

# RECOGNIZING FREE SPEECH RIGHTS AND ACADEMIC FREEDOM ON CAMPUS



## 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)







THIS IS OUR COUNTRY  
NAACP

FREEDOM  
NOW

Mr President  
NO FEDERAL  
FUNDS FOR  
APARTHEID  
STATES  
NAACP

WE Will Not  
Buy From  
BUSINESSES  
WILL NOT H  
NEGRO

# 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 sidewalk
- Classroom

# 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.”

## REVIEW: FIGHTING WORDS

Intimidating speech directed at a specific person in a fact-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



# 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

# 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



# 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.



# REGULATING SPEECH

**Any restrictions 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

# CSU TIME, PLACE AND MANNER RESTRICTIONS

- CSU's Policy on Free Speech and Peaceful Assembly
- "Student Forum"
- Planned or Spontaneous Event
- Safety Concerns or Disruptions



# THE FIRST AMENDMENT CONTROLS

**The U.S. Constitution has priority over:**

**Federal statutes**

**State Constitutions**

**State statutes and regulations**

**University policy**



# 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

# DISCUSSION CASE STUDY



# FREE SPEECH AND THE ACADEMY

## Upcoming topics:

- First Amendment in the Classroom
- Principles of Academic Freedom
- Managing Conflict in the Classroom
- Employee Speech
- University Speech



# 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 students to new ideas, new conceptual approaches, and new forms of argument and creativity)



# CORE CONCEPTS - AAUP: 1940 STATEMENT OF PRINCIPLES ON ACADEMIC FREEDOM AND TENURE

- Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.
- Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.

# 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 freedoms’ 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.





# “SAFE SPACES”

## Letter from the Dean of the College at the University of Chicago

- Welcome to the University of Chicago
- Commitment to Freedom of Expression and Inquiry
- Freedom of Expression does not mean the freedom to harass and threaten others
- Commitment to Academic Freedom means we do not support “trigger warnings” or the creation of “safe spaces” where individuals can retreat from ideas and perspectives at odds with their own

# “SAFE SPACES”

## Response Letter from the College Faculty

- Committed to students and the free exchange of ideas
- Variety of opinions about safe spaces and trigger warnings
- Classrooms are a collaborative experiment and mutual respect is important
- Academic freedom in practice can be contentious, difficult, even painful
- Encourage the students to speak up “loudly and fearlessly”

# AT CSU

- **CSU Principles of Community**
- **Academic Faculty and Administrative Professional Manual**
- **Student Code of Conduct**

# UNIVERSITY SPEECH AND EMPLOYEE SPEECH

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# 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.



## 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.

# DISCUSSION CASE STUDY





## 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