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(Original Signature of Member)

118TH CONGRESS
2D SESSION

H. R. _____

To amend the Higher Education Act of 1965 to require institutions of higher education to adopt and adhere to principles of free speech, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. WILLIAMS of New York introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Higher Education Act of 1965 to require institutions of higher education to adopt and adhere to principles of free speech, and for other purposes.

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 “Respecting the First
5 Amendment on Campus Act”.

1 **SEC. 2. SENSE OF CONGRESS.**

2 The Higher Education Act of 1965 (20 U.S.C. 1001
3 et seq.) is amended by inserting after section 112 the fol-
4 lowing new section:

5 **“SEC. 112A. SENSE OF CONGRESS; CONSTRUCTION; DEFINI-**
6 **TION.**

7 “(a) SENSE OF CONGRESS.—

8 “(1) ADOPTION OF CHICAGO PRINCIPLES.—The
9 Congress—

10 “(A) recognizes that free expression, open
11 inquiry, and the honest exchange of ideas are
12 fundamental to higher education;

13 “(B) acknowledges the profound contribu-
14 tion of the Chicago Principles to the freedom of
15 speech and expression; and

16 “(C) calls on nonsectarian institutions of
17 higher education to adopt the Chicago Prin-
18 ciples or substantially similar principles with re-
19 spect to institutional mission that emphasizes a
20 commitment to freedom of speech and expres-
21 sion on university campuses and to develop and
22 consistently implement policies accordingly.

23 “(2) POLITICAL LITMUS TESTS.—The Con-
24 gress—

25 “(A) condemns public institutions of high-
26 er education for conditioning admission to any

1 student applicant, or the hiring, reappointment,
2 or promotion of any faculty member, on the ap-
3 plicant or faculty member pledging allegiance to
4 or making a statement of personal support for
5 or opposition to any political ideology or move-
6 ment, including a pledge or statement regarding
7 diversity, equity, and inclusion, or related top-
8 ics; and

9 “(B) discourages any institution from re-
10 questing or requiring any such pledge or state-
11 ment from an applicant or faculty member, as
12 such actions are antithetical to the freedom of
13 speech protected by the First Amendment to
14 the Constitution.

15 “(b) CONSTRUCTION.—Nothing in sections 112B
16 through 112E shall be construed to infringe upon, or oth-
17 erwise impact, the protections provided to individuals
18 under titles VI and VII of the Civil Rights Act of 1964
19 (42 U.S.C. 2000d et seq.).

20 “(c) DEFINITION.—For purposes of sections 112C,
21 112D, and 112E, the term ‘covered public institution’
22 means an institution of higher education that is—

23 “(1) a public institution; and

24 “(2) participating in a program authorized
25 under title IV.”.

1 **SEC. 3. DISCLOSURE OF FREE SPEECH POLICIES.**

2 The Higher Education Act of 1965 (20 U.S.C. 1001
3 et seq.), as amended by section 2 of this Act, is further
4 amended by inserting after section 112A the following new
5 section:

6 **“SEC. 112B. DISCLOSURE OF POLICIES RELATED TO FREE-**
7 **DOM OF SPEECH, ASSOCIATION, AND RELI-**
8 **GION.**

9 “(a) IN GENERAL.—No institution of higher edu-
10 cation shall be eligible to participate in any program under
11 title IV unless the institution certifies to the Secretary
12 that the institution has annually disclosed to current and
13 prospective students and faculty—

14 “(1) any policies held by the institutions related
15 to—

16 “(A) speech on campus, including policies
17 limiting—

18 “(i) the time when such speech may
19 occur;

20 “(ii) the place where such speech may
21 occur; or

22 “(iii) the manner in which such
23 speech may occur;

24 “(B) freedom of association, if applicable;
25 and

26 “(C) freedom of religion, if applicable; and

1 “(2) the right to a cause of action under section
2 112E, if the institution is a public institution.

