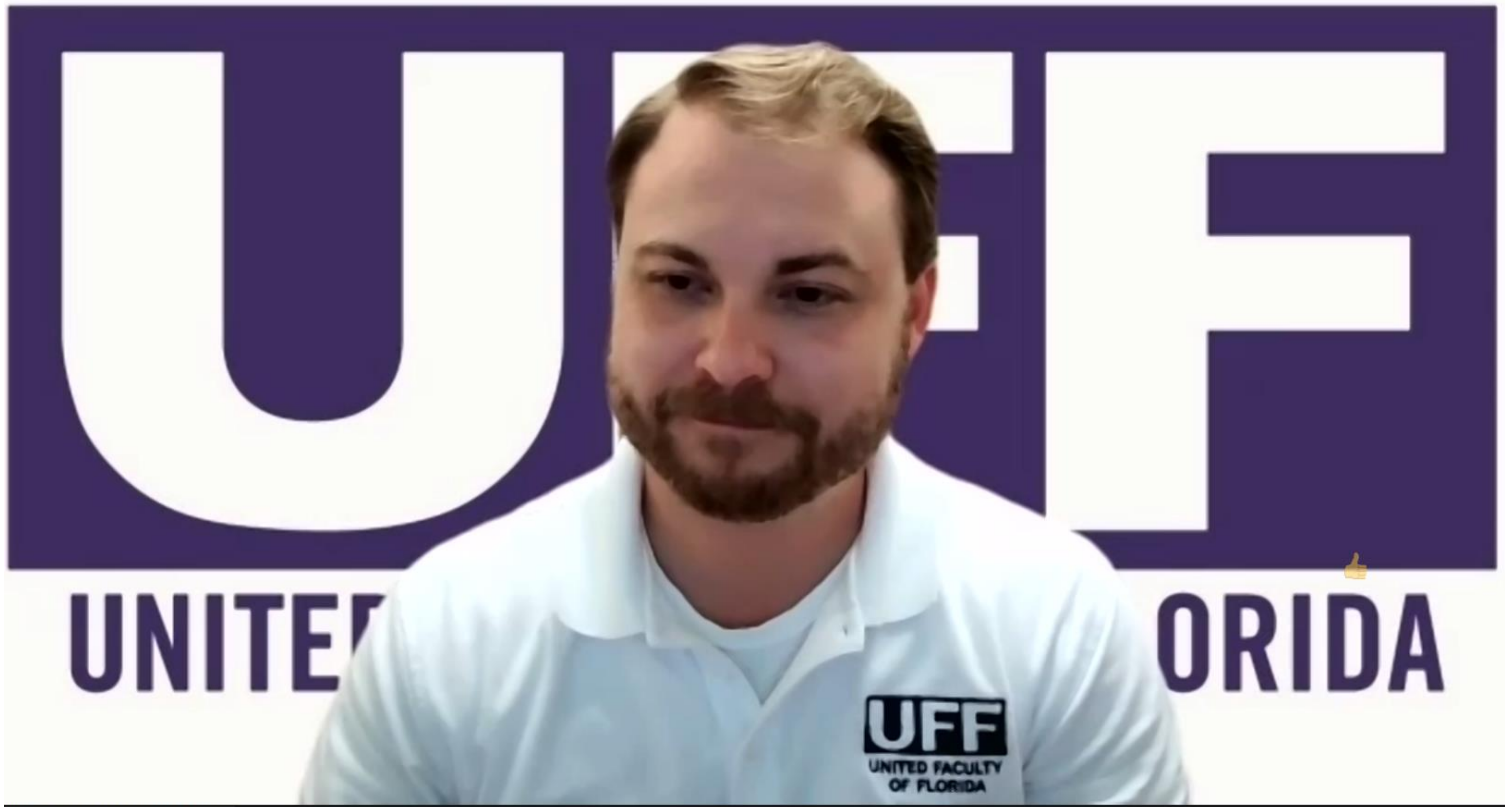


Notes 3 August 2022 in Web Format

Open Zoom; at start, 1 pm, about 500 people registered. Chat and reactions disabled.



Andrew Gothard, UFF Statewide President

Start at 1:04, with 230 people.

