

# Congress of the United States

Washington, DC 20515

September 28, 2022

The Honorable Miguel Cardona  
Secretary  
U.S. Department of Education  
400 Maryland Ave. SW  
Washington, D.C. 20202

Dear Secretary Cardona:

We are conducting oversight over the U.S. Department of Education's (the Department) administration of taxpayers' dollars awarded to public and private colleges and universities under various federal programs. Specifically, we are concerned many of these colleges and universities are undermining free speech and academic freedom on their campuses. Despite this problem, the Department does not seem to be engaged in promoting the free exchange of ideas within our colleges and universities. In fact, we were troubled to hear that the Department did not extend the free speech hotline first established by the past administration which was intended to be a resource to report potential free speech violations.<sup>1</sup> We also do not know the status of the past administration's Religious Liberty and Free Inquiry Rule.<sup>2</sup> We request a briefing to understand better what actions, if any, the Department is taking to promote free speech and academic freedom on college campuses.

## **Attacks on Academic Speech and Freedom at U.S. Universities**

Institutions of higher learning are places where faculty and students should test, develop, and fine tune theories, thoughts, and ideas—some of which will inevitably be controversial. Unfortunately, colleges and universities are stifling free thought and expression. Among these schools are those which have been perceived as our country's top schools, including Yale Law School,<sup>3</sup> Georgetown University Law Center,<sup>4</sup> University of Washington,<sup>5</sup> University of Pennsylvania,<sup>6</sup> and the University of Southern California.<sup>7</sup> These are just a handful of schools

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<sup>1</sup> Jeremiah Poff, *Department of Education silently shuttered DeVos-era free speech hotline*, WASHINGTON EXAMINER (August 17, 2022).

<sup>2</sup> Jeremy Bauer-Wolf, *Where is the Education Department's proposed religious liberty and free inquiry rule?*, *Higher Ed Dive* (Sept. 7, 2022).

<sup>3</sup> Aaron Sibarium, *Hundreds of Yale Law Students Disrupt Bipartisan Free Speech Event*, WASH. FREE BEACON (Mar. 16, 2022).

<sup>4</sup> David Frum, *Georgetown's Cowardice on Free Speech*, THE ATLANTIC (May 20, 2022).

<sup>5</sup> Haley Chi-Sing, *University of Washington Professor Sues School, Alleging Free Speech Violation*, FOX NEWS (Jul. 13, 2022).

<sup>6</sup> Rachel Frommer, *Law Professors Condemned as Racist after Praising America's 1950s 'Bourgeois Culture,'* WASH. FREE BEACON (Aug. 27, 2017); Karen Sloan, *Penn Law Dean Wants 'Major Sanctions' Against Lightning Rod Professor*, REUTERS (Jul. 18, 2022).

<sup>7</sup> Valerie Richardson, *USC Under Federal Probe for Handling of Alleged Anti-Semitism Against Jewish Student Leader*, WASH. TIMES (Jul. 26, 2022).

that in recent years have either suppressed or threatened to suppress faculty and student free exercise speech.

Often school administrators suppress academic thought because it does not align with ever-changing norms of political correctness.<sup>8</sup> Administrators at Yale Law School threatened to interfere with one student's ability to pass the character and fitness examination for his bar license unless he apologized to a student group for an email.<sup>9</sup> St. Louis University disbursed student fees among student organizations discriminately, based on political or ideological affiliation.<sup>10</sup> Certain faculty at University of Pennsylvania, Georgetown University Law Center, and Princeton University have been placed on administrative leave or faced threats of termination or indefinite "investigations" for expressing their opinions outside the classroom on social media.<sup>11</sup> A further motivation for such administrative actions taken against faculty and students for expressing their thoughts and opinions are pressure campaigns from student groups encouraging censorship.<sup>12</sup> This is no way to run an institution for frank and honest intellectual discourse.

Incidents at public universities such as University of Washington, University of Michigan, and University of Arizona mirror those at private universities. At University of Washington, a computer science professor was disciplined for refusing to include a controversial "indigenous land acknowledgement" statement on his course syllabi.<sup>13</sup> In another case, it took a federal lawsuit for University of Michigan to disband its "bias response team" which was dampening free speech by seeking out and reporting student conduct that was considered "hostile" or "biased" against certain groups.<sup>14</sup> This past spring, disruptive student protesters shut down a speech by constitutional law scholar Ilya Shapiro at University of California, Hastings College of the Law.<sup>15</sup> In fact, student protesters routinely try to disrupt and even shut down campus speakers. U.S. Senator Kyrsten Sinema, an instructor at Arizona State University, was harassed even in the bathroom by protestors who were upset with her voting record.<sup>16</sup> All of these instances exemplify how common it has become to disrupt speech.

