

Senate Bill 318

By: Senators Ligon, Jr. of the 3rd, Miller of the 49th, Robertson of the 29th, Heath of the 31st, Thompson of the 14th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 20 of the Official Code of Georgia Annotated, relating to
2 education generally, so as to provide for public forums at public institutions of higher
3 education; to prevent the creation of "free speech zones" at public institutions of higher
4 education; to allow for reasonable, viewpoint-neutral, and narrowly-tailored time, place, and
5 manner restrictions on expressive activity at public institutions of higher education; to
6 prohibit material and substantial disruption of protected expressive activity at public
7 institutions of higher education; to prohibit public institutions of higher education from
8 denying benefits to or otherwise discriminating against a student organization on the basis
9 of the student organization's religious, political, or ideological positions; to require public
10 institutions of higher education to provide public notice of rules and expectations regarding
11 expressive activity; to require public institutions of higher education to develop materials,
12 programs, and procedures related to expressive activity; to provide for penalties; to provide
13 for a limitation period; to provide for a waiver of immunities; to provide for legislative
14 findings and intent; to provide for a short title; to provide for definitions; to provide for
15 related matters; to provide for an effective date; to repeal conflicting laws; and for other
16 purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

19 (a) The General Assembly recognizes:

20 (1) The First Amendment of the United States Constitution and Section I of Article I of
21 the Georgia Constitution protect the rights of freedom of speech, freedom of the press,
22 freedom of religion, freedom of association and to petition the Government for all
23 citizens;

24 (2) The United States Supreme Court, in *Healy v. James*, called public universities,
25 "peculiarly the marketplace of ideas," where young adults learn to exercise these
26 constitutional rights necessary to participate in our system of government and to tolerate
27 others' exercise of the same rights; and found there is "no room for the view that...First

28 Amendment protections should apply with less force on college campuses than in the
29 community at large"; and

30 (3) The United States Supreme Court, in *Sweezy v. New Hampshire*, warned that if public
31 colleges and universities stifle student speech and prevent the open exchange of ideas on
32 campus, "our civilization will stagnate and die."

33 (b) The General Assembly finds:

34 (1) The exercise of these constitutional rights on public college and university campuses
35 in this state is a critical component of the education experience for students and requires
36 that each public college and university in this state ensure free, robust, and uninhibited
37 debate and deliberations by students whether on or off campus;

38 (2) The public colleges and universities in this state and elsewhere are failing to provide
39 adequate safeguards for these constitutional rights of their students leading to a stifling
40 of expression on campus; and

41 (3) A significant amount of taxpayer dollars is appropriated to public institutions of
42 higher education in the state, and as such the General Assembly has a responsibility to
43 ensure that all public institutions of higher education receiving state funds recognize
44 freedom of speech as a fundamental right for all.

45 (c) The intent of this Act is to provide that all public institutions of higher education
46 receiving state funds recognize freedom of speech as a fundamental right for all.

47 **SECTION 2.**

48 Chapter 1 of Title 20 of the Official Code of Georgia Annotated, relating to education
49 generally, is amended by adding a new article to read as follows:

50 "ARTICLE 3

51 20-1-30.

52 This article shall be known and may be cited as the 'Forming Open and Robust University
53 Minds (FORUM) Act.'

54 20-1-31.

55 As used in this article, the term:

56 (1) 'Benefit' means any of the following conferred upon a student or student organization
57 by a public institution of higher education: recognition; registration; the use of facilities
58 of the public institution of higher education for purposes of meetings or other expressive
59 activity; the use of channels of communication of the public institution of higher

60 education; or funding sources that are otherwise available to other students or student
 61 organizations at the public institution of higher education.

62 (2) 'Campus community' means students, administrators, faculty, and staff at the public
 63 institution of higher education and their invited guests.

64 (3) 'Harassment' means unwelcome conduct or expressive activity directed at a student
 65 that is so severe, pervasive, and subjectively and objectively offensive that a student is
 66 effectively denied equal access to educational opportunities or benefits provided by the
 67 public institution of higher education.

68 (4) 'Materially and substantially disrupts' means when a person knowingly and
 69 intentionally engages in conduct or expressive activity which significantly hinders
 70 another person's or group's expressive activity; prevents the communication of the
 71 person's or group's message; or prevents the transaction of the business of a lawful
 72 meeting, gathering, or procession by:

73 (A) Engaging in fighting, violent, or other unlawful behavior; or

74 (B) Physically blocking or using threats of violence to prevent any person from
 75 attending, listening to, viewing, or otherwise participating in an expressive activity.

76 Conduct or expressive activity shall not be considered a material or substantial disruption
 77 if it is protected under the Georgia Constitution or the First Amendment of the United
 78 States Constitution, including, but not limited to, lawful protests in an unrestricted
 79 outdoor area of campus (except during times when those areas have been reserved in
 80 advance for other events) or minor, brief, or fleeting nonviolent disruptions of events that
 81 are isolated and short in duration.

82 (5) 'Public institution of higher education' means:

83 (A) Any two-year college, college, university, or other institution of higher learning
 84 under the management and control of the Board of Regents of the University System
 85 of Georgia; and

86 (B) Any postsecondary technical school under the management and control of the State
 87 Board of the Technical College System of Georgia.

