

No. 25-1404

In the
Supreme Court of the United States

STANDWITHUS CENTER FOR LEGAL JUSTICE, ET AL.,
Petitioners,

v.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the First Circuit**

**BRIEF OF *AMICI CURIAE* LOUIS D. BRANDEIS
CENTER FOR HUMAN RIGHTS UNDER LAW AND
AMERICAN JEWISH COMMITTEE
IN SUPPORT OF PETITIONERS**

RICHARD A. ROSEN
Counsel of Record
PAUL M. ECKLES
RAFAELA FISCHMAN
LOUIS D. BRANDEIS CENTER FOR
HUMAN RIGHTS UNDER LAW
1675 Broadway
Fl. 13
New York, NY 10019
(917) 863-3018
rrosen@brandeiscenter.com

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Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*¹

The Louis D. Brandeis Center for Human Rights Under Law (the “Brandeis Center”) is an independent, non-partisan institution for public interest advocacy, research, and education that seeks to advance the civil and human rights of the Jewish people and to promote justice for all. The Brandeis Center’s education, research, and advocacy focus specifically, though not exclusively, on the spread of anti-Semitism on college and university campuses. Brandeis Center attorneys advise and represent college and university students and employees who have been victims of anti-Semitic conduct that violates Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. §§ 2000d to 2000d-4a) (“Title VI”) and other anti-discrimination laws.

Separate and apart from the claims against the Massachusetts Institute of Technology (“MIT”) at issue in the Petition, the Brandeis Center is prosecuting another civil rights lawsuit against MIT on behalf of other plaintiffs based on the anti-Semitism they experienced at MIT. The lawsuit includes claims based on Title VI and Title VII. While the claims of a plaintiff who is a MIT employee are currently in discovery, the Title VI claims based on the anti-Semitism experienced by MIT students were all

¹ Counsel of record received timely notice of the Brandeis Center’s intent to file this brief under Supreme Court Rule 37.2. Pursuant to this Court’s Rule 37.6, counsel for amici curiae certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than amici curiae or their counsel has made a monetary contribution to the preparation or submission of this brief.

dismissed at the pleading stage based largely on the First Circuit decision at issue in the Petition.

American Jewish Committee (AJC) was founded in 1906 in the wake of European pogroms to combat anti-Semitism and defend human rights generally. Even before, but particularly since, the October 7th atrocities, it has devoted much effort to addressing anti-Semitism on campus and the often-anemic academic responses to it. This case exemplifies the issues that have recurred on campus after campus - and thus merits the Court's attention as the decision below will encourage universities to do little to address activities which turn campuses into hostile environments for Jews.

SUMMARY OF THE ARGUMENT

The First Circuit affirmed the dismissal of the complaint despite allegations that MIT permitted a campus-wide hostile environment of anti-Semitic harassment to persist without taking meaningful steps to end it. The Petition asks this Court to clarify the proper legal standard governing hostile environment claims under Title VI.

This brief addresses a related issue: whether the First Circuit erred by applying the judicially-created deliberate indifference standard to Plaintiffs' claims for prospective injunctive relief and by interpreting the standard in a highly deferential manner. Deliberate indifference was the principal

focus of the proceedings below², and the Petition argues that First Circuit’s deliberate indifference analysis was “intertwined” with and contaminated by its erroneous evaluation of the hostile environment. Accordingly, this issue is “fairly included” within the Questions Presented. *See* Sup. Ct. R. 14.1(a).

This case presents an excellent vehicle for clarifying the deliberate indifference standard. In dismissing the individual plaintiffs’ damages claims, the First Circuit afforded substantial deference to university administrators’ response to allegations of pervasive anti-Semitic harassment *at the pleading stage*, presenting an important question regarding whether Title VI affords university administrators any special deference in responding to allegations of discriminatory harassment. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 310 (2023) (Gorsuch, J., concurring) (“[n]othing in [Title VI] grants special deference to university administrators.”).

This case also provides an opportunity for clarifying the proper scope of the deliberate indifference standard in cases brought pursuant to Spending Clause statutes.³ The Court adopted the

² Deliberate indifference was the sole basis for dismissal by the district court; it was an alternative basis for affirmance cited by the First Circuit; and in his concurrence from the denial of SWU’s petition for rehearing, Judge Dunlap observed that he would have limited the affirmance to deliberate indifference.

