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IN THE

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

CASE NO. 19-1378 Civil

ARKANSAS TIMES LP,

Appellant,

v.

MARK WALDRIP, ET. AL,

Respondents.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS – WESTERN DISTRICT,
Case No. 18-CV-00914 BSM

BRIEF OF *AMICI CURIAE* PROJECT SOUTH THE NATIONAL LAWYERS GUILD

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, Amici issue the following corporate disclosure statement. Amici affirm that they have no parent corporations and no publicly-held corporation owns 10% or more stock in either the National Lawyers Guild or Project South.

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INTERESTS OF AMICI CURIAE

Amici are two organizations with particular expertise and relevant experience regarding the case at issue. The National Lawyers Guild is a progressive public interest association of lawyers, law students, paralegals, and others founded in 1937 dedicated to the need for basic and progressive change for the furtherance of human rights. The National Lawyers Guild has been involved in key social justice struggles throughout its history related to the use of political boycotts to ensure the protection of human rights and equality. The National Lawyers Guild is also dedicated to promoting human rights and advancing social justice struggles against entrenched inequalities throughout the globe through its International Committee, with specific focus on particular areas of concern, including Palestine.

Project South is a Southern-based leadership development organization dedicated to the end of poverty and genocide and the advancement of the Southern Freedom Movement throughout both the American South and the Global South. Project South works across issue areas and among various marginalized communities to advance grassroots efforts to protect the rights and interests of marginalized peoples. Project South is particularly dedicated to the use of and protection of tactics of political engagement embraced by marginalized communities, such as the use of political boycotts. Project South also focuses on

addressing injustice in the Global South, with one particular focus of these efforts on challenging and alleviating the discriminatory and illegal human rights violations imposed upon the Palestinian people by the Israeli government.[1]

[1] Pursuant to Fed. R. App. P. 29(a)(4)(E), Amici certify that this brief was authored entirely by Amici and their counsel and not counsel for any party, that no party or counsel for any party contributed money to preparing or submitting this brief, and that no person apart from Amici, their members, and their counsel, contributed money to the preparation or submission of this brief.

INTRODUCTION

Plaintiff Arkansas Times, a weekly newspaper, contracted for years with an Arkansas state college. Under Act 710, Ark. Code Ann. § 25-1-501, et. seq, (hereafter abbreviated Act 710), however, those who contract with the Arkansas state government must certify that they are not engaged in "a boycott of Israel," which is defined as "refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner." The Act cites statements by a company that it is boycotting Israel as a form of evidence that such a boycott is taking place. Though The Times has not engaged in a boycott of Israel and does not plan to do so, The Times refused to sign the certification when contracting with the college, believing that such an expectation was a violation of its First Amendment rights.

The district court held, however, that Act 710 does not restrict advocacy campaigns calling for the boycott of Israel, but only the act of a boycott. Ark. Times v. Waldrip, No. 4:18-CV-00914 BSM (E.D. Ark. Jan. 29, 2019). It held that a boycott in and of itself is neither a form of speech nor inherently expressive conduct, citing Rumsfeld v. FAIR, 547 U.S. 47 (2006). Ark. Times at 10. The court went on to distinguish its holding from the holding of NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982), which held that a state government could not

penalize civil rights activists with civil damages for engaging in a political boycott of white stores believed to be complicit in segregation and the mistreatment of Blacks. Ark. Times at 12. The district court specifically cited Int'l Longshoremen's Ass. v. Allied Int'l, 456 U.S 212 (1982) for the proposition that boycotts aimed at foreign states and their policies could be lawfully restricted. Ark. Times at 14.

The district court's conclusions were erroneous. First, the court did not apply the proper line of cases. Insofar as Act 710 relates to the First Amendment rights of government contractors or others seeking a government benefit, a significant body of law restricts both the substantive areas of speech that a government can restrict as well as the process by which the state can restrict non-speech acts so as to prevent a chilling effect against lawful speech. Those cases indicate that Act 710 is unconstitutional insofar as it penalizes purchasing decisions based on the associated political motives behind them. Second, the district court incorrectly applied the holdings of FAIR and Int'l Longshoremen despite significant differences in the underlying fact patterns, and improperly distinguished Claiborne.

