



Challenging Your College's Speech Code

The Foundation for Individual Rights in Education is pleased to offer this pamphlet for public university students interested in pursuing legal challenges against university policies that restrict freedom of speech.

**FIRE**

What is FIRE ?

The Foundation for Individual Rights in Education (FIRE) is a non-partisan, non-profit organization dedicated to defending civil liberties on campus. We've been fighting for student and faculty rights since 1999, and we've been very successful in doing so. Since our founding, FIRE has won over 190 public victories at more than 135 colleges and universities that have a total enrollment of nearly three million students. FIRE is directly responsible for changing over 90 unconstitutional or repressive policies affecting more than 1.9 million students. Though we do not directly engage in litigation, we have coordinated seven successful constitutional challenges to speech codes. To learn more about FIRE, check out our website at www.thefire.org.

What is a “speech code”?

Speech codes are university regulations prohibiting expression that would be constitutionally protected in society at large. They do not have to be labeled as a “speech code” in your student handbook—in fact, they almost certainly will not be. Any university regulation restricting speech—whether found in a harassment policy, an Internet usage policy, or elsewhere—might be a speech code.

Why are speech codes problematic?

Speech codes are fundamentally at odds with the function of a university as an open marketplace of ideas. After all, how can a university promote open discussion and discourse if students fear punishment for saying the “wrong” thing?

Furthermore, at public universities, speech codes are against the law. Public universities are government actors and, as such, are legally required to uphold the First Amendment rights of their students. In cases going back decades, courts (including the Supreme Court) have consistently held that college students at public universities enjoy full First Amendment rights.

Why should I care about speech codes?

Speech codes restrict your right to free speech in exactly the place where this right should be most celebrated: the college campus. Speech codes prohibit all kinds of constitutionally protected speech—everything from political statements to jokes and satire—and deaden the dialogue that should be taking place at our nation's colleges and universities. Colleges are supposed to be engaged in a search for truth, so it's a big problem if students can't speak their minds on campus, explore the merits of new ideas, and search for novel ways of thinking. Moreover, speech codes teach college students that censorship, and not debate, is the proper response to speech with which one disagrees.

Typically, speech codes are aimed at expression that another person might find offensive or controversial, as well as the expression of views that are disfavored or in the minority on campus. However well-intentioned, speech codes serve to establish a strict orthodoxy of “acceptable” views and stifle the full range of expression that belongs at a university.

Do speech codes really exist at many colleges?

Yes. FIRE has found that the vast majority of the nearly 400 colleges and universities we surveyed nationwide maintain policies that clearly restrict a substantial amount of protected expression.

Given the vital importance of free expression to both a liberal education and to our democracy, and the fact that speech codes at public universities brazenly violate the Constitution, this sad state of affairs simply cannot be allowed to stand.

What is the purpose of a speech code challenge?

The purpose of a speech code challenge is to obtain an official declaration by a court of law that a university’s speech code is unconstitutional. The court’s declaration will be binding not only on that school, but also on any other public university in the same jurisdiction. Thus, by challenging their institution’s speech codes, students can make both their campuses and those nearby freer for themselves and their fellow students.

How does FIRE challenge speech codes?

FIRE has several attorneys on staff, but we do not directly litigate. Rather, we coordinate legal challenges to speech codes by identifying restrictive speech codes at public universities; finding students at those institutions who are willing to challenge the policies; and finally, securing the *pro bono* (that is, volunteer) assistance of attorneys who are members of our nationwide Legal Network. These skilled attorneys are dedicated to protecting First Amendment rights on campus and are willing to donate their time and expertise to defending students threatened by unconstitutional speech codes.

Once we have matched up an unconstitutional speech code with a willing student-plaintiff and a Legal Network attorney, we are ready to file a complaint in federal court. The complaint will ask the court to declare the university’s speech code unconstitutional, thus forbidding the university from maintaining or enforcing it and forcing the university to comply with the First Amendment.

What is FIRE's track record with speech code challenges?

FIRE has never lost a speech code litigation case. To date, FIRE has coordinated speech code litigation at seven schools: Citrus College (California), Shippensburg University (Pennsylvania), Texas Tech University, the State University of New York at Brockport, San Francisco State University, Temple University (Pennsylvania), and Tarrant County College (Texas). In each of these challenges, the university either settled out of court by voluntarily revising its speech codes, as in the cases of Citrus College and SUNY Brockport, or was handed a legal defeat in court, as in the cases of Shippensburg, Texas Tech, San Francisco State, Temple, and Tarrant County College. You can read more about these victories on our website, www.thefire.org.

Our unbroken series of successful challenges speaks to the care with which FIRE proceeds in coordinating litigation. We challenge university policies only when they are clearly unlawful, and we try to procure student-plaintiffs and attorneys who are committed to winning the challenge. Most importantly, FIRE's track record reflects that the law is firmly on our side when it comes to the unconstitutionality of campus speech codes.

What do students who serve as plaintiffs actually do? Is it a lot of work?

Very little is actually required from students serving as plaintiffs in speech code challenges, as a student's day-to-day involvement in the suit is very limited. A student-plaintiff would first meet with the cooperating attorney and sign an affidavit—a sworn statement—stating that he or she would like to engage in protected speech that is prohibited by the policy or policies in question without fear of punishment. After that, the student's involvement with the case would likely be largely complete in terms of his or her responsibilities or required presence. The court would then receive arguments from the university and from the student's attorney, and begin the process of deciding whether or not the policies are unconstitutional. It is rare for a student to be required to appear in court at all, and FIRE will help every step of the way.

Could my university take action against me for filing a speech code challenge?

Students serving as plaintiffs cannot legally be subject to any form of retaliation for filing the suit. Indeed, if the university were to retaliate, the student would almost certainly be entitled to significant monetary damages. Retaliating against a student-plaintiff would be a very, very unwise move for the university to make, and students need not fear such retaliation as a consequence of filing a speech code challenge. Of course, in the unlikely event that a student were to be the victim of retaliation, FIRE would publicly defend his or her rights.

What happens to students who file speech code challenges?

Students who file speech code challenges continue to live their lives just as before and proceed to obtain their degrees and begin their careers, just like their fellow students. Many students receive positive media attention and are hailed for their commitment to principle and willingness to stand up for the First Amendment. Some former plaintiffs become successful attorneys themselves, like Robert J. Corry, who led a successful challenge of Stanford University's speech code and now practices as a civil rights and criminal defense attorney in Colorado.

Why should I get involved?

Challenging your school's speech codes is an excellent way to stand up for not only your own right to free expression, but for the rights of your fellow students. Students on every public university campus are legally entitled to the full protection of the First Amendment—and any denial of this right is unlawful, unconstitutional, and a betrayal of the university's role as a marketplace of ideas. You don't have the option of violating the law, so why should your university?

Institutions of higher education play a vital role in our society in educating students inside and outside the classroom and preparing them for the world that awaits them beyond the campus. This process cannot fully take place without the liberty to discuss issues freely and participate in a true exchange of ideas. Because speech codes deny students this freedom, they need to be removed from our colleges and universities, and often, it takes a constitutional challenge mounted by a determined student to do so.

Students can aid in the effort to rid our campuses of speech codes at no financial cost to themselves and with little time and effort. While no outcome is ever guaranteed in court, the law is firmly on the side of those challenging university restrictions on the freedom of expression.

Contact FIRE

FIRE attorneys stand ready to answer any questions you may have about your rights and challenging your university's speech codes. Please do not hesitate to contact us.

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