Jerry Edwards with the ACLU:



On to Morenike Fajana:

Academic Freedom and Employment Protections for University Employees

Emerson Sykes, ACLU Senior Staff Attorney
Jerry Edwards, ACLU Florida Staff Attorney
Morenike Fajana, NAACP LDF Assistant Counsel
Conor Flynn, Donnelly & Gross Senior Litigation Attorney

Morenike Fajana, Assistant Counsel...

How did we get here?



- Summer 2020: international protests for racial justice
- September 22, 2020: Executive Order 13950, on “Combating Race and Sex Stereotyping”
 - Santa Cruz Lesbian & Gay Cmty. Ctr. v. Trump, 508 F. Supp. 3d 521 (N.D. Cal. 2020)
- 2021-2022 legislative sessions
 - More than 30 states proposed anti-truth bills; 12 states passed them
- Key States
 - Oklahoma, New Hampshire, Tennessee and Florida
- HB 7
 - Stop W.O.K.E. Act
 - Individual Freedom Act

Executive Order 13950 was probably first executive order designed to suppress public discussion. Tossed out by court and rescinded by Biden Administration. HB 7 is one of the “anti-truth bills” passed, and ACLU is litigating them.

Conor Flynn:

Sources of Job Protections for Professors



- **Annual Contracts**
- **University Policies and Regulations**
- **Faculty Constitution**
- **Florida Board of Governors**
- **Tenure Protections— policy and constitutional**
- **Whistleblower Protection – IPPEA**
- **First Amendment Outside of Work**
- **Academic Freedom and Free Speech in the Classroom**
- **Equal Protection/Anti-Discrimination**

UF shifted its position only after suppression of expert testimony hit the NYTimes. Issue at UF was conflict of interest, testimony adverse to interest of state. Litigating, Judge Walker put in a preliminary injunction. Current timeline for court is March 2023, but UF may try to kick it up to US Supreme Court.

Emerson Sykes: These are your protections.

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First Amendment:

UF Regulations



Examples Include:

- Faculty Grievance Reg 7.042
- Academic Freedom Reg 7.018
- Non-discrimination and Anti-harassment Policy Reg. 1.006
- Tenure and Promotion Policy Reg. 7.019
- Complaints against Faculty Reg 7.036

[UF-7 Academic Affairs » Regulations » University of Florida \(ufl.edu\)](#)



Academic Freedom Reg 7.018

University of Florida

Section (1)(a): The University believes that academic freedom and responsibility are essential to the full development of a true university and apply to teaching, research, and creativity. In the development of knowledge, research endeavors, and creative activities, the faculty and student body must be free to cultivate a spirit of inquiry and scholarly criticism and to examine ideas in an atmosphere of freedom and confidence. The faculty must be free to engage in scholarly and creative activity and publish the results in a manner consistent with professional obligations. A similar atmosphere is required for university teaching. Consistent with the exercise of academic responsibility, a teacher must have freedom in the classroom in discussing academic subjects selecting instructional materials and determining grades. The university student must likewise have the opportunity to study a full spectrum of ideas, opinions, and beliefs, so that the student may acquire maturity for analysis and judgment. Objective and skillful exposition of such matters is the duty of every instructor.



RELATIONSHIP BETWEEN LAWS



Federal Constitution

↪ Florida Constitution

↪ Florida State Law
HB 7

SCOTUS on Academic Freedom



- "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."
Keyishian v. Board of Regents of University of State of N. Y., 385 U.S. 589, 603 (1967)
- "Academic freedom, though not a specifically enumerated constitutional right, long has been viewed as a special concern of the First Amendment."
Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 312 (1978)
- "The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die."
Sweezy v. State of New Hampshire, 354 U.S. 234, 250 (1957)

Academic Freedom: It's a Vibe



- Freedom *on behalf of* whom and *against* whom?
- Institutional freedom
 - Free from undo political influence from other government branches and bodies
- Faculty speech
 - Matter of public interest?
 - In/outside class/extramural?
- For students
 - open question how much academic freedom exists

Some circuits claim that academic freedom protects institutions from outside interference, and does not apply to individuals.

