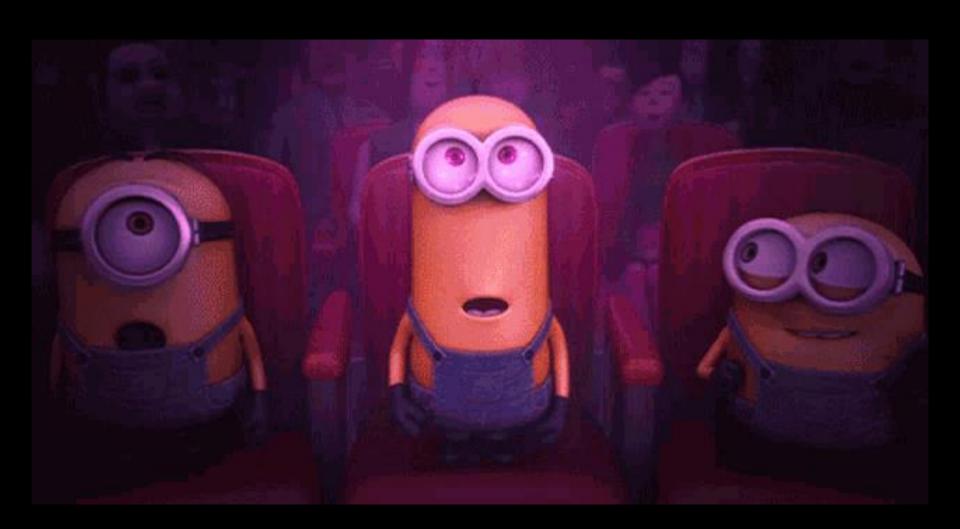
Free Speech on Campus The Sequel

Joseph Thai

Watson Centennial Chair
Presidential Professor
OU College of Law



Previously ...









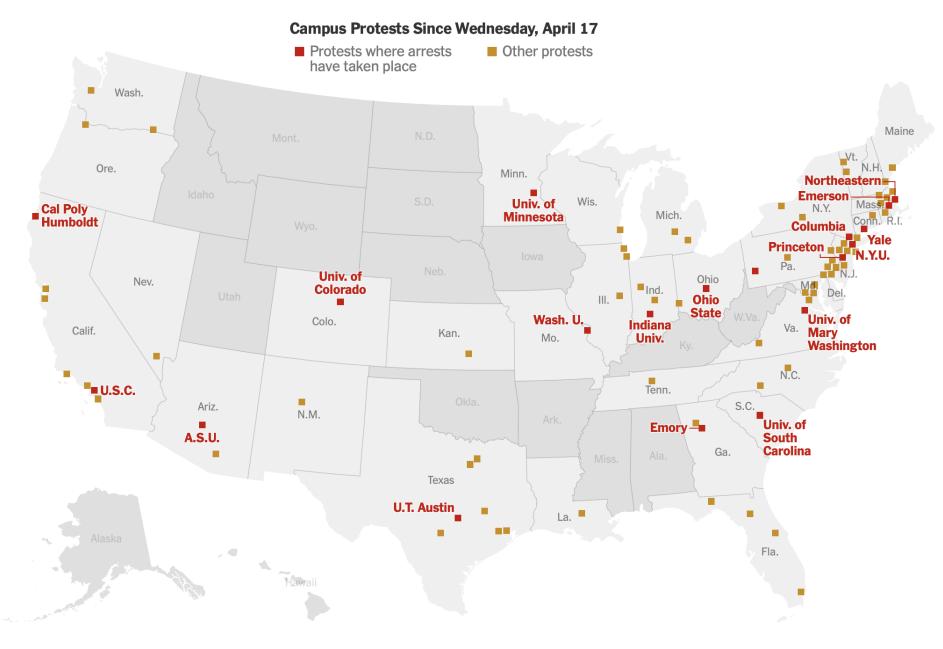


Agreement between University, student leaders will end 'divestment' encampment at Brown

Students agreed to remove the encampment and refrain from further actions that would violate Brown's conduct code through the end of the academic year, which includes Commencement and Reunion Weekend.







Note: Data as of 5:00 p.m. Eastern time on April 28 • By Leanne Abraham, Bora Erden, Lazaro Gamio, Helmuth Rosales, Julie Walton Shaver and Anjali Singhvi



Now Playing ...

