

Date of Hearing: June 18, 2024

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

SB 1287 (Glazer) – As Amended May 16, 2024

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

SENATE VOTE: 30-1

SUBJECT: Public postsecondary education: Equity in Higher Education Act: prohibition on violence, harassment, intimidation, and discrimination

SUMMARY: Requires the Trustees of the California State University and the Board of Governors of the California Community Colleges, and requests the Regents of the University of California to: (1) adopt and enforce student code of conduct policies pertaining to specified behavior on campus; (2) maintain and enforce time, place, and manner restrictions; (4) designate the sections of campuses that are considered public and non – public spaces; and, (5) develop mandatory training programs for students pertaining to protests and the exchange of ideas on campus. Specifically, **this bill:**

- 1) Stipulates it is the policy of the California Community Colleges (CCC), the California State University (CSU), and the University of California (UC) to prevent and eliminate violence, harassment, intimidation, and discrimination that undermine the objectives of the segments to prevent actions that impair the educational mission of the segments, violates federal and state antidiscrimination laws, interferes with the free exercise of freedom of speech, as defined, and interferes with the free exchange of ideas on campus.
- 2) Requires the Trustees of the CSU and the Board of Governors of the CCC to do all of the following:
 - a) Adopt and enforce student code of conducts that prohibit the following:
 - i) Engaging in violence, harassment, intimidation, and discrimination in violation of state or federal antidiscrimination laws, or other relevant laws;
 - ii) Interfering through force, threat of force, or intimidation the freedom of speech, as defined, the free exchange of ideas, or the educational mission of the CCC, CSU, or the UC; and,
 - iii) Calling for genocide;
 - b) Maintain and enforce reasonable time, place, and manner restrictions;
 - c) Clearly set forth the campus' time, place, and manner restrictions and any advance permitting required by the campus;
 - d) Clearly set forth the portions of the campus that are considered public, limited public, and nonpublic and the meaning of the designation;

- e) Develop a mandatory training program for students that includes the following:
 - i) When and where protests and gatherings may be held;
 - ii) Which sections of the campus are considered public, limited public, nonpublic, and private property; and,
 - iii) How students can exchange views in an atmosphere of mutual respect and civility.
- 3) Each campus of the CSU and CCC will ensure that any policy adopted or enforced as required above will be consistent with the first amendment of the United States Constitution and the freedom of speech requirements of the California State Constitution.
- 4) Requires the CSU and the CCC each year, beginning on January 2, 2025, to submit a report to the Legislature on the implementation and administration of (2) of this analysis. The report will include any student code of conduct violations relating to incidents pursuant to (2) of this analysis.
- 5) Stipulates it is intended that the requirements as listed above are interpreted in a manner that is consistent with the first amendment of the United States Constitution and the freedom of speech requirements of the California State Constitution.
- 6) Clarifies the provisions as listed above are severable and if issued invalid, the subdivision or clause issued invalid will not render every subdivision or clause invalid.
- 7) Requests the UC to comply with the above.
- 8) Defines the following:
 - a) “Calling for genocide” means only those acts, verbal, or otherwise that are both intended to and reasonably understood as, calling for genocide;
 - b) “Genocide” has the same definition as conduct set forth in Article II of the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide, whether the conduct is committed with the intent to destroy, in whole, or in part, protected groups specified in the Genocide Convention or protected groups specified in Section 51 of the Civil Code; and,
 - c) “Intimidation” has the same definition as “intimidate” in subdivision (c) of Section 423.1 of the Penal Code.
- 9) Makes various findings and declarations on behalf of the Legislature regarding free speech, academic freedom, and the exchange of ideas on campus and the need to preserve such rights in a manner that ensures student safety.

EXISTING LAW: *The Constitution of the United States of America.*

- 1) Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people to peaceably to assemble, and to petition the Government for a redress of grievances

(Amendment I of the Constitution of the United States of America; Bill of Rights ratified 1791).

Federal law.

- 1) Provides that recipients of federal funding must comply with the mandate that no person on the basis of race, color, or national origin be excluded from the participation in, denied the benefit of, or be subjected to discrimination in any federally funded program or activity (Title IV of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq.).

The Constitution of the State of California.

- 1) Every person may freely speak, write, and public his or her sentiments on all subject, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press (Section 2 of Article I of the California Constitution).

State law.

- 1) Requires the CCC, CSU, and UC to adopt procedures and designate a person to take disciplinary actions against students, faculty, support staff, or administrators who have been found to have willfully disrupted the orderly operation of the campus. Establishes the adjudication process, as defined, for those who have been accused of willful disruption and permits the disciplinary actions to include dismissal, suspension, or expulsion (Education Code (EDC) Section 66017).
- 2) Prohibits higher education institutions from adopting or enforcing a rule that would discipline students solely on the basis of conducting speech that would be considered protected by the United States Constitution or the California State Institution in an off-campus setting. Prohibits the institution from dismissing, suspending, disciplining, reassigning, transferring, or retaliating against an employee who protects student's right to peacefully protest (EDC Section 66301).
- 3) Requires the CSU and requests the UC to designate an individual to serve as a liaison between campus law enforcement agencies and students exercising their rights guaranteed under the first amendment to peacefully protest (EDC Section 66303).
- 4) No person participating in any program or activity conducted by any postsecondary education institution, that receives state financial assistance or enrolls students who receive state financial aid, is to be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any characteristic listed or defined in Section 11135 of the Government Code or any other characteristic that is contained in the prohibition of hate crimes defined in Section 422.6 subdivision (a) of the Penal Code, including immigration status (EDC Section 66270).

