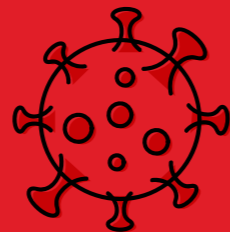


**COVID  
ON  
CAMPUS**

**COVID on Campus:**  
The Pandemic's Impact on  
Student and Faculty  
Speech Rights



## Contents

---

<b>I: Introduction</b>	4
<b>II: Challenges to Student and Faculty Rights</b>	5
<b>III: Broader Challenges to Online Education</b>	10
<b>IV: Conclusion</b>	12

---



## I: Introduction

It's difficult to find any aspect of our lives that has not been impacted by COVID-19. Travel, holidays, business, entertainment, and much more look completely different today than they did a year ago. As K-12 and college students, faculty, teachers, and administrators know all too well, education has been deeply changed — perhaps permanently — by travel restrictions, school closures, and the switch to online education.

But COVID-19's consequences for education have not been limited to location, access, or, in the University of California, Berkeley's case, temporary [bans](#) on outdoor exercise. On campuses across the country, speech and due process rights have been challenged, too, as administrators struggle to respond to the pandemic. At the Foundation for Individual Rights in Education (FIRE), we have been paying careful attention to how these trends have impacted vital student and faculty rights in higher education.

In an August 2020 incident that drew national attention, North Paulding High School in Georgia [suspended](#) two students for tweeting photos of their school hallways crowded with students, many without masks. Administrators at the school reportedly warned via the public address system that students publicly criticizing the school's COVID-19 response would be punished.

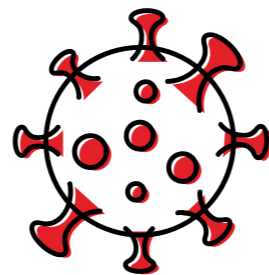
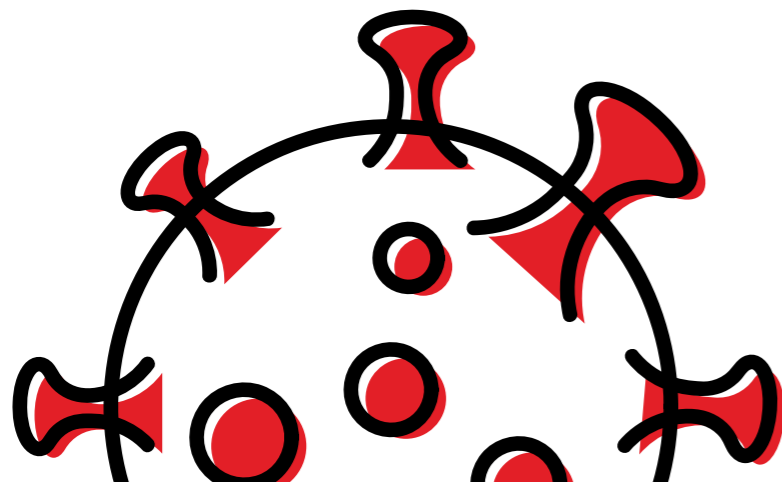
FIRE [wrote](#) at the time, "While last week's situation occurred at a high school, it bears an important lesson about campus censorship in a time of crisis, equally applicable to colleges and universities." Unfortunately, over the past year, FIRE has needed to remind universities time and again that, despite the challenges and difficulties of COVID-19, their obligations to the First Amendment cannot simply be cast aside.

In a September 2020 statement, FIRE [addressed](#) the various measures and restrictions undertaken in response to the spread of COVID-19 and offered three principles to guide universities during the pandemic:

- Viewpoint discrimination and compelled speech are prohibited;
- Public health practices may be mandated, but must be clear, published, and consistently enforced; and
- Medical necessity must guide enforcement decisions, and cannot supersede procedural protections.

FIRE also offered this reminder: "Institutional COVID restrictions must be temporary and tied only to the threat to public health. Restrictions or disciplinary actions substantially unrelated to protecting public health should be rejected and reconsidered."

With vaccine distribution now underway, the worst of COVID-19 will hopefully be behind us soon. But going forward, it's vital that we understand how campuses have handled the challenges surrounding the pandemic and student and faculty rights, so that we can better plan for similar challenges in the future while fulfilling moral and legal obligations to student and faculty rights. In this report, COVID on Campus: The Pandemic's Impact on Student and Faculty Speech Rights, FIRE gives readers a clearer picture of what institutions have done wrong, how they can do better, and the broader challenges to education posed by the past year. If your rights have been violated, please contact FIRE.



