

FREEDOM OF SPEECH 2017

DO AMERICANS STILL VALUE FREEDOM OF SPEECH?



NATIONAL
CONSTITUTIONAL LITERACY
CAMPAIGN

A Special Report by The Washington Times Special Sections Department and The National Constitutional Literacy Campaign

FREEDOM OF SPEECH 2017

Do Americans Still Value Freedom Of Speech?

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Why you should study the First Amendment



By Julie Silverbrook

The First Amendment to the United States Constitution reads:

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.

Passed by Congress, along with 11 other amendments, on September 25, 1789, and ratified as one of the first 10 amendments to the Constitution on December 15, 1791, it sits atop our nation's Bill of Rights.

In the Newseum's 2017 State of the First Amendment study, they found that almost one-quarter of respondents (22.5 percent) reported that they thought the First Amendment's freedoms go too far. Forty-three percent of their survey respondents felt that colleges should have the right to ban controversial speakers on college campuses.

The First Amendment is the constitutional provision that safeguards the constellation of rights essential to democratic self-government. It protects the right to the free exercise of religion and the right to avoid being coerced by government into holding beliefs on religion. It also protects the freedoms of speech and press, of assembly, and the right to petition the government for a redress of grievances.

The Framers understood the value of freedom of speech well before the passage of the First Amendment. In

1783, George Washington wrote "if Men are to be precluded from offering their sentiments on a matter, which may involve the most serious and alarming consequences, that can invite the consideration of Mankind; reason is of no use to us — the freedom of Speech may be taken away — and, dumb & silent we may be led, like sheep, to the Slaughter."

In 1722, Benjamin Franklin wrote "Without Freedom of Thought, there can be no such Thing as Wisdom; and no such Thing as publick Liberty, without Freedom of Speech[.]" Later, Thomas Jefferson would remark, "to preserve the freedom of the human mind then & freedom of the press, every spirit should be ready to devote itself to martyrdom; for as long as we may think as we will, & speak as we think, the condition of man will proceed in improvement."

Today, the legal protection offered by the First Amendment is more robust than at any other time in our nation's history. And, yet, there is a sense that amongst some segments of the population the First Amendment's fulsome protection of freedom of speech is falling out favor. In the Newseum's 2017 State of the First Amendment study, they found that almost one-quarter of respondents (22.5 percent) reported that they thought the First Amendment's freedoms go too far. Forty-three percent of their survey respondents felt that colleges should have the right to ban controversial speakers on college campuses.

According to political scientist John Sides, "Forty years ago, young college students were the most tolerant of controversial speech. That is no longer the case." Jeffrey Herbst, the outgoing CEO of the Newseum, in a recent white paper wrote that young people have carved out an alternate understanding of free expression, what he calls "the right to non-offensive speech." He goes on to explain:

"This perspective essentially carves out an exception to the right of free speech by trying to prevent expression that is seen as particularly offensive to an identifiable group, especially if that collective is defined in terms of race, ethnicity, gender, or sexual identity. The crisis is not one of the very occasional speakers thrown off campus, however regrettable that is; rather, it is a generation that increasingly censors itself and others, largely silently but sometimes through active protest."

When declines in free speech



ILLUSTRATION BY HUNTER

values are paired with a broader trend showing declining belief in democratic forms of government, this raises alarm bells for those of us dedicated to civic education and constitutional literacy. A 2015 study published by Roberto Foa and Yascha Mounk "found that citizens give less and less importance to living in a democracy. They have increasingly negative views about key democratic institutions. Most worryingly of all, they are more and more open to illiberal alternatives."

This is the third special section published by the National Constitutional Literacy Campaign. In light of recent trends and events, we wanted to use this as an opportunity to reflect on the value of freedom of speech and to confront some of the critical issues facing free speech today. The articles that follow are designed to educate, inspire, and make you think.

The National Constitutional Literacy Campaign is a coalition of broad and diverse organizations, including

nonpartisan nonprofits, for-profit entities, and groups from both the left and right who believe in the fundamental importance of constitutional literacy and civics education. If you're interested in joining the coalition or supporting our efforts, please contact Julie Silverbrook at Julie.Silverbrook@consource.org.

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Julie Silverbrook is the Executive Director of The Constitutional Sources Project (ConSource.org), a nonprofit organization devoted to increasing understanding, facilitating research, and encouraging discussion of the U.S. Constitution by connecting individuals with the documentary history of its creation, ratification, and amendment. Julie holds a J.D. from William & Mary Law School. In 2015, she and venture capitalist Chuck Stetson founded the National Constitutional Literacy Campaign.

Standing up for students' First Amendment rights

By Rep. Phil Roe and Rep. Jamie Raskin

America has the greatest universities and colleges in the world. They are a magnet for students coming from abroad and they have been an engine for technological innovation, economic growth and intellectual progress.

The key to success of American higher education has been a boundless freedom of thought and expression. In fashioning the University of Virginia, Thomas Jefferson insisted that the new university would be governed not by any religious orthodoxy but by a robust commitment to reason and free inquiry. The center of his university would be not a chapel but a library.

Since Jefferson's time, many university officials have tried to impose censorship and closed systems of political or religious correctness on their student bodies. But freedom has usually won out in the end, and the Supreme Court has strongly protected academic freedom and wide-open discourse on campus.

Yet, today, many universities and colleges are trying to confine First Amendment political discussion to so-called "free speech zones," which is pretty close to being an oxymoron. In America, the whole country is defined by the First Amendment as a free speech zone, and political expression and assembly may not be quarantined to tiny plots of land on the outskirts of campus.

But lots of colleges and universities are using "free speech zones" to crack down on unwanted speech that takes place elsewhere on campus. Students advocating animal rights, Second Amendment rights, and skepticism of spying by the National Security Agency have all been the targets of censorship over the last few years for not staying quiet about politics outside the free speech zone.

In September of last year, two students from the Kellogg Community College in Battle Creek, Michigan, were arrested for handing out copies of the Constitution while talking with their fellow students on a sidewalk. In March of this year, a student sued Los Angeles Pierce College and the Los Angeles Community



College District after he was told he could not distribute Spanish-language copies of the Constitution on campus unless he was standing in the college's



free speech zone, which comprises less than one-ten thousandth of the total area of Pierce College's 426-acre campus.

Since Jefferson's time, many university officials have tried to impose censorship and closed systems of political or religious correctness on their student bodies. But freedom has usually won out in the end, and the Supreme Court has strongly protected academic freedom and wide-open discourse on campus.

Other colleges and universities have used aggressive enforcement of overly broad and vague "speech codes" to police and punish student expression. Whether these codes have been used against anti-war protesters, anti-apartheid marchers or anti-PC speakers, they are a menace to democratic freedom. To be sure, students may not commit violence against people or property and they may not threaten the safety and security of other students, but if they are on the campus green, they have a right to engage in speech that offends other people.

These are times of great division and danger. One thing all of us can and must hang on to — conservatives and liberals alike — is the Constitution and its founding values. That's why we've co-sponsored a bipartisan resolution reaffirming students' First Amendment rights on college campuses. We believe that institutions of higher education should facilitate respectful debate, freedom of expression and open exchange of ideas.

When white supremacists and neo-Nazi skinheads descended on Jefferson's beloved University of Virginia last month, they targeted the Founder who embodied our national commitment to equality, freedom and progress through scientific reason and debate.

It was stirring indeed to see a few dozen Virginia students guard the statue of Jefferson against the racist mob that came to trample these values. We hope university administrators will stand with them to protect freedom on campus. And we urge our colleagues on both sides of the aisle to join us in standing up for students' First Amendment rights and co-sponsoring this resolution.

Rep. Phil Roe, M.D., Tennessee Republican, is Chairman of the House Committee on Veterans' Affairs. He also serves on the House Education and Workforce Committee. Rep. Jamie Raskin, Maryland Democrat, is the Vice Ranking Member of the House Judiciary Committee. He has been a constitutional law professor for more than 25 years and is the best-selling author of "We the Students: Supreme Court Cases for and About Students."

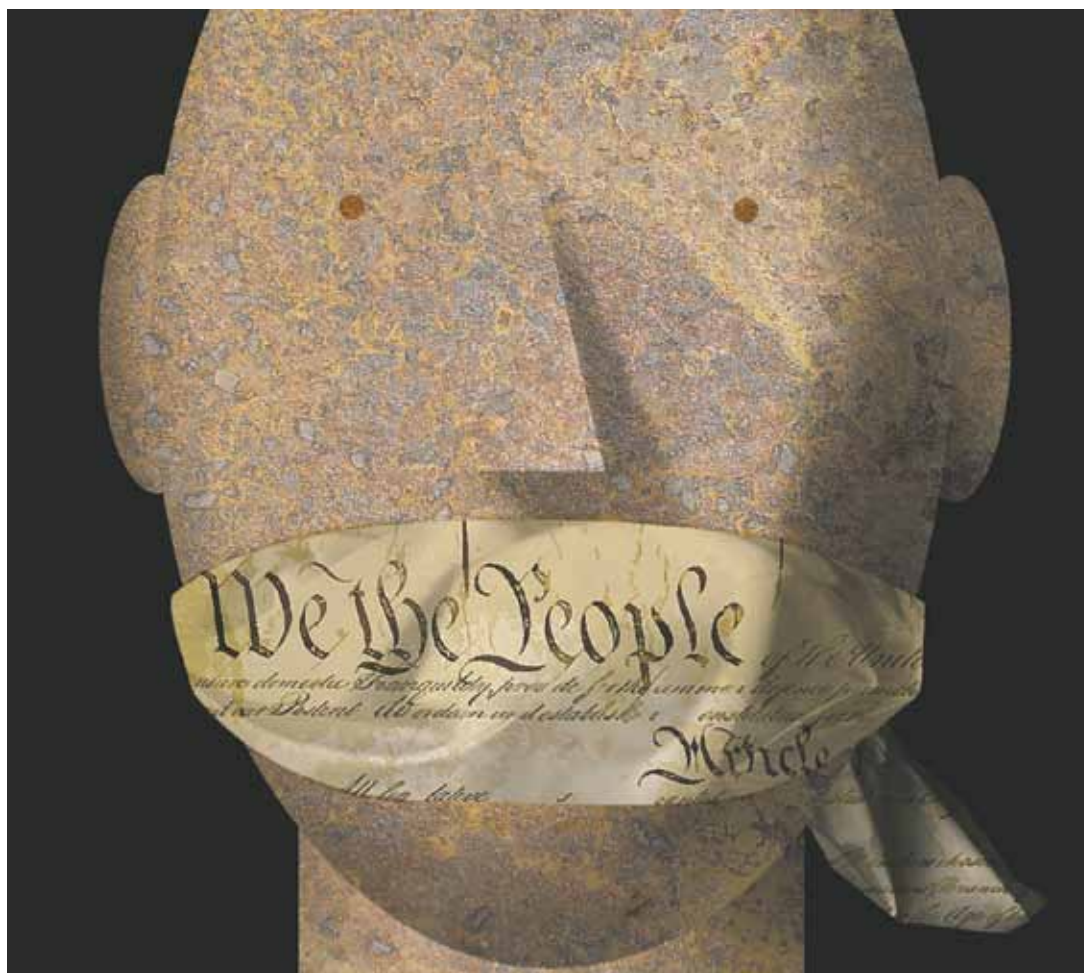


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Free speech is protected — and public reason will prevail



By Jeffrey Rosen

On this year's Sept. 17 Constitution Day, the U.S. Constitution marked its 230th anniversary at a time of intense debate about the meaning of the First Amendment. On campuses and in cities across America, online and in the workplace, there are calls to balance the First Amendment's protections for hate speech against other values, such as dignity or avoiding emotional injury.

In the courts, however, there is no similar debate about the meaning of the First Amendment. On all sides of the spectrum, justices and judges agree that hate speech must be protected in America unless it is intended to and likely to cause imminent violence.

If America is to remain free, it is essential for us to protect even hateful speech from those who would censor or silence it. This freedom — with the other First Amendment freedoms of conscience and assembly — is part of the bedrock of American liberty.

As Constitution Day reminds us, we should give thanks for this inspiring bipartisan constitutional consensus, which distinguishes the United States from the rest of the world as the country that protects free speech more vigorously than any other. And we should remember the constitutional sources of this inspiring American free speech tradition, so that we can remember why giants of the American Constitutional tradition — from Madison and Jefferson to the great Supreme Court Justices Louis Brandeis and Oliver Wendell Holmes — believed that it is crucial in a democracy for courts to protect what Holmes called “freedom for the thought we hate” in order to ensure that citizens can develop their faculties of reason and govern themselves.

