

# Countering Antisemitism Act (CAA) - S. 4091/H.R. 7921

FAQ



## 1. What's the problem with the Countering Antisemitism Act (CAA)?

Despite its purported aim to support the implementation of the Biden Administration's antisemitism strategy,<sup>1</sup> the **CAA raises significant legal and constitutional issues by requiring the government to actively engage in viewpoint discrimination and political repression.** While presented as an alternative to, or a more benign version of, the Antisemitism Awareness Act (AAA),<sup>2</sup> the CAA is also dangerous to First Amendment protected speech. Both the AAA and CAA mandate the use of the International Holocaust Remembrance Alliance (IHRA) definition of antisemitism.<sup>3</sup>

The **CAA is a grave threat to our democracy** because it instructs all Federal, State, and local agencies to use that definition, effectively creating permanent speech police on college campuses and subjecting every American to potential government surveillance, arrest, or other adverse enforcement action and/or discrimination in their school, workplace, house of worship, online, in every aspect of an American's and their family's lives—based *simply on their political views or speech critical of a foreign country or a political ideology.* This is a dangerous and deeply disturbing precedent, unbecoming of a democracy, which should outrage every American. Combatting antisemitism is both necessary and a worthy objective—neither CAA or AAA will truly serve that admirable goal.

## 2. What's the problem with the IHRA definition?

The IHRA definition, originally written for data collection to measure antisemitism in Europe, **embraces the idea that anti-Israel and anti-Zionist speech equates to antisemitism.**<sup>4</sup> This controversial approach has led some pro-Israel organizations to embrace IHRA as the definitive definition of antisemitism and to pursue its codification in U.S. law even though IHRA's own language proclaims it as a "non-legally binding working definition."<sup>5</sup> However, free speech advocates and human rights organizations have rejected it as overly broad.<sup>6</sup> By sweeping speech that is critical of political

<sup>1</sup> *The U.S. National Strategy to Counter Antisemitism*, THE WHITE HOUSE (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/05/U.S.-National-Strategy-to-Counter-Antisemitism.pdf>.

<sup>2</sup> *Antisemitism Awareness Act*, S.4127, 118th Cong. (2024).

<sup>3</sup> *About the IHRA Non-legally Binding Working Definition of Antisemitism*, INT'L HOLOCAUST REMEMBRANCE ALL., <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>.

<sup>4</sup> Eyal Press, *The Problem with Defining Antisemitism*, THE NEW YORKER (Mar. 13, 2024), <https://www.newyorker.com/news/persons-of-interest/the-problem-with-defining-antisemitism>.

<sup>5</sup> *About the IHRA*, *supra* note 3.

<sup>6</sup> See, e.g., *Human Rights and other Civil Society Groups Urge United Nations to Respect Human Rights in the Fight Against Antisemitism*, HUMAN RIGHTS WATCH (Jan 26, 2023), <https://www.hrw.org/news/2023/04/04/human-rights-and-other-civil-society-groups-urge-united-nations-respect-human>.

ideologies or a foreign state's policies into the category of hate, the IHRA definition tramples on the free speech rights guaranteed in our constitution and minimizes the danger of actual antisemitism, undermining efforts to respond effectively to its increase. IHRA's definition is accompanied by eleven examples to "guide IHRA in its work," seven of which include Israel.<sup>7</sup> In its guidance on the definition, IHRA states "[m]anifestations [of antisemitism] might include the targeting of the state of Israel,"<sup>8</sup> and some of the examples listed include applying a "double standard" to Israel's policies, or "denying the Jewish people their right to self-determination."<sup>9</sup>

In more typical definitions, explanations of antisemitism follow a familiar line of reasoning that would apply across all incidents of hate and take into account existing civil rights legal frameworks. For example, following its definition of antisemitism, the Biden Administration's National Strategy to Counter Antisemitism (National Strategy) notes that "antisemitism can manifest as a form of racial, religious, national origin, and/or ethnic discrimination, bias, or hatred; or, a combination thereof."<sup>10</sup>

These differences highlight just how far-reaching IHRA's definition pushes the concept of antisemitism. On one hand, a more traditional, or perhaps not politicized, understanding of antisemitism protects the Jewish American community by situating hate against it in the context of existing legal and policy protections against hate and discrimination. The IHRA definition, on the other hand, by equating political expression against a foreign state or a political ideology to antisemitism moves antisemitism beyond the protected characteristics safeguarded by civil rights laws by including political ideology or viewpoints. Stated in the alternative, codification of IHRA risks redefining civil rights laws to include First Amendment protected political speech.

