**CONTRIBUTION: ACADEMIC FREEDOM**

**United States**

**February 4, 2024**

**From: Critical (Legal) Collective (CLC)**

(Contact**:** Athena D. Mutua, Professor of Law, University at Buffalo School of Law; admutua@buffalo.edu)

**Overview**

1. Academic freedom is under attack in the United States. Like the authoritarian populism rising in countries across the globe, the attack in the U.S. is part of a broader multifaceted assault on democracy and democratic institutions. These include attacks on the electoral process, on the civil rights and liberties of minoritized populations, women, LGBTQ+ people, and activists (recently escalated against Pro-Palestinian activists), among others; and on various independent social and governmental institutions for the purpose of undermining and delegitimizing them.

2. Education generally, and academic freedom in particular, is currently the specific target of interlocking and extremely well-funded reactionary ideological campaigns that seek to impose - through law - restrictions on educational discussions of the role of race, gender, and inclusionary policies in American society. Launched by a network of conservative billionaire donors, corporations, think tanks, media outlets, and legal and legislative associations, adherents of this ideology now dominate one of the major political parties in the United States, the Republican party (GOP). These politicians control not only various state and local administrations, but occupy legislative and judicial positions at the national level.[[1]](#footnote-1)

3. The campaigns have resulted in almost 800 proposals of “discriminatory censorship” laws, directives and resolutions across the country,[[2]](#footnote-2) representing all but one state;[[3]](#footnote-3) and almost 6000 instances of book bans across 41 states and 247 public school districts.[[4]](#footnote-4) While discriminatory censorship laws and rules apply to educators and institutions at the primary and secondary (“K-12”) and higher educational levels, several states have enacted laws that also expand governmental control over curricular content in public colleges and universities, restrict tenure, exert “direct ideological control over how universities operate” through bans on Diversity, Equity, and Inclusion (DEI) programs, and restrict accreditation agencies.[[5]](#footnote-5) All of these are essential components of academic freedom in the United States. Ultimately, the goal is to silence educators: “[T]o silence ideas and identities that some find uncomfortable; control narratives about the past; and ensure that only one set of values, viewpoints, and ideologies makes it past the schoolhouse gate.”[[6]](#footnote-6)

4. However, academic freedom is not only under attack from conservative – “right-wing” - ideology, but also from decades of “neoliberal” ideology and policies advanced by both Democrats and Republicans. Neoliberal policies have fueled the corporatization of the academy and enhanced control of it by corporations and the wealthy. Neoliberalism theorizes that “governmental power is inherently prone to corruption, and that private markets freed from burdensome regulations are the best way to build wealth… and distribute the goods and services necessary for human flourishing.”[[7]](#footnote-7) In reality, “neoliberal policy has dramatically increased economic precarity [in the United States] and concentrated wealth in fewer and fewer hands.”[[8]](#footnote-8)

5. In the K-12 context, “neoliberal initiatives such as voucher programs, charter schools, state funding for parochial schools, and attacks on teachers and teacher unions seek to undermine public K-12 education and create opportunities for private profiteering.”[[9]](#footnote-9) In higher education, neoliberal policy has resulted in “dramatic reductions in state funding…which… have rendered colleges and universities increasingly dependent on” private sources and student tuition, with students increasingly dependent on loans.[[10]](#footnote-10) It has also stimulated “the gradual replacement of tenure-track faculty with poorly paid adjuncts denied security of employment (and therefore security for expression), and the closing of humanities departments and programs that teach students to think critically.”[[11]](#footnote-11)

6. The campaign has grown in three phases, each with a set of deceptive messages and varying institutional and other targets.[[12]](#footnote-12)