Holmes and Brandeis changed their

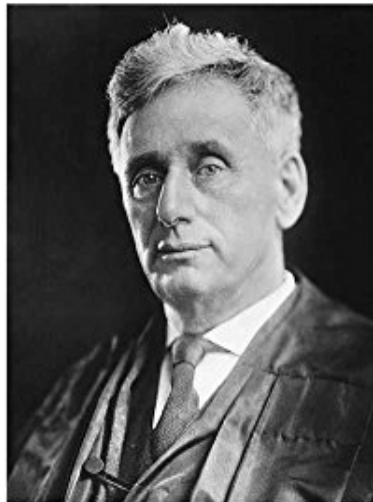
minds about whether the First Amendment should protect hate speech. Before 1919, they had joined Supreme Court opinions upholding the convictions under the Federal Espionage Act of 1917 of Socialists such as Eugene V. Debs, who criticized World War I and called on his fellow citizens to resist the draft. The Court held that any speech that might have a “bad tendency” to lead to unlawful action in the distant future could be suppressed.

Over the summer of 1919, Holmes

In his extraordinary opinion in *Whitney*, Brandeis channeled Jefferson's faith in reason to stipulate that that speech could be restricted only if it threatened to result in imminent and serious criminal harms, and only if there was no time for informed deliberation to defuse the danger. Brandeis' opinion in *Whitney* represents the most important defense of freedom of thought and opinion since Jefferson's First Inaugural, on which it relies. Here are Brandeis' inspiring words:

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.”

In other words, Brandeis' faith in deliberation was based on his conviction that if people were given time and opportunity to engage in “public discussion,” then “the power of reason” would prevail. In his *Whitney* concurrence, Brandeis argues that free speech is necessary both for “the discovery and spread of political truth” and for men and women to “develop their faculties.” There is no greater statement of faith in America of the value of counter-speech as the best response to hate speech and the ability of “the



LOUIS D. BRANDEIS

AMERICAN PROPHET

Jeffrey Rosen

UNABRIDGED | READ BY TRABER BURNS

There are also serious questions about whether, in the age of Twitter mobs and Facebook, the speed of public discourse has accelerated so quickly that the time for “full discussion” Brandeis thought was necessary for falsehoods to be exposed may be in short supply. In an age of “fake news,” citizens' faith in the ability of reason to distinguish between truth and falsehood is itself under siege.

processes of education” to expose falsehoods, as long as there is time for “full discussion.”

In 1969, Brandeis' opinion in *Whitney* was adopted by the Supreme Court as the law of the land in the *Brandenburg v. Ohio*, which held that even a Ku Klux Klan leader in full regalia could not be prosecuted for the hate speech at Klan rally: “If our President, our Congress, our Supreme Court, continues to suppress the white, Caucasian race, it's possible that there might have to be some revengeance taken.” Because the speech was not intended to and likely to cause imminent violence, the Court properly held, it was protected under the First Amendment.

There are vexing questions today about the precise point when hate

and Brandeis changed their mind and came to believe that only speech intended to and likely to cause imminent violence could be suppressed. The greatest statement of their new libertarian faith came in Brandeis' concurring opinion in *Whitney v. California*, decided in 1927. The previous summer, Brandeis had read Jefferson's 1801 letter to the future U.S. senator, Elijah Boardman: “We have nothing to fear from the demoralizing reasonings of some, if others are left free to demonstrate their errors and especially when the law stands ready to punish the first criminal act produced by the false reasonings.”

“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 valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. 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

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PHOTO CREDIT: MARIA BRYK/NEWSEUM

Free speech protection – how far, how much, for whom?

By Lata Nott

One of the most common misconceptions about the First Amendment is that it applies to the actions of private individuals and businesses.

The First Amendment exists to protect you from government censorship and/or punishment of your speech.

If a private school suspends you for criticizing one of its policies, or a private business fires you for expressing your political views, or a private media company refuses to publish your opinion, the First Amendment will not help you.

Or, to draw on some recent events for examples: If Google fires you for writing a controversial memo criticizing its diversity programs, or a hot dog chain encourages you to resign after learning that you attended a white supremacist rally, or GoDaddy refuses to provide its web-hosting services to your neo-Nazi website, the First Amendment will not help you.

Depending on your specific circumstances, there may be some other area of the law where you can find recourse, like contract law or labor law. You just won't find it in the Constitution.

Alright. You get it. Private individuals and businesses can censor or punish speech all they want, and it's not unconstitutional.

But is it right?

There's no easy answer here. (Which is weird: I always imagined that any moral argument involving Nazis would have an easy answer. And be hypothetical.)

It might be legal to fire someone for writing and sharing an opinion, revealing their political beliefs, or exercising their freedom of assembly, but it's hard to deny that these (incredibly public) terminations will have a chilling effect on people's willingness to express controversial thoughts.

A common response here is that freedom of speech doesn't mean freedom from consequences. True, but something about this argument has always made me uneasy.

Yes, as private actors, we have the ability to hold people accountable for what they say, and we do it all the time, with boycotts and Twitter campaigns and the like. We can even make a credible argument that imposing consequences on



“If we continue to advance an agenda that privileges our particular worldview over universal free speech, it won't be long before our own tactics are turned on us as a cudgel. (The last words you may hear as the fascists pummel you to death are: “freedom of speech doesn't mean that speech has no consequences.”)

literal Nazis is the moral thing to do, but let's recognize it for what it is: punishing someone for expressing thoughts that we don't like, in the hopes that they will eventually stop expressing those thoughts.

And while I think I could live peacefully in a world where no one ever “sieg heiled” again, using this tactic to get there is discomfiting, for reasons that Eli Massey aptly summed up in his article, “What Does Free Speech Require?”:

“If we continue to advance an agenda that privileges our particular worldview over universal free speech, it won't be long before our own tactics are turned on us as a cudgel. (The last words you may hear as the fascists pummel you to death are: “freedom of speech doesn't mean that speech has no consequences.”)

Blackballing people for their beliefs can turn ugly quickly (just Google “McCarthyism.”) On the other hand, what's the alternative? Would it be less ugly to require employers to retain employees whose beliefs alienate customers and co-workers? Or to force a business to provide its services to a client it finds repugnant? Does it make a difference if you're the only business that offers this particular service? Or if all the businesses that offer this service refuse to provide it?

I cheered when GoDaddy booted the Daily Stormer website from its hosting

service; I was amused when it was turned away by several other companies. But when they were ousted by a shady-sounding Russian domain, I started to get philosophical. What happens when an idea can't find a platform? Does it really cease to exist?

Now the site lives on the Dark Web, hidden from ordinary search engines

but still present and available for anyone who really wants to find it, and it's hard to remain amused by such an ominous and obvious metaphor.

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Lata Nott is Executive Director of the First Amendment Center of the Newseum Institute.

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speech in public can be suppressed as intended to and likely to cause imminent violence. The American Civil Liberties Union, for example, has decided not to defend members of the “alt-right” and “Antifa Left” who carry firearms to protests because imminent violence is both intended and likely to result.

There are also serious questions about whether, in the age of Twitter mobs and Facebook, the speed of public discourse has accelerated so quickly that the time for “full discussion” Brandeis thought was necessary for falsehoods to be exposed may be in short supply. In an age of “fake news,” citizens' faith in the ability of reason to

distinguish between truth and falsehood is itself under siege.

That's all the more reason for reaffirming and celebrating the core meaning of the First Amendment recognized by Brandeis and endorsed by the Supreme Court — that the best response to hate speech is counter-speech, that citizens need to take the time to deliberate rather than try to silence their opponents, and that public reason in America will ultimately prevail. Jefferson and Brandeis expected no less.

.....
Jeffrey Rosen is President of the National Constitution Center, a nonpartisan nonprofit in Philadelphia, and a law professor at George Washington University. He is the author of “Louis D. Brandeis: American Prophet.”

Welcome to campus! Here's your speech code



IMAGE COURTESY OF FIRE

By Zach Greenberg

As the fall semester gets into full swing, college students are busy with clubs, sports and working towards that elusive 4.0 grade point average. And after a tumultuous presidential election, followed by a turbulent start to the new presidency, many students will continue to speak out, protest and agitate for the causes that drive them. While some universities welcome such political activism, students should be aware that many others have speech codes that restrict their expression and stifle political advocacy.

At the Foundation for Individual Rights in Education (FIRE), where I work, we've been tracking campus speech codes for over a decade. As a result, we've seen our fair share of ridiculous restrictions on student expression — from “inappropriately directed laughter” to “harsh text messages or emails.” But some speech codes are more common than others, and it would behoove students, especially those seeking to protest on campus, to familiarize themselves with these policies as they engage in activism this semester.

1) Overbroad harassment policies

Many colleges utilize policies that define speech protected by the First Amendment as punishable “harassment,” rendering them unconstitutionally overbroad. The Supreme Court has held that student-on-student harassment in the educational setting is conduct that is “so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims’ educational experience, that the victim-students are effectively denied equal access to an institution’s resources and opportunities.” This definition balances a university’s dual obligations to uphold freedom of

speech and address harassing conduct.

However, numerous colleges maintain overbroad harassment policies that are a far cry from this speech-protective standard. For example, Syracuse University’s harassment policy bans “intentional, unwanted and unwelcome words or conduct directed at a specific person that annoys [or] alarms . . . that person.” Also, a large number of educational institutions define sexual harassment as any “unwelcome conduct of a sexual nature,” including “verbal” conduct (i.e., speech). Policies employing this definition subject a wide range of expression protected by the First Amendment (or by private institutions’ promises of First Amendment-like speech protection) to investigation and punishment.

Considering that offensive and annoying speech is generally protected by the First Amendment, these harassment policies are egregious infringements on student free speech. It would behoove students to learn whether their schools maintain such policies as they plan their protests this fall semester.

universities had such policies. Now, due to a combination of litigation and advocacy, only around one in 10 colleges limit student expression in this manner.

Additionally, several states have taken a stand against free speech zones by abolishing them at their public colleges and universities. Students seeking to protest on campus should determine whether they will be subject to a free speech zone policy as they plan their event.

3) Civility codes, bullying policies and other broadly worded speech codes

Policies that prohibit “hate speech,” “bullying,” or “bias incidents,” or that mandate tolerance, civility and respect, encompass a substantial amount of protected speech. These policies utilize broad language by, for example, prohibiting speech that is “offensive” or that “demeans or degrades others.” By utilizing such vague terms to describe limits on speech, these policies give university administrators almost complete discretion to determine what

that fully protect student free speech. If you are a student reading this, the odds are that your college maintains restrictive speech codes.

But fear not! FIRE not only has a database allowing anyone to find speech codes at over 400 institutions of higher education, we also have guides about speech codes and about campus free speech issues more generally. Additionally, students who run afoul of these regulations while protesting on campus are encouraged to contact FIRE.

The work we do, from litigation and public awareness campaigns to policy reform and lobbying, would not be nearly as successful without an active, engaged and informed student body. It is the students against whom these speech codes are enforced and, ultimately, it must be the students who drive the fight against them.

We are continually inspired by the great work students have done to protect free speech, and we stand ready to help in any way that we can. Above all, we implore students to, at the very least, check out what policies they



IMAGE COURTESY OF FIRE

2) Free speech zones

Another prevalent type of speech code limits not what students may say, but where they may say it. Many universities limit student protests and pamphleting to tiny, cordoned off, and sometimes swampy areas of campus called “free speech zones.”

FIRE has been tracking which colleges use free speech zones to cabin speech on their campuses and, in 2013, roughly one in six of America’s top 400

speech can result in discipline. Students should be aware of such policies and how they are enforced on their campuses.

According to FIRE’s “Spotlight on Speech Codes” report, the vast majority of universities have at least one policy that could be interpreted to suppress protected speech, while a large minority have policies that clearly and substantially restrict free speech. Only 36 institutions have written policies

are studying under. FIRE has always believed that, when it comes to defending liberty on campus, forewarned is forearmed.

Zach Greenberg is a Robert H. Jackson Legal Fellow at the Foundation for Individual Rights in Education and a graduate of the Syracuse University College of Law.

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Five things your campus administrators should know about speakers and protests



By Adam Goldstein

From Berkeley to Charlottesville, college campuses have become a flashpoint for protests on a scale we have not seen in decades. At the Foundation for Individual Rights in Education (FIRE), where I work, our mission is to protect the rights of students and faculty on these campuses. We receive numerous complaints every year about how campuses handle controversial speakers as well as students' responses to those speakers.

Some campuses have handled these situations better than others. From those experiences, here are five lessons that can help campus administrators make decisions when faced with a controversial event.