³ We also respectfully suggest that, in an appropriate future case, the Court should revisit both the appropriateness of the judicially-created deliberate indifference standard altogether

deliberate indifference standard as a prerequisite for private plaintiffs to recover *damages as a remedy* in an implied right of action. The standard was developed for that context to reflect the statutory notice requirements governing an agency's authority to withhold or terminate federal funding. But lower courts have treated the “high standard” as defining the intentional discrimination element for all Title VI claims. The issue is especially significant in light of this Court’s repeated caution against extending judicially-created doctrines beyond their intended scope, particularly when doing so is inconsistent with the text of the statute, inconsistent with the Court’s rationale for creating the standard, and imposes material hurdles for enforcement never approved by Congress.

The questions presented have substantial practical importance. Lower courts have struggled to apply Title VI and uncertainty over its scope and application have significant consequences for its enforcement at universities nationwide. Justice Gorsuch recently called for courts to “correct course in their treatment of Title VI.” *Students for Fair Admissions, Inc.*, 600 U.S. at 310 (Gorsuch, J., concurring). And Justice Thomas has likewise recognized that “[w]hether federal courts are applying the correct legal standard under two widely utilized federal [anti-discrimination] statutes is an issue of national importance.” *A. J. T. by & through A. T. v.*

and whether claims for prospective relief against funding recipients should be limited to acts of intentional discrimination. But it need not reach these issues to determine that the First Circuit’s decision should be reversed.

Osseo Area Schs., Indep. Sch. Dist. No. 279, 605 U.S. 335, 355 (2025) (Thomas, J., concurring).

Finally, these issues present themselves against the backdrop of an explosion of anti-Semitic harassment nationwide, particularly on college campuses. The First Circuit's interpretation of Title VI, which is already being cited by courts across the country, threatens to narrow the protections Congress intended to afford students subjected to discriminatory harassment, particularly for Jewish students who have become a protected class in name only.

ARGUMENT

I. LOWER COURTS ARE APPLYING THE DELIBERATE INDIFFERENCE STANDARD IN AN OVERLY DEFERENTIAL MANNER

A. The First Circuit Improperly Deferred to MIT Administrators Over Well-Pled Factual Allegations in the Complaint

In the twenty-seven years since *Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 648 (1999), which applied the deliberate indifference standard to implied private claims for monetary damages, lower courts have extended the deliberate indifference standard to *all* Title VI/IX claims, including claims seeking prospective equitable relief. Further, they have transformed the standard into a Title VI/IX-specific pleading standard that has created an extraordinary barrier to enforcing those statutes.

In articulating the deliberate indifference standard, *Davis* held that funding recipients are liable for “acts of student-on-student harassment only where the recipient’s response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances.” *Id.* at 648. In this case, the Amended Complaint includes well-pled factual allegations of a hostile environment, including intimidation and harassment of Jewish students and professors, and an inadequate response by the university that allowed the hostile environment to continue, depriving Jewish students of an education free from discrimination. Accepting those well-pled allegations as true, as Rule 12(b)(6) requires, the Amended Complaint plausibly states a claim under *Davis* and *Gebser v. Lago Vista Independent School Dist.*, 524 U.S. 274 (1998). But the

First Circuit dismissed the case on a motion to dismiss without allowing any discovery regarding either the hostile environment or the university's response, including what alternatives were available that might have actually ended the harassment. The First Circuit's explanation for this, that "[t]his is not a case in which plaintiffs claim their school took no action in response to reported harassment . . .", *StandWithUs Ctr. for Legal Just. v. Massachusetts Inst. of Tech.*, 158 F.4th 1, 22 (1st Cir. 2025), encapsulates the doctrinal error.⁴

Part of the confusion appears to stem from dicta in *Gebser* and *Davis* and the unusual factual context in which those cases arose, as well as comments in their dissents. The dissent in *Gebser* criticized the deliberate indifference standard as creating an "exceedingly high standard." *Gebser*, 524 U.S. at 304 (Stevens, J., dissenting). *Davis* itself then characterized deliberate indifference as a "high standard." 526 U.S. at 643. Further, in response to a concern expressed in the dissent about a potential avalanche of damages claims against funding recipients, *Davis* observed that "[i]n an appropriate case, there is no reason why courts, on a motion to dismiss, for summary judgment, or for a directed verdict, could not identify a response as not 'clearly unreasonable' as a matter of law." *Davis*, 526 U.S. at

⁴ See also *StandWithUs Ctr. for Legal Just. v. Massachusetts Inst. of Tech.*, 165 F.4th 97, 101 (1st Cir. 2026) (concurrence from denial of rehearing) ("In this case, at least some efforts by MIT's administration -- efforts that will likely distinguish this case from others that may arise in the future -- undercut a finding of deliberate indifference").

