



30 STATE HIGHER EDUCATION POLICY PRIORITIES OF THE AMERICA FIRST AGENDA

Higher Education Reform Initiative | October 2023

The America First Policy Institute's Higher Education Reform Initiative works to develop and advance policy reforms that invigorate a competitive higher education marketplace, strengthen protections for free expression on campus, improve viewpoint diversity in the academy, and build civic literacy. As a starting point, the Initiative has identified 30 state policy priorities and provided examples of promising legislative initiatives that have recently been passed into law, introduced as bills, or developed as model legislation. Falling into nine broad categories, these priorities are designed to (1) combat divisive and ideological campus DEI initiatives, (2) protect students' expressive rights, (3) protect students' religious liberties, (4) enrich the marketplace of ideas by encouraging viewpoint diversity, (5) guarantee minimum due process rights in sexual misconduct investigations, (6) incentivize innovation, efficiency, and delivery of programs that prepare students to enter the workforce with employable skills that are responsive to private sector needs (7) improve governance accountability, (8) improve civics literacy, and (9) combat foreign influence on American campuses. **This is an evolving resource intended to inform and educate policymakers. All feedback is welcome.**

I. Combat divisive DEI programs, which are direct offshoots of Critical Race Theory.

Critical Race Theory (CRT) posits that racial inequity and racial oppression are deeply embedded in the fabric of American society and perpetuated by its governing institutions. The movement's leading theorists maintain that the only way to remedy past and present wrongs is future discrimination that advantages traditionally marginalized racial groups. Diversity, equity, and inclusion (DEI) activists are essentially calling for universities to lead this society-transforming project by treating students differently based on race.¹ In response, on many campuses a complex mix of programs, people, and policies have been established that work together to create powerful incentives and career-threatening penalties that reach into every corner of the institution. They also work to establish a campus viewpoint monoculture on social policy issues related to DEI. These initiatives are not only deepening societal divisions, but the demands of many DEI activists are plainly illegal under Titles VI and VII of the Civil Rights Act and have contributed to the campus free speech crisis.

AFPI supports policies at the state level that:

- 1) **Defund DEI offices that operate as part of the university administrative bureaucracy.** Legislation to restrict funding for central DEI offices that sit outside of the academic structure of the university—and which are often responsible for coordinating activities across campus—is the first step toward rolling back the pernicious influence of campus DEI. Of course, legislators must be careful to respect academic freedom and norms of shared governance, and for that reason, should avoid measures that regulate classroom teaching or faculty research.
 - a. Texas [SB 17 \(2023\)](#) requires the governing board of each public institution in the state to “ensure that each unit of the institution” does not “establish or maintain a diversity,

equity, and inclusion office” or “hire or assign an employee of the institution or contract with a third party to perform the duties of a diversity, equity, and inclusion office.” One advantage of the Texas reform is its careful definition of a DEI office, which includes units established to “[influence] hiring or employment practices at the institution with respect to race, sex, color, or ethnicity,” “[promote] differential treatment of or [provide] special benefits to individuals on the basis of race, color, or ethnicity,” and “[conduct] trainings, programs, or activities designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation.” The legislation also includes carefully crafted exceptions to ensure the university can comply with all pertinent civil rights laws.

- b. Florida [SB 266 \(2023\)](#) prohibits expenditures of state funds “to promote, support, or maintain any programs or campus activities” that “advocate for diversity, equity, and inclusion or engage in political or social activism.” Florida’s legislative language is more straightforward than the Texas model. This means its success will depend on the implementing regulations and enforcement decisions made by the Department of Education and the Board of Governors. It is a good model for states with education bureaucracies that are faithful to the purpose of the legislature.

2) **Prohibit mandatory training related to gender identity and race stereotyping in higher education.**

- a. Texas [SB 17 \(2023\)](#) requires the governing board of each public institution to ensure that no unit of the university “require as a condition of enrolling at the institution or performing any institution[al] function any person to participate in diversity, equity, and inclusion training, which ... includes a training, program, or activity designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation” unless it is “developed by an attorney and approved in writing by the institution’s general counsel and the Texas Higher Education Coordinating Board.” This ensures that institutions will have the flexibility they need to comply with civil rights laws—including settlement agreements with the Department of Education—while also ensuring accountability. The legislation also includes a subsection clarifying that the measure does not interfere with requests from granting agencies and accreditors when they request information on student support activities and civil rights compliance.
- b. Oklahoma [HB 1775 \(2021\)](#) specifies that “[n]o enrolled student of an institution of higher education... shall be required to engage in any form of mandatory gender or sexual diversity training Any orientation or requirement that presents any form of race or sex stereotyping ... shall be prohibited.” With respect to K-12, the statute goes much further, guaranteeing that “[n]o teacher, administrator or other employee of a school district, charter school or virtual charter school shall require or make part of a course” a long list of divisive concepts. To ensure that the statute is not interpreted as forbidding fair and balanced teaching about the country’s history, including the evil of slavery and the many obstacles faced by civil rights reformers, the law expressly notes that “the provisions of [the K-12] subsection shall not prohibit the teaching of concepts that align to the Oklahoma Academic Standards.”
- c. Tennessee’s [SB 2290 \(2022\)](#) prohibits mandatory training programs for students and employees if they include divisive concepts. The term “divisive concepts” is clearly defined with examples drawn from core CRT tenets, which the university is prohibited from advancing in its actions as a public agency. It also prohibits the use of public funds to create incentives for faculty members to “incorporate one (1) or more divisive concepts into academic curricula.” Public universities that employ diversity administrators must ensure that “the duties of such employees ... include efforts to strengthen and increase intellectual diversity among the students and faculty.” The