3 “(b) INTENDED BENEFICIARIES.—The certification
4 specified in subsection (a) shall include an acknowledg-
5 ment from the institution that the students and faculty
6 are the intended beneficiaries of the policies disclosed in
7 the certification.”.

8 **SEC. 4. FREEDOM OF ASSOCIATION AND RELIGION.**

9 The Higher Education Act of 1965 (20 U.S.C. 1001
10 et seq.), as amended by section 3 of this Act, is further
11 amended by inserting after section 112B the following new
12 section:

13 **“SEC. 112C. FREEDOM OF ASSOCIATION AND RELIGION.**

14 “(a) STUDENTS’ BILL OF RIGHTS TO FURTHER PRO-
15 TECT SPEECH AND ASSOCIATION.—

16 “(1) PROTECTED RIGHTS.—A covered public in-
17 stitution shall comply with the following require-
18 ments:

19 “(A) RECOGNIZED STUDENT ORGANIZA-
20 TIONS.—A covered public institution that has
21 recognized student organizations shall comply
22 with the following requirements:

23 “(i) FACULTY ADVISORS.—

24 “(I) IN GENERAL.—A covered
25 public institution may not deny rec-

1 ognition to a student organization be-
2 cause the organization is unable to ob-
3 tain a faculty advisor or sponsor, if
4 the organization meets each of the
5 other content- and viewpoint-neutral
6 institutional requirements for such
7 recognition.

8 “(II) ALTERNATIVE.—An institu-
9 tion described in subclause (I) shall
10 ensure that any policy or practice re-
11 lated to the recognition of a student
12 organization—

13 “(aa) in the case of an orga-
14 nization that meets each of the
15 other content- and viewpoint-neu-
16 tral institutional requirements for
17 such recognition but is unable to
18 obtain a faculty advisor or spon-
19 sor, provides for an alternative to
20 any requirement that a faculty or
21 staff member serve as the faculty
22 advisor or sponsor as a condition
23 for recognition of the student or-
24 ganization, which alternative may
25 include—

1 “(AA) waiver of such
2 requirement; or

3 “(BB) the institution
4 assigning a faculty or staff
5 member to such organiza-
6 tion; and

7 “(bb) does not require a fac-
8 ulty or staff member of the insti-
9 tution assigned to serve as fac-
10 ulty advisor pursuant to item
11 (aa)(BB) to participate in, or
12 support, the organization other
13 than by performing the purely
14 administrative functions required
15 of a faculty advisor.

16 “(ii) APPEAL OPTIONS FOR RECOGNI-
17 TION.—

18 “(I) IN GENERAL.—A covered
19 public institution shall provide an ap-
20 peals process by which a student orga-
21 nization that has been denied recogni-
22 tion by the institution may appeal to
23 an institutional appellate entity for re-
24 consideration.

1 “(II) REQUIREMENTS.—The ap-
2 peal process shall—

3 “(aa) require the covered
4 public institution to provide a
5 written explanation for the basis
6 for the denial of recognition in a
7 timely manner, which shall in-
8 clude a copy of all policies relied
9 upon by the institution as a basis
10 for the denial;

11 “(bb) require the covered
12 public institution to provide writ-
13 ten notice to the students seeking
14 recognition of the appeal process
15 and the timeline for hearing and
16 resolving the appeal;

17 “(cc) allow the students
18 seeking recognition to obtain out-
19 side counsel to represent them
20 during the appeal; and

21 “(dd) ensure that such ap-
22 pellate entity did not participate
23 in any prior proceeding related to
24 the denial of recognition to the
25 student organization.

