

Union Calendar No. 387

118TH CONGRESS
2^D SESSION

H. R. 7683

[Report No. 118-468]

To amend the Higher Education Act of 1965 to require institutions of higher education to adopt and adhere to principles of free speech, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2024

Mr. WILLIAMS of New York (for himself, Mr. THOMPSON of Pennsylvania, and Ms. FOXX) introduced the following bill; which was referred to the Committee on Education and the Workforce

APRIL 26, 2024

Additional sponsors: Mr. OWENS, Mr. WILSON of South Carolina, Mr. KILEY, Mrs. MCCLAIN, Mr. WALBERG, Mrs. HOUCHIN, Mr. CRENSHAW, Mr. ALLEN, Mrs. CHAVEZ-DEREMER, Mr. HARRIS, Mrs. STEEL, Mr. BEAN of Florida, Mr. BANKS, Mr. BURLISON, Mrs. MILLER of Illinois, Mr. VAN DREW, and Mr. HIGGINS of Louisiana

APRIL 26, 2024

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on March 15, 2014]

A BILL

To amend the Higher Education Act of 1965 to require institutions of higher education to adopt and adhere to principles of free speech, and for other purposes.

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 “Respecting the First*
5 *Amendment on Campus Act”.*

6 **SEC. 2. SENSE OF CONGRESS.**

7 *The Higher Education Act of 1965 (20 U.S.C. 1001*
8 *et seq.) is amended by inserting after section 112 the fol-*
9 *lowing new section:*

10 **“SEC. 112A. SENSE OF CONGRESS; CONSTRUCTION; DEFINI-**
11 **TION.**

12 *“(a) SENSE OF CONGRESS.—*

13 *“(1) ADOPTION OF CHICAGO PRINCIPLES.—The*
14 *Congress—*

15 *“(A) recognizes that free expression, open*
16 *inquiry, and the honest exchange of ideas are*
17 *fundamental to higher education;*

18 *“(B) acknowledges the profound contribu-*
19 *tion of the Chicago Principles to the freedom of*
20 *speech and expression; and*

21 *“(C) calls on nonsectarian institutions of*
22 *higher education to adopt the Chicago Principles*
23 *or substantially similar principles with respect*
24 *to institutional mission that emphasizes a com-*
25 *mitment to freedom of speech and expression on*

1 *university campuses and to develop and consist-*
2 *ently implement policies accordingly.*

3 “(2) *POLITICAL LITMUS TESTS.*—*The Congress—*

4 “(A) *condemns public institutions of higher*
5 *education for conditioning admission to any stu-*
6 *dent applicant, or the hiring, reappointment, or*
7 *promotion of any faculty member, on the appli-*
8 *cant or faculty member pledging allegiance to or*
9 *making a statement of personal support for or*
10 *opposition to any political ideology or move-*
11 *ment, including a pledge or statement regarding*
12 *diversity, equity, and inclusion, or related top-*
13 *ics; and*

14 “(B) *discourages any institution from re-*
15 *questing or requiring any such pledge or state-*
16 *ment from an applicant or faculty member, as*
17 *such actions are antithetical to the freedom of*
18 *speech protected by the First Amendment to the*
19 *Constitution.*

20 “(b) *CONSTRUCTION.*—*Nothing in sections 112B*
21 *through 112E shall be construed to infringe upon, or other-*
22 *wise impact, the protections provided to individuals under*
23 *titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C.*
24 *2000d et seq.).*

1 “(c) *DEFINITION.*—For purposes of sections 112C,
2 112D, and 112E, the term ‘covered public institution’
3 means an institution of higher education that is—

4 “(1) a public institution; and

5 “(2) participating in a program authorized
6 under title IV.”.

7 **SEC. 3. DISCLOSURE OF FREE SPEECH POLICIES.**

8 *The Higher Education Act of 1965 (20 U.S.C. 1001*
9 *et seq.), as amended by section 2 of this Act, is further*
10 *amended by inserting after section 112A the following new*
11 *section:*

12 **“SEC. 112B. DISCLOSURE OF POLICIES RELATED TO FREE-**
13 **DOM OF SPEECH, ASSOCIATION, AND RELI-**
14 **GION.**

15 “(a) *IN GENERAL.*—No institution of higher education
16 shall be eligible to participate in any program under title
17 IV unless the institution certifies to the Secretary that the
18 institution has annually disclosed to current and prospec-
19 tive students and faculty—

20 “(1) any policies held by the institutions related
21 to—

22 “(A) speech on campus, including policies
23 limiting—

24 “(i) the time when such speech may
25 occur;

1 “(ii) the place where such speech may
2 occur; or

3 “(iii) the manner in which such speech
4 may occur;

5 “(B) freedom of association, if applicable;
6 and

7 “(C) freedom of religion, if applicable; and
8 “(2) the right to a cause of action under section
9 112E, if the institution is a public institution.

