

# YOUR FIRST AMENDMENT RIGHTS

*and what to do about them*



A guide to civil discourse on today's college campuses





# 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 compels you to keep quiet. For example, it tells you that you can't say anything offensive, let alone political. It forces you to stand in a speech zone. And worst of all, it threatens official 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 launched our 1A Project to protect 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 handbook. 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.



*Kimberly*

**Kimberly Hermann**

General Counsel

Southeastern Legal Foundation

# 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[.]”

Most of our nation’s understanding of the First Amendment comes from the Supreme Court because it is the primary interpreter of the Constitution. Although we have omitted case names for an easier read, everything in this guide stems from Supreme Court cases.

## What is speech?

Answer: Almost Everything!



## Speech does not include

### Obscenity:

Lewd, sexual, and serves no artistic, educational, scientific, or literary value to the public.

### Incitement:

Encouraging others to commit a crime or use violence in the immediate future.

### True threats:

Intentionally putting others in fear for their safety. This is different from hate speech.

### Defamation:

Spreading false rumors about someone.

# Know your campus. Know your grounds.



Whether a speech restriction is OK often depends on where you are standing on campus.

## Traditional Public Forums

- Areas like sidewalks and quads.
- Speech restrictions must be content-neutral, serve a significant interest, and provide alternative locations for speech.
- A school can ONLY restrict the time, place, and manner of speech, and those restrictions must be reasonable. In other words, a school CAN'T regulate the "who" and "why" of speech.
- Your rights are most secure in these areas.

## Designated Public Forums

- Places like auditoriums that a college opens to the public through its actions.
- The Supreme Court recently stated that designated forums must meet the same criteria as traditional forums.



## Nonpublic Forums

- Areas like classrooms and dorms.
- Restrictions on speech in these locations must be viewpoint neutral and reasonable.
- Your rights are least protected here.





# Red Flags

These are some common things to watch out for on your campus.

Your school forces you to stand in a “free expression area.”



You have been accused of a “bias incident.”

Your student government places restrictions on your speech.



Your school denies funding or won't recognize your group as a Registered Student Organization.

# Red Flags

These are some common things to watch out for on your campus.



Your school speech policy is difficult to find or understand.



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



Your college won't let you discuss certain topics, like religion or politics.



Your school's speech code bans offensive language or conduct.

# When your school restricts speech *it usually takes one of three forms:*

## 1 **Never OK:** viewpoint-based discrimination

A college can't regulate the "why" of speech. That means it can't refuse to let someone speak because of the speaker's beliefs. A public college can't label ideas as "acceptable" or "unacceptable."



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

**A:** "Compelling" indicates a grave concern for public health, safety, and welfare. Banning political speech would not be "compelling" because our nation values political discussion, and political speech does not significantly impact public health or safety.

## 2 **Almost Never OK:** content-based discrimination

Sometimes a college will prohibit the discussion of an entire subject. This is **ONLY** OK if the restriction serves a compelling government interest **AND** is very narrowly drawn to achieve that specific goal. For the most part, speech restrictions are not narrow enough to satisfy this test, so they fail.



Q: What is a *significant* government interest?

A: Monitoring traffic flow, noise, and security have all been upheld as “significant” interests. For instance, the government can require protesters to turn down their loudspeakers in a residential area.



Q: What do other channels of communication look like?

A: Universities must provide other ways for students to get their messages across, but schools often fall short of doing so. If, for example, a university requires students to stand in free speech zones, it must also provide access to other areas, a space to post flyers, and/or a place to hold meetings.

### 3 Sometimes OK: content-neutral restrictions

When a college limits speech without singling out viewpoints, subjects, or speakers, the restriction is “content neutral.” A school is generally free to regulate the time, place, and manner—the when, where, and how—of student speech. BUT this type of restriction must serve a significant interest and leave other channels of communication available to students.





# The Real World

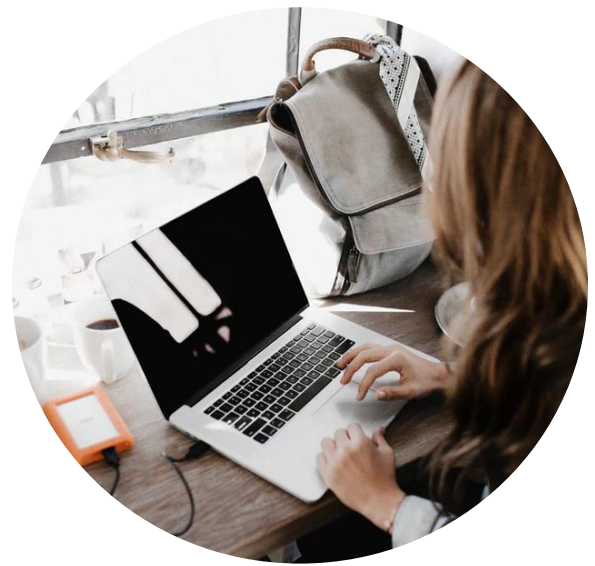
*Here are some ways a college could infringe on your First Amendment rights and some concrete steps you can take to do something about it.*

## Getting Started

### 1 Scenario: You aren't sure what your school policy says or where to find it.

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 usually they are not.

