

SENATE BILL 318¹: EDUCATION; PUBLIC FORUMS AT PUBLIC INSTITUTIONS OF HIGHER EDUCATION;
PROVIDE

Amending by Enacting a New Code Section of O.C.G.A § 20-3-48; and Repealing All Laws in Conflict with the Same

First Signature: Senator William Ligon, Jr. (3rd)

Co-Sponsors: Senator John Albers (56th), Senator Lee Anderson (24th), Senator Ellis Black (8th), Senator Matt Brass (28th), Senator Steve Gooch (51st), Senator Marty Harbin (16th), Senator Bill Heath (31st), Senator Burt Jones (25th), Senator Butch Miller (49th), Senator Jeff Mullis (53rd), Senator Chuck Payne (54th), Senator Randy Robertson (29th), Senator Jesse Stone (23rd), Senator Bruce Thompson (14th), and Senator Lindsey Tippins (37th)

Summary: This Bill amends Title 20 of the Official Code of Georgia Annotated in order to “provide for public forums at public institutions of higher education; to prevent the creation of ‘free speech zones’ at public institutions of higher education; to require public institutions of higher education to develop materials, programs, and procedures related to expressive activity; to provide for penalties; to provide for a limitation period; to provide for a waiver of immunities; to provide for legislative findings and intent; to provide for a short title; to provide for definitions; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.”²

Status: House Committee Reported Favorably by Substitute, House Postponed.³

TEXT OF SENATE BILL 318 (COMMITTEE SUBSTITUTE LC 49 0235S)⁴

SECTION 1.

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

“20-3-48.

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

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

¹ S.B. 318 (Committee Substitute), 155th Gen. Assemb., 2d Reg. Sess. (Ga. 2020), *available at* <http://www.legis.ga.gov/Legislation/20192020/193857.pdf> (last visited Dec. 17, 2020).

² *2019-2020 Regular Session-SB 318, Education; Public Forums at Public Institutions of Higher Education; Provide*, GA. GEN. ASSEMB., <http://www.legis.ga.gov/legislation/en-US/Display/20192020/SB/318> (last visited Dec. 17, 2020) [hereinafter S.B. 318 Status Sheet].

³ *Id.*

⁴ S.B. 318.

- (1) '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.
- (2) 'Campus community' means students, administrators, faculty, and staff at the public institution of higher education and their invited guests.
- (3) 'Material and substantial disruption' means intentional conduct, including, but not limited to, protected expressive activity, that either causes or is reasonably likely to cause a significant interference with the expressive rights of another person or with the operations of the public institution of higher education. The following conduct may be deemed a material and substantial disruption: any unlawful behavior; the actual or threatened use of physical violence against another; the actual or attempted use of physical blocking intended to prevent or hinder another person from attending, observing, hearing, or otherwise participating in protected expressive activity; or the actual attempted use of loud or sustained noise or vocalizations intended to prevent or hinder another person from attending, observing, hearing, or otherwise participating in protected expressive activity. An isolated, insignificant, nonviolent, nonthreatening, and brief or fleeting interference shall not be deemed a material and substantial disruption. The mere undifferentiated fear or apprehension of interference shall not be sufficient to deem such conduct a material and substantial disruption.
- (4) 'Public institution of higher education' or 'institution' means any college or university under the management and control of the Board of Regents of the University System of Georgia.
- (5) 'Student' means any person who is enrolled on a full-time or part-time basis in a public institution of higher education.
- (6) 'Student on student harassment' means unwelcome conduct or expressive 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 provided by the public institution of higher education. This term shall not apply to or govern any employment policy of a public institution of higher education relating to harassment.
- (7) 'Student organization' means any association, club, fraternity, society, sorority, or organized group of students, whether academic, athletic, political, social, or otherwise, that is officially recognized by a public institution of higher education.
- (8) 'Unrestricted outdoor area of campus' means any outdoor area of campus that is generally accessible to members of the campus community, including, but not limited to, grassy areas, walkways, or other common areas, and does not include outdoor areas when and where access to members of the campus community is lawfully restricted.
- (c) Unrestricted outdoor areas of campuses of public institutions of higher education in this state shall be deemed public forums for the campus community, and public institutions of higher

education shall not create ‘free speech zones’ or other designated areas of campus outside of which expressive activities are prohibited for the campus community.

