

# Free Speech on Campus

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*Are legislators and activists curbing free expression?*

By Tom Price



A crowd gathers at a school board hearing last November in Spotsylvania County, Va., to discuss a proposal to pull “sexually explicit” books from school libraries. Efforts to ban certain books, prohibit the teaching of some topics or bar controversial speakers from college campuses are on the rise across the country. (AP Photo/*The Free Lance-Star*/Peter Cihelka)

Although a poll found that 94 percent of Americans view the First Amendment as “vital” to democracy, free speech is under attack at an “unprecedented” level, according to the American Library Association. The attacks are coming from both the right and the left and are challenging books and curricula in classrooms and libraries at all levels, from pre-K through graduate school, according to free speech advocates. Since the beginning of 2021, lawmakers in 40 states have introduced some

175 bills to restrict teachers’ speech, 15 of which became law. And last year, there were 729 demands to remove a total of 1,597 books from libraries and schools, nearly double the challenges in 2019. Controversial speakers have been disinvited from colleges, and many students say peer pressure causes them to hide their opinions. Some educators blame the disputes on political polarization, conservatives’ unhappiness about changes in teaching and administrators’ fear of conflict — all of it exacerbated by social media. Free-speech advocates — from national organizations to local groups — are fighting back.



Books that have been censored or challenged are displayed at Books Inc., an independent bookstore in Alameda, Calif., in 2021. Although wide majorities of Americans oppose book bans, critics tried to exclude nearly 1,600 books, mostly dealing with sexuality or racial issues, from libraries and classrooms. (Getty Images/Smith Collection/Gado/Contributor)

## The Issues

Even before he started work at Georgetown University's Center for the Constitution in January, newly hired law lecturer and executive director Ilya Shapiro was suspended after he was accused of making a racist comment about President Biden's promise to appoint a Black woman to the Supreme Court. <sup>1</sup>

In New Hampshire, high school history teacher Jen Given has become more circumspect in her teaching because of new rules that restrict discussions of race and gender in public schools in her state and 12 others. There and in Oklahoma, teachers can lose their licenses for violating the restrictions.

"The law is really, really vague," Given complained. "It led us to be exceptionally cautious because we don't want to risk our livelihoods when we're not sure what the rules are." <sup>2</sup>

Such attacks on free speech are far too common in schools, University of Virginia senior Emma Camp said in March. Camp went off to college anticipating "an environment that champions intellectual diversity and rigorous disagreement." Instead, she

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lamented, “my college experience has been defined by strict ideological conformity. Students of all political persuasions hold back — in class discussions, in friendly conversations, on social media — from saying what we really think.” <sup>3</sup>

Free speech in schools and universities is under assault from both the left and the right at an “unprecedented” level, according to the American Library Association (ALA) and PEN America, an organization that defends free expression. <sup>4</sup> Some 175 bills restricting teachers’ speech were introduced in 40 states in 2021, according to PEN America; through April of this year, 15 had become law. And last year there were 729 demands to remove a total of 1,597 books from libraries and schools, nearly double the challenges in 2019 — affecting classrooms from prekindergarten through postgraduate studies, says the ALA.

The restrictions range from employee discipline policies, as at Georgetown, to outright bans on books, controversial speakers and topics of study. Those promoting the restrictions give various reasons — alleging obscenity, arguing that books or speakers violate community values or that some books are inappropriate for children at various ages. And, as the ALA and PEN America point out, people on both sides of the political spectrum have promoted restrictive measures.

Critics of the restrictions say that, whatever the motivation for such rules, they amount to a threat to free speech and academic freedom, core values of the U.S. education system for more than a century.

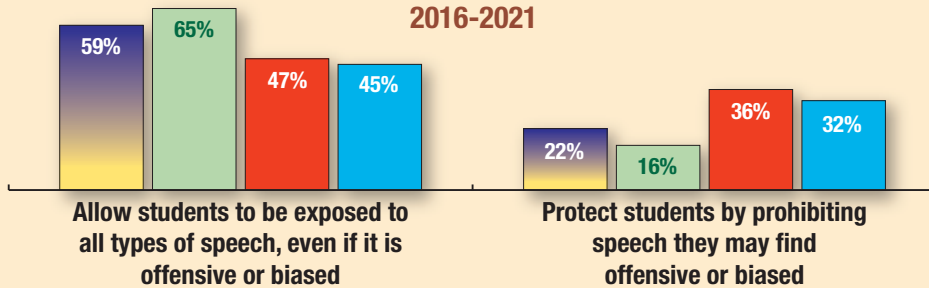
“At the K-12 level, in many ways, we’re witnessing the worst censorship since the McCarthy era,” education historian Jonathan Zimmerman says, referencing Republican U.S. Sen. Joseph McCarthy of Wisconsin, who in the early 1950s helped create a climate of fear by falsely accusing many Americans of supporting communism. “I don’t think we have any historical precedent for the gag laws” being adopted to restrict teachers’ speech in many states, the University of Pennsylvania history professor says. “It’s terrifying.”

The restrictive bills “have tremendous consequences” even when they fail to pass, says Joe Cohn, legislative and policy director at the Foundation for Individual Rights in Education (FIRE), which defends the rights of students and faculty at America’s colleges and universities. Just by attracting public attention, the measures “intimidate people from organizing [potentially controversial] events in the first place,” he says.

### Most College Students Favor Allowing Speech Even If Offensive

A majority of students said all types of speech should be permitted on campus, even if it is offensive or biased, according to a series of surveys conducted from 2016 to 2021 by the nonprofit Knight Foundation. A majority of white students and pluralities of Black and Hispanic students agreed with that view. But the shares of Black and Hispanic students who said it was more important to prohibit offensive speech were larger than among their white peers.

**Opinions on Campus Speech,  
2016-2021**



Source: “College Student Views on Free Expression and Campus Speech 2022,” Knight Foundation, January 2022, p. 24, <https://tinyurl.com/2p8vh3wu>

■ All Students  
■ White  
■ Black  
■ Hispanic

According to the ALA, formal efforts to ban volumes from libraries and schools represent only about 10 percent of all book challenges. School and library officials remove some books from their shelves in order to pre-empt challenges, the association said. And, to avoid controversy, countless school and library personnel decide not to acquire controversial books in the first place, the organization reported. <sup>5</sup>

In the K-12 schools, all of the restrictive legislation was sponsored by conservative lawmakers, as was most of the book-banning — but not all of it. For example, says Zimmerman, “people who were scoffing at removing *Beloved* [by Black author Toni Morrison] from a school district in Virginia . . . were trying to remove *Huck Finn* because of use of the N-word.”

Books challenged in K-12 schools “generally contain age-inappropriate sexual content,” said Jonathan Pidluzny, of the conservative American Council of Trustees and Alumni. <sup>6</sup>

Complaining about violence in *Maus* — a book about the Holocaust taught in a McMinn County, Tenn., middle school — county school board member Tony Allman asked: “Why does the educational system promote this kind of stuff? It is not wise or healthy.” <sup>7</sup>



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On college campuses, the most prominent moves to restrict speech have come from the left, often because of comments perceived as racist or as opposed to policies such as affirmative action. They often take the form of disrupting speeches or demanding that speaker invitations be rescinded. Students also criticize each other, creating problems primarily for conservatives, who are vastly outnumbered by left-leaning students on most college campuses.

“First, students are afraid of being called out on social media by their peers,” University of Virginia sociology professor Brad Wilcox said. “Second, the dominant messages students hear from faculty, administrators and staff are progressive ones. So, they feel an implicit pressure to conform to those messages in classroom and campus conversations and debates.” <sup>8</sup>

Students of all political stripes say they self-censor their comments to avoid expressing potentially unpopular views. Nearly half of undergraduates report feeling “somewhat uncomfortable” or “very uncomfortable” expressing opinions about a controversial topic in class, according to a 2021 poll by College Pulse, a marketing and research firm that focuses on college students. Four in five said they self-censor at least sometimes. The most common reason for feeling uncomfortable was fear of being criticized by other students. <sup>9</sup>

In another survey, by Heterodox Academy — an organization of educators and students that promotes viewpoint diversity in higher education — 63 percent of students said their campus climate “prevents people from saying things that they believe.” <sup>10</sup>

Educators cite a variety of reasons for the increase in restrictions and fear of speaking out, including the political polarization affecting the entire nation and the impact of social media.

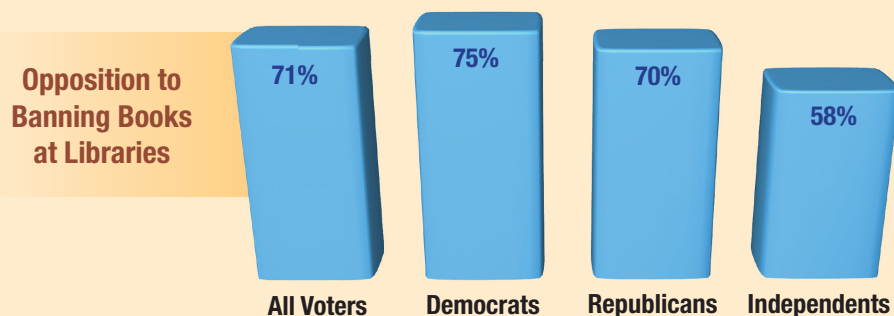
“The same type of polarization we’re seeing in the country has really gotten onto campus,” says Princeton political science professor Keith Whittington, who holds a leadership position in the Academic Freedom Alliance, a group that promotes free expression. “There’s less tolerance for speech that you disagree with or might find dangerous or harmful in some fashion.”

