

## Bad Precedent: The Trump-Pence Administration's Executive Order 13950 as Pretext for Republican Attacks on Academic Freedom

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### Abstract

*The Trump-Pence administration's Executive Order 13950 prohibited government employee training from facilitating antibias and antiracism discussions. In reaction to the executive order, many state legislatures wrestled with the question of what government entities, especially public education institutions, should teach regarding race, gender, LGBTQ+ identities, and US history. Although scholars have begun to consider the implications of educational gag orders for institutions, faculty, and students, there has not been a thorough examination of the partisan ideological network that birthed the modern era of erasure legislation and the role of the Trump-Pence administration in shaping these bills. This article explores how the Republican ideological network framed an issue the Trump-Pence administration amplified through Executive Order 13950, ultimately interfering with the purposes of the institution of higher education—and the potential implications of that interference for our broader society and democracy.*

The Trump-Pence administration's Executive Order 13950 prompted many state legislatures across the United States to introduce educational gag orders (Young and Friedman 2022). At their core, educational gag orders restrict what elementary, secondary, and postsecondary education institutions can teach regarding race, gender, LGBTQ+ identities, and US history; more recently, legislation has started banning diversity, equity, and inclusion (DEI) offices and initiatives on college and university campuses (PEN America n.d.). Although scholars have begun to consider the vast implications of educational gag orders, there has not been a thorough examination of the partisan ideological network that birthed the modern era of erasure legislation and the role of the Trump-Pence administration in shaping these bills (Young 2022). Beyond an analysis of presidential influence in general, the field needs further research on the extent to which partisan ideology combined with executive overreach, particularly during the Trump-Pence administration, may have interfered with the purposes of higher education—and the potential implications of that interference for our broader societal democracy. This article asks how the Republican ideological network and executive overreach of the Trump-Pence administration, through Executive Order 13950, interfered with the purposes of the institution of higher education.

To begin answering this question, I offer a theoretical approach to understanding how the Republican ideological network framed an issue the Trump-Pence administration amplified through Executive Order 13950, ultimately interfering with the purposes of higher education. In providing a framework for unpacking this interference, I first consider the origins of educational gag orders. I then briefly theorize the purposes of higher education, including the functions of providing learning opportunities, preparing individuals to contribute to the economic workforce, and assisting people in contributing to societal democracy. I conclude by describing how partisan ideology combined with executive overreach interfered with each purpose of higher education. In this discussion, I note that the broadest and perhaps most detrimental impact of Executive Order 13950 is the weakening of the democratic aim of the institution of higher education, which has drastic implications for academic freedom.

### The Origins of Educational Gag Orders

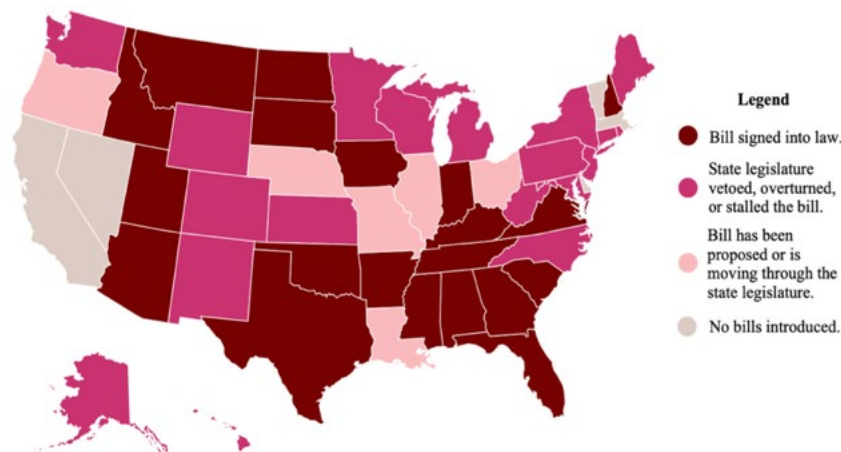
In July 2020, an employee of the City of Seattle documented a required antibias training and sent it to conservative writer Christopher F. Rufo (Wallace-Wells 2021). As a supporter of conservative ideology, which considers discussions of race and racism to result in more division in the United States, Rufo recognized the political opportunity this leak gave the Republican party to frame an issue (Wallace-Wells 2021). Thus, he sought to learn more about antibias and antiracism training for Seattle municipal employees and submitted a Freedom of Information Act request for the seminar slideshows and curricula (Wallace-Wells 2021). While reviewing the materials, Rufo discovered that the city's Office of Civil Rights directed state institutions during implicit bias training to divide departments by race, which he argued endorsed race essentialism (Wallace-Wells 2021). Rufo published an article on Seattle antibias training in the *City Journal*, hoping to draw attention to an issue that could eventually become the foundation of a modern-day culture war (Wallace-Wells 2021).

