

# Georgia State University Law Review

---

Volume 39  
Issue 1 *Fall 2022*

Article 8

---

2022

## HB 1: FORUM Act

Tuscan Fairfield  
tfairfield1@student.gsu.edu

Paul-Michael Haley  
phaley1@student.gsu.edu

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>



Part of the [Constitutional Law Commons](#), and the [Education Law Commons](#)

---

### Recommended Citation

Tuscan Fairfield & Paul-Michael Haley, *HB 1: FORUM Act*, 39 GA. ST. U. L. REV. 75 (2022).  
Available at: <https://readingroom.law.gsu.edu/gsulr/vol39/iss1/8>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact [gfowke@gsu.edu](mailto:gfowke@gsu.edu).

## EDUCATION

***Postsecondary Education: Amend Article 2 of Chapter 3 of Title 20 of the Official Code of Georgia Annotated, Relating to Education Generally, so as to Provide for Public Forums at Public Institutions of Higher Education Within the University System of Georgia and the Technical College System of Georgia For the Campus Community; Prevent the Creation of “Free Speech Zones” at Such Public Institutions of Higher Education; Allow for Reasonable, Content- and Viewpoint-Neutral, and Narrowly Tailored Time, Place, and Manner Restrictions on Expressive Activity at Public Institutions of Higher Education; Prohibit Material and Substantial Disruption of Protected Expressive Activity at Public Institutions of Higher Education; Require Public Institutions of Higher Education to Provide Public Notice of Rules and Expectations Regarding Expressive Activity; Require Public Institutions of Higher Education to Develop Materials, Programs, and Procedures Related to Expressive Activity; Provide for a Short Title; Provide for Definitions; Provide for Related Matters; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes***

CODE SECTIONS:	O.C.G.A. §§ 20-3-48, -48.1 (amended); 20-3-48.2 (repealed); 20-4-11.1 (new)
BILL NUMBER:	HB 1
ACT NUMBER:	818
GEORGIA LAWS:	2022 Ga. Laws Act 553
EFFECTIVE DATE:	July 1, 2022
SUMMARY:	The Act prevents the creation of free speech zones at public institutions of higher education including Georgia universities, colleges, and technical colleges. Additionally, the Act allows universities to create reasonable, content- and viewpoint-neutral, and narrowly tailored time, place, and

manner restrictions on any expressive activity on campus.

### *History*

In 2016, a Georgia Gwinnett College student, Chike Uzuegbunam, wanted to distribute religious literature on campus.<sup>1</sup> He was told he could only speak about his religion in designated “free speech zones” and only after receiving a permit.<sup>2</sup> Yet, even after receiving the permit, college officials informed him that he had to withhold his speech and distribution of religious literature because it violated campus policies.<sup>3</sup> Uzuegbunam filed suit asserting that his First Amendment rights had been violated.<sup>4</sup> The Supreme Court granted certiorari.<sup>5</sup>

While that case was pending, in April 2020, Students for Life at the Georgia Institute of Technology (Georgia Tech) sued the university after it refused to cover the \$2,346 speaking fee for Alveda King, pro-life activist and niece of Dr. Martin Luther King, Jr.<sup>6</sup> The student organization believed this refusal exemplified how student government can “discriminate against some viewpoints,” which, from the students’ perspective, was “not how the marketplace of ideas is supposed to work at a university.”<sup>7</sup> After just a few months, Georgia Tech settled the suit, costing the university—and by extension, the university system—\$50,000 in damages, excluding the cost of legal fees.<sup>8</sup>

These cases centered around “free speech zones”: designated areas on a college or university campus in which individuals may express ideas without administrative regulation, ordinarily with prior

---

1. Uzuegbunam v. Preczewski, 141 S. Ct. 792, 796 (2021).

2. *Id.* at 796–97.

3. *Id.* at 797.

4. *Id.*

5. *Id.*

6. Maureen Downey, *Lawsuit: Anti-Abortion Group at Georgia Tech Denied Funding to Host MLK Niece*, ATLANTA J.-CONST. (Apr. 1, 2020), <https://www.ajc.com/news/education/lawsuit-anti-abortion-group-georgia-tech-denied-funding-host-mlk-niece/XJQUtPrY4JDqqE0IzYmVbJ/> [<https://perma.cc/4YBS-MRDJ>].

7. *Id.* (quoting Caleb Dalton, legal counsel for Alliance Defending Freedom) (internal quotation marks omitted).

8. Eric Stirgus, *Georgia Tech Settles Lawsuit with Pro-Life Student Group*, ATLANTA J.-CONST. (Sept. 10, 2020), <https://www.ajc.com/education/georgia-tech-settles-lawsuit-with-pro-life-student-group/JORF7UDQXZCW5PFJAWQBNRC23M/> [<https://perma.cc/Q4YP-4WU3>].

permission.<sup>9</sup> Since their first appearance on college campuses in the 1980s and 1990s, free speech zones have elicited polarizing responses.<sup>10</sup> Universities argue that these speech zones are necessary to prevent classroom disruptions and campus policy violations.<sup>11</sup> Universities claim to have established these zones to battle hate speech.<sup>12</sup> Conversely, First Amendment activists argue that university-enforced speech zones impermissibly confine expression.<sup>13</sup>

In response to a series of highly publicized events, conservative political figures declared that the First Amendment was “under attack” and began pushing for legislation meant to counter the perceived threat.<sup>14</sup> Since this declaration of a First Amendment “crisis,” twenty-two state legislatures have passed legislation with the intent to affirm the First Amendment’s importance and protect college students who wish to speak on a topic.<sup>15</sup>

Representative Josh Bonner (R-72nd) followed suit and introduced House Bill (HB) 1, the Forming Open and Robust University Minds (FORUM) Act.<sup>16</sup> Noting concerns for students’ First Amendment rights and the costs associated with such cases, like the settlement involving Georgia Tech’s Students for Life, Representative Bonner saw ample need for prohibiting free speech zones on college campuses.<sup>17</sup>

---

9. Jennifer R. Huddleston, *Free Speech in the Age of Political Correctness: Removing Free Speech Zones on College Campuses to Encourage Civil Discourse*, 8 ALA. C.R. & C.L. L. REV. 279, 280–81 (2017).