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

(e) 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, 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.

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

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

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

(i) A public institution of higher education shall not deny a student organization any benefit or privilege available to any other student organization, nor may it deny official recognition to a prospective student organization seeking official recognition, based on the actual or anticipated expressive activity of the organization or based on any requirement that the leaders or members of the organization affirm and adhere to the organization’s beliefs, standards of conduct, mission, or purpose; provided, however, that nothing in this part shall be interpreted as preventing public institutions of higher learning from requiring student organizations to comply with rules and policies applicable to all student organizations; provided, further, that such rules and policies do not violate the Constitutions of Georgia and the United States.

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

(k) Public institutions of higher education shall 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 professors, understand the policies, regulations, and duties of public institutions of higher education regarding expressive activity on campus consistent with this part.”

SECTION 2.

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

“20-3-48.1.

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

- (1) Any barriers to, or disruptions of, free expression within ~~state~~ public institutions of higher education;
- (2) Administrative response and discipline relating to violation of regulations and policies established pursuant to Code Section 20-3-48;
- (3) Actions taken by ~~state~~ public institutions of higher ~~learning~~ education, including difficulties, controversies, or successes, in maintaining a posture of administrative and institutional neutrality with regard to political or social issues; and
- (4) Any assessments, criticisms, commendations, or recommendations the board of regents deems appropriate to further include in the report.”

SECTION 3.

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

SECTION 4.

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

“20-4-11.1.

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

- (1) ‘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.

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

(3) 'Material and substantial disruption' means intentional conduct, including, but not limited to, protected expressive activity, that either causes or is reasonably likely to cause a significant interference with the expressive rights of another person or with the operations of the public institution of higher education. The following conduct may be deemed a material and substantial disruption: any unlawful behavior; the actual or threatened use of physical violence against another; the actual or attempted use of physical blocking intended to prevent or hinder another person from attending, observing, hearing, or otherwise participating in protected expressive activity; or the actual or attempted use of loud or sustained noise or vocalizations intended to prevent or hinder another person from attending, observing, hearing, or otherwise participating in protected expressive activity. An isolated, insignificant, nonviolent, nonthreatening, and brief or fleeting interference shall not be deemed a material and substantial disruption. The mere undifferentiated fear or apprehension of interference shall not be sufficient to deem such conduct a material and substantial disruption.

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

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

(6) 'Student on student harassment' means unwelcome conduct or expressive 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 provided by the public institution of higher education. This term shall not apply to or govern any employment policy of a public institution of higher education relating to harassment.

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

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

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

(c) Public institutions of higher education may maintain and enforce reasonable time, place, and manner restrictions for the campus community narrowly tailored in service of a significant

institutional interest only when such restrictions employ clear, published, content-neutral and viewpoint-neutral criteria, and provide for ample alternative means of expression. Any such restrictions shall allow for members of the campus community to spontaneously and contemporaneously assemble and distribute literature. Nothing in this Code section shall be interpreted as limiting the right of student expression elsewhere on campus.

(d) Protected expressive activity under this Code section consists of speech and other conduct protected by the First Amendment to the United States Constitution, including, but 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.

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

(f) Nothing in this Code section shall be interpreted as preventing public institutions of higher education from prohibiting student on student harassment as defined in this Code section; from complying with federal and state laws prohibiting discrimination and harassment; or from prohibiting, limiting, or restricting expression that is not protected under the Georgia Constitution or the First Amendment of the United States Constitution, including, but not limited to, true threats or expressive activity directed to provoke imminent lawless actions and likely to produce it.

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

(h) A public institution of higher education shall not deny a student organization any benefit or privilege available to any other student organization, nor may it deny official recognition to a prospective student organization seeking official recognition, based on the actual or anticipated expressive activity of the organization or based on any requirement that the leaders or members of the organization affirm and adhere to the organization's beliefs, standards of conduct, mission, or purpose; provided, however, that nothing in this part shall be interpreted as preventing public institutions of higher education from requiring student organizations to comply with rules and policies applicable to all student organizations; provided, further, that such rules and policies do not violate the Constitutions of Georgia and the United States.

(i) Public institutions of higher education shall make public in their handbooks, on their websites, and through their orientation programs for students the policies, regulations, and expectations of students regarding free expressive activity on campus consistent with this Code section.

