

**WRITTEN TESTIMONY of JOSEPH COHN**  
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Before the

**UNITED STATES HOUSE OF REPRESENTATIVES**  
**COMMITTEE ON**  
**EDUCATION AND THE WORKFORCE**

September 26, 2018 hearing on

Examining First Amendment Rights on Campus

September 26, 2018

Representative Virginia Foxx,  
Chairwoman  
Committee on Education and the Workforce  
2257 Rayburn House Office Building  
Washington, DC 20515

Representative Bobby Scott,  
Ranking Member  
Committee on Education and the Workforce

RE: September 26, 2018 hearing on Examining First Amendment Rights on Campus

Dear Chairwoman Foxx, Ranking Member Scott, and honorable members of the Committee:

The Foundation for Individual Rights in Education (FIRE; [thefire.org](http://thefire.org)) is a nonpartisan, nonprofit organization dedicated to defending student and faculty rights on America's college and university campuses. These rights include freedom of speech, freedom of assembly, legal equality, due process, religious liberty, and sanctity of conscience—the essential qualities of individual liberty and dignity.

FIRE thanks the Committee for dedicating the time to address free speech on campus. To supplement the oral testimony I provided at today's hearing, this written testimony overviews the state of written policies that regulate student and faculty speech and association. It evaluates what Congress and state legislatures have done to advance those rights, and finally concludes with a discussion of potential solutions to the challenges remaining.

## **INTRODUCTION**

It has been decades since there has been any question as to whether students at public institutions of higher education enjoy fully vested First Amendment rights on public college and university campuses. In 1957, in deciding *Sweezy v. New Hampshire*, the United States Supreme Court eloquently explained that

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. . . . Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will

stagnate and die.<sup>1</sup>

In the decades since *Sweezy*, the Supreme Court has been unwavering in its support for student and faculty First Amendment rights on public college and university campuses. For example, in *Healy v. James*, the Court observed:

The precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, “the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.”<sup>2</sup>

These principles were confirmed again by the Court in *Papish v. Board of Curators of the University of Missouri*, when it held that “the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”<sup>3</sup>

Despite the Court’s strong support for free expression, censorship of many types persists on American college campuses today. Students, faculty, and their invited guests are too often silenced by campaigns to disinvite controversial speakers, or subjected to efforts to intentionally shut down their events if their views are deemed offensive. Although such problems are persistent on college campuses, this testimony will focus on the written policies, or speech codes, that campus administrations use to silence expression.

## **THE PERSISTENT PROBLEM OF SPEECH CODES**

FIRE defines a “speech code” as any university regulation or policy prohibiting expression that would be protected by the First Amendment in society at large. Any policy—such as a harassment policy, a protest and demonstration policy, or an IT acceptable use policy—is a speech code if it prohibits protected speech.

FIRE reviews written policies at colleges and universities nationwide and assigns speech codes “red light,” “yellow light,” or “green light” ratings based on the extent to which the speech code restricts student expression.

A red light policy is one that both clearly and substantially restricts freedom of speech. A yellow light policy is a policy that could be interpreted to suppress protected speech or policies that, while clearly restricting freedom of speech, restrict only relatively narrow categories of speech. And finally, a green light rating is one that does not seriously threaten campus expression. FIRE assigns an overall rating to a school based on the lowest-rated policies, meaning that an institution with three green light policies, two yellow light policies, and two red light policies would receive an overall red light rating.

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<sup>1</sup> 354 U.S. 234, 250 (1957).

<sup>2</sup> 408 U.S. 169, 180 (1972).

<sup>3</sup> 410 U.S. 667 (1973).

Last year, FIRE surveyed 461 colleges and universities, both public and private, for our Spotlight on Speech Codes 2018 report, and found that nearly one third (32.3 percent) received a red light rating.<sup>4</sup> Of the 357 public institutions we rated, 26 percent received a red light rating, and 65.3 percent received a yellow light rating. Taken together, 91 percent of public institutions, which are bound by the First Amendment, maintain policies that restrict constitutionally protected expression.

### **A. FREE SPEECH ZONES**

Far too many universities—about one in ten, according to our most recent survey—have “free speech zones,” which limit rallies, demonstrations, distribution of literature, petition circulation, and speeches to small and/or out-of-the-way parts of campus.<sup>5</sup> Some schools even require students to inform university administrators in advance that they intend to engage in expressive activity, even going so far as to require university permission for such activities. For example, Massachusetts’ Bridgewater State University maintains a policy that states:

With the approval of the chief of police or designee at least 24 hours in advance, noncommercial pamphlets, handbills, circulars, newspapers, magazines, and other written materials may be distributed on a person-to-person basis in open areas on campus that are at least 10 feet from the entrances or exits of university buildings.<sup>6</sup>

Such prior restraints are generally inconsistent with the First Amendment. Universities may enact reasonable, narrowly tailored “time, place, and manner” restrictions that prevent demonstrations and speeches from unduly interfering with the educational process. They may not, however, regulate speakers and demonstrations on the basis of content or viewpoint, nor may they maintain regulations that burden substantially more speech than is necessary to prevent a material disruption to the functioning of the institution. Restricting student speech to tiny free speech zones diminishes the quality of debate and discussion on campus by preventing expression from reaching its target audience.

The threat to student and faculty speech presented by free speech zones is often exacerbated by burdensome permitting requirements. Students are sometimes required to obtain signatures from multiple officials, a process that can take days or weeks depending on the bureaucratic process, to even use a free speech zone. In contrast, much campus speech involves spontaneous responses to recent or still-unfolding circumstances. Requiring students to remain silent until a university administrator has completed paperwork may interfere with the demonstrator’s message by rendering it untimely and ineffective. Furthermore, these permitting requirements often become mechanisms for

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<sup>4</sup> FIRE, *Spotlight on Speech Codes 2018: The State of Free Speech on Our Nation’s Campuses*, 2017, available at <https://www.thefire.org/spotlight-on-speech-codes-2018>.

<sup>5</sup> *Id.*

<sup>6</sup> *Free Speech and Demonstration Policy*, BRIDGEWATER STATE UNIVERSITY, (Sept. 2017), [http://handbook.bridgew.edu/docs/BSU\\_Free\\_Speech\\_and\\_Demonstration\\_Policy\\_Revised\\_2017.pdf](http://handbook.bridgew.edu/docs/BSU_Free_Speech_and_Demonstration_Policy_Revised_2017.pdf).

viewpoint discrimination, as university administrators may waive or expedite requirements for non-controversial events but insist on observing the procedures for a more contentious event. In short, the permitting regulations that often accompany free speech zones, in addition to being unconstitutional prior restraints on their face, are also an invitation for administrative abuse.

For example, in 2015, Modesto Junior College in California settled a lawsuit by agreeing to eliminate its restrictive “free speech zone,” which was brought into the national spotlight after security officers and a campus official were video-recorded telling a student—who was also a military veteran—that he could not hand out copies of the U.S. Constitution because he was not standing in the campus’s tiny “free speech zone.”<sup>7</sup> Ironically, this incident took place on Constitution Day, the very day Congress has designated to celebrate our Constitutional rights.

Similarly, in 2017, students at Kellogg Community College in Michigan sued the institution after they were arrested while distributing pocket-sized versions of the Constitution on campus.<sup>8</sup> The students had been informed that they were violating the college’s solicitation policy because they had not received advance approval from the college to distribute literature to their fellow students.

In March 2015, student Nicolas Tomas filed a First Amendment lawsuit against California State Polytechnic University, Pomona, after a campus police officer stopped Tomas from handing out pro-animal rights flyers on a campus sidewalk. The officer told Tomas he would need to have a permit and wear a badge while distributing any written material. He was told he would also be confined to Cal Poly Pomona’s tiny free speech zone, which made up less than .01 percent of campus.

The continued maintenance of free speech zones is detrimental to all campus community members. Institutions risk losing lawsuits; students risk punishment for protected speech and learn the wrong lesson about their expressive rights, concluding that speaking their minds is not worth the punishment. Establishing that outdoor areas on public campuses are traditional public forums will ensure that our public universities continue to be a traditional space for debate aptly and memorably recognized by the Supreme Court as “peculiarly the ‘marketplace of ideas.’”<sup>9</sup>

## **B. OVERBROAD ANTI-HARASSMENT POLICIES**

Federal anti-discrimination law requires colleges and universities receiving federal funding—virtually all institutions, both public and private—to prohibit discriminatory harassment on campus. Simultaneously, public universities are required by the First

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<sup>7</sup> Tal Kopan, *Student stopped from handing out Constitutions on Constitution Day sues*, POLITICO (Oct. 10, 2013), <https://www.politico.com/blogs/under-the-radar/2013/10/student-stopped-from-handing-out-constitutions-on-constitution-day-sues-174792>.

<sup>8</sup> *Community College Agrees to Resolve Free Speech Lawsuit*, THE ASSOCIATED PRESS (Jan. 23, 2018), <https://www.usnews.com/news/best-states/michigan/articles/2018-01-23/community-college-agrees-to-resolve-free-speech-lawsuit>.

<sup>9</sup> *Healy*, 408 U.S. at 180 (internal citation omitted).

Amendment to honor students' freedom of speech. While private institutions of higher education are not bound by the First Amendment, those that explicitly promise free speech must honor that commitment.

Harassment, properly defined, is not protected by the First Amendment. The Supreme Court of the United States has set forth a clear definition of discriminatory harassment in the educational setting, a definition carefully tailored to fulfill public schools' twin obligations to respect free speech and prevent harassment. In *Davis v. Monroe County Board of Education*, 526 U.S. 629, 651 (1999), the Supreme Court defined student-on-student harassment in the educational context as targeted, unwelcome discriminatory conduct that is "so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities." Public colleges and universities are legally obligated to maintain policies and practices aimed at preventing this type of genuine harassment from happening on their campuses, while also honoring student and faculty First Amendment rights.

Unfortunately, institutions often inappropriately cite obligations under federal anti-discrimination laws to investigate and punish protected speech that is unequivocally not harassment. In April, 18 students, all members of Syracuse University's Theta Tau fraternity, were removed from classes after a private video of them participating in satirical skits mocking bigoted beliefs was leaked to the public. Astonishingly, the campus administrators did not recognize the satirical nature of the skits and instead summarily suspended the students, prohibiting them from continuing to attend their classes.<sup>10</sup> The campus cited its overbroad anti-harassment policy.

Further examples abound. Starting in April 2013, the University of Alaska Fairbanks' student newspaper was subjected to a 10-month investigation because a professor repeatedly claimed that two articles constituted sexual harassment prohibited by Title IX.<sup>11</sup> The two articles at issue were an April Fool's Day article about a "building in the shape of a vagina" and a factual report about the public "UAF Confessions" Facebook page.<sup>12</sup> Student journalists told FIRE that this baseless investigation chilled their reporting, even making the then-editor-in-chief too apprehensive to publish an in-depth informational article about the important issue of sexual assault on campus.<sup>13</sup>

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<sup>10</sup> Lauren del Valle, *Their fraternity is expelled. They're removed from classes. And another disturbing Syracuse frat video surfaces*, CNN (Apr. 23, 2018), <https://www.cnn.com/2018/04/23/us/new-video-syracuse-university-theta-thau-frat/index.html>.

<sup>11</sup> Sam Friedman, *Appeal seeks re-examination of sexual harassment complaints against UAF student newspaper*, FAIRBANK DAILY NEWS-MINER (Nov. 11, 2013), [http://www.newsminer.com/news/local\\_news/appeal-seeks-re-examination-of-sexual-harassment-complaints-against-uaf/article\\_82c9309e-4ab0-11e3-b059-0019bb30f31a.html](http://www.newsminer.com/news/local_news/appeal-seeks-re-examination-of-sexual-harassment-complaints-against-uaf/article_82c9309e-4ab0-11e3-b059-0019bb30f31a.html).

<sup>12</sup> Susan Kruth, *VIDEO: University of Alaska Fairbanks Newspaper Investigated for Nearly a Year for Protected Speech*, THE TORCH (Sept. 19, 2014), <https://www.thefire.org/video-university-alaska-fairbanks-newspaper-investigated-nearly-year-protected-speech>.

<sup>13</sup> Sarah Kuta, *CU-Boulder: Patti Adler could teach deviance course again if it passes review*, DAILY CAMERA (Dec. 17, 2013, 12:47 PM), [http://www.dailycamera.com/cu-news/ci\\_24738548/boulder-faculty-call-emergency-meeting-discuss-patti-adler](http://www.dailycamera.com/cu-news/ci_24738548/boulder-faculty-call-emergency-meeting-discuss-patti-adler). For more information about the Adler case, including FIRE's correspondence with the university, please visit FIRE's website at

And perhaps most egregiously, in 2007, Indiana University-Purdue University Indianapolis student-employee Keith John Sampson was found guilty of racial harassment for merely reading the book *Notre Dame vs. The Klan: How the Fighting Irish Defeated the Ku Klux Klan* silently to himself. Only after a successful intervention by FIRE did the university reverse its racial harassment finding against Sampson.<sup>14</sup> This case is instructive because it illustrates the fact that universities' broad understanding of sexual harassment informs their unconstitutional policies and practices with respect to racial and other types of harassment. Often, these policies and applications bear no resemblance to the legal principles governing discriminatory harassment in the educational setting and instead reveal a general, "catch-all" understanding of the term "harassment." The Sampson case demonstrates that when not properly cabined to the *Davis* standard, university harassment policies are routinely used to punish students and faculty, often with absurd, illiberal results.

Despite the Supreme Court's clear guidance, far too many universities continue to maintain harassment policies that fall far short of the Court's *Davis* standard and prohibit or threaten speech protected by the First Amendment—or, in the case of private universities, speech protected by the school's own promises. For example, at Penn State, sexual harassment is defined broadly as any "verbal or physical conduct of a sexual nature that is unwanted, inappropriate, or unconsented to."<sup>15</sup>

Similar policies have been consistently struck down on First Amendment grounds by federal courts for over two decades, yet unconstitutional definitions of harassment remain widespread.

Even when the *Davis* decision was rendered, the Court was concerned that if educational institutions' responsibility to address harassment was left undefined, schools would predictably cite this obligation as a rationale for censorship. The dissenting opinion in *Davis*, authored by Justice Anthony Kennedy, warned of "campus speech codes that, in the name of preventing a hostile educational environment, may infringe students' First Amendment rights."<sup>16</sup> Justice Kennedy noted that "a student's claim that the school should remedy a sexually hostile environment will conflict with the alleged harasser's claim that his speech, even if offensive, is protected by the First Amendment."<sup>17</sup> In response, Justice Sandra Day O'Connor's majority opinion in *Davis* was very careful to

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<http://www.thefire.org/cases/university-of-colorado-at-boulder-professor-threatened-with-harassment-investigation-forced-retirement-over-classroom-presentation> (last visited Sept. 20, 2018).

<sup>14</sup> *University says sorry to janitor over KKK book*, ASSOCIATED PRESS (July 15, 2008),

[http://www.nbcnews.com/id/25680655/ns/us\\_news-life/t/university-says-sorry-janitor-over-kkk-book](http://www.nbcnews.com/id/25680655/ns/us_news-life/t/university-says-sorry-janitor-over-kkk-book). For more information about the Sampson case, including FIRE's correspondence with the university, please visit FIRE's case page at <https://www.thefire.org/cases/indiana-university-purdue-university-indianapolis-student-employee-found-guilty-of-racial-harassment-for-reading-a-book> (last visited Sept. 20, 2018).

<sup>15</sup> *Pennsylvania State University Policy AD85: Sexual and/or Gender-Based Harassment and Misconduct (Including Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking and Related Inappropriate Conduct)*, available at <https://guru.psu.edu/policies/ad85.html>.

<sup>16</sup> *Davis*, 526 U.S. at 682 (Kennedy, J., dissenting).

<sup>17</sup> *Id.* at 683.

“acknowledge that school administrators shoulder substantial burdens as a result of legal constraints on their disciplinary authority.”<sup>18</sup> Speaking precisely to Kennedy’s concerns, O’Connor reassured the dissenting justices that it would be “entirely reasonable for a school to refrain from a form of disciplinary action that would expose it to constitutional or statutory claims.”<sup>19</sup> The majority’s careful, exacting standard was purposefully designed to impose what O’Connor characterized as “very real limitations” on liability, in part as recognition of the importance of protecting campus speech rights.<sup>20</sup> The *Davis* standard is stringent because the First Amendment requires it to be.

Overly broad and vague harassment and bullying policies benefit no one. Colleges risk lawsuits by chilling or punishing protected speech, while students learn the wrong lesson about their expressive rights, concluding that self-censorship is safer than risking discipline for speaking their mind. Thankfully, the fix is simple: Congress should require universities to implement anti-discriminatory harassment policies that precisely track the Supreme Court’s *Davis* standard. By simply incorporating a definition carefully crafted by the Supreme Court, such a requirement could end decades of confusion and abuse of harassment policies on campus and eliminate what has historically been the most common form of unconstitutional speech code. Precisely defining peer-on-peer harassment as *no more or less than* the requirements of *Davis* will ensure that institutions have the ability to meet both their legal and moral obligations to maintain campus environments free from discriminatory harassment while protecting free speech. These twin responsibilities need not be in tension.

## **FREEDOM OF ASSOCIATION**

Another startling trend FIRE is monitoring closely is universities, both public<sup>21</sup> and private,<sup>22</sup> curtailing the fundamental freedom of association, particularly as it pertains to a student’s right to join single-gender organizations, including sororities and fraternities, but occasionally also a capella groups and intramural sports teams.

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<sup>18</sup> *Id.* at 649.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 652.

