

12-1-2021

A Critical Examination of Contemporary Legal Issues Important to College Presidents

Arleene Breaux

University of Alabama, apbreaux@ua.edu

Jennifer M. Miles

Widener University

John W. Murry Jr.

University of Arkansas, Fayetteville

G. David Gearhart

University of Arkansas, Fayetteville

Follow this and additional works at: <https://scholarworks.uark.edu/jrcp>



Part of the [Educational Leadership Commons](#), and the [Higher Education Administration Commons](#)

Recommended Citation

Breaux, A., Miles, J. M., Murry, J. W., & Gearhart, G. D. (2021). A Critical Examination of Contemporary Legal Issues Important to College Presidents. *Journal of Research on the College President*, 5(1). Retrieved from <https://scholarworks.uark.edu/jrcp/vol5/iss1/6>

This Article is brought to you for free and open access by ScholarWorks@UARK. It has been accepted for inclusion in *Journal of Research on the College President* by an authorized editor of ScholarWorks@UARK. For more information, please contact scholar@uark.edu.

A Critical Examination of Contemporary Legal Issues Important to College Presidents

Arleene Breaux
University of Alabama

Jennifer M. Miles
Widener University

John W. Murry, Jr.
University of Arkansas

G. David Gearhart
University of Arkansas

ABSTRACT

This discussion provides a highlight of the legal dimensions that college presidents must consider in providing oversight for college operations. Many of these issues are driven by the behaviors of campus constituents, but several key legal issues are also the result of federal legislation and involvement in higher education.

Correspondence related to this article should be directed to Arleene Breaux, Coordinator of the Executive Doctoral Program in Higher Education at the University of Alabama, apbreaux@ua.edu (205-348-1169).

The American higher education and legal systems are inexplicably tied, with the latter's influence continuing to increase as lawmakers have looked for ways to direct higher education's efforts to make its leaders more accountable. Presidents and academic leaders must have an informed understanding of how specific laws impact higher education decision-making. Legal understanding is helpful in avoiding poor decisions, costly legal fees, resource losses, and damage to an institution's reputation.

In the wake of the nation's most polarized political landscape, protracted racial unrest, and a pandemic, public university presidents, considered boundary spanners between their institutions and social and political groups, have been tested more than in any other time in history. Presidents are being challenged to maintain welcoming campuses supportive of open discourse and tolerance at a time when a politically motivated, culture war is threatening the First Amendment rights of the academy's membership. Defending the university's "marketplace of ideas" in all forms of expression is foundational to higher education, but activist students, legislatures, and governing boards have been exerting their authority and often using legal means to control the speech, academic freedom, and organizational decisions made by college leaders.

Higher Education and Political Polarization

Social and political polarization exploded during the 2016 and 2020 presidential election cycles, resulting in high-profile student protests related to free speech on public university campuses. The 2020-21 Pandemic coupled with the murder of George Floyd unmasked underlying socioeconomic and racial discriminations and ignited more instances of divisive and hateful speech across the nation and on college campuses. Consequently, speech and academic freedoms have come under attack by ideologues, including students, policymakers, and boards of trustees. Presidents will face the difficulty of defending free speech in all forms while meeting the demands of their politically and culturally divided constituencies.

Higher Education and the Political Dividing Line

Possession of a college degree now serves as a dividing line in American politics, with degree holders generally supporting liberal ideologies and non-degree holders leaning toward conservatism (Kelderman, 2020). According to a 2019 survey by the Pew Research Center, approximately one-half of Americans believe that colleges and universities are having a negative effect on the nation, with 40% of Republicans citing a lack of confidence in the ability of university professors to act in the best interest of the public. Conservative policymakers argue that faculty members intentionally limit conservative speech on campuses, with the intent of indoctrinating students with more progressive perspectives while liberal lawmakers suggest that Republicans engage in efforts, such as hate-laced rhetoric to further widen society's differences (Parker, 2019).

Liberals have typically capitalized on political correctness and accepted social norms to shape higher education's behavior whereas conservatives have relied more on their legal and policymaking influence at state capitols, in the courts, and on governing boards (Wippman & Altschuler, 2021). As of 2020, Republicans controlled 29 state legislatures, 26 governorships, and appointed 226 judges over the course of the Trump Administration's single term (National Council of State Legislatures, 2021; Calmes, 2021). University governing boards, often appointed by state governors and legislatures reflect that same partisanship, with over two-thirds of current board members being Republican appointees (Ellis, Stripling, & Bauman, 2020).

