

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

As Engrossed: S2/9/23

A Bill

SENATE BILL 125

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

For An Act To Be Entitled

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

Subtitle

18 TO AMEND THE RESTRICTIONS AN INSTITUTION
19 OF HIGHER EDUCATION MAY IMPOSE ON FREE
20 EXPRESSION; AND TO AMEND THE AREAS THAT
21 CONSTITUTE A PUBLIC FORUM FOR MEMBERS OF
22 A CAMPUS COMMUNITY.

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

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

30 (3) The exercise of First Amendment rights on the campuses of
31 state-supported institutions of higher education in this state is a critical
32 component of the education experience for students and requires that each
33 state-supported institution of higher education in this state ~~ensure~~ ensures
34 free, robust, and uninhibited debate and deliberation by students, whether on
35 or off campus;

36 (4) The First Amendment is the floor of free speech protection,



1 and a commitment to the free exchange of ideas gives members of campus
 2 communities in this state the ability to engage in free, robust, and
 3 uninhibited debate and deliberation, whether on or off campus, beyond those
 4 guaranteed by the First Amendment;

5 ~~(4)~~(5) State-supported institutions of higher education in this
 6 state and elsewhere should provide adequate safeguards for the First
 7 Amendment rights ~~of their students~~ and other free-speech rights of members of
 8 campus communities to avoid a stifling of expression on campus;

9 ~~(5)~~(6) The United States Supreme Court has warned that if state-
 10 supported institutions of higher education stifle student speech and prevent
 11 the open exchange of ideas on campus, “our civilization will stagnate and
 12 die”, Sweezy vs. New Hampshire, 354 U.S. 234, 250 (1957);

13 ~~(6)~~(7) A significant amount of taxpayer dollars is appropriated
 14 to state-supported institutions of higher education each year, and the
 15 General Assembly must ensure that all state-supported institutions of higher
 16 education receiving state funds recognize freedom of speech as a fundamental
 17 right for all; and

18 ~~(7)~~(8) State-supported institutions of higher education should
 19 strive to ensure the fullest degree of intellectual and academic freedom and
 20 free expression, and it is not the proper role of state-supported
 21 institutions of higher education to shield individuals from speech that is
 22 protected by the First Amendment to the United States Constitution, this
 23 subchapter, and other state and federal statutes, including without
 24 limitation ideas and opinions the individuals may find unwelcome,
 25 uncollegial, disagreeable, or even deeply offensive.

26
 27 SECTION 3. Arkansas Code § 6-60-1003(6)(B), concerning definitions
 28 under the Forming Open and Robust University Minds (FORUM) Act, is amended to
 29 read as follows:

30 (B) “Materially and substantially disrupts” does not
 31 include conduct that is protected under the First Amendment to the United
 32 States Constitution or Arkansas Constitution, Article 2, §§ 4, 6, and 24, or
 33 is otherwise protected under this subchapter or in another state or federal
 34 statute, which includes without limitation:

35 (i) Lawful protests in ~~an outdoor~~ any area of campus
 36 that is generally accessible to members of the campus community, except

1 during times when the area has been reserved in advance for another event; or
2 (ii) Minor, brief, or *fleeting nonviolent and not*
3 *sonorous* disruptions of events ~~that~~ if the disruptions are isolated and short
4 in duration;

5
6 SECTION 4. Arkansas Code § 6-60-1004 is amended to read as follows:

7 6-60-1004. Protected expressive activities.

8 (a) Expressive activities protected under this subchapter consist of
9 *speech and other expressive conduct protected by the First Amendment to the*
10 *United States Constitution, this subchapter, and other state and federal*
11 *statutes, including without limitation:*

12 (1) Communicating through any lawful verbal, written, or
13 electronic means;

14 (2) Participating in peaceful assembly;

15 (3) Protesting;

16 (4) Making speeches, including without limitation those of guest
17 speakers;

18 (5) Distributing literature;

19 (6) Making comments to the media;

20 (7) Carrying signs; and

21 (8) Circulating petitions.

