

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE BILL 3586

By: McCall

AS INTRODUCED

An Act relating to higher education; creating the Forming Open and Robust University Minds Act; providing for definitions; including expressive activities under the provisions of the act; providing for traditional public forums and providing reasonable restrictions; permitting person to engage in expressive activity; providing certain interpretations; requiring state educational institutions to develop handbooks and materials regarding free expression; requiring state educational institutions to make certain posting and report; permitting certain legal action and providing for statute of limitation; providing waiver of immunity; providing certain intent of Legislature; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3247 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and be cited as the "Forming Open and Robust University Minds Act".

B. As used in this act only:

1. "Benefit" means the following:

- a. recognition,
- b. registration,
- c. the use of facilities of the institution of higher education for meetings or speaking purposes,
- d. the use of channels of communication, and
- e. funding sources that are otherwise available to other student associations at the public institution of higher education;

2. "Campus community" includes students, administrators, faculty and staff at the institution of higher education and their invited guests;

3. "Counterdemonstration" means lawful action or conduct that criticizes or objects to the free expression activities of others on campus, and does not violate the rights of others in the campus community by materially disrupting previously scheduled or reserved activities in a portion or section of the campus at that scheduled time;

4. "Harassment" shall mean only that expression that is so severe, pervasive, and subjectively and objectively offensive that it unreasonably interferes with an individual's access to educational opportunities or benefits provided by the public institution of higher education;

5. "Outdoor areas of campus" means the generally accessible outside areas of campus where members of the campus community are

commonly allowed, such as grassy areas, walkways or other similar common areas and does not include outdoor areas where access is restricted to a majority of the campus community;

6. "State educational institution" means the term as defined in Section 3102 of Title 70 of the Oklahoma Statutes;

7. "Student" means any person who is enrolled on a full-time or part-time basis in a state educational institution; and

8. "Student organization" means an officially recognized group at a public institution of higher education, or a group seeking official recognition, comprised of admitted students that receive, or are seeking to receive, benefits through the institution of higher education as defined in this section.

C. Expressive activities protected under the provisions of the Forming Open and Robust University Minds Act include, but are not limited to, any lawful verbal or written means by which individuals may communicate ideas to one another, including all forms of peaceful assembly, protests, speeches and guest speakers, distribution of literature, carrying signs and circulating petitions.

D. The outdoor areas of campuses of state educational institutions shall be deemed traditional public forums. State educational institutions may maintain and enforce reasonable time, place and manner restrictions narrowly tailored in service of a significant institutional interest only when such restrictions

1 employ clear, published, content- and viewpoint-neutral criteria,
2 and provide for ample alternative means of expression. Any such
3 restrictions shall allow for members of the campus community to
4 spontaneously and contemporaneously assemble and distribute
5 literature.

6 E. Nothing in the Forming Open and Robust University Minds Act
7 shall be interpreted as limiting the right of student expression
8 elsewhere on campus.

9 F. Any person who wishes to engage in noncommercial expressive
10 activity on campus shall be permitted to do so freely, as long as
11 the person's conduct is not unlawful and does not materially and
12 substantially disrupt the functioning of the state educational
13 institution, subject only to the requirements of subsection D of
14 this section.

15 G. Nothing in the Forming Open and Robust University Minds Act
16 shall prohibit state educational institutions from maintaining and
17 enforcing reasonable time, place and manner restrictions that are
18 narrowly tailored to serve a significant institutional interest only
19 when such restrictions employ clear, published, content- and
20 viewpoint-neutral criteria. Any such restrictions shall allow for
21 members of the campus community to spontaneously and
22 contemporaneously assemble and distribute literature.

23 H. Nothing in the Forming Open and Robust University Minds Act
24 shall be interpreted as preventing state educational institutions

1 from prohibiting, limiting or restricting expression that the First
2 Amendment does not protect (e.g., true threats, and expression
3 directed to provoke imminent lawless actions and likely to produce
4 it), or prohibiting harassment as defined in paragraph 4 of
5 subsection B of this section.

6 I. Nothing in the Forming Open and Robust University Minds Act
7 shall be interpreted as limiting the right of members of the campus
8 community to hold counterdemonstrations, so long as the conduct of
9 such counterdemonstrations is not unlawful and does not materially
10 and substantially prohibit the free expression rights of others on
11 campus, or disrupt the functioning of the institution of higher
12 education.

13 J. No state educational institution may deny a belief-based
14 student organization any benefit or privilege available to any other
15 student organization, or otherwise discriminate against a belief-
16 based organization based on the expression of the organization,
17 including any requirement that the leaders or members of such
18 organization:

19 1. Affirm and adhere to the organization's sincerely held
20 beliefs;

21 2. Comply with the organization's standards of conduct; or

22 3. Further the organization's mission or purpose, as defined by
23 the student organization.