Ios Angeles Times

CALIFORNIA

Apology letters. Suspensions. After protest citations, students face campus consequences



A pro-Palestinian encampment at UC Irvine campus on April 29. (Gina Ferazzi / Los Angeles Times)

HIGHER EDUCATION

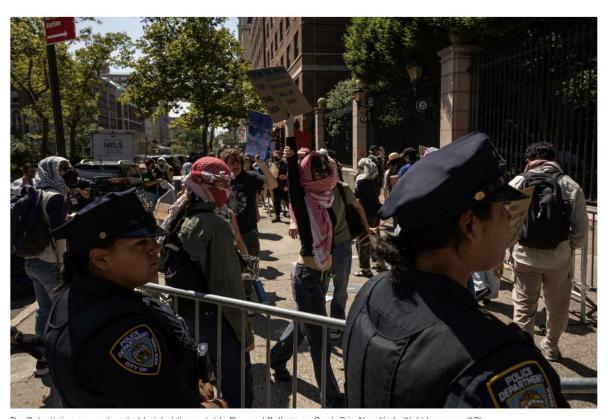
Limits on masks, tents and noise: Some campuses tighten protest rules

Since the pro-Palestinian demonstrations last spring, some colleges have added new restrictions. A call for a "day of action" on Thursday may test them.

8 min



□ 439



Pro-Palestinian supporters hold picket line outside Barnard College on Sept. 3 in New York. (Yuki Iwamura/AP)

The Harvard Crimson

Universities Nationwide Have Embraced Institutional Neutrality. How Does Harvard's Report Stack Up?

BY TILLY R. ROBINSON May 30, 2024



The Washington Post Democracy Dies in Darkness

Classes and protests resume at Columbia and other campuses

The Ivy League school reopened for the fall term with a small number of arrests and mixed feelings about the year ahead.



Pro-Palestinian supporters hold a picket line outside Columbia University on Tuesday, Sept. 3, 2024. (Yuki Iwamura/AP)







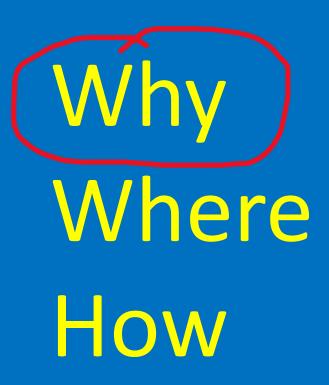






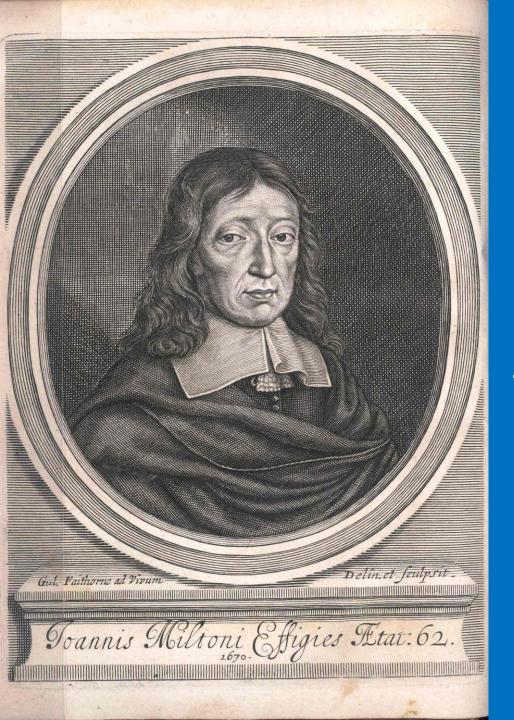


Why Where Free Speech How



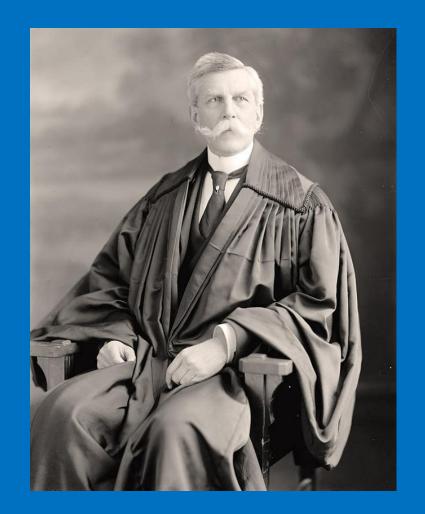
Where Free Speech

Truth



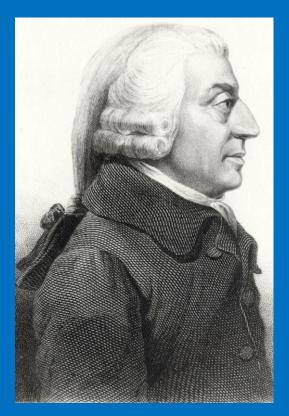
"Let [Truth] and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter?"