(j) Public institutions of higher education shall 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 professors, understand the policies, regulations, and duties of public institutions of higher education regarding expressive activity on campus consistent with this Code section.

(k) The State Board of the Technical College System of Georgia shall make and publish an annual report and provide a copy to the Governor and each chamber of the General Assembly on July 1 of each year addressing the following from the previous calendar year:

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

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

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

(4) Any assessments, criticisms, commendations, or recommendations the State Board of the Technical College System of Georgia deems appropriate to further include in the report.”

SECTION 5.

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

SPONSOR’S RATIONALE

According to Senator William Ligon, Jr. (“Senator Ligon”), the sponsor of Senate Bill 318, one of the greatest things about this country and the State of Georgia is free speech.⁵ Senator Ligon has a history of introducing and supporting faith-based and “religious freedom” bills.⁶ Senator

⁵ GPB Lawmakers, *Legislative Day 26* (beginning at 1:38:10), YOUTUBE (Mar. 9, 2020), <https://www.youtube.com/watch?v=gGkwsVcu9w&list=PLtnbuO1Wh9L5pXzY0ZVeC-5zj5CTdfyr&index=97> [hereinafter GPB Lawmakers].

⁶ Patrick Saunders, *Georgia Senate committee passes anti-LGBTQ ‘free speech’ bill*, PROJECT Q ATLANTA (Mar. 2, 2020), <https://www.projectq.us/Georgia-Senate-committee-passes-anti-LGBTQ-free-speech-bill/> (In 2017, Senator Ligon “sponsored an anti-LGBTQ ‘religious freedom’ bill.” *Id.* Further, Ligon amended a 2017 bill allowing for “faith-based adoption agencies” to refuse to work with LGBTQ couples seeking adoption. *Id.* Moreover, in 2018, Senator Ligon once more introduced a bill that would allow “faith-based agencies to ban LGBTQ couples from adopting.” *Id.* In 2019, Senator Ligon sponsored another “religious freedom” bill, but the bill did not “gain any traction.”); See Matt Hennie, *Ga. Republicans launch ‘religious freedom’ fight*, PROJECT Q ATLANTA (Feb. 21, 2017), <https://www.projectq.us/Georgia-Republicans-open-religious-freedom-fight/> (In 2017, Senator Ligon, along with 18 co-sponsors, supported Senate Bill 233. *Id.* Senate Bill 233 sought to amend the law “to provide for the preservation of religious freedom.” *Id.* Further, the 19 co-sponsors of Senate Bill 233 sought to add language from the federal Religious Freedom Restoration Act to state law. *Id.* Moreover, in 2018, Senator Ligon proposed Senate Bill 375, which sought to protect faith-based adoption agencies from losing funding if they refused to place children with LGBT couples.); See also Matt Hennie, *Georgia lawmaker introduces LGBT adoption, foster care ban*, PROJECT Q ATLANTA (Feb. 1, 2018), <https://www.projectq.us/Georgia-lawmaker-introduces-LGBT-adoption-foster-care-ban/> (In 2019, Senator Ligon co-sponsored Senate Bill 221 which mirrored the federal version of the 1993 “religious freedom” bill); See also Patrick Saunders, *‘Shameful’ anti-LGBTQ ‘religious freedom’ bill filed in Georgia Senate*, PROJECT Q

Ligon is advocating for Senate Bill 318, also known as the FORUM Act, in an effort to overcome what supporters believe to be the “harsh or unconstitutional treatment” of students on college and university campuses.⁷ Senate Bill 318’s primary focus is on those students with conservative viewpoints and those who are members of faith-based organizations.⁸ Senator Ligon introduced Senate Bill 318 in an effort to “protect[] the constitutional right to freedom of speech, press, religion and association,” specifically on campuses of higher education within the State of Georgia.⁹

Senator Ligon states that the purpose of Senate Bill 318 is not only to protect, but to clarify the First Amendment rights of students.¹⁰ Furthermore, the Senator has expressed concern with student organizations being pressured to compromise on which students may attend their meetings.¹¹ According to the Senator, while student organization meetings are open and visitors may attend freely, the organizations are required to admit members who may oppose the overall purpose of the student organization.¹² Senator Ligon argues this requirement “is the polar opposite of what the freedom of association means.”¹³ Moreover, he believes that Senate Bill 318 is important because institutions play a role in the facilitation of ideas and the development of the society.¹⁴ Therefore, by allowing campus groups to limit their memberships, the First Amendment rights of students within those groups will be protected.¹⁵