1. Have a lawful policy in place before there is an event request.

Just as "hard cases make bad law," ugly permit requests make bad policies. The risk of acting unconstitutionally or restrictively in the face of a request from a "hate group" is exponentially higher if your employees are making up the rules as they go along. It is much safer, legally speaking, to have a well-written policy and follow it.

As part of our work at FIRE, we review the speech-related policies of colleges and maintain a database with a simple, traffic-light-inspired red/yellow/green rating system. A list of schools with "green light," constitutionally sound policies is available on FIRE's website. One thing you will notice is that these policies don't have to be long or go into a great level of detail; they need only set forth the guiding principles for the decision-making process.

2. Accept that security will cost money and that is part of protecting civil rights. Civil rights, including free speech, are expenditures. It costs the government money to provide lawyers for the accused, to hold elections, and to

provide a tax exemption for religious organizations. We choose to provide these things, however, because we prioritize liberty over institutional efficiency. If you are an institution that purports to protect civil rights (public or private), that protection is occasionally going to come with a price tag.

Perhaps the biggest difference between colleges that successfully host controversial speakers and those that become cautionary headlines is their willingness to invest in adequate policing. If, for whatever reason, an event on your campus is likely to bring thousands of participants and protesters, it should be policed at a level at least equal to a sporting event that brings thousands of fans. To throw up your hands and leave safety up to the protestors is a plan calculated to turn your institution into cable news fodder for the next several months, and worse, suggests an indifference to the well-being of your

community.

4. Before making or enforcing any restriction on protests at a public institution, ensure the rule is viewpoint-neutral, necessary for a compelling reason, and leaves open alternative methods of engaging in the same expression. This is a layman's restatement of the test courts use to weigh whether an institution's speech restriction is a valid regulation of the "time, place, and manner" of speech. For example, if there's a particularly narrow street that students must use to walk between school buildings, a college would likely be justified in requiring protesters to stand on an adjacent street that is larger or less well-traveled.

But to be permissible, these rules must be applied equally to all requesters, regardless of viewpoint. An institution cannot have one set of rules for a Mardi Gras parade and another set for white

physical disruption, that may justify postponing an event until those risks can be addressed. The simplest example might be a speaking engagement that seemed noncontroversial at first, but became controversial shortly before it was held, leading to some verifiable threats of violence that law enforcement authorities find to be credible. If these threats are far more likely than not to take place (based on some evidence the university can publicly share), the institution may be justified in canceling the immediate event.

The important thing to understand is that an institution compelled to take this stand will avoid much of the potential backlash by making clear it intends to ensure the event can take place at a future date and by starting the planning process to hold that event safely in the future. Your institution's commitment to free speech and academic freedom is not something it should surrender to



community.

3. Remember: organized protests are a form of speech, and speech is not violence.

It is popular in some academic circles to rationalize that the suppression of protest on campus is justifiable because some protests include hateful ideas, and hateful ideas inflict a "form of violence" on the groups they target. This statement is wrong, has no basis in law, and cannot immunize an institution from a legal challenge.

The entire model of Western democracy hinges on the idea that violence is unnecessary because speech alone will determine which ideas are worth preserving. Speech only loses First Amendment protection when it rises to the level of one of the few, narrowly

nationalists, for example.

The rules must also be necessary to achieve some compelling government interest and leave open some alternative that permits the protesters to achieve the goal of the protest. And remember, these restrictions only permit the institution to shift the protest enough to achieve the government's interest, and then only if the protesters' goals are still met. If you want to move the protest to a street so far from the event that the protesters can't be seen and heard by attendees, your restriction is unconstitutional, because it frustrates the entire purpose of the protest.

5. If your institution has specific, identifiable evidence that an event is going to create a substantial risk of a

any heckler's veto or threat of disruption. Instead, a university should ideally identify the risks, plan to mitigate them, and move forward.

Remember, tranquility is not the natural state of education. Students are constantly being confronted with new ideas while bringing their own to the table. Sometimes, that clash takes place with signs and chants. It is not meant to be comfortable; it is only meant to be preferable to the alternatives, none of which look like democracy.

Adam Goldstein is a Robert H. Jackson Legal Fellow at the Foundation for Individual Rights in Education and a co-author of the textbook *Law of the Student Press*.

Let's resolve: No 'free speech shortcuts' through the First Amendment



By Gene Policinski

No matter what you might believe ails our national approach to free speech today, let's resolve to not try to take shortcuts through the First Amendment to fix the problems.

Let's resolve not to try to silence would-be Nazis and goofy white supremacists by enacting laws that close down their ability to speak freely to the other 99.99 percent of the nation. The more we see of their intellectually bankrupt ideas, the better to see how marginal and unpatriotic they are.

Let's promise that we will not support efforts to throw Donald Trump off Twitter in the name of good government or good taste or good whatever. Rarely have American voters had more insight, unfiltered and unedited, into the mind and motivations of our president — be that reassuring or terrifying.

Let's not just tolerate, but invite, controversial speakers to our public college campuses — and when they arrive and speak, let's challenge them with questions rather than violent disruption. Hearing someone is not endorsement of their views, and getting first-hand exposure to ideas you may not like will just better prepare you to offer a counterinterview.

Let's not buy into a contemporary European concept that banning negative words or images or marches will somehow eliminate the ideas behind them. The American experience proves otherwise: Groups like the Ku Klux Klan embrace secrecy because it allows them to exaggerate their size and disguise their real motives.

While we're resolving things involving the five freedoms of the First Amendment, let's reject the lazy idea that there is "The Media," the verbal equivalent of the Loch Ness Monster. It doesn't exist. Doesn't now, never did, and unless we as a nation decide to void

out the "free press" part of the First Amendment, never will.

"The Media" is just a political piñata that slipped into the nation's vocabulary about the time we realized referring to "the press" no longer was appropriate. The reality is we all get the news — or can, with very little effort — from a seething, uncoordinated, competitive, local-regional-national collection of news operations ranging from small town weeklies and individual blogs to major city newspapers, broadcasting and cable news operations.

There's just too much variety — in focus, reach, subject matter and quality — for any one collective term to apply. Is your neighborhood newsletter part of a sinister national cabal to hoodwink

the nation into becoming a Republican or Democrat? Do Rush Limbaugh, Sean Hannity, Rachel Maddow and those folks over at CNN all have a secret handshake and magic decoder ring as required accessories when they meet secretly each morning over breakfast to plot nation's brainwashing?

Do you doubt the accuracy of what you just saw or read or heard in a news report — which polls say are many of us, much of the time? Fine. Use your

freedoms of speech and press to complain, but please be specific — which journalist, when on what. Whenever possible, give the rest of us the benefit of your correct information, including its source. Frankly, anything less is just more noise that "the Media sky is falling" — and just as meaningful.

Let's not gut First Amendment-related court rulings, statutes and guidelines developed over several centuries that protect our right to free expression simply as a means of gaining political advantage, retaliation or social shaping — even with the best of intentions.

Laws on certain kinds of speech — defamation, bullying and "true threats" for example — likely do need some updating to deal with the speed and

critical opinions? Nobody likes a bully — but wouldn't we be better off to focus on preventing the behavior through education and counseling than trying to set up a new speech framework that can only punish the violator after the human damage is done?

And let's not mistake the spate of billionaire-funded lawsuits against news and entertainment outlets as anything more than heavy-handed attempts to chill speech (reporting) on controversial subjects or people. We cannot have robust public debate if we abandon an underlying idea set out in the 1964 Supreme Court decision in *Times v. Sullivan* that public figures have the means and ability to protect themselves in the public square that do not otherwise



ILLUSTRATION BY GREG GROESCH

Frankly, we'll never have — and should not have — a system of censors or "truth verifiers" to screen out things like the fake Houston flooding "shark in the streets" images and their ilk. We just need to keep a healthy skepticism, which will be helped by the growing, fact-checking online industry.

pervasive nature of our relatively young, 24/7-interconnected social media world. But let's take our time to consider less obvious and certainly potentially negative effects of making it easier to successfully pursue a defamation complaint.

Do we want to lose the useful information in restaurant reviews, or water down those web sites devoted to rating home-repair operations because operators have an increased fear of legal action over accurate information or

reside with ordinary folks.

Let's promise ourselves that we will keep in mind the hard-won view about free speech that our nation has developed, expressed recently by U.S. Supreme Court Justice Anthony M. Kennedy in a concurring opinion that permits a Seattle rock band to register its name for trademark protection, even though some find "The Slants" an

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offensive term.

“A law that can be directed against speech found offensive to some portion of the public can be turned against minority and dissenting views to the detriment of all...,” Justice Kennedy wrote. “The First Amendment does not entrust that power to the government’s benevolence. Instead, our reliance must be on the substantial safeguards of free and open discussion in a democratic society.”

Granted, we’ve decided as a nation that some speech does not deserve protection: blackmail, child pornography and attempts to immediately incite violence among them. But we must renew our commitment today to narrowly defining in law what is not protected, even if it means standing in defense of the rights of those who would provoke, challenge or even disgust most of us.

Finally, let’s celebrate that the nation’s Founders hard-wired into our Constitution and Bill of Rights a process of self-correction through free expression. They had experience with a simpler system — a despot, even a benevolent one, making social decisions for the rest.

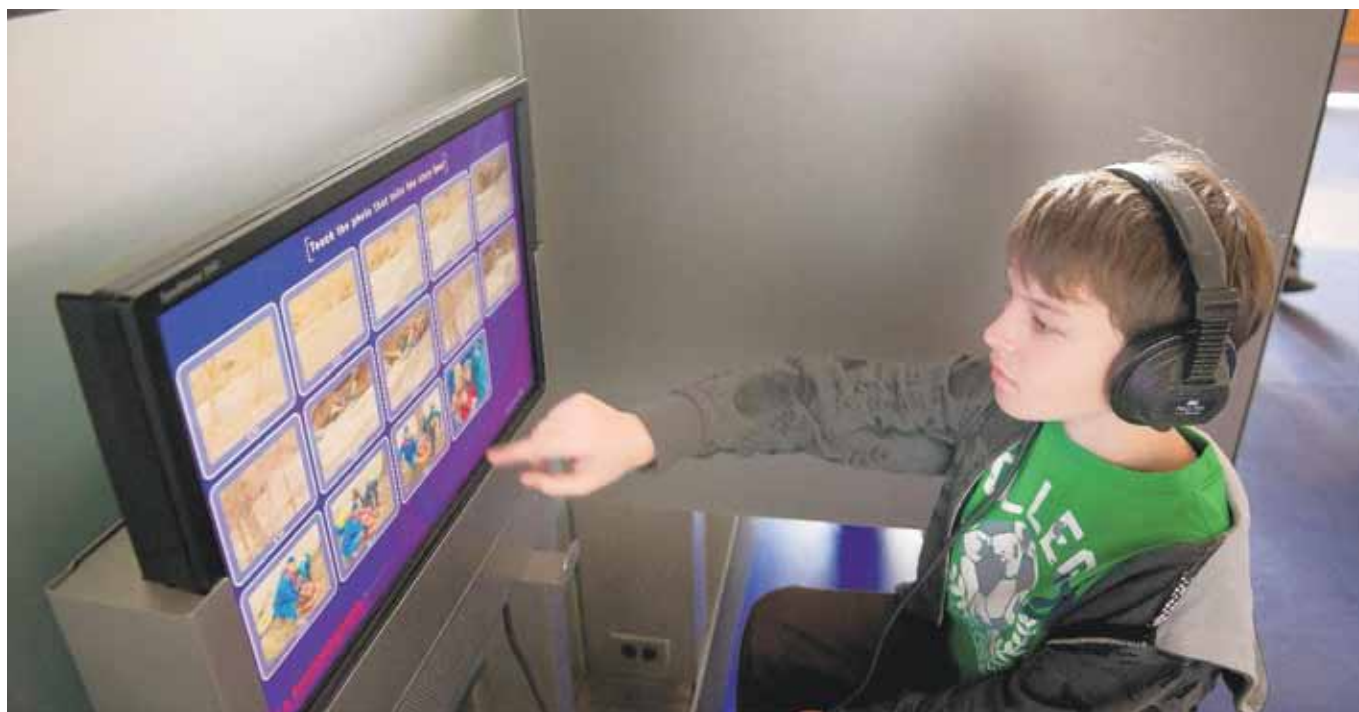
Even though many of us today find fault with tweets, posted comments and some or many of today’s news outlets, let’s not lose sight that we get to talk among ourselves unimpeded by government through that system of wildly divergent, independent set of news gath-



News Corporation News History Gallery at the Newseum.

