

Preliminary Report of the Special Committee on Academic Freedom and Florida

In January 2023, the AAUP announced the establishment of a special committee to review an apparent pattern of politically, racially, and ideologically motivated attacks on public higher education in Florida. Since then, the undersigned members of this special committee have interviewed more than forty faculty members and a former president at multiple public Florida colleges and universities, and we have immersed ourselves in a dizzying array of documents and media reports. Our efforts thus far have led us to conclude that academic freedom, tenure, and shared governance in Florida's public colleges and universities currently face a politically and ideologically driven assault unparalleled in US history. Initiated and led by Governor Ron DeSantis and the Republican majority in the state legislature, this onslaught, if sustained, threatens the very survival of meaningful higher education in the state, with the direst implications for the entire country. Based on our work thus far, the committee believes a number of AAUP principles and standards may be implicated, including those articulated in statements and reports such as the 1940 *Statement of Principles on Academic Freedom and Tenure*; the 1966 *Statement on Government of Colleges and Universities*; *The Freedom to Teach*; *Freedom in the Classroom*; the *Statement on Collective Bargaining*; and *Faculty Participation in the Selection, Evaluation, and Retention of Administrators*. Because of the massive scope of this coordinated attack and the continued unfolding of events, the committee is deferring preparation of a more complete and thorough final report, which will discuss the pertinent Association-supported standards in detail. This preliminary report highlights some initial findings and patterns.

This report presents four main findings:

1. The governor and state legislature are using their swift, aggressive, and ongoing “hostile takeover” of New College of Florida as a test case, likely for its intimidating effect. This “takeover” has proceeded through Governor DeSantis’s appointment of a slate of six highly partisan trustees, five of whom live outside the state and are publicly known as right-wing activists, to New College’s board of trustees. These appointees, together with other political allies of the governor, have announced their intention not only to transform New College into what they describe as the “Hillsdale College of the South” but also to use the takeover as a blueprint for future encroachments on public colleges and universities across the country. Although they have not yet fully achieved their goals—restructuring New College’s

administration; developing a “new core curriculum”; eliminating all diversity, equity, and inclusion (DEI) policies; and restructuring academic departments—the changes initiated by the new board are already extensive and the consequent impact on faculty, staff, and students is profound.

2. Academic administrators throughout Florida’s public university and college systems, from the highest to the lowest levels—without exception—not only have failed to contest these attacks but have too frequently been complicit in and, in some cases, explicitly supported them. While some individuals are leaving as a matter of conscience, those who remain face the prospect of serving as pawns in DeSantis’s corrupt patronage system. Moreover, disciplinary professional organizations and accrediting bodies so far have responded unevenly or not at all to the plight of the faculty members facing serious threats to their academic freedom.
3. Governor DeSantis has taken executive actions and the Florida legislature has passed a series of bills that, taken collectively, constitute a systematic effort to dictate and enforce conformity with a narrow and reactionary political and ideological agenda throughout the state’s higher education system. These efforts grievously undermine basic and long-standing principles of academic freedom, tenure, and shared governance. A key component of this agenda has been an effort to destroy college and university programs that serve minority communities and to banish from classrooms ideas and information about race, gender, and sexual identity that fail to conform to the prejudices of politicians. The governor has sought to enforce these acts and impose his partisan agenda through the appointment of politically connected ideologues to the state university system’s board of governors and to the boards of trustees of individual institutions.
4. Although several pieces of legislation proposed by the DeSantis administration have been stalled by litigation challenges and others have not yet been fully implemented, the chilling effect on academic freedom of the governor’s and legislature’s efforts has already been felt by faculty and students throughout the state’s public higher education institutions. The resulting self-censorship and fear are now also spilling over into private institutions in Florida.

We now elaborate on these findings, reserving a complete and more detailed assessment of the situation for our final report.

1. The “Hostile Takeover” of New College of Florida

You can smell fear in the air.

—Longtime New College faculty member

To get a sense of what the DeSantis-led assault on higher education seeks to achieve we have only to look at what is happening at New College of Florida. To achieve his goal of taking over New College, in January 2023 Governor DeSantis appointed six new members to its board of trustees; the board of governors appointed one new member as well. The newly appointed board members are Ryan Anderson (board of governors appointee), Mark Bauerlein, Debra Jenks, Charles R. Kesler, Christopher Rufo, Matthew Spalding, and Jason “Eddie” Speir. Five of the seven are well-known conservative academics or activists who appear to live outside Florida: Dr. Anderson, Dr. Bauerlein, Dr. Kesler, Dr. Spalding, and Mr. Rufo. Perhaps the best-known is Mr. Rufo, the chief strategist behind the campaign to demonize critical race theory (CRT), conflating it deliberately with DEI programs and fueling a conservative backlash against DEI efforts and CRT. Dr. Spalding, a dean at Hillsdale College, and Dr. Kesler, a professor at Claremont McKenna College, were both part of the Trump administration’s 1776 Commission, which produced a widely criticized rebuttal to the *New York Times*’s 1619 Project; Dr. Anderson is president of the Washington, DC–based Ethics and Public Policy Center, a conservative think tank.

