118TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
118–468

RESPECTING THE FIRST AMENDMENT ON CAMPUS ACT

APRIL 26, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Ms. FOXX, from the Committee on Education and the Workforce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 7683]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 7683) 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, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Respecting the First Amendment on Campus Act".

SEC. 2. SENSE OF CONGRESS.

The Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is amended by inserting after section 112 the following new section:

"SEC. 112A. SENSE OF CONGRESS; CONSTRUCTION; DEFINITION.

"(a) SENSE OF CONGRESS.—

"(1) ADOPTION OF CHICAGO PRINCIPLES.—The Congress—

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

"(B) acknowledges the profound contribution of the Chicago Principles to the freedom of speech and expression; and

"(C) calls on nonsectarian institutions of higher education to adopt the Chicago Principles or substantially similar principles with respect to institutional mission that emphasizes a commitment to freedom of speech and

expression on university campuses and to develop and consistently implement policies accordingly.

"(2) POLITICAL LITMUS TESTS.—The Congress—

"(A) condemns public institutions of higher education for conditioning admission to any student applicant, or the hiring, reappointment, or promotion of any faculty member, on the applicant or faculty member pledging allegiance to or making a statement of personal support for or opposition to any political ideology or movement, including a pledge or statement regarding diversity, equity, and inclusion, or related topics; and

"(B) discourages any institution from requesting or requiring any such pledge or statement from an applicant or faculty member, as such actions are antithetical to the freedom of speech protected by the First Amendment to the Constitution.

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

"(c) DEFINITION.—For purposes of sections 112C, 112D, and 112E, the term 'covered public institution' means an institution of higher education that is—

"(1) a public institution; and

"(2) participating in a program authorized under title IV.".

SEC. 3. DISCLOSURE OF FREE SPEECH POLICIES.

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

"SEC. 112B. DISCLOSURE OF POLICIES RELATED TO FREEDOM OF SPEECH, ASSOCIATION, AND RELIGION.

"(a) IN GENERAL.—No institution of higher education shall be eligible to participate in any program under title IV unless the institution certifies to the Secretary that the institution has annually disclosed to current and prospective students and faculty—

"(1) any policies held by the institutions related to—

"(A) speech on campus, including policies limiting—

"(i) the time when such speech may occur;

"(ii) the place where such speech may occur; or

"(iii) the manner in which such speech may occur;

"(B) freedom of association, if applicable; and

"(C) freedom of religion, if applicable; and

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

"(b) INTENDED BENEFICIARIES.—The certification specified in subsection (a) shall include an acknowledgment from the institution that the students and faculty are the intended beneficiaries of the policies disclosed in the certification.".

SEC. 4. FREEDOM OF ASSOCIATION AND RELIGION.

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

"SEC. 112C. FREEDOM OF ASSOCIATION AND RELIGION.

"(a) STUDENTS' BILL OF RIGHTS TO FURTHER PROTECT SPEECH AND ASSOCIATION.—

"(1) PROTECTED RIGHTS.—A covered public institution shall comply with the following requirements:

"(A) RECOGNIZED STUDENT ORGANIZATIONS.—A covered public institution that has recognized student organizations shall comply with the following requirements:

"(i) FACULTY ADVISORS.—

"(I) IN GENERAL.—A covered public institution may not deny recognition to a student organization because the organization is unable to obtain a faculty advisor or sponsor, if the organization meets each of the other content- and viewpoint-neutral institutional requirements for such recognition.

"(II) ALTERNATIVE.—An institution described in subclause (I) shall ensure that any policy or practice related to the recognition of a student organization—

"(aa) in the case of an organization that meets each of the other content- and viewpoint-neutral institutional requirements for such recognition but is unable to obtain a faculty advisor or sponsor, provides for an alternative to any requirement that a faculty or staff member serve as the faculty advi-

sor or sponsor as a condition for recognition of the student organization, which alternative may include—

"(AA) waiver of such requirement; or

"(BB) the institution assigning a faculty or staff member to such organization; and

"(bb) does not require a faculty or staff member of the institution assigned to serve as faculty advisor pursuant to item (aa)(BB) to participate in, or support, the organization other than by performing the purely administrative functions required of a faculty advisor.

"(ii) APPEAL OPTIONS FOR RECOGNITION.—

"(I) IN GENERAL.—A covered public institution shall provide an appeals process by which a student organization that has been denied recognition by the institution may appeal to an institutional appellate entity for reconsideration.

"(II) REQUIREMENTS.—The appeal process shall—

"(aa) require the covered public institution to provide a written explanation for the basis for the denial of recognition in a timely manner, which shall include a copy of all policies relied upon by the institution as a basis for the denial;

"(bb) require the covered public institution to provide written notice to the students seeking recognition of the appeal process and the timeline for hearing and resolving the appeal;

"(cc) allow the students seeking recognition to obtain outside counsel to represent them during the appeal; and

"(dd) ensure that such appellate entity did not participate in any prior proceeding related to the denial of recognition to the student organization.

"(B) DISTRIBUTION OF FUNDS TO STUDENT ORGANIZATIONS.—A covered public institution that collects a mandatory fee from students for the costs of student activities or events (or both), and provides funds generated from such student fees to one or more recognized student organizations of the institution, shall—

"(i) establish and make publicly available clear, objective, content- and viewpoint-neutral, and exhaustive standards to be used by the institution to determine—

"(I) the total amount of funds made available for allocations to the recognized student organizations; and

"(II) the allocations of such total amount to individual recognized student organizations;

"(ii) ensure that allocations are made to the recognized student organizations in accordance with the standards established pursuant to clause (i);

"(iii) upon the request of a recognized student organization that has been denied all or a portion of an allocation described in clause (ii), provide to the organization, in writing (which may include electronic communication) and in a timely manner, the specific reasons for such denial, copies of all policies relied upon by the institution as basis for the denial, and information of the appeals process described in clause (iv); and

"(iv) provide an appeals process by which a recognized student organization that has been denied all or a portion of an allocation described in clause (ii) may appeal to an institutional appellate entity for reconsideration, which appeals process—

"(I) shall require the covered public institution to provide written notice to the students seeking an allocation through the appeal process and the timeline for hearing and resolving the appeal;

"(II) allow the students seeking an allocation to obtain outside counsel to represent them during the appeal; and

"(III) require the institution to ensure that such appellate entity did not participate in any prior proceeding related to such allocation.

"(C) ASSESSMENT OF SECURITY FEES FOR EVENTS.—A covered public institution shall establish and make publicly available clear, objective, content- and viewpoint-neutral, and exhaustive standards to be used by the institution to—

"(i) determine the amount of any security fee for an event or activity organized by a student or student organization; and

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

"(I) the content of expression or viewpoint of the student or student organization;

"(II) the content of expression of the event or activity organized by the student or student organization;

"(III) the content of expression or viewpoint of an invited guest of the student or student organization; or

"(IV) an anticipated reaction by students or the public to the event.

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

"(2) DEFINITIONS.—In this subsection:

"(A) RECOGNIZED STUDENT ORGANIZATION.—The term 'recognized student organization' means a student organization that has been determined by a covered public institution to meet institutional requirements to qualify for certain privileges granted by the institution, such as use of institutional venues, resources, and funding.

"(B) SECURITY FEE.—The term 'security fee' means a fee charged to a student or student organization for an event or activity organized by the student or student organization on the campus of the institution that is intended to cover some or all of the costs incurred by the institution for additional security measures needed to ensure the security of the institution, students, faculty, staff, or surrounding community as a result of such event or activity.

"(b) EQUAL CAMPUS ACCESS.—A covered public institution shall not deny to a religious student organization any right, benefit, or privilege that is otherwise afforded to other student organizations at the institution (including full access to the facilities of the institution and official recognition of the organization by the institution) because of the religious beliefs, practices, speech, leadership standards, or standards of conduct of the religious student organization.

"(c) FREEDOM OF ASSOCIATION.—

"(1) UPHOLDING FREEDOM OF ASSOCIATION PROTECTIONS.—Any student (or group of students) enrolled in an institution of higher education that receives funds under this Act, including through an institution's participation in any program under title IV, shall—

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

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

"(C) if selected for membership by any single-sex social organization, be able to join, and participate in, such single-sex organization, subject to its standards for regulating its own membership, as provided under paragraph (3)(C).

"(2) NONRETALIATION AGAINST STUDENTS OF SINGLE-SEX SOCIAL ORGANIZATIONS.—An institution of higher education that receives funds under this Act, including through an institution's participation in any program under title IV, shall not—

"(A) take any action to require or coerce a student or prospective student who is a member or prospective member of a single-sex social organization to waive the protections provided under paragraph (1), including as a condition of enrolling in the institution;

"(B) take any adverse action against a single-sex social organization, or a student who is a member or a prospective member of a single-sex social organization, based on the membership practice of such organization limiting membership only to individuals of one sex; or

"(C) impose a recruitment restriction (including a recruitment restriction relating to the schedule for membership recruitment) on a single-sex social organization recognized by the institution, which is not imposed upon other student organizations by the institution, unless the organization (or a council of similar organizations) and the institution have entered into a mutually agreed upon written agreement that allows the institution to impose such restriction.

"(3) RULES OF CONSTRUCTION.—Nothing in this subsection shall—

"(A) require an institution of higher education to officially recognize a single-sex social organization;

"(B) prohibit an institution of higher education from taking an adverse action against a student who organizes, leads, or joins a single-sex social organization—

"(i) due to academic or nonacademic misconduct; or

"(ii)(I) for public institutions, because the organization's purpose is directed to inciting or producing imminent lawless action and likely to incite or produce such action; or

"(II) for private institutions, because the organization's purpose is incompatible with the religious mission of the institution, so long as that adverse action is not based on the membership practice of the organization of limiting membership only to individuals of one sex;

"(C) prevent a single-sex social organization from regulating its own membership;

"(D) inhibit the ability of the faculty of an institution of higher education to express an opinion (either individually or collectively) about membership in a single-sex social organization, or otherwise inhibit the academic freedom of such faculty to research, write, or publish material about membership in such an organization; or

"(E) create enforceable rights against a single-sex social organization or against an institution of higher education due to the decision of the organization to deny membership to an individual student.

"(4) DEFINITIONS.—In this subsection:

"(A) ADVERSE ACTION.—The term 'adverse action' includes the following actions taken by an institution of higher education with respect to a single-sex social organization or a member or prospective member of a single-sex social organization:

"(i) Expulsion, suspension, probation, censure, condemnation, formal reprimand, or any other disciplinary action, coercive action, or sanction taken by an institution of higher education or administrative unit of such institution.

"(ii) An oral or written warning with respect to an action described in clause (i) made by an official of an institution of higher education acting in their official capacity.

"(iii) An action to deny participation in any education program or activity, including the withholding of any rights, privileges, or opportunities afforded other students on campus.

"(iv) An action to withhold, in whole or in part, any financial assistance (including scholarships and on-campus employment), or denying the opportunity to apply for financial assistance, a scholarship, a graduate fellowship, or on-campus employment.

"(v) An action to deny or restrict access to on-campus housing.

"(vi) An act to deny any certification, endorsement, or letter of recommendation that may be required by a student's current or future employer, a government agency, a licensing board, an institution of higher education, a scholarship program, or a graduate fellowship to which the student applies or seeks to apply.

"(vii) An action to deny participation in any sports team, club, or other student organization, including a denial of any leadership position in any sports team, club, or other student organization.

"(viii) An action to withdraw the institution's official recognition of such organization.

"(ix) An action to require any student to certify that such student is not a member of a single-sex social organization or to disclose the student's membership in a single-sex social organization.

"(x) An action to interject an institution's own criteria into the membership practices of the organization in any manner that conflicts with the rights of such organization under title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) or this subsection.

"(xi) An action to impose additional requirements on advisors serving a single-sex social organization that are not imposed on all other student organizations.

"(B) SINGLE-SEX SOCIAL ORGANIZATION.—The term 'single-sex social organization' means—

"(i) a social fraternity or sorority described in section 501(c) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code, or an organization that has been historically single-sex, the active membership of which consists primarily of students or alumni of an institution of higher education; or

"(ii) a single-sex private social club (including an independent organization located off-campus) that consists primarily of students or alumni of an institution of higher education.

"(d) CONSTRUCTION.—Nothing in this section shall be construed to prohibit an institution of higher education from taking any adverse action (such as denying or revoking recognition, funding, use of institutional venues or resources, or other privileges granted by the institution) against a student organization based on the student organization having knowingly provided material support or resources to an organization designated as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).".

SEC. 5. FREE SPEECH ON CAMPUS.

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

"SEC. 112D. FREE SPEECH ON CAMPUS.

"(a) IN GENERAL.—A covered public institution shall—

"(1) at each orientation for new and transfer students, provide students attending the orientation—

"(A) a written statement that—

"(i) explains the rights of students under the First Amendment to the Constitution;

"(ii) affirms the importance of, and the commitment of the institution to, freedom of expression;

"(iii) explains students' protections under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and the procedures for filing a discrimination claim with the Office for Civil Rights of the Department of Education; and

"(iv) includes assurances that students, and individuals invited by students to speak at the institution, will not be treated in a manner that violates the freedom of expression of such students or individuals; and

"(B) educational programming (including online resources) that describes their free speech rights and responsibilities under the First Amendment to the Constitution; and

"(2) post on the publicly accessible website of the institution the statement described in paragraph (1)(A).

"(b) CAMPUS FREE SPEECH AND RESTORATION.—

"(1) DEFINITION OF EXPRESSIVE ACTIVITIES.—In this subsection, the term 'expressive activity'—

"(A) includes—

"(i) peacefully assembling, protesting, speaking, or listening;

"(ii) distributing literature;

"(iii) carrying a sign;

"(iv) circulating a petition; or

"(v) other expressive activities guaranteed under the First Amendment to the Constitution;

"(B) applies equally to religious expression as it does to nonreligious expression; and

"(C) does not include unprotected speech (as defined by the precedents of the Supreme Court of the United States).

"(2) EXPRESSIVE ACTIVITIES AT AN INSTITUTION.—

"(A) IN GENERAL.—A covered public institution may not prohibit, subject to subparagraph (B), a person from freely engaging in noncommercial expressive activity in a generally accessible area on the institution's campus if the person's conduct is lawful. The publicly accessible outdoor areas of campuses of public institutions of higher education shall be regulated pursuant to rules applicable to traditional public forums.

"(B) RESTRICTIONS.—A covered public institution may not maintain or enforce time, place, or manner restrictions on an expressive activity in a generally accessible area of the institution's campus unless the restriction—

"(i) is narrowly tailored in furtherance of a significant governmental interest;

"(ii) is based on published, content-neutral, and viewpoint-neutral criteria;

"(iii) leaves open ample alternative channels for communication; and

"(iv) provides for spontaneous assembly and distribution of literature.

"(C) APPLICATION.—The protections provided under subparagraph (A) do not apply to expressive activity in an area on an institution's campus that is not a generally accessible area.

"(D) NONAPPLICATION TO SERVICE ACADEMIES.—This subsection shall not apply to an institution of higher education whose primary purpose is the education of individuals for the military services of the United States, or the merchant marine.

"(c) PROHIBITION ON USE OF POLITICAL TESTS.—

"(1) IN GENERAL.—A covered public institution may not consider, require, or discriminate on the basis of a political test in the admission, appointment, hiring, employment, or promotion of any covered individual, or in the granting of tenure to any covered individual.

"(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed—

"(A) to prohibit an institution of higher education whose primary purpose is the education of individuals for the military services of the United States, or the merchant marine, from requiring an applicant, student, or employee to take an oath to uphold the Constitution of the United States;

"(B) to prohibit an institution of higher education from requiring a student, faculty member, or employee to comply with Federal or State anti-discrimination laws or from taking action against a student, faculty member, or employee for violations of Federal or State anti-discrimination laws, as applicable;

"(C) to prohibit an institution of higher education from evaluating a prospective student, an employee, or a prospective employee based on their knowingly providing material support or resources to an organization designated as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act (8 U.S.C. 1189);

"(D) to prohibit an institution of higher education from considering the subject-matter competency including the research and creative works, of any candidate for a faculty position or faculty member considered for promotion when the subject matter is germane to their given field of scholarship; or

"(E) to apply to activities of registered student organizations.

"(3) DEFINITIONS.—In this subsection:

"(A) COVERED INDIVIDUAL.—The term 'covered individual' means, with respect to an institution of higher education that is a public institution—

"(i) a prospective student who has submitted an application to attend such institution;

"(ii) a student who attends such institution;

"(iii) a prospective employee who has submitted an application to work at such institution;

"(iv) an employee who works at such institution;

"(v) a prospective faculty member who has submitted an application to work at such institution; and

"(vi) a faculty member who works at such institution.

"(B) MATERIAL SUPPORT OR RESOURCES.—The term 'material support or resources' has the meaning given that term in section 2339A of title 18, United States Code (including the definitions of 'training' and 'expert advice or assistance' in that section).

"(C) POLITICAL TEST.—The term 'political test' means a method of compelling or soliciting an applicant for enrollment or employment, student, or employee of an institution of higher education to identify commitment to or make a statement of personal belief in support of any ideology or movement that—

"(i) supports or opposes a specific partisan or political set of beliefs;

"(ii) supports or opposes a particular viewpoint on a social or political issue; or

"(iii) promotes the disparate treatment of any individual or group of individuals on the basis of race, color, or national origin, including—

"(I) any initiative or formulation of diversity, equity, and inclusion beyond upholding existing Federal law; or

"(II) any theory or practice that holds that systems or institutions upholding existing Federal law are racist, oppressive, or otherwise unjust.".