Wesleyan University President Michael Roth says Americans “are trigger-happy with indignation.” They “get a lot out of feeling indignant,” which fuels attacks on other people’s speech, he says.

Emerson Sykes, a staff attorney for the Speech, Privacy and Technology Project at the American Civil Liberties Union (ACLU), says conservative unhappiness with recent changes in teaching has motivated many of the restrictive measures in K-12 schools.

### Large Majority of Voters Oppose Efforts to Ban Books

More than 70 percent of U.S. voters oppose removing books from local public libraries because some think young people should not be exposed to them, according to a March survey conducted by two polling firms for the American Library Association. Large majorities of both Democrats and Republicans opposed such bans; slightly fewer independent voters held that view.



Source: "Large majorities of voters oppose book bans and have confidence in libraries," American Library Association, March 24, 2022, <https://tinyurl.com/5fr49pct>

"For generations, we had a very whitewashed version of American history that was taught in public schools," he says. "In the last few decades, we've seen great progress in presenting a more comprehensive and inclusive picture of our country and our world in our schools, and what we're seeing now is a backlash to that."

For example, there has been widespread opposition to the use in schools of *The New York Times*' "1619 Project," published in 2019, which contended that slavery played a larger role in America's development than most people realize. <sup>11</sup>

Many state legislatures have prohibited classes from using the project. Other laws ban class content that makes students feel uncomfortable about the color of their skin. A bill that cleared a Florida state Senate committee this year, for instance, declares: "An individual should not be made to feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race." <sup>12</sup>

Texas state Sen. Brandon Creighton, a Republican, who sponsored restrictive legislation in his state, said teachers should "promote

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America and our republic for what it is, which is the greatest country in the history of the world, and certainly the most philanthropic.” <sup>13</sup>

The ACLU said the restrictions attempt to paint a picture of American history “that erases the legacy of discrimination and lived experiences of Black and Brown people.” By enacting such restrictions, government officials are “trying to hide history from us,” said Emma Stratton, a high school junior in Tennessee. <sup>14</sup>

Several experts said social media amplify free-speech conflicts. A controversial remark on social media reaches a much wider audience today than a conversation would have in the past, Whittington says. Social media also “make it much easier to launch an effort to suppress speech.”

The internet “silos people into more think-alike communities” and “doesn’t support nuanced conversation,” said Jacqueline Pfeffer Merrill, director of the Campus Free Expression Project at the Washington-based Bipartisan Policy Center, which promotes cooperation across party lines. <sup>15</sup>

School officials’ ignorance contributes to the problem, says Eric Baxter, vice president and senior counsel at the Becket Fund for Religious Liberty, which defends the rights of religious institutions and individuals.

For example, he says, some universities — including Wayne State University, in Detroit, and the University of Iowa — have imposed anti-discrimination rules that punish campus religious groups for requiring their members or leaders to share the organizations’ religious tenets. The approach is illegal, unconstitutional and “absurd on its face,” Baxter says, adding that university officials “didn’t think through what the nondiscrimination policies really mean. Nondiscrimination is meant to protect religious organizations and individuals,” he says, not to say that religious organizations cannot require their leaders to be religious.

Still others attribute speech suppression on campuses to school administrators who are “conflict-averse,” in the words of Adam Steinbaugh, a FIRE lawyer. “It doesn’t really matter who is bringing up the complaints,” he said. Administrators “are eager to protect the reputation of the institution, protect the budget and avoid conflict.” <sup>16</sup>

As school and college administrators, teachers and students grapple with challenges to free speech, here are some of the questions being debated:

### Do some values outweigh free speech?

Journalist Sean Illing calls himself an “absolutist” about free speech. “The value of free expression seems so fundamental to me that it hardly needs a defense,” said Illing, a writer for the online news organization Vox. <sup>17</sup>

But most Americans are not so absolutist on the issue. University of Chicago law professor Brian Leiter, for instance, has argued that free speech is not “an inherently good thing” but “can be good, or it can be bad.” In fact, Leiter wrote, “we have massive amounts of worthless, dangerous speech in the public sphere right now.” <sup>18</sup>

America should “regulate speech effectively — to minimize its very real harms, without undue cost to its positive values,” he argued. But, he conceded, he has not figured out how to do so. “I don’t think we can be confident that . . . the regulators of speech, would make the right choices in discerning what is good and bad speech, or what is helpful or unhelpful speech.” <sup>19</sup>

According to polls, most Americans express strong support for free speech, but many see the need for certain exceptions.

A 2015 Pew Research Center poll of adults in 38 countries found that Americans had the most favorable view of free speech. And 94 percent of U.S. adults in a 2020 poll conducted by the nonprofit Freedom Forum, which promotes the First Amendment, said the amendment is “vital” to American democracy. But just 59 percent said they agreed that college campuses should support free expression even if some find the speech offensive, according to a 2021 survey by the Knight Foundation. <sup>20</sup>

And Americans are sharply divided when it comes to hate speech. In a 2021 survey by the Freedom Forum, 35 percent said hate speech should be protected, 36 percent said it should be banned and 28 percent had no opinion. <sup>21</sup>

Those feelings are especially pronounced among college students. A 2018 survey by the Gallup Organization and the Knight Foundation found that 53 percent of college students said fostering a diverse and inclusive environment is more important than free speech. And there were pronounced differences based



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on gender and race. Sixty-one percent of men and 52 percent of white students favored free speech over diversity and inclusion, while 64 percent of women and 68 percent of Black students said fostering diversity and inclusion were more important. A 2021 survey, conducted by Ipsos for Knight, found that 67 percent of all students said campuses should restrict racial slurs. That opinion was expressed by 73 percent of black students, 70 percent of Hispanics and 64 percent of whites. <sup>22</sup>

Cohn, of the Foundation for Individual Rights in Education, says there are religious institutions — and some nonreligious ones — “that prioritize other values above free speech.” And he says that the courts, while generally supportive of free expression, have carved out some narrow exceptions. “Speech that constitutes a true threat to actually incite violence is not protected,” he says. Additionally, “if you want to create a religious community around a certain set of values, you’re allowed to do that.”

In addition, says the Academic Freedom Alliance’s Whittington, colleges can establish rules that aim to foster an environment conducive to learning. “You need to protect people from being harassed,” he says. “You can’t have faculty hurling insults at their students or bullying their students.”

Educational institutions that receive federal funding are in a complicated situation when it comes to the First Amendment because they are also governed by Title VI of the Civil Rights Act of 1964, which prohibits such institutions from allowing a hostile environment that prevents minority students from receiving an education. The U.S. Education Department has interpreted that to mean schools cannot restrict constitutionally protected speech unless it creates hostility that is “sufficiently serious to deny or limit a student’s ability to participate in or benefit from an educational program.” <sup>23</sup>

Proponents of campus diversity efforts used that argument last fall to successfully oppose a scheduled address at the Massachusetts Institute of Technology (MIT) by University of Chicago geophysics professor Dorian Abbot. He was to speak about the prospects for life beyond Earth’s solar system, but his invitation was rescinded because of his past criticism of some methods for increasing diversity.

Among those protesting Abbot’s appearance was Phoebe Cohen, chair of the Geosciences Department at Williams College, who

said underrepresented faculty and students are harmed when people speak against diversity programs.

“I spoke up because pushing back against flawed ‘free speech’ and ‘meritocracy’ narratives is vital,” she wrote, referring to the belief that anyone can succeed through skill and hard work, which critics dispute by arguing that U.S. society is not a level playing field. <sup>24</sup>



Dissident Chinese artist Badiucao displays his satirical artwork protesting China's hosting of the 2022 Winter Olympic Games because of its treatment of Uyghurs, a Muslim minority. After George Washington University students displayed the posters, other students interpreted them as anti-Chinese hate speech. The university said it would investigate but later relented. Critics say it is an example of how campus speech codes can be misused. (AFP/Getty Images/Piero Cruciatti)

“MIT’s earth sciences department has been making some big moves towards increasing diversity, equity, inclusion in their department,” which has been comprised primarily of white men, Cohen said. Inviting a critic of those efforts to speak was hypocritical and would discourage minorities from teaching or studying there, she said. “This kind of language . . . makes them feel like they have no place in STEM,” Cohen said, using the acronym for science, technology, engineering and mathematics. <sup>25</sup>

Such an effort to silence speech “is dangerous and has no place in a society that values uninhibited, robust and wide-open debate under our longstanding commitment to the values of free speech,” said Wencong Fa a senior attorney with the Pacific Legal Foundation, which defends Americans’ constitutional rights. <sup>26</sup>

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Even hate speech and other offensive expression need to be tolerated, said Fa, who opposes campus speech codes.

“Throughout our nation’s history, many unorthodox American thinkers have shared ideas that were considered offensive and unpopular in their time but later came to be revered,” he continued, noting that civil rights activists were once reviled by many whites in both the South and the North. <sup>27</sup>

Misapplied speech codes can produce ludicrous results, said Greg Lukianoff, president and CEO of FIRE.

“George Washington University started investigating a student group because they had posters protesting the Beijing Olympics and treatment of the Uyghurs,” Lukianoff said, referring to a mostly Muslim ethnic minority in western China who, according to human rights activists, suffer systemic persecution at the hands of Chinese authorities. “Things were clearly directed at the People’s Republic of China but were reinterpreted as being xenophobic and hateful to Chinese students.” <sup>28</sup>

Eric Kaufmann, an adjunct fellow at the conservative Manhattan Institute, predicts that free-speech regulation will be tightened in the future, because young people today tend to prioritize the well-being of disadvantaged people over free speech and other kinds of freedoms.

