

TEXAS PUBLIC POLICY FOUNDATION

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**LEGISLATOR'S
GUIDE**
to the issues



TEXAS PUBLIC POLICY
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The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.

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Free Speech on Campus

The Issue

Over the past few years, a plethora of news accounts has exposed serious restrictions on free speech and debate on our campuses. University [speech codes](#), restrictive “free-speech zones,” and commencement speaker “[dis-invitations](#)” threaten to undermine our schools’ defining mission: the free, nonpartisan quest for truth, that is, the Socratic vision from which liberal education originated.

There is no more pressing issue in higher education today. If free speech and debate die on our campuses, they will come in time to die in the public square, dooming self-government.

The model for higher education currently threatened is born of Socrates’ proposition that “the unexamined life is not worth living for a human being.” It is no accident that the words “liberal” and “liberty” share the same root: Liberal education, for Socrates, is an education *in* and *through* liberty. The highest purpose of liberal education is to foster the freedom of the mind, that is, freedom from unexamined assumptions—e.g., swings in intellectual fashion, partisan politics, and ideology. Liberty at its peak is thus identical with the pursuit of truth.

But truth-seeking, as Socrates’ trial and execution show, is not without dangers. Thus, the institutions devoted to cultivating intellectual liberty—colleges and universities—depend for their safety on their being situated in a system of political liberty. In this respect, the cultivation of free minds *both* transcends *and* depends on the political freedom enshrined in our Constitution.

If students are deprived of the growth opportunities provided by encountering and debating ideas with which they disagree, they will lack the qualities essential to informed, effective citizenship, which requires knowledge of our fundamental moral and political principles. Democracy depends on a citizenry so endowed.

Academic freedom is a subset of the freedom of speech promised under a constitutional democracy. History shows that regimes that do not protect free speech in the political sphere also do not protect it in the academy. Freedom of speech in the political sphere is animated by the conviction that the people, if free to engage in debate over policy issues, will, through this process, be better able to choose wisely among competing policies and the candidates espousing them. Academic freedom is animated by the conviction that the examined life is the highest capacity of human beings. In both spheres, truth-seeking is the end to which freedom of speech and inquiry exist as the indispensable means.

The Facts

- The Supreme Court has ruled that “state colleges and universities are not enclaves immune from the sweep of the First Amendment. ... [T]he precedents of this Court leave no room for the view that ... First Amendment protections should apply with less force on college campuses than in the community at large” (*Healy v. James*).
- The nonpartisan think tank the Foundation for Individual Rights in Education (FIRE) has published its latest [report](#) on academic freedom, *Spotlight on Speech Codes 2018: The State of Free Speech on Our Nation’s Campuses*. Its most salient findings are:

1. “Just under one-third (32.3%) of surveyed institutions received FIRE’s lowest, [red light rating](#) for maintaining speech codes that clearly and substantially restrict freedom of speech.”
 2. Most schools (58.6%) “receive a [yellow light rating](#). Yellow light policies restrict narrower categories of speech than red light policies do, or are vaguely worded in a way that could too easily be used to suppress protected speech, and are unconstitutional at public universities.”
- Duly alarmed over the rising intolerance sweeping across campuses nationwide, the University of Chicago released its “Report on Free Expression” in 2015. [The Chicago Statement](#), as it has come to be called, has been adopted by the administrations or faculty bodies of [42 universities as of June 17, 2018](#), among them, Columbia, Princeton, Johns Hopkins, Georgetown, Purdue, Michigan State, the University of Missouri System, and LSU.
 - Versions of the Goldwater Institute’s model proposal on campus free speech have been adopted by the North Carolina Legislature as well as the University of Wisconsin System Regents.
 - In Texas, not one school has signed the Chicago Statement or embraced the Goldwater model proposal. Moreover, Texas houses five schools with FIRE’s worst rating for free speech (“Red Light”) and 11 schools with its second worst rating (“Yellow Light”).
 - A version of the Goldwater model bill passed in the Texas Senate in 2017, but was not heard in the House.

Recommendations

- Each college and university’s board of trustees (or “regents”) could adopt the Chicago Statement, in the manner done by Purdue and the University of Nebraska.
- The Texas Legislature could pass legislation requiring all Texas public universities to adopt the Chicago Statement and/or the Goldwater model.

Resources

[“Chicago Statement: University and Faculty Body Support,”](#) Foundation for Individual Rights in Education (June 15, 2018).

[Campus Free Speech: A Legislative Proposal](#), by Stanley Kurtz, James Manley, and Jonathan Butcher, Goldwater Institute (2018).

[Free to Learn? Think Again: Restoring the First Amendment at Texas Public Universities](#) by Thomas Lindsay, Texas Public Policy Foundation (Aug. 2016).

[The Need for Free Speech and Debate in Both Our Schools and the Public Square](#) by Thomas Lindsay, invited testimony before the Senate State Affairs Committee, Texas Public Policy Foundation (Jan. 31, 2018).

[“Report of the Committee on Freedom of Expression”](#) by Stone et al., University of Chicago (2015).

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