SEC. 6. ENFORCEMENT.

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

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

"(B) In the case of an institution that is not a public institution, the institution will comply with sections 112B and 112C(c).

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

"(i) be ineligible to participate in the programs authorized by this title for a period of not less than 1 award year; and

"(ii) in order to regain eligibility to participate in such programs, demonstrate compliance with all requirements of such section for not less than one award year after the award year in which such institution became ineligible.".

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

"SEC. 112E. ENFORCEMENT.

"(a) CAUSE OF ACTION.—

"(1) CIVIL ACTION.—After exhaustion of any available appeals under section 112C(a), an aggrieved individual who, or an aggrieved organization that, is harmed by the maintenance of a policy or practice by a covered public institution that is in violation of a requirement described in section 112B, 112C, or 112D may bring a civil action in a Federal court for appropriate relief.

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

"(A) a temporary or permanent injunction; and

"(B) awarding a prevailing plaintiff—

"(i) compensatory damages;

"(ii) reasonable court costs; and

"(iii) reasonable attorney's fees.

"(3) STATUTE OF LIMITATIONS.—A civil action under this subsection may not be commenced later than 2 years after the cause of action accrues. For purposes of calculating the two-year limitation period, each day that the violation of a requirement described in section 112B, 112C, or 112D persists, and each day that a policy in violation of a requirement described in section 112B, 112C, or 112D remains in effect, shall constitute a new day that the cause of action has accrued.

"(b) NONDEFAULT, FINAL JUDGMENT.—In the case of a court's nondefault, final judgment in a civil action brought under subsection (a) that a covered public institution is in violation of a requirement described in section 112B, 112C, or 112D, such covered public institution shall—

"(1) not later than 7 days after the date on which the court makes such a nondefault, final judgment, notify the Secretary of such judgment and submit to the Secretary a copy of the nondefault, final judgment; and

"(2) not later than 30 days after the date on which the court makes such a nondefault, final judgment, submit to the Secretary a report that—

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

"(B) provides evidence to support such certification.

"(c) REVOCATION OF ELIGIBILITY.—In the case of a covered public institution that does not notify the Secretary as required under subsection (b)(1) or submit the report required under subsection (b)(2), the Secretary shall revoke the eligibility of such institution to participate in a program authorized under title IV for each award year following the conclusion of the award year in which a court made a nondefault, final judgment in a civil action brought under subsection (a) that the institution is in violation of a requirement described in section 112B, 112C, or 112D.

"(d) RESTORATION OF ELIGIBILITY.—

"(1) IN GENERAL.—A covered public institution that loses eligibility under subsection (c) to participate in a program authorized under title IV may seek to restore such eligibility by submitting to the Secretary the report described in subsection (b)(2).

"(2) DETERMINATION BY THE SECRETARY.—Not later than 90 days after a covered public institution submits a report under paragraph (1), the Secretary shall review such report and make a determination with respect to whether such report contained sufficient evidence to demonstrate that such institution is no longer in violation of a requirement described in section 112B, 112C, or 112D.

"(3) RESTORATION.—If the Secretary makes a determination under paragraph (2) that the covered public institution is no longer in violation of a requirement

described in section 112B, 112C, or 112D, the Secretary shall restore the eligibility of such institution to participate in a program authorized under title IV for each award year following the conclusion of the award year in which such determination is made.

"(e) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this section, and on an annual basis thereafter, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Senate Committee on Health, Education, Labor, and Pensions a report that includes—

"(1) a compilation of—

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

"(B) the reports submitted to the Secretary under subsection (b)(2) for such year; and

"(2) any action taken by the Secretary to revoke or restore eligibility under subsections (c) and (d) for such year.

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

"(g) DEFINITION.—In this section, the term 'nondefault, final judgment' means a final judgment by a court for a civil action brought under subsection (a) that a covered public institution is in violation of a requirement described in section 112B, 112C, or 112D that the covered public institution chooses not to appeal or that is not subject to further appeal.".

PURPOSE

H.R. 7683, the *Respecting the First Amendment on Campus Act*, would amend the *Higher Education Act of 1965* (HEA) to require institutions of higher education to adopt and adhere to First Amendment principles as a stipulation for funding under Title IV of the HEA.

COMMITTEE ACTION

115TH CONGRESS

Second Session—Hearings

On September 24, 2018, the Committee on Education and the Workforce held a hearing on "Examining First Amendment Rights on Campus." The purpose of this hearing was to discuss how institutions of higher education (IHEs) are and are not protecting individual rights under the First Amendment to the U.S. Constitution. Testifying before the Committee were Mr. Zachary Wood, Author, *Uncensored*, New York, NY; Mr. Joseph Cohn, Legislative and Policy Director, Foundation for Individual Rights in Education, Philadelphia, PA; Ms. Suzanne Nossel, Chief Executive Officer, PEN America, New York, NY; and Mr. Ken Paulson, President, First Amendment Center, Nashville, TN.

118TH CONGRESS

First Session—Hearings

On March 29, 2023, the Committee's Higher Education and Workforce Development Subcommittee held a hearing on "Diversity of Thought: Protecting Free Speech on College Campuses." The purpose of this hearing was to highlight the ways in which free

speech rights are being violated on college campuses and to discuss potential legislative solutions to preserve this aspect of the First Amendment. Testifying before the Subcommittee were Mrs. Cherise Trump, Executive Director, Speech First, Washington, D.C.; Mr. Josiah Joner, Executive Editor, The Stanford Review, Stanford, CA; Ms. Suzanne Nossel, Chief Executive Officer, PEN America, New York, NY; and Mr. Ilya Shapiro, Director of Constitutional Studies, Manhattan Institute, Washington, D.C.

On March 7, 2024, the Committee's Higher Education and Workforce Development Subcommittee held a hearing on "Divisive, Excessive, Ineffective: The Real Impact of DEI on College Campuses." The purpose of the hearing was to examine ways in which institutions and accreditors are engaging in harmful diversity, equity, and inclusion (DEI) practices, including how those practices impact First Amendment rights. Testifying before the Subcommittee were Dr. Erec Smith, Associate Professor of Rhetoric, York College of Pennsylvania, Cato Research Fellow, York, PA; Dr. James Murphy, Director of Career Pathways and Post-Secondary Policy, Education Reform Now, Washington, D.C.; Dr. Stanley Goldfarb, Chair, Do No Harm, Bryn Mawr, PA; and Dr. Jay Greene, Senior Research Fellow, The Heritage Foundation's Center for Education Policy, Fayetteville, AR.

Legislative Action

On March 15, 2024, Representative Brandon Williams (R–NY) introduced the *Respecting the First Amendment on Campus Act* (H.R. 7683) with Representatives Glenn Thompson (R–PA) and Virginia Foxx (R–NC).

The bill was referred solely to the Committee on Education and the Workforce. On March 21, 2024, the Committee considered H.R. 7683 in legislative session and reported it favorably, as amended, to the House of Representatives by a recorded vote of 24–14. The Committee considered the following amendments to H.R. 7683:

1. Representative Williams offered an Amendment in the Nature of a Substitute that made one minor grammatical change to the bill. The amendment was adopted by voice vote.

2. Representative Kathy Manning (D–NC) offered an amendment that requires public colleges to explain during student orientation the student protections under Title VI of the *Civil Rights Act* and the procedures for filing a claim for discrimination. The amendment was adopted by voice vote.

3. Representative Kathy Manning (D–NC) offered an amendment that states that nothing in the bill is meant to prohibit IHEs from taking action against a student organization that knowingly provides material support or resources to an organization designated as a foreign terrorist organization. The amendment was adopted by voice vote.

COMMITTEE VIEWS

INTRODUCTION

A university's key purpose is to create a marketplace of ideas ordered to the pursuit of knowledge. Whether enrolled in a liberal arts program, cybersecurity certificate, or in medical school, students learn fundamental theories and must know how to apply

their knowledge to real world challenges, often preparing arguments and confronting differing opinions from their own as they seek, discover, and explore the best ideas their peers and the world have to offer. Freedom of speech and the other First Amendment rights have been a cornerstone in advancing American postsecondary education. The Supreme Court has long established that "state colleges and universities are not enclaves immune from the sweep of the First Amendment." [1] Unfortunately, we regularly see the First Amendment under attack at colleges and universities.[2] H.R. 7683, the *Respecting the First Amendment on Campus Act*, ensures that the First Amendment is upheld at public colleges and universities as well as at private colleges and universities that promise specific rights to their students and receive federal funding through Title IV of the HEA. Learning the art of disagreement, persuasion, and resolution produces better students and citizens, not angry mobs who silence their opposition or coerce conformity to specific ideologies and beliefs. H.R. 7683 will uphold Americans' constitutional rights and restore decency on college campuses.

Modern Challenges to Free Speech on Campuses

Attacks on free speech can come from other students, faculty, or the university leadership itself. They can be either deliberate or inadvertent. Threats to free speech take various forms: shout downs,[3] disinvitations of speakers,[4] free speech zones,[5] security fees,[6] political litmus tests,[7] and even physical violence in reaction to speech [8] are pervasive on college campuses. Students and faculty should never fear for their safety and livelihoods for expressing differing, and often conservative, opinions.

Shout Downs (the Heckler's Veto) and Disinvitations

Deliberate shout downs occur when protesters, generally student led, attempt to disrupt or cancel a speech by yelling over the speaker, issuing threats, or even rioting. When the university either fails to stand up for the rights of the speaker or suppresses the speaker's speech because of the anticipated or actual reactions of the speaker's opponents, a heckler's veto has occurred.

A stark example of a heckler's veto was seen when Stanford law students shouted down U.S. Court of Appeals Judge Stuart Kyle Duncan during an event hosted by the Federalist Society Chapter at Stanford Law School. Judge Duncan had been invited to lecture on recent decisions handed down by the Fifth Circuit, but students

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[1] *Healy v. James,* 408 U.S. 169 (1972); *Widmar* v. *Vincent*, 454 U.S. 263 (1981) which states "our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities."

[2] https://www.insidehighered.com/news/quick-takes/2024/04/01/rep-raskin-shouted-down-university-maryland?utm_source=Inside+Higher+Ed&utm_campaign=685a187579-DNU_2021_COPY_02&utm_medium=email&utm_term=0_1fcbc04421-685a187579-236720318&mc_cid=685a187579&mc_eid=c9e98a4375.

[3] https://www.insidehighered.com/news/students/free-speech/2023/04/13/shouting-down-speakers-who-offend.

[4] https://www.usatoday.com/story/opinion/2018/06/29/universities-politically-controversial-commencement-speakers-student-protest-column/734068002/.

[5] https://www.campusreform.org/article/georgia-schools-free-speech-zone-policy-might-breaking-law-legal-group- finds-exclusive-/24999.

[6] https://www.thefire.org/news/dartmouth-continues-violate-college-republicans-rights-imposing-3600-security-fees-following.

[7] https://www.goldwaterinstitute.org/asus-dei-regime-mandates-discriminatory-inclusivity-training-so-were-suing/.

[8] https://pen.org/press-release/pen-america-condemns-uc-berkeley-protests-that-turned-violent-with-reported-antisemitic-bigotry/.

heckling and shouting obscenities directly at him prevented him from finishing his remarks. Multiple Stanford administrators were in the room, but when Judge Duncan asked them to intervene, a DEI administrator read prepared remarks shaming the judge for his opinions and claiming that he made students uncomfortable.[9]

While in some instances protestors are protected by the First Amendment, free speech does not mean hecklers get to shut down a campus event.[10] Free speech is allowed in public forums, but the Federalist Society event constituted a limited public forum where viewpoint-neutral and reasonable restrictions have been held as appropriate in the educational setting.[11] After calls for the university to take stronger action to uphold the university's policies against this type of free speech violation, on March 22, 2023, the Stanford Law Dean released a letter more thoroughly reprimanding the actions that took place as not in line with university free speech policy. The letter also announced that students would be required to take mandatory educational programming to better understand freedom of speech and announced the DEI Dean would be suspended.[12]

Sadly, student acceptance of speaker shout downs remains high. A recent survey found that 45 percent of students believe blocking other students from attending a speech is acceptable.[13] Even more worrisome, 25 percent of students believe using violence to stop speech is acceptable.[14] This threat of violence and campus disruption has led multiple universities to preemptively cancel appearances by potentially "offensive" speakers who simply have views that are contrary to the majority opinion on campus.

Free speech zones and security fees

Institutions must allow for ample opportunities for speech on campus. An institution may constitutionally craft a content and viewpoint neutral process for placing reasonable time, place, and manner restrictions on speech activities, but the so-called "free speech zones" that exist at many universities go much further. These oxymoronically named locations are plainly at odds with the First Amendment: while "free speech zones" have been propped up by some universities as areas where students can speak their minds, they effectively prohibit free speech anywhere outside the zone. Further, "free speech zones" are often small and in out-of-the-way areas, and thus add further restrictions to free speech. Still worse, sometimes students can only conditionally use a "free speech zone," often needing to comply with requirements like pre-registering an event with an administrator, often days or weeks in advance, or adhere to strict time limits on expressive activities. H.R. 7683 builds on Representative Greg Murphy's (R–NC) *Campus Free Speech Restoration Act* to prohibit public institutions from restrict-

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[9] https://www.foxnews.com/politics/new-video-shows-stanford-protesters-heckling-trump-judge-as-dei-dean-appears-to-smirk.

[10] https://www.washingtonpost.com/opinions/2022/03/24/free-speech-doesnt-mean-hecklers-get-shut-down-campus-debate/.

[11] *Christian Legal Soc. Chapter of Univ. of Cal., Hastings College of Law* v. *Martinez,* 561 U.S. 661 (2010).

[12] https://law.stanford.edu/wp-content/uploads/2023/03/Next-Steps-on-Protests-and-Free-Speech.pdf?mkt_tok=ODg0LUZTQi0zMDcAAAGKqNfmUfz2S_PCzkgUjCQGrC2DR1ji-TGeKtn3NnnIoJpAduaZaZdKteNsL5dGzCkk5cwWC_6vm8autYIUyUQO4uIJy6lLbBGo4 7NHk8_3iTA.

[13] https://www.thefire.org/research-learn/2024-college-free-speech-rankings.

[14] *Ibid.*

ing an individual from freely engaging in noncommercial expressive activity on campus, including in "free speech zones," except in limited and viewpoint-neutral circumstances consistent with the First Amendment. At its core, the freedom of speech allows for ample expression and should not be repressed by public institutions that censor speech through shout downs and other means. However, H.R. 7683 does state that expressive activity does not include unprotected speech as defined by Supreme Court precedents.

Even when an institution moves forward with appropriate time, place, and manner restrictions, institutions sometimes assess high security fees to cover the costs of maintaining campus security during the visit of a controversial speaker.[15] While government actors may charge security fees for those wishing to use public facilities for expressive purposes, the Supreme Court has held that varying the amount of security fees because of the anticipated hostility to speech is unconstitutional.[16] A student or student group hosting a speaker cannot receive a drastically different security fee assessment than another student or student group on the basis that the event might draw protest. Institutions should remain committed to only implementing content-neutral policies, including security fee provisions. Representative Erin Houchin's (R–IN) *Student Bill of Rights* would require public institutions to make publicly available clear, objective, and content-and-viewpoint neutral standards to determine the security fees assessed for events. This policy is included within H.R. 7683 to ensure colleges are abiding by content-and-viewpoint neutral fee assessments.

H.R. 7683 includes several other policies that would protect speech from censorship. The bill includes a Sense of Congress that non-sectarian institutions should adopt the well-known Chicago Principles, or similar principles, that are a model statement expressing an institution's commitment to allowing free expression on campus.[17] Additionally, H.R. 7683 would decrease the likelihood of incidents of speech censorship by including Representative Kevin Kiley's (R–CA) *Free Speech On Campus Act*, which would require institutions to provide written educational materials during college orientation to explain students' First Amendment rights. Lastly, H.R. 7683 maintains robust accountability through transparency and requires all institutions that choose to receive federal aid through Title IV of the HEA to annually disclose any university policies regarding rights to speech, association, and religious expression as a condition of receiving aid. Increasing student and faculty awareness of university policies will decrease incidents of shout downs, cancellations, and disinvitations.

Political Litmus Tests

Universities also preemptively discourage unwanted speech and viewpoints through the use of political litmus tests. Many prospective and current students and faculty are being compelled to sign statements, provide specific statements, or otherwise express support for a particular position or ideology the institution wishes to propagate. Failure to adopt the prescribed opinion can result in

[15] https://www.yaf.org/news/berkeley-charges-conservative-students-15k-exercise-first-amendment-rights/.
[16] *Forsyth County, Georgia* v. *Nationalist Movement*, 505 U.S. 123 (1992).
[17] https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf.

academic or professional consequences for students and faculty. By pressuring students and faculty to adopt a political position or ideology, these university actions choke dissent and free inquiry. One such document is the "Diversity Statement" that many universities and colleges now require of applicants in their faculty hiring processes. A 2021 American Enterprise Institute report found that one out of every five American professors is hired based on his or her commitment to the principles of DEI instead of his or her merit.[18] Representative Elise Stefanik's (R–NY) *Restoring Academic Freedom on Campus Act* would require institutions to end the use of political tests, such as required DEI statements, in admission, hiring, and promotion processes. A variation of this bill is included within H.R. 7683. Students and faculty must be free to question, research, and argue in pursuit of knowledge. Institutions that use such political tests and programming to shut out varying views ensure ideological monopoly and conformity—both of which are antithetical to a college education.

