

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 684

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO THE PROTECTING CAMPUS FREE SPEECH IN HIGHER EDUCATION ACT;
2 AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 65, TI-
3 TLE 33, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE
4 FINDINGS, TO DEFINE TERMS, TO PROVIDE THAT CERTAIN ACTIVITIES ARE PRO-
5 TECTED, TO ESTABLISH PROVISIONS REGARDING EXPRESSIVE ACTIVITIES IN
6 OUTDOOR AREAS OF INSTITUTION CAMPUSES, TO ESTABLISH PROVISIONS REGARD-
7 ING FREE EXPRESSIVE ACTIVITY, TO PROVIDE FOR FREE SPEECH EDUCATION, TO
8 REQUIRE CERTAIN REPORTS, TO PROVIDE REMEDIES, TO PROVIDE A STATUTE OF
9 LIMITATIONS, TO PROVIDE THAT PUBLIC INSTITUTIONS OF HIGHER EDUCATION
10 ARE NOT IMMUNE FROM SUITS OR LIABILITY, AND TO PROVIDE SEVERABILITY; AND
11 DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
12

13 Be It Enacted by the Legislature of the State of Idaho:

14 SECTION 1. That Title 33, Idaho Code, be, and the same is hereby amended
15 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
16 ter 65, Title 33, Idaho Code, and to read as follows:

17 CHAPTER 65

18 PROTECTING CAMPUS FREE SPEECH IN HIGHER EDUCATION ACT

19 33-6501. SHORT TITLE. This chapter shall be known and may be cited as
20 the "Protecting Campus Free Speech in Higher Education Act."

21 33-6502. LEGISLATIVE FINDINGS. The legislature finds that:

22 (1) The first amendment of the United States constitution and the con-
23 stitution of the state of Idaho protect the rights of freedom of speech,
24 freedom of the press, freedom of religion, freedom of association, and free-
25 dom to petition the government for all people;

26 (2) The United States supreme court, in *Healy v. James*, described
27 public universities as "peculiarly the marketplace of ideas," where young
28 adults learn to exercise the constitutional rights necessary to participate
29 in this system of government and to tolerate others' exercise of the same
30 rights, and there is "no room for the view that ... first amendment protec-
31 tions should apply with less force on college campuses than in the community
32 at large";

33 (3) The exercise of first amendment rights on the campuses of public in-
34 stitutions of higher education in this state is a critical component of the
35 education experience for students and requires that each public institution
36 of higher education ensures free, robust, and uninhibited debate and delib-
37 erations by students whether on or off campus;

38 (4) The United States supreme court warned in *Sweezy v. New Hampshire*
39 that if public universities stifle student speech and prevent the open ex-
40 change of ideas on campus, "our civilization will stagnate and die"; and

1 (5) A significant amount of taxpayer dollars is appropriated to pub-
 2 lic institutions of higher education each year and, as such, the legislature
 3 must ensure that all public institutions of higher education receiving state
 4 funds recognize freedom of speech as a fundamental right for all.

5 33-6503. DEFINITIONS. As used in this chapter:

6 (1) "Benefit" means the recognition, registration, use of facilities
 7 of an institution of higher education for meetings or speaking purposes, use
 8 of channels of communication, and use of funding sources that are otherwise
 9 available to other student organizations at the public institution of higher
 10 education.

11 (2) "Campus community" means the students, administrators, staff, and
 12 faculty of a public institution of higher education and the invited guests
 13 of the institution and the institution's student organizations, administra-
 14 tors, faculty, and staff.

15 (3) "Harassment" means expression that is unwelcome and so severe,
 16 pervasive, and subjectively and objectively offensive that a student is
 17 effectively denied equal access to educational opportunities or benefits
 18 provided by a public institution of higher education.

