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Colleges Face Tidal Wave Of Lawsuits Over Gaza Protests

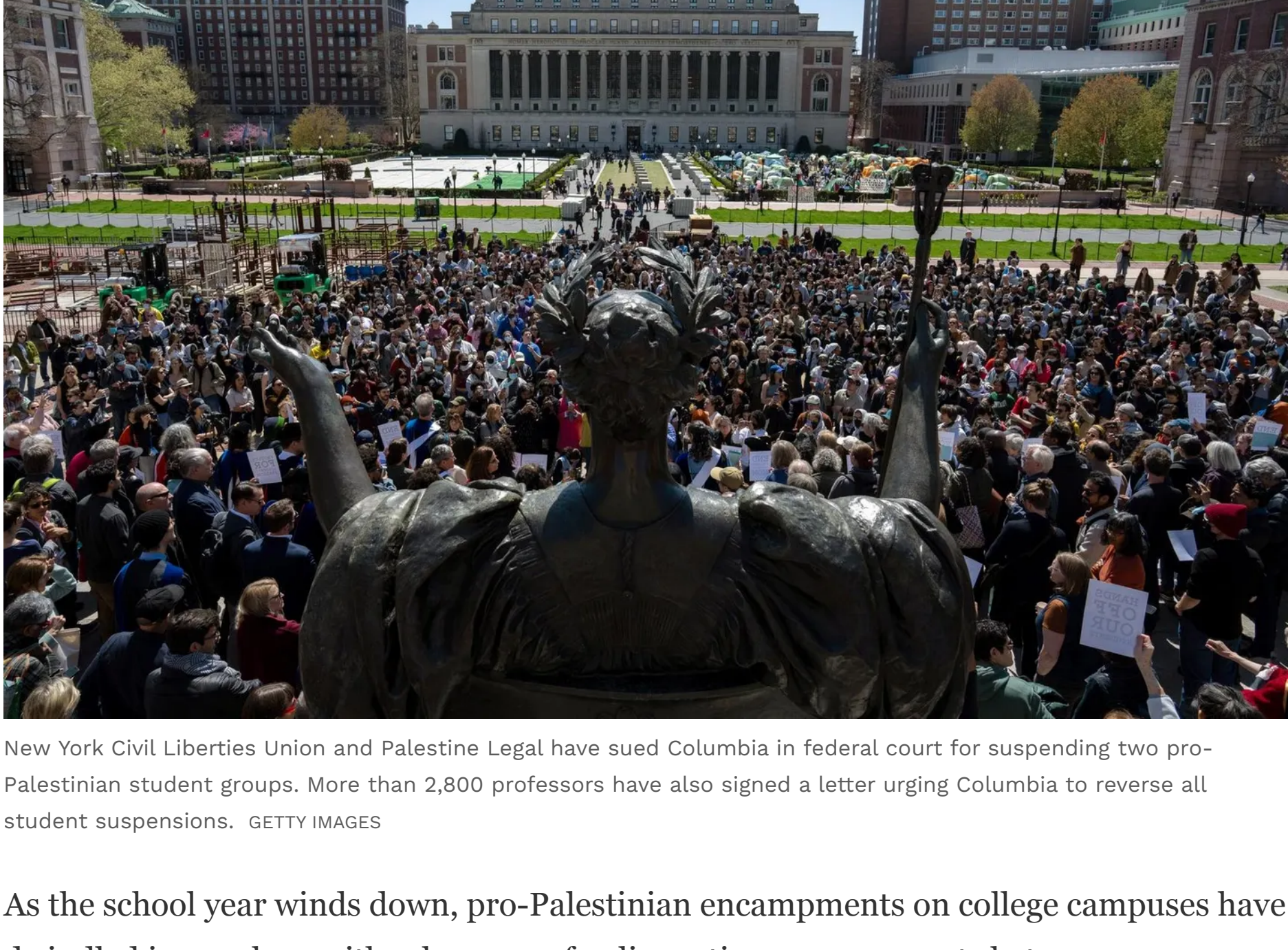
Suspended students, pro-Palestinian groups and Jewish students have all gone to court. Meanwhile, internal disciplinary hearings continue.

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New York Civil Liberties Union and Palestine Legal have sued Columbia in federal court for suspending two pro-Palestinian student groups. More than 2,800 professors have also signed a letter urging Columbia to reverse all student suspensions. GETTY IMAGES

As the school year winds down, pro-Palestinian encampments on college campuses have dwindled in number—either because of police action or agreements between demonstrators and college administrations. In their wake, they’ve left disrupted academic careers; questions about how far the right to protest on campus goes; and what could be drawn out battles in court (and college tribunals) about the punishments and protections due students and faculty on all sides of the Gaza conflict. Since April 18th, when arrests at a Columbia University encampment sparked wider protests, more than 2,900 people have been arrested or detained at 67 different campuses according to a *New York Times* tally.

