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Essay

Trump Administration's Attacks on the Press, Universities, and Law Firms: Five Key Commonalities

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When Donald Trump returned to the Presidency in 2025, the heated rhetoric attacking the press, universities, and lawyers that dominated his first term in office turned to action. These aggressive attacks on our nation's elite institutions have been remarkably successful. This Essay asks why.

This Essay first offers some historical context for Trump's attacks and outlines their general parameters. Although the current Trump administration attacks on the press, universities, and law firms are more brazen and more aggressive than any we have ever seen before, our own nation's history laid the groundwork for them. In addition, in recent decades the public's trust in universities, the press, and elites in general has dramatically decreased, blunting political outrage.

The second Part of this Essay identifies five key factors leading to the remarkable success of the Trump attacks: (1) these institutions need money and are run like businesses; (2) legal challenges to the Trump administration's actions face significant procedural obstacles and substantive uncertainty; (3) the Administration's actions have a broad chilling effect on others; (4) the institutions under attack have a weak commitment to the freedom of speech, the freedom of the press, and academic freedom; and (5) the institutions are fractured and have failed to engage in effective collective action. In light of these weaknesses, saving our democratic institutions from the Trump administration's attacks will be no easy feat.

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The Trump Administration's Attacks on the Press, Universities, and Law Firms: Five Key Commonalities

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INTRODUCTION

The second Trump administration has engaged in an unprecedented attack on democratic institutions. This symposium is primarily focused on threats to the press, but this Essay compares and contrasts the threats on the press with threats to two other essential democratic institutions: law firms and universities. To many, it has been shocking to see how weak these institutions have been in response to authoritarian measures. But this Essay identifies several factors these attacks have in common to illustrate why they have been so effective.

Although in many ways President Trump's attacks have been astonishing in the way they flout democratic norms, they are not entirely unprecedented, particularly in other countries. Many scholars have noted that undermining the checks and balances of these institutions is a key hallmark of authoritarianism.¹ Some of the national leaders Trump has long openly admired have embraced tactics to undermine these institutions.² Indeed, the Nazis used these tactics as a strategy to secure power in 1930s Germany.³ The playbook for aggregating power is as old as time. After all,

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¹ Frank Langfitt, *Hundreds of Scholars Say U.S. is Swiftly Heading Toward Authoritarianism*, NPR (Apr. 22, 2025, 5:01 AM), <https://www.npr.org/2025/04/22/nx-s1-5340753/trump-democracy-authoritarianism-competitive-survey-political-scientist>.

² See Praveena Somasundaram & Frances Vinall, *Trump Again Praises Authoritarian Leaders at Bronx Rally*, WASH. POST (May 24, 2024), <https://www.washingtonpost.com/politics/2024/05/24/trump-rally-bronx-putin-kim-jong-un> (reporting that Trump praised Russian President Vladimir Putin, North Korean dictator Kim Jong Un, Chinese leader Xi Jinping, and Hungarian Prime Minister Viktor Orban); see also Domenico Montanaro, *6 Strongmen Trump Has Praised – and the Conflicts it Presents*, NPR (May 2, 2017, 11:43 AM), <https://www.npr.org/2017/05/02/526520042/6-strongmen-trumps-praised-and-the-conflicts-it-presents> (listing authoritarians Trump has praised: Rodrigo Duterte of the Philippines, Vladimir Putin, Xi Jinping, Kim Jong Un, Abdel-Fattah el-Sissi of Egypt, and Recep Tayyip Erdogan of Turkey).

³ Amanda Taub, *The Frightening Precedents for Trump's 'Legal Abyss'*, N.Y. TIMES (May 3, 2025), <https://www.nytimes.com/2025/05/03/world/trump-dual-state.html> (detailing how Nazi Germany created a dual state, "in which most laws and many rights still applied; and alongside it a zone of authoritarianism, in which government power was unbounded"). Whether the Trump administration

it was Shakespeare who wrote the famous line, “[F]irst thing we do, [we] kill all the lawyers.”⁴

Part I of this Essay focuses on the history of the executive branch’s relationship with the press, law firms, and universities before outlining Trump’s own evolving relationship with these institutions. This Part also points out that in his first administration, Trump posed a danger to these institutions, but his actions were not far removed from actions taken by prior presidents. In his second term, however, Trump’s attacks are much more aggressive and flout the norms that had restrained prior presidents.

Part II of this Essay outlines common weaknesses in these institutions the Trump administration has used to its advantage to achieve its goals: (1) the institutions need money and are run like businesses; (2) legal challenges face procedural obstacles and substantive uncertainty; (3) the Administration’s actions have a broad chilling effect on others; (4) the institutions have a weak commitment to the freedom of speech, the freedom of the press, and academic freedom; and (5) the institutions are fractured and do not readily engage in collective action. In light of these weaknesses, saving our democratic institutions will be no easy feat.

I. BACKGROUND ON THE ATTACKS ON THE PRESS, UNIVERSITIES, AND LAW FIRMS

It would take an entire book, if not a series of books, to summarize the various ways the second Trump administration has tried to undermine the press, universities, and law firms.⁵ Instead, this Part briefly offers some historical context for these sorts of attacks and outlines their general parameters. Although this administration’s attacks on the press, universities,

intends to emulate some aspects of Nazi Germany remains unclear, but it is increasingly using Nazi rhetoric. See Ali Breland, *The Trump Administration is Publishing a Stream of Nazi Propaganda*, THE ATLANTIC (Jan. 21, 2026), <https://www.theatlantic.com/national-security/2026/01/social-media-trump-administration-dhs/685659> (“The U.S. Labor Department is embracing Nazi slogans and tropes, the Pentagon’s research office is deploying neo-Nazi graphic elements in its social-media feeds, and the Department of Homeland Security recently posted lyrics mimicking a popular song by a band with ties to an ethno-nationalist social club.”).

⁴ WILLIAM SHAKESPEARE, HENRY VI pt. 2, act 4, sc. 2, l. 75.

⁵ Professor Tim Zick does an excellent job summarizing the first year of attacks on the freedom of speech in TRUMP 2.0: EXECUTIVE POWER AND THE FIRST AMENDMENT (2026). As Professor Zick outlines in his book, the Trump administration also has undermined the freedom of speech by pulling scientific studies from databases, *id.* at 202–11 (citing *Schiff v. U.S. Off. of Pers. Mgmt.*, 784 F. Supp. 3d 380 (D. Mass. 2025)); altering and removing exhibits at museums, parks, research centers, and the National Zoo, *id.* at 188–92 (citing Exec. Order No. 14253, 90 Fed. Reg. 14563 (Mar. 27, 2025)); removing books from libraries, *id.* at 192–202 (citing Plaintiffs’ Reply in Support of Their Motion for Preliminary Injunction, *E.K. v. Dep’t of Def. Educ. Activity*, No. 1:25-cv-00637-PTG-IDD, 2025 WL 2198346 (E.D. Va. May 30, 2025) (citing Defendants’ Memorandum of Law in Opposition to Plaintiffs’ Motion for a Preliminary Injunction, *E.K. v. Dep’t of Def. Educ. Activity*, No. 1:25-cv-00637-PTG-IDD, 2025 WL 4096742 (E.D. Va. May 23, 2025))); and using immigration law to remove people with undesirable viewpoints from the country, *id.* at 120–38 (citing *Am. Ass’n of Univ. Professors v. Rubio*, 802 F. Supp. 3d (D. Mass. Sept. 30, 2025)).

and law firms are more brazen and more aggressive than any we have ever seen before, our own nation's history laid the groundwork for them. Political actors generally, and the Executive branch in particular, have frequently attacked these institutions, especially during wartime and other times of national stress.

A. *Attacks on the Press*

The Executive has always had a fraught relationship with the press.⁶ In the early days of our nation, the Executive branch would plant information in typically partisan press outlets.⁷ As a more commercial, mass media emerged in the 1800s, however, the Executive had to adapt to obtain more favorable coverage. President McKinley and President Theodore Roosevelt undertook such efforts with vigor, issuing press releases, holding press conferences, and hiring press secretaries.⁸ President Roosevelt was a particular master of using the press to his advantage by speaking to the reporters off the record and floating “leaked” trial balloons on possible new policies.⁹ He even leaked information to “opposition news outlets” to give his leaks more credibility.¹⁰ Other government agencies and officials quickly learned from Roosevelt’s example that favorable relationships with reporters could help them manipulate press coverage to their advantage.¹¹

Although presidents have learned how useful the press can be, they have frequently become annoyed when the press revealed information they would have rather kept out of the public eye. In some instances, this information involved sensitive information relating to diplomatic affairs and national security matters.¹² Democratic requirements of transparency and accountability often come into conflict with the Executive’s preference for secrecy.¹³ Perhaps the best known example of this sort of conflict occurred when President Nixon unsuccessfully sought to enjoin The New York Times (“NYT”) and The Washington Post from publishing the Pentagon Papers, a report detailing the history of the United States’s involvement in the Vietnam War.¹⁴ But American history is full of these sorts of conflicts, from the Alien and Sedition Acts, to labeling the press “traitors” for their investigation of government activities after the September 11 attacks.¹⁵

⁶ I have written in more detail elsewhere about the tensions between the Executive and the press, particularly in the context of national security leaks. See Mary-Rose Papandrea, *Lapdogs, Watchdogs, and Scapegoats: The Press and National Security Information*, 83 IND. L.J. 233, 249–57 (2008).

⁷ *Id.* at 250.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 250–51.

¹¹ *Id.* at 251.

¹² *Id.* at 238–39.

¹³ *Id.*

¹⁴ *N.Y. Times Co. v. United States*, 403 U.S. 713 (1971).

¹⁵ See Papandrea, *supra* note 6, at 234–35 (discussing NYT’s post-September 11

Unlike most of these prior instances, however, President Trump's outrage is not limited to national security leaks. Instead, Trump's hostility to the press runs much deeper. He rails against the press not merely when it exposes sensitive government information, but whenever it exposes any information at all that he would rather keep out of public discussion. No president enjoys unfavorable coverage, but Trump has made no secret that he would prefer to have total control over the dissemination of information, whether through his own social media platform, TruthSocial, or through publications that have demonstrated their loyalty to him. One possible explanation for Trump's unbridled attacks on the press is that unlike prior presidents, he does not rely on the press to inform the public about what he is doing. This means that the president no longer has the same antagonistic but symbiotic relationship with the press; it is simply antagonistic.

Furthermore, the apparent motivation for many of Trump's attacks on the media is deeply personal and not related to broader executive goals. The prime motivation for most of the lawsuits he has brought against the press appears to be retaliation against his "enemies."¹⁶ Indeed, some of the cases not only have no apparent legal merit, but also seem irrational unless the goal is to cause annoyance, run up his opponents' legal bills, and score political points.¹⁷ For example, the lawsuit against The Wall Street Journal ("WSJ") based on its publication of the birthday card Trump apparently sent to Jeffrey Epstein exposes Trump to embarrassing discovery if the suit survives a motion to dismiss.¹⁸ Also, in the arguably "irrational" bucket are Trump's arguments for the reversal of the actual malice standard in *New York Times Co. v. Sullivan*.¹⁹ Trump fails to realize, however, that he directly benefits from this intent requirement as a frequent defamation lawsuit defendant.²⁰

eavesdropping story, referring to the newspaper as "guilty of treason" for publishing the criticism).

¹⁶ This is consistent with Trump's record before he entered politics. For example, Trump brought a lawsuit against an architecture critic for the Chicago Tribune for criticizing his plans to build the world's largest skyscraper in lower Manhattan. Paul Goldberger, *Architecture View; Can a Critic Really Control the Marketplace?*, N.Y. TIMES (Oct. 14, 1984), <https://www.nytimes.com/1984/10/14/arts/architecture-view-can-a-critic-really-control-the-marketplace.html>.

¹⁷ See, e.g., Brian Stelter & Liam Reilly, *Trump's Lawsuit Against the New York Times is Meritless, First Amendment Experts Say*, CNN (Sept. 17, 2025), <https://www.cnn.com/2025/09/17/media/trump-new-york-times-nyt-lawsuit-meritless-experts> (reporting that some experts claim that Trump's chances in court against the NYT are very low, but it is "almost beside the point" as he is seeking political victory).

¹⁸ In April 2026, the federal district court granted the defendants' motion to dismiss Trump's lawsuit, with leave to amend. *Trump v. Dow Jones & Co., Inc.*, No. 1:25-CV-23232, 2026 WL 979572 (S.D. Fla. Apr. 13, 2026).

¹⁹ Hadas Gold, *Donald Trump: We're Going to 'Open Up' Libel Laws*, POLITICO (Feb. 26, 2016, 2:31 PM), <https://www.politico.com/blogs/on-media/2016/02/donald-trump-libel-laws-219866>. While running for president, Trump promised, "I'm going to open up our libel laws so when they write purposely negative and horrible and false articles, we can sue them and win lots of money." *Id.*

²⁰ See David Enrich, *Can the Media's Right to Pursue the Powerful Survive Trump's Second Term?*, N.Y. TIMES (Mar. 3, 2025), <https://www.nytimes.com/2025/03/03/magazine/nyt-sullivan-defamation-press-freedom-ruling.html> (arguing Trump is aiming to make it easier for people to be found liable for defamation).

Trump showed his antipathy for the press during his first term. During the 2016 presidential campaign, reporters faced openly hostile audiences and feared the threat of imminent violence. On the campaign trail and later when he took office, Trump's explosive rhetoric attacking the press and journalists continued unabated. He has repeatedly declared that the "failing" press publishes "fake news" and is "the enemy of the American people."²¹ He argued that journalists are "really, really dishonest people, and they're bad people," who "really . . . don't like our country" and "are trying to take away our history and our heritage."²² Trump also had a penchant for engaging in rude ad hominem attacks on journalists (especially ones who are female, minorities, or disabled) and their employers. Concerns about the threats his rhetoric portended, as well as the leak-investigation subpoenas to reporters during the Obama administration and the targeting of Black Lives Matter protesters in Ferguson, Missouri, led more than two dozen news organizations, professional societies, and free expression advocates to join forces to establish the U.S. Press Freedom Tracker²³ to provide a centralized source of data and research regarding threats to press freedom in the United States.²⁴

But throughout his first term, Trump, his rotating cast of advisors, and the Department of Justice ("DOJ") were (mostly) sound and little fury. Of course, this is not to say that the first Trump administration ("Trump I") refrained from controversial actions.²⁵ At his confirmation hearings,

²¹ Michael M. Grynbaum, *Trump Calls the News Media the 'Enemy of the American People'*, N.Y. TIMES (Feb. 17, 2017), <https://www.nytimes.com/2017/02/17/business/trump-calls-the-news-media-the-enemy-of-the-people.html> (quoting Donald J. Trump (@realDonaldTrump), X (Feb. 17, 2017, 4:48 PM), https://x.com/realDonaldTrump/status/832708293516632065?ref_src...%2F19%2Fbusiness%2Fmedia%2Ftrump-media-enemy-of-the-people.html).

²² *President Trump Ranted For 77 Minutes in Phoenix. Here's What He Said*, TIME (Aug. 23, 2017, 9:30 AM) <https://time.com/4912055/donald-trump-phoenix-arizona-transcript>. Trump has continued to engage in even more heated anti-press rhetoric, such as Trump claiming that publishing criticism of him (or of other government officials, like U.S. Supreme Court Justices) is "illegal." Aaron Blake, *Trump Keeps Talking About Criminalizing Dissent*, WASH. POST (Sept. 24, 2024), <https://www.washingtonpost.com/politics/2024/09/24/trump-keeps-talking-about-criminalizing-dissent/>. He has also continued to hurl insults at particular reporters and press outlets he disfavors. Chantelle Lee, *White House Escalates Trump Attacks on Press With 'Media Offenders' Website and Tipline: What to Know*, TIME (Dec. 3, 2025, 2:48 PM) <https://time.com/7338411/white-house-media-bias-tracker-trump-attacks>.

