

UNC Greensboro Board of Trustees

February 5, 2020

THE FIRST AMENDMENT AND THE NC CAMPUS FREE SPEECH ACT:

Their Application to Public Universities in North Carolina

UNC Greensboro
Board of Trustees
February 5, 2020

Campaign Events on Campus

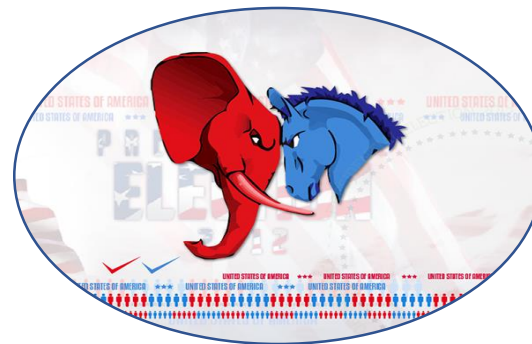
- As a public institution, we remain politically neutral
- Campus use determination process for events that are political in nature varies slightly for nonpartisan vs. partisan activity
- Determination is not driven by content, ideology

Nonpartisan activity

- Allowable under most circumstances
- Candidate forums, issue education events, voting-related activities

Partisan activity

- Allowable with certain stipulations
- Candidate rallies, single-party advocacy



Campaign Events on Campus

Primary guidance documents:

- [University Facility Use Policy](#)
 - Campaigns are treated as 3rd party/unaffiliated entities
 - Must pay full freight (facility rental, security, IT, etc.)
- [Student Affairs Guidelines for Student Groups](#)
 - Registered Student Organizations can sponsor political events
 - Must comply with CAP event registration process and timeline
 - Fundraising limitations

Employee Political Activity

Subject to the Human Resources Act (SHRA)

[N.C. General Statute § 126-13](#)

Employees can:

- Engage in political activity as a private citizen on their own time with their own resources

Employees can't:

- Actively manage/participate in a campaign while on duty
- Use State resources (including authority of position, funds, equipment, etc.) to support/oppose candidates
- Coerce support from subordinates

Employee Political Activity

Exempt from the Human Resources Act (EHRA)

[UNC System Policy Manual, Chapter 300.5.1 and Guidelines](#)

“Nothing... prohibits, or otherwise limits, teaching, inquiry, classroom discussion or discourse concerning political issues, including campaigns, candidates, political groups or issues in campaigns for public office, ***that are within the subject matter*** of any academic program, course, curriculum, or study.”

Employee Political Activity

[UNC System Policy Manual, Chapter 300.5.1 and Guidelines](#)

- Allows faculty advocacy within discipline (ie. Capitol Hill visits)
- Process for EHRA employees as candidates and/or elected officials
- Tier I Senior Academic & Administrative Officers (SAAO)
 - Chancellors, Vice Chancellors, Provosts, Deans
 - “...subject to any limitations on political activity established by Article 5 of G.S. 126... [and] The Board of Governors’ policies concerning political activity, Section 300.5 of the UNC Policy Manual”

The University's Role



- Adhere to our values as a “Marketplace of Ideas”
- Provide clear and consistent guidance re: policies and guidelines for all community members
- Support voting opportunities for internal and external stakeholders
- Cultivate an environment for “good citizenship” by providing educational opportunities about the political process and civic engagement



Kristina Gage

Associate Director for Civic Engagement,
Office of Leadership & Civic Engagement

Student Voter Engagement

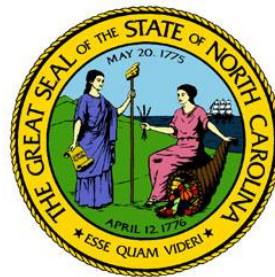
UNCG Voter Engagement Recognition:

- **All In Democracy Challenge**
 - 2018 Midterm: Gold Seal, voting rate of 40-49%
 - 2016 Presidential: Bronze Seal, voting rate of 50-59%
- **"Voter Friendly Campus"** designation twice, Campus Vote Project and NASPA
- **SoCon Voter Participation Championship, 2nd Place**



Leading Practices for Trustees

- Ambassadors for all community stakeholders
- Perception and clarity in public role
- Use of University resources (facility access, devices, email accounts)
- Tier I SAAO model
- Consultation resources (Strategy & Policy, General Counsel)





UNC GREENSBORO

THANK YOU
Questions?