As governmental officials have projected partisan policy agendas onto state-supported institutions, legal constraints on the academy increase. When lawmakers use their influence and "power of the purse" to advance their personal ideologies and goals, public university presidents find themselves fighting more expansive legal and regulatory requirements, changes in governance structures, and funding losses.

First Amendment Protections in Educational Settings

The First Amendment to the US Constitution broadly protects Americans' free speech, press, religion, association, privacy rights and to some degree, the concept of academic freedom. While speech (and conduct) considered to be repulsive, hateful, or unpopular is protected under the First Amendment, its protection does not extend to obscenity, fighting words, true threats, and speech intended to incite lawlessness. Speech, even if considered uncivil or capable of producing

conflict is protected in educational settings, up to the extent of material disruption to an institution's core mission (Lake, 2011).

Upholding the First Amendment rights of campus communities during a time of unprecedented partisanship has challenged academic leaders. The American Association of State Colleges & Universities (AASCU) has identified campus speech concerns as one of higher education's most pressing policy issues in every year since 2017. First Amendment advocacy groups and conservative lawmakers argue that legislating higher education is warranted because its liberal bias is manifested in administrative policies that inhibit free expression on college campuses (Deneen, 2020).

Students and the First Amendment

University presidents' duties are made more difficult by students' lack of understanding of what constitutes speech protections under the First Amendment and their ability to reconcile those protections with campus inclusivity (Alexander, 2020). In 2020, the Knight Foundation surveyed 3,000 college students to gauge their perspectives on campus speech. Eighty-one percent of students reported a desire to be exposed to all forms of expression, even if it was found to be biased or offensive and 68% of students believed that free speech rights are critical to the American democracy. Yet, 78% of students approved of institutional leaders restricting racially derogatory language on college campuses.

A 2017 Brookings survey of 1,500 college students reported over one-half of its respondents approved of using loud repetitive shouting to obstruct audiences from hearing a speaker's message and 19% would also support the use of violence to quell offensive or hate-ridden speech (Villasenor, 2017).

Students and university leaders often fail to understand their legal limitations to address offensive or racially biased campus speech. In 2018, student protesters at the University of Connecticut (UC) demanded sanctions against two students whose racial slur, made while walking outdoors on campus, was recorded and posted online. Both students were arrested and charged with ridicule related to creed, religion, color, denomination, nationality, or race and punished by expulsion (Leckrone, 2020). The students sued and prevailed against UC for exceeding its authority to punish, given the slur was protected speech under the First Amendment.

Speech Rights on Campuses

As students and faculty have moved beyond traditional classroom settings and into virtual environments, upholding speech rights has become more challenging. Public institutions have historically relied on speech codes and zones to define acceptable forms of expression and ensure students could safely exercise their First Amendment rights (Tierney, 2021). The Supreme Court has generally supported such narrow reasonable time, place, and manner restrictions to meet governmental (i.e., public institutions) interests, but it has failed to provide any guidance on the parameters for campus speech zones, or even their permissibility (Lake, 2011).

State lawmakers, on the contrary, have been particularly focused on legislation that limits institutions' ability to manage controversial speech, employ speech code policies, or designate speech to specific locations on their campuses. Legislative efforts have also promoted punishing students who disrupt invited campus speakers, blocking counter protests on campuses, and allowing student identity (i.e., gender or sexual orientation) to be considered for membership in student organizations. Critics argue that these types of regulations may actually "chill" student speech or invoke violence on college campuses (Rosenberg, Urban, & Pesavento, 2018).

Student Self-Censorship

University leaders worry that campus speech legislation will result in increased student self-censorship. A Knight Foundation survey of 3,000 students in 2018 reported that 61% believed that the climate on their campuses prevented some students from openly expressing their views to avoid offending others. Reflective of the nation's partisan divide, 92% of the respondents indicated that students identifying as Democrats were more comfortable sharing their opinions on campuses. Only 69% of respondents believed the same for Republican students. Self-censorship on college campuses has been the result, with more than 75% of the survey respondents reporting electing inclusion over participation when presented controversial discourse in the classrooms or on campus.

University leaders have attempted to manage disruptive, unwelcome, or discriminatory speech or practices through institutional policymaking. Yet, they face potential legal action when those policies violate students' First Amendment rights. The courts recently ruled against the University of Iowa (UI) for not applying unilateral sanctions against every student group said to be violating the campus' human rights policies. In 2018, the InterVarsity Graduate Christian Fellowship sued UI when its status as a registered student organization was revoked based on its religiously affiliated membership and leadership selection practices. The courts ruled that UI's actions were discriminatory because its administrative decisions were made solely on the basis of the group's religious views and its leadership choices.