²³ U.S. PRESS FREEDOM TRACKER, <https://pressfreedomtracker.us> (last visited Feb. 27, 2026).

²⁴ Kirstin McCudden, *Celebrating 5 Years Since Launch of the U.S. Press Freedom Tracker*, FREEDOM OF THE PRESS FOUND. (Aug. 2, 2022), <https://freedom.press/about/announcements/celebrating-5-years-since-launch-of-the-us-press-freedom-tracker>.

²⁵ See Charlie Savage & Katie Benner, *Trump Administration Secretly Seized Phone Records of Times Reporters*, N.Y. TIMES (June 11, 2021), <https://www.nytimes.com/2021/06/02/us/trump-administration-phone-records-times-reporters.html> (reporting the secret seizure of phone and email logs for reporters at the NYT, The Washington Post, and CNN). In addition, when the NYT was working on a story about the arrest of James Wolfe, the former security director for the Senate Select Committee on Intelligence, for making false statements to investigators about a leak, the newspaper learned that its reporter Ali Watkins had received a letter several months earlier, in February 2018, notifying her that her phone and email records had been seized as part of the Wolfe investigation. The seizure of Watkins'

Attorney General Sessions refused to promise, as his predecessor Eric Holder did, that journalists would never be sent to jail for protecting their sources.²⁶ When Trump complained that the DOJ was “VERY weak” on leaks, Sessions announced new leak investigations and revised the DOJ guidelines for obtaining press records and testimony.²⁷ The Trump I DOJ referred at least 334 leaks for a criminal investigation, a record number, and established a new unit within the Counterintelligence Division to investigate leaks.²⁸ Under Trump I, the DOJ prosecuted eight people who disclosed information to the press without authorization.²⁹ More disturbingly, it also subpoenaed records from reporters at CNN, The Washington Post, and the NYT outlets in secret.³⁰ While these actions deeply threatened the freedom of the press, they were not significantly different from the threats the media faced under the Obama administration, which also aggressively investigated and prosecuted leaks.³¹

records raised concerns about the freedom of the press but was complicated by the fact that she was involved in a romantic relationship with Wolfe. Michael M. Grynbaum, *New York Times Reassigns Reporter in Leak Case*, N.Y. TIMES (July 3, 2018), <https://www.nytimes.com/2018/07/03/business/media/ali-watkins-times-reporter-memo.html>. The DOJ also served a subpoena on a reporter, former Oregon Public Broadcasting reporter John Sepulvado, in connection with the prosecution of participants in the takeover of the Malheur National Wildlife Refuge in 2016. Maxine Bernstein, *Judge Quashes Subpoena of Former OPB Reporter in Refuge Occupation Trial*, OREGON LIVE (Feb. 24, 2017, 10:02 PM), https://www.oregonlive.com/oregon-standoff/2017/02/judge_quashes_subpoena_of_form.html. The federal district court granted the reporter’s motion to quash despite the government’s arguments that the reporter’s privilege did not apply in criminal proceedings. *Id.* Another action of note is that the Trump DOJ renewed the Julian Assange prosecution, which the Obama DOJ had determined threatened press freedoms. Charlie Savage, *Assange’s Plea Deal Sets a Chilling Precedent, But It Could Have Been Worse*, N.Y. TIMES (June 25, 2024), <https://www.nytimes.com/2024/06/25/us/politics/assange-plea-deal-press-freedom.html>. Whether Assange should be considered part of the press is hotly contested; in addition, it was the Biden administration that ultimately secured a guilty plea. *Id.* Nevertheless, the Assange prosecution is “the first time in American history [that] gathering and publishing information the government considers secret has been successfully treated as a crime.” *Id.*

²⁶ Peter Sterne, *Sessions ‘Not Sure’ Whether He Would Prosecute Journalists*, POLITICO (Jan. 10, 2017, 04:49 PM), <https://www.politico.com/blogs/on-media/2017/01/sessions-not-sure-whether-he-would-prosecute-journalists-233431>.

²⁷ Matt Zapposky & Devlin Barrett, *Attorney General Says Justice Dept. Has Tripled the Number of Leak Probes*, WASH. POST (Aug. 4, 2017), https://www.washingtonpost.com/world/national-security/attorney-general-says-justice-dept-has-tripled-the-number-of-leak-probes/2017/08/04/1a395064-791d-11e7-9eac-d56bd5568db8_story.html (quoting Donald J. Trump (@realDonaldTrump), X (July 25, 2017, 6:12 AM) <https://x.com/realDonaldTrump/status/889790429398528000>).

²⁸ Ken Klippenstein, *Trump Administration Referred a Record Number of Leaks for Criminal Investigation*, THE INTERCEPT (Mar. 2, 2021, 6:51 PM), <https://theintercept.com/2021/03/02/trump-leaks-criminal-investigation/>.

²⁹ Heidi Kitrosser, *The Espionage Act After the Mar-a-Lago Indictment*, LAWFARE (June 13, 2023, 3:00 AM), <https://www.lawfaremedia.org/article/the-espionage-act-after-the-mar-a-lago-indictment>.

³⁰ Katie Brenner, Nicholas Fandos, Michael S. Schmidt & Adam Goldman, *Hunting Leaks, Trump Officials Focused on Democrats in Congress*, N.Y. TIMES (June 14, 2021), <https://www.nytimes.com/2021/06/10/us/politics/justice-department-leaks-trump-administration.html>. On top of that, federal prosecutors went after the communications records of several House Democrats, their aides, and their family members in an unusually aggressive investigation that led to concerns that the powers of the DOJ had been weaponized for political purposes. *Id.*

³¹ See Ted Galen Carpenter, *Barack Obama’s War on a Free Press*, CATO INST. (Feb. 11, 2021), <https://www.cato.org/commentary/barack-obamas-war-free-press#> (outlining the Obama

Trump's supporters amplified his attacks on the media.³² During the January 6 attack on the Capitol, rioters attacked at least eighteen journalists and destroyed thousands of dollars worth of equipment.³³ After Trump was banned from Twitter, he took his attacks on the press to his own platform TruthSocial.³⁴ While it is impossible to blame Trump entirely for the public's increasing distrust of the establishment media, at a minimum he has normalized and encouraged political attacks on journalists.³⁵ Polls reveal that Republicans support bullying of the press in greater numbers than Democrats.³⁶

When Trump ascended to the Presidency for the second time, one of his first executive orders expressed a strong commitment to “[r]estoring [the] [f]reedom of [s]peech and [e]nding [f]ederal [c]ensorship.”³⁷ In reality, however, the current Trump administration poses a grave threat to press freedom and the freedom of speech.³⁸ The second Trump administration (“Trump II”) has taken a number of other steps to undermine independent journalism and the free flow of information about the government to the public.³⁹

Trump II has limited the flow of information to the public by cracking down on communications with the press and restricting press access. The Pentagon has excluded reporters who were unwilling to sign a lengthy document outlining various conditions for their access.⁴⁰ Trump II has

administration's attack on leakers and national security reporters). Eric Holder made his promise not to go after journalists only after he aggressively prosecuted leaks to the press, obtained press records, and sought the testimony of Jim Risen. For more discussion on Holder's record, see Kelly J. O'Brien, *Eric Holder's Lasting Damage to Press Freedom*, COLUM. JOURNALISM REV. (Nov. 25, 2014), https://www.cjr.org/behind_the_news/eric_holder_press_freedom.php.

³² See Julie Posetti, Waqas Ejaz, Nabeelah Shabbir & Kaylee Williams, *U.S. Elections: Press as Enemies of the People, or Democracy's Watchdogs?*, INT'L CTR. FOR JOURNALISTS (Nov. 4, 2024), <https://www.icfj.org/news/us-elections-press-enemies-people-or-democracys-watchdogs> (reporting on online harassment of journalists by Trump supporters).

³³ *Id.*

³⁴ *Id.* Trump was later able to rejoin Twitter, now called X. *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Exec. Order No. 14149, 90 Fed. Reg. 8243 (Jan. 20, 2025).

³⁸ The Department of Justice has also made some important (if not entirely unexpected) modifications to the attorney general guidelines governing the use of legal process to compel information from, or records of, the news media. Gabe Rottman, *US Justice Department Rescinds Biden-Era Protections For The Press*, REPS. COMM. FOR THE FREEDOM OF PRESS (Apr. 30, 2025), <https://www.rcfp.org/doj-rescinds-news-media-guidelines-analysis>. These new regulations roll back some important gains the press had made with the DOJ while Merrick Garland was in office. *Id.* But these changes, while concerning, are relatively insignificant compared to the other levers the Trump administration has used to go after the press.

³⁹ Many of these attacks on the press follow the blueprint of the Heritage Foundation's compendium of policy suggestions in Project 2025. Angela Fu, *Here's How Many of Project 2025's Media Proposals Were Implemented in 2025*, POYNTER (Dec. 29, 2025), <https://www.poynter.org/reporting-editing/2025/project-2025-actions-against-press/>.

⁴⁰ See David Bauder, *Journalists Turn in Access Badges, Exit Pentagon Rather Than Agree to New Reporting Rules*, ASSOC. PRESS NEWS (Oct. 15, 2025, 8:07 PM), <https://apnews.com/article/pentagon->

excluded the Associated Press from White House briefings and taken control over the rotation of pool reporters from the White House Correspondents Association, predictably favoring more conservative outlets.⁴¹ Various federal departments have required their employees to sign nondisclosure agreements and take polygraph tests, and Trump has stripped security clearances from government officials who have spoken to the press without permission.⁴²

President Trump also successfully pressured Congress to defund public broadcasting, leading to the collapse of the Corporation for Public Broadcasting and threatening the very existence of public radio stations throughout the nation, especially in rural areas.⁴³ Kari Lake, now “acting CEO” of the U.S. Agency for Global Media, has withheld funds and laid off most staff from the Voice of America and Radio Free Europe/Radio Liberty.⁴⁴

The Federal Trade Commission (“FTC”) is using its considerable investigatory and regulatory powers to pressure media, technology, and nonprofit companies.⁴⁵ The agency has gone after Media Matters for potential illicit collusion with the advertisers who left the platform X in the wake of Media Matters’s reporting.⁴⁶ In early February 2026, NewsGuard—

press-access-hegseth-trump-restrictions-5d9c2a63e4e03b91fc1546bb09ffbf12 (reporting on the collective action of journalists who surrendered press access credentials rather than agree to government-imposed rules on their reporting). The NYT and reporter Julian Barnes are currently challenging this new policy in court. *N.Y. Times Co. v. Dep’t of Def.*, No. CV 25-04218 (PLF), 2026 WL 962252 (D.D.C. Apr. 9, 2026) (appeal filed Apr. 10, 2026). While this case is pending on appeal, the D.C. Circuit has stayed the district court’s decision to the extent that it allows reporters to be unescorted.

⁴¹ See, e.g., Ali Bianco, *White House Shakes Up Press Pool in Apparent Nod to Court Ruling*, POLITICO (Apr. 15, 2025, 8:57 PM), <https://www.politico.com/news/2025/04/15/white-house-changes-press-pool> (reporting that, under Trump II’s new guidelines, the Associated Press, Reuters, and Bloomberg will no longer share a rotating spot for press access at the White House).

⁴² Fu, *supra* note 39.

⁴³ Allison Perlman & Josh Shepperd, *Clawback of \$1.1B for PBS and NPR Puts Rural Stations at Risk—and Threatens a Vital Source of Journalism*, THE CONVERSATION (Jul. 17, 2025, 4:41 PM), <https://theconversation.com/clawback-of-1-1b-for-pbs-and-npr-puts-rural-stations-at-risk-and-threatens-a-vital-source-of-journalism-255826> (reporting that Congress approved of the law that pulled back on funding public broadcasting); see also David Bauder, *Corporation for Public Broadcasting Votes Itself Out of Existence*, ASSOC. PRESS NEWS (Jan. 5, 2026, 3:36 PM) (stating that the Corporation for Public Broadcasting voted to dissolve following Congress’s decision to defund operations).

⁴⁴ Giselle Ruhyyiyih Ewing, *Kari Lake Lays Off Hundreds at VOA Parent Agency Amid Legal Battle*, POLITICO (Aug. 30, 2025, 2:07 PM), <https://www.politico.com/news/2025/08/30/voice-of-america-firings-kari-lake-00538086>. Kari Lake and the U.S. Agency for Global Media have been embroiled in litigation. See *Complaint, RFE/RL, Inc. v. Lake*, No. 1:25-cv-00799 at 2 (D.D.C. Mar. 18, 2025) (alleging unlawful withholding of appropriated funds from RFE/RL, Inc.), *dismissed* 2025 WL 1839924 (D.C. Cir. July 1, 2025); *Widakuswara v. Lake*, 1:25-cv-01015-RCL, 2026 WL 970265 (D.C. Cir. Mar. 31, 2026) (issuing stay pending appeal of district court’s order requiring the return to work of all employees placed on administrative leave pursuant to March 2025 directive).

⁴⁵ Will Oremus, *Trump’s Campaign Against ‘Left-Wing’ Media Finds a New Target: Apple News*, WASH. POST (Feb. 12, 2026), <https://www.washingtonpost.com/technology/2026/02/12/apple-news-bias-ftc-ferguson-letter/> (stating that Trump has repeatedly publicly pressured media outlets and other organizations for having a liberal bias).

⁴⁶ Mike Scarcella, *US Appeals Court Blocks FTC Subpoena Targeting Media Matters for Now*, REUTERS (Oct. 23, 2025, 1:43 PM), <https://www.reuters.com/legal/government/us-appeals-court-blocks-ftc-subpoena-targeting-media-matters-now-2025-10-23/>.

a company that rates the reliability of online news sources—filed a lawsuit against the FTC and its chair Andrew Ferguson, alleging that the agency has used its regulatory authority to harass and punish a news organization it regards as too progressive.⁴⁷ Shortly after Apple sponsored the Bad Bunny halftime show at the Super Bowl, FTC chair Andrew Ferguson sent a letter to the company accusing its Apple News aggregation service of “systematically promot[ing] news articles from left-wing news outlets and suppress[ing] news articles from more conservative publications.”⁴⁸ Although Ferguson asserted the FTC is “not the speech police,” he nevertheless threatened action against Apple for making misrepresentations to its customers.⁴⁹

Trump II has also weaponized the Federal Communications Commission (“FCC”). Immediately upon taking office, FCC Chair Brendan Carr revived three complaints against affiliates of ABC, NBC, and CBS that had been dismissed under the Biden administration as at odds with the First Amendment.⁵⁰ Carr has aggressively interpreted FCC authority to police broadcast media for failing to broadcast in “the public interest,” for “news distortion,” and for violating the “equal time” rule.⁵¹ The threat of FCC action has sometimes come at the same time Trump has filed civil lawsuits based on the same broadcasts. For example, desperate for government approval of their plans to merge with Skydance, Paramount (which owns CBS) paid \$16 million to Trump to settle the frivolous lawsuit he brought based on the editing of a Kamala Harris interview on *60 Minutes*.⁵² Trump has filed a variety of other defamation lawsuits.⁵³ In order to secure FCC

⁴⁷ Complaint, *NewsGuard Techs., Inc. v. Fed. Trade Comm’n*, No. 1:26-cv-00353 at 2 (D.D.C. Feb. 6, 2026); see also Jacob Sullum, *A First Amendment Lawsuit Challenges FTC Chairman Andrew Ferguson’s Vendetta Against NewsGuard*, REASON (Feb. 9, 2026, 4:00 PM), <https://reason.com/2026/02/09/a-first-amendment-lawsuit-challenges-ftc-chariman-andrew-fergusons-vendetta-against-newsguard/printer/> (reporting on the conflict between the parties).

⁴⁸ Oremus, *supra* note 45 (quoting Letter from Andrew N. Ferguson, Chairman, Fed. Trade Comm’n, to Timothy Cook, Chief Exec. Officer, Apple Inc. (Feb. 12, 2026) [hereinafter *Apple News Warning Letter*], https://www.ftc.gov/system/files/ftc_gov/pdf/apple-news-warning-letter.pdf).

