



## ACADEMIC FREEDOM Florida

On October 29, a federal court filing revealed that University of Florida (UF) officials barred three professors from assisting plaintiffs in a lawsuit to overturn SB 90, a recently passed law restricting voting rights.

Officials said that since UF was a state institution, their participation in a lawsuit against the state was “adverse to UF’s interests” and not allowable. The professors barred from testifying were Daniel Smith, chair of the university’s political science department; Michael McDonald, an elections scholar; and Sharon Wright Austin, who studies African American political behavior.

Robert Post, a professor at Yale Law School, said he knew of no other case in which a university had imposed prior restraint on a professor’s ability to speak. “The university does not exist to protect the governor,” said Post. “It is an independent institution to serve the public good.”

The lawsuit contends that Florida’s newly-enacted election law “creates major obstacles to vote-by-mail, curtails access to drop boxes, and criminalizes line warming activities such as providing water to voters” and that these provisions unconstitutionally discriminate against Black, hispanic, and elderly voters.

SB 90 also created a requirement to present a state-approved ID including a person’s gender and photograph when voting in person, adversely impacting the voting rights of transgender individuals and those without the ability to obtain an approved ID.

University spokesperson Hessy Fernandez said “The university did not deny the [professors’] First Amendment rights or academic freedom. Rather, the university denied requests . . . to undertake outside paid work that is adverse to the

university’s interests as a state of Florida institution.”

Smith had previously testified in two other voting rights lawsuits against Florida’s Republican led government while employed by UF. One of those suits forced the state to provide Spanish-language ballots; the other overturned a ban on early-voting polling places on UF campuses.

Earlier this year, Governor Ron DeSantis signed a law mandating the annual assessment of university professors’ political views. (See: *Journal of Intellectual Freedom & Privacy*, v.6 iss.4: Is it Legal: Universities: Florida). As governor, DeSantis also appoints 6 of the 13 UF trustees. The board’s chairman, Morteza Hosseini, is a prominent Republican donor and DeSantis advisor.

The American Civil Liberties Union of Florida (ACLU-F) wrote that the university “should not be looking to Governor DeSantis to decide which speech activities it will engage in. That is precisely the opposite of the values that universities are thought to stand for.”

On November 3, it was reported that UF had prevented an additional five professors from testifying: Jeffrey Goldhagen, Kenneth Nunn, Sarah Wolking, Teresa Jean Reid, and Mark Fenster. Two professors were barred from contesting the DeSantis administration’s ban on school mask mandates.

UF President Ken Fuchs sent a university-wide email on November 5 announcing that he had “asked UF’s Conflicts of Interest Office to reverse the decisions on recent requests by UF employees to serve as expert witnesses in litigation in which the state of Florida is a party.”

On January 21, Chief US District Judge Mark Walker granted a preliminary injunction, ordering that “defendants must take no steps to enforce

its conflict-of-interests policy with respect to faculty and staff requests to engage as expert witnesses or provide legal consulting in litigation involving the State of Florida until otherwise ordered.”

In the 74-page order, Walker said that “UF has bowed to perceived political pressure from Florida’s political leaders and has sanctioned the unconstitutional suppression of ideas out of favor with Florida’s ruling party.”

**Reported in:** *The Gainesville Sun*, January 21, 2022; *The New York Times*, October 29, 2021, and November 4, 2021; *Tampa Bay Times*, October 30, 2021; *News 4 JAX*, November 1, 2021; *The Independent Florida Alligator*, November 3, 2021; *Forbes*, November 7, 2021.

## SCHOOLS Indianapolis, Indiana

On December 22, US District Judge James Sweeney granted a preliminary injunction allowing Pendleton Heights High School’s Gay-Straight Alliance (GSA) group to advertise, raise funds, and be listed in the school handbook as lawsuit filed by students and the American Civil Liberties Union of Indiana (ACLU-I) proceeds.

GSA groups exist to allow LGBTQIA+ students and allies to meet and provide social, emotional, and educational support to one another.

According to the lawsuit, Pendleton Heights’ GSA was forbidden from advertising its existence on school bulletin boards, the school radio station, or anywhere else on school property. No other student group is bound by such restrictions.

The lawsuit argues that placing this restriction on the GSA violates students’ First Amendment rights. “By creating additional hurdles for Pendleton Heights Gay-Straight Alliance,



such as censoring the group's promotions and prohibiting fundraising, the school is infringing on these students' rights," said Ken Falk, legal director for ACLU-I.

According to ACLU-I, prohibiting the GSA from advertising, recruiting members, and fundraising on school property like other student groups are allowed to have "severely hindered [it] in its purpose as a place of shelter, support, and education."

This is not the only discriminatory action Pendleton High School has taken against the LGBTQIA+ community. On May 18, teachers were ordered to remove Pride flags from their classrooms, arguing that they were "political paraphernalia."

**Reported in: *Los Angeles Blade*, December 23, 2021; *Indianapolis Star*, December 22, 2021; *The Herald Bulletin* May 19, 2021.**

### Loudoun, Virginia

On January 19, a federal judge Anthony Trenga for the District Court for the Eastern District of Virginia dismissed a lawsuit against the Loudoun County Public Schools (LCPS).

*Menders v. Loudoun County School Board* (1:21-cv-00669) was filed by a group of parents claiming the district's racial equity framework violated students' First Amendment rights.

The suit focused on two provisions from the district's "Action Plans to Combat Systemic Racism."

The first was the mechanism allowing school officials to investigate reports of racism and discrimination. The second was the creation of the student equity ambassador program, which would collect student complaints related to experiences of racism and inequity and anonymously share them with school staff.

The action plan was published in June 2020 to address an attorney general's office audit of the district which found a "hostile learning environment" for students of color and called for extensive reforms.

A study by The Equity Collaborative which the district commissioned informed the plan.

The Liberty Justice Center, which represented the parents in the case, claimed that the equity plan was tied to critical race theory (CRT). Governor Glenn Youngkin issued an executive order banning CRT in schools on January 15. (See: this issue: For the Record: Virginia).

Trenga wrote that the "plaintiffs have failed to allege facts that make plausible that the Bias Incident Reporting System will harm them in any way. Plaintiffs have not alleged that there have been any disciplinary

incidents initiated as a result of the reporting forms; or that any alleged incidents have even passed beyond the Equity Office for an investigation."

Trenga stated that the parents' problems with the framework cannot be litigated, but rather should be taken up with the school board. This course of action is not unproblematic. Loudoun's board is under siege and facing six recall campaigns led by Fight for Schools, a political action committee led by former Trump senior official Ian Prior.

Fight for Schools' campaigns have already resulted in one board member's resignation. On January 18, the NAACP released a statement that they would be joining the cases to help defend two of the school board members facing recall.

On January 15, Youngkin also issued an executive order directing the Attorney General to "initiate and coordinate investigative and prosecutorial efforts" of the Loudoun County School Board and administration regarding two cases of sexual assault at high schools.

**Reported in: *DCist*, July 15, 2021, and January 21, 2022; *Loudoun Times-Mirror*, January 18, 2022.**