

Making the Case for Academic Freedom and Institutional Autonomy in a Challenging Political Environment

A RESOURCE GUIDE FOR CAMPUS LEADERS



PEN AMERICA

PEN America stands at the intersection of literature and human rights to protect free expression in the United States and worldwide. We champion the freedom to write, recognizing the power of the word to transform the world. Our mission is to unite writers and their allies to celebrate creative expression and defend the liberties that make it possible. Learn more at pen.org.

AMERICAN COUNCIL ON EDUCATION

The American Council on Education (ACE) is a membership organization that mobilizes the higher education community to shape effective public policy and foster innovative, high-quality practice. As the major coordinating body for the nation's colleges and universities, our strength lies in our diverse membership of more than 1,700 colleges and universities, related associations, and other organizations in America and abroad. ACE is the only major higher education association to represent all types of U.S. accredited, degree-granting institutions: two-year and four-year, public and private. Our members educate two out of every three students in all accredited, degree-granting U.S. institutions. Learn more at acenet.edu.

Cover photo courtesy of ACE member institution Ohio University.



ACE and the American Council on Education are registered marks of the American Council on Education and may not be used or reproduced without the express written permission of ACE.

American Council on Education
One Dupont Circle NW
Washington, DC 20036

© 2023. All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without permission in writing from the publisher.

CONTENTS

- Introduction.....1
- What the Public Believes: Campuses Should Decide What Is Taught or Discussed2
- Communication Tools for Tackling Proposed Restrictions on Academic Freedom5
 - Purpose5
 - Background Points6
 - Speaking to the Media.....7
 - Communicating to Campus Stakeholders8
 - Questions You May Be Asked.....9
 - Additional Resources.....10
- Appendix A: Divisive Concepts Laws That Restrict Higher Education.....11
- Appendix B: A Brief Overview for Campus Stakeholders.....13
 - Issue.....13
 - Background.....13
 - Response13

INTRODUCTION

Over the past several years, there have been numerous state government efforts—sometimes sparked by legislators and other times by governors—to shape, limit or regulate the presentation and discussion in educational institutions of topics such as race, gender, American history, and LGBTQ+ identities. These bills have sometimes been labeled as efforts to prohibit the teaching of “divisive concepts,” and they have been described by PEN America as “[educational gag orders](#).” This has occurred more often at the K–12 level, but it is an issue increasingly and directly affecting colleges and universities. These attempts to mandate what can and cannot be taught and discussed on our campuses are unsettling and dangerous. They represent a serious threat to the academic autonomy and intellectual freedom that make American higher education the envy of the world.

Nearly 200 years ago, [James Madison proclaimed](#) that “the advancement and diffusion of knowledge . . . is the only guardian of true liberty.” Yet, since 2021, there has been a [wave of bills](#)—140 in 2022 alone and introduced in more than 40 state legislatures across the United States—seeking to restrict teaching and training in K–12 schools and on college campuses, as well as more broadly within state agencies and institutions. The majority of these bills target discussions of race, racism, gender, critical race theory (CRT), and American history and ban a series of prohibited or divisive concepts for teachers and trainers operating in K–12 schools, public universities, state agencies, and workplace settings. Their goals are clear: to chill academic and educational discussions and impose government dictates on teaching and learning, sometimes with the threat of punishment that includes fines, loss of state funding, civil liability, dissolution of school districts, termination, or even criminal charges against teachers. There was more than a 250 percent increase in such bills in 2022 compared with 2021, 39 percent of which targeted higher education (see [Appendix A](#) with a representative sample of recently enacted laws). In 2023, the threat of these bills continues in many states.

In addition to governors willing to sign such legislation, some are also taking executive actions. For instance, Virginia Governor Glenn Youngkin’s very first executive order upon taking office in early 2022 banned “[inherently divisive concepts](#)” at the K–12 level. South Dakota Governor Kristi Noem [signed a similar executive order](#) in April 2022, after also signing legislation earlier in the year that prohibited colleges and universities from requiring students and teachers to attend trainings or orientations that teach or promote “divisive concepts.” With Sarah Huckabee Sanders, Arkansas’ new governor, signing an educational gag order to [ban CRT](#) in K–12 public schools on the first day of her term, it appears that elected officials will be continuing to scrutinize and trying to exert control over what goes on in classrooms at both the K–12 and postsecondary education levels.

