

TESTIMONY:

**Kimberly Hermann, General Counsel, Southeastern Legal Foundation
Georgia Senate Bill 339**

Mr. Chairman, Ranking Member, members of the committee –

Thank you for the privilege of appearing before you today. As many of you are aware, Southeastern Legal Foundation is an Atlanta-based national constitutional public interest law firm founded in 1976. We appear before the U.S. Supreme Court more than 30 times a year in direct litigation and as amicus, including cases involving free speech and the First Amendment.

Over the past 40 years, we have appeared more than two dozen times before the Georgia General Assembly to testify about the constitutional and legal impact of proposed legislation, which is why we are here today at your invitation.

For the past two years, we have actively engaged in legal research through our national effort, the **Student Freedom and Safety Project**. During this time, we have issued Open Records and Freedom of Information requests to federal and state education agencies, public universities and colleges, and governing Boards of Regents in more than a dozen states, including Georgia.

At this time, our legal analysis of existing rules, practices and procedures implemented by public universities to protect free speech— what many refer to as “speech codes” —concludes that rather than protect free speech, they violate the First Amendment directly, or in practice. In many instances, universities and colleges – and the Boards of Regents who govern them – do not even maintain such codes or policies, or do so in a case-by-case basis.

According to our analysis, between one-third and one-half of the universities and colleges we examined maintain either unconstitutional policies or have no policies at all. We are not prepared at this time to publicly reveal specific institutions. This finding is consistent with U.S. Attorney General Jeff Sessions’ September 2017 public statement that 40 percent of universities and colleges across our nation maintain speech codes that substantially infringe on constitutionally protected speech.

A number of our public universities and colleges here in Georgia fall in the 40 percent. Some of the schools boast so-called “speech zones” which confine free speech to very limited areas on campus. Some prohibit speech, not because the speech meets the legal definition of harassment or discrimination, but because it may hurt another person’s feelings. And some of them create a culture where shout-downs are the new norm.

Among various legislative efforts that propose to remedy this constitutional crisis is GA Senate Bill 339.

We have reviewed this bill and, based on our analysis, Senate Bill 339 provides important guidance directives to the Georgia Board of Regents and, by extension, to the public universities and colleges of our state. The bill provides specific and substantive protections to protect fair, free and open access within reasonable time-place-manner restrictions to free speech on campuses across the state.

The bill does goes much further than existing law. It establishes guidelines that can be employed by Georgia's public universities and colleges to protect individuals on campuses who engage in free speech activities. It also provides for a legal and transparent process by which students and other individuals may seek administrative and, ultimately, legal redress for perceived violations of First Amendment rights – again, much more extensive than existing law provides.

SB 339 addresses key elements of any First Amendment analysis – objective application and the process for addressing grievances. When we talk about constitutional rights – especially those protected by the First Amendment – there is no place for discretionary application. SB 339 provides an objective response to ensure that all of those attending our State's public colleges and universities may freely express themselves. Without an objective and consistent disciplinary process, the response to the silencing act is undoubtedly content-based, speaker-based, or viewpoint based – all of which are unconstitutional. The procedures provided for in SB 339 help ensure that the response is constitutional – both from a due process and equal protection standpoint.