

The Future of Academic Freedom: State Legislatures and Classroom Content Bans

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In January 2022, the Indiana House passed a bill to limit what teachers can say regarding race, history, and politics in Indiana's K-12 classrooms. The bill, later rejected by the Indiana Senate, matched legislation that senators had already abandoned after its author said it would require teachers to remain neutral on topics including Nazism, Marxism, and fascism. Indiana's controversial bill, inspired by a nationwide debate over how schools teach about race, history, and social-emotional learning passed despite considerable opposition from the state's teachers.

The bill focused on "divisive concepts" and banned Indiana public schools from teaching certain concepts related to sex, race, ethnicity, religion, color, national origin, or political affiliation. It also prevented teaching that might result in any individual feeling discomfort, guilt, anguish, responsibility, or any other form of psychological distress based on sex, race, ethnicity, religion, color, national origin, or political affiliation.

The new law allowed parents to file complaints and sue the school for any violations of the law. It empowered the state's secretary of education to suspend or revoke the state license of a teacher, principal, superintendent, or other employee for "willfully or wantonly" violating its provisions around promoting divisive concepts. It required teachers to post materials and activities used in the classroom on websites for parents to inspect and created parent-centered curriculum review committees.

While supporters highlighted the importance of curricular transparency and parental involvement, opponents argue that the bill would drive teachers out of the classroom because of increased workload and fears their work will be subject to undue scrutiny. The bill also led to concerns about the educational impact of legislation that might prevent students from learning the truth about dark periods of national and world history. Few critics were convinced that teachers would feel empowered to teach honestly about historical injustices. Critics also argued that schools would be subject to endless civil action from parents unhappy with classroom lessons or requirements to upload mate-

rials to online portals would drown teachers in additional work.

While the bill in Indiana died despite a GOP supermajority in both chambers, other states passed similar bills. Such restrictions expanded to include college teaching—striking at the core of academic freedom and worrying faculty and educational experts who support free expression, critical analysis, viewpoint diversity, democratic deliberation, and difficult conversations in the classroom.

Content bans and classroom censorship interfere with instructors' ability to promote deep learning and prepare students to live in diverse communities. Lasting learning occurs when teachers challenge students' ways of thinking about the world (Bain, 2004). The best teachers know their subjects inside and out—but also understand how to engage and challenge students, as well as to provoke impassioned responses. This does not happen through rote memorization or indoctrination. It happens through the teaching of critical thinking skills that require students to interrogate a wide range of viewpoints and claims by investigating the evidence that supports each claim, by identifying and avoiding logical fallacies¹, and by recognizing and guarding against bias.² One cannot understand the past—or the present—while ignoring inconvenient, unflattering, or uncomfortable truths. One cannot reduce negative partisanship or fight political polarization by limiting classroom discussions to topics chosen by the party in power. Unfortunately, there is a growing movement to restrict speech within K-12 and college classrooms.

Perhaps the most famous example of such legislation is Florida's Stop W.O.K.E. Act, a law limiting what schools, universities, and workplaces can teach about race and identity. In his January 2022 injunction—and later November 2022 decision striking down the higher education sections of Florida's Stop Woke Act—Judge Mark Walker wrote a strong rebuke of the law, arguing that it constitutes "viewpoint discrimination" by limiting faculty speech to include only opinions that the state agrees with. The judge stressed the importance of academic freedom and free speech in a democracy saying, "If our 'priests of democracy' are not allowed to shed light on challenging ideas, then democracy will die in darkness," and noted that the First Amendment does not allow the state to "muzzle its university professors, impose its own orthodoxy of viewpoints, and cast us all into the dark." The judge argued that, even if the goal of the state is to curb racism or sexism in the classroom, the state "cannot enact rank viewpoint-based restrictions on protected

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speech" (Syruga and Rozsa, 2022). The fact that the law was vague and left it unclear what is prohibited or permitted also shaped the judge's ruling. If faculty have trouble interpreting a law, they are likely to err on the side of caution by omitting materials they otherwise would have included in the coursework. This has a chilling effect on free speech.

PEN America issued a report³ on state legislative efforts to restrict teaching about topics such as race, gender, American history, and LGBT+ identities in K-12 and higher education. The organization tracks these bills weekly in an Index of Education Gag Orders.⁴ As of August 2022, proposed gag orders increased 250 percent compared to 2021, with 36 states introducing 137 gag order bills in 2022. The 2022 bills are more punitive than past proposals, including heavy fines or loss of state funding for institutions, termination of employment, and/or criminal charges for teachers. While most bills targeted teaching about race, a growing number targeted LGBTQ+ identities, including Florida's BH 1557 "Don't Say Gay" bill—and 22 others.

Bills introduced in 2022 also targeted higher education more frequently than in 2021, with 39% of bills in 2022 targeting higher education, which many political observers see as part of a larger attack on higher education. Colleges and universities in Republican-led states are particularly vulnerable to gag orders. Republican lawmakers have overwhelmingly driven this trend (with only one Democratic sponsor for the 137 bills introduced from January 1 to August 22, 2022). Conservative groups have urged Republican legislators to sponsor new legislation and lobbied the courts to broaden the interpretation of existing gag order laws. While Republican legislators once championed bills protecting free expression on college campuses, many of their

bills now censor the teaching of particular ideas. As is often the case in politics, general support for broad principles (e.g., free speech) gives way to narrow concerns about protecting one's own ideological interests (e.g., supporting controversial conservative speech while banning liberal speech, or vice versa).

PEN America, and other groups championing the freedom of expression, anticipate that more gag order bills introduced in state legislatures where they failed to pass by a narrow margin in 2022. This includes "curriculum transparency" bills, content bans (e.g., anti-CRT and anti-LGBT+ bills), and book bans.

In some ways, the conversation surrounding recent gag order laws mirrors the liberal attempts to combat hate speech, discrimination, and harassment through speech codes at public universities in the 1980s and early 90s. While the courts were sympathetic to these goals, most struck down such codes as overly-broad bills that constituted viewpoint discrimination. Rather than relying on legislators to tell faculty and students what they can discuss in the classroom, faculty should be trained to facilitate difficult conversations and encourage free speech, civility, and democratic deliberation in the classroom.⁵ ■

ENDNOTES

1. <https://yourlogicalfallacyis.com/>
2. <https://yourbias.is/>
3. <https://pen.org/report/americas-censored-classrooms/>
4. https://docs.google.com/spreadsheets/d/1Tj5WQVBmB6SQg-zP_M8uZsQQGH09TxmBY73v23zpyr0/
5. For a useful discussion guide promoting free speech and inclusion on campus see <https://idhe.tufts.edu/resources/free-speech-inclusion-campus-discussion-guide>

MEMBER AWARD UPDATES

Awarded first Chancellor's Medal of Excellence (2023)

Michelle Deardorff

University of Tennessee, Chattanooga



Awarded final list and honorary mention in Award for Best Book in Israel Studies by Azrieli Institute of Israel Studies and Concordia University Library (2022)

Niva Golan-Nadir

University at Albany, SUNY



Awarded the Citrin Award lecture (2022)

Donald Green

Columbia University



Awarded President's Award for Distinguished Scholar-Teachers (2023)

Mark Howard

Georgetown University

Awarded ISA Human Rights Best Book Award (2023)

Lynette Ong

University of Toronto