## II: Challenges to Student and Faculty Rights

Over the past year, FIRE has received more requests for help than ever before — and a significant part of the jump was due to universities' handling of the pandemic. In some cases, university violations of student rights were exacerbated because of COVID-19. At Haskell Indian Nations University, for example, a student was [kicked out](#) of his campus housing and forced to sleep in his car — during a pandemic and under a statewide stay-at-home order — after administrators suspended him without a hearing for telling a campus facilities employee he was on "some kind of power trip" and "being an asshole."

Three predominant themes emerged from the cases FIRE took on since the spread of the pandemic: (1) censorship of speech related to academic institutions, (2) censorship of speech related to COVID-19, and (3) troubling measures applied to campus communities during COVID-19. Below is a collection of cases highlighting these themes and their effects on student and faculty rights across the country.

### Censorship of Speech Related to Academic Institutions

In general, it's not uncommon for universities and their administrations to react poorly to criticism. This trend did not disappear during COVID-19. At some universities, campus community members, especially resident assistants, were warned against speaking publicly or critically about their universities' handling of the pandemic.

As the following cases show, universities cracking down on critics are wrong in at least two ways. First, it's immoral and, in some cases, unconstitutional to censor speech simply because it portrays institutions in a poor light, especially when the subject matter relates to public health. And second, it's ineffective. Attempted censorship often does nothing more than bring more attention to the speech in question, a phenomenon known as the [Streisand Effect](#).

**University of California, Santa Barbara:** It didn't take long after COVID-19 shutdowns began for a campus censorship [threat](#) to emerge. At UCSB, though, it wasn't administrators who threatened faculty for speaking out — it was online testing service ProctorU. On March 13, the UCSB Faculty Association Board [expressed](#)

"serious concern" about the use of ProctorU, alleging that the service's privacy policy "potentially implicates the university into becoming a surveillance tool." Less than a week later, ProctorU's attorney [responded](#) with a blustering letter making a number of claims, including defamation, copyright, and trademark, against the Faculty Association for its criticism — and this letter was sent to state and federal prosecutors, too.

**Wayne State University Law School:** FIRE wrote to Wayne State University Law School in July over concerns about [retaliation](#) against students pressing for bar exam accommodations during COVID-19. Earlier that month, a law school administrator emailed the graduating class in response to students advocating for the option of a "diploma privilege," which would allow qualifying graduates to pursue admission to the State Bar of Michigan without sitting for the Michigan Bar exam. The email [warned](#), "[W]hile you have every right to criticize the bar exam, the Board of Law Examiners, or the State Bar of Michigan online, it may not be a smart strategy for passing Character & Fitness with ease."

As FIRE's [letter](#) explained, the email was troubling on two fronts: First, administrative warnings like this chill student speech about how institutions handle the pandemic, an unacceptable result. Second, the warning raises questions about the state of law students' First Amendment rights in Michigan. Fortunately, Dean Richard Bierschbach [responded](#) to FIRE to assert that the law school "ardently supports and will actively defend our students' First Amendment expressive rights."

**University of Missouri:** As students at some campuses began to return to in-person studies and dorms last summer, student employees hoped to sound the alarm about their safety concerns. But at the University of Missouri, they were [stymied](#) by administrative warnings or policies limiting their ability to speak out. Speaking to the Columbia Missourian, residential assistants anonymously accused university practices of "needlessly put[ting] them and others at risk" amidst the pandemic. According to the [Missourian](#), the RAs required anonymity because they were not "authorized" to speak about the issue to the media, and a "strict media policy for Residential Life employees" had been "laid out" to them in a meeting.

On August 14, FIRE [wrote](#) to the university for clarification on student employees' ability to speak to the media, including the student press. Shortly thereafter, Mizzou [replied](#) to FIRE to convey that the university does not impose a "blanket prohibition against speaking to the media" and promised to inform staff of this information. As FIRE [explained](#), Mizzou's commitments go a long way to clear up confusion about student employees' speech rights, a concern that could be fully ameliorated by revisions to Mizzou's "[Residential Life media protocol](#)."

**Louisiana State University:** On the same day FIRE [wrote](#) to Mizzou about restrictions on student employee speech, FIRE sent a letter to Louisiana State University over similar concerns. On August 11, The Advocate [reported](#) that three LSU RAs quit "largely because . . . officials couldn't answer real-world questions about its extensive pandemic housing plan" and that "RAs are specifically forbidden from speaking to the media, including the on-campus newspaper, The Reveille." FIRE's letter called on LSU to rescind any blanket prohibitions on student employees' speech. LSU didn't bother to [acknowledge](#) FIRE's concerns, but responded — because, by law, it had to — to a public records request seeking the university's [Residential Life Media Policy](#). Unsurprisingly, the policy is troubling. It warns RAs who intend to speak to the media: "Even though you may be discussing your own experiences, you will be identified as an LSU staff member, so you are representing the university. This is not an appropriate time to air your disagreements with Residential Life."

