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THE STATE OF CAMPUS FREE EXPRESSION IN NORTH CAROLINA: A CLOSE LOOK AT THE “RESTORE/PRESERVE CAMPUS FREE SPEECH ACT”

Victoria Smith Ekstrand and Chengyuan Shao*

INTRODUCTION

Concerned with the Goldwater Institute’s 2017 campus free speech legislative proposal and the adoption of campus free speech statutes around the country, this Article examines North Carolina’s 2017 Restore/Preserve Campus Free Speech Act using research findings from a campus-wide survey among undergraduate students at a public university in North Carolina. This Article reviews and analyzes the law to identify its key goals and provisions. Using social science survey methods, it then investigates what North Carolina undergraduate students think and understand about the First Amendment and its role on college campuses, particularly in relation to controversial speakers. By comparing the law’s concerns with the survey findings, we address whether and how the law addresses the gaps in students’ understanding of the First Amendment and its role on a college campus. Finally, this Article makes recommendations about what may be needed to help foster robust campus free expression.

In 2017, the Goldwater Institute, a conservative think-tank, issued a report titled, “Campus Free Speech: A Legislative Proposal.”¹ In it, the Institute lamented the death of free expression on college campuses in the wake of speaker bans, heckler’s vetoes, safe spaces, and restrictive speech policies.² It also called for faculty and administrators to confront college students with “new ideas, especially ideas with which they disagree”³ In making a call for renewed action to protect

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¹ STANLEY KURTZ, JAMES MANLEY & JONATHAN BUTCHER, CAMPUS FREE SPEECH: A LEGISLATIVE PROPOSAL, GOLDWATER INST. (Jan. 30, 2017), https://goldwaterinstitute.org/wp-content/uploads/cms_page_media/2017/2/2/X_Campus%20Free%20Speech%20Paper.pdf.

² *See id.*

³ *Id.* at 2.

First Amendment ideals on U.S. college campuses, the Institute proposed state legislatures pass a model bill to protect the conservative minority of college students.⁴

The model bill was heavily criticized by the American Association for University Professors (AAUP) as “straightforwardly political” by seeking “to support what it sees as the embattled minority of conservatives on campus against the ‘politically correct’ majority.”⁵ In a *Chronicle of Higher Education* piece titled, “How the Right Weaponized Free Speech,” historian Joan W. Scott claimed that the Institute’s proposal went further than calling on professors to present “both sides of an issue in the classroom” by removing the professor’s constitutionally protected role to regulate speech in the classroom: “In effect, students are allowed to say anything they want, removing intellectual authority from the professor.”⁶ In short, normally anti-regulation conservatives have been criticized for regulating free speech.

Variations of the Goldwater bill have been adopted by at least seventeen states, with more than a dozen other states introducing bills and resolutions,⁷ but little is understood about

⁴ *Id.*

⁵ *Campus Free-Speech Legislation: History, Progress, and Problems*, AAUP (Apr. 2018), https://www.aaup.org/file/Campus_Free_Speech_2018.pdf [hereinafter *Campus Free-Speech Legislation*].

⁶ Joan W. Scott, *How the Right Weaponized Free Speech*, CHRON. OF HIGHER EDUC. (Jan. 7, 2018), <https://www.chronicle.com/article/How-the-Right-Weaponized-Free/242142>.

⁷ ALA. CODE § 16-68-3 (2019); ARIZ. REV. STAT. ANN. § 15-1861-1869 (2018); ARK. CODE ANN. § 6-60-1001 through § 6-60-1010 (2019); H.R. 63, 2017 Leg., Reg. Sess. (Cal. 2017); FLA. STAT. ANN. § 1004.097 (West 2019); GA. CODE ANN. § 20-3-48 (2018); H.B. 622, 64th Leg., 2d Reg. Sess. (Idaho 2018); H.B. 422, 64th Leg., 2d Reg. Sess. (Idaho 2018); H.B. 2939, 100th Gen. Assemb., 1st Reg. Sess. (Ill. 2017); S.B. 302, 120th Gen. Assemb., 2d Reg. Sess. (Ind. 2018); S.B. 3120, 87th Gen. Assemb., 2018 Sess. (Iowa 2018); IOWA CODE § 261H (2018); S.B. 340, 87th Leg., 2018 Sess. (Kan. 2018); KY. REV. STAT. ANN. § 164.348 (West 2019); LA. STAT. ANN. § 17:3399.31-.37 (2018); S.B. 349, 99th Leg., Reg. Sess. (Mich. 2017); S.B. 2469, 90th Leg., 2d Reg. Sess. (Minn. 2018); MO. ANN. STAT. § 173.1550 (West 2015); H.B. 2284, 99th Gen. Assemb., 2d Reg. Sess. (Mo. 2018); Legis. B. 718, 105th Leg., 2d Reg. Sess. (Neb. 2018); H.B. 477, 2017 Leg., 165th Sess. (N.H. 2017); S.B. 6126, 2017 Leg., 240th Sess. (N.Y. 2017); N.C. GEN. STAT. §§ 116-300–304 (2020); H. Con. Res. 10, 132d Gen. Assemb., Regulation. Sess. (Ohio 2018); OHIO REV. CODE ANN. § 3345.21 (West); OKLA. STAT. tit. 70, § 2120; S.B. 1200, 56th Leg., 2d Reg. Sess. (Okla. 2018); S.B. 1085, 122d Gen. Assemb., 2d Reg. Sess. (S.C. 2018); S.B. 198, 93rd Leg. Assemb. (S.D. 2018); S.D. CODIFIED LAWS § 13-53-53 (2019); TENN. CODE ANN. § 49-7-2405 (West 2018); TEX. EDUC. CODE ANN. § 51.9315 (West 2019); VA. CODE ANN. § 23.1-401.1 (West 2018); H.B. 2223, 65th Leg., 2d Spec. Sess. (Wash. 2017); Assemb. B. 299, 103d Leg., Reg. Sess. (Wis. 2017); H.B.

the scope, reach, and differences among those laws. More importantly, the laws, passed largely in reaction to problems with controversial speakers on campus, raise fundamental questions about the actual state of free expression on college campuses today, including what students know about the First Amendment and their own attitudes and behaviors about campus free expression. The purpose of this Article is to examine one of these statutes against the actual condition of campus free expression in a state marred by both intense partisan politics and disputes about the leadership of its seventeen-campus system: North Carolina.

North Carolina provides a particularly compelling case study because its embattled University of North Carolina (“UNC”) Board of Governors is run largely by Republican donors, party activists, and former Republican lawmakers,⁸ many of whom are closely connected to lawmakers in the state capitol and who have repeatedly and outwardly criticized the UNC system’s perceived liberal bias and silencing of conservatives’ voices.⁹ Members of the Board of Governors are elected by the North Carolina General Assembly.¹⁰ In 2017, the North Carolina legislature passed the “Restore/Preserve Campus Free Speech Act,” modeled on the Goldwater bill, to respond to these concerns and ensure that “all constituent institutions of The University of North Carolina officially recognize freedom of speech as a fundamental right.”¹¹ The new law, which carries penalties up to and including student suspension, was largely criticized for selectively protecting free speech and creating a chilling effect on the speech of faculty and

4203, 83d Leg., Reg. Sess. (W. Va. 2018); H.B. 137, 2018 Leg., Budget Sess. (Wyo. 2018). See also *Campus Free Speech Statutes*, FIRE, <https://www.thefire.org/category/campus-free-speech-statutes> (last accessed Feb. 23, 2021).

