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SENATE BILL DRS25053-LH-59C* (02/14)

Short Title: Restore/Preserve Campus Free Speech. (Public)

Sponsors: Senators Bishop and Curtis (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO RESTORE AND PRESERVE FREE SPEECH ON THE CAMPUSES OF THE
3 CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

4 Whereas, the Constitution of North Carolina recognizes in Article I, Section 14, that
5 "Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall
6 never be restrained, but every person shall be held responsible for their abuse"; and

7 Whereas, the constituent institutions of The University of North Carolina have
8 historically embraced a commitment to freedom of expression in policy; and

9 Whereas, it is appropriate for The University of North Carolina System to restate
10 and confirm their commitment to free expression; and

11 Whereas, in 1974, the Committee on Free Expression at Yale issued a statement
12 known as the Woodward Report that stands as a classic defense of free expression on
13 campuses; in 2015, the Committee on Freedom of Expression at the University of Chicago
14 issued a similar and widely respected report; and in 1967, the Kalven Committee Report of the
15 University of Chicago articulated the principle of institutional neutrality regarding political and
16 social issues and the essential role of such neutrality in protecting freedom of thought and
17 expression at universities. The principles affirmed by these three highly regarded reports are
18 inspiring articulations of the critical importance of free expression in higher education; and

19 Whereas, the General Assembly views freedom of expression as being of critical
20 importance and requires that each constituent institution ensure free, robust, and uninhibited
21 debate and deliberation by students of constituent institutions whether on or off campus; and

22 Whereas, the General Assembly has determined that it is a matter of statewide
23 concern that all constituent institutions of The University of North Carolina officially recognize
24 freedom of speech as a fundamental right; Now, therefore,

25 The General Assembly of North Carolina enacts:

26 **SECTION 1.** Chapter 116 of the General Statutes is amended by adding a new
27 Article to read:

28 "Article 36.

29 "Campus Free Speech.

30 "**§ 116-300. Policies required.**

31 The Board of Governors of The University of North Carolina shall develop and adopt a
32 policy on free expression that states, at least, the following:

33 (1) The primary function of each constituent institution is the discovery,
34 improvement, transmission, and dissemination of knowledge by means of
35 research, teaching, discussion, and debate. To fulfill this function, the



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1 constituent institution must strive to ensure the fullest degree of intellectual
2 freedom and free expression.

3 (2) It is not the proper role of any constituent institution to shield individuals
4 from speech protected by the First Amendment, including, without
5 limitation, ideas and opinions they find unwelcome, disagreeable, or even
6 deeply offensive.

7 (3) Students and faculty have the freedom to discuss any problem that presents
8 itself, as the First Amendment permits and within the limits of narrowly
9 tailored viewpoint- and content-neutral restrictions on time, place, and
10 manner of expression that are consistent with this Article and that are
11 necessary to achieve a significant institutional interest, provided that these
12 restrictions are clear, published, and provide ample alternative means of
13 expression. Students and faculty shall be permitted to assemble and engage
14 in spontaneous expressive activity as long as such activity is lawful and does
15 not materially and substantially disrupt the functioning of the constituent
16 institution, subject to the requirements of this section.

17 (4) Any person lawfully present on campus may protest or demonstrate there. It
18 shall be made clear that protests and demonstrations that infringe upon the
19 rights of others to engage in or listen to expressive activity shall not be
20 permitted and shall be subject to sanction. This shall not prohibit professors
21 or other instructors from maintaining order in the classroom.

22 (5) The campuses of the constituent institutions are open to any speaker whom
23 students, student groups, or members of the faculty have invited.

24 (6) The public areas of campuses of the constituent institutions are traditional
25 public forums, open on the same terms to any speaker.

26 (7) The policy shall include a range of disciplinary sanctions for anyone under
27 the jurisdiction of a constituent institution who interferes with the free
28 expression of others.

29 (8) In all disciplinary cases involving expressive conduct, students are entitled
30 to a disciplinary hearing under published procedures, including, at a
31 minimum, (i) the right to receive advance written notice of the charges, (ii)
32 the right to review the evidence in support of the charges, (iii) the right to
33 confront witnesses against them, (iv) the right to present a defense, (v) the
34 right to call witnesses, (vi) a decision by an impartial arbiter or panel, (vii)
35 the right of appeal, and (viii) the right to active assistance of counsel.

36 (9) The constituent institutions (i) shall strive to remain neutral, as an institution,
37 on the public policy controversies of the day and (ii) may not take action, as
38 an institution, on the public policy controversies of the day in such a way as
39 to require students or faculty to publicly express a given view of social
40 policy.

41 **"§ 116-301. Committee on Free Expression.**

42 (a) The Board of Governors of The University of North Carolina System shall establish
43 the Committee on Free Expression and appoint 11 individuals from among its membership to
44 the Committee. The members of the Committee on Free Expression shall elect a chair from the
45 members of the Committee. Each member of the Committee on Free Expression shall serve on
46 the Committee at the pleasure of the Board of Governors. Each member's term shall be equal to
47 the remainder of the member's respective term on the Board of Governors. In the event of a
48 vacancy on the Committee, the Board of Governors shall appoint a replacement from among its
49 membership.

