

The Political Machine Behind the War on Academic Freedom

How conservative activists use state legislatures to control what colleges can teach.



RICARDO REY FOR THE CHRONICLE

THE REVIEW | ESSAY

By *Steven Brint*

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The last few years have seen a troubling and unusually brazen series of challenges to academic freedom. In 2021, Republican state legislators began to draft bills banning what they referred to as “divisive concepts” in education curricula, and eliminating administrative offices and practices concerned with racial-ethnic and other forms of diversity. In the GOP’s rendering, the term “divisive concepts” refers to the idea sometimes propounded by historians that the institutions of the United States were created to maintain racial and gender inequalities and to preserve the supremacy of white people and men. Most of the bills to regulate curricula have been directed toward public K-12 education, where the states have been accorded great authority by the courts. But from the beginning, this restriction fever seeped into the higher-education arena, where state prescription has historically run aground of academic-freedom protections.

The tally so far: By the summer of 2023, governors of eight states had signed into law curriculum-content restrictions aimed at higher education. Governors in five states had signed into law restrictions on diversity, equity, and inclusion, and legislatures in 12 states were considering similar bills restricting curriculum or DEI or both. In 11 states, bills restricting course content or banning DEI had died in committee or had been vetoed by Democratic governors. Legislators and governors in 15 states — most of them with large Democratic majorities — had shown no interest in pursuing either course content or DEI restrictions through legislation.

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The most notorious of the recent measures, Florida’s Senate Bill 266, authorized a blanket ban on general-education core courses that, in the words of the bill, “distort significant historical events or include a curriculum that teaches identity politics ... or [are] based on theories that systemic racism, sexism, oppression, and privilege are inherent in the institutions of the United States and were created to maintain social, political, and economic inequities.” The bill states further that courses with a curriculum based on “unproven, speculative, or exploratory content” are not suitable for general-education credit. Signed into law by Gov. Ron DeSantis in May, SB 266 also defunded DEI offices and programs and put more power for hiring professors in the hands of university presidents. Following the logic of the law, it does not matter now in Florida public universities if the evidence shows that some policies of American institutions were in fact enacted to maintain social inequalities or that most scientific theories are speculative insofar as they lack definitive proof.

How should we understand the Republican Party’s mobilization to restrict curricular content in higher education and to ban DEI policies? Is it driven by substantive concerns, presidential ambitions, racial politics, illiberalism on the left, some combination of these influences — or something else entirely?

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I have spent many dozens of hours listening to the committee and floor hearings in the two states at the forefront of these restrictive efforts: Florida and Texas. I have also interviewed legislators and higher-education officials in these states, and conducted quantitative studies to identify the characteristics of states that have been most eager to pass restrictive laws.

The answers I have come up with focus on a national-level political machine. Business influence, the pandemic, and the anti-racism movement were also factors, but not in the direct ways most people imagine. To understand what has driven this restriction fever it is necessary to look at the political machinery that generated the bills and signings, the rhetoric that sustains this machinery and gives it emotional force, and the economic and social conditions of the states swept up in it.

By understanding what happened, those who are appalled by state intrusions into free inquiry can gain clues about what can be done to protect academic freedom, not only against this continuing assault but against future attacks along similar lines.

A common view of state politics is that legislators learn about a problem from advocacy groups or constituents, write legislation to address the problem, and then try to persuade their colleagues to support their bill. This imagery is increasingly at odds with how state politics actually works, and it is definitely not how the recent restrictions on academic freedom happened. Instead, well-established webs of organizations exploited the opportunities provided by grass-roots protest to disseminate model legislation to receptive legislators and governors.

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Unquestionably, national political circumstances provided these organizations with an opportunity. The killing of George Floyd by a Minneapolis police officer precipitated racial protests that began in May 2020 and lasted throughout the rest of the year and into 2021. The protests were the culmination of years of discontent over states' failures to prevent police killings of unarmed Black people. The isolation, death, job loss, and political frustrations of the pandemic undoubtedly contributed to the breadth and anger of the protests, which spread to some 2,000 U.S. cities and towns. It was during this time that Americans outside of academic circles first became aware of such previously unfamiliar terms as “systemic racism,” “white supremacy,” “white privilege,” and “white fragility.” They became familiar, too, with the term “critical race theory,” a name for a decades-old academic movement that draws attention to the pervasiveness and systemic nature of racial inequalities.

