OHIO HOUSE OF REPRESENTATIVES
GOVERNMENT ACCOUNTABILITY AND OVERSIGHT COMMITTEE
HOUSE BILL 476, THREE PROPOSED AMENDMENTS

OPPOSITION TESTIMONY OF MICHAEL S. GOLDSTEIN, ESQ.
TO ADOPTION OF THREE AMENDMENTS, PROPOSED MAY 17, 2016
MAY 18, 2016

Chairman Brown, Vice Chairman Blessing, Ranking Member Clyde, and honorable members of the House Government Accountability and oversight Committee:

I am Michael Goldstein. I have been a member of the Ohio Bar for over 40 years, practicing as an assistant law director, as a prosecutor, as a senior attorney for the Cleveland Electric Illuminating Company, and as a private practice employment law attorney. I am also a military retiree with a 30-year Navy career as an intelligence officer, with an emphasis on the Middle East, followed by many years of study of Middle East history thereafter. I am here to apply my experience to my testimony today.

I am a proponent of HB 476 as originally introduced, but I am a very strong opponent of each of the three proposed amendments which were published sometime yesterday, May 17, 2016. I received the text of the proposed amendments at about 5:00 p.m. yesterday from the committee staff.

HB 476, as introduced, is a very worthy piece of anti-discrimination legislation. I am proud that it is being considered for adoption by the General Assembly of my state. The bill says that the State of Ohio may not enter into or renew a contract with any business entity that will not sign a contract which prohibits it from engaging in specified types of economic discrimination against Israel as a protest against the policies of the government of Israel.

The singling out of Israel, a major U.S. ally, and the only democratic nation in the Middle East that shares our liberal Western values, is, in fact, demonstrably discriminatory. Israel is the only nation in that part of the world in which Christians may practice their religion in safety without fear of genocide. In fact, of all the nations in the area, the Christian population in growing in numbers only in Israel. In Israel Jews, Christians of all sects, Muslims, Baha'i, and people of other religions, are all co-equal citizens with equal rights. The rights of all citizens of Israel are commensurate with the civil rights enjoyed by Americans under our U.S. Constitution – and the Constitution of the State of Ohio. Notwithstanding constant propaganda against Israel emanating from Arab states and other Muslim majority states, non-state actors such as terrorist groups, and Muslim Brotherhood and other Jihadist organizations, Israel has a fine human rights record. These other entities, by contrast, have horrible human rights records.

And yet, no other state in the world is vilified and sanctioned as is Israel, even states and other entities which treat their woman as slaves, engage in slavery and slave trading, execute gays because they are gay, and have legal codes which render all Jews and Christians second class

citizens who have to pay protection money to the state to stay alive, although subject to rank subjugation, humiliation, and fear.

Israeli civil and human rights apply not only to all citizens of Israel, but also to Arab residents of territories under the control of Israel, outside of, but contiguous to, Israel. These territories are Judea and Samaria, the heartland of biblical Jewish state.

The boycott and divestment movement (BDS), as defined in HB 476, urges the waging of economic warfare against Israel, but against no other countries in the world. This is discrimination. The bill before you is Ohio's statement that it will not remain complicit in this unfair economic war against an important ally which holds and practices Western values.

What do these three amendments attempt to do? All three are toxic to the anti-discrimination goal of the bill. As introduced, the bill says in essence that no business entity of any sort may enter into a contract with the State of Ohio unless it certifies that it does not engage in boycotting Israel or Israeli companies, whether in Israel or in territory controlled by Israel, or divesting from funds from the government of Israel or from a company operating in Israel or in territory controlled by Israel.

One amendment, if adopted, would limit the operation of the statute solely to corporations which have annual contracts with the State of Ohio that total more than $5 million. Those corporations would not be allowed to engage in discriminatory economic warfare against Israel and still do business with Ohio. However, sole proprietorships, partnerships, corporations having annual contracts with Ohio that total $5 million or less, national associations, societes anonyme, limited liability companies, limited partnerships, limited liability partnerships, joint ventures, or other business organizations, would, in fact, be able to engage in discriminatory economic warfare against Israel and still enter into contacts with agencies of the State of Ohio. This is analogous to a state employment non-discrimination law which would prohibit large corporate employers from discriminating against racial minorities in hiring, but would allow smaller corporate employers, and all other employers, to exclude blacks, Hispanics, and other minorities from employment.

