



## FACULTY SENATE MINUTES

|                      |  |                |             |                  |                  |
|----------------------|--|----------------|-------------|------------------|------------------|
| <b>Meeting Date:</b> | 03/06/2023   | <b>Time:</b>   | 14:45-16:30 | <b>Location:</b> | Culp/Zoom        |
| <b>Next Meeting:</b> | 03/20/2023   | <b>Scribe:</b> |             |                  | Ashley Sergiadis |
| <b>Present:</b>      | Beatty, Kate; Blackhart, Ginni; Blackwell, Roger; Blevins, Emily; Boa, Jen; Bray, Sheree; Burns, Bracken; Byington, Randy; Daniels, Jean; Desjardins, Matthew; Digavalli, Siva; Dowling-McClay, KariLynn; Easterday, Mary; Ecay, Thomas; Elangovan, Saravanan; Fisher, Stacey; Foley, Virginia; Foreman, Robin Ann; Frye, Steph; Funk, Bobby; Garris, Bill; Gentry, Retha; Gray, Jeffrey; Greene, Amy; Harnois-Church, Patricia; Hauldren, Kacie; Hawthorne, Sean; Hemphill, Bill; Hendrix, Stephen; Herrmann, Andrew; Hounshell, Jonathan; Kim, Sookhyun; Kruppa, Michael; Landis, Ryan; Lyons, Reneé; Mamudu, Hadii; McGarry, Theresa; Nivens, Ryan; O'Neil, Kason; Ramsey, Priscilla; Scott, Dane; Sergiadis, Ashley; Stevens, Alan; Tai, Chih-Che; Thigpen, Jim; Thompson, Beth Ann; Trogen, Paul; Uddin, Moin; Walden, Rachel; Weise, Constanze; Yampolsky, Lev; Youngberg, George; Zahner, Matthew |                |             |                  |                  |
| <b>Absent:</b>       | Chakraborty, Kanishka; Fiuza, Felipe; Mackara, Fred; Schroder, Laurie; Waters, Susan   |                |             |                  |                  |

### Agenda Items

Meeting called to order

1. Celebrations

2. Introductions of Speakers and Guests

3. Announcements

4. Guest Speakers

5. Approval of Minutes

6. Action Items

7. Information Items

8. Old Business

9. New Business

10. Comments from Guest

11. Final Comments/Announcements from Senators

12. Adjourn

### DISCUSSIONS

1. Celebrations

1.1 **Hendrix** celebrated that it is almost Spring Break.

2. Introductions of Speakers and Guests

2.1 Karin Keith, Associate Provost for Faculty

2.2 Allan Forsman, Faculty Ombudsperson

2.3 Dr. Mark Fulks, University Counsel and Chief Compliance Officer

3. Announcements

3.1. The Executive Committee will next meet with President Noland on Friday, March 10. Please submit questions by Tuesday, March 7.



## DISCUSSIONS

- 3.2 Sergiadis announced events celebrating the work of faculty using Open Educational Resources (OER). All events are in Sherrod Library 309. On March 7, the OER Champions Reception (drop-in event with refreshments) will be held from 10 AM to 12 PM. On March 8, Senator Weise and her colleague will be speaking at 1:00 PM and Senator Uddin and his colleagues will be speaking at 2:00 PM on their experiences using OER.

### 4. Guest Speakers

#### 4.1 Dr. Allan Forsman, Faculty Ombudsperson

*Slides from the presentation are attached at the end of the minutes. The slides provide the content of the presentation. The following information represents the question-and-answer portion of the presentation.*

**Byington:** We used to have a quasi-position among the faculty called navigators (e.g., Doug Burgess, Jim Bitter). Should we refer issues to the ombudspersons rather than using the old informal network of navigators?

**Forsman:** It would be best to refer to the ombudspersons.

#### 4.2 Dr. Mark Fulks, University Counsel & Chief Compliance Officer – Freedom of speech on college campuses

*Slides from the presentation are attached at the end of the minutes. The slides provide the content of the presentation. The following information represents the question-and-answer portion of the presentation.*

**Funk:** Every year a guy comes to campus (Borchuck Plaza) and screams at the students calling them whores, etc. Why does he get to do this every year? He is confrontational.

**Fulks:** It is protected speech.

**McGarry:** Will counter-protesters who have not made prior arrangements with the campus be asked to leave?

**Fulks:** We won't ask them to leave, but we may escort them to another place. If a student group reserves a space, then they receive priority over that space. If people came to protest that student group, then the university would provide them with a space so everyone's voices can be heard. (Example: If a student group was showing a film inside a classroom, protesters may be asked to set up outside the building.)

