

April 4, 2022

Via U.S. Mail and Email to bill.lee@tn.gov

The Honorable Bill Lee
Governor of the State of Tennessee
Tennessee State Capitol, 1st Floor
600 Dr. Martin Luther King, Jr. Blvd.
Nashville, TN 37243

Re: SB 2290/HB 2670

Dear Governor Lee,

On behalf of the ACLU of Tennessee and its thousands of members throughout the state, we write to ask you to **veto SB 2290/HB 2670**. This bill does not promote academic freedom in Tennessee. Instead, it hampers professors and students alike from tackling head-on a broad range of issues on their schools' campuses. By applying vague restrictions to overbroad "concepts," this legislation will chill the expression of students and faculty alike. It also intentionally targets and denies access to equitable, culturally relevant teaching and ideas that reflect the history and lived experiences of Black, Indigenous, and other people of color; women and girls; and LGBTQ+ individuals. Staff will fear – rightly so – lawsuits from students and others who disagree with the content of a professor's instruction. Our colleges and universities should be the "marketplace[s] of ideas" and the "nurseries of democracy." This legislation encourages instead a culture of fear and silence in higher education.

As was the case with last year's classroom censorship bill, the legislation's "divisive concepts" are so vague they give universities and teachers almost no way of knowing what concepts and ideas are prohibited. In Oklahoma, the ACLU and ACLU of Oklahoma brought suit over a similar law that banned nearly identical vague and overbroad "concepts." Both SB 2290/HB 2670 and the Oklahoma law ban concepts that are copied nearly verbatim from an executive order issued in September 2020 by then-President Trump that banned such "trainings." These provisions were quickly enjoined by a federal court as impermissibly vague.

These vague concepts include, for example, that "this state or the United States is fundamentally... racist or sexist." Is it "divisive" to teach that the Founding Fathers – indeed fundamental to American



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government and society – espoused racist views or owned slaves? Another “divisive concept” is one that “promotes division between, or resentment of, a race, sex, religion, creed, nonviolent political affiliation, social class, or class of people.” Our history and our present are full of – defined by – conflict related to the issues listed here. To what discussions do these provisions *not* apply?

By casting such a wide net, the content to which the bill applies is largely undefined. Students, faculty, and administrators will be left guessing as to what training topics and classroom discussions are subject to this legislation. In Oklahoma, in response to their anti-“divisive concepts” law, universities and schools have pulled work from diverse authors from their curricula and library shelves and halted necessary sexual and racial harassment prevention trainings. Tennessee schools and universities will be forced to do the same here.

The bill is also vague in the scope of its application. While the legislation says it does not prohibit discussion of these “divisive concepts” in the classroom, it prevents a university from requiring a student or staff member “assent” to one of these “concepts.” But what does this mean in practice? Can, for example, a student be tested on material critical of the United States and its history of racism? Can a student sue a professor if they do not like their grade on such an assessment?

Indeed, individuals are empowered to sue professors, or the university, based on these broad, vague proscriptions: Section 4 of the bill provides that “an individual who believes that a violation of this Section 4 has occurred may pursue all equitable or legal remedies.” Given that no one can say with any specificity what a violation of this section entails, professors and administrators may be subject to frivolous lawsuits which threaten their staff position and require paying legal fees for defense against these claims. The incentives for faculty are clear: avoid addressing topics that may be characterized as “divisive concepts” in this legislation.

Section 5 of this bill further prohibits public institutions from holding mandatory trainings for students or faculty that “include” one or more of these concepts. This provision goes even further than earlier sections by banning even the mention of material relating to these concepts in school trainings. Under this law, universities are likely barred from requiring implicit bias trainings for staff, which can help ensure faculty treat their students with respect and dignity, no matter their race or background. This section disempowers university



administrators who seek to act in the best interests of their staff and students.

Section 5 also prohibits the use of “state-appropriated funds to incentivize, beyond payment of a regular salary or other regular compensation, a faculty member to incorporate ... divisive concepts into academic curricula.” Again, because these concepts are so vague and overbroad, this may restrict universities from awarding a range of grants, stipends, fellowships, and more. This ties the hands of our administrators and faculty. We should trust university administrators and faculty to make discretionary funding judgments according to the processes already in place. By forcing ideological restrictions on those decisions, this legislation further limits the academic freedom of our universities.

As our country, our state, and our communities reckon with the legacy of slavery, Jim Crow, and systemic racism, Tennessee should encourage exploration of these topics – especially in our universities. SB 2290/HB 2670 establishes vague restrictions on overbroad concepts and limits the freedom of academic institutions and faculty to address these issues. College students can handle difficult discussion and curricula. Confronting a range of ideas – including some with which students may disagree – is a vital component of a university education. In this way, SB 2290/HB 2670 is antithetical to the very purpose of our university system, which ranks among the strongest and most rigorous systems in the country. Tennessee should reject this bill’s regressive approach to higher education and promote the academic freedom of students and faculty. We ask you to **veto SB 2290/HB 2670**.

Sincerely,



Hedy Weinberg
Executive Director

