

**A POCKET GUIDE TO**

**FREE**

**SPEECH**

**AND PEACEFUL ASSEMBLY**

# FREE SPEECH

---

**W**hen you first arrived on campus, there was quite a bit of emphasis on learning and expanding your worldview. Yet, what good is all that knowledge if you don't put it into action to change the world?

Two of the most immediate steps you can take towards that end are to educate others on important issues and to request action from decision makers. The right to free speech makes these pursuits possible and offers countless vehicles for this exchange of ideas. But what exactly is "free speech" and how can we leverage it to achieve these goals? What are the restrictions on speech? When and how can we gather with others who share our message? This Pocket Guide will arm you with information to answer these questions, and more.

## PUBLIC VS. PRIVATE INSTITUTIONS

---

Public schools are bound by the First Amendment, while private schools are not. However, all schools might also be required to follow certain state or local laws, as well as internal policies.

## Free Speech 101

---

We hear about "free speech" quite frequently, so here are a few basic principles to know:

- Generally, "free speech" refers to one of the liberties afforded by the First Amendment of the U.S. Constitution. The First Amendment prohibits the government from infringing upon:
  - Freedom of religion
  - Freedom of speech
  - Freedom of the press
  - The right to peacefully assemble
  - The right to petition the government
- Protected speech generally includes the oral or written exchange of ideas, and particularly those that have some type of political, scientific, literary or artistic value.
- Some types of conduct are also protected where the conduct sends a message. For example, the government cannot create a law that prohibits burning the flag as a form of protest (but might be able to limit this conduct in other ways, as discussed on the next page).
- Freedom of speech also *includes the right not to speak* (e.g. declining to recite the Pledge of Allegiance).



# RESTRICTIONS ON FREE SPEECH

**T**here are several forms of speech that are *not* protected under the First Amendment. Try to steer clear of the following:

**“Fighting Words.”** Where the average person would find the speech to be *inherently likely to provoke a violent response towards another person* (including towards the speaker), the speech will likely not be protected. This includes credible threats of harm. This even includes situations when harm is not necessarily intended by the speaker (e.g. yelling “fire” in a crowded theater).

**Criminal Acts.** Freedom of speech does not excuse the commission of criminal acts in the course of sending the message. Nor does it allow encouraging others to commit criminal acts.

**Time, Place and Manner Restrictions.**

The government can control when, where and how you spread your message, provided that the rules apply equally to all people regardless of the message that they wish to spread. For example, you don’t have the right to shout your message inside of the residence halls during quiet hours, or to burn your flag in a space where the fire code prohibits open flames.

**Harassment.** The First Amendment doesn’t permit unwelcome conduct that targets individuals based on a protected characteristic (e.g. race, religion, gender, etc.) and which substantially interferes with an individual’s access to educational opportunities.

**Defamation.** The First Amendment doesn’t protect anyone from being sued for making a false statement of fact about a person, which has the effect of damaging that person’s reputation.

**Commercial Speech.** Speech that is used for commercial purposes may enjoy less protection than non-commercial speech. For example, while you may have the right to print a certain political message onto T-shirts, you might not have the same right to advertise the sale of those T-shirts on campus.

## IS “HATE SPEECH” PROTECTED?

Generally, speech associated with inflammatory messages (e.g. displaying swastikas or burning crosses) is still protected under the First Amendment. But under certain circumstances, such messages might still constitute incitement to violence or harassment.



# USING SPEECH EFFECTIVELY

It's one thing to speak. It's another to speak effectively. Before launching your campus efforts to educate others, you may want to consider the following:

## What is Your Message?

Understanding *what* you are trying to achieve is essential to achieving it. Are you asking people to take action? Or are you raising awareness of an issue? Is your message clear? Will people understand what you're trying to convey, or why it's relevant to them?

**Take Action:** Consider running your message by people who can provide solid feedback before launching it.

## How are You Getting the Word Out?

Consider your audience. Are you trying to get the message out to anyone who will listen, or focusing on a specific group? What will be the best way to reach that audience? Is holding up posters in between classes going to be an effective way of reaching the administration? Or should you try to set up a one-on-one meeting with a key administrator?

**Who are Your Allies?** Which groups of people share your same goals? Will it be effective for multiple groups to launch separate campaigns around the same message? You might end up competing for the same campus spaces, resources and attention of the same audience. Strategize with those who share your goals to determine how to get the word out *together*.

## CREATE SPACE TO LISTEN

*"Free speech carries with it some freedom to listen."*  
— Warren E. Burger

When you speak, people often speak back. Anticipate the responses that you might receive. Create space to hear others' messages in order to explore all sides of the issue and all possible solutions.

For instance, instead of sending your message in a one-sided communication (i.e. a campus email), consider sharing your message in an open forum where you can hear other perspectives in real time. Take the time to really listen to those perspectives so that your position on the issue can be fully informed.





# TALKING THE TALK

## Understanding the Different Forms of Engagement

Conversation with others on controversial issues can take several different forms. Some circumstances may allow for a cordial exchange of contrasting viewpoints, while others may necessitate swift, unrelenting advocacy. Take time to consider which form of engagement will be most effective in light of your audience, forum and ultimate goal.