**Juniata College:** It's not just students who feared repercussions for speaking critically of their colleges' handling of COVID-19. At Juniata College, a professor felt similar [pressure](#). In August, tenured professor Douglas A. Stiffler posted a Facebook comment regarding a National Public Radio [segment](#) about campuses and COVID-19. Stiffler [wrote](#), "As the result of Juniata's decision to hold classes in person, it is quite possible that people who come on to Juniata's campus will die, as will people in town. That is what is at stake." According to [The Chronicle of Higher Education](#), "Stiffler had largely forgotten about the comment when his chair called him about it a few days later. Someone had complained about it, she told him, and he might want to be more careful about his posts in the future." Stiffler believed that would be the end of the discussion. It wasn't.

Provost Lauren Bowen contacted Stiffler and told him in a meeting that the [college](#) would be placing a letter of reprimand in his file. In the letter, Bowen wrote: "[W]

hen you state publically [sic] that Juniata's decision could cause people who come to campus to die, you have gone beyond offering feedback on policy and are not exercising the restraint and respect expected of faculty." While institutions can encourage civil discourse, "restraint" and "respect" are too subjective to enforce — and the subjects of criticism are often likely to perceive their critics as uncivil. That naturally means that administrators empowered to enforce civility norms will be inclined to use them against their critics.

**University of Virginia:** Living up to its "[green light](#)" [rating for speech-protective policies](#), the University of Virginia [committed](#) to reworking its resident advisor agreement to ensure that its RAs would be free to speak with reporters. On September 11, FIRE [asked](#) UVA to address its limits on student employee speech after student paper The Cavalier Daily [reported](#) on a policy that "restricts resident staffers from speaking to the press," which inspired RAs to anonymously voice their concerns about their safety issues for residence hall workers. In [response](#) to FIRE's request, UVA committed to revising its RA agreement to clarify, "Individual Resident Staff members may speak to the media or public in their individual capacities, making clear they are not speaking on behalf of or for the program."

**University of North Carolina at Chapel Hill:** In October, concerns about student employee speech that had been raised at Mizzou, UVA, and LSU reemerged at UNC Chapel Hill after an investigation from The Daily Tar Heel. The student newspaper's [article](#) asserted that, due to a media relations policy, "[a]s the public raised questions for months about Carolina Housing's operations in the face of COVID-19, student staff had been hesitant to answer them to the media — many citing their fear of getting fired or losing their chance to be rehired." FIRE [wrote](#) to the university asking that, in keeping with its status as a "green light" university, UNC Chapel Hill review student concerns about the media relations policy and acknowledge students' speech rights. In response, UNC Chapel Hill [confirmed](#) to FIRE that it "takes seriously" its speech commitments and had updated its media relations policy in light of its First Amendment obligations.

**Frostburg State University:** As at other schools, FSU student journalists were vital in shining a light on restrictions on student employees' speech about COVID-19 safety. In November, student paper The Bottom Line [reported](#) that multiple RAs alleged that "the Office of Residence Life would now require Hall

Directors to indicate 'attitude' issues on employment evaluations if RAs spoke to media outlets about the university's handling of the virus." The paper [sought](#) more information and filed public records requests for administrators' emails. It found that, though it was never sent, the university's housing director wrote a draft statement in response to The Bottom Line's questions about RAs. That draft read: "In the real world, if you bad mouth your employer you could lose your job. With the Resident Assistants, who are employed by Frostburg State University, speaking out against their employer may be noted in their evaluation forms and used as a teaching tool."

FIRE [wrote](#) to FSU to ask the university to commit to not punishing RAs for speaking out about pandemic-related fears. The university [responded](#) on November 20, [promising](#) that "FSU has no policy restricting the free speech of its resident assistants." But that wasn't the end of the story. On November 23, administrators [summoned](#) student journalist Cassie Conklin to discuss her alleged harassment of a faculty member a month prior. The university claimed it had video evidence of Conklin's harassment. In reality, the video was evidence of her innocence and showed her simply sticking a note back on the faculty member's door after it had fallen. Curiously, though, Conklin's meeting occurred the next business day after her [reporting](#) about a student's COVID experience caught [wider media attention](#). FSU's administration not only warned Conklin that it was investigating her for harassment but also demanded The Bottom Line do the same and investigate her too. After a [press release](#) and [letter](#) from FIRE and the Student Press Law Center, FSU [backed down](#) on its investigation, but the state of freedom of the press at Frostburg State remains chilly.