Meanwhile, some federal legislators have discussed proposals to interject Congress into what happens in our classrooms and on campuses too. For example, during the debate over the National Defense Authorization Act (NDAA) for fiscal year 2022, a provision was unsuccessfully proposed that would have required all defense contractors, including colleges and universities, to make publicly available online an array of diversity, equity, and inclusion training materials or other internal policies related to CRT. The higher education community objected to this provision, arguing that it would waste time and money while creating a chilling effect on the good faith, reasonable, and lawful efforts of colleges and universities that act as federal contractors to build and sustain nondiscriminatory, inclusive, and diverse workplaces and learning communities. Fortunately, the provision was not included in the final version of the NDAA.

As these issues surface and simmer across the country, the American Council on Education (ACE) and PEN America have partnered to create this resource guide. We hope both to provide an overview of what is happening and why and to offer guidance on how presidents, chancellors, and other campus leaders can address these issues from a higher education perspective with internal and external stakeholders. Some of what is contained in this resource guide will be familiar to various campus leaders already, and a number of leaders already have grappled with the issues addressed here. Our goal is to assemble information and ideas in a succinct and accessible format that provides a menu of options and strategies for addressing different situations in different places. Higher education leaders need to convey why it is so important that elected officials not impose restrictions on how and what is taught, as well as to emphasize the importance of ensuring that all members of the campus community feel comfortable airing varying perspectives across campus and in the classroom. Higher education must make its case—and it's a good one—for the value of addressing a wide array of topics through a variety of academic lenses. Some of these topics may be controversial to some people, but all can and should be studied with intellectual rigor and a willingness to engage in open and civil dialogue for the benefit of our students and our entire society.

WHAT THE PUBLIC BELIEVES: CAMPUSES SHOULD DECIDE WHAT IS TAUGHT OR DISCUSSED

In the summer and fall of 2022, ACE conducted [public opinion research](#) on the public's understanding and views about these issues. The research involved several focus groups and a national survey, and it included registered Democrats, Republicans, and Independents. In general, the research identified broad agreement on keeping elected officials out of the shaping of higher education curriculum and on the importance of academic freedom and free speech in classrooms and elsewhere on campus. Bipartisan majorities of those surveyed said that all topics should be open for discussion on college campuses, as long as issues are fairly presented in a nondoctrinaire way, because college students are adults—in contrast to K–12 environments, where some restrictions may be permissible. Indeed, the vast majority of those surveyed believe that it is good for college students to be exposed to a wide range of topics and viewpoints—including those that some might deem controversial—because weighing multiple points of view is essential to learning to think critically, a fundamental part of a college education. The public opinion research identified strong opposition to federal and state policymakers mandating what can or cannot be taught or discussed on college campuses and imposing restrictions or conditions on campus speech and curriculum. Instead, the research reflected a public belief that campus leadership and faculty are best situated to make these decisions, not the government. Despite this belief, however, there is sentiment among some Republicans, as well as a fair number of Independents and Democrats, that taxpayers should have a say in what is taught at public colleges and universities.

This resource guide primarily confronts the increasing tendency by elected officials, particularly at the state level, to author viewpoint-based intrusions into higher education classrooms and curricula. If campus leaders cannot make the case for the importance of all students, faculty, and staff having the right and ability to engage in unencumbered and robust campus discussions, it will prove tougher to defend campus free expression to state legislators and other policymakers.