⁴⁹ *Apple News Warning Letter*, *supra* note 48.

⁵⁰ Cecilia Kang, *Brendan Carr Plans to Keep Going After the Media*, N.Y. TIMES (Sept. 24, 2025), <https://www.nytimes.com/2025/09/24/technology/brendan-carr-fcc-kimmel.html>.

⁵¹ *Id.*; see also Ashley Ahn, *F.C.C. Chair Threatens to Revoke Licenses Over War Coverage*, N.Y. TIMES (Mar. 14, 2026), <https://www.nytimes.com/2026/03/14/world/middleeast/fcc-broadcasters-iran-war.html> (reporting Carr as saying, “Broadcasters must act in the public interest, and they will lose their licenses if they do not”); Kelly Kasulis & Scott Nover, *FCC Targets Talk Shows by Revisiting ‘Equal Time’ Rule for Political Candidates*, WASH. POST (Jan. 22, 2026), <https://www.washingtonpost.com/business/2026/01/22/late-night-equal-time-fcc/> (reporting FCC’s decision to interpret narrowly the “bona fide” news exception to equal time rule so that it does not apply to talk shows and daytime programs like *The View*).

⁵² Geoff Bennett & Courtney Norris, *The Politics Behind the \$8B Paramount-Skydance Merger*, PBS NEWS (July 25, 2025, 6:50 PM), <https://www.pbs.org/newshour/show/the-politics-behind-the-8b-paramount-skydance-merger> (stating that, as part of the merger, Skydance has agreed to address Trump’s concerns regarding bias at CBS).

⁵³ See Laura Wagner & Scott Nover, *Trump Has Ramped Up Lawsuits Against the Media. Here’s Where They Stand*, WASH. POST (Jan. 25, 2026), <https://www.washingtonpost.com/business/2026/01/25/>

approval of its merger with Paramount, Skydance Media agreed to install an “ombudsman” to receive and investigate allegations that its news media programming is not fair and balanced and to end diversity initiatives.⁵⁴ ABC took late-night comedian Jimmy Kimmel off the air after his comments about the Charlie Kirk murder; the removal happened after FCC Chair Brendan Carr threatened that Kimmel could be removed “the easy or hard way.”⁵⁵ In April 2026, soon after the Trumps demanded the firing of Kimmel for making a joke about Melania Trump as an “expectant widow,” Carr initiated a review of several Disney broadcast stations.⁵⁶ The FCC also has initiated investigations of NBC/Comcast and ABC/Disney for allegedly seeking onerous concessions from affiliates, and forced Verizon and T-Mobile to give up their diversity initiatives before approving transactions.⁵⁷ Carr also ordered the agency to investigate NPR and PBS for allegedly violating rules that prohibit them from accepting prohibited advertisements.⁵⁸

Trump has personally filed lawsuits to obtain extremely lucrative settlements from ABC (\$15 million), Meta (\$25 million), and

5/trump-media-lawsuits (reporting on Trump’s personal lawsuits against media outlets during and after his first stint in office).

⁵⁴ John Hendel, *Skydance Pledges Creation of Ombudsman to Vet CBS Bias Concerns*, POLITICO PRO (July 23, 2025, 1:14 PM), <https://subscriber.politicopro.com/article/2025/07/skydance-pledges-creation-of-ombudsman-to-vet-cbs-bias-concerns-00470734>. CBS, once a lion of independent journalism, has agreed to a number of questionable changes to their editorial practices in recent months. For example, after several days of relentless attacks by Homeland Security Secretary Kristi Noem and other members of the Trump administration, CBS’s *Face the Nation* will no longer air edited interviews of public officials. Michael M. Grynbaum & Benjamin Mullin, *CBS Abruptly Changes Editing Rules After Attacks from Administration*, N.Y. TIMES (Sept. 5, 2025), <https://www.nytimes.com/2025/09/05/business/cbs-face-the-nation-editing-rules.html>.

⁵⁵ Kailyn Rhone, *What to Know About the Suspension, and the Return, of Jimmy Kimmel’s Show*, N.Y. TIMES (Sept. 25, 2025), <https://www.nytimes.com/2025/09/20/business/jimmy-kimmel-show-abc-kirk-fcc.html> (outlining the circumstances behind Jimmy Kimmel’s week-long suspension from ABC). Even after Kimmel’s weeklong suspension ended, broadcast company Nexstar refused to broadcast his show for another week. At this time, the FCC was considering whether to approve the merger of Nexstar with its rival Tegna, which it ultimately approved in March 2026. As a result of the Nexstar-Tegna merger, Nexstar owns stations reaching 80% of American households. Approving this merger required the FCC to waive its own rules preventing one company from owning more than 39% of broadcast stations. Several state attorneys general have filed antitrust lawsuits challenging the merger. Daisuke Wakabayashi, *F.C.C. Approves Nexstar’s Acquisition of a Local TV Rival*, N.Y. TIMES (Mar. 19, 2026), <https://www.nytimes.com/2026/03/19/business/fcc-nexstar-tegna-deal-approved.html>.

⁵⁶ Dominick Mastrangelo, *FCC Chair: “No Pressure” from White House for Disney Review*, THE HILL (Apr. 30, 2026), <https://thehill.com/homenews/media/5857742-fcc-brendan-carr-abc-disney-review-kimmel/> (reporting Carr’s claims that Trump did not pressure the FCC to pursue this investigation).

⁵⁷ David Shepardson, *FCC Opens Probe Into Comcast Relationships with Local TV Affiliates*, REUTERS (July 30, 2025, 11:13 AM), <https://www.reuters.com/business/media-telecom/fcc-opens-probe-into-comcast-relationships-with-local-tv-affiliates-2025-07-30/>.

⁵⁸ Benjamin Mullin & David McCabe, *F.C.C. Chair Orders Investigation into NPR and PBS Sponsorships*, N.Y. TIMES (Jan. 30, 2025), <https://www.nytimes.com/2025/01/30/business/media/npr-pbs-fcc-investigation.html>.

CBS/Paramount (\$16 million).⁵⁹ Other lawsuits against The WSJ, the NYT, the BBC, the Pulitzer Prize Board, the Des Moines Register, and pollster Ann Selzer remain pending.⁶⁰

Finally, the federal government is targeting individual journalists with surveillance, physical attacks, and deportation. In January 2026, the FBI raided the home of The Washington Post journalist Hanna Natanson and seized her electronic devices, including two computers, a recorder, a portable hard drive, a cellphone, and a Garmin watch.⁶¹ This is the first time the federal government has raided a reporter's home as part of a national security leak investigation.⁶² Seizing her electronic devices not only makes it difficult for Natanson to do her work, but, more importantly, threatens to expose other confidential sources and newsgathering information.⁶³

In addition, federal agents have physically attacked members of the press covering protests or court hearings in Los Angeles, Chicago, New York, and Minnesota.⁶⁴ Federal prosecutors obtained a grand jury indictment against journalist Don Lemon for conspiring to interfere with religious rights by interrupting a religious service and for violating the federal Freedom of Access to Clinic Entrances Act (which also covers houses of worship), even after a federal judge previously held there was no probable cause for the charges.⁶⁵ The government has also attempted to detain and deport non-citizen journalists, such as Tufts PhD student Rumeysa Ozturk, who was singled out on the basis of an op-ed critical of Israel published in the student

⁵⁹ David Bauder, *Paramount Will Pay \$16 Million in Settlement with Trump over '60 Minutes' Interview*, ASSOC. PRESS (July 2, 2025), <https://www.ap.org/news-highlights/spotlights/2025/paramount-t-will-pay-16-million-in-settlement-with-trump-over-60-minutes-interview/> (reporting on Trump's lawsuits and settlements with ABC, Meta, and CBS).

⁶⁰ Wagner & Nover, *supra* note 53 (reporting on Trump's lawsuits as of January 2026). These cases are in addition to four other cases Trump has filed that were previously dismissed before he took office the second time. *See id.* (cataloging dismissed lawsuits against NYT, The Washington Post, and CNN).

⁶¹ Perry Stein, *Judge Blocks Government From Reviewing Post Reporter's Data*, WASH. POST (Jan. 22, 2026), <https://www.washingtonpost.com/national-security/2026/01/21/washington-post-hannah-natanson-search-court-filing>.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *See, e.g., Attacks on Journalists in Minnesota Cap Trump's First Year Back in Office*, RSF: REPS. WITHOUT BORDERS (Jan. 20, 2026) <https://rsf.org/en/attacks-journalists-minnesota-cap-trump-s-first-year-back-office> ("At least six journalists have been violently attacked by agents in the state's twin cities of Minneapolis and St. Paul . . ."); Michael R. Sisak, *Federal Agents Grab and Shove Journalists Outside NYC Immigration Court, Sending One to Hospital*, ASSOC. PRESS NEWS (Sept. 30, 2025, 7:54 PM), <https://apnews.com/article/nyc-immigration-journalists-shoving-manhattan-84d95f26278aa406ecd37d72ed213452> (reporting on NYC journalist getting shoved by federal agents).

⁶⁵ *Indictment, United States v. Levy-Armstrong*, No. 0:26-cr-00025-LMP-DLM (D. Minn. Jan. 29, 2026); Josh Gerstein & Gregory Svirnovskiy, *Don Lemon Arrested over Minnesota Church Protest After Judge Previously Rejected Charge*, POLITICO (Jan. 30, 2026, 11:03 AM), <https://www.politico.com/news/2026/01/30/don-lemon-arrest-minnesota-protest-00756892>.

newspaper,⁶⁶ and Emmy-winning journalist Mario Guevara, who was deported to El Salvador after spending 100 days in ICE custody.⁶⁷

In sum, Trump II's attack on press freedom is multi-faceted.⁶⁸ In addition to filing defamation lawsuits, Trump II has engaged in continued verbal attacks on the press; restricted press access to the president and to the Pentagon; eliminated federal funding for NPR, PBS, Voice of America, and other subsidized outlets; and weaponized multiple federal agencies to force media companies to toe a more conservative ideological line. These attacks come at a time of a radically evolving media ecosystem, when the public consumes its information in an increasingly fragmented and polarized way, trust in the institutional media is at a historic low, and many news outlets face profound economic difficulties.

B. Universities

Universities and the federal government have likewise had a complicated relationship for many decades before Trump.

After World War II, universities joined forces with the government to engage in scientific research that served the public good, particularly with respect to public health and national security.⁶⁹ The government also came to realize that the humanities and social sciences could be useful for learning more about foreign peoples, cultures, and political systems.⁷⁰ Although universities and professors benefited from federal funding for their research, this dependence on federal funding meant that they were not entirely in control of their research agenda, as the government pushed them to study topics that would serve its own needs.⁷¹ For example, universities developed area studies programs (like Russian studies, for example) and conducted

⁶⁶ Jonah E. Bromwich, *Immigration Judge Says Trump Administration Cannot Deport Tufts Student*, N.Y. TIMES (Feb. 10, 2026), <https://www.nytimes.com/2026/02/10/us/immigration-judge-tufts-student-rumeysa-ozturk.html>.

⁶⁷ George Chidi, *Journalist Mario Guevara Deported to El Salvador After 100 Days in ICE Custody*, THE GUARDIAN (Oct. 3, 2025), <https://www.theguardian.com/us-news/2025/oct/03/journalist-mario-guevara-ice-deportation>. Guevara was originally charged with misdemeanors based on live-streaming a protest and traffic violations. He was ultimately deported for not posting an immigration bond when he filed his application for asylum thirteen years ago. Neil Vigdor, *Journalist Mario Guevara Is Deported After Being Held for Over 100 Days*, N.Y. TIMES (Oct. 3, 2025), <https://www.nytimes.com/2025/10/03/us/mario-guevara-journalist-deported.html>.

⁶⁸ See Jared Schroeder, *US Media in the Crosshairs*, NIEMAN REPS. (Jan. 16, 2026), <https://niemanreports.org/lawfare-us-media-press-freedom-trump-american-politics-journalism/> (“The attacks have been widespread and, often, nuanced in approach, as government actors have leveraged financial threats, weaponized the legal system, and limited access to news organizations.”).

⁶⁹ I have explored this history in more detail elsewhere. See Mary-Rose Papandrea, *Money Money Money: Universities, Federal Funding, and Academic Freedom* in ACADEMIC FREEDOM UNDER TRUMP (Lee Bollinger & Geoffrey Stone, eds.) (forthcoming Oxford University Press 2026).

⁷⁰ Jeffrey Rosario, *The Complicated History of Government Influence Over Universities*, TIME (May 20, 2025, 4:36 PM), <https://time.com/7280839/history-government-influence-universities/>.

⁷¹ See *id.* (tracing the historical influence of federal funding on social science research programs that, for example, resulted in the creation of new academic fields aligned with the government's policy interests).

scientific research that the government wanted.⁷² At various times, universities and political actors have disagreed about research priorities.⁷³

Congress has also placed conditions on federal funding to protect its investment and achieve other priorities. In 1952, when Congress renewed the GI Bill, it added accreditation requirements—and put a federal agency in charge of supervising the accreditors—to protect students against the many questionable for-profit institutions that had sprung up to take advantage of the funds.⁷⁴ Most significantly, Congress conditioned federal funds on compliance with anti-discrimination laws.⁷⁵ The federal government most notably interfered with the operation of universities through the administration of Title IX, which prior administrations have used to create what Josh Gersen and Jeannie Suk Gersen called a “sex bureaucracy” on college campuses.⁷⁶ Congress has also used conditions on federal funding to require universities to allow military recruiters on campus⁷⁷ and to recognize “Constitution Day” every September.⁷⁸ Congress considered—but failed to pass—legislation that would condition certain federal funds on providing a viewpoint-diverse campus.⁷⁹

In addition, the government has historically regarded scholars and students with suspicion.⁸⁰ Tensions between the federal government and universities have run high during the Red Scare, the Civil Rights movement, and the Vietnam War. Indeed, Trump’s attack on universities finds its heart in conservatives’ long-standing arguments that universities coddle students, indoctrinate them with liberal “Marxist” ideology, fail to hire conservative professors, and, more generally speaking, “censor” conservative

⁷² *Id.*; see also Papandrea, *supra* note 69.

⁷³ Papandrea, *supra* note 69.

⁷⁴ Antoinette Flores, *The “Secret Weapon” in Right-Wing Attacks on Higher Education*, ACADEME MAG. (Fall 2025), <https://www.aaup.org/academe/issues/fall-2025/secret-weapon-right-wing-attacks-higher-education>.

⁷⁵ I discuss the statutory and constitutional complexities of these laws, particularly Title VI, in great detail elsewhere. See Mary-Rose Papandrea, *Strings Attached: Federal Funding and Campus Speech*, 94 GEO. WASH. L. REV. ___ (forthcoming 2026).

⁷⁶ See Jacob Gersen & Jeannie Suk, *The Sex Bureaucracy*, 104 CALIF. L. REV. 881, 883 (2016) (analyzing how legal obligations relating to sexual violence and sex discrimination create a “federal bureaucracy [that] is now regulating sex itself”); see also Frederick M. Hess, *A Memo to College Presidents*, JAMES G. MARTIN CTR. FOR ACAD. RENEWAL (Mar. 28, 2025), <https://jamesgmartin.center/2025/03/a-memo-to-college-presidents> (arguing that “[t]he modern era of turbocharged federal involvement in higher education really commenced during the Obama years” with President Biden continuing these efforts “and then some”).

⁷⁷ *Rumsfeld v. F. for Acad. & Institutional Rts, Inc.*, 547 U.S. 47 (2006) (rejecting challenge to Solomon Amendment, requiring universities to give military recruiters equal access to campus/students).

⁷⁸ Consolidated Appropriations Act, 2005, Pub. L. No. 108–447, § 111, 118 Stat. 2809, 3344–45 (Dec. 8, 2004).

⁷⁹ See Papandrea, *supra* note 75.