10 “(b) *INTENDED BENEFICIARIES.*—The certification
11 specified in subsection (a) shall include an acknowledgment
12 from the institution that the students and faculty are the
13 intended beneficiaries of the policies disclosed in the certifi-
14 cation.”.

15 **SEC. 4. FREEDOM OF ASSOCIATION AND RELIGION.**

16 *The Higher Education Act of 1965 (20 U.S.C. 1001*
17 *et seq.), as amended by section 3 of this Act, is further*
18 *amended by inserting after section 112B the following new*
19 *section:*

20 **“SEC. 112C. FREEDOM OF ASSOCIATION AND RELIGION.**

21 “(a) *STUDENTS’ BILL OF RIGHTS TO FURTHER PRO-*
22 *TECT SPEECH AND ASSOCIATION.*—

23 “(1) *PROTECTED RIGHTS.*—A covered public in-
24 stitution shall comply with the following require-
25 ments:

1 “(A) *RECOGNIZED STUDENT ORGANIZA-*
2 *TIONS.—A covered public institution that has*
3 *recognized student organizations shall comply*
4 *with the following requirements:*

5 “(i) *FACULTY ADVISORS.—*

6 “(I) *IN GENERAL.—A covered*
7 *public institution may not deny rec-*
8 *ognition to a student organization be-*
9 *cause the organization is unable to ob-*
10 *tain a faculty advisor or sponsor, if*
11 *the organization meets each of the other*
12 *content- and viewpoint-neutral institu-*
13 *tional requirements for such recogni-*
14 *tion.*

15 “(II) *ALTERNATIVE.—An institu-*
16 *tion described in subclause (I) shall en-*
17 *sure that any policy or practice related*
18 *to the recognition of a student organi-*
19 *zation—*

20 “(aa) *in the case of an orga-*
21 *nization that meets each of the*
22 *other content- and viewpoint-neu-*
23 *tral institutional requirements for*
24 *such recognition but is unable to*
25 *obtain a faculty advisor or spon-*

1 sor, provides for an alternative to
2 any requirement that a faculty or
3 staff member serve as the faculty
4 advisor or sponsor as a condition
5 for recognition of the student or-
6 ganization, which alternative may
7 include—

8 “(AA) waiver of such re-
9 quirement; or

10 “(BB) the institution
11 assigning a faculty or staff
12 member to such organization;
13 and

14 “(bb) does not require a fac-
15 ulty or staff member of the insti-
16 tution assigned to serve as faculty
17 advisor pursuant to item
18 (aa)(BB) to participate in, or
19 support, the organization other
20 than by performing the purely ad-
21 ministrative functions required of
22 a faculty advisor.

23 “(ii) APPEAL OPTIONS FOR RECOGNI-
24 TION.—

1 “(I) *IN GENERAL.*—A covered
2 *public institution shall provide an ap-*
3 *peals process by which a student orga-*
4 *nization that has been denied recogni-*
5 *tion by the institution may appeal to*
6 *an institutional appellate entity for re-*
7 *consideration.*

8 “(II) *REQUIREMENTS.*—The ap-
9 *peal process shall—*

10 “(aa) *require the covered*
11 *public institution to provide a*
12 *written explanation for the basis*
13 *for the denial of recognition in a*
14 *timely manner, which shall in-*
15 *clude a copy of all policies relied*
16 *upon by the institution as a basis*
17 *for the denial;*

18 “(bb) *require the covered*
19 *public institution to provide writ-*
20 *ten notice to the students seeking*
21 *recognition of the appeal process*
22 *and the timeline for hearing and*
23 *resolving the appeal;*

24 “(cc) *allow the students seek-*
25 *ing recognition to obtain outside*

1 *counsel to represent them during*
2 *the appeal; and*

3 “*(dd) ensure that such appel-*
4 *late entity did not participate in*
5 *any prior proceeding related to*
6 *the denial of recognition to the*
7 *student organization.*

8 “*(B) DISTRIBUTION OF FUNDS TO STUDENT*
9 *ORGANIZATIONS.—A covered public institution*
10 *that collects a mandatory fee from students for*
11 *the costs of student activities or events (or both),*
12 *and provides funds generated from such student*
13 *fees to one or more recognized student organiza-*
14 *tions of the institution, shall—*