649. Of course, *Gebser* and *Davis* predate both *Twombly* and *Iqbal*. See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Nothing in those later decisions suggests that Title VI claims should be exempt from the ordinary rule that courts must accept well-pled factual allegations as true and draw reasonable inferences in the plaintiff's favor.

Lower court confusion also appears to stem from the extraordinary facts present in *Davis*. The harassment lasted for more than six months, the school principal refused to take any action or even separate the two students, and the perpetrator ultimately pled guilty to sexual battery. Some lower courts have treated those extraordinary facts as the relevant benchmark. See, e.g., *Foster v. Bd. of Regents of Univ. of Michigan*, 982 F.3d 960, 965 (6th Cir. 2020) (“A review of the facts in *Davis*—the key case in the area—adds contour to the deliberate-indifference standard.”).

The factual context of *Davis* has also contributed to the confusion in lower courts in another way. *Davis* involved interactions of fifth graders. The Court repeatedly emphasized the distinctive context of elementary schools and cautioned against importing workplace standards into interactions among young children. *Davis*, 526 U.S. at 651 (we “must bear in mind that schools are unlike the adult workplace and that children may regularly interact in a manner that would be unacceptable among adults.”). But lower courts have ignored the Court’s concern about the specific context and extended *Davis* beyond the elementary-school context while according university

administrators a level of deference that *Davis* never contemplated.

Lower courts have focused on these facts and dictum and transformed deliberate indifference into a Title VI-specific pleading rule under which courts defer to universities' asserted explanations rather than accept the complaint's well-pleaded factual allegations as true. *See, e.g., Canel v. Art Inst. of Chicago*, 824 F.Supp.3d 686, 708 (N.D. Ill. Mar. 19, 2026) (“In short, the question is not whether the school's response satisfied the plaintiff; rather, the question is whether the school responded in a way that was clearly unreasonable. The Court may make this determination as a matter of law at the motion to dismiss stage.”).

In Title VI actions throughout the country, courts routinely credit, *at the pleading stage*, wholly ineffective responses to harassment. The First Circuit's decision is unfortunately not an outlier, either, and because lower courts have pervasively adopted the same interpretation of *Gebser* and *Davis*, it is unlikely that a circuit split will ever emerge. *See Yakoby v. Trs. of Univ. of Pennsylvania*, No. CV 23-4789, 2025 WL 1558522, at *8 (E.D. Pa. June 2, 2025) (“Deliberate indifference is a very high bar and Plaintiffs' dissatisfaction with Penn's responses is not enough to establish there was an official decision by Penn to not remedy a Title VI violation *and* that this deliberate indifference effectively caused racial discrimination.”)⁵; *Adams v. Demopolis City Schs.*, 80

⁵ In *Yakoby*, 2025 WL 1558522, at *7, the court took it a step further and dismissed a Title VI case at the pleading stage

F.4th 1259, 1270 (11th Cir. 2023) (“A school district is not deliberately indifferent simply because the measures it takes to stop the harassment or discrimination ultimately are ineffective. . . . Deliberate indifference is an exacting standard; neither negligence nor mere unreasonableness is enough.”) (citations omitted); *Malick v. Croswell-Lexington Dist. Schs.*, 148 F.4th 855, 862 (6th Cir. 2025) (“Through it all, we ‘ask not whether the school’s efforts were ineffective but whether they amounted to an official decision not to remedy’ the harassment. To avoid liability, a school need only ‘respond in good faith when allegations of harassment arise.’”)(citations omitted); *Karasek v. Regents of Univ. of California*, 956 F.3d 1093, 1108 (9th Cir. 2020) (finding no deliberate indifference because “we conclude that UC’s noncompliance with the DCL and its own policies was, at most, ‘negligent, lazy, [and] careless’”); *Johnson v. Ne. Sch. Corp.*, 972 F.3d 905, 912 (7th Cir. 2020) (“A negligent response is not unreasonable, and therefore will not subject a school to liability. And we will not second guess a school’s disciplinary decisions—even a school’s decision not to impose any disciplinary measures—so long as those decisions are not clearly unreasonable.”) (citation omitted).

