



Submission to the Special Rapporteur on the right to education

ACADEMIC FREEDOM AND FREEDOM OF EXPRESSION IN EDUCATIONAL INSTITUTIONS: UNITED STATES

Scholars at Risk (SAR) is an international network of higher education institutions dedicated to protecting threatened scholars, preventing attacks on higher education communities and promoting academic freedom worldwide. SAR has Special Consultative Status with ECOSOC (2013) and is a lead member of the Coalition for Academic Freedom in the Americas (CAFA). CAFA fosters the respect, protection, and promotion of academic freedom, with the goal of developing relevant human rights standards to protect higher education spaces and strengthen democratic principles in the Americas. SAR and CAFA welcome the Special Rapporteur's ongoing efforts to advance academic freedom, including through her recent call for submissions.

This submission is focused on the significant, recent challenges to academic freedom and freedom of expression in United States educational institutions, to the extent they relate to the issues raised in the SR's questionnaire. The analysis below is drawn in significant part from SAR's [2021](#),¹ [2022](#),² and [2023](#)³ Free to Think reports, as well as data developed through SAR's [Academic Freedom Monitoring Project](#).⁴ We welcome further inquiry and would be happy to share additional resources with the SR's office, should they be helpful.

General framework

1. *Constitutional and legal protections, limitations, and restrictions*

Under US jurisprudence, academic freedom is most often approached within the freedom of speech (expression) framework of the First Amendment to the US Constitution.⁵ As the US Supreme Court has held:

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.

* * *

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.

Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957).

This broad articulation of the importance of academic freedom establishes a strong basis for protection with regard to issues that fall squarely within the rubric of free expression on campus. However, US constitutional jurisprudence has not otherwise laid out, comprehensively or with precision, the scope and limits of academic freedom.⁶ University autonomy and other aspects of academic freedom are mentioned, but not clearly defined in the jurisprudence, with key questions about implementation left to the states, which may or may not address them in their constitutions (which generally mirror the federal Constitution, especially on core issues such as free expression), statutes and regulations. This creates a patchwork of laws and regulations offering varying levels of protection.⁷

In addition, the United States' domestic obligations include compliance with international treaty obligations, including under the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), which include academic freedom as fully and independently grounded in the rights to freedom of opinion and expression (ICCPR Art. 19), the right to education (ICESCR Art. 13), and the right to the benefits of science (ICESCR Art. 15(3)).

In his concurring opinion in *Sweezy*, Justice Felix Frankfurter eloquently articulated a broader conception of academic freedom, which is closer to current international human rights doctrine on the subject:

For society's good -- if understanding be an essential need of society -- inquiries into [the natural and social sciences], speculations about them, stimulation in others of reflection upon them, must be left as unfettered as possible. Political power must abstain from intrusion into this activity of freedom, pursued in the interest of wise government and the people's wellbeing, except for reasons that are exigent and obviously compelling. . . This means the exclusion of governmental intervention in the intellectual life of a university.

Id. at 261-262.

'It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail 'the four essential freedoms' of a university -- to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.'

Id. at 263.⁸

Justice Frankfurter's words flow naturally from the logic of the majority opinion, and match international human rights standards.⁹ Thus, they represent a powerful tool for advocates arguing for broader understanding and protection of academic freedom, including for university autonomy.

In this context, it is crucial to distinguish academic freedom from freedom of expression. While the two are interrelated and overlap (for example, an on-campus lecture within a professor's area of expertise is a simultaneous expression of both rights), they are neither identical nor fully coextensive. Much conduct protected by free expression has no connection to processes of research, formal education, or educational expertise, and as such is outside academic freedom. Moreover, although free expression generally protects the right to speak and publish with few limitations, it lacks any obligation of quality, expertise, sourcing, or professional standards. Academic freedom, in contrast, includes expression that is broadly related to research or educational training or expertise, and requires adherence to ethical and professional standards, as determined by other academics of similar training and expertise. Where courts, states, institutions, and the public blur these distinctions, and define academic freedom as synonymous with freedom of expression, the exercise of academic freedom can be mistaken (or intentionally misrepresented) as mere expression or partisan opinion. This opens the door to politicizing the classroom, deters scholars and educators from informing public discourse for fear of retaliation, and may subject scholars and educational institutions to outside pressures and attacks.¹⁰ Recent examples of such pressures and attacks are described below.

