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ACLU OF MASSACHUSETTS CONCERNS ABOUT
“An Act Prohibiting Discrimination in State Contracts” (SD 922/HD779)

The ACLU of Massachusetts (ACLUM) opposes legislation penalizing those who take part in peaceful boycotts. The right to boycott to achieve political or social change is expression protected by the First Amendment. *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982).

Our concern for those First Amendment rights led us to oppose a bill in the last legislative session that would have denied state and local government contracts to those who participate in peaceful boycotts. New legislation in the current legislative session, An Act Prohibiting Discrimination in State Contracts (SD 922/HD 779), is substantially different from last session’s bill. Consequently, ACLUM believes that SD 922/HD 779 does not, as written, interfere with the right to boycott.¹

However, we are concerned by the statements of some of the new bill’s proponents, which indicate that their aim is to prevent the state from contracting with those who support a boycott relating to Israel, including the BDS (boycott, divest, sanction) movement.² An anti-boycott motivation calls into question the constitutionality of the legislation, even if it is neutral on its face.

The proponents’ statements as to the meaning of the bill may frighten people, make them unsure of the scope of the law, and deter them from exercising their First Amendment rights. Business owners may be coerced into not supporting BDS because of uncertainty about the law in order to obtain state contracts. This chilling effect does serious harm to freedom of expression, regardless of whether the bill, on its face, applies to peaceful boycotts.

¹ If the legislation were to be applied to peaceful political boycotters, it would be unconstitutional.

² ACLUM takes no position on the BDS movement.