Bipartisan Policy Center | The Council of Independent Colleges

CAMPUS FREE EXPRESSION:

# A New Roadmap for Trustees

**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

**Jim Douglas (Co-Chair)**
Executive in Residence,
Middlebury College
Former Governor of Vermont

**Chris Gregoire (Co-Chair)**
CEO, Challenge Seattle
Former Governor of Washington

**Ronald A. Crutcher**
President Emeritus,
University of Richmond

**Daniel Cullen**
Professor of Philosophy, Rhodes College

**Ross Irwin**
COO, BridgeUSA

**William A. Keyes, IV**
President, Institute for
Responsible Citizenship

**Walter M. Kimbrough**
Former President, Dillard University

**Linda A. Livingstone**
President, Baylor University

**John A. Nunes**
Interim President, California
Lutheran University

**Ronald S. Rochon**
President, University of
Southern Indiana

**Carol A. Sumner**
Chief Diversity Officer and Vice
President of Diversity, Equity, and
Inclusion, Northern Illinois University

**Lori S. White**
President, DePauw University

## STAFF

**G. William Hoagland**
Senior Vice President

**Matthew Kuchem**
Associate Director,
Campus Free Expression Project

**Jonathan Marks**
Professor of Politics, Ursinus College
BPC Consultant

**Jacqueline Pfeffer Merrill**
Director, Campus Free
Expression Project

**Jacob Salas**
Project Associate,
Campus Free Expression Project

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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: Guest speakers are silenced by the heckler's veto. Government actors overreach in their legitimate oversight role to prescribe or proscribe subjects and scholarly approaches and by suggesting that the mere discussion of divisive concepts could result in sanctions. Well-intended attempts to bolster diversity and inclusion sometimes link hiring, tenure, and promotion to affirming disputed views about equality and how to advance it. Sometimes the stress is indirect, a matter of culture. A faculty member drafting a syllabus decides it is too risky to assign a classic but controversial text. Students hold back from making an argument in class for fear of being ostracized.

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, student, and staff speech are constrained in a polarized national political environment, in which social media is a megaphone that amplifies campus controversies. Evidence is ample that the intellectual climate on many college campuses impairs discussion of matters about which Americans passionately disagree. The traditional understanding of free speech as a liberalizing force is itself being called into question. Some institutions have responded to these pressures with determined efforts to uphold free expression and academic freedom and to teach these principles to a new generation, but more must be done across the higher education sector.

The chilling of campus speech has effects beyond the borders of the campus. Rather than alleviating the political polarization in our nation today, the inhibition of campus speech is degrading the civic mission of higher education. To maintain our pluralistic democracy, colleges and universities must prepare students for civic participation as independent thinkers who can tolerate contrary viewpoints and work constructively with those with whom they have principled disagreements.

As fiduciaries who wield, in principle, ultimate authority at their colleges and universities, trustees are uniquely responsible for and capable of defending academic freedom and freedom of expression. On campus only a few days annually, trustees delegate much of their power and are loath to intervene in ordinary academic governance. But the same "outsider" status that encourages restraint confers on trustees an ability to notice when policies might be failing and commitment to free expression principles could be waning. Trustees are

therefore well situated to defend the principles of academic freedom and free expression to political actors, donors, and outside critics, and to remind colleges and universities that free expression principles are central to their academic and civic missions.

To most help their institutions, trustees must go beyond occasional crisis management and work consistently to support a 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. Each governing board must reflect on and affirm academic freedom and free expression.

Governing boards need to take on four challenges.

First, in considering high-level institutional goals, trustees must acknowledge the potential tension between upholding free expression and maintaining an inclusive and respectful learning environment for all. Few who have observed higher education in the recent past can fail to notice that permissible speech can cause people to feel hurt or excluded from the collegiate community. Although some expression may 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, trustees should champion a diversity of viewpoints on campus. Introducing students to a wide range of perspectives, while giving them the tools to listen carefully and to 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. Although trustees do not typically work directly with students, they can hold others accountable for making viewpoint diversity an institutional priority and can demonstrate their support for it in their own speech and practices.

Third, trustees should support strong policies for the protection of academic freedom and free expression for students and faculty and the consistent application of these policies to unorthodox and unconventional views, including those disfavored by most community members. Such policies should include an orientation for students, faculty, staff, and the trustees themselves on the meaning and significance of free expression and academic freedom.

Fourth, trustees should support institutional efforts to 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 our country. Matriculating students typically need coaching and instruction in these skills and dispositions, for want of which our national discourse suffers. Colleges should strive to graduate students who raise the

bar for serious discourse. At the same time, the culture of academic freedom and free expression is not just for students; trustees should consider how they observe these principles in their dealings with each other, as well as with students, faculty, staff, and the senior leadership team.

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

In this guide, we first examine the role of trustees 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 trustees seeking to invigorate a culture of robust yet respectful inquiry on their campuses.

