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Sub. S. B. No. 40

Senators Brenner, McColley

**Cosponsors: Senators Roegner, Blessing, Burke, Coley, Craig, Eklund, Hackett,
Hoagland, Huffman, M., Huffman, S., Johnson, Lehner, Maharath, Obhof,
Peterson, Rulli, Schaffer, Wilson**

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

<u>campus;</u>	104
<u>(3) Develop and distribute materials, programs, and</u>	105
<u>procedures to individuals responsible for the education or</u>	106
<u>discipline of students, such as administrators, campus police</u>	107
<u>officers, residence life officials, and professors, to inform</u>	108
<u>them of the policies, regulations, and duties of the institution</u>	109
<u>regarding free expression on campus.</u>	110
<u>(D) (1) Nothing in this section shall be interpreted as</u>	111
<u>preventing state institutions of higher education from</u>	112
<u>restricting expressive activities that the First Amendment to</u>	113
<u>the United States Constitution or Article I, Sections 3 and 11</u>	114
<u>of the Ohio Constitution does not protect.</u>	115
<u>(2) Nothing in this section shall enable individuals to</u>	116
<u>engage in conduct that intentionally, materially, and</u>	117
<u>substantially disrupts another individual's expressive activity</u>	118
<u>if it occurs in a campus space reserved for exclusive use or</u>	119
<u>control of a particular individual or group.</u>	120
<u>Sec. 3345.0213. (A) (1) Outdoor areas of campuses of state</u>	121
<u>institutions of higher education are public forums for campus</u>	122
<u>communities.</u>	123
<u>(2) State institutions of higher education shall not</u>	124
<u>create "free speech zones" or designate other outdoor areas of</u>	125
<u>campuses where expressive activities are prohibited.</u>	126
<u>(3) State institutions of higher education may maintain</u>	127
<u>and enforce reasonable time, place, and manner restrictions</u>	128
<u>specifically developed in service of a significant institutional</u>	129
<u>interest only when such restrictions employ clear, published,</u>	130
<u>viewpoint- and content-neutral criteria, and provide for ample</u>	131
<u>alternative means for expressive activities. Any such</u>	132

restrictions shall allow for members of a campus community to 133
spontaneously and contemporaneously assemble and distribute 134
literature. 135

(B) Nothing in this section shall be interpreted as 136
limiting the right of student expression elsewhere on campus. 137

Sec. 3345.0214. (A) Within one hundred eighty days after 138
the effective date of this section, and in a manner that 139
complies with the "Family Educational Rights and Privacy Act of 140
1974," 88 Stat. 571, 20 U.S.C. 1232g, each state institution of 141
higher education shall submit to the governor, speaker of the 142
house of representatives, and president of the senate a report 143
detailing its course of action in accordance with sections 144
3345.0212 and 3345.0213 of the Revised Code. The report shall 145
contain the following information: 146

(1) A description of any barriers to or incidents of 147
disruption of free expression occurring on campus, including 148
attempts to block or prohibit speakers and any investigation of 149
students or student groups on the basis of expression. The 150
description also shall include the nature of each barrier or 151
incident and the disciplinary action, if any, taken against 152
members of the campus community determined to be responsible for 153
the barriers or incidents; 154

(2) Any other information the state institution of higher 155
education finds necessary and appropriate for the public to 156
evaluate whether the free expression rights for members of the 157
campus community have been adequately protected. 158

(B) Each state institution of higher education shall 159
publish the report prescribed by this division on its web site. 160
The report must: 161

(1) Be accessible from the main page of an institution's 162
web site by use of not more than three links; 163

(2) Be word-searchable; and 164

(3) Be accessible to the public without requiring user 165
registration of any kind. 166

(C) Within thirty days after an action is brought against 167
a state institution of higher education for an alleged violation 168
of expression rights, the institution shall submit a 169
supplementary report, containing the information described in 170
division (A) of this section and a copy of the complaint. 171

Sec. 3345.21. The board of trustees of any college or 172
university which receives any state funds in support thereof, 173
shall regulate the use of the grounds, buildings, equipment, and 174
facilities of such college or university and the conduct of the 175
students, staff, faculty, and visitors to the campus so that law 176
and order are maintained and the college or university may 177
pursue its educational objectives and programs in an orderly 178
manner. 179

The board of trustees of each such college or university 180
shall adopt rules for the conduct of the students, faculty, 181
visitors, and staff, and may provide for the ejection from 182
college or university property, suspension or expulsion of a 183
person who violates such regulations. All such rules shall be 184
published in a manner reasonably designed to come to the 185
attention of, and be available to, all faculty, staff, visitors, 186
and students. 187

The board of trustees shall provide for the administration 188
and enforcement of its rules and may authorize the use of state 189
university law enforcement officers provided for in section 190

3345.04 of the Revised Code to assist in enforcing the rules and 191
the law on the campus of the college or university. The board of 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