

September 30, 2019

Office of the President

The Honorable Cecile Bledsoe and the Honorable Jeff Wardlaw
Co-chairs, Arkansas Legislative Council
1 Capitol Mall
Little Rock, AR 72201

Dear Senator Bledsoe and Representative Wardlaw,

The General Assembly recently enacted Act 184 of 2019, known as the FORUM Act and codified at Ark. Code Ann. § 6-60-1001 *et seq.*, regarding free speech on campus. This letter serves as the University of Arkansas System’s report on the “course of action implemented to ensure compliance” required under Ark. Code Ann. § 6-60-1008. Specifically, this letter summarizes the measures that have been taken at the Board of Trustees, System and campus levels during the 90-day period following the FORUM Act’s effective date. As president of the system, I am submitting this letter and attachments on behalf of all of the UA System institutions.

First, in May 2019, the Board of Trustees amended Policy 705.1, which concerns the use of University facilities. The policy now concludes with the following statement: “Members of the campus community may engage in expressive activities in outdoor campus areas, subject to reasonable time, place and manner restrictions to be defined by each campus, unit or division. Any such restrictions will be described in a published campus, unit or division policy, must be consistent with constitutional requirements and Ark. Code Ann. § 6-60-1005, and must be reviewed by the Office of General Counsel.”

Second, the UA System issued a revised version of UA Systemwide Policy and Procedure 715.1, concerning the use of facilities. The previous version’s introductory language regarding the importance of free expression was retained, and Part III was added in May 2019 to incorporate the FORUM Act’s requirements.

Third, the Office of General Counsel prepared a model policy on outdoor areas of campus that complies with the FORUM Act. All UA System campuses have updated existing policies or adopted the model policy to comply with the Act. The campuses have included updated policies in their student handbooks and posted them on their websites, and are beginning to incorporate pertinent information in their orientation programs.

Fourth, the Office of General Counsel prepared a list of “frequently asked” questions and answers for training and informational purposes. The FAQ has been broadly distributed among campus administrators, faculty, student-life staff, campus police, and others. The FAQ is

2404 North University Avenue / Little Rock, Arkansas 72207-3608 / 501-686-2505

University of Arkansas, Fayetteville / University of Arkansas at Little Rock / University of Arkansas at Pine Bluff
University of Arkansas for Medical Sciences / University of Arkansas at Monticello / Division of Agriculture / Criminal Justice Institute
Arkansas Archeological Survey / Phillips Community College of the University of Arkansas / University of Arkansas Community College at Hope
University of Arkansas Community College at Batesville / Cossatot Community College of the University of Arkansas
University of Arkansas Community College at Morrilton / University of Arkansas at Fort Smith
University of Arkansas – Pulaski Technical College / University of Arkansas Community College at Rich Mountain
Arkansas School for Mathematics, Sciences and the Arts / University of Arkansas Clinton School of Public Service / University of Arkansas System eVersity

Senator Bledsoe and Representative Wardlaw

Page 2

September 30, 2019

intended to be used by UA System institutions to ensure that those individuals with responsibility for discipline and education understand their duties regarding free expression on campus (including requirements pertaining to registered student organizations) as is required under the FORUM Act.

Fifth, the Office of General Counsel held a web-based training session for campus administrators on August 16, 2019. The training session covered the FORUM Act's requirements and was widely attended by staff members across the UA System.

A copy of the referenced documents—namely, Board Policy 705.1, UASP 715.1, the model campus policy, the Q&A document, and the training presentation—are enclosed. Free speech has always been a vital part of the educational experience at the University of Arkansas, and our campuses are committed to complying with the FORUM Act. We would be happy to visit with you about any of our initiatives. Please feel free to contact us at any time.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donald R. Bobbitt", with a long horizontal flourish extending to the right.

Donald R. Bobbitt

President

Charles E. Scharlau Presidential Leadership Chair

Enclosures (5)

cc: Marty Garrity, Director, Bureau of Legislative Research

USE OF UNIVERSITY FACILITIES

University facilities, grounds, and other resources (collectively “facilities”) exist for the purpose of fulfilling the University’s broad educational objectives, including its primary educational mission of teaching, research, and public service; promoting a robust exchange and critical evaluation of diverse viewpoints; and fostering economic development and community involvement. When not required for its organized educational programming or official functions, University facilities may be made available for extracurricular use to colleges, departments, and other organizational units of the University; to organizations composed exclusively of faculty and staff; to organizations that exist solely for the benefit of the University; and to recognized student organizations with the approval of the faculty advisor.

