

As Introduced

133rd General Assembly

Regular Session

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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 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 both of the following: 45

(a) Conduct by an employee of a state institution of 46
higher education that requires an individual to submit to 47

unwelcome sexual activity in order to receive an aid, benefit, 48
or service of the institution; 49

(b) Unwelcome conduct that is so severe, pervasive, and 50
objectively offensive that it effectively denies an individual 51
equal access to the individual's education program or activity. 52

(5) "Materially and substantially disrupts" means when a 53
person, with the intent to, or with knowledge of doing so, 54
significantly hinders another person's or group's expressive 55
activity, prevents communication of their message, or prevents 56
the transaction of the business of a lawful meeting, gathering, 57
or procession by either: 58

(a) Engaging in violent or otherwise unlawful behavior; or 59

(b) Physically blocking or using threats of violence to 60
prevent any person from attending, listening to, viewing, or 61
otherwise participating in an expressive activity. This shall 62
not include conduct that is protected under the First Amendment 63
to the United States Constitution or Section 3 of Article I of 64
the Ohio Constitution. 65

(6) "Outdoor areas of campus" means the generally 66
accessible outside areas of campus where members of the campus 67
community are commonly allowed, such as grassy areas, walkways, 68
and other similar common areas. This does not include outdoor 69
areas where access is restricted to a majority of the campus 70
community. 71

(7) "State institution of higher education" has the same 72
meaning as in section 3345.011 of the Revised Code. 73

(8) "Student" means any person who is enrolled on a full- 74
time or part-time basis in a state institution of higher 75
education. 76

(9) "Student group" means an officially recognized group 77
at a state institution of higher education, or a group seeking 78
official recognition, comprised of admitted students that 79
receive, or are seeking to receive, benefits through the 80
institution of higher education. 81

(B) The provisions and requirements of sections 3345.0212 82
to 3345.0215 of the Revised Code supersede any rule, policy, 83
action, communication, or requirement of any state institution 84
of higher education or other agency of the state. No rule, 85
policy, action, communication, or requirement shall contradict 86
or diminish the effect of those sections of the Revised Code. 87

(C) If any provision of sections 3345.0212 to 3345.0215 of 88
the Revised Code is declared unconstitutional, or its 89
application to any person or circumstances is held invalid, the 90
remainder of those sections and their application to other 91
persons or circumstances shall not be affected. 92

Sec. 3345.0212. (A) Except as permitted by this section 93
and sections 3345.0213 and 3345.12 of the Revised Code, no state 94
institution of higher education, or any of its administrators 95
acting in their official capacity, shall prohibit any individual 96
from engaging in noncommercial expressive activity on campus, so 97
long as the individual's conduct is lawful and does not 98
materially and substantially disrupt the functioning of the 99
institution. 100

(B) No state institution of higher education shall charge 101
security fees to a student or a student group based on the 102
content of their expression, the content of the expression of 103
their invited guest, or the anticipated reaction to an invited 104
guest's expression. 105

<u>(C) Each state institution of higher education shall do</u>	106
<u>all of the following:</u>	107
<u>(1) Adopt a policy on harassment that is consistent with</u>	108
<u>and adheres strictly to its definition in section 3345.0211 of</u>	109
<u>the Revised Code;</u>	110
<u>(2) Make public in its handbook, on its web site, and in</u>	111
<u>its orientation programs for students the policies, regulations,</u>	112
<u>and expectations of students regarding free expression on</u>	113
<u>campus;</u>	114
<u>(3) Develop and distribute materials, programs, and</u>	115
<u>procedures to individuals responsible for the education or</u>	116
<u>discipline of students, such as administrators, campus police</u>	117
<u>officers, residence life officials, and professors, to inform</u>	118
<u>them of the policies, regulations, and duties of the institution</u>	119
<u>regarding free expression on campus.</u>	120
<u>(D) (1) Nothing in this section shall be interpreted as</u>	121
<u>preventing state institutions of higher education from</u>	122
<u>restricting expressive activities that the First Amendment to</u>	123
<u>the United States Constitution or Article I, Sections 3 and 11</u>	124
<u>of the Ohio Constitution does not protect.</u>	125
<u>(2) Nothing in this section shall enable individuals to</u>	126
<u>engage in conduct that intentionally, materially, and</u>	127
<u>substantially disrupts another individual's expressive activity</u>	128
<u>if it occurs in a campus space reserved for exclusive use or</u>	129
<u>control of a particular individual or group.</u>	130
<u>Sec. 3345.0213. (A) (1) Outdoor areas of campuses of state</u>	131
<u>institutions of higher education are public forums for campus</u>	132
<u>communities.</u>	133
<u>(2) State institutions of higher education shall not</u>	134

create "free speech zones" or designate other outdoor areas of 135
campuses where expressive activities are prohibited. 136

