

INFORM. INSPIRE. DEVELOP CIVIC LEADERS.

THE POLICY CIRCLE

FREE SPEECH





WHAT IS FREE SPEECH?



THE FIRST PORTION OF THE FIRST AMENDMENT "ALLOWS INDIVIDUALS TO EXPRESS THEMSELVES WITHOUT INTERFERENCE OR CONSTRAINT BY THE GOVERNMENT."

ARTICLE 19 OF THE UN'S DECLARATION OF HUMAN RIGHTS SAYS, "EVERYONE HAS THE FREEDOM OF OPINION AND EXPRESSION; THIS INCLUDES FREEDOM TO HOLD OPINIONS WITHOUT INTERFERENCE AND TO SEEK, RECEIVE AND IMPART INFORMATION AND IDEAS"

FREEDOM OF EXPRESSION IS CONSIDERED CENTRAL TO A VIBRANT DEMOCRACY. SILENCING IDEAS THAT DO NOT ALIGN WITH OUR OWN PREVENTS "A FLOURISHING, OPEN MARKETPLACE OF IDEAS" THAT UNDERLIES THE EXCHANGE OF IDEAS, SELF-DETERMINATION, AND FREEDOM.



FACTS TO KNOW



"LIKE ALL GUARANTEES OF THE BILL OF RIGHTS, THE FIRST AMENDMENT'S FUNDAMENTAL GUARANTEE OF 'FREEDOM OF SPEECH, AND OF THE PRESS' LIMITS ONLY THE ACTIONS OF THE GOVERNMENT (FEDERAL, STATE AND LOCAL), NOT THE ACTIONS OF PRIVATE INDIVIDUALS, ORGANIZATIONS OR BUSINESSES.

MOST MAJOR ONLINE PLATFORMS ORIGINALLY "PREFERRED TO MODERATE AS LITTLE CONTENT AS POSSIBLE," BUT TODAY "COMPANIES SUCH AS FACEBOOK EMPLOY THOUSANDS OF MODERATORS AND USE ARTIFICIAL INTELLIGENCE AND OTHER TECHNOLOGY TO KEEP TABS ON WHAT THEIR USERS POST." BETWEEN AUGUST 2019 AND FEBRUARY 2021, NEGATIVE VIEWS OF BIG TECH COMPANIES AMONG AMERICANS INCREASED FROM 33% TO 45%, AND THE SHARE OF AMERICANS WHO WANT GOVERNMENT TO REGULATE TECH FIRMS INCREASED FROM 48% TO 57%.

HATE SPEECH, "SPEECH THAT EXPRESSLY DENIGRATES INDIVIDUALS ON THE BASIS OF SUCH CHARACTERISTICS AS RACE, RELIGION, GENDER, NATIONAL ORIGIN, AND SEXUAL ORIENTATION," IS NOT SUBJECT TO REGULATION AS IT "DOES NOT CONSTITUTE LOW VALUE SPEECH" BASED ON PAST SUPREME COURT RULINGS. THIS IS THE CASE FOR ENTERTAINMENT, VULGARITY, BLASPHEMY, AND EVEN VIOLENT VIDEO GAMES, ALTHOUGH THERE IS AN EXCEPTION FOR DISCRIMINATION. ACCORDING TO PROFESSOR EUGENE VOLOKH OF UCLA SCHOOL OF LAW, "WHEN SPEECH IS 'SEVERE OR PERVASIVE ENOUGH TO CREATE A 'HOSTILE OR OFFENSIVE ENVIRONMENT' ...SUCH SPEECH BECOMES A FORM OF DISCRIMINATION."

"LOW" VALUE SPEECH, WHICH INCLUDES DEFAMATION, OBSCENITY, AND THREATS, IS NOT PROTECTED BY THE FIRST AMENDMENT. NEW YORK TIMES V. SULLIVAN (1964) DETERMINED THAT DEFAMATION IS NOT PROTECTED WHEN IT DAMAGES A PERSON'S REPUTATION AND WAS DONE INTENTIONALLY WITH MALICE. OBSCENITY AND CHILD PORNOGRAPHY ARE ALSO NOT PROTECTED, BASED ON RULINGS IN MILLER V. CALIFORNIA (1973) AND NEW YORK V. FERBER (1982), RESPECTIVELY.

