

Written submission against LD 1351.

My name is Jim Burke, and I am a resident of Topsham Maine. As a bit of background, I am now retired. I am a former president of the American Civil Liberties Union of Maine, and I am an Emeritus Clinical Professor of Law at the University of Maine School of Law. I do not write on behalf of either of those organizations. I submit as my own opinion this written testimony in opposition to LD 1351.

Religion is already a protected class status under the Maine Human Rights Act, 5 MRSA sec.4552. Section 4552 (2) defines "discriminate" for purposes of the Human Rights Act clearly and includes subjecting someone to harassment based on religion. There is no question, under current Maine law, that harassment of, or discrimination against, a Jewish person based on their religion violates the law.

LD 1351 seeks to amend the clear language of the MHRA in order to limit legitimate political speech by expanding the definition of discriminatory behavior of an antisemitic person to include legitimate criticism of the government of the State of Israel. It does this by incorporating the IHRA definition of antisemitism, developed back in 2016 as a non-legally binding working definition for use monitoring antisemitic incidents worldwide. It was not intended to serve as a legal framework for institutions or governments. Most dangerously, it conflates criticism of the state of Israel and Zionism with being anti-Jewish. The state of Israel is not Judaism.

Seven of the 11 "contemporary examples of antisemitism" in the IHRA definition involve criticism of the state of Israel. The State is not the Jewish people. Defining antisemitism so broadly and vaguely will have chilling effects on free speech, scholarship, and public dialogue around international affairs and current events. The IHRA definition has often been

used to wrongly label criticism of the State of Israel as antisemitic behavior. Contrary to combating genuine antisemitism, this has the effect of suppressing speech and criticism that may be critical of Israel and/or Zionism, which is also a political position. Neither is Judaism, and criticism of either is not antisemitic behavior. The definition is often used to target professors, students, grassroots organizations, human rights groups, and even members of the US Congress, who document or criticize Israeli policies or human rights violations. Many Jews criticize Israel or Zionism, and this definition would, in an Orwellian fashion, label them as antisemites. Ken Stern, the main drafter of the IHRA definition, recently reiterated his concerns about institutions adopting the IHRA definition stating that it is "a blunt instrument to label anyone an antisemite".

And if the Legislature were to pass this bill, I believe that the Courts would find it an unconstitutional infringement on our freedom of speech. Criticizing a government, a politician, a political party, or a political position is about as fundamental an exercise of free speech as can be imagined.

I urge this committee to vote against the passage of LD 1351.

Thank you. Jim Burke