No. 25-2239

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

EYAL YAKOBY, JORDAN DAVIS, NOAH RUBIN AND STUDENTS AGAINST ANTISEMITISM, INC.,

Plaintiffs-Appellants

v.

THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA,

Defendant-Appellee.

On Appeal from the United States District Court for the Eastern District of Pennsylvania
No. 2:23-cv-04789-KNS

BRIEF OF AMICUS CURIAE OF AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS AND MIDDLE EAST STUDIES ASSOCIATION IN SUPPORT OF DEFENDANT-APPELLEES

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and 3d Cir. L.A.R. 26.1.1, Amicus Curiae American Association of University Professors and Middle East Studies Association of North America, Inc., discloses that it has no parent corporations and that no publicly held corporations hold 10% or more of its stock.

Dated: December 22, 2025

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This amicus brief is submitted on behalf of the American Association of University Professors ("AAUP") and the Middle East Studies Association ("MESA"). All parties have consented to the filing of this brief.

I. STATEMENT OF IDENTITY AND INTEREST OF AMICUS

The American Association of University Professors ("AAUP") is a non-profit organization of over 50,000 faculty, graduate students, and academic professionals. Since its founding in 1915, AAUP's core mission has been to advance and defend academic freedom. AAUP has issued statements and interpretations on academic freedom, campus speech, and anti-discrimination that have been cited by the Supreme Court and influenced university policies nationwide. *See, e.g., Bd. of Regents v. Roth,* 408 U.S. 564, 579 n.17 (1972); *Tilton v. Richardson,* 403 U.S. 672, 681-82 (1971). In response to the authoritarian crackdown on the autonomy of U.S. colleges and universities, AAUP has initiated lawsuits defending the rights and liberties of its members to speak and associate freely without ideological censorship. *See, e.g., American Association of University Professors v. Rubio,* No. 1:25-cv-1068, 2025 U.S. LEXIS 193069, at *111 (D. Mass. Sept. 30, 2025); *Amer. Assoc. of Univ. Professors - Harvard Fac. Chapter v. Dept. of Just.*, No. 1:25-cv-10910 (D. Mass. Sept. 3, 2025). Over 200 of our members are current and recent affiliates of the University of Pennsylvania. Therefore, AAUP has a strong interest in defending the

First Amendment rights of scholars, faculty, students, and the broader Penn community from the weaponization of antidiscrimination law.

The Middle East Studies Association of North America, Inc. ("MESA") is a nonprofit membership scholarly association of faculty, students, and researchers interested in the study of the Middle East. MESA has an interest in defending the rights of its members who study, teach, and conduct scholarship to speak and associate freely in ways informed by their study of the Middle East. Dozens of our members are current or recent affiliates of the University of Pennsylvania, including faculty and students. MESA established its Committee on Academic Freedom decades ago to protect our members' First Amendment rights. As pro-Israel groups increasingly flooded school administrators and the federal government with claims of antisemitism, prompting an unprecedented wave of Title VI investigations and private lawsuits, MESA launched its Academic Freedom Initiative ("AFI") to systematically track Title VI antisemitism claims against colleges and universities. Thus, MESA has a well-established interest in the protection of the First Amendment rights of students, researchers and scholars at Penn in the field of Middle East Studies.

II. STATEMENT OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 29(c)(5)

No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund the preparation or submission of this brief. No person other than the amicus curiae, its members, or its counsel contributed money that was intended to fund the preparation or submission of this brief.

III. SUMMARY OF ARGUMENT

This court should affirm the district court's dismissal of Plaintiffs-Appellants' Title VI claims. Plaintiffs-Appellants failed to allege facts plausibly showing that the University of Pennsylvania was deliberately indifferent to antisemitic harassment on campus. On appeal, Plaintiffs-Appellants again seek to expand Title VI beyond its constitutional and statutory limits by recasting protected political expression as unlawful discrimination. At stake before this court lies the fate of academic freedom and the integrity of federal antidiscrimination law—and whether both will be forfeited to suppress political speech and dissent.