➤ GOVERNMENT INVOLVEMENT ◀



THE ROLE OF GOVERNMENT IN FREE SPEECH MATTERS IS LIMITED PRIMARILY TO PROTECTING ITS CITIZENS' CONSTITUTIONAL RIGHTS. INTERPRETATION OF THE FIRST AMENDMENT IN SPECIFIC CASES IS LEFT TO THE JUDICIARY. ACCORDING TO THE CONSTITUTION CENTER, "ALTHOUGH THE FIRST AMENDMENT SAYS 'CONGRESS,' THE SUPREME COURT HAS HELD THAT SPEAKERS ARE PROTECTED AGAINST ALL GOVERNMENT AGENCIES AND OFFICIALS: FEDERAL, STATE, AND LOCAL, AND LEGISLATIVE, EXECUTIVE, OR JUDICIAL."

WITHOUT FIRST SATISFYING "A VARIETY OF STANDARDS AND TESTS THAT HAVE BEEN ESTABLISHED BY THE SUPREME COURT OVER THE PAST CENTURY," THE GOVERNMENT IS VERY LIMITED IN ITS ABILITY TO RESTRICT FREE SPEECH. LAWS RESTRICTING THE CONTENT OF SPEECH USUALLY VIOLATE FIRST AMENDMENT RIGHTS BECAUSE SUCH LAWS "DISTORT PUBLIC DEBATE AND CONTRADICT A BASIC PRINCIPLE OF SELF-GOVERNANCE: THAT THE GOVERNMENT CANNOT BE TRUSTED TO DECIDE WHAT IDEAS OR INFORMATION 'THE PEOPLE' SHOULD BE ALLOWED TO HEAR."

THE GOVERNMENT CAN IMPOSE "TIME, PLACE, AND MANNER" RESTRICTIONS, SUCH AS REQUIRING PERMITS FOR MEETINGS. THE GOVERNMENT IS ALSO ALLOWED TO INTERVENE WHEN A PROTEST "CROSSES THE LINE FROM SPEECH TO ACTION." FOR THE MOST PART, HOWEVER, FREEDOM OF SPEECH IS SEEN AS NECESSARY TO SELF-GOVERNMENT BECAUSE IT "GIVES THE AMERICAN PEOPLE A 'CHECKING FUNCTION' AGAINST GOVERNMENT EXCESS AND CORRUPTION."

CAMPAIGN CONTRIBUTIONS HAVE BEEN INCLUDED AS A FORM OF FREE EXPRESSION, BUT WHETHER AND HOW THE GOVERNMENT CAN "CONSTITUTIONALLY RESTRICT POLITICAL EXPENDITURES AND CONTRIBUTIONS IN ORDER TO 'IMPROVE' THE DEMOCRATIC PROCESS" REMAINS UNDECIDED. GOVERNMENT EFFORTS TO "LIMIT THE IMPACT OF MONEY IN THE POLITICAL PROCESS HAVE BEEN HELD UNCONSTITUTIONAL," AS CONTRIBUTIONS ARE CONSIDERED FIRST AMENDMENT RIGHTS OF FREE EXPRESSION. SOME CONTINUE TO ARGUE THAT "THE NEED TO PREVENT WHAT THEY SEE AS THE CORRUPTION AND DISTORTION OF AMERICAN POLITICS CAUSED BY THE EXCESSIVE INFLUENCE OF A HANDFUL OF VERY WEALTHY INDIVIDUALS AND CORPORATIONS IS A SUFFICIENTLY IMPORTANT GOVERNMENT INTEREST TO JUSTIFY LIMITS."





➤ FRAMING THE ISSUE ◀



CANCEL CULTURE IS "THE POPULAR PRACTICE OF WITHDRAWING SUPPORT FOR (CANCELING) PUBLIC FIGURES AND COMPANIES AFTER THEY HAVE DONE OR SAID SOMETHING CONSIDERED OBJECTIONABLE OR OFFENSIVE." MANY YOUNG AMERICANS SAY IT IS IMPORTANT TO HOLD OTHER ACCOUNTABLE FOR THEIR ACTIONS AND WORDS, BUT MANY ALSO EXPRESS "SERIOUS CONCERN FOR CANCEL CULTURE'S IMPACT ON SOCIETY" IN TERMS OF CONFORMISM, CENSORSHIP OF IDEAS, AND PUBLIC SHAMING AND OSTRACISM.

BIG TECH COMPANIES "HAVE BECOME INDISPENSABLE FOR THE SPEECH OF BILLIONS." THIS MEANS THESE PLATFORMS "HAVE ENORMOUS POWER AND INFLUENCE OVER PUBLIC DISCOURSE IN OUR NATION," BEGGING THE QUESTION: "SHOULD THEY HAVE UNLIMITED AUTHORITY TO DECIDE FOR THEMSELVES WHO CAN AND CANNOT SHARE THEIR VIEWS WITH OTHER AMERICANS ON THESE EXTRAORDINARILY POWERFUL MEANS OF COMMUNICATION?" MANY CONCERNED CITIZENS "FEAR THAT THESE ONLINE PLATFORMS HOLD OUTSIZED POWER OVER PUBLIC DISCOURSE BECAUSE SO MUCH SPEECH FLOWS THROUGH THEM."

