N✳ C✳MMENT

Public Universities' Social Media Use and the First Amendment

FIRE

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Executive Summary

In October 2019, Facebook founder and chief executive officer Mark Zuckerberg spoke at Georgetown University, extolling the virtues of freedom of expression and noting in particular the importance of college students' ability to "express who they were and what mattered to them," including through "challeng[ing] some established ways of doing things on campus."[1]

Because Facebook is a private entity, the First Amendment—which only limits government actors—does not require it to honor expressive freedom. Zuckerberg's endorsement of freedom of expression as a principle is a welcome and encouraging development.

It is, however, at odds with the fact that Facebook provides governments the tools to censor. These actors include public universities and colleges which are bound by the First Amendment—those very campuses where students have "challenged some established ways of doing things."

These tools include Facebook's automated content filters, which allow state institutions to automatically "hide" users' comments if they contain words included on Facebook's undisclosed list of offensive words or the government actor's customized list of prohibited words. These tools enable public universities—and other government actors—to quietly remove critical posts, transforming the Facebook pages into less of a forum and more of a vehicle for positive publicity.

This censorship has deleterious effects on campus and public discourse. Using public records requests, FIRE surveyed over 200 public universities and colleges across 47 states and the District of Columbia. Half of the surveyed institutions choose to use Facebook's "strong" profanity filter, and nearly a third—55, or 27.8%—use the medium filter. This means that 77.4% of surveyed institutions choose to employ a blacklist of prohibited words not disclosed to the public.

Additionally, nearly a third of the universities surveyed (59, or 30.3%) use a custom blacklist, collectively censoring 1,825 unique words and phrases. These range from familiar profanities to words relating to matters of local and national concern—for example, blocking animal rights activists' criticism of food vendors, curbing discussion of what to do about a campus Confederate monument, and

shielding criticism of itinerant preachers, controversial faculty, politicians, and sports teams.

Even without these tools, public actors can prune their Facebook comments, manually hiding comments to manipulate and shape the apparent public discourse. Wright State University, for example, deleted comments supporting a faculty strike from its Facebook page, leaving behind a community "forum" that largely (and falsely) appeared supportive of the university's administration and critical of striking faculty.

Because Facebook doesn't alert a user when their post has been removed, or tell the public that comments have been censored, these commenters (and other users) may never know their words have vanished.

Further, both Facebook and Twitter allow government actors to block members of the public from participating in these public forums.

These automated methods of censorship are not only contrary to a commitment to freedom of expression, but also provide government actors with tools that—in light of recent federal court rulings concerning President Trump's Twitter feed—violate the government actors' legal obligations under the First Amendment.

Half of the surveyed institutions choose to use Facebook's strong profanity filter and 27.8% use the medium filter.

■ Strong filter   ■ Medium filter

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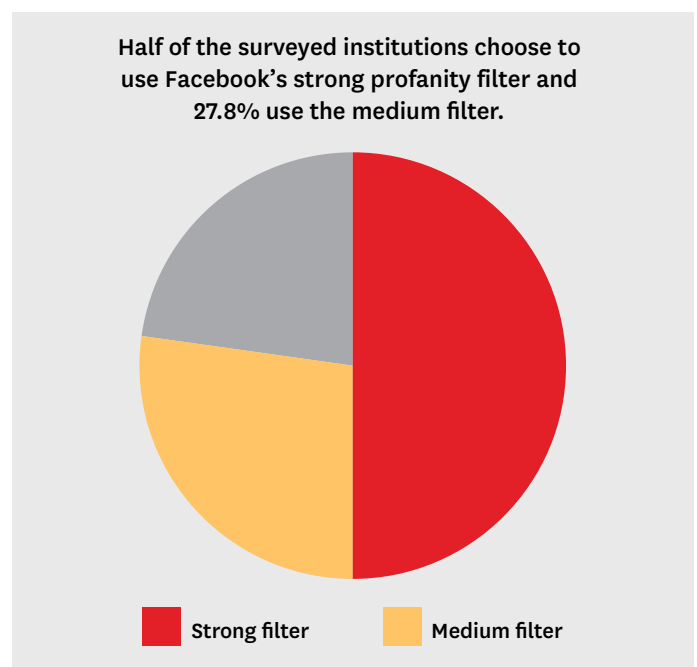
[1] Mark Zuckerberg, *Standing for Voice and Free Expression*, Georgetown University (Oct. 17, 2019) (transcript available at https://www.facebook.com/notes/mark-zuckerberg/standing-for-voice-and-free-expression/10157267502546634).

Methodology

FIRE issued public records requests to five institutions in each state where public institutions of higher education are subject to public records laws, which are similar to the commonly known federal Freedom of Information Act (FOIA).

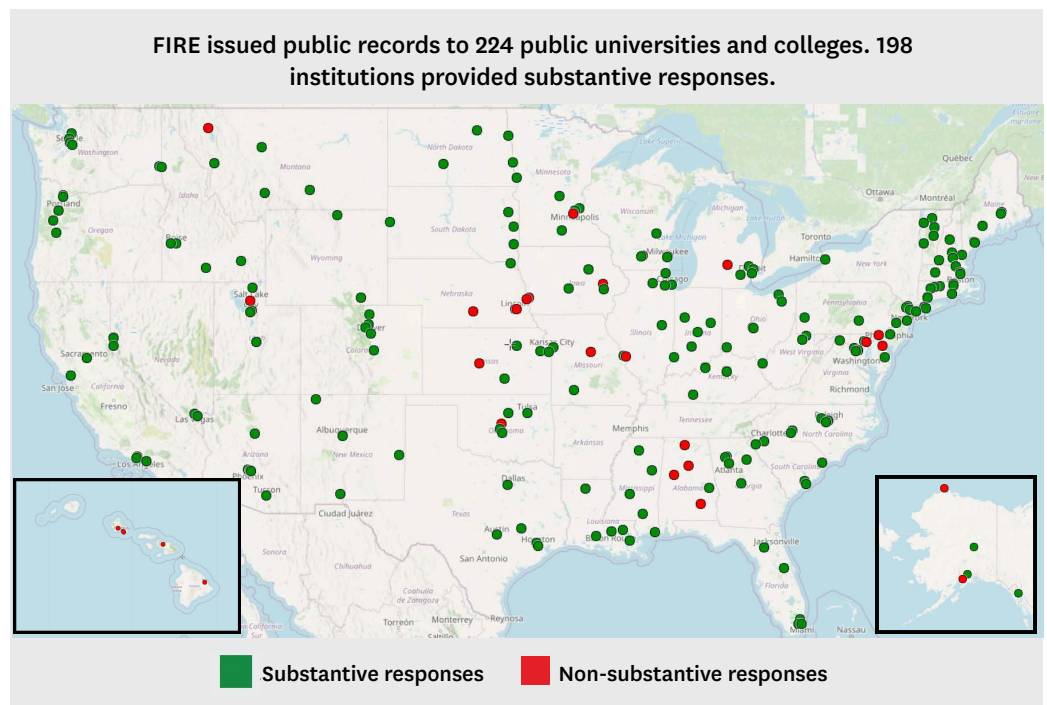The five institutions per state were divided into two categories:

1. The three public, four-year institutions with the largest undergraduate enrollment; and

2. The two public, two-year institutions with the largest undergraduate enrollment.

Our approach has some logistical limitations. Some states, like Delaware and Pennsylvania, exempt some or all of their institutions of higher education from their public records laws, or limit the scope of the laws to specific expenditures. Other states' public records laws expressly limit their public records laws to requests made by citizens of the state.[2] In other states, there are fewer than five institutions, or fewer than the three four-year and two two-year institutions this survey sought to cover. Finally, some institutions could not be contacted due to the potential for conflict with a pending FIRE lawsuit against the institution. In those cases, the institution was replaced with the public institution with the next-highest enrollment. A full list of exceptions may be found in Appendix B.

Altogether, FIRE's survey issued public records requests to **224 public universities and colleges in 47 states and the District of Columbia**. 198 institutions provided substantive responses. A full list of surveyed institutions may be found in Appendix A, which also identifies the institutions which failed or refused to produce records and includes data compiled from the survey.

Our public records requests identified the official Facebook and Twitter account for the institution and asked the institution to provide to FIRE the Facebook settings, list of blocked Facebook users, and list of blocked Twitter users. An example of a representative request may be found in Appendix C. We encourage journalists or interested members of the public to adapt our request to ask other public institutions—not just universities—about their records.

The calculation of the number of words on institutions' customized blacklists excludes duplicates. Thus, if two institutions blocked the word "dog," that word is counted only once. However, the calculation of the number of blocked Facebook users, as well as the number of blocked Twitter users, did not exclude duplicates. Accordingly, if one user were blocked by two universities, she would be counted twice.

FIRE issued public records to 224 public universities and colleges. 198 institutions provided substantive responses.

■ Substantive responses   ■ Non-substantive responses

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[2] This limitation has been upheld by the Supreme Court. McBurney v. Young, 569 U.S. 221, 224 (2013).

Discussion

FACEBOOK'S TOOLS

Facebook allows institutions, entities, organizations, and government actors to establish pages, operating as a forum where the public can share their thoughts with or about the organization. This includes public officials and government entities, ranging from the President of the United States to the City of North Pole, Alaska. As described below, public actors are bound by the First Amendment when they use tools provided by private entities.

When a business, organization, government entity, or public figure creates a "page," Facebook allows them to create posts on their own page, gives the option of allowing others to add their own posts, and allows Facebook users to add comments to those posts.

Facebook provides page owners with four tools to limit user content:

1. **The profanity filter.** Facebook's "profanity filter" automatically hides visitors' posts if they contain words on one of two lists—one for the "medium" setting and one for the "strong" setting.[3] The words on these lists are not publicly disclosed, but are composed of "the most commonly reported words and phrases marked offensive" by Facebook users.[4] The profanity filter is turned off by default.

2. **The customized blacklist.** The "page moderation" filter allows an administrator to establish a custom list of blocked words.[5] Like the profanity filter, this filter automatically hides posts or comments if they contain a phrase on the custom list.

3. **The blocking function.** An administrator of the page may ban particular accounts, after which "they'll no longer be able to publish to [the page], like or comment on your . . . posts, message [you] or like your [page]."[6]

4. Manual removal. An administrator may manually hide specific posts or comments.

A user may not know that their comment has been hidden, as it remains visible to the poster.

TWITTER'S TOOLS

Twitter offers fewer methods of regulating user interactions with government accounts:

1. **The blocking function.** Twitter users can block others from interacting with them.[7]

2. **The muting function.** Twitter users can mute users and terms, but this function does not prevent those users from interacting with the account, and a muted user's tweets can still be seen by other visitors.[8]

THE FIRST AMENDMENT LIMITS PUBLIC ACTORS' USE OF FILTERING TOOLS

With the emergence of the internet and social media, courts have increasingly been called upon to apply the First Amendment to the digital realm. As the Supreme Court of the United States recently observed, "in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views," but the answer today is "clear": "It is cyberspace . . . and social media in particular."[9]

Accordingly, a wide range of courts across the country have held government actors' social media sites,[10] including those

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[3] Facebook, *Moderate Your Facebook Page*, Dec. 7, 2015, https://www.facebook.com/facebookmedia/blog/moderating-your-facebook-page; see also Facebook, How can I proactively moderate content published by visitors on my Page?, https://www.facebook.com/help/131671940241729 (last visited Apr. 15, 2020).

[4] *Id.*

[5] *Id.*

[6] Facebook, *How do I ban or unban someone from my Page?*, https://www.facebook.com/help/185897171460026 (last visited Apr. 15, 2020).

[7] Twitter, *How to control your Twitter experience*, https://help.twitter.com/en/safety-and-security/control-your-twitter-experience (last visited Apr. 15, 2020).

[8] This function does not infringe on a user's First Amendment rights: One has a right to speak at or about the government, but the government is not obligated to pay attention to that speech. Accordingly, FIRE's survey did not ask about muted users or content.

[9] Packingham v. North Carolina, 137 S. Ct. 1730, 1735 (2017); see also Knight First Amendment Inst. at Columbia Univ. v. Trump, 928 F.3d 226, 237 (2d Cir. 2019) ("Knight") ("[S]ocial media is entitled to the same First Amendment protections as other forms of media.").

