

Free Speech on Campus: Understanding Students' Expressive Rights in the New Era of Protests

Institute for Academic Leadership Workshop
Howey-in-the-Hills, FL June 2, 2025

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Roadmap for Today

- **Ten Fundamental First Amendment Principles**
- **Key Florida Statute Regarding On-Campus Free Expression**
- **University-Specific Policies (two examples)**

The First Amendment to the U.S. Constitution

1791

*“Congress shall make
no law . . . abridging the
freedom of **speech**, or of the
press; or the right of the
people peaceably to
assemble, and to **petition**
the Government for a
redress of grievances.”*

Why is the First Amendment Important?

Restricts the Govt's Ability To:

- Control What We Can and Cannot Say
 - Define What is True
 - Compel Us to Express the Government's View
- (First Amendment protects the right not to speak)

Why is the First Amendment Important?

Allows Us To:

- Criticize Government Officials & Their Policies
- Influence the Political Process & Shape Laws
- Express Dissenting/Minority Viewpoints
- March in Protests and Hold Rallies

The Right to Vigorously Criticize Government Officials

“We consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”

The Right to Vigorously Criticize Government Officials

New York Times Co. v. Sullivan,

376 U.S. 254 (1964).

The Right to Peaceably Assemble



10 Fundamental First Amendment Principles

*Keys for informed
discussions and
understandings of
free speech rights on
public university
campuses*

Principle No. 1

**The First Amendment protects
against government censorship,
NOT censorship by private
individuals and businesses.**

Principle No. 1 Continued

The First Amendment protects students, staff, faculty, and visitors on campus at universities in the State University System of Florida because the universities are government actors.

Principle No. 2

Some types of speech are NOT protected by the First Amend.

Unprotected Categories

- **Obscenity**
- **Child Pornography**
- **Speech Integral to Criminal Conduct**
- **Fraud**
- **Libelous Statements**

Unprotected Categories

- **Fighting Words**
- **True Treats**
- **Incitement**

Principle No. 3

The First Amendment protects offensive and hateful speech UNLESS it is used within the context of an unprotected category such as:

- **Fighting Words**
- **True Threats**
- **Incitement**

Principle No. 3 Continued

There is not an unprotected category of expression called “hate speech” under the First Amendment.

Principle No. 4

Symbolic Expression

Speech Sometimes Includes Conduct

- Actor: Intent to Convey a Specific Message?
- Audience: Substantial Likelihood the Intended Message Will be Understood by Some?

Principle No. 5

Viewpoint Neutrality

**Viewpoint Discrimination by the
Government is Unconstitutional.**

Principle No. 6

Speaker-Based Discrimination May Violate the First Amendment

**“A commitment to speech for only
some messages and *some* persons is
no commitment at all.” J. Gorsuch, 2023**

Principle No. 7

Time, Place & Manner Regulations

The government may regulate the Time, Place and Manner of speech in public forums such as public streets, sidewalks & parks . . . and on public university campuses.

Principle No. 7 Continued

Time, Place & Manner Regs Must:

- **Be Content Neutral, NOT Content Based**
- **Serve a Significant/Substantial Interest**
- **Be Narrowly Tailored to Serve that Interest**
- **Leave Open Alternative Ways of Speaking**

Principle No. 8

**Many First Amendment
rules are grounded in the
“Marketplace of Ideas”
theory of free expression.**

Principle No. 9

Counter Speech

The preferred remedy under the First Amendment for speech we object to is to counter it with more speech, NOT to censor it; to add more speech to the marketplace of ideas.

Principle No. 10

A Heckler's Veto

The government carries the burden to protect speakers from a heckler's veto. A heckler's veto violates the First Amendment.

Review of Principles

1. **Government Censorship Only**
2. **Not All Speech Is Protected**
3. **Hate Speech Generally Is Protected**
4. **Symbolic Expression**
5. **Viewpoint Neutrality**
6. **Speaker-Based Discrimination**
7. **Content-Neutral Time, Place & Manner Regulations**
8. **Marketplace of Ideas Theory**
9. **Counter Speech**
10. **A Heckler's Veto**

Florida Statute

Campus Free Expression Act

Florida Statute 1004.097

Campus Free Expression Act

- **What Speech is Protected**
- **Use of Outdoor Areas**
- **Time, Place & Manner Regs**
- **No Free-Speech Zones**
- **No Disruptions of Others**
- **Recording Lectures**

What Speech Is Protected?

“Expressive activities protected under the First Amendment to the United States Constitution and Art. I of the State Constitution include, but are not limited to, any lawful oral or written communication of ideas, including all forms of peaceful assembly, protests, and speeches; distributing literature; carrying signs; circulating

What Speech Is Protected?

petitions; faculty research, lectures, writings, and commentary, whether published or unpublished; and the recording and publication, including the Internet publication, of video or audio recorded in outdoor areas of campus. Expressive activities protected by this section do not include defamatory or commercial speech.”

Using Outdoor Areas on Campus

“A person who wishes to engage in an expressive activity in outdoor areas of campus may do so freely, spontaneously, and contemporaneously as long as the person’s conduct is lawful and . . .

Using Outdoor Areas on Campus

**does not materially and substantially
disrupt the functioning of the public
institution of higher education or infringe
upon the rights of other individuals or
organizations to engage in expressive
activities.”**

Time, Place & Manner Regs OK

“Outdoor areas of campus are considered traditional public forums for individuals, organizations, and guest speakers. A public institution of higher education may create and enforce restrictions that are reasonable and content-neutral on . . .

Time, Place & Manner Regs OK

time, place, and manner of expression and that are narrowly tailored to a significant institutional interest. Restrictions must be clear and published and must provide for ample alternative means of expression.”

No Free-Speech Zones Allowed

“A public institution of higher education may not designate any area of campus as a free-speech zone or otherwise create policies restricting expressive activities to a particular outdoor area of campus . . .”

No Disruption of Scheduled Activities

“Students, faculty, or staff of a public institution of higher education may not materially disrupt previously scheduled or reserved activities on campus occurring at the same time.”

Recording Classroom Lectures

“[A] student may record video or audio of class lectures for his or her own personal educational use, in connection with a complaint to the public institution of higher education where the recording was made, or as evidence in preparation

Recording Classroom Lectures

for, a criminal or civil proceeding. A recorded lecture may not be published without the consent of the lecturer.”

**University-
Specific Policies
Affecting
On-Campus
Demonstrations**

- **Two Brief Examples**
- **Check Your
University's Policies**
- **These Are Often Very
Detailed**

University of Central Florida

“UCF recognizes that campus is home for many students – and, therefore, UCF does not permit speakers or events between 10 p.m. and 8 a.m.

Sunday through Thursday, or between midnight and 8 a.m. Friday and Saturday. UCF does not allow individuals or groups to be disruptive when . . .

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they engage in expressive activities. For example, a speaker cannot block traffic or interfere with people's ability to get in and out of campus buildings. A speaker cannot use amplified sound unless specifically permitted by UCF.”

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“Users of Outdoor Areas must not cause a material and substantial disruption to University Business, Events and activities taking place on Campus. A material and substantial disruption is any conduct that significantly interferes with the University’s educational, business, and operational . . .

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functions or intentionally and significantly
hinders another person's or group's expressive
rights. However, this does not include conduct
protected under the First Amendment to the
United States Constitution or Article I of the
Florida Constitution, including but not . . .

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limited to, lawful protests and counter-protests in the Outdoor Areas of Campus or minor, brief, or fleeting nonviolent disruptions that are isolated as outlined in the Campus Free Expression Act.”

Thank You!

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