



Testimony

Testimony before Senate State Affairs Committee

Committee hearing to “ascertain any restrictions on Freedom of Speech rights that Texas students face in expressing their views on campus”

by Thomas Lindsay, Ph.D.

KEY POINTS

- There has recently been a plethora of news accounts exposing serious restrictions on free speech and debate on our country’s campuses.
- University speech codes, restrictive “free-speech zones,” and commencement speaker “dis-invitations” threaten to undermine our colleges’ and universities’ defining mission.
- The Supreme Court has ruled that “state colleges and universities are not enclaves immune from the sweep of the First Amendment.”
- A 2015 Pew Research Center study finds that 40 percent of millennials today approve of censorship, nearly double that of their parents’ generation.
- The University of Chicago’s official defense of free speech on campus has been adopted by the administrations or faculty bodies of 34 universities to date.

Dear Members of the Senate State Affairs Committee:

It is an honor to be invited by this committee to present my research findings regarding the state of free speech at Texas public colleges and universities. I present my findings based not only on my research, presented below, but also on the basis of my 30 years spent in higher education, first as a professor of political science, and then as a dean, provost, and college president.

Based on my research and lived experience, it appears to me that there may be no more pressing issue in higher education for us to face at this time. I present the grounds for my claim below.

The Need for Free Speech and Debate in Both Our Schools and the Public Square

The unexamined life is not worth living for a human being.
—SOCRATES (PLATO’S APOLOGY OF SOCRATES)

[I]f any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility. ... [T]hough the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied. ... [E]ven if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension [of] or feeling [for] its rational grounds.

—JOHN STUART MILL, ON LIBERTY (MILL 1859, 2.41; emphasis supplied)

Free inquiry is indispensable to the good life ... [U]niversities exist for the sake of such inquiry ... [W]ithout it they cease to be universities.

—ROBERT MAYNARD HUTCHINS, FORMER PRESIDENT
UNIVERSITY OF CHICAGO

Over the past few years, there has been a plethora of news accounts exposing serious restrictions on free speech and debate on our country’s campuses. University [speech codes](#), restrictive “free-speech zones,” and commencement

speaker “[dis-invitations](#)” threaten to undermine our colleges’ and universities’ defining mission: the free, non-partisan quest for truth, that is, the Socratic vision from which liberal education originated.

As I have argued in my paper [Free to Learn? Think Again](#), the model for liberal education currently threatened consists in what is known as the “Socratic turn.” Liberal education is born of Socrates’ proposition that “the unexamined life is not worth living for a human being.” Socrates argues that science and philosophy’s quest—to gain greater knowledge of the whole—cannot take place in isolation. Instead, scientific and philosophic inquiry (the two meant the same thing for the classical philosophers) require that scientists and philosophers also “examine their act of examining”; that is to say, scientists and philosophers must also study the context in which they pursue discovery. For this reason, Socrates tells us that he turned away from the sole study of what we today label the “natural sciences,” and turned toward the “human things,” politics chief among them.

In this light, it should come as no surprise that the word “liberal” in “liberal education” derives from the same root as the word “liberty.” Liberal education, for Socrates, is an education *in* and *through* liberty. Following Socrates, the highest and deepest purpose of liberal education is the freedom of the mind; that is, freedom from unexamined assumptions, for example, swings in intellectual fashion, partisan politics, and ideology. Only when illuminated by intellectual freedom are both the possibilities and limitations of our other freedoms—political and economic—fully disclosed. Liberty at its peak is therefore identical with the pursuit of truth.

But truth-seeking, as Socrates’ ultimate fate suggests, is not without its dangers. Socrates was tried, convicted, and executed on charges of impiety and corrupting the youth of Athens.

Accordingly, the institutionalization of regimes devoted to cultivating intellectual liberty—in our case, colleges and universities—depends on their being situated in a system of political liberty. In this respect, it can be said that the cultivation of free minds *both* transcends *and* depends on

the political freedom enshrined in the United States Constitution and the Texas Constitution.

Plato’s student Aristotle in *The Politics* adds to his teacher’s case for the indispensability of free speech and debate. This arises out of Aristotle’s famous formulation that we human beings are by nature “political animals.” By this he means that an aspect of human nature, our “political capacity,” requires for its completion or perfection our employing *logos* (*logos* can be translated as “reason” and “speech”) for the purpose of discovering and communicating to our fellow citizens what we deem to be advantageous, just, and good for our political community. Needless to say, such discovery and communication cannot take place absent the freedom to speak and debate. Such absence weakens society and the individual alike.

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If our students are deprived of the growth opportunities provided by encountering and debating ideas with which they disagree, they will come to lack some of the qualities essential to informed, effective citizenship. The philosopher Francis Bacon clarifies this for us when he lists what is required for a genuine education: reading, writing, and debate. He writes that “reading maketh a full man; con-

ference a ready man; and writing an exact man.” In other words, education seeks to make our minds “full” or broad through reading; “exact” or precise in our reasoning, through writing; and “ready,” that is, prepared, through “conference,” or debate. These are the qualities that define not only good learners but also good citizens. Informed, effective citizenship requires breadth, precision, and readiness. Our democracy depends on a citizenry so endowed.

Academic freedom is a subset of the freedom of speech and press promised under a modern, constitutional democracy. Regimes that do not protect free speech in the political sphere—as is accomplished by the First Amendment in this country—also do not protect it in the academy. Freedom of speech and press in the political sphere is animated by the conviction that the people, if free to witness and engage in robust debate over policy issues, will, through this dialectical process, be better able to choose wisely among competing policy alternatives and those candidates espousing them. Academic freedom is animated by the conviction that the quest for truth

(Socrates’ “examined life”) is the highest capacity of human beings. In both spheres, truth-seeking is the end to which freedom of speech and press exist as indispensable means.

Simply stated, the quest for truth is the foundation and justification of the principle of academic freedom at our colleges and universities. It is because the quest for truth is the highest capacity of human beings that the doctrine of academic freedom exists. Truth-seeking, in this account, trumps political ends, all other things being equal. That said, just as liberty in the political sphere is distinguished from license, free academic speech and debate do not exist as ends in themselves; their value stems from their indispensability as means to the end of truth-seeking, and no further. As means, they are subservient to their respective ends. Freedom, in both spheres, while indispensable, is not absolute.

The Supreme Court has ruled that “state colleges and universities are not enclaves immune from the sweep of the First Amendment. ...[T]he precedents of this Court leave no room for the view that ...First Amendment protections should apply with less force on college campuses than in the community at large” (*Healy v. James* 1972). However, too often today, the freedom required to pursue truth is impeded in and by our universities themselves. The nonpartisan think tank, the Foundation for Individual Rights in Education (FIRE), has published its latest report on academic freedom *Spotlight on Speech Codes 2018: The State of Free Speech on Our Nation’s Campuses*. Its most salient findings are below.

