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# U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS  
1139 LONGWORTH HOUSE OFFICE BUILDING  
Washington, DC 20515

January 10, 2024

Interim President Alan M. Garber, MD, PhD  
Harvard University  
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President Sally Kornbluth  
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Interim President J. Larry Jameson, MD, PhD  
University of Pennsylvania  
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Philadelphia, Pennsylvania 19104

President Martha E. Pollack  
Cornell University  
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Dear Presidents Kornbluth, and Pollack, and Interim Presidents Garber and Jameson:

On October 7, 2023, the world saw innocent Israeli civilians slaughtered at the hands of Hamas terrorists. In the wake of this heinous attack, we have seen many individuals, organizations, and nonprofit entities condemn Hamas and its supporters. We are concerned, however, about the lack of an appropriate response and support for Jewish people and students at your universities.

As you know, your institutions are aided by the beneficial treatment provided to nonprofit, tax-exempt entities. Your universities also receive funding from federal grants and appropriations, support for student loan assistance, lucrative financial benefits from your tax-exempt status, and the advantageous tax treatment of your institutions' endowments.

You may also be aware that there are certain standards your institutions must meet to receive this highly advantageous and preferential treatment. For example, to be exempted from

federal income taxes and have eligibility to receive tax-deductible contributions,<sup>1</sup> your institutions' activities must be primarily for educational purposes<sup>2</sup>—meaning that both individual instruction for the purpose of improving or developing students' capabilities is provided and that such instruction on subjects is useful to the individual and beneficial to the community.<sup>3</sup> Additionally, since your institutions receive federal funds from the U.S. Department of Education, you are also required to comply with relevant antidiscrimination laws.<sup>4</sup>

Given the disappointing and lackluster responses by your respective universities to Hamas' attacks and your subsequent failure to adequately protect Jewish students from discrimination and harassment, we question whether your institutions are satisfying the requirements to receive these benefits. For example, during a December 5, 2023, U.S. House of Representatives Committee on Education and the Workforce hearing, not only did former President Gay, President Kornbluth, and former President Magill fail to condemn calls for violence or genocide against the Jewish community, but former President Gay even went as far as to say that calls for “intifada” against Israel amounted to protected speech.<sup>5</sup> Similarly, President Kornbluth suggested that antisemitic speech on campus calling for the elimination of the Jewish people would only be investigated as harassment if it was pervasive, severe, and targeted at individuals.<sup>6</sup> Even more disturbing was former President Magill implying that such speech would only amount to illegal harassment if it turned into conduct<sup>7</sup>—a truly horrifying sentiment for Jewish students across the country that have seen antisemitic conduct sweeping through college campuses, including yours, since October 7.

This, however, is not the first time we have heard of concerning responses to antisemitism on college campuses. During a November 15, 2023, U.S. House of Representatives Committee on Ways and Means hearing, we heard from a student at Cornell University, Talia Dror, who shared that, “[s]tudents, professors and administrators at Cornell celebrated the massacre of innocent civilians,”<sup>8</sup> and that while Cornell made firm statements on a variety of topics and incidents in the past, the university was silent when it came to condemning explicit antisemitism and endorsements of terrorism under the guise of free speech.<sup>9</sup>

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<sup>1</sup> IRC § 501(a), 170(c)(2) (describing the benefits rising from 501(c)(3) status).

<sup>2</sup> IRC § 501(c)(3) (stating that organizations must be “organized and operated exclusively” for one or more purposes, including charitable, religious, or educational purposes).

<sup>3</sup> Treas. Reg. § 1.501(c)(3)-1(d)(3)(i).

<sup>4</sup> 20 U.S.C. § 1681; 40 U.S.C. § 2000d; 42 U.S.C. § 12101; 29 U.S.C. § 794.

<sup>5</sup> H. Comm. On Education and the Workforce, *Hearing: Holding Campus Leaders Accountable and Confronting Antisemitism* (Dec. 5, 2023), <https://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=409777>.

