



# FIRE QUARTERLY

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## REPORT: ARTISTS CLASH WITH CAMPUS CENSORS

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SUMMER 2018

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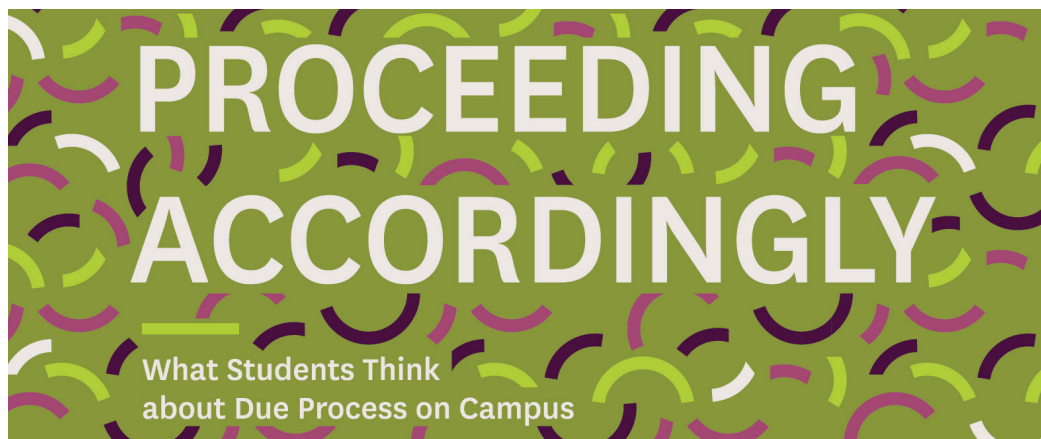


## FIRE SURVEY: VAST MAJORITY OF STUDENTS WANT DUE PROCESS RIGHTS THAT COLLEGES REFUSE TO PROVIDE

• PHILADELPHIA, PENNSYLVANIA •

A FIRE survey released in June found that a vast majority of college students support fundamental due process protections in campus disciplinary hearings in order to ensure they are fair. Most top college and universities, however, fail to provide them.

The survey of student attitudes builds on FIRE’s “Spotlight on Due Process” report, released last year, which found that the overwhelming majority of America’s top universities fail to provide students accused of serious misconduct with even the most basic elements of fair procedure.



The survey, “Proceeding Accordingly: What Students Think about Due Process on Campus,” found that 85 percent of students think their accused classmates should be considered innocent until proven guilty. According to last year’s due process report, however, less than 30 percent of America’s top universities guarantee students that protection. Similarly, 8 in 10 students surveyed think students accused of breaking the law should be allowed to have a lawyer in campus disciplinary proceedings, but very few top colleges and universities allow active assistance from an attorney.

“There’s a vast gulf between the robust protections that students want and to which

they are morally entitled, and the meager protections that most colleges actually provide,” said Samantha Harris, FIRE’s vice president of policy research. “Campus proceedings can have permanent, life-altering consequences. It’s time for colleges and universities to start listening to their students and providing safeguards that reflect the seriousness of these processes.”

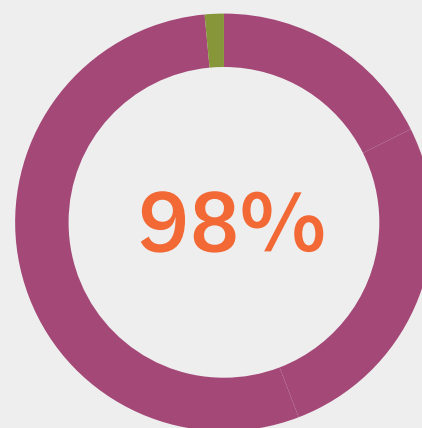
The survey measures student support for due process protections in three scenarios: when a student allegedly breaks a rule, drinks alcohol under the age of 21, or engages in sexual misconduct. Support for protections under each scenario varies by gender and political affiliation.

