



THE PRIVILEGE AND PERILS OF FREE SPEECH: ACADEMIC
FREEDOM, BANNING CURRICULA, HATE SPEECH, AND STUDENT
SAFETY AND BELONGING

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RECENT REACTIONS TO CONTROVERSIAL SPEAKERS ON CAMPUS: MICHAEL KNOWLES AT UB; JUDGE KYLE DUNCAN AT STANFORD



WHAT HAPPENED: A COMPARISON

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- March 2023: Michael Knowles, right wing commentator and podcaster, invited to speak at UB by student group YAF; his topic was a condemnation of feminism
 - At CPAC conference Knowles had said "there can be no middle way in dealing with transgenderism", and that "for the good of society, transgenderism must be eradicated from public life entirely."¹
 - Faculty and student groups demanded that UB cancel Knowles' speech; UB refused but issued statement condemning his views
 - Active protests outside Snee Hall, but no disruption of speech
 - April 2023: U.S. Judge Kyle Duncan invited to speak at Stanford Law by student chapter of Federalist Society
 - As an attorney Duncan worked on cases opposing LGBTQ rights and issue conservative opinions as judge
 - Student groups called for banning Duncan; protestors repeatedly heckled and interrupted his speech; Diversity Officer momentarily removed him from podium, condemned his views, and then condemned censorship and asked students to let him speak
 - Duncan had to terminate his speech due to heckling
 - Stanford Law Dean issued formal apology to Duncan; several FedSoc judges call for banning Stanford Law students from clerkships

WERE THESE APPROPRIATE EXERCISES OF FREE SPEECH OR NOT?

- Does faculty and student academic freedom include the right to demand cancellation of speakers?
- Are student groups exercising their free speech rights when they invite controversial speakers?
- Were UB community members exercising their free speech rights when protesting outside Slee Hall?
- Were Stanford Law students exercising free speech rights when heckling and drowning out Judge Duncan?
- Should the Stanford administrator have temporarily removed Judge Duncan from the podium and given her own speech about his views?
- Should UB or Stanford have cancelled the speakers?

WHAT IF UB HAD CANCELLED KNOWLES? SIMILAR OR DIFFERENT FROM:

Book bans?

- PEN America: 2532 book bans in schools in 2022
- 41% related to LGBTQ people
- 40% have main characters who are people of color
- 21% directly address issues of race and racism



WHAT IF UB
HAD BANNED
KNOWLES?
SIMILAR OR
DIFFERENT
FROM:

“STOP WOKE
ACT”?

FREEDOM FROM INDOCTRINATION

FLORIDA EDUCATION

INCLUDES:

- The history of the United States, the Holocaust, and African Americans.
- The study of Hispanic and women's contributions to the United States.
- Civics, character, and mental health education.
- Conservation of natural resources.
- HB 7 also includes many new required components of African American history education.

WILL NOT INCLUDE:

Indoctrinating students with CRT principles such as:

- Members of one race, color, national origin, or sex are morally superior.
- A person, by virtue of his or her race, color, national origin, or sex is inherently racist, sexist, or oppressive.
- A person's moral character or status as either privileged or oppressed is necessarily determined by his or her race, color, national origin, or sex.
- Such virtues as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist.

HOUSE BILL 7

FIRST LEGISLATION OF ITS KIND IN THE NATION

- Deems CRT training to be an unlawful employment practice.
- Ensures Florida's K-20 students and employees are not subject to Critical Race Theory indoctrination.
- Requires development of "Stories of Inspiration" curriculum to demonstrate important life skills and the principles of individual freedom.

CONSEQUENCES

TOOLS FOR EMPLOYEES AND TEACHERS TO FIGHT BACK

- Reinforces that employees, parents, and students have a private right of action when discriminated against through CRT and CRT training.
- Gives the State Board of Education enforcement authority in K-12 settings.