<sup>21</sup> Ryne Weiss, *Cal Poly suspends all Greek organizations after controversies at two fraternities*, FIRE (April 26, 2018), <https://www.thefire.org/cal-poly-suspends-all-greek-organizations-after-controversies-at-two-fraternities>; Esther Honig and Abby Vesoulis, *Greek Life At Ohio State Shaken After Fraternity Suspensions*, WOSU PUBLIC MEDIA (Jan. 12, 2018), <http://radio.wosu.org/post/greek-life-ohio-state-shaken-after-fraternity-suspensions#stream/0>; Ryne Weiss, *Florida State University suspends free speech and freedom of assembly until further notice*, FIRE (Nov. 10, 2017), <https://www.thefire.org/florida-state-university-suspends-free-speech-and-freedom-of-assembly-until-further-notice>; Dan Corey, *University of Michigan Fraternity Council Cancels All Greek Life Activities*, NBC NEWS (Nov.10, 2017), <https://www.nbcnews.com/storyline/hazing-in-america/university-michigan-fraternity-council-cancels-all-greek-life-activities-n819746>; Ryne Weiss, *Louisiana State University suspends free speech and freedom of assembly “until further notice,”* FIRE (Sept. 27, 2017), <https://www.thefire.org/louisiana-state-university-suspends-free-speech-and-freedom-of-assembly-until-further-notice>.

<sup>22</sup> Ryne Weiss, *University of Rochester may subject single gender organizations to arbitrary waiver process*, FIRE (April 11, 2018), <https://www.thefire.org/university-of-rochester-may-subject-single-gender-organizations-to-arbitrary-waiver-process>; Allie Grasgreen, *Siblings, Not Brothers or Sisters*, IN IDE HIGHER ED (Nov. 30, 2012), <https://www.insidehighered.com/news/2012/11/30/trinity-college-fraternities-sororities-ordered-go-coed>.



Although the institution is private, and thus not required under the First Amendment to respect the free association rights of its students, nowhere has the fight against freedom of association been more protracted or more egregious than at Harvard University. It therefore serves as a helpful example, illustrative of this new threat.

In May of 2016, Harvard's then-president, Drew Faust, announced her intention to make membership in an off-campus single-gender organization a punishable offense.<sup>23</sup> The reason for this, Harvard claims, is that by nature of being single-gender, the organizations' membership practices are discriminatory, and by virtue of their money and status, the male Final Clubs—which are substantially similar to fraternities—exert undue influence on the social scene at Harvard. Harvard's edict: go co-ed, dissolve, or face consequences.

Because the organizations are independent, and receive no financial or administrative support from the university, Harvard's only leverage was to deny members leadership and academic opportunities. Under the policy, those who are found to be members of unregistered single-gender social organizations lose the ability to lead official student groups and sports teams, to apply for prestigious academic awards such as the Marshall and Rhodes scholarships, and to apply for postgraduate fellowships at Harvard.<sup>24</sup>

In other words, those who exercise their freedom of association in ways Harvard does not agree with will find themselves on a blacklist, deprived of equal access to certain opportunities and benefits available to other students.

Many students objected swiftly and vigorously to this blacklist policy. Hundreds of Harvard women marched in the "Hear Her, Harvard" protest.<sup>25</sup> The female students suspected that although the policy was clearly meant to address the male groups, it was they who would be disproportionately impacted by the policy. They turned out to be right. Interestingly, so far, most of the all men's groups remain, while every single women's group has chosen either to go co-ed, or to close.<sup>26</sup> Harvard, in its ostensible crusade for gender equality, now finds itself successful only at extinguishing groups for women.

The attempt to stamp out final clubs is eerily reminiscent of historical attempts by Harvard to eradicate student membership in formerly disfavored groups. In fact, this is at least the third time in its history Harvard has attempted to punish members of its community for their lawful associations. In 1920, Harvard convened a "secret court" to

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<sup>23</sup> Drew Gilpin Faust, *Letter on Single-Gender Social Organizations*, HARVARD UNIVERSITY (May 6, 2016), available at <https://www.harvard.edu/president/news/2016/letter-on-single-gender-social-organizations>.

<sup>24</sup> Katie O'Dair, *Letter from Dean O'Dair Regarding Social Organization Recognition Process*, HARVARD UNIVERSITY (2018), available at <https://osl.fas.harvard.edu/deanodairpolicyletter>.

<sup>25</sup> C. Ramsey Fahs, *Hundreds of Women Protest Harvard Sanctions*, HARVARD CRIMSON (May 10, 2016), <https://www.thecrimson.com/article/2016/5/10/women-oppose-sanctions/>.

<sup>26</sup> Caroline S. Engelmayer and Michael E. Xie, *Harvard's Last Sorority Disappears as Alpha Phi Buckles to College Pressure, Goes Co-Ed*, HARVARD CRIMSON (Aug. 19, 2018), <https://www.thecrimson.com/article/2018/8/19/last-sorority-alpha-phi-co-ed/>.

investigate and expel gay men and their close associates from the campus community.<sup>27</sup> In the 1950s, Harvard's administration targeted and retaliated against faculty and graduate students accused of communist associations.<sup>28</sup>

The passage of time has proven those efforts to invade the personal, extracurricular lives of students unjust and antithetical to the liberal tradition. Time will likely clarify that it is wrong still.

Although the example of Harvard illustrates the new threat to freedom of association, similar attempts to crack down on or burden single-gender organizations have taken place on public campuses. At California Polytechnic State University, pictures of members of two fraternities were leaked that community members found to be offensive, leading to the suspension of all activities in the Greek system. College administrations at Louisiana State University and Florida State University suspended the free assembly rights of members of all Greek students after alcohol-related deaths at individual fraternities.

At a public institution of higher education, it is indisputable that participation in a single-gender club, sorority, or a cappella group on one's own time is a protected exercise of one's constitutional right to choose one's associations. At a public institution, it would be unconstitutional for an administration to close opportunities and restrict access to educational benefits to a student on account of their decision to join a constitutionally protected association.

Congress should expressly prohibit public institutions from restricting access to opportunities and benefits it offers to only those students who reject private associations the institution disfavors. Congress should also consider extending this protection to students enrolled at private institutions that accept federal funds. FIRE has attached model language here for your consideration. (See Appendix A.)

## **LEGISLATIVE RESPONSES**

A great deal of the work to stop campus censorship will necessarily have to occur in the courts and on the campuses themselves. Indeed, in 2014, FIRE launched its Stand Up For Speech Litigation Project to bolster the core of our efforts, which focus on direct advocacy at the collegiate level to reflect that reality. Lawmakers, however, are essential to solving this problem too. Legislators and government officials have used a variety of strategies to promote free speech on college campus. This section will discuss those efforts.

### **A. SHINING LIGHT ON THE PROBLEM**

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<sup>27</sup> Ryne Weiss, *Harvard's Troubled History with Free Association: Part 1*, FIRE (Feb. 6, 2017), <https://www.thefire.org/harvards-troubled-history-with-free-association-part-1/>.

<sup>28</sup> Ryne Weiss, *Harvard's Troubled History with Free Association: Part 2*, FIRE (Feb. 7, 2017), <https://www.thefire.org/harvards-troubled-history-with-free-association-part-2/>.

Leaders on both sides of the aisle have used their voices to speak out against campus censorship. In an interview with ABC News, former President Barack Obama gave a full-throated rebuttal to those on campus who would use censorship to silence their political adversaries:

[We] have these values of free speech. And it's not free speech in the abstract. The purpose of that kind of free speech is to make sure that we are forced to use argument and reason and words in making our democracy work. And, you know, you don't have to be fearful of somebody spouting bad ideas. Just out-argue them. Beat 'em. Make the case as to why they're wrong. Win over adherents. That's how things work in a democracy."<sup>29</sup>

On Constitution Day earlier this month, the Department of Justice and the Education Department each held events focusing on free speech on campus. At both events, the respective secretaries of those departments emphasized the critical importance of safeguarding free speech on college campuses for students across the political spectrum.

Senators Mitch McConnell and Bernie Sanders both publicly condemned campus censorship.<sup>30</sup> Representative Eleanor Holmes Norton made campus free speech a central theme of her 2017 commencement address to Georgetown University Law Center graduates, when she argued:

The law has been fundamental to change in our country, especially the First Amendment. Yet there is recent disquieting evidence on college campuses of intolerance of speech at odds with the progressive views members of your generation and I share.<sup>31</sup>

Speaking during an Oversight Committee joint subcommittee hearing on July 27, 2017, Chairwoman Foxx reflected on the dangers of campus censorship too:

As we all agree, free speech is fundamental to a free society. It's astonishing to me that so many young adults today are willing to throw those constitutionally protected rights out the window just because they are on a college campus and may disagree with the content of what is being said.<sup>32</sup>

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<sup>29</sup> Press Release, FIRE, President Obama: Student Protests Should Embrace Free Speech (Nov. 16, 2015), available at <https://www.thefire.org/president-obama-student-protests-should-embrace-free-speech/>.

<sup>30</sup> Tyler Coward, *Senators McConnell, Sanders talk about protecting free speech on campus; McConnell mentions FIRE on Senate floor*, FIRE (June 26, 2017), <https://www.thefire.org/senators-mcconnell-sanders-talk-about-protecting-free-speech-on-campus-mcconnell-mentions-fire-on-senate-floor/>.

<sup>31</sup> Joe Cohn, *Rep. Holmes Norton latest policymaker to highlight importance of campus free speech*, FIRE (May 23, 2018), <https://www.thefire.org/rep-holmes-norton-latest-policymaker-to-highlight-importance-of-campus-free-speech/>.

<sup>32</sup> Joe Cohn, *Recap: House committee holds campus free speech hearing, raises FIRE issues*, FIRE (July 31, 2017), <https://www.thefire.org/recap-house-committee-holds-campus-free-speech-hearing-raises-fire-issues/>.

Congressional hearings like this one play an important role too, not only in educating the members of these committees on the threats to free speech that are persistent on our campuses, but also as an opportunity to shine light on the issue and explore solutions.

As Justice Louis Brandeis eloquently stated, “Sunlight is said to be the best of disinfectants.” With congressional hearings like this one, institutions that are censoring their students and faculty have been put on notice that Congress is watching, and that it does not like what it sees.

## **B. OVERSIGHT**

Shortly after the House Judiciary Committee’s Subcommittee on the Constitution and Civil Justice held a June 2, 2015 hearing on “First Amendment Protections on Public College and University Campuses,” Judiciary Committee Chairman Bob Goodlatte applied additional pressure on the 161 public institutions that at that time maintained red light speech codes. (See Appendix B.)

In his letter, Chairman Goodlatte wrote, “In FIRE’s Spotlight on Speech Codes 2015, your institution received a ‘red light’ rating. . . . We write to ask what steps your institution plans to take to promote free and open expression on its campus(es), including any steps toward bringing your speech policies in accordance with the First Amendment.” This letter, and its follow up to the 33 public institutions that didn’t respond to the original, were key factors in a dramatic decrease in red light policies. (See Appendix C). In the year that followed the letter, the percentage of public institutions maintaining red light policies dropped from 45.8% to 33.9%.<sup>33</sup>

## **C. LEGISLATION**

Since 2013, 11 states have passed legislation to promote free speech on campus. Six states, including Virginia, Missouri, Arizona, Colorado, Utah, and most recently Florida have passed bills aimed exclusively at prohibiting public colleges and universities from restricting students’ expressive activities with free speech zones. (See Appendix D.). Each of those bills enjoyed broad bipartisan support. In 2017, the Kentucky legislature passed a religious liberty bill that also included a section dedicated to prohibiting free speech zones. (See Appendix E.)

Arizona, Georgia, Louisiana, and North Carolina have all recently passed bills on campus free speech as well. (See Appendix F.) Each of those bills address free speech zones and establish broad principles that should guide institution’s commitments to free speech; however, FIRE has concerns about the bills passed in Arizona, Georgia, and Louisiana over their departure from established First Amendment jurisprudence.<sup>34</sup>

---

<sup>33</sup> FIRE, *Spotlight on Speech Codes 2017, 2016*, available at <https://www.thefire.org/spotlight-on-speech-codes-2017/>.

<sup>34</sup> Tyler Coward, *Problematic Arizona campus free speech bill would allow colleges to restrict students’ rights*, FIRE (April 19, 2018), <https://www.thefire.org/problematic-arizona-campus-free-speech-bill-would->

Tennessee’s Campus Free Speech Protection Act, the most comprehensive bill passed to date, prohibits the use of free speech zones; includes language affirming public institutions’ obligation to protect students from harassment by their peers in a manner that is consistent with their obligations under the First Amendment by adopting the definition of student-on-student harassment set forth by the Supreme Court in *Davis*; bars institutions from rescinding invitations to speakers invited by students or faculty; prohibits viewpoint discrimination in the allocation of student fees to student organizations; and protects faculty from being punished for speech in the classroom, unless the speech is both “not reasonably germane to the subject matter of the class as broadly construed, and comprises a substantial portion of classroom instruction.” (See Appendix G.) The bill received nearly unanimous support in both legislative chambers.

In May of 2017, Representative Phil Roe introduced a bipartisan resolution (H.Res. 307) that states, “free speech zones and restrictive speech codes are inherently at odds with the freedom of speech guaranteed by the First Amendment of the Constitution.” (See Appendix H.) The resolution now has 43 cosponsors.

In February, Senator Orrin Hatch introduced the Free Right to Expression in Education Act (the FREE Act, S. 2394), which closely resembles the Campus Free Expression Act passed in Utah to ban the use of free speech zones to stifle student speech. (See Appendix I.) FIRE strongly supports the FREE Act and urges Congress to pass it into law.

## **SOLUTIONS**

There is no silver bullet that will resolve every threat to free speech on campus. Congress can, however, take steps that will dramatically reduce such cases. The two most impactful steps Congress could take would be to pass Senator Hatch’s FREE Act and to pass legislation codifying the Supreme Court’s definition of student-on-student harassment set forth in *Davis v. Monroe County Board of Education*. This combined effort would eliminate a vast majority of speech codes on college campuses today.

To ensure that campuses respect the freedom of association, which is essential to people’s ability to collectively organize around shared goals, Congress should pass legislation that prohibits educational institutions from sanctioning students or discriminating against them on account of their decisions to be part of a constitutionally protected association.

## **CONCLUSION**

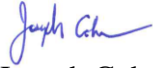
FIRE’s recommendations are intended to assist Congress in defending and promoting students’ free speech rights at our nation’s public institutions of higher education so that they can truly fulfill their promise as our most vital marketplaces of ideas.

---

allow-colleges-to-restrict-students-rights/; Tyler Coward, *Louisiana governor signs campus free speech bill into law; law needs technical improvement*, FIRE (June 6, 2018), <https://www.thefire.org/louisiana-governor-signs-campus-free-speech-bill-into-law-law-needs-technical-improvement/>.

Thank you for your continued interest in supporting free speech at America's public institutions of higher education and for your attention to FIRE's proposals. If you are interested in discussing our suggestions further, or have any questions regarding free speech on campus, please feel free to contact me at (215) 717-3473 or at [joe@thefire.org](mailto:joe@thefire.org).

Respectfully submitted,

A handwritten signature in blue ink that reads "Joseph Cohn".

Joseph Cohn  
Legislative and Policy Director  
Foundation for Individual Rights in Education

w/ appendices

# Appendix A

**HEA Freedom of Association Amendment**

Section 112 (20 U.S.C. 1011a) is amended—

(1) in subsection (a) by inserting after paragraph (x) the following:

“(2) PROTECTION OF RIGHTS - No student attending an institution of higher education that receives funds under this Act shall, on the basis of a constitutionally protected association, be excluded from participation in, be denied the benefits of, or be subjected to discrimination or official sanction under any education program, activity, or division of the institution directly or indirectly receiving financial assistance under this Act, whether or not such program, activity, or division is sponsored or officially sanctioned by the institution.

(A) Nothing in this section shall be construed to prevent an institution of higher education from taking appropriate and effective action to prevent violations of State liquor laws, to discourage binge drinking and other alcohol abuse, to protect students from sexual harassment including sexual assault, to prevent hazing, or to regulate unsanitary or unsafe conditions in any university-owned or leased student residence.

(B) The term “protected association” means the joining, assembling, and residing with others that is protected under the First and Fourteenth Amendments to the Constitution, or that would be protected if the institution of higher education involved were subject to those amendments.

(C) The term “official sanction” means expulsion, suspension, probation, reprimand, or any other disciplinary, coercive, or adverse action taken by an institution of higher education, administrative unit of the institution, agent of the institution, or student government tasked with distributing mandatory student activity fees. It includes written warning made by an official of an institution of higher education acting in the official capacity of the official when that warning includes a threat of further sanction.

(D) This section shall not apply to any institution of higher education which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of that organization.



## Appendix B



House of Representatives  
**Judiciary Committee**

Chairman Bob Goodlatte

PRESS RELEASE (PRESS-RELEASES) | AUGUST 14, 2015

# Chairman Goodlatte Urges Public Colleges and Universities to Update Free Speech Codes

**Washington, D.C.**— House Judiciary Committee Chairman Bob Goodlatte (R-Va.) today sent a letter to 160 public colleges and universities urging the institutions to update their free speech codes in order to foster freedoms under the First Amendment.

The letter comes after the Foundation for Individual Rights in Education (FIRE) released a report (<https://www.thefire.org/spotlight-speech-codes-2015/>) detailing a list of public colleges and universities that received a “red light” rating. FIRE classifies a “red light” institution as “one that has at least one policy that both clearly and substantially restricts freedom of speech.”

Chairman Goodlatte requested that the institutions respond to the letter with “what steps your institution plans to take to promote free and open expression on its campus(es), including any steps toward bringing your speech policies in accordance

with the First Amendment.”

Recently, the House Judiciary Committee’s Subcommittee on the Constitution and Civil Justice held a hearing (<http://www.judiciary.house.gov/index.cfm/hearings?ID=C256F82E-1F4E-4F60-B702-78A58B81E4F8>) examining First Amendment protections for students on public college and university campuses.

