

# FREEDOM OF SPEECH, EXPRESSION AND ASSOCIATION

The rights of free speech are guaranteed to us by the First Amendment to the United States Constitution and by Article I, Section 19 of the Tennessee State Constitution. These protections apply not only to speech we consider true or good but also to speech that is unpopular, strange, or even hateful. Our nation's founders believed that if society wants to protest against ideas it is convinced are wrong, it must do so by expressing its own ideas, not by silencing those wrong ideas. The Supreme Court has written that this freedom is the matrix – the indispensable condition – of all other freedoms we enjoy.

The right of free speech protects more than the right to talk. It includes the different ways we express ourselves and communicate with each other, such as picketing, leafleting, marching to city hall, wearing an armband, and creating works of art or music. It also protects our right to assemble, and the freedom of the press. It even protects our right to burn the American flag.

## PERMITS AND RALLIES

While the First Amendment protects our right to express ourselves, we do not have an absolute right to exercise that right at any *time*, in any *place*, or in any *manner*. We do not necessarily have a right to hold a large rally at midnight outside a hospital, for example. The government does have the authority to prevent us from unreasonably disrupting the lives and habits of those around us. While we may have the right to march down our city's main street, we may not have the right to do so at rush hour. While we may have the right to hold a demonstration in a park, we may not have the right to do so at four in the morning.

On the other hand, the government cannot make regulations merely because it does not like the *message* that the speaker seeks to convey. If noontime parades are permitted for Democrats and Republicans, they must be permitted for socialists and anarchists. If Catholics and Protestants can hand out literature on a street corner, so can Hare Krishnas. The right to free speech belongs to all of us, popular or unpopular, rich or poor. The government can restrict the *manner* in which we express ourselves but not the *message* we express. However, when speech turns to action, the government can intervene more aggressively. For example, political protesters have the right to picket, to distribute literature, and to engage passersby in debate, but they do not have the right to block driveways or building entrances or to physically harass people. Please check with

your local government for applicable permitting regulations.

## CENSORSHIP

There has been a revitalized campaign in recent years for the government to censor books, music, television and art that touches on sensitive subjects like violence and sexuality.

Sex in art and entertainment is the most frequent target of censorship crusades. A painting of the classical statue of Venus de Milo was removed from a store because the managers of the shopping mall found its semi-nudity "too shocking."

Hundreds of works of literature, from Maya Angelou's *I Know Why the Caged Bird Sings* to John Steinbeck's *Grapes of Wrath*, have been banned from public schools based on their sexual content. A museum director was charged with a crime for including sexually explicit photographs by Robert Mapplethorpe in an art exhibit. American law is, on the whole, the most speech-protective in the world -- but sexual expression is treated as a second-class citizen. The Supreme Court has allowed censorship of sexual speech on moral grounds - a remnant of our nation's Puritan heritage.

Here are just a few examples of books that have been banned: *Animal Farm*, *The Wizard of Oz*, *Romeo & Juliet*, *Anne Frank: The Diary of a Young Girl*, *The Scarlet Letter*, *Cinderella*, *Where the Wild Things Are*, *The Merchant of Venice*, *Of Mice & Men*, *Go Ask Alice*, *Bridge over Toko-Ri*, *As I Lay Dying*, *Wuthering Heights*, *Huckleberry Finn*, *Catcher in the Rye*, *Farewell to Arms*, *Black Like Me*, *The Bell Jar*, and many more. How many of these have you read?

## STUDENT FREE SPEECH RIGHTS

We often get calls about students' free speech rights. While students do not enjoy all the rights of adults, public school students still have the right to express their opinions as long as they do so in ways that do not "materially and substantially" disrupt classes or other school activities. For example, students can protest, but if students hold the protest on the school steps and block entrance to the building, school officials can stop it. The School can also



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probably stop students from using “vulgar or indecent” language or promoting illegal activity or drug use.

Students’ rights to express their political beliefs is based on a famous Supreme Court case, *Tinker v. Des Moines Independent Community School District*, in which the Court held that students could not be stopped from wearing black arm bands to school to protest the Vietnam War. Students can express their opinions orally, in writing, leaflets, buttons, armbands, or T-shirts. School officials cannot censor only one side of a controversy. If they allow an article in the school paper condemning pre-marital sex, then they may not censor an article condoning it.

School administrators can regulate the content of school-sponsored newspapers, that is, papers paid for and run by the school. However, the school may not censor students who hand out a completely student-run publication, as long as it is not “indecent” and does not “materially and substantially” disrupt school.

## HATE SPEECH

Recent years have seen a rise in verbal abuse directed at people of color, lesbians and gay men, and other historically persecuted groups. Justifiable outrage at this intolerance has spurred the adoption of policies in universities or government agencies prohibiting speech that offends any group based on race, gender, ethnicity, religion or sexual orientation.

While well meaning, these policies are a threat to the First Amendment, which protects speech, no matter how offensive it’s content. The right to free speech is perhaps its most valuable when the speech in question is most offensive, and most in threat of being suppressed. Speech that offends our morality or is hostile to our way of life warrants the same constitutional protection as other speech; when one of us is denied this right, all are denied. Where racist, sexist or homophobic speech is concerned, the ACLU believes that more speech, not less, is the best response. Codes that suppress bigoted speech treat only the symptom; the real problem is bigotry, and this problem is best addressed out in the open with free discussion. Only then can attitudes be changed.

## RESOURCES – NATIONAL AND STATE

ACLU-TN provides the following list of resources for informational purposes only. ACLU-TN does not endorse any of the organizations listed.

### National Organizations

#### [First Amendment Center/Washington](#)

555 Pennsylvania Ave.  
Washington, DC 20001  
Tel: (202) 292-6288  
Fax: (202) 292-6295

#### [National Coalition Against Censorship](#)

275 7th Avenue, #1504  
New York, NY 10001  
Phone: (212) 807 - 6222  
Fax: (212) 807 - 6245  
Email: [ncac@ncac.org](mailto:ncac@ncac.org)

### State Organizations

#### [John Seigenthaler First Amendment Center At Vanderbilt University](#)

1207 18th Ave. S.  
Nashville, TN 37212  
Tel: (615) 727-1600  
Fax: (615) 727-1319  
E-mail: [info@fac.org](mailto:info@fac.org)

**FOR MORE INFORMATION SEE  
[“RIGHT TO PROTEST” FLYER](#)**



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