2. *Academic Freedom protections for staff, teachers, and students*

As noted above, US law generally recognizes some elements of academic freedom at the higher education level. While the US Supreme Court has recognized some protections for students' and teachers' expressive activity at the primary and secondary level, including in the context of student newspapers, non-disruptive political expression,¹¹ and the content of school libraries,¹² it has done so through the frame of free speech, not academic freedom.

3. *Main challenges to academic freedom, and gaps in the legal framework for protection*

Significant current challenges include national and state-level legislative and executive actions undermining institutional autonomy, as well as the failure of university leaders to respect, protect, and promote academic freedom and free expression on campus.

Restrictions on Curricula and Campus Expression

In recent years state legislatures and executives have imposed restrictions on the content of ideas which can be studied or taught. For example, state legislatures in Florida, Texas, Ohio, Tennessee, and Oklahoma have passed legislation prohibiting state universities

from teaching subjects including “critical race theory”¹³ issues related to diversity, equity, and inclusion (DEI);¹⁴ and other purportedly “divisive” concepts.¹⁵ According to an analysis by PEN America, as of February 2024, 99 such bills have been introduced targeting higher education in 33 states; nine have become law.¹⁶ Similar legislation has targeted primary and secondary education, banning or restricting the teaching of certain concepts relating to race, gender, sexual orientation and other “divisive” topics. To date, 24 such laws have been passed in 17 states.¹⁷

An ongoing analysis by the Chronicle of Higher Education reflects that 65 bills have been introduced in 25 states to undermine DEI programs on campus; eight of these have become law.¹⁸ These include a Texas bill eliminating DEI programs;¹⁹ a North Carolina law banning diversity statements at state agencies, colleges and universities;²⁰ and a Utah law banning DEI offices and trainings, among other things.²¹ Most of the bills include vague and overbroad language and undefined terms which collectively, and in combination with the risk of severe sanctions, stigmatize broad areas of research and teaching and encourage self-censorship.

Other Restrictions on Institutional Autonomy

Recently, state legislative and executive bodies have intruded on the autonomy of education systems and institutions to sanction or otherwise impose changes to the curricula, governance, culture, and student populations of universities. These actions include appointing political allies to positions of power over educational systems for the purpose of imposing restrictions from within.

For example, Florida Governor Ron DeSantis’s administration has worked to alter the character of several state universities – most prominently New College of Florida, a highly ranked university historically known for its progressivism. DeSantis publicly proclaimed universities to be bastions of “wokeism”²² and declared that Florida is “where woke goes to die.”²³ In early 2023, DeSantis’s administration appointed a hand-picked group of allies to the school’s board of trustees.²⁴ Among the board’s first acts was the January 2023 firing of New College’s president, apparently for her support for teaching critical race theory and issues related to DEI.²⁵ They later appointed a political ally of the governor as her successor.²⁶ Within a few months, the board denied five professors tenure on apparently political grounds,²⁷ and the school refused to renew the contract of a US history professor in apparent retaliation for an op-ed in which he expressed concern about the direction of New College.^{28, 29} In a report on the DeSantis administration’s higher education policies, the AAUP found:

- (1) the ‘hostile takeover’ of New College is both a ‘test case’ and a ‘blueprint for future encroachments on public colleges and universities across the country’; (2) academic administrators in Florida ‘not only have failed to contest’ attacks on the system ‘but have too frequently been complicit in and, in some cases, explicitly supported them’; (3) legislation enacted by Governor DeSantis and the legislature, ‘taken collectively, constitutes a systematic effort to dictate and enforce conformity with a narrow and reactionary political and ideological agenda’ and represents ‘a uniquely bold and dangerous program designed to reshape public higher education according to ideological and partisan political standards’; and (4) ‘the chilling effect on academic freedom of the governor’s and legislature’s efforts has already been felt by faculty and students.’³⁰

These and similar policies have left professors at New College and across Florida in doubt about what topics they may cover in class, and afraid that an in-class statement will expose them to smear campaigns, online and in-person threats, disciplinary action including job loss, and civil or criminal liability and the associated personal and financial costs.