* Phase 1- Attacks *anti-racism,* equating efforts to promote racial justice and combat racism, including its inclusionary vision, *as racist*, and capturing this inversion in the phrase “Critical Race Theory” or “CRT,” – thereby distorting an entire academic school of legal thought. Legislative efforts: Targets both K-12 and higher education in a single legislative effort. Part of a flood of state measures sparked by former president Trump’s Executive Order 13950 (now rescinded), which banned so called *divisive concepts* in government trainings.[[13]](#footnote-13) CRT Forward notes that as of December 2022, 35 percent of divisive concept legislation explicitly banned CRT.[[14]](#footnote-14)
* Phase II – Intensifies attacks on discussions about LGBTQ+ people and women’s roles in society. It uses “the whip of *parental rights”* to galvanize, mostly conservative non-minority, support to limit gender-based discussions and reflects the alliance between political conservatives and Christian nationalists. Legislative efforts: Separate legislation emerges, targeting K-12 or higher education. In 2023 alone, states proposed 39 bills restricting discussion of LGBTQ topics in K-12 specifically, many modeled on Florida’s HB 1557 (2022), known colloquially as the “Don’t Say Gay” act.[[15]](#footnote-15) Separate legislation attacks the structural supports of academic freedom, including attacks on colleges and universities’ governing structures and tenure regimes. Again, Florida, which Pen America suggests is driving the conservative agenda,[[16]](#footnote-16) has passed several laws that undermine academic governance, aspects of which are being replicated in laws and bills in Iowa, Mississippi, North Carolina, North Dakota, Ohio and Texas, among others.
* Phase III – Arises out of the war in Gaza. Broad definitions of *antisemitism* are advanced – which include critiques of Israel as antisemitic – and weaponized to silence and chill speech and activism critical of Zionism or Israel’s conduct in occupied Palestine.[[17]](#footnote-17) Pro-Palestinian activism also penalized. Legislative efforts: Bills in three states define antisemitism to incorporate the controversial International Holocaust Remembrance Alliance definition.[[18]](#footnote-18) Approximately 30 other states have similar “redefinitions,”[[19]](#footnote-19) most replicating former president Trump’s 2019 Executive Order 13899. On penalties, Florida Bill HB 465, requires state colleges and universities “to assess out-of-state fees on [post-secondary] students who promote foreign terrorist organization[s];” and renders them ineligible for financial aid, among other things. In October 2023, Florida Board of Governors Chancellor directed Florida university presidents to disband chapters of the student group, Students for Justice in Palestine, but no actions were taken to deactivate the chapters.[[20]](#footnote-20)

**General Legal Framework**

 Academic Freedom and the First Amendment

7. Academic freedom in the United States is grounded in and protected pursuant to the First Amendment of the U.S. Constitution. [[21]](#footnote-21) The First Amendment provides in part: “Congress shall make no law… abridging the freedom of speech, or of the press.”[[22]](#footnote-22) The Supreme Court has declared that the central commitment of the First Amendment is to allow for free debate on public issues.[[23]](#footnote-23) The interpretation of the First Amendment is found in American case law, particularly through Supreme Court decisions.

8. While the Supreme Court has held that the unique role of speech and thought in public universities provides a special niche in approaching First Amendment matters on college campuses, the Court has never ruled academic freedom as a standalone right.

9. Academic freedom is not defined in either the U.S. Constitution or any state constitutions. The Supreme Court observed the importance of academic freedom in its 1967 decision, *Keyishian v. Board of Regents*.[[24]](#footnote-24) The case involved professors at a public university in New York refusing to sign a loyalty oath saying they were not communists. Here the Supreme Court held that laws that infringe on freedom of speech in the classroom must be narrow and specific. It elaborated:

[O]ur nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. Academic freedom is therefore a special concern of the First Amendment. It does not tolerate laws that cast a pall of orthodoxy over the classroom.”[[25]](#footnote-25)

10. In short, tenured professors enjoy academic freedom, as do higher education institutions. Functionally, this means that academic support staff acting on the university’s behalf engage in speech and expression that resembles academic speech.

11. However, as the Supreme Court has become more conservative, this seemingly unwavering commitment to academic freedom is increasingly in doubt. In 2006, the Court’s decision in *Garcetti v. Ceballos* threw into question whether the First Amendment protected certain kinds of speech and activity by academics at *public* institutions. In the case, the Supreme Court held that the First Amendment does not protect government employees’ speech when that speech is made pursuant to the duties of employment.[[26]](#footnote-26) Employees at *public* universities are considered government or state employees.[[27]](#footnote-27) Though the Court explicitly declined to extend its holding to cases involving scholarship or teaching-related speech, doubts remain.

12. Recently, a (lower) federal district court reasoned that *Garcetti* does not apply to university professor’s in-class speech following Eleventh Circuit precedent. [[28]](#footnote-28) *Pernell v. Florida Board of Governors*[[29]](#footnote-29) involves one of the most notorious classroom censorship laws in the current moment.[[30]](#footnote-30) The **“Stop W.O.K.E.” Act “**severely restricts Florida educators and students from learning and talking about issues related to race and gender in higher education classrooms,” including concepts related to the legacy of slavery in the United States, affirmative action, white privilege, and anti-racism.[[31]](#footnote-31) As a result, Florida professors are officially banned from expressing views regarding these topics, topics of which the State of Florida disapproves.[[32]](#footnote-32) Furthermore, professors are barred from endorsing any subjective viewpoints pertaining to these topics.[[33]](#footnote-33)

13. Explaining that the Supreme Court has identified two forms of speech restrictions that are subject to heightened scrutiny: content-based restrictions and viewpoint-based restrictions, the court determined that the Florida law imposed an impermissible viewpoint-based restriction on educators’ classroom speech. *The case is ongoing.*

