

116TH CONGRESS
1ST SESSION

S. RES. 233

Recognizing the importance of protecting freedom of speech, thought, and expression at institutions of higher education.

IN THE SENATE OF THE UNITED STATES

JUNE 5, 2019

Mrs. BLACKBURN (for herself, Mr. TILLIS, Mr. LANKFORD, Mr. CORNYN, Mr. COTTON, Mr. BRAUN, Mr. GRASSLEY, Ms. ERNST, Mr. RUBIO, Mr. HAWLEY, Mr. SCOTT of South Carolina, and Mr. CRUZ) submitted the following resolution; which was referred to the Committee on the Judiciary

RESOLUTION

Recognizing the importance of protecting freedom of speech, thought, and expression at institutions of higher education.

Whereas the First Amendment to the Constitution of the United States guarantees that “Congress shall make no law . . . abridging the freedom of speech”;

Whereas, in *Healy v. James*, 408 U.S. 169 (1972), the Supreme Court of the United States held that the First Amendment to the Constitution of the United States applies in full force on the campuses of public colleges and universities;

Whereas, in *Widmar v. Vincent*, 454 U.S. 263 (1981), the Supreme Court of the United States observed that “the

campus of a public university, at least for its students, possesses many of the characteristics of a public forum”;

Whereas lower Federal courts have also held that the open, outdoor areas of the campuses of public colleges and universities are public forums;

Whereas section 112(a)(2) of the Higher Education Act of 1965 (20 U.S.C. 1011a(a)(2)) contains a sense of Congress noting that “an institution of higher education should facilitate the free and open exchange of ideas”, “students should not be intimidated, harassed, discouraged from speaking out, or discriminated against”, “students should be treated equally and fairly”, and “nothing in this paragraph shall be construed to modify, change, or infringe upon any constitutionally protected religious liberty, freedom, expression, or association”;

Whereas, despite the clarity of the applicable legal precedent and the vital importance of protecting public colleges in the United States as true “marketplaces of ideas”, the Foundation for Individual Rights in Education has found that approximately 1 in 10 of the top colleges and universities in the United States quarantine student expression to so-called “free speech zones”, and a survey of 466 schools found that almost 30 percent maintain severely restrictive speech codes that clearly and substantially prohibit constitutionally protected speech;

Whereas, according to the American Civil Liberties Union (ACLU), “Speech codes adopted by government-financed state colleges and universities amount to government censorship, in violation of the Constitution. And the ACLU believes that all campuses should adhere to First Amendment principles because academic freedom is a bedrock of education in a free society.”;

Whereas the University of Chicago, as part of its commitment “to free and open inquiry in all matters”, issued a statement in which “it guarantees all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn”, and more than 50 university administrations and faculty bodies have endorsed a version of the “Chicago Statement”;

Whereas, in December 2014, the University of Hawaii at Hilo settled a lawsuit for \$50,000 after it was sued in Federal court for prohibiting students from protesting the National Security Agency unless those students were standing in the tiny, flood-prone free speech zone at the university;

Whereas, in July 2015, California State Polytechnic University, Pomona, settled a lawsuit for \$35,000 after it was sued in Federal court for prohibiting a student from handing out flyers about animal abuse outside of the free speech zone at the university, comprising less than 0.01 percent of campus;

Whereas, in May 2016, a student-plaintiff settled her lawsuit against Blinn College in Texas for \$50,000 after administrators told her she needed “special permission” to advocate for Second Amendment rights outside of the tiny free speech zone at the college;

Whereas, in February 2017, Georgia Gwinnett College agreed to modify its restrictive speech policies after two students sued in Federal court to challenge a requirement that students obtain prior authorization from administrators to engage in expressive activity within the limits of a tiny free speech zone, comprising less than 0.0015 percent of campus;

Whereas, in March 2017, Middlebury College students and protesters from the community prevented an invited speaker from giving his presentation and then attacked his car and assaulted a professor as the two attempted to leave, resulting in the professor suffering a concussion;

Whereas, in January 2018, Kellogg Community College in Michigan settled a lawsuit for \$55,000 for arresting two students for handing out copies of the Constitution of the United States while talking with their fellow students on a sidewalk;

Whereas, in June 2018, the University of Michigan agreed to change its restrictive speech code on the same day the United States Department of Justice filed a statement of interest in support of a lawsuit in Federal court challenging the constitutionality of the speech code of the university;

Whereas, in December 2018, the Los Angeles Community College District, a 9-campus community college district that includes Pierce College, settled a lawsuit for \$225,000 and changed its restrictive speech policies after it was sued in Federal court for prohibiting a Pierce College student from distributing Spanish-language copies of the Constitution of the United States on campus unless he stood in the free speech zone, which comprised approximately 0.003 percent of the total area of the 426 acres of the college;

Whereas, in December 2018, the University of California, Berkeley, home of the 1960s campus free speech movement, settled a lawsuit for \$70,000 and changed its restrictive policies after it was sued in Federal court for singling out one student group, apart from other student

groups, with the imposition of stricter rules for inviting “high-profile” public speakers;

Whereas the States of Virginia, Missouri, Arizona, Kentucky, Colorado, Utah, North Carolina, Tennessee, Florida, Georgia, Louisiana, South Dakota, and Iowa have passed legislation prohibiting public colleges and universities from quarantining expressive activities on the open outdoor areas of campuses to misleadingly labeled free speech zones; and

Whereas free speech zones have been used to restrict political speech from all parts of the political spectrum and have thus inhibited the free exchange of ideas at campuses across the country: Now, therefore, be it

1 *Resolved*, That the Senate—

2 (1) recognizes that free speech zones and re-
3 strictive speech codes are inherently at odds with the
4 freedom of speech guaranteed by the First Amend-
5 ment to the Constitution of the United States;

6 (2) recognizes that institutions of higher edu-
7 cation should facilitate and recommit themselves to
8 protecting the free and open exchange of ideas;

9 (3) recognizes that freedom of expression and
10 freedom of speech are sacred ideals of the United
11 States that must be vigorously safeguarded in a
12 world increasingly hostile to democracy;

13 (4) encourages the Secretary of Education to
14 promote policies that foster spirited debate, aca-
15 demic freedom, intellectual curiosity, and viewpoint

1 diversity on the campuses of public colleges and uni-
2 versities; and

3 (5) encourages the Attorney General to defend
4 and protect the First Amendment across public col-
5 leges and universities.

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