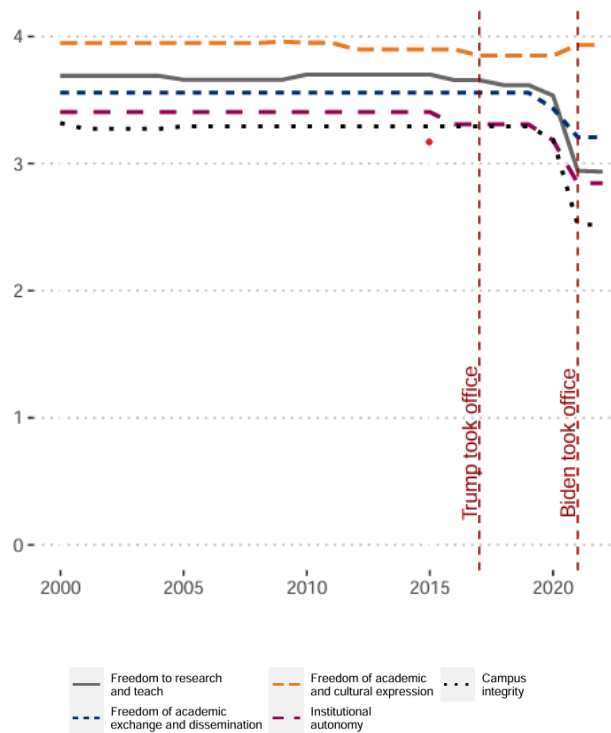
Political actors have also used funding to exert leverage over universities. For example, as of December 2023, Republican legislators in Wisconsin had held up funding for university pay increases, construction and utilities for over six months in order to pressure the University of Wisconsin system to reduce DEI-related positions.³¹

Failure to Respect, Protect, and Promote Academic Freedom on Campus

Numerous other recent, concerning developments stem from a broader failure, often on the part of university administrators, institutional authorities, and others to respect, protect, and promote academic freedom, including the following:

- In March 2023, a Texas university professor was placed on administrative leave and threatened with termination after being accused of disparaging the state's lieutenant governor; an internal investigation ultimately found no evidence of wrongdoing and she was allowed to retain her position.³²
- In July 2023, a journalism professor who had been offered a tenured position at a Texas university learned that the offer was reduced to a one-year contract in a non-tenured position, and a three-year administrative role directing the school's journalism program. This occurred after a conservative website published an article accusing the professor of supporting DEI initiatives, and alumni groups and a regent reportedly complained to the university's president about, among other things, the professor's work on race.³³
- Following the October 7 Hamas attack on Israel and the subsequent war in Gaza, institutional responses to campus tensions have included numerous suspensions of professors,³⁴ cancellations of events,³⁵ violence among and between students,³⁶ and denial of permits and revocation of student groups' status without due process.³⁷

As illustrated by the most recent Academic Freedom Index (AFi), these developments have led to a significant overall decline in academic freedom in the US, beginning around 2016, after the election of Donald Trump. Under the Trump administration, the US saw accelerating political efforts targeting specific academic doctrines, and the individuals accused of teaching them.



The First Amendment of the US Constitution is a crucial tool in responding to many of the attacks described above, especially those targeting *both* expression and academic freedom. For example, a district court blocked enforcement of Florida’s “Stop W.O.K.E. Act” as a First Amendment violation, because it bans colleges and universities from including disfavored content in required courses, such as whether “systemic racism, sexism, oppression, or privilege are inherent.” The ruling is currently under appellate review.³⁸ However, political leaders across the US have clearly been emboldened to test the strength of the First Amendment’s protections, and it is by no means guaranteed that litigation alone will stop the implementation of every restrictive law – even those targeting expression most directly. It will certainly not eliminate the chilling effect on higher education communities when scholars, students, and others are forced to expend money and resources to defend themselves from lawsuits, terminations, and even prosecution under these statutes.

Further, as noted above, current First Amendment jurisprudence may be insufficient to combat attacks not involving expression. For example, the DeSantis administration’s installation of its political allies at New College and elsewhere has resulted in terminations and alterations to curricula and the make-up of student bodies, but these actions are not as easily challenged under the First Amendment. A full defense of academic freedom would require a wider understanding of its scope and a broader legal foundation.

