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**TESTIMONY IN OPPOSITION TO 16-H 7736,
AN ACT RELATING TO ANTI-DISCRIMINATION IN STATE CONTRACTS
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The ACLU certainly appreciates the state's interest in not conducting business with entities that engage in discriminatory activities prohibited by law. However, we are deeply concerned about the breadth of the language in this bill, which goes far beyond state objections to entering into contracts with businesses that, for example, discriminate in their individual hiring practices based on an applicant's person's race, religion or other protected status. By focusing on discrimination against "public entities" of foreign states, this bill instead potentially chills the legitimate free speech activities of contractors.

This 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.*"

We wish to note a few important underlying premises that form the foundation for our position in opposition to this legislation. First, as noted above, we believe the state clearly has a legitimate interest in requiring contractors to abide by employment-related anti-discrimination laws. At the same time, 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).

The concern we have with this legislation is its attempt to bar doing business with contractors who boycott "public agencies" or "public entities of a foreign state." It is unclear to us how one discriminates against a "public entity of a foreign state" based on its race, religion, nationality, etc. For example, was a decision to boycott South African goods during apartheid an inappropriate boycott based on "nationality"? By failing to make any clear distinction between a boycott based on a foreign entity's policies and one based specifically on the race or nationality of the entity's inhabitants, this legislation could have a chilling effect on legitimate, constitutionally protected politically-

motivated boycotts. Contractors unwilling to risk the loss of business with the state could easily fear that a broad reading of this law could disqualify them if they engage in policy-related boycotts with a foreign entity, and thus improperly discourage them from doing so.

For these reasons, the ACLU of Rhode Island opposes H-7736.