



February 16, 2023

RE: Oppose HB 1606 For Infringing on Free Speech and Perpetuating Anti-Palestinian Racism

Dear Members of the Senate Committee on Rules,

We write to ask you to oppose HB 1606, which adopts the International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism, including its contemporary examples related to Israel, as a tool and guide for recognizing and combating antisemitic discrimination and hate crimes in Virginia.

The IHRA definition falsely conflates antisemitism with criticism of Israel, and it is routinely employed to silence students, scholars, and community advocates who speak about Palestinian rights, infringing on their First Amendment rights and reinforcing anti-Palestinian racism. Codification of the IHRA definition has been opposed by a broad cross-section of civil liberties and human rights organizations, as well as Jewish Studies, Middle East, and other expert scholars, including its lead author.

In the face of increasing incidents of racism, xenophobia, antisemitism, and other forms of bigotry and discrimination,¹ it is incumbent on lawmakers at all levels of government to take action to ensure the safety and promote the dignity of all people, especially vulnerable populations targeted by bias-motivated attacks.

Unfortunately, HB 1606 does not achieve this goal. The definition does not help to identify anti-Jewish bigotry; it is only useful in attempts to classify criticism of Israel as antisemitic in order to promote censorship of such criticism. The adoption of this politicized definition will therefore infringe on core First Amendment rights by circumscribing what government officials deem “acceptable” to say about Israel. It will also perpetuate anti-Palestinian discrimination by targeting the main victims of Israel’s international law violations—Palestinians—with censorship and false accusations of anti-Jewish animus when they oppose their own oppression. We urge you to oppose the adoption of this controversial and racist censorship tool.

We set forth in more detail below our primary concerns about the IHRA definition in HB 1606. The Appendix contains examples of how IHRA has been used to censor protected expression in support of Palestinian rights. **We urge you to oppose HB 1606.**

I. The IHRA Definition Infringes on Freedom of Speech and Perpetuates Anti-Palestinian Racism

Adopting the IHRA definition in HB 1606 would infringe on bedrock constitutional protections. The definition’s contemporary examples dangerously conflate criticism of Israel with antisemitism, suppressing information about Israeli human rights violations and Palestinian lived experiences, rather than making it easier to identify anti-Jewish discrimination.

Seven of the eleven contemporary guiding examples attached to the definition concern Israel, including “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” and “Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.”² These guiding examples

¹ In 2021, the Southern Poverty Law Center (SPLC) documented 1,221 active hate and antigovernment extremist groups across the United States. See S. POVERTY L. CTR., *THE YEAR IN HATE AND EXTREMISM 2021* 4 (2021), <https://www.splcenter.org/sites/default/files/splc-2021-year-in-hate-extremism-report.pdf>. The FBI documented 8,263 hate crimes in 2020 and 7,262 in 2021. While this data appears to indicate a decrease in hate crimes, the SPLC has consistently highlighted issues with the FBI’s data collection methodology and underreporting by law enforcement agencies. Consequently, the SPLC notes that the FBI “vastly understates the extent of the problem.” See S. POVERTY L. CTR. *HATE CRIMES, EXPLAINED* (2021), <https://www.splcenter.org/hate-crimes-explained>; Press Release, S. Poverty L. Ctr., 2021 Hate Crimes Report Cannot Be Trusted (Dec. 12, 2022), <https://www.splcenter.org/presscenter/splc-2021-fbi-hate-crime-report-cannot-be-trusted>.

² “Working Definition of Antisemitism,” International Holocaust Remembrance Alliance, <https://www.holocaustremembrance.com/stories/working-definition-antisemitism>, last visited January 13, 2023. These examples are core to how the IHRA definition has been understood and deployed. JAMIE STERN-WEINER, *FREE SPEECH ON ISR., THE POLITICS OF A DEFINITION: HOW THE IHRA WORKING DEFINITION OF ANTISEMITISM IS BEING MISREPRESENTED* 6 (2021), available at <https://freespeechonisrael.org.uk/wp-content/uploads/2021/04/The-Politics-of-a-Definition.pdf> (“What pro-Israel activists deem ‘essential’ is ‘the list of examples’ (Israel Ministry of Foreign Affairs), which the [American Jewish Committee] goes so far as to designate the real definition: ‘essentially the definition is the examples’.”) (internal links removed).

falsely equate criticism of a state with animus against Jewish people³ and have been weaponized to smear support for Palestinian rights as *per se* antisemitic.⁴

Application of the IHRA definition would drive state employees into a morass of discriminatory and viewpoint-based distinctions and may compel and punish speech in violation of the First Amendment and Virginia’s Constitution.⁵ Decision makers would be required to investigate the content of political speech of only particular members of the Virginia community—those who advocate for Palestinian rights. For example, state employees would be tasked with determining whether an individual who said, “Israel is a racist state” and an individual who said “the U.S. is a racist state” should be treated differently. Similarly, decision makers would need to assess whether discussions of Israel’s discriminatory policies (such as Jewish-only roads connecting illegal Jewish-only Israeli settlements in the occupied West Bank which Palestinians are effectively barred from using)⁶ are grounds for discrimination complaints or investigations. Opposing these segregationist policies is not antisemitic, it is in fact anti-racist. Human rights advocacy calling for freedom, justice, and equality for Palestinians, or discussions that vigorously criticize Israel’s foundation on the dispossession of Palestinians, are simply not anti-Jewish hate. Yet, adoption of the IHRA definition would put state employees in the position of censors that punish and chill protected speech in support of Palestinian rights.

The IHRA definition is weaponized especially against Palestinian, Arab, and Muslim advocates, who are frequently and falsely smeared as antisemitic solely for their speech in support of Palestinian rights—accusations that are often laden with anti-Palestinian racism and anti-Muslim stereotypes. By falsely conflating criticism of Israel and its founding as a modern state with anti-Jewish discrimination, the IHRA definition punishes Palestinians for speaking about their own recent histories of dispossession and oppression at the hands of the Israeli state. Many Palestinian families still bear the scars of 1948, when they were ethnically cleansed from the land that would become the Israeli state. Palestinians continue to face Islamophobia and racism on US campuses,⁷ at borders controlled by Israel,⁸ and inside occupied Palestine in the form of Israeli state violence, just

³ See PALESTINE LEGAL, BACKGROUND ON EFFORTS TO REDEFINE ANTISEMITISM AS A MEANS OF CENSORING CRITICISM OF ISRAEL,

<https://static1.squarespace.com/static/548748b1e4b083fc03cbf70e/t/5e3858c18f9eda181706a8d2/1580751047471/Backgrounder+on+Efforts+to+Redefine+Antisemitism.pdf> (last updated January 2020).

⁴ See, e.g., State Dept. *Push to Label Human Rights Orgs ‘Antisemitic’ Exposes Repressive Intent of Redefinition Efforts*, PALESTINE LEGAL (Oct. 30, 2020),

<https://palestinelegal.org/news/2020/10/30/state-department-push-to-label-human-rights-orgs-antisemitic-exposes-repressive-intent-of-redefinition-efforts>; 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>.

⁵ VA. CONST. art I, § 12; U.S. CONST. AMEND. I.

⁶ See Nir Hasson, *New Jerusalem ‘Apartheid Road’ Opens, Separating Palestinians and Jewish Settlers*, HAARETZ (Jan. 10, 2019), <https://www.haaretz.com/israel-news/2019-01-10/ty-article-magazine/premium/new-apartheid-road-opens-separating-palestinians-and-west-bank-settlers/0000017f-e8cc-df2c-a1ff-fedda5460000>.

⁷ *Student Leader Challenges Anti-Palestinian Campus Climate at FSU*, PALESTINE LEGAL (April 13, 2021), <https://palestinelegal.org/case-studies/2021/4/13/student-leader-challenges-anti-palestinian-campus-climate-at-florida-state-university>.

⁸ *Israel discrimination of Palestinian Americans triggers opposition to visa waiver*, MIDDLE EAST MONITOR (June 30, 2022), <https://www.middleeastmonitor.com/20220630-israel-discrimination-of-palestinian-americans-triggers-opposition-to-visa-waiver/>.

for being Palestinian or expressing their Palestinian identity.⁹ IHRA would define the telling of Palestinian family histories, descriptions of Palestinian daily life experiences, and analyses of Palestinian and Israeli histories as anti-Jewish. This is an absurd and erroneous conclusion that forecloses Palestinian views about Israel as motivated by hate, rather than a reaction to the actions of a state that has violently denied the most basic rights to Palestinians for as long as most have been alive.