CREDIT: SAM KITTNER/NEWSEUM

Let’s promise that we will not support efforts to throw Donald Trump off Twitter in the name of good government or good taste or good whatever. Rarely have American voters had more insight, unfiltered and unedited, into the mind and motivations of our president – be that reassuring or terrifying.



NBC News Interactive Newsroom at the Newseum.

CREDIT: SAM KITTNER/NEWSEUM

ers and providers, and now through social media and online offerings.

The challenges to journalists today are more pervasive and more threatening than at any time in a lifetime and more: Daily chants of “Fake News” from politicians who know better can, over

time, inure some portion of the public by simple repetition to the good work being done by journalists. Deliberately fake news reports are amplified worldwide and near-instantly by social media networks. News companies have not yet found, despite two decades of effort, a

substitute for a failed system of funding.

But while the system is stressed, there are positive points as well: A renewed public debate over accuracy and fairness has produced a strong round of self-examination among journalists, the rise of the fact-checking news industry,

and circulation increases and ratings bumps. Claims of “fake news” have finally pushed the social media giants to confront not just that issue, but also their growing role as news providers.

There’s also a renewed awareness among news consumers of their need for clear, factual and accurate information — both in what they consume and in what they produce.

Frankly, we’ll never have — and should not have — a system of censors or “truth verifiers” to screen out things like the fake Houston flooding “shark in the streets” images and their ilk. We just need to keep a healthy skepticism, which will be helped by the growing online fact-checking industry.

In a time when many of us are rightfully concerned about the new challenges — or perhaps simply more obvious challenges — that result from being able to speak freely, please take a moment to consider all the good that truly free expression brings — and what our lives and our nation would be with less than freedom of speech.

Gene Policinski is Chief Operating Officer of the Newseum Institute and of the Institute’s First Amendment Center. He has been researching, writing and speaking on First Amendment issues for more than 25 years.

The rights essential to free societies



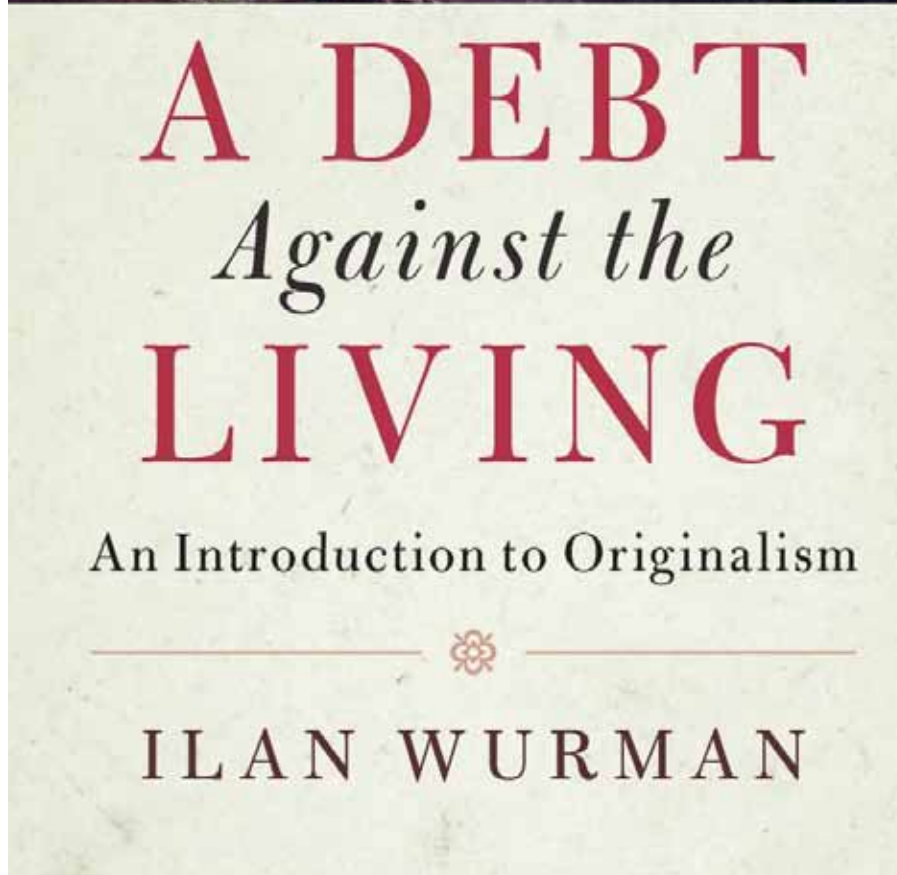
By Ilan Wurman

Our Constitution recently turned 230 years old. In some quarters, however, citizens have begun to question whether the Constitution still ought to be the law of the land after all this time. We've heard cries that the First Amendment shouldn't mean all that we thought it meant, that free speech does not mean protection for speech that offends or harms the sensibilities of others. We heard this in the wake of Charlottesville and even before on college campuses, where many of our soon-to-be leading citizens have claimed that speech they deem undesirable and harmful ought to be silenced and those who would choose to listen to such speech obstructed.

Where, exactly, does the freedom of speech fit in to our regime of self-government? Is this freedom and all that it was thought to entail still essential to the success of our Constitution?

As I have argued in my new book, "A Debt Against the Living: An Introduction to Originalism," the Founders recognized — rightly — that a constitution for a free society had to do two things to be worthy of the name of a constitution. The constitution they framed would first have to enable self-government, so that we the people could deliberate and reflect on the kind of society we want to be when it comes to most economic, cultural, moral and political issues. That means we have the right, for example, to engage with our representatives to request legislation that protects against discrimination in the workplace or on college campuses.

But the Framers recognized that it was insufficient for a free constitution merely to create a regime of self-government. It also had to protect our natural liberties. And these two goals are often in tension with each other. After all, it is often popular majorities that would infringe on the rights of others — akin to what we



We've heard cries that the First Amendment shouldn't mean all that we thought it meant; that free speech does not mean protection for speech that offends or harms the sensibilities of others. We heard this in the wake of Charlottesville, and even before on college campuses, where many of our soon-to-be leading citizens have claimed that speech they deem undesirable and harmful ought to be silenced and those who would choose to listen to such speech obstructed.

see on college campuses when students through collective actions try to infringe on the rights of their fellows, or as we saw in Charlottesville when people of good will tried to silence speech they believed to be (and which actually happened to be) abhorrent.

The Founders recognized that these two ends must be balanced, and balanced carefully. As Burke said, it is very easy to form a government — all one has to do is compel obedience. And it's equally easy to establish freedom — all one has to do is let go the

rein altogether. But to form a free government, one that balances these two competing ends, requires a powerful and combining mind. The Framers' accomplishment is balancing these ends through ingenious mechanisms, such as the separation of powers, checks and balances, the division of federal and state power, and the enumeration of power.

But they also insulated from legislative reach a small handful of liberties they believed to be essential for the success of free societies. These included the right to be secure in one's home, papers and effects; the right to a jury trial, to counsel, and to many other rights ordinarily afforded criminal defendants; the right to bear arms to provide a check on government tyranny; the right to exercise one's religion; and the rights to speak one's mind, assemble peaceably, and petition our representatives no matter what it is we are advocating.

That point is critical — the Framers understood that no matter the content of the speech, political speech in particular had to be protected. After all, if the government can decide to favor some speech and disfavor other speech, who is to say that the government will always be right? Congress infamously refused to entertain any petitions from abolitionists in the 1830s because the topic was too controversial. And the Postmaster General refused to circulate abolitionist literature in the mails in the South. When government is given the power to decide what speech shall be protected, the government will not always be on the side of justice or good policy.

That is why the government can't choose to ignore the requirements for warrants, can't deny someone a jury trial — and it can't suppress political speech of any stripe. These rights are so essential for the success of a free society that these are the few rights the Founders insulated from popular control. And consider how few in number these insulated rights are! Unlike the constitutions of more modern times, which purport to protect rights to health care and education and a whole panoply of social goods, our Constitution protects very little. That is because the Founders knew that we would evolve and progress as a society, so they left much to our greatest right of all: our right to self-government.

But as for those rights they did protect, our society cannot succeed — or, at least, it cannot be free — without them.

Ilan Wurman is the author of "A Debt Against the Living: An Introduction to Originalism."

Democracy, truth seeking and freedom of thought: An interview with Dr. Cornel West and Dr. Robert George

By Julie Silverbrook

On March 14, 2017, Dr. Robert George and Dr. Cornel West, high-profile scholars from opposite ends of the political spectrum, published a statement in support of truth seeking, democracy and freedom of thought. ... The statement (<https://jmp.princeton.edu/statement>) has more than 5,000 signatories.

Below is a transcript from the hour-long dialogue I had with Professors West and George earlier this year. The dialogue is long, but I believe it will inspire readers to once again — or, perhaps, for the first time — fall in love with learning for learning's sake, and to rededicate themselves to the project of civic renewal.

Julie Silverbrook: What motivated the two of you to issue your statement in support of “truth seeking, democracy and freedom of thought and expression”?

Robert George: Brother Cornel and I are both what he aptly describes as “old school humanists.” We believe that education is fundamentally about truth seeking, about seeking knowledge of the truth, about seeking wisdom, about seeking understanding. And we recognize that that can only be done in circumstances of freedom — that is, circumstances in which people are free, and know they are free, and feel free to follow the evidence and the arguments wherever they may lead. And people need to be able to interact with each other honestly, expressing opinions, marshalling arguments, offering criticisms.

Knowledge seeking is not an individual enterprise. Of course, we as individuals seek knowledge, but we do it — and we do it best — when we're collaborating with other people. That's why we have universities, and research institutes. We need circumstances of freedom in order to do that....

If we restrict speech, even if our motives are good, even if we are trying to prevent people from being offended, or prevent people from being insulted, or prevent people from suffering what is sometimes called “dignitary harm” — no matter how good our motives are — if we restrict the honest expression of ideas and arguments, we undermine our capacity for democratic governance. So Cornel and I brought those two concerns together in our statement.

Cornel West: Brother Robby and I long ago fell in love with the quest for truth, and so we recognize truth is bigger than all of us — bigger than politics, ideology, race, gender, sexual orientation. That the quest for truth is one that requires always taking a risk, always being open-minded and vulnerable in the quest, given our fallibility, and, at this particular moment, in which America is so polarized, Balkanized,

that it was a wonderful idea. Brother Robby brought it to me, and I said yes, indeed, let's do this together. We've been doing this for more than a decade together. We've been teaching together, and we've been lecturing together, and it's all motivated by that shared love of truth.

Julie Silverbrook: How many signatories does the statement have as of the date of this interview?

Robert George: Nearly 5,000.

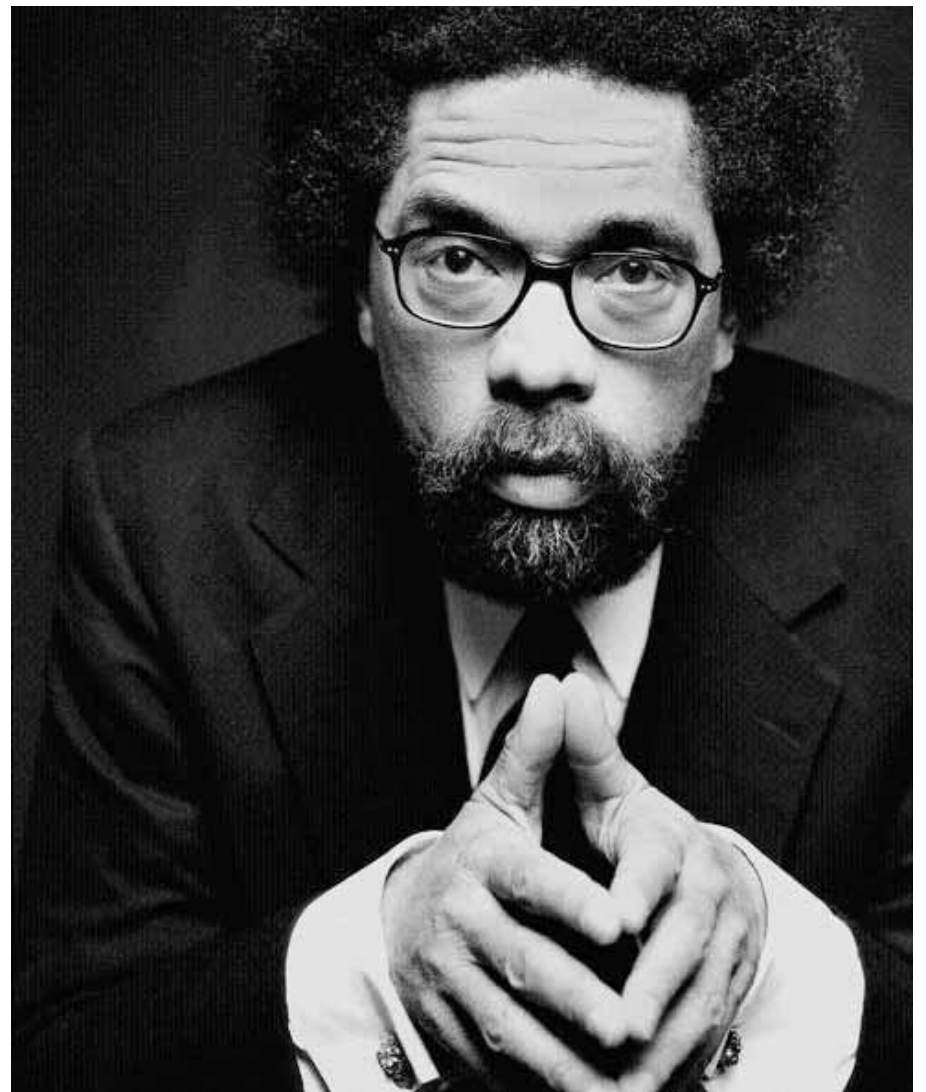
Julie Silverbrook: I think people are moved by what they are seeing on college campuses, and the perception that there is growing intellectual intolerance on college campuses across the nation. I'm curious what you think are the root causes of this trend today?

