

Why Teachers Must Defend The First Amendment?

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Received : 2018-09-28

Accepted : 2018-12-01

How to cite this paper: Moore, J., (2018). Why Teachers Must Defend The First Amendment? *Journal of Culture and Values in Education*, 1(2), 23-41.

Abstract

Freedom of expression is a central tenet of American democracy and is essential to civic education in K-12 schools and universities. Freedom of expression is crucial to individual liberty, participatory democracy, scientific advancement, and protects citizens from governmental overreach. All citizens have the right to freedom of speech, press, religion, petition, and assembly under the First Amendment of the United States Constitution. They must have the ability to acquire information, scientific evidence, historical facts, and dissenting opinions on all public issues to make informed and intelligent choices regarding policies, laws, and political candidates. This includes citizens' rights to express radical, offensive, and controversial ideas that may be unpopular with the government or special interest groups. However, freedom of expression is under attack in universities, the institutions ostensibly committed to protecting the First Amendment and academic freedom. In fact, many educational institutions have established speech codes that prevent individuals from making controversial, radical, and offensive statements about individuals or groups based on race, ethnicity, religion, sexual orientation, gender identity, and other classifications. Therefore, it is incumbent upon educators to defend the First Amendment in K-12 schools and universities. Unconstitutional speech codes, overt attempts at censoring students' rights, and institutional efforts to silence dissenting views are anathema to democracy and social studies education. This article will examine these issues and offer strategies to combat censorship in educational institutions.

Keywords: First Amendment, democracy, liberty, social studies, censorship, teachers

Introduction

On February 1, 2017, a group of protesters—including a small number of rioters engaging in criminal vandalism and battery—succeeded in forcing the University of California at Berkeley to cancel a planned speech by Milo Yiannopoulos. The College Republicans invited the conservative and controversial editor at Breitbart News to discuss his political views (Foundation for Individual Rights in Education, 2017). The protesters smashed windows, removed barricades, threw rocks and fireworks at police, and threw Molotov cocktails that ignited fires. Moreover, six people suffered non-life threatening injuries and the rioting caused \$100,000 in property damage (Park & Lah, 2017). There is no evidence that Berkeley officials attempted to prevent Yiannopoulos from speaking; however, there are questions regarding

Berkley's response to the rioters and their inability to protect Yiannopoulos and his audience (Park & Lah, 2017).

The Berkley event is hardly the first time that protesters and rioters have been able to shut down speech by threatening violence, mob censorship, or other methods to disrupt controversial speakers on American campuses. Furthermore, there have been numerous examples of secondary school students having their First Amendment rights violated by school officials (Paulson, 2014). The United States is experiencing a cultural divide among liberals, conservatives, and others on the ideological spectrum; opposing political values over free speech and the First Amendment, the role of government, immigration issues, and racial and gender issues animate this significant, and rancorous, division among Americans.

In fact, many educational institutions have established speech codes that prevent individuals from making controversial, radical, and offensive statements about individuals or groups based on race, ethnicity, religion, sexual orientation, gender identity, and other classifications (American Library Association, 2017; Foundation for Individual Rights in Education, 2018; Keierleber, 2015; Powers, 2015). Ostensibly, the purpose of these speech codes is to ensure that "hate speech"—often defined "as hostile or prejudicial attitudes expressed toward another person's or group's characteristics, notably sex, race, ethnicity, religion, or sexual orientation" (Dye 2011, p. 508) —are prohibited in the name of tolerance, diversity, and equality. Advocates of these prohibitions on freedom of expression assert the need to protect historically disenfranchised groups from prejudiced remarks, racial hatred, hurt feelings, and incivility (Powers, 2015). Increasingly, many students believe that they have a constitutional right to avoid confrontation with ideas that might cause emotional upset or question their moral universe. This is anathema to a liberal arts education and is incompatible with a pluralistic democracy.

However, the central constitutional problem with the vast majority of speech codes, as well as blasphemy laws that prevent criticism of religious ideas, rituals, figures, and practices, is that they are a violation of the First Amendment (Foundation for Individual Rights in Education, 2018, 2013; Haynes 2013; Saxe V. State College Area School District, 2001). Furthermore, these speech codes—if enforced—would have a devastating impact on social studies education in secondary schools. Social studies themes, such as war, equality, racial discrimination, poverty, religion, the proper size and scope of government, and many others, are inherently controversial topics that generate passionate debate and motivate individuals to exercise their constitutional rights to political activism via voting, protesting, lobbying Congress, filing lawsuits, and freely expressing their views in multiple forums. Indeed, censoring ideas, values, beliefs, attitudes, and opinions—no matter how controversial, extreme, offensive, or repugnant they may be—is anathema to a free society and a direct threat to American democracy (Foundation for Individual Rights in Education, 2018, 2013; Haynes, 2013; Paulson, 2014).

