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In Senate, May 5, 2021

An Act To Enact the Campus Free Speech and Free Press Act

Received by the Secretary of the Senate on May 3, 2021. Referred to the Committee on Education and Cultural Affairs pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read "D M Grant", is positioned above the printed name of the Secretary of the Senate.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator KEIM of Oxford.
Cosponsored by Representative: ANDREWS of Paris.

1 Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 20-A MRSA c. 408 is enacted to read:

3 **CHAPTER 408**

4 **CAMPUS FREE SPEECH AND FREE PRESS ACT**

5 **§10601. Short title**

6 This chapter may be known and cited as "the Campus Free Speech and Free Press Act."

7 **§10602. Free speech policy statement**

8 **1. Free speech policy statement; required contents.** Each public institution of
9 higher education shall adopt a free speech policy statement that contains, at a minimum:

10 A. That the institution is committed to free and open inquiry in all matters and
11 guarantees all members of the institution's community, including all the staff and
12 students, the broadest possible latitude to speak, write, listen, challenge and learn;

13 B. That the institution fully respects and supports the freedom of all members of the
14 institution's community to discuss any problem that presents itself;

15 C. That it is not the proper role of the institution to attempt to shield individuals from
16 ideas and opinions they find unwelcome, disagreeable or even deeply offensive.
17 Although the institution greatly values civility and although all members of the
18 institution's community share the responsibility for maintaining a climate of mutual
19 respect, concerns about civility and mutual respect can never be used as a justification
20 for closing off discussion of ideas, however offensive or disagreeable those ideas may
21 be to some members of the institution's community;

22 D. That the institution's fundamental commitment is to the principle that debate and
23 deliberation may not be suppressed because the ideas put forth are thought by some to
24 be offensive, unwise, immoral or wrongheaded. It is for the individual members of the
25 institution's community, not for the institution, to make those judgments for themselves
26 and to act on those judgments, not by seeking to suppress speech but by openly and
27 vigorously contesting the ideas that they oppose. Indeed, fostering the ability of
28 members of the institution's community to engage in such debate and deliberation in
29 an effective and responsible manner is an essential part of the institution's education
30 mission; and

31 E. That the institution expects members of the institution's community to act in
32 conformity with the principle of free speech. Although members of the institution's
33 community are free to criticize and contest the views expressed on campus and to
34 criticize and contest speakers who are invited to express their views on campus, they
35 may not intentionally, materially and substantially disrupt another's freedom to express
36 that person's views, even views they reject or loathe. To this end, the institution has a
37 solemn responsibility not only to promote a lively and fearless freedom of debate and
38 deliberation but also to protect that freedom when others attempt to restrict it.

39 **2. Public institution of higher education defined.** As used in this chapter, unless the
40 context otherwise indicates, "public institution of higher education" or "institution" means

1 any campus of the Maine Community College System, any campus of the University of
2 Maine System and the Maine Maritime Academy.

3 **§10603. Right to use campus for free speech activities**

4 **1. Protected expressive activities.** Expressive activities protected under the
5 provisions of this Act include, but are not limited to, all forms of peaceful assembly,
6 protests, speeches, distribution of literature, carrying signs, circulating petitions and the
7 lawful recording and publication, including Internet publication, of audio and video
8 recorded in public outdoor areas of public institutions of higher education.

9 **2. Traditional public forum; reasonable restrictions.** The publicly accessible
10 outdoor areas of public institutions of higher education must be treated as traditional public
11 fora. In those areas, public institutions of higher education may maintain and enforce
12 reasonable time, place and manner restrictions in service of a significant institutional
13 interest only when such restrictions employ clear, published, content-neutral and
14 viewpoint-neutral criteria and provide for ample alternative means of expression. Any such
15 restrictions must provide for opportunities for members of the institution's community to
16 spontaneously and contemporaneously distribute literature and assemble.

