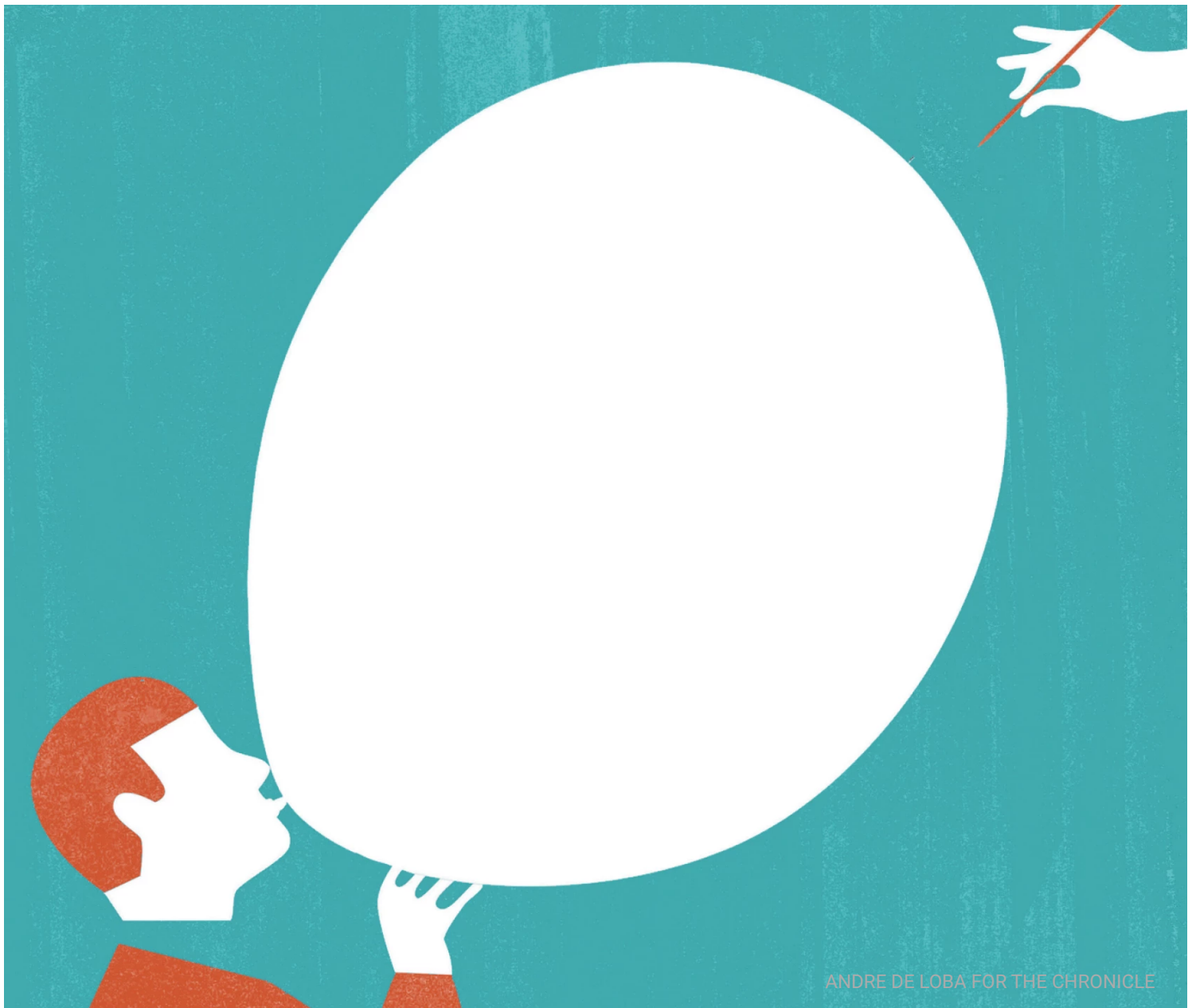


DEI Goals Are Worthy. Campus DEI Bureaucracies Fail Them.

Anyone and everyone can deploy the 'harm' rationale to curtail academic freedom.



