

The Boston Globe

Trump goes ‘woke’ in report on antisemitism at Harvard

What is most striking is the brazen hypocrisy — one might even say *chutzpah* — of the Trump lawyers’ arguments.

By Benjamin Eidelson

July 3, 2025

Benjamin Eidelson is a professor at Harvard Law School.

Earlier this week, the Trump administration issued its [formal finding](#) that Harvard University is violating Title VI of the Civil Rights Act of 1964 by tolerating discrimination against Jewish and Israeli students. As a scholar of antidiscrimination law (as well as a member of the Jewish community at Harvard), I can’t say I had high expectations for the administration’s legal analysis or command of the facts. What is most striking, though, is the brazen hypocrisy — one might even say *chutzpah* — of the Trump lawyers’ arguments. At every turn, the finding relies on sweeping notions of discrimination that the administration has repudiated when it comes to every other group.

Appreciating the ironies here requires understanding the actual law that Harvard is alleged to have violated. That statute prohibits discrimination within federally funded programs “on the ground of race, color, or national origin.” So to make its case, the government had to show that students are being denied equal access to a Harvard education *based on their race or country of origin*. And because practically all of the government’s allegations concern perceived harassment by fellow students, the government also had to show that the university itself has effectively *condoned* these discriminatory acts by others. As a colleague and I explain in detail in a new [article](#) in the Harvard Law Review, both of these requirements are nuanced and demanding.

What the administration mainly offers in its finding, though, is a litany of sit-ins, walk-outs, and group letters organized by pro-Palestinian student groups — with remarkably little evidence of any intention to harass or discriminate against Jewish peers. Take, for example, the government’s finding that “Jewish and Israeli students at Harvard were repeatedly denied access to ... libraries.” That sounds like an accusation of intentional discrimination. In fact, though, the only evidence for several of these “denials of access” consists of [reports that](#) some students “silently studied in the [library]” with signs taped to their laptops that read “No normalcy during genocide,” “Justice for Palestine,” or “Israel Bombs, Harvard Pays.” How does that constitute discrimination against Jewish or Israeli peers?

The answer is that the administration could classify that behavior as discriminatory only by embracing an especially radical version of an effects-based theory of discrimination. Specifically, the implicit argument proceeds in two steps. First, Jews or Israelis are much more likely than others to be offended by this kind of anti-Israel rhetoric — and so to feel unwelcome or uncomfortable in spaces where it is present. Second, when certain behavior (here, certain expression) has that kind of disproportionate impact on one group, engaging in that behavior amounts to discrimination against the disparately affected group — even absent any *intent* to single out its members. The legal term for this kind of discrimination theory is “disparate-impact liability,” although that legal theory is usually seen only in domains such as employment and housing — not as a basis for speech regulation, let alone for mandating how peers should interact on college campuses.

And hence the rich irony: Not only is disparate impact widely recognized as a progressive idea, it is intensely embattled — thanks in no small part to President Trump. Just months ago, Trump issued a landmark executive [order](#) denouncing disparate impact as a pernicious ideology that “is wholly inconsistent with the Constitution” because it fails to treat people “as individuals.” By requiring decision-makers to attend to the aggregate consequences of their choices for different groups, Trump said, rules against disparate-impact effectively “mandat[e] ... discrimination.” (This is a longstanding conservative talking point, and Trump’s executive order was previewed in Project 2025.) Trump thus ordered that all federal agencies “shall deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability.” As many observers have noted, this retrenchment is actively crippling legal protections against redlining, vote dilution, occupational segregation, abusive policing practices, and more.

But somehow the anti-Harvard legal team, alone among federal officials tasked with enforcing civil rights, didn't get the memo. When it comes to people of color who are excluded from voting by ostensibly neutral requirements, the administration's position is that there can be no discrimination without proof of intent. Likewise for women excluded from public-safety jobs by physical capacity tests, or Black citizens who bear the brunt of police violence or decrepit public infrastructure. But if a college student's political activity disproportionately affects Jewish or Israeli peers — even just by causing offense or making them feel alienated — the administration deems that inherently discriminatory, no intent required.

Could the administration claim instead that hostility toward Israel or Zionism is inherently antisemitic because many Jews see Zionism as *part* of their Jewish identity? Not really. Because Title VI does not cover religion, Jewishness is protected by the law only insofar as it constitutes a “race” — a fact about one's ancestry. Under existing law, however, culturally salient practices or beliefs can play no role in the definition of racial categories. That is why judges have ruled that bans on dreadlocks and cornrows are not racially discriminatory, even if Black employees view these hairstyles as expressive of their racial identity.

The irony, once again, is that the contrary view — the culture-oriented conception of race that Trump's legal theory in the Harvard case would require the courts to embrace — is a well-known tenet of critical race theory, the “woke” school that Trump and his allies have ridiculed for years.

Maybe it is a mistake to scrutinize the legal analysis in what is evidently a political document. Yet if anyone still doubts the sham quality of this “civil rights” action, there is no better proof than the lawyers' shameless reliance on ideas about discrimination that, when enlisted in the service of traditional civil rights concerns, the administration purports to find fundamentally un-American.