

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

As Engrossed: S2/4/19

A Bill

SENATE BILL 156

5 By: Senators B. Ballinger, K. Hammer, Rapert
6 By: Representatives Sullivan, Bentley, Dotson, *Beck, Cloud, C. Cooper, Crawford, Gonzales, Payton*
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; TO DECLARE*
14 *AN EMERGENCY; AND FOR OTHER PURPOSES.*

Subtitle

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18 *TO ESTABLISH THE FORMING OPEN AND ROBUST*
19 *UNIVERSITY MINDS (FORUM) ACT; AND TO*
20 *DECLARE AN EMERGENCY.*

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

24
25 *SECTION 1.* Arkansas Code Title 6, Chapter 60, is amended to add an
26 additional subchapter to read as follows:

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

28
29 6-60-1001. Title.

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

32
33 6-60-1002. Legislative intent.

34 The General Assembly finds that:

35 (1) The First Amendment of the United States Constitution and
36 the Arkansas Constitution protect the rights of free speech, freedom of the



1 press, freedom of religion, and freedom of association for all citizens;

2 (2) The United States Supreme Court has called public
3 universities “peculiarly the marketplace of ideas,” Healy v. James, 408 U.S.
4 169, 180 (1972), where young adults learn to exercise these constitutional
5 rights necessary to participate in our system of government and to tolerate
6 the exercise of those rights by others, and there is “no room for the view
7 that . . . First Amendment protections should apply with less force on
8 college campuses than in the community at large,” Healy, 408 U.S. at 180;

9 (3) The exercise of First Amendment rights on the campuses of
10 state-supported institutions of higher education in this state is a critical
11 component of the education experience for students and requires that each
12 state-supported institution of higher education in this state ensure free,
13 robust, and uninhibited debate and deliberation by students, whether on or
14 off campus;

15 (4) State-supported institutions of higher education in this
16 state and elsewhere should provide adequate safeguards for the First
17 Amendment rights of their students to avoid a stifling of expression on
18 campus;

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

23 (6) A significant amount of taxpayer dollars is appropriated to
24 state-supported institutions of higher education each year, and the General
25 Assembly must ensure that all state-supported institutions of higher
26 education receiving state funds recognize freedom of speech as a fundamental
27 right for all; and

28 (7) State-supported institutions of higher education should
29 strive to ensure the fullest degree of intellectual and academic freedom and
30 free expression, and it is not the proper role of state-supported
31 institutions of higher education to shield individuals from speech that is
32 protected by the First Amendment to the United States Constitution, including
33 without limitation ideas and opinions the individuals may find unwelcome,
34 uncollegial, disagreeable, or even deeply offensive.

35
36 6-60-1003. Definitions.

1 As used in this subchapter:

2 (1) "Benefit" means the following:

3 (A) Recognition;

4 (B) Registration;

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

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

8 (E) Funding sources that are available to student
9 organizations at the state-supported institution of higher education;

10 (2) "Campus community" means:

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

12 (i) Students;

13 (ii) Administrators;

14 (iii) Faculty; and

15 (iv) Staff; and

16 (B) Invited guests of:

17 (i) The state-supported institution of higher
18 education; or

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

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

22 (A) Criticizes or objects to an expressive activity on
23 campus; and

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

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

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

34 (6)(A) "Materially and substantially disrupts" means a
35 disruption that occurs when a person, with the purpose or knowledge of
36 significantly hindering the expressive activity of another person or group,

1 prevents the communication of a message of another person or group, or
2 prevents the transaction of the business of a lawful meeting, gathering, or
3 procession by:

4 (i) Engaging in fighting, violence, or other
5 unlawful behavior; or

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

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

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

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

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

22 (i) Grassy areas;

23 (ii) Walkways; and

24 (iii) Other similar common areas.

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

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

29 (i) Community college; or

30 (ii) University.

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

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

35 (10) "Student organization" means an officially recognized group
36 at a state-supported institution of higher education or a group seeking

1 official recognition, composed of admitted students that receive or are
2 seeking to receive benefits through the state-supported institution of higher
3 education.

4
5 6-60-1004. Protected expressive activities.

6 Expressive activities protected under this subchapter consist of speech
7 and other conduct protected by the First Amendment to the United States
8 Constitution, including without limitation:

9 (1) Communicating through any lawful verbal, written, or
10 electronic means;

11 (2) Participating in peaceful assembly;

12 (3) Protesting;

13 (4) Making speeches, including without limitation those of guest
14 speakers;

15 (5) Distributing literature;

16 (6) Making comments to the media;

17 (7) Carrying signs; and

18 (8) Circulating petitions.

