

In Harvard Versus Trump, Experts Divided on Whether Admin Is Violating First Amendment

Leaders from more than 600 colleges and universities so far proclaim support for Harvard's lawsuit against the Trump administration.

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Harvard University in Cambridge, Massachusetts, on Dec. 12, 2023. Reuters/Brian Snyder/File Photo



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The fight between the Trump administration and Harvard University has now expanded to two legal disputes.

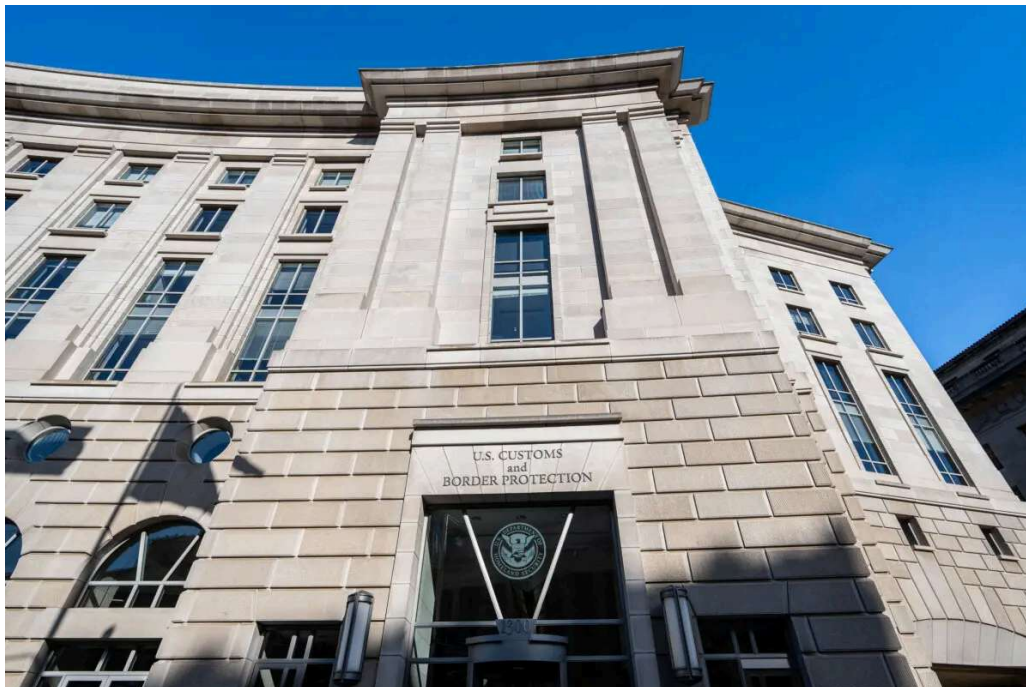
The university first sued over the administration's cancellation of more than \$2 billion in grants over Harvard's alleged failure to accede to various demands concerning anti-Semitism and diversity, equity, and inclusion (DEI).

A second lawsuit was brought by Harvard challenging the Department of Homeland Security's (DHS) revocation of the university's Student and Exchange Visitor Program certification, curtailing its ability to enroll international students.

DHS alleged that Harvard didn't respond to its request to provide information about the criminality and misconduct of [foreign](#) students on its campus.

DHS later [reversed](#) its revocation decision and gave Harvard 30 days to respond to alleged breaches of federal regulations to avoid being decertified from the foreign student enrollment system.

In both cases, Harvard argues that the administration's actions violated the university's First Amendment rights, as well as due process requirements.



The U.S. Department of Homeland Security in Washington on Aug. 12, 2024. Madalina Vasiliu/The Epoch Times

Origins of a Standoff

On taking office, President Donald Trump quickly enacted his campaign promise to withhold federal funding from educational institutions involved with DEI, anti-Semitism, or ideological indoctrination practices, including allowing biological males to participate in women's sports.

The Trump administration sent Harvard an extensive [list](#) of conditions for dealing with anti-Semitism and DEI in the aftermath of the pro-Palestinian protests on its campus.

The university refused to comply, [citing](#) freedom of speech and academic independence, prompting the Trump administration to freeze \$2.26 billion in medical research grants and consider up to \$9 billion in additional cuts.

