

116TH CONGRESS  
2D SESSION

# S. 4483

To amend the Higher Education Act of 1965 to ensure that public institutions of higher education eschew policies that improperly constrain the expressive rights of students, and to ensure that private institutions of higher education are transparent about, and responsible for, their chosen speech policies.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 6, 2020

Mr. COTTON (for himself, Mr. McCONNELL, Mrs. LOEFFLER, and Mr. CRAMER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Higher Education Act of 1965 to ensure that public institutions of higher education eschew policies that improperly constrain the expressive rights of students, and to ensure that private institutions of higher education are transparent about, and responsible for, their chosen speech policies.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Campus Free Speech  
5 Restoration Act”.

1 **SEC. 2. PROTECTION OF STUDENT SPEECH AND ASSOCIA-**  
2 **TION RIGHTS.**

3 Section 112(a) of the Higher Education Act of 1965  
4 (20 U.S.C. 1011a(a)) is amended—

5 (1) by redesignating paragraph (2) as para-  
6 graph (4); and

7 (2) by inserting after paragraph (1) the fol-  
8 lowing:

9 “(2) It is the sense of Congress that—

10 “(A) every individual should be free to profess,  
11 and to maintain, the opinion of such individual in  
12 matters of religion or philosophy, and that pro-  
13 fessing or maintaining such opinion should in no  
14 way diminish, enlarge, or affect the civil liberties or  
15 rights of such individual on the campus of an insti-  
16 tution of higher education; and

17 “(B) no public institution of higher education  
18 directly or indirectly receiving financial assistance  
19 under this Act should limit religious expression, free  
20 expression, or any other rights provided under the  
21 First Amendment to the Constitution of the United  
22 States.

23 “(3) It is the sense of Congress that—

24 “(A) free speech zones and restrictive speech  
25 codes are inherently at odds with the freedom of

1 speech guaranteed by the First Amendment to the  
2 Constitution of the United States;

3 “(B) bias reporting systems are susceptible to  
4 abuses that may put them at odds with the freedom  
5 of speech guaranteed by the First Amendment to the  
6 Constitution of the United States; and

7 “(C) no public institution of higher education  
8 directly or indirectly receiving financial assistance  
9 under this Act should restrict the speech of such in-  
10 stitution’s students through improperly restrictive  
11 zones, codes, or bias reporting systems.”.

12 **SEC. 3. CAMPUS SPEECH POLICIES AT INSTITUTIONS OF**  
13 **HIGHER EDUCATION.**

14 Title IV of the Higher Education Act of 1965 (20  
15 U.S.C. 1070 et seq.) is amended—

16 (1) in section 487(a), by adding at the end the  
17 following:

18 “(30) In the case of an institution that is a  
19 public institution, the institution will comply with  
20 the expressive activity protections described in sec-  
21 tion 493E.”; and

22 (2) in part G, by adding at the end the fol-  
23 lowing:

1 **“SEC. 493E. CAMPUS SPEECH POLICIES AT PUBLIC UNIVER-**  
2 **SITIES.**

3 “(a) DEFINITION OF EXPRESSIVE ACTIVITIES.—

4 “(1) IN GENERAL.—In this section, the term  
5 ‘expressive activity’ includes—

6 “(A) peacefully assembling, protesting,  
7 speaking, or listening;

8 “(B) distributing literature;

9 “(C) carrying a sign;

10 “(D) circulating a petition; or

11 “(E) other expressive rights guaranteed  
12 under the First Amendment to the Constitution  
13 of the United States.

14 “(2) EXCLUSIONS.—In this section, the term  
15 ‘expressive activity’ does not include unprotected  
16 speech (as defined by the precedents of the Supreme  
17 Court of the United States).

18 “(b) EXPRESSIVE ACTIVITIES AT AN INSTITUTION.—

19 “(1) IN GENERAL.—Each public institution of  
20 higher education participating in a program under  
21 this title may not prohibit, subject to paragraph (2),  
22 a person from freely engaging in noncommercial ex-  
23 pressive activity in a generally accessible outdoor  
24 area on the institution’s campus if the person’s con-  
25 duct is lawful.

1           “(2) RESTRICTIONS.—An institution of higher  
2 education described in paragraph (1) may not main-  
3 tain or enforce time, place, or manner restrictions on  
4 an expressive activity in a generally accessible out-  
5 door area of the institution’s campus unless the re-  
6 striction—

7           “(A) is necessary to achieve a compelling  
8 governmental interest;

9           “(B) is the least restrictive means of fur-  
10 thering that compelling governmental interest;

11           “(C) is based on published, content-neu-  
12 tral, and viewpoint-neutral criteria;

13           “(D) leaves open ample alternative chan-  
14 nels for communication; and

15           “(E) provides for spontaneous assembly  
16 and distribution of literature.

17           “(3) APPLICATION.—The protections provided  
18 under paragraph (1) do not apply to expressive ac-  
19 tivity in an area on an institution’s campus that is  
20 not a generally accessible outdoor area.