19
20 6-60-1005. Public forums.

21 (a) An outdoor area of campus of a state-supported institution of
22 higher education shall be deemed a public forum for members of the campus
23 community.

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

25 (1) Shall not create free speech zones or other designated
26 outdoor areas of campus outside of which expressive activities are
27 prohibited; and

28 (2)(A) May maintain and enforce reasonable time, place, and
29 manner restrictions for outdoor areas of campus that are narrowly tailored to
30 serve a significant institutional interest only when such restrictions:

31 (i) Employ clear, published, content- and viewpoint-
32 neutral criteria; and

33 (ii) Provide for ample alternative means of
34 expression.

35 (B) Any restrictions under subdivision (b)(2)(A) of this
36 section shall allow for members of the campus community to spontaneously and

1 contemporaneously assemble, speak, and distribute literature.

2 (c) A member of the campus community who wants to engage in
3 noncommercial expressive activity in an outdoor area of campus of a state-
4 supported institution of higher education shall be permitted to do so freely
5 as provided under subsection (b) of this section if the individual's conduct:

6 (1) Is not unlawful; and

7 (2) Does not materially and substantially disrupt, as defined
8 under § 6-60-1003, the functioning of the state-supported institution of
9 higher education.

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

11 (1) Limiting the right of campus community member expression
12 elsewhere on campus;

13 (2) Preventing a state-supported institution of higher education
14 from prohibiting, limiting, or restricting expression that the First
15 Amendment does not protect, including without limitation true threats and
16 expression directed to provoke imminent lawless actions and likely to produce
17 it, or prohibiting harassment as defined by § 6-60-1003;

18 (3) Allowing an individual to engage in conduct that materially
19 and substantially disrupts, as defined under § 6-60-1003, another person's
20 expressive activity if the other person's activity is occurring in an area of
21 campus that is reserved for an activity under the exclusive use or control of
22 a particular group.

23
24 6-60-1006. Freedom of association – Nondiscrimination against students
25 and student organizations.

26 A state-supported institution of higher education shall not deny a
27 student organization any benefit or privilege available to any other student
28 organization or otherwise discriminate against an organization based on the
29 expression of the organization, including any requirement that the leaders or
30 members of an organization:

31 (1) Affirm and adhere to the organization's sincerely held
32 beliefs or statement of principles;

33 (2) Comply with the organization's standards of conduct; and

34 (3) Further the organization's mission or purpose, as defined by
35 the student organization.

36

1 6-60-1007. Free expression policies.

2 State-supported institutions of higher education shall:

3 (1) Make public in their handbooks, on their websites, and
4 through their orientation programs for students the policies, regulations,
5 and expectations of students regarding free expression on campus consistent
6 with this subchapter; and

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

13
14 6-60-1008. Accountability to the public.

15 Each state-supported institution of higher education shall submit to
16 the Governor and Legislative Council, a report that details:

17 (1) The course of action implemented to ensure compliance with
18 the requirements of this subchapter by *ninety (90) days after the effective*
19 *date of this act*; and

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

22
23 6-60-1009. Remedies.

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

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

29 (A) Injunctive relief;

30 (B) Reasonable attorney's fees; and

31 (C) Expenses; and

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

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

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2 6-60-1010. Statute of limitations.

3 A person or student organization is required to bring suit for
4 violation of this subchapter not later than three (3) years after the day the
5 cause of action accrues.

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7 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
8 General Assembly of the State of Arkansas that the exercise of First
9 Amendment rights on campuses of state-supported institutions of higher
10 education is critical to the education experience for students; that state-
11 supported institutions of higher education should safeguard First Amendment
12 rights of their students; that the General Assembly must ensure that all
13 state-supported institutions of higher education receiving state funds
14 recognize the freedom of speech as a fundamental right for all; and that this
15 act is immediately necessary to ensure First Amendment rights are preserved
16 for everyone on campuses of state-supported institutions of higher education.
17 Therefore, an emergency is declared to exist, and this act being immediately
18 necessary for the preservation of the public peace, health, and safety shall
19 become effective on:

20 (1) The date of its approval by the Governor;

21 (2) If the bill is neither approved nor vetoed by the Governor,
22 the expiration of the period of time during which the Governor may veto the
23 bill; or

24 (3) If the bill is vetoed by the Governor and the veto is
25 overridden, the date the last house overrides the veto.

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27
28 /s/B. Ballinger
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