

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

**AS PASSED SENATE**

A BILL TO BE ENTITLED

AN ACT

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

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

19 Title 20 of the Official Code of Georgia Annotated, relating to education generally, is  
 20 amended by repealing Code Section 20-3-48, relating to adoption of free speech and  
 21 expression regulations and disciplinary sanctions for interfering with rights, and enacting a  
 22 new Code Section 20-3-48 to read as follows:

23 "20-3-48.

24 (a) This part shall be known and may be cited as the 'Forming Open and Robust University  
 25 Minds (FORUM) Act.'

26 (b) As used in this part, the term:

27 (1) 'Benefit' means any of the following conferred upon a student or student organization  
28 by a public institution of higher education: recognition; registration; the use of facilities  
29 of the public institution of higher education for purposes of meetings or other expressive  
30 activity; the use of channels of communication of the public institution of higher  
31 education; or funding sources that are otherwise available to other students or student  
32 organizations at the public institution of higher education.

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

35 (3) 'Materially and substantially disrupts' means when a person knowingly and  
36 intentionally engages in conduct or expressive activity which significantly hinders  
37 another person's or group's expressive activity; prevents the communication of the  
38 person's or group's message; or prevents the transaction of the business of a lawful  
39 meeting, gathering, or procession by:

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

41 (B) Physically blocking, using threats of violence, or creating loud or sustained noise  
42 or vocalization intended to prevent any person from attending, listening to, viewing, or  
43 otherwise participating in an expressive activity.

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

50 (4) 'Public institution of higher education' or 'institution' means any college or university  
51 under the management and control of the Board of Regents of the University System of  
52 Georgia.

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

55 (6) 'Student on student harassment' means unwelcome conduct or expressive activity  
56 directed at a student that is so severe, pervasive, and subjectively and objectively  
57 offensive that a student is effectively denied equal access to educational opportunities or  
58 benefits provided by the public institution of higher education. This term shall not apply  
59 to or govern any employment policy of a public institution of higher education relating  
60 to harassment.

61 (7) 'Student organization' means any association, club, fraternity, society, sorority, or  
62 organized group of students, whether academic, athletic, political, social, or otherwise,  
63 that is officially recognized by a public institution of higher education.

64 (8) 'Unrestricted outdoor area of campus' means any outdoor area of campus that is  
65 generally accessible to members of the campus community, including, but not limited to,  
66 grassy areas, walkways, or other common areas, and does not include outdoor areas when  
67 and where access to members of the campus community is lawfully restricted.

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

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

80 (e) Protected expressive activity under this part includes, but is not limited to, lawful  
81 verbal, written, audio-visual, or electronic expression by which individuals may  
82 communicate ideas to one another, including all forms of peaceful assembly, distributing  
83 literature, carrying signs, circulating petitions, demonstrations, protests, and speeches  
84 including those by guest speakers.

85 (f) Any person who wishes to engage in noncommercial expressive activity in an  
86 unrestricted outdoor area of campus shall be permitted to do so freely, as long as the  
87 person's conduct is not unlawful and does not materially and substantially disrupt the  
88 functioning of the public institution of higher education, subject to restrictions lawfully  
89 imposed under subsections (c) and (d) of this Code section. Nothing in this Code section  
90 shall be construed to make the unrestricted areas of campus into a designated public forum  
91 for persons who are not members of the campus community.

92 (g) Nothing in this part shall be interpreted as preventing public institutions of higher  
93 education from prohibiting student on student harassment as defined in this part or from  
94 prohibiting, limiting, or restricting expression that is not protected under the Georgia  
95 Constitution or the First Amendment of the United States Constitution, including, but not  
96 limited to, true threats or expressive activity directed to provoke imminent lawless actions  
97 and likely to produce it.

98 (h) Nothing in this part shall enable individuals to engage in conduct that materially and  
99 substantially disrupts another's expressive activity that is occurring in an unrestricted

100 outdoor area of campus or a campus space reserved for that activity under the exclusive use  
101 or control of a particular group.

102 (i) No public institution of higher education may deny a religious, political, or ideological  
103 student organization any benefit or privilege available to any other student organization,  
104 or otherwise discriminate against such an organization, nor may a prospective student  
105 organization actively seeking official recognition by a public institution of higher education  
106 be denied official recognition, based on the actual or anticipated expressive activity of the  
107 organization, including any requirement that the leaders or members of such organization:

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

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

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

111 (j) Public institutions of higher education shall make public in their handbooks, on their  
112 websites, and through their orientation programs for students the policies, regulations, and  
113 expectations of students regarding free expressive activity on campus consistent with this  
114 part.

