

Barbara Kates  
Bangor  
LD 1351

April 7, 2025

Members of the Judiciary Committee,

Thank you for your work on behalf of the people of Maine. Please vote ought-not-to-pass on LD 1351, An Act to Require Antisemitism to Be Considered as Motivation When Determining a Violation of a Criminal or Civil Law.

We are Jews who have lived in the Bangor area since 1980. We are concerned about antisemitism and we and our children have experienced it multiple times here in Maine. Our Jewish community welcomes support at a time when we are under attack from the political right and left, and when antisemitism is being used as a political pawn. Passing LD 1351 is not the support that is needed by our community..

Here are some of the problems with the bill:

1) The bill is unnecessary for the Maine Human Rights Act

It is an amendment to the Maine Human Rights Act. That Act forbids discrimination (which is defined to include harassment) in a number of areas (employment, housing, public accommodations, credit, and education) based on certain grounds. Among these grounds are religion. So if a Jew is discriminated against by reason of religion, the Human Rights Act already provides a remedy. (National origin and ancestry are also grounds protected against discrimination, so that, e.g., an Israeli in Maine would be protected by the law.) If the bill authors do not feel that the Maine Human Rights Act adequately addresses antisemitism, legislation should address that specifically.

2) The definition of antisemitism is ambiguous.

There are several well recognized definitions of antisemitism. Using the IHRA definition in making law is contentious within the Jewish community. The IHRC definition is specifically denominated as a "non-legally binding working definition." But to write it into a legally binding statute is inappropriate. For example, the IHRC has this to say about anti-Israel antisemitism: "Manifestations [of antisemitism] 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." This is fine as a non-legally binding working definition. Antisemitism might indeed involve holding Israel to a different standard than that to which other countries are held. But, as a legal standard, with legal consequences, the line is far too vague to be permissible.

3) The reach of the bill is overly broad.

While the bill is presented as an amendment to the Maine Human Rights Act, it reaches not only that Act, but also "any criminal or civil law". That covers a lot of ground. It covers everything. What are the consequences of such a blanket consideration? The Committee's attorneys can answer this question better than we.

4) "Motivation" is not generally an appropriate factor.

Maine criminal law, as well as some civil law, looks generally to four mental states when assessing culpability: intentional acts, acts done with knowledge, acts done with reckless disregard, and acts committed through negligence. But the bill instructs that for all criminal and civil law, an assessment of whether there was an antisemitic "motive" must be made. This would work a revolution in Maine law. In certain narrow areas, motivation is considered (e.g., Maine's sentencing law, 17-A MRS § 1501(8)(B), allows consideration of whether a victim was selected by reason of the victim's religion) but this is a very circumscribed consideration of motivation, very unlike what's in the bill.

5) The bill might intrude on Constitutionally protected speech.

There is one aspect of antisemitism that is not covered by the Human Rights Act. The IHRC definition of antisemitism states that "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." (emphasis added). Hate speech is a rhetorical manifestation of antisemitism. It is deplorable. Yet it is protected by the Free Speech guarantee of the First Amendment.

Thank you for your consideration of our concerns. Please feel free to reach out to us with your questions.

Sincerely,  
Solomon Goldman  
Barbara Kates