statute also prohibits schools from penalizing or discriminating against students and employees for their “refusal to support, believe, endorse, embrace, confess, act upon, or otherwise assent to one (1) or more divisive concepts.” Likewise, the measure guarantees that no student or employee shall “be required to endorse a specific ideology or political viewpoint to be eligible for hiring, tenure, promotion, or graduation.” The statute does not, however, address classroom instruction, where First Amendment protections are strongest and norms of academic freedom protect the exploration of controversial theories.

- 3) **Forbid political litmus tests in admissions decisions and hiring for university positions.**
 - a. [Florida SB 266 \(2023\)](#) offers a straightforward approach to ending the use of DEI statements in personnel actions. The law prohibits state universities from requiring “any statement, pledge, or oath other than to uphold general and federal law, the United States Constitution, and the State Constitution as a part of any admissions, hiring, employment, promotion, tenure, disciplinary, or evaluation process.”
 - b. [Texas SB 17 \(2023\)](#) prohibits “diversity, equity, and inclusion” statements in personnel actions, specifying that universities may not “give preference on the basis of race, sex, color, ethnicity, or national origin to an applicant for employment, an employee, or a participant in any function of the institution.”
 - c. The James Martin Center for Academic Renewal, Stanley Kurtz, and the Goldwater Institute have proposed [model legislation](#) that guarantees no “political test or qualification shall ever be required as a condition of admission into, or promotion within, any public educational institution of the state, as teacher, employee, or student.” The “End Political Litmus Tests in Education Act” also prohibits extending preferential consideration to applicants, faculty, and staff based on the expression of a “partisan, political or ideological set of beliefs.”

- 4) **Prohibit the establishment of bias incident response teams** or reporting systems that allow members of the campus to set off burdensome and reputation-damaging investigations when students claim they are offended or “harmed” by protected speech. Even though several federal appeals courts have ruled that such systems have an unconstitutional chilling effect on speech, [hundreds](#) of campuses have implemented them.
 - a. Speech First has published [model](#) legislation that would prohibit public institutions from establishing offices or systems that “[s]olicit the reporting of incidents of student speech protected by state or federal law, including but not limited to speech pertaining to disagreements of opinion; political beliefs or affiliations; or perceived bias, prejudice, stereotypes, or intolerance.”

- 5) **Prohibit compelled speech related to divisive concepts.**
 - a. Idaho [HB 377 \(2021\)](#) states that “[n]o public institution of higher education, school district, or public school, including a public charter school, shall direct or otherwise compel students to personally affirm, adopt, or adhere to “three specific tenets of critical race theory: i., that any sex, race, or ethnicity “is inherently superior or inferior,” ii., “[t]hat individuals should be adversely treated on the basis of their sex, race” or other identity characteristics, and iii., that individuals “are inherently responsible for actions committed in the past by other members of the same sex (or) race” by virtue of their own sex or race. Application in the classroom is narrow, forbidding schools from establishing courses of instruction or units of study “directing or otherwise compelling students to personally affirm, adopt, or adhere to” the stated tenets of critical race theory. (A small change in bills based on the Idaho statute, making clear that assigning positions for an academic or policy debate does not constitute compelled speech, would prevent misunderstandings about the scope of the prohibition).

II. Improve the climate for free expression on American college and university campuses.

[Several studies](#) have [documented](#) a campus crisis due to limits on free expression. Students [routinely](#) exercise self-censorship and say they cannot discuss controversial issues of public and social policy. According to the Foundation for Individual Rights and Expression (FIRE), 23 states have [enacted](#) legislation to strengthen free speech protections and promote free expression on public college and university campuses. Many of the statutes are narrow in scope, however, and could be amended to include additional protections.

