

Trump Remedies to Harvard's Ills Should Respect Free Speech



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In its multi-pronged efforts to pressure Harvard to live up to its self-proclaimed mission to seek and transmit knowledge and pursue the truth, the Trump administration seems to be of two minds on free speech. Along with demanding that Harvard meet its obligations under civil-rights law to combat antisemitism on campus and end race-based discrimination or lose federal funding, the Trump administration has conditioned billions in taxpayer dollars on the university's protecting the free speech on which excellence in scholarship and teaching depend. Yet the White House's remedies to Harvard's censoring and indoctrination clash with free-speech imperatives and risk turning Harvard, with its shameful record of stifling dissent from progressive orthodoxy, into a free-speech martyr.

Only weeks after inauguration, Vice President JD Vance delivered an unequivocal message to America's European friends: Free speech is central to our shared civilization and essential to our prosperity and security.

On Feb. 11, in remarks at the Artificial Intelligence Action Summit in Paris, France, the vice president warned that "excessive regulation" endangered "a transformative industry just as it's taking off." He worried about the infusion of "ideological bias" into artificial intelligence, and about government's exploitation of AI as "a tool for ideological censorship."

On Feb. 15, in a Munich Security Conference speech, Vance said that the biggest danger facing Europe is not Russia but "the threat from within, the retreat of Europe from some of its most fundamental values – values shared with the United States of America." Particularly alarming, stated the vice president, was the threat from within posed by Europe's employment of thought police.

For example, observed Vance, EU officials threatened "to shut down social media during times of civil unrest the moment they spot what they've judged to be 'hateful content.'" In Germany, "police have carried out raids against citizens suspected of posting anti-feminist comments online as part of 'combating misogyny on the internet.'" In Sweden, "the government convicted a Christian activist for participating in Quran burnings that resulted in his friend's murder." And "the British government charged Adam Smith-Connor, a 51-year-old physiotherapist and an army veteran, with the heinous crime of standing 50 meters from an abortion clinic and silently praying for three minutes, not obstructing anyone, not interacting with anyone, just silently praying on his own."

The United States' record, Vance acknowledged, was far from unblemished. Back home, "the prior administration threatened and bullied social media companies to censor so-called misinformation – misinformation like, for example, the idea that coronavirus had likely leaped from a laboratory in China."

The Trump administration, Vance insisted, was different. It would practice at home "under Donald Trump's leadership" what Vance preached abroad: "... we may disagree with your views, but we will fight to defend your right to offer it in the public square, agree or disagree."

That's a ringing and welcome assurance. But the Trump administration's campaign against Harvard sends an equivocal message on free speech, affirming it and calling it into question.

In an April 11 letter to Harvard President Alan Garber, the Trump administration demanded prompt action from the university in order to preserve the flow of billions in federal funding on which its scholarship and teaching rely. The government instructed Harvard to abolish its race-based DEI programs, and undertake sweeping reforms of the university's governance, hiring and admissions, handling of antisemitism, student discipline, whistleblower reporting and protection, and cooperation with federal regulators. The April 11 letter also informed the university that the Trump administration would assume responsibility for ensuring that Harvard maintains an intellectual environment open to a variety of opinions: "By August 2025, the University shall commission an external party, which shall satisfy the federal government as to its competence and good faith, to audit the student body, faculty, staff, and leadership for viewpoint diversity, such that each department, field, or teaching unit must be individually viewpoint diverse."

A Statement on Academic Freedom and Harvard by Right-of-Center Scholars, Lawyers, and Former Government Officials," published in the Chronicle of Higher Education on May 23, takes issue with the Trump administration's hammer-and-tongs approach to re-grounding free speech at Harvard. The distinguished signatories include two of my Hoover colleagues with highly pertinent expertise – eminent First Amendment scholar Eugene Volokh, and Michael McConnell, also a Stanford Law School professor, and among the nation's leading authorities on America's founding principles and constitutional traditions.

The "generally right-of-center scholars, lawyers, and former government officials" identify several affronts to free speech in Trump administration efforts to invigorate it at Harvard.