**Ramsey:** What is a microaggression?

**Boa, Walden, and Easterday** provided the following resources:

- <https://www.npr.org/2020/06/08/872371063/microaggressions-are-a-big-deal-how-to-talk-them-out-and-when-to-walk-away>
- <https://sph.umn.edu/site/docs/hewg/microaggressions.pdf>
- <https://www.psychologytoday.com/us/basics/microaggression>

**McGarry:** What if your subject matter is teaching students how words affect other people?

**Fulks:** It is allowed if it is a legitimate part of the course that you are teaching. For example, critical race theory is used to interpret the constitution's legal text, so this topic can be taught in courses such as constitutional law.

**Boa:** The slides state: "a university cannot prohibit students or faculty from using words that some consider to be examples of microaggressions." Does this mean that we can allow students to say racist things in class?

**Walden:** It feels hard/wrong to tell a minority student being subjected to racist hate speech that it hasn't happened "enough times" yet or isn't and implied threat of violence (in response to the definition of harassment as severe, pervasive, objectively offensive). Senators **Easterday, Boa, Digavalli** agreed.

**Boa:** How does this play into Title IX? What if the "hate speech" has to do with someone's sexual orientation or gender identity?

**Fulks:** It has to be severe, pervasive and objectively offensive. There is not a well-defined test. Marlena Rogers and the Compliance Staff review these matters and decide if something needs an investigation and/or rises to the level of discrimination. Reports are taken very seriously. They relay those with a complaint to the University's resources (e.g., counseling) to help them deal with the situation.



## DISCUSSIONS

**Daniels:** What are the criteria/standards used by the ETSU team to decide if it is a “true threat”?

**Fulks:** Mark Fulks, Michelle Byrd as well as representatives from Public Safety and Counseling are on the team. They gather and review information from public safety, housing, student life and enrollment, legal counsel, etc. to decide if there is a threat.

**Yampolsky:** I noticed the administration tends to cite the clause “faculty must not introduce matter not related to the subject” without also citing that such introduction has to constitute a “substantial portion” of instruction. Could you comment on this?

**Fulks:** I would apply those together. If we get a complaint, we would look at the whole context in which its presented.

**Byington:** If someone is injured at an event, what would the liability look like?

**Fulks:** It will depend on how they got injured. If a fight happens, the people who fought are liable. The police do not have an obligation to step in. The university will generally not be liable. The university could be liable if they completely abandoned all responsibility of imposing a safe meeting space (e.g., asking how many people will be at the event and providing a reasonable space for the crowd). Once people are on campus, the individual who causes the injury will be the one responsible.

**Hemphill:** Do we have more control of the area around the University School? If we see something, who do we report it to?

**Fulks:** Depending on what it is, you can call University Counsel or Public Safety (if a bigger concern). We can protect minors from obscenity. If it does not fall under obscenity, then we can ask folks to express themselves in a reasonable time and place. For example, the images from the anti-abortion groups do not count as obscenity. However, directing the protests away from University School may be a solution.

**Beatty:** Is it harassment if someone makes the same derogatory comments to multiple people (e.g., targeting individuals with rainbow flags)?

**Fulks:** If thirty people reported that the same person makes comments when they wore a rainbow flag, we would review the case. It could be harassment directed towards a group. However, these types of comments are often not reported. Similarly, we could probably do something if someone came into the Pride Center every day and made comments or protested (for example).

**Foley:** Can a student be held accountable for creating a hostile work environment?

**Fulks:** I don't know if it would be called a hostile work environment. We would call it harassment. There are actions that are less disciplinary that can be taken. For example, we might have Dr. Byrd's area intervene and take whatever steps that we can to correct that person's behavior. Then, we take action if they are persistent.

### 5. Approval of Minutes

**Blackhart** questioned whether there was an objection to approving the minutes from the 02/20/2023 meeting.

**Sergiadis** noted that Senator Nivens and Guest Speaker Hagemeier submitted corrections.

**No Objection: Minutes Approved**

### 6. Action Items

None.

### 7. Information Items

7.1 Notes from Executive Committee meetings with Provost McCorkle – Blackhart

7.2 Faculty Senate elections & officer elections – Blackhart

President Blackhart emailed Faculty Senate members of each college about Senators' terms that are expiring and the number of vacancies within each college. College elections need to be done by the end



## DISCUSSIONS

of March. In April, Faculty Senate will elect Vice President, Secretary, and Treasurer/COO. The officers in those positions will share more information about these positions at the next meeting. Elections for the at-large members of the Executive Committee will happen in the fall.