Academic freedom is a core feature of university life. The ability for students and faculty to exchange ideas, engage in open debate, and consider viewpoints that may be provocative without political or ideological censorship is a key part of what distinguishes universities from other fora. *See, e.g.*, *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003); *Healy v. James*, 408 U.S. 169, 180 (1972), citing *Tinker v. Des Moines Independent School District*, 393 U.S. 503, 506 (1969). These features are

central to academic freedom, which the Supreme Court has recognized as a "special concern of the First Amendment." *See Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967). Similarly, the AAUP has long emphasized that controversial and provocative speech must be defended on campuses, even when it might cause offense to others.

In their amended complaint and brief, Plaintiffs-Appellants overwhelmingly challenge political expression: protests, chants, demonstrations, sit-ins, and academic and cultural events that criticize Israel and/or Zionism, and express solidarity with the Palestinian people. The district court correctly observed that these "sweeping allegations of ideological, philosophical, religious and political concerns and grievances . . . have nothing to do with a federal lawsuit." *Eyal Yakoby v. Trs. of the Univ. of Pa.*, No. 23-4789, 2025 U.S. Dist. LEXIS 103709, at *2 (E.D. Pa. June 2, 2025). Put simply, Plaintiffs-Appellants seek to compel Penn's censorship of speech and expression with which they take offense.

Further, the district court rightly held that these allegations fail to warrant Title VI liability. *Id.* at *13. Title VI does not license universities to suppress speech on matters of public concern. *StandWithUs Ctr. for Legal Just. v. Massachusetts Inst. of Tech.*, 158 F.4th 1, 13-14 (1st Cir. 2025). Nor does it authorize courts to construe its mandate in conflict with the First Amendment. *Gartenberg v. Cooper Union for the Advancement of Sci. & Art*, 765 F. Supp. 3d 245, 260 (S.D.N.Y. 2025) ("A statute

that burdens protected speech must comport with the First Amendment . . .") (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 265 (1964)).

Plaintiffs-Appellants' theory would require universities to censor political expression whenever some students characterize provocative or controversial viewpoints as discriminatory harassment. Their position would chill academic freedom and open inquiry, transforming universities into sites for ideological orthodoxy rather than free expression.

Even further, Plaintiffs-Appellants and their amici attempt to bolster their claims by invoking the presence of a nationwide antisemitism crisis in the backdrop of campus protests at Penn. They rely on investigation counts and statistics offered by the Department of Education's Office of Civil Rights ("OCR") and the Anti-Defamation League ("ADL"). However, recent empirical evidence demonstrates that the recent surge in Title VI antisemitism complaints and investigations overwhelmingly concern speech critical of Israel and/or Zionism, rather than discriminatory conduct directed at Jewish people. American Association of University Professors & the Middle East Studies Association, *Discriminating Against Dissent: The Weaponization of Civil Rights Law to Repress Campus Speech on Palestine* 10 (Nov. 5, 2025), https://www.aaup.org/sites/default/files/2025-11/Discriminating-Against-Dissent_0.pdf. ADL statistics on antisemitism have also come under fire for relying on the International Holocaust Remembrance Alliance

("IHRA") definition of antisemitism, which conflates antisemitism with criticism of Israel and Zionism. This court should not rely on external metrics of discrimination in its Title VI analysis, as they present no direct relationship to the climate on Penn's campus. Moreover, it should scrutinize any statistics with documented reliability issues.

For these reasons, amici urge the court to uphold the district court's dismissal and affirm that Title VI cannot be weaponized to suppress free speech and academic freedom on university campuses.

