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CHALLENGES TO FREEDOM OF SPEECH ON COLLEGE CAMPUSES

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTHCARE, BENEFITS AND ADMINISTRATIVE RULES

AND THE

SUBCOMMITTEE ON INTERGOVERNMENTAL AFFAIRS

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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CHALLENGES TO FREEDOM OF SPEECH ON COLLEGE CAMPUSES

Thursday, July 27, 2017

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON HEALTHCARE, BENEFITS, AND ADMINISTRATIVE RULES, JOINT WITH THE SUBCOMMITTEE ON INTERGOVERNMENTAL AFFAIRS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittees met, pursuant to call, at 9:04 a.m., in Room 2167, Rayburn House Office Building, Hon. Jim Jordan [chairman of the Subcommittee on Health Care, Benefits, and Administrative Rules] presiding.

Present from Subcommittee on HealthCare, Benefits, and Administrative Rules: Representatives Jordan, Walker, Meadows, Grothman, Mitchell, Krishnamoorthi, Norton, Kelly, and Plaskett.

Present from Subcommittee on Intergovernmental Affairs: Representatives Palmer, Grothman, Foxx, Massie, Walker, Demings, and DeSaulnier.

Also Present: Representatives DeSantis, Hice, Brat, Rooney, and Raskin.

Mr. JORDAN. The joint subcommittees will come to order.

We are going to start with a short 50-second video clip, then opening statements, and then get right to our esteemed panel of witnesses, so let's start with the video.

[Video shown.]

Mr. JORDAN. Well, trigger warnings, safe spaces, safe zones, shout-downs, microaggressions, bias response teams, and, as we saw from the video, even riots on campuses today.

I want to thank you all for joining us in the audience and certainly our witnesses today. This is our second in a series of hearings to highlight the First Amendment. "The history of intellectual growth and discovery clearly demonstrates the need for unfettered freedom, the right to think the unthinkable, discuss the unmentionable, and challenge the unchallengeable." That quote, taken from the 1974 Woodward Report at Yale, summarizes the policy that was for years the gold standard of what free speech on campus should look like.

College is a place for young minds to be intellectually bombarded with new, challenging ideas. Unfortunately, today, on many campuses students and faculty are forced into self-censorship out of fear of triggering violating a safe space, a microaggression, or being targeted by a bias response team. Restricting speech that does not conform to popular opinion contradicts the First Amendment prin-

ciples and the right to speak freely without regard to offensiveness. Shout-downs, disinvitations, and even violent rioting, as we saw on the video, are some of the tactics used to silence opposing views.

In the most recent example of how not to promote free speech on campus, students and even faculty at Evergreen State College berated and threatened a professor for questioning why a new campus initiative could not be debated. The police eventually stepped in to warn the professor it was no longer safe—think about this—no longer safe for him to actually come to campus.

The college administrators stood by and did nothing. In fact, when asked to come and defend their speech policies at today's hearing, Evergreen's president George Bridges refused to testify, suggesting such policies truly are indefensible. And he was not the only one to decline an invitation to defend the policies that limit speech and ideas on our college campuses.

I see in this past academic year violent disruptions and silencing of opposing opinions are detrimental to an educational environment where students can learn and engage in civil discourse. This has serious ramifications for our public education system.

This committee is committed to help colleges reinstate the freedom of speech as an important protection. After all, it is no coincidence that the Constitution's Framers prioritized the freedom of speech in the First, the First Amendment.

Mr. JORDAN. With that, I would like to recognize Mr. Krishnamoorthi, the gentleman from Illinois, for his opening statement.

Mr. KRISHNAMOORTHI. Thank you, Mr. Chairman, and thank you, Chairman Palmer, and Ranking Member Demings, and thank you all for being here today.

Free speech is a cornerstone of this nation's commitment to ensure that we have the most robust and wide-open discussion on issues that affect the public. Our First Amendment protections are among our most cherished rights. While certain restrictions on the time, place, and manner of speech can exist, any law that seeks to limit the substance of speech should be approached with great caution. Restrictions may exist on how, when, and where people say things, but the government fundamentally should not restrict what people say.

The Supreme Court has rightly held that practically any peaceably expressed idea cannot be suppressed by law, no matter how unpopular, repugnant, crude, or ill-informed it may be. However, free speech does not mean the right to be free from criticism. As I have a right to state my view, you have a right to disagree vocally, passionately, and peaceably. No idea should be free from criticism.

This is why I am particularly concerned about a potential bill that is going to be discussed today, a Wisconsin bill that would allow for the suspension or expulsion of any University of Wisconsin student who engages in, quote, "indecent, profane, boisterous, obscene, unreasonably loud, or other disorderly conduct that interferes with the free expression of others." This law does not merely seek to restrict the time, manner, or place of speech, but it threatens students with disciplinary action for exercising their First Amendment rights.

While nobody should interfere with anyone else's free expression, this bill, as drafted, opens the door for the State Government to quash any form of student protest its officials do not agree with whenever officials deemed the conduct to be, quote/unquote, "indecent," quote/unquote, "boisterous," or quote/unquote, "profane."

Regardless of the intentions behind this bill, I am very concerned about the chilling effect on the rights of students to speak out against the ideas of others with whom they disagree. Ironically, while proponents of the Wisconsin bill claim that it is to protect free speech at the university, the bill's threat of harsh discipline against students who express their opinions would have precisely the opposite effect.

The Anti-Defamation League, which has worked for over a century to protect American civil rights and is represented here today, has raised legitimate concerns with legislative efforts that would inhibit the free speech rights of students on any side of the debate. As the ADL points out, protecting free speech on college campuses should not be partisan, and most importantly, should not be legislated by Congress. Rather, it should be left in the hands of the Academy.

To that effect, it is critical that in looking to address the challenges of free speech we do not do the very thing some here today have criticized colleges in doing, suppressing certain forms of speech that may not be popular or as offensive to others.

As we examine the issue of free speech at our nation's colleges, we are fortunate to be joined today by Mr. Fred Lawrence, the former president of Brandeis University, and who can speak from firsthand experience the challenges university administrators face in balancing free-speech rights on campuses. Mr. Lawrence understands the complexities of running a university in a way that legislatures do not and can explain for us the difficulties campuses face when addressing free-speech challenges.

Ironically, we have a situation here where we see some of my colleagues advocating for more government intrusion in an effort to quell the rights of students to challenge the ideas of speakers they may have profound disagreements with. But just as important as it is for us to stand up for the rights of others to engage in speech that may be deeply offensive to some, it is just as critical that we stand up for the rights of students to protest and speak out against speech they disagree with. That isn't going to happen because of greater, more restrictive legislation such as the Wisconsin bill. It will happen because colleges and universities are allowed the freedom and flexibility to encourage open expression among students and faculty.

Thank you, Mr. Chairman.

Mr. JORDAN. I thank the gentleman.

I would now recognize the subcommittee chairman, Mr. Palmer.

Mr. PALMER. I yield my time to the gentlewoman from North Carolina, Ms. Foxx.

Mr. JORDAN. The gentlelady is recognized.

Ms. FOXX. Thank you, Mr. Chairman, and I thank Chairman Palmer for giving me the opportunity to say a few words on this issue.

I welcome everyone to this joint subcommittee hearing today, which is of particular interest to so many of us. It is a real privilege for me to continue to serve on this committee while serving as chairwoman of the House Committee on Education and the Workforce. Many of you know I spent most of my adult life in higher education as both an instructor and administrator on a college campus.

Our Founders believed that a free expression of ideas and speech were an essential foundation to our nation and captured its importance in the First Amendment. George Washington said it perfectly in 1783. "If men"—or women he might add today—"are to be precluded from offering their sentiments on a matter which may involve the most serious and alarming consequences that can invite the consideration of mankind, reason is of no use to us. The freedom of speech may be taken away, and, dumb and silent, we may be led like sheep to the slaughter."

Throughout our nation's history, we the people have defended our right to express our beliefs and opinions, no matter how unpopular, without the fear of retribution. While the way in which we express ourselves has changed since our nation's founding, Americans still hold tight to the belief that freedom of speech and expression are fundamental to who we are as a people.

According to a 2015 Pew Research poll, 95 percent of Americans believe that people should be able to make statements that publicly criticize the government. Roughly 70 percent of Americans also considered it very important for people to be able to use the internet without government censorship on matters of free speech. Apparently, this poll did not take into account individuals on college campuses who seem to disagree.

We are seeing a steady rise in anti-speech attacks on students, faculty, and invited speakers on our campuses. Pressure from students, faculty, and free-speech advocates has put college administrators in a difficult position, and the committee understands their frustration. It is difficult to manage a campus when dealing with campus protests and other disruptions by students or other members of the campus community who simply do not want a certain point of view expressed on their campuses.

College campuses are supposed to be places where students and instructors are able to share in diverse conversations on any topic in order to better understand our society. In my years in the classroom, I loved to see students thoughtfully and respectfully discuss the conflicting ideas. I believe to this day those discussions help many students learn to express themselves. As a lifelong learner, they helped me, too.

I have often told people that the greatest compliment I ever received as a teacher was at the end of the semester evaluations when many of my students would say, "She taught me how to think." There just is no greater compliment than that.

When we stifle free speech at our institutions of higher education, we are depriving students of an open environment of thoughts and opinions. This is especially true for public colleges and universities that receive direct taxpayer funding. Our public institutions of higher education should not be engaged in activities that would stifle any constitutionally protected speech of a member

or invited guest in the educational community. And while private colleges and universities do not have the same constitutional obligations as their public counterparts, I hope we can all agree that they should do what they can to ensure their campuses foster robust discussions that include all views.

Today's joint subcommittee hearing will explore these concerns, as well as how colleges may address these issues without unconstitutional restrictions on free speech. The First Amendment promises a freedom of expression for all Americans, and it is the duty of Congress to ensure that those rights are protected on the campuses of our public colleges and universities. While Congress is not in the business of defining what is and what is not protected by the First Amendment, we must guarantee this fundamental right is upheld.

I look forward to hearing from our witnesses and members today as we have this important discussion on one of our nation's most central rights.

Mr. JORDAN. I thank the gentlelady for her statement and her service as the Education and Workforce chairman.

And we now recognize the ranking member of the subcommittee, Mrs. Demings.

Mrs. DEMINGS. Thank you so much, Mr. Chairman, and thank you to our ranking member, Mr. Krishnamoorthi, as well.

Good morning, everyone, and thank you all so much for being here.

I grew up in Jacksonville, Florida. My mother was a maid, and my father, a janitor. But in spite of their lack of material wealth, they gave me everything they had to support me and prepare me mentally, physically, and spiritually to succeed.

I am the youngest of seven children but the first in my family to go to college. My parents' life lessons helped to guide me in college when it was clear that there were some who did not want me there. When I joined the Orlando Police Department when women and other minorities were still trying to find their way, my parents' life lessons guided me, and even here, they still guide me in the United States Congress.

I have taken three oaths in my lifetime, one as a young police officer in 1984, one when I was sworn in as the police chief, and the third when I was sworn in as a Member to serve in the 115th session of the U.S. House of Representatives. In each oath, I swore that I would protect and defend the Constitution of the United States against all enemies, foreign and domestic. I have taken each oath very, very seriously.

As a law enforcement officer, I had several occasions to provide security for many groups while they exercised their First Amendment rights, groups like the Ku Klux Klan and the neo-Nazi movement. There, I was providing much-needed protection, and if anyone, someone, anyone had tried to harm them in any way, I would have risked my life to protect them, not because I agreed with their speech but because I agreed with their right to speak, their right as guaranteed by the First Amendment.

I appreciate this opportunity to shine a light on the real clear and present danger facing colleges and universities around the Nation. The problem is not high-profile speakers like Ann Coulter. The clear and present danger is the increase in white supremacist

hate groups on campuses and the targeting and harassing of students because of their race, religion, gender, and sexual identity.

For the 2016 and 2017 school year, the Anti-Defamation League reported that students, faculty, and staff on 110 American college campuses were confronted by 159 separate incidents of racist flyers and stickers. The Southern Poverty Law Center reported that in 10 days alone after last year's election there were 140 incidents of hate bias attacks on university campuses.

Most recently, on May 1 of this year at American University, bananas tied with nooses were hung across the campus after the school elected its first African-American student government president Taylor Dumpson, who I understand is with us today. Now, I was proud when Taylor was elected because it demonstrated our progress, much-needed progress as a nation, but the words "AKA free" were written on the bananas, referring to the predominantly African-American sorority, of which Taylor is a member. Taylor was also subjected to a cyber bullying campaign by a white supremacist group on social media. The Federal Bureau of Investigation is investigating these unprotected illegal expressions of speech that Taylor was subjected to as a hate crime. The operative word here is crime.

Mr. Chairman, I would ask that a written statement from Taylor about the hate speech attacks and harassment she was subjected to on the campus of American University be included in the hearing record.

Mr. JORDAN. Without objection.

Mrs. DEMINGS. Thank you so much. As Taylor explained, and I quote, "I applied to college," like all of our children do. "When I applied, I thought I would meet new people and learn new things, not be the victim of a racially motivated hate crime and cyber bullying that would interrupt my academics and disrupt my mental, emotional, and physical health." As stated earlier, what happened in Taylor's case is being investigated by the FBI.

Mr. Chairman, public safety trumps everything.

For students like Taylor, the issue of free speech on college campuses isn't a right or left issue. Rather, it is about criminal acts being wrapped in banners of free speech. It is knowing that the symbols and language from 400 years of torture and terror are enough to strike fear in the hearts of every student of color.

As we examine the issue of free speech on college campuses, let's keep the focus on addressing some of the real danger, which are any acts of violence, attempts to threaten, intimidate, bully, harass, or violate any laws that this nation holds quite dear. For even with the guiding principles of the United States Constitution, we are a nation of laws, and public safety always has been and still is my number-one concern.

Thank you so much, Mr. Chairman, and I yield back.

Mr. JORDAN. I thank the gentlelady.

Without objection, the chair is authorized to declare a recess at any time, and the chair will also hold open for five legislative days for any members who would like to submit a written statement.

Finally, the chair welcomes Mr. Blum, Mr. DeSantis this morning, and the chair also notes the presence of Congressman Brad

Thompson and Mr. Rooney. Without objection, these members are welcome to fully participate in today's hearing.

I want to show one other quick video clip before we get to our panel, and this is about 20 seconds. We can show that real quick.

[Video shown.]

Mr. JORDAN. This is where it all ends. You start with the safe spaces, safe zone, trigger warnings, microaggressions, bias response teams, and even riots, as we saw on the first video, and where does it end? It ends with students holding hostage a president of the university, and he has to ask permission to go to the men's room. That is why we are having this hearing. That is why we are highlighting the attacks on the First Amendment.

And now, I am pleased to recognize our distinguished panel. I would like to start with Ms. Nadine Strossen, law professor at NYU University, and also a long career working with the American Civil Liberties Union. We welcome you here, Ms. Strossen.

Mr. Ben Shapiro, editor-in-chief of the Daily Wire and columnist. We appreciate you being here as well, Mr. Shapiro.

Mr. Adam Carolla, comedian, radio personality, and TV host, welcome as well.

Dr. Zimmerman, former provost and vice president for academic affairs at Evergreen State College, the college that was just part of that last video clip; and more importantly, former president, Oberlin College in the 4th District of Ohio. We welcome you, Mr. Zimmerman, as well.

And Mr. Frederick Lawrence with the Anti-Defamation League, welcome as well.

Pursuant to committee rules, we actually all stand and be sworn in, so if you please stand, raise your right hand.

[Witnesses sworn.]

Mr. JORDAN. Let the record show that everyone answered in the affirmative.

Ms. Strossen, you know how this works; you have done it before. You get five minutes more or less. We appreciate less, but somewhere in that vicinity would be great. And you are now recognized for your five minutes.

WITNESS STATEMENTS

STATEMENT OF NADINE STROSSEN

Ms. STROSSEN. Thank you so much, Chairman Gordon and—Jordan and other distinguished committee members. I am so grateful for your eloquent, fervent commitment to freedom of speech and especially on college campuses where it's particularly important, and for including me in these important hearings.

As the opening statements have made clear, all of us share a general neutral commitment to freedom of speech in the abstract, but the difficulty is when we hear ideas that we hate. It becomes very hard, as Justice Oliver Wendell Holmes enjoined us all to do, to defend freedom even for the thought that we hate. So, I urge all students and others on campus to respect freedom of speech for speakers they strongly disagree with, but I also—picking up on the point that Mr. Krishnamoorthi made, also firmly defend freedom of

speech for protesters, for peaceful, non-disruptive protesters against those speakers. This is the genius of the First Amendment.

I share the concern that Mrs. Demings raised and also that Mr. Jordan raised about violations of law. You know, the legal infractions, the crimes that were committed against the administrators that we saw, but crimes, including hate crimes that are committed against students, we do not need to choose between robust freedom of speech and these countervailing concerns of equality and respecting law and order. The question is what is the appropriate response to ideas that we disagree with, including hateful ideas.

And here, I'm happy to say that the Anti-Defamation League, the Southern Poverty Law Center, the ACLU, we are all on the same page, that we need not and should not sacrifice robust freedom of speech in order to counter hateful ideas and hate crimes. In fact, the appropriate answer, as the Supreme Court has said, is more speech, counter speech. And interestingly enough, evidence demonstrates that it is far more effective than censorship in robustly, effectively countering ideas that we disagree with.

I'm working on a book right now, and this is the whole theme of the book summed up in the title, HATE, all caps because that is a very serious problem in this country, but the subtitle is Fighting It with Free Speech, Not Censorship.

And we really have to educate the activists, the students on today's campuses. I have to say, as an activist from the '60s and '70s, I'm thrilled by the resurgence of student activism in support of racial justice and social justice. I'm really heartened by their bringing in voices who were traditionally marginalized and disempowered, but I am disheartened by their apparent belief that freedom of speech is an enemy. Nothing could be further from the truth. The whole struggle for racial justice throughout the history of this country, starting with the abolitionists, going through the civil rights movement, and every movement for social justice, including for women's rights and LGBT rights has depended critically on robust freedom of speech, including for ideas that were controversial and hated.

Now, in addition to misunderstanding how essential freedom of speech, including for hated ideas and hateful speech, is there is too much misunderstanding about what the First Amendment actually means. We hear too many statements about so-called hate speech, which, by the way, has no—is not a legal term of art. It has no accepted definition, so it is generally used to describe speech that conveys hateful ideas on the basis of certain personal characteristics that traditionally have been bases of discrimination: race, religion, gender, and sexual orientation, among others.

We hear constantly statements that hate speech is not free speech, absolutely wrong, but we also hear equally incorrect statements that hate speech is absolutely protected, also equally wrong. The genius of our Supreme Court decisions on this issue—and here the Court has been very unified from right to left, setting a model that we should all emulate in the rest of the world. This is not a partisan or ideological issue. They have laid down two core free-speech principles, one when hate speech or any other dislike speech may not be punished and one when it may be punished, and I

think they are brilliant and make great common sense, including in this context.

Number one, speech may never be censored just because we revile its ideas. That's called viewpoint neutrality. Number two, and this picks up on points that Mrs. Demings in particular made and was also made by other speakers, the opening speakers, that if the speech does cause what is often called a clear and present danger of harm, including instilling a reasonable fear that you will be attacked, the incidence of the nooses, that constituted targeted harassment and threats, which may and should be punished consistent with existing free-speech principles.

So, I think if people understood both the commonsense distinction that our law draws between protecting ideas that we hate versus not protecting but strongly punishing speech that actually directly causes imminent serious harm, then there would be much more acceptance of it. And I'd like to—and support for it neutrally.

I'd like to end by quoting—there are so many that I could quote—prominent minority leaders who recently have spoken out against censorship on campus not only because it is wrong in principle, but also because it is disempowering to the student activists who are seeking greater justice. And there are many examples. One would be former President Obama himself, but I'm going to quote somebody who is actually a university president, Ruth Simmons, former president of Brown University, the first African-American president of any Ivy League university and the first female president of Brown. She said, "I believe that learning at its best is the antithesis of comfort, so if you come to this campus for comfort, I would urge you to walk through yon iron gate, but if you seek betterment for yourself, for your community, and posterity, stay and fight."

Thank you.

[Prepared statement of Ms. Strossen follows:]

Written testimony of Nadine Strossen before Joint Hearing of the Subcommittee on Health Care, Benefits, and Administrative Rules and the Subcommittee on Intergovernmental Affairs of the Committee on Oversight and Government Reform, "Challenges to the Freedom of Speech on College Campuses" – July 27, 2017, 9:00 a.m., 2154 Rayburn House Office Building

(Nadine Strossen is the John Marshall Harlan II Professor of Law, New York Law School, and the immediate past national President of the American Civil Liberties Union, 1991-2008.)

Introduction

I would like to thank Chairman Jordan and Ranking Member Krishnamoorthi of the Subcommittee on Health Care, Benefits and Administrative Rules, and Chairman Palmer and Ranking Member Demings of the Subcommittee on Intergovernmental Affairs, for convening this hearing on such a critically important topic and giving me the opportunity to participate.

Having consulted with Chairman Jordan and Committee staff members, we agreed that I could be most helpful to your deliberations by drawing upon my expertise as a constitutional law professor, who has specialized in First Amendment freedom of speech issues, including specifically campus free speech issues.

So let me start by saying a word about my longstanding engagement with these issues. My first major law review article on point was published in the *Duke Law Journal* way back in 1990, analyzing why the then-new so-called "hate speech"[1] codes on college campuses were unconstitutional, as well as unwise. (I attach a copy of this article as Appendix A to my testimony.) Despite the passage of time, the article's analysis continues to be pertinent and accurate.

In fact, in the decades since then, the U.S. Supreme Court has steadily become even more protective of freedom of speech, including for controversial and unpopular speech. Notably, the Court's speech-protective decisions have been joined by Justices from across the ideological spectrum, underscoring that the fundamental principles at stake should also unite all of us, regardless of our disagreements on particular policy issues.

The Court ringingly reaffirmed the First Amendment's protection even for hateful and hated speech just last month. In *Matal v. Tam*, it unanimously struck down the federal law that denied registration to tradenames that "disparaged" particular individuals or groups. As the Court declared: "Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express 'the thought that we hate.'"

When campus "hate speech" codes were initially proposed in the late 1980s, the American Civil Liberties Union debated what position it should take. Throughout the ACLU's history (going back to 1920), it steadfastly had defended freedom even for "the thought that we hate," including even anti-civil liberties messages. The ACLU did this most prominently in "the Skokie case" in 1977-78, successfully defending First Amendment rights of neo-Nazis to demonstrate in Skokie, Illinois, a town with a large Jewish population, including many Holocaust survivors. Nonetheless, in light of new arguments that were advanced in support of campus speech codes in the late 1980s, the ACLU to its credit reexamined its longstanding past position. The new arguments, which are still being pressed on campus today,

[1] As I explain below, this term has no specific, accepted legal definition. To underscore that fact, I put it in quotation marks, as other commentators have done.

maintained that freedom of speech for racist and other "hate speech" on campus undermined the rights to equal educational opportunities that the ACLU also steadfastly championed. (In the past, including in the Skokie situation, the arguments in favor of censoring "hate speech" centered on that speech's potential instigation of violence and emotional trauma.) After thorough consideration of the new equality-based arguments, the ACLU resoundingly reaffirmed its historic position that speech should never be censored solely because of its disfavored – even despised—message. Moreover, the ACLU concluded that the crucially important goals of promoting equality, diversity, and inclusivity on college campuses would be more effectively promoted through counterspeech and other non-censorial measures. The ACLU accordingly adopted a policy statement, entitled "Free Speech and Bias on College Campuses," which opposed censoring racist or other discriminatory expression, and instead advocated multiple non-censorial alternative strategies to promote equality and inclusivity on campus. That policy is included at the end of my *Duke Law Journal* article, Appendix A to this testimony.

Increasing recent calls for campus censorship – potential causes

In the words of the ACLU's principal founder, Roger Baldwin, "No fight for civil liberties ever stays won." Accordingly, to quote that other sage, Yogi Berra, in the past couple of years, we have been seeing "déjà vu all over again," with recent campus censorship – and calls for more such censorship – of not only racist speech and other "hate speech," but even of any speech on any topic that offends a listener. The rhetoric we too often hear on campuses is that students should not be exposed to speech or speakers whose ideas make them "uncomfortable," or that they find "unwelcome." Most disturbingly, too many students – as well as faculty members -- ignore the vital distinction between words and conduct, claiming that words are tantamount to physical violence, and therefore seeking the same kind of punishment for words as for physical violence.

Psychologists, sociologists, and other social scientists have proffered various theories about the elements in the psyches of today's college students, and in today's culture, which might foster this climate of fear toward words and ideas with which one disagrees. Experts in the humanities have suggested that a contributing factor is post-modernism, with its rejection of traditional distinctions between speech and conduct.

Drawing upon my own expertise and experience, I would like to stress the following contributory factor to the "hostile environment" toward free speech on too many campuses: widespread ignorance about First Amendment freedom of speech principles -- both what they are, and why they are of such critical importance. In particular, too many of today's campus activists on behalf of such essential goals as equality and justice wrongly believe that freedom of speech is antithetical to those goals; this could not be further from the truth. Throughout our history, freedom of speech has been the greatest engine for positive reform, including racial justice and women's rights, whereas censorship has been a consistent impediment. In 2016, I wrote an article developing this theme, for a symposium sponsored by the *Brooklyn Journal of Law and Policy* (I attach a copy as Appendix B). I am now writing a book on point, whose title says it all: *HATE: Fighting it With Free Speech, Not Censorship* (Oxford University Press 2018).

The Woodward Report and the Chicago Principles

A classic statement of the governing principles concerning campus free speech and academic freedom was set out in Yale University's 1974 "Woodward Report," issued by a committee chaired by the

prominent historian C. Vann Woodward.[2] These enduring principles continue to apply fully to today's campus free speech controversies, including at Yale itself. Crucially important is the report's insistence on the university's central mission – "to discover and disseminate knowledge" –and its refusal to let other goals undermine that mission, no matter how worthy such goals might be. As the report stated:

> [A] University ...is not primarily a fellowship [or] a replica of the civil society outside it. Without sacrificing its central purpose, it cannot make its primary ...value the fostering of ...solidarity, harmony, civility, or mutual respect. To be sure, these are important values; other institutions may properly assign them the highest...priority; and a good university will seek and may in some significant measure attain these ends. But it will never let these values, important as they are, override its central purpose. We value freedom of expression precisely because it provides a forum for the new, the provocative, the disturbing, and the unorthodox.

In 2015, the University of Chicago also adopted a set of free speech principles, which concisely reaffirm the same speech-protective tenets in this current era when they are again under siege.[3] On the key point about valuing learning and knowledge over civility and comfort, the Chicago principles declared:

> [I]t is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.

First Amendment protection for offensive, hateful speech

In the remainder of this statement, I would like to elaborate on the critically important free speech principles that protect even – indeed, especially – the speech that is deemed "offensive," "unwelcome," or even "hateful" and hated. These principles are essential in every context in our society, consistent with not only individual liberty, but also democratic legitimacy. Nowhere are they more important, though, than in our campus communities, given their dedication to discovering and disseminating knowledge and truth.

As a lifelong activist for civil liberties and civil rights, I am thrilled by the recent resurgence of student activism in support of social justice. I am also heartened by efforts to amplify and heed the voices of those who traditionally have been marginalized. I am disheartened, though, by the assumption that we can best promote these laudable goals by silencing other voices, including those whose ideas are deemed offensive or hateful. That assumption is reflected in many statements during recent campus debates, and also in opinion surveys. Based on history and my own experience, I firmly believe that robust freedom of speech is absolutely essential for promoting equality, and that this is true even for speech that offends even our most cherished beliefs.

