



REMARKS FOR SUBMISSION TO THE OHIO STATE SENATE  
EDUCATION COMMITTEE, REGARDING SB 40

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Chairwoman Lehner, Vice Chair Terher, Ranking member Fedor, and members of the committee:

“Do you like freedom and liberty?” This was a question posed by students at a public college campus a few years ago. The answer on our college campuses must and should be a resounding, “Yes.” After all, the as the Supreme Court has stated, the “essentiality of freedom in the community of American universities is almost self-evident.”<sup>1</sup> Indeed, 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.”<sup>2</sup> However, because many public college and university policies fail to safeguard these important principles, students’ speech is silenced and fear rather than freedom reigns on many campuses. Indeed, students have found that the answer to the question “do you like freedom and liberty?” on many campuses, is “no.” The speakers in that case were actually arrested for asking this question and passing out copies of the constitution without permission.<sup>3</sup> While this specific incident happened just north of here in Michigan, unfortunately, when it comes to free speech, Ohio’s public colleges and universities currently fall short as well.

By way of introduction, my name is Caleb Dalton. I serve as Legal Counsel with Alliance Defending Freedom’s Center for Academic Freedom. ADF is the world’s largest legal organization committed to protecting religious freedom, free speech, and the sanctity of life. We played various roles in 54 Supreme Court victories and since 2011, we have represented parties in nine victories at the Supreme Court.<sup>4</sup> In 2018, Empirical SCOTUS ranked ADF first among “the top performing firms” litigating First Amendment cases.<sup>5</sup> ADF’s Center for Academic Freedom<sup>6</sup> is committed to protecting freedom of speech and association for students and faculty so that everyone can freely participate in the marketplace of ideas without fear of censorship, and has represented clients in over 385 victories for First Amendment matters on university

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<sup>1</sup> *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

<sup>2</sup> *Keyishian v. Bd. of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 603 (1967).

<sup>3</sup> *Young Americans for Liberty v. Kellogg Community College*, <https://adflegal.org/detailspages/press-release-details/student-club-supporters-arrested-for-handing-out-us-constitution-at-michigan-college-adf-sues>.

<sup>4</sup> Alliance Defending Freedom has achieved successful results for its clients before the United States Supreme Court, including nine victories before the highest court in the last eight years. See e.g. *National Institute of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018) (striking down state law forcing pro-life pregnancy centers to advertise for abortion industry); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018) (upholding ADF’s client’s free-exercise rights); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) (striking down state burdens on ADF’s client’s free-exercise rights); *Geneva College v. Burwell*, 136 S. Ct. 1557 (2016) (per curium) (successful result for religious colleges’ free exercise rights); *Southern Nazarene University v. Burwell*, 136 S. Ct. 1557 (2016) (same); *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015) (unanimously upholding ADF’s client’s free-speech rights); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014) (striking down federal burdens on ADF’s client’s free-exercise rights); *Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811 (2014) (upholding a legislative prayer policy promulgated by a town represented by ADF); *Ariz. Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436 (2011) (upholding a state’s tuition tax credit program defended by a faith-based tuition organization represented by ADF).

<sup>5</sup> Adam Feldman, *Empirical SCOTUS: Supreme Court all-stars 2013-2017*, SCOTUSBlog.com, Sept. 13, 2018, <https://www.scotusblog.com/2018/09/empirical-scotus-supreme-court-all-stars-2013-2017/>.

<sup>6</sup> ADF Center for Academic Freedom, [www.CenterforAcademicFreedom.org](http://www.CenterforAcademicFreedom.org) (last visited March 30, 2019).

campuses since 2006.<sup>7</sup> I appreciate the opportunity to speak with you today regarding the FORUM Act and the need for the legislature to take action to protect students' first amendment rights on campus.

