

# A “Perfect Storm”: Convergent Political Forces Threatening the University

RISA L. LIEBERWITZ\*

## I. INTRODUCTION

Academic freedom has long been accepted as essential to faculty’s ability to engage in teaching and research that will fulfill the public mission of the university.<sup>1</sup> Building on the AAUP’s 1915 Declaration of Academic Freedom and Tenure and its 1940 Statement on Academic Freedom and Tenure, universities across the U.S. have internalized the professional norms of academic freedom and the job security of tenure that is needed to protect faculty exercise of this freedom in their teaching, research, public speech, and faculty governance activities. The university’s public mission also depends on protecting its institutional independence from conflicts of interests that could compromise its commitment to serving the public interest.

Starting in the first Trump administration, there have been widespread political attacks on universities and these traditional norms of independence of universities, the exercise of faculty academic freedom, and collective faculty governance. Universities have experienced an onslaught of federal and state legislative and administrative actions that interfere with university autonomy and faculty control over student admissions, academic programs, and faculty appointments. Facing threats and actual massive cuts of federal research funds, many universities have engaged in tactics of appeasement or outright capitulation to political demands.

What explains these recent attacks on higher education and the degree of their success in undermining the values, norms, and goals of universities? This article seeks to answer this question by examining the current moment in the broader context of institutional changes in the university that have occurred since the 1980s, which have weakened the ability and the will of university administrations to resist the current attacks on the traditional norms of university independence and faculty academic freedom.

Section II of the article, “Academic freedom, freedom of expression, and diversity in higher education,” sets forth the origins and adoption of professional norms of faculty academic freedom as central to the university’s ability to fulfill its public mission. This discussion also explores the expansion of faculty and student diversity as being essential to broadening and deepening academic studies and research in universities. Section III, “Corporatization of higher education: Laying the groundwork to weaken academic freedom,” analyzes the “corporatization” of the university since the 1980s, as neoliberal privatization policies have influenced universities to

---

\* Professor of Labor and Employment Law, School of Industrial & Labor Relations, Cornell University

<sup>1</sup> The term “university” is used in this article to encompass colleges and universities, unless otherwise noted.

make structural changes modeled on private businesses. Corporatization is marked by major structural changes in universities, including commercialization of academic research and increasingly close relationships with for-profit business, commodification of teaching by a largely contingent faculty, and an expanded university administration that engages in top-down hierarchical decision-making. As the university has adopted structures consistent with an identity as a corporate market actor, these institutional changes have undermined faculty academic freedom and created conflicts of interests with the public mission of the university.

Having weakened the university's values and norms of an independent institution serving a public mission, corporatization has made the university more vulnerable to external political interference. Section IV, "Attacks on Higher Education: Trump's first administration" and Section V, "Escalating Direct Assaults on Higher Education: Trump's second administration" describe and analyze the Trump administration's agenda against universities and its implementation through Supreme Court appointments, Executive Orders, and federal agency use of federal Title VI and Title IX anti-discrimination investigations to coerce universities to enter agreements to dismantle academic programs that engage in education and research in area studies about the Middle East and about racial and gender inequalities. Section IV also discusses the external attacks on public universities at the state level through legislation and regulation modeled on the Trump agenda.

Section VI brings the earlier sections together to analyze how these multiple social, political, and economic conditions created "the 'perfect storm' for the governmental attack on universities." This section also explores the reasons that university administrations have chosen to respond individually, with most engaging in appeasement or capitulation to the Trump administration's demands, rather than engaging in a collective resistance to the attacks. The discussion addresses, as well, the damaging consequences of university administrations' choice. The alternative of resistance is explored through an analysis of collective resistance by faculty and student organizations and unions engaged in multiple tactics against the federal and state government attacks, including litigation and grassroots organizing on campuses.

## II. ACADEMIC FREEDOM, FREEDOM OF EXPRESSION, AND DIVERSITY IN HIGHER EDUCATION

### *A. Origins and expansion of academic freedom*

Current concepts of academic freedom in the US have their origins in the early twentieth century with the founding of the AAUP in 1915. As corporate wealth and power expanded during capitalist industrialization, university administrations were acceding to demands from industrialist donors to discharge faculty whose academic work and public speech did not align with the donors' interests. The AAUP was formed as a collective response to university administrations' actions. This also coincided with the development of social science disciplines, which expanded the scope of

critique of societal conditions. The AAUP’s 1915 *Declaration of Principles*<sup>2</sup> demanded faculty academic freedom and independence from the university administration and financial supporters of the university.<sup>3</sup> The Declaration described a broad scope of academic freedom in teaching, research, and public or “extramural” speech as essential for faculty to fulfill the public mission of the university.<sup>4</sup> Protection of academic freedom, the Declaration further asserts, relies on the lifetime job security of tenure, with due process prior to discipline or dismissal of a faculty member.<sup>5</sup> The Declaration also describes collective aspects of academic freedom through faculty governance, which respects faculty expertise and independence carried out through peer review to evaluate colleagues’ competence and qualifications for faculty appointments and promotion to a tenured status.<sup>6</sup>

The AAUP reiterated its call for faculty academic freedom, tenure, and shared governance in its *1940 Statement of Principles on Academic Freedom and Tenure*,<sup>7</sup> which was issued jointly by the AAUP and the Association of American Colleges (AAU). The strength and endurance of these employment conditions are found in their long-time recognition as the norms of the academic profession that have been internalized by faculty, adopted over the decades in public and private universities throughout the U.S., and endorsed by over 250 academic professional organizations and universities.<sup>8</sup> In this way, academic freedom in its full scope can best be described as a set of “extra-legal” rights developed by the academic profession in the public interest.<sup>9</sup>

In 1967, the US Supreme Court described academic freedom as being “a special concern of the First Amendment.”<sup>10</sup> Despite the Court’s recognition that academic freedom is crucial to creating an environment of free inquiry in colleges and universities, the Court’s interpretations have limited its scope and depth as a constitutional protection for faculty. Several factors explain this. First, the threshold requirement of governmental or “state action” to trigger First Amendment freedoms and due process rights makes constitutional academic freedom inapplicable to private university

---

<sup>2</sup> AM. ASS’N OF UNIV. PROFESSORS, *1915 Declaration of Principles*, in POL’Y DOCUMENTS & REP., 3 (11<sup>th</sup> ed. 2015).

<sup>3</sup> Risa L. Lieberwitz, *Faculty in the Corporate University: Professional Identity, Law, and Collective Action*, 16 CORNELL. J. OF L. & PUB. POL’Y 263, 269 (2007) [hereinafter Lieberwitz, *Faculty in the Corporate University*].

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Am. Ass’n of Univ. Professors, *1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments*, POL’Y DOCUMENTS & REP., 13 (11<sup>th</sup> ed. 2015) <https://www.aaup.org/reports-publications/aaup-policies-reports/policy-statements/1940-statement-principles-academic>.

<sup>8</sup> Risa L. Lieberwitz, *Corporatization of Higher Education: A Crisis of Labor and Democracy*, in THE CAMBRIDGE HANDBOOK OF LABOR AND DEMOCRACY, 321 (Angela B. Cornell & Mark Barenberg eds., 2022).

<sup>9</sup> Risa L. Lieberwitz, *The Corporatization of the University: Distance Learning at the Cost of Academic Freedom?*, 12 B.U. PUB. INT. L. J. 73, 89 (2002) [hereinafter Lieberwitz, *The Corporatization of the University*].

<sup>10</sup> *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967). *See also*, *Sweezy v. New Hampshire*, 354 U.S. 234 (1957) (containing an early development of a concept of academic freedom, without explicitly adopting academic freedom as a constitutional right).

faculty in relation to their university employer.<sup>11</sup> Even in public universities constitutional protection is limited by Supreme Court decisions that significantly narrow the scope of First Amendment protection for public employees vis-à-vis their government employers.<sup>12</sup> This deference to public employers' discretion in disciplining employees for their speech is an outgrowth of the common law doctrine of "employment at will," which gives employers unilateral power to hire or fire "at will" unless limited by constitutional, statutory, or contractual restrictions. The Supreme Court has steadily shifted its constitutional interpretations in public employee speech cases to mirror common law employment at will. In *Garcetti v. Ceballos*,<sup>13</sup> the Court held that public employers may constitutionally discipline or discharge public employees for their speech "pursuant to their official duties."<sup>14</sup> Given the contradiction between this holding and the role of faculty academic freedom in carrying out their duties, the Court suggested that university faculty teaching and scholarship may be excepted from the *Garcetti* holding.<sup>15</sup> The lower federal courts have been mixed in their application of this potential exception.<sup>16</sup>

In contrast, "extra-legal" rights of academic freedom and due process—which can be called "professional academic freedom"—apply equally to faculty in public and private universities.<sup>17</sup> Universities have widely adopted the AAUP's broad coverage of academic freedom to include teaching, research, and extramural speech and association.<sup>18</sup> The broad scope of academic freedom has been essential to protect faculty expression in fraught political times, as many AAUP investigations of alleged violations of academic freedom relate to extramural speech, including recent cases concerning faculty speech on social media.<sup>19</sup> Academic freedom is strengthened by faculty participation in shared governance, which describes faculty as having primary collective responsibility over academic matters, such as academic programs, and shared responsibility over other university matters. The AAUP describes shared governance as "inextricably linked" to academic freedom.<sup>20</sup> Such "intramural speech" enables faculty to engage in

---

<sup>11</sup> Lieberwitz, *The Corporatization of the University*, *supra* note 9, at 89.

<sup>12</sup> *Id.* at 89–90. See also, *Pickering v. Bd. of Educ.*, 391 US 563 (1968).

<sup>13</sup> *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

<sup>14</sup> *Id.* at 421.

<sup>15</sup> *Id.* at 425. See, Mary-Rose Papandrea, Keynote Address: Universities and Unresolved Free Speech Challenges, 23 FIRST AMEND. L. REV. 293, 310–17 (2024).

<sup>16</sup> See, AM. ASS'N OF UNIV. PROFESSORS, *Protecting an Independent Faculty Voice: Academic Freedom After Garcetti v. Ceballos* (2023), *citing*, *Heim v. Daniel*, 81 F.4th 212 (2d Cir. 2023); *Meriwether v. Hartop*, 992 F.3d 492, 506–07 (6th Cir. 2021); *Demers v. Austin*, 746 F.3d 402, 406, 412 (9th Cir. 2014); *Adams v. Trs. of the Univ. of N. Carolina-Wilmington*, 640 F.3d 550, 562 (4th Cir. 2011) <https://www.aaup.org/reports-publications/aaup-policies-reports/topical-reports/protecting-independent-faculty-voice#fn6>.

<sup>17</sup> Walter P. Metzger, *Profession and Constitution: Two Definitions of Academic Freedom in America*, 66 TEX. L. REV. 1265, 1291(1988).

<sup>18</sup> AM. ASS'N OF UNIV. PROFESSORS, *Committee A Statement on Extramural Utterances*, in POL'Y DOCUMENTS & REP., *supra* note 2, at 31; Lieberwitz, *supra* note 8.

<sup>19</sup> AM. ASS'N OF UNIV. PROFESSORS, *Academic Freedom and Tenure: The University of Illinois at Urbana-Champaign* (Apr. 2015), [www.aaup.org/report/UIUC](http://www.aaup.org/report/UIUC).

<sup>20</sup> AM. ASS'N OF UNIV. PROFESSORS, *On the Relationship of Faculty Governance to Academic Freedom*, in POLICY DOCUMENTS AND REPORTS (*supra* note 2), at 125.

collective self-governance that protects faculty freedom to dissent and act independently from the university administration.<sup>21</sup>

Faculty collective autonomy over academic matters is based on the expertise of faculty to engage in policy making, as well as to engage in the peer review process in faculty hiring and promotions.<sup>22</sup> In addition, “academic due process” provides safeguards to faculty in multiple contexts, including rights to appeal from negative promotion decisions, protection against censorship or retaliation by either their colleagues or the administration, and protections of fair investigations and hearings for faculty charged with misconduct that may result in severe sanctions such as suspension or dismissal.<sup>23</sup> Such due process protections are needed along with academic freedom, to deter administrators from bringing or sanctioning non-meritorious charges against faculty. Further, where academic freedom and due process protections are incorporated into university policies, individual employment contracts, or collective bargaining agreements, they may be legally enforceable contracts.<sup>24</sup>

*B. Academic freedom, broader access to higher education, and expanded academic programs*

Realizing the public mission of the university depends on creating broad access to students to pursue their interests. The post-World War II period marked the start of public funding at levels that supported broad national growth in universities and significantly expanded student access to higher education.<sup>25</sup> Although the federal GI Bill created opportunities for returning members of the armed forces to attend universities, the benefits went primarily to white men.<sup>26</sup> In what has been called the “massification” of higher education from 1960 through the mid-1970s, the states expanded the number and size of two-year and four-year public universities, to maintain low tuition levels with state and federal funding.<sup>27</sup> These governmental actions expanded access to a broader range of students, with increased enrollment for working class students, women, and students of color.<sup>28</sup> This more diverse student body brought a wide range of ideas and experience to the university, including their concerns about social justice issues. In the 1960s, this led to student activism, on and off campus, in social movements for civil rights, Black Power, feminism, and resistance to the Vietnam War.<sup>29</sup> These interests led, as well, to student activism concerning the university’s structure and functions, including student demands for their

---

<sup>21</sup> *Id.* at 123–25.

<sup>22</sup> Lieberwitz, *supra* note 8, at 319.

