

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

State of Arkansas As Engrossed: S2/8/21 S3/4/21 S4/1/21 S4/7/21

93rd General Assembly

A Bill

Regular Session, 2021

SENATE BILL 191

By: Senator D. Sullivan

By: Representative Womack

For An Act To Be Entitled

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

Subtitle

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

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

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

This subchapter shall be known and may be cited as the ~~“Forming Open and Robust University Minds (FORUM) Act”~~ “Free Thought in Higher Education Act”.



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

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

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

~~(5)(6)~~ 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)(7)~~ 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)(8)~~ 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.

SECTION 3. Arkansas Code § 6-60-1003(6)(B), concerning definitions

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

(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, or is otherwise protected under this subchapter or in another state statute, which includes without limitation:

- (i) Lawful protests in ~~an outdoor~~ any 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;

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

6-60-1004. Protected expressive activities.

(a) Expressive activities protected under this subchapter consist of speech and other expressive 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.

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

(A) Ensure students and teachers the fullest degree of intellectual and academic freedom and free expression;

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

(C) Not restrict students and teachers from communicating with members of the public, whether members of the public are members of the

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

(2) Speech and expressive conduct permitted under subdivision (b)(1) of this section shall not interfere with prohibitions against harassment and discrimination.

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

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

6-60-1005. Public forums.

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

(1) Outdoor areas; and

(2)(A) Indoor common areas generally open to all students and teachers for the purpose of congregating for social interaction, as designated by a state-supported institution of higher education.

(B) A state-supported institution of higher education shall appropriately designate indoor common areas generally open to all students and teachers for the purpose of congregating for social interaction.

(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 regarding the time, place, or manner of carrying out expressive activities for ~~outdoor~~ areas of campus that are narrowly tailored to serve a significant institutional interest only when such restrictions:

(i) Employ clear, published, content-neutral 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~~ any public 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 to the United States Constitution does not implicate~~ violates the laws of this state or the Arkansas Constitution, 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; or
- (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.

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

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; and

(3) Not require *students or teachers* to take an oath other than an oath required by law or an academic or professional accrediting body.

/s/D. Sullivan