FIRE’s Major Findings:

1. “Just under one-third (32.3 percent) of surveyed institutions received FIRE’s lowest, [red light rating](#) for maintaining speech codes that clearly and substantially restrict freedom of speech. This year’s figure is seven percentage points lower [than last year](#) and almost 42 percentage points lower than [in FIRE’s 2009 report](#).”
2. “Most institutions — 58.6 percent — receive a [yellow light rating](#). Yellow light policies restrict narrower categories of speech than red light policies do, or are vaguely worded in a way that could too easily be used to suppress protected speech, and are unconstitutional at public universities.”

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3. “Thirty-five institutions earned FIRE’s highest, [green light rating](#) for free speech. Since this year’s report was written, two more universities have earned green light status, bringing the total to 37. Only eight institutions earned this rating in the 2009 report.”
4. “Approximately one in ten institutions maintain a “free speech zone” where student demonstrations and other expressive activities are limited to small or out-of-the-way areas on campus.”
5. “Fully 30 percent of institutions maintain some form of bias response team, specifically tasked with identifying “bias” and “hate speech” on campus. These teams can rely on students anonymously reporting other students for speech which, though subjectively seen as “offensive,” is often fully protected speech. More than half of private institutions surveyed have implemented bias response teams.”

The good news reported in these surveys is that a growing number of universities and state legislatures across the country are aware of the challenge and have acted to address it. They are coming together out of the

shared conviction that abuse of the rights guaranteed to students and faculty under the First Amendment violates not only the Constitution, but also the very reason for being of universities. As former University of Chicago President Robert Maynard Hutchins rightly observed, “Freedom of inquiry, freedom of discussion, and freedom of teaching—without these a university cannot exist.”

Further encouraging news consists in the fact that, in a number of states where legislation to bolster campus free speech has been passed, it has not proceeded on a simply partisan basis. That this can be accomplished even in our time of polarized politics bespeaks the parties’ shared conviction that the sanctity of free speech and debate is not, and must never become, a merely partisan issue, for free speech is not “political” in the narrow sense of the word. Instead, free speech and debate are the indispensable *conditions* on which *all* sides depend in order to make their cases to the public. Both democracy and education depend for their viability on the freedom to speak and debate. Freedom, so understood, transcends the partisan divide. As the ACLU’s “[Speech on Campus](#)” [study](#) states:

The First Amendment to the Constitution protects speech no matter how offensive its content. Restrictions on speech by public colleges and universities amount to government censorship, in violation of the Constitution. Such restrictions deprive students of their right to invite speech they wish to hear, debate speech with which they disagree, and protest speech they find bigoted or offensive. An open society depends on liberal education, and the whole enterprise of liberal education is founded on the principle of free speech.

In the same study, the ACLU reminds us that “[t]he right to free speech is not just about the law; it’s also a vital part of our civic education. As Supreme Court Justice Robert Jackson wrote in 1943 about the role of schools in our society: ‘That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.’”

It has been said that what is taught in the classrooms in this generation will be practiced in the legislatures in the next generation. Such is the strength of the tie between education and democracy. But fear arises on this count when we reflect on the polling data regarding the attitudes of our young people toward the First Amendment. A 2015 Pew Research Center [study finds](#) that 40 percent of millennials today approve of censorship, nearly double that of their parents’ generation. These young people will go on in time to become our political leaders. Will they protect free speech and debate?

Time alone will answer the above question, but a survey of recent events on campuses nationwide should give us pause. Consider the following list.

Examples of Campus Censorship

- In October 2017, the executive vice president of the ACLU of Virginia, Claire Guthrie Gastanaga, was [shouted down](#) by protesters at the College of William and Mary.

In response, Gastanaga [placed a statement](#) on the ACLU of Virginia website: “The ACLU of Virginia supports unequivocally the freedom of professors, students and administrators to teach, learn, discuss and debate or to express ideas, opinions or feelings in classroom, public or private discourse.”

The statement goes on to affirm: “We also support the goals espoused by the demonstrators (ending white supremacy, achieving racial justice, elevating those who have been oppressed). It is more than disappointing, however, when the robust debate that should be the hallmark of the culture of inquiry on a college campus is disrupted by those who seek with their own voices or actions simply to silence others who took actions or hold views based on principles with which they disagree.”

- In October 2017, pro-Trump hecklers shouted down the California attorney general. Whittier College hosted California Attorney General Xavier Becerra for a discussion organized by Ian Calderon, the California State Assembly majority leader. But, as reported on FIRE’s [website](#), the scheduled talk was forced to conclude early due to pro-Trump hecklers’ continued shouting of insults at both Becerra and Calderon.

As reported by FIRE’s Adam Steinbaugh, “pro-Trump hecklers, upset about Becerra’s [lawsuit against the](#)

[Trump administration over DACA](#), continuously shouted slogans and insults at Becerra and Calderon.

A group affiliated with the hecklers later [boasted](#) that

the speakers were ‘SHOUTED DOWN BY FED-UP CALIFORNIANS’ and that the ‘meeting became so raucous that it ended about a half hour early.’”

The event “was free and open to members of the community,” featuring introductions from both Whittier’s president and student body president. “As soon as they began the discussion, however, hecklers decked in ‘Make America Great Again’ hats began a continuous and persistent chorus of boos, slogans, and insults.”

“Calderon asked the audience to hold applause or booing, remarking: ‘It’s important that we have a productive conversation here.’ Becerra said that he thought the First Amendment to be a ‘precious thing,’ but said he doubted the audience could hear him speak. The event, scheduled for an hour, [concluded](#) after about 34 minutes.”

- In May 2017, U.S. Sen. John Cornyn, who had been invited by Texas Southern University to give the commencement address, had his speech [cancelled](#) due to opposition by some on campus.

Too often today, the freedom required to pursue truth is impeded in and by our universities.