<sup>23</sup> AM. ASS’N OF UNIV. PROFESSORS, *Recommended Institutional Regulations on Academic Freedom and Tenure*, in POL’Y DOCUMENTS AND REPORTS (*supra* note 2), at 79–90; *supra* note 8, at 322.

<sup>24</sup> AM. ASS’N OF UNIV. PROFESSORS, *Faculty Handbooks as Enforceable Contracts* (2009), <https://www.aaup.org/reports-publications/aaup-policies-reports/topical-reports/protecting-independent-faculty-voice#fn6>.

<sup>25</sup> Risa L. Lieberwitz, *Vulnerability Theory and Higher Education*, 55 THE L. TEACHER 5, 8 (2021) [hereinafter *Vulnerability Theory*]; Lieberwitz, *supra* note 8, at 323.

<sup>26</sup> *Vulnerability Theory*, *supra* note 25, at 8.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 9.

<sup>29</sup> *Id.*

participation in university decisions in developing new academic programs in gender, race, and ethnic studies.<sup>30</sup> In its 2024 statement *On Eliminating Discrimination and Achieving Equality in Higher Education*, the AAUP emphasized the importance of academic freedom and faculty diversity to make such program expansion possible, which in turn, enables the university to continue on a path toward academic excellence: “Broad representation of faculty members—in terms of gender, race, and ethnicity—is essential to fulfill the promise of academic freedom to deepen existing disciplinary approaches and open new disciplinary paths, including the study of inequality and discrimination, methods for dismantling them, and strategies for reform and fundamental change.”<sup>31</sup>

The post-World War II period in the US also marked the expansion of federal government public funding for academic research, particularly in science and engineering. Since 1960, federal funding has constituted the majority of university research support.<sup>32</sup> Student activism has also addressed academic research, including demands for transparency and ethical accountability in academic research programs.<sup>33</sup>

### III. CORPORATIZATION OF HIGHER EDUCATION: LAYING THE GROUNDWORK TO WEAKEN ACADEMIC FREEDOM AND THE PUBLIC MISSION OF THE UNIVERSITY

Explaining the external attacks on the university by the Trump administrations must begin with a review of the internal institutional changes in the university since 1980s, known as the “corporatization” of the university.<sup>34</sup> While higher education has never been insulated from the power and influence of wealthy donors, the Reagan administration’s neoliberal policies launched a major shift in university goals and structure towards private market interests.<sup>35</sup> Corporatization is marked by major changes in universities throughout the US: expanding administration, shrinking tenure system, top-down hierarchical decision-making, skyrocketing tuition and student debt, close relations with for-profit businesses, commercialization of academic research, and commodification of teaching.<sup>36</sup> These structural changes have moved the university toward an identity as a market actor serving private interests, which conflicts with the public mission of the university.<sup>37</sup> This conflict of interests has undermined the fundamental principles and norms of faculty academic freedom in research, teaching, governance, and extramural speech protected by the job security of tenure.<sup>38</sup> Having weakened the university’s values and norms of

---

<sup>30</sup> *Id.*

<sup>31</sup> AM. ASS’N OF UNIV. PROFESSORS, *On Eliminating Discrimination and Achieving Equality in Higher Education*, 52 (2024).

<sup>32</sup> Lieberwitz, *supra* note 8, at 324.

<sup>33</sup> *Vulnerability Theory*, *supra* note 25, at 9.

<sup>34</sup> Lieberwitz, *supra* note 8, at 325; Lieberwitz, *supra* note 3, at 264; Lieberwitz, *supra* note 9, at 74.

<sup>35</sup> Lieberwitz, *supra* note 8, at 324.

<sup>36</sup> *Id.*; *Vulnerability Theory*, *supra* note 25, at 13–19.

<sup>37</sup> *Supra* note 8, at 325; *Vulnerability Theory and Higher Education* *supra* note 25 at 13–19.

<sup>38</sup> *Supra* note 8, at 326; *Vulnerability Theory and Higher Education* *supra* note 25 at 13–19.

an independent institution serving a public mission, corporatization has made the university more vulnerable to external attacks, including political interference by the Trump administration and federal agencies, as well as by state legislation intruding on the university’s autonomy. Corporatization has weakened universities’ ability and resolve to resist these attacks.

The Reagan era launched the attack on “big government” through deregulation and privatization of public functions.<sup>39</sup> In higher education, the policies of privatization had powerful negative impacts. Public funding plummeted and student debt climbed sharply, with negative effects on students whose financial circumstances put pressure on them to pursue higher education as a “return on investment” rather than as an intellectual exploration of a broad range of academic courses, including the humanities.<sup>40</sup> In 1980, Congress passed the Bayh-Dole Act, which gave universities the right to patent their federally funded research results rather than placing them in the public domain.<sup>41</sup> In response, university technology transfer offices were expanded to “scour [university] labs”<sup>42</sup> for faculty research that could be commercialized through university patents, which could then be exclusively licensed to for-profit corporations, including big pharma and agribusiness.<sup>43</sup> The university would share the profits through royalties to the faculty researcher.<sup>44</sup> These arrangements create a conflict of interests for the university and the faculty researcher, whose private financial interests are now at odds with the public mission of the university.<sup>45</sup> “Strategic corporate alliances” create similar conflicts of interests, where universities receive high levels of corporate funding from the likes of Monsanto and Novartis, in exchange for corporate rights of first refusal on exclusive licensing.<sup>46</sup> Studies have revealed the impact of these conflicts of interests, including that corporately financed researchers are significantly more likely than researchers not funded by the corporation to reach favorable results about a corporation’s product – including pharmaceutical products.<sup>47</sup>

Further mirroring a for-profit corporate identity, universities have adopted an internal labor model that shrinks the tenure system and thus the job security that is essential to faculty independence and academic freedom.<sup>48</sup> This institutional change has created a predominately contingent faculty workforce in the US. Nationally, the percentage of tenure-track/tenured faculty positions has plummeted from 78 percent in 1969,<sup>49</sup> to

---

<sup>39</sup> *Supra* note 8, at 324.

<sup>40</sup> *Supra* note 8, at 324–25.

<sup>41</sup> Risa L. Lieberwitz, *Confronting the Privatization and Commercialization of Academic Research: An Analysis of Social Implications at the Local, National, and Global Levels*, 12 IND. J. OF GLOB. LEGAL STUD. 109, 120 (2005).

<sup>42</sup> *Id.* at 122 (citing DEREK BOK, UNIVERSITIES IN THE MARKETPLACE: THE COMMERCIALIZATION OF HIGHER EDUCATION 141 (2003)).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 124 n.77.

<sup>45</sup> *Id.* at 119–22.

<sup>46</sup> *Id.* at 123–24.

<sup>47</sup> *Id.* at 135–36.

<sup>48</sup> *Supra* note 8, at 327.

<sup>49</sup> Pullias Center for Higher Education, *The Delphi Project on the Changing Faculty and Student Success: National Trends for Faculty Composition Over Time 5* (2013), <https://pullias.usc.edu/download/national-trends-for-faculty-composition-over-time/>.

53 percent in 1987,<sup>50</sup> to 32 percent in 2022.<sup>51</sup> University administrations have grown precipitously, by 140 percent between the years 1976 and 2015, as contrasted with full-time faculty growth of 86 percent in that period.<sup>52</sup> University administrations have used the resulting shift in power to impose unilateral control over faculty and to override collective faculty governance.<sup>53</sup>

Since the 1960s, faculty unionization has grown as a means of regaining collective faculty governance, with a current unionization rate of 52 percent of all public two-year college faculty members and 33 percent of four-year public university faculty members.<sup>54</sup> This has almost solely benefited public university faculty covered by state collective bargaining laws. Due to the 1980 U.S. Supreme Court decision in *Yeshiva University*,<sup>55</sup> private university faculty unionization has been severely limited, with a current rate of 8 percent.<sup>56</sup> The *Yeshiva* Court held that faculty collective autonomy through shared governance made most private university faculty “managerial” employees, excluded from rights to unionize under the National Labor Relations Act.<sup>57</sup> The four dissenting Justices noted the flaw in this reasoning, as faculty had gained collective autonomy from their collective demands for academic freedom, not from university administration and faculty alignment of interests. With the weakening of shared governance and the growing contingent faculty workforce, however, private university faculty unionization has become a greater possibility even under *Yeshiva*.<sup>58</sup> Since 2012, there has been a 56 percent growth rate in private universities, with almost three-quarters of new collective bargaining units composed of only non-tenure-track members.<sup>59</sup>

---

<sup>50</sup> Am. Ass’n of Univ. Professors, *The Inclusion in Governance of Faculty Members Holding Contingent Appointments* 206 (2024), <https://www.aaup.org/reports-publications/aaup-policies-reports/topical-reports/inclusion-governance-faculty-members#BTT1>.

<sup>51</sup> Am. Ass’n. of Univ. Professors, *The Inclusion in Governance of Faculty Members Holding Contingent Appointments* 206 (2024), <https://www.aaup.org/reports-publications/aaup-policies-reports/topical-reports/inclusion-governance-faculty-members#BTT1>.

<sup>52</sup> *Supra* note 8, at 327.

<sup>53</sup> *Id.*; *Faculty in the Corporate University*, *supra* note 3, at 303-04; Am. Ass’n. of Univ. Professors, *The 2021 AAUP Shared Governance Survey: Findings on Faculty Roles by Decision-Making Area* (Jul. 2021), <https://www.aaup.org/reports-publications/aaup-policies-reports/topical-reports/college-and-university-governance/2021>.

<sup>54</sup> Risa L. Lieberwitz, *Faculty Unionization and the Continuing Contradiction of Yeshiva*, 110 *ACADEME* 10 (Fall 2024), <https://www.aaup.org/academe/issues/fall-2024/faculty-unionization-and-continuing-contradiction-yeshiva> (citing William A. Herbert, Jacob Apkarian & Joseph van der Naald, *2024 Directory of Bargaining Agents and Contracts in Institutions of Higher Education*, NAT’L CTR. FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUC. AND THE PROFESSIONS 1, 21 (2024), <https://www.hunter.cuny.edu/national-center/articles-and-publications/#directory>).

<sup>55</sup> *NLRB v. Yeshiva Univ.*, 444 U.S. 672, 691 (1980).

<sup>56</sup> Lieberwitz *supra* note 54.

<sup>57</sup> 29 U.S.C. §§ 151–169.

<sup>58</sup> Under the Obama administration, the National Labor Relations Board made some progress toward increasing private university faculty rights to unionize by interpreting *Yeshiva* in the context of corporatization trends that have weakened faculty collective governance power in universities. *Pacific Lutheran University*, 361 *NLRB* No. 157 (2014).

<sup>59</sup> Lieberwitz, *supra* note 54.

#### IV. ATTACKS ON HIGHER EDUCATION: TRUMP’S FIRST ADMINISTRATION

In both of his presidential administrations, Trump has steadily expanded his attacks on higher education as part of his broader agenda against racial and gender equality and immigrant rights. The following sections lay out the ways in which the Trump agenda has negatively affected universities’ commitment to furthering such equality goals and more general goals of academic freedom as part of their public mission.

##### A. Trump’s Supreme Court appointments

Trump’s ability to secure a conservative majority on the Supreme Court has resulted in judicial decisions that have advanced his political agenda. While right-wing campaigns against the labor movement began long before the 2016 election,<sup>60</sup> the Trump administration has fueled those efforts to undermine unionization. In its 5-4 decision *Janus v. AFSCME, Council 31*<sup>61</sup> in 2018, the Supreme Court held that union security clauses in public sector collective bargaining violate the First Amendment, thereby constitutionalizing “right to work” laws in public employment.<sup>62</sup> Union security clauses include collective bargaining provisions that require employees who are covered by and benefit from a collective bargaining agreement, but who do not join the union, to pay their fair share of union dues.<sup>63</sup> Public sector unions have survived *Janus*, with some unions able to offset the loss of union security clauses by engaging in active organizing to encourage employees to become union members.<sup>64</sup>

The Supreme Court’s conservative supermajority’s decisions have advanced Trump’s political agenda, even under the Biden presidency. In *Students for Fair Admissions v. Harvard*,<sup>65</sup> the Court held, 6-3, that racially based affirmative action in university student admissions is prohibited under the Fourteenth Amendment Equal Protection Clause and Title VI of the Civil Rights Act of 1964.<sup>66</sup> This holding dealt a direct blow to progress that had been made toward racial diversity in higher education institutions. The Court’s opinion rejected the position that race could be considered as a

---

<sup>60</sup> In the first decade of the 2000’s, multiple states adopted legislation weakening state public sector collective bargaining, including Wisconsin’s 2011 elimination of collective bargaining rights for University of Wisconsin system employees. Risa L. Lieberwitz, *Contract as Public Law: The Public Nature of Collective Bargaining*, in VULNERABILITY AND THE LEGAL ORGANIZATION OF WORK, 122, 137-38, M.A. Fineman & J. Fineman eds. (Routledge 2018).

Twenty-six states now have “right to work” laws prohibiting agency shop/fair share fees in public or private unionized workplaces. Nat’l. Conf. of State Legislatures, “*Right-to-Work*” Resources (Dec. 19, 2023), <https://www.ncsl.org/labor-and-employment/right-to-work-resources>.

<sup>61</sup> *Janus v. AFSCME, Council 31*, 585 U.S. 878 (2018).

<sup>62</sup> The Right to Work Foundation and the State Policy Network, which engage in well-funded campaigns for “right-to-work” laws, described its intent to use the *Janus* decision “to deliver a mortal blow” to public sector unions. Risa L. Lieberwitz, *Fighting for Our Rights Today, Building Our Strength for Tomorrow*, 105 ACADEME 8, 12 (2019).