---

### 3. ***Don't we need the CAA because antisemitism is on the rise in America?***

**Antisemitism is increasing but adopting the CAA is not the remedy.** Animus or attacks against Jewish Americans is vile and has no place in America. Antisemitism, a long-held core belief of white supremacists, is also a threat to the safety and wellbeing of society as hate against any one community harms all communities. In a pluralistic democracy, Congress has a solemn responsibility to protect all communities against hate incidents and to bring diverse communities together. The CAA would do neither and instead further divides the American people.

And yes, antisemitic hate crimes have risen in recent years. The FBI reported in their annual *Hate Crime Statistics*, that there were 1,122 "Anti-Jewish" incidents in 2022, accounting for the largest number of single-bias hate crime incidents based on religion.<sup>11</sup> This represents a 37.3% increase from the previous year and is the highest number of Anti-Jewish incidents recorded since 1993.<sup>12</sup> At the same time, 2022 proved to be the most violent year on record for hate crimes, suggesting that not only is the

---

<sup>7</sup> *About the IHRA*, *supra* note 3.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> The White House, *supra* note 1 at 13.

<sup>11</sup> *AAI Statement on the FBI's 2022 Hate Crime Data Release: Second Consecutive Year of the Highest Number of Hate Crimes Since Reporting of Data Began in 1992*, ARAB AM. INST. (Oct. 16, 2023), <https://www.aaiusa.org/library/hatecrime2023>.

<sup>12</sup> *Id.*

threat of antisemitism growing but incidents of hate are becoming more dangerous.<sup>13</sup> Although 2023 federal statistics have yet to be released and the chronic underreporting of hate crime is well documented, the federal data demonstrate an alarming trend of increased hate crime for successive years.

We remain committed to combating all hate, including the scourge of antisemitism. It is partly that mission that requires us to reject the conflation of antisemitism with criticism of Israel. Requiring a legislatively enshrined definition of antisemitism, which does not exist for other forms of hate or bias, is not necessary to fighting antisemitism. And specifically adopting the IHRA definition as the CAA and the AAA do, would cause harm by lessening the significance of the real problem of antisemitism targeting the Jewish American community and by burdening government civil rights enforcement and reporting mechanisms with incidents based on a pro-Israel agenda designed to silence pro-Palestine advocacy.

---

#### 4. **Does the CAA really include the IHRA definition?**

The text of **the CAA defines antisemitism using the IHRA definition** as it appears “in section 3 of the Never Again Education Act” which is, in fact, verbatim the IHRA definition.<sup>14</sup> This explicit adoption of IHRA runs counter to the purported aim of the bill to enhance the Administration’s National Strategy. In fact, it directly contradicts the Biden Administration’s decision *not* to officially endorse or enforce the IHRA definition as part of the National Strategy made evident by the use of a separate definition. As noted above, the National Strategy provides a definition.<sup>15</sup> If the objective were solely to combat antisemitism and to implement the National Strategy, that would have been the definition codified and operationalized in the CAA or the AAA. It is not. Instead, the use of the IHRA definition further separates the declared purpose of the bill from its actual consequences.

---

#### 5. **If the IHRA definition has already been codified, what’s wrong with the CAA adopting it?**

While some may argue that the Never Again Education Act’s earlier adoption of the IHRA definition renders concern of its adoption here moot, it is important to note the distinct contexts of each piece of legislation. The Never Again Education Act applies IHRA’s definition solely in the context of Holocaust

---

<sup>13</sup> *Id.*

<sup>14</sup> Compare 36 U.S.C. §2301(3)(1) (“The term ‘antisemitism’ means 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 or their property, toward Jewish community institutions and religious facilities.”), with Working Definition of Antisemitism, INT’L HOLOCAUST REMEMBRANCE ALL., <https://holocaustremembrance.com/resources/working-definition-antisemitism> (last visited May 5, 2024) (“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.”).