115 (k) Public institutions of higher education shall develop materials, programs, and  
116 procedures to ensure that those persons who have responsibility for discipline or education  
117 of students, such as administrators, campus police officers, residence life officials, and  
118 professors, understand the policies, regulations, and duties of public institutions of higher  
119 education regarding expressive activity on campus consistent with this part.

120 (l) Any person or student organization aggrieved by a violation of this part may bring an  
121 action against the public institution of higher education, including its employees acting in  
122 their official capacities, responsible for the violation and seek appropriate relief, including,  
123 but not limited to, injunctive relief, monetary damages, reasonable attorneys' fees, and  
124 court costs. If a court should find a violation of this part, it shall issue an award of at least  
125 \$5,000.00. Any person or student organization aggrieved by a violation of this part may  
126 assert such violation as a defense or counterclaim in any disciplinary action or in any civil  
127 or administrative proceedings brought against such student or student organization.  
128 Nothing in this subsection shall be interpreted to limit any other remedies available to any  
129 person or student organization.

130 (m) A person shall be required to bring suit for violation of this part not later than one year  
131 after the day the cause of action accrues. For purposes of calculating the one-year  
132 limitation period, each day that the violation persists, and each day that a policy in violation  
133 of this part remains in effect, shall constitute a new day that the cause of action has  
134 accrued.

135 (n) Nothing in this part shall prohibit public institutions of higher education, including, but  
136 not limited to, athletic department administrators and coaching staffs, from requiring

137 student athletes to comply with athletic department or team policies, rules, and regulations  
 138 or from implementing disciplinary consequences according to such policies, rules, and  
 139 regulations for violations thereof by any student athlete governed by such policies, rules,  
 140 and regulations."

141 **SECTION 2.**

142 Said title is further amended by revising Code Section 20-3-48.1, relating to annual report  
 143 by board of regents, as follows:

144 "20-3-48.1.

145 The board of regents shall make and publish an annual report and provide a copy to the  
 146 Governor and each chamber of the General Assembly on July 1 of each year addressing the  
 147 following from the previous calendar year:

148 (1) Any barriers to, or disruptions of, free expression within state public institutions of  
 149 higher education;

150 (2) Administrative response and discipline relating to violation of regulations and  
 151 policies established pursuant to Code Section 20-3-48;

152 (3) Actions taken by state public institutions of higher ~~learning~~ education, including  
 153 difficulties, controversies, or successes, in maintaining a posture of administrative and  
 154 institutional neutrality with regard to political or social issues; and

155 (4) Any assessments, criticisms, commendations, or recommendations the board of  
 156 regents deems appropriate to further include in the report."

157 **SECTION 3.**

158 Said title is further amended by repealing and reserving Code Section 20-3-48.2, relating to  
 159 reasonable time, place, and manner restrictions on speech.

160 **SECTION 4.**

161 Said title is further amended in Article 2 of Chapter 4, relating to technical and adult  
 162 education, by adding a Code section to read as follows:

163 "20-4-11.1.

164 (a) As used in this Code section, the term:

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

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

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

173 (3) 'Materially and substantially disrupts' means when a person knowingly and  
174 intentionally engages in conduct or expressive activity which significantly hinders  
175 another person's or group's expressive activity; prevents the communication of the  
176 person's or group's message; or prevents the transaction of the business of a lawful  
177 meeting, gathering, or procession by:

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

179 (B) Physically blocking, using threats of violence, or creating loud or sustained noise  
180 or vocalization intended to prevent any person from attending, listening to, viewing, or  
181 otherwise participating in an expressive activity.

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

188 (4) 'Public institution of higher education' or 'institution' means any postsecondary  
189 technical school or other postsecondary branch of the Technical College System of  
190 Georgia.

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

193 (6) 'Student on student harassment' means unwelcome conduct or expressive activity  
194 directed at a student that is so severe, pervasive, and subjectively and objectively  
195 offensive that a student is effectively denied equal access to educational opportunities or  
196 benefits provided by the public institution of higher education. This term shall not apply  
197 to or govern any employment policy of a public institution of higher education relating  
198 to harassment.

199 (7) 'Student organization' means any association, club, fraternity, society, sorority, or  
200 organized group of students, whether academic, athletic, political, social, or otherwise,  
201 that is officially recognized by a public institution of higher education.

202 (8) 'Unrestricted outdoor area of campus' means any outdoor area of campus that is  
203 generally accessible to members of the campus community, including, but not limited to,  
204 grassy areas, walkways, or other common areas, and does not include outdoor areas when  
205 and where access to members of the campus community is lawfully restricted.

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

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

218 (e) Protected expressive activity under this Code section includes, but is not limited to,  
219 lawful verbal, written, audio-visual, or electronic expression by which individuals may  
220 communicate ideas to one another, including all forms of peaceful assembly, distributing  
221 literature, carrying signs, circulating petitions, demonstrations, protests, and speeches  
222 including those by guest speakers.

