

TO: Senate Workforce & Higher Education Committee
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio
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RE: Sub. Senate Bill 135 – Opponent testimony



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To Chairman Johnson, Vice Chair Cirino, Ranking Member Williams, and members of the Senate Workforce & Higher Education Committee, thank you for this opportunity to provide the following opponent testimony for Substitute Senate Bill 135.

Before you today is a bill addressing various aspects of how Ohio's colleges and universities operate. It also makes numerous changes regarding the First Amendment in Ohio's schools, universities, and those who contract with public universities to provide goods and services. Our interest in SB 135 and today's comments are limited to the speech provisions.

OVERVIEW

Over the past several years, the General Assembly has been active in introducing and passing legislation with regard to speech in Ohio's schools. As the organization that reviews, researches, speaks on, and litigates these issues more than any other in the state, the ACLU of Ohio takes particular interest in all these bills.

Our emphasis and goal is for broad First Amendment protections for all Ohioans, including our students. On some of these bills, we have been or are proponents. Some other bills we regard as unnecessary given the broad free speech protections found in the First Amendment and Ohio Constitution. Concerns about potential, harmful effects – even with bills with good intentions - have led us to be interested party on those. On others, we think the language will undoubtedly confuse where it seeks to clarify and lead to negative consequences.

There is a lot to say and can be said about the complexities and nuances of the First Amendment as it applies to public school and universities. It is far from a black/white world of constitutional law. I offer the following, brief thoughts in attempt to be as helpful as possible to the committee.

STUDENT SPEECH

For now, we have three general thoughts about the student speech provisions. First, SB 135 does not appear to account for certain speech that is so pervasive and harassing that it prevents a student or students from receiving a proper education and reasonably makes them feel unsafe in school. Schools have an obligation to provide an environment where this does not occur. However, SB 135 does not appear to acknowledge this duty. Certainly, we do not want public schools going overboard and unnecessarily or unconstitutionally restricting speech. But, we also must account for this obligation.

Second, if SB 135 supporters want to protect the free speech of public school students, perhaps the most helpful and needed step they can take is to codify, via Ohio law, the concept that schools may not punish students for speech outside the school doors or school environment. This is a timely issue as the Supreme Court of the United States is currently considering a closely-watched case about this very issue.

Third, last session, this body passed Senate Bill 40. In part, that bill addressed speech issues on Ohio's public university and college campuses. It went into effect only two months ago. Is there something deficient in SB 40 that now leads to making further changes of this type so soon, especially as Ohio universities and schools have spent resources and time preparing for SB 40's implementation?

TEACHER/FACULTY SPEECH

The First Amendment rights of public school teachers remains a murky area precisely because most of their classroom speech is treated as if it is the government's own speech. What is clear is they do not enjoy the same, exact free speech rights as students. Indeed, public school teachers walk a fine line because they are employed by the government. So, if or when they are disciplined, those punishments are ultimately government restrictions on speech. However, they are also employees in a workplace and must abide by various rules and regulations governing their jobs and their roles.

However, SB 135 does not recognize this distinction and treats students and teachers or professors as if they have the same exact free speech rights in the classroom. The end result will be instructors having wide latitude to express their beliefs with regard to such topics as political candidates, religious faith, and other endless other topics whether they are teaching kindergartners or instructing a class of 30-year-old PHD students.

SB 135 also completely ignores the power dynamic between teachers and students by treating them as equals in a classroom environment. Does anyone really expect an impressionable third grader to push back when their teacher spouts off regarding religion, politics, and other topics? Indeed, when it comes to religious and other speech in a classroom, courts are generally more protective of the younger students because of indoctrination concerns. Again, SB 135 does not recognize any differences between ages and maturity levels of students.

Finally, SB 135 appears to not recognize the requirement that government, including public school teachers, must remain neutral with regard to religious teachings. This bill can certainly be interpreted as kicking open the door to allow teachers to openly discuss their own religious views and denigrate those of others, among other, related problems along these lines.

BOYCOTTS & STATE CONTRACTS

A few years ago, Ohio passed a stunningly anti-free speech law. It prevents state agencies from contracting with private businesses if those businesses boycott other countries for ideological and political reasons. This same law requires what is essentially a formal oath from these businesses they do not and will not engage in such boycotts. Preventing private companies and businesses from doing this outside of any business they may have with the State of Ohio is certainly a First Amendment issue and violation. That is why such laws continue to be struck down by courts across the country, including one just this week out of Georgia.

It is ironic a bill that purports to be so concerned about the free speech of students and faculty then doubles down on Ohio's own flawed law by expanding it to include state university and college contracts. It is our belief the existing law should be repealed, not perpetuated via SB 135.

CONCLUSION

Again, this is the short version of the ACLU of Ohio's concerns with this legislation. I hope this summary proves helpful with this committee's consideration of this bill. Should any members wish for further dialogue on our concerns, I am available and would welcome that opportunity. But, SB 135 currently contains far too many pitfalls, unintended consequences, intended consequences, and problems with regard to its speech provisions. As currently written, the ACLU of Ohio urges your rejection of Substitute Senate Bill 135.