⁸⁰ Rosario, *supra* note 70.

viewpoints.⁸¹ In 2004, Stanley Fish remarked that the right and left have been fighting over universities for years, and although the left won the war over the curriculum, the right convinced the American people that universities were “hotbeds . . . of radicalism and pedagogical irresponsibility where dollars are wasted, nonsense is propagated, students are indoctrinated, religion is disrespected, and patriotism is scorned.”⁸² Trump himself made some of these attacks throughout his first term.⁸³

As with the press, however, Trump’s first term attacks on universities were more sound than fury, although in hindsight some of his actions and proposals were clear precursors for what we are seeing in his second term. During his first presidential campaign and throughout his first administration, Trump frequently complained about non-Americans in the U.S., rejected or downplayed scientific research about the environment and public health, was profoundly anti-intellectual, and expressed concern about conservative viewpoints on college campuses.⁸⁴ Trump’s populist rhetoric came at the same time many Americans were concerned about the high cost of education as well as the perceived failure of a college education to prepare students for jobs.⁸⁵ Trump’s critical statements led many to fear what he might do to higher education. Once in office, he proposed massive budget cuts for federally funded research, including, but not limited to, global health issues and environmental science and climate change, as well as a reduction in the “indirect costs,” or overhead costs, researchers can claim.⁸⁶ But Congress rebuffed his efforts.⁸⁷ His administration did not try to use alleged violations of anti-discrimination law to force higher education reforms. Trump was able to convince Congress to pass a tax on the endowment

⁸¹ See Papandrea, *supra* note 75; see also Rosario, *supra* note 70 (quoting Senator Joseph McCarthy as saying, “Countless times . . . I have heard parents throughout the country complain that their sons and daughters were sent to college as good Americans and returned four years later as wild-eyed radicals”).

⁸² Stanley Fish, *Intellectual Diversity*, CHRON. HIGHER EDUC. (Feb. 13, 2004), <https://www.chronicle.com/article/intellectual-diversity>.

⁸³ See Papandrea, *supra* note 75.

⁸⁴ See Scott Jaschik, *Trump Victory Jolts Higher Ed*, INSIDE HIGHER ED (Nov. 8, 2016), <https://www.insidehighered.com/news/2016/11/09/trump-victory-will-be-jolt-higher-education> (describing then-candidate Trump’s “regular[] attack[s on] colleges”).

⁸⁵ Michael C. Bender, Alan Blinder & Michael S. Schmidt, *Investigations and a Billion-Dollar ‘Shakedown’: How Trump Targeted Higher Education*, N.Y. TIMES (Jan. 21, 2026), <https://www.nytimes.com/2026/01/21/us/politics/trump-higher-education-2025.html> (showing a growing public discontent in colleges through polls).

⁸⁶ Henry Fountain & John Schwartz, *Scientists Bristle at Trump Budget’s Cuts to Research*, N.Y. TIMES (Mar. 16, 2017), <https://www.nytimes.com/2017/03/16/climate/trump-budget-science-research.html>; see also Meredith Wadman, *Trump Proposes Massive NIH Budget Cut and Reorganization*, SCI. (Apr. 17, 2025, 4:20 PM), <https://www.science.org/content/article/trump-proposes-massive-nih-budget-cut-and-reorganization> (describing how Trump’s proposed budget cuts would be achieved, in part, by a new cap on indirect costs).

⁸⁷ Robert Pear, *Congress Rejects Trump Proposals to Cut Health Research Funds*, N.Y. TIMES (Sept. 11, 2017), <https://www.nytimes.com/2017/09/11/us/politics/national-institutes-of-health-budget-trump.html>.

income of some private universities.⁸⁸ Trump I's Department of Education also laid the groundwork for using the accreditation process for reforming universities by eliminating the distinction between national and regional accreditors; this has paved the way for some states to change the accreditors for public institutions.⁸⁹

In the run-up to his second election to the presidency, Trump ramped up his attack on universities. First, he attacked the diversity, equity, and inclusion ("DEI") policies of universities and positioned himself as the "anti-woke" candidate.⁹⁰ The campus protests that followed Hamas's October 7, 2023, attacks on Israel, as well as Israel's response to those attacks, gave President Trump an additional vector for attacking universities, this time as hotbeds for antisemitism. The House began investigating the nation's top universities before Trump took office, and the hearings they held led directly or indirectly to the resignation of several university presidents.⁹¹

Trump continued his attack on universities with a vengeance when he took office. Leveraging Title VI and Title IX, Trump issued an executive order declaring the end of DEI.⁹² In addition, the Trump II administration has cancelled billions of dollars in federal research grants.⁹³

Trump's attack on higher education did not stop there. He has also attempted to deport foreign students who had engaged in anti-Israel speech, limit the number of international students, increase the endowment tax, pressure accreditors, cap student loans, and take other actions directly and indirectly to undermine the academic freedom and First Amendment rights of professors.⁹⁴

⁸⁸ *What is the Tax Treatment of College and University Endowments?*, TAX POL'Y CTR. (Jan. 2024), [hereinafter *Tax Treatment*] <https://taxpolicycenter.org/briefing-book/what-tax-treatment-college-and-university-endowments> (explaining that the 2017 law placed a 1.4% tax on endowment income of certain nonprofit colleges and universities).

⁸⁹ Flores, *supra* note 74 (describing how after the 2019 regulation was finalized Florida and North Carolina passed legislation requiring public colleges and universities to regularly switch accrediting agencies).

⁹⁰ Donald J. Trump, *Protecting Students from the Radical Left and Marxist Maniacs Infecting Educational Institutions*, YOUTUBE at 00:52 (May 2, 2023), <https://www.youtube.com/watch?v=iK1iAfm8nB4> (explaining plans to "reclaim" educational institutions from the left with accreditation standards that would include eliminating DEI programs).

⁹¹ Papandrea, *supra* note 69, at 9–10 (discussing how University of Virginia President, Jim Ryan, resigned in 2025 to resolve Title VI claims in response to demands from the Trump administration).

⁹² Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025) (declaring that DEI preferences violate the Civil Rights Act of 1964, terminating diversity programs within the federal government, and instructing agencies to implement regulations to encourage the private sector to do the same).

⁹³ Kathryn Palmer, *Documenting Trump's 'Arbitrary' Cuts to Science*, INSIDE HIGHER ED (May 6, 2025), <https://www.insidehighered.com/news/government/science-research-policy/2025/05/06/documenting-trumps-arbitrary-cuts-science> (reporting the National Institutes of Health has cancelled about \$2 billion in grants and the National Science Foundation has cancelled more than \$780 million in grants).

⁹⁴ See Adrian Florido & A. Martínez, *Trump Executive Order Aims to Deport International Students Who Have Protested Israel*, NPR (Feb. 6, 2025, 4:13 AM), <https://www.npr.org/2025/02/06/nx-s1-5281179/trump-executive-order-aims-to-deport-international-students-who-have-protested-israel>

To date, six major universities have entered into settlements with the Trump administration to restore their federal funding.⁹⁵ Only two universities have sued the Trump administration to address their federal funding: Harvard and the California State System.⁹⁶ The California State lawsuit challenges findings that San Jose State University violated Title IX by allowing transgender athletes to compete from 2022 to 2024.⁹⁷ It is too soon to know the outcome of the California State lawsuit, but so far Harvard is largely winning its legal battles.⁹⁸ Wildly changing demands have undermined Harvard's ability to reach a resolution with Trump II.⁹⁹ It is possible more lawsuits are forthcoming; only time will tell.¹⁰⁰ It appears that

(reporting on a Trump Executive Order targeting international students who joined Gaza war protests for deportation); Josh Moody, *White House Floats Compact for Preferential Treatment*, INSIDE HIGHER ED (Oct. 2, 2025), <https://www.insidehighered.com/news/government/science-research-policy/2025/10/02/white-house-floats-compact-preferential> (reporting on proposals to limit international student enrollment); Donald J. Trump, *supra* note 90, at 0:55 (discussing plans to pressure accreditors to adopt administration-aligned standards); Jessica Blake, *What to Know About Trump's Definition of Professional Degrees*, INSIDE HIGHER ED (Nov. 26, 2025), <https://www.insidehighered.com/news/government/student-aid-policy/2025/11/26/what-know-about-definition-professional-degree> (reporting on Trump administration plans to cap student loan borrowing for certain professional degrees); Bender, Blinder & Schmidt, *supra* note 85 (describing the administration's investigations of universities and the resulting pressure on academic policies and speech about topics such as race and gender).

⁹⁵ Alan Blinder, *How Universities are Responding to Trump*, N.Y. TIMES (Feb. 5, 2026), <https://www.nytimes.com/article/trump-university-college.html> (reporting that Brown, Columbia, Cornell, Northwestern, the University of Pennsylvania, and the University of Virginia all made deals to restore federal funding); Bender, Blinder & Schmidt, *supra* note 85 (“Six elite universities have chosen to settle civil rights investigations, agreeing to adopt portions of Mr. Trump’s political agenda and collectively pay hundreds of millions of dollars to the U.S. Treasury or Trump-supported projects.”).

⁹⁶ Faculty unions like the Association for American University Professors (“AAUP”) have filed several lawsuits, along with individual faculty and students. In addition, the AAUP, the American Council on Education, the Association for Public and Land-Grant Universities, several individual universities, and states have sued the federal government to challenge NIH guidance capping indirect costs. *Massachusetts v. Nat’l Inst. of Health*, 164 F.4th 1 (1st Cir. 2026) (entering a permanent injunction preventing the federal government from capping indirect costs at fifteen percent).

⁹⁷ The complaint can be viewed at <https://www.calstate.edu/Documents/CSU-Lawsuit.pdf?v=2>. See also Kate Hidalgo Bellows, *In a Rare Move, A University System Sues the Trump Administration*, CHRONICLE OF HIGHER ED (Mar. 9, 2026), <https://www-chronicle-com.us1.proxy.openathens.net/article/in-a-rare-move-a-university-system-sues-the-trump-administration>.

⁹⁸ See *President & Fellows of Harvard Coll. v. U.S. Dep’t of Health & Hum. Servs.*, 798 F. Supp. 3d 77, 91–92 (D. Mass. 2025) (largely granting Harvard’s motion for summary judgment in its case alleging the termination of its research grants violated the Administrative Procedure Act and constituted unlawful retaliation for Harvard’s exercise of its First Amendment rights), *appeal docketed*, No. 25-2230 (1st Cir. Dec. 30, 2025); *President & Fellows of Harvard Coll. v. U.S. Dep’t of Homeland Sec.*, 788 F. Supp. 3d 182, 186 (D. Mass. 2025) (entering a preliminary injunction enjoining the Trump administration from revoking Harvard’s ability to host international students), *appeal docketed*, No. 25-1627 (1st Cir. Jul. 1, 2025).

⁹⁹ Michael C. Bender, Alan Blinder, Mark Arsenault & Michael S. Schmidt, *Trump, Changing Course, Throws Harvard Deal Talks Into Chaos*, N.Y. TIMES (Feb. 3, 2026), <https://www.nytimes.com/2026/02/03/us/politics/trump-changing-course-throws-harvard-deal-talks-into-chaos.html> (reporting that negotiations between Harvard and the Trump administration stalled when President Trump increased his demand from \$200 million to \$1 billion).

¹⁰⁰ Indeed, while this Essay was in the editing process, the Trump administration filed a new lawsuit

his administration is working through a list of sixty universities it identified as violating Title VI for failing to take sufficient action against antisemitism on their campuses.¹⁰¹ The terms of these settlement agreements vary, but several involve huge payments of funds either directly to the United States or to certain negotiated recipients. In addition, some schools have agreed to ongoing monitoring of their campus climates and the adoption of policies that reflect Trump's views on gender and sex (such as single-sex dorms and locker rooms) and eliminate "DEI" programs and preferences.¹⁰²

Trump has also circulated a proposed "Compact for Academic Excellence in Higher Education" to select universities that would give signatories priority for future federal funding.¹⁰³ The Compact's conditions include banning the consideration of race or sex in hiring or admissions; freezing tuition for five years; limiting international student enrollment; embracing institutional neutrality; requiring standardized tests for admission; reducing grade inflation; ensuring a "vibrant marketplace of ideas on campus"; restricting employees from expressing political views; embracing a statement that "academic freedom is not absolute"; adopting policies reflecting a belief that gender is determined by reproductive function; shutting down departments that "punish, belittle or spark violence against conservative ideas"; and anonymous, published polls about the university's compliance with the Compact.¹⁰⁴ Led by MIT, which rejected the Compact on the grounds that research funding should be based on

against Harvard for allegedly failing to provide sufficient documents regarding its admissions practices. Michael C. Bender & Alan Blinder, *Justice Department Sues Harvard for Admissions Records*, N.Y. TIMES (Feb. 13, 2026), <https://www.nytimes.com/2026/02/13/us/politics/harvard-lawsuit-admissions-doj-trump.html>.

¹⁰¹ Press Release, U.S. Department of Education's Office for Civil Rights Sends Letters to 60 Universities Under Investigation for Antisemitic Discrimination and Harassment, U.S. Dep't of Educ. (Mar. 10, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-educations-office-civil-rights-sends-letters-60-universities-under-investigation-antisemitic-discrimination-and-harassment> (reporting that letters were sent to sixty institutions already under investigation for Title VI violations relating to antisemitic harassment and discrimination, warning them of potential enforcement actions).

¹⁰² For a more detailed summary, see Papandrea, *supra* note 69, at 7–10.

¹⁰³ Michael C. Bender, *Trump Administration Asks Colleges to Sign 'Compact' to Get Funding Preference*, N.Y. TIMES (Oct. 3, 2025), <https://www.nytimes.com/2025/10/02/us/politics/trump-college-funding.html>.

¹⁰⁴ *Id.* ("The compact would require colleges to freeze tuition for five years, cap the enrollment of international students and commit to strict definitions of gender."); Alan Blinder, *All but 2 Universities Decline a Trump Offer of Preferential Funding*, N.Y. TIMES (Oct. 20, 2025), <https://www.nytimes.com/2025/10/20/us/politics/universities-funding-compact.html> ("The compact includes conditions like agreeing 'that academic freedom is not absolute'"); Moody, *supra* note 94 (listing conditions of compact).

merit,¹⁰⁵ most universities have rejected this Compact.¹⁰⁶ Most of these provisions are deeply objectionable incursions into the academic freedom and institutional autonomy of universities; at least one provision (restricting the political expression of employees) is potentially unconstitutional, at least at public universities.¹⁰⁷ But it is possible the Trump administration will develop a revised Compact that is not so sweeping and threatening to universities' institutional autonomy. Furthermore, Trump continues to threaten universities by making it more difficult for international students to attend, changing accreditation policies, threatening to take away patents (and the accompanying income) for inventions created through federal monies, attempting to end their tax-exempt status, and restricting the availability of student loans.¹⁰⁸ The pressure points Trump has identified to force universities to change are seemingly endless.

C. *Lawyers*

Although examples are less common, government actors in this country have also attempted to undermine lawyers and judges. The most notable examples are the blacklisting of lawyers during the Red Scare and Virginia's attempt to prevent the NAACP from representing clients, an effort that the Supreme Court rebuffed in *NAACP v. Button*.¹⁰⁹ The FBI also used counterintelligence in the form of warrantless wiretaps and searches to disrupt the liberal National Lawyers Guild in the 1940s and 1950s.¹¹⁰ In addition, Congress attempted to prevent federally funded Legal Aid lawyers from representing clients challenging welfare laws; the Supreme Court also held that this effort was unconstitutional in *Legal Services Corporation v.*

¹⁰⁵ Josh Moody, *MIT Rejects Proposed Federal Compact*, INSIDE HIGHER ED (Oct. 10, 2025), <https://www.insidehighered.com/news/governance/executive-leadership/2025/10/10/mit-rejects-proposed-federal-compact> (reporting on MIT's refusal to sign the "Compact for Academic Excellence in Higher Education," and stating it was the first to publicly reject).

¹⁰⁶ Blinder, *supra* note 104 (reporting that by the White House deadline, only the University of Texas suggested it might sign on; Vanderbilt did not reject the Compact but expressed reservations).