The administration said that under the 1964 Civil Rights Act, the federal government has the [authority](#) to withhold funding from institutions that discriminate by race or national origin.

Harvard responded with a federal [lawsuit](#) asking a U.S. District Court in Massachusetts to restore the funding and deem the president's actions illegal and unconstitutional.

Trump has since pledged to [revoke](#) the university's tax-exempt status, and Education Secretary Linda McMahon warned Harvard that it is ineligible for future federal grants unless significant management changes are made.

On May 13, the administration's Joint Task Force to Combat Anti-Semitism, [announced](#) it was terminating an additional \$450 million in grants to the university, citing Harvard Law Review's recent \$65,000 fellowship award to a pro-Palestinian protester accused of assaulting a Jewish student on campus.

The higher education community, meanwhile, has hailed Harvard as a defender of First Amendment rights in a fight against "unprecedented government overreach and political interference."

"Our colleges and universities share a commitment to serve as centers of open inquiry where, in their pursuit of truth, faculty, students, and staff are free to exchange ideas and opinions across a full range of viewpoints without fear of retribution, censorship, or deportation," reads a recent [proclamation](#) from the American Association of Colleges and Universities signed by leaders from more than 600 schools.

Harvard's First Legal Complaint

Harvard's April 21 lawsuit says the medical research grants the Trump administration froze have no connection to the harassment of Jewish students, and that First Amendment free speech protections do not permit the government to "interfere with private actors' speech to advance its vision of ideological balance."

"Nor may the government rely on the threat of invoking legal sanctions and other means of coercion to achieve the suppression of disfavored speech," it says, adding that under federal law, Harvard has the right to hire whomever it wants and teach whatever it wants.

The lawsuit also stated the university took several steps to address anti-Semitism before the funds were frozen, and argued that the Trump administration did not initiate a required formal due process, which has been noted in Supreme Court cases, that includes a hearing and a report to relevant committees in the House and Senate.

"Defendants did not lawfully attempt to secure compliance by voluntary means before freezing Harvard's federal assistance," the lawsuit says.

The Trump administration has until June 16 to file a response to the suit.

Both Sides See an Open-and-Shut Case

Georgetown University Law Professor David Cole, who previously served as national legal director for the American Civil Liberties Union and has represented groups on both sides of the political spectrum, told [lawmakers](#) that the First Amendment allows for anti-Semitic language and assemblies on college campuses, just as it does for any group that embraces or fights racism.

DEI is also within the scope of academic freedom protected by the First Amendment and Civil Rights laws, Cole added.

"Academic freedom is a special concern of the First Amendment," he said. "Universities make these decisions, not politicians."

It takes a lot to prove that a person or entity's actions have exceeded the boundaries of free speech to the point of harassment, Cole told the House panel on May 7.

An individual or group of individuals' harassment against a student is not the same as institutional harassment to the point where a student's equal access to education is denied specifically because of their Jewish identity. To prove the latter, there must be evidence that

the university was “deliberately indifferent” to the acts and events, Cole said.

Of the several universities the Trump administration has accused of anti-Semitism, Cole said he is unaware of any circumstances where that burden of proof has been satisfied.

“There’s a very high standard. It’s almost never been met,” Cole said. “The greater danger is giving the government power to censor speech by labeling it.”

Other experts agree that the First Amendment allows campuses to promote DEI and protects even hateful language on campuses. But they say that this doesn’t supersede the Trump administration’s right to withhold funding under the authority of the 1964 Civil Rights Act if those activities create a hostile environment or are deemed discriminatory.

There’s nothing in the Constitution that indicates higher education institutions are entitled to government money, they say.

John Shu, a constitutional law expert who served in both Bush administrations, said the federal government may withhold funding or take other actions against institutions that discriminate.

Moreover, Shu said the Supreme Court [ruling](#) in *Students for Fair Admissions v. Harvard* that determined that Harvard and North Carolina had discriminated by race in student admissions should also be considered.

“If the universities don’t want the government to meddle in their affairs, then they shouldn’t take government money,” Shu told *The Epoch Times*. “Regardless, they shouldn’t be discriminating in the first place. Just because Harvard got away with it for the past several decades doesn’t mean it’s not wrong.”