10. *Id.* at 284; A. Celia Howard, *No Place for Speech Zones: How Colleges Engage in Expressive Gerrymandering*, 35 GA. ST. U. L. REV. 387, 397 (2019).

11. Emilie Kraft, *Free Speech Zones*, FIRST AMEND. ENCYCLOPEDIA (2009), <https://www.mtsu.edu/first-amendment/article/960/free-speech-zones> [<https://perma.cc/T4D6-UDA6>].

12. See Howard, *supra* note 10, at 397, 403.

13. Emerson Sykes & Vera Eidelman, *When Colleges Confine Free Speech to a ‘Zone,’ It Isn’t Free*, ACLU: NEWS & COMMENTARY (Feb. 7, 2019), <https://www.aclu.org/blog/free-speech/student-speech-and-privacy/when-colleges-confine-free-speech-zone-it-isnt-free> [<https://perma.cc/39RG-6A82>].

14. Frank D. Lo Monte, *The Legislative Response to a Perceived “Free Speech Crisis” on Campus*, 34 COMM’NS LAW. 7, 7–8 (2019) (detailing a string of events in which polarizing conservative figures had college campus visits postponed or cancelled due to the possibility of “safety concerns”).

15. *Id.*; Michael Hurley, *Indiana Passes Bill Establishing Protections for Campus Free Speech in State Law*, FIRE (Mar. 17, 2022), <https://www.thefire.org/indiana-passes-bill-establishing-protections-for-campus-free-speech-in-state-law/> [<https://perma.cc/X5BY-N7QG>]; AM. ASS’N OF UNIV. PROFESSORS, *CAMPUS FREE-SPEECH LEGISLATION: HISTORY, PROGRESS, AND PROBLEMS* 5–9 (2018), [https://www.aaup.org/file/Campus\\_Free\\_Speech\\_2018.pdf](https://www.aaup.org/file/Campus_Free_Speech_2018.pdf) [<https://perma.cc/SRA5-LYBR>].

16. Georgia General Assembly HB 1 Bill Tracking [hereinafter HB 1, Bill Tracking], <https://www.legis.ga.gov/legislation/58786> [<https://perma.cc/X8FX-H63E>].

17. Telephone Interview with Rep. Josh Bonner (R-72nd) (May 23, 2022) [hereinafter Bonner

Representative Bonner previously introduced a version of the FORUM Act during the 2019–2020 legislative session as House Bill (HB) 995, which was favorably reported by substitute by the higher education committee on March 12, 2020.<sup>18</sup> The bill, however, stalled in the Senate and never received a hearing.<sup>19</sup> In 2022, Representative Bonner reintroduced the FORUM act as HB 1.<sup>20</sup>

### *Bill Tracking of HB 1*

#### *Consideration and Passage by the House of Representatives*

Representative Josh Bonner (R-72nd) sponsored HB 1 in the Georgia House of Representatives with Representative Ginny Ehrhart (R-36th), Representative Todd Jones (R-25th), Representative Rick Williams (R-145th), Representative Joseph Gullett (R-19th), and Representative Wesley Cantrell (R-22nd) cosponsoring.<sup>21</sup> The bill was placed in the House hopper on January 28, 2021, and was first read on January 29, 2021.<sup>22</sup> After a second read on February 1, 2021, the bill was referred to the House Higher Education Committee.<sup>23</sup>

The House Higher Education Committee first addressed HB 1 on February 19, 2021.<sup>24</sup> The bill was based on the prior Committee substitute of HB 995, which was introduced but never voted on during the 2019–2020 legislative session.<sup>25</sup> During the Higher Education Committee hearing, the University System of Georgia and the ACLU

---

Interview] (on file with the Georgia State University Law Review).

18. Georgia General Assembly HB 995 Bill Tracking, <https://www.legis.ga.gov/legislation/57638> [<https://perma.cc/D9B5-T5P6>]; State of Georgia Final Composite Status Sheet, HB 995, Aug. 7, 2020.

19. Bonner Interview, *supra* note 17.

20. HB 1, Bill Tracking, *supra* note 16.

21. *Id.*

22. *Id.*; State of Georgia Final Composite Status Sheet, HB 1, May 19, 2022.

23. HB 1, Bill Tracking, *supra* note 16; State of Georgia Final Composite Status Sheet, HB 1, May 19, 2022.

24. Video Recording of House Higher Education Committee Meeting at 1 hr., 29 min., 48 sec. (Feb. 19, 2021) [hereinafter House Higher Education Committee Meeting Video 1] (remarks by Chairperson Chuck Martin (R-49th)) [https://www.youtube.com/watch?v=aoqF11d\\_xY&list=PLIgKJe7\\_xdLV\\_T8UkoYPYEmdWjOBYZDEq&index=137](https://www.youtube.com/watch?v=aoqF11d_xY&list=PLIgKJe7_xdLV_T8UkoYPYEmdWjOBYZDEq&index=137) [<https://perma.cc/8BSX-4XWK>].

