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To: Higher Education and Employment Advancement Committee

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Re: HB 5355 AN ACT CONCERNING FREEDOM OF EXPRESSION ON COLLEGE CAMPUSES - Oppose

Dear chairs, ranking members, and distinguished members of the Higher Education and Employment Advancement Committee. I am writing to the committee in opposition of HB 5355 An Act Concerning Freedom of Expression on College Campuses. As a scholar working on dark money influence in higher education, this bill raises considerable concerns.

Campus free speech bills are popping up at state legislatures across the country, in addition to being issued by executive order from the White House. On face, campus free speech bills appear to be common sense statements about the importance of free speech on college campuses. However, they should instead be understood as part of a broader political strategy among private and corporate entities to undermine existing standards and professional norms that currently govern the difficult issues around preserving academic and free speech on college and university campuses. Institutions must be free to address these complicated issues according to the mission and professional standards, not through legislative imposition.

For context: Over the past few years there have been a large number of high-profile examples used to build the argument that conservative speech is stifled on college campuses. In many instances, the examples pointed to involve students protesting controversial conservative speakers, including Milo Yiannopoulos, Ben Shapiro, Charles Murray as well as Lucian Wintrich at UConn in 2017. This now common narrative of student protestors denying the free speech of conservative speakers becomes much more complicated, however, if one looks into the considerable funding and organized partisan machinery that makes these campus confrontations possible. Many of the controversial speakers are brought to campus by groups like Young Americans for Liberty, Turning Point USA, and other student-facing groups within the Koch donor network. As journalist Jane Mayer, Duke historian Nancy MacLean, Harvard political scientist Theda Skocpol, and countless others have demonstrated, these organizations are largely funded by the Charles Koch Foundation, Stand Together (formerly Freedom Partners Chamber of Commerce), Donor Trust and Donor Capital Fund (entities created to transfer donor money into ultra-libertarian groups), and well as others within the broader Koch donor network.¹ Similarly, many of the legal groups that sue schools for supposedly denying the free speech of campus speakers—such as Speech First and the Foundation of Individual Right in Education—are

¹ Jane Mayer. 2017. "A Conservative Nonprofit That Seeks to Transform College Campuses Faces Allegations of Racial Bias and Illegal Campaign Activity," *New Yorker*, December 21. Vasquez, Michael. 2017. "Inside a Stealth Plan for Political Influence," *Chronicle of Higher Education*, May 7. MacLean, Nancy. 2017. *Democracy in Chains: The Deep History of the Radical Right's Stealth Plan for America*. New York: Viking. Skocpol, Theda, and Alexander Hertel-Fernandez. 2016. "The Koch Network and Republican Party Extremism." *Perspective on Politics* 14 (3):681-99. Kroll, Andy. 2013. "Exposed: The Dark-Money ATM of the Conservative Movement." *Mother Jones*, February 5. SourceWatch. 2019. "Koch Brothers." The Center for Media and Democracy 2018 [Accessed March 4, 2020]. Available from https://http://www.sourcewatch.org/index.php/Koch_Brothers.

also funded by these same donors.² As are the organizations that have created model “campus free speech” legislation, such as the Goldwater Institute and the American Legislative Exchange Council (ALEC).³ While HB 5355 is not a verbatim adoption of the popular model bills put forward by these groups, it uses similar language to achieve many of the same effects.

Why are these billionaire funders concerned with stoking campus free speech crises and then advocating for campus free speech legislation? It is because such campus free speech bills are a strategy advanced by these outside groups to prevent criticism of their campus programs, and to shield the speakers they bring to campus from opposition. Such legislation also furthers the narrative that there exists a free speech “problem” on campus. Passing legislation that limits campus protest (in the name of “free speech”) will further allow outside groups and private interests to shape whose speech is protected on campus. They achieve this, for example, by limiting the ability for students to challenge why unqualified, anti-academic political partisans are being brought to campus in the first place.