<sup>6</sup> Annie Ma, *How the presidents of Harvard, Penn and MIT testified to Congress on antisemitism*, AP NEWS (Dec. 12, 2023), <https://apnews.com/article/harvard-penn-mit-president-congress-intifada-193a1c81e9ebcc15c5dd68b71b4c6b71>.

<sup>7</sup> *Id.*

<sup>8</sup> H. Comm. On Ways and Means, *Hearing: From Ivory Towers to Dark Corners: Investigating the Nexus Between Antisemitism, Tax-Exempt Universities, and Terror Financing* (Nov. 15, 2023), <https://waysandmeans.house.gov/event/hearing-from-ivory-towers-to-dark-corners-investigating-the-nexus-between-antisemitism-tax-exempt-universities-and-terror-financing/>.

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

This alarming conduct is not limited to statements made during congressional hearings. Rather, it also includes behavior occurring on your campuses. Look no further than Cornell, where antisemitic threats of violence targeting Jewish students were posted on message boards, eventually leading to an Federal Bureau of Investigation (“FBI”) investigation and federal charges against the student who made the direct and violent threats.<sup>10</sup> At Harvard, protestors surrounded and intimidated a Jewish student, which lead to reports being filed with campus police and the FBI as well.<sup>11</sup> Similarly, at the University of Pennsylvania, students have expressed fear following instances of hateful conduct towards Jewish students on campus, saying that they “don’t even feel comfortable walking outside our house wearing their kippahs just because they don’t know if they’re going to be harassed, some of them have before.”<sup>12</sup> Even more alarming is the Massachusetts Institute of Technology (“MIT”) seeming to prioritize anti-Israel protestors calling for violence over its Jewish students when it failed to expel protestors over “visa issues” despite the school previously threatening that such conduct would result in expulsion.<sup>13</sup>

The proliferation of this type of antisemitic activity on your campuses and college campuses across the country as well as the continued lack of support for Jewish students and condemnation of calls for violence against the Jewish community is extremely concerning. It is also perplexing given how your institutions have had no problem condemning other behavior in the past. For example, the University of Pennsylvania had no problem issuing a warning threatening action against students for violating its antidiscrimination policy by failing to use their classmates’ preferred pronouns.<sup>14</sup> Students at Harvard University were told that similar conduct could violate its harassment policies as well.<sup>15</sup> In addition, Harvard disinvited a feminist philosopher last year for comments critical of transgender ideology, and former President Gay’s institution fired a political science instructor for inviting renowned social scientist Charles Murray to speak at their class.<sup>16</sup> Similarly, MIT forced its campus Chaplain to resign in 2020

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<sup>10</sup> Doina Chiacu and Andrea Shalal, *US Officials, Jewish Leaders Meet to Address Antisemitism on Campus*, REUTERS (Oct. 31, 2023), <https://www.reuters.com/world/us/us-officials-jewish-leaders-meet-address-antisemitism-campus-2023-10-30/>; Associated Press, *Cornell student charged with threatening to. Massacre Jewish students*, POLITICO (Oct. 31, 2023), <https://www.politico.com/news/2023/10/31/cornell-threats-jewish-students-00124678>.

<sup>11</sup> Keith Griffin, *Harvard Pro-Palestinian Protesters Swarm MBA Student Shouting ‘Shame’ After He Tried to Film Them at “Die-In” Protesting Israel’s War with Hamas*, Daily Mail (Nov. 1, 2023),

<https://www.dailymail.co.uk/news/article-12700239/Harvard-Palestinian-protest-Israel-Hamas-Gaza-war.html>.

<sup>12</sup> *Jewish students at UPenn share concerns about antisemitism on campus*, FOX 29 PHILADELPHIA (Dec. 8, 2023), <https://www.fox29.com/news/jewish-students-at-upenn-share-concerns-about-antisemitism-on-campus>.

<sup>13</sup> Thomas Catenacci, *MIT faces backlash for not expelling anti-Israel protesters over ‘visa issues’: ‘Who is in charge?’*, YAHOO NEWS (Nov. 13, 2023), <https://news.yahoo.com/mit-faces-backlash-not-expelling-155058180.html>.

