

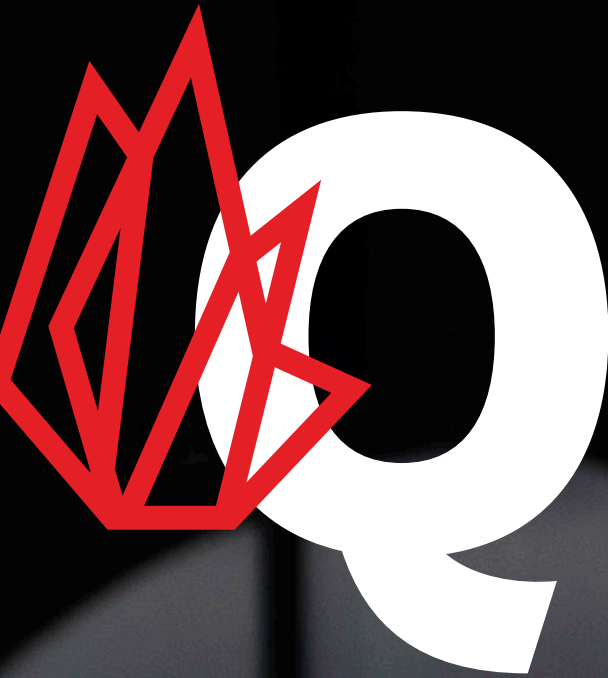
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FIRE QUARTERLY

WINTER 2021



A chill at Frostburg State

A student journalist is targeted.
With FIRE, she fights for her rights. | 4



88% of universities restrict expression — and online classes are especially dangerous for student speech

Students may be able to find their professors and classmates online, but many won't find their speech rights there. A new FIRE study found half of top American colleges and universities maintain policies that restrict online expression protected under First Amendment standards, and 9 in 10 restrict speech broadly on campus.

Spotlight on Speech Codes 2021: The State of Free Speech on Our Nation's Campuses analyzes the written policies at 478 of America's top colleges and universities for their protection of free speech. The report finds that 88% of American colleges maintain policies that restrict — or could be interpreted to restrict — expression, and almost 200 public institutions maintain online speech policies that run afoul of the First Amendment.

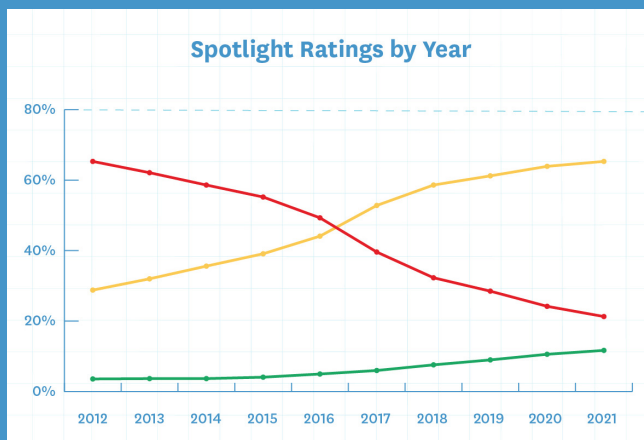
See how your alma mater stacks up at thefire.org/spotlight

Just over a fifth of institutions — 21% — received an overall red light rating, FIRE's lowest rating, for maintaining speech codes that both "clearly and substantially" restrict freedom of speech. This reflects a 3-point drop from last year's report.

Alarming, red light schools still make up at least half of FIRE-rated institutions in the District of Columbia and 7 states: Alaska, Delaware, Illinois, Oregon, South Carolina, Vermont, and Wyoming.

Only 12% of institutions nationwide (56 schools) do not maintain any policies that compromise student expression, earning FIRE's highest, green light rating. This total is up significantly

from only 2% in 2009. Meanwhile, the number of institutions earning a yellow light rating is growing: from 21% in 2009 to 65% today.