It should be noted that all accredited colleges and universities already have institution-specific policies for how to navigate the complicated issues of academic freedom and free speech. Professional organizations like the American Association of University Professors (AAUP) also provide highly regarded and widely followed professional standards that address the completed issues around the freedom of students, faculty, and staff to speak, research, and study on campus.⁴ HB 5355 seeks to replace existing campus policies and professional standards through the imposition of policies that seeks to achieve greater donor influence over what kinds of speakers, conversations, and ideas are discussed on campus. Such legislation paves the way for even greater opportunity for well-funded partisans to shape what campus communities talk about, and how.

So what does HB 5355 do? It requires institutions of higher education in Connecticut to produce a “policy on freedom of expression.” This policy has six components.

First, the policy must state “the goal of prioritizing freedom of expression in the fulfillment of such institution's mission.” All accredited institutions of higher education already have such policies (and the assumption that they do not only exists to perpetuate the partisan narrative that college campuses do not respect free speech).

Secondly, campus policies must state “the role of the institution in protecting freedom of expression on campus, including when the ideas or opinions expressed are disagreeable or offensive.” In doing so, free speech is established as the primary objective, even in instances where such speech might run contrary to institutional mission. It is critical to point out that, as it is stated, this bill applies to all institutions “of higher education” and not just public universities (where the first amendment protections against government restrictions on speech are already spelled out).

Thirdly, the bill requires that campuses write policies that limit protest to that which “does not substantially or materially interfere with . . . the ability of others to engage in or listen to an expressive

² SourceWatch. 2019. “Speech First.” The Center for Media and Democracy.

https://www.sourcewatch.org/index.php?title=Speech_First [Accessed March 4, 2020].

³ Hertel-Fernandez, Alexander. 2019. *State Capture: How Conservative Activists, Big Business, and Wealthy Donors Reshaped the American States--and the Nation*. New York Oxford University Press.

⁴ For an overview, see: Reichman, Henry. 2019. *The Future of Academic Freedom*. Baltimore: Johns Hopkins University Press. Scott, Joan W. 2017. “On Free Speech and Academic Freedom,” *AAUP Journal of Academic Freedom*, 8, 4.

activity.” This requirement redefines constitutionally protected speech as unlawful; in effect, protecting the free speech of the speaker while denying the free speech to potential protestors.

In addition, the bill requires campus policies that designate “public areas on campus as public forums that are open on the same terms to any speaker.” However, “any speaker” might include Nazis, racists, and alt-right figures who pose a threat to students and violate the mission of the institution. It could also mean that a school like Hartford Seminary would have to indulge not only atheists but also anti-Semites, Islamophobes, or speakers from the Westboro Baptist Church—the presence of which would jeopardize their institutional mission.

Furthermore, the bill requires campus policies that deregulate college campuses, changing their designation to a limited public forum. Doing so would prevent colleges and universities from exercising their authority to protect their institutional interest, stripping their ability to draw upon their own policies, circumstances, and professional standards to determine who does and does not have access to their campus. In short, the bill treats college campuses as public parks and sidewalks, where everyone is allowed to express their opinion freely and without any limitations.

And, finally, the bill mandates policies that would prevent schools from disinviting speakers. This is particularly worrisome given that the donor network advancing campus free speech legislation has created pipelines of funding the circumvents traditional institutional practices for inviting speakers. Students or others empowered by the Koch donor network, for example, could invite speakers that jeopardize the institutional mission of the school and, given this bill, the administration could not overrule their decision. Again, another example of empowering a donor-driven—rather than institutional, professional, and mission driven—understanding of campus speech.

In considering HB 5355 it is important to understand the context in which this bill is being considered. Issues of campus free speech are complex, difficult, and must be handled with considerable thought and deliberation. This bill, however, seeks to derail already existing institutional and professional mechanisms for handling these complex issues. It does so for a partisan purpose, namely perpetuating the false narrative that conservative voices are not welcome in higher education. What this bill helps facilitate, however, is the empowerment of donor driven speech on campus. The public is best served, however, by allowing institutions to pursue their mission and professional obligations, namely the protection of free and open inquiry. This is not a goal accomplished by empowering external and partisan funders to have greater access determining what speech is allowed on college campuses.