[10] To be sure, the First Amendment does not restrict the use of Facebook or Twitter by *private* actors, such as businesses or private colleges. Nor do Facebook or Twitter themselves violate the First Amendment by providing these tools.

on Facebook and Twitter, to be subject to First Amendment limitations.[11] The most prominent of these decisions thus far is a successful challenge to President Trump's practice of blocking critics from his Twitter account.[12] These rulings only limit *government* actors' use of social media tools; the First Amendment does not impose legal obligations on social media sites like Facebook and Twitter, nor on other private parties when they use social media.[13]

A. What is the public forum doctrine?

The general thrust of the cases addressing public actors' use of social media is that the "interactive space" constitutes a "public forum." This is a term of art in First Amendment law, setting forth a "metaphor . . . first used in constitutional free speech cases as a way of explaining why the government cannot engage in . . . content discrimination with regard to speaking, picketing, or leafleting on city parks and sidewalks."[14]

A public forum is most often seen as a physical site. For example, a public sidewalk or park would likely be seen as a **"traditional public forum"**: places where members of the public may freely gather and talk about whatever is on their minds.[15] In those places, attempts to limit *viewpoint* are never permissible, and attempts to limit *content* must meet

"strict scrutiny"—that is, any limits must be necessary to address a *compelling* government interest and narrowly tailored to serve that interest.

Meanwhile, a meeting space set up by a government entity for discussion of particular subjects or use by particular groups might be a "limited public forum." For example, school board meetings at which members of the public can speak are limited public forums, as they're set aside for a particular purpose.16 In these spaces, government has a freer hand to regulate the subject matter of speech or who may utilize the space, but can't exclude people or speech based on the viewpoint expressed. Even if a particular space is privately owned, it is a public forum when a government actor exercises control over it, such as when a city leases a private theater.17

Public forum doctrine distinguishes between speech by the government and its employees—"government speech"— and speech by others that the government regulates.[18]

B. What are the different standards for different public forums?

Not every space opened to expression is a free-for-all in which anything goes. Different standards attach to the forum depending on its purpose, and the extent to which

[11] *See, e.g.,* Robinson v. Hunt Cty., 921 F.3d 440, 447–49 (5th Cir. 2019) (assuming a sheriff's Facebook page is a public forum and holding that a policy of deleting "inappropriate" comments was viewpoint discriminatory); Davison v. Randall, 912 F.3d 666, 681–87 (4th Cir. 2019) (county official's Facebook page was a public forum); Lloyd v. City of Streetsboro, No. 18-3485, 2018 U.S. App. LEXIS 36090, at *9–14 (6th Cir. 2018) (unpublished opinion reversing *sua sponte* dismissal of complaint alleging viewpoint discrimination on city's official Facebook page); Report and Recommendations, Clark v. Kolkhorst, No. A-19-cv-0198-LY-SH, *11–12 (W.D. Tex. Feb. 5, 2020), ECF No. 36 (recommending denial of motion to dismiss First Amendment claim); American Atheists, Inc. v. Rapert, No. 4:19-cv-17, at *43–44 (W.D. Ark. Sept. 30, 2019), ECF No. 27 (plaintiffs had "fair chance" of showing state legislator's Twitter and Facebook blocks were viewpoint discrimination); Garnier v. Poway Unified Sch. Dist., No. 17-cv-2215-W (JLB), U.S. Dist. LEXIS 167247, at *14–21 (S.D. Cal. Sept. 26, 2019), ECF No. 42 (denying motion for summary judgment and finding that the interactive portions of school board members' Facebook and Twitter accounts were designated, not limited, public forums); Order of Dismissal, Landman v. Scott, No. 19-cv-01367 (D. Colo. Sept. 10, 2019), ECF No. 27 (state legislator agrees to unblock Facebook and Twitter critic, pay $25,000); Findings of Fact and Conclusions of Law, Campbell v. Reisch, No. 2:18-cv-4129-BCW, 2019 U.S. Dist. LEXIS 138881, at *9–15 (W.D. Mo. Aug. 16, 2019), ECF No. 55 (interactive space created by state representative's tweets was a designated public forum); Windom v. Harshbarger, No. 1:19-cv-24, 2019 U.S. Dist. LEXIS 95080, at *13–18 (N.D.W. Va. June 6, 2019), ECF No. 18 (First Amendment challenge survives motion to dismiss where constituent blocked from legislator's "politician" Facebook page); Hyman v. City of Walnut Ridge, No. 2:18-cv-02138, 2019 U.S. Dist. LEXIS 90509, at *4–5 (E. D. Ark. May 30, 2019), ECF No. 17 (interactive portion of police department's Facebook page was not government speech); One Wisconsin Now v. Kremer, 354 F. Supp. 3d 940 (W.D. Wis. Jan. 18, 2019) (legislators blocking critic on Twitter); People for the Ethical Treatment of Animals, Inc. v. Young, No. 4:18-cv-01547 (S.D. Tex. Sept. 10, 2018), ECF No. 31 (summary order denying motion to dismiss First Amendment claims premised on keyword-based content filters on public university's Facebook page); Leuthy v. LePage, No. 17-cv-00296, 2018 U.S. Dist. LEXIS 146894, *36–43 (D. Me. Aug. 29, 2018) (governor's Facebook page was limited public forum); Price v. City of New York, No. 15-cv-5871, 2018 U.S. Dist. LEXIS 105815, *25–46 (S.D.N.Y. June 25, 2018) (where NYPD precinct blocked Twitter user, whether the forum was a "public, designated, or nonpublic forum" was immaterial, as "viewpoint discrimination that results in the intentional, targeted expulsion of individuals . . . is unlawful in *any* forum," including nonpublic forums); Dingwell v. Cossette, No. 3:17-cv-01531, 2018 U.S. Dist. LEXIS 95832 (D. Conn. June 7, 2018) (critic blocked from police Facebook page); Davison v. Plowman, No. 1:16-cv-180, 2017 U.S. Dist. LEXIS 4348, at *10 (E.D. Va. Jan. 10, 2017) (county's policy and practice of encouraging comments on its Facebook page created a limited public forum).

[12] Knight First Amendment Inst. at Columbia Univ. v. Trump, 302 F. Supp. 3d 541, 549 (S.D.N.Y. May 23, 2018) (upheld on appeal by the Second Circuit in *Knight*).

[13] *See, e.g.,* Prager Univ. v. Google LLC, No. 18-15712, 2020 U.S. App. LEXIS 5903, at *7 (9th Cir. Feb. 26, 2020) (no First Amendment claim that YouTube "censored" speech because the free speech clause "prohibits the government—not a private party—from abridging speech.").

[14] Aaron H. Caplan, *Invasion of the Public Forum Doctrine*, 46 Willamette L. Rev. 647, 647 (2009-2010).

[15] ACLU of Nev. v. City of Las Vegas, 333 F.3d 1092, 1099 (9th Cir. 2003) (the "quintessential traditional public forums are side-walks, streets, and parks.").

[16] *See, e.g.,* Lowery v. Jefferson Cty. Bd. of Educ., 586 F.3d 427, 432 (6th Cir. 2009) (school board meetings give "citizens a chance to express their views to the board, [but] cannot accommodate the sort of uninhibited, unstructured speech that characterizes a public park.").

[17] Se. Promotions, Ltd. v. Conrad, 420 U.S. 546, 555 (1975) (government-leased theater "under [the] control" of public officials); Denv. Area Educ. Telecomm. Consortium, Inc. v. F.C.C., 518 U.S. 727, 749 (1996).

[18] Government actors have sought to frame *visitors'* Facebook or Twitter comments as government speech, arguing that because the government hasn't removed those comments, it is effectively publishing the comments as the government's *own* speech. Most people, however, would not view a Facebook comment or tweet as government-endorsed simply because it hasn't been removed.

government actors may regulate expression within that forum depends on the forum's purpose and the expression at issue:

- Government actors can almost **always** limit expression that falls into one of the historic, narrowly-defined exceptions to the First Amendment: "incitement, obscenity, defamation, speech integral to criminal conduct, so-called 'fighting words,' child pornography, fraud, [and] true threats."[19] This is true in all forums: traditional, designated, and limited.

- Government actors can **never** limit expression because of its "point of view"[20] or where the "specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction."[21] This is also true in all forums.

- If no effort is made to set aside the space for discussion by particular people or about particular subjects, the space is likely to be treated as a *designated* or "open" public forum.[22] In that case, restrictions on the "time, place, and manner of expression" are permissible only if they are "content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication."[23] If a burden on speech is content-based, the regulation is permissible only if it is "necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end."[24]

- If a policy is established and consistently enforced[25] to limit use of the forum for particular people or discussion of certain subjects, the space is more likely to be treated as a limited public forum, in which the government has greater leeway to regulate speech.[26] There, restrictions need not be content-neutral, but must be *viewpoint*-neutral, "reasonable in light of the purpose served by the forum,"[27] and must "comport with the definition of the forum"[28]—that is, the government cannot exclude speech for which, or speakers for whom, the forum was opened.

These standards are also important for evaluating whether the regulation of online expression is permissible under the First Amendment.

C. How does the public forum doctrine apply to social media?

While public forums are most easily conceptualized as physical spaces—such as open areas, meeting rooms, and bulletin boards[29]—the public forum doctrine has also been applied by the Supreme Court to forums which consist "more in a metaphysical than in a spatial or geographic sense."[30] For example, the same principles have been applied to—albeit with varying outcomes—student activity fees pooled for student organizations,[31] schools' internal mailing systems,[32] and email systems.[33] As governments have ventured into cyberspace, courts have applied these principles to government websites, distinguishing

[19] United States v. Alvarez, 567 U.S. 709, 709 (2012).

[20] Rodriguez v. Maricopa Cty. Cmty. College Dist., 605 F.3d 703, 710 (9th Cir. 2009).

[21] Rosenberger v. Rector & Visitors of Univ. of Va., 515 U.S. 819, 829–30 (1995). This is true even if the interactive space of the social media page is deemed a non-public forum, as access even to a non-public forum may only be "restricted as long as the restrictions are 'reasonable and [are] not an effort to suppress expression merely because public officials oppose the speaker's view.'" Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788, 800 (1985) (quoting Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 450 U.S. 37, 46 (1983)).

[22] Good News Club v. Milford Cent. Sch., 533 U.S. 98, 106 (2001) (distinguishing "traditional or open" public forums from "limited" public forums); Garnier v. Poway Unified Sch. Dist., No. 17-cv-2215-W (JLB), U.S. Dist. LEXIS 167247, at *14–21 (S.D. Cal. Sept. 26, 2019), ECF No. 42 (interactive portions of school board members' Facebook and Twitter accounts were designated, not limited, public forums); One Wisconsin Now v. Kremer, 354 F. Supp. 3d 940, 953–55 (W.D. Wis. Jan. 18, 2019) (interactive portions of legislators' Twitter accounts were designated public forums).

[23] Perry Educ. Ass'n, 450 U.S. at 45.

[24] Id.

[25] Garnier, U.S. Dist. LEXIS 167247 at *20–21.

[26] Faith Center Church Evangelistic Ministries v. Glover, 480 F. 3d 891, 908 n.8 (9th Cir. 2006) (A "limited public forum is a sub-category of the designated public forum, where the government opens a nonpublic forum but reserves access to it for only certain groups or categories of speech.").

[27] Good News Club, 533 U.S. at 106–07 (quoting, in part, Rosenberger v. Rector & Visitors of Univ. of Va., 515 U.S. 819, 829 (1995)).

[28] OSU Student All. v. Ray, 699 F.3d 1053, 1062 (9th Cir. 2012).

[29] See, e.g., Lister v. Def. Logistics Agency, 482 F.Supp.2d 1003, 1009–11 (S.D. Ohio 2007) (government agency's bulletin board had "some aspects of a limited public forum" because it was "open to all employees" to "post matters addressing a broad range of topics or meetings," rendering removal of religious materials unconstitutional).

[30] Rosenberger v. Rector & Visitors of Univ. of Va., 515 U.S. 819, 830 (1995).

[31] Id.

[32] Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 450 U.S. 37, 46–49 (1983).

[33] Rodriguez v. Maricopa Cty. Cmty. College Dist., 605 F.3d 703, 710 (9th Cir. 2009).

government-published websites from websites that allow members of the public to exchange views.[34]

Courts have used the legal framework provided by public forum doctrine to analyze government social media use. While the government actor has control over its own posts (which are quintessential "government speech"), the "interactive space" that follows those posts and allows for response from the public constitutes a public forum subject to the First Amendment's protection.[35] In other words, while a public university student or faculty member might have a right to post a relevant comment on an existing thread, they could not compel the university to "share" their post in the same manner as the university publishes its own posts.