For this survey, FIRE contracted with YouGov, a nonpartisan polling and research firm. YouGov used an online survey to interview two- and four-year undergraduate students at American colleges and universities between Jan. 29 and Feb. 12, and provided FIRE with a final data set of 2,225 responses.

### KEY FINDINGS

- 98 percent of students think it is important or very important that students have due process protections in college.
- Female students are eight percentage points less likely to think a student should be considered innocent until proven guilty by the school’s administration if the student has allegedly engaged in sexual misconduct than if the student has allegedly broken an unspecified rule.
- Although three-quarters of students support cross-examination in campus disciplinary proceedings, only one-third of institutions in FIRE’s “Spotlight on Due Process” report consistently provide students a meaningful opportunity to cross-examine witnesses.
- When a student has allegedly engaged in sexual misconduct, very liberal students are 19 percentage points less likely than their very conservative peers to think that those students should be considered innocent until proven guilty by the school’s administration.
- However, when a student has allegedly engaged in underage drinking, very liberal students are 13 percentage points more likely than their very conservative peers to think that students should be considered to be innocent until proven guilty by the school’s administration.

98 percent of students think it is important or very important that students have due process protections in college.





# SYRACUSE SLAMS STUDENTS WITH MULTI-YEAR SUSPENSIONS FOR SATIRICAL FRATERNITY ROAST

● SYRACUSE, NEW YORK ●



THETA TAU FRATERNITY HOUSE, CREDIT: JOSH SHUB-SELTZER | THE DAILY ORANGE

Syracuse University suspended 15 Theta Tau fraternity members on June 5 for hosting a private, satirical roast that the university claims caused “an immediate breach of the peace” and went “beyond the bounds of protected speech.” Neither of these findings is true.

Suspensions of up to two years were handed down to the students after a three-person panel tried the engineering fraternity members as a group and found them guilty of violating university policies. The disciplinary proceeding was prompted by the unauthorized release of videos from the private roast on April 18. Stripped of their satirical context, the videos were described as sexist and racist — despite the fact the pledges were racially diverse — and provoked calls for the university to impose discipline, even though nobody actually present at the event filed a complaint.

“When a university expels students for a private roast consisting of completely protected speech, it has no business pretending that it cares about free expression,” said FIRE’s Ari Cohn, who wrote to Syracuse Chancellor Kent Syverud to demand that Syracuse respect expressive rights and drop the investigation.

Among the policies the students allegedly violated are “destructive behavior,” a vague harassment policy, and “an immediate breach of the peace.” According to the panel, the skit “threatened the mental health, physical health and safety” of those

who sought out and viewed the weeks-old video.

Syracuse’s tribunal relied heavily on subjective responses to the expression in justifying its decisions. It cited one student’s social media post that read, “I don’t feel safe here,” and another comment at an open campus forum that “videos

## “It’s a terrible day for due process and free speech on college campuses.”

GREGORY GERMAIN, SYRACUSE PROFESSOR OF LAW

like this promote the inability to feel safe in your own body and in the space of this campus.”

“Apparently, all that is required to throw a student out of school is that some other student claims to feel unsafe,” said Syracuse Professor of Law Gregory Germain. “It’s a terrible day for due process and free speech on college campuses.”

The board claimed the students’ suspensions were necessary to allow the community time “to heal.” The students had just one day to file an intent to appeal the verdict.

If they wish to return to the university after their suspensions, they must perform a slew of tasks, including reading books on

“inclusion,” writing a 12-page reflection paper on what it means “to be a member of a diverse community,” and performing 160 hours of community service — more than the maximum recommended number of community service hours for Class B Misdemeanors in New York such as jury tampering.

Five unnamed fraternity members filed a federal lawsuit against Syracuse, contesting their suspensions. In response, Syracuse’s lawyer filed a motion on June 18 to require that the students’ names be publicly released in court documents, possibly jeopardizing their safety and future career prospects.

