



MEMORANDUM

Date: 13 November 2018
To: The Ohio Higher Education and Workforce Development Committee
From: Tyson C. Langhofer
Re: Testimony Supporting House Bill 758

Thank you, Chairman Duffey and other members of the Committee.

My name is Tyson Langhofer. I serve as the Director of the ADF Center for Academic Freedom. We are committed to protecting freedom of speech and association of students and faculty, having secured nearly 400 victories defending these freedoms at public universities across the country. Thank you for allowing me to speak this morning regarding HB 758. It is a privilege to stand before you and advocate for free speech and free association in the very places where those priceless liberties should be most cherished and most celebrated: the campuses of our public universities.

Sadly, it is in those very places where those liberties are too often under assault. For example, last year we filed a lawsuit against Miami University of Ohio after it unconstitutionally censored a student group's speech.¹ Ellie Wittman, the President of that group, is here today and will tell the rest of the story.

A lawsuit was filed just last week against Kent State University for assessing unconstitutional security fees against a student group. A hearing on the students' motion for preliminary injunction is being held today.

At a college in Georgia, a student named Chike Uzuegbunam recently tried to distribute literature outside on campus, peacefully sharing his faith with fellow students.² College officials quickly stopped him because he was outside the two "speech zones" that comprised a tiny fraction of campus, less than 0.0015%, and were closed more than 90% of the week.

Chike then followed these rules and reserved a speech zone. When the day came for him to speak, campus police stopped him after just a few minutes. Why? Someone complained about his speech, and to the College, this converted constitutionally protected speech into "disorderly conduct." Under its speech code, "disorderly conduct" included anything that "disturbs the peace and/or comfort of person(s)."

¹ See Alliance Defending Freedom, *University officials in Ohio deem pro-life display harmful, impose unconstitutional trigger warning*, Nov. 29, 2017, at <http://www.adfmedia.org/News/PRDetail/10425> (last visited Nov. 12, 2018).

² See Alliance Defending Freedom, *Georgia College Sued for Censoring Student Speech, Restricting it to 0.0015% of Campus*, Dec. 20, 2016, available at <http://www.adfmedia.org/News/PRDetail/10134> (last visited Feb. 20, 2018); see also Alliance Defending Freedom, *US Weighs in for Censored Christian Student in Georgia*, Sept. 26, 2017, available at <http://www.adfmedia.org/News/PRDetail/10387> (last visited Feb. 20, 2018).



Sadly, Chike’s story is not unusual. Using similar policies, university officials nationwide treat students as if they should be seen but not heard.

We recently represented a Christian student group at North Carolina State where similar speech policies prohibited students from distributing any “written materials” or engaging in “any oral communication with a passerby” anywhere on campus without first getting permission from administrators.³

We also recently represented a libertarian student group at Kellogg Community College in Michigan.⁴ Its members stood outside on campus, asked students, “Do you like freedom and liberty?,” and handed out copies of the U.S. Constitution. College officials declared this question too “provocative” for their students and had our clients arrested, jailed, and charged with trespassing.

HB 758 seeks to protect students at Ohio’s public universities from becoming the next victims of this sort of abuse. Why is this legislation necessary? First, it protects the rights of students from university officials who either do not understand or do not care about the First Amendment.

All of Ohio’s public universities doubtlessly say they value free speech. But so do these schools in Georgia, North Carolina, and Michigan—and countless others like them. Just because a university says it values free speech does not mean that its actions or policies comply with the First Amendment.

For example, FIRE, a national non-partisan free speech group has rated eleven public universities in Ohio as “yellow light” schools.⁵ This is because they maintain at least one speech code that restricts free speech. If this is true of these major institutions, other colleges this group has yet to evaluate likely have similarly problematic speech codes.

In recent years, we sent six Ohio colleges and universities letters, informing them that they had unconstitutional speech codes or limited the freedom of association for

³ See Alliance Defending Freedom, *Student Group Sues NC State for Requiring Permits for Any, All Speech*, Apr. 26, 2016, available at <http://www.adfmedia.org/News/PRDetail/9937> (last visited Feb. 20, 2018); Alliance Defending Freedom, *Court Quickly Halts NC State Policy that Requires Permits for Any, All Speech*, Jun. 6, 2016, available at <http://www.adfmedia.org/News/PRDetail/9981> (last visited Feb. 20, 2018).

⁴ See Alliance Defending Freedom, *Student Club Supporters Arrested for Handing out US Constitution at Michigan College, ADF Sues*, Jan. 18, 2017, available at <http://www.adfmedia.org/News/PRDetail/10155> (last visited Feb. 20, 2018); see also Sarah Kramer, *When Free Speech Becomes “Trespassing”: ADF Sues Kellogg Community College*, Jan. 18, 2017, available at <https://www.adflegal.org/detailspages/blog-details/allianceedge/2017/01/18/when-free-speech-becomes-trespassing-adf-sues-kellogg-community-college> (last visited Feb. 20, 2018); Michelle Gregoire, *I Was Arrested for Handing Out the Constitution, While Campus Rioters Go Free*, Jun. 1, 2017, available at <https://www.adflegal.org/detailspages/blog-details/allianceedge/2017/06/01/i-was-arrested-for-handing-out-the-constitution-while-campus-rioters-go-free> (last visited Feb. 20, 2018).

⁵ These institutions include Bowling Green State University, Kent State University, Miami University of Ohio, Ohio University, Shawnee State University, Ohio State University, University of Akron, University of Cincinnati, University of Toledo, Wright State University, and Youngstown State University. Each of them maintains harassment-related speech codes that do not satisfy the constitutional standards in *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999). See Found. for Indiv. Rights in Educ., *Spotlight Database for Ohio*, available at <https://www.thefire.org/spotlight/?y=OH> (last visited November 12, 2018).



student groups.⁶ We offered to help them revise these policies. Three promised to review their policies; the others ignored us completely.

HB 758 would prevent these kinds of problems by ensuring that universities do what they are not inclined to do voluntarily: comply with the First Amendment.

Second, HB 758 provides clarity, giving universities a blueprint for crafting constitutional policies. This, in turn, incentivizes them to adopt such policies, thus avoiding litigation altogether. If institutions ignore this blueprint, this bill would serve as a catalyst for resolving the litigation quickly, before the legal bills pile up. Thus, this bill helps save the state's money and prevents universities from forcing Ohio's taxpayers to pay the bill for illegal policies.

Third, HB 758 educates students. Too often, students acquiesce to illegal actions and policies simply out of ignorance. But universities are obligated to respect the freedoms of all students, not just those who have the right knowledge, the right contacts, or enough funds to seek legal assistance. HB 758 informs students of their rights, giving officials all the more reason to respect those rights.

In closing, the Supreme Court declared that the "essentiality of freedom in the community of American universities is almost self-evident."⁷ It ruled that our "Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection."⁸ But many universities, including ones in this state, substantially restrict free speech and association, teaching students that government censorship is the norm, not the exception. HB 758 seeks to correct these injustices without forcing students to vindicate their freedoms through the courts.

Thank you for your time, and I am happy to answer any questions you may have.

⁶ These institutions include Bowling Green State University, Shawnee State University, Stark State College of Technology, University of Rio Grande, University of Toledo, and Youngstown State University.

⁷ *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

⁸ *Keyishian v. Bd. of Regents of Univ. of N.Y.*, 385 U.S. 589, 603 (1967).