ATLANTA (Feb. 28, 2019), <https://www.projectq.us/georgia-lawmaker-files-Shameful-anti-LGBTQ-religious-freedom-bill/> (discussing opposition to Senate Bill 221, a bill introduced by Senator Marty Harbin and co-sponsored by Senator Ligon. *Id.* Senate Bill 221 “mirrors the federal version of the ‘religious freedom’ bill signed into law in 1993.” *Id.*).

⁷ Eric Stirgus, *Bill aims to remove speech zones at Georgia public colleges*, THE ATLANTA JOURNAL CONSTITUTION (Feb. 20, 2020), <https://www.ajc.com/news/local-education/Bill-aims-remove-speech-zones-Georgia-public-colleges/6Rdvo2ceTucbB4VwaCXQOM/> (Several students presented arguments to the Georgia Senate in support of Senate Bill 318. *Id.* Specifically, Jeb Edmondson, a University of North Georgia student, stated that he believes there has “been an effort by administrations, student governments and bureaucracy on campus to suppress students’ rights to free speech[.]” *Id.* Students with conservative viewpoints or those in faith-based organizations have been forced to stifle their expression. *Id.*); See Jessica Gresko, *Supreme Court wrestles with Ga. college free-speech case*, THE FREE SPEECH CENTER: FIRST AMENDMENT NEWS AND INSIGHTS FROM MTSU (Jan. 12, 2021), <https://www.mtsu.edu/first-amendment/post/1245/Supreme-Court-wrestles-with-Ga-college-free-speech-case> (In 2016, a Georgia Gwinnett College student was handing out Christian pamphlets on campus and was instructed by a security guard that he needed a reservation to distribute the literature. *Id.* The student sued the college, who has since changed its policy to allow students to distribute literature at any time without obtaining a permit. *Id.* Currently, the only restriction set in place by the college is the need for a permit if the number of students demonstrating or distributing literature exceeds 30 individuals. *Id.*).

⁸ Stirgus, *supra* note 7.

⁹ Opinion, *LIGON: Update from the Capitol: Week 3*, ALLONGEORGIA (Feb. 5, 2020), <https://allongeorgia.com/georgia-opinions/LIGON-Update-from-the-Capitol-Week-3/> [hereinafter *LIGON*].

¹⁰ GPB Lawmakers, *supra* note 5 (beginning at 1:38:16).

¹¹ *LIGON*, *supra* note 9.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* (Moreover, in Senator Ligon’s weekly update, he has cited to the Supreme Court cases of *Healy v. James* (Healy v. James, 408 U.S. 169) and *Sweezy v. New Hampshire* (*Sweezy v. New Hampshire*, 354 U.S. 234), which he states both highlight the key roles colleges and universities play in developing the society. *Id.* He emphasizes that educational systems are expected to “nurture civic responsibility and inculcate in our students an abiding respect for American ideals, particularly those natural rights that are recognized in the First Amendment.” *Id.* Senator Ligon states that colleges and universities have a responsibility to ensure students can freely and peacefully exercise their First Amendment rights. *Id.*).

¹⁵ *Id.*

Senator Ligon asserts that Senate Bill 318 provides three specific protections to students: which students can speak, where they can speak, and to whom they can speak.¹⁶ In the Senator's opinion, Senate Bill 318 will ensure that students who are lawfully engaged in expressive activity and are not disrupting the functioning of the college or university will not be banned from engaging in such activity.¹⁷ In addition, he argues that Senate Bill 318 protects where students can speak by banning free speech zones or areas.¹⁸ Senator Ligon further explains that Senate Bill 318 clarifies the reasonable restrictions a university may place on speech that is content-neutral and not directed toward a specific group.¹⁹ Lastly, Senator Ligon believes that Senate Bill 318 protects to whom students may speak by protecting freedom of association.²⁰ This freedom of association ensures that the leaders and members of the student organizations can abide by policies consistent with the respective student organizations' beliefs.²¹ Therefore, the Senator emphasizes that implementing these three key protections will ensure that students' First Amendment rights are protected.²²