Julia Jackson-Newsom

Associate Vice Chancellor for Strategy and Policy

j_jackso@uncg.edu

Nikki Baker

Director of Federal and External Affairs

nikki.baker@uncg.edu

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 controversial viewpoints on disfavored subjects.**

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:
 - **Incitement**
 - 1) directed to inciting or producing imminent lawless action and
 - 2) likely to incite or produce such action
(*Brandenburg v. Ohio* (U.S. 1969))
 - **True Threat**
 - 1) A speaker directs a threat
 - 2) to a person or group of persons
 - 3) with the intent of placing the victim in fear of bodily harm or death
(*Virginia v. Black* (U.S. 2004))
 - **Fighting words:** confrontational words or threats that provoke immediate violence
 - **Obscenity:**
 - 1) appeals to carnal interests, clearly offensive, and without redeeming social value
 - 2) Pornography Defined: "I know it when I see it"
– U.S. Supreme Court Justice Potter Stewart
 - **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**

Regulation of speech

Permissible to stop **Harassment**:

- Aimed at an individual
- Pervasive and severe
- Creates an intimidating, hostile and demeaning atmosphere

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 Constitutional Protections and the World: GERMANY

Volksverhetzung: "incitement to hatred"



- Whosoever, in a manner capable of **disturbing the public peace**:
- Incites **hatred against a national, racial, religious group or a group defined by their ethnic origins**, against segments of the population or individuals because of their belonging to one of the aforementioned groups or segments of the population or calls for violent or arbitrary measures against them; or
- **Assaults the human dignity of others** by insulting, maliciously maligning an aforementioned group, segments of the population or individuals because of their belonging to one of the aforementioned **groups or segments of the population**, or defaming segments of the population,
- Shall be liable to imprisonment from:

3 months to 5 years

US Constitutional Protections and the World: Canada



- Freedom of expression in Canada is not absolute; Section 1 of the Charter allows the government to pass laws that limit free expression so long as the limits are "reasonable and can be justified in a free and democratic society."
- Hate speech is defined as the advocacy and incitement of genocide or violence against a particular defined racial, ethnic, gender, sexual, religious or other identifiable group.

"Limits on speech were incorporated in the criminal code in relation to treason, sedition, blasphemous and defamatory libel, **disruption of religious worship, hate propaganda, spreading false news**, public mischief, obscenity, indecency and other forms."

— *Prof. Dominique Clément, University of Alberta*

UNC Greensboro Examples:

Westboro Baptist Church



Photos by: Khadejeh Nikouyeh/News & Record

"These Negroes, they're getting pretty uppity these days and that's a problem for us since they've got something now they never had before, the political pull to back up their uppityness. Now we've got to do something about this, we've got to give them a little something, just enough to quiet them down, not enough to make a difference... I'll have them niggers voting Democratic for the next two hundred years."

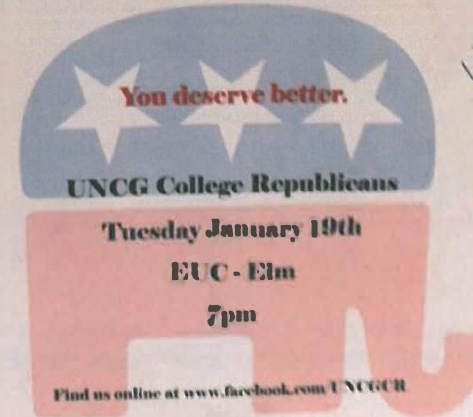
- President Lyndon Johnson, referring to the Civil Rights Act of 1964

"I mean you've got the first sort of mainstream African-American who is articulate and bright and clean and nice-looking guy."

- Vice President Joe Biden

"I think one man is just as good as another so long as he's not a nigger or a Chinaman. Uncle Will says that the Lord made a White man from dust, a nigger from mud, then He threw up what was left and it came down a Chinaman. He does hate Chinese and Japs. So do I. It is race prejudice, I guess. But I am strongly of the opinion Negroes ought to be in Africa, Yellow men in Asia and White men in Europe and America."

- President Harry Truman, in a letter to his future wife



First
Amendment
in Practice

UNC
Greensboro



**Regarding November 18, 2019
Westboro Baptist Church Protest**

“Although UNC Greensboro does not and cannot regulate speech based on its content, University officials and employees do have a constitutional right to express our views. ***I want all of you to know that the beliefs espoused by this group run counter to our established values of diversity and inclusion. I do not agree with nor support any of the views expressed by this group.***”





Indiana University Bloomington

- **Professor Eric Rasmusen used his private social media accounts to disseminate his racist, sexist, and homophobic views.**
 - **women do not belong in the workplace,**
 - **particularly not in academia**
 - **most women would prefer to have a boss than be one;**
 - **he has used slurs in his posts about women;**
 - **That gay men should not be permitted in academia**
 - **because he believes they are promiscuous and unable to avoid abusing students;**
 - **That black students are generally unqualified for attendance at elite institutions**
 - **and are generally inferior academically to white students.**