The right began capitalizing on the protests, and the wider circulation of ideas about systemic racism, almost immediately. Already by September 2020 — just four months after the protests began — the Trump administration had issued an executive order decrying “divisive content” in public education.

Three months later, in December 2020, the American Legislative Exchange Council, an influential conservative policy shop frequently abbreviated as ALEC, held a virtual workshop attended by some 30 state legislators as well as representatives from corporations and nonprofits on “Against Critical Theory’s Onslaught.” The policy entrepreneur Christopher F. Rufo was one of the conveners of this workshop, together with staffers from the Heritage Foundation, the American Enterprise Institute, and the Woodson Center. Rufo had gained a following by publicizing and critiquing the new anti-racist programs in K-12 schools, and it was an interview with him on Fox News

that had inspired the Trump executive order. His workshop associates at the Heritage Foundation were at this time already focusing on ways to ban critical race theory in public-school classrooms through state legislation.

During its heyday in the early 2010s, ALEC's model legislation gave birth to some 1,000 bills a year in state legislatures in a wide range of policy arenas. However, apart from convening the anti-CRT workshop, it remained largely on the sidelines as the new wave of restrictive legislation rolled out. Instead, other organizations in the conservative organizational ecosystem took up the reins. The main actors have been staffers in three GOP-aligned think tanks: The Heritage Foundation, whose staffers were responsible for model legislation on "divisive concepts," and the Manhattan and Goldwater Institutes, whose staffers were responsible for the model to restrict DEI offices and activities. Other institutions, such as Hillsdale College, the Claremont Institute, the Ethics and Public Policy Center, North Carolina's James G. Martin Center for Academic Renewal, and the National Association of Scholars, have played supporting roles in areas where they have had an interest and access to policymakers.

Gubernatorial staff members are connected to the think tanks, and these staffers are often the source of proposed legislation. The staffs tweak the model legislation, discuss it with important constituencies, and prepare talking points for allies of the governor who are persuaded to carry the legislation. For governors or their staffs, it is usually a straightforward matter to find willing partisans to carry the legislation, either out of party loyalty or because the rewards can be significant. Those who have been the principal sponsors and advocates of legislation for Governor DeSantis in Florida, for example, have been rewarded with college presidencies and top executive positions in the state's educational bureaucracies. In some cases, legislators themselves have been the authors of the restrictive legislation, but most state legislators have limited discretionary time and little staff support and are consequently dependent on those who do have time and staff support.

It is much easier, of course, to pass controversial legislation in states with substantial partisan majorities. Where governors come from the opposite party, veto-proof majorities are essential. Large majorities ensure that the votes are there to defeat unfriendly amendments and to pass legislation. It was not surprising to hear a leading Democrat in Texas admit with resignation: “You have the votes. It is what it is. You can do what you want.”

In early 2021, the Heritage Foundation introduced model legislation to ban “divisive content” in public education. Although written for K-12 schools, this model was picked up, often word for word, by state legislatures for application to public higher-education institutions in willful violation of academic-freedom protections.

The central provision of the model legislation read: “No public education employee shall compel a teacher or student to adopt, affirm, adhere to, or profess ideas ... [including] the following: 1. That individuals of any race, ethnicity, color, or national origin are inherently superior or inferior; 2. That individuals should be adversely or advantageously treated on the basis of their race, ethnicity, color, or national origin; 3. That individuals, by virtue of race, ethnicity, color, or national origin, bear collective guilt and are inherently responsible for actions committed in the past by other members of the same race, ethnicity, color, or national origin.”

The proposed legislation was justified by a novel treatment of the equal-protection clause of the 14th amendment, applied to white people rather than members of racial-minority groups, as well as a similarly novel interpretation of Title V and VI of the Civil Rights Act of 1964. (These were the same arguments recently used by the Supreme Court’s majority in its ruling on affirmative action in higher education.) Where Black individuals were once protected by these provisions, Heritage proposed to use them to protect the sensibilities of white children who were allegedly identified by critical race theory as inherently advantaged. The model put teeth into this extension of state

authority by proposing that noncompliant schools become ineligible for state funds and subject to civil lawsuits.