When a facility is not in use for a regularly scheduled educational activity or for an extracurricular activity by one of the University organizations listed above, pursuant to policies or procedures tailored to the educational objectives of the University adopted by each campus or unit, such facilities may be made available for use by individual or informal groups of students as part of their overall educational experience, or by other persons or entities if such use serves institutional objectives. For example, it is an objective of the University to provide opportunities for University and broader communities to see and hear leaders from throughout the state, nation, and world. Speeches and debates by or on behalf of candidates for office may be scheduled in University facilities under arrangements that allow reasonable opportunities for opposing candidates or points of view, although campaign fundraising is not permitted and University imagery shall not be used for campaign advertising. It must be made clear that the University does not support or oppose the views or candidacies of such individuals. Any such use is secondary to and shall not interfere with the primary purposes and functions to which University facilities are dedicated.

Members of the campus community may engage in expressive activities in outdoor campus areas, subject to reasonable time, place and manner restrictions to be defined by each campus, unit or division. Any such restrictions will be described in a published campus, unit or division policy, must be consistent with constitutional requirements and Arkansas Code section 6-60-1005, and must be reviewed by the Office of General Counsel.

May 23, 2019 (Revised)

September 14, 2018 (Revised)

May 26, 2016 (Revised)

November 11, 1988 (Revised)

September 21, 1979 (Revised)

May 12, 1962

USE OF UNIVERSITY FACILITIES**I. Statement of Principles**

The University of Arkansas has an obligation to its students and to the larger society of which it is a part to provide the fullest opportunity for a free exchange and critical evaluation of diverse viewpoints. This means freedom to teach, freedom to learn, freedom to discuss, and freedom to expose ideas to the critical analysis appropriate to the University setting. In order to accomplish this mission, the administration, faculty, and students have a continuing responsibility for preserving the properly directed use of the institution's freedom to teach, to discuss, and to explore.

The University's dedication to the spirit of free inquiry requires the examination and evaluation of controversial viewpoints, but obviously does not require the endorsement of such viewpoints. Divergent points of view must be recognized, but at the same time kept within a framework of orderly conduct in accordance with human dignity, respect for the individual, and the responsibilities of the University. The University is not available for exploitation, and special interests out of harmony with its educational objectives are not to be served.

Policy Statement of the Board of Trustees (aka Board Policy 705.1)

University facilities, grounds, and other resources (collectively "facilities") exist for the purpose of fulfilling the University's broad educational objectives, including its primary educational mission of teaching, research, and public service; promoting a robust exchange and critical evaluation of diverse viewpoints; and fostering economic development and community involvement. When not required for its organized educational programming or official functions, University facilities may be made available for extracurricular use to colleges, departments, and other organizational units of the University; to organizations composed exclusively of faculty and staff; to organizations that exist solely for the benefit of the University; and to recognized student organizations with the approval of the faculty advisor.

When a facility is not in use for a regularly scheduled educational activity or for an extracurricular activity by one of the University organizations listed above, pursuant to policies or procedures tailored to the educational objectives of the University adopted by each campus or unit, such facilities may be made available for use by individual or informal groups of students as part of their overall educational experience, or by other persons or entities if such use serves institutional objectives. For example, it is an objective of the University to provide opportunities for University and broader communities to see and hear leaders from throughout the state, nation, and world. Speeches and debates by or on behalf of candidates for office may be scheduled in University facilities

under arrangements that allow reasonable opportunities for opposing candidates or points of view, although campaign fundraising is not permitted and University imagery shall not be used for campaign advertising. It must be made clear that the University does not support or oppose the views or candidacies of such individuals. Any such use is secondary to and shall not interfere with the primary purposes and functions to which University facilities are dedicated.

II. Procedures

A. Faculty and Staff; Affiliated Organizations

A member of the faculty may invite outside speakers to participate in a class, conference, or institute that is a part of the University educational program, subject to any campus policies governing such activities.

Any college, department or other organization of the faculty or administration, any organization composed exclusively of University faculty and staff members, any scholarly organization whose membership includes University faculty, and any affiliated organization that exists solely for the benefit of the University may use University facilities to hold meetings, subject to applicable campus policies.

Any use of University facilities for fundraising involving faculty or staff must benefit the University and is restricted to official University units and recognized supporting organizations.