For the Faculty Trustee, voting will start on Monday, March 20<sup>th</sup> and end on March 31. The information on the nominees featured on the Faculty Senate page is still available. Please encourage faculty to vote for the Faculty Trustee as it is a very important position. Faculty eligible to vote are all full-time faculty as defined by ETSU (academic, fiscal, clinical, research, University School, post-retiree, VA academic faculty).

### 7.3 Reports from University Committees

### 7.4 Other Items of Discussion from the Floor

#### Taskforce on Academic Organization and Structure – Foley

- Senator Foley is co-chairing the committee with Dr. Hagemeier. Invitations to serve on the committee went out last Friday (March 3). Every college is represented. President Blackhart will represent Faculty Senate on the committee. The first meeting will happen this Friday (March 10). The committee will review if ETSU is organized in a way that makes sense for student access and progression, faculty collaboration, research/service opportunities, etc.
- The deans asked Provost McCorkle and President Noland for possible examples of reorganization, which the Provost and President provided to them. However, there is no planned outcome for this committee. Nothing has been predetermined.
- There will be plenty of opportunities for faculty to provide the committee with feedback. Any feedback can be emailed to Drs. Foley or Hagemeier. Before the semester ends, there will be a town hall meeting.
- This type of work has not been done since the 1980s. ETSU is at a good time and place to review the structure. Chapter 125 Part II discussed looking at the organization.
- Faculty Senate Executive Committee previously asked Provost McCorkle whether the institution should consider reorganization prior to the dean searches for Arts/Sciences and Business/Technology. She said that this had been discussed at the administrative level and the new deans will be able to help guide us through that process. They also told the deans when they were selected that this process would likely happen.
- Colleges' or programs' ability to be accredited should not be impacted by the reorganization.

**McGarry** provided feedback and questions she collected prior to the meeting:

- In the College of Arts and Sciences, there is already speculation that a split will happen between the STEM disciplines and humanities. What kinds of changes might other colleges have? For example, will business and technology split? What kind of changes may occur in the health sciences?
- Are we likely to see specific disciplines move to different colleges? Would advertising move to business and technology? Where does digital media or digital animation belong in a contemporary university?
- How does the potential cost of adding the number of needed administrators (e.g., more deans, chairs) affect the budget for hiring more faculty?

**Lyons:** How did you determine who to invite from the faculty onto the committee?

**Foley:** We wanted college representation. In some cases, the number of the representatives matches the size of the college (e.g., Arts and Sciences has more representatives).

**Hagemeier:** The deans suggested names knowing that college deans would not be on the committee. If there is a lot of variability in the college, then you have multiple representatives.

**Foley:** We did not take all the deans' suggestions.

**Trogen:** Who do we contact with observations about reorganization?

**Hagemeier:** Any feedback can be emailed to Drs. Foley or Hagemeier.



## DISCUSSIONS

8. Old Business  
None.

9. New Business  
None.

10. Comments from Guests

10.1 The Provost website has information about divisive concepts and how to address that in class.

11. Final Comments/Announcements from Senators

11.1 **McGarry** raised a question on dual enrollment to be discussed at the next meeting. Some instructors wanted to raise the issue of faculty having non-optimal experiences with dual enrollment. High school students have usually worked well in general education courses. However, she and others have noticed a decay in quality since the pandemic. Please talk to your constituents as to whether this is (not) an issue for them.

12. Adjourn

**Motion to Adjourn:**  
**Second:**  
**Meeting Adjourned**

*Please notify Senator Ashley Sergiadis ([sergiadis@etsu.edu](mailto:sergiadis@etsu.edu), Faculty Senate Secretary, 2022-2023) of any changes or corrections to the minutes.*

*Note: Meeting minutes are not a word-for-word transcript. Statements and questions by Senators are edited and summarized for clarity.*

# Meeting with Provost McCorkle

February 21, 2023

## Questions for Provost McCorkle

### Question #1

I'd like to learn more about the role and voice of tenured faculty in the determination and implementation of departmental mergers (voluntary or involuntary). I do have questions about faculty's role in shared governance when a departmental merger is announced to the department in a top-down "this has already been decided" manner and when faculty in the department may not be deeply supportive of a merger/dissolution or perhaps do not see a compelling rationale to make such a move. Do faculty in healthy and cohesive departments have meaningful agency or votes in this decision-making process since we create, advocate, and daily work for the mission and vision of the departments that we serve in?

