



TO: Senate Government Oversight and Reform Committee
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio
DATE: December 7, 2016
RE: House Bill 476

To Chairman Coley, Vice Chair Seitz, and members of the Senate Government Oversight and Reform Committee, my name is Gary Daniels, chief lobbyist for the American Civil Liberties Union of Ohio ("ACLU of Ohio") and I appear to present opponent testimony on Amended House Bill 476.

On its face, HB 476 is simple. It forbids contracts between the State of Ohio and a business entity that "boycotts" Israel. This legislation is part of a coordinated, nationwide response to the anti-BDS (Boycott, Divestment, and Sanctions) movement. This effort seeks to convince others not to do business with Israel in protest of Israel policies and actions as it relates to Palestinians.

However, the ramifications of HB 476 are far-reaching, troublesome, and potentially unconstitutional, in ways I am unsure if sponsors, proponents, or this committee have considered.

First, HB 476 places zero limits on why a business entity may choose to not engage in business with or in Israel. Let's say Israel's government decides to place any number of taxes, tariffs, or restrictions on goods imported from the United States or just Ohio. Accordingly, a corporation decides continued business in and with Israel is no longer in their best financial interests. House Bill 476 forbids that decision, should that business wish to keep its contract with the State of Ohio.

HB 476 is so extremely broad it also forbids businesses from ending relationships with other businesses and corporations in Israel no matter whether that corporation is controlled by the Israeli government, is a totally private corporation, or even if it is a foreign-owned business merely operating in Israel.

So expansive is HB 476 it does not even limit its reach to where the boycotting company is located. In other words, it applies to all corporations, businesses, and other business entities whether they are located in Ohio, somewhere else in the U.S., or anywhere on the planet. So long as they have or desire to have a contract with the State of Ohio.

AMERICAN CIVIL
LIBERTIES UNION
OF OHIO
4506 CHESTER AVENUE
CLEVELAND, OH 44103-3621
T/216.472.2220
F/216.472.2210
WWW.ACLUOHIO.ORG
contact@acluohio.org

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Also troubling is the lack of any mention or detail as to how exactly Ohio government will enforce HB 476. What state agencies or departments will be responsible for enforcing these prohibitions? Exactly what criteria will they use to investigate and determine why exactly a business entity in Toledo, Texas, or Tokyo decided to stop doing business with Israel? Will this involve subpoenas or demands for business records, emails and other internal communications? Or maybe the monitoring of Facebook, Twitter, and other social media? Will business owners and CEOs be called before or made to answer to a government committee to justify their lack of or end to business in Israel? All such actions by the State of Ohio raise serious First Amendment concerns as does HB 476 itself.

In addition, the ACLU of Ohio anticipates once HB 476 establishes a precedent of tying such conditions to state contracts it will be only a matter of time before we see additional laws from the legislature applied to business in and with other countries.

Pass HB 476 and what prevents this legislature from enacting a similar law that forbids businesses from anywhere on Earth, with state contracts in Ohio, from boycotting or disinvesting from *any* country or business in that country for any reason or all reasons?

Could or should the Ohio General Assembly forbid state contracts to those who refused to support Hillary Clinton for president? Or sever contracts with those supporting the Second Amendment? Or maybe those who oppose *Roe v. Wade*?

If your answer is "no" or "that does not sound right to me" in those more narrowly-tailored situations then surely you see the problems of House Bill 476, a bill with almost no limits on reasons or geography, except for the variable of Israel.

Finally, the ACLU of Ohio believes HB 476 will face an uphill battle once it reaches federal court. In *O'Hare Truck Service v. City of Northlake*, the U.S. Supreme Court ruled, by a 7-2 margin, that the city's removal of a tow truck company from a government list of preferred companies for supporting an opposing mayoral candidate violated O'Hare Truck Service's First Amendment rights. In other words, a private business was punished by the government, via removal of a contract, for expressing an unpopular viewpoint.

Members of this committee, there are many reasons to oppose HB 476 beyond those just mentioned. At a minimum, it is wholly unneeded. At its core, this bill is Big Government run amok. The ACLU of Ohio urges this committee's rejection of House Bill 476.