

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

# 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 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.  
18  
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## 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.  
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29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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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".  
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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, are 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~~ ensures  
 8 free, robust, and uninhibited debate and deliberation by students, whether on  
 9 or 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~~ right 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.

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 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~~ if the disruptions are isolated and short in  
 13 duration;

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15 SECTION 4. Arkansas Code § 6-60-1004 is amended to read as follows:  
 16 6-60-1004. Protected expressive activities.

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

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

22 (2) Participating in peaceful assembly;

23 (3) Protesting;

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

26 (5) Distributing literature;

27 (6) Making comments to the media;

28 (7) Carrying signs; and

29 (8) Circulating petitions.

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

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

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

36 (C) Not mandate the use of specific words, including

1 without limitation pronouns; and

2 (D) Not restrict members of the campus community from  
3 communicating with members of the public, whether members of the public are  
4 members of the campus community or the public at large, on any matter except  
5 for a matter prohibited by state or federal law.

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

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

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13 SECTION 5. Arkansas Code § 6-60-1005 is amended to read as follows:  
14 6-60-1005. Public forums.

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

18 (1) Outdoor areas; and

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

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

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

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

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

31 (ii) Provide for ample alternative means of  
32 expression.

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

36 (c) ~~A member of the campus community who wants~~ All people legally

1 present on campus who want to engage in noncommercial expressive activity in  
2 ~~an outdoor~~ any public area of campus of a state-supported institution of  
3 higher education shall be permitted to do so freely as provided under  
4 subsection (b) of this section if the ~~individual's~~ their conduct:

5 (1) Is not unlawful; and

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

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

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

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

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

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