

Trump and Congress Gear Up To Fight Campus Antisemitism

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COMMENTARY

On Nov. 15, sounding nothing like the racist threat to democracy that many of those who oppose him fear, President-elect Donald Trump announced measures “to defeat antisemitism and defend our Jewish citizens in America.” The former and soon-to-be president aims to act expeditiously. “My first week back in the Oval Office my administration will inform every college president that if you do not end antisemitic propaganda, they will lose their accreditation and federal taxpayer support,” he stated. “I will inform every educational institution in our land that if they permit violence, harassment, or threats against Jewish students, the schools will be held accountable for violations of the civil rights laws.” Trump emphasized that “Jewish Americans must have equal protection under the law.” And he promised that “[m]y administration will move swiftly to restore safety for Jewish students and Jewish people on American streets.”

Trump’s words hearten, particularly considering the blatant upsurge of antisemitism on campus and off since Oct. 7, 2023. On that horrible day, Iran-backed Hamas jihadists from Gaza massacred some 1,200 persons in southern Israel, among them approximately 40 Americans, and took approximately 250 hostages, including 12 Americans. Particularly at America’s most selective colleges and universities, campus protestors rushed to embrace the perpetrators of the mass atrocities against Israel, to heap blame on the Jewish victims of barbarism, and to pour scorn on the nation-state of the Jewish people for exercising its right to self-defense.

Peaceful protests, which abide by reasonable time, place, and manner restrictions, contribute to universities’ educational mission. But many of the post-Oct. 7 anti-Israel protests at the nation’s best universities not only featured calls for the destruction of the Jewish state but also intimidation of Jewish students, seizing and vandalism of campus property, and disruption of universities’ educational mission.

As in addressing other forms of discrimination, the federal government confronts limits in fighting antisemitism on campus. Antisemitism involves the expression of odious opinions about Jews and the commission of shameful acts against them. However, the expression of most odious opinions – with narrow exceptions for those that involve, for example, defamation, fighting words, true threats, and incitement to immediate lawless action – is constitutionally protected. The First Amendment gives wide latitude to foolish, dishonest, and hateful utterances. And liberal education – an education that prepares students for freedom

by transmitting knowledge, examining diverse ideas and views, enlivening the moral imagination, and fostering independent thinking – depends on examining and explaining the odiousness of odious opinions. Not all shameful acts, moreover, violate university rules or criminal law.

The fight against campus antisemitism must distinguish, as Scalia Law School Professor David Bernstein emphasizes, speech that is protected from actions – such as harassment, vandalism, and occupation of campus property – that are not. If, however, private universities choose to narrow the range of permissible speech to shield students' sensibilities from supposedly offensive speech (public universities operate subject to the First Amendment), they nevertheless should enforce fairly their rules. Instead, our colleges and universities have been quick to show solicitude for the feelings of preferred racial, ethnic, and religious minorities and women (a majority of the nation's undergraduates) while hemming and hawing when it comes to safeguarding Jews from unprotected speech and rule-breaking and criminal action.

Notwithstanding crucial distinctions and fine lines, the federal government possesses effective tools to impel colleges and universities to honor civil rights, including those of Jewish students, and to uphold the institutions' own rules against harassment, intimidation, and violence, including that directed at Jews. As "Antisemitism on College Campuses Exposed" – the Republican staff report of the U.S. House of Representatives Committee on Education and the Workforce – demonstrates, not least of these tools is the exercise of congressional oversight over postsecondary institutions that receive federal funds.

Released in late October, the report is based on the committee's extensive investigation, which involved listening to university officials and students at four hearings and a roundtable as well as reviewing more than 400,000 documents. It draws examples of university indulgence of antisemitism from the East Coast, the Midwest, and the West Coast: Barnard College; Columbia University; George Washington University; Harvard University; Massachusetts Institute of Technology; Northwestern University; Rutgers University; University of California, Berkeley; University of California, Los Angeles; University of Pennsylvania; and Yale University. The investigation revealed "a stunning lack of accountability by university leaders for students engaging in antisemitic harassment, assault, trespass, and destruction of school property." Professors sought to protect students from university efforts to hold them accountable for their lawlessness while top university officials equivocated about their stance toward antisemitism, obfuscated their deliberations and decisions, and capitulated to students who flouted university rules and criminal law.