[The America First Policy Institute \(AFPI\)](#) supports policies at the state level that:

- 6) Require public institutions to **commit to the ideals of a truth-seeking institution** as the precondition of building a thriving marketplace of ideas. Dozens of universities, including several state systems, have adopted the [Chicago Principles](#) on Freedom of Expression or a substantially similar statement dedicating the university to “the preservation and celebration of the freedom of expression as an essential element of the University’s culture.” Legislatures can require state institutions (or systems, as applicable) to do so.
 - a. Alabama [HB 498 \(2019\)](#) endorses the Chicago Principles and the University of Chicago’s Kalven Committee [report](#) in its findings section of the statute. The latter expressly commits the university to neutrality on contested issues of public and social policy, recognizing that “to be true to its faith in intellectual inquiry, [a university] must embrace, be hospitable to, and encourage the widest diversity of views within its own community.”
 - b. The National Association of Scholars’ Civics Alliance has proposed [model](#) legislative text that commits public universities to a truth-seeking mission by requiring the institutions (and all academic units within them) to adopt guiding principles into their mission statements—for example, “We affirm that {Entity} will educate students by means of free, open, and rigorous intellectual inquiry to seek the truth.”
- 7) Establish a **definition of student-on-student harassment** consistent with the United States Supreme Court’s definition in *Davis v. Monroe County Board of Education*. This prohibits overbroad speech codes on campus that can be used to report (and investigate) constitutionally protected speech, which chills student and faculty expression.
 - a. Arkansas [SB 156 \(2019\)](#) defines “harassment” as an “expression that is so severe, pervasive, and subjectively and objectively offensive that it effectively denies access to an educational opportunity or benefit provided by the state-supported institution of higher education.”
 - b. Utah [HB 159 \(2021\)](#) adopts a similar definition and includes a cause of action clause that authorizes the attorney general to “bring an action to enjoin a violation.”
- 8) Require governing boards of regents (or trustees) to adopt a policy requiring state institutions to **sanction students who deliberately interfere with speech and assembly rights** of other students, faculty, and speakers.
 - a. Georgia’s [SB 339 \(2018\)](#) specifies that “the board of regents shall establish a range of disciplinary sanctions for anyone under the jurisdiction of the state institution of higher learning who is found by his or her conduct to have interfered with the board of regents’ regulations and policies relevant to free speech and expression on the campus of each such institution.”
- 9) Mandate that the governing board for each public institution **publish an annual study of the campus climate for free speech and institutional viewpoint neutrality**.

- a. Georgia's [SB 339 \(2022\)](#) requires the board of regents to publish an annual report and "provide a copy to the Governor and each chamber of the General Assembly" that addresses any "disruptions of free expression," the administration's "response and discipline relating to violations," and "actions taken by public institutions ... including difficulties, controversies, or successes, in maintaining a posture of administrative and institutional neutrality with regard to political and social issues." This kind of reporting requirement focuses campus leaders' attention on protecting students' expressive rights on a day-to-day basis.
- 10) **Prohibit so-called "free speech zones"** that have the practical effect of quarantining political speech to narrow areas of the public campus.
- a. Florida's [SB 4 \(2018\)](#) specifies that "[a] person who wishes to engage in an expressive activity in outdoor areas of campus may do so freely, spontaneously, and contemporaneously as long as the person's conduct is lawful and does not materially and substantially disrupt the functioning of the public institution of higher education or infringe upon the rights of other individuals or organizations to engage in expressive activities." Any permissible "time, place, and manner" restrictions must be reasonable and "content-neutral."
 - b. Florida's statute also creates a cause of action, authorizing a person injured by a university's violation of the law to bring legal action to obtain injunctive relief. Other states, including Missouri under [SB 93 \(2015\)](#), include a cause of action clause authorizing the attorney general to seek injunctive relief. Iowa [SF 274 \(2018\)](#) authorizes members of the campus to file a complaint with the institution's governing board.
- 11) Require that public colleges and universities **educate all incoming students about the importance of free speech and viewpoint diversity.**
- a. Ohio's [SB 40 \(2020\)](#) requires public universities to publicize "policies, regulations, and expectations of students regarding free expression on campus" in its handbook and orientation programs. State institutions are also required to train faculty, staff, and administrators on the "duties of the institution regarding free expression on campus."
 - b. North Carolina [HB 527 \(2017\)](#) requires that "[a]ll constituent institutions of The University of North Carolina shall include in freshman orientation programs a section describing the policies regarding free expression consistent with this Article." Art. 1 includes a strong statement defining the function of higher education ("the discovery, improvement, transmission, and dissemination of knowledge"), guarantees that student and faculty First Amendment rights will be protected, and requires that students who disrupt the expressive rights of others be disciplined.
- 12) **Forbid viewpoint discriminatory policies** and actions with respect to speaker invitations.
- a. Tennessee [SB 723 \(2017\)](#) guarantees that public institutions "shall allow all students and all faculty to invite guest speakers to campus to engage in free speech regardless of the views of guest speakers" and specifies that school administrators "shall not disinvite a speaker ... because the speaker's anticipated speech may be considered offensive, unwise, immoral, indecent, disagreeable, [etc.]."
 - b. Ohio [SB 40 \(2020\)](#) specifies that no state university "shall charge security fees to a student or a student group based on the content of their expression, the content of the expression of their invited guest, or the anticipated reaction to an invited guest's expression."

