



**Testimony for the Senate Education, Energy, and the
Environment Committee**

March 5, 2025

**SB 847 – Higher Education – Antihate and Antidiscrimination
Policies and Workgroup (Maryland Campus Accountability and
Modernization to Protect Students Act)**

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UNFAVORABLE

The ACLU of Maryland opposes SB 847, which provides certain requirements for policies this bill mandates institutions of higher education to adopt in relation to racial, ethnic, and religious violence, harassment, and intimidation. This includes policies governing an institution's response to related complaints and incidents; the required regulation and monitoring of expressive activity; the mandated tracking and reporting of related incidents, complaints, and responses; and the development of related missions and programming. This bill also establishes grant funding to promote intergroup and interfaith outreach, and creates the Workgroup on Combating Antisemitism, Islamophobia, and Other Forms of Racial, Ethnic, and Religious Violence, Harassment, and Intimidation to develop and recommend related guidance.

Although we recognize and share in the goal of protecting students from discrimination, bigotry, and bias-driven harm, we are critically concerned that certain provisions could work against this intent by opening the door to overbroad restrictions on expressive activity, and by allowing enforcement to be potentially skewed by differing viewpoints on the undefined categories of "Islamophobia" and "antisemitism" singled out as the primary focuses of the workgroup convened under this bill.

Many of the institutions of higher education subject to this bill already maintain and enforce similar provisions under their own policies, such as the University of Maryland's (UMD's) currently posted "Guidelines

on Demonstrations and Leafletting.”¹ While the security and procedural reasons for such policies can certainly be important, their language and application must still not infringe on the right to freely engage in the exchange of ideas that undergirds higher learning and campus life, as guaranteed by the First Amendment of the U.S. Constitution and Article 40 of the Maryland Declaration of Rights.

Both history and recent events have shown that serious harm can result where such provisions are improper, misapplied or used to unjustly censor speech and other expressive activity, as demonstrated by the preliminary injunction recently ordered against UMD-College Park in a pending case by Students for Justice in Palestine challenging the university’s revocation of the group’s approval to host an interfaith vigil on October 7th mourning ongoing genocide in Gaza, and its ultimate ban of all student-organized events on campus that day.²

By generally requiring higher education institutions to regulate the time, place, and manner of seemingly all expressive activities, including the required adoption of provisions related to safety and disruptions, SB 847 provides an overbroad foundation for resulting policies that could risk depriving students, faculty members, administrators, and employees of the basic freedoms to associate and express their beliefs. The severe harm of this risk is embedded in the direct and prior restraints on any expressive conduct that could very likely result and constrain robust community interactions, discourse, and other forms of expression essential to maintaining an inclusive and well-informed academic environment.

The likelihood of this risk manifesting is compounded by the bill’s lack of safeguards against unconstitutional content or viewpoint-based restrictions, as well as the chilling impact of the imposed pathway for law enforcement escalations and required designation of a monitoring administrator. Within the broader context of this bill’s enforcement per recommendations prescribed by the established “Workgroup on Combatting Antisemitism, Islamophobia, and Other Forms of Racial, Ethnic, and Religious Violence, Harassment, and Intimidation,” there is a concern that resulting speech restrictions and the bill’s other disciplinary, reporting, security, and grant related measures could be

¹ University of Maryland, Guidelines for Demonstrations & Leafletting, Univ. of Md. Policies, <https://policies.umd.edu/guidelines-demonstrations-leafletting> (last visited Mar. 3, 2025).

² *University of Maryland Students for Justice in Palestine v. Board of Regents*, No. 8:24-cv-02683-TDC (D. Md. S. Div. Oct. 1, 2024).

susceptible to inequitable or unwarranted enforcement against or in favor of certain groups whose legitimate perspectives diverge on the politically-wrought issues of Islamophobia and antisemitism.

While Islamophobia and antisemitism are both extremely critical issue areas to address, highlighting these particular concerns as the workgroup's presumptive focus above other racial, ethnic, or religious concerns in higher education may entangle the state in a worrisome precedent. Without any provisions defining this politically-loaded terminology, the enforcement of this bill per recommendations flowing from the workgroup's subjective understanding of what constitutes "Islamophobic" or "antisemitic" conduct would likely result in a virtual minefield of free speech headaches and dilemmas.

However, the process of resolving this concern by applying a uniform definition would be complex to say the least, as elevating particular definitions above others could just open to the door to even further unconstitutional constraints against expressing unpopular, but not unlawful, ideas. If the overall intent of this bill is to ensure higher education communities are safe from the harm of discriminatory, bigoted, and bias-driven conduct, protection from the danger of selective enforcement and censorship must be equally prioritized. Providing strong and well-balanced safeguards against the unjustly targeted or mis-application of restrictions on expression is essential to advancing this goal, but is unfortunately not achieved by SB 847 as currently drafted.

For the foregoing reasons, the ACLU of Maryland urges an unfavorable report on SB 847.