

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 1287 (Glazer)
Version: March 20, 2024
Hearing Date: April 23, 2024
Fiscal: Yes
Urgency: No
AWM

SUBJECT

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

DIGEST

This bill 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 adopt certain policies prohibiting violence, harassment, intimidation, and harassment on campus and setting forth each institution's policies regarding protests, as specified; and to develop mandatory training programs for students, as specified.

EXECUTIVE SUMMARY

Existing state law requires postsecondary educational institutions to protect their students from discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or immigration status. Existing federal law requires that no person at an educational institution that receives federal funds, including colleges and universities, may be discriminated against on the basis of race, color, or national origin; these terms have been interpreted to include shared ancestry or ethnic characteristics, or citizenship or residency in a country with a dominant religion or distinct religious identity.

Campuses have long been hotbeds of protest. In the wake of the October 7 Hamas attack on Israel and Israel's war on Gaza, however, on-campus protests at California's colleges and universities have become more frequent and, in some cases, more violent. Students also report an increase in harassment on campuses on the basis of protected bases; the federal Office of Civil Rights at the Department of Education has opened investigations into discrimination on the basis of "shared ancestry" at 10 different California campuses.

This bill requires the California State University (CSU) and the California Community Colleges (CCCs), and requests the Regents of the University of California (UC), to adopt specified policies relating to violence, harassment, intimidation, and discrimination on campuses. The author's intent for the bill is to bring civility back to on-campus discourse. The author has agreed to amendments that eliminate certain content-based provisions, and that narrow certain provisions, to avoid conflicts with the First Amendment and the California Constitution's guarantees of free speech and the right to assemble. As amended, the bill will retain provisions which will be subjected to strict scrutiny by the courts, which is a high bar to clear. A mockup of the amendments is included as Appendix A to this analysis.

This bill is sponsored by the author and is supported by over 40 organizations, including religious, student, and community organizations. This bill is opposed by ACLU California Action, the Arab American Civic Council, Jewish Voice for Peace Action - Greater Los Angeles, the Palestinian American League, Rank and File for a Democratic Union, The Palestinian Youth Movement LA-OC-IE Chapter, the University of California Student Association, US Campaign for Palestinian Rights, and five individuals. The Senate Education Committee passed this bill with a vote of 7-0.

PROPOSED CHANGES TO THE LAW

Existing constitutional law:

- 1) Provides that Congress shall make no law abridging the freedom of speech, or the right of the people to peaceably assemble, and to petition the government for redress of grievances. (U.S. Const., 1st amend. (the First Amendment) & 14th amends.; see *Gitlow v. People of State of New York* (1925) 268 U.S. 652, 666 (First Amendment guarantees apply to the states through the due process clause of the Fourteenth Amendment).)
- 2) Provides that every person may freely speak, write, and publish their sentiments on all subjects, and that a law may not restrain or abridge liberty of speech. (Cal. Const., art. I, § 2 (Section 2).)
- 3) Provides that the people have the right to petition for redress of grievances and assemble freely to consult for the common good. (Cal. Const., art. I, § 3.)

Existing federal law and regulations:

- 1) Provide that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. (42 U.S.C. § 2000d.)

- 2) Defines, through the Department of Education's Office of Civil Rights' interpretation of 1), discrimination on the basis of race, color, or national origin to include discrimination on the basis of shared ancestry or ethnic characteristics, or citizenship or residency in a country with a dominant religion or distinct religious identity. (*See, e.g., U.S. Dept. of Ed., Office of Civil Rights, Fact Sheet: Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics (Jan. 2023).*)

Existing state law:

- 1) Provides that it is the policy of this State to afford all persons in public schools equal rights and opportunities in the educational institutions of this state, regardless of their actual or perceived disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, immigration status, or association with a person or group with one or more of these actual or perceived characteristics. (Ed. Code, §§ 200, 210.2.)
- 2) Provides that no person shall 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 set forth in subdivision (a) of Section 422.6 of the Penal Code, including immigration status, in any program or activity conducted by any postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid. (Ed. Code, § 66270.)
- 3) Prohibits the Regents of the University of California, the Trustees of the California State University, the governing board of a community college district, or an administrator of any campus of those 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 those institutions, is protected from governmental restriction by the First Amendment or Section 2. (Ed. Code, § 66301(a).)
- 4) Provides that 3) does not prohibit the imposition of discipline for harassment, threats, or intimidation, unless constitutionally protected, or prohibit an institution from adopting rules and regulations that are designed to prevent hate violence, as defined, from being directed at students in a manner that denies them their full participation in the educational process, if the rules and regulations conform to the standards established by the First Amendment and Section 2 of Article I of the California Constitution for citizens generally. (Ed. Code, § 66301(d), (e).)
- 5) Permits a student enrolled in an institution at the time the institution has made or enforced a rule in violation of 3) may commence a civil action to obtain appropriate

injunctive and declaratory relief as determined by the court; the court may award attorney's fees to a prevailing plaintiff. (Ed. Code, § 66301(b).)

- 6) Requires the governing board of a community college to adopt rules and regulations relating to the exercise of free expression by students upon the premises of each community college maintained by the district, which shall include reasonable provisions for the time, place, and manner of conducting such activities.
 - a) These rules and regulations shall not prohibit the right of students to exercise free expression including, but not limited to, the use of bulletin boards, the distribution of printed materials or petitions, and the wearing of buttons, badges, or other insignia; except that expression which is obscene, libelous or slanderous according to current legal standards, or which so incites students as to create a clear and present danger of the commission of unlawful acts on community college premises, or the violation of lawful community college regulations, or the substantial disruption of the orderly operation of the community college, shall be prohibited. (Ed. Code, § 76120.)
- 7) Provides that it is a hate crime, punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed \$5,000, or by both, plus community service not to exceed 400 hours, for a person to:
 - a) By force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to them by the Constitution or laws of this state or by the Constitution or laws of the United States in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in 8); however, no person shall be convicted of a violation of this provision based on speech alone, except upon a showing that the speech itself threatened violence against a specific person or group of persons and the defendant had the apparent ability to carry out that threat.
 - b) Knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the Constitution or laws of this state or by the Constitution or laws of the United States, in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in 8). (Pen. Code, § 422.6.)
- 8) Provides that a hate crime, for purposes of 4), includes acts committed, in whole or in part, due to one or more of the following actual or perceived characteristics of the victim: disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics. (Pen. Code, § 422.55.)