Because the First Amendment protects users' speech in these interactive spaces, government actors like public colleges and universities cannot censor user comments in that space because they disagree with the *viewpoint*

expressed. That means that—at a minimum—government actors cannot block users,[36] remove posts,[37] or otherwise "burden" speech[38] because they find the expression offensive, disagreeable, or wrong.

That does not mean that every digital space associated with a government actor is a free-for-all forum where any content may be shared. How government actors characterize and treat digital spaces is important, as regulations on interactive spaces will be analyzed based on whether they are—as with physical spaces—traditional, dedicated, or limited public forums.

If the interactive space is a limited public forum, some restrictions will be permissible. For example, a prohibition on "clearly off topic" comments is a "self-evidently viewpoint-neutral" regulation "limiting a forum to discussion of selected topics," and is "reasonably related — indeed, integral — to the forum's purpose."[39] As such, these

Here's a visual demonstration of how "government speech" and the interactive digital spaces work on Facebook (left) and Twitter (right):

University's post: government speech.

Interactive space: First Amendment applies.

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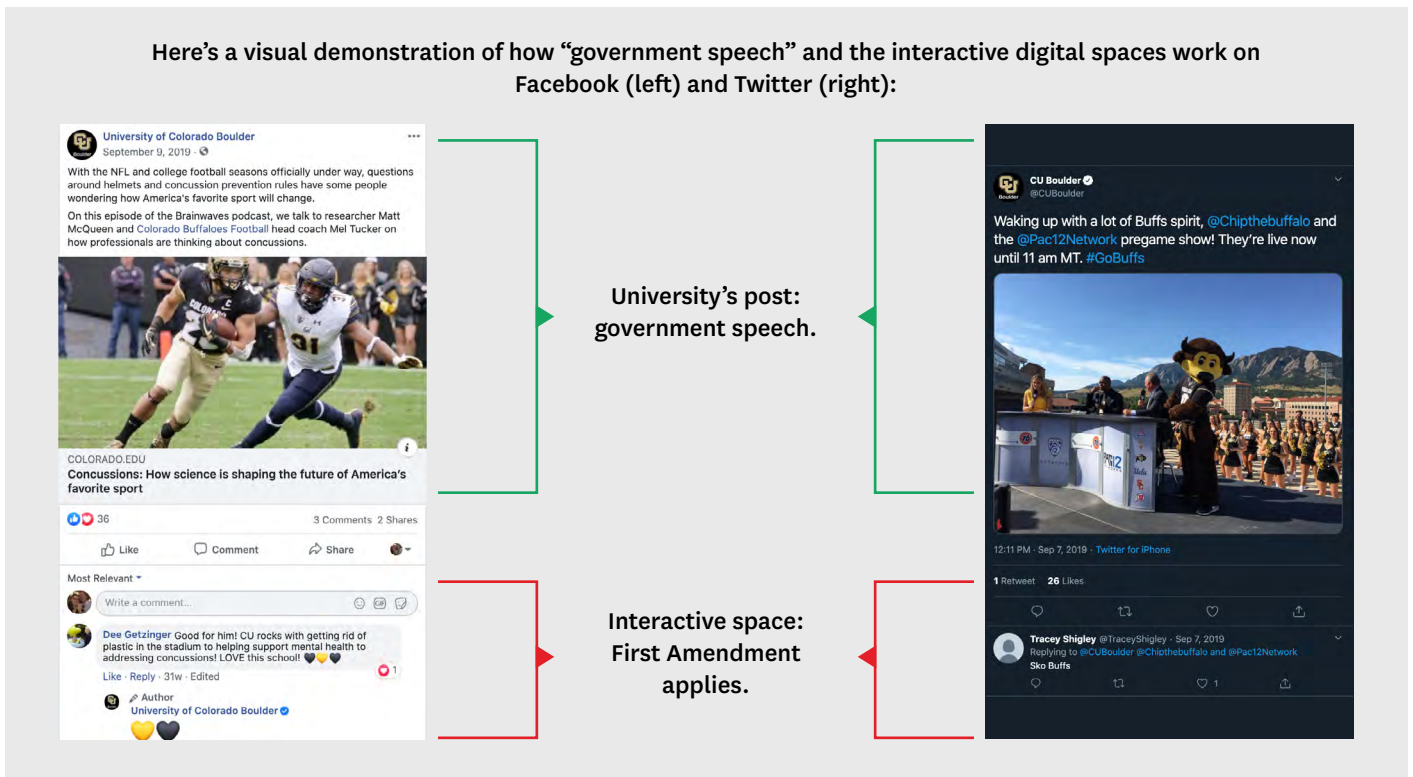
[34] *Compare* Putnam Pit, Inc. v. City of Cookeville, 221 F.3d 834, 844 (6th Cir. 2000) (city's website listing links to other sites was a non-public forum, not a public forum, because it was not structured to allow "dialogue between users," but primarily "to convey information to the reader") *with* Page v. Lexington Cty. Sch. Dist. One, 531 F.3d 275, 284 (4th Cir. 2008) (school district's website was not a public forum, but "the issue would, of course, be different" if the website were a "type of 'chat room' or 'bulletin board' in which private viewers could express opinions or post information").

[35] Knight First Amendment Inst. at Columbia Univ. v. Trump, 302 F. Supp. 3d 541, 572–73 (S.D.N.Y. May 23, 2018).

[36] Davison v. Randall, 912 F.3d 666, 687–88 (4th Cir. 2019) (official who blocked constituent because of his critical viewpoint was viewpoint discrimination, which is "prohibited in all forums.").

[37] Robinson v. Hunt Cty., 921 F. 3d 440, 447 (5th Cir. 2019).

[38] Knight at 238–39.

[39] Davison v. Plowman, 247 F.Supp.3d 767, 777 (E.D. Va. 2017).

kinds of viewpoint-neutral limitations are constitutionally permissible and do not violate the First Amendment.

But the government's ability to regulate speech in a limited public forum has boundaries. If, in crafting a policy governing social media content, the policy affords too much discretion to the institution's content moderators, those standards will inevitably be abused to censor criticism of the institution. The **University of Connecticut**'s policy, for example, reserves to officials "the right" to remove comments they believe to be "offensive," expression that "aligns with hate speech," or posts that are "otherwise objectionable."

These types of broad, ambiguous policies will lead to viewpoint discrimination and may render the policy itself unconstitutional.[40] For example, **Wright State University** created "guidelines" barring comments deemed to be "propaganda," "foul," "trolling," "offensive," or "inflammatory," giving staff members—overseen by university administrators—unfettered discretion to manually hide comments criticizing the administration's positions during a faculty strike, such as those disclosing senior administrators' salaries.[41] (At the time of publication, Wright State officials had communicated to FIRE that the university was conducting an internal review of its Facebook guidelines in response to a letter from FIRE raising concerns about the policy.)

In addition to the ability to limit expression by policy and manual enforcement, Facebook provides a variety of automated content-policing tools to administrators of Facebook pages.

However, the tools provided by Facebook are not adequately tailored and do not respect the contours of the First Amendment, and their use by government actors will almost certainly lead them to violate the First Amendment rights of students, faculty, and the general public. When used by public institutions, Facebook's tools amount to always-on sentinels tasked with identifying and automatically censoring student and faculty speech—and, for years, government actors have been using these tools to effectuate online censorship.

PUBLIC INSTITUTIONS ARE USING FACEBOOK AND TWITTER TOOLS TO VIOLATE THE FIRST AMENDMENT

It has long been settled law that the First Amendment is binding on public colleges and universities, including when they act to regulate the otherwise-protected speech of students, faculty, and organizations comprised of students or faculty members, such as student clubs or faculty unions.[42] When public universities open digital spaces for discussion by faculty, students, and the general public, regulations of those digital spaces must meet First Amendment scrutiny.

Beginning in October 2018, FIRE issued requests under public records laws to 224 public universities and colleges in 47 states, plus the District of Columbia. The selected institutions represent the three four-year institutions and the two two-year institutions with the highest enrollment in the state.[43]

Of the 224 institutions surveyed, 198 (or 88.4%) provided substantive responses.

FIRE found that many public universities and colleges are using automated tools to regulate online expression in ways that do not comport with the First Amendment.

A. Most public colleges use Facebook's 'profanity' filters, secret blacklists of words that risk violating the First Amendment.

Half of the responding institutions—99 of 198—use Facebook's "strong" profanity filter, and nearly a third—55, or 27.8%—use the platform's "medium" filter. This means that 77.8% of surveyed institutions use some version of the profanity filter.

Because Facebook does not disclose the list of words or phrases on either the "medium" or "strong" profanity filters, it is not clear what content is automatically scrubbed from

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[40] *See, e.g.*, Crowder v. Hous. Auth. of Atlanta, 990 F.2d 586, 591 (11th Cir. 1993) (a restriction vesting unfettered discretion in a government actor "opens the way to arbitrary suppression of particular points of view.").

[41] Greg Harold Greubel, *Public records reveal Wright State used unconstitutional Facebook page policy to censor pro-union speech during historic faculty strike*, Found. for Indiv. Rights in Educ., Jan. 24, 2020, https://www.thefire.org/public-records-reveal-wright-state-used-unconstitutional-facebook-page-policy-to-censor-pro-union-speech-during-historic-faculty-strike; *see also*, Letter from Greg Harold Greubel, Staff Attorney, Foundation for Individual Rights in Education to Larry Y. Chan, General Counsel, Wright State University, Jan. 23, 2020, *available at* https://www.thefire.org/fire-letter-to-wright-state-university-january-23-2020.

[42] Healy v. James, 408 U.S. 169, 180 (1972) (there is "no room for the view that . . . First Amendment protections should apply with less force on college campuses than in the community at large").

[43] As discussed in the methodology section of this report and in the appendices, some states or institutions could not be surveyed, failed to respond at all, sought exorbitant fees, or cited exceptions to open records laws, ranging from arguments that they cannot be required to "create" records to claims that revealing Facebook blacklists creates a risk to public safety.

the pages of institutions that utilize the filters created by Facebook. (The custom filters, described below, can be identified through public records requests.)

Facebook, again, does not violate the First Amendment when it creates these filters and offers them to their users. Instead, the First Amendment *protects* the rights of private entities like Facebook to decide what speech to publish or refuse.[44]

However, when a *government* agency uses these tools to filter particular words or phrases, it raises serious First Amendment concerns. The premise underlying this type of restriction—that blocking individual words is justifiable under the First Amendment because it will improve public discourse—has been expressly rejected by the Supreme Court. In *Cohen v. California*, the Court held that a jacket emblazoned with the words "Fuck the Draft," worn in a courthouse hallway populated with "women and children," was protected speech.[45] "[W]e cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process," the Court explained, as "governments might soon seize upon the censorship of particular words as a convenient guise for banning the expression of unpopular views."[46]

This risk is most colorfully illustrated by institutions' use of customized blacklists to suppress discussion of local controversies, as discussed below. However, the broader use of Facebook's own profanity filters—a *secret* list of disapproved words automatically compiled from Facebook users' feedback—will have the same effect, while failing to meaningfully protect equitable, civil discourse.

First, because the list is generated by compiling the terms "most commonly reported" as offensive, it necessarily limits speech that is in the greatest need of protection from censorship because it is disapproved by those whose views and sensibilities are more likely to be majoritarian or mainstream. As the Supreme Court observed in holding that burning the American flag is protected expression, "[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."[47]

The use of these databases may also, incidentally, inure to the detriment of minority speakers. One recent study, for example, found that "tweets by African American authors are 1.5 times more likely to be labeled 'offensive,'" and tweets in African American English are "more than twice as likely to be labeled as 'offensive' or 'abusive.'"[48] As a result, automated means of identifying human speech, when relying on human-generated data, may introduce "human biases [which] can easily result in a skewed distribution in the training data," yielding "unintended bias in the resulting models, and therefore potentially unfair applications."[49] Because datasets of offensive language may yield a "systemic racial bias," they may "have a disproportionate negative impact" on minority communities, effectively creating systems that "may discriminate against the groups who are often the target of the abuse we are trying to detect."[50]

Second, an automated system is unlikely to interpret the context and meaning of uses of words that may be offensive in some contexts and inoffensive in others. Content "moderation is, inherently, a subjective practice," rendering "content moderation at scale . . . impossible to do well."[51]

As a journalist reporting on recent studies on attempts to create filtering mechanisms for offensive speech observed:

> [W]hat is considered offensive depends on social context. Terms that are slurs when used in some settings — like the "n-word" or "queer" — may not be in others. But algorithms — and content

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[44] *See*, Miami Herald Pub. Co., Div. of Knight Newspapers Inc. v. Tornillo, 418 U.S. 241, 256–57 (1974) (a "[g]overnment-enforced right of access" in the form of a statute compelling newspapers to publish rebuttals "operates as a command in the same sense as" a rule prohibiting speech, violating the First Amendment). This right is fortified by statute shielding providers of an "interactive computer service" from civil liability for removing content they deem "objectionable." 47 U.S.C. § 230(c)(1).

