SOUTHEASTERN LEGAL FOUNDATION
Rebuilding the American Republic®

March 4, 2020

Senator William T. Ligon, Jr.
121-H State Capitol
Atlanta, GA 30334
william@senatorligon.com

Re: Senate Bill 318: FORUM Act

Dear Senator Ligon,

Southeastern Legal Foundation (SLF), founded in 1976, is an Atlanta-based national constitutional public interest law firm advocating for free speech, individual freedom, property rights, and the rule of law. We appear before the U.S. Supreme Court more than 30 times a year in direct litigation and as amicus, including cases involving the First Amendment. And we have testified dozens of times before the Georgia General Assembly about the legal impact of proposed legislation.

Through the **1A Project**, SLF helps college students who believe that their First Amendment rights have been violated. We do this through free legal assistance, reference materials like our student guidebook, and speeches at colleges across the nation. We write to you today to discuss Senate Bill 318 (the Forming Open and Robust University Minds (FORUM) Act).

America's colleges were once a marketplace of ideas, but today's restraints often coerce students into silence. Colleges tell students that they can't say anything offensive, let alone political. They force students to stand in faraway speech zones. In some cases, they threaten official discipline against students who simply want to exercise their First Amendment rights. As a result, students stay silent, because facing discipline isn't worth the risk to them.

We are contacted by college students every week. Their first question is always, "Can you help me find my school's speech policy?" or "I don't understand what these rules mean." Students need to know their college's rules before they can be expected to follow them. But often the rules are not in writing, are not published, or are hidden within a web of policies online. When students have questions about the enforcement of school policies, they do not know where to turn because of the conflicting messages they receive from campus administrators.

Another question we receive is whether it is normal for a school to require students to reserve a space in a free speech zone just to hand out flyers or talk about current events. The answer is twofold. Unfortunately, yes, it is normal. But, on the other hand, it is often unconstitutional. Although schools understandably must consider safety, especially when members of the outside community visit campus, requiring students to plan speech activities weeks in advance is antithetical to the First Amendment. Prior notice is unrealistic because many issues worth discussing arise spontaneously. Like all citizens, students must be encouraged to gather in public

places and exchange ideas as part of the necessary civic order. For this reason, public areas on campus must be available for spontaneous discussion, tabling, and other normal student organization activities.

Requiring students to sign up in advance to use speech zones opens the door to prior restraint and discrimination. Many campus reservation forms ask students to explain the intent and purpose of their planned speech activities. When school officials have the power to grant or deny access to student groups, they inevitably examine the answers in those forms. This allows them to consider topics and viewpoints, which is content- and viewpoint-based discrimination.

We must protect students from discrimination. Colleges often limit political speech, particularly discussion about candidates or ballot initiatives. Such limits are unconstitutional and contradict the original intent of the First Amendment, which was written with political speech in mind; the Framers knew that government suppression of political criticism would pave the way for tyranny.

Finally, a major issue plagues the legal protection of college students' First Amendment rights: standing. More often than not, if a student brings a viable claim against a university, either the school changes its policy or by the time the case reaches trial, the student has graduated. As a result, courts frequently dismiss college students' lawsuits as moot.

In one of the most important free speech cases in American history, U.S. Supreme Court Justice Louis Brandeis explained: "Those who won our independence believed that the final end of the State was to make men free to develop their faculties, and that, in its government, the deliberative forces should prevail over the arbitrary . . . They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that, without free speech and assembly, discussion would be futile; that, with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty, and that this should be a fundamental principle of the American government . . . If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence." *Whitney v. California*, 274 U.S. 357 (1927) (Brandeis, J., concurring).

This rings especially true in the context of campus speech. This law can help hold Georgia's public colleges accountable. By creating an explicit cause of action, SB 318 allows courts to hear cases and to correct constitutional violations. This will allow students to defend their rights and effectuate real policy change on their campuses.

Thank you for the opportunity to share some of the issues that face Georgia's college students.

Yours in Freedom,

Kimberly

Kimberly S. Hermann
General Counsel