- 13) Establish a standing subcommittee on state boards of trustees (regents) responsible for compiling an **annual report on the state of free expression for the university/ state system**.
 - a. North Carolina [HB 527 \(2017\)](#) requires the chair of the Board of Governors to designate a Committee on Free Expression. The committee reports to the governor, the general assembly, and the public and is required to issue an annual report describing any disruptions to students' expressive rights, the administration's handling of the disruption, any substantial difficulties maintaining "administrative and institutional neutrality with regard to political or social issues," and any assessments or recommendations the committee sees fit to add.

III. Protect the religious liberty of all students.

College administrators and student government associations sometimes make it difficult for student organizations with a religious identity to organize, receive funding, and govern themselves according to their principles. Lawmakers can act to protect students' free exercise rights.

AFPI supports policies at the state level that:

- 14) **Forbid discrimination against student organizations with a religious mission** or identity by denying them recognition or funding or by requiring them to open leadership roles to all comers as a condition of official recognition or institutional funding.
 - a. Kentucky's [HB 254 \(2019\)](#) guarantees that "student religious and political organizations are allowed equal access to public forums on the same basis as nonreligious and nonpolitical organizations" and requires that "[s]tudent activity fee funding ... is not denied based on the viewpoints that the student organization advocates."
 - b. Iowa [SF 274 \(2018\)](#) specifies that public universities "shall not deny any benefit or privilege to a student organization based on the student organization's requirement that the leaders of the student organization agree to and support the student organization's beliefs, as those beliefs are interpreted and applied by the organization, and to further the student organization's mission."
- 15) **Protect Jewish students from harassment** and build a culture that does not tolerate antisemitism.
 - a. Texas [HB 3257 \(2021\)](#) established a public commission to study antisemitism and charged it with making recommendations for K-12 school systems and state colleges and universities (among other things). State legislators can also require governing boards, higher education coordinating bodies, and departments of education (as applicable) to issue an annual report to state leaders summarizing any complaints of antisemitic incidents on public campuses and the steps taken by the institution to combat discrimination and harassment based on national origin. Reporting requirements force higher education leaders to study the problem and focus attention on developing strategies to support affected students in the short term and improve the campus environment over the long term.

IV. Take positive steps to improve viewpoint diversity on campus.

A truly liberal education requires the freedom and opportunity to explore a wide range of viewpoints. Unfortunately, most campuses today are characterized by a left-leaning viewpoint monoculture. A [study](#) conducted by the Higher Education Research Institute at the University of California-Los Angeles found that 60% of college faculty members across all disciplines identify as "far left" or "liberal," compared to 12% who call themselves "conservative" or "far right." The ratio is often even more

lopsided in disciplines like history, psychology, journalism, and law. One [study](#) of voter registrations in those disciplines at 40 leading universities found institutional Democrat-to-Republican ratios as high as 60 to 1.

AFPI supports policies at the state level that:

- 16) **Establish centers to bring viewpoint diversity to campus** and bolster civic education.
 - a. Tennessee [SB 2410 \(2022\)](#) passed both houses with strong bipartisan majorities (90–3 in the House and 30–3 in the Senate). The measure establishes a new “institute of American civics at the University of Tennessee, Knoxville” designed to “enhance education in the fields of politics, economics, philosophy, American history, American government, and other related fields as appropriate, with a focus on the rights and responsibilities of American citizenship.” The statute creates a board of directors to oversee the center and initial hires with the expectation that it will be [funded](#) by a \$4 million recurring appropriation and house at least eight tenure track/tenured faculty, four instructors, and three academic administrators. Similar reform initiatives created the [Civitas Institute](#) at the University of Texas at Austin, the [Hamilton Center](#) at the University of Florida, and the [Adam Smith Center for Economic Freedom](#) at Florida International University.
 - b. Ohio [SB 117 \(2023\)](#), passed as part of the state’s budget bill, creates academic institutes at five Ohio universities designed to foster teaching and research related to “principles, ideals, and institutions of the American constitutional order.” Each center has a distinctive mission or focus, but they are all designed to improve civic education and bring intellectual diversity to Ohio campuses. The statute specifies that the centers “shall be independent academic unit[s]” with the authority to “house tenure-track faculty”—“not fewer than fifteen” at the largest centers—and to offer courses and develop academic programs. To ensure fidelity to the legislature’s vision, the legislation lodges the power to appoint an “academic council,” which serves an advisory function to each center, with the university’s governing board. The academic council is charged with recommending a slate of candidates for the center’s directorship to the university president, and the director reports directly to the provost or president (as opposed to a college dean). This significantly reduces the power of current faculty and administrators to capture or derail the centers. The legislation also clearly specifies that “no faculty outside of the center shall have the authority to block faculty hires into the center.” The two-year [appropriation](#) for the five centers is \$24 million.