1 (b) All employees of The University of North Carolina System and all State agencies
2 shall cooperate with the Committee on Free Expression by providing information requested by
3 the Committee.

4 (c) The Committee on Free Expression shall report to the public, the Board of
5 Governors, the Governor, and the General Assembly by September 1 of every year. The report
6 shall include all of the following:

7 (1) A description of any barriers to or disruptions of free expression within the
8 constituent institutions.

9 (2) A description of the administrative handling and discipline relating to these
10 disruptions or barriers.

11 (3) A description of substantial difficulties, controversies, or successes in
12 maintaining a posture of administrative and institutional neutrality with
13 regard to political or social issues.

14 (4) Any assessments, criticisms, commendations, or recommendations the
15 Committee sees fit to include.

16 **"§ 116-302. Freshman orientation.**

17 All constituent institutions of The University of North Carolina shall include in freshman
18 orientation programs a section describing the policies regarding free expression consistent with
19 this Article.

20 **"§ 116-303. Guidelines and additional policies authorized.**

21 The Board of Governors, and the constituent institutions of The University of North
22 Carolina subject to approval of the Board of Governors, may adopt additional policies and
23 guidelines to further the purposes of the policies adopted pursuant to this Article. Nothing in
24 this Article shall be construed to prevent institutions from regulating student speech or activity
25 that is prohibited by law. Except as further limited by this Article, constituent institutions shall
26 be allowed to restrict student expression only for expressive activity not protected by the First
27 Amendment, including all of the following:

28 (1) Violations of State or federal law.

29 (2) Expression that a court has deemed unprotected defamation.

30 (3) Harassment.

31 a. "Peer-on-peer harassment," which is defined as conduct directed by a
32 student toward another individual student that is so severe, pervasive,
33 and objectively offensive that it effectively deprives the victim of
34 access to the educational opportunities or benefits provided by the
35 university.

36 b. "Quid pro quo sexual harassment," which is defined as explicitly or
37 implicitly conditioning a student's participation in an education
38 program or activity or basing an educational decision on the student's
39 submission to unwelcome sexual advances, requests for sexual
40 favors, or other verbal, nonverbal, or physical conduct of a sexual
41 nature.

42 (4) True threats, which are defined as statements meant by the speaker to
43 communicate a serious expression of intent to commit an act of unlawful
44 violence to a particular individual or group of individuals.

45 (5) An unjustifiable invasion of privacy or confidentiality not involving a matter
46 of public concern.

47 (6) An action that unlawfully disrupts the function of the university.

48 (7) Narrowly tailored time, place, and manner restrictions on expressive
49 activities consistent with G.S. 116-300(3).

50 **"§ 116-304. Actions to enforce the provisions of this Article.**

1 (a) A constituent institution may restrict expressive conduct in the public areas of
2 campus only if it demonstrates that the restriction satisfies all of the following criteria:

3 (1) Is necessary to achieve a compelling governmental interest.

4 (2) Is the least restrictive means of furthering that compelling governmental
5 interest.

6 (3) Leaves open ample other opportunities to engage in the expressive conduct.

7 (4) Provides for spontaneous assembly and distribution of literature.

8 (b) The Attorney General or any person whose expressive rights are violated under this
9 section may bring an action in a court of competent jurisdiction against the constituent
10 institution to enjoin any violation of this section and to recover reasonable court costs and
11 reasonable attorneys' fees.

12 (c) In an action brought under subsection (b) of this section, if the court finds that a
13 violation of this section occurred, the court shall award the aggrieved person injunctive relief
14 for the violation and shall award reasonable court costs and reasonable attorneys' fees. The
15 court shall also award damages of one thousand dollars (\$1,000) or actual damages, whichever
16 is higher.

17 (d) A person shall bring an action for a violation of this section within one year after the
18 date the cause of action accrues. For the purpose of calculating the one-year limitation period,
19 each day that the violation persists or each day that a policy in violation of this section remains
20 in effect constitutes a new violation of this section and shall be considered a day that the cause
21 of action has accrued.

22 (e) Nothing in this section shall be construed to make any chancellor, other official, or
23 other employee of a constituent institution personally liable for acts taken pursuant to their
24 official duties."

25 **SECTION 2.** The Board of Governors shall develop a policy that requires the
26 diversity office or department of each constituent institution, if such office or department
27 exists, to include among the duties of the diversity office or department compliance with this
28 act. This policy shall include a renaming of the constituent diversity office or department to
29 include the phrase "Free Speech Compliance" and shall require that diversity and free speech
30 compliance officers receive training on ensuring compliance with this act. Such training shall
31 be developed and provided by the University of North Carolina School of Government.

32 **SECTION 3.** This act becomes effective June 30, 2017. The initial annual report of
33 the Committee on Free Expression is due by September 1, 2018.