### Answer to Question #1

Philosophically, Provost McCorkle believes that any decision that involves faculty should allow faculty input. Faculty have primacy in some areas like tenure and promotion and curriculum. She referred to the [2021 AAUP Shared Governance Survey](#), which discusses how different institutions are handling shared governance. Regarding department structure, faculty need to be involved even though the final structural decision is by the dean. All options should be considered and the decision should not come as a surprise to the faculty.

Recently, Clemmer College decided to merge the departments Curriculum & Instruction and Educational Foundations & Special Education. The Dean intended on starting with department conversations and discussion, but the perception was that the decision was already made. She has learned from this experience. Senators expressed that the messaging of the departments "dissolving" added to the anxiety of the faculty around the situation. Provost McCorkle explained that the word dissolve was used to indicate that there was not a primary department taking on a less functioning department but that the departments were equal. Senator Foley expressed that Clemmer College has had a history of decisions made without the faculty. Senator Nivens stated that backing up the timeline of this merger has helped.

Senator Blackhart asked how/why do department mergers usually happen and if the process is to usually consult faculty. Provost McCorkle mentioned some common scenarios: (1) a chair departs and the need to merge is discussed, (2) the departments were split or combined in the past, (3) departments are close in space and combine, (3) departments need to share resources like a department chair.

### Question #2

Please provide an update on plans for the search for the Dean of the College Clinical and Rehabilitative Health Sciences.

### Answer to Question #2

The search will be postponed until the reorganization task force finishes their recommendations (see Question #3). Lynn Williams will remain interim. The search for deans will be a national search like the previous ones.

### Question #3

Related to these questions, rumors are beginning to spread around campus about how colleges might be reorganized. Can you provide any insights to the rumors and where your office is in terms of pursuing a college reorganization on campus?

#### Answer to Question #3

- ETSU will be exploring college reorganization. Provost McCorkle will be discussing college reorganization at Academic Council on Thursday. A formal announcement will be sent to the campus later this week.
- Virginia Foley and Nick Hagemeyer will be co-chairing a task force beginning this spring that will review the organization of our colleges. The task force's work will continue into the fall and conclude with a recommendation for reorganization. If the recommendations are approved, the reorganization would not happen until Fall 2024. Representatives have not been chosen yet. Faculty Senate will be asked to provide one or two nominations to serve on the task force. The Faculty Senate representative cannot be on the Board of Trustees. Senator Foley expressed that they plan on having many opportunities for the campus to give feedback and participate in the process for those not on the task force (e.g., focus groups, town halls, visit to Faculty Senate and colleges). The expectation is that the task force will have some proposed changes.
- College reorganization has been discussed with the deans who support reviewing the structure.
- The **deans asked** for the President and Provost to provide their idea for reorganization. Their ideas included a College of Arts, Social Sciences, and Humanities, a College of STEM, a Health Sciences College (including most departments from Clinical and Rehabilitative Health Sciences and Public Health), Clemmer College of Education (with Sports, Exercise, Recreation, and Kinesiology somewhere else possibly). These ideas by the President and Provost are **NOT** the plan going forward. It was a way to get the conversation started with the deans. The President and Provost want the task force to come up with their own proposal rather than relying on their ideas.
- The goal of the task force is to create a better structure that will better serve our faculty and students, as Chapter 125 Part II discusses. This is not about eliminating positions or programs. The budget should not be the primary driver for decisions. This is not part of the Huron Review.
- A formal announcement of the task force will be made on or before Friday February 24, 2023 by close of business.

### Question #4

Are there any updates from the T&P review committee?

#### Answer to Question #4

Associate Provost Keith recently formed subcommittees to review academic policies (one subcommittee for policies dealing with faculty, one for policies dealing with students, and one for policies dealing with curriculum). The subcommittees have been given their charge and walked through the process. The subcommittees will determine if each policy needs substantial changes, small changes (technical, reformatting), or no changes. They will also identify areas where ETSU does not have a policy but needs one. The policies that the subcommittees have identified as needing substantial changes will be sent to the individuals that it will impact for edits. Once they are revised, the policies will go through the normal policy approval procedure including public comment. Senator Foley commented that we currently rely on TBR policies that do not exist anymore. Senator Hemphill reminded everyone of the important difference of policy versus processes and procedure. Associate Provost Keith has identified some universities with good policies that ETSU can consult: Wichita State University, The University of

Memphis, Tennessee Tech University, University of Virginia. In particular, University of Virginia reviews their policies from an equity lens.

Associate Provost Keith did not want to start the tenure and promotion committee until they were about one month into the policies project. She would like the committee to start their work this spring. She mentioned that it may be possible for individuals on the committee to receive a summer stipend. Senators suggested that the committee start in the fall (i.e., mid-August) rather than have work done over the summer.