- 17) **Commit state universities to the viewpoint neutrality principles** articulated in the University of Chicago Kalven Committee report (1967).
 - a) North Carolina [HB 527 \(2017\)](#) recognizes that “[i]t is not the proper role of [a university] to shield individuals from speech ... including ... ideas and opinions they find unwelcome, disagreeable, or even deeply offensive.” That statute also stipulates that public universities “may not take action, as an institution, on the public policy controversies of the day in such a way as to require students, faculty, or administrators to publicly express a given view of social policy.”
 - b) Section 3345 of Ohio [SB 83 \(2023\)](#), still under consideration in fall 2023, requires each public university to adopt a policy affirming that its “primary function is to practice, or support the practice, discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate.” Universities must also commit to fostering intellectual diversity and aspire to institutional viewpoint neutrality by refraining from endorsing or opposing controversial matters of public policy as an institution.

- 18) Require state universities to **assess the level of intellectual diversity on campus** and develop strategies to improve the marketplace of ideas.
- a. Florida [HB 233 \(2021\)](#) requires the university system’s governing board to “require each state university to conduct an annual assessment of the intellectual freedom and viewpoint diversity at that institution.” Universities must also publish the results each year. Reporting requirements strongly encourage universities to take remedial action so that institutional leaders can explain to state leaders and concerned citizens that they are addressing any problems revealed. The surveys can be designed to test student perceptions of the administration’s commitment to free speech and building a wide-ranging marketplace of ideas. They can also test proposals to improve the campus climate for free inquiry to discern what actions students (especially those who report self-censoring) believe would have the highest payoff.
 - b. Tennessee’s [SB 2290 \(2022\)](#) requires each public institution to conduct and publish “a biennial survey of the institution’s students and employees to assess the campus climate with regard to diversity of thought and the respondents’ comfort level in speaking freely on campus.”

V. Require state colleges to establish strong due process protections for students.

The Biden Administration’s proposed revision to Title IX regulations would significantly weaken federally required minimum due process protections for students accused of sexual misconduct. This would allow universities to revert to the failed practices of the Obama era, which saw students unjustly subjected to life-changing punishments without due process and exposed universities to litigation risk. Nevertheless, states can still act to strengthen due process protections, and in fact, some appeals courts actively require it. According to FIRE, [eight](#) states have passed legislation establishing strong minimum due process protections for students: Arizona [HB 2563](#) (2018), Arkansas HB 1892 and [SB 365](#) (2015, 2023), Florida [HB 233](#) (2021), Kentucky [HB 290](#) (2022), Louisiana [HB 364](#) (2022), North Carolina [HB 527 \(2017\)](#), North Dakota [Ch. 15-10-56](#) (2020), and Ohio SB 135 (2022).

AFPI supports policies at the state level that:

- 19) Specify robust minimum requirements for **protecting students’ due process rights** and that require Title IX officers to have substantial justice administration experience.
- a. Florida [HB 233 \(2021\)](#) requires state colleges and universities to extend the following specific guarantees to students and to publish them on the institution’s website: “timely written notice [of the] alleged violation,” “the right to a presumption that no violation occurred,” (i.e., innocent until proven guilty), “the right to an impartial hearing officer,” “the right to an advisor or advocate,” “the right to appeal,” the opportunity to question witnesses, and access to “all known information relating to the allegation.”
 - b. The National Association of Scholars’ (NAS) “Campus Due Process Act” [model legislation](#) requires state colleges and universities to “establish adjudication procedures for faculty, staff, and students with strict adherence to due process protections, including ... “the presumption of innocence,” the use of a “clear and convincing evidence standard,” “the right to counsel,” “the right to know what one is charged with,” “the right to access all evidence including exculpatory evidence,” and “the right to live hearings” in which cross-examination is permitted, among other protections. While most of the NAS recommendations are compatible with the pending Biden Administration regulation, as proposed, the new federal standards would permit use of the “clear and convincing standard” of evidence only at schools that use that standard in every type of disciplinary proceeding (from alleged faculty research misconduct to alleged students’ violation of the student code of conduct). This is somewhat unusual, as most schools specify lower evidentiary thresholds (for example, “preponderance of the evidence”) for some types of investigation.

