

## Hate Speech is Free Speech

Protecting constitutional rights while still promoting the respect and safety of citizens can be a tricky issue. The constitutional amendments allow for a lot of interpretation, creating controversial subjects, particularly in schools. Schools must protect students constitutional rights, but also protect their students physically and mentally. Colleges are often faced with the specific issue of allowing freedom of speech when that speech is offensive to some, or prohibiting hate speech to protect students emotional safety. Colleges are also expected to maintain a quality educational atmosphere, and hate speech could disrupt and erode that quality. Taking all these issues into account, it becomes very difficult to decide what is the right thing to do.

It is clear that hate speech must have a few regulations. As decided in *Chaplinsky v. New Hampshire* in 1942, there are narrow and limited exceptions to the overall protection of free speech. The presiding judge on the case decided that the lewd, the profane, the slanderous, and insulting or “fighting” words uttered by Chaplinsky neither contributed to the expression of ideas or possessed any “social” value in the search for truth. The court also defined fighting words as “those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.” Therefore, they were not protected by the First Amendment. However, this was a very specific situation, involving a one-on-one confrontation likely to provoke violence, and there have been many court cases since 1942 that have ruled that hate speech is protected by the First Amendment.

Another argument some may pose to control hate speech is that its secondary effects on the targeted group of people may be harmful. In the case *City of Renton v. Playtime Theatres*, the showing of adult movies in specific places in the city was prohibited because of the

secondary effects on the community. This ordinance by the City of Renton was upheld because the city was not concerned with the content of the adult movies, merely the effects of them on the places around the theatre. However, hate speech is largely controversial because of its content. In *R.A.V. v. St. Paul*, it was found that the ordinance cited to arrest R.A.V was unconstitutional because it condemned expression of ideas partially based on their content, however disrespectful they may be to the targeted group.

In *R.A.V. v St. Paul*, it was held that free speech cannot be prohibited based solely on the subject it addresses. R.A.V was initially arrested for violating a local bias ordinance. However, it was found that this ordinance was tailored to protect groups previously discriminated against. For example, it prohibited offensive speech against African Americans but not against the Ku Klux Klan. Because of this, the ordinance was considered discriminatory, and therefore, unconstitutional.

After examining all these prior cases, it becomes clear that colleges cannot regulate hate speech without unnecessary restrictions on free speech, or demonstrating discrimination themselves. Colleges are concerned with the protection of minority groups often discriminated against, such as Jews, Muslims and African Americans. However, by suggesting to only prohibit free speech regarding those subjects, colleges are directly contradicting a decision made by the Supreme Court that it is unconstitutional, and furthermore, discriminatory, to prohibit free speech based on its subject, or its content. Colleges, just like the government, cannot outlaw certain expressions of ideas because they do not agree with them.

Simply restricting free speech also may not create a higher quality educational atmosphere. The suppression of ideas, however offensive they may be, takes away students opportunities to confront ideas they may disagree with, debate their disagreements and opinions,

and to learn from other people's perspectives. Furthermore, restricting hate speech on college campuses cannot change the fact that hate speech is a regular occurrence in the United States, and learning how to combat and confront it is an important life skill.

This does not mean that colleges have no power to protect their students. As found in *Virginia v. Black*, if a "true threat" is spoken, or a statement meant to intimidate an individual or group of individuals, then it is not protected by the First Amendment. As shown in *Chaplinsky v. New Hampshire*, if the statement is a one-on-one confrontation intended to provoke violence, then it is not protected by the First Amendment. It's also important to know that in *R.A.V v. St. Paul*, the act of burning a cross on a neighbor's property was illegal, it was simply the law. *St. Paul* used to prosecute *R.A.V* that was found defective. Colleges still have power to protect students from abuse and fear when the situation calls for it.

This does not mean that colleges cannot take steps to create a safe and welcoming environment for all. Colleges can continue to promote diversity, denounce bigoted viewpoints, encourage peaceful protest of contested views, and raise awareness on issues pertaining to hate speech. Colleges can continue to demonstrate how hate speech goes against the environment they wish to create, and promote the respect they would like students to have towards each other. By doing so, colleges can inspire social change, and can decrease the amount of hate speech happening in the future without restrictions.

The First Amendment protects all expressions of speech because it is against the United States ideals to allow the government to choose what is okay to say and what isn't. This also pertains to colleges. By allowing colleges to stifle all speech that they consider "offensive", the United States will start down a slippery slope in which free speech may be prohibited by authorities whenever they find it insulting. Colleges have a multitude of options and alternatives

to promote respect and denounce hate and bigotry that does not involve restrictions of free speech. If colleges take advantage of these options, they may find that they can influence their students to create a more respectful world for everyone.

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