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Legal Sidebar

Stand With Us v. MIT: MIT Not Liable for Anti-Israel Activity on Campus

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Since October 7, 2023, the federal government has devoted significant attention to protest activity at colleges and universities related to the Israel-Hamas war. The Trump Administration, for example, has cited schools' alleged failures to protect Jewish students from antisemitism in decisions withholding or terminating federal funding. Federal courts, meanwhile, are addressing claims by Jewish students alleging race and national origin discrimination under Title VI of the Civil Rights Act of 1964 (Title VI).

As discussed in a previous Legal Sidebar, claims that schools have discriminated against Jewish students under Title VI raise complex questions. These questions include whether Title VI covers any kind of religious discrimination, and if so, what forms of antisemitism it prohibits. Lawsuits by Jewish students objecting to pro-Palestinian or anti-Israel activity also may require courts to consider whether certain activity that could be considered harassment under antidiscrimination law must receive First Amendment protection.

On October 21, 2025, in the first federal appellate decision to examine some of these questions in the context of recent claims by Jewish students, the First Circuit affirmed the dismissal of a Title VI case against the Massachusetts Institute of Technology (MIT). This Sidebar explains the decision in *Stand With Us Center for Legal Justice v. MIT* and its implications for federal antidiscrimination law.

Title VI, Hostile Educational Environment Claims, and the First Amendment

Title VI prohibits discrimination on the basis of race, color, or national origin in federally funded programs. All public schools, and nearly all private colleges and universities, accept federal funding and are therefore subject to Title VI. While there are several types of potential Title VI claims, many of the cases brought by Jewish students after October 7, 2023, allege that their schools have allowed antisemitic harassment on campus to flourish. As this Legal Sidebar explains in greater detail, although the Supreme Court has never ruled on whether and how Title VI applies to claims against schools based on student-on-student harassment, lower courts regularly apply the standards the Supreme Court developed for student-on-student sexual harassment under Title IX of the Education Amendments of 1972. To prove a Title VI

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claim based on harassment—often known as a "hostile educational environment" claim—under these standards, a student must demonstrate that (1) she experienced harassment that was "so severe, pervasive, and objectively offensive" that she lost "access to the educational opportunities or benefits provided by the school"; (2) her school had "actual knowledge" of the harassment; (3) the school was "deliberately indifferent" to it; and (4) the harassment was motivated by the student's race, color, or national origin.

While lower courts have interpreted Title VI to extend to racial harassment in certain circumstances, some Title VI claims involving harassment may be in tension with the First Amendment. The Supreme Court has held that hate speech is protected by the First Amendment's Free Speech Clause, which limits the government's power to regulate private speech. The Court has recognized some categories of unprotected speech that the government may regulate more freely. Some courts have held, however, that "[t]here is no categorical 'harassment exception' to the First Amendment's [F]ree [S]peech [C]lause." As statutes may not attach conditions to federal funds that circumvent the Constitution, Title VI claims based on allegedly harassing speech may raise questions about the extent of a school's obligation to act in ways that could impinge on that speech.

Stand With Us v. MIT

Two Jewish students and an organization formed to fight antisemitism alleged that, after October 7, 2023, anti-Israel activity at MIT created a hostile educational environment for Jewish students. According to the plaintiffs' complaint, as recounted by the circuit court, antisemitic protest activity at MIT included public statements from student groups blaming Israel for the October 7 attacks and supporting Palestinian "resistance" to Israel; rallies and protests at which students shouted slogans including "Palestine will be free, from the river to the sea," and "There is only one solution! Intifada revolution!"; staged walk outs and die ins; and the posting of fliers supporting Palestinians and opposing "Zionism." A student group staged an event outside the offices of Jewish professors and MIT's Israel internship program which reportedly left staff members feeling intimidated. Several months later, pro-Palestinian students began an email campaign to pressure faculty to drop connections to Israel. The plaintiffs also alleged that some MIT faculty and guest speakers supported the protest activity and themselves made offensive statements.

In early November 2023, MIT issued more restrictive policies around campus protests and posting fliers. Shortly thereafter, MIT suspended noncompliant protestors from nonacademic campus activities and referred them for further discipline. Following several more protests in February 2024, MIT suspended one of the student groups leading the protests.

From April 21 to May 10, 2024, pro-Palestinian protestors erected an encampment at a central location on MIT's campus, which was next to the MIT Hillel (a hub for Jewish life at MIT). One week into the encampment, MIT's president stated publicly that MIT would discipline students violating campus rules and that police would monitor the protest to prevent "further escalation." She rejected calls for faculty to cut ties with Israel and pronounced that the protest "need[ed] to end soon." MIT installed fencing around the encampment on May 3. On May 6, the school threatened protestors with disciplinary action if they did not depart. As the court observed, "this strategy appears to have backfired," leading to a "surge" of new protestors breaching the fence. On May 8 and 9, protestors blocked a campus building and nearby street and defaced Israeli and American flags. MIT cleared the encampment on May 10.