14. Academic freedom, though broad, is not inviolate. Even tenured professors’ academic freedom does not extend to constrain the university from administrative oversight. [[34]](#footnote-34) And, academic institutions cannot rely on academic freedom to discriminate unlawfully or otherwise violate statutory anti-discrimination or constitutional equal protection obligations.[[35]](#footnote-35)

15. Elementary and secondary school teachers, however, do not enjoy the same academic freedoms as their tertiary counterparts. Because the states generally enjoy police power over teaching and learning, elementary and secondary teachers are constrained by pre-approved state curricula and can face adverse employment action for any deviation from those curricula.[[36]](#footnote-36) Within that framework, the judge in the Pernell case notes “the Eleventh Circuit and its predecessor have recognized that the First Amendment protects classroom discussions at [both] the secondary and university levels” and does so, in the jurisdiction.

16. As for students, they “retain their First Amendment rights in schools. In *Tinker v. Des Moines Independent Community School District*, a 1969 decision, the U.S. Supreme Court held that students do not ‘shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”’[[37]](#footnote-37) Students also have a right to access information, but it is limited to access to the state-provided curriculum,[[38]](#footnote-38) and to books that the state has already chosen to make available to them.[[39]](#footnote-39) College students may choose their classes, but they also do not have meaningful choice in what their professors choose to teach because of the professors and the institution’s academic freedom. However, the institution cannot rely on its academic freedom to discriminate against students’ own expression within or outside the classroom [[40]](#footnote-40)

Examples of the Impact of Discriminatory Censorship Laws

17. Since January 2021, rightwing officials have increasingly governed on a platform of discriminatory censorship at all levels of government. They have proposed nearly 800 “discriminatory censorship laws”—a term [legal scholars have employed](https://nepc.colorado.edu/publication/censorship) to capture official acts designed to (a) purge classroom conversations about targeted topics (e.g., racism, sexism, gender identity, colonialism/imperialism) and (b) demean inclusionary values and people from historically marginalized groups (people of color; LGBTQ+ community).

18. [Recent analysis](https://nepc.colorado.edu/publication/censorship) suggest that these laws—which target K-12 and higher education —have already had two significant negative impacts on students, and educators: the laws (a) anchor regimes of *miseducation* and (b) create *hostile learning environments* by exposing individuals from targeted groups to a heightened risk of race- and gender-based harassment.

19. The National Education Policy Center in a recent report describes the impact of these laws, primarily on K-12 education:[[41]](#footnote-41)

* State and local officials have *enacted* over 240 discriminatory censorship laws regulating K-12 classrooms.
* Discriminatory censorship laws now regulate schools that are home to over 1.3 million educators and nearly half of the United States ~50 million public school students.
* A majority of these laws have been adopted at the local level by school districts or school boards rather than by state officials.
* Enforcement mechanisms vary but have become increasingly punitive since 2022.
* Discriminatory censorship laws lack public support.
* Legal challenges have been few, likely due to a lack of favourable precedent.
* Students and teachers face an increased risk of race and sex-based harassment because discriminatory censorship laws stigmatize targeted groups and chill support for those groups.
* Just 11 people were responsible for over half of attempted book bans in 2021-2022 school year.
* Many jurisdictions with these laws “now subject educators to enhanced surveillance, including “tip lines,” to report on teachers, secret recordings, and requirements to post coursework online.”CRT Forward reports that 41 discriminatory censorship laws targeting K-12 institutions “affirmatively require school districts to allow parents to surveille curriculum,” with even baseless complaints having consequences. [[42]](#footnote-42)

**II. Guidelines & Codes: AAUP on Academic Freedom, Tenure & Shared Governance**

20. The United States has a custom of honoring academic freedom dating back to the nation’s founding. However, in 1915, the *American Association of University Professors (AAUP),* the leading organization on academic freedom, formed in response to trustees with ties to private industry interfering with university faculty’s ability to research and teach independently. In forming, the AAUP issued its 1915 *Declaration of Principles on Academic Freedom and Tenure.[[43]](#footnote-43)* Over the course of the next century, the AAUP continued to revise and issue dozens of policy documents and reports on academic freedom, including the 1940 Statement of Principles on Academic Freedom,[[44]](#footnote-44) and the 1966 Statement on Government of Colleges and Universities.[[45]](#footnote-45) The *Declaration* in defining academic freedom makes clear that both the institution and teachers are to be free to search for truth and its exposition without interference from political figures, boards of trustees, donors, or other entities. It provides three core functions of *academic institutions in society*:

* to promote inquiry and advance the sum of human knowledge,
* to provide general instruction to students; and
* to develop experts for various branches of the public service.[[46]](#footnote-46)

And, it articulated three principles of *academic freedom*:

* “freedom of inquiry and research;
* freedom of teaching within the university or college; and
* freedom of extra-mural utterance and action.”[[47]](#footnote-47)

21. One of AAUP’s most significant achievements has been the “development of robust professional norms of democratic university governance” [[48]](#footnote-48) – of the internalization and adoption of the “extra-legal” rights of academic freedom by most colleges and universities, both public and private,[[49]](#footnote-49) as well as by a host of adjacent institutions. These norms include independence, the job security of tenure and due process prior to discipline or dismissal, and shared governance.[[50]](#footnote-50) For faculty these practices are largely secured by contract (and unions for a host of public institutions),[[51]](#footnote-51) with governance practiced through faculty senates or councils, all of which are shaped and defined by disciplinary requirements applied through peer review.

