

FIRE

Foundation for Individual
Rights and Expression

March 1, 2023

Higher Education and Employment Advancement Committee
Connecticut General Assembly
Legislative Office Building
Hartford, CT 06106

Chair Haddad, Chair Slap, and members of the committee,

Thank you for holding the hearing on HB 6567. As you may recall from my testimony, I promised we would work on a redline of the bill for the committee to consider. The redline is attached with our proposed language. As I noted in my testimony, the bill is an important step in the right direction for freedom of expression at Connecticut's public institutions of higher education. However, some modest, but important, changes are needed to ensure the legislation provides clear guidance for university policies and effectively protects free speech on campus.

First, we clarified the definition of “materially and substantially interfere.” This definition helpfully and carefully defines the line between constitutionally protected protests and unprotected heckler’s vetoes.

Second, we moved and clarified the provision designating the public areas of campus as public forums. By moving the provision, it is now more clearly tied to the time, place, and manner restrictions institutions may impose in public forums. We also added “any indoor space opened for expressive purposes” as spaces designated as public forums to capture the indoor areas mentioned later in the bill: “dormitories and inside and outside of student union buildings.”

Third, we amended the level of scrutiny the time, place, and manner restrictions on expression to more closely track the standard set by the Supreme Court of the United States in *Ward v. Rock Against Racism* (1989).

Fourth, we amended the language regarding the unprotected speech the Board of Trustees of The University of Connecticut or the Board of Regents for Higher Education for the respective institutions may prohibit. The original language could be read to empower administrators to review materials before they can be distributed. While the new language does not allow for prior restraint and pre-screening, it still allows the Board and institutions to prohibit speech not protected by the First Amendment.

Fifth, we made clear that institutions of higher education may have a permitting process in order to grant exclusive control of an area for free expression, and clarifies how security fees may be assessed. Consistent with Supreme Court precedent, this provision prevents colleges from charging security fees to students and student organizations based on the content of their expression or the anticipated reaction to an invited guest's speech, while allowing them to assess these fees on content and viewpoint neutral criteria, like whether alcohol will be served at the event, etc.

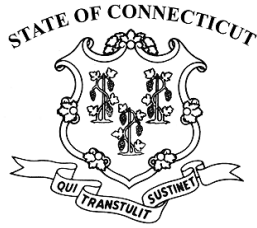
We are happy to answer any questions the committee might have regarding these suggested changes. We have also attached FIRE's model Campus Free Expression Act so you can see where much of the language we have suggested comes from. I remind the committee that campus free speech legislation has passed in approximately 20 states, oftentimes with overwhelming bipartisan support, and signed into law by both Democratic and Republican governors.

Thank you again for considering this important piece of legislation and we look forward to providing any additional information the committee might need.

Best regards,

A handwritten signature in black ink, appearing to read "Greg Y. Gonzalez", with a long horizontal flourish extending to the right.

Greg Y. Gonzalez
Legislative Counsel



General Assembly

January Session, 2023

Raised Bill No. 6567

LCO No. 3123

03123_____HED

Referred to Committee on HIGHER EDUCATION AND
EMPLOYMENT ADVANCEMENT

Introduced by:
(HED)

**AN ACT REQUIRING PUBLIC INSTITUTIONS OF HIGHER EDUCATION
TO ESTABLISH A POLICY REGARDING FREEDOM OF EXPRESSION
ON CAMPUS.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

Section 1. (Effective July 1, 2023) (a) For purposes of this section, "Materially and substantially interfere" means when a person, with the intent to, or with knowledge of, doing so, significantly hinders another person's or group's expressive activity, prevents the communication of the message, or prevents the transaction of the business of a lawful meeting, gathering or procession by (A) engaging in fighting, violent, or seriously disruptive behavior; or (B) physically blocking or significantly hindering any person from attending, listening to, viewing, or otherwise participating in an expressive activity. Conduct that "materially and substantially interfere" shall not include conduct that is protected under the First Amendment of the United States Constitution or Article 1 of the constitution of this state. Such protected conduct includes, but is not limited to, lawful protests and counter-protests in the outdoor areas of campus generally accessible to the members of the public (except during times when those areas have been reserved in advance for other events),

or minor, brief, or fleeting nonviolent disruptions of events that are isolated and short in duration.

