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The Hon. Gina Raimondo  
Governor  
State House  
Providence, RI 02903

**RE: VETO 16-H 7736**

Dear Governor Raimondo:

On behalf of the ACLU of Rhode Island, I am writing to urge your veto of 16-H 7736, a bill purportedly aimed at banning discrimination in state contracts but that, in fact, would punish local businesses for engaging in their right to freedom of speech. In urging a veto, we note that this bill has some striking resemblances to the “revenge porn” legislation that you recently vetoed. Like those bills, this one has significant ramifications for the exercise of First Amendment rights and is worded in a troublingly broad and confusing manner.

Although proponents of this measure claim to have crafted it to address First Amendment concerns, it does no such thing. The legislation bars most businesses from receiving a state contract if they are engaged in a “boycott of any person, firm or entity based in or doing business with a jurisdiction with whom the state can enjoy open trade, and/or the boycott of any public agencies, entities or instrumentalities of the jurisdiction with whom the state can enjoy open trade.” With certain exceptions, a boycott is defined as refusing “to deal with a person, *firm or entity, or a public entity of a foreign state*, when the action is based on race, color, religion, gender, or nationality of the targeted person, firm, entity or public entity of a foreign state.”

The ACLU certainly appreciates the state’s interest in not conducting business with entities that engage in discriminatory activities prohibited by law. *But that is not what this bill is about*. Rather, by focusing on “discrimination” against “public entities” of foreign states, this bill instead chills the legitimate free speech activities of contractors.

That is because the legislation targets not discriminatory conduct, but free speech activity that takes the form of boycotts. However, boycotts “to bring about political, social, and economic change” through speech, assembly and petition are unquestionably protected by the First Amendment. *NAACP v. Claiborne Hardware Co*, 458 U.S. 911 (1982). In addition, the government generally cannot punish contractors based on their political beliefs, associations and activities. See, e.g., *O’Hare Truck Service v. City of Northlake*, 518 U.S. 712 (1996); *Agency For International Development v. Alliance For Open Society International, Inc*, 520 U.S. \_\_\_\_ (2013).

As one court has explained:

“[A]lthough the government is under no obligation to provide various kinds of benefits, it may not deny them if the reason for the denial would require a choice between exercising First Amendment rights and obtaining the benefit. ... [T]he government cannot avoid the reach of the First Amendment by acting indirectly rather than directly.” *Brooklyn Institute of Arts v. City of New York*, 64 F.Supp. 184, 200 (E.D.N.Y. 1999) (citations omitted)

On one level, it is unclear to us how one discriminates against a “public entity of a foreign state” based on its race, religion, nationality, etc. On the other hand, one can readily argue that the decision to boycott any foreign state is, by definition, discrimination on the basis of nationality. Thus, under the terms of this bill, the many businesses that decided to boycott South African goods during apartheid engaged in an inappropriate boycott based on “nationality” that would have disqualified them from receiving any state contracts. To the extent the bill allows boycotts that are expressly allowed by other statutes, it only compounds the free speech problems by giving the state the power to pick and choose which boycotts – i.e., which speech – private businesses may privately engage in.

In short, by failing to clearly protect a private business’s decision to boycott based on a foreign entity’s policies, this legislation would chill legitimate, constitutionally protected politically-motivated boycotts. Many contractors unwilling to risk the loss of business with the state are therefore likely to stay away from exercising their First Amendment right to boycott. Indeed, that is ultimately the purpose of the bill – to cripple politically motivated boycotts of Israel, and thereby to punish particular viewpoints that the government disagrees with. That is never a permissible motivation for a government actor.

Worse, this legislation would put your Department of Administration in the unenviable and dubious position, if questions about a business’s practices arose, of interrogating contractors about their views on political issues in order to determine whether any boycott they were engaged in disqualified them from a state contract.

For all these reasons, the ACLU of Rhode Island urges your veto of H-7736. Thank you in advance for considering our views. I would be happy to provide any additional information that you would find helpful.

Sincerely,

Steven Brown  
Executive Director

cc: Claire Richards, Executive Counsel  
Lisa Vura-Weis, Deputy Chief of Staff