These conclusions were eloquently endorsed by Ruth Simmons, who was Brown University's President from 2001-2012. The first African-American President of any Ivy League university, and Brown's first female President, she had faced much racial and gender discrimination. Yet, in her very

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[2] http://yalecollege.yale.edu/deans-office/reports/report-committee-freedom-expression-yale

[3] https://freeexpression.uchicago.edu/page/statement-principles-free-expression

first Convocation Address, President Simmons powerfully explained the unique importance of full free speech on campus, including for "hate speech." I will quote a few highlights:

> The protection of speech that is offensive or insulting to us is one of the most difficult things ...we do. But it is this same freedom that protects us when we are in turn powerless.... Of course, ...we hope that you will all use this freedom responsibly..., that you will not...deliberately assault, intimidate, [or] harass others under the guise of free speech.... However, ...you must not avoid expressing your opinion[s] and engaging those of others. I won't ask you to embrace someone who offends your humanity through...free speech. But I would ask you to understand that the price of your own freedom is permitting th[at] expression.....You know something that I hate? When people say, "That doesn't make me feel good about myself." I say, "That's not what you're here for."... I believe that learning at its best is the antithesis of comfort....[So,] [i]f you come to this [campus] for comfort, I would urge you to walk [through] yon iron gate....But if you seek betterment for yourself, for your community and posterity, stay and fight.

In this testimony, I am going to translate President Simmons' poetic oratory into legalistic prose, explaining how the ideals she champions are reflected in First Amendment principles. To start with, let me explain a couple terms. "Offensive speech" and "hate speech" are not legal terms of art, precisely because the Supreme Court has never recognized any general free speech exception for either kind of speech. Therefore, I am going to use both terms as they are usually used in everyday discourse. "Offensive speech" refers to speech that we consider wrong, dangerous, hurtful or harmful in any way, and "hate speech" or "hateful speech" refers to a specific type of offensive speech: namely, speech that conveys biased ideas about certain personal characteristics, including race, religion, gender, and sexual orientation.

Three basic points

Recent surveys show that too many people, including university students, are at best ignorant about free speech principles, and at worst hostile toward them. To me, this shows that free speech proponents have not done as good a job as we must to explain and champion our position. In particular, I think we must better explain three basic points.

First, we must clarify that in some circumstances, hateful, offensive speech may appropriately be regulated and punished, fully consistent with First Amendment principles. To be sure, we may not suppress any speech due to its offensive or hateful content alone. However, we may suppress such speech in particular contexts, when it directly, demonstrably, and imminently causes certain specific, objectively ascertainable serious harms, as the Supreme Court has defined them, including: a genuine threat; targeted harassing or bullying; inciting imminent violent or illegal conduct; and contributing to a "hate crime." I will explain these contextual concepts below, but at this point, I am raising them to highlight the following important fact: when people call for changing U.S. law so we can suppress offensive speech or "hate speech," some of the speech that they have in mind may well already be restricted.

Now I will turn to the second point that free speech proponents must explain more clearly: Just because one has the right to say something does not mean that it is right to do so. Therefore, when critics tell us that certain expressions we use are unnecessarily hurtful or insensitive, even unintentionally, then we should choose to rephrase our message whenever we can do so without altering its substance. When we opt to do that, we are exercising our free speech rights, in response to our critics' exercise of their free speech rights. Yes, that kind of criticism can well hurt our psyches and dignity, just as hateful, offensive speech also does. Accordingly, one understandable response to both kinds of hurtful speech

could well be to silence us altogether. We might well choose to remain silent, rather than to subject ourselves to hurtful speech that responds to what we say.

The price of robust freedom of speech is that we all have to bear the slings and arrows of speech that assails us, our ideas and our identities. Free speech proponents have traditionally told targets of hateful, offensive speech that they must bear the burden of that kind of hurtful speech, even though it assaults their self-esteem and their cherished beliefs. Correspondingly, all of us have to bear the burden of speech that charges us with being insensitive or implicitly biased. For all of us who are deeply committed to equality, such charges assault our self-esteem and our cherished beliefs. But that is a price worth paying for both of the great causes at stake, both free speech and equality: freedom of speech that extends equally to all speakers and ideas, including speakers and ideas that have been marginalized.

That brings me to the third point that we free speech proponents have not explained persuasively enough: Why we should not empower officials to suppress the important residual category of constitutionally protected offensive speech or "hate speech." This protected category consists of all such speech that does not, in context, directly, demonstrably cause the kinds of objectively ascertainable harms I listed earlier.

To be sure, this speech may well cause palpable psychic harms. We protect speech precisely because of its great power to affect our hearts and minds, both negatively and positively. To explain why we do not punish "hate speech" or other offensive speech based solely on its psychic harm, let me quote an old saying: "The cure is worse than the disease." Even worse than speech's power to wound is government's power to pick and choose which among the infinite array of wounding words it will punish. By so doing, government would strip us individuals of the power to choose which powerful words we will utter, and which we will listen to, as well as which ones we will ignore, reject, and answer back.

The Supreme Court strongly reaffirmed these core principles in 2011, in upholding the right to engage in extremely hurtful, hateful speech: picketing outside funerals of slain members of the U.S. military, with picket signs conveying offensive, insulting views toward members of our armed services, Catholics, the Pope, and gay men and lesbians. Over only one dissent, the Court held that this hurtful "hate speech" was constitutionally protected. As it explained:

> Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and – as it did here – inflict great pain. [W]e cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course – to protect even hurtful speech on public issues to ensure that we do not stifle public debate.

Evidence indicates that the more people think about these challenging issues, the more they tend to support free speech. After all, it is counter-intuitive to support freedom to voice ideas we ourselves reject, so it is not surprising that our initial, instinctive reaction is that those ideas should be suppressed. This point was acknowledged by no less a free speech champion than former Supreme Court Justice Oliver Wendell Holmes, in his historic opinion declaring that the First Amendment protects "freedom for the thought that we hate." Holmes recognized, though, our natural tendency to resist this notion. As he explained: "Persecution for the expression of opinions seems …perfectly logical. If you have no doubt of your premises … and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition." Holmes then goes on to explain why, on reflection, we must overcome that instinct:

> But when [people] have realized that time has upset many fighting faiths, they may come to believe ...that the best test of truth is the power of the thought to get itself accepted in the competition of the market…. [Therefore,] we should be eternally vigilant against attempts to

> check the expression of opinions that we loathe and believe to be fraught with death, unless they…imminently threaten the country.

The critical "viewpoint neutrality" principle

As I noted earlier, contrary to much popular misunderstanding, there is no general exception to the First Amendment's free speech guarantee for speech whose message is offensive or hateful. To the contrary, the Supreme Court has repeatedly reaffirmed that government may never suppress speech just because officials or members of the public disapprove of its message, even if the vast majority of us consider its message absolutely abhorrent. Instead, government must maintain "content neutrality" and "viewpoint neutrality" toward speech's content, viewpoint, and message.

In support of this crucial principle, I would like to quote someone who speaks with special authority on point: former President Barack Obama. His expertise stems from not only his background as a constitutional law professor, but also his experience as the target of vicious, vile "hate speech." Yet Obama has strongly endorsed the classic First Amendment view that "hate speech" should be strongly protected, not despite his commitment to combating discrimination but rather, precisely for that reason. In many forums during the last two years of his Presidency, Obama repeatedly stressed this point. For example, he championed campus free speech even for "language that is offensive to African Americans, or … sends a demeaning signal towards women." After all, as campus activists in the Black Lives Matter and anti-sexual assault movements remind us, meaningful reform requires candid in-depth conversations about race, sex and gender. Obama made precisely this point:

> Being … an activist, involves hearing the other side and … engaging in a dialogue because that's … how change happens. The civil rights movement happened because … the leadership … consistently … sought to understand the views of the other side, even views that were appalling to them.

Obama likewise has repeatedly championed the time-honored First Amendment precept that the appropriate response to ""hate speech"" is not to suppress it, but rather to refute it, through what is usually called "counterspeech." As he said: "Anybody … you disagree with, you should have an argument with them. But you shouldn't silence them by saying, 'I'm too sensitive to hear what you have to say.'" Obama has recognized that it may be especially burdensome to students who are targets of ""hate speech"" to answer back, but he also has recognized that this effort is an essential step toward the social reforms they champion: "[Y]es, this …may put a slightly higher burden on minority students. But you're not going to make the kinds of deep changes in society that those students want without taking on [their opponents] in a …courageous way."

Counterspeech

It is also essential for others to respond to "hate speech" -- not only its targets, but also, especially, other leaders in the pertinent community. On university campuses, the university President, as well as student government organizations and leaders, should also speak out strongly. In response to "hate speech," they should defend the right to convey even hateful, hated ideas, but they should also denounce such ideas. I like to describe this approach as cen-SUR-ing speech, not cen-SOR-ing it. On this point, I will cite former Harvard President Derek Bok. During his Presidency, some students hung Confederate flags from their dormitory windows, which prompted other students to protest by hanging swastikas from their dormitory windows.

By the way, this incident illustrates the intractable problem of deciding what should count as "hate speech." Of course, the swastika is deeply identified with Hitler's anti-semitic and other egregiously hateful ideas, not to mention actual genocide. But the Harvard students who hung the swastika were trying to convey the opposite message; they were condemning the racism that the Confederate flag connoted to them by equating it with the swastika. So, should these swastika displays count as "hate speech," or as *anti-* "hate speech"?

Harvard President Bok responded to both displays by swiftly issuing a thoughtful statement that strongly criticized them, but also strongly defended free speech both in principle and as the most effective vehicle for fostering an inclusive campus community. I will quote a portion:

> The fact that speech is protected by the First Amendment does not necessarily mean that it is right, proper, or civil. [I agree with] the vast majority in this community ...that hanging a Confederate flag or Swastika in public view...is insensitive and unwise . . . because any satisfaction it gives to the students who display these symbols is far outweighed by the discomfort it causes to many others. No community can... become humane and caring by restricting what its members can say. The worst offenders will simply find other ways to irritate and insult. Those who are not malicious but merely insensitive are not likely to learn by having their [displays] torn down....I fear that . . . the resulting publicity [would] eventually attract more attention to the offensive material than would ever have occurred otherwise . . . .In conclusion, ...our concern for free speech ....keep[s] the University from ...removing the offensive [symbols], but it should not prevent us from urging the students involved to take more account of the feelings and sensibilities of others. Most of the time, I suspect, we will succeed in this endeavor.

Undue vagueness

As the Supreme Court has recognized, freedom of speech is especially endangered whenever the government enforces such inherently vague, subjective concepts as "offensive" or "hateful." Lacking any clear, objective guidelines, enforcing authorities necessarily exercise their unfettered discretion according to their own subjective tastes or those of politically powerful community members. Therefore, the enforcement patterns will be arbitrary at best, discriminatory at worst.
At best, which particular expression will be deemed offensive or hateful, will be completely unpredictable. This causes a "chilling effect" because most people do not want to run the risk of investigation and prosecution, let alone punishment. Consequently, people self-censor, not engaging in expression that might possibly be deemed offensive or hateful by the powers that be.

The unfettered discretion that is required to enforce such vague concepts is also likely to be exercised in a discriminatory way, singling out expression that is produced by or appeals to individuals or groups who are relatively unpopular or powerless.

Constitutionally protected "hate speech"

I will now focus specifically on constitutionally protected "hate speech" because that is the particular type of offensive speech that students consider the most offensive of all. A 2015 Pew Research Center survey showed that 40% of U.S. Millennials supported censoring such speech.

Again, for the reasons that Justice Holmes described, I fully understand the innate appeal of suppressing such odious ideas. We fight against bias and discrimination, so why allow speech that even potentially reflects or promotes them?

My bottom-line answer is that censoring constitutionally protected "hate speech" will actually do more harm than good to the urgently important goals that I wholeheartedly share with proponents of such censorship: eradicating biased attitudes and discriminatory actions. I have already made several points to support this conclusion, including by quoting former Presidents Obama and Simmons. Below I will further explain these and other reasons for our shared conclusion.

Before I do that, though, I want to briefly explain, as I promised, the most important situations in which "hate speech" may be restricted because of some specific, objectively demonstrable serious harm that it directly causes in particular contexts, beyond its adverse mental or emotional impact resulting from its viewpoint alone.

"Hate speech" may be punished in certain specific contexts

First, if "hate speech" conveys a targeted threat to commit a violent or illegal act, which instills reasonable fear in its targets, that speech may be punished.

Second, "hate speech" that is directly targeted at a specific individual or small group of individuals may well also rise to the level of punishable harassment or bullying.

Third, speech that is objectively offensive and sufficiently severe, persistent, and pervasive to undermine equal opportunities at work or in education may constitute "hostile environment" harassment.

Fourth, we may punish any "hate speech" that intentionally incites imminent illegal or violent conduct, which is likely to happen imminently.

Finally, "hate speech" may be punished if it constitutes an element in a "hate crime," such as assault or vandalism. Government may treat such a crime as more serious, and impose an increased punishment, when its target is singled out for hateful or discriminatory reasons.

In sum, notable instances of "hate speech" are already unprotected, because they directly cause the specific sorts of harm that many people have in mind when they say we should punish "hate speech." In addition, again, we can and should reduce even constitutionally protected "hate speech" through the important non-coercive means at our disposal, including by engaging in counterspeech, and by sensitively phrasing our own speech to avoid unnecessary offense when we can do so without altering the idea or view we are conveying.

Censoring constitutionally protected "hate speech" will be ineffective in promoting equality

In contrast, though, we should not empower officials to censor constitutionally protected "hate speech." I agree with former Presidents Obama and Simmons that such censorship is at best ineffective for promoting equality, and at worst counterproductive. Now I will list the most important reasons for that conclusion.

(1)Laws against constitutionally protected "hate speech" are inevitably enforced disproportionately against speech by, and on behalf of, whatever individuals and ideas are relatively marginalized in the particular community. Such dissident, minority perspectives should always be heard in our democracy, not only because of the speakers' free speech rights, but also so the rest of us can be aware of their views and respond to them. Moreover, in some communities, the marginalized and hence silenced voices will include the very racial and other minority groups who are the intended beneficiaries of the speech-suppressive laws.

(2) Censoring constitutionally protected "hate speech" undermines a mainstay of equal rights movements, which have always been especially dependent on a robust concept of free speech, because

their views have been seen as offensive or even hateful by defenders of the status quo. After all, that's why Martin Luther King wrote his famous letter from the Birmingham *jail*.

(3) Censoring such speech increases attention to, and sympathy for, bigots.

(4) It drives bigoted expression and ideas underground, making it harder to identify who holds them, and harder to refute them.

(5) Censorship necessarily deals with only the crudest, most vulgar expressions of discrimination, leaving untouched the more subtle, insidious, and influential ones.

(6) It deprives those who reject hateful ideas of the opportunity to formulate and articulate responses, and it deprives everyone else of the opportunity to hear such responses. Such debates may well be more effective in repudiating hateful ideas than silencing them would be.

(7) Punishing hateful ideas deflects responsibility from those who actually commit discriminatory or violent acts, by attributing blame to speech.

(8) Likewise, censorship undermines human dignity, autonomy, and moral agency, by assuming that those who hear hateful speech will be negatively influenced by it, rather than critically considering it, rejecting it, and/or responding to it.

(9) In particular, punishing hateful ideas reinforces paternalistic stereotypes about members of minority groups, suggesting that they need special protection from offensive, hateful speech.

(10) Those who are subject to hateful speech will be conditioned to expect a higher authority to punish it, rather than experience the empowerment that comes from responding themselves.

(11) Censoring hateful speech curbs candid intergroup dialogue about racism and other forms of bias, which is an essential precondition for reducing discrimination.

(12) Positive intergroup relations are more likely to result from education and discussions about misunderstandings and insensitivity. By contrast, laws that target constitutionally protected "hate speech" will continue to generate controversy and litigation, and increase intergroup tensions.

(13) Censorship diverts us from more effective strategies for combating discrimination and violence.

Cost-benefit balance

Now I will sum up the balance of what we would gain and what we would lose by censoring constitutionally protected "hate speech." The plus side, from the perspective of those who seek suppression, is quite limited. That is because the new suppression would extend to only a subset of "hate speech," since we may already punish "hate speech" that, in context, directly causes specific serious imminent harms, as I have explained. Moreover, even of that newly suppressable subset, we could only punish yet another subset: the most blatant expressions. Yet, it is the more subtle expressions that are the most insidious. This was well-explained by Professor Henry Louis Gates, Director of Harvard University's Hutchins Center for African and African American Research:

> [I]n American society today, the real power commanded by the racist is likely to vary inversely with the vulgarity with which it is expressed....The circles of power have long since switched to a vocabulary of indirection....[T]hose who [seek to restrict "hate speech"] invite us to spend more time worrying about speech codes than coded speech.

Now let's turn to the cost side. Censoring constitutionally protected "hate speech" would cause an incalculable chilling effect on any speech that challenges the prevailing orthodoxy in any community. Furthermore, we would incur the multiple costs to the equality goal that I summarized above. The net loss for both speech and equality were well summarized by Professor Gates:

> [Hate] [s]peech codes are symbolic acts. They let a group of people say, "We...are not the sort of community where we would tolerate someone saying ...'rigger' [sic]. Well, big deal. But there are other ...consequences, like ...the effect on freedom of inquiry. I think we're all bigger and more secure than that. I think we have to allow people to say even unpopular ...and nasty things in order to protect [our] right to attack our government and say whatever's on our minds.

Non-censorial alternatives for promoting campus equality

Those of us who champion equality, diversity, and inclusivity on campus have a special responsibility to promote other, non-censorial, approaches that are effective. The ACLU has consistently done that. When it adopted the 1990 policy statement opposing censorship of constitutionally protected "hate speech" on campus, it stressed alternative methods for countering discrimination and promoting equality. More than a quarter century later, that list is still pertinent, because we still have so much work to do on these fronts. I quote from it here:

> Colleges and universities have an affirmative obligation to combat racism, sexism, homophobia, and other forms of bias, and a responsibility to provide equal opportunities through education. To address these responsibilities, the ACLU advocates the following actions by each college and university:
>
> (a) to utilize every opportunity to communicate ...its commitment to the elimination of all forms of bigotry on campus;
>
> (b) to develop comprehensive plans aimed at reducing prejudice, responding promptly to incidents of bigotry and discriminatory harassment, and protecting students from any such further incidents;
>
> (c) to pursue vigorously efforts to attract enough minorities, women and members of other historically disadvantaged groups as students, faculty members and administrators to alleviate isolation and to ensure real integration and diversity in academic life;
>
> (d) to offer and perhaps require all students to take courses in the history and meaning of prejudice, including racism, sexism, and other forms of invidious discrimination;
>
> (e) to establish new-student orientation programs and continuing counseling programs that enable students of different races, sexes, religions, and sexual orientations to learn to live with each other outside the classroom;
>
> (f) to review and, where appropriate, revise course offerings as well as extracurricular programs in order to recognize the contributions of those whose art, music, literature and learning have been insufficiently reflected in the curriculum; [and]
>
> (g) to address the question of *de facto* segregation in dormitories and other university facilities....

The importance of these alternative, speech-respectful strategies, was recently endorsed by Shaun Harper, an African American Professor at the University of Pennsylvania, who is Executive Director of the Center for the Study of Race and Equity in Education. He wrote an op-ed in the *Washington Post* stressing that most Black Lives Matter campus activists are demanding precisely these kinds of non-censorial measures, and that almost none are seeking suppression of racist or other "hate speech:"

> When [my institute asks] students of color ...what corrective actions they want administrators to take on their campuses, they say nothing about ...campus speech codes. They tell us they want to be heard, understood and taken seriously. They want white people to recognize the harmful effects of their words and actions. They want greater inclusion of culturally

diverse perspectives in the curriculum, more resources for ethnic studies programs and cultural centers, more people of color in professorships and senior administrative roles. They want educators on their campuses to be more highly skilled at teaching diverse student populations and fostering inclusive learning environments where every student feels respected. They want names of slave owners removed from buildings and statues of white supremacists taken down.

Conclusion

If all of us who are committed to equal justice for all would exercise our precious First Amendment rights, we would wield more positive power, for more positive change, than any censorship could ever do. As Dr. Martin Luther King declared: "In the end, we will remember not the words of our enemies, but the silence of our friends."

Mr. JORDAN. Thank you, Ms. Strossen.
Mr. Shapiro?

STATEMENT OF BEN SHAPIRO

Mr. SHAPIRO. It's an honor to testify before you here today.

The reason that I'm with you is that I speak on dozens of college campuses every year, so I have some firsthand experience with the anti-First Amendment activities that have been taking place on the college campuses. I've encountered anti-free speech measures, administrative cowardice, even physical violence on campuses ranging from California State University at Los Angeles to University of Wisconsin at Madison, which is driving the legislation that Mrs. Demings was talking about, to Penn State University to UC Berkeley, and I am not alone.

In order to understand what's been going on at some of our college campuses, it's necessary to explore the ideology that provides the impetus for a lot of the protesters who violently obstruct events, pull fire alarms, assault professors and even other students, and the impetus for administrators who all too often humor these protesters.

Free speech is under assault because of a three-step argument made by the advocates and justifiers of violence. The first step is they say that the validity or invalidity of an argument can be judged solely by the ethnic, sexual, racial, or cultural identity of the person making the argument. The second step is if they claim those who say otherwise are engaging in what they call verbal violence. And the final step is they conclude that physical violence is sometimes justified in order to stop such verbal violence.

So let's examine each of these three steps in turn. First, the philosophy of intersectionality. This philosophy now dominates college campuses, as well as a large segment, unfortunately, of today's Democratic Party and suggests that straight white Americans are inherently the beneficiaries of white privilege and therefore cannot speak on certain policies since they've not experienced what it's like to be black or Hispanic or gay or transgender or a woman. This philosophy ranks the value of a view not based on the logic or merit of the view but on the level of victimization in American society experienced by the person espousing the view. Therefore, if you're an LGBT black woman, your view of American society is automatically more valuable than that of a straight white male.

The next step in the logic is obvious. If a straight white male or anybody else who ranks lower on the victimhood scale says something contrary to the viewpoints of the higher-ranking intersectional—intersectionality identity, that person has engaged in a microaggression. As NYU social psychologist Jonathan Haidt writes, "Microaggressions are small actions or word choices that seem on their face to have no malicious intent but that are thought of as a kind of violence nonetheless."

You don't have to actively say anything insulting to microaggress. Somebody merely needs to take offense. If, for example, you say that society ought to be colorblind, you are microaggressing certain identity groups who have been victimized by a non-colorblind society. Note, microaggressions, as the name suggests, are

not merely insults. They are aggressions. They are the equivalent of physical violence.

Just two weeks ago, psychologist Lisa Feldman Barrett of Northeastern University published an essay in The New York Times suggesting that words should be seen as physical violence because they can cause stress and stress causes physical harm. Thus, Feldman suggested it is reasonable scientifically speaking to ban or restrict speech you do not like at your school. This is both inane and dangerous. That's because it leads to the final logical step, words you don't like deserve to be fought physically.

When I spoke at California State University L.A., one professor threatened students who sponsor me by offering to fight them. He then posted a slogan on the door of his office stating, "The best response to microaggression is macroaggression." As Haidt writes, "This is why the idea that speech as violence is so dangerous. It tells the members of a generation already beset by anxiety and depression that the world is a far more violent and threatening place than it really is." It tells them words, ideas, speakers can literally kill them, even worse, at a time of rapidly rising political polarization in the United States, it helps a small subset of that generation justify political violence.

Indeed, protesters all too often engage in physically violent disruption when they believe their identity group is under verbal attack by someone, usually a conservative but not always. Not only do some administrators look the other way, at Middlebury College, Cal State L.A., Berkeley, Evergreen, actual crimes were committed and almost nobody has been arrested. But they actively forbid events from moving forward, creating a heckler's veto, the notion that if you are physically violent enough, you can get administrators to kowtow to you, to bow before you by canceling an event you disagree with altogether. All of this destroys free speech. But just as importantly, it turns students into snowflakes, craven and pathetic, looking for an excuse to be offended so they can earn points in the intersectionality Olympics and then use those points as a club with which to beat opponents.

A healthy nation requires an emotionally and intellectually vigorous population ready to engage in open debate at all times. Shielding college students from opposing viewpoints makes them simultaneously weaker and more dangerous. We must fight that process at every step, and that begins by acknowledging that whatever we think about America and where we stand, we must agree on this fundamental principle: All of our views should be judged on their merits, not on the color or sex or sexual orientation of the speaker, and those views should never be banned on the grounds that they offend someone.

Thanks so much.

[Prepared Statement of Mr. Shapiro follows:]

THE
DAILY WIRE

July 24th, 2017

Committee On Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

"Challenges to the Freedom of Speech on College Campuses"

Witness Testimony

It's an honor to testify here before you today.
My name is Ben Shapiro. I'm editor-in-chief of The Daily Wire and host of "The Ben Shapiro Show" podcast. The reason I'm with you today is that I speak on dozens of college campuses each year, so I have first-hand experience with the anti-First Amendment activities taking place on some of our college campuses. I've encountered anti-free speech measures, administrative cowardice, and even physical violence on campuses ranging from California State University at Los Angeles to University of Wisconsin at Madison to Penn State University to University of California at Berkeley. And I'm not alone.
In order to understand what's been going on at some of our college campuses, it's necessary to explore the ideology that provides the impetus for protesters who violently obstruct events, pull fire alarms, assault professors and other students – and the impetus for administrators who all too often humor these protesters. Free speech is under assault because of a three-step argument made by the advocates and justifiers of violence.
Step 1: They say that the validity or invalidity of an argument can be judged solely by the ethnic, sexual, racial, or cultural identity of the person making the argument.
Step 2: They claim that those who say otherwise are engaging in verbal violence.
Step 3: They conclude that physical violence is justified in order to stop such verbal violence.
Let's examine each of these steps in turn.
First, the philosophy of intersectionality. This philosophy now dominates college campuses as well as a large segment of today's Democratic Party: it suggests that straight white Americans are inherently the beneficiaries of white privilege, and therefore cannot speak on certain policies, since they have not experienced what it's like to be black or Hispanic or gay or a woman. This philosophy ranks the value of a view not based on the logic or merit of the view, but on the level of victimization in American society experienced by the person espousing the view. Therefore, if you're an LGBT black

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woman, your view of American society is automatically more valuable than that of a straight white male.

The next step in this logic is obvious: if a straight white male – or anybody else who ranks lower on the victimhood scale – says something contrary to the viewpoint of the higher-ranking intersectionality identity, that person has engaged in a "microaggression." As NYU social psychologist Jonathan Haidt writes, "*Microaggressions* are small actions or word choices that seem on their face to have no malicious intent but that are thought of as a kind of violence nonetheless."

You don't have to actively say anything insulting to "microaggress" – someone merely needs to take offense. If you say, for example, that society ought to be color-blind, you are microaggressing certain identity groups who have been victimized by a non-color-blind society.

NOTE: Microaggressions, as the name suggests, are not merely insults – they're aggressions. They are the equivalent of physical violence. Just two weeks ago, psychologist Lisa Feldman Barrett of Northeastern University published an essay in *The New York Times* suggesting that words can be seen as physical violence – they cause stress, stress causes physical harm. Thus, Feldman suggested, "it's reasonable, scientifically speaking," to ban speech you don't like at your school.

This is inane and dangerous.

That's because it leads to the final logical step: words you don't like deserve to be fought physically. When I spoke at California State University at Los Angeles, one professor threatened students who sponsored me by offering to fight them; he then posted a slogan on the door of his office, stating, "The best response to micro-aggression is macro-aggression." As Haidt writes, "This is why the idea that speech is violence is so dangerous. It tells the members of a generation already beset by anxiety and depression that the world is a far more violent and threatening place than it really is. It tells them that words, ideas, and speakers can literally kill them. Even worse: At a time of rapidly rising political polarization in America, it helps a small subset of that generation justify political violence."

Indeed, protesters all too often engage in physically violent disruption when they believe their identity group is under verbal attack by someone – usually conservative, but not always. Not only do some administrators look the other way – at Middlebury College and Cal State Los Angeles and Berkeley, actual crimes were committed, and almost nobody has been arrested – but they actively forbid events from moving forward, creating a heckler's veto: the notion that if you're physically violent enough, you can get administrators to kowtow to you by cancelling an event you disagree with altogether.

All of this destroys free speech. But just as importantly, it turns students into snowflakes, craven and pathetic, looking for an excuse to be offended so they can earn points in the

intersectional Olympics and then use those points as a club with which to beat opponents. A healthy nation requires an emotionally and intellectually vigorous population ready to engage in open debate. Shielding college students from opposing viewpoints makes them simultaneously weaker and more dangerous. We must fight that process at every step. That begins by acknowledging that whatever we think about America, we must agree on this fundamental principle: all of our views should be judged on their merits, not on the color or sex or sexual orientation of the speaker, and those views should never be banned on the grounds that they offend someone.