As online censorship surges, FIRE fights back

While the difficulties brought by online teaching due to COVID-19 are new, universities' struggles with respecting student rights online are not. FIRE's report on online censorship, *Memory-holed: Universities and Internet Speech*, explores the surge in online censorship and examines some of FIRE's biggest online speech cases from the past two decades.

The report examines how colleges restrict speech on their social media pages, collectively blocking 1,825 unique words and phrases including the names of political figures, corporate partners, sports teams, faculty members, and even an emoji.

The problem extends beyond America's borders: The report shows how international students and American students studying abroad or through international partnerships face serious consequences for internet speech — including arrest.



"Students and professors are constantly facing investigations and punishments for speech that's fully protected by the Constitution," said report author Sarah McLaughlin. "All it takes is an opinion and a Twitter account, and you could be next. And when that happens, FIRE is here to fight for you."

on that note...

THE UNITED NATIONS TAKES NOTICE OF ACADEMIC FREEDOM. FIRE asks hundreds of colleges to do the same.

This winter, FIRE wrote to more than 400 institutions to encourage them to take note of a new report on academic freedom released by the United Nations Office of the High Commissioner for Human Rights' Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression.

The report, written by former Special Rapporteur David Kaye and presented to the United Nations General Assembly on Oct. 23, presents a concerning picture of the global state of academic freedom. The report cited FIRE's work showing that universities bound by the First

Amendment or their stated commitments to free expression frequently abandon those obligations when pressured by students, legislators, or aggrieved members of the public to punish controversial faculty speech.

FIRE's letter notified universities of the report's commentary on academic freedom in the United States as well as its recommendations for how institutions can better protect student and faculty rights on campus.

VICTORY:

Student stopped by campus police for holding up a sign settles First Amendment lawsuit with Mississippi college

Mississippi's Jones College finalized a settlement with former student Michael Brown, who sued the college with FIRE after administrators and campus police infringed on his First Amendment rights.

"I am pleased that Jones College was willing to work in good faith to align their policies with the First Amendment rights guaranteed to all of us, especially students on their campus," said Brown after the late November settlement. "Fighting for this reform is important to me because we all must have the ability to speak freely, otherwise how are we any better than other nations and regimes that restrict what their citizens may say?"

Brown was stopped from exercising his free speech rights on campus twice in early 2019 when he tried to recruit fellow students for a campus chapter of Young Americans for Liberty. In February 2019, administrators called campus police to stop Brown from rolling around a "free speech ball," telling him he needed the college's permission before engaging in expressive activity. Two months later, campus police stopped Brown from holding up a sign polling fellow students on marijuana legalization without permission. The campus police chief hauled him into his office and told him he should've been "smarter" than to exercise his First Amendment rights without the college's permission.

Brown and FIRE sued Jones College in September 2019, challenging the college's overly-restrictive speech codes, which required administrative approval and a minimum three-day waiting period before "gathering for any purpose" anywhere on campus.

As part of the settlement, Jones College agreed to implement a policy allowing students to express themselves without permission. The policy also adopts language from the "Chicago Statement," joining 77 other institutions nationwide in adopting this principled statement on free expression. Finally, the college agreed to pay \$40,000 for attorneys' fees and damages.

"We're proud of Mike for standing up for his rights and the speech rights of all students at Jones College," said FIRE Director of Litigation Marieke Tuthill Beck-Coon. "At a time when students at 9 in 10 colleges across the country forfeit their rights under unconstitutional speech codes, we commend Jones College for joining the ranks of Chicago Statement institutions committed to providing students 'the broadest possible latitude to speak.'"

With its new policy in place, Jones College joins a positive statewide trend for campus free speech in Mississippi.

In 2019 alone, four universities in Mississippi scrapped their unconstitutional speech policies to be among the 56 institutions nationwide earning FIRE's highest, green light rating. Today, Mississippi is second to only North Carolina for states with the most green light colleges.

