

## **First Amendment FAQ's**

### **What is the First Amendment?**

The First Amendment of the United States Constitution protects individuals' freedom of speech and expression, stating: "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 speech is protected by the First Amendment?**

The First Amendment protects spoken, written, and symbolic speech, as well as *expressive activity*, regardless of the content. What a person says, wears, reads, or performs is generally protected by the First Amendment. The First Amendment protects speech that is offensive, hateful, or upsetting unless it falls into a category that the U.S. Supreme Court has determined is unprotected. See "*The First Amendment: Categories of Speech*," Congressional Research Service <https://sgp.fas.org/crs/misc/IF11072.pdf>.

### **Is there speech that is not protected by the First Amendment?**

Yes, there are limits to the protections afforded by the First Amendment. Whether speech is protected requires a detailed, fact specific analysis. In general, the First Amendment does not protect individuals from engaging in violence, true threats, the incitement of violence, or harassment that rises to the level of a violation of the University's Nondiscrimination, Sexual Misconduct, Discrimination and Harassment policies: <https://www.ou.edu/eoo/policies-and-procedures>

- True threats: "True threats encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals...: The speaker need not actually intend to carry out the threat." *Virginia v. Black*, 538 U.S. 343 (2003).
- Incitement of violence: Speech that "advocates the use of force or of law violation" is protected by the First Amendment "except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444 (1969).
- Harassment: Harassment is defined in the University's Nondiscrimination and Sexual Misconduct, Discrimination and Harassment policies as unwelcome verbal or physical conduct based on a protected class (i.e., race, color, national origin (including shared ancestry or ethnic characteristics), sex, gender identity/expression according to applicable law, marital status, religion, age, political beliefs, disability, and veteran status) that is so severe or pervasive, objectively and subjectively offensive that it interferes with, denies, or limits an individual's ability to participate in or benefit from the University's

educational programs and activities. Harassment can take two forms: power differentials (quid pro quo) or hostile environment.

For additional information about protected and unprotected speech see: “*The First Amendment: Categories of Speech*,” Congressional Research Service <https://sgp.fas.org/crs/misc/IF11072.pdf>.

### **Is “hate speech” protected?**

Although not specifically defined by the U.S. Supreme Court, “hate speech” is generally considered speech or expression that targets an individual or group of people based on their race, ethnicity, religion, gender, disability, or sexual orientation. The U.S. Supreme Court has held that hate speech is protected by the First Amendment and cannot be censored, punished, or unduly burdened by a university unless it falls into a category that is unprotected by the First Amendment, such as a threat or harassment that rises to the level of a hostile environment which is both objectively and subjectively offensive and is so severe or pervasive that it interferes with a person’s ability to engage in educational or employment opportunities.

### **Does the First Amendment protect civil disobedience on campus?**

No. Civil disobedience is the refusal to comply with certain laws as a form of political protest. The First Amendment does not permit individuals to break the law or violate University policies or rules.

### **Can the University limit protected speech activities?**

Yes. The University may place content- and viewpoint-neutral time, place, and manner restrictions on activities to ensure health, safety, and welfare and to prevent disruption of teaching, learning, research, service, and patient care on our campuses.

For example, the University may limit the use of amplified sound on campus during specific hours or dates. However, it may not place the restriction on the use of amplified sound on the basis of the content of a group’s speech. Rather, the rules must apply to users of the space regardless of the content or viewpoint of their speech.

- In October 2024, a federal court prohibited the University of Maryland from canceling a student organization’s planned expressive events for October 7, 2024. See [https://storage.courtlistener.com/recap/gov.uscourts.mdd.567249/gov.uscourts.mdd.567249.35.0\\_1.pdf](https://storage.courtlistener.com/recap/gov.uscourts.mdd.567249/gov.uscourts.mdd.567249.35.0_1.pdf)

See the University’s expressive activity and related policies here: <https://www.ou.edu/resources/expressive-activity-on-campus>

### **Can the University take action if someone says offensive or false things? Either in person or on social media?**

Generally speaking, the University cannot punish someone for saying false or offensive things unless the offensive or false speech rises to speech that is unprotected, e.g. defamation, etc. See *“The First Amendment: Categories of Speech,”* Congressional Research Service <https://sgp.fas.org/crs/misc/IF11072.pdf>.

### **Where do I report a concern regarding perceived threatening or harassing speech posted on social media?**

Statements or comments that are perceived to be threatening should be reported to the University of Oklahoma Police Department. Statements or comments that are harassing and are targeted to individuals or groups based on a protected class, such as race, religion, sex or gender, may be a violation of the University’s Nondiscrimination and Sexual Misconduct, Discrimination, and Harassment policies.

To report a claim of discrimination or harassment, or to seek available remedial measures and support, please visit the website of the Office of Institutional Equity: <https://www.ou.edu/eoo>

### **How do I file a complaint if I feel my free speech or free expression rights have been violated?**

To report a potential policy violation anonymously, please visit [ou.ethicspoint.com](http://ou.ethicspoint.com) or call 1-844-428-6531.

### **Why may the University offer remedial measures, like flexible class attendance, to alleviate the impact of expressive activity?**

Even where speech is protected, the University owes an obligation to its community under Title VI, Title VII, and Title IX of the Civil Rights Act to prevent and remediate a hostile environment that is based on a protected classification, e.g., race, national origin, ethnicity, shared ancestry, religion, or gender. The Office of Civil Rights, which enforces a university’s compliance with these laws, has articulated several remedial measures universities should consider to prevent and remediate a hostile environment (whether reported or in the process of being created) to include changing a policy or practice, flexible attendance, safety plans, counseling, etc.