This article will describe the importance of freedom of expression, and its limited exceptions crafted by judicial review, to American democracy. Furthermore, the article will examine the First Amendment in universities and secondary schools, including several examples of specific cases in which authorities violated students' First Amendment rights. Finally, the article will

provide guidelines for secondary social studies teachers on how to safeguard students' rights and teach about the First Amendment, specifically freedom of expression, in a pedagogically sound manner that comports with constitutional law.

The First Amendment: Essential to Social Studies and Democracy

Freedom of expression—defined as the ability to speak, listen, read, write, and publish with very limited government control—is essential to American democracy (Dye, 2011; NCSS, 2016). Expression can be verbal, written, or symbolic and applies to all forms of communication, such as books, newspapers, the Internet, radio, art, music, television, and personal contact. Citizens cannot acquire information, scientific evidence, and multiple viewpoints that are essential to making intelligent and informed choices regarding political candidates, political parties, and public policies without the First Amendment protections of religion, speech, press, assembly, and petition (Losco & Baker, 2017; Smolla, 2018). In fact, freedom of expression is crucial to individual liberty and the protection of all individual rights and is a cornerstone of popular sovereignty (Smolla, 2018). Moreover, freedom of expression is a prerequisite for scientific advancement and intellectual progress; entrenched interests groups try to crush new, dangerous, and radical ideas that pose a threat to the established order. Indeed, throughout history, people viewed the ideas of democracy, equality, and individual human rights with hostility (Center for Civic Education, 2009; Losco & Baker, 2017). Contemporary societies continue to debate these competing values and ideas spawned by conflicting religious, cultural, and political worldviews.

It is difficult for many people to tolerate ideas, values, and beliefs that they diametrically oppose centered on moral, religious, or political reasons. Threats to freedom of expression can emanate from government officials or majorities hostile to minority opinions; therefore, placing basic constitutional rights beyond the reach of majorities demonstrated prudence (Center for Civic Education, 2009; Smolla, 2018). Hence, individuals are free to express radical, extreme, controversial, and vile opinions irrespective of majority opposition to these views. This is a critical but challenging lesson for secondary and university students to understand: The First Amendment protects offensive, controversial, radical, and sacrilegious expression. Without this protection, some people would censor political speech, publishing (in print and online), art, literature, music, and other forms of expression. This would have a devastating impact on our democracy; it would retard progress in science, and stifle creativity on multiple fronts. Students must learn that personal and educational growth are enhanced when they are exposed to a wide range of ideas, values, and experiences; tolerance must extend beyond race, gender, sexual orientation, and religion to include diversity of thought.

However, there are people who argue that the First Amendment goes too far in protecting offensive speech. For example, a recent survey found that 40% of millennials (roughly, ages 19 to 35) said that the government should be able to prevent people from making statements that are offensive to minority groups. This is remarkable considering that only 27% of Gen Xers (ages 36-52) and 24% of Baby Boomers (ages 52-71) agreed with censorship on this topic (Poushter 2015). Moreover, there is a significant racial and ethnic divide regarding offensive statements about minority groups, with 38% of non-whites supporting government censorship and 23% of

non-Latino whites in favor of banning offensive speech (Poushter, 2015). Political affiliation has a dramatic impact on one's views regarding offensive speech. Almost twice as many Democrats (35%) said that the government should be able prevent offensive speech against minorities compare with only 18% of Republicans. Finally, there is a slight difference in views based on educational attainment, with Americans possessing a high school diploma or less (31%) arguing that the government should protect minorities from offensive speech compared with 22% of college graduates asserting minority protection (Poushter, 2015).

Overall, 67% of Americans say offensive speech is deserving of First Amendment protections and the United States is among the supportive countries in the world regarding free speech, freedom of the press and the right to use the Internet without government censorship (Wike & Simmons, 2015). For example, Americans are considerably more tolerant of offensive speech compared to Europeans; 77% of Americans believe that blasphemy should be protected speech; only 57% of England's citizens think blasphemy deserves protection. Less than 50% of citizens in Germany, Italy, and Poland support blasphemous speech (Wike, 2016). Many factors influence views regarding the First Amendment and Americans are engaged in passionate debates regarding the boundaries of free expression.