Nineteen students from Arizona State University who were barred from campus after refusing to leave a Pro-Palestinian protest before ASU police began to make arrests for trespassing, are suing in federal court, charging their First Amendment free speech rights were violated. They [asked the court](#) for an emergency injunction that would have let them back on campus to finish their Spring exams. They didn’t get it, but their suit is still alive.

At Harvard, 13 about-to-graduate seniors, who were suspended in May by the Harvard College Administrative Board for their role in an encampment, became the center of a power struggle with ideological overtones. The Harvard Faculty of Arts and Sciences [voted on May 20](#) to put them back on the list to get their degrees this month. Two days later, the Harvard Corporation, the school’s top governing body, [took them off the list](#), saying appeals to the administrative disciplinary process needed to play out first. As the *Harvard Crimson* put it, the board was forced “to make an impossible choice between discrediting the school’s disciplinary processes or directly overriding the will of the University’s largest faculty.”

Meanwhile, the New York Civil Liberties Union and Palestine Legal have [sued Columbia](#) in federal court for suspending two pro-Palestinian student groups. Palestine Legal has also sparked a Department of Education Office for Civil Rights (OCR) investigation of the [University of Massachusetts-Amherst](#) and filed complaints with OCR against [Northwestern University](#), the [University of North Carolina-Chapel Hill](#) and [Emory University](#).

Jewish students, for their part, with the assistance of the [Brandeis Center](#), have filed federal civil rights suits [against Harvard](#), the [University of Pennsylvania](#) and the [University of California Regents](#), among others, for tolerating antisemitism and failing to protect them from harassment. Brandeis has also lodged civil rights complaints with the OCR against the [University of California-Santa Barbara](#), [Occidental College](#), [Pomona College](#), the [University of Massachusetts-Amherst](#), [Ohio State University](#) and [American University](#).

So what is the law? While the right to protest on campus is generally broader [than in a workplace](#), it’s not unlimited, experts say. Colleges have the right to establish codes of conduct that may, for example, limit where, when and how demonstrations can take place—so long as they are clear about their rules in advance and enforce them equally. But they also have to comply with civil rights laws when protecting other students.

In many headline-grabbing protests, students are not just exercising free speech rights, but also participating in civil disobedience, points out Alex Morey, vice president of campus advocacy at the Foundation for Individual Rights and Expression, a nonprofit that aims to protect free speech on U.S. campuses. By definition, civil disobedience is nonviolent, but it goes beyond the confines of protected speech, she explains. Students are essentially saying “I am willing to face the consequences, be arrested, be suspended or expelled from my school because I feel so passionately about this issue, it’s worth it,” Morey says. “That is part of the power of civil disobedience is that you know there is going to be some consequence for what you’re doing.”

Pro-Palestinian protestors have come under fire for using the slogan “From the river to the sea, Palestine will be free,” a slogan used by Hamas and referenced in its 2017 charter. It is commonly interpreted to be a call for the destruction of Israel as a state and Jewish groups consider it antisemitic. Morey contends the slogan is protected under the First Amendment, which protects potentially offensive and even hate speech. (However speech that incites immediate violence, or that could cause immediate harm—such as yelling fire in a crowded theater—isn’t typically protected).

That said, hate speech can violate university speech codes and codes of conduct. Such violations are dealt with internally by colleges and universities in accordance with their stated policies, which typically include due process proceedings, says Drew Duncan, a Kansas-based student rights lawyer. (The same is true for sanctions against faculty members). It usually starts with a “notice to the accused of what they’re accused of doing wrong, then there will be a prescribed investigation period and how that investigation will be conducted. Then there will be disclosure of evidence, and then there will be a hearing,” he explains.

But that’s not how it’s been working in the case of some politically fraught Gaza protests. Arrested students have been suspended or barred from campus before hearings take place. Then some of those actions have been reversed without a lengthy process. Barnard College ended up lifting the suspension of most of the 55 students it hastily suspended after they were arrested on Columbia’s campus on April 18th. The students were offered “amnesty” if they agreed to follow Barnard’s rules through a probationary period ending August 9th, went to a meeting on the student code of conduct and wrote a brief reflection paper. The student newspaper, the Columbia Spectator, [observed](#), “Amnesty is not currently defined by or included as a disciplinary alternative in the current Student Code of Conduct.”

In other words, administrators, faced with opposition to the suspensions from faculty and students, improvised. (So far, 2,835 professors from colleges and universities around the world have [signed an open letter](#) calling on Columbia and Barnard to reverse and expunge all student suspensions and charges.)

Historically, both mass arrests and suspensions have followed a similar pattern. During the [famous April 1968 Columbia protests](#), hundreds of Columbia students were arrested by the New York Police Department. But in October of 1968 the *New York Times* [reported](#) that a judge had dismissed charges against the majority of them, based in part, on a plea for leniency by Columbia’s law school dean. Meanwhile, [most](#) of the original year-long suspensions of students were lifted.

When it comes to mass protests, it’s not just the politics of the issue. College disciplinary hearings can be a time-consuming process and that can give students strength in numbers, observes Joseph Lento, who has built a boutique national law firm specializing in student discipline defense. “It’s easier for a school to potentially discipline or try to discipline one student versus, say, 100 or 500,” he says.