This bill:

- 1) Defines the following, for purposes of the findings and declarations in 2):
 - a) "Campus" is a campus of the University of California, the California State University, or the California Community Colleges.
 - b) "Segment" is the University of California, the California State University, or the California Community Colleges.
- 2) States that the Legislature finds and declares all of the following:
 - a) Free speech, academic freedom, and the free exchange of views among students and faculty are all critical to the educational missions of the segments.
 - b) It is also critical to the educational missions of the segments that speech and the exchange of ideas take place in a constructive environment of mutual respect for diversity of backgrounds, ideas, and viewpoints in order to (1) maximize the exchange of views, (2) achieve the goals of excellence in research, teaching, and learning, and (3) achieve the goals of developing lifelong citizenship skills.
 - c) The educational missions and goals of the segments are severely disrupted by actions that constitute harassment, intimidation, and discrimination in violation of federal or state law, segment rules, or campus codes of conduct.
 - d) The values of free speech, the free exchange of ideas, and the opportunities to all who wish to express their views on campus are important values and provide critical contributions to the educational missions of the segments.
 - e) A constructive environment of mutual respect is just as important to furthering free speech as it is to furthering the educational missions of the segments.
 - f) The values of free speech, the free exchange of ideas, and the opportunities to all who wish to express their views on campus are impaired by actions that constitute harassment, intimidation, and discrimination in violation of state law, segment rules, or campus codes of conduct.
 - g) Violence, harassment, intimidation, and discrimination based on a person's identity, ideas, or viewpoints violate the rights of the victims and impair both the educational missions of the segments and the values of free speech.
 - h) Violence, harassment, and discrimination violate federal and state antidiscrimination laws applicable to the segments, including Title VI of the federal Civil Rights Act of 1964 (42 U.S.C. § 2000d, et seq.) and Section 66270 of the Education Code, and frustrate the efforts of the segments to comply with these laws and ensure that the victims have the opportunity to participate fully and equally in their chosen campus experience.
 - i) Violence, harassment, intimidation, and discrimination in the sheltered environment of a residential campus impair the educational missions of the segment, undermine the value of antidiscrimination embodied in federal and state civil rights laws, and diminish, in the aggregate, the exercise of free

- speech by intimidating members of the campus community who become reluctant to express their views.
- j) In numerous instances, participants in campus activities have engaged in violence, harassment, intimidation, and discrimination that were intended, and were reasonably understood by the victims or hearers, to do either, or both, of the following: (1) interfere with the rights established under the First Amendment or Section 2 of Article I of the California Constitution, or otherwise interfere with the free exchange of ideas, or (2) call for or support genocide, as that term is defined by the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), whether that genocide is aimed at protected groups specified in the Genocide Convention, or aimed at protected groups specified in Section 51 of the Civil Code.
 - k) The violence, harassment, intimidation, and discrimination described in 2)(i) have impaired the educational missions of the segments, undermined federal and state antidiscrimination laws, interfered with the exercise of rights established under the First Amendment and Section 2 of Article I of the California Constitution, and interfered with the free exchange of ideas by members of campus communities.
- 3) Defines, for purposes of 4)-8), "institution" as a campus of the California Community Colleges, the California State University, or the University of California.
- 4) Provides that, in order to prevent harassment, intimidation, and discrimination that impairs the educational missions of the public segments of postsecondary education, violates federal and state antidiscrimination laws, and interferes with the free exercise of rights under the First Amendment and Section 2 of Article I of the California Constitution, it is the policy of the public segments of postsecondary education to eliminate harassment, intimidation, and discrimination that undermine these objectives.
- 5) Requires the Trustees of the California State University and the Board of Governors of the California Community Colleges to do all of the following:
- a) Adopt and enforce policies, in institution-based codes of conduct, that prohibit violence, harassment, intimidation, and discrimination that are intended to, and are reasonably understood by the victims or hearers, to do either of the following:
 - i. Interfere with the free exercise of rights under the First Amendment or Section 2 of Article I of the California Constitution.
 - ii. Call for or support genocide.
 - b) Maintain and enforce reasonable time, place, and manner restrictions, including advance authorization provisions, for public protests and demonstrations at institutions.

- c) Develop mandatory training programs to educate students on how to exchange views in an atmosphere of mutual respect and civility.
 - d) Require as a condition of admission and continued matriculation at an institution, each student attending the institution, and each new applicant in their applicant for admission to the institution, to acknowledge their obligation to comply with 5)(a)-(c) and the institution's code of conduct.
- 6) Requires the Trustees of the California State University and the Board of Governors of the California Community Colleges, on or before January 1, 2025, and annually thereafter, to submit a report to the Legislature on the implementation and administration of 5). The report shall be submitted in compliance with Government Code section 9795.
- 7) Requests the University of California to comply with 5)-6).
- 8) Provides that the provisions of 3)-7) are severable, and that if any provision of 3)-7) is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

COMMENTS

1. Author's comment

According to the author:

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 [institutions of higher education] 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.

2. Background on incidents at California postsecondary institutions, pending investigations, and pending litigation regarding discrimination on campus

As explained by the Senate Education Committee's analysis of this bill, which is incorporated herein by reference:

As cited by the author, there have been numerous incidents on California college and university campuses recently that have resulted in a sense of an unsafe environment and even injury. There are too many to list in this analysis, including several involving faculty; of note is a February 26, 2024, incident where a guest speaker at UC Berkeley was interrupted by hundreds of protesters who

shattered the venue's glass doors and windows, gained entry, and assaulted attendees.

