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A Senator Fights DeVos With FIRE

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Sen. Bob Casey has a loaded question for Education Secretary-designate Betsy DeVos. “Ms. DeVos must fully explain whether she supports the radical view that it should be more difficult for campus sexual-assault victims to receive justice,” said the Pennsylvania Democrat, who sits on the committee that begins confirmation hearings for Mrs. DeVos Tuesday.

Mr. Casey was apparently acting under pressure from groups, including the American Association of University Women, that support the Obama administration’s illegal reading of Title IX. The administration has construed Title IX—the federal law barring sex discrimination by federally funded schools—as a mandate to punish students and faculty accused of sexual misconduct using procedures that make it extraordinarily difficult for even an innocent person to defend himself. Campus tribunals routinely abandon many rights for the accused, such as the right to see and present evidence, be represented by a lawyer, confront one’s accuser, or even have a hearing.

According to a top AAUW policy adviser, Mrs. DeVos’s lack of experience as an “education professional” means she can be judged on her charitable contributions—including to the Foundation for Individual Rights in Education, a nonprofit I co-founded and on whose board I serve. FIRE vigorously defends the free-speech and due-process rights of college students and faculty.

Philadelphia-based FIRE is nonpartisan and has defended students and faculty members on the left and right. FIRE has made common cause with politically diverse organizations ranging from the American Civil Liberties Union and the National Association of Criminal Defense Lawyers to the Heritage Foundation, Young Americans for Liberty and the **Cato Institute**.

Mrs. DeVos has entered the political thicket that civil libertarians often encounter, wherein one is saddled with the actions of the accused rather than credited with advocating for fair procedures. As a criminal-defense and civil-liberties trial lawyer who has represented defendants ranging from student radicals to alleged child molesters, I can vouch for the virulence of guilt-by-association.

Higher education is currently embroiled in a contentious battle over campus sexual assault. The Obama administration and certain nonprofits, including the AAUW, want to make it easier for campus disciplinary tribunals to credit the complaints of alleged victims and to punish the accused, frequently by expulsion.

The Education Department has instructed universities to adjudicate claims of sexual misconduct using the low “preponderance of the evidence” standard, in which the mere 50.1% likelihood of guilt is sufficient. FIRE argues that a higher standard may be necessary—particularly given that campus judicial systems typically lack many if not most of the procedural protections available to defendants facing criminal charges, or even civil liability, in a court of law.

Lest anybody doubt the problem caused by the absence of due process, a quick scan of the landscape produces myriad examples. A Brandeis student sued the university after it found him guilty—without a hearing—of sexual misconduct for, among other things, staring at his then-boyfriend’s body while the two shared a bathroom. Judge Dennis Saylor, in a decision allowing the lawsuit to move forward, noted that Brandeis’s “inquisitorial” process “appears to have substantially impaired, if not eliminated, an accused student’s right to a fair and impartial process.”

Civil-liberties advocates have long defended free speech and fair procedures. Often that means standing up for the rights of people who hold odious views or have committed grave crimes, including sexual assault. Those whose views are merely unpopular, and the innocent who are wrongly accused, depend on the same protections.

If confirmed, Mrs. DeVos will have the opportunity to improve the climate for fairness and accuracy in campus judiciaries at universities that have obliterated due process for fear of losing millions in federal aid—to make American higher education free and fair again.

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