



SPEECH FIRST

CONGRESSIONAL TESTIMONY

"DIVERSITY OF THOUGHT: PROTECTING FREE SPEECH ON COLLEGE CAMPUSES"

Testimony before

Education & the Workforce Committee
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Thank you Chairman Owens and Ranking Member Wilson, and thank you members of the subcommittee for the opportunity to testify today.

My name is Cherise Trump. I'm the Executive Director of Speech First, a free speech advocacy organization that has successfully sued colleges over their anti-speech policies and won. No, I'm not related to the former President but according to some colleges my last name poses an "elevated risk."¹ Over the past year alone, I have visited dozens of campuses and spoken with thousands of students. Those students face an ever-growing, ever-present threat on campuses: universities working with the Biden Administration² and activists³ to chill and silence student speech.

¹ Aaron Sibarium, Her Name Is Trump. That Makes Her An 'Elevated Risk', According To Trinity University, February 28, 2023 at Washington Free Beacon, <https://freebeacon.com/campus/her-name-is-trump-that-makes-her-an-elevated-risk-according-to-trinity-university/>

² <https://www.dailysignal.com/2022/07/29/dojs-partisan-shell-game-raises-ethics-issues-about-pamela-karlan/>

³ <https://www.nationalreview.com/bench-memos/stanford-audio-vindicates-duncan-stanford-hides-video/>

Across the nation, many universities have implemented policies that supposedly “protect” students. While claiming they’re “protecting” students, what they’re really doing is trampling on other students’ rights. Public universities have no excuse for violating the law. And while private universities operate within different legal parameters, they also have no excuse for failing to uphold students’ First Amendment rights that they so often promise to champion. They have virtually unlimited resources, in-house counsel, and in some cases, more administrators than professors. With all of these “highly educated” individuals on campus, one would hope colleges have at least a basic understanding of the U.S. Constitution, and in this case, the First Amendment. The university campus is no stranger to free speech; historically the university campus was the arbiter of free expression. But it is clear today that those calls for free speech were really only calls for particular viewpoints.

Our lawsuits at Speech First challenge university policies that target, investigate, and discipline students for their constitutionally protected speech. The First Amendment should be the guide that universities use when deciding whether and how to regulate student speech. But it isn’t. Universities instead try to find ways to target and suppress uncomfortable speech. Their stated goals are diversity, inclusion, safety, and other euphemisms. But it seems the term “diversity” applies to everything except thought.

I was on a campus in North Carolina last week speaking to a room of about 50 students. And when I asked if any had been required to, or on their own had read, the U.S. Constitution before entering college, only 5 raised their hands. It is no wonder why students fail to grasp such basic concepts like the freedom of speech. Even law students either don’t get it (or don’t want to get it), as recent events at Stanford Law School revealed.

You often hear students claim they are exercising their free speech rights by shouting down a speaker. Not quite. There can be no right to block someone else’s right to speak, for obvious reasons.

Our universities are failing miserably at the one thing they are being paid exorbitant amounts to do. They are failing to educate students. Universities should be challenging students intellectually and driving them to seek truth. But in order to seek truth, one must engage in the ‘robust exchange of ideas’—a concept that has been lost on students but that wasn’t lost on our Founders. When students are exposed to different and challenging ideas, they emerge stronger, smarter, and more resilient. Intellectual growth is not something that happens in a vacuum; students must be able to express their ideas and opinions on political and social issues in order to exercise the critical thinking process that is so vital to intellectual development.

Currently, Diversity, Equity, and Inclusion (DEI) permeates every aspect of the college experience: from freshman orientation to graduation. In 2022 Speech First obtained freshman orientation materials from almost every major state university. Only one third of the materials mentioned free speech or viewpoint diversity, while over 90% discussed diversity, equity, and inclusion. Among those that did mention free speech, it was still a 7 to 1 ratio of DEI topics to free speech/viewpoint diversity; if mentioned at all, it was only in passing, emphasizing to students even more that free speech and the respect for opposing viewpoints is merely a footnote

to DEI.⁴ Of the DEI topics emphasized in orientations, around 23% of the materials focused on “DEI training” which is often run by a third party company that specializes in this subject matter and can be described as “sensitivity training”. 9% discussed anti-racism, 10% racial equity, 9% microaggressions, 20% discrimination, 2% trigger warnings, and 27% discussed implicit bias.⁵

Our findings show that new student orientation programs exclusively steep students in all things DEI, while leaving out fundamental principles like free speech and viewpoint diversity. Students begin their college careers being told they are implicitly biased against certain races and ethnicities, and that they are privileged if they look a certain way. They are told that no matter where they came from or what their background is, they have an inherent bias that they must focus on rectifying. In some cases, students are made to take “implicit bias tests” that ask them to match skin color with positive and negative words and if they click too fast they will be told they are “implicitly bias”—in other words, racist.

