

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

# A Bill

SENATE BILL 191

5 By: Senator D. Sullivan  
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## For An Act To Be Entitled

8 AN ACT CONCERNING THE FORMING OPEN AND ROBUST  
9 UNIVERSITY MINDS (FORUM) ACT; TO CHANGE THE NAME OF  
10 THE FORMING OPEN AND ROBUST UNIVERSITY MINDS (FORUM)  
11 ACT TO THE FREE THOUGHT IN HIGHER EDUCATION ACT; TO  
12 AMEND THE RESTRICTIONS A STATE-SUPPORTED INSTITUTION  
13 OF HIGHER EDUCATION MAY IMPOSE ON FREE EXPRESSION; TO  
14 AMEND THE AREAS THAT CONSTITUTE A PUBLIC FORUM FOR  
15 MEMBERS OF A CAMPUS COMMUNITY; AND FOR OTHER  
16 PURPOSES.  
17  
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## Subtitle

19 TO CHANGE THE NAME OF THE FORUM ACT; TO  
20 AMEND THE RESTRICTIONS AN INSTITUTION OF  
21 HIGHER EDUCATION MAY IMPOSE ON FREE  
22 EXPRESSION; AND TO AMEND THE AREAS THAT  
23 CONSTITUTE A PUBLIC FORUM FOR MEMBERS OF  
24 A CAMPUS COMMUNITY.  
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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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30 SECTION 1. Arkansas Code § 6-60-1001 is amended to read as follows:  
31 6-60-1001. Title.

32 This subchapter shall be known and may be cited as the ~~"Forming Open~~  
33 ~~and Robust University Minds (FORUM) Act"~~ "Free Thought in Higher Education  
34 Act".  
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36 SECTION 2. Arkansas Code § 6-60-1002(3)-(7), concerning the



1 legislative intent of the Forming Open and Robust University Minds (FORUM)  
 2 Act, is amended to read as follows:

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

9 (4) The First Amendment is the floor of free speech protection,  
 10 and a commitment to the free exchange of ideas gives members of campus  
 11 communities in this state the ability to engage in free, robust, and  
 12 uninhibited debate and deliberation, whether on or off campus, beyond those  
 13 guaranteed by the First Amendment;

14 ~~(4)(5)~~ 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~~ rights to free speech of members of campus  
 17 communities to avoid a stifling of expression on campus;

18 ~~(5)(6)~~ 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)(7)~~ A significant amount of taxpayer dollars is appropriated  
 23 to state-supported institutions of higher education each year, and the  
 24 General 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)(8)~~ 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.

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35 SECTION 3. Arkansas Code § 6-60-1003(6)(B), concerning definitions  
 36 under the Forming Open and Robust University Minds (FORUM) Act, is amended to

1 read as follows:

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

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

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

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13 SECTION 4. Arkansas Code § 6-60-1004 is amended to read as follows:  
14 6-60-1004. Protected expressive activities.

15 (a) Expressive activities protected under this subchapter consist of  
16 speech and other expressive conduct ~~protected by the First Amendment to the~~  
17 ~~United States Constitution,~~ including without limitation:

18 (1) Communicating through any lawful verbal, written, or  
19 electronic means;

20 (2) Participating in peaceful assembly;

21 (3) Protesting;

22 (4) Making speeches, including without limitation those of guest  
23 speakers;

24 (5) Distributing literature;

25 (6) Making comments to the media;

26 (7) Carrying signs; and

27 (8) Circulating petitions.

28 (b)(1) Except as provided under subsection (c) of this section, a  
29 state-supported institution of higher education shall:

30 (A) Ensure members of the campus community the fullest  
31 degree of intellectual and academic freedom and free expression;

32 (B) Not restrict speech that individuals may find  
33 controversial, uncollegial, disagreeable, or offensive; and

34 (C) Not restrict members of the campus community from  
35 communicating with members of the public, whether members of the public are  
36 members of the campus community or the public at large, on any matter except

1 for a matter prohibited by state or federal law.

2 (2) Speech and expressive conduct permitted under subdivision  
 3 (b)(1) of this section shall not interfere with state and federal laws for  
 4 the prohibition of harassment and discrimination.

5 (c) A state-supported institution of higher education may impose  
 6 reasonable restrictions regarding the time, place, or manner of carrying out  
 7 expressive activities.

8  
 9 SECTION 5. Arkansas Code § 6-60-1005 is amended to read as follows:  
 10 6-60-1005. Public forums.

11 (a) ~~An outdoor area~~ The following areas of campus of a state-supported  
 12 institution of higher education shall be deemed a public forum for members of  
 13 the campus community:

14 (1) Outdoor areas; and

15 (2) Indoor areas that are generally accessible to members of the  
 16 campus community.

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

18 (1) Shall not create free-speech zones or other designated  
 19 ~~outdoor~~ areas of campus outside of which expressive activities are  
 20 prohibited; and

21 (2)(A) May maintain and enforce reasonable ~~time, place, and~~  
 22 ~~manner~~ restrictions regarding the time, place, or manner of carrying out  
 23 expressive activities for ~~outdoor~~ areas of campus that are narrowly tailored  
 24 to serve a significant institutional interest only when such restrictions:

25 (i) Employ clear, published, content-neutral and  
 26 viewpoint-neutral criteria; and

27 (ii) Provide for ample alternative means of  
 28 expression.

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

32 (c) A member of the campus community who wants to engage in  
 33 noncommercial expressive activity in ~~an outdoor~~ any public area of campus of  
 34 a state-supported institution of higher education shall be permitted to do so  
 35 freely as provided under subsection (b) of this section if the individual's  
 36 conduct:

1 (1) Is not unlawful; and

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

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

6 (1) Limiting the right of campus community member expression  
7 elsewhere on campus;

8 (2) Preventing a state-supported institution of higher education  
9 from prohibiting, limiting, or restricting expression that ~~the First~~  
10 ~~Amendment to the United States Constitution does not implicate~~ is illegal,  
11 including without limitation true threats and expression directed to provoke  
12 imminent lawless actions and likely to produce it, or prohibiting harassment  
13 as defined by § 6-60-1003; or

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

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20 SECTION 6. Arkansas Code § 6-60-1007 is amended to read as follows:

21 6-60-1007. Free expression policies.

22 State-supported institutions of higher education shall:

23 (1) Make public in their handbooks, on their websites, and  
24 through their orientation programs for students the policies, regulations,  
25 and expectations of students regarding free expression on campus consistent  
26 with this subchapter; ~~and~~

27 (2) Develop materials, programs, and procedures to ensure that  
28 those persons who have responsibility for discipline or education of  
29 students, such as administrators, campus police officers, residence life  
30 officials, and faculty, understand the policies, regulations, and duties of  
31 state-supported institutions of higher education regarding free expression on  
32 campus consistent with this subchapter; and

33 (3) Not require members of the campus community to take an oath  
34 other than an oath required by law or an academic or professional accrediting  
35 body.

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