

DREXEL LAW REVIEW

THOMAS R. KLINE SCHOOL OF LAW

VOLUME 16

2024

ISSUE 4

ARTICLE

KNOWLEDGE AND DEMOCRACY AT RISK: FROM FLORIDA TO PENNSYLVANIA AND BEYOND

Anil Kalhan *

INTRODUCTION

In recent years, schools, colleges, universities, and libraries, along with individual scholars, teachers, and librarians, have faced a rapidly growing panoply of politically and ideologically motivated efforts in the United States and other countries to restrict teaching, research, and access to knowledge on subjects deemed to be “divisive” or “controversial,” particularly (but not exclusively) with respect to race, gender, and sexuality.¹

* Professor of Law, Drexel University. A.B., Brown University; M.P.P.M., Yale School of Management; J.D., Yale Law School. Many thanks to Tabatha Abu El-Haj, Adam Benforado, and Sharrona Pearl for helpful comments on previous drafts; to all of the symposium participants for an extraordinarily valuable set of conversations; to the editors of the *Drexel Law Review*, particularly Sarah Stone and Alexandria Richards, for their excellent and extensive work in organizing the symposium and publishing this Issue; to Mallory Heller, Mary McGovern, and the many other individuals working at Drexel who helped make the event happen; and to the American Association of University Professors, American Constitution Society, American Constitution Society Drexel Chapter, Reed Smith LLP, SNF Paideia Program at the University of Pennsylvania, Stradley Ronon Stevens & Young LLP, and Thomas R. Kline for their generosity as cosponsors and supporters of the event. I am also very thankful to Nicole Aiken-Shaban, Manan Ahmed, Ed Brockenbrough, Sigal Ben-Porath, Nick Fleisher, Charlotte Garden, Jamie Gershkow, Jonathan Glater, Helen Gym, Emily Houh, Sherrilyn Ifill, Afshan Jafar, Ravi Kalhan, Santosh Kalhan, Satish Kalhan, Tom Kline, Liz Leininger, Zinelle October, Sharrona Pearl, Monica Clarke Platt, Hank Reichman, Jennifer Ruth, Kim Scheppele, Brittney Schoenbeck, Greg Scholtz, Chloe Silverman, Kara Stein, Brian Soucek, Tracy Tripp, and Jeremy Young for their suggestions, insights, and support in a variety of ways as the symposium was being conceived and planned.

1. See, e.g., *Dispatches from States Under Legislative Attack*, ACADEME, Autumn 2023, at 18; Kasey Meehan, Jonathan Friedman, Tasslyn Magnusson, & Sabrina Baëta, *Banned in the USA*:

Ranging from direct efforts to restrict or mandate curricular content to more indirect initiatives that create chilling effects on disfavored subjects, these initiatives have been pushed by a highly organized, well-funded network of right-wing groups, which have organized and supported state and local political actors nationwide by raising and contributing large sums of money, drafting model legislation, providing technical and legal expertise, helping to develop political strategies, and mobilizing political support. Especially in the aftermath of the 2020 election, the Republican Party and its elected officials have embraced the “playbook” of these groups to an unprecedented degree.²

These direct and indirect substantive incursions have been accompanied by aggressive structural interventions to impose greater external control over schools, colleges, universities, and libraries. Within higher education, for example, these efforts

State Laws Supercharge Book Suppression in Schools, PEN AM. (Apr. 20, 2023), <https://pen.org/report/banned-in-the-usa-state-laws-supercharge-book-suppression-in-schools/> [<https://perma.cc/EBB4-FND5>]; Sam LaFrance & Jonathan Friedman, *Educational Intimidation: How “Parents’ Rights” Legislation Undermines the Freedom to Learn*, PEN AM. (Aug. 23, 2023), <https://pen.org/report/educational-intimidation/> [<https://perma.cc/TH8A-6CFT>]; Jeremy Young, Jeffrey Sachs, & Jonathan Friedman, *America’s Censored Classrooms*, PEN AM. (Aug. 17, 2022), <https://pen.org/report/americas-censored-classrooms/> [<https://perma.cc/6CQ8-KY6B>]; Jonathan Friedman & James Tager, *Educational Gag Orders: Legislative Restrictions on the Freedom to Read, Learn, and Teach*, PEN AM. (Nov. 2021), <https://pen.org/report/educational-gag-orders/> [<https://perma.cc/W7JW-PFJJ>]; Melissa Gira Grant, *Out of Print*, NEW REPUBLIC (Mar. 16, 2023), at 14, <https://newrepublic.com/article/170920/conservative-book-bans-libraries-fighting-back> [<https://perma.cc/TU9J-C7SH>]. On developments outside the United States, see, for example, Tom Ginsburg, *Academic Freedom and Democratic Backsliding*, 71 J. LEGAL EDUC. 238, 245–47 (2022); David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Final Report: Academic Freedom and the Freedom of Opinion and Expression*, U.N. Doc. A/75/261 (July 2020), <https://freedex.org/2020/07/31/final-report-academic-freedom-and-the-freedom-of-opinion-and-expression/> [<https://perma.cc/T7YS-ZR46>].

2. Nicholas Confessore, *‘America Is Under Attack’: Inside the Anti-D.E.I. Crusade*, N.Y. TIMES, (Jan. 20, 2024), <https://www.nytimes.com/interactive/2024/01/20/us/dei-woke-claremont-institute.html> [<https://perma.cc/85LU-7AK3>]; see Steven Brint, *The Political Machine Behind the War on Academic Freedom*, CHRON. HIGHER EDUC. (Aug. 28, 2023), <http://www.chronicle.com/article/the-political-machine-behind-the-war-on-academic-freedom> [<https://perma.cc/S8RR-M3CB>] (Jan. 10, 2023); Elizabeth A. Harris & Alexandra Alter, *A Fast-Growing Network of Conservative Groups Is Fueling a Surge in Book Bans*, N.Y. TIMES (Dec. 12, 2022), <https://www.nytimes.com/2022/12/12/books/book-bans-libraries.html> [<https://perma.cc/C5S5-SD5A>]; RALPH WILSON & ISAAC KAMOLA, *FREE SPEECH AND KOCH MONEY: MANUFACTURING A CAMPUS CULTURE WAR* (2021); Isaac Kamola, *Dear Administrators: To Protect Your Faculty from Right-Wing Attacks, Follow the Money*, 10 J. ACAD. FREEDOM 22 (2019).

have sought to reshape governing boards, curtail shared faculty governance, eliminate or weaken faculty tenure protections, inhibit collective bargaining rights, and politicize institutional accreditation processes. Although these kinds of intrusions on institutional autonomy are part of much longer term trends, they have been vigorously embraced and pursued more recently as part of broader, ideological strategies to undermine the autonomy and integrity of academic institutions and to silence or marginalize perspectives that right-wing interest groups disfavor.³ The combined impact of these efforts has been exacerbated by longstanding budgetary challenges and severe austerity measures, which have left many academic institutions more vulnerable to external pressures from politicians and donors.⁴

3. See, e.g., David Pozen, *Seeing the University More Clearly*, BALKINIZATION (May 6, 2024), <https://balkin.blogspot.com/2024/05/seeing-university-more-clearly.html> [https://perma.cc/S8RR-M3CB]; Marc Stein, *The End of Faculty Tenure and the Transformation of Higher Education*, ACADEME, Winter 2023, at 18; Jarrod Kelly, *The Right-Wing War on Accreditation*, CHRON. HIGHER EDUC. (Mar. 31, 2023), <http://www.chronicle.com/article/the-right-wing-war-on-accreditation> [https://perma.cc/RJBN-QTXX]; see also CONTINGENT FACULTY AND THE REMAKING OF HIGHER EDUCATION: A LABOR HISTORY (Eric Fure-Slocum & Claire Goldstene eds., 2024); LARRY G. GERBER, *THE RISE AND DECLINE OF FACULTY GOVERNANCE: PROFESSIONALIZATION AND THE MODERN AMERICAN UNIVERSITY* (2014); BENJAMIN GINSBERG, *THE FALL OF THE FACULTY: THE RISE OF THE ALL-ADMINISTRATIVE UNIVERSITY AND WHY IT MATTERS* (2011).

4. See, e.g., Todd Richmond, *University of Wisconsin Regents Back GOP Deal for Funding in Exchange for Limiting Diversity Efforts*, ASSOCIATED PRESS (Dec. 13, 2023), <https://apnews.com/article/republicans-vos-universities-wisconsin-diversity-underly-vote-57a0ac73eb4b6de2d72a22178f41bb33> [https://perma.cc/U2EV-HS8W]; Dan Bauman, *Why Is West Virginia U. Making Sweeping Cuts? Hobbled by the Great Recession, the Flagship Bet on Growth That Never Came*, CHRON. HIGHER EDUC. (Aug. 11, 2023), <http://www.chronicle.com/article/why-is-west-virginia-u-making-sweeping-cuts> [https://perma.cc/U3HA-W84J]; see also Rose Casey, Jessica Wilkerson & Johanna Winant, *An Open Letter from Faculty at West Virginia University*, BOSTON REV. (Sept. 7, 2023), <https://www.bostonreview.net/articles/an-open-letter-from-faculty-at-west-virginia-university/> [https://perma.cc/PYM6-FDNX] (discussing “potentially cataclysmic” fiscal crisis at West Virginia University “largely caused by financial mismanagement; the university is running a \$45 million deficit after a decade of real estate boondoggles, administrative bloat, and declining state funding”); Hank Reichman, *Neo-Nationalism, Neoliberalism, and Academic Freedom: A US Perspective*, ACADEME BLOG (Oct. 4, 2022), <https://academeblog.org/2022/10/04/neo-nationalism-neoliberalism-and-academic-freedom-a-us-perspective/> [https://perma.cc/U3HA-W84J] (arguing that, “[o]verly concerned with fund-raising, public image, and relations with influential politicians,” university leaders “have too often failed to defend (or only weakly defended) faculty members against the proliferation of threats directed against them”); see also David W. Chen & Michael Corkery, *A New Playbook for College Donors: Power Politics*, N.Y. TIMES (Dec. 13, 2023), <https://www.nytimes.com/2023/12/13/us/universities-donors-penn-harvard.html> [https://perma.cc/UU9K-WDDS]; Shawn Musgrave, *Leonard Leo Built the Conservative Court. Now He’s Funneling Dark Money Into Law Schools*, INTERCEPT

Such measures also have weakened the ability of faculty to effectively resist attacks on the core values and mission of their institutions—a vulnerability that opportunistic administrators, donors, activists, and politicians have increasingly sought to exploit. In the wake of the Hamas attacks in October 2023, and the contention that has emerged on many college and university campuses about the Israeli government’s military response in Gaza, the various dimensions of this assault have only intensified.⁵

Over this same period, scholars and other observers also have increasingly warned that in many of these same countries, the weakening of political institutions has placed democracy itself more fundamentally at risk. In the United States, a range of tactics to manipulate political processes—including aggressive partisan gerrymandering, voter suppression efforts, the weakening of campaign finance regulations, and the manipulation of independent media—have undermined representative institutions and increasingly insulated elected officials from

(May 29, 2024), <https://theintercept.com/2024/05/29/leonard-leo-donor-law-schools/> [<https://perma.cc/9XGP-69UW>].