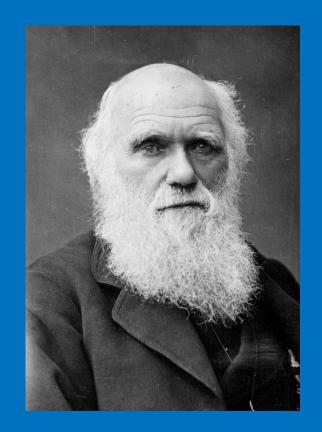
"[T]he ultimate good desired is better reached by the free trade of ideas . . . the best test of truth is the power of the thought to get itself accepted in the competition of the market"



Holmes





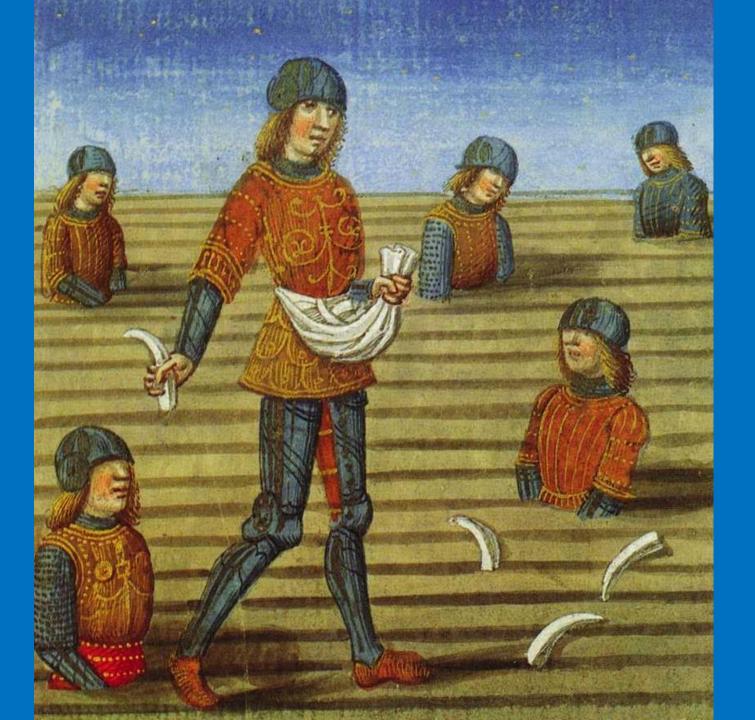


Milton Smith Darwin



"[T]here's a simultaneously scary and exciting future where Al-generated false stories are the norm."

ChatGPT



Self-Governance



"The constitutional right of free expression is powerful medicine in a society as diverse and populous as ours."

"It [puts] the decision as to what views shall be voiced largely into the hands of each of us, in the hope that use of such freedom will ultimately produce a more capable citizenry and more perfect





Self-Fulfillment





COMEDIES, & HISTORIES, & TRAGEDIES.

Published according to the True Original Copes.

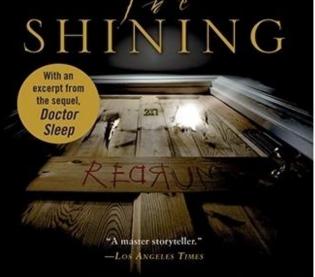
This Figure, that thou here feeth per
It was for gentle Shakespeare of
Wherein the Grauer had a strife
Wherein the Grauer had a strife
with Nature, to out doo the list
with Nature, to out doo the list
of could be but have drawne his was
As well in brasse, as he hath his
Hisface; the Print would then support

To the Reader.

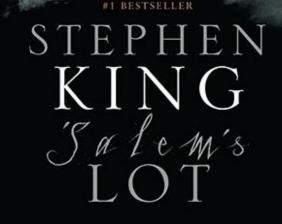
Hisface : the a reader vent in branch All, that was ever vent in branch But, fince he cannot, Reader, look Noron his Picture, but his Book

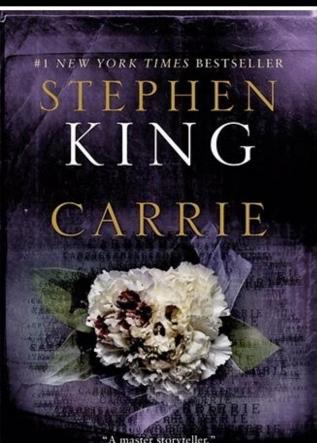


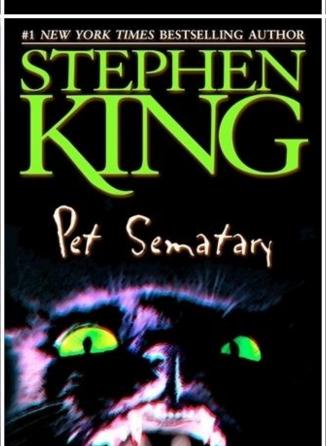
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STEPHEN KING STAND COMPLETE AND UNCUT EDITION



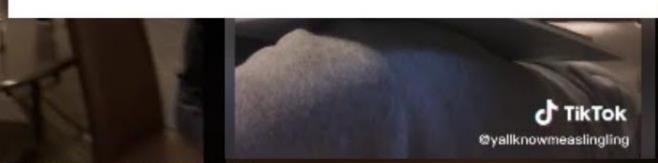








TIK TOK UNIVERSITY





Has class at 9:15*



Law

"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."

