

November 20, 2015

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative regarding limitations of the activities of “holocaust denial organizations” at state-funded educational sites and with state-funded educational employees (A.G. File No. 15-0073).

Background

Rules for Allowing External Groups to Distribute Information and Facilitate Activities on School Sites. State law specifies that individuals who are neither school employees nor students may only visit a school upon first providing the principal or the principal’s designee their names, ages, purposes in entering school grounds, and proofs of identity. State law allows schools to take any other reasonable steps to protect the safety of their students and prevent disruption on their campuses. Some districts have added restrictions beyond those contained in state law. For example, some districts require external groups to notify them at least two weeks prior to visiting a school. Principals (or designees) may deny requests if they have a reasonable basis for concluding that the external group would disrupt the school or the school’s students, teachers, or employees; result in damage to the school; or result in the distribution or use of unlawful substances. College presidents may exert similar authority and restrict the activities of groups that may cause violence or damage to their campus facilities.

Other Ways Schools Regulate Information and Activities. The courts have upheld certain other ways that schools may regulate some information and activities on their campuses. For example, schools may have blanket policies prohibiting certain content (such as political or religious material) from being placed in teachers’ school mailboxes. Districts may have similar blanket policies for what is allowed inside classrooms. In certain instances, districts may limit activities off-site. For example, districts may discipline teachers for inappropriate conduct with children that occurs off-site.

Proposal

This measure changes state law in the following ways:

Prohibits Holocaust Denial Organizations From Distributing Material and Facilitating Events at Certain Sites or to the Sites' Employees. The measure prohibits a school, educational institution, or museum that receives state funds from allowing a holocaust denial organization to distribute information or facilitate activities (1) within the boundaries of these institutions' properties or (2) to these institutions' employees, clients, or students. The measure indicates that the prohibition extends to any information distributed or activity facilitated by one of these organizations, even if not directly related to holocaust denial and even if distributed to employees, clients, or students off-site.

Defines Holocaust Denial Organization. The measure defines a holocaust denial organization as an organization or "front organization" that lobbies against the recognition of the Jewish, Armenian, or Ukrainian Holocausts. Under the measure, organizations would be defined as holocaust denial organizations regardless of whether their holocaust denial occurred publicly or privately.

Specifies Communities May Sue and Seek Damages. The measure allows organizations representing the "community being targeted by the holocaust denial organization" to seek injunctive relief and damages from a school, educational institution, or museum that violates the above prohibitions.

Fiscal Effect

Legal Issues With the Measure. Certain provisions of this measure likely would be determined by the courts to be in conflict with the U.S. Constitution. Most notably, a court could find that the prohibition on distributing information violates the First Amendment. If a court were to rule that it could not be implemented, then the measure would have no fiscal effect.

Relatively Minor Administrative Costs if Implemented. If the measure could be implemented legally, it would generate additional administrative costs for some local and state agencies. Schools, educational institutions, and museums would incur some administrative costs to identify holocaust denial organizations and ensure these organizations did not distribute material or facilitate events on site. Local educational entities—as well as the California State University, University of California, and State Library—would incur these costs. Statewide, these costs likely would be relatively minor, as some of these educational institutions already screen groups prior to allowing them to distribute materials or facilitate events on site. For those local educational entities, however, that do not currently screen external groups, costs could be more substantial.

Legal Costs Are Uncertain. If the measure could be implemented legally and a state-funded educational institution violated its provisions and were sued for such violations, it would incur legal defense costs. These costs could be high as some provisions of the measure may be viewed as far-reaching or ambiguous, potentially making educational institutions' defenses more challenging and time-consuming. Moreover, an educational institution could be liable for damages if the plaintiffs were successful. The uncertainty regarding the number of cases that

might be filed statewide, the duration of potential trials, and the damages that might be awarded make estimating these legal costs challenging. The annual legal cost statewide is unlikely to be significant, but the cost could be significant for a particular educational institution in a particular year. (Statewide, trial courts also would incur costs to hear these cases. Hearing these cases could either increase total trial court costs or increase the trial court case backlog, lengthening the time before cases are heard.)

Summary of Fiscal Effects

We summarize the fiscal effects of the measure below.

- Given its restraint on free speech, a court may find this measure unconstitutional. If so, it would have no fiscal effect.
- If the measure could be implemented legally, the annual cost to state-funded educational institutions is unlikely to be significant statewide, but the cost for a particular local government in a particular year might be significant if it is sued and found to have violated the provisions of the measure.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance