

Fighting Harmful Words
Balancing Free Speech and Student Wellbeing for Public Colleges and Universities

Erin Shaver

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I. Introduction

College campuses in the United States have long been considered allies and defenders of free speech. College is supposed to be a time of challenging debate and learning, pushing the intellectual and ideological comfort zones of students. However, vocal figures of controversy who use college campuses to espouse ideas of racial superiority, misogyny, and hatred have challenged the notion that free speech is alive on the college campus. These speakers bring with them concerns for campus safety and wellbeing, which causes a dilemma for public schools: balancing the wellbeing of students against the legal obligations of the First Amendment. Schools are still challenged when the speaker is less polarizing. For years, students have protested lectures and commencement speakers to the point where some speakers withdraw or are disinvited from the event. Words matter, and colleges and universities should be permitted to recognize that words alone can put their student population at risk of harm.

II. Background and Arguments

Addressing this issue as though it is one side versus another with no gray area does a disservice to the more level-headed voices in the debate. A total ban on any speakers of a certain ideology would be ridiculous and a constitutional violation. At the same time, requiring students to abide ideologies as repulsive as Nazism in the place where they study, socialize, eat, sleep, and live for their first years of adulthood is offensive and dismissive. Those who oppose disinviting or canceling speakers on college campuses fall into at least two categories: free speech proponents who believe counter-speech is a better way to protest speakers and those who claim that canceling speakers is part of the political liberalization of college campuses. Undoubtedly, these individuals do not agree with each other on every issue. This demonstrates the importance of the First Amendment and one of the core purposes for supporting it. Free speech is a value, regardless of ideology.

CNN correspondent Fareed Zakaria made the point in his 2017 commencement address at Bucknell that without debate, students risk viewing ideas as “dead dogmas” rather than

“living truths.”¹ Zakaria criticized the motivations behind disinviting speakers and emphasized the importance of engaging with people of “wildly different perspectives” as part of the growth experienced in college.² College students are likely to find themselves in leadership positions throughout their careers. Entertaining ideas that vary from a student’s own teaches the student an important life skill. By listening to others, especially those who disagree with them, students are more likely to learn to ask themselves what they’re missing.³ Listening to others regardless of their beliefs supports the fact that no one is infallible.

The Newseum’s First Amendment Center’s David L. Hudson, Jr. submitted a written statement to the U.S. House of Representatives Judiciary Committee on April 4, 2017. In his statement, he noted that “one of the most venerated principles” of the First Amendment is the counter-speech doctrine that Justice Louis Brandeis developed in *Whitney v. California*.⁴ He further suggested that, when dealing with offensive or controversial speakers, colleges “should embrace and advance the counter-speech principle rather than resort to silencing and disinviting” them.⁵ Hudson also wrote on the specific issue of the heckler’s veto for the Newseum on its First Amendment Center website. He defined the heckler’s veto as “a situation involving a government official who allows a hostile audience’s reaction to shut down or silence an unpopular speaker. In other words, the speaker’s right to free speech is suppressed by the fear of disruption.”⁶ Interestingly, the heckler’s veto was used first in the South when the

¹ Fareed Zakaria, Commencement Address at Bucknell University (May 21, 2017), available at <https://www.youtube.com/watch?v=K8jvZuBTjBE>.

² See *id.*

³ *Id.*

⁴ *Written Statement of David L. Hudson, Jr., Ombudsman, Newseum Institute First Amendment Center: Hearing on First Amendment Protections on Public College and University Campuses*, 115th Cong. (Apr. 4, 2017). (citing *Whitney v. Calif.*, 274 U.S. 357, 377).

⁵ *Id.*

⁶ David L. Hudson, *Controversial Campus Speakers*, Newseum Institute First Amendment Center (April 2017), <http://www.newseuminstitute.org/first-amendment-center/topics/freedom-of-speech-2/free-speech-on-public-college-campuses-overview/campus-speakers/>.

viewpoint expressed was opposition to segregation.⁷ This demonstrates why many scholars and writers suggest that allowing a vocal majority to cancel a speaker is dangerous.