22. While the AAUP has provided a strong framework for academic freedom, and other organizations now exist to protect it, the framework has several flaws. These include its limited focus on teachers in higher education, and its failure to address the rights of students.[[52]](#footnote-52) However, a significant weakness, now being exploited in the attack against academic freedom, is that although faculty have “primary responsibility, through their governing bodies, for academic matters such as curriculum, teaching, research, and faculty appointments and promotions,” the administration or governing boards still have final decision-making authority.[[53]](#footnote-53)

23. AAUP, among other things, investigates violations of academic freedom and publishes reports of violations to bring pressure to bear on institutions. It recently conducted reports on the state university systems of North Carolina (UNC) and Florida. The UNC report is deeply disturbing.[[54]](#footnote-54) However, the report on the state of Florida is absolutely harrowing.[[55]](#footnote-55) Links for both reports are included here. However, it is important to note that the AAUP found that:

[a]cademic freedom, tenure, and shared governance in Florida’s public colleges and universities currently face a politically and ideologically driven assault unparalleled in US history, which, if sustained, threatens the very survival of meaningful higher education in the state, with dire implications for the entire country.[[56]](#footnote-56)

**III. Funding of Education : Privatization**

24. U.S. colleges and universities have institutionalized academic “peer” review of sponsored research, though administrators often manage these offices. Federal government agencies such as the National Endowment for the Humanities (NEH) and the National Institute of Health (NIH), agencies which primarily fund intellectual research, often employ peer review processes.[[57]](#footnote-57) Although government funding “shapes research agendas through its descriptions of research interests and award of grants, the public-interest ethos of some agencies and the peer review process place constraints on the use of agency power or personal financial interests to skew research grants in an… anti-democratic direction.[[58]](#footnote-58)

### 25. However, federal government funding of academic research has declined. During the post-World War II expansion of public funding for academic research, the federal government provided 60 to 70 percent of university research support. After the Reagan administration launched neoliberal policies in the 1980s, this support declined, such that federal funding decreased from 57 percent to 51 percent between 2000 and 2017 alone.[[59]](#footnote-59) The 1980s push for privatizing and decreasing public services led to the privatization of a host of public functions, including of primary and secondary schools. [[60]](#footnote-60) This was accompanied by promulgation of laws such as the 1980 Bayh-Dole Act, which together with the corporatization of the university incentivized the commercialization of academic research.[[61]](#footnote-61) The Act “permits and encourages universities and other federal fund recipients to patent and license research resulting from the use of federal funds, including exclusive licenses to for-profit corporations.”[[62]](#footnote-62)

Privatization in Public Education - K-12

### 26. The move to privatize public education (K-12 schools) has had bipartisan support, captured in part by policies of the G.W. Bush, Obama and Trump administrations. However, the K-12 privatization agenda is funded and led “by a very small group of American billionaires,”[[63]](#footnote-63) from the Walton family (Walmart), Bill Gates (Bill & Melinda Gates Foundation to Charles Koch (Koch Industries) and Mark Zuckerberg (Facebook CEO), among others, including dark money sources.[[64]](#footnote-64)

### 27. Diane Ravitch, a leading education historian and a former member of the conservative school reform movement, explains the reform-cum-privatization movement “is not meant to reform public education but is a deliberate effort to replace public education [a system which educates nerly 90% of American children[[65]](#footnote-65)] with a privately managed, free-market system of schooling.”[[66]](#footnote-66) Ravitch argues that the problems found in urban schools, in particular, have been misdiagnosed and are the result of poverty and segregation. The proposed “reforms” - private management and control, increased standardize testing, competition among schools and accountability, which often means closing “failing” schools - do not address these issues.[[67]](#footnote-67) Further, privatization, she argues has failed to deliver on its promises of improved educational quality and racial equity as measured by its own key criteria: It has filed to raise test scores, with charter schools being more segregated thn public schools.[[68]](#footnote-68)

