



# **FREE SPEECH ON CAMPUS**

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# FIRST AMENDMENT

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

# FIRST AMENDMENT

“If there is a bedrock principle underlying the First Amendment, it is that government may not prohibit the expression of an idea simply because it finds it offensive or disagreeable.”

Justice William Brennan

Texas v. Johnson, 491 U.S. 397 (1989)

WHAT IS  
SPEECH?



# WHAT IS SPEECH?

**“Speech” is defined broadly by the courts to cover symbolic speech or expressive conduct, including, but not limited to:**

Protests/Demonstrations

Clothing

Posters, Flyers

Refraining from speaking

## The First Amendment Controls

The U.S. Constitution has priority over:

Federal statutes

State Constitutions

State statutes and regulations

University policies

## Category and Location Matter

Not all speech is protected

- Obscenity
- Defamation
- Fighting Words
- Incitement
- Threats, Intimidation

What about Hate Speech?

Not all locations are treated equally

- Public sidewalks
- Classroom

# REVIEW: FIGHTING WORDS

Intimidating speech directed at a specific person in a face-to-face confrontation amounts to as “fighting words.” Persons engaging in fighting words can be sanctioned if the words, “by their very utterance inflict injury or tend to incite an immediate breach of the peace.”

**Chaplinsky v. New Hampshire**



# WHAT IS HATE SPEECH?

## **Dictionary.com:**

“speech that attacks a person or group on the basis of race, religion, gender, or sexual orientation.”

## **Uslegal.com:**

“a communication that carries no meaning other than the expression of hatred for some group, especially in circumstances in which the communication is likely to provoke violence. It is an incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, national origin, gender, religion, sexual orientation, and the like. Hate speech can be any form of expression regarded as offensive to racial, ethnic and religious groups and other discrete minorities or to women.”

# HATE SPEECH

## **When is hate speech not protected by the First Amendment?**

- When it is directed at person in a face-to-face confrontation and is meant to inflict injury or incite a breach of the peace.
- When non-verbal symbols are used to encroach upon or desecrate private property



## TRADITIONAL PUBLIC FORUM

- Areas such as public sidewalks, parks, public streets, town squares, etc.
- Speech here gets the highest level of protection – strict scrutiny:  
a content neutral restriction must (1) be narrowly tailored to a significant state interest and (2) leave open ample alternative channels for communication.

## DESIGNATED PUBLIC FORUM

- Areas that the government has purposely chosen to serve as a public forum (e.g., a public building a bulletin board).
- Can be either as open as a public forum [highest level of First Amendment scrutiny applies] or as closed as a limited public forum—limited to certain classes of speakers (e.g., students only) or certain subject matter (e.g., curriculum related to course subjects). Any regulation or limitation must be reasonable in light of the purpose served by the forum [lesser amount of First Amendment scrutiny].

## NON-PUBLIC FORUM

- Areas are open on a selective basis for individual speakers (e.g., classrooms, entry way to residence halls). These are areas that are neither traditionally used for expressive activities nor opened in a substantial way for expressive activities.
- Speech here gets the lowest level of First Amendment protection—restrictions must be reasonable and may not discriminate on basis of a speaker's viewpoints.



# SPEAKERS ON CAMPUS

Location?

Content-Neutral Time, Place & Manner Restrictions

Disruption to Campus Operations and Safety Concerns

—Heckler's veto

“unsubstantiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression”

—Tinker v. Des Moines

## REGULATING SPEECH

Any restriction on speech imposed by a governmental entity should be content neutral time, place, and manner restrictions.

### **Unconstitutional Regulations:**

- Overbroad Regulations

- Constitutionally Vague Regulations

- Content-Based Regulations

# EMPLOYEE SPEECH AND THE FIRST AMENDMENT

Speech of public employees is generally protected when they speak as a private citizen on a matter of public concern.

A public employer has the right to restrict employee speech if doing so is necessary for the efficient and effective operation of the public employer.



# GARCETTI-CONNICK-PICKERING

Was the speech made pursuant to an employee's official duties?

If yes, then no First Amendment protection

Was the speech on a matter of public concern?

If no, then no First Amendment protection.

If yes, maybe there is First Amendment protection; balance the employee's interest in commenting on matters of public concern against the government's interest in promoting efficient government services.

## WHAT IS ACADEMIC FREEDOM?

**Academic freedom is a broad doctrine giving faculty leeway in addressing academic subjects, allowing them to even challenge conventional wisdom**

**Academic freedom serves two purposes:**

- Advancing knowledge through research and creativity (and good research and creative activities need breathing space)
- Educating students to develop their own independence of mind (by exposing student to new ideas, new conceptual approaches, and new forms of argument and creativity)



## JUDICIAL RECOGNITION OF ACADEMIC FREEDOM

*Sweezy v. New Hampshire, 354 U.S. 234 (1957)*

“It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail ‘the four essential freedom’s of a university – to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.”

## KEY PRINCIPLES

- The university has a rich history of supporting academic freedom and desire to provide faculty opportunity to teach and research without undue limitations.
- Faculty have significant discretion in the teaching of course material provided the teaching methods are germane to the subject matter of the class and align with the institution's teaching standards; however, academic freedom does not extend to speech that is not germane to the class.

# UNIVERSITY SPEECH

“It is not easy to imagine how government could function if it lacked the freedom to select the messages it wishes to convey.”

Walker v. Sons of Confederate Veterans, Inc.,  
135 S. Ct. 2239

The university may choose a message that it wants to communicate to its constituents.



## KEY TIPS AND TAKEAWAYS

The First Amendment broadly protects speech, whether we like the speech or not.

When you want to silence speech, think of the First Amendment

Remember, the First Amendment encourages counter speech

Call the Office of the General Counsel

