

Sept. 6, 2016

To Gov. Brown

From: Coalition to Defeat AB 2844: stop.1551.1552@gmail.com; 916 407-2814

Six reasons why you should veto AB 2844 (see reverse for proposed veto message)

1. The state Department of Finance opposes AB 2844, "because it would result in additional costs without providing additional protections against discrimination beyond existing state law. This bill merely requires self-certification of compliance with existing law, yet incurs costs to the General Fund, which is inconsistent with the current budget." (<http://tinyurl.com/zxb58er>) Senate Appropriations Committee cost estimates:
 - Fielding and investigating complaints, and possibly prosecuting them, estimated at \$625,000 a year.
 - Higher costs for state contracting due to lack of exclusions for sole-source contracting, no-bid renewals, etc., estimated at as much as 0.5 percent of current state contracting costs: \$140 million a year.
 - Other agencies' increased administrative workload and costs for goods and services due to specified contracting requirements are "unquantifiable but potentially significant."
 - Law enforcement agencies: unknown costs for arrest and incarceration.
2. The Finance list leaves out defense of litigation challenging AB 2844's constitutionality, which will surely transpire, if for nothing else over the vague new crime the bill creates. Every legal organization that has weighed in on AB 2844 in its various incarnations, including ACLU, the Center for Constitutional Rights, National Lawyers Guild and others, has warned of this unconstitutionality. Potential plaintiffs are not only individuals, churches and nonprofits that receive state funds, but also multinational corporations that have chosen for whatever reason to cease doing business in Israel. Public contracts with such entities could result in complaints alleging perjury against them, and they would have both the resources and motivation to forcefully challenge such a process.
3. AB 2844 has been from the start and remains primarily the California version of a national effort to shut down an important public conversation about Israel, Palestine and U.S. foreign policy by singling out and stigmatizing certain viewpoints. That's not what state governments should be doing. As the Assembly Judiciary Committee analysis said: "It is difficult to imagine legislation more clearly calculated to have a chilling impact of the exercise of protected speech." (<http://bit.ly/2bPWIUp>)
4. Laws that create a chilling effect on protected speech are patently unconstitutional, even if they don't directly ban or punish it. Recent as well as initial declarations by the author and sponsors leave no doubt that this remains their intent, even after the operation of the proposed law became disguised as merely opposing unlawful discrimination. See the videos of the various committee presentations and the floor debate, especially the floor statement by Sen. Monning (<http://senate.ca.gov/media-archive#>, 8.24.16 at 3:39:25).
5. Proponents resorted to the "discrimination" deception when it became clear that the original, direct assault on the First Amendment would not pass. But the bill remains poisoned with the unfounded, absurd insinuation that critics of Israeli policies are somehow inclined to discriminate unlawfully against Californians. Ironically, their criticism has much to do with the very real struggles to end discrimination against Palestinians in Israel and in the occupied West Bank, including East Jerusalem, and Gaza.
6. Boycotts, a form of protected speech with a long history of use against apartheid and in support of farm workers, among many other causes, have especially agitated the proponents of AB 2844. But as the Los Angeles Times wisely wrote in a July 5 editorial:

"The proponents of this bill are desperately eager to single out and punish companies that engage in boycotts against Israel. Realizing that their initial proposal ran contrary to the free speech protections guaranteed in the Bill of Rights, they have now come back with a convoluted, redundant and most likely ineffectual bill that allows them to say they've passed an anti-BDS bill. ...

Politicians are free to denounce BDS if they choose. But they must do so without infringing on the rights of their constituents."¹

¹ <http://www.latimes.com/opinion/editorials/la-ed-bds-bill-20160630-snap-story.html> Note that contrary to Sen. Jackson's statement on the Senate floor after Sen. Monning quoted from it, the LA Times editorial responded to the same version of AB 2844 now passed by the Legislature, except for several minor amendments. The reasons for the paper's opposition remain unchanged.

PROPOSED VETO MESSAGE

To the Members of the California State Assembly:

I am returning AB 2844 without my signature.

This bill would require state contractors to sign affidavits under penalty of perjury that their policies toward a sovereign nation or peoples do not violate California's existing anti-discrimination laws.

While I understand and wholeheartedly affirm the need to protect Californians from discrimination based on race, color, religion, ancestry, national origin, age, disability, medical condition, marital status or sexual orientation, the state of California already requires state contractors to certify in writing that they are in compliance with our civil rights laws in public accommodations, employment, and housing. Our enforcement of these laws, enacted in 1959, has been consistent and unwavering.

AB 2844, opposed by the Department of Finance, would therefore be duplicative of laws already on the books, and according to state agencies, could cost California taxpayers an estimated \$140 million a year. This amount does not include the burdensome cost of defending against First Amendment constitutional challenges, which would result in years of costly litigation and legal uncertainty. Nor can we calculate the possible loss of valuable state revenue should potential contractors decline to bid on state contracts for fear of exposing themselves to criminal liability.

I have reviewed in depth the arguments from both sides about the significance of enacting legislation to address foreign disputes, and am concerned by the vagueness in AB 2844 as to what "policies" could provide the basis for a charge of perjury; and that by stigmatizing a certain point of view this bill would have a chilling effect on political speech. The U.S. Supreme Court in *NAACP v. Claiborne Hardware Co.* (458 US 886, 1982) recognized boycotts for political ends as a form of "expression on public issues" that "occupies the highest rung of the hierarchy of First Amendment values."

For these reasons, I am returning AB 2844 without my signature.

Sincerely,

Edmund G. Brown Jr.