

Frequently Asked Questions



Read answers to frequently asked questions relating to free speech, the First Amendment, and expressive activities on campus at UC San Diego.

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What is the First Amendment?

The first 10 Amendments to the U.S. Constitution are known as the Bill of Rights, which were created to ensure the protection of certain individual liberties. The First Amendment states:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

While the language of the First Amendment refers only to “Congress,” the First Amendment – as well as most of the other Amendments that make up the Bill of Rights – applies to government entities in general by way of the Fourteenth Amendment to the Constitution. This includes

federal, state and local government officials, and extends to public schools and institutions including UC San Diego.

What is free speech?

Free speech is any form of speech—including nonverbal and silent protest as well as symbolic speech—that is legally protected by the First Amendment. This often includes speech that we find offensive or morally questionable. Justice William Brennan wrote in the Supreme Court's decision in *Texas v. Johnson* (1989):

"If there is a bedrock principle underlying the First Amendment, it is that government may not prohibit the expression of an idea simply because it finds it offensive or disagreeable."

Is hate speech protected speech?

Yes. There is no legal definition of hate speech. Some people mistakenly believe that it is unlawful to say things that offend or insult groups based on race, color, religion, national origin, sexual orientation, disability or other traits. This is incorrect. Although it may be difficult to understand or accept, hate speech is protected under the First Amendment. Because the goal of the Bill of Rights was to protect individual liberty, the First Amendment does not distinguish between hateful and non-hateful speech or otherwise allow the government to make moral judgments about the content of speech.

It is important to note that the First Amendment does not protect conduct or actions just because they are motivated by an individual's beliefs or opinions. Therefore, even though hate speech is protected by the First Amendment, "hate crimes" may be regulated by law.

In addition, the First Amendment does not protect true threats (statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals).

What types of speech are not protected by the First Amendment?

Speech that is not protected by the First Amendment includes fighting words, incitement of illegal activity, true threats and harassment. However, historically, the Supreme Court has held a very narrow definition of these terms, limiting the authority of the government and public officials to prohibit or prosecute speech, even if it appears to fall into one of these categories.

- **Obscenity** – Speech/materials may be deemed obscene (and therefore unprotected) if the speech meets the following (extremely high) threshold: It (1) appeals to the "prurient" interest in sex, (2) is patently offensive by community standards, and (3) lacks literary, scientific, or artistic value.
- **Incitement** – Activity or speech that advocates for producing 'imminent lawless action' and is likely to produce such action.
- **Fighting words** – Speech that is personally/individually abusive and is likely to incite imminent physical retaliation.
- **Defamation** – An intentional and false statement about an individual that is publicly communicated in written (called "libel") or spoken (called "slander") form, causing injury to the individual.
- **Perjury** – A knowingly false statement given under oath in court.
- **Extortion** – Obtaining property by wrongful use of force or fear.
- **Harassment** – Conduct based on a protected category that is so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victims are effectively denied equal access to an institution's resources and opportunities. *Davis v. Monroe County Board of Education (1999)*.
- **True threats** – Statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. The speaker does not have to act on his or her words (e.g., commit a violent act) in order to be found guilty of true threat.
- **False advertising** – A knowingly untruthful or misleading statement about a product or service.
- **Certain symbolic actions**, if the actions are otherwise illegal.
 - Examples: Tagging/graffiti, littering, burning a cross on private property.
- **Plagiarism of copyrighted material**
- **Child pornography**

Are nonverbal symbols, like swastikas or burning flags, constitutionally protected?

It depends. The Supreme Court ruled in *Texas v. Johnson* (1989) that burning the American flag was protected speech. In *Tinker v. Des Moines Independent Community School District* (1969), they ruled that wearing black armbands to protest the Vietnam War was protected speech. However, the First Amendment does not protect the use of nonverbal symbols to directly threaten an individual or encroach upon or destroy private property. Examples might include hanging a noose over a dorm room or spray painting swastikas on the library wall.

Is speech on the Internet entitled to the same level of protection as speech in print and other media?

Yes. In the case *Reno v. ACLU* (1997), the Supreme Court rejected the government's argument that speech on the Internet could be more carefully regulated as it is with radio and television broadcasting, and concluded that the Internet should be given the full protection of the First Amendment as it is with print media.