**Collin College:** On top of dealing with the COVID-19 pandemic, Collin College has its own censorship epidemic. Since October, FIRE has battled Collin College over its [mistreatment](#) of professor Lora Burnett, who caught attention for her tweets critical of Vice President Mike Pence during a 2020 vice presidential debate, and its [stonewalling](#) of public records requests about Burnett.

In February 2021, Collin's administration escalated its reputation for rights violations when it [directed](#) that two professors, Audra Heaslip and Suzanne Jones, be dismissed when their contracts expire — against recommendations from Collin faculty and staff. The basis for the nonrenewal? The professors' criticism of the college's handling of COVID-19. In response, FIRE

wrote another [letter](#) to Collin's administration stating — yet again — that the First Amendment protects the rights of faculty members at public institutions to speak as private citizens about matters of public concern.

#### Censorship of Speech Related to COVID-19

While the challenges posed by COVID-19 require innovative and, in some cases, unprecedented solutions, censorship shouldn't be one of them. FIRE was compelled to remind a number of universities of that fact over the past year in response to efforts to crack down on speech, from the clinical to the controversial, related to COVID-19.

**University at Albany:** "Corona virus isn't gonna stop anyone from partying." Well, that would soon prove to be untrue, but it was nevertheless the caption added to a @BarstoolAlbany Instagram video about a "coronavirus"-themed party held at University at Albany in mid-February last year. The video, which was shortly taken down, [reportedly](#) showed "a bucket filled with ice and bottled Corona beer and a student wearing a surgical mask over his face" as well as a white sheet with a biohazard symbol and "two faces," one with an X over each eye and the other a "frown, with what looks like straight lines for eyes." In response to the event, student organization Asian American Alliance shared a [message](#) on Instagram calling on SUNY Albany to "investigate this illegal student group" and "requir[e] them to delete this video and to apologize on their Instagram homepage."

In a [statement](#), SUNY Albany announced that it was "aware of a coronavirus-themed party that was recently held off-campus and not sanctioned by the University at Albany," and that the "theme of this party was distasteful and hurtful and is not representative" of the campus. The statement went on to assert that "any allegations of conduct violations will be investigated and addressed through the University's disciplinary process." In response, FIRE [reminded](#) SUNY Albany of its First Amendment obligations as a public university. While the party's theme may have been deeply offensive to other members of the campus community, that has no bearing on the expression's protection under the First Amendment.

**New York University Grossman School of Medicine:** On March 31, FIRE [wrote](#) a letter to NYU after learning that the Grossman School of Medicine and NYU Langone Health [prohibited](#) faculty from speaking with the media about COVID-19 without prior approval from the Office of

Communications and Marketing. FIRE's [letter](#) explained that while NYU is not bound by the First Amendment as a private university, its muzzle on faculty doctors' speech should be considered unacceptable at any institution that seeks to uphold the values of a free society. The restrictions at NYU mirrored a [broader](#) push to silence medical workers during a fraught period in hospitals.

FIRE's letter concluded: "Let your faculty and the press talk to each other. The public they both serve will benefit." The following months would confirm time and again how right this message was, and how vital it is for the public to have access to current medical information during a health crisis.

**University of California System:** In late March, the University of California System published a "[guidance document](#)" for "campus decision makers, faculty, administrators, students and staff" titled "Equity and Inclusion during COVID-19." The document contained a series of statements, but two specifically caught public attention: 1) "Do not use terms such as 'Chinese Virus' or other terms which cast either intentional or unintentional projections of hatred toward Asian communities, and do not allow the use of these terms by others. Refer to the virus as either 'COVID-19' or 'coronavirus' in both oral and written communications"; and 2) "Do not resort or revert to unkind discussions about people, individuals or groups who may not be in your immediate social circle." As FIRE [explained](#) at the time, while the document is framed as "guidance," its use of language like "Do not . . ." suggests these provisions are mandatory. And as a public university system bound by the First Amendment, UC may not prohibit protected speech. Directives like these may encourage students and faculty to self-censor, even if the guidance is intended to be only aspirational. FIRE encouraged the UC System to revise this guidance to ensure that it is intended as a "more speech" solution, rather than unclear "guidance."