B. Student Organizations; Informal Student Use

Any recognized student organization may use University facilities for meetings performances, and other organized activities subject to campus policies governing such activities. A recognized student organization (“RSO”) may not be denied use of a University facility for meeting or speaking purposes based solely upon the organization’s expression. In addition, RSO use of a facility for meeting or speaking purposes may not be denied based solely on an RSO’s requirements that members affirm and adhere to particular sincerely held beliefs or principles, that members comply with the RSO’s standards of conduct, or that members further the organization’s defined mission or purpose. Any restrictions must be reasonable time, place and manner restrictions and must otherwise comply with Arkansas Code section 6-60-1005. Restrictions must advance a significant interest of the institution and must not restrict expressive activity more than is reasonably required to meet the institution’s interest.

If an off-campus speaker or performer is to be invited to campus by a recognized student organization, the faculty advisor must give his or her approval prior to the time an invitation is extended and publicity is released. Approval or disapproval will not be based solely upon the content of the speaker or performer’s protected speech. In the event the group does not currently have an official advisor, the approval of a faculty member or administrator is required. Whether to invite a particular speaker or performer is generally up to the student organization, but event details such as date, time, location, and security arrangements are subject to review and approval by campus officials.

Publicity and communications concerning any meetings shall clearly identify the sponsoring organization and shall carefully avoid any stated or implied University sponsorship. In all open meetings at which an off-campus speaker will speak, a faculty member or administrator shall be present, and there will be an opportunity for questions.

An invitation to a speaker does not necessarily imply approval or disapproval of the speaker or his or her views by either the University or the student organization.

In case a request for the use of a University facility by a recognized student organization cannot be granted, it is the responsibility of the University officer to whom the request was made to notify promptly in writing the organization making the request and state the reasons for the denial.

Speakers may be invited to the campus to discuss political issues, but they may not engage in political fundraising.

Recognized student organizations may solicit membership and dues at meetings, and philanthropic events may be conducted by registered student organizations on their own behalf in compliance with campus policies. This policy shall be interpreted consistent with the University's educational mission of encouraging students to engage in expressive activity as part of their preparation for lifelong responsible citizenship.

C. Non-University Entities

The facilities of the University exist for the primary purpose of supporting and furthering a program of higher learning. The use of facilities of the University should be extended to non-University entities only when that use will serve an educational objective of the University and mission of the campus, division or unit, and such use will not interfere with the educational activities of the University.

A request for the use of University facilities by a non-University entity should be directed to an individual designated by the Chancellor or chief executive officer, unless otherwise provided for by the campus, division or unit under its policies. The evaluation of the appropriateness of a particular use of facilities by a non-University group or organization may include the following criteria:

- (1) Relevance and contribution to the needs of the educational program of the University and mission of the campus, division or unit, distinct from the entity's viewpoint.
- (2) Availability of suitable space not needed for the educational activities of the University.
- (3) Potential for disruption to the University's educational program, considering the proposed time, location and attendance at the event.
- (4) Security considerations and responsibility for any costs or damage associated with the proposed use.
- (5) Wear and tear, cleaning costs, and similar facilities maintenance considerations.

- (6) Compliance with campus, division or unit procedures for requesting access to facilities and other applicable campus policies and governing law.

University facilities shall not be used by non-University groups or organizations to raise money for campaigns or for projects that do not further the University's educational objectives or the mission of the campus, division or unit, as determined by the institution.

III. Outdoor Campus Areas

Outdoor campus areas are generally open for use by students, administrators, faculty, staff and their invited guests for the purpose of engaging in protected expressive activities. Campuses may impose reasonable restrictions on the time, place and manner of outdoor expressive activity. Any such restrictions must be reasonable time, place and manner restrictions and must otherwise comply with Arkansas Code section 6-60-1005. Restrictions must advance a significant interest of the institution and must not restrict expressive activity more than is reasonably required to meet the institution's interest. Any such restrictions must be reflected in a campus, unit or division policy that is publicized through student handbooks, websites, student orientation and other forms of media deemed appropriate by the campus, unit or division.

IV. Business Activities and Solicitation

University facilities exist to carry out the University's educational objectives. Subject to official economic development initiatives of the University and services officially authorized by the University to enhance the educational setting for students, faculty and staff, University facilities may not be used for the conduct of private business activity.

Any uninvited private business solicitation, including any private fundraising activity, in University facilities or on University grounds is prohibited. To the extent that a campus, division or unit allows any business solicitation, that campus, division or unit shall establish appropriate policies or procedures, which shall include the designation of the campus official authorized to handle any requests. Further, such policies or procedures must first be reviewed by the Office of General Counsel.

Campuses are authorized to establish policies governing student entrepreneurial activity connected to the University's educational program.

V. Campus Policies and Procedures

Each campus may establish more specific policies and procedures for use of its facilities. Such policies and procedures must be consistent with Board Policies, applicable University of Arkansas Systemwide Policies and Procedures and applicable laws. Further, such campus policies and procedures must first be reviewed by the Office of General Counsel.

