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TO: House Government Oversight Committee  
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio  
DATE: April 18, 2023  
RE: House Bill 100 – Opponent testimony

To Chairman Peterson, Vice Chair Thomas, Ranking Member Forhan, and members of the House Government Oversight Committee, thank you for this opportunity to provide opponent testimony on House Bill 100.

The ACLU of Ohio appreciates HB 100 is meant to protect Ohioans' display of "Thin Blue Line" flags and emblems on their property when the places they live subject displays to regulations of homeowners associations, condominium associations, mobile home park operators, or private landlords. By doing this, HB 100 expands current law applicable to the United States flag, the State of Ohio flag, POW/MIA flags, and military service flags.

The ACLU of Ohio typically takes interest in these types of situations when they explicitly involve the First Amendment. That is, when there is a government actor and/or involvement restricting speech. Of course, HOAs and other entities subject to HB 100 are not government actors.

Nonetheless, the ACLU of Ohio still appreciates legal and statutory protections of speech and expression in countless situations and arenas where there is no government involvement. This includes HOAs and the other entities covered by HB 100.

I realize that all sounds contradictory; the ACLU of Ohio essentially supports legal protections for the display of Thin Blue Line flags and emblems on these properties, but is opposed to House Bill 100.

Our opposition comes not from the protection of private expression HB 100 provides, but rather the fact HB 100 protects and addresses only one type of expression, one message. When Government puts its finger on the speech scale, as it does with HB 100, it creates First Amendment problems.

It is the position of the ACLU of Ohio if the General Assembly is going to, once again, weigh into speech displays in these contexts then the statutory protection must apply to all messages and speech. If Government decides pro-law enforcement speech is worthy of statutory protection, then it cannot refuse to provide the same for speech with an opposing message in the same contexts.

Likewise, if the Government is going to involve itself in this regard, then it must provide protections for all types of messages and speech from property owners, renters, and so on, not just that speech in support of, complimenting, opposing, or questioning law enforcement.

When Government holds the keys to regulation and restriction, picking and choosing speech and expression winners is a formula fraught with numerous and identifiable problems. Government's proper role is to facilitate free speech pursuant to its duties under the First Amendment, not to use its powers to facilitate only the speech meeting its approval.

In other words, the ACLU of Ohio would generally support legislation with widespread protections for Ohioans' displays of expression and speech regarding HOAs, condos, and more. House Bill 100 falls far short of that. On the macro level, it protects a very narrow category of speech. On the micro level, it fails to provide identical protections for speech representing different perspectives on law enforcement. HB 100's too narrow scope is what makes it constitutionally problematic.

For these reasons, the ACLU of Ohio encourages this committee's rejection of House Bill 100.