First Amendment

"nor shall any State deprive any person of ... liberty ..."

Fourteenth Amendment

An Act

ENROLLED HOUSE BILL NO. 3543

By: Caldwell (Chad) of the House

and

Daniels of the Senate

An Act relating to higher education; establishing the Oklahoma Free Speech Committee to the Oklahoma State Regents for Higher Education; specifying duties of the Committee; amending 70 O.S. 2021, Section 2120, which relates to regional education services and schools; modifying reporting requirement; directing the Committee to provide or approve training materials; providing for collection of complaints; requiring training; and providing for codification.

SUBJECT: Higher education

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3205.11 of Title 70, unless there is created a duplication in numbering, reads as follows:

There is hereby created the Oklahoma Free Speech Committee to the Oklahoma State Regents for Higher Education.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3205.12 of Title 70, unless there is created a duplication in numbering, reads as follows:

The duties of the Oklahoma Free Speech Committee shall be to:

1. Review the free speech policies of Oklahoma public universities;



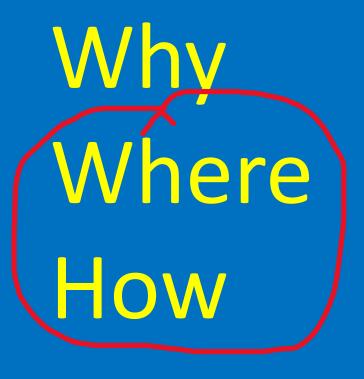
Foundational Principles

- **95.** <u>University of Texas System</u>: Affirmed by the Board of Regents in November 2022.
- 96. University of Oklahoma: Affirmed by the Board of Regents in November 2022.*
- **97.** Massachusetts Institute of Technology: Affirmed by Faculty Governance in December 2022.*
- 98. Glendale Community College: Affirmed by the Faculty Senate in January 2023.
- 99. Clemson University: Affirmed by the Board of Trustees in February 2023.
- 100. Davidson College: Officially Adopted in March 2023.*
- **101.** <u>University of Southern Mississippi</u>: Affirmed by the Faculty Senate in March 2023.
- LO2. Virginia Tech: Affirmed by the Board of Visitors in March 2023.
- 103. University of South Carolina: Affirmed by the Board of Trustees in June 2023.
- 104. University of Tulsa: Officially Adopted in September 2023.
- 105. University of Wyoming: Officially Adopted in December 2023.*
- LO6. University of Michigan: Affirmed by the Board of Regents in January 2024.*
- **107.** Furman University: Officially Adopted in February 2024.*
- **108.** Emory University: Affirmed by the Emory College of Arts and Sciences Faculty Senate in February 2024.
- 109. Syracuse University: Officially Adopted in May 2024.
- **110.** <u>Stanford University</u>: Affirmed by the Faculty Senate in May 2024.

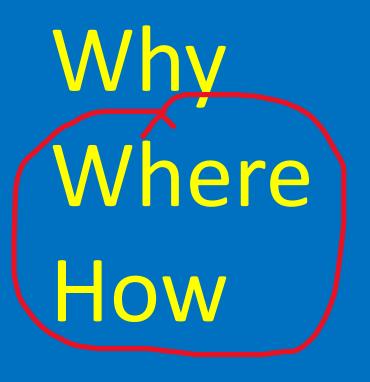


Foundational Principles

"Because the University is committed to free and open inquiry in all matters, it guarantees all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn."



Free Speech



- Public forums
- Classes
- Events
- Offices & Non-PublicAreas

Traditional Public Forums

Traditional Public Forums

Lawns, plazas, parks, streets and sidewalks

- Historically open to the general public
- Suitable for assembly and speech
- Where rallies, protests and marches occur
- "Special position" in First Amendment law

McCullen (2014)







"Such areas occupy a special position in terms of First Amendment protection because of their historic role as sites for discussion and debate.... There, a listener often encounters speech he might otherwise tune out."

Roberts



Roberts

"[T]he government's ability to restrict speech in such locations is very limited.... [T]he government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."

"[T]he government may not ... shield the public from some kinds of speech on the ground that they are more offensive than others."