21           “(4) NONAPPLICATION TO SERVICE ACAD-  
22 EMIES.—This section shall not apply to an institu-  
23 tion of higher education whose primary purpose is  
24 the training of individuals for the military services  
25 of the United States, or the merchant marine.

1 “(c) CAUSES OF ACTION.—

2 “(1) AUTHORIZATION.—The following persons  
3 may bring an action in a Federal court of competent  
4 jurisdiction to enjoin a violation of subsection (b) or  
5 to recover compensatory damages, reasonable court  
6 costs, or reasonable attorney fees:

7 “(A) The Attorney General.

8 “(B) A person claiming that the person’s  
9 expressive activity rights, as described in sub-  
10 section (b)(1), were violated.

11 “(2) ACTIONS.—Notwithstanding any other  
12 provision of law, in an action brought under this sec-  
13 tion, the Federal court shall decide de novo all rel-  
14 evant questions of fact and law, including the inter-  
15 pretation of constitutional, statutory, and regulatory  
16 provisions, unless the parties stipulate otherwise. In  
17 an action brought under this subsection, if the court  
18 finds a violation of subsection (b), the court—

19 “(A) shall—

20 “(i) enjoin the violation; and

21 “(ii) if a person whose expressive ac-  
22 tivity rights were violated brought the ac-  
23 tion, award the person—

24 “(I) not less than \$500 for an  
25 initial violation; and

1                   “(II) if the person notifies the in-  
2                   stitution of the violation, \$50 for each  
3                   day the violation continues after the  
4                   notification if the institution did not  
5                   act to discontinue the cause of the  
6                   violation; and

7                   “(B) may award a prevailing plaintiff—

8                   “(i) compensatory damages;

9                   “(ii) reasonable court costs; or

10                  “(iii) reasonable attorney fees.

11                  “(d) STATUTE OF LIMITATIONS.—

12                  “(1) IN GENERAL.—Except as provided in para-  
13                  graph (3), an action under subsection (c) may not  
14                  be brought later than 1 year after the date of the  
15                  violation.

16                  “(2) CONTINUING VIOLATION.—Each day that  
17                  a violation of subsection (b) continues after an ini-  
18                  tial violation of subsection (b), and each day that an  
19                  institution’s policy in violation of subsection (b) re-  
20                  mains in effect, shall constitute a continuing viola-  
21                  tion of subsection (b).

22                  “(3) EXTENSION.—For a continuing violation  
23                  described in paragraph (2), the limitation described  
24                  in paragraph (1) shall extend to 1 year after the  
25                  date on which the most recent violation occurs.

1 “(e) FEDERAL REVIEW OF SPEECH POLICIES.—

2 “(1) NO ELIGIBILITY FOR FUNDS.—

3 “(A) IN GENERAL.—No public institution  
4 of higher education shall be eligible to receive  
5 funds under this Act, including participation in  
6 any program under this title, if the Secretary  
7 determines that the institution—

8 “(i) maintains a policy that infringes  
9 upon the expressive rights of students  
10 under the First Amendment to the Con-  
11 stitution of the United States; or

12 “(ii) maintains or enforces time,  
13 place, or manner restrictions on an expres-  
14 sive activity in a generally accessible out-  
15 door area of the institution’s campus that  
16 do not comply with subparagraphs (A)  
17 through (E) of subsection (b)(2).

18 “(B) COURT REVIEW.—Notwithstanding  
19 any other provision of law, the Secretary’s de-  
20 terminations under this subsection shall be re-  
21 viewed de novo with respect to all relevant ques-  
22 tions of fact and law, including the interpreta-  
23 tion of constitutional, statutory, and regulatory  
24 provisions, unless the parties stipulate other-  
25 wise.



1           “(2) DESIGNATION OF AN EMPLOYEE TO RE-  
2           CEIVE COMPLAINTS.—The Secretary shall designate  
3           an employee in the Office of Postsecondary Edu-  
4           cation of the Department to receive complaints from  
5           students or student organizations at a given public  
6           institution of higher education, or from any other  
7           person or organization, regarding policies at the in-  
8           stitution—

9                   “(A) that infringe upon the expressive  
10                  rights of students under the First Amendment  
11                  to the Constitution of the United States; or

12                   “(B) that maintain or enforce time, place,  
13                  or manner restrictions on an expressive activity  
14                  in a generally accessible outdoor area of the in-  
15                  stitution’s campus that do not comply with sub-  
16                  paragraphs (A) through (E) of subsection  
17                  (b)(2).

18           “(3) COMPLAINT.—A complaint submitted  
19           under subparagraph (2)—

20                   “(A) shall include the provision of the in-  
21                  stitution’s policy the complainant believes either  
22                  infringes upon the expressive rights of students  
23                  under the First Amendment to the Constitution  
24                  of the United States or maintains or enforces  
25                  time, place, or manner restrictions on an ex-

1           pressive activity in a generally accessible out-  
2           door area of the institution’s campus that does  
3           not comply with subparagraphs (A) through (E)  
4           of subsection (b)(2), along with any evidence re-  
5           garding the operation and enforcement of such  
6           policy the complainant deems relevant; and

7           “(B) may include an argument as to why  
8           the policy in question either infringes upon the  
9           expressive rights of students under the First  
10          Amendment to the Constitution of the United  
11          States or maintains or enforces time, place, or  
12          manner restrictions on an expressive activity in  
13          a generally accessible outdoor area of the insti-  
14          tution’s campus that does not comply with sub-  
15          paragraphs (A) through (E) of subsection  
16          (b)(2).