May 23, 2019
September 19, 2018
April 29, 2016

MODEL POLICY ON FREE SPEECH AND EXPRESSIVE ACTIVITIES IN OUTDOOR AREAS OF CAMPUS

I. Policy Statement

The University recognizes the important role of intellectual freedom and free expression on campus, and it seeks to further the advancement of knowledge by means of research and discovery, teaching, and vigorous discussion of ideas. Students and faculty are free to discuss matters of public concern to the extent consistent with the First Amendment and the reasonable, content-neutral restrictions set forth in this policy and other University and campus policies.

The University recognizes that individuals or groups may be opposed to certain expressive activities or speakers. Disagreement with different opinions is acceptable; however, the use of violence (including threats of violence and unlawful harassment),¹ violations of law, and violations of University policy are not consistent with creating an environment in which ideas can be discussed openly. An individual or group wishing to protest an expressive activity on campus is subject to the same standards as presenters. Individuals who choose to listen bear the responsibility of recognizing and honoring the right of free speech. On-campus protests and demonstrations that materially and substantially infringe upon the rights of others to engage in or listen to expressive activity are not permitted.

This policy describes the rights of members of the campus community to engage in expressive activities in outdoor areas of campus and provides for procedures and restrictions that are intended to protect the interests of the University and the campus community. To the extent any part of this policy conflicts with Arkansas Act 184 of 2019 (Ark. Code Ann. § 6-60-1005), the provisions of Act 184 will control.

II. Definitions

A. “Expressive activity” means all forms of non-commercial expression that are protected by the First Amendment to the U.S. Constitution, which may include peaceful assemblies, speeches, protests, picketing, leafleting, circulating petitions, distributing literature, and similar expressive communications and activities.

B. “Member of the Campus Community” means an enrolled student, an administrator, faculty member, staff member, registered student organization, a

¹ “Harassment” means expression that is so severe, pervasive, and subjectively and objectively offensive that it effectively denies access to an educational opportunity or benefit or a professional workplace.

group seeking official recognition as a registered student organization, or an invited guest of any of the foregoing persons or groups.

C. “Large-scale event” means (1) an event that involves the use of amplified sound; (2) an event that involves the placement of a stage, carts, vehicles, trailers, or multiple tables; or (3) a parade, demonstration, or similar planned event that: (a) can reasonably be expected to attract 50 or more people, including participants and spectators or (b) can reasonably be expected to require additional security, crowd control or other substantial University resources. A “large-scale event” does not include a spontaneous, contemporaneous assembly of members of the campus community.

D. “Non-Member of the Campus Community” or “Non-Member” means all persons, groups, clubs, or other organizations that do not come within the definition of “Member.”

E. A “Registered Student Organization” or “RSO” means an organization (including a club) comprised of University students that is registered with the campus office of student involvement and leadership.

F. “Outdoor Area of Campus” means the generally accessible outside areas of the campus of a state-supported institution of higher education where members of the campus community are commonly allowed, including grassy areas, walkways, and other similar common areas. “Outdoor Area of Campus” does not include outdoor areas where access by the majority of the campus community is restricted.

III. Applicability of Other Policies

A. Facilities Use

The utilization of campus facilities is generally governed by Board of Trustees Policy 705.1, the University of Arkansas Systemwide Policies and Procedures 715.1, and applicable campus policies on facilities use.

B. Academic Freedom

This Policy shall not be interpreted as limiting, expanding, or otherwise affecting the rights and obligations of faculty as set forth in Board of Trustees Policy 405.1.

IV. Time, Place, and Manner Guidelines

Outdoor areas of campus may be used for expressive activities protected by the First Amendment so long as they meet the requirements set forth below. These requirements will be applied to all expressive activities regardless of the content of the expression or the viewpoints of the speakers or participants:

1. The expressive activity must not violate local ordinances, state laws, federal laws, this policy, or other University policies.
2. The duration of the expressive activity may be limited to a reasonable period of time, based on the type of event and the resources required to manage it.
3. There shall be no obstruction of entrances or exits to buildings, driveways, parking lots, or other campus locations.
4. The expressive activity must not materially disrupt vehicular traffic, pedestrian traffic, or scheduled University programs or events. A speaker's use of walkways or other common areas may not block the free passage of others or impede the regular operation of the University.
5. The expressive activity must not create unreasonable safety risks.
6. There shall be no alteration, modification, defacement, or destruction to University-owned or University-leased property.
7. Expressive activities are subject to any campus policies on the permissible posting of signage, use of chalk, or other alterations to University structures.
8. The erection of tents or any temporary structures must be inspected for safety and approved by the [insert title of appropriate University administrator, e.g. Dean of _____]. Construction of other structures is not permitted.
9. The location for the expressive activity must be left in its original condition at the conclusion of the event, and persons are responsible for ensuring that any trash or litter is properly discarded. Any person or entity that causes damage to University-owned or controlled property will be responsible for paying any charges necessary to return the property to its original state. Similarly, reasonable cleaning charges may be assessed.
10. Amplification equipment such as loudspeakers are allowed only with prior permission from the [insert title of appropriate University administrator, e.g.