On January 6, Mr. Rufo tweeted about the takeover of the New College board, “We are now over the walls and ready to transform higher education from within. Under the leadership of Gov. DeSantis, our all-star board will demonstrate that the public universities, which have been corrupted by woke nihilism, can be recaptured, restructured, and reformed.”¹

Among Mr. Rufo’s goals for New College, also laid out in a tweet, are restructuring the administration, developing “a new core curriculum,” eliminating DEI policies, and restructuring academic departments.

The first meeting of the New College board of trustees attended by the newly appointed members took place on January 31. The trustees were met by hundreds of students, faculty members, and alumni protesting what amounted to a “hostile takeover,” as then president Patricia Okker would

¹ Christopher Rufo (@realchrisrufo), Twitter, January 6, 2023, <https://twitter.com/realchrisrufo/status/1611406507815636993>. Also see Josh Moody, “DeSantis Aims to Turn Public College into ‘Hillsdale of the South,’” *Inside Higher Ed*, January 11, 2023, <https://www.insidehighered.com/news/2023/01/11/desantis-seeks-overhaul-small-liberal-arts-college>, and Trip Gabriel, “He Fuels the Right’s Cultural Fires (and Spreads Them to Florida),” *New York Times*, April 24, 2022, <https://www.nytimes.com/2022/04/24/us/politics/christopher-rufo-crt-lgbtq-florida.html>.

call it during the meeting, by the new conservative appointees. Earlier in the day, Mr. Rufo had appeared with the governor at a news conference in Bradenton, just north of the New College campus, where the governor pledged an infusion of \$15 million at New College to be spent on hiring new faculty and scholarships for students, with an additional \$10 million every year thereafter.

The trustees took up the matter of President Okker's appointment, voting nine to three to terminate her appointment, effective immediately. According to the board's statement following the meeting, it "appointed Dr. Bradley Thiessen as the interim president and made a motion to approve entering into discussions with Richard Corcoran, former commissioner of the Florida Board of Education, to assume the role [of] interim president effective March 1, 2023."² The trustees also accepted the resignation of board chairperson Mary Ruiz, appointing Debra Jenks, a college alumna and one of the new trustees, to serve as the new chair.

In her remarks before the board's vote, President Okker acknowledged that she was aware of its plan to terminate her appointment, citing social media posts from two trustees a few days before the meeting. She regretted that she would "disappoint" her supporters who had urged her to stay on and push back against the governor's plans for New College. She was unable to remain president, she explained, because she could not "in good conscience" seek contributions from donors by telling them that New College students were being "indoctrinated," as Governor DeSantis and some of the new trustees have alleged.

At its February 28 meeting, with Interim President Corcoran in office, the board of trustees voted to eliminate the college's Office of Outreach and Inclusive Excellence (OOIE) and to remove the request for diversity statements by job candidates from the faculty handbook. Subsequently all OOIE staff were transitioned to other positions on campus except for Yoleidy Rosario-Hernandez, the dean of diversity, who was fired instead of being offered the position of associate dean of housing and residential life in student affairs, as had been announced at the February board meeting. The campus community learned of Rosario-Hernandez's firing through media coverage, including in the *Washington Post*. "I am the first casualty in many ways," Rosario-Hernandez stated presciently.³ Since then other

² "Statement Following the Board of Trustees Meeting, January 31, 2023," New College of Florida, <https://www.ncf.edu/news/statement-following-the-board-of-trustees-meeting-january-31-2023/>. Mr. Corcoran, "in a 2021 speech at Michigan's right-wing Hillsdale College, came close to calling for the collapse of the public school system through student attrition and said the political war 'will be won in education'" (Kathryn Joyce, "The Florida of Today Is the America of Tomorrow": Ron DeSantis's New College Takeover Is Just the Beginning of the Right's Higher Ed Crusade," *Vanity Fair*, February 10, 2023, <https://www.vanityfair.com/news/2023/02/ron-desantis-new-college-florida>).

³ Jack Stripling, "Ousted Florida College Diversity Leader: 'I Am the First Casualty,'" *Washington Post*, March 10, 2023, <https://www.washingtonpost.com/education/2023/03/10/new-college-diversity-officer-fired/>.

staff members have been fired, and it appears that the administration is targeting LGBTQ individuals and people of color.

Between the January and April board meetings, New College was thrown into chaos. Faculty members with whom we spoke expressed anxiety, fear, and uncertainty regarding their futures and the future of New College. They expressed deep concern for their students, who are experiencing, academically and personally, an unprecedented level of turmoil. One faculty member told us, “We’re all in disbelief. When we pass each other on campus we just look at each other and have no response to the simple question, ‘How are you?’ We just shake our heads as we walk on.” Several others told the undersigned committee that they were on the job market or will be shortly.

