

**AMERICAN BAR ASSOCIATION**  
**SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE**  
**COALITION ON RACIAL AND ETHNIC JUSTICE**  
**COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY**  
**NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION**  
**INTERNATIONAL LAW SECTION**  
**SENIOR LAWYERS DIVISION**

**REPORT TO THE HOUSE OF DELEGATES**

**RESOLUTION**

- 1 RESOLVED, That the American Bar Association urges federal, state, local, territorial, and  
2 tribal governments in the United States to condemn antisemitism, as referred to in The  
3 International Holocaust Remembrance Alliance's (IHRA) working definition of  
4 antisemitism, encouraged for use by other governments and international organizations  
5 by the U.S. Department of State: "Antisemitism is a certain perception of Jews, which  
6 may be expressed as hatred toward Jews. Rhetorical and physical manifestations of  
7 antisemitism are directed toward Jewish or non-Jewish individuals and/or their property,  
8 toward Jewish community institutions and religious facilities."  
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- 10 FURTHER RESOLVED, That the American Bar Association urges federal, state, local,  
11 territorial, and tribal governments in the United States to support legislation which  
12 combats and condemns antisemitism, such as H. Res. 1125 (May 18, 2022) and  
13 S.Res.252 (June 14, 2021)  
14
- 15 FURTHER RESOLVED, That the American Bar Association urges the United States and  
16 all other United Nations member states to adopt legislation and to pursue policies and  
17 measures that condemn and eliminate antisemitism  
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- 19 FURTHER RESOLVED, That the American Bar Association should take a leadership role  
20 in opposing antisemitism, both in the United States and around the world, and use its best  
21 efforts to:
- 22 1. Condemn all antisemitic attitudes and actions, whether intentionally  
23 discriminatory or that have the effect of being discriminatory;
  - 24 2. Advocate for governments at all levels to take all reasonable steps to improve  
25 the physical security of Jewish institutions and organizations, including by using  
26 existing tools such as increasing funding for the Nonprofit Security Grant

- 27 Program of the Department of Homeland Security, to keep at-risk houses of
- 28 worship, schools, and community centers safer from antisemitic violence;
- 29 3. Encourage laws, policies and training that build the capacity of the legal
- 30 community, government agencies and officials, law enforcement and the public
- 31 at large to research, understand and counter antisemitism;
- 32 4. Encourage and collaborate with attorneys and other bar associations to
- 33 advocate against antisemitism in the profession and the community;
- 34 5. Provide, and encourage other bar associations to provide, training and
- 35 education, to give people the knowledge and tools necessary to identify,
- 36 prevent, respond to, and remedy antisemitism, including by providing support
- 37 to support victims of antisemitism; and
- 38 6. Call on social media platforms to institute stronger and more significant efforts
- 39 to identify, measure and address online antisemitism.

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41 FURTHER RESOLVED, That nothing in this resolution is intended to diminish or infringe

42 upon any right protected by the First Amendment to the United States Constitution.

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44 FURTHER RESOLVED, That nothing in this resolution is intended to diminish or infringe

45 upon any right detailed in Article 19 and Article 20 of the Universal Declaration of Human

46 Rights.

## REPORT

### Introduction

Following centuries of violent hate and prejudice, Jews flocked to America with the hope of creating lives free from discrimination due to their Jewish identities, religious beliefs and practices. Compared to most of the world, America has been a haven for freedom; but our nation is not immune from the scourge of antisemitism, and the current decade of social upheaval, economic uncertainty and violent political polarization are fanning its flame, both in the United States and around the world.

### A Thousand Year European Survey in Two Paragraphs

The centuries following the massacres of Jewish communities during the Crusades<sup>1</sup> showed an antisemitism deeply embedded in Western culture. From 1190 onward, Jews were expelled from towns throughout France and England, their properties and business assets confiscated, and families ransomed.<sup>2</sup> Jews were banished from all of England in 1290<sup>3</sup>, and from Spain in 1492<sup>4</sup>, resettling in places including Poland, Holland, North Africa, and the Ottoman Empire.<sup>5</sup>

Thriving Medieval Christian antisemitism was exemplified by Martin Luther's 1543 "On the Jews and Their Lies." In 1570, the Archduchess of Austria ordered Jews in Bohemia to pay a "readmission fee" every 10 years, and Jewish families were limited to one son.<sup>6</sup> In 1772, Russian Jews were ordered to live in the Pale of Settlement and nowhere else in Russia.<sup>7</sup> Still, in the late 1880s, Russian pogroms destroyed many of those villages, driving Jews out of the country.<sup>8</sup> In the mid-20<sup>th</sup> century, a politically unsettled Germany and its antisemitic leader killed 40% of the Jews on earth.

### The American Jewish Experience

Religious liberty was one of the stated values of the birth of the United States, drawing Jews among the nation's founders. In 1740, naturalization laws included Protestant and Jewish residents, offering Jews a legal status they would not find in Europe for another 50 years; by the time of the Revolutionary War, five small Jewish communities existed on the Atlantic seaboard.<sup>9</sup>

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<sup>1</sup> S. D. Goitein, *Contemporary Letters on the Capture of Jerusalem by the Crusaders*. JOURNAL OF JEWISH STUDIES 3 (1952), pp. 162–77, [163].

<sup>2</sup> [England](#) article in the [Jewish Encyclopedia](#) (1906) by Joseph Jacobs.

