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December 6, 2016

RE: Oppose H.R. 6421/S. 10 “The Anti-Semitism Awareness Act of 2016.”

Dear Member of Congress:

I write as the lead author of the EUMC’s “Working Definition on Antisemitism,” to encourage you not to move “The Anti-Semitism Awareness Act of 2016,” which essentially incorporates that definition into law for a purpose that is both unconstitutional and unwise. If the definition is so enshrined, it will actually harm Jewish students and have a toxic effect on the academy.

I remain a proponent of the inclusion of Jews as a group afforded protection under Title VI. I was the complainant in the [Vestal School District case](#)¹ where a hostile environment for Jewish students was found. As this case underscores, Jewish students are already protected by Title VI and the Department of Education’s enforcement policies.

Antisemitism – like all forms of bigotry – has an impact on some campuses. The worst way to address it is to create a de facto hate speech code, which is what this bill proposes to do.

In years past various Title VI cases were brought asserting that a hostile environment was created in substantial part by anti-Israel speech. All of them lost. In 2011 Cary Nelson, then President of the American Association of University Professors and I (on behalf of the American Jewish Committee, where I was employed for nearly 25 years as its antisemitism expert) co-wrote an [open letter](#)² outlining how the “Working Definition” was being abused in Title VI cases in an attempt to restrict academic freedom and punish political speech. While the AJC

¹<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02111270-a.pdf>

²https://www.aaup.org/news/cary-nelson-and-kenneth-stern-pen-open-letter-campus-antisemitism#.WEYz_KIrKRt

subsequently [withdrew](#)³ its endorsement from this letter, I remain convinced that the arguments advanced in it were correct. Unlike the Vestal case, where Jewish students were directly bullied, intimidated, and even kicked, these cases complained about educational programs regarding the occupation of the West Bank, films that promoted BDS, classroom texts that proponents thought one-sided and anti-Israel, and a program called “Arabs and the Holocaust,” which claimed the creation of Israel was a “tragedy” for Palestinian Arabs. It was even alleged that it was a Title VI violation to host a campus speaker critical of Israel.

Last year, when the University of California was considering adoption of the Department of State definition (which is even broader than the EUMC definition), I [wrote an op-ed](#)⁴ advising against such a step. The definition was never intended to be used to limit speech on a college campus; it was written for European data collectors to have a guideline for what to include and what to exclude in reports.

Some who urged the University of California to adopt the definition were clear that they saw it as a vehicle to stop anti-Israel speech, including promotion of the Boycott/Divestment/Sanctions movement. I disagree with BDS, and have written extensively about it (most recently [here](#)⁵), but it is wrong to say that BDS is inherently a form of antisemitism, and even if it were it would be improper to try and censor pro-BDS campus activity, which is political speech and should be answered by more speech and education, not suppression.

If this bill is passed, its proponents will have the ability to threaten federal funding at colleges and universities where political speech against Israel occurs, and where administrators then don't try to stop it, or fail to put the university on record calling such speech antisemitic.

Think of the precedent this would set.

If denying the right of Israel to exist is enshrined as antisemitism by law, would Congress then pass parallel legislation defining opposition to a Palestinian state as anti-Palestinianism? Would it adopt a definition of racism, perhaps including opposition to affirmative action? Would it pass laws defining Islamophobia, anti-LGBT animus, anti-immigrant bias, anti-white bias, etc.? And if campus political speech cannot employ “double standards,” as the Department of State definition rejects regarding Israel, does this mean that political speech against China or Russia or the U.S. which doesn't employ parallels against other countries might someday be legally suspect too?

³ <http://forward.com/news/141386/line-between-anti-israel-and-anti-semitic-protests/>

⁴ http://www.jewishjournal.com/opinion/article/should_a_major_university_system_have_a_particular_definition_of_anti_semitic

⁵ <http://jkrfoundation.org/wp-content/uploads/2016/05/BDS-V8.pdf>

Students should not be harassed and intimidated and threatened. But a campus must be a place where students are challenged by difficult – and yes, disturbing and even hateful – ideas.

I have been writing about how to address campus bigotry for over twenty-five years, and trained more than two hundred college and university presidents on how to engage this issue on their campuses.

In my view, this legislation – which is a direct affront to academic freedom – will make the situation on campus worse. Tellingly one organization supporting the legislation claimed “Jewish students do not receive the same protections that other demographic groups receive,” and cited examples of a professor being suspended over a blog post on gay marriage and the cancelling of a campus screening of the film “American Sniper.” Clearly this legislation is intended to have a similar negative impact on academic freedom and free speech. Pro-Israel activists will suffer in the aftermath, because they will be seen as trying to suppress speech with which they disagree.

As I and Justus Rosenberg – the president of the Foundation I am honored to direct, and the last surviving member of the group which [rescued hundreds of artists and intellectuals from the Nazis](#)⁶ – wrote, there are many things a university [can and should do to address antisemitism](#)⁷ and other forms of hatred. Imposing a definition of antisemitism makes those steps (surveys of students, curriculum review, increased classes on antisemitism, on hatred, on how to discuss difficult issues, on how to engage the conflicting narratives about Israel and Palestine, etc.) less likely to be taken, because administrators will default to discouraging and suppressing speech, fearful if they don’t outside groups will pressure them to do so, using Title VI as a threat or a weapon.

If I can be helpful to you as you consider how to address this legislation, I’d be honored to do so.

With best regards,

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⁶ http://www.nytimes.com/2016/05/01/nyregion/professor-justus-rosenberg-has-a-past.html?_r=1

⁷ <http://jkrfoundation.org/opinion-how-uc-can-respond-to-bigoted-speech-without-censorship/>