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April 10, 2019

## Memorandum of Opposition

A.1145 (Paulin)

The Commission on Independent Colleges and Universities (CICU) opposes A.1145 which adds a new section to the education law allowing private, not-for-profit campuses to be used for free speech activities. This bill would endanger the safety of campus communities and restrict colleges and universities from creating rules on their own private property. The United States Constitution gives private colleges the right to create campus rules that best meet the needs of their communities. CICU represents more than 100 private, not-for-profit colleges and universities in New York State who educate almost 500,000 students annually.

Private, not-for-profit colleges and universities operate on private property. They balance public access to their campuses with the needs of their campus communities; some have open campuses, some do not, but all have made decisions with the best interest of their students and staff in mind. The United State Supreme Court has ruled that the United States Constitution does not give individuals the right to enter and remain on private property for free expression except in limited circumstances (*Pruneyard Shopping Center v. Robins*, 1980). The New York State Court of Appeals has repeatedly ruled that private property owners have the right to regulate speech and expression on their property (*Shad Alliance v. Smith Haven*, 1985, *Kings Mall LLC v. Wenke*, 2007). Colleges exercise these rights when they balance the free speech of their communities along with other factors such as safety and inclusion. This legislation would attack these fundamental rights and compel colleges to facilitate any speech by any speaker on their campus.

Colleges and universities create campus speech guidelines as part of a broader institutional culture that makes individual campuses the right fit for their respective student bodies. Campuses may limit where demonstrations or public speakers may congregate because of access and safety concerns. This legislation will only upset the balance that individual campuses find between expression and other concerns.

Further, this legislation would require that colleges allow spontaneous assembly. Colleges that require planning and engagement prior to public assembly do so to ensure that proper safety precautions are taken. These same safety precautions are the reason New York State requires large groups to acquire a permit before advocating at the state Capitol. Without proper notice and planning, members of the campus community could be put in harm's way. Campuses that have rules regarding public assembly create those rules with the safety of their community in mind.

Finally, this legislation will lead to costly and arbitrary litigation, the cost of which is ultimately borne by students. Stripping colleges of their ability to regulate gatherings on campus could lead to accidents and increased liability costs. These issues will ultimately result in increased costs for students or resources being diverted from student aid. The recent efforts by the Trump Administration to influence acceptable speech on private college campuses is a disturbing intrusion into private property rights, and has the potential to create an environment where government is the ultimate arbiter of what is acceptable speech on private property.

For these reasons the Commission on Independent Colleges and Universities opposes this legislation.