

HB 521
Opposed (UNF)
Democratic Socialists of America - Southern Maryland Chapter
Palestine Solidarity Working Group
6 Mattawoman Ct, Indian Head, MD 20640
southernmarylandDSA@gmail.com
(240) 258-7641

The Southern Maryland Chapter of the Democratic Socialist of America (DSA) abhors discrimination of all kinds, including antisemitism, especially when it hinders working class and marginalized Marylanders from achieving their full potential. All people – Jews and non-Jews alike – deserve freedom from persecution, respect for individual rights, and recognition of their shared humanity.

Unfortunately, embedding the flawed IHRA Definition of antisemitism into Maryland State procurement law will not achieve these ends. Instead, it will generate confusion and litigation. It will chill legitimate political discourse. It will not reduce antisemitism or improve Maryland State procurement.

We offer the following arguments in opposition to the HB 521:

1. The IHRA definition chills legitimate criticism of the state of Israel, which is against the public interest.

International courts, non-governmental organizations, scholars, and journalists have raised substantial questions regarding whether the State of Israel is committing war crimes, crimes against humanity, apartheid, ethnic cleansing and even genocide.

Both the Federal government and the State of Maryland are spending taxpayer money to support the State of Israel. It is right and proper that citizens openly debate the merits of this financial support without any consideration of whether doing so could bar them from state contracts.

On matters of politics and public policy, Marylanders must have the right to speak freely, even when statements are outrageous or even false. Working class citizens cannot afford attorneys to help them navigate the ambiguities of the IHRA definition while they insist tax dollars promote human rights and not ill-advised foreign projects.

2. The IHRA definition is likely an unconstitutional restriction on freedom of speech.

The IHRA definition expressly includes “rhetorical ... manifestations” and thus targets speech by its own terms. HB 521 is a State restriction on speech because it would prohibit the State from procuring goods or services from businesses that engage in allegedly offending rhetoric.

Under Constitutional jurisprudence, State restrictions on speech are subject to strict scrutiny and must be narrowly tailored to meet a compelling governmental interest. In particular, laws restricting speech are unconstitutional where they suffer from vagueness or overbreadth.

a. The definition is vague

The definition states that antisemitism is “a certain perception of Jews, which may be expressed as hatred of Jews” (emphasis added). Unfortunately, reasonable and well-meaning citizens of Maryland will not be able to interpret what an offending “perception” might be. For example, as the bill is written, it could include perceptions not involving hatred (e.g., one might have the perception that there is only one type of Judaism when in fact there are several branches). The IHRA has examples that purportedly help people interpret the definition but these examples are not expressly cited in the bill now before the Committee and are themselves vague and subject to a wide range of interpretations.

b. The definition is overly broad

The definition covers “Rhetorical and physical manifestations directed toward ... Jewish or non-Jewish individuals or their property.” The term “rhetorical” encompasses a wide variety of speech, including spoken and written. The phrase “Jewish or non-Jewish individuals” literally applies to everyone. The phrase “or their property” would then include nearly everything under any form of private or corporate ownership.

A law targeting statements directed at everyone and nearly everything is not narrowly tailored, but rather fatally overly broad.

3. The IHRA definition improperly discriminates against Jews who reject the idea that Zionism is integral to their Jewish identity.

We are concerned that the intent of this bill is to include the IHRA interpretative examples even though these are not expressly in the language of the bill. Three of the IHRA examples directly link Judaism with Zionism — in the examples, anti-semitism could include making statements that hold Israel to a higher standard than other nations, or claim that Israel is racist or has Nazi-like policies.

However, many Jews (including many who are DSA members) strongly oppose Zionism. Jewish organizations that act in solidarity with DSA – such as Jewish Voice for Peace and If Not Now – are highly critical of the State of Israel. Additionally, many orthodox Jews such as the Satmar Hasidim reject modern Zionism.

In this light, broadly interpreted, the IHRA definition could be weaponized against Jewish community institutions that do not support the definition, as well as organizations in solidarity

with those institutions (e.g., the DSA). If adopted in law, the IHRA definition could easily create more division than healing.

4. Existing discrimination rules for Maryland state procurement adequately address anti-semitism.

We know of no instance in the modern era in which the State of Maryland engaged in business with an entity that promotes anti-semitism, nor is any example cited in the preamble to the bill. No evidence has been offered that any aspect of Maryland State procurement has failed to identify anti-semitism in any way in the real world application of Maryland discrimination laws. Accordingly, the bill does not appear to be a remedy for any actual problem. Current law is sufficient.

The Southern Maryland Chapter of the DSA urges the Committee and House of Delegates to reject HB 521. The bill unfairly limits speech with little assurance that it would be an effective countermeasure to antisemitism.