Various speakers have been disinvited from campuses, causing different reactions. In 2014, Condoleezza Rice withdrew from a commencement address at Rutgers University after students held a sit-in to protest due to her role in the Iraqi War. She reasoned that her appearance would distract from the celebration of commencement.⁸ Soon after Rice withdrew, International Monetary Fund (IMF) chief Christine LeGarde withdrew from a speech at Smith College after students protested the IMF on campus.⁹ CIA Director John Brennan gave a speech at the University of Pennsylvania where he was continuously interrupted by hecklers. The Dean of the law school asked the audience if they would rather hear Brennan's response to their criticisms than continue to shout, but, as he answered, more audience members shouted over him. The moderator eventually canceled the event.¹⁰ When Middlebury College students protested *The Bell Curve* author Charles Murray's lecture on their campus by pulling fire alarms and shoving him and others at the lecture, the school punished only a small number of the students who participated due to identification difficulties.¹¹ In each of these cases, the speakers reacted calmly, though they were met with much different kinds of protests. This is not always the case.

In the spring, UC-Berkeley canceled a rally Ann Coulter planned to hold due to safety concerns. Self-described troll Milo Yiannopoulos, who was disinvited from UC-Berkeley two months earlier due to safety concerns reacted to Coulter's disinviting. "It's happening because

⁷ Brett G. Johnson, *The Heckler's Veto: Using First Amendment Theory and Jurisprudence to Understand Current Audience Reactions Against Controversial Speech*, 21 Comm. L. & Pol'y 175, Spring 2016.

⁸ Emma G. Fitzsimmons, *Condoleezza Rice Backs Out of Rutgers Speech after Student Protests*, N.Y. Times, May 3, 2014.

⁹ Richard Pérez-Peña, *After Protests, I.M.F. Chief Withdraws as Smith College's Commencement Speaker*, N.Y. Times, May 12, 2014.

¹⁰ Ally Johnson, *Protests Shut Down CIA Director's Talk at Penn*, Daily Pennsylvanian, April 1, 2016.

¹¹ Stephanie Saul, *Dozens of Middlebury Students are Disciplined for Charles Murray Protest*, N.Y. Times, May 24, 2017.

the left knows it's losing. It's losing the political battle and losing the free speech battle. And like a dog being kicked to death, it is lashing out."¹² He vowed to return to campus in the fall for a "Free Speech Rally" where "each day of the planned protest week will be devoted to attacking one liberal group . . . one day we will focus on feminists, another on Black Lives Matter" and a day will be dedicated to the idea that "politically correct" treatment of Muslims threatens the safety of the nation.¹³ Coulter also reacted to her speech being canceled by "vow[ing] to speak anyway" in the campus public plaza.¹⁴ The school canceled the event due to safety concerns. In the case of Coulter, some evidence suggests that UC-Berkeley failed to offer a classroom location for her planned lecture and refused to work with the student groups that invited her to find alternative locations for her lecture.¹⁵ Whether this is the whole truth, perhaps working with students could have prevented some of the protests.

Some suggest that instead of arguing that students are oversensitive "snowflakes," higher education should recognize that, in terms of maturity, college students are still children.¹⁶ Others give students more credit and note that the recognition of certain ideas being unacceptable is an example of college students being ahead of the rest of society. Ulrich Baer wrote, "We should thank the student protestors, the activists in Black Lives Matter and other 'overly sensitive' souls for keeping watch over the soul of our republic."¹⁷ Additionally, some of the speakers who are associated with the white nationalist movement put minority students in

¹² William Wan, *Milo's Appearance at Berkeley Led to Riots: He Vows to Return this Fall for a Week-Long Free-Speech Event*, Wash. Post, April 26, 2017.

¹³ *Id.*

¹⁴ Susan Svrluga, William Wan & Elizabeth Dwoskin, *Ann Coulter Speech at UC Berkeley Canceled, Again, Amid Fears for Safety*, Wash. Post, April 26, 2017.

¹⁵ *Id.*

¹⁶ Eric Posner, Editorial, *Universities Are Right—and Within Their Rights—to Crack Down on Speech and Behavior*, Slate (Feb. 12, 2015 2:30 PM), http://www.slate.com/articles/news_and_politics/view_from_chicago/2015/02/university_speech_codes_students_are_children_who_must_be_protected.html.

¹⁷ Ulrich Baer, Editorial, *What Liberal 'Snowflakes' Get Right About Free Speech*, N.Y. Times, April 24, 2017.

particular danger. Baer further argues that free speech is not under attack, rather “the rights, both legal and cultural, of minorities to participate in public discourse” is what is at risk.¹⁸

Some argue that college campuses are purposefully silencing conservative ideologies in favor of politically liberal ones, and political correctness is a poison to free speech. Some disagree with that concept but still believe the correct path is to encourage counter-speech and public debate on issues presented. Others believe students need to be protected. Others yet believe that students should be able to reject certain speakers and ideologies they find repugnant and dangerous. Public schools are in a much more difficult position than private schools because of their status as government actors. Reacting to this debate has specific considerations unique to such institutions.