⁸ Joe Killian, *Trove of Emails Provides a Window into Conflicts at UNC*, NC POL’Y WATCH (Jan. 10, 2018), <http://www.ncpolicywatch.com/2018/01/10/trove-emails-provides-window-conflicts-unc/>.

⁹ Jane Stancill, *Campus Free Speech Bill Passes House*, THE NEWS & OBSERVER (Apr. 26, 2017), <https://www.newsobserver.com/news/local/education/article146828989.html>.

¹⁰ *About the Board of Governors*, THE UNIV. OF N.C. SYSTEM, <https://www.northcarolina.edu/leadership-and-governance/board-of-governors/> (last accessed May 10, 2021).

¹¹ An Act to Restore and Preserve Free Speech on the Campuses of the Constituent Institutions of the University of North Carolina, 2017 N.C. Sess. Laws 1397, 1398 (Codified in N.C. GEN. STAT. § 116-300 (2020)) [hereinafter *Restore/Preserve Campus Free Speech Act*].

students.¹² This study seeks to connect this bill's embattled history with its ultimate purpose: to "ensure free, robust, and uninhibited debate and deliberation by students of constituent institutions" whether on or off campus.¹³ To do this, this study will identify the disconnect between what legislators and the Goldwater Institute *say* is the problem with what *actually may be* the problem with campus free expression in North Carolina. The goals and provisions of the Restore/Preserve Campus Free Speech Act will be compared to what North Carolina students actually understand about the First Amendment and campus free expression to identify measurable problems and possible solutions.

This Article proceeds in four parts. Part I addresses conservatives' concerns about campus free expression and the need for legislation. Part II reviews the Goldwater bill and the adoption of North Carolina's Restore/Preserve Campus Free Speech Act, also known as H.B. 527,¹⁴ to identify its key goals and provisions. Part III describes the survey method and findings, offering more information about what North Carolina undergraduate students understand about the First Amendment and its role on college campuses, particularly in relation to controversial speakers. Part IV offers a discussion and conclusion, making recommendations about what this research suggests about fostering robust campus free expression and what might best serve those ends.

I. CONSERVATIVES' CONCERNS ABOUT CAMPUS FREE EXPRESSION

North Carolina's campus free expression law and the Goldwater statutes, in general, were the culmination of criticism that U.S. college campuses have become increasingly resistant to conservative voices, particularly in the wake of the 2016 election of President Donald Trump. Couched generally under the concern and disdain for campus "political correctness,"

¹² Joe Killian, *Civil Liberties Advocates Wary of Campus Free Speech Bill Under Consideration by UNC Board of Governors*, NC POL'Y WATCH (Dec. 24, 2017), <http://www.ncpolicywatch.com/2017/10/24/civil-liberties-advocates-wary-campus-free-speech-bill-consideration-unc-board-governors/>.

¹³ Restore/Preserve Campus Free Speech Act, 2017 N.C. Sess. Laws 1397.

¹⁴ *Id.*; H.B. 527, N.C. GEN. ASSEMB., <https://www.ncleg.gov/BillLookUp/2017/H527> (last accessed May 10, 2021).

conservatives criticized protests against controversial campus speakers, free-speech zones, new speech codes, “safe spaces,” and “trigger warning” policies.¹⁵ Each of these concerns is addressed briefly below and is followed by a discussion of the model statute and North Carolina’s own Goldwater bill, the Restore/Preserve Campus Free Speech Act.¹⁶

Conservatives’ concerns grew after invited speakers faced threats of and actual violence, hecklers’ vetoes, boycotts, and disinvitations. Conservative commentator Ann Coulter and alt-right writer Milo Yiannopoulos faced violence at the University of California at Berkeley in 2017,¹⁷ and others, like U.S. Secretary of Education Betsy DeVos, endured student hecklers at graduation ceremonies.¹⁸ The University of Florida grappled with violence when white supremacist Richard Spencer visited campus.¹⁹ That event resulted in increased security and five arrests, including one for a man who fired a gun into a crowd.²⁰ No one was injured.²¹ At UNC-Chapel Hill, alumni threatened to withhold support from the Hussman School of Journalism and Media when Fox News commentator Tucker Carlson was invited in 2018 to give the annual Roy H. Park Lecture.²²

Since 1999, the Foundation for Individual Rights in Education (“FIRE”) has tracked an increasing number of

¹⁵ Kurtz, Manley & Butcher, *supra* note 1, at 3.

¹⁶ N.C. GEN. STAT. § 116-300 (2020).

¹⁷ Jeremy W. Peters & Thomas Fuller, *Ann Coulter Says She Will Pull Out of Speech at Berkeley*, N.Y. TIMES (Apr. 27, 2017), <https://www.nytimes.com/2017/04/26/us/ann-coulter-berkeley-speech.html>; Madison Park & Kyung Lah, *Berkeley Protests of Yiannopoulos Caused \$100,000 in Damage*, CNN (Feb. 2, 2017), <https://www.cnn.com/2017/02/01/us/milo-yiannopoulos-berkeley/index.html>. Coulter eventually appeared at Berkeley in 2019 to protest at significant expense. See Ben Klein, *UC Berkeley Spends \$290,000 on Security for Ann Coulter Talk*, THE DAILY CALIFORNIAN (Dec. 28, 2019), <https://www.dailycal.org/2019/12/28/uc-berkeley-spends-290000-on-security-for-ann-coulter-talk>.

¹⁸ Sabrina Siddiqui, *Betsy DeVos Booed While Giving Commencement Speech in Florida*, THE GUARDIAN (May 20, 2017), <https://www.theguardian.com/us-news/2017/may/10/betsy-devos-booed-commencement-speech-florida>.

¹⁹ Eric Levenson, *Protestors Heckle Richard Spencer at Univ. of Florida Talk*, CNN (Oct. 19, 2017, 9:00 AM), <https://www.cnn.com/2017/10/19/us/university-florida-richard-spencer-speech/index.html>.

²⁰ Jeremy Bauer-Wolf, *Lessons from Spencer’s Florida Speech*, INSIDE HIGHER ED (Oct. 23, 2017), <https://www.insidehighered.com/news/2017/10/23/nine-lessons-learned-after-richard-spencers-talk-university-florida>.

²¹ *Id.*

²² Jane Stancill, *Tucker Carlson Appearance at UNC Journalism School Prompts Outcry*, THE NEWS & OBSERVER (Feb. 15, 2018), <https://www.newsobserver.com/news/local/education/article200375894.html>.

“disinvited” campus speakers as well as an increase in efforts to force disinvitations, noting that speakers are “much more likely to be targeted for disinvitation for holding or expressing viewpoints perceived as conservative by faculty or students.”²³ Those institutions with the highest number of disinvitation incidents “also maintain severely speech-restrictive policies,” according to FIRE.²⁴ These policies, many in the form of new speech codes, occurred at the same time that students called for additional “safe spaces” on campus and increased “trigger warnings” within classrooms.²⁵ We address each of these issues below.

