



## **FAMILY ISSUE FACT SHEET**

**No. 2016-08 (February 2016)**

# **HB 2548 – POSTSECONDARY CAMPUSES; PUBLIC FORUMS; ACTIVITIES**

### **EXECUTIVE SUMMARY**

Across the nation, a growing number of students' free speech rights on campus have been curtailed by universities and courts alike. Arizona's law was updated in 2011 to protect First Amendment rights for students but continues to lack the ability to enforce such a law. HB 2548 ensures that if a student's free speech rights are restricted, the student or the Attorney General can bring a legal claim against the college or university.

### **BACKGROUND**

The First Amendment of the U.S. Constitution provides that "Congress shall make no law...abridging the freedom of speech...." There is no setting that this protection of speech is more applicable than in traditional public forums – "places which by long tradition or by government fiat have been devoted to assembly and debate."<sup>1</sup> Examples of traditional public forum include "streets and parks which have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions."<sup>2</sup> Generally in public forums like these, government restrictions of speech must meet the highest legal analysis of strict scrutiny, meaning there must be a compelling government interest and it must be narrowly drawn to achieve that end.

Although the Supreme Court has ruled that "the campus of a public university, at least for its students, possesses many of the characteristics of a public forum," some colleges and universities in recent years have used restrictive policies creating "free speech zones" to not permit student speech without prior approval.<sup>3</sup>

In response to this government overreach, the Arizona legislature passed the University Students' Religious Liberty Act in 2011, which required that any restrictions on student speech in open, outdoor areas of the campus or other facilities that are made available for student speech are subject to strict scrutiny review by a court. This law has remained on the books for several years, but a recent case at Paradise Valley Community College has highlighted the need to add a crucial enforcement mechanism for the law.

In October last year, college student Brittany Mirelez wanted to publicize the creation of a campus group called Young Americans for Liberty. After she began passing out fliers for her group and copies of the U.S. Constitution, campus officials told her to stop because she did not obtain a reservation in advance.

Although the establishment of a “free speech zone” and requirement for seeking advanced permission would seem to violate current state law on its face, the law does not include the ability to file a lawsuit to seek enforcement of the law. Because of this omission, attorneys for Mirelez filed a lawsuit in federal court making traditional First Amendment claims.

HB 2548 ensures that students like Brittany have a form of recourse if a university or college violates Arizona’s public forum law. It adds a private right of action and also allows for the Attorney General to bring a lawsuit in the event the law is violated. In addition, HB 2548 makes a clarifying change to the definition of “public forum” to avoid confusion.

## TALKING POINTS

- **Colleges and universities are supposed to be a place where ideas are freely shared, not gagged.** The cornerstone of higher education is the ability of students to participate in the marketplace of ideas on campus.
- **The First Amendment protects the rights of students to engage in speech.** This bill simply ensures there is the ability to enforce a law already on the books.
- **A college short-circuits its own purpose when it places its own restrictive speech rules above the freedoms that the First Amendment guarantees to students and all Americans.**
- **Students should not have to seek permission to exercise their First Amendment rights.**

## CONCLUSION

In light of a growing trend to restrict students’ free speech rights, the Arizona legislature was ahead of the curve when it passed the University Students’ Religious Liberty Act in 2011. Due to a recent case highlighting the inability to enforce the law, HB 2548 adds a private right of action to ensure the law will be followed.

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<sup>1</sup> *Perry Education Assn. v. Perry Local Educators’ Assn.*, 460 U.S. 37, 45 (1983).

<sup>2</sup> *Id.*

<sup>3</sup> *Widmar v. Vincent*, 454 U.S. 263, 268 n. 5 (1981).