

FREE SPEECH

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STUDENTS & THE BILL OF RIGHTS

THE 1ST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or **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.



THE 1ST AMENDMENT PROTECTS STUDENTS AT PUBLIC UNIVERSITIES

“That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.”

LIMITATIONS ON THE 1ST AMENDMENT

The United States Supreme Court has recognized that the right of free speech is not absolute at all times and under all circumstances. There are certain well defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional questions.



CATEGORIES OF SPEECH NOT PROTECTED BY THE 1ST AMENDMENT



Obscenity*



True Threats / Intimidation*



Fighting words / Incitement to Imminent Breach of Peace*



Child pornography



Defamation (libel and slander)



Perjury



Blackmail



Solicitation to commit crimes

OBSCENITY

There is a very high threshold that must be met in order for obscenity not to be protected. This includes showing that the language or images appeal to the prurient interest in sex, and it depicts something that is considered patently offensive based on contemporary community standards and that it lacks serious literary, scientific, or artistic value.



TRUE THREATS

“True threats” encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.

A prohibition on true threats protect individuals from the fear of violence and from the disruption that fear engenders.

One must look at the **context** in which the communication was made to determine if the communication would cause **a reasonable person** to construe it as a serious intention to inflict bodily harm.

NOW IS I LOVE YOU TOO MUCH TO WALK AWAY T
ME INSIDE, PICK UP YOUR BAGS OFF THE SIDEWA
THIS THA
I DON'T CARE SINCERITY M...
D YOU THIS IS F...
LOOK ME IN THE EYEBALL
TIME I'M P****D. I'LL AIM MY FIST AT THE DRYV
NEXT TIME? THERE WON'T BE NO NEXT TIME!
THREAT
I WILL SEE EVEN WHEN I KNOW'S I...
WED... ME JUST... HE BACK
I KNOW IM A LIAR
IF SHE EVER TRIES TO F*****G LEAVE AGAIN
TIE HER TO THE BED AND SET THIS HOUSE ON FIRE



TRUE THREATS— INTIMIDATION

“a state, consistent with the First Amendment, may ban cross burning carried out *with the intent to intimidate*.”

Under the “true threats” carve-out, “a State may choose to prohibit only those forms of intimidation that are most likely to inspire fear of bodily harm.”

WHAT ABOUT “HATE SPEECH”?

- There is no “hate speech” exception to the First Amendment.
- Courts have generally found that the First Amendment protects speech if it causes only emotional injury, no matter how offensive it is.



WHAT ABOUT “HATE SPEECH”?

“Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express ‘the thought that we hate.’”

THE BAND
WHO MUST
NOT BE
NAMED



WHAT ABOUT “HATE SPEECH”?

The father of a military veteran sued the Westboro Baptist Church for emotional distress after church members picketed his son's funeral with hateful, antigay signs. The Supreme Court found that the First Amendment protected the picketing.



“ABUSIVE OR OBSCENE LANGUAGE”

- In a public place uses *abusive or obscene language* or makes an *obscene gesture*.

Disorderly
Conduct



- Directs abusive or *obscene language* or makes an *obscene gesture* towards another person.

Harassment



- Telephones another person and addresses to or about such other person any *lewd or obscene words or language*.

Harassing
Communications



WHAT IS "ABUSIVE OR OBSCENE LANGUAGE"?

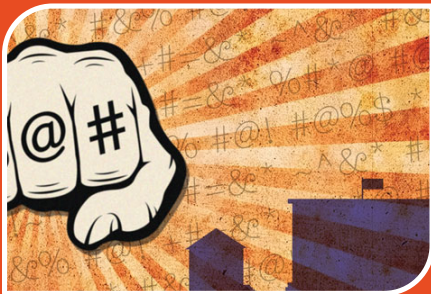
“abusive or obscene language” is very narrow and ***applies only to “fighting words”***



FIGHTING WORDS



“Fighting words” are those words which have a likelihood of causing a violent response by the person to whom they are addressed. They are words that by their very utterance provoke a swift physical retaliation and incite an immediate breach of the peace.

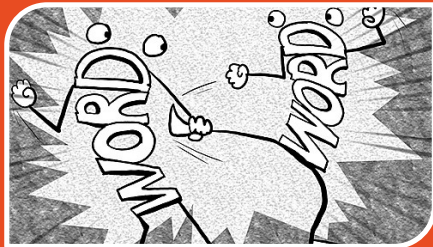


“The test is what men of common intelligence would understand would be words likely to **cause an average addressee to fight.**”

FIGHTING WORDS



“Fighting words” are “personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction.”



The utterance itself must “tend to incite an immediate breach of the peace.”



It is not enough that [the words] merely arouse anger or resentment. Or that the words are deemed “a socially unacceptable mode of communication,”

FIGHTING WORDS



It is clear that the words must “by their very utterance provoke a swift physical retaliation and incite an immediate breach of the peace.”

DESECRATION OF VENERATED OBJECTS—FLAG BURNING

- (a) A person commits the crime of desecration of venerated objects if he intentionally:
 - (1) Desecrates any public monument or structure or place of worship or burial; or
 - (2) Desecrates in a public place **the United States or Alabama flag** or any other object of veneration by the public or a substantial segment thereof.

DESECRATION OF VENERATED OBJECTS—FLAG BURNING

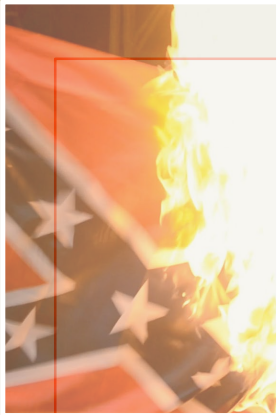
Texas v. Johnson (1989)

“Under the circumstances, Johnson’s burning of the flag constituted expressive conduct, permitting him to invoke the First Amendment. The State conceded that the conduct was expressive. Occurring as it did at the end of a demonstration coinciding with the Republican National Convention, the expressive, overtly political nature of the conduct was both intentional and overwhelmingly apparent.”

DESECRATION OF VENERATED OBJECTS—FLAG BURNING



“Expression may not be prohibited on the basis that an audience that takes serious offense to the expression may disturb the peace, since the government cannot assume that every expression of a provocative idea will incite a riot but must look to the actual circumstances surrounding the expression.”



“Johnson’s expression of dissatisfaction with the Federal Government’s policies also does not fall within the class of ‘fighting words’ likely to be seen as a direct personal insult or an invitation to exchange fisticuffs.”



TAKEAWAYS

DISCUSSION / QUESTIONS

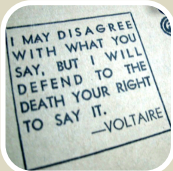
Takeaways



Students at public universities enjoy full protection of the 1st Amendment.



But, 1st Amendment protections of free speech are not absolute.



There is no “hate speech” exception to the 1st Amendment. But threats and intimidation are not protected.



Students have the right to express controversial ideas *and* to protest ideas with which they disagree so long as they do not prevent others from speaking.

