

**As Introduced**

**132nd General Assembly**

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**H. B. No. 363**

**Representatives Goodman, Brenner**

**Cosponsors: Representatives McColley, Wiggam, Perales, Merrin, Brinkman, Riedel, Keller, Schaffer, Thompson, Dever, Stein, Retherford, Zeltwanger, Sprague, Young, Dean, Butler, Koehler, Roegner, Henne, Scherer, Johnson, Pelanda, Hood, Becker, Kick, Romanchuk, Gavarone, Antani, Green, Lang**

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**A BILL**

To amend sections 3345.02, 3345.021, 3345.023, and 3345.21, to amend, for the purpose of adopting a new section number as indicated in parentheses, section 3345.025 (3345.0210), and to enact new section 3345.025 and sections 3345.024 and 3345.026 of the Revised Code to enact the "Campus Free Speech Act" with respect to the freedom of speech and assembly at state institutions of higher education and the charging and allocation of student activity fees.

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

**Section 1.** That sections 3345.02, 3345.021, 3345.023, and 3345.21 be amended, section 3345.025 (3345.0210) be amended for the purpose of adopting a new section number as indicated in parentheses, and new section 3345.025 and sections 3345.024 and 3345.026 of the Revised Code be enacted to read as follows:

**Sec. 3345.02.** (A) As used in this section, 17

(1) "state-State institution of higher education" has the 18  
same meaning as in section 3345.011 of the Revised Code. 19

Beginning in the 2008-2009 academic year, each (2) 20  
"Student group" has the same meaning as in section 3345.023 of 21  
the Revised Code. 22

(3) "Student activity fee" means any fee charged to 23  
students by a state institution of higher education, the 24  
proceeds of which are used to support and facilitate the 25  
expression and activities of students or student groups. 26  
However, it does not include any fee charged to students for the 27  
support of common buildings and rooms, student centers, 28  
theaters, pools, and other facilities of common use to all 29  
students or of the meetings and official responsibilities of the 30  
student government. 31

(B) Each state institution of higher education shall 32  
include in each statement of estimated or actual charges owed by 33  
a student enrolled in the institution an itemized list of the 34  
instructional fees, general fees, special purpose fees, service 35  
charges, fines, and any other fees or surcharges applicable to 36  
the student. 37

(C) (1) No state institution of higher education shall 38  
require any student to pay any student activity fee as a 39  
condition to graduate or earn a degree from that institution. 40  
Additionally, no state institution shall collect a student 41  
activity fee from a student, unless that student chooses to pay 42  
the fee in accordance with division (C) (2) of this section. 43

(2) A state institution may provide students with the 44  
option to pay for any student activity fee, so long as the 45

institution itemizes the fee and the student is notified that 46  
the fee is voluntary. If the student chooses to pay the fee, 47  
then the institution may collect the fee. 48

(3) Each state institution shall ensure that any student 49  
activity fee collected by the institution is distributed to 50  
student groups in a manner that is neutral to each group's 51  
viewpoint. For this purpose, each institution shall: 52

(a) Publish clear, objective standards to follow when 53  
allocating student activity fees. The standards shall not be 54  
ideological or partisan to any specific viewpoint. 55

(b) To the extent permissible under state law, make all 56  
meetings regarding the allocation of student activity fees open 57  
to the public. For this purpose, the institution shall give 58  
public notice of each meeting not less than twenty-four hours 59  
prior to the meeting. 60

(c) Disqualify any individual from making decisions 61  
regarding the allocation of student activity fees, if that 62  
individual has previously violated the standards published 63  
pursuant to division (C) (3) (a) of this section; 64

(d) Identify in writing the specific reason that a request 65  
for funding from a student group has been denied or reduced from 66  
the amount requested; 67

(e) For student groups whose funding requests have been 68  
denied or reduced, provide for an appeals process. 69

**Sec. 3345.021.** The board of trustees of any college or 70  
university, which receives any state funds in support thereof, 71  
shall have full power and authority on all matters relative to 72  
the administration of such college or university. 73

