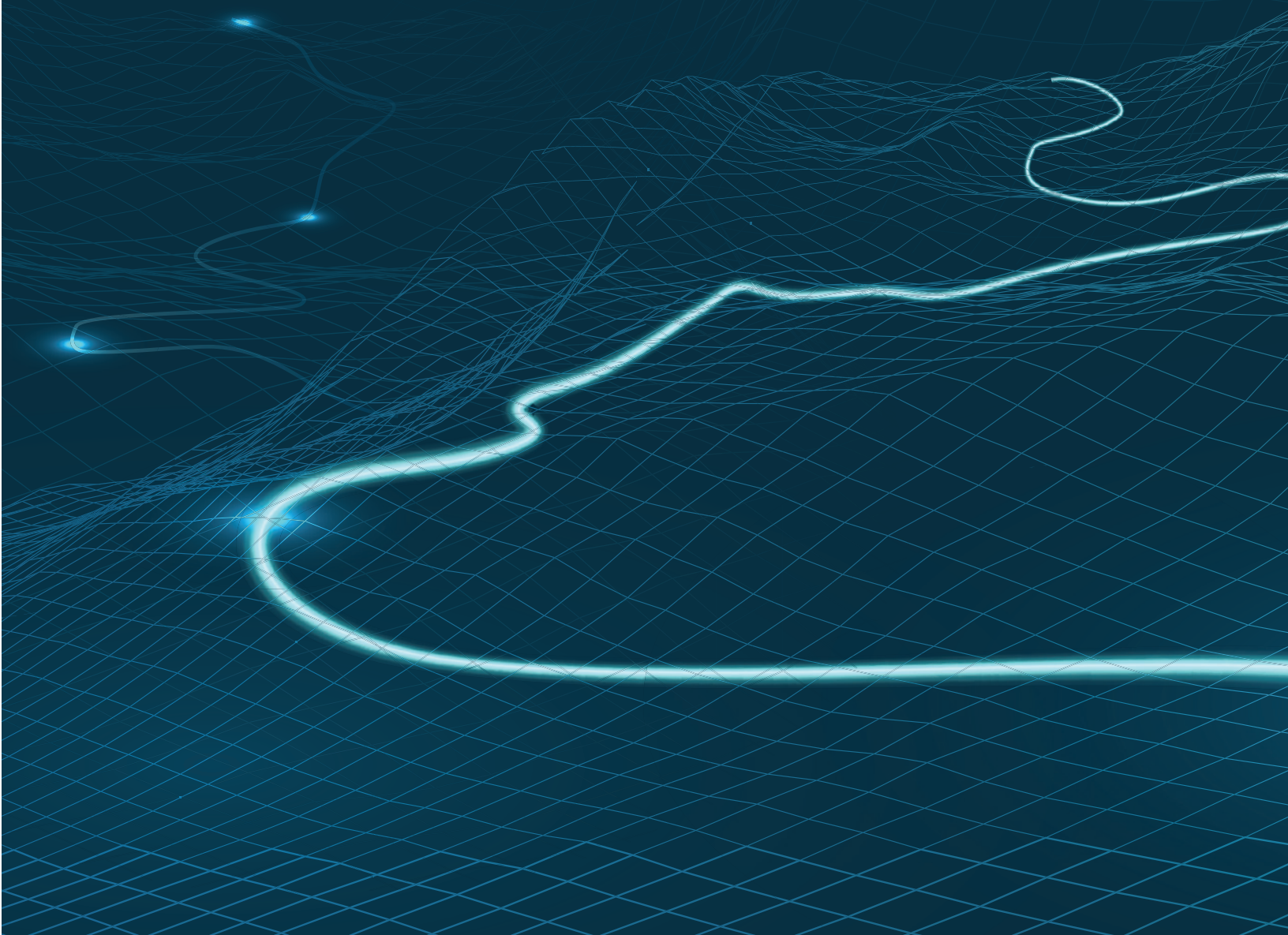
Bipartisan Policy Center | The Council of Independent Colleges

CAMPUS FREE EXPRESSION:

A New Roadmap for Faculty

ACADEMIC LEADERS TASK FORCE ON CAMPUS FREE EXPRESSION

2024 Roadmaps for Presidents, Trustees, Faculty, and Student Affairs Administrators | July 2024



ACADEMIC LEADERS TASK FORCE ON CAMPUS FREE EXPRESSION

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In July 2024, with the full support of the Bipartisan Policy Center, the task force migrated to the Council of Independent Colleges, under whose auspices its 2021 report and 2024 reports *Campus Free Expression: A New Roadmap for Presidents*; *Campus Free Expression: A New Roadmap for Trustees*; *Campus Free Expression: A New Roadmap for Faculty*; and *Campus Free Expression: A New Roadmap for Student Affairs* are now made available.

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DISCLAIMER

This report is the product of BPC's Academic Leaders Task Force on Campus Free Expression. The findings and recommendations expressed herein are those solely of the task force, although no member may be satisfied with every individual recommendation in the report. The contents of this report do not necessarily represent the views or opinions of BPC's founders or its board of directors, nor the views or opinions of any organization associated with individual members of the task force. In addition, the views expressed herein do not necessarily reflect the views or opinions of the Council of Independent Colleges, its board, or its members.

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Letter from the Co-Chairs

In 2021, the Bipartisan Policy Center's Academic Leaders Task Force on Campus Free Expression published its consensus report, *Campus Free Expression: A New Roadmap*. Its recommendations have been adopted by the University of Wisconsin System, the Virginia Council of Presidents—representing all of Virginia's public higher education institutions—and many colleges and universities, both public and private.

We remain deeply concerned about the erosion of a robust and respectful culture of free expression, academic freedom, and open inquiry.

Since the release of the task force's report, pressures on campus culture have increased. High school students' isolation during the COVID-19 pandemic has rendered them less prepared for conversation with people whose views differ from theirs. Political polarization has intensified, undermining the norms of civil discourse. Confidence in higher education has plummeted, paving the way for legislative and executive interference in academic freedom, freedom of expression, and campus governance. In this atmosphere, supercharged by the politics of the Israel-Hamas conflict, colleges have struggled to uphold free expression and academic freedom while maintaining a respectful learning environment for all.

As former governors—one of whom has spent a decade as a faculty member—we believe that governors and legislators have essential oversight roles in public higher education, but that intrusive government regulation of curricular standards and faculty speech compromises the ability of higher education institutions to fulfill their academic and civic missions. At the same time, college leaders—from the president's office on down—must recommit to fostering a robust free expression culture.

To meet this moment, we have reconvened the task force. Although the task force affirms its 2021 report, it is publishing four reports with updated guidance and tabletop exercises for presidents, trustees, faculty, and student affairs leaders.

Colleges and universities must prepare Generation Z for rigorous and civil debate about difficult issues across the political spectrum and serve as forums for scholars and students who ask provocative questions and stress-test answers. We believe that these recommendations, especially when adopted as part of a campus-wide strategy, can do much to support the work of higher education leaders to sustain a culture of open inquiry and restore confidence in our higher education institutions.

Jim Douglas
Co-Chair

Chris Gregoire
Co-Chair

Executive Summary

Two core principles of higher education—academic freedom and free expression—are under great stress. Sometimes, the stress is direct: Well-intended attempts to foster diversity and inclusion sometimes tie hiring, tenure, and promotion to controversial views about equality and how to advance it. Or government actors exercise their oversight role in such a way as to suggest that the mere discussion of divisive issues could result in sanctions. Sometimes the stress is indirect, a matter of culture rather than regulation. Classroom discussion is chilled by the fear of a censorious minority, on or off campus, left wing or right wing, that can make one's life miserable and impose high costs on speakers. Increasing ideological uniformity on campus further constrains free inquiry and expression by faculty and students alike.

Because the pursuit of knowledge proceeds in many modes, we refer to free expression, not free speech. Speech may be the preeminent mode of inquiry on a college campus, whether it proceeds in the language of mathematics or the language of literary analysis. However, visual art, theatrical performance, nonverbal protest, and much more are also important modes of expression.

More broadly, faculty speech is constrained in a polarized environment in which different factions are powerful enough to punish it. Evidence is ample that the intellectual climate on many college campuses impairs discussion of issues about which Americans passionately disagree. Faculty members confront these stresses amid falling trust in higher education across the board.