Since the Senate Education Committee's analysis was published, protests at Pomona College have escalated and 19 people who occupied the college president's office and refused to identify themselves were arrested,¹ and the University of Southern California canceled its valedictorian's graduation speech citing "substantial risks relating to security and disruption" arising from the "intensity of feelings, fueled by both social media and ongoing conflict in the Middle East."²

On November 7, Catherine Lhamon, the Assistant Secretary for Civil Rights at the Office of Civil Rights at the Department of Education (OCR), wrote a "Dear Colleague" letter addressing the rise of hate crimes and harassment on campuses and reminding colleges and universities of their obligations under federal law:

As we witness a nationwide rise in reports of hate crimes and harassment, including an alarming rise in disturbing antisemitic incidents and threats to Jewish, Israeli, Muslim, Arab, and Palestinian students on college campuses and in P-12 schools, the fulfillment of school communities' federal legal obligations to ensure nondiscriminatory environments have renewed urgency. As the President promised, the federal government is "...working with community partners to identify, prevent, and disrupt any threats that could harm the Jewish, Muslim, Arab American, Palestinian American, or any other communities." Hate-based discrimination, including based on antisemitism and Islamophobia among other bases, have no place in our nation's schools.

It is in this context that I write to remind colleges, universities, and schools that receive federal financial assistance of their legal responsibility under Title VI of the Civil Rights Act of 1964 and its implementing regulations (Title VI) to provide all students a school environment free from discrimination based on race, color, or national origin, including shared ancestry or ethnic characteristics. It is your legal obligation under Title VI to address prohibited discrimination against students and others on your

¹ Kaleem & Petrow-Cohen, 'I can't focus on anything but rage.' Pro-Palestinian protests roil elite Pomona College, L.A. Times (Apr. 24, 2024), available at <https://www.latimes.com/california/story/2024-04-12/pomona-college-palestine-gaza-activism>. All links in this analysis are current as of April 21, 2024.

² Kaleem, *Citing safety concerns, USC cancels pro-Palestinian valedictorian's graduation speech*, L.A. Times (Apr. 15, 2024), available at <https://www.latimes.com/california/story/2024-04-15/usc-valedictorian-asna-tabassum>.

campus—including those who are or are perceived to be Jewish, Israeli, Muslim, Arab, or Palestinian—in the ways described in this letter.³

The letter explained to colleges and universities that the OCR considers unwelcome conduct based on shared ancestry or ethnic characteristics that, based on the totality of the circumstances, is subjectively and objectively offensive and so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity to be the type of harassment that creates a hostile environment.⁴ The letter went on to remind colleges and universities that they must take immediate and effective action to respond to harassment that creates a hostile environment.⁵ The letter closed with a request that schools “[p]lease be vigilant in protecting your students’ rights under Title VI, understanding that we in OCR are and will be.”⁶

As of April 17, 2024, the OCR has 10 open “shared ancestry” discrimination investigations against postsecondary educational institutions in California: UC Santa Barbara, the Western University of Health Sciences, UC Berkeley, Abraham Lincoln University, San Diego State University, UC Davis, Stanford University, UCLA, Santa Monica College, and USC.⁷ Additionally, a Title VI complaint with OCR against UC Davis, alleging that there is a “pervasively hostile, antisemitic campus climate, with incidents of unlawful discrimination and harassment, for students at UC Davis based on their national origin (Jewish shared ancestry or Israeli national origin).”⁸

3. Existing law regarding discrimination, harassment, and free speech at California’s public universities

As explained by the Senate Education Committee’s analysis of this bill:

Existing law requires postsecondary educational institutions to adopt anti-discrimination and harassment policies. Existing law further authorizes institutions to adopt rules and regulations that are designed to prevent hate violence from being directed at students in a manner that denies them their full participation in the educational process, if the rules and regulations conform to

³ United States Department of Education, Office for Civil Rights, November 7, 2023, Dear Colleague letter, p. 1, available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf>.

⁴ *Id.* at p. 2.

⁵ *Ibid.*

⁶ *Id.* at p. 3.

⁷ OCR, List of Open Title VI Shared Ancestry Investigations (last updated Apr. 16, 2024), <https://www2.ed.gov/about/offices/list/ocr/sharedancestry-list.html?perPage=100>. The list is updated every Tuesday, so this list might not be current as of the date this bill is set to be heard. (*See id.*)

⁸ StandWithUs Center for Legal Justice, letter of complaint to OCR (Apr. 1, 2024), available at <https://swulegaljustice.org/uc-davis-title-vi-campaign/>.

standards established by the First Amendment to the United States Constitution and Section 2 of Article I of the California Constitution for citizens generally.

The UC, CSU, and community college districts, and their respective campuses, have student codes of conduct in place. These codes of conduct also provide for the discipline of students for violating those codes of conduct.

That analysis also states that all UC and CSU campuses have existing time, place, and manner restrictions to ensure safety, security, and order on campus; at the time the analysis was drafted, Committee staff was still verifying whether all of the CCC campuses had such policies. Additionally, according to the analysis, the UC and CSU each maintain a handbook, manual, or policies at the system level that provide guidance on free speech issues and policies.

At the federal level, Title VI of the Civil Rights Act⁹ prohibits discrimination at institutions that accept federal funds on the basis of race, color, or national origin.¹⁰ As noted above, the OCR interprets “race, color, or national origin” to also include shared ancestry or ethnic characteristics, or citizenship or residency in a country with a dominant religion or distinct religious identity.¹¹ The acts of other students – e.g., student-on-student discriminatory harassment that rises to the level of having a “systematic effect” on the institution’s programs and activities – can give rise to a Title VI violation when the institution is aware of the discrimination and acts with deliberate indifference, i.e., fails to respond reasonably in light of the known circumstances.¹²

4. Background on First Amendment protections

The federal and state Constitutions prohibit the government from abridging the freedom of speech and the right to peaceably assemble.¹³ “The vitality of civil and political institutions in our society depends on free discussion...it is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effective. The right to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes.”¹⁴ And “[i]f there is a bedrock principle underlying the First Amendment, it is

⁹ 42 U.S.C. §§ 2000d et seq.

¹⁰ *Id.*, § 2000d.

¹¹ *See, e.g.*, U.S. Dept. of Ed., Office of Civil Rights, Fact Sheet: Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics (Jan. 2023).