<sup>3</sup> [Edict of Expulsion](#).

<sup>4</sup> Rhea Marsh Smith (1965) SPAIN, A MODERN HISTORY. Ann Arbor: The University of Michigan Press: p. 124.

<sup>5</sup> Dan Cohn-Sherbok (2006) *The Paradox of Anti-Semitism*: pp. 170–71.

<sup>6</sup> [Hungary](#) article in the [Jewish Encyclopedia](#) (1906) by Gotthard Deutsch, Alexander Büchler.

<sup>7</sup> Steven Beller (2007) *Antisemitism: A Very Short Introduction*: p. 14, 28, 29.

<sup>8</sup> (in Polish) Pogrom Archived February 6, 2010, at the Wayback Machine, based on Alina Cała, Hanna Węgrzynek, Gabriela Zalewska, Historia i kultura Żydów polskich. Słownik, WSiP; Jewish Massacre Denounced", in The New York Times, 1903 April 28.

<sup>9</sup> Jon Efron, THE JEWS: A HISTORY (Pearson, 2009), 226.

Famously, in 1790, George Washington wrote to the Hebrew Congregation of Newport, Rhode Island, that his government “gives to bigotry no sanction, to persecution no assistance,... May the children of the stock of Abraham who dwell in this land continue to merit and enjoy the good will of the other inhabitants—while everyone shall sit in safety under his own vine and fig tree and there shall be none to make him afraid.”<sup>10</sup>

But that promise has never been fully realized. During the Civil War, General Ulysses S. Grant issued an order to expel all Jews from the territory under his command, blaming Jews “as a class” for the smuggling and cotton speculation conducted by a diverse network of people in his region; after Jewish expulsions in northern Mississippi and Paducah, Kentucky, President Lincoln learned of Grant’s order and put a stop to it.<sup>11</sup> In the late 19<sup>th</sup> century, agrarian populists of the South and Midwest seized on conspiracy theories, claiming that urban Jews were exploiting markets and the federal government as a whole. Some such populists condemned Jews as a national threat, as an entire corrupt class of international financiers who owned the banks and ruined small family farms by promoting the gold standard.<sup>12</sup>

In 1913, Leo Frank, a Jewish 29-year-old factory superintendent, was convicted of murdering a young female employee in Atlanta, Georgia. After the governor of Georgia reduced Frank’s sentence from the death penalty to life imprisonment because of a trial tainted by antisemitism, an angry mob, including prominent local citizens, abducted him from prison and lynched him.<sup>13</sup> Since the 1920s, the Ku Klux Klan has threatened and attacked Jews as part of a perceived threat to white America.

Through most of the 20<sup>th</sup> century, Jews were subjected to quotas limiting their admission into schools and businesses. In 1922, Harvard’s president proposed a 15 percent quota on the portion of Jewish students in each class, maintaining that too many Jews at the university could cause more antisemitism.<sup>14</sup> Stanford’s president recently apologized “to the Jewish community, and to our entire university community, [for its] actions...to suppress the admission of Jewish students in the 1950s and for the university’s subsequent denials of those actions.”<sup>15</sup> Fraternities, clubs, resorts, hotels, and homeowners’ associations regularly restricted the sale of property to Jews.<sup>16</sup>

From 1920 to 1924, Henry Ford, a powerful leader of American business and politics, published antisemitic conspiracy theories in 91 consecutive issues of his weekly

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<sup>10</sup> <https://wassermanschultz.house.gov/news/documentsingle.aspx?DocumentID=2836>.

<sup>11</sup> Jonathan D. Sarna, *AMERICAN JUDAISM* (Yale University Press, 2004), 120-21.

<sup>12</sup> Hasia R. Diner, *THE JEWS OF THE UNITED STATES, 1654 TO 2000* (University of California Press, 2006), 170.

<sup>13</sup> Sarna, *supra* note 12, at 216.

<sup>14</sup> Jerome Karabel, *THE CHOSEN: THE HIDDEN HISTORY OF ADMISSION AND EXCLUSION AT HARVARD, YALE, AND PRINCETON* (Houghton Mifflin Harcourt, 2005), p 99.

<sup>15</sup> [Stanford University apologizes for limiting Jewish student admissions during the 1950s | CNN](https://www.cnn.com/2019/04/22/stanford-apologizes-jewish-student-admissions/index.html).

<sup>16</sup> Jewish Telegraphic Agency, Archive; *Florida Supreme Court Rule Voids Anti-Jewish Restrictive Covenants*, <https://www.jta.org/1959/04/22/archive/florida-supreme-court-rule-voids-anti-jewish-restrictive-covenants>; Jonathan D. Sarna, *AMERICAN JUDAISM* (Yale University Press, 2004), 219.

newspaper, with a circulation of 700,000; his four-volume *The International Jew* followed, with hundreds of thousands of copies distributed.<sup>17</sup>

Father Charles Coughlin's radio show reached 15 million listeners per week, leveling antisemitic screeds, justifying Nazi violence against Jews overseas and inciting listeners to paint swastikas on Jewish businesses and to assault Jews in the streets<sup>18</sup>; his newspaper *Social Justice*, with a circulation of over 1 million copies, published over 100 antisemitic articles at a circulation of over 1 million copies per issue from 1940 to 1942. World famous aviator Charles Lindbergh said in 1941 that Jewish control of "our motion pictures, our press, our radio and our government" was truly what endangered the American people.<sup>19</sup> Those were among the reasons why the United States did so little to save Jews fleeing the Nazis regime, as shown in filmmaker Ken Burns' documentary "The U.S. and the Holocaust."<sup>20</sup>