Thank you,

Ben Shapiro
Editor-in-Chief of The Daily Wire
Host of The Ben Shapiro Show

Mr. JORDAN. Mr. Shapiro, would the professors you cited in your testimony view your 4 minute and 48 second opening statement as a microaggression?

Mr. SHAPIRO. I assume that some of them would. I mean, apparently, college students do all the time since when I speak there I've been ——

Mr. JORDAN. I think they ——

Mr. SHAPIRO.—there have been riots and such.

Mr. JORDAN. I think they definitely will, which is kind of a sign of the times, I guess.

Mr. Carolla, you are recognized for five minutes.

STATEMENT OF ADAM CAROLLA

Mr. CAROLLA. Thank you. It's an honor to be asked to speak in front of you all.

First, just a quick piece of business. Do we get to keep these pads? This is going to be huge. And not that I'm going to, but what do you reckon they'll get on eBay? I'm not saying I'm going to, but it's just pure curiosity.

I'm not as eloquent as Mr. Shapiro. I sort of speak in beats and off the top of my head, and I've written a few down for you all today.

First off, I come from a very blue-collar background. I grew up in North Hollywood, California. My dad was a schoolteacher, and my mom received welfare and food stamps and told me very importantly when I was young when I asked her if she would get a job, she said, "And lose my welfare benefits? No, thank you," which taught me a very valuable lesson, which is never to listen to my mom.

All right. I ended up being a carpenter and then a boxing instructor and met Jimmy Kimmel when I taught him to box for a morning zoo stunt and eventually made my way onto TV and radio. In the early days of my career, I toured the country with Dr. Drew when we were on Loveline together, a syndicated radio program also on MTV, and we must have played 100 college campuses with nary a word of negativity and no safe spaces and no stuffed animals being handed out, simply went there, said our piece. Many controversial ideas were exchanged, and that's just what they were, exchanged, and then we got our paychecks and went home.

And 15 years later, I went out with Dennis Prager, a conservative talk show host, and attempted to do a show at Cal State Northridge where my mother was an actual graduate from with a Chicano studies degree, believe it or not. So, she's rolling in dough about now.

And they pulled the plug on it. They gave us no good reason why we couldn't speak there, and we actually had to get attorneys involved to go back and speak at a later date.

We're talking a lot about the kids, and I think they're just that, kids. We are the adults, and I don't think we are doing the children—I mean, these are 18- and 19-year-old kids that are at these college campuses. They grew up dipped in Purell, playing soccer games where they never kept score, and watching Wow! Wow! Wubbzy! and we're asking them to be mature. We need the adults to start being the adults.

Studies have shown that if you take people and you put them in a zero-gravity environment like astronauts, they lose muscle mass, they lose bone density. We're taking these kids in the name of protection, we're putting them in a zero-gravity environment, and they're losing muscle mass and bone density. They need to live in a world that has gravity.

When you—you need to expose your children to germs and dirt in the environment to build up their immune system. Our plan is put them in a bubble, keep them away from everything, and somehow they'll come out stronger when they emerge from the bubble. Well, that's not happening.

Children are the future, but we are the present and we're the adults and we need to act like it. And I feel that what's going on on these campuses is—we need law and order. We need to bring back law and order, but I think if we just had order, we wouldn't need law. So, could we just bring back order, and could the faculty and administration on these campuses act like faculty and administration, and, most importantly, adults who are in charge of these kids who need some gravity in their life. Thank you.

[Prepared Statement of Mr. Carolla follows:]

House Committee on Oversight and Government Reform
No Safe Spaces Congressional Testimony Regarding Free Speech on College Campuses
July 27, 2017

Chairman Jordan and members of the subcommittee;

The stars of our film, comedian Adam Carolla and nationally syndicated talk-show host Dennis Prager, both make their living by sharing ideas. Our filmmaking team is comprised of Hollywood veterans that would not have a career telling stories and making movies if it weren't for the rights granted to us by the 1st Amendment. The issue of free speech is dear to all of us, which is why Adam Carolla is representing our film in Congress to testify on this issue. We thank you for the opportunity, and acknowledge your intrepidness for inviting a well-known comedian to speak his mind. Paraphrasing our 40th President, Ronald Reagan, the *eight* most terrifying words in the English language are, "I'm from Hollywood and I'm here to help."

Adam Carolla and Dennis Prager share no similarities as it pertains to their academic careers. Carolla had an undistinguished and short lived effort (if you can call it that) at a community college, while Prager is Ivy League educated. But despite academic pedigree, the chilling of free speech concerns all of us, especially when it's at the epicenter of what should be the place where ideas are shared and challenged the most— college.

This concern over free speech on college campuses operates on several levels. First, Carolla and Prager are two men that make their living by challenging ideas through humor, debate, social commentary, and if warranted, ridicule. Adam did *Dancing with the Stars,* so he knows a little something about ridicule; that Bruno can be merciless. Dennis has been doing talk radio for more than three decades while Adam hosts the most-downloaded podcast in existence. They constantly have guests on who disagree with them on many subjects. Challenging ideas and points of views— while having your own challenged— is an important part of the public discourse. When we enter into robust debate the best ideas will most often rise. It's when ideas and points of view are censored that our country loses, because we may miss new ideas or other ones may not have been properly examined.

Second, many of us are parents who have or will be sending our kids to college in the not so distant future. We want them to be shaped, challenged, and matured in their experience. We know this is a lot to ask from an institution receiving government funds, but we're optimists. If our kids choose a career that requires college, we truly want them to be trained to be the best in their fields. If it doesn't, then they will have been failed by the very institution whose job is to educate and prepare them. Most students agree, as a recent poll reveals 69% of respondents believe college should prepare you for a specific

job or career.[1] What kind of preparation is being provided if we are avoiding discussions on tough subjects? Are true facts and best research being sidelined because it's taboo to someone's feelings? We can understand how the bar in something like gender studies is so low as there really isn't a big consequence. But do you really want an engineer who designed the plane you're flying in to feel that the reality of gravity is a Caucasian micro-aggression because it was discovered by Newton?

Third, as concerned citizens we know that what happens at college does not stay at college. There seems to be a growing movement to shut down differing points of view that are not politically correct or fit neatly into today's "speech codes", which are nothing short of thought-regulation. And the centrifuge of this movement is ironically the college campus, the place that has traditionally been the center of the free exchange of ideas. Instead, colleges now have places known as "safe spaces" where students who feel threatened by concepts, ideas, or differing views may retreat. Instead of fostering the development of young adults, colleges are providing coloring books, play-doh, puppies, and stuffed animals.[2] It's basically your four-year-old daughter's bedroom where one can shut out the challenges and facts of the outside world. Providing this bubble wrapped type of education does not prepare the next generation for the challenges of life. It prepares them for failure. Can you imagine a student like this getting a job in customer service for an IT company where millions of dollars are on the line, and rather than being able to address or fix a problem, they will need play-doh and puppies to get through the day? We would argue that the only thing worse than being uneducated is being mis-educated.

We've also seen how speakers have faced being shut down, intimidated from speaking, and even physically assaulted on campus. Carolla and Prager recently faced being shut down when we planned to hold an event at Cal State Northridge for our film. We had confirmed the rental of the facilities and then two weeks prior to the event were told the school did not want to have controversial speakers such as Carolla and Prager on campus. We can understand that some radical feminists wouldn't want the former star of the *Man Show* on their campus, but why not Dennis? He's really just tall and smart. This was later deemed a "scheduling conflict" not a "content conflict". Eventually, after lawyers jumped in, the scheduling conflict was resolved and the event was held. It went on to produce a #1 iTunes comedy album. But it showed us up close what is happening on campus. And it shocked us because our colleges should be an important place that embraces free speech, intellectual diversity, and challenging ideas.

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[1]Today's Student survey project by Cengage Learning
http://assets.cengage.com/pdf/wp_todays-student-work-ready.pdf

[2] https://www.nytimes.com/2015/03/22/opinion/sunday/judith-shulevitz-hiding-from-scary-ideas.html

The cry for diversity on college campuses is loud and unrelenting, and it's also total boloney. College campuses are one of the most diverse places in our nation in terms of race, gender, class, and ethnicity. But true diversity includes intellectual diversity, where differing points of view and ideas can be discussed, even the ones we vehemently disagree with. True diversity requires points of view we disagree with. Otherwise it isn't diverse, only self re-affirming. The diversity being pushed on campus is not one of true diversity, but reaffirming already approved thoughts. This point couldn't be made any clearer than by Sol Stern, one of the co-founders of the Berkeley Free Speech Movement in the 1960's. Stern— looking back 50 years later— on what he saw as the failure of the original Free Speech Movement. He observed, "the claim that the FSM was fighting for free speech for all (i.e., the First Amendment) was always a charade. Within weeks of FSM's founding, it became clear to the leadership that the struggle was really about clearing barriers to using the campus as a base for radical political activity. Our movement ignored Orwell's warning that 'political language is designed to make lies sound truthful.'"[3]

Orwell was right. And 50 years later the climate on college campuses is growing worse. The stated goal of diversity has been one of inclusion, but the recent growth of "identity politics" has reversed this to ultimately promote exclusion. While our national motto is "E Pluribus Unum," or "out of many, one," identity politics creates a divisive power play on the pattern of basing one's identity on characterizations like race, gender, class, sexual orientation, religion, and on down the line in as many divided categories of oppression as one can imagine.

If there was a game of "identity poker," as white males, Carolla and Prager would be holding low cards while a female playing at the same table would be holding a low pair. An African-American lesbian would be holding a nice straight, but she would be trumped by a one legged, trans-gendered Muslim who would be holding a straight flush. Ultimately, identity politics in our society does not bring us together, but eventually divides us until we are ruled by the tyranny of one. Someone somewhere is always offended. The Constitution does not protect against hurt feelings, yet this is ultimately what is being promoted.

Ignoring issues, facts, and viewpoints we do not like does not make them go away. This approach compounds the issue, as students no longer learn how to engage ideas, thoughts, and even people. They are encouraged not to try and solve problems but to run away. Ideas that can't stand up to debate should not be coddled and protected, they should be exposed. Free debate elevates the best ideas. This is how we moved forward throughout history. This is what drove our founding.

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[3] https://www.city-journal.org/html/free-speech-movement-50-11433.html

College campuses were once a fantastic place for comedians like Adam Carolla to perform. But today the negatively charged environment where everyone is offended has made it toxic. It's so bad that some of the top comedians, including Jerry Seinfeld, Bill Maher and Chris Rock—not exactly a right-wing cabal— have noted that performing on a college campus is no longer a real option due to the labyrinth of speech codes and hurt feelings. Comedians explore many subjects, many of which include stereotypes. They then they make social commentary or a joke about it. String enough of those together and there's a routine. Offending people is the foundation of what comedians do. Finding a moment, person, group, or idea and holding it up for ridicule has been a part of comedy since the very first joke ever told. Someone will almost always be offended, but if you're a good comedian the joke will reveal a truth we can all recognize. Without this we're all just sitting in a dark theater buying two overpriced drinks. Comedians are the modern-day court jesters holding the mirror of truth back up to society.

One of the other most concerning actions on campus, are the reactions by students to what they deem micro-aggressions by using macro-aggressions (or what us working people would call rioting). In the last several years we have seen an alarming amount of hostility on campuses, which can only be equated to temper tantrums set on fire. No one would ever agree with every single speaker brought to campus, but those speakers have a first amendment right to speak, not to be intimidated, shut down, or violently attacked. We've all heard about the incidents at Yale, Berkeley, Middlebury, Brandeis, Claremont McKenna and recently Evergreen College. These are places where ideas should be interchanged, rebutted, peacefully challenged, and maybe laughed at, but not shut down. Hating the hater is still hate, but the irony of this statement does not seem to break through the eggshell of thinking so pervasive amongst these college students. And Berkeley's Hate Free Zone seems to be one of the greatest examples of irony, lost on a bunch of kids who are paying a lot of money for an education.

But let's be very clear—it's not just the students who are to blame. Campus administrators and teachers have promoted these ideas and then retreated to the sidelines when it became violent. It's as if the mental patients are now running the asylum. Where is the accountability from the administrations of these colleges and universities? How can there be accountability if there is no adult in the room? Why aren't administrators accountable to us, the taxpayers, as we continue to fund this Social Justice Neverland, completely disconnected from the real world of working and regular people.

Americans, from the beginning, have always like to argue and debate, even amongst friends. And we're damn good at it. The element of debate is a hallmark of our country, from the time of Sam Adams. By the way, he was not named after the beer, the beer was named after him. So, if you learn nothing else from today, hang on to that. We may or may not include that fact in the film.

But seriously, America has always been that "safe space" where truth can be spoken to power. Where "We the People" can challenge a king and a corrupt idea like a monarchy. This right has been re-affirmed through our history. It's been fought for and people have died for it. We must understand that we have the right to free expression, not the right to not be offended. This fundamental difference is being lost on today's college campuses.

We should not be teaching students to retreat from debate, but to charge intellectually into it. And we should hold college administrators accountable for stifling debate. This is one of the most valuable and profound gifts given to us in the founding of America.

Thank you for your time.

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Mr. JORDAN. Well said. Well said. Thank you, Mr. Carolla.

And, Mr. Zimmerman, or Dr. Zimmerman, excuse me, you are now recognized for your opening statement.

STATEMENT OF MICHAEL ZIMMERMAN

Mr. ZIMMERMAN. Mr. Chairman, members of the committee, thank you for inviting me to speak with you about the importance of freedom of speech on college campuses.

I begin by making two points that are intricately related to the issue. First, I believe it's important to recognize that racism in American society, both overt racism as well as more subtle but no less important forms of institutional racism, is very real and needs to be addressed.

Second, nothing that anyone might say today should undermine the critical role that colleges and universities play in American society. While these institutions aren't perfect and while those of us in the Academy need to work toward improvement, higher education has been and remains the single best way for individuals to dramatically improve their socioeconomic status. Beyond that personal benefit, there's ample evidence demonstrating that society is richer when it's well-populated by an educated citizenry.

I've spent almost 40 years working at institutions as a faculty member and administrator promoting the value of a liberal arts education. Such an education should teach students how to think rather than what to think. It should teach them how to differentiate facts from opinions, and it should teach them how to articulate their thoughts cogently rather than repeating those of others.

As we've all seen, there have been problems on American campuses. Some voices have not been welcomed, while others have been violently excluded. Let me say this as clearly as I can. This is wrong and it must stop. But what we don't need is additional legislation. We currently have all the tools we need to fix the problem if we have the courage to use them. College administrators need the courage to do what is right, to stand for principles rather than expediency, and to risk alienating some in the name of those principles.

On campuses where such strong leadership exists, conflict rarely escalates to crisis. At the same time, faculty members need to hold their colleagues accountable. The problems we've seen on campuses are not, I'm confident, supported by the vast number of faculty members. But most faculty have opted to remain silent, to censor themselves, and therefore, they've ceded control of their institutions to a small but vocal minority.

This silence is understandable. Speaking out distracts people from their important work of teaching and scholarship, while often bringing them into conflict with their colleagues. Asking faculty to encourage civil discussion and to celebrate a range of voices and perspectives is asking a great deal of them, more than we see in our political discourse. But if diverse opinions are not celebrated on campuses where were supposed to be trafficking in ideas, I doubt they'll find any welcoming environment. When we shut out voices, we shut out ideas, and serious consequences ensue.

Part of the problem on campuses I believe stems from a rise in the belief that all knowledge is socially constructed and that there

are no absolute truths, or the concept of postmodernism, as it is known in academic circles. Why has this idea made a comeback now? One possibility is that the relentless disparagement many have leveled on disciplines and the humanities, arts, and social sciences has led to a backlash. It shouldn't be surprising that when practitioners see their fields portrayed as useless by those who promote only STEM—science, technology, engineering, and mathematics—they push back, and the resistance often manifests itself as antipathy towards science.

When we marginalize certain voices, we all lose. We need to recognize that disciplines each bring something important to our understanding of the world. Privileging some fields over others yields a fragmented and incomplete picture. I say this as a scientist. As important as science is, it certainly isn't all there is.

Much of the tension on campuses today comes from a similar historical silencing of certain voices, voices of the marginalized, voices of people of color, the disabled, those with nontraditional sexual orientations, the poor, and many others. As these individuals rightfully try to insert their voices into conversations, tensions arise. But these voices deserve to be a part of the conversation.

The comparison between racism, sexism, homophobia, and other equally terribly discriminatory behaviors and a lack of appreciation for certain academic disciplines should be seen only as a metaphor. In the former case, people's lives and their experiences are discounted. Without those voices, we all suffer, obviously not equally, but we all suffer. The goal has to be to find ways to celebrate ideas, a wide array of ideas and the people who hold them, but such a celebration requires not only that more voices be at the table but that all of us listen to those voices. Looking beyond oneself, listening to what others have to say, understanding a perspective other than your own even if you don't agree with that perspective after all is what a liberal arts education is all about.

Thank you.

[Prepared Statement of Mr. Zimmerman follows:]

Testimony of Michael Zimmerman
27 July 2017

Mr. Chairman, members of the committee, thank you for inviting me to come and speak with you today about the important issue of freedom of speech on college campuses.

I want to begin by making two critical points that are intricately related to the issue at hand. First, I believe that it is important to recognize that racism in American society, both overt racism as well as more subtle but no less important forms of institutional racism, is very real and needs to be addressed.

Second, nothing that anyone might say today should in any way undermine the critical value that colleges and universities play in American society. While these institutions are not perfect and while those of us in the academy as well as those of us who care about these institutions need to take steps to help them improve, higher education has been and remains the single best way for individuals to dramatically improve their socio-economic status. Beyond the personal benefits that accrue to degree holders, there is ample evidence to demonstrate that society is far richer when it is well populated by an educated citizenry.

I have spent much of the last 40 years working at various institutions as a faculty member and administrator promoting the value and power of a liberal arts education. A liberal arts education should teach students how to think rather than what to think, it should teach students how to differentiate facts from opinions, and it should teach students how to articulate their thoughts cogently rather than repeating those of others.

As we have all seen, over the past several years there have been problems on American campuses. Some voices have not been welcomed and others have been violently excluded. Let me say this as clearly as I can: This is wrong and it must stop. But what we don't need is additional legislation to be brought into the mix.

We currently have all the tools we need to fix the problem – if we have the courage to use them. College administrators need the courage to do what is right, to stand for principles rather than expediency, and to risk alienating some in the name of those principles. On campuses where such strong leadership exists, conflict rarely escalates to crisis.

At the same time, rank and file faculty members need to hold their colleagues accountable. The problems we've seen on campuses are not, I am confident, supported by the vast majority of faculty members. In a thoughtful op-ed piece in the *Washington Post* Jacques Berlinerbau, Professor of Jewish Civilization at Georgetown University,

recently made the case that we shouldn't misread the nature of the controversy's occurring on campuses:

> [T]he liberal/conservative divide at a typical college—and especially at an elite college—is fairly irrelevant to free speech dust-ups. That's because in American academic culture there exist not two, but three, broad ideological camps and neither liberals nor conservatives are center stage.... In my experience, liberal professors play far less of a role in these incidents than a group we might refer to as the "radical left." This third camp is composed of a vast, and diverse array of quite serious scholars whose animus towards liberal ideas often exceeds its disdain for conservative ones.[1]

For many reasons, though, most faculty members, many of whom who hold liberal views as well as those who hold conservative political views, have opted to remain silent, to censor themselves, and therefore they have ceded control of their institutions to a small but very vocal minority. This silence is understandable, speaking out distracts faculty members from their important work of teaching and scholarship, and it often brings them into conflict with their colleagues.

Asking faculty members to encourage civil discussion and to celebrate a range of voices and perspectives is asking a great deal of them – more than we currently see in our political discourse or across most segments of society. Beyond the walls of the academy, we seem to have devolved into a situation where we believe that winning debating points is more important than considering the ideas that others hold. And we seem to have accepted the perspective that shouting slogans is more meaningful than exploring differences and looking for similarities.

Michael Roth, the president of Wesleyan University, made this point very well in a recent opinion piece in *Inside Higher Ed*. He wrote:

> Demonizing people because they have ideas different from your own has always been a temptation, and lately it has become a national contagion. College campuses are not at all immune from it, but this malady is fatal for liberal education. Many people are so accustomed to curated information -- be it from social media feeds or just from one's choice of cable news -- that they have lost the ability to respond thoughtfully to

[1] Jacques Berlinbrau. 30 June 2017. When your next college free speech controversy erupts, don't blame liberals. *Washington Post* (https://www.washingtonpost.com/news/grade-point/wp/2017/06/30/when-your-next-college-free-speech-controversy-erupts-dont-blame-liberals/?utm_term=.80be0fa04fa3)

> points of view different from their own. When they are confronted with disagreement, they may feel their "existence is annihilated" or that the person with whom they disagree wants "to make it harder for people like themselves to get on in the world."[2]

But if diverse opinions are not celebrated on college campuses, where community members are supposed to traffic in ideas, I doubt that they'll find any welcoming environment in our society. When we shut out voices, we shut out ideas and there are serious intellectual consequences of such behavior.

Part of the problem we see on college campuses, I believe, stems from a rise in the belief that all knowledge is socially constructed and that there are no absolute truths, or the concept of post-modernism as it is known in academic circles. Why has this idea made such a comeback at this particular point in history? One possibility is that the relentless disparagement many have leveled on disciplines in the humanities, arts and social sciences has led to a backlash. It shouldn't be surprising that when practitioners see their fields portrayed as useless by those who promote only STEM (Science, Technology, Engineering and Mathematics), they push back and it shouldn't be surprising that the resistance often manifests itself as antipathy toward science.

Although they may not be knowingly promoting a post-modern agenda, those who act as if expertise doesn't matter are causing great harm. When basic facts are dismissed because they're unpopular, or the collective voice of the world's experts on a particular topic, whether it be on climate change or evolution, for example, is dismissed because some might prefer a different conclusion, irrespective of the data, dissension is sown and dialogue is curtailed. The classic, but by no means sole, example of such a perspective was demonstrated by Don McLeroy, at the time the chair of the Texas State Board of Education. After being continually frustrated by scientists and teachers who were promoting the best science education we have rather than the creationism McLeroy wanted taught in Texas, he opined, "Someone's got to stand up to experts."

We have seen politicians regularly attacking some academic majors, from anthropology to art history. Despite these negative statements, the data show two things. First, the heads of our country's largest businesses are interested in hiring broadly trained individuals, regardless of major. They want to employ people who can think critically and communicate well. Studies undertaken on behalf of the Association of American Colleges and Universities on this issue are illuminating.

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[2] Michael S. Roth. 17 July 2017. From Unruly Hearts to Open Minds. Inside Higher Ed (https://www.insidehighered.com/views/2017/07/17/campus-intellectual-diversity-age-polarization-essay)

Second, the data on the actual earnings of people with different undergraduate majors is fascinating. Fifteen years after graduation, differences all but evaporate. Education and degree acquisition is what's important rather than the particular discipline that was studied.

When we marginalize certain voices, we all lose. We need to recognize that different disciplines each bring something important to our understanding of the world around us. Privileging some fields of study over others yields a fragmented and incomplete picture. I say this as a scientist. As important as science is, it certainly isn't all there is.

Much of the tension on college campuses today comes from a similar historical silencing of certain voices, voices of the marginalized, voices of people of color, the disabled, those with "non-traditional" sexual orientations, the poor, and many others. As these individuals rightfully try to insert their voices into conversations tensions arise. But these voices deserve to be a part of the conversation.

The comparison between racism, sexism, homophobia and other equally terribly discriminatory behaviors and a lack of appreciation for certain academic disciplines should be seen simply as a metaphor. In the former case, people's lives and their experiences are discounted. Without those voices, conversations are stunted and we all suffer, obviously not equally, but we all suffer.

Similarly, voices from all parts of the political spectrum need to be present but they need to be present in ways that promote dialogue rather than hatred. Having said that, I hasten to add that holding and articulating a different political opinion, even a widely divergent political opinion, is not the same as promoting hate speech or actual hatred. Again, let me turn to Michael Roth, who made this point so very well:

> [T]hose attacked as PC shouldn't take the bait and content themselves with labeling anyone who attacks them as racist. Those who point out the dangers of big government, emphasize the needs of national security in an age of terrorism, extol the virtues of family and religion, or defend free speech deserve intellectual engagement -- not insult and irony. Those who support a progressive campus culture make a big mistake if they think they are protecting that culture by insulating it from ideas that come from conservative, libertarian and religious traditions.

The goal has to be to find ways to celebrate ideas, a wide array of ideas, and the people who hold those ideas. But such a celebration requires not only that more voices be at the table but that all of us listen to those voices. Looking beyond oneself, listening to what others have to say, understanding a perspective other than your own, even if you don't agree with that perspective, after all, is what a liberal arts education is all about.

Is there any evidence that such an interchange of ideas can work? I believe that there certainly is. Within the academy, when faculty members teach students how to think rather than what to think, something that the vast majority of faculty members, but unfortunately not all faculty, do so very well, creative, competent and skeptical citizens are created. There's also strong evidence that meaningful dialogue can make a difference outside the academy.

Let me provide you with just one example, but one I know very well. In addition to my role as an academic, I serve as the founder and unpaid executive director of The Clergy Letter Project, an organization of more than 14,700 clergy members from a broad range of religious traditions and from all corners of the United States. This group advocates for a more robust and nuanced understanding of the relationship between religion and science – a topic that has, for centuries, been fraught with tension. By promoting discussion rather than dissension, The Clergy Letter Project has made great strides in helping the public come to grips with these issues. In addition to reaching millions of people with our message and seeing the overwhelmingly positive response members have received, I want to share one additional piece of evidence indicating that a strategy of open dialogue can be both respected and transformational. Positive stories about the efforts of The Clergy Letter Project have run on both NPR and Fox News suggesting that it is possible to reach across the political divide and engage individual in thoughtful exchanges.

So, yes, I believe unreservedly in the transformational power of ideas. But for those ideas to be truly powerful, they have to be fully understood and freely adopted and, in part, that means that alternative viewpoints have to be understood as well. This can only occur when we listen, truly listen to one another, and especially listen to those with whom we disagree. College and university campuses should not be the only place in society where this happens, but they absolutely must be one place where it does.

And I am confident that despite some very public failures, this is exactly what happens on college and university campuses most of the time.

Mr. JORDAN. I thank the gentleman.

Mr. Lawrence?

STATEMENT OF FREDERICK LAWRENCE

Mr. LAWRENCE. Thank you, Mr. Chairman, ranking members, and distinguished members of the committee. I am the 10th secretary and the CEO of the Phi Beta Kappa Society, and I say that I am delighted to hear Dr. Zimmerman's celebration of the liberal arts and sciences. Phi Beta Kappa was founded, like our nation, in 1776 and dedicated to the notion of free expression, free inquiry, and that the liberal arts and sciences would bring us to a better place. Indeed, it has in this country.

I am honored today to appear on behalf of the Anti-Defamation League, of which I am a national commissioner and former chair of the National Legal Affairs Committee.

The challenge of free expression on our campuses has never seemed greater, and I am grateful for the opportunity to address it today before this committee. I know from my years as a law school dean and as a university president that these challenges come in all directions and all contexts. They come from the left and they come from the right. They ——

Mr. JORDAN. Mr. Lawrence, just pull the microphone a little closer. Pull your mic a little closer to you there. Now, we are talking.

Mr. LAWRENCE. Did you miss any of the good stuff, Mr. Chairman?

Mr. JORDAN. No, got it all. Got it all. Keep going, brother.

Mr. LAWRENCE. I want to make sure that my board heard everything, Mr. Chairman.

The challenges of free speech come from the left and they come from the right. They involve students, they involve faculty, and they involve those outside the campus who affect the community as invited speakers and sometimes as uninvited agitators. Given our current polarization in our society, it is perhaps no surprise that this issue presents itself with such urgency on our campuses today, public campuses and private small liberal arts schools and large research universities.

At this moment, it is especially important to clarify first principles pertaining to our democracy's core values of free expression as they manifest themselves on our campus, and I would articulate two such principles. First, and I think there is broad agreement on this panel today on this, robust free expression and free inquiry are central for the mission of our colleges and universities. The limits of such expression are way out on the margins of expressive activity, and they involve behavior that threatens or instills fear in a victim or victims. Hate speech is protected, hate crimes are not.

