



TODD ROKITA
ATTORNEY GENERAL

May 13, 2024

Ball State University Board of Trustees
C/o Rick Hall
Administration Building room 101
Muncie, IN 47306

Dear Board of Trustees:

Designated terrorist organization Hamas launched a brutal attack against the State of Israel on October 7, 2023.¹ Since then, antisemitic activity across the United States has substantially increased.² While this gruesome attack is deeply disturbing, a rise in antisemitic activity on college campuses across the country followed³—with 73% of Jewish college students and 44% of non-Jewish students experiencing or witnessing antisemitism since the beginning of the 2023 school year.⁴

Some of these acts of antisemitism occur right here in our great Hoosier state. My office has received numerous reports that individuals and various student groups on your campuses have provoked antisemitic activity against Jewish and Israeli students.⁵ Students and outsiders have even resorted to forming “encampments” and “liberated” zones on your campuses, publicly

¹ Foreign Terrorist Organizations, U.S. Dep’t of State, <https://www.state.gov/foreign-terrorist-organizations/> (last accessed April 19, 2024).

² Press Release, *Massive Spike post-Oct. 7 recorded; campus incidents tripled; bomb threats targeting Jewish institutions up 10 times* (April 16, 2024) <https://extremismterms.adl.org/resources/press-release/us-antisemitic-incidents-soared-140-percent-2023-breaking-all-previous>.

³ Emily Longnecker, *More Than 65 IU Faculty, Staff Issue Statement Speaking out Against Targeted Harassment of Jewish Students and Faculty Members*, WTHR (April 30, 2024), <https://www.wthr.com/article/news/local/more-than-65-iu-faculty-staff-issue-statement-speaking-out-against-targeted-harassment-of-jewish-students-and-faculty-members-bloomington-indianapolis/531-337bc091-19da-4cb7-9a1d-5a6f89b8bb41>; Jackie Hajdenberg, *Former Cornell Student Who Threatened to Shoot up Kosher Dining Hall Pleads Guilty*, Jewish Telegraphic Agency (April 11, 2024), <https://www.jta.org/2024/04/11/united-states/former-cornell-student-who-threatened-to-shoot-up-kosher-dining-hall-pleads-guilty>; Greg Norman, *NYU Students Stage Walkout Following Violent Anti-Israel Protests*, Fox News (April 23, 2024), <https://www.foxnews.com/us/nyu-students-planning-walkout-following-violent-anti-israel-protests>; May Oliver, *Pro-Palestinian Protests Leave American College Campuses on Edge*, CBS News (April 23, 2024), <https://www.msn.com/en-us/news/us/pro-palestinian-protests-leave-college-campuses-on-edge-coast-to-coast/ar-AAInvzKX>.

⁴ Press Release, *Nearly Three-Quarters of Jewish Students Experienced or Witnessed Antisemitism on Campus, New Survey Finds* (Nov. 29, 2023), <https://www.adl.org/resources/press-release/nearly-three-quarters-jewish-students-experienced-or-witnessed-antisemitism>.

⁵ *Enforcement of Equal Educational Opportunity: Hearing on H.B. 1002 Before the House Comm. on Education and Senate Comm. on Education and Career Development*, 123rd General Assembly (2024).

showing their support for Hamas and targeted animus towards the State of Israel and Jewish students.⁶ This directly correlates to surveys which found that only 46% of Jewish students felt physically safe on their college campus after October 7.⁷

This is completely unacceptable.

My team and I are deeply committed to ending antisemitism in all forms. That is why I aggressively supported House Bill 1002 in the Indiana General Assembly as it was introduced. That bill would have codified the International Holocaust Remembrance Alliance’s (“IHRA”) working definition⁸ of antisemitism into State law, including examples of antisemitism.⁹ However, the Indiana State Senate gutted the bill, making the proposed definition of antisemitism completely toothless. Because of this, I requested Governor Holcomb to veto the bill, which he did on March 18, 2024.¹⁰

However, just because this piece of legislation failed does not mean there are no other legal avenues available to ensure that our Jewish and Israeli students do not face antisemitism and hate on your campuses. It is imperative that you hold individuals and groups accountable when dealing with these deplorable acts. Your colleges and universities may be vulnerable to adverse legal action and a loss of federal funding because you are government actors if you do not appropriately address these escalations on your campuses.

