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TESTIMONY IN OPPOSITION TO 19-H 5151, ARTICLE 5, SECTION 9,
IMPOSING THE SALES TAX ON LOBBYING SERVICES
February 28, 2019

The ACLU of Rhode Island strongly opposes the FY 2020 budget's proposed tax on "lobbying services." Our concerns are two-fold.

Presently, the only "services" that are taxed under R.I.G.L. §44-18-7.3 fall into just four categories: certain transportation services, pet services, travel related services, and investigatory/armored car services. H-5151 proposes to add four more: hunting-related services, interior design services, commercial building services, and lobbying services.

Unlike these other current taxable services, a "lobbying services" tax is a direct levy on the exercise of political speech, a quintessential First Amendment activity. While the state may have the right to reasonably treat certain First Amendment-related activity as taxable as part of a broader tax scheme, we believe it becomes much more questionable when it is singled out among a small group of other "services" subject to the tax. Placing a potentially significant price tag on engaging in free speech for hire is problematic when the vast majority of other employment-related services are not subject to the same sales tax.

In addition, we note that the tax does not apply to peripheral services related to lobbying, such as consulting and public relations services, but instead only on those engaged in a classic exercise of First Amendment rights: petitioning the government for a redress of grievances. This too is deeply troubling, as core political speech is being singled out for adverse treatment compared to other speech.

Our second concern involves the potential reach of this tax on entities engaged in lobbying activities. It is our understanding that this budget proposal is purportedly aimed specifically at contract lobbying. But even assuming this more narrow target was acceptable, we do not believe the language of the budget Article is so limited. "Lobbying services" are defined in the Article in accordance with the definition contained in the state's lobbying law, R.I.G.L. §42-139.1-3(a)(3), which covers just about any organization engaged in lobbying. Thus, the many non-profit organizations that engage lobbyists to act on their behalf as part of their 501(c)(4) activities would be subject to paying this tax. Indeed, many non-profits, including the ACLU, have set up non-tax-exempt (c)(4) arms for lobbying purposes, and their separate 501(c)(3) status will not protect them from this tax.

In addition, a "service charge" subject to the lobbying tax is defined under the Article to mean, among other things, "dues paid to any association, club or organization regardless of the purpose for which the dues are paid." As we read the proposal, a membership organization like the ACLU that engages in lobbying would appear to be required to pay a lobbying tax on the dues that individuals pay to be "card-carrying" ACLU members, since those dues fall under the definition of a "service charge." Many other non-profits – large and small – have similar structures and could face similar tax obligations. Whether that result is intended or not, this demonstrates the dangers posed by this Article in trying to tax free speech activity.

The ACLU fully appreciates the state's need to balance the budget and find alternative revenue streams to meet that goal. However, we do not believe a special tax on First Amendment activities is an appropriate way to do so. We therefore urge removal of this particular tax from the proposed budget.

Submitted by: Steven Brown, Executive Director