



MEMORANDUM

Date: May 26, 2020
To: The Ohio House of Representatives Higher Education Committee
From: Tyson C. Langhofer
Re: Testimony Supporting Senate Bill 40

Thank you, Chairwoman Keller and other members of the Committee.

My name is Tyson Langhofer. I serve as the Director of the Alliance Defending Freedom Center for Academic Freedom. We are committed to protecting the 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 afternoon regarding SB 40. 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, in 2017 we filed a lawsuit against Miami University of Ohio after it unconstitutionally censored a student group's speech.¹ Alli Lowe, the President of that group, is here today and will tell the rest of the story.

In 2018, one of our allied attorneys represented a student group in a successful lawsuit against Kent State University for assessing unconstitutional security fees on their event.

At a college in Georgia several years ago, a student named Chike Uzuegbunam 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)."

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

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 May 21, 2020).

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 May 21, 2020); 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 May 21, 2020).



We currently represent Young Americans for Liberty at Montclair State University in New Jersey where three of their members were stopped from peacefully expressing their views on a sidewalk because college policies prohibit students from engaging in peaceful, expressive activity 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.

SB 40 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, New Jersey, 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.

Over the last five years, we sent seven Ohio colleges and universities letters, informing them that they had unconstitutional speech codes or limited the freedom of association for student groups.⁵ We offered to help them revise these policies. Two agreed to modify their policies; the others ignored us completely.

SB 40 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, SB 40 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.

³ See Alliance Defending Freedom, *Montclair State sued over unconstitutional speech policy, arbitrary favoritism toward student groups*, Jan. 16, 2020, available at <http://www.adfmedia.org/News/PRDetail/10906> (last visited May 21, 2020).

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 May 21, 2020); 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 May 21, 2020); 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 May 21, 2020).

⁵ These institutions include Bowling Green State University, Central Ohio Technical College, Clark State Community College, Edison Community College, Stark State College of Technology, University of Rio Grande, and Youngstown State University.



Third, SB 40 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. SB 40 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.”⁶ 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.”⁷ 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. SB 40 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 *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

⁷ *Keyishian v. Bd. of Regents of Univ. of N.Y.*, 385 U.S. 589, 603 (1967).