FISCAL EFFECT: According to the Senate Committee on Appropriations:

- 1) The CSU indicates that the bill could result in unknown, but potentially significant legal liability costs if the bill were not amended to clarify the meaning of "calling for genocide." Additionally, the mandatory training program would have unknown, upfront costs to be developed and ongoing costs to deliver it each year to students. The CSU indicates that the

annual reporting requirement and the time, manner, and place provisions would be minor and absorbable within existing resources (General Fund).

- 2) The University of California estimates one-time General Fund costs ranging from \$250,000 to \$1 million to develop training to educate students the bill's provisions regarding when and where protests and gatherings may be held and how to exchange views in an atmosphere of mutual respect civility. The cost to update student codes of conduct are expected to be minor and absorbable.
- 3) The CCC Chancellor's Office estimates one-time Proposition 98 General Fund costs of \$4.6 million for community colleges to update free speech and student codes of conduct policies and ongoing costs of approximately \$16.1 million for the colleges to develop mandatory training programs to educate students and add a question to CCC Apply for students to acknowledge their obligation to comply with the institution's code of conduct. The Chancellor's Office also estimates ongoing Proposition 98 General Fund costs of up to \$8.8 million for colleges to report data on institution code of conduct violations. Further, there would be General Fund administrative costs of about \$236,000 to the Chancellor's Office for various workload activities, including one-time expenses of \$126,000 to develop regulations on student code of conduct and free speech policies.

COMMENTS: *Need for the measure.* According to the author, "across our higher education system the freedom of expression has been impaired with increasing reoccurrences of harassment, intimidation, and violence on campus targeted towards those with differing viewpoints. California's colleges and universities have a responsibility to promote free speech and to prevent harassment and discrimination that violates anti-discrimination laws. Many marginalized communities are suffering from discriminatory attached. SB 1287 is about making sure that California universities are places where everyone can share their thoughts and ideas freely. We want to protect free speech and academic freedom while also preventing any form of harassment or discrimination. The need has been highlighted by incidents of antisemitism that have resulted from the October 7th terrorist attack in Israel. By having the higher education institution's set clear rules and reporting systems, we're making sure that universities can maintain an environment where everyone feels respected and can learn without fear of intimidation, harassment, or violence."

Incidents of intimidation, harassment, and violence on college campuses. Disruption of the peace on campus is not an insular event to the current academic year. Since the beginning of the Civil Rights movement, students have gathered and raised their voices to bring collective awareness to the infringement upon the rights of marginalized communities.

In some cases, student protests on campus have yielded policy changes whose affects were felt for generations. The result of the student protests at San Francisco State University in the late 1960s resulted in the creation of the first College of Ethnic studies. Decades later, this college was instrumental in the mandates for ethnic studies as a CSU degree requirement. Protests on campus following the murder of George Floyd resulted in campuses of the CCC, CSU, and UC changing their policies for how police interact with students on campus.

While an effective tool for change, student protests on campus can become extreme and often, the behavior of students blurs the lines between peaceful demonstrations and potentially, criminal behavior.

On December 2, 1965, students at UC Berkeley occupied an administration building and were subsequently arrested for trespassing.¹ The protests escalated to other colleges and universities. In 1967, then-Governor Ronald Reagan penned a letter to Glenn Dumke, the chancellor of San Francisco State college, and opined:

“How far do we go in tolerating these people & this trash under the excuse of academic freedom & freedom of expression? Please understand, that question isn’t made in any tone of accusation. I mean myself too in that use of the term ‘we.’ Hasn’t the time come to take on those neurotics in our faculty group and lay down some rules of conduct for the students comparable to what we’d expect in our own families? If we do and the ‘we’ this time means you’d have all the backing I could give you, I believe the people of California would take the state college system to their hearts.”²

SB 1287 (Glazer) would fulfill the intent of then-Governor Ronald Reagan by mandating student code of conduct on CCC and CSU campuses to contain prohibitions not just on behavior that is violent, harassing, intimidating, or discriminatory; but on “calls for genocide” and any conduct that is considered interfering through force, threat of force, or through intimidation, the freedom of speech on campus, the free exchange of ideas, or the educational mission of the segment.

SB 1287 (Glazer) would effectively constitute a policy that aligns with then-Governor Reagan’s plea to the campus Chancellor, to “lay down some rules of conduct for the students comparable to what we’d expect in our own families” by curtailing the freedom of speech on campus and the freedom to assemble.

