



Rutgers Law School
Center for Security, Race and Rights

Threats to Free Speech and Palestinian Civil Rights: The IHRA Definition of Antisemitism

ISSUE BRIEF

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“A sane country does not wage war against civilians, does not kill babies as a pastime, and does not engage in mass population displacement,” stated Yair Golan, former deputy chief of staff of the Israeli army.¹ In a May 2025 radio interview, Golan publicly criticized Israel’s collective punishment of Palestinian civilians in Gaza. Comparing Israel to Apartheid South Africa, Golan further noted that “the Jewish people, who have endured persecution, pogroms, and genocides throughout our history ... are the ones now taking actions that are utterly unconscionable.”²

Israeli government members immediately lashed out at Golan, with Defense Minister Israel Katz describing Golan’s words, especially about Israel killing Palestinian babies, as a “vile blood libel against our regular and reserve soldiers.”³ Golan’s assertion, however, is based on well-documented figures: by early September 2025, the Gaza Health Ministry reported 63,746 total Palestinian fatalities, while Save the Children confirmed that more than 20,000 children had been killed since October 2023.⁴ Still, Israel’s former top military officer was subject to the absurd allegation that he is an antisemite because Israel and its supporters frequently weaponize antisemitism in bad faith to silence criticism of Israeli policies and violence against Palestinians.

Among the most common politicized legal tools for shielding Israel from criticism is the IHRA working definition of antisemitism. Among its examples of antisemitism is the use of “the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis,” which is then deployed to mischaracterize an allegation that Israel kills Palestinians as an antisemitic blood libel.⁵ Similarly, another example of antisemitism is “claiming that the existence of a State of Israel is a racist endeavor,” which renders academic analysis or public speech showing that Zionism is a European settler colonial project or depicting Israel as a Jewish supremacist state as a form of antisemitism.⁶

The desired outcome is clear: censor and punish the humanization of Palestinians through academic research, political analysis, or public condemnation of Israeli practices, policies, and laws.

In the United States, Israel’s supporters actively utilize the IHRA working definition of antisemitism to intimidate and attack individuals and institutions that defend the equality of Palestinians, challenge U.S. foreign policy toward Israel and Palestinians and criticize the foreign state of Israel. That a sizeable number of Jews in the US, as in Israel, also face spurious charges of antisemitism when they criticize Israel lays bare the lie: the IHRA working definition of antisemitism aims not to protect Jews, but to shield Israel from criticism and accountability under international law by suppressing free speech and academic freedom.

The past two years have exposed the dangerous outcome of such content and viewpoint-based suppression of speech, activism, and academic work: systematic violations of First Amendment protected free speech rights and the freedom to study, write, and teach about Israel’s violence against Palestinians on American university campuses.

The “New Antisemitism” and Settler Colonial Studies

Decades of scholarship by Palestinians and anti-Zionist Jews starting in the 1960s converged in the 1990s with the trailblazing work by Indigenous scholars to contribute to the growth of settler colonial studies in academic research on the United States, Australia, Canada and Israel.⁷ The depiction of Israel as a settler colonial project threatens to undermine its founding national myths by exposing it as a structurally violent state from its inception based on Zionism as a racist, Jewish supremacist ideology.

In the United States, the Anti-Defamation League (ADL) responded to settler colonial studies by initiating a political project in 1974 it coined “The New Antisemitism,” which conflated criticism of Israel with antisemitism as a way to delegitimize academics, politicians, and activists engaged in such critiques.⁸ It was only in the 1990s, however, that consecutive Israeli governments began to refocus the international discourse about antisemitism on the idea that anti-Zionism is antisemitism. British Jewish writer Antony Lerman argues that this “new orthodoxy” in the last three decades has reproduced “an antisemitic construct, because it treats being Jewish as a singularity: ‘all Jews are the same.’”⁹ Indeed, antisemites have always aimed their ideas, policies, and violence against “the Jews” according to the way they, the antisemites, view all Jews. In this case, the casting of all Jews as Zionists, or the conflation of Judaism with Zionism, reproduces the antisemitic idea that Jews are not loyal to their states of citizenship and residency.

The United Nations World Conference against Racism in Durban, South Africa in 2001 was a watershed moment in the emergence of the “new antisemitism” orthodoxy, due to the failed attempt to pass an official declaration at the conference on Zionism as a form of racism.¹⁰ The associated global grassroots effort to hold Israel accountable for various forms of mass violence against Palestinians, ranging from permanent military occupation, forced displacement, and other violations of international law in the West Bank and the Gaza strip to systemic discrimination against Palestinians with Israeli citizenship, triggered a decade of intense diplomatic work by Israel, in coordination with major Jewish organizations such as the American Jewish Committee (AJC) and the ADL.

The objective was no secret: censor speech and punish researchers who apply the settler colonial framework to Israel. Israel and its supporters thus aimed to characterize any critique of Israel exposing racist policies, practices, and politics that legally, socially, and economically subordinate indigenous Palestinians to an inferior status to Jews as a manifestation of antisemitism, legally and politically.

The tool for imposing such political orthodoxy became the “working definition of antisemitism,” formulated primarily by American Jewish lawyer Kenneth Stern when he directed the antisemitism desk at the AJC and published in 2005 on the website of the European Union Monitoring Centre on Racism and Xenophobia (EUMC). The new definition was then used, cited, recommended, or adopted by various government and non-government organizations in North America and Europe, including the US State Department’s Special Envoy to Monitor and Combat Anti-Semitism in 2010

and the International Holocaust Remembrance Alliance (IHRA) in its meeting in Bucharest, Romania in 2016.¹¹

Once IHRA adopted the working definition, Zionist organizations immediately proclaimed it as the purported gold standard for combating antisemitism in the United States. Their goal was not to stop antisemitism, but rather to stop political criticism of Israel as a settler colonial or racist state, and in turn defend Israel's dehumanization and violent oppression of the indigenous Palestinian population through its laws, practices, and policies.