~~Such power shall include but not be limited to the~~ 74  
~~authority to withhold use of the facilities of any such college-~~ 75  
~~or university for meetings or speaking purposes from persons who-~~ 76  
~~are members of the communist party, persons who advocate or-~~ 77  
~~persons who hold membership in or support organizations which-~~ 78  
~~advocate the overthrow of the government of the United States-~~ 79  
~~and its free institutions by force or violence or whose presence-~~ 80  
~~is not conducive to high ethical and moral standards or the-~~ 81  
~~primary educational purposes and orderly conduct of the-~~ 82  
~~functions of the institution.~~ 83

The board of trustees of any such college or university 84  
may delegate any administrative authority mentioned in this 85  
section, ~~including but not limited to, the enforcement of rules-~~ 86  
~~or regulations with respect to the use of university or college-~~ 87  
~~facilities for speaking purposes,~~ to the president of any such 88  
college or university, or to such other administrative personnel 89  
as may be designated or appointed therefor by the board of 90  
trustees. 91

**Sec. 3345.023.** (A) (1) As used in sections 3345.023 to 92  
3345.026 of the Revised Code: 93

(a) "Benefits" include, without limitation: 94

(i) Recognition; 95

(ii) Registration; 96

(iii) The use of facilities of the state institution of 97  
higher education for meetings or speaking purposes, subject to 98  
section 3345.021 of the Revised Code; 99

(iv) The use of channels of communication of the state 100  
institution of higher education; 101

(v) Funding sources that are otherwise available to any other student group in the state institution of higher education. 102  
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(b) "Campus community" includes students, student groups, faculty, staff, and employees of a state institution of higher education and any invited guests of those individuals. 105  
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(c) "Expression" includes, but is not limited to, any lawful verbal or written means by which individuals may communicate ideas to one another, including all forms of peaceful assembly, protests, speeches, distribution of literature, carrying and displaying signs, and circulating petitions. 108  
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(d) "Generally accessible areas" means areas of the campus of a state institution of higher education where members of the campus community are commonly allowed, but does not include areas where access is restricted to a majority of the campus community. All generally accessible areas of campus shall be considered traditional public forums for expression by members of the campus community. 114  
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(e) "Restriction on expression" means anything that may stand as a barrier to expression in any way or chill expression. 121  
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(f) "State institution of higher education" has the same meaning as in section 3345.011 of the Revised Code. 123  
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(g) "Student group" means an officially recognized group at a state institution of higher education, or a group seeking official recognition in compliance with established policies of the state institution of higher education, comprised of admitted students that receive, or are seeking to receive, benefits through the state institution of higher education. 125  
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(2) The provisions and requirements of sections 3345.023 to 3345.026 of the Revised Code supersede any rule, policy, action, communication, or requirement of any 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. 131-136

(3) If any provision of section 3345.02 or sections 3345.023 to 3345.026 of the Revised Code is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the remainder of those sections and the applicability thereof to other persons or circumstances shall not be affected thereby. 137-142

(B) No state institution of higher education shall take any action or enforce any policy that would deny a religious student group any benefit available to any other student group based on the religious student group's requirement that its leaders or members adhere to its sincerely held religious beliefs or standards of conduct. 143-148

~~(B) As used in this section:~~ 149

~~(1) "Benefits" include, without limitation:~~ 150

~~(a) Recognition;~~ 151

~~(b) Registration;~~ 152

~~(c) The use of facilities of the state institution of higher education for meetings or speaking purposes, subject to section 3345.021 of the Revised Code;~~ 153-155

~~(d) The use of channels of communication of the state institution of higher education;~~ 156-157

