



May 13, 2024

The Honorable Richard Durbin  
Chairman, Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Lindsey Graham  
Ranking Member, Senate Judiciary Committee  
152 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Jim Jordan  
Chairman, House Judiciary Committee  
2138 Rayburn House Office Building  
Washington, DC 20515

The Honorable Jerrold Nadler  
Ranking Member, House Judiciary Committee  
2142 Rayburn House Office Building  
Washington, DC 20515

**RE: Opposition to the Countering Antisemitism Act (S. 4091/H.R. 7921)**

Dear Chairs and Ranking Members:

As a civil rights advocacy organization that prioritizes fighting hate in all its forms and defending our Bill of Rights, we write to urge you to oppose S. 4091/H.R. 7921, the Combating Antisemitism Act (CAA),<sup>1</sup> and any other congressional efforts that conflate antisemitism with criticism of the state of Israel or Zionism and weaponize the federal government to enforce this distortion of antisemitism.<sup>2</sup>

Let us be clear: 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. Antisemitic hate crimes have risen in recent years. Indeed, since 2015, a number of communities, including Arab Americans, have experienced a disturbing uptick in hate rhetoric, discrimination, and violence.<sup>3</sup> 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.

**The CAA is a grave threat to our democracy.** It would not only perpetuate the misguided effort to codify a definition of antisemitism into federal law—a legislatively enshrined definition does not

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

<sup>2</sup> As of this letter, at least 15 bills or resolutions in the 118<sup>th</sup> Congress, including: *Antisemitism Awareness Act of 2023*, S.3141, 118th Cong. (2023-24), <https://www.congress.gov/bill/118th-congress/senate-bill/3141>; *Antisemitism Awareness Act of 2023*, H.R.6090, 118th Cong. (2023-24), <https://www.congress.gov/bill/118th-congress/house-bill/6090>; *A bill to provide for the consideration of a definition of antisemitism set forth by the International Holocaust Remembrance Alliance for the enforcement of Federal antidiscrimination laws concerning education programs or activities, and for other purposes*, S.4127, 118th Cong. (2024), <https://www.congress.gov/bill/118th-congress/senate-bill/4127>; *Define to Defeat Act of 2024*, H.R.7945, 118th Cong. (2024), <https://www.congress.gov/bill/118th-congress/house-bill/7945>; *PROTECT Jewish Student and Faculty Act*, H.R.7478, 118th Cong. (2024), <https://www.congress.gov/bill/118th-congress/house-bill/7478>; and *A resolution unequivocally condemning antisemitism and lauding the working definition of antisemitism of the International Holocaust Remembrance Alliance*, S. Res. 254, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/senate-resolution/254>.

<sup>3</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>.

exist for other forms of hate or bias—it would also instruct all federal, state, and local agencies to use that definition. This instruction would effectively create permanent speech police on college campuses, as well as expand the likelihood Americans will be surveilled and subject to arrest and prosecution *simply for expressing criticism of a foreign country or a political ideology*.

**Both the CAA and the Antisemitism Awareness Act (AAA)<sup>4</sup> misrepresent, yet mandate the use of, the International Holocaust Remembrance Alliance (IHRA) definition of antisemitism.<sup>5</sup>** 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>6</sup> This controversial approach has led some pro-Israel organizations to embrace IHRA as the definition of antisemitism and to pursue its codification in U.S. law. However, free speech advocates and human rights organizations have rejected the definition as overly broad.<sup>7</sup> By sweeping speech that is critical of political 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.

The CAA would take a limited statutory reference to Holocaust education—a situation to which the IHRA definition was originally intended—and expand it well beyond its original conception. The CAA defines antisemitism as it appears “in section 3 of the Never Again Education Act,” which, in turn, sets forth verbatim the IHRA definition.<sup>8</sup> The Never Again Education Act applies IHRA’s definition solely in the context of Holocaust remembrance and education.<sup>9</sup>

The CAA also *explicitly* endorses and encourages the IHRA definition in a “Sense of Congress” provision, which underscores congressional intent.<sup>10</sup> The Sense of Congress provision further states that the IHRA definition “should be utilized by Federal, State, and local agencies.” To add fuel to the fire, the Findings section includes troubling language that suggests that criticism of an individual based on their support for Israel or Zionism is antisemitic. It is difficult for Congress to be much clearer than this: including a politicized definition of antisemitism in the proposed statutory language, a Sense of the Congress provision, and a Findings clause.

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<sup>4</sup> *Antisemitism Awareness Act*, S.4127, 118th Cong. (2024).

<sup>5</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>6</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>7</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>.

<sup>8</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>9</sup> 36 U.S.C. §2301.

<sup>10</sup> CHRISTOPHER M. DAVIS, CONG. RSCH. SERV., “SENSE OF” RESOLUTIONS AND PROVISIONS 2 (2015), <https://crsreports.congress.gov/product/pdf/RS/98-825/17> (Noting that a Sense of Congress “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.”).