American higher education has historically been esteemed for its civic mission of teaching each generation how to engage in robust yet civil discussions about difficult and sometimes divisive issues. Indeed, it is fundamental to the mission of colleges and universities that complex issues, challenges, and ideas be examined and openly debated on campus and in classrooms. According to the American Association of University Professors' influential *1915 Declaration of Principles on Academic Freedom and Academic Tenure* (pdf), one of the three key functions of an academic institution is “to promote inquiry and advance the sum of human knowledge.” Further, the principles emphasized that these functions are advanced and protected through academic freedom, described as inhering not in “the absolute freedom of utterance of the individual scholar, but [in] the absolute freedom of thought, of inquiry, of discussion, and of teaching, of the academic profession.” In addition, the *1940 Statement of Principles on Academic Freedom and Tenure* (pdf) declared that:

Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. *The common good depends upon the free search for truth and its free exposition.* Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. (emphasis added)

Higher education institutions are committed to transparent intellectual inquiry and academic excellence, free speech, and civil discourse.

Another distinguishing feature of American higher education has been its independence from direct governmental control. In an oft-quoted concurring opinion in the 1957 U.S. Supreme Court case *Sweezy v. New Hampshire*, Associate Justice Felix Frankfurter spoke about “the dependence of a free society on free universities,” pointedly saying that “this means the exclusion of governmental intervention in the intellectual life of a university.” His opinion highlighted the “‘the four essential freedoms’ of a university—to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.” And, in a warning that is as relevant today as it was seven decades ago, Justice Frankfurter stated, “It matters little whether such intervention occurs avowedly or through action that inevitably tends to check the ardor and fearlessness of scholars, qualities at once so fragile and so indispensable for fruitful academic labor.”

As a cautionary note, our public research revealed some skepticism about the way institutions handle controversial topics and whether liberal and conservative views are equally accepted on campus. By almost two to one, voters think that the discourse about politics and issues on college campuses is headed in the wrong direction (25 percent of voters believe it to be headed in the right direction, compared with 45 percent who think it is on the wrong track). Perhaps this is due to examples of campus free speech controversies in the media, particularly in conservative media forums that have emphasized what they believe are instances of conservative speakers not being provided full and fair opportunities to express their views. Recent research from the [University of North Carolina](#) and [University of Wisconsin](#) systems has complicated this picture by demonstrating that conservative students do feel silenced on campus—yet primarily by their peers, rather than their teachers. There have also been efforts by various groups on some campuses to silence or censor professors, students, and guest speakers from across the political spectrum.

The solution to an intolerant campus climate is [better education about free expression and effective communication](#), not legislative censorship. Nevertheless, these controversies can erode confidence in our colleges and universities as true homes to open inquiry and as forums to prepare the next generation of civic leaders and productive citizens. In turn, it can become more difficult for college and university leaders to be viewed credibly by policymakers and other stakeholders when they do the right thing and push back against these harmful efforts to restrict what is taught and discussed on campus.

In light of this challenge, campus leaders ought to visibly redouble their longstanding commitment to campus free speech and civil discourse as a key component of academic excellence, even if it sometimes makes some in the campus community uncomfortable. Campus leaders can do this by making it clear that campuses must be places for discussion and debate about a wide swath of ideas—and that this policy is not only valuable to their students' academic and personal development, but also an integral part of their missions as higher education institutions.

There is general agreement that the cure for bad speech is more speech, as ACE's research found. Most of those surveyed did not agree with disinviting a controversial speaker; rather, many thought that the speech or event should be allowed to proceed while students or others opposed to those ideas should be permitted to protest peacefully and ask questions constructively. PEN America maintains its [Campus Free Speech Guide](#) with practical, principled guidance for administrators, faculty, and students on how to respond to speech-related controversies and how higher education institutions can take proactive steps to keep campuses open to all voices.

In addition, presidents and chancellors may consider adopting principles or guidance that outlines their institution's stance on open inquiry and free speech, both inside the classroom and across campus. One popular model that a number of institutions nationwide [have adopted](#) is the [Chicago Principles](#), which were developed in 2014 by the University of Chicago.

The core of the Chicago Principles, as stipulated in the University of Chicago's *Report of the Committee on Freedom of Expression*, mirrors many of the sentiments revealed by ACE's public opinion research. The University of Chicago proclaims:

In a word, the University's fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the University community, not for the University as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the University community to engage in such debate and deliberation in an effective and responsible manner is an essential part of the University's educational mission.