What is covered?

- Protected for full-time, part-time, tenure and tenure-track and contingent professors and lecturers, graduate student instructors, and research assistants.
- Includes the liberty to conduct research and draw conclusions rooted in evidence.
- Includes the right to select course materials and content, pedagogy, make assignments, and assess student performance. These should be germane to the subject matter.
- Certain limits: e.g. University grading policy, protections against a hostile education environment



Speech in the Classroom:



Hardy v. Jefferson Community College

- An African-American student alleged that professor Hardy used offensive language in a lecture on language and social constructivism. Hardy was not offered a class to teach the following semester.
- In Hardy's course, students were asked to examine how language "is used to marginalize minorities and other oppressed groups in society," and the discussion included examples of derogatory, sexist, and racist language.
- The Court ruled in favor of Hardy, finding that the topic of the class—"race, gender, and power conflicts in our society"—was a matter of public concern and held that "a teacher's in-class speech deserves constitutional protection."

Speech in the Classroom:



Bonnell v. Lorenzo

- A female student filed a sexual harassment complaint alleging Bonnell repeatedly used lewd and graphic language in his English class. The college terminated Bonnell.
- "While a professor's rights to academic freedom and freedom of expression are paramount in the academic setting, they are not absolute to the point of compromising a student's right to learn in a hostile-free environment."
- Bonnell's use of vulgar language was "not germane to the subject matter" of the course, and therefore unprotected.

Curricular Assignments

Yacovelli v. Moeser

- At the beginning of the school year, UNC scheduled a school-wide discussion for all new students based on the book *Approaching the Qur'an: The Early Revelations*. Lawsuit alleged this violated separation of church and state.
- “There is obviously a secular purpose with regard to developing critical thinking, [and] enhancing the intellectual atmosphere of a school for incoming students.”



Curricular Assignments

Axson-Flynn v. Johnson

- Axson-Flynn, a college theater student, changed some words in assigned scripts for in-class performances so as to avoid using words she found offensive based on her religious beliefs. Her professors warned her that she would not be able to change scripts in future assignments. Axson-Flynn left the program and sued.
- Court: the school could compel speech from Axson-Flynn if doing so was “reasonably related to legitimate pedagogical concerns.”



Current Lawsuits Challenging HB 7



- Two cases challenging the so-called “Stop W.O.K.E. Act” in the federal district court in Tallahassee
 - Both are before Judge Mark Walker
- Falls v. DeSantis, 4:22-cv-166 (N.D. Fla. 2022)
 - Filed in April
 - One higher education plaintiff (Professor Robert Cassanello from UCF)
 - Judge denied motion for preliminary injunction as to all K-12 and employer plaintiffs
 - Motion for PI still pending for Professor Cassanello
- Honeyfund.com, Inc. v. DeSantis, 4:22-cv-227 (N.D. Fla. 2022)
 - Filed in June
 - Challenging part of law that limits employers’ DEI trainings
 - Not challenging parts of the law that apply to K-20 education
 - Preliminary injunction hearing will occur on August 8

Jerry Edwards:

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How We're Approaching HB 7



- The ACLU, ACLU of Florida, and NAACP LDF are currently investigating the impact of HB 7 on higher education in Florida.
- We are presently evaluating our litigation options.
- If you feel that this law will impact courses you teach, feel free to reach out to me at jedwards@aclufl.org. Our conversation will remain confidential.
- We are particularly interested in speaking with:
 - Community college professors
 - Untenured faculty
 - Professors of color
 - Gender/women's studies professors
 - Professors whose courses touch upon critical race theory, anti-racism, and/or racial justice or social justice movements

Emily McCann:



HB 7 CLASSROOM GUIDANCE
CAMI ACCEUS
EMILY MCCANN, PH.D.



We represent only members.



LEGISLATIVE CONTEXT, POLITICAL CONTEXT

Recent legislation demonstrates swing toward extremist legislative control over university management, threatening academic freedom:

- HB 233
- SB 7044
- HB 7

Faculty self-censorship is the point.



Legislature is trying a power grab, extending surveillance and control into universities and colleges.