VI. Establish strong incentives for innovation, efficiency, student success, and attention to labor market signals.

States invest in public higher education to advance the public interest. Colleges and universities advance those interests in many ways, including by preparing students for success in the labor market. However, when public institutions have guaranteed taxpayer-financed funding streams, they can become detached from market forces. Lawmakers can use funding levers to encourage institutional leaders to attend to the alignment of program portfolios with market demand and to encourage innovation and efficiency.

AFPI supports policies at the state level that:

- 20) Require state universities to **compete for state appropriation** under a funding model that incentivizes efficiency, innovation, and better student outcomes.
 - a. Kentucky's [SB 153 \(2017\)](#) (revised by [SB 135](#) in 2021) establishes a formula that allocates the entire state appropriation to universities based on student credit hours delivered; student success metrics, including credentials awarded, student progression, low-income credentials, STEM+H credentials, and targeted industry credentials; and campus operations (by privileging expenses related to instruction).
 - b. Florida's HB 7029 (2016) (Ch. [2016-237 §9 §1001.66](#)) establishes a performance-based funding [system](#) that penalizes universities when student success outcomes decline by withholding a proportion of the state's institutional investment (a pot of funding that is distinct from the "state investment"). Metrics of student success include graduation and retention rates, median wages of recent graduates, enrollment of low-income students, the Pell-eligible student graduation rate, bachelor's degrees awarded in areas of strategic emphasis, etc.). Schools with declining scores for two consecutive years or whose total score is beneath a specified threshold must submit an improvement plan to the board to receive 50% of their institutional investment and must meet the agreed upon goals therein to receive the second half of the appropriation.

- 21) **Establish earnings-weighted funding models for specific institutions** that incentivize universities to develop programs and curricula that deliver a high return on investment.
 - a. Texas has adopted an innovative "Returned-Value" funding model for Texas State Technical College (TSTC) that ties the entirety of the school's state appropriation to graduates' earnings. This creates a strong incentive to design innovative programs that truly meet the demands of the marketplace. A 2011 budget [rider](#) directed the Texas Higher Education Coordinating Board to work with TSTC and the Legislative Budget Board to create a formula that rewards "job placement and graduate earnings projections, not time in training or contact hours." The model led to significant changes in the school's program portfolio, including new industry partnerships and the shuttering of underperforming programs.
 - b. The Cicero Institute has developed [model](#) legislation that directs state departments of education or higher education coordinating agencies to develop a funding model that allocates funding based on institutions' workforce readiness scores. They have also developed an in-depth [report](#) assessing approaches to performance-based funding.

VII. Increase governance accountability at state colleges and universities.

Universities are complicated institutions with a multipronged mission, several powerful stakeholder constituencies, decentralized decision-making authority, and immense annual budgets. Governing boards—generally selected by the governor or elected by the people—have management and oversight authority. But they are often staffed by people—highly accomplished and competent, no doubt—who nevertheless have little higher education experience. Moreover, their work is complicated by an immense information asymmetry, given the administration’s large professional staff. Statutory reform can help governing boards ensure higher levels of accountability in several ways.

AFPI supports policies at the state level that:

- 22) Require an initial orientation (on board members’ responsibilities and authority) and **regular professional development for members of state college and university governing boards.**
 - a. Kentucky’s [KRS 164.020](#) (last amended 2023) requires its higher education coordinating body, the Council on Postsecondary Education, to “develop in cooperation with each public university and the Kentucky Community and Technical College System a comprehensive orientation and education program for new members of the council and the governing boards and continuing education opportunities for all council and board members.” The following topics are among those mandated by the statute: “the roles of the council and governing board members, the strategic agenda and the strategic implementation plan, and the respective institution’s mission, budget and finances, strategic plans and priorities, institutional policies and procedures, board fiduciary responsibilities, legal considerations including open records and open meetings requirements, [and] ethical considerations arising from board membership.”

- 23) Require governing boards actively to **review the program portfolio at each public university**, assessing student employment outcomes and alignment with labor market demand.
 - a. Section 8.17 of North Carolina [SB 105 \(2021\)](#) requires the university system’s Board of Governors to “contract with an independent research organization to conduct an evaluation of its current programs at each constituent institution of The University of North Carolina related to its operational costs, student outcomes, and return on investment (ROI) of each program.” The assessment will help universities to replicate and enhance programs doing the most to prepare students for professional success and to identify those in need of improvement. The report must also be designed to help legislators evaluate the ROI for state higher education funding expenditures.
 - b. Section 1 of [Florida SB 266 \(2023\)](#) requires the Board of Governors to periodically “review the mission of each constituent university and make updates or revisions as needed.” Boards are then required to review “existing academic programs for alignment with the mission.” The 2023 revisions build on existing provisions in the state code that require universities to think about their mission in light of several functions, including “the state’s economic development,” higher education’s research and truth-seeking role, and the academy’s responsibility to rear “this generation’s finest minds” to tackle problems facing the state and society.

