

Opening Statement of Ranking Member Bobby Scott (VA-03)
House Committee on Education and the Workforce
“Examining the First Amendment on Campus”
Full Committee Hearing
Wednesday, September 24, 2018 | 10:00 a.m.

Thank you, Madam Chairwoman, and welcome to our distinguished witnesses. I want to thank you for agreeing to be here and testify today on some of the issue surrounding free exercise of the First Amendment on college campuses.

For 231 years, our Constitution has made this country the envy of the world. The rights and freedoms guaranteed by the Constitution have protected us from the kinds of upheavals over religious and political issues that have led to strife and turmoil in many other nations. Our country endures because of the genius of our Constitution. While we have had many of the challenges of other nations, including civil war, our Constitution allows us to have vigorous debates of issues, followed by free and fair elections, knowing our nation will endure. We must not only celebrate the majesty of our Constitution, but protect and defend it, as well. This is a shared responsibility.

Unfortunately, when it comes to the issue of free speech on college campuses, far too often we see a retreat into ideological camps with selective partisan interpretations of:

- who has free speech rights and who doesn't;
- who is being persecuted for their beliefs and who are the persecutors; and,
- where and how lines between protected speech and unprotected speech should be drawn.

These narratives are often less about ensuring dialogue and a proliferation of speech and more about winning a debate in the national media not on a college campus.

America today is more politically and religiously diverse than ever before, and that extends to our nation's colleges and universities. The increased presence of students of different races, religions, socio-economic backgrounds, gender identities and sexual orientations on our campuses has the opportunity to grow the number of voices, and the types of speech that are valued on our campuses.

But with this growth has also come a rise in the partisan defense of First Amendment rights. While it is not always the case, many students only hear an invocation of the First Amendment on campus when they are being asked to tolerate speech and ideas that are intolerant of them. To be sure, while infringements on campus free speech are just as likely to come from the political right as the political left, the far right has turned the shared goal of protecting free speech into a partisan fight.

Just this summer Attorney General Jeff Sessions gave a speech decrying “a generation of sanctimonious, sensitive, supercilious snowflakes” describing the state of free speech on college campuses. Ironically, Mr. Sessions delivered that speech at an event sponsored by a conservative group that publishes professor watchlists designed to intimidate faculty and suppress academic speech. This makes it hard to consider the enforcement of free speech rights by this Administration to be non-partisan.

Now let me be clear, even speech that may be considered despicable speech is, indeed, protected by the First Amendment on public university campuses. You do not need the First Amendment to protect agreeable and acceptable speech. Public universities as state actors, have the duty to ensure free speech, and any restriction on it must be in line with established constitutional principles.

But, our schools also have duties under Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in “any program or activity receiving Federal financial assistance.” And we must consider what has recently accompanied this partisan fight around free speech: a documented rise in incidents of harassment towards marginalized student groups. These students, rightfully fearful about their safety and security, petition their college administrators for help. The First Amendment is not an excuse for inaction.

In subregulatory guidance, the Department of Education has illustrated how a university can live up to both its requirements under the First Amendment and under Title VI saying, and I quote:

“OCR [Office of Civil Rights] has consistently reaffirmed that the Federal civil rights laws it enforces protect students from prohibited discrimination and are not intended to restrict expressive activities or speech protected under the U.S. Constitution’s First Amendment. The fact that discriminatory harassment involves speech, however, does not relieve the school of its obligation to respond if the speech contributes to a hostile environment. **Schools can protect students from such harassment without running afoul of students’ and staff First Amendment right ...** educational institutions can establish a campus culture that is welcoming and respectful of the diverse linguistic, cultural, racial, and ethnic backgrounds of all students and institute campus climate checks to assess the effectiveness of the school’s efforts to ensure that it is free from harassment.”

It is troubling that the rise in hate speech, and the embrace of partisan enforcement of free speech is coinciding with a damaging shift in how the Education Department views its role in defending students’ civil rights. Under Secretary DeVos, we have seen active investigation of claims of campus free speech violations at public universities brought by conservative activists, but nothing investigating the explosion in incidences of racially motivated hate speech or actions on campus.

Madame Chairwoman, while I believe not every problem has a legislative solution, Congress could do more to help schools in maintaining their First Amendment and title VI duties. To that end I have introduced The Equity and Inclusion Enforcement Act (H.R. 2486). The bill would help address this challenge by requiring programs that receive federal student assistance to designate at least one Title VI compliance coordinator to investigate Title VI discrimination complaints and uphold institutional responsibility to promote a safe and inclusive learning environment. Much like the work our Title IX coordinators do currently, this bill could help the schools that strive to be both a marketplace of ideas and safe and equal space for all students to do just that. I look forward to hearing from our witnesses today, and I yield back.