

Legislators Threaten Academic Freedom

by Tom Auxter
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At the end of the 2005 legislative session, Rep. Dennis Baxley (R-Ocala) threatened to file his bill restricting academic freedom again if his efforts to get voluntary acceptance of his ideas do not produce results. The bill (HR 837), (<http://www.unitedfacultyofflorida.org/pdf/HB837.pdf>) which was defeated in the 2005 session, places strict limits on political and religious topics that can be discussed in the classroom and invites litigation if faculty cross the line in what they discuss. Controversial topics can only be discussed if they are directly pertinent to the subject matter of the course. If controversy is introduced in the classroom, there must be equally serious coverage given to alternative views.

He has repeatedly said that public higher education has an extreme "liberal bias." He believes that classroom instruction is one-sided and that there is toleration of abusive treatment of conservative students and faculty.

Baxley repeats the accusations made by conservative activist David Horowitz, who launched a well-financed, national campaign against academic freedom. Students are supposedly punished with lower grades and humiliation in the classroom if they identify themselves as conservatives in a discussion or in written work. He says students can also expect punishment if they wear buttons or t-shirts that announce their views.

Horowitz was chosen by the Republican leadership as an "expert witness" to begin legislative hearings last April on Baxley's bill. His testimony consisted largely of horror stories of abusive treatment of students. There was no independent investigation or substantiation of any of the stories he told, and the examples were drawn from other states. (Inside Higher Ed recently published evidence, which was released by the University of Northern Colorado, showing that Horowitz's claim about a professor who supposedly required students to write an essay on why George Bush is a war criminal is false.) [HY-PERLINK "http://www.insidehighered.com/news/2006/01/11/retract" \o "http://www.insidehighered.com/news/2006/01/11/retract"](http://www.insidehighered.com/news/2006/01/11/retract)

Baxley insisted that the abuses were rampant in Florida too and that he had received hundreds of complaints from students. Nevertheless, he said he would not supply details about any of the cases in order to protect the students involved, who expected retaliation from professors if their identities were revealed. Initial comments from other legislators in the hearings revealed that they were disturbed by the accusations and that they were seriously considering taking action.

I testified in the hearings, representing the 18,000 faculty members in Florida organized by UFF, in response to Horowitz and Baxley. I gave legislators a prepared statement (<http://www.unitedfacultyofflorida.org/pdf/4-6-05Statement-Academic-Freedom.pdf>) and also spoke directly to the accusations that Horowitz and Baxley had just made. I pointed out that accusations are different from evidence and that we have no substantiated examples of abuses to prove we have a problem in Florida. Since the legislation imposes extreme limitations on academic freedom, with destructive consequences for higher education, it would cause damage without providing any demonstrated benefit. I also pointed out that it is hard enough to recruit and retain faculty in Florida, given the low salaries we offer, without the Legislature making it even more difficult by passing radical restrictions on academic freedom. I was pleased that both legislators and reporters seemed to understand and appreciate the argument I made that it would undermine the quality of higher education to replace an academic definition with a political definition of how a topic could be approached in the classroom.

I was surprised by the firestorm of public reaction against the legislation. Newspapers across the state covered the hearings and reported on problems with the legislation. Editorials followed. An outpouring of reactions from faculty and students indicated to the public and to legislators that those directly affected had good reasons for their opposition. At the last minute the leadership of the House and Senate decided not to bring the bill to a vote.

When the bill was defeated last spring, Rep. Baxley said he was not willing to give up plans for future legislative action on the issue unless higher education officials and university presidents gave him what he was seeking by administrative order. Both Horowitz and Baxley said they would be delighted to see Florida do what Colorado did in response to similar legislation. There the university presidents signed a "memorandum of understanding" promising to discipline any professor who made a student "feel uncomfortable" in the classroom. After Baxley suggested this idea in the legislative hearing, I noted that this reduces classroom discussion to the lowest common denominator of the most easily offended student, with professors subject to litigation if what they say bothers any student in the class.

On January 12, 2006 Rep. Baxley told me that he was optimistic about talks he is having with the new chancellor, the Board of Governors, and university presidents. If these talks result in administrative measures to control the problem he believes exists, then he will not need to reintroduce the legislation in 2006. (He still has time to do this.) In other words, if administrators give him what he wants through a campus policing mechanism, similar to what was created in Colorado, he will not have to force the issue to be resolved through legislation.

Earlier the same day I spoke to a legislative aide in his office who said that Rep. Baxley was waiting for the OPPAGA report to be issued before he filed the bill again. The Office of Program Policy Analysis and Government Accountability is an investigative arm of the Legislature – with the power to force state agencies to provide information legislators seek. Last summer this office forced public universities and community colleges to supply the records of all student complaints against faculty as well as all complaints faculty made against faculty that had to do with the exercise of academic freedom.

