

CULTURAL AND POLITICAL DISPUTES IN A PUBLIC UNIVERSITY

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Office of General Counsel

- New in 2010
- 2012 – 2 attorneys at UP and 2 at Hershey
- Currently, 11 attorneys at UP and 5 at Hershey
- <https://www.ogc.psu.edu/>
 - General practice areas
 - Subject matter assignments

Cultural and Political Divide


Universities are ground zero for divisions in society:

• Politics	• Immigration
• Race	• Religion
• Diversity	• Guns
• Gender	• Elitism
• Inequality	• Access and Affordability
• Foreign Influence	• Civility and Respect
• Free Speech	

Cultural and Political Divide

- Freedom of speech is itself a divisive issue if perceived as polarizing and in conflict with inclusion and other values

Free Speech as an Organizing Principle

- But freedom of speech is also a fundamental part of the mission of a university, a core democratic and constitutional value, and central to the search for truth
 - How free speech intersects with cultural and political issues and divisions may provide a useful framework for discussing how the divisions can be understood and addressed
 - Let's start with first principles
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We the People

Article 1


First Principles – First Amendment

“Congress shall make no law . . . abridging the freedom of speech”

First Principles – Academic Freedom

History

What is it?

- Freedom of inquiry and research
 - Freedom of teaching
 - Freedom of extramural speech and actions
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First Principles – Politics & Cultural Issues

- What are the competing values and legal constraints
- The law of race, gender, politics, and other substantive issues

University Policies

- AD 85 and 91
- AD 92
- AC 64, AC47, AD 88
- AD 51; AD 2 and 2A; other
- Free Speech resource:

<https://knowyourrightsandresponsibilities.psu.edu/pages/first-amendment>




First Amendment Architecture, Doctrine and Themes

– 10 Things to Know

- Context matters
- Facts matter
- Overlapping, competing, conflicting, ambiguous


Ten Things to Know

1) Exceptions (or “not covered”)

- Incite imminent lawless action or violence
 - Actionable harassment
 - Interfere with legitimate University operations
 - Defamation
 - Obscenity
 - True threats
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Ten Things to Know

2) Forum Analysis

- Definitions: public forum, limited forum, non-public forum
 - Penn State campus - AD51
 - inside/outside
 - Private office
 - bulletin boards
 - Classroom
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Ten Things to Know

3) Speakers

- Imminent lawlessness or violence
 - Spencer
 - AD 2A
 - Heckler's veto
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Ten Things to Know

4) Hate speech

- By itself, protected
 - Changing values and perceptions
 - Conduct
 - But see illegal harassment
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Ten Things to Know

5) Time, place and manner

- Restrictions on public forum
 - Problem if too broad
 - Overlap with disruption
 - Must be content and viewpoint neutral
 - Loudspeakers, tent cities, chalking, flags, structures
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Ten Things to Know

6) Classrooms

- Academic freedom
 - University control
 - Professional limits
 - Captive audience
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Ten Things to Know

7) Chilling speech

- Recent cases re: bias response teams
 - 3d circuit re: harassment policy language
 - University right to free speech
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Ten Things to Know

8) Speech in personal capacity

- Academic freedom
 - Social media
 - Not represent University
 - Use of University name and title
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Ten Things to Know

9) Civility and respect

- What's wrong with it?
 - FIRE
 - Principles vs. requirements
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Ten Things to Know

10) Random Buzzwords

- Microaggressions
 - Trigger warnings
 - Prior Restraints
 - Content/viewpoint neutrality
 - Speech codes
 - Speech zones
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Hot Topics

- University of Chicago Statement
- Statues, buildings, donors
- Federal Government: Executive Orders, DOE, etc.

Questions