Similarly, [PEN America's Principles of Campus Free Speech](#) provide both general and specific precepts for nurturing campus communities that protect speech to the utmost and allow for academic and social discourse that is truly inclusive and transcends boundaries, predicated on the ideal of open and respectful exchange. They state:

Campuses must be open to a broad range of ideas and perspectives, and to achieve that, they must uphold the rights of all students to participate freely and equally. . . . Campus leaders must be free to speak in their own right, to assert and affirm their institutional values.

When considering adopting a free expression statement, campus leaders ought to think carefully about involving varied institutional stakeholders in the process. It may be helpful to review the range of existing statements, such as those surveyed by the [Bipartisan Policy Center](#), as well as other advice from its [Academic Leaders Task Force on Campus Free Expression](#).

COMMUNICATION TOOLS FOR TACKLING PROPOSED RESTRICTIONS ON ACADEMIC FREEDOM

Purpose

As noted earlier, some policymakers are pushing policies that restrict or limit teaching or discussion of so-called “divisive concepts”—at least in part due to claims about campus free speech shortcomings. The challenge confronting campus leaders across the country is to demonstrate clearly that the policies being advanced are irresponsible intrusions on academic autonomy and would dangerously undermine the core values of academic freedom, free speech, and civil discourse.

Whether at the state or federal level, the ability of colleges and universities to determine the academic content and intellectual rigor of what takes place in the classroom and across campus is of paramount importance to the quality of the education that our students receive—and to the ability of institutions to produce productive citizens and leaders and cutting-edge, innovative research that produces lifesaving medical and scientific advances and generates economic growth for the benefit of our entire society.

This resource guide equips campus leaders with ways to respond when policymakers or other stakeholders raise questions about what's being said and taught on campus or try to impose limitations on academic freedom. It also provides proactive strategies that can help head off such attacks in the first place—or at least defuse them more easily when they occur (see Appendix B for a short overview version that may prove useful in sharing with stakeholders).

While there is a growing sense of urgency around responding to government interference—overreach—in the classroom, campus leaders must also show a sense of urgency around ensuring that classroom exchange is open and respectful and that free expression is protected across the entire campus as a matter of course.

Background Points

We present the following background points, reflective of a broad expert and popular consensus, as ways to talk about these issues with state elected officials and other policymakers:

- Free and open academic inquiry and debate on college campuses are essential to our democracy and national well-being.
- Colleges and universities examine complex issues, challenges, and ideas and provide a forum in which issues and opinions can be explored and openly debated. They are committed to transparent intellectual inquiry and academic excellence, free speech, and civil discourse.
- Fostering a rigorous and civil exchange of ideas has never been more important. America needs its higher education institutions to graduate students with the skills needed to be productive citizens who contribute to engaged communities and to produce scholarship and research that boosts our national, state, and local economies and cultural offerings and leads to life-altering technologies and lifesaving medical advances that benefit all of American society.
- College students are adults who should be exposed to all topics on campus, including controversial and contentious ideas presented in an intellectually rigorous way that encourages discourse. In the classroom, this means that professors should present views on a topic that are accurate, nondoctrinaire, and consistent with curricular requirements. It is important to note that under the principles of academic freedom and shared governance, faculty are charged with being the main decision-makers shaping syllabi and curricula.
- Higher education institutions are committed to the idea that more speech is good speech and to ensuring that all members of the campus community feel comfortable expressing their ideas and views. To that end, all members of the campus community must be able to speak their minds freely, even if some have opinions that others find wrong, objectionable, or offensive. Part of growing up and becoming an adult is being exposed to uncomfortable ideas that may be different from one's own.
- Having to weigh multiple points of view about controversial topics helps students learn to think critically. It is fundamental to a college education and, more generally, to growing into adulthood.
- The best cure for bad speech is more speech, not restrictions on speech. There are limits to this—but only those that reflect First Amendment jurisprudence. When speech violates the law, defames individuals, or threatens violence, that crosses the line and need not be tolerated. These exceptions, and the circumstances in which they are invoked, must be communicated in a clear and transparent manner to the entire campus community and other external stakeholders.
- Government officials should not make decisions about what can or cannot be taught or discussed on college campuses or impose restrictions on campus speech or curricula. Campus and faculty leaders are best situated to make these decisions, not the government.
- For the past century, higher education institutions and government officials have worked in partnership to study social challenges and propose solutions, including regarding the operation of colleges and universities. No campus leader today is unaware of the challenges to free speech and open dialogue that are spreading on college campuses, coupled with concerns from students and faculty from different identities and across the political spectrum that academic environments do not feel hospitable to

their viewpoints. Campus leadership should be keen to work in partnership with government officials on studying these challenges and proposing and implementing solutions. Additional efforts to control how ideas are shared on campuses, from any source, could have a deleterious effect on achieving this mutual goal.