15 “*(i) establish and make publicly avail-*
16 *able clear, objective, content- and viewpoint-*
17 *neutral, and exhaustive standards to be*
18 *used by the institution to determine—*

19 “*(I) the total amount of funds*
20 *made available for allocations to the*
21 *recognized student organizations; and*

22 “*(II) the allocations of such total*
23 *amount to individual recognized stu-*
24 *dent organizations;*

1 “(ii) ensure that allocations are made
2 to the recognized student organizations in
3 accordance with the standards established
4 pursuant to clause (i);

5 “(iii) upon the request of a recognized
6 student organization that has been denied
7 all or a portion of an allocation described
8 in clause (ii), provide to the organization,
9 in writing (which may include electronic
10 communication) and in a timely manner,
11 the specific reasons for such denial, copies of
12 all policies relied upon by the institution as
13 basis for the denial, and information of the
14 appeals process described in clause (iv); and

15 “(iv) provide an appeals process by
16 which a recognized student organization
17 that has been denied all or a portion of an
18 allocation described in clause (ii) may ap-
19 peal to an institutional appellate entity for
20 reconsideration, which appeals process—

21 “(I) shall require the covered pub-
22 lic institution to provide written notice
23 to the students seeking an allocation
24 through the appeal process and the

1 *timeline for hearing and resolving the*
2 *appeal;*

3 *“(II) allow the students seeking*
4 *an allocation to obtain outside counsel*
5 *to represent them during the appeal;*
6 *and*

7 *“(III) require the institution to*
8 *ensure that such appellate entity did*
9 *not participate in any prior pro-*
10 *ceeding related to such allocation.*

11 *“(C) ASSESSMENT OF SECURITY FEES FOR*
12 *EVENTS.—A covered public institution shall es-*
13 *tablish and make publicly available clear, objec-*
14 *tive, content- and viewpoint-neutral, and exhaus-*
15 *tive standards to be used by the institution to—*

16 *“(i) determine the amount of any secu-*
17 *rity fee for an event or activity organized*
18 *by a student or student organization; and*

19 *“(ii) ensure that a determination of*
20 *such an amount may not be based, in whole*
21 *or in part, on—*

22 *“(I) the content of expression or*
23 *viewpoint of the student or student or-*
24 *ganization;*

1 “(II) *the content of expression of*
2 *the event or activity organized by the*
3 *student or student organization;*

4 “(III) *the content of expression or*
5 *viewpoint of an invited guest of the*
6 *student or student organization; or*

7 “(IV) *an anticipated reaction by*
8 *students or the public to the event.*

9 “(D) *PROTECTIONS FOR INVITED GUESTS*
10 *AND SPEAKERS.—A covered public institution*
11 *shall establish and make publicly available clear,*
12 *objective, content- and viewpoint-neutral, and ex-*
13 *haustive standards to be used by the institution*
14 *related to the safety and protection of speakers*
15 *and guests who are invited to the institution by*
16 *a student or student organization.*

17 “(2) *DEFINITIONS.—In this subsection:*

18 “(A) *RECOGNIZED STUDENT ORGANIZA-*
19 *TION.—The term ‘recognized student organiza-*
20 *tion’ means a student organization that has been*
21 *determined by a covered public institution to*
22 *meet institutional requirements to qualify for*
23 *certain privileges granted by the institution,*
24 *such as use of institutional venues, resources,*
25 *and funding.*

1 “(B) *SECURITY FEE.*—*The term ‘security*
2 *fee’ means a fee charged to a student or student*
3 *organization for an event or activity organized*
4 *by the student or student organization on the*
5 *campus of the institution that is intended to*
6 *cover some or all of the costs incurred by the in-*
7 *stitution for additional security measures needed*
8 *to ensure the security of the institution, students,*
9 *faculty, staff, or surrounding community as a*
10 *result of such event or activity.*

11 “(b) *EQUAL CAMPUS ACCESS.*—*A covered public insti-*
12 *tution shall not deny to a religious student organization*
13 *any right, benefit, or privilege that is otherwise afforded*
14 *to other student organizations at the institution (including*
15 *full access to the facilities of the institution and official rec-*
16 *ognition of the organization by the institution) because of*
17 *the religious beliefs, practices, speech, leadership standards,*
18 *or standards of conduct of the religious student organiza-*
19 *tion.*

20 “(c) *FREEDOM OF ASSOCIATION.*—

21 “(1) *UPHOLDING FREEDOM OF ASSOCIATION*
22 *PROTECTIONS.*—*Any student (or group of students)*
23 *enrolled in an institution of higher education that re-*
24 *ceives funds under this Act, including through an in-*