The chilling of campus speech is having effects beyond campus borders. Rather than lessening the political polarization in our nation today, the inhibition of campus speech is degrading the civic mission of higher education, carried out especially by faculty members in their classrooms and co-curricular work. That mission is to maintain our pluralistic democracy by preparing students for civic participation as independent thinkers who can tolerate contrary viewpoints and work constructively with those with whom they have principled disagreements.

Among groups on campus, faculty have the biggest stake in preserving academic freedom. To do so, they must act not only occasionally when their own academic freedom is threatened but consistently to maintain a healthy culture of academic freedom and free expression. The character and means of maintaining such a culture will vary according to the missions and histories of different campus communities. Yet college faculty should not only affirm academic freedom and free expression but also actively support the rigorous exercise of these freedoms by presenting students with competing ideas and encouraging a robust intellectual exchange so that they may draw their own conclusions.

Faculty must take on four challenges.

First, they must acknowledge the potential tension between upholding free expression and maintaining an inclusive and respectful learning environment for all. Every faculty member who understands the high stakes of teaching and research knows that permissible speech can cause people to feel hurt or excluded from a community. Although some expression can be hurtful, freedom of expression remains an essential condition of the genuine inclusiveness that characterizes communities of teachers and learners. It also remains essential to higher education's academic and civic missions.

Second, faculty should champion a diversity of viewpoints on campus. Exposing students to a wide range of perspectives and methods of confronting issues, while giving students the tools to listen carefully and distinguish between stronger and weaker arguments, is at the heart of teaching. It is also essential preparation for the rigors of citizenship in a diverse society. Faculty themselves should want to surround themselves with colleagues who will put them to the test and discourage common assumptions from hardening into orthodoxies.

Third, faculty should support strong policies that protect academic freedom and free expression for students and faculty alike, as well as support the consistent application of such policies to unorthodox and unconventional views, including those disfavored by most faculty members. These policies should include provisions to hold orientations for faculty and graduate students that will introduce them to the institution's culture. Although graduate students are, for good reason, subject to more supervision than other members of that community, visible support for their academic freedom is one way of signaling its importance.

Fourth, faculty should make the skills and dispositions necessary for academic and civic discourse a central aim of the collegiate experience. Absent such skills and dispositions, formal protections for free expression and academic freedom, though necessary, are insufficient to create a culture of open inquiry and respectful, productive debate on campus and in the nation. Matriculating students typically need coaching and instruction in these skills and dispositions, for want of which our national discourse suffers. Our aim should be to graduate students who raise the bar for serious discourse. Faculty should attend to how curricula can support that aim. At the same time, the culture of academic freedom and free expression is not just for students. Faculty can do more, in their dealings with each other, to consider and adhere to the norms that characterize that culture.

Faculty face considerable challenges in preserving free expression and academic freedom. Although no college's faculty is responsible for curing the ills of higher education nationally, this moment presents significant opportunities for professors to make a positive impact at their own institutions.

In this guide, we first examine the role of faculty and explain the nature and importance of the twin values of free expression and academic freedom. Next, we survey some important changes in our social, political, and campus landscapes. Finally, we present a roadmap with recommendations for faculty seeking to invigorate a culture of robust yet respectful inquiry on their campuses.

Free Expression and Academic Freedom: A Changing Landscape

The role of faculty

Trustees and administrators play important roles in safeguarding the missions of colleges and universities. Faculty members do so as well, because they are the principal leaders of teaching and research. In its 1940 Statement of Principles on Academic Freedom and Tenure, the American Association of University Professors (AAUP) maintains that the "common good depends upon the free search for truth and its free exposition." If so, the university's claim to serve the common good rests primarily on faculty in their work as scholars, teachers, and, at times, expert contributors to public discussion.[1] The historian of higher education John Thelin provides another simple way of thinking about the near-identification between the role of faculty and the mission of colleges and universities: "Educational policies and programs are the right and the responsibility of the faculty."[2]

Despite their importance to the academic mission, faculty are under duress. Recent legislative efforts to weaken tenure and regulate the teaching of certain "divisive concepts" are directed primarily against faculty who are condemned by politicians and at times by their constituents as liberal elitists.[3] Such attacks come on top of a longer-term weakening of faculty power and prerogative over several decades. Part of that weakening has to do with bargaining power in, as Thelin puts it, "a deflated and stagnant labor market in most fields" going back 50 years."[4] Less sensational, but at least as consequential as direct attacks on tenure, has been the steady replacement of tenured and tenure-track positions with term and adjunct positions. As a result, the former "have over time become a more malleable and shrinking portion of the overall faculty."[5]

For this reason, among others, faculty efforts to preserve the integrity of their institutions against determined opposition do not always succeed. But the integrity of colleges and universities, as well as the vocations and well-being of faculty, require a spirited defense of academic freedom and free expression. Faculty should be as zealous in their defense against attacks from students and other faculty as they are in attacks from administrators, trustees, and legislatures.

At Hamline University, Erika López Prater, an adjunct professor of art history, was not asked back to teach because of complaints that she had shown an

image of the Prophet Muhammad in class. Mark Berkson, chair of Hamline's department of religion, was initially one of few to object. He defended the academic freedom of "a faculty member who [was] simply trying to share and teach the history of Islamic art with students."[6] But Berkson, as the AAUP report on the incident explains, also had to assert his right to speak up at a "community conversation" provoked by the groundless charges against López Prater. He spoke despite attempts by a faculty member and a senior administrator to silence him. Ultimately, multiple organizations stood up for López Prater, but Berkson's courage, as well as the timely public writing of Islamic art historian Christiane Gruber of the University of Michigan, were essential to draw attention to what Gruber called "serious concerns about freedom of speech and academic freedom."[7]

Whatever protections it may have had for academic freedom on paper, Hamline University in late 2022 lacked a culture friendly to academic freedom or free expression, according to the AAUP report. Individual acts of courage and energetic organizing campaigns on the part of individuals deserve our applause. But the faculty's responsibility for safeguarding the integrity of its work is collective, and faculty members are the key shapers and guardians of academic freedom and free expression culture.

Why is academic freedom a core higher education value?

In 1915, the American Association of University Professors (AAUP) enumerated the freedoms that all higher education institutions need to serve their unique role in securing the common good. Colleges and universities are "intellectual experiment stations" that give scholars and students room to pursue arguments and evidence where they lead. In so doing, they foster the advancement and transmission of knowledge, teach students "to think for themselves," and "provide them access to those materials which they need if they are to think intelligently."[8]

In 1940, the American Association of Colleges joined the AAUP in issuing a "Statement of Principles on Academic Freedom and Tenure," brief enough for "framing in every academic board room" but consistent enough with the principles of 1915 to secure universities as homes for the "free search for truth and its free exposition."[9] Colleges and universities have widely adopted the 1940 statement, and it has survived the dramatic challenges and changes higher education has undergone in the subsequent eight decades, not only because it issued from both faculty and administrators but also because it has proven itself. As the historian Walter Metzger has argued, the 1940 statement "serves the enduring interests of the academic profession and the academic enterprise, not to perfection, but better than anything else in existence or readily imaginable."[10]

Universities and colleges must foster freedom of research to support the search for truth and its free exposition. Freedom of research also places trust in scholars, who are guided by "their own scientific conscience," rather than by donors, bosses, or popular demand.[11]

Universities and colleges must foster freedom in teaching and learning. For students to benefit from the expertise of their teachers and to become independent thinkers, classrooms, laboratories, and supervised research projects must be places where they can pursue inquiries and can share knowledge freely.[12] Free students, and not just free teachers, contribute to such inquiries. For that reason, the AAUP recognized as early as 1915 that academic freedom applies to "the freedom . . . of the student" to learn.[13] In the classroom, as a more recent AAUP-endorsed statement explains, students have the freedom "to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion." And their work should be "evaluated solely on an academic basis, not on opinions or conduct in matters unrelated to academic standards."[14]

In addition, universities and colleges foster freedom of extramural speech, which protects faculty when they speak to matters of public concern, and freedom of intramural speech, which protects faculty when they criticize institutional policies. The former freedom preserves colleges and universities as protectors of free inquiry into and the exposition of unconventional and unpopular opinions and results. The latter freedom preserves the faculty's role in shared governance.[15]

Regulations found in handbooks regarding tenure, promotion, and disciplinary action can protect academic freedom. But for such regulations to successfully foster the free exchange and disciplined scrutiny of ideas, a campus ethos of academic freedom is essential.

Why is freedom of expression a core higher education value?