<sup>14</sup> Brittany Bernstein, *Pennsylvania University Threatens to Punish Students for Misusing Classmates’ Pronouns*, YAHOO NEWS (Sept. 23, 2021), <https://news.yahoo.com/pennsylvania-university-threatens-punish-students-121036589.html?guccounter=1>.

<sup>15</sup> Jared Gould, *Students caught using wrong pronouns at Harvard may violate harassment policies*, CAMPUS REFORM (Oct. 4, 2022), <https://www.campusreform.org/article/students-caught-using-wrong-pronouns-at-harvard-may-violate-harassment-policies/20328>.

<sup>16</sup> Frederick Hess, *Harvard’s Catastrophic Hypocrisy*, FORBES (Dec. 7, 2023), <https://www.forbes.com/sites/frederickhess/2023/12/07/harvards-catastrophic-hypocrisy/?sh=3d9dab815ca8>.

following controversial comments about George Floyd;<sup>17</sup> and the University of Pennsylvania did not hesitate to investigate and seek to strip tenure from a law school professor for holding controversial views,<sup>18</sup> despite allowing professors who repeatedly denied Hamas' worst atrocities and "romanticized the murder of over a thousand Israeli Jews" to remain employed.<sup>19</sup>

Perhaps this is why the Foundation for Individual Rights and Expression ("FIRE") has given your universities poor ratings for free speech protection on campus.<sup>20</sup> For example, while MIT received an average rating as the 136th ranked school for free speech according to FIRE's 2024 College Free Speech Rankings, Harvard University ranked dead last with an "abysmal" speech climate rating.<sup>21</sup> The University of Pennsylvania ranked second-to-last at 247th with a "very poor" rating, and Cornell ranked 212th with a "below average" speech climate rating.<sup>22</sup>

Free speech should be protected – even speech we disdain. But your universities have long practiced the protection of preferred speech rather than truly protecting all speech. In so doing, you appear to have lost the ability to recognize when speech crosses the line into conduct, especially on topics that do not fit into your preferred categories. You have also failed to exercise effective leadership to handle protected antisemitic speech in the way a leader should – with more speech. As leaders on your campuses, you set the tone. You have found your voices before on numerous other topics, but not on this one. If antisemitic speech crosses the line into unprotected conduct, it must be punished severely. If disgusting antisemitic speech remains in the protected category, it should be condemned, not coddled. Your words and actions matter. Condemning barbaric terrorism against Israel and disgusting antisemitism should not be difficult. Protecting Jewish students on campus as you protect other students, should not be a challenge. This is not that hard.

This alarming approach to protecting free speech while not simultaneously protecting students on campuses comes at a time when diversity, equity, and inclusion ("DEI") activity is surging across the country.<sup>23</sup> Despite the burgeoning growth of this sector and purported support for all people regardless of background across the country, Jewish students are facing antisemitism more than ever,<sup>24</sup> and reports suggest that campus DEI staff "are unwelcoming

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<sup>17</sup> Jonathan Turley, *MIT Chaplain Forced to Resign After Comments on Floyd Case* (June 23, 2020), <https://jonathanturley.org/2020/06/23/mit-chaplain-forced-to-resign-after-comments-on-floyd-case/>.

<sup>18</sup> Isaac Avilucea, *Where Penn's disciplinary case against professor Amy Wax stands*, AXIOS (May 23, 2023), <https://www.axios.com/local/philadelphia/2023/03/23/penn-law-school-amy-wax-hearings-disciplinary-case>.

<sup>19</sup> Danielle Wallace, *UPenn president torched over antisemitic speakers, teachers allowed on campus but not Trump ICE director*, FOX NEWS (Dec. 5, 2023), <https://www.foxnews.com/politics/upenn-president-torched-antisemitic-speakers-teachers-allowed-campus-not-trump-ice-director>.