17          “(4) SYSTEM OF REVIEW.—

18                  “(A) FIRST STAGE REVIEW.—

19                          “(i) REQUEST FOR RESPONSE.—Not  
20                          later than 7 days after the date of receipt  
21                          of a complaint under paragraph (2), the  
22                          Secretary shall review the complaint and  
23                          request a response to the complaint from  
24                          the institution.

1           “(ii) INSTITUTION RESPONSE.—Not  
2 later than 30 days after the date the Sec-  
3 retary requests a response under clause (i),  
4 the institution shall—

5           “(I) certify to the Secretary that  
6 the institution has entirely withdrawn  
7 the policy that occasioned the com-  
8 plaint;

9           “(II) submit a revised policy for  
10 review by the Secretary; or

11           “(III) submit a defense of the  
12 policy that occasioned the complaint.

13           “(iii) AVAILABILITY TO COMPLAIN-  
14 ANT.—

15           “(I) IN GENERAL.—Not later  
16 than 7 days after the date of receipt  
17 of a revised policy or defense of the  
18 original policy as submitted by the in-  
19 stitution pursuant to clause (ii), the  
20 Secretary shall make available to the  
21 complainant a copy of such revised  
22 policy or defense.

23           “(II) RESPONSE BY COMPLAIN-  
24 ANT.—Not later than 60 days after  
25 the date of receipt of a revised policy

1 or defense of the original policy under  
2 subclause (I), the complainant may  
3 submit to the Secretary a response to  
4 the revised policy or defense of the  
5 original policy.

6 “(III) SUBMISSION TO THE IN-  
7 STITUTION OF RESPONSE.—Not later  
8 than 7 days after the date of receipt  
9 of a response under subclause (II),  
10 the Secretary shall submit to the in-  
11 stitution a copy of such response.

12 “(iv) DETERMINATIONS.—If the insti-  
13 tution declines to entirely withdraw the  
14 policy that occasioned the complaint and  
15 either submits a revised policy for review  
16 or submits a defense of the policy that oc-  
17 casioned the complaint, the Secretary shall,  
18 not later than 60 days after the date of the  
19 deadline for a response by the complaint as  
20 described in clause (iii)(II), make one of  
21 the following determinations:

22 “(I) Determine that the com-  
23 plaint in question has insufficient  
24 merit to proceed to Second Stage Re-  
25 view described in subparagraph (B).

1                   “(II) Determine that the com-  
2                   plaint in question has sufficient merit  
3                   to proceed to Second Stage Review  
4                   described in subparagraph (B).

5                   “(v) NOTIFICATION.—Not later than  
6                   7 days after the date the Secretary makes  
7                   a determination under clause (iv), the Sec-  
8                   retary shall notify the institution and the  
9                   complainant of such determination.

10                  “(vi) END.—The determination under  
11                  clause (iv) shall constitute the end of First  
12                  Stage Review.

13                  “(B) SECOND STAGE REVIEW.—

14                  “(i) IN GENERAL.—In a Second Stage  
15                  Review, the Secretary shall notify the insti-  
16                  tution and the complainant of the com-  
17                  mencement of the Second Stage Review,  
18                  and shall give the institution the option of  
19                  entirely withdrawing the policy that occa-  
20                  sioned the complaint or submitting a re-  
21                  vised policy for review within 30 days of  
22                  the commencement of the Second Stage  
23                  Review. In such notification submitted to  
24                  the institution and complainant, the Sec-  
25                  retary shall indicate the relevant sections

1 of the institution's policy in question and  
2 explain why these sections may be out of  
3 compliance.

4 “(ii) DETERMINATION.—Not later  
5 than 90 days from the commencement of  
6 the Second Stage Review, the Secretary  
7 shall determine whether the policy that oc-  
8 casioned the complaint, or the revised pol-  
9 icy submitted during the First Stage Re-  
10 view, or the revised policy submitted within  
11 the first 30 days of the Second Stage Re-  
12 view, is in violation of student rights under  
13 the First Amendment to the Constitution  
14 of the United States or of the restrictions  
15 on the regulation of speech by time, place,  
16 and manner set forth in this section, there-  
17 by ending Second Stage Review.

18 “(iii) INVESTIGATION.—During Sec-  
19 ond Stage Review, the Secretary may con-  
20 duct an investigation in which further in-  
21 formation may be sought or requested  
22 from the complainant, the institution, or  
23 any other source the Secretary determines  
24 pertinent.

