



Chairperson Senator Carol Liu  
Senate Education Committee  
State Capitol, Room 2083  
Sacramento, CA 95814

April 23, 2015

**Re: Concerns over Senate Concurrent Resolution 35**

Dear Senator Liu and Members of the Senate Education Committee:

As civil rights organizations committed to racial justice, we support your efforts to confront racism and bigotry on campus, including anti-Semitism. But given the way the accusation of anti-Semitism has been wrongfully leveled across California as set forth below, we write to express concerns over Senate Concurrent Resolution 35 (SCR 35), introduced March 26, 2015, by Sen. Jeff Stone.

SCR 35 fails to distinguish between constitutionally protected political speech and unlawful acts; and it perpetuates a mischaracterization of critiques of Israeli policies as anti-Semitic. We are concerned that the legislation as written can be used to stifle political expression. Moreover, the resolution's vague language and reference to an over-broad definition of anti-Semitism serve to trivialize instances of actual hatred, making them harder to recognize and confront.

This letter provides (1) background on the history of similar resolutions in the California legislature, (2) information about the orchestrated campaign to repress campus speech, (3) details on the problematic language of SCR 35, (4) an explanation of how SCR 35 reinforces a false picture of anti-Semitism on California campuses, and (5) recommendations to address our concerns.

**1. Similar resolutions in the California Legislature have fared poorly.**

Previously, the Legislature has been asked to support efforts to stifle speech critical of Israel's violations of human rights and international law on campus by falsely labeling it as anti-Semitic. House Resolution 35, passed hastily by the Assembly in 2012, mischaracterized the campus climate for Jewish students as hostile and falsely branded advocacy for Palestinian rights as anti-Semitic. It also triggered First Amendment alarms with patently unconstitutional

recommendations to restrict campus speech. It was widely rebuked,<sup>1</sup> and subsequently disavowed by several legislators when they became aware of its implications.

In 2013, proposed Assembly Concurrent Resolution 76, which also called for “condemnation” of protected speech, was withdrawn by its chief author after it encountered opposition in the Assembly Higher Education Committee for its likely chilling effect on First Amendment rights.

## **2. There is a concerted effort to repress campus speech.**

For many years, the government of Israel and numerous U.S. groups defending its policies have tried to characterize advocacy for Palestinian rights, and especially calls for boycott of and divestment from corporations and institutions that profit from or contribute to Israel’s human rights violations as tantamount to anti-Semitism.<sup>2</sup> These groups have relied on accusations of anti-Semitism to suppress human rights activism, particularly on college campuses.

For instance, the depiction of swastikas, mentioned in SCR 35, is an expression of anti-Semitism conjuring up the Nazi regime and its genocide against the Jews of Europe. Israel-aligned groups allege that isolated incidents of swastika graffiti are connected to activism for Palestinian rights.<sup>3</sup> There is no evidence to support this accusation.

Private Israel advocacy organizations in the United States have for years worked closely with Israeli government officials to suppress the growing criticism of Israeli human rights abuses. A recent report estimates that by now, hundreds of millions of dollars have been dedicated to the effort,<sup>4</sup> involving legal threats and complaints, smear campaigns against student activists and academics, pressure on university administrators to censor Palestine advocacy, subsidized travel to Israel for student leaders, paid campus representatives, and donations to student government candidates, among other things.

Despite all this, the U.S. Department of Education (DOE) has soundly rejected efforts by some of these groups to stifle speech by filing complaints under Title VI of the Civil Rights Act,

---

<sup>1</sup> See, A Resolution Regarding California Assembly Bill HR 35, passed by the University of California Student Association, September 15, 2012, <http://calsjp.org/?p=1297>; See also, Letter from California Scholars for Academic Freedom to the California Assembly, <http://www.csun.edu/~vcnth00m/OpenLetterHR35.html>; Letter from six civil rights organizations and four student organizations to the California Assembly, [http://ca.cair.com/images/uploads/HR\\_35\\_Letter\\_to\\_Lawmakers.pdf](http://ca.cair.com/images/uploads/HR_35_Letter_to_Lawmakers.pdf).

