

# Free Speech:

## What it is and how it affects the University of Maryland

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# Introduction



# Context Matters

- This area of the law is very fact-specific and context matters.
- This presentation is therefore intended only as a general educational overview of select freedom of speech matters, and not as a definitive statement of how the law would necessarily apply in a specific instance.





# The First Amendment





# FIRST AMENDMENT

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.

# First Amendment: Expressive Activity

- The term “speech” constitutes expression that includes far more than just words to include, without limitation, what a person wears, reads, performs, protests, and more.
- Courts have ruled that the First Amendment protects symbolic expression, such as swastikas, burning crosses, Confederate flags and peace signs because such expression is “closely akin to ‘pure speech.’”



# First Amendment: Hate Speech

- “Hate speech” is thought of as expression which is intended to promote or justify hatred for a particular group of people based on traits such as their race, sex, national origin, or religion.
- Unless it also falls under one of the narrow categories of unprotected speech, hate speech is considered to be protected under the First Amendment, no matter how offensive or hurtful it may be to an individual or group of people.



# First Amendment: Unprotected Speech

- There are certain categories of speech that are not entitled to protection under the First Amendment – UMD may, for example, restrict speech that constitutes a genuine threat of harm to a particular individual or group, amounts to unlawful harassment, is intended and likely to provoke imminent unlawful action, falsely defames a specific individual, or otherwise violates the law.
- These exceptions to free speech have been interpreted narrowly by the US Supreme Court and state and federal courts.





# First Amendment: Other Restrictions

- The right to speak on campus is not a right to speak at any time, at any place, and in any manner that a person wishes.
- UMD may, and does, regulate where, when, and how speech occurs in a reasonable, viewpoint-neutral manner and narrowly tailored to achieve important institutional goals, such as educating students and protecting public safety.



# First Amendment: Forums

- Forum analysis is a means of determining when the government's interest in limiting the use of its property to its intended purpose outweighs the interest of those wishing to use the property for other purposes.
- Accordingly, the extent to which the government can control access to its property and expressive conduct in it depends on the nature of the relevant forum.



# First Amendment: Forums

- **Traditional Public Forums:** The right to limit speech is most circumscribed in traditional public forums – e.g., sidewalks, parks and other areas typically used by the public for purposes of assembly and discussing matters of public concern. The UMD campus is not a traditional public forum.



# First Amendment: Forums

- **Designated or Limited Public Forums:** A portion of the UMD campus has been intentionally opened and designated as a public forum for expressive activities – for example, Hornbake Plaza. In these designated or limited public forums, UMD cannot treat similarly-situated groups differently, and must apply any rules or regulations on a content-neutral basis.





# First Amendment: Forums

- **Non-Public Forums:** areas on campus, such as offices, classrooms, and dorms, that are not made available to the general public and allow for greater restrictions on speech. Accordingly, the First Amendment does not protect an individual's right to disrupt a class, play loud music in dorms late at night, or impede other people's ability to enter and exit buildings.



# Free Speech at UMD



# Free Speech at the University of Maryland

- As an academic institution, the University of Maryland exists for the advancement of knowledge, the pursuit of truth, the development of students, and the promotion of social well-being.
- Freedom of speech – the right to articulate ideas and opinions without interference, retaliation or punishment from the government (including public institutions of higher education) – is a critical component for the attainment of these objectives.



# Free Speech at the University of Maryland

- The ideas of different members of the campus community will often and quite naturally conflict. But it is not the proper role of UMD to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive.
- ***“The university is the home and sponsor of critics; it is not itself the critic.”***

– University of Chicago Kalven Report  
on the University’s Role in Political and Social Action



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# Academic Freedom

- Academic freedom is generally understood to mean the right of faculty in the discharge of their duties to express their ideas and challenge the ideas of others without fear of retribution by their institution. When it comes to those duties, faculty members should abstain from sharing their views of, or voicing their opinion on, matters that are not directly related and otherwise germane to the particular course, subject matter or area of study – generally, no justification to talk about a US presidential election during a math class.



# Academic Freedom

- Outside of those duties, faculty members and other UMD employees do have the ability and right under the First Amendment to express themselves concerning matters of public interest, just like any other citizen. To the extent they wish to do so, UMD employees should engage in any such expressive activities in their individual and personal capacities, without suggesting institutional sponsorship or support of those expressive activities.



# Student Organizations

- Just like students themselves, student organizations at UMD have assembly and speech rights. UMD cannot deny to a group of students recognition as a student organization, so long as they meet established requirements to obtain such recognition.
- Likewise, student organizations can engage in expressive activities on campus consistent with UMD's time, place and manner restrictions for doing so. To do otherwise would be tantamount to viewpoint discrimination and contrary to our obligations under the constitution and law.



# Criticism and Interference

- Although members of the UMD community are free to criticize and contest the opinions expressed on campus, they may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe.
- Freedom of speech does not give one permission to silence the speech of others by shouting, heckling or otherwise disrupting a speech to the point that the speaker cannot continue or that the audience can no longer listen (the so-called heckler's veto).





# Criticism and Interference

- Members of the UMD community can, however, use their own freedom of speech to make their opinions heard, while respecting the free speech rights of others.
- ***“If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.”***

– Justice Louis D. Brandeis, *Whitney v. California*, 1927



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# Reporting Unlawful Expressive Conduct

- UMD encourages any member of the community who feels they've experienced bias, discrimination, harassment and/or threats to promptly report such incidents through one or more of internal platforms/resources established for that purpose.
- Reporting specific incidents of alleged misconduct allows UMD to investigate and address them as may be warranted.
- UMD has a robust anti-retaliation policy that safeguards the right to engage in protected activity.



# Civility and Respect

- Notwithstanding the existing constitutional and legal limitations on restricting the right to free speech, UMD encourages members of the campus community to treat each other with respect, dignity and civility.
- Just because there is a First Amendment right to say something, doesn't mean it should be said.



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# Civility and Respect

- We can all work together to promote and ensure an environment where all students, faculty and staff are welcomed, respected and supported, and where members of our community are tolerant of the ideas and expression of others.



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# University Statement on Free Speech Values



# University Statement on Free Speech Values

“Every member of the campus community has an obligation to support the right of free expression at the university, and to refrain from actions that reduce intellectual discussion. No member shall prevent such expression, which is protected under the constitutions of the United States and the State of Maryland.”



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# University Statement on Free Speech Values

“In addition to the obligation to promote and protect free expression, individuals assume further responsibilities as members of the university. The campus expects each individual community member to consider the harm that may result from the use of slurs or disparaging epithets intended to malign, for example, another’s race, ethnicity, national origin, religion, sex, gender identity, sexual orientation, political affiliation, or physical or mental disability.”



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# University Statement on Free Speech Values

“While legal protections for free expression may sometimes supersede the values of civility and mutual respect, members of the university community should weigh these values carefully in exercising their fundamental right to free expression.”

## Full University Statement:

[policies.umd.edu/statement-free-speech-values](https://policies.umd.edu/statement-free-speech-values)



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**Thank You  
and  
Questions**

