

# Your First Amendment Rights

*and what to do about them*

A guide to civil discourse on today's college campuses





This is for your general informational purposes only. It is not legal advice and does not create an attorney-client relationship between you and Southeastern Legal Foundation.

# We're here to help.

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Your college campus is where you go to learn, live, work, gather, and play. It was once a marketplace where students like you could exchange ideas freely without fear of censorship. But if your college is like most these days, instead of encouraging you to share your ideas, it forces you to keep quiet. It tells you that you can't say anything offensive, let alone political. It imposes lengthy approval processes before you can host an event or even hand out flyers. And worst of all, it threatens discipline for simply exercising your First Amendment rights. The result: you stay silent.

Sound familiar? We've been there. We've seen it. And we're here to help. Southeastern Legal Foundation believes that your thoughts should be shared, because only through discourse can we learn and grow as a society. That's why we are committed to protecting students' freedom of speech.

In our experience, many of you need an answer to your problems right now. For some, a solution may only exist in the courtroom. But for others, it can be as simple as talking to your administrators. That's why we've compiled this guidebook. In it you'll find an overview of First Amendment laws on college campuses, what colleges can and cannot restrict, and hypotheticals to help you navigate the problems you may encounter.

Before you can successfully convey your message, it is important to understand your right to share it. It is our goal to give you the tools to stand up for yourself in this fight for freedom. And we are ready to assist you every step of the way.



Yours in Freedom,



Cece O'Leary

Director of Legal Initiatives

# The First Amendment

*“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech[.]”*

**Speech is anything that  
conveys a message**



**clothing**



**tabling**



**flyers**



**symbols**



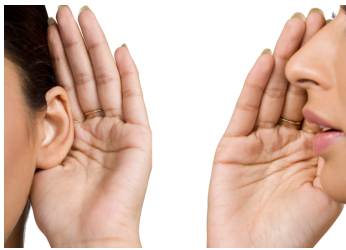
**social media**



**protesting**

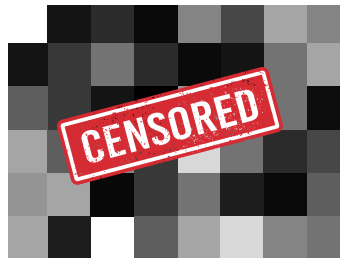


# Only a few things are NOT protected by the First Amendment



## **defamation**

spreading false rumors about others



## **obscenity**

depicting lewd and sexually explicit messages



## **true threats of violence**

intentionally putting others in fear for their physical safety



## **inciting violence**

encouraging others to commit a crime or use violence

## **Did you know?**

The First Amendment even protects “hate speech” and “offensive speech”

# When schools restrict speech

*it usually happens in three ways*

## **NEVER OK: viewpoint-based restrictions**

A public college can't treat speakers differently based on their beliefs.

Colleges can't stop speakers from visiting campus because they don't like their views, give benefits to some groups but deny them to others, or otherwise favor or disfavor viewpoints.

## **ALMOST NEVER OK: content-based restrictions**

Sometimes colleges ban the discussion of an entire subject, like political speech.

This is **ONLY** OK if the restriction serves a compelling government interest **AND** is very narrowly drawn.

For the most part, content-based restrictions are unconstitutional.



### **Q: What is a "compelling" government interest?**

A: "Compelling" means a grave concern for public health, safety, and welfare. It is a very high standard for colleges to meet.





**Q: What is a "significant" government interest?**

A: Monitoring traffic flow, noise, and security are considered "significant" interests.



**Q: What are other channels of expression?**

A: Universities must provide other ways to get messages across, like different times and locations for speech activities. Unfortunately, they often fall short of this requirement.

**SOMETIMES OK:  
time, place, and manner  
restrictions**

A college is generally allowed to regulate the time, place, and manner of student speech—when they speak, where they speak, and what kind of materials they can use to convey their message.

**BUT** a college must still treat all speakers equally.

**AND** any restrictions on the time, place, or manner of speech must serve a significant interest and leave other channels of expression available to students.



# Stand your ground

*Your rights are stronger in certain areas of campus*

## **STRONGEST**

sidewalks and quads



## **STRONG**

auditoriums and arenas



## **WEAKEST**

classrooms and dorms





## 1. Your rights are **STRONGEST** in a traditional public forum

- These are usually outdoor areas like sidewalks and quads
- A college can **ONLY** restrict the time, place, and manner of your speech in those areas
- Time, place, and manner restrictions must apply equally to everyone, and your college must provide other ways to communicate your message if your preferred time or location is not available
- Your rights are most secure here

## 2. Your rights are **STRONG** in a designated public forum

- These are places like auditoriums that a college opens to the public through its actions
- Once the college opens up the space, the same rules as the traditional public forum apply

## 3. Your rights are **WEAKEST** in a nonpublic forum...but you **STILL** have rights!

- These are areas like classrooms and dorms
- Your rights are least protected here...but you still have rights!
- A college must treat all viewpoints equally in this forum, and any restrictions must also be reasonable

# The Real World

*Here are some red flags to watch out for on your college campus and concrete steps you can take to defend your First Amendment rights*

## **1 You aren't sure what your school policies say or where to find them.**

Most schools have a free speech policy, a student code of conduct, and a student organization manual. These policies should be easy to locate and understand, but often they are not.



- **Do a Google search for these policies. They are often kept on the Legal Affairs or Dean of Student's webpage.**
- **Contact the school and ask to see the policies.**
- **When in doubt, SLF is available to help you locate and understand your policies.**

## **2 You attend a private college, and your administrators refuse to recognize your student group because of your views.**

Even though the First Amendment does not fully apply to private colleges, you still have options.