<sup>2</sup> See, e.g., Israeli Prime Minister Benjamin Netanyahu: “I think it’s important that the boycotters must be exposed for what they are. They’re classical anti-Semites in modern garb”, <http://www.reuters.com/article/2014/02/17/us-israel-boycott-idUSBREA1G1CK20140217>, Jeffrey Heller, “Netanyahu says Israeli high-tech stronger than boycotters,” Reuters, Feb. 17, 2014; Roz Rothstein, founder and CEO of StandWithUs: “BDS is the newest form of anti-Semitism,” David’s Star Magazine, September/October 2014, <http://www.standwithus.com/news/article.asp?id=3552>.

<sup>3</sup> Ryan Pessah, executive director of the Legislative Jewish Caucus and chair of the Sacramento Jewish Community Relations Council, recently said at a rally protesting the off-campus display of swastikas at a private home in Sacramento, referenced in SCR 35: “I truly think that the increase in anti-Semitism is directly connected to the BDS movement. I would argue that without BDS, you would not have these swastikas.”

<sup>4</sup> The Business of Backlash, 2015, published by the International Jewish Anti-Zionist Network, <http://www.ijan.org/resources/business-of-backlash/>

which requires universities to protect students from discrimination. The DOE dismissed complaints against three UC schools alleging that allowing speech critical of Israel on campus created a “hostile anti-Semitic environment” for Jewish students.<sup>5</sup> DOE’s civil rights officers engaged in lengthy factual investigations of campus events and affirmed that criticism of Israeli state policy is constitutionally protected political speech, not harassment based on complainants’ racial or national origin background. DOE noted that such “robust and discordant expressions” are to be expected on a college campus. Decades of Supreme Court rulings support the DOE’s conclusions.

### **3. SCR 35 uses unconstitutionally overbroad and vague language.**

The resolution does not make explicit reference to campus speech related to Israel, but given the problematic language in SCR 35, described below, we are concerned it will be interpreted to stifle speech.

#### **a. Incorporation of the State Department definition of anti-Semitism**

The resolution begins with an invocation of the U.S. State Department’s definition of anti-Semitism. Although the section quoted in SCR 35 is uncontroversial and aligns with a traditional understanding of the term,<sup>6</sup> the State Department radically departs from that understanding with its listing of examples of “Anti-Semitism Related to Israel,” known as the “three D’s”: “demonizing Israel,” “applying a double standard to Israel” and “delegitimizing Israel.”<sup>7</sup> This codifies and amplifies the false conflation of anti-Semitism with protected speech critical of Israeli policies.

The European Union Monitoring Centre (EUMC), where this description first appeared in 2005 as the result of lobbying efforts by Israel-aligned groups, meant it to be only a “guide for data collection.”<sup>8</sup> It was ultimately discarded even for that limited use due to objections from European organizations. In 2013 it was removed from the agency’s website altogether, over protests by Israeli officials and U.S.-based Israel advocacy groups.<sup>9</sup>

---

<sup>5</sup> Letter from U.S. Department of Education to UC Berkeley, Aug. 19, 2013, re: Case No. 09-12-2259, <http://bit.ly/doeucb>; Letter from U.S. Department of Education to UC Santa Cruz, Aug. 19, 2013, re: Case No. 09-09-2145, <http://bit.ly/doeucsc>; Letter from U.S. Department of Education to UC Irvine, Aug. 19, 2013, re: Case No. 09-07-2205, <http://bit.ly/doeucirvine>.

<sup>6</sup> For example, Merriam-Webster defines anti-Semitism as, “Hostility toward or discrimination against Jews as a religious, ethnic or racial group.” One might add to that the use of stereotypes about Jews – mostly negative ones but at times seemingly complimentary (e.g. that Jews are “smart” or “good at making money”).

<sup>7</sup> Defining Anti-Semitism, Fact Sheet, Special Envoy to Monitor and Combat Anti-Semitism, U.S. Department of State, <http://www.state.gov/j/drl/rls/fs/2010/122352.htm>.

<sup>8</sup> See Seth Berkman, “Anti-Semitism Fight Hinges On Definition,” Jewish Forward, September 25, 2012, <http://forward.com/articles/163105/anti-semitism-fight-hinges-on-definition/?p=all>

<sup>9</sup> JTA, “EU drops its 'working definition' of anti-Semitism,” The Times of Israel, Dec. 5, 2013, <http://www.timesofisrael.com/eu-drops-its-working-definition-of-anti-semitism/>.

