

## Statement of Commitment to Free Expression

### **Preamble**

Freedom of expression is the foundation of an Ohio University education. Open debate and deliberation, the critique of beliefs and theories, and uncensored academic inquiry are all essential to our shared mission of discovery and dissemination of knowledge.<sup>1</sup>

We enjoy the freedoms of speech and assembly on our campuses not by virtue of this Statement or any university policy. Those rights are secured by the First Amendment and other federal and state constitutional provisions and laws, which establish our freedoms far beyond what a university policy may supplement or diminish.

Beyond their constitutional significance, freedom of inquiry and expression also are hallmarks of a worthy education. We are entrusted with the intellectual and civic preparation of those who will create, build, discover, teach, and lead in our community, nation, and world. To meet this charge, we must teach the essential nature of free speech to a democratic society: The robust exercise of free expression illuminates our search for truth and progress. It nourishes an informed democracy. It gives voice to the oppressed. Its presence guarantees all other freedoms; its loss foretells tyranny.

Many generations of Ohio University students, faculty, and staff have walked beneath our Alumni Gateway and its inscription: “So enter that daily thou mayest grow in knowledge, wisdom, and love.” For those who have walked through those gates—and for the generations that will follow them—this Statement affirms that our daily pursuit of knowledge, wisdom, and love is possible only through our dedication to the preservation and celebration of the freedom of expression. Just as the Alumni Gateway inscription dedicates our own community to a more universal mission, this Statement is a lasting affirmation of these established freedoms and their meaning to our institution.

In his 1962 *Speaker’s Policy*, Ohio University President Vernon R. Alden described freedom of expression as “a profound part of our heritage,” asserting that “freedom of inquiry and discussion is essential to a student’s educational development.” The students, faculty, and staff of our institution today are stewards of Ohio University’s legacy of activism and free speech. We must preserve and protect this legacy, both by word and deed, for our students and for the generations that will follow us.<sup>2</sup>

Ohio University welcomes free expression in all its forms, including the expression of dissent. Universities at their best are lively, sometimes tumultuous places. This is especially true here, where today we walk the same greens where our predecessors assembled to call for civil rights and an end to the Vietnam War, to mourn the assassinations of heroes, and to express concern for campus issues of their day. Recent years have shown this legacy of activism to be alive and well on our campuses. We welcome this, and we recognize that robust debate and civil disagreement are healthy signs of an engaged university community and a diversity of perspectives.

Moreover, an important corollary to free expression is our dedication to academic freedom: the faculty of our University must always be free to pursue their research, scholarship, creative activity, teaching, and other academic endeavors consistent with the professional standards of their disciplines.

### **Free Expression: Principles of Application**

We affirm the value of free expression, but applying these broad values to our campuses is complex. For example, all enjoy free speech rights, but their exercise by competing groups sometimes brings those rights into conflict. Most agree that mere inconvenience should be tolerated while genuine disruption should not, but defining the difference between the two in some scenarios can be difficult. And while almost everyone in the United States is aware of the First Amendment, we do not always share a common understanding of what the law actually requires, prohibits, or permits.

This section includes brief discussions of principles and challenges that arise in the application of free expression rights to our campuses, informed by the First Amendment and court decisions applying the law.

#### ***Constitutional Limitations: Time, Place, Manner Rules and Disruption***

The robust exercise of free speech is essential to our mission, and this includes expressions of dissent and protest. Ohio University welcomes demonstrations, marches, and similar assemblies in almost all outdoor areas and many indoor spaces of our campuses, and generally we should accept any inconveniences that may result as a unique and necessary feature of university life.