The second principle is that constitutionally protected hate speech still causes harm to members of our community. There is a moral imperative, therefore, for campus leaders vigorously to criticize hate speech, not to suppress it, not to prohibit it, but to identify it for what it is and to criticize it.

These two principles lead me to a third conclusion, that efforts to legislate bright-line solutions to subtle and complex situations are misguided and they are doomed to fail. Campus administrators must be given the discretion to handle cases of hate speech and to

judge when cases have crossed the line into hate crimes. If we are to do our job, as Congresswoman Foxx said, to teach our students how to think, that must be left in the hands of those on campus who are best equipped to make those decisions.

Let me elaborate briefly on the two principles. Free expression is a core value of our system of government and our society, and it is especially true on our campuses. Most if not all of our campuses share a common mission, to discover and create knowledge and to transmit that knowledge through our teaching and our scholarship. For this mission, free expression and free inquiry are essential.

I therefore start from the presumption that speech on campus and writings on campus are protected, but this is not a presumption without a limit. Where should the limit for expression be? Where does protected hateful speech cross over into being behavior that a university may prohibit and sanction? As is so often the case in the law, for example, in basic principles of criminal law, we do best to focus on the actor's intent. The division between that which we may protect and that which we may prohibit should be based on the intent of the actor. Is the intent to communicate, however hateful the idea, or is the intent to intimidate and threaten a particular victim?

A recent example that helps make this point referred to by Ranking Member Demings, and that refers to the statement of Ms. Taylor Dumpson seated behind me in the room today makes the point. As the ranking member said, after her election as the first black woman to hold the position of president of the student government at American University, she was the victim of targeted hate-motivated actions, bananas hung with nooses with the letters of an African-American sorority. This reaches beyond the boundaries of free expression to a hate crime and has no place on an American campus.

To be sure, not all hateful speech is similarly threatening and prescribable. Much is protected. What is the proper response when hateful speech that is protected occurs on our campuses? Here, I believe, as Professor Strossen said at the very beginning, we do well to look to Justice Louis Brandeis' famous dictum in the case of Whitney v. California where he said, "The answer to hateful or offensive speech is not in forced silence, it is more speech." And in the face of hate speech on campuses, the call for more speech is not merely an option, it is a moral obligation on behalf of our campus leaders on all sides.

We observe with alarm the disturbing increase in the number of cases of white supremacist activity on our campuses, as has been well and disturbingly documented by the Anti-Defamation League. But even then, the answer will generally not be the enforced silence of which Justice Brandeis warned. The answer is to assert the highest values of our academic communities. Doing so precisely in the context of how we debate and how we disagree is at the heart of the enterprise of a college or university.

Thank you, Mr. Chairman.

[[Prepared Statement of Mr. Lawrence follows:]

Testimony of Frederick M. Lawrence
Secretary and CEO, The Phi Beta Kappa Society
On behalf of the
Anti-Defamation League
Before the
House Oversight and Governmental Reform Committee
Hearings on
Challenges to Freedom of Speech on College Campuses
July 27, 2017

I am Frederick M. Lawrence, Secretary and CEO of The Phi Beta Kappa Society. I am here today representing the Anti-Defamation League. I am an ADL National Commissioner and former Chair of the League's National Legal Affairs Committee. On behalf of ADL, we very much appreciate the opportunity to participate in this hearing on Challenges to Freedom of Speech on College Campuses.[1]

The Anti-Defamation League

Since 1913, the mission of ADL has been to "stop the defamation of the Jewish people and to secure justice and fair treatment for all." Dedicated to combating anti-Semitism, prejudice, and bigotry of all kinds, as well as defending democratic ideals and promoting civil rights, ADL is proud of its leadership role in developing innovative materials, programs, and services that build bridges of communication, understanding, and respect among diverse racial, religious, and ethnic groups.

ADL works with colleges and universities across the country, on both proactive education about hate, bigotry and bias, and in response to specific hate incidents on campus when they occur. ADL's expertise in combatting hate, building inclusive communities, and safeguarding civil rights, perfectly positions the organization to weigh in on this critical issue for institutions of higher education.

Free Speech and the University Campus

ADL, in its work around the country, regularly encounters virulent hate speech. But ADL recognizes that even the most heinous speech is largely protected by our federal and state constitutions. Indeed, ADL staunchly and consistently supports this bedrock principle of American democracy. The ability to express controversial and even offensive ideas is a cornerstone of our nation's democratic ideals – one of the principal ways our nation is exceptional and distinguished from the vast majority of countries around the globe where unpopular viewpoints can be – and are – punished.

This is particularly true on our campuses. Our nation's colleges and universities cover a wide range of models and identities but most if not all schools share a similar mission – to discover and create knowledge, and to transmit that knowledge through teaching and scholarship, for the betterment of our local, national and even international communities. For this mission, free expression and free inquiry are essential.

To say that hate speech is generally protected, however, is not the end of the matter. Whether expression should be protected, although a critically important question, is best seen as a threshold issues, and not the ultimate issue for a higher education institution. There is a moral obligation to respond clearly and forcefully to constitutionally protected hate speech. This is especially true of residential campuses where the very mission of the institution includes building a community and preparing future citizens.

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[1] On June 20, representing the Phi Beta Kappa Society, Frederick M. Lawrence testified before the Senate Judiciary Committee for their hearings on "Free Speech 101: The Assault on the First Amendment on College Campuses." His full statement from those hearings is here: https://www.judiciary.senate.gov/imo/media/doc/06-20-17%20Lawrence%20Testimony.pdf

The moral response to hateful speech is to describe it as such, and to criticize it directly. Supreme Court Justice Louis D. Brandeis famously wrote in *Whitney v. California* that except in those rare cases in which the harm from speech is real and imminent, the answer to harmful or hateful speech is not "enforced silence," but is rather "more speech."

The Integral Role Universities Play When Responding to Hate Speech

In the past six months, ADL has not only seen a spike in anti-Semitic/hateful incidents on campus, but has documented the changing nature of incidents, and an increased impact on communities that coincides with a polarized climate. College and university leaders play a key role in responding to these types of situations: they must ensure that no one is punished for their protected speech just because it discomfits some and, simultaneously, use their bully pulpit to counter hateful speech with timely, specific, and direct responses. We have seen this technique successfully utilized across the country.

For instance, on Valentine's Day, a Central Michigan University (CMU) Republican student group distributed gift bags to students including a card that read, "my love 4 u burns like 6,000 jews." The card included a photo of Adolf Hitler. In response to this incident, CMU President George Ross issued a forceful statement that the card's language, "while protected by the First Amendment, is unacceptable and is not consistent with our values and standards." He continued by calling upon "each of our students, faculty and staff to be beacons of peace, respect, inclusivity and civility — to be role models of integrity, dignity and leadership.[2]"

More than 100 faculty members heeded this call when they wrote an Open Letter to the university community. It stated:

> "First and foremost, we stand in unflinching solidarity with Jewish communities on our campus and beyond. We uphold you now and always. We will do everything in our power to protect you, to listen to and hear your truths, to affirm and teach your histories and current-day experiences, and to celebrate your people.
>
> Further, we reject acts of hate against any group of fellow humans on our campus and in our communities at home and abroad. Here, too, we vow to uphold the values of a diverse society that treasures the multiplicity of voices, experiences, and identities.
>
> We condemn any rhetoric or any group that provides fertile ground for hate speech. We will not hesitate to name things for what they are. Speaking out against hate and intolerance isn't a partisan act; it is a moral imperative rooted in the fight for justice, dignity, and human rights.
>
> We won't make peace with hate on our campus or anywhere else.[3]"

Even though the creator of the valentine turned out not to be a student, the initial impact of the incident was deeply painful to the campus community. When messages appear on campus that are demeaning to a group of people or demonstrate actions that are contradictory to the values of diversity, equity and inclusion, trust is eroded and communities need to heal. Make no mistake: hate speech on campus, though it may be protected by the First Amendment, has a significant impact. It distracts from the learning community which institutions strive to create, and it increases the perception of division in an already deeply-polarized political climate. A study released in April 2017[4] by the Cooperative Institutional Research Program at the Higher Education Research Institute at UCLA reports the 2016 cohort of incoming first-year students to be "the most politically polarized" in the more than 50 years of this annual study.

This issue of hate speech creating a distraction from learning is important. When a student's sense of value and belonging in a place he or she calls home is challenged, it interferes with the ability to learn inside the classroom and out, and it also negatively affects the success of staff and faculty.

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[2] https://www.cmich.edu/news/article/Pages/card-statement.aspx
[3] https://docs.google.com/document/d/1j2k-LRpoTknuCdlL9Gsoc2eMhI-1TLmaj-nGsb2qhQY/pub
[4] https://www.insidehighered.com/sites/default/server_files/files/TheAmericanFreshman2016PREPUB.pdf

While civility and discourse are critical in general, educational institutions should take special cognizance of the fact that historically-marginalized and minority groups bear a greater burden when speech targets their personal identities and sense of self. Gaps in success rates for students of color are well documented. There are several compounding factors at work for many of these students, including that they are already vulnerable to bias, stereotypes, threats, and, in some cases, financial concerns, and pressures from being the first in their family to attend college.

This is not to argue for prohibiting or excluding hateful expression. It is to say, however, that it is critical that administrators, staff, faculty, students, and all community members speak and act, both against hate, and toward a civil environment that accounts for the complexities of a diverse community. Colleges and universities must build an institution for learning that works toward inclusion and equity while also ensuring open expression and a marketplace for ideas. This requires flexibility and the ability for campus leadership to shift policies and practices for the needs of their community.

Heckler's Veto

Our free speech rights may be the world's broadest, but they are not unlimited. Speech that intentionally intimidates, threatens, or otherwise interferes with the legal rights of others is not protected. While protest, for instance, is a time-honored manifestation of our free speech rights, there are limits to this expressive activity, too. No outside person has a right to be invited to speak on campus, but when they are invited in an authorized manner by a university department, faculty, or an authorized student group, First Amendment free speech rights attach or, in the case of private universities that are not bound by the First Amendment, principles of free expression and free inquiry that are tantamount to the Constitutional protections attach. Preventing authorized speakers from talking is not protected by the First Amendment. Regrettably, we are seeing protesters employ this tactic – sometimes referred to as a "heckler's veto" – increasingly on campuses. When campus authorities or police allow dissenters to drown out someone's speech or prevent someone from speaking, they are allowing protestors to silence that speaker, and fail to protect the constitutional rights of both the speaker and the audience.

Sadly, this sequence has become all too familiar. Just this year, we have watched it play out at institutions including Middlebury College, University of California at Berkeley, Claremont McKenna College, New York University, Columbia University, University of Buffalo, University of California at Irvine and Northwestern University.[5] For example, last April, at San Francisco State University, protestors equipped with sound amplifiers effectively shut down a scheduled presentation by Jerusalem Mayor Nir Barkat. Despite the presence of a university administrator and campus police at the event, Mayor Barkat was forced to retreat with a smaller group while protesters continued using amplified sound in an effort to prevent him and the audience from exercising their First Amendment rights therefore inhibiting any dialogue on the issues.

These intentional interruptions – done under the guise of free expression -- contravene the First Amendment and undermine academic freedom and the open exchange of ideas. Presenters and protestors can both be heard without one infringing upon the rights of the other. Campus policies should reflect this, and administrators must act to prevent speakers from being deprived of their constitutional rights. In academia, not all ideas must be legitimized, but when presented, they should be given the opportunity to be heard. Open expression and academic freedom are guiding principles toward honest inquiry and the shaping of a society where current unpopular ideas have a path to becoming future truths.

Legislation Pertaining to Free Speech on Campus

In an attempt to respond to this ill-conceived, deeply offensive 'shout-down' strategy," legislators in 17 states have introduced legislation purported to protect free speech on campus. These bills are largely based on a model written by the Goldwater Institute[6] and contain troubling provisions that would shift discretion on how to handle these incidences from the university to the statehouse. Some proposed legislation mandates suspension and/or expulsion as a result of infringing the expressive rights of others, and other proposals allow for similar exclusionary discipline. These legislative proposals would prevent university administrators from making case-specific judgments based on the particular facts of a case,

[5] http://www.nationalreview.com/corner/448132/year-shout-down-worse-you-think-campus-free-speech
[6] http://goldwaterinstitute.org/en/work/topics/constitutional-rights/free-speech/campus-free-speech-a-legislative-proposal/

substituting a one-size-fits-all rule from the statehouse. Decisions about discipline must be left to the judgment of individual university leaders. Moreover, fear of such harsh discipline and consequences will inevitably have a chilling effect on student and faculty speech.

The Institute's model also places an emphasis on the need for individuals to be permitted to assemble spontaneously and distribute literature. The model, however, does not contain a definition of spontaneous. This ambiguousness could lead to unintended consequences such as attempts to circumvent the permit process[7] or other ways in which colleges and universities authorize speakers for campus events utilizing constitutional "time, place and manner" regulations, designed to ensure both freedom of speech and safety and order on campus.

Perhaps most troubling, one-third of these bills include a condition that universities "(1) shall strive to remain neutral, as an institution, on the public policy controversies of the day, and (2) may not take action, as an institution, on the public policy controversies of the day in such a way as to require students or faculty to publicly express a given view of social policy." [8] Precluding universities from advocating on behalf of issues that reflect their institutional values violates fundamental academic norms and inhibits their ability to maintain a safe and inclusive campus climate.

For instance, in response to the Executive Orders signaling a crackdown on illegal immigration, 28 universities vowed to offer sanctuary to their undocumented students[9]. For example, University of Pennsylvania President Amy Gutmann announced that, "The University of Pennsylvania will not allow Immigration and Customs Enforcement (ICE) / Customs and Border Protection (CBP) / U.S. Citizenship and Immigration Services (USCIS) on our campus unless required by warrant...Further, the university will not share any information about any undocumented student with these agencies unless presented with valid legal process."[10] University leaders must not be stripped of their policy making discretion and other tools to create a campus where all community members feel welcome.

When the state of Indiana was grappling with whether or not to pass an amendment banning same-sex marriage statewide, the University of Indiana was the state's first college or university to join Freedom Indiana – a bipartisan coalition of organizations and businesses dedicated to thwarting the ban. The university's capacity to speak out in no way undermined the ability of individual students, faculty, or administrators to articulate a contradictory opinion.

A Collective Response: UC Final Report on the Principles Against Intolerance

In 2016, the University of California Regents took an important step forward in outlining university rights and responsibilities on campus when it unanimously passed its *Final Report of the Regents Working Group on Principles Against Intolerance*.[11] This approach not only recognized that First Amendment and academic freedom principles must remain paramount, but also established an aspirational tone that reflects an understanding of the many real challenges presented when a college atmosphere becomes the target of anti-Semitic behavior, racism, or discrimination of any kind. Most critically, the report highlighted the vital role of university leadership in addressing tolerance. ADL supported the adoption of the Report and has urged the California State University system to adopt similar principles.[12]

White Supremacists on Campus: Unprecedented Recruitment Efforts Underway

Colleges and universities must have the ability to react appropriately as the needs of the community and the context of American society shift. This past year, issues related to extremism have affected campuses in a disturbing, new way.

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[7] For instance, a bill currently in the Texas Assembly requires that members of the university's community be allowed "to spontaneously and contemporaneously assemble or distribute written materials without a permit or other permission from the institution."
ftp://ftp.legis.state.tx.us/bills/85R/billtext/html/house_bills/HB02500_HB02599/HB02527I.htm

[8] Goldwater institute model

[9] http://remezcla.com/lists/culture/sanctuary-campus-daca/

[10] https://news.upenn.edu/message-penn-community-concerning-our-daca-and-undocumented-community-members

[11] http://regents.universityofcalifornia.edu/aar/mare.pdf

[12] http://la.adl.org/news/joint-statement-in-support-of-uc-regents-policy-against-intolerance/

Hate, bias and prejudice are not merely internal issues for colleges and universities to manage. Hate speech often comes from external entities, making students, staff, and faculty targets. The likelihood of being targeted by extremist individuals and groups has risen, presenting another compelling reason for colleges and universities to maintain agency in the creation and amending of policies with regard to open expression.

ADL has documented that white supremacists are engaged in unprecedented outreach efforts on American college campuses[13] – another sign that these hate groups feel emboldened by the current political climate.[14]

There are several notable mechanisms used by white supremacist groups, including, fliers, hacking, online trolling, 'White Student Union' websites, as well as in-person speaking engagements and protests. Throughout the 2016-17 school year, students, faculty, and staff on 110 American college campuses in 33 states were confronted by 159 separate incidents of racist fliers and stickers, as well as numerous on-campus appearances by white supremacists and several rounds of anti-Semitic, targeted racist faxes, and emails.

White supremacists are mobilizing in hopes of translating their online activism to "real world" action, and campuses – and young people – are prime recruitment targets, in part because they are still figuring out who they are, and what they believe. Extremists also undoubtedly see value in recruiting a new generation that will carry the movement for years to come.

Longtime white supremacist Jared Taylor recently wrote on his website, American Renaissance, that colleges are of special interest "because they are bastions of anti-white propaganda." Before he imploded publicly in February, Islamophobic and misogynist gadfly Milo Yiannopoulos told CNN, "I am speaking on college campuses because education ... is really what matters. It's a crucible where these bad ideas are formed. Bad ideas like ... progressive social justice, feminists, Black Lives Matter..."[15]

Yiannopoulos' appearances (some of which were cancelled) seem to have energized other racists. Nathan Damigo, founder of the white supremacist group Identity Evropa, has called Yiannopoulos "an inspiration," and showed up at the (ultimately cancelled) Yiannopoulos speech at UC Davis, hoping to poach a few fans for his own cause, which he outlined in a Tweet: "We will not rest until Alt-Right ideas are represented on campuses nationwide."

While the vast majority of white supremacist campus actions involve hateful fliers ("Imagine a Muslim-Free America,") and stickers ("Make America White Again"), white supremacists have also sent anti-Semitic faxes and, in the case of white supremacist Richard Spencer, delivered speeches on campus. Many of these incidents are linked to larger coordinated promotional efforts by white supremacist groups, like Identity Evropa's "Project Siege," which includes actual campus recruitment visits, and American Vanguard's "Northern Propaganda Campaign." These two groups are responsible for the majority of the white supremacist fliers and events tracked over the last several months.

In January, American Renaissance launched a hate-filled campus campaign, which for now seems to be limited to hanging "pro-white" propaganda posters. The academic racist Jared Taylor called on "racial activists" to place the "attractive posters" in "high-traffic areas" around campus on his American Renaissance website. Racist fliers and posters have adorned parking garages, street signs, billboards, utility poles, and along corridors.

Andrew Auernheimer, a white supremacist hacker known as "Weev," took targeting to the next technological level when he sent out anti-Semitic and racist fliers via many thousands of campus printers across the country. One flier, which was adorned with swastikas, read in part: "I unequivocally support the killing of children. I believe that our enemies need such a level of atrocity inflicted upon them...So the

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[13] https://www.adl.org/sites/default/files/documents/Campus-Report-Table-2017.pdf ADL has documented hate group activities on 64 campuses, in 26 states, by 14 different extremist groups,
[14] https://www.adl.org/blog/white-supremacists-on-campus-unprecedented-recruitment-efforts-underway
[15] http://www.cnn.com/2017/02/02/us/milo-yiannopoulos-ivory-tower/index.html

hordes of our enemies from the blacks to the Jews to the federal agents are deserving of fates of violence so extreme that there is no limit to the acts by which can be done upon them in defense of the white race." The fliers referenced The Daily Stormer, Andrew Anglin's neo-Nazi website.

Until recently, on-the-ground white supremacist actions have been relatively infrequent on college campuses – but there have been notable exceptions. In 2013, Matthew Heimbach attempted to start a White Student Union at Towson University in Maryland to "represent the unique cultural heritage, folk customs and strong Christian traditions that define white civilization." Later that same year, Patrick Sharp established a similar group at Georgia State University.

In 2015, two white supremacist groups, the now-defunct National Youth Front (NYF) and Traditionalist Youth Network (TYN), launched a campaign against two intellectuals whose work focuses on race-related issues. The targets of their online and on-campus protests were Lee Bebout, an associate professor of English at Arizona State University who was teaching a course called "U.S. Race Theory and the Problem of Whiteness," and Tim Wise, an independent scholar who delivers lectures on racism on campuses across the country.

These days, white supremacists are taking more forceful steps to establish a physical presence on campus. Identity Evropa (founded by Nathan Damigo) was clear in its goals – and used fittingly "academic" language – when describing "Project Siege" plans for the 2016-17 school year: Go talk to actual students. "Project Siege is the beginning of a long-term cultural war of attrition against the academia's cultural Marxist narrative that is maintained and propagated into society though the indoctrination of the future managerial class. If we are to be successful in combating the current paradigm," the online message read, "it is imperative that we create space for our ideas at universities across the country. Speaking with students and helping them unpack some of their assumptions while gaining name recognition for our organizations are the ways in which we will create the foundation for that space."

Sometimes, white supremacists are themselves students. Damigo, for example, is a student at California State University at Stanislaus. At the University of Wisconsin, Daniel Dropik, a 33-year-old student-employee who was convicted in 2006 of setting fire to two black churches, attempted to form the Madison branch of the American Freedom Party, which urges students to "fight anti-white racism." The American Freedom Party is a white supremacist group founded by William Johnson, and was heavily involved in the 2016 presidential campaign.

White supremacist events on campus face particular scrutiny and, in some cases, speakers are able to circumvent the school altogether, avoiding heated debates over free speech rights. In December, when Richard Spencer spoke on the Texas A&M campus, he was not there as a guest of the University. Instead, he spoke to supporters and onlookers in a room rented for the occasion by local neo-Nazi, Preston Wiginton.

Why now?

White supremacists, emboldened by the rhetoric of the 2016 presidential campaign, are stepping out of the shadows and into the mainstream. In January, Jared Taylor wrote, "It is widely understood that the election of Donald Trump is a sign of rising white consciousness...Now is the time to press our advantage in every way possible." Richard Spencer has stated that now is the time to "professionalize" white supremacist beliefs, and is currently fundraising to take his message to campuses across the country. "These types of events are tremendous opportunities for us to communicate our message," he told supporters in December. "They are ways for us to reach millions of people who would otherwise never have heard our ideas."

Campus responses

Fear and anger are the most common reactions to white supremacist fliers and events, usually followed by a powerful response from students and others who are appalled by the display of hate and divisiveness. Rallies and other gatherings are common. At Purdue University, a group of students replaced American Vanguard's "pro-white" posters with their own inclusive messages, and loud protests met Richard Spencer when he arrived to speak at Texas A&M.

College administrators are responding more quickly and forcefully to campus hate speech. The chancellor of the University of Texas at Austin immediately called for a town hall meeting after anti-Muslim and anti-immigrant fliers (sponsored by American Vanguard) were found all over the campus. While this town hall did not alone heal tensions, UT and many schools are launching new Diversity, Equity and Inclusion initiatives, with the goal to make campus populations feel safer and more empowered. At the University of Michigan, racist and anti-Semitic emails were sent to students from an outside email address that pretended to use the name and signature of a professor on campus.[16] University of Michigan President Mark Schlissel immediately condemned the incident and the next morning the university provided a status report to students and began working with the FBI to find the source of the hateful emails.

When Hate Speech Crosses the Line

In early May, following the election of Taylor Dumpson, the first African-American female student body president at American University, an unknown perpetrator hung several nooses on the AU campus, some with bananas with the hateful message "AKA Free," which appeared to target the traditionally African American sorority to which Ms. Dumpson belonged. Protests and demands for action ensued and the AU administration sought to proactively address the situation while the FBI and campus police are currently investigating the incident as a possible hate crime. [17]

Ms. Dumpson posted a thoughtful statement, calling for calm and stating her intent to ensure that the campus is safe and welcoming to all.[18] The same day that the nooses were found, American University President, Dr. Neil Kerwin, denounced the incident, calling it a "cowardly, despicable act." He continued:

> Know that American University remains committed to principles of diversity, inclusion, common courtesy, and human dignity, and acts of bigotry only strengthen our resolve. Anyone who does not feel similarly does not belong here.[19]

President Kerwin's timely and firm response is a good example of how campus administrators must respond to incidents of hate and bias on their campuses – and have a plan in place *before* these incidents occur.

Every year, thousands of students are the victims of bias-motivated slurs, vandalism, threats, and physical assaults on college campuses. In 1998, to increase awareness of hate violence on college campuses, Congress enacted an amendment to the Higher Education Act (HEA) requiring all colleges and universities to collect and report hate crime statistics to the Office of Postsecondary Education (OPE) of the Department of Education. Unfortunately, the Department of Education's current hate crime statistics[20] reflect very substantial underreporting. Even worse, the limited available data frequently conflicts with campus hate crime information collected by the Federal Bureau of Investigation under the 1990 Hate Crime Statistics Act (HCSA).[21] Collecting and reporting this data accurately must become a common practices for all colleges and universities.

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[16] https://publicaffairs.vpcomm.umich.edu/u-m-statement-on-spoofing-attack/

[17] https://www.nytimes.com/2017/05/03/us/bananas-hang-from-black-nooses-and-a-campus-erupts-in-protest.html

[18] Dumpson wrote, "We must use this time to reflect on what we value as a community and we must show those in the community that bigotry, hate, and racism cannot and will not be tolerated." http://www.ausg.org/ausg_president_taylor_dumpson_statement_racist_incident

[19] http://www.american.edu/president/announcements/May-1-2017.cfm

[20] https://ope.ed.gov/campussafety/#/

[21] https://ucr.fbi.gov/hate-crime/2015 The Violence Against Women Reauthorization Act of 2013 (Public Law 113-4) amended the Clery Act of 1990 (Public Law 101-542) to require campus security and local law enforcement to identify, record, and effectively respond to incidents motivated by gender identity bias and national origin bias – in addition to the longstanding requirements to report hate crime incidents based on race, gender, religion, disability, sexual orientation, or ethnicity bias.

Policy Recommendations

1) Reject legislative attempts to strip university leaders of their discretion or to link federal funding to speech.
In addition to state efforts to shift decision-making regarding academic freedom and free expression from university halls to state houses, there is also a movement advocating for tying eligibility for tax-exempt status or federal student aid under the Higher Education Act to how universities respond in the face of free speech challenges. The prospect of creating a free speech 'test' that a college or university must 'pass' in order to receive federal financial assistance is disturbing. The business of safeguarding our educational institutions' free speech should not be legislated by Congress. Rather, it should be left in the hands of the academy. Congress should reject attempts at linking federal funds to a unilateral vision of what speech on campus should look like.

2) Educate faculty and students on the parameters of their First Amendment free speech rights.
The best means of helping people understand and exercise their First Amendment rights is to educate them. The ADL program "Identity, Inclusiveness, and Free Speech on Campus," which helps administrators, faculty, students and campus security balance the complex interplay of free expression and bias, also offering insights on how best to create an inclusive campus environment. ADL has worked with a number of California, Illinois, Texas, Massachusetts, New York, and Washington, D.C. campuses on this issue.

Another ADL program, "Words to Action,[22]" helps students learn how to respond constructively when dialogue becomes heated or even aggressive. 'Words to Action' has served over 2500 students in the past year. Additionally, for over 15 years, ADL has been sharing with college administrators our resource guide "Responding to Bigotry and Intergroup Strife on Campus: A Guide for College and University Presidents and Senior Administrators." This manual provides guidance and techniques to use in response to severe conflicts on campus.

3) Improve training for campus officials and police on responding to bias incidents and hate crime.
In those cases that cross the line from protected speech to unprotected, targeted harassment, intimidation, and bias-motivated violence, the Department of Education and the Department of Justice should work with law enforcement organizations (including campus police) and civil rights and religious groups with interest and expertise in combating hate violence, to do outreach and education – highlighting the recently-added issues of gender-identity and national origin based hate violence, using the updated *Clery* Handbook.[23] Coordination with relevant college and university offices in these efforts is essential.

4) Create and Convene a National Task Force on Inclusive Excellence.[24]
Colleges and universities operate under the premise that equity, inclusion, and belonging are key factors of a successful learning environment. Without inclusion at every level, excellence is not achieved. Creating a more diverse community brings benefits of varied viewpoints for creative problem solving, and also requires a wider lens with which to view the needs of all members of the diverse community. In a society that faces challenges of inequity, colleges and universities face this as well. There is a growing awareness of unconscious bias, achievement gaps, and overt hate speech. This is the first step toward inclusion, but a national task force is needed to ensure that solving these problems is considered critical to success of higher education institutions and the experience of all students, staff, faculty administrators, and visitors. Systems must be created that consider the ways in which all members experience the environment, curriculum, student services, tenure, and promotion procedure, leadership opportunities, and day-to-day living and learning. A task force specific to equity and inclusion elevates the message that all people must know that their success is valuable. Working toward inclusion is working toward every member of our campuses and our society reaching their full potential without some people feeling the additional burdens of stereotypes, biases, and systems that were not designed to include them.