<sup>63</sup> *Id.*

<sup>64</sup> Ken Girardin, *The Janus Effect*, Empire Center (Feb. 21, 2023), <https://www.empirecenter.org/publications/the-janus-effect/>.

<sup>65</sup> *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181 (2023).

<sup>66</sup> *Id.* at 230.

positive factor to promote diversity in student admissions. As the AAUP stated in its analysis of the majority opinion, “While scarcely acknowledging the existence of discrimination against minorities, Chief Justice John Roberts, writing for the majority, emphasized that ‘college admissions are zero-sum. A benefit provided to some applicants but not to others necessarily advantages the former group at the expense of the latter.’”<sup>67</sup> Further, the decision overrode universities’ institutional academic freedom to improve higher education institutions through admissions programs that consider race as one factor in a holistic admissions process that increases diversity of the student body.<sup>68</sup> In her dissenting opinion, Justice Sotomayor explains that “[the] compelling interest in student body diversity is grounded not only in the Court’s equal protection jurisprudence but also in principles of ‘academic freedom,’ which “‘long [have] been viewed as a special concern of the First Amendment.’”<sup>69</sup>

The *SFFA v. Harvard* decision signals the Court’s willingness to interpret constitutional and statutory rights in ways that reinforce the status quo of racial inequality. As Justice Sotomayor stated in her dissenting opinion, “[T]he Court cements a superficial rule of colorblindness as a constitutional principle in an endemically segregated society where race has always mattered and continues to matter. The Court subverts the constitutional guarantee of equal protection by further entrenching racial inequality in education, the very foundation of our democratic government and pluralistic society.”<sup>70</sup>

The Court’s decision has had a major impact on student admissions. Although the overall enrollment of Black and Latino students in universities increased in the year following the *SFFA v. Harvard* decision, Black and Latino enrollment declined or remained flat in almost all highly selective private and public colleges and universities.<sup>71</sup> The Court’s decision also laid the groundwork for Equal Protection and Title VI challenges beyond student admissions programs, with lawsuits seeking to apply the decision to end scholarship programs<sup>72</sup> and diversity, equity and inclusion (DEI) offices and

---

<sup>67</sup> Am. Ass’n of Univ. Professors, *Students for Fair Admissions, Inc. v. President & Fellow of Harv. Coll.*, quoting Chief Justice Roberts, <https://www.aaup.org/brief/students-fair-admissions-inc-v-president-fellows-harvard-coll-600-us-no-20-1199-june-29-2023>.

<sup>68</sup> *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

<sup>69</sup> Sotomayor, *supra* note 65, at 332. (Sotomayor, joined by Kagan and Jackson, dissenting) (quoting *Grutter v. Bollinger*, 539 U.S. 306, 324, quoting *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 324 (1978)).

<sup>70</sup> Sotomayor, *supra* note 65, at 318–19. (Sotomayor, joined by Kagan and Jackson, dissenting).

<sup>71</sup> Meredith Kolodner and Marina Villeneuve, *After Affirmative Action: Four Takeaways – and Puzzles – From College Admissions Data*, The Hechinger Rep. (Feb. 12, 2026), <https://hechingerreport.org/after-affirmative-action-takeaways-and-puzzles-from-college-admissions-data/>. See also, Johanna Alonso, *The Changing Demographics of Admitted Students*, INSIDE HIGHER ED (Jul. 11, 2025), <https://www.insidehighered.com/news/admissions/traditional-age/2025/07/11/rates-admitted-students-who-are-black-hispanic-have> (Discussing an Urban Institute report with data from 18 colleges and universities showing that after the *SFFA v. Harvard* decision that the share of applicants who were Black or Hispanic increased from fall 2023 to fall 2024, but the percentage of those students admitted decreased.); Anemona Hartocollis, *The University of California Increased Diversity. Now It’s Being Sued*, NEW YORK TIMES (Feb. 3, 2025), <https://www.nytimes.com/2025/02/03/us/affirmative-action-california.html>.

<sup>72</sup> See, e.g., Karen Sloan, *ABA sued over diversity scholarships by conservative group*, REUTERS (Apr. 14, 2025), <https://www.reuters.com/legal/government/aba-sued-over-diversity-scholarships-by->

programs,<sup>73</sup> as well as state laws banning (DEI) educational programs in public universities.<sup>74</sup> Even without threatened or actual lawsuits, risk averse universities have engaged in “anticipatory obedience”<sup>75</sup> – particularly related to DEI programs, including changing websites, renaming DEI offices, and closing exhibits.<sup>76</sup> As discussed further below, the Trump administration has used unsupported allegations of Title VI violations and has threatened or imposed federal research funding cuts to coerce universities to increase such overly broad self-policing.

### *B. State “Divisive Concepts” laws*

In September 2020, during his first presidential administration, Trump issued an “Executive Order on Combating Race and Sex Stereotyping,”<sup>77</sup> which included a requirement that federal agency heads ensure that agency employees “do not teach, advocate, act upon, or promote in any training to agency employees any of the divisive concepts” listed in the Executive Order (EO). It also requires federal agencies to review grant programs to identify those where the agency might require the funding recipient to certify that it will not use federal funds to promote the listed divisive concepts. Included in the list of “divisive concepts” are items that represent Trump’s hostility towards teaching about the history of race and gender inequalities and their current systemic reality in the US and teaching about the benefits of affirmative action to address those inequalities. The “divisive concept” list is made up of caricatures of these ideas, including teaching that “one race or sex is inherently superior to another race or sex”; “the United States is fundamentally racist or sexist”; “an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously”; “an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex;” and “an individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex;” and “any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex”.<sup>78</sup>

---

conservative-group-2025-04-14/; John Wisely, *U-M Alumni Association ends diversity scholarship program*, DETROIT FREE PRESS (Mar. 21, 2025), <https://www.freep.com/story/news/education/2025/03/21/u-m-alumni-association-ends-diversity-scholarship-program/82588500007/>.

<sup>73</sup> Anna Griffith, *Anti-DEI Retrenchment and Litigation after Students for Fair Admissions v. Harvard*, (Sept. 2024) (Memorandum, Rutgers University) (on file with Rutgers Center for Law, Inequality, and Metropolitan Equity).

<sup>74</sup> *Id.*

<sup>75</sup> Am. Ass’n of Univ. Professors, *Against Anticipatory Obedience* (Jan. 2025), <https://www.aaup.org/reports-publications/aaup-policies-reports/policy-statements/against-anticipatory-obedience>.

<sup>76</sup> See, Sonel Cutler, Aisha Baiocchi, Erin Gretzinger, Maggie Hicks, Christa Dutton, and Jasper Smith, *Tracking Higher Ed’s Dismantling of DEI*, CHRONICLE OF HIGHER EDUCATION (Feb. 10, 2026), <https://uat.brightspot.chronicle.com/article/tracking-higher-eds-dismantling-of-dei>; Am. Ass’n of Univ. Professors, *supra* note 75.

<sup>77</sup> Exec. Order No. 13590, 85 Fed. Reg. 60683 (Sept. 22, 2020).

<sup>78</sup> *Id.*

While this Trump EO was revoked in January 2021 by President Biden,<sup>79</sup> since 2020 many state legislatures have enacted laws that replicate the prohibitions on teaching, advocating, or promoting the same list of “divisive concepts” in public schools. Justified as necessary to counter “critical race theory” (CRT)—attacked as part of right-wing dog whistle politics<sup>80</sup>—these divisive concepts laws started as controls on curriculum and teaching in K-12 public schools and expanded to apply to public universities.<sup>81</sup> As PEN America explains in its 2021 report, “Educational Gag Orders”: “In making a straw man out of CRT, legislators are seeking to dictate and constrict how educators address a wide range of subjects relating to race, diversity, and American history.”<sup>82</sup> Similar to attacks on affirmative action in student admissions, “divisive concepts” redefine the harm of race discrimination to mean the harm to white students who are taught about US racial history and its legacy. The PEN America report quotes the Washington Post in describing “Trump’s combustible formula of white identity politics.”<sup>83</sup>

There have been numerous lawsuits bringing First and Fourteenth Amendment challenges against these laws.<sup>84</sup> In an important case, *Pernell v. Florida Board of the State University System, et al.*,<sup>85</sup> the federal district court issued a preliminary injunction in 2022 based on the viewpoint discrimination and vagueness of the state of Florida’s so-called “Stop W.O.K.E. Act,” which prohibits university faculty from engaging in “instruction” that “espouses, promotes, advances, inculcates, or compels...student[s] or employee[s] to believe [eight specified concepts].”<sup>86</sup> As Judge Mark E. Walker explains in his opinion, “Defendants [Florida Board of Governors of the State University System, et al.] 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

<sup>79</sup> Joseph Storch, *The President’s Executive Order on Combating Race and Sex Stereotyping: What Colleges and Universities Need to Know*, THE STATE UNIVERSITY OF NEW YORK (Oct. 2, 2020), <https://system.suny.edu/sci/news/10-3-20-eo-on-combating-race-and-sex-stereotyping/index.html>. 2, 2020), <https://system.suny.edu/sci/news/10-3-20-eo-on-combating-race-and-sex-stereotyping/index.html>. The EO was enjoined by a federal district court in December 2020. Sheryl Estrada, *Biden Revokes Trump’s Order Limiting Diversity Training*, HIGHER ED DIVE (Jan. 21, 2021), <https://www.hrdiver.com/news/biden-revokes-trumps-order-limiting-diversity-training/593748/>. Further, on January 20, 2021, newly inaugurated President Biden signed an EO revoking the Trump “divisive concepts” EO. *Id.*

<sup>80</sup> Jonathan Friedman & James Tager, *Educational Gag Orders*, PEN AMERICA (Nov. 8, 2021), <https://pen.org/report/educational-gag-orders/#heading-2> (quoting conservative commentator Christopher Rufo’s statement in *The New Yorker* describing critical race theory as “the perfect villain”).

<sup>81</sup> PEN America has published ongoing reports about divisive concepts laws. *See id.*; Jeremy C. Young & Johnathan Friedman, *America’s Censored Classrooms 2022*, PEN AM. (Aug. 17, 2022), <https://pen.org/report/americas-censored-classrooms/>; Jeffrey Adam Sachs and Jeremy C. Young, *America’s Censored Classrooms 2024*, PEN AM. (Oct. 8, 2024), <https://pen.org/report/americas-censored-classrooms-2024/>; *See also*, Jonathan Feingold and Joshua Weishart, *Discriminatory Censorship Laws*, 99 TUL. L. REV. 585 (2025); Jeannie Suk Gersen, *Academic Freedom and Discrimination in a Polarizing Time*, 59 HOUS. L. REV. 781, 796–99 (2022) (analyzing the conflict between academic freedom and anti-discrimination mandates).

<sup>82</sup> Jonathan Friedman & James Tager, *Educational Gag Orders*, PEN AM. (Nov. 8, 2021), <https://pen.org/report/educational-gag-orders/#heading-2>.

<sup>83</sup> *Id.* (citing Michael Sherer, “white identity politics drives Trump, and the Republican Party under him”).

<sup>84</sup> For a list of 16 active lawsuits challenging these state laws, *see* Sachs and Young, *supra* note 81.

<sup>85</sup> *Pernell v. Fla. Bd. of Governors of the State Univ. Sys.*, 641 F. Supp. 3d 1218 (N.D. Fla. 2022).

<sup>86</sup> *Id.* at 1231.

dystopian.”<sup>87</sup> The Eleventh Circuit Court of Appeals reached a decision that left in place the district court’s preliminary injunction pending the defendants’ appeal to the Eleventh Circuit.<sup>88</sup>

V. ESCALATING DIRECT ASSAULTS ON HIGHER EDUCATION:  
TRUMP’S SECOND ADMINISTRATION

The second Trump administration has made frontal attacks against universities using a two-pronged approach. The first prong consists of presidential EOs and federal agency discrimination allegations that target universities. The EOs direct federal agencies to take actions against immigrants, affirmative action, DEI, and dissent. The EOs also incorporate the use of Title VI of the Civil Rights Act of 1964,<sup>89</sup> which prohibits discrimination on the basis of race, color, or national origin in programs or activities of any institution that receives federal funding. Although Title VI does not prohibit religious discrimination, since 2004, federal agency guidance has interpreted Title VI to include religion as part of protected shared ancestry or ethnic characteristics, which would include Muslims, Jews, Hindus, and Sikhs.<sup>90</sup> Trump’s EO 14188, “Additional Measures to Combat Anti-Semitism” (Feb. 3, 2025),<sup>91</sup> directs federal agencies to report about Title VI complaints “related to anti-Semitism...after October 7, 2023,” specifying reports on complaints filed with the Department of Education against K-12 schools and universities.<sup>92</sup> Trump’s EO 13899, “Combating Antisemitism,”<sup>93</sup> issued during his first administration, adopts the International Holocaust Remembrance Alliance (IHRA) definition of antisemitism and its accompanying examples, and requires all federal agencies to “consider” these in Title VI enforcement.<sup>94</sup> As discussed further in the Section V.C of this article, this strengthens federal agencies’ ability to bring Title VI allegations based on protected speech, as the IHRA definition is overly broad in its inclusion as examples of antisemitic speech certain types of criticisms about the state of Israel and Zionism that conflate political critique with antisemitism.<sup>95</sup>

It is highly unusual for the Department of Education (ED) to enforce Title VI by seeking cuts in federal funding to higher education institutions.<sup>96</sup> Yet the second prong of the Trump administration’s attacks on universities

<sup>87</sup> *Id.* at 1230.