### The Post War Era

After the 1945 defeat of the Nazis and the liberation of the one-third of Europe's Jewish population left alive, the percentage of Americans who reported hearing recent criticisms of Jews plummeted from 64 percent in 1946 to 15 percent in 1951.<sup>21</sup> A 1947 movie exposing antisemitism, "Gentleman's Agreement" was nominated for eight Academy Awards, winning Best Picture and Best Director.<sup>22</sup>

In 1965, the Second Vatican Council repealed the Church doctrine of collective Jewish responsibility for the death of Jesus, a historic source of antisemitism.<sup>23</sup> The 1960s Civil Rights Movement helped open doors theretofore closed to Jews, into partnerships at prestigious law firms and executive positions on Wall Street.<sup>24</sup>

While antisemitism was chased to the sidelines, it persisted. In 1967, George Lincoln Rockwell, founder of the American Nazi Party, called for the deportation of all Black

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<sup>17</sup> Sarna, *supra* note 12, at 217; Leonard Dinnerstein, *ANTISEMITISM IN AMERICA* (New York: Oxford University Press, 1994), 81.

<sup>18</sup> Jon Efron, *THE JEWS: A HISTORY* (Pearson, 2009), 420; Albin Krebs, *Charles Coughlin, 30's 'Radio Priest*," *NEW YORK TIMES*, Oct. 28, 1979.

<sup>19</sup> Sarna, *supra* note 12, at 266.

<sup>20</sup> [About The U.S. and the Holocaust | Ken Burns | PBS.](#)

<sup>21</sup> Sarna, *supra* note 12 at 266-267.

<sup>22</sup> [https://en.wikipedia.org/wiki/Gentleman%27s\\_Agreement](https://en.wikipedia.org/wiki/Gentleman%27s_Agreement).

<sup>23</sup> Vatican; *Declaration on the Relation of the Church to Non-Christian Religions*, [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_decl\\_19651028\\_nostra-aetate\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651028_nostra-aetate_en.html).

<sup>24</sup> Dinnerstein, 155, 157; Charles H. Stember et al, *JEWS IN THE MIND OF AMERICA* (1966), 96–97.

people to Africa and of “Communist Jews” to gas chambers.<sup>25</sup> Synagogues and Jewish community centers, along with Black churches, were targets of bombings.<sup>26</sup>

### Antisemitic Activity Currently on the Rise

In light of the above, it is no surprise that antisemitism persists in America, and cannot ever be fully eradicated. It is damning by faint praise that “only” 10 percent of Americans harbor antisemitic attitudes, well under the global average of 26 percent.<sup>27</sup> Despite those frightening numbers, most people who harbor those attitudes do not act upon them.

However, given an atmosphere of fear, economic challenge and political polarization, antisemitism moves from thought to action. Hannah Meyers, director of the Policing and Public Safety Initiative at the Manhattan Institute, warns that “the aftermath of calamitous 2020, as the virus and lockdown trapped people with their own fears, is the growth of conspiracy theories in American society that blame Jews for the country’s troubles. This dangerous development has taken root not only among ideological extremists but in groups with a dangerous purchase on the mainstream...Predictably, left to fester, these ideas have fostered violence.”<sup>28</sup> “We know that we, the Jewish people, are often picked as the scapegoat when something’s not going right amongst some group,” said Rabbi Eric Solomon of Temple Beth Meyer in Raleigh, North Carolina.

Tragically, examples of violent antisemitism exploding into action have become frequent in recent years. The January 6 Capitol rioters included numerous actors carrying antisemitic symbols, one man wearing a “Camp Auschwitz” sweatshirt, and another with a pro-Holocaust “6MWE” shirt, shorthand for “6 Million [Dead Jews] Wasn’t Enough.”<sup>29</sup>

Georgia’s Representative Marjorie Taylor Greene, has spread videos on Facebook, claiming that “Zionist supremacists” deliberately plotted to overwhelm Europe with Muslim immigrants in order to “replace” white people and that the California wildfires were started by a “Jewish space laser.”<sup>30</sup>

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<sup>25</sup> *The shadow of an assassinated American Nazi commander hangs over Charlottesville*, WASHINGTON POST, Michael E. Miller, August 21, 2017, <https://www.washingtonpost.com/news/retropolis/wp/2017/08/21/the-shadow-of-an-assassinated-american-nazi-commander-hangs-over-charlottesville/>.

<sup>26</sup> Isabel Fattal, *A Brief History of Anti-Semitic Violence in America*, THE ATLANTIC, October 28, 2018, <https://www.theatlantic.com/politics/archive/2018/10/brief-history-antisemitic-violence-america/574228/>.

<sup>27</sup> <https://global100.adl.org/map>, The incidence of global antisemitic attitudes is generally far more frequent than in the United States. The map cited in this footnote shows the percentage in any nation by gender age and religion, and an explanation of the methodology employed. That report states that of just over 4 billion adults in the countries surveyed worldwide, over a billion people harbor antisemitic attitudes, spread evenly across all age groups. The reported percentages worldwide are 34% in Eastern Europe, 24% in Western Europe, 23% in Sub-Saharan Africa, 22% in Asia, 19% in The Americas, and 14% in Oceania; it is 74% in the Middle East and North Africa.

