

As Introduced

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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

A BILL

To amend sections 3345.02, 3345.021, 3345.023, and 1
3345.21, to amend, for the purpose of adopting a 2
new section number as indicated in parentheses, 3
section 3345.025 (3345.0210), and to enact new 4
section 3345.025 and sections 3345.024 and 5
3345.026 of the Revised Code to enact the 6
"Campus Free Speech Act" with respect to the 7
freedom of speech and assembly at state 8
institutions of higher education and the 9
charging and allocation of student activity 10
fees. 11

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

Section 1. That sections 3345.02, 3345.021, 3345.023, and 12
3345.21 be amended, section 3345.025 (3345.0210) be amended for 13
the purpose of adopting a new section number as indicated in 14
parentheses, and new section 3345.025 and sections 3345.024 and 15
3345.026 of the Revised Code be enacted to read as follows: 16

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

<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 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.

~~The~~ In accordance with section 3345.023 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 3345.02, 3345.021, 3345.023, 3345.025, and 3345.21 of the Revised Code are hereby repealed.

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

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