Academic Freedom on Campus

Academic freedom, the search for truth through inquiry, teaching, and research has historically been thought to shield faculty and students from institutional or governmental interference. However, both classroom and online discussions have become part of out-of-context messaging on social media, harassment campaigns, and partisan attacks, making faculty increasingly vulnerable when presenting controversial opinions or addressing potentially divisive issues (Ellis, Stripling, & Bauman, 2020; Matthew, Lawrence, & Matthew, 2017; Kelderman, 2021).

Tierney (2021) suggests that the confluence of technology, micro-aggressions, and hate speech on modern college campuses has made defining and upholding academic freedom more difficult; but the courts' failure to prescribe which rights academic freedom includes or to whom they apply has only created confusion among faculty and administrators looking to preserve their institutions' legal interests (Rosenberg, Urban, & Pesavento, 2018).

Diversity among college students related to age, gender, ethnicity, sexual identity, and religiously affiliation has made today's students more aware of negative political and social climates and the struggles facing historically-minoritized populations. To ensure more inclusive and equitable campuses, institutional leaders have designated "safe spaces" for students to engage in freer expression, required faculty to provide "trigger warnings" in their classrooms, and created reporting processes for incidents of bias. Despite being well intended, these efforts, have First Amendment and academic freedom implications (Rosenberg, Urban, & Pesavento, 2018).

FERPA

The Family Educational Rights and Privacy Act (FERPA) is the primary federal legislation regarding the privacy of student data and information (Tonsager & Skeath, 2017). Hundreds of pieces of federal legislation, in addition to FERPA, govern the administration of higher education. Out of all federal legislation, FERPA is the primary act that guides how colleges and universities use institutional data and track the progress of students (Fuller, 2017). All educational agencies and institutions that receive funds from the federal government must comply with FERPA (Tonsager & Skeath, 2017). The main purpose of FERPA is to provide guidelines regarding how institutions can disclose student data, including which information requires a student's prior written consent before sharing. Because a lack of understanding of FERPA can cause a great deal of confusion (Fuller, 2017), presidents and campus leaders must be aware of FERPA, and must ensure campus officials are aware of FERPA and have structures and policies in place on campus to ensure compliance with FERPA.

Presidents can oversee strategic planning and assessment initiatives on campus. Student records, including records connected to academic programs, student services, athletics, and campus police, can be a critical part of planning and assessment. Using data and technology can help guide planning for the campus, including providing evidence regarding outcomes and expectations (Gagliardi et al., 2018; Gagliardi & Johnson, 2021; Gagliardi & Turk, 2017). When student information and records are used, care must be taken to ensure no privacy laws are broken, including ensuring the use of personally identifiable information.

FERPA applies to personally identifiable information in students' records. Personally identifiable information includes data linked to a specific, individual student. A student's education record includes information related to a student that an institution maintains, or that an agency maintains on behalf of the institution (Tonsager & Skeath, 2017). This information requires the consent of a student before being released. Directory information, however, can be released.

Directory information can be disclosed without the written consent of students (Fuller, 2017; Tonsager & Skeath, 2017). Directory information does not include a student's ID number or Social Security information. Directory information may include information such as a student's name, address, enrollment status, and campus activities. Institutions must disclose how it defines directory information, including all student information included. Presidents and campus leaders need to know how the institution defines directory information, and where that definition is located. Students do not have to participate in the disclosure of their directory information;

students have the right to opt out of directory information disclosures (Tonsager & Skeath, 2017).

Exceptions to obtaining written consent from a student are in place. For example, institutional faculty and staff with a legitimate educational interest may have access to student information without a student's written consent (2017, Fuller). Presidents need to know who can access information, and who cannot access it without the written consent of students. Situations may arise in which university officials need access to students' education records due to a legitimate education interest. Another exception in FERPA includes health emergencies; this exception permits staff members and additional nonmedical employees to share information with parents regarding health emergencies (Baker, 2005).

Faculty and staff have access to a wide variety of information protected under FERPA. Presidents must ensure a culture exists on campus in which faculty and staff are aware of information that must be kept confidential, and information that can be disclosed. Training is needed regarding FERPA. Individuals who need to understand FERPA include staff in areas such as admissions, institutional research, financial aid, the registrar's office, faculty, athletics, student affairs, housing and residence life, and campus police.