<sup>88</sup> *Pernell v. Fla. Bd. of Governors of the State Univ. Sys.*, 2023 U.S. App. LEXIS 6591 (11th Cir. 2023).

<sup>89</sup> 42 U.S.C. § 2000(d) (2026).

<sup>90</sup> Letter from Catherine E. Lhamon, Dear Colleague Letter: Protecting Students from Discrimination, such as Harassment, Based on Race, Color, or National Origin, Including Shared Ancestry or Ethnic Characteristics (May 7, 2024).

<sup>91</sup> Exec. Order No. 14188, 90 Fed. Reg. 8847 (Feb. 3, 2025).

<sup>92</sup> *Id.*

<sup>93</sup> Exec. Order No. 13899, 84 Fed. Reg. 68779 (Dec. 11, 2019).

<sup>94</sup> AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS & MIDDLE EAST STUDIES ASSOCIATION, DISCRIMINATING AGAINST DISSENT: THE WEAPONIZATION OF CIVIL RIGHTS LAW TO REPRESS CAMPUS SPEECH ON PALESTINE 7–8 (2025).

<sup>95</sup> See text accompanying notes 154–159, *infra*.

<sup>96</sup> Suzanne B. Goldberg & Olatunde C.A. Johnson, *Campus Crises and the Limits of Title VI*, 126 COLUM. L. REV. F. 1, 21–26 (2026); AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, ON TITLE VI, DISCRIMINATION, AND ACADEMIC FREEDOM 4–5 (2025);

cuts federal research funding as a means of pressuring universities to settle unsupported Title VI allegations with agreements that enable the federal government to intrude on university independence and autonomy. Such agreements have targeted gender, racial justice, and Middle East studies programs.

#### *A. Executive Orders*

With the second Trump administration has come new Executive Orders that weaponize the use of anti-discrimination laws to undermine the equality goals of those laws. EOs attacking affirmative action and DEI are: EO 14281, “Restoring Equality of Opportunity and Meritocracy; EO 14173, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity”; EO 14151, “Ending Radical and Wasteful Government DEI Programs and Preferencing”; EO 14190, “Ending Radical Indoctrination in K-12 Schooling”; EO 14253, “Restoring Truth and Sanity to American History”; and EO 14170, “Reforming the Federal Hiring Process and Restoring Merit to Government Service”.

Eos attacking gender equality are: EO 14168, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” “ordering all agencies and departments within the Executive Branch to ‘enforce all sex-protective laws to promote [the] reality’ that there are ‘two sexes, male and female,’ and that ‘[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality.’”<sup>97</sup> and EO 14201, “Keeping Men Out of Women's Sports.”<sup>98</sup>

Trump’s EOs incorporate the use of Title VI to target expression critical of Israel and Zionism. Like EO 13899, “Combating Antisemitism,” issued in 2019 during Trump’s first administration, EO 14188, “Additional Measures to Combat Anti-Semitism,” issued in February 2025,<sup>99</sup> conflates antisemitism with political criticism of Israel and Zionism. EO 14188 declares that “[it] shall be the policy of the United States” to use “all available and appropriate legal tools” “to prosecute, remove or otherwise hold to account” citizens and noncitizens who engage in activity that the Trump administration labels as “unlawful anti-Semitic harassment and violence.”<sup>100</sup> The EO requires that the Secretary of Education submit an inventory and analysis of all Title VI complaints and administrative actions in OCR “related to anti-Semitism...after October 7, 2023.” Adding to the repression of free speech, EO 14161, “Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats”<sup>101</sup> (Jan. 30, 2025), prohibits non-citizens lawfully living in the U.S. from engaging in constitutionally protected speech that the Trump administration may subjectively interpret as expressing a “hostile attitude” toward U.S.

---

<sup>97</sup> U.S. Dep’t of Educ. Office for Civil Rights, Dear Colleague Letter: Title IX Enforcement Directive (Feb. 4, 2025).

<sup>98</sup> Exec. Order No. 14201, 90 Fed. Reg. 9279 (2025).

<sup>99</sup> EO 14188, *supra* note 91.

<sup>100</sup> *Id.*

<sup>101</sup> Exec. Order No. 14161, 90 Fed. Reg. 8451 (2025).

“citizens, culture, government, institutions, or founding principles” on penalty of deportation.<sup>102</sup>

### *B. Federal Agency investigations*

Title VI investigations increased late in the Biden administration, primarily based on complaints filed alleging that speech in university campus protests that was critical of Israel and Zionism constituted a hostile environment based on antisemitism. Between October 7, 2023 and the end of 2024, the Biden administration’s ED initiated investigations of alleged antisemitism at 65 colleges and universities, twice the number of the 38 investigations of all other types of racial harassment combined.<sup>103</sup> Under the Trump administration, antisemitism investigations against universities have continued, with 38 opened between January and September 2025, while racial harassment investigations appear to have been halted.<sup>104</sup> The ED’s Office for Civil Rights (OCR) conducts an investigation to determine whether the university has fulfilled its obligation to “take prompt and effective steps” to address alleged unlawful discrimination.<sup>105</sup> If OCR finds merit to the complaint, it usually negotiates with a college or university to reach agreement about the steps it will take to remedy any specific issue of discrimination or harassment, such as actions to improve the campus climate, including educational activities or training about protections and prohibitions under Title VI.<sup>106</sup>

Federal agencies have taken additional actions to aggressively implement Trump’s EOs. The ED’s OCR issues “Dear Colleague Letters” (DCLs) interpreting anti-discrimination law, including Title VI of the Civil Rights Act and Title IX of the Education Amendments of 1972,<sup>107</sup> which prohibits sex discrimination in any educational programs or activities that receive federal funding. Although DCLs do not have the force of law, they may be influential with the courts, as well as influencing the conduct of federal fund recipients.<sup>108</sup>

On February 14, 2025, OCR issued a DCL<sup>109</sup> that seeks to apply the US Supreme Court’s *SFFA v. Harvard* decision to DEI programs, an interpretation that goes far beyond the Court’s holding that the Fourteenth Amendment and Title VI prohibit consideration of race as a factor in student admissions.<sup>110</sup> The DCL declared OCR’s intent to use Title VI to investigate

<sup>102</sup> *Id.*

<sup>103</sup> AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS & MIDDLE EAST STUDIES ASSOCIATION, DISCRIMINATING AGAINST DISSENT: THE WEAPONIZATION OF CIVIL RIGHTS LAW TO REPRESS CAMPUS SPEECH ON PALESTINE 2, 10–11 (2025).

<sup>104</sup> *Id.* at 1–2, 10.

<sup>105</sup> AM. ASS’N OF UNIV. PROFESSORS, ON TITLE VI, DISCRIMINATION, AND ACADEMIC FREEDOM 4–5 (2025).

<sup>106</sup> *Id.*

<sup>107</sup> 20 U.S.C. § 1681 et seq.

<sup>108</sup> AM. ASS’N OF UNIV. PROFESSORS, ON TITLE VI, DISCRIMINATION, AND ACADEMIC FREEDOM 5 (2025).

<sup>109</sup> U.S. Dep’t of Educ. Office for Civil Rights, Dear Colleague Letter: “SFFA v. Harvard” (Feb. 14, 2025).

<sup>110</sup> *Supra* note 108, at 7. Note: The author of this article was a member of the AAUP Committee A on Academic Freedom that drafted this report.

universities for DEI programs that “deny students the ability to participate fully in the life of a school” when they “stigmatize students that belong to particular racial groups” based on “crude racial stereotypes,” and teach that students of those racial groups “bear unique moral burdens that others do not.”<sup>111</sup> Like the *SFFA v. Harvard* decision, the DCL redefines the harm of racism not to affect students of color, but rather as falling on white students who will be obliged to “bear unique moral burdens” to address the existence or perpetuation of racism.<sup>112</sup> In its report, “On Title VI, Discrimination, and Academic Freedom,” the AAUP Committee A on Academic Freedom and Tenure criticizes the DCL’s characterizations of DEI programs. The Committee A report states: “DEI programs were meant to address precisely those systematic biases based on race, color, and national origin that Congress intended to counteract when it passed the 1964 Civil Rights law. In a perverse reading of DEI, the administration makes it an instance of racial discrimination rather than an attempt to dismantle the structures of discrimination based on race.”<sup>113</sup>

The DCL’s descriptions of DEI also draw from the Trump “divisive concepts” EO issued in 2020.<sup>114</sup> Like the “divisive concepts” federal EO and state laws, the DCL interferes with academic freedom by censoring university programs addressing racism, whether they take place inside and outside the classroom.<sup>115</sup> The illegitimate nature of the February 14, 2025 DCL was revealed by a series of federal district court decisions issuing injunctions against the ED’s use of the DCL, based on the likelihood that plaintiffs would succeed on the merits of their constitutional claims that the DCL was void for vagueness under the Fifth Amendment, constituted viewpoint discrimination under the First Amendment, and failed to follow the notice and comment period required for adopting new regulations under the Administrative Procedures Act.<sup>116</sup> In January 2026, the ED OCR decided to abandon any appeals or attempts to enforce the DCL.<sup>117</sup>

Despite the injunctions against the ED’s DCL, the US Department of Justice doubled down on weaponizing Title VI by issuing its own memorandum for all federal agencies in July 2025, providing “guidance

---

<sup>111</sup> Letter from Craig Trainor, Dear Colleague Letter: *SFFA v. Harvard* (Feb. 14, 2025); See also, AM. ASS’N OF UNIV. PROFESSORS, ON TITLE VI, DISCRIMINATION, AND ACADEMIC FREEDOM 7 (2025).

<sup>112</sup> “White students are clearly the protected group at issue according to Trump’s OCR, since they are thought to bear ‘moral burdens’ [for slavery, racism] ‘that others do not.’” AM. ASS’N OF UNIV. PROFESSORS, ON TITLE VI, DISCRIMINATION, AND ACADEMIC FREEDOM 8 (2025).

<sup>113</sup> AM. ASS’N OF UNIV. PROFESSORS, ON TITLE VI, DISCRIMINATION, AND ACADEMIC FREEDOM 7 (2025).

<sup>114</sup> See, text accompanying notes 77–83, *supra*.

<sup>115</sup> U.S. Dep’t of Educ. Office for Civil Rights, Frequently Asked Questions on Dear Colleague Letter About Racial Preferencing (Mar. 1, 2025). After an initial federal district court injunction was issued against enforcing the DCL, the ED posted the following notice: “As a result [of the April 24, 2025 injunction], the Department of Education’s Office for Civil Rights will not take any enforcement action, or otherwise implement, the February 28, 2025, Dear Colleague Letter, associated FAQs, the End DEI Portal, or the certification requirement until further notice.” *Id.*

<sup>116</sup> See Brooke Schultz, *Trump Can’t Require Schools to Certify They Won’t Use DEI*, JUDGE SAYS, EDUC. WEEK (Aug. 15, 2025); Matthew Stone, *Trump Can’t Enforce Anti-DEI Directives in Schools*, 3 JUDGES SAY EDUC WEEK (Apr. 24, 2025); See also, National Education Association, et al. v. United States Department of Education, et al., 779 F. Supp. 3d 149 (D.N.H. 2025).

<sup>117</sup> Jessica Blake, *Education Dept. Drops Appeal of Court Order Blocking Anti-DEI Guidance*, INSIDE HIGHER ED (Jan. 22, 2026).

[that] clarifies the application of federal antidiscrimination laws to programs or initiatives that may involve discriminatory practices, including those labeled as Diversity, Equity and Inclusion (“DEI”) programs.”<sup>118</sup> This DOJ “guidance” is far reaching, describing its views of potentially discriminatory practices such as “unlawful proxies,” where federally funded institutions “intentionally use ostensibly neutral criteria that function as substitutes for explicit consideration of race, sex, or other protected characteristics.”<sup>119</sup> Among its examples of potentially discriminatory proxies, the DOJ memorandum lists “recruitment strategies targeting geographic areas...chosen primarily because of the racial or ethnic composition rather than other legitimate factors.”<sup>120</sup> In other words, the DOJ targets practices that are lawful even under the Supreme Court’s *SFFA v. Harvard* student admissions decision.<sup>121</sup> The broad sweep of the DOJ “guidance” memorandum also draws from “divisive concepts” state laws in describing DEI trainings that may be discriminatory.<sup>122</sup>

The ED issued a February 4, 2025, DCL<sup>123</sup> relying on Trump’s EOs to interpret Title IX in ways that undermine its goal of increasing gender equality. Title IX of the Education Amendments of 1972<sup>124</sup> prohibits sex discrimination in any educational programs or activities that receive federal funding. The ED’s DCL announced that the ED “must enforce Title IX consistent with President Trump’s [January 2025 Executive] Order” “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,”<sup>125</sup> which declares a fixed binary biological definition of sex as male and female. Similarly, the DOJ guidance memorandum states, “To ensure compliance with federal law and to safeguard the rights of women and girls, organizations should affirm sex-based boundaries rooted in biological differences,”<sup>126</sup> and that “failing to maintain sex-separated athletic competitions and intimate spaces can also violate federal law.”<sup>127</sup> The Trump administration’s narrow interpretation of “sex” undermines the equality goals of Title IX by denying the existence of “gender identity.” This also violates academic freedom by seeking to coerce universities to affirm a fixed biological meaning of sex. The Trump administration’s coercive actions under the cover of Title IX extend their weaponization of Title VI of the Civil Rights Act.

---

<sup>118</sup> Office of the Attorney General, *Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination* (July 29, 2025).

<sup>119</sup> *Id.* at 5.