Freedom of Association and Religion

In addition to protecting free speech, H.R. 7683 protects the right to assemble, which also guarantees individuals the freedom to associate with others. The First Amendment extends to government actors, including public institutions, which must not deny students from joining or forming a student organization, including a religious student organization. Court decisions have also affirmed that religious student organizations, as well as other student organizations, should be allowed to require their leaders to subscribe to certain leadership requirements.[19] Public institutions must also provide benefits to religious student organizations in the same manner as all other student organizations.[20] Representative Tim Walberg's (R–MI) *Equal Campus Access Act* would prohibit a public institution from denying a religious student group any right similarly afforded to other student organizations because of the religious group's beliefs, practices, or leadership standards. This bill is included in H.R. 7683. Private institutions are not obligated to provide the same association opportunities or freedom of religion policies, but many private colleges nevertheless support student organizations and religious student organizations. If a private institution's policies provide these promises, then they must uphold the benefit.

Courts have also defined the rights of student organizations specifically, as examples of institutions abridging freedoms have come to light in a variety of ways. H.R. 7683 includes Representative Houchin's *Students Bill of Rights Act* to tackle the issues student organizations may face.

First, student groups seek "recognition" from universities to receive a portion of student activity fees, have the option to reserve meeting space on campus at no expense, and to advertise the organization to other students. Having a faculty sponsor is sometimes the only path for student groups to apply for recognition, but the lack of ideological diversity in faculty can make it difficult for

[18] https://www.aei.org/research-products/report/other-than-merit-the-prevalence-of-diversity-equity-and-inclusion- statements-in-university-hiring/.
[19] https://www.becketlaw.org/case/intervarsity-christian-fellowship-v-university-iowa/.
[20] *Rosenberger* v. *Rector and Visitors of the University of Virginia,* 515 U.S. 819 (1995).

groups to find a sponsor. In 1989, the liberal to conservative ratio among college faculty was 2.3:1. As of the 2016–2017 school year, that ratio had doubled to 5:1.[21] Conservative faculty may also feel institutional pressure to not have their name associated with a student group. H.R. 7683 provides a pathway for student groups to have alternative means of gaining recognition, such as through an appeals process, that are not reliant on faculty sponsorship.

Second, universities charge mandatory fees for activities and clubs. The Supreme Court ruled unanimously in *Wisconsin v. Southworth* (1999) that such fees were constitutional as long as the use of those funds for extracurricular student speech is viewpoint neutral.[22] Instead, student groups have been forced to navigate a confusing and biased system in order to receive a fair share of student fees.[23] Many universities will show ideological preference in funding and will not be transparent about how funding decisions are approved or denied. A 2020 lawsuit against Cal State University (CSU)-San Marcos found that the Gender Equity Center and the LGBQTA Pride Center on campus received a combined $296,498 to fund their activities while a recognized Students for Life group was denied a $500 grant request. The court ruled that CSU San Marcos unconstitutionally discriminated against certain viewpoints in their allocation of student activities funds.[24] H.R. 7683 would instead require public institutions to provide mandatory fees to recognized student organizations in a content and viewpoint-neutral manner and to make public the methods for fee disbursement so all students have an understanding of how mandatory fees are allocated.

Third, institutions should treat all recognized student groups the same when it comes to funding eligibility and should be clear about the funding process. In *Forsyth County, Georgia v. Nationalist Movement* (1992), the Supreme Court held that varying the amount of security fees because of the anticipated hostility to speech is unconstitutional.[25] Despite this, institutions still assess abnormally high security fees on certain ideological viewpoints. For example, in 2017, the University of California Berkeley charged over $15,000 for a student group to host speaker Ben Shapiro.[26] A student group's ability to exercise free speech should not be contingent on arbitrarily imposed fees. H.R. 7683 affirms that public institutions should only implement security fee provisions that are content-neutral, with clear transparency about security fee structure and policies surrounding security.

Fourth, institutions also have a responsibility to protect invited speakers when security is needed. Former swimmer Riley Gaines was surrounded by an angry mob and physically hit multiple times after giving a speech for a student group event at San Francisco

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[21] https://www.aei.org/articles/are-colleges-and-universities-too-liberal-what-the-research-says-about-the-political- composition-of-campuses-and-campus-climate/.

[22] https://www.oyez.org/cases/1999/98 1189.

[23] https://adfmedia.org/case/young-americans-freedom-v-university-florida.

[24] https://adfmedia.org/press-release/pro-life-student-groups-lawsuit-prompts-systemwide-policy-change-nations-largest-0.

[25] https://www.oyez.org/cases/1991/91-538.

[26] https://www.yaf.org/news/berkeley-charges-conservative-students-15k-exercise-first-amendment-rights/.

State University.[27] In her response to the incident, the university's vice president for student affairs called the protest "peaceful."[28] Institutions should foster a culture where students can protest in a constitutional manner, not with violence and intimidation. H.R. 7683 would require public institutions to ensure speakers of all viewpoints are safe by making public the institution's content-and viewpoint-neutral standards to govern the protection of speakers and guests.

Single-sex social organizations have also been the subject of institutional admonishment, and students have even been subject to adverse action. In 2019, a federal court held that university policies that punish students that are part of unrecognized single-sex organizations are discriminating based on sex and limiting association.[29] H.R. 7683 includes Representative Stefanik's *Freedom of Association in Higher Education Act* to protect a student's choice to associate with an organization, ensures universities cannot unfairly impose operational policies or restrictions on single-sex organizations, and allows these organizations to define their own membership criteria.

Enforcement

More than 20 years ago, the federal government declared the importance of free speech on college campuses. The 1998 reauthorization of HEA included a Sense of Congress in support of "the free and open exchange of ideas." This language received broad bipartisan support as well as support from outside groups across the political spectrum. An amendment offered by Senator Ted Kennedy (D–MA) in the 2008 HEA reauthorization adopted even stronger pro-free speech language by condemning efforts to discriminate against students because of their speech.[30] Despite these efforts, the HEA still fails to provide a strong enforcement provision that would hold universities accountable or provide a method by which aggrieved students and faculty can fight oppression.

Acknowledging the rising assault on free speech, 23 states have enacted legislation to strengthen the First Amendment on college campuses[31] and 11 states have passed legislation prohibiting DEI in some form on college campuses.[32] Unfortunately, most states have not prioritized these issues comprehensively, leaving students and faculty vulnerable to attacks on their freedom. When legislatures have attempted to provide protections for free speech specifically, the proposals have failed to include strong enforcement mechanisms to ensure universities are effectively protecting the constitutional rights of their students and faculty.

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[27] https://www.foxnews.com/politics/riley-gaines-ambushed-physically-hit-after-saving-womens-sports-speech-san-francisco-state.

[28] https://www.foxnews.com/sports/sf-state-president-calls-riley-gaines-sex-protected-sports-speech-deeply-traumatic-trans-community.

[29] https://www.forbes.com/sites/evangerstmann/2019/08/14/federal-judge-rules-that-harvard-may-be-discriminating-against-single-sex-organizations/?sh=2c7a66be6ccc;
https://www.washingtonpost.com/education/2020/06/30/harvard-rescinds-policy-against-fraternities-sororities-other-single-gender-organizations/.

[30] https://www.law.cornell.edu/uscode/text/20/1011a.

[31] https://www.thefire.org/legislation/enacted-campus-free-speech-statutes/.

[32] Utah, Florida, Mississippi, North Carolina, North Dakota, Oklahoma, South Dakota, Tennessee and Texas https://www.axios.com/local/salt-lake-city/2024/02/01/anti-dei-bills-have-surged-since-2021; Alabama https://www.insidehighered.com/news/quick-takes/2024/03/22/alabama-governor-oks-bill-targeting-dei-divisive-concepts; and Indiana https://www.nas.org/blogs/statement/indiana-senate-bill-202-reforms-dei-policy.

In recent years, the Executive Branch has also engaged in upholding fundamental rights guaranteed by the First Amendment with a strong enforcement mechanism. On September 23, 2020, the Trump administration's Department of Education (ED) issued the Religious Liberty and Free Inquiry final rule regarding compliance with the First Amendment for both public and private institutions that receive grants from ED.[33] However, in February of 2023, the Biden administration announced its review of certain aspects of the Free Inquiry Rule related to institutions' compliance.[34] Under the rule, ED would rely on a state or federal court to determine a final, non-default judgement that the institution violated the First Amendment and, therefore, ED grant requirements. H.R. 7683 uses a similar enforcement policy by amending the HEA to provide a right of action against a public institution that has seemingly violated the policies included in the bill and would rely on a court's non-default, final judgement to determine if an institution is in fact in violation. H.R. 7683 would require a public institution to report any final, non-default judgement to ED no more than seven days after the judgement is received and submit a report within 30 days to ED to certify the practice has been reversed. If the institution were to fail to submit this report, the institution would have its Title IV eligibility revoked for the following award year. To be clear, an institution would not automatically lose federal aid eligibility if there were a claim of a violation of H.R. 7683. Instead, H.R. 7683 provides for a fair and orderly process to evaluate if an institution has breached an individual's or a group's rights, and it provides time and opportunities for an institution to reverse a court-affirmed violation before the final enforcement policy is exerted.

CONCLUSION

College campuses are a breeding ground for illiberal thought. Shout downs, cancelations, disinvitations, disciplinary action, and even physical violence in reaction to speech are pervasive on college campuses. The forced commitment to DEI is exploding. Political litmus tests in admissions and hiring processes penalize applicants for not conforming to the "acceptable" beliefs of the day. Universities receive hundreds of billions in taxpayer dollars but deny students and staff American freedoms, ignoring established court doctrine respecting the First Amendment. H.R. 7683, the *Respecting the First Amendment on Campus Act*, restores the spirit and letter of constitutional principles on college campuses by making First Amendment rights on campus a condition of receiving Title IV funds under the HEA.

SUMMARY

H.R. 7683 SECTION-BY-SECTION SUMMARY

Section 1. Short title

- Identifies the short title of the bill as the *Respecting the First Amendment on Campus Act*.

[33] https://www.govinfo.gov/content/pkg/FR-2020-09-23/pdf/2020-20152.pdf.
[34] https://www.federalregister.gov/documents/2023/02/22/2023-03671/request-for-information-regarding-first-amendment-and-free-inquiry-related-grant-conditions.

Section 2. Sense of Congress

- 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 nonsectarian 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 Representative Murphy. 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.

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 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 Representative Houchin's *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 assignment of a sponsor by the university to perform the required administrative functions. An institution is also 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 the 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 organiza-

tion 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 Representative Walberg's *Equal Campus Access Act* to prohibit 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 Representative Stefanik's *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; for private institutions can take adverse action if the organization's purpose is incompatible with the religious mission of the institution, so long as that adverse action is not based on the organization being a single-sex social organization.

Section 5. Freedom of speech

• The bill includes Representative Kiley's *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 stating 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 Representative Murphy's *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 expres-

sive 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 Representative Stefanik's *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 organization that 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.

EXPLANATION OF AMENDMENTS

The amendments, including the amendment in the nature of a substitute, are explained in the body of this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. H.R. 7683 ensures that First Amendment protections are upheld at colleges and universities that receive funding through Title IV of the HEA. H.R. 7683 is applicable only to institutions of higher education and therefore does not apply to the Legislative Branch.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93–344 (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act of 1995, Pub. L. No. 104–4), the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office (CBO) pursuant to section 402 of the Congressional Budget and Impoundment Control Act of 1974.

EARMARK STATEMENT

H.R. 7683 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

ROLL CALL VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include for each record vote on a motion to report the measure or matter and on any amendments offered to the measure or matter the total number of votes for and against and the names of the Members voting for and against.

Date: 3/21/24

COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call:7 Bill: H.R. 7683 Amendment Number: n/a

Disposition: Motion to Report H.R. 7683, as amended, passed by a Full Committee Roll

Call Vote (24 y – 14 n)

Sponsor/Amendment: Rep. Williams/ ANS_001

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mrs. FOXX (NC) (Chairwoman)	X			Mr. SCOTT (VA) (Ranking)		X	
Mr. WILSON (SC)	X			Mr. GRIJALVA (AZ)			X
Mr. THOMPSON (PA)	X			Mr. COURNTEY (CT)			X
Mr. WALBERG (MI)	X			Mr. SABLAN (MP)		X	
Mr. GROTHMAN (WI)	X			Ms. WILSON (FL)			X
Ms. STEFANIK (NY)	X			Ms. BONAMICI (OR)		X	
Mr. ALLEN (GA)	X			Mr. TAKANO (CA)		X	
Mr. BANKS (IN)	X			Ms. ADAMS (NC)		X	
Mr. COMER (KY)	X			Mr. DESAULNIER (CA)		X	
Mr. SMUCKER (PA)	X			Mr. NORCROSS (NJ)			X
Mr. OWENS (UT)	X			Ms. JAYAPAL (WA)		X	
Mr. GOOD (VA)	X			Ms. WILD (PA)		X	
Mrs. MCCLAIN (MI)	X			Ms. MCBATH (GA)		X	
Mrs. MILLER (IL)	X			Mrs. HAYES (CT)		X	
Mrs. STEEL (CA)	X			Ms. OMAR (MN)		X	
Mr. ESTES (KS)	X			Ms. STEVENS (MI)		X	
Ms. LETLOW (LA)	X			Ms. LEGER FERNÁNDEZ (NM)			X
Mr. KILEY (CA)	X			Ms. MANNING (NC)		X	
Mr. BEAN (FL)	X			Mr. MRVAN (IN)		X	
Mr. BURLISON (MO)	X			Mr. BOWMAN (NY)			X
Mr. MORAN (TX)			X				
Mr. JAMES (MI)	X						
Ms. CHAVEZ-DEREMER (OR)	X						
Mr. WILLIAMS (NY)	X						
Ms. HOUCHIN (IN)	X						

TOTALS: Ayes: 24 Nos: 14 Not Voting: 7

Total: 45 / Quorum:38 / Report:

(25 R - 20 D)

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 7683 is to require institutions of higher education that receive funding through Title IV of the HEA to adopt and adhere to principles of free speech.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 7683 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the committee's oversight findings and recommendations are reflected in the body of this report.

REQUIRED COMMITTEE HEARING AND RELATED HEARINGS

In compliance with clause 3(c)(6) of rule XIII of the Rules of the House of Representatives the following hearing held during the 118th Congress was used to develop or consider H.R. 7683: On March 29, 2023, the Subcommittee on Higher Education and Workforce Development of the Committee on Education and the Workforce held a hearing entitled, "Diversity of Thought: Protecting Free Speech on College Campuses." On March 7, 2024, the Subcommittee on Higher Education and Workforce Development held a hearing entitled, "Divisive, Excessive, Ineffective: The Real Impact of DEI on College Campuses."

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for H.R. 7683 from the Director of the Congressional Budget Office:

H.R. 7683, Respecting the First Amendment on Campus Act
As ordered reported by the House Committee on Education and the Workforce on March 21, 2024

By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
Direct Spending (Outlays)	0	*	*
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	*	*
Spending Subject to Appropriation (Outlays)	*	*	not estimated

Increases *net direct spending* in any of the four consecutive 10-year periods beginning in 2035?	No	Statutory pay-as-you-go procedures apply?	Yes
		Mandate Effects	
Increases *on-budget deficits* in any of the four consecutive 10-year periods beginning in 2035?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

* = between -$500,000 and $500,000.

H.R. 7683 would require postsecondary education institutions to meet certain requirements to participate in federal student aid programs, including the Federal Pell Grant Program and the federal student loan programs.

Under the bill, public institutions generally would have to:

- Allow students to freely engage in noncommercial expressive activity on campus;
- Provide religious student organizations with any rights otherwise afforded to other student organizations;
- Make admission and employment decisions without soliciting applicants' or employees' personal beliefs regarding any particular social or political issues, including diversity, equity, and inclusion initiatives beyond upholding existing federal law; and
- Publish viewpoint-neutral policies for allocating mandatory student fees among student organizations and for assessing security fees for student-organized events.

If a public institution was found by a court to have violated any of the bill's requirements, the institution would lose eligibility for federal student aid until the Secretary of Education determined that the institution was no longer in violation.

In addition, public and private institutions could lose eligibility to participate in federal student aid programs if they violated the bill's requirements to allow students to form or join single-sex organizations and disclose annually to students and faculty any institutional policies related to freedom of association, religion, or speech. Institutions could still prohibit student organizations that knowingly provide support or resources to a foreign terrorist organization.

Finally, H.R. 7683 would require the Department of Education to report annually to the Congress summarizing institutional violations and the actions taken by the department to restore institutions' eligibility.

Using information about the cost of similar activities, CBO estimates that it would cost less than $500,000 over the 2024–2029 period for the Department of Education to publish regulations, mon-

itor violations, and report annually. Any spending would be subject to the availability of appropriated funds.

In addition, institutions that violated the provisions of H.R. 7683 could lose eligibility for federal student aid; those programs are funded both by direct spending and by spending subject to appropriation. Because CBO expects that institutions would generally comply with the bill's requirements, we estimate that enacting the bill would not significantly reduce direct spending or spending subject to appropriation.

