



Before the United States Department of Education

**PETITION FOR RULEMAKING OF:
AMERICA FIRST LEGAL FOUNDATION**

Submitted via Email

**PETITION FOR RULEMAKING
TO AMEND CAMPUS CRIME REPORTING REQUIREMENTS
UNDER THE JEANNE CLERY ACT**

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SUMMARY OF THE PETITION

1. America First Legal Foundation (“AFL”) respectfully petitions the U.S. Department of Education (the “Department”) to initiate rulemaking to amend 34 C.F.R. § 668.46, titled “Institutional security policies and crime statistics.”
2. The proposed amendments would require covered institutions to track and disclose, in their annual reports under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”),¹ statistics regarding the following crimes, when occurring in connection with protest activity, demonstrations, or riots: riot/inciting or promoting a riot; trespass; false imprisonment; larceny-theft; simple assault; battery; intimidation; and destruction/damage/vandalism of property.
3. The proposed amendments would also require covered institutions to publish, in a prominent location on their public websites, a Political & Religious Violence Transparency Report, including a detailed description of (1) all violent protests, demonstrations, and riots, occurring on campus, on public property immediately adjacent to campus, or in non-campus buildings or property owned or controlled by the institution, involving force, threats of force, or the risk of injury to persons; (2) all assaults or intimidation, defined as acts of violence, credible threats of violence, or threatening harassment directed at individuals or groups based on political belief, religious belief, affiliation, or expressive activity; and (3) destruction of property, including arson, vandalism, or other deliberate damage, when occurring in connection with protest activity, demonstrations, or riots. The report should also explain, in narrative form, what steps the institution and/or local law enforcement took to address any incidents identified in the report.
4. The Clery Act was enacted to ensure that students, prospective students, parents, and staff have accurate information regarding campus safety. Yet current reporting requirements do not adequately capture violent, politically motivated activity that poses real risks to the campus community. Disclosure of this information is essential to fulfill the Clery Act’s core purpose: ensuring that students, prospective students, parents, and staff have a clear understanding of campus conditions and access to material information concerning their safety.

STATEMENT OF JURISDICTION

5. This petition for rulemaking is submitted pursuant to 5 U.S.C. § 553(e), which grants any interested person the right to petition the Department for the issuance, amendment, or repeal of a rule.

¹ 20 U.S.C. § 1092(f).

6. The Secretary of Education (the “Secretary”) has general rulemaking power under two provisions: 20 U.S.C. § 1221e-3 and 20 U.S.C. § 3474. Under section 1221e-3:

The Secretary, in order to carry out functions otherwise vested in the Secretary by law or by delegation of authority pursuant to law, and subject to limitations as may be otherwise imposed by law, is authorized to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of, and governing the applicable programs administered by, the Department.

20 U.S.C. § 1221e-3. And section 3474 states, “The Secretary is authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department.” 20 U.S.C. § 3474. Although “[t]he extent of the Department of Education’s rulemaking power under sections 1221e-3 and 3474 has yet to be discussed in detail by any circuit court,” *Secular Student Alliance v. U.S. Dep’t of Educ.*, 762 F.Supp.3d 24, 30 (D.D.C. 2025), the plain language of these statutes vests the Department with authority to promulgate rules with respect to functions that Congress assigned the Department to have.

7. Because the Secretary has authority to administer the Clery Act,² the Secretary may issue rules and regulations governing the manner of operation of Clery Act reporting requirements and related programs.

STATEMENT OF INTEREST

8. America First Legal Foundation (“AFL”) is a national nonprofit organization dedicated to upholding the rule of law and defending the constitutional rights of all Americans. In furtherance of its mission, AFL routinely engages in litigation and government oversight to protect the physical safety and general well-being of students in educational settings, including both K–12 schools and institutions of higher education.

LEGAL BACKGROUND

9. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, commonly known as the Clery Act, was enacted in response to the 1986 rape and murder of Jeanne Clery, a 19-year-old at Lehigh University.³ Following Clery’s tragic death, her family launched a national advocacy

² See 20 U.S.C. § 1092(f)(2) (referencing the Secretary’s authority to administer the Clery Act).

