

How State Lawmakers Can Restore Freedom on Campus

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Something is wrong with American higher education. Colleges and universities offer encomiums to free speech and inquiry, which the First Amendment protects, at least in theory, at public institutions. But the unmistakable trend in higher education is to police speech and thought.

Colleges and universities promulgate speech codes. Administrators, professors and students encourage “trigger warnings” and demand punishment for “microaggressions”—a pretentious word for inadvertent slights—and insist on “safe spaces” from which troubling opinions and ideas are banished. Campus authorities disinvite controversial speakers and look the other way when students shout down dissenters who somehow slipped through. The transparent goal is to prevent any deviation from the reigning orthodoxy.

Freedom of speech in higher education has been beleaguered before. In the 1960s many students—and some faculty—invoked freedom of speech to protect their denunciations of the establishment. But they were quick to pull up the drawbridge behind them, disrupting lecturers who deviated from their party’s line or denying them a campus forum. Now they and their progeny are the establishment laying siege to freedom of speech.

The yawning gap between universities’ role as citadels of free inquiry and the ugly reality of campus censorship is often the fault of administrators who share the progressive belief that universities must restrict speech to protect the sensitivities of minorities and women. Even

those who aren't ideologically committed can be wary of bad publicity. They often capitulate to the loudest and angriest demonstrators to get controversies off the front page.

The democratic process can change this balance of incentives. At the Heritage Foundation on Tuesday, the Phoenix-based Goldwater Institute, in collaboration with Stanley Kurtz of the Ethics and Public Policy Center, will unveil "model state-level legislation designed to safeguard freedom of speech at America's public university systems."

The proposal is aimed at state universities because they are subject to the First Amendment and depend for their mandate and their revenues on state governments. But the key provisions are inspired by three exemplary private university reports that expound the principles of free speech in higher education: the University of Chicago's Kalven Committee Report on the University's Role in Political and Social Action (1967), the Report of the Committee on Freedom of Expression at Yale (1974) and the Report of the Committee on Freedom of Expression (2015), also from the University of Chicago.

The model legislation would encourage boards of trustees, which hire and fire, and legislatures, which hold the power of the purse, to exercise oversight more effectively and thereby alter the balance of incentives for administrators. Specifically, it would do the following:

- Require each public university to abolish existing speech codes and publish a formal statement affirming that the institution's primary function is "the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate," and that it will "strive to ensure the fullest degree of intellectual freedom and free expression."
- Require public universities to impose disciplinary sanctions on those on campus who infringe the rights of others to free expression, while affording due-process rights to the accused.
- Instruct universities to feature programs in freshman orientation that present the principles of free expression and set forth the campus policies that safeguard it, particularly the disciplinary sanctions for those who violate the rights of others.
- Call upon university trustees to create a committee responsible for issuing an annual public report describing the condition of freedom of expression on campus.
- Establish causes of action under state law for those on campus whose free-speech rights have been infringed and allow them to recover reasonable court costs and attorney fees if they prevail.

- Oblige each public university to “strive to remain neutral, as an institution, on the public policy controversies of the day” and bar universities from taking actions that “require students or faculty to publicly express a given view of social policy.”

By enacting bills based on the Goldwater Institute proposal, state legislatures would enable colleges and universities to create an educational community in which students and faculty can enjoy the freedom to defend their views, air their disagreements, explore competing perspectives, seek knowledge, and passionately pursue the truth.

That would advance the cause of public higher education. It would also serve as an inspiration and prod to private colleges and universities—where freedom of speech today is no less imperiled—to renew their worthiest traditions.

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