I. You must protect your Jewish students from antisemitism under Title VI.

Title VI prohibits discrimination based on race, color, or national origin by programs or activities of recipients of federal financial assistance.¹¹ This protection “extends to students who experience discrimination, including harassment, based on their actual or perceived: (i) shared ancestry or ethnic characteristics; or (ii) citizenship or residency in a country with a dominant religion or distinct religious identity.”¹² Title VI safeguards all students, including those who are perceived to be Jewish, from discrimination.¹³ Failure to protect students from antisemitism in

⁶ Indiana Daily Student (@idsnews), X (formerly Twitter) (April 25, 2024 at 11:48am), <https://x.com/idsnews/status/1783523588357693645>; Andrew Miller (@andrew_mmiller), X (formerly Twitter) (April 25, 2024 at 10:59am), https://twitter.com/andrew_mmiller/status/1783511148278485218; Purdue Exponent (@purdueexponent), X (formerly Twitter) (April 25, 2024 at 2:05pm), <https://x.com/purdueexponent/status/1783558051342991601>.

⁷ *Supra* Press Release.

⁸ Working Definition of Antisemitism, Holocaust Remembrance, <https://holocaustremembrance.com/resources/working-definition-antisemitism> (last accessed April 19, 2024).

⁹ Indiana House Bill 1002 (as introduced) (2024), <https://iga.in.gov/pdf-documents/123/2024/house/bills/HB1002/HB1002.01.INTR.pdf>.

¹⁰ Letter to Speaker Todd Huston from Governor Eric Holcomb on Vetoing HB 1002, (March 18, 2024), https://www.in.gov/gov/files/HEA_1002.pdf.

¹¹ U.S. Department of Education Office for Civil Rights, *Title VI legal requirements for entities that receive federal financial assistance* (November 7, 2023), . <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf>.

¹² *Id.* See also *T.E. v. Pine Bush Cent. Sch. Dist.*, 58 F. Supp. 3d 332, 354-55 (S.D.N.Y. 2014).

¹³ *Id.*

violation of Title VI may prompt investigation and action by the Office for Civil Rights at the United States Department of Education, potentially resulting in the loss of federal funds.¹⁴

Additionally, in Executive Order (“EO”) 13899, President Trump adopted the IHRA’s definition of antisemitism, including the examples, for Title VI and the federal government.¹⁵ The President made it clear that “[i]t shall be the policy of the executive branch to enforce Title VI against prohibited forms of discrimination rooted in antisemitism as vigorously as against all other forms of discrimination prohibited by Title VI.”¹⁶ This EO, which remains in effect, continues to assert the executive branch’s commitment to vigorously enforcing Title VI against antisemitic discrimination.

Some Indiana colleges and universities boast large populations of Jewish students.¹⁷ If these students face antisemitism on campus without corrective measures, they may bring an action under Title VI against your university by alleging (1) a hostile environment; or (2) retaliation. *I.G. by & through Grunspan v. Jefferson Cnty. Sch. Dist. through Bd. of Educ. for Jefferson Cnty. Sch. Dist.*, 452 F. Supp. 3d 989, 1001-04 (D. Colo. 2020). Thus, failure to intervene, including preventing *hostile environments* or *retaliation*, could constitute a Title VI violation. The Office for Civil Rights at the U.S. Department of Education has in fact started numerous investigations under their authority as they continue to enforce Title VI.¹⁸

