

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 758**

**Representatives Antani, Brenner**

**Cosponsors: Representatives Wiggam, Becker, Merrin**

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**A BILL**

To amend sections 3345.021 and 3345.21 and to enact 1  
sections 3345.0211, 3345.0212, 3345.0213, 2  
3345.0214, and 3345.0215 of the Revised Code to 3  
enact the "Forming Open and Robust University 4  
Minds Act" regarding free speech on college 5  
campuses. 6

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 3345.021 and 3345.21 be amended 7  
and sections 3345.0211, 3345.0212, 3345.0213, 3345.0214, and 8  
3345.0215 of the Revised Code be enacted to read as follows: 9

**Sec. 3345.021.** ~~The~~ Subject to sections 3345.0212 to 10  
3345.0215 of the Revised Code, the board of trustees of any 11  
college or university, which receives any state funds in support 12  
thereof, shall have full power and authority on all matters 13  
relative to the administration of such college or university. 14

~~Such power shall include but not be limited to the~~ 15  
~~authority to withhold use of the facilities of any such college~~ 16  
~~or university for meetings or speaking purposes from persons who~~ 17  
~~are members of the communist party, persons who advocate or~~ 18

~~persons who hold membership in or support organizations which~~ 19  
~~advocate the overthrow of the government of the United States~~ 20  
~~and its free institutions by force or violence or whose presence~~ 21  
~~is not conducive to high ethical and moral standards or the~~ 22  
~~primary educational purposes and orderly conduct of the~~ 23  
~~functions of the institution.~~ 24

The board of trustees of any such college or university 25  
may delegate any administrative authority ~~mentioned in this~~ 26  
~~section, including but not limited to, the enforcement of rules~~ 27  
~~or regulations with respect to the use of university or college~~ 28  
~~facilities for speaking purposes,~~ to the president of any such 29  
college or university, or to such other administrative personnel 30  
as may be designated or appointed therefor by the board of 31  
trustees. 32

Sec. 3345.0211. (A) As used in this section and sections 33  
3345.0212 to 3345.0215 of the Revised Code: 34

(1) "Benefits" has the same meaning as in section 3345.023 35  
of the Revised Code. 36

(2) "Campus community" means students, student groups, 37  
faculty, staff, and employees of a state institution of higher 38  
education and their invited guests. 39

(3) "Expressive activities" means any lawful verbal, 40  
written, audiovisual, or electronic means by which individuals 41  
may communicate ideas, including all forms of peaceful assembly, 42  
protests, speeches, distribution of literature, carrying and 43  
displaying signs, and circulating petitions. 44

(4) "Harassment" means only expression that is unwelcome 45  
and so severe, pervasive, and subjectively and objectively 46  
offensive that it unreasonably interferes with an individual's 47

access to educational opportunities or benefits provided by a 48  
state institution of higher education. 49

(5) "Materially and substantially disrupts" means when a 50  
person, with the intent to, or with knowledge of doing so, 51  
significantly hinders another person's or group's expressive 52  
activity, prevents communication of their message, or prevents 53  
the transaction of the business of a lawful meeting, gathering, 54  
or procession by either: 55

(a) Engaging in violent or otherwise unlawful behavior; or 56

(b) Physically blocking or using threats of violence to 57  
prevent any person from attending, listening to, viewing, or 58  
otherwise participating in an expressive activity. This shall 59  
not include conduct that is protected under the First Amendment 60  
to the United States Constitution or Section II of Article I of 61  
the Ohio Constitution. 62

(6) "Outdoor areas of campus" means the generally 63  
accessible outside areas of campus where members of the campus 64  
community are commonly allowed, such as grassy areas, walkways, 65  
and other similar common areas. This does not include outdoor 66  
areas where access is restricted to a majority of the campus 67  
community. 68

(7) "State institution of higher education" has the same 69  
meaning as in section 3345.011 of the Revised Code. 70

(8) "Student" means any person who is enrolled on a full- 71  
time or part-time basis in a state institution of higher 72  
education. 73

