

## Frequently Asked Questions Regarding Expressive Activity and Harassment

### **The First Amendment to the United States Constitution protects free expression. What does that mean?**

The First Amendment protects speech as well as expressive activities, such as plays, satire, flag burning, and political cartoons, buttons or slogans. The First Amendment does not, however, protect all speech.

### **What speech is protected?**

The First Amendment generally allows persons to speak freely while located in a public forum. A public forum is defined as all generally accessible outside areas of the University's campus. Generally, almost any topic is permissible, as are most printed materials, visual images, photographs, or physical items put on display. A broad array of language is permissible, including words that some may consider to be hateful, offensive, profane, vulgar, or extremely descriptive. A topic may not be excluded from First Amendment protection simply because it may be considered controversial within the community, such as religion, politics, sexuality, gender identity, government, military or police issues. There are, however, some categories of speech that do not qualify for First Amendment protection.

### **What speech is not protected?**

Speech that does not enjoy the protections of the First Amendment and may be regulated because of its content. Exceptions to free speech include, but are not limited to:

- **Obscenity:** Statements or materials that: appeal to the prurient interest in sex, as judged by contemporary community standards; depict or describe sexual conduct in a patently offensive way; and lack serious literary, artistic, political, or scientific value.
- **Fighting Words:** Statements that tends to incite an immediate and violent response from an average person.
- **Defamation:** False statements of fact about a person. In cases concerning a public official or figure, the speaker must have acted with intent in making the false statement.
- **Incitement of Imminent Lawless Behavior:** Statements that may advocate the use of force or lawbreaking **except** where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.
- **True Threats:** Statements meant to communicate a serious expression of an intent to commit an act of unlawful violence to an individual.

### **What is “hate speech” and is it protected?**

Hate speech has no legal definition. While individuals may differ on what is considered “hateful” the term “hate speech” refers to speech that insults or demeans a person or group of people the basis of who they are (i.e., religion, race, ethnicity, nationality, gender, or other identity factor).

### **What is a “heckler’s veto” and is it permitted?**

A heckler’s veto refers to suppressing or punishing particular speech based on the likely reaction of the listeners, which is not permitted. Generally, action taken by the University to restrict protected speech must be based upon content-neutral factors; the University may not prevent or stop speech based solely on how it believes the audience will react to the speech and must take reasonable measures to ensure a hostile crowd does not prevent unpopular speech.

### **What expressive activities are protected under the First Amendment?**

Protected expressive activities generally include the following, so long as they do not materially and substantially affect the teaching, research, or administrative functions of the University:

- Holding a protest, demonstration, march or rally
- Handing out flyers or leaflets
- Standing up or turning your back toward a speaker
- Wearing clothing that expresses your view on a topic

### **What is the difference between protesting and engaging in civil disobedience?**

Under the First Amendment and the university’s policies, protesters on campus may express their views in many ways, including by assembling, demonstrating, and marching. Those activities are constitutionally protected and must be permitted, so long as they are not disruptive or violate basic use rules.

Civil disobedience is different. Civil disobedience typically involves peaceful, conscientious, and intentional violations of laws or rules. Those who engage in civil disobedience often do so to highlight injustice and to call for societal change, but civil disobedience — even for worthy causes — is not protected by the First Amendment; there is no constitutional “right” to civil disobedience or to substantially disruptive protest, and civil disobedience may result in disciplinary and legal consequences.

### **When does speech become harassment?**

The First Amendment does not protect behavior on campus that meets the definition of “harassment” under applicable University policy, including:

- Administration of Student Conduct
- Affirmative Action, Equal Employment Opportunity and Non-Discrimination/Harassment

- Free Speech and Harassment
- Sexual Harassment Under Title IX