The Committee may wish to consider how the student code of conduct to prohibit the “interfering through force, threat of force, or intimidation the educational mission of the segment” will be used in the future by the institutions against student protestors. For example if students were to protest future tuition increases, campuses could interpret this action as intimidating and interfering with the educational mission of the segment.

The provision of SB 1287 (Glazer) changing the student code of conduct is not limited to the actions of student protests as not every incident of violence, intimidation, harassment, and discrimination is the result of a protest. In documentation provided by the author, an incident in 2019 of a white student using a racial slur against black people prompted UC Berkeley prompted to issue a letter of condemnation against instances of discrimination and aggression.

In a letter to the leadership of UC and CSU in November 2023, the California Legislative Jewish Caucus expressed their collective outrage and concern regarding the increased number of antisemitic incidents occurring on campuses since the Israeli-Hamas conflict began on October 7, 2023. The letter included the following details on antisemitic incidents which had been described to various members of the Caucus:

“In recent days, we have heard from Jews across California who have been targeted by hate on our campuses. Among numerous other examples, we have heard from Jewish students at UC Berkeley, UC Davis, and San Jose State who report being physically attacked for

¹ <https://billofrightsinstitute.org/essays/protests-at-the-university-of-california-berkeley>

² <https://www.gilderlehrman.org/history-resources/spotlight-primary-source/ronald-reagan-unrest-college-campuses-1967>

expressing support for Israel; Jewish students at UC San Diego who required a police escort in order to safely leave a student meeting; obscene anti-Israel graffiti on a Jewish ritual space at Cal Poly Humboldt; anti-Israel rallies at UCLA that interrupted classes with hate-filled rhetoric; a social media post by a UC Davis faculty member with knife, axe, and blood emojis calling for violence against Zionists in their homes and their ‘kids in school;’ and an increased need for armed security at Jewish student centers on multiple campuses. Shockingly, anti-Israel student groups immediately celebrated the Hamas terrorist attack on October 7th, while the UC Ethnic Studies Faculty Council glorified the largest mass murder, rape, and kidnapping of Jewish civilians since the Holocaust as worthy of support as part of the ‘Palestinian freedom struggle.’”

The National Center for Education Statistics, found that the three most common types of on-campus hate crimes were intimidation, vandalism, and simple assault and the top three categories of bias motivating those hate crimes were race, sexual orientation, and ethnicity.³

Committee Staff note that neither the State nor the Federal Government require institutions to report on the number of violent, harassing, intimidating, nor discriminatory incidents on campus.

Unless the incidents rise to criminal behavior, neither the public nor the Legislature are made aware. SB 1287 (Glazer) seeks to rectify this data exclusion by requiring the CCC and the CSU and requesting the UC to provide annual reports on the number of student code violations that resulted from behavior that was violent, harassing, intimidating, or discriminatory; “calls for genocide”; and, any conduct that is considered interfering through force, threat of force of intimidation the freedom of speech on campus, the free exchange of ideas, or the educational mission of the segment.

Student codes of conduct. The Education Code authorizes the governing boards of each community college, the Board of Trustees of the CSU, and the Board of Regents at the UC to establish student codes of conduct or the “specific rules and regulations governing student behavior.” Both the CSU and the UC have systemwide student codes of conduct that apply to all campuses within the segment; whereas, the CCC student code of conduct requirements differs across all 73 community college districts.

The CSU student code of conduct includes a list of conduct that is grounds for student discipline including:

- 1) Unauthorized entry, presence in, use of, or misuse of University property;
- 2) Willful disruption or obstruction of a University-related activity or any on-campus activity;
- 3) Participating in an activity that disrupts the normal operations of the University or infringes on the rights of members of the University community;
- 4) Disorderly, lewd, indecent, or obscene behavior at a University related activity or directed toward a member of the University community;

³ <https://nces.ed.gov/programs/coe/indicator/a22/postsecondary-hate-crimes>

- 5) Conduct that threatens or endangers the health or safety of any person within or related to the University community, including, physical abuse, threats, intimidation, harassment, or sexual misconduct;
- 6) Unauthorized destruction, or damage to University property or other property in the University community; and,
- 7) Any act chargeable as a violation of a federal, state, or local law that poses a substantial threat to the safety or well being of members of the University community, to property within the University community or poses a significant threat of disruption or interference with University operations (California Code of Regulations 5 CA ADC 41301).

The UC student code of conduct has similar provisions. Committee Staff examined the student code of conducts of several CCC districts and each contained similar provisions to the CSU policy.

The Committee may wish to consider if the provisions of this measure are redundant of existing policies and whether the provisions remove the autonomy of the institutions to determine what acts are considered threatening or endangering to the health and safety of the campus community.