<sup>15</sup> The White House, *supra* note 1 at 13 (“Antisemitism is a stereotypical and negative perception of Jews, which may be expressed as hatred of Jews. It is prejudice, bias, hostility, discrimination, or violence against Jews for being Jews or Jewish institutions or property for being Jewish or perceived as Jewish.”).

remembrance and education.<sup>16</sup> Here, the **CAA applies the definition to a pervasive whole-of government structure, involving thirty-two different federal departments, independent agencies, and quasi-official government agencies adopting IHRA in conducting their work,**<sup>17</sup> a new position within the Executive Office of the President to oversee its implementation, a new “Designee” within the Office for Civil Rights (OCR) at the Department of Education, and a new “Interagency Task Force to Counter Antisemitism.” An OCR Designee to focus exclusively on antisemitism, as defined by IHRA, on college campuses and a Task Force tasked with, among other things, “collecting and organizing data, including research results and resource information from relevant agencies and researchers, on domestic antisemitism” should alarm free speech and civil rights advocates alike. The **implications and harm the adoption of the IHRA definition can have in this context is far different than its narrowly defined use in Holocaust education as enacted in the Never Again Education Act.**

---

## **6. Doesn't the CAA's version of the IHRA definition exclude examples, therefore making it less dangerous?**

While some suggest the CAA's adoption of the IHRA definition *without* explicit inclusion of its examples will not result in the violation of First Amendment protected speech, this belies a logical reading of the text and the stated intent of some of its champions. First, the IHRA definition as implemented in the United States, from its inception to its practical application, is specifically designed to silence pro-Palestinian speech by conflating antisemitism with criticism of the state of Israel and Zionism. Second, **the CAA read in its totality with its inclusion of 1) the IHRA definition as the definition of antisemitism, 2) the IHRA definition in a Sense of Congress calling for its broad utilization on the Federal, State, and local level, and 3) the IHRA definition in a Sense of Congress calling on the Department of Education to issue a proposed rule pursuant to former President Donald Trump's 2019 Executive Order entitled “Combating Anti-Semitism,” makes clear congressional intent** for federal agencies and the courts, among others, to adopt and enforce the IHRA definition in its whole form.<sup>18</sup> An examination of the IHRA definition's enactment on the state level is illustrative of this point. For example, when tracking its successful adoption in individual states, one of the IHRA definition's most ardent supporters does not distinguish between the states that have adopted the definition *with* the examples, from those that did so *without* them.<sup>19</sup>

The problem is the IHRA definition itself. The “contemporary examples of antisemitism” contained in the definition are expository; including them does not curb the inherent breadth of the definition. Nor do the examples bring a larger range of speech and expression under the definition that would not have been already potentially covered by the overly broad definition. From a free speech perspective,

---

<sup>16</sup> 36 U.S.C. §2301.

<sup>17</sup> The CAA defines “relevant agency” in the context of the bill to include fourteen out of fifteen Federal Departments save for the Department of Energy. S.4091(4)(2).

<sup>18</sup> S.4091(3)(b); S.4091(4)(1); S.4091(9)(b).

<sup>19</sup> *CAM Information Hub Database of IHRA Antisemitism Definition Adoptions by US States*, COMBAT ANTISEMITISM MOVEMENT, <https://combatantisemitism.org/government-and-policy/cam-information-hub-database-of-ihra-antisemitism-definition-adoptions-by-us-states-2/>; Zvika Klein, *865 Entities Have Adopted or Endorsed IHRA Definition of Antisemitism*, THE JERUSALEM POST (Mar. 16, 2022), <https://www.jpost.com/diaspora/antisemitism/article-701485>.

including examples means simply that they are reaffirmed as being covered under the definition. At the same time, however, their exclusion does not mean the CAA is more speech protective as the examples are intrinsically linked to it and widely understood to be covered by the definition, to say nothing of the self-censorship issues and other uncertainties the vague and overbroad IHRA definition imposes.

Additionally, beyond the IHRA definition, the CAA in a Findings clause asserts, "Antisemitism can also exist when individual Jews are . . . attacked, disparaged, or demonized based on their real or perceived connection to, affiliation with, or support for, the state of Israel as a Jewish state."<sup>20</sup> Efforts to combat antisemitism, whether in the National Strategy or other anti-hate campaigns, are not advanced by a congressional Findings clause that holds one cannot "disparage" a person for their *real* support of Israel or Zionism. While we should all collectively work to elevate our public discourse and reject the defamation of all people, the government should not play a role in dictating that, nor should it define as antisemitic constitutionally protected political viewpoints.

