

Written Testimony of Mark Rienzi¹

Before the House Committee on Education and the Workforce
Subcommittee on Workforce Protections

Combating Workplace Antisemitism in Postsecondary Education: Protecting
Employees from Discrimination

June 26, 2024

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Chairman Kiley, Ranking Member Adams, and distinguished Members of the Subcommittee, I am honored to appear before you today and offer testimony as part of your important efforts to combat antisemitism in higher education. My name is Mark Rienzi, and I am a law professor at the Catholic University of America. I am also President and CEO of the Becket Fund for Religious Liberty. Becket is a non-profit, public-interest law firm dedicated to protecting religious liberty for people of all faiths. At Becket, we defend the rights of Buddhists, Christians, Jews, Hindus, Muslims, Native Americans, Sikhs, Zoroastrians, and members of other faiths to live out their religious beliefs. We have litigated hundreds of cases in federal and state courts, including many before the United States Supreme Court. All of our Supreme Court cases resulted in favorable decisions, often by unanimous or supermajority vote.²

Imagine, if you will, the following scenes. A group of individuals hold a demonstration at a main thoroughfare of a public university. They carry antisemitic signs and chant “slaughter the Jews.” Police officers are present, but they stand idly by as the demonstrators intimidate Jewish students and faculty.³ A few weeks later, a professor finds a piece of paper entitled “Loudmouth Jew” accompanied by a book cover prominently featuring a swastika placed outside his home.⁴

² See, e.g., *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012) (unanimous); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *Holt v. Hobbs*, 574 U.S. 352 (2015) (unanimous); *Zubik v. Burwell*, 578 U.S. 932 (2016) (unanimous); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732 (2020) (7-2); *Little Sisters of the Poor Sts. Peter & Paul Home v. Pennsylvania*, 591 U.S. 657 (2020) (7-2); *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021) (unanimous).

³ *Frankel v. Regents of the Univ. of Cal.*, Case No. 24-cv-4702, ECF No. 1 ¶¶ 58-60 (C.D. Cal., filed June 5, 2024).

⁴ *Id.* ¶¶ 61-63.

Then imagine hundreds of agitators swarming a law school, holding signs and chanting slogans like “there’s only one solution” and “death to Jews.”⁵ A short time later, unknown individuals construct a statue on campus that traffics in antisemitic tropes, with a large pig holding a bag of money alongside a bucket painted with the Star of David.⁶

Finally, students and imported activists erect an unauthorized encampment at the heart of campus, outside important academic buildings and the main undergraduate campus library. Those inside the encampment shout antisemitic slurs like “this is the final solution” and “death to Jews.” They draw a Star of David, cross it out, and replace it with swastikas. They set up checkpoints to block access, interrogate students attempting to pass, and deny entry to visibly Jewish students, such as those wearing a Star of David necklace or a kippah. Police officers are present and aware of the situation, but university officials instruct them not to intervene. Other security personnel encourage Jewish students not to attempt to access the area. University officials refuse to discipline students engaging in unlawful conduct and refuse to enforce campus policies against the illegal encampment. Their actions embolden the protestors. Violence predictably ensues.⁷

These episodes may sound like they come from Germany in the 1930’s, but they don’t. They describe real-life events that occurred at the University of California, Los Angeles over the past nine months—events that have prompted a lawsuit against UCLA where my law firm is representing several students. And they could very well describe events at any number of American universities, where similar illegal conduct occurred following Hamas’ terrorist attack on October 7.

⁵ *Id.* ¶ 66.

⁶ *Id.* ¶¶ 82-84.

⁷ *Id.* ¶¶ 87-159.

So what can be done to ensure that universities and their administrators that have denied Jewish students, faculty, and employees equal treatment under the law are held accountable for their actions? Fortunately, existing law provides many mechanisms to hold universities and public officials accountable.

To begin, Title VI of the Civil Rights Act of 1964 provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”⁸ Almost all institutions of higher education in the country receive some form of financial assistance from the Federal government and are therefore subject to suit under Title VI. And the Supreme Court has made clear that discrimination against Jews is discrimination based on race,⁹ as have multiple recent presidential administrations.¹⁰ So Title VI prohibits discrimination against Jews—whether it’s based on actual or perceived ancestry, race, ethnic characteristics, or national origin. That means universities like UCLA are liable under Title VI for excluding students, faculty, and employees from full participation and the full benefits of their programs because they are Jewish.