SUMMARY OF THE ARGUMENT

The district court erred in dismissing Arkansas Times' suit and denying a preliminary injunction, where The Times properly stated a claim under the First Amendment. In fact, Act 710 is unconstitutional under controlling case law that sets the limits of government loyalty oaths and other preconditions on contracting

and receiving other government benefits. Where such preconditions create a chilling effect against particular types of speech, they are unconstitutional. The district court's application of contrary case law was incorrect, and in fact, controlling case law holds that political boycotts, such as the proscribed boycott of Israel, are protected by the Constitution. Therefore, this Court of Appeals must overturn the district court's ruling and strike down Act 710 as unconstitutional.

ARGUMENT

POINT I

ACT 710 IS PLAINLY UNCONSTITUTIONAL UNDER CONTROLLING CASE LAW THAT SETS THE LIMITS OF GOVERNMENT PRECONDITIONS ON CONTRACTING WITH THE GOVERNMENT AND RECEIVING OTHER GOVERNMENT BENEFITS.

A. The Constitution forbids statutes that are vague enough that investigation and enforcement threaten or discourage political speech.

In Speiser v. Randall, 357 U.S. 513 (1958), the Supreme Court struck down a so-called "loyalty oath" requiring veterans to affirm by oath that they did not "advocate the overthrow of the Government of the United States or the State of California by force or violence or other unlawful means" in order to qualify for a tax exemption under California law. The Speiser court assumed that California would be acting lawfully insofar as it proscribed a narrow category of illegal speech acts; rather, the grounds for which the oath was struck down was that its

vagueness created a chilling effect against lawful speech. Speiser, 357 U.S. at 519. In particular, the Speiser court held that "When the State undertakes to restrain unlawful advocacy it must provide procedures which are adequate to safeguard against infringement of constitutionally protected rights," and considered that the authority given to a tax assessor to determine whether or not an individual's statements constituted illegal advocacy did not meet this bar insofar as it placed the burden on an individual to prove his speech was legal. Speiser, 357 U.S. at 524, 527-526. The Supreme Court subsequently held in Sweezy v. New Hampshire, 354 U.S. 234 (1957) that a professor could not be held in contempt for refusing to answer questions about his personal political beliefs during an investigation into subversion within the state government. The Sweezy court noted, "It is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas, particularly in the academic community." Sweezy, 354 U.S. at 245.

The certification requirement of Act 710 and the use of company statements as evidence of a boycott of Israel trigger the same constitutional concerns as in Speiser and Sweezy. Act 710 does not prohibit any and all refusals to do business with Israeli companies or US companies conducting business with Israel. Rather, it

defines prohibited boycotts as those refusals carried out "in a discriminatory manner." Because the private intentions of a government contractor come into play to measure what prompted that person to refuse a particular business dealing, the subsequent investigative process to which a contractor is exposed necessarily infringes upon his or her private speech and thought. According to the district court, an individual could still call for boycotts of Israel, attend and meet with organizations that are engaged in boycotting activity, and the like. Ark. Times at 13. But because all of these could be used as indicators of an illicit motive behind a refusal to deal, the contractor's First Amendment-protected speech is subject to the same chilling effects that prompted the Court to refuse to enforce the loyalty oath and its associated statutory framework in Speiser. This is true even one assumed arguendo that boycotts themselves are not subject to First Amendment protections and can be regulated (despite established Supreme Court case law to the contrary); neither the Speiser nor Sweezy courts challenged the underlying purposes of the respective laws. Act 710's broad definition of "Boycott Israel" to include not only refusing to business but also "other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories" further chills a contractor from daring to engage in actions that may well constitute protected speech. AR Code . § 25-1-502(1)(A)(i).

Because Act 710 would place an undue chilling effect on political speech through its regulation of certain types of boycotts of Israel, it violates the rule in Speiser and must be struck down.

B. The speech protections of Speiser bar unreasonable expectations from affecting government contractors' speech rights.

In Keyishian v. Bd. of Regents, 385 U.S. 589 (1967), the Supreme Court extended the holding of Speiser to a case involving teachers at a state university. The Court held that a statute was unconstitutionally vague where it threatened the dismissal of teachers for "seditious utterances" insofar as it forced individuals to guess whether or not their speech would qualify and steer them away from dissenting positions. Keyishian, 385 U.S. at 603. Keyishian explicitly held that "the theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected," citing, among other cases, Speiser. Keyishian, 385 U.S. at 605-606 (internal citations omitted).