---

## **7. Why is the IHRA definition in the CAA a problem if it is mentioned only in the Sense of Congress and a Findings clause?**

Even without looking to the definition as adopted by the CAA from the Never Again Education Act, the inclusion of the IHRA definition in a Sense of Congress and a Findings clause holds significant weight. A Sense of Congress is indicative of congressional policy. Similar to when one notes a savings clause or a sunset provision in a bill, one must approach assurances about a "sense of Congress" being of little consequence with caution. Though they do not have the force of law, they are statements of congressional intent and **government agencies monitor them because "they may serve as an early signal that Congress will alter statutory provisions if the informal nature of 'sense of' provisions does not influence agency policy."**<sup>21</sup> Understanding the "sense of" provisions in the CAA as "soft law" to "convey information about future intentions to enact hard law, allowing people to adjust their behavior in advance of binding statutes and in some cases avoiding constitutional requirements that apply to hard law" is certainly informative.<sup>22</sup> As legal scholars on the subject note, "if people adjust their behavior in anticipation of hard law, hard-law enactment might not be necessary."<sup>23</sup> In multiple ways, the **CAA makes clear Congressional directive on implementing the IHRA definition, its adoption in a whole-of-government approach, and reporting and enforcement provisions to ensure compliance. Indeed, "because soft law reveals information about legislative beliefs, there are settings in which rational observers will react as if it were hard law."**<sup>24</sup>

Further, the effect of "sense of" provisions seem to be even more pronounced when, instead of being featured in a freestanding congressional resolution that does not require a presidential signature, the

---

<sup>20</sup> S.4091(2)(12).

<sup>21</sup> CHRISTOPHER M. DAVIS, CONG. RSCH. SERV., "SENSE OF" RESOLUTIONS AND PROVISIONS 2 (2015), <https://crsreports.congress.gov/product/pdf/RS/98-825/17>.

<sup>22</sup> Jacob E. Gersen & Eric A. Posner, *Soft Law: Lessons From Congressional Practice*, 63 STAN. L. REV. 573, 586 (2008).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 588.

soft law appears in a federal law that, constitutionally, requires bicameralism and presentment to the president in order to become effective.<sup>25</sup> Taking all of this into consideration, including the fact that the "sense of" provisions literally instruct federal implementing agencies to utilize the IHRA definition, the dismissal of the "sense of" provisions is not sound policy as a rational observer will indeed correctly understand it to be a congressional policy statement.

---

## 8. What impact will the CAA really have on free speech?

For years, civil society organizations have cautioned lawmakers on the constitutional implications of IHRA's definition of antisemitism because of its inclusion of opposition to Israeli policies and Zionism as an example of antisemitism.<sup>26</sup> Viewpoint discrimination occurs when government regulation restricts speech or expression based on the underlying views or opinion of that speech.<sup>27</sup> Our courts have long upheld political speech as a pillar of First Amendment rights, giving the highest protection from government suppression to individual's political expression.<sup>28</sup> **In adopting the IHRA definition of antisemitism,<sup>29</sup> increasing surveillance on groups expressing dissent on U.S. policies related to Israel or policies of a foreign state,<sup>30</sup> and increasing pressure on the speech of students,<sup>31</sup> the CAA would have the government overstep the bounds of protected speech and engage in viewpoint discrimination.**

Zionism is a political ideology, not a component of a religion, ethnicity, or any other protected class. Critics of Zionism are engaging in a form of political discourse that is integral to our democratic processes. Academics,<sup>32</sup> free speech organizations,<sup>33</sup> and legal organizations<sup>34</sup> have all noted the chilled speech, loss of academic freedom, and censorship of political thought that adoption of IHRA's definition would bring. The CAA creates an overbroad understanding of the scope of what constitutes antisemitism, stifling legitimate criticism of Israeli policies and actions. In mandating that federal agencies enforce a definition of antisemitism that bans political discourse from an anti-Zionist viewpoint, the CAA requires that government agencies actively *enforce* viewpoint discrimination.

---

<sup>25</sup> *Id.*

<sup>26</sup> *About the IHRA*, *supra* note 3 (In its guidance on the definition IHRA states "[m]anifestations [of antisemitism] might include the targeting of the state of Israel." It goes on to list examples including applying a "double standard" to Israel's policies, or "denying the Jewish people their right to self-determination.").

<sup>27</sup> *Boos v. Barry*, 485 U.S. 312 (1988) (finding a District of Columbia law violated the First Amendment by banning any signs critical of a foreign government within 500 feet of that government's embassy).

<sup>28</sup> *Id.*

<sup>29</sup> *Supra*. Part 4.

<sup>30</sup> Various parts of the CAA raise alarms over government monitoring of "antisemitic" speech as defined by the IHRA. This includes collection and analysis of propaganda, which under the overbroad IHRA definition would sweep up many Arab American civil society organizations and individual Arab Americans, as well as others who simply express support for Palestinian human rights or political dissent against Israel. S.4091(7)(b)(2)(B)(ii).