When does speech become unlawful harassment?

The precise legal standards for unlawful harassment vary depending on who the harasser and who the victim of the harasser are. In general, harassment refers to a severe or pervasive course of conduct directed at an individual that causes that person substantial emotional distress. Whether the conduct constitutes harassment depends on a number of factors, including how it occurs, the frequency of its occurrence, and the extent to which it is targeted at a specific individual. For example, an offensive description of a student in a publicly accessible publication or website, (*e.g.*, social media) may not rise to the level of harassment because it occurs in a public domain and the student may choose to avoid those publications or websites. In contrast, if an individual is the target of repeated harassing phone calls or email messages, such action may give rise to a valid claim of harassment.

Students, faculty or staff who feel that they may have been subjected to harassment are encouraged to reach out to university administrators including the Office for the Prevention of Harassment and Discrimination, the Office of Student Conduct, Student Affairs and residential deans. Find more information on making a report on the [OPHD website](#).

As a public university, what laws govern UC San Diego's position on free speech?

As a public university, UC San Diego is obligated to uphold the First Amendment. Our campus is home to diverse organizations, faculty, staff and students, each with a wide range of interests and viewpoints. Although the views expressed by a particular group or at a particular event may not reflect the views of UC San Diego, all campus community members have the right to express those views, at appropriate times, in appropriate places and in appropriate manners. UC San Diego is not permitted to silence speech merely because the speech is offensive to many or even most of the UC San Diego community. Students, faculty, and staff are all entitled to exercise their own rights to free speech to condemn or criticize offensive speech, for example, by holding protests, teach-ins or counter-demonstrations as long as they are conducted in a lawful manner.

Are private universities obligated to comply with the First Amendment?

No. Public colleges and universities are considered “state actors”—in other words, they act on behalf of the government. This means they are legally required to uphold the constitutional rights of their students. Private institutions—even ones that receive substantial government funding—are not directly bound by the First Amendment. Regulation of speech at private universities, however, may be governed by university policies, contracts with students or state statutes.

How does UC San Diego respond to hate speech?

UC San Diego is dedicated to fostering a campus climate that is diverse and inclusive and vigorously opposes and deplors all forms of hate-fueled speech. UC San Diego offers support for faculty, staff and students who wish to use their private free speech rights to condemn hateful speech. Students who encounter hurtful or offensive speech are encouraged to reach out to University administrators including the Office of the Vice Chancellor for Diversity, Equity and Inclusion, the Office for the Prevention of Harassment and Discrimination, the Office of Student Conduct and college Student Affairs and Residential deans. More information about responding to acts of intolerance may be found at the [Office for the Prevention of Harassment and Discrimination \(OPHD\) website](#).

Does the First Amendment protect civil disobedience on campus?

No. The First Amendment protects freedom of speech and expression, but does not protect engagement in civil disobedience which, by definition, involves the violation of laws or regulations. So if, for example, student protesters take over a campus building, or disrupt classes or events, their actions may be subject to punishment, not only under the UC San Diego Student Conduct Code, but also in criminal court—if the conduct constitutes a crime. Civil disobedience has historically played a significant role in various social movements, but students should be aware that participation in civil disobedience, whether occurring on- or off-campus, could potentially result in serious criminal or conduct charges.

Beyond its legal obligations, does UC San Diego believe that offensive speech should be allowed on campus?

Yes. Although it may be upsetting to hear certain kinds of speech, UC San Diego does not believe such speech should be restricted. Instead, we concur with Justice Louis Brandeis, who said the remedy to hateful speech was “more speech, not enforced silence.” When we are confronted with speech that is morally repugnant, we should engage and debate it, rather than stifle it.

Part of UC San Diego’s mission is the search for knowledge, which cannot be accomplished without the foundation of free speech and academic freedom. It is important to remember that many ideas we believe in – including climate change, evolution, and equal rights for women and minorities – were once considered offensive.

What is academic freedom?

The University of California has a system-wide mission committed to the discovery of knowledge and dissemination of that knowledge to students and society at large. As such, it supports the principles of academic freedom, which protect “freedom of inquiry and research, freedom of teaching, and freedom of expression and publication.” View [UCOP’s full policy](#). This means that faculty should have the freedom to teach, learn, study, and otherwise pursue knowledge without fear of undue interference or reprisal from the government, educational institution, or public. The justification of academic freedom is that it not only benefits the faculty and students, but also society in general, as the advancement of knowledge is best served when academic inquiry is free from restraint.