³ CLERY CENTER, *What happened to Jeanne Clery was a tragedy*, <https://perma.cc/N75M-9K3L>.

campaign to require colleges and universities to be transparent about campus crime.⁴ Their efforts led Congress to pass the Crime Awareness and Campus Security Act of 1990,⁵ later renamed in Jeanne Clery's honor.

10. In passing the Clery Act, Congress found that “students and employees of institutions of higher education should be aware of the incidence of crime on campus and policies and procedures to prevent crime or to report occurrences of crime.”⁶
11. Congress further found that “applicants for enrollment at a college or university, and their parents, should have access to information about the crime statistics of that institution and its security policies and procedures.”⁷
12. Congress also observed that “while many institutions have established crime preventive measures to increase the safety of campuses, there is a clear need—(A) to encourage the development on all campuses of security policies and procedures; (B) for uniformity and consistency in the reporting of crimes on campus; and (C) to encourage the development of policies and procedures to address sexual assaults and racial violence on college campuses.”⁸
13. The Clery Act applies to all institutions of higher education that participate in any program under Subchapter IV of Chapter 28 of Title 20 of the U.S. Code and Title IV of the Higher Education Act of 1965, other than a foreign institution of higher education.⁹
14. The Clery Act as amended requires covered institutions to prepare, publish, and distribute, through appropriate publications or mailings, to all current students and employees, and to any applicant for enrollment or employment upon request “an annual security report” containing “at least” the following information with respect to the campus security policies and campus crime statistics:
 - a. Procedures for students and others to report criminal actions or emergencies on campus and the institution's policies for responding to such reports.¹⁰

⁴ *Id.*

⁵ See Crime Awareness and Campus Security Act of 1990, Pub. L. No. 101-542, § 203, 104 Stat. 2381, 2385 (1990), as amended.

⁶ *Id.* § 202.

⁷ *Id.*

⁸ *Id.*

⁹ 20 U.S.C. § 1092(f)(1).

¹⁰ *Id.* § 1092(f)(1)(A).

- b. Policies regarding security for and access to campus facilities, including residence halls, and security considerations in the maintenance of those facilities.¹¹
- c. Information on the authority of campus security personnel, their relationship with state and local law enforcement (including any formal agreements such as memoranda of understanding), and policies that encourage accurate and prompt reporting of crimes by victims or others.¹²
- d. Descriptions of programs that inform students and employees about campus security procedures and crime prevention and that promote personal responsibility for the safety of oneself and others.¹³
- e. Data for the most recent calendar year and the two preceding years, including:
 - i. Criminal offenses such as murder, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, manslaughter, and arson.¹⁴
 - ii. Arrests or disciplinary referrals for liquor law violations, drug-related violations, and weapons possession.¹⁵
 - iii. Hate crimes, including larceny-theft, simple assault, intimidation, vandalism, or other bodily injury offenses, reported by bias type (race, gender, religion, national origin, sexual orientation, gender identity, ethnicity, or disability).¹⁶
 - iv. Domestic violence, dating violence, and stalking incidents.¹⁷
 - v. Hazing incidents.¹⁸
- f. Policies for monitoring criminal activity at recognized off-campus student organizations, including those with off-campus housing facilities.¹⁹

¹¹ *Id.* § 1092(f)(1)(B).

¹² *Id.* § 1092(f)(1)(C).

¹³ *Id.* § 1092(f)(1)(D)–(E).

¹⁴ *Id.* § 1092(f)(1)(F)(i).

¹⁵ *Id.*

¹⁶ *Id.* § 1092(f)(1)(F)(ii).

¹⁷ *Id.* § 1092(f)(1)(F)(iii).

¹⁸ *Id.* § 1092(f)(1)(F)(iv).

¹⁹ *Id.* § 1092(f)(1)(G).

