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## **IAGS Resolution on the Situation in Gaza**

*Recognising* that, since the horrific Hamas-led attack of 7 October 2023, which itself constitutes international crimes, the government of Israel has engaged in systematic and widespread crimes against humanity, war crimes and genocide, including indiscriminate and deliberate attacks against the civilians and civilian infrastructure (hospitals, homes, commercial buildings, etc.) of Gaza, which, according to official UN estimates, at the date of this resolution, has killed more than [59,000](#) adults and children in [Gaza](#);

*Recognising* that these crimes are [estimated to have left many thousands](#) of [people buried](#) under the rubble or otherwise inaccessible, and most probably dead;

*Recognising* that this bombing and other violence is estimated to have injured more than [143,000](#) people, with many maimed;

*Recognising* that the [actions of the Israeli government](#) against Palestinians have included [torture](#), [arbitrary detention](#), and [sexual and reproductive violence](#); deliberate attacks on [medical professionals](#), [humanitarian aid workers](#) and journalists; and the [deliberate deprivation](#) of [food](#), [water](#), [medicine](#), and electricity essential to the survival of the population;

*Recognising* that Israel has [forcibly displaced nearly all of the 2.3 million Palestinians](#) in the Gaza Strip multiple times, and demolished more than 90 percent of the [housing infrastructure in the territory](#);

*Recognising* that the consequences of these [crimes](#) have included [destroying entire families](#) and [multiple generations](#) of [Palestinians](#);

*Recognising* that Israel has [destroyed schools, universities, libraries, museums, and archives](#), all of them essential to the continued existence of Palestinian collective well-being and identity;

*Recognising* that [Israel has killed](#) or injured [more than 50,000 children](#) and that this destruction of a substantial part of a group constitutes genocide, as emphasized in a joint declaration of intervention in the [International Court of Justice](#) case of *The Gambia v Myanmar* by six countries—Canada, Denmark, France, Germany, the Netherlands, and the United Kingdom—which states “that children form a substantial part of the groups protected by the Genocide Convention, and that the targeting of children provides an indication of the intention to destroy a group as such, at least in part. Children are essential to the survival of any group as such, since the physical destruction of the group is assured where it is unable to regenerate itself.”;

*Recognising* that Israeli governmental leaders, [war cabinet ministers](#), and [senior army officers](#) have made explicit statements of “intent to destroy”, characterizing Palestinians in Gaza as a whole as enemies and “human animals” and stating the intention of inflicting “maximum damage” on Gaza, “flattening Gaza,” and turning Gaza into “hell”;

*Recognising* that Israeli [Prime Minister Benjamin Netanyahu](#) has endorsed the [current US President's plan](#) to forcibly [expel all Palestinians](#) from the Gaza Strip, with no right of return, in what Navi Pillay, head of the UN Commission of Inquiry on the Occupied Palestinian Territory, has said amounts to [ethnic cleansing](#);

*Recognising* that the [deliberate destruction](#) of agricultural fields, food warehouses, and bakeries and other violence that prevents food production, in conjunction with denial and restriction of humanitarian aid, indicate the [intentional infliction of unlivable conditions](#) resulting in [starvation](#) of Palestinians in Gaza;

*Acknowledging* that, on 21 November 2024, the [International Criminal Court](#) issued arrest warrants for Prime Minister [Benjamin Netanyahu](#) and former Defense Minister [Yoav Gallant](#) of Israel, in the court's ongoing investigation opened on 3 March 2021, of crimes committed on Palestinian territory since 13 June 2014, charging them with crimes identified in the Rome Statute, in the Gaza Strip from at least 8 October 2023, including the starvation of civilians, intentionally directing attacks against a civilian population, murder, and persecution;

*Whereas* Israel's actions in response to the October 7 attack and subsequent holding of hostages have not only been directed against the Hamas group responsible for these, but have also targeted the entire Gazan population;

*Acknowledging* that the International Court of Justice found in three provisional measures order in the case of [South Africa v. Israel](#) — January, March, and May 2024 — that it is plausible that Israel is committing genocide in its attack in Gaza and ordered Israel to take all measures within its power to prevent and punish the direct and public incitement of genocide and to ensure the provision of humanitarian assistance to civilians in Gaza;

*Acknowledging* that leading global international law organizations and UN bodies, including [Amnesty International](#), [Human Rights Watch](#), [Forensic Architecture](#), DAWN, [B'Tselem](#) and [Physicians for Human Rights](#), and [the Special Rapporteur on the situation of human rights in the Occupied Palestinian Territories](#), have conducted [extensive investigations](#) and issued reports concluding that Israel is committing genocide in Gaza;

*Acknowledging* that a number of [Israeli](#), Palestinian, [Jewish](#), and [other scholarly experts working in Holocaust and Genocide Studies](#) and [in International Law](#) have concluded that Israeli governmental and military actions constitute genocide;

*Acknowledging* that international civil society has a responsibility to prevent genocide by encouraging and assisting states to fulfil their obligations under the Genocide Convention to prevent, suppress, and punish genocide;

*Acknowledging* that putative security measures against members of a group are often pretext for mass killing and genocide as it has become in this case;

Therefore, the International Association of Genocide Scholars:

*Declares* that Israel's policies and actions in Gaza meet the legal definition of genocide in Article II of the United Nations Convention for the Prevention and Punishment of the Crime of Genocide (1948);

*Declares* that Israel's policies and actions in Gaza constitute war crimes and crimes against humanity as defined in international humanitarian law and the Rome Statute of the International Criminal Court;

*Calls upon* the government of Israel to immediately cease all acts that constitute genocide, war crimes and crimes against humanity against Palestinians in Gaza, including deliberate attacks against and killing of civilians including children; starvation; deprivation of humanitarian aid, water, fuel, and other items essential to the survival of the population; sexual and reproductive violence; and forced displacement of the population;

*Calls upon* the government of Israel to comply with the Provisional Measures orders of the International Court of Justice;

*Calls upon* the state parties of the International Criminal Court to comply with their obligations, cooperate with the Court, and surrender any individual subject to an arrest warrant;

*Calls upon* all states to actively pursue policies to ensure respect for their obligations under international law, including under the Genocide Convention, the Arms Trade Treaty and international humanitarian law, with regards to Israel and Palestine;

and

*Calls upon* the government of Israel and all other United Nations members to support a process of repair and transitional justice that will afford democracy, freedom, dignity, and security for all people of Gaza.

Current as of 28 July 2025

Resolution passed 31 August 2025

## Call to Senior University Administrators to Refuse the IHRA Definition of Antisemitism

4 July 2025

We, the [Genocide and Holocaust Studies Crisis Network](#) and allies, are a group of scholars, including those with expertise in histories of antisemitism, genocide, the Holocaust, the history and sociology of fascism, and hate speech. We come from diverse backgrounds and carry diverse religious, social, and political identities. Based on our extensive research, we urge all universities to refuse to adopt the problematic and confusing International Holocaust Remembrance Alliance [IHRA] Working Definition of Antisemitism. We urge university administrators across a broad spectrum to join in asserting that protest and criticism of state violence constitute protected speech on campuses.

Conceived as a legally non-binding definition of antisemitism in 2016, the IHRA definition is now in the process of being adopted into law by our states, the federal government, and our universities. By accepting the IHRA's conflation of criticism of Zionism, Israeli state policies, and violence against Palestinians with antisemitism (i.e. anti-Jewish prejudice), university administrations have harmed students, faculty, and community members -- many of them Jews -- who rightfully protest Israel's destructive assault on Gaza. Citing its chilling effect, even its co-author, [Kenneth Stern](#), has repudiated the IHRA definition's current uses.

The IHRA definition constitutes an attack on constitutional rights to free expression and has functioned to discipline, detain, expel, and deport students and scholars. University administrators have the power to come together and assert that the actions of Mahmoud Khalil, Badar Khan Suri, Rümeyşa Öztürk, and others wrongfully arrested simply for expressing their political views, are not antisemitic.

We request that you use your authority as university administrators to reject the misperceptions that impede free inquiry into the complexities of Jewish and Palestinian histories. Labeling anti-Zionist Jews as antisemitic, for example, encourages the erasure of a long history of Jewish anti-Zionist organizations and political parties. By generating a false understanding of antisemitism, universities allow attacks on anti-Zionist Jews for the way they identify as Jews. This very real antisemitism puts Jews in danger. The IHRA definition of antisemitism also sanctions Palestinians for merely describing the reality of systemic Israeli racism that they face, and it thus [silences, excludes, erases, defames and/or dehumanizes Palestinians and their narratives](#). Finally, the adoption of the IHRA definition risks curtailing faculty members' freedom to teach these histories that have been studied and documented extensively, including by Jewish and Israeli scholars.

Universities should be safe and welcoming environments for all students. We believe that it is the university's responsibility both to prevent and respond appropriately to discrimination and racism of all kinds, to protect Native people, Muslims, Jews, Arabs, Black people, Asians, Latinos, people with disabilities, and LGBTQI+ people. That responsibility also includes recognizing the right of students to take part in peaceful protest.

We hope that you share our vision for a university where academic freedom, political expression, and the protection of marginalized students and faculty are paramount. It is time to work towards restoring universities as spaces where complex histories can be studied freely and

all legitimate scholarly and political opinions can be heard. We request that you work together across universities to realize this vision, which institutions articulate but have not done enough to protect. Rejecting the IHRA definition is one concrete and powerful step towards making this goal a reality.

1. Michael Rothberg, Professor of English, Comparative Literature, and Holocaust Studies, UCLA
2. Raz Segal, Associate Professor of Holocaust and Genocide Studies, Stockton University
3. Liora Halperin, Professor of International Studies, History, and Distinguished Endowed Chair of Jewish Studies, University of Washington
4. Barry Trachtenberg, Rubin Presidential Chair of Jewish History, Wake Forest University
5. Atalia Omer, Professor of Religion, Conflict and Peace Studies, The University of Notre Dame
6. Joel Beinin, Donald J. McLachlan Professor of History, Emeritus, Stanford University
7. Taner Akçam, Director of the Armenian Genocide Research Program, UCLA
8. Frances Tanzer, Clark University
9. Marianne Hirsch, Professor Emerita, Columbia University
10. Shira Klein, Associate Professor of History, Chapman University
11. Santiago Slabodsky, Kaufman Chair in Jewish Studies, Hofstra University
12. Zinaida Miller, Professor of Law & International Affairs, Northeastern University
13. Jelena Subotic, Distinguished University Professor, Georgia State University
14. Johanna Ray Vollhardt, Associate Professor of Psychology, Clark University
15. Eric Kurlander, William R. Kenan Jr. Professor of History, Stetson University
16. Brett Ashley Kaplan, University of Illinois, Urbana-Champaign
17. Nitzan Lebovic, Professor, Lehigh University
18. Atina Grossmann, Professor of History, Cooper Union, NY
19. Michael Drexler, Professor of English, Bucknell University
20. Thomas Kühne, Strassler Colin Flug Professor of Holocaust History, Clark University
21. Annelise Orleck Professor of History, Dartmouth College
22. Olga Gershenson, Professor of Judaic and Near Eastern Studies, University of Massachusetts Amherst
23. Sarah Zarrow, Endowed Professor of Jewish History, Western Washington University

24. Rabab Abdulhadi, Professor, Director and Senior Scholar, Arab and Muslim Ethnicities and Diasporas Studies Program, San Francisco State University
25. Roma Sendyka, Professor, Research Center for Memory Cultures, Jagiellonian University, Krakow
26. Nathaniel Berman, Visiting Professor, Columbia University; Professor Emeritus, Brown University
27. Max Strassfeld, Associate Professor, USC
28. Karyn Ball, Professor, University of Alberta
29. Susan Jacobowitz, Professor, Department of English, Queensborough Community College, The City University of New York
30. Sadia Aqsous-Bienstein, Palestine / Israel Studies, Associate Professor, Sorbonne-Nouvelle University
31. Anton Shammass, Prof. Emeritus of Comp Lit and MES, University of Michigan, Ann Arbor
32. Mona Awad
33. Ivar Ekeland, former President, the University of Paris-Dauphine
34. Jay D. Aronson, Professor and Founder/Director of the Center for Human Rights Science, Carnegie Mellon University
35. Rabbi Simkha Y. Weintraub, LCSW, Retired Lecturer in Pastoral Care, Jewish Theological Seminary of America
36. Keith David Watenpaugh, Professor of Human Rights Studies, University of California, Davis
37. Frank Biess, Professor of History, Rita Atkinson Chair in German Studies, University of California, San Diego
38. Arlene Stein, Distinguished Professor of Sociology, Rutgers University
39. Esther Brito, PhD Student, American University
40. Cathy Lisa Schneider, Professor Emerita of International Service, American University
41. Stefano Bellin, BOF Postdoctoral Fellow, Ghent University
42. Amy E. Randall, Professor, Department of History, Santa Clara University
43. Harold Jacobs, Professor Emeritus of Sociology, SUNY--New Paltz
44. Elizabeth Heineman, Professor of History, University of Iowa
45. Mary Nolan, Professor of History emerita, NYU
46. Robert Yerachmiel Sniderman, Assistant Professor of Socially Engaged Art, Fairhaven College of Interdisciplinary Studies, Western Washington University

47. Rebecca Armendariz, MSW
48. Jack Kurzweil, Professor emeritus, Electrical Engineering, San Jose State University
49. Sheer Ganor, Assistant Professor, University of Minnesota, Twin Cities
50. Beth Ribet, Lecturer in Gender Studies, UCLA
51. Nina Paulovicova, Associate Professor, History, Athabasca University
52. Braden Russell, PhD candidate, University of British Columbia
53. Noa Shaindinger, Department of History and Political Science, Worcester State University
54. Willow-Samara Allen, Associate Professor, Royal Roads University
55. Kamran Rastegar, Professor of Comparative Literature, Tufts University
56. Daniel Neuspiel, Professor Emeritus of Pediatrics, Atrium Health
57. Sandra Gruner-Domic, PhD. Independent researcher
58. Jason Groves, Associate Professor of German Studies, University of Washington, Seattle
59. Al Kagan, Professor of Library Administration Emeritus, University of Illinois, Urbana/Champaign
60. Maya Crystal, Alum in Political Science and Gender and Women's studies with a minor in Jewish studies, UIUC
61. Jonathon Catlin, Postdoctoral Associate, University of Rochester
62. Catherine Moury, Associate Professor of Political Science, Nova University, Portugal
63. Saghar Shahidi-Birjandian, Assistant Professor, University Canada West
64. David Livingstone, Adjunct Professor of History, California Lutheran University
65. Jonas Fossli Gjersø, Associate Professor of History, University of Stavanger
66. Dvora Joseph Davey, Associate Professor, ID Medicine, UCLA
67. Susan Slyomovics, Distinguished Professor of Anthropology and Near Eastern Languages & Cultures, UCLA
68. Ben Spatz, Visiting Scholar, University of Oxford
69. Dzeneta Karabegovic, Associate Professor, University of Salzburg
70. Milica Popović, Senior Postdoctoral Researcher, Austrian Academy of Sciences
71. Arie M. Dubnov, George Washington University
72. Birgul Kutan, Assistant professor, University of Sussex
73. Alexandre Dessingué, Professor of History and Memory Culture, University of Stavanger

74. Heleen Touquet, Professor, University of Antwerp
75. Anneke Newman, Senior Postdoctoral Fellow, University of Ghent
76. Luisa Gandolfo, Senior Lecturer in Sociology, University of Aberdeen
77. Emily Julia Roche, Postdoctoral Fellow, Maynooth University
78. Zoltán Kékesi, Research Fellow, University College London
79. Roschanack Shaery Yazdi, Associate Professor, University of Antwerp
80. Rebecca Alpert, Professor of Religion Emeritus, Temple University
81. Stefaan De Neve, Professor, Bioscience Engineering, Ghent University, Belgium
82. Manuel Schwab, Professor, American University in Cairo
83. Emmaia Gelman, Director, Institute for the Critical Study of Zionism
84. Ariek Norford, PhD Candidate, Stony Brook University
85. Keith P. Feldman, Associate Professor of Ethnic Studies, UC Berkeley
86. Koen Bogaert, Associate Professor in Political Sciences, Ghent University (Belgium)
87. Miller Oberman, Director of First Year Writing, The New School
88. Thierry Elin-Saintine, Associate Professor of First-Year Studies, Math, Stockton University
89. Adam Miyashiro, Professor, Stockton University
90. Ekaterina Sedia, Professor of Biology, Stockton University
91. Jordan Corson, Associate Professor of Education, Stockton University
92. Nazia Kazi, Professor of Anthropology, Stockton University
93. Terri Ginsberg, Assistant Professor, Rutgers University
94. Eva Willems, Postdoctoral researcher, Ghent University
95. Jennifer S. Ponce de León, Associate Professor of English, University of Pennsylvania
96. Elyse Crystall, Teaching Professor, UNC -Chapel Hill
97. Glenn Hendler, Professor of English and American Studies, Fordham University
98. Suvir Kaul, University of Pennsylvania
99. Alan M. Wald, H. Chandler Davis Collegiate Professor, University of Michigan
100. David Klein, Emeritus Professor of Mathematics, California State University Northridge
101. Greta Treistman, Librarian, Seattle Colleges
102. Daniel Segal, Jean M. Pitzer Professor, Pitzer Colleges of the Claremont Colleges

103. Victor Silverman, Emeritus Professor of History, Pomona College
104. Orian Zakai, Associate Professor of Hebrew, George Washington University
105. Jean Halley, Professor of Sociology, College of Staten Island and the Graduate Center of the City University of New York
106. Deepa Kumar, Professor, Media Studies, Rutgers University
107. Kristen Gillespie-Lynch, Professor of Psychology, College of Staten Island, CUNY
108. Ania Loomba, Catherine Bryson Professor of English, University of Pennsylvania
109. Rachel Rubin, MD, MPH, Adj Assistant Professor, Public Health, University of Illinois Chicago
110. Amit Baishya, Associate Professor, University of Oklahoma
111. Iain Michael Chambers, Professor, University of Naples, Orientale
112. Laura Goldblatt, Assistant Professor, University of Virginia
113. Margaret W Ferguson, Distinguished Professor of English Emerita, University of California at Davis
114. Bernadette J. Brooten, Kraft-Hiatt Professor of Christian Studies emerita, Brandeis University
115. Caroline Kahlenberg, University of Virginia
116. Crystal Bartolovich, Associate Professor, Syracuse University
117. Susan Winnett, Professor emerita of American Studies, Heinrich-Heine-Universität Düsseldorf
118. Mark LeVine, Professor of History, UC Irvine
119. Laura Morowitz, Professor of Art History, Wagner College
120. Jeffrey A. Grossman, University of Virginia
121. Eli Meyerhoff, Visiting Scholar, Duke University
122. Emily Weissbourd, Associate Professor, Lehigh University
123. Rosalind Petchesky, Distinguished Professor Emerita of Political Science, Hunter College and the Graduate Center, City University of New York
124. Sarah Combellick-Bidney, Associate Professor, Augsburg University
125. Bakirathi Mani, Professor of English, University of Pennsylvania
126. Michael Letwin, Former President, Association of Legal Aid Attorneys / UAW 2325 / Labor for Palestine National Network
127. Lisa Chason, Senior Lecturer in Writing Studies, University of Illinois Urbana-Champaign

128. Praseeda Gopinath, Associate Professor, Binghamton University
129. Leo Spitzer, Professor of History, Emeritus, Dartmouth College
130. Lara Braitstein, Associate Professor, School of Religious Studies, McGill University
131. Geoff Eley, Karl Pohrt Distinguished University Professor of Contemporary History, emeritus, University of Michigan
132. Daniel Vitkus, Rebeca Hickel Endowed Chair, U. of California, San Diego
133. Jenna Udren, Research Scientist, University of Washington
134. Melissa Levy, Associate Professor, University of Virginia
135. Dan Froot, Research Professor, UCLA
136. Lilah Leopold, PhD Candidate, University of Illinois, Urbana-Champaign
137. Robert Clines, Associate Professor, Western Carolina University
138. Jake McGinty, Computer Science Alumni, University of Illinois Urbana-Champaign
139. David Arnow, Professor, Brooklyn College -- CUNY
140. Bruce Robbins, Old Dominion Foundation Professor in the Humanities, Columbia University
141. Grover C. Furr, Professor of English, Montclair State University
142. Blake Stimson, Professor of Art History, University of Illinois, Chicago
143. Silke-Maria Weineck, Grace Lee Boggs Professor of Comparative Literature and German Studies, University of Michigan
144. Yael Navaro, Professor of Social Anthropology, University of Cambridge
145. Jared McBride, Assistant Professor, UCLA
146. Lisa Cerami, Assistant Professor of Instruction of German, University of Rochester
147. Chris Tilly, Professor of Urban Planning, UCLA
148. Lisa Rofel, Professor Emerita, University of California, Santa Cruz
149. Nancy Gallagher, Professor Emerita, UCSB
150. Stacy Fahrenthold, Professor of History and Middle East/South Asia Studies, UC Davis
151. David Pellow, Distinguished Professor, UC Santa Barbara
152. Flagg Miller, Professor, The University of California, Davis
153. Susette Min, Associate Professor, UCD
154. Mark Jerng, Professor of English and Asian American Studies, UC Davis

155. Alan Meyers MD, MPH, Emeritus Professor of Pediatrics, Boston University School of Medicine
156. Sang Kil, Professor, Justice Studies, San Jose State University (job suspended for Palestine so signing as an individual)
157. Omar Zahzah, Assistant Professor, San Francisco State University
158. Ramya Vijaya, Professor of Economics, Stockton University, New Jersey
159. Michael Palm, Associate Professor, UNC-Chapel Hill
160. Jane Lehr, Professor, California Polytechnic State University
161. Kamala Visweswaran, Professor of Anthropology, Rice University
162. Suad Joseph, Distinguished Research Professor, University of California, Davis
163. Ashraf Tubeileh, Associate Professor, California Polytechnic State University, San Luis Obispo
164. Monika Mokre, PD Dr., Political Scientist
165. Manzar Foroohar, History Professor Emérita, Cal Poly, San Luis Obispo
166. David Lloyd, Distinguished Professor of English, UC Riverside
167. Mino Moallem, Professor, UC Berkeley
168. Juan Cole, Professor of Middle Eastern History, University of Michigan
169. Corin Bowen, Assistant Professor of Engineering Education, California State University, Los Angeles
170. Betsy Erbaugh, Associate Professor of Sociology, Stockton University
171. Sasan Fayazmanesh, Professor Emeritus of Economics, California State University, Fresno
172. Rouhollah Aghasaleh, Assistant Professor, Cal Poly Humboldt
173. Paola Bacchetta, Professor, University of California, Berkeley
174. Jeffrey Skoller, Professor emeritus, UC Berkeley
175. Jamal Nassar, Dean Emeritus, California State University, San Bernardino
176. Bronwyn Leebaw, Professor, UC Riverside
177. Vida Samiian, Professor & Dean Emerita, CSU Fresno
178. Naomi Braine, Professor of Sociology, Brooklyn College and the Graduate Center, CUNY
179. Howard Winant, Distinguished Professor of Sociology Emeritus, University of California, Santa Barbara

180. Harvey Molotch, Prof Emeritus, UCSB and NYU
181. Alice Rothchild, MD, Harvard University, retired
182. Linda Herrera, Professor, University of Illinois, Urbana Champaign
183. Sherry Millner, Media Professor, CUNY College of Staten Island
184. Ken Habib, Professor, Cal Poly
185. Shahla Razavi, Associate Professor of Mathematics (retired), Mt. San Jacinto College
186. Naomi Schiller, Associate Professor of Anthropology, Brooklyn College and The Graduate Center, CUNY
187. Theresa Montaño, Professor, Chicana/o Studies, CSU Northridge
188. Assaf Kfoury, Professor of Computer Science, Boston University
189. Ronald Loewe, Professor of Anthropology, CSULB
190. Afshin Matin-Asgari, California State University, Los Angeles
191. Brad Erickson, Lecturer Faculty in Liberal Studies, San Francisco State University
192. Christoph Hanssmann, Assistant Professor, UC Davis
193. Robert Gelbach, Professor of Political Science emeritus, Southern CT State University
194. Anat Biletzki, Schweitzer Professor of Philosophy, Quinnipiac University
195. Abbas Amanat, William Sumner Professor of History, Yale University
196. Ervand Abrahamian, Professor Emeritus of History, Graduate Center, City University of New York
197. Stephen McFarland, Professor of Labor Studies, CSU Dominguez Hills
198. Que-Lam Huynh, Professor of Psychology, CSU Northridge
199. Seth L. Sanders, Professor Emeritus of Jewish Studies and Religious Studies, UC Davis
200. Mairaj Syed, Religion, Culture, and Society, University of California, Davis
201. Sarah Minslow, PhD, Associate Professor, Cal State LA
202. Lynne Joyrich, Professor of Modern Culture and Media, Brown University
203. Priti Haria, PhD, Associate Professor of Education, Stockton University, NJ
204. Asef Bayat, Professor of Sociology, University of Illinois, Urbana-Champaign
205. Curtis Perry, Professor of English, University of Illinois, Urbana-Champaign
206. Julie Orlemanski, Associate Professor, University of Chicago
207. Marjorie N. Feld, Professor of History, Babson College

208. David Palumbo-Liu, Louise Hewlett Nixon Professor, Stanford U
209. Maud Burnett McLnerney, Professor of English and Comparative Literature, Haverford College
210. Hakem Al-Rustom, Assistant Professor, University of Michigan
211. Nesrine Chahine, Assistant Professor, TTU
212. Frederik Forrai Ørskov, University of Copenhagen
213. Usha Iyer, Associate Professor, Film and Media Studies, Stanford University
214. Ahlam Muhtaseb, CSUSB
215. Sara Borjas, Professor of English and Creative Writing, California State University, East Bay
216. Raquel E Aldana, Professor of Law, UC Davis
217. Raj Chetty, Associate Professor, St. John's University
218. Cynthia Franklin, Professor, University of Hawai'i
219. Mikael Wolfe, Associate Professor of History, Stanford University
220. Anna Bigelow, Associate Professor of Religious Studies, Stanford University
221. David Kazanjian, Professor of Comparative Literature, University of Pennsylvania
222. Paola Rivetti, Associate Professor, Dublin City University
223. Karim Mattar, Associate Professor of English, University of Colorado at Boulder
224. Huda Fakhreddine, Associate Professor, University of Pennsylvania
225. Neil Balan, Assistant Professor, Saint Mary's University (Mi'kma'ki)
226. Shiri Pasternak, Associate Professor, Criminology, Toronto Metropolitan University
227. Andrew Woolford, Professor of Sociology and Criminology, University of Manitoba
228. Anthony Alessandrini, Professor of English and Middle Eastern Studies, City University of New York
229. John Barry, Professor, Queen's University Belfast
230. Hasia Diner, Emerita, New York University
231. Guangtian Ha, Associate Professor of Religion, Haverford College
232. Kimberly Reiter, Associate Professor of History, Stetson University
233. Ziad Elmarsafy, Professor of Arabic and Comparative Literature, University of St Andrews
234. Mark Schafer, Senior Lecturer II, University of Massachusetts Boston

235. Michael Harris, Professor of Mathematics, Columbia University
236. Tommaso Valletti, Professor of Economics, Imperial College London
237. Anna Mollow, Independent Scholar
238. Laurie King, Teaching Professor, Department of Anthropology, Georgetown University
239. Naomi Seidman, Chancellor Jackman Professor of the Arts, University of Toronto
240. Joy Ladin, Gottesman Professor of English (retired), Yeshiva University
241. Takashi Nakamura, Instructor, British Columbia Institute of Technology
242. Mariam Taher, Center for Contemporary Arab Studies, School of Foreign Service, Georgetown University
243. Cyrus Bina, Professor Emeritus of Economics, University of Minnesota
244. Deborah Rosenfelt, Professor Emerita, University of Maryland
245. Oded Goldreich, Professor, Weizmann Institute of Science, Israeli Academy of Sciences and Humanities
246. Jonathan Gingerich, Associate Professor of Law, Rutgers University
247. Natte Hillerberg, MD, consultant psychiatrist, alumni, Karolinska Institute
248. Kristofer Petersen-Overton, Babson College
249. Joan N. Radner, Professor Emerita, American University
250. Steven M. DeLue, Professor Emeritus, Miami University
251. Maria-Carolina Cambre, Professor, Concordia University
252. Fred L Pincus, Emeritus Professor of Sociology, University of Maryland Baltimore County
253. Susan S. Lanser, Professor Emerita of Humanities, Brandeis University
254. Jason Sumich, Dr, University of Essex
255. Alma Rachel Heckman, Neufeld-Levin Chair of Holocaust Studies and Associate Professor of History and Jewish Studies, UC Santa Cruz
256. Arlie Russell Hochschild, Professor Emerita, Sociology, UC Berkeley
257. Yoav Duman, Professor of Political Science, Green River College
258. Giovanni Picker, Senior Lecturer in Sociology, University of Glasgow, UK
259. Zachary Lockman, Professor, New York University
260. Sara Feldman, Preceptor in Yiddish, Harvard University
261. Haynes Miller, Professor of Mathematics, emeritus, Massachusetts Institute of Technology

