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HOUSE BILL 2223

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State of Washington                      65th Legislature                      2017 2nd Special Session

By Representative J. Walsh

1            AN ACT Relating to protecting the freedom of speech in  
2 institutions of higher education; and adding a new chapter to Title  
3 28B RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.**    (1) The legislature finds and declares  
6 that public institutions of higher education are not exempt from the  
7 First Amendment to the United States Constitution or Article I,  
8 section 5, of the Washington state Constitution, which guarantees  
9 freedom of speech and expression. It is the intent of the legislature  
10 that Washington's public institutions of higher education embrace a  
11 commitment to the freedom of speech and expression for all students  
12 and all faculty.

13            (2) The legislature further intends that its public institutions  
14 of higher education, including faculty at the institutions, may not  
15 require students or other faculty to adopt or indicate an adherence  
16 to the beliefs or orthodoxies on any particular political,  
17 philosophical, religious, social, or other such subject. However,  
18 institutions of higher education may require students and faculty to  
19 conform their conduct to the requirements of law and policy.

20            (3) It is further the intent of the legislature that public  
21 institutions of higher education not stifle freedom of speech and

1 expression by implementing vague or overbroad speech codes,  
2 establishing free speech zones, imposing unconstitutional prior  
3 restraints on speech, or disinviting speakers based on the  
4 anticipated reaction or opposition of others to the content of  
5 speech.

6 NEW SECTION. **Sec. 2.** The definitions in this section apply  
7 throughout this chapter unless the context clearly requires  
8 otherwise.

9 (1) "Constitutional time, place, and manner restrictions" means  
10 restrictions on the time, place, and manner of free speech that do  
11 not violate the federal or state constitutions, are reasonable,  
12 content-neutral, and viewpoint-neutral, are narrowly tailored to  
13 satisfy a significant institutional interest, and leave open ample  
14 alternative channels for the communication of the information or  
15 message to its intended audience.

16 (2) "Faculty" or "faculty member" means any person, whether or  
17 not the person is compensated by a public institution of higher  
18 education, and regardless of political affiliation, who is tasked  
19 with providing scholarship, academic research, or teaching. "Faculty"  
20 includes tenured and nontenured professors, adjunct professors,  
21 visiting professors, lecturers, graduate student instructors, and  
22 those in comparable positions, however titled. "Faculty" does not  
23 include persons whose primary responsibilities are administrative or  
24 managerial.

25 (3) "Free speech" means speech, expression, or assemblies, verbal  
26 or written, protected by the federal or state constitutions,  
27 including, but not limited to, all forms of peaceful assembly,  
28 protests, demonstrations, rallies, vigils, marches, public speaking,  
29 distribution of printed materials, carrying signs, displays, or  
30 circulating petitions. "Free speech" does not include the promotion,  
31 sale, or distribution of any product or service.

32 (4) "Institution of higher education" or "institution" has the  
33 definition in RCW 28B.10.016.

34 (5) "Student" means:

35 (a) An individual currently enrolled in a course of study at an  
36 institution of higher education; and

37 (b) An organization that comprises entirely individuals currently  
38 enrolled in a course of study at an institution of higher education

1 and the organization is registered as a student organization with the  
2 institution pursuant to institutional rules.

3 NEW SECTION. **Sec. 3.** (1) The governing boards of every  
4 institution of higher education shall each adopt a policy that  
5 affirms the following principles of free speech, which are the public  
6 policy of this state:

7 (a) Students have a fundamental constitutional right to free  
8 speech;

9 (b) An institution of higher education must be committed to  
10 giving students the broadest possible latitude to speak, write,  
11 listen, challenge, learn, and discuss any issue, subject to section 6  
12 of this act;

13 (c) An institution of higher education must be committed to  
14 maintaining its campus as a marketplace of ideas for all students and  
15 all faculty in which the free exchange of ideas is not suppressed  
16 because some or most members of the institution's community think  
17 those ideas are offensive, unwise, immoral, indecent, disagreeable,  
18 conservative, liberal, traditional, radical, or emotionally  
19 disturbing;

20 (d) Students and faculty members must be allowed to make  
21 judgments about ideas for themselves and to act on those judgments by  
22 openly and vigorously debating the ideas they either agree to and/or  
23 oppose, rather than by seeking to suppress free speech;

24 (e) It is not the proper role of an institution of higher  
25 education to attempt to shield individuals from free speech,  
26 including ideas and opinions they find offensive, unwise, immoral,  
27 indecent, disagreeable, conservative, liberal, traditional, radical,  
28 or emotionally disturbing;

29 (f) Although an institution of higher education should greatly  
30 value civility and mutual respect, concerns about civility and mutual  
31 respect must not be used by an institution of higher education as a  
32 justification for closing off the discussion of ideas, however  
33 offensive, unwise, immoral, indecent, disagreeable, conservative,  
34 liberal, traditional, radical, or emotionally disturbing those ideas  
35 may be to some students or faculty;

36 (g) All students and all faculty must be free to state their own  
37 views about and contest the views expressed on campus and to state  
38 their own views about and contest speakers who are invited to express  
39 their views on campus. Students and faculty may not substantially