The lawsuit was filed in partnership with Cody W. Gibson of Gibson & Mullennix, PLLC in Jackson, Mississippi, who was co-counsel with FIRE in the case. The suit was part of FIRE's Million Voices Campaign, which aims to free the voices of one million students by striking down unconstitutional speech codes nationwide. To date, these efforts have successfully helped over 400,000 students.



Mike Brown stood up for his speech rights — protecting the rights of nearly 5,000 students at Jones College.

A student re-attached a fallen note of support to a staff member's door.

Then her university investigated her for harassment.



How far will a university administration go to retaliate for bad press? At Frostburg State University, the answer is chilling.

Student reporter Cassie Conklin must have ruffled some administrative feathers for covering criticism of the Maryland university's COVID-19 response for the student newspaper. After video showed her re-attaching a fallen note to a staff member's door during a campus protest, she found herself the target of a baseless harassment investigation by the administration, and the newspaper faced demands to investigate and punish its own reporter.

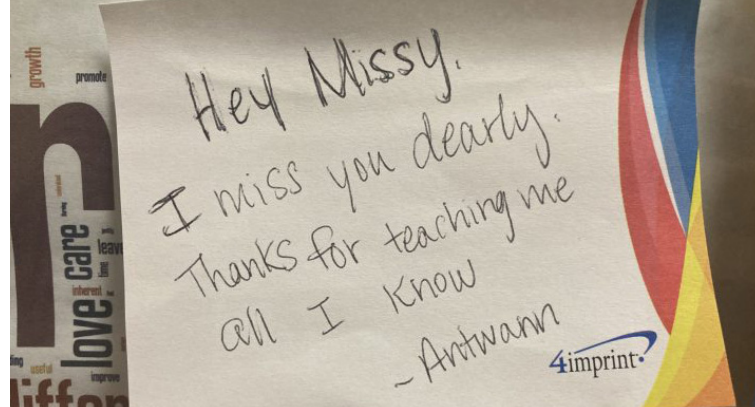
“The realization that the president of Frostburg State University, a school that I deeply love and respect, chose to personally target and retaliate against me for my journalistic efforts has been overwhelming, confusing, and hurtful,” Conklin said.

FIRE and the Student Press Law Center called on FSU to end any investigation into Conklin without punishment and make clear that The Bottom Line, the university's independent student newspaper, is not required to comply with any administrative directives.

On Oct. 21, Conklin covered student protests against a staff member, during which she photographed the staff member's door. On Oct. 30, Conklin wrote an unrelated story detailing a student's ordeal after testing positive for coronavirus, alleging that the university did little to help the student despite knowing she lived in campus dorms.

The Baltimore Sun linked to Conklin's coronavirus story on Nov. 20. Three days later, administrators summoned Conklin's editor-in-chief and the newspaper's faculty adviser for a meeting to discuss Conklin allegedly harassing a university staff member an entire month prior.

Administrators accused Conklin of slipping a threatening note under the door of the staff member who was the subject of the



The note Cassie Conklin reattached to a staff member's door.

student protests. The university said they had video evidence to prove the allegations (the video actually proves Conklin's innocence), and directed the newspaper to investigate and punish Conklin.

FSU could not explain why it waited 33 days to initiate the investigation. Moreover, the investigation was initiated the next business day after her report on coronavirus in the dorms gained mass media attention.

“The fact that the university waited an entire month to act on a complaint calls into question whether the university was concerned by her alleged behavior — or by her growing portfolio of reporting critical of the university,” said FIRE's Lindsie Rank, author of the letter to FSU.

The video doesn't back up FSU's version of the facts. Instead, the tape shows a note fall from the staff member's door into an empty hallway. Conklin picked up the note and re-attached it to the door. What's more, the note, which Conklin photographed but did not author, is not threatening, but expresses support for the staff member.

After FIRE's letter, the university said Conklin would not be subject to further investigation or punishment. But what about the long-term threat? Is the student press truly free at FSU?

Our concerns are rooted in a broader context. In November, FIRE wrote to FSU after emails surfaced in which the university's housing director threatened student resident assistants that “speaking out against their employer may be noted in their evaluation forms and used as a teaching tool.” In response, Frostburg assured us that “RA's are NOT terminated just because they speak up.”

