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Re: Unconstitutional Use of Office and Resources Sponsoring and Promoting Armenian Genocide Scholarship Contest to Coerce Facebook to Censor Views or Content Protected by the First Amendment Disputing Armenian Genocide Allegations Which Have Never Been Proven in a Court of Law

Dear Superintendent Thurmond and California Armenian Legislative Caucus Members:

The United States Supreme Court reminded lawmakers and government officials in *Lane v. Wilson*, 307 U.S. 268, 275 (1939) that the Constitution forbids both simple-minded and sophisticated violations.

The California Armenian Legislative Caucus and Department of Education have chosen the latter course and should immediately cease and desist.

The Caucus and the Department are brandishing their offices and resources to attempt to coerce Facebook to censor all viewpoints or content inconsistent with Armenian Genocide allegations despite their protection under the First Amendment. (The allegations have never been adjudicated by any court—an indisputable fact acknowledged by the European Court of Human Rights in *Perincek v. Switzerland* (October 15, 2015).

The attempted censorship would ban the views of such credentialed and renowned scholars as Princeton Professor Bernard Lewis, Guenter Lewy of the University of Massachusetts, Justin McCarthy of the University of Louisville, and Stanford Shaw of U.C.L.A. Indeed, the hoped-for censorship would ban the opinion of the European Court of Human Rights in *Perincek v. Switzerland* because it disputes that an Armenian Genocide has ever been proven. Among other things, the opinion notes:

“[T]he question whether the events that took place in 1915 and subsequent years may be characterized as ‘genocide’ is of considerable interest to the public...[I]t is even doubtful that there can be a ‘general consensus,’ particularly among academics, about such events as those at issue in this case, given that historical research is by definition subject to controversy and dispute and does not readily lend itself to definitive conclusions or the assertion of objective and absolute truths.”

It is inarguable that if the California legislature enacted a law or the Department of Education promulgated a decree compelling Facebook to remove any content denying Armenian Genocide allegations, the law or decree would violate freedom of speech. The United States Supreme Court has repeatedly held that Government discrimination against speech based on viewpoint is a per se violation of the First Amendment. *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019); *Rosenberger v. Rector and Visitors University of Virginia*, 515 U.S. 819 (1995); *Lamb’s Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993).

The Caucus and the Department are seeking to accomplish indirectly through their sponsorship and promotion of the hate-inspired Armenian Genocide Scholarship Contest Facebook’s censorship of views or content that disputes the unproven Armenian Genocide narrative. The Caucus’ Scholarship Contest offers California’s millions of high school students (grades 9 to 12) a chance for scholarships of \$1,000, \$750, and \$500, for essays to Facebook’s Mark Zuckerberg urging that he decree such censorship. The Scholarship Contest aims to give birth to a California high school student megaphone clamoring for Zuckerberg to censor on behalf of the Caucus and Department views or content regarding Armenian Genocide allegation which they find disagreeable.

This transparent endeavor by organs of the California government to coerce Facebook through the voices of over 2 million high school students to censor speech protected by the First Amendment is flagrantly unconstitutional. Government exhortations to private parties to discriminate constitute state action subject to constitutional prohibitions or limitations, especially when accompanied by veiled threats to retaliate if compliance is not forthcoming. Here, the California Department of Education could block access to Facebook on all school computers. It could encourage students to boycott Facebook if it declined to censor all views and contents contrary to Armenian Genocide allegations. And Facebook could be blacklisted by the California Department of Education if it attempted to expand its business into the classroom.

In *Lombard v. Louisiana*, 373 U.S. 267 (1963), the Mayor of New Orleans was held to have coerced a restaurant manager into seeking removal of sit-in demonstrators protesting racial segregation by stating:

“I have today directed the superintendent of police that no additional sit-in demonstrations...will be permitted...regardless of the avowed purpose or intent of the participants...”

It is my determination that the community interest, the public safety, and the economic welfare of the city require that such demonstrations cease and that henceforth they be prohibited by the police department.”

The United States Supreme Court concluded that the Mayor's words were indistinguishable from an ordinance prohibiting Negroes from seeking desegregated service in restaurants (Id. at 273):

“A State, or a city, may act as authoritatively through its executive as through its legislative body. As we interpret the New Orleans city officials' statements, they here determined that the city would not permit Negroes to seek desegregated service in restaurants. Consequently, the city must be treated exactly as if it had an ordinance prohibiting such conduct.”

In *Bantam Books v. Sullivan*, 372 U.S. 58 (1963), the United States Supreme Court condemned informal government suppression of allegedly immoral books through intimidation tactics analogous to the Caucus' Scholarship Contest as a transgression of free speech. In that case, a Rhode Island Commission to Encourage Morality in Youth notified book distributors and retailers of allegedly objectionable magazines and books irrespective of their protection under First Amendment protection, thanked them in advance for their cooperation, and alerted them of its duty to recommend to the Attorney General prosecution of obscenity. The predictable result of the Commission's notices was the suppression of the sale and circulation of the books listed as immoral despite the absence of any finding of illegality.

The Court explained (Id. at 68):

“What Rhode Island has done...has been to subject the distribution of publications to a system of prior administrative restraints, since the Commission is not a judicial body and its decisions to list particular publications as objectionable do not follow judicial determinations that such publications may lawfully be banned.”

The Caucus' hate-inspired Scholarship Contest is comparable. It seeks to intimate Facebook into censoring speech that diverges from the Armenian Genocide narrative notwithstanding the absence of any judicial determination that the speech may lawfully be banned.

The Scholarship Contest should further be abandoned because of its predictable encouragement of violence or bullying against Turkish Americans. Harry Sassounian, for instance, explained that he was spurred to assassinate Turkish counsel general Kemal Arikan in Los Angeles because inculcated with the conviction at age 19 that Turkey was guilty of genocide against Armenians and its refusal to confess to the unproved crime could only be attributable to anti-Armenian malevolence.

The Scholarship Contest seeks to inculcate assassin Harry Sassounian's warped and murderous thinking into the minds of millions of impressionable and hormone-driven high school students. It seeks to inculcate precisely the same view of Armenian Genocide allegations that provoked Sassounian to assassinate Kemal Arikan. There may be more wicked undertakings, but if there are, they do not readily come to mind.

The Caucus and the Department of Education should recognize the combustible dynamics within the Armenian American community engendered by the Armenian Genocide narrative. Neither Armenian American organizations nor individual Armenians have openly repudiated or disowned twin Armenian terrorist organizations with a grisly history of violence against Turkey, Turkish officials, or Turkish Americans to avenge an alleged Armenian Genocide: the Armenian Secret Army for the Liberation of Armenia and the Justice Commandos of the Armenian Genocide.

We would welcome an opportunity to discuss this letter with the Department and Caucus to devise constructive pedagogically sound protocols to educating California's high school students about the Armenian Genocide narrative.

Sincerely,

/s/Bruce Fein

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