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[22] https://www.adl.org/words-to-action
[23] https://www2.ed.gov/admins/lead/safety/handbook.pdf
[24] https://www.aacu.org/making-excellence-inclusive

Ultimately, improving campus climate – both for those speaking and for those listening – can only result from a steadfast commitment to civility, dialogue, and education. ADL appreciates this Committee's willingness to highlight this important issue and looks forward to further discussion and progress towards fulfilling the promise of creating educational institutions that both safeguard free expression from all perspectives *and* ensure that all members of the community feel safe and welcome.

Mr. JORDAN. Thank you all for your eloquent testimony. We appreciate that and frankly think Congress broke some new ground today, first reference ever to Wow! Wow! Wubbzy! in a congressional hearing. But we will start with the chairman of the Education and Workforce Committee, the gentlelady from North Carolina.

Ms. FOXX. Thank you again, Mr. Chairman, and I want to thank our witnesses again for being here.

As we all agree, free speech is fundamental to a free society. It is astonishing to me that so many young adults today are willing to throw those constitutionally protected rights out the window just because they are on a college campus and may disagree with the content of what is being said. However, it is not surprising that so many colleges are struggling with how to handle free-speech rights on campus.

Mr. Zimmerman, you note in your written testimony it is important for colleges and universities to continue to be a place where free exchange of ideas, even though some may disagree, is allowed and even encouraged. I strongly agree. Can you discuss some of the challenges public colleges and university administrators face when trying to balance their constitutional responsibility to protect free speech with ensuring the safety of the campus community, particularly when opposition to that speech leads to threats of potential violence?

Mr. ZIMMERMAN. I can certainly try. It's not an easy—there's no simple answer to that. The most important thing I think goes back to something Nadine Strossen said and has written about eloquently, and that is in American society and on campuses today we don't have a good enough understanding of what the First Amendment actually means. We need to educate each other within the Academy and beyond the Academy about the importance of freedom of speech.

So, often on college campuses, there are two kinds of issues. There are the internal issues that administrators are more easily able to deal with if they have the courage to do so, and then there are the external issues, when the attacks on freedom of speech come from external agitators, and that's much more difficult because administrators don't control those individuals.

Administrators have to have the courage to stand up and, as Mr. Lawrence has said, to speak out eloquently in favor of ideas that they are opposed to and make it clear—and speak out in favor of the opportunity for those ideas to be expressed while making it clear that those ideas should not be expressed and to call the people who are saying those hateful words into question, not their right to say them but their obligation not to say them if they want to live in a civil society.

So, what administrators need to do is change the nature of the discourse, to ask for much more civil discourse. And that doesn't mean closing down ideas. It means respecting each other and the diversity of opinions that each of us should have.

Ms. FOXX. Thank you very much.

Ms. Strossen, in your testimony, you discuss several instances where speech may be restricted because of specific objectively demonstrable serious harm that it directly causes. Can you expand

on those instances and discuss how colleges and universities can appropriately draw the line?

And again, I appreciate all of you all coming today.

Ms. STROSSEN. Too eager to talk. As one educator to another, I'm especially eager to answer that fine question. The basic—the most important examples that would apply on campuses include what the law calls a genuine threat or a true threat and targeted harassment. Now, we have to be very careful because we tend to use the word threat or harassment very loosely in everyday conversation. And I am very concerned about students and even faculty members saying, "I feel assaulted by that speech" or even "I feel, you know, that speech is committing violence against me." No, no, no.

The test is appropriately narrow. The element of intent, as Mr. Lawrence said, is very important. When the speaker means to instill a reasonable fear, not a fear that someone subjectively feels but a reasonable person in the position of the student who is targeted would reasonably feel fear of violence or harm, that is a true threat. And it doesn't—the speaker need not intend to actually carry out the threatened harm but to instill the fear, which itself is intruding into the liberty.

So—and it's a very fact-specific determination, which is why I agree with Mr. Krishnamoorthi that we must not make this into a punitive matter because it is a matter that involves discretion and judgment. You would look at all the facts and circumstances, and certainly one of them, as Mrs. Demings said, is the history that is associated with the expression. The noose, certainly, would convey a reasonable fear of racist violence.

Ms. FOXX. Thank you, Mr. Chairman. I yield back.

Mr. JORDAN. The ranking member is recognized, Mr. Krishnamoorthi.

Mr. KRISHNAMOORTHI. Ms. Strossen, you are free to exercise your free-speech rights to mispronounce my name. That is perfectly okay. The other day I introduced myself, I said, "Hi, my name is Raja Krishnamoorthi," and someone said, "Roger Christian Murphy, very nice to meet you," so I am used to it.

You know, I think that the three principles that I am—look, I think there is room for us to come to agreement on a few principles that I am hearing echoed in your excellent testimonies across the board. First, I personally believe that Mr. Lawrence is—Dr. Lawrence is absolutely right, that college administrators should have maximum discretion to, you know, essentially enforce these free-speech rights both for those who are peacefully protesting and those who would show up in, as Mr. Shapiro said, you know, practice their viewpoints or espouse their viewpoints.

The second principle kind of goes along the lines of what you are saying, Ms. Strossen, which is you have to have some principle that is equally applied to both sides, and that is, is it the reasonable-person test. Would a reasonable person feel they are about to be attacked, or would a reasonable person perceive an intent to attack, et cetera.

And then the third principle I think is we don't want anything to border on violence, any kind of incitement to violence. That is why, when Mrs. Demings brought up the case of Taylor, who is

with us in the audience—I am sorry; I forgot your last name, Ms. Taylor.

Ms. DUMPSON. Dumpson.

Mr. KRISHNAMOORTHI. Dumpson. Thank you for coming. I think that that particular episode to me I think as a reasonable person—hopefully, most people would agree that is crossing a line into a place where, you know, there might be violence on its way, and I am very sorry that even happened to you. At the same time, I am disturbed when I see videos of people getting shouted down and shut down.

And so my question to the administrator is that people who are in the shoes of the college presidents and administrators who are trying to enforce these principles, Dr. Lawrence and Dr. Zimmerman, I mean, how do you, A, prevent that kind of shouting down and just, you know, shutdown of speech, which we saw, and on the other hand prevent what Congresswoman Demings talked about, which is that hate crime in my view? I mean, what are the challenges there from a public policy standpoint? Like is there anything that you need in terms of tools to help in that particular area?

Mr. LAWRENCE. Well, let me start with the last question, is there anything else that we need besides the goodwill of the House of Representatives? We certainly do not need more legislation in this area. I think the question of how do you deal with the conflict between, on the one hand, protecting students from hate crimes, on the other hand exposing students to troublesome ideas, even offensive ideas and teaching them how to respond to it. That is the challenge that we meet.

But you start, I think, by recognizing, as a university administrator, that it is—those are not the only two options. Either we protect speech and embrace it or we prohibit speech. There's this whole middle category that says speech is protected, it is encouraged, and university administrators also have First Amendment rights and also get to speak.

So, in many cases, the answer is not to run to the extreme of shutting down an event if there is a—even a white supremacist on campus. If they are invited by a campus group or in a State university if they're entitled to be there by the State university rules, then you don't shut it down, but you do counter it with comments of your own, and the administration has to say, "We have values in this university, and we represent all of our students of all backgrounds, and this is what we stand for and these are the high values of this university."

I know outside the context of the university this sounds like thin stuff. Within the university on the campus for those of us who spent our lives there, this is not thin stuff. This is the real stuff. This is where students and faculty are engaged in the life of the school on a daily basis.

So this is where Justice Brandeis really did have it right. The answer is not enforced silence, but it is more speech, and more speech is not just an option; it's a moral obligation.

Mr. KRISHNAMOORTHI. Dr. Zimmerman, can I just add onto that? Has something changed in the last 10, 15 years whereby the incidents that Congresswoman Demings talked about have been on the rise, especially as of late against many different minority groups

and also what Mr. Shapiro was talking about as well? I mean, has something changed that we need to be aware of?

Mr. ZIMMERMAN. What a great question. Let me back up for one second and agree with Dr. Lawrence and say one other thing, and that is you can't wait until one of these events happens. You have to change the culture ——

Mr. KRISHNAMOORTHI. Right.

Mr. ZIMMERMAN.—from the beginning.

Mr. KRISHNAMOORTHI. Right.

Mr. ZIMMERMAN. You have to—the first day students come to campus, before they come to campus ——

Mr. KRISHNAMOORTHI. Right.

Mr. ZIMMERMAN.—they have to know they're coming to a place where they're going to be trafficking in ideas, and some of those ideas, as so many of you have said, might be controversial and might make them uncomfortable, but that's what makes them educated.

I guess the deep—the real answer that I see to your wonderful question is are we a less civil society in general than we used to be? Are we more at odds with one another? Do we have a deeper misunderstanding and more distrust when we talk with people who disagree with us? Are college campuses the epicenter of this or are they a reflection of what's going on in society?

And, you know, I—we're sitting here in House chambers or a conference room. The House doesn't interact with the—Members don't interact with each other at least publicly very well often. We on college campuses, students, faculty model the behavior we see. And it's not that you are the problem, but you are part of American society. We have all come to this, I think. We need collectively to come to a better understanding of how to disagree civilly and respectfully.

And unless we understand what our opponents are saying, we're never going to make cogent arguments against them. We need to understand our position, and we need to understand their position if we're going to make rational decisions.

Mr. KRISHNAMOORTHI. Thank you.

Mr. JORDAN. Mr. Carolla, we have heard from the other side, we have heard from a couple of our witnesses about the intent to cause violence. We have heard the term agitator used. We have heard that it is appropriate to criticize hate speech. When you are on campus, do you engage in hate speech?

Mr. CAROLLA. Well, that's a—it's all in the ear of the beholder. That's the problem, and everyone's ears are getting supersensitive these days. I express ideas and ideas I believe in and oftentimes jokes like, Mr. K, did they charge you extra for the nameplate? You know, like ——

Mr. KRISHNAMOORTHI. I have a wraparound—it wraps around ——

Mr. CAROLLA. When you bring a van to the car wash, do they charge you more? I just figure with the 128 letters there.

You know, I try to be a little more philosophical about all this stuff, and I was at a Home Depot in Glendale, California, two days ago standing in the tool department, and a Taylor Swift song came on. And I was initially agitated. I just didn't feel like it was good

thematically for me to be looking at RotoHammer with Taylor Swift talking about how hot she was pumping above my head like a halo. But all I did was keep shopping, keep walking. I realized some people like this music, some people don't like this music. It's the prerogative of whoever manages the Home Depot to play Taylor Swift at that time. I didn't complain, I didn't throw something at the speaker, and I didn't start a fire. I just got my tools, paid, and left.

And I just thought if more people could do that with ideas they disagree with or people they disagree with or music they disagree with—it's not an endorsement of Taylor Swift; it's I have a life to lead. I need a RotoHammer, and I don't personally hold the manager of this Home Depot—nothing against him if he wants to play—he or she wants to play Taylor Swift.

And I think if people could just sort of have that in their mind—and I'm not saying don't have an opinion and I'm not saying don't voice your opinion, but when other people are voicing their opinion or singing their song, sometimes it's time just to grab your RotoHammer and head for the parking lot.

Mr. JORDAN. And your appearances on campus, has your intentions ever been to cause violence on college campuses?

Mr. CAROLLA. Oh, sorry for skirting the question.

Mr. JORDAN. No, no, no, it is a second question. It is a second question. You did fine on the first.

Mr. CAROLLA. Literally talking about Taylor Swift and skirting, mini-skirting the question. Of course not, never, no. And I don't know whose—who does have those ideas. I personally want to exchange ideas. I basically want to just take my ideas and put it into your head, but I don't want to put my fist or foot in your head.

Mr. JORDAN. Yes. Mr. Lawrence, do you think that when Mr. Shapiro is on campus that he has any intentions to cause violence or promote violence? Do you think he is an agitator or do you think he engages in hate speech?

Mr. LAWRENCE. No, I have no reason to believe he's there to create violence, and, in fact, I would say that the wise university president does not get in the business on a daily basis of calling First Amendment balls and strikes. Generally speaking, you want to let the game play on. You want ideas to be exchanged. If Mr. Carolla wants to come to campus and do his seething critique of Taylor Swift, I would say have had it.

But those aren't the hard cases that we're talking about. Where you do weigh in are precisely cases ——

Mr. JORDAN. What you mean they are not the hard cases? Mr. Shapiro has been shouted down uninvited, violence at the thing, so what do you mean it is not the hard case? If you think his speech is appropriate, he is engaging in the kind of ideas, robust debate that we want on college campuses, then why is the reaction the way it is then?

Mr. LAWRENCE. Well, there shouldn't be that reaction, and what I mean by not being a hard case is that it should not be a hard case for a university administration to protect his right to speak. I think there's no problem with that.

Mr. JORDAN. That seems to be.

Mr. LAWRENCE. But what I mean by the hard case is that when you do see a dramatic increase in white supremacist incidents on campuses, university administrators have to pay attention, and particularly when there are people who come from the outside ——

Mr. JORDAN. Right.

Mr. LAWRENCE.—and the university president has a hard time keeping control of her or his campus. That—but that's a different situation from Mr. Carolla and Mr. Shapiro.

Mr. JORDAN. Mr. Shapiro, are you an agitator?

Mr. SHAPIRO. Not as far as I'm aware. So this—I think that some of what's been said does miniskirt the debate.

You know, Mr. Krishnamoorthi—I got it right—when you're talking about the Wisconsin law, I believe that law was brought up in direct counter to what happened, and it was people who talked about it on the Floor of the legislature—in direct counter to what happened when I spoke at University of Wisconsin at Madison where you had a bunch of protesters who sit in front of the stage and obstructed the stage and then refused to leave. And when I asked the police would they remove the protesters at a certain—they'd been going for 15 minutes.

I—by the way, personally, two things just to preface. I have no problem whatsoever with people protesting my speeches. I do have a problem with people who won't actually let me speak.

And, number two, as far as all the talk about white supremacy, I can speak from experience, Mr. Lawrence, your organization named me the number-one target of anti-Semitism online last year, so I have a trophy at my house that says number-one hated Jew in America, so I'm totally familiar with the level of vitriol that's become common in our politics.

But one of the things that's a problem and I think we have to be careful about is when we say leave it to the administrators and then the administrators do what they did at UW, which is the police—I said to the police, "Will you remove these protesters," and the police said, "We have been told by the administration that if we remove the protesters, we are to shut down the event entirely, so we can't remove the protesters." We literally had to wait until they just got tired and walked out basically.

When that's response of the administration, shouldn't there be some sort of repercussion for that? Because what I'm seeing is a heckler's veto that's taking place on campus. What I'm seeing is people who are not engaging in free speech designed to enrich the debate but in order to shut down the debate, and there have to be some sort of ramifications for people who are actually committing trespass.

I mean, these are—this is not a question of free—everyone is trying to focus in on this term hate crime and hate speech. They—but the important part of those phrases is not the first word. It's speech versus crime. So if there is a crime that's being committed, we're all in agreement. If somebody commits a crime and they're speaking of an imminent threat to somebody, of course that's a crime, but that has very little to do with the hate and a lot more to do with the crime as to whether that's prosecuted because hate speech is not prosecutable, nor should it be policed by the campus.

So, the fact is that what we are seeing is a conflation between speech and active attempts to obstruct in order to promote the obstruction by some administrators on a few college campuses.

Mr. CAROLLA. Can I add to that?

Mr. JORDAN. Sure can.

Mr. CAROLLA. I think that the bigger problem and what's sort of insidious here is I believe that the administration does not agree with Ben Shapiro and Ben Shapiro's thoughts and what Ben Shapiro is going to say, so it becomes a tacit agreement. They disagree—they're basically Steeler fans, and he's a Baltimore Ravens fan, and he's going to come up and make a speech, and all the Steeler fans say, well, he should be allowed to, but we're not a fan, and so quietly they go along with it. And I think that's a problem. I think that's a big problem.

We—everyone agrees on free speech, everyone agrees that the college campus should be a petri dish of free speech or melting pot or whatever it is, a sea sponge of free speech, but when the administration doesn't agree with what Ben Shapiro has to say, they don't defend his right to say it as vigorously as they would if someone came on who they agree with. It's quiet and no one ever talks about it, but I believe that's what's going on.

Mr. JORDAN. They tell him like they did last week that, oh, there is no venue that will accommodate him in September. Wow, right? You can't find the place on campus to have him come and address this ——

Mr. SHAPIRO. I mean, I think that—if I may for a second, I think that that's one of the dangers here is that what we're seeing in many cases is use of what would normally be time, place, and manner restrictions in order to restrict the actual type of speech.

Ms. STROSSEN. As a pretext.

Mr. SHAPIRO. Yes.

Ms. STROSSEN. If I might say, responding to points that Mr. Krishnamoorthi made and also ——

Mr. JORDAN. I have got to get to ——

Ms. STROSSEN.—Chairman Jordan, that this really is not such a new phenomenon. Back in the '60s and '70s, there was actually epic violence on campuses, massive shutdowns, outside agitators, students alike, faculty members and administrators imprisoned within their offices, and that gave rise to that fabulous report that Chairman Jordan referred to, the Woodward Report, which I think is responsive to a number of questions that have been raised. What should campus administrators do? Because it really, in concrete terms, spells out the distinctions between speech that should be protected, including vehement protest, and where it crosses the line into coercion and intimidation, where it is important for the university to enforce its own rules. But that's as distinct from ——

Mr. JORDAN. Well said.

Ms. STROSSEN.—government getting into the fray.

Mr. JORDAN. Well said.

The gentlelady from Florida is recognized, and we will be relaxed in time restraints a little bit there, too.

Mrs. DEMINGS. Thank you so much, Mr. Chairman.

And again, thank you to all of our witnesses for being here today and engaging in this very important discussion.

Mr. Lawrence, in your written testimony you talk about white supremacists are engaged in unprecedented outreach on American colleges and campuses. What do you believe accounts for the rise in outreach? And what do you believe white supremacist groups are hoping to achieve by the increase in targeting colleges and universities?

Mr. LAWRENCE. I think what they are hoping to accomplish is to influence the next generation of leaders in society, and so they come to campus with that in mind. I think they also are hoping to get a high level of visibility, which they do. Campuses get a high level of attention in the media and the press, in government, and mostly for good reasons, but I think that raises that as well.

And I think to a certain extent we are living in a highly hyperpolarized environment right now, and there is a violence to the vocabulary that comes very quickly, and there is a racialized version of much of this vocabulary that comes very quickly.

But let me hasten to add that even when those groups come to campus, I still think the answer is more speech, not to restrict. But I do think this is where the job of the administrator becomes very complicated but terribly important to be a voice of clarity to say on this campus we believe that all are entitled to come here and have a satisfying learning experience, to be challenged, to be challenged intellectually, to be troubled with ideas, but not to be threatened and not to be stigmatized because of who they are or what they are.

Mrs. DEMINGS. You know, as I indicated in my opening statement, I have been directly involved in numerous—provided security for numerous protests as persons who I agreed with and groups that I didn't exercise their First Amendment rights, so I take this conversation very, very seriously.

You talked earlier about kind of the complicated and sometimes difficult job of the college administrator, who is trying to balance protecting the right to free speech but also thinking about the welfare and safety and well-being of their students, which can be a difficult line. Could you—or even Dr. Zimmerman. I would like to hear from both of you. Kind of talk more about—even though we said it is a tough—it is difficult, could you kind of talk more about the role of the college administrator in balancing the right to free speech and the welfare of the students on campus?

Mr. LAWRENCE. Well, let me start with something very important that Dr. Zimmerman said. These discussions do not best start once an event has already happened on campus. It starts at first-year orientation discussions. It starts in dinners in the president's home. It starts in discussions in the office talking about what do we stand for? What does a civil learning climate mean? What does it mean to challenge each other? It comes with how we treat each other. I think he's also right that there are a precious few good role models for civil disagreement in our society right now, so we have to create those on our university campuses.

When an event does happen, I think there also are very significant rules of engagement that have to be enforced, so, for example, if Mr. Shapiro wanted to come to my campus, he obviously would be free to come, and I would make sure that there were no protesters who kept him from coming, but I would require—and I'm

sure he'd be happy with this requirement—that he'd have to take questions and answers; he couldn't just give a speech and leave it. I have no reason to think he wouldn't agree with that.

Mr. SHAPIRO. In fact, I actually—in all my speeches I say if you disagree with me, you go to the front of the line for Q&A. That's always how it works.

Mr. LAWRENCE. When I got pushback particularly from some of my trustees about certain speakers they disagreed with vehemently, "Why are they on campus?", my response was always, "Trust my kids." I'm going to make sure that these speakers have to answer questions, and they're going to stay until the questions are done. Trust my students to ask hard questions. That's where the training how to think actually happens, so you create those environments as well.

But, look, let's be clear as well. When the situation gets out of control usually because you've got people from the outside—not only, sometimes it's inside—but usually, when you've got people from the outside, then you got the same questions on campuses that law enforcement, such as your experience, are more adept at dealing with. And these will continue to be challenges for our universities.

Mrs. DEMINGS. In your written testimony, you also talked about the just unbelievable number of incidents of racist-related stickers, flyers on campuses. Could you talk a little bit about the impacts that you have seen on certain groups as it pertains to those flyers and stickers?

Mr. LAWRENCE. Look, you've got to go all the way back to first principles. Universities are not punitive institutions; they are educative institutions. We exist for a purpose; it is to educate our students. When there is a pervasive expression of racism on campus, that disables the learning of certain students. Again, that doesn't necessarily mean you would repress some of that expression, but you have to respond to that not just because you think that's a nice thing to do. You have a professional obligation as an educator to see to the learning ability of the students on your campus. So, the incidents that you're referring to have a deeply negative impact on the ability of students to learn, which at the end of the day is the mission of the institution.

Mrs. DEMINGS. Okay. Thank you. I am out of time.

Thank you so much, Mr. Chairman. I yield back.

Mr. JORDAN. Thank you.

The chair notes the presence of Congressman Hice and Professor Raskin, and without objection, they will be welcome to participate fully in today's hearing.

I now recognize the Chairman, Mr. Palmer.

Mr. PALMER. Thank you, Mr. Chairman.

I just want to bring up something from your written testimony that frankly, Mr. Lawrence, I find troubling. You cite an instance at Central Michigan University where there was a Valentine's Day card that went out that was extremely offensive to Jews, and you do point out that the creator—and it was attributed to a Republican student group. And in your written testimony you went out that the creator of the Valentine turned out to not be a student, but you never mentioned in here that it was not the Republican

group, that an inquiry into this by Central Michigan University found—led by Katherine Lasher said that they determined that leaders of the student organization, the college Republicans at CMU were unaware of the card and that their director said the members of the student organization were shocked and remorseful. Why didn't you make that clear?

Mr. LAWRENCE. Congressman, I apologize if it was not clear in the written testimony as you see it. I did say in the testimony that it was determined not to be from a student group. The ——

Mr. PALMER. But you didn't make clear that it wasn't the Republican—not only was not a student, it wasn't the Republicans.

I guess I'm a little sensitive about that, Mr. Chairman. I like to enter this into the record if I may.

Mr. JORDAN. Without objection.

Mr. PALMER. Because I realize that some speech does incite inappropriate behavior, even violence, and I know that firsthand because I was one of the Republican baseball players that was on the field. I was 20 steps from the guy when he started shooting, and it was clear that he was incited by certain speech.

But I would like to point out that, as traumatic as that experience was, I have not heard a single demand from any one of those who were present who were injured or wounded for restriction of anyone's right to speak their views on any issue.

And I just think—you know, I was at the University of Alabama in the mid-1970s. Nineteen sixty-five was the first time an African-American was allowed to enroll in the University. It was a dark time in our history, there is no question about it. But in 1976 we elected the first African-American president of the Student Government Association, the year before that, the executive vice president of the Student Government Association. And there were people who disagreed and protested, but we didn't have this inability to communicate that we have right now on the university campuses.

Mr. LAWRENCE. Mr. Chairman, I would agree that it is critically important that on campuses we not get in the business of name-calling and certainly not prohibiting others from speaking. And, in fact, one of the reasons that I think it is very important for universities not to rush to judgment and not to look at these as cases to punish but as cases to educate is that the goal at the end of the day is to teach students how to challenge each other intellectually but not physically ——

Mr. PALMER. But you have a ——

Mr. LAWRENCE.—and not with ——

Mr. PALMER. You have a responsibility, though, to make sure that both sides have the opportunity to engage. This idea that denying students the opportunity to hear views or ideas that are contrary to what they believe, these safe spaces, I think are dangerous. You are not protecting students. You are denying them the ability to engage in debate, to defend their views or oppose other views because when they leave college, I promise you, they are going to run into the views that are opposite to their own.

Mr. LAWRENCE. You and I are in complete agreement on that. It is the obligation of the university to expose students to views they disagree with. You and I are in complete agreement on that point.

Mr. PALMER. I ask Professor Strossen, while I find the numerous instances of speakers being disinvited or shouted down problematic, I think the most troubling aspect of the anti-free speech movement is the surprising amount of traction it has gained with the younger generation. There is a Pew Research Center study that showed that 40 percent of millennials believe that the government should be able to prevent people from publicly making statements that are offensive to minority groups. Does your experience as a professor confirm that students are likely to support restrictions on speech?

Ms. STROSSEN. I am not going to rely on anecdotes because I have to say, by definition, when I'm invited to speak on campus, I'm often perceived as a controversial speaker for defending freedom for everybody from A-to-Z. So ——

Mr. PALMER. Now, how does it impact you in the classroom? I'm not talking about ——

Ms. STROSSEN. Oh, in the class—no, in the classroom, you can't teach a law class without—well without forcing students to do well to be able—and here my students can quote this—articulate and defend all plausible perspectives on every issue. You're going to fail my class if you just adhere to the civil libertarian line or any other line. You have to be able to answer back.

And interestingly enough, there has been some suggestion that these problems do not exist at law schools. The new dean of the Yale Law School just wrote a very interesting essay in TIME magazine in which he said isn't it striking that we don't have these problems at law school? It may well be because we so emphasize critical thinking and forcing students to advocate against their own deeply held beliefs, understanding, first of all, that may open their minds and change their perspectives. That's not the worst thing to happen in life. And secondly, even if it doesn't, it enhances their ability to effectively advocate their own positions. So, that could be an educational model for undergraduates and, for that matter, high schools and below as well.

Mr. PALMER. I am encouraged to know that you are promoting critical thinking skills.

One last thing, Mr. Chairman, I hear you tapping there; I heard that.

Mr. Shapiro, proponents of curtailed speech often argue that certain types of speech amount to violence, noting that certain listeners are emotionally harmed when listening to ideas with which they disagree. There was an article in the L.A. Times that made this argument, going so far as to call on courts and legislatures "to allow the restriction of hate speech, as do all other economically advanced democracies in the world." Is there any limiting principle at play where forbidden speech is anything that a particular person or group of people find offensive?

Mr. SHAPIRO. No, I haven't seen any limiting principle at play at all on college campuses, which is the problem. You'll have people like Jason Riley from the Wall Street Journal treat it exactly the same way as Ann Coulter and Milo Yiannopoulos, and they're poles apart in terms of how they express themselves and many of the views that they hold.

So, this idea that there is some sort of bright line—this is why I hate even—even the term hate speech is really difficult because it's—it just suggests that if I don't like what you're saying or if I impute to you an intent that you may not have, then, now you're hateful and you should be banned. It seems to me that it would be a more effective use of terminology would say speech I find insulting or speech I find offensive, but the idea of hate speech itself—there are certain types of speech I think we can all agree are objectively hateful, but I don't think that there is any limiting principle at play from a lot of administrators because I think that they use that club of hate speech in order to cudgel people with whom they disagree. They just say, okay, I don't like what you're saying now, and that's hate speech.

