

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

SENATE BILL 156

5 By: Senators B. Ballinger, K. Hammer, Rapert
6 By: Representatives Sullivan, Bentley, Dotson
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH THE FORMING OPEN AND ROBUST
10 UNIVERSITY MINDS (FORUM) ACT; TO PROTECT THE FREE
11 SPEECH RIGHT OF STUDENTS IN ACCORDANCE WITH THE FIRST
12 AMENDMENT OF THE UNITED STATES CONSTITUTION THAT
13 PROHIBITS "ABRIDGING THE FREEDOM OF SPEECH"; AND FOR
14 OTHER PURPOSES.
15

Subtitle

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18 TO ESTABLISH THE FORMING OPEN AND ROBUST
19 UNIVERSITY MINDS (FORUM) ACT.
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21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. DO NOT CODIFY. Legislative findings.

25 The General Assembly finds that:

26 (1) The First Amendment of the United States Constitution and
27 the Arkansas Constitution protect the rights of free speech, freedom of the
28 press, freedom of religion, and freedom of association for all citizens;

29 (2) The United States Supreme Court has called public
30 universities "peculiarly the marketplace of ideas," Healy v. James, 408 U.S.
31 169, 180 (1972), where young adults learn to exercise these constitutional
32 rights necessary to participate in our system of government and to tolerate
33 the exercise of those rights by others, and there is "no room for the view
34 that . . . First Amendment protections should apply with less force on
35 college campuses than in the community at large," Healy, 408 U.S. at 180;

36 (3) The exercise of First Amendment rights on the campuses of



1 state-supported institutions of higher education in this state is a critical
2 component of the education experience for students and requires that each
3 state-supported institution of higher education in this state ensure free,
4 robust, and uninhibited debate and deliberation by students, whether on or
5 off campus;

6 (4) State-supported institutions of higher education in this
7 state and elsewhere are failing to provide adequate safeguards for the First
8 Amendment rights of their students, leading to a stifling of expression on
9 campus;

10 (5) The United States Supreme Court has warned that if state-
11 supported institutions of higher education stifle student speech and prevent
12 the open exchange of ideas on campus, "our civilization will stagnate and
13 die", Sweezy vs. New Hampshire, 354 U.S. 234, 250 (1957); and

14 (6) A significant amount of taxpayer dollars is appropriated to
15 state-supported institutions of higher education each year, and the General
16 Assembly must ensure that all state-supported institutions of higher
17 education receiving state funds recognize freedom of speech as a fundamental
18 right for all.

19
20 SECTION 2. Arkansas Code Title 6, Chapter 60, is amended to add an
21 additional subchapter to read as follows:

22 Subchapter 10 – Forming Open and Robust University Minds (FORUM) Act

23
24 6-60-1001. Title.

25 This subchapter shall be known and may be cited as the "Forming Open
26 and Robust University Minds (FORUM) Act".

27
28 6-60-1002. Definitions.

29 As used in this subchapter:

30 (1) "Benefit" means the following:

31 (A) Recognition;

32 (B) Registration;

33 (C) The use of facilities of a state-supported institution
34 of higher education for meetings or speaking purposes;

35 (D) The use of channels of communication; and

36 (E) Funding sources that are available to student

1 organizations at the state-supported institution of higher education;

2 (2) "Campus community" means:

3 (A) A state-supported institution of higher education's:

4 (i) Students;

5 (ii) Administrators;

6 (iii) Faculty; and

7 (iv) Staff; and

8 (B) Invited guests of:

9 (i) The state-supported institution of higher
10 education; or

11 (ii) Any individual in subdivisions (2)(A)(i)-(iv)
12 of this section;

13 (3) "Counter demonstration" means lawful action or conduct that:

14 (A) Criticizes or objects to an expressive activity on
15 campus; and

16 (B) Does not violate the rights of others in the campus
17 community by materially disrupting previously scheduled or reserved
18 activities in a portion or section of the campus at that scheduled time;

19 (4) "Free-speech zone" means an area on the campus of a state-
20 supported institution of higher education that is designated for the purpose
21 of engaging in an expressive activity;

22 (5) "Harassment" means expression that is so severe, pervasive,
23 and subjectively and objectively offensive that it effectively denies access
24 to an educational opportunity or benefit provided by the state-supported
25 institution of higher education;

26 (6)(A) "Materially and substantially disrupts" means a
27 disruption that occurs when a person, with the purpose or knowledge of
28 significantly hindering the expressive activity of another person or group,
29 prevents the communication of a message of another person or group, or
30 prevents the transaction of the business of a lawful meeting, gathering, or
31 procession by:

32 (i) Engaging in fighting, violence, or other
33 unlawful behavior; or

34 (ii) Physically blocking or using threats of
35 violence to prevent any person from attending, listening to, viewing, or
36 otherwise participating in an expressive activity.

