

August 28, 2012

Dear Assembly Member:

We write to register our alarm and dismay over the passage of HR 35, a resolution that was rushed through the end of this legislative term without public comment or input from civil rights and community organizations about its threat to First Amendment rights of freedom of expression, and about its gross mischaracterizations of the climate for Jewish students on California campuses.

HR 35 is a poorly researched, highly ideological resolution that contributes to a climate of intimidation faced by Muslim and Arab students on California campuses. Additionally, it will serve to chill the speech of the many Jewish students who wish to voice critical viewpoints about Israel. HR 35 threatens California's cherished tradition of respect for freedom of speech in educational settings. It lauds the very same report issued by UC Campus Climate advisory groups that has been subjected to widespread criticism for its potential threat to students' civil rights. After considering the many objections to the Climate Report, UC President Yudof tabled the recommendations, and called for further review and analysis. We urge the Assembly to revisit this issue when it reconvenes in January.

At that time, we will ask the Assembly to repudiate HR 35's troubling language, and to instead approach campus issues in a manner that remains faithful to the First Amendment, addresses the sensitivities and concerns of different community and civil rights groups, and proceeds with a diversity of viewpoints represented at the table. Our communities consider this a high priority issue in light of recent troubling developments at California campuses.

Although there is much to criticize in HR 35 line by line, we have summarized our broad objections below.

### **The Assembly did not benefit from public comment in considering HR 35**

HR 35 was rushed through the Assembly quietly and at the end of the legislative term, before advocates and community organizations had an opportunity to provide their input or impact assessments to Assembly members. It also was introduced and discussed in committee while most California students were not on their campuses, which prevented students from organizing around a resolution that will profoundly affect their lives. As such, its sweeping and unfounded allegations were not subjected to sufficient public scrutiny, nor was its potential impact on Arab, Muslim and Jewish students considered. This lack of community involvement explains why HR 35 is so out of touch with student sentiment, community interests and the concerns of civil rights groups.

### **HR 35 poses a serious threat to First Amendment rights**

Although HR 35 does not create any new law, it effectively encourages university administrators to infringe upon students' free speech rights. By equating legitimate political debates about geopolitics with anti-Semitism, the resolution emboldens administrators to take action to chill

and prevent such speech. However, in the recent case of *Felber v. Yudof*, the federal court for the Northern District of California granted the University of California's motion to dismiss, declaring that prevention of protest activities regarding Israeli policies would likely violate the First Amendment. "[A] very substantial portion of the conduct to which plaintiffs object represents pure political speech and expressive conduct, in a public setting, regarding matters of public concern, which is entitled to special protection under the First Amendment." (Order Granting Def.'s Mot. Dismiss, 12/22/2011). HR 35 pays only lip service to the First Amendment, while simultaneously encouraging universities to tread close to the line of violating it.

### **Concern about anti-Semitism is not the driving force behind HR 35**

Though cloaked as a resolution condemning anti-Semitism, the actual goal of HR 35 is to stifle geopolitical debates in academic and university settings. Nobody should hesitate to condemn anti-Jewish expression no matter the context in which it arises. But this resolution characterizes criticism of Israel generally as "cloaked" anti-Semitism. By HR 35's logic, Presidents Jimmy Carter, Barack Obama, and George H. W. Bush, and organizations like Human Rights Watch and Amnesty International are all anti-Semitic because they have at times criticized Israeli policies. This politically motivated definition of anti-Semitism lacks any basis and does a tremendous disservice to the fight against real anti-Semitism. It is no more anti-Semitic to criticize Israel than it is anti-Muslim to criticize Saudi Arabia.

### **HR 35 is based on bad-faith distortions of the facts**

HR 35 paints a picture of California campuses that would be unfamiliar to virtually all students, and perhaps even to the authors of the Campus Climate Report on Jewish students, who found that "It would be a disservice to in any way describe the UC campus environment as one which does not offer Jewish students the opportunity to explore and express their Jewish identity in myriad ways." A petition and statement signed by more than 2,200 Jewish UC students and alumni points out that progressive and liberal Jewish students were excluded from the committee's findings. As Rebecca Pierce, a Jewish student at UC Santa Cruz recently wrote in an op-ed for the Northern California Jewish community publication *jweekly*: "Since coming to UCSC, my ability to participate in Jewish student programming while active in the campus Committee for Justice in Palestine has met constant challenges. Last year, I was repeatedly subjected to abusive online comments by a staff member at a center for Jewish life because of my decision to be in CJP and participate in Jewish student programming." (*Available at <http://www.jweekly.com/article/full/66225/u.c.-report-on-jewish-campus-climate-results-marginalize-misrepresent-stude/>*, accessed 8/26/2012). Given the controversial nature of the Campus Climate reports, it is mind-boggling that the Assembly would blindly laud them without first conducting a credible investigation.

### **No legal claim of a hostile anti-Semitic campus climate based on political speech has ever been sustained in the United States**

HR 35 makes broad allegations that universities have become a hostile environment for Jewish students, without mentioning that nobody has ever made a successful claim that California campuses are a hostile place for Jewish students. In 2007, the U.S. Department of Education

(DOE) dismissed such an allegation against UC Irvine. In December 2011, a federal judge dismissed a lawsuit brought by a student at UC Berkeley alleging a hostile anti-Semitic environment because of protest activities. Even the cited US Commission on Civil Rights hearings in 2006 relied exclusively on anecdotal evidence from only three people, all affiliated with partisan pro-Israel advocacy organizations. Had assembly members been aware of these facts, they almost certainly would have modified or repudiated HR 35's hyperbolic language.

We would like to meet with you to discuss how the damage from this resolution can be mitigated. Please contact Rachel Roberts (Northern California) at [rroberts@cair.com](mailto:rroberts@cair.com) or Adel Syed (Southern California) [asyed@cair.com](mailto:asyed@cair.com) at your earliest possible convenience for a meeting with concerned students and community members in your home office.

Sincerely,

**American Muslims for Palestine**  
**Asian Law Caucus**  
**Center for Constitutional Rights**  
**Council on American-Islamic Relations, California**  
**Jewish Voice for Peace**  
**National Lawyers Guild-Los Angeles Chapter**  
**Students for Justice in Palestine, UC Irvine**  
**Students for Justice in Palestine, UC Riverside**  
**Students for Justice in Palestine, UC San Diego**  
**Students for Justice in Palestine, University of Southern California**