Form of Engagement	Structure	Description
<b>Discussion</b>	Often without a premeditated structure	An open and exploratory exchange of experiences and viewpoints without any particular agenda
<b>Dialogue</b>	May be structured or unstructured	An open exchange of perspectives on a given subject that deliberately leaves room to hear and consider all opinions for the purpose of learning more about the subject at hand
<b>Deliberation</b>	Typically structured	An exchange of ideas for the purpose of ultimately reaching a collaborative solution to a common problem
<b>Debate</b>	Heavily structured	A competitive exchange of ideas from individuals or groups who are assigned to promote the merits of a particular perspective for the purpose of exploring all sides of an issue
<b>Argument</b>	May be structured or unstructured	A competitive exchange of perspectives by individuals or groups with opposing viewpoints, for the purpose of advancing the interests of one party over all others
<b>Dictation/ Diatribes</b>	May be structured or unstructured	A one-way communication of ideas or perspectives for the purpose of promoting the interests of one person/group over all others, leaving no room for the consideration of other perspectives or ideas

# THE RIGHT TO PEACEFUL ASSEMBLY

**T**he First Amendment also prohibits the government from stopping you from peacefully gathering with others to spread your message. Mass protests (e.g. marches, sit-ins) are a prominent example of this liberty at work. As with free speech, there are some parameters on peaceful assembly:

**Traditional Public Forums.** While you certainly have a right to assemble in privately owned locations with the permission of the owner, the right to assemble also extends to “traditional public forums,” such as public sidewalks, streets and parks.

**Public Buildings.** While you may have a right to enter certain spaces of public buildings as an individual citizen, the right to assemble does not always extend to those same spaces. But assemblies may take place outside of the entrance to a public building, so long as the assembly doesn’t interfere with public access to the building or administrative operations.

## **Time, Place and Manner Restrictions.**

The right to assembly is subject to restrictions on the time, place and manner in which people can assemble. The government can restrict assemblies, provided that the reason for the restriction is not related to the content of the message and that the restrictions are enforced equally for all people and groups.

- For example, the government may limit noise levels to prevent assemblies from disturbing the peace.
- The government may also require a permit for assemblies which might disrupt the general public’s access to certain spaces like roads and walkways.
- In large public forums, like college campuses, the government may designate particular areas of a reasonable size for assembly in order to minimize the disruption to the public’s use and enjoyment of the entire premises.

**“PEACEFUL ASSEMBLY” MEANS  
PEACEFUL ASSEMBLY**

As with the right to free speech, gatherings that encourage others to act violently, destructively or otherwise break the law are *not* protected by the First Amendment.

**EQUAL  
RIGHTS!**





# INTERACTING WITH ADMINISTRATORS

**W**hen you get active on campus, the ultimate goal is typically to get your message in front of the decision makers who can effect change. But when you finally land that meeting with those key administrators, how will you ensure that your message is taken seriously? Before you show up, consider doing the following:

**Do Your Homework.** Make sure that you research the issue thoroughly.

- Understand the problem, and how various constituents on campus feel about the issue.
- Do your best to understand ahead of time what reasons the school may have to uphold the current system, policy, etc.

**Distinguish Your Wants from Your Needs.** Our “wants” can often feel like “needs” until we get some much-needed perspective. Taking time to really distinguish what you need from what you want can help prioritize your desired outcomes.

- Making these distinctions can also demonstrate that you have taken time to carefully consider the relative importance of all issues on the table.
- Understanding which items are open to compromise gives you some room to negotiate for the real big ticket items on your agenda.

## **Determine “Demands” vs. “Requests.”**

It’s quite common for students to put forth a list of “demands” to the administration. Labeling your action items as “demands” strongly suggests that there is no room for negotiation.

- Under some circumstances, making “demands” can effectively convey the seriousness of the issues. Under other circumstances, using this terminology can diminish credibility. So, carefully consider which label you will use.

## **UNDERSTANDING THE ZERO SUM GAME**

Remember that time, space and money are all finite resources. Generally, demanding something new necessitates that your institution (and its students) relinquish something else to make way for change. Arriving with a full proposal that accounts for this in realistic terms can make your action items more practicable in the eyes of the administration.

# LEARN MORE

---

Freedom of speech and peaceful assembly are BIG subjects to cover. While this Pocket Guide strives to give you the essential tools to get started, there is plenty more to learn about these topics. Check out the resources below to continue the conversation and reinforce your understanding of these very important free speech and peaceful assembly topics.

## Videos:

---

- “At Mizzou, Yale and Beyond, Campus Protests Stir Fresh Questions about Free Speech.” PBS NewsHour: <http://bit.ly/2kq6ye4>
- Free Speech vs. Hate Speech on College Campuses, PBS: <https://to.pbs.org/3AoKENU>

## Readings:

---

- Campus Free Speech Guide, PEN America: [campusfreespeechguide.pen.org](http://campusfreespeechguide.pen.org)
- “First Amendment FAQs.” Freedom Forum Institute: <https://bit.ly/2HHZEo>

## National Resources:

---

- The Constitution of the U.S. Explained: <https://constitution.congress.gov>
- What Does Free Speech Mean? U.S. Courts: <http://bit.ly/1V8FdH3>
- American Civil Liberties Union (ACLU).
  - Free Speech: <http://bit.ly/1TxzpUV>
  - Speech on Campus: [www.aclu.org/other/speech-campus](http://www.aclu.org/other/speech-campus)

## LOCAL RESOURCES

---

Bear in mind that while most of the principles in this Pocket Guide are guided by federal law, there may be other local laws and ordinances that are applicable in your city or county. In particular, these resources will typically offer more specific guidance on time, place and manner restrictions, the necessity for permits and more specific information on various forms of prohibited conduct (e.g. discrimination, harassment, etc.). It's certainly worth asking!