<sup>31</sup> S. 4091(9).

<sup>32</sup> *Legislative Threats to Academic Freedom: Redefinitions of Antisemitism and Racism*, AM. ASSOC. OF UNIV. PROFESSORS, 2-3 (2022), [https://www.aaup.org/file/Legislative Threats to Academic Freedom-Redefinitions of Antisemitism and Racism.pdf](https://www.aaup.org/file/Legislative%20Threats%20to%20Academic%20Freedom-Redefinitions%20of%20Antisemitism%20and%20Racism.pdf).

<sup>33</sup> *ACLU Statement on Senate Introduction of 'Anti-Semitism Awareness Act'*, ACLU (May 23, 2018) <https://www.aclu.org/press-releases/aclu-statement-senate-introduction-anti-semitism-awareness-act>;

<sup>34</sup> Rachel Gurevich, *ABA Removes International Definition of Antisemitism From Its Resolution Condemning the Problem*, GEORGETOWN UNIV.: FREE SPEECH PROJECT (March 6, 2023, 10:27am), <https://freespeechproject.georgetown.edu/tracker-entries/aba-removes-international-definition-of-antisemitism-from-its-resolution-condemning-the-problem/> (noting that the American Bar Association chose not to adopt the IHRA's definition of antisemitism).

Moreover, the legislation's mandate for a report on online antisemitism, as defined by the IHRA definition, raises significant concerns about potential censorship of dissenting voices, particularly on social media platforms. By equating criticism of Israel with antisemitism, the report risks legitimizing and fueling online censorship efforts that suppress legitimate discourse and dissent.

---

## 9. **What impact can the CAA have on government agencies?**

The CAA applies to all but one federal agency, requiring participation in reporting and implementation across the federal government.<sup>35</sup> The implications of the adoption of a definition of antisemitism that conflates anti-Zionism with hate and the requirements for federal agencies to report on their activities opens the door to insidious discrimination against Arab Americans, including Americans of Palestinian descent, non- or anti-Zionist Jewish Americans, or any other advocates for Palestinian human rights.

At the Department of Housing and Urban Development, the Department's role in enforcing fair housing laws and addressing housing discrimination could be compromised if efforts to combat antisemitism are not balanced with protections for free speech and fair treatment. Would individuals advocating for Palestinian rights or critical of Israeli policies be less likely to report instances of housing discrimination out of fear of reprisal or being labeled as antisemitic, undermining efforts to ensure equal housing opportunities for all? Can landlords, property managers, and housing providers use this broadened definition as a pretext for denying housing opportunities to individuals or families?

Within the purview of the Equal Employment Opportunity Commission, communities may face employment discrimination without recourse if criticism of Zionism is equated with antisemitism. Can employers use this overbroad definition as a pretext for discriminatory hiring, promotion, or termination practices based on employees' political beliefs or ethnic background, exacerbating existing disparities in employment opportunities? Already, we've seen Arab Americans fired for their political speech against Israel.<sup>36</sup> Should the EEOC be ordered to embrace the IHRA definition, these individuals may lack recourse to assert their rights.

These are just a few examples of the impact the CAA would have on the ability of federal agencies to effectively enforce the rights of all Americans.

---

## 10. **What impact can the CAA have on the Department of Education?**

Of particular concern to civil rights advocates is Section 9 of the CAA which declares it is dedicated to combating antisemitism in higher education.<sup>37</sup> This section calls on the Department of Education to issue a rule pursuant to former President Trump's Executive Order on Combating Antisemitism (EO

---

<sup>35</sup> S.4091(4)(2).

<sup>36</sup> Nathan Robinson, *Free Speech Means Not Retaliating Against Employees Over the Israeli-Palestinian Conflict*, THE NATION (Oct 31, 2023), <https://www.newsweek.com/free-speech-means-not-retaliating-against-employees-over-israeli-palestinian-conflict-opinion-1839673>.

<sup>37</sup> *Countering Antisemitism Act*, S.4091(9), 118th Cong. (2024).

