

# Post-2024 US Election: What Colleges and Universities Can Expect from the Incoming Administration and the 119th Congress

## The First 100 Days: Higher Education

### Client Alerts

November 14, 2024

By: Ishan K. Bhabha, Lauren J. Hartz, Emily M. Loeb, Gail H. Morse, Hilary Ledwell, Erica Turret

The 2024 election capped a year of intense political scrutiny for colleges and universities, and the election results could have far-reaching ramifications for higher education. When President-Elect Trump takes office in January and the 119<sup>th</sup> Congress is sworn in, colleges and universities may quickly become the target of executive and congressional action on several fronts.

President-Elect Trump's remarks on the campaign trail, and in the days since the election, provide a preview of what to expect. President-Elect Trump has called for abolishing the US Department of Education; described the college accreditation system as his "secret weapon" to "impose real standards on colleges," which include a host of conservative policy priorities, including a wholesale ban of DEI initiatives; and promised to use the US Department of Justice to enforce federal civil rights laws against schools that "continue to engage in racial discrimination" through DEI initiatives, threatening fines "up to the entire amount of their endowment."<sup>[1]</sup>

Below, we highlight the key areas we are watching and what colleges and universities can expect come January 2025:

**An expanded reach of the Supreme Court's decision in *Students for Fair Admissions (SFFA)* and a crackdown on DEI writ large.** Colleges and universities are entering their second full admissions cycle since the Supreme Court struck down race-conscious admissions programs in *SFFA*,<sup>[2]</sup> which reversed decades of precedent and required major changes to the process for selecting applicants for admission. Under the Biden Administration, institutions have been encouraged to pursue other means of achieving racial diversity on campus, and *SFFA* has not been interpreted to apply to financial aid and scholarship programs.<sup>[3]</sup> The Trump Administration will likely take a different approach to admissions and DEI more broadly—as officials from the first Trump Administration outlined in an amicus brief in the *SFFA* case. On the admissions front, institutions should expect more investigative activity from the Department of Education's Office of Civil Rights (OCR) and/or the Department of Justice's Civil Rights Division. The federal government may also bring litigation against institutions based on alleged noncompliance with *SFFA*, or it may aid *SFFA* in the litigation that the group has already threatened against multiple institutions based on the class demographics that they disclosed from the past admissions cycle.

The anticipated attacks on campus diversity initiatives will extend far beyond admissions programs. As President-Elect Trump has indicated, he plans to instruct the Department of Justice to investigate DEI programs more broadly and punish institutions that maintain DEI commitments.<sup>[4]</sup> In September 2020, then-President Trump issued the "divisive concepts" executive order, which sought to prevent federal funding recipients from promoting certain ideological principles including critical race theory.<sup>[5]</sup> Several states, inspired by this executive order, later passed legislation shuttering DEI at state universities. President-Elect Trump has also advocated that those ideological principles be replaced with new

academic standards and required content.<sup>[6]</sup> We can expect to see these types of actions ramp up at the federal level, as well as an increased number of congressional investigations into DEI in higher education.

**Increased scrutiny over how institutions handle allegations of antisemitism and campus protests.** Following Hamas’s deadly attacks on Israel last year, congressional Republicans launched a wide-ranging investigation into institutional responses to antisemitism across over a dozen campuses. The investigation stretched over nine months, with the stated aim of assessing whether postsecondary institutions were meeting their Title VI obligations to protect Jewish students. It involved high-profile hearings, transcribed interviews, subpoenas, and resulted in the production of more than 400,000 pages of documents, as documented by the House Education and Workforce Committee’s 325-page Staff Report that was issued on October 31, 2024.<sup>[7]</sup> It remains to be seen whether the Committee will seek to push legislation forward based on the investigation or report, but the election results make such legislation more likely.

In the 119<sup>th</sup> Congress, we expect to see a continued appetite for investigations into higher education in the House, and potentially, new efforts in the Senate now that Republicans have taken control. Speaker Mike Johnson announced months ago the expansion of the original House Education and Workforce Committee investigation to be a “whole of the House” effort related to antisemitism.<sup>[8]</sup> That effort has included an investigation of universities’ federal funding, foreign student visa programs, and tax benefits. Senator Bill Cassidy, who currently serves as the Ranking Member of the Senate Health, Education, Labor, and Pensions (HELP) Committee, has urged the Committee to hold a hearing and conduct oversight regarding allegations of antisemitism and campus protests.<sup>[9]</sup>

In addition, we expect the Executive Branch to become an increasingly active partner in such efforts. Congressional committees and the Department of Education may share priorities, information, and even documents. Indeed, universities targeted by one or more of these entities will have to expect that furnishing materials to one may be furnishing them to all.