The growth of new campus codes has been largely a function of increasing campus oversight designed to thwart growing incidents of hate speech, assist campus police, and protect university obligations under civil rights laws to create a safe learning environment. As Keith Whittington writes, the adoption of such codes has led to lawsuits that reveal just how such codes are often broadly worded and arbitrarily enforced.²⁶ Still, Whittington writes, that has not stopped their use or enforcement:

Rather than adopting narrow policies that targeted true threats, college administrators regularly favored policies that prohibited anything they found demeaning or offensive. Rather than restricting themselves to intervening in student affairs when someone had been threatened with violence, college administrators routinely policed the tone and content of student arguments and even classroom discussions. Rather than relying on faculty to teach and correct students who made weak or misguided but inflammatory arguments, they authorized administrators to discipline those students.²⁷

But such blanket criticism may fail to capture the recent and unique circumstances of each institution, its history, and

²³ DISINVITATION REPORT 2014, FIRE (May 28, 2014), <https://www.thefire.org/disinvitation-season-report-2014/>.

²⁴ *Id.*

²⁵ KEITH E. WHITTINGTON, SPEAK FREELY: WHY UNIVERSITIES MUST DEFEND FREE SPEECH 57–77 (2018).

²⁶ *Id.* at 88.

²⁷ *Id.* at 89.

the resurgence of hate crimes, particularly in the South. In perhaps the best-known example, white supremacists and members of “Unite the Right” threatened students and others near and on the University of Virginia campus in Charlottesville in August 2017, killing one protestor and injuring many others, after city officials permitted the group to carry out its rally despite online threats of violence.²⁸

In North Carolina, campus police have actually gone out of their way—some have said too far out of their way²⁹—to allow confederate monument supporters and white supremacist voices on campus. In March 2019, UNC police allowed a group of armed white supremacists to remain on campus, sparking student outrage and a new chancellor’s assessment team to “review all significant campus police actions and major emergency management and public safety events in the future.”³⁰ Campus police were seen shaking hands with the neo-confederates, who were “politely informed” about the rules against firearms on campus grounds.³¹

At the University of Missouri, students protesting campus racism refused to allow a journalist covering their protest to photograph them in a tent city they had constructed on public property, creating a “safe space” for their work.³² “‘We ask for no media in the parameters so the place where people live, [seek] fellowship, and sleep can be protected from twisted insincere narratives,’ a Twitter account associated with the activists later

²⁸ Joe Heim, *Recounting a Day of Rage, Hate, Violence and Death*, WASH. POST (Aug. 14, 2017), <https://www.washingtonpost.com/graphics/2017/local/charlottesville-timeline>.

²⁹ Charlie McGee, *Here Are a Few of the Threats Made in a Confederate Supporter’s On-Campus Livestreams*, THE DAILY TAR HEEL (Apr. 21, 2019), <https://www.dailytarheel.com/article/2019/04/new-confederate-threats-0421>.

³⁰ Charlie McGee, *Confederate Group Brings Guns to Campus; No Arrests Made*, THE DAILY TAR HEEL (March 21, 2019), <https://www.dailytarheel.com/article/2019/03/confed-weapons-0321> (“North Carolina law makes it a felony to possess a firearm, openly or concealed, on any educational property However, neither University nor town police charged, arrested or issued trespass orders during the event.”).

³¹ Joe Killian, *UNC Students to Walk Out Over Police Policies Toward White Supremacist, Anti-Racist Protestors*, NC POL’Y WATCH (Apr. 24, 2019), <http://www.ncpolicywatch.com/2019/04/24/unc-students-to-walk-out-over-police-policies-toward-white-supremacist-anti-racist-protesters/>.

³² Conor Friedersdorf, *Campus Activists Weaponize ‘Safe Space,’* THE ATLANTIC (Nov. 10, 2015), <https://www.theatlantic.com/politics/archive/2015/11/how-campus-activists-are-weaponizing-the-safe-space/415080/>.

declared.”³³ From the viewpoint of conservatives within the Goldwater Institute, however, the expansion of “safe spaces” to public forums represented an idea that can “easily become zero-sum.”³⁴ As Whittington writes:

From a space in which students can feel comfortable sharing their experiences and expressing their feelings, the focus has shifted to an “identity-safe environment” in which students can feel accepted and welcomed for who they are and feel free from the perception that they might be judged on the basis of features of their self-identity. As the possible threats to a student’s self-esteem multiply and grow increasingly subtle, the demands for actions to eliminate those threats grow apace.³⁵

Similarly, conservative concerns about “trigger warnings” also indicate unregulated expansion. Where such warnings were once limited to the study of war veterans suffering from Post-Traumatic Stress Disorder (PTSD) and were adopted by Internet sites to serve as a limited type of content warning,³⁶ “the concept and terminology soon migrated into an ever-wider environment and mutated as it did so.”³⁷ Before long, “faculty were advised to include trigger warnings on classroom materials that might be deemed risky to some.”³⁸ Debates raged over whether and how to address the concerns expressed by students with varying disabilities, gender identities, sexual orientations, and races or ethnicities on campus. The term also quickly became a rhetorical ideograph and prompted conservative commentators to pejoratively label such students “snowflakes,” each with their own special needs and characteristics, unable to withstand a competitive and sometimes offensive marketplace of ideas.³⁹

³³ *Id.*

³⁴ WHITTINGTON, *supra* note 25, at 69; *see also* Kurtz, Manley & Butcher, *supra* note 1.

³⁵ WHITTINGTON, *supra* note 25, at 68.

³⁶ Ali Vingiano, *How the “Trigger Warning” Took Over the Internet*, BUZZFEED NEWS (May 5, 2014, 2:37 PM), <https://www.buzzfeednews.com/article/alisonvingiano/how-the-trigger-warning-took-over-the-internet>.

³⁷ WHITTINGTON, *supra* note 25, at 60.

³⁸ *Id.*

³⁹ *See, e.g.*, George F. Will, *On American campuses, freedom from speech*, THE WASH. POST (Nov. 23, 2015), <https://www.washingtonpost.com/opinions/on-american->

II. NORTH CAROLINA'S RESTORE/PRESERVE CAMPUS FREE SPEECH ACT

In response to these debates and concerns, the Goldwater Institute, a conservative and libertarian think tank founded in 1988, issued its report on January 30, 2017.⁴⁰ According to the report, “freedom of speech is dying on our college campuses and is increasingly imperiled in society at large.”⁴¹ The report argued that students should be “confronted with new ideas, especially ideas with which they disagree.”⁴²

Relying on three prior campus expression reports—Yale University’s 1974 Woodward Report,⁴³ the University of Chicago’s 1967 Kalven Report,⁴⁴ and the University of Chicago’s 2015 Stone Report⁴⁵—the Goldwater proposal called for changing “the balance of forces contributing to the current baleful national climate for campus free speech.”⁴⁶ The model bill’s provisions included:

- An “official university policy that strongly affirms the importance of free expression, nullifying any existing restrictive speech codes in the process”;
- A policy to prevent “administrators from disinviting speakers, no matter how controversial, whom members of the campus community wish to hear from”;
- A set of “disciplinary sanctions for students and anyone else who interferes with the free speech rights of others”;

campuses-freedom-from-speech/2015/11/13/98d33faa-8966-11e5-9a07-453018f9a0ec_story.html.

