



Free Speech on the University of North Alabama's campus

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 assemble, and to petition the government for a redress of grievances."

The right to freedom of speech allows individuals to express themselves **without government interference**, with certain narrow exceptions.

Public universities like the University of North Alabama are state governmental agencies. Therefore, the University is "the government" and is **not** allowed to interfere with individual expression, except in very narrow exceptions that include:

- True threats (criminal threats directed at a person with the intent of placing the victim in fear of bodily harm or death).
- Fighting words (personally abusive epithets in your face, tending to cause an immediate violent reaction).
- Incitement to imminent lawless action (i.e. incitement to riot); speech must present a clear, present and immediately imminent threat before it can be prohibited
- Criminal or illegal conduct (i.e. vandalism, assault, riots, defamation, discrimination, etc.).
- Seriously disruptive actions (i.e. occupying a building, shouting down a lecturer or some other disruption of the academic environment).
- Obscenity- This is legally defined as when the description or depiction of sexual conduct, taken as a whole, by the average person, applying contemporary community standards, portrays sex in a patently offensive way; appeals to the prurient interests of individuals, and, when taken as a whole, lacks seriously literary, artistic, political, or scientific value (standard from Miller v. California).
- Harassment-sufficiently severe or pervasive to deny or limit the student's ability to participate in or benefit from the educational program

*Note that whenever these narrow exceptions are used to restrict or punish speech, they are heavily scrutinized by courts.

According to case law, we cannot:

- Censor, prohibit, "chill" or punish protected speech
 - Even if it's biased, rude, mean, hateful, offensive, bigoted, wrong, immoral or deeply distressing
- Enact or enforce censorship policies:
 - Hate speech codes
 - Overzealous anti-harassment policies reaching into protected speech
 - Prohibit microaggressions or require trigger warnings
 - Unofficial bias investigations/warnings
 - Designated speech zones
 - Disinvite controversial speakers
- Compel speech through mandatory civility statements

We can:

- Prohibit, punish, and remedy discrimination
- Prohibit and punish violence, vandalism, criminal threats and other criminal conduct
- Impose neutral reasonable time, place and manner restrictions (must be content or viewpoint neutral and narrowly drawn to meet an important governmental purpose and applied consistently)
 - Examples include:
 - Chalking rules (i.e. must use washable chalk)
 - Posting rules (i.e. size of posters, places where posting is allowed)
 - Noise control (i.e. no loud bullhorn outside a classroom)
 - Litter control (i.e. designated literature distribution areas)
 - Traffic control (i.e. cannot block sidewalks, roadways)
- Lead by example, talk about aspirational values and encourage respectful engagement by all

Hate speech is still protected speech unless it crosses the line (meets another of the narrow exceptions above).