1 (B) "Materially and substantially disrupts" does not
 2 include conduct that is protected under the First Amendment to the United
 3 States Constitution or Arkansas Constitution, Article 2, §§ 4, 6, and 24,
 4 which includes without limitation:

5 (i) Lawful protests in an outdoor area of campus
 6 that is generally accessible to members of the public, except during times
 7 when the area has been reserved in advance for another event; or

8 (ii) Minor, brief, or fleeting nonviolent
 9 disruptions of events that are isolated and short in duration;

10 (7)(A) "Outdoor areas of campus" means the generally accessible
 11 outside areas of the campus of a state-supported institution of higher
 12 education where members of the campus community are commonly allowed,
 13 including without limitation:

14 (i) Grassy areas;

15 (ii) Walkways; and

16 (iii) Other similar common areas.

17 (B) "Outdoor areas of campus" does not include outdoor
 18 areas where access by the majority of the campus community is restricted;

19 (8)(A) "State-supported institution of higher education" means
 20 without limitation an Arkansas state-funded:

21 (i) Community college; or

22 (ii) University.

23 (B) "State-supported institution of higher education" does
 24 not include a school that is run by the Department of Correction;

25 (9) "Student" means any person who is enrolled on a full-time or
 26 part-time basis in a state-supported institution of higher education; and

27 (10) "Student organization" means an officially recognized group
 28 at a state-supported institution of higher education or a group seeking
 29 official recognition, composed of admitted students that receive or are
 30 seeking to receive benefits through the state-supported institution of higher
 31 education.

32
 33 6-60-1003. Protected expressive activities.

34 Expressive activities protected under this subchapter include without
 35 limitation:

36 (1) Communicating through any lawful verbal or written means;

- 1 (2) Participating in peaceful assembly;
 2 (3) Protesting;
 3 (4) Making speeches, including without limitation those of guest
 4 speakers;
 5 (5) Distributing literature;
 6 (6) Carrying signs; and
 7 (7) Circulating petitions.

8
 9 6-60-1004. Public forums.

10 (a) An outdoor area of campus of a state-supported institution of
 11 higher education shall be deemed a public forum for the campus community.

12 (b) State-supported institutions of higher education:

13 (1) Shall not create free speech zones or other designated areas
 14 of campus outside of which expressive activities are prohibited; and

15 (2)(A) May maintain and enforce reasonable time, place, and
 16 manner restrictions that are narrowly tailored to serve a significant
 17 institutional interest only when such restrictions:

18 (i) Employ clear, published, content- and viewpoint-
 19 neutral criteria; and

20 (ii) Provide for ample alternative means of
 21 expression.

22 (B) Any restrictions under subdivision (b)(2)(A) of this
 23 section shall allow for members of the campus community to spontaneously and
 24 contemporaneously assemble, speak, and distribute literature.

25 (c) An individual who wants to engage in noncommercial expressive
 26 activity on the campus of a state-supported institution of higher education
 27 shall be permitted to do so freely as provided under subsection (b) of this
 28 section if the individual's conduct:

29 (1) Is not unlawful; and

30 (2) Does not materially and substantially disrupt the
 31 functioning of the state-supported institution of higher education.

32 (d) This section shall not be interpreted as:

33 (1) Limiting the right of student expression elsewhere on
 34 campus;

35 (2) Preventing a state-supported institution of higher education
 36 from prohibiting, limiting, or restricting expression that the First

1 Amendment does not protect, including without limitation true treats and
2 expression directed to provoke imminent lawless actions and likely to produce
3 it, or prohibiting harassment as defined by § 6-60-1002(5);

4 (3) Allowing an individual to engage in conduct that materially
5 and substantially disrupts another person's expressive activity if the other
6 person's activity is occurring in an area of campus that is reserved for an
7 activity under the exclusive use or control of a particular group.

8
9 6-60-1005. Noncommercial expressive activity permitted.

10 Any person who wishes to engage in noncommercial expressive activity on
11 campus shall be permitted to do so freely, as long as the person's conduct is
12 not unlawful and does not materially and substantially disrupt the
13 functioning of the state-supported institution of higher education, subject
14 only to the restrictions under § 6-60-1004.

15
16 6-60-1006. Freedom of association – Nondiscrimination against students
17 and student organizations.

18 A state-supported institution of higher education shall not deny a
19 belief-based student organization any benefit or privilege available to any
20 other student organization or otherwise discriminate against a belief-based
21 organization based on the expressive activities of the organization,
22 including any requirement that the leaders or members of the belief-based
23 organization:

24 (1) Affirm and adhere to the organization's sincerely held
25 beliefs;

26 (2) Comply with the belief-based organization's standards of
27 conduct; and

28 (3) Further the belief-based organization's mission or purpose,
29 as defined by the student organization.

30
31 6-60-1007. Free expression policies.

32 (a) The board of trustees of a state-supported institution of higher
33 education shall develop and adopt a policy on free expression that contains
34 at least the following statements:

35 (1)(A) That the primary function of an institution of higher
36 education is the discovery, improvement, transmission, and dissemination of

1 knowledge by means of research, teaching, discussion, and debate.