Additionally, Senator Ligon believes that Senate Bill 318 is essential because, since 2009, the State of Georgia has spent over a million dollars defending lawsuits for the infringement of First Amendment rights on college campuses.²³ Specifically, Georgia has allocated money for attorneys to defend the State against the unconstitutional infringements.²⁴ Examples of these infringements include students being forbidden from handing out fliers on their campuses and students being heckled in classrooms for expressing their rights to speak about certain topics.²⁵ Senator Ligon asserts that this money should instead be spent on educating children in the educational systems.²⁶ He further reasons that states that have enacted similar bills do not experience such violations because the law regarding First Amendment violations on their campuses is unambiguous.²⁷ Thus, Senator Ligon asserts that by enacting Senate Bill 318, the State of Georgia will experience fewer violations.²⁸

According to the Senator, despite campuses of higher education having their own non-discrimination policies, groups with religious affiliations have been threatened with revocation of their membership because they require their members to adhere to their religious viewpoints.²⁹ He explains that, based on First Amendment jurisprudence, the students should be free to associate with members who share the same values.³⁰ The states are not to discriminate against religious

¹⁶ GPB Lawmakers, *supra* note 5 (beginning at 1:38:30).

¹⁷ *Id.*

¹⁸ *Id.* (maintaining that Senate Bill 318 clarifies the published restrictions a university may impose on student speech which include reasonable time, place, and manner restrictions. *Id.*).

¹⁹ *Id.*

²⁰ GPB Lawmakers, *supra* note 5 (beginning at 1:39:24).

²¹ *Id.*

²² *Id.*

²³ *Id.* (beginning at 1:40:05).

²⁴ *Id.* See also Stirgus, *supra* note 7 (arguing that Georgia's students should not have to file lawsuits for First Amendment infringements to protect their speech; therefore, by enacting Senate Bill 318, the State of Georgia will eliminate the need to allocate money for potential infringements. *Id.*).

²⁵ Stirgus, *supra* note 7.

²⁶ GPB Lawmakers, *supra* note 5 (beginning at 1:51:55).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* (beginning at 1:42:04).

³⁰ *Id.* (asserting that the opposite of Senate Bill 318 would be for colleges and universities to implement an "all-comers" policy in which campus groups would be required to admit any student into their organizations, regardless of their beliefs. *Id.* The Senator has expressed concern with an "all-comers policy" that faith-based groups on college

organizations.³¹ The Senator asserts that faith-based groups, who he claims are in the minority, should be allowed to require their members adhere to the beliefs of the religious group.³² If not, the minority groups may be diluted in voice by being required to admit members who oppose those beliefs.³³ Lastly, Senator Ligon emphasizes that these groups should have the same opportunity to receive federal funding, just as any other group on campus, despite their religious affiliation and membership criteria.³⁴

Finally, Senate Bill 318 was amended to include Amendment 2, a provision which outlines the free speech rights of student athletes on college campuses.³⁵ The amendment clarifies and states that student athletes must comply with team policies while engaged in athletic events, but that their speech will not be restricted outside of the realm of athletic competitions.³⁶ Further, supporters of the Amendment to Senate Bill 318 believe that students engaged in team sports should be held to a different standard than those standards of individual expression, specifically arguing that allowing students to protest and exercise their First Amendment rights during sporting events takes away from the cohesiveness of the team.³⁷ Moreover, supporters of Amendment 2 are also concerned that allowing student athletes to express their individualism during athletic events will put their own needs and opinions before the team.³⁸

OPPOSITION'S RATIONALE

Senator Zahra Karinshak ("Senator Karinshak"), opposed Senate Bill 318 during the 2019-2020 Legislative Session, raising concerns that the protections imposed by Senate Bill 318 already exist under Georgia law, and therefore, Senate Bill 318 is unnecessary.³⁹ Further, Senator Karinshak stated that public colleges and universities in Georgia already have non-discrimination policies in place.⁴⁰ She raised additional concerns regarding separation of church and state, and argued that Senate Bill 318 could jeopardize federal funding for colleges.⁴¹ According to Senator Karinshak, these same organizations could meet off campus, although by doing so the

and university campuses would not be allowed to impose standards or criteria for membership, which would effectively silence the beliefs and the voice of the members of the group. *Id.*)

³¹ *Id.*

³² *Id.* (beginning at 1:43:25).