A university may be subject to a *hostile environment* claim under Title VI if a student faces antisemitism in such a way that (1) deprives them access to education benefits or opportunities; (2) the university was deliberately indifferent to the harassment; and (3) fails to act. *See I.G.*, 452 F. Supp. 3d at 1001 (quoting *Bryant v. Indep. Sch. Dist. No. 1-38*, 334 F.3d 928, 934 (10th Cir. 2003)); *see also Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 670 n.14 (2d Cir. 2012). For example, targeting Jewish students online,¹⁹ chasing individuals out of dormitories while holding Palestinian flags, or allowing pro-Hamas rallies last October to devolve into “anti-Jewish rallies” which turned violent²⁰ may all contribute to a hostile environment. Within the last year, members of the Students for Justice in Palestine who attempted to intimidate members of a Jewish Fraternity in their parking lot because of the Israeli flag flown above their house is most likely a hostile

¹⁴U.S. Department of Education Office for Civil Rights, *Title VI legal obligation to provide Jewish students a discrimination free school environment* (May 25, 2023),

<https://www2.ed.gov/about/offices/list/ocr/docs/antisemitism-dcl.pdf>.

¹⁵ Combating Anti-Semitism, 84 FR 68779

¹⁶ *Id.*

¹⁷ Top 60 Public Universities by Jewish Population, Hillel International, <https://www.hillel.org/top-60-jewish-colleges/> [Indiana University ranks #6 in the nation].

¹⁸ List of Open Title VI Shared Ancestry Investigations, Office for Civil Rights U.S. Dep’t of Education (last updated April 30, 2024), <https://www2.ed.gov/about/offices/list/ocr/sharedancestry-list.html>; *See also* OCR Complaint and Notification Letter, Office for Civil Rights U.S. Dep’t of Education, <https://www2.ed.gov/policy/gen/leg/foia/in-indianaubloomington-1-compandnotlet.pdf>.

¹⁹ JTA, *Anti-Semitic Post Says Jews Taking Over Indiana University Campus*, The Times of Israel (September 6, 2018), <https://www.timesofisrael.com/anti-semitic-post-says-jews-taking-over-indiana-university-campus/>.

²⁰ Salome Cloteux, Ruth Cronin, and Andrew Miller, *Separate Peaceful Gatherings Over Israel-Palestine Conflict End in Clash on IU’s Campus*, Indiana Daily Students (October 10, 2023), <https://www.idsnews.com/article/2023/10/israel-palestine-rally-protest-conflict-iu-student>.

environment.²¹ Similarly, acts such as vandalizing student spaces with swastikas, allowing anti-Semitic graffiti to be painted on your sidewalks, or allowing students to rip mezuzahs off the doors of Jewish students in university housing are causes for Title VI action.²² Moreover, colleges and universities which allow “encampments,” or any type of “liberated zone,” to form on campus, like those which formed this past month, especially close to a Jewish student center, not only presumably violates your university codes of conduct, but also likely perpetuates a serious hostile environment in violation of Title VI.²³ Earlier this year, universities who canceled a planned public speaker that dissented from the Hamas narrative due to “security concerns” without taking appropriate action to ensure public safety created a possible hostile environment.²⁴ Student government officials resigning last fall due to antisemitism also raises serious concerns.²⁵ Students, faculty, and guests have experienced antisemitism on your campuses—not hypothetical or conjectural situations, but real people facing real discrimination.

Furthermore, if a student reports antisemitism on campus and the student experiences “materially adverse consequences” for reporting such harassment, a university may be subject to a *retaliation* claim under Title VI. *See L.L. v. Evesham Twp. Bd. of Educ.*, 710 F. App’x 545, 551 (3d Cir. 2017) (unpublished) (citing *Peters v. Jenney*, 327 F.3d 307, 320 (4th Cir. 2003)).²⁶ If a teacher discovers a Jewish student’s stance on Hamas, and in turn, grades that student’s assignment as failure or claims plagiarism—a serious academic charge—then that may be direct retaliation, especially after the dean placed an “observer” in the classroom and the professor continued to grade assignments in a biased manner. This raises serious Title VI concerns if appropriate action was not taken due to the professor’s blatant retaliation against this student. Serious Title VI concerns are also raised when a professor cancels a final exam in “solidarity” with ongoing campus pro-Hamas protests. Lastly, a professor who fails to honor a religious exemption for a Passover Seder and still takes away points for missing class from a Jewish student raises further serious Title VI concerns.