# Free Expression and Academic Freedom: A Changing Landscape

## The role of trustees

American colleges and universities place ultimate institutional authority in a board of trustees. Trustees have a fiduciary relationship to their colleges and universities, meaning that they are obligated by law to act in the best interest of their institutions, as stewards of their resources, reputations, and missions. They are obligated, too, to carry out their responsibilities with diligence and prudence, which entails being "knowledgeable of the institution's purposes, operations, and environment."[1]

Governing boards are key players in the effort to accomplish the institution's academic and civic missions: to pursue and share knowledge and to prepare students for civic participation as independent thinkers who can tolerate contrary viewpoints and work constructively with the people who hold them. In pursuing these missions, trustees must help safeguard academic freedom and free expression.

The tradition at American colleges and universities of relying on lay governing boards puts trustees in a unique position to defend campus freedoms during a period of widespread mistrust of academics. In 1903, professor John S. Bassett of Trinity College—soon to be Duke University—praised Booker T. Washington as "the greatest man, save General Lee, born in the South in 100 years." Today, Bassett's praise of Robert E. Lee would spark outrage, but in 1903 his praise of Booker T. Washington led newspapers and the Democratic Party to demand Bassett's dismissal. The trustees upheld academic freedom by declining Bassett's letter of resignation.[2]

In 1956, Princeton University's American Whig-Cliosophic Society invited Alger Hiss to speak. Princeton faced intense and widespread pressure to disinvite Hiss, who had recently finished serving a sentence for perjury in connection with his spying for the Soviet Union. One of Princeton's trustees, Harold R. Medina, a federal judge with strong anti-communist credentials, persuaded the trustees to reaffirm the "core principle that the university was open to speakers of all persuasions." The speech proceeded without incident, and the controversy soon died down. William Bowen and Eugene Tobin, who retell this story in *Locus of Authority*, conclude that "trustees . . . are often more effective in defending campus rights in politically charged situations than are faculty and other 'insiders.' "[3]

Trustees can provide essential support to leadership teams during free expression crises. When white supremacist David Duke qualified to participate in the 2016 candidates' debate for a Louisiana U.S. Senate seat to be held at Dillard University, an HBCU, Dillard President Walter Kimbrough was pressured to refuse to host the debate. The school's board of trustees backed his decision to hold the debate as planned. Although the event was controversial, the campus leadership was united in its approach to free expression.[4]

Although trustee boards enjoy ultimate institutional authority, nearly all U.S. boards recognize the principle of shared governance. That principle is at the core of academic freedom. If higher education is to protect and nurture rigorous inquiry into important questions, then faculty must play the leading part in matters pertaining directly to research and teaching, such as the evaluation of tenure cases and the devising of the curriculum. The principle of shared governance is also essential to the smooth functioning of colleges and universities, because the expertise and skills required to run them are widely dispersed, and trustees are neither full time nor on scene.[5] For these reasons, a board of trustees, although it is engaged at a general level in the whole work of the institution, "entrusts the conduct of administration to the administrative officers—the president and deans—and the conduct of teaching and research to the faculty."[6]

## 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."[7]

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."[8] 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."[9]

Universities and colleges must foster freedom of research to support the search for truth and its 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.[10]

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 share knowledge freely. 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.[11] 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."[12]

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 exposition of unconventional and unpopular opinions and results. The latter freedom preserves the faculty's role in shared governance.[13]

Regulations found in handbooks regarding tenure, promotion, and disciplinary action can help 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 the 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 may 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."[14] 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.

## 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.[15] 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.

**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.

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.[16]

## New academic freedom and free expression challenges

Trustees, like other campus leaders, 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 grow up in increasingly homogeneous neighborhoods, where they may know few whose viewpoints, news sources, socioeconomic status, and race differ from their own.[17] 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.[18] Face time with friends has continued to decline since the pandemic ended.[19] Mental health issues increased markedly during the pandemic, and more high school students report that they are "not mentally ready" for college.[20]

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.[21]

## Social media

Social media destabilizes the climate for open exchange. Today's students inhabit a physical campus and a virtual campus. Social media sometimes nudges people into think-alike groups, often rewards hyperbole and outrage, and rarely supports nuanced academic reasoning. Social media undermines the integrity of classroom experiences, as students wonder whether someone will share their classroom comments on social media.[22]

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.[23] Students are increasingly uncomfortable expressing an unpopular opinion to fellow students on a social media account tied to their names.[24]

> **"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."[25]**
>
> **Walter Kimbrough, former president of Dillard University**

## Affective polarization

As a country, we are riven by affective polarization and divisive stereotypes about our political opposites.[26] Too often, today's conservatives and liberals think that those with different political viewpoints are bad people with bad values. Polarization off campus makes its way onto campus. A survey of undergraduates at the University of North Carolina found, as is likely true on campuses nationwide, that conservative and liberal students hold divisive stereotypes about each other.[27] And a 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.[28]

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.

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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.[29] 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.[30] 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 conflict with diversity and inclusion.[31] 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 that make them

feel marginalized.[32] 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 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.[33]

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?"[34] 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.

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 of 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.