<sup>120</sup> *Id.* See also, Johanna Alonso, *Justice Department Declares DEI Unlawful*, INSIDE HIGHER ED (July 30, 2025).

<sup>121</sup> See, Richard d. Kahlenberg, *New Avenues for Diversity After Students for Fair Admissions*, 48 J. COLLEGE & UNIVERSITY L. 283, 301–06 (2023).

<sup>122</sup> Office of the Attorney General, *Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination* (July 29, 2025), <https://www.justice.gov/ag/select-publications>.

<sup>123</sup> U.S. Dep’t of Educ. Office for Civil Rights, Dear Colleague Letter: Title IX Enforcement Directive (Feb. 4, 2025).

<sup>124</sup> 20 U.S.C. § 1681.

<sup>125</sup> U.S. Dep’t of Educ. Office for Civil Rights, Dear Colleague Letter: Title IX Enforcement Directive (February 4, 2025).

<sup>126</sup> Office of the Attorney General, “*Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination*” at 6 (July 29, 2025).

<sup>127</sup> *Id.* at 6.

The attacks on gender equality have resulted in university administrations' violations of academic freedom. University of Oklahoma put a psychology course instructor on administrative leave after a student complained of religious discrimination because she received a failing grade on her essay about gender.<sup>128</sup> Given the interference with the instructor's teaching, even conservatives have found this to be extreme. The Oklahoma governor called the situation "deeply concerning" and a politically conservative commentator stated, "You have to pass students who only cite religious faith for their opinions now or they're victims of discrimination."<sup>129</sup> Gender studies have been under severe attack in Texas. A Texas A&M University Senior Lecturer was discharged based on a student complaint that the faculty member was teaching that gender identity includes transgender status.<sup>130</sup> The university administration ignored the faculty council's finding that the discharge violated academic freedom.<sup>131</sup> Six public university systems, including the University of Texas system, now require reviews of curriculum, syllabi and course content about gender identity.<sup>132</sup>

### C. Federal agencies' use of the "art" of coercive "deals" with universities

In February 2025, the DOJ led the Trump administration's creation of a multi-agency "Task Force to Combat Antisemitism," which also includes representatives from the ED and the Department of Health and Human Services.<sup>133</sup> This Task Force has further politicized the use of Title VI by making allegations of antisemitism on university campuses without following any of the Title VI investigative and other due process requirements to determine whether there is supporting evidence of such claims.<sup>134</sup> Mostly targeting Ivy League universities, the Task Force has

<sup>128</sup> Mark Arsenault, "College Instructor Put on Leave Over Zero Grade for Gender Essay," N.Y. TIMES (Dec. 2, 2025), <https://www.nytimes.com/2025/12/02/us/oklahoma-bible-essay-gender-teasing-zero.html>.

<sup>129</sup> *Id.*

<sup>130</sup> Emma Whitford, "2 Texas A&M Administrators and Professor Out After Viral Video," INSIDE HIGHER ED (Sept. 10, 2025), <https://www.insidehighered.com/news/faculty/academic-freedom/2025/09/10/texas-am-professor-and-administrators-out-after-viral>.

<sup>131</sup> Emma Whitford, "Texas A&M Faculty Council Says Professor's Dismissal Academic Freedom violated," INSIDE HIGHER ED (Nov. 13, 2025), available at <https://www.insidehighered.com/news/quick-takes/2025/11/13/texas-am-faculty-finds-dismissed-profs-academic-freedom-violated>; see also AAUP-TAMU Response to the Firing of Dr. McCoul, AAUP-TAMU BLOG (Sept. 18, 2025), <https://aaup-texas.org/blog/f/aaup-tamu-response-to-the-firing-of-dr-mccoul>.

<sup>132</sup> Emma Whitford, *Texas Systems Review Course Descriptions, Syllabi, as Critics Scrutinize Them*, INSIDE HIGHER EDUC. (Oct. 9, 2025), <https://www.insidehighered.com/news/faculty-issues/curriculum/2025/10/09/texas-systems-review-course-descriptions-syllabi>; Antonio L. Ingram II, *Anti-Truth Movements Post World War II Germany and Contemporary Texas: The Repetition of History and Lessons in Truthful Reconstruction*, 16 DREXEL L. REV. 751 (2024).

<sup>133</sup> Press Release, U.S. Dep't of Just., Justice Department Announces Formation of Task Force to Combat Anti-Semitism (Feb. 3, 2025), <https://www.justice.gov/opa/pr/justice-department-announces-formation-task-force-combat-anti-semitism>; see also Jessica Blake, *Who is Trump's Task Force?*, INSIDE HIGHER ED (Apr. 2, 2025), <https://www.insidehighered.com/news/government/politics-elections/2025/04/02/who-trumps-antisemitism-task-force>.

<sup>134</sup> Michael C. Dorf, *Trump's Columbia Funding Cutoff is Illegal*, THE CHRON. OF HIGHER EDUC. (Mar. 10, 2025), <https://www.chronicle.com/article/trumps-columbia-funding-cutoff-is-illegal>; AMERICAN

escalated even further by using the unproven Title VI allegations as the basis for threatening or imposing massive cuts in federal research funding unless the university enters an agreement that includes institutional changes in areas such as academic programs, university governance and leadership, student admissions processes, and external monitoring.<sup>135</sup> On top of this, the agreements usually include a penalty of millions of dollars that the university will pay to the federal government.<sup>136</sup> It is worth remembering that it is almost unheard of for Title VI investigations to result in the loss of federal funding.<sup>137</sup> Moreover, the Task Force’s “negotiations” process is one of coercion to enter an agreement in exchange for reinstating federal funding, rather than a process following a real investigation and other Title VI due process requirements that could lead to funding cuts.<sup>138</sup>

The politics underlying the Task Force’s coercive measures can be traced back to the Trump EOs that seek to suppress dissent against Trump policies and actions – particularly those concerning Israel and Palestine. Prior to Trump’s second administration, right-wing Republicans in congressional hearings had engaged in political theater, accusing Ivy League universities of antisemitism for not cracking down on student and faculty protests against Israel’s military response in Gaza after October 7, 2023.<sup>139</sup> In his second term, the Trump EOs and federal agency abuse of Title VI have taken this conflation of political protest with antisemitism even further, using unfounded allegations of antisemitism as a pretext for federal funding cuts against universities such as Columbia, Harvard, and University of Pennsylvania, unless they agree to the Task Force’s intrusive demands to make institutional changes, succumb to governmental oversight, and pay a huge ransom to the federal government.<sup>140</sup> Harvard refused to enter an agreement to comply with the Task Force’s demands, which included extreme conditions for the federal government to release the \$2.2 billion in frozen federal research grant funds.<sup>141</sup> Harvard brought

---

ASSOCIATION OF UNIVERSITY PROFESSORS & MIDDLE EAST STUDIES ASSOCIATION, *DISCRIMINATING AGAINST DISSENT: THE WEAPONIZATION OF CIVIL RIGHTS LAW TO REPRESS CAMPUS SPEECH ON PALESTINE* 23–24 (2025).

<sup>135</sup> AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, *ON TITLE VI, DISCRIMINATION, AND ACADEMIC FREEDOM* 8–9 (2025); Chronicle Staff, *Tracking Trump’s Higher-Ed Deals*, THE CHRON. OF HIGHER EDUC. (Aug. 8, 2025), <https://www.chronicle.com/article/universities-are-making-deals-with-trump-heres-how-they-stack-up>.

<sup>136</sup> Chronicle Staff, *supra* note 135.

<sup>137</sup> See note 96, *supra*.

<sup>138</sup> See Katherine Mangan, *Judge Blocks Trump’s Threats to Cut Funds to California*, THE CHRONICLE OF HIGHER EDUCATION (Nov. 15, 2025), <https://www.chronicle.com/blogs/the-trump-agenda/judge-blocks-trumps-threats-to-cut-funds-to-u-of-california>.

<sup>139</sup> See Katherine Knott, *Third Antisemitism Hearing Could Further Disrupt Higher Ed*, INSIDE HIGHER ED (May 22, 2024), <https://www.insidehighered.com/news/government/2024/05/22/key-developments-higher-ed-columbia-u-house-hearing>; Katherine Knott, *3 Presidents on the Hot Seat*, INSIDE HIGHER ED (Dec. 6, 2023) <https://www.insidehighered.com/news/government/2023/12/05/house-republicans-castigate-presidents-harvard-penn-and-mit>.

<sup>140</sup> AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, *ON TITLE VI, DISCRIMINATION, AND ACADEMIC FREEDOM* 8–9 (2025).

<sup>141</sup> Josh Moody, *Harvard Resists Trump’s Demands*, INSIDE HIGHER ED (Apr. 14, 2025) (“The letters call for changes to governance, hiring and admissions, a ban on masks, and more, including greater scrutiny of international applicants to exclude ‘students supportive of terrorism or anti-Semitism.’” The demands also included “a shutdown of all diversity, equity, and inclusion initiatives; and the reformation of multiple programs ‘with egregious records of antisemitism or other bias.’”).

a First Amendment challenge against the DOJ and other federal agencies, as did the national AAUP and the Harvard AAUP chapter, with both cases then consolidated in federal district court.<sup>142</sup> In April 2025, the district court issued a permanent injunction ordering the Trump administration to cease withholding federal funds from Harvard.<sup>143</sup> Judge Burroughs' opinion drew the curtain back to reveal the reality of the Task Force's use of Title VI allegations of antisemitism as a pretext for cutting funds in order to pressure Harvard to yield to governmental ideological dictates: "The fact that Defendants' swift and sudden decision to terminate funding, ostensibly motivated by antisemitism, was made before they learned anything about antisemitism on campus or what was being done in response, leads the Court to conclude that the sudden focus on antisemitism was, at best...arbitrary and, at worst, pretextual....[T]he government-initiated onslaught against Harvard was much more about promoting a governmental orthodoxy in violation of the First Amendment than about anything else, including fighting antisemitism."<sup>144</sup>

The national AAUP joined other unions and organizations to bring First Amendment challenges against the Trump administration's funding cuts of nearly \$600 million of federal research grants to UCLA.<sup>145</sup> The multi-agency Task Force made extreme and intrusive demands on the University of California system as a condition of reinstating their federal funding. These demands included that the UCLA submit to federal monitoring of its compliance with "academic restructuring" related to curricular changes, DEI programs, hiring practices, and admissions, in addition to increased restrictions on campus protests, and adoption of the EO 14168 concerning "gender ideology."<sup>146</sup> UCLA would also be required to pay \$1.2 billion in return for restoration of the federal grants. In November 2025, the federal district court issued a preliminary injunction ordering the resumption of funding to UC and finding that the federal government violated the First Amendment. The hard hitting first paragraph of District Judge Rita F. Lin's opinion captures scope and depth of the Trump administration's politically motivated attacks and coercive measures against the University of California and more broadly against universities across the nation:

Plaintiffs have submitted overwhelming evidence. Across 74 declarations and more than 700 pages of supporting documents, Plaintiffs show that the Administration and its executive agencies are engaged in a concerted campaign to

---

<sup>142</sup> *President & Fellows of Harvard College v. U.S. Dep't of Health and Hum. Servs.*, 25-cv-11048, (D. Mass. (2025)); *Am. Ass'n of Univ. Professors v. U.S. Dep't of Just.*, No. 1:25-cv-10910, (2025).

<sup>143</sup> *President & Fellows of Harvard College v. U.S. Dep't of Health and Hum. Servs.*, 798 F. Supp. 3d 77, 137 (D. Mass. 2025).

<sup>144</sup> 798 F. Supp. 3d at 121–22.

<sup>145</sup> *Am. Ass'n of Univ. Professors*, No. 25-cv-07864-RFL; *See also Federal Court Blocks Trump Effort to Pressure UC System into Political Compliance*, AM. ASS'N. OF UNIV. PROFESSORS, <https://www.aaup.org/federal-court-blocks-trump-effort-pressure-uc-system-political-compliance>.

<sup>146</sup> *Am. Ass'n of Univ. Professors*, No. 25-cv-07864-RFL, at 33–35.

purge "woke," "left," and "socialist" viewpoints from our country's leading universities. Agency officials, as well as the President and Vice President, have repeatedly and publicly announced a playbook of initiating civil rights investigations of preeminent universities to justify cutting off federal funding, with the goal of bringing universities to their knees and forcing them to change their ideological tune. Universities are then presented with agreements to restore federal funding under which they must change what they teach, restrict student anonymity in protests, and endorse the Administration's view of gender, among other things. Defendants submit nothing to refute this.<sup>147</sup>

Despite the federal Task Force's failure to follow Title VI due process requirements and failure to supply supporting evidence of unlawful discrimination, several universities including Columbia University, University of Pennsylvania, Brown University, and Cornell University have entered agreements with the federal government.<sup>148</sup> The most notorious agreement was by Columbia University in July 2025, immediately after suspending or expelling students for participation in pro-Palestinian protests<sup>149</sup> and soon after the federal government cut \$400 million in Columbia's federal research funds.<sup>150</sup> Columbia agreed to pay \$200 million to the US government, plus \$21 million to an Equal Employment Opportunity Commission claims fund, in exchange for the government's restoring \$400 million in grant funds and closing pending Title VI and Title VII investigations or compliance reviews.<sup>151</sup> Other agreement provisions take aim at the Trump administration's political targets, including Columbia's agreement to restructure programs and hiring in regional area studies, starting with the Middle East, decrease international student enrollment, ensure that its hiring and admissions do not promote "unlawful DEI goals," and accept oversight by an external "Resolution Monitor" to ensure its compliance with the agreement.<sup>152</sup> Columbia's and other universities' agreements have been strongly criticized as capitulating to the Trump administration's coercive demands to agree to measures that go beyond any lawful remedies under Title VI, and that are tantamount to the use of extortion to coerce agreement to

---

<sup>147</sup>American Association of University Professors, et al. v. Trump, et al., 2025 U.S. Dist. LEXIS 224922 (N.D. Cal. 2025), at 7.