And microaggression culture contributes to this. I mean, literally on campuses students will be told that if you say to another student, "Where are you from?", that this is some sort of microaggression, that this is a minor, minor form of hate speech if you say, "Where are you from?", because you're implying they're not from here. Well, I mean, of course you're not from here. I mean, I assume you weren't born on this spot, but it doesn't matter.

The idea that you're going to broaden out terminology in order to prohibit groups that you don't like or ideas that you don't like, I would much prefer that if we're going to be—if we're going to move the ratchet in any one direction, let's move the ratchet in favor of more speech.

And I agree of course with Mr. Lawrence that it's perfectly appropriate if an administrator wants to say that I personally disagree or the university doesn't agree with the views that are being espoused by a particular speaker, that's perfectly appropriate, but, you know, sometimes there are gray areas in terms of what the university is doing.

When Mr. Lawrence was at Brandeis University, Ayaan Hirsi Ali was uninvited from the university because of blowback from some of the students. I mean, is that a case of her free-speech rights being violated? It's a private university, but if it were a public university, would that be a case of her free-speech rights being violated because administrators decided not to stand up for those because students were upset?

I mean, this is why I think that the notion that there is some sort of grand intelligentsia running the universities who are capable of discriminating between hate speech and normal speech and could be sitting atop a hill somewhere under a palm tree like a qadi dispensing justice on a case-by-case basis I think is nonsense, and I don't think that they have any rational standards they apply.

Mr. PALMER. I will just conclude with this, Mr. Chairman, that I think this hearing is very important. I think the main thing that students ought to get and all of us ought to get is to deny ourselves access to other people's views is to deny ourselves furthering our own education. This is how you learn.

And I would like to compliment Mr. Carolla on his metaphors football and hardware. Thank you very much. I yield back.

Mr. JORDAN. I thank the gentleman.

Mr. CAROLLA. Thank you.

Mr. JORDAN. When Mr. Shapiro was giving his example about asking the question and it being perceived as a microaggression asking the question of where are you from, I noticed the students in the audience all nodding their heads, and so in our subsequent hearings we are going to look to get some students here who can give us some firsthand knowledge of what it is like from their perspective on these particular campuses.

And with that, I recognize the gentlelady from Illinois for her questioning.

Ms. KELLY. Thank you, Mr. Chair.

I find this conversation very interesting. I used to work on a college campus. I was a director of Minority Student Services for Bradley University, and I am now on the Board of Trustees of Bradley. That is my alma mater.

And something you said, Mr. Zimmerman, we did start—you know, we had student orientation, and as part of the orientation, the students went through diversity training and diversity orientation. As freshmen, they had to go through a class for half of the semester.

Mr. Lawrence, Anti-Defamation League came to the campus. That is where I cut my teeth. I am a diversity trainer, and we did a campus of difference.

And one thing I wanted to say also, I know on the outside it may look like we don't get along, but I just hosted something I called "Breaking Bread," and there were 75 of us, Democrats and Republicans, that ate together, and not that probably—Mr. Meadows, a head of the Freedom Caucus, and I probably never vote alike, but we are very close. You can ask him. And Mr. Palmer and I, I bring him popcorn from Illinois, so we do get along better than people think. Maybe we need to show it a little bit better.

Mr. PALMER. And I brought you Valentine chocolate.

Ms. KELLY. That is right. He brought me Valentines chocolate. But I think we do get along better than people think. We may not agree on how to get to a goal, but there are a lot of similar goals also.

But Mr. Palmer said—and I deeply understand how he is sensitive because of what he experienced, but I also think about Taylor and the impact on her. And even though I agree with free speech and all of that, but we do need to think about the impact and the long-lasting impact that it does have on people. And I don't want to speak for her, but like maybe her trust or, you know, when she meets someone new or how the campus is and those kind of things, I think that we really need to make sure that we give the students support. And I agree with being open-minded to different ideas and things like that, but it does have an impact on people.

When I went to college a long, long time ago, it was so segregated. I grew up in New York City. I went to college at Bradley University, and I just was not used to that. And I still remember the impact that it had on me and people's attitudes and things like that, but maybe that led me to be passionate about diversity and becoming a diversity trainer.

But what do you think about that, the impact that it has on people? Even like Mr. Palmer said—and he is a full-grown adult, a

Congressman, and the impact of what he went through has on him—but how can we support students?

Mr. LAWRENCE. Well, I think the more we talk with one another and the more we listen to one another, the easier it is to understand one another. When we look at others as other, we can demonize them. We can ignore their ideas and know that their ideas are wrong. When we understand who these people are and what they believe, it's so much easier to share what we have in common instead of looking for our differences.

So, the fact that you had 75 members together is absolutely wonderful, but I think you're right; that needs to be demonstrated more openly because that's not the image that's seen. And we, as members of the Academy, as I've said, we as citizens, we as human beings look for role models, and we model what we see, whether we mean to or not. And when we see from cable news segregation of ideas, not segregation in terms of race but—well, some of that as well but segregation in terms of ideas, when we see that so obvious, we internalize that and say that must be the way American society should work.

We need to work together. We need to understand each other, and we need to be able to disagree. There's nothing wrong with the disagreeing, especially with the ideas but not with the people.

Ms. KELLY. But I also think in disagreeing there has to be a certain level of respect.

Mr. LAWRENCE. Absolutely.

Ms. KELLY. That is the other part, too. And again, I go back to what Taylor went through. That is beyond the pale, and I do think things should be done about that.

Mr. LAWRENCE. I agree with you completely.

Ms. STROSSEN. Could I possibly say something? First of all, Congressman Kelly, I've spoken at Bradley and I have wonderful memories. There weren't protests. But studies have been done by social psychologists and legal theorists also have supported the notion that a major harm from even threatening speech that could be punished, much less constitutionally protected hate speech, is not the initial speech itself but if there's lack of objection to it from the surrounding community, if there's lack of support for the person who's the target of the hate speech.

Conversely, when you have university presidents, student body leaders, other members of the campus community rallying to support the students who are the target of that speech, that ends up being not such a—it can become a resilient, empowering kind of experience.

Ms. KELLY. Thank you.

Mr. JORDAN. I thank the gentlelady.

The gentleman from Kentucky, Mr. Massie, is recognized.

Mr. MASSIE. I remember my very first day on campus. I grew up in a rural town in Kentucky, 1,500 people, and I went to a school in Cambridge, Massachusetts, had never even visited the campus. I crossed the crosswalk. We didn't have any crosswalks where I grew up—and a car honked at me. I thought what are the odds? I have been here an hour and already met somebody I know. I turned around and waved at the car. I think they were waving

back with one finger, but what that showed me is these people may have different ideas or a different upbringing than I had.

Ms. Strossen articulated a threshold for reasonable expectation, whether something is hate speech or whether it is protected or not. Mr. Lawrence, she said it was—maybe the threshold should be reasonable expectation to—that it would instill fear or violence—a fear of violence or harm. Is that—would you like to in less than 30 seconds if you could sort of articulate the standard of what might be protected and what might not?

Mr. LAWRENCE. Yes, I think that Professor Strossen and I are in roughly the same place on this. I would just focus more, as we often do in the criminal law, on the intent of the actor, so was it behavior that was intended to threaten or intimidate, not to confound, not to trouble, not to raise new opinions ——

Mr. MASSIE. Right.

Mr. LAWRENCE.—but to threaten or to intimidate.

Mr. MASSIE. Okay. I have got a document here you may recognize. It is the Constitution and the Declaration of Independence. If I brandish this, Mr. Lawrence, in your presence, are you intimidated? Does it strike fear in your heart? Do you think that harm may come to you very soon?

Mr. LAWRENCE. I think it is actually much safer than crossing the street in Cambridge, Massachusetts.

Mr. MASSIE. I would agree, but the administrators at the Kellogg Community College don't. They arrested students for handing out a Constitution. Can you imagine that? That is the height of irony. How far has this ridiculousness gone if students are arrested for handing out Constitutions? This is the document that contains the First Amendment, the protection in there. I think maybe we have gone too far if this is now recognized as something that passes that threshold.

Mr. Carolla, I know King George may have found this to be insightful, but do you find ——

Mr. CAROLLA. Is he a basketball player? I don't keep up, you know, on the kings. I was just having a thought. No, I'm sorry. Continue your ——

Mr. MASSIE. No, I just want to know, is this a threatening document? Does this cross the threshold?

Mr. CAROLLA. Not unless there's a knife hidden inside of it ——

Mr. MASSIE. Right.

Mr. CAROLLA.—no. But as I was hearing everyone speak, I never went to college. There's something I do—I would like to touch on very quickly, which is going through diversity training, going to college, we're all sitting here, first off, under the assumption that 100 percent of kids go to college. I didn't know anyone who went to college, so I had to figure out a way to be a decent human being, not to be racist, not to be filled with hate, to be tolerant minus college. I think that starts at home.

So if we—if you get to 18 or 19, I believe the cement on the sidewalk of your brain has already dried, and good luck carving your initials into it with diversity training. If you're a bad kid and we get hold of you in college, you're probably just going to be a bad adult. You need to learn to be a good human being from zero to

college instead of us all converting you once you get to college, and especially since more than half the people don't end up in college.

So, we're sitting here with a grand plan of how to coach everyone up once they get to college. What if they never get to college? What about their parents and what kind of job are they doing coaching the kids up so that they need no coaching, whether they go to college or not?

Mr. MASSIE. Mr. Shapiro, I'm going to assume you don't find this to be a threatening or harmful document.

Mr. SHAPIRO. I've brandished it at a few people myself, yes.

Mr. MASSIE. Look, the college's defense, when they arrested these students—by the way, they spent overnight in jail, seven hours in jail for handing out Constitutions. You said something earlier that struck me, that time, place, and manner regulations are being used to restrict free speech because that is what the college said to these students who belonged to Young Americans for Liberty. They said if you just filled out the paperwork, if you had stood 100 feet over there instead of where you are standing, and if you had done it at this time, we would have allowed you to hand out our nation's founding document. Can you speak to how time, manner, and place restrictions are being abused?

Mr. SHAPIRO. So, most obviously, UC Berkeley did that with Ann Coulter where they kept moving around her room and they kept saying they didn't have rooms available. They said the same thing to me a week ago. There was some public outcry, and now they're offering some rooms, which, you know, I hope that that event goes forward. It's not rare. They do this a lot. It's—a private university did it. It was DePaul University. I was threatened with arrest if I set foot on campus. I actually showed up there, and a security guard told me if—if I'm—I asked him, if I move six inches forward, are you going to arrest me? And he said yes, and he had the Sheriff of Cook County behind him.

So, this is—you know, it's become a cover for ideological discrimination because if Ta-Nehisi Coates wants to speak on these campuses, there's not going to be any problem. The administrators will make certain that time, place, and manner restrictions don't get in the way.

And this is why I say saying that the discretion of administrators is wonderful is all well and good except that they very often are attempting to achieve a particular political end by using means that are normally legitimate, and that's definitely a dangerous thing.

If I—if you don't mind, I have a quick note on something that I think it was Mr. Lawrence was saying earlier about the damage that's done to students by various things that happen on campus by threats of violence and this sort of thing. And obviously, everyone I think agrees that what happened to Taylor is unacceptable.

But one of the things that I think should also be pointed out is we have a lot of other students in the crowd and administrators who spend an enormous amount of time pushing stuff like white privilege means that you must accept that you are subordinate in terms of your view because of identity. This also has some lasting damage with regard to First Amendment exercise and with regard to how people perceive the freedom of the country.

And I understand that this is a universally held belief among university educators that we have to accept the guilt of particular races or particular sexual orientations for discrimination that's happened in the past, but when you teach a bunch of 18 and 19-year-old people this, you shouldn't be surprised when, number one, they go into hiding with their viewpoint or, number two, they become frustrated.

It's an absurdity to suggest that you can tell people that their viewpoints are out of line because of their identity at the same time you're telling other people that their viewpoints are completely in line because of their identity, and any assault on their senses must be protected—or prevented at any cost.

Mr. MASSIE. I would just like to point out in closing that the group Young Americans for Liberty that is handing out Constitutions on campuses all across the country has changed free speech restrictions on 25 campuses just by handing out this document, not by setting fires because they didn't like the speaker or throwing rocks through windows but by handing out this Constitution. And I am inspired that there are young people who are inspired by this document, and it should never be illegal to hand out this document.

Mr. JORDAN. Well said, Mr. Massie.

Real quick, Ms. Strossen, is Mr. Shapiro right? Are most of the anti-speech activities going on on campuses targeted towards conservatives and libertarians?

Ms. STROSSEN. The—certainly, the well-publicized ones have been. And I don't—I can't speak for campuses across the country, but I go back to an opening point that I made, which was best summarized in the title of the book by Nat Hentoff called ——

Mr. JORDAN. But I just wanted an answer.

Ms. STROSSEN. I'm sorry.

Mr. JORDAN. I can't—we will come back to that, but I just wanted to respond to Mr. Shapiro's point.

Ms. STROSSEN. Sure.

Mr. JORDAN. I mean, that is my understanding as well, and I will be ——

Ms. STROSSEN. Those are the well-publicized incidents, and it would be consistent with what surveys show about the prevailing beliefs on campus, that the majority of students have—are on the liberal end of the political spectrum, the majority of faculty members are on the liberal end of the spectrum ——

Mr. JORDAN. I find that shocking.

Ms. STROSSEN.—so they would be more likely to be offended ——

Mr. JORDAN. I find that shocking.

Ms. STROSSEN.—by conservative speakers ——

Mr. JORDAN. Professor Raskin, you are smiling. You find that shocking, too, don't you?

The gentlelady from the District of Columbia is recognized for her five minutes.

Ms. NORTON. Thank you, Mr. Chairman.

I am pleased that the entire panel appears to believe that exposure to speech that hurts is part and parcel of living in a democratic free-speech society.

It pains me, I have to say, when I hear of African-American students in particular claiming about hurt feelings when it comes to

speech. I simply say as a black woman and ask them to remember that Frederick Douglass—and I am pleased that this committee has just passed a resolution—sorry, a bill that will allow Douglass' bicentennial to be commemorated—that at the same time that African Americans were enslaved, Frederick Douglass was able in even that society to denounce slavery all over the United States.

Mr. Shapiro, I daresay I have had the opportunity to defend people who were even more controversial than you are. I was assistant legal director of the American Civil Liberties Union. It was a small office, and I had a memorable opportunity to argue before the Supreme Court a so-called prior restraint case. That was a case where, as a matter of fact, it was in Princess Anne County at that time—I lived in New York—Princess Anne County Maryland, and a proto-Nazi racist party came in that county and gave a speech of the kind you might expect that denounced blacks and Jews and anybody else they could think of.

Well, the State's attorney went into court and got an injunction against their ability to speak the next day. And that case was appealed all the way—I argued the case at the Supreme Court not as it was appealed up. Supreme Court ruled unanimously that those vile words could be spoken without being censored ahead of time.

In essence, this kind of activity in the country and on the campus is intended to have some kind of chilling effect to keep people from wanting to speak at all.

The Republican-led assembly in Wisconsin has taken a stab at what to do about this because I don't think we want to encourage hateful speech. And I appreciate what Professor Zimmerman and Mr. Lawrence have said about the anecdotes to hate speech. But if you leave this to legislatures, they have only the law at their disposal.

Now, in Wisconsin, the State Assembly there passed a bill and recently passed a bill that would require disciplinary action, and that action could be suspension or expulsion. This is how they framed what would get you suspension or expulsion. "Any student who engages in indecent, profane, boisterous, obscene, unreasonably loud, or other disorderly conduct that interferes with the free speech—free expression of others."

Every Democrat voted against this. What kind of polarization is this? I am glad to see we don't have it in this committee. Every Democrat voted against that. Every Republican voted for that.

The State Assembly, by the way, was not shy in making clear what their purpose was. It was to suppress the campus protests that they had seen over that time.

Ms. Strossen, I read your written testimony. You give a wonderful expository about free speech, and you mention vague, unclear guidelines as having a potential chilling effect when people read those guidelines. And I guess when you talk about clear, objective guidelines, I just read to you the words of the Wisconsin Legislature, "engages in indecent, profane, boisterous, obscene, unreasonably loud," et cetera, speech. Would you have concerns about that statute, that Wisconsin statute, and what do you think would be the concerns of, for example, the Supreme Court of the United States?

Ms. STROSSEN. Well, as Justice John Marshall Harland, who was a graduate from New York Law School—I have to correct that typo—where I teach famously said "One person's vulgarity is another person's lyric. One person's indecent profane speech is somebody else's poetic speech. One person's unreasonably loud speech is somebody else's clearly audible speech."

The reason why we do not allow government to enforce these vague standards is that they depend on subjective value judgments, which can turn on nothing other than the political preferences of the enforcing authorities, which is exactly what we're all complaining about. We need to have clear objective standards relating to demonstrable serious harm such as violence or threats to constrain the discretion so as not to punish disfavored ideas.

Now, Congresswoman Norton, I don't know if you got to the appendix to my testimony ——

Ms. NORTON. I did not.

Ms. STROSSEN.—but it includes very old but still timely, sadly, law review article which quotes a certain Eleanor Holmes Norton way back in 1990, who said—and this is exactly on point—"It is technically impossible to write an anti-speech code that cannot be twisted against speech nobody means to bar. It has been tried and tried and tried." So you answered your own question very eloquently.

Ms. NORTON. Thank you very much.

Thank you, Mr. Chairman. I think I should end with that.

Mr. JORDAN. And on a high note there, that is great. Yes, thank you.

The gentleman from Virginia is recognized, not that I didn't want to recognize you, Dave, but technically, Mr. Meadows is up next, but I will go to you and then we will come back to Mr. Meadows.

Mr. BRAT. Thank you, Mr. Chairman. And my two colleagues are letting me go prior to them because it is my birthday and my parents are out in Statuary Hall.

And so my—I am a professor. I see a lot of young people out there. It is great to see you. Raise your hand if you are young. Raise your hand if you feel young. All right, good. So we have got a lot—I am a professor for 20 years, so I used to torture you all in economics 101 classes. So, I see you sitting here, so here you go again. We are going to give you a little philosophical lecture.

And the witnesses today were all just phenomenal. Mr. Carolla in the last series of questions said we have got to learn to be good, and that right there sums it up. And I am going to ask the college presidents how we ground our philosophical statements. That will be my question, right, so they can give a cursory view of Western civ in the 30 seconds I leave you at the end.

But I have a famous painting in my office with Plato pointing up, right? What is to good? He thought it was up there in the realm of the forms, and Aristotle is pointing down. And no one has resolved that question philosophically in 2,400 years. There is no definition of the good. That is what makes it crucially important that we do the liberal arts education and allow all views to be heard from 2,400 years of human history. And on that note I hope we all agree.

My colleagues on the other side of the aisle have spoken about atrocities that have occurred in Western civ. I totally agree with them. That is not what this is about today. But it is about teaching these first principles. Everyone is talking about shared values today. I am not sure if there are any shared values today. If you want to read a good book, read Alastair McIntyre. He will start off on the good, right? And you probably heard of him. But his book is called Whose Justice? Which Rationality? Same question, right? Whose justice, which rationality, and what is the good? And we don't have answers to that right now. See, your generation better get moving.

The liberal arts I started teaching about 20 years ago, we went from liberalism—I am a 19th century liberal, right? They call me a right-wing knuckle-dragger in the newspaper, right? But I am a class—I believe in Adam Smith and James Madison, the author of the Constitution. And liberals, my liberal colleagues on the Democratic side of the aisle always used to respect my view 20 years ago. That shifted in academia in the last 20 years. Now, it is the hard left, and they are following a philosophy called deconstruction. They are ripping apart the foundations of the country. The Judeo-Christian tradition, the rule of law, and free markets are under attack by the left, not my Democrat friends I go to church with. That is a distinction.

And if you ask them to ground their definition of the good or name a philosopher that undergirds their thinking, they can't do it. So make sure you young people ask your professors when they are spouting off, say name a philosopher, and if they can't do it, write about it in the student newspaper because it is an embarrassment.

And so I went to Princeton seminary. The seminary voluntarily moved itself across the tracks because we don't believe in forcing religion on other people. That is the great debate, right? So, we have had the Enlightenment Project. We tried to ground reality in human reason alone. It worked great in the sciences, but in the moral realm it failed, right? Jefferson, Immanuel Kant was kind of the end of the Enlightenment Project. And the moral vision failed because they could not tell you why it is that human beings are worthy of dignity in the first place.

But our shared values that were delivered in the Declaration was fairly clear. We have inalienable rights that come from our Creator. Wow, there is a shocker. Ask your leftists professors if they believe in those shared values, those inalienable rights, right, that proceed the existence of government, that come from our Creator. And boy, there you have it all, right?

So, that has been rejected by the left. In K–12 education I am sad to report the kids are not taught any system of ethics for the first 13 years of their education. And then, in college they are taught leftism. And so now we are left talking about free speech, one particular part of the First Amendment and a narrow part, and we are being told by some people, "Leave it to the academic institutions." You have got to be kidding me. These are the first principles that ground in and surround the space that universities inhabit, right, so the rule of law has to precede what educational entities

do, and that is why we are here today talking about the law that will surround the space you all act in.

And so I will just give you another quiz. Here are the ethical schools that are taught in higher ed. Raise your hand if you are an Aristotelian. No, none of them. All right.

Raise your hand if you are a follower of utilitarianism, Bentham, John Stuart Mill. Oh, really? Good. Good for you. Okay. That is the harm principle. Ms. Strossen mentioned that.

Raise your hand if you are a follower of Immanuel Kant, if you are a Kantian. So we have got two people, good.

So those are the schools of thought you are allowed to teach because they are the Enlightenment schools of reason, right? Now, no one follows those schools of thought, but in higher ed, you are not allowed to teach about the Judeo-Christian tradition, Judaism, Christianity, Buddhism, Confucianism, and religion.

How many people in the audience and in the real world live out those traditions? Just about 7 billion people out of 8 billion, right? And that is why I think we have got a fundamental problem. So there is my lecture.

Presidents, if you want to weigh in on what has gone wrong in higher ed over the past 20 years and how can we fix it.

Ms. STROSSEN. Thirty seconds.

Mr. BRAT. Thirty seconds.

Mr. ZIMMERMAN. I wouldn't dare touch that, but what I am willing to touch until you tell me otherwise is two things. First, I want to thank you for your passionate defense of the liberal arts because the liberal arts—which has nothing to do with liberal or conservative; it has to do with its origin—is critically important, and the liberal arts are based on an idea that all ideas need to be discussed.

I'd argue with you just a drop in saying that I frankly don't believe the majority of professors on college campuses have taken the view that you've espoused. Unfortunately, some have. From my 40 years in the Academy, I've had any number of conversations with parents in which I've said what good faculty members want to do—and I believe in the institutions I've been a part of. Almost all of our faculty members are good faculty members. They want to teach your students how to think. And if in the course of that instruction they think something different at the end than they did at the beginning, that's okay. If they don't think anything different, that's okay, as long as they can articulate either of those beliefs.

Very rarely I believe do faculty go into a classroom and say here's what you need to think. You need to learn to think like I think. You need to parrot back what I believe. Yes, that happens and it happens not very often but too frequently because if it happens at all, it's too frequent. But I don't think that's the norm.

Mr. LAWRENCE. Yes, I would agree with that. It was interesting one of your colleagues said a little earlier that actually there's very good working relationships across the aisle here. We don't see it out in public, and I think that's exactly the same phenomenon we're talking about in the university. There's a lot of things that happen in the classroom and office hours and seminar rooms that don't get a lot of play because what—if it bleeds, it leads is the way the media treats you and also treats us in academia.

As the CEO of the Phi Beta Kappa Society, I would be remiss if I did not thank you for your deep embracement of the liberal arts. Phi Beta Kappa stands for philosophia biou kybernetes, which means "love of learning is the guide of life." I mention that, Congressman, because it's about the process of the learning ——

Mr. BRAT. Yes.

Mr. LAWRENCE.—which I think is key, and when we lose track of that, then I think we get ourselves in problems. But the great legal philosopher Alexander Bickel said the only true integrity is the integrity of process, and the process by which we learn in our universities, which is really what we're here talking about today ——

Mr. BRAT. Yes.

Mr. LAWRENCE.—is what—is the glory of our university system in this country.

Mr. BRAT. I just want to thank—I want to thank the panel. And, Mr. Shapiro, you are a first great philosopher on the rise. I can tell. Thank you very much.

Mr. JORDAN. I thank the gentleman.

Before I recognize Ms. Plaskett, I should point out we have been here for a couple of hours. If anyone needs the facilities, to use the restroom or anything, just let us know and we can take a short recess or if you need anything. You have got plenty of water and all that. We would like to go for a little while longer, and we will now go to Ms. Plaskett for her questioning.

Ms. PLASKETT. Thank you very much, Mr. Chairman, for the opportunity to have a discussion on this topic.

Mr. Zimmerman, I think that what you have stated—Dr. Zimmerman, that universities and schools are for teaching individuals how to think. That is primary, as you said, and Mr. Lawrence.

And, Mr. Carolla, I couldn't be more than in agreement with you about the toughness that is needed by young people. And I have to tell you, you don't have to look at any other group that is tougher than young black men and women who go to universities or—I have gone to universities or predominantly white schools. You have got to eventually, if you are going to come out of there on top, have a thick skin.

I went to one of the most elite private boarding schools in the early '80s when almost nobody was there that looked like me. You know what it's like to be an African-American Caribbean woman at a boarding school in Connecticut when you grew up in Brooklyn, New York, and being asked to give the black point of view in the classroom when you didn't even know you had a point of view at 13 years old.

But I think what we need to discuss here—and my colleague Mr. Brat talked about it, about the influence of the extreme left, but he didn't talk about the influence of the extreme right as well and how that is affecting our young people on campuses. What is the alt right as well as the extreme left doing to the discourse and the civility on campuses?

I am very honored to have Ms. Dumpson, Taylor Dumpson here. I am a graduate of American University's Law School where one of my first-year law professors sits next to me. I am always happy to point out that he is more junior than I am now in Congress, but

he was my professor there. And I understand what you go through, and I am grateful that your mother is here with you and that you have the support of your family.

That is important because, you know, the Anti-Defamation League has recently reported that in the past six months alone, I quote, "They have seen a spike in anti-Semitic hateful incidents on campuses."

And I know that we are talking about free speech. Free speech is important, but I think that it would be inclusive for us to discuss this not just in the context of how it affects conservative speech and conservative students but how it affects all students. I think that we are doing the American public a disservice when we only talk about one side of the coin and not the other.

I fear for our conservative young children who feel that they can't say what they want to say in a respectful manner, and then the same way I am concerned for those who come on campuses who are not respectful in their speech, whether it be to Mr. Shapiro, whether it be to Taylor Dumpson having an ability to hold office on the campus for which her family has supported her to be there. That is a problem, and that is a problem that this committee should be concerned with.

But who is the appropriate individual or the institutions to address that? I don't think it is the legislature's job to do that. I think it is for us to question the institutions and ensure that they do it.

On May 1, after being elected the university's first African-American student body president, we discussed that Ms. Dumpson was met with hung nooses around campus and with bananas with the message of "AKA free," which references Alpha Kappa Alpha, a traditionally African-American sorority that Ms. Taylor Dumpson belongs to. And I am Me Phi Me right now myself. I am sorry; I never belonged to a sorority. But we appreciate the work of your sorority in the African-American community, along with the others.

And not too long after, she was subjected to harassment on social media by a known neo-Nazi group. Mr. Lawrence, are you familiar with the hate speech incidents that she just described?

Mr. LAWRENCE. Yes, I am.

Ms. PLASKETT. And is that an example of hate speech that crosses the line and should have no place on a college campus?

Mr. LAWRENCE. That is correct, Congresswoman. I would say that's actually—you know, what I usually mean by hate speech or hateful speech is the kind of speech that is in fact protected and ought to be criticized by university administrators. I would say would happen to Ms. Dumpson crosses the line actually over to being a hate crime.

Ms. PLASKETT. And why is that?

Mr. LAWRENCE. Because of the clear intent of the actor is not to communicate a view but to threaten her, to intimidate her, to instill fear in her. When that happens, we're no longer in the realm of having an even difficult, provocative conversation. We've crossed over the line into threats.

Ms. PLASKETT. So it is as Ms. Strossen discussed, that a reasonable person would see that as threatening speech ——

Mr. LAWRENCE. That ——

Ms. PLASKETT.—not as one that is merely to express an opinion that may be different ——

Mr. LAWRENCE. That is certainly how I would understand it.