### 28. Jim Freeman, a civil rights attorney, notes that the movement has operated heavily in communities of colour. The reforms, he suggests, are often imposed without community consultation (or despite opposition) and have led to an *epidemic* of school closings that destabilize these communities, given the centrality of community schools. For instance, he notes that in Gary (IN), Detroit (MI) and Camden (NJ) public school districts, each with children of colour constituting over 95 % of the students, 69%, 66%, and 50% of the public schools, respectively, have been closed, among other harms.[[69]](#footnote-69)

### 29. While Ravitch distinguishes among the various types of privatization warriors, she like Freeman, argues that privatization is simply a “money-grab,”[[70]](#footnote-70) a potential transfer of $500 to $600 billion of “public funds to private management and [through the creation] of thousands of deregulated, unsupervised, and unaccountable schools, opens the public coffers to profiteering, fraud, and exploitation by large and small entrepreneurs.”[[71]](#footnote-71)

### Privatization and Corporatization in Higher Education

### 30. Privatization in the context of U.S. higher education is manifest most squarely in the “steep decline of public funding for higher education, with more deleterious effects on public universities.[[72]](#footnote-72) Some of the effects, as Professor Lieberwitz notes, include: higher tuition fees, increased commodification of education, and extremely high student debt with universities forced to search for additional funds in the private market or cut programs, and suffering declines in liberal arts studies.[[73]](#footnote-73)

31. "Corporatization" is pervasive throughout the U.S. university, shifting the institutional social role of the university from serving a democratic public mission to serving private economic interests,” especially the private economic interest of for-profit corporations. The corporate business model of managing universities *as a business, “*strengthens the top down decision-making power of the administration,”[[74]](#footnote-74) encourages university-industry ties, and “creates a strong incentive to commercialize academic research.”[[75]](#footnote-75) These “undermine university's institutional independence, faculty impartiality in choosing and carrying out a research agenda, and the norms of the academic profession.”[[76]](#footnote-76) Some of the effects of this include:

* ***Removing academic research from the public domain for public use, placing it instead in private for-profit hands: “***In 1979, before the Bayh-Dole Act, US universities obtained 264 patents. Between 1988 and 2003, US patents awarded to academic institutions quadrupled, from about 800 to more than 3,200 per year (Johnston 2007: 162) and by 2016 had more than doubled.”[[77]](#footnote-77)
* ***Reducing the number of tenured faculty***: Nationally, “the percentage of tenure-track/tenured faculty positions has plummeted from 78 percent in 1969 to… 30 percent today.”[[78]](#footnote-78) Growth in contingent faculty has racial and gender impacts, stratifies the faculty, delinks academic freedom from tenure, limiting their ability to speak out and their participation in shared governance.
* ***Increasing administrative staff:***  “Between the years of 1976 and 2015, the number of full-time university executives and managers grew by 140 percent, compared to a smaller growth rate for faulty. [[79]](#footnote-79)
* ***Increasing the power of corporate funders and donors:*** Allows them to shape the institutions and studies to meet their own narrow pecuniary needs and ideological perspectives, which overall tend to be more conservative than those of the American public. And donors, in this regard have become more aggressive as three recent scandals reveal. They involve the donor-driven reshaping of George Mason law school,[[80]](#footnote-80) UNC’s journalism school’s failure to secure Nicole Hannah-Jones, and the resignations as college presidents of Dr. Claudine Gay (Harvard)[[81]](#footnote-81) and Dr. Liz Magill (Univ. of Pennsylvania).[[82]](#footnote-82)

END

1. *See generally*, Athena D. Mutua, *Reflections on Critical Race Theory in a Time of Backlash,* 100 Denver law Review 553 (2023), <https://digitalcommons.law.buffalo.edu/journal_articles/1198/>, (discussing the miseducation campaigns against critical race theory) [↑](#footnote-ref-1)
2. The 800 proposals include federal, state and local bills, resolutions, executive orders, opinion letters, statements, and other measures. See CRT Forward, <https://crtforward.law.ucla.edu/>; and CRT Forward (Report): Tracking the Attack on Critical Race Theory (Apr. 6, 2023), <https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf>, [CRT Forward Report]. The term “discriminatory censorship laws is taken from Feingold & Weishart, Discriminatory Censorship Laws Imperil Public Education (2023), <https://nepc.colorado.edu/publication/censorship>. [↑](#footnote-ref-2)
3. CRT Forward, supra note 2. [↑](#footnote-ref-3)
4. Pen America, Report: Spineless Shelves: Two Years of Book Banning (2023) (reporting 5894 instances), <https://pen.org/spineless-shelves/>. [↑](#footnote-ref-4)
5. Pen America, Report: America’s Censored Classrooms 2023: Lawmakers Shift Strategies as Resistance Rises (November 9, 2023), <https://pen.org/report/americas-censored-classrooms-2023/>

