



IOWA HOUSE DEMOCRATS

BILL SUMMARY

Public Speech on College Campuses HF 661

Status of Bill: House Calendar
Committee: Judiciary Committee (12-9)
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Lead Democrat: Rep. Wolfe
Floor Manager: Rep. Hite

Background

On February 6, 2009, The United States District Court for the Southern District of Iowa ruled on Business Leaders in Christ v. the University of Iowa. In the case, the University of Iowa revoked the Registered Student Organization status of Business Leaders in Christ (BLinC) because the University claimed the group violated the Human Rights Policy of the university by disqualifying individuals from leadership in the organization based on sexual orientation and gender identity.

The Federal District Court found that any restrictions of BLinC's free speech, expressive association, and free exercise of the organization's First Amendment rights were subject to strict scrutiny. The court found that a university granting recognition to a student organization creates a limited public forum, and a limited public forum cannot discriminate against speech based on its viewpoint. The University of Iowa was found to have applied its own Human Rights Policy in a discriminatory manner by allowing certain groups, like Love Works, which required leaders to sign a "gay-affirming statement of Christian faith," to discriminate based religious beliefs and the university allowed groups like the Hawkapellas, an all-female singing group, and the Chinese Students and Scholars Association, that was limited to Chinese students, to discriminate based on protected traits. The court quoted a previous court that found that when the government targets particular views that "the violation of the First Amendment is all the more blatant." The court found that the University of Iowa violated BLinC's First Amendment rights to free speech, expressive association, and free exercise of religion. The court did grant qualified immunity to individual University of Iowa administrators that made decisions involving BLinC from monetary damages in the case.

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Policy Adoption

Requires the state Board of Regents and the directors of each community college to adopt a policy on free speech on the campus. The policy must include all of the following:

- The primary function of an institution of higher education is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate. To fulfill the function of the institution must strive to ensure the fullest degree of intellectual freedom and free expression allowed under the U.S. Constitutional First Amendment.
- The proper role of an institution is not to shield individuals from speech protected by the First Amendment, which may include ideas and opinions the individual finds unwelcome, disagreeable, or even offensive.
- The proper role of an institution is to encourage discovery of thoughts, ideas, and opinions and to encourage, within the bounds of the First Amendment, the peaceful, respectful, and safe exercise of First Amendment rights.

- Students and faculty have the freedom to discuss any problem that presents itself, and assemble, and engage in spontaneous expressive activity on campus, within the bounds of the First Amendment and subject to reasonable time, place, and manner restrictions.
- Outdoor areas of campus are public forums and are open on the same terms to any invited speaker, subject to reasonable time, place, and manner restrictions.

Protected Activities

Protected activities under the bill include noncommercial expressive activities that include, but are not limited to, any lawful oral or written means used to communicate ideas to one another. This includes, but is not limited to, peaceful assembly, protests, speeches (including those by invited speakers), distribution of literature, circulating petitions, and publishing audio or video recorded in outdoor areas of campus, including publishing or streaming on an Internet site. A member of the campus community that wishes to engage in noncommercial expressive activity in an outdoor area of campus must be permitted to do so freely, subject to reasonable time, place, and manner restrictions, as long as the conduct is not unlawful and does not impede other's access to a facility or walkways and does not disrupt the function of the institution.

An institution may designate areas of campus for use by the campus community, but access to areas must be granted on a viewpoint-neutral basis. An institution cannot deny benefits or privileges to student organizations based on the viewpoint of the organization or expression of those viewpoints. An institution cannot deny any benefit or privilege to a student organization based on the organization's requirement that the leaders of the organization agree to and support the organization's beliefs, as those beliefs are interpreted and applied by the organization, to further the organization's mission.

The bill states that new requirements for protected activities cannot be interpreted as limiting counter demonstrations held in an outdoor area of campus as long as the counter demonstration is lawful, does not material and substantially prohibit the free expression rights of others or disrupt the functioning of the institution, and does not impede other's access to the facility or use of walkways. Restrictions on counter protests can be subject to reasonable time, place, and manner restrictions.

An institution may prohibit, limit, or restrict expression that the First Amendment does not protect. This includes, but is not limited to, a threat of serious harm directed to provoke imminent unlawful actions and harassment.

Public Forums

Outdoor areas of institutions are deemed to be public forums. Institutions may maintain and enforce clear, published, reasonable viewpoint-neutral time, place, and manner restrictions that are narrowly tailored to further significant institutional interests. The institution must allow members of the campus community to engage in spontaneous activity and distribute literature. Restrictions by the institution must provide for ample alternative means of expression. An institution cannot designate any area of campus a free-speech zone or otherwise create policies restricting expressive activities to a particular outdoor area of campus. These requirements do not give an individual a right to conduct that intentionally, materially, and substantially disrupts the expressive activity of another person or organization if the institution has reserved space in an outdoor area for campus activities by the person or organization.

Remedies

A member of the campus community aggrieved by a violation of these requirement may file a complaint with the governing body of the institution. A member of the campus community may assert a violation as a defense or counterclaim in a disciplinary action or in a civil or administrative proceeding. There is a statute of limitations requiring a claim for a violation of this chapter not more than a year after the day the cause of action occurs. These remedies do not limit any other remedies available to a member of the campus

community. These remedies do not make any administrator, officer, employee, or agent of an institution personally liability for acts taken in the individual's official duties.

Prohibitions on unfunded state mandates do not apply to this bill.

This bill is effective immediately upon enactment.