- **Check to see if your college has a free speech provision (often in the student handbook) saying your college is committed to protecting diverse points of view.**
- **If it does, you may have rights. Start by asking your administrators why they are not complying with their own policies.**
- **If that is unsuccessful, it may be time to speak to an attorney.**



### **3 Your student government passes a resolution targeting your expression.**

Individual members of student government have their own views. But if they try to make their views into law, it could be unconstitutional.

- **Attend your student government's open forum and voice your concerns. Remember: they are supposed to be the voice of the entire student body.**
- **Resolutions are often symbolic, not binding. But if they are binding, or if administrators adopt a resolution as a formal policy, it may be time for legal action.**
- **Consider running for student government so that conservative and libertarian voices are represented.**

### **4 Your student government refuses to fund your event.**

Student government often controls funding on campus. Unfortunately, that means they try to silence conservative and libertarian students by refusing to fund their speakers and events.



- **If you suspect that your student government is only funding certain groups on campus, you can submit an open records request to your college seeking more information. Ask SLF to help you draft one.**
- **If you know that your student government is funding groups differently based on viewpoint, it is time to call a lawyer.**

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## 5 Your school bans offensive speech, biased speech, or speech that belittles or stereotypes others.

Anti-bias codes are generally unconstitutional because they often ban protected forms of speech, including so-called hate speech and offensive speech.

- You cannot be punished for protected speech, including bias, no matter how much it may offend someone.
- If your college bans speech that you think is protected, it may be time to contact a lawyer.



## 6 Your college has a bias reporting form and a bias response team.

A "chilling effect" exists when a student objectively fears that speaking could result in discipline. Bias investigations generally chill speech because students fear retaliation from administrators and classmates. Any action taken by your college that has a "chilling effect" on your speech is unconstitutional.

- Many colleges have bias response teams that review and investigate reports of bias. Often they have the appearance of authority, but they can never actually punish you for protected speech.
- You can decline any voluntary meetings with administrators.
- If the school threatens consequences for failing to comply, it may be time for legal action.



## **7 Your college forces you to use your classmates' preferred pronouns.**

The Constitution protects your right to speak and not to speak. A college cannot compel your speech by forcing you to affirm other students' pronouns.

- **You can never be forced to personally affirm or agree with beliefs that you do not agree with, including the belief that there are more than two genders.**
- **If your college requires you to use other students' preferred pronouns, contact an attorney.**

## **8 Your college tells you to delete a social media post that someone found "harmful."**

Students have First Amendment rights whether they are on or off campus. So long as you are not threatening physical violence or otherwise engaging in illegal activity, your speech on social media is protected.

- **Seek clarification from your school about what exactly seemed offensive or harmful.**
- **Ask your school to show you the policy governing offensive or harmful speech.**
- **If you still have questions, or if you think your school may be unconstitutionally banning offensive speech, contact SLF for help.**



# The Real World

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## 9 Your college charges high security fees for your event because your speaker is "controversial."

Some colleges charge higher security fees if they think a speaker will draw a disruptive crowd. But assessing fees based on how controversial a speaker is, or how an audience will react to her views, is a form of viewpoint discrimination.

- **Ask to see the policy showing how fees are assessed for each event. If they are assessed solely based on the size of the space, that may be constitutional.**
- **If fees are assessed based on a speaker or potential controversy, it is likely unconstitutional.**



## 10 Your college bans political speech.

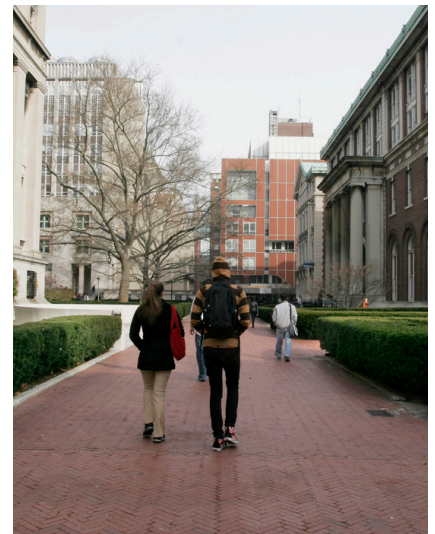
Schools often enact policies limiting political speech during important elections or telling students they can't use the university network to send political emails. These policies are unconstitutional because they are content-based restrictions.

- **Remind your school that political speech is the most protected form of expression under the First Amendment and that colleges cannot impose content-based restrictions like these.**
- **If your school refuses to revise the policy, or threatens punishment for failing to comply with the policy, it is time to talk to a lawyer.**

## **11** Your school requires you to get approval before publishing materials or hosting an event.

A prior restraint exists when a university official censors a student before the student can even speak. When administrators have authority to approve or deny speech in advance, they may unconstitutionally discriminate against views they don't agree with.

- **Set up a meeting with administrators to learn more about the policy.**
- **Ask how it works, why they have it, and if they would revise it so that the university is not engaging in prior restraint.**
- **If that is unsuccessful, it is time for legal action, including demand letters.**



## **12** Your college says you must stand within a designated area on campus to speak.

Colleges can place some restrictions on speech in a classroom. But on a campus lawn or sidewalk, you have a lot of freedom and your school must provide plenty of opportunities for you to convey your message.

- **Check your state law. Many states have banned speech zones by saying that students can gather spontaneously in outdoor areas of campus.**
- **Find out what other options are available if the designated area is reserved. Are they similar in time and location to the designated area?**
- **If there are no other options, or if the designated area seems unreasonably small or far away, SLF can help.**





## SOUTHEASTERN LEGAL FOUNDATION

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As a nonprofit law firm, our services are completely free.  
We are here as your resource.

**[SLFLiberty.org](https://SLFLiberty.org)**

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