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Campus Free Speech: A Reference Handbook

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Chapter 2

Problems, Controversies, and Solutions

Introduction

This chapter focuses on some of the most prominent problems and controversies arising from the debate over campus free speech issues. As interpretations over the First Amendment's protection of free speech has evolved over many decades, so too has the issue on university and college campuses across the nation. While Americans have always valued their constitutional right to free speech, several surveys in recent years show that younger citizens are less tolerant of free speech than older generations. This trend is particularly evident among university and college students, a majority of whom do not know that hate speech is constitutionally protected, support disinviting campus speakers with whom they disagree, and self-censor in class.

This chapter also discusses possible solutions to those problems and controversies. An important method for analyzing trends involving campus free speech problems and controversies is through the lens of the academic discipline of political science as well as the work of student affairs administrators. This allows an assessment of the role of free speech as a core tenet of civic engagement and diversity initiatives on campuses. Doing so has shown the potential for better collaboration between political science faculty and student affairs administrators to effectively promote civic engagement, diversity/inclusion, and free speech on university and college campuses. Best practices have emerged to provide specific ideas on how to meet the challenge of creating a campus climate that promotes civic engagement as well as free speech, civil discourse, and constructive disagreement. Recent initiatives on many campuses have sought to promote free speech and viewpoint diversity on campus. In addition, political science departments can serve

as an essential resource for student affairs administrators in creating campus-wide civic engagement initiatives as well as establishing free speech as an essential academic value.

Campus Climate Regarding Free Speech

Free speech has long been held as an essential right for American citizens, and it is among the core values and tenets of basic freedoms and liberties that set the United States constitutional government apart from other democratic systems worldwide. As stated in the First Amendment, "Congress shall make no law . . . abridging the freedom of speech . . ." While no absolute right to freedom of speech exists, the U.S. Supreme Court has, in its rulings for the past 100 years, given wide latitude to various forms of protected speech, especially when the message represents a political viewpoint.

Freedom of speech has also been a prominent theme for modernist liberal philosophers since communication plays a seminal role in liberal democratic governments. For example, John Stuart Mill argued for the need to hear opposing viewpoints, since the "opinion may possibly be true," "he who knows only his own side of the case, knows little of that," and "conflicting doctrines share the truth between them." John Dewey's writings tie together the ideals of democracy and education, as the "devotion of democracy to education is a familiar fact." In addition, Dewey argues for the need to share and listen to opposing ideas as part of civic engagement: "A society which makes provision for participation in its good of all its members on equal terms and which secures flexible readjustment of its institutions through interaction of the different forms of associated life is in so far democratic."

More recently, deliberative democracy theorists argue for deliberation within the public sphere, emphasizing the need for citizens to participate in politics as this provides the foundation

for democratic government. Legal scholar Cass R. Sunstein provides what he calls the "Madisonian" definition of free speech, based on James Madison's view that free speech was explicitly linked to sovereignty and the American conception of republican government and political representation. As such, American citizens must participate within the deliberative democracy that the U.S. Constitution provides as "it is designed to have an important deliberative feature, in which new information and perspectives influence social judgments about possible courses of action."

For campus administrators, it seems most students desire a campus environment that shields them from views they might find offensive. Students are pressing campus leadership on why commitments to free speech should supersede diversity, equity, and inclusion efforts, which they view as more important. Student affairs professionals should examine how they can help students consider free speech not in terms of others' rights to say something, but in terms of how it benefits their own education – how they can retain their own rights to decide for themselves what perspectives they choose to hear and consider.

Pollsters have long been intrigued about the concept of free speech and how it is viewed by American citizens. As early as 1949, Gallup polled American citizens on the topic, asking "When you hear or read about the term 'freedom of speech,' what does that mean to you?" The results showed that 92 percent of respondents said they understood the term; 50 percent said that an absolute freedom exists for citizens to say anything they wanted about the government, while 45 percent said that freedom of speech should be qualified (with restrictions seen as acceptable during wartime; if the country was threatened; the statements were false/defamatory; to curb communists/fascists; and that free speech should be limited only to U.S. citizens). The poll also showed a difference in support for free speech based on education level; those who were college

educated supported complete freedom (58 percent) at a higher rate than those with a high school education (53 percent), while college educated respondents supported qualified freedoms at a lower rate (38 percent) than those with a high school education (43 percent).