CBO's estimate of H.R. 7683 is subject to uncertainty. Enacting the bill would allow individuals and organizations to bring civil suits against public postsecondary educational institutions that fail to meet the bill's requirements. The number of such actions that might be brought, and their ultimate outcome, is uncertain. If more institutions lose eligibility under H.R. 7683 than CBO expects, the reduction in federal spending would be larger than CBO estimates.

The CBO staff contact for this estimate is Margot Berman. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 3400. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when, as with the present report, the Committee adopts as its own the cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

HIGHER EDUCATION ACT OF 1965

* * * * * * *

TITLE I—GENERAL PROVISIONS

* * * * * * *

PART B—ADDITIONAL GENERAL PROVISIONS

* * * * * * *

SEC. 112A. SENSE OF CONGRESS; CONSTRUCTION; DEFINITION.

(a) SENSE OF CONGRESS.—

(1) ADOPTION OF CHICAGO PRINCIPLES.—The Congress—

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

(B) acknowledges the profound contribution of the Chicago Principles to the freedom of speech and expression; and

(C) calls on nonsectarian institutions of higher education to adopt the Chicago Principles or substantially similar principles with respect to institutional mission that emphasizes a commitment to freedom of speech and expression on university campuses and to develop and consistently implement policies accordingly.

(2) POLITICAL LITMUS TESTS.—The Congress—

(A) condemns public institutions of higher education for conditioning admission to any student applicant, or the hiring, reappointment, or promotion of any faculty member, on the applicant or faculty member pledging allegiance to or making a statement of personal support for or opposition to any political ideology or movement, including a pledge or statement regarding diversity, equity, and inclusion, or related topics; and

(B) discourages any institution from requesting or requiring any such pledge or statement from an applicant or faculty member, as such actions are antithetical to the freedom of speech protected by the First Amendment to the Constitution.

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

(c) DEFINITION.—For purposes of sections 112C, 112D, and 112E, the term "covered public institution" means an institution of higher education that is—

(1) a public institution; and

(2) participating in a program authorized under title IV.

SEC. 112B. DISCLOSURE OF POLICIES RELATED TO FREEDOM OF SPEECH, ASSOCIATION, AND RELIGION.

(a) IN GENERAL.—No institution of higher education shall be eligible to participate in any program under title IV unless the institution certifies to the Secretary that the institution has annually disclosed to current and prospective students and faculty—

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

(A) speech on campus, including policies limiting—

(i) the time when such speech may occur;

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

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

(B) freedom of association, if applicable; and

(C) freedom of religion, if applicable; and

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

(b) INTENDED BENEFICIARIES.—The certification specified in subsection (a) shall include an acknowledgment from the institution that the students and faculty are the intended beneficiaries of the policies disclosed in the certification.

SEC. 112C. FREEDOM OF ASSOCIATION AND RELIGION.

(a) STUDENTS' BILL OF RIGHTS TO FURTHER PROTECT SPEECH AND ASSOCIATION.—

(1) PROTECTED RIGHTS.—A covered public institution shall comply with the following requirements:

(A) RECOGNIZED STUDENT ORGANIZATIONS.—A covered public institution that has recognized student organizations shall comply with the following requirements:

(i) FACULTY ADVISORS.—

(I) IN GENERAL.—A covered public institution may not deny recognition to a student organization because the organization is unable to obtain a faculty advisor or sponsor, if the organization meets each of the other content- and viewpoint-neutral institutional requirements for such recognition.

(II) ALTERNATIVE.—An institution described in subclause (I) shall ensure that any policy or practice related to the recognition of a student organization—

(aa) in the case of an organization that meets each of the other content- and viewpoint-neutral institutional requirements for such recognition but is unable to obtain a faculty advisor or sponsor, provides for an alternative to any requirement that a faculty or staff member serve as the faculty advisor or sponsor as a condition for recognition of the student organization, which alternative may include—

(AA) waiver of such requirement; or

(BB) the institution assigning a faculty or staff member to such organization; and

(bb) does not require a faculty or staff member of the institution assigned to serve as faculty advisor pursuant to item (aa)(BB) to participate in, or support, the organization other than by performing the purely administrative functions required of a faculty advisor.

(ii) APPEAL OPTIONS FOR RECOGNITION.—

(I) IN GENERAL.—A covered public institution shall provide an appeals process by which a student organization that has been denied recognition by the institution may appeal to an institutional appellate entity for reconsideration.

(II) REQUIREMENTS.—The appeal process shall—

(aa) require the covered public institution to provide a written explanation for the basis for the denial of recognition in a timely manner, which shall include a copy of all policies relied upon by the institution as a basis for the denial;

(bb) require the covered public institution to provide written notice to the students seeking recognition of the appeal process and the timeline for hearing and resolving the appeal;

(cc) allow the students seeking recognition to obtain outside counsel to represent them during the appeal; and

(dd) ensure that such appellate entity did not participate in any prior proceeding related to the denial of recognition to the student organization.

(B) DISTRIBUTION OF FUNDS TO STUDENT ORGANIZATIONS.—A covered public institution that collects a mandatory fee from students for the costs of student activities or events (or both), and provides funds generated from such student fees to one or more recognized student organizations of the institution, shall—

(i) establish and make publicly available clear, objective, content- and viewpoint-neutral, and exhaustive standards to be used by the institution to determine—

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

(II) the allocations of such total amount to individual recognized student organizations;

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

(iii) upon the request of a recognized student organization that has been denied all or a portion of an allocation described in clause (ii), provide to the organization, in writing (which may include electronic communication) and in a timely manner, the specific reasons for such denial, copies of all policies relied upon by the institution as basis for the denial, and information of the appeals process described in clause (iv); and

(iv) provide an appeals process by which a recognized student organization that has been denied all or a portion of an allocation described in clause (ii) may appeal to an institutional appellate entity for reconsideration, which appeals process—

(I) shall require the covered public institution to provide written notice to the students seeking an allocation through the appeal process and the timeline for hearing and resolving the appeal;

(II) allow the students seeking an allocation to obtain outside counsel to represent them during the appeal; and

(III) require the institution to ensure that such appellate entity did not participate in any prior proceeding related to such allocation.

(C) ASSESSMENT OF SECURITY FEES FOR EVENTS.—A covered public institution shall establish and make publicly available clear, objective, content- and viewpoint-neutral, and exhaustive standards to be used by the institution to—

(i) determine the amount of any security fee for an event or activity organized by a student or student organization; and

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

(I) the content of expression or viewpoint of the student or student organization;

(II) the content of expression of the event or activity organized by the student or student organization;

(III) the content of expression or viewpoint of an invited guest of the student or student organization; or

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

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

(2) DEFINITIONS.—In this subsection:

(A) RECOGNIZED STUDENT ORGANIZATION.—The term "recognized student organization" means a student organization that has been determined by a covered public institution to meet institutional requirements to qualify for certain privileges granted by the institution, such as use of institutional venues, resources, and funding.

(B) SECURITY FEE.—The term "security fee" means a fee charged to a student or student organization for an event or activity organized by the student or student organization on the campus of the institution that is intended to cover some or all of the costs incurred by the institution for additional security measures needed to ensure the security of the institution, students, faculty, staff, or surrounding community as a result of such event or activity.

(b) EQUAL CAMPUS ACCESS.—A covered public institution shall not deny to a religious student organization any right, benefit, or privilege that is otherwise afforded to other student organizations at the institution (including full access to the facilities of the institution and official recognition of the organization by the institution) because of the religious beliefs, practices, speech, leadership standards, or standards of conduct of the religious student organization.

(c) FREEDOM OF ASSOCIATION.—

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

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

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

(C) if selected for membership by any single-sex social organization, be able to join, and participate in, such single-

sex organization, subject to its standards for regulating its own membership, as provided under paragraph (3)(C).

(2) NONRETALIATION AGAINST STUDENTS OF SINGLE-SEX SOCIAL ORGANIZATIONS.—An institution of higher education that receives funds under this Act, including through an institution's participation in any program under title IV, shall not—

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

(B) take any adverse action against a single-sex social organization, or a student who is a member or a prospective member of a single-sex social organization, based on the membership practice of such organization limiting membership only to individuals of one sex; or

(C) impose a recruitment restriction (including a recruitment restriction relating to the schedule for membership recruitment) on a single-sex social organization recognized by the institution, which is not imposed upon other student organizations by the institution, unless the organization (or a council of similar organizations) and the institution have entered into a mutually agreed upon written agreement that allows the institution to impose such restriction.

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

(A) require an institution of higher education to officially recognize a single-sex social organization;

(B) prohibit an institution of higher education from taking an adverse action against a student who organizes, leads, or joins a single-sex social organization—

(i) due to academic or nonacademic misconduct; or

(ii)(I) for public institutions, because the organization's purpose is directed to inciting or producing imminent lawless action and likely to incite or produce such action; or

(II) for private institutions, because the organization's purpose is incompatible with the religious mission of the institution, so long as that adverse action is not based on the membership practice of the organization of limiting membership only to individuals of one sex;

(C) prevent a single-sex social organization from regulating its own membership;

(D) inhibit the ability of the faculty of an institution of higher education to express an opinion (either individually or collectively) about membership in a single-sex social organization, or otherwise inhibit the academic freedom of such faculty to research, write, or publish material about membership in such an organization; or

(E) create enforceable rights against a single-sex social organization or against an institution of higher education due to the decision of the organization to deny membership to an individual student.

(4) DEFINITIONS.—In this subsection:

(A) ADVERSE ACTION.—The term "adverse action" includes the following actions taken by an institution of higher education with respect to a single-sex social organization or a member or prospective member of a single-sex social organization:

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

(ii) An oral or written warning with respect to an action described in clause (i) made by an official of an institution of higher education acting in their official capacity.

(iii) An action to deny participation in any education program or activity, including the withholding of any rights, privileges, or opportunities afforded other students on campus.

(iv) An action to withhold, in whole or in part, any financial assistance (including scholarships and on-campus employment), or denying the opportunity to apply for financial assistance, a scholarship, a graduate fellowship, or on-campus employment.

(v) An action to deny or restrict access to on-campus housing.

(vi) An act to deny any certification, endorsement, or letter of recommendation that may be required by a student's current or future employer, a government agency, a licensing board, an institution of higher education, a scholarship program, or a graduate fellowship to which the student applies or seeks to apply.

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

(viii) An action to withdraw the institution's official recognition of such organization.

(ix) An action to require any student to certify that such student is not a member of a single-sex social organization or to disclose the student's membership in a single-sex social organization.

(x) An action to interject an institution's own criteria into the membership practices of the organization in any manner that conflicts with the rights of such organization under title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) or this subsection.

(xi) An action to impose additional requirements on advisors serving a single-sex social organization that are not imposed on all other student organizations.

(B) SINGLE-SEX SOCIAL ORGANIZATION.—The term "single-sex social organization" means—

(i) a social fraternity or sorority described in section 501(c) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code, or an organization that has been historically sin-

gle-sex, the active membership of which consists primarily of students or alumni of an institution of higher education; or

(ii) a single-sex private social club (including an independent organization located off-campus) that consists primarily of students or alumni of an institution of higher education.

(d) CONSTRUCTION.—Nothing in this section shall be construed to prohibit an institution of higher education from taking any adverse action (such as denying or revoking recognition, funding, use of institutional venues or resources, or other privileges granted by the institution) against a student organization based on the student organization having knowingly provided material support or resources to an organization designated as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).

SEC. 112D. FREE SPEECH ON CAMPUS.

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

(1) at each orientation for new and transfer students, provide students attending the orientation—

(A) a written statement that—

(i) explains the rights of students under the First Amendment to the Constitution;

(ii) affirms the importance of, and the commitment of the institution to, freedom of expression;

(iii) explains students' protections under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and the procedures for filing a discrimination claim with the Office for Civil Rights of the Department of Education; and

(iv) includes assurances that students, and individuals invited by students to speak at the institution, will not be treated in a manner that violates the freedom of expression of such students or individuals; and

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

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

(b) CAMPUS FREE SPEECH AND RESTORATION.—

(1) DEFINITION OF EXPRESSIVE ACTIVITIES.—In this subsection, the term "expressive activity"—

(A) includes—

(i) peacefully assembling, protesting, speaking, or listening;

(ii) distributing literature;

(iii) carrying a sign;

(iv) circulating a petition; or

(v) other expressive activities guaranteed under the First Amendment to the Constitution;

(B) applies equally to religious expression as it does to nonreligious expression; and

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

(2) EXPRESSIVE ACTIVITIES AT AN INSTITUTION.—

(A) IN GENERAL.—A covered public institution may not prohibit, subject to subparagraph (B), a person from freely engaging in noncommercial expressive activity in a generally accessible area on the institution's campus if the person's conduct is lawful. The publicly accessible outdoor areas of campuses of public institutions of higher education shall be regulated pursuant to rules applicable to traditional public forums.

(B) RESTRICTIONS.—A covered public institution may not maintain or enforce time, place, or manner restrictions on an expressive activity in a generally accessible area of the institution's campus unless the restriction—

(i) is narrowly tailored in furtherance of a significant governmental interest;

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

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

(iv) provides for spontaneous assembly and distribution of literature.

(C) APPLICATION.—The protections provided under subparagraph (A) do not apply to expressive activity in an area on an institution's campus that is not a generally accessible area.

(D) NONAPPLICATION TO SERVICE ACADEMIES.—This subsection shall not apply to an institution of higher education whose primary purpose is the education of individuals for the military services of the United States, or the merchant marine.

(c) PROHIBITION ON USE OF POLITICAL TESTS.—

(1) IN GENERAL.—A covered public institution may not consider, require, or discriminate on the basis of a political test in the admission, appointment, hiring, employment, or promotion of any covered individual, or in the granting of tenure to any covered individual.

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

(A) to prohibit an institution of higher education whose primary purpose is the education of individuals for the military services of the United States, or the merchant marine, from requiring an applicant, student, or employee to take an oath to uphold the Constitution of the United States;

(B) to prohibit an institution of higher education from requiring a student, faculty member, or employee to comply with Federal or State antidiscrimination laws or from taking action against a student, faculty member, or employee for violations of Federal or State anti-discrimination laws, as applicable;

(C) to prohibit an institution of higher education from evaluating a prospective student, an employee, or a prospective employee based on their knowingly providing material support or resources to an organization designated as a for-

eign terrorist organization pursuant to section 219 of the Immigration and Nationality Act (8 U.S.C. 1189);

(D) to prohibit an institution of higher education from considering the subject-matter competency including the research and creative works, of any candidate for a faculty position or faculty member considered for promotion when the subject matter is germane to their given field of scholarship; or

(E) to apply to activities of registered student organizations.

(3) DEFINITIONS.—In this subsection:

(A) COVERED INDIVIDUAL.—The term "covered individual" means, with respect to an institution of higher education that is a public institution—

(i) a prospective student who has submitted an application to attend such institution;

(ii) a student who attends such institution;

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

(iv) an employee who works at such institution;

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

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

(B) MATERIAL SUPPORT OR RESOURCES.—The term "material support or resources" has the meaning given that term in section 2339A of title 18, United States Code (including the definitions of "training" and "expert advice or assistance" in that section).

(C) POLITICAL TEST.—The term "political test" means a method of compelling or soliciting an applicant for enrollment or employment, student, or employee of an institution of higher education to identify commitment to or make a statement of personal belief in support of any ideology or movement that—

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

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

(iii) promotes the disparate treatment of any individual or group of individuals on the basis of race, color, or national origin, including—

(I) any initiative or formulation of diversity, equity, and inclusion beyond upholding existing Federal law; or

(II) any theory or practice that holds that systems or institutions upholding existing Federal law are racist, oppressive, or otherwise unjust.

SEC. 112E. ENFORCEMENT.

(a) CAUSE OF ACTION.—

(1) CIVIL ACTION.—After exhaustion of any available appeals under section 112C(a), an aggrieved individual who, or an aggrieved organization that, is harmed by the maintenance of a policy or practice by a covered public institution that is in violation of a requirement described in section 112B, 112C, or 112D

may bring a civil action in a Federal court for appropriate relief.

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

(A) a temporary or permanent injunction; and

(B) awarding a prevailing plaintiff—

(i) compensatory damages;

(ii) reasonable court costs; and

(iii) reasonable attorney's fees.

(3) STATUTE OF LIMITATIONS.—A civil action under this subsection may not be commenced later than 2 years after the cause of action accrues. For purposes of calculating the two-year limitation period, each day that the violation of a requirement described in section 112B, 112C, or 112D persists, and each day that a policy in violation of a requirement described in section 112B, 112C, or 112D remains in effect, shall constitute a new day that the cause of action has accrued.

(b) NONDEFAULT, FINAL JUDGMENT.—In the case of a court's nondefault, final judgment in a civil action brought under subsection (a) that a covered public institution is in violation of a requirement described in section 112B, 112C, or 112D, such covered public institution shall—

(1) not later than 7 days after the date on which the court makes such a nondefault, final judgment, notify the Secretary of such judgment and submit to the Secretary a copy of the nondefault, final judgment; and

(2) not later than 30 days after the date on which the court makes such a nondefault, final judgment, submit to the Secretary a report that—

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

(B) provides evidence to support such certification.

(c) REVOCATION OF ELIGIBILITY.—In the case of a covered public institution that does not notify the Secretary as required under subsection (b)(1) or submit the report required under subsection (b)(2), the Secretary shall revoke the eligibility of such institution to participate in a program authorized under title IV for each award year following the conclusion of the award year in which a court made a nondefault, final judgment in a civil action brought under subsection (a) that the institution is in violation of a requirement described in section 112B, 112C, or 112D.