(9) "Student group" means an officially recognized group 74  
at a state institution of higher education, or a group seeking 75  
official recognition, comprised of admitted students that 76

receive, or are seeking to receive, benefits through the 77  
institution of higher education. 78

(B) The provisions and requirements of sections 3345.0212 79  
to 3345.0215 of the Revised Code supersede any rule, policy, 80  
action, communication, or requirement of any state institution 81  
of higher education or other agency of the state. No rule, 82  
policy, action, communication, or requirement shall contradict 83  
or diminish the effect of those sections of the Revised Code. 84

(C) If any provision of sections 3345.0212 to 3345.0215 of 85  
the Revised Code is declared unconstitutional, or its 86  
application to any person or circumstances is held invalid, the 87  
remainder of those sections and their application to other 88  
persons or circumstances shall not be affected. 89

**Sec. 3345.0212.** (A) No state institution of higher 90  
education, or any of its administrators acting in their official 91  
capacity, shall prohibit any individual from engaging in 92  
noncommercial expressive activity on campus, so long as the 93  
individual's conduct is lawful and does not materially and 94  
substantially disrupt the functioning of the institution. 95

(B) Each state institution of higher education shall do 96  
the following: 97

(1) Make public in its handbook, on its web site, and in 98  
its orientation programs for students the policies, regulations, 99  
and expectations of students regarding free expression on 100  
campus. 101

(2) Develop and distribute materials, programs, and 102  
procedures to individuals responsible for the education or 103  
discipline of students, such as administrators, campus police 104  
officers, residence life officials, and professors, to inform 105

them of the policies, regulations, and duties of the institution 106  
regarding free expression on campus. 107

(C) (1) Nothing in this section shall be interpreted as 108  
preventing state institutions of higher education from 109  
prohibiting harassment or restricting expressive activities that 110  
the First Amendment to the United States Constitution does not 111  
protect. 112

(2) Nothing in this section shall enable individuals to 113  
engage in conduct that intentionally or materially and 114  
substantially disrupts another individual's expressive activity 115  
if it occurs in a campus space reserved for exclusive use or 116  
control of a particular group. 117

**Sec. 3345.0213.** (A) (1) Outdoor areas of campuses of state 118  
institutions of higher education are public forums for campus 119  
communities. 120

(2) State institutions of higher education shall not 121  
create "free speech zones" or designate other outdoor areas of 122  
campuses where expressive activities are prohibited. 123

(3) State institutions of higher education may maintain 124  
and enforce reasonable time, place, and manner restrictions 125  
specifically developed in service of a significant institutional 126  
interest only when such restrictions employ clear, published, 127  
viewpoint- and content-neutral criteria, and provide for ample 128  
alternative means of expressive activities. Any such 129  
restrictions shall allow for members of a campus community to 130  
spontaneously and contemporaneously assemble and distribute 131  
literature. 132

(B) Nothing in this section shall be interpreted as 133  
limiting the right of student expression elsewhere on campus. 134

Sec. 3345.0214. (A) (1) Within one hundred eighty days 135  
after the effective date of this section, and in a manner that 136  
complies with the "Family Educational Rights and Privacy Act of 137  
1974," 88 Stat. 571, 20 U.S.C. 1232g, each state institution of 138  
higher education shall submit to the governor, speaker of the 139  
house of representatives, and president of the senate a report 140  
detailing its course of action in accordance with sections 141  
3345.0212, 3345.0213, and 3345.0215 of the Revised Code. The 142  
report shall contain the following information: 143

(a) A description of any barriers to or incidents of 144  
disruption of free expression occurring on campus, including 145  
attempts to block or prohibit speakers and any investigation of 146  
students or student groups on the basis of expression. The 147  
description also shall include the nature of each barrier or 148  
incident and the disciplinary action, if any, taken against 149  
members of the campus community determined to be responsible for 150  
the barriers or incidents; 151

(b) Any other information the state institution of higher 152  
education finds necessary and appropriate for the public to 153  
evaluate whether the free expression rights for members of the 154  
campus community have been adequately protected. 155

(2) Each state institution of higher education shall 156  
publish the report prescribed by this division on its web site. 157  
The report must do the following: 158