[45] Cohen v. California, 403 U.S. 15, 16 (1971).

[46] *Id*. at 26.

[47] Texas v. Johnson, 491 U.S. 397, 414 (1989).

[48] Maarten Sap, Dallas Card, Saadia Gabriel, Yejin Choi, and Noah A. Smith, 2019, The Risk of Racial Bias in Hate Speech Detection. In *Proceedings of the 57th Annual Meeting of the Association for Computational Linguistics* at 1668–78, *available at* https://homes.cs.washington.edu/~msap/pdfs/sap2019risk.pdf.

[49] Lucas Dixon, John Li, Jeffrey Sorensen, Nithum Thain, and Lucy Vasserman. 2018. Measuring and Mitigating Unintended Bias in Text Classification. In *Proceedings of AAAI/ACM Conference on Artificial Intelligence, Ethics, and Society* at 67, *available at* https://dl.acm.org/doi/pdf/10.1145/3278721.3278729.

[50] Thomas Davidson, Debasmita Bhattacharya, and Ingmar Weber, 2019, Racial Bias in Hate Speech and Abusive Language Detection Datasets, *available at* https://arxiv.org/pdf/1905.12516.pdf.

[51] Mike Masnick, *Masnick's Impossibility Theorem: Content Moderation At Scale Is Impossible To Do Well*, Techdirt, Nov. 20, 2019, https://www.techdirt.com/articles/20191111/23032743367/masnicks-impossibility-theorem-content-moderation-scale-is-impossible-to-do-well.shtml.

moderators who grade the test data that teaches these algorithms how to do their job — don't usually know the context of the comments they're reviewing.[52]

Similarly, automated systems are incapable of making value judgments, resulting in the suppression of speech that makes *use* of offensive words in order to appropriate or report on that speech. While a filter may be intended to prevent, for example, the use of a racial slur directed to another user, it will also suppress posts by a student who, targeted by use of that same slur, posts about their experience on their university's Facebook page to call on the university to take action. Activists utilizing offensive language or imagery in order to report on or criticize their use may not anticipate automated filtering, but a user dedicated to using the language or imagery in order to harass others may be more likely to devise workarounds, or use language less likely to be caught in a filter.

Third, the use of blacklists almost certainly fails First Amendment scrutiny under either a designated or limited public forum analysis. Facebook's profanity filter is expressly premised on feedback identifying which words or phrases users find offensive. A limitation on this basis is not viewpoint-neutral, rendering its use fatal in any forum.[53] Further, it is unlikely that a public institution will be able to bear its burden—to demonstrate that its restriction is reasonable—if it cannot identify the words that it is restricting. Similarly, an undisclosed list of prohibited terms necessarily means that members of the public do not have notice as to what speech is permitted or prohibited, ensuring that the restriction will "trap the innocent by not providing fair warning" about what is prohibited.[54]

An automated blacklist also fails First Amendment scrutiny because it automatically hides speech unless it is reviewed by an administrator of the page, effectuating a system of prior restraints on speech, "the most serious and the least

tolerable infringement on" freedom of expression.[55] The risk prior restraints present to freedom of expression is so great that the "chief purpose" in adopting the First Amendment was to prevent their use.[56] Prior restraints are permissible only where they are bound by "narrow, objective, and definite standards"[57] and where the authorities' review and determination must be made within a specific period of time.[58] Absent these procedural safeguards, which FIRE has not observed at any surveyed institution, a prior restraint is unconstitutional.

An automated system that bars specific words does not differentiate between offensive uses of a word or uses of profound public importance. While it may serve a college or university's public relations goals to police public-facing expression by students and faculty for civility, it undermines the institution's commitment to freedom of expression and obligations under the First Amendment.

B. Facebook's customizable blacklists are used to restrain speech critical of government institutions and their corporate partners, or speech on matters of public concern.

Nearly a third of the public colleges and universities FIRE surveyed (60, or 30.3%) use a customized blacklist on their Facebook pages, collectively censoring 1,825 unique words and phrases. These range from the words populating George Carlin's famous list of "Filthy Words"[59] to words and phrases pertaining to political and social matters of local and national concern. Together, these customized lists evidence use of Facebook's technology to automatically censor criticism of institutions, corporate partners, campus controversies, and even sports-related chest-thumping.

These filters are not likely to pass First Amendment scrutiny. Moreover, many of these filters evidence viewpoint discrimination, as they are specifically designed to hide terms closely associated with particular criticisms. For

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[52] Shirin Ghaffary, *The algorithms that detect hate speech online are biased against black people*, Vox, Aug. 15, 2019, https://www.vox.com/recode/2019/8/15/20806384/social-media-hate-speech-bias-black-african-american-facebook-twitter.

[53] *See, e.g.*, Matal v. Tam, 137 S. Ct. 1744, 1763 (2017) (striking down regulation barring trademark registration for "any mark that is offensive to a substantial percentage of the members of any group" because it amounted to viewpoint discrimination, and observing that "[g]iving offense is a viewpoint").

[54] Grayned v. City of Rockford, 408 U.S. 104, 108 (1972).

[55] Neb. Press Ass'n v. Stuart, 427 U.S. 539, 559 (1976).

[56] Near v. Minnesota, 283 U.S. 697, 713 (1931).

[57] Shuttlesworth v. Birmingham, 394 U.S. 147, 151 (1969).

[58] *See, e.g.*, Pan Am v. Municipality of San Juan, No. 3:18-cv-1017 (PAD), 2018 U.S. Dist. LEXIS 208014, at *21–24 (D.P.R. Dec. 10, 2018) (surveying the procedural and substantive strands of the doctrine of prior restraint); see also, Covenant Media of S.C., LLC v. City of N. Charleston, 493 F.3d 421, 431 (4th Cir. 2007) ("A prior restraint on speech that imposes no time limitations on the decision-making process plainly fails" First Amendment scrutiny when the prior restraint is based on content.).

[59] *In the Matter of a Citizen's Complaint Against Pacifica Foundation Station WBAI (FM), New York, New York*, 56 F.C.C.2d 94, 109, Declaratory Order (Feb. 21, 1975) (Transcript of George Carlin's "Filthy Words" monologue, prepared by the Federal Communications Commission), *archived at* https://web.archive.org/web/20110123114427/http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/filthywords.html.

example, restrictions on posting about "chickens" at the **University of Kentucky** are inarguably intended to suppress criticism by animal rights activists, even if a supporter of the university's vendor would also face restrictions because of a post containing the same term.

Even where a filter is not likely to amount to viewpoint discrimination, its use is not likely to be sufficiently tailored to meet the institution's obligations under the First Amendment.

For example, a student at the **University of North Carolina at Chapel Hill** might want to respond to a university post about Black History Month[60] to raise questions about "Silent Sam," a Confederate monument that until recently stood on UNC's campus. But they could not have done so if their comment used the monument's name, because that phrase was on UNC's Facebook blacklist.[61] Or, similarly, when the university posted a message announcing the removal of the monument's pedestal,[62] comments containing the words "Silent Sam" would unquestionably be relevant. Yet none of the hundreds of visible comments contain those words—almost certainly because of the blacklist. Similarly, students who used the phrases "9/11" or "terrorism" in responding to the university's post memorializing the September 11 attacks[63] would not reach their intended audience—again, almost certainly because of the blacklist. Yet each of these comments would be on-topic and not otherwise fall within a categorical exception to the First Amendment.

Similarly, students at schools like **Oklahoma State University**, where the names of political candidates are automatically scrubbed, would encounter difficulty if they mentioned their favored (or disfavored) candidates' names in response to the schools' posts about getting out the vote.[64]

These restrictions, even where they are viewpoint neutral, are not "reasonable in light of the purpose served by the forum"[65] because they burden relevant, on-topic expression in a medium intended to operate in real-time. Instead, they effectuate a system of prior review on particular terms, and institutions are not likely to provide the procedural protections required by the First Amendment.
FIRE's survey revealed that public institutions are using the customized blacklist feature to limit a wide range of criticism, or to blunt discussion of local controversies:

- The **University of Kentucky** blocks the words "birds," "chicken," "chickens," and "filthy." The university explained to FIRE that it instituted this restriction "around the time that Aramark came on campus" and activists began posting "highly graphic videos of chicken slaughter." In 2014, the university announced it was entering into a 15-year contract worth $250 million with Aramark.[66] Similarly, Mississippi State University blocks mentions of "Aramark" and terms related to its dining facilities.

- **Texas A&M University** blocked terms in an effort to bar criticism by animal rights activists, including People for Ethical Treatment of Animals, over research conducted on dogs. These terms include "peta," "abuse," "abusers," and "lab." PETA and the Electronic Frontier Foundation sued Texas A&M in 2018 over the censorship.[67] **Santa Monica College** likewise bars "cats," "dissecting," "torture," and "killing" following a

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[60] See, e.g., Univ. of N.C. at Chapel Hill, *Recognizing Carolina's black pioneers*, Facebook (Feb. 23, 2018), https://www.facebook.com/uncchapelhill/videos/10155430896997709.

[61] After a letter from FIRE, UNC removed some of the terms on its customized list, but it is not clear what terms remain. Letter from Kara E. Simmons, Associate Vice Chancellor and Senior Univ. Counsel, Univ. N.C., to Adam Steinbaugh, Director, Individual Rights Defense Program, Found. for Indiv. Rights in Educ. (Sept. 13, 2019) (on file with author).

[62] Univ. of N.C. at Chapel Hill, *Chancellor Folt announces resignation…*, Facebook (Jan. 15, 2019), https://www.facebook.com/uncchapelhill/posts/10156120737537709.

[63] Univ. of N.C. at Chapel Hill, *Carolina community gathers in remembrance of 9/11*, Facebook (Sept. 11, 2018), https://www.facebook.com/uncchapelhill/videos/1925944624166629.

[64] See, e.g., Oklahoma State Univ., *It's Election Day, Cowboys! Get out and VOTE!*, Facebook (Nov. 8, 2016), https://www.facebook.com/okstate/photos/a.145735572306/10153859326792307.

[65] Good News Club v. Milford Cent. Sch., 533 U.S. 98, 106–07 (2001) (quoting, in part, Rosenberger v. Rector & Visitors of Univ. of Va., 515 U.S. 819, 829 (1995)).

[66] Jay Blanton, *Dining Partnership Will Transform Vital Service to UK Campus*, Univ. of Ky., June 13, 2014, https://uknow.uky.edu/campus-news/dining-partnership-will-transform-vital-service-uk-campus.

[67] Adam Schwartz, *EFF Lawsuit Ends Censorship Against PETA on Public University's Facebook Page*, Electronic Frontier Found., Feb. 4, 2020, https://www.eff.org/deeplinks/2019/12/eff-ends-censorship-against-peta-public-universitys-facebook-page; see also Adam Steinbaugh, *Texas A&M: Our secret list of naughty words you can't say on our Facebook page doesn't offend the First Amendment*, Found. for Indiv. Rights. in Educ., Aug. 23, 2018, https://www.thefire.org/texas-am-our-secret-list-of-naughty-words-you-cant-say-on-our-facebook-page-doesnt-offend-the-first-amendment.

PETA campaign critical of cat dissection in an anatomy course.[68]

- During protests over the "Silent Sam" Confederate monument, the **University of North Carolina at Chapel Hill** blocked posts containing the phrase "Silent Sam," as well as mentions of "Nazis." The university also blocked mentions of the terms "9/11," "terrorist," "terrorism," and the name of a professor whose teaching about the September 11, 2001, terrorist attacks drew national media coverage when a student, who had not read any of the materials,[69] publicly complained about the materials read in the course.[70] The university also barred terms relating to sexual assault.