“The message sent by Syracuse is clear: Any expression, even if it’s legal and said in a private setting, can lead to expulsion if enough people pick up their pitchforks,” said Cohn. 🔥

# 195

The number of emails FIRE supporters sent to Syracuse through our Take Action portal



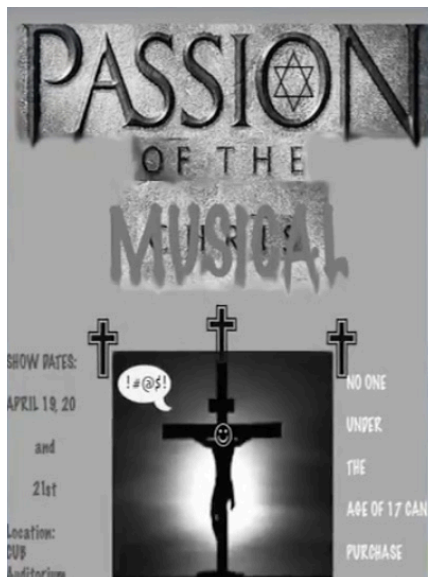
CALIFORNIA STATE UNIVERSITY, LONG BEACH, N\*W\*C\*,  
CREDIT: AGUSTIN, AXIBAL, GREGLEY



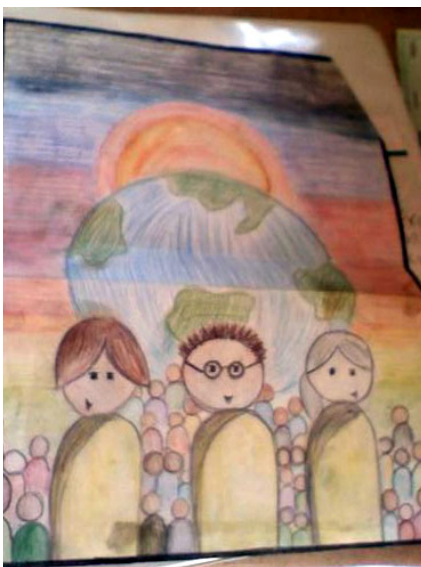
PENNSYLVANIA STATE UNIVERSITY, "PORTRAITS OF TERROR,"  
CREDIT: ALAN POWELL, TERMITE TV



BRANDEIS UNIVERSITY, "VOICES OF PALESTINE,"  
CREDIT: SAMAH AL-AZZA VIA BOSTON GLOBE



GAINESVILLE STATE COLLEGE, PASSION OF THE MUSICAL,  
CREDIT: CHRIS LEE



SOUTHWESTERN COLLEGE, WOMEN'S HISTORY MONTH,  
CREDIT: SAVEOURSWC.COM, VIA ARCHIVE.ORG



TARLETON STATE UNIVERSITY, CORPUS CHRISTI



KENNESAW STATE UNIVERSITY, "A WALK IN THE VALLEY,"  
CREDIT: MIKE JENSEN



UNIVERSITY OF IOWA, "IN THEIR SHOES,"  
CREDIT: SERHAT TANYOLACAR



GAINESVILLE STATE COLLEGE, "HERITAGE?,"  
CREDIT: ALAN POWELL, TERMITE TV



UNIVERSITY OF WISCONSIN-STOUT, FIREFLY POSTER,  
CREDIT: JAMES MILLER / ELEMENTS OWNED BY 20TH CENTURY FOX TELEVISION



UNIVERSITY AT BUFFALO, "WHITE ONLY,"  
CREDIT: MICAH OLIVER / THE SPECTRUM



## COVER STORY

# REPORT: ARTISTS CLASH WITH CAMPUS CENSORS

• PHILADELPHIA, PENNSYLVANIA •

Art censorship is nothing new. Spanish conquistadors smashed ceramics of ancient Peruvian cultures that portrayed gay and lesbian sex. The Roman Catholic Church of the 15th century was so intent on covering up penises that for decades even Michelangelo's David wore a garland of leaves around his waist. But a July report from FIRE shows that art censorship remains alive and well, even on today's college campuses, where administrators are still painting the proverbial fig leaf over art they find objectionable.