The International Holocaust Remembrance Alliance (IHRA)

The International Holocaust Remembrance Alliance (IHRA), established in 1998, is an important organization of global Holocaust memory, consisting of delegations from its 35 member states, including the United States and Israel. Each delegation includes scholars, educators, and representatives of museums and memorials, but decision-making lies in the hands of the diplomats who head the delegations. Each year, one of the member states volunteers to hold the IHRA Presidency and host the organization's meetings. Israel is the current holder of the IHRA Presidency, from March 2025 to February 2026, and Dani Dayan, the Chairperson of Yad Vashem, Israel's official Holocaust memorial institute, serves as the current IHRA Chair. Significantly, Dayan had served from 2007 to 2013 as the chairperson of the Yesha Council, the umbrella organization of Jewish settlers in the Israeli-occupied West Bank.¹²

The IHRA's founding document – the Stockholm Declaration (2000) – begins with a description of the Holocaust as an event that “fundamentally challenged the foundations of civilization. The unprecedented character of the Holocaust will always hold universal meaning.” This formulation of the Holocaust as unique – “unprecedented” and possessing “universal meaning” – bestows uniqueness also on antisemitism, perceived as the key cause of the Holocaust, and on Israel, perceived as the post-Holocaust response, the state of Jewish survivors.

Ample scholarship has addressed the causes of the Holocaust, the complexities of the genocide as it unfolded during World War II, and the establishment of Israel in ways that significantly challenge the image of antisemitism, the Holocaust, and Israel as unique phenomena that led from one to the other.¹³ This powerful image of uniqueness has nevertheless persisted, certainly beyond academia, with far-reaching implications in international politics and law. One such implication is precisely the idea that any criticism of Israel can only be a manifestation of antisemitism, and that antisemitism deserves exceptional attention, including its own separate definition, that other forms of racism do not.¹⁴

The IHRA Working Definition of Antisemitism

The IHRA Working Definition of Antisemitism (IHRA definition) offers a vague definition:

“Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.”¹⁵

This is not a definition at all. Rather, it functions, together with the examples attached to it, as an open-ended invitation for legislators, university administrators, government officials, and others to arbitrarily define antisemitism pursuant to their political objectives, personal agendas, and economic incentives.¹⁶

Indeed, the IHRA definition includes 11 examples that constitute an integral part of the document and have been weaponized politically to censor speech, quash academic freedom, and engage in anti-Palestinian racism.

Tellingly, seven of the eleven examples invoke the state of Israel:

1. Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
2. Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.
3. Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.
4. Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust).
5. Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
6. Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.
7. Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor.
8. Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.

9. Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
10. Drawing comparisons of contemporary Israeli policy to that of the Nazis.
11. Holding Jews collectively responsible for actions of the state of Israel.

The heightened focus on Israel effectively conflates all Jews with a foreign state, thereby accomplishing two primary goals of the Israeli government and its supporters:

- 1) Deny Palestinians the civil right to narrate their own history, lived experiences, culture, and politics, and in turn legalize anti-Palestinian racism; and
- 2) Coercively impose political orthodoxy in speech, research, and lawful collective action by conflating antisemitism with criticism of Zionism and Israel, and in turn legalize the targeting of Jews who express criticism of Israeli policies and violence against Palestinian, especially anti-Zionist Jews.

Legalizing Anti-Palestinian Racism

In response to an alarming rise of discrimination against Palestinians in North America for decades, the Arab Canadian Lawyers Association (ACLA) proposed in 2022 a definition for anti-Palestinian racism, which has also been adopted by the Institute for the Understanding of Anti-Palestinian Racism.¹⁷ Anti-Palestinian racism is “a form of racism that silences, excludes, erases, stereotypes, defames or dehumanizes Palestinians or their narratives.”¹⁸

Examples of anti-Palestinian racism include:

1. denying the Nakba and justifying violence against Palestinians;
2. failing to acknowledge Palestinians as an Indigenous people with a collective identity, belonging and rights in relation to occupied and historic Palestine;
3. erasing the human rights and equal dignity and worth of Palestinians;
4. excluding or pressuring others to exclude Palestinian perspectives, Palestinians and their allies;
5. defaming Palestinians and their allies with slander such as being inherently antisemitic, a terrorist threat/sympathizer or opposed to democratic values.¹⁹

Numerous cases demonstrate how the IHRA definition has been weaponized in the pro-Israeli political project of excluding the perspectives and experiences of Palestinians in the US, Canada, and Europe in the media, universities, schools, and government policies.²⁰

Two examples listed in the IHRA definition play a particularly central role in legalizing this anti-Palestinian political agenda.

IHRA Definition Example 7: “denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor.”

As extensive research by Palestinians, Israeli Jews, and others has shown, the Nakba stemmed from a settler-colonial vision buttressed by a racist view of Palestinians that became structural in Israel from its founding.²¹ According to the IHRA definition, then, any discussion of the Nakba is antisemitic, because it exposes the racist nature of the establishment of Israel. The IHRA definition thus serves as a tool of Nakba denial that defames Palestinians as inherently antisemitic for researching, writing, teaching, and speaking about their own history and experiences of systematic human rights violations by Israel.²²

Erasure of Palestinian experiences before and after the establishment of Israel is a clear manifestation of anti-Palestinian racism. Legislative bills that adopt the IHRA definition thus codify anti-Palestinian racism into law under the false pretense of anti-discrimination; whereas the real objective of such laws is to deny Palestinians, scholars of diverse identities including Jews, and American citizens their constitutional rights to conduct research, teach, speak, and engage in political advocacy that criticize Israel as a racist settler colonial state without fear of punishment by the state.

