

Navigating the Federal and State Legislative & Regulatory Landscapes

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Presenters in Order of Presentation:

Steven Bloom, Assistant Vice
President, Government Relations
American Council on Education (ACE)



Michael Hardy, Associate Vice
President for Government Relations
Texas A&M University



Moderator:

Kris West, Director, Research Ethics &
Compliance, COGR



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Increasing Trend – State policy steps and Conflict with Federal Policy/Law

- Long history of tension between state and federal law:
 - Supremacy Clause of US Constitution – Art. VI
 - Preemption
 - Federal floor – states can provide greater rights
- Recent examples:
 - Marijuana
 - COVID mitigation
 - DEI/Tenure/Curriculum – so-called “Divisive Concepts”



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State Policy Steps – “Divisive Concepts” Intrusions on Academic Freedom and Institutional Autonomy

- Rising claims in states that colleges teaching inaccurate or ideological material (race, CRT, gender, LGBTQ+ identities) and concerns about other campus activities e.g. DEI –
- Background:
 - Protests following George Floyd murder
 - Trump EO “Combatting Race and Sex Stereotyping” (September 2020)
 - 2021 Virginia governor’s race

State Policy Steps – “Divisive Concepts” Intrusions on Academic Freedom and Institutional Autonomy

- First saw in K-12 and now migrating to higher education.
- Increasing number of state policy actions restricting campus activities including in the classroom.
- Labeled so-called “divisive concepts.” Also, PEN America calls them “Educational Gag Orders”
- Serious threat to academic freedom and institutional autonomy.

Educational Gag Orders in Higher Education

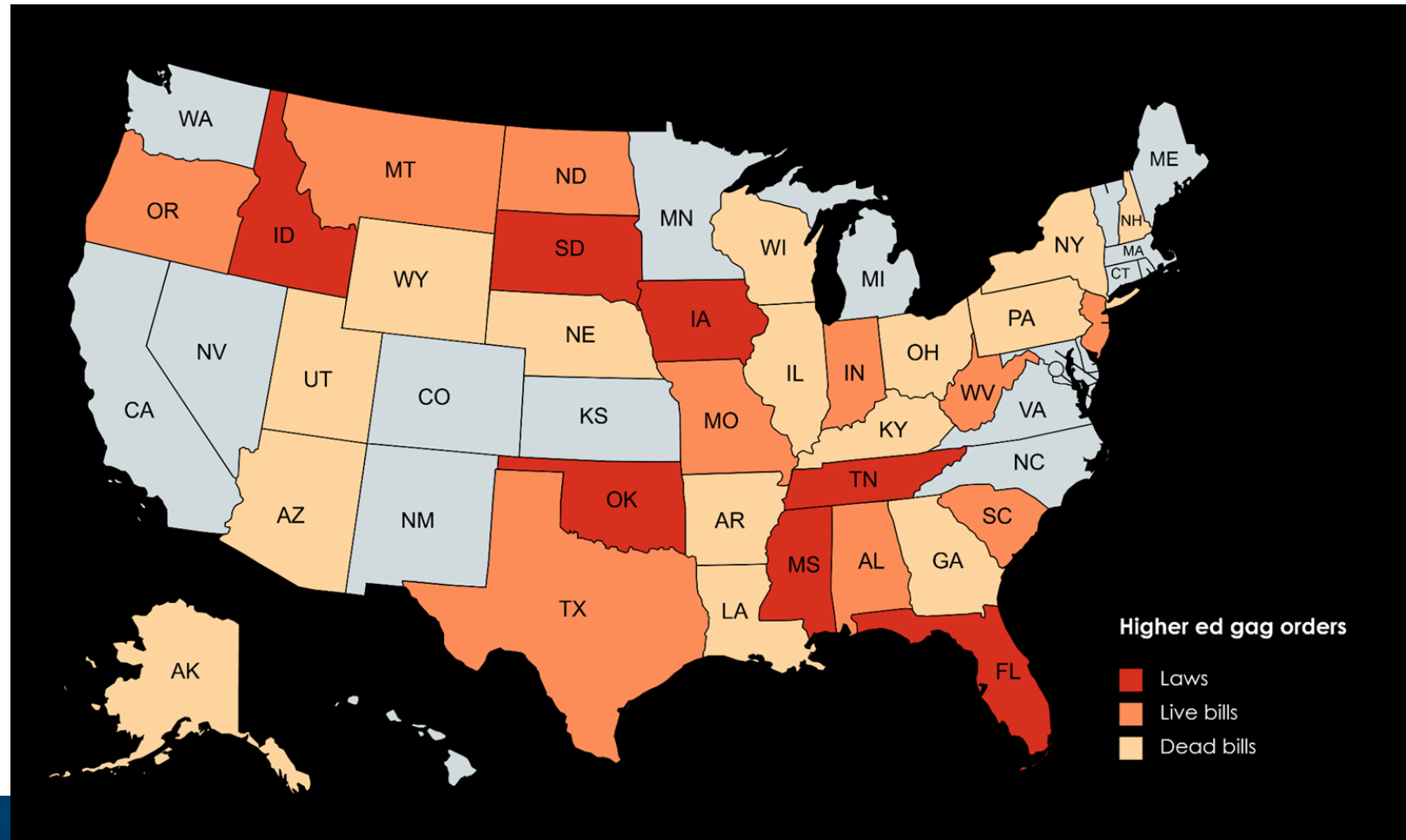
Since January 2021, **98** proposed bills in **33** states