25. *Id.* at 2 hr., 8 min., 44 sec. (remarks by Christopher Bruce, Political Director, ACLU of Georgia); see HB 995 (HCS), 2020 Ga. Gen. Assemb.

of Georgia noted two major concerns with the bill.<sup>26</sup> First, both entities believed that the definition of benefits, by removing universities' ability to remove funding from hate groups, would allow discrimination on campuses.<sup>27</sup> Both entities believed that this prohibition on removing association funding would conflict with federal discrimination law.<sup>28</sup> Second, the University System of Georgia feared that the bill would subject it to more state and federal suits due to a cause-of-action section included in the bill.<sup>29</sup>

In response to these concerns, Representative Bonner attempted to compromise with the University System of Georgia and the ACLU of Georgia but could not do so.<sup>30</sup> He presented an updated version of the bill in the Higher Education Committee meeting on February 24, 2021; the version removed the clauses that provided for a cause of action and a prohibition on removal of university funding.<sup>31</sup> On March 4, 2021, the Higher Education Committee presented additional changes that brought the bill more in line with the final version of HB 995.<sup>32</sup> These

---

26. House Higher Education Committee Meeting Video 1, *supra* note 24, at 1 hr., 46 min., 55 sec. (remarks by Brooke Bowen, Legal Counsel, University System of Georgia); *id.* at 2 hr., 9 min., 00 sec. (remarks by Christopher Bruce, Political Director, ACLU of Georgia).

27. House Higher Education Committee Meeting Video 1, *supra* note 24, at 1 hr., 47 min., 03 sec. (remarks by Brooke Bowen, Legal Counsel, University System of Georgia); *id.* at 2 hr., 9 min., 19 sec. (remarks by Christopher Bruce, Political Director, ACLU of Georgia); *see also* HB 1, as introduced, § 2, p. 3, ll. 55–60, 2021 Ga. Gen. Assemb. (“‘Benefit’ means any of the following conferred upon a student or student organization by a public institution of higher education: recognition; registration; the use of facilities of the public institution of higher education for purposes of meetings or other expressive activity; the use of channels of communication of the public institution of higher education; or funding sources that are otherwise available to other students or student organizations at the public institution of higher education.”).

28. House Higher Education Committee Meeting Video 1, *supra* note 24, at 1 hr., 47 min., 03 sec. (remarks by Brooke Bowen, Legal Counsel, University System of Georgia); *id.* at 2 hr., 9 min., 19 sec. (remarks by Christopher Bruce, Political Director, ACLU of Georgia).

29. House Higher Education Committee Meeting Video 1, *supra* note 24, at 1 hr., 51 min., 25 sec. (remarks by Brooke Bowen, Legal Counsel, University System of Georgia); HB 1, as introduced, § 2, p. 7, ll. 147–61, 2021 Ga. Gen. Assemb.

30. Bonner Interview, *supra* note 17. Note the ACLU of Georgia initially opposed the bill but were neutral to the Act as passed. *Id.*

31. Video Recording of House Higher Education Committee Meeting at 2 min., 00 sec., (Feb. 24, 2021) (remarks by Rep. Josh Bonner (R-72nd)) [https://www.youtube.com/watch?v=6UZ110jv\\_-s&list=PLIgKJe7\\_xdLV\\_T8UkoYPYEmdWjOBYZDEq&index=137](https://www.youtube.com/watch?v=6UZ110jv_-s&list=PLIgKJe7_xdLV_T8UkoYPYEmdWjOBYZDEq&index=137) [<https://perma.cc/TWH3-3FK2>].

32. Video Recording of House Higher Education Committee Meeting at 3 min., 35 sec., (Mar. 4, 2021) [hereinafter House Higher Education Committee Meeting Video 3] (remarks by Rep. Josh Bonner (R-72nd)) [https://www.youtube.com/watch?v=MO\\_6IUT1XAQ&list=PLIgKJe7\\_xdLV\\_T8UkoYPYEmdWjOBYZDEq&index=139](https://www.youtube.com/watch?v=MO_6IUT1XAQ&list=PLIgKJe7_xdLV_T8UkoYPYEmdWjOBYZDEq&index=139) [<https://perma.cc/T7QV-VHYA>]. *Compare* HB 1 (LC 49 0477S), 2021 Ga. Gen. Assemb., *with* HB 995 (HCS), 2020 Ga. Gen. Assemb.

changes included amending definitions, including the definition of “protected expressive activity,” to match HB 995.<sup>33</sup> The definition of “materially and substantially disrupts” notably differed from HB 995’s language and more closely resembled a definition taken from case law.<sup>34</sup> The Higher Education Committee favorably reported the bill by substitute during the same meeting.<sup>35</sup>

On March 31, 2021, the bill was withdrawn by the House and recommitted to the Higher Education Committee.<sup>36</sup> On February 10, 2022, the Committee favorably reported the bill by substitute.<sup>37</sup> This substitute differs from the prior substitute in two ways: (1) the removal of the preamble language denoting restriction on the denial of benefits and funding to student organizations, and (2) the removal of the definition of “benefits” in Sections 1 and 4.<sup>38</sup>

The House read HB 1 for a third time on March 4, 2022, and called the bill to the floor for consideration on the same day.<sup>39</sup> The House

33. House Higher Education Committee Meeting Video 3, *supra* note 32, at 3 min., 35 sec.; *Compare* HB 1, as introduced, § 2, p. 5, ll. 110–14, 2021 Ga. Gen. Assemb. (“Protected expressive activity under this article includes, but is not limited to, lawful verbal, written, audio-visual, or electronic expression by which individuals may communicate ideas to one another, including all forms of peaceful assembly, distributing literature, carrying signs, circulating petitions, demonstrations, protests, and speeches, including those by guest speakers.”), *with* HB 1 (LC 49 0477S), § 1, p. 4, ll. 78–83, 2021 Ga. Gen. Assemb. (“Protected expressive activity under this part consists of speech and other conduct protected by the First Amendment to the United States Constitution, including, but not limited to . . .” and continuing verbatim with HB 1, as introduced), *and* HB 995 (HCS), § 1, p. 4, ll. 111–15, 2020 Ga. Gen. Assemb. (mirroring the language in HB 1, as introduced).

