

Possible Activity: Consider the state of First Amendment speech rights for employees in higher education, both at public and private colleges and universities. Among the topics for discussion, here are some issues for possible conversation:

- What do you think of the U.S. Supreme Court's ruling that public employees (including staff members at public colleges and universities) do not have First Amendment rights for speech made in carrying out their professional job duties?
- Are courts that have ruled that faculty at public colleges and universities have First Amendment rights for their teaching and research (and maybe service) making a good or reasonable interpretation of First Amendment standards and of academic freedom?
- The public employee speech standards deny First Amendment protection to staff for speech made in carrying out their official job duties, but some staff, such as in student affairs, are often at the center of contested and high-profile incidents that arise on campuses. Are there steps or policies that institutions should have in place to help ensure the fair and equitable treatment of staff for their speech made in carrying out their job duties?
- While private colleges and universities are not subject to First Amendment speech standards in the treatment of employees, what types of standards or policies should they have in place for both staff and faculty?

Reflection Scenario: Social Media Post By Professor

A faculty member at a public university consistently makes social media postings that are offensive and degrading to women and to members of the LGBTQ community. Below are some of the comments made and materials shared by the professor:

- “Geniuses are overwhelmingly male because they combine outlier IQ with moderately low Agreeableness and moderately low Conscientiousness”
- Sharing an article titled, “Are Women Destroying Academia? Probably.”
- In response to a post about the sexual habits of young women, stating, “I just dropped my freshman son off at Purdue earlier today,” ... “those girls are really showing off their legs! And I could see girls sitting alone just hoping for a friend—even a female friend, maybe. Parents don't realize that college is a jungle full of hungry predators.”

In response to complaints and concerns over these and other postings, [university officials have responded](#) that they consider the professor's comments to be vile but cannot fire the faculty member based on the First Amendment. The [university's provost also issued a statement](#) describing the professor's views as “stunningly ignorant, more consistent with someone who lived in the 18th century than the 21st.” Despite concluding that the speech is protected by the First Amendment, the university has said that any students who wish may transfer out of the professor's classes. The university has also instituted a grading policy where assignments are submitted anonymously to the professor for grading purposes. Additionally, the university is conducting a review to determine if the professor has shown bias in grading in previous courses.

What do you think of the university’s response to complaints over the professor’s speech? Should the university be able to fire the professor? In thinking about a response, consider other types of social media postings that have resulted in calls to fire university employees. For instance, calls for dismissal came after a professor (at a private university) made a controversial tweet about Queen Elizabeth II’s death that later was removed by Twitter. Under what circumstances should a public university be able to discipline or fire an employee for their social media postings, including professors? What about the standards that private universities, which are not bound by the First Amendment, should adopt? When should an institution respond publicly (see below for section on institutional speech) when an employee makes a controversial social media posting, especially when it goes “viral”?

2.6 Social Media and When the Institution Speaks

Unlike a forum that exists for students’ or others’ speech, there are multiple instances when a college or university engages in institutional speech (i.e., when it is the speaker), including on social media. A previous section considered how the Supreme Court has ruled that public employees (including at colleges and universities) do not possess First Amendment rights for speech made in carrying out their official job duties (as covered in the section, it is an open question whether an academic freedom exception exists for professors, but the standards do cover other university employees). Part of the logic of courts for permitting public employers (including colleges and universities) to exercise control over speech by public employees in carrying out their job duties is that such speech is really for and by the public employer, such as a public college or university. On a daily basis, colleges and universities engage in institutional speech (courts refer to what is known as the [government speech doctrine](#) for this type of speech), such as making public announcements or issuing institutional standards or policies. Courts have ruled that a governmental unit (like a public college or university) is able to engage in speech and messaging. For instance, in the scenario presented in the section on social media speech by faculty and staff, a university’s provost responded very strongly in an official university statement to problematic speech made by a professor as a private citizen outside their job duties. As an official authorized to speak for the institution, the university, through the provost, could speak out disapprovingly of the faculty member’s speech, even though the institution had decided that the professor’s speech was protected by the First Amendment.

In the social media context (as in other settings), questions and issues may arise as to when a social media posting represents the speech of an institution. For example, an institutional leader may make a social media posting on an account maintained by the institution, but confusion may exist over if the views are those only of the official or represent institutional speech. Similarly, units or departments at a college or university maintain social media accounts. What happens when the social media account for an academic department has comments that run contrary to or in opposition to official

Social Media: The Real Campus Speech Zone

A Learning Resource Informing Institutional Responses and Educational Efforts

university positions or statements? Unlike social media speech by an individual in their private citizen capacity, an institution is likely to possess substantially more authority to regulate these types of social media accounts that are maintained by the college and university and are considered speech by the institution. Institutions often maintain policies regarding social media accounts, and employees need to be informed about and educated on relevant standards to be followed in maintaining social media accounts (see Educational Efforts in Part 3).

As pointed out in the previous section on the importance of forums and First Amendment speech rights on campus, if a university maintains a social media account and then allows comments by individuals, then a type of forum may exist in relation to such comments. If such a forum has been created for individuals to share their views, then, under forum standards, a public college or university may not be able to remove comments that are on-topic but with which university officials disagree. Officials may, however, ensure that comments are relevant to the forum (for example, if a social media account is focused on a university's e-sports team and its competitions and activities, then comments made about politics or other social controversies may be off-topic and legitimately removed).

Possible Activity: Colleges and universities are often called upon to speak about events taking place inside and outside of the campus community. Deciding if and when to do so is a complicated calculation: who should speak? What should the message say? What will the impact be? The [University of California National Center for Free Speech and Civic Engagement](#) hosted a [conversation about these and other questions related to institutional speech](#). Along with Michelle Deutchman, Executive Director of the Center, the conversation featured Cerri Banks (an accomplished educational leader who served at multiple institutional institutions, including Mount Holyoke, Skidmore, and Syracuse, but who sadly passed away in 2022) and Sigal Ben-Porath, a leading scholar who serves as Professor of Education at the University of Pennsylvania.

Social media issues can often raise questions around when institutions should weigh in on various controversies. After watching the conversation, consider with your colleagues about issues related to institutional speech, including:

- (1) When is it appropriate for the Institution to speak on an issue? Or, as advanced in some model legislation and in proposed bills, such as in Ohio, should institutions stay silent on “controversial” matters?
- (2) Who should be involved in crafting various institutional messages?