



SPEECH FIRST

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Thank you Chairman Cirino and Ranking Member Ingram, and thank you members of the committee 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 litigates against colleges and universities on behalf of our members when those institutions violate their free speech rights. Over the past year alone, I have visited dozens of campuses and spoken with thousands of students.

It is clear to me the serious lack of civics education in our public schools has rendered students and faculty vulnerable to campus environments that are increasingly hostile to free speech. For example, I spoke to a room full of fifty students while visiting a college campus a few months ago, and I asked how many of them had read the U.S. Constitution. Only five students raised their hands. Sadly, those results are not unusual—they're part of a concerning trend across American universities. The bottom line is that many students arrive on college campuses with no basic understanding of the foundational principles that make up our country's legal, political, and governing structures.

George Washington said: "A primary object should be the education of our youth in the science of government. In a republic, what species of knowledge can be equally important?"

This point is as critical today as it was in the early years of our country. If we want to protect our civil liberties, the next generation must not only understand the constitution, but also the original ideas, debates, and philosophies that animate it.

A disinterested populace that cannot be bothered with the duties associated with citizenship, led by complacent leaders who prefer that citizens don't care to inquire about their rights, is a recipe for civic disaster. Based on my experiences at campuses across the country, I can tell you we are on that path today. My conversations with students have exposed three main sentiments:

1. Fear
2. Hate/Hostility
3. Apathy/complacency

I frequently hear from students who fear retaliation for expressing their views, especially if those views are outside the mainstream. They are afraid of being reported by their peers to the apparatchik that is the college administrators who run what are commonly known as "Bias Reporting Systems" ("BRS").¹ These are anonymous reporting systems where students are encouraged to inform on one another for incidents of "bias" or "offensive" speech. "Bias Incidents" are often described as "microaggressions", not using someone's preferred pronouns, "offensive speech", "joking", or "stereotyping." In some cases, even offending someone's political affiliation is a reportable offense. All of these purported "offenses" are constitutionally protected forms of speech. But do students know this? Or do they go along with the motion not realizing they can push back when their rights are violated?

I often find myself explaining to students that whether or not they find someone's speech appalling, uncomfortable, or offensive, the Supreme Court has unanimously held time and time again, even as recently as 2019,² that there is no "offensive speech" exception to the First Amendment.

When a student is reported to a BRS, 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?

Bias Reporting Systems 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.

¹ https://speechfirst.org/wp-content/uploads/2023/04/SF-2022_Bias-Response-team-and-Reporting-System-Report_Final.pdf.

² *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019).

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 reported comments made by their own students in academic settings. 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%³ 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.⁴

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.”⁵

The state of Ohio currently has fifteen campuses with Bias Reporting Systems that we know of based on our survey.⁶ Furthermore, students fear the weaponization of harassment policies which have been commonly used to tamp down on unpopular speech by stating, in OSU’s case, that “unwelcome verbal conduct” can be considered reportable harassment. So, if someone decides to express their views on whether biological males who identify as female should be allowed to participate in women’s sports, they could be reported for harassment.

The students I work with only come to us because we promise to protect their identities. They are so afraid of retaliation that they will often have to move to multiple locations when talking with me on the phone because they worry other students will overhear and find out they have controversial or unpopular views and will report them for it. If this doesn’t sound like something out of a George Orwell novel or what it’s like to live under a totalitarian regime, then you must not be paying attention.

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 cannot 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?

³ 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

⁴ 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.

⁵ 979 F.3d 319, 338 (5th Cir. 2020).

⁶ *Free Speech in the Crosshairs*, *supra*.

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

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.⁷

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?

Students do not know how to engage with opposing ideas. They are constantly operating in unpredictable environments and fear the universities do not have their best interests at heart unless they tow the ideological line or fit the mold for the political agenda of the day. A student at UC-Boulder was wearing a MAGA hat and was sucker punched in the face by an African American female for wearing this hat. This was assault. But he did not report the incident because he was so convinced the university would do nothing and that he, himself, might get blamed for the incident in the end.

A 2021 survey from College Pulse and RealClear Education found that a little over 20% of students felt it was okay to use violence against someone based on their speech.⁸

At the University of North Texas, an angry mob chased students who hosted a controversial speaker down the hall and one of them had to hide in a utility closet until the mob decided to give up and leave.⁹

I recently visited SUNY-Oswego and was protested for my talk on free speech of all things. I was the first conservative speaker in over two years on that campus and was met with aggressive protests. The level of police and security required was quite alarming on its own, but worse yet, the student protestors wouldn't even stay to hear my talk.

When I interview students on campuses for my podcast and man-on-the-street interviews, they struggle to answer a simple question: "What topics are essentially off-limits to discuss in the classroom?" While looking over their shoulders and whispering concerns about being cancelled, they tell me that the answer is racial issues, LGBTQ, immigration, abortion, the Second Amendment, and even discussions around free speech itself. You know, just the most salient societal questions of the day.