IV. ARGUMENT

A. Plaintiffs-Appellants' Exploitation of Title VI Threatens Academic Freedom.

The ability of students and faculty to exchange ideas without political or ideological interference lies at the core of academic freedom, a value the Supreme Court has recognized as a "special concern of the First Amendment." *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967). The Supreme Court has long regarded universities as unique sites of free expression and open inquiry, spaces where exposure to competing ideas is not merely tolerated but encouraged, and where students and faculty do not "shed their constitutional rights . . . at the schoolhouse gate." *See Healy v. James*, 408 U.S. 169, 180 (1972), citing *Tinker v. Des Moines Independent School District*, 393 U.S. 503, 506 (1969). "The essentiality of freedom

in the community of American universities is almost self-evident." *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

The Court has underscored that universities "occupy a special niche in our constitutional tradition" on account of "the expansive freedoms of speech and thought associated with the university environment." *Grutter*, 539 U.S. at 329 (collecting cases). The university is the ultimate "marketplace of ideas," *Keyishian*, 385 U.S. at 603, where there occurs a "[c]ompetition in ideas and governmental policies [that] is at the core of our electoral process and of the First Amendment freedoms." *Williams v. Rhodes*, 393 U.S. 23, 32 (1968). Thus, "the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Healy v. James*, 408 U.S. at 180; *see also Rust v. Sullivan*, 500 U.S. 173, 200 (1991) ("[As] a traditional sphere of free expression," universities play a role "fundamental to the functioning of our society.")

The AAUP has long emphasized that controversial and provocative speech must not merely be tolerated on campus, but uplifted as central to academic life. "[T]he ability to espouse highly controversial and unpopular views is an essential social responsibility of universities and colleges." AAUP, *Ensuring Academic Freedom in Politically Controversial Academic Personnel Decisions* (August 2011), https://www.aaup.org/NR/rdonlyres/895B2C30-29F6-4A88-80B9FCC4D23CF28B/0/PoliticallyControversialDecisionsreport.pdf; *see also* AAUP,

1915 Declaration of Principles on Academic Freedom and Tenure (1915), https://www.aaup.org/NR/rdonlyres/A6520A9D-0A9A-47B3-B550-C006B5B224E7/0/1915Declaration.pdf (arguing that the university "should be an intellectual experiment station, where new ideas may germinate and where their fruit, though still distasteful to the community as a whole, may be allowed to ripen.")

Accordingly, the First Amendment protects campus speech even when it promotes ideas that may be controversial, provocative, or divisive. *Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1126 (11th Cir. 2022) ("The Supreme Court has reiterated time and again—and increasingly of late—the 'bedrock First Amendment principle' that '[s]peech may not be banned on the ground that it expresses ideas that offend.'") (quoting *Matal v. Tam*, 582 U.S. 218, 223 (2017) (alterations in original); *Blum v. Schlegel*, 18 F.3d 1005, 1012 (2d Cir. 1994) (observing that "the efficient provision of services" by a state university "actually depends, to a degree, on the dissemination in public fora of controversial speech implicating matters of public concern.").

These principles of academic freedom also extend to students. In *Healy v. Jame*s, the Supreme Court addressed the refusal of a college to recognize a left-wing student group that engaged in protest and civil disobedience in opposition to the Vietnam War and racial injustice. *Healy*¸ 408 U.S. at 174. Finding that the university violated the First Amendment, the Court explained,

> [T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, "the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton* v. *Tucker*, 364 U.S. 479, 487 (1960). The college classroom with its surrounding environs is peculiarly the "marketplace of ideas," and we break no new constitutional ground in reaffirming this Nation's dedication to safeguarding academic freedom. *Keyishian*, 385 U.S. at 603; *Sweezy*, 354 U.S. at 249-250.

408 U.S. at 180-81.

Similarly, AAUP's 1915 Statement warned that, without academic freedom, the university is transformed into a "proprietary institution" that functions to promote "the particular opinion[s] of those who control it." AAUP, *1915 Declaration* at 5; *see also Speech First*, 32 F.4th at 1127 n.6 ("the dangers of viewpoint discrimination are heightened in the university setting") (internal quotation marks omitted) (quoting *Gay Lesbian Bisexual All. v. Pryor*, 110 F.3d 1543, 1550 (11th Cir. 1997)).

Here, Plaintiffs-Appellants ask this court to adopt a view of the university as a bastion of ideological censorship that erodes academic freedom.