1 *stitution’s participation in any program under title*
2 *IV, shall—*

3 *“(A) subject to paragraph (3)(A), be able to*
4 *form a single-sex social organization, whether*
5 *recognized by the institution or not; and*

6 *“(B) be able to apply to join any single-sex*
7 *social organization; and*

8 *“(C) if selected for membership by any sin-*
9 *gle-sex social organization, be able to join, and*
10 *participate in, such single-sex organization, sub-*
11 *ject to its standards for regulating its own mem-*
12 *bership, as provided under paragraph (3)(C).*

13 *“(2) NONRETALIATION AGAINST STUDENTS OF*
14 *SINGLE-SEX SOCIAL ORGANIZATIONS.—An institution*
15 *of higher education that receives funds under this Act,*
16 *including through an institution’s participation in*
17 *any program under title IV, shall not—*

18 *“(A) take any action to require or coerce a*
19 *student or prospective student who is a member*
20 *or prospective member of a single-sex social orga-*
21 *nization to waive the protections provided under*
22 *paragraph (1), including as a condition of en-*
23 *rolling in the institution;*

24 *“(B) take any adverse action against a sin-*
25 *gle-sex social organization, or a student who is*

1 *a member or a prospective member of a single-*
2 *sex social organization, based on the membership*
3 *practice of such organization limiting member-*
4 *ship only to individuals of one sex; or*

5 “(C) *impose a recruitment restriction (in-*
6 *cluding a recruitment restriction relating to the*
7 *schedule for membership recruitment) on a sin-*
8 *gle-sex social organization recognized by the in-*
9 *stitution, which is not imposed upon other stu-*
10 *dent organizations by the institution, unless the*
11 *organization (or a council of similar organiza-*
12 *tions) and the institution have entered into a*
13 *mutually agreed upon written agreement that al-*
14 *lows the institution to impose such restriction.*

15 “(3) *RULES OF CONSTRUCTION.—Nothing in this*
16 *subsection shall—*

17 “(A) *require an institution of higher edu-*
18 *cation to officially recognize a single-sex social*
19 *organization;*

20 “(B) *prohibit an institution of higher edu-*
21 *cation from taking an adverse action against a*
22 *student who organizes, leads, or joins a single-sex*
23 *social organization—*

24 “(i) *due to academic or nonacademic*
25 *misconduct; or*

1 “(i)(I) for public institutions, because
2 the organization’s purpose is directed to in-
3 citing or producing imminent lawless ac-
4 tion and likely to incite or produce such ac-
5 tion; or

6 “(II) for private institutions, because
7 the organization’s purpose is incompatible
8 with the religious mission of the institution,
9 so long as that adverse action is not based
10 on the membership practice of the organiza-
11 tion of limiting membership only to indi-
12 viduals of one sex;

13 “(C) prevent a single-sex social organization
14 from regulating its own membership;

15 “(D) inhibit the ability of the faculty of an
16 institution of higher education to express an
17 opinion (either individually or collectively)
18 about membership in a single-sex social organi-
19 zation, or otherwise inhibit the academic freedom
20 of such faculty to research, write, or publish ma-
21 terial about membership in such an organiza-
22 tion; or

23 “(E) create enforceable rights against a sin-
24 gle-sex social organization or against an institu-
25 tion of higher education due to the decision of the

1 organization to deny membership to an indi-
2 vidual student.

3 “(4) *DEFINITIONS.*—*In this subsection:*

4 “(A) *ADVERSE ACTION.*—*The term ‘adverse*
5 *action’ includes the following actions taken by*
6 *an institution of higher education with respect to*
7 *a single-sex social organization or a member or*
8 *prospective member of a single-sex social organi-*
9 *zation:*

10 “(i) *Expulsion, suspension, probation,*
11 *censure, condemnation, formal reprimand,*
12 *or any other disciplinary action, coercive*
13 *action, or sanction taken by an institution*
14 *of higher education or administrative unit*
15 *of such institution.*

16 “(ii) *An oral or written warning with*
17 *respect to an action described in clause (i)*
18 *made by an official of an institution of*
19 *higher education acting in their official ca-*
20 *capacity.*

21 “(iii) *An action to deny participation*
22 *in any education program or activity, in-*
23 *cluding the withholding of any rights, privi-*
24 *leges, or opportunities afforded other stu-*
25 *dents on campus.*