13899).<sup>38</sup> The former administration made clear the EO specifically used the IHRA definition to push the notion that “Anti-Zionism is anti-Semitism.”<sup>39</sup> By calling for a rule to formally adopt the IHRA definition in Title VI enforcement, the legislation threatens to suppress legitimate discourse on Israel and Zionism on college campuses, thus undermining academic freedom and stifling the free exchange of ideas.<sup>40</sup>

In creating the role of a Designee to separate and elevate the Department’s work on countering antisemitism, the CAA makes the mistake of politicizing the real danger of antisemitic discrimination in schools.<sup>41</sup> Robust mechanisms and safeguards already exist within the Department of Education to address instances of antisemitism, anti-Arab racism, and all forms of hate on college campuses.<sup>42</sup> Presently, there are ongoing Title VI cases at numerous universities demonstrating the Department’s commitment to upholding the civil rights of all students, including in instances of alleged antisemitism.<sup>43</sup> By approaching incidents of discrimination seriously via the rigorous and established procedures already set in place, we ensure that that allegations of discrimination are thoroughly investigated and addressed, not politicized.

Finally, as the text of the bill rightly points out, the Department of Education’s Office for Civil Rights already has a backlog of civil rights complaints. Further adding to the overwhelming workload of the Office for Civil Rights (OCR) with reports of discrimination based on political speech will deeply harm students who do experience discrimination on campuses, including students experiencing antisemitism. Instead of flooding the overworked system with erroneous reports, policymakers should look to supporting OCR with increased funding.

---

## 11. **What impact can the CAA have on the Department of Justice?**

The CAA extends its reach to the Department of Justice (DOJ), mandating their adherence to the IHRA definition.<sup>44</sup> This move sets a dangerous precedent by legitimizing and potentially codifying political viewpoints as prosecutable acts of hate, infringing upon constitutionally protected freedoms of speech and expression. It also puts a protected class, Arab Americans, who frequently and constitutionally voice their political dissent of Israeli policies, under increased scrutiny by the federal government’s policing arms—wasting valuable resources that could be used to counter legitimate threats, and further entrenching viewpoint discrimination into government activities.

---

<sup>38</sup> *Id.* at 4091(9)(b).

<sup>39</sup> Exec. Order No. 13899, 84 Fed. Reg. 68779; Jared Kushner, *President Trump Is Defending Jewish Students*, N.Y. TIMES (Dec. 11, 2019), <https://www.nytimes.com/2019/12/11/opinion/jared-kushner-trump-anti-semitism.html> (“The Remembrance Alliance definition makes clear what our administration has stated publicly and on the record: Anti-Zionism is anti-Semitism. The inclusion of this language with contemporary examples gives critical guidance to agencies enforcing Title VI provisions.”).

<sup>40</sup> *Supra* Part 8.

<sup>41</sup> S. 4091(9)(c).

<sup>42</sup> 42 U.S.C. 2000d, *et seq.*

<sup>43</sup> *Pending Cases Currently Under Investigation at Elementary-Secondary and Post-Secondary Schools*, U.S. DEPT. OF ED.,

[https://ocras.ed.gov/open-investigations?field\\_ois\\_state=All&field\\_ois\\_discrimination\\_statute=All&field\\_ois\\_type\\_of\\_discrimination=711&items\\_per\\_page=20&field\\_ois\\_institution=&field\\_ois\\_institution\\_type=All&field\\_open\\_investigation\\_date\\_1=&field\\_open\\_investigation\\_date\\_2=&field\\_open\\_investigation\\_date=&field\\_open\\_investigation\\_date\\_3=&page=2](https://ocras.ed.gov/open-investigations?field_ois_state=All&field_ois_discrimination_statute=All&field_ois_type_of_discrimination=711&items_per_page=20&field_ois_institution=&field_ois_institution_type=All&field_open_investigation_date_1=&field_open_investigation_date_2=&field_open_investigation_date=&field_open_investigation_date_3=&page=2) (last visited May 7, 2024).

<sup>44</sup> *See* discussion *supra* Part 5.



The work of the Department of Justice and its law enforcement arm, the Federal Bureau of Investigation (FBI), will be immediately affected by the passage of the CAA to the detriment of free speech rights and the rights of securitized communities who are often disparately impacted by government counterterrorism policies, including Arab Americans. Under section 9 of the Act, the FBI, along with Homeland Security, the National Counterterrorism Center, and the newly established National Coordinator to Counter Antisemitism must “produce an annual threat assessment of antisemitic violent extremism.”<sup>45</sup> As previously noted, adopting the IHRA definition can have far-reaching negative impacts, including, for example, maligning a progressive Jewish organization as having “expressions of support for violence/terrorism.”<sup>46</sup> Under this logic, the CAA’s usage of the IHRA definition as a parameter for new threat assessments runs the risk of pulling any organization into the realm of “violent extremists” based on constitutionally protected political expression. This would lead to profiling and undue increased government targeting and surveillance, while also diverting needed resources from real dangers to public safety emanating from violent white supremacist movements.

