



FIRE QUARTERLY

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FIRE SURVEY EXAMINES STUDENTS' ATTITUDES ABOUT FREE SPEECH

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IN SPEECH, ATTORNEY GENERAL JEFF SESSIONS JOINS A NONPARTISAN CHORUS IN SUPPORT OF CAMPUS FREE EXPRESSION

• WASHINGTON, D.C. •



JEFF SESSIONS, ATTORNEY GENERAL EDITORIAL CREDIT: MARK REINSTEIN / SHUTTERSTOCK.COM

In a Sept. 26 speech at Georgetown University, Attorney General Jeff Sessions focused attention on the state of free speech on America’s college and university campuses.

“The right of free speech does not exist only to protect the ideas upon which most of us agree at a given moment in time,” he noted, urging the students in attendance to “make your voices heard, [and] to defend the rights of others to do the same.”

During his remarks, Sessions recognized FIRE’s work tracking restrictive campus speech codes through our Spotlight database and our lawsuit against Los Angeles Pierce College. He also announced that the Department of Justice will now submit statements of interest in support of student lawsuits that seek to vindicate free speech rights on campus.

“The First Amendment is the law of the land on public campuses, but for decades colleges have been treating that fundamental right as though it’s optional,” said FIRE Executive Director Robert Shibley. “By supporting student litigation, the Department of Justice can help us ensure that all students can express themselves freely on campus.”

Sessions’ remarks come amid high-profile campus controversies. While FIRE has seen the number of blatantly unconstitutional written speech codes trend downward in recent years, there has been an uptick

in efforts to disinvite controversial speakers of all political persuasions, a rise in the use of bias response teams to monitor unpopular speech, and violence aimed at silencing off-campus speakers.

“The right of free speech does not exist only to protect the ideas upon which most of us agree at a given moment in time.”

JEFF SESSIONS, ATTORNEY GENERAL

“Liberal democracies can work out their political differences nonviolently because of the debate and dissent that free speech makes possible,” said Shibley. “As campuses struggle with an uptick in violence in

response to controversial speech, we are glad to see the Department of Justice bring much-needed attention to this issue.”

Sessions joined a bipartisan chorus of public officials who have expressed support for free speech on campus in recent years. This summer, Sens. Bernie Sanders and Mitch McConnell both condemned efforts to shut down viewpoints on college campuses. And in 2015, then-President Obama twice explained the importance of free speech on campus.

“I don’t agree that you, when you become students at colleges, have to be coddled and protected from different points of view,” he said in a September 2015 town hall.

FIRE is pleased that leaders in both parties agree that free speech on campus must be defended. We look forward to working with the attorney general and Congress in support of that crucial goal. ♡

FIRE QUARTERLY

SPOTLIGHT: THREE NEW GREEN LIGHT SCHOOLS



UNC Wilmington



Appalachian State University



Kansas State University

35 NATIONWIDE



IT'S OVER! EDUCATION DEPARTMENT RESCINDS CONTROVERSIAL 2011 DEAR COLLEAGUE LETTER

● WASHINGTON, D.C. ●



Six years of federal Title IX policy that stripped college students and faculty members of important due process protections and sowed confusion among administrators are finally over.

On Sept. 22, the Department of Education's Office for Civil Rights announced that the April 4, 2011 "Dear Colleague" letter and an accompanying 2014 guidance document are rescinded. The 2011 letter mandated that colleges use the low, "preponderance of the evidence" standard to adjudicate accusations of sexual misconduct on campus. It also recommended the removal of other critical elements of a fair procedure, such as the right to cross-examination and prohibitions on double jeopardy.

In the six and a half years since the "Dear Colleague" letter was published, FIRE has led the fight against the erosion of due process rights on campus through the abuse of Title IX, the 1972 law that prohibits sex discrimination in federally funded educational programs. FIRE has sent letters to the government and to universities, written countless articles explaining the risk of erroneous guilty findings, provided congressional testimony on the issue, and even sponsored a federal lawsuit arguing that the "preponderance" mandate is unlawful under the Administrative Procedure Act.

"The campus justice system was and is broken," said Robert Shibley, FIRE's executive director and the author of

"Twisting Title IX." "Fair outcomes are impossible without fair procedures. When the government sprang its 2011 letter on colleges and students without warning, it made it impossible for campuses to serve the needs of victims while also respecting the rights of the accused. With the end of this destructive policy, we finally have the opportunity to get it right."

"Fair outcomes are impossible without fair procedures."

ROBERT SHIBLEY, FIRE EXECUTIVE DIRECTOR

In the announcement, the Department of Education stated that it will develop a new approach to addressing sexual misconduct on campus that takes seriously the rights of both victims and the accused. New policy will be implemented through a "notice and comment" process that responds to the input of all stakeholders, according to the department. The department did not solicit feedback for its 2011 letter, prompting FIRE to sponsor a legal challenge last year.