**Columbia University:** As we all know, conversations on social media can quickly turn hot-tempered. That is even more true when the discussion turns to topics like politics and the pandemic. In April, Columbia professor Jeffrey Lax [argued](#) on Facebook with Gabriel Montalvo, a student at a different university, about then-President Donald Trump's handling of the pandemic. Montalvo commented about what he called the "constant bash" of Trump and, after a back and forth, Lax eventually wrote, "[W]hy don't you just drop dead, you neo-nazi murderer-lover." Although Montalvo was a student at the City University of New York, not Columbia, he filed

a "[formal complaint](#)" with the university the following month. In May, FIRE [warned](#) Columbia against punishing Lax, writing: "Lax's testy Facebook back-and-forth fails to run afoul of any Columbia policy. In fact, First Amendment-style speech protections — like those Columbia has enshrined as essential to its campus — are actually at their apex in cases such as this, where the speech is political in nature and centers on a matter of great public concern. A discussion about a sitting president's management of a global pandemic certainly fits the bill, even if that exchange is intemperate."

#### **Troubling Measures Applied to Campus Communities During COVID-19**

Questions about student and faculty rights on campus amidst the pandemic are not just cabined to specific faculty members or student newspapers facing threats for speaking about COVID-19 or their institutions' handling of it. In some cases, universities' campus-wide measures, and their application of those measures, presented threats to individual rights as well.

**Whitman College:** When students left their campuses for spring break last March, it was the last time many of them would be on campus for the academic year. This was true for students at Whitman College, who quickly found themselves under a policy of [prior review](#) for student listservs after a campus controversy. In early April, Instagram campus confession account @WhitmanConfessional2 posted a submission that stated: "Petition to change the name of Coronavirus to Kung Flu." The post spurred debates among students and complaints to administrators and the Whitman student listserv, where the @WhitmanConfessional2 account manager argued with other students about his moderation decisions. The next day, Whitman's administration [notified](#) students that the college had "taken the necessary steps" to report the confession account to Instagram. Administrators also announced that they would begin practicing prior review of messages sent on the student listserv. FIRE [wrote](#) to Whitman on May 1 to explain why the college's heavy-handed treatment of the student listserv could limit important student discussion — especially during a pandemic when student discussion has to take place on the internet.

**The Ohio State University:** In advance of the 2020–21 academic year, The Ohio State University was [requiring](#) all members of the OSU community to sign the "Together As Buckeyes Pledge" as a condition of their return to campus in August. The pledge [included](#) statements

about public health but also asked signatories to confirm their agreement with this message: "I believe in excellence in all that we do and that it is important to embrace diversity in people and ideas; foster the inclusion of all Buckeyes; allow for access and affordability of an Ohio State education; subscribe to innovation around keeping the Buckeye community safe; and rely on collaboration and multidisciplinary endeavors to guide best practices. Last, I believe in the importance of transparency, integrity and trust." As FIRE explained in a [letter](#) to OSU, this section of the statement amounted to compelled speech because it purported to commit the speaker to holding a particular view, a result unacceptable at a public university bound by the First Amendment. Fortunately, OSU understood FIRE's concerns and promised to [revise](#) the pledge "to clarify that while the pledge states that Ohio State's values are fundamental guiding principles of the institution, there is no requirement for individual affirmation of those values in the pledge."

**Montana State University:** In an effort to enforce contract tracing, a Montana State University administrator [informed](#) student organization leaders on July 29 that all student clubs and organizations would be "required to track attendance at events, including closed meetings" in accordance with MSU's COVID-19 protocol. The mandatory attendance record would be taken via two apps maintained by the university. MSU had not explained the limits on which administrators had access to the attendee lists or the length of time lists would be stored. In an August 26 [letter](#), FIRE explained to MSU that the policy posed a threat to students' right to speak anonymously and that the university must seek the least restrictive methods to achieve its public health goals. After all, such a policy could inhibit students interested in privately attending groups focused on mental health, faith, sexuality, or other sensitive issues. In response, MSU quickly [confirmed](#) to FIRE that the Office of Student Engagement would be "crafting and disseminating new language regarding attendance guidelines to make it clear there is no requirement that student clubs record attendance and then provide those records to the university."