- The **University of Arizona** automatically removes posts containing the word "rape" or the name of an itinerant preacher known for holding signs reading "You Deserve Rape," which has drawn media criticism.[71] This restriction presumably removes complaints about the preacher.

- **Suffolk County Community College (NY)** blocks posts concerning inclement weather closures, and includes terms that demonstrate that the purpose is to inhibit criticism, barring the words "blizzard," "snow," "dangerous," "slip," "scared," "irresponsible," "tragedy," and "accident." They also block "apologize," "resign," and "disgrace."

- **Clemson University** blocked mentions of Harambe, a meme about a gorilla that had previously generated controversy on campus when a residential employee sought to bar students from referencing the meme on their dormitory doors. Clemson also blocked phrases referring to other controversies on campus,

including the name of a professor criticized for calling Republicans "racist scum," the word "turtle" (apparently because of a student's poll of his classmates, which was reported in the press, about purposefully driving over turtles). Clemson also blocks the words "boycott" and "Nike"—a company with which the university has entered into a $58 million contract.[72] Similarly, the university blocked the words "senators," "pledge," and "anthem," likely relating to students who protested by sitting during the pledge of allegiance during a student government meeting.[73] Clemson also blocked the word "balloonsblow," referring to environmental activists who called on the university to end its practice of releasing balloons during football games.[74] Ominously, Clemson also blocked the words "rape" and "rapeculture." In response to FIRE's records request, Clemson removed the blocked terms and implemented "measures so that blocks of protected speech do not occur" in the future.[75]

- The once-popular awareness campaign "Kony"[76] cannot be found on **Auburn University**'s Facebook page, because comments containing that word are automatically deleted.

- The **University of Mississippi** prohibits mentions of its former mascot, "Colonel Reb," a "caricature of an antebellum Southern plantation owner" no longer used by the university.[77]

- The **University of Washington** blocks a pejorative pun on its team name, the Huskies ("Fuskies"), as well as references to its football rivals: "Cougars," "Ducks," "Bruins," and "Beavers." **Texas A&M University** blocks references to the "hook em" horn gesture of their University of Texas at Austin rivals, the Longhorns.

[68] Press Release, *Secret Student Video Exposes Dissection of Pregnant Cat at Santa Monica College*, People for Ethical Treatment of Animals, Sept. 7, 2016, https://www.peta.org/media/news-releases/secret-student-video-exposes-dissection-pregnant-cat-santa-monica-college.

[69] Neel Ahuja, *Distorting the study of 9/11 at UNC*, News & Observer, Sept. 19, 2015, https://www.newsobserver.com/opinion/op-ed/article35735889.html.

[70] Jane Stancill, *UNC course on 9/11 criticized in conservative publications*, Charlotte Observer, Sept. 1, 2015, https://www.charlotteobserver.com/news/local/education/article33282939.html.

[71] Aviva Shen, *University Of Arizona Student Tells Women: 'You Deserve Rape'*, ThinkProgress, Apr. 25, 2013, https://thinkprogress.org/university-of-arizona-student-tells-women-you-deserve-rape-14039c6c7737/.

[72] Manie Robinson, *Clemson extends Nike partnership with 10-year, $58 million deal*, Greenville News, Aug. 3, 2018, https://www.greenvilleonline.com/story/sports/college/clemson/2018/08/03/clemson-nike-extend-partnership-10-year-58-million-deal/897267002.

[73] Georgie Silvarole, *Clemson University student senators sit for Pledge of Allegiance*, WCNC, Sept. 28, 2017, https://www.wcnc.com/article/news/local/clemson-university-student-senators-sit-for-pledge-of-allegiance/479410454.

[74] Matt Connolly, *Clemson ending this football gameday tradition for 2018*, The State, July 28, 2018, https://www.thestate.com/sports/college/acc/clemson-university/article215700140.html.

[75] E-mail from Jermaine D. Johnson, Assistant General Counsel, Clemson Univ., to Adam Steinbaugh, Director, Individual Rights Defense Program, Found. for Indiv. Rights in Educ. (Dec. 21, 2018, 10:12 PM), *available at* https://www.documentcloud.org/documents/6394391-Clemson-University-Social-Media-Survey-Response.html.

[76] Invisible Children, Kony 2012, https://invisiblechildren.com/kony-2012 (last visited Apr. 15, 2020).

[77] Robbie Brown, *Ole Miss Shelves Mascot Fraught With Baggage*, N.Y. Times, Sept. 19, 2019, https://www.nytimes.com/2010/09/20/us/20mascot.html.

Oklahoma State University blocks mentions of its rival football team, including the phrases "boomer sooner" (OU's fight song), "university of oklahoma," and "sooners."

- Not to be outdone by its rival, the **University of Oklahoma** blocks an emoji: 👆 .[78]

- The **University of Central Florida** blocks the words "terrorist" and "sexual."

- **Oakland Community College** in Michigan blocks mentions of the name of a disgruntled former professor.

- **Mississippi State University** blocks the term "fail state," a play on its "Hail State" motto.[79]

- A number of institutions, including **Portland State University**, **Oklahoma State University**, the **University of Arizona**, the **University of North Carolina at Chapel Hill**, blocked the names of political candidates, such as "Trump," "Bernie," or "Hillary." Others, such as **Arizona State University**, restrict pejorative versions of their names or supporters, such as "Trumptards" and "NObama."

- **West Virginia University** blocks mentions of "couch burning," a tradition long disfavored by the university's administration and Morgantown residents.[80]

These lists were largely generated before 2020. While some institutions have since modified their blacklists to remove some terms, it is also likely that some have added new terms to limit expression concerning more recent controversies or political events. FIRE encourages student journalists to use the sample public records request in Appendix C to ask their own (or other) institutions for updated records.

C. Not just words: Public universities block thousands of Facebook and Twitter users.

FIRE's records requests reveal that of the 198 public colleges and universities that responded to FIRE's survey, 173 (or 87%) blocked users on Facebook or Twitter. Together, these institutions blocked 13,197 Facebook users and 4,065 Twitter users from interacting with their posts, pages, or tweets. Accordingly, an institution that blocks at least one user blocks an average of 76 Facebook users and 23.5 Twitter users.

87% of public colleges and universities that responded to FIRE's survey blocked users on Facebook or Twitter.

87%
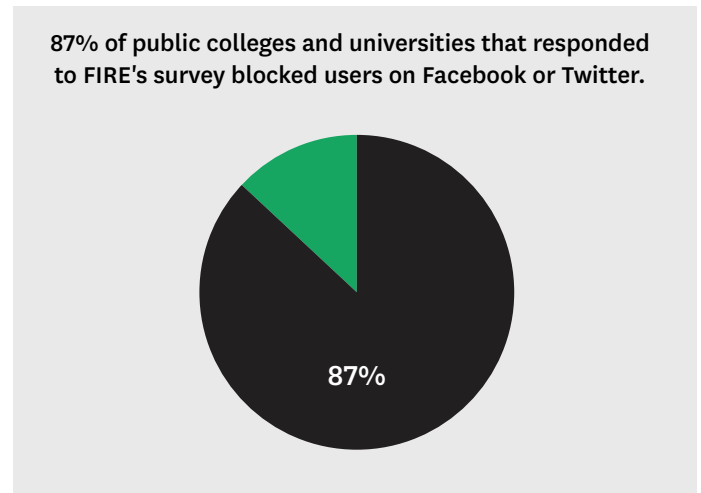
Because Facebook and Twitter do not keep records of the reason for blocking a particular account, and because institutions' records reveal only the name of the blocked user (not what they posted), it's unclear how many of these users were blocked for viewpoint-discriminatory reasons. It's possible many were blocked for violating constitutionally-defensible regulations.

However, government actors cannot restrict access to a public forum based on an objection to the viewpoint of the speaker. Many blocked accounts relate to political, social, or religious movements, including many critical of the institution, raising the possibility that they were blocked for advocating a particular viewpoint.

For example:

- The **University of Kansas** blocks "Boycott Koch Industries," a Facebook account referencing America's second-largest privately-held company,[81] which is based in Kansas and is a major donor to the university.[82] On Twitter, the university blocks accounts

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[78] Extending the middle finger is expression protected by the First Amendment. Swartz v. Insogna, 704 F.3d 105, 111 (2d Cir. 2013).

[79] Jason Kirk, *Some moron spray-painted 'Fail State,' 'Go Rebs,' and more on Mississippi State's campus*, SBNATION, Dec. 17, 2016, https://www.sbnation.com/college-football/2016/12/17/13994290/mississippi-state-stadium-vandalized-spraypaint.

[80] Jesse Wright, *With Hopes to Curb Couch Burning, Morgantown Passes Outdoor Furniture Ban*, W.VA. PUB. BROAD., Apr. 7, 2015, https://www.wvpublic.org/post/hopes-curb-couch-burning-morgantown-passes-outdoor-furniture-ban.

[81] *America's Largest Private Companies*, FORBES, https://www.forbes.com/largest-private-companies/list (last visited Apr. 15, 2020).

[82] Press Release, *Koch Industries Gift of $1M Establishes Business, Engineering Scholarship Funds*, UNIV. OF KAN. (Sept. 8, 2016), https://news.ku.edu/2016/09/08/koch-industries-gift-1m-establishes-business-engineering-scholarship-funds. FIRE also receives funding from the Charles Koch Foundation. FIRE does not accept money from donors who seek to alter our mission or interfere with our case work.

related to the Westboro Baptist Church, which had pledged to picket the university's graduation.

- **Georgia State University** blocked a "Georgia for Bernie" Twitter account. The university also complained to Twitter about a tweet from the account criticizing the university's police because the tweet listed the public contact information of the university's president and police chief.

- The **University of New Hampshire** blocked a Twitter account belonging to "UNH Students for Gary Johnson," a Libertarian Party presidential candidate, and blocked the Twitter account of Breitbart News—and other Twitter critics—after the outlet wrote about professors who called for the expulsion of counter-protesters who dressed as Harambe and Richard Nixon.[83] Other accounts appear to have been blocked because they criticized the university for employing Seth Abramson, whose Twitter criticisms of President Trump have gone viral.

- The **University of Montana** blocked a Twitter account, @UMRape, which was being used to follow "the #UMRape crisis that has been plaguing" the university.

- **Mississippi State University** blocks "Legalize Marijuana in Mississippi."

- A number of universities block accounts supporting the "Occupy" movement. For example, **Ball State University** blocks "Occupy Indiana," **Ivy Tech Community College** in Indiana blocks "Occupy Richmond Indiana," the **University of Maryland-College Park** blocks "Occupy Baltimore," and the **University of North Carolina** blocks "Occupy Raleigh" on Facebook.

- **Idaho State University** blocked a Facebook page critical of a university employee whose photographs of big game hunting in South Africa went viral.[84]

- The **University of Mississippi**, which blocks mentions

of its former "Colonel Reb" mascot on its Facebook page, also blocks a "Colonel Reb" Twitter account operated by an organization (which also has a registered student chapter at the university) that advocates for the mascot's return.[85]

- The **University of Utah** blocks animal rights activists, including PETA, former University of Utah student Jeremy Beckham, and "Animal Welfare News." Activists, including PETA and Beckham, have criticized research conducted at the university's labs.[86]

- The **University of Alaska Anchorage** blocked an "Alaskans4Trump" account that had disparaged activist Shaun King in response to a tweet announcing that King would be speaking at the university.[87]

The reason users have been blocked is not always clear from the records produced to FIRE. (The **University of North Dakota**, for example, blocks a Facebook group entitled "Dog Enthusiasts of North Dakota, no posers, only real dog lovers.") Most institutions block only a handful of users, blocking an average of 76 Facebook users and 23.5 Twitter users. Others wield the tool more liberally. **Indiana University** blocks the most Facebook users (1488), trailed closely by the **University of Washington** (1162), with the **University of California, Los Angeles** in a distant third (691). When it comes to blocked Twitter users, **Portland State University** blocks the most users (883), more than double that of **Central Connecticut State University** (307) and **Arizona State University** (253).

D. The extent of manual removal of posts and comments is unknown.

FIRE's survey did not reveal information about the extent to which institutions utilize their ability to manually hide individual Facebook posts or comments after they've been posted. However, if institutions are utilizing tools to prevent content from being posted, it is certain that they are also removing content after it has been posted. Recall, for example, that at Ohio's **Wright State University**, a public records request revealed that administrators hid hundreds

[83] Katherine Rodriguez, *University of New Hampshire Professors Call for Trump Supporters to Be Expelled*, Breitbart, Nov. 21, 2016, https://www.breitbart.com/politics/2016/11/21/university-new-hampshire-professors-call-trump-supporters-expelled.

