

Date of Hearing: April 21, 2015

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1212 (Grove) – As Introduced February 27, 2015

[Note: This bill is doubled referred to the Assembly Judiciary Committee and will be heard as it relates to issues under its jurisdiction.]

SUBJECT: Postsecondary education: Student Freedom of Association Act

SUMMARY: Establishes the Student Freedom of Association Act. Specifically, **this bill:**

- 1) Requires, as a condition of receiving state funds for student financial assistance, the governing board of each California Community College (CCC) district, the California State University (CSU) Trustees, and the University of California (UC) Regents, to adopt a policy prohibiting their respective campuses from discriminating against a student organization with respect to a benefit available to any other student organization, based on that organization's requirement that its leaders or voting members satisfy either of following:
 - a) Adhere to the organization's viewpoints or sincerely held beliefs; and,
 - b) Be committed to furthering the organization's beliefs, mission, or standards of conduct.
- 2) Specifies that a student or a student organization aggrieved by a violation, as specified, may commence a civil action to obtain appropriate injunctive and declaratory relief as determined by the court; and, states, upon motion, a court may award attorney's fees to a prevailing plaintiff in a civil action, pursuant to this measure.
- 3) Defines the term "benefit" to include, but not necessarily be limited to, all of the following:
 - a) Recognition;
 - b) Registration;
 - c) The use of campus facilities for meetings or speaking purposes that are otherwise available to other campus student organizations;
 - d) The use of channels of communication of the campus that are otherwise available to other campus student organizations; and,
 - e) Funding sources that are otherwise available to other campus student organizations.
- 4) Defines "public institution of higher learning" to include any state postsecondary educational institution governed or supervised by any of the following:
 - a) UC Regents;
 - b) CSU Trustee; and,

- c) CCC district governing board.
- 5) Defines "student organization" to mean an association of students organized around shared missions, interests, beliefs, or education goals.
- 6) Specifies that this measure does not apply to any private institution of higher learning.
- 7) Specifies that the provisions of this chapter are severable; meaning, if any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

EXISTING LAW: Prohibits the UC Regents, CSU Trustees, the governing board of a CCC district, and the administrator of any campus of said institutions from making or enforcing a rule subjecting a student to disciplinary sanction solely on the basis of conduct that is speech or other communication that, when engaged in outside a campus of said institutions, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution (Education Code Section 66301).

FISCAL EFFECT: Unknown

COMMENTS: *Need for the measure.* According to the author, "In 2011, the California State University (CSU) Chancellor issued an executive order calling for a so-called "anti-discrimination" policy requiring student organizations to adopt an "all-comers" policy – meaning that a student group may not reserve leadership roles and voting privileges solely for students that adhere to the principles of that group. As a result, campus organizations may no longer require their members to actually agree with, and stand up for, the core principles of the organization. The campus Democrats must admit Republicans, a campus pro-life group must admit abortion advocates, a campus LGBT group must admit students who reject same-sex marriage, etc." The author contends that, "AB 1212 will require the governing bodies of UC, CSU, and California Community Colleges to adopt a policy prohibiting their respective campuses from discriminating against a student organization based on that organization's requirement that its leaders or voting members adhere to the organization's viewpoints or sincerely held beliefs."

Background. The Supreme Court held in *Christian Legal Society Chapter of the University of California, Hastings College of the Law v. Martinez* that a public law school does not violate the Constitution when it "condition[s] its official recognition of a student group—and the attendant use of school funds and facilities—on the organization's agreement to open eligibility for membership and leadership to all students." 130 S. Ct. 2971, 2978 (2010). The Court referred to the open membership requirement as an "all-comers policy" and concluded that such a policy was a "reasonable, viewpoint-neutral condition on access to the student-organization forum." The Court further held that the all-comers policy did not violate the Free Exercise Clause of the First Amendment (at 2995 n.27).

The Court expressly declined to address whether these holdings would extend to a narrower nondiscrimination policy that, instead of prohibiting all membership restrictions, prohibited membership restrictions only on certain specified bases, for example, race, gender, religion, and

sexual orientation (at 2982, 2984). The Court concluded that the narrower policy is constitutional.