- 24) Require governing boards to **establish bylaws that regularize best practices in university governance.**
 - a. Several states require governing boards to regularize narrow processes and self-studies—some of which are discussed in this report. No state appears to have developed a comprehensive approach to ensuring governing board bylaws are creating reliable processes that strengthen institutional accountability and outcomes.

AFPI is working on model policy that will require public boards of regents/trustees to periodically update their bylaws and adopt structures that regularize review in key areas, including assessment of the institution's academic programs, clear oversight of the state of the campus climate for free expression, periodic review of the school's disciplinary policies and procedures, oversight of priorities in faculty hiring and tenure decisions, assessment of the institution's accreditor, and regular structured review of the university president.

- 25) Require state colleges and universities to **seek reaccreditation from a national accreditor** with a record of supporting positive student outcomes and innovation in the academic program portfolio.
- a. Florida [SB 7044 \(2022\)](#) specifies that “[a] public postsecondary institution may not be accredited by the same accrediting agency or association for consecutive accreditation cycles. In the year following reaffirmation or fifth-year review by its accrediting agencies or associations, each public postsecondary institution must seek and obtain accreditation from an accrediting agency or association identified by the Board of Governors or State Board of Education, respectively, before its next reaffirmation or fifth-year review date.” The requirement does not apply to disciplinary or program accreditation. And the section expires in 2032, meaning that state universities will only be required to change accreditors once. As other states adopt similar measures, it will create competition among accreditors, which are membership organizations funded by the schools they accredit, to become more friendly to innovation and less prescriptive about diversity, equity, and inclusion mandates (and other requirements) that unduly politicize public universities.
 - b. Texas [SB 2335 \(2023\)](#), a bill that did not ultimately pass, proposed a second approach to improving accreditor accountability and ensuring that accreditors serve a quality enhancement function for state universities. It called for the creation of a commission charged with reviewing accrediting agencies. The evaluation standards would have included consideration of retention and graduation rates, graduate labor market success, and borrower behavior at the universities accredited by each major accreditor. State universities would then have been required to seek accreditation under accreditors whose performance as quality assurance entities had been judged by the state to be satisfactory or exemplary. The bill included a cause of action to allow a university that was “adversely impacted by retaliatory action taken against the institution by an accrediting agency” to bring an action “against the accrediting agency in a court of competent jurisdiction.”

IX. Strengthen civics education.

Representative democracies require some level of shared understanding to make reasoned deliberation and civil public discourse possible. U.S. colleges and universities have traditionally played this role by educating civic-minded graduates, who often help to improve the general rate of civic literacy in their roles as teachers, journalists, public leaders, and parents. Yet, it is hard to think of a time when Americans have known less about their country than now. In a recent [survey](#), 51% of *college graduates* could not select the term lengths of U.S. Senators and Representatives on a multiple-choice question. Public colleges and universities can be asked to play an important role in rebuilding a common understanding of American principles, core documents, and history.

AFPI supports policies at the state level that:

- 26) Focus new intellectual diversity institutes and academic centers on **improving teaching and research on American history, constitutional thought, free market economics, U.S. institutions**, and other disciplines related to civic literacy.
 - a. Tennessee's new intellectual diversity center (established in 2022 by [TN SB 2410](#); see p. 6 above) is dedicated to improving civic literacy. The School of Civic and Economic Thought and Leadership (SCETL), established in 2017 by the Arizona legislature with a dedicated funding line, served as the model for the Tennessee institute and similar experiments around the country. SCETL's [mission](#) is to promote viewpoint diversity and civic literacy through the "study of the liberal arts and classic texts with a rigorous examination of American ideas, institutions, and civic culture." Today, the school delivers undergraduate and graduate programs, develops a curriculum for social studies educators, helps train Arizona's teachers, and runs a series of public lectures and debates that are broadcast statewide. The academic centers established in Florida, Texas, and Ohio, similarly (see p. 7 above) aspire to improve campus viewpoint diversity by investing in a range of social sciences and humanities disciplines that are focused on improving civic literacy.

- 27) **Establish required foundational coursework in American history and government, rooted in primary source documents**, that students in state colleges and universities must complete in order to graduate.
 - a. South Carolina's Reinforcing College Education on America's Constitutional Heritage Act (REACH Act; [Bill 38 2021](#)) makes a three-semester-hour course in American history of government a graduation requirement at state colleges and universities. The statute also specifies the course's required content, including the entirety of the U.S. Constitution, Declaration of Independence, and Emancipation Proclamation, along with the Federalist Papers and other foundational documents. Texas, Florida, and Georgia have similar requirements and, in some cases, include additional subject areas—for example state history. A focus on primary documents must be mandated in statute to reduce the likelihood that such courses will be captured by ideological disciplines. States that replicate the reforms can consider adding more areas of focus—for example, key works in Western Civilization or U.S. economic history and free market economic principles.