Universities repeatedly gave antisemitism a pass. "At every school investigated by the Committee, the overwhelming majority of students facing disciplinary action for antisemitic harassment or other violations of policy received only minimal discipline," states the report.

“At some schools, such as Columbia and Harvard, radical faculty members worked to prevent disciplinary action from being taken against students who violated official policies and even the law.”

The federal government has authority to combat antisemitism on campus under Title VI of the Civil Rights Act of 1964. Title VI expressly prohibits postsecondary institutions that receive federal funds – most colleges and universities accept copious amounts of taxpayer dollars in the form of student aid through scholarships, work study, and loans as well as faculty research grants – from discriminating based on race, color, or national origin. That prohibition, according to the Department of Education’s Office of Civil Rights’ consistent stance for 20 years, also forbids discrimination against religious groups.

Universities that receive federal funds run afoul of Title VI in two ways. On pain of losing federal dollars, Title VI bars them from subjecting students to “disparate treatment,” which involves treating similarly situated students differently based on race, color, national origin, or religion. And Title VI prohibits universities from allowing on campus a “hostile environment,” that is, an environment that “is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from a school’s education program or activity.”

Leading universities, the Republican staff report amply documents, have exposed Jewish students to both disparate treatment and hostile environments. But “[s]everal institutions have claimed they cannot protect students because of constraints imposed by the First Amendment.” The claim is hypocritical and false.

The universities’ claim that the First Amendment blocks them from acting against antisemitism is hypocritical because many of them demonstrate disdain for free speech. Harvard, for example, is the nation’s most storied university. In 2024, for the second year in a row, it placed at the very bottom of the Foundation for Individual Rights and Expression rankings of universities’ protection of speech. At the same time, since Oct. 7, 2023, Harvard tied itself in knots to avoid enforcing its own norms and rules against protestors calling for Israel’s destruction. In recent years, many university administrations have denounced and censored constitutionally protected speech that African Americans, women, gays and lesbians, transgendered persons, and white progressive opponents of Donald Trump found offensive. In sharp contrast, these same universities have hesitated and vacillated in the face of the demonization of Israel and vile accusations hurled at Jewish students.

The claim that free speech principles thwart protection of Jewish students from antisemitism is false since much of the antisemitism involves not protected speech but forbidden action. At issue in numerous cases documented by the Republican staff report is physical intimidation, trespass, and the destruction of private property.

Jews on campus at our top universities have not received the heightened protection provided to other minorities. They have not even benefited from the baseline guarantees officially afforded all students.

The report's four key findings should trouble all friends of toleration, civility, and liberal education. First, "[s]tudents who established unlawful antisemitic encampments – which violated university policies and created unsafe and hostile learning environments – were given shocking concessions," which endangered Jewish students and personnel. Second, "university leaders intentionally declined to express support for campus Jewish communities" to avoid "offending antisemitic students and faculty who rallied in support of foreign terrorist organizations." Third, "universities utterly failed to impose meaningful discipline for antisemitic behavior that violated school rules and the law" and "[i]n some cases, radical faculty successfully thwarted meaningful discipline." Fourth, "university leaders expressed hostility to congressional oversight and criticism of their record," and chose to regard "[t]he antisemitism engulfing campuses" throughout the country "as a public-relations issue and not a serious problem demanding action."

The incoming Trump administration and House and Senate majorities are likely to embrace the Republican staff report's concluding call "for a fundamental reassessment of federal support for postsecondary institutions that have failed to meet their obligations to protect Jewish students, faculty, and staff, and to maintain a safe and uninterrupted learning environment for all students."

By ensuring the equal protection under the law of Jewish university students, the Trump administration and Congress can vindicate the impartial enforcement of American law and contribute to the desperately needed reform of our universities.

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