1                   “(iv) CERTIFICATION OF WITH-  
2                   DRAWAL.—At any point during the Second  
3                   Stage Review, the institution in question  
4                   may certify to the Secretary that it has en-  
5                   tirely withdrawn the policy that occasioned  
6                   the complaint, thereby ending the Second  
7                   Stage Review.

8                   “(v) NOTIFICATION AND JUSTIFICA-  
9                   TION.—If the Secretary determines by the  
10                  conclusion of Second Stage Review that  
11                  the policy that occasioned the complaint or  
12                  the revised policy submitted for review dur-  
13                  ing First Stage Review or Second Stage  
14                  Review is consistent with the expressive  
15                  rights of students under the First Amend-  
16                  ment to the Constitution of the United  
17                  States and the restrictions on the regula-  
18                  tion of speech by time, place, and manner  
19                  set forth in this Act—

20                         “(I) the Secretary shall notify the  
21                         complainant and the institution of  
22                         such determination not more than 7  
23                         days after the date of the determina-  
24                         tion; and

1                   “(II) the Secretary shall explain  
2                   and justify such determination in a  
3                   written decision citing relevant legal  
4                   precedent, copies of which shall be  
5                   sent to the complainant, the institu-  
6                   tion, and made available for public in-  
7                   spection, including for online reading  
8                   by the public.

9                   “(C) DETERMINATION THAT INSTITUTION  
10                   IS OUT OF COMPLIANCE.—

11                   “(i) IN GENERAL.—If, upon comple-  
12                   tion of the Second Stage Review, the Sec-  
13                   retary determines that the policy that occa-  
14                   sioned the complaint, or the revised policy  
15                   submitted for review during the First  
16                   Stage Review or Second Stage Review, vio-  
17                   lates the First Amendment to the Con-  
18                   stitution of the United States or the re-  
19                   strictions on the regulation of speech set  
20                   forth in this section, the Secretary shall  
21                   notify the complainant and the institution  
22                   not more than 7 days after the date of  
23                   completion of Second Stage Review that  
24                   the institution is out of compliance with  
25                   the requirements for receiving funds under



1 this Act, including participation in any  
2 program under this title, but will be grant-  
3 ed a grace period of 120 days to return to  
4 compliance before being formally stripped  
5 of eligibility.

6 “(ii) POSTING; EXPLANATION; FINAL  
7 REVIEW.—As part of the notification under  
8 clause (i), the Secretary shall—

9 “(I) require the institution to  
10 post the determination of the Sec-  
11 retary on the website of the institu-  
12 tion within 2 clicks of the homepage,  
13 without a paywall, email login, or  
14 other restriction to access;

15 “(II) explain and justify the de-  
16 termination of the Secretary in a writ-  
17 ten decision citing relevant legal  
18 precedent, copies of which shall be  
19 sent to the complainant, the institu-  
20 tion, and made available for public in-  
21 spection, including for online reading  
22 by the public; and

23 “(III) inform the institution that  
24 Final Review has begun and that the  
25 institution must either certify to the

1 Secretary that it has entirely with-  
2 drawn the policy that occasioned the  
3 complaint, or submit a revised policy  
4 for review to the Secretary not later  
5 than 60 days after the date of receipt  
6 of notice of the conclusion of Second  
7 Stage Review.

8 “(D) FINAL REVIEW.—

9 “(i) IN GENERAL.—If an institution  
10 submits a revised policy for review as de-  
11 scribed in subparagraph (C)(ii)(III), the  
12 Secretary shall review such revised policy  
13 and determine not later than 120 days  
14 after the date of commencement of Final  
15 Review whether the revised policy is con-  
16 sistent with the expressive rights of stu-  
17 dents under the First Amendment to the  
18 Constitution of the United States and with  
19 the restrictions on the regulation of speech  
20 by time, place, and manner set forth in  
21 this Act.

22 “(ii) DETERMINATION OF COMPLI-  
23 ANCE.—If the Secretary determines, as de-  
24 scribed in clause (i), that the revised policy  
25 is consistent with the expressive rights of

1 students under the First Amendment to  
2 the Constitution of the United States and  
3 with the restrictions on the regulation of  
4 speech by time, place, and manner set  
5 forth in this Act, the Secretary shall notify  
6 the complainant and the institution of such  
7 determination not more than 7 days after  
8 the date the determination is made, there-  
9 by ending the final Stage Review.

10 “(iii) DETERMINATION OF VIOLA-  
11 TION.—If the Secretary determines, as de-  
12 scribed in clause (i), that the revised policy  
13 violates the expressive rights of students  
14 under the First Amendment to the Con-  
15 stitution of the United States or the re-  
16 strictions on the regulation of speech by  
17 time, place, and manner set forth in this  
18 Act, the Secretary shall—

19 “(I) notify the complainant and  
20 the institution of such determination  
21 not more than 7 days after the date  
22 the determination is made, thereby  
23 ending the final Stage Review; and

24 “(II) explain and justify the de-  
25 termination in a written decision cit-

1           ing relevant legal precedent, copies of  
2           which shall be sent to the complain-  
3           ant, the institution, and made avail-  
4           able for public inspection, including  
5           for online reading by the public.