While *Davis* recognized that Title IX does not invariably require a school to eliminate harassment altogether, neither *Davis* nor *Gebser* suggests that *any response*, however ineffective, necessarily satisfies the statute. A standard adopted to reflect a recipient’s

because there were no allegations that Penn *itself* had engaged in any conduct that “could be interpreted as antisemitic with the intention of causing harm to the Plaintiffs.”

opportunity to voluntarily come into compliance (*see infra* 15-16) cannot reasonably be understood to permit compliance through wholly ineffective measures.

This interpretation effectively creates a Title VI-specific exception to Rule 12(b)(6). Whether a university's response was “clearly unreasonable in light of the known circumstances” ordinarily presents a fact-intensive inquiry that rarely can be resolved before discovery establishes what administrators knew, what alternatives were available, and why they rejected those alternatives. Yet, rather than accepting the Complaint's factual allegations as true and drawing reasonable inferences in Plaintiffs' favor, the First Circuit accepted the university's asserted justification – that it sought to avoid escalation – as sufficient to defeat the complaint before any discovery.

As discussed further below, the prevailing approach in the lower courts ignores that *Gebser* and *Davis* expanded the available remedies under Title IX rather than restricting previously recognized avenues of enforcement. Before those decisions, funding recipients already faced administrative enforcement and private suits for equitable relief. *Gebser* and *Davis* recognized an additional remedy, money damages, subject to the deliberate indifference limitation. Lower courts have since transformed that limitation on a newly recognized remedy into a broad restriction on Title VI and Title IX enforcement generally.

This case presents an excellent vehicle for clarifying whether Title VI affords university administrators any special deference in responding to allegations of discriminatory harassment.

B. The First Circuit’s Highly Deferential Interpretation of the Deliberate Indifference Standard Has Impaired The Enforcement of Title VI Against Anti-Semitic Harassment

The First Circuit’s highly deferential approach is especially troubling in the context of the enormous surge of anti-Semitic harassment and even violence that Jewish students and faculty are experiencing throughout the country. Indeed, anti-Semitism continued to flourish on MIT’s campus *after* the measures that the First Circuit deemed sufficient as a matter of law in affirming dismissal of the case.

In November 2024 – well after the series of “escalating” actions by the MIT administration that the First Circuit deemed adequate as a matter of law – a MIT professor targeted a Jewish student, declaring him a real-life example of a “Zionist mind infection.” The professor harassed the student in a relentless series of online posts and mass emails, clear violations of MIT policies, while the president of MIT, who was copied on the communications, did nothing. This harassment was the subject of a second lawsuit against MIT. But despite the stark evidence that MIT’s actions addressed in this case had been entirely inadequate, the district court interpreted the First Circuit’s decision as effectively absolving MIT of liability:

The court finds the course of conduct described in the Amended Complaint deeply troubling (indeed, it culminated in Sussman dropping out of his PhD program because of safety concerns). . . Sussman reported DeGraff’s harassment

while it was ongoing. MIT's response to his first email left much to be desired. . . The court is not convinced, however, that MIT was affirmatively choosing to do the wrong thing . . .

Sussman v. Massachusetts Institute of Technology, No. 1:25-cv-11826 (D. Mass. Jan. 5, 2026).

The continued problems on MIT's campus, and the inadequacy of the university's response, are also now the subject of a recently released book by a MIT professor. In his own words, the book provides "a documentation of the MIT administration's failure to protect a minority on campus who were shunned, harassed, vilified, and attacked." *Unsafe at MIT: A Chronicle of a Campus War on the Jews*, Prof. Yossi Sheffi (2026).