The holding of Keyishian was subsequently extended to all government employees in Pickering v. Bd. of Educ., 391 U.S. 563 (1968). In Pickering, the Supreme Court held that where a contracting restriction affects the scope of a contractor's employment and restricts an employee's ability to speak on matters of public affairs, the government must prove the restriction's relevance to the efficiency of public services in a way that justifies treating the employee

differently from other members of the public. Pickering, 391 U.S. at 568. The Supreme Court later extended the Pickering rule to government contractors in Board of County Commissioners v. Umbehr, 518 U.S. 668 (1996).

The rule of Keyishian is particularly applicable to the case at issue. Like in Keyishian, individuals contracting with the state are required to refrain from engaging in a specific type of political activity. While the district court held that such a restriction was constitutionally permitted where the restriction was aimed at boycott-related purchasing decisions rather than boycott-related speech activity, that distinction simply contributes to the statute's unconstitutional vagueness for the reasons addressed in section A of this Point.

In the same way that Keyishian questioned how a teacher at a state college could know to what extent he or she could teach Marxism or the American Revolution before being responsible for engage in seditious utterances, a contractor with the State of Arkansas would not know to what extent his or her constitutionally protected speech related to Israel or its policies could trigger an indication that his or her associated purchasing decisions fall under the proscribed conduct. As such, the rule of Keyishian and Pickering applies.

Needless to say, a generalized rule that no government contractor can participate in boycotts of Israel has no apparent relevance to the efficiency of public services that warrant treating a government contractor differently from

members of the public. As Act 710 proscribes boycott activity by anyone who enters into any sort of contract with the state, personnel as diverse as teachers at public schools and companies providing emergency supplies, to newspapers like Plaintiff-Appellant, are restricted in making such free speech political decisions with no apparent relationship to public services at all, let alone the maintenance of those services' efficiency.

* * *

In sum, the line of cases from Speiser to Pickering that set standards for constitutional limits on speech acts by government contractors and those who seek a government benefit demonstrate that Act 710 is not constitutional. These cases are not limited to direct restrictions on speech, but include limiting government conditions on contracting that could indirectly create a chilling effect on associated speech.

Insofar as Act 710 restricts boycotts of Israel that are defined by the intent of the contractor when refusing to deal with specific companies, it unduly infringes upon the sphere of protected constitutional activity by creating an unconstitutional chilling effect. This is even assuming arguendo (despite Supreme Court case law to the contrary) that boycotts themselves do not constitute First Amendment-protected activity.

POINT II

THE LOWER COURT APPLIED THE WRONG LINE OF CASES BELOW TO CONCLUDE THAT THE FIRST AMENDMENT DOES NOT BAN RESTRAINTS ON BOYCOTTS OF ISRAEL.

A. Rumsfeld v. FAIR is not controlling case law.

In coming to its conclusion that boycotts of Israel do not warrant First Amendment protection, the district court depended heavily on Rumsfeld v. FAIR, 547 U.S. 47 (2006). That case held that a law school association's unwillingness to host military recruiters on university campuses, out of opposition to the military's then-existing ban on gays, was not "inherently expressive" conduct that triggered the protections of the First Amendment. FAIR, 547 U.S. at 65-66. Unlike a parade or the burning of a flag, the FAIR court held that hosting a military recruiter on campus amidst other campus interviews would not be an overwhelmingly apparent expression of the law school's political views. FAIR, 547 U.S at 66. Reasoning that consumer decisions by a government contractor to avoid buying Israeli products would similarly not be apparent, the district court ruled that the boycott was not covered by the First Amendment. Ark. Times at 11.

But FAIR is not applicable to the facts of a consumer boycott of Israel by government contractors, as proscribed by Act 710. In fact, Act 710 does not require government contractors to purchase Israeli goods at all; rather, Act 710 proscribes refusal to deal with Israeli contractors "in a discriminatory manner,"

which is a prerequisite to falling under the Act's definition of a boycott. As such, a contractor who refuses to purchase Israeli goods or contract with Israeli companies due to non-political business reasons, such as pricing or quality, would not be violating the Act. The only way to determine whether or not a contractor is in violation would be to investigate the contractor's political views, triggering the serious constitutional concerns and chilling effects discussed in Point I.

