



## BACKGROUND FOR THE COMMUNITY

### THE U.S. CONSTITUTION’S FIRST AMENDMENT

The University receives many questions related to campus speaking invitations from student groups to individuals who in the past have made controversial and even hate-filled remarks. It is understandable that this type of derogatory and denigrating rhetoric is hurtful and causes anxiety and anger for some. Some speakers are clearly agitators who say repulsive and even outrageous things to gain attention and do indeed use the First Amendment to access public college campuses. Through its First Amendment obligations and commitment to the free expression of ideas, the University provides registered student organizations with a venue to bring speakers to campus. The presence of these speakers should not be viewed as an endorsement by the University.

#### **So why does the University allow individuals to speak on campus who espouse hate, prejudice and disrespect for certain groups?**

Under the First Amendment of the U.S. Constitution, Penn State, as a public university, must protect various expressive rights, even for viewpoints that offend basic [institutional values](#) and personal sensibilities. While the past statements and actions of some speakers — and even things they may say on our own campuses— may be derogatory and can elicit strong reactions from our community, Penn State must continue to uphold the right to free speech—a bedrock principle of our democratic society. Penn State fully supports the fundamental right of free speech – even speech that tests the limits of our tolerance. To ban speakers who espouse ideas that many may find to be personally offensive or abhorrent would be a violation of the First Amendment. Equally important, such a ban would limit the essential freedom that protects the rights of all of us to freely think and express our own ideas.

#### **Why does Penn State so strongly support speech that is antithetical to University values?**

First and foremost, the First Amendment is a critical foundational element in our country and in higher education as we prepare our graduates to enter a society where free speech certainly exists and is protected under the law. The free exchange of ideas is necessary not only within the walls of a university, but within the world beyond. Penn State must educate students to differentiate ideas and thoughts with intellectual clarity so that they can offer counter ideas to those thoughts with which they disagree. Preparing students to be independent thinkers on issues across the political spectrum is an essential role embraced since Penn State’s founding.

Secondly, the primary purpose of a university is to discover and disseminate knowledge. The path of intellectual discovery and growth only occurs if freedom of expression is at the heart: giving all of us the right to think the unthinkable, debate ideas that are considered off-limits, and question the unquestionable. When we choose to censor or suppress controversial ideas of others, we are all then subject to these same actions by individuals who may find our own expressions or ideas unfavorable.

## **But doesn't this type of speech – hate-filled, targeted and discriminatory — work against Penn State's diversity and inclusion efforts? How can these principles co-exist?**

We fully believe that free expression is an indispensable tool to maintaining an inclusive campus— in addition to being essential to our academic and civic missions. History shows that marginalized communities have successfully promoted their interests because they had the right to express their views. In fact, marginalized communities have been unlawfully silenced by speech codes and other regulations against “offensive” speech.

To not allow speech that some may find personally offensive not only violates the Constitution but would erode the basic freedom each of us shares to think and express ourselves as we wish. According to the American Civil Liberties Union (ACLU), “Free speech rights are indivisible. Restricting the speech of one group or individual jeopardizes everyone's rights because the same laws or regulations used to silence bigots can be used to silence you. Conversely, laws that defend free speech for bigots can be used to defend civil rights workers, anti-war protestors, LGBT activists, and others fighting for justice.”

It is inevitable that the spirit of inquiry and challenge that our university seeks to encourage will produce many conflicts of ideas, opinions and actions.

## **The speech that certain individuals engage in is not conducive to discourse. It's not civil nor respectful. How does this meet the University's educational mission and why must we provide these speakers with such a high-profile platform at a major university?**

It is true that at times, the University must host speech that does not meet the standards of academic discourse and breaches our foundational goals of diversity, equity, inclusion and belonging. However, when someone is deprived of the right to freely state their views — regardless of how offensive or unacceptable those views may be — not only is it a violation of law but it also opens the door for random or biased decisions that would impact us all. Who will decide which words must be protected, and which should be punished?

While the First Amendment does not require us to provide a platform for anyone, it does prohibit us from discriminating against speech based on a speaker's viewpoint. The best remedy for speech that we find to be repugnant is more speech – expressive ideas that communicate our values and our commitment to each other and our community. To counter viewpoints you find unacceptable, University leaders encourage you to take part in alternative events and lend your voice and your presence to causes with which you are aligned and that help foster a stronger community. Lawful protest is also an option for letting your voice be heard.