¹² *See Davis v. Monroe County Bd. of Educ.* (1999) 526 U.S. 629, 648-651, 653 (*Davis*) (holding that deliberate indifference standard applies in Title IX suits alleging failure to stop third-party discrimination); *see, e.g.*, *Bryant v. Independent School Dist. No. 1-38* (10th Cir. 2003) 334 F.3d 928, 934 (holding that the *Davis* deliberate indifference standard applies in Title VI suits alleging failure to stop third-party discrimination); *United States v. County of Maricopa* (9th Cir. 1999) 889 F.3d 648, 652 (same).

¹³ U.S. Const., 1st & 14th Amends.; Cal. Const., art. I, §§ 2, 3.

¹⁴ *Terminiello v. City of Chicago* (1949) 337 U.S. 1, 4 (1949) (*Terminiello*).

that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”¹⁵

a. The scope of speech protected by the First Amendment

Although the First Amendment’s speech guarantee is written as an absolute, there are certain narrow categories of speech that fall outside of the First Amendment’s protections.¹⁶ Relevant to this analysis, these categories include:

- “True threats” of violence: “[w]hen a reasonable person would foresee that the context and import of the words will cause the listener to believe he or she will be subjected to physical violence, the threat falls outside First Amendment protection.”¹⁷ While the rationale behind the true threats doctrine is based on the harm to the listener – “[t]rue threats subject individuals to ‘fear of violence’ and to the many kinds of ‘disruption that fear engenders’ ” – the Court recently held that “the First Amendment precludes punishment, whether civil or criminal, unless the speaker’s words were ‘intended’ (not just likely) to produce imminent disorder.”¹⁸
- Inciting imminent lawless action: a state may “forbid advocacy of the use of force or of law violation” “where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”¹⁹ The “mere abstract teaching of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action.”²⁰
- “Fighting words”: in 1942, the Supreme Court held that “the insulting or ‘fighting words’ – those which by their very utterance inflict injury or tend to incite an immediate breach of the peace” are not protected by the First Amendment.²¹ The Court has since clarified that fighting words must be “personally abusive epithets”²² or “an invitation to exchange fisticuffs”²³ directed to a specific person, not generally provocative statements.²⁴ The Court has also arguably, though not officially, done away with the “inflict injury” prong of the fighting words doctrine.²⁵

¹⁵ *Texas v. Johnson* (1989) 491 U.S. 397, 414 (*Johnson*).

¹⁶ *Counterman v. Colorado* (2023) 600 U.S. 66, 73.

¹⁷ *In re M.S.* (1995) 10 Cal.4th 698, 711.

¹⁸ *Counterman, supra*, 600 U.S. at pp. 74, 76.

¹⁹ *Brandenburg v. Ohio* (1969) 395 U.S. 444, 447 (*Brandenburg*).

²⁰ *Id.* at p. 448 (cleaned up).

²¹ *Chaplinsky v. State of New Hampshire* (1942) 315 U.S. 568, 572 (*Chaplinsky*).

²² *Cohen v. California* (1971) 403 U.S. 15, 20 (*Cohen*).

²³ *Johnson, supra*, 491 U.S. at p. 409.

²⁴ *Cohen, supra*, 403 U.S. at p. 20.

²⁵ See, e.g., *Terminiello, supra*, 337 U.S. at p. 4 (freedom of speech “is protected against censorship or punishment, unless shown likely to produce a clear and present danger of serious substantive evil that rises far above public inconvenience, annoyance, or unrest”). Some have questioned whether the fighting

These doctrines have been used to uphold state laws criminalizing false bomb threats;²⁶ hate speech, where the speech itself threatened violence and the speaker had the apparent ability to carry out the threat;²⁷ and other threats that cause the listener to believe they will be subjected to physical violence.²⁸ But the First Amendment also protects speech that many people would rather do without. For example, a state cannot prohibit all cross-burning, but it can ban cross-burning “with intent to intimidate.”²⁹ A person can send hundreds of Facebook messages to a stranger, with details indicating they are surveilling the stranger’s movements and vitriolic profanity, and still be protected from government interference.³⁰ Students can publish pretty appalling opinions about immigrants in the school newspaper without censorship.³¹ And, famously, the Court has held that the First Amendment protected a Ku Klux Klan rally, at which members wore full Klan regalia, some carried guns, and speakers made general statements about the need for violence if the government “continues to suppress the white, Caucasian race.”³² The Court reiterated that “the mere abstract teaching of the moral propriety or even moral necessity for a resort to force and violence[] is not the same as preparing a group for violent action and steeling it to such action.”³³

The breadth of the First Amendment limits the government’s ability to adopt an anti-harassment policy or similar rules that may punish a speaker for the content of their speech.³⁴ The Legislature codified this tension in statute: Section 66031 of the Education Code provides that the UCs, CSUs, and CCCs may not “make or enforce 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 at those institutions, is protected from governmental restriction” under the First Amendment or Section 2.³⁵ The statute goes on to state, however, that this prohibition in turn does not prohibit an institution from imposing “discipline for harassment, threats, or intimidation, unless constitutionally protected” or from adopting “rules and regulations that are designed to prevent hate violence...from being directed at students in a manner that denies them their full participation in the educational process.”³⁶ The statute then gives a caveat to the caveat: any anti-hate-violence rules or regulations must “conform to standards

words exception is still viable, given that the Court has not upheld a “fighting words” restriction since *Chaplinsky*. (E.g., Chemerinsky, *Constitutional Law Principles and Policies* (5th ed. 2015) pp. 1053-1054.)

²⁶ *In re J.M.* (36 Cal.App.5th 668, 677-679 (speech was a true threat that fell outside First Amendment protections).

²⁷ *In re M.S.*, *supra*, 10 Cal.4th at pp. 714-715.

²⁸ *People v. Toledo* (2001) 26 Cal.4th 221, 223.

²⁹ *Virginia v. Black* (2003) 538 U.S. 343, 362-363.

³⁰ *Counterman*, *supra*, 600 U.S. at pp. 70-72.