⁷ '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/>

⁸ <https://www.thefire.org/news/2021-college-free-speech-rankings>

⁹ <https://nypost.com/2022/03/09/north-texas-student-says-police-hid-her-in-closet-during-heated-activist-event/>

In addition to the policies students fear will be used against them, they also fear retaliation from administrators and their professors. I've had students tell me they do not wear cowboy boots to class because they don't want their professors to think they are conservative—apparently cowboy boots are now considered “conservative.” I often hear stories of students who know their grades will suffer if professors disagree with their views.

Meanwhile, I also hear from professors who tell me they no longer hold class discussions, because *they* fear how their students will react to one another, or that the professor himself, may get in trouble for encouraging the discussion of a controversial topic. What is a controversial topic these days? I asked students this exact question. Most said *anything* having to do with politics. But with the level of cultural and societal issues being discussed in the political arenas today, this means virtually any issues could be off-limits.

The bottom-line: no one actually knows what they could get in trouble for saying. This is antithetical to America's founding principles. And how on earth could this possibly create a constructive learning environment?

The hateful sentiments I often see on campuses derive from students who have replaced fellowship with enmity. Students are often confronted with hours of training that focus on the many attributes which divide them rather than those that unite them. These trainings are known as “Diversity, Equity, and Inclusion” programs.

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.¹⁰

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.¹¹

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

¹⁰ Speech First, *Freshman Disorientation Report*, 2022, http://speechfirst.org/wp-content/uploads/2022/08/SF_Freshman-Disorientation-Report_FINAL.pdf

¹¹ *Id.*

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 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 animosity amongst students rather than camaraderie.

I bring up these three main sentiments of fear, hostility, and complacency with you here today for a reason. They all directly contribute to one of the main problems we see in society today: The inability to engage in civil discourse. The concept of civil discourse is essential to the American way of life. I’m sure it is not lost on anyone in this room that we are seeing a serious breakdown in our country’s ability to articulate ideas and political solutions. I hark back to the quote from George Washington and the reasons why he prioritized an education in civics and in the science of government. It was understood then, as it should be now, that our republic is a fragile one, and it can easily collapse when we stop understanding its history, its purpose, and when we stop understanding one another.

There is a steep decrease in student engagement with opposing or challenging ideas. This will ultimately hamper intellectual growth at a time when students should be challenging themselves intellectually more than ever before. Understanding America’s constitutional history is fundamental to understanding the importance of our unique culture of debate and civil discourse which are essential elements to a dynamic and spirited education. Furthermore, any citizen who plans to participate in American society must know and understand the foundational principles which make up our legal system. An ignorance of these principles will lead to the decay of such concepts as Justice, Equal Rights, Liberty, and the obligations of the Citizenry, as well as the appropriate limitations on the government.

When students lose hold of the concepts espoused in the teaching of civics, they lose the sense of ownership over their rights and their liberties. They begin to identify others who are more responsible for safeguarding their rights than they are. This should be of grave concern for anyone working towards the continuation of this republic. Participation in standing up for and defending one’s rights is essential in our form of government. In fact, the only reason I can think to shield students from courses on Constitutional studies, American history, and civics would be for the goal of controlling and manipulating them; molding them for one’s own political agenda. Because once a student has a firm grasp on their rights and obligations, they become more independent thinkers, less influenced by the whims of the prevailing dogma on college campuses, and more open to exercising their rights by participating in rigorous intellectual inquiry.

As of the moment, most students I interact with not only haven’t read the U.S. Constitution, but don’t fully understand what constitutes protected speech. This is why when we see them riot, while calling it a “protest”, shout down speakers, damage property, they say they are only exercising their right to free speech. I think most in this room have taken notice of the fact that

mob behavior is becoming more the norm on college campuses as well as off campus. Many students believe this is constitutionally protected speech and fail to recognize when you prevent someone from speaking, you are no longer exercising *your* right, you are taking away *their* right to speech.

Taking the incident at Stanford Law School for example. Keep in mind the same students who will one day be public defenders, working in corporate law, clerking on the U.S. Supreme Court, and serving as local and federal judges were the same students who spit on a federal judge, told him his children should die, and shouted him down with the support of their DEI Dean. All because they disagreed with his opinions. They all claimed to have been exercising their right to speech. Dean Tirien Steinbach encouraged the mob and questioned the right to free speech in our country asking if the “juice was worth the squeeze.” Meaning, was free speech worth it if we have to listen to opposing ideas? Every individual who died at the hands of a totalitarian regime is spinning in their grave at this question. Of course it is worth it. Just because we don’t know what it is like to live without protections for our rights, doesn’t mean they are non-existent, or that they are inconsequential.

In fact, 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.

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.

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.¹²

Moreover, as Judge Marcus wrote in his concurring opinion in *Cartwright*:

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

¹² 32 F.4th 1110, 1128 (11th Cir. 2022).

ignorance ... A university that turns itself into an asylum from controversy has ceased to be a university; it has just become an asylum.¹³

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.

Free speech, civil discourse, civic duty, and a free society: these are principles we ALL hold dear in this country. But they are disappearing from college campuses. Everyone in this room should want our institutions to teach and embody the virtues that have made this country great. These are the concepts that unite us all as Americans, and these are concepts that should be understood by every citizen in this country.

Thank you.

¹³ *Id.* at 1130 (Marcus, J., concurring).