Academic freedom alone is insufficient to the task of shaping students to be independent thinkers. Such independence requires that students experiment with and encounter ideas outside of supervised and structured classroom conversations. Free expression—academic freedom's wilder cousin—denotes the freedom characteristic of democratic public squares, in which authorities, for the most part, withdraw and participants determine the character and content of conversation.

A college is not a democratic public square. However, college students gather not only in classrooms and other areas reserved for formal learning but also in spaces, such as coffee shops and quads, in which they can hold more-freewheeling conversation. Students not only register for courses but also join clubs, which may be authorized to invite speakers. Other students might assemble to protest those same speakers. If the campuses on which these activities take place are to support rather than undermine the truth-seeking mission of the university and are to help their students learn to think outside of a structured and curated environment, they should be, for the most part, open forums for debate. In 1974, following controversies over student-initiated speaking invitations to the segregationist George Wallace and the "race scientist" William Shockley, Yale University President Kingman Brewster appointed a Committee on Free Expression to "examine the condition of free expression, peaceful dissent, mutual respect and tolerance at Yale." The Woodward Report, named for the committee's chair, the historian C. Vann Woodward, advocated "unfettered freedom, the right to think the unthinkable, discuss the unmentionable, and challenge the unchallengeable."[16] In the context of higher education, free expression is valuable primarily as an essential condition for the truth-seeking mission of the university.

Free expression also serves the civic mission of colleges and universities. That mission requires them to cultivate not only thinkers with habits suitable for an intellectual community but also citizens with habits suitable for a democratic public square, where they will encounter an array of views and values and where the First Amendment is the operative standard. Although free expression alone cannot yield civic mindedness, the open and reasonable exchange of diverse views secured by free expression enables the learning community to model the discursive virtues—from the courage to scrutinize one's own views to the self-restraint to hear others out—that are required for citizenship in a pluralistic society.

A few words on the First Amendment. When many people think about protecting free expression, they think of the First Amendment. The First Amendment does indeed protect essential freedoms of expression in our society from government interference.

However, as a task force, our focus has been on values, the collegiate mission, and campus ethos, not the law. In the public square, the First Amendment rightly protects expression that is vile, hateful, deliberately provocative, poorly argued, or even patently untrue. When we choose to join a campus community—whether by accepting an offer to matriculate as a student, or to accept an offer to be a faculty member, staff, administrator, or trustee—we choose to join a community of teaching, learning, and scholarship. As members of campus communities, we should choose to speak and act in ways that inform, that question, that meet disciplinary standards of evidence, that are truthful or offered in pursuit of the truth, and that affirm the opportunities of others in the community to do the same. The content of the First Amendment includes limited guidance for these value-laden choices about how to speak and act.

However, for two reasons, the First Amendment is essential to campus free expression considerations. Most obviously, the First Amendment is legally binding on public higher education institutions (and on private institutions in California). As we have seen in recent years when provocateurs have used the First Amendment to access public campuses, this right can be used as a cudgel to require accommodation of expression that seeks to give the imprimatur of a campus setting to ideas that in fact undermine the campus ethos. Public institutions must be ready when the First Amendment requires them to accommodate such expression.

Additionally, the First Amendment is important because among the purposes of higher education is preparing graduates to enter a public square where the amendment will be the operative standard. We need to cultivate the inner strength and intellectual clarity in our students to be ready to make thoughtful contributions to our civic affairs and to counter ideas with which they disagree or find deeply offensive.

What is the difference between academic freedom and free expression?

Free expression is often understood in First Amendment terms. The First Amendment sharply limits how state agents, including public universities, can regulate speech. Yet because most Americans see free expression as a foundational right and indispensable to open, robust inquiry, some free speech advocates argue that private universities, although they are not state agents, should voluntarily abide by the First Amendment.[17] Unlike academic freedom, which applies primarily to faculty and, to a lesser degree, to students, free expression, understood in First Amendment terms, applies to the entire campus community.

Academic freedom diverges from freedom of expression in other respects. The First Amendment, with some exceptions, allows faculty to publish and distribute ideas without fear of state censorship or punishment. But to publish in a scholarly journal, faculty must meet the standards of their academic peers. Such standards, though they differ between fields, distinguish good from poor research within a discipline. Similarly, although a professor is entitled to shout in a public park, "The world is flat!" he or she is not entitled to teach it in an astronomy course, or a student to write it on an exam without penalty. Academic freedom does not shield teachers or students from the consequences of their own ignorance or incompetence. Nor does academic freedom protect the professor who, when assigned to teach a class on electrical engineering, teaches socialism or libertarianism instead.

Academic freedom does not guarantee individual faculty members that their speech will not cost them professionally. Rather, it guarantees that costs will be imposed primarily by peers properly applying relevant scholarly and professional standards and, where sanctions are concerned, standards of due process.

Yet free expression is in other ways more protected in academic settings than it is elsewhere. A private employer's right to fire someone for expressing opinions that provoke unwanted controversy is undisturbed by the First Amendment and only sometimes disturbed by other legal protections. In contrast, the principles of academic freedom imply that even nontenured professors at private colleges should not be sanctioned merely because their research, teaching, or extramural speech has generated protests or bad press.

These differences mean that faculty sometimes have freedoms that students do not, and, other times, that students have freedoms that faculty do not. In the classroom, faculty have the freedom to decide which books and topics to discuss, and when to cut off discussion. A student can make a suggestion, but the faculty member has the freedom, because of his or her role in the college's teaching mission, to make the final call. On the other hand, students are often asked in the classroom to express and defend their views on political, social, or

cultural controversies, while faculty member expression should be tempered by the responsibility to "set forth justly, without suppression or innuendo, the divergent opinions of other investigators" and to make space for students to think for themselves.[18]

New academic freedom and free expression challenges

Faculty confront changes in the social, civic, and political landscape and on campus. These changes include three sets of trends that colleges and universities cannot directly affect but that influence the climate in which they cultivate free expression and open inquiry. Some of these trends are recent developments, but others represent long-term issues that have become increasingly difficult to navigate.

Changing patterns of adolescent experience

Campuses are more diverse than ever, but many Generation Z students are less prepared than students of earlier generations for the disagreements, at times upsetting, that arise in intellectually and otherwise diverse communities. Today's adolescents are growing up in increasingly homogeneous neighborhoods, where they may know few whose viewpoints, news sources, socioeconomic status, and race differ from their own.[19] The COVID-19 pandemic exacerbated this inexperience in dealing with disagreement because of diminished opportunities for in-person conversation.

In part due to the influence of social media and the movement from a play-based childhood to a phone-based childhood, Generation Z spent an hour less per day on face-to-face socializing in high school than Generation X did; students, as a result, are less practiced in even friendly social interactions.[20] Face time with friends has continued to decline since the pandemic ended.[21] Mental health issues increased markedly during the pandemic, and more high school students report that they are "not mentally ready" for college.[22] Restricted social interactions during the pandemic have left students less prepared than their predecessors for the demanding conversations in which faculty want them to engage.

At the same time, many parents of Generation Z students have curated their children's social, academic, and extracurricular experiences, intervening when their children's interactions become contentious or challenging, thus rendering them less prepared for life in college and beyond.[23] Such interventions, however, do not seem to have done much for students' emotional health. Even before COVID, the percentage of students who reported "above average" or better emotional health had plummeted from 63.5% in 1985 to 51% in 2015 and 41.4% in 2019.[24] The Healthy Mind survey in 2023 found more students reporting anxiety, depression, and suicidal ideation than at any point in its 15-year

history.[25] It is hard to say how actual and perceived increases in campus mental health challenges influence the classroom. But insofar as the worry that speech is harmful is founded in the worry that it causes or exacerbates trauma, justifiable concerns about student mental health can lead to unjustifiable monitoring of and restrictions on both classroom and extramural speech.

Social media

Social media destabilizes the climate for open exchange. Today's students inhabit both physical and virtual campuses. Social media sometimes nudges people into think-alike groups, often rewards hyperbole and outrage, and rarely supports nuanced academic reasoning.