262. Tomas Persson, Reader in Mathematics, Lund university
263. Lawrence Baron, Emeritus Professor, San Diego State University
264. Joel E. Rubin, Adjunct Researcher, University of Bern (formerly Assoc. Prof. University of Virginia)
265. Neil Vickers, Professor of English Literature, King's College London
266. Carmel Dor, Adjunct Professor, Hamline University
267. Victoria de Grazia, Moore Collegiate Professor Emerita, Columbia University
268. Steven J. Heyman, Professor of Law, Chicago-Kent College of Law, Illinois Tech
269. Alan Feigenberg, Professor Emeritus, School of Architecture, CCNY, PSC-CUNY
270. Carl Gelderloos, Associate Professor of German Studies, Binghamton University (SUNY)
271. Dani Bedau, Professor, San Diego State University
272. Justin Paulson, Associate Professor, Sociology and Political Economy, Carleton University
273. Lynne Tillman, Professor, UAlbany
274. Dr. April Heaslip, Southern New Hampshire University
275. Louis E. Newman, John M. and Elizabeth W. Musser Professor of Religious Studies, Emeritus, Carleton College
276. Stephen Roddy, Professor, University of San Francisco
277. Thomas Bierschenk, University Professor em. of Anthropology, Johannes Gutenberg-Universität Mainz, Germany
278. Karen Adler, Lecturer in History (retired), University of Nottingham
279. Alan Wallach, Wark Professor Emeritus, The College of William and Mary
280. Aron Lee Rosenberg, Faculty Lecturer, McGill University
281. Saul Anton, Associate Professor (CCE), The Pratt Institute
282. Zev-Hayyim Feyer, Rabbi and Independent Scholar
283. Viviane Baladi, retired Directrice de Recherches, CNRS
284. Jonathan Feingold, Associate Professor, Boston University School of Law
285. Bruce N. Fisk, Professor of Religious Studies, Westmont College (retired)
286. Joy Dworkin, Professor of English (ret.), Missouri Southern State University
287. Naomi Scheman, Professor Emerita, Philosophy, University of Minnesota
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724. Jerry Levinsky, Lecturer in Labor Studies, University of Massachusetts, Amherst
725. Heather Schoenfeld, Associate Professor of Sociology, Boston University
726. Mneesha Gellman, Associate Professor of Political Science, Emerson College

727. Talya Fishman, MELC & Jewish Studies, University of Pennsylvania
728. Mica Pollock, Professor of Education Studies, UC San Diego
729. Shana Sippy, Associate Professor, Chair of Religion and Asian Studies, Director of JHF Jewish Studies and Life Initiative at Centre College
730. Meredith Turshen, Professor Emerita, Rutgers University
731. Stephen R. Shalom, Emeritus, William Paterson University
732. Sally Charnow, Professor, Hofstra University
733. Susan Klein, Library Services Asst, retired, Yale University
734. Jennie Kristel, Visiting Core Faculty, Lesley University
735. Stephanie Jed, Professor Emerita, Literature, UCSD
736. Jonathon Glassman, Professor emeritus, Northwestern University
737. Philip Chassler, retired Faculty, University of Massachusetts Boston
738. Joan Meier, NFVLC Professor of Clinical Law, George Washington University Law School
739. Lev Centrih, Assistant Professor, University of Primorska
740. Judith Frank, Eliza J. Clark Folger Professor of English, Amherst College
741. Karen Shmukler, Lecturer, Tufts University
742. Anne-Marie Eddé, Emeritus Professor, Paris1 Pantheon-Sorbonne
743. Joe Feinglass PhD, Research Professor of Medicine, Northwestern University Feinberg School of Medicine
744. Leah Perlmutter, Computer Science, Cornell University
745. Alan Feigenberg, Professor Emeritus, The City College of New York School of Architecture
746. Debbie Becher, Associate Professor of Sociology, Barnard College
747. Igor Babou, Professor, Socio-Anthropology, University Paris Cité
748. Doug Rossinow, Professor of History, Metro State University
749. Joseph Litvak, Harriet H. Fay Professor of Literature, Tufts University
750. Jessica S. Elkayam, Assistant Professor of Philosophy, Sam Houston State University
751. David Rohrich, Professor, Boston University
752. Eli Jany, PhD Candidate, University of Toronto
753. Philippe Lavigne Delville, Anthropologist, Institut de recherche pour le développement, France

754. Deborah Garfinkle, English, De Anza College
755. Adam Lucas, Honorary Senior Fellow, University of Wollongong
756. Margaret Litvin, Associate Professor, Boston University
757. Liat Spiro, Assistant Professor of History, College of the Holy Cross
758. Mireille Besson, Research Director, retired, CNRS
759. Daniel Brooks, Associate Professor of Epidemiology, Boston University
760. Nancy Appelbaum, Professor of History, State University of New York at Binghamton
761. Silvia Ghinassi, Mathematics Instructor, Shoreline College
762. Julia C. Strauss, Professor Emerita, SOAS University of London
763. Aaron Katz, Principal Lecturer Emeritus, University of Washington
764. Sarah Leperchey, Maîtresse de conférences, Université Paris 1 Panthéon-Sorbonne
765. Rachel Bell Burten, Postdoctoral Research Associate in Anthropology, University of Massachusetts Amherst
766. David Gaunt, Professor Emeritus of History, Södertörn University, Stockholm
767. Léa Gudel, PhD Candidate, EHESS-CéSor
768. Rim Abdelmalek, Professeur, Université Tunis El Manar
769. Timotheus Tap, LL.M, Senior Researcher, Institute Statera, Tilburg University
770. Daniel Greenwood, Professor, Hofstra University Deane School of Law
771. Robert Sapolsky, Neurobiologist, Stanford University
772. Sara Aguiton, CNRS Research Fellow, EHESS
773. Michelle Gawerc, Professor of Sociology, Loyola University Maryland
774. Emmanuelle Tixier du Mesnil, professeure d'histoire médiévale, université Paris Nanterre
775. Sayres Rudy, PHD, Political Science, Columbia
776. Cem Kaner, J.D., Ph.D, Professor Emeritus of Software Engineering, Florida Institute of Technology
777. Cathy Lisa Schneider, Professor Emerita, American University
778. Sophy Naess, Senior Critic, Yale School of Art
779. Bensaid Bilel, PhD, Toulouse university
780. Wendy Bilgen, Social Work Lecturer, Cleveland State University
781. Elana Shever, Associate Profesor of Anthropology, Colgate University

782. Josh Sturman, Political Science, University of Washington
783. Daisy J. Goodman, Associate Professor of Obstetrics and Gynecology, Geisel School of Medicine at Dartmouth
784. Beverly Falk, Professor Emerita, The City College of New York
785. Monica Frolander-Ulf, Associate Professor Emerita, University of Pittsburgh, Johnstown
786. Emmanuelle Veuillet, Post-Doctoral Researcher, EHESS
787. Bertrand Berche, Professor, Physics Department, Université de Lorraine
788. Nora Galland, PhD, Teaching and Research Fellow, University of Western Brittany, France
789. Lysandre Vareil, PhD candidate, Sorbonne Université
790. Emmanuelle Posse, professeur de philosophie, Education nationale France
791. Sophie Gilotte, Researcher, CNRS, Lyon
792. Sébastien Geiskopf, Post-PhD, Institut Jean Lamour, Lorraine University
793. William J. Morison, Emeritus, University of Louisville
794. Ratiba Hadj-Moussa, Professor of Sociology, York University, Toronto
795. Rory Archer, University of Vienna
796. Driss Mehdi, Professor Emeritus, Poitiers University, France
797. Elisabeth Weber, Biologist, Université de Lorraine
798. Frédéric Trottier-Pistien, Postdoctorate, Tours University
799. Fatoumata Diallo, CERI Sciences Po
800. Amanda Ricci, Associate Professor of History, York University
801. Bruno Alonso, Researcher, CNRS, Montpellier, France
802. Stefan Kipfer, Professor, York University
803. Waffa Nekka, PhD Researcher, Université de Bordeaux
804. James Dawson, Assistant Professor in Politics, Coventry University
805. Marc S. Halfon, University at Buffalo-State University of New York
806. Ben Allen, Professor of Mathematics, Emmanuel College
807. Rachel Rosenbloom, Professor of Law, Northeastern University School of Law
808. Thomas Jay Lynn, Penn State Berks
809. Cristina Ruiz Serrano, Associate Professor, MacEwan University

810. Jean-Luc Kop, Dr., Associate Professor, Université de Lorraine
811. Laurent Husson, Professor, CNRS
812. Steven Jia, PhD Candidate, Aix-Marseille Université
813. Alan Sokal, Professor of Mathematics, University College London, and member of UCL's Working Group on IHRA (2020-21)
814. Kenges Kairat, PhD, al-Farabi Kazakh National University, Kazakhstan
815. Hilary Lustick, University of Massachusetts, Lowell
816. H Ambre Ayats, Post-Doctoral Researcher, School of Computing, University of Eastern Finland
817. Alexis Wilmes, Ph.D student, Université de Lorraine
818. Nigel Gibson, Professor, Emerson College
819. Dominique Pradelle, Professor, Sorbonne Université (Paris, France)
820. Marie Cuillerai, Professeur, Université de Paris
821. Roshdi Rashed, Professor, CNRS Paris
822. Estibalitz Ezkerra, PhD, Independent Researcher
823. Melissa Weiner, Professor of Sociology & Critical Race and Ethnic Studies, College of the Holy Cross
824. Caroline Robion-Brunner, Dr., University of Toulouse
825. Sandra Fancello, Research Director at the National Center for Scientific Research, France
826. Alberto Florez, Adjunct Research Professor, Carleton University
827. François Schosseler, Directeur de recherche retraité, CNRS
828. Françoise Willmann, Université de Lorraine
829. Raphael Leblois, Researcher, INRAE, Montpellier, France
830. Vincent Bourdin, Dr., CNRS, Paris-Saclay, France
831. Francesco Correale, CNRS - UMR 7324 CITERES, Tours (France)
832. Mike Cushman, LSE Research Fellow (rtd)
833. Sally Howell, Professor of History, University of Michigan-Dearborn
834. Masha Raskolnikov, Associate Professor, Cornell University
835. Kristin Poling, Associate Professor of History, University of Michigan—Dearborn
836. Beverly J. Silver, Professor of Sociology, Johns Hopkins University

837. Jan Kout, University of Basel, Switzerland
838. Josefina Saldaña-Portillo, Professor, NYU
839. Warren Schwartz, PsyD, Psychologist, University of Rhode Island
840. Pierre Torasso, emeritus prof. université de Poitiers
841. Vickie Langohr, Professor, College of the Holy Cross
842. Sébastien Zamith, CNRS researcher, University of Toulouse
843. Sylvain Lebreton, Associate Professor in Ancient History, Université Toulouse - Jean Jaurès
844. Abe Hayeem, RIBA, Chair of Architects and Planners for Justice in Palestine
845. Nicolaas Barr, Part-time Lecturer, Comparative History of Ideas, University of Washington, Seattle
846. Suzy Kim, Professor of Korean History, Rutgers University
847. Raphaëlle Fourlinnie, Study Engineer, EHESS
848. Allison Mickel, Associate Professor of Anthropology, Lehigh University
849. Caterina Zanfi, Chargée de recherche, CNRS/ENS Paris
850. Annabelle Vernouillet, Researcher, CEA, France
851. Harriet Evans, Professor Emerita, Chinese Cultural Studies, University of Westminster
852. Peter Slezak, Associate Professor, University of New South Wales
853. MarieT Chateau, Associate Professor, University of Montpellier
854. Teresa Lee, Assistant Professor, University of Massachusetts Lowell
855. Sarah Gignoux-Wolfsohn, Assistant Professor, University of Massachusetts Lowell
856. Rachel Melamed, Assistant Professor, UMass Lowell
857. Nadia Edmond, Dr., University of Brighton, retired
858. Laura K. Gross, Professor of Computer Science, Bridgewater State University
859. Rosemary Collard, Associate Professor, Simon Fraser University
860. Herbert Ginsburg, PhD, Jacob H. Schiff Foundation Professor Emeritus of Psychology and Education, Department of Human Development, Teachers College Columbia University
861. Hugo Peyriere, PhD Candidate, Hydrogeology, Montpellier University
862. Rachel Trousdale, Professor of English, Framingham State University
863. Kendra Strauss, Simon Fraser University

864. Ellie Ash, Postdoctoral Researcher, Center for Religion and American Culture, Indiana University Indianapolis
865. Daniel Kleinman, Professor of Sociology, Boston University
866. Adi Burton, Centre for European Studies, University of British Columbia
867. Medrar Sallem-Âati, PhD Researcher, Jean Monnet University
868. William J. Bulman, NEH Distinguished Chair and Professor of History, Lehigh University
869. Bryan Cheyette, Professor, University of Reading, UK
870. Judith Colton, Professor emerita of the History of Art, Yale University
871. Ioanna Chatzidimitriou, Dr., Muhlenberg College
872. Eugene Sheppard, Associate Professor, Brandeis University
873. Nicolette Dixon, New York University
874. Coco Rosenberg, Assistant Professor of Art Education, Massachusetts College of Art and Design
875. David Feldman, Professor, Birkbeck Institute for the Study of Antisemitism, University of London
876. Tina Shull, Associate Professor of History, UNC Charlotte
877. Alice Arnold, Adjunct Associate Professor, CUNY
878. Yahya El Berdai, Dr.
879. Sarah Irving, Lecturer in Middle East History, University of Staffordshire
880. Dana Sajdi, Associate Professor, Boston College
881. Samuel Alizon, Research Director in Biology, CNRS, France
882. Kelly Socia, Professor of Criminology & Justice Studies, University of Massachusetts Lowell
883. John Cox, Professor of History, UNC Charlotte
884. Amy Auch, Associate Professor, Drexel University (Philadelphia USA)
885. Anselm Franke, Professor, Zurich University of Arts
886. Jeffrey W. Rubin, Associate Professor of History, Boston University
887. Leslie Salzinger, Associate Professor, Gender and Women's Studies, UC Berkeley
888. Waltraud Paul, CNRS, Paris
889. Susan Blackwell, Researcher, Institute for Language Sciences, Universiteit Utrecht

890. Linda Kim, Associate Professor of Art History, Drexel University
891. Kristi Barnwell, Associate Professor, History, University of Illinois Springfield
892. Elena Burgos Martinez, Lecturer, Groningen University (Netherlands)
893. William Plevan, Assistant Professor, Reconstructionist Rabbinical College
894. Mehdi Adjeroud, Research Institute for Development, Marseille
895. Hugo Cayuela, Postdoctoral Researcher, Oxford University (UK)
896. Lounes Chikhi, PhD, Senior Recher (DR1), CNRS, Toulouse University
897. Santiago Gonzalez-Martinez, Dr., Research Director, INRAE, France
898. Grégoire Perez, PhD, CIRAD
899. Amira Jarmakani, Professor of Women's, Gender, and Sexuality studies, San Diego State University
900. François Bonhomme, D. Sc., Research Director emeritus, CNRS, U. Montpellier
901. Schneur Newfield, Associate Professor, Hunter College, CUNY
902. Dominique Strasberg, Professor, University of Réunion Island
903. Jeff Warner, Action Coordinator, LA Jews for Peace
904. Hervé Bismuth, French Lecturer, Université Bourgogne Europe
905. Anna Lundberg, Professor in Sociology of Law, Lund University
906. Schuyler Ross, Researcher, Columbia University
907. Emina Zoletic, PhD researcher, University of Warsaw
908. Tiziana Terranova, Professor, Università di Napoli L'Orientale, Italy
909. Simona Taliani, Associate Professor, University of Naples L'Orientale
910. Stefano Portelli, Research Fellow, Università Roma Tre
911. Candice Raymond, CNRS Researcher, Pantheon-Sorbonne University
912. Roberto Beneduce, MD, PhD., Full Professor of Anthropology, University of Turin
913. Rafael Levi, Researcher, Univesidad Autonoma de Madrid
914. Joëlle Conrotte, psychologue psychanalyste, Belgique
915. Mark Allan Davis, Associate Professor of Africana Studies, San Francisco State University
916. Daniel Kleinman, Professor, Sociology, Boston University

917. Lindsay Reckson, Professor of English, Haverford College
918. Laura Levitt, Professor of Religion, Jewish Studies, and Gender, Temple University
919. Gustavus Stadler, William R. Kenan Professor of English, Haverford College
920. Danielle Allor, Visiting Assistant Professor of English, Haverford College
921. Lila Corwin Berman, Professor of History and Hebrew & Judaic Studies, New York University
922. Judith E. Tucker, Professor Emerita, Georgetown University
923. Mimi Kirk, Director, Institute for the Study of Christian Zionism
924. Cesar Rodriguez, Associate Professor, San Francisco State University
925. Evelyn Malavé, Assistant Professor, St. John's University School of Law
926. Nader Hashemi, Associate Professor, Georgetown University
927. Jillian Rogin, Associate Professor, University of Windsor, Faculty of Law
928. Rafaëlle Maison, Professeur de droit, Université Paris Saclay
929. Francesca Morgan, Professor of History, Northeastern Illinois University, Chicago
930. Giovanna Cifoletti, Professor emeritus, EHESS
931. Constance Gordon, Associate Professor, Communication Studies, San Francisco State University
932. Neil Balan, Assistant Professor, SJCS, Saint Mary's University (Kjipuktuk)
933. Francesco Sticchi, Senior Lecturer in Film Studies, Oxford Brookes University
934. Samuel Martin, Lecturer, University of Pennsylvania
935. Sabrina Alimahomed-Wilson, Professor, California State University, Long Beach
936. Beatrice F. Manz, Professor Emerita, Tufts University
937. Yanira Reyes Gil, Professor, Interamerican University School of Law, Puerto Rico
938. Mathijs Janssen, Lecturer, University of Amsterdam
939. Chi-ming Yang, Professor, University of Pennsylvania
940. Julia Halperin, Assistant Professor, Emerson college
941. Jose Carlos Urra Llanusa, Research Software Engineer, TU Delft
942. Rachael Stryker, Professor, Human Development and Women's Studies, Cal State East Bay
943. Karen L. Suyemoto, Professor, University of Massachusetts Boston

944. Marilucy González-Báez, Professor, Interamerican University of Puerto Rico, School of Law
945. Shariann Lewitt, Lecturer, MIT
946. Mary Wood, Professor of English, University of Oregon
947. Karyn Ball, Department of English and Film Studies, University of Alberta
948. Nathan Wolff, Associate Professor of English, Tufts University
949. Ruth Paris, Professor, Boston University
950. John Plotz, Mandel Professor of the Humanities, Brandeis University
951. Howard R. Spindel, Associate Professor of History emeritus, Georgetown University
952. Mustafa Aksakal, Associate Professor, Georgetown University
953. Deborah Dwork, Director, Center for the Study of the Holocaust, Genocide, and Crimes Against Humanity, Graduate Center--CUNY
954. Gerald Campano, Professor, University of Pennsylvania
955. Howard Winant, Distinguished Professor of Sociology Emeritus, University of California Santa Barbara
956. Rabbi Amy Eilberg
957. Cecilia Méndez Gastelumendi, Professor of History, University of California, Santa Barbara
958. Elisabeth Weber, Professor, German and Comparative Literature, University of California, Santa Barbara
959. Rabbi Zev-Hayyim Feyer, retired hospital chaplain
960. Lisa Hajjar, Professor of Sociology, UCSB
961. Rabbi Laura Geller Emerita, Temple Emanuel
962. Kouross Esmaeli, Department of Studies in Race, Colonialism and Diaspora, Tufts University
963. Amahl Bishara, Professor of Anthropology, Tufts University
964. Rabbi David J. Cooper, emeritus Rabbi, Kehilla Community Synagogue, Piedmont, CA
965. Yael Fischman, Cantor
966. Najm Yousefi, Associate Professor of History, California State University, Chico
967. Jane Carey, Associate Professor of History, University of Wollongong
968. Philippe Dollfus, Dr., Researcher, CNRS, France

969. Molly Farneth, Associate Professor of Religion, Haverford College
970. Rabbi Jeremy Milgrom, Clergy for Peace and Palestinians and Israelis for Nonviolence
971. Rahma Bavelaar, lecturer, Leiden University of Applied Sciences
972. Michel Gherman, Associate Professor of Sociology, Federal University of Rio de Janeiro
973. Chanda Prescod-Weinstein, Associate Professor of Physics, University of New Hampshire
974. Jeremy Menchik, Associate Professor of International Relations and Political Science, Boston University
975. Edward Bernstein, MD, Professor Emeritus of Emergency Medicine, Boston University School of Medicine
976. Catherine Nesci, Professor of Comparative Literature & French Studies, University of California Santa Barbara
977. Elyse Semerdjian, Kaloosdian/Mugar Chair in Armenian Genocide Studies, Clark University
978. Aurélia Kalisky, Centre Marc Bloch Berlin
979. Hannah Wilson, Postdoctoral Fellow, University of Manchester
980. Sabar Dasgupta, Open Source Systems Engineer, Stanford University
981. Valentina Pisanty, Full Professor, University of Bergamo
982. Anupama Ranawana, Dr., Postdoctoral Researcher, University of Durham
983. Stef Craps, Professor of English Literature and Director of the Cultural Memory Studies Initiative, Ghent University
984. Snežana Stanković, Postdoctoral Researcher, Uniklinik RWTH Aachen
985. Susanne C. Knittel, Associate Professor of Comparative Literature, Utrecht University
986. Rabbi Victor H. Reinstein, Founding Rabbi, Nehar Shalom Community Synagogue, Boston MA
987. Stamatia Portanova, Università degli Studi di Napoli 'L'Orientale'
988. Brian J Griffith, Assistant Professor of European History, California State University, Fresno
989. Adam Y. Stern, Assistant Professor, University of Wisconsin–Madison
990. Alan Whitehorn, emeritus professor, genocide scholar
991. Julia Shatz, Assistant Professor, California State University, Fresno
992. Anne H. Cubilie, Professor of English, Central Washington University

993. Stefani Engelstein, Professor of German Studies and of Gender, Sexuality, and Feminist Studies, Duke University

994. David Frankfurter, Professor of Religion, Boston University

995. Omer Bartov, Dean's Professor of Holocaust and Genocide Studies, Brown University

996. Diane Fujino, Professor, Asian American Studies, University of California, Santa Barbara

997. Marnix Beyen, Professor of Modern History, University of Antwerp

998. Nic Ramos, Assistant Professor of History and Africana Studies, Drexel University

999. Susan Glenn, Professor of History, University of Washington

1000. Jane Barter, Professor, Department of Religion and Culture, the University of Winnipeg

1001. Ezekiel Dixon-Román, Professor, Teachers College, Columbia University

1002. Gina Masequesmay, Professor, Asian American Studies, CSU Northridge

1003. Julie A Carlson, Professor of English, UC Santa Barbara

1004. Baki Tezcan, Professor of History, University of California, Davis

1005. Dani Friedrich, Associate Professor of Curriculum, Teachers College

1006. Lydia Goehr, Columbia University

1007. Josh Cohen, Adjunct Assistant Professor, Hunter College CUNY

1008. Helen Pfeifer, Associate Professor, University of Cambridge

1009. Marina Karides, Professor, University of Hawaii at Mānoa

1010. Hilary Emerson, Assistant Teaching Professor of Italian, University of Rhode Island

1011. Rabbi Toba Spitzer, Congregation Dorshei Tzedek, Newton MA

1012. Yazid Alibhaye, Teacher, University of Reunion Island

1013. Hayley C. Stefan, Lecturer, College of the Holy Cross

1014. Özge Savaş, Assistant Professor of Psychology, College of the Holy Cross

1015. Umme Wara, Phd student, University of Warwick

1016. Natasha Pravaz, Associate Professor of Anthropology, Wilfrid Laurier University

1017. Andrew Arsan, Professor of History, University of Cambridge

1018. Sahar Bazzaz, Professor, College of the Holy Cross

1019. Iacovos Psaltis, Dr. of Professional Studies in Educational Management, independent researcher

1020. Heba Youssef, Dr., University of Brighton
1021. H el ene Maisonneuve, Assistante Ing enieure, Universit  Paris-Saclay
1022. Edwin Everhart, Lecturer, University of Massachusetts Amherst
1023. Lynnette Arnold, Dr., Assistant Professor of Anthropology, UMass Amherst
1024. Adrian Godboldt, PhD Student, University of Massachusetts, Amherst
1025. Cedric Parizot, Senior Researcher, CNRS, Aix Marseille Univ, France
1026. AsiaLuna Patlis, PhD Candidate, Columbia University, NY
1027. F r s Gillon, Assistant Professor in Islamic Studies and Arabic, Aix-Marseille University
1028. Robert Boyce, Emeritus Reader, London School of Economics
1029. Gregory Vandamme, Post-Doctoral Research Associate, University of Chester
1030. Juliette Honvault, CNRS Researcher, Aix-Marseille Universit 
1031. Richard Jacquemond, Professor, Aix-Marseille Universit 
1032. Marco Meineri, University of Torino
1033. John Rogove, Research Postdoc, Sorbonne University
1034. Amani Nuru-Jeter, Professor, UC Berkeley
1035. Jill H. Casid, Professor, University of Wisconsin-Madison
1036. Jon Nissenbaum, Lecturer in Linguistics, Brooklyn College and the Graduate Center, CUNY
1037. Mark Ungar, Professor, Grad Center, City University of NY
1038. Corey Robin, Distinguished Professor, Brooklyn College
1039. Ellen Tremper, Professor of English, Brooklyn College CUNY
1040. Naomi Braine, Professor of Sociology, Brooklyn College CUNY
1041. Julie Agoos, Professor Emerita, English, Brooklyn College CUNY
1042. Archana Ravi, PhD Candidate, University of Giessen
1043. Tanya Pollard, Professor of English at Brooklyn College and the Graduate Center, CUNY
1044. Joan Mandell, Instructor, Georgetown University
1045. Yana Kuchirko, Assistant Professor, City University of New York
1046. Harold Marcuse, Professor Emeritus, University of California, Santa Barbara

1047. Madeline Fox, Associate Professor Sociology and Children & Youth Studies, Brooklyn College CUNY
1048. Ben Snyder, Lecturer, Brooklyn College
1049. Gabriel Kahn, Professor of Professional Practice, USC Annenberg School of Journalism
1050. Zoe Corwin, Research Professor, USC
1051. Zachary Lesser, University of Pennsylvania
1052. Richard Grusin, Distinguished Professor Emerit, University of Wisconsin-Milwaukee
1053. Alicia Castellanos Guerrero, Doctora en Antropología, Universidad Autónoma Metropolitana-Iztapalapa
1054. Silvana Rabinovich, Full Professor, UNAM, Mexico
1055. Eduardo A Rincón Mejía, Autonomous University of Mexico City
1056. Gilberto López y Rivas, Dr., Profesor Investigador, INAH Morelos
1057. Andrea Meza Torres, Dr., UAM-I
1058. David Pavón-Cuéllar, Professor, Universidad Michoacana de San Nicolás de Hidalgo
1059. Renée R. Trilling, Professor, University of Toronto
1060. Fairuz Mullagee, Coordinator, University of the Western Cape
1061. Nina Eliasoph, Professor, Department of Sociology, USC
1062. Shirley Walters, Professor Emerita, University of the Western Cape
1063. Uta Lehmann, Professor, School of Public Health, University of the Western Cape, South Africa
1064. Carolyn McKinney, Professor, University of Cape Town
1065. Vicki Trowler, Research Fellow, University of Huddersfield
1066. Hassan Mahomed, Professor, Stellenbosch University, South Africa
1067. Mpiko Ntsekhe, Professor and Chair of Cardiology, University of Cape Town
1068. Mark D. Steinberg, Professor Emeritus, University of Illinois
1069. Siegfried Dubois, PhD Candidate, INRIA Rennes
1070. Ayaka Yoshimizu, Associate Professor of Teaching, The University of British Columbia
1071. Jared Sacks, Dr., University of Johannesburg
1072. Jasbir Puar, Distinguished Professor of Arts, UBC
1073. Najma Aghardien, Associate Professor, University of Witwatersrand

1074. Chantal Verdeil, Professor of History, Inalco (Paris)
1075. Franck Mermier, Senior Researcher, CNRS, Paris
1076. Greta Sala, PhD Candidate, Inalco Paris and Università degli Studi di Napoli "L'Orientale"
1077. Aboubakr Chraïbi, Professor, INALCO - Paris
1078. Michel Vieillard-Baron, Directeur d'études, École Pratique des Hauts Études
1079. Anaïd Donabedian-Demopoulos, Professor, Institut National des Langues et Civilisations Orientales, Paris (Inalco)
1080. Alain Messaoudi, Assistant Professor, Nantes University
1081. Sophie Hohmann, Assistant Professor, Inalco, Paris
1082. Hélène de Penanros, Professor of Lithuanian Linguistics, Inalco, France
1083. Alain Mille, Emeritus Professor, Univ-Lyon1
1084. Sabrina Mervin, Emeritus Senior Researcher, CNRS-IREMAM (AMU)
1085. Eric Vallet, Full professor, Faculty of Languages, University of Strasbourg
1086. Stéphane Valter, Professor, University of Lyon2
1087. Jo Bluen, London School of Economics
1088. Mériam Cheikh, Associate Professor, Inalco
1089. Karine Lamarche, Permanent Researcher, CNRS
1090. Pablo Isaac Kirtchuk, Ph.D., Lecturer, Institut National de Langues et Civilisations Orientales Paris
1091. Gay W. Seidman, Professor of Sociology, University of Wisconsin-Madison
1092. Sunera Thobani, Distinguished Professor, UBC
1093. Paul Lichterman, Professor of Sociology and Religion, University of Southern California
1094. François Villeneuve, Emeritus Professor, Université Paris 1 Panthéon Sorbonne
1095. Vanessa Van Renterghem, Professor of History, Inalco (Paris)
1096. Augustin Jomier, Associate Professor, Inalco
1097. Claire Balandier, Dr. Hab. in Ancient History and Archaeology, Avignon University
1098. Philippe Michelon, Outstanding Professor of Mathematics, Avignon University
1099. Estelle Guyon, chargée de cours, Université Catholique de Louvain
1100. Ouassim Hamzaoui, Maître de conférences de science politique, Avignon Université
1101. Djihane Madouni, maître de conférences, Inalco

1102. Safoi Babana-Hampton, Professor of French, Michigan State University
1103. Sioux McKenna, Professor of Higher Education Research, Rhodes University South Africa
1104. Sabrina Alimahomed-Wilson, Professor of Sociology, California State University Long Beach
1105. Julia Hope, Researcher, University of Cape Town
1106. André Paul, théologien catholique, retraité, Paris
1107. Piero Gilento, Archaeologist, Inrap
1108. Breton Jean-François, Research Director, CNRS
1109. Kahina Guillard, PhD student, INALCO, Paris
1110. David Jernigan, Professor, Boston University School of Public Health
1111. Pascale Clauss-Balty, building archaeologist, Oram team, UMR 7041, CNRS
1112. Karel Thomas August, Prof. dr. (emeritus), University of Stellenbosch
1113. Michel Mietton, Professeur émérite, Université de Lyon 3 J. Moulin
1114. Thibaud Fournet, architecte, ingénieur de recherche, CNRS
1115. Sylvia Chiffolleau, Researcher, CNRS/LARHRA, Lyon

[[Nearly 3,500 Jewish](#) higher education workers and students signed this statement in Spring 2025.]