Cornel West: One of the explanations has to do with the fact that we live in a predatory capitalist civilization, which makes it difficult to sustain high-quality public life. It has to do with public health care and public transportation, but especially public conversation. Once you begin to lose the art of public conversation, then you end up with finger-pointing and name-calling. And this leads to a shutdown of conversation, and you end up staying in one's own silo or one's own bubble and not wanting to enter the public debate without humiliation. There's a wonderful line from Walt Whitman that the benchmark of a democratic society is the feeling that people can enter the public space without humiliation and that they will be respected. And that's very much what we are losing....

I think this is one of the explanations. There are others having to do with politics, the low quality of politics on both sides of the aisle.

Robert George: I want to recall a very important point that Cornel made earlier in the conversation. He used that word “vulnerability.” When we enter into truth seeking and debate, we render ourselves vulnerable. We can be embarrassed, we can be humiliated when it turns out that a point we thought was valid, under scrutiny and criticism from an interlocutor, turns out not to be valid. Now we human beings, we wrap our emotions around our convictions, which is good because it motivates us to act for the things we believe in, but it also has a bad side, when we become too attached to them and too resistant to criticism. We can worship our opinions and value them above truth. We can turn our opinions into an idol, and engage in a kind of idolatry of the self with respect to our opinions. If we are going to avoid all of those vices, we are going to have to accept vulnerability when we enter into discussions and dialogue and truth-seeking. Of course, we human beings, we don't like that and aren't comfortable doing that, so we want to put up a protective barrier.

When someone expresses an opinion



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that offends us, we want to do something about that; we don't want it to be heard. It's an assault on that vulnerable spot. What Cornel and I have come to understand through long experience — we're a couple of old guys; we were the young rebels, but now we're the old guys — what it has taken us many years to understand fully is that you cannot get nearer to the truth without accepting that vulnerability. And the protection of free speech is required so that we do not let that feeling of vulnerability cause us to shut down others' expressing critical opinions about things we believe in....

Julie Silverbrook: We seem to be getting away from educating our nation's young people about our shared

history. We aren't teaching this in K-12 education anymore. Do you see a connection between this and the decline in civic virtue and increase in political polarization?

Cornel West: I think so. That's part of the relative collapse of public life. The decline of civic virtue has to do with the decline of education that is oriented toward truth seeking. A lot of this also has to do with the spiritual blackout that we are experiencing; the eclipse of integrity, honesty and decency. Once you downplay integrity and mendacity is given free reign, you can't have civic virtue if it's really about manipulation and trying to

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If we restrict speech, even if our motives are good, even if we are trying to prevent people from being offended, or prevent people from being insulted, or prevent people from suffering what is sometimes called “dignitary harm” – no matter how good our motives are – if we restrict the honest expression of ideas and arguments, we undermine our capacity for democratic governance.

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be successful by any means, and being obsessed by the Eleventh Commandment — “Thou shalt not get caught.” Part of what I call neo-liberal soulcraft, to be the smartest or richest in the room. It’s tied to a foreign policy that puts too high an opinion on bombs. There is less and less space for “old school humanists” like Brother Robby and I in a predatory capitalist society, where the egoism and the narcissism is running amok, and the public life is collapsing. And the interest in engaging in the quest for truth looks like it’s anachronistic rather than something that is indispensable.

Robert George: I agree that the decline of civic education at the K-12 level is extremely worrying. But there is another dimension. It’s not just civic education. It is wisdom seeking generally. What we tend to reward in our educational system

— from kindergarten to the doctorate — is smartness, cleverness, skills, but smartness is not the same thing as wisdom or depth of understanding. Now here again, I am not saying we shouldn’t teach skills. And I certainly don’t see any contradiction between rigor of thinking and wisdom seeking. But genuine wisdom seeking has too often been laid aside, so we tend to take more and more technical approaches, narrower approaches, even to humanistic subjects; even the study of Shakespeare or Plato becomes a technical business rather than what it should be — trying to figure out what we can learn about the human condition and about beauty and justice and truth from Shakespeare, Plato and any of the great teachers of humanity. I think we should move toward richer civic education and toward an understanding of education as more oriented toward wisdom and truth

seeking and less directed to the acquisition of technical skills.

Cornel and I sometimes teach seminars together at Princeton, and when we’ve done it, we’ve had the joy of inviting our students into dialogue with St. Augustine when they read his “Confessions” or with Machiavelli when they read “The Prince” or with John Stuart Mill or with C.S. Lewis. We’re not teaching them to do a technical analysis or teaching them facts or having them memorize passages. We want them engaging with these thinkers....

Julie Silverbrook: Let me ask a tough question: How do we get back to that and how do we end up with more people like both of you?

Cornel West: I think it comes down fundamentally to example. Immanuel Kant said examples are the go-karts of judgment and we need to have more exemplary people, movements, schools, temples, mosques, synagogues, churches, that inspire people to opt for wisdom over smartness, opt for courage over cowardice, to opt for compassion over cowardice. And if those grand examples can become contagious, it can lead to the kind of moral and spiritual transformation that we need.

Brother Robby and I, we get up like John Coltrane and say, “How can we be forces for good?” And, of course, Brother Robby and I are ideologically, politically different and we fight and disagree on a whole host of things. He thinks I’m wrong, I think he’s wrong. OK. Let’s continue to wrestle with these things. But we’re trying to be forces for good, trying to be examples of persons who are somehow connected to a great tradition — the legacies of Socrates, of Jerusalem and Jesus and Muhammad and Dorothy Day and Martin Luther King. How can we exemplify the best of that tradition? And it becomes contagious for the younger generation when they see it in motion. It has everything to do with people opting to be certain kinds of human beings and opting for a kind of life oriented toward truth and beauty.

Robert George: That is beautiful. I could not agree with Cornel more. We recognize that we are a couple of badly cracked vessels. We don’t want our students just to mimic us. We have too many flaws. But we do try to give them a model of the stance you should take toward your education. We try to model for them an approach that does not treat education as merely technical, that does not try to replace wisdom with smartness. It’s by setting that example that we hope to inspire them and show them the beauty that is possible if you do take that stance toward education. One way we try to do that is just by doing what we do together. Our students know we don’t agree on politics. In fact, part of why they are drawn to our class is that they want to see what goes on when two rather outspoken characters who disagree about so many things get together. Despite being cracked vessels, we can at least model intellectual integrity, openness to argument and love of truth....

Julie Silverbrook: One final question – how do we imbue society with

these values, with this habit of mind? I think we need to activate all of the mediating institutions of society, and maybe there isn’t a crisp, clean answer, but how do we activate them to revive civil society?

Cornel West: We can regenerate and revitalize and revive the best of tradition. We can try to exemplify the best of the traditions that have been bequeathed to us. You imbue it by means of trying exemplify the best in such a way that it generates a yearning in others to also try to exemplify the best.

Robert George: I think that’s right. The word I’d use is renewal. Revitalization or renewal is not a matter of going back to some mythical good old days when everything was fine. There have never been such good old days. But, at the same time, we have to acknowledge that history is not moving forward in some predetermined direction, always toward moral progress. Today, we are better in some ways than people in the past, but there are some ways that people in the past were better than we are. Revitalization is about what Brother Cornel just said — recovering the best in the past and using that as the foundation for building the future....

The project is fundamentally a spiritual one. I think Cornel would agree with this. It has a lot of dimensions to it — political, economic, and other dimensions and they shouldn’t be given short shrift — but at the base, at its most fundamental level, it is a spiritual one. That means our institutions of faith — of all religious traditions — have a very central role to play. And we’re not going to get anywhere if they don’t play that role.

At the same time, we can’t say this is a only religious problem, and so it’s only up to religious institutions to address it, as if the rest of us don’t have to worry about it. People in positions of social, educational, business and professional leadership have a role to play in the spiritual renewal of the nation. Indeed, we all do. This means getting our values straight. Market values need to be where they belong; non-market values need to govern in places where market values do not belong. We all need to be responsible for communicating to our young people, beginning with our own children, the virtues they need to lead good lives and to be contributing, successful citizens.

Cornel West: Amen.

.....
Julie Silverbrook is Executive Director of The Constitutional Sources Project (ConSource.org). Robert P. George, Ph.D., is McCormick Professor of Jurisprudence and Director of the James Madison Program in American Ideals and Institutions at Princeton University. Cornel West, Ph.D., is Professor of the Practice of Public Philosophy in the Divinity School and the Department of African and African-American Studies at Harvard University. This excerpt is from a full transcript, which is posted at washingtontimes.com.

The Constitution, free speech and college campuses



By Dr. Michael Poliakoff

It might have been too much to hope that after the tumultuous 2016 election, our nation's discourse would simmer down and that cooler heads would prevail. Of course, political rhetoric will ebb and flow with the election cycle, but nearly a year into a new administration, it's clear that something changed irrevocably in the expression and exchange of ideas in the political arena.

The decline in our nation's discourse has been visible for some time to those who pay attention to higher education. Colleges and universities across the country incubated Orwellian speech policies and bias response teams. Perhaps well-intentioned, these policies fail to create a sense of unity and also compromise the quality of dialogue on campus. University administrators allow students to believe that they don't have to listen to contrary opinions; this intolerance for divergent viewpoints now manifests itself in demonstrations on and off campus that rapidly deteriorate into violence.

Americans should always be mindful that universities are marketplaces for ideas and that colleges and universities need to habituate students to open-minded exchange. Instead, trigger warnings appear on class syllabi, and too many campus administrators carve out safe spaces at the request of the best and brightest of the next generation. American college students don't seem to grasp the alarming fact that these policies abridge their own freedoms and set precedents that can be used against them, should the administration undergo a change of leadership or face pressure from outside groups.

It would advance civic virtue if the very institutions entrusted to educate

these students would offer a true education in U.S. history. What Will They Learn?, the American Council of Trustees and Alumni's (ACTA) annual report of college general education requirements, found that of over 1,100 colleges surveyed, only 18 percent required students to take a foundational course in U.S. history or government. In order to fulfill their missions of ensuring that students become well-informed citizens, colleges must prepare graduates who understand the structure,

And earlier this year, the Pew Research Center found that 40 percent of millennials wouldn't object to limiting speech that could be offensive to minorities.

This disregard for constitutional history and civic education diminishes colleges as places where the American tradition of free expression and open discourse flourishes. The Supreme Court has consistently held that controversial speech is protected under the First Amendment of the Constitution.

Exposure to cases like *Brandenburg v. Ohio* or

is ultimately a feeble and unacceptable excuse. The aggressive protests of various student groups should not overrule the imperative of academic freedom and intellectual diversity, even admitting what Justice Oliver Wendell Holmes called, "the thought we hate," for discussion and debate.

Evergreen State College was shut down for days after biology professor Bret Weinstein objected to a social justice-oriented event that encouraged white people to stay off campus. For this, he was accused of supporting white supremacy and made the target of protests. Evergreen's campus security alerted Professor Weinstein that they could not guarantee his safety, forcing him to teach his class off campus.

Hope for the future of free speech in higher education still remains. In this time of increasing political tension, there are individuals and institutions that continue to defend the First Amendment on college campuses. In fact, a few outstanding university leaders have staunchly committed to free expression and to fostering an understanding of these principles.