After Rufo's article was published, the Republican ideological network quickly diffused this issue across the country. US government employees in different states required to attend antibias and antiracism seminars leaked their training to Rufo, trying to sustain the momentum built by his article and further a growing Republican agenda of limiting discussions of race and racism (Wallace-Wells 2021). Rufo found a pattern in descriptions he received of seminars, as many referenced antiracism books rooted in the academic scholarship of critical race theory (CRT) (Wallace-Wells 2021). This led Rufo to begin outing CRT in additional articles, providing further rationale for the Republican Party to amplify the issue, especially the executive branch, which already had a hyperpolarized agenda (Jones 2021). Consequently, after Rufo's appearance on *Tucker Carlson Tonight* in September 2020, President Donald Trump's chief of staff, Mark Meadows, reached out to learn more about his findings and strategize how the executive branch could respond (Jones 2021). Rufo flew to DC to assist in drafting Executive Order 13950 (Wallace-Wells 2021).

### Executive Order 13950

In September 2020, President Trump signed a memorandum on funding for “divisive” employee training and seminars in all federal agencies (Vought 2020, 1). In the statement, the Trump administration asserted that government workers are instructed in antibias and antiracism training that all white people contribute to and benefit from racism, which counters the values of the United States and provokes racial resentment in the workforce (Vought 2020, 1). Less than a month later, President Trump extended the reach of the memorandum by signing Executive Order 13950, on Combating Race and Sex Stereotyping (Federal Register 2020). In practice, the order criticized and prohibited training sessions for federal government workers that discussed race and sex discrimination, colorblindness, meritocracy, bias, and inaccurate perceptions of history (Federal Register 2020).

President Trump’s exertion of power through Executive Order 13950 inspired many Republican-controlled state governments to strategize what state education institutions should teach about race and sex (Young and Friedman 2022). Consequently, state legislators began introducing educational gag orders, erasure legislation that bans teaching divisive concepts in state educational institutions and prohibits DEI-centered offices and initiatives (PEN America n.d.). As shown in the figure below, only five US states had not yet introduced an educational gag order by June 2023: California, Delaware, Massachusetts, Nevada, and Vermont (Schwartz 2023).



Source: Schwartz (2023).

### Actions taken for divisive concepts by state

Though not every state has passed an educational gag order for postsecondary education, in those that have, it has severely affected state higher education institutions (Young and Friedman 2022). For instance, the Florida Legislature has passed numerous educational gag orders for state

higher education institutions, including House Bill 7 and Senate Bill 266: while the former bars institutions from teaching divisive concepts, the latter prohibits institutions from expending state or federal funds on DEI offices or initiatives (PEN America n.d.). The Ohio General Assembly also has introduced multiple educational gag orders with a similar aim of establishing restrictions in higher education, including House Bill 327 and Senate Bill 83 (PEN America n.d.). States where similar legislation has been introduced include but are not limited to Oklahoma, South Dakota, and Tennessee (Schwartz 2023). Educational gag orders can thus be considered as an epidemic that originated in the Republican ideological network and was “super spread” by the executive branch through Executive Order 13950.

### The Purposes of the Institutions of Higher Education

To understand how the Republican ideological network framed an issue the Trump-Pence administration amplified and, thus, interfered with the purposes of higher education, I want to begin by defining its three purposes. Higher education institutions are components of a larger ecosystem known as the institution of higher education (Meyer et al. 2007). By viewing higher education through this lens, we can make meaning of the institution’s defining characteristics and effects on society (Meyer et al. 2007). Hence, by employing this systems approach, we can identify definitions, rules, and models of how the overall ecosystem of higher education influences local, state, and national situations (Meyer et al. 2007). Scholars have used this perspective to theorize that the institution of higher education’s purposes include providing learning opportunities, preparing individuals to contribute to the economic workforce, and assisting people in contributing to societal democracy (Gutmann 1987; Heyneman 2003; O’Banion 2010).

#### *Higher Education as a Learning Opportunity*

One conceptualization of higher education views it primarily as a learning opportunity, making the theoretical assertion that each mission of postsecondary education, including research, teaching, and service, is rooted in the pursuit of knowledge, thus making learning the central value in most scholarly activities (O’Banion 2010). For instance, *research* in postsecondary education aims to build upon past knowledge by providing evidence that results in new learning (O’Banion 2010). At each educational level, *teaching* seeks to facilitate and promote students’ learning (O’Banion 2010). Lastly, *service* in higher education mobilizes learning and applies it through strategies that improve society (O’Banion 2010). To be clear, viewing higher education as a learning opportunity means understanding that the institution’s responsibility is to engage learners, allow them the freedom to explore interests, and define the roles of learning facilitators in terms of the learners’ needs (O’Banion 2010).

### *Higher Education as Workforce Development*

Another theoretical assertion of the purpose of higher education suggests that rather than learning, postsecondary education's primary goal is to teach individuals skilled work to help them achieve financial stability and contribute to the economy (Heyneman 2003). We see this theory demonstrated most often in the national employment and income averages for those who do not pursue higher education compared to those who do. For example, in 2021, the national weekly median earnings were \$1,057, but those with a high school diploma averaged \$809 and those with less than a high school diploma \$626 (US Bureau of Labor Statistics 2022). However, those with a bachelor's degree averaged \$1,334 (US Bureau of Labor Statistics 2022). These data demonstrate that education helps individuals achieve upward mobility, resulting in greater financial freedom and job security—two primary objectives of workforce development as a purpose of higher education. Therefore, from this viewpoint, the purpose of the institution of higher education is to educate people on how to be productive members of the workforce (Heyneman 2003).

