

How to Protect

**free**  
**speech**

on College Campuses



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THE FIRST  
AMENDMENT  
TO THE U.S.  
CONSTITUTION

“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.”

## Free Speech Under Attack on Campus

Free speech—that foundational idea of the First Amendment to the U.S. Constitution—is in danger on college campuses around the country. And the threat carries risks beyond silencing speech. Bradley Devlin, a student at the University of California-Berkley, discovered this danger in 2017. Bradley was waiting outside of a campus building for controversial speaker Milo Yiannopolous to begin making a speech when, he says, “I had an M-80 firework thrown at me twice.”

*“I was ushered into the building by police in riot gear saying, ‘You need to move inside now.’ Right after that, a firework went off. We were inside next to glass windows, and people tried to rush in and break the windows. We were then rushed upstairs and locked in another room.”*

“I’ve never had a more helpless instance in my life,” Bradley says.

Incidents like this, where individuals resort to violence instead of debate, have become increasingly common on campuses around the country—from Middlebury, Vt., to Olympia, Wash. This alarming trend should make protecting free speech a priority for state officials.

Fortunately, state lawmakers have taken notice and are taking action. In the fall of 2017, North Carolina adopted a proposal that says:

*“The proper role [of a college is not to] shield individuals from speech... they find unwelcome.”*

The proposal requires university officials to “implement a range of disciplinary sanctions” for individuals who violate other’s efforts to express themselves.<sup>1</sup> Arizona lawmakers approved similar provisions in 2018, and the Wisconsin Board of Regents—the governing board for the University of Wisconsin system—has also adopted these policies.

Legislators’ actions are important because state and local officials have a duty to enforce state constitutional protections. In many cases, state lawmakers are directly responsible for enacting laws regarding university governing boards’ authority. These boards set many campus policies.

This booklet explains the history behind some of the most important moves already made to protect free speech on college campuses and highlights important provisions that state officials should include in drafting their own proposals.

**“I was halted from handing out the U.S. Constitution. I refused to accept the school policies that infringed on the students’ First Amendment rights.”**

— Jeff Lyons  
Bunker Hill Community

# A History of Protecting Free Speech in the Ivory Tower

Threats to free speech on campus are not a new phenomenon. In the 1960s and '70s, protests and other activities related to the civil rights movement and the Vietnam War tested colleges' commitment to free speech.

The campus turmoil led to the development of two thoughtful documents: the University of Chicago's Kalven Committee report in 1967 and the Woodward Report, produced by Yale's Committee on Freedom of Expression in 1974.<sup>2</sup>

Both the University of Chicago and Yale reports affirmed these schools' commitments to free speech and provide examples that should inform state lawmakers' efforts to protect free expression on campus:

## The Kalven Report 1967:

- ▲ Individuals on campus should be free to express their opinions.
- ▲ Colleges should offer “the fullest freedom for its faculty and students as individuals to participate in political action and social protest.”<sup>3</sup>
- ▲ Students and faculty alike should not fear that a school will try to limit their speech because the university has taken an official position on an issue.

## The Woodward Report 1974:

- ▲ Individuals who violate the free speech rights of others should face discipline.
- ▲ The university should exercise its right to suspend or expel students when they interfere with the ability of others to express themselves.<sup>4</sup>
- ▲ The school should not disinvite speakers and said the university should not rescind speaker invitations based on the individual's reputation or the content of the speaker's prior remarks.

### Stone Report 2015:<sup>5</sup>

- ▲ Commits the University to protecting expression because, “the University has a solemn responsibility not only to promote a lively and fearless freedom of debate and deliberation, but also to protect that freedom when others attempt to restrict it.”<sup>6</sup>

### Chicago’s Dean of Students Letter 2016:

- ▲ “Civility and mutual respect are vital to all of us, and freedom of expression does not mean the freedom to harass or threaten others. You will find that we expect members of the campus community to be engaged in rigorous debate, discussion, and even disagreement. At times this may challenge you and even cause discomfort.”<sup>7</sup>

With today’s climate of campus censorship and other threats to free speech, these statements provide principles that should guide state lawmakers and university communities in designing proposals that protect the right of all members of a campus community to speak freely and practice free expression.