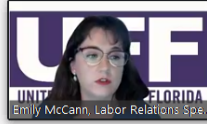
HB 7 MECHANICS



FLBoG Regulation 10.005's requirements

- Institutions will adopt guidelines for reporting, investigating credible allegations
- Substantiated allegations shall be reported to BoG by University
- Punishment determined locally: failure to comply with directive once finding found may result in termination

Collective bargaining agreements' provisions for just cause/discipline not superseded



WHAT ACTIVITIES DOES HB 7 COVER?

HB 7 Amends 1005.05 to read

(a) 4)(a) It shall constitute discrimination on the basis of race, color, national origin, or sex under this section to subject any student or employee to training or instruction that espouses, promotes, advances, inculcates, or compels such student or employee to believe any of the following concepts....

but

(b) Paragraph (a) may not be construed to prohibit discussion of the concepts listed therein as part of a course of 1 training or instruction, provided such training or instruction is given in an objective manner without endorsement of the concepts.

What do Training and Instruction mean? See FL BoG Regulation 10.005:

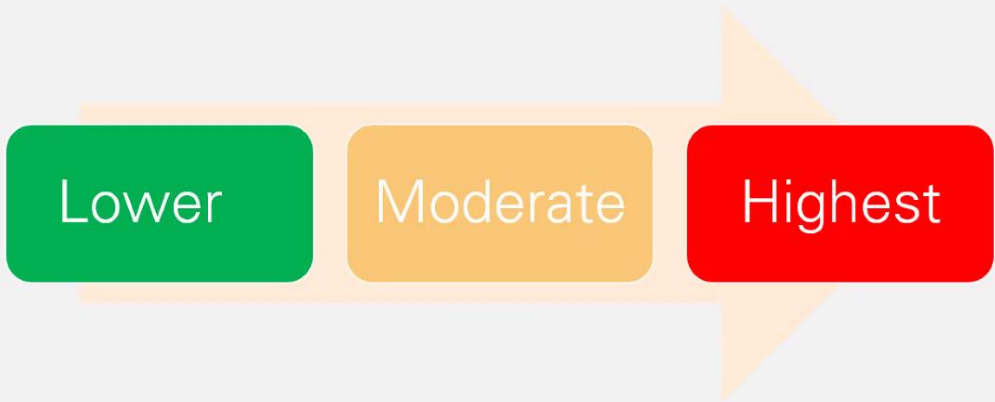
“Training” is defined as a planned and organized activity conducted by the university as a mandatory condition of employment, enrollment, or participation in a university program for the purpose of imparting knowledge, developing skills or competencies, or becoming proficient in a particular job or role.

“Instruction” is defined as the process of teaching or engaging students with content about a particular subject by a university employee or a person authorized to provide instruction by the university within a course.

Levels of risk:



THE FRAMEWORK





GOOD IDEAS FOR ALL INVOLVED

- Syllabus Disclaimer: “No lesson is intended to espouse, promote, advance, inculcate, or compel a particular feeling, perception, viewpoint or belief.”
- Recording Lectures*

Lectures may be public documents, so administrators and the public can request recordings.

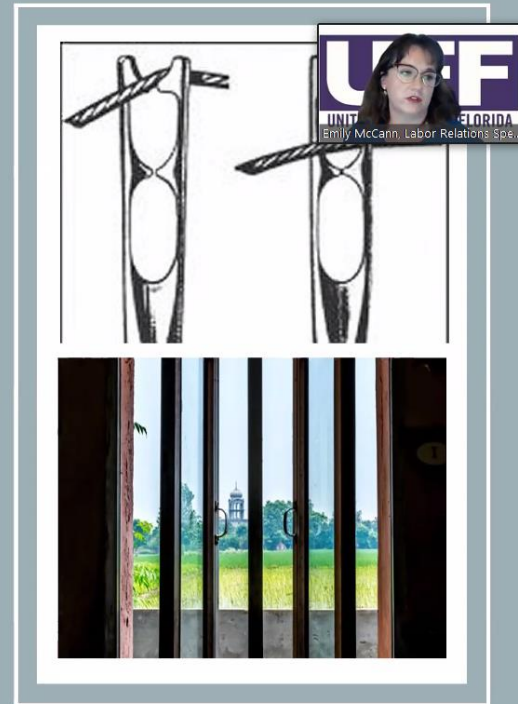


LOW RISK ACTIONS

- 1) Don't teach or address any of the topics prohibited in HB 7.
- 2) Remove all posters and art in your office that “endorse” positions prohibited by HB 7.
- 3) Don't speak to any of the topics addressed in HB 7 with any student groups you may sponsor.
- 4) Don't guest lecture on any Florida campus about any of the topics addressed in HB 7.