<sup>28</sup> <https://www.manhattan-institute.org/anti-semitism-review-2020>.

<sup>29</sup> [The US Capitol riot was full of hate symbols. Here's how to spot them - ABC News.](https://www.abcnews.com/news/2020/01/06/capitol-riot-hate-symbols/)

<sup>30</sup> <https://www.newsweek.com/marjorie-taylor-greene-jewish-space-laser-mockery-1565325>.

At the Unite the Right rally in Charlottesville, Virginia, in August 2017, white supremacists carrying tiki torches marched through the streets shouting, “the Jews will not replace us.” Killings of worshippers at synagogues appear to have become an annual event; eleven were killed and eight more wounded at the Tree of Life synagogue in Pittsburgh, Pennsylvania on October 27, 2018<sup>31</sup>; on April 27, 2019, during the Jewish holiday of Passover, a shooter entered the Chabad synagogue in Poway, California, killing one and injuring three others<sup>32</sup>; on January 15, 2022, a gunman took worshippers hostage at Congregation Beth Israel in Colleyville, Texas, until they escaped eleven hours later.<sup>33</sup> These are among many other acts, including the stabbing of five people at a 2019 Hannukah celebration,<sup>34</sup> and the fatal shooting of six people at a Jersey City, New Jersey kosher supermarket in 2019.<sup>35</sup>

Local Jewish communities from San Francisco, California to Miami Beach, Florida, were littered with pamphlets announcing that “every single aspect of the COVID agenda is Jewish,”<sup>36</sup> and identifying every major figure involved in the COVID fight (including Dr. Anthony Fauci) as Jewish. One of the world’s most influential musicians and producers, Ye, formerly known as Kanye West, did much worse than tweet that he was going to go “death con 3 on JEWISH PEOPLE”—he has freed others to emulate him, as demonstrators in southern California gave Nazi salutes as they stood behind a large overpass banner that read, “Kanye is right about the Jews.”<sup>37</sup>

As catalogued in H.Res.1125, the statistics tell the same story:

- 24 percent of American Jews have been personally targeted by antisemitism in the past twelve months. Four in ten American Jews changed their behavior at least once out of fear of antisemitism. 90 percent believe antisemitism is a problem in the U.S., and 82 percent feel it has increased in the past five years.
- Jews were the target of 55 percent of all religiously motivated hate crimes in 2020, despite accounting for no more than 2 percent of the U.S. population.
- In 2021, there were 2,717 acts of antisemitic vandalism and harassment, a 34 percent increase from 2020; 525 antisemitic incidents took place at Jewish institutions, an increase of 61 percent over 2020.

<sup>31</sup> Levenson, Eric; Sanchez, Ray (October 27, 2018). "[Mass shooting at Pittsburgh synagogue](#)". CNN. Archived from the original on October 27, 2018. Retrieved October 27, 2018.

<sup>32</sup> Paul, Deanna; Mettler, Katie (April 27, 2019). "[Shooting at California synagogue leaves 1 dead, 3 injured in what mayor calls a 'hate crime' that 'will not stand](#)". WASHINGTON POST. Retrieved April 27, 2019.

<sup>33</sup> Douglas, Jack; Zapotosky, Matt; Fisher, Marc (January 22, 2022). "[Angry outbursts and cool determination: Inside the synagogue attacker's 18-day journey to terror](#)". THE WASHINGTON POST. Retrieved January 23, 2022.

<sup>34</sup> "[Synagogue stabbings: five hurt in Monsey attack, say reports](#)". THE GUARDIAN. December 28, 2019. Retrieved December 28, 2019.

<sup>35</sup> "[Six people confirmed dead as Jersey City shooting targets kosher supermarket – The Jewish Chronicle](#)". December 10, 2019. Archived from [the original](#) on December 10, 2019. Retrieved February 8, 2021.

<sup>36</sup> <https://www.berkeleyside.org/2022/02/22/anti-semitic-flyers-berkeley-hills>; <https://www.sfgate.com/bayarea/article/Antisemitic-flyers-found-in-San-Francisco-16800705.php>.

<sup>37</sup> <https://www.latimes.com/california/story/2022-10-23/kanye-is-right-about-the-jews-more-antisemitic-hate-seen-in-l-a-after-rappers-remarks>.

- Antisemitic assaults increased by 167 percent in 2021 compared to the previous year, 138 percent higher than the rolling five-year average.

Predictably, with economic trouble, a polity built on blame and attack, fear of medical dangers and a perceived threat to rights, people look for a safe scapegoat. That is the climate in which antisemitism thrives.

### Modern Manifestations of Antisemitism

This resolution references the 2016 “non-legally binding ‘working definition’ of antisemitism” developed by the 31 member states of the International Holocaust Remembrance Alliance (IHRA). ... [T]he United States now uses this working definition and has encouraged other governments and international organizations to use it as well.”<sup>38</sup> The illustrations provided demonstrate the importance of taking context into account. It is express that “criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic”.<sup>39</sup> Recently, the State Department rejected recent criticism of the IHRA definition describing the criticism as misrepresenting this “broadly endorsed definition”, and concluded, “In an era of rapidly rising global antisemitism, now is not the time to discard one of the most fundamental and critical tools in the arsenal to combat it.”<sup>40</sup>

In its publication “Defining Antisemitism,” the United States State Department provides “contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, for example:

- Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as a 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.