The State Department uses the description for the limited purpose of identifying instances of anti-Semitism abroad in annual country reports.<sup>10</sup> It is not used domestically by any U.S. government agency because it would violate the First Amendment to restrict political speech that criticizes Israel or any nation state.<sup>11</sup>

Although SCR 35 does not quote the offending examples, its reference to the State Department definition is likely to be construed as an endorsement and an incorporation by reference of the unconstitutional examples provided.

**b. An incomprehensible clause aimed at an unknown target**

SCR 35 “condemns any act of anti-Semitism augmenting education programs at all publicly funded schools in the state,” but offers no clue as to what the clause means. “Augmenting” is not defined, nor are any examples of “anti-Semitism augmenting education programs” provided. One may make an educated guess that the phrase refers to extracurricular student activities and to academic programs, in view of the many attacks on student speech and on the academic freedom of UC and CSU departments and faculty who engage critically on Israel’s treatment of Palestinians.<sup>12</sup> This vague but suggestive clause encourages government monitoring of the speech of university community members based on a problematic definition of anti-Semitism being used to stifle one side of an important political debate. The chilling effect on academic and student speech of such a vague clause makes its constitutionality suspect.

**4. SCR 35 reinforces a false characterization of anti-Semitism on California campuses.**

SCR 35 is directed specifically at the University of California campuses and “all publicly funded schools in the state of California.” Yet it does not cite a single example of anti-Semitism on California campuses. This may be poor drafting, but it may also reflect a misunderstanding about the facts, promoted by those who seek to stifle criticism of Israel on campuses, that anti-Semitism is on the rise. This assumption is based on the false premise that any speech vigorously critical of Israel is anti-Semitic.<sup>13</sup>

---

<sup>10</sup> See US State Department, 2008 Contemporary Global Anti-Semitism Report, 2 (Washington, D.C.: US State Department, 2008), <http://www.state.gov/documents/organization/102301.pdf>.

<sup>11</sup> FAQ: What to Know About Efforts to Re-define Anti-Semitism to Silence Criticism of Israel, Palestine Solidarity Legal Support, <http://palestinelegalsupport.org/wp-content/uploads/2015/03/FAQ-onDefinition-of-Anti-Semitism-3-9-15.pdf>.

<sup>12</sup> For example, in 2014, two Israel advocacy organizations, the Brandeis Center and the AMCHA Initiative published reports purporting to present evidence of rampant “anti-Israel bias” at Middle East Studies centers receiving federal funding under the Higher Education Act. They demanded Congress and the U.S. Department of Education either defund the centers or engage in intrusive oversight to ensure that viewpoints sympathetic to Israeli government policies are present in academic departments. The reports singled out the University of California Los Angeles’ Center for Near East Studies as a case study, misrepresenting the nature of the Center’s programming based on factual distortions and an overbroad and unreasonable definition of “anti-Israel” and “anti-Semitic.” See, Bekah Wolf, “Title VI and Middle East Studies: What You Should Know,” Middle East Research and Information Project, Nov. 14, 2014, <http://www.merip.org/title-vi-middle-east-studies-what-you-should-know>.

<sup>13</sup> To reach its conclusion that campus speech is anti-Semitic, AMCHA employs a definition which includes promoting boycott and divestment against companies complicit in the Israeli occupation, “demonizing Israel,”

There have in fact been incidents of campus anti-Semitism, and we join the many voices, including Students for Justice in Palestine groups, who have condemned these instances.<sup>14</sup>

But Israel advocacy groups encourage a false narrative that Jewish students are the targets of campus bigotry to an exceptional degree.<sup>15</sup> To reach this conclusion, speech critical of Israel is lumped together with isolated incidents of actual anti-Semitism; those incidents are elevated and amplified while much more pervasive institutional oppression and racism against other groups is minimized.

The resolution pays lip service, at best, to other forms of discrimination prevalent on college campuses. Only in passing, without a single example, does it condemn “all forms of anti-Semitism and racism, including Islamophobia.” We are concerned this is a glaring omission, considering the high-profile incidents that have made international news in the last year, from nooses on trees to racial epithets in an Oklahoma fraternity song to the cold-blooded murder of three Muslim students in North Carolina – to mention only a few.