III. Legal Analysis

A. Free Speech Law

The First Amendment to the U.S. Constitution says, “Congress shall make no law . . . abridging the freedom of speech.”¹⁹ State actors, as opposed to private actors, are bound by the constraints on the government within the Constitution. This means that the debate about campus speakers has a higher potential for legal consequences for universities like Marshall than for private schools.

The U.S. Supreme Court has described what speech is protected and what speech can be forbidden by state actors. In some cases, this provides clarification. In others, it muddies the issue. In one of his famous dissents, Justice Oliver Wendell Holmes wrote in *Abrams v. United States* that speech alone is insufficient for punishing speech; intent to harm is required.²⁰ He further wrote that “I do not doubt for a moment that by the same reasoning that would justify punishing persuasion to murder, the United States constitutionally may punish speech that

¹⁸ *Id.*

¹⁹ U.S. Const., amend. I

²⁰ See *Abrams v. United States*, 250 U.S. 616, 628 (1919) (Holmes, J., dissenting).

produces or is intended to produce a clear and imminent danger that it will bring about forthwith certain substantive evils that the United States constitutionally may seek to prevent.”²¹ Though Holmes wrote in dissent, later United States Justices would read his words and implement his ideas into opinions that became law.

In 1969, the Supreme Court overturned an Ohio conviction of a Ku Klux Klan (K.K.K.) leader who was punished under an Ohio statute, announcing that the constitutional guarantees of the First Amendment do not allow a government actor to use force of law to prohibit speech “except where such advocacy is directed to inciting or producing imminent lawless action and is likely to produce such action.”²² Further, ideas in the abstract regarding a “moral necessity for a resort to force and violence” is not the same as inciting imminent action.²³

“Fighting words,” or words that by merely being said are enough to cause injury or incite violence, are not protected by the First Amendment.²⁴ When speech is of “such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by social interest in order and morality,” it can be limited.²⁵ This includes such words as obscenities, defamation, and fighting words.²⁶ When some state actors tried to enact statutes that prohibit fighting words, they found themselves in violation of the Constitution because of the language of the statutes. In *R.A.V. v. St. Paul*, an ordinance was found to be unconstitutional because it prohibited speech based solely on the subject addressed by the speech.²⁷ A St. Paul, Minnesota ordinance specified that “whoever places on public or private property a symbol, object, appellation, characterization or graffiti, including but not limited to, a burning cross or

²¹ *Id.* At 627.

²² *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

²³ *Id.* at 448.

²⁴ See *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

²⁵ *Id.* at 572.

²⁶ See *R.A.V. v. St. Paul*, 505 U.S. 377, 382 (1992).

²⁷ See *id.* at 380.

Nazi swastika, which one knows or has reasonable ground to know arouses anger, alarm or resentment in others . . .” violates the law.²⁸

This distinction in the *R.A.V.* opinion is important: fighting words themselves are not content-based. Fighting words can be conservative, liberal, fanatical, or blasphemous. Disallowing fighting words is fine.²⁹ Prohibiting fighting words of certain messages “based on virulent notions of racial supremacy” is not.³⁰ In the opinion, Justice Scalia notes that “reasonable time, place, or manner” restrictions may be upheld, but only if they are “justified, without reference to the content of the regulated speech.”³¹ Such restrictions must leave open alternative channels of communication and be narrowly tailored.³² The result is that public universities are limited in their powers to prohibit certain kinds of speech unless the speech is unprotected by the First Amendment or can be limited by reasonable time, place, or manner restrictions.

B. Legal Requirements of Public Colleges and Universities

Part of the limitation faced by public universities is the extension of limitations of the First Amendment and its interpretation by the judicial system. A public university cannot create policy that violates what the Courts have interpreted the Constitution to mean. After the implementation of Title IX, many colleges and universities adopted standards for campus speech.³³ In 1989, the United States District Court for the Eastern District of Michigan decided a case regarding the University of Michigan’s anti-harassment policy. The Court determined that, “however laudable or appropriate an effort this may have been . . . the policy swept within its

²⁸ *Id.*

²⁹ *See id.* at 391.