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<sup>38</sup> <https://www.state.gov/defining-antisemitism/>.

<sup>39</sup> *Id.*

<sup>40</sup> <https://www.state.gov/the-international-holocaust-remembrance-alliance-working-definition-of-antisemitism/>.

- Denying the Jewish people the right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor.
- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
- Using symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
- Drawing comparisons of contemporary Israel policy to that of the Nazis.
- Holding Jews collectively responsible for the actions of the state of Israel.”

Specific modern instances of antisemitism abound. Major universities have publicly apologized for covert programs to limit the admission of Jews.<sup>41</sup> The Equal Employment Opportunity Commission, responsible for equal treatment in the workplace recently condemned “in the strongest possible terms the recent violence, harassment, and acts of bias against Jewish persons... and to ensure equal opportunity, inclusion, and dignity for all throughout America’s workplaces.”<sup>42</sup>

The Society of Human Resource Managers (SHRM) reports “More than half of Jewish workers reported dealing with workplace discrimination in their careers, according to a 2022 report by Rice University’s Religion and Public Life Program.... Respondents said they had experienced harmful comments, stereotyping and social exclusion.<sup>43</sup> Anti-Defamation League (ADL) data shows that business establishments were the fourth most common site of antisemitic incidents in 2020, with the incidents ranging from verbal abuse to physical intimidation.<sup>44</sup>

### **The Three “Ds”**

Among other things, the modern definition and analysis of antisemitism often focuses on “the three Ds,” demonizing, delegitimizing, or applying a double standard to Jews, Jewish institutions or the Jewish state:<sup>45</sup>

Demonize:

- Using the symbols and images associated with classic antisemitism to characterize Jews, Israel or Israelis.

Double standard:

- Applying double standards by requiring behavior not expected or demanded of any other people, group or democratic nation.
- Protecting the national aspirational rights of other peoples, but not of Jews.

Delegitimize:

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<sup>41</sup> <https://news.stanford.edu/report/2022/10/12/task-force-report-jewish-admissions-and-jewish-life/>.

<sup>42</sup> <https://www.eeoc.gov/resolution-us-equal-employment-opportunity-commission-condemning-violence-harassment-and-bias-0>.

<sup>43</sup> <https://www.shrm.org/hr-today/news/all-things-work/pages/antisemitism-on-the-rise.aspx>.

<sup>44</sup> *Id.*

<sup>45</sup> <https://2009-2017.state.gov/j/drl/rls/fs/2010/122352.htm>.

- Denying the Jewish people their right to self-determination, denying Israel the right to exist, and denying the ability of Jews to have a homeland.

Jews whose religious affiliation and beliefs include a connection with Israel as a Jewish homeland are often ostracized and banned from campus speech or activities,<sup>46</sup> delegitimizing any speech, on any topic from anyone who believes in a Jewish homeland in Israel. The Pew Research Center reported in 2021 that caring about a Jewish homeland in Israel is an element of “what being Jewish means” that is “essential” to 45% of American Jews, “important” to another 37%; and unimportant to 16%<sup>47</sup>; it is antisemitic to require over 80% of American Jews to abandon an essential or important part of their Jewish identity as the price of free speech or association.

Especially alarming to lawyers, nine law school student groups at the University of California at Berkeley’s School of Law amended their bylaws to prohibit speakers who have “expressed or continued to hold” Zionist views or support pro-Zionist events.”<sup>48</sup> Dean Erwin Chemerinsky opposed the rule, noting that under its terms he could not speak at the school, but added “That is their First Amendment right. I find their statement offensive, but they have the right to say it.”<sup>49</sup> The Law School faculty also wrote to oppose the rule.<sup>50</sup> Nonetheless, in keeping with the First Amendment, those nine student groups remain in operation, with their “no Zionist” rule in place.<sup>51</sup>

Whatever the political or religious issue is, engaging in the “3 Ds” is prejudicial. Depriving Jews of a voice, silencing them without debate and deeming them unworthy of being heard, is delegitimization. Accusations of Jews being behind evil conspiracies, controlling the banks, and developing COVID, is demonization. Demanding more from them than from anyone else, or singling them out for punishment, is based on a double standard. All are classic forms of antisemitism, and the ABA should take a clear stand in opposition to these prejudicial beliefs and actions, both in the United States and globally.

### **Antisemitism Turns Violent and Deadly Very Quickly**

One lesson of the Holocaust is how quickly the Nazi Party changed from a powerless outsider to the spearhead of a nearly successful world conquest. In 1933, Adolf Hitler was a recently freed convict with a failed political resume, and in 1939, he was the head of the most aggressive military machine in the world. During that same period of time, adverse actions against Jews grew from indignities to forced migration to ghettos to the 1941 “Final Solution”, a plan for the systematic mass murder of nine million Jews.<sup>52</sup>

<sup>46</sup> <https://www.newsweek.com/i-was-harassed-persecuted-campus-just-being-zionist-opinion-1523873>.

<sup>47</sup> <https://www.pewresearch.org/fact-tank/2021/05/21/u-s-jews-have-widely-differing-views-on-israel/>.

<sup>48</sup> <https://www.dailycal.org/2022/08/31/tensions-mount-as-uc-berkeley-law-groups-ban-zionist-speakers>.

