

NASPA Position on Legislation Related to Free Speech on College Campuses

A number of high-profile incidents involving controversial speakers on college campuses in recent years has focused the attention of lawmakers on the idea of a crisis of free speech in higher education. The fact that public institutions of higher education are considered government actors held to the strictures of the First Amendment complicates matters, though there are many threads to the conversations around threats to speech on college campuses and not all of them apply to constitutional rights.

Generally, legislation – either at the state or federal level – to regulate institutional actions related to speech on campus in the name of protecting free speech runs the risk of creating a chilling effect on speech. Existing case law determined by the Supreme Court of the United States, including *Cox v. New Hampshire*, 1941¹, *Perry Education Association v. Perry Local Educators' Association*, 1983², and *Ward v. Rock Against Racism*, 1989³, have long established and affirmed boundaries on educational institutions' ability to regulate expressive activity on campus without impeding constitutionally protected speech. It is NASPA's position that such protections remain sufficient to foster the free trade in marketplace of ideas so lauded by Justice Oliver Wendell Holmes, Jr. in 1919⁴ and Justice William O. Douglas in 1953⁵.

Recent portrayals of the so-called crisis of free speech on college campuses are often framed as pitting free speech in opposition to equity and diversity. But instead of looking to hide from new ideas, today's students seem to be looking for ways to engage with new ideas directly in ways that engender respect for all participants, if not all opinions. Self-censorship has received much attention in these conversations, though an individual choosing not to speak for fear of social repercussions is not necessarily the same as a government actor actively prohibiting speech. While a climate of self-censorship may indicate a chilled environment that is unwelcoming to some ideas, it does not necessarily constitute an unlawful restriction on speech.

When large protests and counter-protests are expected to occur, college and university leaders spend countless hours planning and organizing both campus and community resources to ensure, above all, the safety of our students. We advise policymakers to

¹ *Cox v. New Hampshire*, 312 U.S. 569 (1941): <http://www.uscourts.gov/educational-resources/educational-activities/facts-and-case-summary-cox-v-new-hampshire>

² *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37 (1983): <https://www.loc.gov/item/usrep460037/>

³ *Ward v. Rock Against Racism*, 491 U.S. 781 (1989): <https://www.law.cornell.edu/supremecourt/text/491/781>

⁴ *Abrams v. United States*, 250 U.S. 616 (1919): <https://www.law.cornell.edu/supremecourt/text/250/616>

⁵ *United States v. Rumely*, 345 U.S. 41 (1953): <https://www.law.cornell.edu/supremecourt/text/345/41>



consider the student safety and funding implications for any legislation requiring college campuses to allow any and all to speak in campus buildings or grounds.

State legislation imposes external conditions and restrictions on institutions and students as they work to establish both meaningful protections for those who have experienced past trauma and create spaces for open and honest discourse on fraught topics. Instead, our institutions of higher education should be allowed the freedom to establish guidelines and rules for deliberation appropriate for their communities within our already established free speech case law.

About NASPA

NASPA – Student Affairs Administrators in Higher Education is the leading association for the advancement, health, and sustainability of the student affairs profession. Student affairs is a critical component of the higher education experience, collaborating with colleagues across institutions of higher education to offer students valuable learning opportunities, meaningful social engagements, and safe and inclusive environments. NASPA's Public Policy Agenda is grounded in a commitment to ensuring opportunity for all institutional members' students and a belief that higher education is a great benefit to both individuals and society.