Student codes of conduct and free speech. Pursuant to the Education Code of California, the CCC, CSU, and UC are barred from authorizing or enforcing a rule that would discipline students solely on the basis of speech, if the speech is protected by United States Constitution or the California State Constitution when the student is off-campus. However, a higher education institution may adopt rules and regulations that preventing conduct that is considered harassment, threats, or intimidating, unless constitutionally protected. The institutions may also adopt rules and regulations that prevent “hate violence” from being directed at students in a manner that denies students their full participation in the education process.

SB 1287 (Glazer) circumvents the above provision and authorizes CCC and the CSU and potentially the UC to adopt and enforce student codes of conduct that would curb the freedom of speech on campus by prohibiting specific conduct regardless of whether the conduct has interfered with students’ participation in the education process.

Under SB 1287 (Glazer), anyone who disrupts the free exchange of ideas on campus would be considered in violation of the student code of conduct. By this definition, the students who peacefully protested against Ben Shapiro speaking at UC Berkeley in 2017 would be considered in violation of the student code of conduct; and therefore, could be expelled from the higher education institution.⁴

Universities in other states have attempted to adopt policies curbing a student’s rights of freedom of speech enumerated by the first amendment to the United States Constitution. In 1988, the Regents of the University of Michigan adopted a policy that would have disciplined students for “hate speech,” or speech that would have been considered negative speech against marginalized communities. In the case documents provided to the U.S. District Court for Eastern District of Michigan, the University of Michigan intended to use the new student code of conduct to

⁴ <https://www.cnn.com/2017/09/14/us/berkeley-ben-shapiro-speech/index.html>

discipline students who, “told jokes about gay men and lesbians or displayed a confederate flag on the door their residence room, or, made a derogatory comments about a specific person or group’s physical appearance, sexual orientation or cultural origins, or religious beliefs.”⁵

In the court case that reviewed the student code of conduct, *Doe v. University of Michigan* (1989), 721 F. Supp. 852. E.D. Mich., the student code of conduct was deemed unconstitutional on the grounds it violated the students first amendment rights under the United States Constitution. Since the Michigan case, universities in other states have attempted to adopt regulations or enforce policies to curb the speech rights of students; however, federal courts have continually upheld the first amendment to the United States Constitution and ruled the “rules and enforcement” unconstitutional.⁶

The student code of conduct attempted by the University of Michigan in 1989 contains similar clauses to SB 1287 (Glazer); and therefore, the Committee may wish to review whether it is prudent to pass similar languagethat has been considered by a federal court and determined to be unconstitutional.

Tools available to postsecondary education institutions to address acts of discrimination. As mentioned in the existing law section of this analysis, the public postsecondary education institutions already have the authority to discipline any student or employee they deem as willfully disrupting the orderly operations of the campus. Cal Poly Humboldt used this provision to place students on an interim suspension during an investigation into the students’ alleged willful disruption during the April 2024 protests that lead to occupation of Siemens Hall on campus.⁷ On May 24, 2024, CalMatters published an article, “Hundreds arrested and suspended: How California colleges are disciplining faculty and students over protests”; which found that least 567 people had either been disciplined by the university or arrested for their participation in the protests on campuses.⁸

Campuses are utilizing the tools currently available to them to discipline students through student code of conduct violations for their participation in activating that either are:

- 1) Intimidating, violent, harassing, and discriminatory in nature; or,
- 2) Interfering with the operation of the educational mission of the campus (the operations of the campus).

The Committee may wish to examine whether SB 1287 (Glazer) is premature. Nothing in the current student codes of conduct prevent campuses from issuing disciplinary sanctions against students whose conduct is considered harassing, intimidating, violent, or discriminatory.

There are range of disciplinary actions an institution may take against a student. Suspension and expulsion are reserved for egregious offenses. Suspensions are removal from the campus for a finite period of time; whereas expulsions are permanent removals not just from the campus, but from the system. A student who is expelled from UC Davis would be barred from admission to all UC campuses. Both disciplinary actions are noted on a student’s transcript and therefore, it is

⁵ [Doe v. University of Michigan, 721 F. Supp. 852 \(E.D. Mich. 1989\) :: Justia](#)

⁶ [Court Cases — Free Speech \(louisville.edu\)](#)

⁷ <https://www.sacbee.com/news/local/article288236900.html>

⁸ <https://calmatters.org/education/higher-education/2024/05/campus-protest-arrests-suspensions/>

possible that another system could bar admissions based on the severity of the disciplinary action.

Moving forward the author may wish to include a requirement for the institutions to disclose the disciplinary sanction levied against the student to ensure the disciplinary action matches the severity of the student code of conduct violation.

The U. S. Department of Education Office for Civil Rights (OCR) is endowed with the responsibility of enforcing the protections afforded to students by federal law. Protection provided by Title VI of the Civil Rights Act of 1964 (Title VI); specifically, protections from discrimination based on race, color, or national origin including shared ancestry, or ethnic characteristics, is extended to students on postsecondary education institutions who receive federal funding. Each community college, CSU, and UC campus receives federal funding; and therefore, are legally obligated take prompt and effective steps to end the harassing conduct, to eliminate any hostile environments, and to prevent the harassment from recurring.