This issue of personal discretion did not exist in FAIR; the law schools did not have any room to deny military contractors for any reason; instead, there was an outright, broad-based requirement that law schools host military contractors regardless of their own political views. In contrast, a government contractor is not required to purchase from Israeli companies under Act 710; rather, the contractor is only proscribed from refusing to do so out of opposition to Israel specifically. Therefore, the analogy between hosting military recruiters on campus and a government contractor's purchasing decisions is inapt, as Act 710 does not mandate purchasing decisions at all. Because Act 710 bans not just the specific purchasing decisions, but the political motives of the purchasers, an issue that did not exist in FAIR, FAIR is not controlling case law.

Additional aspects of FAIR also weigh against viewing it as controlling. First, the FAIR court noted that while hosting recruiters did not constitute expressive conduct, associated speech acts related to hosting the recruiters, such as

e-mails by law school administrators advertising the recruitment events, were subject to First Amendment scrutiny. FAIR, 547 U.S. at 61-62. The court went on to rule that this associated speech was "plainly incidental" to the legitimate regulation of conduct rather than speech, and that previous compelled speech cases were inapposite. That is not the case here. Because the ban on boycotts under Act 710 aims at politically-motivated consumer decisions rather than standard business transactions, the associated speech that is chilled, if not outright banned, is not purely incidental, but fundamental to discerning whether or not an individual contractor has violated the terms of the Act. In fact, the Act seeks to investigate and interrogate the intentions and subliminal motives of persons.

Second, the decision in FAIR was partly upheld because it involved Congress' authority to raise and support Armies, which is "broad and sweeping". FAIR, 547 U.S. at 58 (citing United States v. O'Brien, 391 U.S. 367, 377 (1968)). No such interest is present in Act 710.[2]

[2] Several federal courts have already addressed why boycotts of Israel are not analogous to the conduct at issue in FAIR. See Koontz v. Watson, 283 F. Supp. 3d 1007, 1024 (D. Kan. 2018) ("The Kansas Law here [banning equivalent boycotts of Israel] is different than the requirement at issue in Rumsfeld v. FAIR. The conduct the Kansas Law aims to regulate is inherently expressive. See Claiborne, 458 U.S. at 907-908. It is easy enough to associate plaintiff's conduct with the message that the boycotters believe Israel should improve its treatment of Palestinians. And boycotts – like parades – have an expressive quality. Forcing plaintiff to disown her boycott is akin to forcing plaintiff to accommodate Kansas' message of support for Israel. Because the Kansas Law regulates inherently expressive conduct and forces plaintiff to accommodate Kansas's message, it is

B. Int'l Longshoremen v. Allied is not controlling case law.

The district court also relied heavily on Int'l Longshoremen's Ass'n v. Allied Int'l, 456 U.S. 212 (1982). Int'l Longshoreman upheld the enforcement of a National Labor Relations Act penalty on secondary boycotts against a union whose secondary boycott was ultimately aimed at the Soviet Union following that country's invasion of Afghanistan. While the union argued that their political opposition to the Soviet Union's invasion should exempt them from the penalty, the Court ruled that, in the context of Congress' authority to regulate labor disputes, creating an exception to the rule against secondary boycotts for political boycotts would create too much uncertainty. Int'l Longshoremen, 456 U.S. at 225. The Court drew this conclusion by focusing on the legislative history of the National Labor Relations Act and the considerations Congress took into account in striking the correct balance with regard to such labor regulations.

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unlike the law at issue in Rumsfeld v. FAIR."); and Jordahl v. Brnovich, 336 F. Supp. 3d 1016, 1042 (D. Ariz. 2018) ("Indeed, the collective element of the actions that are prohibited [by an Arizona law banning equivalent boycotts of Israel]…is what distinguishes this Act from those statutes that lawfully prohibit conduct that is not inherently expressive. See e.g. Rumsfeld v. FAIR…The Court agrees that the commercial actions (or non-actions) of one person, e.g. the decision not to buy a particular brand of printer to show support for a political position, may not be deserving of First Amendment protections on the grounds that such action is typically only expressive when explanatory speech accompanies it. However, when a statute requires a company, in exchange for a government contract, to promise to refrain from engaging in certain actions that are taken in response to larger calls to action that the state opposes, the state is infringing on the very kind of expressive conduct at issue in Claiborne.").

