

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 6 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MIKKEL JORDAHL; MIKKEL (MIK)
JORDAHL, PC,

Plaintiffs-Appellees,

v.

MARK BRNOVICH, Attorney General, in
his official capacity as Arizona Attorney
General,

Defendant-Appellant,

STATE OF ARIZONA,

Intervenor-Defendant-
Appellant,

and

JIM DRISCOLL, in his official capacity as
Coconino County Sheriff; ELIZABETH
ARCHULETA; ART BABBOTT; JIM
PARKS, in their official capacity as
Coconino County Jail District Board of
Directors Members; MATT RYAN; LENA
FOWLER,

Defendants.

No. 18-16896

D.C. No. 3:17-cv-08263-DJH

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Appeal from the United States District Court
for the District of Arizona
Diane J. Humetewa, District Judge, Presiding

Submitted December 10, 2019**
Seattle, Washington

Before: RAWLINSON, BEA, and NGUYEN, Circuit Judges.

In 2016 the Arizona Legislature enacted, and the Governor signed, House Bill 2617 (“the Act”) which prohibited public entities from contracting with companies that engage in “boycott[s] of Israel.” Ariz. Rev. Stat. § 35-393.01(A) (2016). A certification that the contractor agreed not to boycott Israel was to be included in every contract with state or local governments. *Id.* When it went into force, the Act applied to all manners of companies, from sole proprietorships to multinational corporations, and to contracts of any value. *Id.* §§ 35-393(2), 35-393.01(A) (2016).

Plaintiff-Appellee Mikkel Jordahl is the sole member and director of Mikkel (Mik) Jordahl, P.C. (“the Firm”), a law firm in Arizona. For the past twelve years, the Firm has maintained a series of contracts with the Coconino County Jail District, under which the Firm provides legal services to inmates. The contract is valued at approximately \$18,000 annually. Jordahl engages in a personal boycott

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

of Israel by refusing to purchase products from companies that he believes “perpetuat[e] the occupation of the West Bank,” and wishes for his Firm to do so as well. When presented with a certification to not engage in a boycott of Israel as part of the contract renewal with Coconino County in 2016, Jordahl, on behalf of the Firm, signed under protest. In 2017, he refused to sign, and the Firm was not paid for services performed.

Jordahl filed suit against the Arizona Attorney General, the Coconino County Sheriff, and the Coconino County Jail District Board of Directors under 42 U.S.C. § 1983, arguing that the Act violated the First Amendment both on its face and as applied to him; Arizona intervened as a defendant. Jordahl sought declaratory and injunctive relief. The district court granted Jordahl’s motion for a preliminary injunction and enjoined the State from enforcing the certification requirement for public contracts. *Jordahl v. Brnovich*, 336 F. Supp. 3d 1016, 1050-51 (D. Ariz. 2018).

The defendants appealed, and in 2019, while the appeal was pending, the State amended portions of the Act with Senate Bill 1167 (“the revised Act”). The revised Act made two key changes that exempt Jordahl and the Firm from the revised Act’s provisions: The Act’s anti-boycott certification requirement now applies only to (1) companies with ten or more full-time employees, and (2) contracts valued at \$100,000 or more. *See* S.B. 1167, 54th Leg., 1st Reg. Sess.

(Ariz. 2019); Ariz. Rev. Stat. §§ 35-393(2), 35-393.01(A). These changes took effect in August 2019.

Because the Act no longer applies to Jordahl or his Firm, his claims for declaratory and injunctive relief are moot. *See Bd. of Trs. of the Glazing Health & Welfare Tr. v. Chambers*, 941 F.3d 1195, 1197 (9th Cir. 2019) (en banc).

Accordingly, we vacate the preliminary injunction and remand the case to the district court with instructions to dismiss the claims for declaratory and injunctive relief. On remand the district court retains jurisdiction to determine whether an award of attorneys' fees is appropriate under 42 U.S.C. § 1988(b). *See Watson v. County of Riverside*, 300 F.3d 1092, 1094-95 (9th Cir. 2002); *Williams v. Alioto*, 625 F.2d 845, 848 (9th Cir. 1980) (per curiam).

VACATED AND REMANDED WITH INSTRUCTIONS.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Form 10. Bill of Costs**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

9th Cir. Case Number(s)

Case Name

The Clerk is requested to award costs to (*party name(s)*):

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