> **"We were in an era when rational dialogue and debate had been abandoned for the high of in-your-face confrontation, with social media as an accelerant."[26]**
>
> **Walter Kimbrough, former president of Dillard University**

As social media becomes increasingly toxic, Generation Z has begun retreating from political engagement online. Only one-third of students find that the dialogue on social media is civil, and only 21% of students regularly share news links on social media, down from 43% in 2017.[27] Social media undermines the integrity of classroom experiences, as students wonder whether someone will share their classroom comments on social media.[28] Students are increasingly uncomfortable expressing an unpopular opinion to fellow students on a social media account tied to their names.[29]

Faculty, too, must worry about students sharing teachers' classroom comments—perhaps taken out of context—or syllabuses on social media, from which they might land on Fox News or in the dean's office.[30] For example, Kenneth Mayer, a professor of political science at the University of Wisconsin, Madison, was deluged with hate mail after a student posted his American presidency syllabus, which included a paragraph on the controversies surrounding Donald Trump. Mayer, whose fairness was defended by UW's College Republicans, was depicted across conservative media, from *The College Fix* all the way to Tucker Carlson, as a left-wing indoctrinator.[31]

Affective polarization

As a country, we are riven by affective polarization and divisive stereotypes about our political opposites.[32] Too often, today's conservatives and liberals think that those with different political viewpoints are bad people with the wrong values. Polarization off campus makes its way onto campus. A survey of undergraduates at a flagship state university found, as is likely

true on campuses nationwide, that conservative and liberal students hold divisive stereotypes about each other.[33] Another recent survey suggested that higher education might increase the "perception gap," the tendency to overestimate how many of one's political opposites hold extreme views.[34]

Differences, even irreconcilable differences, are inevitable, but affective polarization supercharges them and makes it hard to live with, much less learn from, those with whom we passionately disagree.

* * *

As a result of these trends in the wider culture, many students arrive on campus ill-equipped to sustain healthy dialogue and connection. Although colleges and universities cannot solve these problems, they can address five on-campus trends more directly.

Doubts that free expression, academic freedom, and diversity, equity, and inclusion are compatible commitments

Free expression has become more controversial in recent years. Its central importance to a free society is no longer taken as self-evident. Some observers worry that robust protections for free expression are incompatible with commitments to diversity, equity, and inclusion (DEI). Some argue that free expression is a tool of oppression, or that it can inflict psychological and physiological harm.[35] Similarly, academic freedom is suspected in some quarters of putting a weapon in the hands of right-wing conflict entrepreneurs to seize respectable podiums, from which they can spread prejudice.[36] Faced with a perceived trade-off between free expression and inclusion, many assign a higher value to inclusion than free expression.

A majority of students, for example, doubt that commitments to diversity and inclusion are compatible with free expression. According to one major survey, 66% of undergraduates said free speech rights conflicted with diversity and inclusion.[37] Colleges and universities can find themselves facing cross-pressures from advocates for free speech and advocates for diversity.

There are reasons to credit the view that free expression, academic freedom, and diversity, equity, and inclusion are at odds: Members of historically underrepresented groups often report that they do not feel fully accepted or included in the campus community, and that they face an additional burden of having to raise or respond to issues or campus incidents

Within a university community, *respectful* disagreement is not a rupture in the community, but a sign that the community is carrying out its core purposes. Universities are places where criticisms and challenges to our most fundamental social, civic, and political institutions and norms should be proposed and debated. Universities must welcome—indeed, encourage—dissent rather than conformity. The conversations and disputes we encounter in a university should unsettle our most basic presuppositions.

that make them feel marginalized.[38] Scholarly discussions on issues such as race, gender, and class, even if they are conducted with decorum and held to high academic standards, can raise ideas and elicit responses that will be uncomfortable to some and challenge the inclusive character of the campus community. The pushback against DEI efforts, especially by some state legislatures, has renewed concerns about securing and expanding the gains made by universities in creating a more diverse and inclusive campuses.

At the same time, defenders of free expression and academic freedom have understandably criticized some DEI efforts for ignoring viewpoint diversity, equating the discomfort or stress of offensive expression with harm or violence, and enforcing an orthodoxy about the amelioration of historic and ongoing injustices. Colleges and universities have a vital interest in mitigating the effects of such injustices and fostering a diverse and inclusive learning environment, but institutions undermine their academic mission and their credibility when they suppress disagreement on the best means to achieve such goals.[39]

"A commitment to free expression must be built on a foundation of inclusion and equity. Diversity is a necessary condition for the coexistence of different ideas and perspectives, and inclusion is a necessary condition for every member of our community to feel welcomed, affirmed, and respected. In the context of freedom of expression, equity means that we develop, sustain, and uphold a clear set of community values, standards, and expectations, such that a commitment to freedom of expression, and to diversity, equity and inclusion, extends to and is lived by, all members of the community—students, faculty, staff, board members. In a community marked by true inclusion and equity, even fierce debates about a range of differences of opinions and perspectives are not experienced as personal attacks on one's very humanity and sense of well-being and belonging."[40]

Lori White, president of DePauw University

The task force believes that free expression and academic freedom well understood are compatible with diversity and inclusion commitments well understood. To aim at an inclusive campus that honors academic freedom and free expression, one must answer the question, "Inclusion in what?"[41] At colleges and universities, the answer is, "Inclusion in a community of inquiry." To be included in such a community is to be accepted, whatever one's background, as entitled to pose questions, to make and scrutinize arguments, and to participate in the work of teaching, learning, and advancing the community's knowledge. Identity cannot be grounds for exclusion. It also cannot, by itself, be grounds for demanding the exclusion of certain questions or claims from consideration.

The task force also believes that free expression and academic freedom are essential to an inclusive campus. It is through discourse that we can examine, discuss, and ultimately understand others' experiences, viewpoints, and opinions. While profound disagreements and differences might remain, through respectful, serious conversations the campus can become an inclusive community of learners and knowledge-seekers. There are no simple answers or strategies for addressing the perceived tension that pits academic freedom and freedom of expression against diversity, equity, and inclusion. Campuses will need to take some risks, to learn from trial and error, and to engage the community actively.[42]

Decreasing campus viewpoint diversity

Although campuses have become more diverse in many ways, they have become less diverse ideologically. Universities have historically leaned left; as forums for critiquing our social, civic, and political institutions and norms, it would be surprising if universities had a predominantly conservative ethos.[43] Yet colleges and university faculty are considerably more liberal now than they were a few decades ago. Since the Higher Education Research Institute began to track partisan affiliation in 1989, the ratio of liberals to conservatives has more than doubled.[44]

The resulting climate of conformity can compromise the research and teaching mission of higher education, influencing which questions are deemed worth asking, which research is to be viewed with skepticism, and which student classroom comments require scrutiny.[45]

The climate of conformity also compromises the civic mission of higher education. To prepare students for civic life in our pluralistic democracy, in which conservatives, liberals, and moderates each represent at least a quarter of the American populace, campuses should create opportunities for students to learn about and converse with others across the political spectrum.[46]

Finally, the ability to work across all manner of differences is a critical workplace readiness skill. Teaching students to collaborate with colleagues and

clients whose opinions and experiences differ from their own is necessary to prepare them for careers in an increasingly globalized and diverse workforce.

Enabling institutions to carry out both their academic and civic missions will require trustees, senior leaders, and faculty alike to commit to enhancing viewpoint diversity in a way that honors academic freedom.

A censorious minority

Surveys of undergraduates find that a significant minority is willing to shut down speech. In a recent survey of undergraduates in the University of Wisconsin system, 30% of respondents reported feeling "quite a bit" or "a great deal" that "expressing views that you find offensive can be seen as an act of violence toward vulnerable people." Nearly a third agreed that "if a student says something in class that some students feel causes harm to certain groups of people . . .the instructor should stop that student from talking."[47] In a national survey of undergraduates, 13% said that it is always or sometimes acceptable to use "violence to stop a speech, protest, or rally"; 39% said it is always or sometimes acceptable to engage in "shouting down speakers or trying to prevent them from talking."[48] In yet another survey, 1 out of 5 students admits they have "called out, punished, or 'canceled' someone" for expressing views they found offensive.[49]

Surveys of faculty find a significant minority willing to discriminate against their political opposites in hiring, symposia invitations, grant decisions, and paper reviews, and that faculty and departmental culture can stifle open debate.[50] Faculty, who are the chief beneficiaries and guardians of academic freedom, sometimes undermine academic freedom either directly, by seeking to deplatform controversial scholars or viewpoints, or indirectly, by taking the path of least resistance and neglecting to defend academic freedom against censorship and deplatforming.[51]

Shout-downs of campus speakers, calls to dismiss faculty for controversial research or extramural expression, and social media frenzies over controversial expression by students or faculty, while driven by a campus minority, curb open inquiry and academic discourse for all. Academic and expressive freedoms must be defended vigorously to prevent a vocal and censorious minority from disrupting everyone else's opportunity to benefit fully from the free exchange of ideas.