### Additional Updates

- The [ETSU Festival of Ideas](#) will include cohosts from Pantsuit Politics Sarah Stewart Holland and Beth Silvers), NY Times Columnist and Best-Selling Author David Brooks, and a panel discussion (The Art of Civil Discourse: A Campus-Community Conversation). Events happen on February 28 to March 2.
- Applications for 1911 Society are due on March 1, 2023. [Encourage your students to apply.](#)
- Nominations for the Distinguished Faculty Awards for 2023 are open. The deadline for submitting nominations is March 29, 2023.
- Spring commencement will be two ceremonies. They are planning for more time in between the ceremonies and ways to shorten speeches. Senator Foley suggested that the SGA President no longer speaks (as the Faculty Senate President also does not speak). She also suggested to shorten the address of the trustee.



# ESTU Faculty Ombudsperson

Allan Forsman, PhD

Dept. of Health Sciences

&

Amber Kinser\*, PhD

Dept. of Communication and Performance

\* - Starting Summer 2023

# The Faculty Ombudsperson Will:

- Listen to faculty concerns and perspectives
- Provide a safe and private place to share issues
- Help faculty explore options for resolving their concerns
- Assist in identifying and interpreting university policies
- Identify university resources related to their concerns
- Facilitate communication or mediate between individuals or groups
- Remain impartial to all parties involved in a conflict
- NOTE: All communication is strictly confidential

# The faculty Ombudsperson will NOT:

- Advocate for an individual's personal position
- Act without consent
- Participate in any formal grievance or appeal
- Keep identifying records

# Common issues and concerns that might be brought to the faculty ombudsperson

(not a comprehensive list)

- Miscommunication between faculty members
- Conflict or struggles with colleagues
- Interpersonal, intercultural and group conflicts
- Concerns about student complaints
- Questions around policies and/or procedures
- Perceived ethical dilemmas
- Perceived unfair treatment
- Perceived retaliation
- Concerns regarding promotion and tenure processes and salary equity
- Workload issues

# Additional Items in the works

Offering department and group workshops on conflict resolution/management and other communication related issues.



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# Freedom of Speech on Campus

Presented to the Faculty Senate  
March 6, 2023



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# PROTECTED SPEECH

# What speech is protected?

Campus Free Speech Protection Act  
Tenn. Const. Art. I, Section 19  
U.S. Const. Amend. 1



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# The First Amendment

The First Amendment prohibits the federal, state, and local governments from passing a law that:

- Establishes religion (**freedom of religion**),
- Prohibits the **free exercise of religion**,
- Abridges the **freedom of speech**
- Abridges the freedom of the press,



# The First Amendment

- Abridges the right of the people to peaceably assemble, or
  - Abridges the right of the people to petition the government for a redress of grievances.
- 
- Academic Freedom falls within the ambit of the First Amendment.



# The First Amendment

The First Amendment protects **speech**

but not **conduct**

unless the conduct is **expressive** and, therefore, entitled to protection.

- **Expressive conduct** is behavior that is designed to convey a message.
- For example, displaying a red flag, flag burning, and wearing black armbands, all done in protest.



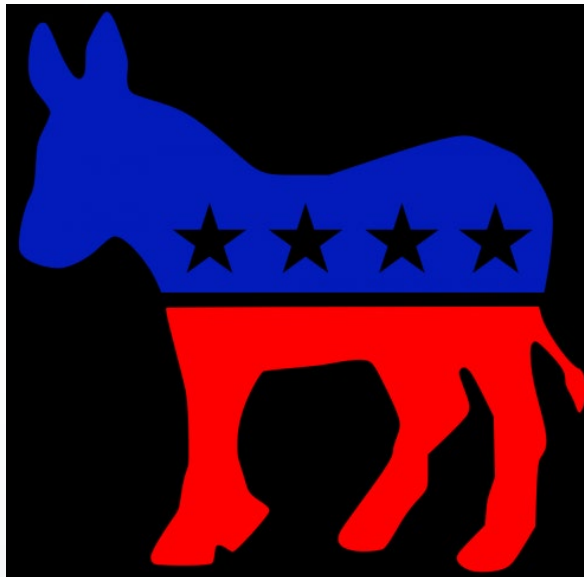
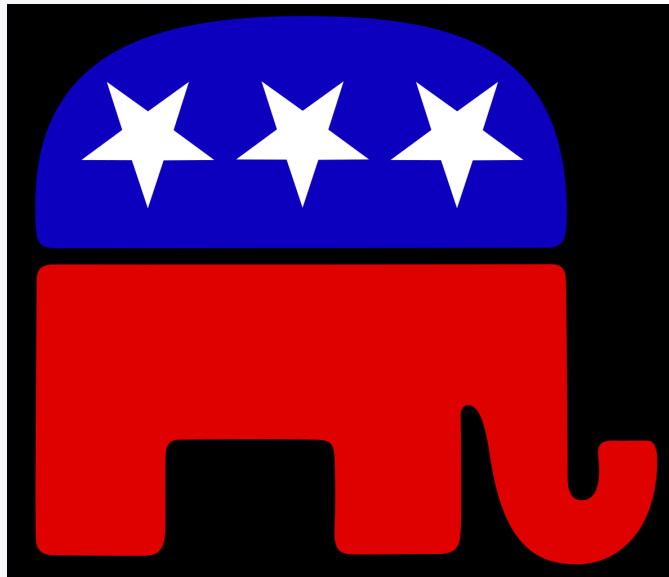
# What speech is protected?