Notably, Israel openly announced its official policy of structural racism in the 2018 Jewish Nation-State Basic Law. Article 1(c) of this law (basic laws in Israel replace a constitution) relegates Israeli citizens who are not Jews to second-class status in stating:

The realization of the right to self-determination in the State of Israel is exclusive to the Jewish people.²³

The law primarily targets Palestinians, who comprise approximately twenty percent of Israel’s citizenry, making it an explicitly anti-democratic law that privileges Jewish identity.²⁴ Moreover, this Israeli law legitimizes anti-Palestinian racism by “failing to acknowledge Palestinians as an Indigenous people with a collective identity.”²⁵

Pointing out the structural racism of any state is a constitutional right of all persons in the United States pursuant to the First Amendment. Codifying the IHRA definition’s viewpoint-based prohibitions into law, therefore, will not withstand judicial scrutiny.²⁶ Outlawing specific criticism of the policies, practices, and laws of a single state – Israel –exposes the real motive of the

proponents of the IHRA definition: protecting Israel from political criticism rather than protecting Jews from discrimination.²⁷

IHRA Definition Example 8: *“Applying double standards by requiring of it [Israel] a behavior not expected or demanded of any other democratic nation.”*

If the denial of the right to self-determination of Jews is antisemitic, as the IHRA definition example 7 states, it follows that the denial of the right to self-determination of any people is a form of racism. Yet according to the IHRA definition, a critique of the 2018 Jewish Nation-State Basic Law’s denial of Palestinian self-determination would also be considered antisemitic. The IHRA definition is thus *not* a mechanism to prevent antisemitic double standards, but a double standard to advance anti-Palestinian racism

Contrary to the language in example 8, the IHRA definition does not treat Israel as “any other democratic nation,” but precisely the opposite: as exceptional. Indeed, by 2016, decades of scholarship had documented systemic racism in other states, including in settler-colonial states such as the United States.²⁸ Americans can legally criticize structural racism in their own country as well as in democracies from France to India, but they cannot make similar criticisms of Israel, according to the IHRA definition, without being antisemitic.

Likewise, Americans have called for prosecution, sanctions, and military interventions against other nations for violations of international law without being accused of racism toward a particular religious, ethnic or racial group. They have demanded an end to foreign aid or boycotting Iran, Yemen, Sudan, and South Africa on account of their racist policies or systematic violations of human rights without facing lawsuits alleging their speech, research, political analysis and activism constitute anti-Muslim, anti-Arab, or anti-White discrimination. In stark contrast, doing the same toward Israel based on its policies, practices, and laws would result in legally sanctioned accusations of antisemitism should the IHRA definition be adopted into law by state legislatures or the federal government.

Ultimately, the IHRA definition turns the struggle against antisemitism on its head: instead of protecting a people – Jews – from exclusionary and violent states, it protects a foreign nation – Israel – from criticism of its exclusion and violence against a people, Palestinians. This political objective also has the perverse outcome of legalizing adverse actions against Jews who criticize Israeli policies, especially anti-Zionist Jews.

A Political Tool to Discriminate Against “Bad Jews”

American Jews can unconditionally support Israel without being accused of dual loyalty, but they cannot criticize Israel without being legally charged with antisemitism if the IHRA definition is codified into law. The conflation of Israel with all Jews that is integral to the IHRA definition creates a double fallacy: it equates criticism of Israel or Zionism with antisemitism and Jewish identity with Zionism.

Rebuking this faulty reasoning, twenty-seven prominent Jewish Studies scholars submitted in June 2025 an amicus brief in Harvard University’s lawsuit against the Trump administration. They explained how this false conflation violates Title VI of the Civil Rights Act because it subjects Jews to harmful stereotypes about what constitutes “authentic” Jewish identity.²⁹ This conflation also ignores the fact that anti-Zionism has been an established Jewish identity since the emergence of Zionism in the late 19th century, as demonstrated in the rich history of anti-Zionist Jewish organizations and political parties.³⁰

The IHRA definition effectively labels anti-Zionist or non-Zionist Jews as “bad Jews” who are thus worthy of discrimination because of how they choose to express their Jewish identity. Specifically, Jews who do not subscribe to Zionism are denied their rights to speak, write, and peaceably advocate in accordance with how they define their identities as Jews. Predictably, such essentialization of Jewish identity has caused unprecedented and ongoing targeting of anti-Zionist Jewish faculty members in colleges and universities across the US.³¹

Among the high profile cases are 1) the failed attempt in 2023 of the Israeli consul for public diplomacy in New York, Yuval Donio-Gideon, to pressure Bard College to cancel the course “Apartheid in Israel-Palestine” by Nathan Thrall, a Jewish American writer who lives in Jerusalem, 2) the University of California-Berkeley’s release in September 2025 of personal information of Jewish American philosopher Judith Butler to the federal government under suspicions of being antisemitic, and 3) the firing in May 2024 of tenured Jewish American anthropologist Maura Finkelstein from Muhlenberg College on account of her speech.³²

Jewish students were also harmed when Northwestern University and the University of California-Los Angeles forced the dismantling of Sukkot (temporary outdoor religious structures) set up by Jewish Voice for Peace in October 2024 to celebrate the Jewish holiday of Sukkot and express solidarity with Palestinians in Gaza.³³ Attacking Jews as Jews and interfering by force in a Jewish religious celebration is clearly antisemitic. Tellingly, the IHRA definition does not include this simple formulation – attacking Jews as Jews – in its pro-Israeli conception of antisemitism.³⁴

For the state of Israel, the conflation of Jews with Zionism serves a key function: Article 6 (b) of the 2018 Jewish Nation-State Basic Law requires that “the State shall act in the Diaspora, to strengthen the affinity between the State and members of the Jewish people.”³⁵ This Israeli state mandate dangerously promotes a common antisemitic stereotype of dual loyalty, that Jews are more loyal to Israel than to their own countries. That this manifestation of antisemitism is also listed in the IHRA definition as Example 6 – “*accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations*” – exposes the internal contradiction within the IHRA definition and gives more reason to reject codifying it into law.