Dean of _____]. Such requests will be evaluated for the potential disruption of regular University activities or processes.

11. Expression that is obscene, defamatory, or consists of fighting words or threats of physical harm, incites imminent lawless action, or is otherwise not entitled to First Amendment protection is not permitted.

12. Except as provided in other University policies, University property may not be used for the purpose of promoting a commercial enterprise or raising money for projects not connected with a University activity.

13. By making a reservation or using a University space for expressive activity, the organizer agrees to be financially responsible for all costs associated with the use of the space—including (but not limited to) security costs related to invited participants, clean up, and repair of damage to University property. Moreover, if warranted by the nature of the event, the University may require a requestor to obtain appropriate liability or other insurance coverage and/or to indemnify the University, its officials, and employees for any claims pertaining to the use of University grounds.

14. Only official academic and administrative units of the University, University-related foundations and the University alumni association, and registered student organizations with approval of their faculty advisor, are allowed to reserve outdoor spaces during “dead days,” any official final examination periods, or the dates of any Official University Commencement activities.

15. Unless officially authorized to do so, no person engaging in expressive activity may represent that the person or organization is speaking on behalf of the University.

16. First priority for use of outdoor spaces shall go to the University’s academic and administrative units, and the University reserves the right to modify or cancel reservations accordingly. All uses of the University’s outdoor spaces remain subordinate to the University’s right to use them at any time to advance the mission of the institution.

V. Expressive Forums and Reservation Requirements

A. Use of Publicly Accessible Outdoor Locations

Members of the Campus Community should make a reservation at least 3 days in advance of any planned use of an Outdoor Area of Campus. Members of the Campus Community must make a reservation for a large-scale event and receive prior approval from the [insert title of appropriate University administrator, e.g.

Dean of _____] at least 3 days in advance of any planned use of an Outdoor area of Campus. Members of the Campus Community, however, may spontaneously and contemporaneously assemble, speak, and distribute literature at outdoor areas of campus without receiving prior approval.

Non-Members of the Campus Community must make a reservation and receive prior approval from the [insert title of appropriate University administrator, e.g. Dean of _____] at least 3 days in advance of any planned use of an Outdoor Area of Campus.

B. Reservation Preference

In instances in which prior permission from the University is not required, persons are still encouraged to contact the [insert title of appropriate University administrator, e.g. Dean of _____] for scheduling purposes to minimize possible conflicts. Persons with a reserved space will have priority over any other persons seeking to use the area during the scheduled time period for an expressive activity.

C. Reservation Requirement for Other Locations [Note: Subsection C may be tailored to the campus or omitted].

There are certain additional locations on campus, including certain indoor facilities, that may be made temporarily available to Members or Non-Members of the Campus Community for assemblies, debates, or other expressive activities as designated by the University. Examples of such locations vary by campus but generally include building foyers, auditoriums, and the Student Union. The use of such locations may entail security concerns, scheduling conflicts, or resource constraints. Where allowed, persons desiring to use such locations may request a reservation pursuant to facility-specific policies. [A list of such reservable facilities is available at [____ hyperlink here_____]]. Approval of reservations may be conditioned on acceptable security arrangements, insurance, or payment of fees.

Other locations on campus are typically restricted for their intended purpose and cannot be reserved for expressive activities. Examples of such locations vary by campus but generally include the following: libraries, the hallways and classrooms in academic buildings, dormitory rooms, faculty and staff offices, administration buildings, medical treatment facilities, research and computer labs, and athletic fields and facilities.

D. Registered Student Organizations, Organized Demonstrations, and Large-Scale Events

The right of freedom of expression at outdoor areas of campus includes organized demonstrations. At the same time, this right does not allow individuals to materially disrupt the University's operations or endanger the safety of others. Accordingly, large-scale events must receive prior approval from the [insert title of appropriate University administrator, e.g. Dean of _____] at least 3 days in advance of the event or activity.²

The University will work with the requesting person to either meet the request or find a suitable time and location. To ensure safety on campus, the University may require the requesting party to provide a parade route, hire security, ensure egress to facilities, or take other steps to maintain the safety of campus. Demonstrations and protests are not permitted in buildings. All participants must follow applicable laws and policies.