Based on this information, requiring a prohibition against a “call for genocide” in a student code of conduct seems to align with preventing discrimination based on race, color, or national origin including shared ancestry, or ethnic characteristics. However, based on case law regarding the protection of offensive rhetoric, prohibiting a call for genocide could be seen as violating a student’s first amendments rights afforded to them by the United States Constitution. Specifically, *Texas v. Johnson*, 491 U. S., 491 397 (1989) stated, “if there is a bedrock principle underlying the First Amendment it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”⁶

Case law has determined that some educational institutions have the authority to restrict student’s speech in defined circumstances, *Bethel School District v. Fraser* (1986) 478 U.S. 675. The premises discussed by the case centered on the permissions provided to public primary and secondary schools to punish students for lewd, indecent, or offensive speech, because the behavior was disruptive to the school-sponsored function, and the rights of high school students are not equal to the rights of adults.⁹

This ruling does not apply to postsecondary education institutions as the Supreme Court determined in *Healy v. James*, 408 U.S. 169 (1972), that, “state colleges and universities are not enclaves immune from the sweep of the First Amendment... the precedents of this Court leave no room for the view that... First Amendment protections should apply with less force on college campuses than in the community at large. The college classroom with its surrounding environs is peculiarly the marketplace of ideas.”⁶

In the May 7, 2024 the OCR “Dear Colleague” letter to educational institutions (both K-12 and postsecondary) opined as to the legal requirements for institutions to honor the First Amendment to the U.S. Constitution while also providing Title VI protections to students:

“Nothing in Title VI or regulations implementing it requires or authorizes a school to restrict any rights otherwise protected by the First Amendment to the U.S. Constitution. OCR enforces the laws within our jurisdiction consistent with the First Amendment. The fact that

⁹ Raskin, Jamie. *We the Students: Supreme Court Cases for and about Students*. Thousand Oaks, CA. CQ Press, 2015. Print.

harassment may involve conduct that includes speech in a public setting or speech that is also motivated by political or religious beliefs, however, does not relieve a school of its obligation to respond under Title VI as described below, if the harassment creates a hostile environment in school for a student or students. Schools have a number of tools for responding to a hostile environment—including tools that do not restrict any rights protected by the First Amendment. To meet its obligation, a university can, among other steps, communicate its opposition to stereotypical, derogatory opinions; provide counseling and support for students affected by harassment; or take steps to establish a welcoming and respectful school campus, which could include making clear that the school values, and is determined to fully include in the campus community, students of all races, colors, and national origins. OCR does not interpret Title VI to require any recipient to abridge any rights protected under the First Amendment. For instance, if students at a public university engage in offensive speech about members of a particular ethnic group and that speech contributes to a hostile environment within an education program about which the university knows or should know, the university has a legal obligation to address that hostile environment for students in school. The university may, however, be constrained or limited in how it responds if speech is involved.”¹⁰

The OCR “Dear Colleague” letter leaves little room for doubt as to the duties a postsecondary education must fulfill to address discrimination in order to be in compliance with Title VI:

“As OCR has articulated many times, OCR could find a Title VI violation in its enforcement work if it determines that: (1) a hostile environment based on race, color, or national origin exists; (2) the school had actual or constructive notice of the hostile environment; and (3) the school failed to take prompt and effective steps reasonably calculated to (i) end the harassment, (ii) eliminate any hostile environment and its effects, and (iii) prevent the harassment from recurring.”¹⁰

One could argue that the offensiveness of a “call for genocide” is enough to constitute a hostile environment; and therefore, should elicit a response from the postsecondary education institutions. However, OCR would disagree:

“The offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a hostile environment under Title VI. OCR evaluates the conduct from the perspective of the student who is allegedly being harassed and from the perspective of a reasonable person in that student’s position, considering all the circumstances. In order to create a hostile environment, the harassing conduct, which may include speech or expression, must be so severe or pervasive that it limits or denies a student’s ability to participate in or benefit from the school’s program or activity.”¹⁰

The Committee may wish to examine realigning the measure to align with the hostile environment definitions as explained by the OCR to protect students’ freedom of speech rights and to protect the institutions from potential OCR violations.

The OCR letter indicates that institutions have a duty to end the harassment and eliminate any hostile environment and its effects. The institutions also have an affirmed responsibility to

¹⁰ [Dear Colleague Letter: Protecting Students from Discrimination, such as Harassment, Based on Race, Color, or National Origin, Including Shared Ancestry or Ethnic Characteristics \(PDF\)](#)

prevent the harassment from recurring. A narrow interpretation of the letter would be to provide punitive measures to violators. However as indicated by examples in the letter, simply levying disciplinary sanction is not enough to eliminate the effects of the hostile environment. Supportive measures must be provided to the survivors of incidents to educational equity.