Why did legislators who want to restrict academic freedom feel the need to go through the OPPAGA process of fishing for complaints made against faculty? In the 2005 legislative hearings it was embarrassing to Baxley and others that they could not point to any verifiable cases of professors discriminating against conservative students or professors. Baxley's hope is that he can prove there is a problem by citing the OPPAGA report so that his credibility about the extent of the problem of discrimination by liberal professors is not called into question again.

Will Baxley and other legislators get their way through intimidating public officials in higher education? Will they finally produce an egregious example of abuse at the hands of a faculty member that serves to stampede the Legislature into punitive action against all faculty? Much remains to be seen. What we know so far about how university presidents in Colorado responded to this kind of high-pressure tactic (coming from the very same legislators who control the process of state appropriations) is not good news.

Even worse, some national professional organizations claiming to represent the highest principles of higher education like American Council on Education, issued a joint statement adopting David Horowitz's language and model of "diversity" – thinking this would appease the political forces who want to limit academic freedom. However, this statement merely whetted the appe-

tite of these political forces. The next day the Republican leadership in the House called a press conference and said the most distinguished organizations in higher education have finally admitted there is a problem with liberal professors abusing conservative students, and now it is time for Horowitz's "Academic Bill of Rights." They immediately inserted it into the Higher Education Reauthorization Act, which is still pending in Congress.

It is clear that backing down on the principles of academic freedom will lead to the demise of academic freedom. Far better to take a principled position the public can understand, as UFF did in the testimony last spring (audioclips @ <http://www2.nea.org/he/flaMedia/index.html>). We need to directly challenge the unsubstantiated allegations, while patiently explaining why academic freedom is essential to the quality of higher education for us all.

Listen to the audioclips of the testimony. Learn about the nature of the attacks. When the crisis intensifies this spring, be prepared to respond by sending messages and making visits.

Join us in organizing to defend academic freedom. Join UFF!

Articles related to ACE Statement:

The ACE statement: [http://www.acenet.edu/AM/Template.cfm?](http://www.acenet.edu/AM/Template.cfm?Section=Home&CONTENTID=10672&TEMPLATE=/CM/ContentDisplay.cfm)

[Section=Home&CONTENTID=10672&TEMPLATE=/CM/ContentDisplay.cfm](http://www.acenet.edu/AM/Template.cfm?Section=Home&CONTENTID=10672&TEMPLATE=/CM/ContentDisplay.cfm)

David Horowitz response: <http://www.frontpagemag.com/Articles/ReadArticle.asp?ID=18537>

Inside Higher Ed article June 23: <http://www.insidehighered.com/news/2005/06/23/statement>

AFT official response: http://www.aft.org/higher_ed/news/2005/Final_ABoR.htm

Inside Higher Ed article June 30 (noting AFT disapproval): <http://www.insidehighered.com/news/2005/06/30/faculty>

AAUP statement: <http://www.aaup.org/newsroom/Newsitems/JointStatementon%20AF.htm>

AAUP opposition to ABOR in Higher Ed Act reauthorization: <http://www.aaup.org/govrel/hea/2005/9805HELPIet.htm>

Michael Bérubé blog entry on this and the Pennsylvania hearings: http://www.michaelberube.com/index.php/weblog/48_hours/ (Bérubé is a long-time AAUP activist)

Miami Herald Jan. 19, 2006:

<http://www.miami.com/mld/miamiherald/13660728.htm>

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**Faculty and Students
Defeat “Academic Bill of Rights” Legislation in Florida**

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The combined efforts of faculty and students carried the day in defeating the “Academic Bill of Rights” in the 2005 Florida Legislature. It was a close call for academic freedom in Florida. Extremist political forces were poised for their first victory in the nation in getting a state legislature to pass restrictions on academic freedom.

The bill was drafted by David Horowitz, a self-described “conservative” activist who receives funds from foundations to crisscross the nation and carry out campaigns to change both the media and higher education in a right-wing direction. He took language from the American Association of University Professors classic statements on academic freedom in order to sugarcoat a poison pill for academic freedom on campus – making illegal much of what occurs in the classroom. He labeled this the “Academic Bill of Rights” and proceeded to find “conservative” legislators to introduce it in state legislatures.

The bill makes it illegal to introduce a controversial topic in class that is not directly pertinent to the subject matter. It would also be illegal to fail to provide “balance” when discussing a controversial issue. A grievance procedure for students who find professors too controversial could end in court action and a settlement against professors. In addition, the bill would provide a path to state court for students who are unhappy about campus procedures and results in grade discrimination cases.