General rule:

Speech and expressive conduct are protected unless it falls within an exception to the First Amendment or is protected by state law.

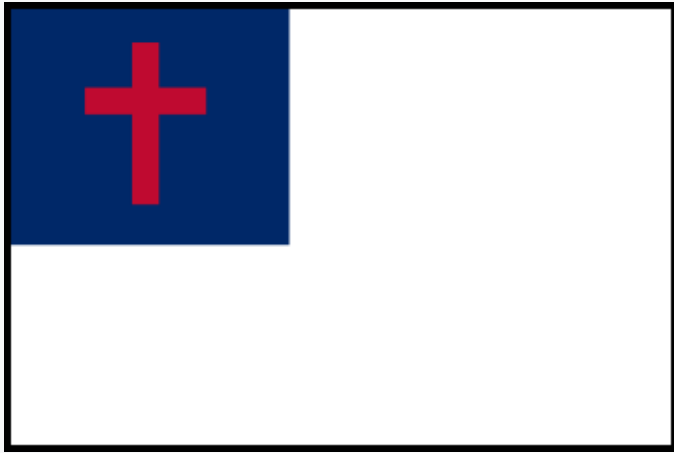


# What speech is protected?



# What speech is protected?

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# What speech is protected?



**David Brooks**  
Best-Selling Author  
& Columnist for the  
NY Times

**Pantsuit Politics**  
Sarah Stewart Holland  
& Beth Silvers,  
Co-Hosts of the  
Acclaimed Podcast,  
Pantsuit Politics

**The Art of Civil Discourse:  
A Campus-Community Conversation**

**WEEK OF  
FEBRUARY 27**

**FESTIVAL OF IDEAS**  
CURIOSITY | CONNECTION | COMMUNITY

Free and open to the public  
[etsu.edu/ideas](https://etsu.edu/ideas)



**BROADWAY**  
AT THE ETSU MARTIN CENTER

**THE SUN WILL COME OUT.**  
**Annie**

**CATS**

**SOLD OUT**  
**Rivendance 25**

**25**  
**CHICAGO**  
YEARS OF  
RAZZLE  
DAZZLE



**MOVIE NIGHT!!!**

Culp Room 219 September 29th 6:30-8:30P.M.

**What is a Woman?**

Movie Popcorn, Candy, and Snacks

TPUSA@ETSU



**YDSA AT ETSU PRESENTS:**

**MARXIST CRITIQUES OF  
INTERSECTIONALITY & INTERSECTIONAL  
CRITIQUES OF MARXISM**

Lecture by Dr. Michael Allen  
Professor, ETSU Dept. of Philosophy

**APRIL 20TH, 2021  
6:00 PM EST**  
VIRTUAL LECTURE & DISCUSSION

Zoom Meeting ID: 943 5909 0937  
Link: <https://bit.ly/3sgJ7Cc>





# What speech is protected?





# What speech is protected?

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**FREE SPEECH ZONE**  
**(Borchuck Plaza)**

# Why do we no longer limit speakers to Borchuck Plaza?

Campus Free Speech Protection Act  
Tenn. Const. Art. I, Section 19  
U.S. Const. Amend. 1



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# Why do we no longer limit speakers to Borchuck Plaza?

The Campus Free Speech Protection Act requires:

- An institution shall maintain the generally accessible, open, outdoor areas of its campus as **traditional public forums** for free speech by students;
- An institution shall not restrict students' free speech only to particular areas of the campus, sometimes known as "**free speech zones**"



# Why do we no longer limit speakers to Borchuck Plaza?

- » These provisions protect students, student groups, and their invited guests.
- University policy allows the general public to reserve and use designated spaces on campus, making them **traditional public forums**.
  - » The University is allowed to impose reasonable time, place, and manner restrictions on all speakers.
  - » Content-based restrictions only to serve a narrowly-drawn compelling state interest.