The First Circuit's decision has rapidly become a leading authority in campus Title VI litigation involving allegations of anti-Semitic harassment. In the short time since it was decided, in addition to *Sussman*, there have been three other decisions that rely substantially on the decision to dismiss cases involving anti-Semitism on college campuses at the pleading stage: *Segev v. Harvard*, No. 25-cv-12020 (D. Mass. Dec. 4, 2025) ("The relevant question is whether the protestors chanting ['from the river to the sea'] viewed [these slogans] as antisemitic. Nothing in the Amended Complaint plausibly permits the inference that they did"); *Doe v. Nw. Univ.*, No. 24-CV-04831, 2026 WL 607423, at *6 (N.D. Ill. Mar. 3, 2026) ("In short, the legal question is not whether Northwestern 'could have handled each situation better,' but rather was Northwestern 'so indifferent to known acts of harassment that it caused students to undergo

harassment or made them more vulnerable to it, and thereby undermined the students' education.”) (citations omitted); *Canel*, 824 F.Supp.3d at 708.

The speed with which the decision has been adopted demonstrates that the question presented is recurring and will continue to affect Title VI litigation nationwide. Absent this Court's guidance, lower courts will continue applying an interpretation of deliberate indifference that effectively insulates universities from Title VI liability whenever they can point to some response, however ineffective.

We respectfully suggest that review is appropriate to clarify the proper scope and interpretation of the deliberate indifference standard.

II. DELIBERATE INDIFFERENCE IS NOT AN ELEMENT OF A TITLE VI CLAIM

A. The Court Created the Deliberate Indifference Standard to Establish a Heightened Standard for Private Litigants to Obtain Monetary Damages as a Remedy

Title VI of the Civil Rights Act of 1964 provides: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. §2000d. It contains no reference to deliberate indifference. Regulations implementing Title VI also contain no reference to deliberate indifference. *See* 28 C.F.R. § 42.201 et seq.

The Court made no mention of deliberate indifference when it recognized an implied right of action for injunctive relief under Title IX in *Cannon v. University of Chicago*, 441 U.S. 677 (1979). *Cannon* noted that Congress had two purposes in enacting Title VI: (i) “Congress wanted to avoid the use of federal resources to support discriminatory practices,” and (ii) “it wanted to provide individual citizens effective protection against those practices.” *Id.* at 704. The Court distinguished actions to terminate an institution’s funding from an “isolated violation” that “might be remedied more efficiently by an order requiring an institution [to comply]” and that it would “make[] little sense to impose on an individual . . . the burden of demonstrating that an institution’s practices are so pervasively discriminatory that a complete cut-off of federal funding is appropriate.” *Id.* at 705. Thus, the Court concluded that, “[t]he award of individual relief to a private litigant who has prosecuted her own suit is not only sensible but is also fully consistent with—and in some cases even necessary to—the orderly enforcement of the statute.” *Id.* at 705-6.⁶

The Court adopted the “deliberate indifference” standard in *Gebser*, a Title IX case involving sexual

⁶ Congress subsequently enacted the Civil Right Remedies Equalization Act, 42 U.S.C.A. § 2000d-7 (1986), which acknowledged a private right of action and effectively adopted the holding in *Cannon*. See *Barnes v. Gorman*, 536 U.S. 181, 185 (2002) (“Although Title VI does not mention a private right of action, our prior decisions have found an *implied* right of action . . . and Congress has acknowledged this right in amendments to the statute, leaving it “beyond dispute that private individuals may sue to enforce’ Title VI”).

misconduct by a teacher. The Court distinguished Title VII, which focuses on making persons whole for past injuries, with Title IX, which as a Spending Clause statute with a contractual framework, “focuses more on ‘protecting’ individuals from discriminatory practices carried out by recipients of federal funds.” 524 U.S. at 287. The Court specifically distinguished an enforcement action to bring an institution into compliance from an action by the government to cutoff federal funding. *Id.* at 288 (“In the event of a violation, a funding recipient may be required to take ‘such remedial action as [is] deem[ed] necessary to overcome the effects of [the] discrimination.’”).

In adopting the deliberate indifference standard, the Court’s express purpose was to establish a prerequisite for *monetary damages* against a funding recipient in a private right of action. *Id.* at 290 (“we hold that a damages remedy will not lie under Title IX unless an official who at a minimum has authority to address the alleged discrimination and to institute corrective measures on the recipient’s behalf has actual knowledge of discrimination in the recipient’s programs and fails adequately to respond.”). The Court’s analysis was based on the “contractual nature” of the statute and hence the need to ensure that a recipient could not be held responsible in damages “solely on principles of vicarious liability or constructive notice” for “its employees’ independent actions.” *Id.* at 287-88, 291.