⁴⁰ Kurtz, Manley & Butcher, *supra* note 1.

⁴¹ *Id.* at 2.

⁴² *Id.*

⁴³ REPORT OF THE COMMITTEE ON FREEDOM OF EXPRESSION AT YALE (Dec. 23, 1974), <https://yalecollege.yale.edu/get-know-yale-college/office-dean/reports/report-committee-freedom-expression-yale>.

⁴⁴ REPORT ON THE UNIVERSITY’S ROLE IN POLITICAL AND SOCIAL ACTION (Nov. 1967), <https://provost.uchicago.edu/reports/report-universitys-role-political-and-social-action>.

⁴⁵ REPORT OF THE COMMITTEE ON FREEDOM OF EXPRESSION (Jan. 2015), <https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf>.

⁴⁶ Kurtz, Manley & Butcher, *supra* note 1 at 4.

- An opportunity to recover court costs and attorney’s fees for persons whose free-speech rights have been improperly infringed;
- A reaffirmation that “universities, at the official institutional level, ought to remain neutral on issues of public controversy to encourage the widest possible range of opinion and dialogue within the university itself”;
- Information about the institution’s official policy on free expression; and
- A “special subcommittee of the university board of trustees to issue a yearly report to the public, the trustees, the governor, and the legislature on the administrative handling of free speech issues.”⁴⁷

North Carolina’s version of the Goldwater bill closely followed this model and became law on July 31, 2017, without the governor’s signature.⁴⁸ The Restore/Preserve Campus Free Speech Act, also known as House Bill 527, was passed by the North Carolina legislature in April 2017.⁴⁹ The bill, championed by Lieutenant Governor Dan Forest and Republican lawmakers, passed the House after twenty minutes of debate.⁵⁰ Representative Jonathan Jordan (R.) of Ashe and Watauga counties, the bill’s sponsor, said the bill was “not ideological” and was more about “doing the right thing.”⁵¹ Opponents of the North Carolina law expressed concern that the bill was introduced without input and debate from campus stakeholders and that many of the provisions of the law were already covered by First Amendment jurisprudence. Others, like Representative Verla Insko (D.) of Orange County, argued that the law was put forward by those with an “extreme agenda.”⁵² UNC constitutional law professor Michael Gerhardt, who saw the law as redundant, said that campuses like UC Berkeley and Auburn University have overreacted to politically sensitive speech: “We just need to remember what the ideals and guarantees of the First

⁴⁷ *Campus Free-Speech Legislation*, *supra* note 5 at 3; *see also* Kurtz, Manley & Butcher, *supra* note 1, at 2.

⁴⁸ *H.B. 527*, *supra* note 14.

⁴⁹ *Id.*

⁵⁰ Stancill, *supra* note 9.

⁵¹ *Id.*

⁵² *Id.*

Amendment are, and how a public campus really respects them and arranges for them and provides for them.”⁵³

The North Carolina statute itself begins with an overall statement of commitment to campus free expression and requires the UNC Board of Governors to develop a policy for the system, consistent with the principles and requirements below.⁵⁴

A. Viewpoint Neutrality

Two provisions of the law remind institutions not to “shield individuals from speech protected by the First Amendment, including, without limitation, ideas and opinions they find unwelcome, disagreeable, or even deeply offensive.”⁵⁵ Furthermore, the law restricts institutions from taking action “on the public policy controversies of the day in such a way as to require students, faculty, or administrators to publicly express a given view of social policy.”⁵⁶ Critics of this part of the bill have commented that such provisions are already inherent in First Amendment jurisprudence.⁵⁷ These critics maintain that the principle of viewpoint neutrality, which restricts the government from “regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction,”⁵⁸ is already well established.

B. Access

The law states that “[s]tudents and faculty have the freedom to discuss any problem that presents itself”⁵⁹ subject to reasonable and constitutional time, place and manner restrictions.⁶⁰ But then it adds that those discussions must be

⁵³ *Id.*

⁵⁴ N.C. GEN. STAT. § 116-300 (2020).

⁵⁵ *Id.* § 116-300(2).

⁵⁶ *Id.* § 116-300(3).

⁵⁷ Stancill, *supra* note 9.

⁵⁸ *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995).

⁵⁹ N.C. GEN. STAT. § 116-300(4).

⁶⁰ The government may impose reasonable restrictions on the time, place or manner of protected speech, as long as the restrictions “are justified without reference to the content of the regulated speech, . . . are narrowly tailored to serve a significant governmental interest, and . . . leave open ample alternative channels for communication of the information.” *See Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (quoting *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984)).

ones “necessary to achieve a significant institutional interest.”⁶¹ In terms of assembly and student protest, the law states that “[s]tudents and faculty shall be permitted to assemble and engage in spontaneous expressive activity as long as such activity is lawful and does not materially and substantially disrupt the functioning of the constituent institution.”⁶² Additionally, it provides for access to UNC campuses “consistent with First Amendment jurisprudence regarding traditional public forums, designated public forums, and nonpublic forums, subject to reasonable time, place, and manner restrictions.”⁶³ Furthermore, the law states that “institutions are open to any speaker whom students, student groups, or members of the faculty have invited”⁶⁴ under such reasonable limitations.

On their face, the new provisions are redundant, if not also alarming, given North Carolina’s history. North Carolina campuses have long been open to speakers whom students and faculty invite, and the First Amendment generally protects speakers on public campuses.⁶⁵ In the late 1960s, UNC-Chapel Hill students sued the university after the state legislature passed a law restricting campus speakers associated with the Communist Party (also known as the “Speaker Ban Law”).⁶⁶ In *Dickson v. Sitterson*,⁶⁷ a federal district court ruled that while the legislature may have had concerns regarding the presence of Communist speakers on campus, the statute was impermissibly vague and ran afoul of constitutional principles, including the First Amendment.⁶⁸ The law was highly criticized, and the incident remains a stain on UNC’s history and commitment to free and open campus expression.⁶⁹

The new law, to quote the former Yankees catcher Yogi Berra, is like déjà vu all over again. Its requirement that campus discussions are protected if they are “necessary to achieve a

⁶¹ N.C. GEN. STAT. § 116-300(4).

⁶² *Id.*

⁶³ *Id.* § 116-300(5).

⁶⁴ *Id.* § 116-300(6).

⁶⁵ *Speech on Campus*, ACLU <https://www.aclu.org/other/speech-campus> (last accessed Feb. 23, 2021).

⁶⁶ N.C. GEN. STAT. § 116-199, 116-200, *repealed by* Laws 1995, c. 379, § 17, eff. July 6, 1995.

⁶⁷ 280 F. Supp. 486 (M.D.N.C. 1968).

⁶⁸ *Id.* at 499.

⁶⁹ See Gene R. Nichol, *Bill Aycock and the North Carolina Speaker Ban Law*, 79 N.C. L. REV. 1725 (2001).

significant institutional interest”⁷⁰ is also arguably unconstitutionally content-based and vague. Such a provision favors the state’s interests above those of either students or faculty, and nowhere in the bill is a “significant institutional interest” clearly defined.

