



## MEMORANDUM

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**To: Students for Life**  
**From: Center for Academic Freedom**  
**Subject: Free Expression on Campus**

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### **I. Free Expression at Public Colleges and Universities**

The Constitution guarantees many rights to students and organizations at public universities. Due to their status as state institutions, public universities cannot abridge any student's right to free speech, free association, free exercise of religion, due process, or equal protection under the law.

These rights give rise to several concrete limits on a public university's interaction with student expression. A public university cannot engage in actions specifically targeted to suppress certain expression on campus. Neither can a public university adopt a policy aimed at promoting one group's viewpoint over another. The First Amendment bars both of these kinds of intervention in the "marketplace of ideas." Additionally, public universities may not discriminate among viewpoints by selectively punishing a student or group because of their views.

Another important issue is equal access to facilities and funding. If a public university opens its facilities for use by student organizations, it must not treat some organizations differently than any other group. Similarly, if a public university requires the payment of student fees, that money must be distributed without any discrimination towards student groups on the basis of their views.

Implicit throughout the First Amendment is the individual's right to associate with others to pursue a wide variety of political, social, educational, religious, and cultural ends. In the context of a public university, this right of association means that student organizations have the right to choose their own leaders and members without interference from the school. If a university allows expressive student organizations to exist at all, it must allow those organizations to select their own leaders and to order their own affairs.

So, in sum, every student at a public university has the following five First Amendment rights:

- 1) The right to free speech and expression;
- 2) The right to equal access to campus facilities and university funding;

- 3) The right to freely associate and select leaders in their groups without university interference; and
- 4) The right to due process and equal protection of law before any of these rights are abridged.

## **II. Threats to Free Expression on Campus**

The following areas often give rise to abridgments of First Amendment rights on college campuses. Read through this checklist to see if your liberty is being curtailed.

### Anti-discrimination Policies (“Loyalty Oaths”)

- Some universities require student organizations to affirm or sign anti-discrimination policies. The policies usually prohibit a student group from discriminating on the basis of “race, religion, gender, ethnicity, nationality, disability, sexual orientation, or marital status.” Universities cannot use these policies to force student groups to admit members or elect leaders who do not share the goals and mission of the organization. The university must permit student groups to follow their consciences when not interfering with the legitimate rights of others nor threatening the health or safety of others.

### Speech Codes:

- Speech codes punish speech that the university deems “intolerant” or “harassing.” Usually, these policies contain vague terms and prohibit otherwise protected speech. A university cannot prevent you from sharing your religious views just because some students may find those views offensive.

### Speech Zones:

- Speech zones limit where students may engage in free expression on campus. These zones are usually unconstitutional if they do not provide you with the same right to engage in speech in the same time, place and manner as other students.

### Student Activity Fees:

- Students may be required to pay student activity fees, but the university must distribute those fees in a viewpoint-neutral manner. A public university cannot refuse to fund one student group if it funds other student groups.