



FREEDOM OF SPEECH PUBLIC UNIVERSITIES

The First Amendment to the United States Constitution gives every individual the right to express their personal religious beliefs through speech, writing, and visual or performing arts at their public university. As government entities, public universities cannot legally enforce policies that discriminate against students, faculty, or staff on the basis of their religious beliefs and practices.

The First Amendment declares in part that “Congress shall make no law . . . abridging the freedom of speech.”¹ The Free Speech Clause limits the government’s ability to interfere with the student right to speak their mind no matter how unpopular, controversial, or disagreeable their ideas may be to others.² And this protection extends beyond mere words to embrace a wide array of expressive activities including what students “wear, read, say, paint, perform, believe, protest, or even silently resist.”³ Speech activities include “leafleting, picketing, symbolic acts, wearing armbands, demonstrations, speeches, forums, concerts, motion pictures, stage performances, remaining silent, and so on.”⁴ Further, the First Amendment does not just protect political speech, but also “purely emotional expression, religious expression, . . . parody, and satire.”⁵

The Free Speech Clause provides such expansive protection that the courts have noted only a few narrowly drawn categories of speech that are not protected. These include “fighting words” (*i.e.*, close quarter communications that would immediately provoke a fight),⁶ “obscenity” (*i.e.*, depictions of hard core sexual acts),⁷ child pornography,⁸ and words that create a “clear and present danger” (*e.g.*, falsely shouting “Fire!” in a crowded theatre).⁹ All other speech is protected. Therefore, a public university may not prohibit speech simply because the opinions expressed are deemed to be racist, sexist, homophobic, hateful, harassing, offensive, intimidating, controversial, provocative, indecent, or because they provoke a violent response from listeners.¹⁰ Yet many public universities today still try to regulate such expression through speech codes, even though federal courts have uniformly struck down these codes as unconstitutional. Therefore, students should be wary if university policies or administrators indicate that their speech may be curtailed for one of the reasons listed

¹ U.S. Const. amend. I.

² David A. French, et al., FIRE’s Guide to Free Speech on Campus 27 (2005) [hereinafter French, Free Speech]; David A. French, FIRE’s Guide to Religious Liberty on Campus 13 (2002) [hereinafter French, Religious Liberty].

³ French, Religious Liberty, *supra* note 2, at 24.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 28.

⁷ *Id.* at 37.

⁸ *Id.* at 40.

⁹ *Schenck v. United States*, 249 U.S. 47, 52 (1919).

¹⁰ French, Free Speech, *supra* note 2, at 20, 27, 29–30, 39–40, 95–98.



above. Although university administrators cannot regulate speech solely based on its content or viewpoint, they do have some discretion to regulate the time, place, and manner of expression.¹¹ That said, students enjoy expansive speech protection in the open, public areas on campus¹² and in facilities that the university has made “generally open”¹³ to students and student groups for expressive activities. University efforts to regulate speech in these locations will almost always fail constitutional scrutiny.

What can students do if their rights are being violated?

Contact Alliance Defending Freedom using the “Request Legal Help” form at www.ADFLegal.org or by calling 1-800-835-5233. A legal representative will review the situation and advise the student of a course of action.

¹¹ *Id.* at 100–05.

¹² *Id.* at 101.

¹³ *Id.* at 103.