More recently, polling on the question of free speech attitudes among university and college students and/or Millennials has garnered media attention due to several high-profile campus incidents where protesters (some violently) attempted to shutdown speakers with whom they disagreed. A few examples of how college students view free speech: A poll in 2016 by the Knight Foundation, the Newseum, and Gallup showed that 73 percent of college students believed freedom of speech to be secure while only 56 percent of the U.S. adult population believed that to be the case. However, a study in 2015 by Pew Research showed that Millennials are far more likely than older Americans to want government officials to prevent people from saying offensive statements about minority groups. Forty percent of Millennials wanted a government ban of this type of hate speech, while only 27 percent of Generation X, 24 percent of Baby Boomer, and 12 percent of Silent Generation respondents wanted a similar ban. A 2018 survey by five groups including the Knight Foundation and Gallup found that college students struggle with balancing free speech rights and the desire to be inclusive. In general, a majority of students polled favored diversity and inclusivity over free speech, but there were wide differences among demographic groups (such as race/ethnicity and political orientation). In addition, a majority of students across demographic groups agreed that hate speech does not deserve First Amendment protection, that safe spaces should be provided on campus, and that universities should do more to ban offensive speech.

Data from “The Freshman Survey” by the Higher Education Research Institute at UCLA show that since the early 1980s, larger percentages of college students support limiting and/or

banning speech on campus that is viewed as extreme or racist/sexist. In 1983, 23.4 percent of respondents believed that "colleges have the right to ban extreme speakers from campus;" by 2015, that number had increased to 43.2 percent. Similarly, in 1992, 58.9 percent of respondents believed that "colleges should prohibit racist/sexist speech on campus;" by 2015, that number had increased to 70.9 percent.

Knight and Gallup also continue to assess available data on attitudes as well as knowledge about free speech among college students. Their work on this topic has provided several key findings: Students value both free expression and inclusion, though their commitment to free expression may be stronger in the abstract than in reality; students have become more likely to think the climate on their campus prevents people from speaking their mind because others might take offense; students say campus expression has shifted online; extreme actions to prevent speakers from speaking are largely, but not universally, condemned; and, students continue to view First Amendment rights as secure rather than threatened, but compared with other recent surveys, they are less likely to view each right as secure. As the debate about free speech (how it is defined and how to better promote it) on university and college campuses continues to evolve and given the lack of knowledge among so many students about what is and is not protected speech, this is now a top priority for many university and college administrators and faculty alike. These issues do and should tie directly into other campus initiatives including civic knowledge and engagement and diversity, equity, and inclusion.

Civic Engagement Initiatives on Campus

Political scientists have had a stake in civic engagement education since the American Political Science Association (APSA) was founded in 1903. However, the discipline has not always held consistent views on how to define civic engagement education as numerous debates during the past several decades has led to changing and refined strategies and goals. Since the late 1990s, more attention has been paid by political scientists "to bridge the 'serious gap' between college civic engagement efforts and education for political engagement in a democracy." In theory, political scientists have an obvious pedagogical interest in the idea of promoting civic engagement, and scholarship continues to emerge on how political scientists can, in practice, best promote civic engagement on campus. It is important to note that "civic engagement" differs from other student activities such as interning, volunteering, or political activities. In addition, proper civic engagement pedagogy does not contain a partisan viewpoint, a point illustrated by how best practices within political science education "encourage and allow students to express and question different political viewpoints."

One way to consider developing meaningful civic engagement on campus is to compare "horizontal" versus "vertical" participation for students. Horizontal participation, such as voter registration or engaging with candidates and policy initiatives on social media, is episodic and may not create long-lasting ways for students to engage with substantive civic activities. Vertical participation, on the other hand, "involves a deeper understanding of the obligations and opportunities for substantial, prolonged engagement to alter the course of government." Political scientists can develop strategies within their classes to promote more engaged learners, including mastery learning (focusing on a limited set of topics until a high level of achievement is attained), a "notice and comment" project (to expose students to bureaucratic agencies, oversight function of Congress, and interest group representation), and "high impact" learning

opportunities such as senior theses or portfolios, study abroad, or academically rigorous service-learning projects. Course offerings within political science provide numerous opportunities to achieve these outcomes and should remain a priority for faculty, as "movement from an episodic form of political engagement to sustained forms of engagement . . . is a critically important goal for political scientists to explore." With well-designed and well-taught courses, political science faculty can also contribute to campus civic engagement efforts in an effective way that does not indoctrinate students inappropriately based on a partisan and/or ideological viewpoint. In addition, these courses can help to close the "democratic achievement gap" so that equal opportunities exist for all students, regardless of socio-economic background, in developing civic engagement interests, not just reinforcing this ideal among more affluent students who have been exposed to political and/or civic engagement at an early stage of life.