Autonomy of educational institutions

4. *Autonomy, self-governance, and restrictions on police or military personnel.*

As noted above, principles of self-governance and institutional autonomy are generally recognized at the higher education level but with widely varying degrees of implementation and legal protection, the latter from a patchwork of state constitutional provisions, laws, and regulations.³⁹

Military intervention into education is generally not a concern due to laws restricting the activities of armed forces domestically. But police confrontations with student protesters on and around campuses have occurred.⁴⁰

5. *Institutional guidelines/codes of conduct developed to ensure respect for academic freedom*

Many universities have statements of values which include academic freedom, but few have codes of conduct, training, or implementing procedures (beyond employment dispute or academic disciplinary procedures) capable of affirmatively promoting academic freedom.⁴¹

A number of public and institutional actors have produced guidance intended to increase respect for and implementation of academic freedom. These include:

- Principles for Implementing the Right of Academic Freedom, prepared by Scholars at Risk in partnership with an international working group, which includes guidance for State, institutional, and other actors.⁴²
- The University of Chicago campus free speech policy statement (the “Chicago Statement”), drafted in 2015 and since adopted by more than 100 universities, aimed at articulating a “commitment to free, robust, and uninhibited debate and deliberation among all members of the University’s community.”⁴³
- Seminal statements by the American Association of University Professors, including its Declaration of Principles (1915)⁴⁴ and Statement of Principles on Academic Freedom and Tenure (1940).⁴⁵

Funding

6. *Regulations on Funding and Protections for Academic Freedom*

Funding is regulated at the federal and state levels, through numerous statutes, regulations, and guidance documents seeking to promote transparency and prevent waste, fraud, and abuse.⁴⁶ Public funds generally require more transparency and implicate First Amendment and regulatory protections, while private funds, depending on their source, may require less transparency or protections. Explicit protections for academic freedom in funding agreements, if any, are not generally made known publicly.

7. *Which rules and regulations protect academic freedom from interferences by commercial actors and financial sponsors, at different tiers of education? Please explain how conflicts of interest that may arise are addressed.*

Interference by commercial actors/financial sponsors would generally be addressed by institutional policies or through state level regulations.

Consistent with principles of university autonomy, conflicts of interest and other ethical questions should be addressed at the institutional level, through transparent, defined processes, consistent with the professional standards of the subject discipline, as determined by higher education professionals of similar expertise.⁴⁷

Surveillance

8. *Surveillance of staff and students, and restrictions on academic freedom and freedom of expression*

The broad availability of recording and transmission technologies has brought benefits including increased access to education, and learning during emergencies (such as Covid-19) when education would otherwise be impossible. But these tools have been misused as well. In particular, surveillance using digital technologies and in-class informants – tools that have been utilized most egregiously in countries like China⁴⁸ and Russia⁴⁹ – have also increased in the US.

A Florida law signed in 2022 requires that state higher education institutions annually survey “intellectual freedom and viewpoint diversity,” and permits students to surreptitiously record video or audio of class lectures, without their lecturer’s consent, in connection with complaints to their higher education institution or “as evidence in, or in preparation for, a criminal or civil proceeding.”⁵⁰ In signing the law, DeSantis explicitly argued that it was a response to universities having become “intellectually repressive environments.”⁵¹ The passage of the law followed calls by some conservative activists for students to “document and expose” the so-called radicalism of their professors.⁵² The possibility of being recorded in preparation for a lawsuit or criminal proceeding, or being doxed or harassed by private/non-state actors,⁵³ presents a grave risk of chilling academic expression.

In addition, according to a recent report, dozens of US colleges are increasingly using artificial intelligence to monitor students’ expressive activity, including participation in protests⁵⁴ as well as to track classroom attendance and analyze student behavior.⁵⁵

Governments abroad, including especially China, as well as Egypt, India, Rwanda, and Saudi Arabia, also rely on in-class informants and digital technologies to surveil their citizens who are studying or working in US universities, and to threaten and harass them.⁵⁶

Freedom of expression in teaching and access to books

9. *Limitations on freedom of expression for teachers and professors*

As noted above, US law generally recognizes some elements of academic freedom at the higher education level, including for teaching and selection of course materials. Such protections are limited at the primary and secondary level, and generally restricted to the First Amendment, where applicable, and employment law.⁵⁷ Protections at all levels are subject to erosion from the types of executive and legislative actions noted above.