The University of Chicago's Statement on Principles of Free Expression has become the gold standard for cultivating free expression and academic freedom on campuses. Under the leadership of President Robert J. Zimmer, the University of Chicago passed this resolution to preserve intellectual diversity and academic freedom.

Many more institutions — including Purdue University, Claremont McKenna College and Princeton University — have followed suit and endorsed the Chicago Principles in similar statements. Purdue took an extra step and included workshops on free speech as part of its freshman orientation program.

Let us praise universities that teach students about their rights and responsibilities as citizens and which work to impart civic knowledge. Let us acknowledge universities that follow the examples set by the University of Chicago and Purdue. College is where students become citizens and leaders: Only an improved culture of dissent and cultivating vigorous discussion and debate on campus will advance our national discourse and enhance the lives of future generations.

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Dr. Michael Poliakoff is President of the American Council of Trustees and Alumni.



ILLUSTRATION BY GREG GROESCH

institutions and laws of the U.S. system of governance.

But survey after survey shows that many college graduates don't have a firm grasp of these concepts. In 2015, a GFK survey commissioned by ACTA found, shockingly, that 10 percent of college graduates believe Judge Judy sits on the Supreme Court. Less humorous was the 46 percent of graduates who didn't know the election cycles and term lengths for members of Congress. Right before last year's election, 13 percent of graduates couldn't define the electoral college.

National Socialist Party v. Skokie might reduce the overwhelming number of campus scandals involving protected speech.

In an ironic turn of events, University of California, Berkeley — the birthplace of the free speech movement in the 1960s — has become a stage for skirmishes between politically divergent parties. Over a period of three months, the university cancelled three scheduled speeches to be given by polarizing figures Milo Yiannopoulos, David Horowitz and Ann Coulter due to safety concerns. That

From Charlottesville to California, by way of North Carolina



By Jim Manley

From Charlottesville to California, violence in the streets and protests on college campuses are forcing us to consider what the First Amendment to the U.S. Constitution really means — and whether we still believe in it.

First, in Charlottesville, the despicable beliefs of bigoted Nazi groups and their white supremacist ilk were on display for all the nation to see. Their beliefs wallow in the deepest mire of collectivist depravity, and we should be repulsed by what they represent. President Donald Trump's dithering aside, it's well within our First Amendment rights to call a spade a spade: Bigotry is wrong.

But it's also within the marchers' rights to be heard, especially on a public college campus, no matter how abhorrent the content of their speech may be. Both the White Nationalists and the counter-protesters had permits to demonstrate in Charlottesville after the White Nationalists marched through the University of Virginia's campus the night before.

The violence that ensued and lives that were lost are tragic and heartbreaking. Words cannot contain enough sympathy to cover the pain of the families and friends who lost their loved ones. But words are the only alternative to violence.

The fact is both sides had a right to demonstrate and protest — and groups like the American Civil Liberties Union agree. If we cannot engage with people who disagree with us, violence is the predictable result. The protesters who turned to violence violated the free speech provisions of the constitution and diminished any chance for dialogue — slim as it was, given the views of the White Nationalists. We must make violence beyond consideration when we hear ideas or witness expressions with

which we disagree, and fight back with better ideas.

Virginia lawmakers began to address this retreat from dialogue on public college campuses earlier this year. The Virginia House of Delegates voted in favor of a resolution to protect free speech on campus, based on a proposal from Stanley Kurtz of the Ethics and Public Policy Center and researchers at the Goldwater Institute.

Similar to the Goldwater Institute proposal, Virginia's resolution calls on the state university system's board of governors to adopt a policy in favor of free speech on campus. The resolution also says, "It is not proper for a public institution of higher education to shield

that some speech is more free than others in the Commonwealth?

The Goldwater Institute's proposal is careful to side with free speech for all. In fact, the proposal says that anyone lawfully present on a public college campus is allowed to protest or demonstrate there. But those protesters — or counter-protesters — cannot block someone else's right to free expression. That draws a clear line between civil debate and violence, encouraging the former and making clear that the latter will be unflinchingly rejected.

Which brings us to California. At the University of California at Berkeley, headspring of the campus Free Speech Movement, violence has broken out at

committed to allowing the events to occur and providing security to stem violence.

Berkeley's new Chancellor, Carol Christ, announced a steadfast commitment to free expression: "The United States has the strongest free speech protections of any liberal democracy; the First Amendment protects even speech that most of us would find hateful, abhorrent and odious, and the courts have consistently upheld these protections."

This is a powerful stance to take. Universities in other states have cancelled alt-right speakers rather than deal with the security concerns they create, but colleges have faced such risks before. In the seminal 1974 Woodward Report, com-



individuals from speech that is protected by the First Amendment, including ideas and opinions that such individuals find unwelcome, disagreeable, or deeply offensive."

After House passage, the resolution's sponsor, Del. Dave LaRock, said he plans to introduce more legislation on the issue next year. Lawmakers in North Carolina have already passed a comprehensive campus free speech law modeled on the Goldwater proposal. A broader commitment to free expression is even more urgently needed in the wake of Charlottesville.

Will Virginia lawmakers follow their Tar Heel colleagues and hold to the First Amendment — including its protections for ideas with which we disagree? The alternative is chilling: Will delegates say

the very idea that student groups would invite a controversial speaker to give a lecture. Ex-Chancellor Nicholas Dirks responded to the hecklers by ratifying their veto, disinviting rabble-rousers Ann Coulter and Milo Yiannopoulos, and calling into question the school's seminal commitment to free expression.

California lawmakers noticed. Assemblywoman Melissa Melendez proposed an amendment to the state constitution based on Goldwater's model.

As Ms. Melendez's amendment worked its way through the state legislature, University of California officials announced an about-face: Student groups invited Ms. Coulter, Mr. Yiannopoulos, commentator Ben Shapiro, and former White House adviser Stephen Bannon to speak on campus — and the university

missioned by Yale University to respond to shout-downs and disinvitations at the school, the committee confessed that "we take a chance, as the First Amendment takes a chance, when we commit ourselves to the idea that the results of free expression are to the general benefit in the long run, however unpleasant they may appear at the time If expression may be prevented, censored or punished, because of its content or because of the motives attributed to those who promote it, then it is no longer free."

Freedom can be risky. But we must take that chance because committing to freedom is the only way to protect individual liberty and foster a civil society.

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Jim Manley is Senior Attorney at the Goldwater Institute.

Freedom of expression: Why and how should it be taught?



By Charles N. Quigley

Why should freedom of expression be taught?

Adolph Hitler, leader of the Nazi Party, took power in 1933 when he became chancellor of the German government. His death in 1945 marked the end of his absolute rule as dictator of the German people. He precipitated one of the most catastrophic periods in human history, in which millions of people died not only on the battlefield, but also in his attempt to eliminate all of the Jews in Europe, as well as homosexuals, gypsies, and the mentally ill and handicapped, who were considered “needless eaters.” He began the first year of his reign by eliminating the political opposition. An early step he took to attain this goal was to eliminate all of the protections for freedom of expression and due process of law in the German constitution.

The following decree was issued by the Reich president in 1933:

Articles 114, 115, 117, 118, 123, 124, and 153 of the Constitution of the German Reich are suspended until further notice. Thus, restrictions on personal liberty; on the right of free expression of opinion, including freedom of the press; on the right of assembly and the right of association; and violations of the privacy of postal, telegraphic and telephonic communications — and warrants for house searches, orders for confiscations, as well as restrictions on property — are also permissible beyond the legal limits otherwise prescribed.

This elimination of fundamental constitutional rights was followed almost immediately by the imprisonment in concentration camps of Germans who opposed Hitler and the Nazi Party. Martin Niemöller was a pastor in the German Evangelical (Lutheran) Church, an early supporter of Hitler

who later turned against him. He was imprisoned in German concentration camps, including Dachau, from 1936 to 1945, when he was freed by Allied forces. He said:

In Germany, they first came for the Communists, and I did not speak up, because I was not a Communist. Then they came for the Jews, and I did not speak up, because I was not a Jew. Then they came for the trade unionists, and I did not speak up, because I was not a trade unionist. Then they came for the Catholics, and I did not speak up, because I was a Protestant. Then they came for me ... and by that time, no one was left to speak up.

This tragic episode in history is not the only time those in power have tried to suppress freedom of expression by people critical of their rule. It happened in our country shortly after it began when Congress passed the four Alien and Sedition Acts, which were signed into law by Federalist President John Adams. They made it more difficult for immigrants to become citizens, gave the president the power to imprison noncitizens who he thought might be dangerous or were from a hostile nation, and they made it a crime to make “false” statements critical of the federal government. Among other things, the Acts were intended to suppress the right to freedom of expression of the opposing Democratic-Republican Party formed by Thomas Jefferson and James Madison.

Imagine a charismatic leader in power in America acting to suspend or erode our Constitution’s protections of our freedom of expression, our due process protections from unreasonable and unfair searches and seizures by government, and our right to the equal protection of the laws regardless of the groups to which we might belong. Could it happen here? How strong are our political institutions? How deeply ingrained among us is an understanding of and a commitment to the fundamental principles and values of the Declaration of Independence and the Constitution and its amendments. To what extent do liberty and equality lie in the hearts and minds of the American people and their elected representatives as a bulwark against the suppression of their liberties and denial of the ideal that “all men are created equal”?

How should freedom of expression be taught?

The American philosopher George Santayana once wrote, “Those who cannot remember the past are condemned to repeat it.”

Unfortunately, too many Americans not only don’t remember the past, they are not aware of it. They are not well versed in American history or the evolution of the American political system and its European antecedents. Lessons like those of Nazi Germany rarely come to mind when issues of freedom of expression, its proper scope and limits and threats to it arise. So a knowledge of the history and centrality of freedom of expression to a free

should be accompanied by an examination of the proper scope and limits of freedom of expression derived at least in part from an examination of landmark Supreme Court decisions on the topic. All inquiry should take place in the light of free and open discussion and debate in which a wide range of reasonable differences of position and opinion are encouraged and respected.

The burden of responsibility for the enlightening of our young people



ILLUSTRATION BY HUNTER

society, at least in western civilization, is an essential foundation for becoming an informed citizen in the United States.

This historical understanding should be accompanied by a conceptual understanding derived from philosophy and jurisprudence. For example, the justifications for widespread freedom of expression from John Stuart Mill’s “On Liberty” and other outstanding sources of political thought undergirding American constitutional democracy should be familiar to American students. This knowledge

regarding the precious rights to freedom of expression they have inherited — and a disposition to cherish them, exercise them competently and responsibly, and protect them — lies with the dedicated teachers of our school systems, many of whom are carrying out this responsibility daily in their classroom using the We the People Programs of the Center for Civic Education and those of other outstanding contributors to the field.

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Charles N. Quigley is Executive Director of the Center for Civic Education.

Encouraging constitutional literacy in youth



By Lisa M. Curtis

“Today’s Constitution is a realistic document of freedom only because of several corrective amendments.” The First Amendment is arguably the most formative of what U.S. Supreme Court Justice Thurgood Marshall frames as “corrective amendments.” The First Amendment — and its fundamental provisions of freedom of expression, freedom to practice a religion of your own choosing, and the right to voice political dissent — is the hallmark of the U.S. Constitution and foundation of our American democratic values.

At times throughout our history, we have struggled to make perfect these fundamental freedoms. In our very real, and often very messy and flawed

reality, the ideals articulated in the First Amendment may seem very different from what we see.

What does the First Amendment really look like in Charlottesville, Virginia, when the public demonstrations of members of hate groups and anti-hate groups collide? Does the First Amendment’s freedom of protection apply to statements of hate, bigotry and prejudice? Who does the First Amendment apply to? What does our understanding and application of the First Amendment reflect about the current state of our society? What does it illuminate about our future?

At the forefront of this struggle to define and apply the First Amendment is the voice of youth. From Marie and Gathie Barnett in West Virginia State Board of Education v. Barnett to Mary Beth and John Tinker in Tinker v. Des Moines Independent Community School District, young people — and students, in particular — have been pivotal in moving forward our understanding of the what, the who, and the why of our First Amendment rights.

In our effort to draw the contours of our understanding of the First Amendment, we must continue to educate, engage and dialogue with young people about the meaning of not only the First Amendment, but also the broader order of the U.S. Constitution. They must also come to see that our progress as a nation depends on their

participation in our system — now and in the future.

