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July 3, 2025

The Honorable Rick Chávez Zbur
The Honorable Dawn Addis
Sacramento, California 95814

Re: AB 715 — as amended 07/01/2025
OPPOSE

Dear Assemblymembers Zbur and Addis:

The American Civil Liberties Union California Action regrets that we must respectfully oppose your AB 715. From our conversations and our past history of working together, we understand we share a common goal: ensuring that all California students have safe and supportive learning environments. While we deeply support this vision, AB 715 is not the solution and will lead to harmful, unintended consequences that undermine this goal.

The ACLU is committed to protecting the civil rights and civil liberties of students, families, and advocates in California's public schools. Our work, including the *Free to Learn, Free to Be* campaign, equips families and advocates with tools to:

- Understand their rights to be free from discrimination and harassment based on protected characteristics;
- Protect access to honest and inclusive instruction; and
- Safeguard First Amendment rights for students and advocates alike.

As we've consistently emphasized in our advocacy:

- Students deserve the freedom to learn and be themselves at school.
- Every student should have access to well-resourced schools, inclusive curricula, and policies that support them—including Black, Indigenous, disabled, and LGBTQ+ students.
- Schools must affirm students' full identities and foster a sense of belonging.
- Inclusive classrooms strengthen academic and social outcomes and promote a healthier, more just society.

We understand the intent with AB 715 is to better protect Jewish students. We fully support this goal and agree that all students must be free from discrimination and harassment because of their protected characteristics.

We also recognize that recent allegations of antisemitic conduct in school settings have created confusion about what constitutes unlawful discrimination versus protected political speech. In some cases, criticism of foreign governments is mischaracterized as antisemitism or nationality-based discrimination.

Regrettably, the recent amendments to AB 715 amplify the concerns we previously raised. Not only do they expand the definitions of protected characteristics in overbroad ways but they also seek to limit speech through vague, overbroad, and, therefore, unconstitutional provisions. AB 715's provisions will dangerously:

- Censor student speech;
- Increase litigation against inclusive curriculum and teaching; and
- Create a chilling effect on educators and students engaged in constitutionally protected expression.

I. Concerns with the Proposed Bill Language

A. Expansion of "Religion" to Include Overbroad Constructions of "Antisemitism" (Ed. Code § 212.3)

The bill seeks to include "antisemitism and Islamophobia" within the definition of religion for anti-discrimination purposes in K-12 schools. While the intent is laudable, the expansion of "religion" under the bill is concerning.

To begin, the protections for "religion" are unbalanced. The term Islamophobia is not defined in the bill while the term "antisemitism" is aided by extensive language, including an article explaining "antisemitic learning environment." Given the bill's focus on antisemitism, the inclusion of Islamophobia within the proposed definition of religion appears more symbolic than substantive, as the remainder of the bill's language, provisions, and enforcement structure focus solely on antisemitism. The resulting imbalance undermines the bill's credibility as a good-faith effort to address religion-based discrimination equitably and inclusively.

Despite the fact that the bill attempts to define antisemitism for purposes of anti-discrimination, either in school climate or curriculum, the harms we previously raised are now amplified.

AB 715 risks encompassing protected political speech. Recent efforts, particularly at the federal level,[1] have sought to define antisemitism so broadly that they include criticism of Israel or support for Palestinian rights—speech protected under the First Amendment. The bill now reflects this broader national trend.

The ACLU does not take a position on current international conflicts, but we staunchly defend the rights of individuals in the United States to engage in *political* speech, including criticism of foreign governments. The ability to criticize governments and their policies is a critical component of our democracy and speech criticizing our, or any other government, is protected speech.[2] This right

[1] *See, e.g.,* ACLU, *ACLU Urges Senate to Oppose S. 4127, the Antisemitism Awareness Act* (Nov. 14, 2024), https://www.aclu.org/documents/aclu-urges-senate-to-oppose-s-4127-the-antisemitism-awareness-act; ACLU, *Reject Definitions of Anti-Semitism that Encompass Protected Speech* (Feb. 6, 2024), https://www.aclu.org/wp-content/uploads/2024/02/Reject-Definitions-of-Anti-Semitism-that-Encompass-Protected-Speech.pdf.

