

TESTIMONY OF HON. KENNETH L. MARCUS
FOUNDER AND CHAIRMAN
THE LOUIS D. BRANDEIS CENTER FOR HUMAN RIGHTS UNDER LAW
TESTIMONY ON S.B. 297
BEFORE THE OHIO SENATE JUDICIARY COMMITTEE
DECEMBER 4, 2024

CHAIRMAN MANNING, VICE CHAIR REYNOLDS, RANKING MEMBER HICKS-
HUDSON, AND MEMBERS OF THE COMMITTEE:

I am honored to appear before you today as a proponent of S.B. 297. My name is Kenneth L. Marcus. I am the Chairman of the Louis D. Brandeis Center for Human Rights Under Law, which I founded to advance the civil and human rights of the Jewish people and promote justice for all. Our primary focus is anti-Semitism on and off college and university campuses. Additionally, I am a former Assistant U.S. Secretary of Education for Civil Rights, Staff Director of the U.S. Commission on Civil Rights, and General Deputy Assistant Secretary of Housing and Urban Development for Fair Housing and Equal Opportunity.

Over the past decade, the Brandeis Center has been a steadfast advocate for students, employees, and members of the public who have faced anti-Semitic harassment, discrimination, and hate crimes. With a nationwide reach, our organization provides comprehensive legal representation, rigorous research, and impactful educational training to empower those responsible for protecting Jewish Americans in both private and public sectors. Throughout our work, we have consistently found the International Holocaust Remembrance Alliance (IHRA) Working Definition of Antisemitism – along with its contemporary examples – to be an indispensable tool in identifying and addressing anti-Semitic behavior. This perspective is shared by many in Ohio, including Governor DeWine, who underscored its importance by issuing Executive Order 2022-06D (“Defining and Combating Antisemitism”), which formally adopts the IHRA definition.¹ Fortunately, the federal government and 35 other states (including the

¹ Executive Order 2022-06D, April 14, 2022. <https://governor.ohio.gov/media/executive-orders/executive-order-2022-06d>.

District of Columbia) also believe that IHRA is a key tool in combating anti-Semitism, adopting it through executive orders, resolutions, legislation, or executive proclamations.²

The IHRA definition defines anti-Semitism as “a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of anti-Semitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.”³ Thankfully, the IHRA Working Definition includes common examples of contemporary manifestations to serve as illustrations that are integral to the definition itself. Contemporary examples include:

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

² “Use of the Working Definition in the U.S.” AJC, August 9, 2024. <https://www.ajc.org/use-of-the-working-definition-in-the-us#:~:text=As%20of%20August%202024%2C%2035,%2C%20Louisiana%2C%20Maine%2C%20Massachusetts%2C>

³ “What Is Antisemitism?” IHRA, December 2, 2024. <https://holocaustremembrance.com/resources/working-definition-antisemitism>.

These examples run the gambit of different manifestations of anti-Semitism – from far right to far left. They are also representative of the forms of discrimination experienced by Jewish students on campus, tying into stereotypes and tropes about Jewish identity.

S.B. 297 would codify E.O. 2022-06D, amending sections of the Revised Code to establish a clear definition of anti-Semitism for use in investigations and proceedings conducted by state agencies. The bill would strengthen legal protections by expanding the definition of “ethnic intimidation” to encompass offenses such as riot and aggravated riot when they are motivated by the victim's race, color, religion, or national origin. This critical legislation represents an important step toward safeguarding the rights and dignity of all individuals in Ohio.

With anti-Semitism on the rise across the country, Ohio has unfortunately seen no shortage of anti-Semitic incidents. Less than two weeks ago, neo-Nazis marched through Columbus, brandishing flags adorned with swastikas and shouting racist and anti-Semitic slurs.⁴ Over the summer, nearly 200 Jewish gravestones were vandalized or destroyed at two cemeteries in Cincinnati, shattering not only monuments but the sense of security within the community.⁵ At Ohio State University (OSU), Jewish students have faced a series of violent and intimidating attacks. In the aftermath of October 7th, two Jewish students were physically assaulted, suffering severe injuries, including a broken nose and a broken jaw. During the attack, they were targeted explicitly for being Jewish and subjected to vile anti-Semitic slurs, including being called

⁴ Park, Hanna. “With Swastika Flags and Bellowed Slurs, Neo-Nazi Marchers Strode through Columbus. Ohio’s Governor and Officials Condemn It.” CNN, November 19, 2024. <https://www.cnn.com/2024/11/18/us/columbus-ohio-neo-nazi-march-hnk/index.html>.

⁵ Baarlaer, Killian. “Jewish Gravestones Vandalized at 2 West Side Cemeteries.” The Enquirer, July 2, 2024. <https://www.cincinnati.com/story/news/2024/07/01/jewish-cemetery-cincinnati-ohio-gravestones-vandalized-tifereth-israel-beth-hamedrash/74273114007/>.

'Zionist kike[s]’⁶ Also at OSU, Jewish students seeking signatures for a petition against anti-Semitism were confronted by a man saying he wanted to “kill Jews,” a peaceful Shabbat dinner at the campus Hillel was disrupted by pro-Palestinian protesters, and Jewish students have faced door vandalism in their residences.⁷ Anti-Israel encampments and protests have devolved into a hotbed of anti-Semitism, with demonstrators targeting Jewish individuals and communities through physical assaults, harassment, and vandalism.⁸

In each of these instances, the Jewish community was targeted specifically for its religious and ethnic identity, singled out by anti-Semitic perpetrators from across the political spectrum. By incorporating the IHRA definition into the state’s evaluation of the ethnic intimidation offense, authorities can more effectively identify and address anti-Semitic motivations behind such crimes, ensuring that hate-driven acts are properly recognized and prosecuted. This measure applies equally to violent far-right, neo-Nazi riots and far-left, pro-Hamas demonstrations, reinforcing that hate-fueled violence will not be tolerated from any ideological source.

Some critics raise First Amendment concerns regarding free speech, particularly in relation to the IHRA definition’s examples involving Israel. However, the definition explicitly states that:

Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic. Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for “why things go wrong.” It is

⁶ Deliso, Meredith. “Ohio State Reports 2 Antisemitic Incidents against Students in 24 Hours.” ABC News, November 10, 2023. <https://abcnews.go.com/US/ohio-state-antisemitic-incidents/story?id=104794723>.

⁷ “Brandeis Center, StandWithUs & ADL File Title VI Complaint Against Ohio State, Alleging Pervasive Antisemitic Climate for Jewish Students.” Louis D. Brandeis Center for Human Rights Under Law, April 9, 2024. <https://brandeiscenter.com/wp-content/uploads/2024/04/OSU-Title-VI-PR-4.9.24-FINAL.pdf>.

⁸ Kohli, Carter. “Video of Ohio State Protest Goes Viral, Prompts University Response.” The Lantern, April 23, 2024. <https://www.thelantern.com/2024/04/video-of-ohio-state-protest-goes-viral-prompts-university-response/>.

expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits.⁹

This distinction emphasizes that legitimate critique of Israel, comparable to that directed at any other nation, remains protected. Concerns about silencing Palestinian, Arab, Muslim, or other voices are therefore unfounded.

Furthermore, the proposed bill regulates conduct, not speech. It states that the IHRA definition shall be taken into consideration when determining whether a “discriminatory act” was “motivated by discriminatory antisemitic intent.” The Supreme Court has long held that statutes enhancing sentences based on the defendant’s motive for selecting a victim do not infringe on free speech rights (*Wisconsin v. Mitchell*, 508 U.S. 476 (1993)). Therefore, this bill raises no free speech concerns, as it does not seek to regulate or punish speech. Additionally, S.B. 297 explicitly states that codifying the IHRA definition “shall not be construed to diminish or infringe on any right protected by the First Amendment to the United States Constitution or the Ohio Constitution.” This approach ensures that free speech rights are not violated while providing a clear tool to identify and address antisemitism.

S.B. 297 would strengthen protections against anti-Semitism by codifying E.O. 2022-06D and expanding the scope of ethnic intimidation to include riot offenses motivated by hate, promoting accountability and deterring violence from any ideological source. This is a necessary and natural step given the type of anti-Semitic discrimination witnessed across the country and here in Ohio. Overall, passing S.B. 297 would reinforce Ohio's commitment to safeguarding civil rights and fostering a safer, more inclusive environment for all citizens.

⁹ What Is Antisemitism?” IHRA, August 20, 2024. <https://holocaustremembrance.com/resources/working-definition-antisemitism>.