March 11, 2025

**Not in our name.**

We are Jewish professors, staff members, and students from universities across the United States. We hold various views about Israel and Palestine, politics in the Middle East, and student activism on our campuses. **But we are united in denouncing, without equivocation, anyone who invokes our name – and cynical claims of antisemitism – to harass, expel, arrest, or deport members of our campus communities.** We specifically reject rhetoric that caricatures our students and colleagues as “antisemitic terrorists” because they advocate for Palestinian human rights and freedom. This is the precise talking point President Trump and the architects of Project ’s [Christian Nationalist agenda](#) now deliberately [wield](#) to buttress a campaign designed to concentrate power and exert “[existential terror](#)” on our institutions and our communities—in part by threatening and slashing federal funding.

On March 8th, the Trump administration [detained Mahmoud Khalil](#), a lawful resident and former Columbia University graduate student who helped lead the campus’s Gaza solidarity encampment. This marks a disturbing escalation in the Trump administration’s open assault on our democracy. **President Trump then exploited the [Hebrew language](#) to taunt Khalil and continues to use [Jews as a shield](#) to justify a naked attack on political dissent and university independence.** All against the backdrop of Trump pardoning [white supremacists](#) and [platforming neo-nazis](#).

As the Knight First Amendment Institute at Columbia University [aptly noted](#): “Universities must recognize that these actions pose an existential threat to academic life itself. They must make clear, through action, that they will not sit on the sidelines as the Trump administration terrorizes students and faculty alike and runs roughshod over individual rights and the rule of law.”

**To this end, we call on our university leaders to:**

- Devote institutional resources to free Mahmoud Khalil and defend any other community member targeted by the Trump administration;
- Democratize university governance by enabling faculty, staff and students to shape institutional budgetary, policy and other responses to the Trump administration’s attacks on our communities and institutions;
- Cease any voluntary collaboration with federal immigration enforcement;



- Reject the dangerous narrative that pro-Palestinian advocacy, in which many Jews have participated, is presumptively anti-Jewish;
- Terminate all collaboration with organizations, such as the Anti-Defamation League, that smear our students and [now applaud](#) the lawless targeting of political opponents, and instead engage a variety of Jewish stakeholders to develop policies and programs that can meaningfully address antisemitism alongside all other forms of bigotry;
- Affirmatively defend every university member's lawful right to engage in First Amendment protected activity without fear of internal or external punishment;
- Work collectively, across institutions, to resist the Trump administration's feigned concerns about "Jewish safety" to smear, isolate and defund our universities and our communities.

We write in hopes that our university leaders will embrace the diversity of Jewish voices, denounce the unconscionable targeting of Mahmoud Khalil, and resist any other effort to politicize Jewish identity—our identity—to divide our communities, undermine our institutions, and erode our democracy.



# The Boston Globe

## Trump goes ‘woke’ in report on antisemitism at Harvard

What is most striking is the brazen hypocrisy — one might even say *chutzpah* — of the Trump lawyers’ arguments.

By Benjamin Eidelson

July 3, 2025

*Benjamin Eidelson is a professor at Harvard Law School.*

Earlier this week, the Trump administration issued its [formal finding](#) that Harvard University is violating Title VI of the Civil Rights Act of 1964 by tolerating discrimination against Jewish and Israeli students. As a scholar of antidiscrimination law (as well as a member of the Jewish community at Harvard), I can’t say I had high expectations for the administration’s legal analysis or command of the facts. What is most striking, though, is the brazen hypocrisy — one might even say *chutzpah* — of the Trump lawyers’ arguments. At every turn, the finding relies on sweeping notions of discrimination that the administration has repudiated when it comes to every other group.

Appreciating the ironies here requires understanding the actual law that Harvard is alleged to have violated. That statute prohibits discrimination within federally funded programs “on the ground of race, color, or national origin.” So to make its case, the government had to show that students are being denied equal access to a Harvard education *based on their race or country of origin*. And because practically all of the government’s allegations concern perceived harassment by fellow students, the government also had to show that the university itself has effectively *condoned* these discriminatory acts by others. As a colleague and I explain in detail in a new [article](#) in the Harvard Law Review, both of these requirements are nuanced and demanding.

What the administration mainly offers in its finding, though, is a litany of sit-ins, walk-outs, and group letters organized by pro-Palestinian student groups — with remarkably little evidence of any intention to harass or discriminate against Jewish peers. Take, for example, the government’s finding that “Jewish and Israeli students at Harvard were repeatedly denied access to ... libraries.” That sounds like an accusation of intentional discrimination. In fact, though, the only evidence for several of these “denials of access” consists of [reports that](#) some students “silently studied in the [library]” with signs taped to their laptops that read “No normalcy during genocide,” “Justice for Palestine,” or “Israel Bombs, Harvard Pays.” How does that constitute discrimination against Jewish or Israeli peers?

The answer is that the administration could classify that behavior as discriminatory only by embracing an especially radical version of an effects-based theory of discrimination. Specifically, the implicit argument proceeds in two steps. First, Jews or Israelis are much more likely than others to be offended by this kind of anti-Israel rhetoric — and so to feel unwelcome or uncomfortable in spaces where it is present. Second, when certain behavior (here, certain expression) has that kind of disproportionate impact on one group, engaging in that behavior amounts to discrimination against the disparately affected group — even absent any *intent* to single out its members. The legal term for this kind of discrimination theory is “disparate-impact liability,” although that legal theory is usually seen only in domains such as employment and housing — not as a basis for speech regulation, let alone for mandating how peers should interact on college campuses.

And hence the rich irony: Not only is disparate impact widely recognized as a progressive idea, it is intensely embattled — thanks in no small part to President Trump. Just months ago, Trump issued a landmark executive [order](#) denouncing disparate impact as a pernicious ideology that “is wholly inconsistent with the Constitution” because it fails to treat people “as individuals.” By requiring decision-makers to attend to the aggregate consequences of their choices for different groups, Trump said, rules against disparate-impact effectively “mandat[e] ... discrimination.” (This is a longstanding conservative talking point, and Trump’s executive order was previewed in Project 2025.) Trump thus ordered that all federal agencies “shall deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability.” As many observers have noted, this retrenchment is actively crippling legal protections against redlining, vote dilution, occupational segregation, abusive policing practices, and more.

But somehow the anti-Harvard legal team, alone among federal officials tasked with enforcing civil rights, didn't get the memo. When it comes to people of color who are excluded from voting by ostensibly neutral requirements, the administration's position is that there can be no discrimination without proof of intent. Likewise for women excluded from public-safety jobs by physical capacity tests, or Black citizens who bear the brunt of police violence or decrepit public infrastructure. But if a college student's political activity disproportionately affects Jewish or Israeli peers — even just by causing offense or making them feel alienated — the administration deems that inherently discriminatory, no intent required.

Could the administration claim instead that hostility toward Israel or Zionism is inherently antisemitic because many Jews see Zionism as *part* of their Jewish identity? Not really. Because Title VI does not cover religion, Jewishness is protected by the law only insofar as it constitutes a “race” — a fact about one's ancestry. Under existing law, however, culturally salient practices or beliefs can play no role in the definition of racial categories. That is why judges have ruled that bans on dreadlocks and cornrows are not racially discriminatory, even if Black employees view these hairstyles as expressive of their racial identity.

The irony, once again, is that the contrary view — the culture-oriented conception of race that Trump's legal theory in the Harvard case would require the courts to embrace — is a well-known tenet of critical race theory, the “woke” school that Trump and his allies have ridiculed for years.

Maybe it is a mistake to scrutinize the legal analysis in what is evidently a political document. Yet if anyone still doubts the sham quality of this “civil rights” action, there is no better proof than the lawyers' shameless reliance on ideas about discrimination that, when enlisted in the service of traditional civil rights concerns, the administration purports to find fundamentally un-American.

July 09, 2024

# The GOP's Bad Faith Focus on Campus Antisemitism

The party's assault on DEI only undermines the ability of colleges to address antisemitism, Jonathan Feingold writes.

By [Jonathan Feingold](#)



Dzmitry Dzemidovich/iStock/Getty Images Plus

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**S**ince Oct. 7, the party that sympathized with Charlottesville's tiki torch-carrying Nazi wannabes has been whipping up hysteria about antisemitism on campus. The strategy was never hidden: weaponize legitimate anxieties to discredit higher education

and to erode civil rights—two long-standing right-wing objectives. Recent events make the gap between GOP talking points and GOP policies impossible to ignore. House Republicans keep demanding “colleges & universities ... step up and protect [Jewish] students from discrimination.” Yet the party’s nationwide assault on diversity, equity and inclusion has crippled universities’ capacity to do just that.

In June, the U.S. Department of Education closed an investigation concerning complaints of antisemitism at the University of Michigan. The department faulted Michigan for failing both to assess whether known incidents created a hostile climate and to “take steps reasonably calculated to end the hostile environment, remedy its effects, and prevent its recurrence.” Michigan has agreed to multiple changes that should enhance its ability to prevent and remedy any hostile climate for Jewish students and others. This includes a more centralized process for investigating complaints, better antiharassment training for students and faculty, and a climate assessment. If the goal is a system more responsive to harassment and discrimination, these are sensible steps.

But if the GOP gets what it wants, it will become more difficult—if not illegal—for universities to do what Michigan just agreed to do. Across the country, Republican officials are pushing “anti-DEI” laws designed to dismantle the programs and personnel tasked with safeguarding students’ civil rights. That’s a recipe for more antisemitism on campus, not less.

In states like Florida and Texas, anti-DEI laws precipitated abrupt office closures and personnel purges. In Florida, officials eliminated the University of Florida’s “chief diversity officer position, scrapping the program’s staff jobs and halting any contracts involving the subject.” In Texas, the state’s GOP leadership banned, with minor exceptions, universities from hiring or assigning any employee or third party “to perform the duties of a diversity, equity and inclusion office.” The law prompted university leaders to close 21 offices, eliminate 311 positions and cut roughly 680 contracts, programs and trainings.

Gutting DEI makes sense if you want to hamstring institutions from cultivating a campus free from bias and harassment—including antisemitism. Consider Michigan, which the federal government faulted for lacking a centralized process for handling and assessing complaints—the precise function a chief diversity officer and DEI office are often well positioned to provide.

Texas's anti-DEI law also bans mandatory trainings “designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation.” On its face, this might not appear to implicate trainings on antisemitism. But as a legal matter, Title VI of the Civil Rights Act of 1964 protects Jewish students (as it does Palestinian students) because those groups are understood in terms of ethnicity and shared ancestry. So while it might not be obvious, Texas's anti-DEI law creates a barrier for antisemitism programming—just as it does for programs “designed or implemented in reference to” anti-Asian racism, anti-Black bias or anti-LGBTQ bigotry.

U.S. House and Senate Republicans want to nationalize Florida and Texas's assaults on student civil rights. Consider U.S. Senator J. D. Vance's Dismantle DEI Act, which would directly undermine Michigan's ability to execute its new commitments. The bill prohibits using federal funds to maintain a DEI office or a chief diversity officer, or to “develop, implement, distribute, publish, or purchase a training course” on DEI-related topics, including courses that assert that certain groups are “systemically ... oppressed ... or unprivileged.” As in Florida and Texas, the apparent aim is to discredit and deny students access to concepts like structural racism, white supremacy and male privilege. But the bill isn't so limited. Think Michigan should expose students and staff to the systemic barriers and biases Jewish people face? Not if J. D. Vance dismantles DEI.

The Dismantle DEI Act would also prohibit accreditors from encouraging “any institution of higher education to engage in prohibited diversity, equity and inclusion practices” or from “assess[ing] the commitment of an institution of higher education to any ideology, belief, or viewpoint.” Tracking other conservative efforts, this language appears to target entities like the American Bar Association that mandate law schools “demonstrate by concrete

action a commitment to diversity and inclusion by providing full opportunities for the study of law and entry into the profession by members of underrepresented groups.” If Senate Republicans make the rules, this would be unlawful. As would any accreditor policy that incentivizes universities to combat antisemitism and other forms of bias. Why? Because anti-antisemitism, like antiracism and gender equity, is an “ideology, belief, or viewpoint.”

As one final example, consider Project 2025, the right-wing playbook for remaking the federal government if Trump wins in November. The drafters urge the next administration to declare that “Title VI of the Civil Rights Act does not include a disparate impact standard.” Conservatives have long disparaged disparate impact theories of discrimination, which require institutions to justify facially neutral policies that disproportionately harm an identifiable group. Some have even characterized as antisemitic now-common critiques of “merit” that take issue with standardized tests and other admissions policies that disparately exclude students of color.

Project 2025’s hostility to disparate impact follows a decades-long conservative campaign to redefine discrimination in narrow terms that require an identifiable perpetrator and intentional discriminatory treatment. That campaign also received a boost late last month when the Supreme Court, in *Loper v. Raimondo*, empowered federal judges to cripple the Department of Education’s ability to realize the full promise of civil rights statutes like Title VI and Title IX. Under a narrow intent-based theory of discrimination, a university’s failure—its *inaction*—to counter harassing speech or conduct would not violate Title VI. In such a world, Michigan never enters into a resolution agreement. Why not? Because when it comes to antisemitism, Title VI would only prohibit universities from intentionally discriminating against Jewish students. Universities would have no affirmative duty, as they presently do, to remedy a hostile environment created by someone else—even if everyone agreed that the offending speech had no academic value and was nakedly racist, antisemitic or anti-Palestinian.

The GOP might like talking about antisemitism. But its crusade against DEI compromises every student’s civil rights—Jewish students included.

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## **Editor's Picks**

**The Students Left Behind by the Travel Ban**

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**There Is No Such Thing as 'Alternative' Careers for Ph.D.s**

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**Visa Delays Persist, Causing Some Students to Defer to Spring**

## **Written By**

Jonathan Feingold

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## Memorandum

To: Colleagues, University Offices of General Counsel, and University Leaders

From: [To promote readability, signatories are listed in Appendix A].

Date: February 20, 2025

Re: **DEI Programs Are Lawful Under Federal Civil Rights Laws and Supreme Court Precedent**

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We are law professors who study and teach antidiscrimination law, education law, employment law, constitutional law, and civil rights. “DEI” is common shorthand for a varied set of initiatives broadly designed to counter pervasive biases and stereotypes, and to cultivate more diverse, equitable, and inclusive institutions. We are concerned that federally funded institutions will eliminate, or already have eliminated, important DEI initiatives that remain legally defensible and often further institutions’ legal obligations under those very laws. **This memo explains why common DEI initiatives remain legally defensible** notwithstanding President Trump’s January 21, 2025 Executive Order titled “[Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)” (the “J21 EO”) and related agency communications like the Department of Education’s February 14 [Dear Colleague Letter](#) (the “DCL”).

The J21 EO demeans “diversity, equity, and inclusion” initiatives and tracks the Trump administration’s broader desire to eliminate public and private efforts to counter various forms of exclusion, bias and bigotry that permeate American society. Federally funded institutions should not, however, interpret the J21 EO and related communications as requiring the elimination or curtailment of existing DEI initiatives.<sup>1</sup>

**First**, the J21 EO expressly (a) recognizes the right of federally funded institutions to engage in their own First Amendment protected speech and (b) does not apply to academic programs or classroom teaching.

**Second**, common DEI initiatives are lawful under prevailing federal civil rights laws and Supreme Court precedent.

**Third**, neither the J21 EO nor related communications change existing federal law. In fact, the J21 EO and DCL concede that DEI initiatives are not inherently unlawful.

**Fourth**, the constitutionality of the J21 EO is currently being litigated.<sup>2</sup> Among other arguments before the court, evidence suggests that the J21 EO rests on, and furthers, pernicious stereotypes about women and Black people.

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<sup>1</sup> For an inexhaustive set of legal scholarship that thickens the analysis in this memo, see Russell K. Robinson, *The Incoherence of the “Colorblind Constitution,”* 113 CALIF. L. REV. \_\_ (forthcoming 2025); Deborah Hellman, *Diversity by Facially Neutral Means*, 110 VA. L. REV. 1091 (2024); Jonathan Feingold, *Affirmative Action After SFFA*, 48 J. COLL. U. L. 239 (2023); Jonathan Feingold, *The Right to Inequality: Conservative Politics and Precedent Collide*, 57 CONN. L. REV. 1 (2024); Sonja Starr, *The Magnet School Wars and the Future of Colorblindness*, 76 STAN. L. REV. 161 (2024); Kimberly West-Faulcon, *Affirmative Action After SFFA: The Other Defenses*, 74 SYRACUSE L. REV. 110 (2024); Kim Forde-Mazrui, *Alternative Action After SFFA*, 76 STAN. L. REV. ONLINE 149, 159 (2024); Jonathan D. Glater, *Reflections on Selectivity*, 49 FORDHAM URB. L.J. 1121 (2022); Vinay Harpalani, “*Safe Spaces*” and the Educational Benefits of Diversity, 13 DUKE L. CONST. L. & PUB. POL’Y 117 (2017).

<sup>2</sup> UPDATE: On February 21, 2025, a federal judge granted a preliminary injunction covering key portions of the J21 EO. *Nat’l Association of Diversity Officers in Higher Ed. v. Trump* (D. Md.), Case No. 1:25-cv-00333-ABA, [https://storage.courtlistener.com/recap/gov.uscourts.mdd.575287/gov.uscourts.mdd.575287.44.0\\_2.pdf](https://storage.courtlistener.com/recap/gov.uscourts.mdd.575287/gov.uscourts.mdd.575287.44.0_2.pdf).

## **I. The J21 EO recognizes the right of institutions to engage in their own First Amendment protected speech and does not apply to academic programs or classroom teaching.**

The J21 EO expressly limits its own scope in two critical respects. The DCL more broadly disclaims that it “does not have the force and effect of law and does not bind the public or create new legal standards.”

**A.** The J21 EO “does not prevent State or local governments, Federal contractors, or Federally-funded State and local educational agencies or institutions of higher education from engaging in First Amendment-protected speech.” Among other consequences, this means that **the J21 EO does not prohibit universities from using their own voice to proudly proclaim their commitment to egalitarian values like diversity, equity, and inclusion.** This should reassure universities that they may continue to employ terms like “diversity,” “equity,” and “inclusion” on university websites and publications. Universities may also communicate their egalitarian-oriented values by, for example, posting #BLM banners on campus, hanging Pride Flags in the student center, or simply reiterating such messages as “Black Lives Matter,” “Trans Lives Matter,” “Palestinian Lives Matter,” “Antisemitism is Unwelcome Here,” “Against Asian Hate,” or any other slogan that cultivates an academic environment in which all students belong.

**B.** The J21 EO “does not prohibit persons teaching at a Federally funded institution of higher education as part of a larger course of academic instruction from advocating for, endorsing, or promoting the unlawful employment or contracting practices prohibited by this order.” In plain language, the J21 EO does not require universities, departments, or individual academics to alter the courses they offer and teach, or censor classroom discussion about racism, gender identity, or other topics disfavored by the Trump administration—even if those courses or topics happen to articulate positions inconsistent with those expounded in the J21 EO.

**In short, nothing about African American Studies, Gender Studies, Jewish Studies, Chicana/o Studies, Asian American Studies, Indigenous Studies, Russian Studies, or any other field, program or academic department focused on a particular group runs afoul of the J21 EO.**

## **II. Common DEI Initiatives are Lawful under Federal Civil Rights Laws and Supreme Court Precedent.<sup>3</sup>**

As noted, “DEI” is common shorthand for a varied set of initiatives broadly designed to counter pervasive biases and stereotypes, and to cultivate more diverse, equitable, and inclusive institutions. These goals are consistent with the values that animate federal civil rights laws. In fact, common DEI initiatives—because they combat biases and cultivate inclusion—better position universities to fulfill their Title VI obligations to, *inter alia*, (a) avoid unlawful disparate treatment; (b) affirmatively remedy racially hostile environments; and (c) avoid unjustifiable disparate outcomes.<sup>4</sup>

**A.** **Contrary to the Trump administration’s suggestion, *Students for Fair Admissions v. Harvard (SFFA)* does not render DEI initiatives legally suspect.** In *SFFA*, the Supreme Court struck down one component of Harvard University’s and the University of North Carolina’s admissions policies: their practice of using an applicant’s racial identity as a formal criterion during the admissions process. The

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<sup>3</sup> This memo refers specifically to the Equal Protection Clause in the United States Constitution and Title VI of the Civil Rights Act of 1964. Most of the analysis also applies to Title VII (barring race- and gender-based discrimination in employment) and Title IX (barring sex-based discrimination).

<sup>4</sup> The DOJ has explained that Title VI’s disparate impact regulation furthers one of Title VI’s core objectives “to ensure that programs accepting federal money are not administered in a way that perpetuates the repercussions of past discrimination.” Title VI Legal Manual, Civil Rights Division, U.S. Department of Justice, <https://www.justice.gov/crt/media/1384931/dl?inline>.

decision was limited to the admissions context. It is less than clear whether *SFFA* applies beyond admissions. Even if it does, the decision is limited to policies that employ “racial classifications”—a term the Supreme Court has historically applied to policies that classify and treat individuals differently based on their racial identities. This would include, for example: (a) employment “set asides” that are only available to members of certain racial groups; and (b) selection processes, like Harvard’s, that use race as a formal criterion when selecting between applicants.

**Critically, the *SFFA* majority and concurrences (all authored by conservative Justices) distinguished between the legally suspect racial *means* Harvard and UNC employed (i.e., the racial classification) and the legally permissible—if not compelling—racial *ends* the defendants pursued (i.e., racial diversity).** Writing for the majority, Chief Justice Roberts characterized the defendants’ diversity-related interests as “worthy” and “commendable.”<sup>5</sup> Justice Kavanaugh reinforced this distinction. Citing opinions from Justices Scalia and O’Connor, Kavanaugh noted that “governments and universities still ‘can, of course, act to undo the effects of past discrimination in many permissible ways that *do not involve classification by race.*’” (emphasis added).<sup>6</sup>

In relevant respects, Justice Kavanaugh (and Justices Scalia and O’Connor before him) is characterizing common DEI initiatives that aim to “undo the effects of past discrimination”—e.g., by combating biases, eliminating unjustifiable barriers, and cultivating inclusion—but do not “involve classification by race.”<sup>7</sup> This would include, for example:<sup>8</sup>

- (i) positively crediting, in admissions or hiring, an individual’s personal experiences with or demonstrated ability to remedy anti-Black racism, anti-LGBTQ bigotry, anti-Asian racism, antisemitism, or any other forms of systemic discrimination, bias, or bigotry<sup>9</sup>;
- (ii) university programming or events that focus on a particular group—including based on race, ethnicity, gender, or sexual orientation—or particular forms of societal bias or discrimination;
- (iii) affinity groups or themed residence halls that are open to all students but foreground a particular group or identity;

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<sup>5</sup> *SFFA v. Harvard*, 600 U.S. 181, 214 (2023) (“Although these are commendable goals, they are not sufficiently coherent for purposes of strict scrutiny); *id.* at 215 (“The interests that respondents seek, though plainly worthy, are inescapably imponderable.”). This distinction between suspect racial means and permissible racial motives tracks Justice Roberts’s opinion in *Parents Involved*, where he invalidated two districts’ use of race as a formal criterion in their school assignment process but approved of the districts’ underlying racial motives. *See Parents Involved in Cmty. Schools v. Seattle Sch. Dist.*, 551 U.S. 701, 743 (2007) (“Simply because the school districts may seek a *worthy* goal does not mean they are free to discriminate on the basis of race to achieve it, or that their racial classifications should be subject to less exacting scrutiny.”) (emphasis added).

<sup>6</sup> *SFFA*, 600 U.S. at 317. *See also* Richard A. Primus, *Equal Protection and Disparate Impact: Round Three*, 117 HARV. L. REV. 493, 539-40 (2003) (quoting *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 237-38 (1995)) (“*Adarand* repeated this idea that ‘race-neutral means to increase minority business participation’ can be a constitutionally appropriate substitute when race-specific affirmative action programs would violate equal protection.” (footnote omitted)).

<sup>7</sup> Although this memo focuses on the legality of facially neutral—or “colorblind”—DEI initiatives, we note that certain racial classifications remain legally defensible. *See* Feingold, *Affirmative Action After SFFA* (citing examples).

<sup>8</sup> For a more detailed overview of DEI initiatives that comply with, and further, federal civil rights laws and Supreme Court precedent, see Jonathan Feingold & Julie Park, [How Universities Can Build and Sustain Welcoming and Equitable Campus Environments](#) (2024).

<sup>9</sup> By only identifying some groups and forms of systemic discrimination, bias, or bigotry, we in no way mean to obscure or minimize other groups that face forms of systemic discrimination, bias, or bigotry in American society.

- (iv) anti-harassment trainings that equip campus stakeholders to interrogate and counter the implicit biases and pervasive race- and gender-based presumptions that permeate United States society and infiltrate American institutions;
- (v) tracking applicants' racial and gender identity and assessing the aggregate impact of hiring or admissions processes along racial or gender lines;
- (vi) taking affirmative steps to mitigate unjustifiable disparities that arise in hiring or admissions contexts;
- (vii) adopting admissions or hiring criteria designed to racially integrate historically white universities (e.g., by eliminating legacy preferences or application fees, ensuring more equitable representation from feeder schools or geographic regions, or reducing reliance on criteria—like standardized tests—that systematically reward inherited advantage over individual talent or potential);
- (viii) investing in professional and impartial internal investigation and compliance units able to timely track, investigate, and respond to complaints of bias, harassment, or discrimination;
- (ix) proudly proclaiming their commitment to cultivate a campus environment where all students, regardless of their identity, feel valued and can enjoy the full benefits of university membership free from harassment, bias or group-based stigma;
- (x) investing in academic departments and curricula (e.g., Ethnic Studies, Gender Studies, Asian American studies, Jewish studies, Latin American Studies, American Indian Studies, Middle Eastern Studies, African American Studies<sup>10</sup>) that directly foreground the experience of a particular racial or ethnic group, or other distinct community;
- (xi) adopting policies that promote full inclusion and accessibility for all community members regardless of their ability status;
- (xii) the use of “all gender” restrooms that are available to all members of the campus community regardless of a person’s gender identity;
- (xiii) recruitment and retention programs or policies that focus on the experience and barriers most often faced by students from specific groups but are available to all.

The foregoing DEI initiatives promote the egalitarian ideals that animate federal civil rights laws. **By helping institutions cultivate academic environments free from bias, stigma, or harassment, DEI initiatives also better position universities to fulfill their basic mission “[\[t\]o pursue truth and knowledge for the common good, which requires the free exchange and critical evaluation of competing ideas.](#)”** Most relevant for present purposes, none of the foregoing DEI initiatives “involve classification by race.” For that reason, these DEI initiatives are not legally suspect.