C. Sanctions

The law requires each North Carolina institution to implement disciplinary sanctions for anyone who:

[S]ubstantially disrupts the functioning of the constituent institution or substantially interferes with the protected free expression rights of others, including protests and demonstrations that infringe upon the rights of others to engage in and listen to expressive activity when the expressive activity has been scheduled pursuant to this policy or is located in a nonpublic forum.⁷¹

Additionally, the law requires “a disciplinary hearing under published procedures” that at a minimum must include:

(i) the right to receive advance written notice of the charges, (ii) the right to review the evidence in support of the charges, (iii) the right to confront witnesses against them, (iv) the right to present a defense, (v) the right to call witnesses, (vi) a decision by an impartial arbiter or panel, (vii) the right of appeal, and (viii) the right to active assistance of counsel.⁷²

In December 2017, the North Carolina Board of Governors adopted a new section to its UNC Policy Manual, titled “1300.8 Policy on Free Speech and Free Expression Within the University of North Carolina System.”⁷³ These additional policy guidelines of more than 3,500 words detail both

⁷⁰ N.C. GEN. STAT. § 116-300(4).

⁷¹ *Id.* § 116-300(7).

⁷² *Id.* § 116-300(8).

⁷³ *UNC Policy Manual, § 1300.8 Policy on Free Speech and Free Expression Within the University of North Carolina System*, UNC. SYS., https://www.northcarolina.edu/apps/policy/index.php?tab=policy_manual (last updated 9/17/2020) [hereinafter *UNC Policy Manual*].

the purpose and consequences of violating the new law.⁷⁴ Section IV of the policy specifically defines a substantial disruption as:

- A. Any action that qualifies as disorderly conduct under G.S. 14-288.4;
- B. Any action that qualifies as a disruption under G.S. 143-318.17;
- C. Any action in violation of a chancellor's designation of a curfew period pursuant to G.S. 116-212;
- D. Any action that results in the individual receiving a trespass notice from law enforcement.⁷⁵

Not surprisingly, further analysis of these sections of the North Carolina code reveal some room for interpretation and possible debate within established First Amendment jurisprudence. For example, under North Carolina's disorderly conduct code, "any utterance, gesture, display or abusive language which is intended and plainly likely to provoke violent retaliation and thereby cause a breach of the peace,"⁷⁶ could be broadly interpreted by police to include "any utterance, gesture, display or abusive language"⁷⁷ and result in premature arrests. As UNC professor and constitutional scholar Michael Gerhardt has pointed out, "the terms 'disruption' and 'punishment' are vague and crafting regulations around them 'would raise some real serious First Amendment concerns.'"⁷⁸ Additionally, the policy defines a substantial disruption as one that impedes the "free flow of traffic into or out of the event" or "interfere[s] substantially with the expressive activity."⁷⁹ Neither of these sections is defined and could censor more dissent during a protest than the First Amendment would likely tolerate.⁸⁰

Penalties for violating the policy state that "[a]ny *second finding* of a material and substantial disruption or substantial interference shall presumptively *result in at least a suspension* as provided by the appropriate disciplinary procedures; however,

⁷⁴ *See id.*

⁷⁵ *Id.* § 1300.8(IV)(A)–(D).

⁷⁶ N.C. GEN. STAT. § 14-288.4(a)(2).

⁷⁷ *Id.* (emphasis added).

⁷⁸ Stancill, *supra* note 9.

⁷⁹ *UNC Policy Manual*, *supra* note 73, §1300.8(VII)(A).

⁸⁰ *See id.*

the institution may impose a different sanction if warranted.”⁸¹ A third finding would “*result in an expulsion of the student or dismissal from employment* of the faculty member or staff employee; however, the institution may impose a different sanction if warranted.”⁸² It is excessive and inconsistent to mandate a suspension and/or expulsion upon a second finding of a student who disrupted a campus event simply by shouting or blocking an aisle when violating underage drinking on campus is first met with penalties that range from mandatory education, written reprimand, or community service.⁸³

D. Monitoring

The law establishes a “Committee on Free Expression” comprised of members of the Board of Governors.⁸⁴ The job of the committee is to issue a yearly report to the public that includes:

- (1) A description of any barriers to or disruptions of free expression within the constituent institutions;
- (2) A description of the administrative handling and discipline relating to these disruptions or barriers;
- (3) A description of substantial difficulties, controversies, or successes in maintaining a posture of administrative and institutional neutrality with regard to political or social issues; and;
- (4) Any assessments, criticisms, commendations, or recommendations the Committee sees fit to include.⁸⁵

⁸¹ *Id.* at § 1300.8(VII)(A)(1) (emphasis added).

⁸² *Id.* (emphasis added).

⁸³ See *Alcohol Policy*, UNC CHAPEL HILL, <https://unc.policystat.com/policy/6993377/latest/#autoid-k6485> (last updated Oct. 10, 2019). See also Jamie Gwaltney & Cole Stanley, *Board of Trustees Announces New Policy Regarding Alcohol Violations*, THE DAILY TAR HEEL (July 21, 2016), <https://www.dailytarheel.com/article/2016/07/board-of-trustees-announces-new-policy-regarding-alcohol-violations> (“‘Treating problem drinking purely as a crime will not work,’ said Winston Crisp, vice chancellor for student affairs. ‘We must fundamentally reconsider how we talk about these issues. Going forward, we must treat this as a public health concern.’”).

⁸⁴ N.C. GEN. STAT. § 116-301(a) (2020).

⁸⁵ *Id.* § 116-301(c)(1)–(4).

Under these additions to the UNC Policy Manual passed by the North Carolina Board of Governors, each institution must also designate a “responsible officer” for carrying out the new law at each institution.⁸⁶ That officer is assigned as the primary contact for questions or concerns about compliance with the law.⁸⁷ The officer also coordinates additional campus-based training or educational opportunities for campus constituents.⁸⁸ The obvious comparisons to George’s Orwell’s *Ministry of Truth* in 1984 could not be more stark: A government group that determines what should be thought and taught, telling “complete truthfulness while telling carefully constructed lies . . . to use logic against logic, to repudiate morality while laying claim to it . . . to forget whatever it was necessary to forget.”⁸⁹ Such a committee presents the potential for serious campus chilling effects at least and unconstitutional prior restraints at most.

E. Education

Finally, the law requires that all seventeen institutions in the North Carolina system include free expression education during freshman orientation.⁹⁰ To date, it is not clear that this provision has been further described or implemented, although anecdotal reports from the UNC-Chapel Hill campus indicate that resident advisers in 2018 spent a few minutes discussing the importance of free speech with students. A notice about the policy is sent out by the UNC-Chapel Hill chancellor at the start of every semester.⁹¹ There is no evidence that faculty or students in the UNC system have been or will be included in discussions about creating a curriculum around First Amendment education, a serious and obvious oversight that assumes administrators know what should be taught and how effectively to teach it.

⁸⁶ *UNC Policy Manual*, *supra* note 73, §1300.8(VIII)(A).

⁸⁷ *Id.* at § 1300.8(VIII)(C).

⁸⁸ *Id.*

⁸⁹ GEORGE ORWELL, 1984 32 (Harcourt Brace Jovanovich, Inc.1949). *See also* U.S. v. Alvarez, 567 U.S. 709, 723 (2012) (“Our constitutional tradition stands against the idea that we need Oceania’s Ministry of Truth.”).