"One Man's Vulgarity" paints a picture of just how far campus censors are willing to go to stifle artistic freedom instead of grappling with a work's meaning. Among the excuses for censorship mentioned in the report: the art was "too controversial," "one-sided," not "respectful and sensitive" enough, or not "conducive to the creative atmosphere."

"Administrators insult both the artist and the campus community when they censor artistic expression," said Sarah McLaughlin, FIRE senior program officer and author of the report. "No person should appoint themselves the sole authority over which art is worth seeing, and who should be allowed to see it."

The art covered in the report represents a broad swath of viewpoints and perspectives; the only common thread is the censorship their messages provoked. Since 2016 alone:

- A university in Massachusetts temporarily closed an art exhibit because images of the Ku Klux Klan and Jews arrested during World War II — intended to emphasize the connections the artist saw between President Donald Trump's campaign rhetoric and historical efforts to oppress minority groups — caused "distress." The school later put one of the images behind drapes and apologized if the art inspired "strong emotions" for some who viewed it.
- A South Carolina university charged a student with disorderly conduct and threatened expulsion for an anti-lynching

display that the university said was "contrary to [its] values," prompting FIRE to write to the university and ensure the charges were overturned.

- A college in Florida refused to display a professor's anti-Trump artwork because it was "too controversial."
- A California university shut down an anti-racism play about how the construct of race affects the performers' lives because the satirical production "wasn't achieving the goal of constructing a dialogue."

The report notes that after pushback from FIRE and others, some universities restored the artwork and others displayed a modified version. However, in many cases the art was purged completely, and thoughtful discussion was traded for empty frames and closed curtains.

"Instead of encouraging lively dialogue, too many colleges choose to rob students of the opportunity to look at a subject with a new perspective, while reinforcing the idea that challenging ideas are unwelcome," said McLaughlin. "Colleges should think twice before choosing sterilization over education."

FIRE's report garnered attention from Fox News, Inside Higher Ed, and others. [6](#)

## "One Man's Vulgarity" paints a picture of just how far campus censors are willing to go to stifle artistic freedom instead of grappling with a work's meaning.



ARCADIA UNIVERSITY, "WASTE SHOW," CREDIT: ALAN POWELL, TERMITE TV



## UNIVERSITY ADOPTIONS OF 'CHICAGO STATEMENT' BOLSTER FREE SPEECH ON CAMPUS

• PHILADELPHIA, PENNSYLVANIA •

In 2015, FIRE launched a national campaign aimed at encouraging colleges and universities to adopt a version of the "Report of the Committee on Freedom of Expression" at the University of Chicago (the "Chicago Statement"). To date, over 40 institutions and faculty bodies have endorsed a version of this policy statement, which is considered the gold standard for schools that want to protect free speech on campus. FIRE has been tirelessly working with administrators, faculty members, and students to make these policy adoptions possible.

In an exciting development, seven of these adoptions have come in 2018 alone, including several noteworthy ones highlighted below.

### University of Arkansas at Little Rock

In the fall of 2017, faculty members across the University of Arkansas system united to advocate against an ill-advised board of trustees policy on faculty tenure that endangered academic freedom by including an "unwillingness to work productively with colleagues" as one of the offenses that could lead to a tenured faculty member's termination. Although that policy was eventually enacted by the board, these professors were not finished fighting for academic freedom quite yet.

In response to the board's policy adoption, faculty members at the Little Rock campus petitioned their university administration to endorse a "statement articulating the University of Arkansas at Little Rock's overarching commitment to free, robust, and uninhibited debate and deliberation among all members of the university's community" as official policy. The administration quickly approved the policy, which borrows heavily from the Chicago Statement and represents a resounding endorsement of academic freedom and free speech.

