



Analysis of Texas SB 16, 17 & 18

Texas SB 16, 17 & 18 are the latest in a line of coordinated attacks on higher education in Texas and across the nation. They are included among a list of [30 bills](#) that Lt. Gov. Dan Patrick has identified as priorities for this legislative session.

SB 16 Analysis

SB 16 requires all public colleges and universities to commit to an environment that promotes intellectual diversity, intellectual inquiry, and academic freedom. The bill's definition of intellectual diversity is not controversial – all students should have a safe environment to learn regardless of race, sex, religion, etc. But this has to be seen as the latest development in a multi-decade effort by the right wing to chill discourse, research and instruction they dislike and encourage what they do like. In that way, it harkens back to ALEC's 2006 model bill, the "[Intellectual Diversity in Higher Education Act](#)," which the Center for Media and Democracy pointed out was built from a "[continuing critique](#) from the right wing that universities are too 'liberal' or hostile to religious, 'conservative', or religiously fundamentalist points of view."

The bill also provides that faculty members "may not compel or attempt to compel" a student enrolled at the institution to adopt a belief that any race, sex, or ethnicity or social, political, or religious belief is inherently superior to any other race, sex, ethnicity, or belief. Of course, this isn't happening in classrooms. However, this provision would likely have a chilling effect on academic freedom in teaching depending upon the interpretation of "may not compel or attempt to compel." One of the AAUP's fundamental tenets is that "teachers are entitled to full freedom in the classroom in discussing their subject . . ." (1940 *Statement of Principles on Academic Freedom and Tenure*). Further, "the freedom to teach includes the right of the faculty to select the materials, determine the approach to the subject, make the assignments, and assess student academic performance in teaching activities for which faculty members are individually responsible, without having their decisions subject to the veto of a department chair, dean, or other administrative officer" (*Academic Freedom in the Medical School*). The bill also reflects and amplifies right wing allegations that educators who teach about critical race theory, the 1619 Project, or racism generally are indoctrinating students. The language of the bill echoes Donald Trump's [Executive Order](#) on Combating Race and Sex Stereotypes which defined certain "divisive concepts" dealing with race and gender. The language mirrors [model legislation](#) from MAGA think tank Citizens for Renewing America (CRA) which is funded by the Conservative Partnership Institute. Both the Executive Order and model legislation is influenced by Russ Vought, Trump's former budget director, who founded CRA.

There are fourteen bills in five states (FL, OK, OR, TX, and VA) with similar language protecting intellectual or viewpoint diversity on college campuses.

SB 17 Analysis

SB 17 unacceptably limits the faculty's voice in shared governance. The bill restricts membership of presidential search committees to members of the Board of Regents, contrary to the widely recognized

principle, articulated in the AAUP's *Statement on Government of Colleges and Universities*, calling for "a cooperative search by the governing board and the faculty." It also vests with governing boards sole authority for approving the hiring of all administrative positions in the institution like the president, vice president, academic deans, etc. The bill requires boards of regents approval for all courses in the core curriculum and for all postings of tenured faculty positions. The requirement also appears to be at odds with the AAUP's *Statement on Government*, which states "[t]he faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process." In these areas, "[t]he governing board and president should . . . concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail." These statements were ratified in 1966 and represent policy adopted by faculty, administration and trustees associations - AAUP, American Council on Education (ACE) and the Association of Governing Boards of Universities and Colleges (AGB). Faculty involvement in hiring is universally recognized and SB 17's attempt to remove this provision violates core principles of college governance. Finally, the bill specifies that institutions cannot spend any appropriations until they report to the legislature that they have complied with these requirements.

Additionally, this bill prohibits any funding for university diversity, equity, and inclusion offices; bans any trainings on diversity, equity, inclusion, bias, oppression, gender identity, or related concepts; and prohibits consideration of race, gender, or ethnicity in hiring decisions. We've identified similar bans in ten bills across five states – FL, MO, TX, UT, and WV. In Texas, HB 1006 similarly threatens to cut funding for DEI in higher education.

