

**As Reported by the Senate Education Committee**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**Sub. S. B. No. 40**

**Senators Brenner, McColley**

**Cosponsor: Senator Roegner**

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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, and 2  
3345.0214 of the Revised Code to enact the 3  
"Forming Open and Robust University Minds Act" 4  
regarding free speech on college campuses. 5

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

**Section 1.** That sections 3345.021 and 3345.21 be amended 6  
and sections 3345.0211, 3345.0212, 3345.0213, and 3345.0214 of 7  
the Revised Code be enacted to read as follows: 8

**Sec. 3345.021.** ~~The~~ Subject to sections 3345.0212 to 9  
3345.0214 of the Revised Code, the board of trustees of any 10  
college or university, which receives any state funds in support 11  
thereof, shall have full power and authority on all matters 12  
relative to the administration of such college or university. 13

~~Such power shall include but not be limited to the~~ 14  
~~authority to withhold use of the facilities of any such college~~ 15  
~~or university for meetings or speaking purposes from persons who~~ 16  
~~are members of the communist party, persons who advocate or~~ 17  
~~persons who hold membership in or support organizations which~~ 18

~~advocate the overthrow of the government of the United States—~~ 19  
~~and its free institutions by force or violence or whose presence—~~ 20  
~~is not conducive to high ethical and moral standards or the—~~ 21  
~~primary educational purposes and orderly conduct of the—~~ 22  
~~functions of the institution.~~ 23

The board of trustees of any such college or university 24  
may delegate any administrative authority ~~mentioned in this—~~ 25  
~~section, including but not limited to, the enforcement of rules—~~ 26  
~~or regulations with respect to the use of university or college—~~ 27  
~~facilities for speaking purposes,~~ to the president of any such 28  
college or university, or to such other administrative personnel 29  
as may be designated or appointed therefor by the board of 30  
trustees. 31

Sec. 3345.0211. (A) As used in this section and sections 32  
3345.0212 to 3345.0214 of the Revised Code: 33

(1) "Benefits" has the same meaning as in section 3345.023 34  
of the Revised Code. 35

(2) "Campus community" means students, student groups, 36  
faculty, staff, and employees of a state institution of higher 37  
education and their invited guests. 38

(3) "Expressive activities" means any lawful verbal, 39  
written, audiovisual, or electronic means by which individuals 40  
may communicate ideas, including all forms of peaceful assembly, 41  
protests, speeches, distribution of literature, carrying and 42  
displaying signs, and circulating petitions. 43

(4) "Harassment" means unwelcome conduct that is so 44  
severe, pervasive, and objectively offensive that it effectively 45  
denies an individual equal access to the individual's education 46  
program or activity. 47

(5) "Materially and substantially disrupts" means when a 48  
person, with the intent to, or with knowledge of doing so, 49  
significantly hinders another person's or group's expressive 50  
activity, prevents communication of their message, or prevents 51  
the transaction of the business of a lawful meeting, gathering, 52  
or procession by either: 53

(a) Engaging in violent or otherwise unlawful behavior; or 54

(b) Physically blocking or using threats of violence to 55  
prevent any person from attending, listening to, viewing, or 56  
otherwise participating in an expressive activity. This shall 57  
not include conduct that is protected under the First Amendment 58  
to the United States Constitution or Section 3 of Article I of 59  
the Ohio Constitution. 60

(6) "Outdoor areas of campus" means the generally 61  
accessible outside areas of campus where members of the campus 62  
community are commonly allowed, such as grassy areas, walkways, 63  
and other similar common areas. This does not include outdoor 64  
areas where access is restricted to a majority of the campus 65  
community. 66

(7) "State institution of higher education" has the same 67  
meaning as in section 3345.011 of the Revised Code. 68

(8) "Student" means any person who is enrolled on a full- 69  
time or part-time basis in a state institution of higher 70  
education. 71

(9) "Student group" means an officially recognized group 72  
at a state institution of higher education, or a group seeking 73  
official recognition, comprised of admitted students that 74  
receive, or are seeking to receive, benefits through the 75  
institution of higher education. 76

(B) The provisions and requirements of sections 3345.0212 77  
to 3345.0214 of the Revised Code supersede any rule, policy, 78  
action, communication, or requirement of any state institution 79  
of higher education. No rule, policy, action, communication, or 80  
requirement shall contradict or diminish the effect of those 81  
sections of the Revised Code. 82

Sec. 3345.0212. (A) Except as permitted by this section 83  
and sections 3345.0213 and 3345.12 of the Revised Code, no state 84  
institution of higher education, or any of its administrators 85  
acting in their official capacity, shall prohibit any individual 86  
from engaging in noncommercial expressive activity on campus, so 87  
long as the individual's conduct is lawful and does not 88  
materially and substantially disrupt the functioning of the 89  
institution. 90