First Circuit Decision

Stand With Us was the first federal appellate decision involving a claim that campus anti-Israel activity following the October 7, 2023, attacks violated Jewish students' Title VI rights. The court's decision largely hinged on three points: (1) most of the complained-of activity was not antisemitic in a way cognizable by federal courts, and therefore (2) even assuming First Amendment exceptions for

discriminatory speech exist, the activity was largely protected by the First Amendment and did not violate Title VI; and (3) to the extent Title VI required MIT to respond to the alleged antisemitism, the university adequately did so.

Court Says Anti-Israel Protests at MIT Were Protected by the First Amendment and Did Not Constitute Severe, Pervasive Harassment Based on Race or National Origin

As discussed above, plaintiffs bringing a Title VI hostile educational environment claim must prove that they suffered severe, pervasive harassment motivated by their race or national origin. Recognizing that Title VI hostile educational environment cases could run up against the First Amendment, the First Circuit determined that it would "not construe Title VI as requiring a university to quash protected speech."

While MIT, as a private institution, may restrict certain speech by its students about Israel, the First Circuit acknowledged the question in *Stand With Us* was whether the federal government could, through Title VI, demand such restrictions. The answer in this case, the court concluded, lay in whether the protestors' speech was protected under the First Amendment. The plaintiffs argued that by engaging in "racist" speech that created a hostile educational environment, the pro-Palestinian protestors lost First Amendment protection. The First Circuit left undecided the thorny questions of whether and when the government may use funding conditions to suppress bigoted speech. It also declined to address whether or what kinds of antisemitism constitute discrimination on the basis of race or national origin and therefore may be proscribed by Title VI. Instead, the court determined that the protestors' speech was not antisemitic in a way cognizable under federal law. Therefore, even assuming the federal government could require universities to restrict some racist speech, the court concluded that the speech at issue in *Stand With Us* could not have led to a Title VI violation.

As the First Circuit pointed out, the speech in question was largely "direct[ed] . . . at the Israeli state and its treatment of Palestinians," rather than expressly at Jews. While the plaintiffs contended that "anti-Zionism"—that is, as they defined it, opposition to Jewish "self-determination" in Israel—is, at least in certain forms, "inherently antisemitic," the court decided that there was no settled view on what "Zionism" means or whether antagonism toward Jewish claims in Israel is antisemitic. Observing that these issues are hotly contested, the court determined that Title VI does not take a side in the debate.

Equally problematic, in the court's view, was that accepting the plaintiffs' framing would imply that other groups—including Palestinians—could make similar and potentially mutually exclusive claims. In other words, if challenges to Jewish claims to Israel were viewed as inherently antisemitic, the court suggested that "by similar logic," challenges to Palestinian claims to the same land could be thought "Islamophobic" or "anti-Arab." The court reasoned that the government could not expect funding recipients to reconcile these kinds of competing positions.

The First Circuit also considered the argument that criticisms of Israel could violate Title VI if they were motivated by antisemitism, even if the critiques were not inherently antisemitic. The court determined that the plaintiffs had not presented evidence that the protestors harbored discriminatory motivations. It rejected the argument that the protestors' choice to focus on Israel and not on other alleged wrongdoers showed animus toward Jews: "Political advocacy, by its nature, involves a choice to focus on certain issues or causes over others," the court stated. Nor could the court find that accusing Israel of committing genocide was inherently antisemitic, or that the protestors had called for genocide against the Jewish people. As for the first contention, the court pointed to Israeli commentators who had accused their country of genocide. As for the second, the court decided that slogans like "from the river to the sea, Palestine will be free" and "intifada revolution" were too ambiguous to be considered calls for genocide against Jews and that the plaintiffs had not presented evidence that the protestors had understood or used those chants to convey such a meaning.

The disruptive nature of the protests did not change the court's conclusion that the protests were neither antisemitic nor constitutionally unprotected. The court ruled that the plaintiffs did not present evidence that the protestors intentionally targeted Jewish students or Jewish areas. Without evidence that the protests and encampment were motivated by antisemitism, the court reasoned, the protest activity could not form the basis of a Title VI claim against MIT, even if Jewish students were particularly affected. Moreover, the court emphasized, students retained the same First Amendment rights when they engaged in collective expression as when they spoke individually.

Finally, the court considered a "handful" of specific incidents "occurring over the course of seven months, that any thoughtful person would regard as antisemitic." For example, one plaintiff claimed that a protestor "raised the front wheels of his bike at them" and said, "Your ancestors didn't die to kill more people." Another alleged that she was prevented from accessing a building "because she was Jewish," and the plaintiffs pled that protestors "'heckled' another individual 'because he was visibly Jewish.'" The court determined that the specific incidents of antisemitism did not rise to the level of severe, pervasive, and objectively offensive harassment. They were too isolated, in the court's view; affected different students (not all of them plaintiffs); and were largely perpetrated by students or guest speakers rather than faculty. The incidents did not, therefore, lead to the "systemic" "deprivation of educational access" necessary to make out a Title VI claim, the court concluded. Moreover, the court held that MIT lacked knowledge of any specific incidents of antisemitic harassment.