- A similar incident also occurred at Texas Southern University this past fall, when Rep. Briscoe Cain was scheduled to speak to the school's Federalist Society chapter. The talk was [cancelled](#) even as Cain arrived on campus after protesters stormed the classroom where it was scheduled to take place. The university claimed that "the speech was cancelled because university rules were not followed in scheduling the event."
- In May of 2015, a student at Blinn College, named Nicole Sanders, [sued](#) the college for not allowing her to advocate on the campus for "Campus Concealed Carry." Her activism was limited to the designated "free speech area." Sanders sued, alleging that her free speech had been infringed. The Blinn College board of trustees [approved a settlement](#) with Sanders in the amount of \$50,000.
- FIRE's [Dis-invitation Database 2016 – Present](#) found that universities disinvited 25 speakers in 2016 due to controversial subject matter. Among these were thinkers such as political scientist Charles Murray, former Homeland Security Secretary Jeh Johnson, and *Washington Post* columnist Kathleen Parker.
- On January 22, 2018, as part of a [legal settlement](#), Michigan's Kellogg Community College changed policies through which it [arrested three supporters](#) of the Young Americans for Liberty chapter on campus as they were handing out copies of the U.S. Constitution to students on a sidewalk. In addition, the college agreed to provisionally recognize the Young Americans for Liberty chapter as well as to pay \$55,000 in damages and attorneys' fees.
- In May 2017, students [protested and rioted](#) during a speech by Charles Murray at Middlebury College, resulting in the serious injury of one of the professors.
- In June 2017, students from Evergreen University [rioted](#) over biology professor Bret Weinstein's refusal to comply with the demand that white people should not attend the university on a certain day. Weinstein insisted that he had a contractual obligation to his students to teach them that day.
- In September 2017, conservative thinker Ben Shapiro [met riots](#) during his speech at UC Berkeley.
- In November 2016, DePaul University [threatened to arrest](#) Ben Shapiro if he stepped foot on campus, despite the fact that he was an invited speaker.
- In December 2015, Ben Shapiro's talk at California State University at Los Angeles was [impeded](#) by student protestors who blocked would-be members of the audience from entering.
- In February 2017, Antifa and student rioters [torched parts of Berkeley](#) in order to cancel Milo Yiannopoulos' speech.
- In April 2016, Milo Yiannopoulos, Christina Hoff Sommers, and Steven Crowder were [shouted down](#) during their talk at the University of Massachusetts at Amherst.
- In November 2017, a Joliet Junior College student was [detained](#) by police for distributing flyers.
- On November 2017, conservative writer David Horowitz was [shouted down](#) at the University of Houston. This was a relatively brief but very disruptive shout-down, as the [video](#) demonstrates.

Prior Work in the Texas Legislature Regarding Freedom of Speech on Campus

Last session, this body passed a bill based loosely on the Goldwater Institute's model bill, titled "Campus Free Speech: A Legislative Proposal." Since then, the Goldwater Institute has revised its model legislation in order to address some concerns.

As a former university professor and senior administrator, I gave this proposal as careful a reading as I could, in order to ensure that we were not replacing one form of regulation with another, also illegitimate form of regulation. I concentrated my attention on the model bill's revisions, which I shall discuss next.

I found four key changes from the original model legislation:

1. The new model proposal adds in its discipline section the words "materially and substantially" to indicate more clearly what sort of interference with the expressive rights of others rightly warrants discipline. These words were added to ensure that no one will be punished for merely saying "Boo!" a couple of times at an event.
2. The new model proposal rephrased its provision on "institutional neutrality" to make it as clear as possible that this is by no means a blanket prohibition. Instead, the institutional neutrality provision is "aspirational." This was in fact also the case in the original language, but it has been clarified to allay fears that this provision calls for a blanket ban.

This is to say, the now-modified provision on institutional neutrality articulates a principle and puts it in play for discussion in the annual report by the committee of trustees—another provision of both versions of the model legislation. It would be unjust to pass a blanket ban on all advocacy, because all public colleges and universities have to, for example, be able to advocate on behalf of tuition increases, tuition revenue bonds, and the like.

3. The revised model legislation adds a provision on free association. This appears to aim at ensuring that campus groups remain free to choose leaders based on the group's core beliefs.
4. The revised model legislation adds a provision on security fees. This provision would not prevent a university from charging higher security fees in those instances in which a speaker is likely to need more protection. It does seek to make schools prove that it is security, not the speaker's views, that is driving the pricing.

Here I should add that there is also a brief provision that codifies the idea that universities do not have to rent out their non-public facilities. If schools are worried about, say, a Richard Spencer, this applies to him. Goldwater's proposed bill mandates that any speaker invited by a student group or faculty is allowed to speak. But Richard Spencer continues to insist on speaking at universities to which he has not been invited. He can do so only because these schools rent facilities to the general public and thus cannot discriminate based on the content of ideas.

The key point here is that no one is obligated to invite a Richard Spencer, or anyone else, to speak. Universities may choose not to rent their facilities to all-comers, and in that case would not be obligated to rent an auditorium to Spencer.

Reviewing these four revisions to the proposed model bill, I deem them to be improvements on the original model. There have been other concerns expressed with the proposed legislation, which I shall attempt to address comprehensively below. First, I shall summarize the remaining provisions of the Goldwater proposed legislation.

Summary of the Remaining Provisions of the Revised Goldwater Model Bill

As I [previously detailed](#), Goldwater's revised model legislation recommends [a number of measures](#) designed to “encourage students and administrators to respect

and protect the free expression of others.” Among the recommended measures are the following:

- Creation of an official university policy that “strongly affirms” the centrality of free speech and debate in fulfilling a university's defining mission—teaching and learning. In the process, it would eliminate any “existing restrictive speech codes” currently on a school's books. It would prevent administrators from issuing “dis-invitations” to speakers “whom members of the campus community wish to hear from.”
- The model bill also mandates penalties for those who would violate others' free-speech rights, and it allows those whose free-speech rights have been illegitimately suppressed to “recover court costs and attorney's fees.” It would require schools to affirm their aspiration to remain “neutral on issues of public controversy” in order “to encourage the widest possible range of opinion and dialogue within the university itself.” While granting that any school may limit the use of its facilities “to invited individuals,” the model bill would mandate that any security fees the school charges for a speaking event must “be reasonable, and not based on the content of the speech.” It would also seek to shield student organizations from “discrimination based on the content of the organization's expression or membership requirements.”
- The remaining measures proposed by the Goldwater model bill aim to enhance transparency. It would require schools to inform all students of their official policy regarding free speech and debate. And it would authorize creation of a special subcommittee of each public university's governing board (board of trustees) to issue a yearly report to “the public, the trustees, the governor, and the legislature on the administrative handling of free-speech issues.”

The hope of the model bill's authors is to create incentives that would lead both students and administrators to “respect and protect the free expression of others” (See Appendix B: Revised Goldwater Model Proposal).

Other State Legislatures' Efforts to Protect Free Speech on Public University Campuses

As I [wrote in *Forbes*](#) in January 2018, Nebraska recently became the [latest state](#) to consider “legislation to restore free speech on college campuses” when Nebraska state Sen. Steve Halloran introduced the Higher Education Free Speech Accountability Act. The legislation being considered is drawn from Goldwater's proposed model

legislation. Commenting on the proposed Nebraska bill, Goldwater's Senior Attorney Manley, a coauthor of its model bill, predicted, "Should this new bill become law, it would create greater accountability regarding the preservation of free speech rights for all on NU [University of Nebraska] campuses."