34. House Higher Education Committee Meeting Video 3, *supra* note 32, at 4 min., 18 sec. *Compare* HB 1 (LC 49 0477S), § 1, pp. 2–3, ll. 34–48, 2021 Ga. Gen. Assemb. (“‘Materially and substantially disrupts’ means when a person intentionally engages in conduct or expressive activity which such person knew or reasonably should have known would significantly hinder another person’s or group’s expressive activity . . .”), *with* HB 1, as introduced, § 2, p. 4, ll. 67–80, 2021 Ga. Gen. Assemb. (“‘Materially and substantially disrupts’ means when a person knowingly and intentionally engages in conduct or expressive activity which significantly hinders another person’s or group’s expressive activity . . .”), *and* HB 995 (HCS), § 1, p. 3, ll. 68–81, 2020 Ga. Gen. Assemb. (mirroring the language in HB 1, as introduced).

35. House Higher Education Committee Meeting Video 3, *supra* note 32, at 1 hr., 18 min., 58 sec.; State of Georgia Final Composite Status Sheet, HB 1, May 19, 2022.

36. State of Georgia Final Composite Status Sheet, HB 1, May 19, 2022; HB 1, Bill Tracking *supra* note 16.

37. State of Georgia Final Composite Status Sheet, HB 1, May 19, 2022.

38. *Compare* HB 1 (LC 49 0477S), p. 1, ll. 8–11, 2022 Ga. Gen. Assemb., *with* HB 1 (LC 50 0337S), p. 1, ll. 7–9, 2022 Ga. Gen. Assemb. *Compare* HB 1 (LC 49 0477S) § 1, p. 2, ll. 26–31, 2022 Ga. Gen. Assemb., *with* HB 1 (LC 50 0337S) § 1, p. 2, ll. 23–25. *Compare* HB 1 (LC 49 0477S) § 4, p. 6, ll. 135–140, 2022 Ga. Gen. Assemb., *with* HB 1 (LC 50 0337S) § 4, p. 6, ll. 126–28, 2022 Ga. Gen. Assemb.

39. State of Georgia Final Composite Status Sheet, HB 1, May 19, 2022; HB 1, Bill Tracking *supra* note 16.

adopted the bill by a vote of 93 to 62.<sup>40</sup> Immediately following the vote, Representative Park Cannon (D-58th) moved for the House to reconsider the bill.<sup>41</sup> The motion to reconsider failed by a vote of 70 to 89.<sup>42</sup>

### *Consideration and Passage by the Senate*

Senator Bruce Thompson (R-14th) sponsored the bill in the Senate.<sup>43</sup> After a first read on March 9, 2022, the bill was referred to the Senate Judiciary Committee, which favorably reported it on March 25, 2022.<sup>44</sup> Second and third reads were conducted on March 28 and April 4, respectively.<sup>45</sup> On April 4, 2022, the Senate called HB 1 to the floor for consideration, and Senator Thompson introduced the bill.<sup>46</sup> After debate, the Senate passed the legislation by a vote of 33 to 18.<sup>47</sup>

### *Final Passage and the Governor's Signature*

On April 6, 2022, the Senate sent the bill to Governor Brian Kemp (R), and the Governor signed HB 1 into law as Act 818 on May 3, 2022.<sup>48</sup> The Act's effective date is July 1, 2022.<sup>49</sup>

### *The Act*

The Act amends Title 20 of the Official Code of Georgia Annotated to concretely delineate permissible limitations to free speech on campus.<sup>50</sup> The Act contains three operative sections, two of which are

---

40. Georgia House of Representatives Voting Record, HB 1, #617 (Mar. 4, 2022).

41. State of Georgia Final Composite Status Sheet, HB 1, May 19, 2022; HB 1, Bill Tracking *supra* note 16; Video Recording of House Proceedings at 56 min., 20 sec. (Mar. 4, 2022) (remarks by Rep. Park Cannon (D-58th)), <https://www.youtube.com/watch?v=IzdgL4uMTUU> [<https://perma.cc/YL9Z-EYMJ>].

42. Georgia House of Representatives Voting Record, HB 1, #621 (Mar. 8, 2022).

43. HB 1, Bill Tracking *supra* note 16.

44. *Id.*; State of Georgia Final Composite Status Sheet, HB 1, May 19, 2022.

45. State of Georgia Final Composite Status Sheet, HB 1, May 19, 2022.

46. HB 1, Bill Tracking *supra* note 16; Video Recording of Senate Proceedings at 1 hr., 22 min., 50 sec. (Apr. 4, 2022) (remarks by Sen. Bruce Thompson (R-14th)), <https://www.youtube.com/watch?v=hkyZ6q6smeg&t=5089s> [<https://perma.cc/QTV9-3PPM>].

47. Georgia Senate Voting Record, HB 1, #844 (Apr. 4, 2022).

48. State of Georgia Final Composite Status Sheet, HB 1, May 19, 2022.

49. HB 1, Bill Tracking *supra* note 16; 2022 Ga. Laws 553, § 5, at 559.

50. 2022 Ga. Laws 553.



virtually identical.<sup>51</sup> The first section repeals and replaces Code section 20-3-48, and the fourth section introduces Code section 20-4-11.1 that mirrors the language set forth in the first section.<sup>52</sup> Chapter 3 of Title 20 of the Official Code of Georgia Annotated applies to postsecondary education, and Chapter 4 of Title 20 applies to vocational, technical, and adult education.<sup>53</sup> Due to the significant overlap, these two sections (the primary sections) will be discussed concurrently.

