

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

As Engrossed: S2/8/21

A Bill

SENATE BILL 191

5 By: Senator D. Sullivan
6 By: Representative Womack
7

For An Act To Be Entitled

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

Subtitle

21 TO CHANGE THE NAME OF THE FORUM ACT; TO
22 AMEND THE RESTRICTIONS AN INSTITUTION OF
23 HIGHER EDUCATION MAY IMPOSE ON FREE
24 EXPRESSION; AND TO AMEND THE AREAS THAT
25 CONSTITUTE A PUBLIC FORUM FOR MEMBERS OF
26 A CAMPUS COMMUNITY.

29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

31 SECTION 1. Arkansas Code § 6-60-1001 is amended to read as follows:
32 6-60-1001. Title.

33 This subchapter shall be known and may be cited as the "~~Forming Open~~
34 ~~and Robust University Minds (FORUM) Act~~" "Free Thought in Higher Education
35 Act".
36



1 SECTION 2. Arkansas Code § 6-60-1002(3)-(7), concerning the
2 legislative intent of the Forming Open and Robust University Minds (FORUM)
3 Act, is amended to read as follows:

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

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

15 ~~(4)(5)~~ 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~~ rights to free speech of members of campus
18 communities to avoid a stifling of expression on campus;

19 ~~(5)(6)~~ 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)(7)~~ A significant amount of taxpayer dollars is appropriated
24 to state-supported institutions of higher education each year, and the
25 General 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)(8)~~ 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 SECTION 3. Arkansas Code § 6-60-1003(6)(B), concerning definitions

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

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

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

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

13

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

15 6-60-1004. Protected expressive activities.

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

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

21 (2) Participating in peaceful assembly;

22 (3) Protesting;

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

25 (5) Distributing literature;

26 (6) Making comments to the media;

27 (7) Carrying signs; and

28 (8) Circulating petitions.

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

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

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

35 (C) Not restrict members of the campus community from
36 communicating with members of the public, whether members of the public are

1 members of the campus community or the public at large, on any matter except
2 for a matter prohibited by state or federal law.

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

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

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

11 6-60-1005. Public forums.

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

15 (1) Outdoor areas; and

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

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

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

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

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

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

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

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

1 conduct:

2 (1) Is not unlawful; and

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

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

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

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

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

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

22 6-60-1007. Free expression policies.

23 State-supported institutions of higher education shall:

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

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

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

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/s/D. Sullivan