(d) RESTORATION OF ELIGIBILITY.—

(1) IN GENERAL.—A covered public institution that loses eligibility under subsection (c) to participate in a program authorized under title IV may seek to restore such eligibility by submitting to the Secretary the report described in subsection (b)(2).

(2) DETERMINATION BY THE SECRETARY.—Not later than 90 days after a covered public institution submits a report under paragraph (1), the Secretary shall review such report and make a determination with respect to whether such report contained sufficient evidence to demonstrate that such institution is no longer in violation of a requirement described in section 112B, 112C, or 112D.

(3) RESTORATION.—If the Secretary makes a determination under paragraph (2) that the covered public institution is no longer in violation of a requirement described in section 112B, 112C, or 112D, the Secretary shall restore the eligibility of such institution to participate in a program authorized under title IV for each award year following the conclusion of the award year in which such determination is made.

(e) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this section, and on an annual basis thereafter, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Senate Committee on Health, Education, Labor, and Pensions a report that includes—

(1) a compilation of—

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

(B) the reports submitted to the Secretary under subsection (b)(2) for such year; and

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

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

(g) DEFINITION.—In this section, the term "nondefault, final judgment" means a final judgment by a court for a civil action brought under subsection (a) that a covered public institution is in violation of a requirement described in section 112B, 112C, or 112D that the covered public institution chooses not to appeal or that is not subject to further appeal.

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TITLE IV—STUDENT ASSISTANCE

* * * * * * *

PART G—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS

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SEC. 487. PROGRAM PARTICIPATION AGREEMENTS.

(a) REQUIRED FOR PROGRAMS OF ASSISTANCE; CONTENTS.—In order to be an eligible institution for the purposes of any program authorized under this title, an institution must be an institution of higher education or an eligible institution (as that term is defined for the purpose of that program) and shall, except with respect to a program under subpart 4 of part A, enter into a program participation agreement with the Secretary. The agreement shall condi-

tion the initial and continuing eligibility of an institution to participate in a program upon compliance with the following requirements:

(1) The institution will use funds received by it for any program under this title and any interest or other earnings thereon solely for the purpose specified in and in accordance with the provision of that program.

(2) The institution shall not charge any student a fee for processing or handling any application, form, or data required to determine the student's eligibility for assistance under this title or the amount of such assistance.

(3) The institution will establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students under this title, together with assurances that the institution will provide, upon request and in a timely fashion, information relating to the administrative capability and financial responsibility of the institution to—

(A) the Secretary;

(B) the appropriate guaranty agency; and

(C) the appropriate accrediting agency or association.

(4) The institution will comply with the provisions of subsection (c) of this section and the regulations prescribed under that subsection, relating to fiscal eligibility.

(5) The institution will submit reports to the Secretary and, in the case of an institution participating in a program under part B or part E, to holders of loans made to the institution's students under such parts at such times and containing such information as the Secretary may reasonably require to carry out the purpose of this title.

(6) The institution will not provide any student with any statement or certification to any lender under part B that qualifies the student for a loan or loans in excess of the amount that student is eligible to borrow in accordance with sections 425(a), 428(a)(2), and 428(b)(1) (A) and (B).

(7) The institution will comply with the requirements of section 485.

(8) In the case of an institution that advertises job placement rates as a means of attracting students to enroll in the institution, the institution will make available to prospective students, at or before the time of application (A) the most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the advertisements, and (B) relevant State licensing requirements of the State in which such institution is located for any job for which the course of instruction is designed to prepare such prospective students.

(9) In the case of an institution participating in a program under part B or D, the institution will inform all eligible borrowers enrolled in the institution about the availability and eligibility of such borrowers for State grant assistance from the State in which the institution is located, and will inform such borrowers from another State of the source for further information concerning such assistance from that State.

(10) The institution certifies that it has in operation a drug abuse prevention program that is determined by the institution to be accessible to any officer, employee, or student at the institution.

(11) In the case of any institution whose students receive financial assistance pursuant to section 484(d), the institution will make available to such students a program proven successful in assisting students in obtaining a certificate of high school equivalency.

(12) The institution certifies that—

(A) the institution has established a campus security policy; and

(B) the institution has complied with the disclosure requirements of section 485(f).

(13) The institution will not deny any form of Federal financial aid to any student who meets the eligibility requirements of this title on the grounds that the student is participating in a program of study abroad approved for credit by the institution.

(14)(A) The institution, in order to participate as an eligible institution under part B or D, will develop a Default Management Plan for approval by the Secretary as part of its initial application for certification as an eligible institution and will implement such Plan for two years thereafter.

(B) Any institution of higher education which changes ownership and any eligible institution which changes its status as a parent or subordinate institution shall, in order to participate as an eligible institution under part B or D, develop a Default Management Plan for approval by the Secretary and implement such Plan for two years after its change of ownership or status.

(C) This paragraph shall not apply in the case of an institution in which (i) neither the parent nor the subordinate institution has a cohort default rate in excess of 10 percent, and (ii) the new owner of such parent or subordinate institution does not, and has not, owned any other institution with a cohort default rate in excess of 10 percent.

(15) The institution acknowledges the authority of the Secretary, guaranty agencies, lenders, accrediting agencies, the Secretary of Veterans Affairs, and the State agencies under subpart 1 of part H to share with each other any information pertaining to the institution's eligibility to participate in programs under this title or any information on fraud and abuse.

(16)(A) The institution will not knowingly employ an individual in a capacity that involves the administration of programs under this title, or the receipt of program funds under this title, who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under this title, or has been judicially determined to have committed fraud involving funds under this title or contract with an institution or third party servicer that has been terminated under section 432 involving the acquisition, use, or expenditure of funds under this title, or who has been judicially determined to have committed fraud involving funds under this title.

(B) The institution will not knowingly contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been—

(i) convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under this title; or

(ii) judicially determined to have committed fraud involving funds under this title.

(17) The institution will complete surveys conducted as a part of the Integrated Postsecondary Education Data System (IPEDS) or any other Federal postsecondary institution data collection effort, as designated by the Secretary, in a timely manner and to the satisfaction of the Secretary.

(18) The institution will meet the requirements established pursuant to section 485(g).

(19) The institution will not impose any penalty, including the assessment of late fees, the denial of access to classes, libraries, or other institutional facilities, or the requirement that the student borrow additional funds, on any student because of the student's inability to meet his or her financial obligations to the institution as a result of the delayed disbursement of the proceeds of a loan made under this title due to compliance with the provisions of this title, or delays attributable to the institution.

(20) The institution will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except that this paragraph shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(21) The institution will meet the requirements established by the Secretary and accrediting agencies or associations, and will provide evidence to the Secretary that the institution has the authority to operate within a State.

(22) The institution will comply with the refund policy established pursuant to section 484B.

(23)(A) The institution, if located in a State to which section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–2(b)) does not apply, will make a good faith effort to distribute a mail voter registration form, requested and received from the State, to each student enrolled in a degree or certificate program and physically in attendance at the institution, and to make such forms widely available to students at the institution.

(B) The institution shall request the forms from the State 120 days prior to the deadline for registering to vote within the State. If an institution has not received a sufficient quantity of forms to fulfill this section from the State within 60 days prior to the deadline for registering to vote in the State, the institution shall not be held liable for not meeting the requirements of this section during that election year.

(C) This paragraph shall apply to general and special elections for Federal office, as defined in section 301(3) of the Fed-

eral Election Campaign Act of 1971 (2 U.S.C. 431(3)), and to the elections for Governor or other chief executive within such State).

(D) The institution shall be considered in compliance with the requirements of subparagraph (A) for each student to whom the institution electronically transmits a message containing a voter registration form acceptable for use in the State in which the institution is located, or an Internet address where such a form can be downloaded, if such information is in an electronic message devoted exclusively to voter registration.

(24) In the case of a proprietary institution of higher education (as defined in section 102(b)), such institution will derive not less than ten percent of such institution's revenues from sources other than Federal funds that are disbursed or delivered to or on behalf of a student to be used to attend such institution (referred to in this paragraph and subsection (d) as "Federal education assistance funds"), as calculated in accordance with subsection (d)(1), or will be subject to the sanctions described in subsection (d)(2).

(25) In the case of an institution that participates in a loan program under this title, the institution will—

(A) develop a code of conduct with respect to such loans with which the institution's officers, employees, and agents shall comply, that—

(i) prohibits a conflict of interest with the responsibilities of an officer, employee, or agent of an institution with respect to such loans; and

(ii) at a minimum, includes the provisions described in subsection (e);

(B) publish such code of conduct prominently on the institution's website; and

(C) administer and enforce such code by, at a minimum, requiring that all of the institution's officers, employees, and agents with responsibilities with respect to such loans be annually informed of the provisions of the code of conduct.

(26) The institution will, upon written request, disclose to the alleged victim of any crime of violence (as that term is defined in section 16 of title 18, United States Code), or a nonforcible sex offense, the report on the results of any disciplinary proceeding conducted by such institution against a student who is the alleged perpetrator of such crime or offense with respect to such crime or offense. If the alleged victim of such crime or offense is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim for purposes of this paragraph.

(27) In the case of an institution that has entered into a preferred lender arrangement, the institution will at least annually compile, maintain, and make available for students attending the institution, and the families of such students, a list, in print or other medium, of the specific lenders for loans made, insured, or guaranteed under this title or private education loans that the institution recommends, promotes, or endorses in accordance with such preferred lender arrangement.

In making such list, the institution shall comply with the requirements of subsection (h).

(28)(A) The institution will, upon the request of an applicant for a private education loan, provide to the applicant the form required under section 128(e)(3) of the Truth in Lending Act (15 U.S.C. 1638(e)(3)), and the information required to complete such form, to the extent the institution possesses such information.

(B) For purposes of this paragraph, the term "private education loan" has the meaning given such term in section 140 of the Truth in Lending Act.

(29) The institution certifies that the institution—

(A) has developed plans to effectively combat the unauthorized distribution of copyrighted material, including through the use of a variety of technology-based deterrents; and

(B) will, to the extent practicable, offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property, as determined by the institution in consultation with the chief technology officer or other designated officer of the institution.

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

(B) In the case of an institution that is not a public institution, the institution will comply with sections 112B and 112C(c).

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

(i) be ineligible to participate in the programs authorized by this title for a period of not less than 1 award year; and

(ii) in order to regain eligibility to participate in such programs, demonstrate compliance with all requirements of such section for not less than one award year after the award year in which such institution became ineligible.

(b) HEARINGS.—(1) An institution that has received written notice of a final audit or program review determination and that desires to have such determination reviewed by the Secretary shall submit to the Secretary a written request for review not later than 45 days after receipt of notification of the final audit or program review determination.

(2) The Secretary shall, upon receipt of written notice under paragraph (1), arrange for a hearing and notify the institution within 30 days of receipt of such notice the date, time, and place of such hearing. Such hearing shall take place not later than 120 days from the date upon which the Secretary notifies the institution.

(c) AUDITS; FINANCIAL RESPONSIBILITY; ENFORCEMENT OF STANDARDS.—(1) Notwithstanding any other provisions of this title, the Secretary shall prescribe such regulations as may be necessary to provide for—

(A)(i) except as provided in clauses (ii) and (iii), a financial audit of an eligible institution with regard to the financial condition of the institution in its entirety, and a compliance audit of such institution with regard to any funds obtained by it

under this title or obtained from a student or a parent who has a loan insured or guaranteed by the Secretary under this title, on at least an annual basis and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary and shall be available to cognizant guaranty agencies, eligible lenders, State agencies, and the appropriate State agency notifying the Secretary under subpart 1 of part H, except that the Secretary may modify the requirements of this clause with respect to institutions of higher education that are foreign institutions, and may waive such requirements with respect to a foreign institution whose students receive less than $500,000 in loans under this title during the award year preceding the audit period;

(ii) with regard to an eligible institution which is audited under chapter 75 of title 31, United States Code, deeming such audit to satisfy the requirements of clause (i) for the period covered by such audit; or

(iii) at the discretion of the Secretary, with regard to an eligible institution (other than an eligible institution described in section 102(a)(1)(C)) that has obtained less than $200,000 in funds under this title during each of the 2 award years that precede the audit period and submits a letter of credit payable to the Secretary equal to not less than ½ of the annual potential liabilities of such institution as determined by the Secretary, deeming an audit conducted every 3 years to satisfy the requirements of clause (i), except for the award year immediately preceding renewal of the institution's eligibility under section 498(g);

(B) in matters not governed by specific program provisions, the establishment of reasonable standards of financial responsibility and appropriate institutional capability for the administration by an eligible institution of a program of student financial aid under this title, including any matter the Secretary deems necessary to the sound administration of the financial aid programs, such as the pertinent actions of any owner, shareholder, or person exercising control over an eligible institution;

(C)(i) except as provided in clause (ii), a compliance audit of a third party servicer (other than with respect to the servicer's functions as a lender if such functions are otherwise audited under this part and such audits meet the requirements of this clause), with regard to any contract with an eligible institution, guaranty agency, or lender for administering or servicing any aspect of the student assistance programs under this title, at least once every year and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

(ii) with regard to a third party servicer that is audited under chapter 75 of title 31, United States Code, such audit shall be deemed to satisfy the requirements of clause (i) for the period covered by such audit;

(D)(i) a compliance audit of a secondary market with regard to its transactions involving, and its servicing and collection of, loans made under this title, at least once a year and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

(ii) with regard to a secondary market that is audited under chapter 75 of title 31, United States Code, such audit shall be deemed to satisfy the requirements of clause (i) for the period covered by the audit;

(E) the establishment, by each eligible institution under part B responsible for furnishing to the lender the statement required by section 428(a)(2)(A)(i), of policies and procedures by which the latest known address and enrollment status of any student who has had a loan insured under this part and who has either formally terminated his enrollment, or failed to reenroll on at least a half-time basis, at such institution, shall be furnished either to the holder (or if unknown, the insurer) of the note, not later than 60 days after such termination or failure to re-enroll;

(F) the limitation, suspension, or termination of the participation in any program under this title of an eligible institution, or the imposition of a civil penalty under paragraph (3)(B) whenever the Secretary has determined, after reasonable notice and opportunity for hearing, that such institution has violated or failed to carry out any provision of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation, except that no period of suspension under this section shall exceed 60 days unless the institution and the Secretary agree to an extension or unless limitation or termination proceedings are initiated by the Secretary within that period of time;

(G) an emergency action against an institution, under which the Secretary shall, effective on the date on which a notice and statement of the basis of the action is mailed to the institution (by registered mail, return receipt requested), withhold funds from the institution or its students and withdraw the institution's authority to obligate funds under any program under this title, if the Secretary—

(i) receives information, determined by the Secretary to be reliable, that the institution is violating any provision of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation,

(ii) determines that immediate action is necessary to prevent misuse of Federal funds, and

(iii) determines that the likelihood of loss outweighs the importance of the procedures prescribed under subparagraph (D) for limitation, suspension, or termination,

except that an emergency action shall not exceed 30 days unless limitation, suspension, or termination proceedings are initiated by the Secretary against the institution within that period of time, and except that the Secretary shall provide the institution an opportunity to show cause, if it so requests, that the emergency action is unwarranted;

(H) the limitation, suspension, or termination of the eligibility of a third party servicer to contract with any institution to administer any aspect of an institution's student assistance program under this title, or the imposition of a civil penalty under paragraph (3)(B), whenever the Secretary has determined, after reasonable notice and opportunity for a hearing, that such organization, acting on behalf of an institution, has violated or failed to carry out any provision of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation, except that no period of suspension under this subparagraph shall exceed 60 days unless the organization and the Secretary agree to an extension, or unless limitation or termination proceedings are initiated by the Secretary against the individual or organization within that period of time; and

(I) an emergency action against a third party servicer that has contracted with an institution to administer any aspect of the institution's student assistance program under this title, under which the Secretary shall, effective on the date on which a notice and statement of the basis of the action is mailed to such individual or organization (by registered mail, return receipt requested), withhold funds from the individual or organization and withdraw the individual or organization's authority to act on behalf of an institution under any program under this title, if the Secretary—

(i) receives information, determined by the Secretary to be reliable, that the individual or organization, acting on behalf of an institution, is violating any provision of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation,

(ii) determines that immediate action is necessary to prevent misuse of Federal funds, and

(iii) determines that the likelihood of loss outweighs the importance of the procedures prescribed under subparagraph (F), for limitation, suspension, or termination,

except that an emergency action shall not exceed 30 days unless the limitation, suspension, or termination proceedings are initiated by the Secretary against the individual or organization within that period of time, and except that the Secretary shall provide the individual or organization an opportunity to show cause, if it so requests, that the emergency action is unwarranted.

(2) If an individual who, or entity that, exercises substantial control, as determined by the Secretary in accordance with the definition of substantial control in subpart 3 of part H, over one or more institutions participating in any program under this title, or, for

purposes of paragraphs (1) (H) and (I), over one or more organizations that contract with an institution to administer any aspect of the institution's student assistance program under this title, is determined to have committed one or more violations of the requirements of any program under this title, or has been suspended or debarred in accordance with the regulations of the Secretary, the Secretary may use such determination, suspension, or debarment as the basis for imposing an emergency action on, or limiting, suspending, or terminating, in a single proceeding, the participation of any or all institutions under the substantial control of that individual or entity.