As those people age and come to dominate the country, he said, “they’re going to change the culture of organizations and probably even law to make it essentially to restrict free speech in the name of social justice. I think really the free speech culture . . . is very much on the back foot amongst this generation.” <sup>29</sup>

#### **Should books that some call inappropriate for younger students or that could upset older students be banned?**

“I think we should throw those books in a fire.”

So said Rabih Abuismail, a member of the Spotsylvania County School Board in Virginia, who was joined in his proposal by the board chair, Kirk Twigg. They said the books they want to burn are sexually explicit. <sup>30</sup>

Their advocacy of book-burning is extreme, but campaigns to remove books from libraries and classrooms are spreading across the country. And while moves to ban certain books have

occurred for decades, educators and librarians say current efforts are more extreme.

“What has taken us aback this year is the intensity with which school libraries are under attack,” said Nora Pelizzari, a spokeswoman for the National Coalition Against Censorship. <sup>31</sup>

Defenders of the banned books say critics frequently call books “pornographic” or “sexually explicit” when they address sexuality but are not actually pornography. “There’s no organized curricula for teaching about sexuality in grades K through 3, so it is a kind of a made-up problem,” says Christopher Finan, executive director of the National Coalition Against Censorship. But some books address LGBTQ characters “in a very nonexplicit way,” he says, and they draw criticism just for that.

He cites *And Tango Makes Three*, a book the publisher recommended for 2- to 5-year-olds about two male penguins who together raise a baby penguin. “There’s no specific mention of sexuality in it, but it was considered very offensive by many people and was on top-10 lists of challenged books for many years,” Finan says.

Books containing information about sex are among the most challenged, according to the ALA.

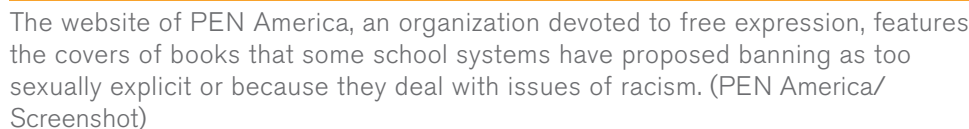
The involvement of politicians in book-banning activities this year is unusual, the library association said. Britten Follett, chief executive of content at Follett School Solutions, one of the country’s largest providers of K-12 books, agreed. “The politicization of the topic is what’s different,” he said. <sup>32</sup>

The conflict over teaching materials was heightened during the pandemic, when parents were often forced to oversee their children’s schoolwork while they studied at home. Many parents became outraged when they got a close look at some of the materials, said Kim Walters, founder of Oregonians for Liberty in Education, which promotes parental rights in schools. <sup>33</sup>

Parents’ reactions often were amplified by conservative activists, such as Christopher Rufo of the Manhattan Institute. Rufo says he has worked to alert parents about the treatment of race in schools, especially around critical race theory, a template for studying race that he calls “an existential threat to the United States.” <sup>34</sup> Educators say critical race theory — which holds that racism is



Republican Gov. Bill Lee of Tennessee said his state needs to “empower parents with a candid look into not only how their children are learning but what their children are learning.” Texas Gov. Greg Abbott, also a Republican, ordered state education officials to review schoolbooks for “pornography and other obscene content.” The Texas Education Agency — which oversees primary and secondary public schools — should report educators who make pornography available to minors “for prosecution to the fullest extent of the law,” he said. He reportedly did not specify how he defines “obscene content,” however. <sup>35</sup>



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Also in Texas, state Rep. Michael Krause in October asked school officials to tell him if their schools carry any of some 850 books that he said “might make students feel discomfort, guilt, anguish, or any other form of psychological distress because of their race or sex or convey that a student, by virtue of their race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.”

Krause’s list includes the Pulitzer-Prize-winning *Confessions of Nat Turner* by William Styron, a novel about a 19th-century revolt by enslaved Black Virginians, and the Pulitzer-nominated *Between the World and Me* by Ta-Nehisi Coates, a memoir about racism and the struggle against it. Book-banning in Texas would be particularly important because, as the nation’s second-most-populous state, Texas exerts enormous influence over what books get published for schools across the rest of the country. <sup>37</sup>

### Books with LGBTQ Content Were Most Challenged

Several books with LGBTQ content or sexually explicit material topped the list of the most challenged books in libraries, schools and universities across the country, according to the American Library Association. The most frequently challenged book was *Gender Queer* by Maia Kobabe.

#### Top Five Most Challenged Books of 2021

Rank	Title	Author	Reason for Challenge, Banning
1	Gender Queer	Maia Kobabe	LGBTQ content, sexually explicit images
2	Lawn Boy	Jonathan Evison	LGBTQ and sexually explicit content
3	All Boys Aren’t Blue	George M. Johnson	LGBTQ and sexually explicit content, profanity
4	Out of Darkness	Ashley Hope Perez	Depictions of abuse, sexually explicit content
5	The Hate U Give	Angie Thomas	Profanity, violence, “anti-police message”

Source: “Top 10 Most Challenged Books Lists,” American Library Association, accessed May 11, 2022, <https://tinyurl.com/yrkecfx4>

The mayor of Ridgeland, Miss., recently announced that he would not release funds to the Madison County Library System until it removed books with LGBTQ themes. Proposed legislation in Tennessee would prohibit textbooks that “promote LGBTQ issues or lifestyles.” <sup>38</sup>

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And a conservative group in Tennessee recently challenged books for young readers that address the civil rights movement. In September, a Pennsylvania school district lifted a year-long ban on books predominantly written by or about people of color. <sup>39</sup>

In several states, including Florida and Wyoming, critics sought criminal charges against librarians for stocking what some say are obscene books in sections for children and teens, but law enforcement officials said there was no basis for such action. <sup>40</sup>

The attacks come primarily from the right, but liberals have complained that certain books, such as *The Adventures of Huckleberry Finn*, *To Kill a Mockingbird* and *Of Mice and Men*, use racist language and depict racial stereotypes. The Mukilteo School Board in Washington state removed *Mockingbird* from the ninth-grade curriculum in January after staff members said it marginalized characters of color, celebrated “white saviorhood” and contained racial slurs.

The criticism ran counter to widespread admiration for *Mockingbird*, which readers in a December survey by *The New York Times Book Review* named the best book published in the last 125 years. <sup>41</sup>

Tiffany Justice — a former school board member in Indian River County, Fla., and a founder of the conservative group Moms for Liberty — said it is reasonable for parents to ask whether certain books, especially those that portray sexual activity, are appropriate for children. <sup>42</sup>

Even “parents who think of themselves as progressive” will be surprised by the content of some books recommended for young children, said Robert Pondiscio, a senior fellow at the center-right American Enterprise Institute, who focuses on K-12 education. He cited *How Mamas Love Their Babies*, which features a sex worker among the mothers, and a book titled *The Hips on the Drag Queen Go Swish, Swish, Swish*, a play on the children’s song “The Wheels on the Bus.” <sup>43</sup>

Pidluzny said taxpayers have the right to shape how children are taught. It is “the essence of representative democracy” for elected officials to consider constituents’ opinions when establishing school curricula, he said. <sup>44</sup>

The ACLU’s Sykes says that “no one would deny there is age appropriateness. Clearly there are certain things that are inappropriate for certain ages.”

But Wesleyan University's Roth — author of *Safe Enough Spaces: A Pragmatist's Approach to Inclusion, Free Speech, and Political Correctness on College Campuses* — says: "You don't need the state legislature to determine [age appropriateness]. That's what librarians do all the time."

Finan, of the National Coalition Against Censorship, says his organization believes that "educators can be trusted to determine what is age appropriate, and they should be allowed to make those decisions." If parents make the choice, he says, "the books that are going to be taught are going to be mere pabulum."

### **Should schools exclude speakers who might upset some students or violate the institution's values?**

Immediately after MIT cancelled University of Chicago geophysicist Abbot's scheduled speech about life in other solar systems, Princeton University invited him to give the same speech on the same day.

The two actions — and the universities' conflicting explanations for them — neatly encapsulated an aspect of the national debate on free speech: Should schools open their platforms to all comers, or exclude speakers who might upset some students or conflict with the institution's core values? MIT cancelled Abbot's speech not because of his research into life on other planets but because of his opposition to some efforts to make campuses more diverse.

MIT Provost Martin Schmidt said Abbot was disinvited because "the debate over both his views on diversity, equity, and inclusion and manner of presenting them were overshadowing the purpose and spirit" of his lecture. (Schmidt will become president of Rensselaer Polytechnic Institute in July.) <sup>45</sup>

"Besides freedom of speech," said Robert van der Hilst, head of MIT's Department of Earth, Atmospheric and Planetary Sciences, "we have the freedom to pick the speaker who best fits our needs." <sup>46</sup>

Princeton professor Robert George, who then invited Abbot to speak at his institution, said MIT "behaved disgracefully in capitulating to a politically motivated campaign," which he lamented is "part of a larger trend of the politicization of science." George heads Princeton's James Madison Program in American Ideals and Institutions and is a founder of the Academic Freedom Alliance, an association of college faculty that promotes academic freedom. <sup>47</sup>



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In April, a similar debate embroiled the University of Virginia, where former Vice President Mike Pence was scheduled to speak. Pence did speak, but a number of individuals and organizations opposed his appearance.