**Northeastern University:** A student's Instagram survey from August [asked](#) incoming Northeastern freshmen, "WHOS PLANNING ON GOING TO/HAVING PARTIES," adding that the poll was "anonymous ofc," and offered "HELL YEAH" AND "NAH" as answer options. Northeastern officials [reached out](#) to the pollster, who gave the university the names of students who had responded "HELL YEAH," and the university

then went on to contact the students, 115 in total, and their parents. In a [letter](#), Northeastern threatened to rescind the students' admissions and demanded they immediately provide a written affirmation that they will not violate the student conduct code or other COVID-related rules upon entering campus. The letter also required students to "demonstrate appropriate model behavior by actively participating in our Protect the Pack campaign." However, the letter did not make clear what "active" participation in its campaign would look like. In response, FIRE asked Northeastern to [clarify](#) that students would not be forced to engage in compelled speech to maintain their acceptance status and make clear that students accused of violating school regulations will be afforded due process during disciplinary proceedings.

**Muscatine Community College:** A months-long battle over a theater production at MCC offers a striking example of how campus public health measures can be used as a pretext to silence controversial expression. Theater director and MCC faculty member Alyssa Oltmanns chose "Dog Sees God: Confessions of a Teenage Blockhead," a modern take on the Peanuts comic strip characters that includes themes of drug use, sexuality, LGBT+ issues, and suicide, for the college's fall 2020 play. After raising concerns about the content of the play, the college [canceled](#) it, citing the pandemic as a reason for the decision — even though the play was set to take place virtually.

On September 25, FIRE [wrote](#) to MCC, explaining that "[w]hile the college may take reasonable steps to prevent the spread of disease on campus in light of the COVID-19 pandemic, citing public health in cancelling a virtual theatre production after the dean of instruction raised concerns about the script's content is naked pretext to censorship." Finally, after receiving [two letters](#) from FIRE, MCC [agreed](#) to offer students free tickets to the show, which a broader community coalition stepped in to co-sponsor, and MCC said it would allow Oltmanns to select the script for a play this spring.

### III: Broader Challenges to Online Education

While the rights of individual students and professors have been challenged by COVID-related restrictions and censorship, broader questions about the role of online education have also emerged over the past year. Online education offers plenty of benefits and opens up access to students and faculty who may have barriers for attending in-person classes. But when education can only take place online, students and faculty may encounter challenges to free expression to which they may be unaccustomed during more typical years.

#### For Zoom the Bell Tolls

As readers can likely confirm, Zoom has been central to continuing communication between friends, families, and colleagues during the pandemic. The same is true at many universities, which have relied on Zoom to ensure classes and academic events can go on from home. But its utilization has not come without setbacks, as targets of [Zoombombing](#) — where users intentionally “bomb” meetings with graphic and disruptive content — can attest. And Zoom’s widespread use comes with questions about how safe, transparent, and speech-protective the platform is in academia.

In June, FIRE joined the National Coalition Against Censorship and PEN America in [writing](#) to Zoom to ask the company to explain how its compliance with China’s censorship demands would impact academic institutions using Zoom. The civil liberties coalition was prompted to write to Zoom after [reports](#) surfaced accusing the company of closing accounts located outside of China after they hosted events commemorating victims of the Tiananmen Square Massacre.

On June 11, Zoom issued a [statement](#) addressing its removal of the accounts and confirmed that going forward it would not remove accounts outside China based on demands from the Chinese government. But, as our letter [explained](#), too many questions still remained about the platform and free expression. For example, will Zoom provide detailed reports of why users are removed from meetings so that educators can know what would disrupt student access to class? And will Zoom actively monitor events that seemingly have the potential to violate local censorship laws?

Zoom did not respond to these questions. And in December, a complaint unsealed by federal prosecutors

shed more light on the company’s deeply troubling dealings with China. Prosecutors [accused](#) China-based Zoom executive Xinjiang Jin of working at the direction of Chinese officials to shut down the accounts of at least four users outside China responsible for Tiananmen-related activism. Jin also “worked with others to create fake email accounts to falsify evidence that meeting participants were supporting terrorism and distributing child pornography.”

Although Zoom confirmed that it was fully cooperating with the investigation, the incident reaffirmed the concerns that academics and advocates have expressed about the potential danger of using Zoom or similar services to hold sensitive online discussions.

Alongside fears about Zoom users’ security, another pressing question emerged: What happens if Zoom decides it doesn’t want to host some viewpoints?

The concern became a reality in September, when Zoom [refused](#) to allow two San Francisco State University faculty members to host a discussion with Leila Khaled on its service after the event faced [demands](#) for cancellation. Leila Khaled was the first woman to [hijack](#) an airplane and did so in support of the Popular Front for the Liberation of Palestine, a group deemed a [foreign terrorist organization](#) by the U.S. Department of State.