17 **3. Noncommercial expressive activity; no "free speech zone."** Any person who
18 wishes to engage in noncommercial expressive activity at a public institution of higher
19 education must be permitted to do so freely, as long as the person's conduct is not unlawful,
20 subject to the restrictions permitted under subsection 2. A public institution of higher
21 education may not designate any area of its campus as a "free speech zone" or otherwise
22 create policies restricting expressive activities to particular areas of campus.

23 **4. Security fees.** A public institution of higher education may require a permit for any
24 individual or group that wants to reserve a campus location and exercise exclusive control
25 over that location during the time of the reservation. A public institution of higher
26 education may charge a security fee to a student organization or student group as part of an
27 application for those activities that require a permit, but a public institution of higher
28 education may not charge security fee to a student or student group based on the content of
29 the expression of the student or student group, the content of the expression of an invited
30 guest or the anticipated reaction to the student's, student group's or invited guest's
31 expression. Whether a permit is approved and whether the security fee is required and its
32 amount may be determined only on the basis of content-neutral and viewpoint-neutral
33 criteria. Examples of content-neutral and viewpoint-neutral criteria include: the time of the
34 event; the location of the event; the anticipated size of the invited audience; and whether
35 alcohol will be served. An institution charging security fees pursuant to this subsection
36 shall publish the criteria it uses for assessing those fees, and it must provide a fee waiver
37 process for individuals and organizations that lack an ability to pay.

38 **5. No right to disrupt.** Nothing in this Act grants students, faculty or staff of the
39 institution the right to intentionally materially and substantially disrupt previously
40 scheduled or reserved activities or to use physical force or violence against a person,
41 physical obstruction or damage or destruction of property or the threat of physical force or
42 violence against a person, of physical obstruction or of damage or destruction of property
43 to interfere with another's freedom to express that person's views, even views they reject or
44 loathe.

1 **6. Right of student expression.** Nothing in this Act may be interpreted as limiting
2 the right of student expression in areas other than as specified in subsection 1.

3 **§10604. Campus free press protections**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "School-sponsored media" means any materials that are prepared, substantially
7 written, published or broadcast, in any medium, by a student journalist at a public
8 institution of higher education under the direction of a student media advisor and
9 distributed or generally made available to members of the student body. "School-
10 sponsored media" does not include media intended for distribution or transmission for
11 classroom purposes only.

12 B. "Student journalist" means a student at a public institution of higher education who
13 gathers, compiles, writes, edits, photographs, records or prepares information for
14 inclusion in school-sponsored media.

15 C. "Student media advisor" means an individual employed, appointed or designated
16 by a public institution of higher education to supervise or provide instruction relating
17 to school-sponsored media.

18 **2. Freedom of speech and press in school-sponsored media.** Except as provided in
19 paragraph A, a student journalist has the right to exercise freedom of speech and freedom
20 of the press in school-sponsored media regardless of whether the medium is supported
21 financially by the school or uses the facilities of the school or if the material is produced in
22 conjunction with a course or class in which the student is enrolled. Subject to paragraph
23 A, a student journalist is responsible for determining the news, opinions, feature and
24 advertising content of school-sponsored media. Student media advisors may teach
25 professional standards of English and journalism to student journalists, consistent with this
26 subsection.

27 A. This section does not authorize or protect expression by a student journalist that
28 violates federal or state law.

29 B. Material prepared for school-sponsored media may not be subject to prior restraint
30 except insofar as the material violates the standards of paragraph A. Institution
31 officials have the burden of showing prior justification for any limitation of student
32 journalist expression under this section and shall afford a student journalist a timely
33 opportunity for appeal.

34 C. A student journalist may not be disciplined for acting in accordance with this
35 section.

36 D. A student media advisor may not be dismissed, suspended, disciplined, reassigned,
37 transferred or otherwise retaliated against for:

38 (1) Refusing to infringe on conduct that is protected by this section or the First
39 Amendment of the United States Constitution or Article I, Section 4 of the
40 Constitution of Maine; or

41 (2) Acting to protect a student journalist engaged in permissible conduct under
42 this section or the First Amendment of the United States Constitution or Article I,
43 Section 4 of the Constitution of Maine.