1 “(B) DISTRIBUTION OF FUNDS TO STU-
2 DENT ORGANIZATIONS.—A covered public insti-
3 tution that collects a mandatory fee from stu-
4 dents for the costs of student activities or
5 events (or both), and provides funds generated
6 from such student fees to one or more recog-
7 nized student organizations of the institution,
8 shall—

9 “(i) establish and make publicly avail-
10 able clear, objective, content- and view-
11 point-neutral, and exhaustive standards to
12 be used by the institution to determine—

13 “(I) the total amount of funds
14 made available for allocations to the
15 recognized student organizations; and

16 “(II) the allocations of such total
17 amount to individual recognized stu-
18 dent organizations;

19 “(ii) ensure that allocations are made
20 to the recognized student organizations in
21 accordance with the standards established
22 pursuant to clause (i);

23 “(iii) upon the request of a recognized
24 student organization that has been denied
25 all or a portion of an allocation described

1 in clause (ii), provide to the organization,
2 in writing (which may include electronic
3 communication) and in a timely manner,
4 the specific reasons for such denial, copies
5 of all policies relied upon by the institution
6 as basis for the denial, and information of
7 the appeals process described in clause
8 (iv); and

9 “(iv) provide an appeals process by
10 which a recognized student organization
11 that has been denied all or a portion of an
12 allocation described in clause (ii) may ap-
13 peal to an institutional appellate entity for
14 reconsideration, which appeals process—

15 “(I) shall require the covered
16 public institution to provide written
17 notice to the students seeking an allo-
18 cation through the appeal process and
19 the timeline for hearing and resolving
20 the appeal;

21 “(II) allow the students seeking
22 an allocation to obtain outside counsel
23 to represent them during the appeal;
24 and

1 “(III) require the institution to
2 ensure that such appellate entity did
3 not participate in any prior pro-
4 ceeding related to such allocation.

5 “(C) ASSESSMENT OF SECURITY FEES FOR
6 EVENTS.—A covered public institution shall es-
7 tablish and make publicly available clear, objec-
8 tive, content- and viewpoint-neutral, and ex-
9 haustive standards to be used by the institution
10 to—

11 “(i) determine the amount of any se-
12 curity fee for an event or activity organized
13 by a student or student organization; and

14 “(ii) ensure that a determination of
15 such an amount may not be based, in
16 whole or in part, on—

17 “(I) the content of expression or
18 viewpoint of the student or student
19 organization;

20 “(II) the content of expression of
21 the event or activity organized by the
22 student or student organization;

23 “(III) the content of expression
24 or viewpoint of an invited guest of the
25 student or student organization; or

1 “(IV) an anticipated reaction by
2 students or the public to the event.

3 “(D) PROTECTIONS FOR INVITED GUESTS
4 AND SPEAKERS.—A covered public institution
5 shall establish and make publicly available
6 clear, objective, content- and viewpoint-neutral,
7 and exhaustive standards to be used by the in-
8 stitution related to the safety and protection of
9 speakers and guests who are invited to the in-
10 stitution by a student or student organization.

11 “(2) DEFINITIONS.—In this subsection:

12 “(A) RECOGNIZED STUDENT ORGANIZA-
13 TION.—The term ‘recognized student organiza-
14 tion’ means a student organization that has
15 been determined by a covered public institution
16 to meet institutional requirements to qualify for
17 certain privileges granted by the institution,
18 such as use of institutional venues, resources,
19 and funding.

20 “(B) SECURITY FEE.—The term ‘security
21 fee’ means a fee charged to a student or stu-
22 dent organization for an event or activity orga-
23 nized by the student or student organization on
24 the campus of the institution that is intended to
25 cover some or all of the costs incurred by the

1 institution for additional security measures
2 needed to ensure the security of the institution,
3 students, faculty, staff, or surrounding commu-
4 nity as a result of such event or activity.

5 “(b) EQUAL CAMPUS ACCESS.—A covered public in-
6 stitution shall not deny to a religious student organization
7 any right, benefit, or privilege that is otherwise afforded
8 to other student organizations at the institution (including
9 full access to the facilities of the institution and official
10 recognition of the organization by the institution) because
11 of the religious beliefs, practices, speech, leadership stand-
12 ards, or standards of conduct of the religious student or-
13 ganization.