6           “(E) LOSS OF ELIGIBILITY.—

7           “(i) IN GENERAL.—If the Secretary  
8           determines, during the Final Stage Review,  
9           that the institution’s policy in question vio-  
10          lates the expressive rights of students  
11          under the First Amendment to the Con-  
12          stitution of the United States or the re-  
13          strictions on the regulation of speech by  
14          time, place, and manner set forth in this  
15          Act, the Secretary shall—

16               “(I) notify the complainant and  
17               the institution not more than 7 days  
18               after the date of the determination  
19               that the institution will lose eligibility  
20               to receive funds under this Act, in-  
21               cluding participation in any program  
22               under this title, in accordance with  
23               this subparagraph;

24               “(II) notify the institution that  
25               the loss of eligibility shall go into ef-

1                   fect beginning with any student noti-  
2                   fied of acceptance for admission to the  
3                   institution during the academic year  
4                   subsequent to the academic year dur-  
5                   ing which the determination is made,  
6                   and that no restoration of eligibility  
7                   for ineligible students in subsequent  
8                   academic years will occur prior to the  
9                   beginning of the third academic year  
10                  subsequent to the academic year dur-  
11                  ing which the determination is made;

12                   “(III) explain and justify the de-  
13                  termination in a written decision cit-  
14                  ing relevant legal precedent, copies of  
15                  which shall be sent to the complain-  
16                  ant, the institution, and made avail-  
17                  able for public inspection, including  
18                  for online reading by the public; and

19                   “(IV) require the institution to  
20                  post the determination of the Sec-  
21                  retary on the website of the institu-  
22                  tion, within two clicks of the home-  
23                  page, without a paywall, email login,  
24                  or other restriction to access.

1           “(ii) CONTINUED ELIGIBILITY.—Each  
2 student enrolled at the institution during  
3 the academic year in which eligibility is  
4 lost as described in this subparagraph, and  
5 each student notified of acceptance for ad-  
6 mission to the institution during the aca-  
7 demic year in which eligibility is lost as de-  
8 scribed in this subparagraph, shall con-  
9 tinue to be eligible to participate, through  
10 the institution, in programs funded under  
11 this Act during the 5-year period after the  
12 date of the loss of eligibility.

13           “(F) RESTORATION OF ELIGIBILITY.—

14           “(i) IN GENERAL.—Not later than 7  
15 days after the loss of eligibility under sub-  
16 paragraph (E), the Secretary shall inform  
17 the institution that it may restore eligi-  
18 bility, either by certifying to the Secretary  
19 that it has entirely withdrawn the policy  
20 that precipitated loss of eligibility, or by  
21 submitting a revised policy for review at  
22 any time following the failure of the Final  
23 Review.

24           “(ii) REVIEW OF REVISED POLICY.—  
25 The Secretary shall review a revised policy

1 submitted for review after the loss of eligi-  
2 bility and determine not later than 120  
3 days after the date the revised policy is  
4 submitted whether it is consistent with the  
5 expressive rights of students under the  
6 First Amendment to the Constitution of  
7 the United States and with the restrictions  
8 on the regulation of speech by time, place,  
9 and manner set forth in this Act.

10 “(iii) INVESTIGATION.—While con-  
11 ducting a review to restore eligibility under  
12 this subparagraph, the Secretary may con-  
13 duct an investigation in which further in-  
14 formation may be sought or requested  
15 from the institution, or any other source  
16 the Secretary determines pertinent.

17 “(iv) WRITTEN DECISION.—In making  
18 a determination of whether a revised policy  
19 submitted for review after the loss of eligi-  
20 bility is either consistent or inconsistent  
21 with the expressive rights of students  
22 under the First Amendment to the Con-  
23 stitution of the United States and with the  
24 restrictions on the regulation of speech by  
25 time, place, and manner set forth in this

1 Act, the Secretary shall explain and justify  
2 the determination in a written decision cit-  
3 ing relevant legal precedent, copies of  
4 which shall be sent to the complainant, the  
5 institution, and made available for public  
6 inspection, including for online reading by  
7 the public.

8 “(v) LIMIT ON REVIEW.—The Sec-  
9 retary may conduct not more than 1 review  
10 to restore eligibility for a single institution  
11 in any given academic year.

12 “(vi) RESTORATION.—If an institu-  
13 tion certifies to the Secretary that the pol-  
14 icy that precipitated the loss of eligibility  
15 has been entirely withdrawn, or if Sec-  
16 retary determines that the revised policy  
17 submitted for review is consistent with the  
18 expressive rights of students under the  
19 First Amendment to the Constitution of  
20 the United States and with the restrictions  
21 on the regulation of speech by time, place,  
22 and manner set forth in this Act, the insti-  
23 tution’s eligibility to receive funds under  
24 this Act, including participation in any  
25 program under this title, shall be restored



1 not earlier than the beginning of the third  
2 academic year following the year in which  
3 notification of loss of eligibility was re-  
4 ceived.

