

# THE FIRST AMENDMENT AND THE NC CAMPUS FREE SPEECH ACT:

Their Application to  
Public Universities in  
North Carolina

---

UNC Greensboro

Board of Trustees

CARL Committee

November 19, 2019

Office of General Counsel





# The First Amendment United States Constitution

# The First Amendment

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.”

(U.S. Const. Amend I.)

1. Establishment of Religion
2. Prohibiting the Free Exercise of Religion
3. Abridging Freedom of Speech
4. Abridging Freedom of the Press
5. Right to Peacefully Assemble
6. Right to Petition the Government



- The First Amendment protects:
  - **Insensitive, boorish or viewpoints on disfavored subjects.**
- The First Amendment forbids the University from regulating or punishing speech that is **offensive or controversial.**
- Public universities must be **content-neutral in the application of free speech rights.**

# First Amendment Exceptions

- Regulation of speech is permissible to stop:
  - **Incitements** (provocation to engage in immediate violence)
  - **Fighting words** (confrontational words or threats that provoke immediate violence)
  - **Obscenity** (appeals to carnal interests, clearly offensive, and without redeeming social value)
  - **Defamation** (falsehoods that harm a person's reputation, but less protection for public figures or on matters of public concern)
  - **False or misleading Commercial Speech**
  - Certain speech by a **public employee**

# Speech Not Protected by First Amendment

Regulation of speech is permissible to stop **Harassment**:

- **Harassment** in an educational institution aimed at an individual on the basis of a protected characteristic (race, gender, sexual orientation, religion); that is also pervasive and severe; is a direct or implied threat to employment or education; or creates an intimidating, hostile and demeaning atmosphere.
  - For example, posting racist messages on the dorm room of an African American student would be regarded as harassment and not speech protected by the First Amendment.

# **What is Hate Speech?**

## **Is it illegal?**

**Hate Speech is not illegal.**

**Just because you can does not mean that  
you should.**

**Individuals maintain First Amendment  
Rights.**



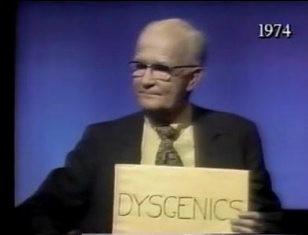
# US Supreme Court Justice: SONIA SOTOMAYOR

***“I find the speech in this case patently offensive, hateful, and insulting. The Court should not, however, gloss over three decades of jurisprudence and the centrality of First Amendment freedoms in our lives because it is confronted with speech it does not like.”***

***- Pappas v. Giuliani, 290 F.3d 143, 154  
(2d Cir. 2002) (Sotomayor, J., dissenting)***







RACIAL  
IDENTITY

## Hate Speech?

- Confederate Monuments
- William Shockley
- Policies or Practices which oppose Sexual Orientation and Gender Identity
- Race and Gender
- HB 2 (Bathroom Bill)





# Presidential Executive Order

- It is the policy of the federal government to:
  - encourage institutions to foster environments that promote open, intellectually engaging, and diverse debate
    - including through compliance with the First Amendment for public institutions and compliance with stated institutional policies regarding freedom of speech for private institutions.
  - take appropriate steps to ensure that institutions that receive federal research or education grants promote free inquiry.



# Free Speech Laws & Range of Coverage

- 36 States
- 104 Bills
  - 16 enacted
  - 2 enacted with revisions
  - 17 pending
  - 69 defeated or expired
- Restate protections under 1st Amendment
- Ban “free speech zones”
- Require schools to punish individuals who disrupt campus events
- Mandatory penalties for certain protests
- Anti-mask legislation



# North Carolina Campus Free Speech Law

## AN ACT TO RESTORE AND PRESERVE FREE SPEECH ON THE CAMPUSES OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA. (2017)

Requirements of the Act:

- Board of Governors Committee on Free Expression.
- Board of Governors free speech policy must state:
  - “It is **NOT** the university’s role to “shield individuals from speech protected by the first amendment, including, without limitation, ideas and opinions they find **unwelcome, disagreeable, or even deeply offensive.**” (NC Campus Free Speech Act)
- The policy notes that “the constituent institutions serve an essential role in encouraging and broadly protecting freedom of thought and expression.”
- UNC constituent institutions submit an Annual Report to the Board of Governors.
- Training for Boards of Trustees and first year students

# North Carolina Campus Free Speech Law

## UNC Policy 1300.8

Section III provides:

In support of the essential role universities hold, the constituent institutions may not take action,

- As an institution,
- On the public policy controversies of the day
- In such a way as to require students, faculty, or administrators to publicly express a given view of social policy.