### Gettysburg College

Concluding a year-long process of deliberating and drafting, Gettysburg College's board of trustees approved a comprehensive statement of principles on free expression in May, entitled the "Freedom of Expression Philosophy." Gettysburg's adoption of this statement was unique because the college actively included the most important campus stakeholders in the drafting process: students, faculty, the board of trustees, and the administration.

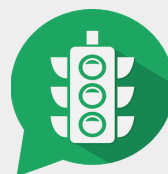
Accordingly, the new philosophy is reflective of the campus community as a whole, and will serve Gettysburg College well in guiding its thinking about free expression issues.

### Ranger College

Ranger College, a community college in Texas, adopted a "Freedom of Expression Resolution" this spring, which is modeled after the Chicago Statement. The college's vice president, Jennifer Kent, hopes the resolution will improve the state of discourse and debate on campus. Following the resolution's endorsement by Ranger's board of trustees, Kent expressed she hopes the adoption "sends a clear message regarding our convictions towards fundamental rights."

As with each of the institutions mentioned above, FIRE wholeheartedly agrees that adoption of a policy statement that prizes robust debate sends a clear message to faculty, students, alumni, and others that the exercise of First Amendment freedoms is not only protected, but encouraged on campus. 🔥

The University of New Hampshire earns FIRE's top rating for free speech



40 green light schools nationwide

## RECENT HEADLINES FROM 'NEWSDESK'

- University of Washington settles security fee censorship lawsuit, agrees to change policy and pay \$122,500 in legal fees
- Happy 150th Anniversary, 14th Amendment
- Q&A with Jamie Kirchick, journalist and candidate for Yale's Board of Trustees
- Kansas officials demand University of Kansas remove American flag artwork



## FACULTY SPOTLIGHT: TIMOTHY SHIELL

• MENOMONIE, WISCONSIN •



PROFESSOR TIMOTHY SHIELL, UNIVERSITY OF WISCONSIN-STOUT,  
CREDIT: UNIVERSITY OF WISCONSIN-STOUT

Professors are important allies in implementing speech-protective policies on campus. We asked University of Wisconsin-Stout philosophy professor Timothy Shiell, who worked with FIRE to improve his university's speech codes, about his work and how other professors can bring about similar changes on their campuses.

**You've been involved in efforts on your campus to defend free speech, including revising speech codes. Can you tell us a bit about how you did it?**

I have found it necessary to operate through both official and unofficial channels. The official channels include department and university personnel committees, various policy committees, and our Faculty Senate. Unofficial channels include politicking strategies, consulting visits, and private meetings. With advice from FIRE, I was able to correct all five of Stout's "red light" university expression policies.

**Why did you get involved in campus speech issues?**

As a graduate student at the University of Iowa I began to realize strong academic freedom and free speech protections are essential to the academy and are too often misunderstood or undervalued, so these



BOWMAN HALL, UNIVERSITY OF WISCONSIN-STOUT, CREDIT: BOBAK HA'ERI / WIKIMEDIA COMMONS

became my areas of greatest professional specialization during the late 1980s to 1990s campus hate speech debates. I actually thought initially that regulation of hate speech was a feasible and desirable way to go. It didn't take long for me to realize that was a mistake. There are many reasons to oppose broad campus speech restrictions, but the most obvious is that they mean anyone who does any kind of controversial research, teaching, or service can face severe penalties, often with little or no due process.

**What role do you think faculty members should play in defending free speech on campus? Do you have any advice for faculty who are looking to become free speech advocates?**

Faculty members (and students) play a vital role in defending free speech and academic freedom. Organized and widespread resistance to censorship can keep it in check. On the other hand, when faculty and students are apathetic or even support censorship — as happens too often these days — they become part of the problem instead of part of the solution. This is one reason why the work of university and private organizations promoting the understanding and appreciation of free speech and academic freedom is so important. FIRE has been a critical ally to many faculty and students across the country, including me. My advice to others looking to stand up for free speech

is to get smart and be brave. To win battles, you need to know more than censors and be able to out-strategize them. You also need thick skin and a passion for the job because you will face powerful and determined censors.