~~(e) Funding sources that are otherwise available to any~~ 158

~~other student group in the state institution of higher  
education.~~ 159  
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~~(2) "State institution of higher education" has the same  
meaning as in section 3345.011 of the Revised Code.~~ 161  
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(C) Subject to the exceptions set forth in section  
3345.024 of the Revised Code, no state institution of higher  
education shall take any action or enforce any policy that  
limits or restricts the constitutional right of a member of the  
campus community to engage in free expression in generally  
accessible areas. According to that constitutional right, each  
state institution shall provide members of the campus community  
with clear, content neutral policies, rules, and procedures  
regarding the conduct for expression. 163  
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(D) No action by an institution of higher education, or  
any of its administrators in the administrator's official  
capacity, including disciplinary action, issued warnings,  
communication of any type that directly or indirectly targets a  
member of the campus community, or information disseminated to  
the entire student population shall limit or chill expression  
based on the content of expression. 172  
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(E) (1) Offense or irritation taken to the content of  
expression shall not be considered an actionable harm under any  
circumstances. 179  
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(2) An institution of higher education or its  
administrators shall not do any of the following: 182  
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(a) Revoke the invitation of the invitee of a member of  
the campus community on the basis of reaction, opposition,  
offense, or irritation taken to the content of that invitee's  
expression; 184  
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(b) Place a restriction on the expression of the invitee 188  
of a member of the campus community on the basis of reaction, 189  
opposition, offense, or irritation taken to the content of that 190  
invitee's expression; 191

(c) Establish a barrier to the expression of the invitee 192  
of a member of the campus community, including but not limited 193  
to imposing a registration or security fee, the amount of which 194  
is unreasonably high compared to other registration and security 195  
fees charged to other invitees on the basis of reaction, 196  
opposition, offense, or irritation taken to the content of that 197  
invitee's expression. 198

**Sec. 3345.024.** (A) Nothing in sections 3345.023 to 199  
3345.026 of the Revised Code shall be interpreted as preventing 200  
or limiting a state institution of higher education from 201  
lawfully engaging in any of the following: 202

(1) Restricting expression in an area of campus that is 203  
not a generally accessible area; 204

(2) Restricting expression by individuals who are not 205  
members of the campus community and to whom those sections do 206  
not apply; 207

(3) Establishing sexual harassment policies that are 208  
consistent with the United States Constitution, or the 209  
constitution of this state, or both; 210

(4) Prohibiting, limiting, or restricting expression by 211  
members of the campus community or other individuals that is a 212  
violation of state or federal law; 213

(5) (a) Prohibiting, limiting, or restricting expression by 214  
members of the campus community or other individuals that is 215  
otherwise subject to limited or diminished protection under the 216



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| <u>United States Constitution, or the constitution of this state,</u>   | 217 |
| <u>or both because that type of expression has been classified</u>      | 218 |
| <u>through decisions of the United States Supreme Court, or the</u>     | 219 |
| <u>supreme court of this state, or both, as any of the following:</u>   | 220 |
| <u>(i) Unprotected defamation;</u>                                      | 221 |
| <u>(ii) Conduct that is so severe and pervasive that it</u>             | 222 |
| <u>constitutes illegal harassment;</u>                                  | 223 |
| <u>(iii) Any statement meant by the speaker to communicate a</u>        | 224 |
| <u>serious expression of intent to commit an act of unlawful</u>        | 225 |
| <u>violence to a particular individual or group of individuals that</u> | 226 |
| <u>constitutes a true threat;</u>                                       | 227 |
| <u>(iv) Unjustifiable invasion of privacy or confidentiality</u>        | 228 |
| <u>not involving a matter of public concern;</u>                        | 229 |
| <u>(v) An action that unlawfully disrupts the function of the</u>       | 230 |
| <u>state institution;</u>   | 231 |
| <u>(vi) Commercial speech;</u>  | 232 |
| <u>(vii) Expression made by an employee that is in violation</u>        | 233 |
| <u>of the institution's established code of employee conduct or is</u>  | 234 |
| <u>otherwise subject to contractual authority of the institution or</u> | 235 |
| <u>its employees;</u>   | 236 |
| <u>(viii) Any other expression that is subject to diminished</u>        | 237 |
| <u>protection under the United States Constitution, or the</u>          | 238 |
| <u>constitution of this state, or both.</u>                             | 239 |
| <u>(b) Any prohibition, limitation, or restriction of</u>               | 240 |
| <u>expression that is subject to diminished protection under</u>        | 241 |
| <u>division (A) (5) (a) of this section shall allow the maximum</u>     | 242 |
| <u>extent of expression permitted under the United States</u>           | 243 |
| <u>Constitution, or the constitution of this state, or both. Any</u>    | 244 |

ambiguity that arises from claims involving limited or 245  
diminished expression shall be resolved in favor of the 246  
individual engaging in the expression. 247