To make matters worse, at its April 26, 2023, meeting, the board denied tenure to five faculty members. All five were going up for tenure in their fifth year (rather than sixth), a relatively common practice at New College. Faculty members told us that historically about one-third of the college’s faculty have applied for tenure in the fifth year. Prior to the April 26 meeting, seven pending tenure cases had already been approved by the faculty review committee, the provost, and Interim President Thiessen (prior to Interim President Corcoran taking office). Yet Interim President Corcoran subsequently called in the seven faculty members and advised them they should withdraw their cases pending before the board or risk being denied tenure.

Five of the seven continued with their tenure cases. Interim President Corcoran inserted a memo into each of their files, which read in part,

I recommend the Board of Trustees defer its decision on awarding tenure to the Candidate. If that is not possible, I recommend denying tenure at this time. This recommendation is based on extraordinary circumstances including but not limited to: (1) changes in administration including new President and new Provost—whereby many of these positions are currently held in Interim status; (2) turnover of a majority of the Board of Trustees; (3) *a renewed focus on ensuring the College is moving towards a more traditional liberal arts institution*; and (4) the related current uncertainty of the needs of the divisions/units and College. (Emphasis added.)

It is obvious from this memo that rather than engaging with the substantive content of each tenure file, Interim President Corcoran, from that point forward, would gauge files by their alignment with the new mission and vision for New College, in clear violation of AAUP-supported standards of academic freedom and tenure as well as the college’s collective bargaining agreement. The trustees voted to deny tenure to all five faculty members.

Faculty chair Matthew Lepinski, also a board member, told this committee, “I was hopeful that the tenure cases would be discussed in a substantive way. And if they were discussed, their strength would come through. A couple of these cases were crazy good. The files ranged from strong to ‘oh my god, how did we get this person?’ It was crushing to me and the students that there was no discussion of the merits of each case.” Dr. Lepinski announced his resignation from his faculty position at the end of the board meeting. In response, Mr. Rufo tweeted, “I wish Dr. Lepinski well *and look forward to recruiting his replacement . . . any faculty that prefer the old system of unfettered left-wing activism and a rubber-stamp board are free to self-select out*” (emphasis added).

Within hours of the board meeting, the New College chapter of United Faculty of Florida (UFF), the faculty union, issued a press release condemning the tenure denials. It stated,

Today’s decision, to our knowledge the first time that the New College trustees have gone against the recommended outcome of our extensive review process, is an unprecedented disruption of that procedure and an abdication of the responsibility of the board to support the college. Despite standing in their fifth year (one year earlier than their mandatory year), our candidates met or exceeded expectations throughout the faculty review process for 5 years and at every stage of the tenure review process, as judged by all qualified parties at New College and by experts in each candidate’s scholarly field. The board’s denial of their tenure status at this stage is a nakedly political action that is hostile to the college and the very academic program they are charged with supporting. This action severely undermines the integrity of our academics and portends a dark future for the college’s ability to attract and retain quality faculty. This is just one step in the downfall of higher education in Florida.

Two days after the board meeting, Interim President Corcoran wrote to the campus community stating, “Wednesday’s board meeting was difficult for everyone, not least for myself.” He offered an assurance that “tenured faculty should be confident that their positions are secure” and reminded the community that the professors denied tenure can reapply the following year. He also reminded the faculty that he and Interim Provost Thiessen “are developing the framework for a foundational core curriculum as mentioned at the Faculty Q&A session last week.”⁴ Less than six hours later, members of the Provost Advisory Committee (the faculty review committee at New College) and other members of the community, including two former New College presidents, sent a response to Interim President Corcoran. It read in part,

⁴ Dr. Thiessen became interim provost and vice president of academic affairs in March, after Mr. Corcoran became interim president (and Dr. Thiessen stepped down from that position).

Our candidates stood when they were ready, as many of us did, in their 5th year. In fact, some of the external letters of review said that these candidates would have earned tenure in their home departments at R1 Universities such as FSU and University of South Carolina. In short, they are stellar, and it's unclear that any Trustee understood that since it seems like their files were not even read or discussed. To deny these faculty tenure that they have clearly earned *this year* is not only an insult to them, but an insult to all of us. . . . The decisions made at the Board of Trustees substantially damaged the level of trust between the administration and faculty. It is now up to you to repair the trust. Here are some suggestions. Trust the faculty's expertise in faculty personnel decisions, from hiring to tenure. Make and keep meetings with our Educational Policy Committee to collaborate on curriculum. And call a special Board Meeting to approve tenure and promotion of this year's candidates as soon as possible.

As of the writing of this preliminary report, none of the tenure denials has been rescinded.