So far Florida is the only state to take the bait from David Horowitz and pass it out of committee and onto the floor of a state legislature (HB 837). Indeed, he was called as the “expert witness” in testimony before the House committee by the Republican leadership. They referred to him as “Dr. Horowitz,” although he does not have a doctoral degree. (He did not correct them.) His use of anecdotal evidence and disregard for the need to substantiate claims of abuse before drawing conclusions made his “expert witness” credentials doubly suspicious to faculty who witnessed his act before the Legislature.

His presentation consisted largely of reciting horror stories about faculty abuse of conservative students and hammering on the point that the pervasive “liberal bias” in academe means that faculty feel free to use their classrooms as platforms for preaching their ideology and punishing students who disagree. He also claimed that the overwhelmingly liberal faculty on almost all campuses discriminate against conservative professors and blackball them in hiring and promotion decisions so that there is no “diversity” in viewpoints.

After Horowitz testified, the House permitted only one faculty member to testify in response. I was chosen to speak for the university and community college faculty represented by UFF (roughly 18,000 faculty members) and also to give the positions of our national affiliates (AFT and NEA). Dr. Roy Weatherford was prepared to speak for AAUP but was not given an opportunity to explain that the language taken from AAUP to sweeten all the “whereas” clauses introducing the bill actually masks the destructive resolutions for action at the end of the bill, which are opposed by AAUP.

I provided a written statement analyzing the destructive effects of the bill and a copy of the motion opposing it, which was passed unanimously by the UFF Senate. (For the statement, motion, and news articles on the issue, visit www.unitedfacultyofflorida.org.) I spoke directly to the accusations made by Horowitz and the main problems with the bill. (For audio clips of the testimony visit www.nea.org/he.) I painted a picture of how radically this bill would change academic life. I also argued that this untested idea, rejected in every other state, would make it extremely difficult to recruit and retain faculty – a task

made difficult enough already given the low salaries the state offers. Two weeks later, when the testimony before the House resumed (just before the committee vote), I was surprised to find that the legislative leadership permitted me to speak again, when I offered to provide an update and summary of arguments against the bill.

Three students opposed to the bill were given a chance to testify as well. They were very effective in arguing that they wanted an education that freely challenged their beliefs, and they did not want restrictions on controversy in the classroom.

Before the committee vote, members of the House spoke about why they were voting one way or the other. Those opposed to the bill said they were affected by faculty and student testimony. The one Republican to vote against the bill, Rep. Larry Cretul, stated that all the students contacting him were against the bill. He said he could not vote for a bill that was supposed to benefit students when students were against it. Even those initially in favor of the bill seemed to soften their positions after two hearings. Some wondered whether a non-legislative solution involving the university presidents might be possible. The bill passed by a party-line vote (8-6), as almost all bills in the House do, with one Republican taking the unusual step of breaking with the majority. At the last minute the Republican leadership decided not to schedule the bill for a vote on the floor, although it passed two committees and went to the floor with party-line approval (with the exception of Rep. Cretul's vote). The testimony, covered extensively in the Florida press, and the ensuing public outcry, nailed down the result. All the attention to the bill dissuaded House leaders from pursuing the issue.

The Senate also responded to the public outcry and finally refused to hear the bill although it was scheduled for a hearing before the Education Committee – a requirement for clearing the bill for a vote. It appeared on the calendar – and disappeared – without a hearing. This killed the bill for 2005.

Since Republicans hold a two-thirds majority in both houses, they could have easily passed the bill, and were prepared to pass it earlier in the session, but had a change of mind at the last minute.

The public testimony in the House, covered in the state's newspapers and media outlets, clearly made a difference. If faculty had not testified about the destructive effects of the bill, or if students had not told legislators they did not want this bill conditioning their lives in the classroom, the result would have been different. If Florida's newspapers had not covered in detail the whole public debate over free speech in the classroom, the result could have been different. If newspapers had not also reported on how few cases of discrimination against conservative students could actually be found in Florida, the result could have changed. With all of these pieces in place, faculty and students made the difference on a critical issue.

All of this amounts to a victory for faculty and students and also for all of the citizens who entered this debate as a result of the news coverage generated by faculty and student activism. Faculty and students carried the day in providing testimony and making the case to a public that became informed (through their efforts) about the destructive consequences of the bill.

For national and state coverage of the public debate in Florida, visit www.unitedfacultyofflorida.org. For excerpts of the testimony before the Florida House of Representatives visit <http://www.nea.org/he>. For the complete testimony before the House (in CD format) contact: House of Representatives Duplicating Office (850-488-70970). Specify the meeting, date, and time: House Education Council, April 5, 2005, at 2:45pm and April 19, 2005, at 9:15am. (Both CDs from the first hearing plus the first two of three CDs from the second are relevant.)