Plaintiffs-Appellants make clear that their core objection is with political expression at Penn. The vast majority of their allegations involve expressive activity—students voicing criticism of Israel or Zionism[1]—rather than

[1] Scholars in Middle East Studies understand Zionism as a "political movement with a specific vision of Jewish self-determination that supports a state for the Jewish

discriminatory conduct against Jewish people. Many of these alleged incidents took place at or near protests, rallies, sit-ins, and events celebrating Palestinian culture. *See* Plaintiffs' Amended Complaint ("AC"), ECF 28 at ¶¶ 59-219. Plaintiffs-Appellants repeatedly take issue with chants and slogans with longstanding historical resonance for the Palestine cause (e.g., "From the River to the Sea, Palestine will be Free" (AC ¶¶ 170, 239, 242) and "Intifada revolution" (AC ¶¶ 170, 242)). They also object to protest tactics that are common elements of student organizing (including the occupation and symbolic renaming of Van Pelt Library as the "Freedom School" to protest scholasticide in Gaza and honor Palestinian scholars and students killed during the genocide (AC ¶ 239)).[2] Their allegations even

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people in the eastern Mediterranean. This movement has three core tenets: (1) all Jews in the world are a single nation; (2) as a nation, the Jewish people is entitled to a state of its own; (3) that state should be located somewhere in the area of the eastern Mediterranean historically known as Palestine, located between the Jordan River and the Mediterranean sea . . . Without taking a position on the first two tenets of whether all Jews are a nation or are entitled to statehood, scholars in Middle East Studies have long pointed out the contradiction between the Zionist project and the rights of the indigenous population of Palestine." American Association of University Professors & the Middle East Studies Association, *Discriminating Against Dissent: The Weaponization of Civil Rights Law to Repress Campus Speech on Palestine* 4 (Nov. 5, 2025), https://www.aaup.org/sites/default/files/2025-11/Discriminating-Against-Dissent_0.pdf. While some Jews view Zionism as a core part of their identity, many do not. *See, e.g.*, *StandWithUs*, 158 F.4th at 16-17 (noting there is "ongoing debate as to the relationship between anti-Zionism and antisemitism"); Itamar Mann & Lihi Yona, *Defending Jews from the Definition of Antisemitism*, 71 UCLA L. Rev. 1150, 1155 (2024), https://www.uclalawreview.org/defending-jews-from-the-definition-of-antisemitism.

[2] Neema Baddam & Vidya Pandiaraju, *Penn officials interrupt Van Pelt Library 'study-in' by pro-Palestinian activists, force relocation*, Daily Pennsylvanian (Feb.

extend to the Palestine Writes Literature Festival (AC ¶ 98), "a gathering of dozens of writers, artists, publishers, performers, and scholars to explore the richness and diversity of Palestinian culture." Plaintiffs-Appellants deem this literature festival an "antisemitic hate fest" (AC ¶ 4).

Plaintiffs-Appellants do not allege actionable discrimination under Title VI. Instead, they repeatedly point to political expression on matters of public concern, which the district court properly held falls outside of Title VI's reach. *See Yakoby*, No. 23-4789, at *13. While students might be offended by the political positions invoked, speech "may not be banned on the ground that it expresses ideas that offend." *Speech First*, 32 F.4th at 1126 (quoting *Matal*, 582 U.S. at 223).

B. Plaintiffs-Appellants Ask the Court to Misuse Title VI to Prohibit Protected Political Speech, Not Antisemitic Harassment.

Title VI does not and cannot require universities to censor political speech. *See StandWithUs*, U.S. App. LEXIS No. 24-1800 at *22, citing *Texas v. Johnson*, 491 U.S. 397, 412 (1989) ("Using Title VI to compel adherence to a preferred political viewpoint would also implicate students' First Amendment freedoms"); *Gartenberg* 765 F. Supp. 3d at 260 ("A statute that burdens protected speech must comport with the First Amendment") (quoting *Sullivan*, 376 U.S. at 265). An interpretation that undermines the First Amendment, as that offered by Plaintiffs-

19, 2024), https://www.thedp.com/article/2024/02/freedom-school-leaves-van-pelt-study-in-relocates-houston-hall.