The university's student newspaper, *The Cavalier Daily*, accused Pence of making "hateful" and "dangerous" comments, citing his longtime opposition to gay rights and his refusal to support the Black Lives Matter movement. "Dangerous rhetoric is not entitled to a platform," the newspaper editorialized. "Speech that threatens the lives of those on [the university's] grounds is unjustifiable. . . . Hateful rhetoric is violent — and this is impermissible." <sup>48</sup>

A faculty group wrote a joint letter criticizing the editorial as a contradiction of the First Amendment and a disservice to victims of actual violence. Nickolaus Cabrera, who chairs the university's chapter of the conservative Young Americans for Freedom, said attempts to block the speech threatened the university's well-being more than Pence himself. <sup>49</sup>



A counterprotester at the University of Utah displays a sign he says was torn by those protesting a 2017 appearance by conservative commentator Ben Shapiro. Efforts to block right-wing speakers on college campuses represent "a deeply mistaken understanding of what universities do," one free speech advocate says. (Getty Images/George Frey)

At the University of Dayton, a private Catholic institution, the school's top administrators rescinded a speaking invitation for Tlaleng Mofokeng, the United Nations special rapporteur on the

right to health, on the grounds that her work in family planning was incompatible with the school's religious beliefs.

In deciding to disinvite Mofokeng, the university said her "background and work related to reproduction is inconsistent with the University's Catholic, Marianist mission and identity." <sup>50</sup>

Miranda Hallett, the associate director of the school's Human Rights Studies Program, complained that the decision to rescind the invitation "stopped a conversation from happening that could have been really important and valuable." <sup>51</sup>

Such efforts to block speakers represent "a deeply mistaken understanding of what universities do," says the Academic Freedom Alliance's Whittington. "Universities routinely provide platforms for people who have controversial opinions that are at odds with the majority of the community and may be at odds with a core institutional commitment."

Another principle that has been "central to the view of university administrators and faculty" is that students "should encounter people who will challenge them about things they hold quite dear," Whittington says.

The Foundation for Individual Rights in Education's Cohn agrees. "If you haven't felt uncomfortable at all during the course of your higher education, you should ask for a refund," he says. "You're supposed to be challenged about the way you think. If you haven't changed your mind lately, how do you know if it's still working?"

Wesleyan's President Roth likens the process to physical exercise. Students are "asked to think about things that expand your horizon," he says. "It's like working out. It's uncomfortable, but you get stronger when you push yourself."

Yet some free-speech advocates concede that there are some forms of speech that they would rather not hear on campus. "De-platforming is a bad idea, but that doesn't mean every viewpoint is equal and worthy of having lots of people listen," says the ACLU's Sykes.

And Roth says that "every free-speech advocate has some point, whether it's child pornography or advocating violence," at which they draw the line. For example, he says, "I don't think we should invite Nazis to campus just to show we believe in free speech." ■

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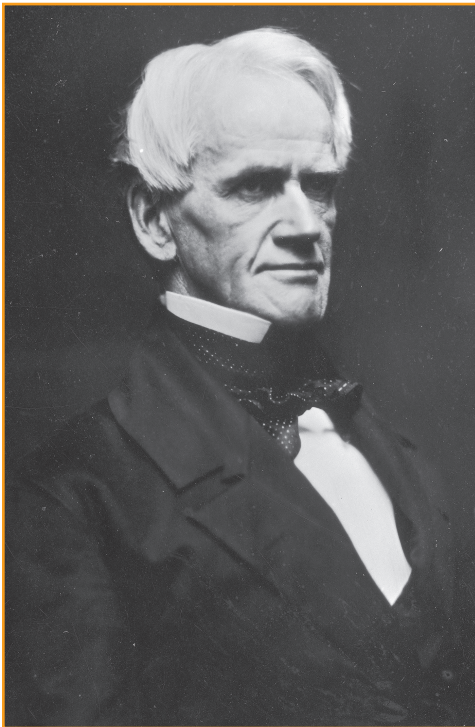
# Background

## Early Court Decisions

America's founders enshrined free speech in the First Amendment to the Constitution, but public and government support for the principle has waxed and waned in the centuries since.

"There's never been a golden age without threats to speech from one source or another," says Cohn.

Challenges often come during times of war or the fear of it. One of the earliest was the short-lived Sedition Act, adopted in 1798 amid fear of a war with France, but it was allowed to expire three years later. It forbade "false, scandalous, or malicious writing" against the government. <sup>52</sup>



Horace Mann was a 19th-century education reformer who promoted free education for all. However, he said controversial issues should not be aired in schools, due to fear that it would reduce support for education taxes. (Getty Images/Archive Photos/Fotosearch/Stringer)

Federal and state governments launched wide-ranging attacks on free speech during the Civil War. Newspaper reporters and editors were arrested for opposing the draft and discouraging enlistment in the Union armed forces. The Post Office refused to deliver some publications. Publications were ceased and presses were shut down. Reporters' telegraph dispatches were censored. <sup>53</sup>

In addition to wartime restrictions, schools "have always been a battleground" over speech, says the ACLU's Sykes. "They are places where we work out who we are and what we believe as a country, sometimes for the benefit of our students and sometimes not."

When it was adopted, the First Amendment prohibited

only the federal government from limiting free speech; it did not apply to private organizations, individuals, states, localities or public schools. According to University of Pennsylvania education historian Zimmerman, the principle of academic freedom was not widely recognized until the 20th century.

In fact, when universal education advocate Horace Mann began campaigning for educational reform in the late 1830s, free speech was far from his mind, Zimmerman says. Mann said that “if there’s ever a controversial issue that comes up in class, squelch it immediately,” Zimmerman says. “He was trying to make the case for a common school system and to get financing to schools. He believed if there were controversial issues being addressed in the schools, the people wouldn’t tax themselves” to pay for public education.

Teachers began demanding free speech and people started using the term academic freedom in the 1880s and ’90s, Zimmerman says. And as the Progressive movement emerged in the 1890s, controversial topics began to enter schools, he says. Progressives, responding to the negative effects of industrialization and urbanization in the late 19th century, advocated government action to combat poverty, the growth of slums, the exploitation of labor and the perversion of democracy by political machines. <sup>54</sup>

In education, Zimmerman says, Progressives “wanted to prepare citizens for democracy. Citizens had to be exposed to those issues because they had to learn the skills of debate and dialogue.” Current events became a classroom topic at this time, he says, “promoted by American newspapers in part to socialize young people to reading newspapers.”

With the advance of the concept of academic freedom in the early 20th century, free speech expanded on campuses. College instructors organized the American Association of University Professors (AAUP) in 1915 and created a Committee on Academic Freedom and Academic Tenure, which issued a statement of principles that was endorsed by the full association. <sup>55</sup>

America’s entry into World War I in 1917 brought new limitations on speech, designed to protect the war effort from internal dissent. Legislation prohibited criticism of the government or the war, and teachers were fired for criticizing the war, Zimmerman says. Fear of communists — who seized control of the Russian



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government in 1917 and established the Soviet Union in 1922 — also spurred speech restrictions, which continued after World War I ended, he says.

In 1919, the U.S. Supreme Court upheld the conviction of Charles Schenck, secretary of the Socialist Party of America, for writing and distributing a pamphlet that opposed the World War I military draft. The court held that the pamphlet posed a “clear and present danger” to the nation and therefore was not protected by the First Amendment. Writing the court’s opinion on the case, *Schenck v. United States*, Justice Oliver Wendell Holmes famously declared that “the most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.” <sup>56</sup> The court would clarify its position on such speech in 1969, when it ruled in *Brandenburg v. Ohio* that even advocating illegal conduct is protected unless the speech is likely to incite “imminent lawless action.” <sup>57</sup>

In 1925, the American Council on Education, an organization of colleges and universities and related associations, promulgated a condensed version of the 1915 statement on academic freedom and tenure, which was endorsed by the AAUP and the Association of American Colleges, now called the American Association of Colleges and Universities. <sup>58</sup>

In the 1930s, with wartime concerns about national security a fading memory and the country focused on rebuilding from the Depression, limits on speech also faded, Zimmerman says.

In 1940, the AAUP, the Association of American Colleges and the American Council on Education issued yet another statement of principles on academic freedom and tenure, which remains in effect today. <sup>59</sup>

The principles assert teachers’ rights to freedom in research, publication and classroom discussions, as well as their rights as citizens to speak on public matters without “institutional censorship or discipline.” In return, teachers’ speech should be accurate and respect others’ opinions. Once earning tenure, a teacher should be terminated “only for adequate cause.” <sup>60</sup>

As with earlier wars, World War II brought more restrictions on speech, Zimmerman says.

In 1938, as the threat of war grew, the House created the Un-American Activities Committee to investigate “the extent, character

and objects of un-American propaganda activities in the United States.” In 1940, with the war underway in Europe and Americans debating whether to become involved, Congress passed the Alien Registration Act, which prohibited advocating “the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence.” <sup>61</sup>

In 1943, with the United States now a part of the conflict, the Supreme Court first applied the First Amendment to public schools, ruling that students could not be forced to salute the American flag or recite the Pledge of Allegiance. <sup>62</sup>

### Academic Freedom

After the war, in 1949, New York state forbade public schools from hiring members of groups that advocated overthrow of the government, a law the Supreme Court upheld in 1952. That ruling was notable for Justice William O. Douglas’ dissent, the first time a justice recognized academic freedom as a right protected by the First Amendment. Fifteen years later, Douglas’ opinion prevailed when the court overturned the New York law, in the case of *Harry Keyishian v. the Board of Regents of the University of the State of New York*, declaring: “Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers involved.” <sup>63</sup>

In June 1957, the high court ruled that New Hampshire had violated the First Amendment by investigating a state university teacher as a subversive, ordering him to turn over a copy of one of his lectures and to disclose his knowledge of the New Hampshire Progressive Party and its members. In doing so, four of the justices issued a ringing endorsement of academic freedom.

