

# MAINE MARITIME ACADEMY

A College of Engineering, Management, Science, and Transportation

May 11, 2021

The Honorable Joseph Rafferty, Chair  
The Honorable Michael Brennan, Chair  
Joint Standing Committee on Education and Cultural Affairs  
100 State House Station  
Augusta, ME 04333

Re: L.D. 1640, An Act to Enact the Campus Free Speech and Free Press Act

Dear Senator Rafferty, Representative Brennan, and members of the Joint Standing Committee on Education and Cultural Affairs:

This letter addresses *L.D. 1640, An Act to Enact the Campus Free Speech and Free Press Act*.

Maine Maritime Academy(MMA) understands the interests and concerns underlying this bill. As an institution of higher education preparing students for active participation in the global economy, we strive to ensure that the free speech rights of our students, employees and visitors. are consistently respected. We support our students and all members of our community in understanding and exercising their rights and responsibilities as citizens. We understand and value our constitutional responsibilities. We have carefully crafted policies, procedures, and practices that guide our exercise of those responsibilities.

During my eight-year tenure at MMA, I cannot recall an instance where there has been a material dispute about how a speaker was treated. We have not had disputes about student assemblies or speaker interruptions. We work closely with student political organizations to help them plan events and speaker presentations that meet the guidelines of our policies and allow free speech and participation in political activities. Periodically, there are questions about how a matter should proceed but those get handled fairly and without meaningful complaint.

This is because we already have policies that address these issues. For example, one policy states:

Public colleges occupy a unique place in society. They are institutions of higher learning dedicated to the discovery and dissemination of knowledge and, in that capacity, they assign a high priority to the freedom of speech. At the same time, public colleges are governmental entities and they must balance that important freedom with other legitimate goals and objectives, including the maintenance of a safe, lawful and orderly environment.

As an instrumentality of the State of Maine, Maine Maritime Academy is committed to its constitutional obligations to respect rights of expression. As an institution of higher learning, the Academy embraces academic freedom and the open exchange of diverse ideas, and is committed to its priority educational objectives of teaching, learning and

student success. Finally, as an institution accessible to the public, the Academy accepts the responsibilities that relate to the relatively open nature of some of its campuses and facilities.

The Academy highly values the free exchange of ideas. The Academy also respects its obligation to maintain a safe, lawful and orderly environment. The primary objective of the Academy is student educational success, and persons exercising their rights of expression and assembly must conduct their activities in a manner that does not unduly interfere with normal operations and conforms to reasonable regulations regarding time, place and manner.

MMA Policy also states that:

One purpose of the First Amendment is to protect earnest debates on challenging subjects. Because this is especially true where people hold strongly held personal, social or religious views, the First Amendment may in some instances limit the authority of entities like the Academy to prevent or punish statements that some may regard as offensive. Such statements could include those that offend or annoy, or that disparage another person's race, ethnicity or other personal attribute. Although the Academy does not condone slurs or epithets because they do not contribute substantive content or further serious pedagogical interests, the Academy recognizes established constitutional limitations upon its ability to sanction all speech that simply offends or annoys.

We understand that our policies and record were not likely known by those who drafted this bill. As you may know, this bill is a version of a national model being presented to state legislatures across the country. It is related to a version recently presented in the United States Congress by Senator Mitch McConnell. It is also a revised version of what this Committee and the 129<sup>th</sup> Maine Legislature voted against in 2019.

Maine Maritime Academy has three overarching concerns with this bill. First, the bill primarily restates already existing free speech law. That law is well-established by decades of federal and state court decisions interpreting both the United States and State Constitutions. This body of law already clearly governs public colleges and universities, so it is not clear why this bill is necessary (and given that fact, why any bill on this subject would apply, as this one does, only to public colleges).

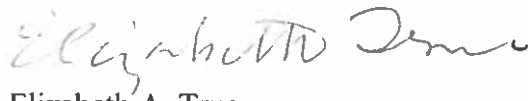
Second, the bill includes very broad proscriptive language and then imposes very substantial financial penalties for violations. As a result of this mix, MMA could be sued for \$100,000 and attorneys' fees for allegedly not meeting any one of a number of standards that would be very difficult to manage. For example, we could be sued for \$100,000 and attorneys' fees for not adequately "guaranteeing all members of the institution's community, including all the staff and students, the broadest possible latitude to speak, write, listen, challenge and learn;" for "never ... closing off discussion of ideas, however offensive or disagreeable those ideas may be;" for failing to "promote a lively and fearless freedom of debate and deliberation;" or for even considering the subject matter of a protest in determining whether security should be considered for the event.

Third, the requirement of this bill that every outdoor space be treated as a “traditional public forum” raises significant constitutional questions. The traditional public forum doctrine is one developed by courts in interpreting both the state and federal constitutions. The doctrine is long-standing and well established. Any statute that purports to amend a constitutional interpretation is in effect an attempt to interpret the constitution itself. Such a statute is a usurpation of judicial power and is therefore unconstitutional as a violation of separation of powers.

MMA has numerous other more detailed concerns. In the meantime, MMA respectfully requests for reasons set forth above that this Committee report this bill Ought Not to Pass.

Thank you for the courtesy of your consideration.

Truly yours,

A handwritten signature in cursive script, appearing to read "Elizabeth A. True".

Elizabeth A. True

Vice President for Student Affairs