³¹ *Smith v. Novato Unified School Dist.* (2007) 150 Cal.App.4th 1439, 1446, 1458-1459.

³² *Brandenburg*, *supra*, 395 U.S. at pp. 445-448.

³³ *Id.* at pp. 447-448.

³⁴ See, e.g., *Rodriguez v. Maricopa County Community College Dist.* (9th Cir. 1999) 605 F.3d 703, 708.

³⁵ Ed. Code, § 66301(a).

³⁶ *Id.*, § 66301(d), (e).

established by the First Amendment of the United States Constitution and Section 2 of Article I of the California Constitution for citizens generally.”³⁷ The First Amendment must remain paramount in any state laws attempting to regulate speech, on or off campus.

b. Where and when one may speak freely

The First Amendment requires government action. Accordingly, nongovernmental actors in charge of private property can place limits on speech without implicating the First Amendment.³⁸ When a state entity owns private property, the analysis becomes more complicated: “[n]othing in the Constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government property without regard to the nature of the property or to the disruption that might be caused by the speaker’s activities.”³⁹ Accordingly:

[r]ecognizing that the Government, no less than a private owner of property, has the power to preserve the property under its control for the use to which it is lawfully dedicated, the Court has adopted a forum analysis as a means of determining when the Government’s interest in limiting the use of its property to its intended purpose outweighs the interest of those wishing to use the property for other interests.⁴⁰

The three levels of fora are:

- Public forum: an area that has “historically been open to the public for speech activities.”⁴¹ Traditional public fora include sidewalks, parks, and public ways.⁴² Speakers can be excluded “only when the exclusion is necessary to serve a compelling state interest and the exclusion is narrowly drawn to achieve that interest.”⁴³
- Limited public forum: an area that the government has “limited to use by certain groups or dedicated solely to the discussion of certain topics.”⁴⁴ In a limited

³⁷ *Id.*, § 66301(e). At a certain point, it becomes difficult to talk about the First Amendment and possible restrictions on speech without resorting to tautology: the First Amendment permits the government to restrict speech that isn’t protected by the First Amendment.

³⁸ *E.g.*, *Hudgens v. N.L.R.B.* (1976) 424 U.S. 507, 513.

³⁹ *Cornelius v. NAACP Legal Defense and Educational Fund, Inc.* (1985) 473 U.S. 788, 799-800.

⁴⁰ *Id.* at p. 800 (cleaned up).

⁴¹ *McCullen v. Coakley* (2014) 573 U.S. 464, 476.

⁴² *Ibid.*; *Perry Educ. Ass’n v. Perry Local Educators Ass’n* (1983) 460 U.S. 37, 45 (*Perry*).

⁴³ *Cornelius, supra*, 473 U.S. at p. 800. The Court has also recognized the possibility of a “designated public forum,” in which the government voluntarily opens to speech a place that the government could close to speech. (*E.g.*, *Pleasant Grove City, Utah v. Summum* (2009) 555 U.S. 460, 469 (*Summum*)). Government restrictions in designated public fora are the subject to the same strict scrutiny analysis as restrictions in a traditional public forum (*id.* at pp. 469-470), but as a practical matter, the government could always respond to an unfavorable ruling by removing the permission for the speech or converting the space to a limited public forum (*see Chemerinsky, supra*, at pp. 1200-1201.)

⁴⁴ *Summum, supra*, at p. 470.

public forum, the government may restrict speech provided that it does “not discriminate on the basis of viewpoint” and the restriction is “ ‘reasonable in light of the purpose served by the forum.’ ”⁴⁵ Limited public fora can include spaces at a public university that are not traditionally public fora (such as classrooms offered for student meetings), as well as to circumstances where a public university offers speech- and association-related benefits, such as a public university’s recognition of school groups.⁴⁶

- Nonpublic forum: an area that is not traditionally open to the public for speech, “[w]here the government is acting as a proprietor, managing its internal operations, rather than acting as a lawmaker to regulate or license.”⁴⁷ Airports, government workplaces, and polling places have been deemed nonpublic fora.⁴⁸ In nonpublic fora, “the state may reserve the forum for its intended purposes, communicative or otherwise, so long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.”⁴⁹

While it’s rare for government restrictions on speech in public fora to be upheld, the state may impose time, place, and manner restrictions on speech in a public forum “provided that they are justified without reference to the content of the regulated speech, that they serve a significant governmental interest, and that in doing so they leave open ample alternative channels for communication of the information.”⁵⁰ However, time, place, and manner “regulations enacted for the purpose of restraining speech on the basis of its content presumptively violate the First Amendment” and are subjected to strict scrutiny.⁵¹ With respect to permit requirements, although permits “are not unconstitutional *per se*,” any system of prior restraint bears “a heavy presumption against its constitutional validity.”⁵² A permit requirement therefore must include “definite and objective guiding standards” to avoid the “ ‘threat of content-based, discriminatory enforcement.’ ”⁵³

⁴⁵ *Good News Club v. Milford Central School* (2001) 533 U.S. 98, 106-107 ; *see also Rosenberger v. Rector and Visitors of University of Virginia* (1995) 515 U.S. 819, 829-830 (in limited public forum analysis, there is “a distinction between, on the one hand, content discrimination, which may be permissible if it preserves the purposes of that limited forum, and, on the other hand, viewpoint discrimination, which is presumed impermissible when directed against speech otherwise within the forum’s limitations”).

⁴⁶ *Christian Legal Society v. Martinez* (2010) 561 U.S. 661, 679-683.

⁴⁷ *Int’l Soc. For Krishna Consciousness, Inc. v. Lee* (1992) 505 U.S. 672, 678.

⁴⁸ *Ibid.*; *Cornelius, supra*, at p. 804-805; *Minnesota Voters Alliance v. Mansky* (2018) 585 U.S. 1, 12 (*Mansky*).

⁴⁹ *Perry, supra*, 460 U.S. at p. 46; *see also Mansky, supra*, 585 U.S. at p. 12 (The Court “has long recognized that the government may impose some content-based restrictions on speech in nonpublic forums, including restrictions that exclude political advocates and forms of political advocacy.”).

