

LEGISLATOR'S GUIDE TO THE ISSUES 2021-2022

Free Speech on Campus

The Issue

Over the past few years, a plethora of news accounts has exposed serious restrictions on free speech and debate on our campuses. University [speech codes](#), restrictive “free-speech zones,” and commencement speaker “[disinvitations](#)” threaten to undermine our schools’ defining mission: the free, nonpartisan quest for truth, that is, the Socratic vision from which liberal education originated.

There is no more pressing issue in higher education today. If free speech and debate die on our campuses, they will come in time to die in the public square, dooming self-government.

The model for higher education currently threatened is born of Socrates’s proposition that “the unexamined life is not worth living for a human being.” It is no accident that the words “liberal” and “liberty” share the same root: Liberal education, for Socrates, is an education in and through liberty. The highest purpose of liberal education is to foster the freedom of the mind, that is, freedom from unexamined assumptions—for example, swings in intellectual fashion, partisan politics, and ideology. Liberty at its peak is thus identical with the pursuit of truth.

But truth seeking, as Socrates’s trial and execution show, is not without dangers. Thus, the institutions devoted to cultivating intellectual liberty—colleges and universities—depend for their safety on their being situated in a system of political liberty. In this respect, the cultivation of free minds both transcends and depends on the political freedom enshrined in our Constitution.

If students are deprived of the growth opportunities provided by encountering and debating ideas with which they disagree, they will lack the qualities essential to informed, effective citizenship, which requires knowledge of our fundamental moral and political principles. Democracy depends on a citizenry so endowed.

Academic freedom is a subset of the freedom of speech promised under a constitutional democracy. History shows that regimes that do not protect free speech in the political sphere also do not protect it in the academy. Freedom of speech in the political sphere is animated by the conviction that the people, if free to engage in debate over policy issues, will, through this process, be better able to choose wisely among competing policies and the candidates espousing them. Academic freedom is animated by the conviction that the examined life is the highest capacity of human beings. In both spheres, truth seeking is the end to which freedom of speech and inquiry exist as the indispensable means.

The Facts

- In [Healy v. James](#), 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.”

- The nonpartisan think tank the Foundation for Individual Rights in Education (FIRE) has published its latest report on academic freedom, [Spotlight on Speech Codes 2020: The State of Free Speech on Our Nation’s Campuses](#). Its most salient findings are:
 - ▶ Just under one-third (24.2%) of surveyed institutions received FIRE’s lowest, [red light rating](#), for maintaining “policy that both clearly and substantially restricts freedom of speech, unambiguously infringing on what is or should be protected expression.”
 - ▶ Most schools (63.9%) receive a [yellow light rating](#). Yellow light policies “restrict a more limited amount of protected expression or, by virtue of their vague wording, could too easily be used to restrict protected expression.”
- Duly alarmed over the rising intolerance sweeping across campuses nationwide, the University of Chicago released its “Report on Free Expression” in 2015. [The Chicago Statement](#), as it has come to be called, has been adopted by the administrations or faculty bodies of 75 universities [as of July 14, 2020](#), among them, Columbia, Princeton, Johns Hopkins, Georgetown, Purdue, Michigan State, the University of Missouri System, and LSU.
- Versions of the Goldwater Institute’s model proposal on campus free speech have been adopted by the North Carolina Legislature as well as the University of Wisconsin System Regents.
- In Texas, only one school has signed the Chicago Statement (UT-San Antonio, 2019) or embraced the Goldwater model proposal. Moreover, Texas houses 3 schools with FIRE’s worst rating for free speech (“Red Light”) and 14 schools with its second worst rating (“Yellow Light”).
- A version of the Goldwater model bill passed in the Texas Senate in 2017 but was not heard in the House.

Recommendations

- Each college and university’s board of trustees (or “regents”) could adopt the Chicago Statement, in the manner done by Purdue and the University of Nebraska.
- The Texas Legislature should strengthen its campus free speech bill, SB 18, passed in 2019. While Texas is to be congratulated for becoming the 17th state in the Union to pass a campus free speech bill, SB 18 has some flaws. The Foundation agrees with the nonpartisan free speech

watchdog, the [Foundation for Individual Rights in Education](#) (FIRE), that “one potentially problematic provision [of SB 18] requires institutions to implement disciplinary measures for students who “unduly interfere with the expressive activities of others.” The Foundation shares FIRE’s concern over “schools sitting idly by as speakers are prevented from addressing an audience because of disruptions.” As FIRE notes, “the statute does not define ‘unduly interfere’ in its text, and if an institution adopted a policy with identical language, it would likely be unconstitutionally overbroad.”

- The Foundation also agrees with [FIRE’s assessment](#) that SB 18 “falls short by failing to provide any mechanism for individuals or the state attorney general’s office to enforce the rights provided in the bill if a school is not in compliance.”

Resources

[“Chicago Statement: University and Faculty Body Support,”](#) Foundation for Individual Rights in Education (Aug. 24, 2020).

[“Campus Free Speech: A Legislative Proposal,”](#) by Stanley Kurtz, James Manley, and Jonathan Butcher, Goldwater Institute (2018).

[“Free to Learn? Think Again: Restoring the First Amendment at Texas Public Universities,”](#) by Thomas Lindsay, Texas Public Policy Foundation (Aug. 2016).

[“The Need for Free Speech and Debate in Both Our Schools and the Public Square,”](#) by Thomas Lindsay, invited testimony before the Senate State Affairs Committee, Texas Public Policy Foundation (Jan. 31, 2018).

[“Report of the Committee on Freedom of Expression,”](#) by Stone et al., University of Chicago (2015).

[“Using the Database,”](#) Foundation for Individual Rights in Education (Aug. 24, 2020).