Court Says MIT Was Not Deliberately Indifferent

The First Circuit also rejected the plaintiffs' Title VI suit on the alternative ground that MIT had responded adequately to any alleged antisemitic harassment—that is, MIT was not deliberately indifferent. The court determined that MIT's response was not "clearly unreasonable under the known circumstances," even if it did not successfully eliminate the alleged harassment. The court was particularly sensitive to MIT's attempts to control protest activity without sparking violence. As the court stated, MIT's response to the protests "escalat[ed]" throughout the school year: as protest activity continued and intensified, MIT revised its policies, met with Jewish community leaders, disciplined students, and suspended the most involved student group. It also formed an initiative to combat antisemitism on campus. MIT took a similarly escalatory response to the encampment in April and May 2024, the court observed, eventually clearing it, leading to the arrests of several protestors. The court concluded that "any reasonable school administrator in MIT's position could have reasonably surmised that its progressively evolving responses prevented the on-campus conflict from exploding into real violence between October 2023 and May 2024."

Analysis and Considerations for Congress

In *Stand With Us*, the First Circuit joined several district courts that have considered the intersection between Title VI and the First Amendment when evaluating discrimination claims by Jewish students after October 7, 2023. Some courts have waved away First Amendment concerns. Others have treated the First Amendment as a significant limitation on federal regulation of harassment. Some courts have, like the First Circuit, avoided some of the First Amendment questions posed by post-October 7 Title VI cases in part by concluding that anti-Israel speech is not necessarily antisemitic within the meaning of federal law. Other courts have expressed discomfort with being asked to rule on claims that speech opposed to "Zionism" is inherently racially bigoted. One district court, for example, flagged that Jewish students' arguments linking "Zionism" deeply to Judaism could require the court to determine what is and is not central to the Jewish faith, a result forbidden by the First Amendment's Establishment Clause.

These different approaches in part reflect the fact that the Supreme Court has never determined whether restrictions on discriminatory, harassing speech in certain environments are constitutional. This

uncertainty may impact Congress's ability to alter the framework for hostile environment claims. The current framework—i.e., the requirement under Title VI that a funding recipient not be deliberately indifferent to severe, pervasive, objectively offensive harassment—is entirely judge-made. Congress could attempt to change it, for example, by defining harassment or altering the standards to which courts hold a funding recipient's response. However, some courts have stated that the high bar to proving a harassment claim may be necessary to ensure that antidiscrimination law does not infringe on First Amendment rights. While Congress may be able to raise that bar, lowering could be more difficult legally, at least so long as the definition of harassment includes arguably protected speech.

The claims in *Stand With Us* faltered even though the First Circuit acknowledged that anti-Israel actions may particularly affect Jewish students. Arguments that certain actions negatively affect specific groups may raise disparate impact claims, but private litigants cannot bring disparate impact suits under Title VI. The Department of Justice recently rescinded Title VI's disparate impact regulations, which had provided for federal enforcement action against disparate impact discrimination. As a result, the federal government now also cannot pursue recourse against schools for disparate impacts under Title VI. Congress could consider whether Title VI should prohibit disparate impact discrimination. In the context of hostile environment claims, however, allowing disparate impact cases to proceed could open up a wide range of conduct and speech to challenge, requiring courts to make difficult decisions about what forms of alleged harassment disproportionately affect particular groups even when harassment is not intentionally targeted at them.

Congress and the executive branch have shown interest in a different approach to protecting Jews from discrimination. Executive Order 13,899 instructs executive agencies to "consider" the definition of antisemitism adopted by the International Holocaust Remembrance Alliance (IHRA) and the "contemporary examples" identified by the IHRA. The House in 2024 proposed a similar approach to Title VI investigations by the Department of Education, with the passage of the Antisemitism Awareness Act. The contemporary examples identified by the IHRA include types of speech close to those that *Stand With Us* determined are not inherently antisemitic. Examples include "[d]enying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor," "[a]pplying double standards by requiring of [Israel] a behavior not expected or demanded of any other democratic nation," and "[d]rawing comparisons of contemporary Israeli policy to that of the Nazis." In general, courts determine the boundaries of protected speech, and Congress cannot remove speech from the First Amendment's purview. Courts following the reasoning of *Stand With Us* could find that the definition of antisemitism promoted by the IHRA sweeps in First Amendment-protected speech, which would restrict Congress's ability to regulate it.

How courts balance the First Amendment with Title VI may affect Congress's ability to regulate many forms of discrimination in a variety of contexts. Courts have interpreted other antidiscrimination laws, for example, those targeting discrimination in employment and housing, to prohibit discriminatory harassment. Generally Congress has more power to regulate speech within specific programs that receive federal funding, rather than speech by funding recipients outside of those programs. Congress also has more power over conduct than speech. Laws prohibiting hostile environments based on harassing *conduct*, such as vandalism, unwanted touching, excessive noise, or obstructing movement, may therefore more easily pass judicial scrutiny.

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