⁵⁰ *Heffron v. International Soc. For Krishna Consciousness, Inc.* (1981) 452 U.S. 640, 647-648.

⁵¹ *City of Renton v. Playtime Theaters, Inc.* (1986) 475 U.S. 41, 46-47; *Barr v. American Ass’n of Political Consultants, Inc.* (2020) 591 U.S. ___, 140 S.Ct. 2335, 2346.

⁵² *Epona v. County of Ventura* (9th Cir. 2017) 876 F.3d 1214, 1222.)

⁵³ *Ibid.*

c. The risk of “chilling effects”

“First Amendment freedoms need breathing space to survive.”⁵⁴ “The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions,”⁵⁵ because people will necessarily give a wide berth to any speech that might run afoul of the law – which leads to the chilling of legitimate speech.⁵⁶ As a result, prohibitions on matters that closely touch on First Amendment-protected activities must be both so clear as to clearly inform individuals as to what conduct is proscribed and so precise so as not to sweep in protected conduct.⁵⁷

5. This bill requires the CSU and CCCs, and requests the UCs, to implement policies relating to student speech and protests on campus

In response to the recent incidents of violence and harassment that have taken place on state university campuses, this bill imposes new requirements on the CSUs and CCCs, and asks the UCs, to adopt new requirements, relating to when and how students can express their views. As currently in print, the bill has several provisions that are likely to be vulnerable to a First Amendment challenge. For example, the bill requires the CSUs and CCCs to impose time, place, and manner restrictions “for public protests and demonstrations” at institutions; this would create a content-based rule that seems unlikely to survive strict scrutiny. Likewise, the bill currently requires students and potential students to agree to comply with the bill’s provisions as a condition of continued admission or admission; but given that some of the bill’s provisions are vague, threatening expulsion or denial of admission for lack of compliance is likely to chill legitimate student speech.

In order to address many of the bill’s problematic provisions, the author has agreed to amend the bill. The amendments also incorporate recommendations from stakeholders. The full mockup of the bill with the amendments is set forth as Appendix A to this analysis. The changes made in the amendments include:

- Defining “intimidation,” which is not prohibited under Title VI or comparable state laws. The definition incorporates the definition of “intimidation” in Penal Code section 423.1, which is deliberately narrowly tailored to include only activity not protected by the First Amendment.
- Modifying the definition of “genocide” and eliminating references to “supporting genocide.” The modified definition is intended to more clearly refer to only overt calls for the specific acts that, when committed with intent to destroy, in whole or in part, a protected group, constitute genocide under Article II of the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide: killing members of the group; causing serious bodily

⁵⁴ *National Ass’n for the Advancement of Colored People v. Button* (1963) 371 U.S. 415, 433 (*Button*).

⁵⁵ *Ibid.*

⁵⁶ *Keyishian v. Bd. of Regents of University of State of N.Y.* (1967) 385 U.S. 589, 604.

⁵⁷ *Button, supra*, 371 U.S. at p. 433.

injury to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; or forcibly transferring children of the group to another group.⁵⁸ These amendments add clarity and avoid a vagueness challenge over the meaning of “supporting” genocide.

- Adding “through force, threat of force, or intimidation” to references to interference with students’ established rights or otherwise interfering with the free exchange of ideas or the educational mission of the segments. This language brings these provisions more closely in line with existing law on when interference with rights may be prohibited, such as California’s hate crime law.⁵⁹
- Clarifying that the policies adopted by an institution must prohibit engaging in violence, harassment, intimidation, and discrimination that violate state or federal laws, including antidiscrimination laws.
- Deleting the requirement that institutions adopt advance permitting requirements for public protest and demonstrations.
- Adding requirements that the institutions, as part of their codes of conduct, (1) clearly set forth the institutions time, place, and manner restrictions, and any permitting requirements in place, (2) clearly designate which portions of the campus are public fora, limited public fora, or nonpublic fora, and (3) explain when and where protests may be held, including the significance of each designation and the rights of private property owners. These requirements are intended to give students a clearer picture of how they may exercise their rights to protest on campus consistent with existing First Amendment law.
- Modifying the requirement that students agree to the bill’s policies to impose a requirement that students agree, as a condition of enrollment, to acknowledge their obligation to comply with the institution’s code of conduct. This should reduce the likelihood of chilling effects addressed above.
- Clarifying that the institutions’ policies adopted under this bill shall be consistent with the First Amendment, Section 2, and Title VI, and that the bill should be interpreted consistent with the First Amendment and Section 2.

Overall, these amendments reduce the likelihood that a court would find this bill unconstitutional. There still are, however, portions of the bill that raise serious First Amendment concerns. Although more narrowly tailored than before, the bill’s requirement that institutions prohibit “calling for genocide” is both a content-based and a viewpoint-based restriction. It is unclear whether this provision can be squared with precedent holding that calls for violence, absent an immediate and actionable threat or incitement to violence, fall outside of First Amendment protection.⁶⁰ It is also unclear if this prohibition would survive the extremely strict scrutiny applied to content-based

⁵⁸ U.N. Convention on the Prevention and Punishment of the Crime of Genocide, approved Dec. 9, 1948, art. II.

⁵⁹ See Pen. Code, § 422.6.

⁶⁰ See *Brandenburg, supra*, 395 U.S. at pp. 447-448.

and viewpoint-based speech restrictions. Similarly, even though the bill's references to interfering with "the free exchange of ideas or the educational mission of the segment" are now limited to interference by force, threat of force, or intimidation, there is a risk that the covered terms are vague enough that students will not understand what is prohibited. 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.

6. Arguments in support

According to a coalition of over 30 supporters in the Jewish Public Affairs Committee of California:

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 amongst students.

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.

