

Attorney General Sessions Gives an Address on the Importance of Free Speech on College Campuses

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Remarks as prepared for delivery

Thank you for that kind introduction. I am so pleased to be here at Georgetown Law and to be speaking at the Georgetown Center for the Constitution where the exchange of ideas is both welcomed and encouraged. Thank you, Professor Barnett for that introduction and for hosting me here with your students. And thank you students for letting me take part in this important conversation with you.

As you embark on another school year, you and hundreds of your peers across this campus will, we hope, continue the intellectual journey that is higher education. You will discover new areas of knowledge; you will engage in debates great and small; many of your views will be challenged and some changed. You will—if your institutions follow our nation’s historic cultural and education traditions—pursue truth while growing in mind and spirit. In short, we hope you will take part in the right of every American: the free, robust, and sometimes contentious exchange of ideas.

As you exercise these rights, realize how precious, how rare, and how fragile they are. In most societies throughout history and in so many that I have had the opportunity to visit, such rights do not exist. In these places, openly criticizing the government or expressing unorthodox opinions could land you in jail or worse.

Let me tell you about one such example. It occurred one autumn when a few idealistic university students came together as a group to advocate for a deeply felt political creed. Wanting to recruit others to their cause, they staked out some ground on a campus walkway popular with students and approached them as they passed.

They said things like: “Do you like freedom? Do you like liberty?” and then they offered to these passersby a document they revered and believed stood for these ideals: the U.S. Constitution. These young proselytizers for liberty did not block the walkway, did not disrupt surrounding activities, and did not use intimidation or violence to press their cause.

Nevertheless, a local government official labeled this behavior “provocative” and in violation of government policy. When the young people bravely refused to stop, citing their right to free speech, the local official had them arrested, handcuffed, and jailed.

This troubling incident could have occurred under any number of tyrannies where the bedrock American ideals of freedom of thought and speech have no foothold. But this incident happened right here in the United States, just last year, at a public college in Battle Creek, Michigan. A state official actually had students jailed for handing out copies of the United States Constitution.

Freedom of thought and speech on the American campus are under attack.

The American university was once the center of academic freedom—a place of robust debate, a forum for the

competition of ideas. But it is transforming into an echo chamber of political correctness and homogenous thought, a shelter for fragile egos.

In 2017, the Foundation for Individual Rights in Education surveyed 450 colleges and universities across the country and found that 40 percent maintain speech codes that substantially infringe on constitutionally protected speech. Of the public colleges surveyed, which are bound by the First Amendment, fully one-third had written policies banning disfavored speech.

For example, at Boise State University in Idaho, the Student Code of Conduct prohibits “[c]onduct that a reasonable person would find offensive.” At Clemson University in South Carolina, the Student Code of Conduct bans any verbal or physical act that creates an “offensive educational, work or living environment.”

But who decides what is offensive and what is acceptable? The university is about the search for truth, not the imposition of truth by a government censor.

Speech and civility codes violate what the late Justice Antonin Scalia rightly called “the first axiom of the First Amendment,” which is that, “as a general rule, the state has no power to ban speech on the basis of its content.” In this great land, the government does not get to tell you what to think or what to say.

In addition to written speech codes, many colleges now deign to “tolerate” free speech only in certain, geographically limited, “free speech zones.” For example, a student recently filed suit against Pierce College, a public school in southern California, alleging that it prohibited him from distributing Spanish-language copies of the U.S. Constitution outside the school’s free speech zone.

The size of this free speech zone? 616 square feet—an area barely the size of a couple of college dorm rooms.

These cramped zones are eerily similar to what the Supreme Court warned against in the seminal 1969 *Tinker v. Des Moines* case about student speech: “Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven.”

College administrators also have silenced speech by permitting “the heckler’s veto” to control who gets to speak and what messages are conveyed. In these instances, administrators discourage or prohibit speech if there is even a threat that it will be met with protest. In other words, the school favors the heckler’s disruptive tactics over the speaker’s First Amendment rights. These administrators seem to forget that, as the Supreme Court put it in *Watson v. City of Memphis* more than 50 years ago, “constitutional rights may not be denied simply because of hostility to their assertion or exercise.”

This permissive attitude toward the heckler’s veto has spawned a cottage industry of protestors who have quickly learned that school administrators will capitulate to their demands.

Protestors are now routinely shutting down speeches and debates across the country in an effort to silence voices that insufficiently conform with their views.

A frightening example occurred this year at Middlebury College. Student protestors violently shut down a debate between an invited speaker and one of the school’s own professors. As soon as the event began, the protestors shouted for 20 minutes, preventing the debate from occurring.

When the debaters attempted to move to a private broadcasting location, the protestors—many in masks, a common tactic also used by the detestable Ku Klux Klan—pulled fire alarms, surrounded the speakers, and began physically assaulting them. In short, Middlebury students engaged in a violent riot to ensure that neither they nor their fellow students would hear speech they may have disagreed with.

Indeed, the crackdown on speech crosses creeds, races, issues, and religions. At Brown University, a speech to promote transgender rights was cancelled after students protested because a Jewish group cosponsored the lecture. Virginia Tech disinvited an African American speaker because he had written on race issues and they worried about protests disrupting the event.

This is not right. This is not in the great tradition of America. And, yet, school administrators bend to this behavior. In effect, they coddle it and encourage it.