“To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation,” Chief Justice Earl Warren wrote on behalf of himself and three colleagues. “Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.” <sup>64</sup>

Most courts since have said free speech rights can be applied to a private college if it has promised faculty and students that it will respect free speech and academic freedom, Cohn says. Those courts treat the promise as an enforceable contract, he says.

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Some courts have also recognized that academic freedom applies in K-12 schools, but that is rare, Sykes says.

## Free Speech Movement

The 1960s also witnessed the rise of the Free Speech Movement, which greatly boosted free expression on campuses across the country. The movement began at the University of California, Berkeley, in 1964, when students began protesting university rules that banned political activity on campus.

Berkeley students had used property near campus for fundraising, organizing and other political actions. When the university shut down that off-campus activity, students set up tables on Sproul Plaza in front of an administration building. The university reacted by suspending eight students for engaging in political activity there in September 1964. The conflict escalated until 800 students, representing a group calling itself the Free Speech Movement, occupied an administration building and library in December. The actions won students the right to conduct political activity in the plaza. <sup>65</sup>



Mario Savio, one of the leaders of the Free Speech Movement at the University of California, Berkeley, speaks at a 1964 rally after students took over an administration building to protest university rules against political activity on campus. (Getty Images/Bettmann/Contributor)

The Civil Rights Act, enacted in 1964, would introduce a new wrinkle to free speech on school and university campuses. Title VI of the act prohibited educational institutions from allowing a hostile environment to exist on campus that could prevent minority students from receiving an education. Some students said hate speech directed at them, such as racial slurs, created such an environment.

The Department of Education eventually issued guidelines stating that schools cannot restrict constitutionally protected speech unless it creates hostility that is “sufficiently serious to deny or limit a student’s ability to participate in or benefit from an educational program.” <sup>66</sup>

The principle of free speech for students was extended to secondary schools in 1969, when the Supreme Court in *Tinker v. Des Moines Independent Community School District* recognized a junior high school student’s free-speech rights. The court famously declared that students and teachers do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” <sup>67</sup>

Previewing today’s free-speech controversies more than a half-century ago, a 1969 letter to *The New York Times* lamented that college students were disrupting campus speakers, making it “increasingly difficult for speakers freely to express their views, for teachers to lecture and for audiences to listen.” <sup>68</sup>

In the 1970s, some college scholars began developing critical race theory, a template for studying racism in government institutions — setting the stage for current battles over that topic. <sup>69</sup>

At about the same time, colleges began to adopt speech codes that prohibited harassing or hateful speech directed at women or minorities. Many of the codes would be challenged and frequently overturned in the courts. In 1973, for instance, the Supreme Court ruled in *Papish v. Board of Curators* that “the mere dissemination of ideas — no matter how offensive to good taste — on a state university campus may not be shut off in the name alone of ‘conventions of decency.’ ” <sup>70</sup>

In 1982 free-speech advocates launched Banned Books Week to call attention to growing efforts to restrict access to books in schools, libraries and bookstores. The week is still celebrated each year, usually in September. <sup>71</sup>

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By 1995 — at least partly in response to federal legislation that prohibited sexual harassment at educational institutions — about 350 colleges had adopted speech codes. Such codes were struck down in at least 14 court cases between 1989 and 2012. In 1989, for instance, a federal court overturned the University of Michigan’s ban on speech that “stigmatizes or victimizes an individual” on the basis of race, ethnicity, religion, gender or sexual orientation. In 1991, a federal court declared the University of Wisconsin’s hate-speech ban unconstitutional. And in a 1999 Georgia case, the Supreme Court said that for someone to be convicted under anti-harassment legislation, the harassment must be “so severe, pervasive and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.” <sup>72</sup>

*The New York Times* in 2019 published its “1619 Project,” named for the year the first enslaved Africans were brought to this country. The project triggered a broad debate about the role slavery played in the nation’s founding and early development.

Responding to the project and similar writings, Robert Woodson Sr., founder of the Woodson Center, a nonprofit organization that promotes market-based efforts to improve low-income communities, said in 2020 that while “slavery and discrimination are part of our nation’s history, . . . America should not be defined solely by this ‘birth defect’ and that Black Americans should not be portrayed as perpetual hopeless victims.” <sup>73</sup>

The murder of a Black man, George Floyd, by a Minneapolis police officer that same year pushed many schools to give increased attention to racism, give marginalized groups a bigger role in curricula and provide anti-bias training to teachers.

At the same time, then-President Donald Trump ordered an end to training programs for federal employees that addressed critical race theory, white privilege and what he called “propaganda.” He did so by repealing an executive order by former President Barack Obama that had directed federal agencies to emphasize diversity and inclusion in training programs but never mentioned critical race theory. Neither did an order by President Biden, which rescinded Trump’s order after a federal judge ruled that it had violated the First Amendment. <sup>74</sup> ■



# Current Situation

## Speech and Race

More than three months after being suspended from a job he had not yet begun, Shapiro still awaits the Georgetown University Law School's decision about his future. <sup>75</sup>

A former vice president of the libertarian Cato Institute, Shapiro was to become a senior lecturer at the law school and executive director of the school's Center for the Constitution on Feb. 1. But on Jan. 26 he tweeted about Biden's promise to appoint a Black woman to replace retiring Supreme Court Justice Stephen Breyer: "Objectively best pick for Biden is Sri Srinivasan [a federal appeals court judge of South Asian heritage] who is solid prog & v smart. . . . But alas doesn't fit into latest intersectionality hierarchy so we'll get lesser black woman." <sup>76</sup>

The phrase "lesser black woman," in particular, touched off angry calls for Georgetown to rescind Shapiro's appointment. Calling the tweet "antithetical to the work that we do here every day to build inclusion, belonging and respect for diversity," Law School Dean William Treanor placed Shapiro on administrative leave and said he would investigate whether Shapiro had violated the school's policies on discrimination and harassment. <sup>77</sup>

Shapiro apologized, deleted the tweet and argued that the comment was protected by Georgetown policies on free expression. "I don't know why it's taking this long," he said in May, "but I look forward to rejoining the faculty and vindicating the values of free speech and academic freedom," Shapiro said. <sup>78</sup>

The Foundation for Individual Rights in Education agreed that the comment was protected under university policies. "Academic freedom protects Shapiro's views, regardless of whether we agree with them or not," FIRE said. A petition signed by more than 200 faculty from around the country argued that firing Shapiro "would be contrary to basic academic freedom principles." <sup>79</sup>

The controversy extended across the country to the University of California's law school, where, on March 1, a program that included Shapiro was shut down after student protesters shouted and banged tables every time he tried to speak. <sup>80</sup>

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The Shapiro controversy is one of numerous recent campus free-speech incidents that include individual disputes, employer-imposed speech limitations, restrictive state legislation and lawsuits seeking to overturn restraints.

## Legislation And Litigation

At least 13 states recently adopted laws or rules on how race can be taught in public schools, and 27 others are considering such legislation. According to a study this year by World Population Review, seven states have banned teaching critical race theory and another 16 are considering doing so, even though educators say the subject is not taught below the graduate level. At least nine states are considering banning library books with LGBTQ content or forbidding teachers from using such words as “transgender.” <sup>81</sup>

Teachers and administrators say the new regulations have changed how the teachers run their classes.

For example, in Florida, Osceola County School District Superintendent Debra Pace said she cancelled a planned professional development session about civil rights history because Flagler College History Professor J. Michael Butler did not submit his presentation for review “in light of the current conversations across our state and in our community about critical race theory.” Butler said his presentation did not mention the theory. <sup>82</sup>

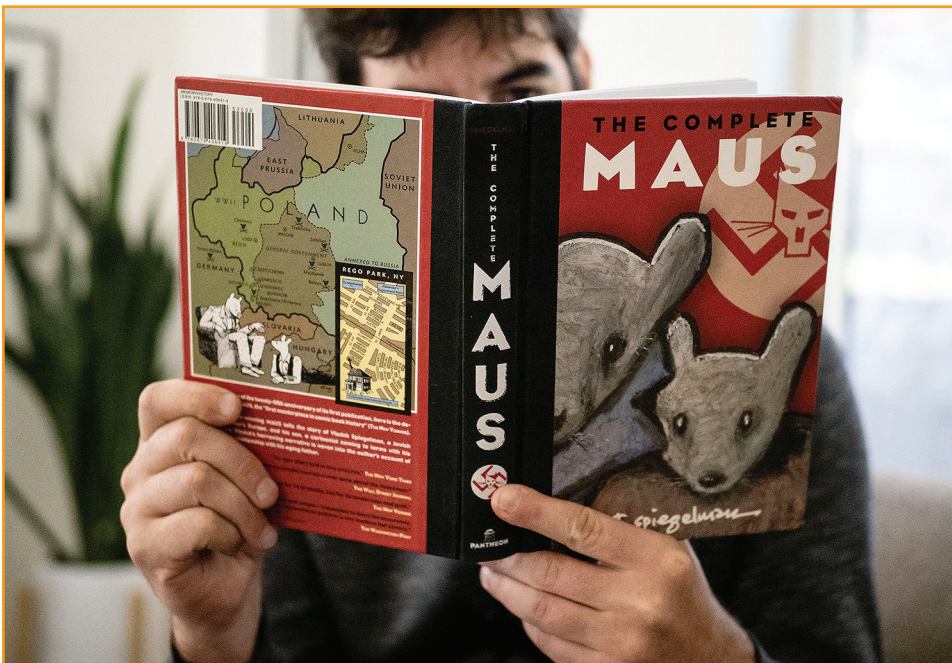
And West Jordan Middle School near Salt Lake City canceled a popular course called American Institutions, in part because it addresses the Black Lives Matter movement. The school’s principal, D. Rae Garrison, also told a student organization to change its name from Black and Proud to the Black Student Alliance. <sup>83</sup>