Widespread self-censorship

One national survey found that 65% of students agreed that "the climate on my campus prevents some people from saying things they believe because others might find them offensive." The percentage of students with that perception has risen in recent years, it noted.[52] According to a University of North Carolina survey, students across the political spectrum self-censor, and a substantial percentage reported doing so on multiple occasions in a single course.[53] Faculty

also self-censor in the classroom, in their choice of research topics, and around their faculty colleagues.[54]

To address self-censorship and the stifling of debate inside and outside the classroom, colleges must assist students in developing skills for spirited, productive academic discourse in an atmosphere of humility, grace, patience, and mutual respect.

Cross-pressured campuses

Campuses have long been sites of protest movements seeking to compel universities to declare themselves on the right side, typically understood as the left side, of various issues, from the Israel-Hamas conflict to police shootings. Such movements have sometimes been supported by faculty and, in recent years, by equity-focused administrative units. After George Floyd's killing in 2020, internal pressure on colleges and universities to declare themselves for social justice intensified.[55] On the other hand, campuses face counterpressure, sometimes backed by executive and legislative actions and right-wing media, for universities to butt out or to publicly distance themselves from disfavored progressive views. The fight over university statements regarding the Hamas terrorist attack in Israel on October 7th and Israel's response is a striking example of how universities struggle to preserve their integrity, reputations, and well-being amid such conflicting pressures.

Faculty, along with their co-workers, confront these pressures amid cratering confidence in colleges and universities. Less than a decade ago, majorities of Republicans and Democrats had, according to Gallup, "a great deal" or "quite a lot" of confidence in higher education. Today, faculty are the face of their colleges and universities during an era in which confidence is down in every subgroup Gallup considers, including Republicans, Democrats, people with no college degree, people with postgraduate degrees, younger people, and older people.[56]

One should not jump to conclusions regarding the reasons for this steep, recent decline in confidence, but it potentially leaves colleges—particularly those also confronting financial and enrollment challenges—caught between left-wing protesters, who can generate bad publicity or impede operations, and right-wing legislators who seek in a variety of ways to put colleges and universities under new constraints, some of which undermine academic freedom and free expression on campus.[57]

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These are the features of the social, civil, and political landscape that make a new roadmap for faculty necessary. Although the core principles of academic freedom and free expression remain unchanged, recent trends require faculty to find new approaches to advancing these principles on their campuses.

Roadmap for Faculty

Leadership on academic freedom and free expression is not confined to top university leaders but depends on creating an institutional environment in which the virtues of intellectual clarity and rigor, empathy, respect, and humility are continually fostered in the life of the university. Trust among the community is essential; within any university community, controversial expression will provoke strong and divergent responses among stakeholders, testing the community but also creating new opportunities to affirm a strong commitment to free expression and open inquiry. A few elements of the roadmap are relevant to crisis management. But regular attentiveness to the health of a campus's culture of free expression, which goes beyond the issuing of well-crafted and thoughtful policy statements and resolutions, can build the trust that enables a community to confront difficult cases. To that end, we present a roadmap on academic freedom and free expression that honors the norms of shared governance. Each element of the campus community—trustees, administrators, faculty, students—has an essential role in fostering a free expression culture; and they must jointly work to uphold the university's academic and civic missions.

Uphold academic freedom in the classroom

Contrary to a trope that faculty use the classroom to promote their own ideology, students report that their professors "do try to discuss both sides of political issues and encourage opinions from across the political spectrum."[58] However, several recent trends among students have contributed to a climate of self-censorship and chilled discourse. The task force heard that, too often, faculty refrained from assigning topics and texts, or raising certain ideas in class discussion, for fear of upsetting some students, even when they thought the omitted material would enrich the class. These faculty concerns are justified by increasingly frequent investigations and sanctions for classroom speech or assignments.[59]

Of course, students can speak up in class or during faculty office hours when they think a professor has said or done something offensive—and to speak with another college office when they feel uncomfortable meeting with the professor. But if a recent survey is correct, students are more primed to do so than one might wish: 74% of respondents agree that professors who say "something that students find offensive" should be reported to the university.[60]

Students should be taught that appealing to the authorities should not be their first resort. Moreover, faculty members should enjoy—and insist on—the support of their department chairs, deans, and senior administrators to

exercise their academic freedom in managing their classes. A substantive conversation, rather than a formal complaint, can often fully address a student's concern.

Faculty are also worried about the impact of self-censorship and social media on their classrooms. Today, most students carry a cellphone capable of creating clips that can be used to embarrass a professor or a classmate.[61] This capability undermines trust and the sense that the classroom is a special, semiprivate space where the conversation is limited to those in the room, even if it might be discussed outside of class. Faculty should consider adding statements on their syllabi about the importance of respectful disagreement, giving others' views a hearing, and acceptable use of social media regarding classroom discussions.[62] Faculty members leading seminars and classes small enough for discussion can set aside time at the beginning of the semester to discuss and establish agreed-upon class norms promoting open inquiry.[63]

Creating a respectful learning environment requires classroom management and pedagogical skills that are refined through long classroom experience. The university or college can convey some of these skills to new faculty members. Campus institutes on teaching and learning or seminars at the schoolwide or department level can support faculty in developing additional ways to teach material, develop syllabi, and structure classroom and other learning experiences, such as supervised research, that encourage all students to be confident that their questions, views, and perspectives will enjoy a fair and respectful hearing in a collegial environment.

In an atmosphere in which innocuous teaching situations can sometimes seem fraught, faculty need to know that administrators have their backs. But it is also the case that even experienced teachers can benefit from opportunities to consider with colleagues how to improve pedagogical methods in ways that move beyond preserving classroom order or facilitating a conversation. Teachers can hardly be expected to inspire and educate their students in the character, worth, and pleasures of a community dedicated to learning and scholarship if they rarely reflect on those things themselves.

The task force learned that contingent and nontenured faculty are especially inclined to avoid subject matter, texts, and teaching strategies that they believe could benefit their students because they fear repercussions. Although percentages vary widely by institution, untenured faculty constitute a majority of teachers nationwide.[64] The integrity of their classrooms is no less important than the integrity of classrooms led by tenured faculty. Particularly in cases of contingent faculty whose contracts can be terminated without rigorous review, faculty must be vigilant in their scrutiny of such arrangements and in defense of their colleagues, to ensure that an institution's need to control costs and preserve some flexibility does not become an excuse to get rid of faculty members who, through their speech, provoked complaints or attracted unwanted attention.

Support diversity, including viewpoint diversity, in hiring, tenure, and promotion

Members of search, appointment, promotion, and tenure committees share in the human tendency of finding kinship with those who are like them—in particular, preferring candidates from their networks or who have similar identities or views. Indeed, a nontrivial minority of faculty admit in surveys to a willingness to discriminate based on ideology in hiring or other decisions. Faculty, along with the president and academic leadership, should take a hard look at how they use diversity criteria in hiring, promotion, and tenure. Faculty and administrators should collaborate to ensure that committee members are educated and supported in their efforts to consider the widest possible range of qualified candidates. Such strategies can include the use of search advocates or training programs for committee members.[65]

Diversity statements are becoming increasingly disfavored as an appropriate strategy for enhancing diversity, with half of faculty reporting in a national survey that they believed that diversity statements were ideological litmus tests that violated academic freedom.[66] Diversity statements, which often seek to gauge an applicant's commitment to certain contested values, are sometimes the sole basis for eliminating candidates, as happened during a life sciences search at the University of California, Berkeley, in which 78% of applicants were dropped solely on this basis.[67] On other occasions, search committees have written position descriptions in ways that suggest candidates should have particular ideological commitments.[68] Randall Kennedy, the Michael R. Klein Professor at Harvard Law School, has argued that mandatory diversity statements typically "constitute pledges of allegiance that enlist academics into the DEI movement by dint of soft-spoken but real coercion: If you want the job or the promotion, play ball—or else."[69]

Simply moving away from diversity statements and other policies that contribute to the perception that colleges and universities are progressive-only zones can go some way toward supporting viewpoint diversity. A related strategy is to make it clear, in external and internal statements about diversity, that the institution prizes viewpoint diversity, including political diversity. This is one way to promote viewpoint diversity without practicing affirmative action for conservatives.[70]

Supporting diversity is not merely a matter of hiring and retaining faculty with certain identities or perspectives. Cultivating a truly diverse and inclusive learning community through proper programmatic, curricular, and pedagogical strategies should be the aim of *all* faculty and administrators. Hiring, tenure, and promotion procedures should focus on evaluating candidates for their ability to foster such a learning environment.