⁹⁰ N.C. GEN. STAT. § 116-302 (2020).

⁹¹ *See Message from Carolina on the First Amendment and Free Speech Laws and Policies*, U. NEWS (Aug. 20, 2018), <https://www.unc.edu/posts/2018/08/20/message-from-carolina-on-the-first-amendment-and-free-speech-laws-and-policies>.

III. A CAMPUS SURVEY STUDY

Survey research methods are frequently employed by researchers and organizations to examine public attitudes toward the First Amendment and freedom of expression. *The Freedom Forum Institute* has been conducting the State of the First Amendment survey consecutively for more than twenty years, reflecting the public's changing views on First Amendment freedoms.⁹² In recent years, controversies around college campus free speech have driven more institutions, such as the *Knight Foundation*, the *Newseum Institute*, and *FIRE* to either partner with *Gallup* or work independently in conducting nationwide survey projects on freedom of expression on college campuses.⁹³ These surveys focused on students' attitudes toward controversial guest speakers on campus and student views on limiting certain types of speech, such as hate speech.⁹⁴ This survey project is greatly informed by these existing public opinion surveys on student expression on college campuses. It seeks to address three questions:

1. What do students understand about free speech rights on a North Carolina campus?
2. What do students understand about controversial speakers on a North Carolina campus?
3. How comfortable do students feel about engaging in controversial issues on a North Carolina campus?

⁹² See *State of the First Amendment Survey*, FREEDOM F. INST., <https://www.freedomforuminstitute.org/first-amendment-center/state-of-the-first-amendment> (last visited Oct. 17, 2020).

⁹³ The Knight Foundation, together with the *Newseum Institute* have published the Free Expression on Campus survey consecutively in 2016 and 2017. See *Free Expression on Campus: What College Students Think About First Amendment Issues*, KNIGHT FOUND. (2016-2017), <https://knightfoundation.org/reports/free-expression-on-campus-what-college-students-think-about-first-amendment-issues/>. In addition to university campuses, the Knight Foundation also continuously conducted the Future of First Amendment survey among high school students and teachers. See *The Future of the First Amendment: 2018 Survey of High School Students and Teachers*, KNIGHT FOUND. (2018), <https://knightfoundation.org/reports/the-future-of-the-first-amendment-2018/>. In 2017, *FIRE* also published the Speaking Freely report on freedom of expression among college students. See *Student Attitudes Free Speech Survey*, FIRE (2017), <https://www.thefire.org/publications/student-surveys/student-attitudes-free-speech-survey>.

⁹⁴ See sources cited *supra* note 93.

A. Procedure and Participants

During the Fall 2018 semester, we conducted a campus-wide survey study among undergraduate students at a large public university in North Carolina in conjunction with a group of undergraduates enrolled in a undergraduate research class on student expression.⁹⁵ The survey targeted a randomly selected sample of 7,000 undergraduate students and asked about students' knowledge of First Amendment protections of speech, attitudes toward protection of unpopular opinions on campus, acceptance of controversial guest speakers, and comfort level discussing controversial subjects on campus. In November 2018, we sent out an online survey to the sampled students through email and collected responses over two weeks. Respondents were offered incentives in exchange for completing the survey. All procedures in the survey were approved by the Institutional Review Board at the university.

The survey had an overall response rate of 11.2 percent. After deleting incomplete and invalid questionnaires, a total of 447 responses were used for data analysis. The sample demographic matched with the overall demographic of enrolled undergraduate students at the university. Table 1 shows the participant demographics.

⁹⁵ The authors wish to thank and acknowledge their student researchers (listed alphabetically): Iyon Baker, Dani Bieler, Kayla Boykins, Joshua Brown, Abby Cantrell, Sutton Cavalchire, Elizabeth Chicas, Adrienne Clevon, Jamey Cross, Chapel Fowler, Sam Freeman, Svannah Gillespie, Zachary Gorelick, Hayley Hardison, Davis Houk, Lilly Hyde, Faith Lovett, Stephen Miller, Taylor Montgomery, Savannah Morgan, Rebecca New, Augustus O'Leary, Eleanor Reneke, Brittney Robinson, Emma Rolader, Laura Shanahan, Leah Stanfield, Wilkins Swiger, Mariam Turner, Cole Villena, Victoria Young.

Table 1 Participant Demographics⁹⁶

<i>Construct</i>	<i>N (%)</i>
Years in College (<i>N</i> =447)	
Freshmen	162 (36.2)
Sophomore	83 (18.6)
Junior	98 (21.9)
Senior	100 (22.4)
Does not apply	4 (0.9)
Gender (<i>N</i> =447)	
Male	161 (36.1)
Female	267 (59.7)
Trans Male	9 (2.0)
Trans Female	1 (0.2)
Non-conforming	5 (1.1)
Prefer not to answer	3 (0.7)
Race (<i>N</i> =447)	
White	308 (68.9)
Black	24 (5.4)
Hispanic	13 (2.9)
Asian	56 (12.6)
American Indian or Alaska Native	3 (0.7)
Native Hawaiian or Pacific Islander	1 (0.2)
Multi-race	36 (8.1)
Other	5 (1.1)
Political ideology (<i>N</i> =447)	
Extremely liberal	40 (8.9)
Liberal	146 (32.7)
Slightly Liberal	71 (15.9)
Moderate, middle of the road	86 (19.2)
Slightly conservative	44 (9.8)
Conservative	51 (11.4)
Extremely conservative	6 (1.3)

B. Concepts Measured

1. Knowledge of the First Amendment

To measure students' knowledge of the First Amendment, eleven questions were asked. The first question asked participants to identify the five rights guaranteed under the First Amendment. Questions two to eleven asked about First

⁹⁶ A few participants chose not to answer the questions on gender and political ideology, as they are allowed to according to Institutional Review Board requirements.

Amendment protections regarding defamation, hate speech, obscenity, advocacy of violence, false and deceptive advertising, social media speech, and the right of public universities to regulate campus speech and protest. Participants were asked to indicate if a statement was true, false, or if they did not know. Scores on the eleven items were summed to form a score for knowledge of the First Amendment.

2. Support for Free Speech on Campus

To measure attitudes toward freedom of speech on campus, participants were asked to indicate how much they agreed or disagreed with statements on a four-item scale (Cronbach's $\alpha = .87$).⁹⁷ The statements read, "Students should be allowed to express unpopular opinions on campus," and "Students should be allowed to say whatever they want, even if what they say could be seen as hateful/bullying others/offensive to others." The four items were averaged to form a score on support for free speech on campus. Responses to all four items were measured on a 7-point Likert scale (1 = "Strongly disagree," 7 = "Strongly agree").