> **"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."[35]**
>
> **Lori White, president of DePauw University**

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 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.[36]

## 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.[37] 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.[38]

The resulting climate of conformity compromises 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.[39]

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.[40]

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, 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."[41] In a national survey, 13% of undergraduates said that it is always or sometimes acceptable to use "violence to stop a speech, protest, or rally"; 39% said the same of "shouting down speakers or trying to prevent them from talking."[42] In yet another survey, 1 out of 5 students admits they have "called out, punished, or 'canceled' someone" for expressing views they found offensive.[43]

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.[44] 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.[45] 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.[46] Faculty also self-censor in the classroom, in their choice of research topics, and around their faculty colleagues.[47]

To address self-censorship and the stifling of debate inside and outside the classroom and quad, 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.[48] 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 7 and Israel's response is a striking example of how universities struggle to preserve their integrity, reputations, and well-being amid such conflicting pressures.

University leaders, including trustees, 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, trustees represent their colleges and universities to outsiders in an atmosphere 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.[49]

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 to put colleges and universities under new constraints, some of which undermine academic freedom and free expression on campus.[50]

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

# Roadmap for Trustees

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 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 work jointly to uphold the university's academic and civic missions.

## Systematically review and consistently enforce policies on free expression and academic freedom

While the principles of freedom of expression and academic freedom are constants, the policies that uphold and operationalize those principles must speak to today's environment. If policies were last reviewed before 2020, the board should ask for a catalog and review of policies that touch on academic freedom and freedom of expression. Those charged with cataloging policies should cast a wide net; policies developed in good faith by offices ranging from the provost's office to the IT department to campus security may have unintended consequences for academic freedom and freedom of expression. These include policies on appointments, promotions, and tenure; faculty and staff's social media use; monitoring of student social media accounts; and major events, protests, law enforcement, and more. Special care should be given to examining rules on campus expression regarding time, place, and manner to ensure they are reasonable, content-neutral, and comply with the law. All policies should be reviewed to ensure they reflect the school's values, comprehensively address today's landscape and are consistent with each other as well as with the school's mission statement. A successful free expression strategy is iterative by reviewing what has worked and what policies, programs, and curricula can be improved, clarified, or added.

Carnegie Mellon University's Commission on Academic Freedom and Freedom of Expression reviewed the school's policies, procedures, and professional codes and recommended revisions to several policies. Among its recommendations were updates to the school's "Policy on Separation of Individual's and Institution's Interests." Particularly in the age of social media, the commission urged updated guidance on how campus community members should make clear when they speak for the school—and when they do not. The commission noted that an updated policy would communicate that the school "encourages" individuals and groups to take stands for the "betterment of society" according to their own beliefs while allowing the university to uphold its institutional neutrality.[51]

After policies have been cataloged and reviewed, they should be easy for community members to access; DePauw University and the University of Missouri, for example, both have webpages devoted to explaining their freedom of expression principles and policies.[52]

A review of policies will prepare schools to respond to accreditation and other external assessments. In 2024, the American Bar Association added protections for free speech for students, staff, and faculty to its accreditation review. The Carnegie Elective Classification for Community Engagement's application for the 2026 cycle includes questions about free expression policies, programming that fosters civil discourse across differences, and training to prepare faculty and staff to teach these skills.[53]

In addition to reviewing, developing, and communicating policies on free expression and academic freedom, institutions must consistently enforce those policies, especially restrictions on time, place, and manner, as well as enforce codes of conduct, which codify the norms that are essential for a healthy learning community. The schools should address violations of these policies through appropriate disciplinary procedures, guided by the standards of due process. They must enforce such policies consistently and equitably, regardless of the views or identities of the individuals involved or the politics of the moment. Failure to judiciously enforce such policies creates de facto norms that become increasingly difficult to root out. Reestablishing control in volatile situations and restoring healthy free expression norms becomes nearly impossible without causing a backlash and could veer into overcorrection and the further erosion of expressive rights. The difficulties many institutions faced in dealing with disruptions in the spring of 2024 were undoubtedly compounded by failures to consistently enforce policies governing demonstrations, camping, and harassment beginning in the fall of 2023.[54] Trustees should support presidential leadership teams in their efforts to ensure that university policies are fairly and reliably enforced.

## Offer visible and budgetary support for academic freedom, free expression, and viewpoint diversity

Trustees should consider issuing their own resolutions affirming the college's policies on academic freedom and free expression and underscoring the institution's commitment to a diversity of viewpoints. They should also collaborate with the president in developing and articulating their institution's philosophy of free expression. One way to do so is by adopting a free expression statement. Task force members Ronald Crutcher, Ronald Rochon, and Lori White, as well as former task force member Wallace Loh, spearheaded the adoption of free expression statements at their institutions. They believed that these statements were valuable for signaling the centrality of free expression and viewpoint diversity to the collegiate mission. Such statements can also serve as a framework for developing campus strategies, policies, programs, and curricula.[55] Other presidents on the task force have not adopted a free expression statement, holding that free expression strategies, policies, programs, and curricula are sufficient to establish a free expression campus ethos. Despite the different views of the task force members on the value of such statements, all members believe in the vital role of trustee leadership in signaling and sustaining their institution's commitment to a culture of free expression.