# The First Amendment



A university **cannot** prevent protesters from having a meaningful opportunity to get their views across in an effective way.



A university **can** impose reasonable time, place, and manner restrictions on protests to prevent disruption to the normal work of the campus, including the educational environment and administrative operations.





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# **STUDENT SPEECH IN THE CLASSROOM**

# What free speech rights do students have in the classroom?

Campus Free Speech Protection Act  
Tenn. Const. Art. I, Section 19  
U.S. Const. Amend. 1



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# Tennessee Campus Free Speech Protection Act



Universities and their faculty shall not require students or other faculty to adopt or to indicate their adherence to beliefs or orthodoxies on any particular political, philosophical, religious, social, or other such subject, although institutions may require students and faculty to conform their conduct to the requirements of law and policy.



# Tennessee Campus Free Speech Protection Act



An institution shall maintain its campus as a *marketplace of ideas* for all students and all faculty in which the *free exchange of ideas* is not to be suppressed because the ideas put forth are thought by some or even by most members of the institution's community to be ***offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed.***



# What free rights do students have in the classroom?

The University must be committed to giving students the **broadest possible latitude** to speak, write, listen, challenge, learn, and discuss any issue.



# What free rights do students have in the classroom?

The University's individual students and faculty are free to make judgments about ideas for themselves, and to act on those judgments **not by seeking to suppress free speech**, **but by openly and vigorously contesting the ideas that they oppose.**



# What free rights do students have in the classroom?



The University **cannot use concerns about civility and mutual respect** to be used as a justification for closing off the discussion of ideas, however offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrongheaded those ideas may be to some students or faculty.



# The First Amendment



A university cannot prohibit students or faculty from using words that some consider to be examples of “**microaggressions.**”



~~A university can sensitize students and faculty to the impact that certain words may have, as part of an effort to create a respectful work and learning environment.~~



# What free rights do students have in the classroom?

Student speech in the classroom is subject to:

- Constitutional time, place, and manner restrictions;
- Reasonable and viewpoint-neutral restrictions in nonpublic forums;
- Content restrictions on speech that are reasonably related to a legitimate pedagogical purpose, such as classroom rules enacted by faculty.



# The First Amendment



A university **can** engage in **content-based evaluation** of faculty and students who are operating within the professional educational context, as long as this evaluation is **based on professional standards or peer assessments of the quality of scholarship or teaching.**

- *The First Amendment does not prevent the university from grading or evaluating faculty performance.*







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# **FACULTY SPEECH IN THE CLASSROOM**

# What free speech rights do faculty have in the classroom?

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# Tennessee Campus Free Speech Protection Act

- Faculty are free in the classroom to discuss subjects within areas of their competence.
- Faculty shall be cautious in expressing personal views in the classroom.
- Faculty shall not introduce controversial matters that have no relationship to the subject taught.



# Tennessee Campus Free Speech Protection Act

- Faculty should not introduce matters in which they have **no special competence or training** and in which, therefore, faculty's views cannot claim the authority accorded statements they make about subjects within areas of their competence.



# Tennessee Campus Free Speech Protection Act

- Most importantly:

**No faculty will face adverse employment action for classroom speech, unless it is not reasonably germane to the subject matter of the class as broadly construed, and comprises a substantial portion of classroom instruction.**



# The First Amendment



A university **can** engage in **content-based evaluation** of faculty and students who are operating within the professional educational context, as long as this evaluation is **based on professional standards or peer assessments of the quality of scholarship or teaching.**

- *The First Amendment does not prevent the university from grading or evaluating faculty performance.*





# The First Amendment



A university cannot prohibit students or faculty from using words that some consider to be examples of “**microaggressions.**”



A university can **sensitize students and faculty** to the impact that certain words may have, as part of an effort to create a respectful work and learning environment.



# The First Amendment



A university cannot engage in **content-based discrimination** against faculty, students, or other speakers or writers who seek to express themselves outside the professional educational context.





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# HATE SPEECH

# What is hate speech and what rules govern it?

Campus Free Speech Protection Act  
Tenn. Const. Art. I, Section 19  
U.S. Const. Amend. 1



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# Hate Speech

A university **cannot** censor speech or punish a speaker merely because a person or group considers it **offensive or hateful**.



- “Hate speech” is not a legally operative term.
- Speech that is described as “hate speech” protected by the First Amendment until it becomes harassment.