Colleges and universities have a legitimate interest in seeking out teachers who can serve a diverse student body and in rewarding such service, but they should not pursue that interest in such a way as to foster or worsen an atmosphere of ideological conformity. In other words, institutions should ensure that diversity narrowly conceived does not undermine diversity broadly conceived. Not requiring diversity statements as part of a written application package does not mean eliminating the consideration of diversity qualifications altogether. Search committees can ask candidates, preferably in an interview setting, how they deal with the diversity of experiences, identities, perspectives, and values that influence student learning or classroom dynamics. The aim of such questions should be to elucidate the candidate's ability to lead conversations among diverse students. Ideological and political diversity are among the appropriate objects of inquiry. In interviews and evaluations, candidates should be assessed on their ability to manage their classrooms as forums for reasonable debate across different views and as training grounds for critical, independent thought.[71]

Not only are we polarized, but people in the various bubbles only interact with people in those bubbles and, worse than that, they've vilified people in the other bubbles. But I see that as a tremendous opportunity for us in higher education to do what I think was one of the things we have been called on to do, and that is to educate our future citizens to be effective and engaging participants in the democratic society.[72]

Ronald A. Crutcher, president emeritus of the University of Richmond

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Build academic freedom and viewpoint diversity into the curriculum and learning outcomes

Faculty set curricula and learning outcomes that can help build a culture supportive of open inquiry in the classroom and the department. Departmental learning outcomes, especially for first- and second-year students, should build the skills of robust academic debate and analyzing multiple perspectives.[73] Skills should include being able to outline and defend multiple viewpoints within the discipline and, especially for humanities and social science subjects, major lines of argument and critique from conservative and liberal perspectives.

In addition to setting curricula and learning objectives, departments can offer team-taught courses pairing faculty of different viewpoints or disciplines, who would model how to debate in a civil and productive fashion.[74] In these days of tight budgets, it may be a stretch for many schools to pay two faculty

for a single course. One budget-conscious alternative is to invite faculty with different viewpoints to team-teach a few class meetings within a course.

The task force also noted the significant role that general education plays in equipping graduates with broad knowledge to contextualize current issues and in giving them the confidence to participate as citizens in civic and policy debates. Faculty members whose university service includes reviewing or revising general education programs and requirements have an essential role to play in shaping the education that will prepare students to engage thoughtfully in civic affairs. With that in view, the task force was mindful of the importance of general education encompassing—as much as possible—history, fine arts, humanities, and the social sciences, as well as mathematics and physical science courses that deepen students' appreciation for the scientific method.

Include methodology and epistemology early in curriculum learning outcomes

The task force heard evidence that students often prioritize knowledge that comes from identity and firsthand (or "lived") experience. Although these are important sources of insight, students' tendency to elevate such perspectives over knowledge developed from other bases can have a deleterious impact on classroom discourse, particularly when it comes to some of the most fraught topics of our time, such as race, class, sex, and gender—topics that are common in many social science and humanities courses.

Because of the priority placed on experience and identity, students sometimes ask student peers from historically underrepresented groups to speak as a representative of that group, as though identity should determine how someone participates and what he or she says in a classroom discussion. On other occasions, students might self-censor because they fear being called out for speaking beyond their own experience or identity.[75] On yet other occasions, students might project their own experiences or assumptions on others. All these scenarios involve students seeing their peers as mere members of an identity group rather than as individuals.

Faculty cannot create a community of equal knowledge-seekers if students do not see themselves and each other as being qualified to venture an academic opinion and to participate in class and quad conversations. We recommend that institutions hold epistemological and methodological discussions in first-year forums. We also urge that these discussions be built into departmental learning objectives for early courses in majors to teach students how to present academic opinions based on disciplinary standards of evidence, so that students are neither unfairly burdened with expectations to speak nor excluded because of their experiences and identity.

Prepare graduate students on issues of free expression and academic freedom

Although most free expression programs focus on undergraduates, it is important to pay attention to graduate students who may have little knowledge of or investment in free expression and academic freedom, despite their importance to their careers.[76]

Graduate students are fledgling researchers and first-time teaching assistants and instructors who are learning how to manage classrooms, draft syllabi and class plans, and elicit students' views in class. They are new to the tension of being obliged to refrain from expressing their own opinions when they are in front of a class as a teaching assistant while being called to make the best case for their views in their graduate seminars and research. Directors of graduate studies and graduate deans should make preparation on academic freedom and free expression an explicit component of the graduate student experience, including in seminars on professional and career development.

Organize and support faculty-led centers and institutes

In efforts to support an open campus culture, faculty-led academic centers and institutes on disciplinary subjects represent another successful strategy. These centers and institutes are platforms for inviting visiting faculty and postdoctoral students to campus for periods of time and for hosting guest speakers. Through their centers and institutes, many faculty mentor students and offer extracurricular and co-curricular opportunities to engage with academic topics, including constitutionalism, leadership and statesmanship, and ethics, as well as social and political issues. These opportunities introduce students to a wider range of views and model respectful discussion of ideas and viewpoints outside the classroom's formal setting.

Make campus free expression and academic freedom policies and philosophy a part of new faculty orientation

Orientation for new faculty members is an opportunity to introduce them to the university's policies and programs on free expression and academic freedom. A panel of faculty who represent a range of political viewpoints can describe the campus approach and commitment to viewpoint diversity. Free expression and academic freedom policies should also be available in the faculty handbook.

Defend academic freedom in scholarship and in intramural and extramural speech

One effect of rising ideological conformity on campus and of growing legislative attention paid to colleges and universities is the pressure that faculty in some disciplines face to avoid politically sensitive research agendas. Recent years have seen the retraction of controversial journal articles and efforts, some successful, to defund research centers.[77]

Meanwhile, the weakened bargaining power of faculty, the perennial urge of people with power to abuse it, and a polarized political atmosphere, among other things, have made faculty vulnerable to firing and other sanctions for both extramural and intramural speech. FIRE's Scholars Under Fire database shows that attempts to sanction professors over such speech have become more frequent in recent years and that these attempts often succeed.[78]

Recent examples of colleges that have imposed sanctions for intramural speech include Linfield University, a private university in Oregon, and Collin College, a community college in Texas, both of which dismissed professors after they criticized leaders or policies.[79] Though both institutions disputed the allegations that they had disregarded academic freedom, the litigation of these cases in the courts highlights the importance of shoring up protections for faculty speech. A recent decision by the 4th U.S. Court of Appeals has further heightened the need for institutions to bolster support faculty members' intramural speech. In *Porter v. North Carolina State*, the majority ruled that intramural speech by public college and university professors falls, for the most part, outside of the protection of the First Amendment. If other courts, which have said little about intramural speech, follow that lead, public university professors will be, as professors in private colleges have been, largely on their own in claiming their academic freedom in this area.[80]

Faculty senates should work to ensure that faculty handbooks codify strong protections for intramural speech. Investigations of faculty for what they have said or written can seem like punishments in themselves, even if the investigation exonerates the person accused. The faculty senate can take a role in establishing policies for such investigations, including due process rights, a standard timeline for review and decision, and the potential outcomes of investigations.

In addition, faculty senates or equivalent bodies can support academic freedom by implementing specific strategies to defend controversial research. When established in advance, such strategies can mitigate the tendency of academic communities to stand aside, or even join in, when those who hold disfavored views are attacked. Faculty are increasingly and appropriately paying attention to how best to respond to online attacks, typically by outside critics from the political right.[81] They are paying less attention to threats to academic freedom that come from their faculty colleagues.[82] Faculty should consider following the

lead of Stanford University's Faculty Senate. It charged its Ad Hoc Committee on Faculty Speech with considering how "outside actors"—as well as "the university" and "members of the university community"—have acted to "constrain or encourage the free exchange of diverse ideas on campus."[83]

More broadly, to avoid being caught unprepared when threats to academic freedom manifest themselves on their campus, faculty should maintain an ongoing conversation on potential controversies. On some campuses, such conversations might take place within an AAUP chapter. The Heterodox Academy also supports such conversations, as well as broader ones on viewpoint diversity, open inquiry, and constructive disagreement, through its network of "campus communities." There is also room for homegrown efforts, such as the Council on Academic Freedom at Harvard, the Columbia Academic Freedom Council, and the University of North Carolina's Committee for Academic Freedom and Free Expression.