at 15-22 [Hereinafter “Censored Classrooms”]. [↑](#footnote-ref-5)
6. *Id.* at 3-4 [↑](#footnote-ref-6)
7. CLC Organizing for Democracy and Liberation: The Right to Learn, The Right to Teach, The Right to Thrive, <https://www.buffalo.edu/baldycenter/multimedia/blog/23-24-blog.html#title_207228381> [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. *Id.* [↑](#footnote-ref-10)
11. *Id.* [↑](#footnote-ref-11)
12. See generally, Censored Classrooms, *supra* note 5 (discussing a shift in the campaign’s focus and strategy). [↑](#footnote-ref-12)
13. Exec. Order No. 13950, 85 Fed. Reg. 60,683 (Sept. 22, 2020), <https://www.federalregister.gov/documents/2020/09/28/2020-21534/combating-race-and-sex-stereotyping>) ( EO 13950, September 22, 2020; Revoked by EO 13985, January 20, 2021); See also Memorandum from Russell T. Vought, OMB Dir. Exec. Off. of the President to the Heads of Exec. Dep’t & Agencies 2 (Sept. 28, 2020), https://www.whitehouse.gov/wp-content/uploads/2020/09/M-20-37.pdf [↑](#footnote-ref-13)
14. CRT Forward, *supra note 2.* [↑](#footnote-ref-14)
15. Pen America, Report: The Florida Effect: How the Sunshine State is Driving the Conservative Agenda on Free Expression, November 28, 2023, <https://pen.org/report/the-florida-effect/> . [↑](#footnote-ref-15)
16. *Id.* [↑](#footnote-ref-16)
17. *See e.g.,* Letter to Co-Sponsors of Proposed American Bar Association Resolution 514 on Antisemitism

Document Date: January 19, 2023, <https://www.aclu.org/documents/letter-co-sponsors-proposed-american-bar-association-resolution-514-antisemitism> (arguing that “[o]ngoing efforts to codify the IHRA definition into law and policy, including at the ABA, are invariably framed as efforts to fight antisemitism. Yet, the clear objective behind the promotion of the IHRA definition is the suppression of non-violent protest, activism, and criticism of Israel and/or Zionism).” [↑](#footnote-ref-17)
18. International Holocaust Remembrance Alliance (IHRA) website at <https://holocaustremembrance.com/resources/working-definition-antisemitism>. For a discussion of various definitions and background of advocacy around them see, Masha Gessen, *In the Shadow of the Holocaust: How the politics of memory in Europe obscures what we see in Israel and Gaza today*, The New Yorker, December 9, 2024, [In the Shadow of the Holocaust | The New Yorker](https://www.newyorker.com/news/the-weekend-essay/in-the-shadow-of-the-holocaust). [↑](#footnote-ref-18)
19. Geoff Mulvihill, *There's a wave of new bills to define antisemitism. In these 3 states, they could become law*,A BC NEWS, January 29, 2024, <https://abcnews.go.com/US/wireStory/wave-new-bills-define-antisemitism-3-states-become-106756518>. [↑](#footnote-ref-19)
20. For more information about the case see, ACLU/Palestine Legal case against Florida: <https://www.aclu.org/cases/students-for-justice-in-palestine-at-the-university-of-florida-v-raymond-rodrigues>. [↑](#footnote-ref-20)
21. *See* Rachel Levinson, *Academic Freedom and the First Amendment: Presentation to the AAUP Summer Institute*, American Association of University Professors (last visited Jan. 31, 2024), <https://www.aaup.org/our-work/protecting-academic-freedom/academic-freedom-and-first-amendment-2007>. [↑](#footnote-ref-21)
22. *See* U.S. Const. amend*.* I., <https://constitution.congress.gov/constitution/amendment-1/>. [↑](#footnote-ref-22)
23. *See* New York Times Co. v. Sullivan, 376 U.S. 254, 272 (1964). [↑](#footnote-ref-23)
24. Keyishian v. Board of Regents, 385 U.S. at 602-03. [↑](#footnote-ref-24)
25. *Id*. at 603. Ultimately, the university violated the First Amendment rights of the professors because it prohibited associations with an organization, without determining whether there was intent to further unlawful aims of that organization. [↑](#footnote-ref-25)
26. Garcetti v. Ceballos, 547 U.S. 410, 421 (2006). [↑](#footnote-ref-26)
27. *See* *Protecting an Independent Faculty Voice: Academic Freedom after Garcetti v. Ceballos*, https://www.aaup.org/report/protecting-independent-faculty-voice-academic-freedom-after-garcetti-v-ceballos. [↑](#footnote-ref-27)
28. Pernell v. Fla. Bd. of Governors of State U. System, 4:22CV304-MW/MAF, 2022 WL 16985720, at 25 (N.D. Fla. Nov. 17, 2022*)* (noting:

 All this is to say that Defendants have identified no case, nor has this Court

identified any authority—binding or persuasive—holding that Garcetti applies to

university professors’ in-class speech such that it amounts to government speech

outside the First Amendment’s protection. To the extent Defendants urge this Court

to determine that university professors’ in-class speech is always pure government

speech, the weight of binding authority requires this Court to decline the invitation. [↑](#footnote-ref-28)
29. *Id.* For more information about the case see *infra* note 31. [↑](#footnote-ref-29)
30. In August of 2022, Florida Governor Ron DeSantis signed into law Florida House Bill 7 (“HB 7”), more commonly referred to as the “Stop W.O.K.E. Act”, or the redubbed “Individual Freedom Act.” H.R. 7, 124th Leg. Reg. Sess. (Fla. 2022). [↑](#footnote-ref-30)
31. *See* ACLU of Florida, *Florida’s “Stop W.O.K.E.” Censorship Bill Continues to Be Blocked After Eleventh Circuit Decision*, ACLU of Florida (Mar. 16, 2023, 2:30 PM), https://www.aclu.org/press-releases/floridas-stop-w-o-k-e-censorship-bill-continues-to-be-blocked-after-eleventh-circuit-decision. [↑](#footnote-ref-31)
32. *See Pernell* at \*1 (providing its interpretation of the Act). [↑](#footnote-ref-32)
33. *Id.* at \*2. [↑](#footnote-ref-33)
34. *See, e.g.,* Parate v. Isibor, 868 F.2d 821 (1989) (a university’s changing a final grade doesn’t offend the professor’s First Amendment speech rights or academic freedom.) [↑](#footnote-ref-34)
35. Cf. Students for Fair Admissions v. Harvard College/University of North Carolina, 600 U.S. 181 (2023) (striking down both schools affirmative action program and holding that academic freedoms over admissions is an insufficient shield against Fourteenth Amendment equal protection and Title VI claims that race-conscious admissions programs unlawfully discriminate on the basis of race). [↑](#footnote-ref-35)
36. *See, e.g*., Evans- Marshall v. Bd. of Educ. of the Tipp Cty. Exempted Vill. Sch. Dist., 624 F.3d 332 (6th Cir. 2010)). [↑](#footnote-ref-36)
37. Pen America, Report: Banned in the USA: The Growing Movement to Censor Books in Schools (2022), https://pen.org/report/banned-usa-growing-movement-to-censor-books-in-schools/ [↑](#footnote-ref-37)
38. Cf. Goss v. Lopez, 419 U.S. 565 (1975) (unilaterally depriving a school child of access to the schooling the state has guaranteed them violates their due process rights)). [↑](#footnote-ref-38)
39. Bd. of Educ. of Island Trees Union Sch. Dist. No. 26 v. Pico, 457 U.S. 853 (1982) (plurality). [↑](#footnote-ref-39)
40. Rosenberger v. Rector & Visitors of the University of Virginia, 515 U.S. 819 (1995)). [↑](#footnote-ref-40)
41. Pulled from Feingold & Weishart, [*Discriminatory Censorship Laws Imperil Public Education*](https://nepc.colorado.edu/publication/censorship) (2023). [↑](#footnote-ref-41)
42. *Id.* [↑](#footnote-ref-42)
43. Seligman et al., *1915 Declaration of Principles on American Freedom and Academic Tenure,* [FinalEdits (aaup.org)](https://www.aaup.org/NR/rdonlyres/A6520A9D-0A9A-47B3-B550-C006B5B224E7/0/1915Declaration.pdf) https://www.aaup.org/NR/rdonlyres/A6520A9D-0A9A-47B3-B550-C006B5B224E7/0/1915Declaration.pdf., 295 (1915)*.* [↑](#footnote-ref-43)
44. *See*, <https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>. [↑](#footnote-ref-44)
45. *See*, <https://www.aaup.org/report/statement-government-colleges-and-universities>. [↑](#footnote-ref-45)
46. Seligman, *supra* note 45 at 295. [↑](#footnote-ref-46)
47. *Id.* at 292. [↑](#footnote-ref-47)
48. Risa L. Lieberwitz,*Corporatization of Higher Education: A Crisis of Labor and Democracy,* in The Cambridge Handbook of Labor and Democracy, Angela B. Cornell and Mark Barenberg, eds. (Cambridge University Press 2022) , at 321. [↑](#footnote-ref-48)
49. *Id.* [↑](#footnote-ref-49)
50. Lieberwitz, *supra* note 48, at 320. [↑](#footnote-ref-50)