19 (4) (a) "Materially and substantially disrupts" means the act of know-
 20 ingly or intentionally doing one (1) or more of the following:

21 (i) Significantly hindering the protected expressive activity of
 22 another individual or group;

23 (ii) Preventing the communication of a message of another indi-
 24 vidual or group; or

25 (iii) Preventing the transaction of the business of a lawful meet-
 26 ing, gathering, or procession by:

27 1. Engaging in fighting, violence, or other unlawful behav-
 28 ior; or

29 2. Physically blocking or threatening violence to prevent
 30 an individual from attending, listening to, viewing, or par-
 31 ticipating in a protected expressive activity.

32 (b) "Materially and substantially disrupts" does not include:

33 (i) Conduct protected under the first amendment to the United
 34 States constitution or the constitution of the state of Idaho. Ex-
 35 cept when an outdoor area of the campus has been reserved in ad-
 36 vance of another event, protected conduct under this subparagraph
 37 includes lawfully protesting in an outdoor area of campus that is
 38 generally accessible to the public; or

39 (ii) A minor, brief, or fleeting nonviolent disruption of an event
 40 that is isolated and short in duration.

41 (5) "Outdoor areas of campus" means the generally accessible outside
 42 areas of campus where members of the campus community are commonly allowed,
 43 such as grassy areas, walkways, or other similar common areas, and does not
 44 include outdoor areas where access is restricted from a majority of the cam-
 45 pus community.

46 (6) "Public institution of higher education" means a state institution
 47 of higher education or a community college organized pursuant to chapter 21,
 48 title 33, Idaho code.

1 (7) "Student" means any person who is enrolled on a full-time or part-
2 time basis in a public institution of higher education.

3 (8) "Student organization" means an officially recognized group at a
4 public institution of higher education or a group seeking official recog-
5 nition, comprised of admitted students that receive, or are seeking to re-
6 ceive, benefits through the institution of higher education as defined in
7 this section.

8 33-6504. PROTECTED ACTIVITIES. Expressive activities protected under
9 the provisions of this chapter include but are not limited to any lawful
10 verbal, written, audio-visual, or electronic means by which individuals may
11 communicate ideas to one another, including all forms of peaceful assembly,
12 protests, speeches and guest speakers, distribution of literature, carrying
13 signs, and circulating petitions.

14 33-6505. OUTDOOR AREAS. The publicly accessible outdoor areas of cam-
15 puses of public institutions of higher education in this state are deemed
16 public forums for the campus community, and public institutions of higher
17 education must not create free speech zones or other designated areas of cam-
18 pus outside of which expressive activities are prohibited. Public institu-
19 tions of higher education may maintain and enforce reasonable time, place,
20 and manner restrictions applicable to the outdoor areas of campus that are
21 narrowly tailored in service of a significant institutional interest only
22 when such restrictions employ clear, published, content-neutral and view-
23 point-neutral criteria and provide for ample alternative means of expres-
24 sion. Any such restrictions must allow for members of the campus community
25 to spontaneously and contemporaneously assemble and distribute literature.
26 Nothing in this section may be interpreted as limiting the right of student
27 expression elsewhere on campus.

28 33-6506. FREE EXPRESSIVE ACTIVITY. (1) Except as otherwise permitted
29 by the first amendment to the United States constitution, and by section 9,
30 article I of the constitution of the state of Idaho, no public institution of
31 higher education shall abridge the constitutional freedom of any member of
32 the campus community to speak on campus.

33 (2) Any member of the campus community who wishes to engage in noncom-
34 mercial expressive activity in the outdoor areas of campus must be permitted
35 to do so freely, as long as the person's conduct is not unlawful and does not
36 materially and substantially disrupt the functioning of the public institu-
37 tion of higher education, subject only to the requirements of this chapter.