The deliberate indifference standard was intended to replicate the procedure the federal government must follow before *revoking an institution’s funding* under Title VI/Title IX (*i.e.*, notice and an opportunity to voluntarily come into

compliance). *Gebser* explained that plaintiffs in an implied right of action should not face a lower burden than the express statutory procedure the federal government must follow to impose financial consequences. *Id.* at 290 (“[w]here a statute’s express enforcement scheme hinges its most severe sanction on notice and unsuccessful efforts to obtain compliance, we cannot attribute to Congress the intention to have implied an enforcement scheme that allows imposition of greater liability without comparable conditions.”).

The Court later extended the application of the deliberate indifference standard to establish a prerequisite for *monetary damages* against a funding recipient based on student-on-student sexual misconduct. *Davis*, 526 U.S. at 648. The Court again explicitly defined the inquiry as focused on the remedy: “we are asked to do more than define the scope of the behavior that Title IX proscribes. We must determine whether a district’s failure to respond to student-on-student harassment in its schools can support a private suit for money damages.” *Id.* at 639.

Focusing again on the Spending Clause implications, the Court reiterated that “the *high standard*’ imposed in *Gebser* sought to eliminate any ‘risk that the [funding] recipient would be liable in *damages* not for its own official decision but instead for its employees’ independent actions.” *Id.* at 643 (quoting *Gebser*) (emphasis added).⁷

⁷ At the time *Gebser* and *Davis* were decided, the Court was also concerned about the potential for unlimited punitive and

**B. Deliberate Indifference is Not
Necessary to Prove Intentional
Discrimination**

In *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001), the Supreme Court held that Title VI prohibits only intentional discrimination. It did not hold that deliberate indifference, which was not even an issue in the case, is the exclusive means of proving intentional discrimination. Lower courts thereafter began to assume “deliberate indifference” (which *Davis* held “amounts to an intentional violation of Title IX”) must therefore be an element of a Title VI claim.

But this Court adopted the deliberate indifference standard as a heightened prerequisite to the recovery of monetary damages. Nothing in *Gebser* or *Davis* purported to redefine the meaning of “intentional discrimination” under Title VI or Title IX. The dissent in *Gebser* characterized deliberate indifference as going well beyond what is necessary to prove intentional conduct. *Gebser*, 524 U.S. at 304 (Stevens, J., dissenting) (“Presumably, few Title IX plaintiffs who have been victims of intentional discrimination will be able to recover damages under this exceedingly high standard”). *Davis* then adopted the “high standard” characterization. 526 U.S. at 643. As discussed above, lower courts have misinterpreted “high standard” to effectively transform the standard into an extraordinary bar to all Title VI claims. *See, e.g., Yakoby*, 2025 WL 1558522, at *8 (“Deliberate

emotional distress damages that would “exceed a recipient’s level of federal funding.” *Gebser*, 524 U.S. at 290. After *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212 (2022) and *Barnes v. Gorman*, 536 U.S. 181 (2002) that is no longer a concern.

indifference is a very high bar”). The district court here characterized it as a “stringent standard of fault.” *StandWithUs Center for Legal Justice v. Massachusetts Institute of Technology*, 742 F.Supp.3d 133, 142 (D. Mass July 30, 2024).

This Court has repeatedly rejected lower courts’ efforts to extend judicially-created heightened standards that are not supported by statutory text beyond the circumstances that produced them. *See, e.g., Muldrow v. City of St. Louis, Missouri*, 601 U.S. 346, 353 (2024) (holding lower courts erred in extending “material adversity” requirement that the Court had adopted for Title VII retaliation claims to Title VII discrimination claims when neither the Court’s rationale nor the text of Title VII supported the extension); *A. J. T. by & through A. T.*, 605 U.S. at 345 (holding lower courts erred in applying heightened standard to ADA and Rehabilitation Act claims based on educational services and that “[n]othing in the text of Title II of the ADA or Section 504 of the Rehabilitation Act suggests that such claims should be subject to a distinct, more demanding analysis”); *Ames v. Ohio Dep’t. Of Youth Servs.*, 605 U.S. 303, 320-26 (2025) (Thomas, J., concurring) (criticizing extension of judicially-created doctrines in civil rights cases that are not supported by statutory text, have created confusion in lower courts, and are incompatible with the Federal Rules of Civil Procedure). All of those criticisms apply to the “deliberate indifference” standard.

