

## Frequently Asked Questions Regarding the Arkansas FORUM Act

1. Q: What is the FORUM Act?  
A: During the last legislative session, the Arkansas General Assembly enacted Act 184 of 2019, codified at Ark. Code Ann. § 6-60-1005, for the stated purpose of “Forming Open and Robust University Minds.” The legislation concerns free expression on campus.
2. Q: What are the key aspects of the FORUM Act?  
A: The FORUM Act does three things. First, it designates outdoor areas of campus as public forums for members of the campus community. Second, it prohibits public colleges and universities from denying benefits and privileges to student organizations based on an organization’s beliefs and expressive activities. Third, the FORUM Act imposes certain publication, training, and reporting requirements on state-supported institutions of higher education.
3. Q: What do campuses need to do to comply with the FORUM Act?  
A: As a threshold matter, campuses should adopt policies that implement the FORUM Act and ensure that their existing policies do not contradict the Act.

In addition, the FORUM Act has three basic requirements:

First, state-supported institutions of higher education must “make public in their handbooks, on their websites, and through their orientation programs for students the policies, regulations, and expectations of students regarding free expression on campus consistent with [the FORUM Act].”

Second, the FORUM Act requires that state-supported institutions “develop materials, programs, and procedures to ensure that those persons who have responsibility for discipline or education of students, *such as administrators, campus police officers, residence life officials, and faculty*, understand the policies, regulations, and duties of state-supported institutions of higher education regarding free expression on campus consistent with [the FORUM Act].” This FAQ could be distributed to these individuals by email. In addition, campuses may want to dedicate portions of their orientation and training programs to the FORUM Act.

Third, each state-supported institution of higher education must submit to the Governor and Legislative council a report that details the course of action implemented to ensure compliance with the requirements of this subchapter **by October 22, 2019**. These bodies must also receive any changes or updates to the chosen course of action within 30 days after making the changes or updates.

4. Q: Who is a “member” of the campus community?

A: This term refers to students, administrators, faculty, staff, and invited guests of any of the foregoing persons.

5. Q: What about pure outsiders (*i.e.*, individuals who show up on campus without an invitation)?

A: The FORUM Act does not speak to outsiders. Public colleges and universities may exclude outsiders for appropriate reasons or impose reservation and check-in requirements. Such requirements should be applied in a viewpoint-neutral manner.

6. Q: What outdoor areas of campus are available for expressive activities by members of the campus community?

A: An “outdoor area of campus” under the FORUM Act means “the generally accessible outside areas of the campus of a state-supported institution of higher education where members of the campus community are commonly allowed.” The term refers to grassy areas, walkways, and other similar common areas. It does not include outdoor areas of campus where access by the majority of the campus community is restricted, such as athletic fields.

7. Q: Are free-speech zones permitted?

A: No. The FORUM Act prohibits public colleges and universities from restricting expressive activities to specific areas.

8. Q: To what extent may members of the campus community engage in spontaneous and contemporaneous assemblies, distribution of literature, and other expressive activities?

A: Members of the campus community may engage in these activities freely, provided that they follow the institution’s time, place, and manner regulations and refrain from material and substantial disruptions.

9. Q: What is a “material and substantial disruption”?
- A: This term refers to a disruption that occurs when a person, with the purpose or knowledge of significantly hindering the expressive activity of another person or group, prevents the communication of a message of another person or group, or prevents the transaction of a lawful meeting, gathering, or procession by (i) engaging in fighting, violence, or other unlawful behavior or (ii) physically blocking or using threats of violence to prevent any person from attending, listening to, viewing, or otherwise participating in an expressive activity.
10. Q: What are the guidelines for having time, place, and manner requirements?
- A: Each requirement must be reasonable; serve a significant institutional interest; employ clear, published, content- and viewpoint-neutral criteria; and provide for ample alternative means of expression.
11. Q: What are some examples of permissible time, place, and manner restrictions?
- A: Examples include restrictions on sound levels at night or during examination periods (*i.e.*, decibal limits), requirements that large groups receive prior permission so that appropriate security planning can take place, and rules against the defacement of school property with paint or chalk (such as buildings and sidewalks).
12. Q: Can institutions of higher education have reservation requirements, such as a requirement that a dean of students or other administrator receive three days’ advance notice before an expressive activity occurs?
- A: Expressive activities by members of the campus community that are “spontaneous and contemporaneous” cannot be subjected to a reservation system. However, reservations may be used for certain *planned* events, depending on circumstances such as the extent to which safety concerns are implicated.
13. Q: Are there any types of speech that can be prohibited in outdoor areas of campus?
- A: An institution may prohibit speech that is not entitled to First Amendment protection. The FORUM Act acknowledges these areas:

- “Harassment,” which is expression that is so severe, pervasive, and subjectively and objectively offensive that it effectively denies access to an educational opportunity or benefit provided by the state-supported institution of higher education
- Threats of violence
- Expression directed to provoke lawless action and likely to produce it

14. Q: What about indoor spaces?

A: Indoor areas, such as auditoriums and student unions, are not mentioned in the FORUM Act. Institutions may apply their existing policies on the use of facilities.

15. Q: What does the FORUM Act say about providing benefits and privileges to students and student organizations?

A: The FORUM Act provides that public institutions of higher education shall not deny a student organization any benefit or privilege available to other student organizations (such as recognition, registration, the use of facilities, the use of channels of communication, and funding sources) or otherwise discriminate against an organization based on its expression, including any requirement that the leaders or members of an organization (1) affirm and adhere to the organization’s sincerely held beliefs or statement of principles; (2) comply with the organization’s standards of conduct; and (3) further the organization’s mission or purpose, as defined by the student organization.

16. Q: What are some examples of impermissible restrictions on student organizations under the FORUM Act?

A: Here are three examples taken from U.S. Supreme Court cases:

- A public college or university cannot refuse to recognize a student organization because its purpose entails partisan activism.
- A public college or university cannot deny funding to student publications ordinarily provided to secular publications solely because they entail Islamic or Christian evangelism.
- A public college or university cannot prohibit student organizations from requiring members to subscribe to a formal statement of beliefs.

17. Q: Does that mean the FORUM Act compels universities to allow student organizations to engage in discrimination on the basis of race, sex, disability, and the like?
- A: State and federal laws and university policies on nondiscrimination still apply. A public college or university may prohibit student organizations from engaging in discriminatory harassment or rejecting members based on a legally protected status.
18. Q: What policies and procedures have been developed to comply with the FORUM Act?
- A: The UA Board of Trustees has amended Policy 705.1 on facilities use to say that “[m]embers of the campus community may engage in expressive activities in outdoor areas of campus, subject to reasonable time, place and manner restrictions to be defined by each campus, unit or division.”<sup>1</sup> In addition, UASP 715.1 has been similarly amended.<sup>2</sup> The UA System Office of General Counsel has also worked with campuses to develop campus-specific policies, which will be published on each campus’s website and inside the student handbook.

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<sup>1</sup> Board Policy 705.1 is available at <https://www.uasys.edu/wp-content/uploads/sites/16/2019/06/0705-1-Use-of-University-Facilities-5.23.19.pdf>.

<sup>2</sup> UASP 715.1 is available at <https://www.uasys.edu/wp-content/uploads/sites/16/2019/06/UASP-715-Use-of-University-Facilities-5.23.19.pdf>.