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**TESTIMONY IN SUPPORT OF 18-H 7343,  
RELATING TO SALES AND USE TAX  
May 3, 2018**

The ACLU of Rhode Island supports this legislation, which would clarify that the current tax exemption that exists for the sales of books by their authors applies to both works of fiction and non-fiction. We understand that this bill was generated because the Division of Taxation, which is responsible for implementing the law, has distinguished between fiction and non-fiction books, and has determined that only the former qualify for an exemption. Such an interpretation, we submit, is contrary to the statute and raises serious constitutional concerns.

As for the statute itself, it clearly exempts “a book or other writing.” There is no ambiguity in that. If Division officials are making the distinction because they believe that non-fiction writing is not “original and creative,” that is a judgment wholly unsupported by any meaningful understanding of the writing process, whatever the genre. Indeed, there exists a whole field of writing that doesn’t fit neatly into either category, and the Division of Taxation has no business making professional judgments about how a book should be categorized for tax exemption purposes. It is simply not up to tax officials to decide whether “non-fiction novels” like Norman Mailer’s *The Executioner’s Song* or Truman Capote’s *In Cold Blood* are more non-fiction or novel and therefore entitled or not entitled to a tax exemption for the author.

Indeed, making these types of content-based distinctions for tax-exempt purposes raises serious First Amendment problems. For example, in *Arkansas Writers’ Project, Inc. v. Ragland*, 481 U.S. 221, 107 S.Ct. 1722 (1987), the U.S. Supreme Court struck down an Arkansas sales-tax scheme that provided an exemption for newspapers and religious, professional, trade, and sports journals, but taxed the sale of general-interest magazines. As the Court noted, “Such official scrutiny of the content of publications as the basis for imposing a tax is entirely incompatible with the First Amendment’s guarantee of freedom of the press.” The R.I. Supreme Court reached a similar conclusion many years ago in striking down a special sales tax exemption for Bibles, but not other literature, in our state’s sales tax law. *Ahlburn v. Clark*, 728 A.2d 449 (R.I. 1999).

This legislation should not be necessary. Whether or not it is enacted, we believe the regulation prompting its introduction is unlawful needs to be repealed. In the interim, we support the bill’s passage merely as an attempt to clarify what we believe is already a clear statute.