

Freedom of Speech at California State University, Fresno

First Amendment to the U.S. Constitution: “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 peaceably to assemble, and to petition the Government for a redress of grievances.”

General Principles

The right to free speech is the cornerstone of freedom of thought and democratic self-governance, and public institutions must uphold free speech under the U.S. Constitution. California State University, Fresno faculty¹, students, and staff stand for these principles because free speech is essential for academic freedom. The University must strive to protect expression of ideas while preserving our learning environment and educational access. Although learning is our top priority, we as a community must NOT condone the creation of intellectual safe spaces where students, faculty or staff retreat from ideas and perspectives at odds from our own or the community’s. In an era when digital (including social) media weaponizes civil discourse, and even the First Amendment protections (Swisher, 2018), it is incumbent upon the University community to ensure that free speech be widely protected. Thus, when confronted with hateful, discriminatory speech, or other ideas with which we disagree, we must strive to provide more speech rather than “enforced silence” (Chemerinsky & Gillman, 2017).

In light of accepting greater amounts of speech, we acknowledge that speech from those with whom we disagree must be permitted without censorship or restriction. Campus policies and individuals within this community must not restrict the ideas of individuals nor the content of protests against those ideas.

Faculty Rights and Responsibilities

Faculty speech is protected from censorship by the University. **Academic Freedom** (defined by the AAUP, 1940, 1970, 2007 at <https://www.aaup.org/our-work/protecting-academic-freedom>) establishes that California State University, Fresno faculty are: 1) “entitled to full freedom in research and in the publication of the results”; 2) “entitled to freedom in the classroom in discussing their subject”²; and 3) “are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be

¹ For purposes of this document, faculty includes all instructors.

² Important here is AAUP’s 1970 “Interpretive Comments” to the 1940 Statement of Principles on Academic Freedom and Tenure. Note 4 containing Comment 2 states: “the intent of this statement is not to discourage what is ‘controversial.’ Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material which has no relation to their subject.”

free from institutional censorship or discipline, but their special position in the community imposes special obligations.”³

Faculty speech should be guided by the AAUP Statement on Professional Ethics (1966, revised in 1987 and 2009), which reads in part:

“As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of these obligations in the light of their responsibilities to their subject, to their students, to their profession, and to their institution. When they speak or act as private persons, they avoid creating the impression of speaking or acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.”

California State University, Fresno faculty should also be guided by our policies, as laid out in the Academic Policy Manual, especially:

- APM 103 – Statement on Academic Freedom

Describes in some detail the breadth of faculty freedom to speak according to the concept of academic freedom, regardless of the medium used for that speech. This comes from the AAUP’s 1940 statement (updated in 1970) on freedom of speech.

- APM 236 – Honor Code of Academic Integrity

Encourages faculty to act in accordance with “a commitment, even in the face of adversity, to five fundamental values: honesty, trust, fairness, respect, and responsibility. From these values flow principles of behavior that enable academic communities to translate ideals to action” (Center for Academic Integrity, Fundamental Values of Academic Integrity) and requiring both administrators and faculty to exhibit the highest professional integrity.

- APM 336 – University Statement on Faculty Rights and Responsibilities

Further defines academic freedom at California State University, Fresno, and makes sure that faculty can be guaranteed a safe and secure work environment. Also emphasizes the importance of professional ethics, as defined by the AAUP, and faculty speaking out on areas in which they are experts as long as it is guided by an effort to seek and speak the truth in a way that fosters mutual respect.

³ AAUP “1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments.”

Obligations of the University

Under federal law, the University has obligations to protect individuals against harassment as well as to protect freedom of speech, and these apply to faculty, staff, and administrators at California State University, Fresno. The following U.S. statutes collectively require the campus to protect individuals from true threats, discrimination and harassment (enforced by the Office of Civil Rights in the U.S. Department of Education, see <https://www2.ed.gov/about/offices/list/ocr/index.html>):

- **Title VI of the 1964 Civil Rights Act:** Provides protection against discrimination based upon race or race-based harassment at universities receiving federal funding.
- **Title VII of the 1964 Civil Rights Act:** As federal courts have interpreted it, Title VII provides protection for employees against discrimination by employers on the basis of race, color, religion, sex or national origin.
- **Title IX of the Education Amendments of 1972:** Provides protection for all people at an educational institution that receives federal funds against unsafe or discriminatory learning (educational) environments. Also provides protections against retaliation, especially based upon gender, including actions that are so severe (pervasive and objectively offensive) that they undermine and detract from the victim's educational experience, effectively denying the victim equal access to institutional resources and opportunities.

While a public university must protect free speech, several decisions in court cases, arbitrations, and legal settlements have allowed limited restrictions in certain circumstances:

- When the speech constitutes “true threats” of violence to an individual or individuals⁴
- When the speech constitutes harassment of an individual based upon race, sex, religion, or sexual orientation⁵
- When the speech involves the destruction of property, for example to communicate a message
- When the speech disrupts class(es), including the broader educational environment and administrative operations (such as excessively loud speech that disrupts classroom work)

All restrictions imposed by the University must be content neutral.

It should always be noted that the First Amendment also includes protection for the right to assemble, free press and religious expression.

⁴ Watts v United States (1969); Virginia v Black (2003)

⁵ Title VI, Title VII of the Civil Rights Act (1964) and Title IX of the Education Amendments (1972)

References

Chemerinsky, Erwin, and Howard Gillman. 2017. *Free Speech on Campus*. New Haven: Yale University Press.

Swisher, Kris. 2018. "Rules Won't Save Twitter. Values Will." *New York Times* at <https://www.nytimes.com/2018/08/08/opinion/twitter-alex-jones-jack-dorsey.html>

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