³⁰ *Id.* at 392.

³¹ *Id.* at 385 (citing *Ward v. Rock Against Racism*, 490 U.S. 781, 791 (1989), *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 298 (1984)).

³² *See Heffron v. Int’l Soc’y. For Krishna Consciousness*, 452 U.S. 640 (1981).

³³ *Free Speech on Campus: Where should colleges draw the line?*, in *CQ Researcher* (Vol. 25 No. 18) 409, 422-23 May 8, 2015.

scope a significant amount of . . . unquestionably protected speech under the First Amendment.”³⁴

The implementation of this policy followed a strange path. In December of 1987, the University president resigned and an interim president took over the position. Later that month, the interim president issued a confidential memorandum to the school’s executive officers detailing the anti-discrimination policy.³⁵ The interim president knew this would cause problems, but reasoned that “students at a university cannot by speaking or writing discriminatory remarks which seriously offend many individuals beyond the immediate victim, and which, therefore, detract from the necessary educational climate of a campus, claim immunity from a campus disciplinary proceeding.”³⁶ The next month, the Board of Regents met and learned about the policy, and it was implemented in 1988. The District Court determined that the overbreadth of the policy was its downfall, and if the policy had the effect only of limiting areas of unprotected speech, it could have stood.³⁷ “What the university could not do, however, was establish an antidiscrimination policy which had the effect of prohibiting certain speech because it disagreed with ideas or messages sought to be conveyed.”³⁸

Aside from First Amendment and constitutional constraints, university governing boards are also subject to other principles. As the *University of Michigan* case demonstrates, college and university policies regarding speech do not appear out of thin air. A Board of Governors, along with the executives of the school, go through a process of implementing a plan. College Boards of Governors are subject to fiduciary duties. These duties include the duties of care, loyalty, and obedience.³⁹ The duty of care requires board members to use the degree “of diligence, care, and skill which ordinarily prudent persons would exercise under similar

³⁴ *Doe v. Univ. of Mich.*, 271 F. Supp. 852, 854 (E. D. Mich. 1989).

³⁵ *See id.* at 855.

³⁶ *Id.*

³⁷ *Id.* at 863.

³⁸ *Id.*

³⁹ *Fiduciary Duties*, Association of Governing Boards of Universities and Colleges, <https://www.agb.org/briefs/fiduciary-duties>.

circumstances.”⁴⁰ The duty of loyalty requires board members to act in good-faith in the best interests of the university and not in self-interest.⁴¹ The duty of obedience is described as a combination of the first two, where a board member must make sure the school “is operating in furtherance of its stated purposes . . . and in compliance with the law.”⁴² This means that, in implementing any sort of policy regarding speech restrictions on campuses, the school’s Board must insist that the school operate within the bounds of the First Amendment.

The Association of Governing Boards of Universities and Colleges (Governing Board) notes that higher education exists to uphold values of institutional independence and educational freedom.⁴³ This contributes to the overall campus climate. Diversity in higher education “is not merely about demographics, but also about campus climate, culture, and norms Diversity without inclusion is only a metric.”⁴⁴ Therefore, universities are ethically obligated to protect campus safety.⁴⁵

The solution to the problem of balancing free speech against students’ rights to refuse to allow racist, sexist, or dangerous speakers to use their home and school as a platform to promote such ideas must keep these legal concepts in mind. Public colleges and universities have a constitutional and a fiduciary obligation to abide by the First Amendment and to protect the safety of their student populations.

IV. Ideas for Finding Solutions

Threats to campus and student safety have an easier solution. When the speech can incite harm, or when the speaker brings with him or her scores of protestors yielding torches and Nazi paraphernalia, public colleges and universities can balance the interests of free speech

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Statement on Governing Board Accountability for Campus Climate, Inclusion, and Civility*, Association of Governing Boards of Universities and Colleges Board of Directors (2016), http://agb.org/sites/default/files/agb-statements/statement_2016_campus_climate.pdf.