[84] Michael H. O'Donnell, *ISU accountant on safari becomes social media target*, Idaho St. J., Aug. 5, 2015, https://www.idahostatejournal.com/members/isu-accountant-on-safari-becomes-social-media-target/article_f46ff95c-3b87-11e5-9f24-93c2ba7f4656.html.

[85] Colonel Reb Found., About Us, http://www.colonelreb.org/saving-colonel-reb (last visited Apr. 15, 2020); *see also* Univ. of Miss., Colonel Reb Found., https://olemiss.campuslabs.com/engage/organization/colonel-reb-foundation (recognized student organization webpage) (last visited Apr. 15, 2020).

[86] Courtney Tanner, *University of Utah can't charge PETA a $5K 'prepayment' for records on lab animal deaths, committee rules*, Salt Lake Trib., Nov. 14, 2018, https://www.sltrib.com/news/education/2018/11/14/university-utah-cant/.

[87] @Alaskans4Trump, Twitter (Feb. 7, 2017, 1:30 AM), https://twitter.com/Alaskans4Trump/status/828913792993988608.

of posts concerning an ongoing faculty union strike.[88] Unfortunately, this type of content removal is difficult to detect through broad public records requests.

HOW PRIVATE AND GOVERNMENT ACTORS CAN MITIGATE THE RISK OF CENSORING SPEECH ON SOCIAL MEDIA

Government actors and social media companies navigating the application of the First Amendment to the digital realm can both take steps to avoid infringing on fundamental civil liberties.

A. Public actors and private colleges must avoid censoring speech on social media.

For administrators and staff at public universities and colleges—as well as at private institutions that promise freedom of expression to students and faculty—there are a variety of ways to reduce the risk of censorship.

For example:

- **Don't filter.** Turn off Facebook's filters.

- **Don't block users.** Don't block users based on their viewpoint. If they repeatedly violate a policy, document it and give them an opportunity to contest any limits on their access.

- **Craft clear, publicly available policies.** Be clear about the purpose of your social media pages. Is your page open for comments only from students or faculty, or is it open to the public? If you place limits on the content of speech, make sure they're published, reasonable, narrow, and objective. A vague policy that leaves your staff with a wide range of discretion is a recipe for trouble. Some universities have begun to formulate new policies.[89]

- **Consistently enforce policies once in place.** A failure to enforce policies consistently may lead to First Amendment liability even if the policy itself is clear, objective, and reasonable. Selective enforcement will lead to the appearance of bias, and may demonstrate unlawful viewpoint discrimination.[90] Further, at least one court has determined that, because policies were inconsistently enforced, a Facebook page was a *designated* public forum, not a limited public forum, meaning that it was subject to a stricter First Amendment analysis.[91]

- **Train staff on First Amendment principles.** Make sure your staff members tasked with regulating and responding to online speech know what they can and can't do, and make sure they ask for help when they're not sure.[92]

- **Keep records.** If you block a user for posting the same comment repeatedly, or for using unprotected speech, keep a record of it. This will facilitate supervision and correction if a user is blocked for an improper reason.

B. Social media companies can discourage government actors from abusing tools to censor online speech.

Social media companies can also take steps to discourage government actors from misusing or purposely abusing their moderation tools to effectuate unlawful censorship.

For example:

- **Distinguish between government and non-government accounts.** If a user identifies themselves as a government actor, make that information public, and require government officials to designate themselves as such in order to create verified pages or accounts.

- **Require government actors to establish public-facing policies.** Restrict government actors' moderation tools unless they have created a public policy concerning user content.

- **Keep filters "off" by default**, and only permit their use if the government actor has established a public-facing content policy.

[88] Greg Harold Greubel, *Public records reveal Wright State used unconstitutional Facebook page policy to censor pro-union speech during historic faculty strike*, Found. for Indiv. Rights in Educ., Jan. 24, 2020, https://www.thefire.org/public-records-reveal-wright-state-used-unconstitutional-facebook-page-policy-to-censor-pro-union-speech-during-historic-faculty-strike.

[89] *See, e.g.*, Northern Arizona University and the University of North Carolina at Chapel Hill.

[90] Thomas v. Chi. Park Dist., 534 U.S. 316, 325 (2002) (granting "waivers to favored speakers" or "denying them to disfavored speakers" would "of course be unconstitutional"); *see, e.g.*, Business Leaders in Christ v. Univ. of Iowa, 360 F.Supp.3d 885, 907 (S.D. Iowa 2019) (disparate enforcement of nondiscrimination policy violated the First Amendment).

[91] Garnier v. Poway Unified Sch. Dist., No. 17-cv-2215-W (JLB), U.S. Dist. LEXIS 167247, at *20 (S.D. Cal. Sept. 26, 2019), ECF No. 42.

[92] To its credit, Wayne State University started training its social media staff after receiving a records request from FIRE.

- **Alert users when their comment has been filtered on a government actor's page.** If a user does not know that their speech has been hidden, they cannot remedy that censorship.

- **Make public the words contained on the profanity filters.** Government actors should not be able to make use of a list of forbidden words hidden from the public.

- **Provide tools and reminders for government accounts.** If an account is designated as belonging to a government actor, provide warnings alongside filtering or blocking tools that their use may have ramifications under the First Amendment. If a government actor blocks a user, require them to set forth their reason for doing so.

CONCLUSION

Freedom of expression is often one of the few tools available to people to defend themselves. As more of our public discourse takes place online, and not on the sidewalk or in the pages of newspapers, it is critical that public and private institutions alike vigorously defend expressive rights, and remain vigilant to the impact censorship will have on individuals, groups, and communities.

FIRE stands ready to assist students, student organizations, faculty members, and faculty organizations in defending their rights—online or off. If you believe your rights may be jeopardized, contact FIRE at https://thefire.org/alarm.

Appendix A:

Surveyed Institutions and Response Data

The following is a simplified version of our survey results data. A more comprehensive version of this data may be found at https://cutt.ly/firesms.

Institutions in **blue** provided adequate responses. Copies of the records are hyperlinked.

Institutions marked in **red** failed to produce sufficient documents for the reasons specified in the accompanying footnote or hyperlinked document.

Name	State	Response	Profanity Filter			Custom Blacklist		Blocked Users	
			Off	Medium	Strong	Uses List	Entries	Facebook	Twitter
TOTAL		198	44	55	99	60	3389	13197	4065
Percentages		88.39%	22.2%	27.8%	50.0%	30.30%		76.3%	23.5%
University of Alaska, Anchorage	AK	Yes			Strong	No	0	23	3
University of Alaska, Fairbanks	AK	Yes			Strong	No	0	18	0
University of Alaska, Southeast	AK	Yes			Strong	Unknown		8	
Kenai Peninsula College[1]	AK	No							
Ilisaġvik College[2]	AK	No							
University of Alabama[3]	AL	No							
Troy University[4]	AL	No							
Auburn University	AL	Yes			Strong	Yes	6	289	29
Calhoun Comm'ty College[5]	AL	No							
Jefferson State Comm'ty College[6]	AL	No							
Arizona State University	AZ	Yes			Strong	Yes	76	136	253
Northern Arizona University	AZ	Yes			Strong	No	0	14	42
University of Arizona	AZ	Yes			Strong	Yes	17	347	79
Pima Comm'ty College	AZ	Yes			Strong	No	0	0	1
Mesa Comm'ty College	AZ	Yes			Strong	Yes	5	1	2
University of California, Los Angeles	CA	Yes			Strong	Yes	46	691	10
California State University, Fullerton	CA	Yes		Medium		No	0	6	25
University of California, Berkeley	CA	Yes			Strong	No	0	0	0
Santa Monica College	CA	Yes			Strong	Yes	9	7	4
American River College	CA	Yes			Strong	Yes	308	62	0
University of Colorado, Boulder	CO	Yes			Strong	No	0	27	3
University of Colorado, Denver	CO	Yes	Off			No	0	94	2

[1] Surveyed in October 2019. Failed to respond.

[2] Surveyed in October 2019. Failed to respond.

[3] Refused: records only open to Alabama citizens.

[4] Failed to respond.

[5] Refused: records only open to Alabama citizens.

[6] Refused: records only open to Alabama citizens.

Name	State	Response	Profanity Filter			Custom Blacklist		Blocked Users	
Colorado State University	CO	Yes		Medium		No	0	47	1
Front Range Comm'ty College	CO	Yes	Off			No	0	3	23
Pikes Peak Comm'ty College	CO	Yes			Strong	No	0	12	16
Central Connecticut State University	CT	Yes			Strong	No	0	29	307
Southern Connecticut State University	CT	Yes			Strong	Yes	2	13	4
Gateway Comm'ty College	CT	Yes	Off			Yes	9	29	6
Manchester Comm'ty College	CT	Yes	Off			No	0	17	4
University of Connecticut	CT	Yes	Off			No	0	71	18
Delaware State University[7]	DE	No							
University of Delaware[8]	DE	No							
Delaware Technical Comm'ty College	DE	Yes			Strong	No	0	3	4
University of Central Florida	FL	Yes			Strong	Yes	43	381	14
Florida International University	FL	Yes			Strong	Yes	4	231	9
University of Florida	FL	Yes			Strong	No	0	0	0
Miami Dade College	FL	Yes	Off			No	0	62	4
Broward College	FL	Yes			Strong	No	0	64	10
Georgia State University	GA	Yes			Strong	No	0	32	24
University of Georgia	GA	Yes			Strong	Yes	2	433	3
Kennesaw State University	GA	Yes			Strong	Yes	25	19	3
Central Georgia Technical College	GA	Yes			Strong	No	0	1	1
Chattahoochee Technical College	GA	Yes			Strong	No	0	71	4
University of Hawai'i at Manoa[9]	HI	No							
University of Hawai'i at Hilo[10]	HI	No							
University of Hawai'i Maui College[11]	HI	No							
Kapi'olani Comm'ty College[12]	HI	No							
Leeward Comm'ty College[13]	HI	No							
Idaho State University	ID	Yes		Medium		No	0	48	10
University of Idaho	ID	Yes		Medium		No	0	28	10
Boise State University	ID	Yes			Strong	No	0	12	33
College of Southern Idaho	ID	Yes			Strong	No	0	5	4
College of Western Idaho	ID	Yes			Strong	No	0	1	3
University of Iowa	IA	Yes		Medium		Yes	5	0	0
University of Northern Iowa	IA	Yes		Medium		No	0	330	0
Des Moines Area Comm'ty College	IA	Yes			Strong	No	0	6	229

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[7] Refused: Delaware State University exempt from Delaware's FOIA.

[8] Refused: Delaware FOIA is limited to records relating to expenditures of public funds.

[9] Provided only partial records.

[10] Provided only partial records.

[11] Provided only partial records.

[12] Provided only partial records.

[13] Failed to respond.