This puts an undue burden on the students’ shoulders as they enter what is supposed to be the most rigorous and studious time in their lives. And instead of focusing on their studies, their ideas, and challenging others’ ideas, they must walk on eggshells, avoid upsetting anyone with simple questions, and focus on correcting a nonexistent bias that creates a sense of enmity amongst students rather than camaraderie.

This emphasis on DEI in freshman orientations is not an oversight; it is intentional, and it is clearly designed to create insecurities where there were none before. Take, for example, the definition of “racism” that administrators at UNLV gave to students: racism, they say, is a “socially constructed racial hierarchy that privileges white people.”⁶ Pure identity politics, on day one after arriving on campus.

Students are at the mercy of the bloated bureaucratic behemoth that is the modern university. These armies of administrators would rather convince students that the world is a place that must cater to their personal preferences, and that the truth doesn’t matter unless it’s *your* truth. If you wonder why rioting against ideas that make students uncomfortable is becoming the norm, I urge you to look at university leadership. They’re the ones setting expectations. And they’re the ones creating policies that encourage students to snitch on one another for offensive jokes and microaggressions.

I would like to emphasize two of the many policies that we are seeing more and more on campuses. These policies are specifically designed to squash speech that dissents from the prevailing dogma on campus.

First are harassment policies. We all know that Title IX regulates discrimination on the basis of sex in education. But what you may not realize is that there is no limit on how many harassment

⁴ Speech First, Freshman Disorientation Report, 2022, http://speechfirst.org/wp-content/uploads/2022/08/SF_Freshman-Disorientation-Report_FINAL.pdf

⁵ Ibid.

⁶ Speech First, Freshman Disorientation Report, 2022, http://speechfirst.org/wp-content/uploads/2022/08/SF_Freshman-Disorientation-Report_FINAL.pdf

and discrimination policies can exist on campuses. Oftentimes, universities have many. In addition to all the federal restrictions on harassment and discrimination, many universities take it upon themselves to adopt even broader definitions of harassment and discrimination. These policies completely disregard the federal guidelines that are meant to strike a balance between protecting students' First Amendment rights while also protecting students. And so the policies outright target constitutionally protected speech. For example, before we sued it, the University of Houston⁷ defined harassment to include negative stereotyping, denigrating jokes, and anything that creates an environment that alters conditions of learning. Currently Oklahoma State University⁸ says that harassment can be anything that threatens or endangers someone's mental health. And the University of Central Florida⁹ once listed examples of discriminatory harassment that included name-calling, verbal acts, and written statements that may be humiliating.

THESE ARE ALL CONSTITUTIONALLY PROTECTED FORMS OF SPEECH. Whether you find someone's speech appalling, uncomfortable, or offensive, the Supreme Court has held time and time again, even as recently as 2019,¹⁰ that there is no hate or offensive speech exception to the First Amendment. Universities are weaponizing harassment policies to target and restrict student speech.

Secondly, and perhaps even more nefarious, are Bias Reporting Systems. BRSs are anonymous reporting systems that solicit reports from students on one another for incidents of "Bias". "Bias" can be defined as anything the university wants. Oftentimes, they define a "bias incident" as "offensive or unwanted speech", "jokes", stereotyping", "microaggressions", and "hate speech". In some cases, even offending someone's political affiliation is a reportable offense. Universities often state that these policies are enforceable anytime, anyplace, and by any medium. This includes social media.

Once a student is reported, they often do not get to face their accuser. They are asked to meet with a member of the administration. Once in the meeting, the student might be asked to write a letter of apology, attend DEI training, or see a counselor.

But the mere intimidation factor associated with being reported, tracked, and called into the office is already a violation of the students' First Amendment rights.

Government agencies, soliciting anonymous reports from citizens that lead to re-education. What does this sound like?