But does that mean speech can be considered as part of the reason an RA might be terminated?

Unfortunately, what Frostburg has not done in either of its responses to FIRE is made a clear statement outlining ways to improve the climate of free speech. While the university claims a commitment to free speech, actions speak louder than words.

We are glad Conklin won't be punished, but we'll be keeping a close eye on Frostburg going forward to ensure it doesn't continue to trample on the expressive rights of its students.

on that note...

FIRE is ramping up its efforts to protect the rights of student journalists. This year, we sent posters to hundreds of newsrooms to remind students of the importance of free speech and warning signs of press censorship. We also launched a hotline (833-451-FIRE) where student journalists can get advice in real time.





Donor Spotlight: Tom Lewis



“I strongly support FIRE’s initiatives defending free speech on college campuses. The First Amendment is under attack like never before and FIRE is helping to protect our constitutional freedoms. American universities continue to suppress student and faculty free speech and if left unchecked, our fundamental rights will continue to erode. Empowering and educating students to express and defend their right to free speech has never been more important, and FIRE is doing the necessary work to combat the current censorship and bias that exists on American campuses today.”

*Tom Lewis
Founder, Owner, and CEO of T.W. Lewis Company in
Phoenix, Arizona*

Tom is a dedicated philanthropist and has been an enthusiastic supporter of FIRE for years. As you can tell from his testimonial, he is deeply committed to safeguarding free speech on college campuses.

FIRE is honored to have committed advocates like Tom as members of The Ember Club. With support from our members, FIRE will continue providing legal aid for students and professors whose rights have been violated, encouraging schools nationwide to adopt our new free speech orientation, expanding our campus climate survey to 150 schools, advancing policies at the campus, state, and federal levels that protect free expression, and so much more.

You can learn more about The Ember Club at thefire.org/donate. If you would like to discuss joining the Ember Club, please do not hesitate to contact us at support@thefire.org or 215-717-3473.

LAWSUIT VICTORY:

UCLA admits to violating the law after stonewalling open records request for over a year

It took 404 days, five extensions, and a lawsuit for the University of California, Los Angeles to fulfill a single open records request.

The saga finally came to a close this winter when FIRE announced a victory in the lawsuit — filed to remind UCLA and public institutions around the country that they have a moral and legal obligation to fulfill public records requests.

“It shouldn’t take over a year and litigation to get 13 pages of documents from a public university,” said FIRE Director of Litigation Marieke Tuthill Beck-Coon. “The people of California deserve far better from the institutions they fund.”

The Superior Court of California entered judgment in FIRE’s favor, ruling that UCLA’s handling of a 2018 records request from FIRE violated the California Public Records Act. As part of the resolution, UCLA admitted that it violated the law by failing to fulfill the request for over a year.

FIRE’s suit stemmed from a 2018 speaking engagement by U.S. Secretary of the Treasury Steven Mnuchin. After news reports that Mnuchin “retracted his permission” for UCLA to release a video of the campus appearance, FIRE issued a public records request to UCLA for a copy of the video and any communications about its release. UCLA publicly posted the video to its website but failed to release any other requested document. Instead, UCLA responded to FIRE with a succession of emails repeatedly awarding itself extensions — five in all — before FIRE filed a lawsuit on March 27, 2019.

UCLA finally handed over the 13 pages of requested documents on April 10, 2019 — more than 13 months after FIRE filed its original request. FIRE was represented by Kelly Aviles of the Law Offices of Kelly Aviles and FIRE attorneys Beck-Coon and Greg H. Greubel. FIRE is grateful to Aviles for her excellent work on our behalf and her dedication to governmental transparency.

UCLA, like many public institutions, has a checkered history with fulfilling public records requests. The Daily Bruin, UCLA’s independent student newspaper, houses a database on its website listing unfulfilled requests to the university — with some requests waiting hundreds of days and counting.