³³ *Id.*

³⁴ *Id.*

³⁵ Wes Wolfe, *Ligon's campus speech bill receives specification on athletes*, THE BRUNSWICK NEWS (Mar. 10, 2020), https://thebrunswicknews.com/news/local_news/Ligon-s-campus-speech-bill-receives-specification-on-athletes/article_bb17fdb4-12ff-562c-bba1-5c0e3c3988c4.html; See GPB Lawmakers, *supra* note 5 (beginning at 2:00:35).

³⁶ Wolfe, *supra* note 35.

³⁷ *Id.*

³⁸ *Id.*

³⁹ GPB Lawmakers, *supra* note 5 (beginning at 1:39:56); See *Board of Regents Policy Manual: Official Policies of the University System of Georgia*, 6.5 FREEDOM OF EXPRESSION (2021), <https://www.usg.edu/policymanual/section6/C2653> (detailing the University System of Georgia's policies and rights guaranteed to students by the First Amendment. *Id.* The designated policies allow students to express themselves in high-traffic public forums. *Id.* The designation of public forums may not be used as a reason to prohibit students, faculty, or staff from engaging in communication. *Id.* The University System's policies state that an institution must promote open ideas on campus and may not unduly burden free expression. *Id.*).

⁴⁰ GPB Lawmakers, *supra* note 5 (beginning at 1:41:52).

⁴¹ *Id.* (beginning at 1:42:41).

organizations would forfeit any federal funding.⁴² She believes that this legislation is an effort to force taxpayers to subsidize discrimination, which would have no limits and could lead to discrimination based on sexual orientation, religion, disabilities, or any other reason.⁴³ According to Senator Karinshak, this effort to discriminate against fellow citizens is unacceptable in 2020.⁴⁴

Senate Bill 318 provides that public institutions will be prohibited from “denying benefits to or otherwise discriminating against a student organization on the basis of the student organization's religious, political, or ideological positions.”⁴⁵ Senator Emanuel Jones (“Senator Jones”), has expressed opposition to Senate Bill 318 and raised a concern regarding the meaning of “ideological organizations.”⁴⁶ During the 2019-2020 Legislative Session, and in response to Senator Ligon’s argument that an ideological group may be closely aligned to a political organization and would likely be more issue-oriented, Senator Jones presented the Webster’s definition of ideology as: “a body of doctrine, a myth, a belief, and etc., that guides an individual, social movement, or institution, class or a large group.”⁴⁷ Senator Jones’s primary concern with the definition of ideology is the word *myth*.⁴⁸ The ideological group could be one which is not based on facts, but instead based on myths which lead to the spreading of lies by the groups, resulting in further discrimination on campuses of higher education.⁴⁹ Specifically, Senator Jones believes these ideologies could lead to discrimination and harm members of the minority and LGBTQ communities.⁵⁰

Senator Elena Parent (“Senator Parent”), also opposes Senate Bill 318. She maintains that the underlying issue is that Senate Bill 318 prohibits a university from enforcing a non-discrimination or “all-comers” policy.⁵¹ According to Senator Parent, the primary issue with prohibiting universities from enforcing an “all-comers” policy is that the campus groups would not be eligible for certain tax payer funding benefits.⁵² Senator Parent states that universities may implement policies under which they will only provide money from student activity fees to those organizations which allow all students to join.⁵³ Senator Parent emphasized that the University

⁴² *Id.*

⁴³ *Id.* (beginning at 2:03:50).

⁴⁴ *Id.*

⁴⁵ S.B. 318 (Committee Substitute), 155th Gen. Assemb., 2d Reg. Sess. (Ga. 2020), available at <http://www.legis.ga.gov/Legislation/20192020/193857.pdf> (last visited Dec. 17, 2020).

⁴⁶ GPB Lawmakers, *supra* note 5 (beginning at 1:44:27).

⁴⁷ *Id.* (beginning at 1:45:20).