**B. Last year, the Supreme Court tacitly reinforced the legality of colorblind DEI initiatives when it denied certiorari in *Coalition for T.J. v. Fairfax*.**<sup>11</sup> In that lawsuit, the conservative Pacific Legal Foundation argued that changes to a public high school’s admissions policy—which included eliminating a \$100 application fee and affording greater representation to feeder middle schools—was unlawful because the policy was designed to increase student body diversity. The Fourth Circuit appropriately rejected the claim. The cert denial, from which Justices Alito and Thomas dissented, suggests that the Supreme Court is not ready to entertain the Trump administration’s theory that any policy adopted with a racial motive—including equality-oriented goals like racial diversity or racial inclusion—is inherently suspect.

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<sup>10</sup> American Indian Studies, Latin American Studies, and Middle Eastern Studies were added to this list on Feb. 22, 2025.

<sup>11</sup> See *Coal. for T.J. v. Fairfax Cnty. Sch. Bd.*, 218 L. Ed. 2d 71 (U.S. 2024) (No. 23-170). The Supreme Court subsequently denied certiorari in a similar case Pacific Legal filed against three of Boston’s most competitive public schools. Justices Alito and Thomas dissented from the cert denial; Justice Gorsuch filed a “Statement.”

To suggest—as the DCL expressly does<sup>12</sup>—that all racially motivated conduct is unlawful proves too much. Civil rights laws like Title VI are themselves racially motivated: to promote racial equality and inclusion. The J21 EO and DCL are also racially motivated: to target and eliminate programs and policies that attend to race.

In its briefing before the Supreme Court, Pacific Legal appeared to concede this point. The organization noted that the “mere intent to increase Black and Hispanic enrollment” does not violate the Equal Protection Clause unless “the *means* chosen [to realize that goal] are designed to treat applicants differently based on race.”<sup>13</sup> (emphasis added). Pacific Legal continued: “For example, the Board removed the \$100 application fee for TJ. Even if it did so to increase black and Hispanic enrollment, it is implausible that having all applicants pay \$0 discriminates against anyone.” The same reasoning would apply to a university’s decision to, for example, eliminate legacy preferences for the children of alumni, reduce reliance on standardized tests, positively credit students whose ancestors were prohibited from attending the university, or automatically admit a specific percentage of students from each public high school in the state. In each instance, the policy furthers a permissible racial goal, and no student is treated “differently based on race.”

**Thus, so long as covered institutions do not limit opportunities to students from a particular racial group or apply different standards to individual students or applicants, there is no legal concern—even if the policy is designed to promote overtly racial goals like diversity, equity, or inclusion.**

### III. The J21 EO concedes that DEI initiatives are not inherently unlawful.

The J21 EO proclaims that many of the most powerful institutions and industries in the country have “adopted and actively use dangerous, demeaning, and immoral race- and sex-based preferences under the guise of so-called ‘diversity, equity, and inclusions’ (DEI) or ‘diversity, equity, inclusion, and accessibility’ (DEIA) that *can* violate the civil-rights laws of this Nation.” (emphasis added). The “can” reflects the Trump administration’s recognition that DEI initiatives do not inherently violate federal civil rights laws.<sup>14</sup>

As a theoretical matter, any policy—whether DEI or not—could violate federal civil rights laws. To answer that question, one would have to determine whether a particular policy: (a) employs suspect *means* (e.g., “Does the policy treat individual students differently because of their racial identity?”); (b) traces to an impermissible  *motive* (e.g., “Is the policy motivated by racial animus, negative stereotypes, or a desire to harm an identifiable racial group?”) and, potentially, (c) does the policy produce a negative  *disparate impact* (e.g., “Does the policy negatively impact Asian American students or Jewish students relative to students from other racial or ethnic groups?”). Even were one to answer one of these questions in the affirmative, that answer is not itself dispositive concerning the policy’s ultimate legality.<sup>15</sup>

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<sup>12</sup> See DCL, <https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf> (“It would, for instance, be unlawful for an educational institution to eliminate standardized testing to achieve a desired racial balance or to increase racial diversity . . . And race-based decision-making, no matter the form, remains impermissible.”).

<sup>13</sup> Reply in Support of Petition for Writ of Certiorari at 12, *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864 (4th Cir. 2023) (No. 23-170).

<sup>14</sup> The DCL contains a similar tell. See *id.* (“DEI programs, for example, *frequently* preference certain racial groups and teach students that certain racial groups bear unique moral burdens that others do not.”). We are unpersuaded by the empirical claim that DEI programs *frequently* do what the DCL claims they do. We nonetheless flag the sentence because it concedes that DEI programs are not inherently unlawful.

<sup>15</sup> An affirmative finding often shifts the burden to the defendant to justify the challenged policy. See Feingold, *Right to Inequality* (discussing burden shifting frameworks).

**Even cursory analysis reveals that common DEI initiatives do not run afoul of these concerns, but instead equip federally funded institutions to prevent and remedy the identity-based harms Title VI and other civil rights laws are designed to prevent.**

**IV. The J21 EO is constitutionally suspect because it appears to rest on pernicious stereotypes that presume the intellectual inferiority of women and Black people.**

As we write, plaintiffs are challenging the legality of the J21 EO.<sup>16</sup> The plaintiffs argue that the J21 EO violates Separation of Powers and is unconstitutional under the First and Fifth Amendment.<sup>17</sup> We anticipate that advocates will raise additional arguments as the case proceeds. One of those arguments will likely be that the J21 EO unlawfully rests on, and furthers, pernicious stereotypes that presume the intellectual inferiority of women and Black people.<sup>18</sup>

This argument will likely point to Section II of the J21 EO, which blames “illegal DEI and DEIA policies” for “case after tragic case” of unspecified catastrophe leading to “disastrous consequences.” This language invokes the talking point that DEI is responsible for essentially every human-made disaster and relies on the empirically fraught claim that DEI policies, because they attend to identity and promote inclusion, compromise “merit” by placing women and Black people into positions for which they are “unqualified.”<sup>19</sup> This theory, in turn, rests on the stereotype that women and Black people are presumptively incompetent and intellectually inferior to white men.

We are not claiming that opposition to DEI inherently traces to pernicious stereotypes or animus. Our claim is specific to President Trump and his administration, whose hostility to DEI appears specifically motivated by presumptions of female and Black incompetence and negative attitudes toward those groups.<sup>20</sup>

Beyond the J21 EO itself, advocates will likely highlight the Trump administration’s use of the pejorative term “[DEI hire](#),” which is often employed to question the qualifications and competence of women and Black people in positions of power—regardless of the person’s individual record, accomplishments or accolades.<sup>21</sup> On this point, the Foundation Against Intolerance and Racism recently cautioned that the Trump administration’s directive to purge “DEI hires” reinforces and invites race- and gender-based presumptions of incompetence.<sup>22</sup> Elon Musk, one of the most influential people driving President Trump’s

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<sup>16</sup> UPDATE: On February 21, 2025, a federal judge granted a preliminary injunction covering key portions of the J21 EO. *Nat’l Association of Diversity Officers in Higher Ed. v. Trump* (D. Md.), Case No. 1:25-cv-00333-ABA, [https://storage.courtlistener.com/recap/gov.uscourts.mdd.575287/gov.uscourts.mdd.575287.44.0\\_2.pdf](https://storage.courtlistener.com/recap/gov.uscourts.mdd.575287/gov.uscourts.mdd.575287.44.0_2.pdf).

<sup>17</sup> See Complaint, National Association of Diversity Officers in Higher Education et al. v. Donald J. Trump et al., <https://storage.courtlistener.com/recap/gov.uscourts.mdd.575287/gov.uscourts.mdd.575287.1.0.pdf>.

<sup>18</sup> *SFFA v. Harvard*, 600 U.S. 181, 220-21 (2023); see also *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 2666 (1977) (“Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.”).

<sup>19</sup> See generally Devon Carbado et al., *Privileged or Mismatched: The Lose-Lose Position of African Americans in the Affirmative Action Debate*, 64 UCLA L. REV. DISCOURSE 174 (2016).

<sup>20</sup> See David Sanger, *Trump Blames D.E.I. and Biden for Crash Under His Watch*, The New York Times (Feb. 1, 2025), <https://www.nytimes.com/2025/01/30/us/politics/trump-plane-crash-dei-faa-diversity.html>.

<sup>21</sup> See Melanie Mason, *Republicans blame DEI for the LA fires. This fire captain disagrees*, Politico (Jan. 15, 2025), <https://www.politico.com/news/2025/01/15/republicans-dei-la-fires-00198551>; Julie Ingram & Alexander Hunter, *Some Republicans attack Kamala Harris as “DEI Hire.” Here’s what that means*, CBS News (July 26, 2024), <https://www.cbsnews.com/news/republicans-attack-kamala-harris-dei-hire/> (“GOP Rep. Tim Burchett of Tennessee called Harris a ‘DEI vice president,’ a reference to diversity, equity and inclusion efforts. Rep. Harriet Hageman of Wyoming called Harris a ‘DEI hire’ and referred to her as ‘intellectually, just really kind of the bottom of the barrel.’”).

<sup>22</sup> See FAIR, *Restoring Biological Truth and Meritocracy in Government* (Jan. 22, 2025), <https://news.fairforall.org/p/restoring-biological-truth-and-meritocracy> (“We urge caution in using this term [“DEI

agenda, has repeatedly traded on these stereotypes to denigrate DEI.<sup>23</sup> Following the fatal January 2025 plane crash, Musk [endorsed](#) a [now-deleted post](#) that expressly questioned the IQ of pilots from Historically Black Colleges and Universities (HBCUs), which were described as indicating “borderline intellectual impairment.”

We flag these final points, in part, to alert universities about arguments likely to be marshalled against the J21 EO as litigation proceeds. **Given evidence that the J21 EO rests on, and furthers, race- and gender-based notions of intellectual inferiority, it is possible that a court enjoins the J21 EO on this basis.**

## Conclusion

To close, we reiterate our overarching observation: **under prevailing federal civil rights laws and Supreme Court precedent, DEI initiatives that do not employ racial classifications or otherwise limit opportunity to individuals from certain racial groups remain legally secure.** It is increasingly clear that the Trump administration intends to dismantle our civil rights infrastructures and erode the autonomy and independence of institutions of higher education. **We urge university leaders to respond confidently, with both law and moral principle on your side,<sup>24</sup> and not to sacrifice essential and legally defensible DEI initiatives that help universities fulfill their most basic mission to pursue truth and knowledge for the common good.**

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hires”] as it may invite speculation, without a firm basis or evidence, regarding an employee’s skills, abilities, or merit and instead make assumptions based on their perceived identity.”).

<sup>23</sup> See Connor Murray, *Elon Musk and More Right-Wing Critics Blame Diversity, Equity and Inclusion for LA Wildfires-With Little Evidence*, Forbes (Jan. 9, 2025), <https://www.forbes.com/sites/conormurray/2025/01/09/elon-musk-and-more-right-wing-critics-blame-diversity-equity-and-inclusion-for-la-wildfires-with-little-evidence/>.

<sup>24</sup> Note: A portion of this sentence was revised on Feb. 20, 2025 to avoid potential ambiguity.

## Appendix A: Memo Signatories<sup>25</sup>

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# U.C.L.A. Law Review

## The War on Higher Education

Athena Mutua, Jonathan Feingold, Angela Harris, Emily Houh,  
Matthew Patrick Shaw & Frank Valdes

### ABSTRACT

Higher education is under assault in the United States. Tracking authoritarian movements across the globe, domestic attacks on individual professors and academic institutions buttress a broader campaign to undermine multiracial democracy and the institutions that sustain and safeguard it. Reflecting on the past academic year, this essay charts the increasingly brazen right-wing efforts in the U.S. Congress and the States to erode academic freedom and university independence—two pillars of our democratic republic. We also identify a bi-partisan source of higher education’s present precarity: the neoliberal policies that precipitated the privatization and corporatization of universities across the country.

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## INTRODUCTION

Academic freedom is under assault in the United States.<sup>1</sup> Like the authoritarian populism rising across the globe, domestic attacks on individual professors and academic institutions buttress a broader and multifaceted campaign to undermine multiracial democracy and the institutions that sustain and safeguard it.<sup>2</sup> The individuals and entities driving this antidemocratic movement have also targeted the electoral process; public education; the right to bodily autonomy; the civil rights and liberties of minoritized and marginalized communities; and freedom of speech and expression (increasingly marshaled against pro-Palestinian advocacy).<sup>3</sup> Their openly stated goal is to delegitimize, defund, and “lay siege to”<sup>4</sup> the institutions that anchor American democracy and civil society, including the institutions that comprise higher education.<sup>5</sup>

This backdrop shapes our analysis and speaks to the urgency of this moment. It also may explain why the United Nations Special Rapporteur on the right to

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1. See Darrell M. West, *Why Academic Freedom Challenges Are Dangerous for Democracy*, BROOKINGS INST. (Sept. 8, 2022), <https://www.brookings.edu/articles/why-academic-freedom-challenges-are-dangerous-for-democracy> [<https://perma.cc/2YW9-L47P>].
  2. See *id.*
  3. See Athena D. Mutua, *Reflections on Critical Race Theory in a Time of Backlash*, 100 DENV. L. REV. 553, 595 (2023); see also Statement by the Special Rapporteur on the Right to Education, Ms. Farida Shaheed on Her Visit to the United States of America, 29 April–10 May 2024 (May 10, 2024), <https://www.ohchr.org/sites/default/files/documents/issues/education/statements/20240510-stm-eom-sr-education-usa.pdf> [<https://perma.cc/9J5D-ZB7T>] (“The most appalling factor [in the widespread repression of student protest] is the unequal treatment of protesters depending on their political position. Pro-Palestinian protesters are disproportionately affected by the harsh response, allegedly for their antisemitic views, paradoxically, even if they self-identify as belonging to the Jewish community or represent Jewish student associations.”).
  4. See Christopher Rufo, *Laying Siege to the Institutions*, IMPRIMIS (April 5, 2022), <https://imprimis.hillsdale.edu/laying-siege-to-the-institutions> [<https://perma.cc/AD4J-BC3Y>] (“Why do I say that we need to lay siege to our institutions? Because of what has happened to our institutions since the 1960s . . . You have to fight on terms that you define. In responding to opponents of the Florida bill, for instance, don’t argue against ‘teaching diversity and inclusion,’ but against sexualizing young children . . . Conservatives have for too long been resistant to attacking the credibility of our institutions.”); see also Jonathan Feingold & Joshua Weishart, *Discriminatory Censorship Laws*, TUL. L. REV. (forthcoming 2024).
  5. See ISAAC KAMOLA, AM. ASS’N OF UNIV. PROFESSORS, MANUFACTURING BACKLASH: RIGHT-WING THINK TANKS AND LEGISLATIVE ATTACKS ON HIGHER EDUCATION, 2021–2023 3 (2024), [https://www.aaup.org/sites/default/files/Manufacturing\\_Backlash\\_final.pdf](https://www.aaup.org/sites/default/files/Manufacturing_Backlash_final.pdf) [<https://perma.cc/GN57-9DDD>] (“Today higher education is under attack. Since 2021 we have witnessed what one scholar correctly called an ‘unusually brazen series of challenges to academic freedom,’ unleashed by conservative activists and a ‘national-level political machine’ closely aligned with the Republican Party.”).

education (SRE) conducted an official country visit to the United States in spring 2024.<sup>6</sup> The SRE is an independent human rights expert that the United Nations Human Rights Council (UNHRC) appointed in 1998 to “examine the crucial issue of the right of all persons to access quality education without discrimination, and to provide recommendations to Governments and other stakeholders.”<sup>7</sup>

To fulfill her mandate, the SRE produces and presents periodic reports to the UNHRC.<sup>8</sup> Earlier this year, the SRE announced a forthcoming report on “academic freedom and freedom of expression in educational institutions.”<sup>9</sup> The Report “[will] build[] on previous work achieved by other United Nations human rights mechanisms on the topic” and “take stock of setbacks and progress both under international human rights law and in domestic legislation and practice with respect to defining academic freedom, ensuring its enjoyment by all relevant actors and protecting it from attacks and interferences.”<sup>10</sup>

As is practice, the SRE invited input from entities ranging from nation-states and UN agencies to human rights organizations and individual academics.<sup>11</sup> The Critical (Legal) Collective (CLC)<sup>12</sup> answered this call with a submission that

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6. See *Call for Contributions: Country Visit to the United States of America (29 April–10 May 2024)* U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/calls-for-input/2024/call-contributions-country-visit-united-states-america-29-april-10-may-2024> [<https://perma.cc/JH2Z-69SM>].
  7. See *Special Rapporteur on the Right to Education*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/special-procedures/sr-education> [<https://perma.cc/54GR-6ES6>]; see also *The Practical Guide to Humanitarian Law*, MEDECINS SANS FRONTIERES, <https://guide-humanitarian-law.org/content/article/3/special-rapporteurs> [<https://perma.cc/TQ7E-WZKH>].
  8. See *Special Rapporteur on the Right to Education*, *supra* note 7.
  9. See *Call for Contributions: Academic Freedom and Freedom of Expression in Educational Institutions*, U.N. HUM. RTS. SPECIAL PROC. (Feb. 2, 2024), <https://www.ohchr.org/sites/default/files/documents/issues/education/cfis/cfi-expression/2023-academic-freedom-questionnaire-en.pdf> [<https://perma.cc/R8Y4-RQQD>] (“The report . . . will also analyze, from a human rights perspective, direct and indirect attacks on and interferences with respect to academic freedom of staff and students, including through commercialization, online surveillance, funding, conditions of work and studies and other pertinent issues.”); see also Farida Shaheed (Special Rapporteur on the Right to Education), *Academic Freedom: Rep. of the Special Rapporteur on the Right to Education*, Farida Shaheed, U.N. Doc. A/HRC/56/58 (Apr. 25, 2024).
  10. See *Call for Contributions: Academic Freedom and Freedom of Expression in Educational Institutions*, *supra* note 9.
  11. *Id.*
  12. The Critical (Legal) Collective describes itself as follows:  
The Critical (Legal) Collective is a group of legal scholars representing some of the many intellectual formations affiliated with critical legal theory—including, Critical Race Theory, Asian American Legal Scholarship, ClassCrits, Critical Legal Studies, Feminist Legal Theory, eCRT, Indigenous Law and Policy, Jurisprudence of Distribution, LatCrit, Law & Political Economy, Third World Approaches to International Law, and more. We promote a more inclusive, democratic, and just

outlined the escalating assault on academic freedom, university independence and freedom of expression in the United States.<sup>13</sup>

This Essay expands upon that submission and proceeds as follows. Part I outlines academic freedom’s core features and spotlights GOP-led attacks on academic freedom in North Carolina and Florida. In Part II, we situate the two preceding case studies within a nationwide right-wing assault on academic freedom and university independence. Part III links academic freedom’s present precarity to often-bipartisan neoliberal reforms that privatized and corporatized much of higher education.

## I. ACADEMIC FREEDOM & ITS ANTAGONISTS

### A. Academic Freedom Basics

The first formal defense of academic freedom came in 1915 when the American Association of University Professors (AAUP) formed to counter rising threats to university autonomy and faculty independence.<sup>14</sup> The AAUP aimed to limit private industry’s influence over university governance and research and safeguard each professor’s ability to research and teach without the threat of external interference.<sup>15</sup> As Galileo Galilei discovered centuries earlier, the pursuit

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society through scholarship, teaching, and advocacy that reckons honestly with past and present structural oppression.

CLC *Statement to University Administrators: Academic Freedom and Palestine*, CRITICAL LEGAL COLLECTIVE (Nov. 15, 2023), <https://www.criticallegalcollective.org> [<https://perma.cc/8723-V9E9>].

13. The CLC’s submission is available on the SRE’s website. See *Call for Contributions: Academic Freedom and Freedom of Expression in Educational Institutions*, *supra* note 9 (expand the “Inputs Received” menu and select the “CLC\_Critical Legal Collective (United States)” link under the “CSO” heading) (last visited July 23, 2024). For the CLC’s actual submission, please see Contribution from *Critical (Legal) Collective to the Special Rapporteur on the Right to Educ.*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R (Feb. 4, 2024), <https://www.ohchr.org/sites/default/files/documents/issues/education/cfis/cfi-expression/subm-academic-freedom-cso-clc-criti-united-states-ates.docx> [<https://perma.cc/ZEN6-HLUR>].
14. See *Timeline of the First 100 Years*, AM. ASS’N OF UNIV. PROFESSORS, <https://www.aaup.org/about/history/timeline-first-100-years> [<https://perma.cc/TZ78-DXX3>].
15. See *id.* (“In March 1915, seventeen faculty members at the University of Utah resign in protest after the appointments of four of their colleagues are abruptly terminated by the president and board of trustees. A month later, the AAUP . . . launches an investigation into violations of principles of academic freedom and tenure at Utah—the first of five investigations that the new Association will undertake in its first year as it puts its principles into practice.”); see also *About the AAUP*, AM. ASS’N OF UNIV. PROFESSORS, <https://www.aaup.org/about-aaup> [<https://perma.cc/B7FG-VKEV>] (“Since our founding in 1915, the AAUP has helped to shape American higher education by developing the standards and procedures that maintain quality in education and academic freedom in this country’s colleges and universities.”).

of knowledge and truth can be controversial and – at times – can expose individual researchers to targeted backlash.<sup>16</sup>

The AAUP issued its initial Declaration of Principles on Academic Freedom and Academic Tenure (the Declaration) in 1915.<sup>17</sup> As a unifying principle, the Declaration counsels that without academic freedom, the university cannot achieve its core mission “to promote inquiry and advance the sum of human knowledge.”<sup>18</sup> To this end, the Declaration explains that academic freedom is “not the absolute freedom of utterance of the individual scholar, but the absolute freedom of thought, of inquiry, of discussion, and of teaching, of the academic profession.”<sup>19</sup> Professor Brian Soucek has accordingly explained “that constraints on academic freedom [must therefore] come from professional norms and disciplinary standards, not from administrators, trustees, or public opinion.”<sup>20</sup> At bottom, academic freedom embodies the “principle that scholars, researchers, and educators can engage in teaching and scholarship without the fear of censorship or retribution.”<sup>21</sup>

Against this backdrop, the Declaration articulates three core functions of academic institutions:

- to promote inquiry and advance the sum of human knowledge;

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16. See Jessica Wolf, *The Truth About Galileo and His Conflict with the Catholic Church*, UCLA NEWSROOM (Dec. 22, 2016), <https://newsroom.ucla.edu/releases/the-truth-about-galileo-and-his-conflict-with-the-catholic-church> [<https://perma.cc/JRG6-434A>] (discussing an article by Professor Henry Kelly examining the conflict between the Catholic Church and Galileo and his adherence to the idea and research suggesting that the earth revolved around the sun).
  17. See EDWIN R.A. SELIGMAN ET AL., AM. ASS’N OF UNIV. PROFESSORS, APPENDIX I: 1915 DECLARATION OF PRINCIPLES ON AMERICAN FREEDOM AND ACADEMIC TENURE 295 (1915), [https://www.aaup.org/NR/rdonlyres/A6520A9D-0A9A-47B3-B550-C006B5B224E7/0/1915 Declaration.pdf](https://www.aaup.org/NR/rdonlyres/A6520A9D-0A9A-47B3-B550-C006B5B224E7/0/1915%20Declaration.pdf) [<https://perma.cc/S3HC-LDNS>]. Over the ensuing century, AAUP members have revised and issued dozens of policy documents and reports on academic freedom. Standout publications include the 1940 Statement of Principles on Academic Freedom. See AM. ASS’N OF UNIV. PROFESSORS, 1940 STATEMENT OF PRINCIPLES ON ACADEMIC FREEDOM AND TENURE, <https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure> [<https://perma.cc/A96X-RXTH>]; see also AM. ASS’N OF UNIV. PROFESSORS, STATEMENT ON GOVERNMENT OF COLLEGES AND UNIVERSITIES (1966), <https://www.aaup.org/report/statement-government-colleges-and-universities> [<https://perma.cc/54QA-99EW>].
  18. See SELIGMAN ET AL., *supra* note 17, at 295.
  19. See *id.* at 300 (“It is obvious that here again the scholar must be absolutely free not only to pursue his investigations but to declare the results of his researches, no matter where they may lead him or to what extent they may come into conflict with accepted opinion.”) *Id.* at 296.
  20. Brian Soucek, *Diversity Statements*, 55 U.C. DAVIS L. REV. 1989, 2035 (2022).
  21. Melissa De Witte, *Academic Freedom’s Origin Story*, STANFORD REP. (May 1, 2023) <https://news.stanford.edu/report/2023/05/01/origin-story-academic-freedom> [<https://perma.cc/BU65-R7V6>].

- to provide general instruction to students; and
- to develop experts for various branches of the public service.<sup>22</sup>

The Declaration further articulates three related principles of academic freedom:

- freedom of inquiry and research;
- freedom of teaching within the university or college; and
- freedom of extramural utterance and action.<sup>23</sup>

As a doctrinal matter, academic freedom is grounded in the First Amendment of the U.S. Constitution,<sup>24</sup> which provides in relevant part: “Congress shall make no law . . . abridging the freedom of speech, or of the press.”<sup>25</sup> The U.S. Supreme Court has declared that the First Amendment’s core purpose is to allow for free debate on public issues.<sup>26</sup>

Academic freedom is not defined in the U.S. Constitution. Nor has the Supreme Court identified academic freedom as a standalone constitutional right.<sup>27</sup> Nonetheless, the Supreme Court has held that academic freedom advances unique First Amendment and democratic interests given the special role of speech and thought in public colleges and universities.<sup>28</sup>

The Supreme Court identified academic freedom’s doctrinal and normative significance in *Keyishian v. Board of Regents*.<sup>29</sup> This foundational 1967 decision involved professors at a New York public university who refused to sign a loyalty oath saying they were not communists.<sup>30</sup> In a ruling that struck down the governing regulations, the Supreme Court held that laws that infringe on freedom

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22. SELIGMAN ET AL., *supra* note 17, at 295.

23. *Id.* at 292.

24. See Rachel Levinson, *Academic Freedom and the First Amendment: Presentation to the AAUP Summer Institute*, AM. ASS’N OF UNIV. PROFESSORS (July 2007), <https://www.aaup.org/our-work/protecting-academic-freedom/academic-freedom-and-first-amendment-2007> [<https://perma.cc/VTH9-SN62>].

25. U.S. CONST. amend. I.

26. See *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964).

27. See *Keyishian v. Bd. of Regents of Univ. of N.Y.*, 385 U.S. 589, 602–03 (1967); *Pernell v. Fla. Bd. of Governors of State Univ. Sys.*, 641 F. Supp. 3d 1218, 1236–37 (N.D. Fla. 2022) (noting that while the U.S. Supreme Court has never proclaimed academic freedom to be a stand-alone right protected by the First Amendment, and the Eleventh Circuit has rejected the view that academic freedom is an independent constitutional right, the Circuit “still recognized that academic freedom remains an important interest to consider when analyzing university professors’ First Amendment claims”).

28. See *Keyishian*, 385 U.S. at 602–03; see also *Sweezy v. New Hampshire*, 354 U.S. 234 (1957) (involving a petition to compel disclosure of a classroom lecture in order to determine if it was “subversive”).

29. 385 U.S. 589 (1967).

30. *Id.* at 592.

of speech in the classroom must be narrow and specific.<sup>31</sup> The majority explicitly moored academic freedom to the First Amendment:

Our nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. [Academic] freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.<sup>32</sup>

Beyond offering academic freedom a precedential anchor, the *Keyishian* majority tethered the concept to democracy itself<sup>33</sup>:

No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation . . . . Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.<sup>34</sup>

Even though academic freedom and the First Amendment are linked, the two entail distinct considerations.<sup>35</sup> Whereas free speech analysis often makes no judgement about the quality of an opinion or idea, academic freedom often does.<sup>36</sup> Academic freedom's concern for quality stems from the university's role within democratic societies as an engine of truth and knowledge production for the common good.<sup>37</sup> Leading experts have explained that this basic mission "requires

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31. *Id.* at 604.

32. *Id.* at 603.

33. With respect to academic freedom, the *Keyishian* Court explained that the "essentiality of freedom in the community of American universities is almost self-evident." *Id.* at 603 (quoting *Sweezy*, 354 U.S. at 250).

34. *Keyishian*, 385 U.S. at 603 (quoting *Sweezy*, 354 U.S. at 250).

35. See Soucek, *supra* note 20, at 2035–36 ("Academic freedom' is sometimes just used to refer to the free speech rights of academics . . . . But academic freedom is also a distinctive and even defining feature of modern American universities.").

36. See MATTHEW W. FINKIN & ROBERT C. POST, FOR THE COMMON GOOD: PRINCIPLES OF AMERICAN ACADEMIC FREEDOM 34–39 (2009) ("The core principle of American academic freedom . . . [recognizes] that faculty are professional experts in the production of knowledge . . . universities can advance the sum of human knowledge only if they employ persons who are experts in their disciplines and only if universities liberate these experts to apply freely the disciplinary methods established by their training."); see also Bill Moyers, *In the Age of Trump, a Chilling Atmosphere*, BILL MOYERS (Oct. 18, 2017), <https://billmoyers.com/story/academic-freedom-age-trump> [<https://perma.cc/NT99-5APL>].