Florida’s Legislature has been especially active. One new law forbids public school teachers from using educational materials developed from the 1619 Project. Another forbids teaching about sexual orientation or gender identity in grades K through 3 and requires that addressing those topics in higher grades be “age appropriate.” <sup>84</sup>

Florida’s universities also have implemented speech restrictions. University of Florida faculty were told they could not testify as

experts in opposition to state government policies, because the university is an arm of that government. After criticism — including from the university’s accrediting body — school officials said professors could testify on their own time, as long as they did not use university resources. The teachers sued on First Amendment grounds anyway, because the conflict-of-interest policy remained in place. <sup>85</sup>

In Tennessee, the McMinn County School Board removed the graphic novel *Maus* from its eighth-grade curriculum, touching off a controversy in January. The book about the Holocaust, the first graphic novel to win the Pulitzer Prize, depicts Jews with mouse heads and Nazis with cat heads and contains images of violence and nudity. The book’s author, Art Spiegelman, said the school board appears to want to “teach a nicer Holocaust.” <sup>86</sup>



A reader holds a copy of *Maus*, a graphic novel about the Holocaust by Art Spiegelman. The book was removed from the eighth-grade curriculum in McMinn County, Tenn., in January after the school board said it contained images of nudity and violence that were inappropriate for eighth graders. (AFP/Getty Images/Maro Siranosian)

But reviewing the graphic images in the book, English professor Thomas Balazs of the University of Tennessee in Chattanooga said it is reasonable to argue that *Maus* is not appropriate for eighth graders. “The whole tone and tenor of the novel is adult,” he said. “A lot of it will simply go over their heads.” <sup>87</sup>

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Those opposed to the book say they “simply want to protect kids from encountering the world’s worst horrors before they are old enough to understand them,” Balazs said. “And there is nothing sinister or bigoted about that.” <sup>88</sup>

Individual teachers also have been attacked for their speech.

Michael Phillips, a history professor at Collin College in McKinney, Texas — which FIRE last year called one of the 10 worst American colleges for free speech — said in January that he is being dismissed because he called for removal of Confederate monuments in Dallas and criticized the school’s COVID-19 policies, which prohibited any mention of wearing masks to class.

Phillips — recently named “Educator of the Year” by the East Texas Historical Association — is the fourth professor within a year to allege being fired because of their speech. College officials said they would not comment on personnel matters. <sup>89</sup>

In Colorado, two Regis Jesuit High School teachers who served as advisers to the student magazine were fired in December after the magazine published a commentary supporting abortion rights in its winter edition. The school’s human resources director accused the teachers of not supporting the school’s “mission and faith dimensions.” Denver Archbishop Samuel Aquila — who has said Biden should not receive communion because of his stance supporting abortion rights — said “faculty and staff of Catholic schools must be pro-life.” <sup>90</sup>

People with free-speech grievances often turn to the courts for relief. “It’s not that they [courts] always get it right,” says FIRE’s Cohn. “But they are more reliable than any other institution.”

For example, Phillips filed a federal suit against Collin College in March, alleging he was fired for exercising his First Amendment rights. Two other former Collin professors had filed similar suits earlier. One, historian Lora Burnett, recently received \$70,000 plus attorney’s fees in a settlement with the school. <sup>91</sup>

A Virginia lawsuit enabled elementary school gym teacher Tanner Cross to keep his job after he was suspended for publicly criticizing and refusing to follow a school district policy to use transgender students’ chosen names and pronouns. Cross said forcing him to do so violated his religious beliefs that a biological boy is not a girl and a biological girl is not a boy, and that the district’s banning him from future school board meetings abridged his free-speech rights.

The Virginia Supreme Court upheld a lower court order that Cross be reinstated while his suit proceeds. The school in November freed Cross from the requirements to use the pronouns and not attend board meetings. Cross, joined by two other teachers, continued the suit in hopes that a court will find the policy unconstitutional. <sup>92</sup>

Spurred by Cross' case, Virginia lawmakers in March passed a bill to protect teachers' and other public employees' right to speak publicly against government proposals, even when the proposals affect the employees' workplaces. <sup>93</sup>

## Outlook

### Cautious Optimism

Experts tend to be cautiously optimistic — but not confident — that a climate allowing free speech to flourish will prevail in the United States.

Whittington, of the Academic Freedom Alliance, who describes himself as naturally optimistic, said he is worried that “we are in a dangerous situation” when it comes to speech. “I think things could get a lot worse if we’re not careful,” he said, “but I don’t think all is lost. <sup>94</sup>

“There’s an awful lot of people who really want to hear the debate and want to hear the arguments and want to think these issues through and are persuadable and can be persuaded,” which is “very encouraging for the long term,” he said. “I think this is a fight that could be won, but we actually have to engage in the fight.” <sup>95</sup>

Zimmerman, the University of Pennsylvania historian, says “the current moment has darkened my own faith a little because we don’t trust each other.” But, he adds, “I think Americans are people of very good faith at the end of the day, and this moment will not last. They never last.”



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Matthew Feeney, director of the Project on Emerging Technologies at the libertarian Cato Institute, foresees changes in social media use that will enhance free speech on the Internet.


No social media site can allow unfettered speech, Feeney said, because of the “wide range of awful but lawful speech” that exists, plus the “spam and other intrusive legal speech [that] would ruin the online experience.” In addition, with Republicans complaining there is too much regulation by social media and Democrats saying there is too little, Congress will not be able to legislate on the matter, he said.

Instead, he predicted that social media users will shift to small, decentralized platforms that will impose fewer rules than those applied by giants such as Facebook and Twitter. <sup>96</sup>

The Manhattan Institute’s Kaufmann predicted that regulations on speech — especially hate speech — will be tightened in the future, because today’s young people tend to prioritize social justice over free speech. <sup>97</sup>

Joyce McConnell, provost and vice president for academic affairs at West Virginia University, however, expects today’s young to support free speech as they age. As college students, they are part of a diverse student body that engages in “the free exchange of ideas,” she said. <sup>98</sup>

Pano Kanelos, president of the newly created University of Austin in Texas, which says it is devoted to preserving free speech, says that in today’s “political-hothouse moment,” it is “difficult to engage with each other in productive dialogue.” (*See Feature.*)

However, he adds, “Universities institutionally span millennia and have seen all sorts of difficult moments. I think the fever will break as a culture, and we will pass this one.” 

## Notes

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A new committee in Oklahoma created by the legislature will oversee campus discourse at public institutions of higher education.

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# At Issue:

Should a school ban speakers who disagree with its core values?

**Yes**



**TRACI YODER**

Director of Research and Education, National Lawyers Guild

EXCERPTED FROM “FREE SPEECH ON CAMPUS: A CRITICAL ANALYSIS,”  
BY TRACI YODER, NATIONAL LAWYERS GUILD

On university campuses, reactionary student groups and their supporters draw on First Amendment arguments to promote agendas that are openly racist, sexist, homophobic, transphobic, xenophobic and ableist (or discriminating against persons with disabilities). They claim that any resistance to these hateful ideologies violates legally protected speech.

Far-right conservative and fascist ideologies are not simply based on logical and reasonable arguments but depend on the irrational mobilization of hate, fear and anger against some of the most marginalized and vulnerable populations. Offering them an open forum and vigorously defending their right to promote harmful speech confers legitimacy on their positions as being equally as acceptable as any other.

The liberal free speech model also does not take into account the asymmetry of different positions and the reality of unequal power relations. Arguments about free speech rarely address the significant power imbalances that exist between, for example, a wealthy white speaker with the backing of a multimillion-dollar organization and members of the populations affected by their words (immigrants, people of color, low-wage workers, etc.). As a result, the rights of those without connections or wealth to equally participate in public discourse are lost in the abstract notion of free speech. The “marketplace of ideas” is like any other marketplace: Those with the most resources dominate.

While liberal advocates are quick to invoke First Amendment arguments to allow all speech, other considerations should also be taken into account, such as: Who is able and allowed to speak, under what conditions and with what consequences? What voices are silenced and what forms of dissent are possible (or not)? Universities can use free speech principles to justify invitations to xenophobic and hate-mongering speakers, but not inviting or funding these people is not necessarily a violation of their free speech, especially when they have many other platforms for getting their message out.

Private schools, for example, are not bound by the First Amendment in the same ways as public schools and can therefore establish policies about hate speech that limit invitations and/or funding to reactionary speakers

and groups. When the views of speakers are dangerous to other people, universities should consider the implications and balance the need for a diversity of viewpoints with the consequences of invalidating the humanity or rights of entire groups of already disadvantaged people.

### No



**JONATHAN FRIEDMAN**

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WRITTEN FOR *CQ RESEARCHER*, MAY 2022

Bans and prohibitions on speakers are toxic policies for educational institutions. As organizations charged with fostering learning, exploration, open inquiry and creativity, such policies send an alarming message to students that words, concepts or ideas can and should be barred by government or institutional authorities on whatever basis those in power so choose. A commitment to liberal education, democracy, diversity, inclusion and pluralism mandate that institutions remain open to a range of ideas.