10. *Access to/Choice of Teaching Materials/Book Bans*

At the higher education level, curricula are typically selected by the professor or relevant department. Indeed, the ability to set curricula is a core aspect of academic freedom and university autonomy. At the primary/secondary level, school boards and administrations normally set curricula, with limited if any freedom of individual teachers to diverge from centrally determined content. Again, as noted above, recent legislative and executive actions have eroded protections. Within higher education, this has meant restrictions and limitations on the teaching of certain ideas or subject matter areas (e.g. gender studies, and so-called “critical race theory”).⁵⁸ At the primary/secondary level, it amounts to bans on specific materials.⁵⁹

¹ <https://www.scholarsatrisk.org/resources/free-to-think-2021/>

² <https://www.scholarsatrisk.org/resources/free-to-think-2022/>

³ <https://www.scholarsatrisk.org/resources/free-to-think-2023/>

⁴ https://www.scholarsatrisk.org/academic-freedom-monitoring-project-index/?_snk_keyword=&taxes%5Bregions%5D%5Bunited-states-of-america%5D=on&_snk_dt%5Bshowall%5D=y

⁵ This dominant First Amendment approach, appropriate in many cases, may not be the best approach for elements of academic freedom that are more closely related to other rights, such as the right to education or to the benefits of science, discussed below.

⁶ While the First Amendment generally applies to state action, and therefore not to private universities, most US institutions have policies in place that mirror the First Amendment.

⁷ An analysis of state constitutional, statutory, and regulatory provisions and their implications for academic freedom is beyond the scope of this submission.

⁸ *Sweezy*, quoting *The Open Universities in South Africa* 10-12. (A statement of a conference of senior scholars from the University of Cape Town and the University of the Witwatersrand, including A. v. d. S. Centlivres and Richard Feetham, as Chancellors of the respective universities.)

⁹ *See, e.g.* Report on Academic Freedom by the Special Rapporteur for promotion and protection of the right to freedom of opinion and expression, A/75/261 (2020), at paras. 5-14 (discussing university autonomy as a key aspect of academic freedom), available at <https://www.ohchr.org/en/calls-for-input/report-academic-freedom-and-freedom-opinion-and-expression>

¹⁰ The blurring of academic freedom and freedom of expression also obscures the fact that many elements of academic freedom extend beyond expression, such as freedom to research, access to information, freedom of movement, and institutional autonomy. *See* Scholars at Risk, Promoting Higher Education Values, 6-10, available at https://www.scholarsatrisk.org/wp-content/uploads/2020/05/SAR_PHV_DiscussionGuide_v20_ONLINE.pdf.

¹¹ *See, e.g. Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969) (holding that public school students’ free expression rights were violated when they were prohibited from and punished for wearing black armbands in protest of the Vietnam war, and stating that “First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”); *see also*

¹² *See Island Trees Sch. Dist. v. Pico by Pico*, 457 U.S. 853, 872 (1982) (holding that, notwithstanding local school boards’ obligation to transmit community values through curriculum, the discretion with which they do so must be exercised consistent with the First Amendment; school board “may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to ‘prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.’” (internal quotation omitted).

¹³ Political actors have applied multiple definitions to the term “critical race theory”, many of which have little connection to the meaning of the academic doctrine of the same name.

¹⁴ *See* The African American Policy Forum, Tracking the Organized Attacks on Racial and Gender Justice, available at <https://www.aapf.org/truthbetold-media>.