In the year that has passed since Goldwater introduced its original model bill, at least 12 states have considered or are now in the process of considering bills inspired by its model. Last summer, North Carolina passed the [Restore Campus Free Speech Act](#). A Goldwater-based bill cleared the Wisconsin House last year, but even before being considered by the Senate, the University of Wisconsin Board of Regents (trustees) [adopted](#) Goldwater's proposed discipline policy. In fact the Wisconsin House as well as the University of Wisconsin Regents actually strengthened it. The Goldwater proposal recommends mandatory suspension only after a second offense. The Wisconsin bill and Regents' policy adds mandatory expulsion for a third offense.

On further investigation, I find that North Carolina's Restore Campus Free Speech Act removed the Goldwater Institute's mandatory minimum discipline provision. But it appears to be an effective bill nonetheless, because the new Regents' annual report on free speech will provide the oversight needed to monitor compliance. In fact, the University of North Carolina Regents recently adopted a discipline policy inspired by the Wisconsin Regents. Although the North Carolina Regents policy does not mandate suspension on a second offense, or expulsion on a third offense, its new policy calls those punishments "presumptive." In other words, the university administration will be held accountable by the Regents if and when it deals out weaker penalties.

Legislation based on the model has also been championed in the Michigan and Wisconsin legislatures. The Goldwater Institute finds that "[related legislation](#) is in the works in Arizona, California, Georgia, Illinois, Minnesota, Tennessee, Virginia, and Wyoming."

A [survey](#) conducted by the *Chronicle of Higher Education* provides another list of states where free-speech proposals are on the legislative dockets. A California lawmaker offered [a bill](#) that would prohibit its public colleges and

universities from disinviting speakers and would ban any existing campus speech codes. The Illinois House of Representatives [considered a bill](#) last session that would require its public colleges and universities to suspend or expel any student who is found guilty twice of infringing on the free-speech rights of others. The legislatures of Michigan, Texas, and Wisconsin also saw the introduction of similar bills in the past year.

None of these bills became law in the above-listed states, but success was achieved in others, in addition to North Carolina. Colorado's governor [signed a bill](#) into law last April that prohibits all its public colleges and universities from limiting campus speech to "free-speech zones" alone. The Louisiana Legislature also passed a free-speech bill last year, but it was [vetoed](#) by Gov. John Bel Edwards. Last March, Utah's governor [signed a bill](#) that articulates a model free-speech policy and includes legal penalties

for those who violate others' free-speech rights. [In Virginia](#), a bill was passed by legislators and signed by the governor that mandates "No public institution of higher education shall abridge the constitutional freedom of any individual, including enrolled students, faculty, and other employees and invited guests to speak on campus."

Finally, last May, the [Campus Free Speech Protection Act](#) was signed into law by Tennessee Gov. Bill Haslam after passing both the Tennessee House of Representatives and Senate by overwhelming majorities (85-7 in the House, and 30-0 in the Senate).

Although the successful free-speech bills vary in their terms, all seem to unite in the conviction that campus shout-downs (through the "[heckler's veto](#)") and/or dis-invitations of speakers on public, taxpayer-funded campuses are both unconstitutional and destructive of democratic deliberation.

Early Returns on the University of Wisconsin Regents' New Speech Policy

There appears to be evidence already that Wisconsin's tougher discipline policy has prevented a shout-down. In October 2017, conservative commentator and Townhall.com News Editor Katie Pavlich came to the University of Wisconsin-Madison to speak about the right to carry guns on college campuses. According to the

What is taught in the classrooms in this generation will be practiced in the legislatures in the next generation. Such is the strength of the tie between education and democracy.

University of Wisconsin-Madison student newspaper [The Daily Cardinal](#), outside the hall where Pavlich spoke, approximately 20 protesters gathered. They demonstrated their opposition to Pavlich through waving phalluses and sex toys.

Unlike Ben Shapiro's shouted-down speech on the same campus a year prior, this protest was peaceful. *Both* sides were able to practice their First Amendment rights, without intimidation from the other. Such peaceful disagreement is the goal that we all seek.

Why was Pavlich allowed to speak while Shapiro was shouted down? In the time between Shapiro's shout-down and Pavlich's peaceful reception, the University of Wisconsin System enacted its new speech policy protecting rights of public speakers invited to campus. The new policy requires schools to suspend protesters found guilty twice of interfering with the free speech rights of others through "violent or other disorderly misconduct that materially and substantially" interferes with a campus speaker on campus. As mentioned earlier, a third offense brings expulsion.

The University of Wisconsin System Regents' success at protecting the free speech of all sides leads us to reflect the earlier-described clash between Rep. Briscoe Cain and Texas Southern University. Not only would the Goldwater proposed bill have made punishment for the Cain shout-down more likely (and thus, one hopes, may even have deterred it), but also, if a Goldwater-based law had been in place, the president of Texas Southern University would have been held accountable in the board's annual report on the state of free speech on the Texas Southern University campus.

The point of Goldwater's proposed annual board report on free speech is to bolster administrators as they seek to preserve the conditions required for higher education. The report has no power but that of sunlight and persuasion, and in this respect it parallels the "aspirational" quality of the proposed bill's policy on institutional neutrality.

Other Concerns Regarding the Efficacy of Goldwater-based Legislation

It would be self-defeating were an effort by the Legislature or board of trustees to restore free speech to eventuate in curtailing student protests on campus. [To prevent this](#), the proposed model bill stresses that the legislation it calls for safeguards *all* forms of free speech. It asserts, "Any person lawfully present on campus may protest or demonstrate there." The bill would forbid only those protests that turn

violent or that intimidate speakers with differing viewpoints into silence. The revised policy states: "Demonstrations that *materially and substantially* infringe upon the rights of others to engage in or listen to expressive activity shall not be permitted and shall be subject to sanction" (emphasis supplied).

Some wonder whether it is in accordance with the Constitution for public universities to mete out punishment to those who suppress the free speech rights of others. The proposal's crafters [respond](#): "Blocking an auditorium or physically assaulting a professor are not expressive activities protected by the First Amendment—they are crimes. Colleges also have both a legal right and a moral obligation to prohibit 'shout-downs,' continuous chanting that prevents a speaker from being heard by those who wish to do so."