The first subsection of these primary sections provides for definitions of terms, beginning with “campus community.”<sup>54</sup> As discussed below, the Act eliminates restrictions on “students, administrators, faculty, and staff at the public institution of higher education and their invited guests.”<sup>55</sup> This definition permits public universities to exclude individuals who are neither enrolled in nor employed by the university but are present on campus to disrupt members of the community.<sup>56</sup> The revised definition of “materially and substantially disrupts” appears next, prohibiting violence, threats of violence, and “loud or sustained noise or vocalization” that prevent someone from engaging in protected First Amendment activity.<sup>57</sup> Importantly, this definition leaves open the opportunity for impassioned debate or other speech that challenges a speaker’s assertions.<sup>58</sup>

The two primary sections differ in their definitions of “public institution of higher education.”<sup>59</sup> Section 1 of the Act defines the term as “any college or university under the management and control of the Board of Regents of the University System of Georgia,” and section 4 of the Act defines such institution as “any postsecondary technical school or other postsecondary branch of the Technical College System

---

51. 2022 Ga. Laws 553, §§ 1–2, 4, at 553–58 (note the similar language used in sections 1 and 4).

52. 2022 Ga. Laws 553, § 1, at 553–56 (codified at O.C.G.A. § 20-3-48 (2022)); 2022 Ga. Laws 553, § 4, at 556–58 (codified at § 20-4-11.1).

53. O.C.G.A. Title 20, Chapter 3 (2022); O.C.G.A. Title 20, Chapter 4 (2022).

54. §§ 20-3-48(b)(1), 20-4-11.1(a)(1).

55. 2022 Ga. Laws 553, § 1, at 554 (codified at § 20-3-48(b)(1)); 2022 Ga. Laws 553, § 4, at 556 (codified at § 20-4-11.1(a)(1)).

56. See §§ 20-3-48(c), 20-4-11.1(b).

57. §§ 20-3-48(b)(2), 20-4-11.1(a)(2).

58. See Bonner Interview, *supra* note 17.

59. Compare O.C.G.A. § 20-3-48(b)(3) (2022), with O.C.G.A. § 20-4-11.1(a)(3) (2022).

of Georgia.”<sup>60</sup> As such, both sections provide substantially similar requirements to the two relevant institutions.

The definition of “student-on-student harassment” tracks language from the Supreme Court in *Davis v. Monroe County Board of Education* and prohibits “activity directed at a student that is so severe, pervasive, and objectively offensive that a student is effectively denied equal access to educational opportunities or benefits.”<sup>61</sup> The primary sections go on to define “[s]tudent” as one enrolled in a “public institution of higher education” and “[s]tudent organization” as a group that is “officially recognized” by a “public institution of higher education.”<sup>62</sup> The final definition relates to “[u]nrestricted outdoor area[s] of campus.”<sup>63</sup> Unrestricted outdoor areas refers to areas that are “generally accessible to members of the campus community . . . and do[] not include outdoor areas when and where access to members of the campus community is lawfully restricted.”<sup>64</sup> The Georgia General Assembly intended this language to refer to footpaths, gardens, and quadrangles where members of the campus community regularly gather and one would expect a high degree of free expressive activity.<sup>65</sup>

After providing definitions, the Act’s primary sections designate all unrestricted outdoor areas as “public forums for the campus community.”<sup>66</sup> Further, this subsection prohibits the designation of “‘free speech zones’ . . . outside of which expressive activities are prohibited for the campus community.”<sup>67</sup> This subsection constitutes the main purpose of the bill and will constitute the bulk of the following analysis. The next subsection, however, permits public institutions of higher education to implement and “enforce reasonable time, place, and manner restrictions . . . narrowly tailored in service of

---

60. 2022 Ga. Laws 533, § 1, at 554 (codified at § 20-3-48(b)(3)); 2022 Ga. Laws 533, § 4, at 557 (codified at § 20-4-11.1(a)(3)).

61. §§ 20-3-48(b)(5), 20-4-11.1(a)(5); *see Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 633 (1999); *see also infra*, Part IV.

62. §§ 20-3-48(b)(4), 20-4-11.1(a)(4), 20-3-48(b)(6), 20-4-11.1(a)(6).

63. §§ 20-3-48(b)(7), 20-4-11.1(a)(7).

64. §§ 20-3-48(b)(7), 20-4-11.1(a)(7).

65. Bonner Interview, *supra* note 17.

66. 2022 Ga. Laws 533, § 1, at 554 (codified at § 20-3-48(c)); 2022 Ga. Laws 533, § 4, at 557 (codified at § 20-4-11.1(b)).

67. §§ 20-3-48(c), 20-4-11.1(b).

a significant institutional interest.”<sup>68</sup> In conformity with First Amendment principles, these restrictions must be “content- and viewpoint-neutral” in their application and definition.<sup>69</sup>

Next, the Act affirmatively protects expressive activity to the same extent as is protected by the First Amendment.<sup>70</sup> This protection includes “verbal, written, audio-visual, and electronic” media and the right of individuals to peacefully assemble and protest.<sup>71</sup> The following subsection provides that members of the campus community may exercise these rights freely, subject to lawfully imposed limitations under the FORUM Act, so long as such activity “does not materially and substantially disrupt the functioning of the public institution of higher education.”<sup>72</sup>

The next two subsections allow public institutions of higher education to “prohibit[] student-on-student harassment,” require compliance with “federal and state laws prohibiting discrimination and harassment,” and reserve specified areas of campus for a person or group to exercise expressive activity.<sup>73</sup> The FORUM Act does not replace existing law punishing hate speech.<sup>74</sup>

Finally, the last two identical subsections of the primary sections direct public institutions of higher education to make their policies readily available on websites and through orientation and training programs for students, “administrators, campus police officers, residence life officials, and professors.”<sup>75</sup>

Section 2 of the Act amends Code section 20-3-48.1 by replacing “state institutions of higher learning” with “public institutions of higher education.”<sup>76</sup> Code section 20-3-48.1 requires the board of regents to provide the Governor and Georgia General Assembly with annual reports relating to barriers or disruptions, responses, actions,

68. §§ 20-3-48(d), 20-4-11.1(c).