Of course, this does not mean there are no limitations governing the use of university spaces for expression. Under constitutional law, there are two types of permissible limitations: (i) rules that regulate the permissible time, place, and manner of speech in advance (*e.g.*, prohibiting use of bullhorns in a library);<sup>3</sup> and (ii) rules prohibiting activities that substantially and materially disrupt important university operations, which often can be determined only at the time of an event.<sup>4</sup>

To ensure that everyday university functions can be accomplished, the institution has adopted both types of rules for use of outdoor and indoor spaces. The precise legal tests for these rules vary depending on the nature of the space. Generally, they must be content-neutral, reasonable, and leave ample alternative methods of expression. These are “narrow exceptions to the general principle of freedom of expression, and it is vitally important that these exceptions never be used in a manner inconsistent with the University’s commitment to a completely free and open discussion of ideas.”<sup>5</sup> Even with these rules, our community members have innumerable opportunities to express themselves on campus: for example, through publications, debate, tee-shirts, and signs, along with spontaneous marches, protests, demonstrations, and assemblies in almost all outdoor spaces and many indoor spaces.

Our community also should consider the difficulty in distinguishing mere inconvenience from disruption. “Disruption” unavoidably depends on the context. It may take very little noise to

disrupt an intense studying session in Alden Library. That same level of noise is less likely to be disruptive in Baker Center at lunchtime on a Tuesday, and may not even be noticed—much less be disruptive—on College Green. As a general matter, a wider range of activities may be disruptive indoors—where most university work takes place, and where people are in closer proximity—than outdoors.<sup>6</sup>

It is not possible to define disruption with perfect clarity for all scenarios in all places, and courts do not expect such precision.<sup>7</sup> Those who enforce these policies and those who seek to comply with them must use reasonable judgment and common sense, informed by the values of our institution, to apply a general definition to the specifics of the moment. By structuring our policies to clarify the many spaces in which demonstrations, marches, and similar assemblies are permissible, along with basic rules for use of spaces, we decrease the number of situations in which subjective judgments about disruption are required.

### ***Content Neutrality***

University rules that govern expression typically must be written and enforced without regard to the content of the expression. This principle—known as “content neutrality”—is a basic requirement of First Amendment law and ensures that governments (and public universities) do not abuse their authority to silence or favor speech based on content.<sup>8</sup>

As a result, the university may not write or enforce rules more generously for popular speech and more restrictively for disfavored, unpopular speech. The rules generally must be applied consistently, regardless of the content. At times, this may mean that sympathetic speakers and speech will be subject to rules governing the time, place, and manner of speech.

### ***Protected Protest versus Civil Disobedience***

Under First Amendment law and the university’s policies, protesters on campus may express their views in many ways, including by assembling, demonstrating, and marching. Those activities are constitutionally protected and must be permitted, so long as they are not disruptive or violate basic use rules.

Civil disobedience is different. Civil disobedience typically involves peaceful, conscientious, and intentional violations of laws or rules. Those who engage in civil disobedience often do so to highlight injustice and to call for societal change, but civil disobedience—even for worthy causes—is not protected by the First Amendment; there is no constitutional “right” to civil disobedience or to substantially disruptive protest, and civil disobedience may result in disciplinary and legal consequences.

### ***Protests and Counter-protests***

Many protests on campus attract counter-protests. When this occurs, the university is legally permitted to manage these scenarios to ensure that the groups are able to safely communicate with each other and the surrounding audience and to prevent one from physically silencing the other. For example, the university may establish a buffer area between two competing protests so

that, where feasible, the groups remain in the same general area. The size and placement of the buffer area, and the resulting orientation of the groups, will depend on the spaces at issue. Generally speaking, it is much more difficult to accommodate competing protests in the same space in indoor areas than outdoors.

### *Event Speakers and Dissent*

The university and its community frequently host events featuring speakers who communicate to an intended audience. Many such events are open to the public, while some are nonpublic or by invitation only. Speakers generally have a right to communicate their message, even though that message may be controversial or disfavored, and the audience has a right to see and hear the speaker.

At public events, individuals typically are free to express dissent in the event venue in ways that do not substantially interfere with the rights of the speaker and the audience. For example, staging a walk-out, wearing expressive clothing, and displaying signs that do not significantly obstruct views generally are permissible. However, the University “has a solemn responsibility not only to promote a lively and fearless freedom of debate and deliberation, but also to protect that freedom when others attempt to restrict it.”<sup>9</sup> Thus sustained heckling and “shouting down” a speaker generally are not permissible.<sup>10</sup>

For nonpublic events, the event organizer usually is allowed to turn away uninvited individuals from entering the venue itself. However, individuals are free to engage in expressive activities outside the venue consistent with university rules. For example, individuals protesting an event inside a building generally may assemble and distribute literature just outside the building, so long as entrances are not blocked.