¹⁰⁷ Moody, *supra* note 94 (noting how some critics have argued that the Compact's conditions undermine free speech).

¹⁰⁸ *Id.* (discussing plans to limit international student enrollment); Betsy Klein, *Trump Administration Targets Harvard's Patents*, CNN POLITICS (Aug. 8, 2025, 8:28 PM), <https://www.cnn.com/2025/08/08/politics/trump-administration-targets-harvards-patents> (reporting on threats to Harvard Universities' patents); Donald J. Trump, *supra* note 90, at 0:55 (discussing plans to pressure accreditors to adopt administration-aligned standards); Blake, *supra* note 94 (reporting on Trump administration plans to cap student loan borrowing for certain professional degrees); *Tax Treatment*, *supra* note 88 (discussing taxes on university endowment income).

¹⁰⁹ *NAACP v. Button*, 371 U.S. 415, 428–29 (1963) (holding that the NAACP's litigation-related advocacy was a protected form of expression and association under the First and Fourteenth Amendments).

¹¹⁰ William Glaberson, *F.B.I. Admits Bid to Disrupt Lawyers Guild*, N.Y. TIMES (Oct. 13, 1989), <https://www.nytimes.com/1989/10/13/nyregion/fbi-admits-bid-to-disrupt-lawyers-guild.html>. The FBI settled an eleven-year-old lawsuit with the National Lawyers Guild in 1989. *Id.*

Velazquez.¹¹¹ Since the 1970s, some conservatives have cast the American Bar Association (“ABA”) as a left-leaning organization. Starting with President George W. Bush, Republican presidents have stopped considering ABA recommendations for judicial appointments.¹¹² Trump’s frequent attacks on the judiciary and individual judges—a practice he and his allies embraced in his first term¹¹³ as well as his second¹¹⁴—generally erode the public’s trust in the rule of law.

No president has ever before issued an executive order punishing particular firms or lawyers to achieve ideological goals.¹¹⁵ The closest example is the third-party settlement practices of the Obama and Biden administrations, by which a corporate defendant sued by the federal government for something like employment discrimination or a violation of environmental protection laws agreed to donate money to a third-party organization progressives favored instead of writing a check to the U.S. government.¹¹⁶ But the scale and scope of the executive orders Trump has issued against specific law firms during his second term¹¹⁷ far exceed these

¹¹¹ *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 536–37 (2001) (holding that the restriction on legal representation to challenge or amend existing welfare law violated the First Amendment).

¹¹² Ed Whelan, *George W. Bush Boots American Bar Association*, CONFIRMATION TALES (Aug. 8, 2024), <https://www.confirmationtales.com/p/george-w-bush-boots-out-american> (reporting on George W. Bush deciding to exclude the ABA from judicial candidate evaluations).

¹¹³ See *In His Own Words: The President’s Attacks on the Courts*, BRENNAN CTR. JUST. N.Y.U. SCH. L. (Feb. 14, 2020), <https://www.brennancenter.org/our-work/research-reports/his-own-words-presidents-attacks-courts> (collecting examples from 2017 to 2020 of Trump’s public statements attacking individual judges and questioning the constitutional authority of the judiciary).

¹¹⁴ Gregg Nunziata & Noah Bookbinder, *The Endgame of Trump’s War on the Judiciary*, CITIZENS FOR RESP. & ETHICS IN WASH. (Aug. 22, 2025), <https://www.citizensforethics.org/news/analysis/the-endgame-of-trumps-war-on-the-judiciary/>. Trump has called for the impeachment of judges for rulings he disfavored, filed a lawsuit against every judge on the federal court in Maryland, and filed a frivolous judicial misconduct complaint against Judge James Boasberg, who issued an order prohibiting the removal of Venezuelan immigrants under the Alien Enemies Act. *Id.*

¹¹⁵ Ryan Lucas, *Federal Judge Strikes Down Trump Order Targeting the Law Firm Perkins Coie*, NPR (May 2, 2025, 9:44 PM), <https://www.npr.org/2025/05/02/nx-s1-5385355/perkins-coie-trump-executive-order-law-firms#:~:text=President%20Donald%20Trump%20signs%20executive,%22> (reporting that in her opinion, Judge Beryl Howell noted these executive orders targeting prominent law firms was unprecedented); John R. Vile, *Trump’s Executive Orders Against Law Firms*, FREE SPEECH CTR. MIDDLE TENN. STATE UNIV. (Oct. 2, 2025), <https://firstamendment.mtsu.edu/article/trumps-executive-orders-against-law-firms/> (“Although some aspects of Trump’s actions are unprecedented, others are similar to earlier cases of blacklisting and to a law that the U.S. Supreme Court rejected in the cases of *NAACP v. Button* (1963).”).

¹¹⁶ Advisory Opinions, *Betrayal of the Law Firms*, THE DISPATCH, at 34:19–37:43 (Mar. 25, 2025), <https://thedispatch.com/podcast/advisoryopinions/betrayal-of-the-law-firms/>.

¹¹⁷ See Suspension of Security Clearances and Evaluation of Government Contracts, Daily Comp. Pres. Docs., 2025 DCPD No. 00303 (Feb. 25, 2025) (ordering the termination of security clearances for employees of Covington & Burling LLP and a review of all government contracts with the firm); Exec. Order No. 14230, 90 Fed. Reg. 11781 (Mar. 6, 2025) (ordering the same for Perkins Coie LLP); Exec. Order No. 14237, 90 Fed. Reg. 13039 (Mar. 14, 2025) (ordering the same for Paul, Weiss); Exec. Order No. 14246, 90 Fed. Reg. 13997 (Mar. 25, 2025) (ordering the same for Jenner & Block); Exec. Order No. 14250, 90 Fed. Reg. 14549 (Mar. 27, 2025) (ordering the same for WilmerHale); Exec. Order No.

ideological settlement terms. Most significantly, the settlements in the Biden and Obama administrations followed legitimate and presumptively meritorious lawsuits; they were not simply acts of retaliation.¹¹⁸

Several law firms entered into “settlement” agreements with the Trump administration in response to executive orders stripping their lawyers of their security clearances and prohibiting their presence in federal buildings, a necessity for practicing law.¹¹⁹ Some of the executive orders also terminated the firms’ federal contracts, prohibited the government from hiring any lawyer affiliated with them, and barred federal employees from “engaging with” them.¹²⁰ Trump targeted law firms to punish them for employing attorneys and representing clients he disfavored.¹²¹ The settlements require the firms to discontinue their DEI practices and to perform pro bono services for causes Trump favors, such as military veterans, immigration enforcement, police misconduct defense, and trade deals.¹²² The four law firms that have challenged these executive orders have so far universally had success in challenging these executive orders as unconstitutional, but appeals are pending.¹²³

II. TAKING ADVANTAGE OF INSTITUTIONAL WEAKNESS

The Trump administration’s attacks on the press, universities, and law firms have not been universally successful on every particular, but on the whole, Trump has already reshaped these institutions in significant ways in a very short time period. There are a number of factors these institutions

14263, 90 Fed. Reg. 15615 (Apr. 9, 2025) (ordering the same for Susman Godfrey LLP). President Trump also issued an Executive order declaring that “it is no longer in the national interest” for President Biden and several others who worked in the Biden administration to have security clearances. One of the people listed is Mark Zaid, a prominent lawyer for government whistleblowers. Zaid successfully obtained a preliminary injunction ordering the reinstatement of his security clearance. *Zaid v. Exec. Off. of the President*, No. CV25-01365 (AHA), 2025 WL 3724884 (D.D.C. Dec. 23, 2025), *appeal docketed*, No. 26-5009 (D.C. Cir. Jan. 13, 2026). The government’s appeal is pending.

¹¹⁸ Advisory Opinions, *supra* note 116, at 36:02–37:43.

¹¹⁹ See *supra* note 117 (listing Trump’s executive orders against law firms).

¹²⁰ Vile, *supra* note 115 (internal quotation marks omitted).

¹²¹ *Id.*

¹²² Carrie Johnson, *Trump’s Deals With Law Firms Are Like Deals ‘Made With a Gun to the Head,’ Lawyers Say*, NPR (May 31, 2025, 5:00 AM), <https://www.npr.org/2025/05/31/nx-s1-5406173/trump-deals-law-firms>.

¹²³ See, e.g., *Susman Godfrey LLP v. E.*

xec. Off. of the President, 789 F. Supp. 3d 15 (D.D.C. 2025) (holding that the executive order violated the First Amendment, the Due Process Clause, the Fifth Amendment, and separation-of-powers principles), *appeal docketed*, No. 25-5310 (D.C. Cir. Aug. 26, 2025); *Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Off. of the President*, 784 F. Supp. 3d 127, 174 (D.D.C. 2025) (holding that the executive order violated the First Amendment, the law firm’s procedural due process rights, and separation of powers doctrine), *amended by* No. CV 25-917 (RJL), 2025 WL 2105262 (D.D.C. June 26, 2025), *appeal docketed*, No. 25-5277 (D.C. Cir. July 28, 2025); *Jenner & Block LLP v. U.S. Dep’t of Just.*, 784 F. Supp. 3d 76, 118 (D.D.C. 2025) (holding that the executive order violated the First Amendment), *appeal docketed*, No. 25-5265 (July 22, 2025); *Perkins Coie LLP v. U.S. Dep’t of Just.*, 783 F. Supp. 3d 105, 180–81 (D.D.C. 2025) (holding that the executive order violated the First and Fifth Amendments), *appeal docketed*, No. 25-5241 (July 2, 2025).

have in common that have led to this remarkable success: (1) the need for money; (2) the lack of legal clarity; (3) anticipatory compliance and the chilling effect; (4) a weak commitment to free speech values; and (5) a failure of collective action.

A. *Money: Hitting Them Where It Hurts*

In hindsight, it should seem so obvious: our democratic institutions need money to achieve their missions. It is easy to glorify our Ivy-clad universities, white shoe law firms, and hearty Fourth Estate as immune from political pressure. But they aren't.

Indeed, apart from the legendary status of these institutions, one reason many may have thought they were immune from brute attack is precisely because they have a lot of money. The top universities have endowments larger than the GNP of small countries; fancy law firms charge their clients hefty fees and make handsome profits; and incredibly wealthy people own some of the most influential media outlets today.¹²⁴ With all of this money comes the expectation—some would say duty—to defy authoritarianism. As it turns out, however, this resistance is difficult as a practical matter, and it is financially very painful. For these institutions, whether to capitulate to Trump is often a purely business decision. Courage is too expensive.

1. *Press*

In the context of threats from the Trump administration and Trump himself, the press faces monetary pressures in two obvious ways: (1) interference with lucrative transactions; and (2) the risk of high jury verdicts in the lawsuits Trump has brought. A third less obvious and relatively new danger: that parent companies that own the press outlets fear damage to their other corporate interests.

To date, the most high-profile capitulation to curry political favor is Paramount's settlement of Trump's lawsuit based on the editing of a *60 Minutes* interview with then-presidential candidate Kamala Harris. Although Paramount had some legal exposure—after all, the case was filed in Texas, hardly media-friendly territory—the circumstances surrounding the \$16 million settlement certainly made it look like a “payoff dressed up as a settlement.”¹²⁵ But given that the case rested on classic editorial decisions, and Trump won the election, it is hard to see how Paramount legitimately had much to fear in court. The newly formed Paramount Skydance company has frequently made headlines since the merger for embracing several controversial editorial policies, from agreeing to the installation of a “bias monitor” as a condition of the merger itself, to the

¹²⁴ Examples include The Washington Post (Jeff Bezos), Paramount (Sheri Redstone), the Los Angeles Times (Patrick Soon-Siong), Meta (Mark Zuckerberg), and X (Elon Musk).

¹²⁵ Bennett & Norris, *supra* note 52.

installation of Bari Weiss as the editor-in-chief of CBS News despite her lack of relevant experience, who, in turn, has made a series of controversial editorial decisions that have put CBS News in turmoil.¹²⁶ FCC Chair Brendan Carr has used his regulatory powers to pressure (some might say “jawbone”) other entities to cave. For example, Nexstar said it would preempt Jimmy Kimmel Live at the same time its merger with Tegna was pending.¹²⁷ As one professor has explained, these media companies are facing “the myriad incalculable ways his administration could retaliate against the corporation’s extended business interests.”¹²⁸ These attacks have measurable financial costs, whereas the cost of preserving a free press is “incalculable,” and one the businesses do not want to bear.¹²⁹

Some of the other press/Trump settlements are also questionable, although to be fair, in some of these cases the press faced some real legal risk. For example, ABC settled Trump’s lawsuit based on George Stephanopoulos’s erroneous statement that Trump had been found “liable for rape” in a civil trial in New York, when in fact he had been held liable for “sexual abuse.”¹³⁰ Settling for \$16 million strikes some as excessive given the incremental harm of Stephanopoulos’s statements compared with the truth. But ABC lost its motion to dismiss and feared that a jury in Trump’s deep-red home state would award damages that were far greater, particularly before a judge who seemed highly unfavorable.¹³¹ Although ABC felt that the law was on their side and they would win on appeal even if they lost at trial, the company also feared the possibility that the case could end up at the Supreme Court and serve as a vehicle for overturning *New York Times Co. v. Sullivan*.¹³²

¹²⁶ Geoff Bennett & Karina Cuevas, *FCC Chairman Says Network Oversight Offers a Needed ‘Course Correction’*, PBS NEWS (July 31, 2025, 6:40 PM), <https://www.pbs.org/newshour/show/fcc-chairman-says-network-oversight-offers-a-needed-course-correction>; Kevin Dolak, *Bari Weiss Takes Hiatus from Podcast as Turmoil Mounts at CBS News*, THE HOLLYWOOD REP. (Jan. 23, 2026, 5:44 PM), <https://www.hollywoodreporter.com/news/general-news/bari-weiss-honestly-hiatus-cbs-news-60-minutes-bloodbath-1236483339/> (reporting that Weiss’s tenure has sparked internal turmoil at CBS, including layoffs, allegations of ideological favoritism, and her last-minute withdrawal of a *60 Minutes* segment unfavorable to the Trump administration).

¹²⁷ Scott Nover, Will Oremus & Jeremy Barr, *Trump FCC Chief is Relishing His Big Kimmel Moment*, WASH. POST. (Sept. 19, 2025), <https://www.washingtonpost.com/business/2025/09/19/trumps-media-enforcer-is-relishing-his-jimmy-kimmel-moment/>.

¹²⁸ *Id.* (quoting Professor Mark Feldstein of the University of Maryland) (internal quotation marks omitted).

¹²⁹ *Id.* (quoting Professor Mark Feldstein of the University of Maryland) (internal quotation marks omitted).

¹³⁰ Brooks Barnes, *Inside Disney’s Decision to Settle a Trump Defamation Suit*, N.Y. TIMES (Dec. 18, 2024), <https://www.nytimes.com/2024/12/18/business/media/disney-trump-abc-lawsuit.html>.

¹³¹ *Id.* In her opinion denying Disney’s motion to dismiss, the judge wrote: “‘A reasonable jury could interpret Stephanopoulos’s statements as defamatory.’ . . . ‘Stephanopoulos stated *ten times that a jury — or juries — had found plaintiff liable for rape.*’” *Id.* (emphasis in original).

¹³² *Id.*

ABC did not just fear monetary damages from the lawsuit, however. Perhaps even greater damages could result from injuries to the other, non-media corporate activities of Disney, its parent company. Reportedly, Disney feared that while the ABC lawsuit was pending, Disney could face right-wing boycotts of their theme parks, which was the kind of bruising—and expensive—public relations battle they fought against Governor DeSantis.¹³³ This illustrates the new kind of danger that comes from having giant corporate conglomerates, engaged in a variety of non-expressive activities, owning media companies.

