

Four or five years ago, a half-dozen states passed laws that blacklist companies opposing fossil fuels. Texas was the most prominent of those states. These laws have pressured companies, especially big financial companies, to invest in fossil fuels. A federal district judge has [struck down](#) the [Texas law](#) as a violation of due process and the First Amendment. The judge was right.

Because the judge's ruling was based on the sweeping scope of the law, it's important to take a close look at the law's language. The law requires the state to divest from and stop doing business with any firm that engages in what it calls a boycott of a fossil fuel company. Boycott is defined very broadly to include "taking any action that is intended to ...inflict economic harm" on any company because that company is connected with the fossil fuel industry, unless the action has an "ordinary business purpose."

The law's procedural rules extend its sweep. Enforcement is in the hands of the Comptroller. The Comptroller can demand that a firm certify its compliance with the law; failing to respond with the necessary certification creates a presumption of noncompliance. The Comptroller is not required to give any explanation for blacklisting a company, and there is no judicial review of the Comptroller's decision.

The federal court found that the statutory definition was unconstitutionally vague and covered constitutionally protected conduct, such as "speaking about the risks posed by fossil fuels, advocating against reliance on fossil fuels, and associating with like-minded organizations." In addition, the court said," the Comptroller has publicly stated that companies can be removed from the blacklist if they discontinue their membership with associations that advocate for sustainable investing (and other sustainability measures)."

Moreover, the Controller has sometimes rejected evidence of an ordinary business purpose without explanation, making it even harder for a company to predict what conduct will trigger blacklisting. Given the absence of judicial review or even an explanation from the Comptroller, the Comptroller's discretion is in effect unbounded, raising additional constitutional concerns.

The court's ruling is a welcome development and long overdue. Texas has been on a campaign to punish anyone who dares oppose the use of fossil fuels. It's good to see that campaign hit a constitutional wall.