The Goldwater model bill crafters point to *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.* (1985), where it was held that in instances where protesters are in fact "expressing a viewpoint—chanting a message or holding up signs that block a speaker—[e]ven protected speech is not equally permissible in all places and at all times." That is to say, the Court's First Amendment jurisprudence "allows reasonable time, place, or manner restrictions," so long as the regulations are narrowly constructed and free from discrimination based on content (*Clark v. Cmte. For Creative Non-Violence*, 1984). Thus, [argue the Goldwater bill's crafters](#), "[r]ules designed to allow speakers to be heard by those who wish to do so are precisely the sort of reasonable regulation the Court permits."

In another article I wrote in [Forbes](#), I described how the U.S. Supreme Court has spoken on the issue of campus free speech in a number of cases. Although the First Amendment does not force government to provide a speaker's platform to anyone, it does prohibit government from discriminating against speech based on the speaker's viewpoint. Therefore, while no public colleges or universities are legally obliged to fund student publications, the Court has [ruled](#) that when a public university opts to provide such funds, it cannot then refuse them for those student periodicals that defend a viewpoint currently out of favor with the ruling majority.

Because Texas public colleges and universities are agencies of the state of Texas, they are as obligated to uphold the First Amendment as any other government agency. For this reason, while administrators are free to invite whomever they choose to appear and speak on campus,

they are constitutionally prohibited from mandating which speakers student groups may decide to invite on their own. To do otherwise, says the Court, constitutes viewpoint discrimination.

Of course, the First Amendment does not protect speech that willfully incites its listeners to immediately engage in violence or illegality. But, aside from violating this high standard, speech must remain free. As an [ACLU study](#) states, “[T]he First Amendment allows lots of breathing room for the messy, chaotic, ad hominem, passionate, and even bigoted speech that is part and parcel of American politics. It’s the price we pay to keep bullhorns in the hands of political activists.”

Moreover, although the Court ruled in 1942 that the First Amendment does not protect “fighting words,” this narrow exception does not apply to [those addressing large audiences on campus](#)—regardless of how odious the speech may be. For this reason, the Court has also ruled that government cannot inhibit speech that is likely to provoke a hostile reaction; that is, the Court has ruled against the “heckler’s veto.” As the ACLU argues, “without this vital protection, government officials could use safety concerns as a smokescreen to justify shutting down speech they don’t like. ... Instead, the First Amendment requires ... taking reasonable measures to ensure that speakers are able to safely and effectively address their audience.”

But what of so-called hate speech? Is it also protected under the First Amendment? It is, as the Court has made abundantly clear, most recently in its June 2017 decision in [Matal v. Tam](#), the “Slants” case. Justice Kennedy wrote: “A law found to discriminate based on viewpoint is an ‘egregious form of content discrimination,’ which is ‘presumptively unconstitutional.’ ... A law that can be directed against speech found offensive to some portion of the public can be turned against minority and dissenting views to the detriment of all.”

On inspection, the Goldwater proposed bill appears to be even more protective of protesters than the minimum standards laid down by the courts. The proposed bill allows universities to regulate speech in public places only

as a last resort when “necessary to achieve a compelling governmental interest.”

As a former university professor, I wondered whether the proposed model’s aspiration to neutrality on current public policy issues might limit what professors would be allowed to teach. However, the model proposal identifies the university only at the “institutional level, not the teachers or students in the classroom.” The [proposed provision states](#): “the institution itself should attempt to remain neutral, as an institution, on the public policy controversies of the day, except insofar as administrative decisions on such issues are essential to the day-to-day functioning of the university.”

The authors of the Goldwater proposed model bill [stress](#) that their “use of ‘attempt’ is intentionally flexible.” They

go on to argue that the “principle of institutional neutrality works to safeguard free speech for students and faculty by minimizing pressure from an official university line.” This is important, because the “absence of an official institutional orthodoxy leaves students and faculty free to express their opinions on controversial issues without fear of reprisal from the university.”

Through this provision, “professors can teach as they see fit, without fear of running afoul of an official university position.”

It should be noted that the model bill’s crafters are cognizant of the fact that, given that the Goldwater Institute identifies itself as politically conservative, some might worry that its model bill intends to protect campus conservative speakers alone.

This is a serious charge, which must be dealt with seriously. For this reason, I reprint below the full text of Goldwater’s [response](#):

This model bill protects the right of anyone lawfully present on campus to speak, protest, or demonstrate—regardless of his or her political message. Our bill has the same implications for progressives as it does for conservatives. At Evergreen State College in Washington State, a self-professed liberal professor disagreed with a suggestion that white members of the campus community leave campus for a day, and in response, students interfered with his teaching and even threatened his

Successful free-speech bills vary in terms but all unite in the conviction that “heckler’s vetoes” and dis-invitations of speakers on public campuses are both unconstitutional and destructive of democratic deliberation.

life. Our bill would require public university officials to intervene and even discipline those students. The individuals guilty of such behavior would be subject to the same sanctions as students who tried to block the entrance to the venue on the California State University Los Angeles campus where conservative speaker Ben Shapiro was due to deliver remarks in February 2016.

Finally, the model bill [states](#) openly that it “does not prohibit professors or other instructors from maintaining order in the classroom.” Regarding speech that takes place outside the classroom, “university officials can set reasonable viewpoint- and content-neutral restrictions on the time, place, and manner of expression, if university policies are clear and published in advance; necessary to achieve a compelling governmental interest; the least restrictive means of furthering that compelling governmental interest; leave open ample other opportunities to engage in the expressive conduct; and provide for spontaneous assembly and distribution of literature.”

Conclusion: Affirming our Democratic Faith

I have [written recently](#) that the rise nationwide of campus free-speech disruptions tests our democratic faith. The stakes involved in this debate, I argue, extend far beyond our campuses. Nothing less than the integrity of the American experiment in self-government is at stake.

Simply put, American democracy rests on the faith that the people will be capable of choosing rightly, provided that they are free to discuss and deliberate over the merits and demerits of competing candidates and proposals.

Our colleges and universities rest on a kindred faith—that students and faculty will more likely arrive at the truth through unfettered study and debate. This is more than sound pedagogy, important as that is. As we have seen, it is also settled constitutional law.

Our democratic faith in free debate extends to both public universities and the public square. Governing majorities come and go, and with them come and go political opinions, a number of them repellent, to be sure. But while many among us might not share the same political opinions—even to the point of regarding the opposition as “hateful”—what we all share is a profound need for alternative visions to be heard and debated. Without protection for free speech and debate, we run the risk that our suppression of others’ speech during this political season—during which we are the majority—will be turned against us in the next, when we find ourselves in the minority.

Therefore, it is in the self-interest of all parties, regardless of—indeed, *because of*—their differing viewpoints, to seek to ensure a level playing field for all when it comes to speech and debate. In Aristotle’s *Politics*, he describes effective citizenship as the knowledge and willingness to “rule and be ruled in turn.” This is what our First Amendment jurisprudence over the past century articulates. Speakers must be able to speak without interruption to those who want to hear them. Protesters must be allowed to protest to signal their differences. But each must take place “in turn,” that is, a speech and its protest cannot take place at the same time and location. Otherwise, our First Amendment guarantees are for naught.