(3)(A) Upon determination, after reasonable notice and opportunity for a hearing, that an eligible institution has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, or the employability of its graduates, the Secretary may suspend or terminate the eligibility status for any or all programs under this title of any otherwise eligible institution, in accordance with procedures specified in paragraph (1)(D) of this subsection, until the Secretary finds that such practices have been corrected.

(B)(i) Upon determination, after reasonable notice and opportunity for a hearing, that an eligible institution—

(I) has violated or failed to carry out any provision of this title or any regulation prescribed under this title; or

(II) has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, and the employability of its graduates,

the Secretary may impose a civil penalty upon such institution of not to exceed $25,000 for each violation or misrepresentation.

(ii) Any civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the institution of higher education subject to the determination, and the gravity of the violation, failure, or misrepresentation shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the institution charged.

(4) The Secretary shall publish a list of State agencies which the Secretary determines to be reliable authority as to the quality of public postsecondary vocational education in their respective States for the purpose of determining eligibility for all Federal student assistance programs.

(5) The Secretary shall make readily available to appropriate guaranty agencies, eligible lenders, State agencies notifying the Secretary under subpart 1 of part H, and accrediting agencies or associations the results of the audits of eligible institutions conducted pursuant to paragraph (1)(A).

(6) The Secretary is authorized to provide any information collected as a result of audits conducted under this section, together with audit information collected by guaranty agencies, to any Federal or State agency having responsibilities with respect to student financial assistance, including those referred to in subsection (a)(15) of this section.

(7) Effective with respect to any audit conducted under this subsection after December 31, 1988, if, in the course of conducting any such audit, the personnel of the Department of Education discover, or are informed of, grants or other assistance provided by an institution in accordance with this title for which the institution has not received funds appropriated under this title (in the amount necessary to provide such assistance), including funds for which reimbursement was not requested prior to such discovery or information, such institution shall be permitted to offset that amount against any sums determined to be owed by the institution pursuant to such audit, or to receive reimbursement for that amount (if the institution does not owe any such sums).

(d) IMPLEMENTATION OF NON-FEDERAL REVENUE REQUIREMENT.—

(1) CALCULATION.—In making calculations under subsection (a)(24), a proprietary institution of higher education shall—

(A) use the cash basis of accounting, except in the case of loans described in subparagraph (D)(i) that are made by the proprietary institution of higher education;

(B) consider as revenue only those funds generated by the institution from—

(i) tuition, fees, and other institutional charges for students enrolled in programs eligible for assistance under this title;

(ii) activities conducted by the institution that are necessary for the education and training of the institution's students, if such activities are—

(I) conducted on campus or at a facility under the control of the institution;

(II) performed under the supervision of a member of the institution's faculty; and

(III) required to be performed by all students in a specific educational program at the institution; and

(iii) funds paid by a student, or on behalf of a student by a party other than the institution, for an education or training program that is not eligible for funds under this title, if the program—

(I) is approved or licensed by the appropriate State agency;

(II) is accredited by an accrediting agency recognized by the Secretary; or

(III) provides an industry-recognized credential or certification;

(C) presume that any Federal education assistance funds that are disbursed or delivered to or on behalf of a student will be used to pay the student's tuition, fees, or other institutional charges, regardless of whether the institution credits those funds to the student's account or pays those funds directly to the student, except to the extent that the student's tuition, fees, or other institutional charges are satisfied by—

(i) grant funds provided by non-Federal public agencies or private sources independent of the institution;

(ii) funds provided under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals who are in need of that training;

(iii) funds used by a student from savings plans for educational expenses established by or on behalf of the student and which qualify for special tax treatment under the Internal Revenue Code of 1986; or

(iv) institutional scholarships described in subparagraph (D)(iii);

(D) include institutional aid as revenue to the school only as follows:

(i) in the case of loans made by a proprietary institution of higher education on or after July 1, 2008 and prior to July 1, 2012, the net present value of such loans made by the institution during the applicable institutional fiscal year accounted for on an accrual basis and estimated in accordance with generally accepted accounting principles and related standards and guidance, if the loans—

(I) are bona fide as evidenced by enforceable promissory notes;

(II) are issued at intervals related to the institution's enrollment periods; and

(III) are subject to regular loan repayments and collections;

(ii) in the case of loans made by a proprietary institution of higher education on or after July 1, 2012, only the amount of loan repayments received during the applicable institutional fiscal year, excluding repayments on loans made and accounted for as specified in clause (i); and

(iii) in the case of scholarships provided by a proprietary institution of higher education, only those scholarships provided by the institution in the form of monetary aid or tuition discounts based upon the academic achievements or financial need of students, disbursed during each fiscal year from an established restricted account, and only to the extent that funds in that account represent designated funds from an outside source or from income earned on those funds;

(E) in the case of each student who receives a loan on or after July 1, 2008, and prior to July 1, 2011, that is authorized under section 428H or that is a Federal Direct Unsubsidized Stafford Loan, treat as revenue received by the institution from sources other than funds received under this title, the amount by which the disbursement of such loan received by the institution exceeds the limit on such loan in effect on the day before the date of enactment of the Ensuring Continued Access to Student Loans Act of 2008; and

(F) exclude from revenues—

(i) the amount of funds the institution received under part C, unless the institution used those funds to pay a student's institutional charges;

(ii) the amount of funds the institution received under subpart 4 of part A;

(iii) the amount of funds provided by the institution as matching funds for a program under this title;

(iv) the amount of funds provided by the institution for a program under this title that are required to be refunded or returned; and

(v) the amount charged for books, supplies, and equipment, unless the institution includes that amount as tuition, fees, or other institutional charges.

(2) SANCTIONS.—

(A) INELIGIBILITY.—A proprietary institution of higher education that fails to meet a requirement of subsection (a)(24) for two consecutive institutional fiscal years shall be ineligible to participate in the programs authorized by this title for a period of not less than two institutional fiscal years. To regain eligibility to participate in the programs authorized by this title, a proprietary institution of higher education shall demonstrate compliance with all eligibility and certification requirements under section 498 for a minimum of two institutional fiscal years after the institutional fiscal year in which the institution became ineligible.

(B) ADDITIONAL ENFORCEMENT.—In addition to such other means of enforcing the requirements of this title as may be available to the Secretary, if a proprietary institution of higher education fails to meet a requirement of subsection (a)(24) for any institutional fiscal year, then the institution's eligibility to participate in the programs authorized by this title becomes provisional for the two institutional fiscal years after the institutional fiscal year in which the institution failed to meet the requirement of subsection (a)(24), except that such provisional eligibility shall terminate—

(i) on the expiration date of the institution's program participation agreement under this subsection that is in effect on the date the Secretary determines that the institution failed to meet the requirement of subsection (a)(24); or

(ii) in the case that the Secretary determines that the institution failed to meet a requirement of subsection (a)(24) for two consecutive institutional fiscal years, on the date the institution is determined ineligible in accordance with subparagraph (A).

(3) PUBLICATION ON COLLEGE NAVIGATOR WEBSITE.—The Secretary shall publicly disclose on the College Navigator website—

(A) the identity of any proprietary institution of higher education that fails to meet a requirement of subsection (a)(24); and

(B) the extent to which the institution failed to meet such requirement.

(4) REPORT TO CONGRESS.—Not later than July 1, 2009, and July 1 of each succeeding year, the Secretary shall submit to the authorizing committees a report that contains, for each

proprietary institution of higher education that receives assistance under this title, as provided in the audited financial statements submitted to the Secretary by each institution pursuant to the requirements of subsection (a)(24)—

(A) the amount and percentage of such institution's revenues received from sources under this title; and

(B) the amount and percentage of such institution's revenues received from other sources.

(e) CODE OF CONDUCT REQUIREMENTS.—An institution of higher education's code of conduct, as required under subsection (a)(25), shall include the following requirements:

(1) BAN ON REVENUE-SHARING ARRANGEMENTS.—

(A) PROHIBITION.—The institution shall not enter into any revenue-sharing arrangement with any lender.

(B) DEFINITION.—For purposes of this paragraph, the term "revenue-sharing arrangement" means an arrangement between an institution and a lender under which—

(i) a lender provides or issues a loan that is made, insured, or guaranteed under this title to students attending the institution or to the families of such students; and

(ii) the institution recommends the lender or the loan products of the lender and in exchange, the lender pays a fee or provides other material benefits, including revenue or profit sharing, to the institution, an officer or employee of the institution, or an agent.

(2) GIFT BAN.—

(A) PROHIBITION.—No officer or employee of the institution who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, or agent who has responsibilities with respect to education loans, shall solicit or accept any gift from a lender, guarantor, or servicer of education loans.

(B) DEFINITION OF GIFT.—

(i) IN GENERAL.—In this paragraph, the term "gift" means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having a monetary value of more than a de minimus amount. The term includes a gift of services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

(ii) EXCEPTIONS.—The term "gift" shall not include any of the following:

(I) Standard material, activities, or programs on issues related to a loan, default aversion, default prevention, or financial literacy, such as a brochure, a workshop, or training.

(II) Food, refreshments, training, or informational material furnished to an officer or employee of an institution, or to an agent, as an integral part of a training session that is designed to improve the service of a lender, guarantor, or servicer of education loans to the institution, if

such training contributes to the professional development of the officer, employee, or agent.

(III) Favorable terms, conditions, and borrower benefits on an education loan provided to a student employed by the institution if such terms, conditions, or benefits are comparable to those provided to all students of the institution.

(IV) Entrance and exit counseling services provided to borrowers to meet the institution's responsibilities for entrance and exit counseling as required by subsections (b) and (l) of section 485, as long as—

(aa) the institution's staff are in control of the counseling, (whether in person or via electronic capabilities); and

(bb) such counseling does not promote the products or services of any specific lender.

(V) Philanthropic contributions to an institution from a lender, servicer, or guarantor of education loans that are unrelated to education loans or any contribution from any lender, guarantor, or servicer that is not made in exchange for any advantage related to education loans.

(VI) State education grants, scholarships, or financial aid funds administered by or on behalf of a State.

(iii) RULE FOR GIFTS TO FAMILY MEMBERS.—For purposes of this paragraph, a gift to a family member of an officer or employee of an institution, to a family member of an agent, or to any other individual based on that individual's relationship with the officer, employee, or agent, shall be considered a gift to the officer, employee, or agent if—

(I) the gift is given with the knowledge and acquiescence of the officer, employee, or agent; and

(II) the officer, employee, or agent has reason to believe the gift was given because of the official position of the officer, employee, or agent.

(3) CONTRACTING ARRANGEMENTS PROHIBITED.—

(A) PROHIBITION.—An officer or employee who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, or an agent who has responsibilities with respect to education loans, shall not accept from any lender or affiliate of any lender any fee, payment, or other financial benefit (including the opportunity to purchase stock) as compensation for any type of consulting arrangement or other contract to provide services to a lender or on behalf of a lender relating to education loans.

(B) EXCEPTIONS.—Nothing in this subsection shall be construed as prohibiting—

(i) an officer or employee of an institution who is not employed in the institution's financial aid office and who does not otherwise have responsibilities with respect to education loans, or an agent who does not

have responsibilities with respect to education loans, from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans;

(ii) an officer or employee of the institution who is not employed in the institution's financial aid office but who has responsibility with respect to education loans as a result of a position held at the institution, or an agent who has responsibility with respect to education loans, from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans, if the institution has a written conflict of interest policy that clearly sets forth that officers, employees, or agents must recuse themselves from participating in any decision of the board regarding education loans at the institution; or

(iii) an officer, employee, or contractor of a lender, guarantor, or servicer of education loans from serving on a board of directors, or serving as a trustee, of an institution, if the institution has a written conflict of interest policy that the board member or trustee must recuse themselves from any decision regarding education loans at the institution.

(4) INTERACTION WITH BORROWERS.—The institution shall not—

(A) for any first-time borrower, assign, through award packaging or other methods, the borrower's loan to a particular lender; or

(B) refuse to certify, or delay certification of, any loan based on the borrower's selection of a particular lender or guaranty agency.

(5) PROHIBITION ON OFFERS OF FUNDS FOR PRIVATE LOANS.—

(A) PROHIBITION.—The institution shall not request or accept from any lender any offer of funds to be used for private education loans (as defined in section 140 of the Truth in Lending Act), including funds for an opportunity pool loan, to students in exchange for the institution providing concessions or promises regarding providing the lender with—

(i) a specified number of loans made, insured, or guaranteed under this title;

(ii) a specified loan volume of such loans; or

(iii) a preferred lender arrangement for such loans.

(B) DEFINITION OF OPPORTUNITY POOL LOAN.—In this paragraph, the term "opportunity pool loan" means a private education loan made by a lender to a student attending the institution or the family member of such a student that involves a payment, directly or indirectly, by such institution of points, premiums, additional interest, or financial support to such lender for the purpose of such lender extending credit to the student or the family.

(6) BAN ON STAFFING ASSISTANCE.—

(A) PROHIBITION.—The institution shall not request or accept from any lender any assistance with call center staffing or financial aid office staffing.

(B) CERTAIN ASSISTANCE PERMITTED.—Nothing in paragraph (1) shall be construed to prohibit the institution from requesting or accepting assistance from a lender related to—

(i) professional development training for financial aid administrators;

(ii) providing educational counseling materials, financial literacy materials, or debt management materials to borrowers, provided that such materials disclose to borrowers the identification of any lender that assisted in preparing or providing such materials; or

(iii) staffing services on a short-term, nonrecurring basis to assist the institution with financial aid-related functions during emergencies, including State-declared or federally declared natural disasters, federally declared national disasters, and other localized disasters and emergencies identified by the Secretary.

(7) ADVISORY BOARD COMPENSATION.—Any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to education loans or other student financial aid of the institution, and who serves on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors, shall be prohibited from receiving anything of value from the lender, guarantor, or group of lenders or guarantors, except that the employee may be reimbursed for reasonable expenses incurred in serving on such advisory board, commission, or group.

(f) INSTITUTIONAL REQUIREMENTS FOR TEACH-OUTS.—

(1) IN GENERAL.—In the event the Secretary initiates the limitation, suspension, or termination of the participation of an institution of higher education in any program under this title under the authority of subsection (c)(1)(F) or initiates an emergency action under the authority of subsection (c)(1)(G) and its prescribed regulations, the Secretary shall require that institution to prepare a teach-out plan for submission to the institution's accrediting agency or association in compliance with section 496(c)(3), the Secretary's regulations on teach-out plans, and the standards of the institution's accrediting agency or association.

(2) TEACH-OUT PLAN DEFINED.—In this subsection, the term "teach-out plan" means a written plan that provides for the equitable treatment of students if an institution of higher education ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency or association, an agreement between institutions for such a teach-out plan.

(g) INSPECTOR GENERAL REPORT ON GIFT BAN VIOLATIONS.—The Inspector General of the Department shall—

(1) submit an annual report to the authorizing committees identifying all violations of an institution's code of conduct that the Inspector General has substantiated during the preceding year relating to the gift ban provisions described in subsection (e)(2); and

(2) make the report available to the public through the Department's website.

(h) PREFERRED LENDER LIST REQUIREMENTS.—

(1) IN GENERAL.—In compiling, maintaining, and making available a preferred lender list as required under subsection (a)(27), the institution will—

(A) clearly and fully disclose on such preferred lender list—

(i) not less than the information required to be disclosed under section 153(a)(2)(A);

(ii) why the institution has entered into a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower; and

(iii) that the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list;

(B) ensure, through the use of the list of lender affiliates provided by the Secretary under paragraph (2), that—

(i) there are not less than three lenders of loans made under part B that are not affiliates of each other included on the preferred lender list and, if the institution recommends, promotes, or endorses private education loans, there are not less than two lenders of private education loans that are not affiliates of each other included on the preferred lender list; and

(ii) the preferred lender list under this paragraph—

(I) specifically indicates, for each listed lender, whether the lender is or is not an affiliate of each other lender on the preferred lender list; and

(II) if a lender is an affiliate of another lender on the preferred lender list, describes the details of such affiliation;

(C) prominently disclose the method and criteria used by the institution in selecting lenders with which to enter into preferred lender arrangements to ensure that such lenders are selected on the basis of the best interests of the borrowers, including—

(i) payment of origination or other fees on behalf of the borrower;

(ii) highly competitive interest rates, or other terms and conditions or provisions of loans under this title or private education loans;

(iii) high-quality servicing for such loans; or

(iv) additional benefits beyond the standard terms and conditions or provisions for such loans;

(D) exercise a duty of care and a duty of loyalty to compile the preferred lender list under this paragraph without prejudice and for the sole benefit of the students attending the institution, or the families of such students;

(E) not deny or otherwise impede the borrower's choice of a lender or cause unnecessary delay in loan certification under this title for those borrowers who choose a lender that is not included on the preferred lender list; and

(F) comply with such other requirements as the Secretary may prescribe by regulation.

(2) LENDER AFFILIATES LIST.—

(A) IN GENERAL.—The Secretary shall maintain and regularly update a list of lender affiliates of all eligible lenders, and shall provide such list to institutions for use in carrying out paragraph (1)(B).

(B) USE OF MOST RECENT LIST.—An institution shall use the most recent list of lender affiliates provided by the Secretary under subparagraph (A) in carrying out paragraph (1)(B).