Appellants, would "cast significant doubt on the statute's constitutionality." *Gartenberg*, 765 F. Supp. 3d at 264 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018)).

The past two years have seen a substantial rise in attempts to mobilize Title VI in order to suppress campus speech. AAUP has been party to several lawsuits with factual allegations and legal claims similar to those before this court. For instance, in *American Association of University Professors v. Rubio*,[3] the district court found that faculty and students, including AAUP and MESA members, were unlawfully "deported with the goal of tamping down pro-Palestinian student protests and terrorizing similarly situated non-citizen (and other) pro-Palestinians into silence because their views were unwelcome." No. 1:25-cv-1068, 2025 U.S. LEXIS 193069, at *111 (D. Mass. Sept. 30, 2025); *see also Amer. Assoc. of Univ. Professors - Harvard Fac. Chapter v. Dept. of Just.*, No. 1:25-cv-10910, at *79 (D. Mass. Sept. 3, 2025) (holding that the Trump Administration's termination of grant funding to Harvard in retaliation for political speech "used antisemitism as a smokescreen for a targeted, ideologically-motivated assault on this country's premier universities," in violation of the First Amendment and Title VI); *Amer. Assoc. of Univ. Professors v. Trump*, No. 3:25-cv-07864, 2025 U.S. Dist. LEXIS 224922, at *10 (N.D. Cal.

[3] MESA was also party to this suit, as the government's ideological deportation policy directly impacted our members' ability to meet, discuss critical topics of our field, and produce scholarship.

Nov. 14, 2025) (issuing a preliminary injunction ordering the Trump Administration to, in part, cease its "concerted policy" of weaponizing "allegations of antisemitism to justify funding cancellations" to the University of California system).

Due in large part to the efforts of pro-Israel groups, the government has opened at least 102 antisemitism investigations against colleges and universities since October 7, 2023. American Association of University Professors and the Middle East Studies Association, *Discriminating Against Dissent: The Weaponization of Civil Rights Law to Repress Campus Speech on Palestine* 10-11 (Nov. 5, 2025), https://www.aaup.org/sites/default/files/2025-11/Discriminating-Against-Dissent_0.pdf. [4] Recent empirical research has found that the number of lawsuits alleging Title VI violations after October 7, 2023, increased dramatically; only two were filed before that date. *Id.* As discussed further in Section B, the vast majority of allegations were focused on speech and expression in support of Palestine and Palestinians. *Id*.

As the district court correctly recognized, Plaintiffs-Appellants accused Penn of "at worst . . . tolerating and permitting the expression of viewpoints which differ

[4] Section B of the argument, "Plaintiffs-Appellants' Use of Unreliable Statistics Undermine Their Claims of a Hostile Environment at Penn", *infr*a, explores the implications of the report's findings for claims made by Plaintiffs-Appellants and their amici that a rise in Title VI antisemitism lawsuits necessarily correlates to a rise in campus antisemitism in greater depth.

from their own." *Yakoby*, 2025 U.S. Dist. LEXIS 103709, at *13. Plaintiffs-Appellants reprise the same category error before this court.

Rather than pleading genuine instances of antisemitism, Plaintiffs-Appellants overwhelmingly point to canonical examples of political expression on matters of public concern. The district court determined that these forms of political expression are not subject to censure under Title VI. *See id*. Indeed, Plaintiffs-Appellants do not challenge harassing speech and conduct directed toward Jewish people. Instead, they challenge speech and conduct that express critiques about the state of Israel and its military's actions. If the court endorses Plaintiffs-Appellants' theory, it would only embolden future litigants to challenge disfavored political speech under the guise of enforcing federal antidiscrimination law. The predictable result would be a chilling effect on campus speech, forcing universities to act as arbiters of ideological orthodoxy rather than as institutions committed to intellectual exchange and open inquiry.

Title VI was never intended to serve this function. *See* Committee A on Academic Freedom and Tenure, *On Title VI, Discrimination, and Academic Freedom* 4 (2025) ("There is no mystery or vagueness about the word discrimination as used in the bill. It means a distinction in treatment given to different individuals because of their different race, color, or national origin") (citing 110 Cong. Rec. S7477 (1964)).