California's public higher education. According to the state's three public higher education systems, the CCC, CSU, and UC, their policies for the creation of campus recognized student organizations, are aligned to current law and the rulings of the United States Supreme Court and California's Ninth Circuit Court, which ruled that non-restrictive rules for membership and leadership are constitutionally sound under federal law.

Nothing in the segments' policies preclude student groups from forming that choose to hold exclusive member and leadership roles, said groups are just not recognized as official campus groups. Although there are several benefits to student groups having official recognition status, such as discounted usage fees for campus facilities, most campuses within the segments still provide significantly discounted facilities usage fees to non-recognized groups; some campuses do not even charge non-recognized groups usage fees.

Arguments in support. According to the Christian Legal Society, "AB 1212 will protect college students from discrimination in the vitally important context of state colleges and universities." The Christian Legal Society argues that, "AB 1212 ensures that California taxpayers' money will not be spent on unnecessary litigation that will result from California public universities misinterpreting previous policies, or creating new policies, to exclude religious groups from campus because they require their leaders to share the groups' religious beliefs.

Arguments in opposition. According to the California State Student Association (CSSA), "AB 1212 sets a damaging precedent to create legislation with particular groups in mind without considering other consequences. CSSA argues that, "AB 1212 could lead to cultural clubs requiring their leaders be of certain ethnicity, for example, and it should not be the obligation of the state to financially support organizations that are not inclusive of all students."

Committee considerations. California has clearly identified goals in statute that all public elementary and secondary schools, the CCCs, the CSU, the UC, and independent institutions of higher education are designed to provide educational opportunity and success to the broadest possible range of our citizens, and shall provide the following:

- 1) Access to education, and the opportunity for educational success, for all qualified Californians. Particular efforts should be made with regard to those who are historically and currently underrepresented in both their graduation rates from secondary institutions and in their attendance at California higher educational institutions.
- 2) Quality teaching and programs of excellence for their students. This commitment to academic excellence shall provide all students the opportunity to address issues, including ethical issues, that are central to their full development as responsible citizens.
- 3) Educational equity not only through a diverse and representative student body and faculty but also through educational environments in which each person, regardless of race, gender, gender identity, gender expression, sexual orientation, age, disability, or economic

circumstances, has a reasonable chance to fully develop his or her potential (EC Section 66010.2).

Additionally, Title VII of the Civil Rights Act of 1964, the major federal anti-discrimination law, prohibits discrimination on the basis of the following: race, color, sex (which includes pregnancy and childbirth), religion, and national origin.

This measure appears to be in conflict to the state's codified goals for higher education. By mandating that in order for the CCC, CSU, and UC to be eligible to provide state financial aid to their students, they must have policies in place that allow for campus approved student groups to have exclusive leadership and membership rules, does that take away from ensuring all students, regardless of race, color, sex, religion and national origin, have access to an educational environment whereby they have a reasonable chance to fully develop their potential?

The Committee may wish to consider whether or not it desires to pass out a measure that could be deemed a contradiction to the state's goals for higher education and the Civil Rights Act of 1964.

Additionally, student groups all have the power of choice. Students can choose to comply with the segments' legally-mandated non-discrimination rules regarding membership and leadership – in which cases said groups would be recognized by their college and/or university and would receive funding and other specific benefits associated with that recognition, or, students can choose not to comply with the policies in place, subsequently not being recognized as an official campus organization.

If this measure passes, will it create a slippery slope whereby the campuses will be forced to approve requests for student groups that may offend the sensibilities of some of their students, faculty, and staff? What will occur if a student group seeks to have a campus approve a White supremacist group, or students from the Church of Satan group? If the campus ultimately denies a student group seeking to have an exclusive club that offends the sensibilities of students, faculty, and staff, will the campus be in jeopardy of not being able to provide state financial aid to the thousands of students who rely on state financial aid? Will the campus face law suits?

The Committee may wish to consider whether or not it desires to pass out a measure that could potentially disrupt thousands of students from being able to receive state financial aid and open up the flood gates with law suits.

REGISTERED SUPPORT / OPPOSITION:

Support

Chi Alpha Campus Ministries, U.S.A.
Christian Legal Society
InterVarsity Christian Fellowship/USA

Opposition

California State Student Association

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