1 “(iv) *An action to withhold, in whole*
2 *or in part, any financial assistance (includ-*
3 *ing scholarships and on-campus employ-*
4 *ment), or denying the opportunity to apply*
5 *for financial assistance, a scholarship, a*
6 *graduate fellowship, or on-campus employ-*
7 *ment.*

8 “(v) *An action to deny or restrict ac-*
9 *cess to on-campus housing.*

10 “(vi) *An act to deny any certification,*
11 *endorsement, or letter of recommendation*
12 *that may be required by a student’s current*
13 *or future employer, a government agency, a*
14 *licensing board, an institution of higher*
15 *education, a scholarship program, or a*
16 *graduate fellowship to which the student ap-*
17 *plies or seeks to apply.*

18 “(vii) *An action to deny participation*
19 *in any sports team, club, or other student*
20 *organization, including a denial of any*
21 *leadership position in any sports team,*
22 *club, or other student organization.*

23 “(viii) *An action to withdraw the in-*
24 *stitution’s official recognition of such orga-*
25 *nization.*

1 “(ix) An action to require any student
2 to certify that such student is not a member
3 of a single-sex social organization or to dis-
4 close the student’s membership in a single-
5 sex social organization.

6 “(x) An action to interject an institu-
7 tion’s own criteria into the membership
8 practices of the organization in any manner
9 that conflicts with the rights of such organi-
10 zation under title IX of the Education
11 Amendments of 1972 (20 U.S.C. 1681 et
12 seq.) or this subsection.

13 “(xi) An action to impose additional
14 requirements on advisors serving a single-
15 sex social organization that are not imposed
16 on all other student organizations.

17 “(B) SINGLE-SEX SOCIAL ORGANIZATION.—
18 The term ‘single-sex social organization’
19 means—

20 “(i) a social fraternity or sorority de-
21 scribed in section 501(c) of the Internal
22 Revenue Code of 1986 which is exempt from
23 taxation under section 501(a) of such Code,
24 or an organization that has been histori-
25 cally single-sex, the active membership of

1 *which consists primarily of students or*
2 *alumni of an institution of higher edu-*
3 *cation; or*

4 “(i) a single-sex private social club
5 *(including an independent organization lo-*
6 *cated off-campus) that consists primarily of*
7 *students or alumni of an institution of*
8 *higher education.*

9 “(d) CONSTRUCTION.—Nothing in this section shall be
10 *construed to prohibit an institution of higher education*
11 *from taking any adverse action (such as denying or revok-*
12 *ing recognition, funding, use of institutional venues or re-*
13 *sources, or other privileges granted by the institution)*
14 *against a student organization based on the student organi-*
15 *zation having knowingly provided material support or re-*
16 *sources to an organization designated as a foreign terrorist*
17 *organization pursuant to section 219 of the Immigration*
18 *and Nationality Act (8 U.S.C. 1189).”.*

19 **SEC. 5. FREE SPEECH ON CAMPUS.**

20 *The Higher Education Act of 1965 (20 U.S.C. 1001*
21 *et seq.), as amended by section 4 of this Act, is further*
22 *amended by inserting after section 112C the following new*
23 *section:*

1 **“SEC. 112D. FREE SPEECH ON CAMPUS.**

2 “(a) *IN GENERAL.*—A covered public institution
3 shall—

4 “(1) at each orientation for new and transfer
5 students, provide students attending the orientation—

6 “(A) a written statement that—

7 “(i) explains the rights of students
8 under the First Amendment to the Constitu-
9 tion;

10 “(ii) affirms the importance of, and
11 the commitment of the institution to, free-
12 dom of expression;

13 “(iii) explains students’ protections
14 under title VI of the Civil Rights Act of
15 1964 (42 U.S.C. 2000d et seq.) and the pro-
16 cedures for filing a discrimination claim
17 with the Office for Civil Rights of the De-
18 partment of Education; and

19 “(iv) includes assurances that students,
20 and individuals invited by students to
21 speak at the institution, will not be treated
22 in a manner that violates the freedom of ex-
23 pression of such students or individuals;
24 and

25 “(B) educational programming (including
26 online resources) that describes their free speech

1 *rights and responsibilities under the First*
2 *Amendment to the Constitution; and*

3 “(2) *post on the publicly accessible website of the*
4 *institution the statement described in paragraph*
5 *(1)(A).*

6 “(b) *CAMPUS FREE SPEECH AND RESTORATION.—*

7 “(1) *DEFINITION OF EXPRESSIVE ACTIVITIES.—*
8 *In this subsection, the term ‘expressive activity’—*