Discrimination is discrimination, no matter what sort of company is doing it, and that is recognized in the bill as introduced. Those who propose this amendment to HB 476 would have Ohio permit economic warfare discrimination against Israel to proceed in almost every case. This would make Ohio complicit in this discrimination.

Unlike the bill as introduced, a second proposed amendment would permit discriminatory economic warfare against Israel to continue in territories not in Israel, but controlled by Israel. These are areas where Israeli companies employ large numbers of Arabs. Many of us have SodaStream machines in our homes. The owner of SodaStream built his factory in the territories, and he employed Israeli Arabs, Israeli Jews, and Arabs who were resident in the territories. All employees received wages at the Israeli wage rate, which is three times the wage rate of Arabs in the territories under the civil administration of the Palestinian Authority (PA). In addition, all employees received Israel's national health insurance, both for themselves and for their extended families.

Due to pressure from the BDS movement, Soda Stream was forced out of the territories. They tried to relocate to the Sinai where they could employ some Muslim Bedouins, but due to security concerns they were not allowed to do so. Thus Soda Stream was forced by the BDS movement to relocate in Israel proper, and all those Arab employees who live in the territories lost their well-paying jobs and their medical benefits, as did their families, and were thrown back into the PA's job market, where jobs are scarce.

To illustrate this further, here are some excerpts from an article on the Soda Stream closing appearing March 1, 2016 in The Blaze at http://www.theblaze.com/stories/2016/03/01/backfire-hundreds-of-palestinians-lose-jobs-after-activists-push-to-boycott-israeli-company-that-scarlett-johansson-promoted/:

> Hundreds of Palestinian workers have lost their jobs following a boycott campaign against SodaStream, an Israeli company that manufactures home kitchen fizzy drink machines. . . . SodaStream was a prominent target of the Boycott, Divestment and Sanctions Campaign and CODEPINK, because it operated a factory in the West Bank. "We're heartened by all the support that everyone has shown us, but in the end, when I get up tomorrow, I won't have a job to go to," Yasin Abu Ateek, a 29-year-old father of two who worked for SodaStream for six years told the Jerusalem Post.
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> The Post, quoting the company, reported that the Palestinian employees each supported an average of 10 other people with their income.
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> "All the people who wanted to close [the factory] are mistaken. … They didn't take into consideration the families," Ali Jafar, a Palestinian shift manager, told The Guardian in September.
> "SodaStream should have been encouraged in the West Bank if [the BDS movement] truly cared about the Palestinian people," SodaStream CEO Daniel Birnbaum told the British paper then.

Other Israeli companies, many of them high-tech, have been outsourcing their work to Arabs in the territories, to the financial and social benefit of both. This trend is illustrated by a December 18, 2010 Associated Press article appearing in Haaretz, a politically liberal Israeli newspaper and online news site at http://www.haaretz.com/israel-news/israeli-high-tech-companies-outsourcing-to-palestinians-1.331256
This sort of cooperative efforts between territorial Muslim Arabs and Israelis will be harmed if the BDS movement is allowed to operate in the territories.

If HB 476 is enacted with this amendment, there will be more economic damage caused to the Arabs in the territories, the very persons the BDS movement purports it wants to help. Ohio should not be complicit in continuing to facilitate discriminatory economic warfare against Israel in the territories.

The third proposed amendment is also toxic. It is a sunset provision which repeals the act five years after its effective date. This is senseless: If the BDS economic warfare against Israel is

discriminatory on the effective date of the act, will it be any less discriminatory five years later when it is no longer prohibited by the State of Ohio? Of course not. Such an important anti-discrimination law should only be repealed, if at all, by further action of the General Assembly at a later date.

Unmistakably, HB 476 as introduced is essentially an anti-discrimination provision. Boycotts of companies for their Israel-related activities share the fundamental flaw of discriminatory conduct: they seek to punish companies and people not based on their own conduct, but based on their national associations. Just as gender or sexual orientation discrimination by state contractors would be no more acceptable if it took place in a politically disputed territory, the discrimination manifest in Israel boycotts is not mitigated by the location where it takes place.

