

The UNC System's In-Process Free Speech Regulations

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and

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**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

**SESSION LAW 2017-196
HOUSE BILL 527**

**AN ACT TO RESTORE AND PRESERVE FREE SPEECH ON THE CAMPUSES OF THE
CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.**

Became law on July 31, 2017, after Governor Cooper did not sign it.

THE CORNER

THE ONE AND ONLY.

North Carolina Campus Free-Speech Act: First Goldwater-Based Law



by [STANLEY KURTZ](#) July 31, 2017 3:49 PM

With Governor Roy Cooper (D) taking no action on the bill, the state of North Carolina has enacted the Restore Campus Free Speech Act, the first

CAMPUS FREE SPEECH: A LEGISLATIVE PROPOSAL

BY STANLEY KURTZ, JAMES MANLEY, AND JONATHAN BUTCHER



The General Assembly of North Carolina enacts:

SECTION 1. Chapter 116 of the General Statutes is amended by adding a new Article to read:

"Article 36.

"Campus Free Speech.

"§ 116-300. Policies required.

The Board of Governors of The University of North Carolina shall develop and adopt a policy on free expression that states, at least, the following:

- (1) The primary function of each constituent institution is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate. To fulfill this function, the constituent institution must strive to ensure the fullest degree of intellectual freedom and free expression.
- (2) It is not the proper role of any constituent institution to shield individuals from speech protected by the First Amendment, including, without

The Process Thus Far

- BOG shared draft of policy with Faculty Assembly
- FA input (Profs *Timothy Ives* (UNC School of Pharmacy), *David Green* (Law, NC Central), *Kim Cogdell* (Law, NC Central), *Jim Martin* (Chemistry, NCSU))
- Main goal: ensure that BOG policy is no broader than the statute requires
- Some changes accepted by BOG; others not
- Input/reaction from others affected by policy as well (including staff, students, campus-level counsels' offices, others)
- BOG Committee on University Governance approved a draft of policy on Friday, 11/3
- Modifications continue to be made
- Up for consideration/vote by full BOG at meeting on December 15
- Came before FEC on Monday, November 6. Because the target is still moving, and time is very short, FEC decided to inform Faculty Council rather than attempt a resolution

The Draft BOG Policy as of Now(ish): An Overview

I.

Purpose of policy is to support and assist campuses in efforts to **embrace** free speech rights and **balance** them with protections against unlawful activity.

II.

Lengthy affirmation of the university's and the General Assembly's support for established principles of free expression, **with this addition**: "It is not the proper role of any constituent institution to shield individuals from speech protected by the First Amendment, including, without limitation, ideas and opinions they find unwelcome, disagreeable, or even deeply offensive."

III.

Campuses may not act on current public policy controversies in a way that requires anyone to publicly express a particular view.

The Draft BOG Policy as of Now(ish): An Overview

IV.

Students, staff and faculty may gather for expressive activity if it is lawful and does not “materially and substantially disrupt the functioning” of a campus.

A “material and substantial disruption” is one or more of four things:

- a. disorderly conduct **in violation of state law**
- b. disruption of a public meeting **in violation of state law**
- c. violation of a chancellor-designated curfew **under state law**
- d. conduct **actually triggering** a trespass notice from law enforcement.

The Draft BOG Policy as of Now(ish): An Overview

IV. (continued)

Consistent with established First Amendment principles, campuses are open to **any speaker invited** by students or faculty.

But much of the property of the university is dedicated to the campus's **instruction and research functions**, and the campuses can exclude people from those areas in order to prevent disruption to those functions.

V.

Campuses are allowed to restrict types of expression that are **not protected** under the First Amendment (e.g., defamatory expression)

VI.

Campuses are required to take steps **to inform** students, faculty, staff, and the general public about their First Amendment policies.

The Draft BOG Policy as of Now(ish): An Overview

VII. Consequences

Campuses have to implement and enforce a range of sanctions – extending to dismissal or expulsion – for those who **substantially disrupt** a campus’s functioning.

“Substantial disruption” means the four legal violations mentioned earlier, and can include a protest that “materially infringes” on the right of an audience to listen to a scheduled speaker in a nonpublic setting.

A counter-protester can also run afoul of the policy by disrupting a protester who is engaged in an “acceptable form of dissent.”

The Draft BOG Policy as of Now(ish): An Overview

VII. Consequences (continued)

A first offense can lead to discipline including suspension, expulsion, or dismissal.

The presumptive punishment is at least a suspension for a second offense and expulsion (student) or dismissal (faculty/staff) for a third, but a campus can impose a different sanction if warranted.

Charged individuals are entitled to a variety of procedural protections in the adjudication of their claimed offenses.

VIII.

Each campus has to identify who is responsible for ensuring compliance with the policy and, as requested, reporting to the BOG Committee on Free Expression. Those individuals will be trained by the UNC School of Government.