37. See David Kaye (Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression), *Rep. of the Special Rapporteur on the Promotion and Protection of*

precisely that ideas be treated unequally, that they be assessed and weighed, accepted and rejected.”<sup>38</sup>

The university must therefore be a place that separates the good idea from the bad—that distinguishes between what is true and what is false.<sup>39</sup> One would expect academic institutions and faculty to reject academically discredited ideas—like the notion that the earth is 10,000 years old, that the Holocaust did not occur, or that biological differences explain racial inequality. The processes for evaluating an idea’s quality, in turn, must be free from external interference and influence; requiring systems of review by peers with relevant disciplinary competence.<sup>40</sup>

It is now widely recognized that tenured professors and higher education institutions enjoy academic freedom.<sup>41</sup> Functionally, this means that principles of academic freedom can extend to administrative staff speaking on the university’s behalf.<sup>42</sup>

Primary and secondary level (K-12) teachers do not enjoy the same academic freedom protections as their higher education counterparts.<sup>43</sup> One reason is that states generally enjoy police power over teaching and learning, which constrains K-12 teachers to preapproved state curricula.<sup>44</sup> Teachers can face adverse

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*the Right to Freedom of Opinion and Expression*, ¶ 10, U.N. Doc. A/75/261 (July 28, 2020) [hereinafter *UN 2020 Report on Academic Freedom*]; R. SELIGMAN ET AL., *supra* note 17, at 295 (the core mission of academic institutions is “to promote inquiry and advance the sum of human knowledge”).

38. See FINKIN & POST, *supra* note 36, at 43.

39. See Steven G. Calabresi, *Freedom of Expression and the Golden Mean*, 79 BROOK. L. REV. 1005, 1010 (2014) (“I would add that public colleges, universities, and secondary schools could not even function if they did not choose to praise some viewpoints and criticize others. The praising of some things and the disapproving of others is basically at the core of what education itself is all about.”).

40. See Moyers, *supra* note 36 (noting effort by rightwing groups to eliminate peer review).

41. See *Parate v. Isibor*, 868 F. 2d 821, 826 (6th Cir. 1989) (quoting Regents of the Univ. of Mich. v. Ewing, 474 U.S. 214, 226 n.12 (1985) (alterations in original)) (“Academic freedom thrives not only on the robust and uninhibited exchange of ideas between the individual professor and his students, but also on the ‘autonomous decisionmaking [of] . . . the academy itself.’”).

42. See Brian Soucek, *Academic Freedom and Departmental Speech*, AAUP BLOG (Spring 2022), <https://www.aaup.org/article/academic-freedom-and-departmental-speech> [<https://perma.cc/K6F4-KN7G>].

43. See *The Perilous State of Academic Freedom and Free Expression in Education*, PEN AM. (Feb. 5, 2024), <https://pen.org/the-perilous-state-of-academic-freedom-and-free-expression-in-education> [<https://perma.cc/X4PX-YGTH>] (“While academic freedom is an institutional precedent in higher education, it is not customarily applied at the primary and secondary school level in the same manner.”).

44. See, e.g., *Evans-Marshall v. Bd. of Educ. of Tipp City. Exempted Vill. Sch. Dist.*, 624 F. 3d 332, 344 (6th Cir. 2010) (“Even to the extent academic freedom, as a constitutional rule, could somehow apply to primary and secondary schools, that does not insulate a teacher’s curricular and pedagogical choices from the school board’s oversight, as opposed to the teacher’s right to speak and write publicly about academic issues outside of the classroom.”).

employment action for deviating from those standards.<sup>45</sup> This does not mean that K-12 teachers enjoy no speech rights. As one example, the federal judge who enjoined Florida’s “Stop W.O.K.E. Act” observed that “the Eleventh Circuit and its predecessor have recognized that the First Amendment protects classroom discussions at [both] the secondary and university levels.”<sup>46</sup>

Academic freedom is not without limits. Even for tenured faculty, academic freedom does not insulate individual professors from institutional regulations or administrative oversight.<sup>47</sup> Academic freedom does not, for example, preclude a university from disciplining a faculty member who violates university policy or ethical obligations—such as violating “regulations on human subject research.”<sup>48</sup> Nor does academic freedom pre-empt constitutional or statutory obligations that govern individual faculty and academic institutions—such as state and federal antidiscrimination laws that prohibit race- and gender-based harassment.<sup>49</sup>

It is worth also noting that recent conservative Supreme Court majorities have exhibited a waning commitment to academic freedom and employee speech rights generally. In *Garcetti v. Ceballos*, for example, the Supreme Court confronted “whether the First Amendment protects a government employee from discipline based on speech made pursuant to the employee’s official duties.”<sup>50</sup> In a 5-4 ruling, the Supreme Court held that when government workers “make statements pursuant to their official duties, [they] are not speaking as citizens,” and therefore, the First Amendment does not apply.<sup>51</sup>

This ruling narrowed the speech rights for government employees—a category that includes professors at public universities. The question, therefore, is

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45. *Id.*

46. *Pernell v. Fla. Bd. of Governors of State Univ. Sys.*, 641 F. Supp. 3d 1218, 1242 (N.D. Fla. 2022).

47. *See, e.g., Parate v. Isibor*, 868 F.2d 821, 827 (6th Cir. 1989) (“The administration of the university rests not with the courts, but with the administrators of the institution. A nontenured professor does not escape reasonable supervision in the manner in which she conducts her classes or assigns her grades.”).

48. *FAQs on Academic Freedom*, AM. ASS’N OF UNIV. PROFESSORS, <https://www.aaup.org/programs/academic-freedom/faqs-academic-freedom> [<https://perma.cc/7WD4-H5W4>].

49. *See* Cara McClellan, *Discrimination as Disruption: Addressing Hostile Environments Without Violating the Constitution*, 34 *YALE L. & POL’Y REV. INTER ALIA* 1, 6–7 (2015) (quoting *Healy v. James*, 408 U.S. 169, 189 (1972)) (arguing that universities may constitutionally regulate speech that constitutes racial discrimination under Title VI of the Civil Rights Act of 1964 because such speech—and failure to address it—can offend “reasonable campus rules, interrupt classes, or substantially interfere with the opportunity of other students to obtain an education”).

50. 547 U.S. 410, 413 (2006).

51. *Id.* at 421.

whether *Garcetti* reaches public university faculty and undercuts the academic freedom they would otherwise enjoy.<sup>52</sup> Recognizing this concern, the *Garcetti* majority explicitly declined to extend its holding to cases involving scholarship or teaching-related speech.<sup>53</sup> One can read this as an attempt to square *Garcetti* with precedent like *Keyishian* that grounded academic freedom in the First Amendment and broader democratic norms.

Uncertainty about *Garcetti*'s scope nonetheless lingers.<sup>54</sup> In recent years, champions of discriminatory censorship,<sup>55</sup> who increasingly dominate the Republican Party (GOP),<sup>56</sup> have invoked *Garcetti* to challenge the speech rights of professors at public universities. In one 2022 decision enjoining part of Florida's Stop W.O.K.E. Act,<sup>57</sup> a federal judge rejected this argument and held that *Garcetti* does not apply to a university professor's in-class speech.<sup>58</sup> The lawsuit alleges that

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52. See *Protecting an Independent Faculty Voice: Academic Freedom After Garcetti v. Ceballos*, AM. ASS'N OF UNIV. PROFESSORS, <https://www.aaup.org/report/protecting-independent-faculty-voice-academic-freedom-after-garcetti-v-ceballos> [<https://perma.cc/7R6P-EABB>] (“[A]cademic freedom of professors continues to face serious threats. In the immediate aftermath of *Garcetti*, the principal threat appeared to be judicial hostility or indifference to academic freedom, which seemed to lead some lower federal courts to adopt overly restrictive interpretations of faculty free speech rights that *Garcetti* did not compel.”).
53. See *Garcetti*, 547 U.S. at 425 (“There is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court’s customary employee-speech jurisprudence. We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching.”).
54. See Soucek, *supra* note 20, at 2023 (noting “[t]here is a circuit split . . . about whether *Garcetti*’s holding *does* apply to teachers, especially university professors”).
55. We borrow the term “discriminatory censorship” from Jonathan Feingold & Joshua Weishart. See JONATHAN FEINGOLD & JOSHUA WEISHART, NAT’L EDUC. POL’Y CTR., HOW DISCRIMINATORY CENSORSHIP LAWS IMPERIL PUBLIC EDUCATION 18–21 (2023), <https://nepc.colorado.edu/publication/censorship> [<https://perma.cc/J5UC-GP72>] (applying the term “discriminatory censorship” to laws designed to (1) chill classroom conversations about racism, gender identity, and other targeted topics and (2) demean inclusionary values and stigmatize historically subordinated groups).
56. See *Mutua*, *supra* note 3.
57. In August of 2022, Florida Governor Ron DeSantis signed into law Florida House Bill 7, more commonly referred to as the Stop W.O.K.E. Act, or the redubbed Individual Freedom Act. See H.R. 7, 124th Leg. Reg. Sess. (Fla. 2022).
58. See *Pernell v. Fla. Bd. of Governors of State Univ. Sys.*, 641 F. Supp. 3d 1218, 1241 (N.D. Fla. 2022) (“All this is to say that Defendants have identified no case, nor has this Court identified any authority—binding or persuasive—holding that *Garcetti* applies to university professors’ in-class speech such that it amounts to government speech outside the First Amendment’s protection. To the extent Defendants urge this Court to determine that university professors’ in-class speech is always pure government speech, the weight of binding authority requires this Court to decline the invitation.”); see also Soucek, *supra* note 20, at 2023–24 (footnotes omitted) (“*Garcetti* is premised on the idea that a manager should be able to direct an employee’s work without triggering a free speech lawsuit. Since no managers direct faculty

the Stop W.O.K.E. Act “severely restricts Florida educators and students from engaging in scholarship about issues related to race and gender” in higher education classrooms, including concepts related to slavery, affirmative action, white privilege, and antiracism.<sup>59</sup> The challenged law exposes Florida professors to severe penalties for expressing views regarding these topics, and it grants Florida’s Republican officials substantial discretion to target individuals who express viewpoints and perspectives they dislike.<sup>60</sup> Siding with the plaintiffs, the district court recognized academic freedom’s doctrinal and practical significance.<sup>61</sup> With notably stark language, the court concluded that the Florida law imposed an impermissible viewpoint-based restriction on educators’ classroom speech.<sup>62</sup> In March 2023, the Eleventh Circuit denied the state’s request to stay the injunction.<sup>63</sup> The case is ongoing.

To summarize: the Supreme Court has long viewed academic freedom as a “special concern of the First Amendment” that enables higher education to serve

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members’ teaching and research in that way, at least at any university that respects academic freedom, the premise does not apply.”).

59. See Press Release, ACLU of Fla., *Florida’s “Stop W.O.K.E.” Censorship Bill Continues to Be Blocked After Eleventh Circuit Decision*, ACLU (Mar. 16, 2023, 2:30 PM), <https://www.aclu.org/press-releases/floridas-stop-w-o-k-e-censorship-bill-continues-to-be-blocked-after-eleventh-circuit-decision> [<https://perma.cc/45P8-3ZE4>].
60. See *Pernell*, 641 F. Supp. 3d at 1231–32 (providing its interpretation of the Act); see also Katheryn Russell-Brown, “*The Stop Woke Act*: HB 7, Race, and Florida’s 21st Century Anti-Literacy Campaign,” 47 N.Y.U. REV. L. & SOC. CHANGE 338, 365–66 (2023) (footnotes omitted) (“The law allows for a private cause of action that could entitle a successful complainant to injunctive relief, back pay, and compensatory damages up to \$100,000. This amount covers loss of dignity, mental anguish, and punitive damages. Further, the Attorney General may initiate a civil action for injunctive relief, damages, or civil penalties of up to \$10,000 per violation when they have reasonable cause to believe that an individual or a group has engaged in or been subjected to discrimination under HB 7. Where a state employee is found to have violated the law, they may be discharged from their position.”).
61. *Pernell*, 641 F. Supp. 3d at 1271.
62. *Id.* at 1230 (footnotes omitted) (“The law officially bans professors from expressing disfavored viewpoints in university classrooms while permitting unfettered expression of the opposite viewpoints. Defendants argue that, under this Act, professors enjoy ‘academic freedom’ so long as they express only those viewpoints of which the State approves. This is positively dystopian. It should go without saying that ‘[i]f liberty means anything at all it means the right to tell people what they do not want to hear.’”).
63. *Pernell v. Fla. Bd. of Governors of State Univ.*, No. 22-13992-J, 2023 WL 2543659 (11th Cir. 2023). In a separate recent decision, a federal judge in New Hampshire struck down a discriminatory censorship law on the basis that it was unconstitutionally vague. See *Local 8027, AFT-N.H., AFL-CIO, et al. v. Edelblut*, No. 21-cv-1077-PB, 2024 WL 2722254, slip op. at 49 (D. N.H. May 28, 2024) (“The Amendments are viewpoint-based restrictions on speech that do not provide either fair warning to educators of what they prohibit or sufficient standards for law enforcement to prevent arbitrary and discriminatory enforcement. Thus, the Amendments violate the Fourteenth Amendment to the U.S. Constitution.”).

its core democratic function. Against this backdrop, we now highlight two state-level efforts to undermine academic freedom and university independence.<sup>64</sup>

## B. Academic Freedom's Antagonists

One of AAUP's most significant achievements comprises the development "of robust professional norms of democratic university governance" which include a democratic labor regime of shared governance structured to safeguard academic freedom.<sup>65</sup> These norms and practices include faculty independence, the job security of tenure, due process prior to discipline or dismissal, and shared governance.<sup>66</sup> Under shared governance (which distributes governance authority across the faculty and the administration), the faculty have the "primary responsibility, through their governing bodies, over academic matters such as curriculum [including approving new academic programs and courses], teaching, research, and faculty appointments and promotions."<sup>67</sup> For many university faculty, concrete privileges and protections are secured by contract (and negotiated through unions at a number of public institutions).<sup>68</sup>

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64. Albeit beyond the scope of this Essay, students also possess certain First Amendment rights animated by academic freedom interests. *See, e.g., Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (explaining that high school students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."); Jonathan Friedman & Nadine Farid Johnson, *Banned in the USA: The Growing Movement to Censor Books in Schools*, PEN AM. (Sept. 19, 2022), <https://pen.org/report/banned-usa-growing-movement-to-censor-books-in-schools> [<https://perma.cc/CX5J-ARWY>].

65. Risa L. Lieberwitz, *Corporatization of Higher Education: A Crisis of Labor and Democracy*, in *THE CAMBRIDGE HANDBOOK OF LABOR AND DEMOCRACY* 318, 318–21 (Angela B. Cornell & Mark Barenberg eds., 2022). This has manifested as the internalization and adoption of the "extra-legal" rights of academic freedom by most colleges and universities, both public and private. *See id.* at 321. While the AAUP has provided a strong framework for academic freedom, and other organizations now exist to protect it, the framework has identifiable flaws. These include its rather singular focus on teachers in higher education, and its failure to sufficiently address the rights of students. *See De Witte, supra* note 21. The AAUP has, at times, issued statements concerning students' rights and freedoms that relate to academic freedom. *See, e.g., Joint Statement on Right and Freedoms of Students*, AM. ASS'N OF UNIV. PROFESSORS, <https://www.aaup.org/report/joint-statement-rights-and-freedoms-students> [<https://perma.cc/82V7-JTY5>] ("Freedom to teach and freedom to learn are inseparable facets of academic freedom."). Further, despite the widespread practice of peer review of research and teaching, white women and people of color remain underrepresented in the tenure ranks of many disciplines—due in part to institutions' and disciplines' ongoing failure to remedy histories of formal and informal exclusion. *See Lieberwitz, supra* note 65, at 323.

66. *See Lieberwitz, supra* note 65, at 320.

67. *Id.* at 321.

68. *See id.* at 321, 323.

Even under shared governance, the administration or external governing boards often enjoy final decisionmaking authority over many areas of institutional governance.<sup>69</sup> As we now detail, GOP officials in North Carolina and Florida have weaponized external boards to buttress a broader effort to undermine academic freedom and cripple university and faculty independence.<sup>70</sup>

## 1. North Carolina GOP's Assault on Higher Education

The University of North Carolina (UNC) system is “overseen by a board of governors” (BOG) that enjoys immense power over “the planning, development, and overall governance of the system.”<sup>71</sup> In 2010, Republicans held the Governor’s post and gained control of both chambers of North Carolina’s legislature.<sup>72</sup> Party leaders “saw the UNC board of governors, with its broad agenda-setting powers, as the key to transforming the university system” to one of their liking.<sup>73</sup>

Over the next several years, GOP leadership spearheaded procedural and substantive changes that cemented the party’s “partisan political control” over higher education in the state.<sup>74</sup> In 2016, for example, the “outgoing Republican governor signed legislation stripping his Democratic successor of the power to make appointments to campus-level boards of trustees.”<sup>75</sup> In a state with roughly equal numbers of registered Democrats and Republicans,<sup>76</sup> state-level gerrymandering has enabled Republicans to maintain legislative majorities. As a result, the 2016 transfer of appointment power granted the GOP “near-total control over appointments to campus-level boards of trustees.”<sup>77</sup>

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69. *Id.* at 321.

70. See KAMOLA, *supra* note 5; NICHOLAS FLEISHER ET AL., AM. ASS’N OF UNIV. PROFESSORS, REPORT OF A SPECIAL COMMITTEE: GOVERNANCE, ACADEMIC FREEDOM, AND INSTITUTIONAL RACISM IN THE UNIVERSITY OF NORTH CAROLINA SYSTEM 15 (2022), <https://www.aaup.org/report/governance-academic-freedom-and-institutional-racism-university-north-carolina-system> [<https://perma.cc/ZK9N-DKSG>]; AFSHAN JAFAR ET AL., AM. ASS’N OF UNIV. PROFESSORS, REPORT OF A SPECIAL COMMITTEE: POLITICAL INTERFERENCE AND ACADEMIC FREEDOM IN FLORIDA’S PUBLIC HIGHER EDUCATION SYSTEM (2023), [https://www.aaup.org/file/AAUP\\_Florida\\_final.pdf](https://www.aaup.org/file/AAUP_Florida_final.pdf) [<https://perma.cc/P42V-44R8>].

71. See FLEISHER ET AL., *supra* note 70, at 3.

72. See *id.*

73. See *id.*

74. See *id.* at 4.

75. See *id.*

76. Justyn Melrose, *Does North Carolina Have More Democrats, Republicans, or Unaffiliated Voters?*, MYFOX8 (Feb. 20, 2024), <https://myfox8.com/news/politics/your-local-election-hq/does-north-carolina-have-more-democrats-republicans-or-unaffiliated-voters> [<https://perma.cc/3WGH-M74W>].

77. See FLEISHER ET AL., *supra* note 70, at 4.

The AAUP report recounts how these changes, which coincided with GOP leadership appointing “political ideologues” to the boards, undermined academic freedom and university independence across the UNC system.

One example entails the BOG’s decision to close three university-based policy centers in 2015.<sup>78</sup> This included UNC-Chapel Hill’s privately-funded Center for Poverty, Work, and Opportunity—an entity created to “examine innovative and practical ideas for moving more Americans out of poverty and into the middle class.”<sup>79</sup> The Report notes that “[p]rominent North Carolina conservatives had opposed the poverty center from its inception [in 2005].”<sup>80</sup> That opposition escalated when the poverty center’s director “joined the state’s Moral Mondays civil disobedience movement and became an outspoken critic of [the North Carolina] state government.”<sup>81</sup> In 2014, a BOG working group called for eliminating the poverty center along with thirteen other public-minded centers (out of 237 centers reviewed).<sup>82</sup> The BOG obliged and closed the center— notwithstanding widespread support for the center from faculty, students, administrative leaders, and local civil rights groups.<sup>83</sup>

## 2. Florida GOP’s Assault on Higher Education

A separate AAUP Report identified similar conduct by the Florida GOP.<sup>84</sup> The Report opens by detailing Governor DeSantis’ takeover of New College. Prior to the takeover, “New College was known as a leading alternative liberal arts college . . . known for its tolerance of diversity and its ‘quirky’ and iconoclastic students.”<sup>85</sup>

In January 2023, following the governor’s re-election, DeSantis and the state board of governors appointed seven new members to New College’s board of trustees.<sup>86</sup> Five of the new members are “well-known conservative academics or activists who appear to live outside of Florida.” Among them is Christopher Rufo,

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78. *See id.* at 15.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.* “Six of the seven working group members were Republicans. Of the 237 centers reviewed by the group, the only three recommended for closure involved scholarly interests in poverty, the environment, or social justice. Among the thirteen other research centers for which the panel recommended changes but not elimination were programs that focused on diversity, the environment, women’s issues, aging, and teaching and learning.” *Id.*

83. *Id.* at 15–16.

84. *See generally* JAFAR ET AL., *supra* note 70.

85. *Id.* at 3.

86. *See id.* (noting that the state board of governors also appointed one new member).

who gained notoriety for “fueling a conservative backlash against DEI efforts and CRT.” Two other appointments were part of President Trump’s 1776 commission; a third is president of a DC-based conservative think tank. In a January 6 tweet, Rufo communicated his vision for the board: “We are now over the walls and ready to transform higher education from within . . . [O]ur all-star board will demonstrate that the public universities, which have been corrupted by woke nihilism, can be recaptured, restructured, and reformed.”<sup>87</sup>

Over the subsequent months, the new trustees replaced the New College President with Richard Corcoran (the former commissioner of DeSantis’ Board of Education), eliminated the Office of Outreach and Inclusive Excellence, altered the faculty handbook, terminated the college’s gender studies program, and denied tenure to five faculty members.<sup>88</sup> Corcoran also recommended that the board deny tenure to a separate set of faculty members due, in part, to “a renewed focus on ensuring the College is moving towards a more traditional liberal arts institution.”<sup>89</sup> This “renewed focus” reflects the trustees’ desire to “adopt a new ‘classical’ liberal arts curriculum modeled after that of conservative Hillsdale College.”<sup>90</sup> As Kathryn Joyce outlined in a series of articles, “Hillsdale’s ‘classical education’ model—extolling Western civilization, American exceptionalism and the idea that America was founded on ‘Judeo-Christian’ principles—has become the chief model of what conservatives want to see in education.”<sup>91</sup>

The AAUP report explains that Corcoran’s plan to “gauge applications by their alignment with the purported new mission and vision for New College”—rather than the substantive content and merit of each tenure file—violates AAUP-supported standards of academic freedom and tenure and violates New College’s collective bargaining agreement.<sup>92</sup>

This concern played out in May 2023 when Corcoran ignored the faculty’s recommendation and declined to renew the contract of Erik Wallenberg, a visiting

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87. *Id.*

88. *Id.*

89. *Id.* at 5.

90. *Id.* at 8.

91. Kathryn Joyce, *Tennessee Showdown: Governor’s Big Plan for Right-Wing Charter Schools Sparks Fierce Backlash*, SALON (Aug. 22, 2022, 6:30 AM), <https://www.salon.com/2022/08/22/tennessee-showdown-governors-big-plan-for-right-wing-charter-schools-sparks-fierce-backlash> [<https://perma.cc/G7ZZ-WRH4>]; see also Kathryn Joyce, *Salon Investigates: The War on Public Schools Is Being Fought From Hillsdale College*, SALON (Mar. 16, 2022, 6:35 AM), <https://www.salon.com/2022/03/16/salon-investigates-the-on-public-schools-is-being-fought-from-hillsdale-college> [<https://perma.cc/GE4F-LTXM>].

92. See JAFAR ET AL., *supra* note 70, at 5.

professor and New College’s “sole historian of the United States.”<sup>93</sup> Two months’ prior, Wallenberg had co-authored an opinion piece that criticized the board’s takeover and described “comments made to a student by trustee Rufo [as] ‘demeaning and rude.’”<sup>94</sup> In an extraordinary act, Rufo responded by attacking Wallenberg on Twitter and then celebrated the professor’s nonrenewal: “New College will no longer be a jobs program for middling left-wing intellectuals.”<sup>95</sup> Multiple organizations condemned Rufo’s tweets and the board’s open interference and abuse of power. Jeremy Young, who leads PEN America’s Freedom to Learn initiative, described the nonrenewal as “an appalling act of political retaliation and an affront to the principle of academic freedom.”<sup>96</sup>

Albeit a single example, the New College takeover illustrates how DeSantis weaponized state power to undermine academic freedom, erode faculty rights and impose a right-wing ideological agenda on Florida’s leading public liberal arts institution. We encourage readers to review the full AAUP report, which details a broader campaign to undermine higher education in Florida. The report’s authors summarize their findings as follows:

[A]cademic freedom, tenure, and shared governance in Florida’s public colleges and universities currently face a politically and ideologically driven assault unparalleled in [U.S.] history,’ which, ‘if sustained, threatens the very survival of meaningful higher education in the state, with the direst implications for the entire country.’<sup>97</sup>

North Carolina and Florida are not anomalous. In the next Part, we situate these two examples within a nationwide right-wing campaign to erode academic freedom and undermine university independence.<sup>98</sup>

## II. A COORDINATED ASSAULT ON ACADEMIC FREEDOM SWEEPS THE UNITED STATES

The assault on academic freedom is part of a multifaceted campaign to undermine democracy and democratic institutions.<sup>99</sup> This antidemocratic project

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93. *Id.* at 7.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.* at 2.

98. See Letter from Concerned Law Professors Re: House Committee Investigation, to Congresswoman Virginia Foxx (Apr. 17, 2024), <https://docs.google.com/document/d/1YkrKYwkae7uR3XasQkZhLRmJf8xTyOC5ILRc4EkXVi8/edit> [<https://perma.cc/RH66-DLUV>].

99. See West, *supra* note 1.

is supported by a well-resourced network of right-wing officials, think tanks, foundations, and media.<sup>100</sup> Through coordinated legal, political, and discursive strategies, this network has already begun to undermine our collective right to research, learn about and address the structural forces that drive racism, sexism, and class inequality in the United States.<sup>101</sup>

As a strategic matter, we should not be surprised that antidemocratic forces view financially stable and independent universities as a threat. A well-informed citizenry, autonomous university, and independent faculty are all antithetical to authoritarian causes.<sup>102</sup> Johns Hopkins University President Ronald J. Daniels outlined this dynamic in an insightful 2021 Washington Post op-ed, “Why Authoritarian Regimes Attack Universities.”<sup>103</sup> Alongside examples including the Taliban, Benito Mussolini, and Viktor Orbán, President Daniels clarified what many of us intuitively understand: “Independent universities unnerve authoritarians because everything that these institutions strive to achieve is inimical to the autocrat’s devotion to the accumulation and arbitrary exercise of coercive public power.”<sup>104</sup>

One can divide today’s assault on academic freedom and critical thought into three general phases.

*Phase 1:* Beginning in earnest in early 2021,<sup>105</sup> right-wing think tanks developed and deployed model legislation and talking points to stigmatize and stifle the nation’s nascent turn toward racial justice.<sup>106</sup> Central to this strategy was a messaging campaign that transformed the term “critical race theory” into a slur

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100. See KAMOLA, *supra* note 5.

101. See Mutua, *supra* note 3.

102. See Ronald J. Daniels, Opinion, *Why Authoritarian Regimes Attack Independent Universities*, WASH. POST (Sept. 28, 2021, 12:46 PM), <https://www.washingtonpost.com/opinions/2021/09/28/why-authoritarian-regimes-attack-independent-universities> [<https://perma.cc/6JTP-XHWW>].

103. *Id.* We borrow this reference to President Daniel’s op-ed from the Letter from Concerned Law Professors, which astutely connected Daniels’s insights vis-à-vis foreign authoritarians to the GOP officials in the United States. See Letter from Concerned Law Professors, *supra* note 98. This link is more than conceptual. Earlier this year, Hungary’s authoritarian leader Viktor Orbán visited the United States and held meetings with former president Trump and the Heritage Foundation. See Casey Michel, *How Viktor Orbán Conquered the Heritage Foundation*, NEW REPUBLIC (Mar. 15, 2024), <https://newrepublic.com/article/179776/heritage-foundation-viktor-orban-trump> [<https://perma.cc/N2BE-ER2K>].

104. Daniels, *supra* note 102.

105. One could mark the beginning of this phase in September 2020, when then-President Trump issued an Executive Order widely understood to target antiracist efforts within the federal government. See Jonathan Feingold, *Reclaiming Equality: How Regressive Laws Can Advance Progressive Ends*, 73 S.C. L. REV. 723 (2022).

