**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “FORMING OPEN AND ROBUST UNIVERSITY MINDS (FORUM) ACT OF 2020” BY ADDING CHAPTER 148 TO TITLE 59 SO AS TO DEFINE NECESSARY TERMS, TO PROVIDE MEASURES TO PROTECT EXPRESSIONS BY STUDENTS AND STUDENT ORGANIZATIONS IN CERTAIN PLACES ON THE CAMPUSES OF PUBLIC INSTITUTIONS OF HIGHER LEARNING IN THIS STATE, TO PROVIDE RELATED REQUIREMENTS FOR POLICIES AND PROCEDURES, TO PROVIDE SPECIFIC RESPONSIBILITIES OF PUBLIC INSTITUTIONS OF HIGHER LEARNING, AND TO PROVIDE MEANS OF REDRESS FOR VIOLATIONS OF THIS ACT.

Whereas, the South Carolina General Assembly finds that the First Amendment of the United States Constitution and the South Carolina Constitution protect the rights of free speech, freedom of the press, freedom of religion, and freedom of association and to petition the government for all citizens; and

Whereas, the South Carolina General Assembly finds that in *Healy v. James*, 408 U.S. 169, 180 (1972), the Supreme Court of the United States called public universities, “peculiarly the marketplace of ideas” where young adults learn to exercise these constitutional rights necessary to participate in our system of government and to tolerate others’ exercise of the same rights, and there is “no room for the view that … First Amendment protections should apply with less force on college campuses than in the community at large”; and

Whereas, the South Carolina General Assembly views the exercise of First Amendment rights on public university campuses in this State as critical components of the education experience for students and requires that each public college and university in this State ensure free, robust, and uninhibited debate and deliberations by students whether on or off campus; and

Whereas, the South Carolina General Assembly finds that the Supreme Court of the United States has warned in *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957), that if public universities stifle student speech and prevent the open exchange of ideas on campuses, “our civilization will stagnate and die”; and

Whereas, the South Carolina General Assembly finds that a significant amount of taxpayer dollars are appropriated to public institutions of higher learning each year and as such, this Legislature must ensure that all public institutions of higher learning receiving state funds recognize freedom of speech as a fundamental right for all. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 59 of the 1976 Code is amended by adding:

“CHAPTER 148

Forming Open and Robust University Minds (FORUM) Act of 2020

Section 59‑148‑110. This chapter must be known and may be cited as the‘Forming Open and Robust University Minds (FORUM) Act of 2020’.

Section 59‑148‑120. As used in this chapter:

(1) ‘Benefit’ means recognition, registration, the use of facilities for meeting or speaking purposes, the use of channels of communication, and the use of funding sources that otherwise are available to student organizations at a public institution of higher learning.

(2) ‘Campus’ means a building or real property owned or controlled by a public institution of higher learning within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the educational purposes of the institution.

(3) ‘Campus community’ means students, administrators, faculty and staff at the institution of higher learning and their invited guests and any off‑campus person or organization invited to speak at, or to help organize, facilitate, or operate an event sponsored by a student, student group, or organization.

(4) ‘Harassment’ means only an expression that is unwelcome, so severe, pervasive, and subjectively and objectively offensive, that a student is effectively denied equal access to educational opportunities or benefits provided by the public institution of higher education.

(5) ‘Materially and substantially disrupts’ means when a person, with the intent to or with knowledge of doing so, significantly hinders the institution’s educational, academic, or research purposes, or hinders another person’s or group’s expressive activity, prevents the communication of the message, or prevents the transaction of the business of a lawful meeting, gathering, or procession by:

(a) engaging in fighting, violent or other unlawful behavior; or

(b) physically blocking or using threats of violence to prevent any person from attending, listening to, viewing, or otherwise participating in an expressive activity or in activities relating to the educational, academic, or research purposes of the institution; and

(c) conduct that ‘materially disrupts’ or that ‘materially and substantially disrupts’ does not include lawful actions of law enforcement taken to protect persons or property, to enforce the law, or to address a violation of the law, nor does it include conduct protected under the First Amendment to the United States Constitution or the Constitution of this State. This protected conduct includes, but is not limited to:

(i) lawful protests by students or student organizations of the institution in the outdoor areas of campus generally accessible to the members of the public, except during times when those areas have been reserved in advance for other events; or

(ii) minor, brief, or fleeting nonviolent disruptions of events that are isolated and short in duration.