Research suggests that political science faculty are themselves more politically engaged than other disciplines, and that modeling that political participation can be a useful tool in the classroom to encourage civic engagement, "as long as it does not compromise other important goals of academic learning" and maintains an inclusive approach for students who may disagree with the faculty member's own personal support of a candidate, party, or policy issue. However, numerous opportunities exist to teach civic engagement "across the disciplines," and political scientists have also recently taken the lead in expanding this "global endeavor" into other areas of the social sciences and humanities. Civic engagement education includes numerous components that can and should complement course development in other fields (such as sociology, communication, history, economics, etc.), including active-learning components or other assignments that encourage "deep and substantial participation in democracy," all of which can be introduced in any type of course and at any type of institution.

The National Association of Student Personnel Administrators (NASPA), the largest professional association for student affairs, defines civic learning and democratic engagement as "promoting the education of students for engaged citizenship through democratic participation in their communities, respect and appreciation of diversity, applied learning and social responsibility." For most campuses, civic engagement initiatives focus on community service, service learning, and voter education, but there also is an emphasis on deliberative dialogue. NASPA advocates for student affairs professionals to provide spaces for students to have conversations: "It is our role to educate students about their first amendment right. It is our role to teach students about communication strategies; dialogue and deliberation, writing, and so forth. It is not necessarily our role to stipulate when our students converse nor to decide which topics they should or not discuss with one another."

Diversity, Equity, and Inclusion Initiatives on Campus

Recent work by political scientists interested in assessing the state of civic engagement across the discipline has also touched on the issues of diversity, equity, and inclusion, particularly when considering the interdisciplinary potential of effective civic engagement programs. Some campuses view social and ideological diversity as an asset by integrating "content into the classroom curriculum that creates spaces for students to share their diversity of experiences as assets to the discussion." Civic engagement through deliberative pedagogy, a strategy that helps to "identify and dismantle the structures and norms used to prevent women and other marginalized people from fully participating in deliberative decision making," can also help to remedy historical and systemic inequality.

Much of the recent scholarship, however, has focused on addressing diversity within the profession itself, as opposed to engaging on the issue of pedagogical approaches within political science and how those might benefit students and/or contribute to a more inclusive campus environment. For example, gender inequality has received much attention in recent years in a variety of areas, including publishing, service, and teaching evaluations. Much more research and discussion are needed to address racial/ethnic as well as LGBTQ disparities within the discipline, since "this lack of representation means that we, as a field, cannot address how women of color and other intersectional groups experience compounded inequalities and disenfranchisement." While the discipline of political science seems to be setting the bar high to adequately address the broader issue of diversity and inclusion, much work needs to be done to expand beyond just the experience of faculty.

Regarding the importance of diversity in higher education, the American Council on Education states that diversity in universities and colleges is essential to serving the needs of a democratic society and fulfilling their primary mission in providing a high-quality education. Student affairs professionals know from student development theory that students learn and grow when they are forced to integrate new information into their existing ways of thinking, and direct interactions with others who are different are a particularly positive catalyst for such growth. To the contrary, overprotective college environments may be comfortable for students but may not be conducive to this development.

However, the recent trend in student affairs is to focus less on education and more on access and equity. NASPA's Equity and Diversity focus area "emphasizes social justice and the continued diversification in today's higher education environment." Their initiatives are advanced primarily through constituent groups organized by race, sex, gender, and other

identities. NASPA, along with the American College Personnel Association (ACPA), another student affairs association, also has developed a common set of ten professional competency areas for student affairs educators, one of which is social justice and inclusion. Among other areas, this competency focuses on equitable participation in educational activities; addressing privilege, oppression, and power; and developing a culture that supports free expression and the capacity for professionals to negotiate different standpoints.