5 “(G) GOOD FAITH REPRESENTATION.—

6 “(i) IN GENERAL.—The Secretary  
7 shall inform any institution undergoing re-  
8 view of its campus speech policies that it  
9 expects the institution to represent its poli-  
10 cies, along with any proposed revisions in  
11 such policies, in good faith.

12 “(ii) MISREPRESENTATION.—

13 “(I) COMPLAINTS.—A student,  
14 student organization, or any other  
15 person or organization may file, with  
16 the employee in the Office of Postsec-  
17 ondary Education of the Department  
18 designated by the Secretary under  
19 paragraph (2) to receive complaints, a  
20 complaint that an institution has sub-  
21 stantially misrepresented its speech  
22 policies, or withheld information re-  
23 quested by the Secretary during an  
24 investigation, or attempted to cir-  
25 cumvent the review process by reinsti-

1                   tuting a policy under review in a sub-  
2                   stantially similar form without inform-  
3                   ing the Secretary.

4                   “(II) LOSS OF ELIGIBILITY.—If  
5                   the Secretary determines upon inves-  
6                   tigation, or after receiving a complaint  
7                   under subclause (I), that an institu-  
8                   tion has substantially misrepresented  
9                   its speech policies, or withheld infor-  
10                  mation requested by the Secretary  
11                  during an investigation, or attempted  
12                  to circumvent the review process by  
13                  reinstating a policy under review in  
14                  a substantially similar form without  
15                  informing the Secretary, the institu-  
16                  tion shall lose eligibility to receive  
17                  funds under this Act, including par-  
18                  ticipation in any program under this  
19                  title.

20                  “(iii) LOSS OF ELIGIBILITY.—If an in-  
21                  stitution loses eligibility under clause (ii),  
22                  the Secretary shall notify the institution,  
23                  not later than 7 days after the determina-  
24                  tion, that the loss of eligibility shall go into  
25                  effect beginning with any student notified

1 of acceptance for admission to the institu-  
 2 tion during the academic year subsequent  
 3 to the academic year during which the de-  
 4 termination is made, and that no restora-  
 5 tion of eligibility for students admitted in  
 6 subsequent academic years will occur prior  
 7 to the beginning of the third academic year  
 8 subsequent to the academic year during  
 9 which the determination is made.

10 “(f) RETALIATION PROHIBITED.—

11 “(1) IN GENERAL.—No person may intimidate,  
 12 threaten, coerce, or discriminate against any indi-  
 13 vidual because the individual has made a report or  
 14 complaint, testified, assisted, or participated or re-  
 15 fused to participate in any manner in an investiga-  
 16 tion, proceeding, or hearing under this section.

17 “(2) SPECIFIC CIRCUMSTANCES.—

18 “(A) EXERCISE OF FIRST AMENDMENT  
 19 RIGHTS.—The exercise of rights protected  
 20 under the First Amendment to the Constitution  
 21 of the United States does not constitute retalia-  
 22 tion prohibited under paragraph (1).

23 “(B) CODE OF CONDUCT VIOLATION FOR  
 24 MATERIALLY FALSE STATEMENT.—Charging an  
 25 individual with a code of conduct violation for

1 making a materially false statement in bad  
 2 faith in the course of a grievance proceeding  
 3 under this section does not constitute retalia-  
 4 tion prohibited under paragraph (1). A deter-  
 5 mination regarding responsibility, alone, is not  
 6 sufficient to conclude that any party made a  
 7 materially false statement in bad faith.

8 **“SEC. 493F. CAMPUS SPEECH POLICIES AT PRIVATE UNI-**  
 9 **VERSITIES.**

10 “(a) IN GENERAL.—Each private institution of high-  
 11 er education eligible to receive funds under this Act, in-  
 12 cluding any program under this title, shall—

13 “(1) post in one place on the website of the in-  
 14 stitution all policies that pertain to the protection  
 15 and regulation of the expressive rights of students,  
 16 including the right to submit a complaint under this  
 17 section, within 2 clicks of the homepage, without a  
 18 paywall, email login, or other restriction to access;

19 “(2) include a copy of such policies in a hand-  
 20 book distributed to new students; and

21 “(3) send a copy of—

22 “(A) such policies to the employee of the  
 23 Department designated by the Secretary to re-  
 24 ceive such policies; and

1           “(B) any updates to such policies to such  
2           employee not later than 60 days after the date  
3           of a change to such policies.

4           “(b) RESPONSIBILITY FOR FULL POLICY DISCLO-  
5 SURE.—Each private institution of higher education de-  
6 scribed in subsection (a) shall include with the copy of the  
7 policies described in subsection (a)—

8           “(1) a statement affirming that all policies per-  
9           tinent to the protection and regulation of the expres-  
10          sive rights of students have been disclosed in the  
11          manner required by this section, along with an ac-  
12          ceptance of contractual obligation to publicly disclose  
13          all such policies; and

14          “(2) a statement affirming that publication of  
15          such policies as required by this section establishes  
16          a contractual obligation on the part of the institu-  
17          tion to its students to maintain and enforce the dis-  
18          closed policies, and only those policies, in matters  
19          pertaining to the protection and regulation of the ex-  
20          pressive rights of students.