Concerns that the IHRA definition will be used to censor constitutionally protected speech and reinforce anti-Palestinian racism are not abstract or theoretical, but are based on extensive and well documented experience. As summarized here, and in more detail in the Appendix, the IHRA definition has been deployed, among many other examples, to:

- Block a Palestinian poet from speaking at Arizona State about violent oppression he has experienced as a Palestinian;
- Fuel a months-long bullying campaign against a Palestinian student leader at Florida State University, involving dozens of Islamophobic, racist, violent, and misogynistic private messages, threats from state legislators to withdraw state funding for the university, and multiple petitions calling for the student to be removed from his leadership position and expelled from school;
- Investigate a UCLA professor for inviting a Palestinian guest lecturer who voiced criticism of Zionism; and
- Prevent students at UC Berkeley from jointly mourning the deaths of Palestinian children killed in Gaza and Jewish people killed in the shooting at the Tree of Life synagogue in Pittsburgh.

IHRA has become an instrument of censorship in a context where speech on Palestine is already widely suppressed. Since 2014, Palestine Legal has responded to more than 2,200 incidents of censorship, punishment, or other burdening of advocacy for Palestinian rights.¹⁰ Pro-Israel advocacy groups devote considerable resources to monitor the speech and activities of Palestinian rights advocates and falsely accuse them of antisemitism, based solely on their criticism of Israel.¹¹ The over 2,200 incidents Palestine Legal has documented understate the phenomenon, as many advocates who are unaware of their rights or afraid of attracting further scrutiny stay silent and do not report incidents of suppression.

The IHRA definition infringes on the rights to free speech, association, assembly, and political participation, and exacerbates anti-Palestinian racism; we urge you not to adopt it.

⁹ Amnesty Int'l, *Apartheid Against Palestinians: Cruel system of domination and crime against humanity*, Index MDE 15/5141/2022 (Feb. 1, 2022), <https://www.amnesty.org/en/documents/mde15/5141/2022/en/>.

¹⁰ PALESTINE LEGAL, 2021 YEAR-IN-REVIEW: PALESTINIAN UPRISING GENERATES RECORD SOLIDARITY—AND FIERCE BACKLASH, <https://palestinelegal.org/2021-report>.

¹¹ PALESTINE LEGAL AND CTR. FOR CONSTITUTIONAL RIGHTS, *THE PALESTINE EXCEPTION TO FREE SPEECH*, (2015) <https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/560c2e0ae4b083d9c363801d/1443638794172/P%20alestine+Exception+Report+Final.pdf>. See also PALESTINE LEGAL, 2020 YEAR-IN-REVIEW: THE MOVEMENT WILL NOT BE CANCELED, <https://palestinelegal.org/2020-report>; PALESTINE LEGAL, 2021 YEAR-IN-REVIEW: PALESTINIAN UPRISING GENERATES RECORD SOLIDARITY – AND FIERCE BACKLASH, <https://palestinelegal.org/2021-report>.

II. HB 1606 is Part of a Rightwing Political Agenda that Opens the Door for Criminalization of Protected Expression in Support of Palestinian Rights

HB 1606, as amended, purports to adopt the “non-legally binding” IHRA definition.¹² This caveat is an unavailing attempt to save the bill from the constitutional infirmities set out above. Even “soft law” efforts to adopt IHRA contribute to infringement of fundamental rights.¹³ Moreover, statements made by the bill’s sponsors and Virginia officials, as well as the trajectory of codification efforts in other states, underscore that the primary target of this measure is not protecting Jewish communities from anti-Jewish bigotry that has resulted in deadly attacks by individuals espousing white nationalist and antisemitic views—the identification of which does not require this definition. Rather, it is to silence advocacy for Palestinian rights and criticism of Israel.

HB 1606 adopts the IHRA definition for state agencies to use as a tool and guide for “training, education, recognizing, and combating antisemitic hate crimes or discrimination and for tracking and reporting antisemitic incidents.”¹⁴ One of the bill’s sponsors has stated that adoption of the IHRA definition “will help law enforcement intervene to prevent escalation.”¹⁵ Using IHRA as a tool to track, report, and combat hate crimes will result in Palestine advocates—especially those in Arab, Muslim, and Palestinian communities—being surveilled, targeted, and harassed by law enforcement without justification.¹⁶ This bill gives law enforcement yet another tool to “intervene” in communities who speak out in support of Palestinian rights, continuing the terrible legacy of post-9/11 “counter-terror” surveillance programs that have criminalized constitutionally protected speech and political activism among immigrants, in Muslim communities, and in other communities

¹² HB 1606, 2023 Sess. (Va. 2023), (House Floor substitute), available at <https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+HB1606H2>. Proponents of the IHRA working definition often promote it as being non-legally binding. However, even upon adoption of the IHRA working definition in 2016, the IHRA chair expressed hopes for a binding definition. “Working Definition of Antisemitism,” International Holocaust Remembrance Alliance, <https://www.holocaustremembrance.com/stories/working-definition-antisemitism>, last visited February 8, 2023. See also JAMIE STERN-WEINER, FREE SPEECH ON ISR., THE POLITICS OF A DEFINITION: HOW THE IHRA WORKING DEFINITION OF ANTISEMITISM IS BEING MISREPRESENTED 6 (2021), available at <https://freespeechonisrael.org.uk/wp-content/uploads/2021/04/The-Politics-of-a-Definition.pdf>.

¹³ The former U.N. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance points out that the “de facto influence [of the IHRA working definition] on the policy and practice of governments and private actors has contributed to violations of the human rights of freedom of expression, assembly and political participation, among others,” observing that “it is precisely the ‘soft law’ status of the working definition that effectively helps to undermine certain co-existent rights, without offering any remedy or means to legally challenge such violations.” Tendayi Achiume (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), *Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, U.N. Doc. A/77/512 (Oct. 7, 2022),

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/618/67/PDF/N2261867.pdf?OpenElement>.

¹⁴ HB 1606, 2023 Sess. (Va. 2023), available at <https://lis.virginia.gov/cgi-bin/legp604.exe?231+sum+HB1606>.

¹⁵ Virginia House of Delegates Regular Session Stream, at 1:34 (Feb. 6, 2023), available at <https://virginiageneralassembly.gov/house/chamber/chamberstream.php>

¹⁶ In 2021, Palestine Legal received several reports of people being questioned for their activism on social media by law enforcement agents who claimed that they were simply following up on complaints. These reports show a pattern of smear campaigns launched by individuals or Israel advocacy groups, who then file complaints to enlist law enforcement authorities to monitor and intimidate activists. PALESTINE LEGAL, 2021 YEAR IN REVIEW, <https://palestinelegal.org/2021-report>.

of color.¹⁷ Palestinian rights advocates are more likely to be investigated and potentially charged with hate crimes for otherwise protected expression as a result of HB 1606.

Moreover, efforts to codify the IHRA definition are part of a broader rightwing attack on protest and dissent. Members of the rightwing thinktank, American Legislative Exchange Council (ALEC), have encouraged lawmakers to codify the IHRA definition.¹⁸ ALEC is responsible for drafting and disseminating model legislation that targets and criminalizes communities of color and justice movements, including Stand Your Ground laws, Voter ID laws, critical infrastructure anti-protest laws, laws circumscribing what can be taught about the role of racism in U.S. history, and anti-boycott laws.¹⁹

In Virginia, in one of his first acts in office, Governor Youngkin signed an executive order establishing a Commission to Combat Antisemitism,²⁰ which released a report and recommendations in December 2022.²¹ The composition of the Commission has been criticized for its partisan nature,²² and its analysis and recommendations reflect the same conflation between Palestinian rights advocacy and anti-Jewish bigotry that raises constitutional concerns in the IHRA definition found in HB 1606.²³ In fact, the Commission calls the IHRA definition the “gold standard” and warns against “relying on nonbinding resolutions and proclamations, because these

¹⁷ Danya Zituni, *Several US Cities Have Increased Policing of Palestine Solidarity*, TRUTHOUT (Dec. 12, 2022), https://truthout.org/articles/several-us-cities-have-increased-policing-of-palestine-solidarity/#gf_1097213664.