Beyond the reporting requirements in the bill, there is a strong risk that adopting a definition of antisemitism could lead to the misuse of civil rights laws and discriminatory practices within the DOJ against certain communities. Specifically, Arab Americans may be disproportionately targeted for investigation and prosecution under the guise of combating antisemitism, exacerbating existing disparities in the criminal justice system. Take, for example, the reporting as an antisemitic incident a student group’s bylaws resolving not to host anti-Zionist events or speakers by a group using an overbroad definition of antisemitism.<sup>47</sup> When the Department of Justice is forced to use this expansive definition, that student group’s bylaw adoption could have been reported to federal authorities as a hate incident. This misuse of civil rights laws would dilute credible information on antisemitic attacks and cause community harm, diverting everything from community-based grants to training to resources away from actual hate prevention opportunities.

---

## **12. The Anti-Defamation League (ADL) uses the IHRA definition framework for their data, is that a problem?**

ADL’s definition of antisemitism does not produce data that can be used to document, analyze, or combat hate. Instead, it shows the danger of conflating political criticism of Israel or Zionism with the real problem of antisemitism, a problem shared by the CAA’s approach of adopting the IHRA definition.

While flawed, government hate crime reporting data remains the only source of credible information on hate crimes, including the rise of antisemitism. The Anti-Defamation League (ADL), whose statistics are cited in the CAA, situates itself as a clearinghouse for tracking antisemitism. However, the ADL’s reporting fails to provide credible information on antisemitic incidents due to their use of the IHRA

---

<sup>45</sup> *Countering Antisemitism Act*, S.4091(7)(b)(1), 118th Cong. (2024).

<sup>46</sup> Jewish Voice for Peace (JVP): What You Need to Know, Anti-Defamation League (Nov. 17, 2022), <https://www.adl.org/resources/blog/jewish-voice-peace-jvp-what-you-need-know>.

<sup>47</sup> See *infra* discussion at notes 48-53.

definition and fluctuating methodology seemingly based on political agendas. As a result, the ADL's data, and its politicized definition of antisemitism, is compromised. A closer look at their data should serve as a warning to those hoping the CAA will help protect Jewish Americans.

The ADL has adopted a definition of antisemitism that includes criticism of Zionism or the state of Israel as hate. A particularly noteworthy speech delivered in 2022 officially declared, "antizionism is antisemitism"<sup>48</sup> and compared groups with anti-Zionist stances to violent white nationalist groups.<sup>49</sup> This has widened the pool of antisemitic incidents the ADL publishes annually, rendering the data biased and unusable.<sup>50</sup> Previously, ADL's reporting on antisemitic incidents only included incidents if there was a "clear victim" and incidents that involved the broad category of "anti-Israel rhetoric" had to at least target Jewish institutions or feed into anti-Jewish tropes.<sup>51</sup> In contrast, in their 2022 report, the ADL included an "incident" at University of California at Berkeley, during which student organizations "adopted a bylaw stating they 'will not invite speakers that have expressed and continue to hold views or host/sponsor/promote events in support of Zionism.'"<sup>52</sup> The victim was noted in that incident as the general "Jewish community," far from the "clear victim" needed to report an incident.<sup>53</sup>

Equally troubling is the changing methodology in the ADL's incident reporting. For the past several months, the ADL has been touting statistics that antisemitic attacks have surged in 2023, doubling since the previous year.<sup>54</sup> While, like anti-Arab racism, an increase of antisemitism is both likely and regrettably anticipated since the attacks of October 7, 2023, the reality is the ADL made a midyear-change to its collection methodology to include "certain expressions of opposition to Zionism, as well as support for resistance against Israel or Zionists that could be perceived as supporting terrorism or attacks on Jews, Israelis or Zionists."<sup>55</sup> As a result, the 2023 data is not only incomparable month-to-month, but also unable to coherently give a picture of incidents year-to-year. The report itself notes that 15% of the increase from 2022-23 was due to the updated methodology, which included many of the nonviolent pro-Palestinian protests for mere anti-Israel or anti-Zionist political chants.<sup>56</sup>

---

<sup>48</sup> *Remarks by Jonathan Greenblatt to the ADL Virtual National Leadership Summit*, ANTI-DEFAMATION LEAGUE (May 1, 2022), <https://www.adl.org/remarks-jonathan-greenblatt-adl-virtual-national-leadership-summit> ("To those who still cling to the idea that antizionism is not antisemitism – let me clarify this for you as clearly as I can – antizionism is antisemitism. I will repeat: antizionism is antisemitism.").

