

FREE SPEECH

In today's world of social media, research shows that lies go viral more quickly than true statements. In many ways, social media sites today function as the public square. But legally speaking, Internet platforms can restrict free speech far more than the government can. They're like malls, where private owners police conduct. In this issue, Operation Wildfire reviews our right of free speech, the challenges it presents and potential solutions.

Free Speech is perhaps the most precious, misunderstood, inalienable right enshrined in both the U.S. and Pennsylvania Constitutions. Among the five tenets of the First Amendment are the freedom of speech and the press. Specifically, "Congress shall make no law...abridging the freedom of speech, or of the press...."¹ The Pennsylvania Constitution, while more verbose, covers both, and extends to local government the requirement that "no law shall ever be made to restrain the right there of."²

The essence of the misunderstanding of the U.S. Constitution is that the government shall make no law regarding speech and the press, but private institutions are able to constrain or prohibit speech through so-called "speech codes" and a refusal to print and distribute speech.

This matter is complicated by the fact that the federal government, conspiring with social media giants, has directly ordered the censoring of words and ideas that it considers unacceptable.³ To be sure, this is not the first time the government has violated the Constitution. In fact, the 5th Circuit Federal Court found that the CDC, the FBI, and the White House violated the Constitution by their contacts with tech companies.⁴

At the same time that the government appears to be violating the Constitution, the battle over free speech through cancellation by public and private institutions has been building and coming to a head as a result of the campus unrest and protests over the Israeli-Hamas war. For example:

- Columbia and USC have cancelled graduation ceremonies;
- Protestors disrupted the commencement ceremonies at The University of Michigan and numerous public and private colleges and universities; and,
- In Pennsylvania, noted political commentator and author Michael Smerconish was disinvited from delivering the commencement address at Dickinson College. Ostensibly, the withdrawal of the invitation was triggered by the fact that some pro-Hamas students were offended by his words from a book he authored twenty years ago.

The scope and intensity of suppression of free speech rights has been growing for most of the 21st Century. It's a tragic irony that for many in the aftermath of the Free Speech Movement at Berkeley that we find ourselves in this condition. "Tabling" in The Pennsylvania State University's Hetzel Union Building was a widely employed free speech platform in the 1960s. You would find libertarians placed adjacent to the Marxist SDS group, next to the campus Republican and Democrat organizations. Numerous and intense debates with no physical threats were commonplace. Would the same happen today?

By 2020 the suppression of speech in society had become so threatening that an open letter defending free speech was published in the July issue of Harper's magazine with 153 signers. Titled "A Letter on Justice and Open Debate"⁵, the letter describes a right-wing opposition to liberalism, but argues that the political left engages in censorship of its own, denouncing "an intolerance of opposing views, a vogue for public shaming and

¹ The United States Constitution, Amendment 1.

² The Constitution of the Commonwealth of Pennsylvania, Article I Section 7.

³ "5th Circuit Finds Biden White House, CDC Likely Violated First Amendment," *Washington Post*, September 8, 2023

⁴ Ibid.

⁵ A Letter on Justice and Open Debate, *Harper's* magazine, July 7, 2020,

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ostracism, and the tendency to dissolve complex policy issues in a blinding moral certainty.” The signers continue, “The restriction of debate, whether by repressive government or an intolerant society, invariably hurts those who lack power and makes everyone less capable of democratic participation...We refuse any false choice between justice and freedom, which cannot exist without each other.”⁶

Among the signers we find Anne Applebaum, Margaret Atwood, John McWhorter, David Brooks, Steven Pinker, Malcolm Gladwell, Jonathan Haight, Cornel West, Bari Weiss and J.K. Rowling.

But one of the most effective arguments for embracing free speech and listening to opposing views comes from the late author, journalist and educator Christopher Hitchens. We found his speech at this link: <https://www.youtube.com/watch?v=zDap-K6GmL0>.⁷

At the same time, when does free speech become hate speech?

While the U.S. Constitution gives latitude to hate speech and offensive rhetoric, court decisions in the last century have carved out notable — though narrow — exceptions to free speech guarantees and authorized prosecution for language deemed to fall out of bounds. Comments intended as specific and immediate threats brush up against those protections, regardless of a person’s race or religion. So do personal, face-to-face comments meant to incite imminent lawlessness, such as a riot. In other words, the more specific and immediate the threat, the more likely it’ll be regarded as illegal.⁸

But the U.S. Supreme Court unanimously affirmed that there is no ‘hate speech’ exception to the First Amendment.⁹ Justice Samuel Alito wrote, “[The idea that the government may restrict] speech expressing ideas that offend ... strikes at the heart of the First Amendment. Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express “the thought that we hate.”

So now that we’ve illustrated the challenges, it’s time to propose some solutions. A number of contemporary authors offer actions that counteract the threats to free speech. William Meek “Squire Bill” Widener remarked, “Do what you can, with what you’ve got, where you are.” “Squire Bill” offered the classic grassroots solution – it’s up to each one of us. We’ve provided a few ideas to help you begin to chart a new course:

- Cut back on screen time – give your cell phone and computer a break;
- Wean off social media by deleting one of your apps;
- Prohibit cell phones during meal times;
- Form or join a coffee klatch;
- Seek out people who are different ethnically, spiritually, educationally, politically, etc. and listen to them; and,
- Take time to read publications that hold views that differ significantly from yours. Operation Wildfire regularly reads publications from the left, right and center. We then share that information with you.

And you can probably think of many more ideas.

Above all, remember that the solution to intolerance is tolerance; and, the solution to the threat to free speech is more free speech.

⁶ “A Letter on Justice and Open Debate,” *Harper’s Magazine*, July 7, 2020.

⁷ Christopher Hitchens – Free Speech (2006) [HQ] YouTube.

⁸ How federal law draws a line between free speech and hate crimes, PBS News Hour, December 15, 015

⁹ Supreme Court reaffirms: there is no ‘hate speech’ exception to the First Amendment, The Washington Post, June 19, 2017