

## THE RESPECTING THE FIRST AMENDMENT ON CAMPUS ACT (H.R. 7683)

### Background

On March 15, 2024, Rep. Brandon Williams (R-NY) and House Education and the Workforce Chairwoman Virginia Foxx (R-NC) introduced the [Respecting the First Amendment on Campus Act](#) (H.R. 7683). The bill would subject colleges and universities to a number of detailed and prescriptive policy requirements and disclosures related to free speech on campus as a condition of Title IV eligibility. While most of the bill's requirements apply only to public institutions, some apply to both public and private institutions.

According to its sponsors, the legislation would ensure that public institutions are complying with their First Amendment obligations and that all institutions are providing greater clarity and transparency regarding campus speech policies. However, contrary to these stated objectives, the bill would undermine efforts to protect free speech on campus and make it harder to provide safe learning environments free from unlawful discrimination.

On March 21, the House Education and the Workforce Committee held a markup of the bill. ACE [sent a letter](#) to the committee outlining concerns and indicating opposition to the bill in advance of the markup. During the session, two amendments from Rep. Kathy Manning (D-NC) were accepted before the bill was approved by the committee on a party line vote of 24-14.

We will continue to monitor this legislation should it be brought to the House floor.

### Overview

H.R. 7683 would amend the Higher Education Act to adding new sections 112A, 112B, 112C, 112D, and 112E. These sections outline new requirements and disclosures for institutions regarding campus policies related to freedom of speech, association, and religion, along with a new enforcement mechanism. While most of these requirements apply exclusively to public institutions, the requirements in section 112B and in subparagraph (c) of section 112C would apply to both public and private institutions. In addition, the bill amends the program participation agreement (PPA) to make Title IV federal student aid eligibility contingent on complying with these requirements.

### Section 112A: Sense of Congress

The bill would create, in section 112A, a sense of Congress recognizing free expression, open inquiry, and the honest exchange of ideas as “fundamental” to higher education. It acknowledges “the profound contributions of the [Chicago Principles](#)” to the freedom of speech and expression and encourages institutions to adopt them or similar principles. It also condemns public institutions that condition the admission of students or the hiring, reappointment, or promotion of any faculty member on making statements of support or opposition to any political ideology or movement, including a pledge or statement regarding diversity, equity, or inclusion. The sense of Congress discourages institutions from requesting or requiring these statements as “antithetical” to freedom of speech under the First Amendment.

Section 112A would also add a rule of construction stating that nothing in the bill shall be construed as infringing on protections to individuals afforded under Title VI and VII of the Civil Rights Act.

## Section 112B: Disclosure of free speech policies

Section 112B would require institutions to certify annually to the Secretary of Education that they have disclosed to students, including prospective students, and faculty any policies related to

- speech on campus, including time, place, and manner restrictions;
- freedom of association, if applicable;
- freedom of religion, if applicable; and
- for public institutions, the right to a cause of action under section 112E.

The bill would require institutions to specifically acknowledge in their annual certification that “students and faculty are the intended beneficiaries” of the policies disclosed.

## Section 112C: Freedom of Association and Religion

### Student organizations and faculty advisors

Section 112C(a) would prohibit a public institution from denying recognition to a student organization due to a failure to obtain a faculty advisor, provided the organization meets each of the other content- and viewpoint-neutral institutional requirements for recognition. If the student organization is unable to obtain a faculty advisor, the institution must either waive the requirement or “assign” a faculty or staff member to serve as the advisor. Assigned advisors may not be required to participate in or support the organization other than performing purely administrative functions.

The bill would also require institutions to create an institutional appeals process for student organizations denied recognition that:

- provides a written explanation for the denial in a timely manner;
- provides written notice of the appeals process and timeline for hearing and resolving;
- allows students to obtain outside counsel to represent them; and
- ensures the institutional appellate entity did not participate in any prior proceeding related to the denial of recognition.

### Distribution of funds to student organizations

Under the bill, if a public institution collects mandatory student activities or events fees that are used to provide funds for recognized student organizations, the institution must:

- create, and make publicly available, clear content and viewpoint-neutral standards for determining the total amount of funds allocated for recognized student organizations and the amount allocated to each organization;
- provide, upon request of an organization that has been denied part/all of an allocation, in writing the specific reasons for the denial, copies of all policies, and information on the appeals process; and
- provide an appeals process that:
  - gives written notice to students of the timeline for hearing and resolving the appeal;
  - allows students to obtain outside counsel; and
  - ensures that the appellate entity did not participate in any prior proceeding related to the allocation.

### Security fees for speakers invited by student organizations

The bill would require public institutions to establish and make public clear, objective content- and viewpoint-neutral standards to determine the security fee to be assessed to a student or student organization for any event planned by a student or student organization.

When determining security fees, institutions would be prohibited from considering the content of expression or viewpoint of the student, the student organization, the event, the invited guest, or the “anticipated reaction by students or the public to the event.”

The bill also would require public institutions to 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.

### Section 112C(b): Religious student organizations

Section 112C(b) of the bill would prohibit public institutions from denying a religious student organization any benefit provided to other student organizations (including access to facilities and official recognition) because of the religious student organization’s “beliefs, practices, speech, leadership standards, or standards of conduct.”

This language would, in effect, prohibit public institutions from requiring student organizations to adopt “all-comers” policies—a right affirmed by the Supreme Court in *Christian Legal Society v. Martinez*. It would also codify in statute the Trump administration’s regulation on religious student organizations (included as part of the “free inquiry” regulatory package) which the Biden administration has proposed to rescind.