# Hate Speech

A university can censor speech or punish a speaker that meets the legal definition of:



- **Harassment** (severe, pervasive, objectively offensive),
- **true threats of violence** (not hyperbole),
- **incitement to imminent lawless action,**





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# UNPROTECTED SPEECH

# The First Amendment

A university can censor speech or punish a speaker that meets the legal definition of:



- **Harassment** (severe, pervasive, objectively offensive),
- **true threats of violence** (not hyperbole),
- or other speech acts that are unprotected by the First Amendment, including:
  - » **incitement to imminent lawless action,**





# The First Amendment

- »defamation (libel & slander),
- »obscenity (appeals to prurient interest, sexual content, lacks serious literary, artistic, political, or scientific value),
- »destruction of property (vandalism),
- »disruption of classes or campus activities (disorderly conduct), Or
- »speech inconsistent with professional standards.





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# **THE UNIVERSITY'S OBLIGATIONS**

# Tennessee Campus Free Speech Protection Act

Public institutions of higher education **shall not stifle freedom of speech and expression** by implementing vague or overbroad **speech codes**, establishing **free speech zones**, imposing unconstitutional **prior restraints** on speech, or **disinviting speakers** based on the anticipated reaction or opposition of others to the content of speech.



# Tennessee Campus Free Speech Protection Act

An institution shall maintain a campus as a **marketplace of ideas** for *all students and all faculty* in which the **free exchange of ideas** is not to be suppressed because the ideas put forth are thought by some or even by most members of the institution's community to be **offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed.**



# The First Amendment

A university **cannot** censor speech or punish a speaker merely because a person or group considers it **offensive or hateful**.



- “Hate speech” is not a legally operative term.
- Speech that is described as “hate speech” protected by the First Amendment until it becomes harassment.



# The First Amendment

A university can censor speech or punish a speaker that meets the legal definition of:



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# The First Amendment

- »defamation (libel & slander),
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- »destruction of property (vandalism),
- »disruption of classes or campus activities (disorderly conduct), Or
- »speech inconsistent with professional standards.



# The First Amendment



A university **cannot** prevent protesters from having a meaningful opportunity to get their views across in an effective way.



A university **can** impose reasonable time, place, and manner restrictions on protests to prevent disruption to the normal work of the campus, including the educational environment and administrative operations.





# The First Amendment



A university cannot impose content-based **speech** restrictions in dormitories.



A university can impose content-neutral **restriction** in dormitories designed to ensure a supportive living environment for students.



# The First Amendment



A university cannot censor or punish some speakers, but not others, for putting up handbills, writing messages in chalk, or engaging in similar acts of expression.

- No selective enforcement.



A university can create general **content-neutral regulations** governing on-campus expression.



# The First Amendment



A university cannot engage in **content-based discrimination** against faculty, students, or other speakers or writers who seek to express themselves outside the professional educational context.



# The First Amendment



A university **can** engage in **content-based evaluation** of faculty and students who are operating within the professional educational context, as long as this evaluation is **based on professional standards or peer assessments of the quality of scholarship or teaching.**

- *The First Amendment does not prevent the university from grading or evaluating faculty performance.*



# The First Amendment



Faculty members may choose to provide students warnings before presenting material that might be offensive or upsetting to them.



A university should not require that faculty provide “**trigger warnings**” before presenting or assigning material that might be offensive or upsetting to students.



# The First Amendment



A university can create “safe spaces” that ensure that individuals feel free to express the widest array of viewpoints, and can support students efforts to self-organize in ways that reflect shared interests and experiences.



A university **cannot use “safe spaces” to censor** the expression of ideas considered too offensive for students to hear.



# The First Amendment



A university cannot prohibit students or faculty from using words that some consider to be examples of “**microaggressions.**”



A university can **sensitize students and faculty** to the impact that certain words may have, as part of an effort to create a respectful work and learning environment.



# The First Amendment

A university can ensure that all student **organizations**, as a condition for recognition and receipt of funding, **be open to all students**, and can impose sanctions on student organizations for conduct if it is not protected by principles of freedom of speech.





# The First Amendment



A university cannot deny recognition to a student organization or impose sanctions against it for the views or ideas expressed by the organization, its members, or its speakers.



# The First Amendment



A university can censor or punish speech over the internet and social media that otherwise is not protected (see the list previously discussed).



A university cannot punish speech over the internet on the ground that it is **offensive**.



# The First Amendment



A university may speak out against especially egregious speech acts and encourage the university community to make its own decisions about what speech acts deserve praise or condemnation.



# The First Amendment



A university should not comment on or condemn every campus speech act that some person considers offensive.





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