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<sup>8</sup> *Id.*

<sup>9</sup> Aaron Sibarium, *A Yale Law Student Sent a Lighthearted Email Inviting Classmates to His 'Trap House.'* *The School is Now Calling Him to Account*, WASH. FREE BEACON (Oct. 13, 2021).

<sup>10</sup> Caitlyn McCoy, *SLU Doles Hundreds of Thousands of Dollars to Liberal Groups, Conservatives Get \$440*, Young Am.'s Found. (Jun. 23, 2022).

<sup>11</sup> Adam Steinbaugh, *Penn Caves to Pressure, Initiates Disciplinary Proceedings Against Tenured Law Professor Amy Wax*, FIRE: FOUND. FOR INDIVIDUAL RIGHTS & EXPRESSION (Jan. 18, 2022); Nate Hochman, *Inside Georgetown Law's Campaign to Cancel Ilya Shapiro: 'This is Melting Down.'* NAT'L REV. (Feb. 2, 2022); Joshua Katz, *Princeton Fed Me to the Cancel Culture Mob*, WALL. ST. J. (May 24, 2022).

<sup>12</sup> *Id.*

<sup>13</sup> *Supra*, n. 3.

<sup>14</sup> Martin Slagter, *University of Michigan Ends Bias Response Team in Free Speech Lawsuit Settlement*, MICHIGAN LIVE (Oct. 29, 2019).

<sup>15</sup> Erwin Chemerinsky & Howard Gillman, *Free Speech Doesn't Mean Hecklers Get to Shut Down Campus Debate*, WASH. POST (Mar. 24, 2022).

<sup>16</sup> Morgan Keith, *Constituents Confront Senator in Arizona State University Bathroom Over Build Back Better Agenda and Immigration*, BUSINESS INSIDER (Oct. 4, 2021).

Unfortunately, these efforts to suppress free speech are working. College students are increasingly concerned about their ability to freely express their opinions and ideas on their campuses.<sup>17</sup> Only 47 percent of students believe their speech rights are protected, and only about half report being comfortable expressing disagreement with their instructor or peers in class.<sup>18</sup> Disturbingly, 66 percent of students reported believing that it is acceptable to shout down a speaker to prevent them from speaking on campus, while 23 percent reported their belief that it is acceptable to use *actual violence* to stop a campus speech.<sup>19</sup>

### **An Example of Threatening Speech Tolerated Because it is Left Leaning Orthodoxy**

However, despite these widespread challenges to freedom of speech, there are strange exceptions which demand our attention. It appears that, if your speech is aligned with left leaning orthodoxy, it will be protected even if it is arguably a threat against the Supreme Court justices. For instance, on June 25, 2022, a Harvard Law School instructor tweeted the following:

The 6 justices who overturned Roe should never know peace again. It is our civic duty to accost them every time they are in public. They are pariahs. Since women don't have their rights, these justices should never have a peaceful moment again.<sup>20</sup>

The tweet was later taken down. However, this same Harvard instructor acknowledge the power of words in a later tweet:

This is such a stupid take [referring to an article by Bari Weiss relating to the attack on Salman Rushdie]. Words are not violence? How was the fatwa not violence? Rushdie had to go into hiding for 8 years because of it. It was just words!

We need to realize that words have the ability to inspire violence and directly harm people. They are not meaningless.<sup>21</sup>

It appears this Harvard instructor needs to heed her own advice and cease tweeting verbal attacks on politicians, commentators, judges, and others who hold conservative views. Instead, this instructor might want to focus on tolerance and respect for all opinions. U.S. universities should follow suit and foster an environment of tolerance, respect, and peaceful dissent.

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<sup>17</sup> Dante Chinni, *Students Value Free Speech, but Feels Theirs is Threatened*, NBC NEWS (Jan. 30, 2022); Jacqueline Pfeffer Merrill, *Is Free Speech At-Risk on Today's College Campuses?* THE HILL (Apr. 15, 2022).

<sup>18</sup> Knight Foundation, *College Student Views on Free Expression and Campus Speech* (Jan. 25, 2022).