5. See, e.g., Confessore, *supra* note 2; Maureen Farrell & Rob Copeland, *Bill Ackman’s Campaign Against Harvard Followed Years of Resentment*, N.Y. TIMES (Dec. 12, 2023), <https://www.nytimes.com/2023/12/12/business/bill-ackman-harvard-antisemitism.html> [<https://perma.cc/PPE5-U6FC>]; Rachel Louise Ensign & Juliet Chung, *Elite Universities Face Donor Revolt Over Mideast Conflict*, WALL ST. J. (Oct. 24, 2023), <https://www.wsj.com/us-news/education/elite-universities-face-donor-revolt-over-mideast-conflict-6c93662f> [<https://perma.cc/X8F7-LYAS>]; Stephanie Saul, *Who Decides Penn’s Future: Donors or the University?*, N.Y. TIMES (Oct. 27, 2023), <https://www.nytimes.com/2023/10/26/us/university-of-pennsylvania-donors-israel-hamas.html> [<https://perma.cc/BNEA-AF8U>]; see also Tabatha Abu El-Haj, *The Endangered Right to Assemble on Campus*, INSIDE HIGHER ED (Dec. 14, 2023), <https://www.insidehighered.com/opinion/views/2023/12/14/colleges-suppress-pro-palestinian-organizing-opinion> [<https://perma.cc/VBF7-G4M3>]; Ryan Quinn, *Will Academic Freedom and Campus Free Speech Survive?*, INSIDE HIGHER ED (May 3, 2024), <https://www.insidehighered.com/news/faculty-issues/academic-freedom/2024/05/03/will-academic-freedom-and-campus-free-speech> [<https://perma.cc/2K55-JHHV>]; David A. Bell, *Elise Stefanik, Dean of Faculty*, CHRON. HIGHER EDUC. (Apr. 22, 2024), <https://www.chronicle.com/article/elise-stefanik-dean-of-faculty> [<https://perma.cc/9WMK-3SV9>]; Paula Chakravartty & Vasuki Nesiah, *Is This the End of Academic Freedom?*, N.Y. TIMES (Apr. 5, 2024), <https://www.nytimes.com/2024/04/05/opinion/free-speech-academic-freedom.html> [<https://perma.cc/FSU7/KDJ3>]; Andrew Manuel Crespo & Kirsten Weld, *The Harvard Corporation Tries to Kill Faculty Governance*, CHRON. HIGHER EDUC. (Jun. 5, 2024), <https://www.chronicle.com/article/the-harvard-corporation-tries-to-kill-faculty-governance> [<https://perma.cc/T7D9-XF7W>].

meaningful democratic accountability.⁶ Far from constraining these developments, the Supreme Court and federal judiciary have actively embraced and contributed to them, particularly following the Trump presidency's appointment of committed, partisan judges in large numbers.⁷ Outside the United States, the rise of populist, autocratic regimes in countries such as Hungary, Turkey, and India has similarly imperiled democratic institutions and values.⁸ This weakening of democratic institutions, in turn, has created a more hospitable environment for right-wing attacks on education and knowledge. As democratic institutions have eroded, political actors have faced fewer constraints in their efforts to undermine the autonomy and integrity of educational institutions, which are often feared by autocratic political figures as centers of potential opposition or competing sources of knowledge and authority.⁹

To examine these parallel developments in relation to each other, in November 2023 the *Drexel Law Review* organized and convened a wide-ranging, two-day symposium, *Knowledge at Risk: Democratic Erosion and the Contemporary Assault on Education and Expertise*, that addressed a number of key questions. How should we conceptualize the relationship between the

6. See, e.g., Michael J. Klarman, *Foreword: The Degradation of American Democracy—and the Court*, 134 HARV. L. REV. 1, 19–106 (2020); STEVEN LEVITSKY & DANIEL ZIBLATT, *TYRANNY OF THE MINORITY: WHY AMERICAN DEMOCRACY REACHED THE BREAKING POINT* (2023); see also Thomas Zimmer, *Democracy Faces a Reactionary Counter-Mobilization*, DEMOCRACY AMERICANA (Nov. 29, 2022), <https://thomaszimmer.substack.com/p/democracy-faces-a-reactionary-counter> [<https://perma.cc/ZH7R-9SCL>].

7. See, e.g., Klarman, *supra* note 6, at 178–231 (“[W]hether conscious strategizing or motivated reasoning is doing the work, the bottom line is the same: a Republican Court will not protect democracy from Republican efforts to undermine it or check the authoritarian tendencies of a Republican President in any substantial way”); Melissa Murray & Katherine Shaw, *Dobbs and Democracy*, 137 HARV. L. REV. 728, 776–85 (2024); see also Anil Kalhan, *Judicial Illiberalism: How Captured Courts Are Entrenching Trump-Era Immigration Policies*, LEX, Fall 2022, at 28 (available at <https://klhn.co/lex-2022-09-judiciary-immigration> [<https://perma.cc/YEC9-BEPY>]); Josh Marshall, *See the Corrupt Court for What It Is*, TALKING POINTS MEMO (Oct. 27, 2020, 1:30 PM), <https://talkingpointsmemo.com/edb/see-the-corrupt-court-for-what-it-is/share-to-ken/fNRq15VixOXu> [<https://perma.cc/DT8E-PXNC>].

8. See, e.g., Aziz Z. Huq & Tom Ginsburg, *How to Lose a Constitutional Democracy*, 65 UCLA L. REV. 78, 118–42 (2018); Klarman, *supra* note 6, at 11–19; Kim Lane Scheppele, *Autocratic Legalism*, 85 U. CHI. L. REV. 545 (2018).

9. See, e.g., BRADFORD VIVIAN, *CAMPUS MISINFORMATION: THE REAL THREAT TO FREE SPEECH IN AMERICAN HIGHER EDUCATION* 3–4 (2022); Ginsburg, *supra* note 1, at 239.

recent attacks on education, knowledge, and academic expertise, on the one hand, and growing concerns about the erosion of democracy, on the other? What are the various components of this assault, and how have they emerged and developed? To what extent has democratic erosion facilitated or contributed to this assault? To what extent should that assault itself be understood as “anti-democratic” in character, and why? What roles have money and private actors played in enabling these attacks? What strategies might effectively protect education and knowledge in the face of this onslaught, and how can education and knowledge production contribute to the protection and advancement of democratic principles, practices, and institutions?

The symposium brought together a diverse and multidisciplinary group of leading scholars, lawyers, advocates, and elected officials from across the United States.¹⁰ In addition to writing extensively on academic freedom, university governance, freedom of speech, and democratic institutions in their scholarship and other publications, most of the faculty participants have also worked actively on these issues in other capacities, ranging from engagement with organizations such as the American Association of University Professors and Law and Society Association to work on their own campuses. Other symposium participants included lawyers, advocates, and organizers who have

10. Participants included Jacqueline Allain (PEN America), Sigal Ben-Porath (University of Pennsylvania), Eve Darian-Smith (University of California, Irvine), Anna V. Eskamani (Representative, Florida House of Representatives), Morenike Fajana (NAACP Legal Defense and Education Fund), Katrina Feldkamp (NAACP Legal Defense and Education Fund), Liliana M. Garces (University of Texas), Jonathan D. Glater (University of California, Berkeley), Helen Gym (former City Councilmember At-Large, Philadelphia City Council), Emily M.S. Houh (University of Cincinnati), Antonio L. Ingram II (NAACP Legal Defense and Education Fund), Jyoti Jasrasaria (Elias Law Group LLP), Isaac Kamola (Trinity College), Liz Leininger (St. Mary's College of Maryland), Bethany Letiecq (George Mason University), Anne Marie Lofaso (West Virginia University), Alison Macrina (Library Freedom Project), Dara Purvis (Penn State University), Henry Reichman (California State University, East Bay), Jennifer Ruth (Portland State University), Allison Scharfstein (NAACP Legal Defense and Education Fund), Kim Lane Scheppele (Princeton University), Brian Soucek (University of California, Davis), and Dheepa Sundaram (University of Denver). Several faculty members from Philadelphia area universities served as moderators: Ed Brockenbrough (University of Pennsylvania), Amy C. Offner (University of Pennsylvania), Sharrona Pearl (Drexel University), Theodore W. Ruger (University of Pennsylvania School of Law), and Chloe Silverman (Drexel University). The full schedule and program for the symposium are available at <https://klhn.co/Drexel-L-Rev-2023> [<https://perma.cc/3EX2-638Z>].

been actively engaged in litigation, legislative advocacy, policy development, and organizing campaigns to resist censorship, defend truth in education, advance diversity and inclusion, and protect the integrity of teaching and research. The symposium also featured current and former elected officials who have grappled with these issues as members of state and local legislative bodies.