## **Why do student fees go toward speakers who most people don't want on campus?**

Recognized student organizations can, without the University's consent or endorsement, invite speakers to campus as a constitutional right and are free to sponsor programs or speakers of their choosing without censorship. Based on past court decisions, allocating boards (such as the student-run University Park Allocation Committee (UPAC)) must make decisions that are **viewpoint neutral** and not based on religious, political or personal views. The student fees are intended to be allocated toward initiatives that represent the diverse viewpoints and perspectives of the student body, even those with which many profoundly disagree. If a university usually allows students to use campus resources, it cannot withdraw those resources because a controversial speaker has been invited to campus. **Bottom line:** The approval of student-fee funding for a controversial speaker cannot be based on the viewpoints of that speaker.

## **Isn't hate speech different from free speech? Why can't Penn State stop individuals who are expressing hate speech?**

The term “hate speech” has no legal meaning in the U.S. and the Supreme Court has repeatedly confirmed that words and other expressions that many people would consider to be “hate speech” are constitutionally protected under the First Amendment. We understand the hurtful nature of this type of rhetoric and the desire to silence those who use it. However, as a public university, Penn State is bound by these court rulings and the overarching protection of speech provided in the constitution.

## **Is there any speech that the University would limit?**

Freedom of expression at Penn State is not without limits. There are exceptions to the First Amendment. For example, the University may restrict expression that incites imminent lawless action, defames a specific individual, or targets a specific individual or individuals with true threats of violence. In addition, the University may reasonably regulate the time, place and manner of expression and it can make sure it does not disrupt classes, operations, or University-sponsored events. [According to the ACLU](#), “the First Amendment does not protect behavior on campus that crosses the line into targeted harassment or threats, or that creates a pervasively hostile environment for vulnerable students. But merely offensive or bigoted speech does not rise to that level and determining when conduct crosses that line is a legal question that requires examination on a case-by-case basis.”

## **What can we do as a community to show these individuals who espouse hate and create division that they are not welcome here?**

University leaders encourage students, faculty and staff to take part in alternative events and lend their voices and presence to causes with which they are aligned and that help create a stronger community.

Individuals are free to speak out clearly against expressions of racist, sexist, homophobic and transphobic speech, as well as other instances of discrimination. For their safety and the safety of others, engaging in nondisruptive lawful protest is the best means for having opposing voices heard.

Those who study controversial speakers recommend that the most impactful way to combat purveyors of hate is not to engage, because engagement and anger is exactly what they seek. Many of the individuals who gain a platform for their denigrating rhetoric have their cause amplified by the outrage — and sometimes violence — they create within a community.

Unfortunately, social media gives a tremendous public platform to individuals with distasteful and abhorrent views and their audiences are drawn in by the content they provide—content that is created by a community's anger and reactions. Provocateurs and agitators love nothing more than to fill a room with protestors and record it as content. Angry protests, particularly those that devolve into violence, only serve to advance the goals of, and bring more attention to, these agitators and the ideas they represent.

## **WHEN PENN STATE-AFFILIATED INDIVIDUALS ARE INVOLVED IN HATEFUL LANGUAGE AND BEHAVIORS**

Controversial speakers are not the only people who possess the ability to upset our community. Another aspect of free speech that is often questioned is that of students, faculty, staff and alumni who have been reported to the University for their use of hateful language, slurs or discriminatory behavior.

Social media has made it easier than ever to freely share views that we may find repugnant and hateful. There have been incidences in the past where individuals, noted as being part of the Penn State community, have been identified on social media for hate-filled rhetoric, posting Nazi symbols and using repulsive language to denigrate others. On these occasions, University leaders have condemned their speech or expressions, noting that they are not speaking on behalf of Penn State nor are they aligned with the University's stated values of integrity, respect, responsibility, discovery, excellence and community.

In the aftermath of such incidents there are often calls for more action — such as punishment or expulsion of students or termination of employees. The University shares in the anger that hate-filled words create and empathizes with those who experience fear or feel threatened because of the color of their skin, the religion they practice, or other aspects that inexplicably make them targets of hate. As repulsive as the language these individuals used may be — it is usually within their legal rights to express themselves as they wish.

