The Right-Wing Attacks on Higher Education: An Analysis of the State Legislative Landscape

Right-wing lawmakers continue to wage a coordinated attack against public colleges and universities with legislation that would undermine academic freedom, chill classroom speech and impose partisan agendas on public higher education. Currently, at least 57 such bills have been introduced in 23 states (Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Utah and West Virginia). The major categories and trends include bills to:

- Limit teaching about race, gender and sexual orientation;
- Require intellectual and viewpoint diversity statements and surveys;
- Cut funding for diversity, equity and inclusion efforts; and
- End tenure for faculty.

This legislation is the latest in a multiyear effort by right-wing activists and donors to reshape academia to its liking. The bills build on President Donald Trump's 2020 executive order on Combating Race and Sex Stereotyping, Koch-funded efforts to build their own programs within institutions, and previous assaults on the free exchange of ideas and faculty academic freedom, such as the so-called Academic Bill of Rights, David Horowitz's book *The Professors: The 101 Most Dangerous Academics in America,* and Turning Point USA Professor Watchlist. The current round of legislation reinforces a right-wing communication effort to attack public colleges and universities on the grounds that they are ideologically outside the mainstream, hostile to conservative views and focused on indoctrinating students into "woke" ideology. These bills are only one piece of a broader campaign to remake public higher education that includes Florida Gov. Ron DeSantis' hostile takeover of the New College of Florida.

The underlying narrative that universities are hostile to conservative speech has been manufactured over many years. For example, the perniciousness of this assault can be seen in a series of Idaho Freedom Foundation reports from 2020 that accused Idaho's public colleges of indoctrinating students with a "social justice" ideology that includes commitments to diversity, equity and inclusion. The reports led the Legislature to defund social justice initiatives at Idaho colleges. The IFF is part of the right-wing State Policy Network, which the Center for Media and Democracy describes as a "web of right-wing 'think tanks'" funded by large corporations, right-wing foundations and wealthy conservative ideologues to shape state and local policy based on free-market principles. SPN has close ties to Koch foundations, which invest a significant amount of money to advance free-market and white supremacist ideas on college campuses, giving more than $458 million in grants to more than 550 universities and higher education nonprofits between 2005 and 2019.

What follows is an analysis of the four categories of bills we are currently seeing across state legislatures, along with information on where bills have been introduced and who is behind efforts to enact them. The legislation detailed below would foreclose avenues of legitimate teaching, scholarly inquiry and debate; remove tenure

protections; diminish the role of faculty in academic governance; and end efforts to advance equity and diversity at institutions of higher education. These bills and the efforts to pass them will have a pervasive chilling effect on academic freedom and the free exchange of ideas on college and university campuses. Regularly updated information on the status of this legislation can be found at this Quorum link.

Limiting Teaching about Race, Gender and Sexual Orientation

States where bills have been introduced: As of April 3, 2023, there are 29 bills in 18 states: Alabama, Florida, Illinois, Indiana, Minnesota, Missouri, Montana, New Hampshire, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Utah and West Virginia. The bills in Utah and West Virginia did not pass before those states' legislatures adjourned for 2023 without setting a future date to resume.

What these bills do: These bills limit the teaching of so-called divisive concepts related to race, gender and sexual orientation. They use similar language to define the concepts they ban and caricature the way these topics are discussed in the classroom, such as prohibiting educators from teaching that "one race or sex is inherently superior to another race or sex" or that "an individual, by virtue of his or her race or sex, is inherently racist, sexist or oppressive, whether consciously or unconsciously." These bills also state that schools may not compel students or staff to "affirm, adopt or adhere to" the idea that any "sex, race, ethnicity, religion, or national origin" is inherently superior or inferior, or that any of these groups should be treated adversely on the basis of their identity.

These "divisive concepts" reflect right-wing culture war messaging about the way educators are approaching the subjects of race, gender and sexual orientation. Some bills are more direct, with explicit bans on specific subject matter like critical race theory. In an extreme example, Florida House Bill 999 would eliminate entire fields of study that are associated or aligned with critical race theory, gender studies or intersectionality. These bills often include penalties for teaching banned concepts, from loss of funding for institutions to loss of tenure for faculty. Written in a vague way, and without actual understanding of the academic debates about race and gender, these bills are aimed at chilling classroom conversations, creating a significant threat to academic freedom of teaching and research.

With regard to academic freedom of teaching, one of the American Association of University Professors' fundamental tenets is: "Teachers are entitled to full freedom in the classroom in discussing their subject" (1940 *Statement of Principles on Academic Freedom and Tenure*). Further, AAUP says, "the freedom to teach includes the right of the faculty to select the materials, determine the approach to the subject, make the assignments, and access student academic performance in teaching activities for which faculty members are individually responsible, without having their decisions subject to the veto of a department chair, dean, or other administrative officer" (*Academic Freedom in the Medical School*). These bills clearly undermine this freedom to teach.