For her part, SFSU president Lynn Mahoney rightly refused demands to cancel the event, instead [writing](#): “[T]he university will not enforce silence — even when speech is abhorrent. What sets a university apart from primary or secondary education is that the views of our faculty are not prescribed, curtailed or made to conform to content standards.”

Zoom’s cancellation of Khaled at SFSU would not be its last. The following month, Zoom also [reportedly](#) canceled events planned in response to the SFSU discussion at New York University, the University of Hawaii at Manoa, and the University of Leeds in the United Kingdom, citing anti-terrorism laws. But, as FIRE’s Adam Steinbaugh [explained](#) in September, the claims that hosting an online discussion with Khaled is material support of terrorism, unlawful under federal law, are suspect at best.

Ultimately, the controversy over Khaled should

encourage academic communities to ask broader questions about their use of Zoom and similar tools, especially when communities can only congregate virtually. Some faculty bodies, like Georgetown University’s Main Campus Executive Faculty, are already [investigating](#) the issue.

To be clear, Zoom is not bound by the First Amendment and is free to decide which content it will not host. But Zoom markets itself to universities as an online educational tool, and many universities use it now and may continue to do so after in-person classes become more frequent. Having offered itself as a facilitator of academic functions, Zoom should be expected to be a steadfast partner in defending academic freedom — and academic institutions should insist that it do so. If it continues to falter, administrators, students, and faculty should be careful to understand when, how, and why Zoom may shut down discussions, whether they feature Leila Khaled or Chinese dissidents.

#### Censorship Across Borders

In the United States, students and faculty enjoy the speech protections provided by the First Amendment. But those protections can only go so far when students at American universities are taking online classes from outside of the U.S. and are subject to internet and speech restrictions. This issue became even more apparent last summer after U.S. Immigration and Customs Enforcement announced in July that international students would be [required](#) to leave the country if their classes were held entirely online in the fall.

On July 13, FIRE [filed](#) a friend-of-the-court brief in the lawsuit brought by Harvard University and Massachusetts Institute of Technology against the U.S. Department of Homeland Security and ICE over the policy’s implementation. As FIRE’s [brief](#) explained, that policy would force students to return to countries that drastically suppress speech, potentially making class participation difficult or impossible:

Some 1.1 million international students attend American universities and colleges. Of these, approximately 502,470 students originate from—and will presumably return to—repressive states where the government blocks or filters online communication, forces the removal of certain online content, or punishes online expression by

banning “fake news,” blasphemy, or insults to state institutions or officials.

The lion’s share of these students—some 370,000—hail from the People’s Republic of China, the nation rated by Freedom House as “the world’s worst abuser of internet freedom” for four consecutive years. An additional 6,917 students originate from—and would presumably attend virtual classes from—Hong Kong, where expressive rights are rapidly deteriorating as the Chinese Communist Party imposes the “Great Firewall” to suppress its critics. ICE’s policy requires those students to study under the watchful eye of the Chinese government’s sophisticated regime of internet censorship and surveillance. This system denies internet users access to material required for basic academic discussions. Students studying remotely from China will, for example, be barred from discussing historical accounts of the Tiananmen Square massacre or China’s current use of concentration camps.

While China represents the most dramatic threat—in both size and sophistication—to students’ expressive rights, it is not the only such actor. Some 10,000 students could return to Turkey, where political speech, including criticism of President Erdogan, can lead to prison, and where universities have been purged of dissenting academics. Others—like nearly 8,000 students from Pakistan—may return to states where “blasphemous” speech may be met with state-sanctioned or extrajudicial death.

FIRE went on to explain that faculty could be affected too, and might reasonably avoid controversial discussions to ensure students are kept in class and out of legal trouble, a result that would impact students in the U.S., as well.

In a welcome reversal, ICE [announced](#) one day later that it would not enforce this policy. But the change to ICE’s policy did not eliminate concerns about repercussions for students’ online class contributions.

In late June, China foisted the National Security Law upon Hong Kong, dealing a massive blow to its vibrant protest movement. The law threatens severe penalties for violations of its vague bans on separatism and subversion and has since been systematically applied to Hong Kong’s pro-democracy activists. While the legislation is troubling enough for its effect on Hong Kong, its impact has gone far beyond its borders — by

design. The legislation [applies](#) “even to those who are not residents of Hong Kong, with Article 38 suggesting that foreigners who support independence for Hong Kong or call for imposing sanctions on the Chinese government could be prosecuted upon entering Hong Kong or mainland China.”