Further, a plan for a new curriculum has been unveiled, staff layoffs continue, and a May 8 press release from Interim President Corcoran announced that New College will begin accepting a classical and Christian exam alternative to the SAT exam called the Classic Learning Test (CLT) in the fall, pending the passage of a bill in the state legislature. It is worth noting that two of the newly appointed New College trustees are connected to the CLT: Dr. Bauerlein participated in developing the test and Mr. Rufo currently serves on the test's board of academic advisers.⁵ Examples of such corrupt patronage abound

⁵ As this preliminary report was being prepared for publication, the New College faculty approved the following resolution:

Move to censure the New College of Florida Board of Trustees for failing in their fiduciary duties of first: caring for the institution's reputation and for student, faculty, and staff well-being; and second: endangering the College's ability to fulfill its mission of preparing "intellectually curious students for lives of great achievement" and offering "a liberal arts education of the highest quality in the context of a small, residential public honors college with a distinctive academic program which develops the student's intellectual and personal potential as fully as possible; encourages the discovery of new knowledge and values while providing opportunities to acquire established knowledge and values; and fosters the individual's effective relationship with society."

Whereas the New College of Florida Board of Trustees is charged (per BOG) with fiduciary duties of care (to pursue New College's interests with diligence and prudence), loyalty (to place interests of New College above your own), and obedience (ensure New College complies with applicable laws and acts according to New College's own policies);

Whereas both the presiding officer of the board and a majority of other voting members of the board must be free of any contractual, employment, or personal or familial financial interest in the institution;

Whereas the New College of Florida Board of Trustees should not be controlled by a minority of board members or by other organizations or interests;

and

Whereas public records requests revealed that an independent actor (Bob Allen) has exerted external influence over the Board of Trustees in contradiction to the principle of independence;

at New College since the “hostile takeover” and are clearly part of a larger pattern in the state of Florida, as discussed below.⁶

2. Administrative Complicity and Corrupt Patronage

In every conversation that the committee has had with Florida faculty members—including those from multiple institutions and of varied political persuasions; on tenured, tenure-track, and contingent appointments; from an array of disciplines in the physical and natural sciences, law, business, social science, and humanities; and from the leadership of the UFF—we heard repeated complaints not only about the silence of their campus and system administrators but also about administrators’ direct complicity in implementing policies that would severely restrict academic freedom and faculty and

Whereas Trustee Jenks acted as a minority actor in isolation from other Board members, directing the College to freeze ongoing faculty and independent contractor searches during February 2023;

Whereas Trustee Spalding acted as a minority actor in isolation from other Board members, to communicate with Richard Corcoran in order to name him as interim president outside of public meetings (“The Sunshine”);

Whereas Trustees Rufo, Bauerlein, and Speir have not to our knowledge disclosed financial conflicts of interests related to school partnerships, other governing boards, or income from subscriptions to their writings or test products;

Whereas Trustee Rufo refuses to cooperate with public records (aka “Sunshine Law”) requests related to his work as a trustee of New College of Florida, in contradiction to the duty of obedience;

Whereas the majority of Trustees present voted “no” on recent tenure cases without offering explanation or evidence of having read the tenure files or understanding tenure processes at the college as is their duty;

Whereas Trustee Bauerlein publicly gave a rationale for his vote on tenure cases that does not derive from New College policies as stated in the *Faculty Handbook*;

Whereas Trustees Rufo and Speir regularly make disparaging and unprofessional comments on social media and in news media about New College students, staff, and community members, communicating a lack of fiduciary care, harming and diminishing the college’s standing;

Whereas many of the Trustees actively ignore members of the public who give comment at Board of Trustees meeting, communicating a lack of respect and care to the public including taxpayers;

Whereas Trustees have monetary responsibilities to assist the college to secure funds both by donating themselves and/or by encouraging others to do the same, which is not currently the case to our knowledge;

Be it resolved that the New College Board of Trustees is censured by the faculty for failing to uphold College policies and more broadly failing in or explicitly disregarding their fiduciary duties to the College.

⁶ Another example is the introduction of intercollegiate athletics at New College. Immediately after the announcement, Mariano Jimenez was appointed as the athletic director and head baseball coach. Mr. Jimenez was the president of baseball operations and athletic director at Inspiration Academy, a faith-based school founded by DeSantis-appointed trustee Eddie Speir. (Steven Walker, “New College Launches Athletic Department, Names Director and Baseball Coach,” *Sarasota Herald-Tribune*, March 31, 2023, <https://www.heraldtribune.com/story/news/education/2023/03/31/new-college-of-florida-hires-mariano-jimenez-as-ad-and-baseball-coach/70069838007/>.)

student rights more generally. It is perhaps understandable that administrators would be cautious in their conduct, fearful that their institutions might suffer devastating retaliatory budget cuts from a governor and legislature that have demonstrated repeatedly their willingness to act vindictively toward critics.⁷ That said, the approach of many of the administrators appears more cowardly than cautious. When the online publication *Inside Higher Ed* asked forty Florida public college and university presidents for comment on the state's higher education legislation, none was willing to speak, even when offered anonymity.⁸

Our committee also extended invitations for interviews to an array of current Florida higher education administrators; to date, only two have responded. Ray Rodrigues, chancellor of the Florida Board of Governors, and Kathy Hebda, chancellor of the Florida College System, declined our invitations by citing a series of comments made by AAUP president Irene Mulvey, stating, "Since the president of AAUP has consistently concluded political interference exists in Florida's higher education system, it is difficult to accept that the AAUP's special committee will fairly and fully consider any testimony to the contrary." We indicated to the chancellors that we would, in fact, welcome testimony to the contrary and are not bound by President Mulvey's comments; nonetheless, they declined our invitations.

