As Introduced

133rd General Assembly
Regular Session
2019-2020

H. B. No. 88

Representative Antani
Cosponsors: Representatives Riedel, Romanchuk, Merrin, McClain

A BILL

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

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

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

Sec. 3345.021. The Subject to sections 3345.0212 to 3345.0215 of the Revised Code, the board of trustees of any college or university, which receives any state funds in support thereof, shall have full power and authority on all matters relative to the administration of such college or university. Such power shall include but not be limited to the authority to withhold use of the facilities of any such college or university for meetings or speaking purposes from persons who are members of the communist party, persons who advocate or—
persons who hold membership in or support organizations which advocate the overthrow of the government of the United States and its free institutions by force or violence or whose presence is not conducive to high ethical and moral standards or the primary educational purposes and orderly conduct of the functions of the institution.

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

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

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

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

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

(4) "Harassment" means both of the following:

(a) Conduct by an employee of a state institution of higher education that requires an individual to submit to
unwelcome sexual activity in order to receive an aid, benefit, or service of the institution;

(b) Unwelcome conduct that is so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the individual's education program or activity.

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

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

(b) Physically blocking or using threats of violence to prevent any person from attending, listening to, viewing, or otherwise participating in an expressive activity. This shall not include conduct that is protected under the First Amendment to the United States Constitution or Section 3 of Article I of the Ohio Constitution.

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

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

(8) "Student" means any person who is enrolled on a full-time or part-time basis in a state institution of higher education.
(9) "Student group" means an officially recognized group at a state institution of higher education, or a group seeking official recognition, comprised of admitted students that receive, or are seeking to receive, benefits through the institution of higher education.

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

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

Sec. 3345.0212. (A) Except as permitted by this section and sections 3345.0213 and 3345.12 of the Revised Code, no state institution of higher education, or any of its administrators acting in their official capacity, shall prohibit any individual from engaging in noncommercial expressive activity on campus, so long as the individual's conduct is lawful and does not materially and substantially disrupt the functioning of the institution.

(B) No state institution of higher education shall charge security fees to a student or a student group based on the content of their expression, the content of the expression of their invited guest, or the anticipated reaction to an invited guest's expression.
(C) Each state institution of higher education shall do all of the following:

(1) Adopt a policy on harassment that is consistent with and adheres strictly to its definition in section 3345.0211 of the Revised Code;

(2) Make public in its handbook, on its web site, and in its orientation programs for students the policies, regulations, and expectations of students regarding free expression on campus;

(3) Develop and distribute materials, programs, and procedures to individuals responsible for the education or discipline of students, such as administrators, campus police officers, residence life officials, and professors, to inform them of the policies, regulations, and duties of the institution regarding free expression on campus.

(D)(1) Nothing in this section shall be interpreted as preventing state institutions of higher education from restricting expressive activities that the First Amendment to the United States Constitution or Article I, Sections 3 and 11 of the Ohio Constitution does not protect.

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

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

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

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

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

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

(a) A description of any barriers to or incidents of disruption of free expression occurring on campus, including attempts to block or prohibit speakers and any investigation of students or student groups on the basis of expression. The description also shall include the nature of each barrier or incident and the disciplinary action, if any, taken against members of the campus community determined to be responsible for the barriers or incidents;
(b) Any other information the state institution of higher education finds necessary and appropriate for the public to evaluate whether the free expression rights for members of the campus community have been adequately protected.

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

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

(b) Be word-searchable;

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

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

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

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

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

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

Sec. 3345.21. The board of trustees of any college or
university which receives any state funds in support thereof,
shall regulate the use of the grounds, buildings, equipment, and
facilities of such college or university and the conduct of the
students, staff, faculty, and visitors to the campus so that law
and order are maintained and the college or university may
pursue its educational objectives and programs in an orderly
The board of trustees of each such college or university shall adopt rules for the conduct of the students, faculty, visitors, and staff, and may provide for the ejection from college or university property, suspension or expulsion of a person who violates such regulations. All such rules shall be published in a manner reasonably designed to come to the attention of, and be available to, all faculty, staff, visitors, and students.

The board of trustees shall provide for the administration and enforcement of its rules and may authorize the use of state university law enforcement officers provided for in section 3345.04 of the Revised Code to assist in enforcing the rules and the law on the campus of the college or university. The board of trustees, or appropriate officials of such college or university when the authority to do so has been delegated by the board of trustees, may seek the assistance of other appropriate law enforcement officers to enforce the rules and to enforce laws for the preservation of good order on the campus, and to prevent the disruption of the educational functions of the college or university.

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

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

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