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BY E-MAIL

January 10, 2018

Lieutenant Governor Kevin L. Bryant
President of the Senate
P.O. Box 142
Columbia 29201

Senator Hugh K. Leatherman, Sr.
Senate President Pro Tempore
111 Gressette Bldg.
Columbia, SC 29201

Re: H. 3643

Dear Lieutenant Governor Bryant and Senator Leatherman,

On behalf of the Anti-Defamation League (“ADL”), we write to express our views on House Bill 3643, “A bill to amend the code of laws of South Carolina ... by adding section 59-101-220 so as to define certain terms concerning anti-Semitism” (“H. 3643”).

Founded over a century ago, ADL is the nation’s leading civil rights and human relations organization, combating anti-Semitism and all forms of bigotry, as well as promoting understanding and diversity throughout the United States and abroad.

H. 3643 appears to be modeled on Senate Resolution 10, “Anti-Semitism Awareness Act of 2016, (“S. 10”), which passed the U.S. Senate during the 114th Congress. Indeed, H. 3643 adopts the definition of anti-Semitism found in S. 10 and requires that “[i]n reviewing, investigating, or deciding whether there has been a violation of a college or university policy prohibiting discriminatory practices on the basis of religion, South Carolina public colleges and universities shall take into consideration th[is] definition of anti-Semitism for purposes of determining whether the alleged practice was motivated by anti-Semitic intent.”

As a preliminary matter, ADL firmly believes that H. 3643 was filed in good faith and is very well-intentioned. However, the contexts of S. 10 and H. 3643 are quite different. On the federal level, there are multiple laws that already prohibit discrimination at post-secondary institutions receiving federal funding. Title VI of the 1964 Civil Rights Act prohibits discrimination on the basis of race, color and national origin. Seven years ago, the U.S. Department of Education (“DOE”) issued guidance interpreting Title VI to prohibit discrimination against Jews and other minority faiths under certain circumstances. This guidance, however, is not law and the current or a prospective Administration could rescind it.

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Furthermore, Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex. And Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 prohibit discrimination on the basis of disability. South Carolina, however, has no analogous or similar laws prohibiting discrimination at its colleges and universities. In fact, H. 3643 is only applicable to colleges and universities which have policies prohibiting discrimination on the basis of religion.

S. 10, which ADL supports, was filed for a narrow purpose, to codify the above-referenced DOE guidance on discrimination against Jews and other faiths into law. Codification of this guidance on a specific form of discrimination makes sense within a federal system of laws that already prohibits numerous forms of discrimination at colleges and universities.

However, given that South Carolina has no law prohibiting discrimination at post-secondary institutions, we firmly believe that it would be far more appropriate for the legislature to enact a comprehensive anti-discrimination statute. All college and university students should have uniform state protections against discrimination and harassment based on personal characteristics. Such a law should of course include a prohibition on religious discrimination and harassment, the investigation of which could take into consideration the definition of anti-Semitism found in H. 3643.

To this end, we are enclosing a proposed amendment to this legislation for the Senate's consideration on second reading.

Sincerely,



Allison Padilla-Goodman
ADL Regional Director

Enc.

cc: The South Carolina Senate



AMENDMENT TO H. 3643

SECTION 1. Article 1, Chapter 101, Title 59 of the 1976 Code is amended by adding:
"Section 59-101-220.

- (A) Each public college or university shall adopt a policy prohibiting discrimination against students because of race, color, sex, disability, national origin, or religion.
- (B) For the purposes of this section "discrimination" shall include:
- (1) exclusion from participation in, denial of the benefits of, or being subjected to discrimination in any public college or university program or activity; or
 - (2) actions or words that create a hostile environment at a public college or university, if so severe, pervasive and objectively offensive so as to substantially limit an individual's ability to equally participate in or benefit from the institution's educational programs.
- (C) The term "because of religion" or "on the basis of religion" or terms of similar import when used in reference to discrimination in this section or a policy required under paragraph (A) include discriminatory actions at any public college or university against students of any faith or creed based on hostility towards their actual or perceived religion, ancestry or ethnic characteristics, including anti-Semitism.
- (D) For purposes of this section, the term "anti-Semitism" includes:
- (1) the definition of anti-Semitism set forth by the Special Envoy to Monitor and Combat Anti-Semitism of the Department of State in the fact sheet issued on June 8, 2010; and
 - (2) the examples set forth under the headings 'Contemporary Examples of Anti-Semitism' and 'What is Anti-Semitism Relative to Israel?' in the fact sheet.
- (E) In reviewing, investigating, or deciding whether there has been a violation of a policy required under paragraph (A) on the basis of religion, a public college or university shall take into consideration the definition of the term anti-Semitism found in paragraph (D) as part of its determination of whether the alleged conduct or practice was motivated by unlawful, discriminatory intent.
- (F) Nothing in this section may be construed to diminish or infringe upon any right protected under the First Amendment to the Constitution of the United States or Section 2, Article I of the South Carolina Constitution, 1895."

SECTION 2. This act takes effect upon approval by the Governor.