- 4. "Outdoor areas of campus" means the generally accessible outside areas of campus where members of the campus community are commonly allowed, such as grassy areas, walkways or other similar common areas and does not include outdoor areas where access is restricted from a majority of the campus community;
- C. 1. The outdoor areas of campuses of public institutions of higher education in this state shall be deemed public forums for the campus community, and public institutions of higher education shall not create "free speech zones" or other designated areas of campus outside of which expressive activities are prohibited. Public institutions of higher education may maintain and enforce reasonable time, place and manner restrictions narrowly tailored in service of a significant institutional interest only when such restrictions employ clear, published, content— and viewpoint—neutral criteria and provide for ample alternative means of expression. Any such restrictions shall allow for members of the campus community to spontaneously and contemporaneously assemble and distribute literature.
- D. 1. Any person who wishes to engage in noncommercial expressive activity on campus shall be permitted to do so freely, as long as the person's conduct is not unlawful and does not materially and substantially disrupt the functioning of the public institutions of higher education, subject only to the requirements of subsection C of this section.



First Amendment Protection of Traditional Public Forums

- Open to general public for assembly and speech.
- Government cannot censor speech based on topic or viewpoint.
- Content discrimination is presumptively invalid under "strict scrutiny."





- No political protests
- No protests on race
- No rallies for white supremacy





- No political protests
- No protests on war in Gaza
- No pro-Palestine protests



"[T]he government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information."

Roberts

or fleeting nonviolent disruptions of events that are isolated and short in duration;

- 4. "Outdoor areas of campus" means the generally accessible outside areas of campus where members of the campus community are commonly allowed, such as grassy areas, walkways or other similar common areas and does not include outdoor areas where access is restricted from a majority of the campus community;
- 5. "Public institution of higher education" means any institution within The Oklahoma State System of Higher Education or technology center schools overseen by the State Board of Career and Technology Education; and
- 6. "Student organization" means an officially recognized group at a public institution of higher education, or a group seeking official recognition, comprised of admitted students that receive or are seeking to receive benefits through the public institution of higher education.
- B. Expressive activities protected under the provisions of this section include but are not limited to any lawful verbal, written, audio-visual or electronic means by which individuals may communicate ideas to one another, including all forms of peaceful assembly, protests, speeches and guest speakers, distribution of literature, carrying signs and circulating petitions.
- C. 1. The outdoor areas of campuses of public institutions of higher education in this state shall be deemed public forums for the campus community, and public institutions of higher education shall not create "free speech zones" or other designated areas of campus outside of which expressive activities are prohibited. Public institutions of higher education may maintain and enforce reasonable time, place and manner restrictions narrowly tailored in service of a significant institutional interest only when such restrictions employ clear, published, content— and viewpoint—neutral criteria and provide for ample alternative means of expression. Any such restrictions shall allow for members of the campus community to spontaneously and contemporaneously assemble and distribute literature.
- 2. Nothing in this subsection shall be interpreted as limiting the right of student expression elsewhere on campus.





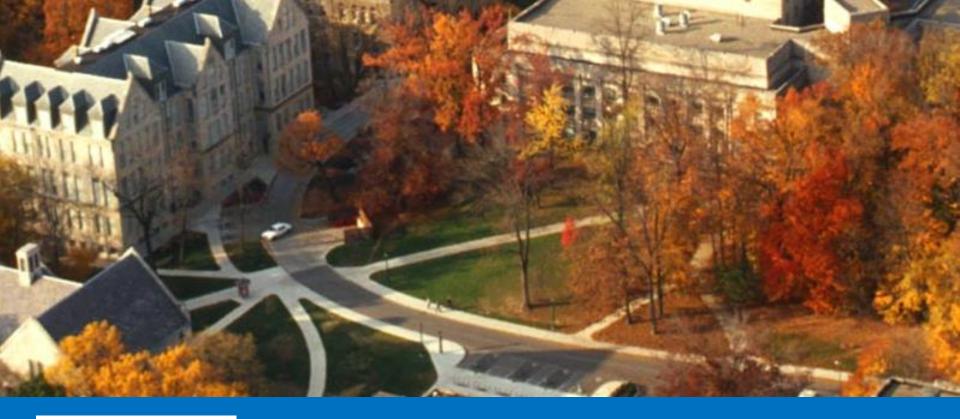


No overnight encampments

CCNV (1982)



"There is no gainsaying that preventing overnight sleeping will avoid a measure of actual or threatened damage to Lafayette Park and the Mall"





No expressive activities between 11 pm and 6 am





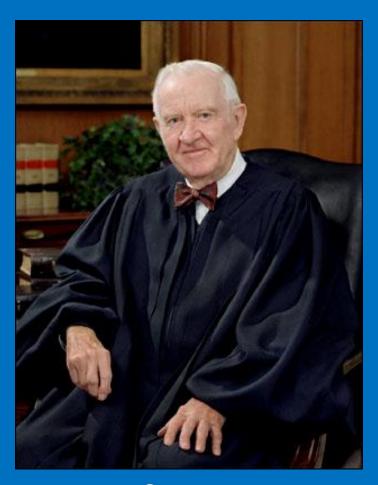






No chalking at all

City of Ladue (1994)



Stevens

"Ladue has almost completely foreclosed a venerable means of communication that is both unique and important. It has totally foreclosed that medium to political, religious, or personal messages."