This policy does not designate all publicly accessible outdoor locations on campus as traditional public fora.

E. Denials and Revocations

A denial or revocation of permission to engage in an expressive activity shall generally be based on a reason set forth in this policy or other applicable policies of the Board of Trustees or University of Arkansas System. However, no policy can address every possible activity or situation that may occur on University property, and the University reserves the right to address such situations as circumstances warrant.

Any decision to deny a reservation for a publicly accessible outdoor location shall be promptly communicated in writing to the requester and shall set forth the basis of the denial. Any such denial must be based on clear, viewpoint-neutral criteria. Anyone aggrieved by the application of these rules may appeal in writing within 10 days to the Vice Chancellor for Student Affairs or designee.

VI. Sanctions and Enforcement

Violations of this policy by Members of the Campus Community may result in review and sanctions under applicable University policies. Students will be subject to the procedures established in the Code of Student Conduct. Faculty and staff will be subject to the procedures established in applicable employee handbooks.

² Students' use of a single table, cart, booth, or similar structure that does not exceed three feet by six feet (3' x 6') is permitted without a reservation at permissible outdoor locations so long as the time, place, and manner guidelines are followed.

Violations of this policy by other persons may result in removal from campus or arrest. Members and Non-Members of the Campus Community may also lose their privileges to use campus grounds and facilities in the future, in addition to criminal sanctions. Any criminal proceedings are separate from the University's sanctions. The University will enforce this policy in a content-neutral manner.

Frequently Asked Questions Regarding the Arkansas FORUM Act

1. Q: What is the FORUM Act?

A: During the last legislative session, the Arkansas General Assembly enacted Act 184 of 2019, codified at Ark. Code Ann. § 6-60-1005, for the stated purpose of “Forming Open and Robust University Minds.” The legislation concerns free expression on campus.

2. Q: What are the key aspects of the FORUM Act?

A: The FORUM Act does three things. First, it designates outdoor areas of campus as public forums for members of the campus community. Second, it prohibits public colleges and universities from denying benefits and privileges to student organizations based on an organization’s beliefs and expressive activities. Third, the FORUM Act imposes certain publication, training, and reporting requirements on state-supported institutions of higher education.

3. Q: What do campuses need to do to comply with the FORUM Act?

A: As a threshold matter, campuses should adopt policies that implement the FORUM Act and ensure that their existing policies do not contradict the Act.

In addition, the FORUM Act has three basic requirements:

First, state-supported institutions of higher education must “make public in their handbooks, on their websites, and through their orientation programs for students the policies, regulations, and expectations of students regarding free expression on campus consistent with [the FORUM Act].”

Second, the FORUM Act requires that state-supported institutions “develop materials, programs, and procedures to ensure that those persons who have responsibility for discipline or education of students, *such as administrators, campus police officers, residence life officials, and faculty*, understand the policies, regulations, and duties of state-supported institutions of higher education regarding free expression on campus consistent with [the FORUM Act].” This FAQ could be distributed to these individuals by email. In addition, campuses may want to dedicate portions of their orientation and training programs to the FORUM Act.

Third, each state-supported institution of higher education must submit to the Governor and Legislative council a report that details the course of action implemented to ensure compliance with the requirements of this subchapter **by October 22, 2019**. These bodies must also receive any changes or updates to the chosen course of action within 30 days after making the changes or updates.

4. Q: Who is a “member” of the campus community?

A: This term refers to students, administrators, faculty, staff, and invited guests of any of the foregoing persons.

5. Q: What about pure outsiders (*i.e.*, individuals who show up on campus without an invitation)?

A: The FORUM Act does not speak to outsiders. Public colleges and universities may exclude outsiders for appropriate reasons or impose reservation and check-in requirements. Such requirements should be applied in a viewpoint-neutral manner.

6. Q: What outdoor areas of campus are available for expressive activities by members of the campus community?

A: An “outdoor area of campus” under the FORUM Act means “the generally accessible outside areas of the campus of a state-supported institution of higher education where members of the campus community are commonly allowed.” The term refers to grassy areas, walkways, and other similar common areas. It does not include outdoor areas of campus where access by the majority of the campus community is restricted, such as athletic fields.

7. Q: Are free-speech zones permitted?

A: No. The FORUM Act prohibits public colleges and universities from restricting expressive activities to specific areas.