Over the course of six panels and two keynote sessions, the symposium participants discussed the origins of recent attacks on education and knowledge, surveying the broader political, social, and economic landscape within which these threats have emerged and situating these developments within the context of a broader rise of populist, anti-democratic forces in the United States and around the world. Several participants discussed the role of well-funded, “dark money” organizations in driving these attacks and the ways in which other civil society actors—sometimes operating transnationally—have reinforced and contributed to these attacks in various ways. At a more granular level, panelists mapped and analyzed particular components of this assault in various states, dissecting and critiquing the specific provisions of various laws and proposals targeting schools, colleges, universities, and libraries and discussing the harms these measures have visited upon marginalized communities. Participants also explored a variety of conceptual issues arising from these developments, including the ways in which distinctions between “academic freedom” and “freedom of speech” are often misunderstood or conflated, the limitations of seeking to maintain institutional neutrality in the face of attacks on academic institutions’ core values and mission, the selective and opportunistic ways in which “parental rights” has been invoked in support of recent initiatives, and the essential role of institutional autonomy and faculty governance to the protection of academic freedom. Finally, panelists considered and discussed various strategies for protecting and advancing education and knowledge—including litigation and administrative complaints, legislative advocacy, the development of alternative educational spaces, institutional adaptation and

support for faculty, and various forms of organizing—and explored the opportunities and limitations that different strategies present under circumstances in which democratic institutions are also vulnerable.

I. MAPPING THE LANDSCAPE OF THREATS TO EDUCATION AND KNOWLEDGE

As Bradford Vivian has explained, public discourse and mainstream news coverage of higher education frequently rest on various forms of misinformation and distortion.¹¹ Elite national news organizations often give grossly disproportionate attention to specific “culture war” incidents at a small handful of elite private institutions, for example—and even then, often in misleading or misinformed ways—and then proceed to generalize about “higher education” more broadly from there.¹² Especially in recent years, however, some of the most dangerous and far-reaching threats to higher education have systematically targeted public institutions, sometimes in arcane, technical

11. VIVIAN, *supra* note 9; see also Amy Kapczynski, *The Real Lessons We Should Draw from Claudine Gay's Resignation*, LPE PROJECT (Jan. 8, 2024), <https://lpeproject.org/blog/the-real-lessons-we-should-draw-from-claudine-gays-resignation/> [<https://perma.cc/PM4J-7SR5>].

12. See Don Moynihan, *The Campaign That Removed the President of Harvard Was About DEI, Not Plagiarism*, CAN WE STILL GOVERN? (Dec. 22, 2023), <https://donmoynihan.substack.com/p/the-campaign-to-remove-the-president> [<https://perma.cc/96L9-BMN7>] (discussing tendency by *New York Times* reporters to “treat higher education purely from a culture war perspective, building on narratives of woke students and besieged conservatives”); VIVIAN, *supra* note 9, at 8 (discussing media tendency to “turn[] fixations with occasional conflicts on specific campuses into sweeping condemnations of higher education in general”); see also Ben Cas-selman, *Shut Up About Harvard*, FIVETHIRTYEIGHT (Mar. 30, 2016, 6:30 AM), <https://fivethirtyeight.com/features/shut-up-about-harvard/> [<https://perma.cc/99LV-AUDF>]; Vimal Patel, *Colleges Are Losing Control of Their Story. The Banh-Mi Affair at Oberlin Shows How*, CHRON. HIGHER EDUC. (Oct. 31, 2019), <https://www.chronicle.com/article/colleges-are-losing-control-of-their-story-the-banh-mi-affair-at-oberlin-shows-how/> [<https://perma.cc/7UGQ-QVP6>]; Luisa Marcela Ossa, *The Mainstream Media Is Getting Academia Wrong. Still*, ESQUIRE (Feb. 14, 2022), <https://www.esquire.com/news-politics/a39038497/college-elitism-media-coverage-essay/> [<https://perma.cc/3JLG-NH28>]. But cf. Paul Musgrave, *The Capital Strike*, SYSTEMATIC HATREDS (Dec. 12, 2023), <https://musgrave.substack.com/p/the-capital-strike> [<https://perma.cc/9FH4-JV69>] (arguing that while “[i]t is true that the elite media of the United States . . . spend too much time covering the campus politics of the Ivy League . . . [w]e actually need to pay attention to what’s happening at the Ivies right now in relation to the current conflict . . . as a protest action by wealthy and powerful people designed to break private institutions—and their charges—to their will”).

ways that garner limited public attention.¹³ When this recent wave of ideologically driven threats has managed to enter mainstream public consciousness, Florida frequently has been at the forefront of that attention. The pattern of legislative and executive attacks that Florida's Republican political leaders have leveled against higher education has been particularly severe and extensive, and the high profile attempts by the state's Republican governor to try to build a national political brand on the basis of that assault have ensured significant media attention.¹⁴

Florida similarly loomed large in the *Drexel Law Review* symposium, which featured numerous participants who have actively worked on these matters in various capacities within the state. The full scale assault on Florida's public higher education system provides a particularly stark illustration of issues at the heart of the symposium's theme. As discussed at length in two reports produced by AAUP's Special Committee on Academic Freedom in Florida in 2023, the state's public higher education system has been subject to an "unparalleled" and systematic set

13. See *supra* notes 1–4 and accompanying text; Philip Bump, *Furor Over the Ivies — and Crickets About Florida*, WASH. POST (Dec. 8, 2023, 11:19 AM), <https://www.washingtonpost.com/politics/2023/12/08/higher-education-desantis-florida-ivies/> [https://perma.cc/A929-Y2LC]; Paul Krugman, *The Biggest Threat to America's Universities*, N.Y. TIMES (Dec. 14, 2023), <https://www.nytimes.com/2023/12/14/opinion/harvard-desantis-florida-college.html> [https://perma.cc/J6YX-74V6]; Katherine Knott, *DeSantis Challenges Constitutionality of Accreditation*, INSIDE HIGHER ED (June 27, 2023), <https://www.insidehighered.com/news/government/student-aid-policy/2023/06/27/florida-lawsuit-challenges-constitutionality> [https://perma.cc/SZY7-QUZT].

14. See, e.g., David Smith, *Ron DeSantis Put Nearly All His Eggs in the Basket of a 'War on Woke'*, GUARDIAN (Jan. 22, 2024), <https://www.theguardian.com/us-news/2024/jan/21/ron-desantis-republican-presidential-candidate-dropped-out-analysis> [https://perma.cc/N9WJ-JRQT]; Stephanie Saul, *In Florida's Hot Political Climate, Some Faculty Have Had Enough*, N.Y. TIMES (Dec. 4, 2023), <https://www.nytimes.com/2023/12/03/us/florida-professors-education-desantis.html> [https://perma.cc/A3NZ-F3DH]; see also Rep. Maxwell Alejandro Frost, Memorandum on Ad Hoc Hearing on Oversight of Anti-Democratic Abuses of Power in the State of Florida (June 21, 2023), https://frost.house.gov/imo/media/doc/2023.06.21-memo-congressman-frost-ad-hoc-hearing-overisght-of-anti-democratic-abuses-of-power-in-the-state-of-florida_0.pdf; Neal H. Hutchens & Vanessa Miller, *Florida's Stop WOKE Act: A Wake-Up Call for Faculty Academic Freedom*, 48 J. COLL. & UNIV. L. 35 (2023); Kathryn Russell-Brown, "The Stop WOKE Act": HB 7, Race, and Florida's 21st Century Anti-Literacy Campaign, 47 N.Y.U. REV. L. & SOC. CHANGE 338 (2023); Mary Anne Franks, *The Lost Cause of Free Speech*, 2 J. FREE SPEECH L. 337 (2022); KATHERYN RUSSELL-BROWN & RYAN MORINI, A WAY FORWARD: UF RACE SCHOLARS ON SUPPORT, OBSTACLES, AND THE NEED FOR INSTITUTIONAL ENGAGEMENT (2021).

of attacks that threatens “the very survival of meaningful higher education in the state.”¹⁵

The most vivid of these episodes arguably has involved the hostile takeover of New College of Florida. In January 2023, in a dramatic and overtly politicized intervention, the state’s Republican governor, Ron DeSantis, engineered the appointment of a slate of partisan trustees comprising a majority of the board. The new appointees, whose ranks included several high-profile, right-wing activists from outside of Florida, quickly took a wrecking ball to the institution and began to take sweeping actions to remake the college in accordance with their own ideological vision. Almost immediately, the trustees summarily fired the school’s president, Patricia Okker, and replaced her with one of the governor’s political associates—Richard Corcoran, a former Republican speaker of the Florida House of Representatives with no experience working in higher education as a scholar, as a teacher, or in any other capacity—and gave him a generous base salary of almost \$700,000, an increase of almost \$400,000 over the salary that Okker had received.¹⁶

15. AFSHAN JAFAR, HENRY REICHMAN, DAVARIAN BALDWIN, EMILY M.S. HOUH, ANIL KALHAN, CHARLES TOOMBS, & BRIAN TURNER, AM. ASS’N UNIV. PROFESSORS, SPECIAL COMM. ON ACAD. FREEDOM IN FLORIDA, POLITICAL INTERFERENCE AND ACADEMIC FREEDOM IN FLORIDA’S PUBLIC HIGHER EDUCATION SYSTEM (Nov. 2023) (hereinafter AAUP SPECIAL COMMITTEE ON FLORIDA, FINAL REPORT), <https://www.aaup.org/report/report-special-committee-political-interference-and-academic-freedom-florida%E2%80%99s-public-higher> [<https://perma.cc/UQ8Q-X5MW>]; AFSHAN JAFAR, HENRY REICHMAN, DAVARIAN BALDWIN, EMILY M.S. HOUH, ANIL KALHAN, CHARLES TOOMBS, & BRIAN TURNER, AM. ASS’N UNIV. PROFESSORS, SPECIAL COMM. ON ACAD. FREEDOM IN FLORIDA, PRELIMINARY REPORT OF THE SPECIAL COMMITTEE ON ACADEMIC FREEDOM AND FLORIDA (May 2023), <https://www.aaup.org/report/preliminary-report-special-committee-academic-freedom-and-florida> [<https://perma.cc/MG79-CQKC>]; see also Afshan Jafar, Anil Kalhan, Emily M.S. Houh & Henry Reichman, *Here’s Why We Fear a Dystopian Future for Florida’s Universities*, TAMPA BAY TIMES (Dec. 16, 2023), <https://www.tampabay.com/opinion/2023/12/16/heres-why-we-fear-dystopian-future-floridas-universities-column/> [<https://perma.cc/KA5E-8VLT>]. I served as a member of the AAUP Special Committee, and since 2020 I have served as a member of AAUP Committee A on Academic Freedom and Tenure. As with my remarks during the symposium, the views expressed here are my own and do not necessarily reflect those of AAUP or these AAUP committees.