CHALKING

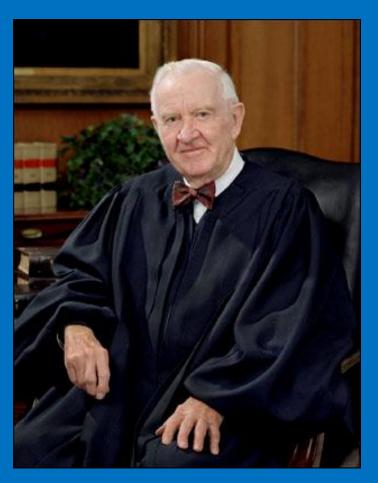
- Pre-approval for chalking must be obtained by completing the RSO Publicity Request Form in ENGAGE.
- Only white or yellow water-soluble chalk may be used. The use of spray chalk is strictly prohibited.
- Chalked messages are restricted to horizontal concrete sidewalks and must not be placed under any building overhangs or within ten (10) feet of any building entrance.
- Chalked messages must contain the name of the sponsoring organization.
- Chalking cannot interfere with another message that has already been chalked.
- Any chalking placed improperly is subject to removal by campus personnel at the registered student organization's expense.





- Not without prior approval
- Only RSO's may chalk

Watchtower (2002)



Stevens

"It is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so."





"If there is evidence that an impermissible purpose or justification underpins a facially content-neutral restriction, for instance, that restriction may be content based."

City of Austin (2022)



- Facially neutral, but adopted to censor disfavored content
- Facially neutral, but applied to censor disfavored content

McCullen (2014)





No. 19-6008

UNITED STATES COURT OF APPEALS TENTH CIRCUIT

CALVIN McCRAW, G. WAYNE MARSHALL, MARK FAULK, TRISTA WILSON, NEAL SCHINDLER, OKLAHOMA LIBERTARIAN PARTY, and RED DIRT REPORT,

Plaintiffs-Appellants,

v.

CITY OF OKLAHOMA CITY and WILLIAM CITTY, in his official capacity as Chief of the Oklahoma City Police Department,

Defendants-Appellees.

APPELLANTS' OPENING BRIEF

APPEAL FROM THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA
THE HONORABLE JOE HEATON
No. CIV-16-352-HE

Joseph Thai P.O. Box 6197 Norman, OK 73070 (405) 204-9579 thai@post.harvard.edu Erwin Chemerinsky 215 Boalt Hall Berkeley, CA 94720 (510) 642-6483 echemerinsky@law.berkeley.edu

Additional counsel listed on inside cover

ORAL ARGUMENT REQUESTED

June 14, 2019

Classes & Events

Limited Public Forums
Reasonableness Test





Reasonable content-neutral restrictions are valid.

- Only attend if enrolled or invited
- Only speak if called on
- No disruptions or walkouts

Reasonable content-based restrictions are valid.

Only speak on-topic





Viewpoint-based restrictions are likely invalid.

- Only certain views on race allowed in history class
- Only certain views on Gaza allowed in Middle East politics class







- Can reasonably set format (moderated)
- Can reasonably limit audience participation (Q&A)
- Can reasonably respond to disruptions (remove protesters)
- If audience views are invited (Q&A), cannot limit viewpoints.





- Can reasonably set format (program).
- Can reasonably limit audience participation (applause)
- Can reasonably respond to disruptions (remove protesters)
- Viewpoint restrictions likely invalid (no OU shirts at OSU graduation)

Offices & Non-Public Areas

Non-Public Forums
Reasonableness Test





- Can reasonably restrict presence and speech to protect function of space.
- Viewpoint restrictions are likely invalid.



Non-Public Property

- Can reasonably limit to prevent damage or disassociate from message.
- Viewpoint restrictions are likely invalid.

University Speech

Freedom to (Not) Speak







Oklahoma State Univ.

21.5K posts





Oklahoma State Univ.

@okstate

Living out our land-grant mission through instruction, research and outreach since 1890.

Stillwater
 Ø okstate.edu
 ☐ Joined August 2008

9,539 Following **87.8K** Followers

Harvard Affiliates, Politicians Slam University Leaders Over Late, 'Word Salad' Statement on War in Israel



University leadership faced criticism over their delayed response to the attack on Israel. By Julian J. Giordano

By Miles J. Herszenhorn and Claire Yuan, Crimson Staff Writers

October 10, 2023



The Harvard Crimson

Universities Nationwide
Have Embraced
Institutional Neutrality.
How Does Harvard's
Report Stack Up?