A FIRE study released in September and featured on page 6 of this issue of the FIRE Quarterly found that college students are routinely denied even the most basic elements of a fair hearing. FIRE's report found that 74 percent of top

universities do not even guarantee accused students the right to be presumed innocent until proven guilty. Indeed, since the 2011 "Dear Colleague" letter was issued, students have filed more than 180 lawsuits against colleges for allegedly conducting unfair disciplinary procedures. ♣



ROBERT SHIBLEY, FIRE EXECUTIVE DIRECTOR

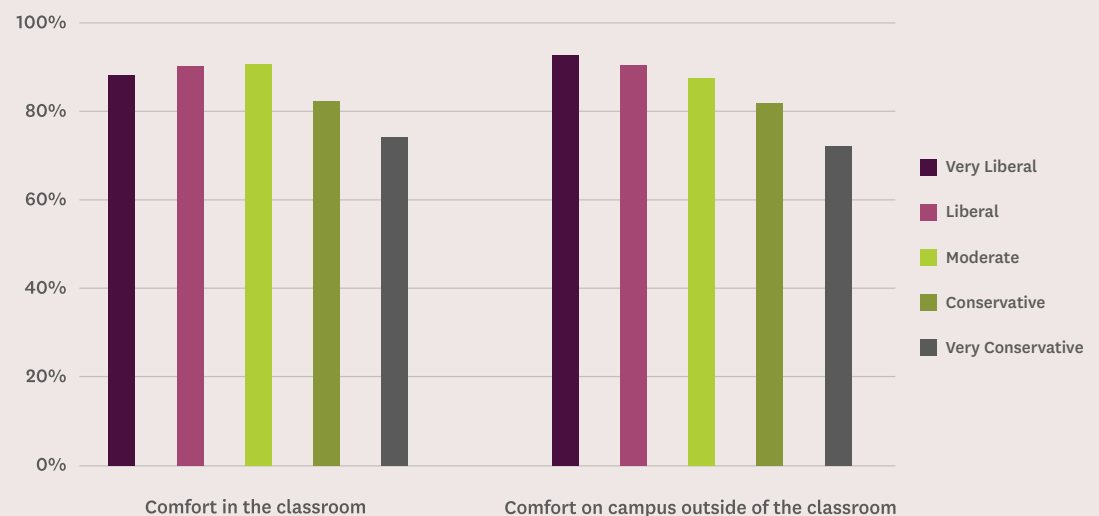
74 percent of universities do not even guarantee the presumption of innocence.

SPEAKING FREELY

What Students Think about Expression
at American Colleges

Ideology and comfort with expression

I feel comfortable sharing my own ideas and opinions



Note: Students who were "not sure" of their ideology are not represented in the figure.



COVER STORY

FIRE SURVEY EXAMINES STUDENTS' ATTITUDES ABOUT FREE SPEECH

• PHILADELPHIA, PENNSYLVANIA •

A groundbreaking October report from FIRE found a majority of students on college campuses self-censor in class, support disinviting some guest speakers with whom they disagree, and don't know that "hate speech" is protected by the First Amendment. The study also found that Republican and Democratic students have different opinions on campus protests, disinvitations, and hate speech protections.

In the most comprehensive survey on students' attitudes about free speech to date, FIRE measured student responses to questions about self expression, reactions to expression of other students, guest speakers, and hate speech. Some key findings:

- 46 percent of students recognize that hate speech is protected by the First Amendment, and 48 percent of students think the First Amendment should not protect hate speech.
- Most students (56 percent) support disinviting some guest speakers. Democratic students are 19 percentage points more likely than their Republican peers to agree that there are times a speaker should be disinvited.
- 58 percent of college students think it's important to be part of a campus community where they are not exposed to intolerant or offensive ideas.
- Very few students report that they would participate in actions that would prevent a guest speaker event from taking place (2 percent). Even fewer said they would use violence to disrupt an event (1 percent).
- In open-ended questions, almost half of students (45 percent) identify speech with a racist component as hate speech, and 13 percent of students associate hate speech with violence.

- In class, 30 percent of students have self-censored because they thought their words would be offensive to others. A majority of students (54 percent) report self-censoring in the classroom at some point since the beginning of college.

FIRE's survey also found ideological differences in how students feel about free expression, both inside and outside the classroom. Very liberal students are 14 percentage points more likely than their very conservative peers to feel comfortable expressing their opinions in the classroom. Additionally, 60 percent of Republican students think they should not have to walk past a protest on campus, while only 28 percent of Democratic students think the same.

