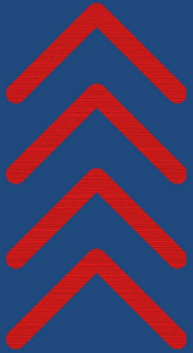


Protecting Freedom of Expression on Campus In the Face of Rising Intolerance

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March 2, 2022**





Illustrative photo – Shutdown of a 2017 pro-Israel event by protesters at the University of California, Irvine who entered the event and shouted loudly and continuously, explicitly stating to speakers, “You people...should not be allowed on this f*****g campus!” The event was curtailed and attendees and speakers had to be escorted safely out by police.

Source Credit: Gary Fouse

Why Freedom of Expression is Crucial to Campus Life

- » • **Crucial to the Institution:** The transmission and production of knowledge - vital to every college and university - can't happen without freedom of expression, including academic freedom.
- » • **Crucial to the Individual:** Freedom of expression is central to every person's sense of dignity, worth, and emotional well-being.

The First Amendment and the Rights of All Students To Self-Expression

“Freedom of speech is indivisible; unless we protect it for all, we will have it for none.”

- Harry Kalven, Jr., American jurist and preeminent legal scholar

Freedom of thought, inquiry and expression are fundamental rights of each and every member of the campus community, protected under the First Amendment of the U.S. Constitution. These rights include the freedom to express opinions; to hear, express and debate various views, no matter how unpopular; and to voice criticism. They also include the rights that are concomitant with the freedom to full participation in campus life more broadly, such as the freedom of association and assembly.

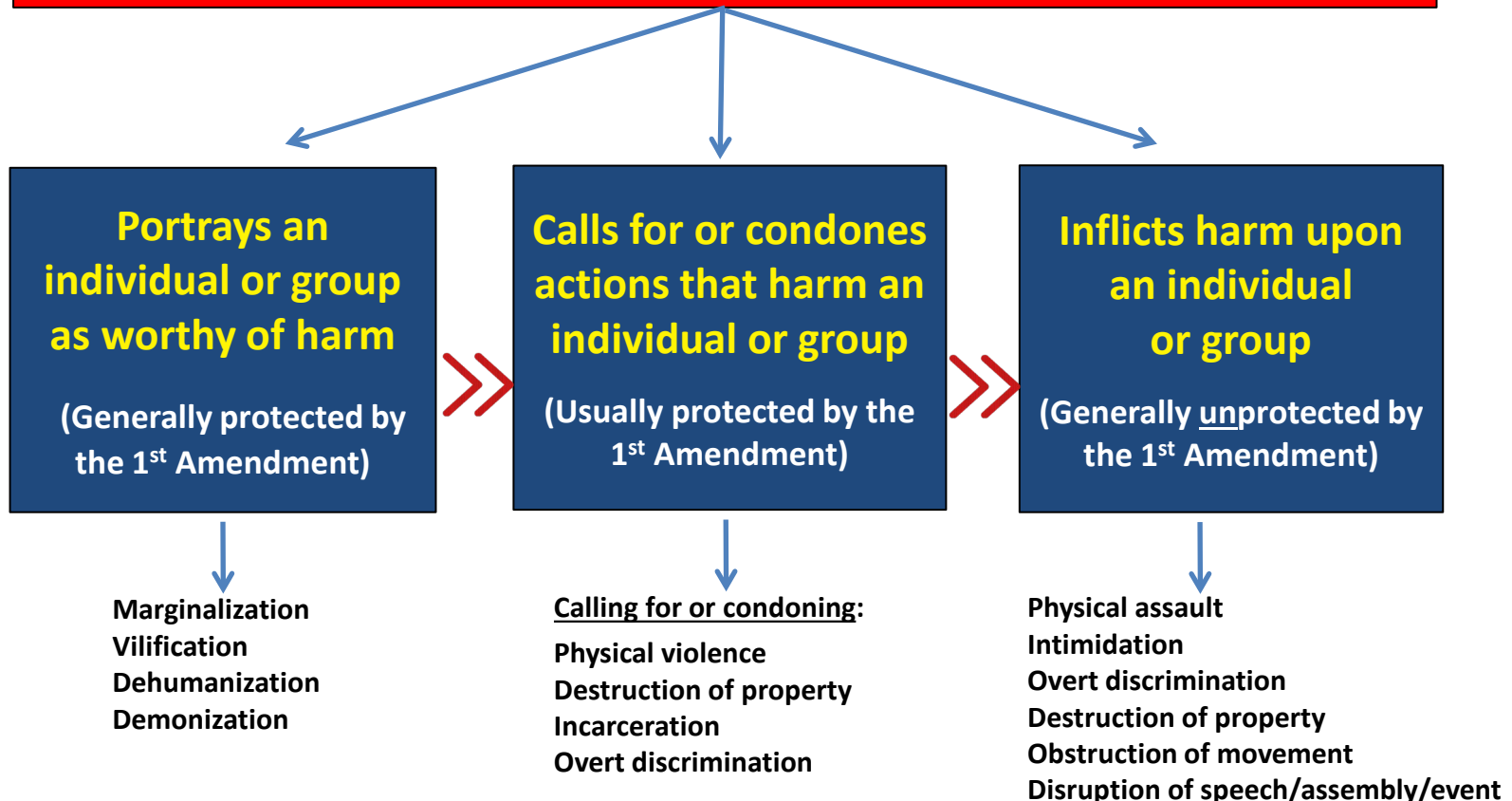
What Are the Things that Limit/Threaten Campus Expression