<sup>49</sup> *Id.* ("...these groups epitomize the Radical Left, the photo inverse of the Extreme Right that ADL long has tracked. Unlike their right-wing analogs, these organizations might not have armed themselves or engaged in an insurrection designed to topple our government, but these radical actors indisputably and unapologetically regularly denigrate and dehumanize Jews.").

<sup>50</sup> The ADL's expansion of antisemitism to include anti-Zionism and anti-Israel speech has been a source of conflict. *See, e.g.,* Jonathan Guyer and Tom Perkins, *Anti-Defamation League Staff Decry 'Dishonest' Campaign Against Israel Critics*, THE GUARDIAN (Jan. 5, 2024), <https://www.theguardian.com/news/2024/jan/05/adl-pro-israel-advocacy-zionism-antisemitism>.

<sup>51</sup> Arno Rosenfeld, *ADL Counts 3,000 Antisemitic Incidents Since Oct. 7, Two-Thirds Tied To Israel*, FORWARD (Jan. 10, 2024), <https://forward.com/news/575687/anti-defamation-league-adl-antisemitism-count-anti-zionism/> (noting the Director of ADL's Center on Extremism had previously stated that "his team generally only included incidents that had a clear victim — as opposed to general expressions of hostility toward Jews — and that there was a high bar for including criticism of Israel.").

<sup>52</sup> *Audit of Antisemitic Incidents in 2022*, ANTI-DEFAMATION LEAGUE (Apr. 16, 2024), <https://www.adl.org/resources/report/audit-antisemitic-incidents-2022>.

<sup>53</sup> *Id.*

<sup>54</sup> *Audit of Antisemitic Incidents in 2023*, ANTI-DEFAMATION LEAGUE (Apr. 16, 2024), <https://www.adl.org/resources/report/audit-antisemitic-incidents-2023>.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* ("Of the 8,873 incidents tabulated in 2023, 3,162 (36% of the total) contained elements referencing Israel or Zionism . . . The majority (2,526) of Israel-related incidents took the form of harassment, including 1,352 incidents that took place at anti-Israel protests.").

---

### 13. **What does the current environment tell us about the dangers of the CAA approach?**

Unfortunately, **recent events demonstrate the concerns about the CAA are not hyperbole.** In the last few weeks, the **conflation of criticism of Israel with antisemitism has already resulted in suppression of political speech and the right to assembly, arrests of more than 2,300 Americans, and the threat of further law enforcement action.** Numerous college and university presidents ordered or requested law enforcement to descend on college campuses as students protested Israel's war crimes in Gaza. These actions resulted in police beating, tasing, shooting rubber bullets, and other acts of violence against protesters, the vast majority of whom were peaceful.<sup>57</sup> These reckless responses by government officials and educators were so horrifying that faculty at many campuses—from Dartmouth, to Columbia, to Emory, to USC—felt compelled to stand with and protect their students, risking their own physical safety.<sup>58</sup> In the wake of these attacks, some members of Congress called for peaceful student protesters to have their visas revoked by the Department of Homeland Security simply because they expressed pro-Palestinian views.

These have been some of the most disgraceful attacks on one of the most sacrosanct freedoms in the U.S. in recent memory—a freedom believed so fundamental to our nation that it is enshrined in the First Amendment: the right to free speech. In this context, we now see attempts in Congress to codify a politicized definition of antisemitism and to weaponize the federal government against individuals and groups, including Jewish Americans, who criticize the state of Israel or Zionism. Never before has Congress attempted to codify a politicized definition of bigotry, but it is racing to do so now, shredding our Constitution in the process.

**Want to learn more about our work?**

**Did we miss something or make a mistake?**

**We want to hear from you: [communications@aaiusa.org](mailto:communications@aaiusa.org)**

---

<sup>57</sup> E.g., Anna Skinner, *Police Shoot at UCLA Protesters as Encampment Cleared*, NEWSWEEK (May 2, 2024), <https://www.newsweek.com/ucla-campus-protests-police-shoot-pro-palestinian-1896549>.

<sup>58</sup> Vimal Patel, *Police Treatment of a Dartmouth Professor Stirs Anger and Debate*, N.Y. TIMES (May 3, 2024), <https://www.nytimes.com/2024/05/03/us/dartmouth-professor-police-protests.html>.