[2] *Tinker v. Des Moines Indep, Cmty. Sch. Dist.,* 393 U.S. 503, 513-14 (1969).

extends to students. Indeed, courts have long held that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." [3]

California law already prohibits discrimination based on religion. Jewish and Muslim students are protected under these existing laws. Adding overbroad terms like "antisemitism" and now "antisemitic learning environment" will lead to schools misapplying the law, as seen in the high-profile case of a student in the Newport-Mesa Unified School District who was suspended for saying, "Free Palestine." The suspension was publicly justified by a district official as a response to "hate speech,"[4] despite the fact that the phrase "Free Palestine" did not meet any legal definition of incitement or harassment. Under the proposed definition of "antisemitic learning environment," this type of censorship will be amplified.

This incident raises concerns that some school officials may engage in conduct that chills students' protected political speech and may violate the Constitution by disciplining students for exercising their First Amendment rights. Importantly, school officials must avoid potentially chilling or censoring student political speech, even if they disagree with it. This bill risks conflating political speech as "antisemitic." As the U.S. Supreme Court explained in *Tinker v. Des Moines Independent Community School District*, "[a]ny word spoken, in class, in the lunchroom, or on campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk; and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society."[5]

B. Expanding "Nationality" to Include "Residency in a Country with a Dominant Religion or Distinct Religious Identity" (Ed. Code § 212)

AB 715 also seeks to broaden the definition of "nationality" to include "a social organization where a collective identity has emerged with a combination of shared features across a given population, such as language, history, ethnicity, religion, culture, territory, or society" for anti-discrimination purposes in K-12 schools. This addition is dangerously overbroad, ambiguous, and will lead to constitutional violations.

To begin, this expanded definition of "nationality" is dangerously overbroad and opens the door to confusing and absurd outcomes. It is unclear what constitutes "social organization" for these purposes. Would a gang affiliated with a specific "territory" and targeted by school police now have a claim for "nationality"-based discrimination? Could white supremacists or online communities with a shared "collective identity" of superiority over people of other races or "cultures" now have a

[3] *Id*. at 506.

[4] Ruben Vives, *Newport Beach Student Suspended for Remarks to Another Student Including 'Free Palestine'*, Los Angeles Times, Nov. 11, 2023, https://www.latimes.com/california/story/2023-11-11/corona-del-mar-student-suspended-for-saying-free-palestine; Annika Bahnsen, *Corona del Mar Student Suspended for Saying 'Free Palestine'*, Orange County Register, Nov. 10, 2023, https://www.ocregister.com/2023/11/10/corona-del-mar-student-suspended-for-saying-free-palestine/.

[5] *Tinker*, 393 U.S. at 508-9.

claim for nationality-based discrimination? This definitional vagueness and overbreadth will only increase the risk of litigation, undermine legitimate equity efforts, and create confusion for families, educators, and school administrators.

Furthermore, this expanded definition may lead to situations where constitutionally protected political speech—such as criticism of countries with dominant religions—is mischaracterized as prohibited nationality-based discrimination. For instance, individuals perceived to be from Christian-majority countries (or what is perceived to be a Christian-majority country) like the United States[6] could be considered a protected "nationality" class under this bill. This blurs the line between religion and nationality and invites claims that inclusive curricula or classroom discussions discriminate against individuals of "Christian nationality."

Groups already engaged in legal and political challenges to inclusive education—including those critical of ethnic studies, LGBTQ+ inclusion, and gender-inclusive policies—could use the bill's language to argue that these policies marginalize and illegally discriminate against Christian viewpoints or "stereotypes" of Christian-based beliefs regarding gender roles or sexuality. This may lead to:

- Litigation against curricula aligned with the FAIR Act or California Healthy Youth Act;[7]
- Suppression of inclusive teaching practices;
- A platform for challenging lessons that affirm LGBTQ+ students or address racial justice.