14 “(c) FREEDOM OF ASSOCIATION.—

15 “(1) UPHOLDING FREEDOM OF ASSOCIATION
16 PROTECTIONS.—Any student (or group of students)
17 enrolled in an institution of higher education that
18 receives funds under this Act, including through an
19 institution’s participation in any program under title
20 IV, shall—

21 “(A) subject to paragraph (3)(A), be able
22 to form a single-sex social organization, whether
23 recognized by the institution or not; and

24 “(B) be able to apply to join any single-sex
25 social organization; and

1 “(C) if selected for membership by any sin-
2 gle-sex social organization, be able to join, and
3 participate in, such single-sex organization, sub-
4 ject to its standards for regulating its own
5 membership, as provided under paragraph
6 (3)(C).

7 “(2) NON-RETALIATION AGAINST STUDENTS OF
8 SINGLE-SEX SOCIAL ORGANIZATIONS.—An institu-
9 tion of higher education that receives funds under
10 this Act, including through an institution’s partici-
11 pation in any program under title IV, shall not—

12 “(A) take any action to require or coerce
13 a student or prospective student who is a mem-
14 ber or prospective member of a single-sex social
15 organization to waive the protections provided
16 under paragraph (1), including as a condition
17 of enrolling in the institution;

18 “(B) take any adverse action against a sin-
19 gle-sex social organization, or a student who is
20 a member or a prospective member of a single-
21 sex social organization, based on the member-
22 ship practice of such organization limiting
23 membership only to individuals of one sex; or

24 “(C) impose a recruitment restriction (in-
25 cluding a recruitment restriction relating to the

1 schedule for membership recruitment) on a sin-
2 gle-sex social organization recognized by the in-
3 stitution, which is not imposed upon other stu-
4 dent organizations by the institution, unless the
5 organization (or a council of similar organiza-
6 tions) and the institution have entered into a
7 mutually agreed-upon written agreement that
8 allows the institution to impose such restriction.

9 “(3) RULES OF CONSTRUCTION.—Nothing in
10 this subsection shall—

11 “(A) require an institution of higher edu-
12 cation to officially recognize a single-sex social
13 organization;

14 “(B) prohibit an institution of higher edu-
15 cation from taking an adverse action against a
16 student who organizes, leads, or joins a single-
17 sex social organization—

18 “(i) due to academic or nonacademic
19 misconduct; or

20 “(ii)(I) for public institutions, because
21 the organization’s purpose is directed to
22 inciting or producing imminent lawless ac-
23 tion and likely to incite or produce such
24 action; or

1 “(II) for private institutions, because
2 the organization’s purpose is incompatible
3 with the religious mission of the institu-
4 tion, so long as that adverse action is not
5 based on the membership practice of the
6 organization of limiting membership only
7 to individuals of one sex;

8 “(C) prevent a single-sex social organiza-
9 tion from regulating its own membership;

10 “(D) inhibit the ability of the faculty of an
11 institution of higher education to express an
12 opinion (either individually or collectively) about
13 membership in a single-sex social organization,
14 or otherwise inhibit the academic freedom of
15 such faculty to research, write, or publish mate-
16 rial about membership in such an organization;
17 or

18 “(E) create enforceable rights against a
19 single-sex social organization or against an in-
20 stitution of higher education due to the decision
21 of the organization to deny membership to an
22 individual student.

23 “(4) DEFINITIONS.—In this subsection:

24 “(A) ADVERSE ACTION.—The term ‘ad-
25 verse action’ includes the following actions

1 taken by an institution of higher education with
2 respect to a single-sex social organization or a
3 member or prospective member of a single-sex
4 social organization:

5 “(i) Expulsion, suspension, probation,
6 censure, condemnation, formal reprimand,
7 or any other disciplinary action, coercive
8 action, or sanction taken by an institution
9 of higher education or administrative unit
10 of such institution.

11 “(ii) An oral or written warning with
12 respect to an action described in clause (i)
13 made by an official of an institution of
14 higher education acting in their official ca-
15 pacity.

16 “(iii) An action to deny participation
17 in any education program or activity, in-
18 cluding the withholding of any rights,
19 privileges, or opportunities afforded other
20 students on campus.