1 E. Each public institution of higher education shall adopt a written policy for the
2 exercise of the right of student journalists to freedom of speech and freedom of the
3 press in school-sponsored media in accordance with this section. The policy must
4 include reasonable provisions for the time, place and manner of distribution of student
5 expression consistent with section 10603. The policy must include a provision
6 allowing for the timely appeal within the institution of decisions made pursuant to this
7 section.

8 F. An expression made by a student journalist in the exercise of free speech or free
9 press may not be deemed an expression of institution policy, and no institution official
10 or institution may be held responsible in any civil or criminal action for any expression
11 made or published by a student journalist.

12 G. A student journalist or student media advisor may file a complaint against a public
13 institution of higher education and its agents acting in their official capacities for
14 injunctive or declaratory relief in the Superior Court to enforce the rights provided by
15 this section. This paragraph may not be construed to create a private right of action on
16 behalf of a student journalist other than to seek injunctive relief allowing the
17 publication of the student expression in question. A court may award reasonable
18 attorney's fees to a plaintiff that substantially prevails.

19 **§10605. Policy; training and education**

20 **1. Responsibility for discipline and education.** Each public institution of higher
21 education shall develop training materials, programs and procedures to ensure that those
22 persons who have responsibility for discipline or education of students, including but not
23 limited to administrators, campus police officers, residence life officials and professors,
24 understand the policies, regulations and duties of public institutions of higher education
25 regarding free expression on campus, academic freedom, freedom of the press and other
26 constitutional rights applicable in the collegiate setting.

27 **2. Students.** Each public institution of higher education shall develop materials,
28 programs and procedures to educate students on the policies, regulations and duties of
29 public institutions of higher education regarding free expression on campus, academic
30 freedom, freedom of the press and other constitutional rights applicable in the collegiate
31 setting.

32 **§10606. Cause of action**

33 **1. Plaintiffs.** The following persons may file a complaint in the Superior Court against
34 a public institution of higher education and its agents acting in their official capacities to
35 enjoin a violation of this Act and to recover compensatory damages, reasonable costs and
36 attorney's fees:

37 A. The Attorney General; and

38 B. Persons whose expressive rights were violated through the violation of this Act.

39 **2. Damages.** In an action brought under this section, if the court finds a violation of
40 this Act, the court shall award the plaintiff not less than \$500 for the initial violation plus
41 \$50 for each day the violation remains ongoing, which accrues starting on the day after the
42 complaint is served on the public institution of higher education. The total damages,
43 excluding court costs and attorney's fees, available to a plaintiff or plaintiffs, in a case or
44 cases stemming from a single controversy, may not exceed the actual damages incurred by

the plaintiff or plaintiffs or \$100,000 in total, whichever is greater. When a violation harms multiple plaintiffs, the court shall divide the damages equitably among the plaintiffs until the maximum award, if available, is exhausted.

3. One-year limitation period. A person must bring suit for a violation of this Act no later than one year after the day the cause of action accrues. For purposes of calculating the one-year limitation period, each day that the violation of this Act persists and each day that a policy in violation of this Act remains in effect constitutes a new violation of this Act and, therefore, a new day that the cause of action has accrued.

SUMMARY

This bill enacts the Campus Free Speech and Free Press Act, which applies to state public institutions of higher education, namely, the Maine Community College System, the University of Maine System and the Maine Maritime Academy. It establishes the right to use the campus of these institutions for free speech activities and prohibits the limitation of expression to so-called free speech zones. It also protects student journalists and their student media advisors, although it does not authorize or protect expression by a student journalist that violates federal or state law. It creates a cause of action against a public institution of higher education and its agents, to be filed by the Attorney General or any aggrieved person, for injunctive relief as well as damages.