While student affairs professionals include free expression in their objectives, many see their primary role as student advocates, not educators; furthermore, many see their inability to deny or heavily restrict controversial speech or speech deemed as hateful is incongruent with the affirming, inclusive campus environments they are trying to create. As a result, they often view free speech not as an opportunity to advance student learning through deliberative discourse, but as a required negative – something for which they must apologize to students.

Challenges of Promoting Free Speech on Campus

While political science faculty have embraced a long disciplinary tradition of promoting campus-wide civic engagement activities that benefit students, student affairs administrators and staff have been more extensively engaged in addressing diversity, equity, and inclusion initiatives on campus. That is, political scientists have much work to do in addressing diversity, equity, and inclusion beyond faculty affairs, as does student affairs in promoting civic engagement initiatives that go beyond basic programs such as community service and voter registration. There are some student affairs programs related to informed voter initiatives regarding dialogues or mechanisms for students to engage with peers on important political/policy issues being considered. Yet, free speech is not that critical of an issue in these kinds of discussions because students do not

challenge the notion of free speech when it comes to discussing ideas and policy initiatives. When it comes to issues of diversity and inclusion, it is necessary for students to understand that hate speech is protected, but both literatures avoid the "difficulty" of free speech. The bottom line is that there is not enough work being done and/or promoted on the value of discourse itself; the idea of deliberate discourse, how this promotes and protects free speech, and why that is and should be an essential educational value is mostly missing from both literatures.

In their rulings on First Amendment rights, the courts have well established that free speech rights are not only essential to learning on university and college campuses but have done so by emphasizing the critical role these institutions play in our society. Key rulings include:

- *Sweezy v. New Hampshire* (1957): The essentiality of freedom in the community of American universities is almost self-evident…. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.… Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.
- *Shelton v. Tucker* (1960): …(T)he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools."
- *Healy v. James* (1972): The college classroom with its surrounding environs is peculiarly the "'marketplace of ideas….'"

- *Rosenberger v. UVA* (1995): The quality and creative power of student intellectual life to this day remains a vital measure of a school's influence and attainment. For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation's intellectual life, its college and university campuses.

Given that students are not likely to embrace the importance of protecting free speech of others, especially speech they deem as in conflict with diversity and inclusion, it is essential to help them understand the perspective advanced by these court opinions—that the most important aspect of free speech is its value to them and their learning. Students should be challenged to decide for themselves what is hateful speech, and not leave this determination to their peers or the institution. Furthermore, students should be challenged to understand that not all students prefer the same response to offensive material; while some students may believe they should be shielded from it, others may feel listening to offensive ideas helps them refine their own perspectives more clearly, even if it does not change them.

Political scientists can be a useful resource to student affairs administrators and staff in promoting civic engagement as well as diversity, equity, and inclusion initiatives. In a broad sense, when messages about the value of civic engagement – particularly free speech – are delivered by faculty, students are more likely to associate that message with their education; to the contrary, when students hear the messages from administrators, they are more likely to infer motives that advance the best interests of the institution, not the students. Furthermore, political scientists are particularly well-positioned for this role given that through their disciplinary training, political scientists should know the importance of deliberative discourse and how it

relates to essential democratic values. By the very nature of the topics studied and the methodologies employed, political scientists bring an expertise to the discussion that other fields within the humanities and social sciences cannot, even those who do not specialize in American politics or political theory as broadly trained political scientists have a familiarity with these concepts.

However, both political science faculty and student affairs administrators must recognize their separate and unique roles in achieving this goal on campus yet must have shared objectives that are also embraced by other important actors on campus (student governance, faculty governance, and/or senior administrative staff). And while not all political science faculty will want to or should engage with such initiatives, a coordination of pedagogical activities along with programs sponsored by student affairs offices can make a major contribution to promoting an inclusive and civic-minded climate on campus. Such faculty efforts should also be rewarded and valued (in terms of teaching load, merit increases, and promotion and tenure consideration) as an extension of the political science discipline into important areas of service on campus; publishing on this topic (particularly in peer-reviewed journals such as *PS: Political Science & Politics* and the *Journal of Political Science Education*) should also be duly recognized as important contributions to the disciplinary literature.