21          “(c) CAUSE OF ACTION.—

22          “(1) AUTHORIZATION.—A student claiming  
23          that a private institution of higher education in  
24          which the student is enrolled has violated any re-  
25          quirement or contractual obligation imposed by this

1 section may bring an action in a Federal court of  
2 competent jurisdiction to enjoin such violation or to  
3 recover compensatory damages, reasonable court  
4 costs, or reasonable attorney fees.

5 “(2) ACTIONS.—Notwithstanding any other  
6 provision of law, in an action brought under this  
7 subsection, the Federal court shall decide de novo all  
8 relevant questions of fact and law, including the in-  
9 terpretation of constitutional, statutory, and regu-  
10 latory provisions, unless the parties stipulate other-  
11 wise. In an action brought under this subsection, if  
12 the court finds a violation of subsection (b), the  
13 court—

14 “(A) shall—

15 “(i) enjoin the violation; and

16 “(ii) award the student—

17 “(I) not less than \$500 for an  
18 initial violation; and

19 “(II) if the student notifies the  
20 institution of the violation, \$50 for  
21 each day the violation continues after  
22 the notification if the institution did  
23 not act to discontinue the cause of the  
24 violation; and

25 “(B) may award a prevailing plaintiff—

1 “(i) compensatory damages;

2 “(ii) reasonable court costs; or

3 “(iii) reasonable attorney fees.

4 “(d) SECRETARIAL REQUIREMENTS.—

5 “(1) DESIGNATION OF AN EMPLOYEE.—The  
6 Secretary shall designate an employee in the Office  
7 of Postsecondary Education in the Department who  
8 shall—

9 “(A) receive and compile updated copies of  
10 all policies pertaining to the protection and reg-  
11 ulation of the expressive rights of students at  
12 private institutions of higher education that re-  
13 ceive funds under this section, including any  
14 programs under this title;

15 “(B) preserve all records of such policies  
16 for a period of not less than 10 years and make  
17 such policies, and the dates they were disclosed,  
18 modified, or withdrawn, available for public in-  
19 spection, including for online reading by the  
20 public;

21 “(C) receive complaints from students, stu-  
22 dent organizations, or from any other person or  
23 organization, that believes a private institution  
24 of higher education has not disclosed a policy  
25 pertaining to the protection and regulation of

1 the expressive rights of students as required by  
2 this section, is enforcing a policy pertaining to  
3 the expressive rights of students that has not  
4 been disclosed as required by this section, or  
5 has failed to make and publish a statement af-  
6 firming contractual responsibility for full policy  
7 disclosure, or affirming contractual responsi-  
8 bility for the enforcement of speech policies, as  
9 required by this section;

10 “(D) not more than 7 days after the date  
11 of receipt of a complaint under subparagraph  
12 (C), review the complaint and request a re-  
13 sponse from the institution;

14 “(E) undertake an investigation, in re-  
15 sponse to a complaint under subparagraph (C)  
16 or at the Secretary’s independent initiative, to  
17 determine whether a private institution of high-  
18 er education has failed to disclose a policy per-  
19 taining to the protection and regulation of the  
20 expressive rights of students as required by this  
21 section, is enforcing a policy pertaining to the  
22 expressive rights of students that has not been  
23 disclosed as required by this section, or has  
24 failed to make and publish a statement affirm-  
25 ing contractual responsibility for full policy dis-



1 closure, or affirming contractual responsibility  
2 for the enforcement of speech policies, as re-  
3 quired by this section; and

4 “(F) determine, not later than 120 days  
5 after the date of receipt of a complaint or 120  
6 days after the date of the start of an investiga-  
7 tion opened at the Secretary’s independent ini-  
8 tiative, whether the private institution of higher  
9 education in question has failed to disclose a  
10 policy pertaining to the protection and regula-  
11 tion of the expressive rights of students as re-  
12 quired by this section, is enforcing a policy per-  
13 taining to the expressive rights of students that  
14 has not been disclosed as required by this sec-  
15 tion, or has failed to make and publish a state-  
16 ment affirming contractual responsibility for  
17 full speech policy disclosure, or affirming con-  
18 tractual responsibility for the enforcement of  
19 speech policies, as required by this section.

20 “(2) LOSS OF ELIGIBILITY.—

21 “(A) IN GENERAL.—If the Secretary deter-  
22 mines that a private institution of higher edu-  
23 cation has failed to disclose a policy pertaining  
24 to the protection and regulation of the expres-  
25 sive rights of students as required by this sec-

1           tion, is enforcing a policy pertaining to the ex-  
2           pressive rights of students that has not been  
3           disclosed as required by this section, or has  
4           failed to make and publish a statement affirm-  
5           ing contractual responsibility for full speech  
6           policy disclosure, or affirming contractual re-  
7           sponsibility for the enforcement of speech poli-  
8           cies, as required by this section, the Secretary  
9           shall notify the institution and, if applicable,  
10          the complainant, not more than 7 days after  
11          the date of such determination, that the institu-  
12          tion is out of compliance with the requirements  
13          for receiving funds under this Act, including  
14          participation in any program under this title,  
15          but will be granted a grace period of 60 days  
16          to return to compliance before formally losing  
17          eligibility for receiving funds under this Act, in-  
18          cluding participation in any program under this  
19          title.