FERPA affects how faculty interact with students in their academic programs, and what information, and how and to whom that information, can or cannot be disclosed. A student's performance on examinations and quizzes cannot be disclosed without written permission of the student. This includes how grades are posted. Instructors should know where to direct individuals who request this information and be encouraged to contact the appropriate college or university office or official for guidance. The office that provides FERPA information and coordinates resources regarding waivers and opting out of directory information is typically the registrar's office (Marcum & Perry, 2010). FERPA must be considered in terms of all learning platforms and environments, including face-to-face and on-line learning. In an on-line environment, privacy issues can become more complicated. Faculty and staff benefit from training, including information regarding student privacy in an on-line environment (Chang, 2021). Presidents and institutional leaders can establish a culture on campus in which academic policies and practices apply to all academic programs, regardless of delivery method.

Coaches in intercollegiate athletics, as college and university employees, must comply with FERPA. Coaches need to be properly trained, because disclosing information they are asked to provide to internal and external entities may violate FERPA. Staff and coaches in intercollegiate athletic departments need to be trained regarding legal requirements (Palmer and Kobritz, 2011).

Another area on campus outside of Academic Affairs that needs to be aware of FERPA is the campus police department. Campus police need to be aware of FERPA, including if, how, and to whom student information can be disclosed. In addition to student records, information used in student conduct matters, and body camera footage (Gaub, 2021), other student information campus police may have access to/can include information found in incident reports, and security camera footage.

Colleges and universities often acknowledge the role of families and parents of current students regarding the student's success at the institution ("Shifting the Paradigm of Parent and Family Involvement: A Practitioner Perspective of Families as Partners in Student Success," 2015), and campus leaders may establish programs and initiatives in order to connect parents and families to the institution. Legal restrictions related to FERPA can affect the relationship that parents and families have with the institutions. These limitations may affect how parents and families engage with the institution ("Implications and Recommendations: An Emerging Agenda to Better Understand the Role of Parents and Families," 2015). Awareness and acknowledgment of the restrictions and limitations is important when reviewing the role of parents and families and exploring new programs and initiatives.

FERPA affects data that can be disclosed and how student data can be shared and obtained (Tonsager & Skeath, 2017). Presidents interact with, and work with, a large variety of on-campus and off-campus constituencies, including students, families, faculty, staff, community members, alumni, donors, the media, and elected officials. Presidents need to know what information regarding students can and cannot be disclosed. Presidents and other campus leaders may be asked for information regarding students and student records at any time (Trachtenberg, 2006); a clear understanding of privacy laws is critical.

Title IX

In 1972, Title IX became part of the Educational Amendments to the Civil Rights Act of 1964 (Perry, 2021). Title IX is a civil rights law prohibiting educational institutions from discriminating on the basis of sex (Javorka & Campbell, 2021). All institutions that receive federal funds must comply with Title IX (Walker, 2020). Title IX applies to many issues related to sex discrimination, including athletics, employment, pregnant and parenting students, sexual misconduct, and academic programs (Perry, 2021). College and university presidents must be aware of Title IX, including institutional responsibilities related to Title IX, and how the institution's mission statement and strategic plan are connected to the institution's commitment to Title IX and gender equity.

Considered landmark legislation, Title IX requires anti-discrimination measures intended to protect staff, faculty, and students in educational institutions. Through Title IX, sex discrimination toward employees and students is prohibited (Stromquist, 2013). Title IX, which is overseen by the Office of Civil Rights (Nightingale, 2021; Office of Civil Rights, 2021), applies to post-secondary education and K-12 education (Chambers et. al, 2021; Compliance Overview, 2021). As institutional leaders, college and university presidents are responsible for ensuring their institutions are diverse, inclusive, and equitable (Rodriguez, 2015). Title IX compliance contributes to maintaining a diverse and equitable campus. Presidents need to be aware of institutional responsibilities regarding Title IX, including making sure policies are in place and training is available for students and employees.

Changes have been made to Title IX throughout the years. In 2011, during the administration of President Obama, the Office of Civil Rights in the Department of Administration published guidance that expanded rights of victims of sexual misconduct. The guidance was distributed through a Dear Colleague Letter. During President Trump's administration, those guidance

documents were revoked, and new interim guidelines were put into place; the guidelines became Title IX regulations in May 2020 and were in effect in August 2020 (Perry, 2021). Institutions' policies and practices, which are affected when federal guidance and regulations are amended or revised under changes in the federal administration (Chambers et al., 2021; Mehta, 2019), had to be reviewed and revised. Title IX coordinators are responsible for keeping up with changes, working with appropriate campus officials to revise campus policies and procedures, informing employees and students, and revising policies, programs, and trainings as needed.