### *Higher Education as Laboratory of Democracy*

The last theoretical assertion of the purpose of higher education suggests that it seeks primarily to foster an environment where scholars can find solutions that favor development of a more enlightened and better functioning society (Gutmann 1987). This approach proposes that scholars have a responsibility to use their education to ensure that policies and practices reflect society's needs and goals (Gutmann 1987). Hence, when facing societal disagreements, the democratic purpose of higher education invites debate and guides individuals through understanding who should make decisions about education and what the ethical boundaries of that authority are (Gutmann 1987). Therefore, higher education's democratic purpose lies outside of partisan ideology and power, offering an environment where individuals can explore all possibilities and perspectives (Gutmann 1987).

### **The Interference of Executive Order 13950 in the Purposes of Higher Education**

The Republican ideological network, combined with the executive overreach of the Trump-Pence administration, interfered with each purpose of higher education in distinct ways. For instance, perspectives on higher education that prioritize learning as its primary purpose concentrate on the needs and development of learners rather than those of internal or external institutional agents (O'Banion 2010). Yet Executive Order 13950 restricted knowledge by limiting topics learners may explore. Similarly, perspectives on higher education that prioritize workforce development concentrate on educating people to be productive members of the economic workforce (Heyneman 2003). Yet Executive Order 13950 criticized individuals whose work centers on race and gender and discredited them and their professions, with potentially negative

implications for the workforce. However, arguably, Executive Order 13950's greatest interference was in higher education's democratic function.

### *Emphasizing Interference in the Democratic Function*

Executive Order 13950 interfered with the democratic purpose of the institution of higher education in two ways. First, by prohibiting discussions of race, gender, and LGBTQ+ identities, the Trump-Pence administration restricted deliberation and debate, characteristics paramount to the democratic purpose of higher education (Gutmann 1987). Although these subjects often lead to controversy, controversy does not necessarily mean a topic ought to be barred or construed as "un-American." In fact, the democratic theories of education understand highly contested issues as "moral disagreements" that provide an opportunity to deliberate about the most fundamental values in our society and, therefore, to advance our understanding of what constitutes a good life (Moses 2016). Thus, the democratic purpose of education is to mold controversies into solutions that contribute to a better society (Gutmann 1987). If this obligation is disregarded, higher education institutions risk losing their integrity and becoming pawns in a much larger political game, often with power-driven motives, as witnessed in the issuing of Executive Order 13950. Higher education is not a space for forced agreement but instead for inquiry and solutions (Gutmann 1987).

The second way Executive Order 13950 interfered with the democratic purpose of the institution of higher education is by directly infringing upon the academic freedom of scholars, more broadly including the faculty, staff, and students at any given institution. Academic freedom includes the ability of scholars to explore topics in their field without interference from political entities (AAUP n.d.). These freedoms are generally well protected for tenure-track and tenured faculty, and some institutions have also begun to clarify the freedoms afforded to staff, non-tenure-track faculty, and students. The educational gag orders that have followed Executive Order 13950 suggest that people should not study, learn, or teach about race, gender, and LGBTQ+ identities, imposing penalties on scholars and institutions exploring these topics (PEN America n.d.). This interference with academic freedom raises the question of what will happen to the democratic purpose of higher education if academic freedom is no longer paramount. Academic freedom is the safeguard of higher education, with many scholars in controversial fields relying on it to keep doing work that furthers societal progress (AAUP n.d.). Limiting academic freedom therefore has potentially severe implications for intellectual and technological progress.

### **Looking Forward**

Even though President Biden repealed Executive Order 13950 immediately upon being sworn into office, we continue to see its effects today, most notably in copycat state legislation

throughout the country (Young and Friedman 2022). For instance, many argue that Florida is becoming a template for legislative infringement upon the purposes of higher education, and specifically the democratic functions of deliberation, debate, and academic freedom (Moody 2023). Thus, while Biden's repeal may limit the direct negative consequences of Executive Order 13950, the order continues to have long-term effects on all levels of government—including institutional, state, and federal (Young and Friedman 2022). In this way, the current proliferation of educational gag orders across the United States demonstrates how the Republican ideological network, combined with the power of the executive branch during the Trump administration, has interfered with the institution of higher education and provided a blueprint for continued interference in years or decades to come.

While this theoretical article has foregrounded the role of the Republican ideological network and the presidency in limiting the purposes of higher education, future research should continue to explore the implications of legislative bans that preceded Executive Order 13950. Research might also want to explore the implications of executive orders and the broader rhetoric on the purposes of K–12 education, which also serves an essential function for our democracy (Gutmann 1987). For now, this article has highlighted the role of our higher education systems in guiding and developing our collective thinking about our society and our democracy. Restricting discussions in our higher education institutions limits the problems our country can resolve. Academic freedom is needed if we are to continue upholding the democratic purposes of education and for the future of our democracy at large.

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