88 (6) 'Student' means any person who is enrolled on a full-time or part-time basis in a
 89 public institution of higher education.

90 (7) 'Student organization' means any association, club, fraternity, society, sorority, or
 91 organized group of students, whether academic, athletic, political, social, or otherwise,
 92 that is either officially recognized by a public institution of higher education or actively
 93 seeking official recognition by a public institution of higher education.

94 (8) 'Unrestricted outdoor area of campus' means any outdoor area of campus that is
 95 generally accessible to members of the campus community, such as grassy areas,

96 walkways, or other common areas, and does not include outdoor areas when and where
97 access to members of the campus community is lawfully restricted.

98 20-1-32.

99 (a) Unrestricted outdoor areas of campuses of public institutions of higher education in this
100 state shall be deemed public forums for the campus community, and public institutions of
101 higher education shall not create 'free speech zones' or other designated areas of campus
102 outside of which expressive activities are prohibited.

103 (b) Public institutions of higher education may maintain and enforce reasonable time,
104 place, and manner restrictions narrowly tailored in service of a significant institutional
105 interest only when such restrictions employ clear, published, content- and
106 viewpoint-neutral criteria, and provide for ample alternative means of expression. Any
107 such restrictions shall allow for members of the campus community to spontaneously and
108 contemporaneously assemble and distribute literature. Nothing in this Code section shall
109 be interpreted as limiting the right of student expression elsewhere on campus.

110 20-1-33.

111 (a) Protected expressive activity under this article includes, but is not limited to, lawful
112 verbal, written, audio-visual, or electronic expression by which individuals may
113 communicate ideas to one another, including all forms of peaceful assembly, distributing
114 literature, carrying signs, circulating petitions, demonstrations, protests, and speeches
115 including those by guest speakers.

116 (b) Any person who wishes to engage in noncommercial expressive activity in an
117 unrestricted outdoor area of campus shall be permitted to do so freely, as long as the
118 person's conduct is not unlawful and does not materially and substantially disrupt the
119 functioning of the public institution of higher education, subject to restrictions lawfully
120 imposed under subsection (b) of Code Section 20-1-32.

121 (c) Nothing in this article shall be interpreted as preventing public institutions of higher
122 education from prohibiting harassment as defined in this article or from prohibiting,
123 limiting, or restricting expression that is not protected under the Georgia Constitution or
124 the First Amendment of the United States Constitution, including, but not limited to, true
125 threats or expressive activity directed to provoke imminent lawless actions and likely to
126 produce it.

127 (d) Nothing in this article shall enable individuals to engage in conduct that materially and
128 substantially disrupts another's expressive activity that is occurring in an unrestricted
129 outdoor area of campus or a campus space reserved for that activity under the exclusive use
130 or control of a particular group.

131 (e) No public institution of higher education may deny a religious, political, or ideological
132 student organization any benefit or privilege available to any other student organization,
133 or otherwise discriminate against such an organization, based on the actual or anticipated
134 expressive activity of the organization, including any requirement that the leaders or
135 members of such organization:

136 (1) Affirm and adhere to the organization's sincerely held beliefs;

137 (2) Comply with the organization's standards of conduct; or

138 (3) Further the organization's mission or purpose, as defined by the student organization.

139 (f) Public institutions of higher education shall make public in their handbooks, on their
140 websites, and through their orientation programs for students the policies, regulations, and
141 expectations of students regarding free expressive activity on campus consistent with this
142 article.

143 (g) Public institutions of higher education shall develop materials, programs, and
144 procedures to ensure that those persons who have responsibility for discipline or education
145 of students, such as administrators, campus police officers, residence life officials, and
146 professors, understand the policies, regulations, and duties of public institutions of higher
147 education regarding expressive activity on campus consistent with this article.

148 (h) Any person or student association aggrieved by a violation of this article may bring an
149 action against the public institution of higher education, including its employees acting in
150 their official capacities, responsible for the violation and seek appropriate relief, including,
151 but not limited to, injunctive relief, monetary damages, reasonable attorneys' fees, and
152 court costs. If a court should find a violation of this article, it shall issue an award of at
153 least \$5,000.00. Any person or student organization aggrieved by a violation of this article
154 may assert such violation as a defense or counterclaim in any disciplinary action or in any
155 civil or administrative proceedings brought against such student or student organization.
156 Nothing in this subsection shall be interpreted to limit any other remedies available to any
157 person or student organization.

158 (i) A person shall be required to bring suit for violation of this article not later than one
159 year after the day the cause of action accrues. For purposes of calculating the one-year
160 limitation period, each day that the violation persists, and each day that a policy in violation
161 of this article remains in effect, shall constitute a new day that the cause of action has
162 accrued.

163 (j) The state waives immunity under the Eleventh Amendment of the United States
164 Constitution and consents to suit in a federal court for lawsuits arising out of this article.
165 A public institution of higher education that violates any provision of this article is not
166 immune from suit or liability for the violation."

167 **SECTION 3.**

168 This Act shall become effective on July 1, 2020.

169 **SECTION 4.**

170 All laws and parts of laws in conflict with this Act are repealed.