In order to be in compliance with Title IX, universities and colleges must respond to reports of sexual assault (Fenwick, 2018; Nightingale, 2021), sexual harassment (Nondiscrimination on the Basis of Sex, 2020; Walker, 2020), and rape (Walker, 2020). Students enrolled in colleges and universities have been found to be at high risk of sexual assault (Javorka & Campbell, 2021). Ensuring institutional compliance with Title IX, and providing prevention programming, are critical.

Title IX Offices coordinate reporting of sexual assault allegations and oversee sexual assault investigations. The number of staff members may differ based on the size and scope of the institution. Title IX coordinators need to be supported by institutional leaders (Chambers et al., 2021). Presidents can ensure the Title IX coordinator, and other faculty and staff, are thoroughly versed in Title IX complexities, are aware of changes, and revise policies and trainings as needed to ensure compliance. If institutions do not stay current regarding changes, institutions can be found to be out of compliance.

Title IX coordinators and additional faculty and staff, such as deputy coordinators, need to have initial training when new to their roles, and require additional training as changes are made on a federal level and as institutional policies and procedures are updated and revised. These staff members need to be knowledgeable so they can train, and serve as a resource for, others on campus. Expenses are associated with trainings, and presidents and institutional leaders must be committed to providing appropriate financial resources (Chambers et al., 2021). Multiple campus offices, all reporting to different supervisors, may be involved in Title IX compliance; for example, student affairs and human resources may both be tasked with ensuring trainings are conducted, and that the institution's policy and reporting mechanisms are publicized throughout the campus.

Employees considered "responsible employees" have reporting responsibilities under Title IX (Chambers et al., 2021; Compliance Overview, 2021). Presidents need to know of their own responsibilities, and faculty and staff responsibilities, including training for those individuals. Title IX trainings may be on-line or face-to-face (Chambers et al., 2021). Chambers et al. (2021) found, in a study exploring Title IX coordinators' perceptions of Title IX trainings, that Title IX coordinators expressed that including the institution's mission improves the effectiveness of trainings.

Trainings can be offered to specific departments, including intercollegiate athletics and campus police. Title IX can directly impact the work of faculty and staff in the course of their daily work. For example, campus police officers and staff members must be aware of Title IX. Campus police departments maintain records that could possibly be included in Title IX investigations,

criminal proceedings, and student disciplinary matters, such as student information and camera footage (Gaub, 2021).

Presidents of colleges and universities are in a position to empower members of the campus community to ensure that trust and inclusion are imbedded throughout the institution, and are part of the culture of the institution (Rodriguez, 2015). Title IX affects all realms of institutions, and individuals need to know how, and to whom, to report Title IX concerns (Nondiscrimination on the Basis of Sex, 2020). Presidents of colleges and universities need to include others in offices, departments, and areas across campus, in making changes to create a campus environment in which students can succeed (Rodriguez, 2015), and in which faculty and staff can do their best work.

Safe Spaces, Trigger Warnings, and Bias Reporting

Safe spaces include either physical locations for students to engage in free expression or pedagogical assurances that students' classroom speech will not result in any penalty or loss of favor. Trigger warnings involve a professor alerting students to the possibility of potentially disturbing classroom content or discussions. Warnings allow students the opportunity to opt-out of conversations they may find troubling. University procedures making it easier to report incidents of bias on campus have also been implemented.

Critics of these measures argue that universities are learning environments that should challenge students' belief systems through pedagogies that provoke debate (Rosenberg, Urban, & Pesavento, 2018). Consequently, institutional leaders are forced to attempt to balance the benefits of these protections against the possibility of increased student self-censorship or punishment for contradictory perspectives.

Activist Legislatures

Navigating the politics at state capitols is an important duty of the public college and university president. State support for public higher education has been shrinking for decades, but these institutions remain reliant on appropriated dollars for their operations and keeping tuition rates affordable. Effective presidents understand that relationship building and responsiveness to legislative concerns are the best strategies for deflecting unnecessary or unreasonable laws directed at higher education institutions.

Activist legislatures, fueled by political ideology, have not been content to provide only financial support to their public institutions, despite the Supreme Court's position that educational decisions are better left to educational experts (Jeltema, 2004). State lawmakers interest in speech rights peaked in 2017 after high-profile, and sometimes violent campus protests aimed at silencing conservative speakers occurred at the University of California (UC) Berkeley, UCLA, Middlebury College, and campuses across the U.S. (Chauvin, 2018; Ellis, Stripling, & Bauman, 2020).