<sup>19</sup> *2021 College Free Speech Rankings*, FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION, available at <https://reports.collegepulse.com/college-free-speech-rankings-2021> (last accessed Aug. 10, 2022).

<sup>20</sup> Alejandra Caraballo (@Esqueer\_), Twitter (Jun. 25, 2022, 7:18 AM), <https://campusreform.org/article?id=19822>.

<sup>21</sup> Alejandra Caraballo, (@Esqueer\_), Twitter (Aug. 15, 2022).

[https://twitter.com/Esqueer\\_/status/1559185185563820032?s=20&t=KzsWGSPLYPdDg1IeTEtoA](https://twitter.com/Esqueer_/status/1559185185563820032?s=20&t=KzsWGSPLYPdDg1IeTEtoA).

## **Universities Receive Enormous Amounts of Taxpayer Dollars & Should Support Free Speech—on all Sides of the Political Spectrum**

The federal government gives U.S. public and private institutions substantial grants and contracts funded entirely by taxpayers. For example, in 2019, Yale University received approximately \$620 million, Harvard University received approximately \$1.1 billion, University of Pennsylvania received approximately \$830 million, Georgetown University received approximately \$370 million, and University of Southern California received approximately \$1.1 billion.<sup>22</sup> Public schools also receive substantial federal funding. In 2019, University of Washington received \$1.2 billion, University of Michigan received \$1.1 billion, University of California Hastings College of the Law received \$30 million, and Arizona State University received \$1 billion in federal taxpayer dollars.<sup>23</sup> In total for 2019, federal funds were remitted to public and private postsecondary education institutions in the form of federal student aid (\$98 billion), grants (\$41 billion), and contracts (\$10 billion).<sup>24</sup> Additionally, since 2020, Congress pumped \$76.2 billion in “emergency” funds into the Higher Education Emergency Relief Fund (HEERF) via the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act), the *Coronavirus Response and Relief Supplemental Appropriations Act* (CRRSAA), and the *American Rescue Plan Act* (ARPA).<sup>25</sup> These numbers are evidence that American taxpayers make a significant investment in colleges and universities.

For this reason, these institutions of higher learning should be havens of free speech. Instead, school administrators are undermining the very purpose of their institutions. The proliferation of cancel culture in American higher education threatens the ability of students and faculty to push themselves past their academic limits. The Department should be signaling to these institutions that academic freedom is paramount for the success of students, faculty, and society, and should help them see that limiting free speech is counter to the intellectual goals of academia.

To assist Committee Republicans in conducting important oversight of the Department’s administration of funds for higher education, including what the Department is doing to promote free speech and academic freedom, we request a staff-level briefing as soon as possible, but no later than October 5, 2022.

Thank you for your consideration of this important issue. To make arrangements to schedule the briefing or ask any related follow-up questions, please contact Committee on Oversight and Reform Republican Staff at (202) 225-5074. The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad

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<sup>22</sup> USASpending.GOV – DATA LAB, FED. INV. IN HIGHER EDUC. (Oct. 2019), *see* <https://datalab.usaspending.gov/colleges-and-universities/> (last accessed Aug. 10, 2022).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> CARES Act, Pub. L. No. 116-136 § 18004(a)(1-3) (2020); CRRSAA, Pub. L. No. 116-250 § 314, 134 Stat. 1932 (2020); ARPA, Pub. L. No. 117-2 § 2003, 135 Stat. 23 (2021); U.S. Dep’t of Educ., ARP: Am. Rescue Plan (HEERF III), *available at* <https://www2.ed.gov/about/offices/list/ope/arp.html> (last accessed Aug. 10, 2022).

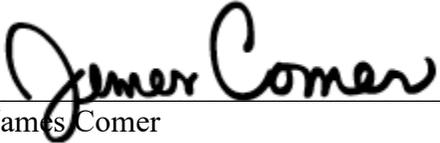
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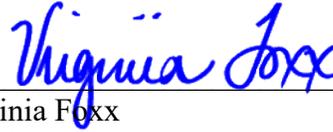
authority to investigate “any matter” at “any time” under House Rule X. Thank you in advance for your cooperation with this inquiry.

Sincerely,



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James Comer  
Ranking Member  
Committee on Oversight and Reform



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Virginia Foxx  
Ranking Member  
Committee on Education and Labor

cc: The Honorable Carolyn B. Maloney, Chairman  
House Committee on Oversight and Reform

The Honorable Robert C. Scott, Chairman  
Committee on Education and Labor