PHOTO PROVIDED BY KEVIN MCMAHON

## Student Story: University of Virginia

As a student and member of the Young America’s Foundation chapter at the University of Virginia, Kevin McMahon regularly invites speakers to the campus. But a recent school policy has had a chilling effect on his attempt to organize lectures.

Campus officials sent an email to students saying that students should call 911 if they see a flyer or poster that offends them.

“The political climate at UVA is tense,” Kevin says, noting the 2017 protests in Charlottesville that led to the death of one individual.

Kevin says he is trying to create events where students can discuss—and even debate—sensitive topics peacefully. “I’d want more than anything for someone [who disagrees with a speaker] to come to one of these events,” he says.

But it is hard to organize these speaking opportunities, Kevin says, “especially when the university is pressuring students to call 911 when they see something they don’t like.”

Universities should be places that promote discussion and debate and should not shelter students from ideas. Colleges should teach students how to engage in civil discourse.

**“Just a few decades ago, Florida State University was heralded as the ‘Berkeley of the South,’ given the number of civil rights and antiwar demonstrations. Now, it is the opposite. I have been stopped multiple times while handing out copies of the U.S. Constitution.”**

**— Mike Avi  
Florida State University**





# **A Step-by-Step Guide to Protecting Free Speech on Campus**





State lawmakers should require public university governing boards to adopt a **statement of commitment to free speech** on campus, to be made available in university materials like student handbooks and discussed during student orientation.



Free speech policies should be clear that **anyone lawfully present on campus can protest or demonstrate there**. Universities can adopt rules to maintain order on campus that may affect the ability of individuals to speak or demonstrate, but such rules must be publicly available and provide other means for individuals to express themselves.



**All public areas of a public college campus should be free speech zones**. Individuals who want to speak in public areas on campus should not be sequestered to hard-to-reach areas of the college grounds.



Public colleges and universities **should not sanction members of the campus community for their views**. Faculty and students must be free to take positions on issues without fear that the school will silence them because of official university policies. Universities should provide forums for free speech, not decide what speech is acceptable.



State policymakers should also encourage schools to **institute consequences for anyone who violates the free speech rights of others, up to and including suspension or expulsion.** Policymakers should conduct oversight to review public universities' handling of such situations.



Proposals that levy sanctions for interfering with the free speech rights of others must be paired with **due process protections for the accused.** College officials must provide written notice of the charges and provide an impartial forum to weigh evidence on both sides. In the more serious cases, the accused should have the right to active assistance of counsel.

If an incident on campus involves violation of state or local ordinances—laws involving arson or physical assault, for example—then universities should refer such issues to the proper authorities.



University governing boards should oversee the writing **of annual reports on the condition of free speech in the campus community,** including an evaluation of college administrators' decisions regarding any free speech-related incidents that happened during the year. The board should make the reports available to lawmakers and the public.



# Key Ideas in the Free Speech on Campus Debate

## Free Speech Zone

A so-called free speech zone is a designated area of campus where individuals can speak or demonstrate. Colleges are using these zones to restrict the distribution of flyers or the staging of a protest. Such areas are notoriously small and hard to find on campus.

For example, at the University of Hawaii at Hilo, the free speech zone was a “flood-prone” area, and at California State Polytechnic University in Pomona, the zone amounted to 0.01 percent of the campus.<sup>8</sup> At Southern Illinois University, the zone was a 905-square-foot area—approximately one-third the size of a tennis court (students sued the university, and the school settled the case and abandoned the free speech zone concept).

## Bias Response Team

Such teams allow students to report an incident involving bias—often anonymously—after which the team will investigate the incident. According to the Foundation for Individual Rights in Education, more than 200 colleges around the country have Bias Response Teams. A response team at the University of California, San Diego investigated a student publication after the paper satirized so-called “safe spaces” on campus. A team investigated students at the University of Wisconsin-Platteville after the students dressed as three blind mice for Halloween.

A culture in which individuals anonymously report taking offense at someone else has a deeply chilling effect. A campus community will struggle to develop trust, a sense of belonging, and a robust deliberative environment when campus officials have a policy of investigating anonymous reports of hurt feelings.

