



Jewish Voice for Peace + www.jvp.org + sacramento@jvp.org

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To: Senate Appropriations Committee

From: Jewish Voice for Peace California chapters (Bay area, Los Angeles, Sacramento, San Diego, Santa Barbara and campus chapters (UCLA, UCB, with others in formation)

SB 1287 – Oppose

Most of this proposed legislation merely reiterates what UC, CSU and community colleges in the state are already required to do to protect and – where constitutionally permitted – regulate campus speech on contentious issues.

But we concur with objections voiced (before the bill was amended) by ACLU California Action that in several ways, its provisions cross the line into unconstitutionality. This remains true even with amendments approved in the Senate Judiciary Committee April 23. SB 1287 should not, therefore, be enacted.

Moreover, the burden the bill would impose on higher education institutions, required to draft reworded rules and explain them to staff, would cause unnecessary state expenses. And the potential of having to defend the bill's unconstitutional provisions in court could involve serious funding obligations – at a time of major state deficits.

Much of the reiteration of established constitutional law in the bill is unnecessarily verbose and redundant, as if pretending to break new ground. One example, which would be inserted as new Education Code Section 66270.7(a), says that

“In order to prevent violence, harassment, intimidation, and discrimination, that impairs the educational missions of the public segments of postsecondary education, violates federal and state antidiscrimination laws, and interferes with the free exercise of rights established under the First Amendment to the United States Constitution and Section 2 of Article I of the California Constitution, it is the policy of the public segments of postsecondary education to prevent and address violence, eliminate harassment, intimidation, and discrimination that undermine these objectives.” (emphasis ours)

This strangely reflexive provision adds absolutely nothing to long-established law. Other provisions similarly regurgitate existing law: commission of violence is already a crime; punishment can be enhanced if it is motivated by hate. There is no need to relitigate the well-known exceptions to the First Amendment regarding speech, which apply equally on and off campus.

One novel provision, however, deemed a First Amendment violation not only by ACLU but by the Judiciary Committee analysis, would prohibit “calling for genocide.” (The original version added “or supporting.”) As odious as we all surely agree either act would be, determining whether someone has committed it would require highly subjective – and often partisan -- judgment of the meaning of their words; and that would easily slip into viewpoint discrimination, utterly forbidden under protected speech doctrine.

Citing the definition laid out in the UN Genocide Convention is of no help in this regard. Currently, amid the attack of October 7, 2023, and the response to it, angry allegations of genocidal intent and/or acts are being leveled at each other by multiple actors. Human rights agencies and UN bodies, including the International Court of Justice, have found a “plausible case” for it based on Israeli military and settler behavior following high officials’ statements of intent calling for “leveling Gaza,” among many others.

That this context is relevant to the bill is apparent from the author’s comment that “the need [for its passage] has been highlighted by incidents of antisemitism that have resulted from the October 7th terrorist attack in Israel.” While there have been some such incidents, mostly verbal expression that is nevertheless protected speech, there have been many, much more serious attacks on Palestinians, Arabs and Muslims in California and elsewhere, from firings and denial of academic and other employment to deadly shootings. University presidents have been forced out for failing to unequivocally endorse the highly partisan view that certain pro-Palestine slogans in fact call for genocide.

What constitutes “incidents of antisemitism” is also a matter of dispute, to say the least. As keen observers of the controversy, we have witnessed a years-long, deliberate and now accelerating campaign to conflate criticism of Israel or Zionism with hatred of Jews, which generally amounts to a weaponization of false charges of antisemitism in service of a new McCarthyism – and makes us less safe as Jews, not more.

SB 1287 is one more venue for this campaign, and not a bill that would protect free speech, let alone contribute to the fight against real antisemitism grounded in white supremacy. Almost all of it merely restates existing law, with an unconstitutional twist. While seemingly extolling free speech it is meant, ironically, to bully into silence students and other non-violent advocates wanting to exercise their First Amendment rights.

The Legislature must reject this mostly pointless, unconstitutional and potentially expensive bill.

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