Name	State	Response	Profanity Filter			Custom Blacklist		Blocked Users	
Kirkwood Comm'ty College[14]	IA	No							
University of Illinois, Urbana-Champaign	IL	Yes			Strong	Yes	21	517	5
University of Illinois, Chicago	IL	Yes			Strong	No	0	137	54
Northern Illinois University	IL	Yes			Strong	Yes	5	78	39
College of DuPage	IL	Yes			Strong	No	0	0	0
College of Lake County	IL	Yes			Strong	No	0	11	6
Purdue University	IN	Yes	Off			No	0	435	12
Indiana University	IN	Yes	Off			No	0	1488	197
Ball State University	IN	Yes			Strong	No	0	78	2
Ivy Tech Comm'ty College	IN	Yes			Strong	Yes	145	319	2
Vincennes University[15]	IN	Yes			Strong	Yes	6	13	2
University of Kansas	KS	Yes			Strong	Yes	14	621	8
Kansas State University[16]	KS	Yes		Medium		Yes	53	0	0
Wichita State University	KS	Yes	Off			No	0	13	1
Johnson County Comm'ty College	KS	Yes			Strong	No	0	2	0
Barton County Comm'ty College[17]	KS	No							
University of Kentucky	KY	Yes	Off			Yes	4	82	3
Western Kentucky University	KY	Yes		Medium		No	0	69	4
University of Louisville[18]	KY	Yes			Strong	Yes	7	0	0
Jefferson Comm'ty and Technical College	KY	Yes	Off			No	0	1	36
Bluegrass Comm'ty and Technical College	KY	Yes			Strong	No	0	4	5
University of Louisiana, Lafayette	LA	Yes			Strong	No	0	234	17
Southeastern Louisiana University	LA	Yes			Strong	No	0	33	0
Louisiana Tech University	LA	Yes		Medium		No	0	100	54
Delgado Comm'ty College	LA	Yes			Strong	Yes	5	21	0
Baton Rouge Comm'ty College	LA	Yes			Strong	No	0	0	15
University of Massachusetts, Amherst	MA	Yes			Strong	No	0	73	12
University of Massachusetts, Lowell	MA	Yes	Off			No	0	15	9
University of Massachusetts, Boston	MA	Yes			Strong	Yes	3	20	5
Bunker Hill Comm'ty College	MA	Yes	Off			No	0	3	0
Middlesex Comm'ty College	MA	Yes		Medium		No	0	10	0
University of Maryland, University College	MD	Yes			Strong	No	0	0	0
University of Maryland, College Park	MD	Yes		Medium		Yes	43	105	5
Towson University	MD	Yes			Strong	No	0	24	5
Montgomery College	MD	Yes			Strong	No	0	15	3
Comm'ty College of Baltimore County[19]	MD	No							

[14] Requested $80.00.

[15] A copy of these records was sent via mail but cannot be located at this time because the author's office is inaccessible due to COVID-19.

[16] Requested $12.50.

[17] Failed to produce records after acknowledging request.

[18] Requested $5.00.

[19] Failed to produce records after acknowledging request.

Name	State	Response	Profanity Filter			Custom Blacklist		Blocked Users	
University of Maine	ME	Yes		Medium		No	0	3	1
University of Southern Maine	ME	Yes			Strong	No	0	18	13
University of Maine at Augusta	ME	Yes			Strong	No	0	6	1
Southern Maine Comm'ty College	ME	Yes	Off			No	0	5	1
Eastern Maine Comm'ty College	ME	Yes		Medium		No	0	2	0
Michigan State University[20]	MI	No							
University of Michigan, Ann Arbor	MI	Yes		Medium		No	0	352	0
Wayne State University	MI	Yes	Off			No	0	21	203
Oakland Comm'ty College	MI	Yes			Strong	Yes	15	23	6
Macomb Comm'ty College	MI	Yes	Off			No	0	36	30
University of Minnesota, Twin Cities	MN	Yes	Off			Yes	2	37	15
St. Cloud State University	MN	Yes			Strong	No	0	48	31
Minnesota State University, Mankato	MN	Yes		Medium				42	1
Normandale Comm'ty College[21]	MN	No							
Century College	MN	Yes	Off			No	0	0	0
Missouri State University, Springfield	MO	Yes		Medium		No	0	0	4
University of Missouri, Columbia[22]	MO	No							
University of Missouri, St. Louis[23]	MO	No							
St. Louis Comm'ty College	MO	Yes		Medium		No	0	9	24
Metropolitan Comm'ty College, Kansas City	MO	Yes			Strong	No	0	3	4
University of Mississippi	MS	Yes			Strong	Yes	11	100	65
Mississippi State University	MS	Yes		Medium		Yes	430	87	5
University of Southern Mississippi	MS	Yes			Strong	No	0	16	3
Hinds Comm'ty College	MS	Yes			Strong	No	0	23	38
Mississippi Gulf Coast Comm'ty College	MS	Yes	Off			No	0	4	2
Montana State University	MT	Yes	Off			No	0	0	0
Montana State University, Billings	MT	Yes			Strong	No	0	5	0
University of Montana	MT	Yes		Medium		No	0	39	2
Flathead Valley Comm'ty College[24]	MT	No							
Great Falls College MSU	MT	Yes	Off			No	0	4	0
North Carolina State University, Raleigh	NC	Yes			Strong	No	0	0	0
University of North Carolina, Charlotte	NC	Yes	Off			No	0	1	2
University of North Carolina, Chapel Hill	NC	Yes			Strong	Yes	46	156	16
Central Piedmont Comm'ty College	NC	Yes		Medium		No	0	1	5
Wake Technical Comm'ty College	NC	Yes			Strong	Yes	10	0	0
University of North Dakota	ND	Yes			Strong	No	0	71	103
North Dakota State University	ND	Yes	Off			No	0	34	0

[20] Refused, citing public safety and cybersecurity, and an exemption created in response to 9/11.

[21] Failed to produce records after acknowledging request.

[22] Refused: claimed producing records would amount to "creating" a document.

[23] Refused: claimed producing records would amount to "creating" a document.

[24] Requested $20 for records.

Name	State	Response	Profanity Filter			Custom Blacklist		Blocked Users	
Bismarck State College	ND	Yes		Medium		No	0	8	0
North Dakota State College of Science	ND	Yes			Strong	Yes	438	9	2
Lake Region State College	ND	Yes		Medium		No	0	0	0
University of Nebraska, Lincoln[25]	NE	No							
University of Nebraska, Omaha[26]	NE	No							
University of Nebraska, Kearney[27]	NE	No							
Metropolitan Comm'ty College[28]	NE	No							
Southeast Comm'ty College[29]	NE	No							
University of New Hampshire	NH	Yes		Medium		Yes	4	122	76
Plymouth State University	NH	Yes		Medium		No	0	0	6
Keene State College	NH	Yes	Off			No	0	49	12
NHTI, Concord's Comm'ty College	NH	Yes			Strong	No	0	4	0
Manchester Comm'ty College	NH	Yes	Off			No	0	7	0
Thomas Edison State College	NJ	Yes		Medium		No			0
Rowan University	NJ	Yes		Medium		Yes	5	20	21
Montclair State University	NJ	Yes	Off			No	0	11	2
Bergen Comm'ty College	NJ	Yes	Off			Yes	12	27	0
Brookdale Comm'ty College	NJ	Yes	Off			Yes	3	9	5
New Mexico State University	NM	Yes		Medium		No	0	52	39
Eastern New Mexico University	NM	Yes			Strong	No	0	3	1
University of New Mexico	NM	Yes		Medium		No	0	49	9
San Juan College	NM	Yes			Strong	No	0	8	1
Central New Mexico Comm'ty College	NM	Yes		Medium		No	0	24	3
Western Nevada College	NV	Yes			Strong	No	0	0	0
University of Nevada, Las Vegas	NV	Yes			Strong	Yes	1	16	10
University of Nevada, Reno	NV	Yes			Strong	No	0	53	92
Truckee Meadows Comm'ty College	NV	Yes		Medium		No	0	16	39
College of Southern Nevada	NV	Yes			Strong	No	0	0	0
University at Buffalo	NY	Yes			Strong	No	0	27	0
CUNY Hunter College	NY	Yes		Medium		Yes	422	28	6
Stony Brook University	NY	Yes		Medium		Yes	4	33	5
Suffolk County Comm'ty College	NY	Yes			Strong	Yes	81	0	47
Nassau Comm'ty College	NY	Yes			Strong	No	0	390	0
The Ohio State University	OH	Yes		Medium		Yes	9	1	3
University of Cincinnati	OH	Yes			Strong	No	0	28	3
Kent State University	OH	Yes		Medium		Yes	10	126	1
Columbus State Comm'ty College	OH	Yes			Strong	No	0	0	0

[25] Same as the University of Nebraska, Kearney. Response here.

[26] Same as the University of Nebraska, Kearney. Response here.

[27] Refused: claimed "settings information is design or setup information" and "not a record." Produced incomplete records, limited to some blocked users.

[28] Refused: claimed social media account information does not belong to the college.

[29] Refused: claimed producing records would amount to "creating" a document.

Name	State	Response	Profanity Filter			Custom Blacklist		Blocked Users	
Cuyahoga Comm'ty College	OH	Yes	Off			No	0	12	2
University of Oklahoma	OK	Yes		Medium		Yes	1	543	18
Oklahoma State University	OK	Yes		Medium		Yes	8	189	39
University of Central Oklahoma[30]	OK	No							
Tulsa Comm'ty College	OK	Yes			Strong	No	0	1	0
Oklahoma City Comm'ty College	OK	Yes	Off			No	0	12	1
Portland State University[31]	OR	Yes			Strong	Yes	9	17	883
Oregon State University	OR	Yes	Off			No	0	0	0
University of Oregon	OR	Yes			Strong	Yes	96	99	0
Portland Comm'ty College	OR	Yes		Medium		Yes	10	11	0
Chemeketa Comm'ty College	OR	Yes	Off			No	0	4	0
Comm'ty College of Allegheny County	PA	Yes			Strong	No	0	1	0
Harrisburg Area Comm'ty College	PA	Yes	Off			No	0	3	16
Rhode Island College	RI	Yes	Off			No	0	22	5
University of Rhode Island	RI	Yes	Off			No	0	0	3
Comm'ty College of Rhode Island	RI	Yes			Strong			11	1
Clemson University	SC	Yes			Strong	Yes	44	48	5
College of Charleston	SC	Yes		Medium		No	0	0	0
Coastal Carolina University	SC	Yes		Medium		No	0	20	5
Trident Technical College	SC	Yes		Medium		No	0	28	2
Greenville Technical College	SC	Yes		Medium		No	0	12	5
South Dakota State University	SD	Yes			Strong	No	0	20	1
University of South Dakota	SD	Yes			Strong	No	0	7	3
Black Hills State University	SD	Yes	Off			No	0	21	1
Southeast Technical Institute	SD	Yes	Off			No	0	5	1
Lake Area Technical Institute	SD	Yes		Medium		No	0	4	2
University of Texas, Austin	TX	Yes		Medium		Yes	1	18	40
University of Texas, Arlington	TX	Yes	Off			No	0	4	3
Texas A&M University[32]	TX	Yes		Medium		Yes	31		82
Lone Star College System	TX	Yes		Medium		Yes	3	3	2
Houston Comm'ty College	TX	Yes			Strong	No	0	0	2
University of Utah	UT	Yes	Off			No	0	307	17
Utah State University	UT	Yes			Strong	Yes	6	20	1
Weber State University[33]	UT	No							
Snow College	UT	Yes		Medium		No	0	0	3
Salt Lake Comm'ty College	UT	Yes		Medium		No	0	1	1
University of Vermont	VT	Yes	Off			No	0	8	13
Castleton State College	VT	Yes			Strong	Yes	6	8	7

[30] Produced incomplete records.

[31] First requested $1,331.18 for records. Ultimately charged $49.76 to provide a list with all individuals' names redacted.

[32] Refused to produce records identifying who is blocked from the university's Facebook page, as that issue was then being litigated.

[33] Refused: claimed producing records would "require us to create a custom record" and was not required to produce a record that "does not already exist."

Name	State	Response	Profanity Filter			Custom Blacklist		Blocked Users	
Northern Vermont University, Johnson	VT	Yes	Off			No	0	10	0
Comm'ty College of Vermont	VT	Yes		Medium		No	0	4	10
Vermont Technical College	VT	Yes		Medium		No	0	8	0
University of Washington	WA	Yes		Medium		Yes	31	1162	64
Washington State University	WA	Yes			Strong	Yes	4	0	0
Bellevue College	WA	Yes			Strong	No	0	1	0
Everett Comm'ty College	WA	Yes		Medium		No	0	12	17
Edmonds Comm'ty College	WA	Yes		Medium		Yes	6	3	44
University of Wisconsin, Milwaukee	WI	Yes			Strong	Yes	8	7	62
University of Wisconsin, Oshkosh	WI	Yes		Medium		No	0	6	11
University of Wisconsin, Madison	WI	Yes			Strong	No	0	0	0
Madison Area Technical College	WI	Yes			Strong	Yes	3	0	0
Milwaukee Area Technical College	WI	Yes			Strong	No	0	5	5
West Virginia University	WV	Yes			Strong	Yes	25	0	0
Marshall University	WV	Yes		Medium		No	0	13	11
Fairmont State University	WV	Yes	Off			No	0	8	1
Blue Ridge Comm'ty and Technical College	WV	Yes			Strong	Yes	731	0	0
Pierpont Comm'ty and Technical College	WV	Yes			Strong	No	0	0	0
University of Wyoming	WY	Yes	Off			No	0	33	1
Laramie County Comm'ty College	WY	Yes		Medium		No	0	1	7
Sheridan College	WY	Yes	Off			No	0	0	0
University of the District of Columbia	DC	Yes			Strong	No	0	7	12

Appendix B:

Exceptions to Survey Methodology

The survey sought to cover two sets of institutions within each state, plus the District of Columbia: the three four-year institutions with the highest enrollment and the two two-year institutions with the highest enrollment. This would amount to 255 institutions, but not every state has qualifying institutions, some states' public records laws do not extend to those institutions, and some institutions cannot be surveyed due to a legal conflict. What follows is a list of states or institutions falling under an exception or conflict:

- **Arkansas:** Public records law limited to citizens of Arkansas. (-5 institutions).