Speaking to the Media

In addition to discussing these issues with the campus community, policymakers, and other internal and external stakeholders, there may be opportunities to raise these issues with media outlets; this may sometimes be done proactively and other times will be in response to inquiries from reporters. University and college leaders carry a great deal of prestige and respect in their communities, perhaps more than they realize. An op-ed, media commentary, or speaking engagement on these issues may well be of interest to the media and persuasive to the general public.

There are various ways in which the media might become interested in a story involving issues of free speech and open inquiry in a positive light. For example, an institution might want to raise the issue proactively with local media if it adopts guidance, a set of principles promoting campus free speech, or an education or training program for its students, faculty, or staff. An institution may receive media attention from a speech-related controversy on campus or if restrictions of the type outlined herein are covered by the press.

Regardless, in these circumstances it behooves college and university leaders to offer constructive and positive reflections on the importance of academic freedom; the ability to speak freely about a wide range of ideas on campus; and why attempts to impose viewpoint-based restrictions on these rights, particularly by government, are dangerous. Institutional leaders should consult with their own media relations teams, but here are a few suggestions to weigh when considering effective media communications:

- Do you wish to be understood as the face and voice of the school? Can you reasonably expect that the media, the public, your campus constituencies, and policymakers will receive your comments as ones divorced from an institutional position?
- What is the focus of the story and the angle the reporter is taking?
- What is the story you want to tell?
- What is the perspective of those you disagree with and what are the points they will make—and how will you address them in a constructive and positive manner?
- What three or four main (and succinct) points will you want to make with accompanying examples or data?
- How will you take these key messages and consistently drive home the overall story you want to tell? Repetition can be a powerful tool in an interview.

SHARE REAL STORIES

When talking to both stakeholders, policymakers, and the media, use real stories about students, professors, and others in your campus community to illustrate how academic freedom and rigorous discourse benefits your students and the public good. Demonstrate how that atmosphere exists and talk about a wide array of perspectives and views in doing so.

The following videos from the American Historical Association about teaching history with integrity and confronting the nation's past are good examples of how to respond:

- “Teaching with Integrity: Historians Speak”
- “Teaching with Integrity: Confronting a Nation's Past”

OTHER WAYS TO COMMUNICATE VIA LOCAL MEDIA OUTLETS

Op-eds

- Typically no more than 700–800 words; check specific guidelines
- Respond in a positive, constructive manner to a proposal or event that threatens academic freedom on your campus
- Use examples of why the proposal would be damaging
- Show why academic freedom and intellectual rigor help your students and the public good
- Amplify your piece via social media channels

Letters to the editor

- Typically very brief, in the 100–200 word range; check specific guidelines
- Use to respond to a story or op-ed in that publication or to a proposal or event in the community even if not yet the subject of a story, but you must do so as quickly as possible to have the best chance of being published
- Keep the letter focused on two to three salient points
- Amplify the letter via social media channels

Social media and blog posts

- Use your channels to get out information and messages about what's happening on your campus to head off potential proposals and address proposed restrictions
- Be proactive and constructive, not defensive
- Leverage respected community voices

Communicating to Campus Stakeholders

1. **Ask your stakeholders to join in your efforts to better inform policymakers.** Communicate to members of the campus community—including students, staff, and faculty, as well as alumni and other stakeholders—about how to proactively discuss the importance of academic freedom and institutional autonomy and how to respond to threats to it.
2. **Speaking out publicly.** As you communicate with your stakeholders, note that they too can write letters to the editor, op-eds, and otherwise communicate with the media on these issues.
3. **Contacting elected officials.** Consider asking your campus stakeholders to contact elected officials to convey why it is damaging to impose limits or restrictions on what is taught and discussed in the classroom and across campus. The background points in this resource guide can be helpful.

