MARICOPA COMMUNITY COLLEGES

Frequently Asked Questions:

STUDENT FREE EXPRESSION AND THE FIRST AMENDMENT

The First Amendment to the Constitution protects speech no matter how offensive its content. Restrictions on speech by public colleges amount to government censorship, in violation of the Constitution. Such restrictions deprive students of their right to invite speech they wish to hear, debate speech with which they disagree, and protest speech they find bigoted or offensive. An open society depends on liberal and open education, and the whole enterprise of liberal education is founded on the principle of free speech. But the right to free speech is not just about the law; it's also a vital part of our civic education. As Supreme Court Justice Robert Jackson wrote in 1943 about the role of schools in our society: "That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." Remarkably, Justice Jackson was referring to grade school students. Inculcating constitutional values — in particular, the value of free expression — should be nothing less than a core mission of any college or university.

QUESTION	ANSWER
DOES THE FIRST AMENDMENT REQUIRE THAT THE COLLEGE PROVIDE A PLATFORM FROM WHICH TO SPEAK?	The First Amendment does not require the college to provide a platform to anyone, but it does prohibit the college from discriminating against speech on the basis of the speaker's viewpoint. For example, the college has no obligation to fund student publications; but if it does, it cannot selectively withhold said funds from a particular student publication simply because they advocate a controversial point of view. College administration cannot dictate which speakers students may invite to campus on their own initiative and cannot charge fees for added security related to the speaker's visit to campus.
WHAT IS HB 2563 AND HOW DOES IT APPLY TO MCCCD?	In April of 2018, Governor Ducey signed House Bill 2563, aimed at protecting free speech on Arizona's public universities and community colleges. Public universities and community colleges are directed to create free expression policies that "ensure the fullest degree of intellectual freedom." The law further requires that each community college governing board "develop and adopt a policy on free expression" and prescribes certain statements and requirements be included.
WHAT CONSTITUTES FIGHTING WORDS AND ARE THEY PROTECTED?	The Supreme Court ruled in 1942 that the First Amendment does not protect "fighting words," but this is an extremely limited exception and applies only to intimidating speech at a specific individual in a face-to-face confrontation that is likely to provoke a violent reaction. The "fighting words" doctrine does not apply to speakers addressing large crowds on campus, no matter how much discomfort, offense, or emotional pain their speech may cause or on the grounds that it is likely to provoke a hostile response. This is called the rule against a "heckler's veto."
IS THERE A DIFFERENCE BETWEEN FREE SPEECH AND DANGEROUS, UNPROTECTED SPEECH?	Yes. Speech is not constitutionally protected when it targets a particular individual for harm, such as a true threat of physical violence. The college must take action to remedy behavior that interferes with a particular student's ability to exercise their right to participate fully in educational services and activities, such as targeted harassment. The First Amendment does not protect behavior on campus that crosses the line into targeted harassment or threats, or that creates a pervasively hostile environment for vulnerable students.

"The Maricopa County Community College District is an EEO/AA institution and an equal opportunity employer of protected veterans and individuals with disabilities."

WHAT ARE SOME OF THE NEW PROVISIONS OF THE FREE EXPRESSION LAW?	One new aspect of the law is a requirement that the community college district establish a committee that will monitor free speech and report any infringements or problems. This committee will keep track of speech infringements and monitor follow-up actions by the university administrations. The committee will also submit an annual report to the legislature that details a number of topics, such as descriptions of any barriers to or disruptions of free expression and a description of the administrative handling of discipline related to barriers to or disruptions of free expression.
WHAT ABOUT THE PROCESS TO BRING A SPEAKER ON CAMPUS?	The new law makes it possible for spontaneous gatherings and protests, and outlines that unless the scheduled gathering is going to be large in scope and size, the college cannot require reservations be made before approving a free speech event.
ARE NONVERBAL SYMBOLS PROTECTED SPEECH?	Symbols of hate are constitutionally protected if they're worn or displayed before a general audience in a public place — say, in a march or at a rally in a public park. The Supreme Court has ruled that the First Amendment protects symbolic expression, such as swastikas, burning crosses, and peace signs because it's "closely akin to 'pure speech.'" Nonverbal symbols are not protected under the First Amendment if used to directly threaten an individual.
IS A PROFESSOR'S FREE SPEECH THE SAME AS ACADEMIC FREEDOM?	Although the Supreme Court has identified the protections of academic freedom as significant, it has not declared that academic freedom is coterminous with the First Amendment's free speech provision. The American Association of University Professors (AAUP) has issued statements regarding academic freedom. That statement provides that faculty are "entitled to full freedom in research and in the publication of the results....to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. . ." In other words, in order for the faculty member to be protected by academic freedom in the classroom, the speech must be germane to the subject matter of the course.
WHAT ABOUT POLITICAL SPEECH? IS THIS PROTECTED SPEECH UNDER THE FIRST AMENDMENT?	MCCCD recognizes and welcomes the educational benefits of exposing students to political debate and information, including partisan political speech, within the limits of Arizona state law. State law prohibits a person acting on behalf of the college from using or spending college (or district) resources for the purpose of influencing the outcome of an election.
CAN POLITICAL SCIENCE DEPARTMENTS AND SERVICE LEARNING GROUPS PROVIDE INTERNSHIPS WITH POLITICAL PARTIES OR CANDIDATES FOR POLITICAL OFFICE?	The statutory restriction prohibits using district resources in any manner that is not impartial or neutral, so as long as the internship or service learning is being provided specifically for the "real world" experience provided by these experiences and not specifically to endorse a candidate or partisan platform, these activities do not violate the law. They key here is that the opportunities must be neutral and impartial.
RESOURCES	www.aclu.org/other/speech-campus "The Intersection of Title VI, Title IX, the First Amendment and Academic Freedom. NACUA, July 28-July1, 2015 ARS 15-1408;