(6) ‘Outdoor area of campus’ means generally accessible outside areas of campus where members of the campus community are commonly allowed, including grassy areas, walkways, or other similar common areas, but specifically excluding outdoor areas where access is restricted to a majority of the campus community.

(7) ‘Public institution of higher learning’ means state‑supported post‑secondary educational institutions, including technical and comprehensive educational institutions.

(8) ‘Student’ means a person who is enrolled on a full‑time or part‑time basis in a public institution of higher learning.

(9) ‘Student organization’ means an officially recognized group at a public institution of higher learning or a group seeking official recognition, comprised of admitted students presently enrolled in the institution of higher learning.

Section 59‑148‑130.Expressive activities of members of the campus community that are protected under the provisions of this chapter include, but are not limited to, any lawful verbal, written, audio‑visual, or electronic means by which they may communicate ideas to one another, including peaceful assembly, peaceful protests, speeches, guest speakers, literature distribution, sign carrying, and petition circulation.

Section 59‑148‑140. (A) The outdoor areas of campuses of public institutions of higher learning in this State are open for expressive activity by members of the campus community. Public institutions of higher learning may maintain and enforce reasonable time, place, and manner restrictions that are narrowly tailored in service of a significant institutional interest. Such restrictions must employ clear, published, content‑neutral and viewpoint‑neutral criteria, and provide for ample alternative means of expression. The restrictions must allow members of the campus community to spontaneously and contemporaneously assemble and distribute literature.

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

(C) Nothing in this section may be interpreted to convert or deem the campuses of public institutions of higher learning in this State to be traditional public forums or designated public forums or otherwise alter or expand the First Amendment rights, facility use rights, rights of access, or other rights of those who are not members of the campus community.

Section 59‑148‑150. (A) A member of the campus community who wishes to engage in noncommercial expressive activity on campus is permitted to do so if his conduct is lawful and does not materially and substantially disrupt the functioning of the public institution of higher learning, or the rights of others to engage in or listen to lawful expressive activity, subject only to the requirements of this chapter.

(B) Nothing in this section prohibits public institutions of higher learning from maintaining and enforcing reasonable time, place, and manner restrictions that are narrowly tailored in service of a significant institutional interest. Such restrictions must employ clear, published, content‑neutral and viewpoint‑neutral criteria, and provide for ample alternative means of expression.

(C) Nothing in this chapter may be interpreted as preventing public institutions of higher learning from:

(1) prohibiting, limiting, or restricting expression that the First Amendment does not protect; or

(2) prohibiting harassment.

(D) Nothing in this section may be interpreted to enable individuals to engage in conduct that intentionally, materially, and substantially disrupts the expressive activity of another if that activity occurs in a campus space reserved for that activity under the exclusive use or control of a particular group.

Section 59‑148‑160. (A) A public institution of higher learning may not deny any student organization registration, recognition, or any benefit or privilege available to another student organization, or otherwise discriminate against such an organization, based on the content or viewpoint of the expression or beliefs of the organization, or the requirement of the organization that its leaders or members:

(1) affirm and adhere to the sincerely held beliefs of the organization;

(2) comply with the standards of conduct of the organization; or

(3) further the self‑defined mission or purpose of the organization.

(B) Nothing in this section may be interpreted as preventing public institutions of higher learning from prohibiting, limiting, or restricting expression that the First Amendment does not protect or from prohibiting harassment.

Section 59‑148‑170. (A) A person or student organization aggrieved by a violation of this chapter may bring an action in state court against the public institution of higher learning and any other officials acting in their official capacities who are responsible for the violation and seek appropriate relief, including, but not limited to, injunctive relief, monetary damages, reasonable attorneys’ fees, and court costs. If a court finds a violation of this chapter, it shall require the institution to pay the aggrieved party that brought the action damages in an amount of not less than five thousand dollars. A person or student organization who is aggrieved by a provision of this chapter may assert such violation as a defense or counter claim in a disciplinary action or in a civil or administrative proceeding brought against the student or student organization.

(B) The provisions of this section may not be construed to limit any other remedies available to a person or student organization aggrieved by a violation of this chapter.

Section 59‑148‑180. A person may bring suit for a violation of this chapter no later than one year after the day the cause of action accrues. For purposes of calculating the one‑year limitation period, each day that the violation persists, and each day that a policy in violation of this section remains in effect, constitutes a new violation of this chapter and a new day that the cause of action has accrued.

Section 59‑148‑190. A public institution of higher learning that violates this chapter is not immune from suit or liability for the violation.”

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. This act takes effect upon approval by the Governor.

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