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Free speech advocates alarmed by 'unconstitutional' anti-bullying bill

By [Steven Nelson](#) - The Daily Caller | Published: 4:10 PM 12/14/2010 | Updated: 4:17 PM 12/14/2010

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Photo: AP

The Tyler Clementi Higher Education Anti-Harassment Act may not be fast-tracked for a vote during the lame duck session of Congress. This comes as a relief to free speech advocates who fear that the legislation may usher in a new era of censorship on college campuses.



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The free speech advocacy group the Foundation for Individual Rights in Education has expressed concern that the bill, sponsored by Democratic New Jersey Sen. Frank Lautenberg, contains unconstitutional definitions of harassment.

Will Creeley, FIRE’s director of legal and public advocacy, told The Daily Caller that he believes that aspects of the act “threaten free speech on campus and are likely to be found unconstitutional if challenged in court.”












One portion of the act defines harassment as “sufficiently severe, persistent, or pervasive as to limit a student’s ability to participate in or benefit from a program or activity at an institution of higher education, or to create a hostile or abusive educational environment at an institution of higher education.” The second part of this definition is cause for significant concern, says Creeley.

Creeley explained that failure to define behavior that creates a “hostile or abusive educational environment” establishes a vague standard that would likely be abused by college administrators.

“Unconstitutional definitions of ‘harassment’ are the most commonly abused rationale justifying censorship,” Creeley said, noting that a similar policy was applied “to a student magazine at Tufts University that published true if unflattering facts about Islam.”

Free speech advocates are not the only opponents of the bill. Jimmy LaSalvia of GOProud, an organization of gay conservatives, told TheDC that he doubts that passage and implementation of the act will have a positive impact.

“It would require that colleges and universities receiving federal funds have the same policies as Rutgers did when the Tyler Clementi tragedy occurred,” says LaSalvia. “ I hope that Congress deals with the pressing matters facing the nation before dealing with this.”

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LaSalvia continued, saying, “[T]his is a very serious issue that should be taken seriously, but the United States Congress isn’t the place to deal with this issue.”

Conversations about the issue should be addressed within communities and houses of worship according to LaSalvia, who says that Justin Bieber’s Twitter feed likely has more influence than the act would.

Criticizing the act on free speech grounds has resulted in bitter criticism of FIRE, including a post on Lez Get Real addressed to Creeley that reads: “you are more than happy to side with those who cause suicides and no matter how much you want to scream about opposing bullying.”

Creeley responded to the criticism, writing that “simply invoking Clementi’s name in the title of the bill does not render it worthy of passage, nor does it justify the bill’s infringements upon freedom of speech.”

Senator Lautenberg’s office did not respond to multiple requests for comment made by TheDC regarding criticism of the legislation. The bill is currently co-sponsored by Democratic Sens. Daniel Akaka of Hawaii, Robert Menendez of New Jersey, Ron Wyden of Oregon, and Jeff Merkley of Oregon, as well as independent Vermont Sen. Bernie Sanders.

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Thanks for looking at "Teen Cyberbullying Investigated" on <http://www.freespirit.com> [publisher] or on <http://www.askthejudge.info> [a free website for & about teens and the laws that affect them].

Respectfully, -Judge Tom.

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