

# Frequently Asked Questions:

## Censorship in Tennessee's Higher Education

This document does not give legal advice, and you should not rely on it as legal advice. You should speak with a lawyer to get advice on your specific situation.

A nationwide attempt to censor honest discussion in America's public schools is underway and has begun impacting higher education. State legislatures – including Tennessee's – have passed legislation that censors students and employees of *public higher education institutions*. We oppose Tennessee's oppressive policies, which threaten free expression on campuses.

Read page 2 & 3 to learn what Public Chapter 818 & 268 do.

### What are “divisive concepts” as outlined in Public Chapter 818 & 268?

Both laws relate to a series of 16 “concepts” (TCA 49-7-1902) which may not be used in Tennessee's public higher education settings, including the following:

- An individual, by virtue of the individual's race or sex, is inherently privileged, racist, sexist, or oppressive, whether consciously or subconsciously;
- A meritocracy is inherently racist or sexist, or designed by a particular race or sex to oppress members of another race or sex;
- This state or the United States is fundamentally or irredeemably racist or sexist;
- The rule of law does not exist, but instead is a series of power relationships and struggles among racial or other groups;
- A concept that promotes division between, or resentment of, a race, sex, religion, creed, nonviolent political affiliation, social class, or class of people.

**The provisions of these laws are intentionally vague and mandate reporting of ill-defined “violations,” causing fear of future retribution from the Tennessee legislature chilling speech at public institutions.** Efforts to support diversity, equity and inclusion on college campuses, for example, are essential to creating environments that recognize differences and foster the success of ALL students, but may be minimized out of concern that they are “divisive concept,” even if in compliance with the law.

### Do Public Chapter 818 & 268 impact higher education courses and instruction?

No, unlike Tennessee's divisive concepts law in K-12, Public Chapter 818 and 268 do not explicitly impact courses or instruction in public institutions of higher education in Tennessee. As currently written, these laws affect other aspects of higher education settings, including training, hiring and admissions processes, and create additional institution reporting requirements.

### What resources are available to support institutions navigating higher education censorship efforts?

Check out [this academic freedom resource guide](#) for campus leaders by PEN America & American Council on Education.

**If any of these laws affect you, we want to hear from you.**

If you are aware of a school using these censorship laws to stop student speech, association, or other activities, please contact ACLU-TN by visiting: <https://action.aclu.org/legal-intake/aclu-tn-legal-intake-form>

**If you are a professor** and have been told to change curriculum or course instruction, been disciplined for something you've said or taught, or been told to remove a book from your class because of these laws, please contact ACLU-TN at: [www.aclu-tn.org/legal-assistance/](http://www.aclu-tn.org/legal-assistance/).

**If you are a student** and your school has prohibited you from discussion with other students, forming a club, reading or presenting on a certain book or topic, or has inhibited your speech any other way, please contact ACLU-TN at: [www.aclu-tn.org/legal-assistance/](http://www.aclu-tn.org/legal-assistance/).

# Public Chapter 818

In 2022, the Tennessee legislature passed **Public Chapter 818**. This law bans the same “divisive concepts” from **Public Chapter 493** except in public higher education settings as opposed to [Tennessee’s K-12 classrooms](#), and includes two additional concepts: “stereotyping” (assigning character traits or values based on race or sex) and “scapegoating” (assigning fault, blame or bias based on race or sex).

## What does the law do?

- Outlines a process for students or employees to report violations of **Public Chapter 818**.
  - A violation occurs when:
    - A student or employee received adverse treatment due to refusal to support one or more “divisive concepts.”
    - An institution required a student, job applicant, or candidate for promotion or tenure to endorse a specific ideology or political viewpoint.
  - Individuals who believe a violation has occurred can pursue “equitable or legal remedies” in court.
  - Institutions shall take “appropriate steps” to correct any violation and submit corrective action to the comptroller of the treasury.
- Bars public institutions of higher education from:
  - Denying access, charging money, and showing favoritism for student groups who want to use campus facilities routinely used by other students;
  - Requiring an applicant for employment or admission from submitting a personal diversity statement or affirming agreement with an institutional diversity statement;
  - Approving use of state funds for activities, meetings or travel for an organization if participation promotes a “divisive concept.”
- Shifts the focus of employees whose primary duties include diversity by requiring them to add and create programs, in addition to their normal duties, that “strengthen and increase intellectual diversity” — a concept that is both vague and undefined — among the institution’s students and faculty members.
- Requires public institutions of higher education to:
  - Submit a report about how the institution is complying with the law;
  - Notify students and employees about the law’s restrictions and definitions of “divisive concepts” on their website and in introductory materials;
  - Provide training to employees to ensure compliance with the law.



## Public Chapter 268

In 2023, the Tennessee legislature passed the “Tennessee Higher Education Freedom of Expression & Transparency Act.” This law expands the implications of **Public Chapter 818** by creating additional requirements and processes for public institutions of higher education related to divisive concepts.

### What does the law do?

- Public institutions of higher education may not compel students or employees to adopt “divisive concepts,” or condition hiring, tenure, promotion, or graduation on endorsement of a “specific ideology or political viewpoint.”
  - Failure to endorse “divisive concepts” cannot be used to penalize students or employees.
  - An individual who believes a violation has occurred “may pursue all equitable or legal remedies that may be available to the individual” in an appropriate court.
- Public institutions of higher education shall not:
  - Conduct mandatory training for students or employees if the training includes one or more “divisive concepts;”
    - “Training” includes = seminars, workshops, trainings, and orientations
  - Use training programs or training materials for students or employees if the program or material includes one or more “divisive concepts;”
  - Use state-appropriated funds to incentivize, beyond payment of regular salary or other compensation, a faculty member to incorporate one or more “divisive concepts” into academic curricula.
- Shifts the focus of employees whose primary duties include diversity by requiring them to add and create programs, in addition to their normal duties, that “strengthen and increase intellectual diversity” — a concept that is both vague and undefined — among the institution’s students and faculty members.
- Public institutions of higher education must conduct a biennial “campus climate” survey assessing diversity of thought and respondents’ comfort level in speaking freely.
- Each institution shall present survey results to the Tennessee state legislature upon completion and when their budgets are being presented to select committees.
- Law shall not be interpreted as:
  - Prohibiting non-discrimination training;
  - Infringing on First Amendment rights;
  - Infringing on academic freedom of faculty;
  - Prohibiting trainer from answering questions;
  - Prohibiting promotion of diversity, equity, and inclusion.