

RECENT LEGISLATION RELATED TO FREE SPEECH ON MONTANA'S PUBLIC CAMPUSES

BACKGROUND

In recent sessions, Montana legislators considered several bills related to civil rights and free speech on Montana campuses. Though the bills aren't the focus of the Civil Rights Violations and Censorship by MUS Committee, the context of recent legislative discussions in this area might be helpful as the committee proceeds with its work.

2019 LEGISLATURE

The 66th Montana Legislature approved [House Bill No. 735 \(HB 735\)](#), which was sponsored by Rep. Mike Hopkins. However, Governor Steve Bullock vetoed the bill.

HB 735 prohibited public postsecondary institutions (universities and colleges) from creating "free speech zones" or otherwise designating outdoor campus areas where expressive activity was prohibited. It defined "expressive activity" as "any lawful oral, written, audio-visual, or electronic means by which individuals may communicate ideas to one another, including all forms of peaceful assembly, protests, speeches, guest speakers, distribution of printed materials, carrying signs, and circulating petitions." The bill outlined when a public postsecondary institution could limit expressive activities and the prohibited activities.

HB 735 allowed a student to file an action in district court if the student alleged a violation of the law. If the court found in favor of the student, the postsecondary institution was liable for damages of at least \$2,000 and up to \$75,000.

The governor [vetoed HB 735](#), reasoning that students already had remedies under federal law for free speech violations and that the bill limited those current protections.

2021 LEGISLATURE

The 67th Legislature considered two bills introduced by Rep. Mike Hopkins that related to free speech on college campuses: [House Bill No. 218 \(HB 218\)](#) and [House Bill No. 349 \(HB 349\)](#).

Recent Legislative Action Related to Civil Rights and Free Speech on Montana Public Campuses

HB 218 was similar to HB 735 from 2019 in that it banned free speech zones and provided students an avenue in state court to address allegations of potential violations of the law. However, it met a different fate as the 67th Legislature enacted HB 218, and Governor Greg Gianforte signed it into law.

HB 349 also was enacted by the 67th Legislature and signed by the governor. It prohibited a public postsecondary institution from discriminating against a religious, political, or ideological student organization based on the “expressive activity” of the student organization. HB 349 allowed student organizations to require that a leader or member follow the organization’s code of conduct and adhere to the organization’s sincerely held beliefs, while restricting the ability of a postsecondary institution to deny certain privileges and benefits to that student organization based on the expressive activities of its members. The privileges and benefits available to student groups include use of facilities, registration, recognition, and funding sources.

After the bill was enacted, several faculty and student groups and individuals challenged the bill’s constitutionality in state district court. The district court found that HB 349 violated the Montana Constitution by infringing on the authority granted to the Board of Regents to govern activities of the Montana university system and permanently enjoined enforcement of the bill. The Montana Supreme Court later upheld the district court ruling ([2024 MT 86](#)).

2023 LEGISLATURE

Two legislators introduced bills during the 68th Legislature to amend Article X, section 9, of the Montana Constitution, which grants power to the Board of Regents to “supervise, coordinate, manage, and control” the state’s university system.

Rep. Jennifer Carlson sponsored [House Bill No. 197 \(HB 197\)](#) to clarify that the powers granted to the Board of Regents in the constitution were “inferior to all restraints on government memorialized in Article II and elsewhere in the Montana constitution” and subject to limitations enacted by law. The sponsor withdrew HB 197 prior to a hearing.

Rep. Mike Hopkins sponsored [House Bill No. 517 \(HB 517\)](#) to allow the legislature to enact laws that would require the Board of Regents to protect freedom of speech, expression, and due process rights and to provide judicial remedies. HB 517 also would have added that the Board of Regents and other parts of the university system were not exempt from laws of general applicability. The bill failed to gather enough votes to meet the constitutional threshold for legislative proposals to amend the constitution, which is two-thirds of all members of the legislature.

2025 LEGISLATURE

[House Bill No. 284](#), which created the Civil Rights Violations and Censorship by MUS committee, was the only bill considered by the 69th Legislature on the topic of campus free speech and expressive activities.