51. *Id*., at 321, 323. [↑](#footnote-ref-51)
52. Melissa De Witte, *Academic freedom’s origin story*, The Stanford Report, May 1, 2023 (discussing scholar Emily J. Levine’s ideas and book entitled, Allies and Rivals: German-American Exchange and the Rise of the Modern Research University (The University of Chicago Press, 2021), [↑](#footnote-ref-52)
53. Lieberwitz, *supra* note 48 at 325. [↑](#footnote-ref-53)
54. AAUP, Governance, Academic Freedom, and Institutional Racism in the University of North Carolina System (April 2022), https://www.aaup.org/report/governance-academic-freedom-and-institutional-racism-university-north-carolina-system. [↑](#footnote-ref-54)
55. AAUP, Report of a Special Committee: Political Interference and Academic Freedom in Florida’s Public Higher Education System (December 2023), https://www.aaup.org/report/report-special-committee-political-interference-and-academic-freedom-florida%E2%80%99s-public-higher [↑](#footnote-ref-55)
56. *Id*. at 49. [↑](#footnote-ref-56)
57. For a list of U.S. federal grant- making agencies see, Federal Grant-Making Agencies, <https://www.grants.gov/learn-grants/grant-making-agencies.html> . See also e.g., , Peer Review for Sponsored Research, https://ari.hms.harvard.edu/research-influence/peer-review-confidentiality/peer-review-sponsored-research#:~:text=Peer%20Review%20for%20sponsored%20research%20funding%20is%20a%20process%20adopted,strength%20of%20proposed%20research%20plans. [↑](#footnote-ref-57)
58. Lieberwitz, *supra* note 48 at 324. [↑](#footnote-ref-58)
59. *Id.* [↑](#footnote-ref-59)
60. *Id.*  [↑](#footnote-ref-60)
61. *Id*., at 325 [↑](#footnote-ref-61)
62. *Id*. and 35 U.S.C. §18, <https://www.govinfo.gov/content/pkg/USCODE-2011-title35/html/USCODE-2011-title35-partII-chap18.htm>. [↑](#footnote-ref-62)
63. Jim Freeman, Rich Thanks to Racism: How the Ultra-Wealthy Profit from Racial Injustice 41 (2021). [↑](#footnote-ref-63)
64. *Id*. 41-43. [↑](#footnote-ref-64)
65. Ravitch, Diane. Reign of Error: The Hoax of the Privatization Movement and the Danger to America's Public Schools . Knopf Doubleday Publishing Group. Kindle Edition, at Loc. 6425. [↑](#footnote-ref-65)
66. *Id*. at Loc. 171. [↑](#footnote-ref-66)
67. *See generally id.* [↑](#footnote-ref-67)
68. *Id*., at Loc. 5852; See also Ravitch, Diane Ravitch, Slaying Goliath: The Passionate Resistance to Privatization and the Fight to Save America’s Public Schools 2602 (2020). [↑](#footnote-ref-68)
69. Ravitch, Slaying Goliath, supra note 70 at 11 (listing a multitude of harms). [↑](#footnote-ref-69)
70. Freeman, *supra* note 63, at 41 [↑](#footnote-ref-70)
71. Ravitch, *supra* note 65 at Loc. 2602. [↑](#footnote-ref-71)
72. Lieberwitz, *supra* note 48 at 318-333. [↑](#footnote-ref-72)
73. *Id.* [↑](#footnote-ref-73)
74. *Id.* at 325. [↑](#footnote-ref-74)
75. *Id.* [↑](#footnote-ref-75)
76. *Id., at 326.* [↑](#footnote-ref-76)
77. *Id., at 325.* [↑](#footnote-ref-77)
78. Id., at 327. [↑](#footnote-ref-78)
79. *Id.* [↑](#footnote-ref-79)
80. https://www.aaup.org/article/george-mason-university%E2%80%99s-donor-problem-and-fight-transparency [↑](#footnote-ref-80)
81. Alvin Tillery, Putting the Racist Crusade against Harvard’s Dr. Claudine Gay in Context, Medium, January 5, 2024, [https://medium.com/@atillery2/putting-the-racist-crusade-against-harvards-dr-claudine-gay-in-context-26535c307f96](https://medium.com/%40atillery2/putting-the-racist-crusade-against-harvards-dr-claudine-gay-in-context-26535c307f96), [https://acrobat.adobe.com/id/urn:aaid:sc:US:6f42f4a5-6f67-47d4-af57-0ecfc56bc091](https://acrobat.adobe.com/id/urn%3Aaaid%3Asc%3AUS%3A6f42f4a5-6f67-47d4-af57-0ecfc56bc091). [↑](#footnote-ref-81)
82. [University of Pennsylvania president resigns after furor over free speech and antisemitism | US universities | The Guardian](https://www.theguardian.com/us-news/2023/dec/09/university-of-pennsylvania-president-free-speech-antisemitism) [↑](#footnote-ref-82)