

# Governance

HIGHER EDUCATION NEWS FOR UNIVERSITY GOVERNORS AND TRUSTEES

FALL 2016

**The Pope Center for Higher Education Policy is pleased to announce some exciting news.**

**We will be changing our name very soon.**

We will still do the important work we have done since we were incorporated in 2003, and earlier as a project of the John Locke Foundation. We will research activities in our colleges and universities, exposing their weaknesses and their strengths, and promote policies and ideas to make higher education more efficient, more rigorous, more transparent, and more just.

So why the name change?

We continually find that the *Pope Center* is being confused with the *Pope Foundation*. While the *Pope Center* focuses entirely on higher education, the *Pope Foundation* has a broader portfolio. Furthermore, the *Pope Center* is an operating foundation in the process of becoming a public charity; the *Pope Foundation* is a private foundation that funds other organizations. Indeed, the *Pope Center* receives substantial funding from the foundation.

We want to end the confusion and our new name will do that.



## It's Time for Schools to Review Their Academic Freedom Policies

*Jay Schalin*

A short list of the most important functions of university governance must include an obligation to make sure the spirit of inquiry remains open for all. This obligation falls under the heading of “academic freedom.”

Academic freedom is a complex and often confusing subject. For instance, many incorrectly confuse it with the constitutional right to free speech. One has a right to publicly state that “the moon is made of green cheese;” one does not, however, have any such right to remain employed if he or she says so while teaching a college astronomy class.

Most academic freedom issues are very specific, depending on the particulars of each case. Does a faculty member’s complaints about his department head or administration reflect a public concern, or is he or she merely expressing personal grievances? Is a professor teaching her personal opinion as fact? Or merely stating information that is no longer contested by serious scholars?

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One of the biggest problems is that academic freedom is commonly viewed from one perspective only, that of the faculty. Faculty are indeed deserving of powerful academic freedom protections; they are, after all, the ones producing new knowledge and deciding which existing knowledge to teach. But other stakeholders on campus also deserve academic freedom rights: students, administrators, and trustees. For instance, students have a right to be taught the major conflicting views about topics that are still considered open and up for debate, rather than being indoctrinated to just one contested view.

Furthermore, at state-supported universities, taxpayers and state residents have rights as well. And the institution itself has rights, such as controlling course content.

Given the great potential for academic mischief and bias, it is imperative that state university systems and their constituent campuses review their academic freedom policies on a regular basis. If UNC-Wilmington had proper academic freedom policies in place, it could have avoided the Mike Adams controversy, in which a professor was denied promotion for his beliefs because they conflicted with the majority consensus in his department. Instead, the university and Adams became

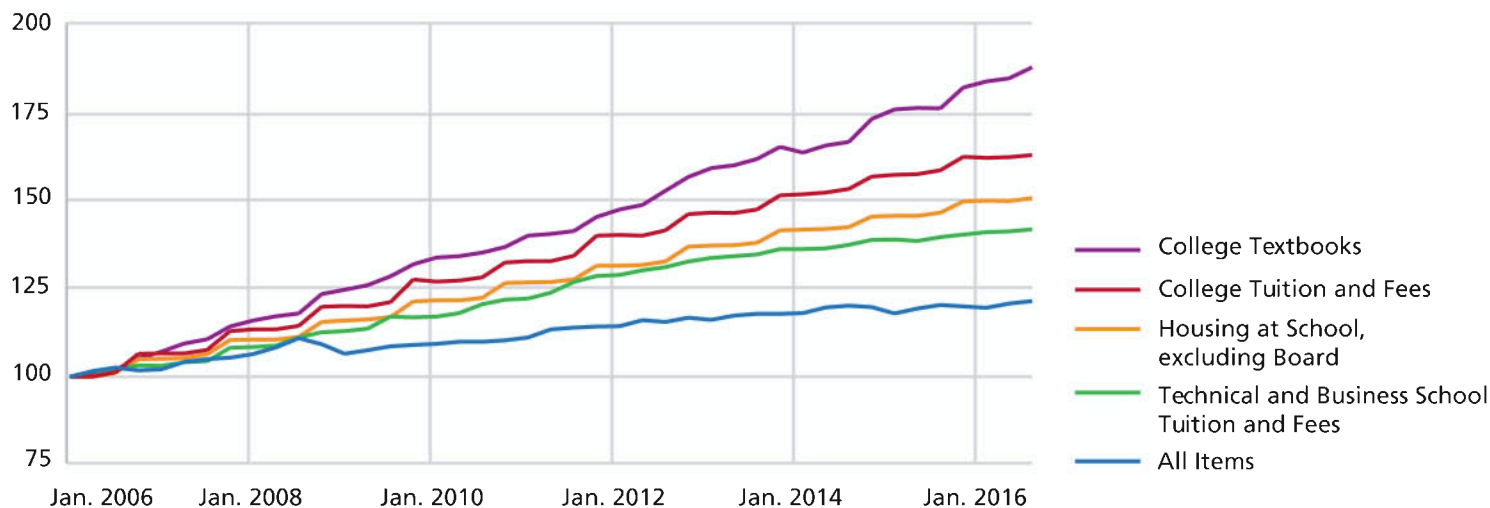
locked in an eight-year legal battle that cost the school \$665,000 in Adams' back pay and legal fees, not to mention the cost of their own attorneys and staff.