7. Arguments in opposition

According to ACLU California Action:

Punishing students and speakers on campus when they exercise their fundamental right to free expression is wrong and unlawful – even when the speech being expressed might be offensive or inflammatory. “Speech on matters of public concern . . . is at the heart of the First Amendment’s protection,” *Snyder v. Phelps*, 562 U.S. 443, 451-52 (2011) (internal quotations and citation omitted), regardless of whether that speech is offensive. Indeed, the Supreme Court “ha[s] said time and again that the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.” *Matal v. Tam*, 582 U.S. 218, 244 (2017) (internal quotations and citation omitted). Although “[t]he language of the political arena . . . is often vituperative, abusive, and inexact,” *Watts v. U.S.*, 394 U.S. 705, 708 (1969), the point of the First Amendment, and “the point of all speech protection . . . is to shield just those choices of content that in someone’s eyes are misguided, or even hurtful.” *Snyder v. Phelps*, 562 U.S. at 458 (internal quotations and citation omitted). These staunch free speech protections enable democratic discussion and debate critical to “the bringing about of political and social changes desired by the people.” Likewise, the principles of academic freedom require higher education institutions to safeguard protected speech and political debate in order to help students pursue knowledge.

Of course, campuses need not tolerate speech the law does not shelter. Historically unprotected categories of speech include defamation, incitement, obscenity, and true threats. Moreover, harassment is not protected speech, as California law defines it as “unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses that person, and that serves no legitimate purpose.” Cal. Code Civ. Proc. § 527.6(b). Existing law requires postsecondary educational institutions to adopt anti-discrimination and harassment policies. 42 U.S.C. § 2000d et seq., 28 C.F.R. 42.101 et seq. Existing law further authorizes institutions to adopt rules and regulations that are designed to prevent hateful violence from

being directed at students in a manner that denies them their full participation in the educational process. *Id.* Campuses already have codes of conduct prohibiting unlawful harassment, violence, and threats. These existing policies ensure safe educational environments without encroaching on vital First Amendment freedoms.

This SB 1287 goes beyond such protections in ways that would likely lead colleges and universities to silence a range of protected speech based on viewpoint alone. It provides no clear standards for identifying forms of conduct or speech that will be “reasonably understood by the victims or hearers” to “call for or support genocide.” It is also overly broad and will likely sweep in a wide range of protected speech and expression. The lack of clear standards also means that the bill provides inadequate notice of the types of speech and expressive conduct that it prohibits. It is therefore unconstitutionally vague in addition to being overbroad.

SUPPORT

30 Years After
AJC Los Angeles
AJC San Diego
AJC San Francisco
Anti-Defamation League
Church State Council
Democrats for Israel – California
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 of the Sacramento Region
Jewish Big Brothers Big Sisters of Los Angeles
Jewish Center for Justice
Jewish Community Federation & Endowment Fund
Jewish Community Relations Council, Santa Barbara
Jewish Community Relations Council of the Bay Area
Jewish Democratic Club of Marin
Jewish Democratic Club of Solano County
Jewish Democratic Coalition of the Bay Area
Jewish Democrats of San Diego County

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

Jewish Family & Community Services East Bay

Jewish Family Service LA

Jewish Family Service of San Diego

Jewish Family Services of Silicon Valley

Jewish Federation Los Angeles

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 Silicon Valley

Jewish Public Affairs Committee of California

JFCS Long Beach and Orange County

JVS SoCal

Progressive Zionists of California

Raoul Wallenberg Jewish Democratic Club

OPPOSITION

ACLU California Action

Arab American Civic Council

Jewish Voice for Peace Action, Greater Los Angeles

Palestinian American League

Rank and File for a Democratic Union

The Palestinian Youth Movement LA-OC-IE Chapter

University of California Student Association

US Campaign for Palestinian Rights

Five individuals

RELATED LEGISLATION

Pending Legislation: AB 2925 (Friedman, 2023) expands and clarifies the Education Code's antidiscrimination provisions to explicitly include persons from the State of Israel or Palestine and to explicitly prohibit antisemitism and Islamophobia. AB 2925 is pending before the Assembly Judiciary Committee.

Prior Legislation:

AB 2019 (Kiley, 2019) would have established the Free Speech on Campus Act, which would have required the CCC and CSU campuses, and requested the UC Regents, to make and disseminate a free speech statement that affirms the importance of, and the campus' commitment to promoting, freedom of expression, including assurances that

students and speakers would be protected from exclusionary behavior that violates the First Amendment. AB 2019 died in the Assembly Higher Education Committee.

AB 1571 (Kiley, Quirk, 2019) was substantially similar to AB 2019. AB 1571 died in the Assembly Judiciary Committee.

AB 1358 (Melendez, 2019) would have established the Campus Free Speech Act which would have, among other things, required the appropriate governing board or body of each public postsecondary educational institution to adopt free speech policies, as specified. AB 1358 died in the Assembly Higher Education Committee.

SB 1381 (Nielsen, 2018) would have declared the outdoor areas of public postsecondary educational institutions in the state to be traditional public fora for purposes of free expression legal analysis under the First Amendment; would have permitted those institutions to maintain and enforce reasonable time, place, and manner restrictions only when those restrictions are narrowly tailored; and would have required the restrictions to allow for members of the campus community to lawfully, spontaneously, and contemporaneously distribute literature and assemble. SB 1381 died in the Senate Appropriations Committee.

SB 1388 (Anderson, 2018) would have required the CSUs and CCCs, and requested the Regents, to adopt a policy on free expression that contains specified statements; required the outdoor areas of areas of public educational instructions to be declared traditional public fora; and required that persons who wish to engage in noncommercial expressive activity in those outdoor areas be permitted to do so, as provided. SB 1388 failed passage in the Senate Education Committee.

AB 2374 (Kiley, 2018) would have established the Free Speech on Campus Act of 2018, which would have, among other things, required the appropriate governing board or body of each public postsecondary educational institution to adopt free speech policies, as specified. AB 2374 died in the Assembly Appropriations Committee.

AB 2081 (Melendez, 2018) was substantially similar to AB 1358 (Melendez, 2019). AB 2081 failed passage in the Assembly Higher Education Committee.

PRIOR VOTES:

Senate Education Committee (Ayes 7, Noes 0)

Appendix A

Proposed Committee Amendments to SB 1287 (Glazer)

Additions are in bold and underline; deletions are in strikethrough. The amendments are subject to any nonsubstantive changes the Office of Legislative Counsel may make.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) As used in this act ~~section~~, the following definitions apply:

(1) "Campus" means a campus of the University of California, the California State University, or the California Community Colleges.