<sup>148</sup> Chronicle Staff, *Tracking Trump's Higher-Ed Deals*, THE CHRONICLE OF HIGHER EDUCATION, (August 8, 2025), <https://www.chronicle.com/article/universities-are-making-deals-with-trump-heres-how-they-stack-up>.

<sup>149</sup> AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, ON TITLE VI, DISCRIMINATION, AND ACADEMIC FREEDOM 9 (2025); Francine Diep and Sarah Huddleston, *In Extraordinary Deal with Trump, Columbia U. Agrees to Pay \$200 Million to Restore Funds*, THE CHRONICLE OF HIGHER EDUCATION, (July 23, 2025), <https://www.chronicle.com/article/in-extraordinary-deal-with-trump-columbia-u-agrees-to-pay-200-million-to-restore-funds>.

<sup>150</sup> AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, ON TITLE VI, DISCRIMINATION, AND ACADEMIC FREEDOM 9 (2025).

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

unconstitutional provisions.<sup>153</sup> The Columbia University chapter of the AAUP described Columbia's agreement as being a "blunt instrument through which the Trump Administration has demonstrated its power to bludgeon American universities into undermining the traditions of free and open inquiry, robust political speech, and shared governance that have long distinguished them."<sup>154</sup>

It is telling that Columbia also agreed to adopt the IHRA definition of antisemitism and its accompanying examples.<sup>155</sup> Adopted by the first Trump administration in EO 13899, "Combating Antisemitism,"<sup>156</sup> for use by federal agencies, the IHRA definition is an overly broad definition that federal agencies, including the ED and now the multi-agency Task Force, use in evaluating Title VI allegations of antisemitic hostile environment harassment.<sup>157</sup> While including criteria that accurately describe antisemitism, the IHRA definition also includes as examples of antisemitic speech certain types of criticisms about the state of Israel and Zionism that conflate political critique with antisemitism.<sup>158</sup> For example, the IHRA defines as antisemitic speech "denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor" and speech "applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation." Using this conflation of political speech with antisemitism opens the door to Title VI allegations targeting speech protected by the First Amendment and academic freedom.<sup>159</sup> Even Kenneth Stern, one of the authors of the IHRA definition, has objected to the "weaponizing" of the definition, arguing that its misuse undermines efforts to detect and combat real instances of antisemitism.<sup>160</sup>

---

<sup>153</sup> Jessica Blake, *Columbia Deal a 'Threat' to Higher Ed, Experts Warn*, INSIDE HIGHER ED, (July 25, 2025), <https://www.insidehighered.com/news/government/politics-elections/2025/07/25/columbia-settlement-offers-warning-higher-ed>; Jameel Jaffer, Alex Abdo, Katy Glenn Bass, Nadine Farid Johnson, and Larry Siems, *What the Columbia Settlement Really Means*, KNIGHT FIRST AMEND. INST. AT COLUMBIA UNIV., (Aug. 4, 2025), <https://knightcolumbia.org/blog/what-the-columbia-settlement-really-means>.

<sup>154</sup> Columbia University Chapter of the AAUP, "An Agreement That Settles Nothing," *Academe Blog*, July 29, 2025, <https://academeblog.org/2025/07/29/an-agreement-that-settles-nothing/>.

<sup>155</sup> AM. ASSOC. OF UNIV. PROFESSORS, ON TITLE VI, DISCRIMINATION, AND ACADEMIC FREEDOM 9 (2025).

<sup>156</sup> Exec. Order No. 13899, *supra* note 93.

<sup>157</sup> AM. ASSOC. OF UNIV. PROFESSORS & MIDDLE E. STUD. ASSOC., DISCRIMINATING AGAINST DISSENT: THE WEAPONIZATION OF CIVIL RIGHTS LAW TO REPRESS CAMPUS SPEECH ON PALESTINE 7–8 (2025); AM. ASSOC. OF UNIV. PROFESSORS, ON TITLE VI, DISCRIMINATION, AND ACADEMIC FREEDOM 9 (2025).

<sup>158</sup> AM. ASSOC. OF UNIV. PROFESSORS & MIDDLE E. STUD. ASSOC., DISCRIMINATING AGAINST DISSENT: THE WEAPONIZATION OF CIVIL RIGHTS LAW TO REPRESS CAMPUS SPEECH ON PALESTINE 7–8 (2025); Jason Brownlee, *Efforts to Weaponize Title VI against Pro-Palestine Speech on University Campuses*, 30 TEX. J. ON C.L. & C.R. 52 (2024).

<sup>159</sup> AM. ASSOC. OF UNIV. PROFESSORS & MIDDLE E. STUD. ASSOC., DISCRIMINATING AGAINST DISSENT: THE WEAPONIZATION OF CIVIL RIGHTS LAW TO REPRESS CAMPUS SPEECH ON PALESTINE 7–8 (2025); AM. ASSOC. OF UNIV. PROFESSORS, ON TITLE VI, DISCRIMINATION, AND ACADEMIC FREEDOM 6–7 (2025); Itamar Mann and Lihi Yona, *Defending Jews From the Definition of Antisemitism*, 71 UCLA L. REV. 1150 (2024).

<sup>160</sup> AM. ASSOC. OF UNIV. PROFESSORS COMM. A ON ACAD. FREEDOM AND TENURE, LEGISLATIVE THREATS TO ACADEMIC FREEDOM: REDEFINITIONS OF RACISM AND ANTISEMITISM, 2 (2022).

## VI. THE “PERFECT STORM” FOR THE GOVERNMENTAL ATTACK ON UNIVERSITIES

The attacks on higher education are part of Trump’s broader agenda to dismantle democratic institutions and establish autocratic presidential power. Trump’s ability to advance these goals regarding higher education were made possible by economic, political, and legal developments starting in the 1980s with the resurgence of neoliberal privatization under Reagan, which led to internal institutional changes to the university through the process of corporatization. Section VI.A. brings together and analyzes the way that these internal changes, combined with the external attacks on the university by post-Obama presidencies, created a “perfect storm” of social forces that have enabled the extreme level of Trump’s current attacks on higher education. Section VI.B analyzes why university administrations have not engaged in collective resistance against these external attacks. Section VI.C then discusses the collective resistance that has occurred by faculty and student organizations and the role of the courts in finding the attacks to be unconstitutional.

### *A. Conditions creating the “perfect storm”*

The Reagan era laid the groundwork for a weakening of universities’ ability to withstand the attacks being launched under the two Trump administrations. As discussed in Section III, university corporatization creates an internal threat to universities’ institutional independence and commitment to its public mission. University administrations have embraced the neoliberal obsession with a market-driven economy, putting into place an institutional vision of the “entrepreneurial” university. This corporate model encourages faculty to commercialize research and build closer relationships with industry, commodifies teaching with a largely contingent faculty work force, and expands top-down decision-making by an ever expanding administration. Shifting toward a university identity as market actor has led to institutional changes that undermine the university’s institutional independence, faculty academic freedom and tenure, due process, and shared governance, which are fundamental to fulfilling the university’s public mission.<sup>161</sup> This largely self-inflicted weakening of universities’ independence and public mission has continued with corporatization trends under the ongoing neoliberal policies since the Reagan administration.

The first Trump presidential campaign and election win marked the start of a severe, rightward shift in political and judicial institutions that have added external threats to university independence and faculty academic freedom. Trump’s overtly racist, misogynist, and xenophobic campaign fueled a racially driven backlash against the Obama presidency. In the university context, this backlash is evidenced in the federal and state level

---

<sup>161</sup> Risa L. Lieberwitz, *Fighting for Our Rights Today, Building Our Strength for Tomorrow*, 105 *ACADEME* 8, 10–11 (2019).

attacks on programs and policies adopted in the 1960s, which supported advances toward a more diverse student body and a broadened academic curriculum. In his first administration, with the support of a right-wing Senate majority, Trump was able to secure a conservative Supreme Court.<sup>162</sup> Under the Biden presidency, the Trump impact continued, as the Court delivered the demise of affirmative action in student admissions, and state legislatures imported Trump's EO on "divisive concepts" into state laws restricting academic freedom at all levels of public education.

Under the Biden presidency, the "perfect storm" was strengthened by the external political attacks on universities after October 7, 2023. Congressional hearings, beginning in December 2023 revealed the weak defense of academic freedom and protected political speech by university presidents accused of antisemitism for not disciplining students and faculty for their protests against Israel's massive military campaign in Gaza.<sup>163</sup> One of the most distressing displays of such weakness was Columbia University's president Minouche Shafik's performance in front of the House committee, when she named faculty who were being investigated or who would never teach at Columbia again.<sup>164</sup> Having already corporatized the university as a market actor with increasingly close relations with for-profit businesses and conservative wealthy donors and trustees, the university presidents' responses can be understood as appeasement rather than robust support for academic freedom and freedom of expression.<sup>165</sup>

These developments laid the groundwork for Trump's second administration when he unleashed an all-out direct assault on universities. This frontal attack goes to a new extreme of using antidiscrimination law against itself. Following the example of the Supreme Court majority in *SFFA v. Harvard*, the Trump administration has weaponized anti-discrimination law, including Title VI and Title IX, to destroy the goals of civil rights law to undo systemic racial and gender inequalities. Using a combination of political and legal tools of presidential EOs, "Dear Colleague Letters," Title VI investigations, and cuts in federal research funds, federal agencies under Trump have launched a barrage of attacks against universities to put the federal re-interpretation of anti-discrimination into effect.<sup>166</sup> With these tools, Trump and his federal agencies have accused universities of engaging in discrimination by increasing diversity in student admissions and faculty appointments, teaching and research about race and gender, and creating

---

<sup>162</sup> See, Gerhard Peters and John T. Woolley, *Trump Campaign Press Release – Promises Kept – Another Supreme Court Justice*, THE AMERICAN PRESIDENCY PROJECT (Oct. 26, 2020), <https://www.presidency.ucsb.edu/documents/trump-campaign-press-release-promises-kept-another-supreme-court-justice>.

<sup>163</sup> Knott, *supra* note 139.

<sup>164</sup> Ryan Quinn, *Columbia President Accused of Dishonest Testimony, Throwing Professors 'Under the Bus'*, INSIDE HIGHER ED (Apr. 19, 2024), <https://www.insidehighered.com/news/faculty-issues/academic-freedom/2024/04/19/columbia-president-accused-throwing-profs-under-bus>.

<sup>165</sup> See, Robert Reich, *Academic Freedom The Loser When Big Donors Hound US University Presidents*, THE GUARDIAN (Dec. 12, 2023), <https://www.theguardian.com/commentisfree/2023/dec/12/us-college-donors-influence-gaza-israel>; Rob Copeland, *Warning of 'Grave' Errors, Powerful Donors Push Universities on Hamas*, N.Y. TIMES (Oct. 15, 2023), <https://www.nytimes.com/2023/10/15/business/harvard-upenn-hamas-israel-students-donors.html>.

<sup>166</sup> See text accompanying notes 89–127, *supra*.

DEI policies and programs.<sup>167</sup> These attacks on universities have been further fueled by federal agencies’ unsupported Title VI allegations that conflate antisemitism with political dissent against Israel and Zionism.<sup>168</sup> With the federal multi-agency Task Force’s coerced agreements with Columbia University, Brown University, University of Pennsylvania, Cornell University, and others, the weaponization of Title VI has been turned into a tool of extortion against higher education institutions.<sup>169</sup>

*B. The choice of capitulation or resistance*

*1. Capitulation and its costs*

In the face of widespread ideological, political, and economic attacks by federal and state governments, university administrations have not joined together to collectively resist the interference with universities’ institutional independence, faculty academic freedom and students’ freedom of expression. Instead, university administrations have maintained an individualistic response to these attacks, choosing to duck and cover, appease Congressional critics and federal agencies, or capitulate to coercive demands to make institutional changes in exchange for the reinstatement of federal research funds.<sup>170</sup>

This individualized institutional strategy was not inevitable. The universities could have chosen to collectively refuse to accede to Trump’s demands. If all or most universities had resisted together, they could have significantly increased their power to push back against Trump and the federal agencies’ unconstitutional and illegal tactics. Rather than Princeton and Wesleyan being among the exceptional cases of university presidents who have publicly opposed Trump’s attacks against higher education,<sup>171</sup> the higher education community could have stood together in their resistance. The statement, “A Call for Constructive Engagement,”<sup>172</sup> signed by many university and college presidents was a starting point for resistance, as it stated the presidents’ commitment to “open inquiry,” and stated that they “oppose undue government intrusion in the lives of those who learn, live, and work on our campuses” and “reject the coercive use of public research funding.”<sup>173</sup> Following this, however, there was no collective action taken

<sup>167</sup> See text accompanying notes 108–127, *supra*.

<sup>168</sup> See text accompanying notes 140–147, *supra*.

<sup>169</sup> See text accompanying notes 148–154, *supra*; See also, Rana M. Jaleel and Risa L. Lieberwitz, *The Corruption of Civil Rights and the Capitulation of Higher Ed*, LAW AND POLITICAL ECONOMY PROJECT (Oct. 23, 2025) (“As the AAUP’s Committee A on Academic Freedom and Tenure wrote in its report, *On Title VI, Discrimination, and Academic Freedom*, the Trump administration’s attempt to unmake the Civil Rights Act by hijacking the language of discrimination is nothing less than an attempt to rewrite the history of the nation”); AM. ASSOC. OF UNIV. PROFESSORS, ON TITLE VI, DISCRIMINATION, AND ACADEMIC FREEDOM (2025).