The result was Republican-controlled state houses calling for more accountability in protecting conservative speech on university campuses (AASCU, 2021). Variations among state laws exist

but by 2019, seventeen states had enacted laws restricting institutional campus speech code use; preventing students from obstructing speakers with opposing viewpoints; and allowing cause of action against institutions found to be violating student speech protections (Bauer-Wolf, 2019).

Campus free speech groups such as the Foundation for Individual Rights in Education (FIRE) lobby against university policies deemed to obstruct free speech, such as requiring advance notice and/or prior approval to invite speakers to campus or hold protests, limiting speech to only specific locations on campus, or raising campus security fees to deter students from hosting events involving controversial speech.

Examples of state legislation passed in 2019 include Arkansas' SB 156, known as the *Forming Open and Robust University Minds (FORUM) Act* and Alabama's *Free Speech* legislation, both intended to protect students' First Amendment free speech rights and prohibit abridged speech on public institutions' campuses. Failure to comply provides opportunities for individuals or student organizations to:

- a) pursue legal action against not only the public institution, but other individuals responsible for violations,
- b) seek injunctive relief as well as monetary damages, attorney's fees, and court costs; and
- c) defend against disciplinary actions or civil and administrative proceedings against them.

Federal efforts in 2019 included an executive order signed by former President Donald J. Trump directing grant-issuing agencies to ensure that public universities comply with free speech and inquiry regulations.

Activist Governing Boards

Public university boards are legally responsible for ensuring that institutions fulfill their assigned missions. They also serve as fiduciaries in preserving the financial, physical, and intellectual vitality of their institutions. With state's Governing board members are often appointed by governors or in some cases, state legislatures. Their service is complicated by the very political environment that made their appointment possible. Furthermore, governing boards of public institutions are asked "to exercise legal responsibility over an organization that requires expertise they often do not hold, engage with campus power structures they often do not understand, and take actions on management decisions they often did not participate in" (Hendrickson, Lane, Harris, & Dorman, 2013, p. 227).

Politics and the law shape the composition of public universities' boards as well as the underlying forces involved in their decision making (Bastedo, 2009). Political posturing has led to more board interference in a myriad of institutional affairs. Scholars agree that boards place scholarship and teaching and universities' integrity at risk when they intervene in matters such as faculty authority, curricula choices, or hiring decisions (Bastedo, 2009; Whittington & Wilentz, 2021). Agencies responsible for evaluating U.S. institutions' educational quality standards oppose governing boards that lack independence, promote ideologies and public policies to satisfy their political constituencies' goals, or use their official positions to advance their personal causes (Bastedo, 2009; Derby, 2021).

While governing boards hold the legal authority to approve institutional employment offers, they have historically relied on faculty and administrative leaders' professional authority and recommendations for hiring decisions. Incidents of increasingly partisan boards are threatening institutional self-governance. Allegations against the University of North Carolina at Chapel Hill's Board of Trustees for political meddling surfaced in 2021 when it denied faculty recommendations in awarding tenure to a journalist tied to controversial race-based scholarship. As in this case, board interference rooted in political ideology puts institutions at legal, monetary, and reputational risks.

Consequently, public university presidents must find ways to balance the power dynamics between the boards with the capability of hiring and firing them and their duty to uphold the academic freedoms of its institutional members' (Bastedo, 2009; Hendrickson et al., 2013). Through relationship building and board educational opportunities, presidents can mitigate members' attempts to use their influence to insert ideologies into institutional leaders' decisions.

Discussion

The speed and turbulence of modern environments has made it important for university presidents to possess a foundational understanding of the law. The legal system's influence on higher education decision making has never been greater (Lake, 2011). Yet, few academic leaders' career trajectories have prepared them for the legal landscape they will likely encounter. Presidents must possess an awareness and understanding of the underlying legalities involved in every campus decision and sharing that understanding with the university's constituencies, both internal and external, is the most effective way to mitigate the legal risks posed to their institutions.

Concerns related to the speech and academic freedoms of students and faculty as well as the rising political intrusiveness of legislative bodies and governing boards have been presented here. University presidents should not feel as if they have no real recourse against offensive, but protected, speech or politically motivated intrusions within their campuses. They can enlist the power of their constituencies to resist efforts to suppress free expression and address activist legislatures' and governing boards' interests by incorporating some of these broad recommendations:

1. Communicate a personal and institutional commitment to free expression and academic freedoms.
2. Foster and encourage the academy's constituencies to value all forms of speech.
3. React within the law, to address any discriminatory, retaliatory, harassing, or privacy invasions among campus constituencies.
4. Avoid speech suppression, refuting offensive or harmful speech with more speech.
5. Commit resources to addressing the monetary and psychic costs associated with free expression protections.
6. Initiate and support programming that educates institutional stakeholders on the First Amendment's protections and limitations.