BY TILLY R. ROBINSON

May 30, 2024



- No official positions on controversial public issues not directly related to core function of university.
- Err on side of avoiding official statements.



Foundational Principles

In a word, the University's fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the University community, not for the University as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the University community to engage in such debate and deliberation in an effective and responsible manner is an essential part of the University's educational mission.

Now Playing ...



From: Morvant, Mark C. <mmorvant@ou.edu>

Sent: Friday, October 4, 2024 3:49 PM

To: Provost - Deans (Norman) <deans@ou.edu>; Provost - Chairs & Directors (Norman)

cprovost-chairsdirectors@ou.edu>

Cc: Wright, Andre <andre.wright@ou.edu>; Gracey, Marci J. <mgracey@ou.edu>; Ellis,

Sarah J. <sjr@ou.edu>; Allman, Grey <greyallman@ou.edu>; Walker, Chris O.

<chriswalker@ou.edu>; Palk, Laura M. ledu>; Paliotta, Armand

<apaliotta@ou.edu>; Hendricks, Heather N. <hendricks@ou.edu>
Subject: Correction: Flexibility with Attendance and Assignments

Dear Deans, Chairs and Directors,

We understand that student groups are organizing planned expressive activity next week, including a planned walk-out at 10:00 am on October 9.

Please see the message below from the Institutional Equity Officer:

Please communicate with your faculty that flexibility in attendance and assignments should be provided for students that express a concern for their safety on campus or have been adversely impacted by the planned expressive activities. This may include adjustments in due dates and online options. Faculty who also are concerned for their safety on campus or have been adversely impacted by the planned expressive activities may make a short term pivot to online instruction, but should continue instructional activities next week.

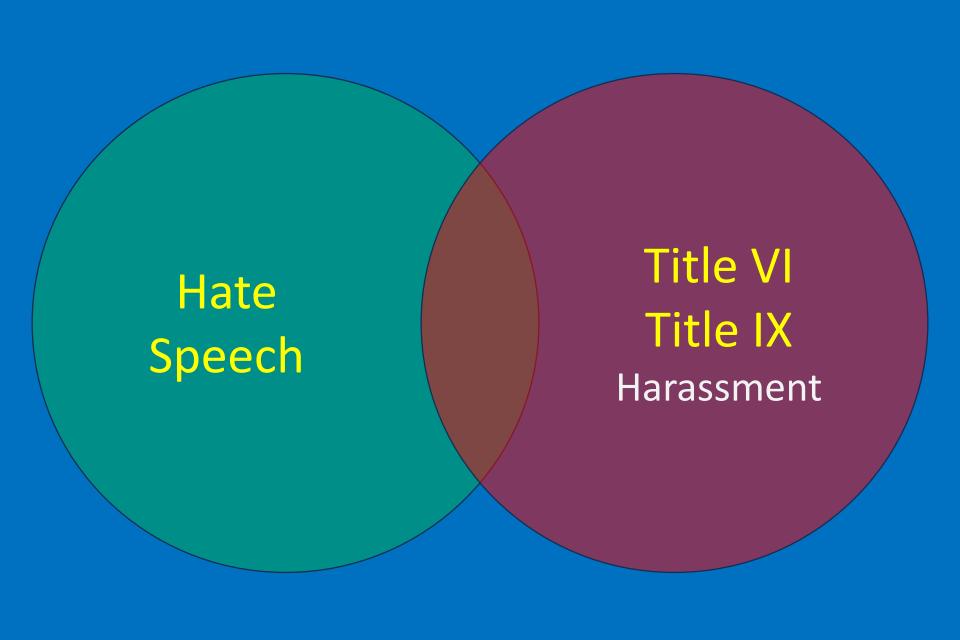
Any individual who expresses that they have been threatened, harassed, or adversely impacted should be referred to the Institutional Equity Office for resources and supportive measures. Reports can be make at https://www.ou.edu/eoo.html/ or to jeo@ou.edu.

Sincerely,

Mark

Dr. Mark Morvant

Senior Vice Provost // Instruction and Student Success



Title VI and Title IX

- Universities receiving federal funds cannot discriminate on basis of race or sex.
- Includes verbal or physical harassment that creates a hostile environment from being
 - Unwelcome
 - Discriminatory
 - On basis of race (VI) or sex (IX)
 - Subjectively and objectively offensive
 - So severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity

Free Speech Flee Speech

scpl.ou@proton.me

[OU SJP] Call to Action: Faculty Solidarity and Mobilization for Palestine - October 9th, 10 AM, Dale Hall To: ktaylor@ou.edu, mctaylor@ou.edu, rebekah.taylor@ou.edu, Rebekah.S.Taylor-1@ou.edu & 6 more

Details

Dear Faculty Member,

We are writing to you as the OU chapter of Students for Justice in Palestine (OU SJP) to extend you an invitation: join us in our walk-out this upcoming week on October 9th at 10 AM, starting at Dale Hall. In these urgent times, we ask you to stand with your students, not only in spirit but in action. We encourage you to cancel classes that day and instead bring your students to join us in solidarity, making this mobilization a shared act of resistance against oppression and genocide.