The California Legislature has expressed a commitment to honest and inclusive education, including instruction on slavery, racism, and systems of oppression.[8]

This bill's expanded definitions directly conflict with that goal by inviting censorship of perspectives that some may find ideologically unpopular but that are both currently educationally appropriate and constitutionally protected.

C. AB 715 Will Subject Instructional Materials to Broad Censorship Triggers

Education Code section 244 imposes a duty on local educational agencies (LEAs) to adopt or approve only those instructional materials that would not subject a student to unlawful

[6] *See* Pew Research Center, *Religious Landscape Study* (Feb. 26, 2025), https://www.pewresearch.org/religion/2025/02/26/religious-landscape-study-executive-summary/. (reporting that "62% of U.S. adults describe themselves as Christians.")

[7] Cal. Educ. Code § 51204.5 (Deering 2012); *See also* Cal. Educ. Code § 60040 (Deering 2012): *See also* Cal. Educ. Code § 51930 (Deering 2016).

[8] Cal. Educ. Code § 202 (b) (Deering 2023) ("The California Constitution protects pupils' rights to share ideas and beliefs, including the right to receive information and knowledge, and guarantees pupils equal protection under the law"); *See also* Cal. Educ. Code § 202 (c) (Deering 2023) ("Under California law, California schools must create an equitable learning environment where all pupils, including lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ) pupils and Black, Indigenous, and other pupils of color feel welcome, including through honest discussions of racism, the history of slavery in our society and in California, and the diversity of gender and sexual orientation that reflects the lived reality of those pupils.").

discrimination pursuant to Education Code section 220. That section, in turn, relies on definitions provided elsewhere in the Education Code—including the sections defining "religion" and "nationality" or "antisemitic learning environment" discussed above.

AB 715 now extends its restrictions not only to instructional materials formally adopted by the district, but also to any materials used in "school spaces, including signage." The bill goes on to list a number of circumstances in which instructional or other materials would be considered discriminatory under the bill's provisions.

When these bill's provisions are combined with the bill's proposed definitions of "religion" and "nationality," it opens the door to expansive legal interpretations that could treat the mere presence of discussion of certain ideas in a classroom as actionable discrimination. As a result, merely permitting classroom discussions of complex or "controversial" topics could be construed as unlawful under this bill and subject school staff or students to new and enhanced enforcement mechanisms. For example, the bill proposes adding new sections that would lead to censorship in schools. Education Code section 60049 mandates that instructional materials that discuss "Jews, Israel, or the Israel-Palestine conflict for use in schools" shall meet specific requirements and section 60050 imposes limitations on instruction to K-12 students related to "a controversial issue."

Under such sweeping and overbroad mandates:

- Lessons on systemic racism, settler colonialism, or gender equity could be mischaracterized as discriminatory or controversial issues under the expanded definitions;
- Discussions aligned with the FAIR Act or adopted ethnic studies standards may be challenged as promoting "antisemitic" or "anti-Christian" views;
- Educators may avoid discussing controversial or sensitive topics altogether, depriving students of the inclusive and honest education they are entitled to receive;
- LEAs, and specifically teachers, will be burdened with increased demands to produce their teaching materials in response to expanded obligations under the California Public Records Act; and
- LEAs will be burdened with investigations and lawsuits for constitutionally protected teaching practices.