(a) Be accessible from the main page of an institution's 159  
web site by use of not more than three links; 160

(b) Be word-searchable; 161

(c) Be accessible to the public without requiring user 162  
registration of any kind. 163

(3) Within thirty days after an action is brought against 164  
a state institution of higher education for an alleged violation 165  
of expression rights, the institution shall submit a 166  
supplementary report, containing the information described in 167  
division (A)(1) of this section and a copy of the complaint. 168

**Sec. 3345.0215.** (A) Notwithstanding Chapter 2743. of the 169  
Revised Code, the state hereby waives its immunity from suit in 170  
a federal court under the Eleventh Amendment to the United 171  
States Constitution, and consents to the jurisdiction of the 172  
federal courts over its civil liability, and the civil liability 173  
of a state institution of higher education, for any violation of 174  
sections 3345.0212 and 3345.0213 of the Revised Code. A state 175  
institution of higher education shall not be immune from suit or 176  
liability for those violations. 177

(B) Any member of the campus community aggrieved by a 178  
violation of sections 3345.0212 and 3345.0213 of the Revised 179  
Code may bring a civil action against the state, a state 180  
institution of higher education, and its employees acting in 181  
their official capacities. In the action, the aggrieved may seek 182  
and obtain appropriate relief, including injunctive relief, 183  
compensatory damages, reasonable attorney's fees, and court 184  
costs. If a court finds a violation of section 3345.0212 or 185  
3345.0213 of the Revised Code, it shall issue an award of not 186  
less than one thousand dollars. 187

(C) Any member of the campus community aggrieved by a 188  
violation of sections 3345.0212 and 3345.0213 of the Revised 189  
Code may assert such violation as a defense or counterclaim in 190  
any disciplinary action or in any civil or administrative 191  
proceedings brought against such individual or student group. 192  
Nothing in this section shall be interpreted to limit any other 193

remedies available to the individual or student group. 194

(D) Except as otherwise provided in this division, an 195  
action against the state, a state institution of higher 196  
education, or an employee acting in their official capacity for 197  
a violation of section 3345.0212 or 3345.0213 of the Revised 198  
Code shall be brought within one year after the cause of action 199  
has occurred. A court may allow an action described in this 200  
division to be brought after the expiration of that one-year 201  
period if the court determines that there is just cause for a 202  
delay in bringing the claim. 203

**Sec. 3345.21.** The board of trustees of any college or 204  
university which receives any state funds in support thereof, 205  
shall regulate the use of the grounds, buildings, equipment, and 206  
facilities of such college or university and the conduct of the 207  
students, staff, faculty, and visitors to the campus so that law 208  
and order are maintained and the college or university may 209  
pursue its educational objectives and programs in an orderly 210  
manner. 211

The board of trustees of each such college or university 212  
shall adopt rules for the conduct of the students, faculty, 213  
visitors, and staff, and may provide for the ejection from 214  
college or university property, suspension or expulsion of a 215  
person who violates such regulations. All such rules shall be 216  
published in a manner reasonably designed to come to the 217  
attention of, and be available to, all faculty, staff, visitors, 218  
and students. 219

The board of trustees shall provide for the administration 220  
and enforcement of its rules and may authorize the use of state 221  
university law enforcement officers provided for in section 222  
3345.04 of the Revised Code to assist in enforcing the rules and 223



the law on the campus of the college or university. The board of 224  
trustees, or appropriate officials of such college or university 225  
when the authority to do so has been delegated by the board of 226  
trustees, may seek the assistance of other appropriate law 227  
enforcement officers to enforce the rules and to enforce laws 228  
for the preservation of good order on the campus, and to prevent 229  
the disruption of the educational functions of the college or 230  
university. 231

~~The~~ In accordance with section 3345.0213 of the Revised 232  
Code, the rules of the board of trustees shall not restrict 233  
freedom of speech nor the right of persons on the campus to 234  
assemble peacefully. 235

**Section 2.** That existing sections 3345.021 and 3345.21 of 236  
the Revised Code are hereby repealed. 237

**Section 3.** This act shall be known as the "Forming Open 238  
and Robust University Minds Act," or the "FORUM Act." 239