

## H.B. 1006 and H.B. 1607: The Eighty-Eighth Texas Legislature's Attack on Academic Freedom in Texas

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### Abstract

*The Eighty-Eighth Texas Legislature's House of Representatives demonstrated how politicized higher education has become by introducing two bills, H.B. 1006 and H.B. 1607. Both threaten academic freedom and the ability of public colleges and universities to create diversity, equity, and inclusion (DEI) programs. While the bills did not pass, examining their context remains essential because conservatives may introduce similar bills in future sessions if legislation from the eighty-eighth session fails to achieve their goals. This article discusses the bills' potential impact on higher education in Texas and their effects on other elements of Texas society.*

Neither liberty nor freedom is guaranteed to those living in the United States. Historically, they are reserved for the ruling class—often white, Christian heterosexual men. Over time and through the courts, Congress, and the executive branch, constitutions, amendments, and legislation have provided marginalized populations similar protections before the law. However, states like Texas are increasingly using the three branches of government and democratic processes to restrict the liberty of marginalized groups once again. For example, in 2021, the antiabortion Heartbeat Act was passed, and in 2022 the Texas Supreme Court upheld legislation allowing for the investigation of parents of transgender youth seeking gender-affirming care and doctors providing it (Chappell 2022). Each session, more and more populations find themselves targeted by conservatives who perceive them as threats to their ideology and values.

In the eighty-eighth session, faculty in higher education in Texas found themselves in conservatives' crosshairs with the introduction of H.B. 1006 and H.B. 1607. H.B. 1006 prohibits diversity, equity, and inclusion (DEI) policies in higher education and requires neutrality. H.B. 1607 dictates what can and cannot be taught in a classroom. While this legislation would harm all of higher education, it would disproportionately affect the faculty responsible for teaching students essential concepts and democratic theories, developing the critical thinking skills integral to solving societal problems, and fostering the ability to empathize with the struggles of those different from ourselves. This article discusses the two policies and explores their potential long-term consequences on the state's education system and society.

## The Legislation

Politicizing education is becoming a tradition in the United States. In recent years conservatives nationwide have argued that educators indoctrinate students with ideas contradicting the “authentic founding principles of the United States” (H.B. 1607, section 51.982). In 2021 similar claims resulted in Texas’s passing Senate Bill (S.B.) 3, an anti-critical race theory (CRT) policy restricting K–12 teachers from teaching topics the legislature deemed inappropriate for children. It also banned 801 books, including nonfiction and academic ones (Solomon 2022). Ironically, S.B. 3 and the book ban arguably indoctrinate students with conservatives’ perceptions of history, politics, and society by revising history and discouraging critical thinking. H.B. 1006 and H.B. 1607 seek to achieve the same goal in higher education and require faculty to act as agents of the conservative agenda rather than academics.

### *H.B. 1006*

Scholars understand DEI as critical to creating and maintaining an institution that seeks to provide a safe space for all to express their viewpoints, learn from others, and develop the skills of social responsibility, self-awareness, and the ability to understand the value of all social, religious, economic, and political cultures (Clayton 2021). However, H.B. 1006 forbids the creation and funding of DEI programs and limits the academic expression of educators by demanding they abide by conservatives’ definition of neutrality in the classroom. It allows a person to sue the institution if they believe it or its faculty does not comply with these limitations on academic freedom (section 3, subsection K). Under H.B. 1006, offering such an environment can cost the institution millions in legal fees despite its benefits to student development, faculty research, and fostering of a more inclusive society.

H.B. 1006 also requires educators to be politically, socially, and culturally neutral (Section 51.354). However, the bill offers no examples of or guidelines regarding conservatives’ idea of neutrality. This intentional vagueness and the omnipresent fear of lawsuits can deter faculty from supporting DEI programs or teaching classes in disciplines like philosophy or sociology that challenge students to consider and explore theories and ideas that might counter conservative ideology and values. This bill is an infringement on academic freedom. This is especially the case for those working at public institutions with limited funds and declining enrollments; as H.B. 1006 states, “The institution shall pay the fees and costs from the budget of the office of the chief executive officer of the institution or the institution’s system, as applicable” (section K). At public institutions without sufficient private endowments or donations, the administration and faculty fear that a lawsuit could eliminate DEI programs and force curriculum changes. In contrast, private institutions can continue to offer them.

### *H.B. 1607*

Like S.B. 3, H.B. 1607 prohibits teaching concepts, theories, and ideas. While H.B. 1006 requires neutrality, H.B. 1607 explicitly forbids instruction of a particular kind. For example, educators at public institutions are prohibited from including concepts that “an individual should be discriminated against or receive adverse treatment solely or partly because of the individual’s race or sex . . . [that] an individual, by virtue of the individual’s race or sex, bears responsibility, blame, or guilt for actions committed by other members of the same race or sex . . . [and that] racism is anything other than deviations from, betrayals of, or failures to live up to the authentic founding principles of the United States” (H.B. 1607, section 51.892). Much like H.B. 1006, H.B. 1607 threatens academic freedom in multiple ways because failure to comply results in a cutoff of state funds (section 51.982).

These limitations prevent educators from teaching fundamental concepts such as democracy and why differences in democracies exist. Explaining how our ideas of democracy evolve requires discussions about rights and liberties—two things historically not afforded to all, often based on traits like race and gender—which require that students have a baseline knowledge of our history of inequality and discrimination. For example, the United States continues to be labeled a flawed democracy by the Economic Intelligence Unit’s (n.d.) Democracy Index, which publishes an annual report ranking the world’s democracies. To understand why the United States was initially downgraded to and remained a flawed democracy for over five years, students must understand how our history has allowed this to happen and how the current political and social climates have allowed it to remain our reality (*The Economist* 2022). To fully explain these concepts, we cannot avoid race, sex, and gender, but will faculty be willing to take the risk, knowing the potential consequences for doing so?

