Written by **Warren Mass** on March 17, 2017

Bills in New York State Legislature Target Free Speech

One bill currently in the New York State legislature would fine individuals or website or search engine operators for refusing to remove online material deemed to be "inaccurate," "irrelevant," "inadequate," or "excessive." Three other bills already passed by the state senate would, among other things, deny funding to student groups at public universities who advocate for Boycott, Divestment, and Sanctions (BDS) of Israel and other U.S. allied nations.

The first bill — A05323 and S04561, the "Right to be forgotten act" — would require any individual (including "all search engines, indexers, publishers and any other persons") to remove, upon the request of any individual, information, articles, identifying information, and other content about such individual, as well as links, that is "inaccurate," "irrelevant," "inadequate," or "excessive."

The bill includes this vague and arbitrary definition of what constitutes "inaccurate," "irrelevant," "inadequate," or "excessive" information:

> For purposes of this section, "inaccurate", "irrelevant", "inadequate", or "excessive" shall mean content, which after a significant lapse in time from its first publication, is no longer material to current public debate or discourse, especially when considered in light of the financial, reputational and/or demonstrable other harm that the information, article or other content is causing to the requester's professional, financial, reputational or other interest, with the exception of content related to convicted felonies, legal matters relating to violence, or a matter that is of significant current public interest, and as to which the requester's role with regard to the matter is central and substantial.

Violators who do not comply and take down the objectionable information within 30 days after receiving a removal request will be subject to a fine equal to the "actual monetary loss" for each violation, or statutory damages in the amount of $250 for each day of the violation after the removal request, whichever is greater. Additionally, notes the bill, the party who does not honor the removal request will have to pay to the requester "any and all costs and attorney's fees incurred while enforcing his or her rights under this act."

Since determining the actual monetary loss of the requester would be difficult outside of a court of law, this law obviously encourages litigation — hence its reference to the recovery of attorney's fees.

The law also opens a Pandora's Box of potential litigation by holding liable not only the individual originally posting the objectionable information, but also all site managers of "all articles and other content that either is presently being made available on the internet, or other widely used computer-based network, program or service, regardless of when such articles and other content was first so or otherwise posted, published or otherwise made available."

Anyone who frequently uses online social networking sites understands how readily users share material from one user's page to another's. And writers who publish online frequently cite material

from other writers and include links to other articles within their own. This means that once "objectionable" material has been shared or copied onto other sites, each and every other site manager becomes liable to be fined if they do not remove it. If passed, this law would create a legal nightmare.

The "Right to be forgotten act" has not been acted on, and if common sense prevails, it never will be. However, three other bills already passed by the New York State Senate would also attack free speech. They would, respectively, 1): deny funding to student groups at public universities who advocate for "Boycott, Divestment, and Sanctions (BDS) of Israel and American allied nations; 2): deny public universities from using state money to fund membership in, or travel and lodging for a meeting of, an academic association that boycotts Israel; and, 3): create a blacklist to deny state contracts to and investment in individuals, organizations, and businesses that boycott "American allied nations."

A commentary on these bills posted by The Bill of Rights Defense Committee/Defending Dissent Foundation serves to make clear the distinction between personal or partisan positions on political or foreign policy issues and the fundamental right to freedom of speech. It notes:

> The bills specifically target critics of Israel's policies toward Palestinians. While as a civil liberties organization we take no position on the Israel-Palestine conflict, we recognize that the speech targeted by these bills is exactly what the First Amendment is designed to protect. Bills that attack the right to protest impact all of us adversely.

The group's post then continues by summarizing the three individual bills:

S.2493 –Would deny funding to student groups at public universities who advocate for "Boycott, Divestment, and Sanctions (BDS) of Israel and American allied nations…"

S.4837–Would deny public universities from using state money to fund membership in, or travel and lodging for a meeting of, an academic association that boycotts Israel.

S.2492–Would create a blacklist to deny state contracts to and investment in individuals, organizations, and businesses that boycott "American allied nations."

When we read the rest of S.2492, we find that "allied nations" means many nations besides Israel. It includes all NATO member nations, any country that was a signer of SEATO in 1954, any country other than Venezuela that is a signer of the Rio Treaty of 1947, and the individual nations (besides Israel) of Ireland, Japan, and the Republic of Korea (South Korea).

Considering the large number of nations included in the above definition, and the many possible policies all of these nations might take on a number of issues, some of which an American might approve of and some of which an American might quite legitimately, in good conscience, disapprove of, the proposed bill would most certainly constitute a deterrent to freedom of speech.

Continuing, The Bill of Rights Defense Committee post observes:

> The Supreme Court has explicitly stated boycotts for political, economic, and social change are protected political speech under the First Amendment. The Supreme Court has also ruled that the state cannot deny public benefits based on individuals or organizations exercise of free speech rights. Courts across the country have also continuously found that public universities cannot deny funding or other resources to student groups, because of their political point of view.

Another article published by Breitbart last June about a predecessor to S. 2493 introduced in the New York legislature during last year's session questions the constitutionality of that legislation, which in addition to naming boycotts of allied nations, also included boycotts against "a person or group based

on race, class, gender, nationality, ethnic origin or religion" as grounds for withholding funding. The article stated:

> The bill is potentially a violation of the 1st Amendment, as universities must be consistently neutral when it comes to funding student groups. The *Washington Post* notes, "In a series of decisions, [the Supreme] Court has emphasized that the First Amendment generally precludes public universities from denying student organizations access to school-sponsored forums because of the groups' viewpoints."
>
> As terms such as discrimination, intolerance, and hate speech are subjective and open to interpretation, the universities would be actively engaging in viewpoint discrimination.

Self-identified "liberals" are fond of citing "academic freedom" as a principle guaranteeing that all viewpoints should be allowed to be freely expressed on our nation's campuses. However, in reality, anyone attempting to express any viewpoint other than whatever the current liberal cause *du jour* is will quickly find that freedom of expression does not apply to him or her.