Can university officials or the student government censor a student organization publication if the university or student government funds it?

It depends how the publication was established. If the publication is published by the university or the student government, then, yes, as the publisher, the university or the student government has a right to exercise editorial control over the publication. If the publication is published by students or a student organization, however, the university and the student government may not censor its content based on the viewpoints expressed in the publication. Among the actions the courts have prohibited are confiscating copies of publications, requiring prior review of content, removing objectionable material, limiting circulation, suspending editors, and withdrawing or reducing financial support to an individual publication. Student editors have the right to edit or refuse to publish an article or piece in their own publications. Similarly, the UC San Diego Associated Students (the undergraduate student government) produces its own publication and manages its own television station and radio station, and its editors and station managers may edit or refuse to publish or broadcast a piece or project.

What are “time, place, and manner” restrictions? How do they relate to controversial speakers?

Although public entities like UC San Diego cannot censor speech or prohibit speakers from coming to campus, public universities may establish rules regarding the time, place and manner in which speakers can share their messages. Examples of allowable restrictions might be preventing speakers from interrupting classes or lectures; moving a speaker to another venue; or prohibiting the use of amplified sound in certain locations or at certain times. Wherever such restrictions exist, they must be content-neutral, serve a government interest (such as public safety or the continuation of classes), be narrow in scope and provide ample alternatives for expression. Learn more about the [Policy on Speech, Advocacy and Distribution of Literature on University Grounds](#).

What if a speaker coming to campus is known for hate speech?

UC San Diego cannot block a person or group that has been invited to speak on campus simply because the administration or campus community members disagree with the speaker's ideologies. While people are free to protest or criticize the speaker, they are not free to prevent

the speaker from speaking. The goal of UC San Diego is to foster an educational environment that promotes dialogue that contributes to and enriches the diversity of opinions.

What about the argument that restrictions on speech are an effective way to combat bigotry on campus?

Even if bigoted speech were stifled, it would not mean bigoted beliefs would be quelled. Knowing what people are really thinking by having them speak their views freely facilitates open argument and dialogue that leads to changing minds and behaviors. Confronting, hearing and countering offensive speech is an important skill. If we shut down speakers who espoused bigoted views, our students would never have the opportunity to confront those views themselves.

Can I use my own freedom of speech to shout down a speaker's whose message I oppose?

No, freedom of speech does not give you permission to silence the speech of others by shouting, heckling or otherwise interrupting a speech to the point that the speaker cannot continue or that the audience can no longer hear. If you were allowed to shout down speech you disagreed with, and someone else shouted down your speech if they disagreed, then open and free debate would be impossible. Intentionally disrupting a speaker could expose a student to sanctions under the Student Conduct Code.

How do campuses ensure the safety of students and staff in light of freedom of speech?

University of California campuses pair a commitment to free speech with a commitment to safety. People who threaten or commit acts of violence are subject to arrest and prosecution by law enforcement, as well as discipline imposed by the University.

What are UC San Diego's Principles of Community? How do they relate to free speech?

Our Principles of Community were developed collaboratively by many members of the UC San Diego community, including students, faculty and staff. The goals of the Principles are to encourage a climate of fairness, cooperation and professionalism; to foster inclusiveness, respect and a welcoming environment; and to promote collaborative attitudes and actions.

While the Principles of Community serve as guidelines for how UC San Diego community members should treat one another, they are not meant to create a means by which students, non-affiliates or off-duty employees can be sanctioned for violation. In other words, even though speech may run afoul of the Principles of Community, the speaker cannot be punished for violating the Principles of Community.

Student groups have the right to invite speakers of any belief to campus, but we encourage these groups to consider that such rights also come with a moral obligation to consider the consequences of their words, actions, events and invitations. We ask that groups view all actions and outcomes through the lens of our Principles of Community to determine whether it is consistent with our community's values as well as their own.

If someone is holding an event on campus, can I protest it?

Yes. The right to protest is protected by the First Amendment. We believe that peaceful protest is an effective way to counter speech or beliefs to which you are opposed. However, protests must be carried out in a way that does not infringe on anyone else's rights, including the speaker's.