- **Check your school's Dean of Student Affairs website**
- **Do a Google search for these policies**
- **Contact the school and ask to see the policies, either on your own or with SLF's assistance**



### 2 Scenario: Your university denies funding to your group because it does not want other students to think it supports your ideas.

A school can't deny or limit funding to your group based on your group's viewpoint. Colleges can impose mandatory student activity fees on all students to fund registered student organizations. But schools must allocate these funds among organizations neutrally.

- **Ask to see university records showing where these funds go through an open records request**
- **Anyone can submit an open records request, but if you need help drafting one, contact SLF**

### 3 Scenario: Your college refuses to recognize your group as a registered student organization.

Failure to officially recognize a group means that students can't access campus facilities and resources available to all other groups. This is a prior restraint and may be unconstitutional.

- **Inquire into reasons for denial**
- **See what steps, if any, you can take to be recognized**
- **If that is unsuccessful, it may be time for legal action**

### 4 Scenario: Your college requires your student organization to allow anyone to become a member.

This has been a problem for religious groups in particular. The Supreme Court has held that as long as the school policy is applied neutrally to all groups, and as long as it is reasonable, it is constitutional.

- **Ask your school whether it requires all organizations to follow this policy**
- **If the school is only targeting your group, it could be an unconstitutional form of discrimination**

### 5 Scenario: Your student group can't find a professor who is willing to be your advisor.

Just as colleges around the country are silencing students, they are also silencing professors. Professors often hesitate to advise conservative and libertarian groups because doing so could put their hard-earned careers at risk.

- **Contact the Registered Student Organization Office to determine whether a professor must meet certain criteria before becoming an advisor**
- **Ask why this criteria is in place**
- **You or SLF can also submit an open records request seeking a list of all professors who meet the advisor criteria**



# The Real World

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## Getting Out There

### 6 Scenario: Your college prohibits political speech.

Schools often enact policies limiting political speech during important elections, but 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**
- **If your school threatens punishment for failing to comply with the policy, it is time to talk to a lawyer**



### 7 Scenario: Your school says you must stand within a speech zone.

The outcome here depends on where you are trying to speak. In a classroom, the restriction only needs to be reasonable. On a campus lawn or sidewalk, the restriction must be neutral and leave other channels of communication available.

- **Ask your administrators their reason for imposing the restriction**
- **Find out what other options are available besides the speech zone**
- **If there are no other options, SLF can draft a demand letter requesting other channels of communication be made available to students**

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**Scenario: Your school requires you to get approval before publishing materials, hosting an event, or using a speech zone.**

A prior restraint exists when a university official tries to censor a student before the student can even speak. Giving administrators the authority to approve or deny publications, events, and access to campus spaces allows them to make judgment calls about what you are trying to say. This paves the way for viewpoint and content-based discrimination.

- **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**

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**Scenario: Your school has a policy that prohibits offensive language or conduct.**

Despite popular belief, hate speech is protected by the Constitution so long as it does not threaten violence. The best way to combat hate speech is through other speech, not shutting down a speaker. Universities can't use "safe spaces" to prohibit speech that is uncomfortable.

- **Talk with your college administrators to determine whether there will be consequences for what you say**
- **If there will be consequences, the policy may be unconstitutional**

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**Scenario: Your student government passes resolutions that appear to infringe on your rights.**

Administrators are not the only ones who make policies that violate the First Amendment. Many student governments pass resolutions that silence students.

- **Attend your student government's open forum and voice your concerns**
- **If the policies are binding on the student body and not just symbolic, it may be time for legal action**



# The Real World

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## Facing Discipline

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**Scenario:** Your college investigates you for a “bias incident.”

Any action taken by your college that has a “chilling effect” on your speech is unconstitutional. 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.

- **You can decline any voluntary meetings with administrators**
- **If the school threatens consequences for failing to comply, it may be time for legal action**



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**Scenario:** Administrators force you to delete a social media post because someone thought it was harmful or threatening.

The Supreme Court has yet to tackle social media on college campuses. But it recently held that cyberspace is like a traditional public forum, and therefore people are free to speak online with few constraints. While we always encourage civil discourse, a school can’t demand removal of a post that is “offensive,” unless it falls within an unprotected category of speech.

- **Seek clarification from your school about what exactly was offensive**
- **If you still have questions, or if you feel like your school is engaging in discrimination, contact SLF**







## SOUTHEASTERN LEGAL FOUNDATION

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