The recent student encampments primarily violate what are called time, place and manner restrictions, through which colleges and universities limit the type and duration of demonstrations on campus. For example, Columbia makes clear in its [rules of university conduct](#) that all members of the university have the right to demonstrate, rally and picket on campus. But, it reserves the right to regulate the time, place, and manner with which these demonstrations occur, and notes that “the right to demonstrate cannot come at the expense of the right of others to counter-demonstrate, to teach, or to engage in academic pursuits requiring uninterrupted attention.” So barring students or faculty members from attending class, or holding a protest in the classroom, say, would likely violate these rules.

Administrators must apply time, place and manner restrictions equally to all groups, regardless of identity or viewpoint, Morey says. “If you say the Zionists can camp, but the pro-Palestinians can’t, or the College Democrats can use amplified sound, but the College Students for Bernie cannot use amplified sound, then you’re not imposing those regulations in a fair way.”

Ironically, despite the rhetoric which anti-woke governors like Florida’s Ron DeSantis [used to threaten protestors](#), students at public universities theoretically have a bit more leeway for protesting than those at private schools, with public colleges often required to provide more procedural protections and also more susceptible to claims they’re violating the Constitution’s First Amendment, which limits government, but not private restrictions on free speech.

“The fundamental difference often is that at a public school, a student’s going to have traditional due process under the state and federal constitutions, whereas in a private school, those rights are not the same,” says Lento.

Despite the First Amendment, even at a public college, not all venues need to be available for even nonviolent demonstrations, notes Duncan. “Simply because a university is a state school does not mean that the entire campus is a traditional forum for protesting. Think of a post office or the Social Security Administration—I mean, folks can’t go in there and protest as they see fit. So the same kind of principle would favorably apply in a classroom at a university,” he says. “But that being said, the courts have held that there are what they call traditional public forums that are akin to a street corner—on campus, it would be something like a sidewalk or a public space, that would have a lot of First Amendment protection.”

Even if state schools can set reasonable limits, those limits need to be equally enforced. That’s an issue in the Arizona case. The students, in their amended complaint, allege that “ASU’s decision to enact harsh, immediate disciplinary action without any recourse was based solely upon the anti-Israel message being communicated by Plaintiffs’ protest”—in other words, based on the content of their speech, which violates the first amendment. To make the point that they were treated differently, the suit asserts that fraternity members who were drinking and videoing the demonstration were not punished by the school.

ASU, in its responses, states that the students violated the university’s longstanding policy against camping, and that the discipline they faced had nothing to do with the viewpoint of the protest. “To be sure, the impermissible encampment was motivated by Plaintiffs’ desire to

express their views on the ongoing and tragic conflict in the Middle East. But neither the longstanding policy prohibiting such encampments, nor its enforcement, had anything to

do with their beliefs or the content of their speech,” ASU’s attorneys wrote in their response to the suit. “Indeed, since the removal of the encampment, ASU’s campus has seen several other pro-Palestine rallies and events take place without incident.”

In this environment, faculty have found themselves at odds with administrators—and the officers they’ve called in—and not just at Harvard and Columbia. Professors at Dartmouth College and Washington University in St. Louis were tackled to the ground by police and taken into custody while filming campus protests.

At Emory University, [Professor Noëlle McAfee](#), chair of the philosophy department and the author of recent books on feminism and politics and psychoanalysis, [was arrested](#) after telling an Atlanta police officer to stop “pummeling” a student. McAfee, 63, was taken to jail and given a ticket for disorderly conduct. She’s scheduled to appear in court on July 12.

“They brutally assaulted a few dozen students who were there. Me getting arrested was nothing,” McAfee told Forbes. “I know how to be around police—be calm and not confrontational. And in fact, I was the first person at the jail that they let go ... But what they did to these students is just so traumatizing to revisit.”

Like other professors, she defends student protests as healthy for society. “When there’s something amiss in the body politic, it’s often students who sound the alarm that there’s something wrong that we need to deal with,” she says. “Students did that when the U.S. was waging war on a little country in Southeast Asia. In my generation, students did that because our universities were investing in apartheid regimes. And since, students have been protesting and sounding the alarm about the AIDS crisis, the environmental crisis, about Occupy [Wall Street], about wealth discrepancies, about Black Lives Matter.”

“We should be tipping our hat to the students for doing this work and not brutalizing them... regardless of how you feel about that particular issue,” she adds.

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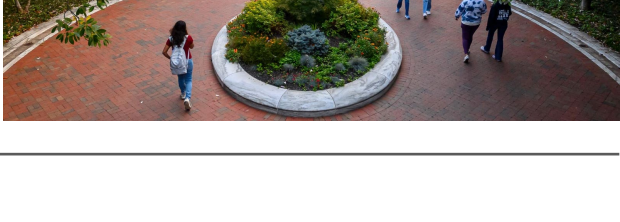
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