21 “(iv) An action to withhold, in whole
22 or in part, any financial assistance (includ-
23 ing scholarships and on-campus employ-
24 ment), or denying the opportunity to apply
25 for financial assistance, a scholarship, a

1 graduate fellowship, or on-campus employ-
2 ment.

3 “(v) An action to deny or restrict ac-
4 cess to on-campus housing.

5 “(vi) An act to deny any certification,
6 endorsement, or letter of recommendation
7 that may be required by a student’s cur-
8 rent or future employer, a government
9 agency, a licensing board, an institution of
10 higher education, a scholarship program,
11 or a graduate fellowship to which the stu-
12 dent applies or seeks to apply.

13 “(vii) An action to deny participation
14 in any sports team, club, or other student
15 organization, including a denial of any
16 leadership position in any sports team,
17 club, or other student organization.

18 “(viii) An action to withdraw the in-
19 stitution’s official recognition of such orga-
20 nization.

21 “(ix) An action to require any student
22 to certify that such student is not a mem-
23 ber of a single-sex social organization or to
24 disclose the student’s membership in a sin-
25 gle-sex social organization.

1 “(x) An action to interject an institu-
2 tion’s own criteria into the membership
3 practices of the organization in any man-
4 ner that conflicts with the rights of such
5 organization under title IX of the Edu-
6 cation Amendments of 1972 (20 U.S.C.
7 1681 et seq.) or this subsection.

8 “(xi) An action to impose additional
9 requirements on advisors serving a single-
10 sex social organization that are not im-
11 posed on all other student organizations.

12 “(B) SINGLE-SEX SOCIAL ORGANIZA-
13 TION.—The term ‘single-sex social organization’
14 means—

15 “(i) a social fraternity or sorority de-
16 scribed in section 501(c) of the Internal
17 Revenue Code of 1986 which is exempt
18 from taxation under section 501(a) of such
19 Code, or an organization that has been his-
20 torically single-sex, the active membership
21 of which consists primarily of students or
22 alumni of an institution of higher edu-
23 cation; or

24 “(ii) a single-sex private social club
25 (including an independent organization lo-

1 cated off-campus) that consists primarily
2 of students or alumni of an institution of
3 higher education.”.

4 **SEC. 5. FREE SPEECH ON CAMPUS.**

5 The Higher Education Act of 1965 (20 U.S.C. 1001
6 et seq.), as amended by section 4 of this Act, is further
7 amended by inserting after section 112C the following new
8 section:

9 **“SEC. 112D. FREE SPEECH ON CAMPUS.**

10 “(a) IN GENERAL.—A covered public institution
11 shall—

12 “(1) at each orientation for new and transfer
13 students, provide students attending the orienta-
14 tion—

15 “(A) a written statement that—

16 “(i) explains the rights of students
17 under the First Amendment to the Con-
18 stitution;

19 “(ii) affirms the importance of, and
20 the commitment of the institution to, free-
21 dom of expression; and

22 “(iii) includes assurances that stu-
23 dents, and individuals invited by students
24 to speak at the institution, will not be
25 treated in a manner that violates the free-

1 dom of expression of such students or indi-
2 viduals; and

3 “(B) educational programming (including
4 online resources) that describes their free
5 speech rights and responsibilities under the
6 First Amendment to the Constitution; and

7 “(2) post on the publicly accessible website of
8 the institution the statement described in paragraph
9 (1)(A).

10 “(b) CAMPUS FREE SPEECH AND RESTORATION.—

11 “(1) DEFINITION OF EXPRESSIVE ACTIVI-
12 TIES.—In this subsection, the term ‘expressive activ-
13 ity’—

14 “(A) includes—

15 “(i) peacefully assembling, protesting,
16 speaking, or listening;

17 “(ii) distributing literature;

18 “(iii) carrying a sign;

19 “(iv) circulating a petition; or

20 “(v) other expressive activities guar-
21 anteed under the First Amendment to the
22 Constitution;

23 “(B) applies equally to religious expression
24 as it does to non-religious expression; and

1 “(C) does not include unprotected speech
2 (as defined by the precedents of the Supreme
3 Court of the United States).

