

TO: Senate Judiciary Committee

FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio

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RE: Sub. House Bill 297 - Opponent Testimony

To Chairman Manning, Vice Chair Reynolds, Ranking Member Hicks-Hudson, and members of the Senate Judiciary Committee, thank you for this opportunity to provide opponent testimony on Senate Bill 297.



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Of course, SB 297 is a bill to expand Ohio's laws as they relate to state investigations and enforcement of potential violations of antidiscrimination laws and as they apply to the offenses of Riot and Aggravated Riot. This is to be done by adopting a definition of "antisemitism" to be used for these purposes. Furthermore, SB 297 requires a particular definition be used. That is the definition developed and endorsed by the International Holocaust Remembrance Alliance (IHRA):

"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."

In order to provide further clarification as to how "antisemitism" should be interpreted, the IHRA offers a non-exclusive list of "contemporary examples" listed below:

- **Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion;**
- **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;**
- **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;**
- **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);**

- **Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.**
- **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.**
- **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.**
- **Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.**
- **Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.**
- **Drawing comparisons of contemporary Israeli policy to that of the Nazis.**
- **Holding Jews collectively responsible for actions of the state of Israel.**

It is unfortunate the first two hearings on SB 297 did not result in a discussion about the exact language this bill seeks to adopt as these IHRA contemporary examples present a litany of serious free speech concerns. A review of these examples essentially means Ohioans would be forbidden from, or face consequences for, voicing, commenting or opining on matters fully protected by the First Amendment.

To be clear, the ACLU of Ohio of course does not support or advocate for the discriminatory harassment, bullying, violence against, or targeting of Jewish people. We believe the General Assembly is correct to be concerned about antisemitism and increased examples of it in and around Ohio. But we reject any attempt to limit and outlaw constitutionally protected free speech, even speech we, you, and others may find abhorrent.

Adoption of the IHRA contemporary examples of antisemitism would mean numerous, and perhaps endless, examples of outlawing, among other speech:

- Complaints about, or opposition to, any and all domestic and/or foreign policy and actions of and by Israel;
- Using, voicing, or supporting a Jewish stereotype, such as Jews having power in some industry;
- Disputing the scope of any aspect of the Jewish Holocaust of the 1940s;
- Raising any question as to the national loyalty or priority of any Jewish person;
- Expressing disagreement with the idea that the Jewish people have a “right to self-determination;”
- Making untruthful allegations about Jews (where the government determines what is or is not truthful).

One need not agree with any, some, or all of these examples of speech to recognize it is still constitutionally protected and the various problems that inevitably arise when Government tries to pick and choose what controversial speech is legally acceptable.

During last week’s SB 297 hearing, some proponents tried to wave away these concerns by explaining SB 297 also contains this language:

The definition of "antisemitism" in this section 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 division shall not be construed to conflict with this chapter or any other federal, state, or local antidiscrimination law.

This provision offers zero comfort or assurances the requirements of SB 297 and these IHRA “contemporary examples” would not be used to target and punish constitutionally protected speech. Particularly because at least some proponents believe these examples are not protected in the first place by the First Amendment.

It also does not save SB 297 from unconstitutionality. An ordinary person would not know what speech is, or is not, a violation of the law. It is therefore vague and overbroad and violates the U.S. and Ohio Constitutions.

At least one witness also tried to downplay free speech concerns by stating these restrictions pass constitutional muster because they address conduct, not speech. This is an interesting interpretation of the First Amendment. But it is misleading and has been repeatedly rejected by courts.

Certainly, various types of harassment, bullying, violence, and other actions and conduct do not generally enjoy First Amendment protection, for good reason. But some examples of “conduct” protected by the First Amendment include burning a flag; labor strikes; economic boycotts of a company, business, or individual; and refusing to vote in elections. All conduct, all protected.

Finally, there are also numerous concerns about how a person, department, or entity tasked with enforcing SB 297 will determine someone is acting, or has acted, with antisemitic intent. Is the expectation people accused of violations will have their social media accounts investigated? How about the books they read, the movies they watch, the organizations they support or are a member of, the people they associate with, and more? SB 297 is silent on the scope of, and any guidance regarding, investigation and enforcement.

Ohio government is already equipped to investigate and enforce its antidiscrimination laws without selecting one particular target of discrimination and applying a wholly different standard that involves limiting and outlawing constitutionally protected free speech.

For all these reasons and more, the ACLU of Ohio encourages this committee’s rejection of Senate Bill 297.