(i) DEFINITIONS.—For the purpose of this section:

(1) AGENT.—The term "agent" has the meaning given the term in section 151.

(2) AFFILIATE.—The term "affiliate" means a person that controls, is controlled by, or is under common control with another person. A person controls, is controlled by, or is under common control with another person if—

(A) the person directly or indirectly, or acting through one or more others, owns, controls, or has the power to vote five percent or more of any class of voting securities of such other person;

(B) the person controls, in any manner, the election of a majority of the directors or trustees of such other person; or

(C) the Secretary determines (after notice and opportunity for a hearing) that the person directly or indirectly exercises a controlling interest over the management or policies of such other person's education loans.

(3) EDUCATION LOAN.—The term "education loan" has the meaning given the term in section 151.

(4) ELIGIBLE INSTITUTION.—The term "eligible institution" means any such institution described in section 102 of this Act.

(5) OFFICER.—The term "officer" has the meaning given the term in section 151.

(6) PREFERRED LENDER ARRANGEMENT.—The term "preferred lender arrangement" has the meaning given the term in section 151.

(j) CONSTRUCTION.—Nothing in the amendments made by the Higher Education Amendments of 1992 shall be construed to prohibit an institution from recording, at the cost of the institution, a hearing referred to in subsection (b)(2), subsection (c)(1)(D), or subparagraph (A) or (B)(i) of subsection (c)(2), of this section to create a record of the hearing, except the unavailability of a recording shall not serve to delay the completion of the proceeding. The Secretary shall allow the institution to use any reasonable means, including stenographers, of recording the hearing.

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MINORITY VIEWS

INTRODUCTION

H.R. 7683, the *Respecting the First Amendment on Campus Act*, amends the *Higher Education Act of 1965* (HEA) to create a new compliance regime for public colleges and universities around aspects of the Constitutionally-protected freedoms of speech, religion and association. Supporters of H.R. 7683 suggest it protects freedoms for all students and faculty, but such protections are only necessary if you first accept the Majority's premise that there is a "free speech crisis" on campuses around the country.[1] This "crisis" does not exist, as described by the Majority, and this bill is unnecessary. The First Amendment has existed to protect the rights of free expression on college campuses since 1791. Individuals can and will continue to avail themselves of its protections—they do not need any help from H.R. 7683 to do so.

BACKGROUND ON THE FIRST AMENDMENT ON COLLEGE CAMPUSES

Despite the premise underlying H.R. 7683, public institutions of higher education (IHEs) are state actors, and must already comply with First Amendment protections related to speech, religion, and association.[2] College campuses are often fora where controversial ideas are discussed both in and out of classroom settings, and tensions may naturally run high. Such discussions can be infused with hateful speech—speech that while abhorrent, is constitutionally protected.[3] This results in situations where public IHEs are compelled to grant fora to hateful speech they disagree with, lest they violate the First Amendment. Tension around this issue has been at the center of the response of many colleges to student discourse in the aftermath of the October 7th Hamas attack on Israel.[4] Similarly, when a student group brings a controversial speaker to campus, public universities must provide a platform for such speakers, even if a school reasonably believes the presence of that speaker

[1] Campus free speech was the subject of the last education-related hearing held by the Majority in the 115th Congress before it lost the gavel, and the third education-related hearing held by the Majority in the 118th Congress when it regained the gavel. *Examining First Amendment Rights on Campus: Hearing Before the H. Comm. on Educ. & the Workforce*, 115th Cong. (2018); *Diversity of Thought: Protecting Free Speech on College Campuses: Hearing Before the Subcomm. on Higher Educ. & Workforce Development of the H. Comm on Educ. & the Workforce*, 118th Cong. (2023).

[2] *E.g.*, Healy v. James, 408 U.S. 169, 180 (1972) ("At the outset we note that state colleges and universities are not enclaves immune from the sweep of the First Amendment.").

[3] *See* Brandenburg v. Ohio, 395 U.S. 444, 447 (1969). Free speech rights are not absolute. Over time courts have devised tests to determine what types of speech are not deserving of First Amendment protection. The result is three *very narrowly* tailored classes or types of speech that the government, and by extension public IHEs, can prohibit without violating the First Amendment. These are obscenity, defamation, and fighting words. *E.g.*, Chaplinsky v. New Hampshire, 315 U.S. 568 (1942).

[4] This specifically refers to Constitutionally protected speech and not incidents that fall outside of First Amendment protection, or speech and actions that could be considered harassment under Title VI of the *Civil Rights Act of 1964*.

could result in commotion and counterprotest.[5] Free speech on campus is not absolute—courts have held that states (and by extension state colleges and universities) have power to control access to their property and make determination as to whether an area is a public forum with largely unfettered free speech rights, or something lesser.[6]

In the event that an individual believes that a public IHE has infringed on its rights, they can sue for injunctive relief and the remedy would be the IHE would be forced to stop the infringement. However, state entities generally retain sovereign immunity against money damage remedies.[7] Similarly, under the doctrine of qualified immunity, public school officials themselves may only be held liable for damages under certain proscribed circumstances.[8] It is the elimination of these immunities, not the protection of free speech, that is the key to understanding H.R. 7683.

H.R. 7683 IS A POOR SUBSTITUTE FOR THE FIRST AMENDMENT

Nothing currently prevents individuals from seeking injunctive relief to stop a public IHE from violating their First Amendment rights. H.R. 7683 simply abandons the First Amendment as the protector of speech and creates instead a new legislative scheme. In doing so it makes an end- run around the civil rights principles of sovereign and qualified immunity courts have consistently upheld in First Amendment cases.[9] The bill adds four new substantive sections to HEA that dictate how a public IHE must disclose free speech, religion, and association policies, and proscribe specific rules a public IHE must follow in regards to First Amendment activity that differ from existing constitutional caselaw. The bill then creates a specific cause of action to hold schools (and their staff) liable for money damages for violating this new scheme by conditioning a public IHE's participation in federal student aid as an unequivocal waiver of sovereign immunity. This conditioning has the added benefit of placing the bill in the Committee's jurisdiction, as discussion of such Constitutional issues would normally be the jurisdiction of the Committee on the Judiciary. This is reinforced by including for good measure the possibility a public IHE could lose that Title IV aid as well for a violation of this new system.

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[5] *See, e.g.*, Am. C.L. Union, *Speech on Campus*, (Dec. 18, 2023), https://www.aclu.org/documents/speech-campus.

[6] *E.g.*, Turning Point USA v. Rhodes, 973 F.3d 868, 875–77 (8th Cir., 2020) ("The First Amendment guarantees a right of free speech. But while the First Amendment's text prohibits laws 'abridging the freedom of speech,' the freedom of speech enjoyed by citizens is not absolute. The Constitution does not give Hoggard 'unfettered latitude' to speak and set up tables 'wherever and whenever [s]he might choose.' Rather, the State of Arkansas, 'no less than a private owner of property, has the power to preserve the property under its control for the use to which it is lawfully dedicated.' As such, the First Amendment does not require Arkansas to 'freely . . . grant access to all who wish to exercise their right to free speech' on its property 'without regard to the nature of the property or to the disruption that might be caused by the speaker's activities.' Thus, the legality of speech restrictions on state property 'turns on the nature of the property involved and the restrictions imposed.'(internal citations omitted)).

[7] U.S. Const. amend. XI.

[8] *Turning Point, supra* note 6. at 875 ("Qualified immunity shields public officials from liability for civil damages if their conduct did not 'violate clearly established statutory or constitutional rights of which a reasonable person would have known.")(internal quotes omitted).

[9] *See, e.g.*, Cent. Va. Cmty. Coll. V. Katz, 546 U.S. 356, 360 (2006)("Petitioners are Virginia institutions of higher education that are considered "arms of the State" entitled to sovereign immunity." (internal quotes omitted).

Conservative speech, along with other First Amendment freedoms, thrive on campus

The Majority continues to iterate its concerns about a free speech crisis on campus and claims that H.R. 7683 will make entire public university campuses a "'free speech zone' where students are exposed to different opinions", and "learn how to debate contested ideas".[10] They claim the lack of "viewpoint diversity" on campus inhibits the ability of conservative students to express their views. Evidence suggests that notwithstanding such a viewpoint imbalance, conservative thought continues to flourish on college campuses. The Majority's analysis consistently fails to acknowledge that conservative speech on campus is propped up by a vast network of outside organizations that support such speech,

> . . . ranging from financial resources for campus recruiting, conference travel, and summer fellowships to opportunities to bring speakers onto campus and templates for media blitzes. . . . [C]onservative organizations not only channel activism, but also create a career funnel that helps young activists find paid internships and occupational opportunities within the conservative sector. In contrast, students in the progressive channel are unable to build upon external sponsorships, but must navigate in more of a do-it-yourself environment, both in terms of political activism and future career prospects.[11]

By their own accounts, there are over 2,000 College Republicans chapters on American college campuses,[12] over 2,000 chapters of Young Americans for Freedom,[13] over 800 college chapters of Turning Point USA,[14] and over 200 chapters of the Federalist Society at U.S. law schools.[15] This is just the most public tip of the iceberg

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[10] Press Release, H. Comm. on Educ. & the Workforce, Chairwoman Foxx Delivers Opening Remarks at Markup to Bolster Workforce and Advance Academic Freedom, Mar. 21, 2024, https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=410332.

[11] Daniel Meyer, Campus Activism in Polarized Times, 87 Higher Educ. 813–818 (2023) (reviewing The Channels of Student Activism: How the Left and Right Are Winning (and Losing) in Campus Politics Today by Amy Binder and Jeffrey Kidder).

[12] College Republican National Committee, *About CRNC*, https://www.crnc.org/about (last visited Mar. 30, 2024). This is distinct from College Republicans of America, the Political Action Committee founded former college republicans designed "to empower, train, and develop the next generation of Republican leaders. By providing resources, training, networking opportunities, and incentives for students to volunteer in our various initiatives, CRA enables our young Republicans to advocate for conservative principles, support Republican candidates, effect change in our communities, conserve our environment, secure employment, and shape public policy." https://www.uscollegegop.com/.

[13] Young America's Foundation, *Home Page*, https://yaf.org/ (last visited Mar.30, 2024) ("Young America's Foundation is the leading organization for young conservatives. With more than 60 years of experience and contacts on more than 2,000 campuses, we help students like you find support, promote conservatism, and take action.").

[14] Turning Point USA, *College Program—Turning Point USA*, https://www.tpusa.com/college (last visited Mar. 30, 2024) ("Turning Point USA College educates students about the importance of limited government, freedom, and capitalism. This department has 48 full-time field representatives that exist to educate, support, train, and empower students through grassroots activism and peer-to-peer conversations. . . . With nearly over 800+ college chapters, this program is the largest and most impactful—successfully rebranding the movement to make it fun and engaging to young people.").

[15] The Federalist Society, *Student Division, The Federalist Society*, https://fedsoc.org/divisions/student (last visited Mar. 30, 2024) ("Student Division programming fosters a network of conservative and libertarian students eager to challenge the legal establishment as lawyers, faculty, judges, and policy makers."); The Federalist Society, *About Us*, https://fedsoc.org/about-us#FAQ (last visited Apr. 1, 2024) ("Everyone is welcome to the programs of our more than 200 law school chapters, over 100 metropolitan lawyers chapters, and 15 nationwide practice groups. The

Continued

of infrastructure and private capital dedicated to incubating conservative thinkers and leaders on campus and vaulting them into positions of political influence in Washington, D.C. and state capitals around the country.[16] Claims of a campus free speech crisis simply perpetuate the need to continue to subsidize more conservative voices on campus who then claim as part of their activism, that there is a free speech crisis on campus.[17]

H.R. 7683 is not limited to political speech. Portions of the bill include new requirements for public IHEs in recognizing both sectarian and religious student organizations. Under H.R. 7683, public IHE's would have to ensure that any student organization that wanted official recognition by the school but could not achieve this for lack of a willing faculty advisor had some path to official recognition.[18] Further, the bill would require public IHEs to develop specific procedures, including appellate procedures, for determining how funds are allocated to official organizations.[19] The bill would require all IHEs that receive Title IV aid (including private institutions) to allow students to organize and join "any single-sex social organization", regardless of whether such organization has been recognized by the IHE.[20] While the Majority's rhetoric is not as explicit in these areas, the implication of H.R. 7683 is that college administrations are preventing students from joining groups en masse and stopping religious groups from existing on campus. Again, the numbers do not reflect this reality. There are over 350,000 fraternity and 410,000 sorority undergraduate members in the US.[21] There are over 2,000 American chapters of Campus Crusade for Christ and nearly 600 U.S. colleges served by Hillel International.[22] Just as there is no free speech crisis, there is not a crisis on campus preventing students from joining organizations or exercising their freedom of religion.

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several hundred events sponsored each year by the Federalist Society are publicly advertised and are open to the press and the general public.")

[16] *See, e.g.*, Julian Epp, Republicans Have Spent Millions on Youth Outreach. And It's Working., The Nation, Oct. 6, 2022, https://www.thenation.com/article/politics/raising-them-right-kyle-spencer-conservative-youth/ (featuring discussion with Kyle Spencer, author of Raising Them Right, The Untold Story of America's Ultraconservative Youth Movement and Its Plot for Power).

[17] *Id.* ("Once the young conservatives began to latch onto the culture wars—and particularly around the idea of "free speech"—they really started to gain traction. They spread this idea that young conservatives were not allowed to speak on college campuses. If you send that message enough, and then present yourself as the antidote, that's pretty powerful.").

[18] H.R. 7683, § 4 (creating HEA § 112C(a)(1)(A)(i), Faculty Advisors).

[19] *Id.* (creating HEA § 112C(a)(1)(B), Distribution of Funds to Student Organizations).

[20] *Id.* (creating HEA § 112C(c), Freedom of Association).

[21] *E.g.*, Elon University, *IFC Fraternities and Sororities*, https://www.elon.edu/u/fraternity-and-sorority-life/about-us/councils/ifc/ (last visited Mar. 30, 2024); Cleveland Panhellenic CAPA, *National Panhellenic Conference*, https://www.clevelandpanhellenic.org/ national-panhellenic-conference#:~:text=NPC%20sororities%20are %20located%20on,undergraduate %20members%20in%205%2C110 %20chapters. (last visited Mar. 30, 2024). This represents the undergraduate population of fraternities that belong to the North American Interfraternity Conference and sororities that are members of the National Panhellenic Conference. This number does not include the approximately 4 million members of the fraternities and sororities that compose the National Pan-Hellenic Conference (colloquially referred to as the Divine Nine). Jay King, 'Divine Nine' fraternities and sororities continue to have powerful influence, Greenville Journal, Feb. 22, 2022. Many of the chapters of these fraternities and sororities are graduate chapters where members join after completing their undergraduate degree, or chapters based not at specific schools but cities, counties or other regional subdivisions, as participation in the chapter extends through a member's entire life.

[22] Campus Crusade for Christ, International, *Cru*, https://www.cru.org/us/en/communities/campus/collegebound/studentwelcome.html (last visited Mar. 30, 2024); Hillel International, *Find a Hillel*, https://www.hillel.org/find-a-hillel/?search=&location=&location-distance=25mi&jewish-experience%5B%5D=has-hillel&college-type=all&country=US (last visited Mar. 30, 2024).

While there is not a "free speech" crisis, or a "freedom of association crisis" there are, however nearly 2,000 public colleges and universities in the United States,[23] each with their own distinctive student bodies, campuses, and local, state, and federal legal frameworks. As such there is an array of differing rules and requirements (with corresponding rationales and justifications) regulating free expression, association, and student organizations on each campus. Regardless of the situation on any particular campus, there are self-evident simple rationales for many of these rules. Yet, despite the lack of evidence of rampant First Amendment violations unresolved by existing remedies afforded by the First Amendment, H.R. 7683 would require schools to participate in a compliance system for certain aspects of the First Amendment expression on campus. As the American Council on Education wrote in its joint letter with the American Association of Community Colleges, the American Association of State Colleges and Universities, the Association of American Universities, the Association of Public and Land-grant Universities, and the National Association of Independent Colleges and Universities:

> H.R. 7683 would inject the federal government in higher education in a new and counterproductive fashion by imposing a rigid, highly prescriptive, and costly regulatory and enforcement framework on nearly 2,000 public colleges and universities. These institutions are already subject to the protections afforded by the First Amendment and would therefore have to implement a new campus-wide compliance scheme on top of existing practices.[24]

H.R. 7683 creates free speech requirements outside of First Amendment jurisprudence

Under H.R. 7683, a public IHE would be required to treat any "generally accessible" part of its campus as a public forum, where restrictions on speech may regulate solely the time, place, and manner, of the expression, not its content or viewpoint.[25] This again attempts to elevate H.R. 7683 over what the First Amendment allows as it has been interpreted by the federal courts; state universities do not have to grant unfettered free speech rights across a campus, and have the power to determine what speech restrictions are necessary given the property in question.[26] Courts can conduct "forum analysis" and determine if the University is violating the First Amendment or not.[27] As the Association of Public Land-Grant Universities said in its letter to the Committee:

> The First Amendment combined with case law provides deep protections for free speech and association on campuses of public universities, while enabling institutions to put in place reasonable, view-point neutral restrictions to

[23] Nat'l. Ctr. for Educ. Stats. *Fast Facts—Educational Institutions*, https://nces.ed.gov/fastfacts/display.asp?id=1122 (reporting that in 2020–21, there were 1.892 public postsecondary institutions participating in HEA Title IV).

