

POLICY PAGES

Religious Freedom for College Students Sept. 12, 2019

OVERVIEW

Across the nation, a growing number of students' religious freedom and free speech rights on college campuses have been curtailed by administrators and other students. Instead of being the "marketplace of ideas," public universities and colleges have become places of vulnerability for students who wish to live out and express their faith on campus.

In response to these alarming national trends, Arizona has updated its laws four times since 2011 to ensure First Amendment freedoms of speech and religion are alive and well in its public universities and community colleges.

ANALYSIS

Despite our nation's longstanding commitment to the free exchange of ideas among teachers and students at our public universities and colleges, school officials have been chipping away at First Amendment freedoms.¹ Whether motivated by ideology or in an attempt to protect students from perceived emotional harm or simply to avoid protests, unpopular viewpoints are being silenced.

Thankfully, constitutional protections and newly enacted statutory protections under Arizona law have countered these unsettling national trends.

CONSTITUTIONAL PROTECTIONS

Students do not lose their constitutional rights simply by stepping onto the public college or university campus.² College students generally possess a broad range of constitutional rights on campus, even more so than K-12 public school students because the school's interest is much weaker in dealing with adult college students than with minors. The school may limit student



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activities only if the activities “infringe reasonable campus rules, interrupt classes, or substantially interfere with the opportunity of other students to obtain an education.”³

Colleges and universities must treat religious speech by students the same as nonreligious speech by students, and the school may not censor student speech or activities simply because school administrators do not like the student’s viewpoint.⁴

On a public college or university campus, students may:

- **Share Their Faith.** Students may pray, read their Bibles, discuss their religious beliefs, and engage in other religious activities as long as they do not interrupt classes or substantially interfere with the education of other students.
- **Express Their Religious Beliefs in School Assignments.** Students may express their religious beliefs, discuss religious figures, and draw religious artwork in school assignments without being penalized or rewarded on the basis of their religious content or viewpoint. The student’s work will be judged by ordinary academic standards of substance and relevance to the course curriculum or requirements of the assignment or coursework.
- **Wear Clothing, Jewelry, or Accessories that Display Religious Messages or Symbols.** Most colleges and universities have few or no restrictions on student dress. If the school permits students to wear clothing, jewelry, or accessories that express a message, the school may not single out religious messages for unfavorable treatment.
- **Distribute Religious Literature and Fliers on Campus.** Students are generally free to distribute tracts or fliers on campus, subject to reasonable restrictions (on time, place, and manner) that apply equally to religious and nonreligious materials. Schools may prohibit literature distribution during class instruction.
- **Start or Participate in a Religious Student Club on Campus.** Religious student groups are entitled to equal access to campus facilities, equal access to university funding, and freedom from interference in the group’s internal governance and composition.

For more information on constitutional protections, see these resources from [Alliance Defending Freedom](#) (ADF) and [Foundation for Individual Rights in Education](#) (FIRE).

STATUTORY PROTECTIONS

Center for Arizona Policy (CAP) raised concerns about students’ religious freedoms at Arizona’s public universities and community colleges to the state Legislature in 2011, leading to the University Students’ Religious Liberty Act being passed and signed into law. Since then, these foundational rights have been further protected and clarified.

Religious Freedom. Under [A.R.S. §15-1862](#), a public university or community college:

- Shall not discriminate against a student on the basis of the student's religious viewpoint, expression or belief.
- Shall not adopt any policy that penalizes or punishes a student based on the student's religious viewpoint, expression or beliefs.
- Shall not penalize or reward a student on the basis of religious content or a religious viewpoint in an assignment or classroom discussion requesting a student's viewpoint. The academic work shall be evaluated based on ordinary academic standards such as grammar, style, analysis and adherence to the instructions for the assignment.
- Shall not withhold any certificate or degree on the basis of a student's religious viewpoint or religious expression.
- Shall not discipline or discriminate against a student in a counseling, social work or psychology program because the student refuses to counsel a client about goals that conflict with the student's sincerely held religious belief if the student consults with the supervising instructor or professor to determine the proper course of action to avoid harm to the client.

Religious freedom protections also extend to faith-based student groups on campus. Under [A.R.S. §15-1863](#), a public university or community college:

- May not discriminate against or deny recognition, equal access or a fair opportunity to any student organization or group on the religious, political, philosophical or other content of the organization's or group's speech including worship.
- May not deny recognition or any privilege or benefit to a student organization or group that exercises its right to order its internal affairs, select its leaders and members, define its doctrines and resolve disputes in furtherance of the group's religious or political mission. The group may exclude students not committed to the group's mission.

Free Speech. In addition to the specific religious freedom protections discussed above, Arizona law has strong campus free speech protections, which would include religious speech. Under Arizona law, public universities and colleges:

- May not create "free speech zones," thereby limiting free speech to a limited area on campus, though they may impose reasonable time, place and manner restrictions ([A.R.S. §15-1865](#)).
- Shall not restrict a student's right to speak, including verbal speech, holding a sign or distributing fliers or other materials, in an open outdoor area or part of campus that has been open to students for expression, but may impose reasonable time, place and manner restrictions ([A.R.S. §§15-1861, -1864](#)).

