

House Oversight Committee
House Bill 4436
Position: Opposed
May 16, 2019

I would first like to thank the sponsor and this committee who have worked to provide legislation that seeks to protect our right of free speech. Dialogue and the open exchange of ideas are vital to our society when they do not put others in harm. Unfortunately, HB 4436 in its current form does not protect our precious freedom but instead weakens it. Its language is vague and stifles free speech while restricting the power of our educational institutions to fight for just causes. These issues are demonstrated in the following provisions:

- HB 4436 Sec. 3 (a)(iv) seeks to penalize protests or demonstrations that “materially infringe upon the rights of others to engage in or listen to expressive activity.” This language is too vague and chills free speech by threatening sanctions against successful protests. For example, a counter protest may occur on campus which is larger and louder than the original protest. If this counter protest makes it difficult for someone to listen, the counter protesters may be sanctioned under this provision. This threat has the potential to chill campus free speech for fear of sanctions and discourages popular and democratic protest activity.
- HB 4436 Sec. 3 (a)(viii) mandates an “institution will strive to remain neutral, as an institution, on the public policy controversies of the day.” Similar to Sec. 3 (a)(iv), this provision is vaguely worded (what are considered public policy controversies?) and not only limits the freedom of our educational institutions, but also limits our ability as a society to engage with social issues. If this provision were in place during the 1990s for instance, it may have prevented US colleges from participating in the boycott of Apartheid South Africa. The stances taken by those institutions against white supremacy were undisputedly just and vital to the effort to achieve legal racial equality in South Africa. If such a provision were implemented, our institutions would no longer have the chance to participate in such noble causes.

HB 4436 in its current form contradicts long-established precedents about free speech on college campuses. If these provisions are interpreted correctly, this “free speech bill” ironically only limits our First Amendment rights at a time when they are crucial to preserving our democracy. HB 4436 also forces colleges to substantively disengage with important social issues despite this engagement being the mission of many institutions. Once again, I applaud the efforts of our elected officials in striving to protect and strengthen our rights and have no doubt their intentions were right. Unfortunately, I believe this effort has missed its mark.

Respectfully,

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