

TO: House Civil Justice Committee
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio
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RE: House Bill 88 – Interested Party Testimony



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To Chairman Hambley, Vice Chair Patton, Ranking Member Brown, and members of the House Civil Justice Committee, thank you for this opportunity to present interested party testimony on House Bill 88.

Due to inquiries from members of this committee, we thought it may be helpful to appear today to share our thoughts and answer any questions the committee may have.

As you might expect, the ACLU of Ohio has always and remains committed to broad free speech protections including speech that takes place on the campuses of Ohio's state universities.

For that reason, there are several provisions found in HB 88 the ACLU of Ohio supports including:

- 1) Removal from current law the outdated, unenforceable and unconstitutional restrictions on the speech of communists, those who "presence is not conducive to high ethical and moral standards" and similar language.
- 2) The elimination of free speech zones on campus. As you have heard from previous witnesses, these ironically-named locations do not facilitate the free exchange of ideas or information, they purposely limit them in unacceptable and unconstitutional ways.
- 3) Allowances for spontaneous assemblies of students and individuals. Too often, such scenarios are unfortunately overlooked by government entities who seek to regulate speech, even when the regulation is not meant to stifle First Amendment rights.
- 4) Requiring students to be informed about their First Amendment rights on campus.

Indeed, much of HB 88 errs on the side of free speech and against government restrictions, an overall goal we appreciate and share.

However, there are other sections, provisions, and language found in HB 88 that give us pause. It appears, in HB 88's zeal to protect campus speech, it is designed to enshrine into state law much of what is current First Amendment court jurisprudence. It is that which leads to our hesitation.

You may be familiar with the old saying – the answer to any legal question is “it depends.” It is an observation that both pokes fun at the legal profession but also accurately describes it. It also applies to First Amendment law and litigation.

This “it depends” allows judges and courts to weigh specific factors, variables, and interests for each individual case before them. So, while some principles may apply very broadly in a majority of situations, there may also be rare exceptions. When those exceptions occur, judges, attorneys, plaintiffs, and defendants adjust by necessity to any such changes to previous case law.

HB 88 plants various specific language and principles into the Ohio Revised Code. By doing so, it begs the question what happens if future court decisions regarding speech on campus weaken or improve this area of law, leaving Ohio law antiquated and frozen in time, much like current law's aforementioned restrictions against communists?

Going further, there is various language found in HB 88 that not only gives us pause - we feel it is unhelpful. This is the result of terms found in HB 88 such as “public forums” (without defining what kind of public fora), what a “significant institutional concern” entails when deciding whether a university's concerns are legitimate or not, unclear language regarding the rights of counter protestors, and more.

If the committee is interested, there is more to say about these concerns. But, for now, my goal is to provide brief testimony and, again, see if there are specific questions from the committee and ways the ACLU of Ohio may be of assistance in furthering understanding of the First Amendment on campus and the ramifications of HB 88.

For now, I will say that the ACLU of Ohio's ideal version of such legislation would include the provisions found in House Bill 88 we support while leaving much of the specific and detailed language about the First Amendment out of state law.