"There is clearly a partisan divide in how students perceive free speech on college campuses," said Executive Director Robert Shibley. "This further solidifies the importance of FIRE's mission. Free expression is too important to become a partisan issue in higher education."

Additionally, FIRE's survey found that a majority of students want their schools to invite a variety of guest speakers to campus (93 percent), and 64 percent report changing an attitude or opinion after listening to a guest speaker.

FIRE contracted with YouGov (California), a nonpartisan polling and research firm, to survey 1,250 American undergraduate students between May 25 and June 8. The survey project was made possible by a grant from the John Templeton Foundation to conduct polling on campus attitudes, engage in legal and social science research, and mobilize a wider audience on and off campus in the fight for student and faculty rights. <#>

65% of students agree to having changed an attitude or opinion about an issue after listening to a guest speaker.





REPORT: AMERICA'S TOP UNIVERSITIES DENY STUDENTS FAIR HEARINGS

• PHILADELPHIA, PENNSYLVANIA •

Students accused of misconduct on campus are routinely required to defend themselves against serious accusations without even the most basic due process protections, according to a first-of-its-kind report from FIRE released in September.

“Spotlight on Due Process 2017” surveyed 53 of America’s top universities and found that a shocking 85 percent of schools receive a D or F grade for not ensuring due process rights. The schools were judged on whether they guarantee those accused of campus misconduct 10 core elements of fair procedure, including adequate written notice of the allegations, the presumption of innocence, and the right to cross-examine — at least indirectly — all witnesses and accusers. FIRE awarded each institutional policy a grade based on how many of those elements it guaranteed.

“Most people will probably be surprised to learn that students are routinely expelled from college without so much as a hearing,” said Vice President of Policy Research Samantha Harris. “This report should be a huge red flag to students, parents, legislators, and the general public that an accused student’s academic and professional future often hinges on little more

than the whim of college administrators.”

FIRE’s report found that 74 percent of top universities do not even guarantee accused students the right to be presumed innocent until proven guilty. Making matters still more unjust, fewer than half of schools reviewed (47 percent) require that fact-finders — the institution’s version of judge and/or jury — be impartial.

85 percent of schools receive a D or F grade for not ensuring due process rights.

Additionally, 70 percent of institutions fail to consistently provide students a meaningful opportunity to cross-examine their accusers or the witnesses against them — despite the fact that the Supreme Court has called cross-examination the “greatest legal engine ever invented for the discovery of truth.”

Most universities try students under one set of procedures for sexual misconduct, and an

entirely different set of procedures for all other offenses. Of the 50 institutions in the report that maintain separate policies for sexual and non-sexual misconduct, 58 percent grant students fewer procedural protections in sexual misconduct cases — even when those cases allege criminal behavior. Troublingly, 79 percent of top universities receive a D or F for failing to protect the due process rights of students accused of sexual misconduct.

Of the 103 policies at 53 institutions rated for this report, not one received an A grade. Only two institutions — Cornell University and the University of California, Berkeley — earned a B for protecting student due process rights in both sexual and non-sexual misconduct cases.

“The decisions made by campus tribunals have serious and lasting consequences,” said Senior Program Officer for Legal and Public Advocacy Susan Kruth. “Colleges and universities must maintain policies designed to help fact-finders arrive at the truth. That way, institutions can discipline students who have been fairly adjudicated to be guilty without needlessly punishing innocent students.”



FIRE QUARTERLY

RECENT HEADLINES FROM ‘NEWSDESK’

- Rensselaer Polytechnic Institute president (literally) fences out free speech
- Poll: Nearly three quarters of Americans agree campus sex assault policies must be fair to complainants and accused students
- Hecklers shout down California attorney general, assembly majority leader at Whittier College
- Texas Southern University president storms into student event, shuts down speech



FIRE TRAINS STUDENTS TO DEFEND THEIR RIGHTS

● ORLANDO, FLORIDA ●

The campus judicial process can be confusing and unwieldy, especially for students who don't understand their rights. But thanks to FIRE, students aren't facing the process alone. Launched earlier this year, FIRE's Student Defenders program helps students understand and protect their rights — and those of their peers.

In October, students from across the country gathered in Orlando, Florida for FIRE's Student Defenders Conference. Nearly 30 students had a packed weekend learning about their due process rights and how to take action on campus to protect them.

Student Defenders educate fellow students on their rights, explain students' options throughout the university judicial process, advocate for fair and clear policies and procedures, and advise and counsel students regarding disciplinary proceedings. By accompanying students through the university judicial system, Student Defenders act as watchdogs for due process violations and provide accountability for university administrators.