Just over a week ago, after the Orwellian-named “anti-fascist” protestors had successfully shut down numerous campus speaker events in recent months with violent riots, Berkeley was reportedly forced to spend more than \$600,000 and have an overwhelming police presence simply to prove that the mob was not in control of the campus.

In advance, the school offered “counseling” to any students or faculty whose “sense of safety or belonging” was threatened by a speech from Ben Shapiro—a 33-year-old Harvard trained lawyer who has been frequently targeted by anti-Semites for his Jewish faith and who vigorously condemns hate speech on both the left and right.

In the end, Mr. Shapiro spoke to a packed house. And to my knowledge, no one fainted, no one was unsafe. No one needed counseling.

Yet, after this small victory for free speech, a student speaking to a reporter said in reaction, “I don’t think Berkley should host any controversial speakers, on either side.” That is, perhaps, the worst lesson to take away from this episode.

I know that the vast majority of students like you at the Constitution Center need no lecture on the dangers of government-imposed group think. But we have seen a rash of incidents often perpetrated by small groups of those students and professors unable or unwilling to defend their own beliefs in the public forum.

Unfortunately, their acts have been tolerated by administrators and shrugged off by other students. So let us directly address the question: Why should we worry that free speech is in retreat at our universities?

Of course, for publicly run institutions, the easy answer is that upholding free speech rights is not an option, but an unshakable requirement of the First Amendment. As Justice Robert Jackson once explained: “If there is a fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.”

But even setting aside the law, the more fundamental issue is that the university is supposed to be the place where we train virtuous citizens. It is where the next generation of Americans are equipped to contribute to and live in a diverse and free society filled with many, often contrary, voices.

Our legal heritage, upon which the Founders crafted the Bill of Rights, taught that reason and knowledge produced the closest approximation to truth—and from truth may arise justice. But reason requires discourse and, frequently, argument. And that is why the free speech guarantee is found not just in the First Amendment, but also permeates our institutions, our traditions, and our Constitution.

The jury trial, the right to cross-examine witnesses, the Speech & Debate Clause, the very art and practice of lawyering—all of these are rooted in the idea that speech, reason, and confrontation are the very bedrock of a good society. In fact, these practices are designed to ascertain what is the truth. And from that truth, good policies and actions can be founded.

The Federalists against the Anti-federalists, Abraham Lincoln against Stephen Douglas, Dr. Martin Luther King Jr. against George Wallace. Indeed, it was the power of Dr. King's words that crushed segregation and overcame the violence of the segregationists. At so many times in our history as a people, it was speech—and still more speech—that led Americans to a more just, more perfect union.

The right to freely examine the moral and the immoral, the prudent and the foolish, the practical and the inefficient, and the right to argue for their merits or demerits remain indispensable for a healthy republic. This has been known since the beginning of our nation.

James Madison knew this when, as part of his protest against the Alien and Sedition Acts—the speech codes of his day—he said that the freedom of speech is “the only effectual guardian of every other right.”

And, in a quote that I am reminded of daily in this job, Thomas Jefferson knew this when he said in words now chiseled in the stone of his memorial, “I swear upon the altar of God eternal hostility against every form of tyranny over the mind of man.”

Soon you will be the professor, the university president, the Attorney General, and even the President of the United States. And you will have your own pressing issues to grapple with. But I promise you that no issue is better decided with less debate, indifference, and with voices unheard.

There are those who will say that certain speech isn't deserving of protection. They will say that some speech is hurtful—even hateful. They will point to the very speech and beliefs that we abhor as Americans. But the right of free speech does not exist only to protect the ideas upon which most agree at a given moment in time.

As Justice Brandeis eloquently stated in his 1927 concurrence in *Whitney v. California*: “If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.”

And let me be clear that protecting free speech does not mean condoning violence like we saw recently in Charlottesville. Indeed, I call upon universities to stand up against those who would silence free expression by violence or other means on their campuses.

But a mature society can tell the difference between violence and unpopular speech, and a truly free society stands up—and speaks up—for cherished rights precisely when it is most difficult to do so.

As Justice Holmes once wrote: “If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate.” For the thought that we hate.

And we must do so on our campuses. University officials and faculty must defend free expression boldly and unequivocally. That means presidents, regents, trustees and alumni as well. A national recommitment to free speech on campus is long overdue. And action to ensure First Amendment rights is overdue.

Starting today, the Department of Justice will do its part in this struggle. We will enforce federal law, defend free speech, and protect students' free expression from whatever end of the political spectrum it may come. To that end, we are filing a Statement of Interest in a campus free speech case this week and we will be filing more in the weeks and months to come.

This month, we marked the 230th anniversary of our Constitution. This month, we also marked the 54th anniversary

of the 16th Street Baptist Church bombing in Birmingham. Four little girls died that day as they changed into their choir robes because the Klan wanted to silence the voices fighting for civil rights. But their voices were not silenced.

Dr. Martin Luther King Jr. would call them “the martyred heroines of a holy crusade for freedom and human dignity,” and I urge you to go back and read that eulogy and consider what it had to say to each of us. This is the true legacy of free speech that has been handed down to you. It was bought with a price. This is the heritage that you have been given and which you must protect.

So I am here today to ask you to be involved to make your voices heard—and to defend the rights of others to do the same.

For the last 241 years, we have staked a country on the principle that robust and even contentious debate is how we discover truth and resolve the most intractable problems before us.

Your generation will decide if this experiment in freedom will continue. Nothing less than the future of our Republic depends on it.

Speaker:

Attorney General Jeff Sessions

Component(s):

Office of the Attorney General

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