- 28) Pair required coursework in American history and government at the postsecondary level with **rigorous civics literacy testing**.
 - a. Florida's [SB 1108 \(2021\)](#) required that "each student must demonstrate competency in civic literacy by achieving a passing score on an assessment and by successfully completing a civic literacy course" to graduate from a public college or university. The required courses and assessment must focus on "the basic principles of American democracy and how they are applied in our republican form of government, an understanding of the United States Constitution, knowledge of the founding documents and how they have shaped the nature and functions of our institutions of self-governance, and an understanding of landmark Supreme Court cases and their impact on law and society."

IX. Combat Foreign Influence on U.S. Campuses

Foreign governments and actors, especially China and groups working to advance the interests of the Chinese Communist Party (CCP), invest large sums to influence and gain access to American universities. They recruit researchers through talent programs to establish duplicate labs and research

projects in China, they steal intellectual property from American campuses, and they fund programs to shape the intellectual life of American campuses (both to promote CCP propaganda and supervise Chinese students studying in the United States).

AFPI supports policies at the state level that:

- 29) **Protect American intellectual property** by establishing reasonable restrictions on Chinese influence and recruiting programs.
 - a. AFPI's China Policy Initiative published the "[Protect American Campuses Act](#)," adapted from Wisconsin [SB 744 \(2021\)](#). The bill prohibits employees, students, and faculty at state institutions from participating in "recruitment programs established by the government of China, including the Thousand Talents Program, the Overseas High-Level Talent Recruitment Program, and the National High-End Foreign Experts Recruitment Plan"—all of which are designed to facilitate the theft of intellectual property. The bill would also require universities to report any Chinese efforts to recruit or enter into certain forms of partnership with U.S.-based researchers.

- 30) **Limit foreign influence on U.S. campuses** by establishing foreign gift reporting requirements at the state level.
 - a. Section 3 of Florida [HB 7017 \(2021\)](#) established a foreign gift reporting requirement for state universities, setting the reporting threshold at \$50,000. State colleges and universities must provide details of such gifts to the Department of Education (or Board of Governors, as applicable), including the amount of the gift and the date it was received, the source of the gift, and a copy of the gift agreement. To ensure compliance, the relevant inspectors general are required to "randomly inspect or audit at least 5 percent of the total number of gifts disclosed." The statute subjects schools that fail to disclose foreign gifts to a civil penalty equal to 105% of the gift's value and enables the attorney general to bring a civil action to enforce the provision. It also includes whistleblower protections and creates a financial incentive to encourage whistleblower reports.
 - b. Section 2 of Florida [HB 7017 \(2021\)](#) restricts campus partnerships with foreign countries of concern, including China, Russia, Iran, North Korea, Cuba, Venezuela, and Syria. State colleges and universities are prohibited from entering into agreements with, or accepting grants from, the specified countries if the partnership interferes with the university's freedom of contract or allows the foreign entity to influence the curriculum of the school or otherwise "[promote] an agenda detrimental to the safety or security of the United States or its residents." The statute also includes a provision prohibiting public universities from accepting anything of value "conditioned upon participation in a program or other endeavor to promote the language or culture of a foreign country of concern." The language is carefully crafted to cover not just Confucius Institutes, most of which have now been shuttered, but also less explicit Chinese Communist Party initiatives designed to shape university programs and culture.

Visit [AmericaFirstPolicy.com](https://americafirstpolicy.com) to learn more about the Higher Education Reform Initiative.

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For more information about higher education reform initiatives, or to discuss customizing these policies to your state’s specific needs and circumstances, please contact:

Matthew Lobel, Policy Analyst, Higher Education Reform Initiative at mlobel@americafirstpolicy.com

Jonathan Pidluzny, Ph.D., Director, Higher Education Reform Initiative at jpidluzny@americafirstpolicy.com

End Note

ⁱ For a discussion of the relationship between Critical Race Theory and campus DEI, including activists’ insistence on reverse discrimination in favor of historically marginalized groups, see Pidluzny, J. (2023, Aug.). *Reversing the Woke Takeover of Higher Education: Strategies to Dismantle Campus DEI*. America First Policy Institute, p. 3-8. Retrieved October 22, 2023, from <https://americafirstpolicy.com/latest/research-report-reversing-the-woke-takeover-of-higher-education-strategies-to-dismantle-campus-dei>