

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ALEXANDER KESTENBAUM and
STUDENTS AGAINST ANTISEMITISM,
INC.,

Plaintiffs,

v.

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE,

Defendant.

Case No. 1:24-cv-10092-RGS

Oral Argument Requested

**DEFENDANT’S MOTION TO DISMISS AND
MOTION TO STRIKE PLAINTIFFS’ COMPLAINT**

Defendant President and Fellows of Harvard College (“Harvard”) hereby moves to dismiss this action in its entirety pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) and, in the alternative, moves to strike Plaintiffs’ demand for injunctive relief under Federal Rule of Civil Procedure 12(f). The grounds for this motion, which are explained in detail in the accompanying Memorandum of Law, include the following:

1. The Court should dismiss Plaintiffs’ challenge to Harvard’s ongoing response to antisemitism under Rule 12(b)(1) because it is premature.
2. The Court should dismiss all claims brought by Students Against Antisemitism (“SAA”) under Rule 12(b)(1) for lack of standing.
3. The Court should dismiss the claims for injunctive relief brought by Alexander Kestenbaum and SAA under Rule 12(b)(1) because Mr. Kestenbaum’s claims are moot due to his graduation and because both Mr. Kestenbaum and SAA lack standing to seek injunctive relief.

4. The Court should strike Plaintiffs' demands for injunctive relief because Plaintiffs seek an impermissibly broad injunction and demand particular disciplinary measures, a form of relief not available under Title VI.

5. The Court should dismiss Plaintiffs' Title VI claim under Rule 12(b)(6) because Plaintiffs do not plausibly allege Harvard demonstrated discriminatory animus nor do they plausibly allege that Harvard acted with deliberate indifference.

6. The Court should dismiss Plaintiffs' breach of contract and implied covenant claims under Rule 12(b)(6) because they fail to plead a breach of contract and because their implied covenant claim is duplicative of their insufficient Title VI and contract claims.

7. In support of this Motion, Harvard submits the accompanying Memorandum of Law and the Declarations of Timothy Whelsky, Felicia Ellsworth, and Meredith Weenick.

WHEREFORE, Harvard respectfully requests that the Court dismiss this action in its entirety and strike Plaintiffs' demands for injunctive relief and punitive damages.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Defendant respectfully requests oral argument of this Motion.

DATED: June 18, 2024

Respectfully Submitted,

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE

By its attorneys,

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LOCAL RULE 7.1 CERTIFICATION

The undersigned hereby certifies that on June 14, 2024, counsel for Harvard conferred with Plaintiffs' counsel in a good faith attempt to resolve or narrow the issues involved in this motion, and that the parties did not reach an agreement.

/s/ Felicia H. Ellsworth

Felicia H. Ellsworth

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2024, I caused this document to be filed through the CM/ECF system, where it will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Felicia H. Ellsworth

Felicia H. Ellsworth