

Why Congress' new anti-Semitism bill won't protect Jews

U.S. senators' Anti-Semitism Awareness Act actually gives America's most virulent anti-Semites a giant pass | Analysis

By Asher Schechter | Dec. 10, 2016 | 3:07 AM

Since the election of Donald Trump, hate crimes have been spiking across America. Anti-Muslim hate crimes have reached 9/11-era levels, according to the FBI. And Latinos, African-Americans and LGBT people are under constant attack and made to feel increasingly beleaguered, both on social media and in the real world.

Anti-Semitism is also once again on the rise – an old-school form of anti-Semitism, with swastikas, the “Sieg Heil!” salutes and declarations like “Jews are not white!”

In New York, which has seen a 35 percent increase in hate crimes over the past year, according to the NYPD, the majority of incidents since Election Day have targeted Jews. Things have gotten so bad that CNN seriously debated the question of whether Jews are people or not. (For the record, they are.)

Not to worry, though: Congress is coming to the rescue! Last week, in an uncharacteristically muted and quick fashion, the Senate passed a bill called the Anti-Semitism Awareness Act, a bipartisan effort that aims to tackle the reported rise in anti-Semitic incidents in colleges and on university campuses.

Following its rapid approval, only days after it was first introduced in the Senate, a version has been introduced to the House of Representatives, sponsored by both Democrats and Republicans.

Yet the new bill does not mention the recent surge in hate crimes across the United States. It does not include the words “alt-right” or “white supremacy.” It does, however, encourage universities to use a controversial definition of anti-Semitism, and has been widely criticized by free speech advocates and civil rights groups as violating the First Amendment.

It also conflates anti-Semitism with criticisms of Israel, a tiresome strategy that has been made particularly dangerous in an era where far-right groups use pro-Israeli rhetoric as a cover and excuse to incite against minorities.

What does the new bill say?

The new bill was introduced by Senators Bob Casey (D-PA) and Tim Scott (R-SC), before a similar version was introduced to the House by Peter Roskam (R-IL) and Ted Deutch (D-FL).

Essentially, the act adopts the State Department's 2010 definition of anti-Semitism, which includes "demonization" of Israel, "delegitimizing" Israel, or holding Israel to a "double standard" – that is, "requiring of it a behavior not expected or demanded by any other democratic nation." The language is based on definitions first laid out by former Israeli minister and Soviet dissident Natan Sharansky.

The bill instructs the Department of Education to "take into consideration" this definition when investigating complaints of anti-Semitism and discrimination on college campuses. It has been widely supported by pro-Israel groups like AIPAC and the Anti-Defamation League, which lobbied intensely for it. It follows what the ADL described as a dramatic rise in anti-Semitic incidents in 2015, when "anti-Semitic incidents at colleges and universities nearly doubled."

So why is this problematic?

Because it attempts, in effect, to apply censorship on protected free speech while ignoring the giant red neo-Nazi elephant in the room.

The authors of the bill cited four examples of anti-Semitism:

- * Calling for, aiding, or justifying the killing or harming of Jews;
- * Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust;
- * Demonizing Israel by blaming it for all interreligious or political tensions; and
- * Judging Israel by a double standard that one would not apply to any other democratic nation.

While the first example is clearly anti-Semitic and is already illegal, the last three examples are where the problem lies. While Holocaust denial is idiotic and no doubt damaging, it is protected by the First Amendment.

Holding Israel to a double standard is also not illegal, and as many Israeli human rights activists can attest, what constitutes “demonization” of Israel can often be a matter of subjective opinion.

The State Department's memo on which this definition of anti-Semitism is based was originally intended to help identify anti-Semitic groups outside the United States. It was never meant to help monitor speech in educational institutions within America.

Like it or not, the First Amendment was meant to protect provocative speech, not just agreeable speech. While many believe that pro-boycott (BDS) activists "judge Israel by a double standard," holding a country to a double standard is not and should not be a criminal offense. Neither should voicing an opinion that "denies the Jewish people their right to self-determination."

If you don't believe this bill is problematic, just ask Kenneth Stern, the lead author of the European Monitoring Centre's (EUMC) "working definition on anti-Semitism," on which both the State Department and the Anti-Semitism Awareness Act are based.

In recent years, Stern – an expert on anti-Semitism – has been fighting attempts by pro-Israel organizations to apply his definition of anti-Semitism to U.S. universities, arguing that the definition was never intended to limit speech in academic institutions, but "was written for European data collectors to have a guideline for what to include and what to exclude in

reports.” In a letter to the House Judiciary Committee last week, Stern called for the House to reject the bill, calling it “both unconstitutional and unwise,” and warned that “it will actually harm Jewish students and have a toxic effect on the academy.”

Stern added that “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 anti-Semitic. Think of the precedent this would set.”

But isn’t anti-Zionism anti-Semitism?

No, it is not, at least not necessarily, and the conflation between the two is precisely why this bill is so dangerous. While this bill didn’t start the trend (Israeli governments have been trying to conflate anti-Semitism and criticism of Israel for years), it does present an escalation and a clear danger – not just to free speech in America, but to the fight against anti-Semitism as well.

Essentially, the new bill omits the explosion of anti-Semitism propagated by hate groups that raise actual swastikas and give “Sieg Heil” salutes. Instead, it

focuses on BDS and like-minded leftist groups, as if BDS presents the biggest threat facing the safety of Jews in America today.

What this actually does is to provide potential cover to those anti-Semites and racists who don't tick the boxes outlined in the bill. Think of Breitbart website editors, for instance, justifying their status as the number one news source for white nationalists by hiding behind their staunchly pro-Israel stance.

Think of Trump, the staunchly pro-Israel candidate, airing a "Protocols of the Elders of Zion"-type ad with disturbingly anti-Semitic connotations days before the election. Consider this lovely white nationalist lauding the racial purity of Israel's immigration policy as a justification of his own distorted views.

In all of these cases, support for Israel served as a way to make white nationalist/anti-Semitic views a bit more, well, kosher. We can't be racists, say America's leading propagators of hate-speech, because we are not critical of Israel, and everyone knows that anti-Semitism and anti-Zionism go hand in hand.

The bill currently going through the House, unfortunately, not only confirms this flawed logic. It also gives America's prime instigators of anti-

Semitism a giant pass. So long as they recognize Israel's sovereignty over Jerusalem, of course.