MISINFORMATION SPREADING ON SOCIAL MEDIA IS A CHALLENGE FOR FREE SPEECH RIGHTS. UNLESS FRAUDULENT NEWS CROSSES "SPECIFIC LEGAL RED LINES," SUCH STORIES "ARE NOT ILLEGAL, AND OUR GOVERNMENT DOES NOT HAVE THE POWER TO PROHIBIT OR CENSOR THEM." SOME POINT TO THIS AS THE REASON TRUST IN INFORMATION SOURCES IS AT RECORD LOWS.

IN PUBLIC SCHOOLS, DISRUPTIVE SPEECH CAN BE PROHIBITED, BUT HOW SCHOOLS HSOULD ADDRESS SUCH SPEECH THAT ORIGINATES OFF CAMPUS IN THE AGE OF SOCIAL MEDIA RAISES MORE QUESTIONS. ON COLLEGE CAMPUSES, SOME THINK POLICING SPEECH IS UNCONSTITUTIONAL WHILE OTHERS ARGUE RESTRICTIONS ARE NECESSARY TO DETER HATE SPEECH.





SOLUTIONS



POLICYMAKERS ON A BIPARTISAN BASIS HAVE CALLED TO BREAK UP BIG TECH:



OTHERS THINK THIS MAY LEAD TO GOVERNMENT OVERREACH, AND WOULD LIKE TO SEE MORE A CHANGE IN TARGETED AD MODELS THAT CONTRIBUTE TO CONTROVERSIAL AND INFLAMMATORY CONTENT

OTHER OPTIONS TO REGULATE BIG TECH COMPANIES INCLUDE STRENGTHENING USER PRIVACY PROTECTIONS, AND EVEN “SELF-REGULATION EFFORTS OR THE DEVELOPMENT OF INTERNAL ETHICAL CODES BY THE TECH COMPANIES.” SUCH EFFORTS WOULD NEED TO BE ENFORCED; FOR EXAMPLE, A NUMBER OF MAJOR PLATFORMS ENDORSED THE SANTA CLARA PRINCIPLES ON TRANSPARENCY AND ACCOUNTABILITY IN CONTENT MODERATION IN 2019.

INDIVIDUALS ALSO HAVE THE POWER TO PROTECT THEMSELVES; BECAUSE OF THE EROSION OF TRUST IN THE MEDIA AND SOCIAL MEDIA COMPANIES, MANY BELIEVE INCREASING THEIR INFORMATION LITERACY IS THE BEST DEFENSE AGAINST MISINFORMATION.

➤ WHAT YOU CAN DO ◀

MEASURE -
DO YOU KNOW THE STATE OF
FREE SPEECH IN YOUR
COMMUNITY OR STATE?
WHAT ARE YOUR ALMA
MATER'S POLICIES?



IDENTIFY -
WHO ARE THE BOARD MEMBERS
DETERMINING POLICY AT YOUR
ALMA MATER OR LOCAL
EDUCATIONAL INSTITUTIONS?
WHAT STEPS HAVE YOUR
STATE'S OR COMMUNITY'S
ELECTED AND APPOINTED
OFFICIALS TAKEN?



REACH OUT -
FIND ALLIES IN YOUR
COMMUNITY OR IN NEARBY
TOWNS AND ELSEWHERE IN
THE STATE.
FOSTER COLLABORATIVE
RELATIONSHIPS WITH LOCAL
BUSINESSES, COMMUNITY
ORGANIZATIONS, AND SCHOOL
BOARDS.



PLAN -
SET MILESTONES BASED
ON YOUR STATE'S
LEGISLATIVE
CALENDAR OR LOCAL
COMMUNITY CALENDAR.



EXECUTE -
RE-READ THE BILL OF RIGHTS AND THE
CONSTITUTION. EXAMINE **OPENMIND**
AND WHETHER OR NOT IT COULD BE A
GOOD FIT FOR USE IN YOUR CHURCH,
SCHOOL, WORKPLACE, OR AT HOME.
ENGAGE WITH COLLEGE STUDENTS YOU
KNOW. KEEP UP WITH POLICIES AT YOUR
ALMA MATER, AND DETERMINE
WHETHER OR NOT YOU SUPPORT ITS
FREE SPEECH POLICIES.