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By *Amna Khalid* and *Jeffrey Aaron Snyder*

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We appreciate that Stacy Hawkins, vice dean of Rutgers Law School, acknowledges in her recent [essay](#) in these pages that academic freedom “will sometimes (perhaps increasingly often) collide” with DEI initiatives and commitments. The discourse on this topic has been greatly impoverished by an unwillingness to grapple with this reality.

When it comes to this contest of “competing interests,” Hawkins rejects our argument that academic freedom should triumph: “Sometimes DEI will win, other times academic freedom will prevail, but it cannot be that we continue to value academic freedom at all costs.”

Hawkins’s response seems to suggest that academic freedom is the only thing that matters to us. Writing about DEI in public forums, we have seen firsthand that criticism of DEI initiatives is often mistaken for hostility to the values of diversity and inclusion. Perhaps an analogy might help clarify our position.

We are strongly in favor of public safety as a principle. But the *department* of public safety is a different matter. The notion that any criticism of law-enforcement policies and practices means we don’t care about public safety is nonsensical. The same logic applies to DEI. That’s why we draw a sharp distinction between diversity, equity, and inclusion as concepts and what we call DEI Inc., which is the specific ways these ideas have been articulated in administrative language and institutional policies.

Some of our [interlocutors](#) imagine that we are unaware of, or simply don’t care about, the “long histories of deliberate marginalization and abuse” faced by different campus populations. This is most certainly not the case. We agree, for instance, that Black, Hispanic, and Indigenous scholars

are shamefully underrepresented at the faculty level. We believe that recruiting and retaining more diverse faculty members (and students) should be a top institutional priority.

But that doesn't mean we endorse the full package of DEI Inc. policies that are routinely promoted to achieve these goals. Mandatory diversity statements for hiring and promotion are [ideological litmus tests](#). Diversity training is woefully [ineffective](#). If we genuinely want to increase the number and enhance the success of historically excluded populations on campus, we think investing in academic-support services and pursuing cluster hires hold much more promise than DEI box-ticking exercises.

Hawkins claims that the principle of academic freedom “emanates” from the First Amendment. In fact, the origins of academic freedom are [found](#) in 19th-century Germany, the birthplace of the modern research university, and the accompanying notion of *Wissenschaftsfreiheit*, or “scientific freedom.” In the United States the academic freedom *urtext* is the American Association of University Professors' 1915 Declaration of Principles on Academic Freedom and Academic Tenure. Nowhere in this [document](#) is the First Amendment even mentioned.

Rather, the 1915 Declaration grounds academic freedom in credentialed expertise, asserting that professors should be free to carry out their research and teaching “without fear or favor” because they are experts whose truth-seeking work advances “the sum of human knowledge” and contributes to the public good. The AAUP's [conception](#) of academic freedom also, of course, includes the protection of professors' extramural speech: “When they speak or write as citizens, they should be free from institutional censorship or discipline.”

Courts have referenced the First Amendment to affirm the importance of academic freedom — in cases such as *Keyishian v. Board of Regents*, a 1967 Supreme Court decision — but academic freedom is fundamentally a guild right, not a constitutional right, which is why it deserves as much protection at private institutions as at public ones.

When it comes to teaching, Hawkins asserts that “balancing academic freedom with academic responsibility will sometimes require harmful and offensive speech to be condemned, especially

W when it serves no legitimate educational purpose.” This is a real head-scratcher. In the classroom, academic freedom does not need to be balanced with a helping of academic responsibility, any more than steak *frites* needs to be balanced with a side of fries. Responsibility, in the form of professional competence, is already an essential ingredient. Academic freedom is not a license to mouth off or teach whatever material suits your fancy. If a professor’s speech “serves no legitimate educational purpose,” then, by definition, it’s not protected by academic freedom.

That’s true, whether it’s a biology professor extolling the virtues of creationism or a professor of any stripe engaging in discriminatory treatment or harassment. The latter is a “breach of professional ethics,” as the AAUP’s 2007 report “[Freedom in the Classroom](#)” explicitly states: “An instructor may not harass a student nor act on an invidiously discriminatory ground toward a student, in class or elsewhere.”