Thus, H.B. 1607 can prevent educators in higher education from providing an accurate version of history and society. This may result in students holding onto the common misconception that the United States is the benchmark for democracy, rather than asking what they can do to ensure that our nation becomes and remains a full democracy. The future effects of failing to ask such questions could be disastrous.

### **Consequences**

H.B. 1006 and H.B. 1607 seek to undermine the benefits of diversity and academic freedom and further foster intolerance and inequality. If similar bills were to pass in future legislative sessions, the consequences for Texas or any similarly situated state would be monumental.

#### *A Loss of Students and Faculty and Financial Hardship*

An immediate consequence may be losing students and faculty as they seek a learning and research environment that is less hostile, restrictive, and politicized. While not all students who

prefer schools that value DEI or offer courses and content deemed controversial will choose to attend private institutions or out-of-state schools, a decrease in enrollment is imminent for some public colleges and universities. Schools already struggling financially may have to cut the DEI programs that attract students to their institution because of fears of lawsuits or the state's withholding funding. The academic freedom of those at public minority-serving institutions and historically Black colleges and universities may also be disproportionately targeted, given conservatives' negative perceptions of CRT and assumptions that programs like African American studies seek to indoctrinate students. Given that funding is tied to enrollment, this could be catastrophic for these institutions as they lose the students interested in these programs and curricula and the faculty that teach them.

There may also be a loss of diversity on campus. Conservatives' hostility toward immigrants, transgender youth, and other marginalized groups is increasingly visible in their legislation. By prohibiting institutions from supporting these groups and fostering inclusion, students from such backgrounds have little incentive to attend a public university in a state at war with their right to exist. H.B. 1006 and H.B. 1607 may also encourage some students to take on additional debt in an uncertain economy. Students needing DEI programs' support may choose to take out additional loans to attend the private in- or out-of-state institutions that offer them the sense of belonging and inclusion they need for academic success (Kurfist 2022). Faculty at public institutions will have to make similar choices if they seek to protect their academic freedom, work at an institution that increases their sense of belonging and inclusion, and avoid the further political weaponization of higher education by conservatives.

### *A Deepened Crisis in K–12 Public Education*

The bills may also have significant consequences for the K–12 education system. Texas requires K–12 teachers to have degrees and certifications in the subject they teach from an educator preparation program recognized by the Texas Higher Education Coordinating Board (Texas Education Agency n.d.). If bills similar to H.B. 1006 and H.B. 1607 deterred such programs from offering DEI training and content that explains why inequalities persist in the United States, this could harm one of the state's most vulnerable populations: children.

Without the proper education, skills, or experiences, future cohorts of teachers will be unable to meet or understand the unique needs of Texas's diverse student body. This is especially true since most teachers in Texas are white (58.6 percent), while 72.5 percent of students are people of color (Education Trust 2022). If teachers are unable to meet these students' specific needs and lack the cultural knowledge to understand their students better, the racial achievement gap in standardized testing may only widen (Texas Education Agency 2022).

A second consequence of the K–12 system is the loss of future teachers, especially ones from diverse backgrounds, deepening a teacher shortage already exacerbated by the COVID-19 pandemic. Students from marginalized groups interested in becoming educators may attend out-

of-state colleges and universities because they wish to be at an institution that celebrates diversity, supports learning that challenges their worldviews, and encourages personal growth. Given its increasingly hostile environment, they may not want to return to Texas. Other deterrents include S.B. 3, the K–12 anti-CRT bill, which further limits their academic freedom and ability to teach students ideas beyond the state’s revisionist curriculum.

### *Intolerance*

The most dangerous consequence could be an acceptance of intolerance. By restricting the academic freedom of educators in higher education, students will not have access to courses, research, and instructors that challenge them to question their worldviews. They will not be pushed to be made aware of the systemic struggles of marginalized groups or feel the responsibility to change structures that maintain inequality, as H.B. 1607 forbids teaching anything that suggests racial or gender privilege. The reduction in DEI and whitewashing of course content will not adequately prepare students to work in a global economy where knowledge and understanding of cultural norms are critical to effective communication and teamwork. The Texas education provided from the time someone is six years old in kindergarten to twenty-two years old graduating college will reinforce the ideologies, values, and beliefs deemed appropriate by the Texas legislature. Unfortunately, legislation, court rulings, and executive orders demonstrate that these values and beliefs promote a culture of intolerance.

### **Conclusion**

The consequences of H.B. 1006, H.B. 1607, and similar bills will be long-term and severe. The loss of talented academics, coupled with difficulties in recruiting faculty to work in such a restrictive environment, will be detrimental to the higher education system and the economy. With more such bills likely to be introduced in the future, public higher education systems in the state, such as the Texas A&M University, University of Texas, and University of Houston systems, must support their faculty and do everything they can to protect academic freedom. Given the number of students they enroll, they are responsible for ensuring that such legislation does not impede their ability to teach students skills like social responsibility and critical thinking necessary to thrive in today’s world. Given the number of faculty they employ, they must provide a safe space for educators to teach and conduct research. They must also protect tenure, which conservatives continue to attack.

The introduction of bills promoting the conservative agenda will continue to threaten higher education; unfortunately, some will pass. However, by working with faculty, administrators can find ways to comply that protect the institution from lawsuits and ensure that faculty maintain their academic freedom. Through shared governance, administrators and faculty can establish

procedures, processes, and programs to protect their institution and prepare for future legislation seeking to end academic freedom.

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