Key to this holding was that the penalizing legislation was crafted in the context of regulating labor generally, and the Court's unwillingness to create a political exception. Congress' authority to regulate labor unions has no applicability to Act 710. Act 710 does not make general rules regarding the conduct of labor unions which subsumes political boycotts of other countries. Rather, Act 710 exists solely to proscribe a political boycott aimed at Israel. Hence, neither the labor law context nor the uncertainty that would have been created by an exception to Congress' careful balancing of considerations exists in the present case.

In fact, the Supreme Court went on to decide Claiborne during the same term, in which the distinction between political boycotts, which deserve First Amendment protections, and purely economic boycotts, which do not, was further refined. Claiborne, 458 U.S. at 907 ("Secondary boycotts and picketing by labor unions may be prohibited, as part of Congress' striking the delicate balance between union freedom of expression and the ability of neutral employers….to remain free from coerced participation in industrial strife…we do not find a comparable right to prohibit peaceful political activity such as that found in the boycott in this case."). To interpret Int'l Longshoremen to permit banning political boycotts contradicts this history.

C. Claiborne controls, and as such, boycotts of Israel are protected speech.

In addition to the line of cases from Speiser to Pickering which ban restrictions on government contractors that create a chilling effect on speech, the current case is also properly governed by Claiborne, which defined some boycotts as deserving First Amendment protection in and of themselves. As several other courts have already concluded, Claiborne is controlling case law insofar as purely political boycotts of Israel are concerned, and the district court's distinctions are inapt.

Claiborne held that the First Amendment precluded imposing liability on participants of a peaceful boycott for damages resulting from that boycott, which was an effort by civil rights activists to pressure their city and its businesses, many of which were owned by city officials, to end discriminatory treatment of Blacks: "The boycott of white merchants at issue in this case took many forms…the boycott was supported by speeches and nonviolent picketing. Participants repeatedly encouraged others to join its cause." Claiborne, 458 U.S. at 907.

Discussing the scope of constitutional protection, the Court continued, "Each of these elements of the boycott is a form of speech or conduct that is ordinarily entitled to protection under the First and Fourteenth Amendments." Id. The Court's decision addressed the collective refusal to purchase as itself a protected form of association and expression. e.g.: "The black citizens named as defendants in this

action banded together and collectively expressed their dissatisfaction with a social structure that had denied them rights to equal treatment," 458 U.S. at 907. After summarizing the various aspects of the boycott that involved these speech elements – such as meetings, picketing, and publicly shaming those who opposed the boycott – the Court concluded: "In sum, the boycott clearly involved constitutionally protected activity. The established elements of speech, assembly, association, and petition, though not identical, are inseparable. Through exercise of these First Amendment rights, petitioners sought to bring about political, social, and economic change." Claiborne, 458 U.S. at 911 (internal citations omitted). While holding that governments could regulate some activity in relationship to the boycott that was actually illegal, such as violent intimidation, the Court held that "When such conduct occurs in the context of constitutionally protected activity, however, precision of regulation is demanded." Claiborne, 458 U.S. at 916.

The rule of Claiborne straightforwardly applies to the current case.[3] Penalties are imposed insofar any effort – or refusal to renounce any effort to linit economic relations with a particular country are considered part of a boycott, which involves the inseparable aspects of the First Amendment freedoms described

[3] Both remaining federal courts that have analyzed the question of equivalent bans on Israel boycotts have come to the same conclusion. See Koontz v. Watson, 283 F. Supp. 3d 1007 (D. Kan. 2018); and Jordahl v. Brnovich, 336 F. Supp. 3d 1016 (D. Ariz. 2018).

by the Claiborne court. The penalty is overbroad and underinclusive, in that it plainly restricts those First Amendment freedoms while also permitting refusals to deal with Israeli companies for other reasons, indicating that to the extent that the Act serves any legitimate government purpose, it is not subject to any precision of regulation as mandated by the Claiborne court.