1 K. State educational institutions shall make public in their
2 handbooks, on their websites, and through their orientation programs
3 for students the policies, regulations and expectations of students
4 regarding free expression on campus consistent with the Forming Open
5 and Robust University Minds Act.

6 L. State educational institutions shall develop materials,
7 programs and procedures to ensure that those persons who have
8 responsibility for discipline or education of students, such as
9 administrators, campus police officers, residence life officials and
10 professors, understand the policies, regulations and duties of state
11 educational institutions regarding free expression on campus
12 consistent with the Forming Open and Robust University Minds Act.

13 M. 1. Each state educational institution shall publicly post
14 on their website, as well as submit to the Governor and Legislature
15 by January 1, 2019, a report which will detail the course of action
16 implemented to be in compliance with the requirements of the Forming
17 Open and Robust University Minds Act. A report shall also be given
18 in the instance of any changes or updates to the chosen course of
19 action. The information required in the report shall be:

- 20 a. accessible from the institution's Internet website
 - 21 home page by use of not more than three links,
 - 22 b. searchable by keywords and phrases, and
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1 c. accessible to the public without requiring
2 registration or use of a user name, a password or
3 another user identification.

4 2. The report shall include:

5 a. a description of any barriers to or incidents of
6 disruption of free expression occurring on campus,
7 including but not limited to attempts to block or
8 prohibit speakers and investigations into students or
9 student organizations for their speech. The
10 description shall include the nature of each barrier
11 or incident, as well as what disciplinary action, if
12 any, was taken against members of the campus community
13 determined to be responsible for those specific
14 barriers or incidents involving students. These shall
15 be reported without revealing those students'
16 personally identifiable information, and
17 b. any other information each state educational
18 institution deems valuable for the public to evaluate
19 whether free expression rights for all members of the
20 campus community have been equally protected and
21 enforced consistent with the Forming Open and Robust
22 University Minds Act.

23 3. If a state educational institution is sued for an alleged
24 violation of First Amendment rights, a supplementary report with a

1 copy of the complaint must be submitted to the Governor and State
2 Legislature within thirty (30) days.

3 N. Any person or student association aggrieved by a violation
4 of this act may bring an action against a state educational
5 institution and any other persons responsible for the violation and
6 seek appropriate relief, including, but not limited to, injunctive
7 relief, monetary damages, reasonable attorney fees and court costs.
8 Any person or student organization aggrieved by a violation of this
9 act may assert such violation as a defense or counterclaim in any
10 disciplinary action or in any civil or administrative proceedings
11 brought against such student or student organization. Nothing in
12 this section shall be interpreted to limit any other remedies
13 available to any person or student organization.

14 O. A person shall be required to bring suit for violation of
15 this section not later than one (1) year after the day the cause of
16 action accrues. For purposes of calculating the one-year limitation
17 period, each day that the violation persists and each day that a
18 policy in violation of this section remains in effect shall
19 constitute a new violation of this section and therefore a new day
20 that the cause of action has accrued.

21 P. The state waives immunity under the Eleventh Amendment of
22 the United States Constitution and consents to suit in a federal
23 court for lawsuits arising out of this act. A state educational
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1 institution that violates this act is not immune from suit or
2 liability for the violation.

3 Q. It is the intent of the Legislature that the Oklahoma State
4 Regents for Higher Education adopt a model policy for each state
5 educational institution to adopt on free expression that contains,
6 at least, the following:

7 1. A statement that the primary function of an institution of
8 higher education is the discovery, improvement, transmission and
9 dissemination of knowledge by means of research, teaching,
10 discussion and debate. This statement shall provide that, to
11 fulfill this function, the institution must strive to ensure the
12 fullest degree of intellectual freedom and free expression; and

13 2. A statement that it is not the proper role of the
14 institution to shield individuals from speech protected by the First
15 Amendment, including, without limitation, ideas and opinions they
16 find unwelcome, disagreeable or even deeply offensive; that students
17 and faculty have the freedom to discuss any problem that presents
18 itself as the First Amendment permits and within the limits of
19 reasonable viewpoint- and content-neutral restrictions on time,
20 place and manner of expression that are consistent with the Forming
21 Open and Robust University Minds Act and that are necessary to
22 achieve a significant institutional interest, provided that these
23 restrictions are clear, published and provide ample alternative
24 means of expression. Students and faculty shall be permitted to

1 assemble and engage in spontaneous expressive activity as long as
2 such activity is not unlawful and does not materially and
3 substantially disrupt the functioning of the institution, subject to
4 the requirements of this subsection, and that the public areas of
5 campuses of the institution are traditional public forums, open on
6 the same terms to any speaker.

7 SECTION 2. This act shall become effective November 1, 2018.

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