In fact, administrative efforts to conform to the wishes of Florida's political leaders predate most of the legislation outlined below. During the COVID-19 pandemic, university administrators initially tended to comply with guidance from the Centers for Disease Control and Prevention on social distancing, masking, and vaccinations. But once Governor DeSantis broke with that approach, they quickly fell in line. For example, at the University of Florida, then president W. Kent Fuchs declined to impose mask standards despite the strong recommendations of faculty experts, complaining to the faculty that he "literally [doesn't] have that power" and prompting one retiring faculty member to conclude that the university is "a behemoth with powerless leadership."⁹

One of the earliest and most disturbing signs of trouble in Florida's higher education system was the attempt by the University of Florida administration in fall 2021 to bar three faculty members in the political science department from testifying as expert witnesses on behalf of plaintiffs in a lawsuit filed

⁷ One faculty member told us that the provost of one state university warned at a faculty senate meeting that the university "will not lose \$33 million in performance funding because one faculty member wants to violate anti-WOKE."

⁸ Josh Moody, "The Silence of Florida's Presidents," *Inside Higher Ed*, March 30, 2023, <https://www.insidehighered.com/news/faculty-issues/academic-freedom/2023/03/30/silence-floridas-presidents>.

⁹ See Jack Stripling, "In Gator Nation, a President Who Won't Bite," *Chronicle of Higher Education*, August 26, 2021, <https://www.chronicle.com/article/in-gator-nation-a-president-who-wont-bite>, and Alice Freifeld, "U. of Florida's COVID Policies Caused Me to Retire Rather Than Teach," *Academe Blog*, October 31, 2021, <https://academeblog.org/2021/10/31/u-of-floridas-covid-policies-caused-me-to-retire-rather-than-teach/>.

by an economic and racial justice group to overturn the state’s new law restricting voting rights. The administration rejected the three professors’ ordinarily pro forma requests for permission to testify, ostensibly on the basis of the university’s conflict-of-interest policy. When news of that action broke, five professors from the UF law school reported that they had been barred from testifying or ordered to omit mention of their university positions when doing so. Eventually, the administration backed down out of embarrassment, but it changed the policy only when affected faculty members filed lawsuits. Our committee has spoken to several of the faculty members involved in these suits, and our final report will expand on this brief account and incorporate their insights.

When in late December 2022 Governor DeSantis directed each of the state’s public four-year institutions to submit comprehensive lists of their spending related to DEI initiatives and CRT, the presidents complied without question. On January 18, 2023, the presidents of the Florida College System released a statement promising to identify and eliminate, by February 1, any academic requirement or program “that compels belief in critical race theory or related concepts such as intersectionality.”

Our final report will incorporate some of the many revealing statements faculty members made to us about the inaction, apathy, cowardice, or complicity of their administrations. For now, we will simply conclude with two preliminary observations.

First, as one faculty member advised us, administrative complicity may best be viewed as the application of an increasingly widespread notion of college and university leadership in which “gaining compliance is seen as leadership.” Throughout higher education, administrators far too frequently imagine their role to be getting those below them—subordinate administrators and staff and faculty members—to comply with the policy preferences of those above them, a hierarchical and passive conception of leadership associated with a certain kind of managerial mentality. Too often administrators are rewarded with promotions and larger salaries for such passivity and compliance.¹⁰ Governor DeSantis makes this situation worse by handpicking university and college presidents and board members from among his friends and political allies—even when they have no experience in higher education. In the most recent example of this pattern of corrupt patronage, Governor DeSantis’s machinations derailed the South Florida State College presidential search. The three original finalists for the presidency chose to withdraw after the governor expressed his displeasure with their candidacies.

¹⁰ Numerous faculty members in the University of Florida’s Levin College of Law whom the committee interviewed expressed disbelief that their dean, Laura Rosenbury, who was named in the lawsuit initiated by UF professors when they were prevented from filing amicus briefs, had just been announced as the incoming president of Barnard College.