First Amendment in Practice

Indiana University

21 November 2019



University decries professor's 'vile' racism and sexism – but says it can't fire him because 1st Amendment forbids it

Indiana University Provost Lauren Robel:

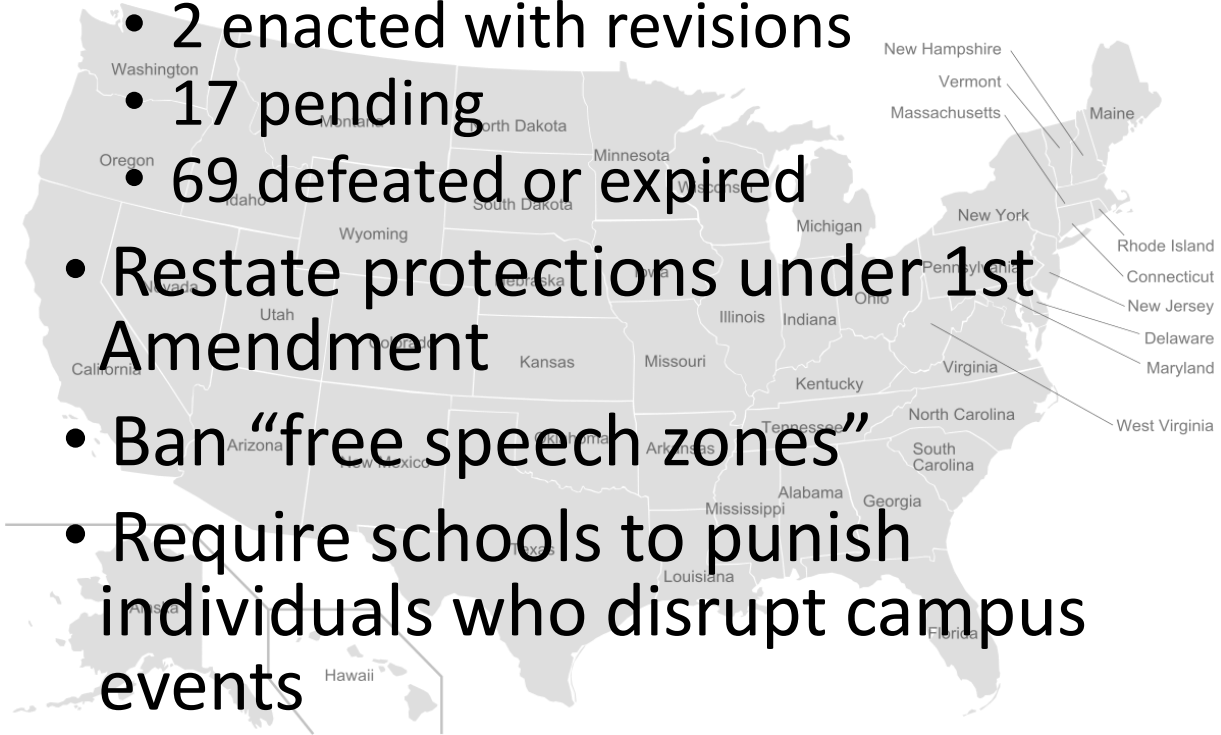
“The First Amendment is strong medicine, and works both ways. All of us are free to condemn views that we find reprehensible, and to do so as vehemently and publicly as Professor Rasmusen expresses his views.”

We cannot, nor would we, fire Professor Rasmusen for his posts as a private citizen, as vile and stupid as they are, because the First Amendment of the United States Constitution forbids us to do so. *That is not a close call.*”