16. Divya Kumar, *New College Board More Than Doubles President’s Pay for Richard Corcoran*, TAMPA BAY TIMES (Feb. 13, 2023), <https://www.tampabay.com/news/education/2023/02/13/new-college-board-more-than-doubles-presidents-pay-richard-corcoran/> [<https://perma.cc/YEK9-D56E>] (noting that Corcoran’s compensation package also included “annual housing stipend of \$84,000, a \$12,000 automobile stipend and yearly retirement

Other patronage hires into the New College administration soon followed. Accompanying this cronyism was a series of moves violating established principles of academic freedom and shared governance as well as the school's own collective bargaining agreement. Over several months, the new leadership denied tenure to five professors who had already successfully completed the review process, fired faculty and staff members who criticized the takeover, manipulated faculty search processes, and took steps to impose curricular changes without meaningful faculty involvement, including elimination of the school's gender studies program. The new board and president also unilaterally eliminated the institution's diversity, equity, and inclusion programs. By August 2023, New College had been hollowed out to a considerable degree, with forty percent of the faculty having left the institution and many students transferring elsewhere.¹⁷

As discussed in the AAUP Special Committee's report, Florida's assault on higher education has extended well beyond the takeover of New College, as Florida Republicans have instituted a raft of measures that are designed not merely to restrict the content of teaching and research on disfavored subjects, but also to institute more far-reaching political control over colleges and universities.¹⁸ The assault has by no means been limited to

supplement of \$104,850"). When the board later installed Corcoran as the school's permanent president, it lavished him with an even more extravagant package that could exceed \$6.3 million over five years including bonuses and deferred compensation. Ian Hodgson, *At New College, a Raise for President Corcoran Could Reach \$300k a Year*, TAMPA BAY TIMES (Oct. 20, 2023), <https://www.tampabay.com/news/education/2023/10/20/new-college-raise-president-corcoran-could-reach-300k-year/> [<https://perma.cc/Y4W9-UGLF>].

17. AAUP SPECIAL COMMITTEE ON FLORIDA, FINAL REPORT, *supra* note 15, at 3–12. At the symposium, Liz Leininger, a former New College faculty member who left the school during the summer of 2023, powerfully shared her experiences as a faculty member in the midst of the takeover. Liz Leininger, *In the Eye of the Hurricane: Why the Story of New College Matters Beyond Florida*, Presentation at *Drexel Law Review Symposium: Knowledge at Risk: Democratic Erosion and the Contemporary Assault on Education and Expertise* (Nov. 3, 2024); *see also* Juliana Paré-Blagoev, *Fighting for the Freedom to Learn at New College of Florida*, ACADEME (Fall 2023), <https://www.aaup.org/article/fighting-freedom-learn-new-college-florida> [<https://perma.cc/V9HU-ZVUR>].

18. AAUP SPECIAL COMMITTEE ON FLORIDA, FINAL REPORT, *supra* note 15; *see also* Pernell v. Florida Bd. of Governors of State Univ. Sys., 641 F.Supp.3d 1218 (N.D. Fla. 2022), *appeal docketed*, No. 22-13992 (11th Cir. Nov. 30, 2022), *stay denied*, 2023 WL 2543659 (11th Cir. Mar. 16, 2023).

higher education. A number of the laws targeting higher education also cover schools and libraries, and other recent laws target those institutions specifically. As a number of symposium participants discussed, legislators, executive officials, and national activist groups have in some ways been even more aggressive in their efforts targeting these local institutions. For example, provisions in a recent Florida statute encourage and facilitate the ability of students to surveil and report their teachers, creating a “private subordination regime” of vigilante enforcement analogous to those established, for example, to curtail access to legal abortion and subordinate LGBTQ+ people in various states.¹⁹ In recent years, Florida has also seen a much higher number of attempts to ban books from public and school libraries than any other state, thanks in part to provisions in recent state laws that similarly facilitate the ability of private citizens to act as vigilantes to challenge particular books and seek their removal from library collections.²⁰

Nor has this assault been limited to Florida, or for that matter to public institutions. While proponents of these incursions have achieved some of their most significant and high profile victories in Florida, those successes have been the product of efforts by an extensive network of think tanks, advocacy groups, and media outlets, in many cases fueled by wealthy donors, that has pursued this agenda nationwide. Pennsylvania, for example, has been a prime target for these groups and, like Florida, has faced particularly aggressive efforts to target public schools and libraries within the state. In an illuminating

19. See *Link v. Diaz*, 669 F.Supp.3d 1192 (N.D. Fla. 2023). See generally Jon D. Michaels & David L. Noll, *Vigilante Federalism*, 108 CORNELL L. REV. 1187 (2023).

20. See, e.g., Douglas Soule, *Florida Had More Books Challenged Than Any Other State*, *American Library Association Says*, TALLAHASSEE DEMOCRAT (Apr. 1, 2024), <https://www.tallahassee.com/story/news/politics/2024/04/01/american-library-association-florida-leads-nation-in-books-challenged/73122000007/> [https://perma.cc/C2FK-GDSZ]; Leslie Postal, *Florida Leads the U.S. by Far in School Book Bans*, *New Report Says*, ORLANDO SENTINEL (Sept. 21, 2023), <https://www.orlandosentinel.com/2023/09/21/florida-leads-the-u-s-in-school-book-bans-new-report-says/> [https://perma.cc/JC26-NJGZ]; Ian Hodgson, *Florida Schools Got Hundreds of Book Complaints—Mostly from 2 People*, TAMPA BAY TIMES (Aug. 26, 2023), <https://www.tampabay.com/news/education/2023/08/24/florida-school-book-complaints-library-challenges-ban-department-of-education-bruce-friedman-vicki-baggett-parental-rights-sold-patricia-mccormick/> [https://perma.cc/GB3Q-JM2U].

keynote discussion during the symposium, Florida State Representative Anna Eskamani and former Philadelphia City Councilmember At-Large Helen Gym explored some of the parallels in their respective states' recent experiences.²¹

For example, like Florida, Pennsylvania has ranked among the highest states in the country in school library book bans, with one Pennsylvania school district ranking higher than any other school district in the country.²² In other states, such as Ohio, proponents of these incursions have sought to go even further than Florida by targeting private colleges and universities with the same kinds of restrictions that have been imposed upon public institutions in other states, as Emily Houh discusses in her contribution to this symposium.²³ This focus on private colleges and universities has intensified in midst of the Israel-Gaza war, as some conservative politicians, activists, and donors have opportunistically seized upon faculty and student expression about the war, and about the Israel-Palestine conflict generally, as a pretext to take broader and more aggressive aim at academic freedom and institutional autonomy at a wider range of colleges and universities.²⁴

21. Anna V. Eskamani & Helen Gym, Keynote Discussion at Drexel Law Review Symposium: Knowledge at Risk: Democratic Erosion and the Contemporary Assault on Education and Expertise (Nov. 4, 2024).

22. See, e.g., Samantha Melamed, *How a Moms for Liberty-Aligned Attack on Library Content Is Upending Politics in Philly Burbs*, PHILA. INQUIRER (Sept. 28, 2023), <https://www.inquirer.com/news/telford-library-funding-book-bans-lgbt-obscurity-montgomery-county-20230928.html> [https://perma.cc/VC4S-RK4M]; Anna Gustafson, *Book Ban Frenzy Reveals a Far-Right Political Agenda in Pennsylvania*, PA. INDEP. (Nov. 2, 2023), <https://pennsylvaniaindependent.com/book-ban-frenzy-far-right-agenda-moms-for-liberty/> [https://perma.cc/4CEKSMXU]; Maddie Hanna, *Moms for Liberty Is Convening This Summer in Philly, a Backdrop for the Group's Focus on 'Preserving American Values'*, PHILA. INQUIRER (Apr. 28, 2023), <https://www.inquirer.com/news/moms-for-liberty-philadelphia-national-summit-summer-2023-20230428.html> [https://perma.cc/RJR3-PDL3].

23. See *infra* note 54 and accompanying text.

24. See, e.g., Farrell & Copeland, *supra* note 5 (noting that "behind [the] anger" of one wealthy Harvard donor since October 2023 have been "personal grievances that predate the uproar" arising from the war, arising from "a gradual degradation of the relationship with his alma mater" over a period of "at least the past three years"); Ensign & Chung, *supra* note 5 (characterizing backlash against elite universities by wealthy conservative donors since October 2023 as "final straw after years of growing disenchantment with the schools over what they see as a leftward political shift"); Confessore, *supra* note 2 (describing Republicans' use of "controversies over antisemitism on campus this fall [as a] fresh opportunity to make their [preexisting] case" against campus diversity, equity, and inclusion initiatives).

As argued by a number of symposium participants, colleges and universities have been vulnerable to these external attacks in part because the internal commitment of their own administrators and trustees to academic freedom, freedom of speech, and educational autonomy has long been uneven, and in too many instances insufficient. As Michael Meranze has noted, “[t]he challenge today is that the threats to academic freedom come both from society outside the school and from within the structures of the contemporary university.”²⁵ The overwhelmingly non-academic composition and accompanying mindset of governing boards and administrations contributes to their uneven commitment to these principles.²⁶ While most trustees undoubtedly strive to perform their responsibilities with diligence and care, only a small percentage of trustees have any professional experience in higher education.²⁷ Increasingly, presidents

25. Michael Meranze, *The Function of the University at the Present Time: On Julia Schleck's "Dirty Knowledge,"* L.A. REV. BOOKS (Jan. 21, 2023), <https://lareviewofbooks.org/article/the-function-of-the-university-at-the-present-time-on-julia-schlecks-dirty-knowledge> [<https://perma.cc/XYP3-LNR2>].