First, the signatories assert that the government's April 11 letter impermissibly requires Harvard to appoint a government-approved "external party" to "audit those programs and departments that most fuel antisemitic harassment or reflect ideological capture." This, though, "expressly targets the expression of disfavored viewpoints." And that violates the First Amendment, which "protects all viewpoints, whether they are anti-Israel or pro-Israel or anti-Palestinian or pro-Palestinian, or even when they supposedly 'fuel' anti-Semitism, racism, sexism, or other such beliefs."

Such targeting of disfavored viewpoints misuses Title VI, which prohibits universities that receive federal funds from creating and maintaining a “hostile educational environment.” That prohibition “may permissibly ban certain kinds of harassment based on race or national origin,” state the signatories. “But Title VI does not, and cannot, require that universities generally suppress the expression of offensive views or ideologies where they fall short of discriminatory harassment.”

Second, they maintain that the Trump administration’s “demand that Harvard ‘immediately shutter all diversity, equity, and inclusion (DEI) programs, offices, committees, positions, and initiatives’” cuts too broadly. Title VI bars universities that receive federal funding from discriminating based on race, color, or national origin, but the First Amendment protects “programs that merely aim to teach ‘diversity, equity, and inclusion’ viewpoints.”

Third, they contend that the White House’s “attempt to mandate ‘viewpoint diversity’ also violates the First Amendment.” According to the signatories, “[a]ny attempt by the federal government to police whether a university is providing adequate viewpoint diversity would itself have to involve viewpoint discrimination, in determining which viewpoints should be represented and which viewpoints need not be.”

In view of these manifold defects with the Trump administration’s endeavors to save Harvard from itself, the signatories “urge the administration to reinstate Harvard’s funding, and halt its retaliatory treatment of the university.”

The signatories’ appeal to the Trump administration to cease and desist does not spring from illusions about the sorry state of America’s elite universities. They know that universities, “have violated the very norms of academic freedom and diversity of thought that they now invoke in their own defense.” And they recognize that “if voluntarily adopted by universities through their established forms of academic governance, some of the measures demanded of Harvard would be welcome reforms.” But the signatories insist that respecting free-speech imperatives and the rule of law takes precedence: “... the premise of academic freedom, and the command of the First Amendment, is that universities’ mistakes should be dealt with through debate, university self-governance, and competition among institutions, and not through federal governmental restraint or pressure.”

The signatories’ salutary corrective to Trump administration excesses goes too far in two respects. As the signatories acknowledge, some of Harvard’s DEI programs likely run afoul of Title VI prohibitions on race-based discrimination. That not only entitles but obliges the Trump administration to initiate proceedings, consistent with federal law, to freeze federal funds. Furthermore, government support for universities is not a blank check and academic freedom does not confer a shield of invulnerability. To warrant taxpayer support, universities must earn citizens’ trust and benefit the nation. Too often, though, they undercut the public

interest by discriminating based on race, indulging antisemitism, politicizing the curriculum, and teaching students to avoid or silence rather than listen to and debate opinions with which they disagree.

As it happens, though, Vice President Vance himself recently provided a powerful reason for the Trump administration to refine its remedies to Harvard's defiance of civil-rights laws and its suppression of speech. In his May 23 keynote address at the U.S. Naval Academy's 2025 Commissioning Ceremony, he announced a "generational shift" from a foreign policy that emphasized nation building and democracy promotion to one focusing on core national interests and great-power competition. This shift requires America, Vance stated, "not just to keep but to widen the technological edge between the United States military and our adversaries all over the world."

Notwithstanding their many and serious faults, America's elite universities conduct extensive and costly scientific research that fuels America's global leadership in technology. A substantial portion of the billions in federal funds earmarked for Harvard frozen by the Trump administration supports such scientific research. Consequently, Trump's Harvard remedy erodes America's "technological edge." By operating against Harvard with a sledgehammer, the Trump administration not only breaks its promise to respect free speech but also impairs a core national-security interest.

For the sake of free speech in America and also in the interest of national security, the Trump administration should devise remedies to Harvard's ills that respect free speech.

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