²¹ *Enforcement of Equal Educational Opportunity: Hearing on H.B. 1002 Before the House Comm. on Education*, 123rd General Assembly (2024) [Statement of Ben Silverman, student, Purdue University] (at 56:01, Part 2 of Jan. 10, 2024 Committee Hearing), https://iga.in.gov/session/2024/video/committee_education_0400/.

²² Jennie Runevitch, *IU Forms Task Force to Combat Rise in Antisemitic Acts on Campus*, WRHT News (November 16, 2021), <https://www.wthr.com/article/news/local/indiana-university-iu-task-force-antisemitic-actions-college-campus/531-e86839b8-72d0-4b38-9d49-e946edeeb8d6>.

²³ Ethan Fine (@FineEthan), X (formerly Twitter) (April 25, 2024), <https://twitter.com/FineEthan/status/1783522077128991083>; see also George Hale (@GeorgeHale), X (formerly Twitter) (April 25, 2024), <https://twitter.com/georgehale/status/1783528624525619537>.

²⁴ Marlssa Meador, *Hillel Postpones Speaker Event Criticized as Islamophobic Due to Security Concerns*, Indiana Daily Student (March 26, 2024), <https://www.idsnews.com/article/2024/03/hillel-postpones-speaker-event-criticized-as-islamophobic-due-to-security-concerns>.

²⁵ Miranda Miller, *Two IU Student Government Members Resign, Accuse Leadership of Antisemitism*, Indiana Daily Student (November 16, 2023), <https://www.idsnews.com/article/2023/11/iu-student-government-members-resign-accuse-leadership-antisemitism>; see also *Supra* Hearing on HB 1002 [Statement of Makiah Pickett, student, Indiana University] (at 33:05), https://iga.in.gov/session/2024/video/committee_education_0400/.

²⁶ See also *Peters*, 327 F.3d at 320; *Shinabargar v. Bd. of Trs.*, 164 F. Supp. 3d 1, 16 n.8 (D.D.C. 2016) (collecting cases); *Kimmel v. Gallaudet Univ.*, 639 F. Supp. 2d 34, 43 (D.D.C. 2009); *I.G.*, at 1002.

Jewish students fear practicing and living their faith openly.²⁷ According to testimony, some students have even abandoned their education and left Indiana.²⁸ Student groups, especially Greek life, have spoken out against antisemitism more than some of your administrations have.²⁹ I am pleased that these young people are standing up to antisemitism, but it demonstrates your own lack of fortitude in taking appropriate action. Jewish students have witnessed and experienced antisemitism on your campuses.³⁰ By not protecting your Jewish students, you deny them the same educational opportunity and protections as everyone else—which is both morally and legally unacceptable. As expressed above, your inaction leaves you vulnerable to a violation of Title VI and may subject you to legal action or the loss of your federal funding.

II. Both Federal and State law prohibit providing “material support” to foreign terrorist organizations.

Federal law prohibits providing material support or resources, training, or assistance to foreign terrorist organizations. *See* 18 U.S.C. § 2339A, § 2339B, and § 2339C. Also, Indiana law prohibits providing material support to foreign terrorist organizations. *See* Ind. Code § 35-46.5-2-5. Therefore, providing any material support or resources, training, finances, expert advice or assistance, advice, or skills to foreign terrorist organizations, including Hamas, is a violation of both Federal and Indiana state law. In *Holder v. Humanitarian Law Project*, the Supreme Court held that 18 U.S.C. § 2339B does not require proof that a defendant intended to further a terrorist organization’s illegal activity, but rather the statute only requires a defendant to know about an organization’s connection to *terrorism*. 561 U.S. 1, 16-17 (2010).³¹ University resources should not be used to fund or support Hamas’s terrorism. It is your duty to ensure that your student-led university sponsored groups, including Students for Justice in Palestine and the Palestine Solidarity

²⁷ *Supra* Hearing on HB 1002.

