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TO: Dear Chairman Coley, Vice-Chair Seitz, Ranking Member Yuko, and Members of Senate Committee on Government Accountability & Oversight

RE: Supplemental testimony in opposition to Am.H.B. 476

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I was present and testified before the Government Oversight Committee on Wednesday, December 7, 2016 in opposition to Am.H.B. 476. I was disappointed that when Senator Seitz attempted to clarify what, in his opinion, the bill does and doesn't protect, he didn't seek to have that exchange with me.

Senator Seitz insisted to another witness that Am.H.B. 476 curtails no one's free speech right, that everyone is allowed to express their opinions concerning the policies of the Nation of Israel except those seeking contracts from the State. But therein lies the violation.

In practice, every employer in Ohio will be covered and affected by Am.H.B. 476, because every employer has contracts with the State. Senator Seitz insisted that he knew of no obstacle keeping the State of Ohio from discriminating against those who want to do business with the State and who oppose the policies of Israel. I respectfully refer Senator Seitz and the Committee to a more than a half-century's worth of court decisions, which overwhelmingly forbid conditioning speech on the receipt of government contracts and other benefits.

The U.S. Supreme Court has repeatedly held for more than 50 years that the government cannot condition a benefit on the requirement that a person forgo a constitutional right, and, as a necessary corollary, that the government may not deny a benefit to a person because he or she exercises a constitutional right. *Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 545 (1983), citing *Perry v. Sindermann*, 408 U.S. 593, 597<sup>1</sup> (1972) (teacher on year-to-year

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<sup>1</sup> "[T]his Court has made clear that, even though a person has no 'right' to a valuable governmental benefit, and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interest, especially his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to 'produce a result which [it] could not command directly.' *Speiser v. Randall*, 357 U.S. 513, 526. Such interference with constitutional rights is impermissible."

employment contract at state college who was illegally nonrenewed for controversial speech); *Speiser v. Randall*, 357 U.S. 513, 518-519 (1958) (“The appellees are plainly mistaken in their argument that, because a tax exemption is a ‘privilege’ or ‘bounty,’ its denial may not infringe speech”); *Federal Communications Commission v. League of Women Voters*, 468 U.S. 364 (1984) (attempted limitation on editorializing by nonprofit media outlets which have received Corporation for Public Broadcasting funds); *Legal Services Corporation v. Velazquez*, 531 U.S. 533 (2001) (Legal Services Corporation Act provision preventing an attorney from arguing to a court that a state statute conflicts with a federal statute or that a state or federal statute by its terms or in its application violates Constitution improperly hamstrings advocacy for impoverished clients benefitting from government-subsidized services); *United States v. American Library Assn., Inc.*, 539 U.S. 194, 210 (2003) (“the government may not deny a benefit to a person on a basis that infringes his constitutionally protected . . . freedom of speech even if he has no entitlement to that benefit.” (quoting *Board of Comm'rs, Wabaunsee Cty. v. Umbehr*, 518 U.S. 668, 674 (1996) (some internal quotation marks omitted))); *O'Hare Truck Service, Inc. v. City of Northlake*, 518 U.S. 712, 716-720 (1996) (unconstitutional to remove vendor which refused to contribute to mayor's re-election campaign from city's rotating list of available companies to perform towing services at its request); *Sherbert v. Verner*, 374 U.S. 398, 404 (1963) (Court reversed denial of unemployment compensation to Seventh Day Adventist who refused employment requiring her to work on Saturdays; “It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege”); *Board of Comm'rs, Wabaunsee Cty. v. Umbehr*, 518 U.S. 668, syll. (1996) (county commissioners terminated trash hauling contractor for public, critical comments; “The First Amendment protects independent contractors from the termination or prevention of automatic renewal of at-will government contracts in retaliation for their exercise of the freedom of speech”); *Saenz v. Roe*, 119 S.Ct. 1518, 526 U.S. 489, 490, (1999) (“State cannot enact durational residency requirements in order to inhibit the migration of needy persons into the State, and that a classification that has the effect of imposing a penalty on the right to travel violates the Equal Protection Clause absent a compelling governmental interest”); *Shapiro v. Thompson*, 394 U.S. 618, 627 n. 6 (welfare benefits); *United Public Workers v. Mitchell*, 330 U.S. 75, 100 (public employment); *Wieman v. Updegraff*, 344 U.S. 183, 192 (public employment); *Shelton v. Tucker*, 364 U.S. 479, 485-486 (public employment); *Torcaso v. Watkins*, 367 U.S. 488, 495-496 (public employment); *Pickering v. Board of Education*, 391 U.S. 563, 568 (principle applies regardless of the public employee's contractual or other claim to a job).

Senator Seitz's perception that the State is free to “boycott the boycotters” is thoroughly misinformed. I urgently ask that when Am. H.B. 476 is brought up for a floor vote today, December 8, 2016, that the Committee's misapprehension of the law be corrected and the full Senate be so informed. It is imperative that the Senate take its vote in the knowledge that Am.H.B. 476 would create a blacklist while destroying the First Amendment right of essentially every employer in Ohio, and cannot survive a court challenge.

Thank you.

Respectfully submitted,

/s/ Terry J. Lodge

Terry J. Lodge, Esq.

Representing Free Speech Coalition of Ohio and  
Northwest Ohio Free Speech Alliance