The importance of programs like Student Defenders was highlighted in FIRE's September report, "Spotlight on Due Process 2017," which found that students accused of misconduct on campus are routinely required to defend themselves against serious accusations without even the most basic due process protections. FIRE assigned a D or F grade to 79 percent of top universities for failing to protect the due process rights of students accused of sexual misconduct. Even basic safeguards such as the presumption of innocence, right to cross-examine all witnesses and accusers, and a



STAFF AND ATTENDEES OF THE STUDENT DEFENDERS CONFERENCE

meaningful right to appeal are lacking at many top institutions.

"Navigating a very confusing judicial process can be extremely difficult and stressful, especially for students who are facing it alone or are researching their rights for the first time," said Director of Campus Outreach Molly Nocheck. "FIRE launched the Student

"FIRE launched the Student Defenders program to make sure students have someone on their side who will advocate for their rights and fair judicial procedures."

MOLLY NOCHECK, DIRECTOR OF CAMPUS OUTREACH

Defenders program to make sure students have someone on their side who will advocate for their rights and fair judicial procedures."

The conference was designed to empower students who have demonstrated an interest in standing up for due process rights at their institutions. Some students were members of established groups, while others were using the FIRE Student Defenders Start Up Guide to create their own organizations on campus.

At the conference, students shared their experiences and compared best practices with other student activists. Sessions focused on the logistics of starting and maintaining a group, working with student governments, advertising and recruiting, interacting with students and administrators, and advocating for better policies. Students also discussed roadblocks and challenges within campus judicial proceedings and brainstormed strategies for how to effectively advocate for other students at their institution.

FIRE staff members were on hand to further examine procedural safeguards that help protect fairness in campus disciplinary procedures and answer questions.

"It was so much help to get advice from everyone and hear about how other schools established their own organizations," said Catherine Lynch, a James Madison University student who attended the conference. "I'm now working on establishing my own Student Defenders on my campus!"





VICTORY IN EIGHTH CIRCUIT: IOWA STATE CAN'T CENSOR POT LEGALIZATION T-SHIRTS

• AMES, IOWA •

This summer, FIRE marked its biggest Stand Up For Speech Litigation Project victory to date.

In *Gerlich v. Leath, et al.*, the U.S. Court of Appeals for the Eighth Circuit upheld a permanent injunction preventing Iowa State University from blocking a student group's use of the university's logos on T-shirts advocating marijuana legalization.

A three-judge panel of the Eighth Circuit on rehearing reaffirmed its initial conclusion, and even broadened its holding that ISU administrators engaged in unconstitutional viewpoint discrimination in violation of the First Amendment when — because of political pressure — they repeatedly denied permission for ISU's chapter of the National Organization for the Reform of Marijuana Laws to include ISU logos on T-shirts that also depicted a marijuana leaf.

A majority of the panel also held that the administrators were not entitled to qualified immunity, which protects public officials from personal liability for constitutional violations that are not clearly established at the time. The majority reasoned that long-standing legal precedent makes clear that, when a public university gives a benefit to all student groups, it may not discriminate in granting access based on a particular group's message.

"We are gratified the Eighth Circuit reaffirmed its earlier holding that the First Amendment does not permit state university officials to condition benefits based on the viewpoint of student groups," said attorney Robert Corn-Revere, who

represents plaintiffs Paul Gerlich and Erin Furleigh with his Davis Wright Tremaine colleagues Ronald London and Lisa Zycherman.

"We are very pleased with a ruling that decisively upholds students' right to be treated fairly and equally, even when advocating politically controversial ideas," said Director of Litigation Marieke Tuthill Beck-Coon. "Paul and Erin had the courage to stand up for their First Amendment rights, and thousands of students in the seven states of the Eighth Circuit will now benefit from their commitment." 🗣️

WICHITA STATE DROPS BOGUS TITLE IX INVESTIGATION OF FRATERNITY FOR HANGING A BANNER

• WICHITA, KANSAS •

Administrators at Wichita State University reversed course after launching a Title IX investigation into a fraternity for hanging a banner outside their fraternity house that read "New Members Free House Tours!" in September.

FIRE wrote a letter to Wichita State President John Bardo on Sept. 12 to demand that the university drop the investigation, arguing that it "sends a message to all students that if their expression offends others, they will be subject to disciplinary investigation." The following day, the university affirmed the expression was protected by the First Amendment and dropped its investigation.

The banner hung outside the Phi Delta Theta fraternity house for approximately five minutes on Sept. 8, facing a neighboring sorority recruitment event. Fraternity members quickly took the banner down and issued an apology.

This is FIRE's second victory at Wichita State this year. FIRE wrote to Bardo in April after the Student Government Association denied recognition to Young Americans for Liberty, a libertarian student group, because of the group's belief in First Amendment principles. The decision was overturned by the Supreme Court of the Wichita State University Student Government after it received FIRE's letter, which explained that the students cannot engage in viewpoint-based discrimination against prospective student groups. 🗣️

