

AB 2844: Some final words (we hope)

To: Senate Appropriations Committee

From: Coalition to stop AB 2844¹

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Following the August 1 committee hearing, we wish to bring to your attention several items regarding AB 2844. For a full analysis of the bill as it now stands, please see our legal memo dated July 25,² and the “AB 2844 opposition summary,” issued later the same week.³

COSTS – POTENTIALLY MORE THAN \$140 MILLION

To summarize the Senate Appropriations analysis conclusions,⁴ with input from the Attorney General’s Office, the Department of General Services and other agencies:

- AG expenses for fielding complaints, investigating them and possibly prosecuting: \$625,000 a year. (Not mentioned is the potential cost of complex appellate litigation when AB 2844 is challenged on constitutional grounds, as it surely would be if enacted.)
- Higher costs for state contracting due to lack of exclusions for sole-source contracting, no-bid renewals, etc., estimated at 0.5 percent of current state contracting costs: \$140 million a year.
- Other agencies’ greater administrative workload and increased costs for goods and services due to the specified contracting requirements: “unquantifiable but potentially significant.”
- Law enforcement agencies: unknown costs for arrest and incarceration.

DEPARTMENT OF FINANCE OPPOSITION

- For the first time since AB 2844 was introduced, the Department of Finance weighed in at the hearing and in a written memo, saying it “*opposes this bill because it would result in additional costs without providing additional protections against discrimination beyond existing state law. This bill merely requires self-certification of compliance with existing law, yet incurs costs to the General Fund, which is inconsistent with the current budget.*”⁵

NO FINDING OF CONSTITUTIONALITY BY THE LEGISLATIVE COUNSEL

- Asked by Sen. Lara what the Legislative Counsel had to say about the debate over whether AB 2844 is constitutional, given that the broad opposition coalition and ACLU have argued that it is unconstitutional, Assembly Member Bloom replied: “That it is constitutional.”⁶
- To the best of our knowledge his statement was not correct; the Legislative Counsel has not found that the bill is constitutional.

FALSE RATIONALES

- As in every previous hearing on the bill, witnesses for the author again:
 - mischaracterized the use of boycott of Israel as inherently “discriminatory,” even though boycotts to effect political and social change have long been recognized as a form of political speech that must be accorded the highest level of First Amendment protection against government interference;
 - stated that a primary need for the bill is to combat a “substantial increase in anti-Semitism on UC college campuses.” To reiterate: Such conflation of political criticism of a state’s policy with attacks on Jewish students is also meant to suppress public discourse and makes it

¹ For a list of coalition endorsers, see <http://tinyurl.com/zej74ps>

² <http://tinyurl.com/j8k87lx>

³ <http://tinyurl.com/zlg7dw8>

⁴ <http://tinyurl.com/zvoslts>

⁵ <http://tinyurl.com/zxb58er>

⁶ http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=3897

harder to confront actual anti-Semitism when it does occur. Please see the previously distributed letter to Sen. Lara from Jewish Voice for Peace Los Angeles and UCLA detailing actual campus climate survey results and the false narrative of incidents presented by Mr. Bloom as examples of campus anti-Semitism.⁷

- Based on these false rationales and on the history of “lawfare” waged by Israel-aligned organizations against students and faculty who advocate for Palestinian rights, proponents of AB 2844 will undoubtedly deluge the Attorney General’s Office with frivolous complaints of alleged discrimination by state contractors who, for whatever reason, choose not to do business with Israel.⁸

JEWISH CALIFORNIANS HAVE A VARIETY OF OPINIONS AND PRIORITIES

- At the August 1 hearing, Mr. Bloom stated that AB 2844 is the “number one priority of the Jewish Caucus.”
- In fact, numerous Jewish constituents have purposely spoken with members of the caucus to make clear that many Jewish citizens are highly critical of Israel’s policies, and even more object to legislative attempts, like AB 2844, to stigmatize and suppress such criticism.
- Notably, two members of the legislative Jewish Caucus declined to sign on as co-authors of the bill, and several caucus members have privately stated that they “wish it would just go away.”

AMENDMENTS CANNOT CURE CONSTITUTIONAL FLAWS

- Regrettably, instead of keeping AB 2844 in suspense, the Assembly Appropriations Committee in May moved it with the bare minimum of votes in favor – but not before gutting much of the bill, to the extent that even the author did not vote to send it to the floor. Nevertheless, as passed in the Assembly, it still mandated creation and maintenance of a costly blacklist of businesses engaged in boycott, thus retaining the original intent: to chill speech.
- We implore Senate committee members to resist any temptation to try to salvage AB 2844 through amendment. It would not cure the bill’s constitutional defects, for instance, to modify the section requiring prospective contractors and grantees to affirm that they have never adopted a “policy” as a “pretext” for discrimination; or to reduce the felony of perjury to civil liability.
- The whole point of the bill from the start has been to single out and stigmatize political criticism of Israeli policies, which is clearly protected speech. Through five major revisions, proponents have struggled to find a formula for silencing such speech in a way that would appear to pass constitutional muster. It is, as we have seen, a futile effort. Invoking “discrimination” – a word entirely absent from early versions – is merely the latest “pretext” for unconstitutionally suppressing protected speech.
- It would be irresponsible to spend scarce general fund dollars on a legislative scheme that would be subjected to widespread legal challenge. According to the ACLU and every other legal organization that has weighed in, AB 2844, if enacted, would likely be declared unconstitutional. This is reason enough not to move it from the Senate Appropriations suspense file.

⁷ <http://tinyurl.com/jpcjr67>

⁸ Proponents of AB 2844 have a demonstrated record of filing frivolous lawsuits and administrative complaints against speech critical of Israeli policies. Such complaints fail in a legal sense, but they succeed in draining government resources. For example, in 2012, an Israel lobby organization called the AMCHA Initiative filed a frivolous complaint with Attorney General Kamela Harris alleging that a Cal State University (CSU) professor violated state law by posting information about a boycott of Israel on his CSU website. CSU had already investigated and rejected the complaint, finding no violations. (See Letter from the National Lawyers Guild, Los Angeles Chapter to CSU Chancellor Timothy White and CSU trustees, September 22 2013, <http://tinyurl.com/zxeug6v>). In 2014, AMCHA again escalated a frivolous complaint to then-State Controller John Chiang after San Francisco State had investigated and rejected it. The complaint falsely alleged that a professor had misused state funds to research Palestine. (See the letter to Chiang from the Center for Constitutional Rights et al., August 1, 2014, <http://tinyurl.com/hx3vxma>). Israel lobby organizations also filed an unsuccessful federal lawsuit and three rejected administrative complaints against the University of California under Title VI of the Civil Rights Act alleging that advocacy for Palestinian rights caused a hostile environment for Jewish students. All four cases were roundly rejected on First Amendment grounds. (See Palestine Legal and Center for Constitutional Rights, *Palestine Exception to Free Speech*, chapter on “Lawsuits and Legal Threats,” September 2015, <http://palestinelegal.org/the-palestine-exception#tactics7>.)