This strategy of conflating speech critical of Israel with anti-Semitism and thereby inflating its prevalence has resulted in an alarming increase in false accusations of anti-Semitism as an instrument to thwart serious discussions about Israel’s treatment of Palestinians. In 2014, Palestine Solidarity Legal Support (PSLS) documented over 240 incidents of repression and requests for legal advice, nearly 75 percent on college campuses. These ranged from disciplinary actions against students for peaceful speech activities to smear campaigns, death threats and anti-Arab and anti-Muslim slurs against activists who voiced their views. So far this year, PSLS has documented over 98 incidents of repression and has responded to an additional 36 requests for legal advice in the context of repression. Over 50 incidents of repression have occurred on California campuses.

For example, at UC Davis, students were subjected to accusations of anti-Semitism, violent threats and anti-Muslim harassment after their student government passed a resolution calling for divestment from companies that profit from Israel’s occupation, and the divestment resolution was falsely blamed for an incident of swastika graffiti. At UC Santa Cruz, student activists are defending themselves against “bias complaints” over a mock “apartheid wall” protesting Israel’s wall that separates Palestinians from each other and from their land in the occupied West Bank, the erection of which the International Court of Justice declared a violation of international law.<sup>16</sup> Pitzer College told students they would be in violation of school policy if they held a similar protest. All of these threats to student speech were based on the false premise that meaningful criticism of Israeli state policy is by definition anti-Semitic.

---

“holding Israel to a double-standard,” and “delegitimizing Israel.” See, AMCHA Initiative, “Antisemitic Activity and Anti-Israel Bias At the Center for Near East Studies, University of California at Los Angeles, 2010 – 2013”, pg. 7, <http://www.amchainitiative.org/amchas-study-of-uclas-center-for-near-east-studies-produces-shocking-statistics/>.

<sup>14</sup> See for example, statement of Students for Justice in Palestine at UC Davis regarding the swastika graffiti of 2015, <https://drive.google.com/file/d/0B6C2ZkjHbn4XdUxhRzBRZEtDeIE/view?pli=1>.

<sup>15</sup> In a recent op-ed calling for protection for Jewish students on California campuses, Tammi Rossman-Benjamin, founder of the AMCHA Initiative, dedicated to crushing pro-Palestinian activism on campus, flatly declared that “Jewish students are the single most vulnerable minority on California campuses.” Sacramento Bee, April 10, 2015 <http://www.sacbee.com/opinion/op-ed/soapbox/article17974802.html>

<sup>16</sup> The July 2004 International Court of Justice advisory opinion is available at, <http://www.icj-cij.org/docket/files/131/1677.pdf>.

SCR 35 reinforces this false characterization of “anti-Semitism” on California campuses. It lumps together anti-Semitic acts committed “in the United States” and “around the world” and includes such atrocities as “violent attacks, ... arson ... and murders.” No such acts have been committed on California campuses, nor on any U.S. campus that we are aware of. The failure to distinguish between criminal violence abroad and actual incidents of anti-Semitic expression at universities in our state creates a false narrative of violent and pervasive manifestations of anti-Semitism on California campuses.

## 5. Recommendations

**We recommend that this resolution be shelved or redrafted** to cure its vagueness and overbreadth; to firmly distinguish between unlawful acts and protected political speech; and to avoid mischaracterizing political criticism of Israeli policy as anti-Semitic. We request the following changes:

- 1) Replace the reference to the State Department definition of anti-Semitism with a standard dictionary definition.
- 2) Delete or clarify the meaning of “any act of anti-Semitism augmenting education programs” and ensure that it cannot be construed as a threat to academic freedom or constitutionally protected free speech.
- 3) Add the following language:

*Nothing in this resolution is intended to diminish the rights of students or anyone else to freely discuss or engage in any legal speech or other activity that is critical of the policies of any country.*

\* \* \*

Thank you for your time and consideration. Please do not hesitate to contact us. We may be reached through David Mandel of Jewish Voice for Peace, [dmandel@gmail.com](mailto:dmandel@gmail.com) (916) 769-1641.

Respectfully,

David Mandel, Esq.  
Jewish Voice for Peace

Jim Lafferty,  
National Lawyers Guild, Los-Angeles

Liz Jackson, Esq.  
Palestine Solidarity Legal Support  
Cooperating Counsel, Center for  
Constitutional Rights

Cc: Members of the Senate Education Committee, Senator Sharon Runner (Vice Chair), Senator Marty Block, Senator Loni Hancock, Senator Tony Mendoza, Senator Bill Monning, Senator Richard Pan, and Senator Andy Vidak.