⁴⁴ *Id.*

⁴⁵ *Id.*

and safety to conclude that certain speakers are too much of a safety risk. However, the probability of violence is not always clear. In implementing a speech policy, the Governing Board suggests that universities should “as a collective body, . . . seek direct engagement with students, faculty, staff, alumni, local communities, and other stakeholders to be certain that they have an understanding of their concerns and current policies.”⁴⁶

The best example of a true heckler’s veto from the canceled speakers noted earlier is that of CIA Director Brennan being booed and interrupted by the audience at Penn—often by people who were not affiliated with the school in the first place.⁴⁷ However, this introduces the issue of the specificity of the definition of a “heckler’s veto.” Is a situation where students protest a known racist or white supremacist the same as an audience member shouting the word, “drones” repeatedly? Likely not. If universities cannot distinguish a rude audience who disagrees with John Brennan from people refusing to abide literal Nazis marching around their campus like what happened at the University of Virginia earlier this month, schools have failed their students.

Words should not be disallowed merely because the speaker or idea is controversial. Students should feel free to protest individuals with whom they disagree politically. Having a sit-in to protest Condoleezza Rice is an appropriate form of speech in itself. Rice poses no danger to students, though, without the chance of large protests or riots. A solution to the problem of commencement speakers is to invite more student input in the process. Some students are part of the group who chooses to invite a particular person to speak at commencement, but perhaps a larger portion of the student body should be part of that decision, with the kind of “notice and comment” process that many administrative governmental decisions require. This allows for the debate to occur before the speaker arrives. If the students do not want to allow the speaker to come to campus, this gives them more of an opportunity to prevent it without the school being

⁴⁶ *Id.* at 12.

⁴⁷ Ally Johnson, *Protests Shut Down CIA Director’s Talk at Penn*, *supra*.

forced to make a decision about First Amendment obligations. The commencement speaker selection process can be political, which is one reason for its secrecy. However, if the process is secretive, a college or university can hardly complain when its students reject the choice.

Sometimes, the speaker is more harmful. Historically, the world has demonstrated that words can cause more severe harm than actions alone. In 1994, a radio broadcast sounded across Rwanda, calling for the recruitment of young men so the majority ethnicity could destroy the minority group. “[T]he reason we will exterminate them is that they belong to one ethnic group. Look at the person’s height and his physical appearance. Just look at his small nose and break it.”⁴⁸ This kind of speech had been billowing in Rwanda since early 1990, and the Rwandan genocide officially began two months after this broadcast in August 1994. At the International Criminal Tribunal for Rwanda, one witness in the prosecution of broadcasters and the owners of radio stations said the communications were like “spreading petrol little by little” so the nation would eventually “burst into genocide.”⁴⁹

This is an extreme and severe example, not meant to suggest such actions or consequences will arise in the U.S. if UC-Berkeley lets Yiannopoulos hold his “Free Speech Rally.” However, his speech generally falls on a different part of the same spectrum of racial or ethnic superiority. Students should protest this. Students should question their peers who extend invitations to speakers like him—why? What value does he add to a discussion? His purpose is disruption, and he is shielded by the First Amendment. For a speaker like Yiannopoulos who has routinely put individuals in danger of physical harm⁵⁰, inviting him to

⁴⁸ *Prosecutor v. Nahimana*, ICTR 99-52-T ¶ 396 (Dec. 3, 2003).

⁴⁹ Susan Benesch, *Vile Crime in Inalienable Right: Defining Incitement to Genocide*, 48 Va. J. Int’l L. 485, 542 (2008) (citing *Nahimana*, ICTR 99-52-T, Judgment and Sentence, ¶ 1099 (Dec. 3, 2003)).

⁵⁰ See Kevin Gosztola, Editorial, *Should Controversial Speakers be Kept off Campus?*, Mint Press News (March 23, 2017), <http://www.mintpressnews.com/should-controversial-speakers-be-kept-off-campus/226192/>, for a discussion of his December 2016 public outing of a University of Wisconsin-Milwaukee transgender student. He said, about the student, “This quote unquote nonbinary trans woman forced his way into the women’s locker rooms this year . . . [t]he way you know he’s failing is I’d almost still bang him.”; see *id.* for a discussion of Yiannopoulos being banned from Twitter for “vicious harassment” of Saturday Night Live’s Leslie Jones after she responded to his misogynistic criticisms of the “Ghostbusters” remake.

speaking on a college campus is a risk. His *modus operandi* is to cause uproar, and being disinvited is better for him than being allowed to speak. If he's disinvited, he makes noise to gain as much attention as he can, thereby reaching more people. He's a toddler who realizes the adults are still allowing him to throw these tantrums and get attention rather than ignoring the antics. The crowds drawn by a speaker who is at least tangentially related to the so-called "alt-right" white nationalism movement are also a concern. Certainly, the risk of neo-Nazis and similar groups marching around a campus is one of public safety. A distinguishing feature of the Nazi swastika and the K.K.K. emblems is that they are "deliberate[ly] associate[ed] with actual historic atrocities—lynchings, tortures, mass killings committed to vindicate the alleged prerogatives of a master race."⁵¹