¹⁵ *See e.g.*, Paul Basken, “Florida restricts teachings on race,” *Times Higher Education*, May 16, 2023, <https://www.timeshighereducation.com/news/florida-restricts-teachings-race>; Francie Deip, “‘A Huge Red Flag’: How Florida Colleges’ Controversial Statement on Diversity Came Together,” *Chronicle of Higher Education*, March 14, 2023, available at <https://www.chronicle.com/article/a-huge-red-flag-how-florida-colleges-controversial-statement-on-diversity-came-together>; “TN bill that allows students to report professors who teach ‘divisive concepts’ passes House and Senate,” *WBIR*, March 14, 2023, <https://www.wbir.com/article/news/education/new-bill-would-strengthen-rules-over-what-can-be-taught-in-classrooms/51-ddd267e4-3d98-4de0-bb2e-3284740b4cb7>; Kate McGee, “Texas Senate approves bill barring professors from “compelling” students to adopt certain political beliefs,” *Texas Tribune*, April 11, 2023, <https://www.texastribune.org/2023/04/11/texas-legislature-higher-education-political-bill/>; Kate Marijolic, “This Ohio Bill Wouldn’t Just Ban Diversity Training. It Would Reshape Higher Ed.,” *Chronicle of Higher Education*, March 30, 2023, <https://www.chronicle.com/article/this-ohio-bill-wouldnt-just-ban-diversity-training-it-would-reshape-higher-ed>. SAR AFMP, <https://www.scholarsatrisk.org/report/2023-12-13-multiple-institutions/>.

¹⁶ Pen America Index of Educational Gag Orders since 2021, available at <https://airtable.com/appg59iDuPhLPPFp/shrtwubfBUo2tuHyO/tbl49yod7l01o0TCk/viw6VOxb6SUYd5nXM?blocks=hide>; *see also* Chronicle Staff, “DEI Legislation Tracker,” *Chronicle of Higher Education*,

updated February 6, 2024, https://www.chronicle.com/article/here-are-the-states-where-lawmakers-are-seeking-to-ban-colleges-dei-efforts?sra=true&cid=gen_sign_in

¹⁷ Pen America Index of Educational Gag Orders since 2021, <https://airtable.com/appg59iDuPhILPPFp/shrtwubfBUo2tuHyO/tbl49yod7l01o0TCk/viw6VOxb6SUYd5nXM?blocks=hide>

¹⁸ Chronicle Staff, “DEI Legislation Tracker,” Chronicle of Higher Education, updated February 7, 2024, https://www.chronicle.com/article/here-are-the-states-where-lawmakers-are-seeking-to-ban-colleges-dei-efforts?sra=true&cid=gen_sign_in

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² The DeSantis administration has defined “wokeism” as “the belief there are systemic injustices in American society and the need to address them.” See ABC News, Kiara Alfonseca, January 23, 2024, What does ‘woke’ mean and why are some conservatives using it?, available at <https://abcnews.go.com/Politics/woke-conservatives/story?id=93051138#>

²³ American Association of University Professors (“AAUP”) Report of a Special Committee: Political Interference and Academic Freedom in Florida’s Public Higher Education System, (“AAUP Report”) p. 1, https://www.aaup.org/file/AAUP_Florida_final.pdf

²⁴ Josh Moody, “The DeSantis Takeover Begins,” *Inside Higher Education*, January 31, 2023, <https://www.insidehighered.com/news/2023/02/01/desantis-puts-action-his-plan-end-woke-activism>
 Grace Mayer, “After Condemning ‘Trendy Ideology’ in Higher Ed, Florida’s Governor Targets a Small College,” *Chronicle of Higher Education*, January 9, 2023, <https://www.chronicle.com/article/after-condemning-trendy-ideology-in-higher-ed-floridas-governor-targets-a-small-college>

²⁵ SAR AFMP, January 31, 2023, <https://www.scholarsatrisk.org/report/2023-01-31-new-college-of-florida/>

²⁶ Sarasota Herald-Tribune, *Who is Richard Corcoran, the New Interim President of New College?* C.A. Bridges, January 31, 2023, available at <https://www.heraldtribune.com/story/news/education/2023/01/31/richard-corcoran-desantis-new-college-of-florida-president-patricia-okker/69859721007/>

²⁷ SAR Academic Freedom Monitoring Project (AFMP), April 26, 2023, <https://www.scholarsatrisk.org/report/2023-04-26-new-college-of-florida/>

²⁸ SAR AFMP, May 12, 2023, <https://www.scholarsatrisk.org/report/2023-05-12-new-college-of-florida/>

²⁹ Each of these incidents represents a radical departure from the normal role of a trustee, which should never include attempts to influence or punish in-class expression. As the AAUP has stated, “Academic freedom is the freedom of a teacher or researcher in higher education to investigate and discuss the issues in his or her academic field, and to teach or publish findings without interference from political figures, boards of trustees, donors, or other entities.” See *AAUP FAQs on Academic Freedom*, available at <https://www.aaup.org/programs/academic-freedom/faqs-academic-freedom>

³⁰ AAUP Report (internal citations omitted).