BRSs intimidate and silence students whose viewpoints do not conform to the dominant social, political, and cultural narratives on campus. By design, these teams create an environment of fear that chills speech and dialogue between students of diverse viewpoints, ultimately silencing speech through self-censorship.

⁷ <https://speechfirst.org/case/university-of-houston/>

⁸ <https://speechfirst.org/case/oklahoma-state-university/>

⁹ <https://speechfirst.org/case/university-of-central-florida/>

¹⁰ "Iancu v. Brunetti." *Oyez*, www.oyez.org/cases/2018/18-302

Even scarier, many students are using them! On many campuses, students know about these policies and have shown a propensity to use them against their fellow students or professors they disagree with. Professors, too, have used BRSs to report comments made by their own students in academic setting. Many students choose not to engage in class discussions or certain types of political conversations because they know these types of reporting entities exist at their institutions.

In 2022, Speech First surveyed 821 public and private institutions and found that 56%¹¹ had a BRS or similar system in place and nearly all of them allowed for anonymous reporting. That is a 200% increase over the past five years. Furthermore, 53% of the most egregious forms of BRSs were housed in Diversity, Equity, and Inclusion offices.¹²

I pose these questions to the committee: can you define speech that can endanger someone's mental health? Can you provide an objective standard for evaluating whether a statement is "humiliating"? And while you're at it, can you define a "microaggression" and list some examples? Because we have seen freshman orientation materials that tell new students that microaggressions can be as innocuous as asking someone where they are from.¹³ How can one expect to enforce a policy when definitions use entirely subjective and broad terms?

In short, students are operating in a surveillance-like state. Accordingly, they are actively censoring themselves out of fear of espousing the "wrong" opinions. They fear repercussions for anything they say. Moreover, when speech codes are purposely written to open the door to punishing any speech that a listener finds subjectively offensive, students genuinely have no idea what they can and can't say. These vague standards only embolden campus activists. When anything and everything can be "offensive" speech, what's to stop students from wielding the current policies against classmates with unpopular opinions?

These institutional endorsements to shut down dissenting ideas has not only emboldened activist-minded students but have also encouraged administrators and non-campus activists of the same ilk.

Just this past week a Pennsylvania lawmaker, La'Tasha Mayes made a veiled threat¹⁴ towards the University of Pittsburgh that the university's funding could be at risk if the university did not cancel events featuring conservative commentators like Michael Knowles.

¹¹ Speech First, Free Speech in the Crosshairs: Bias Reporting on College Campuses, 2022, https://speechfirst.org/wp-content/uploads/2022/04/Free-Speech-in-the-Crosshairs_BRS-Report.pdf

¹² By "most egregious" we mean a more formalized version of BRSs that make up administrative teams explicitly devoted to the solicitation and review of bias incident reports by a designated team of cross-departmental members, university administrators, and often campus security or law enforcement.

¹³ Speech First, Freshman Disorientation Report, 2022, http://speechfirst.org/wp-content/uploads/2022/08/SF_Freshman-Disorientation-Report_FINAL.pdf

¹⁴ Aaron Sibarium, <https://freebeacon.com/democrats/pennsylvania-dem-threatens-to-withhold-funding-from-university-of-pittsburgh-over-conservative-speakers/>

Recently, at UC Davis, Charlie Kirk was met with violent protests and property damage¹⁵ because of a fabricated lie that he advocated violence against transgender people spread by the university's own Chancellor.¹⁶

Stanford law school students completely lost their heads when guest, Judge Kyle Duncan was invited to campus. He was shouted down simply for espousing conservative legal opinions. The law school's DEI dean even claimed during her remarks aimed at Judge Duncan that the students were enrolled in law school to learn advocacy skills. Tellingly, she ignored the primary purpose of law schools, which is to teach students about the law.¹⁷

What's interesting is that it seems speakers under the most threat are not lawmakers or politicians, but podcast pundits like Ben Shapiro who spent \$600,000 in security to protect himself from the mobs at UC Berkeley.¹⁸ It is the spread of ideas that is being shut down, not just a disagreement with policies. Podcasters don't pass policies into law, yet the spread of their ideas is more targeted by the mob than anyone else.

Why are universities so worried about their students being exposed to alternative viewpoints? Are they afraid students might change their minds? Pull away from the political agendas so many administrators and professors promulgate? Doesn't this alone show the dark path we are headed down as a society?

