



December 5, 2016

RE: Oppose H.R. 6421/S. 10, the Anti-Semitism Awareness Act of 2016

Dear Member of Congress:

On December 1, 2016, the U. S. Senate passed S. 10, the Anti-Semitism Awareness Act of 2016—only hours after it was introduced, and without any hearing, committee consideration, committee or floor vote, or any meaningful floor debate. The bill poses a serious threat to the First Amendment free speech rights of those on campus who may hold certain political views. We are confident that most Senators must have been unaware of the unconstitutional implications of the only operative provision of the bill.

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Later that same day, Mr. Roskam (R-IL), Mr. Deutch (D-FL) and others introduced a parallel bill in the House. We understand the sponsors seek to bypass committee consideration and bring the matter before the House under suspension of the rules. Because the bill has received no hearing and no substantive deliberation, we urge Members of Congress to demand that the appropriate committees of jurisdiction examine the bill's merits before the full House considers the bill. In the event that does not occur, we also urge Members to oppose H.R. 6421/S. 10 unless its free speech deficiencies are eliminated from the bill.

The bill would adopt a rule of construction for Title VI of the Civil Rights Act of 1964. Title VI addresses discrimination in programs receiving federal financial assistance – including in the area of higher education. The bill would require the Department of Education to consider the U. S. Department of State's controversial definition of “anti-Semitism” as well as the examples associated with that definition in assessing violations of Title VI on campus. The definition was adapted from one used by the European Monitoring Centre, the original purpose of which was designed for data collection decisions – and most certainly not as a political censorship mechanism.¹

The examples cited in the definition include actions and statements critical of Israel. “Blaming Israel for all . . . political tensions”, applying standards not demanded of other nations, and focusing only on Israel for human rights investigations – these are all cited as examples. Accordingly, one interpretation of these examples would be that vigorous on-campus anti-Israel political

¹ Stern, Kenneth, *Should a Major University System Have a Particular Definition of Anti-Semitism?*, *Jewish Journal* (June 22, 2015) available online at http://www.jewishjournal.com/opinion/article/should_a_major_university_system_have_a_particular_definition_of_anti_semit (accessed Dec. 5, 2016).

advocacy could be deemed a violation of Title VI of the Civil Rights Act. It cannot and must not be that our civil rights laws are used in such a way to penalize political advocacy on the basis of viewpoint.

Eliminating truly anti-Semitic conduct should be a goal of our entire society. Indeed, we should all actively involve ourselves in encouraging our brothers and sisters to refrain from anti-Semitic conduct and speech. It is offensive and harmful. But the First Amendment prevents the federal government from using its great weight to impose severe penalties on a person simply for sharing a political viewpoint critical of Israel. Indeed, First Amendment protections are most important when speakers take controversial or unpopular positions that might arouse strong feelings, passions, and hostility.² H. R. 6421/ S. 10 could result in such impermissible penalties on controversial speech and the bill must therefore not be allowed to pass in that form.

We are also surprised at Congress' apparent determination to take an action with critical constitutional implications without any substantive deliberation whatsoever. Are the proponents concerned that a proper vetting will shed light on the flawed nature of this 'fix'?

We urge the House to give this bill a proper committee hearing and to consider the constitutional implications of the rule of construction contained in this bill. If the House chooses to move forward with the bill in its current form, we urge Members to vote against the bill and we will score Members' votes on this measure.

Do not hesitate to contact Michael Macleod-Ball at 202-675-2309 or mmacleod@aclu.org if you have questions or comments.

Sincerely,



Karin Johanson
Director



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² Snyder v. Phelps, 131 S.Ct. 1207, 1217 (2011) (signs containing homophobic slurs at funeral constitutionally protected).