<sup>49</sup> <http://www.thedailybeast.com/there-are-no-jewish-free-zones-on-the-uc-berkeley-campus>.

<sup>50</sup> <https://docs.google.com/document/d/1BiOeLJSG7lrbh9DSkvxsYRebE6Ck8a0rZaeBWNtjLPY/edit>.

<sup>51</sup> [How a Berkeley Law debate on free speech got turned into a social media circus - Los Angeles Times \(latimes.com\)](https://www.latimes.com/2022/08/31/berkeley-law-debate-on-free-speech-got-turned-into-a-social-media-circus/).

<sup>52</sup> ["Final Solution": Overview | Holocaust Encyclopedia \(ushmm.org\)](https://www.ushmm.org/learn/encyclopedia/articles/final-solution/).

The American Bar Association, in partnership with the German Federal Bar, issued a publication in 2018 called, “Lawyers Without Rights: The Fate of Jewish Lawyers in Berlin after 1933.” Germany’s Jewish lawyers began that six-year period as distinguished and active members of the bar, and by 1939 were banned from all legal practice. That text testifies that less than a century ago a safe and secure cadre of Jewish lawyers was stripped of their dignity, rights, professions and lives. As Justice Stephen Breyer wrote in his introduction to the volume, “we cannot allow future generations to forget historical tragedies like the Holocaust and what can happen when there is no rule of law.”

One feature of the American Jewish experience has been the belief of many that “it can’t happen here”—the sudden violent dramatic turn that occurred in Germany in the 20<sup>th</sup> century, the violence, and expulsions peppering the last thousand years of Western history, and the unexpected loss of a position of comfort and security—cannot happen in modern America. With that propensity for denial, we reject one thousand years of experience, here and abroad. But recent experience has taught us that nothing should be unexpected, no social change beyond imagination.

As the U.S. Special Envoy to Monitor and Combat Antisemitism Ambassador Deborah Lipstadt recently observed: “Our fight against antisemitism is made more difficult by the fact that many people, organizations and institutions, including those who valiantly fight other prejudices with all their hearts and might, fail to see antisemitism as a serious danger. To put it crudely, they wonder “just what the Jews are complaining about?” And because they fail to see antisemitism as a serious threat, when there is an act of antisemitism, they cannot bring themselves to focus specifically on this particular prejudice.”<sup>53</sup> To the contrary, antisemitism needs to be recognized and combatted.

### **This Resolution Calls for Action Sorely Needed to Combat Antisemitism**

Even before the recent dramatic uptick in antisemitic activity and violence, it was wrong to ignore the antisemitism persisting within America and globally. Antisemitism has now reemerged from the shadows; it is modeled by cultural figures and politicians on both ends of the political spectrum. It is critical that we ignore it no longer.

This resolution calls upon the American Bar Association to use its powerful voice in support of victims subjected to antisemitic behavior. It urges passage of bills modeled after H.Res.1125 (2022)<sup>54</sup> (which passed the House by a 420-1 vote), and S.Res.252 (2021)<sup>55</sup>, condemning antisemitism and suggesting concrete steps to prevent it; and to fund and promote the Nonprofit Security Grant Program of the Department of Homeland Security to help synagogues and other Jewish institutions prepare for and defend against

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<sup>53</sup> <https://www.state.gov/remarks-at-the-conference-of-presidents-of-major-american-jewish-organizations-antisemitism-the-interconnected-hatred/>.

<sup>54</sup> <https://www.congress.gov/bills/117th-congress/house-resolution/1125/text>.

<sup>55</sup> <https://www.congress.gov/bills/117th-congress/senate-resolution/252/text>.

antisemitic attacks. The hostages who escaped from the armed shooter at Congregation Beth Israel in Colleyville, Texas, credit that training with saving their lives.<sup>56</sup>

It also encourages the United States and all other United Nations member states to adopt legislation and to pursue policies and measures that condemn and eliminate antisemitism globally. Those policies and measures are complementary to principles already set forth in international documents addressing religious discrimination, such as the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief<sup>57</sup> and in the Declaration of Principles for the International Religious Freedom Alliance.<sup>58</sup>

These congressional resolutions demonstrate that Congress is not solely concerned about domestic antisemitism but about the rise of antisemitism globally. The House resolution in paragraph 3 “calls for amplifying and ensuring United States leadership to fight global antisemitism, working with the Department of State’s Special Envoy to Monitor and Combat Antisemitism and intensifying cooperation with international governments and parliaments around the world.”<sup>59</sup> The Senate resolution in paragraph 4(A) urges the President to “continue the leadership role of the United States in combating antisemitism internationally, including by nominating a qualified Ambassador to Monitor and Combat Antisemitism and engaging intergovernmental organizations to ensure that the anti-discrimination efforts of the organizations include combating antisemitism.”<sup>60</sup> By empowering the ABA to fight antisemitism both in the United States and around the world, this resolution furthers the goals of these congressional resolutions.

The resolution supports onlooker training, so that non-victims who observe antisemitic incidents are in a position to support and assist the victim, rather than conspiring by silence. Though Hitler’s Nazi regime were the architects and mechanics of the “Final Solution” of the extermination of Jews, it was the tacit cooperation of the ordinary citizens of Western Europe that allowed it to nearly succeed.