(B) Nothing in sections 3345.023 to 3345.026 of the 248  
Revised Code is intended to or shall be construed to apply to, 249  
limit, or abrogate any right to free expression by individuals 250  
who are not members of the campus community, such as members of 251  
the general public who are lawfully visiting the campus, or in 252  
an area on campus that is not a generally accessible area. 253

(C) (1) A state institution of higher education may 254  
maintain and enforce reasonable time, place, and manner 255  
restrictions on expression, provided any restriction: 256

(a) Is narrowly tailored to serve a compelling 257  
institutional interest; 258

(b) Is the least restrictive means available; 259

(c) Provides for ample alternative means of expression for 260  
members of the campus community; 261

(d) Allows for members of the campus community to assemble 262  
spontaneously and contemporaneously for expressive purposes. 263

(2) A time, place, and manner restriction on expression 264  
shall not be enforceable if it is any of the following: 265

(a) A restriction that is vague or ambiguous; 266

(b) A restriction that has the purpose or effect of 267  
segregating the expression from any particular audience or 268  
person; 269

(c) A restriction that unnecessarily limits the space for 270  
expression within generally accessible areas; 271

(d) A restriction that is based on reaction or opposition 272  
to the content of expression by any person. 273

**Sec. 3345.025.** (A) Within ninety days after the effective 274  
date of this section, each state institution of higher education 275  
shall develop and adopt a policy regarding free expression that 276  
complies with sections 3345.023 and 3345.024 of the Revised 277  
Code, which shall not be contradicted or diminished by actions, 278  
policies, or procedures, that contains the statement: 279

"Under the Ohio Revised Code, it is not the proper role of 280  
a state institution of higher education to shield individuals 281  
from expression protected by the United States and Ohio 282  
Constitutions, including, without limitation, ideas and opinions 283  
that the institution finds unwelcome, disagreeable, or even 284  
deeply offensive." 285

(B) Each state institution shall: 286

(1) Publish the policy regarding free expression on campus 287  
adopted pursuant to division (A) of this section in any 288  
handbooks, web sites, regulations, and written expectations of 289  
student conduct; 290

(2) Provide a copy of the the policy to each student 291  
during any student orientation program; 292

(3) Develop materials, programs, and procedures to ensure 293  
that its administrators, campus police, residence life 294  
officials, professors, and any other employees or agents who are 295  
responsible for the discipline or education of students 296  
understand the policies, regulations, and duties of state 297  
institutions of higher education regarding free expression on 298  
campus consistent with this section, the United States 299  
Constitution, and the Ohio Constitution. 300

(C) (1) Within one hundred eighty days after the effective 301  
date of this section, and in a manner that complies with the 302  
"Family Educational Rights and Privacy Act of 1974," 88 Stat. 303  
571, 20 U.S.C. 1232g, each state institution of higher education 304  
shall publish on its web site, and submit to the governor, 305  
speaker of the house of representatives, and president of the 306  
senate a report detailing the courses of action implemented in 307  
accordance with the requirements of sections 3345.023 to 308  
3345.026 of the Revised Code, containing the following 309  
information: 310

(a) A description of any barriers to or incidents of 311  
disruption of free expression occurring on campus, including, 312  
but not limited to, attempts to block or prohibit speakers and 313  
any investigation of students or student groups on the basis of 314  
expression; 315

(b) Any other information the state institution of higher 316  
education finds necessary and appropriate for the public to 317  
evaluate whether the free expression rights for members of the 318  
campus community have been adequately protected and enforced. 319

