

Respecting the First Amendment on Campus Act

Bill Summary as Introduced

The worst kept secret in American postsecondary education is the long-standing and pervasive degradation of First Amendment rights. Occurrences like shout downs from angry mobs, disinvitations of speakers, and “cancellations” have become commonplace at our colleges and universities, often because taxpayers are forced to subsidize woke faculty and administrators. This trend threatens students’ constitutionally guaranteed rights at a public institution and the ability of campuses to maintain a civil educational environment.

Luckily, sensible public policy can push back on this plague of illiberalism and restore decency on campuses. Dozens of states have already enacted legislation to protect the First Amendment rights. But progress has been slow and has not yet spread throughout the nation. To ensure these rights are realized for students and faculty, it is necessary to pass strong federal protections.

The *Respecting the First Amendment on Campus Act* amends the *Higher Education Act* (HEA) to ensure that public colleges and universities meet their First Amendment obligations and that all institutions receiving Title IV funding (i.e. federal financial aid and aid from college access programs) through the HEA are transparent about their policies.

Section 2 – Sense of Congress; Construction; Definition

- The bill adds a sense of Congress acknowledging the profound contribution of the University of Chicago’s Chicago Principles that emphasize a commitment to freedom of speech and calls on non-sectarian institutions of higher education to adopt the Chicago Principles, or substantially similar principles, and to develop and consistently implement policies accordingly.
- The bill adds a sense of Congress originally introduced as H.Res. 282 by Rep. Greg Murphy (R-NC). The sense of Congress condemns public institutions for conditioning student admission, hiring, reappointment, or promotion of any faculty member, on making a statement of support or opposition to any political ideology, including regarding diversity, equity, and inclusion. The sense of Congress also discourages any institutions from requesting or compelling this type of statement from student applicants or faculty members.
- The bill includes a provision affirming that nothing in this bill shall be construed to infringe upon, or otherwise impact, the protections provided under title VI and title VII of the Civil Rights Act of 1964.
- The bill defines “covered public institution” as an institution of higher education that is a public institution and participates in a program authorized under title IV of the HEA.

Section 3 - Disclosure of Institutional Policies Related to Speech, Association and Religious Rights

- No institution will be eligible to receive Title IV funding unless it certifies to the Department of Education (ED) that the institution has annually disclosed to current and prospective students and faculty any policies held by the institution related to association, religion, and speech. The bill also requires public institutions to disclose the right to a cause of action.

Section 4 - Freedom of Association and Religion

- The bill includes Rep. Erin Houchin's (R-IN) *Students Bill of Rights Act*, which would affirm the rights of student organizations and students at public institutions receiving funding through Title IV of the HEA.
 - An institution may not deny recognition to a student organization because the organization is unable to find a faculty sponsor. In the case of a student organization that meets all other institutional requirements for recognition, but cannot find a faculty sponsor, an institution must provide an alternative to be recognized, which may include waiving the faculty sponsor requirement or the institution assigning faculty to be a sponsor to perform administrative functions required of a faculty. An institution is required to provide an appeals process for student organizations that are initially denied recognition. The institution must provide a written explanation for denying recognition in a timely manner, provide written notice of the appeal process and timeline to resolve the appeal, allow students to obtain counsel, and ensure that an appellate entity did not participate in the prior decision to deny recognition to the student organization.
 - An institution that collects mandatory student fees must establish and make publicly available clear, objective, content- and viewpoint-neutral standards to allocate funding for recognized student organizations. If a recognized student organization requests information on why it was denied some or all of its funding, an institution must provide a specific reason, copies of policies relied on to deny the funding, and provide an appeals process for the recognized student organization.
 - An institution must make publicly available clear, objective, and content- and viewpoint-neutral standards to determine the security fees assessed for events organized by a student or student organizations.
 - An institution must establish and make publicly available clear, objective, and content- and viewpoint-neutral standards to be used by the institution for the safety and protection of speakers and guests who are invited to an institution by a student or student organization.
- The bill includes Rep. Tim Walberg's (R-MI) *Equal Campus Access Act* to prohibit a public institutions receiving funding through Title IV of the HEA from denying a religious student organization any right otherwise afforded to other student organizations because of the organization's religious beliefs, practices, speech, leadership standards, or standards of conduct.
- The bill includes Rep. Elise Stefanik's (R-NY) *Freedom of Association in Higher Education Act* to protect students' free association right to join a single-sex social organization. Students or a group of students at all institutions receiving Title IV funding must be able to form or apply to join a single-sex social organization. An institution must not take any adverse action against a single-sex social organization or a member of the single-sex organization, such as suspension, other disciplinary action, withholding financial assistance or access to on-campus housing, participation in extracurricular clubs, or withholding letters of recommendation, because of the membership practice of the organization. The bill allows single-sex social organizations to regulate their own membership. However, nothing prevents the institution from not officially recognizing a

single-sex social organization or taking adverse action against a student because of misconduct. Public institutions can also take adverse action if the organization's purposes incite imminent lawless action and for private institutions, because the organization's purpose is incompatible with the religious mission of the institution, so long as the adverse action is not based on the organization being a single-sex social organization.

Section 5 - Freedom of Speech

- The bill includes Rep. Kevin Kiley's (R-CA) *Free Speech on Campus Act*, which requires a public institution receiving funding through Title IV of the HEA to provide a written statement to new and transfer students at orientation that explains the First Amendment rights of students, including assurances of the institution's commitment to freedom of expression and that students and speakers will not have their rights violated. Institutions must also provide educational programming at orientation on free speech rights and responsibilities and post the materials online.
- The bill includes provisions based on Rep. Greg Murphy's (R-NC) *Campus Free Speech Restoration Act*, which prohibits a public institution receiving funding through Title IV of the HEA from preventing a person from freely engaging in noncommercial expressive activity on campus, including by enforcing restrictions on expressive activity to only "free speech zones," except in limited content- and viewpoint-neutral circumstances consistent with the First Amendment.
- The bill includes provisions based on Rep. Elise Stefanik's (R-NY) *Restoring Academic Freedom on Campus Act*, which prevents a public institution receiving funding through Title IV of the HEA from requiring a political test for student admission or appointment, hiring, promotion, or granting of tenure to faculty. The bill defines a political test as compelling a student applicant or employee of an institution to commit to or make a statement in support or opposition to any ideology or partisan belief. A political test is also defined as compelling a student or employee to promote the disparate treatment of an individual because of his or her race, color, or national origin, such as through diversity, equity, and inclusion initiatives.

Section 6 - Enforcement

- If an institution fails to certify that it disclosed its policies on speech, association, or religion to current and prospective students and faculty annually, the institution will be ineligible to receive Title IV funding. In order to regain eligibility to receive funding, an institution must demonstrate compliance with the disclosure requirement.
- The bill would add a cause of action to the HEA for an aggrieved individual, or an organization, who is harmed by a violation of the requirements of this bill and who has exhausted any available appeals. This cause of action would only apply to violations at a public institution receiving Title IV funding. Similar to the judicial enforcement piece of the Trump administration's Religious Liberty and Free Inquiry Rule, if a court's non-default final judgement finds the institution violated any requirements in this bill, the institution must notify ED no later than seven days after the non-default, final judgement. The institution must also submit a report not later than 30 days after the date on which the court makes a non-default final decision certifying that the policy or practice is no longer in use and providing evidence to support the certification. If the institution does not notify ED or reverse the policy or practice, then ED will revoke Title IV eligibility for the

following award year. An institution may submit a report to ED providing evidence that the policy or practice is no longer in use to restore Title IV eligibility.