Below is the text of the letter. A copy of the signed letter can be found here ([https://judiciary.house.gov/index.cfm?a=Files.Serve&File\\_id=794F4958-03AE-4DB3-BD63-85591E5C3275](https://judiciary.house.gov/index.cfm?a=Files.Serve&File_id=794F4958-03AE-4DB3-BD63-85591E5C3275)).

Dear President [NAME],

The First Amendment prohibits the government, including governmental public colleges and universities, from infringing on free speech and the free exercise of religion. The First Amendment states: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble ...” Yet despite these constitutional protections, speech-restrictive policies in our nation’s public colleges and universities remain.

This development was the subject of a recent hearing of the House Committee on the Judiciary’s Subcommittee on the Constitution and Civil Justice titled “First Amendment Protections on Public College and University Campuses.” At that hearing, Greg Lukianoff, President and CEO of the Foundation for Individual Rights in Education (“FIRE”), testified that “[s]peech codes—policies prohibiting student and faculty speech that would, outside the bounds of campus, be protected by the First Amendment—have repeatedly been struck down by federal and state courts. Yet they persist, even in the very jurisdictions where they have been ruled unconstitutional. The majority of American colleges and universities maintain speech codes.”

In FIRE’s Spotlight on Speech Codes 2015, your institution received a “red light” rating. According to FIRE, a “red light” institution “is one that has at least one policy that both clearly and substantially restricts freedom of speech.” They define a “clear” restriction as a policy that on its face is a threat to free speech and “does not depend on how the policy is applied.” They define a “substantial” restriction as a policy that is “broadly

applicable” to speech on campus. We write to ask what steps your institution plans to take to promote free and open expression on its campus(es), including any steps toward bringing your speech policies in accordance with the First Amendment.

###

2138 Rayburn House Office Bldg  
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202.225.3951

Minority Site (<https://democrats-judiciary.house.gov/>)

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ONE HUNDRED FOURTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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HAKEEM S. JEFFRIES, New York  
DAVID CICILLINE, Rhode Island  
SCOTT PETERS, California

August 14, 2015

Dear

The First Amendment prohibits the government, including governmental public colleges and universities, from infringing on free speech and the free exercise of religion. The First Amendment states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble ..." Yet despite these constitutional protections, speech-restrictive policies in our nation's public colleges and universities remain.

This development was the subject of a recent hearing of the House Committee on the Judiciary's Subcommittee on the Constitution and Civil Justice titled "First Amendment Protections on Public College and University Campuses." At that hearing, Greg Lukianoff, President and CEO of the Foundation for Individual Rights in Education ("FIRE"), testified that "[s]peech codes—policies prohibiting student and faculty speech that would, outside the bounds of campus, be protected by the First Amendment—have repeatedly been struck down by federal and state courts. Yet they persist, even in the very jurisdictions where they have been ruled unconstitutional. The majority of American colleges and universities maintain speech codes."

In FIRE's Spotlight on Speech Codes 2015, your institution received a "red light" rating. According to FIRE, a "red light" institution "is one that has at least one policy that both clearly and substantially restricts freedom of speech." They define a "clear" restriction as a policy that on its face is a threat to free speech and "does not depend on how the policy is applied." They define a "substantial" restriction as a policy that is "broadly applicable" to speech on campus. We write to ask what steps your institution plans to take to promote free and open expression on its campus(es), including any steps toward bringing your speech policies in accordance with the First Amendment.

Thank you in advance for your prompt attention to this request. Please have your staff respond to John Coleman at (202) 225-2825 no later than August 28, 2015.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Goodlatte". The signature is written in a cursive style with a large initial "B" and a long horizontal stroke at the end.

Bob Goodlatte  
Chairman  
House Committee on the Judiciary

# Appendix C

BOB GOODLATTE, Virginia  
CHAIRMAN

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RAUL R. LABRADOR, Idaho  
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ONE HUNDRED FOURTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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JUDY CHU, California  
TED DEUTCH, Florida  
LUIS V. GUTIERREZ, Illinois  
KAREN BASS, California  
CEDRIC L. RICHMOND, Louisiana  
SUZAN K. DELBENE, Washington  
HAKEEM S. JEFFRIES, New York  
DAVID CICILLINI, Rhode Island  
SCOTT PEIERS, California

February 11, 2016

Dear Presidents, Chancellors, and Staff,

On August 14, 2015, your institution received a letter from the Committee regarding your school's "red light" rating from of the Foundation for Individual Rights in Education ("FIRE"). The Committee requested a response to the letter by August 28, 2015.

According to FIRE, a "red light" institution "is one that has at least one policy that both clearly and substantially restricts freedom of speech." FIRE defines a "clear" restriction as a policy that on its face is a threat to free speech and "does not depend on how the policy is applied." FIRE defines a "substantial" restriction as a policy that is "broadly applicable" to speech on campus.

Since August, the Committee has received responses from more than 100 public colleges and universities. Your institution is among the small number of institutions that has not yet responded. The Committee again requests a response on this important matter.

Please have your staff respond no later than February 25, 2016.

Sincerely,



Bob Goodlatte  
Chairman  
House Committee on the Judiciary



## Appendix D

2014 SESSION  
14100092D

**HOUSE BILL NO. 258**

Offered January 8, 2014

Prefiled December 30, 2013

A BILL to amend the Code of Virginia by adding in Chapter 1 of Title 23 a section numbered 23-9.2:13, relating to restrictions on student speech by public institutions of higher education.

-----  
Patrons-- Lingamfelter, LaRock and Villanueva

-----  
Referred to Committee on Education  
-----

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 1 of Title 23 a section numbered **23-9.2:13** as follows:

§ 23-9.2:13. Restrictions on student speech; limitations.

Public institutions of higher education shall not impose restrictions on the time, place, and manner of student speech that (i) occurs in the outdoor areas of the institution's campus and (ii) is protected by the First Amendment to the United States Constitution unless the restrictions (a) are reasonable, (b) are justified without reference to the content of the regulated speech, (c) are narrowly tailored to serve a significant governmental interest, and (d) leave open ample alternative channels for communication of the information.

FIRST REGULAR SESSION  
[ P E R F E C T E D ]  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 93**  
98TH GENERAL ASSEMBLY

---

Reported from the Committee on Education, March 17, 2015, with recommendation that the Senate Committee Substitute do pass.  
Senate Committee Substitute for Senate Bill No. 93, adopted March 31, 2015.  
Taken up for Perfection March 31, 2015. Bill declared Perfected and Ordered Printed.

ADRIANE D. CROUSE, Secretary.

0582S.03P

---

**AN ACT**

To amend chapter 173, RSMo, by adding thereto one new section relating to free speech at public institutions of higher education.

---

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 173, RSMo, is amended by adding thereto one new  
2 section, to be known as section 173.1550, to read as follows:

173.1550. 1. The provisions of this section shall be known and  
2 cited as the "Campus Free Expression Act". Expressive activities  
3 protected under the provisions of this section include, but are not  
4 limited to, all forms of peaceful assembly, protests, speeches,  
5 distribution of literature, carrying signs, and circulating petitions.

6 2. The outdoor areas of campuses of public institutions of higher  
7 education in this state shall be deemed traditional public  
8 forums. Public institutions of higher education may maintain and  
9 enforce reasonable time, place, and manner restrictions in service of a  
10 significant institutional interest only when such restrictions employ  
11 clear, published, content, and viewpoint-neutral criteria, and provide  
12 for ample alternative means of expression. Any such restrictions shall  
13 allow for members of the university community to spontaneously and  
14 contemporaneously assemble.

15 3. Any person who wishes to engage in noncommercial expressive  
16 activity on campus shall be permitted to do so freely, as long as the  
17 person's conduct is not unlawful and does not materially and  
18 substantially disrupt the functioning of the institution subject to the

19 requirements of subsection 2 of this section.

20           4. Nothing in this section shall be interpreted as limiting the  
21 right of student expression elsewhere on campus.

22           5. The following persons may bring an action in a court of  
23 competent jurisdiction to enjoin any violation of this section or to  
24 recover compensatory damages, reasonable court costs, and attorney  
25 fees:

26           (1) The attorney general;

27           (2) Persons whose expressive rights were violated through the  
28 violation of this section.

29           6. In an action brought under subsection 5 of this section, if the  
30 court finds a violation, the court shall award the aggrieved persons no  
31 less than five hundred dollars for the initial violation, plus fifty dollars  
32 for each day the violation remains ongoing.

33           7. A person shall be required to bring suit for violation of this  
34 section not later than one year after the day the cause of action  
35 accrues. For purposes of calculating the one-year limitation period,  
36 each day that the violation persists, and each day that a policy in  
37 violation of this section remains in effect, shall constitute a new  
38 violation of this section and, therefore, a new day that the cause of  
39 action has accrued.

✓

State of Arizona  
House of Representatives  
Fifty-second Legislature  
Second Regular Session  
2016

# HOUSE BILL 2615

AN ACT

AMENDING SECTIONS 15-1861 AND 15-1864, ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 14, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-1865; RELATING TO POSTSECONDARY EDUCATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-1861, Arizona Revised Statutes, is amended to  
3 read:

4 15-1861. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Community college" has the same meaning prescribed in section  
7 15-1401.

8 2. "Public forum" includes BOTH A TRADITIONAL PUBLIC FORUM, WHICH IS  
9 any open, outdoor area on the campus of a university or community college,  
10 and A DESIGNATED PUBLIC FORUM, WHICH IS any ~~facilities, buildings~~ FACILITY,  
11 BUILDING or ~~parts~~ PART of ~~buildings~~ A BUILDING that the university or  
12 community college has opened to students or student organizations for  
13 expression.

14 3. "University" means a university under the jurisdiction of the  
15 Arizona board of regents.

16 Sec. 2. Section 15-1864, Arizona Revised Statutes, is amended to read:

17 15-1864. Students' right to speak in a public forum; court  
18 actions

19 A. A university or community college shall not restrict a student's  
20 right to speak, including verbal speech, holding a sign or distributing  
21 fliers or other materials, in a public forum.

22 ~~B. A university or community college may restrict a student's speech~~  
23 ~~in a public forum only if it demonstrates that application of the burden to~~  
24 ~~the student is both:~~

25 ~~1. In furtherance of a compelling governmental interest.~~

26 ~~2. The least restrictive means of furthering that compelling~~  
27 ~~governmental interest.~~

28 B. A UNIVERSITY OR COMMUNITY COLLEGE SHALL NOT IMPOSE RESTRICTIONS ON  
29 THE TIME, PLACE AND MANNER OF STUDENT SPEECH THAT:

30 1. OCCURS IN A PUBLIC FORUM.

31 2. IS PROTECTED BY THE FIRST AMENDMENT TO THE UNITED STATES  
32 CONSTITUTION UNLESS THE RESTRICTIONS:

33 (a) ARE REASONABLE.

34 (b) ARE JUSTIFIED WITHOUT REFERENCE TO THE CONTENT OF THE REGULATED  
35 SPEECH.

36 (c) ARE NARROWLY TAILORED TO SERVE A SIGNIFICANT GOVERNMENTAL  
37 INTEREST.

38 (d) LEAVE OPEN AMPLE ALTERNATIVE CHANNELS FOR COMMUNICATION OF THE  
39 INFORMATION.

40 C. THE FOLLOWING PERSONS MAY BRING AN ACTION IN A COURT OF COMPETENT  
41 JURISDICTION TO ENJOIN ANY VIOLATION OF THIS SECTION OR TO RECOVER REASONABLE  
42 COURT COSTS AND REASONABLE ATTORNEY FEES:

43 1. THE ATTORNEY GENERAL.

44 2. A STUDENT WHOSE EXPRESSIVE RIGHTS WERE VIOLATED BY A VIOLATION OF  
45 THIS SECTION.

1 D. IN AN ACTION BROUGHT UNDER SUBSECTION C OF THIS SECTION, IF THE  
2 COURT FINDS THAT A VIOLATION OF THIS SECTION OCCURRED, THE COURT SHALL AWARD  
3 THE AGGRIEVED PERSON INJUNCTIVE RELIEF FOR THE VIOLATION AND SHALL AWARD  
4 REASONABLE COURT COSTS AND REASONABLE ATTORNEY FEES.

5 E. A PERSON SHALL BRING AN ACTION FOR A VIOLATION OF THIS SECTION  
6 WITHIN ONE YEAR AFTER THE DATE THE CAUSE OF ACTION ACCRUES. FOR THE PURPOSE  
7 OF CALCULATING THE ONE-YEAR LIMITATION PERIOD, EACH DAY THAT THE VIOLATION  
8 PERSISTS OR EACH DAY THAT A POLICY IN VIOLATION OF THIS SECTION REMAINS IN  
9 EFFECT CONSTITUTES A NEW VIOLATION OF THIS SECTION AND SHALL BE CONSIDERED A  
10 DAY THAT THE CAUSE OF ACTION HAS ACCRUED.

11 Sec. 3. Title 15, chapter 14, article 6, Arizona Revised Statutes, is  
12 amended by adding section 15-1865, to read:

13 15-1865. Free speech; prohibition

14 SUBJECT TO REASONABLE TIME, PLACE AND MANNER RESTRICTIONS, A COMMUNITY  
15 COLLEGE OR UNIVERSITY MAY NOT LIMIT ANY AREA ON CAMPUS WHERE FREE SPEECH MAY  
16 BE EXERCISED.

State of Arizona  
House of Representatives  
Fifty-second Legislature  
Second Regular Session  
2016

# HOUSE BILL 2548

AN ACT

AMENDING SECTIONS 13-2906, 15-1861 AND 15-1864, ARIZONA REVISED STATUTES;  
RELATING TO PUBLIC ASSEMBLY.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 13-2906, Arizona Revised Statutes, is amended to  
3 read:  
4 13-2906. Obstructing a highway or other public thoroughfare;  
5 classification; definition  
6 A. A person commits obstructing a highway or other public thoroughfare  
7 if the person, alone or with other persons, does ~~either~~ ANY of the following:  
8 1. Having no legal privilege to do so, recklessly interferes with the  
9 passage of any highway or public thoroughfare by creating an unreasonable  
10 inconvenience or hazard.  
11 2. Intentionally activates a pedestrian signal on a highway or public  
12 thoroughfare if the person's reason for activating the signal is not to cross  
13 the highway or public thoroughfare but to do both of the following:  
14 (a) Stop the passage of traffic on the highway or public thoroughfare.  
15 (b) Solicit a driver for a donation or business.  
16 3. AFTER RECEIVING A VERBAL WARNING TO DESIST, INTENTIONALLY  
17 INTERFERES WITH PASSAGE ON A HIGHWAY OR OTHER PUBLIC THOROUGHFARE OR ENTRANCE  
18 INTO A PUBLIC FORUM THAT RESULTS IN PREVENTING OTHER PERSONS FROM GAINING  
19 ACCESS TO A GOVERNMENTAL MEETING, A GOVERNMENTAL HEARING OR A POLITICAL  
20 CAMPAIGN EVENT.  
21 B. Obstructing a highway or other public thoroughfare UNDER SUBSECTION  
22 A, PARAGRAPH 3 OF THIS SECTION is a class 1 MISDEMEANOR. OBSTRUCTING A  
23 HIGHWAY OR OTHER PUBLIC THOROUGHFARE UNDER SUBSECTION A, PARAGRAPH 1 OR 2 OF  
24 THIS SECTION IS A CLASS 3 misdemeanor.  
25 C. FOR THE PURPOSES OF THIS SECTION, "PUBLIC FORUM" HAS THE SAME  
26 MEANING PRESCRIBED IN SECTION 15-1861.  
27 Sec. 2. Section 15-1861, Arizona Revised Statutes, is amended to read:  
28 15-1861. Definitions  
29 In this article, unless the context otherwise requires:  
30 1. "Community college" has the same meaning prescribed in section  
31 15-1401.  
32 2. "Public forum" includes BOTH A TRADITIONAL PUBLIC FORUM, WHICH IS  
33 any open, outdoor area on the campus of a university or community college,  
34 and A DESIGNATED PUBLIC FORUM, WHICH IS any ~~facilities, buildings~~ FACILITY,  
35 BUILDING or ~~parts~~ PART of ~~buildings~~ A BUILDING that the university or  
36 community college has opened to students or student organizations for  
37 expression.  
38 3. "University" means a university under the jurisdiction of the  
39 Arizona board of regents.  
40 Sec. 3. Section 15-1864, Arizona Revised Statutes, is amended to read:  
41 15-1864. Students' right to speak in a public forum; court  
42 actions  
43 A. A university or community college shall not restrict a student's  
44 right to speak, including verbal speech, holding a sign or distributing  
45 fliers or other materials, in a public forum.

1           B. A university or community college may restrict a student's speech  
2 in a public forum only if it demonstrates that application of the burden to  
3 the student is both:

- 4           1. In furtherance of a compelling governmental interest.  
5           2. The least restrictive means of furthering that compelling  
6 governmental interest.

7           C. THE FOLLOWING PERSONS MAY BRING AN ACTION IN A COURT OF COMPETENT  
8 JURISDICTION TO ENJOIN ANY VIOLATION OF THIS SECTION OR TO RECOVER REASONABLE  
9 COURT COSTS AND REASONABLE ATTORNEY FEES:

- 10           1. THE ATTORNEY GENERAL.  
11           2. A STUDENT WHOSE EXPRESSIVE RIGHTS WERE VIOLATED BY A VIOLATION OF  
12 THIS SECTION.

13           D. IN AN ACTION BROUGHT UNDER SUBSECTION C OF THIS SECTION, IF THE  
14 COURT FINDS THAT A VIOLATION OF THIS SECTION OCCURRED, THE COURT SHALL AWARD  
15 THE AGGRIEVED PERSON INJUNCTIVE RELIEF FOR THE VIOLATION AND SHALL AWARD  
16 REASONABLE COURT COSTS AND REASONABLE ATTORNEY FEES.