- g. Policies governing the possession, use, and sale of alcoholic beverages and illegal drugs, enforcement of related state and federal laws, and descriptions of required drug and alcohol education programs.²⁰
 - h. Guidance for the campus community on how to access law enforcement information regarding registered sex offenders.²¹
 - i. Policies for immediate notification of the campus community in the event of a significant emergency, annual publicizing of emergency procedures, and annual testing of these procedures.²²
 - j. Statements of institutional hazing policies, procedures for reporting and investigating hazing incidents, relevant local, state, and tribal laws, and campus-wide prevention and awareness programs related to hazing.²³
15. In addition to the annual report, the Clery Act requires covered institutions to issue timely warnings to the campus community when emergencies or dangerous situations pose an immediate threat to the health or safety of students and staff.²⁴ Covered institutions must also maintain a daily crime log and designate campus security authorities to ensure accurate collection and reporting of campus incidents.²⁵ The Clery Act covers a broad range of crimes including murder, sexual assault, domestic violence, robbery, burglary, arson, hate crimes, and violations of drug, alcohol, and weapon laws.²⁶
16. In 2024, Congress amended the Clery Act to require covered institutions to report “hazing” incidents as part of their annual Clery Act crime statistics.²⁷ For purposes of reporting statistics on hazing incidents, the Clery Act defines hazing as any intentional, knowing, or reckless act committed (alone or with others) against a person, regardless of that person's willingness to participate, that occurs during initiation into, affiliation with, or maintenance of membership in a student organization; and causes, or creates a risk of, physical or psychological harm beyond the normal risks of participation in the institution or organization (such as typical athletic training).²⁸ The amendments require covered institutions to disclose hazing incidents that occur on campus, in non-campus buildings or property owned or controlled by

²⁰ *Id.* § 1092(f)(1)(H).

²¹ *Id.* § 1092(f)(1)(I).

²² *Id.* § 1092(f)(1)(J).

²³ *Id.* § 1092(f)(1)(K)–(L).

²⁴ *Id.* § 1092(f)(1)(J); 34 C.F.R. § 668.46(e).

²⁵ 20 U.S.C. § 1092(f)(4)(A); 34 C.F.R. § 668.46(f).

²⁶ 20 U.S.C. § 1092(f)(1)(F).

²⁷ *See id.* § 1092(f) (as amended by Pub. L. No. 118–173, 138 Stat. 2597 (2024)).

²⁸ *Id.* § 1092(f)(6)(vi).

the institution, or at off-campus events associated with student organizations.²⁹

17. The 2024 amendment also requires covered institutions to create and post on their official websites a “Campus Hazing Transparency Report.”³⁰ This report must be updated no less frequently than two times per year, and it must summarize all hazing incidents which occurred since the issuance of the institution’s most recent Campus Hazing Transparency Report, including information about the nature of the incidents and the locations in which they occurred.³¹ This report must also specify the dates on which the institution initiated and concluded its investigation into the matter.³² The report must be published in a prominent location on the institution’s website.³³
18. The U.S. Department of Education is responsible for ensuring that colleges and universities comply with the Clery Act.³⁴ Within the Department, the Office of Federal Student Aid, and specifically the Administrative Actions and Appeals Service Group (“AAASG”), oversees enforcement.³⁵ The AAASG has authority to investigate alleged violations, request documentation from institutions, and impose civil penalties for noncompliance.³⁶ Institutions that fail to comply with Clery Act requirements may face civil fines of up to \$71,545 per violation,³⁷ and the Department may also suspend an institution from participation in federal student financial aid programs.³⁸

JUSTIFICATION FOR THE RULE REQUESTED

19. Congress has determined that “students and employees of institutions of higher education should be aware of the incidence of crime on campus and policies and procedures to prevent crime or to report occurrences of crime.”³⁹ Congress has also determined that “applicants for enrollment at a college or university, and their parents, should have access to information about the crime statistics of that institution and its security policies and procedures.”⁴⁰

²⁹ *Id.* § 1092(f)(1)(F)(iv).

³⁰ *Id.* § 1092(f)(9).

³¹ *Id.* § 1092(f)(9)(A)(i)–(iii); *Id.* § 1092(f)(13)

³² *Id.* § 1092(f)(9)(A)(iii)(III).

³³ *Id.* § 1092(f)(9)(D).

³⁴ *Id.* § 1092(f).

³⁵ U.S. DEPT OF EDUC., OFFICE OF FEDERAL STUDENT AID, *Process for Taking Administrative Actions, Including Assessing Penalties, on Institutions*, <https://perma.cc/BLG6-CL8Z>.