Ms. PLASKETT. And would you agree with that as well, Ms. Strossen?

Ms. STROSSEN. I agree with that, and I should say the fact that we call it a hate crime or a bias crime means that it is subject to increased punishment even beyond a non-hateful or discriminatory crime because it causes additional harm not only to the immediate target but to the surrounding community as well.

Ms. PLASKETT. Now, it is interesting, Mr. Shapiro, you talked about white privilege. And just this week I had a conversation with Rachel Laser, who has done some work—a Jewish-American woman who has done some work on this area, as well as having extensive conversations with Dr. Greg Parks of Wake Forest University, who has also talked quite a bit about critical race theory. And it is my understanding that white privilege is not telling individuals that they cannot speak, but it is a term for societal privilege that individuals have as a benefit of their white skin.

And I don't think that—and I think universities would be remiss to then say that because you are white, you are not allowed to say anything that is critical of white people. I didn't know that white privilege actually went into that sphere. My understanding is it is just—and the issue is is that white privilege makes people uncomfortable to talk about the societal privilege that they have.

Mr. SHAPIRO. Well, to me the—what I say on campuses all the time is if you are—want to cite instances of racism that we can all find and fight together, that's something that I am more than willing to stand next to you and fight because that's obviously stuff that we should fight together, but when you just say that there is a white privilege out there in the ether and that by dint of birth your skin color generates for you an advantage, what you're really saying to people is that you—your view is less valuable because you have not experienced what I've experienced. And that is an identity argument that's a character argument that's not a rational political argument that can actually be taken on in any way. That's—it's more of a cudgel and a club than it is an attempt to open a discussion.

Ms. PLASKETT. Well, I think it's a demonstrable evidence that through society's demographics that being white has societal privileges that being black does not, but I ——

Mr. SHAPIRO. Well, we can talk about how that manifests ——

Ms. PLASKETT.—am very interested ——

Mr. SHAPIRO.—because that's ——

Ms. PLASKETT. I am also interested in what you just said now is that you would stand next to anyone who has this. So, Mr. Shapiro, my question to you is for Ms. Dumpson, the tying the noose around the campus and writing messages that target African-American young students, would you consider that hate speech, and then would you stand next to her and fight for her against that?

Mr. SHAPIRO. As I say, I would—this is the first I'm hearing about it honestly, but it ——

Ms. PLASKETT. Really?

Mr. SHAPIRO.—from what—yes. But from hearing about ——

Ms. PLASKETT. Shocking.

Mr. SHAPIRO. Maybe because it's local. I'm from L.A. But in any case, I'm more than happy, more than happy to stand alongside her and fight whatever group was responsible for this, not only more than happy. I mean, you're talking about the—again, I was the number-one target of anti-Semitic harassment from alt right last year ——

Ms. PLASKETT. Thank you.

Mr. SHAPIRO.—so I am more than happy to do all that.

And I think there's one more distinction that has to be made. When we talk about cases like Taylor's, they're horrific, and the administration is siding with Taylor, okay? The administration is doing the right thing by Taylor or trying to do the right thing by Taylor, as they should be. And I think that we need to make a distinction between cases where the administration is actively participating in the suppression of speech and cases in which the administration is trying to do the right thing as a—in order to make people—in order to punish people for application of crime.

Mr. JORDAN. The gentlelady's time is expired. The gentleman ——

Ms. PLASKETT. Thank you.

Mr. JORDAN.—from North Carolina is recognized.

Mr. MEADOWS. Thank you, Mr. Chairman.

As we look at this, this fundamental question of free speech and where we crossed the line is certainly something that is not new in terms of how we argue this point, and yet here I find it interesting today that some of the direction we are going seems to be at odds with what we have looked at institutions of higher learning and being the beacon of free speech, which would not normally be the norm, and now, all of a sudden, we are there.

Without giving the name of the particular university, I was really surprised to find that there was a free-speech zone that allowed to actually be out of the mainstream view of most people, and they allowed you to write in chalk, but it was the chalk that was written in, the word Trump was there and all of a sudden people got fearful for Trump being written in chalk.

Now, I went by this and I can't imagine anybody being afraid of a chalk drawing on a sidewalk. And if that is the case, that I would say that there are probably bathrooms all over this country where people would not want to go in for fear of what they may see on a bathroom wall.

So let's don't take it to extremes and let's make sure that we understand that free speech is the bedrock of who we are. It is truly what we must fight for, and if we start to take it to extremes, we have a problem.

That being said, as an evangelical, I come out very strongly in defense of my Jewish friends who truly—who have had persecution for years, and yet somehow on college campuses it is not okay to defend that. In fact, we go the other way to suggest that that they shouldn't be defended, and I find that offensive. And until we get that right, we are going to have a number of issues.

So, with that opening statement, let me go into a couple of questions. Mr. Zimmerman, I am a little concerned, and I understand that you perhaps have been critical of your previous alma mater

we might say or place of employment, Evergreen State College, because I look here and we have had $22 million in grants and scholarship aids that have gone to them. We have had over $7 million in Federal grants that have gone to them. We have had another $15 million in student loans, and yet we are seeing a chilling effect on free speech. Do you think they are getting it wrong?

Mr. ZIMMERMAN. Yes, I do.

Mr. MEADOWS. Okay, thank you. And I assumed that you would say that. Do you think that they took bad advice from someone when they were invited here to testify and they said that a Member of Congress said that they shouldn't come before the Oversight Committee to defend their position? Do you think that that was misinformed?

I can answer it. The answer is yes. Would you agree with that?

Mr. ZIMMERMAN. That is not for me to say.

Mr. MEADOWS. Well, would it be for you to say to have said if we are going to take away Federal dollars from universities who will not truly defend free speech, that that would be appropriate? I am sure that they would want to weigh in on that.

Mr. ZIMMERMAN. Oh, I believe every administrator on every campus ought to be defending free speech, absolutely.

Mr. MEADOWS. All right. So, Mr. Lawrence, let me come to you because I understand with your new position at ADL, of which many times people on my side of the aisle would see them as being in contrast to that—I don't. In fact, I have encouraged my son to actually join you in really fighting for those things that are critical. But I am troubled by one part of your kumbaya opening testimony.

Mr. LAWRENCE. I take it you mean that as a compliment, Congressman.

Mr. MEADOWS. Well, I wouldn't take it that way yet, so let's go ahead ——

Mr. LAWRENCE. I'm listening.

Mr. MEADOWS.—and go there. Here is my concern, because in your previous career you talked about, well, we are all about free speech and we are really there, and yet there was a certain young lady, a Somali-born activist that was disinvited from getting an honorary degree at your direction, and it was in 2014 where Ms. Ali was disinvited because, quote—the University defended this decision saying it could not, quote, "overlook certain of her past statements that are inconsistent with Brandeis University core values," close quote.

Now, the problem is she is espousing anti-Islamic views and the promotion of women's rights, so which one of those are against their core views?

Mr. LAWRENCE. Well, first of all, neither of those. The ——

Mr. MEADOWS. So, they are both your core views?

Mr. LAWRENCE. But the—what I would say—no, I would say neither of those was the subject of ——

Mr. MEADOWS. So, why did you disinvite her when she is being a true activist? Do you think that some terrorist in some foreign land are upset and fearful for the life because of her words?

Mr. LAWRENCE. No, I would say two things, Congressman. First of all—and I think it's critically important ——

Mr. MEADOWS. So, was this a correct decision?

Mr. LAWRENCE. If I may respond?

Mr. MEADOWS. Respond to that one first, and then I'll let you go ahead and opine on the other. Was this a correct decision?

Mr. LAWRENCE. Yes, I believe that was a correct decision.

Mr. MEADOWS. Based on what?

Mr. LAWRENCE. May I answer?

Mr. MEADOWS. Sure.

Mr. LAWRENCE. First ——

Mr. MEADOWS. Briefly. I only have five minutes.

Mr. LAWRENCE. Well, I'll use as little of your five minutes as I can to give a full answer.

Mr. MEADOWS. Okay.

Mr. LAWRENCE. First, in terms of this hearing and particularly relevant to this hearing, nothing in this decision was about free speech. She had—my entire time as president—and I have every reason to believe my successor would say the same thing—an open invitation to speak on campus, so this was not about free speech.

Mr. MEADOWS. So, it was just about honoring her free speech?

Mr. LAWRENCE. It was about honoring the same way ——

Mr. MEADOWS. So, you didn't want to honor her free speech ——

Mr. LAWRENCE. It's not about ——

Mr. MEADOWS.—that protects women?

Mr. LAWRENCE. I—her speech about women is admirable and was the reason in large part for the original invitation. There was speech that specifically said—that specifically said that Islam should be crushed. And when she was asked—when she—this is on the record. When she was asked, "You mean radical Islam, you don't mean all Islam?" She said, "No, I mean all Islam." This is in direct response to that question. "It must be crushed and something new built on its level." If someone had said that about Christianity, if someone had said that about Judaism, that is someone who would not have been honored by Brandeis University. Would they have been free to speak? Absolutely.

Mr. MEADOWS. So, I assume since you pulled away her doctorate, you invited her back to give lectures on a regular basis, right?

Mr. LAWRENCE. Did that publicly and did that personally and privately ——

Mr. MEADOWS. And so she did? She felt welcome to do that?

Mr. LAWRENCE. I can't say whether she felt welcome or she ——

Mr. MEADOWS. I can. So, did she feel welcome from you, Mr. Lawrence?

Mr. LAWRENCE. She did in fact not come to campus for a public event. She did come to campus subsequently for events, a program at the business school. But she had a standing invitation that was ——

Mr. MEADOWS. So, do you not see what you did had a chilling effect on her free speech? You know, she is out there actually ——

Mr. LAWRENCE. I would put it in the same category, Congressman, as a ——

Mr. MEADOWS. I know you would, but—I wouldn't put it in the same category as what? Go ahead. I will let you finish.

Mr. LAWRENCE. All right. A university—a faith-based university that said that although students are free to express prochoice

views, we will not give an honorary degree to someone who is an advocate ——

Mr. MEADOWS. So, are you saying that what you should do is actually—I will yield back.

Ms. STROSSEN. Time, place, and manner.

Mr. LAWRENCE. I may not be the only one in the room who wanted to hear how that sentence ended.

Mr. MEADOWS. Yes. So much for free speech.

Mr. JORDAN. And you all know Mr. Meadows is my best friend in Congress so—the gentleman from Maryland, the professor, is recognized.

Mr. RASKIN. Mr. Chairman, thank you for convening this most fascinating hearing that I have experienced in my six months in Congress, so I appreciate your very much doing it.

I wanted to give a quick shout-out to Taylor Dumpson, who is at American University where I have been a professor of constitutional law for the last 27 years. So, you guys have entered my world of constitutional law and the First Amendment, so I could be here for hours with you, but I have boiled it down to four questions. I'm going to try to get them all out, direct them to specific people, and if you would take notes if you would and give me an answer back, and maybe I will follow up if I can.

I tell my students at law school there are only two things you have to fear: the Socratic method and the platonic relationship. You have got to deal with it on your own.

All right. Let's start with this. Free speech is like an apple. Everybody wants to take just one bite out of it. Somebody doesn't like left-wing speech, take a bite. Somebody doesn't like right-wing speech, take a bite. Somebody doesn't like Nadine Strossen's eloquent defense of pornography, take a bite. Some people don't like anti-pornography speech, and so on. At the end, there is nothing left of the apple if you are not willing to stand up for the whole thing. We devour the entire thing.

Question for you, Ms. Strossen, at a time when freedom of speech is under attack at the highest levels of the government, the media is being demonized as the enemy of the people, press conferences are being carefully micromanaged, video being shut down, Washington Post, New York Times kicked out of the press room, and so on. How do we overcome the negative messages that are being sent about free speech at the highest levels of government so young people understand, as Congressman Meadows said, as others have said, that this is really who we are, number one?

Number two, this is for Professor Lawrence. Speech exists in a context of power. For example, in Congress for decades before the Civil War there was a gag rule you couldn't mention slavery because of the power of the proslavery delegations. It could not be mentioned on the Floor of Congress. That was one of the things that precipitated the Civil War.

Even today, it is a wonderful panel, but four of you have been chosen by the majority under our rules and one of you has been invited by the minority. So, speech always exists in the context of a set of complex power relationships.

Now, in the 1960s and '70s, tens of thousands of people were suspended, expelled, or otherwise disciplined in anti-Vietnam War pro-

test from campuses. Their speech—there was an effort to drive their speech off of campus.

When I was in college in the 1980s, we saw thousands of people disciplined for protesting the universities and corporate complicity with apartheid South Africa. The speech codes that were used at that time then were dusted off to make life miserable for right-wing activists like Mr. Shapiro and so on.

Now, my question is a serious question, which is, is there an effort across partisan lines, left/right lines to come up with a model speech code that every university and college could adopt that everybody would support universally? Okay. So, Mr. Lawrence, that is for you.

Number three—and maybe I will address this one to Mr. Zimmerman and Mr. Shapiro—are your concerns about free speech just for public universities like Berkeley or the University of Wisconsin or do they apply to private universities, too, like Yale and Harvard and Liberty Baptist—or Liberty University in Virginia; Georgetown, which has kicked off pro-choice speakers and shut down a gay student group at one point; Catholic University, which has kicked off of campus speakers defending prochoice?

And then I looked at—and Liberty University, for example, says that profane language is not permitted. You are punished by a $250 fine and you have got to do 18 hours of community service if your speech is deemed profane. Any derogatory comments of a sexual or religious or racial nature will not be tolerated, also occasion for discipline.

Bob Jones University, which says there is to be no proselytizing on campus based on Calvinism or Arminianism, whatever that might be. And other use of profanity or euphemisms will be occasion for discipline. Euphemisms are against the rules there. So, should we be equally concerned about private universities that have a religious heritage like Bob Jones, Liberty, Yale, American University, which has a Methodist—or are we just concerned about the public universities? I will leave that one for you.

And finally, fourth question for Mr. Carolla. The lost great fine art of heckling in America, if you go back and read the Lincoln-Douglas debates, there was lots of heckling, but they would interject something and they would wait for an answer, and Lincoln and Douglas incorporated it into the debate. Today, heckling is all about getting a bullhorn and shouting somebody down, which is stupid. I mean, that is just a blunder of this generation if that is what they are doing. Can we restore an art of heckling that allows some reasonable interchange between the audience and the speaker without shutting down speech on campus? There we go.

Ms. Strossen, to you.

Mr. JORDAN. That is a great approach ——

Ms. STROSSEN. Oh, I thought I ——

Mr. JORDAN.—five questions ——

Ms. STROSSEN. I thought this was a take-home exam.

Mr. JORDAN.—or four questions in five minutes. Now, you need another five minutes for them to respond. This is awesome.

Mr. RASKIN. You have been very liberal, Mr. Chairman, very liberal today.

Mr. JORDAN. I know I have been.

Mr. CAROLLA. Was I supposed to make fun of your hair during that or—I just didn't know if you're asking me to heckle—perhaps Professor Dreyfus could weigh in on this one.

Mr. JORDAN. I think you got the answer to the fourth question right there.

Ms. STROSSEN. Professor Raskin, I thought this was going to be a take-home exam, but I'm happy to answer it orally now.

You know, I was going to quote the title of Nat Hentoff's book Free Speech for Me—But Not for Thee: How the Left and Right in America Are Constantly Censoring Each Other. So, I found it very helpful in my education and my advocacy on free speech to always give an example that will bother that person. If you hate the media for this reason because they are giving this message that you disagree with and you therefore think government should have the power to censor messages offensive to minorities, let me give you a counterexample where you are in an environment where you are considered a minority and your view is a minority view and—or the other way around and therefore can be subject to censorship.

Unfortunately, given the diversity of environments we have, including some of the private universities that you've cited, I can give you an example where, for one campus where perspective A is censored, there's another campus where perspective anti-A is censored, and that's why we have to maintain neutrality. But I think as an educator we have to give concrete examples. The abstraction is not going to be persuasive.

Mr. RASKIN. Thank you.

Professor Lawrence.

Mr. LAWRENCE. Can there be a model speech code that everybody will agree on, I guess that's an easy one. The answer almost certainly is no. Can we make an effort in that direction? I think the answer there is yes. And it will look something like this. An overwhelmingly presumption—overwhelmingly strong presumption in favor of protection of free speech certainly on campuses of all kinds for all comers who belong on those campuses, that's principle number one.

Principle number two, there's a limiting principle that is the kind of thing that Professor Strossen and I have been talking about where you actually have an intent to do harm, to threaten, to intimidate; not to confound, not to trouble but to actually literally do harm.

And then principle number three is that what is the obligation of a university even in the realm of protected speech when it is hateful speech? I think those three principles in some form or another are going to form the model of the kind of speech codes that should get the broadest consensus that you can. The more specific you try to be about this is in and this is out, you're going to start making mistakes, and that's why virtually every university's speech code has been struck down by university—by courts.

Mr. JORDAN. Mr. Shapiro I think and then Mr. Carolla.

Mr. SHAPIRO. Yes, I mean, as far as the distinction between public and private, I do make a very strong distinction between public and private universities when it comes to speech rights because private universities I believe should have the—like a private busi-

ness, the broadest possible purview to act in accordance with their values ——

Mr. RASKIN. To censor speech?

Mr. SHAPIRO. If they are a private university, sure, which is why when I went to DePaul University and they threatened to arrest me, I left the campus. If they had done that at Cal State L.A., I would have stayed and been arrested.

Mr. RASKIN. Okay. But, Dr. Zimmerman, do you agree with that? Do you think there is a free speech valuation to be fighting for on private campuses as well as public?

Mr. ZIMMERMAN. Absolutely, but it's a different kind of free-speech right. That is the right to free speech is absolute—should absolutely be there because it's a college campus. In—if we value college education, we have to value alternative views. If we value the liberal arts, we have to value other people's ideas. We can't have meaningful discussion if we only have one side of that discussion. But that's different than the State mandating that you have to be able to do that.

Mr. JORDAN. Mr. Heckler?

Mr. CAROLLA. Geez, I want to talk about my white privilege so badly. I graduated North Hollywood High with a 1.7 GPA. I could not find a job. I walked to a fire station in North Hollywood, I was 19, I was living in the garage of my family home. My mom was on welfare and food stamps, and I said, can I get a job as a fireman? And they said no, because you're not black, Hispanic, or a woman. We'll see you in about seven years. And I went to a construction site and dug ditches and picked up garbage for the next seven years.

I got a letter in the mail sent to my father's house saying your time has come to do the written exam for the L.A. Fire Department. I took it, and I was standing in line and I had a young woman of color standing behind me in line and I said, "Just out of curiosity, when did you sign up to become a fireman? Because I did it—or person—seven years ago?" And she said Wednesday. That is an example of my white privilege. It's—I think it's an economic privilege more than it is the color of your skin.

That being said, heckling people, busting their chops, making fun of them is an actual overture of love, friendship, and it's a positive thing. My friends I hang out with, Jimmy Kimmel and his cousin and many, many other comedians, Jeff Ross and people of that nature, and that's all we do, and the day that stops, that'll be the day I know they don't like me anymore.

Now, obviously, doing it to strangers on campus is a different story, but lightening the mood a little bit and lightening up a little bit in general when people—you know, I'm an atheist and I go out and do things with Dennis Prager. He's a devout Jew. He loves it when I make Jew jokes. I love it when he makes atheist jokes, and that's how we know that we're friends. And I'd say the same for Ben Shapiro as well, although I don't know if he loves it when I make the Jewish jokes.

Mr. SHAPIRO. Oh, no it's fine with me.

Mr. CAROLLA. Okay.

Mr. RASKIN. You guys are clearly not running for Congress.

Thank you very much for your testimony, all of you. I yield back, Mr. Chairman.

Mr. JORDAN. Thank you, Professor.

We now recognize the gentleman from Wisconsin, Mr. Grothman.

Mr. GROTHMAN. Yes, just one quick comment for Mr. Zimmerman before I ask him a question. In your testimony, you said higher education has been and remains the single best way for individuals to dramatically improve their socioeconomic status. There is a little bit of snobbery there I don't like, but the point I will make is, at least in my district and I think around the country, we have a lot of young people taking this stuff to heart, and they wind up graduating from an institution like yours with $50 or $60,000 in debt. They really do not find a way to move up economically and they wind up having to go back to a tech school or a trade school, which are very wonderful when they are 39 or 40 and their whole life is delayed. And I want you to be conscious of this kind of unqualified worship of all forms of secondary education because I think it is getting a lot of people into a lot of trouble.

But I will ask you a question. At Evergreen University—I don't know how many professors you have there, but could you tell me about how many professors you have and how many you think, say, voted for Trump in the last election?

Mr. ZIMMERMAN. Full-time, part-time, we have about 180 probably. I have not a clue of who they voted for.

Mr. GROTHMAN. You never talk about politics with any of the people hanging around the campus?

Mr. ZIMMERMAN. I—we certainly talk politics occasionally. I suspect not many of them voted for Trump, but I couldn't tell you the

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Mr. GROTHMAN. Did any of your buddy say they voted for Trump in all the times you talk to them?

Mr. ZIMMERMAN. There are a couple of people on campus who have, but not very many I suspect.

Mr. GROTHMAN. Not very many.

Ms. Strossen, NYU Law School, I am going to give you the same question.

Ms. STROSSEN. New York Law School. Again, I'll go to surveys that reflect that the overwhelming majority of faculty members are Democrats and have given—voted for and given money to Democrats. And I think this is a serious problem because when we talk about diversity, it should include ideological diversity, as well as other kinds of diversity. And I'm very supportive of a number of initiatives that have been started in the recent past to address this problem, one of which is called the Heterodox Academy, which was spearheaded by Jonathan Haidt, who does teach at NYU.

And there's a similar project that's done to give—called the Madison Project that's done together by Cornel West, African-American, extremely liberal, some would say radical professor, together with Robert George, a conservative white male, Princeton professor.

But all of us agree that education suffers when we have too much agreement, too much political orthodoxy ——

Mr. GROTHMAN. Right.

Ms. STROSSEN.—in any direction.

Mr. GROTHMAN. Right. Do you—how many professors do you know? I mean, you guys, I assume, unlike—here on the Evergreen, you must talk about who you vote for. How many do you know on a personal level that voted for Trump in your faculty?

Ms. STROSSEN. You know, I didn't actually ask people for whom they voted, but my educated guess would be ——

Mr. GROTHMAN. People must talk about it in the hallway.

Ms. STROSSEN. Respecting privacy, my educated guess would be extremely few.

Mr. GROTHMAN. Could it be none?

Ms. STROSSEN. Extremely few. But here's something sad. I do know people ——

Mr. GROTHMAN. Okay.

Ms. STROSSEN.—who privately supported Donald Trump but are embarrassed to say that they voted for him.

Mr. GROTHMAN. Okay. So that kind of muzzle—okay. And my question for Mr. Carolla, and I am sorry what you had to go through, the prejudice in our country, but ——

Mr. CAROLLA. I landed on my wallet.

Mr. GROTHMAN. Do you believe part of the problem here is it is easy to hate people and demonize people if you don't know any people like that? It may be one of the reasons why we seem to have difficulty with free speech on college campuses the way you wouldn't have difficulty in other American institutions is because some of the faculty members on college campuses, they can spend, you know, extensive periods of time without talking to anybody who has political opinions significantly different than their own. Is that part of the problem?

Mr. CAROLLA. Oh, absolutely. And it's—I'm sort of bewildered by it because knowing guys like Dennis Prager and Ben Shapiro, and knowing them to be great guys or even sometimes seeing what happens when Dr. Drew says something and the Twittersphere goes ballistic and what—talking about what a bad person he is or what have you, yes, when you get to know almost anybody, you look at them as a person rather than an idea, and we need to look at people as human beings, not ideas or representatives of ideas. And it always helps when you're exposed.

I personally—this may sound like a sidebar, but I grew up playing football. I played 10 years of organized football. I played with every different kind of human being except the Jews actually, Ben.

Ms. STROSSEN. Females?

Mr. CAROLLA. Maybe the holder.

Ms. STROSSEN. Females?

Mr. CAROLLA. Yes.

Mr. SHAPIRO. Yes, the punter.

Mr. CAROLLA. Yes, they cheered. Yes, it was awesome. So I got exposed—everyone realized that everyone who came from every different neighborhood was, you know, there for one reason, and that was trying to win a game, and I think it helped a lot in my view of life. And then later on when I stepped on a construction site, I got the same thing again. So, I do feel like surrounding yourself with diversity and ideas, as well as skin color, is a good thing.

Mr. GROTHMAN. Okay, Mr. Shapiro, I'm going to ask you to follow up on that. Just, you hear things in this job, people come up

to you, and I do believe there is certainly departments on major American campuses in which you can spend, you know, all day walking up the hallways where the faculty work and never be exposed to anybody who voted for a candidate that about half of the American populace did, which is kind of amazing that you find such, you know, lack of diversity ——

Mr. SHAPIRO. Oh, yes. And ——

Mr. GROTHMAN.—anywhere. And I wondered if one of the reasons for the left's rage is because they sometimes do go to work on college campuses and they don't have any friends who even voted for somebody who about half the American public voted for, which is hard to believe there is anywhere in society that kind of cloistered, but I am afraid on college—I wonder if that is one of the reasons why you have this hatred for, say, people who believe in, you know, more conservative half of the American populace.

Mr. SHAPIRO. I think you do have some leftist professors who attempt to, you know, be open to other ideas. I mean, Lani Guinier was one of my professors at Harvard Law school, and she ended up writing a job recommendation for me because we got along so well, and she's very far to the left. But that's more a rarity than it is the common thread.

I mean, even if you put aside President Trump, the fact is that—and I think the polls show that well under 10 percent of the faculty at Ivy League schools voted for Romney in 2012. So, I mean, this has been very consistent, and this is why I think you are seeing some of the violence. When I spoke at Cal State L.A., you actually saw the professors calling me a member of the KKK before I got there. And so most of the students had no clue who I was, but they were perfectly willing to go out in protest and beat people up.

Mr. GROTHMAN. Mr. Zimmerman, are you doing anything—I assume your campus—I mean, Evergreen has got kind of a reputation. Are you doing anything to ——

Mr. JORDAN. We will come back to that. We have got to move on. I thank the gentleman, and I apologize.

Mr. GROTHMAN. All right.

Mr. JORDAN. We are trying to give everyone a little extra time, but we can't go too much longer.

The gentleman from Florida is recognized.

Mr. DESANTIS. Well, thank you, Mr. Chairman, and thanks to the witnesses.

Ben Shapiro, who came up with the Thug Life Ben Shapiro?

Mr. SHAPIRO. I have no idea. It wasn't me. I have never listened to a complete rap song in my entire life.

Mr. DESANTIS. It is funny and it is well done and it has some of your greatest hits.

Let me ask you. You mentioned the professors. Obviously, the professors overwhelmingly are on the left. Some are fair. Some are more pushing the ideology. But I wonder. I see some of these things that you have dealt with, others. I mean, is it the professors doing this or are these students just predisposed to do this? It seems like there are a lot of radical students anyway, and a lot of them are kind of going to do this even if their professors weren't egging them on. Is that true?

Mr. SHAPIRO. So I think there are three groups. I think there are usually a couple of radical professors who egg them on, not the entire left faculty because that would be pretty much everyone but like a couple of radical professors who decide that they think it's worthwhile for there to be massive protests, some student organizers, and then very often lately you've been seeing people bust in from the outside. So, at Berkeley you saw people being—coming in from Antifa and integrating with the Berkeley student population and then doing acts of violence. At Cal State L.A. there were a couple of busloads of people who were bussed in. So, it's really those three groups I think.

Mr. DESANTIS. And when you are dealing with the anti-Semitism and anti-Israel views on campuses, is that faculty-driven or is that outside the university?

Mr. SHAPIRO. Well, I mean, I haven't dealt with that as much because I think in the last couple of years most of the opposition has been coming from the Black Lives Matter movement, from the Bernie Sanders socialist wing of the Democratic party. It hasn't been coming too much from the Israel stuff because I don't speak about the Israel stuff all that often on campus. But, I mean, the—I know for a lot of Jewish students on campus it's very uncomfortable because there are a lot of professors who support boycott divestment and sanctions from Israel and activate their students to do the same.