17           E. A PERSON SHALL BRING AN ACTION FOR A VIOLATION OF THIS SECTION  
18 WITHIN ONE YEAR AFTER THE DATE THE CAUSE OF ACTION ACCRUES. FOR THE PURPOSE  
19 OF CALCULATING THE ONE-YEAR LIMITATION PERIOD, EACH DAY THAT THE VIOLATION  
20 PERSISTS OR EACH DAY THAT A POLICY IN VIOLATION OF THIS SECTION REMAINS IN  
21 EFFECT CONSTITUTES A NEW VIOLATION OF THIS SECTION AND SHALL BE CONSIDERED A  
22 DAY THAT THE CAUSE OF ACTION HAS ACCRUED.

# An Act

SENATE BILL 17-062

BY SENATOR(S) Neville T., Baumgardner, Cooke, Crowder, Grantham, Holbert, Jahn, Lundberg, Marble, Priola, Scott, Sonnenberg, Tate, Gardner, Hill, Kefalas, Lambert, Martinez Humenik, Smallwood;  
also REPRESENTATIVE(S) Humphrey and Bridges, Catlin, Everett, Leonard, Lundeen, Neville P., Saine, Van Winkle, Williams D., Wilson, Arndt, Becker J., Beckman, Buck, Buckner, Carver, Coleman, Covarrubias, Danielson, Esgar, Exum, Garnett, Ginal, Hamner, Hansen, Herod, Hooton, Kennedy, Kraft-Tharp, Landgraf, Lawrence, Lebsock, Lee, Lewis, Liston, Lontine, McKean, McLachlan, Melton, Michaelson Jenet, Mitsch Bush, Navarro, Nordberg, Pettersen, Rankin, Ransom, Rosenthal, Singer, Weissman, Willett, Winter, Wist, Young, Duran.

CONCERNING THE RIGHT TO FREE SPEECH ON CAMPUSES OF PUBLIC INSTITUTIONS OF HIGHER EDUCATION.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, add 23-5-144 as follows:

**23-5-144. Students' right to speak in a public forum - legislative declaration - definitions - violations - court actions - free speech zones.**  
(1)(a) **THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION AND**

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

ARTICLE II, SECTION 10 OF THE COLORADO CONSTITUTION EACH PROTECT THE RIGHT TO FREE SPEECH, INCLUDING THE SPEECH OF STUDENTS ENROLLED AT PUBLIC INSTITUTIONS OF HIGHER EDUCATION. THE GENERAL ASSEMBLY DECLARES THAT IT IS A MATTER OF STATEWIDE INTEREST TO PROTECT THE RIGHTS OF STUDENTS TO EXERCISE THEIR FREEDOM OF SPEECH ON THE CAMPUSES OF PUBLIC INSTITUTIONS OF HIGHER EDUCATION, WHILE RECOGNIZING THE RIGHT OF THOSE INSTITUTIONS OF HIGHER EDUCATION TO ENACT REASONABLE TIME, PLACE, AND MANNER RESTRICTIONS THAT PRESERVE THEIR ABILITY TO FULFILL THEIR EDUCATIONAL MISSIONS. AT THE SAME TIME, THE GENERAL ASSEMBLY DECLARES THAT STUDENT EXPRESSION ON THE CAMPUSES OF INSTITUTIONS OF HIGHER EDUCATION IS A VITAL COMPONENT OF THE EDUCATIONAL ENVIRONMENT AT THESE INSTITUTIONS OF HIGHER EDUCATION AND THAT PROMOTING THE FREE AND UNFETTERED EXCHANGE OF IDEAS IN THIS MARKETPLACE OF IDEAS IS ONE WAY IN WHICH THESE INSTITUTIONS OF HIGHER EDUCATION FULFILL THEIR EDUCATIONAL MISSIONS.

(b) THEREFORE, IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE PROVISIONS OF SUBSECTIONS (2) TO (6) OF THIS SECTION BE CONFINED TO AND APPLY ONLY TO STUDENT EXPRESSION IN A STUDENT FORUM AT AN INSTITUTION OF HIGHER EDUCATION, AS DEFINED HEREIN.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "EXPRESSION" MEANS ANY LAWFUL VERBAL OR WRITTEN MEANS BY WHICH INDIVIDUALS MAY COMMUNICATE IDEAS TO ONE ANOTHER, INCLUDING ALL FORMS OF PEACEFUL ASSEMBLY, PROTESTS, SPEAKING VERBALLY, HOLDING SIGNS, CIRCULATING PETITIONS, AND DISTRIBUTING WRITTEN MATERIALS. "EXPRESSION" INCLUDES VOTER REGISTRATION ACTIVITIES BUT DOES NOT INCLUDE SPEECH THAT IS PRIMARILY FOR A COMMERCIAL PURPOSE, INCLUDING THE PROMOTION, SALE, OR DISTRIBUTION OF ANY PRODUCT OR SERVICE.

(b) "INSTITUTION OF HIGHER EDUCATION" MEANS A PUBLIC POSTSECONDARY INSTITUTION.

(c) "STUDENT" MEANS A PERSON WHO IS ENROLLED FOR EDUCATIONAL PURPOSES AT AN INSTITUTION OF HIGHER EDUCATION.

(d) "STUDENT FORUM" MEANS, AS APPLIED TO STUDENTS, ANY GENERALLY ACCESSIBLE, OPEN, OUTDOOR AREA ON THE CAMPUS OF AN INSTITUTION OF HIGHER EDUCATION, AS WELL AS ANY NONACADEMIC AND PUBLICLY OPEN PORTION OF A FACILITY THAT THE INSTITUTION OF HIGHER EDUCATION HAS TRADITIONALLY MADE AVAILABLE TO STUDENTS FOR EXPRESSIVE PURPOSES.

(3) (a) AN INSTITUTION OF HIGHER EDUCATION SHALL NOT LIMIT OR RESTRICT A STUDENT'S EXPRESSION IN A STUDENT FORUM, INCLUDING SUBJECTING A STUDENT TO DISCIPLINARY ACTION RESULTING FROM HIS OR HER EXPRESSION, BECAUSE OF THE CONTENT OR VIEWPOINT OF THE EXPRESSION OR BECAUSE OF THE REACTION OR OPPOSITION BY LISTENERS OR OBSERVERS TO SUCH EXPRESSION.

(b) NOTHING IN THIS SECTION GRANTS STUDENTS, FACULTY, OR STAFF OF THE COLLEGE OR UNIVERSITY THE RIGHT TO MATERIALLY DISRUPT PREVIOUSLY SCHEDULED OR RESERVED ACTIVITIES IN A PORTION OR SECTION OF THE STUDENT FORUM AT THAT SCHEDULED TIME.

(c) NOTHING IN THIS SECTION SHALL BE INTERPRETED AS PREVENTING AN INSTITUTION OF HIGHER EDUCATION FROM PROHIBITING, LIMITING, OR RESTRICTING EXPRESSION THAT IS NOT PROTECTED UNDER THE FIRST AMENDMENT AND ARTICLE II, SECTION 10 OF THE COLORADO CONSTITUTION.

(4) AN INSTITUTION OF HIGHER EDUCATION SHALL NOT DESIGNATE ANY AREA ON CAMPUS AS A FREE SPEECH ZONE OR OTHERWISE CREATE POLICIES IMPLYING THAT ITS STUDENTS' EXPRESSIVE ACTIVITIES ARE RESTRICTED TO PARTICULAR AREAS OF CAMPUS. AN INSTITUTION OF HIGHER EDUCATION SHALL NOT, EXCEPT FOR THE PURPOSE OF ENACTING TIME, PLACE, AND MANNER RESTRICTIONS PERMITTED PURSUANT TO SUBSECTION (5) OF THIS SECTION, RESTRICT THE RIGHT OF STUDENTS TO ENGAGE IN EXPRESSION IN A STUDENT FORUM.

(5) AN INSTITUTION OF HIGHER EDUCATION SHALL NOT IMPOSE RESTRICTIONS ON THE TIME, PLACE, AND MANNER OF STUDENT EXPRESSION IN A STUDENT FORUM UNLESS THE RESTRICTIONS:

(a) ARE REASONABLE;

(b) ARE JUSTIFIED WITHOUT REFERENCE TO THE CONTENT OF THE SPEECH;

(c) ARE NARROWLY TAILORED TO SERVE A SIGNIFICANT GOVERNMENTAL INTEREST; AND

(d) LEAVE OPEN AMPLE ALTERNATIVE CHANNELS FOR COMMUNICATION OF THE INFORMATION OR MESSAGE.

(6) ANY STUDENT WHO HAS BEEN DENIED ACCESS TO A STUDENT FORUM FOR EXPRESSIVE PURPOSES PROTECTED BY THIS SECTION MAY BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION TO ENJOIN ANY VIOLATION OF THIS SECTION OR TO RECOVER REASONABLE COURT COSTS AND ATTORNEY FEES.

(7) IN AN ACTION BROUGHT PURSUANT TO SUBSECTION (6) OF THIS SECTION, IF THE COURT FINDS THAT A VIOLATION OCCURRED, THE COURT SHALL AWARD THE AGGRIEVED PARTY INJUNCTIVE RELIEF FOR THE VIOLATION AND SHALL AWARD REASONABLE COURT COSTS AND ATTORNEY FEES.

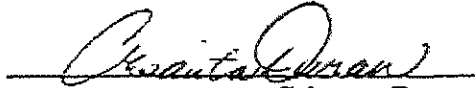
(8) A STUDENT SHALL BRING AN ACTION PURSUANT TO THIS SECTION WITHIN ONE CALENDAR YEAR AFTER THE DATE THAT THE VIOLATION OCCURRED.

**SECTION 2. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.



Kevin J. Grantham  
PRESIDENT OF  
THE SENATE



Crisanta Duran  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

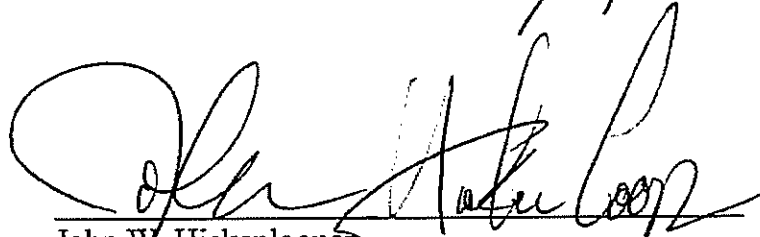


Effie Ameen  
SECRETARY OF  
THE SENATE



Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

APPROVED 1:55 PM 4/4/17



John W. Hickenlooper  
GOVERNOR OF THE STATE OF COLORADO

**CAMPUS FREE SPEECH AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kim F. Coleman**

Senate Sponsor: Todd Weiler

Cosponsors:	Michael S. Kennedy	Mike Schultz
Justin L. Fawson	Karianne Lisonbee	Logan Wilde
Adam Gardiner	Jeremy A. Peterson	Mike Winder
Timothy D. Hawkes	Susan Pulsipher	
Ken Ivory	Marc K. Roberts	

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**LONG TITLE**

**General Description:**

This bill enacts provisions related to expressive activity at an institution of higher education.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ designates outdoor areas of campuses at institutions of higher education as traditional public forums;
- ▶ creates requirements for institutions of higher education related to expressive activity;
- ▶ creates a cause of action related to a violation of expressive rights at an institution of higher education; and
- ▶ enacts other provisions related to expressive activity at an institution of higher education.

**Money Appropriated in this Bill:**

None



29 Other Special Clauses:

30 None

31 Utah Code Sections Affected:

32 ENACTS:

33 53B-27-101, Utah Code Annotated 1953

34 53B-27-102, Utah Code Annotated 1953

35 53B-27-201, Utah Code Annotated 1953

36 53B-27-202, Utah Code Annotated 1953

37 53B-27-203, Utah Code Annotated 1953

38 53B-27-204, Utah Code Annotated 1953

39 53B-27-205, Utah Code Annotated 1953

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41 *Be it enacted by the Legislature of the state of Utah:*

42 Section 1. Section 53B-27-101 is enacted to read:

43 **CHAPTER 27. CAMPUS INDIVIDUAL RIGHTS ACT**

44 **Part 1. General Provisions**

45 **53B-27-101. Title.**

46 (1) This chapter is known as the "Campus Individual Rights Act."

47 (2) This part is known as "General Provisions."

48 Section 2. Section 53B-27-102 is enacted to read:

49 **53B-27-102. Definitions.**

50 As used in this chapter, "institution" means an institution of higher education listed in

51 Section 53B-1-102.

52 Section 3. Section 53B-27-201 is enacted to read:

53 **Part 2. Campus Free Expression Act**

54 **53B-27-201. Title.**

55 This part is known as the "Campus Free Expression Act."

56 Section 4. Section 53B-27-202 is enacted to read:

57 **53B-27-202. Definitions.**

58 As used in this part, "expressive activity" includes:

59 (1) peacefully assembling, protesting, or speaking;

60 (2) distributing literature;

61 (3) carrying a sign; or

62 (4) circulating a petition.

63 Section 5. Section **53B-27-203** is enacted to read:

64 **53B-27-203. Expressive activities at an institution.**

65 (1) An outdoor area of an institution's campus is a traditional public forum.

66 (2) An institution may maintain and enforce reasonable time, place, or manner

67 restrictions on an expressive activity in an outdoor area of the institution's campus, if the

68 restrictions:

69 (a) are narrowly tailored to serve a significant institutional interest;

70 (b) are based on published, content-neutral, and viewpoint-neutral criteria; and

71 (c) leave open ample alternative channels for communication.

72 (3) Subject to Subsection (2), an institution may not prohibit:

73 (a) a member of the institution's community or the public from spontaneously and

74 contemporaneously assembling in an outdoor area of the institution's campus; or

75 (b) a person from freely engaging in noncommercial expressive activity in an outdoor

76 area of the institution's campus if the person's conduct is lawful.

77 (4) This part does not apply to expressive activity in an area on an institution's campus

78 other than an outdoor area.

79 Section 6. Section **53B-27-204** is enacted to read:

80 **53B-27-204. Cause of action.**

81 (1) The following persons may bring an action in a state court of competent jurisdiction

82 to enjoin a violation of this part or to recover compensatory damages, reasonable court costs, or

83 reasonable attorney fees:

84 (a) the attorney general; or

85 (b) a person claiming that the person's expressive rights, as described in this part, were  
86 violated.

87 (2) In an action brought under this part, if the court finds a violation of this part, the  
88 court:

89 (a) shall enjoin the violation;

90 (b) shall, if a person whose expressive rights were violated brought the action, award  
91 the person:

92 (i) at least \$500 for an initial violation; and

93 (ii) if the person notifies the institution of the violation, \$50 for each day the violation  
94 continues after the notification; and

95 (c) may award a prevailing plaintiff:

96 (i) compensatory damages;

97 (ii) reasonable court costs; or

98 (iii) reasonable attorney fees.

99 (3) Notwithstanding Title 63G, Chapter 7, Governmental Immunity Act of Utah, an  
100 institution that violates this part is not immune from suit or liability for the violation.

101 Section 7. Section **53B-27-205** is enacted to read:

102 **53B-27-205. Statute of limitations.**

103 (1) Except as provided in Subsection (3), an action under this part may not be brought  
104 later than one year after the day on which the cause of action accrues.

105 (2) Each day that a violation continues after an initial violation, and each day that an  
106 institution's policy in violation of this part remains in effect, shall constitute a continuing  
107 violation of this part.

108 (3) For a continuing violation described in Subsection (2), the limitation described in  
109 Subsection (1) shall extend to one year after the day on which the most recent violation occurs.

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320 eligibility to receive performance funding. Access rate  
321 benchmarks must be differentiated and scored to reflect the  
322 varying access rate levels among the state universities;  
323 however, the scoring system may not include bonus points.

324 (2) Each fiscal year, the amount of funds available for  
325 allocation to the state universities based on the performance-  
326 based funding model shall consist of the state's investment in  
327 performance funding plus institutional investments consisting of  
328 funds deducted from the base funding of each state university in  
329 the State University System in an amount provided by the  
330 Legislature in the General Appropriations Act. The Board of  
331 Governors shall establish minimum performance funding  
332 eligibility thresholds for the state's investment and the  
333 institutional investments. A state university that meets the  
334 minimum institutional investment eligibility threshold, but  
335 fails to meet the minimum state investment eligibility  
336 threshold, shall have its institutional investment restored but  
337 is ineligible for a share of the state's investment in  
338 performance funding. The institutional investment shall be  
339 restored for each institution eligible for the state's  
340 investment under the performance-based funding model.

341 (4) Distributions of performance funding, as provided in  
342 this section, shall be made by the Legislature to each of the  
343 state universities ~~listed in the Education and General~~  
344 ~~Activities category in the General Appropriations Act.~~

345 Section 6. Section 1004.097, Florida Statutes, is created  
346 to read:

347 1004.097 Free expression on campus.—

348 (1) SHORT TITLE.—This section may be cited as the "Campus

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349 Free Expression Act."

350 (2) DEFINITIONS.—As used in this section, the term:

351 (a) "Commercial speech" means speech in which the  
352 individual is engaged in commerce, the intended audience is  
353 commercial or actual or potential consumers, and the content of  
354 the message is commercial.

355 (b) "Free-speech zone" means an area on a campus of a  
356 public institution of higher education which is designated for  
357 the purpose of engaging in expressive activities.

358 (c) "Material and substantial disruption" means any conduct  
359 that intentionally and significantly hinders another person's or  
360 group's expressive rights. The term does not include conduct  
361 that is protected under the First Amendment to the United States  
362 Constitution and Art. I of the State Constitution, including,  
363 but not limited to, lawful protests and counter-protests in the  
364 outdoor areas of campus or minor, brief, or fleeting nonviolent  
365 disruptions that are isolated or brief in duration.

