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
- <u>https://www.ogc.psu.edu/</u>
 - 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

First Principles – First Amendment role of Colden to fillerache Parameries.

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First Principles – Academic Freedom

History

What is it?

- Freedom of inquiry and research
- Freedom of teaching
- Freedom of extramural speech and actions

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/fi rst-amendment First Amendment Architecture, Doctrine and Themes

- 10 Things to Know
 - Context matters
 - Facts matter
 - Overlapping, competing, conflicting, ambiguous

- 1) Exceptions (or "not covered")
 - Incite imminent lawless action or violence
 - Actionable harassment
 - Interfere with legitimate University operations
 - Defamation
 - Obscenity
 - True threats

- 2) Forum Analysis
 - Definitions: public forum, limited forum, non-public forum
 - Penn State campus AD51
 - inside/outside
 - Private office
 - bulletin boards
 - Classroom

- 3) Speakers
 - Imminent lawlessness or violence
 - Spencer
 - AD 2A
 - Heckler's veto

- 4) Hate speech
 - By itself, protected
 - Changing values and perceptions
 - Conduct
 - But see illegal harassment

- 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

- 6) Classrooms
 - Academic freedom
 - University control
 - Professional limits
 - Captive audience

7) Chilling speech

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

- 8) Speech in personal capacity
 - Academic freedom
 - Social media
 - Not represent University
 - Use of University name and title

- 9) Civility and respect
 - What's wrong with it?
 - FIRE
 - Principles vs. requirements

- 10) Random Buzzwords
 - Microaggressions
 - Trigger warnings
 - Prior Restraints
 - Content/viewpoint neutrality
 - Speech codes
 - Speech zones

Hot Topics

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

Questions