- Shall not impose restrictions on the time, place and manner of student speech that occurs in a public forum and is protected by the First Amendment to the United States Constitution unless the restrictions are reasonable, justified without reference to the content of the regulated speech, are necessary to achieve a compelling governmental interest, are the least restrictive means to further that compelling government interest, leave open ample alternative channels for communication of the information, and allow spontaneous assembly and distribution of literature ([A.R.S. §15-1864](#)).
- May not prohibit a person (whether a student or not) who is lawfully present to protest or demonstrate on that campus, though they may restrict the use of nonpublic facilities to invited individuals ([A.R.S. §15-1864](#)).
- May not prevent a speaker to access the campus whom a student, student group, or faculty member invited ([A.R.S. §15-1864](#)).
- May not charge security fees based on the content of the speech of the person who invited a speaker or of the invited speaker. It shall make reasonable efforts and make available reasonable resources to address the safety of an invited speaker and other persons in attendance ([A.R.S. §15-1864](#)).
- The university or community college may not take action, as an institution, on the public policy controversies of the day in a way that requires students or faculty members to publicly express or endorse a particular view of a public policy controversy ([A.R.S. §15-1864](#)).

Arizona law ([A.R.S. §15-1866](#)) also requires public universities and colleges to create a free expression policy that includes the statements:

- “The primary function of an institution of higher education is the discovery, improvement, transmission and dissemination of knowledge by means of research, teaching, discussion and debate.” This statement shall provide that, to fulfill this function, the university or community college must strive to ensure the fullest degree of intellectual freedom and free expression.
- “It is not the proper role of an institution of higher education to shield individuals from speech protected by the first amendment, including, without limitation, ideas and opinions that may be unwelcome, disagreeable or deeply offensive.”
- “Students and faculty members have the freedom to discuss any problem that presents itself, as the first amendment allows and within the limits of reasonable viewpoint and content-neutral restrictions on time, place and manner of expression that are consistent with this article and that are necessary to achieve a compelling institutional interest if these restrictions are clear, are published and provide ample alternative means of expression.” This statement shall specify that students and faculty members may assemble and engage

in spontaneous expressive activities if those activities are not unlawful and do not materially and substantially disrupt the functioning of the university or community college.

The free expression policy must also have provisions addressing disciplinary proceedings and actions for students that “substantially infringes on the rights of other persons to engage or listen to expressive activity.” Students must be informed of their school’s free expression policy during the freshmen orientation program ([A.R.S. §15-1869](#)).

Although students have broad free speech protections, public universities and colleges may still prohibit speech that violates state or federal law, unprotected defamation, harassment (expression that is so severe, pervasive and subjectively and objectively offensive that it unreasonably interferes with an individual’s access to educational opportunities), true threat (serious expression of an intent to commit an act of unlawful violence against a particular person or group of persons), unjustifiable invasion of privacy or confidentiality that does not involve a matter of public concern, and an action that unlawfully disrupts the function of the university or community college ([A.R.S. §15-1866](#)).

Finally, the attorney general or any person whose expressive rights were violated by a violation of these free expression laws (A.R.S. §§15-1861 through -1869) may bring an action in court to enforce them ([A.R.S. §15-1864](#)).

CONCLUSION

University policies and practices restricting students’ religious freedom and free speech rights are contrary to the core constitutional principles upon which our nation was founded. The U.S. Supreme Court has made clear First Amendment protections should apply with no less force on college campuses than in the community at large.⁵ According to the Court, “The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.”⁶

Protecting free speech and religious freedom are of the utmost importance on our college campuses. Future generations of students are at risk of losing some of their most important rights, and the future of our nation is imperiled when students are taught that government officials can censor their speech or penalize them for their religious beliefs.

TALKING POINTS

- **Students do not lose their constitutional rights simply by stepping onto the public college or university campus. The First Amendment protects the rights of students to engage in religious expression. The CAP-supported University Students’ Religious**

Liberty Act makes it easy for school officials and students to understand their First Amendment rights.

- **State universities and community colleges must treat religious and nonreligious messages and student groups equally.** School officials should not be allowed to silence speech they do not favor, while protecting speech that advances their own ideology.
 - **The First Amendment is not reserved merely for those who align with the majority or college administrators. There is not a free exchange of ideas if the voices of the faithful are silenced.**
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¹This information applies only to public colleges and universities. A private institution is not obligated to respect the constitutional rights of its students, although private school students may be given enforceable rights under a student handbook or other policy.

²[*Healy v. James*, 408 U.S. 169, 180 \(1972\)](#)

³[*Id.* at 189.](#)

⁴[*Id.* at 187-188.](#)

⁵[*Id.* at 180.](#)

⁶[*Id.*](#) (citation omitted).