The First Amendment makes clear that government entities — such as public schools and universities — cannot discriminate or prohibit speech on the basis of viewpoint, and cannot restrict speech except within very specific categories. Pre-emptive prohibitions or reactive bans would violate this cardinal constitutional principle.

Numerous controversies have arisen in higher education in recent years about decisions of student groups, faculty members and college leaders to extend invitations to certain individuals to speak. But the response should not be to demand or institute bans. Rather, those offended by such speakers should exercise their own right to free expression to make their critical views known. Robust protections for speech serve the interests of both the invited speakers and their critics.

Further, the idea that central university authorities could or should wield some veto power over such invitations undermines the mission of the academy and its commitments to diversity, debate and dissent. The decentralized system that exists on most campuses is more empowering, democratic and appropriate to organizations meant to advance human knowledge, understanding and thought.

A university's core values — by definition — include academic freedom and open inquiry, whether it is a public or private institution. While it would be less problematic constitutionally to ban speakers at a private institution, it would still be a pernicious policy that directly contravenes institutional commitments to teaching, research and enlightenment.

A commitment to openness does not necessitate that a private educational institution invite any and all speakers. It just means that its leaders should not prohibit speakers.

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A society thrives on curiosity, and education is the linchpin for that. To sustain democracy, we must support educational institutions committed to openness.

Bans and prohibitions do just the opposite. They foreclose students' educational horizons and dictate orthodoxy and conformity. They can crush the spirit of discovery that should animate learners' interests. To inspire future researchers, thinkers, leaders and citizens, educational institutions must stand firm against such prohibitions.

## Discussion Questions

*Here are some issues to consider regarding free speech in schools and colleges:*

- Some state legislators have placed restrictions on the teaching of the history of racism in the United States. What reasons do they give for these restrictions? Do you think these restrictions are justified, and why?
- Should colleges have speech codes to control hate speech and other forms of offensive expression on campus?
- Some experts say social media amplifies free-speech conflicts by making it much easier to launch an effort to suppress speech. Do you agree? If so, what can or should be done about this?
- In some school districts, books have been removed from libraries because of sexual content that some people view as age-inappropriate. What is your view of such restrictions?
- Is free speech of such overriding importance that it should outweigh all other values? If not, which values are more important?
- To what extent, if at all, should government officials be involved in deciding what is appropriate speech? ■



# Suburban Mothers Resist Book Bans

***“It’s our job as parents to make sure these books do not disappear.”***

Katie Paris, a suburban mom in Cleveland, cut her political teeth working for left-leaning organizations in Washington, D.C. She still dabbles in Democratic Party activism, but she has become best known across the country as the founder in 2016 of the activist group Red Wine & Blue — and that organization’s Book Ban Busters project.

Seeking to win support with self-deprecating humor that pokes fun at stereotypes of suburban housewives, Red Wine and Blue has grown to some 300,000 left-leaning mothers who are active across much of the country. Paris calls the group’s members “PTA mamas and digital divas” who mobilize to share information and contact government decision-makers through a mix of social and political activities. <sup>1</sup>

When the organization launched Banned Book Busters early last year, Paris called it “an exciting and powerful effort to galvanize the energy of the hundreds of thousands of suburban women who have been stepping up in their own communities to protect their kids’ education and the country they love.”

She said she was motivated to form the group by incidents such as a Nashville, Tenn., pastor burning *Harry Potter* and *Twilight* books. She called the book-burning “horrifying, but hardly surprising. There’s a straight line from book banning to book burning.” <sup>2</sup>

The group conducts “Troublemaker Trainings” to teach activists effective ways to oppose book bans, recruit more members, testify at school board meetings and publicize what is happening in their schools. The organization created a website with an interactive map that shows the status of book bans around the country and a form for reporting local bans. <sup>3</sup>

It advises members to “present a calm face to counter the yelling and shouting” and to tell ban advocates that “you can decide what is right for your child, but you don’t get to dictate what’s right for other families.” <sup>4</sup>

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The most-challenged books tend to address sex or sexual orientation. Often critics say the books are aimed at audiences that are too young for the content.

“The bottom line is if parents are concerned about something, politicians need to pay attention,” said Tiffany Justice, a former school board member in Florida and a founder of the conservative group Moms for Liberty, which seeks to increase parental influence in schools. “There are different stages of development of sexuality in our lives, and when that’s disrupted, it can have horrible long-term effects,” she said. <sup>5</sup>

Red Wine and Blue has local chapters around the country. “We do everything that we can to make parents aware of what’s going on,” said Janice Robinson, who heads the organization’s North Carolina program. <sup>6</sup>

The affiliates are not alone. Other local groups are taking creative actions to combat bans, some working with Book Ban Busters and some acting on their own.



Vandegrift High School Banned Book Club members Angela Gutierrez, Jaea Rivera and Isabela Rotondaro (left to right) chat during a recent club meeting in the school's library in Austin, Texas. Similar organizations are sprouting up around the country to fight efforts to ban certain books from libraries and classrooms. (Getty Images/*The Washington Post*/Montinique Monroe)

The Pennridge Improvement Project in Pennsylvania began a drive to purchase banned books and place them in Little Free Libraries, for instance. Other local organizations include the Florida Freedom to Read Project and the Round Rock Black Parents Association in Texas. <sup>7</sup>

“It is our job as parents to make sure these books do not disappear,” said Stephana Ferrell, a mother of two who co-founded the Florida group. “Our students have the right to access diverse materials in their school library.” <sup>8</sup>

Florida Freedom to Read works with other parent groups in the state on a variety of education issues. In addition to lobbying on behalf of challenged books, the organization monitors how schools and libraries are responding to such challenges.

For example, one library’s public records said the book *All Boys Aren’t Blue* — a memoir of the childhood, adolescence and college years of a nonbinary African American — was in stock and available, Ferrell said. “We had a high school student go in there and try to ask for it and they said, ‘Sorry, that book’s not available right now for checkout.’ ” She called that “a shadow ban” on the book. <sup>9</sup>

Students also have joined the fight. At Vandegrift High School in Austin, Texas, for example, they formed the Banned Book Club, which meets every other week to discuss books banned at their school and to post reports about the books on Instagram. Students in Pennsylvania’s Central York School District protested daily outside their high school until bans on more than 300 books, films and articles, mostly by Black and Hispanic authors, were lifted. And two Missouri students filed suit seeking to return banned books to shelves in the Wentzville School District. <sup>10</sup>

Jen Cousins, the other Florida Freedom to Read co-founder, has a child who identifies as nonbinary. The book *Gender Queer* — which has been the target of multiple attacks — gave “comfort” to her child, she said, and could be helpful to other children. <sup>11</sup>

Paris said it is clear “what the issue is here. The books being targeted are almost entirely about black people and LGBT people. If sexual content was the issue, they’d be targeting Shakespeare or Ernest Hemingway, the Bible and we’d be standing up against banning those books, too.” <sup>12</sup>

This is not the 1950’s, Paris said. “Every kid should be equipped for the 21st century, and that means learning real history, not fairy tales.” <sup>13</sup>

— **Tom Price**

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# New Texas University to Be Dedicated to Free Speech

***“Faculty are being treated like thought criminals.”***

Pano Kanelos, the former president of St. John’s College in Annapolis, Md., where the curriculum focuses on the so-called Great Books of Western civilization — ranging from the early Greek scholars through William Shakespeare, Geoffrey Chaucer and Albert Camus — is now helping create a new institution that he says will be equally distinct.

The University of Austin — self-abbreviated as UATX — will be devoted to free expression, which Kanelos says is in short supply on U.S. campuses today.

“On our quads, faculty are being treated like thought criminals,” Kanelos said when he announced the UATX project in November. “We had thought such censoriousness was possible only under oppressive regimes in distant lands. But it turns out that fear can become endemic in a free society. It can become most acute in the one place — the university — that is supposed to *defend* [free speech].” <sup>1</sup>

The UATX website expresses alarm at “the illiberalism and censoriousness prevalent in America’s most prestigious universities.” <sup>2</sup>

Those comments sparked strong criticism, including the resignation of some educators who had joined the nascent school’s advisory board. “The new university made a number of statements about higher education . . . that diverged very significantly from my own views,” said University of Chicago Chancellor Robert Zimmer, who left the board three days after UATX’s founding was announced. <sup>3</sup>

West Virginia University President E. Gordon Gee remained on the board, but said, “I do not agree other universities are no longer seeking the truth, nor do I feel that higher education is irreparably broken.” <sup>4</sup>

Jonathan Friedman, director of free expression and education at PEN America, an organization that defends free speech, warns,



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“We have to be very careful about speaking in broad terms about higher education, because we’re talking about thousands of campuses with hundreds of thousands of students.”

Since his announcement remarks, Kanelos has spoken less dramatically.

“It is undoubtedly true that faculty and students across higher education are becoming more and more guarded about what they express inside and outside the classroom,” he says. “This doesn’t mean that every student and faculty member feels the oppressive weight of censorship. But even a few incidents can be chilling.”

Campus free speech is not at “DEFCON 1,” Kanelos says, using the military term for the highest threat level. “But we may end up there if we don’t do something about this.”

Kanelos says UATX will be about more than free speech. He promises that tuition will be more affordable than other colleges because the institution is focusing resources on academics more than amenities and is dedicated to avoiding administrative excess and overreach. He also plans to revise the traditional curriculum because “we really haven’t changed the curriculum model in about 130 years.”

Kanelos acknowledges he has set an ambitious timetable for getting the school up and running. The first classes are scheduled to be taught this summer, and undergraduate and graduate programs are to begin in the fall of 2024.