Questions You May Be Asked

Are “divisive concepts” taught on your campus? That’s a misleading term that mischaracterizes what happens in the classroom. Faculty teach students—who are adults—by presenting a wide array of differing perspectives and evidence-based information. Many intellectual frameworks are taught alongside one another, including some that may be controversial or with which some people may disagree. That is not a reason to ban these topics; it is a reason to engage with them—such intellectual engagement is a key part of postsecondary education.

Do you oppose efforts to ban critical race theory or the teaching of “divisive concepts”? A distinguishing feature of American higher education has been its independence from direct governmental control. In an oft-quoted concurring opinion in the 1957 U.S. Supreme Court case of *Sweezy v. New Hampshire*, Associate Justice Felix Frankfurter spoke about “the dependence of a free society on free universities,” pointedly saying that “this means the exclusion of governmental intervention in the intellectual life of a university.” His opinion highlighted “‘the four essential freedoms’ of a university—to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.” And, as relevant today as it was seven decades ago, Justice Frankfurter warned, “It matters little whether such intervention occurs avowedly or through action that inevitably tends to check the ardor and fearlessness of scholars, qualities at once so fragile and so indispensable for fruitful academic labor.” Campus leaders are intensely opposed to governors and legislators attempting to censor faculty or otherwise control teaching and research to advance political agendas. Unfortunately, that’s what most of these efforts do. Campus administration and faculty should determine what and how ideas are discussed and taught in classrooms and on campus, without having to look over their shoulders or root out every idea from a course syllabus to which an elected official objects.

How should we address concerns about what students are learning? Curricular decisions should go through the well-established, nonpolitical process with input from campus administrators and faculty. College students are adults who should be exposed on campus to all topics, including controversial and contentious ideas, that should be presented fairly from multiple points of view in a nondoctrinaire way. Part of growing up and becoming an adult is being exposed to ideas different from one’s own, some of which may be discomforting. Having to weigh multiple points of view about controversial topics helps students learn to think critically and to better understand the world around them, which is fundamental to a college education.

How concerned are you about this push to censor faculty and restrict what’s taught in college, including about slavery and racism? Campus leaders should be very concerned. Students need accurate and fact-based history to learn from the past, and postsecondary institutions have a responsibility to teach students about racism and its impact on our society. These attempts to censor faculty, omit history, and ban conversations about race are inappropriate.

What do your students think about this? Colleges and universities exist to examine complex issues, challenges, and ideas and to provide a forum in which issues and opinions can be explored and openly debated. College students pursue a college education expecting to be exposed to a range of ideas, some of which may be controversial and may even make them feel a little uncomfortable. Exposure to and engagement with controversial topics is essential to helping students learn to think critically. Students are likely troubled by the idea that their education might be constricted.

Do you worry that teaching about race will actually lead to more division? No. Regrettably, racism has been a fundamental part of American history since the founding of the United States. Some historians describe slavery as our original sin. So, it makes no sense to ignore the full range of our history, good and bad, and to shield our students, who are adults after all, from discussing that history and what it means today. That is essential to the learning process, particularly when it comes to any vector of difference, from race to gender and sexuality (and many other identity characteristics).

Additional Resources

Contact Steven Bloom (sbloom@acenet.edu) at the American Council on Education or Jeremy C. Young (jyoung@pen.org) at PEN America for more information or assistance on addressing the issues raised in this resource guide.