69. §§ 20-3-48(d), 20-4-11.1(c).

70. 2022 Ga. Laws 553, § 1, at 555 (codified at § 20-3-48(e)); 2022 Ga. Laws 553, § 4, at 557 (codified at § 20-4-11.1(d)).

71. §§ 20-3-48(e), 20-4-11.1(d).

72. §§ 20-3-48(f), 20-4-11.1(e).

73. §§ 20-3-48(g)–(h), 20-4-11.1(f)–(g).

74. Bonner Interview, *supra* note 17.

75. §§ 20-3-48(i)–(j), 20-4-11.1(h)–(i).

76. *Compare* 2022 Ga. Laws 553, § 2, at 556 (codified at § 20-3-48.1), with O.C.G.A. § 20-3-48.1 (2021).

and recommendations regarding free expression on campus.<sup>77</sup> Following the FORUM Act's passage, this language now also appears in Chapter 4, requiring the State Board of the Technical College System of Georgia to provide substantially similar annual reports.<sup>78</sup>

### *Analysis*

Georgia joins a growing list of states enacting legislation to eliminate campus free speech zones.<sup>79</sup> Like other states' laws, the FORUM Act does little more than define and codify existing First Amendment protections. As discussed below, the FORUM Act most significantly affects the classification of unrestricted outdoor areas as public forums *per se* and eliminates any chilling effect previously caused by university policies. This section will address ways the FORUM Act intersects with the First Amendment, concerns among the Act's critics that the Act will promote or permit hate speech, and opportunities students have to seek judicial relief for infringements on protected expressive activity.

### *First Amendment Precedent*

Prior to the General Assembly's consideration and passage of the FORUM Act, Supreme Court precedent tended to reach the same conclusions as the Act's sponsors.<sup>80</sup> The First Amendment's application to education dates back at least to the turbulent 1960s and

---

77. § 20-3-48.1.

78. 2022 Ga. Laws 533 § 4, at 558 (codified at § 20-4-11.1(j)).

79. ALA. CODE § 16-68-2 (2022); ARIZ. REV. STAT. ANN §§ 15-1861 to -1869 (2022); ARK. CODE ANN §§ 6-60-1001 to -1010 (2022); COLO. REV. STAT. § 23-5-144 (2022); FLA. STAT. ANN. § 1004.097 (West 2022); IOWA CODE ANN. § 261H.1 (West 2022); KY. REV. STAT. ANN. § 164.348 (West 2022); LA. STAT. ANN. §§ 17:3399.31 to 3399.37 (2022) (revised to correct technical language LA. H.B. 133 (2022)); MO. ANN. STAT. § 173.1550 (West 2022); MONT. CODE ANN. §§ 20-25-1501 to -1508 (West 2022); N.D. CENT. CODE ANN. §§ 15-10.4-01 to -02 (2022); OHIO REV. CODE ANN. §§ 3345.0211 to .0215 (West 2022); OKLA. STAT. ANN. tit. 70, § 3205.11 (West 2022); S.D. CODIFIED LAWS §§ 13-53-49 to -54 (2022); TENN. CODE ANN. §§ 49-7-2401 to -2408 (2022); TEX. EDUC. CODE ANN. § 51.9315 (West 2022); UTAH CODE ANN. §§ 53B-27-401 to -405 (West 2022); VA. CODE ANN. § 23.1-401.1 (2022); W. VA. CODE ANN. § 18B-20-2 (West 2022).

80. *See generally* Chaplinsky v. New Hampshire, 315 U.S. 568 (1942); Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969); Matal v. Tam, 137 S. Ct. 1744 (2017); Davis v. Monroe Cnty. Bd. of Educ., 526 U.S. 629 (1999).

protests against the Vietnam War.<sup>81</sup> In 1969, at the height of the Vietnam War, the Supreme Court decided *Tinker v. Des Moines Independent Community School District*.<sup>82</sup> Justice Fortas, writing for the majority, famously asserted that high school students who wore black arm bands in protest of the United States' presence in Vietnam do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."<sup>83</sup> The Court held that the students acted well within their right to exercise their freedom of expression at school so long as such action did not disrupt other students' ability to learn.<sup>84</sup>

In 1971, due in no small part to the Twenty-Sixth Amendment lowering the legal age to vote to eighteen, university campuses also experienced a profound shift.<sup>85</sup> Before this era, America viewed its colleges and universities as extensions of secondary education and its professors and administrators as stand-ins for parents as they continued to develop the minds of young men and women.<sup>86</sup> Armed with the right to vote, however, the same young men and women began to express their thoughts and ideas in public areas of campus, often staging large demonstrations and protests against government action.<sup>87</sup> These actions prompted harsh reactions from university administrations that would eventually lead to the creation of free speech zones, outside of which many public universities strictly curtailed extemporaneous free expression.<sup>88</sup>

Before long, aggrieved students claimed that their right to free expression had been violated by university policies that were overbroad or unevenly applied across viewpoints. Federal courts that addressed these claims routinely held the lines set forth by the Supreme Court in *Tinker* and *Chaplinsky v. New Hampshire*.<sup>89</sup> In *Chaplinsky*, the Court upheld a state law that prohibited certain insults directed at

---

81. Huddleston, *supra* note 9, at 283.

82. *Tinker*, 393 U.S. at 504.