366 (d) "Outdoor areas of campus" means generally accessible  
367 areas of a campus of a public institution of higher education in  
368 which members of the campus community are commonly allowed,  
369 including grassy areas, walkways, or other similar common areas.  
370 The term does not include outdoor areas of campus to which  
371 access is restricted.

372 (e) "Public institution of higher education" means any  
373 public technical center, state college, state university, law  
374 school, medical school, dental school, or other Florida College  
375 System institution as defined in s. 1000.21.

376 (3) RIGHT TO FREE-SPEECH ACTIVITIES.—

377 (a) Expressive activities protected under the First

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378 Amendment to the United States Constitution and Art. I of the  
379 State Constitution include, but are not limited to, any lawful  
380 oral or written communication of ideas, including all forms of  
381 peaceful assembly, protests, and speeches; distributing  
382 literature; carrying signs; circulating petitions; and the  
383 recording and publication, including the Internet publication,  
384 of video or audio recorded in outdoor areas of campus.  
385 Expressive activities protected by this section do not include  
386 commercial speech.

387 (b) A person who wishes to engage in an expressive activity  
388 in outdoor areas of campus may do so freely, spontaneously, and  
389 contemporaneously as long as the person's conduct is lawful and  
390 does not materially and substantially disrupt the functioning of  
391 the public institution of higher education or infringe upon the  
392 rights of other individuals or organizations to engage in  
393 expressive activities.

394 (c) Outdoor areas of campus are considered traditional  
395 public forums for individuals, organizations, and guest  
396 speakers. A public institution of higher education may create  
397 and enforce restrictions that are reasonable and content-neutral  
398 on time, place, and manner of expression and that are narrowly  
399 tailored to a significant institutional interest. Restrictions  
400 must be clear and published and must and provide for ample  
401 alternative means of expression.

402 (d) A public institution of higher education may not  
403 designate any area of campus as a free-speech zone or otherwise  
404 create policies restricting expressive activities to a  
405 particular outdoor area of campus, except as provided in  
406 paragraph (c).

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407       (e) Students, faculty, or staff of a public institution of  
408 higher education may not materially disrupt previously scheduled  
409 or reserved activities on campus occurring at the same time.

410       (4) CAUSE OF ACTION.—A person whose expressive rights are  
411 violated by an action prohibited under this section may bring an  
412 action against a public institution of higher education in a  
413 court of competent jurisdiction to obtain declaratory and  
414 injunctive relief, reasonable court costs, and attorney fees.

415       Section 7. Subsections (2), (3), and (4) and paragraph (b)  
416 of subsection (5) of section 1004.28, Florida Statutes, are  
417 amended to read:

418       1004.28 Direct-support organizations; use of property;  
419 board of directors; activities; audit; facilities.—

420       (2) USE OF PROPERTY.—

421       (a) Each state university board of trustees is authorized  
422 to permit the use of property, facilities, and personal services  
423 at any state university by any university direct-support  
424 organization, and, subject to the provisions of this section,  
425 direct-support organizations may establish accounts with the  
426 State Board of Administration for investment of funds pursuant  
427 to part IV of chapter 218.

428       (b) The board of trustees, in accordance with regulations  
429 ~~rules~~ and guidelines of the Board of Governors, shall prescribe  
430 by regulation ~~rule~~ conditions with which a university direct-  
431 support organization must comply in order to use property,  
432 facilities, or personal services at any state university,  
433 including that personal services must comply with s. 1012.976.  
434 Such regulations ~~rules~~ shall provide for budget and audit review  
435 and oversight by the board of trustees, including thresholds for

# Appendix E



1 AN ACT relating to the expression of religious or political viewpoints in public  
2 schools and public postsecondary institutions.

3 WHEREAS, the General Assembly is dedicated to enforcing the constitutional  
4 rights of its citizens, which are secured by the Constitutions of the United States of  
5 America and the Commonwealth of Kentucky;

6 NOW, THEREFORE,

7 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

8 ➔Section 1. KRS 158.183 is amended to read as follows:

9 (1) Consistent with the Constitutions of the United States of America and the  
10 Commonwealth of Kentucky, a student shall have the right to carry out an activity  
11 described in any of paragraphs (a) to ~~(j)~~~~(d)~~ of subsection (2) of this section, if the  
12 student does not:

13 (a) Infringe on the rights of the school to:

- 14 1. Maintain order and discipline;
- 15 2. Prevent disruption of the educational process; and
- 16 3. Determine educational curriculum and assignments;

17 (b) Harass other persons or coerce other persons to participate in the activity; or

18 (c) Otherwise infringe on the rights of other persons.

19 (2) Consistent with the Constitutions of the United States of America and the  
20 Commonwealth of Kentucky, and subject to the provisions of subsection (1) of this  
21 section, a student shall be permitted to voluntarily:

22 (a) Pray or engage in religious activities in a public school, vocally or silently,  
23 alone or with other students to the same extent and under the same  
24 circumstances as a student is permitted to vocally or silently reflect, meditate,  
25 ~~or~~ speak on, or engage in nonreligious matters alone or with other students in  
26 the public school;

27 (b) Express religious or political viewpoints in a public school to the same extent

- 1 and under the same circumstances as a student is permitted to express  
2 viewpoints on nonreligious or nonpolitical topics or subjects in the school;
- 3 (c) Express religious or political viewpoints in classroom, homework, artwork,  
4 and other written and oral assignments free from discrimination or penalty  
5 based on the religious or political content of the submissions;
- 6 (d) Speak to and attempt to discuss religious or political viewpoints with other  
7 students in a public school to the same extent and under the same  
8 circumstances as a student is permitted to speak to and attempt to share  
9 nonreligious or nonpolitical viewpoints with other students. However, any  
10 student may demand that this speech or these attempts to share religious or  
11 political viewpoints not be directed at him or her;
- 12 ~~(e)~~ Distribute religious or political literature in a public school, subject to  
13 reasonable time, place, and manner restrictions to the same extent and under  
14 the same circumstances as a student is permitted to distribute literature on  
15 nonreligious or nonpolitical topics or subjects in the school;~~and~~
- 16 ~~(f)~~ Display religious messages on items of clothing to the same extent that  
17 a student is permitted to display nonreligious messages on items of clothing;
- 18 (g) Access public secondary school facilities during noninstructional time as a  
19 member of a religious student organization for activities that may include  
20 prayer, Bible reading, or other worship exercises to the same extent that  
21 members of nonreligious student organizations are permitted access during  
22 noninstructional time;
- 23 (h) Use school media, including the public address system, the school  
24 newspaper, and school bulletin boards, to announce student religious  
25 meetings to the same extent that a student is permitted to use school media  
26 to announce student nonreligious meetings;
- 27 (i) Meet as a member of a religious student group during noninstructional

1           time in the school day to the same extent that members of nonreligious  
2           student groups are permitted to meet, including before and after the school  
3           day; and

4           (i) Be absent, in accordance with attendance policy, from a public school to  
5           observe religious holidays and participate in other religious practices to the  
6           same extent and under the same circumstances as a student is permitted to be  
7           absent from a public school for nonreligious purposes.

8           (3) Consistent with its obligations to respect the rights secured by the Constitutions  
9           of the United States of America and the Commonwealth of Kentucky, a local  
10           board of education shall ensure that:

11           (a) 1. The selection of students to speak at official events is made without  
12           regard to the religious or political viewpoint of the student speaker;

13           2. The prepared remarks of the student are not altered before delivery,  
14           except in a viewpoint-neutral manner, unless requested by the student.  
15           However, student speakers shall not engage in speech that is obscene,  
16           vulgar, offensively lewd, or indecent; and

17           3. If the content of the student's speech is such that a reasonable  
18           observer may perceive affirmative school sponsorship or endorsement  
19           of the student speaker's religious or political viewpoint, the school  
20           shall communicate, in writing, orally, or both, that the student's  
21           speech does not reflect the endorsement, sponsorship, position, or  
22           expression of the school;

23           (b) Religious and political organizations are allowed equal access to public  
24           forums on the same basis as nonreligious and nonpolitical organizations;  
25           and

26           (c) No recognized religious or political student organization is hindered or  
27           discriminated against in the ordering of its internal affairs, selection of

1           leaders and members, defining of doctrines and principles, and resolving of  
2           organizational disputes in the furtherance of its mission, or in its  
3           determination that only persons committed to its mission should conduct  
4           these activities.

5   (4) Consistent with its obligations to respect the rights secured by the Constitutions  
6           of the United States of America and the Commonwealth of Kentucky, a local  
7           board of education shall permit public schools in the district to sponsor artistic or  
8           theatrical programs that advance students' knowledge of society's cultural and  
9           religious heritage, as well as provide opportunities for students to study and  
10           perform a wide range of music, literature, poetry, and drama.

11   (5) No action may be maintained under KRS 158.181 to 158.187 unless the student has  
12 exhausted the following administrative remedies;

13       (a) The student or the student's parent or guardian shall state his or her complaint  
14           to the school's principal. The principal shall investigate and take appropriate  
15           action to ensure the rights of the student are resolved within seven (7) days of  
16           the date of the complaint;

17       (b) If the concerns are not resolved, then the student or the student's parent or  
18           guardian shall make a complaint in writing to the superintendent with the  
19           specific facts of the alleged violation;

20       (c) The superintendent shall investigate and take appropriate action to ensure that  
21           the rights of the student are resolved within thirty (30) days of the date of the  
22           written complaint; and

23       (d) Only after the superintendent's investigation and action may a student or the  
24           student's parent or legal guardian pursue any other legal action.

25       ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO  
26 READ AS FOLLOWS:

27   A teacher in a public school shall be permitted to:

- 1 (1) Teach about religion with the use of the Bible or other scripture, but without  
 2 providing religious instruction, for the secular study of:  
 3 (a) The history of religion;  
 4 (b) Comparative religions;  
 5 (c) The Bible as literature;  
 6 (d) The role of religion in the history of the United States and other countries;  
 7 and  
 8 (e) Religious influences on art, music, literature, and social studies; and  
 9 (2) Teach about religious holidays, including religious aspects, and celebrate the  
 10 secular aspects of holidays.

11 ➔Section 3. KRS 158.186 is amended to read as follows:

12 The Department of Education shall send electronic or paper copies of Section 1 of this  
 13 Act and KRS 158.195~~[158.181 to 158.187]~~ to each local school board,~~[and]~~ school-  
 14 based decision making council, and certified employee in Kentucky on an annual basis.

15 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO  
 16 READ AS FOLLOWS:

17 Consistent with its obligations to respect the rights secured by the Constitutions of the  
 18 United States and the Commonwealth of Kentucky, a governing board of a public  
 19 postsecondary education institution shall ensure that:

20 (1) The expression of a student's religious or political viewpoints in classroom,  
 21 homework, artwork, and other written and oral assignments is free from  
 22 discrimination or penalty based on the religious or political content of the  
 23 submissions;

24 (2) (a) The selection of students to speak at official events is made in a viewpoint-  
 25 neutral manner; and

26 (b) The prepared remarks of the student are not altered before delivery, except  
 27 in a viewpoint-neutral manner, unless requested by the student. However,

1           student speakers shall not engage in speech that is obscene, vulgar,  
2           offensively lewd, or indecent; and

3           (c) If the content of the student's speech is such that a reasonable observer may  
4           perceive affirmative institutional sponsorship or endorsement of the student  
5           speaker's religious or political viewpoint, the institution shall communicate,  
6           in writing, orally, or both, that the student's speech does not reflect the  
7           endorsement, sponsorship, position, or expression of the institution;

8           (3) Religious and political organizations are allowed equal access to public forums  
9           on the same basis as nonreligious and nonpolitical organizations;

10          (4) No recognized religious or political student organization is hindered or  
11          discriminated against in the ordering of its internal affairs, selection of leaders  
12          and members, defining of doctrines and principles, and resolving of  
13          organizational disputes in the furtherance of its mission, or in its determination  
14          that only persons committed to its mission should conduct such activities; and

15          (5) There shall be no restrictions on the time, place, and manner of student speech  
16          that occurs in the outdoor areas of campus or is protected by the First  
17          Amendment of the United States Constitution, except for restrictions that are:

18          (a) Reasonable;

19          (b) Justified without reference to the content of the regulated speech;

20          (c) Narrowly tailored to serve a compelling governmental interest; and

21          (d) Limited to provide ample alternative options for the communication of the  
22          information.

# Appendix F

Conference Engrossed

State of Arizona  
House of Representatives  
Fifty-third Legislature  
Second Regular Session  
2018

**CHAPTER 267**  
**HOUSE BILL 2563**

AN ACT

AMENDING SECTIONS 15-1861 AND 15-1864, ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 14, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 15-1866, 15-1867, 15-1868 AND 15-1869; RELATING TO STUDENTS' RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-1861, Arizona Revised Statutes, is amended to  
3 read:

4 15-1861. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Community college" has the same meaning prescribed in section  
7 15-1401.

8 2. "INDIVIDUAL CONDUCT THAT MATERIALLY AND SUBSTANTIALLY INFRINGES  
9 ON THE RIGHTS OF OTHER PERSONS TO ENGAGE IN OR LISTEN TO EXPRESSIVE  
10 ACTIVITY" MEANS CONDUCT BY A PERSON WHO, WITH THE INTENT TO OR THE  
11 KNOWLEDGE OF DOING SO, MATERIALLY AND SUBSTANTIALLY PREVENTS THE  
12 COMMUNICATION OF A MESSAGE OR PREVENTS THE TRANSACTION OF THE BUSINESS OF  
13 A LAWFUL MEETING, GATHERING OR PROCESSION BY DOING ANY OF THE FOLLOWING:

14 (a) ENGAGING IN FIGHTING OR VIOLENT OR OTHER UNLAWFUL BEHAVIOR.

15 (b) PHYSICALLY BLOCKING OR USING THREATS OF VIOLENCE TO PREVENT  
16 ANOTHER PERSON FROM ATTENDING, LISTENING TO, VIEWING OR OTHERWISE  
17 PARTICIPATING IN AN EXPRESSIVE ACTIVITY.

18 (c) PREVENTING ANOTHER PERSON FROM ATTENDING, LISTENING TO, VIEWING  
19 OR OTHERWISE PARTICIPATING IN AN EXPRESSIVE ACTIVITY THAT IS HELD AT A  
20 LOCATION THAT IS NOT A PUBLIC FORUM, SUCH AS AN AUDITORIUM OR LECTURE  
21 HALL.

22 ~~2.~~ 3. "Public forum" includes both a traditional public forum,  
23 which is any open, outdoor area on the campus of a university or community  
24 college, and a designated public forum, which is any facility, building or  
25 part of a building that the university or community college has opened to  
26 students or student organizations for expression.

27 ~~3.~~ 4. "University" means a university under the jurisdiction of  
28 the Arizona board of regents.

29 Sec. 2. Section 15-1864, Arizona Revised Statutes, is amended to  
30 read:

31 15-1864. Students' right to speak in a public forum; protests  
32 and demonstrations; invited speakers; court  
33 actions

34 A. A university or community college ~~shall not~~ MAY restrict a  
35 student's right to speak, including verbal speech, holding a sign or  
36 distributing fliers or other materials, in a public forum.

37 B. A university or community college shall not impose restrictions  
38 on the time, place and manner of student speech that:

39 ~~1.~~ occurs in a public forum; AND

40 ~~2.~~ is protected by the first amendment to the United States  
41 Constitution unless the restrictions:

42 ~~(a)~~ 1. Are reasonable.

43 ~~(b)~~ 2. Are justified without reference to the content of the  
44 regulated speech.

1           ~~(c)~~ 3. Are ~~narrowly tailored to serve~~ NECESSARY TO ACHIEVE a  
2 significant COMPELLING governmental interest.

3           4. ARE THE LEAST RESTRICTIVE MEANS TO FURTHER THAT COMPELLING  
4 GOVERNMENT INTEREST.

5           ~~(d)~~ 5. Leave open ample alternative channels for communication of  
6 the information.

7           6. ALLOW SPONTANEOUS ASSEMBLY AND DISTRIBUTION OF LITERATURE.

8           C. A PERSON WHO IS LAWFULLY PRESENT ON A UNIVERSITY OR COMMUNITY  
9 COLLEGE CAMPUS MAY PROTEST OR DEMONSTRATE ON THAT CAMPUS. INDIVIDUAL  
10 CONDUCT THAT MATERIALLY AND SUBSTANTIALLY INFRINGES ON THE RIGHTS OF OTHER  
11 PERSONS TO ENGAGE IN OR LISTEN TO EXPRESSIVE ACTIVITY IS NOT ALLOWED AND  
12 IS SUBJECT TO SANCTION. THIS SUBSECTION DOES NOT PROHIBIT FACULTY MEMBERS  
13 FROM MAINTAINING ORDER IN THE CLASSROOM.

14           D. THE PUBLIC AREAS OF UNIVERSITY AND COMMUNITY COLLEGE CAMPUSES  
15 ARE PUBLIC FORUMS AND ARE OPEN ON THE SAME TERMS TO ANY SPEAKER.

16           E. UNIVERSITY AND COMMUNITY COLLEGE CAMPUSES ARE OPEN TO ANY  
17 SPEAKER WHOM A STUDENT, STUDENT GROUP OR FACULTY MEMBER HAS INVITED.

18           F. A UNIVERSITY OR COMMUNITY COLLEGE SHALL MAKE REASONABLE EFFORTS  
19 AND MAKE AVAILABLE REASONABLE RESOURCES TO ADDRESS THE SAFETY OF AN  
20 INVITED SPEAKER AND OTHER PERSONS IN ATTENDANCE. A UNIVERSITY OR  
21 COMMUNITY COLLEGE MAY NOT CHARGE SECURITY FEES BASED ON THE CONTENT OF THE  
22 SPEECH OF THE PERSON WHO INVITED A SPEAKER OR OF THE INVITED SPEAKER. A  
23 UNIVERSITY OR COMMUNITY COLLEGE MAY RESTRICT THE USE OF ITS NONPUBLIC  
24 FACILITIES TO INVITED INDIVIDUALS.