Although at times boards alone approve such statements, key campus stakeholders should deliberate on those statements most likely to influence campus culture. For example, at Colgate University and Gettysburg College, freedom of expression statements were adopted following processes that began with a presidential call for action, emerged from a committee consisting of faculty and students, and were approved by the trustees as well as the student and faculty senates.[56] In any case, free expression statements are no substitute for effective leadership and sound strategies for securing expressive rights and cultivating a healthy culture of open inquiry.

Indeed, trustees need not limit themselves to issuing resolutions and statements. The Association of Governing Boards, for example, urges trustees to ensure that "board debate on important issues welcome[s] civil dialogue and dissent among members and invited guests." It recommends that boards "consider their role on occasions when students or groups choose to engage them by appearing at a board meeting to express a point of view." Such occasions can be "opportunities to demonstrate support for free speech." Trustees might consider, more broadly, how the board has "engaged with students about issues related to free speech."[57] A trustee can contribute to a culture of academic freedom and free expression simply by attending or introducing an event that exemplifies the university's commitment to open inquiry and discussion.

A "priority" without budget support, however, is not truly a priority. The board should ensure that the school's budget makes provision for initiatives and programs that support a culture of free expression, open inquiry, and viewpoint diversity.

## Take a data-driven approach to campus culture

Trustees should consider monitoring the campus climate to be part of their oversight role. One way to do so is by supporting well-designed campus climate surveys, including the climate for intellectual diversity and free expression.

Institutions that regularly participate in the Higher Education Research Institute Freshman Survey can learn how the views of first-year students have changed over time on such questions as whether colleges should prohibit racist and sexist speech on campus and whether colleges have the right to ban extreme speakers. The Higher Education Research Institute also asks students to place themselves on the ideological spectrum, which can provide a rough measure of one kind of intellectual diversity on campus. But a campus climate survey provides an opportunity to examine in more detail what different campus constituencies, including faculty and staff think about—for example, how difficult or easy it is to express a view that others might find objectionable.

Interpreting the answers to survey questions can be difficult. For example, it would be interesting to know what percentage of students say they self-censor more than once per month. But it is hard to know whether one ought to worry about a finding on that question–perhaps once per month is surprisingly little—without asking additional questions and relying on focus groups to delve into preliminary survey findings.

Because views on free expression on campus are now partisan political fodder, it is important to build trust when devising and implementing a survey. Pomona College's 2018 survey of faculty and staff, though it relied on Gallup, included custom questions developed by a Task Force on Public Dialogue commissioned by Pomona's board, and the task force included board, faculty, student, and dean's office representation. The Pomona College task force, in addition to fielding the survey, made extensive efforts to inform and solicit feedback from the campus community, including alumni and parents of students.[58]

Once a board better understands its policies and campus climate, it might be able to benchmark itself against other and peer institutions. Trustees, working with the presidential leadership team, might select as benchmarks colleges that have published data on their campus free expression climate or a sample of peer institutions.[59]

## Consider the range of social and political issues on which to take an institutional position

Institutional speech has become increasingly controversial, with college presidents coming under scrutiny for what was said—or not said—in response to Supreme Court decisions and to events in domestic and international politics. Trustees, along with the presidential leadership team, must consider the range of issues on which the university will take an institutional position.[60] Private universities have greater freedom than public universities to take an explicit position on social and political issues. It is clearly appropriate for a university to take a position on town-gown matters or if a policy or legislative proposal directly affects the university's operation. But beyond such issues, university practices vary.

Some colleges—including DePauw University, Brown University, and the University of Iowa—have not only determined their criteria for institutional speech but have also published those criteria. Chancellor Howard Gillman at the University of California, Irvine, posted a personal essay about his criteria for issuing a statement. The criteria in these four examples differ, but in each case, they set institution-specific expectations about when the president will—and will not—speak on behalf of the campus.[61]

Some colleges and universities follow the Kalven Report and uphold institutional neutrality by declining to comment on issues that do not bear on "the very mission of the university and its values of free inquiry" and by prioritizing the role of the university as a neutral forum for debate. In this view, institutional speech risks chilling the fullest range of expression by faculty, students, and staff who may feel uncomfortable putting themselves at odds with their school.[62] Other colleges and universities hold that the school should be a neutral forum on most issues, but on select, important social and political issues, it should speak with an institutional voice.[63] Every denominational university, by definition, upholds its creedal texts, values, and commitments on which it is adamantly not neutral; yet, denominational institutions strive for ethical reflection, ongoing interpretation, and theological engagement relative to their particular confession of faith; contemporary social and political issues are occasions for such reflection.

On our task force, members hold varying opinions about the range of issues appropriate for an institutional position. Although universities will reach different conclusions, we believe it is important for university leaders to anticipate what would fall within the range appropriate for their school. University forums, speakers, panels, and campus events that bring multiple viewpoints on contentious issues demonstrate seriousness of purpose in the university's civic mission and alertness to contemporary social and political concerns even without the university taking an official stance.[64]

**Special considerations for faith-based institutions.** Institutions with thick faith commitments have a unique set of challenges and opportunities that are a function of the complex dynamic between academic inquiry and free expression on the one hand, and theological and moral principles on the other. Different interpretations of the faith tradition by trustees, donors, faculty, students, parents, and alumni, as well as the potential tension between rigorous open inquiry and the preservation of core doctrines can complicate efforts to shore up the freedoms that are at the heart of the academic enterprise. Each religious college or university will approach these challenges somewhat differently, according to its mission and its tradition's historic approach to cultural engagement.