22 bills currently live

11 laws have passed in **8** states:

Florida (2)

- Idaho
- Iowa
- Mississippi
- North Dakota
- Oklahoma
- South Dakota
- Tennessee (2)
- Texas



Range of Restrictions and Targets

- Intrusions on Curriculum:
 - History (slavery and race)
 - Gender studies
 - Critical Race Theory
- Medicine: restrictions on training in abortion, contraception
- University recognition/funding for some student groups
- Restrictions/bans of DEI initiatives and programs, and DEI statements in hiring
- Tenure, faculty hiring, and tenure review
- Governing Board takeover (New College, FL)
- Accreditation
- Primarily public institutions but privates also targeted

ACE - Response

- Spring 2022, partnered with PEN America to assemble and co-chair a coalition.
- Last summer/early fall, conducted public opinion research (qualitative and quantitative) to understand public's view:
 - Bipartisan majorities - all topics should be open for discussion on college campuses, as long as issues are fairly presented, because college students are adults.
 - Strong opposition to federal and state policymakers mandating what can or cannot be taught or discussed on college campuses and imposing restrictions or conditions on campus speech or curricula.

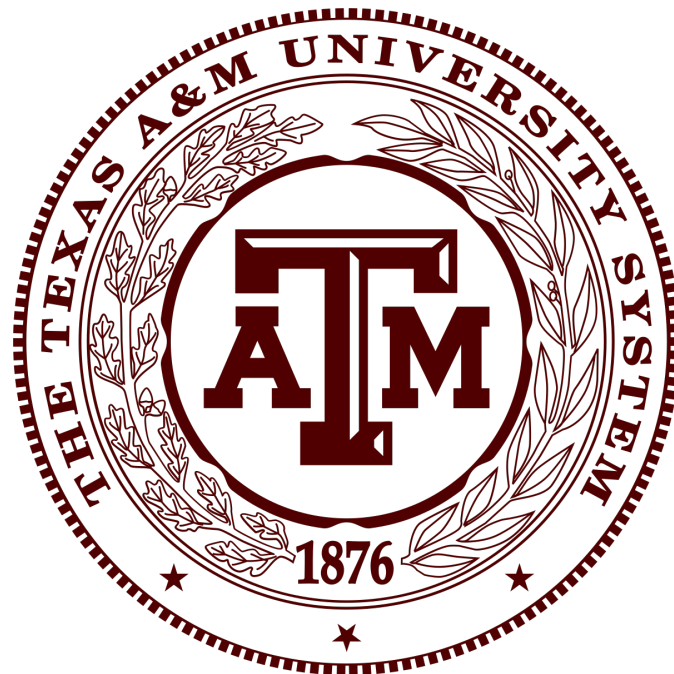
ACE/PEN Resource Guide and other resources

- “Making the Case for Academic Freedom in a Challenging Political Environment.” (February 2023):
 - Overview of trend
 - Review of principles of Academic Freedom and campus free speech
 - Summary of public opinion research findings
 - Communication tools and strategies:
 - Background points
 - Media engagement
 - FAQs
- Reframe discussions of DEI and other advocacy

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Remarks from Michael Hardy & Discussion



COGR Point of Contact

Kris West, Director, Research Ethics & Compliance

kwest@cogr.edu

Research Ethics & Compliance Committee