

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 364

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO THE PROTECTING CRITICAL THINKING IN HIGHER EDUCATION ACT; AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 64, TITLE 33, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE FINDINGS, TO DEFINE TERMS, TO PROVIDE THAT CERTAIN ACTIVITIES ARE PROTECTED, TO ESTABLISH PROVISIONS REGARDING EXPRESSIVE ACTIVITIES IN OUTDOOR AREAS OF INSTITUTION CAMPUSES, TO ESTABLISH PROVISIONS REGARDING FREE EXPRESSIVE ACTIVITY, TO PROVIDE FOR FREE SPEECH EDUCATION, TO REQUIRE CERTAIN REPORTS, TO PROVIDE REMEDIES, TO PROVIDE A STATUTE OF LIMITATIONS, TO PROVIDE THAT PUBLIC INSTITUTIONS OF HIGHER EDUCATION ARE NOT IMMUNE FROM SUITS OR LIABILITY UNDER THIS CHAPTER, AND TO PROVIDE SEVERABILITY; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 64, Title 33, Idaho Code, and to read as follows:

CHAPTER 64
PROTECTING CRITICAL THINKING IN HIGHER EDUCATION ACT

33-6401. SHORT TITLE. This chapter shall be known and may be cited as the "Protecting Critical Thinking in Higher Education Act."

33-6402. LEGISLATIVE FINDINGS. The legislature finds that:

(1) The first amendment of the United States constitution and the constitution of the state of Idaho protect the rights of freedom of speech, freedom of the press, freedom of religion, freedom of association, and freedom to petition the government for all citizens;

(2) The United States supreme court, in Healy v. James, described public universities as "peculiarly the marketplace of ideas," where young adults learn to exercise the constitutional rights necessary to participate in our system of government and to tolerate others' exercise of the same rights, and there is "no room for the view that ... first amendment protections should apply with less force on college campuses than in the community at large";

(3) The exercise of first amendment rights on the campuses of public institutions of higher education in this state are critical components of the education experience for students and requires that each public institution of higher education ensures free, robust, and uninhibited debate and deliberations by students whether on or off campus;

(4) The United States supreme court warned in Sweezy v. New Hampshire that if public universities stifle student speech and prevent the open exchange of ideas on campus, "our civilization will stagnate and die"; and

1 (5) A significant amount of taxpayer dollars is appropriated to pub-
2 lic institutions of higher education each year, and as such, the legislature
3 must ensure that all public institutions of higher education receiving state
4 funds recognize freedom of speech as a fundamental right for all.

5 33-6403. DEFINITIONS. As used in this chapter:

6 (1) "Benefit" means the recognition, registration, use of facilities
7 of the institution of higher education for meetings or speaking purposes,
8 use of channels of communication, and funding sources that are otherwise
9 available to other student organizations at the public institution of higher
10 education.

11 (2) "Campus community" means the students, administrators, faculty,
12 and staff of a public institution of higher education and their invited
13 guests.

14 (3) "Harassment" means only that expression that is unwelcome, so se-
15 vere, pervasive, and subjectively and objectively offensive that a student
16 is effectively denied equal access to educational opportunities or benefits
17 provided by a public institution of higher education.

18 (4) "Materially and substantially disrupts" means when a person, with
19 the intent to or with knowledge of doing so, significantly hinders another
20 person's or group's expressive activity, prevents the communication of an-
21 other person's or group's message, or prevents the transaction of the busi-
22 ness of a lawful meeting, gathering, or procession by:

23 (a) Engaging in fighting or violent or other unlawful behavior; or

24 (b) Physically blocking or using threats of violence to prevent any
25 person from attending, listening to, viewing, or otherwise participat-
26 ing in an expressive activity. Conduct that "materially disrupts" does
27 not include conduct that is protected under the first amendment to the
28 United States constitution or the constitution of the state of Idaho.
29 Such protected conduct includes but is not limited to lawful protests
30 in the outdoor areas of campus generally accessible to the members of
31 the public, except during times when those areas have been reserved in
32 advance for other events, or minor, brief, or fleeting nonviolent dis-
33 ruptions of events that are isolated and short in duration.

34 (5) "Outdoor areas of campus" means the generally accessible outside
35 areas of campus where members of the campus community are commonly allowed,
36 such as grassy areas, walkways, or other similar common areas and does not
37 include outdoor areas where access is restricted from a majority of the cam-
38 pus community.

39 (6) "Public institution of higher education" means a state institution
40 of higher education or a community college organized pursuant to chapter 21,
41 title 33, Idaho Code.

42 (7) "Student" means any person who is enrolled on a full-time or part-
43 time basis in a public institution of higher education.

44 (8) "Student organization" means an officially recognized group at a
45 public institution of higher education or a group seeking official recog-
46 nition, comprised of admitted students that receive, or are seeking to re-
47 ceive, benefits through the institution of higher education as defined in
48 this section.

1 33-6404. PROTECTED ACTIVITIES. Expressive activities protected under
2 the provisions of this chapter include but are not limited to any lawful
3 verbal, written, audio-visual, or electronic means by which individuals may
4 communicate ideas to one another, including all forms of peaceful assembly,
5 protests, speeches and guest speakers, distribution of literature, carrying
6 signs, and circulating petitions.

7 33-6405. OUTDOOR AREAS. The outdoor areas of campuses of public in-
8 stitutions of higher education in this state are deemed public forums for
9 the campus community, and public institutions of higher education must not
10 create free speech zones or other designated areas of campus outside of
11 which expressive activities are prohibited. Public institutions of higher
12 education may maintain and enforce reasonable time, place, and manner re-
13 strictions narrowly tailored in service of a significant institutional
14 interest only when such restrictions employ clear, published, content-
15 and viewpoint-neutral criteria and provide for ample alternative means of
16 expression. Any such restrictions must allow for members of the campus
17 community to spontaneously and contemporaneously assemble and distribute
18 literature. Nothing in this section may be interpreted as limiting the right
19 of student expression elsewhere on campus.