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

(3) **"Intimidation" has the same meaning as in subdivision (c) of Section 423.1 of the Penal Code.**

(4) "Segment" means the University of California, the California State University, or the California Community Colleges.

(5) **"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.**

(6) **"Calling for genocide" means only those acts, verbal or otherwise, that are both intended to, and reasonably understood as, calling for genocide.**

(b) The Legislature finds and declares all of the following:

(1) Free speech, academic freedom, and the free exchange of views among students and faculty are all critical to the educational missions of the segments.

(2) It is also critical to the educational missions of the segments that speech and the exchange of ideas take place in a constructive environment of mutual respect for diversity of backgrounds, ideas, and viewpoints in order to do all of the following:

(A) Maximize the exchange of views.

(B) Achieve the goals of excellence in research, teaching, and learning.

(C) Achieve the goal of developing lifelong citizenship skills.

(3) The educational missions and goals of the segments are severely disrupted by actions that constitute violence, harassment, intimidation, and discrimination in violation of federal or state law, segment rules, or campus codes of conduct.

(4) The values of free speech, the free exchange of ideas, and the opportunities to all who wish to express their views on campus are important values and provide critical contributions to the educational missions of the segments.

(5) A constructive environment of mutual respect is just as important to furthering free speech as it is to furthering the educational missions of the segments.

(6) The values of free speech, the free exchange of ideas, and the opportunities to all who wish to express their views on campus are impaired by actions that constitute violence, harassment, intimidation, and discrimination in violation of federal or state law, segment rules, or campus codes of conduct.

(7) Violence, harassment, intimidation, and discrimination based on a person's identity, ideas, or viewpoints violate the rights of the victims and impair both the educational missions of the segments and the values of free speech.

(8) Violence, harassment, intimidation, and discrimination may violate federal and state antidiscrimination laws applicable to the segments, including Title VI of the federal Civil Rights Act of 1964 (42 U.S.C. Sec. 2000d, et seq.) and Section 66270 of the Education Code, and frustrate the efforts of the segments to comply with these laws and ensure that the victims have the opportunity to participate fully and equally in their chosen campus experience.

(9) Violence, harassment, intimidation, and discrimination in the sheltered environment of a residential campus impair the educational missions of the segment, undermine the value of antidiscrimination embodied in federal and state civil rights laws, and diminish, in the aggregate, the exercise of free speech by intimidating members of the campus community who become reluctant to express their views.

(10) In numerous instances, participants in campus activities have:

~~(A) Engaged in violence, harassment, intimidation, and discrimination; that were intended, and were reasonably understood by the victims or hearers, to do either, or both, of the following:~~

~~(A) Through force, threat of force, or intimidation, interfered~~ 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; and

~~(B) Called for or support genocide, as that term is defined by the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), whether that genocide is aimed at protected groups specified in the Genocide Convention, or aimed at protected groups specified in Section 51 of the Civil Code.~~

(11) The ~~violence, harassment, intimidation, and discrimination~~ activities described in paragraph (10) have impaired the educational missions of the segments, undermined federal and state antidiscrimination laws, interfered with the exercise of rights established under the First Amendment to the United States Constitution and Section 2 of Article I of the California Constitution, and interfered with the free exchange of ideas by members of campus communities.

SEC. 2. Section 66270.7 is added to the Education Code, to read:

~~66270.7. (a) As used in this section, "institution" means a campus of the California Community Colleges, the California State University, or the University of California.~~

~~(a)~~ In order to prevent violence, harassment, intimidation, and discrimination that impairs the educational missions of the public segments of postsecondary education, violates federal and state antidiscrimination laws, and 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, it is the policy of the public segments of postsecondary education to prevent and address violence, ~~eliminate~~ harassment, intimidation, and discrimination that undermine these objectives.

~~(b)~~ The Trustees of the California State University and the Board of Governors of the California Community Colleges shall do all of the following:

(1) Adopt and enforce policies, in institution-based student codes of conduct, that prohibit ~~violence, harassment, intimidation, and discrimination that are intended to, and are reasonably understood by the victims or hearers, to do either of the following:~~

(A) Engaging in violence, harassment, intimidation, and discrimination in violation of state or federal antidiscrimination laws or other relevant laws;

(B) Through force, threat of force, or intimidation, interfere with the free exercise of rights established under the First Amendment to the United States Constitution or

Section 2 of Article I of the California Constitution or otherwise interfering with the free exchange of ideas or the educational mission of the segment; and-

~~(CB)~~ Calling for ~~or support~~ genocide.

~~(2) Maintain and enforce reasonable time, place, and manner restrictions, including advance authorization provisions, for public protests and demonstrations at institutions.~~

(3) Clearly set forth the institution's time, place, and manner restrictions, along with any advanced permitting requirements the institution has adopted.

(4) Clearly set forth which portions of the institution are public fora, limited public fora, or nonpublic fora, and the meaning of each designation.

~~(5) Develop mandatory training programs to educate students on both of the following: how to exchange views in an atmosphere of mutual respect and civility.~~

(A) 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 of the United States Constitution and Section 2 of Article I of the California Constitution; and

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

~~(64) Require, as a condition of enrollment admission and continued matriculation at an institution, each student attending the institution, and each new applicant in their application for admission to the institution, to acknowledge their obligation to comply with this section and the institution's student code of conduct.~~

(c) The institutions, the Trustees of the California State University, and the Board of Governors of the California Community Colleges, and the Regents of the University of California if they elect to comply with this section, shall ensure that any policy adopted or enforced pursuant to this section is consistent with the First Amendment of 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. §§ 2000d et seq.).

~~(d) (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 shall submit a report to the Legislature on the implementation and administration of this section. The report shall include information on code of conduct violations relating to incidents described in paragraph (b).~~

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

(e) The University of California is requested to comply with this section.

(f) The provisions of this section are severable. If any provision of this section 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.

(g) These provisions are intended to be interpreted consistent with the First Amendment of the United States Constitution and Section 2 of Article I of the California Constitution.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.