

Speech on Campus: What Can (and Can't) Universities Do?

Office of General Counsel
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The seal of Kansas State University is partially visible on the left side of the slide. It features a circular design with the text "KANSAS STATE UNIVERSITY" and "FEBRUARY 1863" around the perimeter. In the center, there is a figure holding a torch and a book, with the motto "RULE BY OBEDIENCE" below it.

Student Organizations at K-State: 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 peaceably to assemble**, and to petition the government for a redress of grievances.

What is Speech?

- Words – spoken or written
- Expressive conduct
- Pictures and other imagery





The Guarantee of Free Speech

The right to freedom of speech allows individuals to express themselves without the government interfering – with certain very narrow exceptions.

Public universities like Kansas State University are state governmental agencies, so the University is “the government” and is not allowed to interfere with individual expression, except for those very narrow exceptions.

Applying the Law and History to Current Issues: Hate Speech on Campus



Freedom of speech is the right to articulate one's opinions and ideas without fear of government retaliation or censorship, or societal sanction.

Hate speech is speech which attacks a person or group on the basis of attributes such as gender, ethnic origin, religion, race, disability, or sexual orientation.



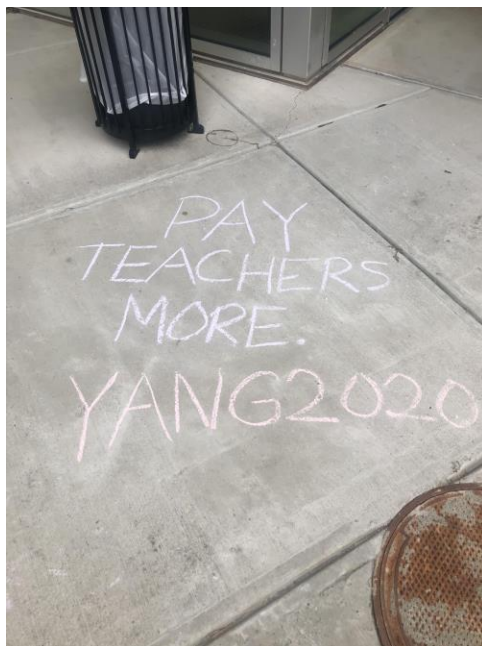


Narrow Exceptions

- 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 (*e.g.*, incitement to riot)
- Criminal or illegal conduct (*e.g.*, vandalism, assault, riots, blackmail, defamation, perjury, child pornography, discrimination)
- Seriously disruptive actions (*e.g.*, occupying a building; shouting down a lecturer)

Other Restrictions on Speech/Association:

Reasonable Time, Place, and Manner Restrictions
Must be content- or viewpoint-neutral, and applied consistently.



- Chalking rules
- Posting rules
- Minimum number of members
- Registration deadlines

What about Freedom of Association?

Healy v. James (1972)

- U.S. Supreme Court held that registration of a campus student organization could not be denied based on viewpoint or concern of possible unrest.
- It is permissible to restrict associational activities when those activities “infringe reasonable campus rules, interrupt classes, or substantially interfere with the opportunity of other students to obtain an education.”
- College administration may require a group seeking official recognition to affirm in advance willingness to comply with reasonable campus rules (e.g. no hazing, no violent disruptions).



KBOR Requirements

All Registered Organizations must acknowledge the following:

- The established policy of the Board of Regents prohibits discrimination on the basis of age, race, color, religion, sex, marital status, national origin, physical handicap or disability, status as a Vietnam Era Veteran, sexual orientation or other factors which cannot be lawfully considered, within the state universities. All fraternal and campus-related organizations shall follow this policy in the selection of their members, except the prohibition against sex discrimination shall not apply to social fraternities or sororities which are excluded from the application of Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.).
- The right of organizations to establish standards for membership is acknowledged, provided that all students are afforded equal opportunity to meet those standards. Just as all students have the right to choose those with whom they would associate on the campus, an organization shall have the right to select its members subject to these principles. Nothing in this policy shall be interpreted as imposing a requirement which would violate the principle of selection on the basis of individual merit.
- In addition, this policy does not prohibit a student organization that is organized around shared religious beliefs from requiring leaders or members to adhere to the organization's sincerely held religious beliefs, comply with the organization's sincerely held religious beliefs, comply with the organization's sincere religious standards of conduct, and be committed to furthering the organization's religious missions, beliefs, observance requirements and standards of conduct as defined by the organization or the religion on which the association is based.

The First Amendment Across American History

What has free speech meant for vulnerable groups?



What CAN the University do?

We CANNOT

- censor, prohibit, “chill” or punish protected expression
 - even if it does not align with the University’s values, even if most find it deeply offensive
- deny or revoke registration, or make funding decisions, based on viewpoint
- exclude equal access to campus resources (like facilities) to student groups based on viewpoint
- compel speech through mandatory civility statements or codes

We CAN

- prohibit, punish and remedy **discrimination and criminal conduct**
- Require student groups to affirm in advance willingness to **comply with reasonable campus rules** (e.g no hazing, no significant disruption)
- **Deny and revoke registration for groups that fail** to follow reasonable campus rules
- impose **neutral** reasonable **time, place and manner restrictions**

Additionally, We CAN (and should)

- lead by example, talk about aspirational values, and encourage respectful engagement by all
- help students understand the limits on the University's authority and how they benefit from limits on governmental power
- empower students to use their voices and form groups consistent with their values
- have an “all-comers” policy to ensure equal access to student organizations for all students

Thank you! Questions?

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