**How has FIRE been helpful to you in your campus activism and/or your research?**

FIRE has been integral to my activism, probably since the mid-2000s. In more recent years, it also has been helpful to my research as it has expanded into scholarly areas. For me, FIRE is the go-to organization. Its principled stance on protecting the rights of all — not just members of a preferred group — is what we need. ☺

**“For me, FIRE is the go-to organization. Its principled stance on protecting the rights of all — not just members of a preferred group — is what we need.”**

PROFESSOR TIMOTHY SHIELL, UNIVERSITY OF WISCONSIN-STOUT

Read our full interview with Professor Shiell — including his thoughts on a UW-Stout art controversy highlighted in FIRE's new art censorship report — at [thefire.org/shiell-interview](http://thefire.org/shiell-interview).

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# WISCONSIN SUPREME COURT: MARQUETTE UNIVERSITY WRONGLY FIRED PROFESSOR FOR OPINIONS ON PERSONAL BLOG

• MADISON, WISCONSIN •

In a win for academic freedom, the Wisconsin Supreme Court ruled that Marquette University wrongly fired Professor John McAdams for comments he made on his personal blog in 2014. FIRE filed a “friend of the court” brief last November urging the court to hear McAdams’ case and reach this result.

On his personal blog, McAdams criticized a graduate teaching instructor by name for her refusal to allow a student to debate gay rights because “everybody agrees on this.” A month later, without presenting him with any formal charges, Marquette suspended McAdams, cancelled his classes, and banned him from campus.

On July 6, the Wisconsin Supreme Court said Marquette’s decision violated its guarantee of academic freedom to McAdams and ordered his immediate reinstatement.

“The undisputed facts show that the University breached its contract with Dr. McAdams when it suspended him for engaging in activity protected by the contract’s guarantee of academic freedom,” the court wrote.

“As FIRE has argued since the beginning, Marquette was wrong to fire John McAdams simply for criticizing a graduate student instructor who unilaterally decided that a matter of political interest was no longer up for debate by students,” said FIRE Executive Director Robert Shibley. “This ruling rightly demonstrates

that when a university promises academic freedom, it is required to deliver.”

Though Marquette is a private, Roman Catholic institution not bound by the First Amendment, the university promises faculty “the full and free enjoyment of legitimate personal or academic freedoms.”

“Administrators cannot simply decide that they do not like the results of certain faculty speech, and then work backwards to find a justification for firing them,” said Ari Cohn, director of FIRE’s Individual Rights Defense Program. “Colleges and universities across the country that are facing calls to discipline faculty members for their online speech should pay attention to today’s decision.”

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## WHAT WE’RE LISTENING TO: ‘CLEAR AND PRESENT DANGER’ PODCAST

Join host and FIRE Visiting Fellow Jacob Mchangama as he navigates the history of free speech — from ancient Athens to today’s “Great Firewall of China.”

In “Clear and Present Danger: A History of Free Speech,” Mchangama weaves modern speech issues throughout his historical analysis: Did history’s first successful Women’s March take place in Rome? What are the similarities between medieval laws against heresy and modern laws against hate speech?

“The podcast provides an engaging and inspiring history of free speech that is accessible to anyone interested in a topic that is fundamental to every human being and society,” wrote Flemming

Rose, Danish journalist and senior fellow at the Cato Institute. “If you want to understand what’s at stake and know about the battles that our predecessors were engaged in [in] the fight for free speech, there can be no better place to start than with Jacob Mchangama’s podcast.”

Available episode topics include democracy in ancient Athens, speaking truth to power in the Roman Empire, religious freedom and persecution of early Christians, inquisition and superstition in the Middle Ages, and more.

“Clear and Present Danger: A History of Free Speech” episodes are available on iTunes and at [freespeechhistory.com](http://freespeechhistory.com).