TEXAS A&M ESSENTIALS

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"Congress shall make no law … abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble …"—**From the First Amendment to the Constitution, ratified December 15, 1791.**

"I do not believe that it can be too often repeated that the freedoms of speech, press, petition, and assembly guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish." **—Justice Black as quoted in the Supreme Court case: Communist Party v. SACB, 367 U.S. 1 (1961).**

"It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."—**From the Supreme Court case: Tinker v. Des Moines, 393 U.S. 503 (1969).**

"Student does not abandon constitutional rights upon registration in college and First Amendment loses none of its awesome force when taken to campus of America."—**From the Court case: Herman v. University of South Carolina, 341 F Supp. 226, (D.S.C., 1971).**

"The College, acting here as the instrumentality of the State, may not restrict speech or association simply because it finds the views expressed by any group to be abhorrent.."—**From the Supreme Court case: Healy v. James, 408 U.S. 169 (1972).**

"Speech 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. On the facts before us, 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."—**Chief Justice Roberts in the Supreme Court case: Snyder v. Phelps, 131 S.Ct. 1207 (2011).**

TEXAS A&M UNIVERSITY

Free Speech and the Right to Associate:

Legal Issues in the Student/University Relationship

Texas A&M University is a public university. As such, faculty and staff are government actors (also known as state actors). The U.S. Constitution and, in particular, First (freedom of religion, speech, press, assembly, petition), Fourth (protections against unreasonable searches and seizures), and Fourteenth (due process and equal protection) Amendment rights are guaranteed when government actors (faculty and staff) interact with individuals (students).

The constitutional dimension of the university/student relationship is no more evident than in the First Amendment rights of free speech and the freedom to associate. The free expression of ideas and the right to associate are American values fiercely protected by the Supreme Court. The First Amendment right to free expression and association at public universities has been explored in classic case law that came into being largely as a result of court cases related to the student unrest of the 1960s. These constitutional issues are sometimes difficult for the general public to comprehend because there is often an expectation that university administrators can control student speech and control or prevent student association. This public perception is often grounded in the false belief that students do not have constitutional rights or that they do not enjoy these rights in their roles as college students. Nothing could be further from the truth at public institutions. Many court cases are often cited to illuminate the university/student constitutional relationship as it relates to free speech and the freedom to associate (see sidebar and page 2).

It is often the case that students engage in free expression that is not offensive, however; University administrators are wise to walk a path that is protective of student rights to free speech, free press, and student protest while simultaneously exercising their rights and authority of position to speak in opposition to offensive free speech, free press, and student protests. The exercise of free expression that has offensive content can be most powerfully engaged through the use of free speech. This protects the free expression rights of students, utilizes the power and authority of the university administration, and models effective citizenship skills for students.

University administrators are not powerless when dealing with free expression issues. Content-based restrictions on the exercise of free expression are judged by the courts to be unconstitutional. Nevertheless, these free expression rights are not absolute. Reasonable time, place, and manner restrictions apply to free speech and student protest issues when there is a compelling government interest to support their strategies to balance these student rights against the right of others to attend class, move about campus, and to avoid disruptions. Strategies include engaged advisement of recognized student groups, restrictions on sound amplification equipment, and the establishment of appropriate time windows for protests.

As a Tier I research institution, the pursuit of truth through open and robust discourse is critical to academic inquiry. As a community of scholars comprising students, faculty, staff, and administrators, the university has an aspirational expectation that such discourse will conducted in accordance with Aggie Core Values. In this "marketplace of ideas," we encourage civil and respectful dialogue creating an environment that allows individuals to express their ideas and to have their ideas challenged in respectful and responsible ways.

First Amendment rights for students

Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969) Reiterated students' right to free speech. The Supreme Court stated: "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." It also emphasized that the freedom to protest does not create a freedom to disrupt.

Healy v. James, 92 S Ct. 2338 (1972). Using Tinker as a foundation, the Supreme Court noted the significance of the First Amendment at state colleges and universities: "State colleges and universities are not enclaves immune from the sweep of the First Amendment . . . the precedents of this Court leave no room for the view that. . . First Amendment protections should apply with less force on college campuses than in the community at large." The Supreme Court went on to note that "The college classroom with its surrounding environs is peculiarly the marketplace of ideas, . . ." (Note: The "marketplace of ideas" concept is frequently referenced in academic freedom discussions.)

Content-based restrictions on Free Speech

Papish v. Board of Curators of University of Missouri, 93 S. Ct. 1197 (1973). A student newspaper editor was expelled for violating a board of curators bylaw prohibiting distribution of newspapers "containing forms of indecent speech." The newspaper contained a political cartoon that depicted policemen raping the Statue of Liberty and the Goddess of Justice with a caption that read: "With Liberty and Justice for All." Additionally the newspaper contained an article entitled "M_____ F_____ Acquitted." The student successfully sued the university. Ruling in the student's favor, the Supreme Court stated: ". . . Healy v. James makes it clear that the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of conventions of decency."

Hate Speech

UWM Post v. Bd. of Regents of Univ. of Wisc., 774 F. Supp. 1163 (E.D. Wis. 1991). The university was permanently enjoined from enforcing a rule prohibiting racist or discriminatory comments, epithets . . . comments that would demean the race, sex, religion, color, creed, disability, sexual orientation, national origin, ancestry, or age of an individual. This rule was considered by the court to be overly broad and vague and thus an imposition on the First Amendment right to free expression. The court pointed out that "above all else, the First Amendment means that the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."

Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University, 993 F. 2d 386 (4th Cir. 1993). A Greek fraternity chapter was disciplined by the university for holding a "Dress a Sig" event where one participant dressed in black face, used pillows to represent breasts and buttocks and wore a black wig with curlers. Student leaders signed a letter requesting the dean to impose sanctions for the offensive program that perpetuated racial and sexual stereotypes. Sanctions were imposed and the fraternity filed suit. The court did not permit the disciplining of the fraternity by quoting from Texas v. Johnson: "If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

The Right to Associate

Healy v. James, 408 U.S. 169 (1972). A group of students wanted to form a chapter of the Students for a Democratic Society (SDS) whose members on other campuses had been involved in violence, burning of buildings, and inciting of riots. The president of the university denied recognition and the students sued. In the final decision supporting the students, the Supreme Court stated: "Among the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs. While the freedom of association is not explicitly set out in the Amendment, it has long been held to be implicit in the freedoms of speech, assembly, and petition. It is to be remembered that the effect of the College's denial of recognition was a form of prior restraint and the Court has consistently disapproved governmental action imposing criminal sanctions or denying rights and privileges solely because of a citizen's association with an unpopular organization. The College, acting here as the instrumentality of the State, may not restrict speech or association simply because it finds the views expressed by any group to be abhorrent."

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ADDITIONAL RESOURCES

Bird, L.E., Macklin, M.B. & Schuster, S.K. (2006). *The First Amendment on Campus: A handbook for college and university administrators.* Washington, DC: National Association for Student Personnel Administrators.

Kaplin, W.A. & Lee, B.A. (2006). *The law of higher education.* 4th edition. San Francisco: CA. Jossey-Bass.

Foundation for Individual Rights in Education (FIRE) http://thefire.org