Certainly, these expressions might lead some students to feel offended or isolated from their peers with different viewpoints. Neither of these outcomes are sufficient to ground a hostile environment claim under Title VI. *See Saxe v. State College Area School District*, 240 F.3d 200, 210 (3d Cir. 2001) ("[n]o court or legislature has ever suggested that unwelcome speech directed at another's 'values' may be prohibited under the rubric of anti-discrimination.") Even if Plaintiffs-Appellants adequately pleaded some isolated incidents of antisemitic harassment, "one person does not lose the right to express a political opinion on a matter of public concern merely because another who expresses the same view does so for condemnable reasons." *StandWithUs*, U.S. App. LEXIS 27390, at *30-31. It is critical that the court reject Plaintiffs-Appellants' distortion of Title VI and affirm that discrimination law is not a mechanism for silencing dissent and open inquiry on campuses.

C. Plaintiffs-Appellants' Use of Unreliable Statistics Undermine Their Claims of a Hostile Environment at Penn.

Plaintiffs-Appellants' allegations rest on the narrative of a sweeping antisemitism crisis at Penn and nationwide. They warn of a "growing institutional problem at Penn's campus and other university campuses" that has fostered an "uninterrupted culture of antisemitism." Am. Compl. ¶¶ 3, 199. They claim that not only is antisemitism "endemic" to Penn, but also that the university has gone so far as to "transform itself into an incubation lab for virulent anti-Jewish hatred,

harassment, and discrimination." *Id.* ¶¶ 12, 1. Penn, they conclude, is "perilous" for Jewish students. *Id.* ¶ 3.

This narrative mirrors arguments raised by amici National Jewish Advocacy Center and StandWithUs (ECF 29) and the Louis D. Brandeis Center for Human Rights Under Law (ECF 31) about the putative surge of antisemitism in the U.S. To substantiate this narrative, Plaintiffs-Appellants and their amici turn to data from the Department of Education's OCR (Am. Compl. ¶ 30; ECF 29 at 11-12), the ADL (*Id*. at 30, ECF 29 at 11; ECF 31 at 10, 14), and the FBI (ECF 31 at 9). When examined closely, however, the empirical evidence does not support the inference that these investigations reflect an antisemitism "epidemic" of (ECF 31 at 2), let alone one attributable to Palestine solidarity organizing on university campuses.

D. Title VI Antisemitism Investigations Primarily Target Political Speech, Not Anti-Jewish Harassment.

The past two years saw a record surge in antisemitism investigations initiated by the OCR, the primary federal agency that has enforced Title VI on college and university campuses. Indeed, more antisemitism investigations were opened in the last two months of 2023 than in all previous years combined. AAUP & MESA, *Discriminating Against Dissent*, *supra* at 9 (hereafter "Discriminating Against Dissent"). However, an empirical analysis of the data shows that the complaints that led to these investigations almost exclusively focused on speech and protest critical of Israel and Zionism, rather than discriminatory conduct directed at Judaism or

Jewish people. *Id*. at 10. In November 2025, the AAUP and MESA published the first systematic empirical study of government investigations and private lawsuits against US colleges and universities under Title VI. *Id*. The report gathered and analyzed 102 antisemitism complaints available on the websites of OCR and various advocacy groups, as OCR generally does not provide figures for investigations opened. *Id*. at 27. Of the 102 complaints analyzed in the report, all but one focus on speech critical of Israel or Zionism. *Id*. Seventy-nine percent of these complaints include allegations of antisemitism that merely describe anti-Zionist expression without reference to Jews or Judaism. *Id* at 2. At least ninety-two of these complaints led to the opening of an investigation. *Id.* at 10. Even further, at least twenty-four percent of these complaints originated with external organizations or individuals unaffiliated with the campus involved. *Id*. at 12. This number could be significantly higher, as the identity of complainants is unknown in twenty-two percent of cases. *Id*.