22 (b)(1) Except as provided under subsections (c) and (d) of this
23 section, a state-supported institution of higher education shall:

24 (A) Ensure that members of the campus community have the
25 fullest degree of intellectual and academic freedom and free expression;

26 (B) Not restrict speech that an individual may find
27 controversial, uncollegial, disagreeable, or offensive;

28 (C) Not mandate the use of specific words, including
29 without limitation pronouns; and

30 (D) Not restrict members of the campus community from
31 communicating with members of the public, whether members of the public are
32 members of the campus community or the public at large, on any matter except
33 for a matter prohibited by state or federal law, including without limitation
34 contract law.

35 (2) Speech and expressive conduct permitted under subdivision
36 (b)(1) of this section shall not interfere with state and federal laws for

1 the prohibition of:

2 (A) Harassment;

3 (B) Discrimination;

4 (C) Obscenity; and

5 (D)(i) Fighting words.

6 (ii) As used in this section, "fighting words" means
7 personally abusive epithets that, when addressed to the average person, have,
8 as a matter of common knowledge, a substantial likelihood to provoke violent
9 reaction.

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

13 (d) State-supported institutions of higher education may prohibit,
14 limit, or restrict:

15 (1) Expression that the First Amendment to the United States
16 Constitution, this subchapter, and any other state or federal statute do not
17 implicate, including without limitation true threats and expression directed
18 to provoke imminent lawless actions and likely to produce it, or prohibiting
19 harassment as defined by § 6-60-1003; or

20 (2) An individual from engaging in conduct that materially and
21 substantially disrupts, as defined under § 6-60-1003, a class, lecture, or
22 other presentation or event, an administrative office, or another person's
23 expressive activity if the other person's activity is occurring in an area of
24 campus that is reserved for an activity under the exclusive use or control of
25 a particular individual or group.

26
27 SECTION 5. Arkansas Code § 6-60-1005 is amended to read as follows:

28 6-60-1005. Public forums.

29 (a) ~~An outdoor area~~ The following areas of campus of a state-supported
30 institution of higher education shall be deemed a public forum for ~~members of~~
31 ~~the campus community~~ all people legally present on campus:

32 (1) Outdoor areas; and

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

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

36 (1) Shall not create free-speech zones or other designated

1 ~~outdoor~~ areas of campus outside of which expressive activities are
2 prohibited; and

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

7 (i) Employ clear, published, content-neutral and
8 viewpoint-neutral criteria; and

9 (ii) Provide for ample alternative means of
10 expression.

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

14 (c) ~~A member of the campus community who wants~~ All people legally
15 present on campus who want to engage in noncommercial expressive activity in
16 ~~an outdoor~~ any public area of campus of a state-supported institution of
17 higher education shall be permitted to do so freely as provided under
18 subsection (b) of this section if the ~~individual's~~ their conduct:

19 (1) Is not unlawful; and

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

23 (d) *This section shall not be interpreted as+*

24 ~~(1) Limiting limiting the right of campus community member~~
25 ~~expression elsewhere on campus+.~~

26 (e) State-supported institutions of higher education may prohibit,
27 limit, or restrict:

28 ~~(2)(1) Preventing a state-supported institution of higher~~
29 ~~education from prohibiting, limiting, or restricting expression~~ Expression
30 that the First Amendment to the United States Constitution, this subchapter,
31 and any other state or federal statute does do not implicate, including
32 without limitation true threats and expression directed to provoke imminent
33 lawless actions and likely to produce it, or prohibiting harassment as
34 defined by § 6-60-1003; or

35 ~~(3)(2) Allowing an An individual to engage from engaging in~~
36 conduct that materially and substantially disrupts, as defined under § 6-60-

1 1003, a class, lecture, or other presentation or event, an administrative
2 office, or another person's expressive activity if the other person's
3 activity is occurring in an area of campus that is reserved for an activity
4 under the exclusive use or control of a particular individual or group.

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6 /s/D. Sullivan
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