The board then voted to lower the qualifications for the position, paving the way for Governor DeSantis to handpick a single finalist, Florida representative Fred Hawkins, a “staunch ally of Governor Ron DeSantis . . . who has no experience in higher ed . . . [and] co-sponsored a bill that stripped the Walt Disney Company of its self-governing power and transferred oversight to a DeSantis-appointed board.”¹¹ On May 10, 2023, Representative Hawkins announced on Twitter that he was “looking forward to becoming the next President of South Florida State College” even though his interview for the position is scheduled for May 31 and the final selection meeting is scheduled for June 7.¹²

A second point that needs emphasis here is the imperative for college and university administrations, indeed for the entire higher education community, to stand firm against the kinds of political interference and pressure tactics we have seen in Florida. A 1956 report of an AAUP special investigation of the anti-Communist hysteria of that era noted the critical importance of resisting such interference:

We cannot censure the justified public interest in colleges and universities or be unmindful of the extremely difficult task confronting academic administrations that seek to preserve educational and research opportunities in order to serve the general welfare in spite of the suspicions of a public which, at times, has been confused by complicated issues or led astray by demagogic appeals. The temptation to yield a little in order to preserve a great deal is strong, particularly when faculty members who cry out for protection seem willfully uncooperative. Yet to yield a little is, in such matters, to run the risk of sacrificing all. Those who feel safe today may become the victims of tomorrow, just as many of yesterday’s political heretics share in today’s orthodoxy.

We cannot accept an educational system that is subject to the irresponsible push and pull of contemporary controversies; and we deem it to be the duty of all elements in the academic community—faculty, trustees, officials and, as far as possible, students—to stand their ground firmly even while they seek, with patient understanding, to enlarge and deepen popular

¹¹ Susan H. Greenberg, “After Failed Presidential Search, South Florida State Names New Finalist,” *Inside Higher Ed*, May 12, 2023, <https://www.insidehighered.com/news/quick-takes/2023/05/12/after-failed-presidential-search-south-florida-state-names-new-finalist>. Representative Hawkins, who was arrested in 2020 and charged with impersonating an officer, holds a bachelor’s degree.

¹² Tom Staik, “Politician Who Had Been Suspended from Office by Gov. DeSantis Is Named Only Finalist for SFSC President,” *Herald Advocate*, May 11, 2023, https://www.theheraldadvocate.com/news/article_bfaccb02-f00e-11ed-8e75-ab21e4616d36.html.

comprehension of the nature of academic institutions and of society's dependence upon unimpaired intellectual freedom.¹³

3. Legislative and Executive Actions

Florida has a long history of legislative and governmental interference in academic matters and college and university governance. State legislators seeking favored policies have frequently used college and university budgets as cudgels. Appointments to higher education boards in the state have long been political—even more, we have been told, than in most states. However, the political interference that began in 2021 is unprecedented in its sweep and ambition in both the state and the nation. A quick summary will suffice here.

House Bill 233. Known colloquially as the Viewpoint Diversity Act, this law, passed in spring 2021, included an especially troubling provision that permits students to record classroom lectures without giving prior notice to their instructor (or classmates) and without the instructor's consent, with the express purpose of obtaining evidence to support lawsuits or institutional complaints filed by the student. The act also bars institutions from "shielding" students or faculty members from "ideas and opinions that they may find uncomfortable, unwelcome, disagreeable or offensive." As the UFF noted in its suit challenging the bill, this provision "ensures that racist and other hate speech is not restricted . . . and that individuals can take legal action against administrations that choose to restrict such speech." Lastly, the law mandated an annual "Intellectual Freedom and Viewpoint Diversity Assessment" of students, faculty members, and administrators. The law was challenged in court, but the suit was dismissed because the act lacked enforcement mechanisms. Passing legislation and issuing executive orders without clear definitions or enforcement mechanisms has become a pattern in Florida, suggesting that the intent is to chill academic freedom rather than to legislate legitimately in the public interest.

Senate Bill 7. This classroom censorship legislation, passed and signed into law in spring 2022 as the Individual Freedom Act but known as the Stop WOKE (Wrongs to Our Kids and Employees) Act, adds a slew of new items to antidiscrimination law designed to restrict what can be taught in class. The bill makes it unlawful to subject any individual to required employment or educational training that "espouses, promotes, advances, inculcates, or compels such individuals to believe a series of specific

¹³ "Academic Freedom and Tenure in the Quest for National Security: Report of a Special Committee of the American Association of University Professors," *AAUP Bulletin* 42, no. 1 (1956): 97.

concepts.” Individual faculty members, supported by prominent civil liberties organizations, challenged the law, which US district judge Mark Walker enjoined. Judge Walker issued a lengthy and well-reasoned opinion that acknowledged the state’s authority to mandate course content but not the specific viewpoints of those who teach that content. He wrote,

The law officially bans professors from expressing disfavored viewpoints in university classrooms while permitting unfettered expression of the opposite viewpoints. Defendants argue that, under this Act, professors enjoy “academic freedom” so long as they express only those viewpoints of which the State approves. This is positively dystopian. It should go without saying that “[i]f liberty means anything at all it means the right to tell people what they do not want to hear”. . . .¹⁴

One thing is crystal clear—both robust intellectual inquiry and democracy require light to thrive. Our professors are critical to a healthy democracy, and the State of Florida’s decision to choose which viewpoints are worthy of illumination and which must remain in the shadows has implications for us all. If our “priests of democracy” are not allowed to shed light on challenging ideas, then democracy will die in darkness. But the First Amendment does not permit the State of Florida to muzzle its university professors, impose its own orthodoxy of viewpoints, and cast us all into the dark.