MEDIUM RISK

- See [HB 7 Classroom Guidance](#)
- All prohibitions rely on cartoonish representations, some unlikely to speak to actual classroom conditions.
- Difference between inherent virtues/qualities of ideas versus empirical effects for categories of people



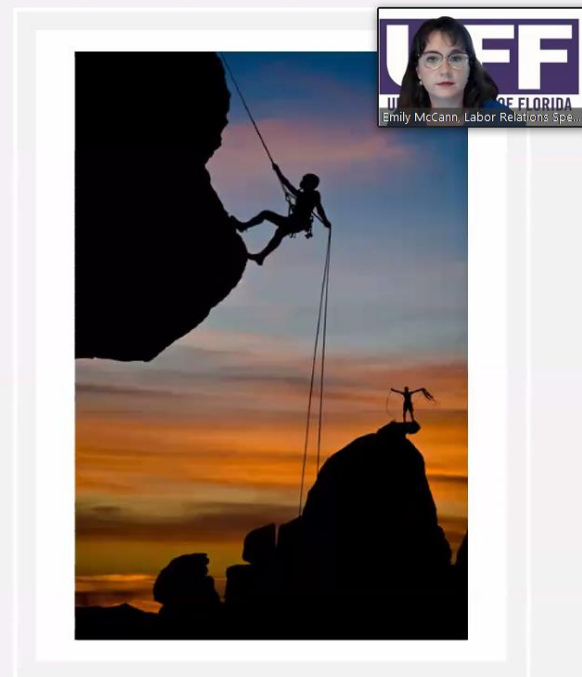
HB 7 Classroom guidance: <https://myuff.org/wp-content/uploads/2022/07/UFF-All-Member-HB-7-Guidance.pdf>

HIGH RISK

Change nothing.

Serve as a test case for potential litigation or organizing against this law if you are ever investigated or harmed.

NB: Members under investigation for violations of HB 7 should contact their chapter leadership and assigned UFF Labor Relations Specialist ASAP.



Cami Accesus:

COURAGE OVER FEAR

- UFF, FEA, NEA and AFT will represent members who are charged with violations of these.
- Members have liability insurance through our nationals that will likely also cover litigation costs
- Most direct, effective solution: GOTV



Closing comments:

Zoom Webinar

Recording LIVE Facebook

Chat

How to join UFF (Join a chapter at your campus, join UFF Retired, or join at large <https://myuff.org/join-uff/>)

Candi Churchill, UFF Execut... to Everyone <https://myuff.org/know-your-rights/>

To be represented by UFF, you must be a member at the time of the incident. Know your rights (UFF HB 7 guidance to members on bottom) <https://myuff.org/know-your-rights/>

How to join UFF (Join a chapter at your campus, join UFF Retired, or join at large <https://myuff.org/join-uff/>)

Join our Get Out The Vote campaign (#UFFvotes: pro-education, non-partisan voter mobilization) <https://myuff.org/uffvotes/>

Donate to UFF's Political Action Committee (no dues money goes to political campaigns) <https://myuff.org/contribute-to-uff-pac-today/>

Who can see your messages? Recording On

Chat disabled

Andrew Gothard, UFF Statewide President

Type here to search

1:51 PM 8/3/2022

At the UFF, we are doing things.

We have a leadership in Tallahassee that is determined to infringe on our academic freedom rights.



CHAT:

Know your rights: <https://myuff.org/know-your-rights/>

#UFFVotes: <https://myuff.org/uffvotes/>

UFF PAC: <https://myuff.org/contribute-to-uff-pac-today/>