106. See KAMOLA, *supra* note 5.

that could discredit efforts to combat racism generally (antiracism), and anti-Black racism in particular.<sup>107</sup> This discursive front created the pretext for GOP officials across the nation to propose hundreds of “discriminatory censorship laws”<sup>108</sup>—a term scholars have employed to describe laws designed to demean inclusionary projects and chill classroom conversations about racism, gender identity, and American history, among other targeted topics. Many discriminatory censorship laws repurposed language from Executive Order 13,950 (now rescinded), which President Trump signed in September 2020 (the Trump EO).<sup>109</sup> The Trump EO banned federal entities and contractors from promoting so-called “divisive concepts” in a publicly understood effort to wield the power of the presidency against antiracism and CRT.<sup>110</sup>

Over the ensuing three years, GOP officials at the state, local and federal levels have proposed over 800 discriminatory censorship laws.<sup>111</sup> Over the same period, the United States has witnessed almost 6,000 instances of book banning across forty-one states and 247 public school districts.<sup>112</sup>

A report by the National Education Policy Center (NEPC Report) details that as of November 2023, state and local officials had enacted over 240 discriminatory censorship laws regulating K-12 classrooms.<sup>113</sup> Most of these laws were adopted at

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107. See Kimberlé Williams Crenshaw, *This Is Not a Drill: The War Against Antiracist Teaching in America*, 68 UCLA L. REV. 1702, 1715 n.25 (2022) (“Much of the well-funded disinformation campaign animating the depiction of C[ritical] R[ace] T[heory] as an intellectual boogeyman began after Christopher Rufo self-declared a ‘one-man war against [C]ritical [R]ace [T]heory.’”).
108. See Feingold & Weishart, *Discriminatory Censorship Laws*, *supra* note 4 (manuscript at 6) (“[W]e believe the term captures two discrete goals these laws further: (1) to discredit inclusionary principles and practices and (2) to deny students access to critical knowledge about racism, sexism, gender identity, and other targeted topics.”).
109. Exec. Order No. 13,950, 85 Fed. Reg. 60683 (Sept. 22, 2020) (revoked by Exec. Order No. 13,985, 86 Fed. Reg. 7009 (Jan. 25, 2021)); see Memorandum from Russell T. Vought, Dir., Off. Mgmt. & Budget, to the Heads of Exec. Dep’t & Agencies regarding Ending Employee Trainings that Use Divisive Propaganda to Undermine the Principle of Fair and Equal Treatment for All 2 (Sept. 28, 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/09/M-20-37.pdf> [<https://perma.cc/QKS6-W88D>].
110. See Feingold and Weishart, *Discriminatory Censorship Laws*, *supra* note 4 (manuscript at 13).
111. See CRT Forward, UCLA SCH. OF L., <https://crtforward.law.ucla.edu> [<https://perma.cc/5LKY-FHN9>] (identifying “807 anti-Critical Race Theory bills, resolutions, executive orders, opinion letters, statements, and other measures” since September 2020); see also TAIFHA ALEXANDER, LA TOYA BALDWIN CLARK, KYLE REINHARD & NOAH ZATZ, UCLA SCH. OF L. CRITICAL RACE STUD., CRT FORWARD: TRACKING THE ATTACK ON CRITICAL RACE THEORY (2023), [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf) [<https://perma.cc/6TYS-UW5L>].
112. See Sabrina Baëta & Kasey Meehan, *Spineless Shelves: Two Years of Book Banning*, PEN AM., <https://pen.org/spineless-shelves> [<https://perma.cc/4ZAA-L59Y>] (reporting 5894 instances).
113. See generally FEINGOLD & WEISHART, *supra* note 55.

the local level by school districts or school boards rather than by state officials.<sup>114</sup> But state laws have the largest impact because they govern all covered schools in the state. Discriminatory censorship laws now regulate over 1.3 million educators and nearly half of the approximately 50 million U.S. public school students.

The NEPC Report documents how discriminatory censorship laws produce two related but distinct harms.<sup>115</sup> First, discriminatory censorship laws produce regimes of miseducation—in which students lose access to critical curricular materials. For example, in some “censored” states, political leaders have replaced a comprehensive curriculum with content produced by right-wing entities like PragerU and Hillsdale College.<sup>116</sup> Second, these laws expose students and teachers from targeted groups to a heightened risk of race- and sex-based harassment.<sup>117</sup>

*Phase II:* By 2022, GOP officials across the country began to direct rhetorical and legislative attacks at the LGBTQ+ community and women’s roles in society.<sup>118</sup> Considered a more successful target than even antiracist efforts, attacks on LGBTQ+ people and related issues such as gender-affirming health care,<sup>119</sup> this period saw right-wing activists employ the “whip of parental rights” to galvanize a mostly conservative, white base to limit discussions on gender and gender

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114. *Id.* at 9–10.

115. *See id.* at 19–20.

116. Feingold & Weishart, *Discriminatory Censorship Laws*, *supra* note 4 (manuscript at 5) (detailing “PragerU’s self-described right-wing ‘indoctrination’ videos . . .”).

117. *See id.*

118. *See* Jeffrey Sachs & Jonathan Friedman, *Educational Gag Orders Target Speech About LGBTQ+ Identities with New Prohibitions and Punishments*, PEN AM. (Feb. 15, 2022), <https://pen.org/educational-gag-orders-target-speech-about-lgbtq-identities-with-new-prohibitions-and-punishments> [<https://perma.cc/C2TH-DPAA>]. Many of these bills built on Florida’s HB 1557, colloquially known as the “Don’t Say Gay” bill that Florida’s GOP legislature passed in 2022. Katie Blankenship, James Tager & Ryan Howzell, *The Florida Effect: How the Sunshine State Is Driving the Conservative Agenda on Free Expression*, PEN AM., <https://pen.org/report/the-florida-effect> [<https://perma.cc/8WE2-G3EM>].

119. Jeremy C. Young, Jonathan Friedman & Kasey Meehan, *America’s Censored Classrooms 2023*, PEN AM. (Nov. 9, 2023), <https://pen.org/report/americas-censored-classrooms-2023> [<https://perma.cc/5P3F-H2XD>].

expression.<sup>120</sup> The move also reflected the alignment between political conservatives and Christian nationalists.<sup>121</sup>

Further, whereas the discriminatory censorship laws that proliferated in Phase I principally targeted K-12 institutions, Phase II saw escalating attacks on higher education.<sup>122</sup> This included GOP efforts to expand governmental control over curricular content in public colleges and universities; to restrict tenure and other faculty protections; to limit the role of accreditation agencies; and, most recently, to exert “direct ideological control over how universities operate” through bans on Diversity, Equity, and Inclusion (DEI) programs.<sup>123</sup> Each of these targets embodies a pillar of academic freedom and, by extension, democratic governance. According to the free speech advocacy organization PEN America, the underlying goal is to: “silence ideas and identities that some find uncomfortable; control narratives about the past; and ensure that only one set of values, viewpoints, and ideologies makes it past the schoolhouse gate.”<sup>124</sup>

Although Florida has led this effort, GOP legislatures in several states—such as North Carolina, North Dakota, Ohio, and Texas—have proposed and adopted legislation designed to usurp institutional independence.<sup>125</sup> Consistent with the foregoing, the University of Kentucky Board of Trustees is poised to vote “on a controversial proposal . . . to dissolve its University Senate, which is more than 100 years old.”<sup>126</sup> The proposal would substantially circumscribe the faculty’s longstanding authority over core issues of university governance—including the power to “approve or reject new academic programs and courses.”<sup>127</sup>

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120. See LaToya Baldwin Clark, *The Critical Racialization of Parents’ Rights*, 132 YALE L.J. 3000, 3042–43 (2023) (explaining that parents were given “parents’ rights anti-CRT guidebooks” and were expected to become “teaching and curriculum watchdogs” entitled to “inspect curricula on demand, investigate an individual teacher’s lessons plans without that teacher’s permission, and opt students out of lessons parents disagree with.”); see also Athena D. Mutua, Angela P. Harris & Francisco Valdes, *Organizing for Democracy and Liberation: The Right to Learn, the Right to Teach & the Right to Thrive: CLC’s Inaugural Convening*, BALDY CTR. BLOG, <https://www.criticallegalcollective.org/blog/organizing-for-democracy-and-liberation-the-right-to-learn-the-right-to-teach-amp-the-right-to-thrive> [https://perma.cc/WX7U-RXE3] (referring to the “whip of ‘parental rights’” and the alignment of political conservatives and the Christian Nationalists in the attack on LGBTQ+ people and related issues).

121. See Mutua et al., *supra* note 120.

122. See generally Young et al., *supra* note 119.

123. *Id.*

124. *Id.*

125. See *id.*

126. Ryan Quinn, *Faculty Power on the Line in Kentucky*, INSIDE HIGHER EDUC. (June 5, 2024), <https://www.insidehighered.com/news/faculty-issues/shared-governance/2024/06/05/faculty-power-under-threat-university-kentucky> [https://perma.cc/UFJ3-SYB5].

127. *Id.*

*Phase III:* Hamas's October 7, 2023, attack on Israel and Israel's subsequent military campaign against Gaza created an opening for proponents of discriminatory censorship to recruit new allies and revive attacks on higher education and inclusive practices like DEI initiatives.<sup>128</sup> Right-wing officials—at times with bipartisan support—have weaponized legitimate concerns about antisemitism by deeming any criticism levied against the Israeli government's policies and practices antisemitic.<sup>129</sup> Individuals and entities aligned with both major American political parties continue to invoke this conflation to silence and stigmatize pro-Palestinian advocacy.<sup>130</sup> At times driven by faculty or alumni pressure, efforts to discredit and censor pro-Palestinian scholarship has penetrated law schools and the journals that produce legal scholarship.<sup>131</sup>

On the legislative front, multiple state legislatures have introduced bills that would codify the widely criticized International Holocaust Remembrance Alliance (IHRA) definition of antisemitism.<sup>132</sup> This builds on efforts by approximately thirty states to redefine antisemitism<sup>133</sup>—many of which replicated

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128. See Ryan D. Doerfler et al., *A Call for Institutional Fairness on Palestine*, LAW & POL. ECON. BLOG (Nov. 21, 2023), <https://lpeproject.org/blog/a-call-for-institutional-fairness-on-palestine> [<https://perma.cc/WFW3-GWBL>].
  129. #RaceClass, *The Anti-Zionism = Anti-Semitism Power Play*, SOUNDCLLOUD (Dec. 6, 2023), <https://soundcloud.com/user-808872105/ep-24-the-anti-zionism-anti-semitism-power-play> (press play to listen to the podcast) (last visited July 23, 2024).
  130. See, e.g., Letter from the ACLU et al., to Co-Sponsors of Proposed American Bar Association Resolution 514 on Antisemitism 2 (Jan. 18, 2023), <https://www.acu.org/documents/letter-co-sponsors-proposed-american-bar-association-resolution-514-antisemitism> [<https://perma.cc/6RDS-6KQD>] (arguing that “[o]ngoing efforts to codify the I[n]ternational H[olocaust] R[emembrance] A[llyance] definition into law and policy, including at the A[merican] B[ar] A[ssociation], are invariably framed as efforts to fight antisemitism. Yet, the clear objective behind the promotion of the IHRA definition is the suppression of non-violent protest, activism, and criticism of Israel and/or Zionism . . .”).
  131. See Jake Offenhartz, *Columbia Law Review's Website Is Shut Down After Publishing Article Critical of Israel*, PBS NEWS (June 4, 2024, 8:49 PM), <https://www.pbs.org/newshour/education/columbia-law-reviews-website-is-shut-down-after-publishing-an-article-critical-of-israel> [<https://perma.cc/N263-YLXT>].
  132. See Geoff Mulvihill, *Lawmakers in Several U.S. States Push for Laws Defining Antisemitism*, PBS NEWS HOUR (Jan. 29, 2024, 9:21 AM), <https://www.pbs.org/newshour/politics/lawmakers-in-several-u-s-states-push-for-laws-to-define-antisemitism> [<https://perma.cc/6SJA-ZLRD>]; see also *Working Definition of Antisemitism*, INT'L HOLOCAUST REMEMBRANCE ALL., <https://holocaustremembrance.com/resources/working-definition-antisemitism> [<https://perma.cc/32W7-LWBE>]. For a discussion of various definitions of antisemitism and background of advocacy around them, see Masha Gessen, *In the Shadow of the Holocaust: How the Politics of Memory in Europe Obscures What We See in Israel and Gaza Today*, NEW YORKER (Dec. 9, 2023), <https://www.newyorker.com/news/the-weekend-essay/in-the-shadow-of-the-holocaust> [<https://perma.cc/XU3E-FA29>].
  133. Geoff Mulvihill, *There's a Wave of New Bills to Define Antisemitism. In These 3 States, They Could Become Law*, ASSOCIATED PRESS (Jan. 30, 2024, 8:12 AM), <https://apnews>.

former President Trump’s 2019 Executive Order 13899 that adopted the IHRA definition.<sup>134</sup>

At the federal level, the U.S. House passed a bill that would amend the U.S. tax code to “terminate the tax-exempt status of ‘terrorist supporting organizations.’”<sup>135</sup> Professor Maryam Jamshidi explains that the bill is “[i]ntended to respond to pro-Palestine student organizing” and “gives the Secretary of the Treasury unilateral authority to suspend the 501(c)(3) status of any U.S. organization they determine has provided ‘material support’ to certain kinds of groups in the preceding three years.”<sup>136</sup> Jamshidi notes with concern that federal officials could weaponize the law by “pushing the baseless narrative that [Students for Justice in Palestine] chapters are fronts for Hamas”—a claim that pro-Israel politicians and groups had made even before October 7, 2023.<sup>137</sup>

At the state level, Florida Bill H.B. 465 requires state colleges and universities “to assess the out-of-state fee for [post-secondary] students who promote [what they define as] a foreign terrorist organization.”<sup>138</sup> The bill renders such students ineligible for financial aid.<sup>139</sup> In October 2023, Florida’s Board of Governors Chancellor invoked this legislation in a directive to Florida university presidents to disband chapters of Students for Justice in Palestine (SJP), a student group that advocates for Palestinian rights.<sup>140</sup> It is unclear whether any presidents have taken steps to deactivate the SJP chapters.<sup>141</sup> Even in states without discriminatory censorship laws, universities have suspended or otherwise sanctioned student groups that openly support Palestinian causes.<sup>142</sup>

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com/article/antisemitism-definition-states-law-zionism-indiana-georgia-871571f3b392455b1479827bdf1f5ea7 [https://perma.cc/7CLQ-BXJQ].

134. See Postsecondary Education Students, H.B. 465, 2024 Reg. Sess. (Fla. 2024).

135. Maryam Jamshidi, *Securitizing the University*, LAW & POL. ECON. BLOG (June 3, 2024), <https://lpeproject.org/blog/universities-securitization-palestine/> [https://perma.cc/JMV5-RPNC].

136. *Id.*

137. See also Maryam Jamshidi, *Students for Justice in Palestine, Governors for Authoritarianism in Florida*, LAW & POL. ECON. BLOG (Nov. 9, 2023), <https://lpeproject.org/blog/students-for-justice-in-palestine-and-governors-for-authoritarianism-in-florida> [https://perma.cc/L275-VMGH].

138. Fla. H.B. 465.

139. *Id.*

140. *Students for Just. in Palestine at Univ. of Fla. v. Rodrigues*, No. 1:23CV275-MW/MJF, 2024 WL 37454, (N.D. Fla. Jan. 31, 2024). For more information about the case, see *Students for Justice in Palestine at the University of Florida v. Raymond Rodrigues*, ACLU (Nov. 16, 2023), <https://www.aclu.org/cases/students-for-justice-in-palestine-at-the-university-of-florida-v-raymond-rodrigues> [https://perma.cc/RZ2L-2PB5].

141. *Id.* at 13 (finding in part that “that no actions have been taken in pursuit of deactivation under the Chancellor’s memorandum.”).

142. See, e.g., Press Release, ACLU, NYCLU and Palestine Legal Sue Columbia University Over Student Group Suspension (Mar. 12, 2024), <https://www.nyclu.org/press-release/>

This targeting of pro-Palestinian advocacy tracks broader trends in which politicians and university leaders wield state power to repress criticism of Israel’s military campaign against Gaza.<sup>143</sup> This past spring, university presidents in deep Red and Blue states deployed armed police forces to arrest and harass their own students and faculty for engaging in peaceful protest.<sup>144</sup> The SRE commented on this disturbing trend following her recent country visit to the United States:

Riot units reportedly used tear gas and rubber bullets in clashes with demonstrators, there are reports of violent arrests leading to injuries, including concussions and broken bones requiring hospital treatment, as well as harassment of the protesters . . . . In addition, universities have reportedly taken disciplinary measures against those who participated or plan to participate in the protests . . . . All these measures have inevitably created a chilling effect on the whole academic community and a climate of intimidation.<sup>145</sup>

As we write, House GOP leadership—among other elected officials—marshal cynical antisemitism talking points to smear individual academics and discredit higher education writ large.<sup>146</sup> On April 17, 2024, Columbia University President Minouche Shafik appeared before the Republican-led U.S. House of Representatives Committee on Education and the Workforce.<sup>147</sup> Modelled after a December 2023 hearing that triggered the ousting of two university presidents, the April 17 hearing bore the title “Columbia in Crisis: Columbia

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nyclu-and-palestine-legal-sue-columbia-university-over-student-group-suspension [https://perma.cc/9ZMA-D4BU] (noting “lawsuit against Columbia University for the unlawful suspension of its chapters of Students for Justice in Palestine (SJP) and Jewish Voice for Peace (JVP) for engaging in peaceful protest”).

143. See, e.g., Paul Butler, *Opinion, Columbia’s President Is Committed to One Principle: Keeping Her Job*, WASH. POST (Apr. 23, 2024, 5:43 PM), <https://www.washingtonpost.com/opinions/2024/04/23/columbia-university-president-committed-job> [https://perma.cc/U7QW-TELV].
144. See, e.g., Dan Rosenzweig-Ziff, Jennifer Hassan, Richard Morgan, Karin Brulliard & Kelly Kasulis Cho, *More Arrests and a Canceled Commencement as College Antiwar Rallies Spread*, WASH. POST (Apr. 26, 2024, 10:26 AM), <https://www.washingtonpost.com/nation/2024/04/25/university-protests-gaza-arrests-emerson-usc> [https://perma.cc/E6UL-BXNA].
145. Statement from Special Rapporteur, *supra* note 3, at 2.
146. See generally Katherine Knott, *Colleges in Republicans’ Crosshairs Enroll Only a Sliver of U.S. College Students*, INSIDE HIGHER EDUC. (June 10, 2024), <https://www.insidehighered.com/news/government/politics-elections/2024/06/10/congress-targets-unrepresentative-sliver-higher-ed> [https://perma.cc/BQ9E-C56T].
147. Noah Bernstein, Sarah Huddleston, Shea Vance & Esha Karam, *Live Updates: Shafik Testifies Before Congress on Columbia’s Handling of Antisemitism on Campus*, COLUMBIA SPECTATOR (Apr. 17, 2024), <https://www.columbiaspectator.com/news/2024/04/17/live-updates-shafik-testifies-before-congress-on-columbias-handling-of-antisemitism-on-campus> [https://perma.cc/63NX-ZCAQ].

University's Response to Antisemitism."<sup>148</sup> During the hearing, President Shafik promised that a visiting professor "will never work at Columbia again" and "pledge[d] to crack down on . . . tenured faculty that the [U.S. House] committee targeted as antisemitic and demanded disciplinary action be taken against."<sup>149</sup> AAUP National President Irene Mulvey remarked that "[w]e are witnessing a new era of McCarthyism where a House committee is using college presidents and professors for political theater."<sup>150</sup>

The day following the hearing, Shafik requested that the New York Police Department (NYPD) remove protesting Columbia students from the university campus. The NYPD responded by arresting over a hundred students.<sup>151</sup> The AAUP issued a concise statement denouncing Columbia's treatment of student protestors:

We condemn in the strongest possible terms the Administration's suspension of students engaged in peaceful protest and their arrest by the New York City Police Department. These acts violate the letter and the spirit of the University Statutes, shared governance, students' rights, and the University's absolute obligation to defend students' freedom of speech and to ensure their safety.<sup>152</sup>

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148. *Id.*

149. Alan Blinder, *Columbia Leaders Grilled at Antisemitism Hearing Over Faculty Comments*, N.Y. TIMES (May 7, 2024, 1:52 PM), <https://www.nytimes.com/live/2024/04/17/nyregion/columbia-antisemitism-hearing?searchResultPosition=2> [https://perma.cc/57XK-R8FV].

150. Stephanie Saul, *Who Are the Columbia Professors Mentioned in the House Hearing?*, N.Y. TIMES (Apr. 17, 2024), <https://www.nytimes.com/2024/04/17/nyregion/jospeh-massad-katherine-franke-mohamed-abdou-columbia-university.html> [https://perma.cc/JMP2-FRXX]. Mulvey added that "President Shafik's public naming of professors under investigation to placate a hostile committee sets a dangerous precedent for academic freedom and has echoes of the cowardice often displayed during the McCarthy era." *Id.* Elements of today's coordinated assault on academic freedom also have more recent echoes. See Juan Cole, *The New McCarthyism*, SALON (Apr. 22, 2005, 7:49 PM), [https://www.salon.com/2005/04/22/mccarthy\\_5](https://www.salon.com/2005/04/22/mccarthy_5) [https://perma.cc/D99B-TZDE] (drawing parallels between the McCarthy era and a 2005 controversy in which a Columbia University professor was targeted for their speech critical of the Israeli government's policies).

151. Judd Legum, *Columbia University Protests and the Lessons of "Gym Crow"*, POPULAR INFO. (Apr. 22, 2024), <https://popular.info/p/columbia-university-protests-and> [https://perma.cc/A93G-6KVZ].

152. Laura Spitalniak, *Pro-Palestinian Legal Group Files Civil Rights Compliant Against Columbia University*, HIGHER ED DIVE (Apr. 26, 2024), <https://www.highereddive.com/news/pro-palestinian-legal-group-civil-rights-complaint-columbia-university-gaza> [https://perma.cc/CQ9R-VSCQ].

### III. PRIVATIZING PUBLIC EDUCATION AND DEFUNDING HIGHER EDUC.

A distinct source of academic freedom's present precarity flows from neoliberal policy and the empowerment of private interests, issues to which we now turn. Decades of neoliberal ideology and reforms—a hallmark of Democratic and Republican administrations—have eroded university autonomy and faculty independence.<sup>153</sup> Neoliberal policies have fueled the corporatization of the academy and enhanced control of it by corporations and the wealthy.<sup>154</sup>

Neoliberalism theorizes that “governmental power is inherently prone to corruption, and that private markets freed from burdensome regulations are the best way to build wealth . . . and distribute the goods and services necessary for human flourishing.”<sup>155</sup> In practice, “neoliberal policy has dramatically increased economic precarity [in the United States] and concentrated wealth in fewer and fewer hands.”<sup>156</sup>

At the K-12 level, “neoliberal initiatives such as voucher programs, charter schools, state funding for parochial schools, and attacks on teachers and teacher unions seek to undermine public education and create opportunities for private profiteering.”<sup>157</sup> For higher education, neoliberal policy has resulted in “dramatic reductions in state funding which have rendered colleges and universities increasingly dependent on” private sources and student tuition, with students in turn increasingly dependent on loans.<sup>158</sup> It has also stimulated “the gradual replacement of tenure-track faculty with poorly paid adjuncts denied security of employment,” and therefore, security for expression, “and the closing of humanities departments and programs that teach students to think critically.”<sup>159</sup>

The 1980s push to privatize and decrease public services led to the privatization of a host of public functions.<sup>160</sup> In the process, interest groups, including right-wing donors and politicians, have systematically eroded key pillars of our public K-12 schools and higher education by privatizing both domains. Increased privatization has, in turn, stripped resources from our public education

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153. See Christine Morley, *The Systemic Neoliberal Colonization of Higher Education: A Critical Analysis of the Obliteration of Academic Practice*, 51 AUSTL. EDUC. RESEARCHER 571, 571 (2024).

154. See Jason Del Gandio, *Neoliberalism and the Academic-Industrial Complex*, TRUTHOUT (Aug. 12, 2010), <https://truthout.org/articles/neoliberalism-and-the-academicindustrial-complex> [<https://perma.cc/V4CJ-2L8A>].

155. Mutua et al., *supra* note 120.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. See Lieberwitz, *supra* note 65, at 324–25.

systems and centralized power within individuals and entities often hostile to public education and multiracial democracy itself.

### A. Privatizing K-12 Education

The move to privatize public K-12 education has had bipartisan support, influencing the policies of the G.W. Bush, Obama, and Trump administrations.<sup>161</sup> Recent reporting reveals that the K-12 privatization agenda is funded and led “by a very small group of American billionaires.”<sup>162</sup> In addition to dark money sources, proponents range from the Walton family (Walmart) and Charles Koch (Koch Industries), to Bill Gates (Bill & Melinda Gates Foundation) and Mark Zuckerberg (Facebook).<sup>163</sup>

Diane Ravitch, a leading education historian and a former member of the conservative school reform movement, explains that the reform-cum-privatization movement “is not meant to reform public education but is a deliberate effort to replace public education,” a system which educates nearly 90 percent of American children,<sup>164</sup> “with a privately managed, free-market system of schooling.”<sup>165</sup> Ravitch argues that contrary to the view of education privatizers, many challenges—particularly in urban schools—derive from poverty and segregation.<sup>166</sup> Commonly proposed reforms—e.g., private management and control, increased standardize testing, competition among schools and accountability (which often entails closing “failing” schools)—fail to remedy these core issues.<sup>167</sup> Ravitch further argues that privatization has failed to deliver on its promises of improved educational quality and racial equity as measured by its own key criteria: it has failed to raise test scores, and charter schools are more segregated than public schools.<sup>168</sup>

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161. See generally DIANE RAVITCH, *SLAYING GOLIATH: THE PASSIONATE RESISTANCE TO PRIVATIZATION AND THE FIGHT TO SAVE AMERICA’S PUBLIC SCHOOLS* loc. 2679 (2020) (ebook) (discussing the educational policies of all three administrations and noting that from “Ronald Reagan to Donald Trump, six successive administrations in Washington, D.C., actively encouraged and funded Corporate Disruption,” which they claimed was reform but Ravitch argues was actually meant to disrupt, redesign, and privatize American public education).

162. JIM FREEMAN, *RICH THANKS TO RACISM: HOW THE ULTRA-WEALTHY PROFIT FROM RACIAL INJUSTICE* 53 (2021).

163. *Id.* at 53–55.

164. DIANE RAVITCH, *REIGN OF ERROR: THE HOAX OF THE PRIVATIZATION MOVEMENT AND THE DANGER TO AMERICA’S PUBLIC SCHOOLS* 320 (2013).

165. *Id.* at 4.

166. *Id.*

167. *Id.*

168. *Id.* at 4, 293; see also RAVITCH, *supra* note 161, loc. 117, 2602.

Jim Freeman, a civil rights attorney, notes that the privatization movement has operated heavily in communities of color.<sup>169</sup> The reforms, he suggests, are often imposed without community consultation, or despite opposition, and have led to an epidemic of school closings that destabilize these communities.<sup>170</sup> Among other examples, Freeman notes that Chicago, IL, Detroit, MI, and Saint Louis, MO public school districts (each with over 88 percent students of color) have shuttered at least 126, 200, and 44 public schools, respectively, in the relevant time period.<sup>171</sup>

While Ravitch distinguishes among the various types of educational privatizer advocates, both she and Freeman observe that school privatization functions as a “money grab.”<sup>172</sup> In concrete terms, fully privatizing public education would entail a transfer of a half trillion dollars of “public funds to private management and the creation of thousands of deregulated, unsupervised, and unaccountable schools [that open] the public coffers to profiteering, fraud, and exploitation by large and small entrepreneurs.”<sup>173</sup>

## **B. Privatizing (and Corporatizing) Higher Education**

In the domain of higher education, privatization has resulted in the steep decline of public funding for higher education from the federal government (which “mainly provides financial assistance to individual students and specific research projects”) and the states (which “primarily pay for the general operations of public institutions.”<sup>174</sup>) This decline in funding has had more deleterious effects on public (relative to private) universities.<sup>175</sup> Professor Risa Lieberwitz has detailed how privatizing higher education has yielded multiple negative consequences: higher tuition fees, increased commodification of education, and staggering student debt, with universities forced to search for additional funds in the private market or cut programs, driving declines in liberal arts studies.<sup>176</sup>

Corporatization is pervasive throughout the American university. The increased influence of private actors has shifted the university’s societal role from

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169. See FREEMAN, *supra* note 162, at 41–45, 53, 77.

170. *Id.* at 45–46, 78–79.

171. *Id.* at 43.

172. *Id.* at 41.

173. RAVITCH, *supra* note 164, at 4.

174. *Two Decades of Change in Federal and State Higher Education Funding*, PEW CHARITABLE TRS. (Oct. 15, 2019), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/10/two-decades-of-change-in-federal-and-state-higher-education-funding> [https://perma.cc/U9PP-J9H5].

175. Lieberwitz, *supra* note 65, at 318–33.

176. See *id.*

erving a democratic public mission to catering to private economic interests—specifically, the economic interests of for-profit corporations.<sup>177</sup> Further, the corporate business model of managing universities as a business “strengthen[s] the top-down [decisionmaking] power of the administration,”<sup>178</sup> encourages university-industry ties, and “creates a strong incentive to commercialize academic research.”<sup>179</sup> This dynamic “undermine[s] [universities’] institutional independence, faculty impartiality in choosing and carrying out a research agenda, and the norms of the academic profession.”<sup>180</sup>

In terms of academic research, American colleges and universities have institutionalized academic peer review of sponsored research, though administrators often manage these offices. Federal government agencies such as the National Endowment for the Humanities (NEH), the National Science Foundation, and the National Institutes of Health (NIH)—agencies which primarily fund intellectual research—often employ peer review processes.<sup>181</sup> Although government funding “shapes research agendas through its descriptions of research interests and award of grants, the public-interest ethos of some agencies and the peer review process place constraints on the use of agency power or personal financial interests to skew research grants in an unchecked capitalist, anti-democratic direction.”<sup>182</sup>

Over time, federal government funding of academic research has steadily declined. During the post-World War II expansion of public funding for academic research, the federal government provided 60 to 70 percent of university research support. After the Reagan administration launched an era of neoliberal policies in the 1980s, this support began to decline—a trend that endures. Between 2000 to 2017, federal funding for academic research decreased from 57 percent to 51 percent.<sup>183</sup>

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177. *See id.*

178. *Id.* at 325.