Similarly, Title VII of the Civil Rights Act of 1964 makes it an “unlawful employment practice for an employer to ... discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”¹¹ This includes

⁸ 42 U.S.C. § 2000d.

⁹ *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615, 617-68 (1987).

¹⁰ *See Dear Colleague Letter*, United States Department of Education Office for Civil Rights (May 25, 2023), available at <https://www2.ed.gov/about/offices/list/ocr/docs/antisemitism-dcl.pdf>; Exec. Order No. 13899 on Combating Anti-Semitism, 84 Fed. Reg. 68779 (Dec. 11, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-12-16/pdf/2019-27217.pdf>.

¹¹ 42 U.S.C. § 2000e-2.

creating a “hostile work environment,” where discriminatory intimidation, ridicule, and insult are severe and pervasive, alter the conditions of employment, and create an abusive working environment.¹² Again, Title VII fits like a glove here. Discriminating against Jews is religious discrimination, and the actions and knowing acquiescence of university administrators allowed campus antisemitism to persist and grow, thereby creating hostile work environments for Jewish employees.

Other civil rights laws can also help address the scourge of antisemitism plaguing our institutions of higher education. The Ku Klux Klan Act was passed during Reconstruction to protect Black Americans from racial terrorism and combat “the Klan’s reign of terror in the Southern States [that] had rendered life and property insecure.”¹³ But the Ku Klux Klan Act also applies today and provides protection for modern-day attacks on Jewish students, faculty, and employees.

Section 1985 of the Ku Klux Klan Act provides that “[i]f two or more persons in any State . . . conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws . . . the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.”¹⁴ When universities acquiesce in antisemitic activity and refuse to apply their campus policies to unlawful behavior, that can give rise to a Section 1985 claim against the universities.

The same is true for Section 1986 of the Ku Klux Klan Act, which permits liability for the *failure to prevent a conspiracy*. Under Section 1986, “[e]very person who,

¹² *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993).

¹³ *Virginia v. Black*, 538 U.S. 343, 353 (2003) (quoting *Jett v. Dallas Independent School Dist.*, 491 U.S. 701, 722 (1989)).

¹⁴ 42 U.S.C. § 1985(3).

having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 . . . , are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented.”¹⁵ Again, that means when universities have the power to prevent racially motivated attacks and hostile work environments against their Jewish students, faculty, and employees, they must do so. Otherwise, they’re violating Section 1986.

If a university is a public institution, like UCLA, then there are even more potential remedies. Those harmed can bring a claim under the Equal Protection Clause, which prohibits the government from discriminating based on religion, race, and ethnicity. Or they can bring a claim for violating their free speech rights, as Jewish students can sometimes only access educational benefits by disavowing their religious identity and Israel’s right to exist. Or plaintiffs can bring a claim based on the Free Exercise Clause, as universities and administrators are denying them equal educational programming due to their religious status and exercise as Jews.

There are many ways in which existing federal law can address the problem of antisemitism on college campuses. But in another sense, the law, on its own, is not fully effective in remedying these problems. That’s because enforcement of federal civil rights protections can depend on the courage of individual litigants.

Suing someone in general is seldom relished by plaintiffs, even in cases where the law is clearly on their side. But when a lawsuit involves antisemitism and religious and racial discrimination, the social and emotional costs to bringing suit are even higher—especially when those lawsuits arise amid a tense nationwide debate like the

¹⁵ 42 U.S.C. § 1986.

one we are in right now. The culture of silence and intimidation and the fear of reprisals isolate victims and prevent them from speaking out and acting without the support of allies and those unaffected by antisemitism. In short, in moments like these it can take a great deal of fortitude to assert one's basic legal rights.