- **California:** East Los Angeles College could not be contacted due to litigation conflict. Replaced by American River College.

- **Delaware:**

- Only two four-year institutions, and only one two-year institution qualified. (-2 institutions).

- The qualifying four-year institutions (Delaware State University and the University of Delaware) are largely exempt from Delaware's public records law. (-2 institutions).

- **Iowa:** Iowa State University could not be contacted due to litigation conflict. Cannot be replaced by another four-year institution because there are only three public four-year institutions in Iowa. (-1 institution).

- **Louisiana:** Louisiana State University could not be contacted due to litigation conflict. Replaced by Louisiana Tech.

- **New Jersey:** Rutgers University could not be contacted due to possibility of litigation conflict. Replaced with Rowan University.

- **Pennsylvania:** The Right to Know law largely exempts four-year institutions, but does not exempt two-year institutions. (-3 institutions).

- **Rhode Island:**

- The Naval War College was not surveyed because its relationship with the armed services may change the First Amendment calculus. It was not replaced because there are only three, four-year institutions in the state. (-1 institution).

- Rhode Island only has one two-year institution. (-1 institution).

- **South Carolina:** The University of South Carolina could not be surveyed due to litigation conflict. Replaced by Coastal Carolina University.

- **Tennessee:** FOIA limited to citizens of Tennessee. (-5 institutions).

- **Virginia:** FOIA limited to citizens of Virginia. (-5 institutions).

- **Washington, D.C.:**

- There's only one public, four-year institution in Washington, D.C., that is not affiliated with the military. (-2 institutions).

- There are no public two-year institutions. (-2 institutions).

- **Wyoming:** There is only one public, four-year institution. (-2 institutions).

Appendix C:

The following is a lightly edited version of the request sent to Michigan State University:
This is a request for records pursuant to the Michigan Freedom of Information Act (Mich. Comp. Laws Ann. §§ 15.231 et seq.). If you are not the records custodian for MSU, please identify the correct person to contact.

This request seeks records relating to restrictions and settings concerning the official Facebook and Twitter accounts for MSU, and should be directed to the person responsible for operating those accounts.

RECORDS REQUESTED

I request the following records:

1.. A copy of the settings for the Facebook page maintained by Michigan State University (available at https://www.facebook.com/spartans.msu). This list is accessible by (A) logging into the Facebook page as an administrator, and then (B) clicking "Settings" at the top of the official page. The URL should look like: https://www.facebook.com/spartans.msu/settings/?tab=settings.

2.. A copy of the list of people or pages banned from the Facebook page referenced above. This list is accessible by: (A) logging into the Facebook page as an administrator, (B) clicking "Settings" at the top of the official page, (C) clicking "People and Other Pages" in the left column, and (D) selecting "Banned People and Pages" from the drop-down menu. The final URL should look like: https://www.facebook.com/spartans.msu/settings/?tab=people_and_other_pages.

3.. A list of the "blocked accounts" by the Twitter account maintained by Michigan State University (available at https://twitter.com/michiganstateu). This list is accessible by navigating to this URL while logged into the account: https://twitter.com/settings/blocked.

Fee waiver request: This request concerns a matter of public interest. The social media restrictions imposed by public institutions and officials — including the president, governors, and public universities — have been challenged on First Amendment grounds. This survey seeks to explore the extent to which public colleges and universities have similar restrictions.

The public interest would be well-served by granting a fee waiver. The request is not being sought for a commercial purpose, but is instead sought by a nonprofit organization to provide the public with information concerning the conduct of government actors as that conduct pertains to civil liberties in higher education.

If a fee waiver is not granted, please apprise me if the estimated costs will exceed $10.

Request for expedited processing: Completion of this survey depends on the institution with the slowest response time. We request that Michigan State University produce responsive records on an expedited basis. As you may be aware, a public body has five business days to respond. (Mich. Comp. Laws. Ann § 15.235(2)).

Appeal information: If you deny any portion, or all, of this request, please provide me with a written explanation of the reason(s) for your denial, including a citation to each specific statutory exemption you believe justifies the refusal to release the information and notify me of the appeal procedures available to me under the law. If you conclude that portions of the records that I request are exempt from disclosure, please release the remainder of such records for inspection and

Appendix D:

Customized Blocked Words

The surveyed institutions blocked the following unique words using Facebook's customizable blacklist. Duplicates were removed.

100	appleguru	assrammer
9/11	applelovers	asswipe
9-11	applemusiclist	asswipes
:))	apps	attention
@$$	aramark	auto
#cocksoutforharambe	areola	awaay
#dicksoutforharambe	areole	awayy
←-- ♥ us ♥	arian	ayir
☝	arrrrr	azazel
$	arschloch	azz
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2's!!!	artificially generated stampede	b-s
2004toyota 4runner	awareness foundation	b!+ch
5g	aryan	b!tch
5t	ash0le	b*tch
a$$	asholes	b00bs
a55	asl	b17ch
a55hole	asla	b1tch
abcreports	ass	b1tches
abuse	ass hole	babe
abusers	ass monkey	babes
accident	assault	baboon
aeolus	assbang	bad
africant	assbanged	balloon
aggy	assbangs	balloonsblow
agsaf	asses	balls
ahole	assface	ballsack
ahuja	assfuck	baloons
alert	assfucker	bammer
amazing	assh0le	bammers
amcik	assh0lez	ban
ame law	asshat	bang
americanadvantagelawgroup@	assho1e	banger
lawyer.com	asshoel	banned
anal	asshole	barf
analprobe	assholery	bart
andskota	assholes	bassterds
anilingus	assholz	bastard
annoying	asskisser	bastards
anthem	asslick	bastardz
anus	asslicker	basterds
apartment	asslickers	basterdz
apologize	asslicks	bawdy
apple	assmaster	bdsm
	assmunch	beaner

bearded clam
beardedclam
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beat-off
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bernie
bert
bestial
bestiality
bfd
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biatch
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big beoyotch
big tits
bigleaguepolitics.com
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bimbo
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hand-job
handjob
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haunt	horniest	illuminati	jerkoff	kumming
hcc	horny	im	jersey	kums
he11	horrendous	inbred	jersey store	kunilingus
hebe	horseshit	incest	jetblue	kunt
heeb	hotsex	injun	jewpidily	kunts
heil	housatonic	insurance	jigaboo	kuntz
heimey	houston community	intercourse	jihad	kurac
hell	college	ipaaaad	jisim	kurwa
hells	http	ipaaad	jism	kusi
helme	http://apps.facebook.	ipaaad twoooosss	jiss	kyke
helvete	com	ipaaadd	jiz	kyrpa
hemp	https	ipaaadd2	jizm	l3i+ch
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herp	allnentertainmentt	ipaad2	junkie	lab
herpes	huevon	ipaad2's	junky	labia
herpy	hui	ipaads	k e r	lame
hershey highway	hump	ipad	kaffer	lampshade
hey	humped	ipad2	kaffir	late
hey there university	humping	ipad2entry	kanker	latee
hick	hurry	ipad2s	kawk	lech
hicks	hussy	ipadd	kido	leper
hiddenpicz	hymen	ipads	kike	leppo
hillary	i padds	ipadss	kikes	lesbian
himey	i-paaaad	iphon5	kill	lesbians
hitler	i-paaaadd	iphone	killary	lesbo
hiv	i-paaadd	iphone 5	kills	lesbos
hoar	ice	iphone5	kinky	lez
hobag	icrazy	iphones	kkk	lezbian
hoer	idiocy	ippaaaadtwoo	klan	lezbians
holocaust	idiot	ippaad	klootzak	lezbo
hom0	idiots	ippad	kma	lezbos
homey	ifree	ippads	kmia	lezzian
homo	igiveaway	iq	knijnenburg	lezzie
homoey	iipaaaad	iq score	knob	lezzies
homophobic	iipaaaadd	irresponsible	knob end	lezzy
homos	iipaaaaddd	isis	knobend	libtard
honkey	iipaaaadddtwos	j3rk0ff	knobs	libtards
honkie	iipaaaaddtwos	jack	knobz	life
honky	iipaaad	jack off	knulle	like
hooch	iipaaadd	jack-off	Kock	like pls. :)
hood rat	iipaaadd2s	jackass	kondum	linthead
hoodrat	iipaaaddtwo's	jackhole	kondums	lipshits
hook	iipaad	jacking jackoff	kony	lipshitz
hookah	iipad	jackoff	kooch	listofapples
hookem	iipad 2's	jambo	kooches	lmao
hooker	iipad2	jap	kootch	lmbo
hoor	iipad2s	japs	kracker	lmfao
hoore	iipad2ss	jerk	kraut	loin
hootch	iipads	jerk jerkoff	kuk	loins
hooter	iipads2	jerk-off	kuksuger	lube
hooters	iippaaaaad2	jerk0ff	kum	lucky
hore	ike likeeeeee	jerked	kummer	lusty

m-fucking
Mafucka
mamhoon
mams
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motehrfucking
motha mother-fucker
mothafuck
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mother fucker
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pita	puto	roflmao	senators	sissy
pizda	puuke	rotflmaotid	sendng	site
pjaavpietrab	puuker	rotflolapmp	sex	sitee
pledge	qahbeh	rtard	sexual	skag
plow	queaf	rtfm	sexy	skanck
plssss	queef	rtwfq	sh!+	skank
plug	queefs	rum	sh!t	skankee
pmp	queer	rump	sh*t	skankey
pms	queero	rumprammer	sh1t	skanks
polac	queers	ruski	sh1ter	skanky
polack	queerz	s hit	sh1ts	skeet
polak	quicky	s-h-1-t	sh1tter	skittle
pollock	quim	s-h-i-t	sh1tz	skittles
poon	qweers	s-o-b	shamedame	skrib
poonani	qweerz	s.h.i.t.	sharmuta	skype
poontang	qweir	s.o.b	sharmute	skypes
poontsee	r-tard	s.o.b.	sheister	slags
poop	racy	s0b	shemale	slave
poor	rag head	sadism	shi+	sleaze
porn	raghead	sadist	shipal	sleazy
porno	ragheads	sale	shit	slip
pornography	rape	sales	shit face	slut
pos	rapeculture	sandnigger	shite	slutdumper
pot	raped	scag	shiteater	slutkiss
potty	raper	scank	shited	sluts
ppictureeee	rapist	scantily	shitface	slutty
ppiicctureeee	rapists	scared	shitfucker	smart
pr0n	raunch	scat	shitfull	smegma
pr1c	rautenberg	schaffer	shithead	smut
pr1ck	really	scheiss	shithold	smuts
pr1k	rebel	schizo	shithole	smutty
preteen	recieved	schlampe	shithouse	snatch
prick	recktum	schlong	shiting	snigger
pricks	rectal	schmuck	shitings	sniper
prig	rectum	screw	shits	snow
profile	rectus	screwed	shitshow	snowflake
prostitute	redneck	screwin	shitt	snowflakes
prude	rednecks	screwing	shitted	snuff
pube	reefer	scrog	shitter	sodom
pubic	reetard	scrot	shitters	sol
pubis	reich	scrote	shittin	son-of-a-bitch
pula	republican	scrotum	shitting	sooners
pule	resign	scrud	shittings	sorry
punkass	retard	scrwing	shitty	souse
punky	retarded	scum	shity	soused
puss	retards	seaman	shitz	sperm
pusse	revue	seamen	shiz	spic
pussee	rim-job	seduce	shot	spick
pussies	rimjob	seks	shyt	spik
pussy	rimming	self	shyte	spiks
pussypounder	ritard	sell	shytty	splooge
pussys	roads	selling	shyty	spooge

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victoria's secret
video watch
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vodka
vomit
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white boy
whitey
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whored
whoreface
whorehopper
whorehouse
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www.bruinslist.com
www.bruinspokerclub.
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