Kim Hermann, executive director of the Southeastern Legal Foundation, which has successfully litigated against DEI in education, said Harvard’s argument that the federally-funded medical research grants had no connection to campus anti-Semitism won’t hold up in court.

Harvard cannot “make an accounting entry into where discrimination is occurring,” she said.

What’s Next?

Harvard has asked the court to order the Trump administration to unfreeze all of its expected federal funds and refrain from taking additional actions against the university. Oral arguments are scheduled to begin July 21.

After the lawsuit was filed, Harvard released a [report](#) acknowledging events of anti-Semitism on campus. The university also renamed its office for Equity, Diversity, and Inclusion to Community and Campus Life, announcing a culture of belonging for “all members.”

Harvard President Alan Garber sent a [letter](#) to Education Secretary Linda McMahon on May 12, saying that while the two share common ground on critical issues, Harvard will continue its litigation against the Trump administration to “address the government’s unlawful attempt to control fundamental aspects of our university’s operations.”

“Harvard is a place to bring people of all backgrounds together to learn in an inclusive environment where ideas flourish regardless of whether they are deemed ‘conservative’, ‘liberal’, or something else, a place where assumptions and claims are tested and challenged, respectfully and thoughtfully, in pursuit of knowledge and truth,” Garber’s letter said.



Harvard President Alan Garber arrives to speak at the 374th Harvard Commencement in Harvard Yard in Cambridge, Mass., on May 29, 2025. Rick Friedman/AFP via Getty Images

Dispute With DHS

DHS Secretary Kristi Noem’s May 22 [decision](#) to revoke Harvard’s ability to enrol foreign students has opened a second front in the university’s legal battles with the administration.

The decision stemmed from an April 16 request seeking information on misconduct and criminal activity committed by foreign students at Harvard. The university responded to the request two weeks later, which DHS said was not compliant. Noem [said](#) in a letter to Harvard that after giving the university another chance to fulfill the request, its response was still “insufficient.”

Harvard immediately sued, resulting in a federal judge temporarily [blocking](#) the revocation.

In its [lawsuit](#), Harvard argued that the decision was “clear retaliation for Harvard exercising its First Amendment rights to reject the government’s demands to control Harvard’s governance, curriculum, and the ‘ideology’ of its faculty and students.”

On May 28, DHS [retracted](#) its revocation notice and instead gave the university 30 days to respond to three grounds to decertify Harvard from a program to enroll foreign students.

The three areas [were](#): Harvard’s alleged failure to comply with data requests on foreign students’ criminal activities; an alleged failure to maintain a campus free from violence and anti-Semitism; and its alleged coordination with the Chinese Communist Party and affiliated groups that raise national security concerns.

The administration [argued](#) in court on May 29 that the judge needn’t impose a further block because the initial revocation was reversed. District Judge Allison Burroughs rejected that argument and extended her block, saying she thought the university was encountering some kind of harm under the First Amendment. Burroughs added that she was considering issuing a more permanent block, known as a preliminary injunction.



Homeland Security Secretary Kristi Noem testifies before the Senate Committee on Homeland Security and Governmental Affairs on Capitol Hill in Washington on May 20, 2025. Madalina Vasiliu/The Epoch Times

Bracing for a Tax-Exemption Fight

With the Trump administration threatening to revoke the university's tax-exempt status, another legal battle may be on the horizon.

With 501(c)(3) nonprofit status, Harvard and the majority of public and private higher learning institutions are not required to pay federal income and municipal property [taxes](#), and donors can make tax-deductible contributions as long as the revenues go into funding operations and not paying stakeholders.

Only the IRS can grant or take away that status. Harvard has [said](#) any stripping of its tax-exempt status would be unlawful. Other experts agree, similarly [pointing](#) to First Amendment protections.

Shu, however, pointed to IRS [regulations](#) prohibiting 501(c)(3) designees from publicly supporting or opposing political candidates, and there are limits for influencing legislation.

If professors force their political views, such as accusing Israel and the United States of white supremacy and colonialism, onto students, the IRS could reasonably construe such behavior as propagandizing, Shu said.

Any attempt to revoke the university's tax-exempt status is all but certain to also wind up in litigation, and ultimately, Shu believes Harvard vs. Trump will be decided by the Supreme Court.

The Epoch Times reached out to Harvard for an updated response.

Sam Dorman contributed to this report.

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