### **Why is the Student Code of Conduct not applicable if it prohibits harassment aimed at race or religion?**

It is important to understand that every case is different and facts matter. It matters, for example, where the incident took place; it matters if it took place as part of a Penn State activity or educational program; it matters if there was additional “conduct” involved; it matters when the incident took place — before or after admission to the University; it matters if there are identifiable victims who are part of the Penn State community; it matters if the speech is “severe and pervasive.” Every case brought to our attention is reviewed individually for the potential disruption to education or a threat of imminent harm or other exception to free speech rights

Many have pointed to the University's Student Code of Conduct as justification for expelling students. They understandably want to know the University has acted, since the Code prohibits harassment based on race or religion. That is only a partial interpretation of our Code and ignores provisions that align our process with constitutional protections. Harassment is defined as behavior that is severe, pervasive, or persistent and objectively offensive to a degree that it interferes with a reasonable person's ability to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University.

Penn State's Office of Student Accountability and Conflict Response reviews and follows up as appropriate on every report received as it relates to an alleged violation. If it's determined that a violation of our Student Code of Conduct occurred we take action and, depending upon the type of violation and circumstances, this can include actions such as warnings, probation and at times expulsion.

### **What about employees who engage in hate-filled speech?**

The constitutional standards and legal exceptions with respect to free speech apply differently to employees than they do to students. Generally speaking, Penn State has more authority to regulate employee “speech,” particularly in the workplace, than it does for students, and has numerous policies in place with respect to appropriate conduct and behavior.

## Why won't the University share more about any actions it does take?

Sometimes, people demand to know that action has been taken in a specific case. Penn State may not disclose details of the student conduct process for any individual, including the outcome of an investigation, or any resulting sanction if a student is found to have violated the Code of Conduct in any respect. This too can be frustrating for matters of public and community concern. The Family Educational Rights and Privacy Act (FERPA) is a federal law, which protects the privacy of students' educational records and personal information. Disciplinary proceedings are part of a student's educational record. Our goal is to employ the conduct process, including accountability, toward a larger educational end. In relation to employees, personnel actions are considered confidential, however there are numerous policies in place related to expectations for which an employee may be held accountable.

## Other institutions have taken strong actions, why can't Penn State?

Penn State, consistent with all public universities across the nation, is legally required to uphold the First Amendment to the Constitution — regardless of how hurtful, revolting and offensive the speech may be. Private universities have no such obligation under the U.S. Constitution. They, as well as private corporations, can sanction individuals whose words and deeds do not mesh with their ideals, mission, values or honor codes. There have been reports recently that have contributed to public confusion, as private universities have announced actions against students or employees in similar circumstances, while other public universities have not and cannot. Also, the facts always matter and frequently the circumstances involved at other universities may be different from what is publicly reported.

Importantly, as a public institution of higher education, Penn State considers the right to free speech and expression essential to our mission of improving society. One of our responsibilities as an institution of higher education is to assist all of our students in developing not only the skills needed to be constructive citizens, but the ability to demonstrate cultural competence, express well-informed opinions and understand society on a global scale. And when our students struggle or fail, there is an opportunity to work through a multi-phased process to educate, encourage learning and growth and, in the end, ideally, they leave the institution as a more well-rounded individual and a more productive citizen.

Often, the antidote to hateful speech is more speech — and not enforced silence. Through the process of education, falsehoods are exposed and constructive dialogue is spurred, which we hope results in a change of hearts and minds. Our faculty and staff work closely with students to encourage social justice, to educate and enlighten, and make sure the University's voice against hate is loud and resolute.

## What is Penn State's perspective on hateful speech?

Individuals who engage in hate-filled speech should know that they have violated fundamental University principles and consider the harm they cause our community. Such hateful speech, even if constitutional, is not welcome at Penn State.

As a University, the promise remains to continue to speak out against hatred and racism whenever it is encountered, to open more dialogue on difficult topics, and to do all that is in our power to educate our community on the importance of diversity, inclusion and creating a welcoming, more humane and just world.

There are resources, such as [Addressing Bias: Rights, Responsibilities and Responses](#), that have been created in partnership with students, available as the University looks to our students, faculty, and staff to use their voices thoughtfully and engage in critical dialogue on these difficult topics.