83. *Id.* at 506.

84. *Id.* at 513.

85. Huddleston, *supra* note 9, at 283.

86. *Id.*

87. *Id.*

88. *Id.* at 284.

89. See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969); *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942); *Roberts v. Haragan*, 346 F. Supp. 2d 853, 872 (N.D. Tex. 2004); *Pro-Life Cougars v. Univ. of Houston*, 259 F. Supp. 2d 575, 584 (S.D. Tex. 2003).

others in public places because the state’s prohibition narrowly applied to “‘fighting’ words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.”<sup>90</sup>

The Texas district court cases of *Roberts v. Haragan* and *Pro-Life Cougars v. University of Houston* prove especially instructive here.<sup>91</sup> The Northern District of Texas held in *Roberts* that the free speech zones on Texas Tech’s campus did not violate the First Amendment, but a university policy requiring prior permission to exercise free speech on other areas of campus swept “too broadly in imposing a burden on a substantial amount of expression that does not interfere with any significant interests of the University.”<sup>92</sup> Similarly, in *Pro-Life Cougars*, the Dean of the University of Houston was authorized to act “in his sole discretion and without the aid of objective guidelines” in determining whether a student’s speech was “potentially disruptive.”<sup>93</sup>

Existing precedent already governed much of what the FORUM Act now addresses, which begs the question: How much further did the Act go in protecting campus free speech? Although some see it as little more than a “political nicety,” the Act settles a question with which the Texas district courts grappled by stating that public institutions of higher education are traditional public forums for the university community.<sup>94</sup> Because the law now affirmatively classifies the unrestricted outdoor areas as traditional public forums, courts will automatically apply heightened scrutiny to campus speech restrictions.<sup>95</sup>

Going one step further than the courts, the FORUM Act eliminates free speech zones altogether.<sup>96</sup> Logically, designating all public outdoor spaces as traditional public forums achieves the same end;

---

90. *Chaplinsky*, 315 U.S. at 572.

91. See *Roberts*, 346 F. Supp. 2d at 853; *Pro-Life Cougars*, 259 F. Supp. 2d at 575.

92. *Roberts*, 346 F. Supp. 2d at 870.

93. *Pro-Life Cougars*, 259 F. Supp. 2d at 583.

94. *Roberts*, 346 F. Supp. 2d at 858; *Pro-Life Cougars*, 259 F. Supp. 2d at 581; Interview with Prof. Anthony Kreis (Aug. 25, 2022) [hereinafter Kreis Interview] (on file with the Georgia State University Law Review); see Interview with Prof. Eric Segall (Aug. 26, 2022) (on file with the Georgia State University Law Review).

95. See O.C.G.A. §§ 20-3-48(b)(7), 20-4-11.1(a)(7) (2022).

96. *Roberts*, 346 F. Supp. 2d at 868 (“This Court finds nothing unconstitutional with regard to . . . the Designated Forum Area section of the interim policy. According to its provisions, student expression in the designated public forums is subject neither to any content restrictions nor to any prior restraints.”).

when every place on campus is a free speech zone, the sign that reads “Free Speech Zone” loses its significance.

### *Discrimination and Hate Speech*

Nothing in the FORUM Act affirmatively promotes, condones, or advocates for hate speech or discrimination against others.<sup>97</sup> Yet critics of the Act note that it removes protections enacted by university administrations to discourage speech that hurts others, whether the speaker intended the harm or not.<sup>98</sup>

In recent years, the Supreme Court has disfavored claims that speech should be prohibited because it harms or offends.<sup>99</sup> In *Matal v. Tam*, the Court held that the Patent and Trademark Office could not deny trademark protection to an Asian-American band known as “The Slants.”<sup>100</sup> The Court asserted myriad justifications for its holding, but Justice Alito penned a plurality opinion stating that “[g]iving offense is a viewpoint.”<sup>101</sup> This statement, given the significant shift in the Supreme Court since 2017, may support concerns that the FORUM Act may later be interpreted to permit or even encourage hate speech on campus. Because it is coextensive with the First Amendment, the FORUM Act permits all speech protected by the First Amendment.<sup>102</sup>

Importantly, the Georgia General Assembly responded to the university system’s concerns that the FORUM Act would lead to widespread discrimination on campus and subsequent litigation.<sup>103</sup> As a result, the Act does not feature the same language that appears in some other state laws that actively prohibit universities from punishing students for causing adverse reactions in others.<sup>104</sup> Colorado’s statute, for example, prevents institutions of higher education from limiting speech or disciplining a student based on the viewpoint expressed “or because of the reaction or opposition by listeners or observers to such

---

97. See 2022 Ga. Laws 553 (codified at §§ 20-3-48, -48.1, 20-4-11.1).

98. Bonner Interview, *supra* note 17.

99. *Matal v. Tam*, 137 S. Ct. 1744, 1751 (2017).

100. *Id.*

101. *Id.* at 1763.

102. See 2022 Ga. Laws 533 § 1, at 555 (codified at § 20-3-48(e)); 2022 Ga. Laws 533, § 4, at 557 (codified at § 20-4-11.1(d)).