It is perhaps not surprising that the NYT has been the most willing to stand up to Trump. It is not wealthier than the other entities willing to settle, but the NYT is not part of a conglomerate; its other business interests are not at risk if it fails to placate Trump. In addition, one basis for the NYT's longstanding stance against settlement is a belief that settlements encourage more defamation plaintiffs to bring lawsuits, which would ultimately cost the paper more money in the long run.¹³⁴ Protecting its reputation for accurate news is part of its brand; not settling lawsuits is also a business decision.

The WSJ has also shown an unwillingness to settle; it is currently fighting the lawsuit Trump filed based on the publication of Epstein's infamous birthday card.¹³⁵ Here, the explanation for the WSJ's vigorous defense is a bit more complicated. The WSJ is part of Rupert Murdoch's consolidated media empire: News Corp. All of the entities under this corporate umbrella are also media entities. Although News Corp is not currently engaged in any major deals that would require FCC approval, News Corp does own Fox News, whose stations are subject to FCC oversight. However, Fox News is known to be conservative and therefore in favor with the Trump administration. One media analyst Michael Savage has suggested that it is actually financially beneficial for Murdoch to have his "bases covered" by supporting a publication (WSJ) that appeals to conservatives skeptical of Trump, because he also has Fox News "serv[ing] up content for loyal Trump supporters."¹³⁶

Although not part of the legacy media, social media plays an essential part of our public discourse today. As a result, it is worth noting Meta's

¹³³ *Id.*

¹³⁴ Robert Reich, *Trump's Suit Against the New York Times is Nonsense. Yet it Poses a Grave Threat*, THE GUARDIAN (Sept. 18, 2025, 6:00 AM), <https://www.theguardian.com/commentisfree/2025/sep/18/trumps-suit-against-the-new-york-times-is-nonsense-yet-it-poses-a-grave-threat>.

¹³⁵ In April 2026, the federal district court granted the defendants' motion to dismiss Trump's lawsuit, with leave to amend. *Trump v. Dow Jones & Co., Inc.*, No. 1:25-CV-23232, 2026 WL 979572 (S.D. Fla. Apr. 13, 2026); Corbin Bolies, *Media Goes on Offense as Trump Steps up His War on Journalism*, THE WRAP (Nov. 25, 2025, 6:00 AM), <https://www.thewrap.com/trump-nyt-wsj-guardian-lawsuit-threat>.

¹³⁶ Michael Savage, *Trump v. Murdoch: Why the Wall Street Journal Isn't Toeing the Line*, GUARDIAN (Jul. 18, 2025), <https://www.theguardian.com/media/2025/jul/18/murdoch-trump-epstein-wsj-analysis>.

payment of \$25 million to settle Trump's lawsuit based on the company's decision to de-platform him following the January 6 attack on the Capitol.¹³⁷ As Jameel Jaffer expertly explained in an op-ed,¹³⁸ this settlement is perhaps the least defensible one of all. Meta's decision to deplatform Trump was a clear exercise of its own First Amendment rights, the kind of exercise of editorial discretion the U.S. Supreme Court has blessed.¹³⁹ The motivation for this settlement can be nothing less than a blatant attempt to curry favor with Trump to reduce regulatory oversight, particularly as they roll out new AI products free from government interference. For social media companies, it is easy to equate reduced (or non-existent) government regulation to the likelihood of more money. For Meta, therefore, a \$25 million payout likely seemed like a bargain.

2. Universities

Universities are in the most precarious financial situation because they heavily rely on federal funds, student loans, and high international student enrollment to achieve their basic teaching and research missions.

Since 1945, universities and the federal government have been in a mutually beneficial relationship. During World War II, the government realized the importance of research for the national good. Rather than establish federal research laboratories, it made more sense to enter into contracts with universities to perform that research. As universities have grown their research missions, they have increasingly relied on billions of federal dollars to do so.¹⁴⁰

Although there have been some tensions in this relationship in the last eighty years, they have been relatively minor. For example, at the outset, the university leaders were hoping to get federal support for "pure" research, whereas the government was more interested in applied research. In addition, because the government declares the research priorities, it has some impact on the direction of the universities' research missions.¹⁴¹ Although some of the targeted universities have massive endowments, these endowments are insufficient to replace lost federal funding.¹⁴² The amount of money the federal government provides to support research year after year is staggering, and dwarfs the endowments of even the most major

¹³⁷ Mike Isaac & Maggie Haberman, *Meta Agrees to Pay Trump \$25 Million to Settle His Lawsuit*, N.Y. TIMES (Jan. 29, 2025), <https://www.nytimes.com/2025/01/29/technology/meta-trump-lawsuit-settlement.html>.

¹³⁸ Jameel Jaffer, *This Is Not a Moment to Settle With Trump*, N.Y. TIMES (Feb. 4, 2025), <https://www.nytimes.com/2025/02/04/opinion/trump-media-lawsuit-freedom.html>.

¹³⁹ *Id.*

¹⁴⁰ For more details about this history, see Papandrea, *supra* note 69.

¹⁴¹ I discuss this relationship in more detail in *id.*

¹⁴² Steven Bloom & Jack Nicholson, *No, Endowments Are Not the Answer to Federal Attacks on Higher Ed*, HIGHER EDUC. TODAY (Apr. 22, 2025), <https://www.higheredtoday.org/2025/04/22/no-endowments-are-not-the-answer-to-federal-attacks-on-higher-ed/>.

universities. They might be able to afford short-term, temporary coverage of lost funding—and many have provided this—but the endowment is not a long-term solution.¹⁴³ Furthermore, the endowments consist of many separate funds, some of which are restricted for specific uses that cannot be redirected.¹⁴⁴ In addition, funding from private individuals and foundations is also unlikely to be sufficient to bridge the gap.¹⁴⁵

As one of the only universities to fight the government to date, Harvard has learned exactly how much power the federal government has over higher education. Not only does the federal government provide research funding, but it also oversees immigration (essential for international students, who often pay full tuition), patents, and student loans. As discussed in more detail below, legal fights challenging the Trump administration on all of these fronts are themselves expensive, with uncertain results. For many universities, it makes more sense to appease the bully Trump not only to restore federal research funding but also to increase the chances of avoiding financial challenges from these additional pressure points.

3. *Law Firms*

The willingness of some of the nation's most prominent law firms to settle with Trump appears to be entirely about money.

The capitulation of law firms to Trump has been deeply distressing. To start with the obvious, law firms are comprised of lawyers; lawyers are not trained to capitulate in the face of flimsy legal threats. Instead, they are trained to fight, and often to fight against government overreach. For this reason alone, it is so hard to fathom why some of the nation's leading law firms collapsed in the face of these threats. To be sure, some firms mentioned concerns that they would have to lay off some of their employees if they did not take a deal, presumably because they would have fewer clients and correspondingly less revenue.¹⁴⁶ Truly, it is heartwarming to think of these major firms as expressing concern about their staff in this way. At the same time, however, layoffs are not unknown at major firms, as a class, and, generally speaking, layoffs happen in most businesses at some point as revenue ebbs and flows.

Instead, it appears the settling law firms were less concerned about their staff, and more concerned about the profits per partner. Yale Law Professor

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ See Alan Blinder & Vimal Patel, *Can Donors Fill the Major Budget Holes That Colleges Face Under Trump?*, N.Y. TIMES (June 28, 2025), <https://www.nytimes.com/2025/06/28/us/donors-universities-funding-gaps-trump-administration.html> (discussing some of the practical difficulties of relying on private dollars).

¹⁴⁶ Sam Levine, *'A Capitalistic Cowardice': Big Law Firms Being Threatened by Trump Face Pressure to Speak Out*, THE GUARDIAN (Mar. 26, 2025), <https://www.theguardian.com/us-news/2025/mar/26/trump-executive-orders-law-firms> (explaining the law firms' reasoning behind the decision to strike a deal with Trump).

John Morley has argued that a firm like Paul, Weiss likely thought settlement was necessary to avoid the possibility of a “death spiral.”¹⁴⁷ The theory is that if a law firm loses clients, it loses revenue, and when it loses revenue, its partners take their clients elsewhere to make more money, which leads to even less revenue for the firm.¹⁴⁸ Morley also pointed out that Paul, Weiss had many more transactional lawyers who can more easily switch firms than litigators.¹⁴⁹

Psychological studies looking at the personalities of the law firm managing partners who settled and who did not settle might also reveal characteristics that help explain the different law firm reactions to Trump’s demands. Lawyers are known to be risk-averse, and even if they had confidence that they would prevail in court, they would rather not take any risk of endangering their ability to represent their clients. In addition, the settling law firms may have also presumed their own clients would be risk-averse and be unwilling to retain counsel viewed as “persona non grata” by the current administration.¹⁵⁰

Relatedly, law firms with large transactional practices seemed more likely to settle, and litigation firms like Williams & Connolly LLP seemed more willing to step up to represent the targeted firms in court.¹⁵¹ This suggests that firms with a higher proportion of non-litigators are more likely to want the interference with their practice to go away. This might be, as John Morley argued, because a law firm is more at risk for a “death spiral” if it has a higher number of transactional lawyers.¹⁵² It is also possible transactional lawyers are concerned about getting regulatory approval for their clients.¹⁵³ It might also be the case that at least some litigators—like the noted criminal defense lawyers at Williams & Connolly—are simply more used to fighting the government.

¹⁴⁷ John Morley, Opinion, *Why Paul Weiss Struck a Deal with Trump*, WALL STREET J. OP.: FREE EXPRESSION (Mar. 28, 2025, 5:45 PM), <https://www.wsj.com/opinion/why-paul-weiss-struck-a-deal-with-trump-law-firm-business-model-35bf7978>.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ David Lat, *Brad Karp’s Email to Paul Weiss About Its Deal With the Trump Administration*, ORIGINAL JURISDICTION (Mar. 23, 2025, 9:45 PM), <https://davidlat.substack.com/p/brad-karp-firmwide-email-to-paul-weiss-about-the-trump-administration-deal>.

¹⁵¹ Justin Henry, *Perkins Coie Hires Williams & Connolly Lawyers to Fight Trump*, BLOOMBERG L. (Mar. 10, 2025, 6:51 PM), https://www.bloomberglaw.com/bloomberglawnews/business-and-practice/X9P5114K000000?bna_news_filter=business-and-practice#jcite. Susman Godfrey is another litigation-focused firm that chose to fight Trump rather than enter into a “deal.” Christopher D. Hampson & Elise Bernlohr Maizel, *Ethics & Independence in Trump’s War on Big Law*, 16 CALIF. L. REV. ONLINE 69, 71 (2025). In addition, Quinn Emanuel, another “litigation powerhouse,” had agreed to represent Paul, Weiss if it decided to fight Trump. *Id.* at n.15.

¹⁵² Morley, *supra* note 147.

¹⁵³ Original Jurisdiction, *Launching a Boutique in Turbulent Times: Timothy Heaphy*, SUBSTACK, at 29:40 (Jan. 21, 2026), https://davidlat.substack.com/p/timothy-heaphy-jack-smith-law-firm-heaphy-smith-harbach-windom-podcast?utm_source=substack&utm_medium=email (interviewing Timothy Heaphy, who mentioned concerns about regulatory approval when asked about Wilkie Farr’s decision to settle).

In the months following the law firm deals, evidence suggests that these settlements might not have been so financially beneficial after all. High-profile lawyers are leaving the firms; clients are unhappy to be represented by lawyers who caved rather than fought back; and recruiting new lawyers is more challenging.¹⁵⁴ These firms are also facing potential civil and criminal investigations arising from the settlements, and the D.C. Bar has issued an opinion stating that the settlements pose conflicts of interest and other ethical problems, including concerns about their “diligence and zeal” and their “professional independence.”¹⁵⁵ The D.C. Bar stated that:

A major concern of this opinion is how a firm that enters into an agreement with conditions that may limit or shape their law practice would deal with a current or proposed matter in which its client’s position is directly adverse to a program or policy in which the government in question has a strong interest.¹⁵⁶

In addition, the D.C. Bar added, obtaining a waiver of this conflict of interest could be “difficult.”¹⁵⁷

B. *Lack of Legal Clarity*

Even if these institutions have the will to resist Trump, the practical reality is that the outcome of their legal challenges is uncertain. Furthermore, the federal court system has not shown itself to be a robust bulwark to Executive branch authority. In addition, lawsuits take time; the delay alone may lead some affected parties to seek a negotiated resolution, even if they feel confident that their legal challenge would ultimately prevail. To obtain a preliminary injunction, litigants must demonstrate not only irreparable harm and the likelihood of success on the merits, but also that no available remedy at law, such as monetary damages, is adequate to compensate its injury, and that the balance of hardships and the public interest support an injunction.¹⁵⁸ In addition, some plaintiffs have discovered that they lack standing to bring their claims, or that their claims are otherwise nonjusticiable, often because they are not yet “ripe.”¹⁵⁹

¹⁵⁴ Daniel Barnes, *Inside the Fallout at Paul, Weiss After the Firm’s Deal with Trump*, POLITICO (June 29, 2025, 7:00 AM), <https://www.politico.com/news/2025/06/29/paul-weiss-brad-karp-trump-fallout-00420354>.

¹⁵⁵ D.C. Bar Ass’n Legal Ethics Comm., Ethics Op. 391 (Oct. 2025), <https://www.dcbbar.org/for-lawyers/legal-ethics/ethics-opinions-210-present/ethics-opinion-391> (discussing how law firm settlements with the government pose conflicts of interest and other ethical problems).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ See *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006) (setting forth the standard for preliminary injunctions).

¹⁵⁹ See, e.g., *Am. Ass’n of Univ. Professors v. U.S. Dep’t of Just.*, No. 25-cv-2429 (MKV), 2025 WL 1684817, at *11 (S.D.N.Y. June 16, 2025) (holding professors lacked standing to bring challenge to revocation of their research funding); *Nat’l Ass’n of Diversity Officers in Higher Educ. v. Trump*,

1. *The Press*

Trump's attacks on the press come from multiple directions; as a result, it is necessary to cover several areas of the law to appreciate the full extent of this uncertainty.

The FBI's shocking search of a Washington Post reporter's home unfortunately highlights the depth of the uncertainty of legal protections for national security reporters. David Schulz explores this legal uncertainty in more detail in this symposium issue;¹⁶⁰ I have also noted such concerns in my own scholarship.¹⁶¹

Briefly, current federal law provides ample statutory provisions under which a reporter who receives or publishes national security information could be prosecuted under a variety of vague statutes.¹⁶² The First Amendment provides only nominal protection against any such prosecutions. The Pentagon Papers case (*New York Times Co. v. United States*) held merely that the government could not obtain a prior restraint against newspapers that wanted to publish national security information that did not show any immediate danger to national security, with six Justices specifically leaving open the possibility of subsequent criminal prosecution for such publication.¹⁶³ In 2001, the Court held in *Bartnicki v. Vopper* that the First Amendment provided a defense for a third-party recipient of illegally wiretapped information, but the opinion is carefully limited to situations where that recipient had "clean hands;" i.e., had done nothing at all to facilitate that exchange of information.¹⁶⁴ As if the obvious limitations of these two decisions were not enough, consider that the composition of the Court is almost entirely different today, with no Justices remaining from the Pentagon Papers case and only Justice Thomas remaining from the *Bartnicki* court (and he dissented!). The Court's opinion of the institutional press appears to have decreased during the ensuing decades.¹⁶⁵ It is hardly clear that a reporter today could rely on the First Amendment as a defense if charged under the Espionage Act or any other federal statute.

167 F.4th 86, 97 (4th Cir. 2026) (holding that plaintiffs lacked standing with respect to the Enforcement Threat Provision).

¹⁶⁰ David Schulz & Brian O'Neill, *Chilling Ambiguity: Can Espionage Act Liability be Imposed for Reporting News?*, 58 CONN. L. REV. (forthcoming May 2026); see also David Schulz, *By Raiding a Reporter's Home, Is the F.B.I. Weaponizing National Security?*, N.Y. TIMES (Jan. 16, 2026), <https://www.nytimes.com/2026/01/16/opinion/fbi-raid-washington-post-law.html> (noting that historically, seizure of reporters' records has been more rare than it is under the Trump administration).

