



Testimony

SB 18 Interim Charge 1 *Texas House Higher Education Committee*

by Thomas K. Lindsay, PhD

Chair Turner and Members of the Committee:

My name is Tom Lindsay, and I am a distinguished senior fellow of higher education and constitutional studies at the Texas Public Policy Foundation. I would like to thank you for the opportunity to provide information for Interim Charge #1.

Interim Charge 1 reads:

Monitor the agencies and programs under the Committee’s jurisdiction and oversee the implementation of relevant legislation passed by the 86th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including:

. . . SB 18, which relates to the protection of expressive activities at public institutions of higher education. Monitor the process by which institutions of higher education implement policies to protect the expressive rights of persons guaranteed by the constitutions of the United States and of this state.

1. What have institutions done to protect the expressive rights of persons while also maintaining an orderly and safe learning environment?

Response:

The Foundation has published [research](#) addressing this topic in detail. It has been too soon since the passage of SB 18 last year—coupled with the COVID-19 shutdown—to assess accurately what institutions have “done to protect the expressive rights of persons while also maintaining a safe learning environment.”

That said, while Texas is to be congratulated for becoming the 17th state in the Union to pass a campus free speech bill, the House should study the efficacy of the following proposed amendments to strengthen SB 18 in order to better ensure its overarching purposes:

The Foundation agrees with the nonpartisan free speech watchdog the Foundation for Individual Rights in Education (FIRE) that “one potentially problematic provision [of SB 18] requires institutions to implement disciplinary measures for students who ‘unduly interfere with the expressive activities of others.’” The Foundation shares FIRE’s concern over “schools sitting idly by as speakers are prevented from addressing an audience because of disruptions.” As FIRE notes, “the statute does not define ‘unduly interfere’ in its text, and if an institution adopted a policy with identical language, it would likely be unconstitutionally overbroad.”

The Foundation also agrees with FIRE’s assessment that SB 18 “falls short by failing to provide any mechanism for individuals or the state attorney general’s office to enforce the rights provided in the bill if a school is not in compliance.”

Thank you for the opportunity to offer this information. I look forward to future discussions.

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