



---

KANSAS NATIONAL EDUCATION ASSOCIATION / 715 SW 10TH AVENUE / TOPEKA, KANSAS 66612-1686

February 15, 2018

SB 340

Written testimony by Mark Desetti, KNEA

In opposition

Mr. Chairman, members of the Committee, thank you for the opportunity to submit written testimony in opposition to Senate Bill 340.

We believe this act, while written in a way to sound like a great protection, is actually harmful. We also believe that while an institution of higher education absolutely must be a center for the free exchange of ideas where everyone is challenged to think in new ways about their own long held positions, the institution must always consider the safety of their students and faculty.

This bill is just as likely to incite violence as it is to protect speech.

I'd like to take certain parts of the bill that we believe are particularly problematic.

Section 1 (d)(3)

"free speech" means speech, expression or assemblies protected by the first amendment to the constitution of the United States or section 11 of the bill of rights of the constitution of the state of Kansas, verbal or written, including, but not limited to, all forms of peaceful assembly, protests, demonstrations, rallies, vigils, marches, public speaking, distribution of printed materials, carrying signs, displays or circulating petitions.

This section is overly broad. As a point, it should be noted that the Statehouse bans the carrying of signs but under this section an institution of higher education could not do the same. Institutions should be allowed to control where and when certain activities may take place.

Section 1 (d)(4)

"Student" means an individual currently enrolled in a course of study at the institution.

This is particularly problematic in that later in the bill any student may invite a speaker to campus who must then be permitted to come. Under this, someone could enroll in one course, invite an incendiary speaker to campus, and the institution would have no option but to allow that speaker on campus.

Section 2 (a)(6)

although an institution should greatly value civility and mutual respect, concerns about civility and mutual respect shall never be used by an institution as a justification for closing off the discussion of ideas, however offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical or wrong-headed those ideas may be to some students or faculty

This section would prohibit an institution from taking into consideration events related to a speaker's past presentations. When rallies featuring a particular speaker routinely devolve into violence, should an institution not have the ability to stop such a speaker from appearing at a rally on campus? This is a fundamental matter of protecting students and faculty.

Section 2 (a)(10) & (11)

an institution shall maintain the generally accessible, open, outdoor areas of its campus as traditional public forums for free speech by students;

an institution shall not restrict students' free speech only to particular areas of the campus, sometimes known as "free speech zones"

These two sections together suggest that there shall be no restriction on where any activity may take place. An institution may not consider what an event might mean in terms of restricting students ability to access classroom buildings or whether or not the area is of sufficient size to host an event. Institutions must be able to manage their facilities in a way that best meets the educational interests of the students.

Section 2 (a)(12)

an institution shall not deny student activity fee funding to a student organization based on the viewpoints that the student organization advocates

This section would require an institution to provide funding to hate groups. Do you wish to require student activity fee funding be provided to white supremacist organizations or anti-Semitic organizations?

Section 2 (a)(13)

an institution shall not establish permitting requirements that prohibit spontaneous outdoor assemblies or outdoor distribution of literature,

This section essentially says that anything is permitted in any outdoor campus area without any advance notice to the institution. This allows the most extreme organizations or speakers access to campus without any ability by the institution to provide even extra police protection.

Section 2 (a)(15) & (16)

an institution shall allow all students and faculty to invite guest speakers to campus to engage in free speech regardless of the views of guest speakers;

an institution shall not disinvite a speaker invited by a student, student organization or faculty member because the speaker's anticipated speech may be considered offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical or wrong-headed by students, faculty, administrators, government officials or members of the public.

Taken together and with the definition of student mentioned earlier, this section allows anyone on campus at any time with no oversight by the institution whatsoever – even if the speaker has a history of inciting violence.

It is important to remember that the Supreme Court has recognized that there are limits to free speech under the first amendment. A unanimous decision in the 1917 case, *Schenck v United States*, noted this. Oliver Wendell Holmes, Jr., in writing the opinion famously stated, "*The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. [...] The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.*"

We believe in the Constitutional protection of free speech. We believe that Richard Spencer is free in this country to preach White supremacy just as Louis Farrakhan is free to preach anti-Semitism and Black supremacy. Most Americans would find both messages to be "offensive, unwise, immoral, indecent, disagreeable." But their right to express such positions should not require an institution of higher education to give them unfettered access to all outdoor areas of campus at any time.

We urge this committee to reject SB 340.