¹⁸ Ed Pilkington, *Revealed: rightwing push to suppress criticism of Israel on US campuses*, THE GUARDIAN (Oct. 17, 2019), <https://www.theguardian.com/us-news/2019/oct/16/conservative-activists-want-to-outlaw-antisemitism-in-public-education-why-is-that-a-bad-thing>. See also Lara Friedman, *States Are Moving to Class Criticism of Israel as Antisemitism*, JEWISH CURRENTS (Feb. 20, 2020), <https://jewishcurrents.org/states-are-moving-to-class-criticism-of-israel-as-antisemitism> (noting that Randy Fine, an ALEC member and the Florida state representative pushing for legislation adopting IHRA, explained his hopes for what the bills would achieve in these terms: “Students for Justice in Palestine is now treated the same way as the Ku Klux Klan – as they should be”).

¹⁹ See, e.g., Chris McGreal, *Rightwing group pushing US states for law blocking ‘political boycott;’ of firms*, THE GUARDIAN (Nov. 11, 2022), <https://www.theguardian.com/us-news/2022/nov/11/alec-anti-political-boycott-state-legislation>; Center for Constitutional Rights, et al., *ALEC ATTACKS* (2019), <https://www.alecattacks.org/sites/default/files/ALEC%20Attacks.pdf>.

²⁰ Va. Executive Order No. 8 (Jan. 15, 2022), available at <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/eo/EO-8-Commission-to-Combat-Antisemitism.pdf>.

²¹ VIRGINIA COMMISSION TO COMBAT ANTISEMITISM, *COMBATING ANTISEMITISM IN AMERICA* (Dec. 2022), [https://www.commonwealth.virginia.gov/media/governorvirginiagov/secretary-of-the-commonwealth/pdf/Antisemitism-Commission-Report_final-\(1\).pdf](https://www.commonwealth.virginia.gov/media/governorvirginiagov/secretary-of-the-commonwealth/pdf/Antisemitism-Commission-Report_final-(1).pdf).

²² Rabbi Michael Knopf, *Column: Antisemitism bills shouldn’t stifle free speech*, RICHMOND TIMES-DISPATCH (Feb. 8, 2023), https://richmond.com/opinion/columnists/column-antisemitism-bills-shouldnt-stifle-free-speech/article_d37a8f5a-a704-11ed-b4e3-0b9a17eb5487.html (“prioritizing political advantage over the well-being of Jewish Virginians, Youngkin refused to include progressive voices on the commission”).

²³ VIRGINIA COMMISSION TO COMBAT ANTISEMITISM, *COMBATING ANTISEMITISM IN AMERICA* (Dec. 2022), [https://www.commonwealth.virginia.gov/media/governorvirginiagov/secretary-of-the-commonwealth/pdf/Antisemitism-Commission-Report_final-\(1\).pdf](https://www.commonwealth.virginia.gov/media/governorvirginiagov/secretary-of-the-commonwealth/pdf/Antisemitism-Commission-Report_final-(1).pdf). The report relies on data from pro-Israel groups that have targeted Palestinian rights advocacy, including the Brandeis Center and AMCHA Initiative as well as the Anti-Defamation League, which has a history of attacking and undermining communities of color and whose methodology also conflates criticism of Israel with antisemitism. See, e.g., Noah Kulwin, *The Unbearable Ignorance of the ADL*, JEWISH CURRENTS (Dec. 8, 2022), <https://jewishcurrents.org/the-unbearable-ignorance-of-the-adl>; *Primer: the ADL is not an ally*, DROP THE ADL, <https://droptheadl.org/>; Mari Cohen, *A Closer Look at the ‘Uptick’ in Antisemitism*, JEWISH CURRENTS (May 27, 2021), <https://jewishcurrents.org/a-closer-look-at-the-uptick-in-antisemitism>.

actions do not carry the force of law and can be as easily overturned as they are easily enacted.”²⁴ The Commission recommends passing legislation codifying the IHRA definition, banning academic boycotts, and punishing entities that engage in boycott, divestment, or sanctions (BDS) tactics.²⁵ The report smears Palestinian rights advocates and BDS campaigning, engaged in by a grassroots movement to achieve freedom, justice, and equality for Palestinians and inspired by the South African anti-Apartheid movement,²⁶ as an “antisemitic and discriminatory” “hate movement.”²⁷ These smears reinforce the conclusion that legislation such as HB 1606 has the intent, and will have the result of targeting Palestinian rights advocacy.

The partisan nature of the Commission and many of its recommendations align with the Governor’s rightwing policy agenda. On Youngkin’s first day in office, he ordered the removal of “inherently divisive concepts, like Critical Race Theory”, from Virginia school curriculums, teacher diversity trainings, and any other materials produced by the Virginia Department of Education.²⁸ Recently, the Youngkin administration admonished a Virginia teacher’s union for distributing Black Lives Matter resources for schools, calling it a “politically driven curriculum toolkit.”²⁹ The targeting of Palestine activism is part and parcel of a broader attempt to stifle anti-racist education and organizing.

Codification efforts in other states point to IHRA proponents’ ultimate target: criminalization of Palestinian rights advocacy and censorship of Palestinians’ lived experience. Some of these laws expand on the IHRA definition specifically to target human rights advocacy. For example, in 2019, Florida adopted legislation to codify the IHRA definition into law and included “focusing peace or human rights investigations only on Israel” as an example of antisemitism.³⁰ In Arizona, a state law requires courts to consider criticism of Israel that falls within the IHRA definition as an aggravating

²⁴ VIRGINIA COMMISSION TO COMBAT ANTISEMITISM, COMBATING ANTISEMITISM IN AMERICA 4 (Dec. 2022), [https://www.commonwealth.virginia.gov/media/governorvirginiagov/secretary-of-the-commonwealth/pdf/Antisemitism-Commission-Report_final-1\).pdf](https://www.commonwealth.virginia.gov/media/governorvirginiagov/secretary-of-the-commonwealth/pdf/Antisemitism-Commission-Report_final-1).pdf).

²⁵ VIRGINIA COMMISSION TO COMBAT ANTISEMITISM, COMBATING ANTISEMITISM IN AMERICA 18-23 (Dec. 2022), [https://www.commonwealth.virginia.gov/media/governorvirginiagov/secretary-of-the-commonwealth/pdf/Antisemitism-Commission-Report_final-1\).pdf](https://www.commonwealth.virginia.gov/media/governorvirginiagov/secretary-of-the-commonwealth/pdf/Antisemitism-Commission-Report_final-1).pdf).

²⁶ Palestinian civil society, *Palestinian Civil Society Call for BDS*, BDS MOVEMENT (July 9, 2005), <https://bdsmovement.net/call>; Nathan Thrall, *BDS: how a controversial non-violent movement has transformed the Israeli-Palestinian debate*, THE GUARDIAN (Aug. 14, 2018), <https://www.theguardian.com/news/2018/aug/14/bds-boycott-divestment-sanctions-movement-transformed-israeli-palestinian-debate>.

²⁷ VIRGINIA COMMISSION TO COMBAT ANTISEMITISM, COMBATING ANTISEMITISM IN AMERICA 3, 16, 22 (Dec. 2022), [https://www.commonwealth.virginia.gov/media/governorvirginiagov/secretary-of-the-commonwealth/pdf/Antisemitism-Commission-Report_final-1\).pdf](https://www.commonwealth.virginia.gov/media/governorvirginiagov/secretary-of-the-commonwealth/pdf/Antisemitism-Commission-Report_final-1).pdf).

²⁸ Ben Paviour and Michael Pope, *Republican Glenn Youngkin is sworn in as the governor of Virginia*, NPR (Jan. 15, 2022), available at <https://www.npr.org/2022/01/15/1073180200/youngkin-sears-inauguration-republicans-gop-virginia>.

²⁹ Staff Report, *Youngkin admin chastises union for Black Lives Matter school toolkit and more Va. Headlines*, VIRGINIA MERCURY (Feb. 13, 2023), <https://www.virginiamercury.com/blog-va/youngkin-admin-chastises-union-for-black-lives-matter-school-toolkit-and-more-va-headlines/>.

³⁰ Fla. Stat. §1000.05(8) (2022), available at <https://www.flsenate.gov/Laws/Statutes/2022/1000.05>. Other states have attempted to pass bills with similar language. See, e.g., HB 2819, 55th Leg. (Az. 2022); HB 0103, 102nd Gen. Ass. (Il. 2021); HB 0600, 111th Gen. Ass. (Tenn. 2019).

factor for hate crimes sentencing in criminal convictions,³¹ meaning that criticism of Israel could result in harsher sentences for protesters charged with a crime.

For the foregoing reasons, we urge you to oppose HB 1606.