The Department of Education currently has 95 pending cases designated as Title VI – National Origin Discrimination Involving Religion under investigation at post-secondary schools. Many may remain pending when President-Elect Trump takes office, and incoming leadership at OCR may take a more aggressive stance in investigating and resolving those complaints as well as initiating new inquiries. Indeed, many of the individuals who were tapped in the first Trump Administration to lead the Department of Education were at the front lines of OCR complaints and civil lawsuits against universities related to antisemitism over the past year.<sup>[10]</sup>

**Continued whiplash on Title IX with a return to the Trump-era rules.** The Biden Administration’s newly issued Title IX regulations will likely be an early target of the incoming administration. These rules, which took effect on August 1, 2024, expand Title IX’s prohibitions to include discrimination or harassment on the basis of sexual orientation and gender identity, consistent with the Supreme Court’s ruling in *Bostock v. Clayton County*.<sup>[11]</sup> Subject to a few exceptions, they also prohibit policies and practices that prevent students from participating in programs consistent with their gender identity.<sup>[12]</sup> Even before the election, these regulations faced major resistance from red states, with 26 attorneys general challenging the rules in court and securing temporary injunctions against their enforcement. President-Elect Trump has promised to overturn these rules on “day one” of his presidency, focusing in particular on the protections for transgender students. He also pledged to ban transgender student-athletes from competing in sports that match their gender identity.

While it is too early to tell what changes President-Elect Trump will make with respect to adjudicating sexual misconduct allegations, institutions can expect to see some reversions to the regulatory regime established during his first term, including the reinstatement of a live-hearing requirement and a renewed ban on the “single-investigator model.”<sup>[13]</sup> Rewriting the current Title IX rules will require another lengthy rulemaking process, potentially leaving institutions without clarity for years to come. But the Biden-era rules are still enjoined in over half of the states and enforcement is blocked against hundreds of institutions. The second Trump Administration could thus take swifter action to dispose of some aspects of the rule by simply declining to defend it in the pending litigation.

### **Cuts to federal funding, increased taxes, and challenges to tax-exempt status for higher education institutions.**

Revoking an institution's federal funding is the nuclear option for the Department of Education and other federal agencies as a sanction for an institution's noncompliance with federal law. However, even if the federal government declines to take such drastic steps, less extreme changes to federal funding and taxation could still create enormous financial burdens for colleges and universities. Tax legislation is a must-pass bill in 2025 as many of the tax cuts from the first Trump administration are set to expire. That first-term tax bill resulted in the current endowment tax of 1.4 percent of an institution's total endowment income, which applies to colleges and universities with more than 500 students and endowments larger than \$500,000 per student. As Republicans look for additional revenue sources and leverage over institutions, this tax will likely be an attractive option. Indeed, President-Elect Trump has threatened skyrocketing endowment taxes as a punishment for institutions that maintain commitments to DEI or do not respond to campus protests in line with his preferred approach.<sup>[14]</sup> And Vice-President Elect Vance authored a 2023 bill that would have increased the endowment tax from 1.4 percent to 35 percent for private colleges and universities with at least \$10 billion in assets under management.<sup>[15]</sup>

In addition, President-Elect Trump has threatened to revoke the tax-exempt status of entities with which he has disagreements. The IRS could challenge tax-exempt status in several ways—the most expeditious would be issuing a notice of a change in position regarding institutional actions that would be considered against public policy and thus grounds for revoking tax-exempt status. The IRS could also commence individual revocation proceedings against institutions.

**Increased scrutiny of foreign funding and relationships between institutions of higher education and foreign entities.** Finally, colleges and universities can expect to face greater scrutiny of—and potentially restrictions on—their relationships with foreign entities, including the foreign funding they accept. This has been an area of increased oversight interest for Republicans, who have expressed a concern that foreign adversaries are targeting American students by stealing research, pushing propaganda, censoring speech, and otherwise influencing their behavior. Policy changes led by a Republican-controlled Congress could include lowering the reporting threshold that triggers donation disclosure requirements; enacting tougher penalties for non-compliance with disclosure requirements; restricting funding from foreign individuals or entities in countries of concern, as well as capping university enrollment from certain countries and curtailing US institutions' foreign campuses; and amending the Foreign Agents Registration Act to cover educational institutions. A related issue that may also receive increased scrutiny is joint research ventures with countries such as China. In September 2024, for example, the House Select Committee on the Chinese Communist Party and the House Education and Workforce Committee released a joint report on how US research funding to American universities has contributed to China's technological advancements and military modernization through research partnerships.<sup>[16]</sup> These areas of oversight will likely continue, if not intensify, in a fully Republican-controlled Congress.

\*\*\*

Jenner & Block has one of the nation's preeminent higher-education practice groups and congressional investigations practices. We have counseled and represented institutions in each of the areas outlined above. If you are interested in learning more about our education practice, please contact practice group Co-Chairs Ishan Bhabha (ibhabha@jenner.com), Lauren Hartz (lhartz@jenner.com), and Terri Mascherin (tmascherin@jenner.com). If you are interested in learning more about our Congressional Investigations practice, please contact Chair Emily Loeb (eloeb@jenner.com) or partner Jon Skladany (jskladany@jenner.com).