25           G. AN INDIVIDUAL STUDENT OR A FACULTY OR STAFF MEMBER OF A  
26 UNIVERSITY OR COMMUNITY COLLEGE MAY TAKE A POSITION ON THE PUBLIC POLICY  
27 CONTROVERSIES OF THE DAY, BUT THE INSTITUTION IS ENCOURAGED TO ATTEMPT TO  
28 REMAIN NEUTRAL, AS AN INSTITUTION, ON THE PUBLIC POLICY CONTROVERSIES OF  
29 THE DAY UNLESS THE ADMINISTRATIVE DECISIONS ON SUCH ISSUES ARE ESSENTIAL  
30 TO THE DAY-TO-DAY FUNCTIONING OF THE UNIVERSITY OR COMMUNITY COLLEGE.

31           H. THE UNIVERSITY OR COMMUNITY COLLEGE MAY NOT TAKE ACTION, AS AN  
32 INSTITUTION, ON THE PUBLIC POLICY CONTROVERSIES OF THE DAY IN A WAY THAT  
33 REQUIRES STUDENTS OR FACULTY MEMBERS TO PUBLICLY EXPRESS OR ENDORSE A  
34 PARTICULAR VIEW OF A PUBLIC POLICY CONTROVERSY.

35           ~~(e)~~ I. The following persons may bring an action in a court of  
36 competent jurisdiction to enjoin any violation of this ~~section~~ ARTICLE BY  
37 ANY UNIVERSITY, COMMUNITY COLLEGE, FACULTY MEMBER OR ADMINISTRATOR or to  
38 recover reasonable court costs and reasonable attorney fees:

39           1. The attorney general.

40           2. A ~~student~~ PERSON whose expressive rights were violated by a  
41 violation of this ~~section~~ ARTICLE.

42           ~~(f)~~ J. In an action brought under subsection ~~(e)~~ I of this section,  
43 if the court finds that a violation of this ~~section~~ ARTICLE occurred, the  
44 court shall award the aggrieved person injunctive relief for the violation  
45 and shall award reasonable court costs and reasonable attorney fees. THE

1 COURT SHALL ALSO AWARD DAMAGES OF ONE THOUSAND DOLLARS OR ACTUAL DAMAGES,  
2 WHICHEVER IS GREATER.

3 ~~F~~ K. A person shall bring an action for a violation of this  
4 ~~section~~ ARTICLE within one year after the date the cause of action  
5 accrues. For the purpose of calculating the one-year limitation period,  
6 each day that the violation persists or each day that a policy in  
7 violation of this ~~section~~ ARTICLE remains in effect constitutes a new  
8 violation of this ~~section~~ ARTICLE and shall be considered a day that the  
9 cause of action has accrued.

10 Sec. 3. Title 15, chapter 14, article 6, Arizona Revised Statutes,  
11 is amended by adding sections 15-1866, 15-1867, 15-1868 and 15-1869, to  
12 read:

13 15-1866. Free expression policy; rules; Arizona board of  
14 regents; community college district governing  
15 boards; requirements

16 A. THE ARIZONA BOARD OF REGENTS AND EACH COMMUNITY COLLEGE DISTRICT  
17 GOVERNING BOARD SHALL DEVELOP AND ADOPT A POLICY ON FREE EXPRESSION THAT  
18 CONTAINS AT LEAST THE FOLLOWING STATEMENTS AND REQUIREMENTS:

19 1. THE PRIMARY FUNCTION OF AN INSTITUTION OF HIGHER EDUCATION IS  
20 THE DISCOVERY, IMPROVEMENT, TRANSMISSION AND DISSEMINATION OF KNOWLEDGE BY  
21 MEANS OF RESEARCH, TEACHING, DISCUSSION AND DEBATE. THIS STATEMENT SHALL  
22 PROVIDE THAT, TO FULFILL THIS FUNCTION, THE UNIVERSITY OR COMMUNITY  
23 COLLEGE MUST STRIVE TO ENSURE THE FULLEST DEGREE OF INTELLECTUAL FREEDOM  
24 AND FREE EXPRESSION.

25 2. IT IS NOT THE PROPER ROLE OF AN INSTITUTION OF HIGHER EDUCATION  
26 TO SHIELD INDIVIDUALS FROM SPEECH PROTECTED BY THE FIRST AMENDMENT,  
27 INCLUDING, WITHOUT LIMITATION, IDEAS AND OPINIONS THAT MAY BE UNWELCOME,  
28 DISAGREEABLE OR DEEPLY OFFENSIVE.

29 3. STUDENTS AND FACULTY MEMBERS HAVE THE FREEDOM TO DISCUSS ANY  
30 PROBLEM THAT PRESENTS ITSELF, AS THE FIRST AMENDMENT ALLOWS AND WITHIN THE  
31 LIMITS OF REASONABLE VIEWPOINT AND CONTENT-NEUTRAL RESTRICTIONS ON TIME,  
32 PLACE AND MANNER OF EXPRESSION THAT ARE CONSISTENT WITH THIS ARTICLE AND  
33 THAT ARE NECESSARY TO ACHIEVE A COMPELLING INSTITUTIONAL INTEREST IF THESE  
34 RESTRICTIONS ARE CLEAR, ARE PUBLISHED AND PROVIDE AMPLE ALTERNATIVE MEANS  
35 OF EXPRESSION. THIS STATEMENT SHALL SPECIFY THAT STUDENTS AND FACULTY  
36 MEMBERS MAY ASSEMBLE AND ENGAGE IN SPONTANEOUS EXPRESSIVE ACTIVITIES IF  
37 THOSE ACTIVITIES ARE NOT UNLAWFUL AND DO NOT MATERIALLY AND SUBSTANTIALLY  
38 DISRUPT THE FUNCTIONING OF THE UNIVERSITY OR COMMUNITY COLLEGE.

39 4. THERE IS A RANGE OF DISCIPLINARY ACTIONS FOR A STUDENT WHO IS  
40 SUBJECT TO THE JURISDICTION OF A UNIVERSITY OR COMMUNITY COLLEGE AND WHO  
41 ENGAGES IN INDIVIDUAL CONDUCT THAT MATERIALLY AND SUBSTANTIALLY INFRINGES  
42 ON THE RIGHTS OF OTHER PERSONS TO ENGAGE IN OR LISTEN TO EXPRESSIVE  
43 ACTIVITY.

1           5. IN ALL DISCIPLINARY PROCEEDINGS INVOLVING STUDENTS, INCLUDING  
2 PROCEEDINGS INVOLVING EXPRESSIVE CONDUCT, A STUDENT IS ENTITLED TO A  
3 DISCIPLINARY HEARING UNDER PUBLISHED PROCEDURES THAT INCLUDE, AT A  
4 MINIMUM, ALL OF THE FOLLOWING:

5           (a) THE RIGHT TO RECEIVE ADVANCED WRITTEN NOTICE OF THE  
6 ALLEGATIONS.

7           (b) THE RIGHT TO REVIEW THE EVIDENCE IN SUPPORT OF THE ALLEGATIONS.

8           (c) THE RIGHT TO CONFRONT WITNESSES WHO TESTIFY AGAINST THAT  
9 STUDENT.

10          (d) THE RIGHT TO PRESENT A DEFENSE.

11          (e) THE RIGHT TO CALL WITNESSES.

12          (f) A DECISION BY AN IMPARTIAL PERSON OR PANEL.

13          (g) THE RIGHT TO APPEAL.

14          (h) IF EITHER A SUSPENSION OF MORE THAN THIRTY DAYS OR EXPULSION IS  
15 A POTENTIAL CONSEQUENCE OF A DISCIPLINARY PROCEEDING UNDER THIS SECTION,  
16 THE RIGHT TO ACTIVE ASSISTANCE OF COUNSEL.

17          6. IT IS THE SENSE OF THE LEGISLATURE THAT IF A STUDENT HAS  
18 REPEATEDLY BEEN DETERMINED TO HAVE ENGAGED IN INDIVIDUAL CONDUCT THAT  
19 MATERIALLY AND SUBSTANTIALLY INFRINGES ON THE RIGHTS OF OTHER PERSONS TO  
20 ENGAGE IN OR LISTEN TO EXPRESSIVE ACTIVITY, A PUNISHMENT OF SUSPENSION OR  
21 EXPULSION FROM THE UNIVERSITY OR COMMUNITY COLLEGE MAY BE APPROPRIATE.

22          7. THIS SECTION SUPERSEDES ANY PREVIOUS POLICIES OF A UNIVERSITY OR  
23 COMMUNITY COLLEGE THAT RESTRICT SPEECH ON CAMPUSES AND THAT ARE  
24 INCONSISTENT WITH THE STATEMENTS AND REQUIREMENTS PRESCRIBED IN THIS  
25 SECTION. EACH UNIVERSITY AND COMMUNITY COLLEGE SHALL REMOVE OR REVISE ANY  
26 PROVISIONS IN ITS POLICIES OR RULES IN ORDER TO COMPLY WITH THIS SECTION.

27          B. THE ARIZONA BOARD OF REGENTS AND EACH COMMUNITY COLLEGE DISTRICT  
28 GOVERNING BOARD MAY ADOPT RULES TO FURTHER THE PURPOSES OF THE POLICY  
29 ADOPTED PURSUANT TO SUBSECTION A OF THIS SECTION. THIS SECTION DOES NOT  
30 PREVENT UNIVERSITIES AND COMMUNITY COLLEGES FROM REGULATING STUDENT SPEECH  
31 OR ACTIVITY THAT IS PROHIBITED BY LAW. EXCEPT AS OTHERWISE PROVIDED BY  
32 THIS ARTICLE, UNIVERSITIES AND COMMUNITY COLLEGES MAY RESTRICT STUDENT  
33 EXPRESSION ONLY FOR EXPRESSIVE ACTIVITY THAT IS NOT PROTECTED BY THE FIRST  
34 AMENDMENT OF THE UNITED STATES CONSTITUTION, INCLUDING:

35           1. A VIOLATION OF STATE OR FEDERAL LAW.

36           2. AN EXPRESSION THAT A COURT HAS DEEMED UNPROTECTED DEFAMATION.

37           3. HARASSMENT. FOR THE PURPOSES OF THIS PARAGRAPH, "HARASSMENT"  
38 MEANS ONLY THAT EXPRESSION THAT IS SO SEVERE, PERVASIVE AND SUBJECTIVELY  
39 AND OBJECTIVELY OFFENSIVE THAT IT UNREASONABLY INTERFERES WITH AN  
40 INDIVIDUAL'S ACCESS TO EDUCATIONAL OPPORTUNITIES OR BENEFITS PROVIDED BY  
41 THE UNIVERSITY OR COMMUNITY COLLEGE.

42           4. A TRUE THREAT. FOR THE PURPOSES OF THIS PARAGRAPH, "TRUE  
43 THREAT" MEANS A STATEMENT THAT IS MEANT BY THE SPEAKER TO COMMUNICATE A  
44 SERIOUS EXPRESSION OF AN INTENT TO COMMIT AN ACT OF UNLAWFUL VIOLENCE  
45 AGAINST A PARTICULAR PERSON OR A GROUP OF PERSONS.

1           5. AN UNJUSTIFIABLE INVASION OF PRIVACY OR CONFIDENTIALITY THAT  
2 DOES NOT INVOLVE A MATTER OF PUBLIC CONCERN.

3           6. AN ACTION THAT UNLAWFULLY DISRUPTS THE FUNCTION OF THE  
4 UNIVERSITY OR COMMUNITY COLLEGE.

5           15-1867. Arizona board of regents; committee on free  
6                           expression; annual report; committee termination

7           A. THE ARIZONA BOARD OF REGENTS SHALL ESTABLISH A COMMITTEE ON FREE  
8 EXPRESSION CONSISTING OF AT LEAST FIFTEEN MEMBERS.

9           B. THE COMMITTEE ON FREE EXPRESSION SHALL SUBMIT AN ANNUAL REPORT  
10 ON OR BEFORE SEPTEMBER 1 TO THE GOVERNOR, THE SPEAKER OF THE HOUSE OF  
11 REPRESENTATIVES AND THE PRESIDENT OF THE SENATE. THE ARIZONA BOARD OF  
12 REGENTS SHALL POST A COPY OF THE ANNUAL REPORT ON ITS WEBSITE AND SHALL  
13 SUBMIT A COPY OF THE ANNUAL REPORT TO THE SECRETARY OF STATE. THE ANNUAL  
14 REPORT SHALL INCLUDE:

15           1. A DESCRIPTION OF ANY BARRIERS TO OR DISRUPTIONS OF FREE  
16 EXPRESSION WITHIN THE UNIVERSITIES IN THIS STATE.

17           2. A DESCRIPTION OF THE ADMINISTRATIVE HANDLING AND DISCIPLINE  
18 RELATING TO BARRIERS TO OR DISRUPTIONS OF FREE EXPRESSION WITHIN THE  
19 UNIVERSITIES IN THIS STATE.

20           3. A DESCRIPTION OF SUBSTANTIAL DIFFICULTIES, CONTROVERSIES OR  
21 SUCCESSES IN MAINTAINING A POSTURE OF ADMINISTRATIVE AND INSTITUTIONAL  
22 NEUTRALITY.

23           4. ANY ASSESSMENTS, CRITICISMS, COMMENDATIONS OR RECOMMENDATIONS  
24 THAT THE COMMITTEE DECIDES TO INCLUDE IN THE ANNUAL REPORT.

25           5. AN ACCOUNTING OF HOW STUDENT ACTIVITY FEES WERE ALLOCATED IN THE  
26 PRIOR YEAR. FOR THE PURPOSES OF THIS PARAGRAPH, "STUDENT ACTIVITY FEES"  
27 MEANS ANY FEE THAT IS CHARGED TO STUDENTS BY A UNIVERSITY IN THIS STATE  
28 AND THAT IS USED TO SUPPORT AND FACILITATE THE EXPRESSION AND ACTIVITIES  
29 OF STUDENTS OR STUDENT ORGANIZATIONS.

30           C. THE COMMITTEE ESTABLISHED PURSUANT TO THIS SECTION ENDS ON  
31 JULY 1, 2026 PURSUANT TO SECTION 41-3103.

32           15-1868. Community college districts; committee on free  
33                           expression; annual report; committee termination

34           A. THE COMMUNITY COLLEGE DISTRICT GOVERNING BOARDS SHALL EACH  
35 ESTABLISH A COMMITTEE ON FREE EXPRESSION.

36           B. EACH COMMITTEE ON FREE EXPRESSION SHALL SUBMIT AN ANNUAL REPORT  
37 ON OR BEFORE DECEMBER 1 TO THE GOVERNOR, THE SPEAKER OF THE HOUSE OF  
38 REPRESENTATIVES AND THE PRESIDENT OF THE SENATE AND SUBMIT A COPY OF THE  
39 ANNUAL REPORT TO THE SECRETARY OF STATE. EACH COMMUNITY COLLEGE DISTRICT  
40 SHALL POST A COPY OF THE ANNUAL REPORT ON ITS RESPECTIVE WEBSITE. THE  
41 ANNUAL REPORT SHALL INCLUDE:

42           1. A DESCRIPTION OF ANY BARRIERS TO OR DISRUPTIONS OF FREE  
43 EXPRESSION WITHIN THE COMMUNITY COLLEGES IN THIS STATE.

1           2. A DESCRIPTION OF THE ADMINISTRATIVE HANDLING AND DISCIPLINE  
2 RELATING TO BARRIERS TO OR DISRUPTIONS OF FREE EXPRESSION WITHIN THE  
3 COMMUNITY COLLEGES IN THIS STATE.

4           3. A DESCRIPTION OF SUBSTANTIAL DIFFICULTIES, CONTROVERSIES OR  
5 SUCCESSES IN MAINTAINING A POSTURE OF ADMINISTRATIVE AND INSTITUTIONAL  
6 NEUTRALITY.

7           4. ANY ASSESSMENTS, CRITICISMS, COMMENDATIONS OR RECOMMENDATIONS  
8 THAT THE COMMITTEE DECIDES TO INCLUDE IN THE ANNUAL REPORT.

9           5. AN ACCOUNTING OF HOW STUDENT ACTIVITY FEES WERE ALLOCATED IN THE  
10 PRIOR YEAR. FOR THE PURPOSES OF THIS PARAGRAPH, "STUDENT ACTIVITY FEES"  
11 MEANS ANY FEE THAT IS CHARGED TO STUDENTS BY A COMMUNITY COLLEGE IN THIS  
12 STATE AND THAT IS USED TO SUPPORT AND FACILITATE THE EXPRESSION AND  
13 ACTIVITIES OF STUDENTS OR STUDENT ORGANIZATIONS.

14           C. EACH COMMITTEE ESTABLISHED PURSUANT TO THIS SECTION ENDS ON  
15 JULY 1, 2026 PURSUANT TO SECTION 41-3103.

16           15-1869. Information on free expression; freshman orientation  
17 programs

18           EACH UNIVERSITY AND COMMUNITY COLLEGE SHALL INCLUDE IN ITS FRESHMAN  
19 ORIENTATION PROGRAM INFORMATION DESCRIBING THE POLICIES AND RULES  
20 REGARDING FREE EXPRESSION IN A MANNER THAT IS CONSISTENT WITH THIS  
21 ARTICLE.

APPROVED BY THE GOVERNOR APRIL 25, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2018.

Senate Bill 339

By: Senators Ligon, Jr. of the 3rd, Shafer of the 48th, McKoon of the 29th, Tippins of the 37th, Miller of the 49th and others

AS PASSED

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 2 of Chapter 3 of Title 20 of the Official Code of Georgia Annotated,  
2 relating to the board of regents and university system, so as to require the board of regents  
3 to develop a policy providing for free speech or free press to be implemented at all  
4 institutions of the university system; to provide requirements for such policy; to provide for  
5 reports and the content of reports; to provide for disciplinary measures; to provide for  
6 exceptions; to provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 SECTION 1.