³⁶ *Id.*

³⁷ See 34 C.F.R. § 668.84(a)(1).

³⁸ 20 U.S.C. § 1094(c)(1)(F) (authorizing suspension of federal student aid eligibility for noncompliant institutions).

³⁹ Pub. L. No. 101-542, § 202.

⁴⁰ *Id.*

20. Congress anticipated that institutions might need to provide information beyond the statute’s baseline requirements to ensure that students, prospective students, parents, and staff have access to relevant safety information. The statute directs that covered institutions must disclose “at least” the information specified in 20 U.S.C. § 1092(f),⁴¹ allowing regulators the discretion to require the reporting of additional information as necessary.
21. Recent reporting reveals a troubling pattern of antisemitic conduct on college campuses, ranging from harassment and intimidation to violent riots and vandalism.⁴² Such conduct is not merely offensive—it poses real, objective risks to students’ safety, mental health, and ability to fully participate in campus life. The prevalence of harassment, coupled with the often-inconsistent institutional response, creates an environment where Jewish students may reasonably fear for their personal security and well-being, undermining both their educational experience and the universities’ obligations under federal civil rights and campus safety laws. Parents and students deserve to know about safety risks on campus.
22. Evidence also suggests that politically motivated violence has intensified in recent years. For example, in the 2024 Strategic Intelligence Assessment on Domestic Terrorism, the Federal Bureau of Investigation and the Department of Homeland Security noted increases in violence tied to political beliefs, including attacks targeting specific ideological groups.⁴³ News reports across the political spectrum also document a rise in politically motivated violence.⁴⁴

⁴¹ 20 U.S.C. § 1092(f).

⁴² See, e.g., MAJORITY STAFF OF H. COMM. ON EDUC. & THE WORKFORCE, 118TH CONG., ANTISEMITISM ON COLLEGE CAMPUSES EXPOSED (Oct. 31, 2024), <https://perma.cc/B83K-KRB4> (finding university administrators at prominent American universities failed to protect Jewish students, including from assaults, violent riots, and vandalism, leading to an unsafe environment); *Campus Antisemitism: A Study of Campus Climate Before and After the Hamas Terrorist Attacks*, ANTI-DEFAMATION LEAGUE (Nov. 29, 2023), <https://perma.cc/D9XD-BUCU> (describing a surge in campus antisemitism based on a survey of over 3,000 students across 689 campuses that found 73% of Jewish students saw or experienced antisemitism since the start of the 2023 school year and revealed Jewish students felt less safe and avoided expressing views on Israel); *Antisemitism on U.S. College and University Campuses 2025 Report*, STOPANTISEMITISM (Dec. 8, 2025), <https://perma.cc/7A8M-ESC7> (finding 140 major American universities systemically tolerated antisemitism and that 39% of surveyed Jewish students reported hiding their identities, 58% experienced antisemitism, and only 12% of incidents were adequately addressed).

⁴³ See FEDERAL BUREAU OF INVESTIGATION, *Strategic Intelligence Assessment and Data on Domestic Terrorism*, (<https://perma.cc/64NC-3MKE>).

⁴⁴ See, e.g., Daniel Byman & Riley McCabe, *Left-Wing Terrorism and Political Violence in the United States: What the Data Tells Us*, CENTER FOR STRATEGIC & INTERNATIONAL STUDIES (Sep. 25, 2025), <https://perma.cc/C6P8-MQFR> (discussing data indicating that left-wing violence has risen in the last 10 years); see also Art Jipson & Paul Becker, *Analysis: What data shows about political extremist violence*, PBS NEWS HOUR (Sep. 20, 2025), <https://perma.cc/J6Y8-TH5S> (explaining that political violence in the U.S. “has risen in recent months”).