Pano Kanelos. (Pano Kanelos/Screenshot)

He and his associates are acting urgently, he says, after having raised more than \$100 million and receiving more than 5,000 inquiries from prospective faculty. They are in the process of accepting a donation of 500 acres of land on which to build the campus, and they have begun initial construction planning.

Kanelos expects to have a prototype of the campus up and running by 2024, with limited initial enrollment. He hopes the student body will eventually total 4,000 undergraduates and 1,000 graduate students. Heather Berg, a spokesperson for the Higher Learning Commission, an accrediting agency, said accreditation can take from one to seven years, which could pose a big challenge to Kanelos' timetable.<sup>5</sup>

This summer's classes will be team-taught by at least two scholars with differing viewpoints, Kanelos said.<sup>6</sup> Topics will include "a critical look at capitalism" and "creative approaches to climate change," he says. Year-long fellowships in leadership will begin in the fall, he adds.

When the undergraduate program begins, freshmen will study humanities, social sciences and natural sciences, "primarily through the lens of the great questions that have been asked in these areas over time," Kanelos says. The curriculum will also include classes in such practical topics as computer coding, foreign languages and musical instruments, he says.

In their junior and senior years, students will study as junior fellows in one of the school's "centers of inquiry," which UATX describes as "a combination of interdisciplinary research institutes, think tanks, and start-up incubators." The students also will complete a major research project that they began during their first two years of study.<sup>7</sup>

Citing the conservative bent among many of the UATX founders and early supporters, some critics question whether the school will differ from existing institutions only in its political leanings. Others — such as *MSNBC* columnist Katelyn Burns, *The New Republic's* Alex Shephard and West Virginia University political scientist Scott Crichlow — labeled the university a "grift," akin to Trump University, built on a false notion of campus illiberalism.<sup>8</sup>

But Kanelos says, "We live in an age of false political binaries. If people on the right are engaged in your project, it must be a project of the right. We have no intention of creating a conservative university."

The board of advisors includes conservative figures, such as former American Enterprise Institute President Arthur Brooks, as well as former ACLU President Nadine Strossen and former Harvard President and Treasury Secretary Larry Summers.

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“If everybody at University of Austin, or most people, are on the right or on either end of the political spectrum . . . we will have failed,” Kanelos told the *Jewish Insider*.<sup>9</sup>

### — Tom Price

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<sup>1</sup> Pano Kanelos, “We Can’t Wait for Universities to Fix Themselves, So We’re Starting a New One,” *Common Sense*, Nov. 8, 2021, <https://tinyurl.com/2sby42y8>.

<sup>2</sup> Valeria Olivares, “University of Austin launched by college critics in response to a culture of ‘censorship,’ ” *The Dallas Morning News*, Nov. 9, 2021, <https://tinyurl.com/54b7cymn>.

<sup>3</sup> Derek Robertson, “It’s the University of Austin Against Everyone — Including Itself,” *Politico*, Nov. 17, 2021, <https://tinyurl.com/nhdtttd5v>.

<sup>4</sup> *Ibid.*

<sup>5</sup> Megan Menchaca, “University of Austin seeks accreditation and land,” *Austin American-Statesman*, Nov. 15, 2021, <https://tinyurl.com/3xsnweek>.

<sup>6</sup> Gabby Deutch, “An interview with the University of Austin’s founding president,” *Jewish Insider*, Nov. 15, 2021, <https://tinyurl.com/2vad2kre>.

<sup>7</sup> “The UATX Undergraduate Curriculum,” University of Austin, <https://tinyurl.com/4yxdmhxw>.

<sup>8</sup> Katelyn Burns, “The ‘University of Austin’ is the best cancel culture grift yet,” *MSNBC*, Nov. 15, 2021, <https://tinyurl.com/4ryshtbp>; Alex Shephard, “Do We Really Need an Anti-Woke University?” *The New Republic*, Nov. 8, 2021, <https://tinyurl.com/32smnbjt>; and Jim Bissett, “Gee: U. of Austin advisory post all about ideas and dialogue — not changing jobs,” *The Dominion Post*, Nov. 8, 2021, <https://tinyurl.com/4avrjwmk>.

<sup>9</sup> Deutch, *op. cit.*

## Chronology

**1700s-1800s** First Amendment protects free speech but does not extend to schools.

### 1791

First Amendment to U.S. Constitution is ratified, saying “Congress shall make no law . . . abridging the freedom of speech.”

### 1798

As the country faces a possible war with France, Congress passes the Sedition Act, which bans false or malicious criticism of the government. The law is allowed to expire in 1801.

### 1837

Horace Mann becomes secretary of new Massachusetts Board of Education and begins campaigning for reforms that include universal public education and better teacher training — but do not include a robust call for free speech.

### 1861-65

During the Civil War, government launches wide-ranging attacks on free speech — jailing journalists, closing some publications and censoring reporters' telegraph dispatches.

### 1868

States ratify 14th Amendment, which the Supreme Court later uses to extend free-speech provisions to state and local governments, including public schools.

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**1900-1950s** Support for free speech waxes and wanes.

### 1915

College teachers form American Association of University Professors, which calls for recognition of academic freedom and tenure.

### 1918

With the United States engaged in World War I, Congress passes the Sedition Act, banning criticism of the government or the war; the law is repealed in 1920. . . . Fear of communism also leads to speech restrictions.

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## 1938

In the period leading up to World War II, speech restrictions are revived, including the creation of the House Un-American Activities Committee to investigate “un-American propaganda activities in the United States.”

## 1943

Despite raging war, Supreme Court applies the First Amendment to public schools, ruling students cannot be forced to salute the American flag or recite the Pledge of Allegiance.

## 1949

New York forbids public schools from hiring members of groups that advocate the overthrow of the government.

## 1952

Supreme Court upholds the New York law, but in a dissent, William O. Douglas becomes first justice to say First Amendment protects academic freedom.

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**1960s-1970s** Free speech restrictions are rolled back.

## 1964

Free Speech Movement begins at University of California, Berkeley, when students protest restrictions on campus political activity and the university suspends activists. University eventually lifts restrictions, and the movement spreads nationwide.

## 1967

Supreme Court overturns New York law that restricted teacher employment. . . . The high court also invalidates a New Hampshire law that allowed investigating a state university teacher as a subversive, declaring “Teachers and students must always remain free to inquire, to study and to evaluate [or] our civilization will stagnate and die.”



### 1969

Recognizing a junior high school student's free-speech rights, Supreme Court declares that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

### 1973

Supreme Court says state universities cannot ban offensive speech.

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### 1980s-Present

Attacks on free speech hit record levels.

### 1982

Free-speech advocates launch annual Banned Books Week to highlight efforts to restrict access to books in schools, libraries and bookstores.

### 1995

About 350 colleges have adopted speech codes that aim to restrict abusive speech and harassment.

### 1999

Supreme Court says hate speech can be banned if it deprives victims of access to educational opportunities, which would violate their rights under the Civil Rights Act of 1964, a law that protects minorities' access to public education.

### 2012

University speech codes have been struck down in at least 14 court cases over the past 23 years.

### 2019

*The New York Times* publishes the "1619 Project," which contends slavery played a greater role in America's development than most people realize. Project becomes target of attacks by conservatives who say it exaggerates racism's impact.

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## 2021

There have been 729 demands to remove 1,597 books from libraries and schools during the year, nearly double the challenges in 2019.

## 2022

PEN America, an organization that defends free expression, says state legislators introduced 175 bills restricting teachers' speech in 40 states from the beginning of 2021 to April 2022.

# For More Information

**Academic Freedom Alliance**, 10 Nassau St., #32, Princeton, NJ 08542; [academicfreedom.org](http://academicfreedom.org). Free-speech advocacy group that publishes historical and current information about the state of free expression on campus.

**American Civil Liberties Union**, 125 Broad St., 18th Floor, New York, NY 10004; 212-549-2500; [www.aclu.org](http://www.aclu.org). Nonprofit advocacy group that represents clients defending their civil rights in court, lobbies government bodies and publishes reports on individual rights and how to assert them.

**American Library Association**, 225 N. Michigan Ave., Suite 1300, Chicago, IL 60601; 800-545-2433; [ala.org](http://ala.org). Promotes the development and improvement of libraries and opposes book bans.

**Becket Fund for Religious Liberty**, 1919 Pennsylvania Ave., N.W., Washington, DC, 20006; 202-955-0095; [www.becketlaw.org](http://www.becketlaw.org). Public interest legal and educational institute that protects free expression for all religions.

**Foundation for Individual Rights in Education**, 510 Walnut St., Suite 1250, Philadelphia, PA 19106; 215-717-3473; [www.thefire.org](http://www.thefire.org). Defends free speech and other civil rights at higher education institutions.

**National Coalition Against Censorship**, 19 Fulton St., Suite 407, New York, NY 10038; 212-807-6222; [ncac.org](http://ncac.org). Advocates for free expression and publishes information about free-speech issues and steps individuals can take to fight censorship.

## About the Author



**Tom Price**, a contributing writer for *CQ Researcher*, is a Washington-based freelance journalist who previously was a correspondent in the Cox Newspapers Washington Bureau and chief politics writer for *The Dayton Daily News* and *The (Dayton) Journal Herald*. He is author or co-author of five books including, with former U.S. Rep. Tony Hall, D-Ohio, *Changing The Face of Hunger: One Man's Story of How Liberals, Conservatives, Democrats, Republicans and People of Faith*

*Are Joining Forces to Help the Hungry, the Poor and the Oppressed*. His previous *CQ Researcher* reports include examinations of race in college admissions, college student debt, the state of the news media and polarization in America.