

May 9, 2019

The Honorable Nita Lowey
Chairwoman
U.S. House Committee on
Appropriations

The Honorable Kay Granger
Ranking Member
U.S. House Committee on
Appropriations

RE: Vote “NO” on the Graves BDS Amendment

Dear Chairwoman Lowey and Ranking Member Granger:



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Susan Herman
President

Anthony Romero
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Ronald Newman
National Political
Director

On behalf of the American Civil Liberties Union (ACLU), and our more than 3 million members, supporters and activists, we strongly urge all Members of the House Appropriations Committee to vote “NO” on the second amendment to the Military Construction and Veterans Affairs Appropriations bill being offered by Rep. Graves. This amendment would permit federal agencies to adopt unconstitutional measures intended to suppress protected political expression when those opinions are disfavored by the government. The ACLU will score this vote.

We urge you to vote “NO” on the Graves BDS Amendment to the Military Construction and Veterans Affairs Appropriations Bill.

The Graves amendment would permit federal agencies to adopt and enforce measures restricting the agencies’ contracting with entities engaged in boycott, divestment, or sanctions activity targeting Israel. This amendment would allow federal agencies to compel contractors to promise not to boycott Israel, as a requirement of maintaining their relationship with the state. The problem is that politically-motivated boycotts are protected by the First Amendment to the Constitution,¹ and this amendment, if enacted, would trample on the constitutionally guaranteed right to free expression.

While we take no position on Israel boycotts, the BDS movement, or Israel-Palestine, we do maintain the government should not be sanctioning business on the basis of First Amendment-protected expression and association.

¹ *NAACP v. Claiborne Hardware*, 468 U.S. 886 (1982).

This is especially true where the ideological position has no connection whatsoever with the business relationship at stake. Math teachers in Kansas² and university students, writers, and journalists in Texas³ should not have to disavow participation in protected expression and association in order to do their jobs or engage in business relationships with the state. The same principle holds true for federal contractors, who, under this amendment, could be penalized for their beliefs or advocacy through a denial of work opportunities and income.

The ACLU is not alone when we say this amendment would be unconstitutional. Three federal courts have now held that politically-motivated boycotts against Israel, including the BDS movement, are protected by the First Amendment. These courts all blocked enforcement of state laws containing contracting restrictions very similar to those that the Graves Amendment would impose. Last month a federal district court in Texas blocked as unconstitutional a state law that required government contractors to certify that they did not boycott Israel and would not do so over the course of their contract.⁴ Courts in Arizona and Kansas issued similar rulings last year.⁵ Moreover, thirteen of the country's preeminent First Amendment scholars, including the former deans of Yale Law School and the University of Chicago Law School and the current dean of the UC Berkeley School of Law, have filed a brief explaining that laws that prohibit government contractors from engaging in politically motivated boycotts in order to maintain their relationship with the government violate the First Amendment.⁶

Regardless of their views on the Israel-Palestine conflict, Members of the House Appropriations Committee should oppose any effort to include this unconstitutional amendment in the Military Construction and Veterans Affairs Appropriations bill. We urge you to vote "NO" on the second Graves amendment. If you have any additional questions, please contact Manar Waheed (mwaheed@aclu.org) and Kate Ruane (kruane@aclu.org).

² Vera Eidelman, *Laws Targeting Israel Boycotts Fail First Legal Test*, ACLU Speak Freely (Jan. 30, 2018) available at <https://www.aclu.org/blog/free-speech/rights-protectors/laws-targeting-israel-boycotts-fail-first-legal-test>.

³ ACLU of Texas Files First Amendment Challenge to Anti-Boycott Law, ACLU of Texas (Dec. 18, 2018) available at <https://www.aclutx.org/en/press-releases/aclu-texas-files-first-amendment-challenge-anti-boycott-law>.

⁴ *Amawi v. Pflugerville Ind. Sch. District*, --- F. Supp. 3d ---, 2-19 WL 1865288 (W.D. TX 2019).

⁵ See *Jordahl v. Brnovich* 336 F.Supp.3d 1016 (D. Ariz. 2018); *Koontz v. Watson*, 283 F. Supp.3d 1007 (D. Kan. 2018).

⁶ Knight First Amendment Institute at Columbia University, *Knight Institute Files Brief in Ninth Circuit on Behalf of Prominent Legal Scholars, Explaining that BDS Boycotts are Protected by the First Amendment*, Jan. 24, 2019, <https://knightcolumbia.org/news/knight-institute-files-brief-ninth-circuit-behalf-prominent-legal-scholars-explaining-bds>.

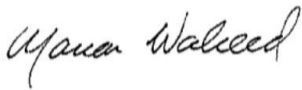
Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Newman".

Ronald Newman
National Political Director

A handwritten signature in black ink, appearing to read "Kate Ruane".

Kate Ruane
Senior Legislative Counsel

A handwritten signature in black ink, appearing to read "Manar Waheed".

Manar Waheed
Senior Legislative and Advocacy Counsel