

Liberty Briefs

Wisconsin Grand *Sons of Liberty*

Campus Free Speech Codes

Updated 1-19-2019

Overview:

Campus Speech Codes began in the 1980s and 1990s as an answer to increasing discrimination and harassment on college campuses. These policies prohibit speech that could be deemed offensive to any person or group based on race, national origin, age, disability, religion, gender, sexual orientation, etc.

These well intended policies conflict with the First Amendment of the United States Constitution which protects the freedom of speech, even if that speech has content that is offensive. The First Amendment provides an exception for harmful speech, such as yelling “fire” in a theater which could cause individuals actual harm. Speech codes developed by state colleges and universities are seen as government censorship, a violation of the Constitution.

Related to the Campus Speech Code debate is the Constitutional right to Due Process for students accused of an infraction of the codes. Some students accused of violating speech codes are denied their due process as universities claim that the discipline is “educational” helping students and not punitive.

Liberal/Progressive View:

Speech codes exist to spare victims any psychological or emotional damage that could impede their learning and future success.

If any speech seems to be offensive it must be eliminated. The offender must be punished, not just for justice but to also send a message to anyone else on campus. They may be investigated, harassed, ostracized, receive public shaming, censorship, firings, suspensions or expulsion without necessarily receiving due process.

Conservative and Libertarian View:

Speech codes violate the constitutional right to freedom of speech. Existing Speech Codes are broad and vague. The result is censorship where students with opposing views are not allowed to speak. Colleges and universities should be centers of academic inquiry where all opinions, viewpoints and ideas can be discussed and debated in an atmosphere of academic freedom.

By hearing opposing viewpoints, students can learn, among other things, to reserve judgment, and tolerate opinions that might offend them. Speech codes on campus create a type of artificial environment that shield students from the real world of diversity and celebrating that diversity within society.

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Existing Law:

Campus Speech Codes were not a direct result of any state or federal legislation. They were written by universities in response to concerns of people who felt themselves objects of hate because of their race, gender, religion, etc.

Legislation has been passed to eliminate misleadingly labeled free speech zones on campuses in:

- Virginia, HB 258, 2014
- Missouri, SB 93, 2015
- Arizona, HB 265, 2016 and HB 2548, 2016

The following states have passed legislation to protect student free press:

- Arkansas, Student Publication Act, 2015729, 2015
- California
- Colorado, Student Free Expression Act
- Illinois, SB 0729, 2007
- Iowa
- Kansas, Kansas Student Publication Act
- Massachusetts
- North Dakota
- Oregon, Oregon Revised Statutes, 2011

SCOTUS Rulings:

The Supreme Court of the United States has not issued a direct ruling on the constitutionality of public university Campus Speech Codes.

Facts:

Campus Speech Codes are in violation of the First Amendment of the US Constitution. Existing Speech Codes are broad and vague and amount to sanctioned censorship.

Position of WiGOL:

Prompt Wisconsin legislators to pass a bill prohibiting Campus Speech Codes at public colleges/universities.