These bills also reflect and amplify right-wing allegations that educators who teach about critical race theory, the 1619 Project or racism generally are indoctrinating rather than educating students. However, as the AAUP's report *Freedom in the Classroom* states, "It is not indoctrination for professors to expect students to comprehend ideas and apply knowledge that is accepted within a relevant discipline." The report goes on to distinguish indoctrination from education:

> Indoctrination occurs when instructors dogmatically insist on the truth of such propositions by refusing to accord their students the opportunity to contest them. Indoctrination occurs when instructors assert such propositions in ways that prevent students from expressing disagreement. Vigorously to assert a proposition or a viewpoint, however controversial, is to engage in argumentation and discussion—an engagement that lies at the core of academic freedom. Such engagement is essential if students are to acquire skills of critical independence. The essence of higher education does not lie in the passive transmission of knowledge but in the inculcation of a mature independence of mind.

The partisan activists and donors behind these bills disapprove of the ways that public discussions about race and gender are evolving, and are therefore using their external influence to shape what goes on in the classroom to meet preferred partisan and political objectives.

Who's behind these legislative efforts: Language in these bills draws from Trump's 2020 executive order on Combating Race and Sex Stereotypes and can be found in model legislation being pushed by MAGA lobbying arm Citizens for Renewing America. Both the executive order and model legislation are influenced by Russ Vought, Trump's former budget director, who founded CRA. CRA is funded by the Conservative Partnership Institute, which is an effort by Trump allies to formalize extremist, far-right politics in the think tank sphere. Other organizations included under the CPI umbrella are the American Accountability Foundation, which attacks President Joe Biden's Cabinet and judicial appointees, and America First Legal, which is run by former Trump speechwriter Stephen Miller and focuses on litigation that "oppose[s] the radical left's anti-jobs, anti-freedom, anti-faith, anti-borders, anti-police, and anti-American crusade." According to 2021 tax filings, CPI had an annual budget of $17.1 million, and revenues of $45.7 million.

Requiring Intellectual and Viewpoint Diversity Statements and Surveys

States where bills have been introduced: As of April 3, 2023, there are six bills in three states: Florida, North Dakota and Texas. Additionally, policymakers in Wisconsin and North Carolina have implemented viewpoint diversity surveys on college campuses.

What these bills do: Like the Florida law, enacted in 2021, these bills require higher education institutions to conduct regular surveys of students and employees to assess "viewpoint diversity" on college campuses. In a variation on this theme, the Texas bill would require institutions to adopt a mission statement committing to viewpoint diversity and institutional neutrality. Lawmakers in Wisconsin and the board of regents in North Carolina are also conducting these viewpoint diversity surveys on college campuses. The idea of intellectual diversity is not controversial; however, the authors start from the assumption that its conservative ideas that are being stifled on college campuses. These bills represent the latest development in a multidecade effort by the right-wing to advance its ideological agenda on college campuses and silence speech that is critical of corporate power and free-market ideology. As the Center for Media and Democracy explains, these kinds of efforts are built on a "continuing critique from the right-wing that universities are too 'liberal' or hostile to religious, 'conservative', or religiously fundamentalist points of view."

Who's behind these legislative efforts: In their book *Free Speech and Koch Money: Manufacturing a Campus Culture War*, Ralph Wilson and Isaac Kamola show how the Koch family donor network is largely responsible for manufacturing a campus free-speech crisis while funding politicians who work to enact viewpoint diversity legislation. The authors have assembled a large body of evidence showing how Koch Industries has spent the

past half-century constructing a dense network of political organizations funded by the Koch family and other like-minded donors working to:

> [U]ndermine environmental, health, and labor regulations, to attack unions, privatize education, reduce taxation, and dismantle the social safety net. This strategy has involved gaining greater footholds on college and university campuses, understood by libertarian donors and activists as strategic beachheads from which to train experts, legitimize their worldview, and recruit student activists into their political machinery. This plutocratic libertarian class sees university campuses as critical to their strategy for social change and as a pipeline of ideas and talent.

Cutting Funding for Diversity, Equity and Inclusion Efforts

States where bills have been introduced: As of April 3, 2023, there are 10 bills in eight states: Arizona, Florida, Iowa, Ohio, Oklahoma, Texas, Utah and West Virginia. The bills in Utah and West Virginia did not pass before those states' legislatures adjourned for 2023.

What these bills do: These bills would prohibit colleges from having diversity, equity and inclusion offices or staff. DEI offices exist to promote diversity among the faculty and student body, provide support to address racial and gender gaps in opportunities and outcomes, and foster more inclusive communities. The AAUP's position is that "a diverse student body is essential to the educational objectives of colleges and universities." As the U.S. Department of Education explains in its report *Advancing Diversity and Inclusion in Higher Education*, DEI efforts can ensure that students from diverse backgrounds are made to feel welcome and provided supports to succeed academically. Ed Trust points to research that shows that faculty diversity improves student retention and completion rates. More broadly, research from the Century Foundation shows that exposure to diversity on college campuses can improve "intellectual engagement, self-motivation, citizenship and cultural engagement, and academic skills like critical thinking, problem solving, and writing—for students of all races. In other words, interacting with diverse peers outside a classroom setting directly benefits students, making them better scholars, thinkers, and citizens."