Florida and other states have passed laws prohibiting teaching about “divisive” concepts regarding race, including “critical race theory” and structural racism

WHAT IF UB
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FROM:

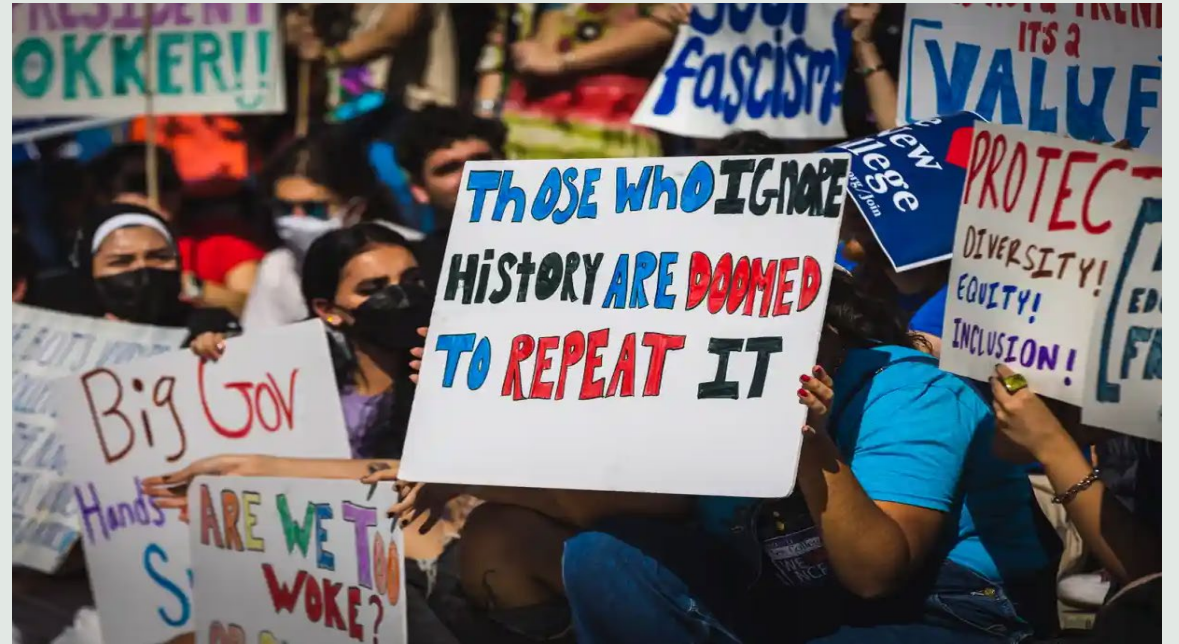
“DON’T SAY
GAY” LAWS?



Florida and other states have passed “Parental Rights in Education” laws that prohibit teaching about sexual orientation and gender identity in grades K-12

WHAT IF UB
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KNOWLEDGE?
SIMILAR OR
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FROM:

ANTI-DEI BILLS?



Fla. HB 999 would ban state colleges and universities from using funds to "promote, support, or maintain any programs or campus activities that espouse diversity, equity, or inclusion [DEI] or Critical Race Theory rhetoric." The bill would also give the state's board of governors the ability to remove "any major or minor that is based on or otherwise utilizes pedagogical methodology

WHAT DOES HISTORY TEACH US ABOUT THIS CURRENT MOMENT IN FREE SPEECH CONTROVERSIES RELATING TO EDUCATION?

- State efforts to suppress or punish speech are deployed against marginalized groups, those who question traditional hierarchies or oppose government policy and power:

Seditious libel prosecutions of late 18th century; jailing of anti-war protestors during WWI and Viet Nam War; persecution of labor unionists and left-wingers during McCarthy era; arrests of civil rights protestors and use of libel laws to suppress news coverage during 1950's and '60's; "anti-riot" laws in response to Native American pipeline protests and BLM movement today

- Suppression of speech – even speech we vehemently disagree with or find hateful – is antithetical to equality and diversity
- This is why we need to have robust respect and protection for all speech, even “hate speech,” while acknowledging the harm it can cause

WHAT DOES FIRST AMENDMENT LAW HAVE TO SAY?

*CONGRESS SHALL MAKE NO **LAW** RESPECTING* AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE **FREEDOM OF SPEECH**, OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION*

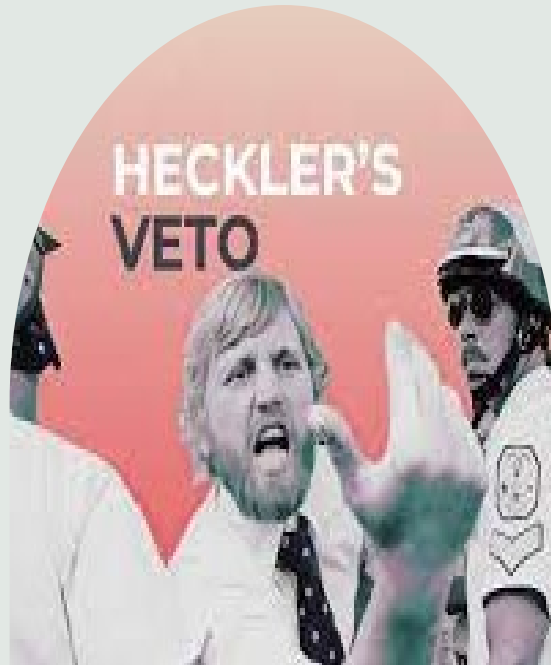
FIRST AMENDMENT RULINGS RELEVANT TO ACADEMIC FREEDOM, CONTROVERSIAL SPEAKERS, AND HATE SPEECH

