

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

State of Arkansas

As Engrossed: S2/4/19 S2/5/19 S2/7/19

92nd General Assembly

A Bill

Regular Session, 2019

SENATE BILL 156

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

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

For An Act To Be Entitled

AN ACT TO ESTABLISH THE FORMING OPEN AND ROBUST
UNIVERSITY MINDS (FORUM) ACT; TO PROTECT THE FREE
SPEECH RIGHT OF STUDENTS IN ACCORDANCE WITH THE FIRST
AMENDMENT OF THE UNITED STATES CONSTITUTION THAT
PROHIBITS ABRIDGING THE FREEDOM OF SPEECH; AND FOR
OTHER PURPOSES.

Subtitle

TO ESTABLISH THE FORMING OPEN AND ROBUST
UNIVERSITY MINDS (FORUM) ACT.

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

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

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

6-60-1001. Title.

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

6-60-1002. Legislative intent.

The General Assembly finds that:

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



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

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

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

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

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

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

6-60-1003. Definitions.

As used in this subchapter:

(1) "Benefit" means the following:

- (A) Recognition;
- (B) Registration;
- (C) The use of facilities of a state-supported institution of higher education for meetings or speaking purposes;
- (D) The use of channels of communication; and
- (E) Funding sources that are available to student organizations at the state-supported institution of higher education;

(2) "Campus community" means:

- (A) A state-supported institution of higher education's:
 - (i) Students;
 - (ii) Administrators;
 - (iii) Faculty; and
 - (iv) Staff; and
- (B) Invited guests of:
 - (i) The state-supported institution of higher education; or
 - (ii) Any individual in subdivisions (2)(A)(i)-(iv) of this section;

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

- (A) Criticizes or objects to an expressive activity on campus; and
- (B) Does not violate the rights of others in the campus community by materially disrupting previously scheduled or reserved activities in a portion or section of the campus at that scheduled time;

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

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

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

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

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

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

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

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

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

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

(i) Grassy areas;

(ii) Walkways; and

(iii) Other similar common areas.

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

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

(i) Community college; or

(ii) University.

(B) "State-supported institution of higher education" does not include:

(i) A public school, public or private institution of higher education, or public or private technical school that operates within the Department of Correction, the Department of Community Correction, or the Division of Youth Services of the Department of Human Services; or

(ii) An educational program that is provided or

facilitated by the Department of Correction, the Department of Community Correction, or the Division of Youth Services of the Department of Human Services;

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

(10) "Student organization" means an officially recognized group at a state-supported institution of higher education or a group seeking official recognition, composed of admitted students that receive or are seeking to receive benefits through the state-supported institution of higher education.

6-60-1004. Protected expressive activities.

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

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

(2) Participating in peaceful assembly;

(3) Protesting;

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

(5) Distributing literature;

(6) Making comments to the media;

(7) Carrying signs; and

(8) Circulating petitions.

6-60-1005. Public forums.

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

(b) State-supported institutions of higher education:

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

(2)(A) May maintain and enforce reasonable time, place, and manner restrictions for outdoor areas of campus that are narrowly tailored to

serve a significant institutional interest only when such restrictions:

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

(ii) Provide for ample alternative means of expression.

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

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

(1) Is not unlawful; and

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

(d) This section shall not be interpreted as:

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

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

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

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

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

members of an organization:

- (1) Affirm and adhere to the organization's sincerely held beliefs or statement of principles;
- (2) Comply with the organization's standards of conduct; and
- (3) Further the organization's mission or purpose, as defined by the student organization.

6-60-1007. Free expression policies.

State-supported institutions of higher education shall:

- (1) Make public in their handbooks, on their websites, and through their orientation programs for students the policies, regulations, and expectations of students regarding free expression on campus consistent with this subchapter; and
- (2) Develop materials, programs, and procedures to ensure that those persons who have responsibility for discipline or education of students, such as administrators, campus police officers, residence life officials, and faculty, understand the policies, regulations, and duties of state-supported institutions of higher education regarding free expression on campus consistent with this subchapter.

6-60-1008. Accountability to the public.

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

- (1) The course of action implemented to ensure compliance with the requirements of this subchapter by *ninety (90) days after the effective date of this act*; and
- (2) Any changes or updates to the chosen course of action within thirty (30) days after making the changes or updates.

6-60-1009. Remedies.

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

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

(B) Reasonable attorney's fees; and

(C) Expenses; and

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

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

6-60-1010. Statute of limitations.

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

/s/B. Ballinger