³¹ Erin Gretzinger, “Wisconsin Governor Sues Republican Legislators for Holding University Pay Raises ‘Hostage,’” *Chronicle of Higher Education*, October 30, 2023, <https://www.chronicle.com/article/wisconsin-governor-sues-republican-legislators-for-holding-university-pay-raises-hostage>. Liam Knox, “No End to Wisconsin’s Higher Ed Budget Standoff,” *Inside Higher Education*, December 8, 2023, <https://www.insidehighered.com/news/government/state-policy/2023/12/08/wisconsin-board-rejects-funding-and-dei-deal-legislature>.

³² SAR AFMP, March 7, 2023 <https://www.scholarsatrisk.org/report/2023-03-07-texas-am-university/>

³³ SAR AFMP, July 11, 2023, <https://www.scholarsatrisk.org/report/2023-07-11-texas-am-university/>

³⁴ SAR AFMP, December 15, 2023, <https://www.scholarsatrisk.org/report/2023-12-15-indiana-university/>

³⁵ SAR AFMP, December 20, 2023, <https://www.scholarsatrisk.org/report/2023-12-20-indiana-university/>; SAR AFMP, November 21, 2023, <https://www.scholarsatrisk.org/report/2023-11-21-university-of-philadelphia/>; SAR AFMP, November 15, 2023, <https://www.scholarsatrisk.org/report/2023-11-15-indiana-university/>; SAR AFMP, November 1, 2023, <https://www.scholarsatrisk.org/report/2023-11-01-barnard-college/>; SAR AFMP, October 23, 2023, <https://www.scholarsatrisk.org/report/2023-10-23-university-of-vermont/>

³⁶ SAR AFMP, November 3, 2023, <https://www.scholarsatrisk.org/report/2023-11-03-university-of-massachusetts-amherst/>; SAR AFMP, October 12, 2023, <https://www.scholarsatrisk.org/report/2023-10-12-columbia-university/>