¹⁶¹ See, e.g., Papandrea, *supra* note 6, at 238–40 (noting how the current executive branch is given "unbridled" authority to keep information out of the public eye); Mary-Rose Papandrea, *Leaker Traitor Whistleblower Spy: National Security Leaks and the First Amendment*, 94 B.U. L. REV. 449, 454 (2014) (arguing that criminal sanctions against leakers should be limited so as not to improperly stifle speech).

¹⁶² For more details about these statutes, see Papandrea, *supra* note 6, at 262–77.

¹⁶³ *N.Y. Times Co. v. United States*, 403 U.S. 713, 714, 718, 722–26, 730, 746 (1971).

¹⁶⁴ *Bartnicki v. Vopper*, 532 U.S. 514, 530–35 (2001).

¹⁶⁵ RonNell Andersen Jones & Sonja R. West, *The U.S. Supreme Court's Characterizations of the Press: An Empirical Study*, 100 N.C. L. REV. 375, 376–78, 428–29 (2022).

Even without bringing criminal charges against a reporter or news outlet, the federal government can make life for a national security reporter miserable by subjecting them to surveillance and subpoenas. The U.S. Supreme Court has never recognized a First Amendment privilege against a government subpoena in a leak investigation; indeed, the only case to consider the issue, in the context of a grand jury subpoena, held that no such privilege applied.¹⁶⁶ The Attorney General has media guidelines that theoretically could provide some protection for reporters,¹⁶⁷ but the Trump I DOJ did not follow these guidelines, and the search of Hanna Natanson's home suggests a strong likelihood that the DOJ under Trump II is likewise going to ignore them. Because these guidelines do not create any enforceable rights for journalists, there is nothing the press can do when the government refuses to follow them.

The Associated Press's case challenging Trump's decision to exclude them from certain press conferences and other briefings reveals that the press has no clear right of access to government information, much less to the Oval Office. Indeed, the White House won a big victory in the D.C. Circuit when that court ruled that the White House likely can bar the Associated Press from the press pool in retaliation for its continued use of "Gulf of Mexico"—rather than Trump's preferred name "Gulf of America"—because these restricted presidential spaces are not public fora.¹⁶⁸ As mentioned earlier, the Executive branch historically engaged voluntarily in exchanges with the press because it served the Executive's own purposes; without the press, the president would find it difficult to tell the public about his activities. The legal challenge to the new Pentagon access rules similarly reveals how difficult it is to assert a constitutional right to ask the government questions. A divided panel of the D.C. Circuit held that the Department of Defense was likely to succeed against the NYT's challenge to its new rule requiring reporters to have escorts when inside the Pentagon.¹⁶⁹

Some of the defamation cases Trump has brought are not clearly frivolous. As discussed above, Disney/ABC faced some potential legal risk

¹⁶⁶ *Branzburg v. Hayes*, 408 U.S. 665, 690–92 (1972). Justice Powell's enigmatic opinion leaves open the possibility of some type of privilege, and the press has exploited this ambiguity to the hilt. But without a federal statutory reporters privilege, whether a reporter can assert a privilege against testifying will depend on the court in which the subpoena is enforced.

¹⁶⁷ See 28 C.F.R. § 50.10 (2025) (listing guidelines that could help protect reporters). Although the revised guidelines express concern about government employee leaks, the new policy subjects the use of legal process to obtain records from or of the news media to a balancing test, protects "lawful newsgathering activities," covers attempts to obtain "communications records" or "business records" about the news media from third parties, retains important procedural limitations on subpoenas (such as exhaustion and tailoring requirements), and leaves in place notice requirements. *Id.*

¹⁶⁸ *Associated Press v. Budowich*, 780 F. Supp. 3d 32, 47–50, 60 (D.D.C. 2025), *appeal docketed*, No. 25-5109 (D.C. Cir. Apr. 10, 2025), *stay pending appeal granted in part*, No. 25-5109, 2025 WL 1649265 (D.C. Cir. June 6, 2025).

¹⁶⁹ See *N.Y. Times Co. v. Dep't of Def.*, <https://www.courthousenews.com/wp-content/uploads/2026/04/dc-circuit-pentagon-emergency-stay-opinion.pdf>.

in the George Stephanopoulos case. Likewise, the Pulitzer Board lost its attempt to win an early dismissal of Trump's defamation case,¹⁷⁰ and the new case against the BBC is not entirely risk-free either.¹⁷¹ Without a successful motion to dismiss, these media outlets face not only intrusive discovery but also the possibility of an uncertain outcome at trial and on appeal.

The best defense in these cases is typically the actual malice intent requirement *Sullivan* established for any defamation case involving a public-official plaintiff.¹⁷² Two sitting Justices have expressed an interest in revisiting that precedent,¹⁷³ and overturning that case has been a pet project of conservatives for a long time. At the moment, however, it seems difficult to count to five to get a reversal of *Sullivan*, especially in the context of the most high-profile public official of them all, the president. Nevertheless, *Sullivan* does not offer the press absolute immunity against defamation lawsuits involving public officials; as a result, the outcome of any particular lawsuit is uncertain. Often the press has to rely on the appeals process to overcome an unfavorable jury verdict. Gawker Media, which was rendered bankrupt as a result of the Terry Bollea case when it was unable to post a bond on appeal, would be the first to caution media outlets about relying on the appellate process to be vindicated.¹⁷⁴

Finally, the Trump administration and FCC Chair Brendan Carr have unearthed some regulatory provisions they can use to threaten broadcasters.¹⁷⁵ The FCC is in charge of licensing broadcast radio and television, and has a number of provisions on the books that it can use to threaten the stations.¹⁷⁶ In particular, Carr has threatened stations with actions under the public interest doctrine and the “news distortion” doctrine.¹⁷⁷ Although there are strong arguments that the First Amendment limits the FCC's authority to weaponize these provisions to limit speech Trump does not like, the constitutionality of these provisions remains

¹⁷⁰ Josh Gerstein, *Trump Wins Round in Libel Suit against Pulitzer Prize Board over Russia Stories*, POLITICO (July 21, 2024, 11:00 AM), <https://www.politico.com/news/2024/07/21/trump-libel-suit-pulitzer-prize-00169975> (reporting Florida judge denied the Pulitzer Board's motion to dismiss Trump's complaint on the grounds that the challenged statements were protected opinion).

¹⁷¹ See Lianne Kolirin, *The BBC Says It Will Ask For Dismissal of Trump's Lawsuit*, CNN (Jan. 13, 2026), <https://www.cnn.com/2026/01/13/media/bbc-will-ask-dismiss-trump-lawsuit-intl> (noting that the BBC has apologized to the Trump Administration for its depictions).

¹⁷² N.Y. Times Co. v. Sullivan, 376 U.S. 254, 279–80 (1964).

¹⁷³ *Berisha v. Lawson*, 141 S. Ct. 2424, 2424–25 (2021) (Thomas, J., dissenting from denial of certiorari) (dissenting from denial of certiorari on historical meaning grounds and criticizing the “actual malice” standard in the modern media); *id.* at 2425–30 (Gorsuch, J., dissenting from denial of certiorari) (same).

¹⁷⁴ Mary-Rose Papandrea, *Media Litigation in a Post-Gawker World*, 93 TUL. L. REV. 1105, 1118 (2019).

¹⁷⁵ See Jim Rutenberg, *The MAGA Plan to Take Over T.V. is Just the Beginning*, N.Y. TIMES (Jan. 13, 2026), <https://www.nytimes.com/2026/01/12/magazine/fcc-tv-networks.html> (discussing various FCC rules used to make stations comply).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

murky.¹⁷⁸ As Professor Stuart Benjamin recently argued, “[b]roadcast content regulation . . . is subject to much more lenient judicial review and rests on sweeping statutory authority, making broadcasting the easiest target for an administration intent on regulating media content.”¹⁷⁹

2. *Law Firms*

The executive orders retaliating against the law firms imposed sweeping restrictions on the ability of the firms to engage in the practice of law. Some of the penalties, such as prohibiting access to federal courts, are unprecedented, but law firms likely would feel confident that most courts, including the U.S. Supreme Court, would strike down that penalty as unconstitutional.¹⁸⁰

On the other end of the spectrum, however, the likelihood of success in a challenge to the revocation of a national security clearance is much more uncertain. As Judge Bates recognized when entering a preliminary injunction against this revocation, the Executive branch receives deference for its national security decisions.¹⁸¹ Furthermore, as with universities, the threat of ongoing retaliation remains for those law firms that are not in Trump’s good graces. For example, law firms hoping to be hired to represent the federal government or to receive government contracts would have a very difficult time waging a legal case against the government if they were not hired or did not receive a particular contract in the future. The reasons for any such failures would be much harder to demonstrate; in any event, the government has a nonfrivolous argument that it can choose lawyers with whom it feels more politically aligned.

3. *Universities*

As with law firms, universities stand on much firmer legal footing when challenging the revocation of existing federal grants and contracts. The Trump administration has made such challenges even easier with its very blatant statements about why President Trump is clawing back these funds. But it is not entirely smooth sailing for universities, especially if the Trump administration does a better job in the future of following the proper procedures for its actions.

¹⁷⁸ *Id.*

¹⁷⁹ Stuart Minor Benjamin, *Making Broadcast Content Regulation Aggressive Again*, 2026 J. FREE SPEECH L. 1047, 1114.

¹⁸⁰ Even here, however, it could have been difficult for the firms to challenge this portion of the executive order due to possible ripeness problems. *See, e.g., Jenner & Block LLP v. U.S. Dep’t of Just.*, 784 F. Supp. 3d 76, 113 (D.D.C. 2025) (noting the possibility that the DOJ’s ripeness arguments “might have a bit more meat” with respect to a law firm’s Fifth and Sixth Amendment arguments, “as those claims might turn on the degree to which the contemplated ‘guidance’ kneecaps Jenner’s ability to fulfill its obligations to its clients”). In *Jenner & Block*, the district court held that this portion of the order was likely unconstitutional under the First Amendment because it was imposed in retaliation for Jenner’s exercise of its First Amendment rights. *Id.* at 112.

¹⁸¹ *Id.* at 101.

In addition to facing the justiciability issues mentioned above, universities are currently embroiled in a massive jurisdictional fight about whether challenges to government contracts must be heard in the Court of Federal Claims or can be heard in federal district court.¹⁸² This means that university actions may have to proceed in two different courts,¹⁸³ which would lead to additional costs, delays, and uncertainty.

The pressure points that the Trump administration is exploiting to bend universities to its will are overwhelming. Government contract law may allow the government to cancel research contracts relying on a contractual provision permitting “termination for convenience.”¹⁸⁴ Like law firms, universities would also face virtually insurmountable practical difficulties if they wanted to challenge the government’s refusal to award them federal grants and contracts in the future. The way the Trump administration has gone about threatening universities in the first year of his second term has been like a bull in a china shop, which has opened up possible procedural challenges to executive action. University lawyers are well aware, however, that if the Trump administration follows the proper procedures in the future, those objections will not be available.

Individual professors, students, staff, and professional associations face their own difficulties if they try to fight the Trump administration on their own. One example that has made it into the court reporters is Columbia University. The Southern District of New York has held that Columbia professors lack standing to challenge the Trump administration’s actions because many of the actions to which they objected originated before Columbia signed a deal.¹⁸⁵ Any such jawboning argument by Columbia itself (although not made in any litigation to date) would likewise suffer from a similar problem; it is impossible to say whether Columbia made these changes because the Trump administration coerced them into doing so, or because they wanted to make them anyway.

¹⁸² See *Dep’t of Educ. v. California*, 604 U.S. 650, 651 (2025) (holding that claims seeking payment of contract must be brought in Court of Federal Claims); see also *Nat’l Inst. of Health v. Am. Pub. Health Ass’n*, 145 S. Ct. 2658, 2660–62 (2025) (Barrett, J., concurring in the partial grant of the application for stay) (providing determinative vote for preliminary holding that university claims for contract termination must be brought in the Court of Federal Claims).

¹⁸³ *Id.* at 2662 (Barrett, J., concurring in the partial grant of the application for stay) (“[M]y preliminary judgment is that the plaintiffs’ challenges to the grant terminations belong in the CFC, and their APA challenges to the guidance belong in district court.”).

¹⁸⁴ DAVID H. CARPENTER, CONG. RSCH. SERV., LSB11275, *THE GOVERNMENT’S BROAD POWER TO TERMINATE PROCUREMENT CONTRACTS 1–2* (Mar. 7, 2025) (discussing the broad power to terminate contracts for the government’s convenience).

¹⁸⁵ *Am. Ass’n of Univ. Professors v. U.S. Dep’t of Just.*, No. 25-CV-2429, 2025 WL 1684817, at *11–13 (S.D.N.Y. June 16, 2025).

C. *The Chilling Effect*

The most pernicious result of the Trump administration's actions against the press, universities, and law firms is that they have led so many of these institutions to engage in "anticipatory compliance" in order to avoid Trump's wrath. Although it is notoriously hard to measure the scope of this chilling effect, at least in some instances it appears clear that some institutions are engaging in self-censoring and changing their behavior in response to Trump's threats.

1. *Law Firms*

As previously mentioned, four law firms have won preliminary injunctions against Trump's executive orders, but nevertheless, the chilling effect on law firms and lawyers more generally remains in effect. Lawyers from the Biden administration have found it much harder to get a new job. Whereas in the past they would likely field multiple offers, they are now happy to receive one.¹⁸⁶ Prominent lawyers who served on high-profile investigations, criminal prosecutions, and civil lawsuits have scrubbed their profiles of such information. Lawyers are also refusing to take on clients who might attract unwanted attention from the Trump administration. For example, DOJ pardon attorney Liz Oyer was unable to find a lawyer to represent her after she was fired for refusing to recommend the restoration of gun rights to Mel Gibson.¹⁸⁷ Deputy Attorney General Todd Blanche publicly accused Oyer of lying about why she was fired, and in response, the Democrats on the Judiciary Committee invited her to testify.¹⁸⁸ The administration sent U.S. Marshals to Oyer's home to warn her about her testifying, which Oyer found very intimidating.¹⁸⁹ Oyer told the NYT:

I spent the entire weekend calling all of the lawyers that I know at law firms around D.C. Everybody I talked to was saying: 'Thank you so much for what you're doing. We'll do whatever we can behind the scenes to support you.' But nobody actually wanted to sit behind me at a congressional hearing. Nobody wanted to put their name on a letter to Todd Blanche.¹⁹⁰

Oyer's story is not isolated. At a recent media law conference, a lawyer told me that he refused to sign a brief defending a Trump-defamation-lawsuit target, and instead was serving in an advisory capacity only. It is impossible

¹⁸⁶ Carrie Johnson, *More Former Government Lawyers are Now Starting their Own Firms*, NPR (Jan. 21, 2026, 5:23 PM), <https://www.npr.org/2026/01/21/nx-s1-5676138/more-former-government-lawyers-are-now-starting-their-own-firms>.

¹⁸⁷ Emily Bazelon & Rachel Poser, *The Unraveling of the Justice Department*, N.Y. TIMES (Nov. 16, 2025), <https://www.nytimes.com/interactive/2025/11/16/magazine/trump-justice-department-staff-attorneys.html>.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

to know how many other lawyers are not representing clients they normally would have prior to Trump's attacks on lawyers, but lawyers for public interest groups report that fewer law firms are willing to partner with them on cases fighting the Trump administration.¹⁹¹ In addition, the law firms that did settle have reportedly shifted the resources they would have spent on more progressive pro bono cases (such as immigration and civil rights) in favor of representing causes Trump favors, such as veterans' rights and antisemitism.¹⁹² The executive orders did not prohibit this representation, but given limited resources, this shift was predictable.