Promoting free speech on campus is an important educational value. The current digital environment (thanks to technological advances, social media, etc.), and certainly the current political environment (dominated by hyper-partisan rhetoric), both present challenges to promoting deliberate democracy and reasoned discourse. Students know how to hear similar political points of view to their own, and can express their own viewpoint, but they are poorly equipped to hear opposing points of view and/or engage in a dialogue that advances substantive

ideas and potential solutions to numerous social and political problems. This is closely tied to the need for students to know how to navigate the current media environment (which also shapes the overall political environment), which is dominated by increased competition among more and more news sources available through constantly expanding technologies. This has led to a greater fragmentation of news (through venues such as social media) and a loss of general intermediary sources (such as legacy media outlets) that used to provide shared experiences for many Americans. These newer news sources often provide less substantive information, and content that is hyper-partisan, which can lead to filtering out only those opinions that the news consumer wants to hear and leaving citizens trapped within echo chambers that exclude viewpoint diversity. As such, promoting critical thinking skills regarding the importance of media literacy as well as free speech as an essential value is increasingly important as students graduate and enter the workforce.

Controversies Regarding Free Speech on Campus

Several high-profile incidents related to free speech have occurred on numerous university and college campuses across the nation in recent years. Three of the most prominent took place during the spring of 2017. Most notably would be the violent protests on the University of California, Berkeley campus over the appearance of former Breitbart News editor and political provocateur Milo Yiannopoulos. Violent protests also erupted at Middlebury College in Vermont over the appearance of Charles Murphy, who had gained prominence and infamy for his 1994 co-authored book *The Bell Curve* about IQ differences between races. In addition, controversy raged on the Claremont McKenna College campus as several students tried to disinvite and then

shut down an invited talk by conservative commentator and attorney Heather MacDonald about her book *The War on Cops*.

Issues related to academic freedom have also arisen. At Portland State University, Bruce Gilley's course on conservative political thought has been, in effect, banned by the administration and denied a place in the course catalog because it has been determined to fail at advancing diversity (as it is defined, which focuses solely on race, sexuality, and gender). At University of Wisconsin, Madison, Kenneth Mayer was accused of political bias in his course on the American presidency due to a statement on his syllabus about Donald Trump offering a good opportunity to study the office "with a president who gleefully flouts the norm of governing and presidential behavior that have structured the office since George Washington." The accusation of bias reached the national level after a conservative student complained about the syllabus on Facebook, which landed her a prime-time interview with Tucker Carlson on Fox News. (After attending the class for two weeks, the student retracted her allegation of political bias). To these types of incidents, responses from administrators have varied. Often, those responses include a commitment to protecting free speech, yet putting that ideal into practice remains a challenge in the face of violent, or even nonviolent, protests.

On our own campus, we have been directly involved in working to create a campus climate that embraces diverse viewpoints among all constituencies—faculty, administrators, staff, and most importantly, students. Chapman University is a private institution in Orange County, California, with an approximate enrollment of 7,000 undergraduate and 2,300 graduate students. We offer a comprehensive curriculum with 110 areas of study across ten colleges and schools, we attract students both nationally and internationally, and increasing diversity among students remains a top priority. Our university has also grown extensively in the past decade, not

only in the size of the student population but also in the types of academic programs offered (including the addition of a school of pharmacy and a school of engineering) as well as the size and scope of the physical campus. Increased attention to research has driven much of this growth, with Chapman receiving an R2 designation from the Carnegie Classification of Institution of Higher Education in early 2019. Yet, teaching and a personalized experience for students also remain a top priority; Chapman's mission is to "provide personalized education of distinction that leads to inquiring, ethical and productive lives as global citizens." All these factors combine to create both challenges and opportunities to promote free speech, viewpoint diversity, and diversity, equity, and inclusion.

In the fall of 2015, both the faculty senate and student senate adopted a campus free speech statement modeled after the University of Chicago's free speech policy. Within days of the 2016 presidential election, conversations began about how to address, in a thoughtful and respectful way, the emotions students were experiencing along with the protests and other forms of expression that were happening on campus. From that, a core group of faculty members came together informally, representing a broad coalition of disciplines, to discuss and plan events to promote free speech and viewpoint diversity on campus. These included, among others, a talk by Professor Laura Kipnis of Northwestern University to discuss her experiences regarding Title IX investigations; a talk (by Lori Cox Han) about the challenge of free speech in the Trump era that included a panel discussion (moderated by Jerry Price) with student leaders of campus political organizations (clubs represented included Democrats, Republicans, Libertarians, and Socialists); and a talk by Colonel Ty Deidule of the history department of West Point about Confederate monuments and memory. Chapman also has a strong presence within the membership ranks of Heterodox Academy, a non-profit collaborative of professors, administrators, staff, and students

who are committed to enhancing the quality of research and education by promoting open inquiry, viewpoint diversity, and constructive disagreement in higher education. The challenge, however, is making sure that these events and initiatives are not just about the administration making a statement about free speech or faculty endorsing those ideals. Students need to be a high priority. Student affairs staff have been engaged partners with faculty in this effort, hosting open forums for students on free expression and inclusion, emphasizing how both are vital to the university environment, and providing an expanded presentation on the topic for key student leaders.