There is extensive precedent for this bill as introduced. Congress has legislated a federal policy opposing Israel boycotts; and in two laws, passed just in the last year, it has defined boycotts of Israel as including those directed to "Israeli-controlled territories." Given that federal law now contains a clear and consistent definition of boycotts of Israel, it would raise serious questions of state interference in foreign affairs for the states to come up with their own territorial parameters, distinct from Congress's. Moreover, the federal laws barring private participation in boycotts of Israel and other countries also make no distinction based on the location of the boycotted company. To introduce such a distinction in state law would be incongruous and improper.

Adopting the proposed amendment to exempt the Israeli-controlled territories from the application of this law would leave Ohio out of step with its fellow states and the federal government. In the last year, seven states have enacted laws dealing with Israel boycotts similar to the bill before this committee. Only one state has deviated from the "Israel and territories under its control" template. In all the jurisdictions (just as it was in Congress), this language was adopted by overwhelmingly bipartisan votes. The pressure groups that are suggesting that this language is controversial or divisive are trying to politicize what has been an extraordinarily non-partisan and unifying wave of legislation. Indeed, the New Jersey state senate unanimously passed a bill disallowing pension investments in companies that boycott "companies operating in Israel or Israeli-controlled territory."

The proposed bill does not lump together Israeli settlements with Israel proper. Indeed, it distinguishes sharply between them. The bill speaks of two distinct areas: "Israel" and "territory controlled by Israel." That means that those "territories" are something different from "Israel." To be sure, the law opposes boycotts of both areas, but that is not conflating them any more than opposing sex or race discrimination by companies would be conflating sex and race. In any case, it is not for the states to decide how to relate to the territories in question. Congress, which has the exclusive power over Foreign Commerce, has given these territories the same customs status as Israel. It would be improper for the states to legislate different geographic parameters for Israel boycotts from those decided on by Congress.

Using the language "territories" is required, as it includes West Jerusalem, Israel's capital, which is not a settlement, within the scope of the Ohio bill. As a result of the Supreme Court's holding in Zivotofsky v. Kerry, 135 S. Ct. 2076, 2095 (2015). Statutory references to Israel

cannot be interpreted to include West Jerusalem. This does not mean U.S. statutes cannot apply to this area – only that they need to use different language, such as "territories controlled by Israeli," to achieve this. Without such language, the statute would effectively permit discriminatory boycotts of businesses operating in Israel's "pre-1967" borders.

This bill does not support settlements, nor does it confer legitimacy on them. The question of whether one opposes or supports settlements is distinct from what the rules dealing with economic activity there should be. This bill is not about settlements – places where people live. Rather, it is about companies in the region – places where people do business. There can be settlements without business activity and business activity without settlements. For example, most people living in the West Bank make their living inside the Green Line (within Israel's "pre-1967" borders); and there is much business activity outside of the Green Line that is done without settlements — many Israeli factories, such as Soda Stream used to do, employ local territorial Arabs, or even Israelis who reside inside the Green Line.

Business in these areas is entirely legal under international law, as every court to consider the issue in recent years has clearly ruled. Just a few months ago the European Court of Justice broadly ruled that international law does not restrict an occupying power's ability to conduct business in territory which it occupies.

HB 476 as introduced, is essentially an anti-discrimination provision. Boycotts of companies for their Israel-related activities share the fundamental flaw of discriminatory conduct: they seek to punish companies and people not based on their own conduct, but based on their national associations. Just as gender or sexual orientation discrimination by state contractors would be no more acceptable if it took place in a politically disputed territory, the discrimination manifest in Israel boycotts is not mitigated by its location.

I urge each member of this honorable committee to vote against each and every proposed amendment before you. If, however, any of the proposed amendments is accepted and made a part of the bill, I then urge you to vote the amended bill down in committee. The amendments seemed designed to cut the heart out of this excellent bill. Supporting a HB 476 amended in this way would indicate a goal of making Ohio complicit in discriminatory conduct. No bill is preferable to a bill amended in this way.

I thank you for your time and attention, and I will be happy to respond to your questions.