The importance of a robust enforcement of First Amendment protections on our nation's campuses is difficult to overstate. The United States Supreme Court has called public universities "peculiarly the marketplace of ideas."<sup>8</sup> Without this marketplace of ideas, the court said, "our civilization will stagnate and die."<sup>9</sup> As the marketplace's custodians, public universities should be places where young adults learn to exercise the First Amendment rights necessary to participate in our system of government and to tolerate others' exercise of those same rights. Indeed, teaching students about our constitutional system and their role in it as citizens is a necessary part of education, and students learn as much or more from universities' policies and practices of protecting or restricting expression and association as they do from the classroom.

Unfortunately, like in some other states, many Ohio colleges and universities retain speech restrictions that violate the first amendment, costing not only student's freedoms, but also teaching future leaders that government censorship is permissible and normal—not to mention the risk to taxpayers dollars entailed by defending these unconstitutional policies in court. Since 2006, ADF's Center for Academic Freedom engaged in legal matters with 12 Ohio institutions regarding free speech and association.

These situations demonstrate both the need for additional legislative action, and the benefit that past action by this body has already had. Between 2006 and 2011, ADF represented multiple student organizations at Ohio Universities that were discriminated against because, for example, as a Christian organization they required their club president to be a Christian.<sup>10</sup> In 2011, the Ohio Legislature passed and the governor signed HB 153 which prohibits this type of discrimination against religious student organizations and these incidents have dramatically decreased. To my knowledge, those incidents that have come up have been quickly resolved without litigation because of the statutory protections provided by this body.

While that legislation has done much good, it was very limited. The ADF Center for Academic Freedom has represented students in cases on Ohio campuses in recent years where the Universities imposed unconstitutional speech codes, speech zones, and fee policies.<sup>11</sup> While some progress has been made through litigation and the threat of litigation, piecemeal progress

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<sup>7</sup> *Id.*

<sup>8</sup> *Healy v. James*, 408 U.S. 169, 180 (1972).

<sup>9</sup> *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (plurality opinion of C.J. Warren).

<sup>10</sup> E.g. *Christian Legal Society v. Holbrook* (Ohio State University), <http://centerforacademicfreedom.org/cases/christian-legal-society-chapter-of-the-ohio-state-university-v-holbrook/>; *Christian Legal Society v. Johnson (Toledo)*, <http://centerforacademicfreedom.org/cases/christian-legal-society-chapter-of-the-university-of-toledo-v-johnson/>; *Campus Bible Fellowship v. Members of the Board of Trustees of Wright State University*, <http://centerforacademicfreedom.org/cases/campus-bible-fellowship-v-members-of-the-board-of-trustees-of-wright-state-university/>.

<sup>11</sup> E.g. Center for Academic Freedom Cases in Ohio, <http://centerforacademicfreedom.org/cases/?filter-topic=all&filter-outcome=all&filter-intervention=all&filter-state=OH&sort=date-desc> (last visited March 30, 2019).

delays justice and cost the state. The time has come to give further guidance to public colleges and universities and the FORUM Act does just that.

The FORUM Act will protect the constitutional rights of students and, ultimately, save the state unnecessary attorney's fees. This legislation is especially important in light of the recent executive order issued by the President which has the potential to jeopardize millions in funding to Ohio's colleges and universities. As I'm sure you are aware, Ohio State alone receives over \$280 million annually in research funding.

The legislature need not micromanage Ohio's institutions of higher education, but it is clear that action is needed to guide the universities and colleges to maintain a least a minimum standard of respect for students' first amendment rights. Just this year, the legislatures in of Iowa, Kentucky, Arkansas, and South Dakota have passed similar bills; and committees in Oklahoma and South Carolina are considering similar bills in hearings today as well. Ohio should join its neighbors in protecting its public universities as the marketplace of ideas where freedom not fear of government restriction leads to innovation and intellectual flourishing.

In conclusion, the status quo at many public institutions substantially restricts free speech and association, and teaches students that government censorship is the norm, not the exception. But, identifying and acknowledging the problems are the first steps in remedying them so that the future of freedom is secured through a well-educated citizenry that appreciates the value of the First Amendment. Taking action is the next step, and that is up to you. We commend the Committee for its attention to this vital matter.

Thank you for your time and am happy to answer questions.

Respectfully,



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