Unconstitutional Viewpoint-Based Regulation of Speech Critical of Israel

Even as a growing number of genocide scholars, international law experts, and major human rights organizations have concluded that Israel has been committing genocide in Gaza since the fall of 2023, unconditional political and military support for Israel remains a bulwark of U.S. foreign policy.³⁶ The policies of Congress, former President Joe Biden, and President Donald Trump maintain pro-Israeli foreign policy in U.S.-Middle East relations that dates back to the 1960s. As more younger Americans vocally demand a change in U.S. policy, proponents of the IHRA definition seek to use it as a legal cudgel to uphold foreign policy orthodoxy.³⁷

The Supreme Court has held that political speech is “at the core of what the First Amendment is designed to protect.”³⁸ Moreover, promoting discussion and debate on issues of public interest – such as US foreign policy toward Palestine and Israel – are critical for “the bringing about of political and social changes desired by the people.”³⁹ As result, codifying the IHRA definition into law through state legislatures or the federal Antisemitism Awareness Act effectively makes speech, political activism, academic research, and teaching that meaningfully challenges U.S. foreign policy toward Israel unlawful. That is, the law would require that the foreign state of Israel be treated as exempt from specific types of criticism in ways not applicable to other countries.

Clearly established Supreme Court precedent holds unconstitutional such viewpoint and content-based regulation of speech and expressive conduct.⁴⁰ Viewpoint discrimination, whether explicitly stated in the law or through a law’s “design” or “operation,” occurs when a law or policy favors or disfavors a particular point of view.⁴¹ Even facially neutral and valid justifications cannot save a law “that is in fact based on the desire to suppress a particular point of view.” A law, regulation or policy that singles out particular speakers or restricts only a particular form of expression may be aimed at suppressing a particular viewpoint.⁴² Similarly, a facially neutral law may be viewpoint-based if, in operation, it restricts or promotes a particular viewpoint.⁴³ The state laws that codify the IHRA definition of antisemitism do just that.

In New Jersey, for example, the proposed General Assembly Bill No. 3558, which seeks to codify the IHRA definition, states that nothing in the law shall be construed to:

“categorize political expression and discourse, academic inquiry, or other forms of speech critical of the State of Israel or its policies as antisemitic *unless such speech includes specific language* or actions defined as antisemitic under this section.

In reviewing, investigating, or deciding whether there has been a violation of any State or federal anti-bias statute, *law enforcement shall take into consideration the definition and examples of antisemitism* as provided for in subsections a. and b. of this section, for the purposes of determining whether the alleged act was motivated by antisemitic intent.” (emphasis added)

Similar to other state laws adopting the IHRA definition of antisemitism, Bill No. 3558 violates the First Amendment of the U.S. Constitution, as well as the New Jersey Constitution,⁴⁴ by imposing legal penalties for viewpoint-based speech.

Regardless of whether one agrees with the speech at issue, a long line of U.S. Supreme Court precedent makes clear that the government may not regulate, censor or otherwise penalize speech based purely on content or viewpoints expressed that fall outside of legally prescribed exceptions.⁴⁵ The exceptions include: 1) speech or expressive conduct that pose a clear and present danger, 2) regulations of speech or expressive conduct that are content and viewpoint neutral, and 3) restrictions on the time, place and manner of the expression of speech or expressive conduct applied without regard to the content or viewpoints.⁴⁶

Likewise, the Antisemitism Awareness Act proposed in Congress seeks to coercively impose pro-Israeli foreign policy orthodoxy through its incorporation of the IHRA definition. The bill passed in the U.S. House of Representatives with a large majority of 320 in favor and 91 opposed in 2023.⁴⁷ When it was introduced in the House by Mike Lawler (Republican-NY) and Jared Moskowitz (Democrat-FL), they encountered an objection from Marjorie Taylor Greene (Republican-GA) that exposed the Antisemitism Awareness Act's viewpoint specific regulation of speech. Greene expressed concern that the bill "could convict Christians of antisemitism for believing the Gospel that says that Jesus was handed over to Herod to be crucified by the Jews."⁴⁸ In addition to subscribing to this antisemitic idea, Greene has also expressed her belief in a world Jewish conspiracy in which "the Jews" use Jewish space lasers to burn the forests in California.⁴⁹

In a remarkable admission of viewpoint discrimination, Representative Lawler responded by reminding his colleagues that the Antisemitism Awareness Act is not designed to target Christians. Rather, he explained that the bill takes aim at university students "hiding behind the conflict between Israel and Hamas and somehow spewing antisemitism."⁵⁰ Worth noting is that many of these university student activists he berates are Jewish.⁵¹ Lawler self-identifies as a practicing Irish Italian Catholic who believes in Jesus and the Gospel,⁵² and his political motivation for proposing the Act demonstrates how supporters of the IHRA definition are not interested in stopping antisemitism, but rather in establishing that certain types of criticism of Israeli policies and practices are antisemitic as a matter of law.⁵³

Passage of the Antisemitism Awareness Act would provide enforcers legal authority to determine which types of criticism are unlawfully antisemitic and which are not, thereby granting them license to engage in unconstitutional viewpoint-based regulation of speech and expressive conduct under the pretext of protecting Jewish safety.