The case is currently under appeal in the US Court of Appeals for the Eleventh Circuit, which has so far declined to lift the injunction.

It is telling that while the Viewpoint Diversity Act would bar professors from “shielding” students from “uncomfortable” or “offensive” ideas, the Stop WOKE Act makes it unlawful to advance ideas that the legislature and governor find “offensive.” Indeed, it appears that these two laws cannot be read together consistently, and under them the average faculty member would work under contradictory directives and obligations. First, the faculty member cannot “shield” students from opposing ideas, even if they are distasteful, discredited, or false, and must provide opposing views. Yet, the Stop WOKE Act prohibits the teaching of certain ideas and approaches, which would make it difficult, if not impossible, for instructors to comply with the Viewpoint Diversity Act’s ban on “shielding.” Legislation currently under consideration, if passed in its present form, would add a third directive: that certain ideas about US history and “Western civilization” *must* be taught. As one faculty leader told the committee, these

¹⁴ Reference to George Orwell, “The Freedom of the Press,” The Orwell Foundation, <https://www.orwellfoundation.com/the-orwell-foundation/orwell/essays-and-other-works/the-freedom-of-the-press/>.

obvious contradictions are most likely “a feature, not a bug” in the overall assault on academic freedom because sowing confusion and fear among faculty members about what they can and cannot teach may be the underlying and main goal of the curricular legislation as a package. Another faculty member put it this way: “It’s expensive to engage in litigation, but cheap to scare people and make them leave.”

It is also critical to note—as one faculty member did to our committee—two peculiarities of the Stop WOKE Act’s provisions against teaching about race. First, unlike similar laws and proposals elsewhere, SB 7 does not bar teaching that one race is superior to others but only that one race is “morally superior,” leaving it permissible to teach that one race is *intellectually* superior. Second, university administrators have tried to calm fears by noting that the act prohibits only “indoctrination.” However, SB 7 actually prohibits both “indoctrination *and persuasion*” (emphasis added). It is, of course, impossible to imagine how one could teach any subject without seeking somehow to persuade students of something.

Senate Bill 7044. Passed by the legislature in March 2022 and signed into law by Governor DeSantis in April 2022, this bill authorizes the Florida Board of Governors to adopt a regulation requiring tenured state university faculty members to undergo a “comprehensive” post-tenure review every five years, addressing their accomplishments, academic duties, evaluations, ratings, and pay. The regulation could also include “consequences for underperformance.” The act further prohibits an institution from being accredited by the same accrediting agency for consecutive accreditation cycles, a provision that, as many have noted, will be impossible to implement and is likely to be repealed or modified.

Senate Bill 520. This act, which had failed to win legislative approval on eight previous votes, creates an exemption to Florida’s “sunshine law” for presidential searches, making Florida one of several states that have legislated closed presidential searches. Opponents raised concerns that the law would enable the hiring of political insiders. That prediction was borne out by the hiring, first, of former Nebraska senator Ben Sasse to lead the University of Florida system and, second, of former Republican Florida house speaker Richard Corcoran as interim president at New College.

House Bill 999/Senate Bill 266. HB 999, with its companion SB 266 (which passed the Senate and the House on April 28 and May 3, respectively), curtails funding of DEI measures on campuses (except in cases where they are needed for accreditation purposes), drastically erodes tenure protections, mandates a comprehensive post-tenure review every five years, empowers boards and presidents to be involved in academic personnel decisions, limits the teaching of certain topics in the general education curriculum, and allows the board of governors and the state board of education to review all elective courses that cover “theories that systemic racism, sexism, oppression, and privilege are inherent in the

institutions of the United States and were created to maintain social, political and economic inequities.” These latest revisions to the bill were touted by Senator Erin Grall as more reasonable than earlier versions because references to “critical race theory” were dropped and the banning of certain subjects was restricted to the general education curriculum and not electives. Yet, when Democratic senator Lori Berman asked at the Senate hearings if reviews of elective course material by the board of governors could result in the elimination of an entire university program, like gender studies, Senator Grall responded, “There’s always possibilities.”¹⁵

Indeed, a closer look at the text of SB 266 reveals that the threat to academic freedom remains. We should view with caution any framing of these bills as “reasonable” or “watered down.”