(2) Within thirty days after an action is brought against 320  
a state institution of higher education for an alleged violation 321  
of expression rights, the institution shall submit a 322  
supplementary report, containing the information described in 323  
division (C) (1) of this section and a copy of the complaint. 324

**Sec. 3345.026.** (A) Notwithstanding Chapter 2743. of the 325  
Revised Code, the state hereby waives its immunity from suit in 326  
a federal court under the Eleventh Amendment to the United 327  
States Constitution, and consents to the jurisdiction of the 328  
federal courts over its civil liability, and the civil liability 329  
of a state institution of higher education, for any violation of 330

division (C) of section 3345.02 and sections 3345.023 to 3345.025 of the Revised Code. A state institution of higher education that violates any of those sections shall not be immune from suit or liability for those violations. 331  
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(B) Any member of the campus community aggrieved by a violation of division (C) of section 3345.02 and sections 3345.023 to 3345.025 of the Revised Code has a civil action against the state, a state institution of higher education, or any other individuals responsible for the violation. In the action, the members of the campus community may seek and obtain appropriate relief, including injunctive relief, compensatory damages, reasonable attorney's fees, and court costs. 335  
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(C) Any member of the campus community aggrieved by a violation of division (C) of section 3345.02 and sections 3345.023 to 3345.025 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. 343  
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(D) Nothing in this section shall be interpreted to limit any other remedies available to the individual or student group. 349  
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(E) Except as otherwise provided in this division, an action against the state, an institution of higher education thereof, or an individual for a violation of division (C) of section 3345.02 and sections 3345.023 to 3345.025 of the Revised Code shall be brought within one year after the cause of action has accrued. 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. 351  
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**Sec. ~~3345.025~~ 3345.0210.** The board of trustees of each 360  
state institution of higher education as defined in section 361  
3345.011 of the Revised Code shall adopt a textbook selection 362  
policy for faculty to follow in selecting and assigning 363  
textbooks and other instructional materials for use in courses 364  
offered by the institution. The policy shall include faculty 365  
responsibilities and actions faculty may take in selecting and 366  
assigning textbooks and other instructional materials. 367

**Sec. 3345.21.** The board of trustees of any college or 368  
university which receives any state funds in support thereof, 369  
shall regulate the use of the grounds, buildings, equipment, and 370  
facilities of such college or university and the conduct of the 371  
students, staff, faculty, and visitors to the campus so that law 372  
and order are maintained and the college or university may 373  
pursue its educational objectives and programs in an orderly 374  
manner. 375

The board of trustees of each such college or university 376  
shall adopt rules for the conduct of the students, faculty, 377  
visitors, and staff, and may provide for the ejection from 378  
college or university property, suspension or expulsion of a 379  
person who violates such regulations. All such rules shall be 380  
published in a manner reasonably designed to come to the 381  
attention of, and be available to, all faculty, staff, visitors, 382  
and students. 383

The board of trustees shall provide for the administration 384  
and enforcement of its rules and may authorize the use of state 385  
university law enforcement officers provided for in section 386  
3345.04 of the Revised Code to assist in enforcing the rules and 387  
the law on the campus of the college or university. The board of 388  
trustees, or appropriate officials of such college or university 389

when the authority to do so has been delegated by the board of 390  
trustees, may seek the assistance of other appropriate law 391  
enforcement officers to enforce the rules and to enforce laws 392  
for the preservation of good order on the campus, and to prevent 393  
the disruption of the educational functions of the college or 394  
university. 395

~~The~~ In accordance with section 3345.023 of the Revised 396  
Code, the rules of the board of trustees shall not restrict 397  
freedom of speech nor the right of persons on the campus to 398  
assemble peacefully. 399

**Section 2.** That existing sections 3345.02, 3345.021, 400  
3345.023, 3345.025, and 3345.21 of the Revised Code are hereby 401  
repealed. 402

**Section 3.** This act shall be known as the "Campus Free 403  
Speech Act." 404

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