California law recognizes that public education plays a critical role in fostering civic engagement and preparing students for democratic participation. Education Code section 202(b), for example, affirms that the "California Constitution protects pupils' rights to share ideas and beliefs, including the right to receive information and knowledge, and guarantees pupils equal protection under the law." [9]

This principle has long been affirmed by the courts. In *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, a plurality of the U.S. Supreme Court recognized that "the right to

[9] Cal. Educ. Code § 202 (b) (Deering 2023); *See* Cal. Const. art. 1, § 2(a); *See also* U.S. Const. amend. I.

receive ideas is a necessary predicate to the recipient's meaningful exercise of [their] own rights of speech, press, and political freedom."[10] The Court held that schools may not remove materials from its library merely to suppress certain ideas or impose upon the students a "political orthodoxy."[11]

Similarly, in *Monteiro v. Tempe Union High School District*,[11] the Ninth Circuit held that the right to receive information includes students' right to receive information through school curriculum.[12] The Ninth Circuit later affirmed the importance of that right in *Arce v. Douglas,* finding that "the state may not remove materials otherwise available in a local classroom unless its actions are reasonably related to legitimate pedagogical concerns."[13] The court emphasized that "[g]ranting wider discretion has the potential to substantially hinder a student's ability to develop the individualized insight and experience needed to meaningfully exercise [their] rights of speech, press, and political freedom."[14]

Amending Education Code section 244 without clear boundaries on what constitutes unlawful discrimination in the context of the proposed expanded definitions risks undermining these foundational principles.

D. "Controversial issues"

We are particularly concerned about the chilling effects of Section 10 of the bill, which would impose at new Education Code section 60050 a series of mandates on any public school educator providing instruction on an undefined "controversial issue." The vagueness and vast overbreadth of this provision will permit its weaponization against educators striving to deliver inclusive education on LGBTQ+ issues and many others, and thus its adoption will stifle inclusion in our public schools in contravention of core California values.

We understand this section to be motivated by a desire to protect students from biased instruction or indoctrination regarding the Israel-Palestine conflict. On this and other subjects, we of course are also in favor of fostering supportive learning environments that allow students to form and express their own opinions based on unbiased presentation of accurate information. However, the overbroad language of Section 10 is ripe for exploitation by those who seek to stifle acknowledgment in our public schools not only of particular viewpoints on conflicts in the Middle East but also of the existence of LGBTQ+ people.

We observe as a general matter that anything and everything can be, has been, or will be a controversial issue, at least in some people's eyes. Questions like whether women and people of color deserve civil rights, whether people from specific nationalities and ethnic groups should be able to immigrate to the United States, and whether LGBTQ+ people exist were all highly controversial at one time before social consensus emerged—and in the current moment of retrenchment, voices challenging those settled principles are growing louder. The proposed bill

[10] *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982).
[11] *Id.* at 875.
[12] *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1028 (1998).
[13] *Arce v. Douglas*, 793 F.3d 968, 983 (2015).
[14] *Id*.

language will serve to empower such voices and further dissuade those educators seeking to provide an inclusive and open learning environment from doing so.

In addition to the overarching problem with "controversial issue" lacking definition and thus threatening to encompass every topic in the curriculum, numerous provisions within Section 10 are problematically vague:

- At proposed Education Code section 60050(a), education must be "balanced," but this term is undefined. This is likely to invite demands for representation and even equal instructional time from proponents of minority views on topics from evolution to marriage equality to the January 6 riot to communism. This will impose a destructive form of "both sides-ism" in the classroom.
- At proposed Education Code section 60050(b), educators are authorized to "provide a personal opinion or viewpoint without advocating for or against a position…" This language is confusing and highly subjective. It will inevitably invite debate about what constitutes "advocating for or against a position" and attacks on teachers who have expressed a personal opinion or even an identity that it is itself controversial in today's polarized environment (such as when a teacher comes out as nonbinary).[15] This section also states that educators "are expected to follow the adopted curriculum and standards." In a sense this restates existing settled law, but in practice it will likely operate to invite political and personal attacks, disciplinary action, and lawsuits against teachers for attempting to acknowledge current events and other matters on the minds of their students using words or instructional resources not explicitly listed in a state framework or district-adopted curriculum.
- At proposed Education Code section 60050(c), educators are required to "assure" students of their "right to form and express an opinion without jeopardizing their grades or being subject to discrimination, retaliation, or discipline, provided the viewpoint does not constitute harassment, threats, intimidation, or bullying, or [sic] is not otherwise unlawful." This may be intended as a restatement of educational best practice, but is problematic as a statutory mandate imposed on all TK-12 public schools without practical guidance on how such assurances are to be provided to all students in an age-appropriate manner or how educators can document the provision of such assurances to protect themselves against liability.
- Proposed Education Code section 60050(d) calls for providing students "adequate factual information" to help them "objectively analyze and evaluate the issue and draw their own conclusions." Again, this aligns with laudable instructional goals, but as a statutory mandate (particularly one lacking definitions of "adequate" or "objective") will lend itself to exploitation by proponents of "alternative facts." The negative impacts of this provision may be felt most acutely in science classrooms, where those who question whether human activity is accelerating climate change, whether HIV causes AIDS, whether masks and vaccines help prevent infectious disease, and so forth will rely on this provision to claim they are entitled to classroom airtime for "factual information" from dubious "scientific" sources. It will also be

[15] While we view this entire section as problematic, we also note there appears to be a drafting error in proposed Education Code section 60050(b), which currently would allow teachers to "provide a personal opinion or viewpoint without … providing an opinion or viewpoint that does not constitute discrimination, as defined in Section 220." This language appears to authorize only the expression of viewpoints that *do* constitute discrimination.

dangerous in the context of providing comprehensive sexual health education pursuant to the California Healthy Youth Act, emboldening those who question the safety and efficacy of FDA-approved contraception methods as well as those who rely on pseudoscience to question the validity of diverse gender identities.

- Similarly, proposed Education Code section 60050(e)(2) mandates that "[a]ny explanation or presentation of an act committed by a state, government, or other group that is factual and historically accurate shall be given without bias." The language presumes that a single objective "factual and historically accurate" presentation of past events exists, when in fact we know that dominant historical narratives are written by the victors. Further, much of what students need to learn in the realm of history is how to explore varying viewpoints on what has occurred, including critiques from more marginalized perspectives of the prevailing narrative penned by those in positions of privilege. In practice, this language is likely to deter educators from presenting diverse viewpoints on past government actions or encouraging critical reflection on them. This language also invites debate about what constitutes "bias." Given the lack of any anchoring standard for what constitutes a bias-free presentation or who gets to make that assessment, this provision will lend itself to exploitation by those who wish to tout rationalizations for previous government-perpetrated atrocities, from slavery and racial segregation to genocidal attacks on indigenous people, Jews, and LGBTQ+ people. As applied to the Israel-Palestine conflict, this provision in particular seems likely to spark more of the types of problems the bill purports to address.

The issues with this section of the bill are especially salient and concerning in the present political moment, which has involved coordinated nationwide attacks on the concepts of diversity, equity, and inclusion, and on the very existence of transgender people. Just recently, the Supreme Court in *Mahmoud v. Taylor*, 606 U.S. __ (June 27, 2025) held that parents have a constitutional right to opt their children out of instruction they deem objectionable for religious reasons, in a decision that cast age-appropriate depictions of LGBTQ+ people in storybooks as somehow harmful or dangerous to children.

Although this decision did not alter the existing statutory mandates for California public schools to provide LGBTQ+-inclusive instruction in the areas of social studies and sexual health education, it did effectively create new administrative burdens and new risks of liability for schools and educators. This bill risks worsening the adverse impacts of *Mahmoud*, and of the federal executive branch's simultaneous aggressive attacks on LGBTQ+ inclusion in schools and on efforts to promote and support diversity in general, by imposing new requirements on the teaching of "controversial issues" without providing enough specificity to enable confident compliance or consistent enforcement.

