

**SUPPLEMENTAL COMMENTS OF WENDY KAMINER ON “FIRST
AMENDMENT PROTECTIONS ON PUBLIC COLLEGES AND
UNIVERSITIES” BEFORE THE HOUSE JUDICIARY SUB-COMMITTEE
ON THE CONSTITUTION AND CIVIL JUSTICE**

Submitted June 10

whether physical, verbal, or electronic,” that may be based on any “distinguishing characteristic” (in addition to a long list of specified characteristics) and can “reasonably be predicted” to “substantially interfere” with the youth’s participation in public services, activities, or privileges. This is, of course, much broader than the Supreme Court’s definition of actionable student on student harassment, as “so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.”⁵

I don’t mean to dismiss the concerns of parents and educators about the taunting and torments some students endure, in school and online. I do mean to stress the corrosive effect of well-intentioned anti-bullying policies on First Amendment values. These policies carve out broad areas of unprotected insulting, demeaning, or otherwise unwelcome speech, establishing expectations of a general right to be protected from verbal offenses.

Censorship in public institutions of higher education, the subject of this hearing, exists in a cultural and regulatory context, not in isolation. It reflects a mistrust of free speech inculcated early in the educational process; it reinforces and may codify that mistrust as college and university graduates enter and begin to shape the wider world.

5