Historically, schools have relied on faculty bodies as their primary source for academic freedom regulations. Statements produced by the American Association of University Professors have often been considered the definitive source of reasoning on the topic. But the faculty is a naturally self-serving participant, not a disinterested third party. Today, governing bodies must look beyond the faculty for sources that present all sides of academic freedom issues. The best source for reasoning on these issues is the long trail of legal cases concerning academic freedom, as both sides of the issues are argued, and the final decision is rendered by disinterested judges and juries (although faculty documents can provide additional insight).

Academic freedom disputes are likely to become more common in the near future, as the culture war appears to be heating back up. Having fair policies in place ahead of time could be the "ounce of prevention" that avoids an unpleasant and costly "pound of cure." ■

*Download the Pope Center's latest report, "Academic Freedom in the Age of Political Correctness," at <http://tiny.cc/academicfreedom>*

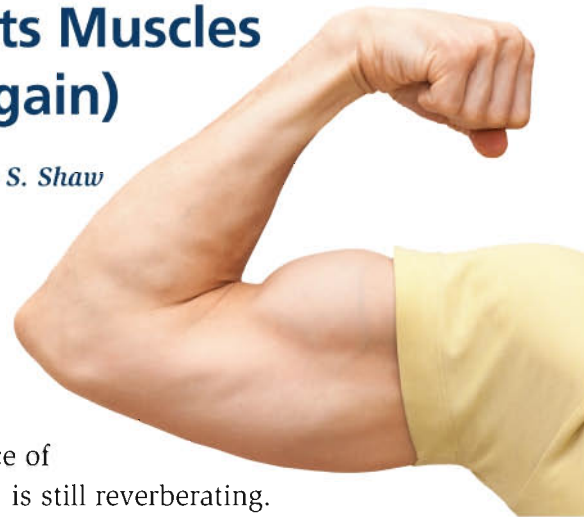
**From January 2006 to July 2016, the Consumer Price Index for college tuition and fees increased 63 percent, compared with an increase of 21 percent for all items. Over that period, consumer prices for college textbooks increased 88 percent and housing at school (excluding board) increased 51 percent.**



Source: U.S. Bureau of Labor Statistics

# The Department of Education Flexes Its Muscles (Again)

*Jane S. Shaw*



The federal Department of Education (DoE) has almost single-handedly brought about the demise of ITT-Technical Institute, a for-profit school with more than 130 campuses and more than 43,000 students. Hardly a fly-by-night operation, ITT-Technical Institute, based in Indianapolis, was incorporated in 1968.

DoE had been tightening its financial control of ITT for several years. As Education Secretary John King wrote in a letter to ITT students on Sept. 6, the department had “significant concerns about ITT’s administrative capacity, organizational integrity, financial viability, and ability to serve students.”

He said that ITT students have two possible choices—perhaps their loans may be discharged and perhaps they may transfer their credits, but neither is certain. Even so, he said, the oversight that led to ITT’s closure was done “in order to protect you, other students, and taxpayers from potentially worse educational and financial damage in the future.” If the loans are discharged, the taxpayer could be on the hook for up to \$500 million, according to news reports.

About two years ago, the Department of Education engineered the demise of an even bigger for-profit school, Corinthian, with some 72,000 students. And the department has recommended that the accrediting agency for Corinthian and ITT, the Accrediting Council for Independent Colleges and Schools, be closed because of lax scrutiny.

Tightening the noose on for-profit schools is only one of the Department of Education’s powerful actions. Another is its “gainful employment rule,” which went into effect in 2015 and withstood legal challenge earlier this year. That rule would cut off federal student aid to vocational schools and programs if their default rates on student debt are too high. While the rule may have merit, it is applied only to career-oriented programs.

But perhaps the biggest sign of muscle is the department’s actions regarding Title IX, the law that prohibits schools from discrimination on the basis of sex. The department’s “Dear Colleague” letter written

in 2011 by its Office of Civil Rights (OCR) is still reverberating.

The department changed the standard for schools’ prosecution of sexual violence cases from the criminal standard of “beyond a reasonable doubt” to the civil standard of “the preponderance of the evidence.” In other words, it is now much easier for an accuser to win a case. DoE contends that since a school’s judicial procedures “will never result in incarceration of an individual...the same procedural protections and legal standards are not required.”

This interpretation led a group of law professors, including civil rights scholars such as Richard Epstein of the University of Chicago and Alan Charles Kors of the University of Pennsylvania, to write an open letter last May. They said that the OCR “has ignored constitutional law, judicial precedent, and Administrative Procedure Act requirements. . . . OCR has brazenly nullified the Supreme Court definition of campus sexual harassment.”

Not to be outdone, another group of law professors, posting their letter on the blog “feministlawprofessors.com,” argued that OCR’s interpretation is consistent with the way that other civil rights violations are handled. The past approach “treated women as inherently untrustworthy and men as not only presumptively innocent, but especially in need of protection from false allegations.”

Whether OCR’s directive allows for due process remains a question. Similarly, it is not clear that DoE is following due process in the ITT case. As ITT said in its closure announcement, “We were not provided with a hearing or an appeal.” ■

# Do You Agree?

“Academic freedom, in short, belongs to that category of rights called “natural rights,” and is expressed in custom, not in statute.... [Natural right] is a body of belief in certain rights...found by the test of time to accord with human nature and civil social nature.”

Russell Kirk in *Academic Freedom: An Essay in Definition*, 1955

The goal of this Pope Center newsletter is to help university trustees and governors to be more effective higher education leaders.

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