²⁸ *Enforcement of Equal Educational Opportunity: Hearing on H.B. 1002 Before the House Comm. on Education*, 123rd General Assembly (2024) [Statement of Rabbi Sue Silberberg, Executive Director at IU Hillel, Indiana University] (at 11:30), https://iga.in.gov/session/2024/video/committee_education_0400/.

²⁹ @zbt.iu, Instagram (February 21, 2022),

https://www.instagram.com/p/CaQnYHBMzSE/?utm_source=ig_web_copy_link&img_index=1; @aepi_iu, Instagram (February 21, 2022),

https://www.instagram.com/p/CaQqeK0MC5h/?utm_source=ig_web_copy_link&img_index=1; *see also* @Tepindiana, Instagram (February 21, 2022),

https://www.instagram.com/p/CaP9_ZWJy9k/?utm_source=ig_web_copy_link; @Akl_iu, Instagram (February 21, 2022), <https://www.instagram.com/p/CaPr1AGrGqU/>; @Aephi_iu, Instagram (February 21, 2022),

https://www.instagram.com/p/CaQ8wBFNhrU/?utm_source=ig_web_copy_link; @Sdtindiana, Instagram (February 22, 2022), https://www.instagram.com/p/CaSWNMkrubh/?img_index=1; @Dphieindiana, Instagram (February 21, 2022), https://www.instagram.com/p/CaQ6nzjMI_I/?utm_source=ig_web_copy_link; @Asaindiana, Instagram

(February 21, 2022), <https://www.instagram.com/asaindiana/p/CaQFebYJqbK/>.

³⁰ *Supra* Hearing on HB 1002.

³¹ *See also United States v. Jones*, 383 F.Supp.3d 810 (2019); *United States v. Osadzinski*, 2021 WL 3209671 (N.D. Ill. July 29, 2021), *aff'd*, No. 22-3140, 2024 WL 1327254 (7th Cir. Mar. 28, 2024).

Committee, do not violate the law and your school policies.³² Some of these same groups supported the October 7 Hamas terrorist attacks against Israel on your campuses.³³

Even recently, Hamas started to praise these student groups by denouncing America, stating “...suppressing these activities will...increase [the students’] position and reveal the falsity of American democracy.”³⁴ The same terrorist organization and “Palestinian cause” for which these students claim to advocate hates America. It’s a shame that these students, who experience the greatest level of freedom anywhere in the world because of the “American democracy,” also despise the same country that allows such freedoms. Ironically, if these students attempted to exercise the same “right to protest” in a territory controlled by Hamas, these students would not encounter the same protections and freedoms. In the meantime, I will not stand idly by and allow terrorist propaganda to grip our college campuses and brainwash our students.

Further, under Ind. Code § 35-46.5-2-7(a), a direct “admission of terrorist organization membership” or “communications authored by [a] person indicating terrorist organization membership. . . [or] *promotion of membership in a terrorist organization*” can be used to determine whether an individual is a member of a terrorist organization. *See* Ind. Code § 35-46.5-2-7(b). You must ensure the safety and security of all students—including Jewish students—from terrorist acts and actors potentially present on your campus.

Lastly, you must guarantee that your state funding is not used to fund or support foreign terrorist groups. Under House Enrolled Act 1179, effective July 1, 2024, the Board of Trustees of each Indiana state educational institution must to adopt a policy that prohibits the use of any state funds or resources to: “(1) engage or contract with an individual associated with a foreign terrorist organization or a state sponsor of terror; or (2) support the activities of a foreign terrorist organization or state sponsor of terror.”³⁵ We must protect our State’s colleges and universities from antisemitism and foreign terrorism.