The resolution calls upon the American Bar Association to collaborate with other organizations, as determined by the internal programming processes of the American Bar Association and other organizations. While these programming activities are the province of ABA boards, Sections, and Committees, examples might include working with educators to bring these lessons into the classroom, working with local civic groups to enable them to aid in the fight against antisemitism and promoting a community which will not allow antisemitism to root and flourish.

The resolution urges the American Bar Association to use its voice and expertise to urge and help social media platforms to institute stronger, more significant efforts to measure

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<sup>56</sup> <https://www.dallasnews.com/news/2022/01/20/how-training-in-the-wake-of-tragedy-helped-the-colleyville-synagogue-hostages-escape/>.

<sup>57</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-all-forms-intolerance-and-discrimination>.

<sup>58</sup> <https://www.state.gov/declaration-of-principles-for-the-international-religious-freedom-alliance/>.

<sup>59</sup> *Supra* note 58.

<sup>60</sup> *Supra* note 59.

and address online antisemitism. Finally, because antisemitic actors often hide in chatrooms or other inaccessible locales, it encourages laws and policies which build the capacity of law enforcement to better prevent antisemitic activity with a goal of stopping attacks before they start. One means of doing so is through “Law Enforcement Community Training” sessions on antisemitism, which can be done at any level.<sup>61</sup>

Extensive work is being done to develop policies and best practices to combat antisemitism. Sweden convened the Malmö International Forum on Holocaust Remembrance and Combating Antisemitism, and obtained cooperative pledges from 41 nations and 16 major international organizations regarding specific action items to combat antisemitism.<sup>62</sup>

Without seeking to direct or limit appropriate ABA programming, among the many possible examples discussed in the 80+ page list of Malmö programming examples,<sup>63</sup> the ABA might: engage with Jewish communities and with civil society organizations in the development of Action Plans on Combatting Hate<sup>64</sup>; promote [our core Constitutional values of] freedom of religion, freedom of thought, and freedom of conscience<sup>65</sup>; continue to fight hate speech on-line [consistent with established ABA policy].<sup>66</sup> With so few Holocaust survivors left today, promote educational materials about the Holocaust [especially about lawyer victims whose jobs, and then lives, were lost, as reflected in the ABA’s Lawyers Without Rights programs and publications].<sup>67</sup> As noted in the statement of The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World):

These stories matter, especially now that we see nationalism and fascism on the rise again, always searching for enemies to scapegoat. These ideologies employ a strategy of targeting entire marginalized communities and today we face well resourced and coordinated efforts to again weave seductive lies to the world, often on social media.<sup>68</sup>

A 2020 survey of the Pew Research Center shows that three-quarters of American Jews think there is more antisemitism in the U.S. today than there was five years ago. Just over half (53 percent) say that, as a Jewish person in the U.S., they personally feel less safe than they did five years ago.<sup>69</sup> This resolution is needed to alleviate those concerns felt more strongly by American Jews every year. Moreover, by developing strategies that

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<sup>61</sup> See, e.g., <https://police.uoregon.edu/combating-antisemitism/>; <https://www.csce.gov/international-impact/press-and-media/press-releases/combating-anti-semitism-osce-police-training>.

<sup>62</sup> <https://www.unaoc.org/event/malmo-international-forum-on-holocaust-remembrance-and-combating-antisemitism/>.

<sup>63</sup> <https://www.holocaustremembrance.com/news-archive/one-year-malmo-forum>.

<sup>64</sup> Pledges, Malmö International Forum on Holocaust Remembrance and Combating Antisemitism (Oct. 13, 2021), at 20, 71.

<sup>65</sup> *Id.* at 24.

<sup>66</sup> *Id.* at 81.

<sup>67</sup> *Id.* at 80-81.

<sup>68</sup> *Id.* at 75-76.

<sup>69</sup> <https://www.pewresearch.org/fact-tank/2021/05/11/10-key-findings-about-jewish-americans/>.

work in the U.S., the American Bar Association can demonstrate the steps that other countries can take to protect their Jewish citizens and residents.

### **First Amendment Protection**

The sponsoring Section of Civil Rights and Social Justice is committed to the elimination of hate and prejudice in all forms. At the same time, the Section recognizes the importance that the First Amendment holds and the need to protect free speech. One cannot protect valuable free speech without protecting the hateful side of expression, often including false, hateful antisemitic speech.

The tiki torch bearing marchers who converged on Charlottesville in August 2017 chanting “Jews will not replace us!” had the constitutional right to assemble and march in support of racist ideas. This principle has been clear at least since 1978, when the ACLU and several Jewish groups defended the Nazis’ right to march in heavily Jewish Skokie, Illinois.<sup>70</sup> This resolution does not limit those Constitutional rights of anti-Jewish bigots; rather, it urges the ABA to fight their false and evil speech with true and moral speech.

The text of the Resolution makes clear that it is not intended to diminish or infringe upon any right protected by the First Amendment to the United States Constitution. Similarly, on an international basis the resolution protects the rights set for in Articles 19 and 20 of the Universal Declaration of Human Rights. Article 19 reads: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Article 20 reads “(1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association.”

### **Conclusion**

It is a comforting fiction to believe that antisemitism is not a problem in America or globally today. The clear thrust of history, and modern current events, show the contrary; rather ignored and left unaddressed, the scope and barbarism of antisemitism grows.