<sup>170</sup> See Alan Blinder, *How Universities are Responding to Trump*, N.Y. Times (Feb. 5, 2026), <https://www.nytimes.com/article/trump-university-college.html>

<sup>171</sup> Zephyr Teachout, *Why are other universities silent in condemning Trump’s attacks on Columbia?*, THE GUARDIAN (Mar. 24, 2025), <https://www.theguardian.com/commentisfree/2025/mar/24/us-universities-trump-columbia>.

<sup>172</sup> Pub. Statement by Am. Ass’n of Coll. and Univ. in Collaboration With Univ. and Coll. Presidents (Apr. 22, 2025).

<sup>173</sup> *Id.*

by university administrations. It is also positive that seven of the nine universities offered the White House’s “Compact for Academic Excellence” have refused to endorse it.<sup>174</sup> In exchange for the possibility of greater federal funding, the compact includes conditions such as agreeing ““that academic freedom is not absolute”” and that they would close ““institutional units that purposefully punish, belittle and even spark violence against conservative ideas.””<sup>175</sup> While some university presidents publicly identified academic freedom as a basis for not endorsing the compact, there was no collective response by the university presidents.<sup>176</sup>

University administrations, faculty, students, and staff should have common interests in resisting the extreme governmental intrusions on the independence and autonomy in academic program development, academic freedom in all subjects – from the humanities to the sciences – and the ability to engage in critical thinking and dissent. Yet, despite widespread calls<sup>177</sup> for collective resistance, university administrations have failed to act together.<sup>178</sup> The same question must be posed for universities’ capitulation to federal and state interference: Why have university administrations failed to engage in collective resistance against the coercive demands that violate their institutional independence, faculty academic freedom, and students’ freedom of expression?

Corporatization of the university may help explain the university administrations’ failure to resist collectively and their individualized responses of appeasement and capitulation. By adopting multiple institutional changes through corporatization, universities have modeled themselves more as private structures with goals similar to for-profit corporations than as institutions with a public mission. Traditional norms essential to fulfilling the university’s public mission – faculty academic

<sup>174</sup> Alan Blinder, *All but 2 Universities Decline a Trump Offer of Preferential Funding*, N.Y. TIMES (Oct. 20, 2025), <https://www.nytimes.com/2025/10/20/us/politics/universities-funding-compact.html#:~:text=Seven%20of%20the%20nine%20universities%20have%20refused,might%20be%20open%20to%20signing%20on%20quickly.>

<sup>175</sup> *Id.*

<sup>176</sup> *Id.* But see, Statement by the Am. Council on Educ. and Higher Educ. Ass’n in opposition to Trump Admin. Compact (Oct. 17, 2025), including statements that the Compact “would impose unprecedented litmus tests on colleges and universities as a condition for receiving ill-defined ‘federal benefits’ related to funding and grants. That is why our associations, which span the breadth of the American higher education community and the full spectrum of colleges and universities nationwide, are unified in our opposition to the compact.” The Statement objects to “government control of a university’s basic and necessary freedoms—the freedoms—to decide who we teach, what we teach, and who teaches,” but does not use the term “academic freedom.”

<sup>177</sup> See, e.g., Joseph Zuloaga, Matt Luo, & Spencer Davis, *Bollinger Calls for Universities to Take ‘Collective Action’ Against Trump Administration in First Post-Presidency Spectator Interview*, COLUMBIA SPECTATOR (Jan. 21, 2026, 8:53 PM), <https://www.columbiaspectator.com/news/2026/01/21/bollinger-calls-for-universities-to-take-collective-action-against-trump-administration-in-first-post-presidency-spectator-interview/>; Rutgers Adjunct Faculty Union Res., *To Establish A Mutual Defense Compact for the Universities of the Big Ten Academic Alliance in Defense of Academic Freedom, Institutional Integrity, and the Research Enterprise* (Mar. 31, 2025), <https://rutgers-ptlfc.org/2025/03/31/resolution-to-establish-a-mutual-defense-compact-for-the-universities-of-the-big-ten-academic-alliance-in-defense-of-academic-freedom-institutional-integrity-and-the-research-enterprise/>; Ryan Quinn, *As Universities Yield to Trump, Higher Ed Unions Are Fighting*, INSIDE HIGHER ED (Apr. 4, 2025), <https://www.insidehighered.com/news/faculty-issues/labor-unionization/2025/04/04/universities-yield-trump-higher-ed-unions-fight>.

<sup>178</sup> See, Anil Kalhan, *Knowledge and Democracy at Risk: From Florida to Pennsylvania and Beyond*, 16 DREXEL L. REV. 685, 689–702 (2024).

freedom and autonomy in teaching, research, governance, and public speech – resonate with the rights and structures of democratic institutions.<sup>179</sup> In contrast, with a corporatized identity as market actors, universities see themselves in competition for market share and market power, rather than as a higher education community dedicated to protecting independence and academic freedom in furthering their public mission. Further, with this corporate identity, some university administrators have seized the current moment to take actions they desired in any case, such as adopting new restrictions on protests.<sup>180</sup> Moreover, with increased hierarchical governance and weakened shared governance bodies, university administrations do not see themselves as answering to faculty, students, and staff; rather, the administrations’ audiences are Boards of Trustees or Boards of Regents dominated by wealthy corporate donors.<sup>181</sup> At this moment, university administrations’ focus on concerns of trustees and donors has been apparent, as evidenced by the powerful donors at University of Pennsylvania and Harvard who have been publicly critical of the universities for not taking a hard enough stand against students and faculty protesting against Israeli actions in Gaza.<sup>182</sup> This element should not be underestimated as a key part of the “perfect storm” that enabled the Trump administration impose extreme demands by weaponizing Title VI allegations of antisemitism based on protected political dissent against Israel’s national policies and actions.

University administrations’ strategies of appeasement and capitulation have been costly. The wreckage from the “perfect storm” has been broad and deep. With the growth of contingent faculty ranks and the expanded power of university administrations, faculty have become increasingly subject to retaliation for engaging in controversial speech. Following the 2016 presidential election, there was a sharp increase in virulent online targeted harassment against faculty and punitive actions by universities against faculty who express critiques of social inequalities and of the Trump administration.<sup>183</sup> Since that time, faculty have been increasingly afraid to exercise their academic freedom in teaching, research, university governance, and extramural speech. The fear is widespread: fear of pressure by administrators to change their course syllabi and course content; fear of student complaints about their statements in class; fear of retaliatory

<sup>179</sup> See, *supra* note 8, at 321–22.

<sup>180</sup> *AAUP Condemns Wave of Administrative Policies Intended to Crack Down on Peaceful Campus Protest*, AAUP (Aug. 14, 2024), <https://www.aaup.org/news/aaup-condemns-wave-administrative-policies-intended-crack-down-peaceful-campus-protest>.

<sup>181</sup> See Alan Blinder & Stephanie Saul, *Wealthy People Have Always Shaped Universities. This Time is Different*, NEW YORK TIMES (Nov. 24, 2025), <https://www.nytimes.com/2025/11/24/us/billionaires-influenceuniversitiestrump.html#:~:text=Some%20billionaires%20have%20been%20allies%20of%20the,Harvard%20and%20the%20University%20of%20Pennsylvania%20leaders>

<sup>182</sup> *Id.*

<sup>183</sup> See, e.g., Press Release, Am. Ass’n of Univ. Professors, Taking a Stand Against Harassment, Part of the Broader Threat to Higher Education (Sept. 7, 2017); *University of Tampa Overreacts to Offensive Tweet*, TAMPA BAY TIMES: EDITORIAL (Sept. 1, 2017), <https://www.tampabay.com/opinion/editorials/editorial-university-of-tampa-overreacts-to-offensive-tweet/2335985/>; Colleen Flaherty, *Trinity Suspends Targeted Professor*, INSIDE HIGHER ED (June. 26, 2017), <https://www.insidehighered.com/news/2017/06/27/trinity-college-connecticut-puts-johnny-eric-williams-leave-over-controversial>; Press Release, American Association of University Professors, Targeted Online Harassment of Faculty (Sep. 7, 2017).

discipline for engaging in public criticism of Israel or for supporting Palestinian rights; fear of retaliation for engaging in collective protests; fear that international students and faculty will be targeted by the Trump administration; fear of retaliation for criticizing the university administration's actions; fear of loss of federal funding for academic research related to race and gender; and fear of loss of their jobs because of any or all of these occurrences.<sup>184</sup>

Faculty are concerned, as well, about the measures that university administrations have taken to restrict freedom of speech. In addition to university administrators calling in the police to quell campus protests, many universities implemented new “expressive activity policies” in 2024, following campus protests against Israeli military actions in Gaza.<sup>185</sup> These policies add severe restrictions on when and where protests can take place, requirements of advanced registration of protests, and increased discipline against students, faculty, and staff for violating the restrictions on protests.<sup>186</sup> Student protestors have taken the major brunt of these new measures, including long suspensions without due process for engaging in nonviolent protests.<sup>187</sup>

The Trump administration's attacks on academic programs of racial, ethnic, and gender studies seek to dismantle the advances since the 1960s in disciplinary development that expands knowledge and analysis of essential social, economic, and political structures of inequality. These attacks seek to undermine academic freedom and the disciplinary legitimacy of these areas of studies. As the AAUP Committee A on Academic Freedom has explained in the context of attacks on DEI: “[S]uch attacks can easily reinforce and indeed fuel portrayals of entire fields and disciplines—including ethnic studies, critical race theory, and gender studies—as ‘political’ and ‘ideological’ projects and not serious subjects or research disciplines. When entire fields and subjects related to the study of race and gender, for example, are not considered ‘intellectual’ pursuits, both academic freedom and DEI as

---

<sup>184</sup> See, e.g., Hannah Richter, *In Red States, Many Academic Researchers Feel Fear – and Resolve*, SCIENCE (Nov. 20, 2025, 5:25 PM), <https://www.science.org/content/article/red-states-many-academic-researchers-feel-fear-and-resolve>; Lee Ann Rawlins Williams, *College Faculty are Under Pressure to Say and do the Right Thing – the Stress also Trickles Down to Students*, THE CONVERSATION (Oct. 22, 2025, 8:15 AM), <https://theconversation.com/college-faculty-are-under-pressure-to-say-and-do-the-right-thing-the-stress-also-trickles-down-to-students-267400>; Michael Shapiro, *It Only Looks Chaotic*, COLLEGEWATCH (Sep. 9, 2025), <https://collegewatch.substack.com/p/it-only-looks-chaotic>; Megan Zahneis & Beckie Supiano, *Fear and Confusion in the Classroom*, CHRON. HIGHER EDUC. (Jun. 9, 2023), [https://www.chronicle.com/article/fear-and-confusion-in-the-classroom?cid=gen\\_sign\\_in&sra=true](https://www.chronicle.com/article/fear-and-confusion-in-the-classroom?cid=gen_sign_in&sra=true).

<sup>185</sup> *Supra* note 180.

<sup>186</sup> Shirin Sinnar, *Campus Protests and the Rule of Law*, 87 L. & CONTEMP. PROBS. 117, 135–57 (2025); *supra* note 180.

<sup>187</sup> See, e.g., Sharon Otterman, *Judge Vacates Punishments of Columbia Students Who Occupied a Building*, N.Y. TIMES (Mar. 3, 2026), <https://www.nytimes.com/2026/03/03/nyregion/columbia-protesters-discipline.html?searchResultPosition=1>; Laura Meckler & Hannah Natanson, *Massive pro-Palestinian College Protests Bring Rare Surge in Discipline*, WASH. POST (May 6, 2024), <https://www.washingtonpost.com/education/2024/05/06/college-protests-suspensions-expulsion-arrests/>; Rachel Treisman, Brian Mann & Jaclyn Diaz, *As Student Protesters Get Arrested, They Risk Being Banned from Campus Too*, NPR (Apr. 29, 2024), <https://www.npr.org/2024/04/29/1247761719/campus-protests-arrests-suspensions>.

social and institutional values are compromised, and the charge of orthodoxy gains purchase.”<sup>188</sup>

The Trump administration’s actions have further unleashed state-level repression of academic freedom. In addition to “divisive concepts” laws, states have proposed or adopted further restrictions on public university teaching and curriculum.<sup>189</sup> The six Texas public university systems have imposed requirements for review and approval of curriculum, syllabi, and course descriptions based on their inclusion of course material related to race and gender.<sup>190</sup> A well-publicized example of the extent of this review is a Texas A&M department chair ordering a faculty member to remove assigned readings of Plato from a module of his Contemporary Moral Problems course that addressed issues of race and gender.<sup>191</sup> University administrators have also discharged tenured and nontenured faculty members for their teaching and extramural speech because of its analysis of political matters<sup>192</sup> or its divergence from the Trump biological definitions of sex.<sup>193</sup>

The damage also includes what cannot be seen. Federal and state governmental attacks on university independence and faculty academic freedom, and university administrators’ restrictions of speech on university campuses have strong chilling effects on students, faculty, and staff.<sup>194</sup> What cannot be measured in any systematic way is the self-censorship that results from such repression. This is exacerbated by the corporatization of the university, as the growing ranks of contingent faculty and the shrinking ranks of faculty on the tenure-track will both be likely to engage in self-censorship. The fear of being placed in the crosshairs of the administration or the government also leads tenured faculty to self-censor, including in the context of faculty governance bodies that have been so weakened by corporatization since the 1980s.

