



June 2, 2021

Dr. Jeremy Thomas
Interim President & Provost
Oklahoma City Community College
7777 South May Avenue
Oklahoma City, Oklahoma 73159-4444

Sent via U.S. Mail and Electronic Mail (jthomas@occc.edu)

Dear Interim President Thomas:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

We are concerned by Oklahoma City Community College's decision to "pause" an OCCC sociology course, SOC 2143 ("Race and Ethnicity in the U.S."), which "examines sociological theories of contact between minority and majority groups in a multicultural society, including topics such as prejudice, discrimination, acculturation, and pluralism."¹

OCCC attributes its decision to "pause" the course to the recent passage of House Bill 1775, which bars the teaching of certain disapproved "concepts" in K-12 classes and prohibits mandatory diversity trainings at institutions of higher education.² The college's statement says that the course's content has not been changed "at this time,"³ but a spokesperson told the *Washington Post* that "substantial changes to the curriculum for this class particularly" are necessary because HB1775 "essentially revokes any ability to teach critical race theory, including discussions of white privilege," in required courses.⁴

¹ Hannah Knowles, *Critical race theory ban leads Oklahoma college to cancel class that taught 'white privilege'*, WASH. POST, May 29, 2021, <https://www.washingtonpost.com/education/2021/05/29/oklahoma-critical-race-theory-ban/>; OKLA. CITY CMTY. COLL., *SOC 2143*, <https://www.occc.edu/catalog/2020-2021/courses/sociology/soc-2143.html> (last visited June 1, 2021).

² HB1775 is codified as Okla. Stat. tit. 70, § 24-157.

³ Scott Jaschik, *Course on Race 'Paused' at Community College*, INSIDE HIGHER ED., June 1, 2021, <https://www.insidehighered.com/quicktakes/2021/06/01/course-race-%E2%80%98paused%E2%80%99-community-college>.

⁴ Knowles, *supra* note 1.

It has long been the unmistakable holding of the Supreme Court that public universities and colleges are subordinate to the Constitution of the United States, including the First Amendment.⁵ Legislatures are not exempt from its reach, and the First Amendment forbids legislative efforts to impose a “pall of orthodoxy over the classroom.”⁶ The “vigilant protection of constitutional freedoms is nowhere more vital” than in institutions of higher education, as the “classroom is peculiarly the ‘marketplace of ideas[.]’”⁷

These fundamental rights extend to individual faculty members, for whom academic freedom is more than an abstract concept, but a critical bulwark against censorship. As one federal appellate court explained, in the context of higher education, “the argument that teachers have no First Amendment rights when teaching, or that [authorities] can censor teacher speech without restriction” is “totally unpersuasive.”⁸ Expression in a college classroom that is germane to the subject matter, “however repugnant” to others, is protected by the First Amendment, particularly when it addresses “matters of overwhelming public concern — race, gender, and power conflicts in our society.”⁹ This remains true even when that expression meets the broad disapproval of students, administrators, or legislators.

Even absent the above considerations, however, HB1775 cannot reasonably be read to compel Oklahoma institutions of higher education, including OCCC, to curtail classes that touch on these matters of public concern. While HB1775 bans the teaching of disapproved “concepts” in a “school district, charter school or virtual charter school,” those provisions do not purport to apply to institutions of higher education. The separate section applicable to “institution[s] of higher education within The Oklahoma State System of Higher Education” is intended to prevent mandatory trainings required as a condition of enrolling in classes, not to regulate college course content. In drafting legislation intended to bar K-12 teachers from making certain viewpoints “part of a course,” Oklahoma’s legislature demonstrated that it knew how to describe classes, and chose not to impose the same obligations on institutions of higher education.

Broadly reading HB1775’s provisions addressing institutions of higher education (in particular the language prohibiting any “requirement that presents any form of race or sex stereotyping or a bias on the basis of race or sex”) would impose a breathtaking range of censorship of discussions in college classrooms. Barring any mandatory course from including “any form of race or sex stereotyping” or “bias” would exile Mark Twain, censor discussion of seminal First Amendment cases, and cancel virtually any discussion of race, sex, or diversity.

⁵ *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large.”).

⁶ *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

⁷ *Id.* (quoting, in part, *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)).

⁸ *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 680 (6th Cir. 2001).

⁹ *Id.* at 683.

These subjects—already under pressure at other institutions¹⁰—would be *verboten* no matter how pedagogically relevant to the particular course. If such a censor-happy reading of the law were indulged, it would impose a far broader range of censorship on institutions of higher education than on K-12 institutions, which are subject only to a narrower prohibition of certain “concepts.” Certainly, Oklahoma’s legislature did not intend to impose a broader restraint on college classrooms than it did on kindergarten classes.

The First Amendment does not permit such an indulgence. Statutes must be construed narrowly when a broader interpretation would place them in conflict with the Constitution, as “every reasonable construction must be resorted to, in order to save a statute from unconstitutionality.”¹¹ If OCCC has serious concerns that HB1775 compels it to violate the First Amendment by censoring the content of its faculty members’ classroom discussions, it is obligated to seek declaratory relief from a court, not to effectuate that censorship.

HB1775 does not require OCCC to review or revise the content of any course, mandatory or otherwise. Accordingly, FIRE calls upon the college to adhere to its First Amendment obligations by immediately reinstating any course “paused” or subject to review as a result of HB1775.

FIRE respectfully requests receipt of a response to this letter by the close of business on June 14, 2021.

Sincerely,



Adam Steinbaugh

Director, Individual Rights Defense Program

¹⁰ See, e.g., Dana Kennedy, *St. John’s professor allegedly fired for reading racial slur from Mark Twain book*, N.Y. POST, May 15, 2021, <https://nypost.com/2021/05/15/professor-allegedly-fired-for-reading-racial-slur-from-mark-twain-book>; Daniel Burnett, *Pushed out of teaching, Central Michigan University journalism professor has his own story to write*, FIRE, May 8, 2021, <https://www.thefire.org/pushed-out-of-teaching-central-michigan-university-journalism-professor-has-his-own-story-to-write>; Aaron Terr, *Investigation reveals Boise State suspended diversity courses over unsubstantiated rumor*, FIRE, May 25, 2021, <https://www.thefire.org/investigation-reveals-boise-state-suspended-diversity-courses-over-unsubstantiated-rumor>.

¹¹ *DeBartolo Corp. v. Fla. Gulf Coast Trades Council*, 485 U.S. 568, 575 (1988) (quoting *Hooper v. California*, 155 U.S. 648, 657 (1895)).