4 “(2) EXPRESSIVE ACTIVITIES AT AN INSTITU-
5 TION.—

6 “(A) IN GENERAL.—A covered public insti-
7 tution may not prohibit, subject to subpara-
8 graph (B), a person from freely engaging in
9 noncommercial expressive activity in a generally
10 accessible area on the institution’s campus if
11 the person’s conduct is lawful. The publicly ac-
12 cessible outdoor areas of campuses of public in-
13 stitutions of higher education shall be regulated
14 pursuant to rules applicable to traditional pub-
15 lic forums.

16 “(B) RESTRICTIONS.—A covered public in-
17 stitution may not maintain or enforce time,
18 place, or manner restrictions on an expressive
19 activity in a generally accessible area of the in-
20 stitution’s campus unless the restriction—

21 “(i) is narrowly tailored in further-
22 ance of a significant governmental interest;

23 “(ii) is based on published, content-
24 neutral, and viewpoint-neutral criteria;

1 “(iii) leaves open ample alternative
2 channels for communication; and

3 “(iv) provides for spontaneous assem-
4 bly and distribution of literature.

5 “(C) APPLICATION.—The protections pro-
6 vided under subparagraph (A) do not apply to
7 expressive activity in an area on an institution’s
8 campus that is not a generally accessible area.

9 “(D) NONAPPLICATION TO SERVICE ACAD-
10 EMIES.—This subsection shall not apply to an
11 institution of higher education whose primary
12 purpose is the education of individuals for the
13 military services of the United States, or the
14 merchant marine.

15 “(e) PROHIBITION ON USE OF POLITICAL TESTS.—

16 “(1) IN GENERAL.—A covered public institution
17 may not consider, require, or discriminate on the
18 basis of a political test in the admission, appoint-
19 ment, hiring, employment, or promotion of any cov-
20 ered individual, or in the granting of tenure to any
21 covered individual.

22 “(2) RULE OF CONSTRUCTION.—Nothing in
23 this subsection shall be construed—

24 “(A) to prohibit an institution of higher
25 education whose primary purpose is the edu-

1 cation of individuals for the military services of
2 the United States, or the merchant marine,
3 from requiring an applicant, student, or em-
4 ployee to take an oath to uphold the Constitu-
5 tion of the United States;

6 “(B) to prohibit an institution of higher
7 education from requiring a student, faculty
8 member, or employee to comply with Federal or
9 State anti-discrimination laws or from taking
10 action against a student, faculty member, or
11 employee for violations of Federal or State anti-
12 discrimination laws, as applicable;

13 “(C) to prohibit an institution of higher
14 education from evaluating a prospective stu-
15 dent, an employee, or a prospective employee
16 based on their knowingly providing material
17 support or resources to an organization des-
18 ignated as a foreign terrorist organization pur-
19 suant to section 219 of the Immigration and
20 Nationality Act (8 U.S.C. 1189);

21 “(D) to prohibit an institution of higher
22 education from considering the subject-matter
23 competency including the research and creative
24 works, of any candidate for a faculty position or
25 faculty member considered for promotion when

1 the subject matter is germane to their given
2 field of scholarship; or

3 “(E) to apply to activities of registered
4 student organizations.

5 “(3) DEFINITIONS.—In this subsection:

6 “(A) COVERED INDIVIDUAL.—The term
7 ‘covered individual’ means, with respect to an
8 institution of higher education that is a public
9 institution—

10 “(i) a prospective student who has
11 submitted an application to attend such in-
12 stitution;

13 “(ii) a student who attends such insti-
14 tution;

15 “(iii) a prospective employee who has
16 submitted an application to work at such
17 institution;

18 “(iv) an employee who works at such
19 institution;

20 “(v) a prospective faculty member
21 who has submitted an application to work
22 at such institution; and

23 “(vi) a faculty member who works at
24 such institution.