It is vital that citizens understand that no constitutional right or liberty is absolute. For example, the United States Supreme Court, ruling in the *District of Columbia v. Heller* (2008), asserted that the Second Amendment confers on individuals the right to keep and bear arms to protect themselves in public and at home. This controversial 5-4 decision does not mean that individuals can possess other weapons, such as ballistic missiles, weaponized smallpox, or any weapon they choose. One of the purposes of the judicial system is to interpret the Constitution and other federal and state laws and establish limitations and exceptions to citizens' legal rights and obligations (Dye, 2011). Thus, First Amendment protections, like others in the Bill of Rights and the other seventeen Amendments, are subject to judicial scrutiny and political debate among lawyers, politicians, scholars, journalists, and the public. It is important that students understand that laws and limits on behavior are not necessarily an infringement on personal freedoms but rather they serve as the legal and moral foundation balancing individual freedom with social order, safety, and community rights. A society without any laws is not free; it is anarchy accompanied by chaos and barbarism.

Thus, there several important exceptions to the First Amendment protection of freedom of expression. First, incitement to riot and threats of violence are not protected forms of speech; the "clear and present danger" and the "incitement" tests asserts that speech can be prohibited when an obvious and immediate danger exists in a real time situation (Center for Civic Education, 2009). The protection of people from violence becomes paramount in these situations and law enforcement is within their rights to stop speech. (Losco & Baker, 2017). For example, the Supreme Court has stated that "true threats as only those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals" (*Virginia v. Black*, 2003).The constitution protects all people from criminal activity and threats.

Likewise, harassment — “targeted discriminatory conduct so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit” (Foundation for Individual Rights in Education, 2013, p. 12) is not protected. Furthermore, “fighting words” — language so abusive and incendiary that it might cause the average person to fight—spoken face to face and likely to result in violence are not protected under the First Amendment. The Supreme Court, arguing in *Chaplinsky v. New Hampshire* in 1942, asserted that “fighting words” are not an exchange of ideas or opinions and are likely to breach the peace or incite violence and their prohibition to protect social order outweighs free expression concerns.

Second, defamation is not protected speech. Defamation—verbal (slander) or written (libel)—language that is false and hurts someone’s reputation is actionable in the court system (Losco & Baker, 2017). Lying is legal (unless one is under oath, damaging others’ reputations or making false claims in advertising); but false statements must harm an individual and the onus is on the speaker to prove his allegations. Truth is an absolute defense to a defamation charge; it is important that students learn to refrain from making false statements and gather evidence before they speak.

Third, the First Amendment does not protect obscenity. This is problematic because defining obscenity has been difficult for the Supreme Court. The 1973 *Miller v. California* decision argued that the material in question (literature, art, music, scientific, political) must be patently offensive, the material appeals to prurient interest based on contemporary community standards, and lacks artistic, literary, political or scientific value. This is a very high standard designed to protect expression. In the 1982 case of *New York v. Ferber*, the Supreme Court prohibited child pornography and depicting children under age 18 engaged in any sexual act is a felony regardless of whether the material is obscene. Changing community standards and technology—the Internet and multiple forms of electronic communication—have presented society and our legal system with a plethora of challenges that are unsolved contemporary issues. Cyberbullying, “hate speech,” and Internet pornography will continue to challenge the legislative and judicial systems to apply the First Amendment.

Finally, while the government is very limited in proscribing speech based on its content, they have more latitude in regulating the time, place, and manner of speech (Center for Civic Education, 2009). Local governments may require permits for protests, rallies, and assemblies; they may regulate the use of loudspeakers, music volume, and sound trucks; establish zoning regulation to protect residents right to quiet and determine if the site is a public forum or nonpublic forum. These regulations ensure safety, balance all competing interests, and minimize disruptions to daily affairs. However, government cannot use these regulations to censor ideas that they find offensive or controversial.

Narrowly tailored exceptions to freedom of expression attempt to balance the rights of all individuals with the rights of the community and other interested parties. This is difficult in a highly diverse and pluralistic democracy but it is essential to civic engagement and social studies education. However, many universities and secondary schools have established speech codes

that are unconstitutional and do not comport with any of the established limitations on freedom of expression.

