

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

3

HOUSE BILL 527*
Committee Substitute Favorable 4/24/17
Committee Substitute #2 Favorable 4/25/17

Short Title: Restore/Preserve Campus Free Speech.

(Public)

Sponsors:

Referred to:

March 30, 2017

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

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

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

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

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

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

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

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

28 "Article 36.

29 "Campus Free Speech.

30 "**§ 116-300. Policies required.**

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

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



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

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

7 (3) The constituent institution may not take action, as an institution, on the
8 public policy controversies of the day in such a way as to require students,
9 faculty, or administrators to publicly express a given view of social policy.

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

20 (5) Park areas, sidewalks, plazas, and similar spaces on the campuses of the
21 constituent institutions are traditional public forums, open on the same terms
22 to any speaker. Other areas of the campuses of the constituent institutions
23 are nonpublic forums consistent with First Amendment jurisprudence.

24 (6) Consistent with First Amendment jurisprudence, including any reasonable
25 time, place, and manner restrictions adopted by a constituent institution,
26 campuses of the constituent institutions are open to any speaker whom
27 students, student groups, or members of the faculty have invited.

28 (7) The constituent institution shall implement a range of disciplinary sanctions
29 for anyone under the jurisdiction of a constituent institution who
30 substantially disrupts the functioning of the constituent institution or
31 substantially interferes with the protected free expression rights of others,
32 including protests and demonstrations that infringe upon the rights of others
33 to engage in and listen to expressive activity when the expressive activity
34 has been scheduled pursuant to this policy or is located in a nonpublic
35 forum.

36 (8) In all student disciplinary cases involving expressive speech or conduct,
37 students are entitled to a disciplinary hearing under published procedures,
38 including, at a minimum, (i) the right to receive advance written notice of
39 the charges, (ii) the right to review the evidence in support of the charges,
40 (iii) the right to confront witnesses against them, (iv) the right to present a
41 defense, (v) the right to call witnesses, (vi) a decision by an impartial arbiter
42 or panel, (vii) the right of appeal, and (viii) the right to active assistance of
43 counsel, consistent with G.S. 116-40.11.

44 **"§ 116-301. Committee on Free Expression.**

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

1 vacancy on the Committee, the Board of Governors shall appoint a replacement from among its
2 membership.

3 (b) All employees of The University of North Carolina System and all State agencies
4 shall cooperate with the Committee on Free Expression by providing information requested by
5 the Committee, unless the requested information is required to be kept confidential by other
6 provisions of State or federal law.

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

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

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

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

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

19 The requirement of reporting to the public may be met by publishing the report on The
20 University of North Carolina System's Web site.

21 **"§ 116-302. Freshman orientation.**

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

25 **"§ 116-303. Guidelines and additional policies authorized.**

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

33 (1) Violations of State or federal law.

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

35 (3) Unlawful harassment.

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

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

41 (6) An action that substantially disrupts the function of the constituent
42 institutions.

43 (7) Reasonable time, place, and manner restrictions on expressive activities,
44 consistent with G.S. 116-300(3).

45 (8) Speech that interferes with the treatment of patients.

46 **"§ 116-304. Limitations on liability.**

47 (a) Nothing in this Article shall be construed to make any chancellor, officer, employee,
48 or member of a Board of Trustees of a constituent institution or the President, officer,
49 employee, or member of the Board of Governors of The University of North Carolina
50 personally liable for acts taken pursuant to their official duties.

1 (b) Nothing in this Article shall be construed to impose liability on The University of
2 North Carolina or a constituent institution for relocating or restricting expressive activity
3 permitted by this act following a reasonable determination that there exists an articulable and
4 significant threat to the health and safety of a student or other individuals, or that the continuity
5 or functioning of campus operations cannot be reasonably remedied except by relocating or
6 restricting expressive activity."

7 **SECTION 2.** The Board of Governors shall develop a policy that requires each
8 constituent institution to identify the officer, office, or department with responsibilities for
9 ensuring compliance with this act and for answering any related questions or concerns. This
10 policy shall require that any officer with these responsibilities receive training on ensuring
11 compliance with this act. Such training shall be developed and provided by the University of
12 North Carolina School of Government.

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