Chapman University, however, has not been immune from its own free speech controversies. During the spring of 2019, the university received national media attention over protests involving two posters on display in its film school depicting the film *The Birth of a Nation*. In 2007 a large collection of classic movie posters was donated to the Dodge College of Film and Media Arts from Cecilia DeMille Presley, granddaughter of noted American filmmaker Cecil B. DeMille. This collection, including the two *The Birth of a Nation* posters, have since been displayed throughout the first floor of Marion Knott Studios. The film's historic relevance notwithstanding, it has long been criticized for being racist, its use of blackface, and is associated with a revival of the Ku Klux Klan after its release in 1915. During the 2018-2019 academic year, several Black students at Chapman voiced their concerns on social media and to administrators over the display of the posters, which led to wider student protests. Chapman's President, Daniele Struppa, allowed the Dodge faculty to decide whether to remove the posters; the faculty did just that and made the decision to return the two posters to the donor. Even though the posters ultimately were removed as the students requested, many were upset that the decision took too long. Some students did not agree with Struppa's decision to view this as an

issue of academic freedom to be decided by Dodge faculty, which highlights the challenge of balancing competing ideals such as free speech and academic freedom in a manner that also respects due process.

Chapman University would again find itself in the headlines during the 2020-2021 academic year. A controversy erupted in August 2020 when then-Chapman University law professor John Eastman published an op-ed in *Newsweek* suggesting that then-vice-presidential candidate Kamala Harris might not be ineligible for the position based on an obscure interpretation of the citizenship clause of the Fourteenth Amendment. Later that fall, Eastman emerged as one of the attorneys aiding President Donald Trump's legal challenges to the outcome of the 2020 presidential election, which Trump lost to Joe Biden. Then on January 6, 2021, Eastman participated in the "Save America" rally where tens of thousands of protesters gathered on the Ellipse (which is between the White House and the Mall). Prior to Trump speaking, Eastman told the crowd that "secret folders" inside ballot counting machines in Georgia had altered the vote count in Biden's favor. Following the rally, a violent mob of Trump supporters stormed the U.S. Capitol building.

After all three of these incidents, several faculty, staff, and students at Chapman University demanded that Eastman be fired or severely punished for his actions. Others defended Eastman's freedom of speech and academic freedom to engage in such political activities. Ultimately, Eastman would retire from the University within days of the January 6th riots. President Struppa issued the following statement: "After discussions over the course of the last week, Dr. John Eastman and Chapman University have reached an agreement pursuant to which he will retire from Chapman, effective immediately. Dr. Eastman's departure closes this challenging chapter for Chapman and provides the most immediate and certain path forward for

both the Chapman community and Dr. Eastman. Chapman and Dr. Eastman have agreed not to engage in legal actions of any kind, including any claim of defamation that may currently exist, as both parties move forward."

Controversies Regarding Academic Freedom

Many other campuses have dealt with similar challenges to academic freedom in recent years. In the fall of 2015, the University of Missouri was experiencing significant campus unrest related to concerns about the campus climate experienced by Black students. The student protesters called themselves Concerned Student 1950, which referred to the first year that Black students were admitted to the University of Missouri. The students' list of demands included the immediate removal of UM System president Tim Wolfe. Members of the University of Missouri football team supported the demands and pledged not to play until the concerns were adequately addressed. During one of the protests on campus, Black students had gathered together and requested that the media give them privacy, even though the protest location was itself public space. As a student reporter approached the group to film the protest, University communications professor Melissa Click grabbed the reporter's camera and tried to physically bar him from accessing the space; when the student reporter persisted, indicating that he was just doing his job, Click was captured on video calling for "some muscle" to physically remove the student reporter from the protest area. Click was suspended and ultimately terminated for her actions at the protest.