9 “(A) *includes—*

10 “(i) *peacefully assembling, protesting,*
11 *speaking, or listening;*

12 “(ii) *distributing literature;*

13 “(iii) *carrying a sign;*

14 “(iv) *circulating a petition; or*

15 “(v) *other expressive activities guaran-*
16 *teed under the First Amendment to the Con-*
17 *stitution;*

18 “(B) *applies equally to religious expression*
19 *as it does to nonreligious expression; and*

20 “(C) *does not include unprotected speech (as*
21 *defined by the precedents of the Supreme Court*
22 *of the United States).*

23 “(2) *EXPRESSIVE ACTIVITIES AT AN INSTITU-*
24 *TION.—*

1 “(A) *IN GENERAL.*—A covered public insti-
2 tution may not prohibit, subject to subparagraph
3 (B), a person from freely engaging in non-
4 commercial expressive activity in a generally ac-
5 cessible area on the institution’s campus if the
6 person’s conduct is lawful. The publicly acces-
7 sible outdoor areas of campuses of public institu-
8 tions of higher education shall be regulated pur-
9 suant to rules applicable to traditional public fo-
10 rums.

11 “(B) *RESTRICTIONS.*—A covered public in-
12 stitution may not maintain or enforce time,
13 place, or manner restrictions on an expressive
14 activity in a generally accessible area of the in-
15 stitution’s campus unless the restriction—

16 “(i) is narrowly tailored in further-
17 ance of a significant governmental interest;

18 “(ii) is based on published, content-
19 neutral, and viewpoint-neutral criteria;

20 “(iii) leaves open ample alternative
21 channels for communication; and

22 “(iv) provides for spontaneous assem-
23 bly and distribution of literature.

24 “(C) *APPLICATION.*—The protections pro-
25 vided under subparagraph (A) do not apply to

1 *expressive activity in an area on an institution's*
2 *campus that is not a generally accessible area.*

3 “(D) *NONAPPLICATION TO SERVICE ACAD-*
4 *EMIES.—This subsection shall not apply to an*
5 *institution of higher education whose primary*
6 *purpose is the education of individuals for the*
7 *military services of the United States, or the*
8 *merchant marine.*

9 “(c) *PROHIBITION ON USE OF POLITICAL TESTS.—*

10 “(1) *IN GENERAL.—A covered public institution*
11 *may not consider, require, or discriminate on the*
12 *basis of a political test in the admission, appoint-*
13 *ment, hiring, employment, or promotion of any cov-*
14 *ered individual, or in the granting of tenure to any*
15 *covered individual.*

16 “(2) *RULE OF CONSTRUCTION.—Nothing in this*
17 *subsection shall be construed—*

18 “(A) *to prohibit an institution of higher*
19 *education whose primary purpose is the edu-*
20 *cation of individuals for the military services of*
21 *the United States, or the merchant marine, from*
22 *requiring an applicant, student, or employee to*
23 *take an oath to uphold the Constitution of the*
24 *United States;*

1 “(B) to prohibit an institution of higher
2 education from requiring a student, faculty
3 member, or employee to comply with Federal or
4 State antidiscrimination laws or from taking ac-
5 tion against a student, faculty member, or em-
6 ployee for violations of Federal or State anti-dis-
7 crimination laws, as applicable;

8 “(C) to prohibit an institution of higher
9 education from evaluating a prospective student,
10 an employee, or a prospective employee based on
11 their knowingly providing material support or
12 resources to an organization designated as a for-
13 eign terrorist organization pursuant to section
14 219 of the Immigration and Nationality Act (8
15 U.S.C. 1189);

16 “(D) to prohibit an institution of higher
17 education from considering the subject-matter
18 competency including the research and creative
19 works, of any candidate for a faculty position or
20 faculty member considered for promotion when
21 the subject matter is germane to their given field
22 of scholarship; or

23 “(E) to apply to activities of registered stu-
24 dent organizations.

