

1 State of Arkansas As Engrossed: S2/4/19 S2/5/19 S2/7/19

2 92nd General Assembly

# A Bill

3 Regular Session, 2019

SENATE BILL 156

4

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

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

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## For An Act To Be Entitled

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

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## Subtitle

18

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

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

23

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

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

27

28 6-60-1001. Title.

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

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32 6-60-1002. Legislative intent.

33 The General Assembly finds that:

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



1           (2) The United States Supreme Court has called public  
2 universities “peculiarly the marketplace of ideas,” Healy v. James, 408 U.S.  
3 169, 180 (1972), where young adults learn to exercise these constitutional  
4 rights necessary to participate in our system of government and to tolerate  
5 the exercise of those rights by others, and there is “no room for the view  
6 that . . . First Amendment protections should apply with less force on  
7 college campuses than in the community at large,” Healy, 408 U.S. at 180;

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

14           (4) 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 to avoid a stifling of expression on  
17 campus;

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

34  
35           6-60-1003. Definitions.

36           As used in this subchapter:

1 (1) "Benefit" means the following:

2 (A) Recognition;

3 (B) Registration;

4 (C) The use of facilities of a state-supported institution  
5 of higher education for meetings or speaking purposes;

6 (D) The use of channels of communication; and

7 (E) Funding sources that are available to student  
8 organizations at the state-supported institution of higher education;

9 (2) "Campus community" means:

10 (A) A state-supported institution of higher education's:

11 (i) Students;

12 (ii) Administrators;

13 (iii) Faculty; and

14 (iv) Staff; and

15 (B) Invited guests of:

16 (i) The state-supported institution of higher  
17 education; or

18 (ii) Any individual in subdivisions (2)(A)(i)-(iv)  
19 of this section;

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

21 (A) Criticizes or objects to an expressive activity on  
22 campus; and

23 (B) Does not violate the rights of others in the campus  
24 community by materially disrupting previously scheduled or reserved  
25 activities in a portion or section of the campus at that scheduled time;

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

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

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

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

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

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

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

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

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

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

21 (i) Grassy areas;

22 (ii) Walkways; and

23 (iii) Other similar common areas.

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

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

28 (i) Community college; or

29 (ii) University.

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

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

36 (ii) An educational program that is provided or

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

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

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

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12 6-60-1004. Protected expressive activities.

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

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

18 (2) Participating in peaceful assembly;

19 (3) Protesting;

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

22 (5) Distributing literature;

23 (6) Making comments to the media;

24 (7) Carrying signs; and

25 (8) Circulating petitions.

26  
27 6-60-1005. Public forums.

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

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

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

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

1 serve a significant institutional interest only when such restrictions:

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

4 (ii) Provide for ample alternative means of  
5 expression.

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

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

13 (1) Is not unlawful; and

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

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

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

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

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

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31 6-60-1006. Freedom of association – Nondiscrimination against students  
32 and student organizations.

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

1 members of an organization:

2 (1) Affirm and adhere to the organization's sincerely held  
3 beliefs or statement of principles;

4 (2) Comply with the organization's standards of conduct; and

5 (3) Further the organization's mission or purpose, as defined by  
6 the student organization.

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8 6-60-1007. Free expression policies.

9 State-supported institutions of higher education shall:

10 (1) Make public in their handbooks, on their websites, and  
11 through their orientation programs for students the policies, regulations,  
12 and expectations of students regarding free expression on campus consistent  
13 with this subchapter; and

14 (2) Develop materials, programs, and procedures to ensure that  
15 those persons who have responsibility for discipline or education of  
16 students, such as administrators, campus police officers, residence life  
17 officials, and faculty, understand the policies, regulations, and duties of  
18 state-supported institutions of higher education regarding free expression on  
19 campus consistent with this subchapter.

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21 6-60-1008. Accountability to the public.

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

24 (1) The course of action implemented to ensure compliance with  
25 the requirements of this subchapter by *ninety (90) days after the effective*  
26 *date of this act*; and

27 (2) Any changes or updates to the chosen course of action within  
28 thirty (30) days after making the changes or updates.

29  
30 6-60-1009. Remedies.

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

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

36 (A) Injunctive relief;

1 (B) Reasonable attorney's fees; and

2 (C) Expenses; and

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

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

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9 6-60-1010. Statute of limitations.

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

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15 */s/B. Ballinger*

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18 **APPROVED: 2/20/19**

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