



2019

First-year Writings: Debate on Campus Speech Codes

Logan Servin

Illinois Wesleyan University, lservin@iwu.edu

Emily Chamernik

Illinois Wesleyan University, echamern@iwu.edu

Follow this and additional works at: <https://digitalcommons.iwu.edu/respublica>



Part of the [Political Science Commons](#)

Recommended Citation

Servin, Logan and Chamernik, Emily () "First-year Writings: Debate on Campus Speech Codes," *Res Publica - Journal of Undergraduate Research*: Vol. 24

Available at: <https://digitalcommons.iwu.edu/respublica/vol24/iss1/7>

This Article is brought to you for free and open access by The Ames Library, the Andrew W. Mellon Center for Curricular and Faculty Development, the Office of the Provost and the Office of the President. It has been accepted for inclusion in Digital Commons @ IWU by the the editors of Res Publica at Illinois Wesleyan University. For more information, please contact digitalcommons@iwu.edu.

©Copyright is owned by the author of this document.

First-year Writings: Debate on Campus Speech Codes

Abstract

The debate that students particularly enjoy is the question of whether campus speech codes trench too much on freedom of expression in the effort to regulate harassment and hate speech. We read Erwin Chemerinsky and Howard Gillman's *Free Speech on Campus* (2017) and consider IWU's posting and harassment policies. The fact pattern follows an incident on campus in 2005 when an anonymous student (or students) posted "Homos Go Home" signs on campus the Friday night before Homecoming. Administrators removed the posters the next morning. Did they do the right thing?

Introduction of First Year Writings

The debate that students particularly enjoy is the question of whether campus speech codes trench too much on freedom of expression in the effort to regulate harassment and hate speech. We read Erwin Chemerinsky and Howard Gillman's Free Speech on Campus (2017) and consider IWU's posting and harassment policies. The fact pattern follows an incident on campus in 2005 when an anonymous student (or students) posted "Homos Go Home" signs on campus the Friday night before Homecoming. Administrators removed the posters the next morning. Did they do the right thing?

--- Professor Jim Simeone

Overbreadth and Underbreath Doctrines in Relation to Campus Speech Codes

Logan Servin

In 2005, several offensive posters were displayed around Illinois Wesleyan University's campus stating anti-gay sentiments such as "Homos go Home". The following morning, all the posters were taken down due to university policy, which restricts any "hostile or intimidating verbal or written statements... that adversely affect the mental or emotional health of the individual or group". After reviewing this incident, I hold that Illinois Wesleyan's Policy on Harassment and Intolerance is unconstitutional by violating the underbreath doctrine through content-based distinctions of offensive speech.

To understand the underbreath doctrine, one must read the case *R. A. V. v. St. Paul*. The Court here ruled that a law cannot target only certain viewpoints of a type of speech while leaving others out (Underbreath Doctrine). Specially, in *R. A. V. v. St. Paul*, the law banning only fighting words attached to certain viewpoints, was determined to be too narrowly skewed and in violation of the underbreath doctrine. If the law banned all fighting words, it would have been constitutional.

Illinois Wesleyan's policy defines acts of harassment on the basis of "race or color, their ethnicity, their sexual or religious orientation, or a disability". Under this policy, the same act is punishable when directed at a person because of their race, but not if directed at someone's political affiliation, age, or gender. Since Illinois Wesleyan's policy only punishes

harassment directed at certain groups, it is in violation of the underbreath doctrine and therefore is unconstitutional.

Given Illinois Wesleyan's policy targets only certain types of harassment. Supporters of this policy may argue that such policy is needed to address and eradicate problem areas in our society. Minorities have often been the target of blatant harassment in our history, Illinois Wesleyan should enact content-based regulations to protect its marginalized populations.

However, even if the argument in support of content-based distinctions holds true, Illinois Wesleyan University's Policy on Harassment and Intolerance is still unfair because it is overbroad and infringes on speech that is constitutionally protected. Looking at the university's policy, punishable harassment is defined as "verbal acts, which are intended to insult or stigmatize an individual or group" and goes on to name some examples such as "using slurs, name-calling, and making offensive jokes". As the Supreme Court in *FCC v. Pacifica Foundation* explains "the fact that society may find speech offensive is not a sufficient reason for suppressing it". In order for speech to be suppressed, it must constitute "a true threat" where "the speaker means to communicate a serious intent to commit an act of unlawful violence to a particular individual or group of individuals". In this case, the poster, given offensive, does not constitute any "true threat" by Chemerinsky and Gilman's definition. Because of this distinction, Illinois Wesleyan University was constitutionally wrong to take down the posters, even if

content-based regulation is permitted, based on the current interpretation of First Amendment rights.