Presidents and boards should clearly articulate the mission and values of the institution to the various constituencies in their community in terms of their faith tradition. Just as important, they should work with faculty and administrators to creatively draw upon their tradition's unique wellspring of moral resources to cultivate a rich learning environment, foster civil dialogue and open inquiry, and inculcate in students the virtues of charity, humility, and truth-seeking. When guided by effective leadership, such institutions become training grounds where students can hone their convictions, strengthen the accord between faith and reason, deepen their knowledge of their own and others' worldviews, and engage the culture with kindness and conviction.

## Honor donor intent and the institution's academic mission

One kind of controversy that might involve trustees concerns gifts to the university. For a higher education sector confronting financial and enrollment challenges, one bright spot is philanthropy. Giving to higher education rose 12.5%, to $59.5 billion, in fiscal year 2022.[65] But institutions can get caught between permitting donors too much influence, at the expense of academic freedom and free expression, and disregarding donor intent. Trustees, often donors themselves, are well-situated to help colleges and universities negotiate the happy but tricky relationship between universities and their benefactors. Such work is particularly important in a period in which donors are increasingly willing to augment the power of the purse with the power of social media to exert pressure on colleges and universities.[66] No strategy for avoiding a public and damaging dispute always works. But understanding how the legitimate interests of donors interact with the mission of the university and being able to communicate that understanding to donors before a crisis arises is the foundation of any principled and prudent strategy.

Donors have every right to give with a particular purpose, rather than donate with no restrictions. And colleges and universities at times give donors cause to worry that, if they are not careful about specifying the terms of their gift, the money might not be spent in a manner that honors their intent.[67]

Donors can contribute salutary criticism, and not just funding, to institutions that can get set in their ways. Philanthropy that seeks to advance particular ideas is not by itself a problem. Institutions that seek out an array of donors can support or enhance programming they would not otherwise be able to support or enhance. Donors certainly influence some areas of programming and hiring—universities that dislike lawsuits and want future donations will think more than twice about using donor funds for programming the donor despises—but colleges and universities can live with that influence up to a point. For example, on a campus replete with opportunities to hear from liberal speakers, a university need not flinch at a donor agreement specifying that a lecture series "teach conservative principles." But it might, as the Honors College at Arizona State University did, face a conflict between its academic integrity and its fundraising goals if the donor for such a series personally places Charlie Kirk, a MAGA figure who continues to maintain that the 2020 election was stolen, on a "Health, Wealth, and Happiness" panel.[68] Or if a donor, as occurred at the University of Washington, seeks to modify an agreement to forbid the holder of a chair from making political statements.[69] In the first case, Arizona State properly allowed the event to go forward amid faculty criticism about Kirk's invitation, but the donor, unhappy with what he characterized as "left-wing hostility" at the university, withdrew his funding anyway.[70] In the second, the University of Washington, to its credit, returned the gift, thereby honoring both donor intent and academic freedom.[71]

Dependence on private philanthropy, whether the donor is a foundation or an individual, can tempt institutions to permit donors to guide their priorities and muzzle speech that might put contributions at risk. Consider the recent controversy regarding how elite institutions have dealt with the Israel-Hamas conflict. Even wealthy colleges and universities have felt compelled to listen to high-dollar donors who criticized them for being too tolerant of what those donors considered to be hate speech.[72] More exposed to pressure are institutions that need private philanthropy to plug holes in their operating budgets or to shore up the endowments they will need to survive in uncommonly hard times for higher education.

Universities need philanthropy, need to pursue their missions, and need to preserve control over programming and curriculum that is essential to academic freedom. Decision-makers need to know and love the unique character of colleges and universities. Advancement officers and staff, who move easily between different kinds of institutions, do not always have this knowledge or feeling. For that reason, oversight of donor agreements must include stakeholders who understand and value the culture of free speech and academic freedom. Trustees who understand the interests of givers and

understand the missions of their universities and colleges have an important role to play in that reflection. When donors are outraged by faculty or student speech, presidents must advocate for academic freedom and freedom of expression and help their institutions preserve independence without suggesting to donors that their role is to give and to shut up.

