

115TH CONGRESS  
2D SESSION

# S. 2394

To amend the Higher Education Act of 1965 to ensure that public institutions of higher education protect expressive activities in the outdoor areas on campus.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2018

Mr. HATCH introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Higher Education Act of 1965 to ensure that public institutions of higher education protect expressive activities in the outdoor areas on campus.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Free Right to Expres-  
5 sion in Education Act”.

6 **SEC. 2. CAMPUS INDIVIDUAL RIGHTS.**

7 Title IV of the Higher Education Act of 1965 (20  
8 U.S.C. 1070 et seq.) is amended—

1 (1) in section 487(a), by adding at the end the  
2 following:

3 “(30) In the case of an institution that is a  
4 public institution, the institution will comply with  
5 the expressive activity protections described in sec-  
6 tion 493E.”; and

7 (2) in part G, by adding at the end the fol-  
8 lowing:

9 **“SEC. 493E. CAMPUS INDIVIDUAL RIGHTS.**

10 **“(a) DEFINITION OF EXPRESSIVE ACTIVITIES.—**

11 **“(1) IN GENERAL.—**In this section, the term  
12 ‘expressive activity’ includes—

13 **“(A)** peacefully assembling, protesting, or  
14 speaking;

15 **“(B)** distributing literature;

16 **“(C)** carrying a sign; or

17 **“(D)** circulating a petition.

18 **“(2) EXCLUSIONS.—**In this section, the term  
19 ‘expressive activity’ does not include violence, har-  
20 assment, or obscenity (as defined by the Secretary in  
21 accordance with the precedents of the Supreme  
22 Court of the United States).

23 **“(b) EXPRESSIVE ACTIVITIES AT AN INSTITUTION.—**

24 **“(1) IN GENERAL.—**Each public institution of  
25 higher education participating in a program under

1 this title may not prohibit, subject to paragraph (2),  
2 a person from freely engaging in noncommercial ex-  
3 pressive activity in an outdoor area on the institu-  
4 tion's campus if the person's conduct is lawful.

5 “(2) RESTRICTIONS.—An institution of higher  
6 education described in paragraph (1) may maintain  
7 and enforce reasonable time, place, or manner re-  
8 strictions on an expressive activity in an outdoor  
9 area of the institution's campus, if the restriction—

10 “(A) is narrowly tailored to serve a signifi-  
11 cant institutional interest;

12 “(B) is based on published, content-neu-  
13 tral, and viewpoint-neutral criteria; and

14 “(C) leaves open ample alternative chan-  
15 nels for communication.

16 “(3) APPLICATION.—The protections provided  
17 under paragraph (1) do not apply to expressive ac-  
18 tivity in an area on an institution's campus that is  
19 not an outdoor area.

20 “(c) CAUSES OF ACTION.—

21 “(1) AUTHORIZATION.—The following persons  
22 may bring an action in a Federal court of competent  
23 jurisdiction to enjoin a violation of this section or to  
24 recover compensatory damages, reasonable court  
25 costs, or reasonable attorney fees:

1           “(A) The Attorney General.

2           “(B) A person claiming that the person’s  
3           expressive activity rights, as described in sub-  
4           section (b)(1), were violated.

5           “(2) ACTIONS.—In an action brought under  
6           this subsection, if the court finds a violation of this  
7           section, the court—

8           “(A) shall—

9           “(i) enjoin the violation; and

10           “(ii) if a person whose expressive ac-  
11           tivity rights were violated brought the ac-  
12           tion, award the person—

13           “(I) not less than \$500 for an  
14           initial violation; and

15           “(II) if the person notifies the in-  
16           stitution of the violation, \$50 for each  
17           day the violation continues after the  
18           notification if the institution did not  
19           act to discontinue the cause of the  
20           violation; and

21           “(B) may award a prevailing plaintiff—

22           “(i) compensatory damages;

23           “(ii) reasonable court costs; or

24           “(iii) reasonable attorney fees.

25           “(d) STATUTE OF LIMITATIONS.—

1           “(1) IN GENERAL.—Except as provided in para-  
2           graph (3), an action under this section may not be  
3           brought later than 1 year after the date on which  
4           the cause of action accrues.

5           “(2) CONTINUING VIOLATION.—Each day that  
6           a violation of this section continues after an initial  
7           violation of this section, and each day that an insti-  
8           tution’s policy in violation of this section remains in  
9           effect, shall constitute a continuing violation of this  
10          section.

11          “(3) EXTENSION.—For a continuing violation  
12          described in paragraph (2), the limitation described  
13          in paragraph (1) shall extend to 1 year after the  
14          date on which the most recent violation occurs.”.

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