1 obstruct or otherwise substantially interfere with the freedom of  
2 others to express views they reject or even loathe. Therefore, an  
3 institution of higher education has a responsibility to promote a  
4 lively and fearless freedom of debate and deliberation and protect  
5 that freedom;

6 (h) An institution of higher education must be committed to  
7 providing an atmosphere that is most conducive to speculation,  
8 experimentation, and creation by all students and all faculty, who  
9 shall always remain free to inquire, to study, and to evaluate, and  
10 to gain new understanding;

11 (i) The primary responsibility of faculty is to engage an honest,  
12 courageous, and persistent effort to search out and communicate the  
13 truth that lies in the areas of their competencies;

14 (j) Although faculty are free in the classroom to discuss  
15 subjects within areas of their competencies, faculty shall be  
16 cautious in expressing personal views in the classroom and shall be  
17 careful not to introduce controversial matters that have no  
18 relationship to the subject taught, especially regarding matters they  
19 have no special competence or training in and in which, therefore,  
20 faculty's views cannot claim the authority accorded other statements  
21 they make that are within their areas of competence. However, no  
22 faculty should face adverse employment action for classroom speech,  
23 unless it is not reasonably germane to the subject matter of the  
24 class as broadly construed and comprises a substantial portion of  
25 classroom instruction;

26 (k) An institution of higher education must maintain the  
27 generally accessible, open, outdoor areas of its campus as  
28 traditional public forums for free speech by students;

29 (l) An institution of higher education must not restrict  
30 students' free speech only to particular areas of the campus,  
31 sometimes known as "free speech zones";

32 (m) An institution of higher education must not deny student  
33 activity fee funding to a student organization based on the  
34 viewpoints that the student organization advocates;

35 (n) An institution of higher education must not establish  
36 permitting requirements that prohibit spontaneous outdoor assemblies  
37 or outdoor distribution of literature. However, an institution of  
38 higher education may maintain a policy that grants members of the  
39 institution's community the right to reserve certain outdoor spaces  
40 in advance;

1 (o) An institution of higher education must not charge students  
2 security fees based on the content of their speech, the content of  
3 the speech of guest speakers invited by students, or the anticipated  
4 reaction or opposition to speech;

5 (p) An institution of higher education must allow all students  
6 and all faculty to invite guest speakers to campus to engage in free  
7 speech regardless of the views of the guest speakers; and

8 (q) An institution of higher education must not disinvite a  
9 speaker invited by a student, student organization, or faculty member  
10 solely because the speaker's anticipated speech may be considered  
11 offensive, unwise, immoral, indecent, disagreeable, conservative,  
12 liberal, traditional, radical, or emotionally disturbing by students,  
13 faculty, administrators, government officials, or members of the  
14 public.

15 (2) The policy adopted pursuant to this section must be made  
16 available to students and faculty annually through one or more of the  
17 following methods:

18 (a) By publication annually in the institution of higher  
19 education's student handbook and faculty handbook, whether paper or  
20 electronic;

21 (b) By way of a prominent notice on the institution of higher  
22 education's web site other than through the electronic publication of  
23 the policy in the student handbook and faculty handbook;

24 (c) Sent annually to students and employees to their  
25 institutionally provided email address; or

26 (d) Addressed by the institution of higher education in  
27 orientation programs for new students and new faculty.

28 (3) Nothing in this section may be construed to grant students  
29 the right to disrupt previously scheduled or reserved activities  
30 occurring in a traditional public forum.

31 NEW SECTION. **Sec. 4.** (1) With respect to disciplining students  
32 for their speech, expression, or assemblies, each institution of  
33 higher education must adopt a policy on "student-on-student  
34 harassment" defining the term consistent with and no more expansively  
35 than the language contained in subsection (2) of this section.

36 (2) As used in this section, "student-on-student harassment"  
37 means unwelcome conduct directed toward a person that is  
38 discriminatory on a basis prohibited by federal, state, or local law,  
39 and that is so severe, pervasive, and objectively offensive that it

1 effectively bars the victim's access to an educational opportunity or  
2 benefit.

3 NEW SECTION. **Sec. 5.** Nothing in this chapter requires an  
4 institution of higher education to fund costs associated with student  
5 speech or expression. An institution of higher education shall not  
6 impose costs on students or student organizations on the basis of the  
7 anticipated reaction or opposition to a person's speech by listeners.

8 NEW SECTION. **Sec. 6.** Nothing in this chapter prohibits an  
9 institution of higher education from imposing measures that do not  
10 violate the federal and state constitutions, such as:

- 11 (1) Constitutional time, place, and manner restrictions;
- 12 (2) Reasonable and viewpoint-neutral restrictions in nonpublic  
13 forums;
- 14 (3) Restricting the use of the institution of higher education's  
15 property to protect the free speech rights of students and faculty  
16 and preserve the use of the property for the advancement of the  
17 institution's mission;
- 18 (4) Prohibiting or limiting speech, expression, or assemblies  
19 that are not protected by the federal or state constitution; and
- 20 (5) Content restrictions on speech that are reasonably related to  
21 a legitimate pedagogical purpose, such as classroom rules enacted by  
22 faculty.

23 NEW SECTION. **Sec. 7.** The governing body of each institution of  
24 higher education may adopt rules to effectuate the purposes of this  
25 chapter.

26 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act  
27 constitute a new chapter in Title 28B RCW.

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