What remained was to find politicians ready to fight for these policies. Recall that school-board meetings had been heating up throughout the country during 2020 and 2021. Most of the heat came from parents who were angry about school closures, vaccine requirements, and mask mandates. In some cases, critical race theory, *The New York Times*'s "1619 Project," and anti-racism programs also became bones of contention.

Two governors helped to supercharge the movement. In the fall of 2021, the Republican gubernatorial candidate Glen Youngkin was able to mobilize suburban Virginians around "parental rights" in the schools. The concept included not only keeping the schools open but also transparency about what was being taught in the curriculum and opposition to "divisive content." Youngkin capitalized on a statement by his Democratic opponent, the former Virginia Governor Terry McAuliffe, that he didn't "think parents should have a say in what was taught in schools." The Youngkin campaign's victory impressed national Republicans because Virginia had been trending blue for many years and because Youngkin had bested a well-known and well-funded opponent. The head of the Republican Study Committee in Congress urged others in his caucus to recognize parental rights as a top-tier issue.

Like Youngkin, Governor DeSantis of Florida saw that anger over what was happening in schools could be harnessed to a right-wing agenda. Proposed one month after Youngkin's election in Virginia, the so-called Stop WOKE Act, Florida House Bill 7, represented DeSantis's first major strike at the educational establishment, including the higher-education establishment. It drew on the Heritage language to proscribe trainings and instruction that purported to argue that members of any group were inherently superior or morally better than members of any other group. The bill added that no students should feel "guilt, anguish or other forms of psychological distress" for actions taken in the past by members of their race or sex. The provisions of the Act

that applied to higher education were [blocked](#) by Judge Mark E. Walker of the U.S. District Court for the Northern District of Florida in November 2022. “Defendants argue that, under this Act, professors enjoy ‘academic freedom’ so long as they express only those viewpoints of which the State approves,” Walker wrote. “This is positively dystopian.”

The first 13 bills to restrict higher-education content were proposed in 2021. The movement crescendoed in 2022 when some 60 pieces of legislation to restrict higher-education content were proposed. A great majority of those bills died in committee or were superseded by similar measures, but between 2021 and 2022 seven bills (in Florida, Idaho, Iowa, Mississippi, Oklahoma, South Dakota, and Tennessee) made it to a governor’s desk and were signed into law. Several more are still pending. Judge Walker’s words did not prevent states from moving forward in 2023 with efforts to impose content restrictions in higher education. Twenty-six more content-restricting bills were introduced in 2023. Many are still pending, as of this writing, and three (in North Dakota, as well as additional bills in Florida and Tennessee) have been signed into law.

By my count, 78 of the 99 “divisive concepts” bills bearing on higher education included language drawn directly from the Heritage Foundation’s model legislation, showing the extent to which this was a national movement led by the White House and think tanks rather than a spontaneous outburst of concern by legislators in conservative-leaning states.

Diversity trainings were another popular target of conservative bills as early as 2021, but model legislation to restrict DEI-related activities came only later. In January 2023, the Manhattan and Goldwater Institutes joined in [writing model legislation](#) to ban DEI offices, diversity trainings, and diversity statements. Rufo, who seemed to be everywhere in this policy arena, was one of the three authors.

One key provision read: “Public ... institutions of higher education in the state ... may not ... expend any funds ... to establish, sustain, support, or staff a diversity, equity, and inclusion office or to ... hire an individual to serve as a diversity, equity, and inclusion officer.” Diversity trainings and diversity statements came in for similar treatment: “A public ... institution of higher education may not make diversity training mandatory.” Another read: “No diversity statement shall ever be required or solicited as part of an admissions process, employment application process, hiring process, contract renewal process, or promotion process.”

The model legislation produced by Rufo and his colleagues is so prolix that no states have adopted it verbatim. But the underlying justifications it provided were influential. These justifications relied primarily on assertions about the stifling of thought due to DEI and its alleged failure to improve conditions on campus for under-represented students.