[1] Post by Elon Musk (Nov. 11, 2024), <https://x.com/elonmusk/status/1856114715694444856> (sharing video message of President-Elect Trump).

[2] *Students for Fair Admissions v. President and Fellows of Harvard College*, 600 U.S. 181 (2023).

[3] See, e.g., U.S. Dep't of Educ., Office for Civil Rights and U.S. Dep't of Justice, Office for Civil Rights, Dear Colleague Letter (Aug. 14, 2023), <https://www.ed.gov/media/document/colleague-20230814pdf>

[4] *Supra* note 1.

[5] Executive Order on Combating Race and Sex Stereotyping (Sept. 22, 2020), <https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-combating-race-sex-stereotyping/>.

[6] *Supra* note 1.

[7] Republican Staff Report: Antisemitism on College Campuses Exposed, Committee on Education & the Workforce (Oct. 31, 2024), [https://edworkforce.house.gov/uploadedfiles/10.30.24\\_committee\\_on\\_education\\_and\\_the\\_workforce\\_republican\\_staff\\_report\\_-\\_antisemitism\\_on\\_college\\_campuses\\_exposed.pdf](https://edworkforce.house.gov/uploadedfiles/10.30.24_committee_on_education_and_the_workforce_republican_staff_report_-_antisemitism_on_college_campuses_exposed.pdf)

[8] Press Release: Speaker Johnson Launches House-wide Effort to Crack Down on Antisemitism on College Campuses "We will use all tools available to us to address this scourge" (Apr. 30, 2024), <https://mikejohnson.house.gov/news/documentsingle.aspx?DocumentID=1384#:~:text=WASHINGTON%20%E2%80%94%20Today%2C%20Speaker%20Johnson%20was,failing%20to%20protect%20Jewish%20students.>

[9] Press Release: Ranking Member Cassidy on Ongoing Antisemitic Attacks, Harassment of Jewish Students on College Campuses, Renews Call for Action (Apr. 22, 2024), <https://www.help.senate.gov/ranking/newsroom/press/ranking-member-cassidy-on-ongoing-antisemitic-attacks-harassment-of-jewish-students-on-college-campuses-renews-call-for-action.>

[10] For example, Kenneth Marcus, founder and chairman of the Brandeis Center, which has brought administrative complaints and lawsuits alleging that universities have violated Title VI by failing to address a hostile environment for Jewish students, served as the Assistant US Secretary of Education for Civil Rights during the first Trump administration.

[11] 34 C.F.R. § 106.10; *Bostock v. Clayton County*, 590 U.S. 644 (2020).

[12] 34 C.F.R. § 106.31.

[13] 85 Fed. Reg. 30026, 30308 (May 19, 2020).

[14] *Supra* note 1.

[15] College Endowment Accountability Act, S. 3514, <https://www.congress.gov/bill/118th-congress/senate-bill/3514>.

[16] Staff of H. Select Subcomm. on the Chinese Communist Party & H. Comm. on Ed. & the Workforce, "CCP on the Quad: How American Taxpayers and Universities Fund the CCP's Advanced Military and Technological Research" (Sept. 23, 2024), <https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/RS%20Report%20Cover%20Final%20%281%29-merged-compressed%20%282%29.pdf>

## Related Attorneys

### Ishan K. Bhabha

Co-Managing Partner  
+1 202 639 6000

### Lauren J. Hartz

Partner  
lhartz@jenner.com  
+1 202 637 6363

### Emilv M. Loeb

Partner  
eloeb@jenner.com  
+1 202 639 6000

**Gail H. Morse**

Partner  
gmorse@jenner.com  
+1 312 923 2672

**Hilary Ledwell**

Partner  
hledwell@jenner.com  
+1 202 639 5353

**Erica Turret**

Associate  
eturret@jenner.com  
+1 202 637 6383

**Related Capabilities**

Congressional Investigations

Education

Government Controversies and Public Policy Litigation

© 2026 Jenner & Block LLP. Attorney Advertising. Jenner & Block LLP is an Illinois Limited Liability Partnership including professional corporations. This publication, presentation, or event is not intended to provide legal advice but to provide information on legal matters and/or firm news of interest to our clients and colleagues. Readers or attendees should seek specific legal advice before taking any action with respect to matters mentioned in this publication or at this event. The attorney responsible for this communication is Brent E. Kidwell, Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654-3456. Prior results do not guarantee a similar outcome. Jenner & Block London LLP, an affiliate of Jenner & Block LLP, is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with SRA number 615729. Information regarding the data we collect and the rights you have over your data can be found in our Privacy Notice. For further inquiries, please contact [dataprotection@jenner.com](mailto:dataprotection@jenner.com).

**Stay Informed**