To be sure, proving deliberate indifference is one means by which a plaintiff may establish an intentional violation. But that is different than the meaning of discrimination under Title VI. Indeed, the

U.S. Solicitor General recently argued that “there remains a ‘critical’ difference between the threshold showing required ‘to establish a Title IX violation’ and the additional, heightened showing required for private parties ‘to recover damages’ or other ‘relief’ for that violation.” *Crowther v. Board of Regents of the Univ. Sys. of Ga.*, No. 25-183, Brief for the United States as Amicus Curiae (https://www.justice.gov/d9/2026-04/25-183-crowther_cvsg.pdf), at 11.

This Court has never used the heightened requirements and admonitions set forth in *Gebser* and *Davis* – “clearly unreasonable,” “high standard,” “systemic,” “very real limitations on a funding recipient’s liability” – to define intentional discrimination. While the Rehabilitation Act is also a Spending Clause statute modeled on Title VI, lower courts have distinguished between the elements of a claim and the damages remedy and required plaintiffs to prove deliberate indifference only to obtain monetary damages. *A. J. T. by & through A. T.*, 605 U.S. at 344-45 (noting treatment by lower courts).

On the meaning of intentional discrimination, this Court has focused on the plain language of Title VI. As Justice Gorsuch recently explained, intentional discrimination under Title VI occurs when someone is treated worse by a funding recipient because of their protected category: “Title VI forbids a recipient of federal funds from intentionally treating one person worse than another similarly situated person on the ground of race, color, or national origin.” *Students for Fair Admissions, Inc.*, 600 U.S. at 287 (Gorsuch, J., concurring). He elaborated that “on the ground of” means “because of,” which means that Title VI

incorporates the ordinary but-for causation standard, which is “sweeping.” *Id.*

This Court recently reaffirmed the same principle in the Title VII context, explaining that “discriminate against” simply means “treat[ing] a person worse” because of their protected trait. *Muldrow*, 601 U.S. at 354.

This Court has repeatedly recognized that plaintiffs may establish intentional discrimination in a variety of ways other than by proving deliberate indifference. In *Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005), the Court explained that “[d]iscrimination’ is a term that covers a wide range of intentional unequal treatment; by using such a broad term, Congress gave the statute a broad reach.” *Id.* at 175. The Court held that retaliation is, “by definition,” intentional discrimination and hence another method of establishing intent. *Id.* at 183.

A related point, which often confuses lower courts, is that “intent” is a distinct concept from “motivation” or “animus.” Plaintiffs in Title VI cases do not need to prove the funding recipient was itself motivated by discriminatory animus (e.g., anti-Semitism); nor is a funding recipient relieved of liability because it acted in pursuit of some assertedly benign objective. “It does not matter if the recipient discriminates in order to advance some further benign ‘intention’ or ‘motivation.’ . . . Title VI prohibits a recipient of federal funds from intentionally treating any individual worse even in part because of his race, color, or national origin and without regard to any other reason or motive the recipient might assert.” *Students for Fair Admissions, Inc.*, 600 U.S. at 288-90 (Gorsuch, J., concurring).

The Second Circuit explained this distinction in the Title IX context. “A defendant is not excused from liability for discrimination because the discriminatory motivation does not result from a discriminatory heart . . . A covered university that adopts, even temporarily, a policy of bias favoring one sex over the other . . . has practiced sex discrimination, notwithstanding that the motive for the discrimination did not come from ingrained or permanent bias against that particular sex.” *Doe v. Columbia Univ.*, 81 F.3d 46, 58 n.11 (2d Cir. 2016).

In sum, Title VI prohibits intentionally treating a person worse because of race, color, or national origin, regardless of the motivation. In harassment or hostile environment cases, as in other Title VI actions, intentional discrimination may be established through the totality of the evidence, including evidence concerning a recipient's response to known harassment. District courts routinely determine at the pleading stage whether a plaintiff has plausibly alleged intentional discrimination. Nothing in Title VI requires a distinct, judge-made definition of intentional discrimination or a distinct, more demanding, judge-made test for proving intentional discrimination.⁸

⁸ Intentional discrimination is unlikely to be a serious dispute in this case. If the harassment and hostile environment had been targeted at members of any other protected category, MIT would not have: (i) chosen to “avoid any further escalation,” (ii) decided not to discipline rule violators, (iii) tolerated protests outside the offices of professors, yelling “you can’t hide,” (iv) advised students not to “directly engage the protestors for your

This case provides an excellent opportunity for the Court to clarify that the plain meaning of Title VI governs and that the judicially-created deliberate indifference standard and its “high standard” is not an element of a Title VI claim and is not necessary to prove intentional discrimination.