3. Support for Controversial Speakers on Campus

Students' attitudes toward controversial speakers on campus were measured using a five-item scale (Cronbach's $\alpha = .84$). The first two questions asked the extent to which students agreed or disagreed with the university inviting "speakers with a variety of viewpoints on political, social, economic and other issues to campus, including speakers whose perspectives are very different from [their] own," and the university cancelling invitations to a speaker if "a speaker's presence on campus might create the potential for violence." The following three questions asked to what extent students think it is acceptable for controversial speakers to give a speech in class, in a lecture hall outside of class, and in a public area on campus. All items were

⁹⁷ Cronbach's alpha is a measure of scale reliability. It measures the internal consistency of a scale, that is, how closely related a set of items are as a group. The individual items in a scale can be used to measure different dimensions of a larger concept. Where those individual items are internally consistent with each other, they can be averaged together into a score that represents that larger concept. A reliability coefficient of .70 or higher is considered "acceptable" in most social science situations. See Chelsea Goforth, *Using and Interpreting Cronbach's Alpha*, U. VA. LIBR. RES. DATA SERVS. & SCIS. (Nov. 16, 2015), <https://data.library.virginia.edu/using-and-interpreting-cronbachs-alpha/>.

measured using a 7-point Likert scale (1 = “Strongly disagree,” 7 = “Strongly agree”). Scores on support for controversial speakers were the average of the five items.

4. Comfort Discussing Controversial Subjects

Students’ level of comfort talking about controversial subjects was measured using a 7-point Likert scale (1 = “Strongly disagree,” 7 = “Strongly agree”). Participants indicated the extent to which they agreed with the statement, “I feel comfortable discussing my views about controversial subjects in the following settings: in class, outside class with professors, outside class with peers.”

5. Other Disagreements and Demographics

A categorical question was added asking what participants think is an appropriate way to express disagreements with a guest speaker, providing options including but not limited to: picketing or distributing literature outside the lecture hall, challenging the speaker in a Q&A session, interrupting the speaker during the lecture, and creating a social media campaign against the speaker. In addition, demographic factors such as gender, years in college, and political ideology were also measured in the survey. Political ideology was measured using a 7-point scale ranging from “Extremely liberal” to “Extremely conservative.”

C. Survey Findings

Table 2 displays descriptive results for the central concepts measured in the survey. On average, participants scored 6.50 out of 11 for knowledge of First Amendment speech protections. Support for free speech and controversial speakers on campus were both well beyond the mid-point on the 7-point scale. Compared to talking to peers and professors outside of class, participants reported feeling the least comfortable talking about controversial subjects in class.

Table 2 Descriptive Statistics for Key Concepts

<i>Variables</i>	<i>N</i>	<i>M</i>	<i>SD</i>	<i>Measure</i>
1. Knowledge of First Amendment law*	447	6.50	1.79	0-11
Five rights				
Defamation				
Hate speech				
Obscenity				
Advocating for violence in abstract manner				
False and deceptive advertising				
Social media content				
Public university bounded by the First Amendment				
University can regulate student speech by enforcing code of conduct				
University students can hold protest on campus				
University can establish T/P/M restrictions on protests				
2. Support for Free Speech on Campus (Cronbach's $\alpha=.87$)	447	4.62	1.53	1-7
Students should be allowed to express unpopular opinions on campus.	447	6.11	1.07	
Students should be allowed to say whatever they want, even if what they say could be seen as hateful.	447	3.93	2.07	
Students should be allowed to say whatever they want, even if what they say could be seen as bullying others.	447	3.78	1.97	
Students should be allowed to say whatever they want, even if what they say could be seen as offensive to others	447	4.66	1.93	
3. Support for Controversial Speakers on Campus (Cronbach's $\alpha=.84$)	445	5.38	1.26	1-7
The university should invite speakers with a variety of viewpoints on political, social, economic and other issues to campus, including speakers whose perspectives are very different from my own.	447	5.91	1.27	
When a speaker's presence on campus might create the potential for violence, UNC should make every effort to protect the speaker and the crowd rather than cancel the invitation.	446	5.09	1.87	
I think it is acceptable for a controversial speaker to speak in a public area on campus.	446	5.15	1.70	
I think it is acceptable for my professors to invite controversial speakers to our class.	447	5.23	1.64	
I think it is acceptable for a controversial speaker to speak in a lecture hall outside of class.	447	5.53	1.50	
4. Comfort Discussing Controversial Subjects	444	4.64	1.55	1-7
In class	447	4.11	1.92	
Outside class with professor	444	4.38	1.82	
Outside class with peers	447	5.44	1.61	

* Percentage of participants who answered the knowledge questions correctly: five rights 51.7%, defamation 65.1%, hate speech 48.5%, obscenity 41.4%, advocating for violence in abstract manner 32.2%, false and deceptive advertising 53.7%, social media content 60.9%, public university bounded by the First Amendment 89.9%, University can regulate student speech by enforcing code of conduct 51.9%, University students can hold protest on campus 98.2%, University can establish T/P/M restrictions on protests 56.4%.

Regarding knowledge of First Amendment rights and protections for different types of speech, 51% of participants correctly named the five freedoms guaranteed under the First Amendment; more than half (51.3%) scored higher than the pass line (6.6) on the 0-11 scale. The percentage of surveyed students who correctly answered the knowledge questions about First Amendment protection for each type of speech was as follows: defamation (65.1%), hate speech (48.5%), obscenity (41.4%), advocating violence in an abstract manner (32%), false and deceptive advertising (53.7%), social media speech (60.9%). These results indicated student understanding of particular areas of First Amendment law. Meanwhile, the majority of students (89.9%) understood that a public university is bound by the First Amendment, while 52% knew that the university administrators could constitutionally regulate student speech by enforcing a student code of conduct. Almost all students (98.2%) were aware that, under the First Amendment, students in a public university can hold peaceful protests on campus, while about 56% were aware that the university administrators can also constitutionally enforce time, place, and manner restrictions on protests.

The survey showed strong support among students for freedom of speech on campus. An overwhelming majority (92.8%) agreed that students should be allowed to express unpopular opinions on campus. The majority (60.9%) agreed that unpopular opinions should be allowed even if the speech could be seen as offensive. However, less than half felt that speech should be protected when it could be seen as hateful (43.4%) or bullying (41.5%). On average, the combined scale measuring support for free speech on campus had a mean score of 4.62 on a 1-7 scale, implying strong support for free speech among surveyed students.

Support for controversial speakers on campus was also high among surveyed students. The majority (86%) agreed that the university should invite speakers with a variety of viewpoints on political, social, economic, and other issues to campus, including speakers whose perspectives are very different from their own. Most (65.1%) believed that instead of cancelling the invitation, the university should make every effort to protect the speaker and the crowd when a speaker's presence on campus might create the potential for violence. When it comes to ways of expressing disagreement at a guest speaker event, very few (6.9%) would interrupt the speaker during the lecture; instead,

the majority reported that they would challenge the speaker in the Q&A session (84.3%) or distribute literature outside the lecture hall (51.2%).

Correlation analysis showed that knowledge of First Amendment law, support for free speech on campus, and support for controversial speakers are significantly related to one another. Knowledge of First Amendment law was positively related to support of free speech on campus, as well as with support for controversial speakers on campus. This means that the more knowledgeable students were about the law, the more supportive they were of freedom of speech and controversial speakers on campus. Furthermore, political ideology was significantly related to support for free speech and support for controversial speakers. Students who identified as more conservative were more likely to support freedom of speech and controversial speakers on campus. Table 3 displays the correlations among key variables.