103. Bonner Interview, *supra* note 17.

104. See 2022 Ga. Laws 553 (codified at §§ 20-3-48, -48.1, 20-4-11.1).

expression.”<sup>105</sup> On the contrary, the FORUM Act states that “[n]othing in this part shall be interpreted as preventing public institutions of higher education from prohibiting student-on-student harassment . . . [or] from complying with federal and state laws prohibiting discrimination and harassment.”<sup>106</sup> For the time being, at least, other state and federal laws provide for a cause of action for individuals threatened or harmed by another’s speech.<sup>107</sup>

Finally, the Act does not prevent the university system or any individual institution from implementing reasonable time, place, and manner restrictions on students’ First Amendment rights.<sup>108</sup> The Act provides for restrictions that are “narrowly tailored in service of a significant institutional interest.”<sup>109</sup> Comparatively, this language permits more leeway than Arizona’s statute, for example, which prohibits restrictions on student speech that are not “necessary to achieve a compelling governmental interest.”<sup>110</sup> Restrictions compliant with the FORUM Act would include prohibitions on speech that disrupts order in a classroom, actively threatens a person or group of persons, or takes place in the middle of the night, to name a few.<sup>111</sup> Critics maintain that these allowances do not go far enough.<sup>112</sup>

### *Direct Relief*

Absent the FORUM Act’s affirmative protections, university students are often at the mercy of administrators’ discretion.<sup>113</sup>

---

105. COLO. REV. STAT. § 23-5-144(3)(a) (2022).

106. 2022 Ga. Laws 553, § 1, at 555 (codified at § 20-3-48(g)); 2022 Ga. Laws 553, § 4, at 558 (codified at § 20-4-11.1(f)).

107. Ana Vieira Ayala, *Hate Speech Is Free Speech but Free Speech Is Not Absolute: A Look at the First Amendment and College Campuses*, 81 TEX. BAR J. 330, 330 (2018) (“The law is clear—hate speech is free speech. However, the notion that free speech is paramount to our democracy and that no speech should be regulated based on its offensiveness does not make the right to free speech absolute.”).

108. 2022 Ga. Laws 553, § 1, at 555 (codified at § 20-3-48(d)); 2022 Ga. Laws 553, § 4, at 557 (codified at § 20-4-11.1(c)).

109. 2022 Ga. Laws 553, § 1, at 555 (codified at § 20-3-48(d)); 2022 Ga. Laws 553, § 4, at 557 (codified at § 20-4-11.1(c)).

110. ARIZ. REV. STAT. ANN § 15-1864(B)(3) (2022).

111. Bonner Interview, *supra* note 17 (The Act “doesn’t allow somebody to run out onto the football field that’s locked up during the day or to stand up during a lecture hall or anything like that.”).

112. Kreis Interview, *supra* note 94.

113. *See Pro-Life Cougars v. Univ. of Houston*, 259 F. Supp. 2d 575, 583–84 (S.D. Tex. 2003) (finding that an administrator’s ability to prohibit certain speech with unlimited discretion violated First Amendment principles).



Students who disagree with university officials' decisions can and have brought their claims to federal court, as discussed above. Although the FORUM Act ultimately proceeded without a private cause of action, Representative Josh Bonner (R-73rd) asserted that such a clause would prove duplicitous.<sup>114</sup> Indeed, Code section 1983 of Title 42 of the United States Code provides ample relief for students harmed by overbroad or unevenly applied university policies that violate the First Amendment.<sup>115</sup>

There remains, however, an elephant on the quad: the mootness doctrine. Because many students who bring a claim in federal court have already graduated by the time they see the inside of a courtroom, courts must contend with the question of whether a similarly situated plaintiff states a claim on which relief can be granted.<sup>116</sup> Moreover, universities may alter restrictive policies once an action has been filed, which also bears on mootness.<sup>117</sup> *Uzuegbunam*, the Georgia Gwinnett College case, squarely confronted and dismissed the mootness problem, stating that a claim for nominal damages satisfies Article III standing.<sup>118</sup> Chief Justice Roberts issued the sole dissenting opinion which begins:

Petitioners Chike Uzuegbunam and Joseph Bradford want to challenge the constitutionality of speech restrictions at Georgia Gwinnett College. There are just a few problems: Uzuegbunam and Bradford are no longer students at the college. The challenged restrictions no longer exist. And the petitioners have not alleged actual damages. The case is therefore moot because a federal court cannot grant Uzuegbunam and Bradford “any effectual relief whatever.”<sup>119</sup>

---

114. Bonner Interview, *supra* note 17.

115. *See Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 798 (2021) (student asserted his claim for damages pursuant to 42 U.S.C. § 1983).

116. *Id.* at 802–04 (Roberts, C.J., dissenting).

117. *See id.* at 797.

118. *Id.* at 796–97.

119. *Id.* at 802–03 (Roberts, C.J., dissenting) (citation omitted).

The Chief Justice then asserts that claims for nominal damages in federal cases will require federal courts to “give advisory opinions whenever a plaintiff tacks on a request for a dollar.”<sup>120</sup>

While an in-depth discussion of mootness doctrine remains a topic for other articles, its application to the FORUM Act should give practitioners pause. Because the Georgia General Assembly enacted a compromise bill that omitted a right to a private cause of action in state court, any challenge in federal court may also fail where the plaintiff does not allege nominal damages or the university changes its policy before trial.<sup>121</sup> Thus, while the Act itself may not provide for direct relief, Supreme Court precedent directly dictates that an aggrieved student may, at the very least, win the argument.<sup>122</sup>

### *Conclusion*

In short, the FORUM Act does little more than codify popular sentiment surrounding campus free speech. While the elimination of free speech zones changes the dynamic of campus discourse, the question remains whether universities should have established those zones to begin with. As of this Article’s publication, discrimination and “giving offense” are not mere points of view but are demonstrable torts which give rise to remedies. While universities and other public institutions may have lost power, the FORUM Act now vests that power in Georgia’s students. May they wield it wisely.

*Tuscan Fairfield & Paul-Michael Haley*

---

120. *Id.* at 803.

121. *See Uzuegbunam*, 141 S. Ct. at 796.

122. *Id.* at 802.



