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HOUSE BILL NO. 1274

Offered January 10, 2018

Prefiled January 10, 2018

A *BILL to amend the Code of Virginia by adding a section numbered 23.1-401.1 and to repeal §§ 23.1-400, 23.1-401, and 23.1-900.1 of the Code of Virginia, relating to public institutions of higher education in the Commonwealth; expressive activity on campus.*

Patron—LaRock

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. **That the Code of Virginia is amended by adding a section numbered 23.1-401.1 as follows:**

§ 23.1-401.1. Expressive activity on campus.

A. As used in this section:

"Benefit" includes recognition, registration, the use of facilities of the public institution of higher education for meetings or speeches, the use of channels of communication, and funding sources that are available to each student organization at the public institution of higher education.

"Campus community" includes students, administrators, faculty, and staff at the institution of higher education and any invited guest of any such individual.

"Counterdemonstration" means lawful action or conduct that criticizes and objects to the expressive activities of others on campus and does not materially and substantially violate the right of members of the campus community to engage in expressive activity.

"Expressive activity" means any lawful oral or written means by which individuals communicate ideas to one another. "Expressive activity" includes all forms of peaceful assembly, protest, speech, guest speech, distribution of literature, carrying of signs, and circulating of petitions.

"Harassment" means expression that is so severe, pervasive, and subjectively and objectively offensive that it unreasonably interferes with an individual's access to educational opportunities provided by a public institution of higher education.

"Outdoor area of campus" means the area of the campus of a public institution of higher education outside of campus buildings that members of the campus community are generally permitted to enter.

"Outdoor area of campus" includes any grassy area, walkway, and other similar common area.

"Outdoor area of campus" does not include any outdoor area where access is restricted to a majority of the campus community.

"Student" means any individual who is enrolled full time or part time at a public institution of higher education.

"Student organization" means any officially recognized group or group that is seeking official recognition at a public institution of higher education that is composed of students that receive or are seeking to receive any benefit.

B. Any outdoor area of campus is deemed a traditional public forum. Public institutions of higher education may maintain and enforce reasonable time, place, and manner restrictions on expressive activity in any outdoor area of campus, provided that such restrictions are narrowly tailored to serve a significant institutional interest; are based on clear, published, content-neutral, and viewpoint-neutral criteria; provide for ample alternative means of expressive activity; and permit members of the campus community to spontaneously and contemporaneously assemble. Nothing in this subsection shall be interpreted to limit the right of any student to engage in expressive activity in any area of campus other than an outdoor area of campus. Public institutions of higher education may maintain and enforce reasonable time, place, and manner restrictions on expressive activity in any area of campus other than an outdoor area of campus, provided that such restrictions are narrowly tailored to serve a significant institutional interest; are based on clear, published, content-neutral, and viewpoint-neutral criteria; and permit members of the campus community to spontaneously and contemporaneously assemble.

C. Any individual who wishes to engage in noncommercial expressive activity on campus shall be permitted to do so freely, as long as such expressive activity does not materially and substantially disrupt the functioning of the public institution of higher education.

D. No public institution of higher education shall (i) deny a student organization any benefit or privilege available to any other student organization, or otherwise discriminate against a student organization, on the basis of the expressive activity of the members of such organization or (ii) restrict a student organization's ability to require any leader or other member of such organization to (a) affirm and adhere to the organization's sincerely held beliefs, (b) comply with the organization's standards of

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59 conduct, or (c) further the organization's self-defined mission or purpose.

60 E. Each public institution of higher education shall establish and include in its student handbook, on
61 its website, and through its student orientation programs institutional policies and expectations
62 regarding expressive activity by students on campus that are consistent with the provisions of this
63 section.

64 F. Each public institution of higher education shall develop materials, programs, and procedures to
65 ensure that any individual who is responsible for the discipline or education of enrolled students,
66 including each administrator, campus police officer, residence life official, and professor, understands
67 the institutional policies and expectations regarding expressive activity by students on campus that are
68 established pursuant to subsection E.

69 G. Each public institution of higher education shall develop, post conspicuously on its website, and
70 submit to the Governor and the General Assembly no later than December 1 of each year a report on
71 the institution's compliance with the provisions of this section. The information contained in such report
72 shall be accessible from the home page of the institution's website by use of not more than three links,
73 searchable by keywords and phrases, and accessible to the public without requiring registration or use
74 of any user name, password, or other user identification. The report shall include:

75 1. A description of any barriers to or incidents of disruption of expressive activity occurring on
76 campus, including attempts to block or prohibit speakers and investigations of students or student
77 organizations based on their expressive activity. Such description shall include the nature of each
78 barrier or incident, as well as what disciplinary action, if any, was taken against the members of the
79 campus community who were determined to be responsible for those specific barriers or incidents.
80 Barriers or incidents involving students shall be reported in a manner that does not disclose any
81 student's personally identifiable information; and

82 2. Any other information that the institution deems valuable for the public to evaluate whether the
83 right of each member of the campus community to engage in expressive activity has been equally
84 protected and enforced, consistent with the provisions of this section.

85 Such report shall be amended and resubmitted to the Governor and General Assembly no later than
86 30 days after any date on which the institution is sued for an alleged violation of any right held by any
87 individual pursuant to the First Amendment to the United States Constitution. Such amended report shall
88 include a copy of the complaint that alleges such a violation.

89 H. Nothing in this section shall be interpreted to:

90 1. Prevent public institutions of higher education from prohibiting, limiting, or restricting any
91 expression that is not protected by the First Amendment to the United States Constitution or prohibiting
92 harassment; or

93 2. Limit the right of members of the campus community to hold a counterdemonstration, as long as
94 such counterdemonstration does not disrupt the functioning of the public institution of higher education.

95 I. Any individual or student organization aggrieved by a violation of any provision of this section
96 may (i) bring an action against the public institution of higher education and any individual responsible
97 for the violation and seek appropriate relief, including injunctive relief, monetary damages, reasonable
98 attorney fees, and court costs, and (ii) assert such violation as a defense or counterclaim in any
99 disciplinary action or in any civil or administrative proceeding brought against such individual or
100 student organization. Nothing in this section shall be interpreted to limit any other remedies available to
101 any individual or student organization.

102 J. Any individual or student organization aggrieved by a violation of any provision of this section
103 that brings an action against the public institution of higher education or any individual responsible for
104 the violation shall do so no later than one year after the day that the cause of action accrues. For
105 purposes of calculating such one-year limitation period, each day that the violation persists shall
106 constitute a new violation of this section and a new day that the cause of action has accrued.

107 K. The Commonwealth waives immunity under the Eleventh Amendment to the United States
108 Constitution and consents to suit in a federal court for lawsuits arising out of this section. A public
109 institution of higher education that violates any provision of this section is not immune from suit or
110 liability for such violation.

111 2. That §§ 23.1-400, 23.1-401, and 23.1-900.1 of the Code of Virginia are repealed.