(b) Not later than January 1, 2024, the Board of Trustees of The University of Connecticut and the Board of Regents for Higher Education shall each develop and adopt a policy on freedom of expression at the public institutions of higher education governed by said boards. Such policy shall include, but not be limited to, (1) the goal of prioritizing freedom of expression in the fulfillment of the institution's mission, including, but not limited to, freedom of expression in research, teaching, discussion and debate, (2) the role of the institution in protecting freedom of expression on campus, including when the ideas or opinions expressed are disagreeable or offensive, (3) a policy establishing that the publicly accessible outdoor areas of campuses, and any indoor space opened for expressive purposes, are public forums subject to reasonable limitations on time, place and manner of expression, provided such limitations are content neutral and viewpoint neutral, are reasonable, in furtherance of a significant institutional interest, and provide for ample alternative means of expression and necessary to a compelling institutional interest, (4) allowance for protest or demonstration by any person lawfully present on campus, including a spontaneous protest or demonstration, provided such protest or demonstration does not substantially or materially interfere with the institution's function or in the ability of others to engage in or listen to an expressive activity in locations that have been reserved, (5) ~~the designation of public areas on campus as public forums that are open on the same terms to any speaker,~~ (6) the availability of resources for protecting the safety and freedom of expression of any speaker invited on campus by any student, student group or faculty member, which resources shall be available on the same terms to any invited speaker, and (7) allowance for enrolled students to engage other students in discussion or to distribute to other students written materials ~~that are political, social, educational, religious or cultural in nature~~ in various locations throughout campus, including, but not limited to, the publicly accessible outdoor areas of campuses, common areas of dormitories and inside and outside of student union buildings, provided (A) such discussion or distribution of written

materials does not substantially or materially interfere with such institution's function; ~~and (B) such discussion or written material is not, as determined by the Board of Trustees of The University of Connecticut or the Board of Regents for Higher Education for the respective institutions governed by said boards, obscene, defamatory, fraudulent, an incitement of imminent violence or criminal action, fighting words, true threats, integral to criminal conduct, pornographic or any other category of speech found by any court of competent jurisdiction to be unprotected under the United States Constitution or the Constitution of the state.~~

(c) Nothing in this section prohibits the Board of Trustees of The University of Connecticut or the Board of Regents for Higher Education for the respective institutions governed by said boards from prohibiting expression, including the distribution of materials when the expression falls into categories that are not protected under the United States Constitution as those categories have been defined by the Supreme Court of the United States.

(d) Nothing in this section prohibits a public institution of higher education from requiring a permit from any individual or group as a condition of being granted exclusive control of a location for its expressive activity at a reserved time. Any such permitting process shall not be overly burdensome, and applications for permits shall be evaluated solely using published content- and viewpoint-neutral criteria.

(e) A public institution of higher education may charge security fees to a student or student group as part of an application for those expressive activities that require a permit, provided that no public institution of higher education shall charge security fees to a student or a student group based on the content of their expression, the content of the expression of their invited guest, or the anticipated reaction to the student's, student group's, or invited guest's expression. Whether the security fee is required and its amount may only be determined on the basis of content- and viewpoint-neutral criteria. Examples of content- and viewpoint-neutral criteria include: the time of the event, the location

of the event, the anticipated size of the invited audience, and whether alcohol will be served. Any public institution of higher education charging security fees pursuant to this Section must publish the criteria it uses for assessing those charges.

(f) Nothing in this section shall enable individuals to engage in conduct that intentionally, materially, and substantially interferes with another's expressive activity if that activity is occurring in a campus space reserved for that activity under the exclusive use or control of a particular group.

(~~bg~~) Not later than February 1, 2024, the Board of Trustees of The University of Connecticut and the Board of Regents for Higher Education shall submit, in accordance with the provisions of section 11-4a of the general statutes, to the joint standing committee of the General Assembly having cognizance of matters relating to higher education the policy adopted pursuant to the provisions of subsection (~~ab~~) of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2023</i>	New section

Statement of Purpose:

To require public institutions of higher education to establish a policy regarding freedom of expression on campus.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

A BILL

To designate outdoor areas of public post-secondary educational institutions as traditional public forums open to free speech, and for other purposes.

SEC. 1. SHORT TITLE.

This Act may be cited as the “Campus Free Expression Act.”

SEC. 2. RIGHT TO USE CAMPUS FOR FREE SPEECH ACTIVITIES.