Finally, allow me to close with a perspective gained from my years of college teaching, which I reported first in my commentary [“Outlawing the ‘Heckler’s Veto’: Drive to Restore Free Speech on Campus Gathers Steam in the States.”](#) When college students study Plato’s *Republic*, they learn of the tyrannical implications of Thrasymachus’ argument that political justice is only “the advantage of the stronger,” or, as it has come to be known, “might makes right.” In *The Republic*, Socrates has the freedom to debate and therewith to defeat Thrasymachus. But free speech will be defeated if we come to believe that the “heckler’s veto”—through which [too many speakers have been shut down](#) on campuses of late—is itself an equally legitimate exercise of free speech.

The heckler’s veto, if tolerated, would teach our students that justice is the advantage of those with stronger vocal cords, of those who are more passionate and angry, of those who better intimidate others from speaking. But the health of any democracy requires that we endeavor to subordinate passion to reason and refuse to intimidate into silence those with whom we disagree. Such moral and intellectual self-restraint is indispensable to ensuring that our public disagreements—and such disagreements will always be with us—are rational, peaceful, and constructive.

For all these reasons, friends of democratic freedom should be encouraged by the efforts nationwide to restore the freedom to disagree on campus, without which no genuine learning can take place.

I am confident that Texas will add its name to this list of states.

Thank you for hearing my testimony. I am happy to answer any questions you might have. ★

APPENDIX A

FIRE's "Red-Light Schools" (Worst Free-Speech Rating) Across the Country in 2018

Red Light: "A red light institution is one that has at least one policy both clearly and substantially restricting freedom of speech, or that bars public access to its speech-related policies by requiring a university login and password for access. A 'clear' restriction is one that unambiguously infringes on protected expression. In other words, the threat to free speech at a red light institution is obvious on the face of the policy and does not depend on how the policy is applied. A 'substantial' restriction on free speech is one that is broadly applicable to campus expression. For example, a ban on 'offensive speech' would be a clear violation (in that it is unambiguous) as well as a substantial violation (in that it covers a great deal of what would be protected expression in the larger society). Such a policy would earn a university a red light."

American University	Framingham State University
Adams State University	Franklin & Marshall College
Alabama A&M University	Furman University
Barnard College	George Washington University
Bates College	Georgetown University
Black Hills State University	Georgia Southern University
Boise State University	Governors State University
Boston College	Grambling State University
Boston University	Grinnell College
Bryn Mawr College	Harvard University
California State University Channel Islands	Howard University
California State University Dominguez Hills	Idaho State University
California State University Fresno	Jackson State University
California State University Long Beach	Johns Hopkins University
California State University Monterey Bay	Kean University
Carleton College	Keene State College
Case Western Reserve University	Kenyon College
Cheyney University of Pennsylvania	Lafayette College
Chicago State University	Lake Superior State University
Clark University	Lehigh University
Clemson University	Lewis-Clark State College
Coastal Carolina University	Lincoln University
Colby College	Louisiana State University – Baton Rouge
Colgate University	Lyndon State College
College of Charleston	Macalester College
College of the Holy Cross	Mansfield University of Pennsylvania
Colorado College	Marquette University
Connecticut College	McNeese State University
Davidson College	Middle Georgia State University
Delaware State University	Middle Tennessee State University
Delta State University	Middlebury College
DePauw University	Missouri State University
Dickinson College	Morehead State University
Drexel University	Mount Holyoke College
Eastern Illinois University	Murray State University
Eastern Michigan University	New Jersey Institute of Technology
Eastern Washington University	New York University
Evergreen State College	Northeastern Illinois University
Florida State University	Northeastern University
Fordham University	Northern Illinois University

Northern Kentucky University
Oklahoma State University – Stillwater
Pennsylvania State University – University Park
Princeton University
Reed College
Rensselaer Polytechnic Institute
Rice University
Sam Houston State University
Shawnee State University
Southeastern Louisiana University
Southern Illinois University at Carbondale
Southern Illinois University at Edwardsville
St. Olaf College
State University of New York – University at Albany
State University of New York at Fredonia
State University of New York New Paltz
Stevens Institute of Technology
Swarthmore College
Syracuse University
Tennessee State University
The College of New Jersey
Troy University
Tufts University
Tulane University
Union College
University of Alabama at Birmingham
University of Alaska Anchorage
University of Alaska Fairbanks
University of California, Riverside
University of Hawaii at Manoa
University of Houston
University of Illinois at Chicago
University of Kansas
University of Louisiana at Lafayette
University of Maine at Presque Isle
University of Massachusetts at Dartmouth
University of Massachusetts at Lowell
University of Miami
University of Michigan – Ann Arbor
University of Michigan – Dearborn
University of Michigan – Flint
University of Minnesota, Morris
University of Montana
University of New Mexico
University of New Orleans
University of North Georgia
University of North Texas
University of Notre Dame
University of Rhode Island
University of Richmond
University of South Carolina – Columbia
University of South Dakota
University of Texas at Austin
University of Texas at Dallas
University of Tulsa
University of West Alabama
University of Wisconsin Oshkosh
University of Wyoming
Utah State University
Utah Valley University
Virginia State University
Wake Forest University
Wellesley College
Wesleyan University
West Chester University of Pennsylvania
Western Illinois University
Whitman College
William Paterson University
Williams College

APPENDIX B

Revised Goldwater Model Proposal

Campus Free Speech Act

WHEREAS, [free speech provision of state constitution] recognizes that “[quote]”; and

WHEREAS, the state institutions of higher education have historically embraced a commitment to freedom of expression in policy; and

WHEREAS, in recent years, state institutions of higher education have abdicated their responsibility to uphold free-speech principles, and these failures make it appropriate for all state institutions of higher education to restate and confirm their commitment in this regard; and

WHEREAS, in 1974, the Committee on Free Expression at Yale issued a statement known as the Woodward Report that stands as a classic defense of free expression on campuses; in 2015, the Committee on Freedom of Expression at the University of Chicago issued a similar and widely respected report; and in 1967, the Kalven Committee Report of the University of Chicago articulated the principle of institutional neutrality regarding political and social issues and the essential role of such neutrality in protecting freedom of thought and expression at universities. The principles affirmed by these three highly regarded reports are inspiring articulations of the critical importance of free expression in higher education; and

WHEREAS, this legislature views freedom of expression as being of critical importance and requires that each state institution of higher education ensure free, robust, and uninhibited debate and deliberation by students of state institutions whether on or off campus; and

WHEREAS, this legislature has determined that it is a matter of statewide concern that all state institutions of higher education officially recognize freedom of speech as a fundamental right; now, therefore,

BE IT ENACTED:

Section 1.