Free Speech under Attack in American Universities

The First Amendment protections of religion, speech, press, petition, and assembly applies to all public universities in the United States. The Supreme Court has consistently ruled that freedom of expression is central to preserving democracy, which depends on an educated population capable of intelligent civic participation. (Haynes, 2013). For example, the Court, ruling in *Sweezy v. New Hampshire* (1957) asserted, “Teachers and students must always remain free to inquire, to study, and to evaluate. To gain new maturity and understanding; otherwise our civilization will stagnate and die.” The right to dissent from orthodoxy, question authority, criticize “sacred cows,” debate controversial issues, and form opinions are essential to the democratic processes of lobbying, campaigning, and voting one’s conscience. Moreover, freedom of expression is a prerequisite for creating knowledge; scientific, technological, and social progress would be impossible without the right to dissent and question established wisdom.

The primary purpose of freedom of expression is to protect radical, controversial, and offensive speech. Academic freedom is crucial for a university education and allowing censorship of ideas—even ones viewed as repugnant by many people—is anathema to education in a democratic society (Smolla, 2018). In *Keyishian v. Board of Regents, State University of New York* (1967), the Court declared “unconstitutional New York statutes and administrative rules designed to prevent employment of subversive teachers and professors in state educational institutions” and asserted the primacy of academic freedom in education. Therefore, diversity of thought and opinion—courageous individuals who challenge orthodoxy and “group think”—is needed in all educational institutions (Powers, 2015). All ideas on the political spectrum should be welcome in educational settings, exposed to critical scrutiny, and subjected to empirical and rational analysis. This freedom is at the heart of democratic education in the United States.

However, over the past several decades, many American universities have implemented campus speech codes, ostensibly designed to protect students from various forms of “hate speech” (FIRE, 2018). The universities claimed speech codes are necessary to promote tolerance, respect, civility, and diversity on college campuses dedicated to equality. In addition, some groups have used threats and violence to shut down conservative speakers, such as Charles Murray, at some universities (Seelye, 2017). Proponents of “hate speech” codes proclaim historically disenfranchised minorities, such as African Americans, Latinos, and Native Americans have been the victims of racial/ethnic oppression, segregation, and other forms of discrimination and need protection on campus. Indeed, racial, ethnic, and religious bigotry have played a major role in American history (Marger, 2016) and the United States has made substantial progress in reducing all forms of discrimination. These efforts include judicial decisions and legislative acts that outlawed school segregation. However, these actions expanded legal protections and rights to all citizens without attempting to prohibit freedom of expression.

While tolerance, respect, and diversity are important educational and social goals, implementing these goals cannot violate the First Amendment's protection of freedom of expression (Haynes, 2013). Therefore, the courts have struck down many university speech codes (Freedom for Individual Rights in Education, 2018). Typically, the courts rule that speech codes violate the First Amendment because they are vague or overbroad. Frequently, the speech codes attempt to censor protected speech and the courts have invalidated them despite universities' efforts to sanitize the term "speech codes" by calling them "student rights and obligations" or "anti-harassment policies."

Normally, these speech codes contain language that prohibits sexist, racist, or anti-homosexual statements deemed offensive or "hate speech." For example, the University of Michigan's speech code forbade "any behavior that stigmatizes or victimizes any individual on the basis of race, ethnicity, religion, sex, sexual orientation, creed...and that...creates an intimidating, hostile, or demeaning environment for educational pursuits, employment or participation in university sponsored extra-curricular activities" (Doe v. Michigan, 1989). The federal district court ruled that this speech code violated the First Amendment; universities cannot censor speech because it is offensive. This speech code, if permitted, would not allow a student to state "I don't accept homosexuality because of my religious beliefs." Enforcing hate speech codes or blasphemy laws would render freedom of expression mute on campus. Individuals have a right to make racist, sexist, or blasphemous statements as well as offer radical political and social opinions on all issues, laws, and policies (Smolla, 2018).

Moreover, defining "hate speech" as any speech that is offensive or critical of specific laws, policies, or ideas is unconstitutional (Powers, 2015). Speech is not synonymous with behavior, and making vulgar, profane, and offensive comments is not synonymous with criminal behaviors. All individuals, regardless of any demographic characteristic, are entitled to protection from criminal acts and equal treatment under the law. Universities have an obligation to protect all students, faculty, staff, and visitors from crime and illegal harassment. However, no one is entitled to protection from ideas or speech that offends them. The most effective method to counter offensive speech is with better ideas, empirical evidence, and open discourse. Simply calling someone a "racist," "misogynist," or "homophobe" may shut down debate—this is the intent for some people who do not tolerate dissent or wish to engage in rational debate—and may indicate a lack of respect for diverse thought (Powers, 2015).