7. Expand support programming or services for students from minoritized populations to moderate the effects of campus hate speech.
8. Ensure that measures taken to address unwelcome, but protected speech do not extinguish, punish, or “chill” campus expression.
9. Develop strong, trustworthy relationships with legislative and governing board members, educating them on the educational, social, political, economic challenges and opportunities facing higher education.
10. Educate legislators and board members on their roles and responsibilities, ensuring their understanding of serving a broader public purpose without political bias or interference.

References

- American Association of State Colleges & Universities (AASCU). (2021). Policy Matters: Top 10 higher education state policy issues for 2021.
- Alexander, E. (May 5, 2020). Campus speech 2020: New survey reveals college student views on free speech and inclusivity. Knight Foundation.
- Baker, T. R. (2005). Notifying parents following a college student suicide attempt: A review of case law and FERPA, and recommendations for practice. *NASPA Journal*, 42(4), 513-533.
- Bauer-Wolf, J. (2019, September 16). “Free speech laws mushroom in wake of campus protests” *Inside Higher Education*.
- Bastedo, M. N. (2009). Conflicts, commitments, and cliques in the university: Moral seduction as a threat to trustee independence. *American Educational Research Journal*, 46(2), 354-386.
- Calmes, J. (2021, June 22). How Republicans have packed the courts for years. *Time*, 197(23).
- Chambers, K., Romsa, B., & Romsa, K. (2021). Prevention of sexual misconduct on college campuses: A qualitative analysis. *College Student Affairs Journal*, 39(1), 28-42.
- Chang, B. (2021). Student privacy issues in online learning environments. *Distance Education*, 42(1), 55-69.
- Chauvin, N.C. (2018). Policing the heckler’s veto: Toward a heightened duty of speech protection on college campuses. *Creighton Law Review*, 52, 29-69.
- Compliance Overview of Title IX, DFSCA, and FERPA and requirements of the legislation. (2021). <https://clerycenter.org/policy/vawa-dfscs-ferpa/>
- Deneen, P. J. (2020, October 30). The higher-ed doom loop. *The Chronicle of Higher Education*, 67(5), 12.
- Derby, J. (2021, June 1). Fiduciaries, not thought police. *Inside Higher Education*.

Ellis, L., Stripling, J., & Bauman, D. (2020, October 2). The new order: How the nation's partisan divisions consumed public-college boards and warped higher education. *The Chronicle of Higher Education*, 67(3), 11-25.

Fenwick, K. (2018). Why social workers should care about changes to Title IX under Trump. *Social Work*, 63(3), 269-271.

Fuller, M. (2017). An update on the Family Educational Rights and Privacy Act. *New Directions for Institutional Research*, 172, 25-36.

Gagliardi, J. S., & Johnson, G. (2021). The evidence imperative: Reflections on how volatility and data are reshaping the relationship between IR and college and university presidents. *New Directions for Institutional Research*, 185-186, 105-122. <http://dx.doi.org/10.1002/ir.20332> (Valid link November 2021 <https://onlinelibrary.wiley.com/doi/10.1002/ir.20332>)

Gagliardi, J. S., Parnell, A., & Carpenter-Hubon, J. (Eds.). (2018). *The analytics revolution in higher education: Big data, organizational learning, and student success*. Stylus Press.

Gagliardi, J. S., & Turk, J. M. (2017). *The data enabled executive*. American Council on Education.

Gallup/Knight Foundation. (2020). The First Amendment on campus 2020 report: College students' views of free expression. <https://knightfoundation.org/wp-content/uploads/2020/05/First-Amendment-on-Campus-2020.pdf>

Gaub, J. E. (2021). Assessing the utility of body-worn cameras for collegiate police agencies. *Police Quarterly*, 24(4), 1-31.

Hendrickson, R. M., Lane, J. E., Harris, J. T., & Dorman, R. H. (2013). *Academic leadership and governance of higher education: A guide for trustees, leaders, and aspiring leaders of two- and four-year institutions*. Stylus Publishing, LLC.

Implications and Recommendations: An Emerging Agenda to Better Understand the Role of Parents and Families. (2015). *ASHE Higher Education Report*, 41(6), 66-72.