The great majority of the 40 DEI bans [currently tracked](#) by *The Chronicle of Higher Education* followed on the heels of this model legislation. The bills clearly reflected the imprint both of the organizational force provided by conservative think tanks and the tailoring of bills to fit local conditions. Diversity statements and mandatory DEI trainings were targeted most often (in 20 and 18 bills respectively), followed by identity-based preferences (14 bills) and DEI offices (13 bills). Seven of the bills in five states (Florida, North Carolina, North Dakota, Tennessee, and Texas) were signed into law in 2023, and 23 bills are still pending as of this writing.

In the midst of well-worn themes that have long divided Republicans and Democrats, I heard three surprising points of contention. One is that the right has adopted the same psychology of harm that has figured in progressives’ campus rhetoric over the last decade. For Republicans these psychological harms come not from progressives’ emphasis on microaggressions and other wounding behavior aimed at members of marginalized groups, but from the potential harm to white students for being seen as oppressors. The claim is explicit in Florida’s Stop

WOKE Act: No student should be made to feel “guilt, anguish, or discomfort” over events that happened in the nation’s history for which they are not directly responsible. It was a constant refrain among Republican legislators in Florida. One wonders how conservatives became so tender in their sensibilities — and, given that both sides are now so prone to feelings of vulnerability, how much more political mileage can be gained on either side from expressions of psychological damage.

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Conservatives’ contradictory views of freedom of expression were a second surprising feature of the debates. Incongruously, Republicans seemed to want to create greater freedom of expression by prohibiting forms of speech with which they disagreed. They were convinced that a “monoculture” existed on campus — without providing more than very thin anecdotal evidence to support the contention — and they wanted to expand intellectual diversity as an antidote. They desired to do so by prohibiting ideas they identified as divisive, such as critical race theory. As Anna Eskamani, a Democratic legislator in Florida, said, “How can you be for more intellectual diversity when you are limiting intellectual diversity?” And a professor who spoke during public testimony prophesied, “You’ll be able to say anything you want on Florida campuses as long as it agrees with what the State finds acceptable.” The Republicans’ arguments seemed to show the truth of this remark. They argued that critical race theory and the language of DEI stifled debate and discussion, whereas speech based on Republicans’ favored ideological positions created unique conditions for enlarging it.

A third surprising feature had to do with the partisan differences over the very nature of knowledge. In the discussion over Stop WOKE and SB 266, Florida Republicans

argued that some knowledge is subjective, exploratory, and speculative, while “true knowledge” possesses the opposite characteristics. Professors were encouraged by Bryan Avila, who was a Republican member of the Florida House and carried the “Stop WOKE” bill in that chamber, to teach only “the most objective” knowledge. Democrats were quick to point out that all knowledge starts out as speculative and exploratory. They noted that knowledge that seems objective to us today may be shown in the future to be incomplete or biased. Republicans expressed little in the way of persuasive counters. When pressed about the kinds of works that should be taught in general-education courses, Erin Grall, a Republican who carried SB 266 in the Florida Senate, said, “Tradition has established [some texts] as important in western culture.” They are, she said, “the fundamental books that allow us to have civil discourse about the most important issues of western civilization.” A Democratic legislator, Bobby Powell, asked her, “Would that include Maya Angelou’s *I Know Why the Caged Bird Sings*?” Grall said that would be up to the university system’s Board of Governors to decide. The “most objective” knowledge in Florida higher education will soon be whatever the state’s Board of Governors approves. At this time, only one professor sits on that board; most of the other members are businesspeople appointed by the governor.

Beyond these sometimes mystifying positions, it is possible to observe a deep structure of cultural opposition at work. The ostensible Republican commitment is to civic ideals based on equal treatment under the law, equality of opportunity, merit-based advancement, and standards of discourse and achievement that apply in the same way to everyone. They do not ask whether these principles in practice advantage people like themselves. The Democratic commitment is to civic ideals that take into account differences in social origins, justice for those who have suffered from legacies of discrimination, and standards of discourse and achievement that are tempered by an embrace of pluralism and cultural differences. They do not ask whether these principles can under some circumstances reinforce rather than disrupt the disadvantages of those they represent.

The Republican position was encapsulated by one of the expert witnesses, Adam Kissel, a visiting fellow at the Heritage Foundation, who spoke in support of the DEI ban in Texas: “DEI is expensive, counter-productive and probably illegal. It categorizes people by characteristics at birth and marginalizes some identities such as political conservatives. ... It [advocates] equality of outcomes by identity group. Any allegation of discrimination is taken as real. It leads people to walk on eggshells. DEI leaders cause division rather than healing.”