**Renaming controversies have multiplied in recent years amid calls for racial reckoning.** In 2020, Michigan State University's James Madison College considered changing its name because its namesake had enslaved people. In 2021, the University of Alabama, Birmingham, removed the segregationist George Wallace's name from a building. In 2017, students at Lebanon Valley College demanded the renaming of Lynch Hall because Clyde A. Lynch, despite an apparently blemish-free record, had an unfortunate surname.[73]

Some renaming controversies are about little more than donor or alumni relations, but others involve the very character of higher education. Universities whose histories can span centuries, are especially charged with reflection, and they should not get swept up in evanescent trends in thought. They should, however, consider whether current practices, traditions, and names, which emerge from a flawed past, stand up to serious moral scrutiny. Sometimes, they do not. On the other hand, as Yale University's Committee to Establish Principles on Renaming observed, "Ill-fated renaming has often reflected excessive confidence in moral orthodoxies." Present-day participants in an "intergenerational project" should exercise great care when acting upon "moral hindsight," and those charged with the well-being of a college or university must be mindful of the legal and publicity pitfalls of renaming.[74]

Increasingly, to avoid panicked improvisation, schools are adopting renaming polices, such as DePauw University's "Principles and Processes for Reconsideration of Names, Statuary, Monuments and Traditions."[75] Although policies will differ by institution, all should, in accordance with the university's knowledge-seeking mission, take advantage of faculty expertise and make every effort not to distort history.[76] They should, in accordance with the university's civic mission, engage students in conversation about the serious questions renaming controversies raise. In accordance with the intergenerational character of most colleges and universities, they should attend not only to the views of current students but also to those of alumni. Presidents and their leadership teams will be called upon to explain to current students why others who care about the college, including trustees specially charged with taking a long view, are legitimate participants and decision-makers in renaming controversies.[77]

## Defend academic freedom in scholarship and in intramural and extramural speech

One effect of rising ideological conformity on campus and 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.[78]

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.[79]

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.[80] 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.[81]

Trustees, like presidents, might be tempted to weigh in when faculty express controversial views. Rather than repressing faculty speech that, at times, creates significant internal tensions and complicates community and donor relations, trustees should support academic freedom by encouraging senior institutional leaders to implement specific strategies to defend controversial research, as well as intramural and extramural speech. In particular, trustees should encourage their institutions to publish clear policies about what kinds of circumstances would trigger a formal investigation of someone for their expression; the policies should include due process rights, a standard timeline for review and decision, and the potential outcomes of investigations. Because protracted and murky investigations become a form of punishment, these procedures should be fair and efficient, and investigations should be concluded in a timely manner.

## Uphold the expressive rights of student athletes

It is a cliché, perhaps unfair, that trustees have privileged access to courtside tickets. They surely have a front-row seat in protecting college interests as well as student rights in addressing one of the increasingly thorny free expression arenas: college athletics. College athletes and coaching staff, especially at Division I universities, present particularly difficult free expression issues. Because of the attention that sports teams and their top-performing student athletes draw, individuals or teams that make statements on social or political issues can garner prominent attention, often leading to pressure from alumni, trustees, and the media. Scholarship athletes are particularly vulnerable to pressures to avoid speaking up for fear of jeopardizing their scholarship status. College athletes should not be expected to surrender or abridge their rights of expression. We recommend that athletic directors and coaches be involved in leadership planning surrounding free expression policy and that coaches affirm the free expression rights of the athletes under their supervision in the same manner as all other students.

Implementing sound strategies to protect the expressive rights of student athletes is becoming more important as they increasingly become public figures in the name, image, and likeness (NIL) era. Administrators should provide media and social media training to student athletes, not for the purpose of dictating what student athletes should say or think, but to prepare them to respond wisely to questions and opportunities they will likely encounter as public figures and as advocates for causes, brands, and products.

In 2021, the NCAA implemented new rules that allow athletes to engage in and profit from NIL activities. Since then, over 30 states have passed NIL laws that establish parameters for schools and student athletes. Some laws, for example, prohibit compensation from so-called vice industries. The NCAA holds that student athletes must comply with state NIL laws and can engage in NIL activities in states without NIL laws. As federal jurisprudence and state laws continue to evolve, administrators should help student athletes navigate NCAA rules, their state's NIL legal regime, as well as their own school's NIL and student conduct policies.[82] Presidents and their leadership teams should understand their state's law and ensure that their institution upholds student athlete expressive rights while supporting them with appropriate training and counsel.

In addition, the landscape of classifying student athletes as "employees" is evolving.[83] It is unclear where student athlete employment will end up, but this question could have an impact on how universities work with their student-athletes on free expression issues.

## Include academic freedom and freedom of expression in trustee orientation and continuing education

A 2009 survey of board chairs, presidents, and chief academic officers found that only 39% of trustee orientations included a unit on academic freedom. It also found that only 23% of trustees thought that they understood the "role of faculty in institutional governance" either "very well" or "well."[84] Given the increasing demands on trustees in a difficult higher education climate, it is doubtful whether a 2024 survey would produce better results.

Yet an understanding of academic freedom, as well as of issues related to shared governance and campus free expression, is essential to trustees as minders of the missions of their colleges and universities. Boards should consider orientation programs for incoming trustees that include background in and philosophical discussion of free expression and academic freedom, as well as continuing education on ongoing and emerging challenges in these areas.

Several organizations, including the Association of Governing Boards, the American Council of Trustees and Alumni, the American Association of University Professors, the Foundation for Individual Rights and Expression, and PEN America can be sources of material for such educational programs. These programs can also be an opportunity for trustees to engage with faculty members at their own institutions.

## Support the leadership team during academic freedom and free expression crises

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.

