

As Introduced

**133rd General Assembly
Regular Session
2019-2020**

S. B. No. 40

**Senators Brenner, McColley
Cosponsor: Senator Roegner**

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 only expression that is unwelcome 45
and so severe, pervasive, and subjectively and objectively 46
offensive that it unreasonably interferes with an individual's 47

access to educational opportunities or benefits provided by a 48
state institution of higher education. 49

(5) "Materially and substantially disrupts" means when a 50
person, with the intent to, or with knowledge of doing so, 51
significantly hinders another person's or group's expressive 52
activity, prevents communication of their message, or prevents 53
the transaction of the business of a lawful meeting, gathering, 54
or procession by either: 55

(a) Engaging in violent or otherwise unlawful behavior; or 56

(b) Physically blocking or using threats of violence to 57
prevent any person from attending, listening to, viewing, or 58
otherwise participating in an expressive activity. This shall 59
not include conduct that is protected under the First Amendment 60
to the United States Constitution or Section 3 of Article I of 61
the Ohio Constitution. 62

(6) "Outdoor areas of campus" means the generally 63
accessible outside areas of campus where members of the campus 64
community are commonly allowed, such as grassy areas, walkways, 65
and other similar common areas. This does not include outdoor 66
areas where access is restricted to a majority of the campus 67
community. 68

(7) "State institution of higher education" has the same 69
meaning as in section 3345.011 of the Revised Code. 70

(8) "Student" means any person who is enrolled on a full- 71
time or part-time basis in a state institution of higher 72
education. 73

(9) "Student group" means an officially recognized group 74
at a state institution of higher education, or a group seeking 75
official recognition, comprised of admitted students that 76

receive, or are seeking to receive, benefits through the 77
institution of higher education. 78

(B) The provisions and requirements of sections 3345.0212 79
to 3345.0215 of the Revised Code supersede any rule, policy, 80
action, communication, or requirement of any state institution 81
of higher education or other agency of the state. No rule, 82
policy, action, communication, or requirement shall contradict 83
or diminish the effect of those sections of the Revised Code. 84

(C) If any provision of sections 3345.0212 to 3345.0215 of 85
the Revised Code is declared unconstitutional, or its 86
application to any person or circumstances is held invalid, the 87
remainder of those sections and their application to other 88
persons or circumstances shall not be affected. 89

Sec. 3345.0212. (A) No state institution of higher 90
education, or any of its administrators acting in their official 91
capacity, shall prohibit any individual from engaging in 92
noncommercial expressive activity on campus, so long as the 93
individual's conduct is lawful and does not materially and 94
substantially disrupt the functioning of the institution. 95

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

(1) Make public in its handbook, on its web site, and in 98
its orientation programs for students the policies, regulations, 99
and expectations of students regarding free expression on 100
campus; 101

(2) Develop and distribute materials, programs, and 102
procedures to individuals responsible for the education or 103
discipline of students, such as administrators, campus police 104
officers, residence life officials, and professors, to inform 105

them of the policies, regulations, and duties of the institution 106
regarding free expression on campus. 107

(C) (1) Nothing in this section shall be interpreted as 108
preventing state institutions of higher education from 109
prohibiting harassment or restricting expressive activities that 110
the First Amendment to the United States Constitution does not 111
protect. 112

(2) Nothing in this section shall enable individuals to 113
engage in conduct that intentionally or materially and 114
substantially disrupts another individual's expressive activity 115
if it occurs in a campus space reserved for exclusive use or 116
control of a particular group. 117

Sec. 3345.0213. (A) (1) Outdoor areas of campuses of state 118
institutions of higher education are public forums for campus 119
communities. 120

(2) State institutions of higher education shall not 121
create "free speech zones" or designate other outdoor areas of 122
campuses where expressive activities are prohibited. 123

(3) State institutions of higher education may maintain 124
and enforce reasonable time, place, and manner restrictions 125
specifically developed in service of a significant institutional 126
interest only when such restrictions employ clear, published, 127
viewpoint- and content-neutral criteria, and provide for ample 128
alternative means of expressive activities. Any such 129
restrictions shall allow for members of a campus community to 130
spontaneously and contemporaneously assemble and distribute 131
literature. 132

(B) Nothing in this section shall be interpreted as 133
limiting the right of student expression elsewhere on campus. 134

Sec. 3345.0214. (A) (1) Within one hundred eighty days 135
after the effective date of this section, and in a manner that 136
complies with the "Family Educational Rights and Privacy Act of 137
1974," 88 Stat. 571, 20 U.S.C. 1232g, each state institution of 138
higher education shall submit to the governor, speaker of the 139
house of representatives, and president of the senate a report 140
detailing its course of action in accordance with sections 141
3345.0212, 3345.0213, and 3345.0215 of the Revised Code. The 142
report shall contain the following information: 143