The CAA then directs nearly every federal agency, including every major federal law enforcement agency and the U.S. military, to adopt the IHRA definition.<sup>11</sup> Contrary to the intent of the CAA and AAA sponsors, however, the IHRA definition was written as a “non-legally binding working definition”<sup>12</sup> and for good reason. In fact, in Europe, which does not have First Amendment guardrails, we have already seen the impact of attempting to legalize the IHRA definition run amuck, with the criminalizing of pro-Palestinian speech, including simply displaying the Palestinian flag or holding conferences on the plight of the Palestinian people.<sup>13</sup>

**The IHRA definition should not be used as a legal definition of antisemitism because it violates the First Amendment.** The IHRA definition is accompanied by eleven examples to “guide IHRA in its work,” seven of which include Israel.<sup>14</sup> In its guidance, IHRA states “[m]anifestations [of antisemitism] might include the targeting of the state of Israel,” and some of the examples include applying a “double standard” to Israel’s policies, or “denying the Jewish people their right to self-determination.”<sup>15</sup> In doing so, the IHRA definition equates anti-Israel and anti-Zionist speech with antisemitism.<sup>16</sup>

Academics,<sup>17</sup> free speech organizations,<sup>18</sup> and legal organizations<sup>19</sup> have all raised alarm about the chilled speech, loss of academic freedom, and censorship of political thought that adoption of the IHRA definition would trigger. Critics of Zionism are engaging in political discourse that is integral to our democratic process. By adopting the IHRA definition, the CAA distorts the scope of what constitutes antisemitism, stifling legitimate criticism of Israeli policies and actions.<sup>20</sup> Furthermore, by requiring federal agencies to enforce a definition of antisemitism that bans political discourse from an anti-Zionist viewpoint, the CAA essentially mandates that government agencies actively enforce viewpoint discrimination.

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<sup>11</sup> The CAA defines “relevant agency” to include thirty-two different independent agencies, quasi-official government agencies, and fourteen out of fifteen Federal Departments save for the Department of Energy. S.4091(4)(2).

<sup>12</sup> *About the IHRA*, *supra* note 5.

<sup>13</sup> Dalal Mawad and Eve Brennan, *France Bans All Pro-Palestinian Protests*, CNN (Oct. 12, 2023) <https://www.cnn.com/2023/10/12/europe/france-ban-pro-palestinian-intl/index.html>.

<sup>14</sup> *About the IHRA*, *supra* note 5.

<sup>15</sup> *Id.*

<sup>16</sup> Press, *supra* note 6.

<sup>17</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_Threats_to_Academic_Freedom-Redefinitions_of_Antisemitism_and_Racism.pdf).

<sup>18</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>19</sup> Rachel Gurevich, *ABA Removes International Definition of Antisemitism From Its Resolution Condemning the Problem*, GEORGETOWN UNIV.: FREE SPEECH PROJECT (March 6, 2023), <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).

<sup>20</sup> Some suggest that CAA’s adoption of the IHRA definition *without* explicit inclusion of its examples will not result in violation of First Amendment protected speech. This is a distinction without a difference and belies a logical reading of the text, as well as the stated intent of some its champions. At the state level, 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. See, *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/>; see also 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>.

By directing every Federal, State, and local agency in the country to utilize the IHRA definition, including among others the FBI, U.S. Department of Homeland Security, National Counterterrorism Center, U.S. Department of Defense, U.S. Department of Education, and Equal Employment Opportunity Commission, the CAA would subject 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.

**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>21</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>22</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.

The purported aim of the CAA is to enhance the Biden Administration's National Strategy to Counter Antisemitism.<sup>23</sup> However, the CAA 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. The National Strategy provides a definition.<sup>24</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 makes clear the intent to advance a pro-Israel agenda designed to silence pro-Palestine advocacy.

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<sup>21</sup> E.g., Anna Skinner, *Police Shoot at UCLA Protesters as Encampment Cleared*, NEWSWEEK (May 2, 2024 8:34am), <https://www.newsweek.com/ucla-campus-protests-police-shoot-pro-palestinian-1896549>.

<sup>22</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>.

<sup>23</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>24</sup> *Id.* 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.”).

**We urge Congress to reject the Combating Antisemitism Act, the Antisemitism Awareness Act, and all similar measures that conflate antisemitism with protected political expression and weaponize the federal government to enforce viewpoint discrimination.**

In the aftermath of October 7, 2023, Arab Americans and Jewish Americans experienced an increase in hate and bigotry. Given your stated desire to protect communities, we also welcome the opportunity to discuss with you the way Arab Americans, along with Black Americans, Asian Americans, American Muslims, and others, have been negatively impacted and harmed by hate in America in the post-October 7 environment and to seek possible remedies.

Thank you for your consideration of our perspective on this serious matter. Should you have any questions, your staff may contact AAI Policy Counsel Margaret Lowry at [mlowry@aaiusa.org](mailto:mlowry@aaiusa.org).

Sincerely,

A handwritten signature in black ink, appearing to read 'Maya Berry', with a stylized flourish extending to the right.

Maya Berry  
Executive Director