Senate Bill 256. Having passed both chambers, this bill now awaits Governor DeSantis’s signature. The purpose of this bill is to weaken unionization efforts by targeting how membership dues are collected and by raising the threshold of minimum membership required to certify or recertify a union. The bill eliminates payroll deductions of union dues and requires that unions maintain a minimum membership of sixty percent of all eligible employees or risk decertification. It is telling that this bill applies to all public-sector unions except those representing firefighters, corrections officers, and the police. Clearly, it is aimed at weakening teachers’ right to unionization.

* * *

Taken as a whole, these new laws and the executive actions enforcing them do not bode well for the future of higher education in Florida. They stand collectively as a uniquely bold and dangerous program designed to reshape public higher education according to ideological and partisan political standards. As one union leader and longtime faculty member in the Florida system stated during an interview, “The legislative measures taken together are not a laundry list, but a strategic plan to implement [DeSantis’s] agenda.” That is to say, all of these bills work together to attack higher education on different fronts and serve to (1) threaten academic freedom as it relates to the teaching and research of certain topics, (2) weaken shared governance and workers’ rights by concentrating power in the hands of the boards of trustees and presidents, and (3) weaken educators’ ability to unionize, thus limiting their ability to fight the abuses of power that are bound to occur after the passage of these bills.

¹⁵ Divya Kumar, “Florida Senate Passes a Watered-Down Slate of Higher Education Changes,” *Tampa Bay Times*, April 28, 2023, <https://www.tampabay.com/news/education/2023/04/28/florida-senate-higher-education-bill-diversity-equity-sb266-hb999-gender-critical-race-theory/>.

This tripartite attack appears to be serving as a model for similar legislation proposed in other states where Republicans control legislatures and governors' mansions. Similar legislation has now been introduced (and in a few cases already passed) in Ohio, Tennessee, and Texas.

4. Chilling Effect on Academic Freedom

It remains unclear how much of Governor DeSantis's higher education agenda will be successfully implemented. No doubt some provisions of recent legislation will not withstand judicial review. Moreover, there are significant signs that the "reforms" trumpeted by the governor are unpopular. But these measures have already done tremendous damage. Several faculty members expressed concern about the impact of the Viewpoint Diversity Act's provision allowing secret student recording of classes and its chilling effects not only on faculty members but also on students, who fear that a comment they make might become grist for the social media troll mill. "Florida is a dumpster fire rolling downhill," opined a UFF leader. Others described an "incredible climate of fear" pervading the state's higher education systems.

We have heard reports that faculty members of color and those teaching in the humanities and social sciences in particular are seeking to leave and that filling positions with candidates of color has become difficult, if not impossible. In fact, filling the positions with any qualified candidates is becoming difficult. Andrew Gothard, president of UFF, which represents more than twenty-five thousand faculty members across the state, told this committee that candidates are turning down job offers in Florida even without having any other offers in hand. At the University of Florida's Levin College of Law, we were told, many of those who are outspoken have departed and "we can't recruit anyone but white men." After the antiracist protests of summer 2020, the college initiated a search for a position in race and the law but has been unable to fill it. Consequently, the faculty is already less diverse than it had been previously.

For many, however, departure is not an option—and they are often horrified to find themselves self-censoring. As always, those without access to the tenure system are the most vulnerable and fearful, but even those with tenure can feel the heat. We heard accounts of faculty members changing syllabi or assignments out of a sense of caution. One tenured law professor who teaches the history of crime and criminal law told us, "There is literally not a class I teach where I am not somehow violating policies and laws." He went on to describe the conditions under which he teaches as "Kafkaesque," because no one knows where the boundaries lie.

Conclusion

During the dozens of interviews conducted thus far by the special committee with faculty members across Florida, two sentiments and phrases came up frequently: the reality in Florida is “Orwellian” and Florida is the “canary in a coal mine.” Indeed, the threat from authoritarian politicians who use phrases like “Stop WOKE,” “DEI bureaucracy,” and “indoctrination” to limit academic freedom while imposing their worldview upon institutions of higher education cannot be overstated. Neither can the threat of Florida-style legislation spreading across the country.

If there are those in academia who think this threat does not affect them because they are at a private institution, or because they are outside of Florida, or because they do not teach in a “controversial” field, or because they are politically conservative, we urge them to pay close attention to the words of a professor at the University of Florida who self-identifies as a conservative and devout Christian. In an email message to his colleagues, he wrote,

Bottom line: **Big Brother is watching.** He is taking names. **I’m on their “woke” list!** I’m the faculty advisor for the Federalist Society, for the Law School Republicans, and for the Christian Legal Society. If they find me threatening, the rest of you are dead in the water.

Be wary and be aware. If I don’t have academic freedom, neither do you. If you don’t, neither do I. We are in this together. (Emphasis in original.)

While the committee will continue its work and publish a detailed report later this year, it is imperative that we pay attention to the dire situation in Florida now. What is happening in Florida will not stay in Florida. We call on all professional organizations, unions, faculty, staff, and administrators across the country to fight such “reforms” tooth and nail and to offer support to our colleagues in Florida however they can. *We are* in this together.

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