26. See, e.g., Benjamin Ginsberg, *College Presidents Should Come from Academia*, N.Y. TIMES (Mar. 3, 2016), <https://www.nytimes.com/roomfordebate/2016/03/01/college-presidents-with-business-world-ties/college-presidents-should-come-from-academia> [<https://perma.cc/6UNQ-8FE4>] (arguing that “business people are generally unprepared and unqualified to manage a university”); John Thelin, *Regardless of Background, A College President Must Uphold Educational Values*, N.Y. TIMES (Mar. 1, 2016), <https://www.nytimes.com/roomfordebate/2016/03/01/college-presidents-with-business-world-ties/regardless-of-background-a-college-president-must-uphold-educational-values-13> [<https://perma.cc/3QPU-HJDQ>] (“[W]hen university trustees become dazzled by a presidential candidate who invokes business slogans such as ‘disruptive innovation’ — which were mostly ineffective in business and are especially inappropriate for colleges — they are laying a blue print for disaster.”).

27. Robert A. Scott, *Unprepared Trustees: A Critical Problem in Higher Education*, ACADEME BLOG (Feb. 22, 2019), <https://academeblog.org/2019/02/22/unprepared-trustees-problem-higher-education/> [<https://perma.cc/T5HH-H9R5>] (noting that less than 10 percent of trustees “have any professional experience in higher education”); Patrick Sanaghan, *The Trouble With Trustees*, INSIDE HIGHER ED (June 15, 2014), <https://www.insidehighered.com/views/2014/06/16/essay-negative-role-being-played-too-many-trustees-colleges> [<https://perma.cc/VG3L-YPKB>] (discussing concerns about trustees who “tend to be critical of faculty but not knowledgeable or curious about faculty life” arguing that a growing number of trustees “clearly don’t understand” the institutions that they are involved with governing); Crespo & Weld, *supra* note 5 (noting that Harvard’s governing board, the Harvard Corporation, is “a self-appointed board composed primarily of business leaders who have never worked in higher education”); see also ROBERT A. SCOTT, HOW UNIVERSITY BOARDS WORK: A GUIDE FOR TRUSTEES, OFFICERS, AND LEADERS IN HIGHER EDUCATION 71–72 (2018) (“Previous experience in higher education is often undervalued when it comes to board membership.”).

and other senior college and university administrators also lack meaningful experience as scholars or teachers as well.²⁸ This shift in the composition of the senior administrative leadership at colleges and universities has coincided with lucrative increases in their compensation packages at many institutions—even as faculty and staff salaries at many of those same institutions have often stagnated.²⁹

In the midst of recent contention over the Israel-Gaza war, the failure of many university presidents to adequately defend academic freedom, shared governance, freedom of speech, and institutional autonomy has made the highly variable and often contingent nature of their commitment to these principles—along with the widening disconnect between administrators,

28. See, e.g., Laura McKenna, *Why Are Fewer College Presidents Academics?* ATLANTIC (Dec. 3, 2015), <https://www.theatlantic.com/education/archive/2015/12/college-president-mizzou-tim-wolfe/418599/> [<https://perma.cc/E685-59NM>]; Greg Toppo, *By One Measure, 'Nontraditional' Presidents Less Rare*, INSIDE HIGHER ED (May 29, 2018), <https://www.insidehighered.com/news/2018/05/30/new-findings-cast-net-more-broadly-nontraditional-college-presidents> [<https://perma.cc/4T2R-ASKK>].

29. Jonathan Zimmerman, *Amy Gutmann's \$23 Million and the Triumph of Cynicism*, INSIDE HIGHER ED (June 27, 2023), <https://www.insidehighered.com/opinion/views/2023/06/27/no-university-president-should-earn-23-million-opinion> [<https://perma.cc/9QJB-75V5>]; see also Judith A. Wilde & James H. Finkelstein, *Is It Time to Cut Presidents' Pay?* CHRON. HIGHER EDUC. (Apr. 5, 2022), <https://www.chronicle.com/article/is-it-time-to-cut-presidents-pay> [<https://perma.cc/GJ9L-45QG>] (finding that inflation-adjusted presidential compensation at 49 state flagship universities increased almost 32 percent on average between 2010 and 2019, even as faculty salaries largely remained flat or significantly declined in the overwhelming majority of those same institutions); Rick Seltzer, *Presidential Perks*, INSIDE HIGHER ED (June 15, 2016), <https://www.insidehighered.com/news/2016/06/16/public-university-presidents-seeing-big-gains-bonuses-other-perks> [<https://perma.cc/J3PS-8UYU>] (quoting hypothesis by researcher Judith A. Wilde that “[o]nce you get a president who is very privileged, he or she tends to take that into the workplace”). Consistent with the national picture, all of these trends—board members and administrators lacking experience as scholars or educators, growing percentages of non-tenure track faculty, severe (but selective) austerity measures, lavish and growing compensation for senior administrators, stagnant compensation for faculty and staff—have been amply in evidence at this institution for many years. See, e.g., Kejsi Ruka, *President John Fry's Salary Moves Up the Rankings*, THE TRIANGLE (Drexel) (Feb. 16, 2024), <https://www.thetriangle.org/news/john-fry-salary/> [<https://perma.cc/EA9R-3G2D>]; Ariana Perez-Castells, *SEPTA's 30th Street Station Is Getting a New Name and \$3.1 Million Courtesy of Drexel University*, PHILA. INQUIRER (Dec. 21, 2023), <https://www.inquirer.com/business/septa-30th-street-market-frankford-trolley-drexel-station-name-change-20231221.html> [<https://perma.cc/GA79-H6VJ>]; see also DAVID A. PAUL, *WHEN THE POT BOILS: THE DECLINE AND TURNAROUND OF DREXEL UNIVERSITY* 188 (2008) (identifying a “fundamental tension between the values of the board and those of the faculty” at the institution that “remains a central challenge for Drexel University and has led to an attitude of resignation and alienation among some faculty”).

trustees, donors, and politicians, on the one hand, and faculty and students, on the other—more plain to see.³⁰ Faced with brazen political opportunism from partisan actors seeking to delegitimize and interfere with higher education institutions, a distressing number of university administrators appear to have chosen to acquiesce, capitulate, or even actively collaborate in undermining the very values and institutional missions they are entrusted to uphold, rather than acting forcefully to defend academic freedom, shared governance, freedom of speech, and institutional autonomy from these external threats.³¹

30. See, e.g., Louis Menand, *Academic Freedom Under Fire*, NEW YORKER (May 6, 2024), <https://www.newyorker.com/magazine/2024/05/06/academic-freedom-under-fire> [https://perma.cc/7D4H-58EZ] (describing congressional testimony of Columbia University President Minouche Shafik in April 2024 as “breathtaking ‘What was she thinking?’ episode in the history of academic freedom”); see also Megan Zahneis, *The Past Month Has Seen a Flurry of No-Confidence Votes in College Presidents*, CHRON. HIGHER EDUC. (May 9, 2024), <https://www.chronicle.com/article/the-past-month-has-seen-a-flurry-of-no-confidence-votes-in-college-presidents> [https://perma.cc/V244-BRXX]; Pozen, *supra* note 3; *supra* note 5 and accompanying text.

31. See, e.g., AAUP Columbia University Chapter & AAUP Barnard College Chapter, Joint Statement (April 19, 2024), <https://drive.google.com/file/d/1rciMXczCli9XjUxtMyIFjUQs3JjpXh4X/view> [https://perma.cc/YFE5-64UU] (“In the face of slanderous assaults on Columbia faculty and students and of gross interference in academic practices by Congressional inquisitors, President Shafik not only did not object—she capitulated to their demands . . . [and] allowed [academic] freedom for Columbia faculty to be publicly shredded.”); AAUP Univ. of Pa. Chapter, Exec. Comm., AAUP-Penn Statement on Dec. 5 Congressional Hearing (Dec. 7, 2023), <https://aaup-penn.org/aaup-penn-statement-on-dec-5-congressional-hearing/> [https://perma.cc/D338-RDLF] (criticizing University of Pennsylvania President Liz Magill for “[spending] several months fruitlessly attempting to placate donors, trustees, members of Congress, and lobbying organizations that neither understand nor respect the principles of academic freedom” and failing, during a December 2023 congressional hearing, to adequately defend the academic freedom of Penn faculty members who have been subjected to campaigns of targeted harassment); Nadia Abu El-Haj, *The Eye of the Beholder*, N.Y. REV. BOOKS (Dec. 24, 2023), <https://www.nybooks.com/online/2023/12/24/the-eye-of-the-beholder/> [https://perma.cc/HV9V-ZZ5F] (“Faced with [Rep. Elise] Stefanik’s relentless questioning, the presidents of Harvard, Penn, and MIT could have refused, like the academics they are, to cede the intellectual ground to her litany of falsehoods. . . . No such responses were offered, however.”); cf. Thomas J. Sugrue, *College Presidents Behaving Badly*, CHRON. HIGHER EDUC. (May 6, 2024), <https://www.chronicle.com/article/college-presidents-behaving-badly> [https://perma.cc/B2V5-CMGT] (“We are living through the most intense period of student protest since the 1960s, and college presidents seem intent on repeating the mistakes of their predecessors.”). In a subsequent congressional hearing, public school officials engaged members of the same House committee, on the same range of issues and questions, rather differently. See Alan Blinder, Annie Karni & Dana Goldstein, *How Public School Leaders Upstaged Republicans and the Ivy League*, N.Y. TIMES (May 9, 2024), <https://www.nytimes.com/2024/05/09/us/house-anti-semitism-hearing-schools.html> [https://perma.cc/VTN6-6B62].