The global nature of the National Security Law is evident in classrooms around the world. Late last summer, faculty at universities in the U.S., the United Kingdom, Australia, and other countries began to [adjust](#) their teaching methods to respond to the threats from the new law and other censorship challenges posed by China. Professors feared that, between the National Security Law and widespread internet surveillance, students could be implicated in expression that could land them in legal peril, especially if they are residents studying online in China during COVID-19 campus shutdowns.

Since August, faculty at a number of institutions including [Yale University](#), [Harvard University](#), and [Amherst College](#) have decided to offer anonymity in class discussions and include syllabi warnings that class material may be illegal in some countries. Just last month, Princeton University Professor of Politics Rory Truex [announced](#) to students in his Chinese politics course that he would “recommend that students who are currently residing in China should not take the course this year.”

FIRE is [tracking](#) these accommodations to study how faculty can protect students’ safety and their own academic freedom rights, and to spread awareness that repression overseas can find its way to American campuses.



## IV: Conclusion

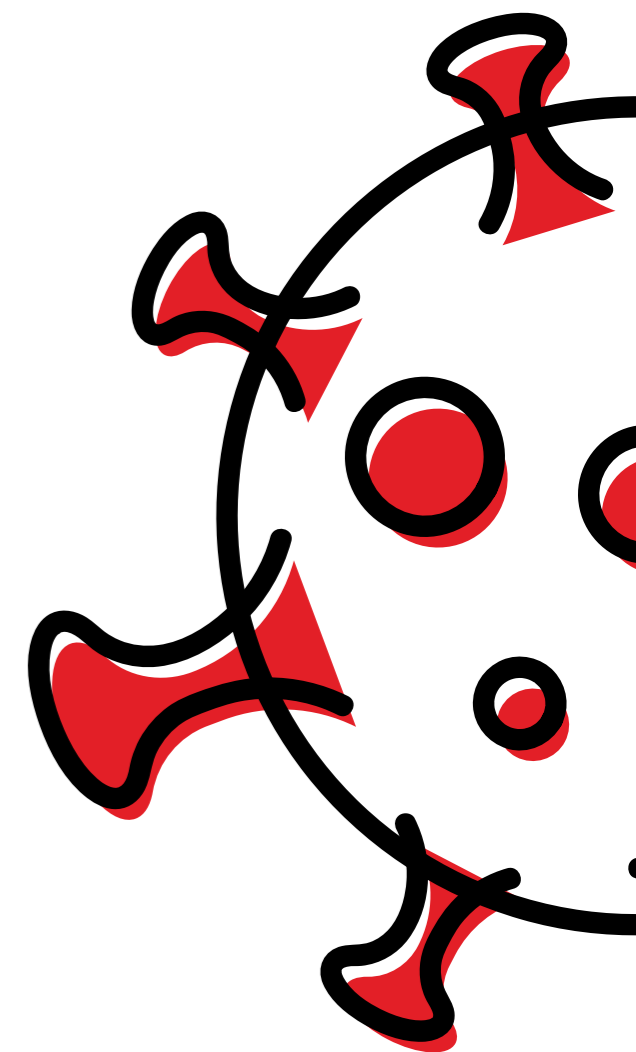
---

Colleges and universities are far from the only institutions facing questions about individual rights and public health measures. In courts across the country, First Amendment challenges to COVID-19-related measures have taken center stage since restrictions first took effect in March.

FIRE legal fellow and assistant professor of law at Belmont University David L. Hudson, Jr. [tackled](#) this issue in an essay late last year, “COVID-19 Emergency Measures and the First Amendment.” Hudson notes that in recent months, federal district courts have been split on whether to take a pro-government approach or an individual rights approach in determining if limitations on gatherings unconstitutionally impede religious practices and freedom of assembly. Even the Supreme Court of the United States has reached different conclusions in different cases concerning this issue. In his essay, Hudson discusses the factors that influenced these varying outcomes and warns that even when facing a pandemic, it is essential to preserve First Amendment rights.

“COVID-19 Emergency Measures and the First Amendment” can be found in FIRE’s [First Amendment Library](#), which also includes a [timeline](#) chronicling FIRE’s coverage of campus censorship related to medical and scientific fields.

If you’re spending a lot more time online lately, you might as well use it to better understand your rights and how to protect them. To learn more about the history, impact, and meaning of free speech in the United States and on college campuses, check out FIRE’s [First Amendment Library](#) and our [resources](#) for students and faculty.





**510 Walnut Street, Suite 1250**  
**Philadelphia, PA 19106**  
**T: 215.717.3473 F: 215.717.3440**  
**[www.thefire.org](http://www.thefire.org)**

    **@thefireorg**