8. Q: To what extent may members of the campus community engage in spontaneous and contemporaneous assemblies, distribution of literature, and other expressive activities?

A: Members of the campus community may engage in these activities freely, provided that they follow the institution’s time, place, and manner regulations and refrain from material and substantial disruptions.

9. Q: What is a “material and substantial disruption”?
- A: This term refers to a disruption that occurs when a person, with the purpose or knowledge of significantly hindering the expressive activity of another person or group, prevents the communication of a message of another person or group, or prevents the transaction of a lawful meeting, gathering, or procession by (i) engaging in fighting, violence, or other unlawful behavior or (ii) physically blocking or using threats of violence to prevent any person from attending, listening to, viewing, or otherwise participating in an expressive activity.
10. Q: What are the guidelines for having time, place, and manner requirements?
- A: Each requirement must be reasonable; serve a significant institutional interest; employ clear, published, content- and viewpoint-neutral criteria; and provide for ample alternative means of expression.
11. Q: What are some examples of permissible time, place, and manner restrictions?
- A: Examples include restrictions on sound levels at night or during examination periods (*i.e.*, decibal limits), requirements that large groups receive prior permission so that appropriate security planning can take place, and rules against the defacement of school property with paint or chalk (such as buildings and sidewalks).
12. Q: Can institutions of higher education have reservation requirements, such as a requirement that a dean of students or other administrator receive three days’ advance notice before an expressive activity occurs?
13. Q: Expressive activities by members of the campus community that are “spontaneous and contemporaneous” cannot be subjected to a reservation system. However, reservations may be used for certain *planned* events, depending on circumstances such as the extent to which safety concerns are implicated.
14. Q: Are there any types of speech that can be prohibited in outdoor areas of campus?
- A: An institution may prohibit speech that is not entitled to First Amendment protection. The FORUM Act acknowledges these areas:

- “Harassment,” which is expression that is so severe, pervasive, and subjectively and objectively offensive that it effectively denies access to an educational opportunity or benefit provided by the state-supported institution of higher education
- Threats of violence
- Expression directed to provoke lawless action and likely to produce it

15. Q: What about indoor spaces?

A: Indoor areas, such as auditoriums and student unions, are not mentioned in the FORUM Act. Institutions may apply their existing policies on the use of facilities.

16. Q: What does the FORUM Act say about providing benefits and privileges to students and student organizations?

A: The FORUM Act provides that public institutions of higher education shall not deny a student organization any benefit or privilege available to other student organizations (such as recognition, registration, the use of facilities, the use of channels of communication, and funding sources) or otherwise discriminate against an organization based on its expression, including any requirement that the leaders or members of an organization (1) affirm and adhere to the organization’s sincerely held beliefs or statement of principles; (2) comply with the organization’s standards of conduct; and (3) further the organization’s mission or purpose, as defined by the student organization.

17. Q: What are some examples of impermissible restrictions on student organizations under the FORUM Act?

A: Here are three examples taken from U.S. Supreme Court cases:

- A public college or university cannot refuse to recognize a student organization because its purpose entails partisan activism.
- A public college or university cannot deny funding to student publications ordinarily provided to secular publications solely because they entail Islamic or Christian evangelism.
- A public college or university cannot prohibit student organizations from requiring members to subscribe to a formal statement of beliefs.

18. Q: Does that mean the FORUM Act compels universities to allow student organizations to engage in discrimination on the basis of race, sex, disability, and the like?
- A: State and federal laws and university policies on nondiscrimination still apply. A public college or university may prohibit student organizations from engaging in discriminatory harassment or rejecting members based on a legally protected status.
19. Q: What policies and procedures have been developed to comply with the FORUM Act?
- A: The UA Board of Trustees has amended Policy 705.1 on facilities use to say that “[m]embers of the campus community may engage in expressive activities in outdoor areas of campus, subject to reasonable time, place and manner restrictions to be defined by each campus, unit or division.”¹ In addition, UASP 715.1 has been similarly amended.² The UA System Office of General Counsel has also worked with campuses to develop campus-specific policies, which will be published on each campus’s website and inside the student handbook.

¹ Board Policy 705.1 is available at <https://www.uasys.edu/wp-content/uploads/sites/16/2019/06/0705-1-Use-of-University-Facilities-5.23.19.pdf>.

² UASP 715.1 is available at <https://www.uasys.edu/wp-content/uploads/sites/16/2019/06/UASP-715-Use-of-University-Facilities-5.23.19.pdf>.