The Marshall-Brennan Constitutional Literacy project is creating the space for youth engagement, education and empowerment. The Marshall-Brennan Project, named after U.S. Supreme Court Justices Thurgood Marshall and William Brennan, is a movement founded in our nation’s capital and active in 19 chapters across the country. We engage law students and high school students in this vital work of capacity-building and youth empowerment. Our paramount aim is to move young people from being on the sidelines to consequential participants in the American democracy.

At the heart of our curriculum is the use of real-life, student-centered U.S. Supreme Court cases — like Barnett and Tinker — that have indelibly shaped our framework for understanding how our First Amendment and constitutional rights operate. The power of the Marshall-Brennan Project lies in our solitary belief that young people hold the vision and power in moving our American democracy forward.

We have seen in recent months the importance of educating our population around what it means to be a member of our American democracy. There was a sleeping giant in the American people that seemed to take for granted our constitutional rights

and take no heed to the power that the people have to mold our democracy. That giant has been awakened.

As we continue to participate in this great experiment, our success in protecting and perfecting our democracy will depend on the degree to which we are able to translate constitutional tenets and founding values to young people in a way that intersects with their modern reality, right here, right now. It is their interaction with the First Amendment and other rights — the expansion of their vision of what is possible — that will ignite the passion for active participation. This is how we will ensure that our American democracy endures as a “realistic document of freedom.”

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Lisa M. Curtis is the Associate Director of the Marshall-Brennan Constitutional Literacy Project. She teaches a specialized advanced constitutional law seminar, which blends school-related constitutional issues with teaching pedagogy and oral argument skills, to the Marshall-Brennan Fellows at the American University Washington College of Law. She received her J.D. from the American University Washington College of Law, and B.A. from the University of Missouri-Columbia.

Freedom of speech, 1791-2017



By Scott D. Cosenza

Free speech, of blessed memory, which survived one civil and two world wars, perished this year, unable to prevail against sustained attacks from the left and right. The death knell came when its heretofore stalwart defender — the American Civil Liberties Union

(ACLU) — in several of its forms, decided to abandon or “clarify” its position, ending years of acting on the principle that free speech was sacrosanct.

The cause of death was insufficient popular respect for free speech and knowledge that for freedom and liberty to prevail, free speech must be defended.

Instapundit’s Glenn Reynolds has instructed his readers over and over again to think of the mainstream media as Democrat operatives with bylines. That deserved reputation has coarsened Republicans’ attitudes towards the press, diminishing respect for the institution and the free speech rights that make the press’s existence possible. How many times do you need to see your side, your people and your culture misrepresented and lied about before you say a pox on all their houses?

Forty-five percent of Trump voters, according to a recent YouGov/Economist poll, favor shutting down media outlets for publishing stories that are biased or inaccurate. The same group

reports that Republicans and Democrats alike would do what our laws and constitution specifically disallow: engage in viewpoint discrimination. A majority of both Democrats and Republicans polled would legally prohibit a neo-Nazi from speaking publicly.

While much of the political left has been historically hostile to free speech in favor of narrative, those forces were kept in check by the *éminence grise* of civil rights organizations, the ACLU. Made famous in their 1977 defense of neo-Nazis’ right to speak in Skokie, Illinois, they held the line. No longer. One wonders if they decided unannounced that people can be free without free speech, or that they have given up on freedom generally.

Silent about free speech activists left by authorities to be beaten by violent mobs in Berkeley, in 2017 the ACLU turned their limited attention and resources to foreign citizens temporarily banned from traveling here. No wonder, as reports indicate they made more money stoking outrage over President

Trump’s travel ban in one weekend than they did in all their fundraising for 2016. In the age of virtue signaling through social media, it just doesn’t pay to favor freedom anymore.

It is tragic, not just for the lack of moral signaling to a core audience of standard-bearers for the culture, but because the courts, where the ACLU plies its trade, have been at the highest levels sympathetic to pro-speech positions. There will be other advocates for the cause, but the courts offer only cold comfort for free speech — they serve as a lagging indicator of where society is. Because of the age and experience required for justices, they hardly represent the vanguard of jurisprudence. The leading indicator is what is being taught and learned at our institutions of higher learning, and that is poison for free speech.

In 1991, Dinesh D’Souza’s book “Illiberal Education” exposed the capture of

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A teacher's dialogue with a future lawyer about free speech

By **AARON HULL AND ARJUN AHUJA**

Arjun Ahuja, a now-graduated senior from Greenwich High School in Greenwich, Connecticut, and Lucy Mini, a rising senior at Greenwich High, competed in and won the ConSource-Harlan Institute Virtual Supreme Court Competition held in 2017 in Washington, D.C. They successfully argued the *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. ____ (2017) case.

Below is the summation of a dialogue that Arjun and I had over the summer, both as a way to address the question of freedom of speech in the classroom, and to describe the process of a mentor-mentee dialogue about what can often be a very sensitive topic.

Arjun Ahuja: Hey, Mr. Hull, I'm struggling with this article. What should I do?

Aaron Hull: What about looking at Charlottesville, from this past weekend?

AA: Awesome — that might work! How come the American Civil Liberties Union (ACLU) initially defended the Unite the Right marchers in Charlottesville? How does it impact the First and Second Amendments? How are they shifting themselves given the backlash in Charlottesville?

AH: I tell you what. I'm taking my daughters to the [solar] eclipse. While I'm gone, do you want to look at some applicable court cases that we could discuss when I get back?

AA: Sure! I've heard a lot about the *Skokie* case [National Socialist Party of America v. Village of Skokie, 432 U.S. 43 (1977)]; are there others?

AH: Yep! Take a look at *Schenck* [*Schenck v. United States*, 249 U.S. 47 (1919)], *Brandenburg* [*Brandenburg v. Ohio*, 395 U.S. 444 (1969)], the *DC* and *McDonald* cases ([*District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. Chicago*, 561 U.S. 742 (2010)]. You might also want to look at Prof. Akhil Reed

Amar's discussion of an individual right to bear arms. Would that work?

Ten days later . . .

AH: What did you learn about the legal basis for the ACLU's position while I was travelling to the eclipse?

AA: Charlottesville could best be

in *Brandenburg v. Ohio* (1969), in which the Court adopted the "imminent lawless action" standard, which would later come to be known as the *Brandenburg Test*. Elaborating on *Schenck*, the Court's ruling in *Brandenburg* narrowed free speech to the extent where we are no longer judging

on the issue for a while, considering First Amendment law is about 50 years (*Brandenburg*) ahead of Second Amendment jurisprudence. As horrible as it may sound, the only remedy to this problem is more of the problem itself. Time cures all, and in legal terms, time tells all...

AH: So, the other part of this question — do you think the ACLU's position on the Unite the Right marchers is the "correct" one?

AA: Speaking as an aspiring lawyer, it depends. "Correct" is a loaded word and has many different connotations. If correct means legal, then no. With the little precedent we do have dealing with the private right to carry a gun (*D.C. v. Heller*), the protesters are in the full scope of their constitutional privileges by protesting with their firearms, not to mention that they are also in accordance with Virginia open-carry ordinances. Ken White also argues, "carrying weapons isn't in itself incitement." I'd tend to agree in legal terms.

Nonetheless, if correct was to have a more meritorious interpretation, I would have to share the opinion of Waldo Jaquith, ACLU of Virginia board member, who swiftly resigned due to his justification of "what's legal and what's right are sometimes different." I've come to this conclusion, albeit a valiant supporter of freedom of speech, with a heavy heart and conflicted mind...

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Aaron Hull has taught social studies for 15 years at Greenwich High School, in Greenwich, Connecticut, and is also an Adjunct Professor at the University of Connecticut. Arjun Ahuja now attends the University of Connecticut. This excerpt is from a longer article that appears on washingtontimes.com.



Greenwich High School Professor Aaron Hull (right) sits with Arjun Ahuja and Lucy Mini, winners of the 2017 ConSource-Harlan Institute Virtual Supreme Court Competition. Image courtesy of Aaron Hull.

described as a teaching experience in the broadness of free speech in today's society.... It would do us well, when discussing the merits of free speech jurisprudence, to understand the chronology of arguments as they present themselves through the highest court of the land. ... In a historic decision, Associate Justice Oliver Wendell Holmes, writing for the majority, contended "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic."

Where the merits of this argument fall short come to light in the Court's ruling

the content of expression, but rather its repercussions. While all of the aforementioned free speech cases are important, the ACLU has been a fierce advocate of free speech rights up to and including distasteful speech, such as Nazi marches in *Skokie*, Illinois.

So what changed? The ACLU recently announced ... that they will no longer defend the free speech rights of citizens carrying firearms.... Consequently, the organization has opened up a whole new Pandora's box of debate within an already loaded issue. ... It is likely that we still won't understand where we stand

COSENZA

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the academy by the radical left and their rabid intolerance of incorrect thinking. There was not a sufficient reaction to stem the tide. Perhaps the most famous early example of the political correctness rot was when in 1993, the University of Pennsylvania decided to punish a freshman Orthodox Jewish student for calling a group of screaming, stomping black women "water buffalo." Despite the fact that not one scintilla of evidence was presented that the comment was motivated by race or animated by bias, the university prosecuted the student under

its judicial system for months, until the women dropped their complaint.

At the time, after calling the charges "questionable semantics, dubious zoology, and incorrect geography," NBC anchor John Chancellor said "[t]he language police are at work on the campuses of our better schools. The word cops are marching under the banner of political correctness. The culture of victimization is hunting for quarry. American English is in danger of losing its muscle and energy. That's what these bozos are doing to us." Can you imagine Lester Holt issuing a similar defense of speech?

The hostility to speech on campus has proceeded apace since then, to its

denouement when journalism professor Melissa Click shouted for physical violence to be used to prevent a student from reporting at the Mizzou protests. From these halls, our future justices will issue, and they will not be steeped in respect for voices speaking against officially approved messages.

President Trump, who has shown contempt for the press, if not their rights, has failed to move a muscle in defense of free speech. Like the Democrat mayors of San Jose, Berkeley and Charlottesville, President Trump refuses to do what any president with reverence and respect for free speech must — direct federal authorities to a full court press against those who infringe on the speech rights

of others. Were the police in those cities told to stand down? Well, something happened. It is uncommon and profoundly disturbing to see police officers standing on public streets witnessing violent felonies a few feet in front of them while they do nothing.

That's a harbinger of the future of speech in America. If it's illegal to say it, surely it can't be too long before it is illegal to think it. Ever-increasing government involvement in ideas and their dissemination (or lack thereof) is the Ghost of Christmas Future.

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What if hate speech was outlawed?



By Tim Donner

There is a growing belief, particularly among America's millennial generation, that there should be limits on free speech. These millennials and their fellow travelers have embraced the idea that there is certain speech — spoken or written — that is offensive enough to be unworthy of protection under the First Amendment.

Many will point to the recent ugliness in Charlottesville, Virginia, and argue that the right to express yourself freely in the public square begets danger, and thus is not as valuable as protecting those who are targets or victims of inflammatory rhetoric.

A surprising number of students at no less an institution than Yale University enthusiastically signed a petition from filmmaker and satirist Ami Horowitz in 2015 calling for an outright repeal of the First Amendment. Mr. Horowitz said a “solid majority” of Yale students he approached supported the repeal, and that it took just one hour for him to collect 50 signatures.

Is the idea of an outright repeal, or an exception for “hate speech,” defensible?

Supporters of the idea argue that words can lead to violence. Furthermore, they assert that even our strongest, most reliable allies such as England, France and Germany do not have constitutionally protected speech. In those countries, one can be prosecuted for spoken or written words. So why should the U.S. be different?

To be clear, there are exceptions to this “absolute” right. Child pornography, blackmail and perjury are not protected speech. And neither are words that directly incite violence or mayhem. In an opinion issued in 1919, Justice Oliver Wendell Holmes famously pointed to “falsely shouting fire in a crowded theatre” as an illegitimate application of the First Amendment.

But the highest form of protected speech is political speech. The Founders and Framers of the U.S. Constitution had just fought a war over their right to

dissent and separate from the British Crown, and they were intent on allowing the type of political expression forbidden by their English overlords. And yet, it is just such political speech that many now seek to limit.

So let us suppose for a moment that the Constitution was amended to prohibit “hate speech.” What specific words or phrases would be labeled as hate? Would context matter? How would such a prohibition be enforced?

Most importantly, who would decide?

The federal government could establish some sort of commission charged with determining which speech represents hate and which does not. Alterna-

ensue. Conservatives and liberals would battle endlessly about who should be selected to sit in judgment of the speech of their constituents or fellow citizens. Those on the left would likely focus on references to race and ethnicity. Those on the right might set their sights on false accusations of racism or sexism (which might also enter the realm of libel and slander). Each of the various identity groups would weigh in with their own demands and definitions of hate speech.

