The Contours of Free Speech on a College Campus

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

First Amendment, U.S. Constitution
PROGRESSION OF FREE SPEECH

“The principle of free thought is not free thought for those who agree with us but freedom for the thought we hate.”

— Justice Oliver Wendell Holmes

May 27, 1929, Opinion of the Court
United States v. Schwimmer
National Socialist Party of America v. Village of Skokie
1977
American Association of University Professors
Institutions of higher education are conducted for the common good... [and] the common good depends upon the free search for truth and its free exposition.

— American Association of University Professors
1940, Statement of Principles on Academic Freedom and Tenure
“The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read...and freedom of inquiry, freedom of thought, and freedom to teach...indeed the freedom of the entire university community. Without those peripheral rights the specific rights would be less secure.”

— Justice William O. Douglas

June 7, 1965, Opinion of the Court

Griswold v. Connecticut
Sweezy v. New Hampshire
1957

IT CAN HAPPEN HERE!
“The four essential freedoms of a university – to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.”

— Justice Felix Frankfurter

Opinion of the Court, June 17, 1957

Sweezy v. New Hampshire
IMPORTANCE OF ACADEMIC FREEDOM

“Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.”

— Justice William J. Brennan

Opinion of the Court, January 23, 1967
Keyishian v. Board of Regents of The University of the State of New York
Institutional Academic Freedom

“The First Amendment was designed by its framers to foster unfettered discussion and free dissemination of opinion dealing with matters of public interest and governmental affairs. It embraces the freedom to distribute information and materials to all citizens, a freedom ‘clearly vital to the preservation of a free society.’”

— Justice Alan B. Handler

Opinion of the Court, The Supreme Court of New Jersey, November 25, 1980

State v. Schmid
William T. Coleman, Jr.
1920-2017
Protected Speech in Higher Education

“The issue of whether or not a professor’s speech constitutes a matter of public concern provides an interesting zigzag of results, often very contextual and fact specific.”

— Michael A. Olivas & Amy Gajda
Pickering v. Board of Education  
1968

The Pickering Test is applied in evaluating the interests of a public employer with its employees' right to Free Speech and requires the court's consideration of the following:

1. Did the individual demonstrate that his or her speech address a matter or matters of public interest and concern?
2. Did the individual demonstrate that his or her speech was a significant or motivating factor in the employer’s decision?
3. Did the court balance the interests of the individual commenting on matters of public concern as a citizen and the public employer's interest in "promoting the efficiency of public service?"
But even in a public forum, the government may impose reasonable restrictions on the time, place, or manner of protected speech—so-called time-place-manner restrictions—provided those restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.

Cornell University Law School, *First Amendment: Freedom of Speech*
Age of Protests on College Campuses
Age of Protests on College Campuses
Alabama State College
Montgomery County Courthouse Sit-In • February 25, 1960
Age of Protests on College Campuses

University of California, Berkeley

Occupation of Sproul Hall - December 2, 1964
Age of Protests on College Campuses
Cornell University
Occupation of Willard Straight Hall - April 19, 1969
Age of Protests on College Campuses
Kent State University
May 4, 1970
Age of Protests on College Campuses
Jackson State College
May 15, 1970
Age of Protests on College Campuses

University of Wisconsin-Madison

Sterling Hall Bombing · August 24, 1970
Age of Protests on College Campuses
University of California, Berkeley
Milo Yiannopoulos Protest • February 1, 2017
IMPORTANCE OF ACADEMIC FREEDOM

“I do not believe that it can be too often repeated that the freedoms of speech, press, petition and assembly guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish.”

— Justice Hugo Black

Dissenting Opinion of the Court, June 5, 1961
Communist Party of the United States v. SACB
(as cited in Healy v. James)
Contours of Free Speech
Q & A

Freedom of Speech