FORUM ACT TRAINING

Act 184 of 2019, Ark. Code Ann. 6-60-1005

Recent Events

- Free-Speech Zones (lawsuit against Arkansas State University)
- Controversial speakers
 - Disinvited
 - Prohibitive Speaker Fees
- *Christian Legal Society v. Martinez* (2010)



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FORUM Act Overview

- Outdoor Areas of Campus are “public forums” for “members of the campus community”
- Student organizations can’t be denied benefits or privileges based on beliefs, expressive activities, or associational requirements
- Publication, training, and reporting requirements



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The FORUM Act does *not* regulate....

- Inside areas
- Uninvited persons



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“Member” vs. Outsider

- Member = students, administrators, faculty, staff, and “invited guests”
- Practical problems with application



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“Outdoor Areas of Campus”

- Generally accessible outside areas
- Members of the Campus Community are commonly allowed to go there



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No Free Speech Zones

- Even if they are not called “zones,” the concept of designating a special area is prohibited by the FORUM Act



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“Spontaneous and Contemporaneous” vs. Planned: Reservation Requirements

- Members of the Campus Community may “freely” engage in “spontaneous and contemporaneous” assemblies, distribution of literature, etc.
- There are practical issues with determining whether an expressive activity is “planned” vs. “spontaneous”
- The model policy urges reservations for “planned” activities, and it requires reservations for planned Large Scale Events (as defined)
- Spontaneous demonstrations are “assemblies,” so members of the campus community must be able to engage in them “freely”



Time, Place, and Manner Restrictions

- Reasonable
- Significant institutional interest
- Narrowly tailored to further the interest
- Clear, published, content- and viewpoint-neutral criteria
- Provide ample, alternative means of expression
- Examples



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Unprotected Speech

- Threats of violence
- Incitement of crimes (LIKELY to produce them)
- Unlawful harassment (i.e., so severe and pervasive that it denies access to an educational opportunity or program)

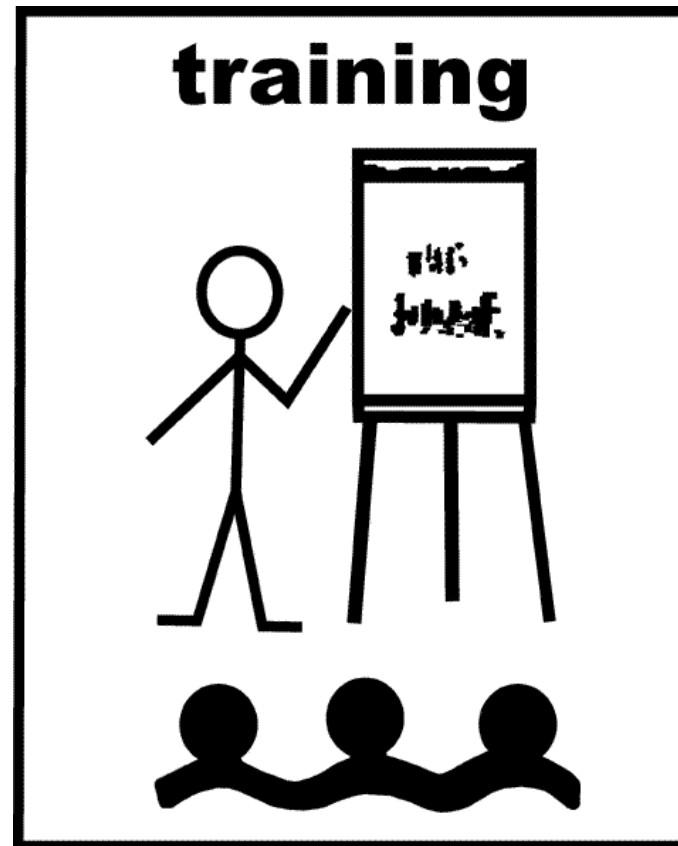



thanks: ron falzone

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Compliance Requirements

- Don't infringe upon free-speech or organizational rights
- Adopt a campus policy
 - The Model Policy can be adapted by each campus
 - Publish on website and in handbooks
- Develop and distribute materials, programs, and procedures for administrators, campus police, residence life personnel, and faculty
 - Distribute the FAQ
 - Include a segment in orientation programs for students
 - Campuses may want to have additional in-person training for select groups (including campus police)
- Submit to Governor and Legislative Council a "report" that details each institution's "course of action" that has been implemented to ensure compliance.
 - Each institution must send by Oct. 22
 - UA System will send a template report/letter a couple of weeks before the deadline
 - UA System send its own letter and include the model policy and FAQ as attachments
 - Please share draft report with System Office prior to sending it to the elected officials



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