(a) A description of any barriers to or incidents of 144
disruption of free expression occurring on campus, including 145
attempts to block or prohibit speakers and any investigation of 146
students or student groups on the basis of expression. The 147
description also shall include the nature of each barrier or 148
incident and the disciplinary action, if any, taken against 149
members of the campus community determined to be responsible for 150
the barriers or incidents; 151

(b) Any other information the state institution of higher 152
education finds necessary and appropriate for the public to 153
evaluate whether the free expression rights for members of the 154
campus community have been adequately protected. 155

(2) Each state institution of higher education shall 156
publish the report prescribed by this division on its web site. 157
The report must do the following: 158

(a) Be accessible from the main page of an institution's 159
web site by use of not more than three links; 160

(b) Be word-searchable; 161

(c) Be accessible to the public without requiring user 162
registration of any kind. 163

(3) Within thirty days after an action is brought against 164
a state institution of higher education for an alleged violation 165
of expression rights, the institution shall submit a 166
supplementary report, containing the information described in 167
division (A)(1) of this section and a copy of the complaint. 168

Sec. 3345.0215. (A) Notwithstanding Chapter 2743. of the 169
Revised Code, the state hereby waives its immunity from suit in 170
a federal court under the Eleventh Amendment to the United 171
States Constitution, and consents to the jurisdiction of the 172
federal courts over its civil liability, and the civil liability 173
of a state institution of higher education, for any violation of 174
sections 3345.0212 and 3345.0213 of the Revised Code. A state 175
institution of higher education shall not be immune from suit or 176
liability for those violations. 177

(B) Any member of the campus community aggrieved by a 178
violation of sections 3345.0212 and 3345.0213 of the Revised 179
Code may bring a civil action against the state, a state 180
institution of higher education, and its employees acting in 181
their official capacities. In the action, the aggrieved may seek 182
and obtain appropriate relief, including injunctive relief, 183
compensatory damages, reasonable attorney's fees, and court 184
costs. If a court finds a violation of section 3345.0212 or 185
3345.0213 of the Revised Code, it shall issue an award of not 186
less than one thousand dollars. 187

(C) Any member of the campus community aggrieved by a 188
violation of sections 3345.0212 and 3345.0213 of the Revised 189
Code may assert such violation as a defense or counterclaim in 190
any disciplinary action or in any civil or administrative 191
proceedings brought against such individual or student group. 192
Nothing in this section shall be interpreted to limit any other 193

remedies available to the individual or student group. 194

(D) Except as otherwise provided in this division, an 195
action against the state, a state institution of higher 196
education, or an employee acting in their official capacity for 197
a violation of section 3345.0212 or 3345.0213 of the Revised 198
Code shall be brought within one year after the cause of action 199
has occurred. A court may allow an action described in this 200
division to be brought after the expiration of that one-year 201
period if the court determines that there is just cause for a 202
delay in bringing the claim. 203

Sec. 3345.21. The board of trustees of any college or 204
university which receives any state funds in support thereof, 205
shall regulate the use of the grounds, buildings, equipment, and 206
facilities of such college or university and the conduct of the 207
students, staff, faculty, and visitors to the campus so that law 208
and order are maintained and the college or university may 209
pursue its educational objectives and programs in an orderly 210
manner. 211

The board of trustees of each such college or university 212
shall adopt rules for the conduct of the students, faculty, 213
visitors, and staff, and may provide for the ejection from 214
college or university property, suspension or expulsion of a 215
person who violates such regulations. All such rules shall be 216
published in a manner reasonably designed to come to the 217
attention of, and be available to, all faculty, staff, visitors, 218
and students. 219

The board of trustees shall provide for the administration 220
and enforcement of its rules and may authorize the use of state 221
university law enforcement officers provided for in section 222
3345.04 of the Revised Code to assist in enforcing the rules and 223

the law on the campus of the college or university. The board of 224
trustees, or appropriate officials of such college or university 225
when the authority to do so has been delegated by the board of 226
trustees, may seek the assistance of other appropriate law 227
enforcement officers to enforce the rules and to enforce laws 228
for the preservation of good order on the campus, and to prevent 229
the disruption of the educational functions of the college or 230
university. 231

~~The~~ In accordance with section 3345.0213 of the Revised 232
Code, the rules of the board of trustees shall not restrict 233
freedom of speech nor the right of persons on the campus to 234
assemble peacefully. 235

Section 2. That existing sections 3345.021 and 3345.21 of 236
the Revised Code are hereby repealed. 237

Section 3. This act shall be known as the "Forming Open 238
and Robust University Minds Act," or the "FORUM Act." 239