Finally, we are losing some of the best tools to defeat antisemitism—the Holocaust survivors and liberators, eyewitnesses who cannot be misled by those who dismiss the dangers of antisemitism. The danger was clear enough in 1945, as the world saw the liberation of concentration camps, and learned, by incredible story, how the surviving Jews made it through. The dangers of prejudice were clear. When truth and lie command equal credence, the death of the eyewitnesses to the 20<sup>th</sup> century antisemitic mass murder leaves an open field for Holocaust deniers and other white supremacist conspiracy theorists. Organizations including the ABA must step powerfully into that breach.

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<sup>70</sup> <https://www.aclu.org/other/aclu-history-taking-stand-free-speech-skokie>).

As antisemitic incidents grow in number and in violence, they present proof of the danger of inaction; leaving antisemitism unchecked is dangerous both to the Jewish victims, and all who face discrimination. In the specific ways outlined above, this resolution asks for the American Bar Association to lead and help in the fight against antisemitism.

Respectfully submitted,

Juan R. Thomas, Chair  
Section of Civil Rights and Social Justice  
February 2023

**GENERAL INFORMATION FORM**

Submitting Entity: Section of Civil Rights and Social Justice

Submitted By: Juan R. Thomas

1. Summary of the Resolution(s).

This Resolution condemns antisemitism and proposes certain ameliorating measures to combat it.

2. Indicate which of the ABA's Four goals the resolution seeks to advance (1-Serve our Members; 2-Improve our Profession; 3-Eliminate Bias and Enhance Diversity; 4-Advance the Rule of Law) and provide an explanation on how it accomplishes this.

The Resolution expressly seeks to advance Goal 3-Eliminate Bias and Enhance Diversity in eliminating bias on the basis of Jewish religion; Goal 2-Improve our Profession and Goal 1-Serve our Members, by addressing antisemitism within the justice system; and Goal 4-Advance the Rule of Law by seeking to guarantee access to law without reference to religion.

3. Approval by Submitting Entity.

This Resolution was approved by the Section of Civil Rights and Social Justice on October 25, 2022.

4. Has this or a similar resolution been submitted to the House or Board previously?

A resolution addressing antisemitism has not been submitted to the House or Board previously, though the ABA has passed policy providing similar protection and support for other subjects of bias and discrimination.

5. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The Resolution is in line with 72M32A and 90M100E in condemning discrimination based on religion.

6. If this is a late report, what urgency exists which requires action at this meeting of the House?

N/A

7. Status of Legislation. (If applicable)

H.Res.1125 – Condemning rising antisemitism was agreed to in the House on May 18, 2022.

S.Res.252 – A resolution unequivocally condemning the recent rise in antisemitic violence and harassment targeting Jewish Americans, and standing in solidarity with those affected by antisemitism, and for other purposes was agreed to in the Senate on June 14, 2021.

8. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

As part of the ABA's role in public and civic education, the ABA should educate about antisemitism and provide tools that bystanders can and should implement. The ABA will work with relevant stakeholders and the Governmental Affairs Office to ensure implementation of the Resolution.

9. Cost to the Association. (Both direct and indirect costs)  
None.10. Disclosure of Interest. (If applicable)

None.

11. Referrals.

Commission on Disability Rights  
 Commission on Hispanic Legal Rights & Responsibilities  
 Commission on Racial and Ethnic Diversity in the Profession  
 Commission on Women in the Profession  
 Commission on Youth at Risk  
 Council for Diversity in the Educational Pipeline  
 Division for Bar Services  
 Division for Public Education  
 Health Law Section  
 Judicial Division  
 Law Student Division  
 Section of Labor and Employment Law  
 Section of State and Local Government Law  
 Solo Small Firm and General Practice Division  
 Tort Trial & Insurance Practice Section  
 Young Lawyers Division

12. Name and Contact Information (Prior to the Meeting. Please include name, telephone number and e-mail address). *Be aware that this information will be available to anyone*

# 514

*who views the House of Delegates agenda online.)*

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13. Name and Contact Information. (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting.

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## EXECUTIVE SUMMARY

1. Summary of the Resolution.

The Resolution condemns antisemitism and proposes certain ameliorating measures to combat it.

2. Summary of the issue that the resolution addresses.

It is a constant that antisemitic attitudes and beliefs exist among some 10% of Americans, and 26% of people worldwide; the incidence of violent and discriminatory action based upon those attitudes is on the rise. This Resolution addresses both of those phenomena.

3. Please explain how the proposed policy position will address the issue.

With special emphasis on public education, educating the legal profession, and working with civic leaders and civil rights organizations, the proposed policy position will seek to ameliorate the high incidence of antisemitic beliefs and attitudes, and advocate for actions to anticipate and prevent discriminatory or violent antisemitic behavior.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

As the Report notes, some 10% of Americans, and 26% of the worldwide population, harbor antisemitic beliefs, and would oppose this resolution. Though this Resolution is not about Israel, the centrist, contextual, consensus IHRA definition of antisemitism might also be opposed by those who maintain either that criticism of Israel is **always** antisemitic, or that criticism of Israel is **never** antisemitic. The Southern Poverty Law Center identifies 61 antisemitic organizations ([Antisemitism | Southern Poverty Law Center \(splcenter.org\)](https://www.splcenter.org)) which would likely oppose the resolution, as would thousands of open antisemites including Kanye West, Nick Fuentes, David Duke, Mel Gibson, and Jon Minadeo Jr.