The Board of Trustees of the state university system shall develop and adopt a policy on free expression that contains, at least, the following:

- (A) A statement that the primary function of an institution of higher education is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate. This statement shall provide that, to fulfill this function, the institution must strive to ensure the fullest degree of intellectual freedom and free expression.
- (B) A statement that it is not the proper role of the institution to shield individuals from speech protected by the First Amendment, including, without limitation, ideas and opinions they find unwelcome, disagreeable, or even deeply offensive.
- (C) Students and faculty have the freedom to discuss any problem that presents itself, as the First Amendment permits and within the limits of reasonable viewpoint- and content- neutral restrictions on time, place, and manner of expression that are consistent with this act and that are necessary to achieve a compelling institutional interest; provided that these restrictions are clear, published, and provide ample alternative means of expression. Students and faculty shall be permitted to assemble and engage in spontaneous expressive activity as long as such activity is not unlawful and does not materially and substantially disrupt the functioning of the institution, subject to the requirements of this subsection.
- (D) Any person lawfully present on campus may protest or demonstrate there. Such statement shall make clear that protests and demonstrations that materially and substantially infringe upon the rights of others to engage in or listen to expressive activity shall not be permitted and shall be subject to sanction. This does not prohibit professors or other instructors from maintaining order in the classroom.

(E) The public areas of campuses of the institution are traditional public forums, open on the same terms to any speaker.

(F) The campuses of the institution are open to any speaker whom students, student groups, or members of the faculty have invited.

(G) The Institution shall make all reasonable efforts and make available all reasonable resources to ensure the safety of invited speakers. An institution shall not charge security fees based on the content of the inviter's speech or the content of the speech of invited speakers. The institution may restrict the use of its non-public facilities to invited individuals.

(H) The policy shall include a range of disciplinary sanctions for anyone under the jurisdiction of the institution who materially and substantially interferes with the free expression of others.

(I) In all disciplinary cases involving expressive conduct, students are entitled to a disciplinary hearing under published procedures, including, at minimum (1) the right to receive advanced written notice of the charges, (2) the right to review the evidence in support of the charges, (3) the right to confront witnesses against them, (4) the right to present a defense, (5) the right to call witnesses, (6) a decision by an impartial arbiter or panel, and (7) the right of appeal.

When suspension for longer than 30 days or expulsion are potential penalties, students are entitled to a disciplinary hearing under published procedures, including, at minimum, all of the above procedures, plus the right to active assistance of counsel.

(J) Any student who has twice been found responsible for infringing the expressive rights of others will be suspended for a minimum of one year, or expelled.

(K) Individual students, faculty, and staff of the university shall be free to take positions on the public controversies of the day, but the institution itself should attempt to remain neutral, as an institution, on the public policy controversies of the day, except insofar as administrative decisions on such issues are essential to the day-to-day functioning of the university. The institution may not take action, as an institution, on the public policy controversies of the day in such a way as to require students, faculty, or staff to publicly express a given view of a public controversy.

(L) No institution may deny a student organization any benefit or privilege available to any other student organization, or otherwise discriminate against a student organization, based on the content of the organization's expression, including any requirement that the leaders or members of such organization:

- (1) Affirm and adhere to the organization's sincerely held beliefs;
- (2) Comply with the organization's standards of conduct; or
- (3) Further the organization's mission or purpose, as defined by the student organization.

(M) This statement supersedes and nullifies any prior provisions in the policies and regulations of the institution that restrict speech on campus and are, therefore, inconsistent with this statement on free expression. The institution will remove or revise any such provisions in its policies and regulations to ensure compatibility with the above statement on free expression.

Section 2

The Board of Trustees of the state university system shall create a single Committee on

Free expression consisting of no less than 15 members. The Committee on Free Expression shall report to the public, the board of trustees, the governor, and the state legislature on September 1 of every year. The report shall include:

- (A) A description of any barriers to or disruptions of free expression within state institutions of higher education.
- (B) A description of the administrative handling and discipline relating to these disruptions or barriers.
- (C) A description of substantial difficulties, controversies, or successes in maintaining a posture of administrative and institutional neutrality with regard to political or social issues.
- (D) Any assessments, criticisms, commendations, or recommendations the committee sees fit to include.

Section 3

State institutions of higher education shall include in freshman orientation programs a section describing to all students the policies and regulations regarding free expression consistent with this act.

Section 4

The university system board of trustees is authorized to adopt regulations to further the purposes of the policies adopted pursuant to this Act. Nothing in this Act shall be construed to prevent institutions from regulating student speech or activity that is prohibited by law. Except as further limited by this Act, institutions shall be allowed to restrict student expression only for expressive activity not protected by the First Amendment, including:

- (A) Violations of state or federal law.
- (B) Expression that a court has deemed unprotected defamation.
- (C) Harassment.
 - (1) “Peer-on-peer harassment,” which is defined as conduct directed by a student towards another individual student, on the basis of that student’s membership or perceived membership in a protected class, that is so severe, pervasive, and objectively offensive that it effectively deprives the victim of access to the educational opportunities or benefits provided by the university.
 - (2) “Quid pro quo sexual harassment,” which is defined as explicitly or implicitly conditioning a student’s participation in an education program or activity or basing an educational decision on the student’s submission to unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature.
- (D) True threats, which are defined as statements meant by the speaker to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.
- (E) An unjustifiable invasion of privacy or confidentiality not involving a matter of public concern.
- (F) An action that unlawfully disrupts the function of the university.
- (G) Reasonable time, place, and manner restrictions on expressive activities consistent with Section 1.3 herein.

Section 5

- (A) A state institution of higher education may restrict expressive conduct in the public areas of campus only if it demonstrates that the restriction:
 - (1) Is necessary to achieve a compelling governmental interest;
 - (2) Is the least restrictive means of furthering that compelling governmental interest;
 - (3) Leaves open ample other opportunities to engage in the expressive conduct; and
 - (4) Provides for spontaneous assembly and distribution of literature.
- (B) The following persons may bring an action in a court of competent jurisdiction to enjoin any violation of this section or to recover reasonable court costs and reasonable attorney fees:
 - (1) The attorney general.
 - (2) A person whose expressive rights are violated by a violation of this section.
- (C) In an action brought under subsection B of this section, if the court finds that a violation of this section occurred, the court shall award the aggrieved person injunctive relief for the violation and shall award reasonable court costs and reasonable attorney fees. The court shall also award damages of \$1,000 or actual damages, whichever is higher.
- (D) A person shall bring an action for a violation of this section within one year after the date the cause of action accrues. For the purpose of calculating the one-year limitation period, each day that the violation persists or each day that a policy in violation of this section remains in effect constitutes a new violation of this section and shall be considered a day that the cause of action has accrued.
- (E) The state waives sovereign immunity and consents to suit in state and federal court for lawsuits arising out of this act. A public institution of higher education that violates this act is not immune from suit or liability for the violation.