Javorka, M., & Campbell, R. (2021). "This isn't just a police issue:" Tensions between criminal justice and university responses to sexual assault among college students. *American Journal of Community Psychology*, 67(1-2), 152-165. <https://doi.org/10.1002/ajcp.12448> (Valid link November 2021 <https://onlinelibrary.wiley.com/doi/10.1002/ajcp.12448>)

Jeltema, L. A. (2004). Legislators in the classroom: Why state legislatures cannot decide higher education curricula. *American University Law Review*, 54(1).

Kelderman, E. (2020, November 13). The college degree is dividing America. *The Chronicle of Higher Education*, 67(6), 18-21.

Kelderman, E. (2021, August 6). The far right's college crusade: How extremists are infiltrating and frustrating campus Republican groups. *The Chronicle of Higher Education*, 67(24), 10-16.

Lake, P. F. (2011). Foundations of higher education policy: Basic legal rules, concepts, and principles for student affairs. National Association of Student Personnel Administrators.

Leckrone, B. (2020, February 7). A public college wants to punish 2 students for hate speech. Is it legal? *The Chronicle of Higher Education*, 66(20), A29.

Marcum, T. M., & Perry, S. J. (2010). Legal tips for those who assist college students: A recommendation for professional development. *College and University*, 85(3), 50-58.

Matthew, K. I., Lawrence, K., & Matthew, M. E. (2017). Balancing disruptive students' rights with campus safety. *The Clearinghouse*, 90(5-6), 203-207.

Mehta, S. (2019, February 16). *The uncertain future of Title IX*. The Kenan Institute for Ethics at Duke University. <https://kenan.ethics.duke.edu/the-uncertain-future-of-title-ix/>

National Council of State Legislators (NCSL). (2021, September 14). State partisan composition. ncsl.org.

Nightingale, S.D. (2021). The role of trust in perceptions of the sexual assault reporting climate for LGBQ college students. *Journal of Diversity in Higher Education*.
<https://doi.org/10.1037/dhe0000317> (Valid link November 2021
<https://psycnet.apa.org/doiLanding?doi=10.1037%2Fdhe0000317>

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. (2020). *85 FR 30026*.

Office of Civil Rights. (2021). *Resource for LGBTQI+ students*. U.S. Department of Education. <https://www2.ed.gov/about/offices/list/ocr/lgbt.html>

Palmer, S., & Kobritz, J. (2011). Collegiate coaches and FERPA. *Review of higher education and self-learning*, 4(9), 54-67.

Parker, K. (2019, August 19). The growing partisan divide in views of higher education. Pew Research Center.

Perry, L. (2021). From Brock Turner to Brian Banks: Protecting victims and preserving due process in the new area of Title IX. *DePaul Journal for Social Justice*, 14(2), 1-51.

Rodriguez, F. C. (2015). Why diversity and equity matter: Reflections from a community college president. *New Directions for Community Colleges*, 172, 15-24.
<http://dx.doi.org/10.1002/cc.20160> (Valid link November 2021
<https://onlinelibrary.wiley.com/doi/10.1002/cc.20160>)

Rosenberg, S., Urban, D., & Pesavento, C. (2018, December 3). Garcetti and academic freedom. *National Association of College and University Attorneys (NACUA) Notes*, 17(2).

Shifting the Paradigm of Parent and Family Involvement: A Practitioner Perspective of Families as Partners in Student Success. (2015). *ASHE Higher Education Report*, 41(6), 45-65.

Stromquist, N. P. (2013). Education policies for gender equity: Probing into state responses. *Education Policy Analysis Archives*, 21, 65. <https://doi.org/10.14507/epaa.v21n65.2013> (Valid link November 2021 <https://epaa.asu.edu/ojs/index.php/epaa/article/view/1338>)

Tierney, W. G. (2021). *Get real: 48 challenges confronting higher education*. State University of New York Press.

Tonsager, L., & Skeath, C. W. (2017). Ask and you might not receive: How FERPA's disclosure provisions can affect institutional research. *Journal of Student Financial Aid*, 47(3), 87-96.

Trachtenberg, S. J. (2006). No magic, little sleep, and lots of luck: Reflections from a long serving university president. *Presidency*, 9(3), 14-19.

Villasenor, J. (2017, September 18). Views among college students regarding the First Amendment: Results from a new survey. Brookings Institution, Washington, DC.

Walker, S. Y. (2020). Understanding Title IX: Implications for higher education. *Teaching and Learning in Nursing*, 15(4), 284-285.

Whittington, K. E., & Wilentz, S. (2021, June 11). The political corruption of the university. *The Chronicle of Higher Education*, 67(20), 38-39.

Wippman, D., & Altschuler, G. C. (2021, August 10). Attacked from both sides. *Inside Higher Education*.