Collin College, a community college district northeast of Dallas enrolling more than 52,000 students, was sued in 2021 by three former faculty members who claimed their contracts were not renewed in violation of their First Amendment rights. History faculty member Lora

Burnett claimed she was fired for a post on Twitter critical of then Vice President Mike Pence. Education faculty member Suzanne Jones said she was fired after she wrote a Facebook post criticizing Collin College's response to COVID-19, as well as for her efforts to start a chapter of a non-bargaining faculty union. History professor Michael Phillips claimed he was fired in retaliation for criticizing the College's handling of the COVID-19 pandemic as well as his public comments regarding the removal of Confederate statues in Dallas. The faculty members claimed that the lack of tenure protections at the College allowed administrators to terminate faculty who make public comments unpopular with the administration. All three faculty were represented by the Foundation for Individual Rights and Expression (FIRE); the terminations also drew criticism from the AAUP, the American Historical Association, and the Academic Freedom Alliance. In the case of Phillips, the faculty-run College council that reviews applicants for new contracts recommended that he receive a new one; however, the university administration declined to do so. Collin College president Neil Matkin and senior vice president of operations Toni Jenkins were both named personally as defendants in Jones's suit. The two administrators requested that the case against them personally be dismissed due to qualified immunity; however, in August 2022, a federal court rejected their request, ruling that the two could potentially be held personally and financially responsible for violating Jones's First Amendment rights. U.S. District Court Judge Amos L Mason wrote that, "By their own admission [the defendants] fired Plaintiff in part for using her social media account to inform the public about a matter of concern." Burnett settled with the College, but the other two lawsuits are ongoing.

In 2021, the Florida legislature passed Senate Bill 90, which imposed limits on voter registration, mail-in voting, and vote-by-mail drop boxes. Immediately after the legislation was signed into law, SB 90 was challenged in court by the League of Women Voters, the NAACP,

and other civil rights and voting rights organizations. Three University of Florida political science faculty members – Daniel Smith, Michael McDonald, and Sharon Wright Austin – were hired to testify as expert witnesses in the lawsuit against the State, specifically that the law unconstitutionally discriminated against minorities and other groups. The University informed the faculty members that they would not be permitted to testify because the University was an institution of the state thus their testimony would be in conflict with the University's interests. After intense criticism, the University indicated that the faculty members could testify as expert witnesses as long as they were not compensated for doing so. After it became clear that faculty at other Florida universities were permitted to testify as expert witnesses with compensation, the University of Florida reversed its decision and indicated the faculty could testify and be compensated. In March 2022, Chief U.S. District Judge Mark E. Walker struck down key provisions of SB 90, ruling that they violated federal law and unconstitutionally impeded the right to vote.

Also, in 2022, the Florida legislature passed the Individual Freedom Act, which barred any teachings or workplace training that "espouses, promotes, advances, inculcate, or compels" someone to believe a particular race or sex is morally superior, or that an individual can be inherently racist or sexist. The law prohibits teaching critical race theory or other concepts perceived as creating racial divisions. Florida governor Ron DeSantis advocated for the legislation, stating that, "We won't allow Florida tax dollars to be spent teaching kids to hate our country or to hate each other." Critical race theory involves examining America's history through the lens of racism; it centers on the idea that racism is systemic in the nation's institutions and that they function to maintain the dominance of white people in society. The theory has become controversial in both K-12 and higher education; supporters of critical race

theory contend that it is necessary to explore how racism and sexism have shaped the country's past and could affect its future, while opponents argue that children should not be taught that America is a racist country.

A faculty member and undergraduate student from University of South Florida challenged the Individual Freedom Act in court, arguing that the law is unconstitutional and that it also violates Florida state law. The plaintiffs were represented by the Foundation for Individual Rights and Expression (FIRE), which said that the law suppresses viewpoints disfavored by Florida lawmakers. They further contended that "Without the freedom to engage in vigorous and robust debate about important issues and contentious concepts, a college freedom is just an exercise in memorizing facts and repeating government-approved viewpoints." Business interests also challenged the law in court as well.