These dynamics have been vividly on display over the past year at this institution's Philadelphia neighbor, the University of Pennsylvania, as a series of incidents has prompted a significant number of Penn faculty members and students to raise questions about the commitment of the university's administrative leaders to protecting academic freedom, freedom of speech, and shared governance from external threats.³² Following the politicized ouster of the university's president in December 2023, some trustees and donors reportedly signaled more expressly a desire to intervene in decision-making over core academic functions in ways that run afoul of academic freedom and shared governance principles.³³ Although Penn faculty members have pushed back against the prospect of such interventions in large numbers, whether and to what extent college and university presidents will prove able and willing to resist these kinds of external incursions over a longer period of time, either at Penn or at other institutions, remains a decidedly fraught and unresolved question.³⁴

32. See AAUP Univ. of Pa. Chapter, Exec. Comm., Statement on Threats to Academic Freedom, University Governance, and Safety at the University of Pennsylvania (Oct. 28, 2023), <https://aaup-penn.org/statement-on-threats-to-academic-freedom-university-governance-and-safety-at-the-university-of-pennsylvania/> [https://perma.cc/5UV3-B66Z]; Letter from AAUP Univ. of Pa. Chapter, Exec. Comm., to Liz Magill, President, University of Pennsylvania, et al. (Nov. 20, 2023), <https://aaup-penn.org/aaup-penn-letter-on-targeted-harassment/> [https://perma.cc/T63J-G66R]; AAUP Univ. of Pa. Chapter, Exec. Comm., Urgent Message: MEC 11/28 Film Screening and Further Threats to Academic Freedom (Nov. 28, 2023), <https://aaup-penn.org/urgent-message-mec-11-28-film-screening-and-further-threats-to-academic-freedom/> [https://perma.cc/UJ7B-AJ5M].

33. Susan Snyder, *Penn Faculty Fear the Donor Who Started the Effort to Oust Liz Magill Is Attempting to Set the Agenda for Trustees*, PHILA. INQUIRER (Dec. 12, 2023), <https://www.inquirer.com/education/marc-rowan-university-pennsylvania-agenda-20231212.html> [https://perma.cc/WL9R-K4U9]; Stephanie Saul, *At Penn, Tensions May Only Be Growing After Magill's Resignation*, N.Y. TIMES (Jan. 29, 2024), <https://www.nytimes.com/2024/01/29/us/university-of-pennsylvania-marc-rowan-magill.html> [https://perma.cc/SB98-RZNY].

34. Letter from University of Pennsylvania Faculty Senate Tri-Chairs Tulia G. Falleti, Eric A. Feldman & Vivian L. Gadsden to Penn Trustees (Jan. 16, 2024), <https://almanac.upenn.edu/articles/from-the-faculty-senate-tri-chairs-faculty-letter-to-penn-trustees> [https://perma.cc/PB7H-GLJN] (letter signed by 1,214 Penn faculty members "unambiguously reject[ing] the view that the Board of Trustees, the schools' Boards of Advisors, alumni, or donors should determine Penn's academic priorities or governance policies"); Hannah Sung & Jules Lingenfelter, *Donors Rule Everything Around Me*, 34TH ST MAG. (Penn) (Mar. 14, 2024), <https://www.34st.com/article/2024/03/liz-magill-upenn-free-speech-academic-freedom-aaup-fire-stefanik-mark-rowan> [https://perma.cc/6J5L-HKXC] Muna Uwanamodo & Ethan Young, *'Let Us Teach': Over 100 Penn*

If anyone at our own institution might be tempted or lulled into feeling *schadenfreude* or complacency when learning of these kinds of experiences at other universities, it is well worth recalling that this institution's own recent history, as discussed extensively in public reporting over the course of 2016 and 2017, has provided ample occasion to worry about related concerns.³⁵ On Christmas Eve in December 2016, George Ciccariello-Maher, a tenured professor of political science, posted a comment on social media that was amplified by right-wing media and quickly went viral—which prompted a campaign of targeted harassment against both Ciccariello-Maher and the university.³⁶ The next morning, the university issued an unsigned public statement condemning Ciccariello-Maher's post and implying that he might even face formal disciplinary action.³⁷ As members of the law school's faculty pointed out shortly thereafter, in a letter to the university's president, Ciccariello-Maher's comments clearly constituted protected extramural expression under academic freedom principles and the university's own

Affiliates Gather in AAUP-Led Protest for Academic Freedom, DAILY PENNSYLVANIAN (Penn) (Jan. 23, 2024), <https://www.thedp.com/article/2024/01/penn-faculty-community-demonstration-academic-freedom> [<https://perma.cc/ZN2J-8HQL>].

35. See also *supra* note 29.

36. For details, see, for example, Scott Jaschik, *Drexel Condemns Professor's Tweet*, INSIDE HIGHER ED (Dec. 26, 2016), <https://www.insidehighered.com/news/2016/12/26/drexel-condemns-professors-tweet-about-white-genocide> [<https://perma.cc/GK4X-29BT>]. Ciccariello-Maher provided his own account of the episode in a statement to the Drexel student newspaper, *The Triangle*. Walker Alexander, *Drexel Professor Issues Statement on "White Genocide" Tweet*, THE TRIANGLE (Drexel) (Dec. 26, 2016), <https://www.thetriangle.org/news/drexel-professor-issues-statement-white-genocide-tweet/> [<https://perma.cc/NJ8S-B2HH>].

37. In full, the statement read as follows:

Drexel became aware today of Associate Professor George Ciccariello-Maher's inflammatory tweet, which was posted on his personal Twitter account on Dec. 24, 2016. While the University recognizes the right of its faculty to freely express their thoughts and opinions in public debate, Professor Ciccariello-Maher's comments are utterly reprehensible, deeply disturbing, and do not in any way reflect the values of the University.

The University is taking this situation very seriously. We contacted Ciccariello-Maher today to arrange a meeting to discuss this matter in detail.

Response to Professor George Ciccariello-Maher's Tweet, DREXEL NOW (Dec. 25, 2016), <http://drexel.edu/now/archive/2016/December/Drexel-response-Ciccariello-Maher/> [<https://perma.cc/XCM9-XLSU>].

policies.³⁸ In the face of substantial public criticism, the university's president and provost later issued a public statement purporting to grudgingly "recognize" Ciccariello-Maher's posts as "protected speech," but simultaneously scolding him for the manner in which he had spoken and effectively admonishing other faculty members that they should pick their words carefully when communicating on social media.³⁹

News reports later indicated that even as the president and provost were publicly acknowledging Ciccariello-Maher's posts as "protected speech," administrators also had simultaneously (but privately) sent him a "cautionary letter" about that

38. Letter from Drexel University Kline School of Law Faculty Members to John A. Fry, President, Drexel University (Dec. 28, 2016) (on file with *Drexel Law Review*) (citing and discussing Am. Ass'n. Univ. Professors, *Committee A Statement on Extramural Utterances* (1964)); see also Memorandum from Drexel University Kline School of Law Faculty Members to N. John DiNardo, Senior Vice Provost for Academic Affairs and Undergraduate Education and Professor of Physics, and Ludo Scheffer, Chair, Faculty Senate and Teaching Professor of Psychology (May 9, 2017) (on file with *Drexel Law Review*); Hank Reichman, *Drexel Must Defend Academic Freedom*, ACADEME BLOG (Dec. 26, 2016, 11:30AM), <https://academeblog.org/2016/12/26/drexel-must-defend-academic-freedom/> [<https://perma.cc/3WUD-W4V8>].

As multiple observers pointed out at the time, Drexel's original statement appeared to be premised on a basic misunderstanding of Ciccariello-Maher's comments and evidently was issued without seeking to clarify the context or meaning of those comments. E.g., Michael Hiltzik, *Another University Flunks the Free-Speech Test*, L.A. TIMES (Dec. 27, 2016), <https://www.latimes.com/business/hiltzik/la-fi-hiltzik-free-speech-drexel-20161227-story.html> [<https://perma.cc/T58V-G45P>] (observing that the misunderstanding caused Drexel to "end[] up labeling an attack on racist conspiracy-mongering 'utterly reprehensible.' We can assume that's not what they meant to do, but they're responsible for their own ignorance"); Samir Chopra, *Drexel University Should Uphold George Ciccariello-Maher's Academic Freedom* (Dec. 27, 2016), <http://samirchopra.com/2016/12/27/drexel-university-should-uphold-george-ciccariello-mahers-academic-freedom/> [<https://perma.cc/AJB4-DZG3>] ("I provide this bordering-on-pedantic analyses of Ciccariello-Maher's tweet, because the investigation I carry out above is in point of fact an elementary one; anyone with a modicum of intelligence would arrive at the same conclusion I did: Ciccariello-Maher was being satirical."); Matthew Dessem, *Drexel University, Apparently Unfamiliar With White Supremacist Lingo, Censures Prof For "White Genocide" Tweet*, SLATE (Dec. 27, 2016), <https://slate.com/culture/2016/12/drexel-censures-professor-for-white-genocide-tweet.html> ("[T]o think Ciccariello-Maher's statements were 'reprehensible,' Drexel's administration must have no idea about the origins or current usage of the term *white genocide*. It doesn't even qualify as a dog whistle . . .") [<https://perma.cc/5WWR-SJCM>]; see also Larry Platt, *George Ciccariello-Maher's White Genocide Tweet Proves Media's Failures*, PHILA. CITIZEN (Jan. 12, 2017), <https://thephiladelphiacitizen.org/george-ciccariello-maher-white-genocide-tweet/> [<https://perma.cc/LNY7-73BF>] (criticizing media coverage for resting on same misunderstanding).