Moving forward, the author may wish to examine whether punitive measures against students is the right recourse for discriminatory events on campus; and, to adopt provisions requiring the institutions to provide supportive measures, including, but not limited to mental health resources, to survivors of discriminatory events.

Congress has begun to examine whether the tools available to postsecondary education institutions are sufficient to address acts of discrimination. The House of Representatives Committee on Education and the Workforce considered and passed H.R. 8648 authored by Representative Chavez-DeRemmer on June 13, 2024.¹¹ If the measure becomes law it would require institutions to report how they investigate Title VI complaints, to designate an employee to coordinate compliance, and adhere to new standards created by the OCR for how to investigate complaints.

Arguments in support. The Jewish Public Affairs Committee of California supports SB 1287 (Glazer) as, “the protections in SB 1287 are particularly urgent for our community, which has experienced a 2,000% increase in antisemitic incidents on college campuses in the five months since the Hamas attacks on October 7, 2023, compared to the same period the year prior. But the growing trend of intolerance for differing viewpoints is a threat to everyone in a diverse, pluralistic society. Free speech is a cornerstone of our democracy, and harassment, intimidation, and violence against people with differing viewpoints threaten our shared values. Institutions of higher education must be accountable for preserving students’ right to safely engage in activities protected by the United States and California Constitutions.”

“There is broad consensus that stronger measures must be taken in this regard. As part of its ongoing investigation of unchecked antisemitism at UC Berkeley, the House Committee on Education and the Workforce expressed ‘grave concerns regarding the inadequacy of UC Berkeley’s response to antisemitism on campus.’ In a letter sent to UC Berkeley on March 19, 2024, the Committee lists several troubling incidents including the assault of Jewish students by anti-Israel activists on campus and the exclusion of an Israeli student from a class conference because of her nationality. Similar incidents across the state prompted the California Legislative Jewish Caucus to send a letter on November 7, 2023, to the UC and CSU systems. It explained that ‘there is a widespread feeling among Jewish students—as well as within the broader Jewish community— that many campus administrators do not understand the severity of the crisis and have been unwilling to take appropriate action to meet this moment.’ Administrators are simply not dealing with these incidents on their campuses. As a result, students are being deprived of their right to participate fully and equally in the education process.”

“SB 1287 offers a tangible solution to address this problem by requiring colleges and universities to update their student codes of conduct to explicitly address violence, harassment, intimidation, and discrimination, and to maintain and enforce time, place, and manner restrictions that encourage a culture of civility and mutual respect. Students must also acknowledge that they will comply with the conduct code.”

¹¹ <https://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=410671>

“Furthermore, the provision mandating each system of higher education to develop training programs to educate students on how to constructively engage with each other will begin to address the culture of intolerance and hostility on campuses by promoting civil discourse. Educators have an obligation to prepare students for the real world. The ability to peacefully and respectfully disagree with others is foundational to succeeding in a diverse society.”

Arguments in opposition. The American Civil Liberties Union California Action respectfully opposes the provision of SB 1287 as, “this legislation will foreseeably lead colleges and universities to silence a range of protected speech based on viewpoint alone. By demanding that institutions follow SB 1287’s strictures, and threatening penalties when they do not, institutions will inevitably err too far and violate a speaker’s constitutional rights—which will, in turn, subject both the institution and the state to liability for constitutional damages and attorneys’ fees. The state should not expend taxpayer dollars to defend an infirm law. Here, the Senate Judiciary Committee analysis is illustrative: ‘It is also unclear if this prohibition would survive the extremely strict scrutiny applied to content-based and viewpoint-based speech restrictions.’ [...] ‘Additionally, because the bill gives the institutions wide discretion on how to adopt the bill’s requirements, there is a risk that a school will interpret this bill as a mandate to impose overbroad restrictions on campus protest activity. If it turns out that institutions are consistently overzealously applying this bill’s requirements, the bill may be susceptible to an as-applied challenge.’”

“Already, California universities are overzealously targeting students, suppressing lawful speech and assembly. Since the Senate Judiciary hearing on April 23, 2024, we have seen tactics at schools and universities using law enforcement and disciplining students which is stifling and restricting speech that is protected by both the U.S. and California Constitutions. The state and schools should not be wasting time and money defending a law that will likely be found in violation of the First Amendment. Importantly, California’s schools and universities are equipped with existing standards and regulations that enable them to address violence and harassment in the educational environment. Therefore, SB 1287 is also unnecessary.”

“Discrimination or harassment directed at individuals because of their race, ethnicity, or religion, is not, of course, permissible. Antisemitic, Islamophobic, anti-Palestinian, or speech targeted at individuals because of their ethnicity or national origin constitutes invidious discrimination, and cannot be tolerated. Universities must not single out particular viewpoints — however offensive they may be to some members of the community — for censorship, discipline, or disproportionate punishment. The speech we censor today will set the stage for what we censor tomorrow. And as Justice Kennedy noted in a concurrence in the case *Matal v. Tam*, ‘a law that can be directed against speech found offensive to some portion of the public can be turned against minority and dissenting views to the detriment of all. The First Amendment does not entrust that power to the government’s benevolence. Instead, our reliance must be on the substantial safeguards of free and open discussion in a democratic society.’”