In August 2022, U.S, District Judge Mark Walker ruled that the Individual Freedom Act was unconstitutional; he further refused to issue a stay that would keep the law in effect during any appeal by the state. The judge stated that the law turned the First Amendment "upside down" because the state is barring speech by prohibiting discussion of certain controversial concepts. The state responded to the judge's ruling by submitting a motion claiming that professors at public universities are state employees, and thus have no right to freedom of speech when they are teaching. The motion stated that the curriculum used in state universities and the in-class instruction offered by state employees are the Florida government's speech. The Supreme Court has previously ruled that state employees do not have First Amendment rights while they were doing their jobs, but the Court left unaddressed the question of whether that principle extends to college classrooms.

Solutions/Best Practices for Promoting Free Speech

American universities can be a positive force in combating political polarization and the lack of viewpoint diversity in national discourse. Yet, evidence suggests that those in higher education have been at best ineffective, and perhaps are even contributing to the problem. In a blog post for Heterodox Academy in 2018 about creating campus-wide partnerships, we wrote: "Universities have allowed ourselves to become a welcoming place for passionate advocacy, but a poor one for dialogue. Social media also works against us: by design it allows people's voices to be heard while receiving only those voices with whom they agree." The following are recommendations on how to develop campus-wide initiatives to promote free speech, civic engagement, and viewpoint diversity, and how to incorporate political science departments into the conversation.

- Faculty should be in the forefront in any campus initiative as it gives more credence to the educational and academic value of promoting free speech, as opposed to administrators imposing "rules" which students perceive as primarily protecting the university.
- Political scientists can, and should, be viewed as a resource due to our disciplinary training and inherent interest in issues directly related to civic engagement, deliberative democracy, and due process (among others). However, it is important to remember that not every faculty member will buy into these initiatives on campus; encourage faculty (especially political scientists) to be involved for the sake of creating a positive campus environment for free speech and not for the sake of political advocacy.
- Faculty should be more visible in their advocacy for free expression. Often, it is the voice of faculty who advocate for specific political issues that are the loudest yet creating a campus climate that embraces free speech will benefit the most constituents.

- Encourage students to resist an oversimplified “free-speech v. diversity” perspective. Our challenge is not to convince them that free speech is as important as diversity, rather that censoring speech ultimately will not advance diversity.
- Focus student attention on the controversial issues themselves, not on what speech can or cannot be permitted. Students learn more and develop better critical thinking skills through analyzing issues as opposed to attempts to “shut down” or “disinvite” speakers.
- Ground the institutional responses to free speech matters in academic values and not university policy. Those policies are in fact already grounded in some values, though students often do not see or understand the distinction between the two.
- Be proactive by offering structured programs on hot button issues. This provides stronger structure for discourse; programs that are reactions to controversial incidents tend to be less productive.
- Encourage students with competing viewpoints to recognize that collaboration is more productive than combativeness. This also promotes critical thinking skills, which is a cornerstone of their educational experience.
- Administrators should encourage faculty to incorporate issues related to civic engagement and free speech into the curriculum. Many political science courses already cover these or related topics; however, multidisciplinary curricular initiatives can promote these values and ideals campus wide and can help initiate conversations among not only faculty and students, but faculty and administrators as well.
- Consider incorporating issues related to civic engagement, free speech, and viewpoint diversity as part of a discussion on “best practices in the classroom” during orientation for new faculty hires (tenure-track, non-tenure line, and adjunct). Every campus has

several faculty members who already promote these ideals and they can be an excellent resource for new faculty. Issues such as these related to teaching undergraduate students are rarely addressed in graduate programs but doing so in this format can help to promote a positive campus climate at the start of each academic year.

Conclusion

Universities are uniquely situated to promote ideals regarding free speech and deliberative discourse, yet recent research suggests that universities, while embracing initiatives to promote all other types of diversity, lack viewpoint diversity. As David Rozado states: "As a result, a homogeneous liberal academy could conceivably form a power structure unlikely to desire opening its circle to intellectual out groups. Intellectual homogeneity has several negative consequences on the educational and research mission of the University." Political science faculty as well as student affairs administrators and staff are well equipped to promote those ideals through civic engagement and diversity/inclusion initiatives. While student affairs may be on the frontlines in dealing with the many challenges occurring on campuses regarding free speech, political scientists can and should engage with their colleagues within the administration as well as other academic fields on their campuses in generating programmatic and pedagogical solutions that can close the "free speech" gap. Future research is also necessary to specifically address how this can be accomplished and would further promote a more extensive "best practices" model for universities in reestablishing free speech as a core educational value.

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