39. Scott Jaschik, *Drexel, Twitter and Academic Freedom*, INSIDE HIGHER ED (Jan. 2, 2017), <https://www.insidehighered.com/news/2017/01/03/drexel-issues-new-statement-about-academic-freedom-and-inclusivity> [<https://perma.cc/3VRB-NV5V>].

extramural expression. Following a series of other comments on social media by Ciccariello-Maher that prompted targeted harassment campaigns that spring, the university proceeded to place Ciccariello-Maher under formal investigation for alleged violations of various university policies. According to news reports, the provost alleged that Ciccariello-Maher had engaged in “extremely damaging conduct” that had become a “serious distraction” to the university, noting in particular that “numerous prospective students” had declined to matriculate “because of [Ciccariello-Maher’s] conduct” and that “at least two potential significant donors to the university have withheld previously promised donations.”⁴⁰ The “committee of inquiry” that the provost was said to have created to investigate these allegations was reportedly constituted in an irregular manner, outside of established faculty governance processes.⁴¹

Later that year, the provost summarily placed Ciccariello-Maher on immediate “administrative leave,” once again apparently without appropriate faculty involvement, based on allegations that because of his social media posts, Ciccariello-Maher’s “presence on campus created a significant public safety risk to the Drexel University community.”⁴² Eventually, in

40. Colleen Flaherty, *Looking Into Tweets*, INSIDE HIGHER ED (Apr. 17, 2017), <https://www.insidehighered.com/news/2017/04/18/documents-show-drexel-investigating-professors-tweets-its-unclear-whether-faculty> [<https://perma.cc/Y6AE-3NEU>].

41. Letter from Hans-Joerg Tiede, Associate Secretary, Am. Ass’n Univ. Professors, to M. Brian Blake, Provost, Drexel University 1–2 (Oct. 12, 2017), <https://www.aaup.org/sites/default/files/Drexel-Ciccariello-Maher-10-12-17.pdf> [<https://perma.cc/NBH4-D4FZ>] [hereinafter AAUP Letter to Drexel Provost, Oct. 12, 2017]; Isaac Smith, *Drexel Publicly Promised Professor Freedom of Expression, but Privately Pursues Investigation*, FOUND. FOR INDIVIDUAL RTS. EDUC. (Jun. 6, 2017), <https://www.thefire.org/news/drexel-publicly-promised-professor-freedom-expression-privately-pursues-investigation> [<https://perma.cc/E4M5-G5ER>].

42. AAUP Letter to Drexel Provost, Oct. 12, 2017, *supra* note 41, at 1; Scott Jaschik, *Controversial Professor Placed on Leave*, INSIDE HIGHER ED (Oct. 10, 2017), <https://www.insidehighered.com/news/2017/10/11/drexel-places-controversial-professor-leave> [<https://perma.cc/Q38N-H9MK>]; Walker Alexander & Gina Vitale, *Students Walk Out of Class to Protest Prof’s Removal*, THE TRIANGLE (Drexel) (Nov. 17, 2017), <https://www.thetriangle.org/news/students-walk-out-of-class-to-protest-profs-removal/> [<https://perma.cc/rp7s-wc37>]; Christopher Newfield, *Feeding a Dangerous Fiction*, INSIDE HIGHER ED (Oct. 18, 2017), <https://www.insidehighered.com/views/2017/10/19/why-universities-should-not-crack-down-free-speech-essay> [<https://perma.cc/AFA4-8P39>]. For Ciccariello-Maher’s own accounts of his social media posts and the targeted harassment campaigns that achieved his suspension, see George Ciccariello-Maher, *Conservatives Are the Real Campus Thought Police Squashing Academic*

December 2017—after facing “nearly a year of harassment by right-wing, white supremacist media outlets and internet mobs” and a situation at the university that he described to have “become unsustainable”—Ciccariello-Maher opted to resign from his tenured position altogether.⁴³

Almost eight years later, this episode could be understood in relatively narrow terms—like other high profile recent cases—primarily as a case illustrating the kinds of academic freedom controversies that increasingly can arise in an era in which extramural expression by faculty members on social media and elsewhere has become routine, widespread, and readily accessible online.⁴⁴ However, understood more broadly, in the context of the themes of this symposium, the episode also looks like a different kind of canary in the coal mine: an illustration of the ways in which academic freedom can be violated in the face of targeted harassment campaigns and other external threats that are intertwined with broader, illiberal threats to democratic governance generally—even for faculty members ostensibly protected by tenure.⁴⁵ At a moment in which the disconnect

Freedom, WASH. POST (Oct. 10, 2017), <https://www.washingtonpost.com/news/posteverything/wp/2017/10/10/conservatives-are-the-real-campus-thought-police-squashing-academic-freedom/> [<https://perma.cc/CE9J-KAW4>]; Walker Alexander, *Triangle Talks with George Ciccariello-Maher*, THE TRIANGLE (Drexel) (Jul. 14, 2017), <https://www.thetriangle.org/news/triangle-talks-george-ciccariello-maher/> [<https://perma.cc/VK3S-CNDL>]; see also AAUP Letter to Drexel Provost, Oct. 12, 2017, *supra* note 41.

43. Marwa Eltagouri, *Professor Who Tweeted, ‘All I Want for Christmas Is White Genocide,’ Resigns After Year of Threats*, WASH. POST (Oct. 27, 2021), <https://www.washingtonpost.com/news/grade-point/wp/2017/12/29/professor-who-tweeted-all-i-want-for-christmas-is-white-genocide-resigns-after-year-of-threats/> [<https://perma.cc/DEB8-ABSL>].

44. See, e.g., HENRY REICHMAN, UNDERSTANDING ACADEMIC FREEDOM 83–98 (2021) (discussing cases involving Amy Wax and Steven Salaita); HENRY REICHMAN, THE FUTURE OF ACADEMIC FREEDOM 64–76 (2019); see also Ethan Young, *Leaked Documents Shed New Light on Recommended Amy Wax Sanctions, Her Appeal to Penn*, DAILY PENNSYLVANIAN (Penn) (Feb. 29, 2024), <https://www.thedp.com/article/2024/02/amy-wax-hearing-leaked-documents-penn> [<https://perma.cc/SK3T-DUW7>]; Jonathan Zimmerman, *My Amy Wax Problem*, INSIDE HIGHER ED (Jul. 25, 2022), <https://www.insidehighered.com/views/2022/07/26/amy-wax-can-speak-her-mind-not-demean-students-opinion> [<https://perma.cc/Q5HT-J42X>]. On protection of faculty members’ extramural expression under academic freedom principles, see also MATTHEW W. FINKIN & ROBERT C. POST, FOR THE COMMON GOOD: PRINCIPLES OF AMERICAN ACADEMIC FREEDOM 127–48 (2009).

45. See Ciccariello-Maher, *supra* note 42 (“In the best of cases, university administrations and departments have publicly condemned threats against faculty and made clear that they do not cave to intimidation campaigns. . . . By bowing to pressure from racist internet trolls, Drexel

between faculty members and students, on the one hand, and administrators, trustees, donors, and other external actors, on the other, continues to widen at a number of institutions, to what extent will college and university administrative leaders remain committed to defending faculty members' academic freedom or students' freedom of speech from these kinds of external threats?⁴⁶ Especially if those external threats are not isolated and episodic, but organized, coordinated, powerful, well-resourced, and potentially violent? As a number of symposium participants discussed in their presentations, this set of questions is by no means hypothetical or theoretical, and events over the past year suggest that the answers are not by any means clear.

The most recent wave of state legislative attacks on education and knowledge in Florida and other states has emerged as part of a broader backlash to the racial justice movements following George Floyd's murder in 2020. Indeed, the provisions of recent laws in Florida and other states can be traced directly to the Trump presidency's responses to those movements. In the waning days of his term as president, Donald Trump signed two executive orders that prohibited workplace diversity trainings within the executive branch that address so-called "divisive concepts" related to race and gender and that openly promoted the teaching of U.S. history in celebratory, "patriotic" ways.⁴⁷

has sent the wrong signal: That you can control a university's curriculum with anonymous threats of violence."). As Ciccariello-Maher added when he left the university, while "tenure is a crucial buffer against those who would use money to dictate the content of higher education . . . in a neoliberal academy, such protections are far from absolute. We are all a single outrage campaign away from having no rights at all, as my case and many others make clear." Eltagouri, *supra* note 43 (quoting Ciccariello-Maher); see also Alexander, *supra* note 42 (quoting Ciccariello-Maher comment, upon his suspension, that "[y]ou can't go around disciplining faculty because of the fact that they themselves have become threatened and been threatened by utterly reactionary and irrational forces that are becoming very powerful in this society. If you do that, there's no such thing as academic freedom, and if you discipline faculty based on what donors think . . . then you've got no vestige of academic freedom left.").

46. See *supra* notes 25-34 and accompanying text.

47. Exec. Order No. 13950, 85 Fed. Reg. 60683 (Sept. 22, 2020) (repealed Jan. 20, 2021); Exec. Order No. 13958, 85 Fed. Reg. 70951 (Nov. 2, 2020) (repealed Jan 20, 2021); see also Jennifer Schuessler, *The Ideas Behind Trump's 1776 Commission Report*, N.Y. TIMES (Jan. 19, 2021), <https://www.nytimes.com/2021/01/19/arts/1776-commission-claims-trump.html> [<https://perma.cc/2Q36-GQVC>]; Tina Nguyen, *A Big Chunk of Trump's 1776 Report Appears Lifted*

While these executive orders were repealed by Joe Biden immediately after he was sworn in as president, they nevertheless created a foundation and blueprint for the even more far-reaching attacks on education that have been pushed at the state level in the years since then. It should hardly be surprising, therefore, that as the Republican Party's nominee for president once again in 2024, Trump has embraced this agenda—and then some—as a prominent part of his campaign platform. By every indication, if Republicans were to take power in Washington in 2025, they would aggressively seek to nationalize this state-by-state assault and extend it in far more radical directions.⁴⁸

II. CONTRIBUTIONS TO THE SYMPOSIUM ISSUE

Four of the papers prepared for the symposium are published in this symposium issue of the *Drexel Law Review*.⁴⁹ In a wide-ranging article informed by their work as lawyers for the NAACP Legal Defense and Education Fund, Morenike Fajana, Katrina Feldkamp, and Allison Scharfstein examine the proliferation of laws and policies in multiple states that curtail teaching and learning of truthful, accurate information about race and racism. They situate these “anti-truth” measures as part of a much larger backlash to the expansion of Black political participation, power, and recognition in recent decades, which has intensified in response to the racial justice movements following George Floyd’s murder in 2020, and whose goals extend beyond restricting educational discourse on race to include the larger goals of undermining public education more broadly. While some of these measures have been challenged in court,

from an Author’s Prior Work, POLITICO (Jan. 19, 2021), <https://www.politico.com/news/2021/01/19/trump-1776-report-plagiarism-460464> [<https://perma.cc/PR95-4GPP>].