APPENDIX A: DIVISIVE CONCEPTS LAWS THAT RESTRICT HIGHER EDUCATION

FLORIDA HOUSE BILL 7 (ENACTED 2022)

- **Type of punishment: monetary fine, loss of state financial support**

This law includes three principal provisions. The first prohibits all employers, including both public and nonpublic educational institutions, from requiring an individual to attend, as a condition of “certification, licensing, credentialing, or passing an examination,” any training or instruction where ideas from a list of “divisive concepts” about race, sex, color, or national origin are espoused, promoted, advanced, inculcated, or imposed. Employers who do so may be fined up to \$10,000 per violation under Florida’s Civil Rights Act. The second provision extends this same prohibition to classroom instruction in public K–12 schools, colleges, and universities. In the case of public K–12 schools, no punishment is specified. However, under a separate law passed shortly after HB 7, public colleges and universities found to have violated this prohibition may lose access to state financial support. The third provision requires that all instruction and supporting materials in public K–12 schools be “consistent” with a list of principles related to race, color, national origin, religion, disability, or sex—principles that essentially contradict the prohibited ideas enumerated elsewhere in the law. Teachers may not “indoctrinate or persuade” students to adopt any beliefs that are inconsistent with these principles.

IDAHO HOUSE BILL 377 (ENACTED 2021)

- **Type of punishment: none specified**

This law bans public schools and institutions of higher education from “direct[ing] or otherwise compel[ing] students to personally affirm, adopt, or adhere” to the outlined “critical race theory” tenets. It also bans funding for such prohibited acts.

IOWA HOUSE FILE 802 (ENACTED 2021)

- **Type of punishment: professional discipline, private right of action**

This law requires that any mandatory staff training “does not teach, advocate, act upon, or promote” specific defined concepts and prohibits those “specific defined concepts” from being included in public school curriculum, including at public universities. Punishments for violating the law can include professional discipline and termination for the offending faculty or staff member, as well as monetary relief in a civil suit filed by any “member of the campus community.”

MISSISSIPPI SENATE BILL 2113 (ENACTED 2022)

- **Type of punishment: none specified**

This law prohibits public K–12 schools, colleges, and universities from “direct[ing] or otherwise compel[ling]” students to “adopt, affirm, or adhere to” ideas from a list of “divisive concepts” related to sex, race, ethnicity, religion, or national origin. These educational institutions are also forbidden from making any “distinction or classification of students” on the basis of race. No public funds may be spent for any purpose that would violate this law.

OKLAHOMA HOUSE BILL 1775 (PDF) (ENACTED 2021)

- **Type of punishment: none specified**

This law bans “mandatory gender or sexual diversity training or counseling” for students or “orientation or requirement that presents any form of race or sex stereotyping or a bias on the basis of race or sex” in higher education and prohibits schools from using specific concepts in courses.

SOUTH DAKOTA HOUSE BILL 1012 (ENACTED 2022)

- **Type of punishment: none specified**

This law prohibits public colleges and universities in South Dakota from compelling students to adopt or affirm certain ideas from a list of “divisive concepts” related to race, color, religion, sex, ethnicity, or national origin. It also bars these institutions from requiring students or employees to attend any training or orientation where these ideas are taught or promoted. No public funds may be spent for any purpose that would violate this law.

TENNESSEE HOUSE BILL 2670 (ENACTED 2022)

- **Type of punishment: private right of action**

This law prohibits public colleges and universities from conducting any mandatory student or employee training that includes ideas from a list of “divisive concepts” related to race, sex, religion, creed, nonviolent political affiliation, social class, or any other “class of people,” or that “promotes resentment” of any such group. For the purposes of this law, training includes “seminars, workshops, trainings, and orientations,” which under some interpretations could include classroom instruction. Public colleges and universities may not compel students or employees to adopt these ideas, or condition hiring, tenure, promotion, or graduation on whether a student or employee endorses a “specific ideology or political viewpoint.” Students or employees who believe this provision has been violated may pursue legal remedy in an appropriate court. The law contains a likely unenforceable savings clause stating that it is not to be interpreted to infringe on an individual’s academic freedom or First Amendment rights.

APPENDIX B: A BRIEF OVERVIEW FOR CAMPUS STAKEHOLDERS

Issue

Over the past several years, there has been a rising trend of policymakers—primarily at the state level—taking steps to restrict the presentation and discussion of topics such as race, gender, American history, and LGBTQ+ identities. These restrictive actions, sometimes labeled as attempts to ban “divisive concepts,” have been described by PEN America as “educational gag orders.” This has mostly occurred at the K–12 level, but it is an issue increasingly affecting colleges and universities as well. These attempts to mandate what can and cannot be taught and discussed on our campuses are unsettling and dangerous. They represent a potentially serious threat to the academic freedom and institutional autonomy that make American higher education the envy of the world.