25 “(3) DEFINITIONS.—In this subsection:

1 “(A) *COVERED INDIVIDUAL.*—*The term ‘cov-*
2 *ered individual’ means, with respect to an insti-*
3 *tution of higher education that is a public insti-*
4 *tution—*

5 “(i) *a prospective student who has sub-*
6 *mitted an application to attend such insti-*
7 *tution;*

8 “(ii) *a student who attends such insti-*
9 *tution;*

10 “(iii) *a prospective employee who has*
11 *submitted an application to work at such*
12 *institution;*

13 “(iv) *an employee who works at such*
14 *institution;*

15 “(v) *a prospective faculty member who*
16 *has submitted an application to work at*
17 *such institution; and*

18 “(vi) *a faculty member who works at*
19 *such institution.*

20 “(B) *MATERIAL SUPPORT OR RE-*
21 *SOURCES.*—*The term ‘material support or re-*
22 *sources’ has the meaning given that term in sec-*
23 *tion 2339A of title 18, United States Code (in-*
24 *cluding the definitions of ‘training’ and ‘expert*
25 *advice or assistance’ in that section).*

1 “(C) *POLITICAL TEST.*—The term ‘political
2 *test*’ means a method of compelling or soliciting
3 an applicant for enrollment or employment, stu-
4 dent, or employee of an institution of higher edu-
5 cation to identify commitment to or make a
6 statement of personal belief in support of any
7 ideology or movement that—

8 “(i) supports or opposes a specific par-
9 tisan or political set of beliefs;

10 “(ii) supports or opposes a particular
11 viewpoint on a social or political issue; or

12 “(iii) promotes the disparate treatment
13 of any individual or group of individuals
14 on the basis of race, color, or national ori-
15 gin, including—

16 “(I) any initiative or formulation
17 of diversity, equity, and inclusion be-
18 yond upholding existing Federal law;
19 or

20 “(II) any theory or practice that
21 holds that systems or institutions up-
22 holding existing Federal law are racist,
23 oppressive, or otherwise unjust.”.

1 **SEC. 6. ENFORCEMENT.**

2 (a) *PROGRAM PARTICIPATION AGREEMENT.*—Section
3 487(a) of the Higher Education Act of 1965 (20 U.S.C.
4 1094(a)) is amended by adding at the end the following:

5 “(30)(A) *In the case of an institution that is a*
6 *public institution, the institution will comply with*
7 *all the requirements of sections 112B through 112D.*

8 “(B) *In the case of an institution that is not a*
9 *public institution, the institution will comply with*
10 *sections 112B and 112C(c).*

11 “(C) *An institution that fails to comply with*
12 *section 112B or 112C(c) shall—*

13 “(i) *be ineligible to participate in the pro-*
14 *grams authorized by this title for a period of not*
15 *less than 1 award year; and*

16 “(ii) *in order to regain eligibility to par-*
17 *ticipate in such programs, demonstrate compli-*
18 *ance with all requirements of such section for not*
19 *less than one award year after the award year*
20 *in which such institution became ineligible.”.*

21 (b) *CAUSE OF ACTION.*—*The Higher Education Act of*
22 *1965 (20 U.S.C. 1001 et seq.), as amended by section 5 of*
23 *this Act, is further amended by inserting after section 112D*
24 *the following new section:*

25 **“SEC. 112E. ENFORCEMENT.**

26 “(a) *CAUSE OF ACTION.*—

1 “(1) *CIVIL ACTION.*—*After exhaustion of any*
2 *available appeals under section 112C(a), an aggrieved*
3 *individual who, or an aggrieved organization that, is*
4 *harmed by the maintenance of a policy or practice by*
5 *a covered public institution that is in violation of a*
6 *requirement described in section 112B, 112C, or 112D*
7 *may bring a civil action in a Federal court for ap-*
8 *propriate relief.*

9 “(2) *APPROPRIATE RELIEF.*—*For the purposes of*
10 *this subsection, appropriate relief includes—*

11 “(A) *a temporary or permanent injunction;*

12 *and*

13 “(B) *awarding a prevailing plaintiff—*

14 “(i) *compensatory damages;*

15 “(ii) *reasonable court costs; and*

16 “(iii) *reasonable attorney’s fees.*

17 “(3) *STATUTE OF LIMITATIONS.*—*A civil action*
18 *under this subsection may not be commenced later*
19 *than 2 years after the cause of action accrues. For*
20 *purposes of calculating the two-year limitation pe-*
21 *riod, each day that the violation of a requirement de-*
22 *scribed in section 112B, 112C, or 112D persists, and*
23 *each day that a policy in violation of a requirement*
24 *described in section 112B, 112C, or 112D remains in*

1 *effect, shall constitute a new day that the cause of ac-*
2 *tion has accrued.*

3 “(b) *NONDEFAULT, FINAL JUDGMENT.*—*In the case of*
4 *a court’s nondefault, final judgment in a civil action*
5 *brought under subsection (a) that a covered public institu-*
6 *tion is in violation of a requirement described in section*
7 *112B, 112C, or 112D, such covered public institution*
8 *shall—*

