



Council on American-Islamic Relations, Ohio
4242 Tuller Road, Suite B2
Dublin, Ohio 43017
Telephone: 614-451-3232
Fax: 614-451-3222
www.cairohio.com

TO: MEMBERS OF THE GOVERNMENT OVERSIGHT AND REFORM COMMITTEE

FROM: COUNCIL ON AMERICAN ISLAMIC RELATIONS, OHIO

DATE: December 6, 2016

RE: OPPOSITION TO HOUSE BILL 476

Jennifer Nimer, Legal Director of Council on American-Islamic Relations, Ohio (“CAIR-Ohio”) presents this written testimony on behalf of CAIR-Ohio in opposition to House Bill 476.

HB 476 requires that recipients of a contract with a state agency declare that they are not boycotting or divesting from Israel or Israeli-controlled territory.

CAIR-Ohio opposes this bill as it will violate the free speech rights guaranteed by the First Amendment to the United States Constitution.

HB 476 seeks to penalize political expression and political protest by using the state’s procurement powers to deny contracts to individuals and businesses boycotting Israel. Proponents of the bill suggest that H.B. 476 does not violate the First Amendment because it would not prohibit anyone from engaging in a boycott; it would only provide that those who do so would forgo the “privilege,” not the “right,” to seek a government contract. This is incorrect. Even when one does not have a right to receive a public benefit, a public benefit cannot be denied on the basis of an unconstitutional condition. Denying someone a public benefit, because of their political speech is such an unconstitutional condition.

The Supreme Court has found that the state could not elect not to renew an employee’s contract because of their First Amendment protected speech nor could the government require that recipients of funding to fight HIV/AIDS to be opposed to the legalization of sex work. (See *Perry v. Sindermann*, 408 U.S. 593 (1972); *USAID v. Alliance for Open Soc’y Int’l, Inc.*, 133 S. Ct. 2321, 2332 (2013))

Government contracts are such a public benefit and thus cannot be denied based on political views. The Supreme Court has explicitly ruled that one cannot be denied a government contract based on their First Amendment protected political views. (See *O’Hare Truck Service v. City of Northlake*, 518 U.S. 712 (1996)). HB 476 does just that; it denies a contract due to the political views of the individual. Boycotting Israel is an act intended to achieve political, social, or

economic change, namely to change Israel's policies towards the Palestinian people. Such a boycott is a form of political speech. By conditioning a public contract on the recipient refraining from such boycotts, the state of Ohio would be imposing an unconstitutional condition, i.e., a condition that violates the recipient's First Amendment rights.

In addition to being unconstitutional, this bill will also stand in opposition to the value of freedom of conscience which forms the bedrock of any free society. In fact, this bill will force citizens to express a particular political opinion if they want to deal with the State of Ohio, which goes against the principle of equal treatment of all citizens, irrespective of political expression.

For the above-mentioned reasons, CAIR-Ohio urges that this bill be rejected.

Sincerely,

Jennifer Nimer
Legal Director
CAIR-Ohio