1 “(B) MATERIAL SUPPORT OR RE-
2 SOURCES.—The term ‘material support or re-
3 sources’ has the meaning given that term in
4 section 2339A of title 18, United States Code
5 (including the definitions of ‘training’ and ‘ex-
6 pert advice or assistance’ in that section).

7 “(C) POLITICAL TEST.—The term ‘political
8 test’ means a method of compelling or soliciting
9 an applicant for enrollment or employment, stu-
10 dent, or employee of an institution of higher
11 education to identify commitment to or make a
12 statement of personal belief in support of any
13 ideology or movement that—

14 “(i) supports or opposes a specific
15 partisan or political set of beliefs;

16 “(ii) supports or opposes a particular
17 viewpoint on a social or political issue; or

18 “(iii) promotes the disparate treat-
19 ment of any individual or group of individ-
20 uals on the basis of race, color, or national
21 origin, including—

22 “(I) any initiative or formulation
23 of diversity, equity, and inclusion be-
24 yond upholding existing Federal law;
25 or

1 “(II) any theory or practice that
2 holds that systems or institutions up-
3 holding existing Federal law are rac-
4 ist, oppressive, or otherwise unjust.”.

5 **SEC. 6. ENFORCEMENT.**

6 (a) PROGRAM PARTICIPATION AGREEMENT.—Section
7 487(a) of the Higher Education Act of 1965 (20 U.S.C.
8 1094(a)) is amended by adding at the end the following:

9 “(30)(A) In the case of an institution that is a
10 public institution, the institution will comply with all
11 the requirements of sections 112B through 112D.

12 “(B) In the case of an institution that is not a
13 public institution, the institution will comply with
14 sections 112B and 112C(e).

15 “(C) An institution that fails to comply with
16 section 112B or 112C(c) shall—

17 “(i) be ineligible to participate in the pro-
18 grams authorized by this title for a period of
19 not less than 1 award year; and

20 “(ii) in order to regain eligibility to partici-
21 pate in such programs, demonstrate compliance
22 with all requirements of such section for not
23 less than one award year after the award year
24 in which such institution became ineligible.”.

1 (b) CAUSE OF ACTION.—The Higher Education Act
2 of 1965 (20 U.S.C. 1001 et seq.), as amended by section
3 5 of this Act, is further amended by inserting after section
4 112D the following new section:

5 **“SEC. 112E. ENFORCEMENT.**

6 “(a) CAUSE OF ACTION.—

7 “(1) CIVIL ACTION.—After exhaustion of any
8 available appeals under section 112C(a), an ag-
9 grievied individual who, or an aggrieved organization
10 that, is harmed by the maintenance of a policy or
11 practice by a covered public institution that is in vio-
12 lation of a requirement described in section 112B,
13 112C, or 112D may bring a civil action in a Federal
14 court for appropriate relief.

15 “(2) APPROPRIATE RELIEF.—For the purposes
16 of this subsection, appropriate relief includes—

17 “(A) a temporary or permanent injunction;

18 and

19 “(B) awarding a prevailing plaintiff—

20 “(i) compensatory damages;

21 “(ii) reasonable court costs; and

22 “(iii) reasonable attorney’s fees.

23 “(3) STATUTE OF LIMITATIONS.—A civil action
24 under this subsection may not be commenced later
25 than 2 years after the cause of action accrues. For

1 purposes of calculating the two-year limitation pe-
2 riod, each day that the violation of a requirement
3 described in section 112B, 112C, or 112D persists,
4 and each day that a policy in violation of a require-
5 ment described in section 112B, 112C, or 112D re-
6 mains in effect, shall constitute a new day that the
7 cause of action has accrued.

