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*Higher Education*

## States consider campus free speech policies

[April 17](#) — With incidents around the nation testing free speech policies on college and university campuses, some states have responded by enacting or considering legislation for their public institutions.

Issues that have surfaced nationwide include institutions restricting protests to certain areas on campus, known as “free speech zones,” protesters drowning out invited speakers with what is sometimes called the “heckler’s veto,” and institutions charging fees to student groups for invited speakers based on campus security concerns.

The Texas Senate Committee on State Affairs earlier this year held a [hearing](#) addressing what role, if any, state law should have in influencing policies on student free speech at the state’s higher education institutions. One of the committee’s [charges](#) this interim is to examine any restrictions on student free speech rights, as well as freedoms of the press, religion, and assembly.

**Recent state laws.** Nine states since 2015 have enacted laws addressing free speech on campus, and several are considering legislation. Florida enacted a law in March that prohibits establishing specific free speech zones on public university campuses, makes outdoor areas on these campuses traditional public forums, and prohibits students, faculty, or staff from materially disrupting previously scheduled campus activities. Tennessee’s law, enacted in 2017 and effective earlier this year, has similar provisions and also prohibits charging security fees to student groups based on anticipated reaction or opposition to the speaker. Arizona, Colorado, Missouri, North Carolina, Utah, Virginia, and Wisconsin also have enacted some form of campus speech legislation, and the Georgia legislature recently sent a bill to the governor.

Many of these state laws expressly allow time, place, and manner restrictions on expression if the restrictions are content neutral and if they are narrowly tailored to serve a significant

institutional interest. Some provide for individuals to bring suit to enjoin restrictions on expression and to recover court costs and attorney’s fees if they can show their rights have been infringed.

Aside from state legislation, some higher education institutions, both public and private, have voluntarily adopted or revised free speech policies in recent years. The University of Chicago in 2015 issued a report that came to be known as the “Chicago statement,” which affirms a commitment to free expression on campus. The Chicago statement or a substantially similar one has since been adopted or endorsed by administrative or faculty bodies at nearly 40 institutions nationwide.

**Texas bill.** The Texas Legislature during its regular session in 2017 considered but did not enact [SB 1151](#) by Buckingham, which would have prohibited free speech zones and restrictions on students’ rights to engage in expression in a student forum at the state’s public higher education institutions. It would have allowed these institutions by rule to enforce reasonable time, place, and manner restrictions if they were narrowly tailored to serve a significant institutional interest and met specific constitutional requirements. Institutions would have been required to adopt policies that included a grievance procedure to address complaints about potential violations of the bill and a prohibition on reducing a student’s grade for engaging in expressive activities. SB 1151 was [approved](#) by the Texas Senate by a vote of 20-9 but died in the House Higher Education Committee.

**Supporters of state legislation** to address free speech rights on college and university campuses say it would help ensure those rights could be exercised by clarifying constitutional requirements for college administrators and, in some cases, making it easier for individuals to challenge speech restrictions. While the U.S. Constitution should provide sufficient protection

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of free speech rights, supporters say, state legislation for public universities is warranted to affirm a commitment to an open and robust exchange of ideas on campus and to provide the clarity needed to help prevent constitutional violations that could result in litigation.

**Critics of state legislation** to address free speech rights on college and university campuses say that state legislatures should allow these institutions to set free speech policies as

they deem appropriate for their individual campuses. They say higher education institutions are best positioned to determine constitutionally appropriate time, place, and manner restrictions on expression, as necessary, to maintain campus security and to protect the learning environment and the rights of everyone. Other critics say state laws are unnecessary because it is the role of the U.S. Constitution, not state legislatures, to protect First Amendment rights on campus.

— *Laura Hendrickson*