III. The First Amendment does not protect unlawful conduct.

The First Amendment broadly protects speech. *See* U.S. CONST. amend. I. As the Supreme Court has ruled, “[s]peech that demeans on the basis of race, ethnicity, [...] religion, [...] or any

³² Students for Justice in Palestine (SJP), ADL (October 19, 2023), <https://notoleranceforantisemitism.adl.org/resources/backgrounder/students-justice-palestine-sjp> [“In the days following Hamas’s October 7, 2023, invasion of Israel, the national leadership of Students for Justice in Palestine (SJP) and many of the organization’s campus chapters explicitly endorsed the actions of Hamas and their armed attacks on Israeli civilians and voiced an increasingly radical call for confronting and “dismantling” Zionism on U.S. college campuses.”]; Angela Morabito, *Widespread Student Support of Hamas Attacks Exposes Moral Bankruptcy of US Higher Education*, Fox News (October 23, 2023), <https://www.foxnews.com/opinion/widespread-student-support-hamas-attacks-exposes-moral-bankruptcy-higher-education>.

³³ *See* Khaleda Rahman, *Full List of US Universities Staging Pro-Palestinian Protests* (October 11, 2023), <https://www.newsweek.com/full-list-universities-staging-pro-palestinian-protests-1833807>; Noe Padilla, *Purdue Students March in Support of Palestine*, Lafayette Journal & Courier (October 10, 2023), <https://www.msn.com/en-us/news/other/purdue-students-march-in-support-of-palestine/ar-AA1i9j2c>; @SJPButler, Instagram (October 8, 2023) https://www.instagram.com/sjbutler_/p/CyJ5-9LJNwe/.

³⁴ Tom O’Connor, *Hamas Slams US Crackdown on Pro-Palestinian College Protests*, Newsweek (April 24, 2024), <https://www.newsweek.com/hamas-slams-us-crackdown-pro-palestinian-college-protests-1893962>.

³⁵ Indiana House Bill 1179 (2024), see at <https://iga.in.gov/legislative/2024/bills/house/1179/details>.

other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express ‘the thought that we hate.’” *See Matal v. Tam*, 582 U.S. 218, 246 (2017) (internal citation omitted). Generally, speech commenting on the State of Israel or world affairs is protected speech. In contrast, speech followed by unlawful conduct is not. The First Amendment does not shield individuals who commit crimes from criminal prosecution. *See Mozzochi v. Borden*, 959 F.2d 1174, 1180 (2d Cir. 1992). For example, protesting the Israel-Hamas war is protected, but blocking a major road to do so, in violation of the law, is not.³⁶ Moreover, the First Amendment does not protect speech directed toward inciting or producing imminent lawless action, and speech likely to produce such action. *See Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

A state educational institution may enforce reasonable time, place, and manner restrictions on campus. Ind. Code § 21-39-8-9. Students’ First Amendment rights are protected when protesting at the prescribed time, manner, and place as allowed by a university. But students who protest while breaking the law, university codes of conduct, or any other campus regulation are not protected. Indiana Code prohibits expressive activity which is (1) unlawful; and (2) disrupts the functioning of a university. Ind. Code § 21-39-8-10. Most importantly, a university has authority to prohibit harassment. *Id.* This includes prohibiting “encampments” or “liberated zones,” which not only disrupt campus life, but also lead to the direct harassment of Jewish students. Lastly, state run universities need to create and maintain student protected expressive activity policies. Ind. Code § 21-39-8-12. I recommend that you review your university policies to ensure proper protection of individuals from unlawful incitement or harassment beyond the limits of the First Amendment or Indiana law.

IV. Conclusion

Protecting our Jewish students requires accountability on your part. I strongly encourage you to enforce university codes of conduct and the law when necessary to put an end to antisemitism and the promotion of terrorism on your campuses. That way we can ensure that all students, including our Jewish brothers and sisters, are safe and have an equal access to education.

Sincerely,



Todd Rokita

³⁶ Ashley Fowler, *Protest Over Israel-Hamas War Ends with Arrests Outside Governor’s Mansion*, WISH TV (April 25, 2024), <https://www.wishtv.com/news/local-news/protest-over-israel-hamas-war-shuts-down-traffic-on-meridian-street/>.