### *Hate Speech and Other Offensive Speech*

At times, our community members will encounter arguments and perspectives with which they disagree, or worse, that are repugnant and offensive. Some such expressions may be condemned as “hate speech.” Although those views are deeply at odds with the values of Ohio University, courts have held that such speech generally is protected by the First Amendment and cannot be punished or regulated based on its content.<sup>11</sup> More importantly, our community is stronger when such views are openly probed, contested, and rebutted.

Ohio University does not shield its community from speech on the basis that it is uncomfortable, wrong, or offensive. Rather, Ohio University seeks to prepare each student to engage thoughtfully and passionately with all ideas, even with disagreeable views.

### *Unprotected Speech*

Notwithstanding the First Amendment’s broad reach, certain categories of speech are not constitutionally protected and may be prohibited and subject to disciplinary or legal action. These categories include genuine harassment and threats, legally obscene material, falsely defamatory statements about a specific person, and incitement.<sup>12</sup> “Sexual harassment,” for

example, is defined and prohibited by Policy 03.004 (Sexual Misconduct, Relationship Violence, and Stalking) and other authorities. When such unprotected speech occurs on our campus, the university will take appropriate disciplinary and remedial action.

## **Conclusion**

“Without a vibrant commitment to free and open inquiry, a university ceases to be a university.”<sup>13</sup> Ohio University embraces its history of free expression and activism, and recognizes the contribution of this legacy to the current vitality of our academic endeavors and our community. Through this Statement, the University secures this legacy of free expression and open inquiry for future generations.

## **Reviewers**

Proposed revisions of this policy should be reviewed by:

1. Faculty Senate
2. Administrative Senate
3. Classified Senate
4. Deans
5. Chairs and Directors
6. Graduate Student Senate
7. Student Senate
8. Chief of Police
9. Executive Director of Baker Center

## **Forms, References, and History**

### **1. Forms**

There are no forms specific to this policy.

### **2. References**

1. This Statement draws upon the University of Chicago’s *Statement on Principles of Free Expression* and *Report of the Committee on Freedom of Expression*, the University of Missouri’s *Commitment to Free Expression* and *Guiding Principles*, and the University of Wisconsin’s *Commitment to Academic Freedom and Freedom of Expression*.

2. For a concise history of free expression at Ohio University, see the *Report of the Presidential Policy Advisory Group on Free Speech at Ohio University*, pp. 3–6.  
<https://www.ohio.edu/sites/default/files/sites/policy-group/Policy%20Advisory%20Group%20Final%20Report.pdf>
3. See *Ward v. Rock Against Racism*, 491 U.S. 781, 791-803 (1989); *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 292 (1984).
4. See *Grayned v. City of Rockford*, 408 U.S. 104, 110-12 (1972); *Healy v. James*, 408 U.S. 169, 188 (1972); *Salehpour v. Univ. of Tenn.*, 159 F.3d 199, 208 (6th Cir. 1998).
5. University of Chicago, *Report of the Committee on Freedom of Expression*, p.2.
6. See *Sword v. Fox*, 446 F.2d 1091, 1095-98 (4th Cir. 1971); *Sabatini v. Reinstein*, 222 F. Supp. 3d 444, 458-59 (E.D. Pa. 2016).
7. See *Snyder v. Phelps*, 562 U.S. 443, 452 (2011).
8. See *R.A.V. v. St. Paul*, 505 U.S. 377, 382-83 (1992).
9. University of Chicago, *Report of the Committee on Freedom of Expression*, p. 3.
10. See *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 261 (6th Cir. 2015).
11. See *Bible Believers*, 805 F.3d at 233 (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”).
12. See *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 632 (1999) (describing unprotected harassment under Title IX as “harassment that is so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit”).
13. Robert M. Hutchins, quoted in University of Chicago, *Report of the Committee on Freedom of Expression*, p. 3.

### **3. History**