<sup>20</sup> Foundation for Individual Rights and Expression (FIRE), *2024 College Free Speech Rankings*, FIRE, <https://rankings.thefire.org/rank>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> ReportLinker, *Global Market for Diversity and Inclusion (D&I) to Reach \$24.3 Billion by 2030*, YAHOO! FINANCE (July 3, 2023), <https://finance.yahoo.com/news/global-market-diversity-inclusion-d-100100759.html> (projecting the DEI global market to reach \$24.3 billion by 2030).

<sup>24</sup> Anti-Defamation League Press Release, *ADL Reports Unprecedented Rise in Antisemitic Incidents Post-Oct. 7*, ANTI-DEFAMATION LEAGUE (Dec. 11, 2023), <https://www.adl.org/resources/press-release/adl-reports-unprecedented-rise-antisemitic-incidents-post-oct-7>.

toward Jewish students.”<sup>25</sup> The lack of support for Jewish students from the DEI community does not only place Jewish students at risk, contrary to the DEI framework, but also highlights the issues with embracing divisive DEI bureaucracies that stifle dissent, shun different or opposing perspectives, and raise questions about moral clarity. As part of your campuses’ educational missions, all students should be protected and supported regardless of background. Specialized, divisive, and ideologically driven DEI bureaucracies are not the answer.

These actions, inconsistencies, and lack of a substantive response raise several questions, including whether your institutions are fulfilling their educational purposes as required to receive 501(c)(3) tax-exempt status, and whether your institutions are adequately protecting Jewish students from harassment and acts of violence in compliance with antidiscrimination laws. These specific incidents add to ongoing concerns that “elite” American universities are failing to provide instruction beneficial to individuals or the community and are instead instructing students to have disdain for the United States and the very communities they live in. Ultimately, as the U.S. House Committee with primary jurisdiction over tax-exempt institutions and the treatment of their endowments, we are left to wonder whether reexamining the current benefits and tax treatment afforded to your institutions is necessary.

As such, we request responses to the following by January 24, 2024:

1. Please provide and clearly identify your policies relating to student free speech rights, associational rights, and any relevant student codes of conduct.
2. What is your university doing, if anything, to address the poor ratings you have received from FIRE on protecting free speech on campus?
3. What is your university doing, if anything, to examine how it evaluates the difference between free speech and harassment, threats, and incitement?
4. Do you have policies in place to determine when you, as a university president, will issue a statement in response to events either on your campus or elsewhere? If so, please provide a copy of those policies.
5. How do you decide whether to issue a statement on a particular event?
6. As a tax-exempt entity, how are you fulfilling your educational purpose for your Jewish students on campus?
7. Is your university subject to the excise tax based on investment income of private colleges and universities under Internal Revenue Code (IRC) § 4968?


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<sup>25</sup> Jay Greene, Ph.D. and James Paul, *Inclusion Delusion: The Antisemitism of Diversity, Equity, and Inclusion Staff at Universities*, THE HERITAGE FOUNDATION (Dec. 8, 2021), <https://www.heritage.org/education/report/inclusion-delusion-the-antisemitism-diversity-equity-and-inclusion-staff>.

- a. If yes, please provide the market value of your university's endowment for the most recent fiscal year.
  - b. If yes, please provide the amount your university paid under IRC § 4968 for the most recent tax year.
8. How does your university's endowment contribute or further your university's tax-exempt purpose?
  9. How are you adequately protecting your Jewish students on campus to comply with antidiscrimination laws and your university's tax-exempt status?
  10. How much does your university spend on diversity, equity, and inclusion programming and initiatives?
  11. How many staff and university personnel do you have dedicated to diversity, equity, and inclusion programming and initiatives?
  12. Please provide any mission statements, policies, handbooks, or other documents that detail the role of diversity, equity, and inclusion departments and programs on your campuses.
  13. Do your diversity, equity, and inclusion departments serve Jewish students on campus?

Thank you in advance for your time and responses. If you have any questions, please contact Sean Clerget of the Ways and Means Majority Committee staff at (202) 225-3625.

Sincerely,



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Jason Smith  
Chairman  
Committee on Ways and Means