9 Article 2 of Chapter 3 of Title 20 of the Official Code of Georgia Annotated, relating to the  
10 board of regents and university system, is amended by adding a new part to read as follows:

11 \*Part 1D

12 20-3-48.

13 (a) The board of regents shall adopt regulations and policies relevant to free speech and  
14 expression on the campuses of state institutions of higher education that address the  
15 following:

16 (1) To assure that freedom of speech or of the press is protected for all persons;

17 (2) To foster the discovery, improvement, transmission, and dissemination of knowledge  
18 by means of research, teaching, discussion, and debate of different ideological positions;

19 (3) Each such institution shall maintain and publish policies addressing content-neutral  
20 time, place, and manner restrictions on expressive activities with the least restrictive  
21 means, in accordance with relevant First Amendment jurisprudence, necessary for  
22 providing use of facilities and resources under the control of the institution to all student  
23 groups and invited speakers, including security and rental fees for such use, to foster the

24 discovery, improvement, transmission, and dissemination of knowledge by means of  
25 research, teaching, discussion, and debate of different ideological positions:

26 (4) To assure that each such institution does not shield students, staff, or individuals on  
27 campus from speech protected by the First Amendment of the United States Constitution,  
28 including ideas and opinions which such students, staff, or individuals on campus find  
29 unwelcoming, disagreeable, or even offensive;

30 (5) To assure students and faculty are permitted to assemble and engage in spontaneous  
31 expressive activity, as long as such activity is not unlawful and does not disrupt or  
32 interfere with the functioning of the institution or classroom instruction, and complies  
33 with the applicable institution's content-neutral time, place, and manner restrictions;

34 (6) To assure that each such institution is open to any invited speaker whom a student  
35 group or members of the faculty have invited, provided any such speaker complies with  
36 the applicable institution's content-neutral time, place, and manner restrictions; and

37 (7) To assure that any student or his or her invitee lawfully present on campus of these  
38 institutions may peacefully protest or demonstrate, provided any such students or invitees  
39 comply with the applicable institution's content-neutral time, place, and manner  
40 restrictions and:

41 (A) Do not interfere with other previously scheduled events or activities on campus  
42 occurring at the same time; and

43 (B) Do not prevent professors or other instructors from maintaining order in the  
44 classroom.

45 (b) Subject to notice, hearing, and due process requirements, the board of regents shall  
46 establish a range of disciplinary sanctions for anyone under the jurisdiction of the state  
47 institution of higher learning who is found by his or her conduct to have interfered with the  
48 board of regents' regulations and policies relevant to free speech and expression on the  
49 campus of each such institution.

50 20-3-48.1

51 The board of regents shall make and publish an annual report and provide a copy to the  
52 Governor and each chamber of the General Assembly on July 1 of each year addressing the  
53 following from the previous calendar year:

54 (1) Any barriers to, or disruptions of, free expression within state institutions of higher  
55 education;

56 (2) Administrative response and discipline relating to violation of regulations and  
57 policies established pursuant to Code Section 20-3-48;



- 58 (3) Actions taken by state institutions of higher learning, including difficulties,  
59 controversies, or successes, in maintaining a posture of administrative and institutional  
60 neutrality with regard to political or social issues; and  
61 (4) Any assessments, criticisms, commendations, or recommendations the board of  
62 regents deems appropriate to further include in the report.

63 20-3-48.2.

64 (a) Nothing in Code Section 20-3-48 shall be construed to prevent institutions from  
65 regulating student speech or activity that is prohibited by law.

66 (b) Except as further limited by this part, institutions shall be allowed to restrict student  
67 expression only for expressive activity not protected by the First Amendment and shall be  
68 able to require reasonable time, place, and manner restrictions on expressive activities  
69 consistent with Code Section 20-3-48."

70 **SECTION 2.**

71 All laws and parts of laws in conflict with this Act are repealed.

SENATE BILL NO. 364

BY SENATORS WARD, ALARIO, BOUDREAUX, CARTER, CLAITOR, CORTEZ,  
DONAHUE, ERDEY, FANNIN, GATTI, HEWITT, JOHNS, LONG,  
LUNEAU, MARTINY, MILKOVICH, MILLS, MIZELL, PEACOCK,  
PERRY, GARY SMITH, JOHN SMITH, THOMPSON, WALSWORTH  
AND WHITE

1 AN ACT

2 To enact Part XIV of Chapter 26 of Title 17 of the Louisiana Revised Statutes of 1950, to  
3 be comprised of R.S. 17:3399.31 through 3399.37, relative to free expression on  
4 college campuses; to provide for the authority of the management boards of public  
5 postsecondary education institutions; to provide for the adoption of policies on free  
6 expression; to provide for definitions; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Part XIV of Chapter 26 of Title 17 of the Louisiana Revised Statutes of  
9 1950, comprised of R.S. 17:3399.31 through 3399.37, is hereby enacted to read as follows:

10 PART XIV. CAMPUS FREE EXPRESSION

11 §3399.31. Definitions

12 For the purposes of this Part, the following words, terms, and phrases  
13 shall have the following meanings, unless the context clearly requires otherwise:

14 (1) "Expressive activities" include but are not limited to any lawful  
15 verbal or written means by which individuals or groups communicate ideas to  
16 one another, as provided by the First Amendment of the Constitution of the  
17 United States of America and by the Constitution of Louisiana, including all  
18 forms of peaceful assembly, protest, speech, distribution of literature, carrying

1 signs, and circulating petitions. This expressly excludes commercial activities  
2 where individuals or groups are being compensated or attempting to advertise,  
3 market, or accrue financial gain to any individual, corporation, business, or  
4 organization.

5 (2) "Outdoor areas" are outside areas generally accessible to the  
6 majority of students, administrators, faculty, and staff, such as grassy areas,  
7 walkways, or other similar common areas, and do not include areas where  
8 access is restricted.

9 (3) "Student organization" means an officially recognized group at a  
10 public postsecondary education institution, or a group seeking official  
11 recognition, comprised of admitted students.

12 §3399.32. Expressive activities; public postsecondary education institutions;  
13 protected

14 A. Expressive activities at public postsecondary education institutions by  
15 students, administrators, faculty members, staff members, and invited guests  
16 are protected.

17 B. Any person who wishes to engage in noncommercial expressive  
18 activity on the campus of a public postsecondary education institution shall be  
19 permitted to do so freely, as long as the person's conduct is not unlawful and  
20 does not materially and substantially disrupt the functioning of the institution.

21 C. The outdoor areas of a public postsecondary education institution  
22 shall be deemed traditional public forums and open to expressive activities.  
23 Nothing in this Part shall be interpreted as limiting the right of student  
24 expression elsewhere on campus.

25 D. A public postsecondary education institution may maintain and  
26 enforce reasonable time, place, and manner restrictions narrowly tailored in  
27 service of a significant institutional interest only when such restrictions employ  
28 clear, published, and content- and viewpoint-neutral criteria and provide for  
29 ample alternative means of expression. Any such restrictions shall allow for  
30 spontaneous and contemporaneous assembly and distribution of literature.

1           E. Nothing in this Part shall be interpreted as preventing institutions  
2           from prohibiting, limiting, or restricting expression that the First Amendment  
3           of the Constitution of the United States of America does not protect, such as  
4           threats and expressions directed to provoke and likely to produce imminent  
5           lawless actions, or from prohibiting harassment.

6           §3399.33. Freedom of association; student organizations

7           No public postsecondary education institution shall deny a belief-based  
8           student organization any benefit or privilege available to any other student  
9           organization, or otherwise discriminate against a belief-based organization,  
10          based on the expression of the organization, including any requirement that the  
11          leaders or members of the organization:

12                   (1) Affirm and adhere to the organization's sincerely held beliefs,

13                   (2) Comply with the organization's standards of conduct,

14                   (3) Further the organization's mission or purpose, as defined by the  
15          organization,

16          §3399.34. Institutional policies on free expression

17          Each public postsecondary education institution shall develop policies,  
18          regulations, and expectations of students regarding free expression and  
19          association on campus that are consistent with this Part and the policies of its  
20          management board. The policies shall outline the rights of students,  
21          administrators, faculty, and staff and shall:

22                   (1) Be made public in the institution's handbook, on its website, and  
23          through student orientation programs.

24                   (2) Be incorporated in the materials, programs, and procedures provided  
25          to all employees and students,

26                   (3) Provide information regarding the procedures whereby a person  
27          aggrieved by a violation of this Part or the institution's policies on free  
28          expression may seek relief.

29          §3399.35. Management boards; policy on free expression

30          Each public postsecondary education management board, in

1 collaboration with the Board of Regents, shall develop and adopt policies on free  
2 expression that contain at least the following:

3 (1) A statement that each institution shall strive to ensure the fullest  
4 degree of intellectual freedom and free expression.

5 (2) A statement that it is not the proper role of an institution to shield  
6 individuals from speech protected by the First Amendment of the Constitution  
7 of the United States of America and Article I, Section 7 of the Constitution of  
8 Louisiana, and other applicable laws, including without limitation ideas and  
9 opinions they find unwelcome, disagreeable, or even deeply offensive.

10 (3) A provision that students and faculty have the freedom to discuss any  
11 topic that presents itself, as provided under the First Amendment of the  
12 Constitution of the United States of America and Article I, Section 7 of the  
13 Constitution of Louisiana and other applicable laws permit and within the  
14 limits on time, place, and manner of expression that are consistent with this  
15 Part and that are necessary to achieve a significant institutional interest; such  
16 restrictions shall be published and provide ample alternative means of  
17 expression.

18 (4) A provision that students and faculty may assemble and engage in  
19 spontaneous expressive activity as long as such activity is not unlawful and does  
20 not materially and substantially disrupt the functioning of the institution,  
21 subject to the requirements of this Part.

22 (5) A provision that any person lawfully present on a campus may  
23 protest or demonstrate there. Protests and demonstrations that infringe upon  
24 the constitutional rights of others to engage in or listen to expressive activity by  
25 creating a substantial and material disruption to the functioning of the  
26 institution or to someone's expressive activity shall not be permitted.

27 (6) A provision that the public areas of campuses of each institution are  
28 traditional public forums that are open on the same terms to any speaker.

29 (7) A provision that the policy supersedes and nullifies any provision in  
30 the policies and regulations of any institution that restricts speech on campus

1 and that any such provision is therefore inconsistent with this policy on free  
2 expression. Each institution shall remove or revise any such provision in its  
3 policies and regulations to ensure compatibility with this policy on free  
4 expression.

5 §3399.36. Reports

6 A. Each public postsecondary education institution shall submit a report  
7 to the governor and the legislature by January 1, 2019, on the implementation  
8 of the provisions of this Part.

9 B. Each institution shall annually submit a report to the governor and  
10 the legislature regarding any barriers to or incidents against free expression  
11 that occurred at the institution. The report shall detail the barrier or incident  
12 as well as actions taken in response to the barrier or incident.

13 C. If an institution is sued for an alleged violation of a right guaranteed  
14 by the First Amendment of the Constitution of the United States of America, the  
15 institution shall submit a supplementary report with a copy of the complaint to  
16 the governor and the state legislature within thirty days of receipt of the  
17 complaint.

18 D. Each institution shall post all reports pursuant to this Section on its  
19 website.

20 §3399.37. Regulations

21 Each postsecondary public education management board shall adopt  
22 policies to implement the provisions of this Part. Nothing in this Part shall be  
23 construed to prevent institutions from regulating student speech or activity that  
24 is prohibited by law. Except as further limited by this Part, institutions may  
25 restrict student expression only for expressive activity not protected by the First  
26 Amendment of the Constitution of the United States of America and Article I,  
27 Section 7 of the Constitution of Louisiana and other applicable laws.

28 Section 2. This Act shall become effective upon signature by the governor or, if not  
29 signed by the governor, upon expiration of the time for bills to become law without signature  
30 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

SB NO. 364

ENROLLED

- 1 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
2 effective on the day following such approval.

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

SESSION LAW 2017-196  
HOUSE BILL 527

AN ACT TO RESTORE AND PRESERVE FREE SPEECH ON THE CAMPUSES OF THE  
CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

Whereas, the Constitution of North Carolina recognizes in Article I, Section 14, that "Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse"; and

Whereas, the constituent institutions of The University of North Carolina have historically embraced a commitment to freedom of expression in policy; and

Whereas, it is appropriate for The University of North Carolina System to restate and confirm their commitment to free expression; and

Whereas, in 1974, the Committee on Free Expression at Yale issued a statement known as the Woodward Report that stands as a classic defense of free expression on campuses; in 2015, the Committee on Freedom of Expression at the University of Chicago issued a similar and widely respected report; and, in 1967, the Kalven Committee Report of the University of Chicago articulated the principle of institutional neutrality regarding political and social issues and the essential role of such neutrality in protecting freedom of thought and expression at universities. The principles affirmed by these three highly regarded reports are inspiring articulations of the critical importance of free expression in higher education; and

Whereas, the General Assembly views freedom of expression as being of critical importance and requires that each constituent institution ensure free, robust, and uninhibited debate and deliberation by students of constituent institutions; and

Whereas, the General Assembly has determined that it is a matter of statewide concern that all constituent institutions of The University of North Carolina officially recognize freedom of speech as a fundamental right; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 116 of the General Statutes is amended by adding a new Article to read:

"Article 36.

"Campus Free Speech.

"§ 116-300. Policies required.

The Board of Governors of The University of North Carolina shall develop and adopt a policy on free expression that states, at least, the following:

- (1) The primary function of each constituent institution is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate. To fulfill this function, the constituent institution must strive to ensure the fullest degree of intellectual freedom and free expression.
- (2) It is not the proper role of any constituent institution to shield individuals from speech protected by the First Amendment, including, without





limitation, ideas and opinions they find unwelcome, disagreeable, or even deeply offensive.

- (3) The constituent institution may not take action, as an institution, 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.
- (4) Students and faculty have the freedom to discuss any problem that presents itself, as the First Amendment permits and within the limits of narrowly tailored viewpoint- and content-neutral restrictions on time, place, and manner of expression that are consistent with this Article and that are necessary to achieve a significant institutional interest, provided that these restrictions are clear, published, and provide ample alternative means of expression. Students 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, subject to the requirements of this section.
- (5) Access to campus for purposes of free speech and expression shall be consistent with First Amendment jurisprudence regarding traditional public forums, designated public forums, and nonpublic forums, subject to reasonable time, place, and manner restrictions.
- (6) Consistent with First Amendment jurisprudence, including any reasonable time, place, and manner restrictions adopted by a constituent institution, campuses of the constituent institutions are open to any speaker whom students, student groups, or members of the faculty have invited.
- (7) The constituent institution shall implement a range of disciplinary sanctions for anyone under the jurisdiction of a constituent institution who substantially 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.
- (8) In all student disciplinary cases involving expressive speech or conduct, students are entitled to a disciplinary hearing under published procedures, including, at a minimum, (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, consistent with G.S. 116-40.11.

**"§ 116-301. Committee on Free Expression.**

(a) The Board of Governors of The University of North Carolina System shall establish the Committee on Free Expression and appoint 11 individuals from among its membership to the Committee. The members of the Committee on Free Expression shall elect a chair from the members of the Committee. Each member of the Committee on Free Expression shall serve on the Committee at the pleasure of the Board of Governors. Each member's term shall be equal to the remainder of the member's respective term on the Board of Governors. In the event of a vacancy on the Committee, the Board of Governors shall appoint a replacement from among its membership.

(b) All employees of The University of North Carolina System and all State agencies shall cooperate with the Committee on Free Expression by providing information requested by the Committee.

(c) The Committee on Free Expression shall report to the public, the Board of Governors, the Governor, and the General Assembly by September 1 of every year. The report shall include all of the following:

- (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.
- (4) Any assessments, criticisms, commendations, or recommendations the Committee sees fit to include.

The requirement of reporting to the public may be met by publishing the report on The University of North Carolina System's Web site.

**"§ 116-302. Freshman orientation.**

All constituent institutions of The University of North Carolina shall include in freshman orientation programs a section describing the policies regarding free expression consistent with this Article.

**"§ 116-303. Guidelines and additional policies authorized.**

The Board of Governors, and the constituent institutions of The University of North Carolina subject to approval of the Board of Governors, may adopt additional policies and guidelines to further the purposes of the policies adopted pursuant to this Article. Nothing in this Article shall be construed to prevent institutions from regulating student speech or activity that is prohibited by law. Except as further limited by this Article, constituent institutions shall be allowed to restrict student expression only for expressive activity not protected by the First Amendment, including all of the following:

- (1) Violations of State or federal law.
- (2) Expression that a court has deemed unprotected defamation.
- (3) Unlawful harassment.
- (4) True threats, which are defined as statements meant by the speaker to communicate a serious expression of intent to commit an act of unlawful violence to a particular individual or group of individuals.
- (5) An unjustifiable invasion of privacy or confidentiality not involving a matter of public concern.
- (6) An action that substantially disrupts the function of the constituent institutions.
- (7) Reasonable time, place, and manner restrictions on expressive activities, consistent with G.S. 116-300(4).
- (8) Speech that interferes with the treatment of patients.

**"§ 116-304. Limitations on liability.**

Nothing in this Article shall be construed to make any chancellor, officer, employee, or member of a board of trustees of a constituent institution or the President, officer, employee, or member of the Board of Governors of The University of North Carolina personally liable for acts taken pursuant to their official duties."

**SECTION 2.** The Board of Governors shall develop a policy that requires each constituent institution to identify the officer, office, or department with responsibilities for ensuring compliance with this act and for answering any related questions or concerns. This policy shall require that any officer with these responsibilities receive training on ensuring compliance with this act. Such training shall be developed and provided by the University of North Carolina School of Government.

