

Testimony of Theresa Sidebotham, Telios Law PLLC
SB 17-062 Right to Free Speech on Campuses
House State, Veterans, and Military Affairs Committee
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Chairman Foote, and Members of the Committee, thank you for the opportunity to speak today. My name is Theresa Sidebotham with Telios Law, and I do First Amendment and free speech advocacy work. Today I am speaking on behalf of the Christian Legal Society.

A 2010 survey of college students found that only 36% agreed with the statement that “it is safe to hold unpopular views on campus.” This number drops to 30% for seniors. Only 16.7% of faculty agreed with the statement.

Yet no one can be confident in ideas that haven’t been tested by exposure to opposing arguments. John Milton said, “Though all the winds of doctrine were let loose to play upon the earth, so truth be in the field, we do injuriously, by licensing and prohibiting, to misdoubt her strength. Let her and falsehood grapple, who ever knew truth put to the worse, in a free and open encounter.” John Milton, *Areopagitica*.

More specifically, here is what the Act would do to protect speech:

The Act reinforces this State’s commitment to free speech and real diversity on campuses.

Values and beliefs are not worth much if you can’t defend them. The free marketplace of ideas is our only sane and progressive option. This includes the protection of speech that some find disturbing—over the years in our country, that has included the speech of abolitionists, those supporting birth control, those supporting the women’s vote, and speech of socialists and communists. Today, it’s more likely to include religious speech or prolife speech. Pluralism cannot really exist without true free speech.

Why are speech zones a problem?

First, the courts have consistently held them unconstitutional. Speech zones are set up in a low-traffic area to marginalize messages that university officials don’t love. It makes it hard for students to share messages that may be less popular. This is a

problem for students whose views are marginalized—but also for all the other students. The point of university is for students to learn to think, to have a vigorous marketplace of ideas, for iron to sharpen iron. If public university is just a warm bath of acceptable sentiment, and diverse or marginalized views are banished to the corridor behind the library, students are not being taught to think, or to value the cut and thrust of healthy argument.

Why does the bill prevent regulating the content of speech?

Popular speech is never a problem—it's unpopular speech that needs protection by the First Amendment—perhaps a Christian prayer group or a conservative political group. Do such views deserve protecting? Under the First Amendment, content-based and viewpoint discrimination is illegal. All students have a right to equal access both to the university and to the activity fee funding. Not only do they and their parents pay taxes, but the true meaning of a public university is lost if officials enforce homogenous thought.

Why are speech codes a problem, since they only prohibit harassing or offensive communications?

Speech codes are facially vague and overbroad, and they limit discussion of critical issues of race, gender, sexuality, and religion. Since they're arbitrarily enforced, they tend to be weapons of the dominant political culture, enforced against dissenters. They invite censorship by giving government officials too much license. Courts have consistently rejected speech codes as illegitimate. Properly formatted discrimination codes prohibit speech that is "so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit." This type of speech goes far beyond criticism or discussion.

Wouldn't this bill let students engage in violent or threatening speech?

No, it would not, as the bill only applies to speech protected by the First Amendment. While vigorous disagreement is protected, violent or threatening speech is not protected, including fighting words, obscenity, defamation, and words that create a clear and present danger. And a university could still restrict noise levels, monitor free access to buildings, and impose other normal law and order rules.

I am happy to answer any questions the Committee members may have.