### Section 112C(c): Single-Sex Social Organizations

Section 112C(c) of the bill would prohibit public and private institutions from taking any action to limit or deny students’ ability to form, join, and participate in single-sex social organizations. This includes:

- requiring or coercing a student to waive the right to join or participate in a single-sex organization, including as a condition of enrollment;
- taking any “adverse action” against a single-sex organization or a student member based on the organization’s practice of limiting membership to individuals of one sex; and
- if officially recognized by the institution, imposing a recruitment restriction that is not imposed on other student organizations, unless as part of a written agreement with the institution.

The bill defines “adverse action” broadly to include expulsion, probation, “condemnation,” an oral or written warning made by an institutional official, denial of privileges granted to other students, withholding of a scholarship or on-campus employment, denying a letter of recommendation, denying participation on a sports team or club or denying leadership positions on a sports teams, and withdrawing official recognition of the organization.

The bill includes “rules of construction” that attempt to clarify limited circumstances where institutions are permitted to take actions against members of a single-sex social organization or the organization itself, such as:

- institutions may withhold official recognition from a single-sex social organization;
- institutions may take adverse action against a student member of a single sex social organization that is based on the student’s academic or nonacademic misconduct;
- public institutions may take action against an organization whose purpose is directed to inciting or producing imminent lawless action; and

- private institutions may take action against an organization if its purpose is incompatible with its religious mission.

## Section 112D: Free Speech on Campus

### Mandatory Disclosures and Educational Programs

The bill would require public institutions to provide a written statement at each orientation for new students which must also be available on the institution's website. The statement must (1) explain the rights afforded students under the First Amendment, (2) affirm the institution's commitment to free expression, and (3) include assurances that students and individuals invited by students will not be treated in a manner that violates freedom of expression. The orientation also must include "educational programming" including online resources that "describes" students' free speech "rights and responsibilities" under the First Amendment.

### Freedom of Expression

The bill attempts to significantly limit the ability of a public institution to restrict the areas on campus where expressive activities may occur. Under the bill, a public institution may not prohibit a person from engaging in "expressive activity" in a "generally accessible area" of the campus provided "the person's conduct is lawful." Further, the legislation would classify any publicly accessible outdoor area on a campus as a *traditional public forum*, even though many of these areas are considered a *limited public forum*, where additional restrictions on speech are typically permitted.

The bill also appears to restrict a public institution's ability to impose content-neutral time, place, and manner restrictions on expressive activity. Any restrictions imposed must be:

- narrowly tailored in furtherance of a significant governmental interest;
- based on published content- and viewpoint-neutral criteria;
- leave open ample alternative channels for communication; and
- provide for spontaneous assembly and distribution of literature.

### Ban on Political Litmus Tests

Under the bill, public institutions would be prohibited from considering, requiring, or discriminating "on the basis of a political test" in the admission, appointment, hiring, employment, promotion, or granting of tenure to any individual. A "political test" is defined as a method of compelling or soliciting an applicant, student or employee to identify a commitment to or make a statement of personal belief in support of any ideology or movement that:

- supports or opposes a specific partisan or political set of beliefs;
- supports or opposes a particular viewpoint on a social or political issue; and
- promotes disparate treatment based on race color or national origin, including statements on "[a]ny initiative or formulation of diversity, equity and inclusion beyond upholding existing Federal law" or "[a]ny theory or practice that holds that systems or institutions upholding existing Federal law are racist, oppressive, or otherwise unjust."

The bill outlines specific exceptions to the prohibition, including allowing institutions to require students, faculty, or staff to adhere to federal or state anti-discrimination laws, and permitting institutions to consider subject-matter expertise for faculty positions or promotions if relevant to their scholarly field.

### Amendments to the Program Participation Agreement

The bill would amend the program participation agreement provisions in Section 487 of the HEA to make Title IV eligibility conditional for a public institution on complying with requirements in Sections 112B, 112C, and 112D of the bill and for a private institution on complying with section 112B and 112C(c).

Failure of any institution, public or private, to comply with sections 112B or 112C(c) would result in the loss of Title IV eligibility for a period not less than one year. To regain eligibility, the institution must demonstrate compliance with these sections for at least one award year following the year it became ineligible.

### Section 112E: Federal Cause of Action and Waiver of Sovereign Immunity

Section 112E would create a new federal cause of action allowing any individual harmed by a public institution's policy or practice in violation of the requirements of sections 112B, 112C, or 112D to bring a lawsuit seeking appropriate relief," including injunctive relief, compensatory damages, court costs and/or attorney's fees.

The receipt of Title IV funds by a public institution is deemed to constitute a waiver of its sovereign immunity rights under the 11<sup>th</sup> amendment for a civil action under this section. Following a final, non-default judgment finding the institution in violation of the bill's requirements, the institution must (1) notify the Secretary of Education within seven days of the final judgment, and (2) file a report with the Secretary within 30 days certifying that the violation has been cured and providing evidence to support the certification. If the institution fails to notify the Secretary or provide the report within the specified time, the Secretary is required to revoke the institution's Title IV eligibility "for each award year following the conclusion of the award year in which the final judgment was made." While the bill would create a process to allow the Secretary to restore an institution's eligibility, once the eligibility has been revoked, it may not be restored again until the following award year.

The bill also requires the Secretary of Education to submit an annual report to the House and Senate education committees compiling notifications of final judgments and reports submitted by institutions to the Secretary, and any action taken by Secretary to revoke or restore Title IV eligibility.