223 (f) Any person who wishes to engage in noncommercial expressive activity in an  
224 unrestricted outdoor area of campus shall be permitted to do so freely, as long as the  
225 person's conduct is not unlawful and does not materially and substantially disrupt the  
226 functioning of the public institution of higher education, subject to restrictions lawfully  
227 imposed under subsections (c) and (d) of this Code section. Nothing in this Code section  
228 shall be construed to make the unrestricted areas of campus into a designated public forum  
229 for persons who are not members of the campus community.

230 (g) Nothing in this Code section shall be interpreted as preventing public institutions of  
231 higher education from prohibiting student on student harassment as defined in this Code  
232 section or from prohibiting, limiting, or restricting expression that is not protected under  
233 the Georgia Constitution or the First Amendment of the United States Constitution,  
234 including, but not limited to, true threats or expressive activity directed to provoke  
235 imminent lawless actions and likely to produce it.

236 (h) Nothing in this Code section shall enable individuals to engage in conduct that  
237 materially and substantially disrupts another's expressive activity that is occurring in an  
238 unrestricted outdoor area of campus or a campus space reserved for that activity under the  
239 exclusive use or control of a particular group.

240 (i) No public institution of higher education may deny a religious, political, or ideological  
241 student organization any benefit or privilege available to any other student organization,  
242 or otherwise discriminate against such an organization, nor may a prospective student

243 organization actively seeking official recognition by a public institution of higher education  
 244 be denied official recognition, based on the actual or anticipated expressive activity of the  
 245 organization, including any requirement that the leaders or members of such organization:  
 246 (1) Affirm and adhere to the organization's sincerely held beliefs;  
 247 (2) Comply with the organization's standards of conduct; or  
 248 (3) Further the organization's mission or purpose, as defined by the student organization.  
 249 (j) Public institutions of higher education shall make public in their handbooks, on their  
 250 websites, and through their orientation programs for students the policies, regulations, and  
 251 expectations of students regarding free expressive activity on campus consistent with this  
 252 Code section.  
 253 (k) Public institutions of higher education shall develop materials, programs, and  
 254 procedures to ensure that those persons who have responsibility for discipline or education  
 255 of students, such as administrators, campus police officers, residence life officials, and  
 256 professors, understand the policies, regulations, and duties of public institutions of higher  
 257 education regarding expressive activity on campus consistent with this Code section.  
 258 (l) Any person or student organization aggrieved by a violation of this Code section may  
 259 bring an action against the public institution of higher education, including its employees  
 260 acting in their official capacities, responsible for the violation and seek appropriate relief,  
 261 including, but not limited to, injunctive relief, monetary damages, reasonable attorneys'  
 262 fees, and court costs. If a court should find a violation of this Code section, it shall issue  
 263 an award of at least \$5,000.00. Any person or student organization aggrieved by a  
 264 violation of this Code section may assert such violation as a defense or counterclaim in any  
 265 disciplinary action or in any civil or administrative proceedings brought against such  
 266 student or student organization. Nothing in this subsection shall be interpreted to limit any  
 267 other remedies available to any person or student organization.  
 268 (m) A person shall be required to bring suit for violation of this Code section not later than  
 269 one year after the day the cause of action accrues. For purposes of calculating the one-year  
 270 limitation period, each day that the violation persists, and each day that a policy in violation  
 271 of this Code section remains in effect, shall constitute a new day that the cause of action  
 272 has accrued.  
 273 (n) The State Board of the Technical College System of Georgia shall make and publish  
 274 an annual report and provide a copy to the Governor and each chamber of the General  
 275 Assembly on July 1 of each year addressing the following from the previous calendar year:  
 276 (1) Any barriers to, or disruptions of, free expression within public institutions of higher  
 277 education;  
 278 (2) Administrative response and discipline relating to violation of regulations and  
 279 policies established pursuant to Code Section 20-3-48;

280 (3) Actions taken by public institutions of higher education, including difficulties,  
281 controversies, or successes, in maintaining a posture of administrative and institutional  
282 neutrality with regard to political or social issues; and

283 (4) Any assessments, criticisms, commendations, or recommendations the board of  
284 regents deems appropriate to further include in the report.

285 (o) Nothing in this Code section shall prohibit public institutions of higher education,  
286 including, but not limited to, athletic department administrators and coaching staffs, from  
287 requiring student athletes to comply with athletic department or team policies, rules, and  
288 regulations or from implementing disciplinary consequences according to such policies,  
289 rules, and regulations for violations thereof by any student athlete governed by such  
290 policies, rules, and regulations."

291 **SECTION 5.**

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

293 **SECTION 6.**

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