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## Academic Freedom Alliance Statement on “Divisive Concepts” Policies

The Academic Freedom Alliance urges policymakers to refrain from adopting “divisive concepts” policies that limit classroom discussion, scholarly inquiry, or public debate in colleges and universities. Such policies are inimical to the free and open intellectual environment that universities should be fostering and interfere in fundamental ways with the core scholarly and educational mission of institutions of higher education.

President Donald Trump issued [Executive Order 13950](#) on September 22, 2020, which prohibited federal workplace training programs that taught, advocated, or promoted any “divisive concepts.” Since then, many proposals have been made in the states similarly to exclude divisive concepts, or what has sometimes been characterized as “critical race theory,” in government workplace training and in public schools. More recently, such bans have also been contemplated for curricula in state colleges and universities. The most prominent of these was adopted by the Florida legislature in the “Stop W.O.K.E. Act” in 2022. The enforcement of that statute has now been enjoined as unconstitutional by a federal district court.

Some of these proposals arose out of concerns that teaching divisive concepts can make it difficult or uncomfortable for students to disagree with what is taught. Of course, divisive concepts, like any concepts or theories discussed in a classroom setting, must be taught in such a way that students are never compelled to accept the beliefs of their instructors: indoctrination is antithetical to education. At the same time, instructors must have the academic freedom to express their beliefs and their reasons for holding them. There is no contradiction here: academic freedom is a two-way street that protects students against compelled belief and instructors against censorship.

It is well established that public universities are constrained by the First Amendment to the U.S. Constitution. Professors at state universities enjoy certain First Amendment protections relative to their university employer, and those protections extend to their speech in the classroom. As the Supreme Court noted in *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967), “Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us, and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.” *Keyishian* itself struck down a New York law compelling public university professors to sign a loyalty oath pledging that they have never advocated the overthrow of the United States government. Similarly, when state officials sought to question a professor about allegedly subversive ideas expressed in his classroom lectures, the Supreme Court rebuffed them, asserting that the “essentiality of freedom in the community of American universities is almost self-evident” and that no one should “impose any strait jacket upon the intellectual leaders in our colleges and universities.” *Sweezy v. United States*, 354 U.S. 234, 250 (1957).



To be sure, the First Amendment also protects individuals, including students in a classroom, from having to engage in compelled speech. In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), the Court rejected a state’s requirement that public school students say the Pledge of Allegiance. There the Court insisted, “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion and force citizens to confess by word or act their faith therein.” But the protection against compelled speech in an educational context does not limit the freedom speech of instructors. As one circuit court recently noted, instructors “may not require students to swear allegiance” to any particular belief, but that does not preclude instructors from teaching or even advocating on behalf of particular beliefs or from requiring students to hear, understand, or even recite such beliefs. *Oliver v. Arnold*, 3 F.4<sup>th</sup> 152, 163 (5<sup>th</sup> Cir. 2021). The recent divisive concepts proposals sweep far more broadly than what would be appropriate simply to protect this constitutional right of students. Such proposals would routinely ban any classroom instruction that would “espouse” or “promote” or “advance” or “inculcate” or “advocate” ideas that politicians find unacceptable. Such prohibitions do not merely guard against the prescription of orthodoxy. They themselves attempt to impose an orthodoxy.

Academic freedom principles, consistent with the core purpose of institutions of higher education, protect the ability of instructors to freely discuss controversial but relevant ideas in a classroom and of scholars to freely investigate and argue in favor of controversial ideas. It is a familiar feature of university life that members of the campus community will encounter ideas and perspectives that they might find offensive, disagreeable, or disturbing. Universities are places where such ideas can be openly examined, argued about, criticized, and promoted. Neither students nor professors are required to adopt any particular idea as their own, but they are afforded the freedom to hear, learn about, and investigate such ideas.

We should be particularly wary of public officials imposing limitations on what ideas can be discussed inside the university. The temptation to abuse such a power in order to suppress ideas that those in power find threatening to their interests and sensibilities is far too great. Campus speech codes, whether imposed by student governments, faculty senates, administrators, trustees, or state legislatures, and irrespective of the particular ideological motives of those seeking to silence others or place restrictions on what they can say, are antithetical to the research and teaching mission of universities. Repugnant ideas on a college campus should be challenged through criticism and debate, not through the tools of censorship.

Bans on divisive concepts go far beyond any role that policymakers have traditionally played in public universities. A legislature may well believe that college students should learn basic civics



or that a particular university campus should focus on engineering and the sciences or that a university should dedicate resources toward developing a particular area of intellectual inquiry. The recent proposals do not resemble such familiar policies. They instead distort the free exchange of scholarly ideas by prohibiting the articulation of some perspectives and points of view. The proposals would not just ban the discussion of controversial topics; they would ban the expression of some particular viewpoints regarding those topics. Students are allowed to hear arguments against affirmative action or reparations for slavery, but they are not allowed to hear arguments in favor of such policies, or at least not all the arguments that advocates of those policies think relevant to making their case. Students in a history class are allowed to see the arguments in favor of the abolition of slavery or the expansion of civil rights, but they are not allowed to see what ideas those activists were faced with and had to overcome. Free inquiry requires more wide-ranging investigations of controversies than such policies would allow. As the English philosopher John Stuart Mill long ago warned, “He who knows only his own side of the case, knows little of that.” Students must be able to explore even those ideas and values that we as a society have rejected if we want them to fully understand and appreciate the ideas and values that we have embraced.

We should also worry about the precedent that such divisive concepts bans set for the future. If a legislature may ban students from hearing someone espouse the view that individuals should receive adverse treatment on the basis of their race or sex in order to advance equity goals or that ideas of merit can be oppressive, they could equally ban any number of other controversial social, political, philosophical, or scientific concepts, whether espoused by those on the left or those on the right, from the university campus. We protect a realm of free inquiry by insisting that university campuses should enjoy some degree of insulation from the political passions of the moment. We should not have to hope that enlightened politicians will tolerate the good kinds of ideas and suppress only the bad ones. We should leave the winnowing of good from bad ideas to the process of scholarly investigation and disputation and free and open classroom debate.

Selective political interventions to override the free exchange of ideas on university campuses will inevitably damage our institutions of higher learning and hamper their ability to contribute to the advancement of knowledge. Bans on divisive concepts, or speech codes by any other name, whether they come from the right or the left, are incompatible with the preservation of great universities.

1/6/2023