48. See, e.g., Steven Brint, *Trump and His Allies Are Preparing to Overhaul Higher Education*, CHRON. HIGHER EDUC. (Mar. 6, 2024), <https://www.chronicle.com/article/if-trump-wins> [<https://perma.cc/D7HG-7QX3>]; Eric Kelderman, *Why Are Trump and DeSantis Talking About Accreditation?*, CHRON. HIGHER EDUC. (May 31, 2023), <https://www.chronicle.com/article/why-are-trump-and-desantis-talking-about-accreditation> [<https://perma.cc/66WT-JX8G>]; HERITAGE FOUNDATION, PROJECT 2025: PRESIDENTIAL TRANSITION PROJECT, MANDATE FOR LEADERSHIP: THE CONSERVATIVE PROMISE 319–62 (2023).

49. Other contributions may be published in subsequent issues.

Fajana, Feldkamp, and Scharfstein emphasize the limitations of litigation. They argue, for example, that above and beyond their curricular restrictions, these anti-truth measures inflict a broad range of dignitary, communal, and economic harms on students, educators, and communities that are not easily remedied through litigation. They also note that the enforcement mechanisms created by these laws can make it difficult for plaintiffs to establish standing or identify suitable defendants. Accordingly, Fajana, Feldkamp, and Scharfstein urge advocates to rely on a broader constellation of strategies to oppose these anti-truth initiatives, including legislative advocacy, administrative complaints under Title VI and Title IX, and local efforts to elect pro-truth officials to school boards and other positions, and grassroots, community-based efforts to create alternative, inclusive educational spaces that affirm marginalized students' identities and histories.

In his article, Antonio Ingram (who, like Fajana, Feldkamp, and Scharfstein, has worked on these issues as a lawyer with the NAACP Legal Defense and Education Fund) places contemporary anti-truth movements in comparative and historical context.⁵⁰ He focuses specifically on Texas, examining three bills introduced in the Texas Senate in 2021 that aimed to restrict teaching and learning about race, gender, and sexuality in higher education, abolish DEI initiatives, prohibit the use of diversity statements in faculty hiring, and eliminate faculty tenure. Ingram draws parallels between the "anti-truth" movements propelling these initiatives and the rise of groups in Germany after World War II that sought to deny or minimize genocide by the Nazi regime. After discussing Germany's legal responses to combat these threats to the democratic, pluralist order that it was trying to build in the aftermath of the war—which included criminal laws, rooted in the German Basic Law's commitment to human dignity, prohibiting and punishing Holocaust denial—Ingram explores whether the U.S.

50. Antonio L. Ingram II, *Anti-Truth Movements Post World War II Germany and Contemporary Texas: The Repetition of History and Lessons in Truthful Reconstruction*, 16 DREXEL L. REV. 751 (2024).

Supreme Court's decision in *Virginia v. Black*, which upheld bans on cross-burning due to its history of intimidation, might provide a basis for an analogous framework for challenging anti-truth laws that seek to deny the United States's own histories of injustice, and that might similarly be understood as barriers to the full realization of multiracial, pluralist democracy.⁵¹

Two articles provide detailed case studies. Dheepa Sundaram recounts the growing, sometimes violent threats to academic freedom coming from groups and individuals who either directly embrace or are influenced by Hindutva, or Hindu nationalism.⁵² After providing an overview of Hindu nationalist ideology and mapping the network of Hindutva-aligned groups, both in India and the United States, she discusses the efforts by these transnational groups and their allies, over many years, to attack scholarship and teaching about Hinduism and South Asian history that they deem objectionable—prominently illustrated, for example, by their longstanding campaigns in California and other states, beginning in the mid-2000s, to challenge the ways in which Hinduism and South Asian history are represented in K-12 textbooks.⁵³ Focusing specifically on a Title VI complaint filed in 2021 against the University of Pennsylvania in connection with a virtual conference on global Hindutva which was sponsored by multiple universities—and which faced a coordinated campaign of targeted harassment and violent threats against the conference's organizers, sponsors, and speakers—Sundaram identifies and discusses a series of recent shifts in the strategies of these groups toward a more proactive and assertive use of litigation and other legal advocacy tactics to attack representations of Hinduism and South Asia that they

51. *Virginia v. Black*, 538 U.S. 343 (2003).

52. Dheepa Sundaram, *An Academic Conference, a Bomb Threat, and a Title VI Complaint: U.S. Hindu Nationalist Groups' Litigious Assault on Academic Freedom*, 16 DREXEL L. REV. 837 (2024). On Hindutva and its transnational manifestations in diaspora communities, see generally Rebecca de Souza, *Hindutva and Ethnonationalism in the Indian American Diaspora*, OXFORD RESEARCH ENCYCLOPEDIA OF COMMUNICATION (2022), <https://oxfordre.com/communication/display/10.1093/acrefore/9780190228613.001.0001/acrefore-9780190228613-e-1254> [<https://perma.cc/PJ68-GCJC>].

53. See also Rupa Pillai, *Textbook Harassment: The Hindu Right's Conservative Agenda to White-wash History*, 90 J. AM. ACAD. RELIGION 801 (2022).

find objectionable.⁵⁴ She argues that even as these groups have justified their claims as necessary to protect Hindu students from being harmed and victimized on campus, as minoritized groups, they simultaneously have employed modes of argumentation that mirror the rhetoric used by conservative groups in support of recent laws banning teaching and discussion of “divisive concepts.”

Finally, Emily Houh analyzes developments in her own state of Ohio, where Republican legislators have pushed one of the most far-reaching proposals targeting both public and private higher education to date.⁵⁵ After discussing various local campaigns within the state to institute “educational gag orders” in K-12 schools, and contention over state education officials’ responses to the racial justice movement following George Floyd’s murder, she provides a detailed examination of Ohio Senate Bill 83, which, like legislation pushed in Florida and other states, draws from model proposals developed by national right-wing groups. Informed by her extensive work on academic freedom and higher education issues for almost two decades, Houh concludes that SB 83’s key provisions—which, among other things, would prohibit diversity, equity, and inclusion initiatives, restrict teaching on race, gender, and other “controversial subjects” from politically disfavored perspectives, and dictate “intellectual diversity” requirements in the curriculum without regard to academic merit or the standards of disciplinary experts—violate well-established principles of academic freedom and shared governance that are designed to

54. Letter from Hindu Am. Found. to Suzanne Goldberg, Acting Assistant Sec’y for Civ. Rts. & Randolph Wills, Deputy Assistant Sec’y for Enf’t, U.S. Dep’t of Educ. Off. of Civ. Rts. (Oct. 6, 2021), <https://www.hinduamerican.org/wp-content/uploads/2021/10/Title-VI-Complaint.University-of-Pennsylvania.100621.pdf> [https://perma.cc/QV2V-QCQU]. In response, an organization of progressive Hindus noted their objections to the claims advanced in the Title VI complaint. Letter from Hindus for Hum. Rts. to Suzanne Goldberg, Acting Assistant Sec’y for Civ. Rts. & Randolph Wills, Deputy Assistant Sec’y for Enf’t, U.S. Dep’t of Educ. Off. of Civ. Rts. (Oct. 8, 2021), <https://www.hindusforhumanrights.org/en/blog/letter-to-us-department-of-educations-office-for-civil-rights-in-support-of-academic-freedom> [https://perma.cc/FD4A-36RR].

55. Emily M.S. Houh, *Ohio: A Case Study in Subnational Authoritarianism*, 16 DREXEL L. REV. 713 (2024).

protect institutional autonomy and the integrity of higher education's academic mission. While Houh notes that coalitions of faculty, students, civil rights organizations, and unions have effectively blocked some of SB 83's most extreme provisions, she emphasizes that it is not at all clear whether opponents will ultimately succeed in preventing the bill's eventual enactment in some form. Drawing on scholarship in law and political science about democratic backsliding and "autocratic legalism,"⁵⁶ Houh concludes that the aggressive push for SB 83 should be understood as part of a larger trend towards "subnational authoritarianism" in Ohio and other states across the country.

CONCLUSION

"Academic freedom," Louis Menand recently noted, "can't just be invoked. It has to be asserted and defended."⁵⁷ Especially given the multiplicity of different forms that contemporary attacks on education, knowledge, and academic expertise have taken—and the extent to which these attacks are intertwined with broader assaults against democratic governance itself—defending the autonomy and integrity of schools, colleges, universities, and libraries in the face of this onslaught demands a set of strategies in response that is no less multifaceted and dynamic. Litigation can be an important response, but as the symposium participants emphasized, the efficacy of litigation also has its limits. A more complete, effective, and durable set of responses therefore requires a broader constellation of strategies, including legislative and administrative advocacy, various forms of local and grassroots organizing, creative coalition building, development of alternative educational spaces, and various efforts to build greater social and civic trust. Effective responses also require concerted efforts to reverse the deeper, longer-term structural trends toward centralized governance, contingency, and austerity that have facilitated the most recent

56. *E.g.*, Scheppele, *supra* note 8.

57. Menand, *supra* note 30, at 60.

wave of assaults.⁵⁸ The symposium participants and contributors to this special issue of the *Drexel Law Review* have offered valuable reflections on all of these strategies, and the conversations they have initiated as part of this symposium will hopefully continue to reverberate in different settings and inform further discussions about productive ways to respond to these formidable challenges in the years to come.

58. See *supra* notes 3–5 and accompanying text; see also Kapczynski, *supra* note 11 (“[D]efending [free speech at universities] will require much more than just resisting the assaults coming from billionaires and right-wing influencers. It will require reconnecting with the purposes and highest aims of the academy and building a political economy of higher education that can begin to truly deliver on them.”); Pozen, *supra* note 3 (“There is no shortage of immediate repair work that needs to be done at Columbia, as at many other universities. But . . . we should redirect some of our critical attention . . . away from the latest divisive decision and toward the decades-long drift toward presidential administration, which shaped how that decision got made”).