

A Timeline Of Antisemitism Legislation And What It Means

By **Amanda Robinson, Rachel Ward and Celia Roady** (July 12, 2024, 4:39 PM EDT)

Congress continues to expand legislative action to address antisemitism. What began in the House of Representatives Committee on Education and the Workforce has expanded to a House-wide effort to combat antisemitism and related issues with wide-ranging implications for education, finance and nonprofit entities.

Timeline of Congressional Action on Antisemitism

The House Committee on Education and the Workforce antisemitism hearings began in November 2023. The hearings focused on educational institutions, with testimony from experts, school administrators and student representatives.

Since then, the congressional inquiry has grown to involve nonprofits that fund or are otherwise connected to recent campus protests and the financial institutions that serve the educational institutions and nonprofits involved.

April 24

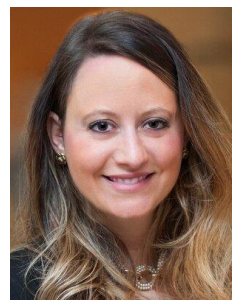
The House Ways and Means Committee sent a letter to Internal Revenue Service Commissioner Daniel Werfel. The letter raised concerns about the influence of foreign adversaries on U.S. tax-exempt organizations and referenced their involvement in "a series of massive antisemitic events."

The letter requested information from the IRS about whether such organizations are operating within the protocols required for tax-exempt status, among other information.

April 30

House Speaker Mike Johnson, R-La., announced "a House-wide effort to crack down on antisemitism on college campuses," which will involve the Committees on Education and the Workforce; Energy and Commerce; Oversight; Judiciary; Ways and Means; and Science Space, and Technology.[1]

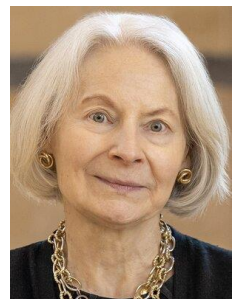
These committees plan to address university research grants, university tax-exempt status, university foreign funding and gifts, student visas of foreign protest participants, and protest group funding, among other issues.



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May 1

The House passed the Antisemitism Awareness Act — H.R. 6090. The bill would require the U.S. Department of Education to use the International Holocaust Remembrance Alliance's working definition of antisemitism when enforcing Title VI of the Civil Rights Act of 1964:

Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.

Under this definition, a Title VI violation may occur when action is taken based on an individual's actual or perceived Jewish ancestry or Jewish ethnic characteristics.

The Department of Education's Title VI investigations are limited to educational institutions that receive federal financial assistance. H.R. 6090 does not apply to private sector employers.

May 14

The House Committee on Education and the Workforce and the House Committee on Oversight and Accountability issued a joint letter to Treasury Secretary Janet Yellen requesting Suspicious Activity Reports, or SARs, for 20 nonprofits purportedly "leading financing, and participating in the pro-Hamas, antisemitic, and anti-American protests occurring on college campuses across the US." [2]

An SAR is a document that financial institutions must file with the Financial Crimes Enforcement Network whenever there is a suspected case of money laundering or fraud.

In the letter, the committee advised that it is "considering potential legislation to strengthen federal transparency laws regarding foreign funding at institutions of higher education." The committees seek to "ensure that financial institutions have the proper internal controls and compliance programs to alert federal agencies of potential malign influence at these [education] institutions."

On May 17, 12 nonprofits responded to the joint letter. The response letter asks the committees to rescind the SARs requests on the grounds that the letter violates the First Amendment by improperly "investigating protected expressive activity."

June 3

Six House committees issued letters to 10 universities that detail the committees' intent to investigate the use of federal funds at the universities in part to ensure "that universities receiving federal funds are fostering and maintaining an environment free from harassment and discrimination." [3]

The committees seek to determine whether federal funds have been used to sponsor or support student groups engaged in alleged antisemitic behavior.

June 7

The Education and Workforce Committee Chair Virginia Foxx, R-N.C., sent a letter to Northwestern University criticizing its congressional response to House document and information requests. [4] Foxx

renewed and supplemented the committee's requests and advised that if Northwestern did not comply, the committee would issue a subpoena.

These letters, taken together, exemplify the heightened political environment in Washington, D.C. Given the number of committees involved, it is likely that antisemitism will remain at the forefront of congressional attention through the 2024 elections.

The broadened antisemitism investigation makes clear that the House is focused on funding as a key subject. This includes where educational institution and nonprofit funding comes from and how it is used.

By necessity, these topics involve financial institutions as the record-keepers of the information. As a result, educational institutions, nonprofits and financial institutions should be mindful that their organization may be subject to congressional inquiry.

Strategic Considerations for a Congressional Response

Congressional actions are distinct from judicial proceedings and include unique legal, political, and media considerations. When counseling a client that is a recipient of a congressional inquiry, counsel should build out a team of legal, government relations and communications professionals with congressional expertise.

As early as practicable, counsel should develop a proactive dialogue with the appropriate committee staff. Through this dialogue, counsel may negotiate the availability of legal privileges, the confidentiality of information and the scope of information requests.

Although there is no legal obligation for the client to comply with a congressional committee letter, it is generally in its best interest to do so. The ability to respond to an informal request allows counsel to convey a client's knowledge and opinions on the topic to the committee staff early on. Early cooperation also decreases the risk that members will publicly attack the client for noncompliance.

Once a congressional committee issues a subpoena, the response is mandatory. If the client fails to respond to a subpoena, Congress may pass a resolution of noncompliance and, ultimately, hold it in contempt.

In addition to committee outreach, counsel should work with their client to develop a communications response strategy to ensure that the client has consistent internal and external messaging.

Counsel may develop procedures for how the client should escalate stakeholder or press inquiries about the congressional action, including whether and how to respond. The counsel-client team should have prompt fact-gathering capabilities to respond to evolving congressional and media requests.

Congress may also request or compel a client to testify at a public hearing. Counsel may engage with the appropriate committee staff to negotiate who will testify and the scope of testimony.

Congressional hearings can quickly become headline news and make available a forum for members themselves to publicly express their views on policy, social and investigatory issues. In some instances, the committee may release a preliminary report of findings prior to the hearing which reveals its predisposition on the issues.

It is important for a client to understand that it may not be possible to "win" the hearing, particularly if the hearing topics are controversial. Members of Congress will often ask straightforward questions about complex issues that require nuanced answers.

Counsel should anticipate the questions that will be asked and develop a tailored approach the witness will take when answering these questions and questions about sensitive topics in general.

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[1] Speaker Johnson remarks at 3:23-3:27 <https://www.youtube.com/watch?v=hSaGUVH5uns>.

[2] <https://oversight.house.gov/wp-content/uploads/2024/05/Letter-to-Yellen-051424.pdf>.

[3] <https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=410652#:~:text=The%20House%20Committee%20on%20Energy,and%20maintaining%20an%20environment%20free>.

[4] https://edworkforce.house.gov/uploadedfiles/6.7.24_letter_to_schill_and_barris.pdf.