That's where the work of this Committee, and the work of the Federal government, can make an important difference. In a prior hearing before this Committee, UCLA Chancellor Gene Block was called to testify and explain the actions of his administration. That hearing demonstrated that UCLA officials were well-aware of the dangers posed by antisemitic demonstrations on campus, yet they did little to stop them. But the statements in that committee hearing also galvanized Jewish students, faculty, and employees and made them realize that they were not alone and could address these issues before they got even worse. Without this Committee's work, many of those harmed by UCLA and other universities would not have felt empowered to speak up. Your continued oversight and investigations are critical to holding universities accountable to the laws that Congress has passed to protect Jewish students, staff, and faculty.

The Department of Education can also follow the lead of this Committee. The Department typically processes and responds to formal complaints before investigating colleges and universities for Title VI violations. And the Department does not have to wait for formal complaints to be filed. The problem of antisemitism in our institutions of higher education is now a well-known problem, and the Department's Office of Civil Rights ("OCR") can begin its own investigations and compliance reviews outside the complaint process. As OCR itself has noted, agency-initiated cases, called "compliance reviews" are intended to "target resources to

compliance problems that are particularly acute, national in scope, or newly emerging.”¹⁶ Antisemitism on college campuses undoubtedly fits that bill.

The EEOC and the Department of Justice can also become involved. Given the rapid rise of antisemitism in our country, EEOC can make it a priority to enforce Title VII against instances of religious discrimination against Jews. The Department of Justice can employ Title IV of the Civil Rights Act of 1964, which authorizes the Attorney General to investigate equal protection violations—including religious discrimination—in public institutions of higher education.¹⁷ The Department of Justice can also sue and compel public school districts and universities to enter into settlement agreements when schools fail to appropriately respond to peer-on-peer religious harassment.¹⁸ And the Department of Justice can intervene in employment discrimination lawsuits on the side of Jewish employees facing religious discrimination.¹⁹ All these actions would send a clear signal that the Federal government is taking antisemitism seriously—in universities, in the employment context, and in our society more broadly.

At the beginning of my remarks, I noted how the events on American colleges and universities today are eerily reminiscent of scenes from German universities and

¹⁶ *Ensuring Equal Access to High-Quality Education*, U.S. Department of Education Office for Civil Rights, available at https://www2.ed.gov/about/offices/list/ocr/docs/ensure03_pg6.html (last modified April 3, 2023).

¹⁷ 42 U.S.C. § 2000c-6.

¹⁸ See, e.g., *Settlement Agreement between the United States of America and Federal Way Public Schools*, available at <https://www.justice.gov/crt/case-document/file/1336691/dl?inline>; *Resolution Agreement between the United States of America and DeKalb County School District*, available at <https://www.justice.gov/sites/default/files/crt/legacy/2013/05/09/dekalbagree.pdf>.

¹⁹ See *Owen and United States of America v. L'Anse Area Schools*, No. 2:00-cv-71 (W.D. Mich., filed Mar. 28, 2002), available at <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/lanseor.pdf>.

society from the 1930's. Remembering that history is important so that we are not condemned to repeat it.

On the more positive side, we can also learn from what our predecessors did well, and we can follow their example. One such example is that of President George Washington, who in 1790 wrote to the Hebrew Congregation of Newport, Rhode Island, that was seeking assurances about the place of Jews within American society. He wrote:

All possess alike liberty of conscience and immunities of citizenship. It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people, that another enjoyed the exercise of their inherent natural rights. For happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance requires only that they who live under its protection should demean themselves as good citizens. . . . May the Children of the Stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other Inhabitants; while every one shall sit in safety under his own vine and figtree, and there shall be none to make him afraid.²⁰

Together, we can defeat the scourge of antisemitism in our institutions of higher learning and society by “giv[ing] to bigotry no sanction, to persecution no assistance.” Together, we can live up to Washington’s promise that in this country, none shall be made afraid on account of his faith or ancestry. And together, we can ensure that the promises of our Constitution and our civil rights laws are kept and safeguarded.

I thank the Committee for its time and allowing me to testify. I look forward to your questions.

²⁰ Letter from George Washington to the Hebrew Congregation in Newport, Rhode Island (Aug. 18, 1790), in *Founders Online*, National Archives, available at <https://founders.archives.gov/documents/Washington/05-06-02-0135>.