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Is the First Amendment in Danger on College Campuses?

BY [STEPHEN SAMOLSKY](#) / ON OCTOBER 6, 2018



On September 26, 2018, the United States House of Representatives held a debate to discuss policies that may inhibit free speech in colleges across the country.^[1] A variety of free speech advocates were invited by Congress to join the conversation, and each presented a unique perspective.^[2] The hearing was a response to university policies that aim to combat hate speech, but which may actually be First Amendment violations. Hate speech is speech that attacks an individual or group based on a protected characteristic, such as race, religion, or sexual identity.^[3] This definition paints a clear picture of why hate speech is undesirable. One may wonder why anybody would support the expression of such atrocities, but the reasoning is more fundamental than the obvious truth that it wrongfully hurts members of the population.

The First Amendment states in full that "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."[\[4\]](#) In effect, the First Amendment guarantees that individuals have a right to express themselves in a variety of ways without fear of government retaliation. Some American colleges are implicated in this free speech debate for two reasons. First, public universities are considered government entities that receive federal funding.[\[5\]](#) Additionally, over 350 colleges implemented codes prohibiting hate speech approximately 25 years ago.[\[6\]](#) For instance, the State University of New York at Albany has a policy prohibiting the use of "obscene language in a public place."[\[7\]](#) While one would be wise to avoid this behavior in public, the policy is a clear violation of the First Amendment. Vulgar and crude language is not illegal. Although the fight against hate speech likely began with positive intentions, this is where the battle has ended up.

College campuses must remain a forum for the free and open exchange of ideas. Universities are the laboratories for the future, and it is to everyone's advantage that they have an informed opinion. As the Supreme Court announced in *New York Times v. Sullivan*, a rule that limits free speech "dampens the vigor and limits the variety of public debate."[\[8\]](#) While prohibiting certain speakers on college campuses may send a strong signal to opposing viewpoints, it is not an admirable message.[\[9\]](#) This is the intellectual equivalent to closing one's ears and screaming "la la la." While this makes some individuals feel protected, banning college speakers has the simultaneous disadvantage of making others feel excluded. Isn't part of the fight against hate speech an attack against exclusion? Additionally, the blending of assorted ideas is what forms stronger and newer beliefs in society. When we don't challenge ourselves, it is easy to become complacent in our viewpoints. Partitioning good and bad speech will at some point place valid and logically sound ideas in the latter category. How can people develop their opinions if they do not fully listen to the opposition?

In an ideal world, people would be able to both speak freely, and avoid hearing speech that they deem to be hateful. Yet in reality, this perfect conception of free speech is not a remote possibility. Thus, American society should be willing to accept the good with the bad. One example is the burning of the American flag.[\[10\]](#) While repugnant to many, it is preferable in a democratic society to give anti-American sentiment a floor than to ban political dissent of all forms. Although Congress could have theoretically outlawed flag burning before the First Amendment, there is a strong sentiment in American society that we should not let the government decide which ideas can be expressed.[\[11\]](#) After all, this is why the First Amendment was drafted. The same is true of colleges and universities, which are no better empowered to control speech than the government.

Universities cannot possibly stop hate speech, despite any efforts or justifications that have been made. As mentioned, public universities are merely extensions of the government, and thus are held to the First Amendment's protections. Free speech is binary: it either exists in totality, or it does not exist at all. Criticism of hate speech policies is not an endorsement of hate speech, but it reflects an understanding that hate speech is a horrible byproduct of a beautiful freedom. The purpose of an education is to learn. However, what are we really learning when we only hear half of the debate?

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[1] Mel Leonor, *Debate Over Campus Free Speech Back Before House*, Politico (Sept. 26, 2018), <https://www.politico.com/newsletters/morning-education/2018/09/26/debate-over-campus-free-speech-back-before-house-351824>.

[2] *Id.*

[3] *Hate Speech Definition*, Dictionary.com, <https://www.dictionary.com/browse/hate-speech> (last visited Sept. 26, 2018).

[4] U.S. Const. amend. I.

[5] Erwin Chemerinsky, *Hate Speech is Protected Free Speech, Even on College Campuses*, Vox, <https://www.vox.com/the-big-idea/2017/10/25/16524832/campus-free-speech-first-amendment-protest> (last updated Dec. 26, 2017).

[6] *Id.*

[7] State University of New York – Albany, *Policies on Tolerance, Respect, and Civility*, Foundation for Individual Rights in Education, https://www.thefire.org/fire_speech-codes/albany-disruptive-conduct/ (last updated Aug. 6, 2018).

[8] *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279 (1964).

[9] Jessica Chasmar, *Ben Shapiro Banned from DePaul University over Security Concerns*, Washington Times (Aug. 1, 2016), <https://www.washingtontimes.com/news/2016/aug/1/ben-shapiro-banned-from-depaul-university-over-sec/>.

[\[10\]](#) Geoffrey R. Stone, *Hate Speech and the U.S. Constitution*, 3 E. Eur. Const. Rev. 78, 82 (1994).

[\[11\]](#) *Id.*