179. *Id.*

180. *Id.* at 326.

181. For a list of U.S. federal grant-making agencies, see *Grant-Making Agencies*, <https://www.grants.gov/learn-grants/grant-making-agencies.html> [<https://perma.cc/SEE9-RVQ5>]. *See e.g., Peer Review for Sponsored Research*, HARVARD MED. SCH., <https://ari.hms.harvard.edu/research-influence/peer-review-confidentiality/peer-review-sponsored-research#:~:text=Peer%20Review%20for%20sponsored%20research%20funding%20is%20a%20process%20adopted,strength%20of%20proposed%20research%20plans> [<https://perma.cc/W7MN-KTMX>] (describing National Institutes of Health peer review for sponsored research).

182. Lieberwitz, *supra* note 65, at 324.

183. *Id.*

This was accompanied by the promulgation of laws like the 1980 Bayh-Dole Act,<sup>184</sup> which alongside the corporatization of the university, incentivized the commercialization of academic research.<sup>185</sup> The Act “permits and encourages universities and other federal fund recipients to patent and license research resulting from the use of federal funds, including exclusive licenses to for-profit corporations.”<sup>186</sup> Previously, the government held many of the patents to research and resulting inventions. This meant that the research and inventions remained in the public domain for possible public use. The shift relocated certain kinds of academic research from the public domain into private, often for-profit hands. As Lieberwitz observed, “before the Bayh-Dole Act, [U.S.] universities obtained 264 patents . . . . Between 1988 and 2003, [U.S.] patents awarded to academic institutions [jumped] from about 800 to more than [3200] per year . . . and by 2016 had more than doubled [from that total to over 6600].”<sup>187</sup> This practice continues “[d]espite the fact that patents and licenses have not been lucrative for most universities.”<sup>188</sup>

On another front, corporatization and limited funding have led to a steady decline in the number of tenured faculty. Nationally, the “percentage of tenure-track [and] tenured faculty positions has plummeted from 78 percent in 1969 to . . . 30 percent” today.<sup>189</sup> In their place, universities have hired contingent faculty. Growth in contingent faculty—a status in which people of color and women are overrepresented—stratifies the faculty and delinks academic freedom from tenure. This status, unprotected by tenure processes, limits contingent faculty’s ability to freely express themselves and participate in shared governance. At the same time, higher education has witnessed an increase in administrative staff. Between 1976 and 2015, for example, “the number of full-time university executives and managers grew by 140 percent.”<sup>190</sup> Faculty grew at a smaller rate over the same period.<sup>191</sup>

These trends have not only increased the power of administrators but also increased the power and influence of corporate funders and donors over academics and universities. This influence empowers private entities to shape

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184. *Id.* at 325.

185. *Id.*

186. *Id.*

187. *Id.* (citing Jon Marcus, *Think Universities Are Making Lots of Money From Inventions? Think Again*, THE HECHINGER REP. (Jan. 17, 2020), <https://hechingerreport.org/think-universities-are-making-lots-of-money-from-inventions-think-again> [https://perma.cc/CS9R-QWKS]).

188. Lieberwitz, *supra* note 65, at 325.

189. *Id.* at 327.

190. *Id.*

191. *Id.*

institutions and research to meet their own narrow pecuniary needs and ideological perspectives, which overall tend to be more conservative than those of the American public.<sup>192</sup> Multiple recent scandals implicating law school independence reveal how donors have driven institutional governance in ways that favor right-wing economic and political interests.<sup>193</sup>

One such episode involved the donor-driven reshaping of George Mason Law School through secret gift agreements, some of which “revealed egregious violations of academic freedom and [university] independence that had been carried out for years.”<sup>194</sup> George Mason University (GMU) was founded in 1972 as a public institution with a small endowment.<sup>195</sup> In the 1980s, Charles Koch—the highly influential libertarian activist—identified GMU as a potential “stronghold of libertarian economics.”<sup>196</sup>

To realize that goal, Koch and his foundation contributed nearly \$100 million to the university between 2005 and 2015, directing most of those funds to the economics department and the law school’s libertarian Law and Economics Center, “which provides corporate-backed ‘free-market’ educational workshops for federal and state judges and attorneys general.”<sup>197</sup> Presumably, these institutions provide the intellectual scaffolding—including the increasingly discredited theory of trickle-down economics—that support the free-market, antitax, anti-government and anti-public education policies associated with and beneficial to the Koch-affiliated network.<sup>198</sup> Then in 2016, “the Koch Foundation and an anonymous donor gave \$30 million to the GMU law school.”<sup>199</sup> The gift

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192. See Timothy K. Kuhner, *The Third Coming of American Plutocracy: What Campaign Finance Reformers Are Up Against*, in *DEMOCRACY BY THE PEOPLE: REFORMING CAMPAIGN FINANCE IN AMERICA* 19, 36 (Eugene D. Mazo & Timothy K. Kuhner eds., 2018) (footnotes omitted) (“[T]his elite class of donors and spenders is highly unrepresentative of the general public. Beyond being overwhelmingly white and wealthy, and mostly male, the donor class does not want the same things from government as average citizens do. Indeed, studies suggest that conservative economic views are what most distinguish campaign donors from the rest of the population and even from other wealthy citizens. Donors’ conservative views on economic matters coincide with the legal and policy environment driving economic inequality.”).

193. See Shawn Musgrave, *Leonard Leo Built the Conservative Court. Now He’s Funneling Dark Money into Law Schools.*, *THE INTERCEPT* (May 29, 2024, 6:00 AM), <https://theintercept.com/2024/05/29/leonard-leo-donor-law-schools> [<https://perma.cc/QX2Y-VABX>].

194. Bethany L. Letiecq, *George Mason University’s Donor Problem and the Fight for Transparency*, *AM. ASS’N OF UNIV. PROFESSORS*, <https://www.aaup.org/article/george-mason-university%E2%80%99s-donor-problem-and-fight-transparency> [<https://perma.cc/92XL-T5KS>].

195. *Id.*

196. *Id.*

197. See *id.*

198. *Id.*; see also Lieberwitz, *supra* note 65, at 326.

199. Letiecq, *supra* note 194.

stipulated funding for new faculty hires, which “raised questions about a donor’s ability to influence the makeup of faculty in a school and whether such provisions essentially subsidize the donor’s intent.”<sup>200</sup>

Concerned stakeholders, including students and faculty, criticized the gift agreement for “providing donors with too much influence [and] also violating principles of academic freedom.”<sup>201</sup> However, while the faculty and students in Virginia continue to work to ensure transparency of donor gift agreements, GOP politicians, often funded by the same donor networks, have stepped into the breach. Elsewhere, in Wisconsin, the GOP-led state legislature withheld funding for the state university system of Wisconsin until it agreed to freeze hiring in DEI, eliminate a program for hiring a diverse cohort of faculty members and raise funds for a new position that would focus on “conservative political thought, classical economic theory, or classical liberalism.”<sup>202</sup>

In a separate incident, UNC’s journalism school failed to secure the appointment of Nikole Hannah-Jones (the recipient of a MacArthur Fellowship and a Pulitzer Prize), despite an ultimate offer.<sup>203</sup> In 2020, after the dean of UNC’s journalism school “raised the possibility of appointing [Hannah-Jones] to an endowed chair,” Hannah-Jones began the “rigorous tenure process” necessary to secure the appointment.<sup>204</sup> Reflecting her impressive credentials, Hannah-Jones received widespread faculty and administrative support—including the dean’s review that Hannah-Jones had “the best” tenure file she had ever seen.<sup>205</sup> The Board of Trustees, who possessed final authority on the appointment, nonetheless delayed review of Hannah-Jones’s file.<sup>206</sup> Reporting revealed that the delay was precipitated by concerns from influential donors and political appointees who disliked the substance of Hannah-Jones’s scholarship.<sup>207</sup>

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200. *Id.*

201. *Id.*

202. Erin Gretzinger, ‘We Were Under So Much Pressure’: Inside Wisconsin’s Tumultuous Budget Deal, *THE CHRON OF HIGHER EDUC.* (Mar. 22, 2024), <https://www.chronicle.com/article/we-were-under-so-much-pressure-inside-wisconsins-tumultuous-budget-deal> [<https://perma.cc/J63M-XH9Q>].

203. See Katie Robertson, *Nikole Hannah-Jones Denied Tenure at University of North Carolina*, *N.Y. TIMES* (July 15, 2022), <https://www.nytimes.com/2021/05/19/business/media/nikole-hannah-jones-unc.html> [<https://perma.cc/UK64-QK3Y>].

204. FLEISHER ET AL., *supra* note 70, at 26.

205. *Id.*

206. See Joe Killian, *Deadline Set for Lawsuit in Nikole Hannah-Jones Tenure Controversy*, *N.C. NEWSLINE* (May 29, 2021, 10:42 AM) <https://pulse.ncpolicywatch.org/2021/05/29/pw-exclusive-deadline-set-for-lawsuit-in-nikole-hannah-jones-tenure-controversy> [<https://perma.cc/64J9-7ZJR>].

207. See FLEISHER ET AL., *supra* note 70, at 26.

One such opponent was Walter Hussman, Jr., who had donated \$25 million to UNC's journalism school (renamed in his honor) and lobbied against Hannah-Jones's appointment. He raised concerns in multiple correspondences to UNC leadership about her support of reparations for Black Americans.<sup>208</sup> Two North Carolina congresspeople—including Representative Virginia Foxx, who now chairs the same House Committee targeting academics who engage in pro-Palestinian speech—also attempted to block Hannah-Jones's appointment.<sup>209</sup> In a letter to UNC's Chancellor, Representative Foxx suggested that “[Hannah-Jones's] portrayals of ‘White America’ are purposely divisive, a characteristic that objectively questions her ability to lead a program at UNC.”<sup>210</sup>

And as referenced above, since October 7, 2023, Representative Foxx has weaponized claims of antisemitism and the power of her congressional office to harass academics and smear higher education itself.<sup>211</sup> In one of her first publicity stunts,<sup>212</sup> Representative Foxx leveraged her federal subpoena power to hold public hearings with university leaders from Harvard University, the University of Pennsylvania, the Massachusetts Institute of Technology (MIT), and Columbia University.<sup>213</sup> Within a month after the hearing, Harvard University's president, Dr. Claudine Gay,<sup>214</sup> and the University of Pennsylvania's president, Dr. Liz Magill, resigned from their respective roles.

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208. *Id.* at 27.

209. *See id.*

210. Matt Shuham, *GOP Reps Objected to Nikole Hannah-Jones's Hiring in Letter to UNC Chancellor*, TALKING POINTS MEMO (Aug. 3, 2021, 6:18 PM), <https://talkingpointsmemo.com/news/gop-reps-objected-to-nikole-hannah-jones-hiring-in-letter-to-unc-chancellor> [https://perma.cc/HQ2S-KTZS].

211. *See* Letter from Concerned Law Professors, *supra* note 98.

212. *See* Press Release, Comm. on Educ. & the Workforce, Foxx Calls on Columbia President, Trustees to Restore Order on Campus (Apr. 21, 2024), <https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=410478> [https://perma.cc/4TBH-N59D].

213. Katie Lobosco, *Harvard, Penn and MIT Presidents Face Grilling by Congress Over Antisemitism*, CNN (Dec. 5, 2023, 3:36 PM), <https://www.cnn.com/2023/12/05/politics/harvard-penn-mit-antisemitism-congress/index.html> [https://perma.cc/4AQY-LYCU]; Annie Ma & Collin Binkley, *Columbia's President Rebutts Claims She Has Allowed the University to Become a Hotbed of Antisemitism*, ASSOCIATED PRESS (Apr. 17, 2024, 5:36 PM), <https://apnews.com/article/columbia-president-congress-israel-hamas-antisemitism-3255357b4443c1fb4bae8b8ea5774ee5> [https://perma.cc/YWB3-JE25].

214. Alvin Tillery, *Putting the Racist Crusade Against Harvard's Dr. Claudine Gay in Context*, MEDIUM (Jan. 5, 2024), <https://medium.com/@atillery2/putting-the-racist-crusade-against-harvards-dr-claudine-gay-in-context-26535c307f96> [https://perma.cc/98Y2-G94U]; Richard Luscombe, *University of Pennsylvania President Resigns After Furor Over Free Speech and Antisemitism*, THE GUARDIAN (Dec. 9, 2023, 5:17 PM), <https://www.theguardian.com/us-news/2023/dec/09/university-of-pennsylvania-president-free-speech-antisemitism> [https://perma.cc/8TLZ-8J65].

While House Republicans played a role in these departures, wealthy donors also fueled intense pressure campaigns against Gay and Magill.<sup>215</sup> One of those donors, Marc Rowan, had criticized President Magill prior to Oct. 7 for allowing UPenn to stage a Palestinian literary festival, on the claim that the festival was antisemitic.<sup>216</sup> Later, apparently in his role as chair of the board of advisors of UPenn's Wharton School, he sent a letter to UPenn's trustees suggesting that "hard choices" would need to be made, potentially including issues related to closing departments, examining faculty hires, and clarifying student free speech rules. The email generated a harsh response signed by 900 UPenn faculty members, among others, explaining that these types of decisions were not within the purview of trustees but rather the product of shared governance practices among those with academic expertise.<sup>217</sup>

For her part, Harvard President Gay became the target of a coordinated right-wing and racially-fueled smear campaign.<sup>218</sup> Many who cheered on this

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215. See Robert Reich, *Powerful Donors Managed to Push out Harvard's Claudine Gay. But at What Cost?*, THE GUARDIAN (Jan. 3, 2024, 7:20 AM), <https://www.theguardian.com/commentisfree/2024/jan/03/powerful-donors-managed-to-push-out-harvards-claudine-gay-but-at-what-cost?ref=biztoc.com> [https://perma.cc/R5VH-NU2S] (outlining abuse of power by wealthy donors like Kenneth Griffin "who earned billions on Wall Street" [Citadel LLC and Citadel Securities], Bill Ackman, "who heads the giant hedge fund Pershing Square Capital Management," Marc Rowan, "chief executive of Apollo Global Management and the chair of the board of Penn's Wharton School, and Jay Clayton, "chairman of Apollo's board, among others). Ross Stevens is the "founder and chief executive officer of Stone Ridge Holdings Group, a financial-services firm, [and he] informed Penn in a letter that he would cancel \$100 million of Stone Ridge shares held by the university if it didn't replace President Liz Magill." Melissa Korn & Joseph De Avila, *Penn Donor Threatens to Rescind \$100 Million Gift Unless President Is Ousted*, WALL ST. J. (Dec. 17, 2023, 11:26 PM), <https://wsj.com/us-news/education/university-of-pennsylvania-president-liz-magill-congressional-testimony-antisemitism-backlash-97376d49> [https://perma.cc/SZ2Y-NUUD].
216. Ramishah Maruf, *UPenn Donors Were Furious About the Palestine Writes Literature Festival. What About It Made Them Pull Their Funds?*, CNN (Oct. 25, 2023, 8:11 AM), <https://www.cnn.com/2023/10/25/business/palestine-writes-literature-festival-what-happened/index.html#:~:text=The%20root%20of%20their%20anger,characterization%20or ganizers%20and%20attendees%20reject.> [https://perma.cc/AP6K-3ARB]; Maureen Tkacik, *The Moral Authority of Marc Rowan*, THE AM. PROSPECT (Oct. 21, 2023), <https://prospect.org/power/2023-10-21-moral-authority-of-marc-rowan> [https://perma.cc/E5VJ-EGHY].
217. Ethan Young, *Over 900 Penn Faculty Warn of 'Hostile Takeover' by Trustees, Donors in Response to Marc Rowan Letter*, DAILY PENNSYLVANIAN (Dec. 17, 2023, 3:08 PM), <https://www.thedp.com/article/2023/12/penn-faculty-concern-marc-rowan-letter> [https://perma.cc/W246-NF2V].
218. See Brakkton Booker, *Was Claudine Gay's Ouster From Harvard Racially Motivated*, POLITICO (Jan. 3, 2024, 2:18 PM), <https://www.politico.com/newsletters/the-recast/2024/01/03/clauidine-gay-harvard-ouster-00133649> [https://perma.cc/9GD8-FH4Q] ("[Gay's] critics trumpeted victory once her resignation became public Tuesday, after a very meticulous and overt campaign to smear Gay, Harvard's first Black woman president.").

campaign openly situated it within a broader effort to discredit and dismantle DEI.<sup>219</sup>

These episodes illustrate the increasing power of external forces—themselves hostile to higher education’s basic mission—to influence and shape institutional governance. Not only does external interference hinder every college and university’s truth-seeking function, but it also cripples universities’ ability to serve as a check on authoritarian impulses. This dynamic should not surprise us. As we have noted from the outset, rising attacks on academic freedom across the globe serve antidemocratic ends.

### CONCLUSION

At its best, the autonomous and independent university functions as a democratic check against authoritarianism. Taking a playbook from dictators across the globe, antidemocratic forces in the United States now aim to erode the safeguards that buffer universities against interference from political ideologues and corporate interests. It behooves all institutional stakeholders, and all champions of freedom of expression, to counter these attacks. Little more than the future of American democracy depends on it.

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219. *See id.* (quoting Josh Hammer for Tweeting: “Claudine Gay’s is a huge scalp. No doubt about that. Especially when combined with Liz Magill’s a few weeks ago. But we can’t rest on our laurels. This is a fight for civilizational sanity against civilizational arson. We can’t stop until the DEI cancer is fully eliminated.”)

Advancing Diversity in Higher Education

# DIVERSITY

D I G E S T



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## Diversity and Learning: "A Defining Moment"

By Kathryn Peltier Campbell, editor, Diversity Digest

Growth is rarely an easy experience. But it is a necessary dimension of life's rhythms. In adolescence, confident children transition to insecure young adulthood; they outgrow their clothing, their self-images, sometimes even their bodies. Hermit crabs face a similar challenge: but instead of outgrowing their garments, they outgrow their shells, organic casings that provide shelter under which they can thrive. Children, of course, adjust. So too do hermit crabs—but not without initial discomfort as they shift to more spacious shells.

Caryn McTighe Musil, AAC&U vice president for diversity, equity, and global initiatives, likened diversity practitioners to these hermit crabs as she addressed the 2006 Diversity and Learning conference. Diversity education has outgrown its frameworks. Practitioners hesitate to leave the "structural, political, and intellectual shells" they have so painfully crafted. The diversity movement, Musil says, has reached a "defining moment." Like hermit crabs, diversity practitioners must choose: remain cramped inside the casings of established structures, or embrace growth and move toward new forms of engagement.

When Musil suggests that diversity educators need to shed their figurative shells, she speaks specifically of three distinct movements within diversity education: U.S. diversity, global learning, and civic engagement. Each movement, she notes, has unique strengths, and each movement has reasonable reservations about collaboration. Individuals in different movements fear that alliances will sap their resources or undercut their missions. In collaboration, however, these movements can create frameworks that are ultimately "more encompassing" than those of any single movement. They can accelerate their collective growth and impact by stepping beyond the casings that have constrained them.

As Musil recalled, diversity education has always been dynamic and evolving. The diversity education movement has, among other things, moved from a desire to advance social justice to seeing diversity as a means to promote academic excellence, civic learning, and engagement. The projects and theories presented at the 2006 Diversity and Learning conference, many of which are revisited in this issue of *Diversity Digest*, illustrate this process of change and renewal. They also illustrate the need to celebrate what Musil calls the "remarkable even if insufficient progress" diversity educators have made—even as the next generation of diversity education emerges.

*Diversity Digest*, too, has reached a point of transition. The educational initiatives we have promoted for over a decade have expanded beyond our structural boundaries. The next issue of *Diversity Digest* will introduce a new format, designed to incorporate the distinct and interrelated movements of civic engagement, global learning, and U.S. diversity. Growth, indeed, is rarely an easy experience—but we believe it will reward us with more spacious architecture for doing our transformative work.

To listen to a podcast of Caryn McTighe Musil's speech "*The Shell Game: Regeneration at the Crossroads*," visit [www.aacu.org/Podcast/DL06\\_podcasts.cfm](http://www.aacu.org/Podcast/DL06_podcasts.cfm). ■

## Complicating Diversity Categories: Jewish Identity in the Classroom

*By Christopher MacDonald-Dennis, assistant dean and director of intercultural affairs at Bryn Mawr College*

BECAUSE JEWISH IDENTITY CONFOUNDS ESTABLISHED AND UNDERSTOOD NOTIONS OF ETHNIC, RACIAL, NATIONAL, AND RELIGIOUS IDENTITY IN THIS COUNTRY, MANY DIVERSITY EDUCATORS FIND DISCUSSING JEWISH IDENTITY AND “PLACE” IN THE UNITED STATES CHALLENGING. JEWS CAN BE NEATLY CATEGORIZED NEITHER AS A RELIGIOUS GROUP NOR AS AN ETHNIC/NATIONAL GROUP, AND ALTHOUGH JEWS HAVE BEEN RACIALLY TARGETED IN EUROPE, EUROPEAN JEWS HAVE “BECOME” WHITE IN THE UNITED STATES. RESEARCHERS ACKNOWLEDGE THAT SOCIAL GROUP DESIGNATIONS THAT REFLECT EITHER/OR CATEGORIES OF ETHNICITY, RELIGION, OR CULTURE IN THE UNITED STATES ARE NOT ESPECIALLY HELPFUL IN UNDERSTANDING THE JEWS AS A DIASPORA PEOPLE WHO HAVE A HISTORY OF RACIALIZED OPPRESSION. JEWS ARE A RELIGIOUS COMMUNITY, A NATION, AND AN ETHNIC GROUP. JEWISH IDENTITY, PARTICULARLY IN THE UNITED STATES, IS MULTI-DIMENSIONAL AND DEFIES SIMPLE SOCIAL CATEGORIES. DIVERSITY EDUCATORS MUST ASSIST STUDENTS, BOTH JEWISH AND NON-JEWISH, IN UNDERSTANDING THE DYNAMICS OF JEWISH OPPRESSION, THE NATURE OF ANTI-SEMITISM, AND THE COMPLEX IDENTITY ISSUES JEWS FACE. IN DOING SO, WE COMBAT OPPRESSION IN ALL ITS FORMS.

Being Jewish is a salient identity for this generation of college students. The history of Jewish oppression continues to inform Jewish identity. Jewish college students in diversity education often articulate a complex understanding of the position of Jews in U.S.-based systems of ethnicity, religion, race, and class. Some claim that Jews are both insiders and outsiders in American society, targeted and privileged simultaneously in their ethno-religious and racial identities. In addition, these students often contend that Ashkenazi (Eastern European) Jews share similarities with both white Christians and non-Jewish people of color. Most importantly, students claim that anti-Semitism has affected them on campus, sometimes within the setting of multicultural programs. Jewish students engaged in diversity education often express internal conflict arising from the contradiction between their assigned identity and their self-image. Diversity educators are frequently uncertain of how to respond to white Jewish students who vigorously contest the ideas that are taught in U.S. classroom settings.

Diversity educators often hear from Jewish students when talking about race that they do not see themselves as “white,” but rather as “Jews.” In keeping with this self-identification, Jews should be understood as a distinctive identity group which is often described using racialized language. Adams (2001) contends that racialized groups are ones in which pan-ethnic lumping occurs (Ibos and Yoruba became black, Puerto Ricans and Mexican Americans became Latinos/as, Chinese Americans and Cambodian Americans became Asian Americans); members of racialized groups are seen as phenotypically different. Given that ethnic designations of Ashkenazi, Sephardic (Iberian), and Mizrahi (Arab/Middle Eastern) are subsumed under the larger rubric of “Jewish” and that one often hears that a Jew with certain features “looks Jewish,” Jews can be figured as such a racialized group.

In fact, anti-Semitism cannot be truly understood without considering it within the historical system of racial constructions. Anti-Semitism can even be considered the prototype of racism (Tessman and

Bar-On 2001). Although most Jews of Ashkenazi ancestry are now seen as white, Jews were explicitly regarded as non-Aryan in nineteenth-century Europe, and U.S. neo-Nazi and Christian Identity groups still maintain a fundamental division between Aryans/whites and all others. In the U.S., there is a connection between white racism and anti-Semitism (Langman 1999). Hence anti-Semitism must be understood within the context of racism.

Because of this link between anti-Semitism and broader racism, and because anti-Semitism still exists in the U.S., incorporating studies of Jewish oppression and anti-Semitism into multicultural education programs has widespread benefits. By examining the history of Jewish exile and oppression, students can begin to understand that Jews are not (as has been historically claimed) a hyper-privileged group that has become successful at the expense of other groups. Students can then begin to comprehend anti-Semitism as a system of oppression. While learning the complete history of anti-Semitism, students can explore the stereotypes and myths that they

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## Beyond Tourism: Race, Space, and National Identity in London

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occurrence but one that could easily involve family and a life left behind. I heard Indian boys address each other as “brown soul brother” and listened while South Asians and Asian Muslims discussed how much they had been affected by leaders such as Malcolm X. I began to feel a kinship with the South Asian population as I noticed how they were influenced not only by their own culture and heritage but by black American and Caribbean cultures as well.

This culture blend extended into aspects of my life outside of academia. In music it was not unusual to hear traditional Punjabi bhangra folk songs merged with reggae and rap, or French artists who combined pop music with Spanish melodies. I heard rap from all over Western Europe and parts of Asia that reconfigured American patterns in order to reflect their own cultural realities. In museums, in the Tube, and on the street I saw paintings and photography from all over Africa that tried to come to terms with what it meant to be African and European in a postcolonial environment utilizing traditional and Western methods. I saw that while American culture did have a global influence, in most cases this influence became transformed to suit the culture it resided in. It was no longer completely American but something forged by each local community, made foreign and completely unpredictable through each interpretation. American culture became a vessel in which these countries could modernize themselves; it became both subject and object. ■

*Editor’s Note: This article is included with thanks to Jeffrey Shultz and Ellen Skilton-Sylvester of Arcadia University.*

## El Camino Real: Where Culture and Academia Meet

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strategic campus planning. Members have advocated for necessary changes on campus, initiated valuable programs, and earned the respect of the college community.

What might the success of one community college’s Hispanic caucus mean for other campuses? First, even though a campus community may have few faculty members and employees of Hispanic heritage, a community of identity provides support for staff members and benefits the college community as a whole in a way that isolated individuals cannot.

Second, having a group that allows an individual to function within his or her own cultural framework provides a sense of validation that may be missing in other arenas (where other cultural values prevail). Finally, the synergy that culturally relevant programs, services, and events create benefits both students and the campus as a whole. Although this may require some adjustments to normal campus processes, aren’t the corresponding values—inclusion, respect, and caring—what higher education should be about? ■

## Complicating Diversity Categories: Jewish Identity in the Classroom

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have learned about Jews. This process of interrogating myths about Jewish identity is especially important for Jewish students who may have internalized anti-Semitic beliefs or who might collude with their own oppression by downplaying the impact of these beliefs on the lives of Jews.

Because Ashkenazi Jews are both racially privileged whites and targeted ethno-religiously, they offer interesting and nuanced ways to conceptualize diversity education. Aware of being simultaneously categorized as not-quite-white in the U.S. and as an “other” in Europe, Ashkenazi Jews question the unnuanced designations used in most diversity programs. Their unique and competing historical narratives (oppressed versus oppressor) both affect their social position in this country and make their history particularly relevant to discussions of U.S.

diversity. If we do not teach students about Jewish identity and history, we are doing a disservice to our students in the fight against all forms of oppression. ■

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For Testimony September 8, 2025

### **“On Authoritarianism and Antisemitism”**

Thank you distinguished Commissioners for having me here today, especially to the Co-Chairs John C. Velis and Simon Cataldo.

I am here because of my expertise in all the topics that you are not supposed to talk about at the Thanksgiving dinner table: religion, politics, bigotry, and the Middle East. I have been researching and teaching these topics for over twenty years, and it is not an exaggeration to say that I am among the state’s most qualified experts on the topic of understanding and combatting intolerance: it is literally my life’s work. You have heard a great deal of testimony over the past six months, but today I want to make two points that go beyond the testimonies you have heard so far: first, on the challenge of understanding antisemitism at a time of authoritarianism, and second, on the unacknowledged problem of intolerance toward minorities within minorities.