38 (3) Nothing in this section prohibits public institutions of higher
39 education from maintaining and enforcing reasonable time, place, and manner
40 restrictions applicable to the outdoor areas of campus that are narrowly
41 tailored to serve a significant institutional interest only when such re-
42 strictions employ clear, published content-neutral and viewpoint-neutral
43 criteria. Any such restrictions must allow for members of the campus commu-
44 nity to spontaneously and contemporaneously assemble, speak, and distribute
45 literature. Nothing in this section may be interpreted as preventing public
46 institutions of higher education from prohibiting, limiting, or restricting
47 expression that the first amendment does not protect, such as true threats or

1 expression directed to provoke imminent lawless actions and likely to pro-
2 duce it, or prohibiting harassment as defined in section 33-6503(3), Idaho
3 Code.

4 (4) Nothing in this section enables individuals to engage in conduct
5 that materially and substantially disrupts another's expressive activity if
6 that activity is occurring in a campus space reserved for that activity under
7 the exclusive use or control of a particular group.

8 (5) No public institution of higher education shall charge security
9 fees to a student or a student organization based on the content of the stu-
10 dent's or organization's expression, the content of the expression of the
11 student's or organization's invited guest, or the anticipated reaction to an
12 invited guest's expression.

13 33-6507. FREE SPEECH EDUCATION FOR MEMBERS OF THE CAMPUS COMMU-
14 NITY. Public institutions of higher education are required to make public in
15 their handbooks, on their websites, and through their orientation programs
16 for students the laws, policies, and expectations of students regarding free
17 expression on campus consistent with this chapter.

18 33-6508. REPORTS. (1) No later than December 1, 2022, each public in-
19 stitution of higher education must publicly post on its website, as well as
20 submit to the governor and the state legislature a report regarding the in-
21 stitution's policies for implementing the requirements of this chapter. A
22 supplemental report must also be given in the instance of any changes or up-
23 dates to such policies. The information required in the report must be ac-
24 cessible to the public without requiring registration or use of a username,
25 password, or another user identification.

26 (2) If a claim or complaint is filed against a public institution of
27 higher education alleging an unlawful unconditional limitation on the pro-
28 tected activities set forth in this section, a supplementary report with a
29 copy of the claim, complaint, or any amended complaint must be submitted to
30 the governor and the legislature within thirty (30) days of the filing of the
31 claim, complaint, or amended complaint.

32 (3) Nothing in this section shall be interpreted as requiring the in-
33 stitution to include any information from a student's education record that
34 would be prohibited from public disclosure by the family educational rights
35 and privacy act or any employee's personnel information that is prohibited
36 from public disclosure by section 74-106(1), Idaho Code.

37 33-6509. REMEDIES. (1) Subject to all provisions and limitations
38 contained in the Idaho tort claims act, chapter 9, title 6, Idaho Code, any
39 student or student organization may bring an action against a public insti-
40 tution of higher education and any of its employees, acting in their official
41 capacities, for a violation of the student's or student organization's
42 rights under this chapter.

43 (2) If a court in an action under this section finds that a public in-
44 stitution of higher education has violated the rights of a student or student
45 organization under this chapter, the court may award:

- 46 (a) Injunctive relief;
47 (b) Compensatory damages;

- 1 (c) Reasonable court costs; and
2 (d) Attorney's fees.

3 33-6510. STATUTE OF LIMITATIONS. A person is required to bring suit
4 for a violation of this chapter no later than one (1) year after the day the
5 cause of action accrues. For purposes of calculating the one (1) year lim-
6 itation period, each day that the violation persists, and each day that a
7 policy in violation of this section remains in effect, constitutes a new day
8 that the cause of action has accrued.

9 33-6511. NO IMMUNITY FOR PUBLIC INSTITUTIONS OF HIGHER EDUCATION. A
10 public institution of higher education that violates this chapter is not im-
11 mune from suit or liability for the violation.

12 33-6512. SEVERABILITY. The provisions of this chapter are hereby de-
13 clared to be severable, and if any provision of this chapter or the applica-
14 tion of such provision to any person or circumstance is declared invalid for
15 any reason, such declaration shall not affect the validity of the remaining
16 portions of this chapter.

17 SECTION 2. An emergency existing therefor, which emergency is hereby
18 declared to exist, this act shall be in full force and effect on and after
19 July 1, 2022.