23. College campuses across the United States have experienced frequent incidents of politically motivated violence in recent years, including assaults, intimidation, and property destruction tied to protests and demonstrations. These events highlight a growing need for institutions to track and address politically charged threats to campus safety.
24. For example, in February 2017, a violent protest erupted at the University of California, Berkeley, on the day that conservative commentator Milo Yiannopoulos was scheduled to speak on campus.⁴⁵ According to the University, protesters caused more than \$100,000 in property damage.⁴⁶ Two members of the College Republicans were attacked while conducting an interview on campus.⁴⁷ Protesters wearing masks threw commercial-grade fireworks and rocks at police officers, and some hurled Molotov cocktails that ignited fires.⁴⁸ Protesters also smashed windows at the student union building where the event was to be held.⁴⁹ At least six individuals were injured.⁵⁰ The University cancelled the event, citing the violence, destruction of property, and concerns for public safety.⁵¹
25. In April 2024, pro-Palestinian agitators at Columbia University broke into a campus building, smashed windows, and blocked doors with furniture.⁵² Outside the building, many of the agitators, wearing masks, locked arms in front of the building to form a human barricade.⁵³ The rioters were demanding that Columbia divest its financial support of Israel, become more transparent, and provide blanket amnesty to protesters.⁵⁴ At least three facilities workers were inside the academic building when the anti-Israel agitators stormed in.⁵⁵ The workers were subsequently allowed to leave at around 12:40 a.m., with one reportedly yelling “they held me hostage” as he left the building.⁵⁶

⁴⁵ Madison Park & Kyung Lah, *Berkeley protests of Yiannopoulos caused \$100,000 in damage*, CNN (Feb. 2, 2017), <https://perma.cc/J7HL-DY8A>.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Lawrence Richard, *Antisemitic riot at Columbia reaches boiling point as agitators take over academic building, barricade doors*, FOX NEWS (Apr. 30, 2024), <https://perma.cc/K8DN-YFPV>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

26. In April 2024, violent anti-Israel protests erupted at Yale University, leading to dozens of arrests.⁵⁷ A Jewish student claimed she was assaulted by one of the protesters because she was wearing a Star of David necklace.⁵⁸
27. In late April and early May 2024, pro-Palestinian protesters established an encampment at the University of California, Los Angeles, calling on the university to divest from companies linked to Israel’s military actions in Gaza.⁵⁹ Tensions escalated after counter-protesters attacked the encampment, leading to violent clashes and physical injuries.⁶⁰ On May 2, UCLA administrators authorized police to clear the encampment, resulting in the dismantling of protest structures and the arrest of more than 200 demonstrators.⁶¹
28. In April 2025, a lecture at Princeton University by former Israeli Prime Minister Naftali Bennett was cut short after protests erupted inside and outside the event.⁶² According to a student, around 200 protesters gathered outside the venue, banging drums, shouting through megaphones, and using microphones to drown out the speech.⁶³ The disruption escalated when demonstrators inside the event stood up and began shouting, and the event was ultimately halted when a fire alarm was pulled, prompting an evacuation.⁶⁴ A Jewish student reported being targeted with antisemitic slurs, including being told to “go back to Europe” and being called “inbred swine” by some protesters.⁶⁵ Princeton President Christopher L. Eisgruber acknowledged the comments, saying in a statement that he was “appalled at reports of antisemitic language directed by demonstrators at members of our community.”⁶⁶
29. In August 2024, on the first day of classes at Cornell University, anti-Israel protesters vandalized and destroyed property in a massive protest.⁶⁷ The anti-Israel activists claimed responsibility for the vandalism in a statement: “We had to accept that the only way to make ourselves heard is by targeting the

⁵⁷ Natalie Duddridge, *Jewish Yale student says pro-Palestinian protester assaulted her. Here’s why she feels targeted.*, CBS NEWS (Apr. 25, 2024), <https://perma.cc/J5JF-BZXK>.