Mr. DESANTIS. So, just from a conservative perspective, we look at some of what is going on on college campuses and we don't necessarily like it but, you know, we don't really want government involved in a lot of this anyway. But on the other hand, people will point out is we are funding these universities, so the American taxpayer is underwriting a lot of this stuff. So, is there a role for government, given that we are funding it or is it just the type of thing that, you know, we fund it and we still have got to just keep her hands off? If we weren't funding it, then I would think that there would not be a role for the Federal Government at all, but given—I mean, a lot of money is going to these universities.

Mr. SHAPIRO. Yes. I mean, the Wisconsin law that's been discussed repeatedly has been I think a little bit unfairly maligned because people are refusing to read the end of the phrase in the law, which is that this is speech that interferes with the speech of others, meaning the—if you have administrators who are basically handing a heckler's veto to people who are standing up in front of other speakers and then attempting to block it, that's not actually free speech, that's trespass. So, I don't know that you need another piece of legislation. I think you do need enforcement of existing law that exists to prevent what is in fact criminal activity and not free speech activity.

But there's going to have to be some sort of consequences for administrators who don't abide by the current law because what they're doing is they are essentially saying we can't shut down this speech but if you go and make a big fuss, then we'll say that in order to shut down the fuss, we have shut down the speech. And if they continue to do that, then I don't see, you know, why Federal funding should be going to—I don't see why my taxpayer dollars

should be going to a university that bans me because the university refuses to protect my right to free speech.

Mr. DESANTIS. That is a good point. Now, you talked about the hierarchy based on identity in terms of who does—and I like a white male would be at the bottom kind of deal but, you know, how honest does even that standard apply? Because like somebody like a Justice Clarence Thomas, who obviously has a very compelling background, how would he be received at these universities in terms of his story, given that he is a constitutional originalist?

Mr. SHAPIRO. Or Jason Riley from the Wall Street Journal. I mean, it's the—obviously, it's—the intersectionality in that philosophy is a stand-in for hard-core leftism, and it's just a way of using multiculturalism as the entr?e to leftist points of view. It isn't actually—as you say, if Clarence Thomas says something, nobody on the left is going to say, well, you know, he suffered as a black man, so his perspective is more valuable than Joe Biden's perspective on a particular issue. You're not going to hear anyone on the left ever said.

Mr. DESANTIS. Carolla, thanks for coming.

Mr. CAROLLA. Thank you, man with the tan from Florida.

Mr. DESANTIS. Trying my best.

Mr. CAROLLA. We don't have to recognize him as the man from Florida. We can all see where he hails from.

Mr. DESANTIS. Yes, well, I appreciate that. It is hot there. We don't have the temperate climate that you guys have in L.A., so it is 95 and heating right now.

Mr. CAROLLA. Well, it's dry, but there are a lot of blowhards there in L.A., so there's a lot of hot wind blowing around.

Mr. DESANTIS. So, I mean, you have kind of come here, we appreciate it. You know, you look at this experience. How do you view kind of what goes on in Washington as potentially being able to help stand up for free speech? Because, you know, we get involved in things, and a lot of times we make it worse.

Mr. CAROLLA. You know, I've—I hosted a show called Loveline for over a decade, and I had a very unique perspective because I was able to talk to troubled kids, teenagers, two hours a night for a decade, and I really got to learn something about young people and how they work and what works and what doesn't work. And, you know, people would say well, you're not a professor, you never read a book, you never went to college, how are you an expert on this? And I say, well, I'm a journeyman carpenter as well. I've never read a book on carpentry, and who would you like to build your house, someone who read a book on it or someone who just did it every day for over a decade?

And I learned that all of these problems that we're talking about, free speech, discrimination, hatred toward other people and drug addiction, violence, crime, it all stems from the family. And when the family is intact, much of this stuff just goes away. You don't have to legislate it away. It just goes away because people are brought up in intact families with decent, caring parents, whatever their color, whatever their background is, and then they produce little decent individuals who go off to college or to a job, place of work, and they don't need to be coached up and they don't need to

be legislated and they don't need to be bloviated by people like us. They grow up in an intact family.

So my feeling is all the stuff we're talking about is at the outside of the rim. The hub is the family, and the discussions should center around the family and who is creating these people who think it would be a good idea to take a baseball bat to the window of a Starbucks in their community.

Mr. DESANTIS. Well, I think that is well put, and if we could deal with that core, the free-speech stuff and a whole host of other problems would go, and that is better than any tax bill or anything else we could be doing. And obviously, it is not going to be government's role per se; it is a societal thing.

But, Mr. Chairman, thanks for your leadership on this issue.

Mr. JORDAN. Well said. Well said.

To our panel, my goal was 12 o'clock. We are going to be pretty close. It may go a few minutes after. But if that is okay with everyone, we have two others and then maybe a couple other questions from the ranking member and myself to close things out.

Mr. Hice from Georgia is recognized.

Mr. HICE. Thank you very much, Mr. Chairman. I appreciate you allowing me to be a part of this hearing today.

Mr. Shapiro, I feel for you, and I met just recently with a group of Jewish students who had experienced a great deal of very difficult—from lack of free speech to harassment and all sorts of things on the various college campuses that they represent.

I am also an evangelical Christian, and I have seen it on the other side as well and have been, in fact, on the frontline of this for long, long time where Christian students are disallowed to even share their faith. They are restricted to free speech zones where Christian organizations are kicked off campuses or even forced to allow non-Christians to take leadership roles in the Christian organization, like how backwards can this possibly be? And in many instances Christian perspective is even looked upon as hate speech, which is absolutely astounding to me where this is going.

And I want to transition, Ms. Strossen, to you. I appreciate you being here as well. Are you familiar with implicit bias testing?

Ms. STROSSEN. Yes.

Mr. HICE. Okay. This is intended to detect biases or prejudices from individuals, various tests. Some colleges are actually using these tests now to force those who fail the test to be cured of their biases, prejudices, whatever it may be, in essence creating on campuses thought police. You are aware of this. I see it by your reaction.

Ms. STROSSEN. I am shocked, and of course I am against creating thought crimes. I am completely in favor of information. I've taken one of those implicit bias tests and it's very interesting. So, if it's presented to you as a way to expand your horizons about subconscious or semiconscious assumptions and stereotypes, to which all of us are prone, many atheists have negative stereotypes about evangelicals, and vice versa.

Mr. HICE. Sure, we all have those. Are you ——

Ms. STROSSEN. But we should overcome them through education, not through indoctrination.

Mr. HICE. Well, and they are not necessarily wrong one thing or another.

Ms. STROSSEN. In some way it's a matter of belief.

Mr. HICE. We have got to accept the fact that you are different from I am ——

Ms. STROSSEN. Absolutely.

Mr. HICE.—and I am different from you, and it is okay.

Ms. STROSSEN. Absolutely. We can disagree.

Mr. HICE. So college really has no business trying to cure people ——

Ms. STROSSEN. Absolutely not.

Mr. HICE.—of their background, what they ——

Ms. STROSSEN. That would be a violation of everything the First Amendment stands for, everything that academic freedom stands for.

Mr. HICE. Absolutely. Let me kind of go on. What are some of the biases that are identified as needing to be cured? Are you aware of that?

Ms. STROSSEN. I'm sorry. I ——

Mr. HICE. All right. Well, let's go on. I don't have time to dig into this. There is so much more to deal with. But would you not agree that when a university or college, whatever, starts branding people as hateful, as bigots, as politically incorrect, as whatever and then creating an effort to cure them of those deficiencies, the school is in itself creating a thought police environment and is very dangerous?

Ms. STROSSEN. And it's also something that violates equality principles, right? We're talking about trying to create campuses where everybody feels welcome and included and part of the community, and to stigmatize people because of their beliefs or their ideas is as offensive to equality and free-speech principles as stigmatizing people because of the color of their skin.

Mr. HICE. Not to mention that, it is also un-American and unconstitutional for ——

Ms. STROSSEN. And bad education and ——

Mr. HICE. Absolutely.

Ms. STROSSEN.—and ineffective. You're not—if—let's assume the worst. Let's assume somebody is a convinced hatemonger. You're not likely to dissuade that person from discriminatory views by treating that person as an outcast. That's the least effective way to persuade that person to change his ideas.

Mr. HICE. Absolutely. And I appreciate what you said a while ago, too, about the vast majority of professors are Democrat or left-leaning, whatever it may be. While we were in fact sitting here, I did a quick search. It is not from my State, but University of Georgia profs are 12 to 1 Democrat over Republicans. I think from what you are sharing and from my experience, that is probably fairly consistent across the country. I can't fully explain it, but it does have an impact on the overall culture that is created and the resistance towards those who disagree with a political, cultural view.

Ms. STROSSEN. And I'm sure you and I would make the same negative conclusion if it was skewed the other way ——

Mr. HICE. Sure.

Ms. STROSSEN.—if the—right.

Mr. HICE. Absolutely. Now, we have got these speech codes in place. It has been identified already a lot about this. We have court decisions that, as one of you mentioned a while ago, the court decisions overwhelmingly have ruled against the majority of the speech codes in universities, and yet to this day about 40 percent of our colleges still have speech codes in place against what has been determined by the rule of law. And why is that?

Ms. STROSSEN. You know, law is not self-enforcing. The Constitution is not self-enforcing. We still have segregated schools all these decades after Brown v. Board of Education, and that is why it is so important for organizations like the ACLU FIRE, the Foundation for Individual Rights in Education, to be able to bring lawsuits to actually enforce principles. I mean, the examples of using so-called time, place, and manner restrictions as a pretext for suppressing ideas, that's illegal and unconstitutional, but you have to bring a lawsuit in order to vindicate that position.

And if I may say, Congressman, just last—a couple of weeks ago, the United States Supreme Court unanimously said speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful but the proudest boast of our free speech jurisprudence is that we protect the freedom to express the thought we hate. If only we could have the same unanimity in society as a whole as those very ideologically diverse Justices have on that cornerstone principle.

Mr. HICE. Mr. Chairman, I am not going any further because I know I am not even a part of this subcommittee, and again, I appreciate you letting me be part of it. I have got a lot more to cover, though, but where this is going with the clear distinction between one viewpoint versus another, creating a culture of intimidation and silencing a particular viewpoint has got to be dealt with, and I thank you for leading this hearing.

Mr. JORDAN. I thank the gentleman and now recognize the—wait a minute, I now recognize the second tan man from Florida, Mr. Rooney is recognized.

Mr. ROONEY. Mr. Chairman, thank you very much for the opportunity to make a few comments about free speech here and for you taking the liberty of highlighting the problems that we face.

Under the guise of protecting students, the freedom to express views not deemed acceptable to an intolerant, judgmental elite is being attacked and denounced by students, professors, and occasionally administrators. These people have the intellectual arrogance to think they should decide for all of us which ideas are to be heard and which are not. This to me reeks of totalitarianism, which, as we all know, creeps in gradually until it takes root.

In The Road to Serfdom, Friedrich von Hayek described how the threat of totalitarianism Europe in the 1930s was foreshadowed by a society moving away from the basic ideas on which European civilization had been built. This behavior in the United States today contradicts the original concept of what a university should be and how it originated in its medieval beginnings as venues for promoting the free exchange and rigorous debate.

Colleges use many different methods to suppress free speech. One such example are these free-speech zones, which have been talked about here on campus. To me, the mere idea of a free-speech

zone is wholly incompatible with the Constitution of the United States, and it turns the words free speech into a gross oxymoron. This transforms an absolute truth, a right guaranteed under our Constitution, into a negotiable, transient morsel of policy. I wonder which of our constitutional rights and liberties will be next?

An ironic case at Kellogg Community College in Michigan—you can't make this stuff up—students were arrested for handing out copies of the United States Constitution without the administration's permission. How incredible is this? In their greatest hopes, Marx and Lenin couldn't have been bold enough to try this. Cancelation of conservative speakers and events on campus has become another method for constraining freedom, as has been talked about here. Following protests and sometimes riotous behavior by the scripted biased students and faculty, many administrators and boards of trustees seem to prefer acquiescence and political correctness instead of confrontation, willing to accept the connected erosion of freedom.

In 2014, protests by leftist students at Rutgers caused former Secretary of State Rice to cancel a commencement speech. This is an individual who rose up from desperate circumstances with a life of persistence and achievement like none other. Condi is certainly the American dream. This here again violent student riots at Berkeley caused a school to cancel speech by the conservative writer and speaker Ann Coulter. So much for colleges fostering an environment of free speech.

Further, many college professors seek to indoctrinate and discourage free debate in class. Much has been written about this, leading to something called groupthink. The desire for conformity replaces rational thought, and conservative opinions are routinely suppressed, as has been talked about in this hearing today. This lack of ideological diversity in academia undermines the free exchange of ideas, and it is no wonder that so much has been written about the lack of critical thinking skills of younger Americans.

Colleges and universities that refuse to respect and enforce our laws and the Constitution should not be subsidized by the United States of America. Our taxpayers should not have to pay for infringements against our Constitution. If schools want to go it alone free of taxpayer money, they can and should do whatever they want to do, and many has been said that about here today. The schools that take our taxpayer money should follow the Constitution and be thankful that we have it.

Not all colleges and universities have succumbed to this political correctness. We know that Mitch Daniels made a very strong statement in 2015 at Purdue to protect academic freedom and individual liberty. John Ellison at the University of Chicago, not exactly known as a conservative bastion, did the same thing, denouncing these free-speech zones and things like that.

And I would like to also finish with the idea that the real world, the one where us carpenter apprentices and journeymen carpenters grow up, by the way, doesn't recognize free-speech zones. Colleges and universities that promote them are committing what I consider to be educational malpractice, failing to prepare students for a life beyond the cocoon of campus. Higher education should be a platform for the peaceful exchange of ideas and debate and formation,

where learning comes from having one's beliefs challenged and having to defend them. That is what the original university was about, and that is what we need in America. If we can get back there, then maybe we will find that we have a new generation of critically thinking Americans that can take our country to even greater heights.

Mr. Chairman, thank you very much for having me.

Mr. JORDAN. You bet. I thank the gentleman.

The gentlelady from Florida is recognized, Mrs. Demings.

Mrs. DEMINGS. Thank you so much, Mr. Chairman. And, you know, we have had, I believe, a very robust conversation today about the First Amendment, which we know is guaranteed by the United States Constitution. We have talked about a lot of things, but we have also talked about a young woman who was attending American University, was elected as president of the student government by her peers, and instead of celebrating, was a victim of harassment, she was threatened, victim of cyber bullying and hate crimes. I believe that Taylor Dumpson represents thousands of students in this country who are just trying to live the American dream.

And since one of my colleagues thought it necessary to issue out an apology today, I would like to issue an apology to Taylor Dumpson for what she had to endure, someone who was doing it right and was the victim of hate crimes, not just hate speech but hate crimes, as investigated by the FBI.

That is my statement, Mr. Chairman.

And I would also like to ask permission to enter a unanimous consent to introduce an article "KCC responds to political organization's lawsuit" into the record.

Mr. JORDAN. Without objection.

Mrs. DEMINGS. Thank you so much. I yield back.

Mr. JORDAN. I thank the gentlelady.

We will close out here with a few more questions, but first, I do want to recognize Ms. Taylor Dumpson as well. Obviously, what happened to you on campus is wrong, should not be tolerated, and is just disgusting. But we appreciate you overcoming that. And the fact that you are a student government president, someday, you are going to be sitting up here doing this same kind of hearing, and we look forward to those days in the future as well.

But my guess is at American University they probably had some diversity training. They probably had some bias training. So maybe this gets to the point Mr. Carolla made earlier. It is not all the bias training and diversity and these tests kids have to take now or students have to take now.

Well, let me just go to Mr. Shapiro. Do you think the bias training is something that is actually helpful?

Mr. SHAPIRO. I don't think it's effective. I think that, in fact, it tends to alienate a lot of the people who feel like I'm not a racist, why am I being forced to endure the implication that I'm a racist and I have the necessity of undergoing bias training.

Mr. JORDAN. Yes. I mean, it seems to me that either Americans—their bias training is not any good or it is just largely probably not ——

Mr. SHAPIRO. People who tie nooses around bananas are not going to be dissuaded from doing so by bias training. They are garbage human beings.

Mr. JORDAN. To Mr. Carolla's point, right, it is a lot more about what kind of background and belief system they bring to the university.

Mr. CAROLLA. I agree wholeheartedly. That starts at home. Anyone who has been in the corporate world knows you have to have sexual harassment training as well, and the cases of sexual harassment have probably gone up tenfold since the training began, so I don't see any direct line from training to effective application of it.

Mr. JORDAN. In fact, it could be almost the converse, right?

Mr. CAROLLA. I feel it is, yes.

Mr. JORDAN. Yes.

Ms. STROSSEN. But Mr. Carolla also talked about the positive impact of actually working together with a diverse group of people, and I think that's what we have to do. We have to bring people together in education and work and other contexts.

Mr. JORDAN. You know, and it has been my experience some of the strongest advocates for left policy and—but I always use the example one of my good friends is Dennis Kucinich, and you cannot get further apart than Jim Jordan and Dennis Kucinich, but we have respect—and a lot of times where we really work together is on civil liberty issues, these kind of issues. That is why I so appreciate this panel we have here today. I mean, that is how it is supposed to work.

So, there was talk earlier about a speech code. It seems to me the speech code is the one that is right behind me, right? Isn't that the speech code in America, the First Amendment itself? Speech code and common sense, as Mr. Carolla has talked about.

So, Mr. Shapiro, your thoughts on a speech code. Shouldn't it be the First Amendment? Shouldn't that be sufficient?

Mr. SHAPIRO. Absolutely. And I think that we're moving into very dangerous territory when we start identifying speech as violence, and that I think is what's happening more and more often in our politics. I think it's happening on college campuses. When you start saying that what you say offends me to the point where I'm going to treat it as violence, then we are moments away from an actual violent conflagration, and that has to stop immediately.

Mr. JORDAN. Do you think, Mr. Shapiro, that some of the things we have seen from the Federal Government are contributing to the what I would describe as, you know, a crazy situation we see on many campuses, situations you have had to go through and live through? Do you think some of the things that the Federal Government has done are chilling free speech on college campuses? And specifically—and frankly, what prompted my renewed interest or greater interest I should say in this series of hearings we are having on the First Amendment was a few years ago when we discovered that an agency with the power and the ability to intimidate and impact people's lives, the agency known as the Internal Revenue Service, was systematically and for a sustained period of time targeting people for their political beliefs. Do you think that has some chilling impact on what may in fact be happening on our—what is in fact happening on our college campuses?

Mr. SHAPIRO. I mean, sure, when people have an enormous amount of power, whether it's at an administrative level or at the Federal level, they tend to use it in ways that benefit the side that they control, and that's—that has—I mean, I think you've seen this—it's a completely different topic, but I think that you've seen this in the context of how a lot of the sexual assault hearings are taking place on campus now where they're taking place under title IX auspices and they don't actually follow any sort of constitutional due process procedures. That's an area where the Federal Government has gotten involved and really overridden individual rights.

And, listen, nobody is in favor of sexual assault. Everyone wants to see rapists prosecuted, but we need to come back to some sort of rational standard of application, not just what we wish we could do in some sort of utopia.

Mr. JORDAN. Just two final points, Mr. Raskin raised the point earlier that the majority party invites four of the witnesses, that the minority party invites one. It is standard practice. I would point out of the four witnesses I think probably two come from—four majority witnesses, probably two come from the left on the political spectrum. Mr. Shapiro hasn't exactly been a fan of the current administration, and I don't know exactly what Mr. Carolla's—I tend to—I would think he is fairly libertarian but I don't know if he is Republican or Democrat.

So, we tried to invite people who believe in the sign that is behind me, that is what we tried to do, and people who are willing to defend it, who are willing to say that this is paramount to the American experience and who we are as a nation, and that is what the series of hearings that we are undertaking in this committee are all about.

So, final question is to the heckler in the middle. When is the movie coming out again?

Mr. CAROLLA. No Safe Spaces, Dennis Prager and myself have gotten together to do this subject, but the 86-minute version of it not the 477-minute version. Yes, my bladder is very angry at you. I think it's coming out mid, early 2018, so look forward to that.

Mr. JORDAN. Well, we look forward to it as well.

I want to thank each of you for being here today and participating in this important hearing, and we look forward to having more. And frankly, what we are going to do, we may invite some of you back, but we certainly want to have some of the students, maybe even some of them who are in the room—the gentleman from Alabama, I am sorry.

Mr. PALMER. I just want to thank the students for coming, and I hope you look back on this and count this as one of the best days in your education that you have ever had.

I yield back.

Mr. JORDAN. I thank the gentleman.

With that, we are adjourned.

Ms. STROSSEN. Thank you very much.

[Whereupon, at 12:06 p.m., the subcommittees were adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Statement
House Committee on Oversight and Government Reform
Subcommittee on Government Operations
Taylor A. Dumpson, Student Government President, American University
July 27, 2017

Thank you for the opportunity to provide a written statement about the use of free speech on college campuses in the form of hate speech and its detrimental consequences. Just over 12 weeks ago today, I found myself at the center of a racially motivated hate crime in the nation's capitol, on the campus of American University, followed by a cyberbullying campaign at the fingertips of white supremacists.

Images of my face with a photoshopped picture of a Kentucky Fried Chicken bucket on my head, "N*gger Agitator", "Negress", and "Sheboon" were just a few of the hundreds of racist slurs, comments, and innuendos that were posted across social media following my taking office on Monday, May 1, 2017. On April 30, after returning from a sorority conference and receiving a competitive leadership award, I was sworn in as the first black woman to hold the position of American University Student Government (AUSG) President. The following day, a masked perpetrator hung bananas from black corded nooses from light posts and bus stops around campus. The bananas were labeled with "AKA" and "AKA FREE", referencing Alpha Kappa Alpha Sorority, Incorporated (AKA) the predominately African-American sorority of which I am a member, and "HARAMBE BAIT" referencing the gorilla that was killed at the Cincinnati Zoo in 2016. When I went to sleep on April 30, I could have never fathom how much my life would be changed by the next time I lay my head.

This bigoted Hate Crime struck me at my core, as if the perpetrator was trying to imply that I ought to be lynched or put down for making history; as if to remind us that we are less than one generation removed from Emmett Till's lynching that spurred the civil rights movement; as if to intimidate and frighten me to the point of resigning from the position I earned fair, and square; as if to say i did not belong. Shortly after I was notified by a friend about the incident on Monday, I called a higher level university administrator and explained what I had heard, and was then notified that the University Police were investigating this incident as a hate crime, as it met the threshold for such; targeted group, and threat of harm. By Wednesday, I was notified that University Police were working to investigate this case along with the Metropolitan Police Department (MPD) and the Federal Bureau of Investigation (FBI). On Thursday May 4, I received an email from the Anti-Defamation League (ADL) notifying me that a cyber-harassment campaign had been made against me by a known neo-nazi on social media. Following the cyber-harassment I have had to change my privacy settings on all forms of social

media, limit my interaction on the internet, and have even had to increase personal security measures, including but not limited to carrying pepper spray and protection from University Police.

This week consisted of being sworn in on one day, and literally having my life flipped upside down in a number of hours.

When I applied to college, I thought that I would meet new people and learn new things not be the victim of a racially motivated hate crime and cyber-bullying that would interrupt my academics and disrupt my mental, emotional, and physical health. The week the May 1 Hate Crime occurred coincided with final examinations. Within that time period, I was expected to complete four final examinations with a fifth to complete the following week. Over the 96-hour period between May 1 and the minute I received the ADL's email, I only had 14-hours of sleep and only one full meal on my stomach.

Due to my lack of sleep as a result of nightmares, lack of appetite due to stress, increased anxiety as a result of feeling unsafe that appeared through panic attacks, national media attention, and cyber-harassment, I was unable to complete my final examinations on time and was forced to request incompletes (I) for the 15 credit hours I was taking. This lead to me fail to meet Section 484(a)(2) of the Higher Education Act of 1965 which "requires a student to be making Satisfactory Academic Progress (SAP) in order to be eligible for any Title IV federal student aid", which put an additional strain on my family. Luckily, thanks to the help I received with the Financial Aid Office at American University, I was able to make a SAP Appeal to maintain my scholarship for the 2017-2018 academic year, my senior year of college. Not only did the May 1 Hate Crime impact my academic progress, but it also impacted my health. Due to increased anxiety as a result of this egregious act, I began to show signs early on for Post-Traumatic Stress Disorder (PTSD) such as flashbacks, nightmares, avoidance, depression, and a relapse of my eating disorder. There were days where I was unable to carry on a conversation without having an anxiety attack or get out of bed and eat a meal, and days where all I did was stare at the ceiling. Since then, I have sought and received consistent support from a number of health care professionals in order to help me process the reactions my body was having to this traumatic event as well as spiritual guidance from the University's Chaplain.

As of right now, I am taking everything one day at a time. There are good days where I feel like my life was back to the way it was prior to May 1, and bad days where I feel like I am reliving the moment time and time again, but most days are in between. All of this, because some prejudice individual chose to commit an act of hate and bigotry in order to intimidate me, which was then followed by more vile individuals who chose to use their free time to harass me on social media causing me to fear for my safety. -- This is not what I came to college for.

KCC responds to political organization's lawsuit

Posted on Jun 22, 2017 by Kellogg Community College

Kellogg Community College this week filed a brief in federal district court opposing a motion for a preliminary injunction requested by a political organization which is suing the College after three people – none of whom were KCC students at the time – were arrested for trespassing at KCC's Battle Creek campus last fall.

The College's court filing was initiated by a motion submitted in May by attorneys from the **Alliance Defending Freedom,** a self-described religious freedom advocacy organization, which represents the **Young Americans for Liberty,** a self-described "pro-liberty" organization. The proposed injunction seeks to limit the College's ability to enforce its Solicitation Policy, which does not infringe upon constitutional free speech rights.

The lawsuit stems from a Sept. 20, 2016, incident in which three individuals were arrested on KCC's North Avenue campus after repeatedly engaging in unpermitted soliciting activities at a main campus entrance. They were representing the Young Americans for Liberty, which is not a registered student organization at KCC. The individuals refused numerous requests by KCC staff to sign in, move approximately 100 feet into the Student Center – one of the busiest areas of campus – and continue their activities in compliance with the College's Solicitation Policy.

Eric Greene, spokesman for KCC, today issued the following statement regarding the case:

"Our campus guests could have resolved their dispute with KCC in a matter of minutes on Sept. 20 and carried on their solicitation activities that same afternoon if they had simply filled out basic paperwork and moved out of the pedestrian walkway where students were trying to get to class. Responding to a complaint from a pedestrian, KCC personnel politely and repeatedly asked the individuals soliciting to comply with College policy or risk being arrested on trespassing charges.

"This case is not about free speech or viewpoint discrimination. We have felt from day one of this unnecessary lawsuit that the plaintiffs' claims are without merit and that the College's Solicitation Policy is constitutional and appropriate in its scope. KCC's Solicitation Policy ensures that the time, place and manner of solicitation

activities – regardless of the content of those activities – do not impede or interfere with the learning environment or College business.

"Similar policies exist at colleges, statehouses, city halls, courthouses, military memorials and other public venues across the United States. KCC's policy, which is neither unconstitutional nor vague, has been enforced accurately and consistently over the years involving groups as varied as military recruiters and beauty product sales people to politicians running for office and members of white supremacy organizations. We don't regulate the content of anyone's solicitation materials, but we do govern the time, place and manner of the activities in order to ensure the safety of all students, employees and guests on our campuses.

"Despite repeated public statements that the College does not take into consideration the content of speech or solicitation when granting access to campus, the YAL and its supporters have vilified the College by spreading false information about why individuals were arrested on Sept. 20 and by suggesting that KCC does not value the U.S. Constitution or the free speech rights of its students. These accusations couldn't be further from the truth.

"In fact, as a marketplace of ideas and thought, KCC – in policy and in practice – values free speech and the Constitutional rights of all people. We teach courses on the U.S. Constitution; we encourage healthy debate in multiple forms; and we dedicate an entire day every year to Constitution-related education and activities – including handing out free copies of the Constitution to passersby – during our annual Constitution Day celebration.

"The College takes seriously any allegation that an individual's freedom of expression has been infringed and we have carefully reviewed our Solicitation Policy and concluded that we have been and continue to be in compliance with all applicable laws.

"KCC has retained legal counsel and will continue to address the complaint thoroughly in the United States District Court, Western District of Michigan."

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