**SECTION 3.** This act becomes effective June 30, 2017. The initial annual report of the Committee on Free Expression is due by September 1, 2018.

In the General Assembly read three times and ratified this the 29<sup>th</sup> day of June, 2017.

s/ Daniel J. Forest  
President of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

This bill having been presented to the Governor for signature on the 29<sup>th</sup> day of June, 2017 and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law. This 31<sup>st</sup> day of July, 2017.

s/ Karen Jenkins  
Enrolling Clerk

## Appendix G

Amendment No. 1 to SB0723

Gresham  
Signature of Sponsor

AMEND Senate Bill No. 723

House Bill No. 538\*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 7, is amended by adding Sections 2 through 9 of this act as a new part.

SECTION 2. This part shall be known and may be cited as the "Campus Free Speech Protection Act."

SECTION 3. The requirements of this part shall apply to every public institution of higher education in this state.

SECTION 4.

(a) The general assembly finds and declares that public institutions of higher education in Tennessee are not immune from the sweep of the First Amendment to the United States Constitution or Article I, Section 19, of the Tennessee Constitution, which guarantees freedom of speech and expression.

(b) It is the intent of the general assembly that the public institutions of higher education embrace a commitment to the freedom of speech and expression for all students and all faculty.

(c) It is further the intent of the general assembly that public institutions of higher education, including their faculty, shall not require students or other faculty to adopt or to indicate their adherence to beliefs or orthodoxies on any particular political, philosophical, religious, social, or other such subject, although institutions may require students and faculty to conform their conduct to the requirements of law and policy.

Amendment No. 1 to SB0723

Gresham  
Signature of Sponsor

AMEND Senate Bill No. 723

House Bill No. 538\*

(d) It is further the intent of the general assembly that public institutions of higher education not stifle freedom of speech and expression by implementing vague or overbroad speech codes, establishing free speech zones, imposing unconstitutional prior restraints on speech, or disinviting speakers based on the anticipated reaction or opposition of others to the content of speech.

SECTION 5. As used in this part, unless the context requires otherwise:

(1) "Constitutional time, place, and manner restrictions" means restrictions on the time, place, and manner of free speech that do not violate the First Amendment to the United States Constitution or Article I, Section 19 of the Tennessee Constitution that are reasonable, content- and viewpoint-neutral, narrowly tailored to satisfy a significant institutional interest, and leave open ample alternative channels for the communication of the information or message to its intended audience;

(2) "Faculty" or "faculty member" means any person, whether or not the person is compensated by a public institution of higher education, and regardless of political affiliation, who is tasked with providing scholarship, academic research, or teaching. For purposes of this part, the term "faculty" shall include tenured and non-tenured professors, adjunct professors, visiting professors, lecturers, graduate student instructors, and those in comparable positions, however titled. For purposes of this part, the term "faculty" shall not include persons whose primary responsibilities are administrative or managerial;

(3) "Free speech" means speech, expression, or assemblies protected by the First Amendment to the United States Constitution or Article I, Section 19 of the Tennessee Constitution, verbal or written, including, but not limited to, all forms of peaceful assembly, protests, demonstrations, rallies, vigils, marches, public speaking, distribution of printed materials, carrying signs, displays, or circulating petitions. "Free speech" does not include the promotion, sale, or distribution of any product or service;

(4) "Institution" means an institution of public higher education in this state; and

(5) "Student" means:

(A) An individual currently enrolled in a course of study at the institution;

and

(B) An organization that is comprised entirely of individuals currently enrolled in a course of study at the institution, that is registered with an institution pursuant to institutional rules.

#### SECTION 6.

(a) The governing body of every institution shall adopt a policy that affirms the following principles of free speech, which are the public policy of this state:

(1) Students have a fundamental constitutional right to free speech;

(2) An institution shall be committed to giving students the broadest possible latitude to speak, write, listen, challenge, learn, and discuss any issue, subject to Section 9;

(3) An institution shall be committed to maintaining a campus as a marketplace of ideas for all students and all faculty in which the free exchange of ideas is not to be suppressed because the ideas put forth are thought by some or even by most members of the institution's community to be offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed;

(4) It is for an institution's individual students and faculty to make judgments about ideas for themselves, and to act on those judgments not by seeking to suppress free speech, but by openly and vigorously contesting the ideas that they oppose;

(5) It is not the proper role of an institution to attempt to shield individuals from free speech, including ideas and opinions they find offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed;

(6) Although an institution should greatly value civility and mutual respect, concerns about civility and mutual respect shall never be used by an institution as a justification for closing off the discussion of ideas, however offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed those ideas may be to some students or faculty;

(7) Although all students and all faculty are free to state their own views about and contest the views expressed on campus, and to state their own views about and contest speakers who are invited to express their views on the institution's campus, they may not substantially obstruct or otherwise substantially interfere with the freedom of others to express views they reject or even loathe. To this end, an institution has a responsibility to promote a lively and fearless freedom of debate and deliberation and protect that freedom;

(8) An institution shall be committed to providing an atmosphere that is most conducive to speculation, experimentation, and creation by all students and all faculty, who shall always remain free to inquire, to study and to evaluate, and to gain new understanding;



(9) The primary responsibility of faculty is to engage an honest, courageous, and persistent effort to search out and communicate the truth that lies in the areas of their competence;

(10) Although faculty are free in the classroom to discuss subjects within areas of their competence, faculty shall be cautious in expressing personal views in the classroom and shall be careful not to introduce controversial matters that have no relationship to the subject taught, and especially matters in which they have no special competence or training and in which, therefore, faculty's views cannot claim the authority accorded statements they make about subjects within areas of their competence; provided, that no faculty will face adverse employment action for classroom speech, unless it is not reasonably germane to the subject matter of the class as broadly construed, and comprises a substantial portion of classroom instruction;

(11) An institution shall maintain the generally accessible, open, outdoor areas of its campus as traditional public forums for free speech by students;

(12) An institution shall not restrict students' free speech only to particular areas of the campus; sometimes known as "free speech zones" ;

(13) An institution shall not deny student activity fee funding to a student organization based on the viewpoints that the student organization advocates;

(14) An institution shall not establish permitting requirements that prohibit spontaneous outdoor assemblies or outdoor distribution of literature, although an institution may maintain a policy that grants members of the college or university community the right to reserve certain outdoor spaces in advance;

(15) An institution shall not charge students security fees based on the content of their speech, the content of the speech of guest speakers invited by students, or the anticipated reaction or opposition of listeners to speech;

(16) An institution shall allow all students and all faculty to invite guest speakers to campus to engage in free speech regardless of the views of guest speakers; and

(17) An institution shall not disinvite a speaker invited by a student, student organization, or faculty member because the speaker's anticipated speech may be considered offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed by students, faculty, administrators, government officials, or members of the public.

(b) The policy adopted pursuant to subsection (a) shall be made available to students and faculty annually through one or more of the following methods:

(1) Published annually in the institution's student handbook and faculty handbook, whether paper or electronic;

(2) Made available to students and faculty by way of a prominent notice on the institution's internet site other than through the electronic publication of the policy in the student handbook and faculty handbook;

(3) Sent annually to students and employees to their institutionally-provided email address; or

(4) Addressed by the institution in orientation programs for new students and new faculty.

(c) Nothing in this section shall be construed to grant students the right to disrupt previously scheduled or reserved activities occurring in a traditional public forum.

#### SECTION 7.

(a) With respect to disciplining students for their speech, expression, or assemblies, an institution shall adopt a policy on "student-on-student harassment" defining the term consistent with and no more expansively than the language contained in subsection (b).

(b) As used in this section, "student-on-student harassment" means unwelcome conduct directed toward a person that is discriminatory on a basis prohibited by federal, state, or local law, and that is so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit.

SECTION 8. Nothing in this part shall require an institution to fund costs associated with student speech or expression. An institution shall not impose costs on students or student organizations on the basis of the anticipated reaction or opposition to a person's speech by listeners.

SECTION 9. Nothing contained in this part shall be construed as prohibiting an institution from imposing measures that do not violate the First Amendment to the United States Constitution or Article I, Section 19 of the Tennessee Constitution such as:

- (1) Constitutional time, place, and manner restrictions;
- (2) Reasonable and viewpoint-neutral restrictions in nonpublic forums;
- (3) Restricting the use of the institution's property to protect the free speech rights of students and faculty and preserve the use of the property for the advancement of the institution's mission;
- (4) Prohibiting or limiting speech, expression, or assemblies that are not protected by the First Amendment to the United States Constitution or Article I, Section 19 of the Tennessee Constitution; or
- (5) Content restrictions on speech that are reasonably related to a legitimate pedagogical purpose, such as classroom rules enacted by faculty.

SECTION 10. The governing body of each public institution of higher education in this state is authorized to promulgate rules to effectuate the purposes of this act in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 11. For purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2018, the public welfare requiring it.

## Appendix H

.....  
(Original Signature of Member)

115TH CONGRESS  
1ST SESSION

**H. RES.** \_\_\_\_\_

Expressing the sense of the House of Representatives relating to protecting freedom of speech, thought, and expression at institutions of higher education.

\_\_\_\_\_  
IN THE HOUSE OF REPRESENTATIVES

Mr. ROE of Tennessee submitted the following resolution; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**RESOLUTION**

Expressing the sense of the House of Representatives relating to protecting freedom of speech, thought, and expression at institutions of higher education.

Whereas in Healy v. James, 408 U.S. 169 (1972), the Supreme Court of the United States held that the First Amendment applies in full force on public college and university campuses;

Whereas in Widmar v. Vincent, 454 U.S. 263 (1981), the Supreme Court of the United States observed that “the campus of a public university, at least for its students, possesses many of the characteristics of a public forum”;

Whereas lower Federal courts have also held that the open, outdoor areas of public college and university campuses are public forums;

Whereas section 112(a)(2) of the Higher Education Act of 1965 (20 U.S.C. 1011a(a)(2)) contains a sense of Congress noting that “an institution of higher education should facilitate the free and open exchange of ideas, students should not be intimidated, harassed, discouraged from speaking out, or discriminated against, students should be treated equally and fairly, and nothing in this paragraph shall be construed to modify, change, or infringe upon any constitutionally protected religious liberty, freedom, expression, or association”;

Whereas despite the clarity of the applicable legal precedent and the vital importance of protecting our Nation’s public colleges as true “marketplaces of ideas,” the Foundation for Individual Rights in Education has found that roughly 1 in 10 of America’s top colleges and universities quarantine student expression to so-called “free speech zones,” that more than 20 speakers were disinvited from speaking on campuses in 2016, and survey of 449 schools found that almost 40 percent maintain severely restrictive speech codes that clearly and substantially prohibit constitutionally protected speech;

Whereas according to the American Civil Liberties Union, “Speech codes adopted by government-financed state colleges and universities amount to government censorship, in violation of the Constitution. And the ACLU believes that all campuses should adhere to First Amendment principles because academic freedom is a bedrock of education in a free society.”;

Whereas in December 2014, the University of Hawaii at Hilo settled a lawsuit for \$50,000 after it was sued in Federal court for prohibiting students from protesting the National Security Agency, unless those students were standing in the institution's tiny, flood-prone free speech zone;

Whereas in July 2015, California State Polytechnic University, Pomona settled a lawsuit for \$35,000 after it was sued in Federal court for prohibiting a student from handing out flyers about animal abuse outside of the school's free speech zone, comprising less than 0.01 percent of campus;

Whereas in May 2016, a student-plaintiff settled her lawsuit against Texas' Blinn College for \$50,000 after administrators told her she needed "special permission" to advocate for Second Amendment rights outside of the school's tiny free speech zone;

Whereas in September 2016, two students from the Kellogg Community College in Battle Creek, Michigan, were arrested for handing out copies of the Constitution while talking with their fellow students on a sidewalk;

Whereas a policy of the Los Angeles Community College District—the largest community college district in the country—declares that all of its campuses "are considered non-public forums, except for those portions of each college designated as Free Speech Areas are hereby designated as limited public forums, which designation may be removed and reverted to non-public forum designation by the Board of Trustees.";

Whereas in March 2017, a student sued officials of Los Angeles Pierce College and the Los Angeles Community College District after administrators at Pierce College told



him that he could not distribute Spanish-language copies of the Constitution on campus unless he was standing in the college's free speech zone, which comprises approximately .003 percent of the total area of Pierce College's 426 acres;

Whereas the States of Virginia, Missouri, Arizona, Kentucky, Colorado, and Utah have passed legislation prohibiting public colleges and universities from quarantining expressive activities on the open outdoor areas of campuses to misleadingly labeled free speech zones;

Whereas free speech zones have been used to restrict political speech from all parts of the political spectrum, and have thus inhibited the free exchange of ideas at campuses across the country; and

Whereas in March 2017, Middlebury College students and protesters from the community prevented an invited speaker from giving his presentation and then attacked his car and assaulted a professor as the two attempted to leave, resulting in the professor suffering a concussion: Now therefore be it

1       *Resolved*, That it is the sense of the House of Rep-  
2 representatives that—

3           (1) free speech zones and restrictive speech  
4 codes are inherently at odds with the freedom of  
5 speech guaranteed by the First Amendment of the  
6 Constitution; and

7           (2) institutions of higher education should fa-  
8 cilitate and recommit themselves to protecting the  
9 free and open exchange of ideas.

# Appendix I

115TH CONGRESS  
2D SESSION

# S. 2394

To amend the Higher Education Act of 1965 to ensure that public institutions of higher education protect expressive activities in the outdoor areas on campus.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2018

Mr. HATCH introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

---

## A BILL

To amend the Higher Education Act of 1965 to ensure that public institutions of higher education protect expressive activities in the outdoor areas on campus.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Free Right to Expres-  
5 sion in Education Act”.

6 **SEC. 2. CAMPUS INDIVIDUAL RIGHTS.**

7 Title IV of the Higher Education Act of 1965 (20  
8 U.S.C. 1070 et seq.) is amended—

1 (1) in section 487(a), by adding at the end the  
2 following:

3 “(30) In the case of an institution that is a  
4 public institution, the institution will comply with  
5 the expressive activity protections described in sec-  
6 tion 493E.”; and

7 (2) in part G, by adding at the end the fol-  
8 lowing:

9 **“SEC. 493E. CAMPUS INDIVIDUAL RIGHTS.**

10 **“(a) DEFINITION OF EXPRESSIVE ACTIVITIES.—**

11 **“(1) IN GENERAL.—**In this section, the term  
12 ‘expressive activity’ includes—

13 **“(A)** peacefully assembling, protesting, or  
14 speaking;

15 **“(B)** distributing literature;

16 **“(C)** carrying a sign; or

17 **“(D)** circulating a petition.

18 **“(2) EXCLUSIONS.—**In this section, the term  
19 ‘expressive activity’ does not include violence, har-  
20 assment, or obscenity (as defined by the Secretary in  
21 accordance with the precedents of the Supreme  
22 Court of the United States).

23 **“(b) EXPRESSIVE ACTIVITIES AT AN INSTITUTION.—**

24 **“(1) IN GENERAL.—**Each public institution of  
25 higher education participating in a program under

1 this title may not prohibit, subject to paragraph (2),  
2 a person from freely engaging in noncommercial ex-  
3 pressive activity in an outdoor area on the institu-  
4 tion's campus if the person's conduct is lawful.

5 "(2) RESTRICTIONS.—An institution of higher  
6 education described in paragraph (1) may maintain  
7 and enforce reasonable time, place, or manner re-  
8 strictions on an expressive activity in an outdoor  
9 area of the institution's campus, if the restriction—

10 "(A) is narrowly tailored to serve a signifi-  
11 cant institutional interest;

12 "(B) is based on published, content-neu-  
13 tral, and viewpoint-neutral criteria; and

14 "(C) leaves open ample alternative chan-  
15 nels for communication.

16 "(3) APPLICATION.—The protections provided  
17 under paragraph (1) do not apply to expressive ac-  
18 tivity in an area on an institution's campus that is  
19 not an outdoor area.

20 "(c) CAUSES OF ACTION.—

21 "(1) AUTHORIZATION.—The following persons  
22 may bring an action in a Federal court of competent  
23 jurisdiction to enjoin a violation of this section or to  
24 recover compensatory damages, reasonable court  
25 costs, or reasonable attorney fees:

1           “(A) The Attorney General.

2           “(B) A person claiming that the person’s  
3           expressive activity rights, as described in sub-  
4           section (b)(1), were violated.

5           “(2) ACTIONS.—In an action brought under  
6           this subsection, if the court finds a violation of this  
7           section, the court—

8           “(A) shall—

9           “(i) enjoin the violation; and

10           “(ii) if a person whose expressive ac-  
11           tivity rights were violated brought the ac-  
12           tion, award the person—

13           “(I) not less than \$500 for an  
14           initial violation; and

15           “(II) if the person notifies the in-  
16           stitution of the violation, \$50 for each  
17           day the violation continues after the  
18           notification if the institution did not  
19           act to discontinue the cause of the  
20           violation; and

21           “(B) may award a prevailing plaintiff—

22           “(i) compensatory damages;

23           “(ii) reasonable court costs; or

24           “(iii) reasonable attorney fees.

25           “(d) STATUTE OF LIMITATIONS.—

1           “(1) IN GENERAL.—Except as provided in para-  
2           graph (3), an action under this section may not be  
3           brought later than 1 year after the date on which  
4           the cause of action accrues.

5           “(2) CONTINUING VIOLATION.—Each day that  
6           a violation of this section continues after an initial  
7           violation of this section, and each day that an insti-  
8           tution’s policy in violation of this section remains in  
9           effect, shall constitute a continuing violation of this  
10          section.

11          “(3) EXTENSION.—For a continuing violation  
12          described in paragraph (2), the limitation described  
13          in paragraph (1) shall extend to 1 year after the  
14          date on which the most recent violation occurs.”.

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