III. The IHRA Definition is Highly Controversial and Broadly Opposed

The IHRA definition is highly controversial, and its codification has been opposed by a broad cross-section of civil liberties groups, human rights organizations, editorial boards of major newspapers, along with hundreds of Jewish and Palestinian advocates and scholars.³² The lead author of the definition, Kenneth Stern, has repeatedly argued against its domestic use in legislation or policy.³³

³¹ Az. Rev. Stat. § 41-1750 (2022). See also Isaac Scher, *Three States Push to Curb Pro-Palestine Activism*, JEWISH CURRENTS (Apr. 26, 2022), <https://jewishcurrents.org/three-states-push-to-curb-pro-palestine-activism>.

³² See, e.g., Corey Balsam, *Who's against adopting the IHRA antisemitism definition?*, TIMES OF ISRAEL (Dec. 9, 2020), <https://blogs.timesofisrael.com/whos-against-adopting-the-ihra-antisemitism-definition/>; 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>; FIRE statement regarding executive order on campus anti-Semitism, FIRE (Dec. 10, 2019), <https://www.thefire.org/news/updated-fire-statement-regarding-executive-order-campus-anti-semitism>; Editorial Board, *Enough Already. Not all criticism of Israel is Anti-Semitism*, L.A. TIMES (June 8, 2018), <http://www.latimes.com/opinion/editorials/la-ed-anti-semitism-20180608-story.html>; Editorial Board, *Editorial: Trump's campus anti-Semitism order could undermine free speech*, L.A. TIMES (Dec. 12, 2019), <https://www.latimes.com/opinion/story/2019-12-12/trumps-order-on-campus-anti-semitism-could-undermine-free-speech>; Editorial Board, *Trump's Executive Order and the Rise of Anti-Semitism*, N.Y. TIMES (Dec. 11, 2019), <https://www.nytimes.com/2019/12/11/opinion/trump-bds-movement-israel.html>; Editorial Board, *Why Trump's Judaism executive order is too narrow and too broad*, WASHINGTON POST (Dec. 12, 2019), https://www.washingtonpost.com/opinions/why-trumps-judaism-executive-order-is-too-narrow-and-too-broad/2019/12/12/04abcf20-1d16-11ea-b4c1-fd0d91b60d9e_story.html; Azeezah Kanji et al., *Repression of speech and scholarship on Palestine needs to end*, AL JAZEERA (Oct. 1, 2020), <https://www.aljazeera.com/opinions/2020/10/1/repression-of-speech-and-scholarship-on-palestine-needs-to-end> (open letter signed by 1400+ lawyers and academics noting that “The clampdown [on speech and scholarship on Palestine] threatens to be further exacerbated by the institutionalisation of the International Holocaust Remembrance Alliance (IHRA) definition of anti-Semitism”); *Palestinian rights and the IHRA definition of antisemitism*, THE GUARDIAN (Nov. 29, 2020), <https://www.theguardian.com/news/2020/nov/29/palestinian-rights-and-the-ihra-definition-of-antisemitism> (open letter from 122 Palestinian and Arab academics, journalists and intellectuals expressing concerns about the IHRA definition); *First Ever 40+ Jewish Groups Worldwide Oppose Equating Antisemitism with Criticism of Israel*, JEWISH VOICE FOR PEACE (July 17, 2018), <https://www.jewishvoiceforpeace.org/2018/07/first-ever-40-jewish-groups-worldwide-oppose-equating-antisemitism-with-criticism-of-israel/>; *Progressive Israel Network Groups Oppose Codification of IHRA Working Definition of Antisemitism, Citing Strong Potential for Misuse*, PROGRESSIVE ISRAEL NETWORK (Jan. 12, 2021), <https://www.progressiveisraelnetwork.org/progressive-israel-network-groups-oppose-codification-of-ihra-working-definition-of-antisemitism-citing-strong-potential-for-misuse/>; Palestinian Human Rights Organizations Council, *PHROC Concerns on Special Rapporteur's Adoption of IHRA Definition of Anti-Semitism* (Oct. 13, 2019), https://www.ohchr.org/sites/default/files/Documents/Issues/Religion/Submissions/PHROC_RespondtoReport.pdf; 128 scholars warn: ‘Don’t trap the United Nations in a vague and weaponized definition of antisemitism’, EU OBSERVER (Nov. 3, 2022), <https://media.euobserver.com/9e86df02ddf67c6046d190b65e4380df.pdf>.

³³ Kenneth Stern’s 2017 testimony to the House of Representatives Judiciary Committee is available at <https://docs.house.gov/meetings/JU/JU00/20171107/106610/HHRG-115-JU00-Wstate-SternK-20171107.pdf>; see also Kenneth Stern, *Will Campus Criticism of Israel Violate Federal Law?*, N.Y. TIMES (Dec. 12, 2016), <https://www.nytimes.com/2016/12/12/opinion/will-campus-criticism-of-israel-violate-federal-law.html>.

First Amendment experts and commentators across the political spectrum have repudiated the codification of the IHRA definition in law or policy.³⁴ In March 2022, the American Association of University Professors (AAUP) Committee on Academic Freedom and Tenure condemned attempts to codify IHRA, arguing these laws “expand the definition of antisemitism to encompass political speech, with several discriminatory effects.” The AAUP “urge[d] the defeat of these legislative initiatives and others of their kind in order to protect the academic freedom that is vital to the preservation of democracy.”³⁵

The former U.N. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Professor E. Tendayi Achiume, expressly called on states “to suspend the adoption and promotion of the working definition and the examples attached to it,” as a result of “the controversial status and divisive effect of the [IHRA definition] and its negative impact on human rights.”³⁶ Nearly 130 scholars specializing in Antisemitism, Holocaust Studies, Modern Jewish History and related fields echoed the Special Rapporteur’s warning, characterizing the definition as a “vague and divisive definition that has been hijacked to shield the Israeli government.”³⁷ The IHRA definition is so controversial and widely opposed that hundreds of prominent scholars in Jewish, Holocaust, Palestine/Israel, and Middle East studies have launched projects aimed at developing a less problematic definition as a corrective to IHRA’s conflation of criticism of Israel with antisemitism and its infringement on free speech and Palestinian rights.³⁸

Moreover, institutions have shown that combatting antisemitism can be accomplished without adopting the IHRA definition.³⁹ In January 2023, despite significant pressure from pro-Israel advocates on the U.S. Department of Education Office for Civil Rights (OCR) to adopt the IHRA

³⁴ See, e.g., Eugene Volokh, *The University of California, ‘microaggressions,’ and supposedly anti-Semitic criticism of Israel*, WASHINGTON POST (Aug. 31, 2015), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/08/31/the-university-of-california-microaggressions-and-supposedly-anti-semitic-criticism-of-israel/>; Erwin Chemerinsky and Howard Gillman, *A Bill to Police Campus Speech*, WALL STREET JOURNAL (Dec. 15, 2016), <https://www.wsj.com/articles/a-bill-to-police-campus-speech-1481846338>; Will Creely, *New federal anti-Semitism act, same First Amendment problem*, FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION (May 29, 2018), <https://www.thefire.org/new-federal-anti-semitism-act-same-first-amendment-problem/>.

³⁵ AMERICAN ASS’N OF UNIVERSITY PROFESSORS, COMMITTEE ON ACADEMIC FREEDOM AND TENURE, LEGISLATIVE THREATS TO ACADEMIC FREEDOM: REDEFINITIONS OF ANTISEMITISM AND RACISM, (Mar. 2022), <https://www.aaup.org/report/legislative-threats-academic-freedom-redefinitions-antisemitism-and-racism>.

³⁶ E. Tendayi Achiume (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), *Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, U.N. Doc. A/77/512 (Oct. 7, 2022), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/618/67/PDF/N2261867.pdf?OpenElement>.

³⁷ 128 scholars warn: ‘Don’t trap the United Nations in a vague and weaponized definition of antisemitism,’ EU OBSERVER (Nov. 3, 2022), <https://media.euobserver.com/9e86df02ddf67c6046d190b65e4380df.pdf>.

³⁸ The Jerusalem Declaration on Antisemitism, <https://jerusalemdeclaration.org/> (last visited Jan. 17, 2023); The Nexus Document, <https://israelandantisemitism.com/the-nexus-document/> (last visited Jan. 17, 2023). These alternative definitions are flawed in their own right. See, e.g., *Principles for Dismantling Antisemitism: A Progressive Jewish Response to the Jerusalem Declaration*, JEWISH VOICE FOR PEACE (April 5, 2021), <https://www.jewishvoiceforpeace.org/2021/04/jerusalem-declaration/>; *Palestinian rights and the IHRA definition of antisemitism*, The Guardian (Nov. 29, 2020), <https://www.theguardian.com/news/2020/nov/29/palestinian-rights-and-the-ihra-definition-of-antisemitism>.

