

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas As Engrossed: S2/4/19 S2/5/19

2 92nd General Assembly

A Bill

3 Regular Session, 2019

SENATE BILL 156

4

5 By: Senators B. Ballinger, K. Hammer, Rapert

6 By: Representatives Sullivan, Bentley, Dotson, *Beck, Cloud, C. Cooper, Crawford, Gonzales, Payton*

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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.

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16

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Subtitle

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

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

27

28 6-60-1001. Title.

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

31

32 6-60-1002. Legislative intent.

33 The General Assembly finds that:

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



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

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

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

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

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

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

34
35 6-60-1003. Definitions.

36 As used in this subchapter:

1 (1) "Benefit" means the following:

2 (A) Recognition;

3 (B) Registration;

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

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

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

9 (2) "Campus community" means:

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

11 (i) Students;

12 (ii) Administrators;

13 (iii) Faculty; and

14 (iv) Staff; and

15 (B) Invited guests of:

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

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

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

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

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

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

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

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

1 prevents the transaction of the business of a lawful meeting, gathering, or
2 procession by:

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

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

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

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

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

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

21 (i) Grassy areas;

22 (ii) Walkways; and

23 (iii) Other similar common areas.

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

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

28 (i) Community college; or

29 (ii) University.

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

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

34 (10) "Student organization" means an officially recognized group
35 at a state-supported institution of higher education or a group seeking
36 official recognition, composed of admitted students that receive or are

1 seeking to receive benefits through the state-supported institution of higher
2 education.

3
4 6-60-1004. Protected expressive activities.

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

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

10 (2) Participating in peaceful assembly;

11 (3) Protesting;

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

14 (5) Distributing literature;

15 (6) Making comments to the media;

16 (7) Carrying signs; and

17 (8) Circulating petitions.

18
19 6-60-1005. Public forums.

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

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

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

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

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

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

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

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

5 (1) Is not unlawful; and

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

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

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

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

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

22
23 6-60-1006. Freedom of association – Nondiscrimination against students
24 and student organizations.

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

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

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

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

35
36 6-60-1007. Free expression policies.

1 State-supported institutions of higher education shall:

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

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

12
13 6-60-1008. Accountability to the public.

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

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

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

21
22 6-60-1009. Remedies.

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

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

28 (A) Injunctive relief;

29 (B) Reasonable attorney's fees; and

30 (C) Expenses; and

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

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

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1 6-60-1010. Statute of limitations.
2 A person or student organization is required to bring suit for
3 violation of this subchapter not later than three (3) years after the day the
4 cause of action accrues.

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/s/B. Ballinger