- **The Law**: Federal, state and local law prohibit expression that rises to the level of criminality, including assault, vandalism, immediate incitement to violence, disturbing the peace and defamation.
- **The College or University**: Most schools also have “time, place, manner” restrictions on speech or expressive behavior engaged in at an inappropriate time or place and/or carried out in an inappropriate manner (e.g. blaring loud music inside a classroom building when classes are in session). Some schools employ “speech codes” to restrict certain kinds of speech deemed hateful or offensive that is otherwise protected under the First Amendment.
- **Other Members of the Campus Community**: Individuals may engage in harassing/bullying/intolerant behavior that impedes or prevents others from expressing their opinion, belief, identity or fully participating in campus life.

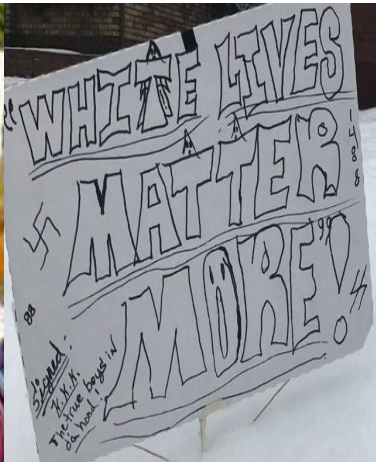


What Is Intolerant Behavior?

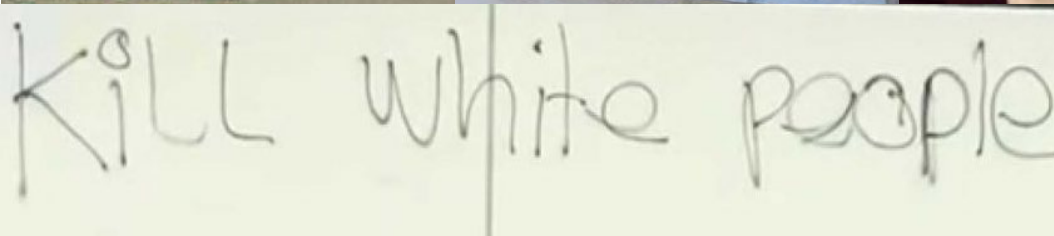
Speech or expressive behavior that seeks to prevent any individual or group from expressing their opinions, beliefs or identity or fully participating in shared society



Intolerant Behavior: Portraying Individuals or Groups as Worthy of Harm (Generally protected by the 1st Amendment)