(3) State institutions of higher education may maintain 137
and enforce reasonable time, place, and manner restrictions 138
specifically developed in service of a significant institutional 139
interest only when such restrictions employ clear, published, 140
viewpoint- and content-neutral criteria, and provide for ample 141
alternative means of expressive activities. Any such 142
restrictions shall allow for members of a campus community to 143
spontaneously and contemporaneously assemble and distribute 144
literature. 145

(B) Nothing in this section shall be interpreted as 146
limiting the right of student expression elsewhere on campus. 147

Sec. 3345.0214. (A) (1) Within one hundred eighty days 148
after the effective date of this section, and in a manner that 149
complies with the "Family Educational Rights and Privacy Act of 150
1974," 88 Stat. 571, 20 U.S.C. 1232g, each state institution of 151
higher education shall submit to the governor, speaker of the 152
house of representatives, and president of the senate a report 153
detailing its course of action in accordance with sections 154
3345.0212, 3345.0213, and 3345.0215 of the Revised Code. The 155
report shall contain the following information: 156

(a) A description of any barriers to or incidents of 157
disruption of free expression occurring on campus, including 158
attempts to block or prohibit speakers and any investigation of 159
students or student groups on the basis of expression. The 160
description also shall include the nature of each barrier or 161
incident and the disciplinary action, if any, taken against 162
members of the campus community determined to be responsible for 163
the barriers or incidents; 164

(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. 165
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(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: 169
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(a) Be accessible from the main page of an institution's web site by use of not more than three links; 172
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(b) Be word-searchable; 174

(c) Be accessible to the public without requiring user registration of any kind. 175
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(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. 177
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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. 182
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(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 191
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institution of higher education, and its employees acting in 194
their official capacities. In the action, the aggrieved may seek 195
and obtain appropriate relief, including injunctive relief, 196
compensatory damages, reasonable attorney's fees, and court 197
costs. If a court finds a violation of section 3345.0212 or 198
3345.0213 of the Revised Code, it shall issue an award of not 199
less than one thousand dollars. 200

(C) Any member of the campus community aggrieved by a 201
violation of sections 3345.0212 and 3345.0213 of the Revised 202
Code may assert such violation as a defense or counterclaim in 203
any disciplinary action or in any civil or administrative 204
proceedings brought against such individual or student group. 205
Nothing in this section shall be interpreted to limit any other 206
remedies available to the individual or student group. 207

(D) Except as otherwise provided in this division, an 208
action against the state, a state institution of higher 209
education, or an employee acting in their official capacity for 210
a violation of section 3345.0212 or 3345.0213 of the Revised 211
Code shall be brought within one year after the cause of action 212
has occurred. A court may allow an action described in this 213
division to be brought after the expiration of that one-year 214
period if the court determines that there is just cause for a 215
delay in bringing the claim. 216

Sec. 3345.21. The board of trustees of any college or 217
university which receives any state funds in support thereof, 218
shall regulate the use of the grounds, buildings, equipment, and 219
facilities of such college or university and the conduct of the 220
students, staff, faculty, and visitors to the campus so that law 221
and order are maintained and the college or university may 222
pursue its educational objectives and programs in an orderly 223

manner. 224

The board of trustees of each such college or university 225
shall adopt rules for the conduct of the students, faculty, 226
visitors, and staff, and may provide for the ejection from 227
college or university property, suspension or expulsion of a 228
person who violates such regulations. All such rules shall be 229
published in a manner reasonably designed to come to the 230
attention of, and be available to, all faculty, staff, visitors, 231
and students. 232

The board of trustees shall provide for the administration 233
and enforcement of its rules and may authorize the use of state 234
university law enforcement officers provided for in section 235
3345.04 of the Revised Code to assist in enforcing the rules and 236
the law on the campus of the college or university. The board of 237
trustees, or appropriate officials of such college or university 238
when the authority to do so has been delegated by the board of 239
trustees, may seek the assistance of other appropriate law 240
enforcement officers to enforce the rules and to enforce laws 241
for the preservation of good order on the campus, and to prevent 242
the disruption of the educational functions of the college or 243
university. 244

~~The~~ In accordance with section 3345.0213 of the Revised 245
Code, the rules of the board of trustees shall not restrict 246
freedom of speech nor the right of persons on the campus to 247
assemble peacefully. 248

Section 2. That existing sections 3345.021 and 3345.21 of 249
the Revised Code are hereby repealed. 250

Section 3. This act shall be known as the "Forming Open 251
and Robust University Minds Act," or the "FORUM Act." 252