⁵⁸ *Id.*

⁵⁹ Lois Beckett & Jessica Glenza, *Police arrest at least 200 pro-Palestinian protesters at UCLA and clear camp*, THE GUARDIAN (May 2, 2024), <https://perma.cc/YEX5-7QWG>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Madison Colombo, *Princeton student says anti-Israel protesters called her ‘inbred swine’ and told her to ‘go back to Europe’*, FOX NEWS (Apr. 12, 2025), <https://perma.cc/5U4D-VFV9>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Daniella Wallace, *Anti-Israel agitators hit Cornell University with vandalism, protests on Ivy League school’s 1st day*, FOX NEWS (Aug. 27, 2024), <https://perma.cc/59QX-5GUT>.

only thing the university administration truly cares about: property,” the statement said.⁶⁸ “With the start of this new academic year,” the Cornell administration is trying desperately to upkeep a facade of normalcy knowing that, since last semester, they have been working tirelessly to uphold Cornell’s function as a fascist, classist, imperial machine.”⁶⁹ As for “debates and peaceful protests,” the statement said that “these on their own will never be enough to achieve the change we demand.”⁷⁰ The students vowed to “continue to take action and escalate for divestment, for a free Palestine, for land back, and for all liberation struggles resisting imperialism.”⁷¹

30. In April 2025, Turning Point USA hosted Brandon Tatum for an event at the University of California, Davis. The event turned violent when demonstrators approached the speaker’s tent on the quad, engaged in shoving, and attempted to pull the tent down.⁷² Those involved were later charged with conspiracy to commit a riot and battery.⁷³
31. In May 2025, pro-Palestinian protesters caused significant disruption at Columbia University, during which at least two public safety officers were injured.⁷⁴ In a video statement, the university president later explained that one group of protesters occupied a main reading room in Butler Library and refused to leave, while another group breached the library’s front entrance, resulting in substantial disorder and requiring intervention by campus security.⁷⁵ Police officers were seen removing over 70 protesters from the library in handcuffs.⁷⁶
32. In November 2025, a Turning Point USA event at the University of California, Berkeley prompted protests that escalated into confrontations between demonstrators and law enforcement.⁷⁷ Protesters assembled outside the venue in opposition to the event, and some acted violently, leading to physical

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Protesters Attempt To Disrupt Student Event*, UC DAVIS (Apr. 3, 2025), <https://perma.cc/2TY2-8FVH>.

⁷³ Daniel Macht, *2 face charges in connection with violence at Turning Point event at UC Davis*, DA SAYS, KCRA 3 (Jan. 23, 2026), <https://perma.cc/8M45-CMQU>.

⁷⁴ Ali Bauma, *At least 2 injured in Columbia University protest, NYPD takes dozens into custody*, CBS NEWS (May 8, 2025), <https://perma.cc/MXS5-2RMJ>.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Natalie Orenstein, *Anti-fascist protesters clash with attendees outside Turning Point event at UC Berkeley*, BERKELEYSIDE (Nov. 10, 2025), <https://perma.cc/U4S8-ASNY>.

altercations, fights, and several arrests.⁷⁸ The unrest later prompted a U.S. Department of Justice inquiry into the protests and related conduct.⁷⁹

33. The events described above demonstrate that politically and religiously motivated protests, demonstrations, and riots have caused physical injuries and property damage, creating genuine threats to student safety on campus. Current Clery Act reporting requirements do not require institutions to disclose the details of such incidents in their annual reports. Many of the crimes that occur during these events fall outside existing Clery categories, limiting transparency and accountability. AFL's proposed amendments would ensure that students, parents, and staff have access to a complete and accurate understanding of campus safety conditions.
34. Institutions of higher education should not be permitted to shield serious risks to student safety behind aggregated statistics or carefully managed public statements. Politically and religiously motivated violence is increasing nationwide, and campuses are not immune from this trend. When students are targeted because of their political beliefs or religious identity—and when institutional responses fail to prevent escalation into violence—those facts are material to campus safety. Transparency in such circumstances is essential so that students, families, and the public can accurately assess risks and hold institutions accountable for their prevention and response efforts.

NATURE OF REQUEST

35. For the reasons set forth in this petition, AFL requests that the Department amend 34 C.F.R. § 668.46 to require higher education institutions to track and report all instances of violent protest activity, politically motivated assaults or intimidation, and protest-related destruction of property, occurring on or near campus or in institution-controlled locations.
36. Specifically, AFL asks the Department to amend § 668.46(c) to require covered institutions to report and disclose in their annual security report statistics regarding the following crimes, when occurring in connection with protest activity, demonstrations, or riots:
 - a. Riot/inciting or promoting a riot.
 - b. Trespass.
 - c. False imprisonment.
 - d. Larceny-theft.
 - e. Simple assault.