- “A fundamental principle of the First Amendment is that the government may not punish or suppress speech based on disapproval of the ideas or perspectives the speech conveys.” *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819 (1995). The test for viewpoint discrimination is whether—within the relevant subject category—the government has singled out a subset of messages for disfavor based on the views expressed.
- Of “Slants,” “Redskins” and cross-burning: Offensive and racially derogatory speech is protected:

Matal v. Tam (2017) Supreme Court struck down part of federal Trademark law barring marks that “disparage or bring into contempt” any person or group, including on the basis of race or ethnicity. “It offends a bedrock First Amendment principle: Speech may not be banned on the grounds that it expresses ideas that offend.” Labeling speech as offensive or disagreeable is a form of viewpoint discrimination.

RAV v. St. Paul (1992), the Court struck down, as viewpoint discrimination, a city ordinance that made it a crime to place a burning cross or swastika anywhere “in an attempt to arouse anger or alarm on the basis of race, color, creed, or religion.”





FIRST AMENDMENT
RULINGS RELEVANT TO
ACADEMIC FREEDOM,
CONTROVERSIAL SPEAKERS,
AND HATE SPEECH

- The “Heckler’s Veto” is a form of viewpoint-based speech suppression. If a speaker’s views are causing listeners to become disruptive or violent, instead of arresting the speaker for “disturbing the peace,” police should control or arrest the disrupters. See., e.g. *Feiner v. NY*; *Terminiello v. Chicago*; *Gregory v. Chicago*
- As Berkeley Law Dean, noted 1st A. scholar Edwin Chemerinsky stated in an editorial explaining why a university cannot ban a controversial speaker:

“Freedom of speech, on campuses and elsewhere, is rendered meaningless if speakers can be shouted down by those who disagree. The law is well established that the government can act to prevent a heckler’s veto - to prevent the reaction of the audience from silencing the speaker. There is simply no 1st Amendment right to go into an auditorium and prevent a speaker from being heard, no matter who the speaker is or how strongly one disagrees with his or her message.”

CONCLUSION: WHY WE HAVE TO TOLERATE THE RIGHT OF THE
KNOWLES AND DUNCANS OF THE WORLD TO SPEAK

- The principles that protect their right to speak at public universities are the same principles that protect the right to speak in opposition to them, to teach and learn about CRT, gender identity and sexuality, structural racism, and to have DEI programs
- Letting them speak does not mean denying or ignoring the harms caused by their words and views

FIRST AMENDMENT FREE
SPEECH PRINCIPLES
PROTECT TEACHING,
RESEARCHING, AND
DISCUSSING “DIVISIVE
CONCEPTS,” GENDER AND
SEXUALITY STUDIES,
ETHNIC STUDIES, AND
CRITICAL RACE THEORY
AT PUBLIC UNIVERSITIES

- *Pernell v. Florida* (2022), federal district court (N.D.Fla) enjoined “STOP WOKE Act” as viewpoint discrimination. Judge Walker called the law “Orwellian doublespeak” in which the legislature had declared that “the State has unfettered authority to muzzle its professors in the name of ‘freedom.’” The judge ruled that students had a right to receive information and diverse viewpoints co-extensive with faculty’s right to convey it. Court noted that while academic freedom has never been protected “as a stand alone right,” the Supreme Court has described it is an “important” interest fundamental to First Amendment values. Florida has appealed.
- *Arce v. Douglas* (2015), 9th Cir. US Court of Appeals struck down an AZ law that was used to bar teaching a Mexican-American studies program in Tucson schools. The law prohibited the use of class materials or books that encourage the overthrow of the government, "promote resentment toward a race or class of people," are "designed primarily for pupils of a particular ethnic group" and "advocate ethnic solidarity instead of the treatment of pupils as individuals." Court held the law was unconstitutionally vague and amounted to viewpoint discrimination.