8 “(b) NON-DEFAULT, FINAL JUDGMENT.—In the case
9 of a court’s non-default, final judgment in a civil action
10 brought under subsection (a) that a covered public institu-
11 tion is in violation of a requirement described in section
12 112B, 112C, or 112D, such covered public institution
13 shall—

14 “(1) not later than 7 days after the date on
15 which the court makes such a non-default, final
16 judgment, notify the Secretary of such judgment and
17 submit to the Secretary a copy of the non-default,
18 final judgment; and

19 “(2) not later than 30 days after the date on
20 which the court makes such a non-default, final
21 judgment, submit to the Secretary a report that—

22 “(A) certifies that the standard, policy,
23 practice, or procedure that is in violation of the
24 requirement described in section 112B, 112C,
25 or 112D is no longer in use; and

1 “(B) provides evidence to support such cer-
2 tification.

3 “(c) REVOCATION OF ELIGIBILITY.—In the case of
4 a covered public institution that does not notify the Sec-
5 retary as required under subsection (b)(1) or submit the
6 report required under subsection (b)(2), the Secretary
7 shall revoke the eligibility of such institution to participate
8 in a program authorized under title IV for each award
9 year following the conclusion of the award year in which
10 a court made a non-default, final judgment in a civil ac-
11 tion brought under subsection (a) that the institution is
12 in violation of a requirement described in section 112B,
13 112C, or 112D.

14 “(d) RESTORATION OF ELIGIBILITY.—

15 “(1) IN GENERAL.—A covered public institution
16 that loses eligibility under subsection (c) to partici-
17 pate in a program authorized under title IV may
18 seek to restore such eligibility by submitting to the
19 Secretary the report described in subsection (b)(2).

20 “(2) DETERMINATION BY THE SECRETARY.—
21 Not later than 90 days after a covered public insti-
22 tution submits a report under paragraph (1), the
23 Secretary shall review such report and make a deter-
24 mination with respect to whether such report con-
25 tained sufficient evidence to demonstrate that such

1 institution is no longer in violation of a requirement
2 described in section 112B, 112C, or 112D.

3 “(3) RESTORATION.—If the Secretary makes a
4 determination under paragraph (2) that the covered
5 public institution is no longer in violation of a re-
6 quirement described in section 112B, 112C, or
7 112D, the Secretary shall restore the eligibility of
8 such institution to participate in a program author-
9 ized under title IV for each award year following the
10 conclusion of the award year in which such deter-
11 mination is made.

12 “(e) REPORT TO CONGRESS.—Not later than 1 year
13 after the date of the enactment of this section, and on
14 an annual basis thereafter, the Secretary shall submit to
15 the Committee on Education and the Workforce of the
16 House of Representatives and the Senate Committee on
17 Health, Education, Labor, and Pensions a report that in-
18 cludes—

19 “(1) a compilation of—

20 “(A) the notifications of violation received
21 by the Secretary under subsection (b)(1) in the
22 year for which such report is being submitted;
23 and

1 “(B) the reports submitted to the Sec-
2 retary under subsection (b)(2) for such year;
3 and

4 “(2) any action taken by the Secretary revoke
5 or restore eligibility under subsections (c) and (d)
6 for such year.

7 “(f) VOLUNTARY WAIVER OF STATE AND LOCAL
8 SOVEREIGN IMMUNITY AS CONDITION OF RECEIVING
9 FEDERAL FUNDING.—The receipt, on or after the date
10 of enactment of this section, of any Federal funding under
11 title IV of this Act by a State or political subdivision of
12 a State (including any municipal or county government)
13 is deemed to constitute a clear and unequivocal expression
14 of, and agreement to, waiving sovereign immunity under
15 the 11th Amendment to the Constitution or otherwise, to
16 a civil action for injunctive relief, compensatory damages,
17 court costs, and attorney’s fees under this section.

18 “(g) DEFINITION.—In this section, the term ‘non-de-
19 fault, final judgment’ means a final judgment by a court
20 for a civil action brought under subsection (a) that a cov-
21 ered public institution is in violation of a requirement de-
22 scribed in section 112B, 112C, or 112D that the covered
23 public institution chooses not to appeal or that is not sub-
24 ject to further appeal.”.