In a Chief Justice John Roberts opinion about the Westboro Baptist Church's picketing of a fallen soldier's funeral, he noted in dicta that "[s]peech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain We cannot react to that pain by punishing the speaker. As a Nation, we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate."⁵² In the first line of his *Doe v. Univ. of Mich.* opinion, Judge Cohn wrote that "[i]t is an unfortunate fact of our constitutional system that the ideals of freedom and equality are often in conflict."⁵³ In some instances, even the judges and justices writing the opinions upholding the free speech rights of those whose words cause harm recognize that the legally correct outcome might be the one more difficult to stomach.

This makes the issue more problematic. Public universities face a difficult choice: allow a person who champions hatred to speak, to the risk of any students, staff, or professors at the opposite end, or deny the person an opportunity to speak and risk a lawsuit. If a white

⁵¹ Brett Johnson, *The Heckler's Veto*, supra. at 203 (internal citation omitted).

⁵² *Id.* at 460-1.

⁵³ *Doe v. Univ. of Mich.* at 853.

nationalist is invited to speak on campus, and no reasonable efforts to convince the student group who invited this person to disinvite him or her yield results, a public university could make the admirable—though probably unwise—decision to cancel the speaker and risk a lawsuit. Posner suggests in his article that students have a choice of how much free speech they want in their college decision.⁵⁴ “[S]tudents who want the greatest speech protections can attend public universities, which (unlike private universities) are governed by the First Amendment.”⁵⁵ This ignores so many realities of college choice. Private colleges are often considerably more expensive and selective than public colleges. The smartest, wealthiest college students cannot be the only ones who get to avoid Nazis on campus. This cannot be a solution. Public colleges and universities must work within their systems to find a solution.

John Stuart Mill wrote that “[t]he only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others.”⁵⁶ The entire world does not adhere to or even appreciate Mill’s philosophy. However, Mill’s philosophy is one of idealism, which is what public colleges need to consider when searching for a solution to this debate. An optimistic solution may not work in such a negative debate. A significant number of voices in this debate are not at all civil, as Mill would have hoped. However, if American society ceases to view America with the potential of idealism, we effectively abandon what truly makes the U.S. special.

In an August 22, 2017 op-ed in *The Charleston Gazette-Mail*, Marshall University President Jerome Gilbert wrote that individuals in higher education have an opportunity and a responsibility to teach tolerance and civility to students.⁵⁷ “We should teach our college students that being passionate about an issue is great, but that we should never let our passion provoke

⁵⁴ See Posner, *supra*.

⁵⁵ *Id.*

⁵⁶ John Stuart Mill, ON LIBERTY (1896).

⁵⁷ Jerome Gilbert, Op-Ed., *Universities Need to Teach Civility*, *Charleston Gazette-Mail*, Aug. 22, 2017.

anger or animosity toward someone holding an opposing view.”⁵⁸ Dissuading students from accepting views of hatred and violence is a step in the process. Public schools, for a start, can teach students that being a civil, decent human being is good.

As Justice Holmes wrote in his *Abrams* dissent, the Constitution “is an experiment, as all life is an experiment. Every year if not every day, we have to wager our salvation upon some prophecy based on imperfect knowledge. While that experiment is part of our system, I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.”⁵⁹ Public colleges and universities must make the safety of students and campus their first priority. Disagreement and debate helps the intellectual development of the student body, and this cannot occur if all voices that might offend are silenced. At the same time, students live, work, eat, sleep, and go to class on their college campuses. Their desires to avoid hateful rhetoric should be taken seriously. Their protests of seemingly uncontroversial individuals should be taken seriously. By communicating with their student populations, public colleges and universities can avoid some of the issues happening at schools like UC-Berkeley. Ultimately, colleges should be safe places to learn. They should also hold free speech rights with reverence. Keeping that in mind, public schools can implement policies that find a balance between free speech, student wellbeing, and campus safety. To start, they can promote civility and communicate with their campus populations to promote the campus climate the school hopes to achieve.