C. The Prevailing Interpretation of the Deliberate Indifference Standard Is Inconsistent with this Court’s Spending Clause Jurisprudence and Has Resulted in Asymmetric Obligations

This Court has consistently treated Spending Clause statutes as contractual in nature and insisted that funding recipients receive clear notice before being subjected to remedies or obligations beyond those Congress enacted. *See Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 219 (2022); *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). The lower courts’ highly deferential interpretation of the deliberate indifference standard has resulted in asymmetrical obligations – funding recipients receive taxpayer money and are protected from any requirements or remedies not set forth expressly in the statute/contract (*e.g.*, punitive

physical safety and well being”; (v) told students to “choose paths” on campus to avoid the protestors; (vi) focused on “a constructive dialogue with those who are protesting”; (vii) asked students for “patience and understanding as [MIT does] this hard work”; and (viii) “urge[d the student and the student’s peers] not to counterprotest.” Petition for Writ of Certiorari at 4a-6a, 10a-11a, No. 25-104, *StandWithUs Center for Legal Justice v. Massachusetts Inst. Of Tech.*, (U.S. filed June 18, 2026).

damages or emotional distress damages), but when it comes to the concomitant obligation that recipients assume when they accept federal funding (*i.e.*, to administer federally funded programs without subjecting participants to prohibited discrimination, including discriminatory harassment and hostile environments), the obligation is treated as conditional, limited and substantially diminished.

The obligation has become conditional because, under the prevailing interpretation, a funding recipient has no judicially enforceable obligation until the recipient is provided actual notice of a problem. Yet, funding recipients have been on notice for decades, not only that Title VI prohibits discrimination, but that private plaintiffs may seek prospective equitable relief to enforce that prohibition. There is therefore no Spending Clause rationale for extending the deliberate indifference limitation developed for the remedy of damages to claims seeking injunctive relief to compel prospective compliance.

The obligation has become limited because, under the prevailing interpretation, a funding recipient is not required to take any action until harassment becomes severe, pervasive, and objectively offensive, and the deprivation of educational access becomes “systemic.” This is despite the fact that Title VI says “no person” shall be “subjected to discrimination” and “[n]othing in [Title VI] endorses racial discrimination to any degree or for any purpose.” *Students for Fair Admissions, Inc.*, 600 U.S. at 310 (Gorsuch, J., concurring); *Fitzgerald v. Barnstable School Committee*, 555 U.S. 246, 257 (2009) (“a Title IX plaintiff can establish school district liability by showing that a single school administrator

with authority to take corrective action responded to harassment with deliberate indifference.”).

The obligation has become substantially diminished because, under the prevailing interpretation, a funding recipient has no obligation to actually put a stop to harassment. Funding recipients are obligated only to respond in a way that is not “clearly unreasonable,” regardless of whether it ends the problem or is even reasonably tailored to end the problem. This interpretation permits funding recipients to continue accepting federal financial assistance while never being judicially required to fulfill the corresponding obligation to administer their programs free from prohibited discrimination.

Conversely, even though Title VI was enacted “to provide individual citizens effective protection against [discriminatory] practices,” its intended beneficiaries face a “high standard” to ending active harassment and hostile environments that is set forth nowhere in the statute.

CONCLUSION

This case presents an ideal vehicle to clarify the role of deliberate indifference in Spending Clause litigation. The Court should clarify whether deliberate indifference is (1) merely a prerequisite to monetary damages, (2) one method of proving intentional discrimination in certain cases, or (3) an element of every Title VI claim. The lower courts have overwhelmingly adopted the third view even though this Court has never done so.

Respectfully submitted,

RICHARD A. ROSEN

Counsel of Record

PAUL M. ECKLES

RAFAELA FISCHMAN

**LOUIS D. BRANDEIS CENTER
FOR HUMAN RIGHTS UNDER
LAW**

1675 Broadway

Fl. 13

New York, NY 10019

(917) 863-3018

rrosen@brandeiscenter.com

Counsel for Amici Curiae

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