(B) No state institution of higher education shall charge 91  
security fees to a student or a student group based on the 92  
content of their expression, the content of the expression of 93  
their invited guest, or the anticipated reaction to an invited 94  
guest's expression. 95

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

(1) Adopt a policy on harassment that is consistent with 98  
and adheres strictly to its definition in section 3345.0211 of 99  
the Revised Code; 100

(2) Make public in its handbook, on its web site, and in 101  
its orientation programs for students the policies, regulations, 102  
and expectations of students regarding free expression on 103  
campus; 104

(3) Develop and distribute materials, programs, and 105

procedures to individuals responsible for the education or 106  
discipline of students, such as administrators, campus police 107  
officers, residence life officials, and professors, to inform 108  
them of the policies, regulations, and duties of the institution 109  
regarding free expression on campus. 110

(D) (1) Nothing in this section shall be interpreted as 111  
preventing state institutions of higher education from 112  
restricting expressive activities that the First Amendment to 113  
the United States Constitution or Article I, Sections 3 and 11 114  
of the Ohio Constitution does not protect. 115

(2) Nothing in this section shall enable individuals to 116  
engage in conduct that intentionally, materially, and 117  
substantially disrupts another individual's expressive activity 118  
if it occurs in a campus space reserved for exclusive use or 119  
control of a particular individual or group. 120

**Sec. 3345.0213.** (A) (1) Outdoor areas of campuses of state 121  
institutions of higher education are public forums for campus 122  
communities. 123

(2) State institutions of higher education shall not 124  
create "free speech zones" or designate other outdoor areas of 125  
campuses where expressive activities are prohibited. 126

(3) State institutions of higher education may maintain 127  
and enforce reasonable time, place, and manner restrictions 128  
specifically developed in service of a significant institutional 129  
interest only when such restrictions employ clear, published, 130  
viewpoint- and content-neutral criteria, and provide for ample 131  
alternative means for expressive activities. Any such 132  
restrictions shall allow for members of a campus community to 133  
spontaneously and contemporaneously assemble and distribute 134

<u>literature.</u>	135
<u>(B) Nothing in this section shall be interpreted as</u>	136
<u>limiting the right of student expression elsewhere on campus.</u>	137
<b><u>Sec. 3345.0214.</u></b> (A) <u>Within one hundred eighty days after</u>	138
<u>the effective date of this section, and in a manner that</u>	139
<u>complies with the "Family Educational Rights and Privacy Act of</u>	140
<u>1974," 88 Stat. 571, 20 U.S.C. 1232g, each state institution of</u>	141
<u>higher education shall submit to the governor, speaker of the</u>	142
<u>house of representatives, and president of the senate a report</u>	143
<u>detailing its course of action in accordance with sections</u>	144
<u>3345.0212 and 3345.0213 of the Revised Code. The report shall</u>	145
<u>contain the following information:</u>	146
<u>(1) A description of any barriers to or incidents of</u>	147
<u>disruption of free expression occurring on campus, including</u>	148
<u>attempts to block or prohibit speakers and any investigation of</u>	149
<u>students or student groups on the basis of expression. The</u>	150
<u>description also shall include the nature of each barrier or</u>	151
<u>incident and the disciplinary action, if any, taken against</u>	152
<u>members of the campus community determined to be responsible for</u>	153
<u>the barriers or incidents;</u>	154
<u>(2) Any other information the state institution of higher</u>	155
<u>education finds necessary and appropriate for the public to</u>	156
<u>evaluate whether the free expression rights for members of the</u>	157
<u>campus community have been adequately protected.</u>	158
<u>(B) Each state institution of higher education shall</u>	159
<u>publish the report prescribed by this division on its web site.</u>	160
<u>The report must:</u>	161
<u>(1) Be accessible from the main page of an institution's</u>	162
<u>web site by use of not more than three links;</u>	163

<u>(2) Be word-searchable; and</u>	164
<u>(3) Be accessible to the public without requiring user registration of any kind.</u>	165 166
<u>(C) 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) of this section and a copy of the complaint.</u>	167 168 169 170 171
<b>Sec. 3345.21.</b> 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 manner.	172 173 174 175 176 177 178 179
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.	180 181 182 183 184 185 186 187
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	188 189 190 191 192

trustees, or appropriate officials of such college or university 193  
when the authority to do so has been delegated by the board of 194  
trustees, may seek the assistance of other appropriate law 195  
enforcement officers to enforce the rules and to enforce laws 196  
for the preservation of good order on the campus, and to prevent 197  
the disruption of the educational functions of the college or 198  
university. 199

~~The~~ In accordance with section 3345.0213 of the Revised 200  
Code, the rules of the board of trustees shall not restrict 201  
freedom of speech nor the right of persons on the campus to 202  
assemble peacefully. 203

**Section 2.** That existing sections 3345.021 and 3345.21 of 204  
the Revised Code are hereby repealed. 205

**Section 3.** This act shall be known as the "Forming Open 206  
and Robust University Minds Act," or the "FORUM Act." 207