

114TH CONGRESS
2D SESSION

S. 10

To provide for the consideration of a definition of anti-Semitism for the enforcement of Federal antidiscrimination laws concerning education programs or activities.

IN THE SENATE OF THE UNITED STATES

DECEMBER 1, 2016

Mr. SCOTT (for himself, Mr. CASEY, Mr. WYDEN, Mr. GRAHAM, and Mr. BENNET) introduced the following bill; which was read twice, considered, read the third time, and passed

A BILL

To provide for the consideration of a definition of anti-Semitism for the enforcement of Federal antidiscrimination laws concerning education programs or activities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Anti-Semitism Aware-
5 ness Act of 2016”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) Title VI of the Civil Rights Act of 1964 (re-
9 ferred to in the section as “title VI”) is one of the

1 principal antidiscrimination statutes enforced by the
2 Department of Education’s Office for Civil Rights.

3 (2) Title VI prohibits discrimination on the
4 basis of race, color, or national origin.

5 (3) Both the Department of Justice and the
6 Department of Education have properly concluded
7 that title VI prohibits discrimination against Jews,
8 Muslims, Sikhs, and members of other religious
9 groups when the discrimination is based on the
10 group’s actual or perceived shared ancestry or ethnic
11 characteristics or when the discrimination is based
12 on actual or perceived citizenship or residence in a
13 country whose residents share a dominant religion or
14 a distinct religious identity.

15 (4) A September 8, 2010 letter from Assistant
16 Attorney General Thomas E. Perez to Assistant Sec-
17 retary for Civil Rights Russlynn H. Ali stated that
18 “[a]lthough Title VI does not prohibit discrimination
19 on the basis of religion, discrimination against Jews,
20 Muslims, Sikhs, and members of other groups vio-
21 lates Title VI when that discrimination is based on
22 the group’s actual or perceived shared ancestry or
23 ethnic characteristics”.

24 (5) To assist State and local educational agen-
25 cies and schools in their efforts to comply with Fed-

1 eral law, the Department of Education periodically
2 issues Dear Colleague letters. On a number of occa-
3 sions, these letters set forth the Department of Edu-
4 cation’s interpretation of the statutory and regu-
5 latory obligations of schools under title VI.

6 (6) On September 13, 2004, the Department of
7 Education issued a Dear Colleague letter regarding
8 the obligations of schools (including colleges) under
9 title VI to address incidents involving religious dis-
10 crimination. The 2004 letter specifically notes that
11 “since the attacks of September 11, 2001, OCR has
12 received complaints of race or national origin harass-
13 ment commingled with aspects of religious discrimi-
14 nation against Arab Muslim, Sikh, and Jewish stu-
15 dents.”.

16 (7) An October 26, 2010 Dear Colleague letter
17 issued by the Department of Education stated,
18 “While Title VI does not cover discrimination based
19 solely on religion, groups that face discrimination on
20 the basis of actual or perceived shared ancestry or
21 ethnic characteristics may not be denied protection
22 under Title VI on the ground that they also share
23 a common faith. These principles apply not just to
24 Jewish students, but also to students from any dis-
25 crete religious group that shares, or is perceived to

1 share, ancestry or ethnic characteristics (e.g., Mus-
2 lims or Sikhs).”.

3 (8) Anti-Semitism remains a persistent, dis-
4 turbing problem in elementary and secondary schools
5 and on college campuses.

6 (9) Jewish students are being threatened, har-
7 assed, or intimidated in their schools (including on
8 their campuses) on the basis of their shared ancestry
9 or ethnic characteristics including through harassing
10 conduct that creates a hostile environment so severe,
11 pervasive, or persistent so as to interfere with or
12 limit some students’ ability to participate in or ben-
13 efit from the services, activities, or opportunities of-
14 fered by schools.

15 (10) The 2010 Dear Colleague letter cautioned
16 schools that they “must take prompt and effective
17 steps reasonably calculated to end the harassment,
18 eliminate any hostile environment, and its effects,
19 and prevent the harassment from recurring,” but
20 did not provide guidance on current manifestation of
21 anti-Semitism, including discriminatory anti-Semitic
22 conduct that is couched as anti-Israel or anti-Zion-
23 ist.

24 (11) The definition and examples referred to in
25 paragraphs (1) and (2) of section 3 have been valu-

1 able tools to help identify contemporary manifesta-
2 tions of anti-Semitism, and include useful examples
3 of discriminatory anti-Israel conduct that crosses the
4 line into anti-Semitism.

5 (12) Awareness of this definition of anti-Semi-
6 tism will increase understanding of the parameters
7 of contemporary anti-Jewish conduct and will assist
8 the Department of Education in determining wheth-
9 er an investigation of anti-Semitism under title VI
10 is warranted.

11 **SEC. 3. DEFINITIONS.**

12 For purposes of this Act, the term “definition of anti-
13 Semitism”—

14 (1) includes the definition of anti-Semitism set
15 forth by the Special Envoy to Monitor and Combat
16 Anti-Semitism of the Department of State in the
17 Fact Sheet issued on June 8, 2010, as adapted from
18 the Working Definition of Anti-Semitism of the Eu-
19 ropean Monitoring Center on Racism and Xeno-
20 phobia (now known as the European Union Agency
21 for Fundamental Rights); and

22 (2) includes the examples set forth under the
23 headings “Contemporary Examples of Anti-Semi-
24 tism” and “What is Anti-Semitism Relative to
25 Israel?” of the Fact Sheet.

1 **SEC. 4. RULE OF CONSTRUCTION FOR TITLE VI OF THE**
2 **CIVIL RIGHTS ACT OF 1964.**

3 In reviewing, investigating, or deciding whether there
4 has been a violation of title VI of the Civil Rights Act
5 of 1964 (42 U.S.C. 2000d et seq.) on the basis of race,
6 color, or national origin, based on an individual's actual
7 or perceived shared Jewish ancestry or Jewish ethnic char-
8 acteristics, the Department of Education shall take into
9 consideration the definition of anti-Semitism as part of the
10 Department's assessment of whether the alleged practice
11 was motivated by anti-Semitic intent.

12 **SEC. 5. CONSTITUTIONAL PROTECTIONS.**

13 Nothing in this Act, or an amendment made by this
14 Act, shall be construed to diminish or infringe upon any
15 right protected under the First Amendment to the Con-
16 stitution of the United States.

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