There is hope though, Speech First has shown that the law is on our side. We have successfully challenged Bias Reporting Systems at the University of Texas, the University of Michigan, and the University of Central Florida, all three schools changed or disbanded their systems. Through litigation, these unconstitutional policies can be fought and won. In *Speech First, Inc. v. Fenves*, the majority opinion said that Bias Reporting Systems represent "the clenched fist in the velvet glove of student speech regulation."¹⁹

Speech First has been around for five years and we have won in the Fifth, Sixth, and Eleventh Circuits on the issue of Bias Reporting Systems and the issue is primed for Supreme Court review. We have also won in the Fifth and Eleventh Circuits on the harassment policy issue. We currently have active lawsuits against Oklahoma State University in the Western District of Oklahoma, and Virginia Tech in the Fourth Circuit Court of Appeals.

¹⁵ Two Arrested, One Officer Injured As Protesters Damage Property Ahead Of Charlie Kirk Event At California University, <https://www.dailywire.com/news/two-arrested-one-officer-injured-as-protesters-damage-property-ahead-of-charlie-kirk-event-at-california-university>

¹⁶ UC Davis Chancellor Gary S. May Comments on March 14 Student-led Event <https://www.youtube.com/watch?v=rz3k-FnPpJM>

¹⁷ 'Dogs—t': Federal Judge Decries Disruption of His Remarks by Stanford Law Students and Calls for Termination of the Stanford Dean Who Joined the Mob. <https://freebeacon.com/campus/dogshit-federal-judge-decries-disruption-of-his-remarks-by-stanford-law-students-and-calls-for-termination-of-the-stanford-dean-who-joined-the-protesters/>

¹⁸ Ben Shapiro's visit cost UC Berkeley an estimated \$600k for security. <https://www.dailycal.org/2017/09/17/uc-berkeley-security-costs-ben-shapiros-visit-estimated-600k>

¹⁹ <https://speechfirst.org/wp-content/uploads/2020/10/UT-opinion.pdf>

In *Speech First v. Cartwright, et al.*, Judge Kevin Newsom of the Eleventh Circuit wrote:

“Colleges and universities serve as the founts of—and the testing grounds for—new ideas. Their chief mission is to equip students to examine arguments critically and, perhaps even more importantly, to prepare young citizens to participate in the civic and political life of our democratic republic.”²⁰

And Judge Marcus wrote in his concurring opinion:

“History provides us with ample warning of those times and places when colleges and universities have stopped pursuing truth and have instead turned themselves into cathedrals for the worship of certain dogma. By depriving itself of academic institutions that pursue truth over any other concern, a society risks falling into the abyss of ignorance...” A university that turns itself into an asylum from controversy has ceased to be a university; it has just become an asylum.”²¹

These successes bring hope, but many of the future leaders of America are still developing skewed and inaccurate views of our First Amendment rights and the laws around free speech.

Higher education seems to be the testing ground for various forms of censorship policies that instill fear, propel viewpoint discrimination, and restrict vital academic discourse. “Free speech” zones, restricting email correspondence, restricting the use of certain words, asking students to become informants, weaponizing harassment policies to target speech, and now in addition to restricting speech, this administration wants to compel speech as well. In May, the Biden Administration and his Department of Education will implement rule changes to Title IX, including the removal of the *Davis* standard. This will leave students open to being reported under Title IX for simply not using someone’s “preferred” pronouns.²² As stated, this is compelled speech. And with students developing a taste for reporting on one another, what does this mean for the coming fall semester on campuses across the country?

All of the policies I have mentioned today are designed to create an environment of control not safety. Students are increasingly choosing security over freedom; preferring comfort over the growing pains of intellectualism and the risks of engaging in the battle of ideas. These are the same students who will be future leaders, litigators, judges, national security advisors, tech CEOs, bankers...what outlooks and habits are they developing on college campuses that they will bring with them in the professional world? We will end up with leaders who are either disconcertingly compliant and avoid confrontation, or leaders who have totalitarian penchants encouraged by all those who agree with them.

²⁰ <https://speechfirst.org/wp-content/uploads/2021/02/UCF-Op-2.pdf>

²¹ Ibid.

²² <https://www.theamericanconservative.com/biden-and-universities-launch-sneak-attack-on-free-speech/>