According to Hawkins, the architects of academic freedom failed to take into account “the inherent power differential between faculty and students” by focusing “exclusively on promoting the free exchange of ideas among equals.” This could not be further from the truth. The authors of the 1915 AAUP Declaration were particularly sensitive to the “special restraints” professors must observe with respect to the “instruction of immature students,” whose minds and character were not “fully formed.” “The teacher,” they wrote, “ought also to be especially on his guard against taking unfair advantage of the student’s immaturity by indoctrinating him with the teacher’s own opinions before the student has had an opportunity fairly to examine other opinions upon the matters in question, and before he has sufficient knowledge and ripeness of judgment to be entitled to form any definitive opinion of his own.”

Last but not least, Hawkins claims that we suggest anti-CRT bills are “aligned with, and should therefore be treated the same as, DEI efforts.” In terms of the people and politics involved, these movements are obviously diametrically opposed to one another. Nonetheless, they are both steeped in the discourse of “harm” and “offense.” As Kimberlé Crenshaw, the Columbia University law professor and leading scholar of critical race theory, recently [explained](#), anti-CRT legislation is predicated on the idea that “white kids’ *feelings* are more important than Black

kids’ reality” (emphasis ours). REM was onto something when the group told us that “everybody hurts.” Our point is that, today, anyone and everyone can deploy the “harm” rationale to curtail academic freedom.

Academic freedom, Hawkins insists, will sometimes “need to cede to the responsibility academic administrators have to effectuate the institutional commitment to diversity, equity, and inclusion.” (Note the conspicuous absence of faculty voices here.) “These decisions,” she says, “much like the adjudication of rights by courts, require close scrutiny, delicate balancing of interests, and context-dependent inquiries.”

But unlike judges who have extensive training in legal matters, administrators often lack the requisite knowledge and expertise about academic freedom to make informed decisions. Recent cases do not inspire confidence. In 2021, University of Florida administrators barred three professors from testifying in a voting-rights lawsuit against the state, an action that the courts [declared](#) to be a violation of the professors’ First Amendment rights and deemed comparable to the “demise of academic freedom” at the University of Hong Kong. Or consider a 2022 incident in which administrators at Indiana University reprimanded elected faculty-council leaders for sending a campus email expressing concern about how a new anti-abortion law could adversely affect the health of members of the campus community. As Steve Sanders, a professor of law at the university, [pointed out](#), this email message constituted faculty speech “on matters of public concern directly connected to IU’s welfare” — which is strictly within the bounds of academic freedom.

More recently, recall the actions taken against the adjunct instructor Erika López Prater by senior administrators at Hamline University, which is now under AAUP [investigation](#), after she showed a medieval depiction of Muhammad in an art-history class. The university’s president and vice president for inclusive excellence both betrayed a shocking lack of understanding of the basic academic-freedom issues at stake. These examples only scratch the surface of cases that demonstrate the dangers of empowering administrators to regulate faculty speech.

Now is a particularly inopportune time to, as Hawkins suggests, “reshape our understanding of academic freedom.” To the extent that we “balance” academic freedom with other values, we will soon discover that DEI isn’t the only alternative on offer. In many red states, politicians and administrators are [demanding](#) that academic-freedom protections be set aside in the name of combating alleged “woke indoctrination.” Out with academic freedom and in with the values of free markets, individual liberty, and “Western civilization.”

Last year Lt. Gov. Dan Patrick of Texas made the following alarming proclamation: “Tenured professors must not be able to hide behind the phrase ‘academic freedom,’ and then proceed to poison the minds of our next generation.” Statements like these underscore how vital academic freedom is for scholars whose work challenges the [status quo](#). Without academic freedom, fields like ethnic studies, gender studies, and critical race theory wouldn’t exist. Can you imagine how a research program committed to identifying the structural racism embedded in American institutions (including academe!) would have got off the ground absent some degree of real faculty autonomy?

So while academic freedom and DEI initiatives will sometimes be in tension, the very study of topics such as racism, social inequality, and non-Western intellectual traditions depends on maintaining academic freedom. It’s the anchor for the whole enterprise of modern higher education, without which we would all be cast adrift.

We welcome your thoughts and questions about this article. Please [email the editors](#) or [submit a letter](#) for publication.

OPINION

ACADEMIC FREEDOM

DIVERSITY, EQUITY, & INCLUSION

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