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Hon. Dave Yost, Ohio Attorney-General
30 East Broad St., 17th Floor
Columbus, OH 43215
Via email only to dave.yost@ohioago.gov

RE: Rebuttal to A-G opposition to proposed Cuyahoga County Council Resolution 2024-0208

Dear Mr. Yost:

On behalf of the No New Bonds campaign in the Cleveland area, we're responding to your June 4, 2024 letter to Chris Ronayne, Cuyahoga County Executive, concerning proposed Resolution R2024-0208, which if passed would express the County Council's intention that there be no prospective purchases by Cuyahoga County of foreign debt instruments as part of the County's investment policy.

The Cleveland Palestine Advocacy Community (CPAC), is the formal sponsor of the No New Bonds coalition campaign in Cleveland. CPAC is a multigenerational, intersectional hub organizing in Cleveland and Northeast Ohio to promote the sanctity and dignity of human life. The coalition is comprised of thousands of people from northeastern Ohio who seek to end the use of Cuyahoga County's tax revenues to support the ongoing Israeli genocide of Palestinians in the Gaza Strip.

Your meddling in this local legislative controversy pending before the Cuyahoga County Council is officious and legally suspect, as we explain below.

I. The Attorney-General completely misunderstands the point of the Resolution

You accuse the County Council of contemplating "the proposed ***divestiture of assets*** held in or associated with the Nation of Israel." Even a casual reading of the title of the resolution should have suggested to you that no "divestiture" whatsoever was being considered: "A Resolution urging the Cuyahoga County Executive and the County Treasurer to *immediately cease any additional County investment in bonds and other sovereign debt issued by the Nation of Israel; and urging the Investment Advisory Committee to amend the County's Investment Policy to prohibit future investments in any foreign securities.*" The County Council's intention is to cease to buy any more foreign securities, including Israel Bonds, while those presently held will be held until maturity. Israel Bonds are a bad investment because they can't be sold or

transferred, but must be held for years until they mature. The County's pathway is responsible and wholly lawful, albeit it is an apparent mystery to you.

II. The Council's objectives are within the scope of O.R.C. § 9.76

It bears noting that the intent of the County Council, as expressed in the heading of the Resolution, is "to prohibit future investments in any foreign securities. O.R.C. § 9.76(A)(1)(c) clearly states that "'Boycott' does not include . . . (c) A boycott against a public entity of a foreign state when the boycott is applied in a nondiscriminatory manner. . . ." Thus according to your own legal authority, the County Council is well within its discretion to end prospective investments in foreign security instruments so long as all foreign investments are ended..

III. As a Charter County, Cuyahoga autonomously decides its investment policies

Cuyahoga County is a charter county, with constitutional and statutory powers that differ from and exceed those of 86 other Ohio counties. Consequently, Cuyahoga has the power to legislate. Section 3.09 of the Charter of Cuyahoga County provides that the County Council is the "legislative power of the County" and is fully empowered to "establish procedures for the making of county contracts." *Id.*, § 3.09(4). According to §103.02 of the Cuyahoga County Code, "If any conflict arises between any provision, term, procedure, or other requirement of the Ohio Revised Code, Ohio Administrative Code, or any other law or regulation, and this Code, the provision, term, procedure, or other requirement of this Code shall prevail." Cuyahoga County's local law governing contracting policies thus predominates over any contradictory provisions that might exist in the Ohio Revised Code.

IV. O.R.C. § 9.76 is otherwise immaterial to the County's investment policy deliberations

In your letter, you say "the State of Ohio has expressly prohibited government actors from boycotting, directly or indirectly, any jurisdiction with whom this state can enjoy open trade," citing O.R.C. § 9.76. According to you, "This is legislative policy meant to bind all Ohio governments."

The statute says nothing of the sort. Assuming, solely for the sake of argument that O.R.C. § 9.76 passes constitutional muster, on its face it does not bar the policy changes the County Council is considering. O.R.C. § 9.76 is narrowly-drawn and simply forbids the government from contracting for goods or services from anyone presently involved in boycotting Israel. The only relevance O.R.C. § 9.76 has for Cuyahoga County's investment practices is to ensure that *if* Cuyahoga County purchases Israel Bonds, it must acquire them through a business entity that isn't boycotting Israel, which seems a rather safe bet. If, instead, Cuyahoga County decides to cease any financing foreign debt, the State of Ohio provides no basis to block that decision. The statute governing investment of idle County funds clearly specifies investments in the foreign debt as an option, not a mandate: "The following classifications of securities and obligations are eligible for such deposit or investment: . . ." O.R.C. § 135.35(A).

Your attempts to contort the plain and limited wording of these statutes into a broad state policy contradict long-understood rules governing the interpretation of statutes, particularly the

doctrine, “*expressio unius est exclusio alterius*” – that the express mention of one person, thing, or consequence implies the exclusion of all others. Also, what is expressed puts an end to what is implied, “*expressum facit cessare tacitum*.” Where a statute is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters. These rules proceed from the premise that the Ohio General Assembly would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.

Because O.R.C. § 9.76 and O.R.C. § 135.35 are explicit in what they forbid and authorize respectively, your attempts to engraft words and meanings not already obvious in these statutes are forbidden. You’re trying to rewrite the uniform depository statute to make it so that Cuyahoga County is powerless to redirect investment of county monies, and you’re doing it by misrepresenting what the anti-boycott law clearly makes legal.

V. The State has not “spoken” in any way that limits discretionary county investment policymaking

Citing zero authority, you assert that “Once the state has spoken on an issue, as it has here, counties and cities cannot refuse to follow its direction.” But the State of Ohio has not spoken as you insist it has; the “direction” you claim has no home in O.R.C. § 9.76. If there’s a state mandate that forbids the exercise of local legislative discretion and instead directs mandatory permanent investment in Israel Bonds, it must be codified elsewhere than O.R.C. § 9.76. Please provide the basis for your bombastic proposition that the “State has spoken “.

VI. Conclusion

The timing and temperament of your letter to the Cuyahoga County Executive amounts to unwarranted and uninformed bullying. You’re interfering in perfectly proper local legislative deliberations. The Cuyahoga County Council possesses powers and discretion which you cannot control. Thousands of citizens ask that you please cease interfering in local democracy in Cuyahoga County.

Best regards,

CLEVELAND PALESTINE ADVOCACY COMMUNITY

By /s/ Terry J. Lodge

Cc: Cuyahoga County Executive
Cuyahoga County Council