Moreover, many OCR investigations appear to have been opened based on scant detail and evidentiary support, making raw investigation numbers poor indicators of a hostile environment on campus. *Id.* at 10-11. Complaints vary greatly in length and detail, and are subject to varying levels of redaction. Some are just a few sentences and lack any specificity in their allegations. For instance, a complaint against Eastern Washington University sent by the parent of a student consists of

two paragraphs that cites the chanting of the slogan "from the river to the sea, Palestine will be free" as evidence of antisemitism and includes a photograph of a poster for a talk under the title "The Massacre in Gaza: Security or Genocide?" before concluding simply with "please investigate the university." *Id*. These findings demonstrate why the existence of an OCR investigation cannot alone be taken as evidence that Jewish students are subject to severe, pervasive, and offensive discriminatory harassment under Title VI, and should prompt additional scrutiny of Plaintiffs-Appellants' and their amicis' claims.

E. The Court Should Not Factor Misleading Statistics into its Analysis of Whether Penn Satisfied its Obligations Under Title VI.

Plaintiffs-Appellants' amici urge the court to consider external factors that Title VI simply does not include as indicators of a hostile environment. *See* § 2000d. The Brandeis Center argues that the district court failed to consider the "intense and growing anti-Semitic climate in educational settings and across the U.S." in its Title VI analysis. Br. for Brandeis Center as Amicus Curiae Supporting Appellants, ECF 31 at 7. Without factoring in the "broader hostile environment" for Jewish students, the court could not adequately assess whether Penn's response to Plaintiffs-Appellants' allegations was reasonable. *Id*., citing 42 U.S.C. § 2000d. To support the claim that there is a "nationwide epidemic" of antisemitism (ECF 31 at 2), the Brandeis Center marshals a range of statistics from the ADL, including: a twenty-

one percent increase in assaults against Jews, *Id*. at 10, and a staggering 344 percent increase in antisemitic incidents over the past five years, *Id.* at 14.

Nothing in the statute directs courts to look at a purported "broader hostile environment" beyond the federally funded program. Even further, there are strong reasons to exercise skepticism about the reliability of the ADL's numbers as metrics for antisemitism. The ADL relies on the International Holocaust Remembrance Alliance ("IHRA") definition of antisemitism, which civil liberties and human rights organizations have long argued conflates criticisms of Israel or Zionism with antisemitism.[5] *See* Human Rights Watch, *Human Rights and other Civil Society Groups Urge United Nations to Respect Human Rights in the Fight Against Antisemitism* (April 20, 2023), https://www.hrw.org/news/2023/04/04/human-rights-and-other-civil-society-groups-urge-united-nations-respect-human. The use of this definition has led to the stifling of protected academic speech on university campuses. As Committee A of the AAUP has pointed out, ". . . [the adoption of IHRA] has led to cancellation of university courses and conferences on the rights of Palestinians and to targeting faculty members in Middle East studies for dismissal and other severe sanctions." Committee A on Academic Freedom and Tenure,

[5] *See also* Committee A on Academic Freedom and Tenure, *Legislative Threats to Academic Freedom: Redefinitions of Antisemitism and Racism* (March 2022), https://www.aaup.org/reports-publications/aaup-policies-reports/policy-statements/legislative-threats-academic-freedom.

Legislative Threats to Academic Freedom: Redefinitions of Antisemitism and Racism (2022) at 71, https://www.aaup.org/reports-publications/aaup-policies-reports/policy- statements/legislative-threats-academic-freedom. Kenneth Stern, one of the authors of the primary definition, has even objected to what he calls "its weaponization" and has opposed legislative efforts to require the Department of Education to use the IHRA definition when evaluating Title VI complaints. *See id.* Despite the clear differences between hate speech directed at Jewish people and speech criticizing the state of Israel, ADL director Jonathan Greenblatt maintains that "anti-Zionism is antisemitism" and an "ideology . . . rooted in rage." *Remarks by Jonathan Greenblatt to the ADL Virtual National Leadership Summit* (May 1, 2022), https://www.adl.org/remarks-jonathan-greenblatt-adl-virtual-national-leadership-summit.