Background

Recent ACE public opinion research surveying registered voters in response to this trend demonstrated broad bipartisan agreement that elected officials should not shape higher education curriculum and that it is important to preserve academic freedom and institutional autonomy on campus. Bipartisan majorities said that all topics should be open for discussion and that college students should be exposed to a wide range of fairly presented topics and viewpoints, even some deemed controversial, because college students are adults. Majorities also view weighing multiple points of view as essential to learning to think critically and as a fundamental part of a college education. The research identified strong opposition to federal and state policymakers mandating what can or cannot be taught or discussed on college campuses or imposing restrictions or conditions on campus speech or curriculum.

Response

The purpose of this overview is to provide campus stakeholders with some guidance about how to proactively discuss the importance of academic freedom and why policymakers should not restrict what is taught and discussed on campus. It is important to emphasize in these discussions that the ability of colleges and universities to determine the academic content and intellectual rigor of what takes place in the classroom and across campus is of paramount importance to the quality of the education that students receive.

Here are some background points about these issues that may be helpful when speaking with policymakers:

- Free, open academic inquiry and debate on college campuses are essential to our democracy and national well-being.
- Colleges and universities examine complex issues, challenges, and ideas and provide a forum in which issues and opinions can be explored and openly debated. Postsecondary institutions are committed to transparent intellectual inquiry and academic excellence, free speech, and civil discourse.
- Fostering a rigorous and civil exchange of ideas has never been more important. America needs its higher education institutions to graduate students with the skills needed to be productive citizens who contribute to engaged communities and to produce scholarship and research that boosts our national,

state, and local economies and cultural offerings and that leads to life-altering technologies and lifesaving medical advances that benefit all of American society.

- College students are adults who should be exposed to all topics on campus, including controversial and contentious ideas, presented in an intellectually rigorous way that encourages discourse. In the classroom, this means that professors should present views on a topic that are accurate, nondoctrinaire, and consistent with curricular requirements. Under the principles of academic freedom and shared governance, faculty are charged with being the main decision-makers shaping syllabi and curricula.
- Higher education institutions are committed to the idea that more speech is good speech and to ensuring that all members of the campus community feel comfortable expressing their ideas and views.
- To that end, all members of the campus community must be able to speak their minds freely, even if some have opinions that others find wrong, objectionable, factually unsupportable, or offensive. Part of growing up and becoming an adult is being exposed to uncomfortable ideas different from one's own.
- Having to weigh multiple points of view about controversial topics helps students learn to think critically. It is fundamental to a college education and, more generally, to growing into adulthood.
- The best cure for bad speech is more speech, not restrictions on speech. There are limits to this—but only those that reflect First Amendment jurisprudence. When speech violates the law, defames individuals, or threatens violence, it crosses the line and need not be tolerated. These exceptions, and the circumstances in which they are invoked, must be communicated in a clear and transparent manner to the entire campus community and other external stakeholders.
- Government officials should not make decisions about what can or cannot be taught or discussed on college campuses or impose restrictions or conditions on campus speech or curricula. Campus and faculty leaders are best situated to make these decisions, not the government.
- For the past century, higher education institutions and government officials have worked in partnership to study social challenges and propose solutions, including regarding the operation of colleges and universities. No campus leader today is unaware of the challenges to free speech and open dialogue that are spreading on college campuses, coupled with concerns from students and faculty from different identities and across the political spectrum that academic environments do not feel hospitable to their viewpoints. Campus leadership should be keen to work in partnership with government officials on studying these challenges and proposing and implementing solutions. Additional efforts to control how ideas are shared on campuses, from any source, could have a deleterious effect on achieving this mutual goal.

Contact Steven Bloom (sbloom@acenet.edu) at the American Council on Education or Jeremy C. Young (jyoung@pen.org) at PEN America for more information or assistance on addressing the issues raised in this overview.

ACE[®] American
Council on
Education[®]