20 33-6406. FREE EXPRESSIVE ACTIVITY. (1) Any person who wishes to engage
21 in noncommercial expressive activity on campus must be permitted to do so
22 freely, as long as the person's conduct is not unlawful and does not materi-
23 ally and substantially disrupt the functioning of the public institution of
24 higher education, subject only to the requirements of this chapter.

25 (2) Nothing in this section prohibits public institutions of higher
26 education from maintaining and enforcing reasonable time, place, and manner
27 restrictions that are narrowly tailored to serve a significant insti-
28 tutional interest only when such restrictions employ clear, published,
29 content- and viewpoint-neutral criteria. Any such restrictions must allow
30 for members of the campus community to spontaneously and contemporaneously
31 assemble, speak, and distribute literature. Nothing in this section may
32 be interpreted as preventing public institutions of higher education from
33 prohibiting, limiting, or restricting expression that the first amendment
34 does not protect, such as true threats or expression directed to provoke
35 imminent lawless actions and likely to produce it, or prohibiting harassment
36 as defined in section 33-6403, Idaho Code.

37 (3) Nothing in this section enables individuals to engage in conduct
38 that intentionally, materially, and substantially disrupts another's ex-
39 pressive activity if that activity is occurring in a campus space reserved
40 for that activity under the exclusive use or control of a particular group.

41 (4) No public institution of higher education shall charge security
42 fees to a student or a student organization based on the content of the stu-
43 dent's or organization's expression, the content of the expression of the
44 student's or organization's invited guest, or the anticipated reaction to an
45 invited guest's expression.

46 33-6407. FREE SPEECH EDUCATION FOR MEMBERS OF THE CAMPUS COMMU-
47 NITY. Public institutions of higher education are required to make public in

1 their handbooks, on their websites, and through their orientation programs
2 for students the laws, policies, and expectations of students regarding free
3 expression on campus consistent with this chapter.

4 33-6408. REPORTS. (1) Each public institution of higher education
5 must publicly post on its website, as well as submit to the governor and state
6 legislature by December 1, 2021, a report detailing the course of action
7 implemented to be in compliance with the requirements of this chapter. A
8 report must also be given in the instance of any changes or updates to the
9 chosen course of action. The information required in the report must be:

10 (a) Accessible from the institution's website home page by use of no
11 more than three (3) links;

12 (b) Searchable by keywords and phrases; and

13 (c) Accessible to the public without requiring registration or use of a
14 user name, a password, or another user identification.

15 (2) The report described in subsection (1) of this section must in-
16 clude a description of any barriers to free expression occurring on campus,
17 including but not limited to attempts to block or prohibit speakers and in-
18 vestigations into students or student organizations for their speech. The
19 description must include the nature of each barrier or incident, as well as
20 which disciplinary action, if any, was taken against members of the campus
21 community determined to be responsible for those specific barriers or inci-
22 dents. No student's personally identifiable information will be included in
23 the report. The report must also include information each public institu-
24 tion of higher education deems valuable for the public to evaluate whether
25 free expression rights for all members of the campus community have been
26 equally protected and enforced consistent with this chapter. If a public
27 institution of higher education is sued for an alleged violation of first
28 amendment rights, a supplementary report with a copy of the complaint or
29 any amended complaint must be submitted to the governor and the legislature
30 within thirty (30) days of the filing of the complaint or amended complaint.

31 (3) Nothing in this section shall be interpreted as requiring the in-
32 stitution to include any information from a student's education record that
33 would be prohibited from public disclosure by the family educational rights
34 and privacy act or any employee's personnel information that is prohibited
35 from public disclosure by section 74-106(1), Idaho Code.

36 33-6409. REMEDIES. Subject to all provisions and limitations con-
37 tained in the Idaho tort claims act, chapter 9, title 6, Idaho Code, any
38 person or student association aggrieved by a violation of this chapter may
39 bring an action against the public institution of higher education and any of
40 its employees, acting in their official capacities, responsible for the vio-
41 lation. A person or student association may seek appropriate relief in such
42 action, including but not limited to injunctive relief, monetary damages,
43 reasonable attorney's fees, and court costs. If a court finds a violation of
44 this chapter, the court will issue an award of at least five thousand dollars
45 (\$5,000). Any person or student organization aggrieved by a violation of
46 this chapter may assert such violation as a defense or counterclaim in any
47 disciplinary action or in any civil or administrative proceedings brought
48 against such student or student organization. Nothing in this section may be

1 interpreted to limit any other remedies available to any person or student
2 organization.

3 33-6410. STATUTE OF LIMITATIONS. A person is required to bring suit
4 for a violation of this chapter no later than one (1) year after the day the
5 cause of action accrues. For purposes of calculating the one (1) year lim-
6 itation period, each day that the violation persists, and each day that a
7 policy in violation of this section remains in effect, constitutes a new day
8 that the cause of action has accrued.

9 33-6411. NO IMMUNITY FOR PUBLIC INSTITUTIONS OF HIGHER EDUCATION. A
10 public institution of higher education that violates this chapter is not im-
11 mune from suit or liability for the violation.

12 33-6412. SEVERABILITY. The provisions of this chapter are hereby de-
13 clared to be severable and if any provision of this chapter or the applica-
14 tion of such provision to any person or circumstance is declared invalid for
15 any reason, such declaration shall not affect the validity of the remaining
16 portions of this chapter.

17 SECTION 2. An emergency existing therefor, which emergency is hereby
18 declared to exist, this act shall be in full force and effect on and after its
19 passage and approval.