The opposite position was represented by Rep. José Menendez, a Texas Democrat: “Not everyone is equal to begin with. Some students have three or four computers in their homes and their parents are professionals. Others have no computers and have two less-educated parents. ... We forget what it is like to feel like you don’t belong, the loneliness and doubt.”

State political machinery can operate tolerably well without the emotional energy that comes from conviction, provided that the votes are there. At the same time, emotional energy gives a sense of life and purpose to the workings of the political machinery.

Strong emotions of pride, longing, and anger were evident on both sides. Among Republicans, I heard pride in putting forward what they saw as inclusive, colorblind policies in the place of the overt racism that so many white Southerners embraced in the past. Brandon Creighton, who carried Senate Bill 17 (the DEI ban), for example, argued, “We want diversity and equality and teaching the good, bad and the ugly about American history.” On the Democratic side, the pride came from celebrating the distinctive cultures that make up an American mosaic where everyone contributes and has a place. Sometimes this argument was put in an economic framework. One DEI officer in Texas said: “The state is becoming more diverse. We want Texas students to succeed in a more diverse work force, and we need highly educated people for important positions.” In other instances, the Democrats’ case took on religious overtones, as when one Black Texas legislator said, “Everyone is one of God’s children.”

Republicans long for a unified ethos and common standards where all students and faculty, regardless of gender, race, or socioeconomic status, can be evaluated fairly. Senator Creighton argued, for example, “Equal opportunity is about promoting merit. We want equality of opportunity. This bill removes divisive agendas while keeping concerns about equality of opportunity and prioritizing who competes well.” Democrats yearn for a spirit of inclusiveness, extending to groups who might otherwise feel unwelcomed. Royce West, a Texas Democrat, said he recognized over-zealousness on the part of some DEI administrators, but argued: “The perception of minorities is that DEI means they are welcome. It’s a welcome mat rather than a stop sign.”

Republican anger stems from the curricular and administrative decisions on campus that stand as a threat to the ideals they seemed to long for. Democratic anger comes from the subordinate status some marginalized students and faculty experience as inherent in American institutional structures and day-to-day interactions. “Why is it hard for white people to talk about racism and white privilege?” one Black Florida Democrat asked. And Nicole Collier, a Texas Democrat, said, “Some of us speak louder because we aren’t heard.” These sentiments were also frequently expressed by the hundreds of people — many of them college students — who showed up to protest the bills during periods of public testimony.

The anger sometimes boiled over in the hearings. In Florida, numerous Black Democrats accused Republicans of trying to erase Black history and Republicans admitted to feeling angry when Democrats said they were doing so. At one point Alex Andrade, the Republican who carried SB 266 in the Florida House, read out a long list of topics mandated in Florida K-12 schools on the history of African Americans and asked how these lessons could constitute erasure. At another tense moment, a Florida Republican state senator, Randy Fine, bitterly remarked that professors “don’t think they’re indoctrinating, they just think they’re right.”

Thus far, the appeal of higher-education restrictions has fallen within tight geopolitical boundaries. The bills and signings have been propagated in Republican strongholds in the Southern and rural Midwestern states. Moreover, the success rate of this legislation has not been extremely impressive. When we look only at the non-duplicative bills, about a third have been signed into law.

Yet we should not underestimate the impact of those that have passed. Public research universities in Florida, Iowa, and Texas are among the top-ranked in the country, and state legislatures have now curtailed academic freedom and/or DEI efforts in those states. Outstanding professors also teach in the other states that have been affected by the restrictions, and those states also enroll students who are interested in ideas the state wants to suppress. Nor is the relatively modest success rate of the bills necessarily an indicator of modest impact. As PEN America's Jeremy Young observes, several of the bills that passed or were introduced this year are more extreme than the bills that passed earlier — and more of these extreme bills are apparently on the way. Thus far, neither academic-freedom watchdogs nor members of the public have been able to persuade Republican Party legislators in a growing number of red states to allow university professors to adjudicate the value of academic ideas.