Lawsuits based on the new limits on speech would abound. Without absolute statutory parameters, judges would make their own subjective determina-

apply the new hate speech exception as they see fit, but that might well trigger conflicts with the Constitution's 14th Amendment, which guarantees equal protection under the law for all citizens.

Over the 240 years of this radical experiment called a constitutional republic, there have been attempts to limit speech. Just two years after the ratification of the U.S. Constitution, the Alien and Sedition Acts were advanced by Federalists and passed into law, effectively equating certain political criticism with treason. In the aftermath of the Civil War, a labyrinth of oaths and affirmations of loyalty were introduced by self-identified “Radical Republicans.” Neither of these efforts were received well by the citizenry, and both ultimately failed.

When it comes to the value of free speech and the consequences of its limitation, we would do well to consider the words — and stand on the shoulders — of great Americans who have come before us.

Supreme Court Justice Louis D. Brandeis said, “It is the function of speech to free men from the bondage of irrational fears.” Further back in our history, Ben Franklin stated, “Freedom of speech is a principal pillar of a free government: When this support is taken away, the constitution of a free society is dissolved, and tyranny is erected on its ruins.”

And Franklin made another key observation about the need for a free press (and thus free speech) by saying, “If all printers were determined not to print anything till they were sure it would offend nobody, there would be very little printed.”

But one of the most passionate defenders of free speech was the very father of our country and first president, George Washington, who warned: “If men are to be precluded from offering their sentiments on a matter, which may involve the most serious and alarming consequences that can invite the consideration of mankind, reason is of no use to us; the freedom of speech may be taken away, and dumb and silent we may be led, like sheep, to the slaughter.”

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Tim Donner is the President of One Generation Away, and a Washington political columnist for LibertyNation.com. He is also longtime entrepreneur, broadcast journalist, conservative public policy advocate and former U.S. Senate candidate from Virginia. He established Horizons Television, which specializes in documentary, educational and promotional video production, and has served as a trustee for several organizations, including the Virginia Institute for Public Policy, Radio America and the National Mental Health Association.



ILLUSTRATION BY GREG GROESCH

tively, a blue ribbon commission of leading Americans from various walks of life could meet and issue recommendations.

Imagine the arguments that would

arise in cases which come before them. That would dramatically increase the already loud cries about judicial bias.

State and local jurisdictions could

A naturalized citizen's reflections on free speech in 2017



By Dr. Deborah De Sousa Owens

My first summer in America was during the country's bicentennial. I was only 12 years old, but I can still remember going to a July 4th parade with my aunt and uncle. At the time, it was almost too much for a young girl from Panama to understand. But I did know I was witnessing the celebration of something awe-inspiring. And I was aware that my new home was a beacon of freedom for the world.

Nearly 25 years later, I finally became an American citizen. By then, I understood much more than I had all those years before. I knew what it meant for my parents to send their daughters away to the land of opportunity. And I had done my best to make them proud.

At my citizenship ceremony, I spoke about the honor and privilege I felt in becoming an American. The ceremony

was held in September 2000, just weeks before a major election. In my speech, I explained why I was so excited about the chance to exercise my rights as a citizen for the first time: "Last year, I decided that it was time to become a citizen. I have issues dear to my heart, particularly education. So, I wanted to vote. This November 7th is the first election of the new decade, new century, new millennium, and I wanted to be a part of it."

For me, voting would be the truest expression of what it means to be an American. Even as a child, I'd thought about how America stood for freedom: freedom from poverty, freedom to learn, and the freedom to dream. Now I was going to participate in that process and (in my own small way) help spread freedom in the world.

Somewhere between the day I gave my citizenship speech and the writing of this article, our country turned its back on freedom. And it happened so quietly that many of us didn't realize what had changed until we found ourselves shunned, mocked, sued, marginalized or intimidated into silence by those who disagreed with us.

In recent years, it seems as though the freedom of speech and diversity of thought that we once prided ourselves on has turned into, "freedom of speech for me, but not for thee."

Good people — ordinary Americans who are trying to live their own dreams — are targeted by bullies who seek to shut them up, run them out of business or otherwise ruin them — just because they hold different political beliefs.

Gone is the idea that there is value to

be found in ideological diversity. Instead, we see organizations like CRTX and Susan B. Anthony List (groups that are well within the mainstream of American politics and have no questionable affiliations of any kind) labeled as "hate groups" by leftists seeking to shut down anyone who doesn't agree with their radical agenda.

I can't understand what happened to the America that inspired me back when I was a little girl. It wasn't all that long ago that I contributed my citizenship speech to a compilation of essays about the history of the America's fight for freedom (in faith, speech, civil rights and more). The following is an excerpt from my essay, "Freedom to Be," which was published in the book "Freedom" in February 2008.

During our first summer, America celebrated its 200th birthday on July 4, 1976. I remember my aunt and uncle taking us to the parade, which was so spectacular to see. I was in awe. I did not comprehend the meaning of that day until years later. What I now understand is that America was liberated and set free from a monarchy that ruled her. Because she was freed, she now extends freedom to persons from around the world. She opened her arms and received my sister and me 31 years ago, and I showed my gratitude by pledging to become an American citizen on September 22, 2000. I do not take what she offers for granted. Since that day, every time there is an election, I vote. I vote because it is important to keep America free from tyranny and everything else that seeks to destroy what she stands for. Freedom to me is America. She allows you the freedom to be!

In the Forward to the book, Dr. Benjamin Hooks — himself a noted civil rights activist — spoke of how "elated" he was to participate in a book where blacks and whites came together to write about freedom: "This book was written to tell what I believe to be an important story of tearing down walls and breaking down barriers from each contributing author's perspective. Each come from different backgrounds, each has his or her own unique story to tell, which I am sure you will find inspirational."

Dr. Hooks meant that there was something valuable to be gained by an enterprise where people were willing to share and accept different points of view in pursuit of greater freedom. The key was knowing we all wanted to make this country better.

If we do not reverse course and begin treating different views with respect and dignity (rather than name-calling and contempt), we will lose the freedom that makes our country great. And that will destroy the dream that is America.

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College students should learn from the Supreme Court: Free speech protects everyone

By Josh Blackman



Pay very close attention to what today's college students think and do because today's college students will become tomorrow's lawyers and the next generation's politicians and judges. This is especially true for the First Amendment. If students are taught that offensive speech should be censored and controversial speakers should be heckled, then the freedom of expression for the future stands on very shaky grounds. This ominous future can be avoided. Students must be taught that

speech ought to be protected, no matter offensive it is. The answer to unpopular speakers is not interruption, but interaction. Use arguments to respond and counterprotest, but do not stop a speech in its tracks. All of these sentiments are easy enough to articulate, but teachers and professors have the front-line responsibility to make sure these precepts are embraced. The Supreme Court's recent decision in *Matal v. Tam* provides a case study of how these lessons can be taught.

An Asian-American dance-rock band sought to trademark its name,

"The Slants." The lead singer of the band, Simon Tam, chose this name to "reclaim" and "take ownership" of racial stereotypes. Nonetheless, the government rejected the application because the term "slants" was a derogatory term for persons of Asian descent. The Patent & Trademark Office justified its decision, in part, because "several bloggers and commenters to articles on the band have indicated that they find the term and the applied-for mark offensive." While this sort of reasoning would pass

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Misconceptions about free speech begin before college



By Dr. John Samples

Autumn brings another host of freshmen to their respective universities to grapple with unfamiliar and often deeply challenging ideas. While college campuses have increasingly become fraught fronts in our nation's totalizing culture war, American parents trust that a high school education has equipped their children with all the civic knowledge required to engage responsibly with a world of new — and sometimes deeply offensive — ideas.

Such trust is unwarranted. College students often seem uncomfortable with, if not hostile to, unorthodox ideas, yet the crisis of free speech does not begin at the university. A 2016 survey of high school teachers and students found that only 45 percent of students agreed that “People should be allowed to say what they want in public, even if it is offensive to others,” and only 43 percent concurred with the statement that “People should be allowed to say what they want on social media, even if it is offensive to others.” A scant majority of teachers would allow these forms of offensive speech.

Such opinions contravene free speech. Americans have a right to say what they please, even if it's offensive. First Amendment expert Jeffrey Herbst notes that young people appear to have a different understanding of free speech that is essentially “the right to non-offensive speech.” Mr. Herbst thinks elementary and high

schools inculcate a respect for diversity understood as “Don't say things that could hurt others.”

That's good advice for life, but not for constitutional law. Most people find some political expression objectionable. Recognizing an “offensive speech” exception to the First Amendment would prohibit a lot of valuable speech.

Kids learn from experience as well as from books, and their experiences all too often suggest that order trumps freedom. A half century ago, the Supreme Court

United States Marine Corps, questioning President George W. Bush's fitness for office, proclaiming that “Black Lives Matter,” and bearing an image of Old Glory. All were prohibited because printed images or words could provoke disruptive conversations between students.

High schools also have nearly unlimited power to censor student speech that is or appears to be sponsored by the school. School officials can control the output of student newspapers and student election campaign materials. This power is wielded



recognized that “students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” The Court ruled that several young Iowans could not be punished by their principal for wearing a black armband to protest the Vietnam War.

But the Court only offered protection to nondisruptive speech, a category that subsequent courts have shrunk to include only the most milquetoast of expressions. Students have faced punishment for wearing clothing celebrating the

to ensure that student papers and elections are completely free of the sorts of controversies common in their real-world equivalents, grossly limiting the value of these exercises.

School administrators have exercised prior restraint over school newspaper articles concerning student drug use, teen pregnancy and the dismissal of favored teachers. In one particularly egregious case, a student paper was shut down in its entirety for reporting on the death of a student injured in a school wrestling match.

Anything that might provoke uncomfortable discussion between students, teachers and parents — or might diminish the school's reputation — seems fair game for censorship. Student electoral speech faces similarly arbitrary restrictions, appeals to religion — even in jest — are prohibited, and candidates have been barred from running due to extracurricular Facebook posts critical of school administrators.

High schools have a higher purpose than occupying the time of young people and keeping them out of trouble. We require our children to attend school because we expect the experience to cultivate the sorts of values required to be good democratic citizens. We encourage students to publish newspapers and hold elections not because they are enjoyable, but because we believe that these activities will prepare them to publish real newspapers and participate in actual elections. In school, as in life, such lessons can be disruptive to teachers and objectionable to fellow students. Avoiding both disorder and offense has fostered a generation at best indifferent to vital constitutional values.

Students who are taught that they cannot be trusted to express themselves freely as high school seniors are unlikely to drastically change their expectations upon becoming college freshmen. Teenagers told that quietude born of censorship is preferable to uncomfortable debate will not develop the ability to engage responsibly with perspectives they find offensive, and are likely to embrace censorship, the preferred tactic of adults with power over their lives. Those concerned by the state of free speech on college campuses should look to the dismal state of free expression in American high schools, where students are routinely treated to a multiyear lesson in the value of quashing expression.

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for standard operating procedures on many college campuses — shut down speech that is deemed “offensive” — the Supreme Court disagreed. Unanimously.

All eight Justices ruled in favor of *The Slants*. (The case was argued before Justice Neil M. Gorsuch joined the bench.) Three decades ago, the Supreme Court ruled that a flag-burning ban is unconstitutional: “If there is a bedrock principle underlying the First Amendment, it is that the government may not

prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” Justice Samuel A. Alito, Jr.'s opinion in *Matal v. Tam* reaffirmed this important maxim. The mere fact that *The Slants* sought a trademark does not give the government the power to pick and choose which speech is worthwhile of protection. Otherwise, Justice Alito explained, “government could silence or muffle the expression of disfavored viewpoints.”

Justice Anthony M. Kennedy's opinion went even further. He explained the government cannot stifle speech because some bloggers were bothered

by the name. The government, Justice Kennedy noted, cannot tie “censorship to the reaction of the speaker's audience.” Allowing a heckler's veto would permit the government to “remove certain ideas or perspectives from a broader debate.” This danger is heightened, Justice Kennedy continued, “if the ideas or perspectives are ones a particular audience might think offensive, at least at first hearing.” And, in a lecture to students nationwide who heckle speakers they deem offensive, the often-swing Justice Kennedy offered this lesson: “Initial reaction may prompt further reflection, leading to a more reasoned,

more tolerant position.” In other words, listen; you just might learn something. Interruption ends the debate. Interaction promotes tolerance.

Professors and students alike should embrace the Supreme Court's unanimous decision. The First Amendment should not be a right-left issue. Everyone benefits from the robust protection of free expression.

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