Table 3 Pearson Correlations Among Key Variables

	1	2	3	4	5
1. Support for controversial speakers	--				
2. Support for free speech on campus	.575**	--			
3. Knowledge of First Amendment law	.151**	.121*	--		
4. Political ideology	.426**	.434**	.064	--	
5. Comfort discussing controversial subjects	-.248**	-.296**	-.016	-.507**	--

** Correlation is significant at the 0.01 level (2-tailed).

* Correlation is significant at the 0.05 level (2-tailed).

Regarding comfort discussing controversial subjects on campus, survey results showed that only about half of participants felt comfortable discussing controversial subjects in class (51.7%) and outside of class with professors (55.5%), while the majority (81.2%) felt comfortable talking about controversial subjects outside of class with peers. Moreover, as shown in Table 3, there was a significant negative correlation between comfort and political ideology. Students who identified as more conservative were generally less likely to feel comfortable talking about controversial topics.

In addition, a comparison analysis showed significant differences between male and female students on the concepts measured in this survey. Male students were more supportive of

having controversial speakers on campus, more supportive of free speech on campus, and scored higher on knowledge of First Amendment law than their female counterparts. But female students generally felt more comfortable talking about controversial subjects on campus. Table 4 displays the comparison analysis results.

Table 4 T-test Results Comparing Males and Females on Key Variables

	Male		Female		<i>t</i> -test
	M	SD	M	SD	
Support for controversial speakers	5.89	1.106	5.06	1.258	6.880**
Support for free speech on campus	5.26	1.567	4.24	1.380	6.819**
Knowledge of First Amendment	6.84	1.774	6.30	1.777	3.062**
Comfort discussing controversial subjects	4.40	1.66	4.76	1.46	2.295*

* $p < .05$, ** $p < .01$

IV. DISCUSSION AND CONCLUSION

The results of the survey indicate that North Carolina students are generally knowledgeable about First Amendment freedoms, and contrary to the concerns of Republican legislators, students are overwhelmingly supportive of controversial guest speakers on campus. A majority of students (86%) thought that the university should invite speakers with a variety of viewpoints, including speakers whose perspectives are very different from their own; and 65.1% believed that the university should not cancel the invitation when the speaker's presence on campus might create the potential for violence. Instead, students believed that campus security should play an active role in ensuring peaceful outcomes when controversial speakers are invited. The notion that North Carolina students are "snowflakes" who do not wish to hear from those whose views differ from their own appears to be unfounded. In light of these findings, the Act is a solution in search of a problem. Improving campus expression is a noble goal, but understanding the true state of free expression on North Carolina's campuses requires research. Legislation based on a handful of incidents without the appropriate data and context not only is misguided, but it also runs the risk of endangering free expression. The threat of legislating content-based restrictions is real.

Another important finding is that there exists a significant correlation between knowledge of First Amendment law and support for freedom of speech and controversial guest speakers on campus. Those who are more knowledgeable about First Amendment law are more likely to support free speech and welcome controversial guest speakers on campus. Although this is only a correlation, instead of causation, it shows that students' knowledge of free speech laws influences how they react to unpopular ideas and controversial guest speakers on campus. Knowledge can nurture tolerance and facilitates rational debate, which is why education and research about the First Amendment should be the primary means for building tolerance and enhancing free speech on college campuses.⁹⁸

If the survey indicates any measure of concern, however, it is in the comfort level students have in discussing controversial subjects in their classrooms. While students generally feel comfortable discussing controversial subjects outside class with their peers, they feel less comfortable having such discussions in class. This could be because faculty are not welcoming of diverse views, as Republicans charge, or because students generally don't feel comfortable participating in large classroom settings. Recent educational research found that instructor participation and class size both positively affect student participation in online teaching; however, the impact of instructor participation in facilitating class discussion weakens as class size increases.⁹⁹ Either way, it's clear that students experience hesitancy engaging in difficult discussions in class, which should be a cause for concern. More research is needed to explore the cause for this unfortunate reality. However, it is clear that North Carolina students and educators should be thinking about ways to open up classes for more exchange, particularly since conservative students, who expressed more openness to freedom of speech, felt more chilled in classroom settings in North Carolina. In the interest of academic freedom, we emphasize that students and professors, not legislators, should take up this role. Together, teachers and students should consider and discuss the terms for debate and discussion within each class, a set of terms that encourages openness but also trust among the members. Campus

⁹⁸ See GREG LUKIANOFF & JONATHAN HAIDT, *THE CODDLING OF THE AMERICAN MIND: HOW GOOD INTENTIONS AND BAD IDEAS ARE SETTING UP A GENERATION FOR FAILURE* 235–69 (2018).

⁹⁹ Elizabeth J. Parks-Stamm et al., *The Effect of Instructor Participation and Class Size on Student Participation in An Online Class Discussion Forum*, *British Journal of Educational Technology*, 48 BRITISH J. OF EDUC. TECH. 1250–59 (2017).

centers for faculty excellence could also play an active role in changing the nature of this reality.

Disadvantages of survey research, such as self-reported data and, in this study, a small sample of racial and gender minorities, limit the conclusions that can be drawn from this data. For example, self-reported support for freedom of speech does not necessarily equate to actual support for (or willingness to listen to) speech that expresses dissenting views from the views of the students responding to the survey. In addition, due to the small sample of people of color and LGBTQ+ individuals, we are unable to draw meaningful conclusions about minority students' comfort level discussing controversial issues on campus. Future research could use qualitative approaches to clarify this important aspect of student expression.

The education and monitoring sections of the Restore/Preserve Campus Free Speech Act as currently written are unlikely to address the problems articulated here. The survey findings indicate that better knowledge of the First Amendment is related to more support for First Amendment. As written, the statute vaguely requires some type of freshman orientation session; the North Carolina Board of Governors' policy, derived from the law, requires a designated free expression representative to study and issue reports and emails. In our view, more input from faculty and students is necessary to successfully implement these requirements and encourage a more robust campus expression environment. Edicts from the top down about campus speech are not likely to change the culture. The results here and in a similar survey¹⁰⁰ have been presented to North Carolina faculty governance groups for discussion,¹⁰¹ with an eye toward new strategies for student and faculty engagement. In addition, future pedagogical strategies should take into consideration gender differences. More research is needed to capture exactly what a successful First Amendment program might look like, but we could at least work on stronger professional bonds between students and faculty engaging in collaborative research. This might provide an opportunity for students and professors to build the kinds of connections that

¹⁰⁰ See JENNIFER LARSON ET AL., *FREE EXPRESSION AND CONSTRUCTIVE DIALOGUE AT THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL* (Mar. 2, 2020), <https://fecdsurveyreport.web.unc.edu/files/2020/02/UNC-Free-Expression-Report.pdf>.

¹⁰¹ Jennifer Larson et al., *Free Expression and Constructive Dialogue Research Event*, INST. ARTS & HUMANS. (Feb. 12, 2020), <https://iah.unc.edu/event/fecd/>.

foster productive and challenging classroom debate.

North Carolina's Restore/Preserve Campus Free Speech Act and the findings of this survey provide a unique opportunity to create a platform for First Amendment education and debate throughout the seventeen-campus system. Further research should investigate reasons for the hesitancy North Carolina students experience in their campus classrooms. New programs and curricula should not only address First Amendment education, but more importantly, actively involve students in that research. Such a program would potentially offer valuable guidance for campuses nationwide with similar state laws and concerns.