

By: Cain

H.B. No. 2100

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the protection of expressive activities at state
3 facilities, including institutions of higher education; creating a
4 civil action.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 2165, Government Code, is amended by
7 adding a new Subchapter J to read as follows:

SUBCHAPTER J. PROTECTION OF EXPRESSION

9 2165.450. APPLICABILITY. The exceptions provided by Section
10 2165.002 do not apply to this section.

11 2165.451. DEFINITIONS. In this section:

19 (b) "Disruptive activity" has the meaning assigned by
20 Section 51.935(b), Education Code;

21 (c) "Employee" means a person employed by a state agency or
22 institution of higher education in an executive, professional,
23 administrative, or clerical capacity;

24 (d) "Institution of higher education" has the meaning

1 assigned by Section 61.003, Education Code.

2 (e) "Matter of public concern" means an issue related to:

3 (1) health or safety;

4 (2) environmental, economic, or community well-being;

5 (3) the government;

6 (4) a public official or public figure;

7 (5) a good, product, or service in the marketplace; or

8 (6) a public policy controversy.

9 2165.452. AFFIRMATIVE RESPONSIBILITIES OF COMMISSION,
10 AGENCY, or INSTITUTION. The commission, a state agency, or an
11 institution of higher education shall:

12 (a) ensure that the common outdoor areas of the buildings,
13 grounds, or property under the control of the commission, state
14 agency, or institution of higher education are deemed traditional
15 public forums; and

16 (b) permit any person lawfully present to engage in
17 expressive activities in those areas freely, as long as the
18 person's conduct:

19 (1) is not unlawful;
20 (2) is not a disruptive activity; and
21 (3) does not materially and substantially disrupt the
22 functioning of the commission, agency, or institution.

23 2165.453. REASONABLE RESTRICTIONS. Notwithstanding Section
24 2165.452, the commission, a state agency, or an institution of
25 higher education by rule may maintain and enforce reasonable
26 restrictions on the time, place, and manner of expressive
27 activities in the common outdoor areas of any public buildings,

1 grounds, or property under the control of the commission, state
2 agency, or institution of higher education, if those restrictions:
3 (a) employ clear, published, content-neutral, and
4 viewpoint-neutral criteria;
5 (b) are necessary to serve a compelling state interest;
6 (c) are the least restrictive means to further that
7 compelling state interest;
8 (d) leave ample alternative means of expression; and
9 (e) allow members of the public to spontaneously and
10 contemporaneously assemble or distribute written material without
11 a permit or other permission from the commission, state agency, or
12 institution of higher education.

13 2165.453. NON LIMITATION. Sections 2165.452 and 2165.453 do
14 not limit the right of expression at any other location on the
15 public buildings, grounds, or property.

16 2165.454. EQUAL APPLICATION. The protections under this
17 subchapter apply equally to all persons, regardless of whether the
18 person is recognized by or registered with the commission, state
19 agency, or institution of higher education.

20 2165.455. POLICIES. (a) The commission, each state agency,
21 and each institution of higher education shall adopt a policy that
22 must:

23 (1) prohibit:

24 (A) the commission, agency, or institution, or
25 any employee of such commission, agency, or institution, from
26 punishing a person in any manner for engaging in expressive
27 activities;

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13 (b) The commission, state agency, or institution of higher
14 education must make the policy adopted under this section available
15 on the commission's, agency's, or institution's website.

16 2165.456. INJUNCTIVE RELIEF. (a) The attorney general or a
17 person whose expressive rights have been violated under this
18 subchapter may bring an action in state court for injunctive relief
19 to compel the commission, state agency, or institution of higher
20 education to comply with this section.

21 (b) The person bringing an action for injunctive relief
22 under this section may recover compensatory damages, court costs,
23 and reasonable attorney's fees. For purposes of this section,
24 compensatory damages means the greater of:

25 (1) the amount of the person's compensatory damages;

26 or

27 (2) \$1,000.

1 (c) Venue for an action under this section is appropriate in
2 the county in which the violation occurred.

3 (d) An action brought under this section must commence not
4 later than one year after the violation occurs. For purposes of
5 computing the limitation period, each day of a continuing
6 violation, including each day a rule or policy violating this
7 section remains in effect, constitutes a separate violation.

8 2165.457. CIVIL CAUSE OF ACTION. In addition to a suit for
9 injunctive relief under Section 2165.456, a person whose expressive
10 rights are affected by a rule or policy adopted by the commission, a
11 state agency, or an institution of higher education may bring a
12 civil action against the commission, agency, or institution for
13 declaratory judgment in the manner provide by Chapter 37, Civil
14 Practice and Remedies Code.

15 2165.458. WAIVER OF SOVEREIGN AND GOVERNMENTAL IMMUNITY.
16 Sovereign immunity and governmental immunity are waived for a
17 violation of this subchapter.

18 SECTION 2. Not later than August 1, 2020, the policies
19 required under Section 2165.455 as required by this Act must be
20 adopted.

21 SECTION 3. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2019.