## 2. Resistance

<sup>188</sup> AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, *Diversity, Equity, and Inclusion Criteria for Faculty Evaluation*, 3 (Oct. 2024), <https://www.aaup.org/reports-publications/aaup-policies-reports/policy-statements/diversity-equity-and-inclusion>.

<sup>189</sup> See Emily M.S. Houh, *Ohio: A Case Study in Subnational Authoritarianism*, 16 DREXEL L. REV. 713 (2024).

<sup>190</sup> Antonio L. Ingram II, *Anti-Truth Movements in Post World War II Germany and Contemporary Texas: The Repetition of History and Lessons in Truthful Reconstruction*, 16 DREXEL L. REV. 751 (2024); Katherine Mangan, *Censoring Courses Isn’t the Law in Texas. Public Universities Are Doing It Anyway*, CHRON. OF HIGHER EDUC. (Mar. 5, 2026), <https://www.chronicle.com/article/censoring-courses-isnt-the-law-in-texas-public-universities-are-doing-it-anyway>; Whitford, *supra* note 132.

<sup>191</sup> Emma Whitford, *Plato Censored as Texas A&M Carries Out Course Review*, INSIDE HIGHER ED (Jan. 7, 2026), <https://www.insidehighered.com/news/faculty-issues/academic-freedom/2026/01/07/plato-censored-texas-am-carries-out-course-review>.

<sup>192</sup> Emma Whitford, *Tenure Under Threat*, INSIDE HIGHER ED (Jan. 26, 2026), <https://www.insidehighered.com/news/faculty-issues/tenure/2026/01/26/tenure-under-threat>.

<sup>193</sup> See text accompanying notes 128–131, *supra*.

<sup>194</sup> See, e.g., Laura Saunders, *The Chilling Impact of Censorship in Higher Education*, SOCIAL SCIENCE SPACE (May 26, 2025), <https://www.socialsciencespace.com/2025/05/the-chilling-impact-of-censorship-in-higher-education/>; Amanda Fuchs Miller, *A ‘Dear Colleague’ by Any Other Name*, INSIDE HIGHER ED (Mar. 6, 2026), <https://www.insidehighered.com/opinion/views/2026/03/06/dear-colleague-any-other-name-opinion>; Nell Gluckman, *Noncitizen Professors Testify About Chilling Effect of Others’ Detentions*, CHRON. OF HIGHER EDUC. (Jul. 7, 2025), <https://www.chronicle.com/article/noncitizen-professors-testify-about-chilling-effect-of-others-detentions>.

Despite the virulent nature of the attacks on universities, faculty have engaged in collective resistance, including through lawsuits filed by the AAUP, AFT, NEA, and other education organizations and unions challenging federal and state actions.<sup>195</sup> The plaintiffs have been represented by civil rights and public interest organizations including the ACLU<sup>196</sup> and Democracy Forward.<sup>197</sup> The lawsuits have raised First and Fifth Amendment freedom of speech and due process challenges to the Trump administration's Executive Orders and cuts in federal funding to universities. These same organizations have filed lawsuits with First Amendment free speech challenges against OCR's DCLs.<sup>198</sup> Filing these lawsuits with multiple organizational plaintiffs has strengthened solidarity among organizations and unions in the educational, labor, and civil rights communities. Several of these lawsuits have resulted in important victories, with federal district courts issuing preliminary or permanent injunctions against the federal multi-agency Task Force's actions and funding cuts,<sup>199</sup> and against federal agency DCLs.<sup>200</sup> Federal court judges have been brave and principled in writing powerful opinions that explain the constitutional bases for the injunctions.

Litigation challenging state governmental actions has also been a significant part of the collective resistance against state "divisive concepts" legislation and against state universities' repression of speech. The initial challenges at the state level were brought after the first Trump administration, as multiple states enacted such laws. Faculty unions and individual faculty members joined together to file the lawsuit in the *Pernell v. Florida* case, which led to the district court's issuance of a permanent injunction against enforcement of Florida's "STOP W.O.K.E. Act."<sup>201</sup>

Organizational statements by education unions, professional organizations, and civil rights organizations have been important acts of resistance that also supply essential information and analysis to their members and the public regarding the fundamental principles of freedom of speech and association, academic freedom, due process, and shared governance. The AAUP issued statements after the start of the Israeli bombardment of Gaza, calling on university administrations to respect academic freedom and freedom of expression on campuses.<sup>202</sup> The AAUP continued to respond with statements calling out university administrations'

---

<sup>195</sup> See text accompanying notes 84–88, 142–147, *supra*; See also, Ryan Quinn, *As Universities Yield to Trump, Higher Ed Unions Are Fighting*, INSIDE HIGHER ED (Apr. 4, 2025), <https://www.insidehighered.com/news/faculty-issues/labor-unionization/2025/04/04/universities-yield-trump-higher-ed-unions-fight>.

<sup>196</sup> See AMERICAN C.L. UNION, *We're Fighting Back Against Efforts to Intimidate Professors into Silence*, <https://www.aclu.org/news/free-speech/were-fighting-back-against-efforts-to-intimidate-professors-into-silence>.

<sup>197</sup> See DEMOCRACY FORWARD, *Broad Coalition of Faculty, Staff, Students, and Unions United to Defend University of California System from Trump-Vance Administration Assault* (Sept. 16, 2025), <https://democracyforward.org/news/press-releases/titlevi-lawsuit/>.

<sup>198</sup> See text accompanying notes 116–117, *supra*.

<sup>199</sup> See text accompanying notes 84–88, 142–147, *supra*.

<sup>200</sup> See text accompanying notes 116–117, *supra*.

<sup>201</sup> See text accompanying notes 84–88, *supra*.

<sup>202</sup> American Association of University Professors, *Academic Freedom in Times of War*, AM. ASS'N OF UNIV. PROFESSORS (Oct. 24, 2023), <https://www.aaup.org/news/academic-freedom-times-war>.

escalation of punitive responses.<sup>203</sup> Joint statements and reports have strengthened solidarity among the organizations, such as the joint report by the AAUP and Middle East Studies Association.<sup>204</sup>

As important for building a collective resistance against state and federal intrusion and repression is the organizing that has occurred by faculty organizations and unions on public and private campuses, whether or not they are unionized. The collective resistance is also aimed at university administrations’ increased restrictions on speech, punitive actions that have primarily been taken against students protesting Israel’s military actions in Gaza, and university administrations’ capitulation to federal and state demands. Joint organizing is powerful here, as well, with solidarity among educational organizations, unions, civil rights organizations, and shared governance bodies on campus. Through this organizing work, faculty have engaged in teach-ins, protests and demonstrations, and have written newspaper op-eds and letters to the editor, petitions to the administration, faculty senate resolutions, and organizational statements. Faculty resistance has focused on both faculty and student rights of academic freedom, freedom of speech, and due process.<sup>205</sup> This includes advocating for students who have faced draconian discipline for their nonviolent protest activities, including *persona non grata* orders and prolonged suspensions issued without due process.

<sup>203</sup> See, e.g., American Association of University Professors, *The AAUP Condemns Escalating Assault on Academic Freedom at Penn*, AM. ASS’N OF UNIV. PROFESSORS (Dec. 19, 2023), <https://www.aaup.org/news/aaup-condemns-escalating-assault-academic-freedom-penn>; Irene Mulvey, *Censorship Will Not Defeat Antisemitism*, AM. ASS’N OF UNIV. PROFESSORS (Dec. 12, 2023), <https://www.aaup.org/news/censorship-will-not-defeat-antisemitism>;

American Association of University Professors, *Polarizing Times Demand Robust Academic Freedom*, AM. ASS’N OF UNIV. PROFESSORS (Nov. 15, 2023), <https://www.aaup.org/news/polarizing-times-demand-robust-academic-freedom>.

<sup>204</sup> AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS & MIDDLE EAST STUDIES ASSOCIATION, *DISCRIMINATING AGAINST DISSENT: THE WEAPONIZATION OF CIVIL RIGHTS LAW TO REPRESS CAMPUS SPEECH ON PALESTINE* (2025).

<sup>205</sup> See, e.g., Cornell Daily Sun Opinion Department, *AAUP Statement on the Trump-Cornell Deal*, CORNELL DAILY SUN: GUEST ROOM (Nov. 13, 2025), <https://www.cornellsun.com/article/2025/11/guest-room-aaup-statement-on-the-trump-cornell-deal#:~:text=This%20agreement%20goes%20beyond%20the%20Supreme%20Court%E2%80%99s%20SFFA%20v%2E%20Harvard%20decision%20about%20affirmative%20action%20in%20student%20admissions>; Cornell Daily Sun Opinion Department, *Cornell’s Actions Against Professor Cheyfitz Violate Academic Freedom, Faculty Governance and Due Process*, CORNELL DAILY SUN: GUEST ROOM (Oct. 5, 2025), <https://www.cornellsun.com/article/2025/10/guest-room-cornell-s-actions-against-professor-cheyfitz-violate-academic-freedom-faculty-governance-and-due-process>; Sophia Riley Sim, *‘Take Back Our University’ Rally Unites a Wide Range of Causes, Organizations*, CORNELL DAILY SUN (Aug. 29, 2025), <https://www.cornellsun.com/article/2025/08/the-people-united-will-never-be-defeated-take-back-our-university-rally-unites-a-wide-range-of-causes-organizations>; Dora Gao, *Knight Institute and AAUP file motion to block Trump administration from deporting pro-Palestinian protestors*, COLUMBIA SPECTATOR (Nov. 16, 2025), <https://www.columbiaspectator.com/news/2025/11/16/knight-institute-and-aaup-file-motion-to-block-trump-administration-from-deporting-pro-palestinian-protestors/>; Dora Gao, *Columbia AAUP calls for greater faculty and student input amid leadership transition*, COLUMBIA SPECTATOR (Apr. 6, 2025), <https://www.columbiaspectator.com/news/2025/04/06/columbia-aaup-calls-for-greater-faculty-and-student-input-amid-leadership-transition/>; Anvi Sehc, *AAUP-Penn alleges Title VI office summoned faculty over ‘unsubstantiated’ antisemitism accusations*, THE DAILY PENNSYLVANIAN (Oct. 23, 2025), <https://www.thedp.com/article/2025/10/penn-aaup-orei-statement-targeting-speech>; Sameeksha Panda & Tanisha Agrawal, *‘Kissing the Trump ring’: Penn faculty condemn University’s Title IX settlement*, THE DAILY PENNSYLVANIAN (Jul. 14, 2025), <https://www.thedp.com/article/2025/07/penn-faculty-react-title-ix-resolution>.

Through all these activities on campus, organizations including AAUP chapters on unionized and non-unionized campuses have grown as faculty seek collective ways to engage in resistance and to protect academic freedom, due process, shared governance and collective bargaining. These collective actions on individual campuses have also opened up greater cross-campus organizing and mutual support. Building these relationships will be important for current and future collective struggles to protect the fundamental norms, values, and rights that make universities meaningful institutions.

## VII. CONCLUSION

This article has traced important periods in the development of the modern university from the early 1900s to the current moment when higher education is experiencing attacks by federal and state governments. This analysis leads to several concluding observations. First, the university in the US has long dealt with conflicting forces. As industrialization developed in the mid- to late 1800s, this led to an early “perfect storm” of conditions resulting in labor conflict in higher education, where faculty organized and demanded academic freedom in colleges and universities as independent institutions serving a public mission rather than serving the private interests of industry.

Secondly, even during the period of public support and growth and expanded access to universities in the 1960s, this did not mean that the university was free from conflict. To the contrary, the college campus was a contested terrain, as student and faculty activists made successful demands for a voice in campus governance, which led to greater diversity of academic programs to include studies of gender, race, and class.

Third, continued momentum toward greater democratic institutional norms, including broader diversity and collective governance was not inevitable. As the political landscape moved to the right under the Reagan administration, privatization led to a new set of conflicts as universities embraced a neoliberal model of the “entrepreneurial” university that adopted for-profit corporate structures of commercialization, profitable research and teaching, and contingent faculty employment. These changes intensified conflicts of interests between the corporatized university’s private financial interests and the university’s interests in serving a public mission as independent institutions supporting broad academic freedom and strong collective faculty governance. These conflicts of interests also affected faculty engaged in commercializing research and building relationships with for-profit businesses.

Fourth, serious consequences of corporatization include the university’s increased vulnerability to external political interference. Thus, the “perfect storm” of political and economic forces was put into place: corporatization and resulting conflicts of interests; weakened university commitment to institutional independence and faculty academic freedom and collective governance; the Trump administration’s hostility to racial and gender equality; and the rise in campus protests about Israel’s military actions in Gaza. Having weakened the traditional norms and institutional

structures to carry out a public mission, university administrations have also failed to oppose the external political attacks against higher education, including federal and state governments’ unconstitutional, unlawful, and coercive use of Title VI and Title IX.

Finally, even in the chaos of the storm, it has become clear how essential collective action is to defend and save the university as an independent institution with a public mission carried out by faculty exercising academic freedom, job security, and collective self-governance. Failing to stand together to reject the Trump agenda, university administrations have chosen an individualistic path – engaging in anticipatory obedience, appeasement, and outright capitulation to intrusive and destructive demands that destroy the university’s independence, academic freedom, and self-governance. In contrast, faculty unions and professional organizations have shown that there is another choice – that resistance is not futile. Joining together to take collective action through litigation and organizing nationally and at the campus level can successfully push back against unconstitutional and unlawful interference with the fundamental values and norms that support higher education in the public interest.