[24] Letter from Ted Mitchell, President, Am. Council on Educ. et al., to Reps. Foxx & Scott (Mar. 20, 2024), https://www.acenet.edu/Documents/Letter-House-First-Amendment-Campus-Act-032024.pdf.

[25] H.R. 7683, § 5 (creating HEA § 112D(b)(2), Expressive Activities at an Institution).

[26] Turning Point USA v. Rhodes, 973 F.3d 868, 875–77 (8th cir. 2020).

[27] *Id*.

> protect public safety and speakers while enabling their higher education mission. While some aspects of the legislation related to designated public forums reinforce existing precedent within some circuits, not all circuit courts have adopted such standards. The result of the legislation in some cases will restrict public universities' ability to protect the use of property for the campus community and likely make institutions greater targets by outsiders who seek to disrupt learning environments. As such, the bill would treat all public university outdoor property as if it was traditional public fora. However, public institutions own and maintain an incredible diversity of property including biological field stations, athletics fields, sewage plants, parking lots, residence halls, forests, etc. We find it highly unusual that Congress would insert itself into the designation of state property in ways it would likely never consider for other non-federal public lands.[28]

H.R. 7683's free speech provisions would also force public IHEs to grant essentially unfettered hate speech rights in any publicly accessible space on campus, as hate speech is speech "guaranteed under the First Amendment to the Constitution".[29] However, unlike the First Amendment, H.R. 7683 does not recognize schools can, in theory, enact content-based speech restrictions on speech under very specific circumstances.[30] One of the specific settings where the Court has upheld content-based restrictions on speech is in schools.[31] This increases the likelihood that there is speech that a public IHE can conceivably regulate based on content under the First Amendment but open itself up to a violation under H.R. 7683.

This fact is especially troubling based on the Majority's current focus on incidents of antisemitic harassment on campus in the wake of the Oct. 7 attack on the state of Israel. Chairwoman Foxx at the markup of H.R. 7683 insisted the Committee in its investigation of antisemitism is interested in not "offensive" and "vulgar" speech that she concedes is constitutionally protected, but speech that "crosses over" into action.[32] Under that rationale, if a school decided to regulate speech based on antisemitic content in certain publicly accessible areas of its campus, arguing the maintenance of

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[28] Letter from Mark Becker, President, Assoc. of Pub. Land-Grant Univ. to Reps. Foxx & Scott (Mar. 20, 2024), https://www.aplu.org/wp-content/uploads/ APLU-Response-Respecting-the-First-Amendment-on-Campus-Act 1.pdf.

[29] H.R. 7683, §5 (creating HEA §112D(b)(2), Expressive Activities at an Institution); *e.g.*, Volokh v. James, 656 F.Supp. 3d 431 439–40 (S.D. N.Y. 2023) (" 'The First Amendment generally prevents government from proscribing speech . . . or even expressive conduct . . . because of disapproval of the ideas expressed.' The First Amendment reflects 'a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.' Thus, as is relevant to the current facts, '[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.' This protection extends to speech which the government may seek to limit because it is offensive or insulting.")(internal citations omitted).

[30] *Id. quoting* Reed v. Town of Gilbert, Ariz., 576 U.S. 155, 163 (2015) ("Content-based laws-those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.")

[31] Morse v. Frederick 551 U.S. 393 (2007) (holding that a school principal consistent with the First Amendment may restrict student speech at a school event when that speech is reasonably viewed as promoting illegal drug use, which due to the myriad of laws enacted by Congress, was considered an important, and arguably compelling interest).

[32] Statement of Rep. Virginia Foxx. H. Comm. on Educ. and the Workforce Markup of H.R. 7683, Mar. 21, 2024 (available at: https://youtu.be/D3mj91wWaSs?t=7547).

a safe learning environment free from harassment required it to do so, that school arguably may be pushing the limits of the First Amendment. They could argue, based on the holding in *Morse v. Frederick*, there was a compelling governmental interest—the maintenance of a safe learning environment required under Title VI of the *Civil Rights Act of 1964*, and newly elevated by the actions of the Committee on Education and the Workforce—that justified a content-based speech restriction. While there might be a case to be made there on First Amendment grounds both for and against that action, there would be no such ambiguity under H.R. 7683, as such a restriction would clearly violate the bill's provisions on expressive activity. By creating new standards, and arguably a whole new regime regulating free expression outside of the First Amendment, H.R. 7683 makes already difficult work of schools even harder. Schools recognize this in their opposition to H.R. 7683:

> Given the Committee's recent focus on concerns regarding antisemitism and the need for campuses to increase their efforts to provide safe environments free from discrimination for all students, we are puzzled by the bill's inclusion of provisions that would tie the hands of campus administrators to address these issues and potentially make campuses less safe.[33]

H.R. 7683 creates freedom of association and religion requirements outside of First Amendment jurisprudence

Under current law, colleges may, as part of its mission to ensure welcoming campuses, institute an "all-comers" policy to prohibit an officially sanctioned student group from rejecting a student from membership or a leadership position on the basis of race, national origin, sex, sexual orientation, gender identity, disability, religion or another protected characteristic to prevent their funds or spaces from becoming exclusive or unwelcoming to certain students. This is a policy that the Supreme Court has upheld on First Amendment grounds but that the *Respecting the First Amendment Act on Campus* would require schools to ignore in applying their policies to religious student groups seeking official recognition.[34]

H.R. 7638 also outlaws a requirement that many public IHEs have: a requirement that an official student organization, eligible to receive programming funds from the IHE, have a faculty advisor. There is a myriad of reasons a college may be understandably reticent to grant hundreds or thousands of dollars to a group of 18–22 year old students without the assurance there is at least one member of the faculty with at least nominal oversight of the organization's activities. Supporters of H.R. 7683 would put their judgment before university officials, and ahead of the Courts which have not ruled on this question on First Amendment grounds.

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[33] Letter from Ted Mitchell, *supra* note 24.

[34] In *Christian Legal Society v. Martinez*, the Supreme Court rejected a First Amendment challenge by a religious student organization that wished to discriminate in violation of the law school's all-comers policy and still be officially recognized by the school. 561 U.S. 661 (2010). Many university fraternity and sorority systems are disproportionately whiter, richer, or male-dominated than the student body as a whole. *See* Clio Chang, *Separate but Unequal in College Greek Life*, The Century Found., Aug. 12, 2014, https://tcf.org/content/commentary/separate-but-unequal-in-college-greek-life/.

And, in perhaps the most absurd usurpation of a university's judgment, H.R. 7683 would prohibit a public IHE, when establishing standards regarding security fees charged recognized student organizations to take into account "the anticipated reaction by students or the public to the event".[35] The record is replete with situations where public IHEs have faced exorbitant costs to ensure public safety when a student group invites a controversial speaker to campus.[36] It is well documented that conservative campus groups have embraced the tactic of "owning the libs", intentionally bringing controversial figures to campus to knowingly stir up fervor among students.[37] Under H.R. 7683, conservatives can continue to own the libs on their campus, they just won't have to pay the costs of ownership.

H.R. 7683 mirrors Trump administrative actions, but goes further

H.R. 7683's policies, which create a flawed legislative scheme to use Title IV funding as cudgel against public IHES for enforcement of its view of the First Amendment, are even more extreme than some of the policies put forward by the Trump administration. In 2020, the Trump administration finalized a rule (hereinafter "2020 Final Rule") to add a grant condition for direct grants or state-administered formula grant programs requiring public IHEs to comply with the First Amendment and requiring private institutions to follow their stated institutional policies on academic freedom and freedom of speech.[38] These regulations also permit the Department of Education to take enforcement action, including withholding funds, any time there is a final, non-default judgement by a State or Federal court that a public IHE violated the First Amendment or a final, non-default judgement by a State or Federal court finding that a private IHE violated its stated institutional policies.[39]

The 2020 Final Rule also included a provision to prohibit public IHEs, as a material condition of federal funding, from denying religious student organizations any benefit, including access to funding, that is otherwise afforded to other student organizations "because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are formed by sincerely held religious beliefs."[40] While purporting to create a policy of equal treatment, in reality the rule created an exemption for religious student groups from nondiscrimination

[35] H.R. 7683, § 4, creating a new HEA § 112.

[36] *See, e.g.*, Jeremy Bauer-Wolf, Lessons from Spencer's Florida Speech, Inside Higher Ed. (Oct. 22, 2017)("As of now, the university [of Florida] is estimating at least $600,000 spent on security[for a speech by White supremacist Richard Spencer]. Berkeley dropped upwards of $800,000 on security for a recent appearance by Yiannopoulos.").

[37] E.g., Joe Perticone, How 'Owning the Libs' Became the Ethos of the Right, Business Insider, Jul. 28, 2018 ("Conservative student activist groups have played a significant role in the build up of "owning the libs" as a core principle on the right. Groups like the Young America's Foundation and Turning Point USA have vast networks across college campuses where students can organize, host events, and propel themselves into careers in media and politics. Both YAF and TPUSA, while at odds with one another, utilize a heavy strategy of provoking what they view as a liberal control of America's colleges and universities.").

[38] Direct Grant Programs, State-Administered Formula Grant Programs, Non Discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, Developing Hispanic Serving Institutions Program, Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, and Strengthening Historically Black Graduate Institutions Program, 85 Fed. Reg. 59916 (Sept. 23, 2020) (codified at 34 C.F.R. pt. 75 and 76; 34 C.F.R. pt 106; 34 C.F.R. pts 606, 607, 608, and 609).

[39] 34 C.F.R. §§ 75.500(b) and (c); 34 C.F.R. §§ 76.500(b) and (c).

[40] 34 C.F.R. §§ 75.00(d), 76.500(d).

rules instituted by public IHEs that apply to all other student groups. The 2020 Final Rule is also at odds with Supreme Court precedent which has held that the adoption of "all-comers" policies is constitutionally permissible.[41]

These provisions are similar to those found in H.R. 7683 with three major distinctions. First, the regulations apply to direct grants and state formula grants, not Title IV funding. Second, the Administration did not put its thumb on the scale and create a new regime defining these rights outside of the First Amendment. Schools must still rely on First amendment caselaw when making their decisions regarding free expression, association, religion, etc. Under H.R. 7683, the First Amendment is jettisoned for the bill's determinations of what free expression rules a school must follow. Finally, the 2020 Final Rule premised any enforcement actions by the Department of Education upon a final court judgement whereas H.R. 7863 also adds compliance with certain portions of the bill to the provisional participation agreements that schools must enter into to be eligible for Title IV, potentially furthering politization of First Amendment issues by some future administrations and jeopardizing public IHE's access to Title IV funding.

In providing feedback on the announcement by the previous administration to promote free inquiry at colleges the Foundation for Individual Rights and Expression (FIRE), an organization dedicated to protecting freedom of speech on college campuses, opposed tying federal education dollars to the outcome of free speech cases as it would create "incentives to either (1) settle every claim brought before [the institution], regardless of how frivolous, or (2) fight each case to the bitter end. Neither outcome would be good for free speech."[42] FIRE also warned against using the Department of Education for enforcement of First Amendment issues for fear of injecting political bias in the resolution of these issues. Importantly, FIRE affirmed that the courts remain the best avenue for the resolution of these issues.

H.R. 7683 adds a provision similar to the *Equal Campus Access Act* of 2023, as introduced in the 118th Congress by Rep. Walberg, to HEA which prohibits a public IHE from denying a religious student organization any benefit that is afforded to other officially sanctioned student organizations (e.g., funding and access to facilities) "because of the religious beliefs, practices, speech, leadership standards, or standards of conduct of the religious student organization."[43] It has the effect of codifying the rescinded Trump-era policy to unconstitutionally favor religion by exempting only religious student groups from nondiscrimination requirements that apply to all other officially recognized student organizations.[44]

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[41] Christian Leg. Soc'y Chapter of the Univ. of Cal. Hastings Coll. of L. v. Martinez, 561 U.S. 661 (2010).

[42] Newsdesk, Foundation for Individual Rights and Expression, The Department of Education must avoid these pitfalls when crafting regulations on campus free speech (Dec. 4, 2019), https://www.thefire.org/news/department-education-must-avoid-these-pitfalls-when-crafting-regulations-campus-free-speech.

[43] Respecting the First Amendment on Campus Act, H.R. 7683, 118th Cong. (as reported by the House Committee on Education and the Workforce, March 21, 2024). Equal Campus Access Act of 2023, H.R. 1816, 118th Cong. (as introduced in the House, March 27, 2023).

[44] Direct Grant Programs, State-Administered Formula Grant Programs, Non Discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, Developing Hispanic Serving Institutions Program, Strengthening Institutions Program,

Continued

Many colleges and universities adopt anti-discrimination policies that require officially recognized student groups to allow any student to join, participate in, and seek leadership in these groups. As a result, this policy undermines nondiscrimination or "all-comers" policies that many public IHEs have enacted to ensure that officially recognized clubs do not reject students from membership or leadership on the basis of race, religion, sex, sexual orientation, gender identity, disability and other protected characteristics. This provision may also put some institutions in the difficult position where they may be under legal obligation to follow state and local nondiscrimination laws, yet risk loss of Title IV funding if they do not comply with federal law, if this provision were to be enacted.[45]

To add insult to injury, under this provision, students would be forced to subsidize groups that discriminate against them. In *Christian Legal Society v. Martinez*, the Supreme Court noted, in the Majority opinion, that the Christian Legal Society (CLS) was "effectively seeking a state subsidy, [and it] faces only indirect pressure to modify its membership policies; CLS may exclude any person for any reason if it foregoes the benefits of official recognition."[46]

DEMOCRATIC AMENDMENTS OFFERED DURING MARKUP OF H.R. 7683

Committee Democrats pointed out that the provisions of H.R. 37683 were antithetical to rights granted under the Constitution, so there was little that could be done to improve upon the bill. Nevertheless, Rep. Kathy Manning (D–NC) was successful to amend the bill to require a public IHE, in the free speech disclosures mandated in the bill, to disclose procedures for students to enforce their rights under Title VI of the *Civil Rights Act of 1964*, and to ensure that schools could take adverse action against student organizations having knowing provided material support or resources to foreign terrorist organizations. These common-sense amendments were adopted by voice vote.

CONCLUSION

Despite claims to the contrary, H.R. 7683 is merely a continuation of the wave of "culture war" legislation proposed by the Majority and reported out of Committee this Congress. Strangely however, this bill breaks from the Majority's well-worn jeremiad against diversity, equity, and inclusion (DEI) programs, and instead embraces a warped DEI philosophy all its own.

H.R. 7683 purports to protect freedoms for all students and faculty, but such protections are only necessary if you first accept the

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Strengthening Historically Black Colleges and Universities Program, and Strengthening Historically Black Graduate Institutions Program, 85 Fed. Reg. 59916 (Sept. 23, 2020) (codified at 34 C.F.R. pt. 75 and 76; 34 C.F.R. pt 106; 34 C.F.R. pts 606, 607, 608, and 609).

[45] Comment Letter, Am. Council on Educ., Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State Administered Formula Grant Programs, Developing Hispanic Serving Institutions Program, and Strengthening Institutions Program, 85 Fed. Reg. 3190 (Jan. 17, 2020) (to be codified at 2 C.F.R. pt. 3474; 34 C.F.R. pts. 75,76,106,606,607,608, and 609). https://www.regulations.gov/comment/ED-2019-OPE-0080-17080.

[46] Christian Legal Soc'y Chapter of the Univ. of Cal., Hastings College of Law v. Martinez, 561 U.S. 661, 682 (2010).

Majority's premise that there is a "free speech crisis" on campus.[47] The Majority cites the lack of conservative First Amendment activity on campus as evidence of this crisis. In actuality, conservative speech on campus is present and flourishing. But, starting from the proposition that campus conservative First Amendment rights are stifled, H.R. 7683 aims to change that, legislating diversity of viewpoints, equity in consideration of campus groups and speakers, and inclusion of more student organizations. These buzzwords hide the real-world implications of the bill's provisions: forcing schools to abide speech regardless of a school's mission or student well-being; insisting on preferential, costly treatment for certain student groups and their speakers; and, demanding the recognition of student organizations free to discriminate with college funds. H.R. 7683 then compels public schools participating in federal student aid programs to ascribe to these pernicious DEI views and creates a top-down regulatory regime to enforce them. If schools do not comply, the bill creates causes of action that activist trial lawyers can use to sue schools into oblivion and shut off access to the federal student aid funds students need to complete their educations.

For this and the reasons stated above, Committee Democrats unanimously opposed H.R. 7683 when the Committee on Education and the Workforce considered it on January 31, 2024. We strongly urge the House of Representatives to do the same.

ROBERT C. "BOBBY" SCOTT,
Ranking Member.
JOE COURTNEY,
GREGORIO KILILI CAMACHO SABLAN,
SUZANNE BONAMICI,
MARK TAKANO,
ALMA S. ADAMS,
MARK DESAULNIER,
Members of Congress.

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[47] Campus free speech was the subject of the last education-related hearing held by the Majority in the 115th Congress, and the third education-related hearing held by the Majority in the 118th Congress. *Examining First Amendment Rights on Campus: Hearing Before the H. Comm. on Educ. & the Workforce*, 115th Cong. (2018); *Diversity of Thought: Protecting Free Speech on College Campuses: Hearing Before the Subcomm. on Higher Educ. & Workforce Development of the H. Comm on Educ. & the Workforce*, 118th Cong. (2023).