Further exposing the pro-Israeli political motivations behind the Antisemitism Awareness Act, Republicans in the U.S. Senate added a religious freedom exemption to the proposed bill: "Nothing in this Act shall be construed to diminish or infringe upon any right protected under the First Amendment to the Constitution of the United States, including the free exercise of religion." The Congressional record shows that the clause's aim is to protect the rights of Christians to claim that

Jews killed Jesus and continue insisting on other antisemitic falsehoods, while keeping in place the false conflation of Zionism and Israel with Jews.⁵⁴

Such viewpoint-based regulation of speech is patently unconstitutional, making state and federal laws that adopt the IHRA definition of antisemitism fertile ground for litigation by civil liberties advocates.⁵⁵ Accordingly, the New Jersey legislature should reject attempts to codify into law the IHRA definition of antisemitism and instead bolster enforcement of existing anti-discrimination law to equally defend Jewish, Muslim, and Palestinian residents from bias acts, while protecting all Americans' right to peacefully dissent, learn, write, and be civically engaged regardless of viewpoints.

POLICY RECOMMENDATIONS

1. **Reject codification into law or policy of the IHRA Working Definition of Antisemitism.**

The IHRA working definition of antisemitism has no place in law. The analysis presented here makes clear that the IHRA definition reproduces anti-Palestinian racism, exacerbates antisemitism, and serves as a tool of censorship of political speech, academic work, and civic engagement on matters of public importance, including criticism of Israel. A recent letter, organized by the Genocide and Holocaust Studies Crisis Network and signed by more than 1100 scholars – working in all fields, from doctoral students to senior professors, in universities large and small, public and private, around the world – calls for the rejection of the IHRA definition in law or policy.⁵⁶ Furthermore, the original IHRA document explicitly notes it is a “non-legally binding” definition.⁵⁷ That the IHRA definition has nevertheless been weaponized through legislation caused Kenneth Stern, a lead drafter of the text of the definition, to repudiate ongoing legislative efforts to codify it into law.⁵⁸

Existing anti-discrimination laws already protect Jewish people, as well as other minority groups, from discrimination. For that reason, there is no equivalent definition for anti-Muslim racism, anti-Black racism or racism against Indigenous people (to note just a few examples) in any state or federal law. Singling out antisemitism as the only form of racism deserving of a separate definition is not only unnecessary to protect Jews from discrimination, but also may give rise to antisemitic conspiracies about Jews controlling the government.

2. **State legislatures and the U.S. Congress should rely on existing anti-discrimination laws to combat antisemitism, anti-Palestinian racism, and Islamophobia; and adhere to constitutional prohibitions against viewpoint-based regulation of speech.**

State legislatures and the U.S. Congress should reject pending or future legislation that codify the IHRA definition of antisemitism into law.⁵⁹ Existing statutes that adopt the IHRA definition of antisemitism should be amended to remove the definition in adherence to the constitutional prohibition of regulation of speech and expressive conduct based purely on content or viewpoint.⁶⁰

The First Amendment of the U.S. Constitution prohibits the government or public institutions from regulating speech based on content or viewpoint, unless a legally specified exception applies. Three legally prescribed exceptions include 1) speech or expressive conduct that pose a clear and present danger, 2) regulations of speech or expressive conduct that are content and viewpoint neutral, and 3) restrictions on the time, place and manner of the expression of speech or expressive conduct that are viewpoint and content neutral.⁶¹ None of these exceptions protect the laws codifying the IHRA definition from meritorious constitutional challenges.

The federal Antisemitism Awareness Act as well as state laws that adopt the IHRA definition are unconstitutionally prohibiting viewpoints whether explicitly in the law, in its “design” or by “operation,” because these laws favor pro-Israeli points of views while disfavoring views critical or opposed to Israel. That is, these laws intentionally regulate speech or expressive conduct based on the speaker’s content. The U.S. Supreme Court makes it clear that even valid justifications, such as combating antisemitism, cannot save a law “that is in fact based on the desire to suppress a particular point of view.”⁶²

The IHRA definition of antisemitism, if codified into law or enforced as policy by state actors, violates these constitutional prohibitions by imposing a legal penalty for speech and expressive conduct based on viewpoints that are critical of Israel in specific ways and the political ideology of Zionism. Attempts to codify it into law or policy should be rejected. Existing anti-discrimination law is sufficient to allow for the fact-specific and context-based analysis necessary to effectively combat hateful acts.⁶³



Endnotes

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¹ Sam Sokol, *Outrage as Opposition Party Leader Golan Says Israel "Killing Babies as a Hobby" in Gaza*, The Times of Israel (May 20, 2025), <https://www.timesofisrael.com/outrage-as-opposition-party-leader-golan-says-israel-killing-babies-as-a-hobby-in-gaza/> (reporting Yair Golan's interview on Kan radio and subsequent condemnation).

² Astha Rajvanshi, *Ex-Israel General Hits Out at Government for "Killing Babies as a Pastime in Gaza,"* NBC News (July 14, 2023), <https://www.nbcnews.com/world/middle-east/ex-israel-general-warns-gaza-pariah-rcna207615>

³ *Id.*

⁴ World Health Org., *Public Health Situation Analysis – Occupied Palestinian Territory*, at 1 (Sept. 5, 2025), <https://www.who.int/publications/m/item/public-health-situation-analysis---occupied-palestinian-territory-September> (reporting Gaza Health Ministry figures of 63,746 killed and 161,245 injured); Save the Children, *Gaza: 20,000 Children Killed in 23 Months of War – More Than One Child Killed Every Hour*, Save the Children Int'l (Sept. 6, 2025), <https://www.savethechildren.net/news/gaza-20000-children-killed-23-months-war-more-one-child-killed-every-hour> (confirming over 20,000 children killed).