Consider the norms that govern academic speech

One area for an ongoing conversation is the norms that guide faculty speech. The AAUP has acknowledged, in language that has found its way into numerous college and university handbooks, that faculty, when they speak as citizens, should "remember that the public may judge their profession and their institution by their utterances" and that they should, among other things, "exercise appropriate restraint." One can agree with the AAUP that the only ground for dismissal is speech that "clearly demonstrates the faculty member's unfitness for his or her position." Nevertheless, faculty members should not abandon their responsibility to consider what constitutes appropriate restraint and when they have a duty to speak up.

For example, departmental statements on matters of public concern raise serious questions about the norms that ought to govern faculty speech. When faculty speak as a department are they, in effect, speaking for the university? When faculty speak as a department but outside of each member's disciplinary expertise, do they undermine the university's claim to independence and provide fuel for legislators eager to intervene? Do such statements risk undermining a culture of free expression and academic freedom, particularly for nontenured faculty, or for job candidates with opposing views who disagree with the departmental position? Are departments, particularly those with roots in activism, sometimes duty-bound to issue public statements? If so, can departments issue statements that mitigate some of the concerns? Faculty and academic administrators must consider these questions as they develop policies that uphold the institution's norms for faculty speech.

The Academic Senate at the University of Illinois, Urbana-Champaign, discussed and adopted nonbinding guidelines for departmental statements, as has the University of California System's Academic Senate.[84] Just as campuses

will take different approaches to institutional speech, they will also establish different policies or guidelines for departmental statements.[85] Nevertheless, academic rights and responsibilities should be part of ongoing discussion of academic freedom and freedom of expression among faculty.

Faculty members with widely different views have, as a matter of interest and principle, reason to attend to academic freedom in times of relative calm, and to assert themselves forcefully when academic freedom, whether of beloved or loathed colleagues, is threatened.

Partner with student affairs administrators

For the pedagogical work of faculty in classrooms and labs to complement the co-curricular programs and events managed by student affairs staff, and for both to support a culture of free expression, they need to work together. At many institutions, student affairs administrators and faculty seldom interact. Sustained and serious collaboration is rare, as each group does its own work without understanding the perspectives of the other.[86] This disconnect impoverishes the learning experience of students and, perversely, undermines their respective efforts to sustain a healthy campus culture of free expression.

Although they have different vocations, student affairs administrators and faculty share in their service to the institution's civic and academic missions. To bolster student capacity for critical thought and civil discourse and to help students navigate fraught cultural clashes, faculty and student affairs administrators should meet regularly to discuss their overlapping and common work and to collaborate with each other.[87] This joint labor will build trust and position student affairs administrators and faculty to effectively handle challenges when they arise.

Be ready to act with confidence, clarity, and due speed when the inevitable campus free expression controversy occurs

Controversy is inevitable in an academic community that encourages intellectually lively classrooms and is at the forefront of new scholarship. On social media, controversial expression is often filtered through a narrow ideological prism and can go viral, attracting regional and even national attention. For campus leaders, social media also compresses the time frame for deciding on a response. A persistent trait of incidents involving campus speech that generate national headlines is that administrators and faculty are reacting to sudden controversies, often leading to hasty or ad hoc decisions; these headline-generating events have an outsized impact on shaping unfavorable public impressions of a particular campus and of higher education more generally. But while controversy is inevitable, crisis is not.

The key is preparation. Although faculty rarely speak with a single voice, their deliberative method of governance is especially well-suited to formulating, as much as possible, a clear, consistent, and fair approach to academic freedom and free expression controversies. Faculty leaders, in faculty senates or equivalent bodies, also need to be prepared to act when such controversies arise. Particularly in an atmosphere in which speech advocacy organizations and state legislators are keeping a close eye on colleges and threatening lawsuits or other sanctions, consultation with the college or university's attorney should be part of this preparation.

The prior use of case studies and tabletop exercises can help avoid hasty and reactive decision-making; such exercises can help to identify what response (if any) is required, which stakeholder groups should be involved, what decision points must be reached, and who should hold authority to make those decisions. Examples of tabletop exercises can be found in Appendix II.

Decisions at key moments send important messages about the university's commitment to academic freedom, free expression, and dissent; however, reacting with unreflective appeals to free speech rights can be seen as dismissing the valid concerns of affected groups on campus. Faculty are well situated to strike the required balance.

Appendix I: Statements on Campus Free Expression

The University of Maryland, the University of Richmond, DePauw University, and the University of Southern Indiana adopted freedom of expression statements in recent years. They are four of the more than 100 colleges and universities that have done so, beginning with the University of Chicago's approval of the Chicago Principles in 2015.[88]

The University of Maryland's Statement on University Values and Statement of Free Speech Values were adopted in 2018 after approval of the university's president and the University Senate. These statements were among the recommendations of the President/Senate Inclusion and Respect Task Force, which was co-chaired by the senior associate vice president of student affairs and a dean. In the course of its work, the President/Senate Inclusion and Respect Task Force held three public forums, invited comment through an online form, and consulted with numerous campus constituencies and broadly with faculty, staff, students, and administrators.[89]

The University of Richmond's Statement on Free Expression was approved by its board of trustees in 2020. The president appointed a University Task Force on Free Expression, following a 2019 campus speaker series on free expression and civil disagreement. The task force drafted a statement, which was presented for comment at forums for faculty, staff, and students; campus members could also submit comments through an online form. After receiving feedback, the task force revised its draft. The board of trustees then approved the statement.[90]

DePauw University developed its Statement on Freedom of Expression through a collaborative, community-driven process. The president requested the Student Academic Life Committee of the faculty to seek input from students, faculty, staff, and alumni through open governance forums and written feedback. A committee then drafted the statement, which was reviewed, refined, and endorsed by students, faculty, and staff governance bodies and the board of trustees before publication in May 2022. This inclusive approach ensured that the final document reflected the university's commitment to protecting

free expression while upholding core institutional principles of respect and inclusion.[91]

The University of Southern Indiana's Statement on Freedom of Expression was adopted in 2016 by the president following a recommendation by a cross-functional and collaborative committee of university leaders. The committee reviewed existing university and peer policies, discussed the needs of the campus community, consulted with President's Council and Faculty Senate, among others, and largely adopted the "Chicago Principles" published by the University of Chicago the previous year.[92]

These statements, and the task forces and deliberative processes that led to their adoption, are offered as examples for those whose campuses are considering issuing a free expression statement.

Appendix II: Tabletop Exercises

College campuses are places where the most fundamental questions are asked and the most settled opinions are challenged. Disagreement among community members is inevitable and even desirable. However, controversial expression can erupt into crisis, disrupting the research, teaching, and civic activities of a campus community.

Tabletop exercises—discussions of hypothetical dilemmas and controversies—are invaluable opportunities for leadership teams, trustees, faculty, and staff to prepare for inevitable free expression controversies. Such exercises allow teams to anticipate issues that may present themselves, to weigh alternative responses and key decision points, to identify responsible offices and stakeholders, and to formulate messages. The use of tabletop exercises can help to create a decision-making process that, when an actual controversy arises, will be seen as fair even by those who disagree with the outcome. Tabletop exercises also allow leaders to identify pathways and programs to better prepare the campus community for controversial expression.

Tabletop exercises may be included as components of annual retreats and standing meetings; orientation programs for administrators, trustees, staff, and faculty; and meetings focused on free expression.

Below, we offer a sample of such exercises. We offer these scenarios without questions or suggested responses to leave your conversations as open-ended and wide-ranging as possible.

Hiring, tenure, and DEI

A public university has come under fire for how it employs diversity, equity, and inclusion (DEI) in its appointments, promotions, and tenure practice, and now it is embroiled in a lawsuit.

The university requires that all applicants for open faculty positions submit, among other items, a statement about their commitment to DEI. The university's statement of core values highlights the importance of diversity, equity, and inclusion to the institution's mission.

An investigation of public records revealed that several academic departments developed a rubric for evaluating candidates' DEI statements as well as their responses to DEI-related interview questions. Candidates were docked points for failing to articulate a "proper" understanding of DEI. Only those who

articulated a sophisticated and enthusiastic endorsement of equity (over mere equality) were given top marks and ultimately received job offers.