⁴⁸ *Id.* (emphasis added) (Senator Jones’s primary concern with the word “myth” is that myths have the potential to be grounded in falsehoods, and therefore, myths are generally not proven fact. *Id.* Senator Ligon’s argument to this concern is that students have a right to create ideological groups based on their own facts and beliefs, even if they are perceived as false by others. *Id.*).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* (beginning at 2:05:58) (Senator Parent’s primary concern with Senate Bill 318 is that it would allow for discrimination on the basis of “religious, political or ideological” practices.); See Senator Elena Parent, *The Parent Press: Updates from the Golden Dome and Town Hall Reminder*, ELENAPARENT.COM (Mar. 2020), <https://www.elenaparent.com/parent-press/The-Parent-Press-Updates-from-the-Golden-Dome-and-Town-Hall-Reminder> (arguing that if Senate Bill 318 is passed, the legislation would prohibit universities from enforcing any policy which may forbid discrimination within student organizations on their campuses. *Id.* The Senator, believing that the university should decide what is best for its students, is concerned that Senate Bill 318 would require a university to act “without knowing the nuances in its own community.” *Id.* In Senator Parent’s opinion, institutions should be responsible for deciding what is best for their community because they know the intricacies of the community. *Id.*).

⁵² GPB Lawmakers, *supra* note 5 (beginning at 2:07:10).

⁵³ *Id.*

System of Georgia knows their students best, and therefore should be allowed to handle free speech issues on their campuses without the assistance of proposed legislation.⁵⁴

Finally, the University System of Georgia has objected to Senate Bill 318 because they believe that it is unnecessary and are concerned that its enactment could lead to discrimination.⁵⁵ According to the senior legal counsel for the University System of Georgia, Brooke Bowen, Senate Bill 318 “prevents public colleges from denying benefits or privileges to student organizations based on the ‘actual or anticipated expressive activity of the organization.’”⁵⁶ The broad language may make it difficult for colleges and universities to prohibit discrimination.⁵⁷ In fact, the University System believes that Senate Bill 318 will expose them to more litigation.⁵⁸

IMPLICATIONS IN GEORGIA

If Senate Bill 318 is enacted, all public spaces on college campuses will be free speech zones.⁵⁹ Senate Bill 318 would protect “faith-based” on-campus groups’ First Amendment rights and would bar those students who disagree with the on-campus groups and organizations from attacking those groups.⁶⁰ Additionally, students would be able to seek \$5,000 in damages from colleges and universities for infringing on their First Amendment rights.⁶¹ The passing of Senate Bill 318 would also raise concerns regarding the University System of Georgia’s role in enforcing on-campus speech.⁶² Senate Bill 318 would prevent public colleges from denying privileges to student organizations based on the “actual or anticipated expressive activity of the organization.”⁶³

LEGISLATIVE GENEALOGY

Senate Bill 318 was first introduced in the Senate Hopper on January 28, 2020.⁶⁴ Senate Bill 318 had its first Senate reading and was referred on January 29, 2020.⁶⁵ The Senate Committee favorably reported by substitute on February 28, 2020.⁶⁶ Senate Bill 318 had its second and third readings on March 2, 2020 and March 9, 2020, respectively.⁶⁷ Senate Bill 318 was passed/adopted by substitute on March 9, 2020.⁶⁸ The House had their first reading on March 10, 2020 and their

⁵⁴ *Id.* (beginning at 2:10:00).

⁵⁵ Saunders, *supra* note 6.

⁵⁶ *Id.*

⁵⁷ *Id.* (further discussing that even if changes were made to the language of Senate Bill 318, the University System of Georgia would still maintain that “the bill isn’t needed.” *Id.*).

⁵⁸ GPB Lawmakers, *supra* note 5 (beginning at 2:10:23).

⁵⁹ Sarah Fay Campbell, *Bonner, Singleton sponsor campus free speech bill*, THE NEWNAN TIMES-HERALD (Mar. 13, 2020), <https://times-herald.com/news/2020/03/Bonner-Singleton-sponsor-campus-free-speech-bill>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Saunders, *supra* note 6.

⁶³ *Id.*

⁶⁴ S.B. 318 Status Sheet, *supra* note 2.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ S.B. 318 Status Sheet, *supra* note 2.

second reading two days later, on March 12, 2020.⁶⁹ The House Committee favorably reported by substitute on June 17, 2020.⁷⁰ The house has been postponed since June 19, 2020.⁷¹

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⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*