Intolerant Behavior: Calling for or Condoning Actions that Harm Individuals or Groups (Usually protected by the 1st Amendment)



Intolerant Behavior: Inflicting Harm on Individuals or Groups (Generally unprotected by the 1st Amendment)



- A homosexual student at Pennsylvania State University was violently assaulted after being told, "You're gay. I hate gays."
- An African American student at San Jose State University was racially bullied by his 3 roommates, who clamped a bicycle lock around his neck and decorated the suite with racist epithets.
- The dorm room door of a conservative student at the University of Michigan was vandalized with angry slurs, an image of the devil, as well as eggs, gum and hot dogs following a conservative article he penned in the campus newspaper.
- An Orthodox Jewish student at CUNY Medgar Evers College was punched in the face and told, "Leave the school, you Jew."



- At UC Berkeley, violent protests resulted in the cancellation of an event with a controversial speaker.
- An Asian USC student was called the racist and homophobic slur "Ching chang chong motherf--- gay" while being pelted with eggs.
- A number of Muslim students at the University of Kansas reported being harassed and assaulted, including by having food thrown at them.
- A pro-Israel student group's event at UC Irvine was disrupted by members of an anti-Zionist student group, who physically and verbally intimidated attendees, loudly chanted "Intifada, Intifada," and threatened a student attempting to enter the event. Police had to escort attendees out of the event for their own safety.

When Intolerant Behavior Becomes Actionable Harassment

Behavioral definition of “harassment” used in most school’s harassment policies:

According to the Supreme Court, harassment is behavior that is **“so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims’ educational experience, that the victims are effectively denied equal access to an institution’s resources and opportunities.”**

Weighing The Victim's Freedom of Expression Against The Harasser's Freedom of Expression

Harassment is behavior that is “so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims’ educational experience, that the victims are effectively denied equal access to an institution’s resources and opportunities.”



Protected Identity Groups in Most Schools'

Harassment Policies

Harassment is behavior that is “so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims’ educational experience, that the victims are effectively denied equal access to an institution’s resources and opportunities.”

“This policy covers harassment on the basis of **race, color, creed, national origin, ethnicity, ancestry, religion, age, sex, sexual orientation, gender identity, marital status, legally registered domestic partnership status, disability, predisposing genetic characteristics, alienage, citizenship, military or veteran status, status as a victim of domestic violence or any other legally protected status.**”

An Example from University of Southern California

“Impeach her Zionist a”**

A coordinated social media campaign of denigration and harassment was carried out to force the student government vice president from office because she was a Zionist (pro-Israel).