³⁹ See, e.g., *Principles for Dismantling Antisemitism: A Progressive Jewish Response to the Jerusalem Declaration*, JEWISH VOICE FOR PEACE (April 5, 2021), <https://www.jewishvoiceforpeace.org/2021/04/jerusalem-declaration/> (calling for dismantling antisemitism alongside all forms of oppression and bigotry and not isolating it from other forms of oppression).

definition in complying with the executive order adopted by former President Trump on Combating Anti-Semitism, OCR declined to do so, while still committing to addressing antisemitism and other forms of discrimination.⁴⁰ Earlier this month, the American Bar Association rejected the inclusion of the IHRA definition in its resolution opposing antisemitism, in part based on opposition from dozens of civil and human rights groups, which noted that “the clear objective behind the promotion of the IHRA definition is the suppression of non-violent protest, activism, and criticism of Israel and/or Zionism—a fact that is so well-documented as to be beyond reasonable dispute.”⁴¹

The widespread criticism of the IHRA definition strongly signals its controversial nature and highlights the growing concern about its instrumentalization to infringe on freedom of expression and other fundamental rights. We urge you to oppose its adoption in HB 1606.

HB 1606’s adoption of a censorship tool will encourage officials tasked with enforcing anti-discrimination and hate crimes laws to infringe on protected speech in violation of constitutional guarantees and, ironically, to perpetuate another form of discrimination: anti-Palestinian racism. This bill will ultimately undermine fundamental rights, while failing to address real bigotry in Virginia. We urge you to drop consideration of this bill HB 1606 and, instead, engage in meaningful efforts to address anti-Jewish, racist, anti-Muslim, anti-immigrant, and anti-LGBTQ incidents and other forms of discrimination that threaten vulnerable communities.

Signed,

Adalah Justice Project
Americans for Justice in Palestine Action (AJP Action)
American-Arab Anti-Discrimination Committee (ADC)
Center for Constitutional Rights
Jewish Voice for Peace Action
King County Jews Against Antisemitism
National Lawyers Guild International Committee
Palestine Legal
Partnership for Civil Justice Fund
Project South
US Campaign for Palestinian Rights

⁴⁰ Dep’t. of Education Office for Civil Rights, Fact Sheet: Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics (Jan. 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-shared-ancestry-202301.pdf>. See also *Palestine Legal Welcomes Ed Dept’s Decision to Combat Antisemitism Without IHRA Definition in New Factsheet*, PALESTINE LEGAL (Jan. 5, 2023), <https://palestinelegal.org/news/2023/1/5/palestine-legal-welcomes-ed-depts-decision-to-combat-antisemitism-without-ihra-definition-in-new-factsheet>.

⁴¹ Coalition letter to the A.B.A. (Jan. 18, 2023), available at <https://www.aclu.org/letter/letter-co-sponsors-proposed-american-bar-association-resolution-514-antisemitism?eType=EmailBlastContent&eId=f4b1f1a8-21e9-4abb-a07b-be70a65d220c>. See also Letter from Palestine Legal and Center for Constitutional Rights to the A.B.A. (Jan. 20, 2023), available at https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/63caea09de0103433add75fd/1674242569560/2023.01.20_Pal+Legal+%2B+CCR+Letter+to+ABA_final.pdf; Hum. Rts. Watch letter to the A.B.A. (Jan. 26, 2023), available at <https://www.hrw.org/news/2023/01/26/human-rights-watch-letter-co-sponsors-proposed-aba-resolution-514-antisemitism>.

Appendix: IHRA Definition in Action - Case Examples

The following cases illustrate how proponents of the IHRA definition use it to censor protected expression in support of Palestinian rights and perpetuate anti-Palestinian racism on campus.⁴²

Arizona State University (ASU)⁴³

IHRA was cited by student government officials at ASU in March 2022 as a reason to prevent student organizers from hosting Palestinian poet and journalist Mohammed El-Kurd to speak about his newly published poetry collection, *Rifqa*. A student government committee first attempted to condition approval of the event on El-Kurd refraining from criticizing Israel. The committee then questioned student organizers about whether the poetry book and the event would involve speech violating IHRA. The student government officials stated, falsely, that the university and the federal government had adopted IHRA and that they were required by law to adhere to the definition.

Student organizers explained that the event would examine how art, poetry, and creativity can be the product of living through war and being displaced in diaspora, and that El-Kurd's poetry and personal accounts reflect his life experience. The organizers were told the next day that the committee did not want to approve their budget request. The event was only approved after Palestine Legal informed the university that applying IHRA to deny funding based on viewpoint of the speaker would violate the First Amendment.

While the event went forward, the long delays and bureaucratic roadblocks not only caused the student organizers considerable time and stress, they also prevented the organizers from promoting the event as they had planned, resulting in a smaller audience than they would otherwise have expected.

Bard College⁴⁴

False accusations of antisemitism based on the logic of IHRA have resulted in over three years of misguided investigations into campus speech about Palestine at Bard. In October 2019, student activists protested a panel featuring Ruth Wisse, a retired Harvard professor with a history of bigoted anti-Palestinian remarks. The protest involved several students silently holding signs with quotes from Wisse such as, "Palestinian Arabs are people who breed and bleed and advertise their misery." After this protest, one of Wisse's co-panelists published an article falsely claiming that she and the other panelists were targeted for being Jewish.

Bard College opened an investigation into two students who were involved with the protest, after Israel advocates accused them of harassment and discrimination. These students were forced to

⁴² These examples are drawn from a coalition letter to the Department of Education's Office for Civil Rights. Letter from Palestine Legal on behalf of civil rights organizations to Dept. of Education Off. For Civil Rights (Aug. 31, 2022), available at <https://static1.squarespace.com/static/548748b1e4b083fc03cbf70e/t/63b6de30db689e6788acce6/1672928817287/Civil+Rights+Orgs+Letter+to+OCR+8-31-22.pdf>.

⁴³ Palestine Legal, "ASU Students Overcome IHRA Roadblock to Mohammed El-Kurd Event," May 10, 2022. <https://palestinelegal.org/news/2022/5/10/asu-students-overcome-ihra-roadblock-to-mohammed-el-kurd-event>

⁴⁴ Palestine Legal, "Bard Students Exonerated After Protesting Anti-Palestinian Speaker," Sept. 22, 2021, <https://palestinelegal.org/case-studies/2021/9/22/bard-students-exonerated-after-protesting-anti-palestinian-speaker>.

testify before a panel of professors during finals week, dealing not only with disciplinary procedures but also a public smear campaign against them. Ultimately, Bard cleared them of any wrongdoing.

Nonetheless, false accusations continued, and in February 2020, OCR opened an investigation into Bard College for National Origin Discrimination Involving Religion, just weeks after Trump's executive order on IHRA.⁴⁵ The students were once again questioned about their activism, this time by a federal investigator from OCR. As of December 2022, the investigation was still under way, and the campus remains under a chilling shadow of uncertainty as to whether campus members are permitted to express support for Palestine without facing punishment.

Butler University⁴⁶

Pro-Israel students proposed a resolution to adopt IHRA in the fall of 2020 as a response to two events that included references to Palestine activism: an art exhibit which displayed posters about boycotts for justice, including Palestine, and a know your rights event about safe protesting, which was jointly hosted by Students for Justice in Palestine (SJP) and the student government. During the initial debate on the IHRA resolution, the only two Palestinians in student government were excluded from participating in discussions and were unable to share the direct impact the resolution would have on Palestinians on campus. Because of the concerns of members of the campus community about the detrimental impact of IHRA, the resolution was dropped, but accusations equating Palestine advocacy with antisemitism continued to pressure campus administrators to suppress speech about Palestine.

Months later the administration abruptly cancelled a lecture by the preeminent activist and scholar Angela Davis without warning or discussion just three days before the event was scheduled to take place. The cancellation occurred after complaints about Angela Davis's vocal support for Palestinian freedom from pro-Israel students. The administration claimed that the student organizers had not followed proper procedures. The administration pointed to bureaucratic hurdles which had only been implemented earlier that year in response to other events relating to Palestine and the proposed IHRA resolution.