# North Carolina Campus Free Speech Law

## AN ACT TO RESTORE AND PRESERVE FREE SPEECH ON THE CAMPUSES OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA. (2017)

- The Act requires appointment of Responsible Officer (RO). UNC Greensboro appointed:



**Alan Boyette**  
Senior Vice Provost

- Duties of RO include:
  - Ensure compliance with the law and policy
  - Assist with interpretation of the law and policy
  - Answer any related questions or concerns from students, faculty members, staff employees, or others
  - Coordinate campus-based training or educational opportunities for campus constituents
  - Serve as primary point of contact



**UNC  
GREENSBORO**  
General Counsel

# North Carolina Campus Free Speech Law

## UNC Greensboro 2018-2019

### Free Expression Report

#### *Highlights*

- Policy Developed
- Responsible Officer Appointed
- Training Provided
- **Green** Rating from Foundation for Individual Rights in Education (F.I.R.E.)
- Wide Variety of Public Speakers
- No Disciplinary Action Needed



UNC  
**GREENSBORO**  
General Counsel

# North Carolina Campus Free Speech Law

## Board of Governor's Findings:

- The constituent institutions are committed to promoting and protecting free speech and free expression;
- Disruptions and interference at scheduled expressive events have been minimal;
- Constituent institutions have developed and utilized mechanisms for receiving, investigating, and resolving complaints regarding alleged free expression policy violations;
- The constituent institutions are regularly providing information to campus constituencies about rights and responsibilities associated with expression on campus through policies, training, and other outreach;
- The Foundation for Individual Rights in Education (FIRE), which rates college and university speech policies, has awarded its highest rating ("green light") to 10 UNC System constituent institutions. Three constituent institutions have attained green light status since the preparation of the 2017-18 report, and multiple other institutions are actively revising policies to attain green light status;
- No constituent institution holds a "red light" rating from FIRE;
- Some constituent institutions have incurred expected and unexpected financial costs related to security surrounding speakers or expressive events on campus; and
- Constituent institutions have accepted the recommendations for improvement contained in last year's report by taking actions, such as:
  - Providing both a central way for people to ask questions or raise concerns about speech and expression at the constituent institutions, and an easily accessed institutional complaint process;
  - Offering a consistent and user-friendly way to access campus speaker/event information; and
  - Providing user-friendly resources for internal groups and/or outside individuals on UNC System's commitment to free expression and information about holding events on campus.

# North Carolina Campus Free Speech Law

## Board of Governor's Recommendations for 2019-20

- Provide training to constituent institution administrators who have transitioned into the Responsible Officer title.
- Provide training to Responsible Officers regarding topics of institutional neutrality and political speech on campus.
- Promote and refine constituent institution processes for receiving and resolving complaints related to speech or expression (which may be part of an existing complaint or grievance process).
- Continue to encourage constituent institutions to further develop accessible resources to publicize information on scheduled speakers and events on campus.
- Continue to encourage each constituent institution to develop standard resources for potential speakers describing in a user-friendly way how to access or reserve campus spaces, applicable time, place, and manner restrictions, any information about costs that may be assessed.
- Continue to encourage constituent institutions to regularly review and, as necessary, revise policies impacting free expression to improve clarity and ensure protection of rights to free expression.
- Develop free speech and free expression training materials that may be shared among the constituent institutions.
- Expand Boards of Trustees training on the Act and free speech/free expression as part of the board member orientation process or in other ways that would be helpful.

# Thank You and Questions?

## Office of General Counsel

**Jerry Blakemore**

[j\\_blakem@uncg.edu](mailto:j_blakem@uncg.edu)

**Kristen Bonatz**

[ksbonatz@uncg.edu](mailto:ksbonatz@uncg.edu)