Replace “Zionist” with... >>

Woman

Man

Jew

Palestinian

Pro-Life

Black Person

White Person

LGBTQ Person

Christian

Republican

Native American

Hispanic Person

Disabled Person

Pro-Choice

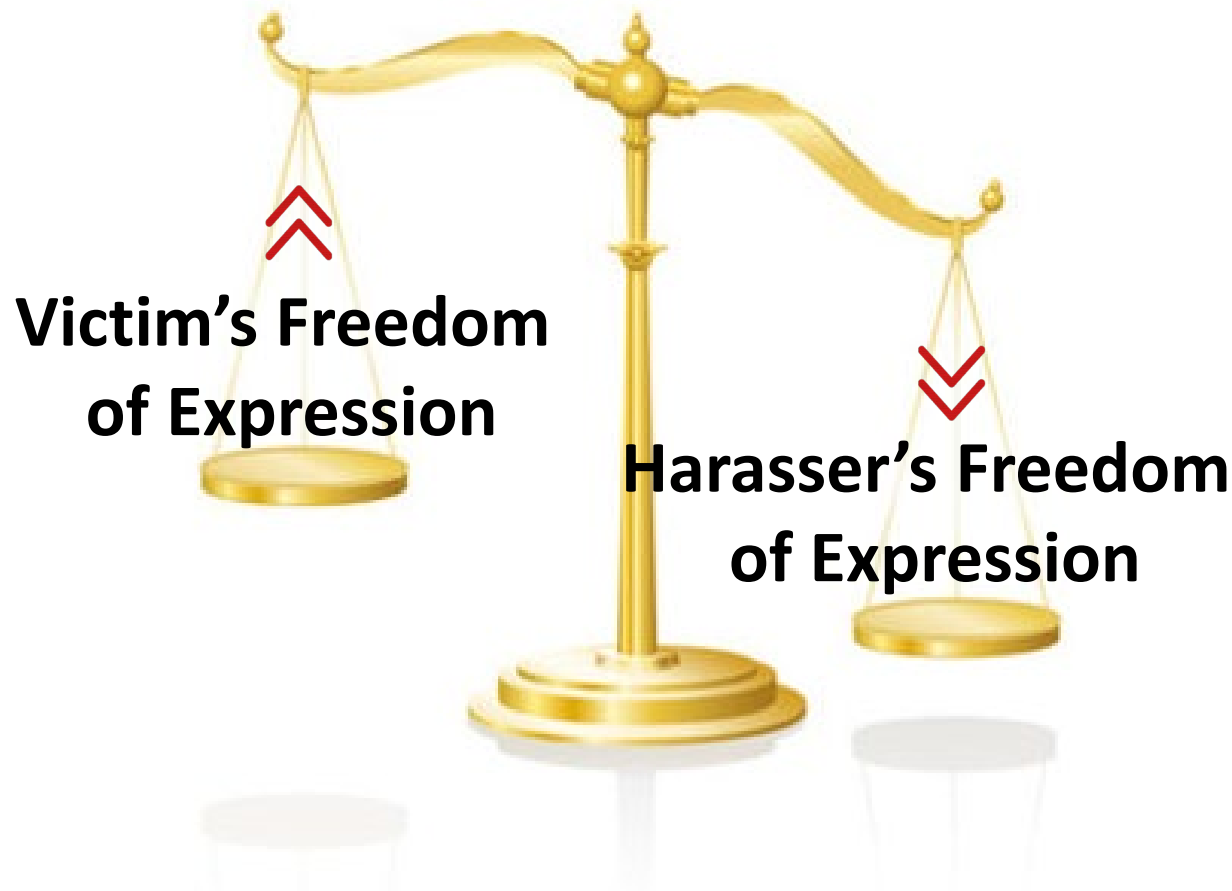
Weighing The Victim's Freedom of Expression Against The Harasser's Freedom of Expression

**When Verbal Abuse is Directed at Members of
a Protected Identity Group**



Weighing The Victim's Freedom of Expression Against The Harasser's Freedom of Expression

When Verbal Abuse is Directed at Students Who are
NOT Members of a Protected Identity Group



A New Approach to Protecting Students from Harassment

Current View:

Protecting Students as Members of Protected Identity Group

- Understands harassment as identity-motivated discrimination
- Considers the identity of the victim and the motivation of the perpetrator
- Is only actionable if the harassment reaches an objective threshold of harm, the victim is a member of a protected group, and the perpetrator is motivated by prejudice against that group



New View:

Protecting Students as Individuals with Equal Rights

- Understands harassment as behavior that suppresses expression
- Does not consider the identity of the victim or the motivation of the perpetrator
- Is actionable when any individual is subject to harassment that reaches an objective threshold of harm, irrespective of the identity of the victim or the motivation of the perpetrator

Steps for Colleges and Universities to Implement New Approach

- Publicly acknowledge the ***equal*** rights of ***all*** students to self-expression and full participation in campus life, as well as the ***equal*** rights of ***all*** students to protection from behavior that violates those rights.
- Recognize that that their school's current harassment policy does ***not*** protect all students from harassing behaviors, and establish robust bullying and cyberbullying policies that use the same behavioral threshold as harassment policies and are equally well-enforced.
- Develop fair and consistent protocols for handling speech that's "uncivil" or "offensive" but still protected by the First Amendment, that do not depend on the motivation of the speaker or identity of those offended by the speech.

THANK YOU!

**For More Information
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www.AMCHAinitiative.org