⁵⁸ *Id.*

⁵⁹ *Abrams* at 630 (Holmes, J., dissenting).

Table of Authorities & References

Case Law & Legal Authority

1. *Abrams v. United States*, 250 U.S. 616 (1919).
2. *Brandenburg v. Ohio*, 395 U.S. 444 (1969).
3. *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).
4. *Doe v. Univ. of Mich.*, 271 F. Supp. 852 (E. D. Mich. 1989).
5. *Heffron v. Int’l Soc’y. for Krishna Consciousness*, 452 U.S. 640 (1981).
6. *Prosecutor v. Nahimana*, I.C.T.R. 99-52-T ¶ 396 (Dec. 3, 2003).
7. *R.A.V. v. St. Paul*, 505 U.S. 377 (1992).
8. *Snyder v. Phelps*, 562 U.S. 443 (2011).
9. U.S. Const., amend. I.

Other Sources

10. Ally Johnson, *Protests Shut Down CIA Director’s Talk at Penn*, Daily Pennsylvanian, April 1, 2016.
11. Brett G. Johnson, *The Heckler’s Veto: Using First Amendment Theory and Jurisprudence to Understand Current Audience Reactions Against Controversial Speech*, 21 COMM. L. & POL’Y 175, Spring 2016.
12. David L. Hudson, *Controversial Campus Speakers*, Newseum Institute First Amendment Center (April 2017), <http://www.newseuminstitute.org/first-amendment-center/topics/freedom-of-speech-2/free-speech-on-public-college-campuses-overview/campus-speakers/>.
13. Eric Posner, Editorial, *Universities Are Right—and Within Their Rights—to Crack Down on Speech and Behavior*, Slate (Feb. 12, 2015 2:30 PM), http://www.slate.com/articles/news_and_politics/view_from_chicago/2015/02/university_speech_codes_students_are_children_who_must_be_protected.html.
14. Emma G. Fitzsimmons, *Condoleezza Rice Backs Out of Rutgers Speech after Student Protests*, N.Y. Times, May 3, 2014.
15. Fared Zakaria, Commencement Address at Bucknell University (May 21, 2017), available at <https://www.youtube.com/watch?v=K8jvZuBTjBE>.
16. *Fiduciary Duties*, Association of Governing Boards of Universities and Colleges, <https://www.agb.org/briefs/fiduciary-duties>.

17. *Free Speech on Campus: Where should colleges draw the line?*, in CQ RESEARCHER (Vol. 25 No. 18) 409, May 8, 2015.
18. John Stuart Mill, ON LIBERTY (1896).
19. Jerome Gilbert, Op-Ed., *Universities Need to Teach Civility*, Charleston Gazette-Mail, Aug. 22, 2017.
20. Kevin Gosztola, Editorial, *Should Controversial Speakers be Kept off Campus?*, Mint Press News (March 23, 2017), <http://www.mintpressnews.com/should-controversial-speakers-be-kept-off-campus/226192/>.
21. Richard Pérez-Peña, *After Protests, I.M.F. Chief Withdraws as Smith College's Commencement Speaker*, N.Y. Times, May 12, 2014.
22. *Statement on Governing Board Accountability for Campus Climate, Inclusion, and Civility*, Association of Governing Boards of Universities and Colleges Board of Directors (2016), http://agb.org/sites/default/files/agb-statements/statement_2016_campus_climate.pdf.
23. Stephanie Saul, *Dozens of Middlebury Students are Disciplined for Charles Murray Protest*, N.Y. Times, May 24, 2017.
24. Susan Benesch, *Vile Crime or Inalienable Right: Defining Incitement to Genocide*, 48 VA. J. INT'L L. 485, 542 (2008).
25. Susan Svrluga, William Wan & Elizabeth Dwoskin, *Ann Coulter Speech at UC Berkeley Canceled, Again, Amid Fears for Safety*, Wash. Post, April 26, 2017.
26. Ulrich Baer, Editorial, *What Liberal 'Snowflakes' Get Right About Free Speech*, N.Y. Times, April 24, 2017.
27. William Wan, *Milo's Appearance at Berkeley Led to Riots: He Vows to Return this Fall for a Week-Long Free-Speech Event*, Wash. Post, April 26, 2017.
28. *Written Statement of David L. Hudson, Jr., Ombudsman, Newseum Institute First Amendment Center: Hearing on First Amendment Protections on Public College and University Campuses*, 115th Cong. (Apr. 4, 2017).