⁵ International Holocaust Remembrance Alliance, *Working Definition of Antisemitism* (2016), <https://holocaustremembrance.com/resources/working-definition-antisemitism>.

⁶ *Id.*

⁷ Areej Sabbagh-Khoury, *Tracing Settler Colonialism: A Genealogy of a Paradigm in the Sociology of Knowledge Production in Israel*, 50 Pol. & Soc'y 44 (2022); Fayeze A. Sayegh, *Zionist Colonialism in Palestine* (Research Ctr. of the Palestine Liberation Org., Beirut 1965); Ze'ev Jabotinsky, *The Iron Wall* (1923), English translation available at Jabotinsky Inst. in Isr., <https://en.jabotinsky.org/archive/search-archive/item/?itemId=158379>; Oren Ziv, 'Copy-paste the West Bank to Gaza': Hundreds Join Gaza Resettlement Event, +972 Mag. (Oct. 22, 2024), <https://www.972mag.com/gaza-israeli-resettlement-event-sukkot/>.

⁸ Benjamin R. Epstein & Arnold Forster, *The New Anti-Semitism* (McGraw-Hill 1974); Marjorie N. Feld, *The Threshold of Dissent: A History of American Jewish Critics of Zionism* 118–19 (SUNY Press 2024).

⁹ Antony Lerman, *Whatever Happened to Antisemitism: Redefinition and the Myth of the "Collective Jew"* ch. 5 (Pluto Press 2022). Lerman served, among other influential positions, as director of the Institute of Jewish Affairs, the research arm of the World Jewish Congress, from 1991 to 1996.

¹⁰ Amos Goldberg, *And You Shall Remember: Five Critical Readings in Holocaust Memory* (in Hebrew) 39–50 (Resling Publ'g 2024) (Isr.).

¹¹ On the complex history of the "working definition of antisemitism" in the first decade of the 21st century, see Lerman, *Whatever Happened to Antisemitism* ch. 6. *supra* note 9.

¹² Int'l Holocaust Remembrance Alliance, *About Us*, <https://holocaustremembrance.com/> (last visited Sept. 15, 2025); Raphael Ahren, *Done Fighting the White House, Settlers' "Foreign Minister" Vies for Knesset Seat*, Times of Israel (Jan. 4, 2015), <https://www.timesofisrael.com/done-fighting-the-white-house-settlers-foreign-minister-vies-for-knesset-seat/>.

¹³ To note just two examples of central scholars in their fields: on the Holocaust, see Christian Gerlach, *The Extermination of the European Jews* (Cambridge Univ. Press 2016); and on the establishment of Israel, see Rashid Khalidi, *The Hundred Years' War on Palestine: A History of Settler Colonialism and Resistance, 1917–2017* (Metropolitan Books 2020).

¹⁴ Anti-discrimination laws in the United States specify race, color, religion, sex, national origin, disability, and age as protected classes. Of the various minority groups that fall within these protected classes, only the definition of antisemitism has been codified into law or by proclamation in over thirty-seven states. See Am. Jewish Comm., *Use of the Working Definition in the U.S.*, <https://www.ajc.org/use-of-the-working-definition-in-the-us> (last visited Sept. 15, 2025).

¹⁵ For the text of the IHRA Working Definition of Antisemitism, see Int'l Holocaust Remembrance Alliance, *Working Definition of Antisemitism*, <https://holocaustremembrance.com/resources/working-definition-antisemitism> (last visited Sept. 15, 2025). There is extensive research criticizing the IHRA Working Definition of Antisemitism from various perspectives. For important recent contributions, see Itamar Mann & Lihi Yona, *Defending Jews from the Definition of Antisemitism*, 71 UCLA L. Rev. 1150 (2024); Neve Gordon, *Antisemitism and Zionism: The Internal Operations of the IHRA Definition*, 34 Middle E. Critique 345 (2024); & Raz Segal & Amos Goldberg, *Antisemitism as a Question in Holocaust Studies, in Antisemitism and the Politics of History* 299 (Scott Ury & Guy Miron eds., Brandeis Univ. Press 2023).

¹⁶ See, e.g., BRISMES/ELSC, *The Adverse Impact of the IHRA Definition of Antisemitism* (Sept., 2023) (reporting UK university complaints alleging criticism of Israel is treated as antisemitism under IHRA examples); *ACLU Condemns House Passage of Dangerous Bill That Would Chill Free Speech* (May 2, 2024) (criticizing the bill for chilling political speech critical of Israel on college campuses); *Harvard Adopts Controversial IHRA Antisemitism Definition*, Middle East Eye (Jan. 22, 2025) (noting backlash over fears that the policy will suppress dissent); Moshe Behar, *The IHRA, Israel, and Antisemitism: Careless Conflations*, Contending Modernities (Mar. 25, 2021) (on UK government pressure to enforce IHRA in universities).

¹⁷ Inst. for Understanding Anti-Palestinian Racism, <https://antipalestinianracism.org/> (last visited Sept. 15, 2025).

¹⁸ Arab-Canadian Lawyers Ass'n, *Anti-Palestinian Racism: Naming, Framing and Manifestations* 14 (Apr. 2022), quoted in Inst. for Understanding Anti-Palestinian Racism, <https://antipalestinianracism.org/> (last visited Sept. 15, 2025).