20                   “(B) SPECIFICATIONS IN NOTIFICATION.—

21          As part of the notification under subparagraph  
22          (A), the Secretary shall specify which policies  
23          need to be disclosed and which statements af-  
24          firming contractual responsibility for speech  
25          policy disclosure and contractual responsibility

1 for speech policy enforcement need to be made  
2 and published in order for eligibility to be re-  
3 stored.

4 “(C) NOTIFICATION OF LOSS OF ELIGI-  
5 BILITY.—

6 “(i) IN GENERAL.—If the Secretary  
7 determines that, 60 days after being noti-  
8 fied that it is out of compliance as de-  
9 scribed in subparagraph (A), the institu-  
10 tion has failed to return to compliance by  
11 making the appropriate speech policy dis-  
12 closures, or statement affirming contrac-  
13 tual responsibility for full speech policy  
14 disclosure, or statement affirming contrac-  
15 tual responsibility for speech policy en-  
16 forcement, the Secretary shall notify the  
17 institution and, if applicable, the complain-  
18 ant, not more than 7 days after the date  
19 of such determination—

20 “(I) that the institution will lose  
21 eligibility to receive funds under this  
22 Act, including participation in any  
23 program under this title;

24 “(II) that the loss of eligibility  
25 shall go into effect beginning with any

1 student notified of acceptance for ad-  
2 mission to the institution during the  
3 academic year subsequent to the aca-  
4 demic year during which the deter-  
5 mination is made, and that no res-  
6 toration of eligibility for ineligible stu-  
7 dents in subsequent years will occur  
8 prior to the beginning of the third  
9 academic year subsequent to the aca-  
10 demic year during which the deter-  
11 mination is made; and

12 “(III) that the institution shall  
13 post the determination of the Sec-  
14 retary on the website of the institu-  
15 tion, within two clicks of the home-  
16 page, without a paywall, email login,  
17 or other restriction to access.

18 “(ii) CONTINUED ELIGIBILITY.—Each  
19 student enrolled at the institution during  
20 the academic year in which eligibility is  
21 lost as described in this subparagraph, and  
22 each student notified of acceptance for ad-  
23 mission to the institution during the aca-  
24 demic year in which eligibility is lost as de-  
25 scribed in this subparagraph, shall con-

1           tinue to be eligible to participate, through  
2           the institution, in programs funded under  
3           this Act during the 5-year period after the  
4           date of the loss of eligibility.

5           “(3) RESTORATION OF ELIGIBILITY.—

6                   “(A) IN GENERAL.—Not later than 7 days  
7           after the loss of eligibility under paragraph (2),  
8           the Secretary shall inform the institution that it  
9           may restore eligibility by making the appro-  
10          priate speech policy disclosures, or statement  
11          affirming contractual responsibility for full  
12          speech policy disclosure, or statement affirming  
13          contractual responsibility for speech policy en-  
14          forcement, as directed by the Secretary in con-  
15          formity with this section.

16                   “(B) REVIEW.—The Secretary shall review  
17          any policy disclosures, or statement affirming  
18          contractual responsibility for full speech policy  
19          disclosure, or statement affirming contractual  
20          responsibility for speech policy enforcement,  
21          and determine whether they are sufficient to re-  
22          store eligibility for receiving funds under this  
23          Act, including participation in any program  
24          under this title, not later than 120 days after

1 the date of receipt of such disclosures or state-  
2 ment.

3 “(C) INVESTIGATION.—While conducting a  
4 review to restore eligibility under this para-  
5 graph, the Secretary may conduct an investiga-  
6 tion in which further information may be  
7 sought or requested from the institution, or any  
8 other source the Secretary determines perti-  
9 nent.

10 “(D) RESTORATION.—If the Secretary de-  
11 termines that the institution under review to re-  
12 store eligibility under this paragraph has made  
13 the policy disclosures, and issued the statement  
14 affirming contractual responsibility for full  
15 speech policy disclosure, and the statement af-  
16 firming contractual responsibility for speech  
17 policy enforcement, as required by this section,  
18 the institution’s eligibility to receive funds  
19 under this Act, including participation in any  
20 program under this title, shall be restored not  
21 earlier than the beginning of the third academic  
22 year following the year in which notification of  
23 loss of eligibility was received.

24 “(E) LIMIT ON REVIEW.—The Secretary  
25 may conduct not more than 1 review to restore

1 eligibility for a single institution in any given  
2 academic year.

3 “(e) NONAPPLICATION TO CERTAIN INSTITUTIONS.—

4 This section shall not apply to an institution of higher  
5 education that is controlled by a religious organization.”.

○