

116TH CONGRESS
1ST SESSION

H. R. 3128

To amend the Higher Education Act of 1965 to uphold freedom of association protections, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 2019

Mr. GALLEGO (for himself, Ms. STEFANIK, Mr. STIVERS, Mrs. MURPHY, Mrs. BROOKS of Indiana, Mr. GOTTHEIMER, Mr. SHIMKUS, Mr. CLEAVER, Mrs. KIRKPATRICK, Ms. KENDRA S. HORN of Oklahoma, Mrs. LAWRENCE, Ms. FUDGE, Mr. BYRNE, and Mr. HUDSON) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Higher Education Act of 1965 to uphold freedom of association protections, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Collegiate Freedom
5 of Association Act”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) Single-sex social organizations, including so-
9 rorities, fraternities, and private social clubs, have

1 existed at institutions of higher education for over
2 200 years, where they have played, and should con-
3 tinue to play, unique roles in the development of
4 young women and men by creating sisterhoods and
5 brotherhoods that foster leadership, promote aca-
6 demic achievement, and encourage civic and campus
7 involvement through philanthropic activities.

8 (2) The freedom of association—that is, the
9 freedom of joining, assembling, and residing with
10 others—is protected under the First and Fourteenth
11 Amendments to the Constitution, and allows individ-
12 uals to create spaces that are safe, welcoming, em-
13 powering, enabling, uninhibited, and free.

14 (3) Single-sex social sororities, fraternities, and
15 private social clubs meet the requirements for inti-
16 mate and expressive associations protected by the
17 freedom of association because they are small and
18 selective, are bound together by friendship, common
19 interests, and common purpose, and create safe and
20 empowering spaces for their members.

21 (4) Some institutions of higher education, which
22 stand in positions of power and authority over their
23 students, have increasingly sought to eliminate or re-
24 strict access to single-sex social organizations, which
25 are designed to nurture, lift, and empower students.

1 (5) While the history of equal access in higher
2 education includes discriminatory actions taken on
3 the basis of race, religion, national origin, and sex
4 by students, faculty, staff, and social organizations,
5 many members of these same groups have taken,
6 and continue to take actions to make the higher edu-
7 cation community more open and inclusive to all.

8 (6) While sex discrimination remains a serious
9 problem in our society, allowing institutions of high-
10 er education to sanction members of sororities, fra-
11 ternities, and private social clubs based solely on the
12 single-sex status of the organization that the student
13 belongs to will not solve these problems, is counter-
14 productive, and violates an individual's constitutional
15 right to freedom of association.

16 (b) PURPOSES.—The purposes of this Act are as fol-
17 lows:

18 (1) Protect any student in a single-sex social
19 organization or any single-sex social organization
20 from any adverse action by an institution of higher
21 education based solely on the membership practice of
22 such organization of limiting membership to only in-
23 dividuals of one sex.

24 (2) Ensure any student in a single-sex social or-
25 ganization or any single-sex social organization is

1 treated equitably in comparison to students at an in-
 2 stitution of higher education who do not participate
 3 in single-sex social organizations, or other social or-
 4 ganizations at an institution of higher education
 5 that are not single-sex.

6 (3) Protect the rights of students to freely asso-
 7 ciate with and participate in social organizations, in-
 8 cluding single-sex social organizations.

9 **SEC. 3. FREEDOM OF ASSOCIATION PROTECTIONS FOR**
 10 **STUDENTS IN SOCIAL ORGANIZATIONS.**

11 Part B of title I of the Higher Education Act of 1965
 12 (20 U.S.C. 1011 et seq.) is amended by adding at the end
 13 the following:

14 **“SEC. 124. FREEDOM OF ASSOCIATION PROTECTIONS FOR**
 15 **STUDENTS IN SOCIAL ORGANIZATIONS.**

16 “(a) UPHOLDING FREEDOM OF ASSOCIATION PRO-
 17 TECTIONS.—Any student (or group of students) enrolled
 18 in an institution of higher education shall—

19 “(1) have a right to form or apply to join any
 20 social organization, including any single-sex social
 21 organization; and

22 “(2) if selected for membership by any social
 23 organization, have a right to join such social organi-
 24 zation and participate in such social organization.

1 “(b) NON-RETALIATION AGAINST MEMBERS OF SIN-
2 GLE-SEX SOCIAL ORGANIZATIONS.—An institution of
3 higher education that receives funds under this Act shall
4 not—

5 “(1) take any action to require or coerce a stu-
6 dent or social organization to waive the rights of the
7 student or organization, respectively, under this sec-
8 tion;

9 “(2) take any adverse action against a student
10 who is a member of a single-sex social organization,
11 or a single-sex social organization, based solely on
12 the membership practice of such organization of lim-
13 iting membership to only individuals of one sex; or

14 “(3) impose a recruitment restriction (including
15 a recruitment restriction relating to the schedule for
16 membership recruitment) on a single-sex social orga-
17 nization recognized by the institution, which is not
18 imposed upon other student organizations by the in-
19 stitution, unless the organization and the institution
20 have entered into a mutually agreed-upon written
21 agreement that allows the institution to impose such
22 restriction.