- 1) Expressive activities protected under the provisions of this Act include, but are not limited to, all forms of peaceful assembly, protests, speeches, distribution of literature, carrying signs, circulating petitions, and the recording and lawful publication, including internet publication, of video and audio lawfully recorded in public outdoor areas of public institutions of higher education;
- 2) The publicly accessible outdoor areas of campuses of public institutions of higher education shall be deemed traditional public forums. Public institutions of higher education may maintain and enforce reasonable time, place, and manner restrictions on expressive activity in the publicly accessible outdoor areas of campus and in indoor locations that the institutions have opened to the public for expressive activity, only if the restrictions are reasonable, in furtherance of a significant institutional interest, and only when such restrictions employ clear, published, content- and viewpoint-neutral criteria and provide for ample alternative means of expression. Any such restrictions must allow for members of the university community to spontaneously and contemporaneously distribute literature and assemble;
- 3) Any person who wishes to engage in noncommercial expressive activity on campus shall be permitted to do so freely, as long as their conduct is not unlawful and does not materially and substantially disrupt the functioning of the institution, subject to the requirements of Subsection 2 of this Section. No public institution of higher education shall designate any area of its campus as a “free speech zone” or otherwise create policies restricting expressive activities to particular areas of campus;
- 4) Nothing in this Act shall enable individuals to engage in conduct that intentionally, materially, and substantially disrupts another’s expressive activity if that activity is occurring in a campus space reserved for that activity under the exclusive use or control of a particular group. For purposes of this Act, “Materially and substantially disrupts” means when a person, with the intent to, or with knowledge of, doing so, significantly hinders another person’s or group’s expressive activity, prevents the communication of the message, or prevents the transaction of the business of a lawful meeting, gathering or procession by:
 - a) engaging in fighting, violent, or seriously disruptive behavior; or

- b) physically blocking or significantly hindering any person from attending, listening to, viewing, or otherwise participating in an expressive activity.

5) Conduct that “materially and substantially disrupts” shall not include conduct that is protected under the First Amendment of the United States Constitution or [State Constitution citation]. Such protected conduct includes, but is not limited to, lawful protests and counter-protests in the outdoor areas of campus generally accessible to the members of the public (except during times when those areas have been reserved in advance for other events), or minor, brief, or fleeting nonviolent disruptions of events that are isolated and short in duration.

6) Nothing in this Act shall be interpreted as limiting the right of student expression elsewhere on campus.

7) Nothing in this Act prohibits a public institution of higher education from requiring a permit from any individual or group as a condition of being granted exclusive control of a location for its expressive activity at a reserved time. Any such permitting process shall not be overly burdensome, and applications for permits shall be evaluated solely using published content- and viewpoint-neutral criteria;

8) A public institution of higher education may charge security fees to a student or student group as part of an application for those expressive activities that require a permit, provided that no public institution of higher education shall charge security fees to a student or a student group based on the content of their expression, the content of the expression of their invited guest, or the anticipated reaction to the student’s, student group’s, or invited guest’s expression. Whether the security fee is required and its amount may only be determined on the basis of content- and viewpoint-neutral criteria. Examples of content-and viewpoint-neutral criteria include: the time of the event, the location of the event, the anticipated size of the invited audience, and whether alcohol will be served. Any public institution of higher education charging security fees pursuant to this Section must publish the criteria it uses for assessing those charges.

SEC. 3. CAUSE OF ACTION.

1) The following persons may bring an action against a public institution of higher education, and its agents acting within their official capacities, in a State or Federal Court of competent jurisdiction to enjoin violation of this Act and to recover compensatory damages, reasonable court costs, and attorneys’ fees:

- a) the attorney general;
- b) persons whose expressive rights were violated through the violation of this Act.

2) In an action brought under this Section, if the court finds a violation of this Act, the court shall award the aggrieved persons no less than \$500 for the initial violation plus \$50 for each day the violation remains ongoing, which shall accrue starting on the day

after the complaint is served on the institution of higher education. The total damages, excluding court costs and attorney's fees, available to a plaintiff or set of plaintiffs, in a case or cases stemming from a single controversy shall not exceed \$100,000 in total. In violations harming multiple plaintiffs, the court shall divide the damages equitably among them until the maximum award is exhausted, if applicable.

SEC. 4. STATUTE OF LIMITATIONS.

1) ONE-YEAR LIMITATIONS PERIOD.

- a) A person must bring suit for a violation of this Act not later than one year after the day the cause of action accrues;
- b) For purposes of calculating the one-year limitation period, each day that the violation of this Act persists, and each day that a policy in violation of this Act remains in effect, shall constitute a new day that the cause of action has accrued.