The Angela Davis event went forward eventually although it was delayed weeks. The accumulated stress on the Palestinian student at the center of these controversies caused severe interruptions to her education, including constant anxiety; hyper visibility and the feeling that everyone on campus was staring at her; a loss of physical security to the point she was advised by administrators not to walk to her car alone; loss of sleep; loss of appetite and a loss of weight; and ultimately the inability to apply to graduate school that year.

⁴⁵ OCR Case No. 02202022, filed Oct. 28, 2019, investigation opened Feb. 3, 2020, still pending as of Dec. 30, 2022. The complaint is not publicly available.

⁴⁶ Palestine Legal, "Palestinian Students & Angela Davis Overcome Censorship Attempts at Butler University," Sept. 22, 2021, <https://palestinelegal.org/case-studies/2021/9/21/palestinian-students-angela-davis-overcome-censorship-butler-university>.

California Ethnic Studies Model Curriculum⁴⁷

The California Department of Education removed Palestine from a draft model curriculum for Ethnic Studies, after a pressure campaign by pro-Israel groups argued that references to Palestinian perspectives and movements in a sample lesson plan violated the rights of Jewish students. The Ethnic Studies Model Curriculum went through a politicized revision that removed mention of Palestine as a place, demoted Arab American studies to a secondary appendix, and included the IHRA definition of antisemitism. The changes to the curriculum so undermined the purposes of ethnic studies that the entire 20-person advisory committee of ethnic studies experts appointed to create the curriculum removed their names from the draft.

Florida State University⁴⁸

In June 2020, Ahmad Daraldik made history as the first Palestinian-American president of the Florida State student senate. Days later, his detractors surfaced a photo of Ahmad in Palestine standing next to a statue of Nelson Mandela in the occupied Palestinian city of Ramallah, with a caption expressing outrage at the Israeli occupation. Almost immediately Ahmad faced a harassment campaign attempting to shame him for sharing his experiences as a Palestinian. Ahmad was broadly attacked as unfit for office, based on the IHRA definition and a similar rationale that speech describing Palestinian life under Israeli occupation is antisemitic.

Ahmad endured months of anti-Palestinian bullying including dozens of Islamophobic, racist, violent and misogynistic private messages; Florida legislators pressuring students to take action against him, including via threats to withdraw state funding for the school; three petitions calling for Ahmad's removal and even expulsion; two university measures adopting the IHRA definition; two resolutions passed by city councils in Florida condemning Ahmad; a statement released by the FSU administration condemning Ahmed for "anti-Israel rhetoric," which was later edited to refer to "antisemitic remarks"; and a mission on Act.il, an app partially funded by Israel, urging social media users to send pre-drafted messages to FSU complaining about Ahmad in return for rewards, badges, and online points.

From the stress of constant bullying messages and the pressure campaign against him, Ahmad had difficulty sleeping, fell ill, fell behind academically, was blocked from participating in student government, lost his sense of security, was unable to function on a daily basis and was unable to speak about being Palestinian without causing further disruptions to his education.

Middlebury College⁴⁹

In March 2021, after the Students for Justice in Palestine (SJP) club at Middlebury College in Vermont launched a campaign to raise awareness about Israeli apartheid, Palestinian and Jewish

⁴⁷ Gabi Kirk, "Authors of California Ethnic Studies Curriculum Decry Cuts to Arab Studies," *Jewish Currents*, Feb. 3, 2021, <https://jewishcurrents.org/authors-of-california-ethnic-studies-curriculum-decry-cuts-to-arab-studies>; Gabi Kirk, "Attacks From Pro-Israel Groups Threaten California's Ethnic Studies Curriculum," *Jewish Currents*, May 7, 2020, <https://jewishcurrents.org/attacks-from-pro-israel-groups-threaten-californias-ethnic-studies-curriculum>.

⁴⁸ Palestine Legal, "Student Leader Challenges Anti-Palestinian Campus Climate at FSU," Apr. 13, 2021 <https://palestinelegal.org/case-studies/2021/4/13/student-leader-challenges-anti-palestinian-campus-climate-at-florida-state-university>.

⁴⁹ Palestine Legal, "Middlebury College Refuses to Support Palestinian Student Harassed After Criticizing Israeli Apartheid," May 12, 2021, <https://palestinelegal.org/news/2021/5/12/middlebury-college-refuses-to-support-palestinian-student-harassed-after-criticizing-israeli-apartheid>.

students were harassed and vilified by Israel advocates and accused of violating IHRA. The group was falsely accused of antisemitism and terrorism, their posters were vandalized, its Palestinian co-president received veiled threats, and its Jewish co-president was pressured by the college to delete language critical of Zionism from SJP’s website.

Amidst the false accusations, the Palestinian co-president was approached multiple times—including while brushing her teeth in her dorm—with threats warning her of another student’s anger and “retaliation” because people were “afraid he’d do something.”

The Israel advocacy group StandWithUs wrote the college demanding it “take action” against SJP. StandWithUs relied on the IHRA definition to argue that the university’s failure to punish SJP for creating a website describing Israel as an apartheid state was antisemitic.⁵⁰ The letter also falsely accused SJP of having links to “designated terror organizations, including Hamas, Islamic Jihad and the Popular Front for the Liberation of Palestine.”

As a result of the threats she faced and the lack of action from administrators, the Palestinian co-president of SJP did not leave her room for four or five days out of fear for her physical safety—except to go to class and get food from the dining hall. She was able to sleep only three to four hours a night and lost seven pounds during this period.

Amidst chilling IHRA legal threats from StandWithUs, Middlebury refused multiple requests by students to the administration asking for protection from further threats and attacks.

New York University (NYU)⁵¹

In spring 2022, after NYU Law Students for Justice in Palestine (LSJP) engaged in a public email exchange about Palestine with their classmates, the Brandeis Center tried to reignite a formerly settled Title VI complaint and pressure NYU into adopting the IHRA examples.

The latest controversy dates back to April 2019 when a group of Israel advocates filed a complaint with OCR against NYU. The allegations in the complaint focused on the organizing efforts of the undergraduate Students for Justice in Palestine (SJP) club, including their support for boycotts for Palestinian rights and false allegations that SJP is connected to or founded by terrorist organizations. The complaint was filed a week after the NYU chapter SJP received a school award for their on-campus organizing and coalition building. The complaint alleged that despite NYU’s frequent and official condemnations of SJP’s activism, NYU did not adequately punish or stifle the Palestine activists in the NYU community.

In September 2020, NYU voluntarily entered a resolution agreement with OCR, agreeing to amend its discrimination policy to add shared ancestry and ethnic characteristics as protected categories. NYU released a statement affirming that the university does not tolerate discrimination or harassment. Nothing in the agreement suggested the university should prohibit or in any way suppress anti-Zionist political expression. In fact, NYU *explicitly declined* to adopt the IHRA

⁵⁰ StandWithUs, “StandWithUs to Middlebury College: Take Action Against Rising Antisemitism,” May 12, 2021, <https://www.standwithus.com/post/standwithus-to-middlebury-college-take-action-against-rising-antisemitism>.

⁵¹ Palestine Legal, “Palestine Legal Urges NYU to Stop Politically-Motivated Investigation of Law Students,” May 27, 2022, <https://palestinelegal.org/news/2022/5/27/palestine-legal-urges-nyu-to-stop-politically-motivated-investigation-of-law-students>.

examples of antisemitism, and explained: “[NYU] will devise its own examples to implement the new policies and...will affirm its long-held commitment to academic freedom and free speech.”⁵²

This did not settle demands from Israel advocacy organizations to censor campus speech supportive of Palestinian rights.

On April 7, 2022, the vice president of the NYU campus group Law Students for Israel initiated a political dialogue by sending a school wide email that condemned “acts of Palestinian terror.” In response, members of LSJP wrote a message of their own contesting this framing and condemning the illegal occupation of Palestine. LSJP’s message provided important political context: Israel’s foundational displacement and ethnic cleansing of Palestinians and its ongoing colonial and apartheid practices. The message also announced a film screening.

Pro-Israel law students reacted by sending a slew of targeted messages to individual LSJP members accusing them of playing into antisemitic tropes and demanding that they retract their statement and condemn Palestinian resistance. When LSJP declined to do so, pro-Israel students submitted complaints to school administrators and leaked the emails to the press. Articles proliferated in right-wing publications falsely accusing the LSJP students (nearly half of whom are Jewish) of antisemitism. The students were also profiled on a harassing blacklisting website.