State Responses to Free Speech on Campus

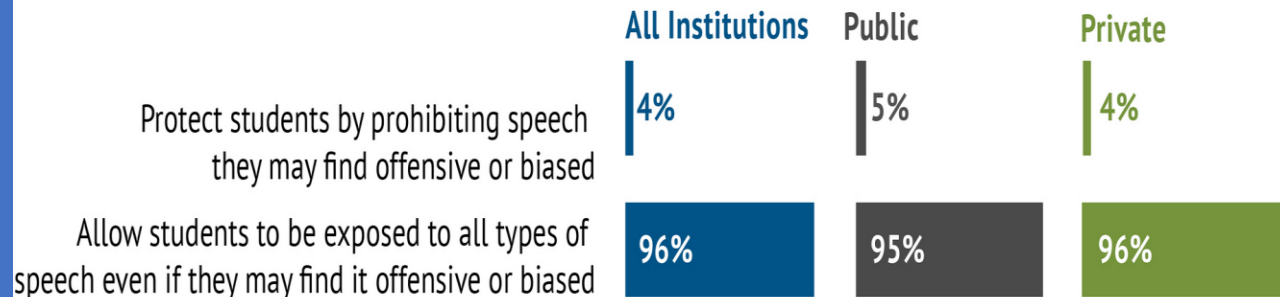
NC Campus Free Speech Act

- 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



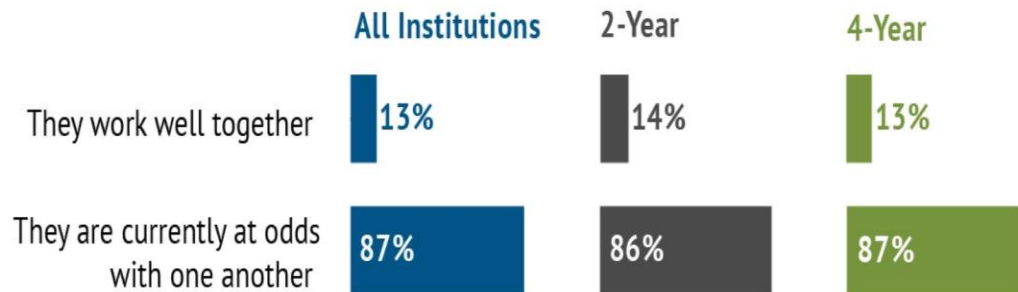
Context and Perspective: 2018 Survey of University Presidents

If you had to choose, do you think it is more important for colleges to:



Source: *Pulse Point Presidential Survey on Campus Inclusion and Free Speech*, American Council on Education, 2018.

How do you perceive the current relationship between campus inclusion and free speech nationally?

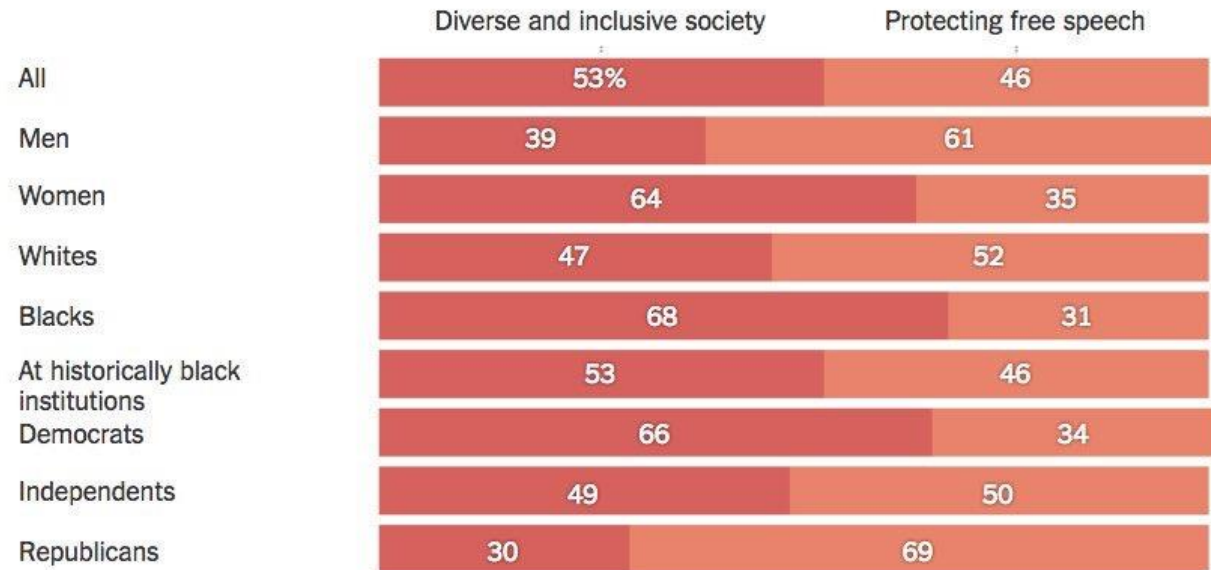


Source: *Pulse Point Presidential Survey on Campus Inclusion and Free Speech*, American Council on Education, 2018.

Context and Perspective: 2017 Gallup Survey Context

Inclusivity is more important than speech, majority of students say

When forced to choose, a small majority of college students say inclusivity is more important than free speech, though they widely believe in the importance of both to democracy.



Note: Due to rounding, some percentages may not add up to 100 percent.

Source: Gallup survey of about 3,000 college students.



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 Governors' Findings:

- committed to promoting and protecting free speech and free expression;
- Disruptions and interference at scheduled expressive events have been minimal;
- No constituent institution holds a “red light” rating from FIRE

and Recommendations:

- further develop accessible resources to publicize information on scheduled speakers and events on campus
- 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.
- **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

Kristen Bonatz

ksbonatz@uncg.edu