Committee comments. SB 1287 (Glazer) prompts two policy questions to be considered by the Committee:

- 1) *Should hate speech be banned from college campuses and do higher education institutions have an obligation to students to identify and eradicate hate speech?*
- 2) *Should campuses be permitted to restrict behavior that interfere with the free exchange of ideas or the educational mission of the campus?*

The United States, unlike many European countries, has adopted laws regulating the use of hate speech. Countries, such as Germany, have defined hate speech as, “in a manner liable to disturb the public peace, (a) incites hatred against parts of the population or invites violence or arbitrary acts against them, (b) attaches the human dignity of other by insulting, malicious degrading or defaming parts of the population.”¹²

Exemptions exist for the freedom of speech rights in the first amendment. Courts have permitted the government to censor and punish “obscenity; fighting words; and incitement of imminent lawless acts.”⁹ However, each of these exceptions are narrow and only a handful of cases have been upheld by the courts.

In 1990, the Duke Law Journal published “Regulating Racist Speech on Campus: A Modest Proposal?” which examined if higher education institutions have the ability to restrict hate speech while also preserving the freedom speech rights founded in the first amendment to the U.S. Constitution.¹³ The proposal ultimately upheld that a student code of conduct which disciplines students for hate speech would not withstand the scrutiny of the court as “the prevention of hate speech” does not fit neatly into the exceptions to the first amendment to the U.S. Constitution.¹²

Students are the most vulnerable population on campus and yet; the restrictions of SB 1287 (Glazer) only applies to them. If the goal of SB 1287 (Glazer) is to protect the educational mission of the institution; then the bill should address the behavior of the members of the campus community and not just one set of the population.

The Committee may wish to examine if the behavioral restrictions of SB 1287 (Glazer) should only be applied to the most vulnerable population on campus who lack any additional forms of protections against accusations.

To address the concerns listed throughout this analysis and to remove potential questions regarding the constitutionality of the bill, the Committee has recommended and the author has agreed to the following amendments:

- 1) Section 1 – Removes from uncodified language subdivision (a) paragraphs (1) – (3) specifically the definitions for “calling for genocide”, “genocide,” and “intimidation.”
- 2) Section 1 – Removes from uncodified language subdivision (b) paragraph (10) subparagraph (C), to read:

(10) In numerous instances, participants in institution activities have done ~~all~~ *both* of the following:

(A) Engaged in violence, harassment, intimidation, and discrimination.

(B) Interfered, through force, threat of force, or intimidation, with rights established under the First Amendment to the United States Constitution and Section 2 of Article I of the California Constitution, or otherwise interfered with the free exchange of ideas or the educational mission of the segment.

¹² <https://journals.ala.org/index.php/jifp/article/view/6906/9503>

¹³ <https://scholarship.law.duke.edu/dlj/vol39/iss3/3>

~~(C) Called for genocide.~~

- 3) Section 66270.7 – Removes from subdivision (a) the following paragraphs (1), (2) and (4) and adds a definition of “hostile environment”. Amends the language to read:

~~(1) “Calling for genocide” means only those acts, verbal or otherwise, that are both intended to, and reasonably understood as, calling for genocide.~~

~~(2) “Genocide” means conduct set forth in Article II of the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), whether that conduct is committed with the intent to destroy, in whole or in part, protected groups specified in the Genocide Convention or protected groups specified in Section 51 of the Civil Code.~~

(1) “Hostile environment” means unwelcomed conduct based on a person’s actual or perceived race, color, ethnicity, national origin, religion, or disability status, that based on the totality of circumstances, is subjectively and objectively offensive, and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from an institution’s education program or activity.

~~(3)~~

(2) “Institution” means a campus of the California Community Colleges, the California State University, or the University of California.

~~(4) “Intimidation” has the same meaning as “intimidate” in subdivision (c) of Section 423.1 of the Penal Code.~~

- 4) Amends subdivision (b) to read:

~~(b) In order to prevent violence, harassment, intimidation, and discrimination that impairs the educational missions of the segments, violates federal and state antidiscrimination laws, interferes with the free exercise of rights established under the First Amendment to the United States Constitution and Section 2 of Article I of the California Constitution, and interferes with the free exchange of ideas by members of institution communities, it is the policy of the segments to prevent and eliminate violence, harassment, intimidation, and discrimination that undermine these objectives.~~

(b) The governing board of a community college district, the Trustees of the California State University, and the Regents of the University of California have the primary responsibility to prevent and address conduct that either creates a hostile environment for students on campus, or results in differential treatment of students on campus based on a student’s actual or perceived race, color, ethnicity, national origin, religion, or disability status.