The Brandeis Center misrepresented the 2020 resolution agreement and continued to argue that NYU should not tolerate political speech critical of Israel (such as boycott campaigns for Palestinian rights or the email exchange between law students, which Brandeis Center mischaracterized as targeting Jewish students at NYU). The Brandeis Center argued that OCR must monitor NYU for tolerating such political speech and that NYU must adopt IHRA examples to comply with the law.⁵³ Several outlets went so far as to imply that the 2020 agreement between NYU and OCR required NYU to revoke the academic scholarships of individuals who signed onto the LSJP statement.⁵⁴

Pomona & Pitzer College⁵⁵

In February 2020, the David Horowitz Freedom Center (DHFC) threatened to sue Pomona and Pitzer Colleges under Title VI of the Civil Rights Act, alleging that the colleges’ tolerance for campus speech on Palestine violated the IHRA definition. In a threat letter to the colleges followed

⁵² Kery Murakami, “NYU Settles Anti-Semitism Case,” *Inside Higher Ed.*, Oct. 2, 2020, <https://www.insidehighered.com/news/2020/10/02/new-york-university-settles-anti-semitism-case-education-department>.

⁵³ Letter from Alyza Lewin and Arthur Traldi, Brandeis Center, to Catherine Lhamon Assistant Secretary for Civil Rights, May 31, 2022, <https://brandeiscenter.com/wp-content/uploads/2022/05/May-31-2022-Letter-to-Asst-Secretary-Lhamon-OCR-regarding-NYU.pdf>.

⁵⁴ Mosaic Magazine, “NYU Law School May Face Federal Scrutiny for Anti-Semitism on Campus,” Apr. 14, 2022, <https://mosaicmagazine.com/picks/israel-zionism/2022/04/nyu-law-school-may-face-federal-scrutiny-for-anti-semitism-on-campus/>; Aaron Sibarium, “Under Federal Scrutiny, NYU Law School Faces Uproar Over Anti-Semitism,” *Washington Free Beacon*, Apr. 13, 2022, <https://freebeacon.com/campus/under-federal-scrutiny-nyu-law-school-faces-uproar-over-anti-semitism/>.

⁵⁵ Erika Schwerdfeger, “Right-wing foundation to sue Pomona, Pitzer,” *The Student Life*, Feb. 21, 2020, <https://tsl.news/pitzer-pomona-claremont-college-david-horowitz-lawsuit-anti-semitism/>; Middle East Studies Foundation Committee on Academic Freedom Letter to Presidents Dr. Melvin Oliver and Dr. Gabrielle Starr, Feb. 20, 2020, <https://mesana.org/advocacy/committee-on-academic-freedom/2020/02/20/allegations-of-anti-semitism-at-pitzer-and-pomona-colleges>.

by a media blitz, DHFC argued that the colleges were in violation of IHRA, and therefore Title VI, because they allowed the student club Students for Justice in Palestine (SJP) to promote boycott, divestment and sanctions (BDS) campaigns. They argued that the BDS movement is founded by someone who calls Israel racist, in violation of IHRA. Other alleged IHRA violations included campus film screenings, academic lectures on Palestine-Israel and art installations. DHFC underlined their argument with anti-Palestinian, anti-Muslim stereotypes alleging—falsely—that BDS is funded by the “terrorist organization, Hamas” and that SJP promotes violence.

Although the DHFC is widely viewed as an extremist hate group⁵⁶ and the complaint was absurd, the threat letter and ensuing media coverage thrust the colleges into a public relations crisis. The threat scared administrators, chilled students, and caused confusion about whether free speech favorable to Palestinian rights would be tolerated.

Tufts University

In November 2020, the Tufts University student body voted overwhelmingly to oppose Tufts University Police Department’s collaboration with the Israeli military, triggering multiple investigations into false allegations of antisemitism and demands from the Brandeis Center for the university to adopt the IHRA definition.

For years before the referendum, Tufts Students for Justice in Palestine (SJP), a student club of mostly Arab, Palestinian, and Jewish students dedicated to Palestinian human rights, had engaged in organizing and education to build diverse coalition of more than 40 student organizations. Throughout the campaign, SJP students and their allies faced online smears and attacks. For example, Ryan Fournier, a conservative political commentator with close to a million followers on Twitter, posted a video to his account alleging that Tufts SJP is antisemitic and asking his followers to call the university. Several outlets ran stories falsely accusing SJP of hateful conducted targeted at Jewish students.

During the student government’s referendum approval process, prior to the student body vote, SJP requested the recusal of a representative who had publicly opposed their campaign in his position as president of Tufts Friends of Israel. The student government denied this recusal request, and SJP submitted a complaint asking the student government to investigate. In February 2021, the Brandeis Center sent a letter to the university calling on Tufts to investigate and punish the SJP students who had filed the complaint. The letter made the false allegation that SJP called for the student to recuse himself from the referendum vote because of his Jewish ethnicity, ignoring the fact that SJP had not called on any other Jewish student senators to recuse themselves. The letter called on the university to adopt the IHRA definition of antisemitism. Over the course of several weeks, pro-Israel outlets picked up the story, accusing students with SJP of antisemitism for supporting Palestinian human rights. Out of fear of further harassment against SJP members and student senators, many of whom were Muslim, Arab, or other people of color, SJP withdrew their complaint. SJP members also declined to publicly defend themselves against the false accusations to avoid further harassment.

⁵⁶ Southern Poverty Law Center, “David Horowitz,” <https://www.splcenter.org/fighting-hate/extremist-files/individual/david-horowitz> (last visited Jan. 17, 2023).

In the time since the Brandeis Center letter, university administrators have launched multiple investigations into false allegations of antisemitism lobbed at pro-Palestine activism on campus, even privately threatening to de-charter SJP, which would cut the organization off from university funding entirely.

University of California, Berkeley – 2018 Vigil⁵⁷

In November 2018, Jewish students at UC Berkeley organized a vigil to jointly mourn the deaths of Palestinian children killed in Gaza and Jewish people killed in a shooting at the Tree of Life synagogue in Pittsburgh. The students faced a barrage of online harassment accusing them of antisemitism. A pro-Israel attorney told the media that he filed a civil rights complaint with the Department of Education relying on the IHRA definition. He argued that the vigil would portray “Israel as a barbarian and racist nation,” running afoul of the definition.⁵⁸ The students spent weeks of their semester responding to the false accusations and canceled the event. They lost study time, and the chance to mourn publicly as Jews and Palestinians together. A student organizer described, “As a Jewish student, I deeply care about antisemitism because it affects me and my family personally, and because it informs my concern about oppression of Jews and Palestinians and all people—it’s why I do what I do.”

University of California, Berkeley – 2016 Course Suspension⁵⁹

In September 2016, UC Berkeley suspended a course called “Palestine: A Settler Colonial Analysis” mid-semester, following complaints from Israel advocacy organizations who claimed the course was antisemitic under the “State Department definition”—a substantially similar definition to IHRA.

Israel advocacy organizations led a media campaign against the course, prompting the university to falsely accuse the Palestinian-American student facilitator Paul Hadweh of failing to follow procedures. After outcry over the blatant academic freedom violations, the university reinstated the course and issued a delayed partial apology to the student facilitator. However, the university did nothing to remedy the lasting harms.

The students in the course lost weeks of course time. The student facilitator, Paul, was depicted falsely in international media coverage (extending to Israeli, Arab, European, national, and local media outlets) as a student who violated university policies and attempted to indoctrinate his peers with antisemitic thinking.

For the weeks that followed the reinstatement, Paul was forced to devote himself full time to defending his reputation. He fell irreparably behind in an intensive Hebrew language course, which he eventually had to drop. Paul lost sleep, had trouble concentrating, and was consumed with the anxiety of potential consequences to his future and his family. In December 2016, following the

⁵⁷ Ed Pilkington, “Revealed: rightwing push to suppress criticism of Israel on US campuses,” *The Guardian*, Oct. 17, 2019, <https://www.theguardian.com/us-news/2019/oct/16/conservative-activists-want-to-outlaw-antisemitism-in-public-education-why-is-that-a-bad-thing>.

⁵⁸ Aaron Bandler, “Pro-Israel Students File Complaint to Department of Education About SJP Vigil at Berkeley,” *Jewish Journal*, Nov. 13, 2018, <https://jewishjournal.com/news/united-states/241882/pro-israel-students-file-complaint-department-education-sjp-vigil-berkeley/>.