2. *Press*

The cost of litigation, as well as the legal uncertainty outlined in the prior Section, fuels the chilling effect that is likely occurring at newsrooms around the country. It is one thing for the well-financed and well-lawyered WSJ and NYT to fight back when Trump files frivolous lawsuits, or when their reporters are arrested or subpoenaed, but smaller, less well-financed outlets can ill-afford this fight. Although about half of the states have anti-SLAPP laws that could result in the recoupment of attorney's fees and a quicker route to dismissal, many states, including Florida, do not have such laws, and there is no federal anti-SLAPP law.¹⁹³ As a result, it is easier to kill a story, or soften its edges, rather than vigorously investigate the federal government's activities.

Furthermore, the recent search of Hanna Natanson's home and seizure of her devices are likely to make sources concerned about the ability of reporters to keep their identities confidential, and is likely to have a chilling effect on their willingness to share information with the press. Without these sources, the ability of the public to learn what the government is doing is greatly diminished.

The press's record during the past year is decidedly mixed. Although some media outlets appear to be directly kowtowing to Trump, and others are likely trying to avoid Trump's wrath, other members of the press

¹⁹¹ Molly Redden, *Trump's War on Big Law Means It's Harder to Challenge the Administration*, PROPUBLICA (Aug. 6, 2025, 6:00 AM), <https://www.propublica.org/article/trump-law-firms-accountability-environment-police-lgbtq> (reporting fewer law firms taking on pro bono cases challenging administration rules on the environment, LGBTQ+ issues, and police accountability); Ryan Lucas, *Fewer Law Firms Are Doing Pro Bono Work for Causes That Are Unpopular with Trump*, NPR (Apr. 10, 2025, 5:45 PM), <https://www.npr.org/2025/04/10/nx-s1-5343592/fewer-law-firms-are-doing-pro-bono-work-for-causes-that-are-unpopular-with-trump>.

¹⁹² See Redden, *supra* note 191 (noting that nine corporate law firms have reached settlements with the Trump administration that require them to provide \$940 million worth of pro bono work toward "Trump-approved causes").

¹⁹³ Federal appellate courts are split about whether state anti-SLAPP laws apply in federal courts with diversity jurisdiction. The Court's recent decision in *Berk v. Choy* appears to make it less likely that such laws would apply in federal court. *Berk v. Choy*, No. 24-440, slip op. at 10 (U.S. Jan. 20, 2026). Of course, each state's law is different, which means that an *Erie* analysis could produce different outcomes, depending on the state statute at issue. *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938).

continue to play an essential role in providing information to the public. Robust criticism of the Trump administration continues on a daily basis at most major newspapers and even on late-night television, notwithstanding the Kimmel kerfuffle. In Chicago and Minnesota, for example, journalists and photojournalists are covering the ICE crackdown and protests, notwithstanding the federal government's attempts to stop them through arrests and beatings.¹⁹⁴ The press is not dead yet.

3. Universities

Evaluating how the actions of the Trump administration have caused anticipatory compliance among universities is a difficult undertaking for several reasons. First, some of the Trump administration's attacks on higher education follow a blueprint for attacks common in more conservative states for many years prior to Trump's second term. Second, some universities may have believed they needed to make some changes in light of preexisting concerns about their campus culture, student protests, and budget models. Third, many universities are complicated institutions. Not only do they engage in teaching and research, they also run major hospitals and athletic organizations. In addition, their governance systems are complicated. Faculty, administrators, boards of trustees, donors, and (in the case of public universities) legislatures frequently conflict. Trump did not create these complications; he just took advantage of them.

With these caveats, it is clear that many universities that Trump did not target have taken actions in the last year that are in line with Trump's priorities. One of the most noticeable trends is the dismantling of DEI efforts. The Chronicle of Higher Education has tracked DEI-related changes at 439 campuses in 48 states and the District of Columbia.¹⁹⁵ The U.S. Supreme Court's decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*,¹⁹⁶ which held unconstitutional affirmative action in higher education, does not explicitly require most of these changes, which include renaming DEI offices as offices for "community," eliminating affinity spaces on campus, and scrubbing websites of any reference to DEI or the history of marginalization.¹⁹⁷

Professors have widely reported increased self-censorship. Noncitizen professors who fear the revocation of their visas have testified that they are

¹⁹⁴ Jeremy Barr, *How Local and National News Outlets Are Covering the Aftermath of ICE Shooting: 'Get There, Bear Witness, Ask Questions'*, THE GUARDIAN (Jan. 17, 2026, 6:00 AM), <https://www.theguardian.com/us-news/2026/jan/17/minneapolis-ice-shooting-media-coverage>.

¹⁹⁵ Erin Gretzinger, Maggie Hicks, Christa Dutton, Jasper Smith, Sonel Cutler & Aisha Baiocchi, *Tracking Higher Ed's Dismantling of DEI*, CHRON. HIGHER EDUC. (Feb. 10, 2026), <https://www.chronicle.com/article/tracking-higher-eds-dismantling-of-dei>.

¹⁹⁶ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2207 (2023).

¹⁹⁷ Gretzinger, Hicks, Dutton, Smith, Cutler & Baiocchi, *supra* note 195.

afraid to criticize the Trump administration or Israel.¹⁹⁸ Researchers have complained that the uncertainty surrounding federal funding has made it difficult to plan for the future. The loss of research—including the loss of future scientists who decide not to pursue careers in academia in light of the uncertainty—is profound.¹⁹⁹

D. *Lack of True Commitment to the First Amendment and the Freedom of Speech*

In theory, the press, universities, and law firms all should have strong commitments to First Amendment principles. The press is called the “[F]ourth Estate” and is literally mentioned in the First Amendment.²⁰⁰ The Court has called universities the quintessential “marketplace of ideas.”²⁰¹ The Supreme Court has made clear that lawyers have the right to represent clients (and, in the case of *Gideon v. Wainwright*, that criminal defendants have the right to lawyers²⁰²) and that the government cannot undermine the arguments they make without undermining the profession itself.²⁰³

But it may be that the commitment to the freedom of speech is not as strong as we might first assume in these institutions, at least not as a class. Even before Trump took office for the second time, universities had begun to crack down on student protestors and showed little tolerance for certain viewpoints.²⁰⁴ For years, conservatives would argue that universities had long censored their viewpoints.²⁰⁵ Universities rushed to embrace institutional neutrality, nominally in the name of promoting academic freedom and free discourse on campus.²⁰⁶ Cynics note, however, that this concept, originally developed in the late 1960s and largely ignored until recently, conveniently

¹⁹⁸ Nell Gluckman, *Noncitizen Professors Testify About Chilling Effect of Others' Detentions*, CHRON. HIGHER EDUC. (July 7, 2025), <https://www.chronicle.com/article/noncitizen-professors-testify-about-chilling-effect-of-others-detentions>; *Am. Ass'n of Univ. Professors v. Rubio*, 802 F. Supp. 3d 120, 178–80 (D. Mass. 2025) (finding this testimony credible).

¹⁹⁹ Rebecca Fan, *Duke Researchers Discuss 'Chilling Effect' of Trump's NIH Funding Cuts on Research, Future of Academia*, DUKE CHRON. (Mar. 4, 2025, 12:32 AM), <https://dukechronicle.com/article/duke-university-researchers-react-to-national-institutes-of-health-research-funding-cuts-limited-communications-impact-on-duke-health-194-million-dollars-20250304>.

²⁰⁰ Delbert Tran, *The Fourth Estate as the Final Check*, YALE L. SCH.: CASE DISCLOSED (Nov. 22, 2016), <https://law.yale.edu/mfia/case-disclosed/fourth-estate-final-check>; U.S. CONST. amend. I.

²⁰¹ *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967).

²⁰² *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

²⁰³ *NAACP Supports the Right to Effective Assistance of Counsel*, NAACP (2016), <https://naacp.org/resources/naacp-supports-right-effective-assistance-counsel>; *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 544, 548 (2001).

²⁰⁴ Isabelle Taft, *How Colleges Are Cracking Down on Students Now*, N.Y. TIMES (Mar. 29, 2025), <https://www.nytimes.com/2025/03/29/us/universities-students-search-warrants.html> (noting that the increasing use of surveillance technology and shows of police force predate Trump II).

²⁰⁵ Jonathan Butcher, *Is Conservative Self-Censorship a Real Thing on College Campuses?*, GOLDWATER INST. (Feb. 20, 2020), <https://www.goldwaterinstitute.org/is-conservative-self-censorship-a-real-thing-on-college-campuses>.

²⁰⁶ Lilah Burke, *Why Colleges are Turning to Institutional Neutrality*, HIGHER ED DIVE (Dec. 3, 2024), <https://www.highereddive.com/news/why-colleges-adopt-institutional-neutrality/734284/>.

allows them to avoid saying anything (as would be their right) and prevents other departments and deans from speaking in order.²⁰⁷

In addition, at least some universities appeared to embrace the Trump administration's threats as an excuse to engage in reforms they had wanted to take all along. In other words, in making concessions to the Trump administration to keep their federal funding, universities traded away things they were already happy to trade away. This is especially true in red and purple states where their sorts of concessions made the board of trustees and legislatures happy, but this phenomenon is not limited to these states. Even in the most liberal schools in the most liberal states, university administrators are looking to make reforms. It is useful to keep in mind that from the beginning, academic freedom has existed in tension with the preferences of administrators.

The commitment of the legacy media to holding the government accountable remains strong in some instances—the WSJ and the NYT are aggressively fighting defamation lawsuits Trump has filed against them—but other outlets have been much less committed to this principle. Indeed, prior to Trump taking office, the Los Angeles Times and the Washington Post collapsed the traditional distinction between editorial and publisher sides of the newspaper. David Ellison, the head of Paramount Skydance, formerly known as Skydance, has no editorial background; this lack of experience in journalism makes it much less surprising that he was unwilling to stand up to Trump.²⁰⁸ With respect to law firms, as discussed previously, it does not seem to be an accident that law firms with heavy litigation-focused practices are more willing to take on the government, even though the bottom-line of their firms might be at risk.

E. *Failure of Collective Action*

We have seen some resistance to the Trump administration, but the failure of these democratic institutions to work together to fight off Trump's attacks has been deeply disturbing and has undermined their ability to challenge these attacks successfully.

One of the most disturbing examples of a collective-action failure was among the law firms. Instead of supporting each other, law firms turned predatory, stealing clients and lawyers from law firms under legal attack. This failure of the nation's leading lawyers to come together to stand up for the rule of law will be a longstanding black mark on the profession.

At the same time, working together will not necessarily make the Trump administration stop their attacks. For example, one of the most

²⁰⁷ *On Institutional Neutrality*, AM. ASS'N OF UNIV. PROFESSORS 4 (Feb. 2025), https://www.aaup.org/sites/default/files/AAUP_Institutional%20Neutrality_3.pdf (“The idea of neutrality has been invoked not only to protect universities’ autonomy and the academic freedom of their members but also to avoid institutional accountability and to silence dissent.”).

²⁰⁸ Rutenberg, *supra* note 175.

heartening acts of collective action occurred when the legacy press stood together in rejecting the new Pentagon press access policy.²⁰⁹ Unfortunately, however, the media is so fractured now that the people who remain are partisan loyalists, which is exactly what the Trump administration wants. The Pentagon has not rescinded its new press policy (although legal challenges are ongoing).²¹⁰ Furthermore, no other news outlets have joined the NYT as plaintiffs in the lawsuit challenging the new Pentagon access policy.

Universities are engaged in their own infighting. Red-state universities are taking advantage of the political opportunity to press aggressive reforms that lawmakers and trustees have long desired. Indeed, in many ways many of these states—most prominently Florida and Texas—were attacking what they saw as the “woke” culture on their campuses for years before Trump was elected.

But even more progressive institutions have split on their approach to the need for reform. University presidents have publicly disagreed with each other about whether Trump has even identified a real problem about the need for reform,²¹¹ and the AAUP has fractured over its more progressive stance that has alienated more moderate and conservative faculty and institutions. The Trump attacks on higher education happen to come at a time when universities are themselves engaged in a lot of introspection.

As Lee Bollinger has recently noted, universities are not used to working together outside of the context of athletics.²¹² The Ivy League, the Big Ten, and the Atlantic Coast Conference (“ACC”) do not discuss academic matters in the context of taking joint action.²¹³ As Bollinger explained, even the Association of American Universities “really just provide[s] opportunities to meet and discuss matters of shared interest.”²¹⁴ It is not designed to fight the federal government. Bollinger explains that one problem is that universities are used to fighting each other for faculty and students; rather than uniting about their shared mission to produce and transmit knowledge, universities compete with each other.²¹⁵

²⁰⁹ Bauder, *supra* note 40.

²¹⁰ Complaint, *N.Y. Times Co. v. Dep’t of Defense*, No. 1:25-cv-04218 (D.D.C. Dec. 14, 2025); Jan Wolfe, *Judge Skeptical of Pentagon’s Restrictions on Press Access*, REUTERS (Mar. 6, 2026, 12:15 PM), <https://www.reuters.com/legal/government/judge-skeptical-pentagons-restrictions-press-access-2026-03-06/>.

²¹¹ Rose Horowitz, *Elite University Presidents Who Despise One Another*, THE ATLANTIC (Sept. 25, 2025), <https://www.theatlantic.com/ideas/archive/2025/08/trump-university-presidents/683803/>.

²¹² LEE C. BOLLINGER, *UNIVERSITY: A RECKONING* 38 (1st ed., 2026).

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.* at 116–17 (noting universities “operate too much as autonomous institutions” and “are used to competing against one another and are hypersensitive to their own institutional independence”).

One silver lining is that almost all of the top universities have rejected the proposed Compact, at least in its current form. It is too early to celebrate, however. First, it does not appear that the universities who initially received the Compact worked together to reject it. Instead, each university made a decision, one by one. Second, it is quite possible that the Trump administration will come back with a pared-down revised agreement that does not so egregiously offend principles of academic freedom and institutional autonomy. Given the overwhelming need for federal support, Trump would be likely to get at least some universities to go his way if he could be less of a bull in a china shop. After all, several top universities have already agreed to “settlement” conditions that could provide the blueprint for a revised agreement.²¹⁶

At the current time, the universities show no signs of working together to fight the Trump administration. Although faculty members have filed lawsuits as members of the AAUP, the only collective action that universities have taken is holding a summit of university leaders organized by the chancellors of Vanderbilt and Washington University about how to “restore trust” in universities.²¹⁷ On the agenda are the very criticisms the Trump administration has made of higher education, such as political bias and discriminatory practices.²¹⁸ But there is no apparent organized effort to stand up for the mission of universities.²¹⁹ Instead of resistance, there is appeasement.²²⁰ Collective action is possible. For example, Bollinger writes glowingly of the collective support the University of Michigan received when litigating challenges to affirmative action.²²¹ Another example is when the universities worked together to offer students displaced by Hurricane Katrina housing and tuition-free enrollment.²²²

Law firms, universities, and the press suffer from a pre-existing public relations problem that the Trump administration has capitalized upon. Fighting back requires not just litigation—although that would be a start—but also collective *political* action to help the public appreciate the essential roles these institutions play in our democracy.²²³

²¹⁶ See Blinder, *supra* note 95 (listing settlement agreements).

²¹⁷ Arne Duncan & David Pressman, *Universities are Sending Trump a Dangerous Message*, WASH. POST (Feb. 9, 2026), <https://www.washingtonpost.com/opinions/2026/02/09/colleges-universities-trump-administration-political-interference>.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ BOLLINGER, *supra* note 212, at 117–19.

²²² Duncan & Pressman, *supra* note 217.

²²³ *Id.*

CONCLUSION

President Trump returned to office in January 2025 ready to undermine many of the institutions that are essential for a well-functioning democracy: the press, lawyers, and universities. Although his methods for attacking these institutions are distinct, they have some important similarities. In addition to expanding upon deep-seated, pre-existing tensions between the government and these institutions, Trump's efforts have capitalized on a number of common factors: (1) the need/desire for money; (2) legal uncertainty; (3) the chilling effect; (4) the lack of firm commitment to free speech principles; and (5) the failure of collective action. These institutional weaknesses leave these essential democratic institutions open to ongoing political attacks.