ENDNOTES

- ¹ Stephen Beale, "[Brown Confronts 'Safe Space' Criticisms, Schedules Free Speech Forum](#)," *New Boston Post*, September 12, 2016, .
- ² See Appendix B and University of Chicago, "[Kalven Committee: Report on the University's Role in Political and Social Action](#)," November 11, 1967.
- ³ Fifty-second Arizona Legislature, Second Regular Session, [HB 2615](#).
- ⁴ Fifty-second Arizona Legislature, Second Regular Session, [HB 2615](#), House Summary as transmitted to the governor.
- ⁵ For a history of these documents, see Appendices A and B.
- ⁶ For summaries of how Yale and the University of Chicago have dealt with free expression on campus, see Appendices A and B at the end of this report.
- ⁷ *Healy v. James*, 408 U.S. 169, 180 (1972) (quotations omitted).
- ⁸ *Healy*, 408 U.S. at 180 (quotations omitted).
- ⁹ See *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 506 (1969).
- ¹⁰ See *Roberts v. Haragan*, 346 F. Supp. 2d 853, 861–62 (N.D. Tex. 2004) ("to the extent the campus has park areas, sidewalks, streets, or other similar common areas, these areas are public forums, at least for the University's students ... [T]he University, by express designation, may open up more of the residual campus as public forums for its students, but it cannot designate less.")
- ¹¹ See Robert F. Utter, *The Right To Speak, Write, and Publish Freely: State Constitutional Protection Against Private Abridgment*, 8 U. PUGET SOUND L. REV. 157 (1985) ("The limited protection provided to freedom of expression in the federal Constitution has so overshadowed the corresponding and often stronger state constitutional guarantees that freedom of expression is almost universally referred to as a 'first amendment' right.")
- ¹² *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976).
- ¹³ *Id.*
- ¹⁴ *Goss v. Lopez*, 419 U.S. 565, 581 (1975)
- ¹⁵ *Id.* at 584 ("Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures.")
- ¹⁶ *Univ. of Texas Med. Sch. at Houston v. Than*, 901 S.W.2d 926, 931 (Tex. 1995).
- ¹⁷ ALASKA STAT. § 44.62.420(b); ARIZ. REV. STAT. § 41-1062(A)(1); ARK. CODE § 25-15-213(1); CAL. GOV'T CODE § 11509; HAW. REV. STAT. § 91-9(b)(5); KAN. STAT. § 77-515(b); MD. CODE, STATE GOV'T § 10-206.1(a)(3); MONT. CODE § 2-4-105; N.H. REV. STAT. § 541-A:31(III)(e); N.M., STAT. § 12-8-11(F); OR. REV. STAT. § 183.417(1); WASH. REV. CODE § 34.05.428(1); TENN. CODE § 4-5-30(b).
- ¹⁸ See, e.g., WASH. ADMIN. CODE 516-28-035; TENN. COMP. R. & REGS. 1720-01-05-.01(2)(a); OR. ADMIN. R. 579-040-0015(4)(f).
- ¹⁹ *Bd. of Regents of Univ. of Wisconsin Sys. v. Southworth*, 529 U.S. 217, 229–30 (2000) ("The viewpoint neutrality requirement of the University program is in general sufficient to protect the rights of the objecting students.")
- ²⁰ *Knox v. Service Employees Intern. Union*, 132 S. Ct. 2277, 2288–89 (2012), see also *Kingstad v. State Bar of Wisconsin*, 622 F.3d 708, 712–13 (7th Cir. 2010).
- ²¹ *Davis Next Friend LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 633 (1999).
- ²² Tyler Arnold, "[Students Threatened with Arrest for Handing out Constitutions](#)," *Campus Reform*, November 3, 2016. A video of the altercation is available on [YouTube](#).
- ²³ Jenna Lifhits, "[George Mason U. Reaffirms Commitment to Free Speech in All-Student Email](#)," *Weekly Standard*, October 28, 2016.
- ²⁴ Yale College Dean's Office, "[Report of the Committee on Freedom of Expression at Yale](#)," December 23, 1974.
- ²⁵ Scott Jaschik, "[U Chicago to Freshmen: Don't Expect Safe Spaces](#)," *InsideHigherEd*, August 25, 2016.

- ²⁶ Richard Pérez-Peña, Mitch Smith, and Stephanie Saul, “[University of Chicago Strikes Back Against Campus Political Correctness](#),” *New York Times*, August 26, 2016.
- ²⁷ University of Chicago, [Report of the Committee on Freedom of Expression](#), January 2015.
- ²⁸ University of Chicago, *Report of the Committee on Freedom of Expression*.
- ²⁹ University of Chicago, “Kalven Committee: Report on the University’s Role in Political and Social Action.”
- ³⁰ University of Chicago, *Report of the Committee on Freedom of Expression*.

About the Author



Thomas J. Lindsay, Ph.D., is director of the Texas Public Policy Foundation's Center for Higher Education and its senior constitutional scholar. He has more than two decades' experience in education management and instruction, including service as a dean, provost, and college president.

In 2006, Lindsay joined the National Endowment for the Humanities (NEH) staff as director of the agency's signature initiative We the People, which supports teaching and scholarship in American history and culture. He was named Deputy Chairman and Chief Operating Officer of the NEH in 2007.

Lindsay received his B.A., *summa cum laude*, in political science, and went on to earn his M.A. and Ph.D. in political science from the University of Chicago. Oxford University Press recently published Lindsay's American Government college textbook *Investigating American Democracy* (with Gary Glenn). He has published numerous articles on the subject of democratic education, many of which have appeared in the world's most prestigious academic journals, including the *American Political Science Review*, the *Journal of Politics*, and the *American Journal of Political Science*.

Lindsay has published articles on higher-education reform in *Real Clear Policy*, *Los Angeles Times*, *National Review*, *Inside Higher Ed*, *Washington Examiner*, Knight-Ridder Syndicate, *Dallas Morning News*, *Houston Chronicle*, *American Spectator*, and *Austin American-Statesman*, among others. He is a regular contributor to *Forbes*.

In recognition of his scholarship on democratic education, Lindsay was made the 1992-93 Bradley Resident Scholar at the Heritage Foundation in Washington, D.C.

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