
SUBSTITUTE SENATE BILL 5538

State of Washington

66th Legislature

2019 Regular Session

By Senate Higher Education & Workforce Development (originally sponsored by Senators Braun, Fortunato, and Wilson, L.)

1 AN ACT Relating to free speech controls at institutions of higher
2 education; adding a new section to chapter 28B.10 RCW; and creating a
3 new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that expressive
6 activities protected under the First Amendment to the United States
7 Constitution and Article I, section 5 of the state Constitution
8 include, but are not limited to: Any lawful oral or written
9 communication of ideas, including all forms of peaceful assembly,
10 protests, and speeches; distributing literature; carrying signs;
11 circulating petitions; and the recording and publication, including
12 the internet publication, of video or audio recorded in outdoor areas
13 of campus. The legislature also finds that protected, expressive
14 activities do not include commercial speech.

15 (2) The legislature finds that a person who wishes to engage in
16 an expressive activity in outdoor areas of campus at an institution
17 of higher education may do so freely, spontaneously, and
18 contemporaneously as long as the person's conduct is lawful and does
19 not materially and substantially disrupt the functioning of the
20 institution of higher education or infringe upon the rights of other
21 individuals or organizations to engage in expressive activities.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 28B.10

2 RCW to read as follows:

3 (1) Restrictions on speech and use of public space at an
4 institution of higher education must be clear and published and must
5 provide for ample alternative means of expression.

6 (2) Outdoor areas of campus are considered limited public forums
7 for individuals, organizations, and guest speakers. An institution of
8 higher education may create and enforce restrictions that are
9 reasonable and content-neutral regarding time, place, and manner of
10 expression and that are narrowly tailored to a significant
11 institutional interest.

12 (a) Restrictions of expressive activities to a particular outdoor
13 area of campus are not reasonable.

14 (b) Restrictions under this section must allow members of the
15 institution of higher education community to spontaneously and
16 contemporaneously assemble. Restrictions must be well-defined and
17 published, at a minimum, on the web site of the institution of higher
18 education and as part of any printed materials covering the rules and
19 policies of the institution of higher education.

20 (3) Students, faculty, or staff of an institution of higher
21 education may not cause material and substantial disruption of
22 previously scheduled or reserved activities on campus occurring at
23 the same time or of the daily orderly operation of the institution of
24 higher education.

25 (4) For the purposes of this section:

26 (a) "Material and substantial disruption" means any conduct that
27 intentionally and significantly hinders another person's or group's
28 expressive rights. "Material and substantial disruption" does not
29 include conduct that is protected under the First Amendment to the
30 United States Constitution and Article I of the state Constitution
31 including, but not limited to, lawful protests and counterprotests in
32 the outdoor areas of campus or minor, brief, or fleeting nonviolent
33 disruptions that are isolated or brief in duration.

34 (b) "Outdoor areas of campus" means generally accessible areas of
35 a campus at an institution of higher education in which members of
36 the campus community are commonly allowed, including grassy areas,
37 walkways, or other similar common areas. "Outdoor areas of campus"

1 does not include outdoor areas of campus to which access is
2 restricted.

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