This week, we have been intimidated and harassed by members of the OU community and administration to stop speaking up for what we believe in. The time to stand up for your students is now. We turn to you as violence towards Pro-Palestinian students escalates on our campus. The more faculty who attend our events, the safer we are as a community and as a movement.

To demonstrate our unwavering commitment, here in the belly of the beast, we have planned a Week of Rage:

Monday at 7pm in the South Oval for a Vigil to honor our Martyrs.

Tuesday at 7pm in Dale Hall 122 for a Teach-in on the Intifadas.

Wednesday at 10am in front of Dale Hall for a Walkout and Picket.

Thursday at 6pm in Dale Hall 122 for a Film Screening of the documentary "Born in Gaza".

Higher education has always been a battleground for justice, and nowhere is this more evident today than in Palestine. In Gaza, Israeli military forces have systematically targeted and destroyed educational institutions, from U.N. schools to universities, aiming to obliterate not only the physical infrastructure but also the knowledge, culture, and future of an entire people. This calculated assault, aptly named scholasticide by the Right 2 Education campaign at Bir Zeit University, seeks to annihilate the educational system, rendering the pursuit of knowledge in Gaza a dangerous and nearly impossible act. Every university in Gaza has been bombed; not one stands intact today.

The silence of Israeli universities in the face of this genocide is deafening. Not a single Israeli institution has condemned the assault on Gaza or called for a ceasefire. Yet, our universities in the U.S. continue to maintain relationships with these complicit institutions. We must ask ourselves: How can we justify these ties?



The UNIVERSITY of OKLAHOMA

TO: All OU Norman Faculty

DATE: October 7, 2024

RE: Unsolicited Emails: Important Information & How to Manage

The University is aware that some faculty may have received unsolicited emails from a non-registered student organization on the Norman campus. Those emails were sent from an external email account that the University does not control.

Should you wish to block receipt of emails from their email address or any other non-University email address, you may do so by following the <u>Block Sender in Outlook</u> Knowledge Base article. Or, if you would prefer, you may also request assistance from OU IT by completing a <u>Device Support Request</u>.



Foundational Principles

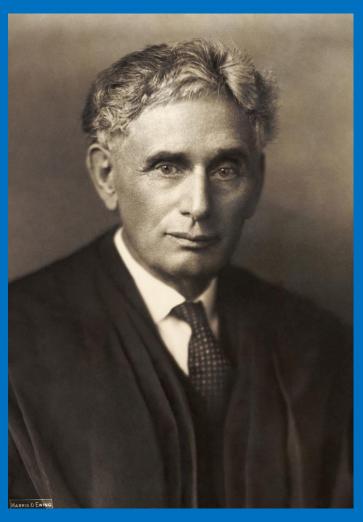
Of course, the ideas of different members of the University community will often and quite naturally conflict. But it is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.

- 4. "Outdoor areas of campus" means the generally accessible outside areas of campus where members of the campus community are commonly allowed, such as grassy areas, walkways or other similar common areas and does not include outdoor areas where access is restricted from a majority of the campus community;
- C. 1. The outdoor areas of campuses of public institutions of higher education in this state shall be deemed public forums for the campus community, and public institutions of higher education shall not create "free speech zones" or other designated areas of campus outside of which expressive activities are prohibited. Public institutions of higher education may maintain and enforce reasonable time, place and manner restrictions narrowly tailored in service of a significant institutional interest only when such restrictions employ clear, published, content— and viewpoint—neutral criteria and provide for ample alternative means of expression. Any such restrictions shall allow for members of the campus community to spontaneously and contemporaneously assemble and distribute literature.
- D. 1. Any person who wishes to engage in noncommercial expressive activity on campus shall be permitted to do so freely, as long as the person's conduct is not unlawful and does not materially and substantially disrupt the functioning of the public institutions of higher education, subject only to the requirements of subsection C of this section.



"Such areas occupy a special position in terms of First Amendment protection because of their historic role as sites for discussion and debate.... There, a listener often encounters speech he might otherwise tune out."

Roberts



Brandeis

"Those who won our independence by revolution were not cowards.... To courageous, self-reliant men, with confidence in the power of free and fearless reasoning ... no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."



