

AB 2844 opposition summary

Toward the California Senate Appropriations Committee hearing, Aug. 1, 2016

AB 2844 has undergone four major rewrites as its authors squirm to do the impossible: Make constitutional a bill whose main purpose from the start has been to single out, stigmatize and ultimately, suppress expression critical of Israel, a classic instance of unconstitutional chilling of protected political speech.

The latest version would invite a deluge of frivolous complaints to the Attorney General's Office, forcing it to expend precious resources investigating allegations that certain acts constituting political speech are actually driven by an ulterior, discriminatory motive. Whether or not actual prosecution for the bill's newly created, felony "thought crime" ensues, the chilling effect of AB 2844's scheme on speech would surely lead to costly litigation seeking to void it for vagueness and other causes of action.

In the process:

- A once-straightforward – if clearly unconstitutional – bill to penalize certain boycotts by denying public contracts to anyone who engages in them has been deceptively infused with "anti-discrimination" rhetoric, playing into the false notion that boycotting Israel is inherently anti-Jewish.
- In fact, more and more Americans, including American Jews, are aghast at anti-democratic, racist and militarist trends in Israeli society, at the rapidly escalating repression of Palestinians and at the deteriorating diplomatic situation with the occupation of East Jerusalem, Gaza and the West Bank in its 50th year – and no end in sight.
- If the bill were truly about discrimination, the word would have appeared in early versions – it didn't, not even once – and it would be redundant to California's existing laws forbidding bias in housing, employment, contracting and other areas, to which AB 2844 itself now refers.
- Deleted in the previous version, the bill now once again singles out Israel; and in another reversion, it applies to any entity, not only for-profit businesses.
- AB 2844 invents a new, unprecedented kind of crime. It would make the purported motivation behind a contractor's alleged act of discrimination into possible perjury, a felony, although an act of discrimination itself would remain subject to civil sanction only.
- AB 2844 violates the Fifth Amendment with its vagueness in the definition of the new crime: Having a "policy ... against" a country that is purportedly a hidden "pretext" for discrimination.
- The Attorney General, tasked with investigating complaints and prosecuting when appropriate, would be deluged with complaints from the same groups that even now chronically accuse critics of Israel of anti-Semitism and worse. The state could be forced to pay millions for investigations, prosecutions and lawsuits over constitutionality.
- Many responsible contractors and nonprofits would abstain from doing business with the state due to principled objections and fears over the witch-hunt that would ensue around allegations of false non-discrimination certification. This too, would cost the state due to narrower bidder pools.

"The proponents of this bill are desperately eager to single out and punish companies that engage in boycotts against Israel. Realizing that their initial proposal ran contrary to the free speech protections guaranteed in the Bill of Rights, they have now come back with a convoluted, redundant and most likely ineffectual bill that allows them to say they've passed an anti-BDS bill. ...

"Politicians are free to denounce BDS if they choose. But they must do so without infringing on the rights of their constituents."

-- Editorial, Los Angeles Times, July 5, 2016

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