**Allowing a controversial event or speech does not imply that the institution endorses the speaker's views.** When the Federalist Society at the University of Richmond Law School invited transgender movement critic Ryan T. Anderson to speak on campus, there were complaints from students and faculty and calls to disinvite the speaker. The law school dean issued a statement that the university upholds principles of robust discussion and that it does not require student groups to vet speakers with the administration. University President Ronald Crutcher said that the school would not cancel the event, although he said he found the speaker's views offensive. Anderson's speech was met with but not disrupted by protesters; during the event, a faculty member offered a rebuttal to Anderson's remarks.[85]

The board has an essential role in supporting the leadership team as they defend the freedom of individual community members to engage in unorthodox and controversial expression and of their institutions generally as havens for free inquiry. The best way to deal with a controversy, however, is to have a strategy in place before it arises. To help the board clarify its own role and thinking on free expression controversies and college policies, it should discuss free expression controversies on other campuses and hypothetical scenarios in the form of tabletop exercises. Such exercises, examples of which can be found in Appendix II, can help to identify what institutional response (if any) is required and which stakeholder groups should be involved.

# 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.[86]

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, more broadly, with faculty, staff, students, and administrators.[87]

The University of Richmond's Statement on Free Expression was adopted 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 trustees then approved the statement.[88]

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.[89]

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.[90]

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.

## Calls for university to issue a statement

Some among the university's Iranian students, faculty, and staff are upset about the 2022 death of Mahsa Amini in the custody of the Iranian morality police and the deaths of scores of protesters. Iranian internet blackouts mean that many are unable to contact family members, heightening their anxiety.

Two days after the report of Amini's death, the Office of International Students and Scholars contacted all Iranian students and visiting research fellows, offering support. That office hosted gatherings and connected many campus members with student counseling services and the employee assistance program. Deans offered accommodations on course assignments and deadlines to Iranian students.

Some said the university should go beyond offers of support. Several professors, including those from Iran and engineering professors who have collaborated with scholars at Iranian universities, met with the president. They said the university must issue a public statement supporting the protesters. They called this a matter of principle and said the university should stand up for human rights, free speech, and academic freedom; they pointed to accounts describing Sharif University in Tehran as a "war zone," to authorities closing universities in Kurdish regions, and to student protesters being detained and killed.

In contrast, no statement was issued in support of the Hong Kong student protesters in 2019, despite calls for the president to do so. Before declining to act, the president's cabinet had met to discuss possible courses of action.

## Building name controversy

A state university's School of Public Policy is named after a 19th-century politician and speaker of the state assembly. Having grown up in a wealthy, slave-owning family, he backed the Confederacy during the Civil War. After the war he publicly supported the ratification of the 13th, 14th, and 15th Amendments to the Constitution and became a university trustee. As a trustee he made a large donation that doubled the university's faculty, resources, and student body. His descendants feature a long list of prolific donors to the school, including two currently enrolled students whose parents continue to give money. All living descendants have disavowed their family's ties to slavery.

The university's Center for Students of Color recently published an article in the school newspaper tracing the family's background and requesting that the School of Public Policy's name be changed. According to the article, keeping the current name would be a "slap in the face to students of color, in effect celebrating a time when the university endorsed the oppression and marginalization of minorities." Students, joined by some professors and alumni, are now organizing protests on campus demanding that the university change the name. Others responded that the school does not honor the politician's ties to slavery, but rather his transformation of the university's size and impact.

The president of the university announces that he has formed a commission to explore a range of solutions. The donor's heirs have announced that they will sue for the return of the donation, with interest (totaling $36 million) should the university change the building name. Yet the protesters continue to demand the building be renamed, arguing, "Compromise is insufficient."

## Long-owned university painting challenged

Three decades ago, an alumnus donated a painting by a celebrated 19th-century American artist to the university's art museum. The painting was accompanied by an endowment gift to the museum's general operations, with the provision that the painting be exhibited permanently. The gift agreement also included a clause requiring the return of the painting and funds if the university chose not to exhibit it.

The painting depicts the completion of the transcontinental railroad and has been interpreted as celebrating the opening of the American West. The painting shows railway executives, pioneers, farmers, churchmen, and—barely visible as they are hidden behind other figures—Chinese immigrant railway workers.

The gift agreement was uncontroversial when it was executed. The museum exhibited the painting in its main foyer and touted it as among the most important works in its collection. Scholars of American art visited the museum to study the painting.

The president of the Asian American Student Association posted on social media that the painting should be removed, because it "lies by showing Chinese immigrants without showing how they were exploited" and "promotes anti-Asian bias." Other students, faculty, and staff shared the president's posts—some echoing calls to remove the painting, others disagreeing.

Local media picked up the story and called the museum director and office of the president for comment. Few outside of top university officials were familiar with the gift agreement. The donor is deceased, but one of his children is an alumnus, and the family has continued its significant philanthropic support.