“With this suit fresh in their minds, we encourage UCLA to finally fulfill the Daily Bruin’s many ignored requests for documents,” said Beck-Coon. “Government actors like UCLA can’t ignore the law and let records requests languish indefinitely. This lawsuit is proof of that.”

INVESTIGATION:

Portland's Lewis & Clark College mandates racial segregation in orientation programming

As we went to print for the last FIRE Quarterly, FIRE launched an investigation into Lewis & Clark College, finding the institution engaged in mandatory racial segregation in its first-year orientation program last fall. College leadership failed to take this problem seriously even after FIRE and one of the college's own professors brought the unlawful program to their attention. In October, the college ultimately determined that they needed to make clear the session is optional if they use it in the future.

Lewis & Clark enlisted a Portland-based "social justice activism" group to run a mandatory orientation workshop Aug. 29 where, in the name of providing "safe spaces" for discussion, students were required to choose whether they most identified as one of three options: "Black," "Indigenous, Person of Color," or "White." Students were then divided by



race into different virtual Zoom breakout rooms for separate educational experiences, unlawfully limiting their ability within the program to engage with students of different races.

"Racial segregation is not only morally wrong, it's illegal on our nation's college campuses," said FIRE Executive Director Robert Shibley. "Mandatory racial segregation isn't wrong because FIRE or a professor finds it objectionable — it's wrong because it means that your ethnicity alone determines the education you receive. That it was just a little segregation, that 'mandatory' actually means 'optional,' or that the college meant well is no defense."

Ohio bans restrictive free speech zones

In late December, Ohio Gov. Mike DeWine signed into law a bill with important free speech protections for students at the state's public colleges and universities. The bill bans free speech zones, adopts the speech-protective definition of student-on-student harassment set forth by the Supreme Court of the United States, and prevents colleges from charging security fees to students and student organizations based on the content of their expression or the anticipated reaction to an invited guest's speech.

"College students deserve to know that the free exchange of ideas will not be inhibited by campus authorities," said FIRE Legislative Counsel Tyler Coward. "FIRE commends the Ohio legislature and Gov. DeWine for ensuring that campus speech rights will be robustly protected in the state."

With SB 40's passage, Ohio joins Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Iowa, Kentucky, Louisiana, Missouri, North Carolina, Oklahoma, South Dakota, Tennessee, Texas, Utah, and Virginia as the 18th state to pass legislation banning public colleges and universities from relegating student expression to so-called "free speech zones."

According to FIRE's Spotlight on Speech Codes 2021 report, 7% of top colleges nationwide maintain a free speech zone, despite the fact that the practice violates the First Amendment.

The zones have been repeatedly struck down by courts or voluntarily revised by colleges as part of settlements to lawsuits, including eight cases in FIRE's Stand Up For Speech Litigation Project. Since 2013, the number of schools that maintain a free speech zone has fallen by more than 50%, in part due to FIRE's efforts.





FIRE
Foundation for Individual
Rights in Education

510 Walnut Street, Suite 1250
Philadelphia, PA 19106

T: 215.717.3473 F: 215.717.3440
www.thefire.org

@thefireorg



LOVE is in the air!

Seven FIRE employees are recently engaged or recently married — and two of the couples met right here at FIRE.



Associate Director of Individual Philanthropy Ashley Adams and Legislative Counsel Tyler Coward got engaged on Nov. 22.



Director of Targeted Advocacy Sarah McLaughlin and Director of the Individual Rights Defense Program Adam Steinbaugh got engaged in 2019 and are set to be married this October.



Senior Program Officer for Policy Reform Mary Zoeller got engaged to Tom Griffin in September and are set to be married this October.



Director of Procedural Advocacy Susan Kruth got engaged to DeeJay Ramundo on New Year's Day.



Senior Program Officer for Policy Reform Laura Beltz married Ian McKoen on Nov. 14. Most of the people present were FIRE staff members, which is fitting because the ceremony took place in Sarah and Adam's backyard!

BUT WAIT! There's more...

