



UNITED STATES MISSION  
TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS  
IN GENEVA

May 11, 2017

Mr. David Kaye  
Special Rapporteur on the promotion and protection  
of the right to freedom of opinion and expression  
Geneva, Switzerland

Ms. Annalisa Ciampi (vice Mr. Maina Kiai)  
Special Rapporteur on the rights to freedom  
of peaceful assembly and of association  
Geneva, Switzerland

Dear Mr. Kaye and Ms. Ciampi:

Thank you for the letter of March 27, 2017, focusing on a number of proposed bills pending in U.S. states. Attached please find the response from the Government of the United States.

**OHCHR REGISTRY**

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Recipients :.....SPD.....  
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Enclosure .....

Sincerely,

Jason R. Mack  
U.S. Deputy Permanent  
Representative to the UN Human  
Rights Council

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**SUBJECT: US Response to the letter of March 27, 2017, focusing on a number of proposed bills pending in U.S. states**

As noted in the letter, and to the best of our belief, none of the proposed bills have yet been enacted by the relevant state legislatures.<sup>1</sup> These proposed bills are not law unless and until they are enacted, and have no current effect or force in law.

The Executive Branch of the federal government does not typically participate in the process of drafting or enacting state or local legislation addressing matters within the jurisdiction of the relevant state or locality due to the federal system of government in the United States. The federal government uses several mechanisms to keep officials at all levels of government generally informed about U.S. human rights obligations and commitments, including periodic correspondence and contacts with U.S. states and local governments.<sup>2</sup>

The United States has robust judicial mechanisms to enforce the First Amendment to the Constitution, which includes the right of the people peacefully to assemble.<sup>3</sup> This right is safeguarded in the United States through the courts, which include a long history of robust Supreme Court decisions that protect this right. These cases provide binding legal guidance to all 50 states as well as to the federal government on implementing the right to peaceful assembly in the United States, including:

- The use of public spaces and streets for communication of views on matters of public concern may not be abridged or denied, although subject to certain judicially-delineated exceptions;<sup>4</sup>
- Government officials may not exclude from public places persons engaged in peaceful expressive activity solely because the government actor fears, dislikes, or disagrees with the views those persons represent;<sup>5</sup>

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<sup>1</sup> At least one bill, in Arkansas, was vetoed by the Governor.

<sup>2</sup> At the time of ratification of the International Covenant on Civil and Political Rights (ICCPR or Covenant), the United States filed an understanding stating “[t]hat the United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Covenant.”

<sup>3</sup> At the time of ratification of the ICCPR, the United States filed a declaration stating “[t]hat the United States declares that the provisions of articles 1 through 27 . . . are not self-executing.”

<sup>4</sup> See *Snyder v. Phelps*, 562 U.S. 443, 451–56 (2011).

<sup>5</sup> See *Wood v. Moss*, 134 S. Ct. 2056, 2066 (2014).

- Expression is subject to reasonable time, place or manner restrictions, based on a three-part test: the restriction must be justified without reference to content, be narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels for communication of the information;<sup>6</sup> and
- Government officials may not have unbridled discretion to decide whether or not to approve a demonstration permit.<sup>7</sup>

Thank you for raising your concerns and observations about the proposed U.S. state bills described in your letter.

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<sup>6</sup> See *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

<sup>7</sup> See *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969).