It is likely, though not a foregone conclusion, that the courts will strike down the laws that restrict college curricula. The courts have historically provided robust protections from what Supreme Court Justice William J. Brennan Jr. called “the pall of orthodoxy” over college classrooms. Civil-liberties organizations, such as the Foundation for Individual Rights and Expression and the American Civil Liberties Union, are contesting the constitutionality of the content-restriction laws as they apply to higher education. But because the courts are not immune to partisanship, no guarantees exist about the final outcomes of these cases.

The fate of the DEI bans is still less certain. The staffing of DEI offices would typically be considered a matter of administrative discretion and therefore outside of the purview of the courts. Diversity statements, on the other hand, do raise First Amendment issues, but law professors have [pointedly disagreed](#) about whether or not they are constitutional.

Regardless of how the court challenges turn out, those who worry about the future of academic freedom in the United States have good reasons for concern. At least since the time of Socrates, political authorities have sought to restrict intellectual inquiry when it has seemed to threaten their beliefs or interests. The principle of academic freedom is intended to ensure that professors are able to pursue their teaching and research within the sphere of their professional expertise free from the restrictions of outside authorities.

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In the United States, the principle of academic freedom was developed by the founders of the American Association of University Professors following the firing of Darwinists by religiously dogmatic college presidents in the 1880s and 1890s and the removal of social reformers by boards dominated by businessmen in the early 1900s. The sweep of the legislation introduced since 2020 is broader than the relatively few incidents that gave rise to the principle of academic freedom, as articulated by the AAUP in 1915. True, it does not match the damage to academic freedom that occurred during the anti-Communist McCarthy era of the 1940s and 1950s, during which

approximately 100 professors were fired and hundreds more harassed and silenced. But it is damaging enough.

Those who oppose this new wave of restrictive legislation have a number of avenues to pursue. One would be to forge an alliance with leading American corporations. The research literature suggests that opposition to DEI is not widespread in U.S. corporations, indicating that the business community could be mobilized in support of campus DEI efforts. Such an alliance might be aided by the new generation of DEI advocates, such as Karith Foster, Carlos Hoyt, and Irshad Manji, who are replacing the politics of suspicion that has sometimes marred campus DEI efforts with programs that emphasize human connections.

Another way to defend against state restrictions to academic freedom would be by monitoring their consequences. Many speakers in Florida and Texas argued that students and faculty will not apply to public universities in those states because of the restrictions, and that some faculty will leave when they go into effect. They also argued that the state would run into problems with federal grants and accreditation and licensing boards that require statements about DEI contributions. It will be important to determine whether and to what extent these fears prove to be warranted. If it can be shown that restrictions on academic freedom do harm to universities' bottom line, the conservative case for them will be considerably weakened.

Finally, and perhaps most important: Opponents of the restrictions need to demonstrate that universities are more than capable of creating open-learning and -inquiry environments where they do not currently exist. I do not agree with the idea that a new, left-leaning culture of illiberalism on campus is the source of the current wave of restrictive legislation; this culture, along with events like the George Floyd protests, only served to provide conservatives with an opportunity to enact policies that they have long been eyeing. But universities do not help their cause if they look the other way when threats to academic freedom come from the campus left. (Indeed, politicized interventions are not limited to conservative states: In recent years, liberal

states like California have also at times passed policies that intrude on academic freedom, as shown by the [required set of beliefs](#) for teaching in California community colleges.)

A vigorous defense of academic freedom against all forms of illiberalism is now occurring on private university campuses such as Cornell and Stanford. The leaders of public universities should consider joining this cause. The long-term benefits in public support might easily outweigh the short-term political costs. To the extent that free inquiry and norms of rigorous debate are institutionalized on campus, we can show the would-be definers of acceptable academic discourse that the responsibility for that definition lies neither on the right nor the left but where it properly should: with scholars.

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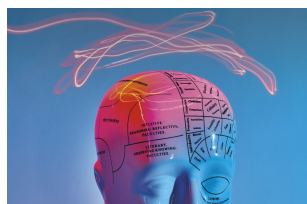
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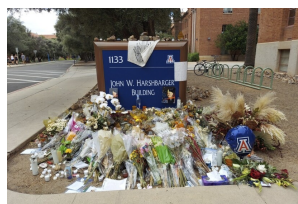
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