## Trustee speech

A member of the board of trustees at a private university is expected to give a large donation to the institution but is now embroiled in a controversy surrounding his use of social media. A fellow member of the board of trustees discovered, to her alarm, that for several years before joining the board, the trustee had "liked" tweets that were highly critical of marriage equality, gender-affirmation surgery, and critical race theory. During this time the trustee had also tweeted several politically charged remarks:

- "Conservatives have to rise and DECLARE WAR on the liberals that are ruining our country."
- "Patriots must employ EVERY AVAILABLE MEANS to overthrow the progressive elites that run our colleges."

- "Change my mind: BLM would rather see cities burn than improve the lives of blacks."

She also found that, shortly before being considered for a position on the board, he had stopped liking and posting controversial tweets. She circulated these tweets to her fellow board members, and the board agreed to consider the issue in an executive session at its next regular meeting in three weeks.

Before the board could meet, a student journalist, having received an anonymous tip, dug up the controversial tweets and published a story about them in the student newspaper. Many faculty and students called on the board of trustees to remove the offending member, and an op-ed in the student paper called for a protest to be staged outside the next board meeting.

## Donor demands return of funds establishing university center

A public university is considering whether to return a $24 million gift that was donated in 2018 to establish a Center on Social Justice and Reconciliation. The money has funded scholarships, postdoctoral fellowships, a lecture series, non-academic staff, affiliated positions for faculty to teach and conduct research, and an endowed chair (named after the donor) who also serves as the center's director.

The center has attracted highly regarded scholars and national media attention for its work, especially in the wake of the George Floyd killing in 2020. In 2022, the chair and director of the center, along with one of the affiliated faculty members (both of whom are tenured professors within the School of Public Policy) authored op-eds that appeared in *The New York Times* and *The Wall Street Journal* that sharply criticized efforts to defund police departments and called for more money to be directed toward filling out police forces.

The donor demanded meetings with the university, arguing that the two professors were failing to uphold the mission for which the center was established. The donor demanded that the two professors (including the chair) be stripped of their affiliations with the center. The donor also insisted on being involved in all future hiring decisions and a curricular overview.

Meanwhile, the chair and affiliated professor said they were not aware of donor expectations surrounding op-eds or policing policy, and faculty from across the university signed a letter calling for the university to uphold the academic freedom of their colleagues.

Because the donor has refused to back down from his demands and is threatening legal action to force a return of his donation, the university is considering the best course of action.

## 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 the "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.

## 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.

In response to the backlash, the provost, with approval from the university president, notified the department that the professor's speech was inconsistent with the university's commitment to maintaining an inclusive and welcoming community. The provost requested that the department find a new director of graduate studies and remove the offending professor's classes from the list of required courses in the departmental curriculum.

Other faculty roundly criticized the provost's intervention as a threat to academic freedom. A group of donors, alumni, and lawmakers began pressuring the board of trustees to overrule the provost's decision.

## Faculty extramural speech on social media

A tenured professor in a university's English department tweeted, in the days following a terror attack in Israel:

- "A glorious day! There is no distinction between Israeli 'civilians' and Israeli soldiers. Anyone heard of mandatory IDF service?"
- "I hope a whiny Zionist speaks up in class today. Students have no right to be shielded from their moral blindness. Sometimes a little humiliation is the path to truth."
- "Israel is only America's junior partner in crime. Maybe, before anything changes, the empire will have to be brought to its knees."

In response, the CEO of a national Jewish organization, in a widely shared tweet, said, "Shame on the university. You said you have no place for hate. Apparently, you didn't mean it." A state legislator held a press conference demanding that the professor be fired and that the university be investigated for its softness on antisemitism. "If Israeli civilians are legitimate targets," the legislator said, "and it is only Israel's junior partner in crime, what does that say about American civilians?" Amid the publicity, the professor receives death threats.

Under pressure, the university suspends the professor with pay and launches an investigation, declaring, "the safety of students is paramount." But a group

of professors who describe themselves as pro-Palestinian write an open letter to the university president complaining that "there is a Palestinian exception to free speech on campus."

## Viewpoint diversity and trustee-created academic center

Due to a perceived left-wing bias in academia, many trustees have sought to expand intellectual diversity by pushing universities and colleges to hire more conservative professors. At one large public university, trustees decided to create a Center for Civic and Western Studies to open the campus to more political viewpoints.

The university's trustees contend that the new center will protect free speech and enhance civil dialogue, as students and faculty will feel more comfortable voicing conservative opinions if there are places on campus where more professors hold these views. According to a campus survey, only 5% of the faculty identify as conservative. Opponents of the program argue that the trustees' plan requires discriminating by viewpoint in the hiring process. Some worry that such a hiring scheme could even require administrators to compel speech, as they are seeking to recruit people who align with the trustees' political mission.

Historically, faculty are responsible for the design of the university's curriculum. Some faculty and senior administrators see the involvement of the trustees in the new program as an unacceptable overstep. However, board members respond that while they have been involved with the program, the center has internal support from some faculty members who are already engaged in improving viewpoint diversity on campus. The board states that it is ultimately the faculty who will design the courses and administrators who will hire staff.

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One Dupont Circle NW, Suite 320
Washington, DC 20036

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202-466-7230

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Washington, DC 20005

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