

March 4, 2020

RE: Oppose SB 1143 and HB 2683 For Chilling and Criminalizing Free Speech

Dear Members of the Arizona Senate,

The undersigned organizations write to express our strong opposition to mirror bills, SB 1143 and HB 2683. These bills would amend Arizona law to incorporate a definition of anti-Semitism that is so overbroad and vague that statements which are solely critical of Israel could be used as evidence of, and reported as, hate crimes, including many statements clearly protected by the First Amendment. We urge the Arizona legislature to vote against this legislation as it will unconstitutionally infringe on core free speech rights.

All bias-based attacks, including anti-Semitism, are appalling, destructive to both individuals and communities, and have no place in Arizona. We welcome meaningful steps to combat hate crimes and bias-based incidents such as improving our state's response to victims of bias crimes and improved training for law enforcement concerning how to recognize, respond to, and report bias crimes. We invite legislation that is a product of a collective effort from a broad range of stakeholders that centers victims and their experiences throughout the policy-development process. Unfortunately, SB 1143 and HB 2683 does none of the above.

Instead, these bills seek to introduce and codify a broad definition of anti-Semitism that “conflate[s] antisemitism with both criticism of Israel and anti-Zionism; as a result, the implications of this new legislation for free speech are alarming.”¹ By introducing an overly broad definition of anti-Semitism into our state legal code, SB1143 and HB 2683 make two alarming changes to Arizona law:

- (1) Anti-Semitism will be defined, separate from all other bias-based motives, with an overly broad and yet vague definition that will chill First Amendment expression.
- (2) This overly broad definition encompassing protected First Amendment speech will apply to other areas of Arizona law, such as the Criminal Code, where statements critical of Israel may be used to increase sentencing and therefore directly criminalize protected speech.

The overbroad definition of anti-Semitism incorrectly equates constitutionally protected criticism of Israel with anti-Semitism, effectively chilling free speech.

The definition of anti-Semitism the Arizona legislature is considering adopting was never intended to be codified into law. Kenneth Stern, the lead author of the original IHRA definition has explicitly opposed application of the definition into United States law. Stern noted the definition was “never intended as a vehicle to monitor or suppress speech on campus” and that it was not only unnecessary but would also “hurt Jewish students and the academy” by preventing conversations of

¹ Lara Friedman, *States Are Moving To Class Criticism of Israel as Antisemitism*, Jewish Currents, February 20, 2020, available at <https://jewishcurrents.org/states-are-moving-to-class-criticism-of-israel-as-antisemitism/>. See also, Brooke Hotez and Margaret A. Waskow, *Local Opinion: Palestinian Rights Are Not Anti-Jewish*, February 25, 2020, Arizona Daily Star, available at https://tucson.com/opinion/local/local-opinion-palestinian-rights-are-not-anti-jewish/article_3f164757-9269-589f-a449-49d479dd1cba.html.

the issues and isolating Jewish students. In his testimony before Congress, Stern also discussed the ways in which the definition has been used to curtail protected speech.²

In addition to chilling speech, these bills would also allow for the criminalization of protected speech. The proposed legislation will make statements that are protected by the First Amendment potentially punishable in criminal court. Under A.R.S. 13-701(D)(15), courts are directed to include as an aggravating factor “evidence that the defendant committed the crime out of malice toward a victim because of the victim's identity in a group listed in section 41-1750, subsection A, paragraph 3.” The proposed legislation modifies A.R.S. 41-1750 (A)(3) so that courts will be required to consider as evidence of “malice toward a victim” statements that are solely critical of the state of Israel. If passed, Arizona law would require that criticism of Israel be considered an aggravating factor for sentencing in criminal convictions. Persons who protest the Israeli government could find themselves facing a bias crime prosecution because of their political speech.

In addition to potentially burdening protected speech, SB 1143 and HB 2683 are unnecessary. Bias crime reporting procedures for hate crimes directed at Jewish persons are already in place at the state and federal level. States across the country utilize a uniform system that allows law enforcement to accurately and quickly report bias crime information as it relates to all persons, including Jewish persons. Requiring government agencies to incorporate criticism of Israel into the definition of anti-Jewish crime may lead to inaccurate and misleading bias crime reporting and will not meaningfully help to combat anti-Semitism.

The First Amendment squarely protects political speech, including criticism of any government, including Israel. No one should be criminalized for criticizing government. In America, we battle ideas we disagree with by championing better ideas, not by criminalizing or censoring speech. Religious liberty and free speech are both fundamental rights under our Constitution. Both can be protected without having to compromise one to allow for the other.

We urge you to reject these bills. Thank you for your attention to this important issue.

Sincerely,

ACLU of Arizona
American-Arab Anti-Discrimination Committee
American Friends Service Committee
American Muslims for Palestine
Amer Zahr, Comedian and Adjunct Professor, Mercy School of Law
Arizona Muslim Alliance
Arizona Palestine Solidarity Alliance
AZ Muslim Police Advisory Board
CAIR-Arizona
Center for Constitutional Rights
Central Arizonans for a Sustainable Economy
Changing Hands Bookstore

² Testimony of Kenneth S. Stern, *Hearing on Examining Anti-Semitism on College Campuses*, U.S. House of Representatives, Committee on the Judiciary (Nov. 7, 2017) available at <https://judiciary.house.gov/wpcontent/uploads/2017/10/Stern-Testimony-11.07.17.pdf>.

Coalición de Derechos Humanos
Council on American-Islamic Relations
Deacon Marion Rimmer, St. John of the Desert Melkite Catholic Church
Defending Rights & Dissent
Digital Displays Arizona
Dr. Hatem Bazian, Professor, University of California – Berkeley
Ghinat LLC
Hoyt Tillman, Historian
Jewish Voice for Peace
Jewish Voice for Peace – Tucson Chapter
John & Stephanie Rimmer, Scottsdale-Based International Business Owners
John Risseuw, Professor Emeritus, Arizona State University
Laiken Jordahl, Borderland Activist
Lauren Kuby, Vice Mayor, City of Tempe
Lily's Hair Salon
LUCHA – Living United for Change in Arizona
National Lawyers Guild
National Lawyers Guild – Central Arizona Chapter
National Lawyers Guild – International Committee
National Lawyers Guild – Palestine Subcommittee
Nancy Siefer, Retired Professor
Noam Chomsky, Laureate Professor, University of Arizona
Noura Erakat, Human Rights Attorney and Assistant Professor, Rutgers University
Marc Lamont Hill, Professor, Temple University
Mikkel Jordahl, Attorney
MPower Change
OneWorld Language Center
Palestine Legal
Palestinian American Community Center
Partnership for Civil Justice Fund
Poder in Action
Progressive Democrats of America – Arizona
Progress Now Arizona
Project South
Refugee and Immigrant Community Empowerment
Sal's Painting
Somali Association of Arizona
Students for Justice in Palestine – Arizona State University
Students for Justice in Palestine – University of Arizona
Sudanese American Association, Arizona State University
UNITE HERE Local 11
US Campaign for Palestinian Rights
We Are All America
WPAWS - Phoenix