



The U.S. Constitution's First Amendment

Background for the Community



PennState



As a land-grant institution, Penn State takes seriously its role in promoting and supporting free speech under the law. Freedom of expression is a bedrock principle of our University and is essential to our core educational mission. Free speech is foundational to a democratic society, even when it tests the limits of our tolerance.

Why does the University allow people to speak on campus who espouse hate and prejudice?

Under the First Amendment of the U.S. Constitution, Penn State, as a public university, must protect various expressive rights, even for viewpoints that may offend basic [institutional values](#) and personal sensibilities. To ban speakers who espouse ideas that may be offensive would be a violation of law. Equally important, such a ban limits the essential freedom that protects the rights of all of us to freely think and express our own ideas.

Most of these speakers are invited by recognized student organizations. These organizations can, without the University's consent or endorsement, invite speakers to campus as a constitutional right without censorship.

Why does Penn State so strongly support speech that is antithetical to University values?

The free exchange of ideas afforded by the First Amendment is necessary not only within the walls of a university, but within the world beyond. Penn State must educate students to differentiate ideas and thoughts with intellectual clarity so that they can offer counter ideas to those with which they disagree. Preparing students to be independent thinkers on issues across the political spectrum is an essential role embraced since Penn State's founding.

The path of intellectual discovery and growth only occurs if freedom of expression is at the heart: giving all of us the right to think the unthinkable, debate ideas that are considered off-limits, and question the unquestionable. When we choose to censor controversial ideas, we are then subject to these same actions by those who may find our expressions unfavorable.





How can hate-filled and discriminatory speech co-exist with Penn State’s diversity and inclusion efforts?

We fully believe that free expression is an indispensable tool to maintaining an inclusive campus—in addition to being essential to our academic and civic missions. History shows that marginalized communities have successfully promoted their interests because they had the right to express their views. In fact, marginalized communities have been unlawfully silenced by speech codes and other regulations against “offensive” speech.

According to the American Civil Liberties Union (ACLU), “Free speech rights are indivisible. Restricting the speech of one group or individual jeopardizes everyone’s rights because the same laws or regulations used to silence bigots can be used to silence you. Conversely, laws that defend free speech for bigots can be used to defend civil rights workers, anti-war protesters, LGBT activists, and others fighting for justice.”

Why are speakers that many find objectionable allowed such a high-profile platform at a major university?

Recognized student organizations can, without the University’s consent or endorsement, invite speakers to campus as a constitutional right and are free to sponsor programs or speakers of their choosing without censorship. While the First Amendment does not require Penn State to provide a platform for anyone, it does prohibit us from discriminating against speech based on a speaker’s viewpoint. The best remedy for speech that we find to be repugnant is more speech that expresses ideas that communicate our values and our commitment to each other and our community.

Why do student fees go toward speech that some see as targeted and disrespectful?

Under the law, allocation boards (such as the student-run University Park Allocation Committee (UPAC)) must make decisions that are viewpoint neutral and not based on religious, political or personal views. The student fees are intended to be allocated toward initiatives that represent the diverse viewpoints and perspectives of the student body, even those with which many profoundly disagree.

Isn’t hate speech different from free speech?

The term “hate speech” has no legal meaning in the U.S. and the Supreme Court has repeatedly confirmed that words and other expressions that many people would consider to be “hate speech” are constitutionally protected under the First Amendment.





Is there any speech that the University would limit?

Freedom of expression at Penn State is not without limits. There are exceptions to the First Amendment. For example, the University may restrict expression that incites imminent lawless action, defames a specific individual, or targets a specific individual or individuals with true threats of violence. In addition, the University may reasonably regulate the time, place and manner of expression and it can make sure the speech does not disrupt classes, operations, or University-sponsored events.

What can we do as a community to ensure the public is aware that, although a speaker is legally permitted to speak on campus, they may not represent our values?

University leaders encourage students, faculty and staff to take part in alternative events and lend their voices and presence to causes with which they are aligned and that help create a stronger community.

Individuals are free to speak out clearly against expressions of racist, sexist, homophobic and transphobic speech, as well as other instances of discrimination. For their safety and the safety of others, engaging in nondisruptive lawful protest is the best means for having opposing voices heard.

Those who study controversial speakers recommend that the most impactful way to combat purveyors of hate is not to engage, because engagement and anger is exactly what they seek. Many of the individuals who gain a platform for their denigrating rhetoric have their cause amplified by the outrage — and sometimes violence — they create within a community.

Can students, faculty, staff or visitors be punished for derogatory speech, such as racial slurs?

Social media has made it easier than ever to freely share views that we may find repugnant and hateful. There have been incidences in the past where individuals, noted as being part of the Penn State community, have been identified on social media for hate-filled rhetoric, and using repulsive language to denigrate others. On these occasions, University leaders have strongly and unequivocally condemned their speech or expressions.

In the aftermath of such incidents there are often calls for more action — such as expulsion of students or termination of employees. The University shares in the anger that hate-filled words create, and has consistently denounced the use of symbols and language associated with hate. As repulsive as the actions of these individuals may be to some — it is usually within their legal rights to express themselves as they wish.



Why isn't the Student Code of Conduct applicable. It prohibits harassment aimed at race or religion?

It is important to understand that every case is different and facts matter. It matters, for example, where an incident took place; it matters if it took place as part of a Penn State activity or program; it matters if there was additional “conduct” involved; it matters when the incident took place — before or after admission to the University; it matters if there are identifiable victims who are part of the Penn State community; it matters if the speech is “severe and pervasive.”

Some have pointed to the University’s Student Code of Conduct as justification for expelling students who espouse hate. People understandably want to know the University has acted, since the Code prohibits harassment based on race or religion. That is only a partial interpretation of our Code and ignores provisions that align our process with constitutional protections. Harassment is defined as behavior that is severe, pervasive, or persistent and objectively offensive to a degree that it interferes with a reasonable person’s ability to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University.

Penn State’s Office of Student Accountability and Conflict Response reviews and follows up as appropriate on every report received as it relates to an alleged violation. If it’s determined that a violation of our Student Code of Conduct occurred we take action.

Why won't the University share more about any actions it does take?

For students, the Family Educational Rights and Privacy Act (FERPA) is a federal law, which protects the privacy of students’ educational records and personal information. Disciplinary proceedings are part of a student’s educational record. In relation to employees, personnel actions are considered confidential, however there are numerous policies in place related to expectations for which an employee may be held accountable.

Doesn't the University have a policy related to the behavior of visitors?

Penn State does have a Visitor Rights and Responsibilities policy, which outlines expectations for all visitors to any University campus. Visitors do have the right to free speech. At all times, visitors, including speakers, have the responsibility to behave in a manner that complies with federal and state laws, local ordinances, and any applicable policies, procedures, and rules of the University. The policy can be found online at <https://policy.psu.edu/policies/ad103>