A number of these bills also outlaw requiring or requesting diversity and equity statements as part of job postings, employment applications, or the admissions process.

Who's behind these legislative efforts: In a January 2023 issue brief, Christopher Rufo and others at the Manhattan Institute outlined four proposals to "reverse the illiberal takeover of higher education through Diversity, Equity, Inclusion (DEI) offices that, ironically, stifle intellectual diversity, prevent equal opportunity, and exclude anyone who dissents from a rigid orthodoxy." The first of those proposals was a call to "abolish DEI bureaucracies." These efforts can be seen as a continuation of Rufo's race-baiting assault on education, which began in 2021 with attacks on critical race theory. As the architect of state legislation banning the teaching of critical race theory in K-12 schools, colleges and universities, Rufo has been clear that his goal is to "lay siege to the institutions." He has called for defunding public universities, ending academic freedom and fostering anger against public education to "create the conditions for fundamental structural change." The Manhattan Institute is a member of the State Policy Network and, as such, fits within the web of right-wing think tanks devoted to advancing free-market ideology in state legislatures. Model legislation to abolish DEI offices has been written by the Manhattan Institute, the Goldwater Institute, the Foundation for Free Expression (FIRE), and other right-wing organizations.

Ending Tenure for Faculty

States where bills have been introduced: As of April 3, 2023, there are at least nine bills in six states: Florida, Iowa, Mississippi, North Dakota, Ohio and Texas. The North Dakota bill appears to have been defeated as a result of North Dakota United's advocacy efforts, but the affiliate warns the bill could be revived in another form.

What these bills do: These bills would make it easier for higher education administrators to dismiss tenured faculty by triggering post-tenure review when there are allegations of bias in teaching or violations of DEI bans. A Florida bill would allow for post-tenure review at any time. Tenure provides economic security, ensuring that faculty can pursue teaching and research without undue influence from corporate or political pressures. It provides essential protections for faculty members who raise ideas that challenge students in their thinking, aiding in the development of critical-thinking skills. Efforts to end tenure undermine academic freedom and therefore represent a threat not only to higher education but to democratic society.

As the AAUP's 1940 *Statement of Principles* asserts:

> Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligation to its students and to society.

The most dangerous potential result of post-tenure review is the threat to academic freedom. That threat is actualized when a post-tenure review process leads to terminations of appointments without academic due process, chiefly an adjudicative hearing of record before a faculty body, in which the burden of demonstrating adequate cause for dismissal rests with the administration ("Post-tenure Review: An AAUP Response"). Post-tenure review, especially in the context of other assaults on higher education, creates the likelihood that that university governing boards, many of which are comprised of political appointees, could fire a faculty member for statements made in the classroom, in research, or in public that the board members *perceive* as biased or simply disapprove of.

Furthermore, attacks on tenure harm efforts to recruit and retain highly qualified faculty. In Florida, where tenure has already been weakened, faculty search committees are having difficulty recruiting applicants, who are opting for positions in states where tenure protections are strong and higher education is better shielded from political pressures.

Who's behind these legislative efforts: Conservatives are increasingly targeting faculty tenure as part of their push to dismantle DEI efforts and ban teaching about race and racism. For example, Texas Lt. Gov. Dan Patrick made a promise to end tenure last year to combat teachings about critical race theory. In past years, tenure elimination served the needs of austerity hawks. Lawmakers were advancing tenure elimination legislation in Wisconsin in 2015 and Kentucky in 2018 at the same time that they were seeking deep cuts in university programs. Ultimately, tenure elimination fits within the broader right-wing campaign to reshape academia to its liking.

Concluding Remarks

While not detailed here, other elements of the right-wing's broader efforts have spillover effects in higher education. The many bills designed to bring the culture war into K-12 schools and libraries will impact students entering our colleges and universities. There are also dozens of bills this year that are designed to limit the ability of pension funds and public reserves, like those held by universities, to invest in funds that consider diversity, equity and inclusion; environmental impact; and corporate governance. Such legislation has been shown to increase the cost of doing business and, to the extent it has a broader chilling effect on discussions of important social issues, will impact higher education. It can also stifle to speech of students, faulty, and staff seeking to have conversations about institutional values and commitments. The same is true for the many bills attacking the transgender community. Legislation that limits access to gender-affirming care, or limits participation in college athletics, will harm the students we serve. In a potential harbinger of things to come, the DeSantis administration has also requested that public higher education institutions provide information on all gender-affirming care that their health services are providing. AFT affiliates across the country are fighting back against this wave of harmful legislation.