¹⁹ *Id.*

²⁰ Eur. Legal Support Ctr., *Suppressing Palestinian Rights Advocacy through the IHRA Working Definition of Antisemitism: Violating the Rights to Freedom of Expression and Assembly in the European Union and the UK* (June 2023); Indep. Jewish Voices Can., *IHRA Definition at Work*, <https://www.ijvcanada.org/ihra-definition-at-work/> (updated Mar. 2022) (last visited Sept. 15, 2025); Letter from Ctr. for Constitutional



Rights et al. to U.S. Dep't of Educ., Office for Civil Rights (Jan. 16, 2024), <https://ccrjustice.org/letter-civil-rights-groups-demand-doe-reject-ihra-definition-antisemitism> (calling on DOE to reject the IHRA definition for conflating anti-Zionism and antisemitism and causing anti-Palestinian racism).

²¹ To note just two recent works, one by Palestinian sociologist Areej Sabbagh-Khoury, *Colonizing Palestine: The Zionist Left and the Making of the Palestinian Nakba* (Stan. Univ. Press 2023), and the other by the late Israeli-American historian Alon Confino, *The Nakba and the Zionist Dream of an Ethnonational State*, 95 Hist. Workshop J. 131 (2023).

²² Itamar Mann & Lihi Yona, *Defending Jews from the Definition of Antisemitism*, 71 UCLA L. Rev. 1150, 1175–82 (2024).

²³ Basic Law: Israel – The Nation State of the Jewish People, State of Isr., unofficial English translation, <https://main.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawNationState.pdf> (last visited Sept. 15, 2025). For an important critique, see Al-Haq: Defending Human Rights, *Factsheet: Israel's "Jewish Nation-State Law" and the Occupied Palestinian Territory* (Jan. 23, 2019), <https://www.alhaq.org/advocacy/6115.html> (last visited Sept. 15, 2025).

²⁴ Council on Foreign Relations, *What to Know About the Arab Citizens of Israel*, <https://www.cfr.org/background/what-know-about-arab-citizens-israel> (last updated May 12, 2021) (last visited Sept. 15, 2025).

²⁵ Dania Majid, *Anti-Palestinian Racism: Naming, Framing and Manifestations*, Arab Canadian Lawyers Ass'n, 2022 CanLIIDocs 4618, ¶ <https://canlii.ca/t/7n8cn> (last visited Sept. 15, 2025).

²⁶ See notes 39 to 47, *infra*.

²⁷ ACLU, *Letter to Co-Sponsors of Proposed American Bar Association Resolution 514 on Antisemitism* (Jan. 19, 2023), <https://www.aclu.org/documents/letter-co-sponsors-proposed-american-bar-association-resolution-514-antisemitism> (forty-two legal and civil rights organizations signed a letter expressing strong objection to the reference to the “International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism”).

²⁸ The year 2016 saw, in fact, the publication of several important books on structural racism in the United States, including Ibram X. Kendi, *Stamped from the Beginning: The Definitive History of Racist Ideas in America* (Bold Type Books 2016).

²⁹ Barry Trachtenberg, Victor Silverman, Atalia Omer, Raz Segal, Rebecca T. Alpert & Judith Butler, *Harvard Appears to Think All Jews Support Israel. That Is Discriminatory*, The Guardian (June 12, 2025), <https://www.theguardian.com/commentisfree/2025/jun/12/harvard-jews-srael-discriminatory>.

³⁰ Yakov M. Rabkin, *A Threat from Within: A Century of Jewish Opposition to Zionism* (Zed Books 2006); August Grabski ed., *Rebels Against Zion: Studies on the Jewish Left Anti-Zionism* (Żydowski Instytut Historyczny 2011).

³¹ Sean O'Neill, *Anti-Zionism Protected Under Equality Law, Judge Rules*, The Times (Mar. 7, 2024), <https://www.thetimes.co.uk/article/anti-zionism-protected-under-equality-law-judge-rules-7zsc630d>.

³² Chris McGreal, *Israeli Diplomat Pressured US College to Drop Course on 'Apartheid' Debate*, The Guardian (Nov. 8, 2023), <https://www.theguardian.com/us-news/2023/nov/08/israeli-diplomat-bard-college-apartheid-debate>; Sarah Viren, *A Professor Was Fired for Her Politics. Is That the Future of Academia?*, N.Y. Times (June 6, 2025), <https://www.nytimes.com/2025/06/06/magazine/academic-freedom-politics.html>; Sam Levin, *UC Berkeley Shares 160 Names With Trump Administration in 'McCarthy Era' Move*, The Guardian (Sept. 12, 2025), <https://www.theguardian.com/us-news/2025/sep/12/uc-berkeley-trump-administration-antisemitism>.

³³ See Jewish Voice for Labour, *Sukkah Desecration on Campuses Reflect the Much Greater Desecration in Gaza* (Oct. 17, 2024), <https://www.jewishvoiceforlabour.org.uk/article/sukkah-desecration-on-campus-reflect-the-much-greater-desecration-in-gaza/> (reporting on Northwestern Univ.); Kevin Rector, *UCLA Police Dismantle Gaza Solidarity Sukkah Tents, Order Protesters to Disperse*, L.A. Times (Oct. 21, 2024), <https://www.latimes.com/california/story/2024-10-21/ucla-police-dismantle-gaza-solidarity-sukkah-tents-order-protesters-to-disperse>.

³⁴ This is pointed out also in Amos Goldberg, *And You Shall Remember: Five Critical Readings in Holocaust Memory* (Resling Publ'g 2024) (Heb.).