**First, my qualifications:** Prior to graduate school I was the Assistant then Associate Director of the New York Regional Office of the Anti-Defamation League (ADL), where I was responsible for collecting the data on antisemitic incidents that is heavily cited in commission testimony and the Commission’s K-12 Findings and Recommendations. I then spent seven years of graduate education researching intolerance and collecting original data using both qualitative and quantitative research methods. Since 2011 I have published numerous scholarly, peer-reviewed journal articles and book chapters on intolerance, and an award-winning book that is taught around the world and considered canonical in the field.<sup>1</sup> Today I am the Director of Boston University’s Institute on Culture, Religion, and World Affairs, the oldest center of its kind in the US, where every week we workshop research in this field, and hold regular events on all the most controversial topics like antisemitism and religious nationalism. Finally, for the past three years I have been the lead organizer of the Conference on the Jewish Left, an annual gathering of thousands of Jews, progressives, and liberals from around the world, which I invite all of you to attend this coming February 12, for presentations by national leaders including Peter Beinart, Liana Krupp, Marjorie Feld, and others. Last year the conference hosted 700 people from 18 countries and 75 universities. I hope you’ll join us and would be happy to save you lunch and front row seats.

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<sup>1</sup> Jeremy Menchik, 2016. *Islam and Democracy in Indonesia: Tolerance without Liberalism* (Cambridge University Press). My CV is available at [https://jeremymenchik.com/wp-content/uploads/2025/09/cv\\_menchik\\_august2025.pdf](https://jeremymenchik.com/wp-content/uploads/2025/09/cv_menchik_august2025.pdf)

## Authoritarianism and Antisemitism

I'll start with the big picture, then narrow down to the data and details. It's crucial to start with the fact that today, the United States federal government is an authoritarian regime. Scholars on democracy tell us that America's descent into authoritarianism began about ten years ago as a result of economic inequality, severe malapportionment and gerrymandering leading to political polarization, and a media environment polluted by misinformation on social media and from the federal government.<sup>2</sup> Public lying by state officials and their allies is now common, a hallmark of authoritarianism.<sup>3</sup> Likewise, authoritarian regimes routinely use minorities to divide and control society.<sup>4</sup> As a result, in an authoritarian country such as ours, it is difficult to tell the difference between a *genuine crisis* and one manufactured by authoritarian officials and their allies.

This is important because today, authoritarian influence from President Donald Trump and his allies have made it seem like antisemitism is a full-fledged crisis. But a dispassionate look at the literature and the data tell us it is a *problem* common to periods of war and economic instability. Differentiating between a *problem* and a *crisis* is crucial for delineating appropriate policy solutions.

## How to Think About Public Prejudice

Seventy years of research on intolerance consistently shows us that most people, most of the time, in most of the world, are intolerant towards some group in society.<sup>5</sup> Social intolerance, which includes antisemitism but also racism, Islamophobia, transphobia, and other forms of prejudice, are permanent features of a democratic society, and those attitudes rise and fall based on predictable variables. Longitudinal data—and we have survey data going back to the 1950s on this—consistently shows a rise in intolerance during periods of economic uncertainty, during periods of war, and toward groups that are broadly perceived as threatening such as Communists, White nationalists, Black nationalists, or now, Muslims and immigrants.

To describe the diversity of prejudices that exist in a diverse society like ours, scholars use the term *pluralistic intolerance*, and one of the ironic benefits of pluralistic intolerance is that that

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<sup>2</sup> Steven Levitsky and Lucan A. Way, "The Path to American Authoritarianism: What Comes after the Democratic Breakdown", 104 *Foreign Affairs*. 36 (March/April 2025).

<sup>3</sup> On lying and authoritarianism see Lisa Wedeen, 1998. "Acting 'As If': Symbolic Politics and Social Control in Syria." *Comparative Studies in Society and History* 40(3): 503–23. doi: [10.1017/S0010417598001388](https://doi.org/10.1017/S0010417598001388). The explanation works especially well for the current regime in the U.S. See Sarah Parkinson, 2020, "Acting 'as if' during Pandemic: Information and Authoritarian Practice in White House." *SSRC Online*. <https://items.ssrc.org/covid-19-and-the-social-sciences/democracy-and-pandemics/acting-as-if-during-pandemic-information-and-authoritarian-practice-in-white-house/>

<sup>4</sup> A useful text on this strategy of authoritarianism illustrates it with a comparison of Jews in Europe and ethnic Chinese in Southeast Asia. See Anthony Reid, Daniel Chirot, ed. 2011. *Essential Outsiders: Chinese and Jews in the Modern Transformation of Southeast Asia and Central Europe* (University of Washington Press).

<sup>5</sup> For the most up-to-date data on global attitudes, see the World Values Survey <https://www.worldvaluessurvey.org/>. For a comparative overview of public attitudes and the role of systematic threats see Jackson JC, van Egmond M, Choi VK, Ember CR, Halberstadt J, Balanovic J, et al. 2019. "Ecological and cultural factors underlying the global distribution of prejudice." *PLoS ONE* 14(9): e0221953. <https://doi.org/10.1371/journal.pone.0221953>

diversity mutes the social impact.<sup>6</sup> In other words, because most people most of the time dislike different groups, we avoid a crisis because there is no single, systematic persecution of any single group in society or by the government. Systematic social prejudice against one group is problematic but becomes dangerous when state power is mobilized to persecute that population. Most of the time, intolerance is a problem, but an unfortunate hallmark of a free society, and not a crisis.

That said, crises arise at predictable moments. A *crisis* of intolerance is when during these moments of heightened prejudice, the government systematically persecutes a widely disliked group. So, for example, in the 1940s during WWII there was widespread prejudice against Japanese Americans, and the government imprisoned them in internment camps. That was a crisis.<sup>7</sup> Today, we have both systematic social prejudice against immigrants AND persecution of immigrants by the state. That's a crisis. In contrast, with respect to antisemitism, there's mixed evidence of a rise in social prejudice against Jews as such. But there's no evidence of systematic state oppression of Jews.<sup>8</sup>

Today, anti-immigrant attitudes are at record levels due to widespread public prejudice, and Immigration and Customs Enforcement (ICE) is abducting people off the street and detaining them, as happened in Somerville with Rümeyşa Öztürk for writing an op-ed supportive of Palestinian human rights. As a result, immigrants are avoiding public spaces like schools, hospitals, and courthouses, and they are self-censoring. Relatedly, Palestinians, as a specific category of non-citizens, are now prohibited from travel to the United States; the federal government has just enacted a complete suspension of approvals of almost all types of visitor visas for Palestinian passport holders.<sup>9</sup> This is a vulnerable and widely disliked minority being systematically persecuted by the state. In contemporary America, expressions of intolerance toward Muslims, Arabs, immigrants (specifically those perceived to be Latino or Hispanic), and transgender persons are widespread and can even be politically *advantageous* for politicians.<sup>10</sup> The state is actively persecuting these minorities. This is a *crisis*: the use of state power to persecute a disliked group.

Similarly, Black Americans are subject to some of the highest levels of intolerance in American society, including the highest number of hate crimes.<sup>11</sup> The commission's preliminary report

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<sup>6</sup> Key research on pluralistic intolerance in America includes John L. Sullivan, James Piereson, and George Marcus, 1993. *Political Tolerance and American Democracy* (University of Chicago Press). For recent work see Brian Schaffner, 2020. *The acceptance and expression of prejudice during the Trump era* (Cambridge University Press).

<sup>7</sup> James L. Gibson, 2008. "Intolerance and Political Repression in the United States: A Half Century after McCarthyism." *American Journal of Political Science*. <https://doi.org/10.1111/j.1540-5907.2007.00301.x>

<sup>8</sup> This is accurate as of today. But the Trump administration openly platforms Nazis, traffics in anti-Jewish conspiracy theories, and has positioned Jews as a scapegoat for the regime's authoritarian ambitions. There is reason to believe that the Trump administration could target Jews for persecution.

<sup>9</sup> Edward Wong, Adam Rasgon, Natan Odenheimer and Hamed Aleaziz. "U.S. Suspends Visas for Palestinian Passport Holders, Officials Say." *The New York Times*. August 31, 2025. <https://www.nytimes.com/2025/08/31/world/middleeast/us-palestinian-visa-suspensions.html>

<sup>10</sup> Maneesh Arora, 2025. *Parties and Prejudice: The Normalization of Antiminority Rhetoric in US Politics* (University of Chicago Press).

<sup>11</sup> The data for the 2024 hate crimes statistics indicates a change in this ratio, but is not available for scrutiny beyond this table: [https://ma.beyond2020.com/ma\\_tops/report/hate-crime\\_1/massachusetts/2024#](https://ma.beyond2020.com/ma_tops/report/hate-crime_1/massachusetts/2024#).

cites the percentage increase in antisemitic hate crimes in Massachusetts as evidence of a “pervasive and escalating problem,” but if you spend just a few minutes looking at the Executive Office of Public Safety and Security’s (EOPSS) hate crimes data, and that is the best data we have on the social impact of prejudice, you see that anti-Black hate crimes are more common than antisemitic crimes, and they much more severe: they are assaults and aggravated assaults, while antisemitic crimes are overwhelmingly vandalism, which is a problem, but a less severe one. Based on the 2023 hate crimes data, the most recent data available for public scrutiny, anti-Black violence is 7 times more common than anti-Jewish violence.<sup>12</sup> And beyond hate crimes, Black Americans are more likely to be arrested, imprisoned, sentenced to longer prison terms, fired from government jobs, and overall discriminated against and persecuted than White Americans.<sup>13</sup> This is a *crisis*: state power is systematically persecuting and discriminating against a disliked group in society.

### **Antisemitism is a Problem Not a Crisis**

In contrast to prejudice toward immigrants, Blacks, and trans Americans, antisemitism is a *problem* that is being exaggerated by Trump and his Jewish and non-Jewish allies to make it seem like a crisis.

Longitudinal studies from reputable survey firms like Pew and Gallup show dramatic *decreases* in antisemitism over the past sixty years based on indicators like willingness to have a Jewish president of the country, or the “feelings thermometer” used to assess attitudes toward religious minorities.<sup>14</sup> Compared to the other minorities mentioned, from a historical perspective, the current situation of Jews in the US is good: American Jews are among the most educated in the US and there are no systematic barriers to higher education like there are for Blacks, Latinos, and certain Asian American and Pacific Islander communities; American Jews have substantially higher incomes than other targeted minorities; American Jews hold public positions and positions of influence that exceed their percentage of the population. In contrast to bigotry toward immigrants, trans people, and Muslims, even spurious accusations of antisemitism have the potential to ruin a person’s career. Jews are not being targeted for arrest or deportation by the federal government like Black, Muslim and Latino immigrants. Jews are not being discriminated against in the federal government workplace like Black Americans. Jews are not being put on Blacklists like the Canary Mission, which is being used by the U.S. State Department to arrest Palestinian human rights supporters.<sup>15</sup> Jews are not avoiding medical care for fear of discrimination like 20% of Latinos. Jews are not discriminated against when buying a home or renting an apartment like 45% of Blacks. Jews are not verbally assaulted in the restroom like

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<sup>12</sup> I use the term “violence” to refer to the assaults and aggravated assaults. <https://www.mass.gov/doc/2023-massachusetts-hate-crime-report-0/download>.

<sup>13</sup> On federal government firings see Erica L. Green, Aug. 31, 2025, “In Trump’s Federal Work Force Cuts, Black Women Are Among the Hardest Hit.” *New York Times*. <https://www.nytimes.com/2025/08/31/us/politics/trump-federal-work-force-black-women>. On systematic anti-Black discrimination and persecution see Bleich SN et. al, 2019. “Discrimination in the United States: Experiences of black Americans.” *Health Services Research* 54 Suppl 2(Suppl 2):1399-1408. <https://pmc.ncbi.nlm.nih.gov/articles/PMC6864380/>

<sup>14</sup> Pew Research Center, 2019. “What Americans Know About Religion.” <https://www.pewresearch.org/religion/2019/07/23/what-americans-know-about-religion/>

<sup>15</sup> The exceptions are non-Zionist Jews, a minority within a minority. That issue is discussed below.

34% of LGBTQ Americans.<sup>16</sup> Most importantly, in contrast to immigrants, trans people, and Muslims, the state is not persecuting Jews.

And yet, and we should take the experiences of targets of antisemitism seriously, *perceptions* of increased antisemitism are today common, especially among the older generations of American Jews with almost double the rates of perceived antisemitism among those over 55 compared to aged 18-24.<sup>17</sup> The past five years, as we have descended into authoritarianism, have not been great for any minorities. Looking at the 2023 hate crime data, we see increases in not just antisemitic hate crimes, but anti-Arab, anti-LGBTQ, anti-Latino hate crimes, and anti-trans attacks, with the latter categories especially concerning because they dovetail with federal government attacks. We should take seriously Jewish perception of antisemitism, and we should also keep it in perspective.

In fact, coming back to the literature on authoritarianism, the state's *weaponization of antisemitism* to attack democratic institutions is a bigger crisis than public prejudice. It is authoritarian to cancel billions of dollars in support for medical research on tuberculosis, chemotherapy, Parkinson's disease and Alzheimer's disease using claims of combatting antisemitism.<sup>18</sup> It is authoritarian to abduct legal immigrants based on dishonest accusations of antisemitism.<sup>19</sup> It is authoritarian to shut down discussions of genocide based on dishonest accusations of antisemitism, as the International Holocaust Remembrance Alliance (IHRA) definition of antisemitism does.<sup>20</sup> Antisemitism is a problem, but the current federal government responses exploit and amplify the problem rather than addressing it.

### **Refuting Bad Data by Authoritarian Actors**

Before concluding, it is important to directly confront the other main actor arguing that antisemitism is a crisis. I take no pleasure in publicly refuting the ADL; I learned a great deal from working there and once even recruited people to work at ADL, including my own students. But it is especially important to contest the ADL's data because it is cited seven times in the Commission's K-12 report, far more than any other organization or expert, and the ADL data provides the backbone for the Commission's narrative and analysis. Our country has crossed over into authoritarianism, but if we have any hope of restoring democracy it depends on all of us working to refute public lying, especially when there are important policy implications.

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<sup>16</sup> Robert Wood Johnson Foundation, 2017. "Discrimination in America: Experiences and Views." <https://www.rwjf.org/en/insights/our-research/2017/10/discrimination-in-america--experiences-and-views.html>

<sup>17</sup> Gallup Poll Social Series: Values and Beliefs, May 2024. <https://news.gallup.com/file/poll/646475/240701ReligiousPrejudice.pdf>

<sup>18</sup> Mary Kekatos, May 29, 2025. "At least 350 Harvard medical grants were terminated by the Trump administration." <https://abcnews.go.com/US/350-harvard-medical-grants-terminated-trump-administration/story?id=122221156>

<sup>19</sup> Leila Fadel, June 23, 2025. "They wanted to separate me from my family': Mahmoud Khalil speaks after ICE release." *NPR* <https://www.npr.org/2025/06/23/nx-s1-5441691/mahmoud-khalil-interview>

<sup>20</sup> Jake Offenhardt, July 25, 2025. "A Columbia genocide scholar says she may leave over university's new definition of antisemitism." *AP News*. <https://apnews.com/article/columbia-university-antisemitism-definition-68d44684f376b12162a28b88104e5d24>

At the very first Commission hearing, Oct. 29, 2024, the second material presented was the ADL's 2023 audit of antisemitic incidents, reporting a 205% of antisemitic incidents for 2023. That number should not be believed, and it should not be included in the final report. I worked on the ADL audit when I was Associate Director of the New York Regional Office. It was unreliable then: no consistency in data collection across regions, no consistency over time, and no consistency in sources or methods. It was a bad measure of antisemitism then and it is worse now. No serious scholar of racism, bigotry, or antisemitism could get through peer review based on ADL's data. It's simply not credible.

In fact, ADL's audit has gotten worse since Jonathan Greenblatt became CEO. Since 2023 the ADL has willfully conflated criticism of Israeli state policy with antisemitism.<sup>21</sup> ADL changed their definition of antisemitic events in October 2023 so that their audit became more unreliable.<sup>22</sup> A systematic, line-by-line analysis of the 2023 audit data in *Jewish Currents* shows that nearly half, 44% of the incidents in ADL's were not clearly antisemitic. Here's the takeaway from that analysis:

“Ultimately, [the ADL's] haphazard approach—as well as the mode of data collection, which favors certain kinds of incidents and does nothing to ensure that it produces a representative sample—renders the audit unable to speak meaningfully to the prevalence or impact of antisemitism in the US. It remains an open question whether a sufficiently sophisticated methodology might produce a more reliable picture, and thus aid the task of combating antisemitism. But it is abundantly clear that the ADL's audit and its uncritical representation in the media do not serve those aims.”<sup>23</sup>

Nor is this problem limited to the 2023 data. The very first citation in the Commission's recent K-12 report is to the ADL's 2024 Audit of Antisemitic Incidents. And yet this most recent ADL report appears to use the same flawed approach: inconsistent application of its own definition, a conflation of criticism of Israel with hate speech, and a persistent focus on minor acts of anti-Zionism such as graffiti, while downplaying white supremacist activities more directly linked to violence.

The ADL's misrepresentation of antisemitism is inviting the persecution of immigrants because it is being done in support of an authoritarian regime. In the same city where Tufts student Rümeyza Öztürk was shackled and detained on the street outside her home for writing an op-ed critical of Israel, the ADL doubled down on the conflation of political speech with antisemitism that provided the pretext for her detention; in Somerville, the 2024 audit records five acts of antisemitic “hate” in 2024. Their records show all five were signs or slogans at political protests referring to Palestinian resistance, liberation, or criticism of Zionism in the context of the genocide in Gaza. None were antisemitism following ADL's definition or even the controversial IHRA definition. ADL's deliberate conflation of antisemitism and criticism of Israel skews the

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<sup>21</sup> Mari Cohen, 2023. “The ADL's Antisemitism Findings, Explained.” *Jewish Currents*.

<https://jewishcurrents.org/the-adls-antisemitism-findings-explained>

<sup>22</sup> ADL 2024. <https://www.adl.org/resources/report/audit-antisemitic-incidents-2023>

<sup>23</sup> Shane Burley and Naomi Bennet, June 17, 2024. “Examining the ADL's Antisemitism Audit.” *Jewish Currents*  
<https://jewishcurrents.org/examining-the-adls-antisemitism-audit>

data so that we simply don't know how many incidents of antisemitism there were in 2023 or 2024. And since ADL does not track that information for incidents of racism or other categories of prejudice, we have no way to know how antisemitic incidents compare or have changed over time.

Beyond the 2023 and 2024 audits, the ADL has repeatedly engaged in the repeated public lying that is the hallmark of authoritarianism and raises even deeper concerns about their data. The ADL has lied about non-violent Jewish peace groups like IfNotNow and Jewish Voice for Peace, dishonestly equating them with violent white supremacists.<sup>24</sup> The ADL has engaged in public Islamophobia by lying about New York Mayoral candidate Zohran Mamdani.<sup>25</sup> I could provide countless more examples—such as Greenblatt's defense for Elon Musk's straight-arm salutes on Inauguration Day, or Greenblatt's lies calling student protesters al-Qaida terrorists—but the point is clear.<sup>26</sup> ADL is unreliable and should not be used as a source for Massachusetts policymakers. Massachusetts lawmakers should follow the lead of Wikipedia's editors, who rightly declared the ADL unreliable on antisemitism and Israel-Palestine. This commission should rise to Wikipedia's standards of evidence and reject the ADL's work.<sup>27</sup>

### **Intolerance Toward Minorities within Minorities**

Before ending, I want to mention an important category of intolerance that has been mostly overlooked in these hearings and broader public discourse. One reason that I organize the Conference on the Jewish Left is to push back against the persecution of Jews by other Jews. More specifically, the conference seeks to push back on the persecution of non-Zionist, post-Zionist, and anti-Zionist Jews.

Non-Zionist Jews are a minority within a minority. In Massachusetts, Jews who are not Zionist are frequently bullied, harassed, marginalized, or otherwise targeted for intolerance. What is especially challenging about this type of intolerance is that policies designed to combat antisemitism can increase the bullying, ostracizing, and exclusion of Jews by other Jews. This issue is well known in scholarship on intolerance and referred to as the problem of "minorities within minorities." This is especially a problem for the commission because when a minority group advocates for special protections from the state, these protections can reinforce discriminatory power dynamics *within* that group, further marginalizing some members. A common example is indigenous women, who are subject to extraordinarily high rates of domestic violence within indigenous communities and can be disadvantaged by traditional laws that lack

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<sup>24</sup> Jonathan Guyer and Tom Perkins, Jan 5, 2024. "Anti-Defamation League staff decry 'dishonest' campaign against Israel critics." <https://www.theguardian.com/news/2024/jan/05/adl-pro-israel-advocacy-zionism-antisemitism>

<sup>25</sup> JTA, "Fact-checking ADL chief Jonathan Greenblatt's attack on Zohran Mamdani," August 19, 2025. <https://www.jta.org/2025/08/19/politics/fact-checking-adl-chief-jonathan-greenblatts-attack-on-zohran-mamdani>;

<sup>26</sup> Noah Shachtman, Aug. 1, 2025. *Intelligencer*. <https://nymag.com/intelligencer/article/inside-adl-anti-defamation-league-greenblatt-zionism-trump-gaza.html>; Arno Rosenfeld and Jacob Kornbluh, June 6, 2025. "Exclusive: ADL chief compares student protesters to ISIS and al-Qaida in address to Republican officials." *The Forward*. <https://forward.com/news/726133/greenblatt-adl-protesters-terrorists/>

<sup>27</sup> For the specific issues that have rendered ADL an unreliable source see [https://en.wikipedia.org/wiki/Wikipedia:Reliable\\_sources/Perennial\\_sources#Anti-Defamation\\_League](https://en.wikipedia.org/wiki/Wikipedia:Reliable_sources/Perennial_sources#Anti-Defamation_League). This is now a common position within the Jewish community. See Rob Eshman, June 19, 2024 "Wikipedia called the ADL 'unreliable.' It's a wake-up call the civil rights organization badly needs." *The Forward*. <https://forward.com/opinion/625117/wikipedia-adl-unreliable-jonathan-greenblatt/>

equal protection for women.<sup>28</sup> Group rights systems in Canada, Israel, Indonesia, and the U.S. are well known for having this particular problem.<sup>29</sup>

We don't have good data on this problem, but I'll give you three anecdotal examples from BU, none of which have been reported because students and faculty are afraid to talk about the bullying of Jews by other Jews:

- In October 2024, in response to an event at Boston University featuring a nationally recognized Jewish scholar of social movements, and organized by a committee of Jewish scholars, extremists working with CAMERA and StandWithUs launched a harassment and misinformation campaign targeting BU leadership and faculty, with thousands of emails terrorizing BU's Jewish Studies faculty. My Jewish colleagues received literally thousands of emails from Jewish extremists that marshalled distortion and caricature to smear the event and its participants. No one slept that week, which coincided with Rosh Hashanah. This was Jewish extremists attacking, harassing, and bullying other Jews because of their perceived failure to sufficiently defend Israel and its policies. Thankfully, the BU administration has handled organized smear campaigns and calls for viewpoint *discrimination* with professionalism and care, maintaining the administration's viewpoint *neutrality*.
- Criticizing Hillel is a difficult task akin to critiquing bubbe's matzah ball soup. But BU's Hillel, which reports to Hillel International rather than the university, is covered in Israeli flags and signs that say "We stand with Israel." Non-Zionist and anti-Zionist Jews are bullied, harassed, and deliberately made to feel unwelcome. Many students, including kosher-keeping students, vegans, halal-eating students, and those with allergies, need to eat there but feel uncomfortable entering the building because of these signs. They wish the dining hall was not deliberately exclusionary as a matter of policy. Jews who are not Zionist have had to form their own organizations elsewhere on campus, but they lack access to kosher kitchens and chaplaincy services. The same is true for Jews at MIT and Harvard, where Jewish extremists have actively bullied Jews who criticize Israeli government policy. There are even Israelis who are made to feel unwelcome in Hillel, bullied by American Jewish extremists for being insufficiently supportive of Israeli government policy. This is intolerance. My example is not meant to implicate all Hillel chapters nor their leaders, which of course comprise a diversity of perspectives. But I was taught by my former ADL boss Abe Foxman to speak out against intolerance, no matter where it arises.
- In the American Jewish community today, it is easier to come out as gay than as non-Zionist or anti-Zionist. If you come out as anti-Zionist you will lose friends, can suffer an estranged relationship with your family, be subject to bullying at Synagogue and Hillel, and lose funding from organizations that claim to represent American Jews even when survey data tell us that they do not. Every Jew who is non-Zionist, post-Zionist, or anti-Zionist has experienced bullying by other Jews.

This problem of Jews persecuting other Jews is not going away. Survey data on American Jewish public opinion tells us that there is a major shift underway; the older generation of Jewish

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<sup>28</sup> Ayelet Shachar, 1998. "Group identity and women's rights in family law: The perils of multicultural accommodation." *Journal of Political Philosophy* 6.3 (1998): 285-305.

<sup>29</sup> See Jeff Spinner-Halev and Avigail Eisenberg, eds. 2005. *Minorities within Minorities: Equality, Rights and Diversity* (Cambridge University Press).

Americans who grew up in the aftermath of the 1967 war and during the Oslo Accords sees in Israel a mirror of their own liberal, democratic values. These are liberal Zionists, and they are largely in charge of the establishment Jewish organizations. Their views are radically different from non-Zionists Jews, and Jews under the age of 40, for whom Bibi Netanyahu and the genocide in Gaza are the face of Jewish nationalism and are clearly incompatible with their liberal values.<sup>30</sup> These are non-Zionists, anti-Zionists, and post-Zionists, and they are a growing segment of the Jewish community. These Jews see in Jewish nationalism the same violence that many Muslims see in Islamic nationalism, and Christians see in Christian nationalism. This trend away from support for Zionism has accelerated in the past two years as photos of mass killing and more recently starvation in Gaza permeate the news and social media. Reliable survey data from Pew and the University of Chicago show 30% differences in attitudes between the older and younger generations on identification with Zionism, with the result that 30-40% of American Jews are now either anti-Zionist or non-Zionist.<sup>31</sup> As long as established Jewish organizations attempt to coerce support for Zionism, the problem of persecution of minorities within minorities will continue.

This commission could do groundbreaking and important work by addressing this overlooked form of intolerance. I hope you will. And I invite those reading this white paper to [write directly to the commissioners](#) to document their experiences of being bullied as Jews, by other Jews.

## Policy Implications

There are three policy implications to my testimony today.

First, the remedy to antisemitism in America should be proportionate to the problem. The K-12 report includes many excellent suggestions: existing programs on combating hate and bias should be updated to include antisemitism as a form of bias, and Holocaust and genocide education should be part of the K-12 curriculum; that education should not be selective and politicized by, for example, denying the genocide now underway in Gaza.

Second, clearly unreliable data should not be used to depict the scale or scope of the problem of antisemitism. Massachusetts should protect itself from efforts by the Trump administration and the Anti-Defamation League to weaponize antisemitism in the service of authoritarianism. The commission's proposed anonymous statewide Bias Reporting Program is an invitation for abuse and the silencing of diverse perspectives on pressing public debates. The commission's support

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<sup>30</sup> Peter Beinart has been tracking this shift for over a decade. See his March 2024 essay, "The Great Rupture in American Jewish Life," *New York Times* for a summary: <https://www.nytimes.com/2024/03/22/opinion/israel-american-jews-zionism.html?searchResultPosition=1>

<sup>31</sup> Elaine Kamarck and Jordan Muchnick, "The Generation Gap in Opinions Toward Israel," Brookings, November 9, 2023, <https://www.brookings.edu/articles/the-generation-gap-in-opinions-toward-israel/>; Katherine Schaeffer, "Slight Uptick in Americans Wanting U.S. to Help Diplomatically Resolve Israel-Hamas War," Pew Research Center, October 3, 2024, <https://www.pewresearch.org/short-reads/2024/10/01/slight-uptick-in-americans-wanting-u-s-to-help-diplomatically-resolve-israel-hamas-war/>; Robert A. Pape, "Understanding Campus Fears After October 7 and How to Reduce Them," University of Chicago Project on Security and Threats, March 7, 2024. [https://cpost.uchicago.edu/publications/cpost\\_understanding\\_campus\\_fears\\_after\\_october\\_7\\_and\\_how\\_to\\_reduce\\_them/](https://cpost.uchicago.edu/publications/cpost_understanding_campus_fears_after_october_7_and_how_to_reduce_them/); Yuval Paldi and Ido Liberman, "Mosaic Teen Israel Survey: Antisemitism and Attitudes Post-October 7th," Mosaic United, September 2024, <https://mosaicunited.org/wp-content/uploads/2024/11/Mosaic-Teens-Survey-Full-Report.pdf>

for the IHRA definition is similarly problematic and will silence democratic criticism of Israeli government policy. It will exacerbate the challenge of protecting a minority within a minority.

Third and relatedly, the commission should be vigilant to not take sides in the schism underway within the American Jewish community. That requires the commission to explicitly include the experiences of non-Zionist and anti-Zionist Jews in any full accounting of antisemitism and encourage schools and universities to cultivate safe spaces for all Jews, regardless of political orientation. In its K-12 report, the commission uses Jewish and Israeli as synonyms. That kind of approach will exacerbate the problem of protecting minorities within minorities. National citizenship and religious identification should be clearly differentiated, as should political ideology (Zionist) and religious identity (Jewish). Some within the Jewish community appear to want this commission to give them tools to silence non-Zionist and anti-Zionist Jews. The commission must not exacerbate the problem of intra-Jewish intolerance by giving bullies the tools of state power.