9 “(1) *not later than 7 days after the date on*
10 *which the court makes such a nondefault, final judg-*
11 *ment, notify the Secretary of such judgment and sub-*
12 *mit to the Secretary a copy of the nondefault, final*
13 *judgment; and*

14 “(2) *not later than 30 days after the date on*
15 *which the court makes such a nondefault, final judg-*
16 *ment, submit to the Secretary a report that—*

17 “(A) *certifies that the standard, policy,*
18 *practice, or procedure that is in violation of the*
19 *requirement described in section 112B, 112C, or*
20 *112D is no longer in use; and*

21 “(B) *provides evidence to support such cer-*
22 *tification.*

23 “(c) *REVOCAION OF ELIGIBILITY.*—*In the case of a*
24 *covered public institution that does not notify the Secretary*
25 *as required under subsection (b)(1) or submit the report re-*

1 *quired under subsection (b)(2), the Secretary shall revoke*
2 *the eligibility of such institution to participate in a pro-*
3 *gram authorized under title IV for each award year fol-*
4 *lowing the conclusion of the award year in which a court*
5 *made a nondefault, final judgment in a civil action brought*
6 *under subsection (a) that the institution is in violation of*
7 *a requirement described in section 112B, 112C, or 112D.*

8 *“(d) RESTORATION OF ELIGIBILITY.—*

9 *“(1) IN GENERAL.—A covered public institution*
10 *that loses eligibility under subsection (c) to partici-*
11 *rate in a program authorized under title IV may seek*
12 *to restore such eligibility by submitting to the Sec-*
13 *retary the report described in subsection (b)(2).*

14 *“(2) DETERMINATION BY THE SECRETARY.—Not*
15 *later than 90 days after a covered public institution*
16 *submits a report under paragraph (1), the Secretary*
17 *shall review such report and make a determination*
18 *with respect to whether such report contained suffi-*
19 *cient evidence to demonstrate that such institution is*
20 *no longer in violation of a requirement described in*
21 *section 112B, 112C, or 112D.*

22 *“(3) RESTORATION.—If the Secretary makes a*
23 *determination under paragraph (2) that the covered*
24 *public institution is no longer in violation of a re-*
25 *quirement described in section 112B, 112C, or 112D,*

1 *the Secretary shall restore the eligibility of such insti-*
2 *tution to participate in a program authorized under*
3 *title IV for each award year following the conclusion*
4 *of the award year in which such determination is*
5 *made.*

6 “(e) *REPORT TO CONGRESS.*—*Not later than 1 year*
7 *after the date of the enactment of this section, and on an*
8 *annual basis thereafter, the Secretary shall submit to the*
9 *Committee on Education and the Workforce of the House*
10 *of Representatives and the Senate Committee on Health,*
11 *Education, Labor, and Pensions a report that includes—*

12 “(1) *a compilation of—*

13 “(A) *the notifications of violation received*
14 *by the Secretary under subsection (b)(1) in the*
15 *year for which such report is being submitted;*
16 *and*

17 “(B) *the reports submitted to the Secretary*
18 *under subsection (b)(2) for such year; and*

19 “(2) *any action taken by the Secretary to revoke*
20 *or restore eligibility under subsections (c) and (d) for*
21 *such year.*

22 “(f) *VOLUNTARY WAIVER OF STATE AND LOCAL SOV-*
23 *EREIGN IMMUNITY AS CONDITION OF RECEIVING FEDERAL*
24 *FUNDING.*—*The receipt, on or after the date of enactment*
25 *of this section, of any Federal funding under title IV of*

1 *this Act by a State or political subdivision of a State (in-*
2 *cluding any municipal or county government) is deemed*
3 *to constitute a clear and unequivocal expression of, and*
4 *agreement to, waiving sovereign immunity under the 11th*
5 *Amendment to the Constitution or otherwise, to a civil ac-*
6 *tion for injunctive relief, compensatory damages, court*
7 *costs, and attorney’s fees under this section.*

8 “(g) *DEFINITION.—In this section, the term ‘non-*
9 *default, final judgment’ means a final judgment by a court*
10 *for a civil action brought under subsection (a) that a cov-*
11 *ered public institution is in violation of a requirement de-*
12 *scribed in section 112B, 112C, or 112D that the covered*
13 *public institution chooses not to appeal or that is not sub-*
14 *ject to further appeal.’”.*

Union Calendar No. 387

118TH CONGRESS
2^D SESSION

H. R. 7683

[Report No. 118-468]

A BILL

To amend the Higher Education Act of 1965 to require institutions of higher education to adopt and adhere to principles of free speech, and for other purposes.

APRIL 26, 2024

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed