

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2017-196
HOUSE BILL 527

AN ACT TO RESTORE AND PRESERVE FREE SPEECH ON THE CAMPUSES OF THE
CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

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

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

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

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

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

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

The General Assembly of North Carolina enacts:

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

"Article 36.

"Campus Free Speech.

"§ 116-300. Policies required.

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

- (1) The primary function of each constituent institution is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate. To fulfill this function, the constituent institution must strive to ensure the fullest degree of intellectual freedom and free expression.
- (2) It is not the proper role of any constituent institution to shield individuals from speech protected by the First Amendment, including, without



limitation, ideas and opinions they find unwelcome, disagreeable, or even deeply offensive.

- (3) The constituent institution may not take action, as an institution, on the public policy controversies of the day in such a way as to require students, faculty, or administrators to publicly express a given view of social policy.
- (4) Students and faculty have the freedom to discuss any problem that presents itself, as the First Amendment permits and within the limits of narrowly tailored viewpoint- and content-neutral restrictions on time, place, and manner of expression that are consistent with this Article and that are necessary to achieve a significant institutional interest, provided that these restrictions are clear, published, and provide ample alternative means of expression. Students and faculty shall be permitted to assemble and engage in spontaneous expressive activity as long as such activity is lawful and does not materially and substantially disrupt the functioning of the constituent institution, subject to the requirements of this section.
- (5) Access to campus for purposes of free speech and expression shall be consistent with First Amendment jurisprudence regarding traditional public forums, designated public forums, and nonpublic forums, subject to reasonable time, place, and manner restrictions.
- (6) Consistent with First Amendment jurisprudence, including any reasonable time, place, and manner restrictions adopted by a constituent institution, campuses of the constituent institutions are open to any speaker whom students, student groups, or members of the faculty have invited.
- (7) The constituent institution shall implement a range of disciplinary sanctions for anyone under the jurisdiction of a constituent institution who substantially disrupts the functioning of the constituent institution or substantially interferes with the protected free expression rights of others, including protests and demonstrations that infringe upon the rights of others to engage in and listen to expressive activity when the expressive activity has been scheduled pursuant to this policy or is located in a nonpublic forum.
- (8) In all student disciplinary cases involving expressive speech or conduct, students are entitled to a disciplinary hearing under published procedures, including, at a minimum, (i) the right to receive advance written notice of the charges, (ii) the right to review the evidence in support of the charges, (iii) the right to confront witnesses against them, (iv) the right to present a defense, (v) the right to call witnesses, (vi) a decision by an impartial arbiter or panel, (vii) the right of appeal, and (viii) the right to active assistance of counsel, consistent with G.S. 116-40.11.

"§ 116-301. Committee on Free Expression.

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

(b) All employees of The University of North Carolina System and all State agencies shall cooperate with the Committee on Free Expression by providing information requested by the Committee.

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

- (1) A description of any barriers to or disruptions of free expression within the constituent institutions.
- (2) A description of the administrative handling and discipline relating to these disruptions or barriers.
- (3) A description of substantial difficulties, controversies, or successes in maintaining a posture of administrative and institutional neutrality with regard to political or social issues.
- (4) Any assessments, criticisms, commendations, or recommendations the Committee sees fit to include.

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

"§ 116-302. Freshman orientation.

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

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

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

- (1) Violations of State or federal law.
- (2) Expression that a court has deemed unprotected defamation.
- (3) Unlawful harassment.
- (4) True threats, which are defined as statements meant by the speaker to communicate a serious expression of intent to commit an act of unlawful violence to a particular individual or group of individuals.
- (5) An unjustifiable invasion of privacy or confidentiality not involving a matter of public concern.
- (6) An action that substantially disrupts the function of the constituent institutions.
- (7) Reasonable time, place, and manner restrictions on expressive activities, consistent with G.S. 116-300(4).
- (8) Speech that interferes with the treatment of patients.

"§ 116-304. Limitations on liability.

Nothing in this Article shall be construed to make any chancellor, officer, employee, or member of a board of trustees of a constituent institution or the President, officer, employee, or member of the Board of Governors of The University of North Carolina personally liable for acts taken pursuant to their official duties."

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

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

In the General Assembly read three times and ratified this the 29th day of June, 2017.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

This bill having been presented to the Governor for signature on the 29th day of June, 2017 and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law. This 31st day of July, 2017.

s/ Karen Jenkins
Enrolling Clerk