23 “(c) RULES OF CONSTRUCTION.—Nothing in this
24 section shall—

1 “(1) require an institution of higher education
2 to officially recognize, or enter into a mutually
3 agreed-upon written agreement with, a social organi-
4 zation (such as a social organization whose purpose
5 is incompatible with the religious or cultural mission
6 of the institution of higher education);

7 “(2) prohibit an institution of higher education
8 from taking an adverse action, which is not based
9 solely on the membership practice of a social organi-
10 zation of limiting membership to only individuals of
11 one sex, against a student who joins such social or-
12 ganization or such social organization—

13 “(A) whose purpose is incompatible with
14 the religious or cultural mission of the institu-
15 tion of higher education; or

16 “(B) for another reason (such as academic
17 or nonacademic misconduct);

18 “(3) subject to subsection (b)(3), prevent a so-
19 cial organization from regulating its own member-
20 ship;

21 “(4) inhibit the ability of the faculty of an insti-
22 tution of higher education to express an opinion (ei-
23 ther individually or collectively) on a single-sex social
24 organization, or otherwise inhibit the academic free-

1 dom of such faculty to research, write, or publish
2 material on such an organization; or

3 “(5) create enforceable rights against a social
4 organization or against an institution of higher edu-
5 cation due to the decision of such social organization
6 to deny membership to an individual student.

7 “(d) DEFINITIONS.—In this section:

8 “(1) ADVERSE ACTION.—The term ‘adverse ac-
9 tion’ includes the following with respect to a single-
10 sex social organization or a member of such organi-
11 zation:

12 “(A) Expulsion, suspension, probation,
13 censure, condemnation, reprimand, or any other
14 disciplinary, coercive, or sanction taken by an
15 institution of higher education or administrative
16 unit of such institution.

17 “(B) An oral or written warning with re-
18 spect to an action described in subparagraph
19 (A) made by an official of an institution of
20 higher education acting in the official capacity
21 of the official.

22 “(C) An action to deny participation in
23 any education program or activity, including the
24 withholding of any rights, privileges, or oppor-
25 tunities.

1 “(D) An action to withhold, in whole or in
2 part, any financial assistance (including schol-
3 arships and on campus employment), or deny-
4 ing the opportunity to apply for financial assist-
5 ance, a scholarship, a graduate fellowship, or
6 on-campus employment.

7 “(E) An action to deny or restrict access
8 to on-campus housing.

9 “(F) An action to deny any certification,
10 endorsement, or letter of recommendation that
11 may be required by a student’s current or fu-
12 ture employer, a government agency, a licensing
13 board, an institution of higher education, a
14 scholarship program, or a graduate fellowship
15 to which the student seeks to apply.

16 “(G) An action to deny participation in
17 any sports team, club, or other student organi-
18 zation, including a denial of any leadership po-
19 sition in any sports team, club, or other student
20 organization.

21 “(H) An action to withdraw official rec-
22 ognition by an institution of higher education.

23 “(I) An action to require any student to
24 certify that such student is not a member of a
25 single-sex social organization or to disclose the

1 student's membership in a single-sex social or-
2 ganization.

3 “(J) An action by an institution of higher
4 education to interject its own criteria into the
5 membership practices of the organization in any
6 manner that conflicts with the rights of such
7 organization under title IX of the Education
8 Amendments of 1972 (20 U.S.C. 1681 et seq.)
9 or this section.

10 “(K) An action to impose any operational
11 policy or restriction that is in violation of this
12 section.

13 “(2) SINGLE-SEX SOCIAL ORGANIZATION.—The
14 term ‘single-sex social organization’ means—

15 “(A) a social fraternity or sorority that is
16 an organization described in section 501(c) of
17 the Internal Revenue Code of 1986 which is ex-
18 empt from taxation under section 501(a) of
19 such Code, the active membership of which con-
20 sists primarily of students in attendance at an
21 institution of higher education;

22 “(B) the Young Men's Christian Associa-
23 tion, Young Women's Christian Association,
24 Girl Scouts, Boy Scouts, Camp Fire Girls, and
25 voluntary youth service organizations which are

1 so exempt, the membership of which has tradi-
2 tionally been limited to persons of one sex and
3 principally to persons of less than nineteen
4 years of age; or

5 “(C) a single-sex private social club (in-
6 cluding an independent organization located off-
7 campus) that consists primarily of students or
8 alumni of an institution of higher education.”.

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