Accordingly, the ADL appears to include anti-Zionist expression in its antisemitism tally. Mari Cohen, *The ADL's Antisemitism Findings, Explained*, Jewish Currents (Apr. 4, 2023), https://jewishcurrents.org/the-adls-antisemitism-findings-explained. Even further, while the ADL did not previously include pro-Palestine protests in its audits prior to 2024, the group notes that it has employed "new methodology" since October 7th that categorizes "opposition to Zionism" or language "perceived as supporting terrorism or attacks on Jews, Israelis or Zionists" as antisemitism. Anti-Defamation League, *Methodology*, *in* Audit of Antisemitic

Incidents 2024 (Apr. 22, 2025), https://www.adl.org/resources/report/audit-antisemitic-incidents-2024. The inclusion of speech critical of Israel and/or Zionism undermines the veracity and reliability of the ADL's calculations.

Indeed, researchers have identified, in total, more than a thousand items in the ADL's 2024 audit that were "misclassified as antisemitic—all cases of speech critical of Israel or Zionism." *See* Shane Burley & Naomi Bennet, *Examining the ADL's Antisemitism Audit*, Jewish Currents (June 17, 2024), https://jewishcurrents.org/examining-the-adls-antisemitism-audit. For instance, use of the phrase "from the river to the sea" was included as an example of antisemitism over 600 times. *Id*. "Respect existence or expect resistance," another slogan used by Palestine solidarity activists and in other movements for racial justice, was listed as a form of antisemitic harassment in twenty-one separate incidents, and similarly, the slogan "when people are occupied, resistance is justified" was flagged thirty-five times. *Id*. The researchers argued that this conflation "inflates both the total number of antisemitic incidents" and their attribution to the Palestine solidarity movement. *Id*. While the ADL claimed that incidents related to Israel and Zionism comprised only thirty-six percent of antisemitic incidents in 2023, the researchers who audited the ADL's findings determined that at least half of the incidents cited by the ADL did not appear to reflect antisemitism, but rather anti-Zionism. Ultimately, they conclude that the ADL's conflation of anti-Zionism and antisemitism skews its data

and reflects the limits of statistical analysis of antisemitism by an organization with deep commitments to Israel advocacy. *See id*.

F. This Broader Context Underscores the Need for Careful Judicial Scrutiny of Title VI Allegations.

These findings should prompt the court to exercise caution when evaluating Plaintiffs-Appellants' factual allegations of antisemitism on campus. In particular, amici arguments, that the court should consider a broader rise in antisemitism when evaluating Penn's obligations under Title VI warrant scrutiny. The recent surge in antisemitism complaints and investigations does not alone establish the existence of a hostile educational environment. Nor does it relieve courts of their obligation to distinguish between discriminatory harassment and protected political expression. When Title VI claims are advanced through statistics or investigation counts that rest on spurious assumptions and questionable data collection practices, the court should scrutinize such evidence carefully to avoid transforming antidiscrimination law into a mechanism for regulating political speech.

V. CONCLUSION

For the foregoing reasons, this court should affirm the district court's decision granting Defendant-Appellee's motion to dismiss.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 5,315 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in 14 point Times New Roman, a proportionally spaced typeface, using Microsoft Word 365 word-processing software.

3. This brief complies with 3d Cir. L.A.R. 31.1(c) because the text of the electronic brief is identical to the text in the paper copies, and a virus detection program, SentinelOne - Agent version 23.3.3.264, has been run on the electronic file and no virus or risk was detected.

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Dated: December 22, 2025

CERTIFICATE OF BAR MEMBERSHIP

The undersigned hereby certifies that he is a member in good standing of the bar of this Court.

/s/ Ryan Allen Hancock
Ryan Allen Hancock

Dated: December 22, 2025

CERTIFICATE OF SERVICE

On this date, I caused a true and correct copy of the foregoing Brief of Amicus Curiae to be served upon all counsel of record via the Court's ECF system, in accordance with 3d Cir. L.A.R. Misc. 113.4.

/s/ Ryan Allen Hancock
Ryan Allen Hancock

Dated: December 22, 2025