

TO: House Finance Committee

FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio

DATE: June 18, 2024

RE: House Bill 606 – Interested party testimony

To Chairman Edwards, Vice Chair LaRe, Ranking Member Sweeney, and members of the House Finance Committee, thank you for this opportunity to provide interested party testimony on House Bill 606.

At a minimum, Ohio’s colleges and universities have a legal obligation to keep students safe from discrimination, harassment, bullying, vandalism, and violence based on their religion, race, ethnicity, or national origin (among other factors not the subject of HB 606).

To that end, HB 606’s provisions regarding institution policies, complaint processes, law enforcement cooperation, and examining further ways to protect students will hopefully prove noncontroversial in practice and application. That said, ensuring such efforts do not go overboard and intrude on the First Amendment free speech rights of other students will be worth monitoring. To be sure, balancing these interests can be complex. On the other hand, our institutions of higher education have been dealing with this complexity for many decades; often successfully, but sometimes not.

To the extent these changes can be made without infringing on the rights of others, the ACLU of Ohio takes no issue. We believe supporters of HB 606 are genuine in their attempts to make our campuses safer for all regardless of religious or other differences.

However, the ACLU of Ohio is very concerned about and, in its current state, opposes other provisions in HB 606 regarding “antisemitism,” “Islamophobia,” “bias,” and related language. The most glaring and obvious problem with HB 606 in this regard is the complete lack of definition in this bill of those often subjective terms. Indeed, how one defines, for example, “antisemitism” can and does differ broadly from person to person.

Under HB 606, it is easy to forecast numerous problems as universities, students, law enforcement, and all other stakeholders scramble to decide for themselves the scope of such terms and when, or if, they should apply to any number of situations. I do not believe it is the intention of HB 606 supporters to create a virtual minefield of free speech headaches and dilemmas, but the complete absence of definitions for often subjective terms will do just that.

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To address criticisms such as this, many have pivoted to formally using the definition of antisemitism developed and endorsed by the International Holocaust Remembrance Alliance. The IHRA definition is:

*“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.”*

I wish I could say that definition clears things up for those concerned about how broadly some may interpret “antisemitism.” Instead, it increases the concern about the scope of such legislation as HB 606. Indeed, this definition has been weaponized to target protected speech on college campuses in other states.

For those concerned about how this particular definition may be interpreted, the IHRA offers guidance. Unfortunately, that advice makes it quite clear that any government entity utilizing it will undoubtedly be silencing others in unconstitutional ways. Among the ways the IHRA encourages others to apply their definition are:

- *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;*
- *Drawing comparisons of contemporary Israeli policy to that of the Nazis.*

I trust this committee fully realizes the First Amendment protects unpopular speech, including, but certainly not limited to, Holocaust denial, voicing of stereotypes, and criticisms of Israel’s foreign and domestic policies. Yet, adoption and enforcement of the IHRA definition(s), or similar definitions, whether via law or policy, ensures First Amendment nightmares unparalleled by any Ohio legislation in recent times.

It is also worth noting HB 606 applies in part to all state agencies, state retirement systems, and JobsOhio. That is, HB 606 requires all these entities to adopt a policy “for the prevention of antisemitism.” Here, as in other parts of the bill, antisemitism is left undefined.

Still, there are rumblings around the Statehouse HB 606 may be amended at a future date to adopt the IHRA definition, or at least some definition, of antisemitism. Adopting any definition that clearly violates the First Amendment would be a great detriment to those genuinely concerned about legitimate student safety and discrimination issues on our campuses (and/or in state agencies, etc) as eventual and predictable lawsuits will tie up the future of HB 606, likely for many years.

Surely, there are ways to further protect college students who are facing or may face religious and related discrimination, violence, and more. As mentioned, HB 606 contains some provisions meant to accomplish that goal. But via the laudable goal to protect students, we must not so casually or carelessly throw First Amendment protections overboard because some, or many, find the speech of others distasteful, offensive, unwelcome, or inaccurate.

Members of this committee, the ACLU of Ohio welcomes further thoughtfulness and intention to protect vulnerable students on campus. But we also encourage your wholesale rejection of any ideas, methods, or movement to chill, restrict, or ban otherwise legal, constitutionally protected speech and expression you or others may not like.