

*Testimony in Opposition to HB 476*  
*Ohio General Assembly | House of Representatives*  
*Committee on Government Accountability & Oversight*  
*May 3, 2016 | Columbus, OH*

**Testimony of Terry J. Lodge, Esq.**

Chairman Brown, Vice Chair Blessing, Ranking Member Clyde, and Members of the Committee:

Thank you for the opportunity to present my testimony.

I am Terry Lodge. I've been practicing law for 37 years in Toledo. I'm a trial and appellate lawyer and specialize in civil rights, environmental and contract law.

Despite its brevity, this bill has sweeping implications.

For instance, H.B. 476 will obligate every employer in Ohio who has a workers' compensation account and an unemployment compensation account to sign a loyalty oath. Section B of the bill begins with the phrase "A state agency may not enter into or renew a contract with a company for the acquisition or provision of supplies, equipment, or services, or for construction services. . . ." When you become an employer, you must establish workers comp and unemployment deposit accounts which are governed by a signed agreement which brings into play explicit state requirements. Those agreements are, legally speaking, contracts for the provision of services to present or former employees of a business.

Moreover, every grocery store and carryout that offers Ohio Lottery tickets for sale, or accepts food stamps, "enters into a contract" with the State by which the business pledges to follow certain practices and conditions in exchange for which they receive some income and the added customer traffic of having those services available. H.B. 476 would require every one of these small and large businesses to sign a loyalty oath not to commercially oppose the foreign state of Israel, upon pain of losing significant commercial benefits.

Criminal defense lawyers are "proprietors" within the definition in the bill. The State must constitutionally guarantee legal counsel to poor criminal defendants and appropriates funds to every one of Ohio's 88 counties for public defender and court-appointed counsel services. H.B. 476 will condition the attorney-client relationship on a pledge of fealty to a state-ordered foreign policy position.

It is my professional opinion that H.B. 476 may be illegal in multiple ways:

> It likely violates First Amendment freedoms of speech and association by conditioning commercial transactions with the State upon a foreign policy dogma which is irrelevant to the underlying transactions and outside the police power of the State of Ohio in any event. Economic boycotts are a recognized form of free speech;

> As an encumbrance upon the attorney-client relationship with no pertinence to the relationship, it possibly violates the State's discharge of its Sixth Amendment constitutional responsibility to criminal defendants;

> By potentially impairing contracts in violation of Article I, § 10 of the U.S. Constitution and Article II, § 28 of the Ohio Constitution because it engrafts a policy viewpoint upon commercial arrangements which has no relationship to the substance of those arrangements;

> By arguably creating an unlawful bill of attainder in violation of Article I, § 10 of the federal Constitution, finding "guilt" upon compelled disclosure of a private political belief in the form of refusing business with the State;

> By thrusting the State into the conduct of foreign trade policy in direct violation of the U.S. Constitution and federal statutes, limiting a private company's ability to move its foreign investments around during the period of that company's contract with the State of Ohio;

> By taking property without due process of law and without compensation in violation of the Fifth and Fourteenth Amendments via this same restriction on movement of capital during the contract; and

> By possibly violating O.R.C. § 1331.01(B), Ohio's antitrust law, which forbids two or more persons from combining to refuse to trade with any person because such person appears on a blacklist issued by a foreign government.

This bill exposes a governmental distaste for intelligent debate based on facts. It is a response to criticism by silencing it. If passed, H.B. 476 assuredly will permit state-sponsored punishment as a response to important, nonviolent speech.

Please let this proposal die in committee.