2 (B) The statement under subdivision (a)(1)(A) of this
3 section shall provide that to fulfill this primary function, the institution
4 of higher education shall strive to ensure the fullest degree of intellectual
5 freedom and free expression;

6 (2) That it is not the proper role of the state-supported
7 institution of higher education to shield individuals from speech protected
8 by the First Amendment of the United States Constitution, including without
9 limitation ideas and opinions the individuals may find unwelcome,
10 disagreeable, or even deeply offensive;

11 (3) That students and faculty:

12 (A) Have the freedom to discuss any problem that presents
13 itself, as the First Amendment of the United States Constitution permits and
14 within the limits of reasonable content-neutral and viewpoint-neutral
15 restrictions on the time, place, and manner of expression that are consistent
16 with this subchapter and that are necessary to achieve a significant
17 institutional interest, so long as these restrictions are clear, published,
18 and provide ample alternative means of expression; and

19 (B) Shall be permitted to assemble and engage in
20 spontaneous expressive activity so long as the activity is not unlawful and
21 does not materially and substantially disrupt the functioning of the state-
22 supported institution of higher education, subject to the requirements of
23 this subsection;

24 (4) That the public areas of campuses of the state-supported
25 institution of higher education are traditional public forums, open on the
26 same terms to any speaker; and

27 (5) That the state-supported institution of higher education:

28 (A) Shall strive to remain neutral as an institution on
29 the public policy controversies of the day; and

30 (B) May not take action, as an institution, on the public
31 policy controversies of the day in such a way as to require students or
32 faculty to publicly express a given view of social policy.

33 (b) State-supported institutions of higher education shall:

34 (1) Make public in their handbooks, on their websites, and
35 through their orientation programs for students the policies, regulations,
36 and expectations of students regarding free expression on campus consistent

1 with this subchapter; and

2 (2) Develop materials, programs, and procedures to ensure that
3 those persons who have responsibility for discipline or education of
4 students, such as administrators, campus police officers, residence life
5 officials, and faculty, understand the policies, regulations, and duties of
6 state-supported institutions of higher education regarding free expression on
7 campus consistent with this subchapter.

8
9 6-60-1008. Accountability to the public.

10 (a) Each state-supported institution of higher education shall
11 publicly post on its website, as well as submit to the Governor and
12 Legislative Council, a report that details:

13 (1) The course of action implemented to ensure compliance with
14 the requirements of this subchapter by December 1, 2020; and

15 (2) Any changes or updates to the chosen course of action within
16 thirty (30) days after making the changes or updates.

17 (b) The report shall be:

18 (1) Accessible from the website of the state-supported
19 institution of higher education institution by use of not more than three (3)
20 links from the home page of the website;

21 (2) Searchable by keywords and phrases; and

22 (3) Accessible to the public without requiring registration or
23 use of a username, a password, or any other user identification.

24 (c) The report shall include:

25 (1)(A) A description of any barriers to or incidents of
26 disruption of free expression occurring on campus, including without
27 limitation attempts to block or prohibit speakers and investigations into
28 students or student organizations for their expressive activities.

29 (B) The description under subdivision (c)(1)(A) of this
30 section shall:

31 (i) Include the nature of each barrier or incident
32 as well as what disciplinary action, if any, was taken against members of the
33 campus community determined to be responsible for those specific barriers or
34 incidents involving students; and

35 (ii) Not reveal the personally identifiable
36 information of the students; and

1 (2) Any other information the state-supported institution of
2 higher education deems valuable for the public to evaluate whether free
3 expression rights for all members of the campus community have been equally
4 protected and enforced consistent with this subchapter

5 (d) If a state-supported institution of higher education is sued for
6 an alleged violation of First Amendment rights, a supplementary report with a
7 copy of the complaint shall be submitted to the Governor and Legislative
8 Council within thirty (30) days of being served with the complaint.

9
10 6-60-1009. Remedies.

11 (a) A person or student organization aggrieved by a violation of this
12 subchapter may:

13 (1) Bring an action against the state-supported institution of
14 higher education and any other persons responsible for the violation and seek
15 appropriate relief, including without limitation:

16 (A) Injunctive relief;

17 (B) Monetary damages;

18 (C) Reasonable attorney's fees; and

19 (D) Court costs; and

20 (2) Assert such violation as a defense or counter claim in any
21 disciplinary action or in any civil or administrative proceeding brought
22 against the person or student organization.

23 (b) This section does not limit any other remedies available to any
24 person or student organization.

25
26 6-60-1010. Statute of limitations.

27 (a) A person or student organization is required to bring suit for
28 violation of this subchapter not later than one (1) year after the day the
29 cause of action accrues.

30 (b) For purposes of calculating the one-year period under subsection
31 (a) of this section, each day that the violation persists, and each day that
32 a policy in violation of this subchapter remains in effect, shall constitute
33 a new violation of this subchapter and a new day that the cause of action has
34 accrued.