

SUBJECT: Protecting expressive activities at public institutions of higher education

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 7 ayes — C. Turner, Stucky, Frullo, Howard, E. Johnson, Pacheco, Schaefer

0 nays

4 absent — Button, Smithee, Walle, Wilson

SENATE VOTE: On final passage, March 20 — 31-0

WITNESSES: *On House companion bill, HB 3395:*
For — Thomas Lindsay, Texas Public Policy Foundation; (*Registered, but did not testify:* Jennifer Allmon, The Texas Catholic Conference of Bishops; Donnis Baggett, Texas Press Association; Adam Cahn, Cahnman's Musings; Mark Dorazio, State Republican Executive Committee; Terry Holcomb and Tanya Robertson, Republican Party of Texas; Rhonda Sepulveda, Catholic Charities of the Archdiocese of Galveston-Houston; Tom Nobis; Gail Stanart)

Against — Samantha Fuchs

On — Ryan Vassar, Office of the Attorney General

DIGEST: SB 18 would create requirements related to speech and expressive conduct protected by the First Amendment on public campuses of higher education institutions.

Policy statement. SB 18 would adopt a statement that it was state policy to protect the expressive rights of persons guaranteed by the U.S. and Texas constitutions by recognizing freedom of speech and assembly as central to the mission of institutions of higher education and ensuring that all persons could assemble peaceably on the campuses of institutions of higher education for expressive activities, including to listen to the speech

of others.

Common outdoor areas. An institution of higher education would be required to ensure that the common outdoor areas of its campus were deemed traditional public forums. Any person would be permitted to engage in expressive activities in those areas freely, as long as the person's conduct was not unlawful and did not materially and substantially disrupt the functioning of the institution.

An institution could adopt a policy that imposed reasonable restrictions on the time, place, and manner of expressive activities in common outdoor areas if those restrictions:

- were narrowly tailored to serve a significant institutional interest;
- employed clear, published, content-neutral, and viewpoint-neutral criteria;
- provided for ample alternative means of expression; and
- allowed members of the university community to assemble or distribute written material without a permit or other permission from the institution.

The bill's provisions on common outdoor areas would not limit the right of student expression at other campus locations.

Students' rights and responsibilities. SB 18 would require each higher education institution to adopt a policy by August 1, 2020, detailing students' rights and responsibilities regarding expressive activities at the institution. The policy would have to allow:

- any person, subject to reasonable restrictions adopted by the institution in accordance with the bill, to engage in expressive activities on campus, including by responding to the expressive activities of others; and
- student organizations and faculty to invite speakers to speak on campus, subject to provisions in the bill.

The policy also would have to:

- establish disciplinary sanctions for students, student organizations, or faculty who unduly interfered with the expressive activities of others on campus;
- include a grievance procedure for addressing complaints of a violation of the bill's requirements;
- be approved by a majority vote of the institution's governing board before final adoptions; and
- be posted on the institution's website.

Each institution would have to make its policies available to students enrolled at and employees of the institution by including them in student and personnel handbooks, providing a copy to students during student orientations, and posting them on the institution's website.

Each institution would have to develop materials, programs, and procedures to ensure that employees responsible for educating or disciplining students understood the bill's requirements and the institution's adopted policies.

Student organizations. A higher education institution could not take action against a student organization or deny the organization any benefit generally available to other student organizations at the institution on the basis of a political, religious, philosophical, ideological, or academic viewpoint expressed by the organization or of any expressive activities of the organization.

SB 18 would define "benefit" to include recognition by or registration with an institution, the use of an institution's facilities for meetings or speaking purposes, the use of communication channels controlled by the institution, and funding sources generally made available to student organizations.

The bill would define "expressive activities" to mean any speech or expressive conduct protected by the First Amendment, and including

assemblies, protests, speeches, distribution of written material, carrying of signs, and circulation of petitions. The term would not include commercial speech.

Guest speakers. In determining whether to approve a speaker or the amount of a fee for use of the institution's facilities, an institution:

- could consider only content-neutral and viewpoint-neutral criteria related to the needs of the event, such as the proposed venue and expected size of the audience, any anticipated need for campus security, any necessary accommodations, and any relevant history of compliance or noncompliance by the requesting student organization or faculty member with the institution's required policy of expressive activities; and
- could not consider any anticipated controversy related to the event.

Report. By December 1, 2020, each institution would have to prepare, post on its website, and submit to the governor and Legislature a report on the institution's implementation of the bill's requirements.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

SB 18 would promote civility, respect, and safety for those expressing diverse views on public college and university campuses by recognizing that the First Amendment applies to all speech, even that deemed unpopular or contentious. The bill would bolster free speech protections on college campuses by ensuring that constitutionally protected expression existed in common outdoor areas and that higher education institutions could not make decisions about guest speakers based on the speaker's viewpoint.

Texas colleges and universities should be places where vibrant debate is not just allowed but encouraged. Recently, higher education campuses have become the focus of those concerned with restrictions on speech content that could potentially violate constitutional principles. SB 18 would affirm that it is Texas policy to protect the expressive constitutional

rights of individuals by recognizing freedom of speech and assembly as central to the mission of public institutions of higher education. Texas would join more than a dozen states that have passed campus free speech laws in the past five years, with many of these bills occurring on a bipartisan basis.

Common outdoor areas. The bill would ensure that common outdoor areas were deemed to be traditional public forums and permit any individual to engage freely in expressive activities there as long as the person's conduct was lawful and did not disrupt the functioning of the institution. Institutions could exert control over common outdoor areas by adopting a policy that imposed reasonable restrictions on time, place, and manner of expressive activities in common outdoor areas as long as the restrictions were narrowly tailored, content neutral, and provided for alternative means of expression. The bill would address reports that students have been told they need campus approval to distribute flyers by specifically allowing members of the university community to assemble or distribute written material without a permit in common outdoor areas.

Student rights and responsibilities. SB 18 would ensure that students, faculty, and staff knew their rights and responsibilities by requiring each institutions to adopt a policy that included disciplinary sanctions for students, student organizations, or faculty who unduly interfered with others' free speech rights. Institutions would have sufficient discretion to adopt the disciplinary policy and a grievance procedure for addressing complaints about free speech violations.

Guest speakers. The bill would prevent campuses from making decisions about scheduling speakers or charging higher fees to student groups sponsoring a speaker based on any anticipated controversy related to the event. An institution would retain the ability to consider any anticipated need for campus security when determining whether or not to approve a guest speaker or charge a fee to the sponsoring student organization.

OPPONENTS
SAY:

SB 18 would change Texas campuses from appropriately limited public forums where the free speech rights of the campus community are

protected to traditional public forums where the rights of persons who were not attending classes or working on campus were equally protected, which could be detrimental the campus community. Federal courts have declined to treat a campus the same as a public park for First Amendment purposes. The bill would primarily benefit those not attending a university by making campuses open to outside groups that could spread offensive ideology or a political agenda.

Common areas. The bill could negatively impact the experience of students who are paying tuition and fees to attend a university by allowing outside groups who might express views that are an anathema to the values of the campus community. There would be little that campus officials could do to stop such activity if it did not meet the bill's high bar of substantially disrupting the function of the institution. The perception that certain voices are being stifled on college campuses does not match reality, as speakers of a variety of political affiliations commonly appear and students regularly discuss contentious issues under existing policies.

Student rights and responsibilities. The bill's requirements for a grievance process to handle complaints should be limited to complaints from students, faculty, and staff of the university. Allowing any person to file a complaint could create an unnecessary and possibly heavy burden on universities.