⁵⁹ Palestine Legal, “UC Berkeley Suspended Course on Palestine,” Oct. 17, 2017, <https://palestinelegal.org/case-studies/2017/10/13/uc-berkeley-suspended-course-on-palestine>.

suspension, the Israeli government denied Paul a permit to cross from the West Bank to Jerusalem for Christmas. Paul's church had applied on his behalf, as it had successfully done in previous years. This was the first time his permit was denied.

University of California Los Angeles – 2018 Student Conference⁶⁰

In November 2018, students from throughout the United States and Canada gathered on the campus of the University of California, Los Angeles (UCLA), for the eighth annual National Students for Justice in Palestine conference, which convened students from diverse backgrounds to discuss achieving equality for Palestinians. The conference faced overwhelming pressure from Israel advocacy groups demanding that the university shut it down. Efforts included legal threats from Israel advocacy organizations; petitions from pro-Israel students and alumni falsely accusing Palestinian students of supporting terrorism; politicians, including the Los Angeles City Council⁶¹ and a member of Congress, demanding UCLA take unconstitutional action to cancel the conference; and aggressive protests before and during the conference where protestors hurled racist insults and reportedly physically assaulted three students. During one protest, an LA City Council member spoke to the crowd, suggesting that student attendees of the conference were “plotting terrorism.”

The university itself issued an unsubstantiated claim of trademark infringement⁶² and demanded that the conference alter its logo. The university also required an overwhelming presence of administrators, campus police, and private security throughout the conference.

Within hours of the conference beginning, the Zachor Legal Institute, an anti-Palestinian group that has repeatedly demanded criminal investigation of human rights activists, filed a federal complaint against UCLA claiming that discussing Palestinian rights was an attack on Jewish students. After OCR opened an investigation into the complaint, the Zachor institute celebrated with headlines such as “US Ed. Dept investigating UCLA over anti-Zionist SJP conference on campus,” and named Trump's Executive Order as a tool to “deal with” speech such as this student conference on Palestine.⁶³ The OCR investigation remains open, and the campus remains under a shadow of uncertainty about whether Palestine advocacy is permissible.⁶⁴

University of California Los Angeles – 2019 Class Discussion⁶⁵

In 2019, UCLA subjected anthropology professor Kyeyoung Park to an unwarranted investigation after a student complained about comments critical of Zionism made by a guest

⁶⁰ Palestine Legal, “Student Group Harassed, Defamed and Threatened with Lawsuit Over Conference,” Nov. 1, 2018, <https://palestinelegal.org/case-studies/2019/2/4/nsjp-2018-conference-case>; Inga Hwang, “National Students for Justice in Palestine conference goes on despite on-campus protest,” *Daily Bruin*, Nov. 18, 2018, <https://dailybruin.com/2018/11/18/national-students-for-justice-in-palestine-conference-goes-on-despite-on-campus-protest>.

⁶¹ PEN America, @PEN America, Nov. 8, 2018, <https://twitter.com/PENAmerica/status/1060638748537434113> (“The Los Angeles City Council's resolution calling on UCLA to cancel a conference organized by National Students for Justice in Palestine represents unwarranted interference by government in protected speech at a public university.”).

⁶² Palestine Legal, “UCLA Falsely Claims Bear Used by Palestinian Rights Group is a Trademark Violation,” Nov. 7, 2018, <https://palestinelegal.org/news/2018/11/7/ucla-bear-trademark-nsjp>.

⁶³ Jeremy Sharon, “US Ed. Dept investigating UCLA over anti-Zionist SJP conference on campus,” *J Post*, Jan. 9, 2020, <https://www.jpost.com/diaspora/us-ed-dept-investigating-ucla-over-anti-zionist-sjp-conference-on-campus-613664>.

⁶⁴ OCR Case No. 09192070, filed Nov. 19, 2018, investigation opened Jan. 3, 2020, still pending as of Dec. 30, 2022.

⁶⁵ Palestine Legal, “UCLA Wrongly Investigates Lecture Linking Zionism with White Supremacy,” May 31, 2019, <https://palestinelegal.org/news/2019/5/31/ucla-wrongly-investigates-lecture-linking-zionism-with-white-supremacy>

lecturer, Dr. Rabab Abdulhadi, during Park’s course on “Constructing Race.” Dr. Abdulhadi discussed the interrelations of Zionism, colonialism, and Islamophobia. StandWithUs filed a Title VI complaint arguing that Dr. Abdulhadi’s comments, which did not mention Jews, were antisemitic according to the IHRA definition.⁶⁶ Again, an OCR investigation into the complaint appears to remain open and academic freedom to teach about Palestine is in question.⁶⁷

University of Illinois-Urbana Champaign

In response to campus advocacy for Palestine⁶⁸—including student efforts to oppose the false conflation between antisemitism and criticism of Israel—the Brandeis Center filed a complaint with OCR in 2020 against the University of Illinois Urbana-Champaign, relying on the IHRA definition to argue that tolerating Palestine advocacy on campus violates Jewish students’ rights. The complaint focused primarily on advocacy by Palestinian students and their allies, including a divestment resolution, rallies against racism, and a presentation on protests in Gaza. The complaint referred to 23 alleged incidents intermixing and equating antisemitic acts such as vandalizing a menorah with expression of pro-Palestinian views such as calling for divestment from companies complicit in violating Palestinian rights.⁶⁹ The complaint remains under investigation.⁷⁰

The pressure this investigation has put on the university has made the campus climate particularly hostile to Palestinian activism. Days after the investigation was opened, the university chancellor issued a statement demanding that students who “identify with Israel” be included in all “campus activities aimed at fighting racism and achieving social justice.”⁷¹ This statement was later invoked in a complaint by professors against a campus civil rights group advocating against hateful ideologies, including Zionism. In another instance the university made a statement mischaracterizing a talk critical of Zionism, calling the talk exclusionary and unrepresentative of university values, and incorrectly denying the fact that the university had sponsored the talk.⁷² The university later apologized for this statement.⁷³

University of Massachusetts Amherst⁷⁴

In April 2019, a group of anonymous pro-Israel students filed a lawsuit relying on the IHRA definition asking the court to force the cancellation of a panel discussion at the University of Massachusetts Amherst. The lawsuit, which was filed with the help of the anti-Palestinian group

⁶⁶ StandWithUs, “OCR Responds to SWU and Zachor Legal Institute Title VI Filings Against UCLA 1-3-20,” Jan. 9, 2020, <https://www.standwithus.com/post/u-s-department-of-education-s-ocr-opens-investigation-on-alleged-ucla-title-vi-violation>.

⁶⁷ OCR Case No. 09202016, filed Oct. 15, 2019, investigation opened Jan. 3, 2020, still pending as of Dec. 30, 2022.

⁶⁸ Palestine Legal, “UIUC Students Organize Against Efforts to Equate Anti-Zionism and Antisemitism,” Oct. 30, 2019, <https://palestinelegal.org/news/2019/10/30/uiuc-students-organize-against-efforts-to-equate-anti-zionism-and-antisemitism>.

⁶⁹ Independent Jewish Voices, “IHRA Definition at Work,” <https://www.ijvcanada.org/ihra-definition-at-work/>.

⁷⁰ OCR Case No. 05202325, filed Mar. 24, 2020, investigation opened Nov. 13, 2020, still pending as of Dec. 30, 2022.

⁷¹ UIUC Office of the Chancellor, “Joint Statement on Anti-Semitism,” Nov. 16, 2020,

<https://blogs.illinois.edu/view/6231/1530347443>.

⁷² Email from Vice Chancellor for Diversity, Equity & Inclusion Sean C. Garrick, “A message regarding an event today,” Apr. 13, 2022, <https://massmail.illinois.edu/massmail/1540841668.html>.

⁷³ Email from Vice Chancellor for Diversity, Equity & Inclusion Sean C. Garrick, et al., “A collaborative statement on academic freedom and critical conversations,” Apr. 21, 2022, <https://massmail.illinois.edu/massmail/1336051131.html>.

⁷⁴ Palestine Legal, “UMass Amherst: Lawsuit Attacking Free Speech Event,” May 31, 2019, updated Dec. 13, 2019, <https://palestinelegal.org/case-studies/2019/5/31/umass-amherst>.

Americans for Peace and Tolerance, argued that the event, “Not Backing Down: Israel, Free Speech and the Battle for Palestinian Human Rights,” would cause “irreparable harm” to Jewish students on campus. The lawsuit was dismissed but not without considerable volunteer resources to defend against the legal bullying.