Nonetheless, the district court attempted to distinguish Claiborne as holding that only speech acts associated with boycotting, rather than the purchasing itself, could not be penalized. Ark. Times at 13 ("Crucially, Claiborne did not address purchasing decisions or other non-expressive conduct.") (internal citations omitted). Based on this interpretation, the underlying purchasing decisions can be restricted for the reasons the court provided when citing FAIR.

This straightforwardly contradicts Claiborne, in which the Court regularly refers to the associated speech acts as part of the boycott itself. Moreover, even if purchasing decisions, in the abstract, can be subject to regulation, Act 710 is aimed at purchasing decisions only insofar as they are associated with the First Amendment activity associated with a boycott that are named by the Claiborne court, namely picketing, public statements, and the like. Absent such political expression, Act 710 restricts nothing. Hence, Act 710 is exactly analogous to the unconstitutional measures that the court struck down in Claiborne.

The district court also held that even if Claiborne stands for the proposition that consumer boycotts are protected speech, subsequent cases have limited the scope of this protection to "nonviolent, primary political boycotts to vindicate particular statutory or constitutional interests," citing Allied Tube & Conduit Corp. v. Indian Head, Inc., 486 U.S. 492 (1988) and FTC v. Sup. Ct. Trial Lawyers Ass'n, 493 U.S. 411 (1989). Whereas boycotts of Israel do not vindicate the boycotters' domestic civil rights, the district court ruled that the protection of Claiborne does not apply. Ark. Times at 14-15. In fact, the cases cited by the district court do not make such a distinction. Rather, both cases explain the nature of the boycott in Claiborne solely to distinguish it from boycotts that are not purely political and fall under Congress' authority to regulate that which is economic in nature. In Allied Tube, the civil rights-based motives of the Claiborne boycotters were cited to distinguish from boycotts that were "motivated by any desire to lessen competition or reap economic benefits." Allied Tube, 486 U.S. at 408. In Trial Lawyers, the civil rights motives of the Claiborne boycotters were cited to distinguish the boycott from economic boycotts that sought "to destroy legitimate competition," such as the boycott in that case which the Court ruled was primarily about "increasing the price that [the Trial Lawyers boycotters] would be paid for their services." Trial Lawyers, 493 U.S. at 427. The holding that a boycott must be

aimed at furthering the boycotters' domestic statutory or constitutional rights is wholly absent from Claiborne itself.

* * *

Because Act 710 proscribes politically motivated boycotts that aim at Israel, rather than purchasing choices in the abstract, and the restrictions are not a matter of economic regulation per se, the Act contradicts Claiborne and must be found unconstitutional. Other cases cited by the district court are not controlling.

CONCLUSION

FOR THE REASONS OUTLINED ABOVE, AMICI RESPECTFULLY URGE THE COURT TO REVERSE THE DISTRICT COURT'S DECISION.

Dated: April 12, 2019

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CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25, I hereby certify that I electronically filed this brief with the Clerk of Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system on April 12, 2019. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: April 12, 2019

/s/ Jordan S. Kushner

_____

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CERTIFICATE OF COMPLIANCE

Undersigned counsel hereby certifies, pursuant to Fed.R.App.P. 32(7)(C) that the foregoing Brief complies with the type-volume limitation set forth by Rule 32. According to the word count of the wordprocessing system used to prepare this brief, this brief contains 4485 words. Undersigned counsel further certifies, pursuant to 8th Cir. Rule 28A, that the software program MS WORD 2016 has been used to prepare the Brief, and that file provided to the court and opposing counsel have been scanned for viruses and are virus-free.

Dated: April 12, 2019

/s/ Jordan S. Kushner

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April 30, 2019

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RE: 19-1378 Arkansas Times LP v. Mark Waldrip, et al

Dear Counsel:

The amicus curiae brief of the National Lawyers Guild and Project South has been filed. If you have not already done so, please complete and file an Appearance form. You can access the Appearance Form at www.ca8.uscourts.gov/all-forms.

Please note that Federal Rule of Appellate Procedure 29(g) provides that an amicus may only present oral argument by leave of court. If you wish to present oral argument, you need to submit a motion. Please note that if permission to present oral argument is granted, the court's usual practice is that the time granted to the amicus will be deducted from the time allotted to the party the amicus supports. You may wish to discuss this with the other attorneys before you submit your motion.

Michael E. Gans
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