Keep in mind:

- i. You are not allowed to block or prevent the movement or access of others.
- ii. It is illegal to disobey a lawful order by a police officer. Such an order might include staying behind a barricade; dispersing from certain areas; or stopping certain activities.
- iii. You should leave an area where others are engaging in illegal activities or acts of violence. Even if you are not participating in the illegal activities, your presence may be interpreted as such.
- iv. Refrain from speech that incites others to illegal activity or violent acts. This kind of speech is not protected by the First Amendment.

Please see the [Policy on Speech, Advocacy and Distribution of Literature on University Grounds](#) for more information.

Are there regulations pertaining to the speech and expressive conduct of non-University affiliates while on campus at UC San Diego?

Yes. The conduct of persons who are on campus but are not otherwise affiliated with UC San Diego is governed by University of California regulations. See the [University of California policy](#) on this topic for more information.

If my student organization hosts an on-campus event, can others video- or audio-record the event or the participants?

It depends. If the event occurs at a public location on campus where access cannot be limited except as specified by UC San Diego policy (e.g., Library Walk), then the event and its participants may be video- and audio- recorded.

If on the other hand the event occurs at a location where access can be controlled or limited (such as a meeting room or ballroom in the Price Center), then the student organization may establish reasonable rules for how audience members conduct themselves and what audience members may bring to the event venue (such as cameras, microphones, and/or other video and audio equipment) so long as the rules are posted at all entrances, are clearly visible and are equally applied to all audience members. Student organizations interested in establishing reasonable restrictions (e.g., no leafleting, no videotaping) at their events should contact their advisor at the [Center for Student Involvement](#) for further information on how to implement these rules.

Is chalking permitted on campus?

Yes, as long as it is done in compliance with [PPM 510-1 Section IX](#), which states, in pertinent part: "Chalking is permitted only on sidewalks of the university grounds that are exposed to weather elements and not covered by a roof or overhang. The material used to mark sidewalks must be water-soluble stick chalk. The use of markers, paints, oil-based products, sprayable chalk, or other types of markers or liquids is prohibited. Chalking is prohibited on other surfaces including roadways, buildings, steps, seating walls, benches, tables, signs, poles, columns, trash receptacles, trees and other surfaces, structures and fixtures. The university has no responsibility to preserve or remove chalking messages from sidewalks. Environmentally sound clean-up is encouraged." The above rules apply irrespective of the content of the chalking.

What are the rules regarding the Graffiti Art Park?

The rules may be found on the [Graffiti Art Park website](#). It is up to our students to report any concerns to artpark@ucsd.edu. The Art Park boards are repainted a solid color at the start of each quarter in order to allow for new art to be created. As stated in the Park Guidelines, "The ideas and thoughts expressed in the Graffiti Art Park do not necessarily represent the students nor the university."

Where can I review UC San Diego's current event policies regarding free speech on campus?

View the [Policy on Free Speech, Advocacy and Distribution of Literature on University Grounds](#) and the [Policy on Major Events on Campus](#). Policies are designed to be consistent with the university's paired commitments to free speech as well as to the safety and well-being of students, other members of the campus community, their guests, and the public.

Is camping permitted on campus?

No. UC San Diego [Policy and Procedure Manual Section 516-10.3](#) states: *"No University property, facility, building space, on-campus vehicle (University or private), or area assigned to departments may be used for either temporary or permanent sleeping or living quarters unless specifically approved for such purposes by the Environment, Health and Safety (EH&S) Office."*

In addition, the California Code of Regulations make it a crime for any University non-affiliate to "camp, occupy camp facilities, use camp paraphernalia, or store personal property on University property." [Cal. Code Reg. 100005\(A\)](#).

Is putting up tents permitted on campus?

No. UC San Diego Policy and Procedure Manual section 510-1.9 Section III(F) provides that *"free standing equipment, structures, or displays"* are permitted only in designated areas with a reservation. Tents are "free standing structures," and so require an advance reservation.

In addition, the California Code of Regulations make it a crime for any University non-affiliate to “bring any tent or other housing structure on University property, or occupy any such tent or housing structure.” [Cal. Code Reg. 100005\(B\)](#).

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Free Expression

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