Campuses Need Speech Regulations

Emily Chamernik

On college and university campuses, administrations try to strike a balance between protecting free speech and debate and fostering a safe environment for everyone. Illinois Wesleyan University (IWU) is a private university, not subject to the constitutional standards public universities must adhere to. While IWU facilitates free speech and expression on campus to promote critical thinking and creativity, it also enforces harassment and posting policies (for posters and flyers) to promote a safe, diverse atmosphere. IWU's posting policies are fair because they protect groups historically subjected to hate crimes and hate speech, prohibit speech that causes harm and foster an environment where people can freely speak and debate.

First, the signs were intended to attack an already-marginalized group. IWU's harassment policies protect groups that have historically suffered from harassment and rationally warrant protection. The article "Anti-LGBTQ hate crimes rose 3 percent in '17, FBI finds", reveals that despite society's progress in LGBTQ support, hate crimes motivated by anti-LGBTQ bias have remained relatively steady, from a high of 1,256 in 2010 to a low of 1,097 in 2014" and the "total number has increased every year" since 2014. This targeted

group must be protected from physical crimes as well as hate speech that risks inciting physical attack. If widespread hate crimes and speech were to target other demographic categories, those groups would also require protection.

Second, physical harm generally violates society's norms and is usually punished. However, emotional harm is often viewed as a lesser offense. In fact, emotional harm can cause "psychological" and "immediate emotional distress," with symptoms ranging from "fear in the gut to rapid pulse rate and difficulty in breathing, nightmares, post-traumatic stress syndrome, stress disorder, hypertension, psychosis, and suicide" (Chemerinsky and Gillman 84). These symptoms increase the risk of disease and chronic conditions and may lead to acute physical problems such as heart attack or stroke. In the IWU incident, the posters could have caused emotional harm had they remained.

Third, allowing hate speech does not make speech accessible to everyone. Rather, it monopolizes speech. The argument that "the answer to hate speech is more speech" is unrealistic when parties feel threatened, ignored, or voiceless. Hate speech stifles the speech of the marginalized, justifying some restrictions so those voices can be heard.

Free-speech maximalists would argue that IWU's harassment and posting policies are unfair because they limit controversial speech. Free speech maximalists' strongest and most frequently-cited argument is that the answer to hate speech is not censorship but more speech.

Free-speech maximalists believe censoring demeaning, insulting, or hateful speech will lead to abuse of the power. This censorship would inevitably lead to a society where no one can speak freely. Thus, IWU's policies are unfair, and the students who posted the signs were within their rights.

However, first, the rules authorizing the removal of the signs were content-neutral because they designate where posters are allowed and require the organization name (Campus Posting Policy). Violations of these rules alone justify removing the "Homos Go Home" posters. Second, the IWU harassment and posting policies do not target specific beliefs or ideas. These policies are intended to protect all people. Third, as a private institution, IWU has the power to set regulations fostering an environment that ensures student safety, advances its mission, and takes time, place, and manner into consideration.

From women's rights to the labor movement to the Civil Rights Movement, free speech has led to undeniable progress in the United States. However, it can also keep the oppressed silenced. Perhaps same-sex marriage would have been legalized sooner if the LGBTQ community had not been constantly threatened, attacked, and murdered for advocating for their rights--and sometimes for merely existing. Because maximal free speech can silence, colleges and universities have every right to set policies that fulfill their missions and keep their campuses safe.

References

Servin

Illinois Wesleyan University. (n.d.) Student Handbook, Policy on Harassment and Intolerance. Retrieved from <https://www.iwu.edu/judicial/handbook/StudentHandbookPolicies.html#harass>

R.A.V. v. City of St. Paul. (n.d.). Oyez. Retrieved December 16, 2019, from <https://www.oyez.org/cases/1991/90-7675>

Federal Communications Commission v. Pacifica Foundation. (n.d.). Oyez. Retrieved December 16, 2019, from <https://www.oyez.org/cases/1977/77-528>

Chemerinsky, E., & Gillman, H. (2017). Free Speech on Campus: Can Colleges Protect Free Speech and Provide Inclusive Campuses at the Same Time? New Haven: Yale University Press.

Chamernick

Ftizensons, Ted. (2018). "Anti-LGBTQ hate crimes rose 3 percent in '17, FBI finds." Retrieved from <https://www.nbcnews.com/feature/nbc-out/anti-lgbtq-hate-crimes-rose-3-percent-17-fbi-finds-n936166>

Chemerinsky, E., & Gillman, H. (2017). Free Speech on Campus: Can Colleges Protect Free Speech and Provide Inclusive Campuses at the Same Time? New Haven: Yale University Press.

Illinois Wesleyan University. (n.d.) Campus Posting Policy. Retrieved from https://www.iwu.edu/senate/images/Campus_Posting_and_Chalking_Policy.pdf

Illinois Wesleyan University. (n.d.) Student Handbook, Policy on Harassment and Intolerance. Retrieved from <https://www.iwu.edu/judicial/handbook/StudentHandbookPolicies.html#harass>