⁷⁸ *Id.*

⁷⁹ Matthew Rehbein, *Justice Department Investigating UC Berkeley protests during Turning Point USA event*, CNN (Nov. 12, 2025), <https://perma.cc/2HCF-JGAS>.

- f. Battery.
 - g. Intimidation.
 - h. Destruction/damage/vandalism of property.⁸⁰
37. Further, AFL requests that the Department amend 34 C.F.R. § 668.46 to require covered institutions to publish, in a prominent location on their public websites, an annual Political & Religious Violence Transparency Report, including a detailed description of (1) all violent protests, demonstrations, and riots, occurring on campus, on public property immediately adjacent to campus, or in non-campus buildings or property owned or controlled by the institution, involving force, threats of force, or the risk of injury to persons; (2) all assaults or intimidation, defined as acts of violence, credible threats of violence, or threatening harassment directed at individuals or groups based on political belief, religious belief, affiliation, or expressive activity; and (3) destruction of property, including arson, vandalism, or other deliberate damage, when occurring in connection with protest activity, demonstrations, or riots. The report should also explain, in narrative form, what steps the institution and/or local law enforcement took to address any activities identified in the report. AFL asks the Department to require that this report shall be updated not less frequently than two times each year.⁸¹
38. AFL further requests that the Department amend 34 C.F.R. § 668.46 to include a section outlining the monetary penalties for noncompliance, including civil penalties and fines up to \$71,545 per violation.⁸²
39. Critically, none of the criminal activity that AFL urges institutions to report is protected by the First Amendment. It is axiomatic that “[t]he First Amendment does not protect violence.” *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982). As the Supreme Court has explained, “violence has no sanctuary in the First Amendment, and the use of weapons, gunpowder, and gasoline may not constitutionally masquerade under the guise of ‘advocacy.’” *Id.* (internal quotation marks omitted). The First Amendment does not protect advocacy “directed [at] inciting or producing imminent lawless action” and is “likely to incite or produce such action.” *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). Likewise unprotected are “fighting words”—that is, words “which by their very utterance inflict injury or tend to incite an immediate breach of

⁸⁰ *Cf.* 34 C.F.R. § 668.46(c)(1)(iii)(B)(4).

⁸¹ *Cf.* 20 U.S.C. § 1092(f)(9)(A)(iii).

⁸² *See* 34 C.F.R. § 668.84(a)(1) (authorizing fines of up to \$71,545 per violation); *see also* 20 U.S.C. § 1094(c)(1)(F) (authorizing the Secretary to prescribe regulations as may be necessary to provide for “the limitation, suspension, or termination of the participation in any program under this subchapter of an eligible institution, or the imposition of a civil penalty under paragraph (3)(B) whenever the Secretary has determined, after reasonable notice and opportunity for hearing, that such institution has violated or failed to carry out any provision of this subchapter, any regulation prescribed under this subchapter, or any applicable special arrangement, agreement, or limitation”).

the peace.” *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942). And the Constitution does not protect “true threats,” meaning statements that communicate “a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003).

40. Insofar as there are borderline cases, nothing in AFL’s proposal prohibits institutions from reporting activity that ultimately qualifies as protected speech. The First Amendment limits government-imposed *punishment* for speech; it does not confer a right to engage in speech or conduct without observation, documentation, and disclosure. *See Laird v. Tatum*, 408 U.S. 1, 10 (1972). Especially in the school context, parents are entitled to information about conduct that may implicate student safety, even where that conduct falls short of criminality. *See Troxel v. Granville*, 530 U.S. 57, 66 (2000) (collecting cases). Providing notice of potentially concerning behavior enables parents and institutions to assess risks, respond appropriately, and protect students—without suppressing speech or imposing penalties for its expression.

CONCLUSION

41. For the foregoing reasons, AFL respectfully petitions the Department to commence rulemaking to require the reporting of criminal activity that occurs in connection with protest activity, demonstrations, or riots, as well as the publication of an annual Political & Religious Violence Transparency Report. These changes are necessary to restore transparency and provide students and parents with the information they need to assess campus safety in an era of escalating political violence.

Respectfully submitted,

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