



Why New Partisan-Inspired Free Speech Laws Endanger Civic Learning on Campus

Nancy L. Thomas, American Association of Colleges and Universities

Twenty-two state legislatures have passed, or are considering, laws that would mandate free speech at public colleges and universities – and a close look at these measures reveals why faculty, university administrators, and policymakers must push back. In a stated quest to protect expressive freedoms for unpopular viewpoints on campus, these laws overreach because they overlook academic freedoms, available research, and the rights of academics to shape the content and contexts of student learning. Faculty members should closely examine the laws in their states and consider how they might adversely affect teaching and learning in and beyond the classroom. Policymakers, too, must weigh partisan urges against the need to allow institutions of higher education to educate students effectively for participation in American democracy.

How New Laws Could Chill Campus Speech

In 2017 and 2018, eleven states passed (and eleven more proposed) legislation that would nullify existing speech codes at public colleges and universities. Apparently designed to address incidents involving speakers on campus, some of the laws allow “victims of free speech infringement” to seek monetary damages, while others mandate that institutions prohibit students from interfering with scheduled events. Several states prevent institutions from “shield[ing] students, staff, or individuals on campus from speech ... including ideas and opinions which such students, staff, or individuals on campus find unwelcoming, disagreeable, or even deeply offensive.” Many of these measures go further with language that would require universities to remain neutral on issues of public controversy.. One bill introduced in Minnesota says “faculty shall be careful not to introduce controversial matters that have no relationships to the subject taught... [or] have no special competence of training.”

Ironically, in practice these laws will likely have a chilling effect on speech. Because the exact meaning of terms such as “interference,” “infringement,” “controversial matters,” or “neutrality” is highly ambiguous, people on campus who are not sure what constitutes a violation of these laws – and what consequences could follow – may well opt for silence rather than test litigious waters. Attorney General Jeff Session promised to intervene in cases involving speech on campus and has already intervened in at least three instances. Because determining a professor’s exact “area of expertise” is nearly impossible, the laws aggressively limit instructors’ freedom of speech. These measures may also limit instructors in various disciplines from fulfilling their responsibility to prepare students for civic participation.

Perhaps the most insidious aspect of these laws is that they may prevent institutions from enforcing community norms like nondiscrimination and inclusion, even as colleges and universities are told that they must acceptance unwelcoming and offensive speech. Such laws ignore the academic freedom of institutions and professors to determine the content of educational programs and the processes for learning. They also ignore research about how campus environments affect learning.

Effective Learning for Democracy

Our research on highly politically engaged colleges and universities reveals that discussions of controversial issues are critical to learning. But high-quality discussions do not simply happen. Rather, they must be carefully constructed and facilitated so that all students, not just some, can participate. For example, due to their personalities or cultural norms, some students prefer to reflect before speaking in class. By creating pauses in the discussion so that people could think and jot down their thoughts, professors provide equal opportunities for participation.

Healthy relationships and trust in the classroom are also necessary for quality discussions. Students say that their favorite and most effective learning experiences were those in which they could engage in rigorous disagreements and debates, yet were “still friends” at the end of class. The classrooms that host such discussions are, we find, carefully designed to be “safe spaces” for disagreement and candor. Provocative arguments are common, and students repeatedly told us that their favorite classes are those where the professor played the “devil’s advocate,” drawing out diverse perspectives on an issue – and introducing a relevant perspective if no one in the room introduces it. Effective professors also insist that students be able to back up their viewpoints and arguments with facts or the literature. To achieve all of these conditions for productive discussions, professors must be free to tailor conditions and control course content.

Setting Educational Goals in the Broader Learning Environment

Learning happens not only in classrooms, and thirty years of research shows that campus culture and climate affects student learning. In our research at the Institute for Democracy and Higher Education, we conclude that students are influential in shaping the campus norms around free speech. We found that students wanted free expression – to a point. They drew the line at behavior they deem racist, sexist, homophobic, xenophobic or hateful toward a particular group. One student explained, “I just feel like people here ... will not tolerate certain things. You can’t go around wearing KKK masks ... that’s not going to work.” This attitude is consistent with recent polling that shows a decline in support among college students for the First Amendment if it means allowing degrading and hateful speech. Laws that expressly *force* campuses to allow offensive speech will inevitably discourage students who want campuses to be welcoming to all.

Although academic freedom is often understood as a protection for faculty research, it is also a privilege afforded to professors so they can teach controversial issues without governmental interference. This ideal also guarantees *institutional* rights to invoke academic grounds to shape the four essential freedoms articulated in the Supreme Court’s 1957 decision in *Sweezy v. New Hampshire* – namely, who may teach, what may be taught, how it shall be taught, and who may be admitted to study. Colleges and universities have essential roles to play in educating students to ensure the health and future of democracy – and they must be allowed to perform that role without partisan interventions.

Read more in Nancy Thomas, “Democratic Education: A Matter of Institutional Conscience and Skills,” *About Campus: Enriching the Student Learning Experience* 6, no. 3 (2001): 19-24.