- ³⁷ SAR AFMP, November 14, 2023, <https://www.scholarsatrisk.org/report/2023-11-14-george-washington-university/>; SAR AFMP, November 10, 2023, <https://www.scholarsatrisk.org/report/2023-11-10-columbia-university/>; SAR AFMP, November 6, 2023, <https://www.scholarsatrisk.org/report/2023-11-06-brandeis-university/>
- ³⁸ “Pernell v. Lamb,” ACLU, July 7, 2023, <https://www.aclu.org/cases/pernell-v-lamb>. “Florida Educators Urge Eleventh Circuit Court of Appeals to Uphold Preliminary Block of Unlawful “Stop W.O.K.E.” Censorship Law,” ACLU, June 16, 2023, <https://www.aclu.org/press-releases/florida-educators-urge-eleventh-circuit-court-of-appeals-to-uphold-preliminary-block-of-unlawful-stop-w-o-k-e-censorship-law>. “Pernell v. Lamb, No. 22-13992 (11th Cir. 2023),” AAUP, <https://www.aaup.org/brief/pernell-v-lamb-no-22-13992-11th-cir-2023>.
- ³⁹ See e.g. Hutchens, Neal, Educational Policy Studies, *Preserving the Independence of Public Higher Education: an Examination of State Constitutional Autonomy Provisions for Public Colleges and Universities* (2009); Educational Policy Studies and Evaluation Faculty Publications. 1. https://uknowledge.uky.edu/epe_facpub/1
- ⁴⁰ See SAR AFMP, <https://www.scholarsatrisk.org/report/2020-06-01-ohio-state-university/>
- ⁴¹ Scholars at Risk’s *Promoting Higher Education Values* guide calls on institutions to develop these and other implementation practices. Available at https://www.scholarsatrisk.org/wp-content/uploads/2020/05/SAR_PHV_DiscussionGuide_v20_ONLINE.pdf
- ⁴² Available at <https://www.scholarsatrisk.org/wp-content/uploads/2023/03/Principles-for-Implementing-the-Right-of-Academic-Freedom-ENGLISH.pdf>
- ⁴³ See Report of the Committee on Free Expression, available at <https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf>
- ⁴⁴ Available at <https://www.aaup.org/NR/rdonlyres/A6520A9D-0A9A-47B3-B550-C006B5B224E7/0/1915Declaration.pdf>
- ⁴⁵ Available at <https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>
- ⁴⁶ Congressional Research Service, *Federally Funded Academic Research Requirements: Background and Issues in Brief* (2017), available at <https://sgp.fas.org/crs/misc/R44774.pdf>
- ⁴⁷ See Scholars at Risk, *Promoting Higher Education Values*, 8, available at https://www.scholarsatrisk.org/wp-content/uploads/2020/05/SAR_PHV_DiscussionGuide_v20_ONLINE.pdf
- ⁴⁸ Globe and Mail, *In China, classroom cameras scan student faces for emotion, stoking fears of new form of state monitoring*, Nathan Vanderklippe, June 1, 2018, available at <https://www.theglobeandmail.com/world/article-in-china-classroom-cameras-scan-student-faces-for-emotion-stoking/>
- ⁴⁹ Radio Free Europe Radio Liberty, *Yes, Big Brother IS Watching: Russian Schools Getting Surveillance Systems Called ‘Orwell’*, Matthew Luxmoore, June 17, 2020, available at <https://www.rferl.org/a/russian-schools-getting-surveillance-systems-called-orwell-/30676184.html>
- ⁵⁰ Florida State Legislature, House Bill No. 233, 2021 Regular Session, <http://laws.flrules.org/2021/159>
- ⁵¹ Caplin News, Ariana Otero, February 17, 2023, *Florida law that allows students to record their professors challenged*, <https://caplinnews.fiu.edu/college-students-record-professors-florida/#:~:text=The%20law%20specifically%20states%20that.a%20criminal%20or%20civil%20proceeding.%E2%80%9D>
- ⁵² CharlieKirk, March 22, 2020, <https://twitter.com/charliekirk11/status/1241820673007161345>; also reported in Emma Pettit, “A Side Effect of Remote Teaching During Covid-19? Videos That Can Be Weaponized,” *Chronicle of Higher Education*, March 24, 2020, <https://www.chronicle.com/article/A-Side-Effect-of-Remote/248319>.
- ⁵³ SAR AFMP, October 12, 2023 <https://www.scholarsatrisk.org/report/2023-10-12-arizona-state-university/>
- ⁵⁴ Arijit Douglas Sen and Derêka Bennett, “Tracked: How Colleges Use AI To Monitor Student Protests,” *The Dallas Morning News*, September 20, 2022, <https://pulitzercenter.org/stories/tracked-how-colleges-use-ai-monitor-student-protests>.
- ⁵⁵ Drew Harwell, “Colleges are turning students’ phones into surveillance machines, tracking the locations of hundreds of thousands,” *Washington Post*, December 24, 2019, <https://www.washingtonpost.com/technology/2019/12/24/colleges-are-turning-students-phones-into-surveillance-machines-tracking-locations-hundreds-thousands/>
- ⁵⁶ Yana Gorokhovskaia and Grady Vaughan, *Foreign Governments Silencing International Students and Educators in the United States*, Freedom House, January 31, 2024, https://freedomhouse.org/sites/default/files/2024-01/TNR_UniversityReport_2024.pdf

⁵⁷ See Education Week, *If Critical Race Theory Is Banned, Are Teachers Protected by the First Amendment?*, Mark Walsh, June 10, 2021 (digesting relevant federal cases), available at <https://www.edweek.org/policy-politics/does-academic-freedom-shield-teachers-as-states-take-aim-at-critical-race-theory/2021/06>

⁵⁸ See p. 4, *supra*.

⁵⁹ In the 2022–23 school year, PEN America recorded 3,362 instances of books banned, an increase of 33 percent from the 2021–22 school year.”Pen America, *Banned in the USA: the Mounting Pressure to Censor*, <https://pen.org/report/book-bans-pressure-to-censor/>