In addition, the university's College of Arts and Sciences, which has full discretion over the tenure process, has issued a set of guidelines that it will use to assess a faculty member's commitment to DEI principles in their scholarship, teaching, and institutional service when considering their promotion and tenure applications. A small group of professors from several disciplines has sued the university, alleging that the guidelines are vague and overbroad and require them to support a particular view of DEI. They argue that these rules violate their First Amendment rights.

Revelations of the university's DEI practices sparked outrage among some students, parents, and state legislators, even as others rallied to the defense of the university.

Faculty intramural speech

A public university has decided not to renew a professor's contract after he made highly critical remarks in several faculty Senate meetings about the administration's decisions surrounding mental health services and DEI policies.

Over a period of several years, the university scaled back its mental health services (along with other types of student services) as part of a larger effort to address a budget shortfall. When a student died by suicide, the professor claimed in a Senate meeting that the university's decision to cut back mental health services was directly harming students and that the administration "should be held responsible" for the student's death.

During this time, the university also eliminated its DEI office and reversed its DEI protocols in response to a new state law requiring the defunding of all DEI initiatives at state colleges and universities. In another faculty meeting, the professor accused the legislature and the university administration of conservative bias and white privilege, claimed that they were "perpetuating systemic racism," and wondered aloud whether they "hate minorities." The student newspaper ran a story about the professor's remarks; the story was picked up by local news outlets and went viral.

The administration notified the professor that it would not renew his contract, citing "inflammatory language." The professor countered that his "free speech rights have been, ironically and unequivocally, violated by the same administration that claims to be fighting against so-called 'cancel culture.'"

The university's president has stated that the nonrenewal concerns "not the content of the speech, but the professor's flagrant disrespect for the administration and the legislature."

Faculty opinion piece

The director of graduate studies in the department of women's, gender, and sexuality studies who is a tenured professor published an article on a gender-critical feminist website, writing:

> A person cannot change their sex; that is a fact. We are allowing children to be mutilated in gender-affirming surgeries that are not backed by science...While those most directly harmed by gender-affirming surgeries are the patients themselves, among the other victims are female student-athletes, denied the opportunity to compete on a level playing field, thanks to President Biden's Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.

A leading women's, gender, and sexuality studies scholar from another university tweeted, "These claims are not supported by any scholarship on gender and sexuality." To show her support of the professor, the state legislator in whose district the campus is located tweeted, "I thought all professors were Woke, but we can be proud of a local professor who has common sense."

Several hundred students, as well as a few dozen faculty and staff, signed a petition demanding the president condemn the professor. The student newspaper published an editorial calling for the professor's firing.

A majority, but not all, of the graduate students in the department sent a letter to the provost and the dean of graduate studies, insisting on the appointment of a new graduate studies director and a guarantee that the professor will not teach any required classes.

Controversial speaker at endowed lecture

The psychology department at a public university hosts an annual lecture endowed by a prominent donor. The donor established the lecture series to provide a platform for scholars who are conducting cutting edge research that challenges the established methods and findings of the field. In a phone call with the department chair, the donor expressed displeasure that the previous three speakers touted progressive orthodoxy rather than challenged it. He said that the lecture series needed more ideological balance and suggested several scholars who could give the lecture.

The department subsequently invited a scholar to speak on her controversial research in which she critiqued the prevailing view that biological sex is a social construct and is not fixed at birth. Her argument is that "transgender ideology" causes real harm to both adults and children.

The talk was publicized among professors and students in the department, and word of the topic spread to the rest of the campus and the local community.

A week before the event, the student-run newspaper published an open letter signed by 300 students and faculty calling on the school to disinvite the speaker. They argued that the invitation legitimized transphobia and said that the need to foster a welcoming environment was more important than permitting offensive free speech. The school decided to let the lecture proceed as planned but required the department to organize a follow-up event for two professors to give a rebuttal and take student questions.

On the day of the talk, the Office of the President sent a school-wide email reminding the community of the university's commitment to both free expression and inclusion and noting that disruptive behavior runs contrary to these values. Roughly 15 minutes into the talk, student activists came in with signs and bullhorns, causing chaos in the lecture hall and creating an extremely tense environment. The administrators present were unable to get control of the situation and had to escort the speaker off campus.

Departmental statement

In the wake of the Supreme Court's 2022 decision in *Dobbs v. Jackson Women's Health Organization*, students, faculty, and staff at some colleges and universities participated in protests and called on others to denounce the decision curtailing abortion rights.

At one public university, the administration adhered to its policy of not commenting on political or policy matters that do not pertain to the institution's core mission, despite pressure by some to issue a statement. However, eager to make an impact and to support their students and colleagues, the departments of psychology, sociology, and anthropology posted statements on social media condemning the Supreme Court ruling.

In addition, the university's medical school released a statement on its website declaring that "this ruling imperils access to essential, evidence-based treatments for our patients and our community. Our team of health care providers is saddened by the overturning of this longstanding precedent."

Numerous students and faculty members, including some from the medical school and three departments, said they did not think it was appropriate for departments or schools to take sides on an issue, especially given internal disagreement about the Supreme Court ruling within those academic units and the university as a whole. Some argued that the university administration should issue its own statement distancing the institution from the medical school and department statements and reaffirming the university's neutrality.

However, other students and faculty argued that it is essential for the university to use its position as a respected center of medicine, law, and policy to advocate for an important cause, and that the medical school in particular would be negligent if it did not issue a statement condemning the ruling

because of its impact on women's health. Some also argued that requiring the school and departments to take down their statements would violate their academic freedom.

Shared syllabus controversy

The college offers a 100-level communications course on critical thinking and argumentation. The course description reads:

> This course examines argumentation as an element of social and civic life. Topics include logic, rhetoric, analysis of audience, evidentiary standards, case construction, persuasion, and ethics of argumentation. Emphasis on development of critical reasoning skills and ability to advocate for a position. Prerequisite: introductory course in communications.

Multiple sections of the course are offered by different instructors, who share a common syllabus. The syllabus includes classes based on textbook readings and classes in which students discuss a contemporary social, cultural, or political issue.

At a meeting to set the syllabus for the coming academic year, a faculty member proposed to include the issue of whether transgender women should be allowed to compete in women's sports as a topic that would engage students' interest. Another faculty member agreed that including the topic would create a good opportunity to model productive discourse on a difficult issue. However, several faculty members expressed the worry that the topic would create an unwelcoming class environment that would marginalize transgender students.

When the group ultimately decided to exclude the proposed topic from the syllabus, two faculty members took to social media to blast their colleagues for bowing to DEI orthodoxy and coddling students.

Divisive concepts in the classroom

A full professor teaching an introductory course on American history at a public university gave a lecture on racism in the nation's founding. The course, which has several sections each taught by a different instructor, is required for all students. Referring frequently to *The New York Times*' 1619 Project and drawing on multiple historical texts, the professor argued that the United States has remained irretrievably racist since its founding. The professor concluded the lecture by stating that whites living in America today are morally culpable for America's systemic racism—both past and present—and that those whites who refuse to acknowledge their white privilege and white guilt should be confronted and shamed.

The lecture went viral, and several hundred students gathered outside the history department's building to protest and to call for the administration to fire the professor. A student-led counterprotest quickly formed to defend the history professor. The Student Government Association held an emergency session to draft and vote on a resolution that defended the professor and denounced the protesters. Despite opposition from 30% of the student representatives, the resolution passed. It was subsequently printed in the university-funded student newspaper, whose student editorial board endorsed the resolution.

Some of the protesters, especially those registered in the professor's course, have started saying that the university has become a hostile environment. Several donors and prominent alumni began to take sides on social media and newspaper op-eds.

Faculty Senate and syllabus statements

As faculty and administrators in higher education have worked to rectify past injustices, several common practices have developed. At one private college, many faculty publish land acknowledgment statements, which identify indigenous communities to whom the land on which the institution sits had belonged.

One semester, the faculty Senate passed a resolution (with three-fourths in favor) to amend institutional policy to require that all professors draft their own land acknowledgment and include it in all their syllabi alongside other required statements on academic misconduct, academic support services, and classroom discussion protocol.

All land acknowledgments are required to name the Native American tribe to whom the land belonged and to reference ongoing research and scholarship on Native American communities.

One professor stated that he had no intention of participating, arguing that the requirement violated his academic freedom and free speech rights. A second professor wrote a satirical land acknowledgment and included it on his syllabi, prompting an outcry from some students and faculty. Both professors were told they would face disciplinary actions if they did not immediately amend their syllabi to include a proper land acknowledgment.

Endnotes

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