Any individual found to be in violation of the ban on DEI trainings will be suspended for an academic year after the first offense and "discharged" after the second. The individual will then be placed on a black list and may not be hired by another institution for five years. Any individual can notify the Attorney General of alleged law violations, who can bring charges. The Texas Higher Education Coordinating Board may withhold "the lesser of \$1 million or one percent of the amount of the institution's operating expenses budgeted for the state fiscal year preceding the state fiscal year in which the violation occurred" for violations of the law.

In addition, the bill calls for amending Section 51.942, Texas Education Code, "Performance Evaluation of Tenured Faculty," to make violation of the DEI ban "good cause for revoking the tenure of a faculty member," which appears to be inconsistent with AAUP-supported principles and standards. The AAUP recognizes only three legitimate bases for terminating an appointment with continuous tenure: dismissal for cause, a demonstrably bona fide financial exigency, and bona fide discontinuance of a program or department for educational reasons. In addition, Regulation 5 ("Dismissal Procedures") of the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure* provides that "[a]dequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities and teachers or researchers."

SB 17 also requires institutions to affirm six statements related to viewpoint diversity, institutional neutrality on political issues, intellectual inquiry, and similar principles. Like SB 16, this responds to the right-wing claim that universities are too liberal or are hostile to religious points of view. These affirmations must be included in all mission statements, and they take precedence over any other values that institutions adopt.

SB 18 Analysis

SB 18 denies the possibility of tenure for all university faculty in Texas who are appointed after September 1, 2023 – currently tenured faculty would retain their tenure. However, the bill allows the board of regents to establish an alternate system of tiered employment that requires an annual performance review, which could be used to justify more frequent tenure reviews, jeopardizing the stability of tenured positions and undermining the academic freedom that tenure was designed to protect.

[Lt. Gov. Patrick made a promise to end tenure last year](#) to combat teachings about critical race theory. Four states (FL, ND, OH, and TX) have seven bills related to ending tenure for college and university faculty. Last session, Florida passed [SB 7044](#), which institutes a five-year review for tenured faculty and is likely the basis of this Texas bill. Florida's [HB 999](#) this session extends the five-year review by adding a just-cause review at any point, effectively eliminating tenure. Again, this can be seen as the latest development in a decades-long effort by the right to assert control over higher education. Efforts to end tenure are also efforts to eliminate academic freedom and therefore represent a threat not only to higher education but to democratic society. As the 1940 *Statement of Principles* asserts:

Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligation to its students and to society.

Final Thoughts

Taken together, these bills are of a piece with Koch-funded efforts to build their own programs within institutions, with previous assaults on the free exchange of ideas and faculty like the so-called "[Academic Bill of Rights](#)" and David Horowitz's book [The Professors: The 101 Most Dangerous Academics in America](#), as well as with more recent developments like Ron DeSantis's takeover of the New College of Florida.

The perniciousness of this assault can be seen in a series of [Idaho Freedom Foundation](#) reports from 2020 that accused Idaho's public colleges of indoctrinating students with a "social justice" ideology which includes commitments to diversity equity and inclusion. The IFF is part of the right wing State Policy Network, which has connections to ALEC and the Charles Koch Institute. As a result of the IFF reports, Idaho legislators [cut \\$409,000 from Boise State University](#) in 2021 – the same amount that the institution spends on "social justice" programming. In response, Boise State University president Scott Green [commissioned an independent review](#) to determine whether the reports' allegations were true. The review was unable to substantiate the IFF reports and allowed President Green to provide this response to a legislator's line of questioning, "in short, the entire social justice narrative on which the University of Idaho was penalized \$500,000 was a false narrative created by conflict entrepreneurs who make their living sowing fear and doubt with legislators and voters."

These bills would have the direct effect of removing tenure protections from faculty, closing avenues of legitimate scholarly inquiry and debate that politicians wish closed, and ending efforts to pursue equity and diversity in institutions of higher education. In addition, these bills and the effort to pass them would have a pervasive chilling effect on academic freedom and the free exchange of ideas on college and university campuses.