## Safe Space

Colleges designate areas as safe spaces when the school or event organizers anticipate the content of a lecture or event may be controversial. The spaces are meant to be a place where individuals can go to express their opinions without fear of being judged. The spaces also allow students to avoid exposure to opinions with which they disagree.

Northern Arizona University President Rita Cheng explains why these spaces are problematic:

*“I think that you as a student have to develop the skills to be successful in this world, and that we need to provide you with the opportunity for discourse and debate.”*

*National Review* author Stanley Kurtz tracked the rise of safe spaces and found that the demand for such spaces increased as “university shout-downs and disinvitations began to spike.”<sup>9</sup> He further notes that “trigger warnings, safe spaces, and microaggressions signal a cultural sea-change.”

## The Heckler's Veto

The Heckler's Veto is imposed when individuals shout at a speaker or even engage in violent activity so that the speaker cannot be heard. The veto is ratified and made effective when government officials—including university administrators—look the other way or disinvite speakers on the basis of threatened protests.

A now-infamous example of such a veto occurred when students and other individuals at Middlebury College in Vermont shouted at guest lecturer Charles Murray and physically attacked the professor who had invited him—such that Murray had to leave town before he could be sure of his physical safety. In a 1927 U.S. Supreme Court ruling, Justice Louis Brandeis said,

*“[The best way to respond to the ideas with which you disagree or that are incorrect is with] more speech, not enforced silence.<sup>10</sup>*

**“I didn’t realize just how deep the red tape goes until I tried to register my Young Americans for Liberty Chapter. On a campus that was once known for its ‘Free Speech Movement,’ it should rattle us all how administrators have silenced so many voices on campus.”**

— Khader Kakish  
University of California Berkeley

# It's time to speak.

The freedom of speech is a founding principle of the United States. Yet as examples at colleges around the country demonstrate, too often individuals on campus are choosing to resort to disruption and even violence instead of debate.

Universities should allow students and faculty to ask tough questions and explore new ideas. A climate of aggression and suspicion marked by the Heckler's Veto, safe spaces, and Bias Response Teams limits speech and does not prepare students for life after college.

State lawmakers and university governing boards must protect the free exchange of ideas. The rights enshrined in the First Amendment to the Constitution and the 50 state constitutions have a vital place in a free society. They are also vital to higher education and must be regarded. ▲

## CENTER FOR EDUCATION POLICY

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## ENDNOTES

- <sup>1</sup> North Carolina Legislature, Session 2017, House Bill 527, <https://www.ncleg.net/Sessions/2017/Bills/House/PDF/H527v6.pdf>.
- <sup>2</sup> Yale College Dean's Office, "Report of the Committee on Freedom of Expression at Yale," December 23, 1974, available at <http://yalecollege.yale.edu/deans-office/policies-reports/report-committee-freedom-expression-yale> (accessed March 29, 2018); University of Chicago, "Kalven Committee: Report on the University's Role in Political and Social Action," November 11, 1967, <http://www-news.uchicago.edu/releases/07/pdf/kalverpt.pdf> (accessed March 29, 2018).
- <sup>3</sup> University of Chicago, "Kalven Committee," p. 2.
- <sup>4</sup> Yale College Dean's Office, "Report of the Committee on Freedom of Expression at Yale."
- <sup>5</sup> University of Chicago, "Report of the Committee on Freedom of Expression," July 2014, <https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf> (accessed March 29, 2018).
- <sup>6</sup> University of Chicago, "Report of the Committee on Freedom of Expression," p. 3.
- <sup>7</sup> Scott Jaschik, "U Chicago to Freshmen: Don't Expect Safe Spaces," InsideHigherEd, August 25, 2016, <https://www.insidehighered.com/news/2016/08/25/u-chicago-warns-incoming-students-not-expect-safe-spaces-or-trigger-warnings>.
- <sup>8</sup> 115th Congress, H.Res.307, <https://www.congress.gov/bill/115th-congress/house-resolution/307/text>.
- <sup>9</sup> Stanley Kurtz, "Understanding the Campus Free-Speech Crisis," National Review, April 12, 2017, <https://www.nationalreview.com/corner/campus-free-speech-crisis/> (accessed March 29, 2018).
- <sup>10</sup> *Whitney v. California*, 274 U.S. 357 (1927).



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