Our schools should be places where young people can learn about themselves and the diverse world around them and where class curricula reflect the full diversity of students and our society. We know that inclusive education not only boosts academic outcomes but also helps to build empathy and foster greater connection among all students. And LGBTQ+ students, just like all other students, benefit from seeing themselves and their families reflected in the classroom. Given the present polarized political climate and pattern of attacks on LGBTQ+ (particularly transgender) people, this

is an especially inopportune time for California to withdraw from its longstanding commitment to inclusive education and enact a statute that makes addressing LGBTQ+ topics and other potentially "controversial" issues in the classroom harder and riskier for educators.

II. Proposed Amendments

The bill in its entirety must not become California law if lawmakers are truly committed to creating safe, welcoming, and affirming learning environments for all students. To address instances of discrimination and harassment against Jewish, Muslim, and other students, and to foster truly safe and supportive learning environments for all students, we recommend:

- Leaving undisturbed the definitions of "nationality" under Education Code section 212 and "religion" under Education Code section 213.
- Removing the "controversial issues" provisions and instead promoting responsible instruction in compliance with the FAIR Education Act, California Healthy Youth Act, and applicable state content standards, and appropriate handling of controversy in the classroom, through training and coaching for educators.
- Creating a Civil Rights Coordinator within the California Department of Education (CDE) to support students and families navigating the Uniform Complaint Procedures (UCP) process and to provide guidance to LEAs on compliance with state and federal anti-discrimination laws. This would align with your proposal for an Antisemitism Coordinator while providing broader support across protected classes and operating under the full extent of state and federal anti-discrimination laws that protect students.
  - ❖ The Civil Rights Coordinator should also be a resource to LEAs including, but not limited to, providing guidance affirming that:
    - California's students have a right to freely talk and learn about race, gender, and sexual orientation in their classrooms in age-appropriate ways; freely talk and learn about the history, identities, experiences, and viewpoints of all marginalized communities in California; and access inclusive and accurate history curriculum, including an honest and truthful history about Black and Indigenous Californians.
    - The U.S. and California Constitutions protect students' rights to share ideas and beliefs, including the rights of listeners to receive information and knowledge.[16] Courts have long found First Amendment violations where school curricula impede the rights of students to receive information and ideas.[17] Categorically banning conversations about discrimination and equity is a form of unlawful censorship. Every public-school student in California has the right to participate in an open and honest dialogue about history. The ability to discuss and debate ideas, even those that some may find uncomfortable, is a crucial part of our democracy.
- Section 234.1 of the Education Code requires CDE to assess whether LEAs have taken certain actions concerning educational equity as part of the Categorical Program Monitoring process. Consequently, we recommend that CDE incorporate into its Education Equity monitoring

[16] U.S. Const. amend. I; Cal. Const. art. I, § 2(a).
[17] *Arce*, 793 F.3d at 981; *Pico*, 457 U.S. at 866-67.

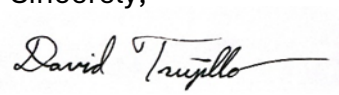
instrument a review of school district policies to ensure they are free of harmful and unlawful censorship.

- Providing funding or technical assistance to LEAs and schools to access restorative justice practitioners, and culturally responsive family engagement experts, and other school site or community resources as explained in Education Code section 234.1(d)(2) following incidents of hate or bias.
- Expanding CDE's Disproportionate Discipline Hotline[18] to include complaints related to discipline for protected political expression.

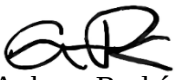
III. Conclusion

While we remain aligned in the belief that no student should experience discrimination or harassment based on a protected characteristic in California's public schools, we must oppose AB 715. This proposal enables censorship, misapplication of anti-discrimination protections, and legal challenges to inclusive curricula and schools.

Sincerely,



David Trujillo
Executive Director



Aubrey Rodríguez
Legislative Advocate

[18]California Department of Education, *State Superintendent Tony Thurmond Announces Programs to Tackle Disproportionate Discipline in Schools* (Feb. 15, 2023), https://www.cde.ca.gov/nr/ne/yr23/yr23rel12.asp.