³⁵ Basic Law: Israel – The Nation State of the Jewish People, 5778–2018, SH No. 5778, art. 6(b), unofficial English translation available at <https://main.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawNationState.pdf> (last visited Sept. 15, 2025).

³⁶ Int'l Ass'n of Genocide Scholars, *Resolution on Gaza* (Sept. 1, 2025), quoted in Dan Williams, *Israel Is Committing Genocide in Gaza, Scholars' Association Says*, Reuters (Sept. 1, 2025), <https://www.reuters.com/world/middle-east/israel-is-committing-genocide-gaza-scholars-association-says-2025-09-01/>.

³⁷ William A. Galston, *Support for Israel Continues to Deteriorate, Especially Among Democrats and Young People*, Brookings Inst. (Aug. 6, 2025), <https://www.brookings.edu/articles/support-for-israel-continues-to-deteriorate-especially-among-democrats-and-young-people/>.

³⁸ *Morse v. Frederick*, 551 U.S. 393, 403 (2007) (quoting *Virginia v. Black*, 538 U.S. 343, 365 (2003) (plurality opinion)).

³⁹ *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347 (1997) (quoting *Buckley v. Valeo*, 424 U.S. 1, 14 (1976)).

⁴⁰ *Police Dep't of Chi. v. Mosley*, 408 U.S. 92 (1972); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819 (1995); *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992).

⁴¹ *Id.*

⁴² *United States v. Playboy Ent. Grp.*, 529 U.S. 803, 812 (2000).

⁴³ *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750 (1988); *Rosenberger*, 515 U.S. 819; *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

⁴⁴ N.J. Const. art. I, ¶ 6 (“Every person may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right”).

⁴⁵ *Reno v. ACLU*, 521 U.S. 844 (1997).

⁴⁶ *Schenck v. United States*, 249 U.S. 47 (1919); *Brandenburg v. Ohio*, 395 U.S. 444 (1969); *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969); *Hefron v. Int'l Soc'y for Krishna Consciousness*, 452 U.S. 640 (1981).



⁴⁷ For documents related to the bill, see H.R. 6090, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/6090> (last visited Sept. 15, 2025).

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⁴⁹ Olivia Nuzzi, *Marjorie Taylor Greene's Conspiracies: From QAnon to Space Lasers*, N.Y. Mag. Intelligencer (Feb. 3, 2021), <https://nymag.com/intelligencer/article/marjorie-taylor-greene-qanon-wildfires-space-laser-rothschild-execute.html>.

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⁵³ Kenneth Stern, *A Bad Deal: By Adopting the IHRA Definition of Antisemitism, Universities are Sacrificing Academic Freedom*, The Knight Foundation, Columbia University (Sept. 5, 2025), <https://knightcolumbia.org/content/a-bad-deal-why-using-the-ihra-definition-of-antisemitism-on-campus-is-incompatible-with-academic-freedom-and-students-right-to-open-inquiry>.

⁵⁴ Jacob Kornbluh, *Why the Antisemitism Awareness Act Now Has a Religious Liberty Clause to Protect 'Jews Killed Jesus' Statements*, Forward (Apr. 29, 2025), <https://forward.com/fast-forward/716347/antisemitism-bill-congress-jews-jesus/>.

⁵⁵ ACLU, *Vote "NO" on S. 558, the Antisemitism Awareness Act* (Apr. 29, 2025), <https://assets.aclu.org/live/uploads/2025/04/vote-no-on-s558-the-antisemitism-awareness-act-help-committee-markup-on-043025.pdf>; Knight First Amendment Inst., *Statement: Using the IHRA Definition to Limit Speech on Campus* (July 16, 2025), <https://knightcolumbia.org/content/knight-institute-sounds-alarm-over-new-restrictions-on-campus-speech>; Ctr. for Constitutional Rights, *Letter from Civil Rights Groups Urging DOE to Reject IHRA Definition of Antisemitism* (Jan. 16, 2024), <https://ccrjustice.org/letter-civil-rights-groups-demand-doe-reject-ihra-definition-antisemitism>.

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⁵⁹ S. 7034-A, 2025 Leg., 2025-2026 Reg. Sess. (N.Y. 2025), <https://www.nysenate.gov/legislation/bills/2025/S7034/amendment/A>; Tom Davies, *Indiana House Passes Bill Defining Antisemitism as Religious Discrimination*, AP News (Jan. 25, 2024), <https://apnews.com/article/89b687b1d6d18862e90e7d3ef0a601a2>; Gary D. Robertson, *North Carolina House Approves Bill Defining Antisemitism*, AP News (May 3, 2023), <https://apnews.com/article/7fce5a49684d52945bd47de4794b1cdd>; S. 1292, 2024-2025 Leg., 221st Sess. (N.J. 2024), <https://legiscan.com/NJ/text/S1292/id/2874968>.

⁶⁰ As of July 2023, thirty-seven U.S. states — including Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Indiana, Iowa, Kansas, Massachusetts, New Hampshire, New York, North Carolina, and South Carolina — have adopted or endorsed the International Holocaust Remembrance Alliance (IHRA) Working Definition of Antisemitism. See Combat Antisemitism Movement, *Database of IHRA Antisemitism Definition Adoptions by U.S. States* (CAM Information Hub, July 2023), <https://combatantisemitism.org/government-and-policy/cam-information-hub-database-of-ihra-antisemitism-definition-adoptions-by-us-states-2/>.

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⁶² *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985).

⁶³ N.J. Stat. Ann. § § 10:5-1 to -50 (West 2024) (New Jersey Law Against Discrimination); Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. § § 2000a-2000h-6).