- 5) Amends subdivision (c) to read”

(c) The governing board of each community college district and the Trustees of the California State University shall do all of the following:

(1) Adopt rules and procedures in the student codes of conduct to provide all of the following elements:

(A) Prohibit violent, harassing, intimidating, or discriminatory conduct that creates a hostile environment on campus.

(B) Prohibit conduct that limits or denies a person's ability to participate in or benefit from the free exchange of ideas or the educational mission of the segment.

(C) Establish reasonable time, place, and manner restrictions, and, if applicable, any advance permitting requirements for protests on campus.

(2) Adopt rules and procedures to take reasonable steps to respond to each incident described in subparagraphs (A) and (B) of paragraph (1) that creates a hostile environment on campus.

(3) Require each campus to publish on the campus's internet website the time, place, and manner restrictions, and any advance permitting requirements for protests on campus.

~~(5)~~

(4) Develop mandatory training programs to educate students on ~~both~~ all of the following:

(A) What constitutes violent, harassing, intimidating, or discriminatory conduct that creates a hostile environment on campus, and the procedures for investigating violations of the student code of conduct.

~~(A)~~

(B) When and where protests and gatherings may be held, including the difference between public fora, limited public fora, nonpublic fora, and private property, consistent with the First Amendment to the United States Constitution and Section 2 of Article I of the California Constitution.

~~(B)~~

(C) How to exchange views in an atmosphere of mutual respect and civility.

~~(6)~~

(5) Require, as a condition of enrollment at an institution, each student attending the institution, to acknowledge their obligation to comply with the institution's student code of conduct.

6) Amends subdivision (d) to read:

(d) Each institution, the Trustees of the California State University, and the ~~Board of Governors of the California Community Colleges~~ governing board of each community college district shall ensure that any policy adopted or enforced pursuant to this section, as applicable, is consistent with the First Amendment to the United States Constitution, Section

2 of Article I of the California Constitution, and Title VI of the federal Civil Rights Act of 1964 (42 U.S.C. Sec. 2000d et seq.).

7) Amends subdivision (e) to read:

(e) (1) On or before January 2, 2025, and annually thereafter, the Trustees of the California State University and the ~~Board of Governors of the California Community Colleges governing board of each community college district~~ shall submit a report to the Legislature on the implementation and administration of this section. This report shall include information on ~~institution~~ student code of conduct violations relating to incidents described in *subparagraphs (A) and (B) of paragraph (1) of subdivision (c)*.

(2) A report submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

REGISTERED SUPPORT / OPPOSITION:

Support

30years After

AJC San Francisco

American Jewish Committee (AJC) San Diego

American Jewish Committee - Los Angeles

Anti Defamation League

Anti-defamation League (UNREG)

Church State Council

Democrats for Israel - CA

Democrats for Israel Los Angeles

Etta

Hadassah

Hillel At Davis and Sacramento

Hillel At UCLA

Hillel of San Diego

Hillel of Silicon Valley

Holocaust Museum LA

JCRC Bay Area

Jewish Big Brothers Big Sisters of Los Angeles

Jewish Center for Justice

Jewish Community Federation and Endowment Fund

Jewish Community Relations Council (SACRAMENTO)

Jewish Community Relations Council, Santa Barbara

Jewish Democratic Club of Marin

Jewish Democratic Club of Solano County

Jewish Democratic Club of the Bay Area

Jewish Democratic Coalition of The Bay Area

Jewish Democrats of San Diego County

Jewish Family & Community Services East Bay

Jewish Family and Children's Service of Long Beach and Orange County

Jewish Family and Children's Services of San Francisco, the Peninsula, Marin and Sonoma

Counties

Jewish Family Service of Los Angeles
Jewish Family Service of San Diego
Jewish Family Services of Silicon Valley
Jewish Federation of Greater Los Angeles, the
Jewish Federation of Greater Santa Barbara
Jewish Federation of The Greater San Gabriel and Pomona Valleys
Jewish Federation of The Sacramento Region
Jewish Free Loan Association
Jewish Long Beach
Jewish Public Affairs Committee
Jewish Silicon Valley
JVS SoCal
Progressive Zionists of California
Raoul Wallenberg Jewish Democratic Club

Oppose

ACLU California Action
Arab American Civic Council
Asian Americans and Pacific Islanders for Civic Empowerment
Associated Students, University of California, Davis
California Faculty Association
Council of UC Faculty Associations
Council on American Islamic Relations
Interfaith Communities United for Justice and Peace
Interfaith Movement for Human Integrity
Jewish Voice for Peace California
Jewish Voice for Peace, Sacramento Chapter
Jewish Youth for Community Action
JVP Action Greater Los Angeles
MSA West
North Coast Coalition for Palestine
Palestine American League
Rank and File for A Democratic Union
Students for Quality Education (SQE) At CSU Sacramento
Students for Quality Education (SQE) At Sacramento State
Students for Quality Education At Sacramento State
Titan YSDA
UAW Local 4123
UAW Local 4811
UC-AFT
UC-AFT Local 1474
University of California Student Association
UPTE-CWA
UPTE-CWA 9119