Of course, this defense of the First Amendment, supported by a plethora of judicial decisions over the past 60 years, is not an endorsement of incivility, intolerance, or disrespectful language. Educators should support civility, rational dialogue, tolerance for dissenting opinions, and respect for evidence in classrooms. Nevertheless, these virtues do not supersede the core American ideal of freedom of expression. Many universities disregard the judicial decisions that have struck down speech codes and continue to violate students' rights. For example, many universities have prevented individuals from wearing Halloween costumes that are "demeaning," "offensive," or engage in "cultural appropriation" (using artifacts, ideas, or material items from another culture. Of course, these bans on Halloween costumes are

unconstitutional and no one can be punished for their costumes, even if they are deemed offensive (Morey, 2018).

In 2018, according to the Foundation for Individual Rights in Education (an organization that monitors First Amendment violations in American universities), reviewed 461 universities and found that 149 (32.3%) schools received a “red light” rating (Foundation for Individual Rights in Education, 2018b, p.6). This indicates these schools maintain highly restrictive speech codes that “clearly and substantially prohibit constitutionally protected speech” (p. 4). Two-hundred and seventy universities earned a “yellow light” rating (58.5%). This rating indicates that these universities maintain policies that restrict freedom of expression, albeit to a lesser extent and in relatively narrower categories compared to “red light” universities. Thirty-five schools earned a “green light” rating (7.6%). This rating indicates that a school has written policies that do not pose a serious threat to freedom of expression (p. 6). Overall, there has been a decline in the number of universities earning a “red light” ranking and the number of schools with a “green light” ranking have quadrupled from eight schools in 2008 to thirty-five in 2018 (p. 6). Despite the continual decline in speech codes, threats to freedom of expression remain a serious issue across the country. Demands for censorship are ubiquitous and many universities, including some that have lost judicial cases on First Amendment law, continue to maintain unconstitutional speech codes. Advocates of extensive First Amendment rights suggest educating secondary and university students about their rights and defending them using the courts and other pro-speech organizations. This is important to combat unlawful speech codes that pose a threat to democracy and education in the United States (Foundation for Individual Rights in Education, 2018b, p. 24).

Freedom of Expression in Secondary Schools

Secondary school students have First Amendment rights in public schools, but these rights are more restricted than university students because secondary students are minors, they are a “captive audience”, and they have fewer legal responsibilities than university students (Haynes, Chaltain, Ferguson, Hudson, & Thomas, 2003; Hudson, 2018). If school administrators can rationally predict that a substantial disruption may occur, or if the student expression is a true threat, schools can constrict student speech to ensure safety. Violence is always a concern in high schools, where immature students often lack self-control and rival gangs may present serious threats to safety and order.

In 1967, the Supreme Court ruled *In re Gault* that minors have distinct rights under the Constitution; this was a significant case because prior to this ruling the law generally regarded children as the property of the parents (Jacobs, 2008). The case concerned the rights of a 15-year-old boy arrested in Arizona for making obscene phone calls and sentenced to juvenile detention until he was 21 years old. (An adult charged with the same crime could face two months in jail and/or a \$50 fine.) There was no appeal in juvenile cases in Arizona at that time and Gault’s legal team appealed to the U.S. Supreme Court; the Court ruled that juveniles are entitled to procedural due process under the Fifth and Fourteenth Amendments to the Constitution.

In 1969, the Supreme Court ruled that a Des Moines high school infringed on the First Amendment rights of Mary Beth Tinker, John Tinker, and Chris Eckhardt when the students were suspended for not removing the black armbands they wore to school to protest the Vietnam War (*Tinker v. Des Moines Independent School District*, 1969). The Supreme Court found that the students' wearing armbands did not cause any violence or disruption to order or discipline. However, balancing First Amendment protections with the right of the school to protect all students from violence and ensure a safe learning environment is important. Subsequent judicial decisions against a student using profanity and offensive terms in a school speech (*Bethel School District v. Fraser*, 1986), and a ruling against a student advocating for illegal drug use (*Frederick v. Morse*, 2007) demonstrated the limits of freedom of expression in secondary schools. The *Tinker*, *Bethel School District v. Fraser*, and *Frederick v. Morse* decisions remain seminal cases regarding freedom of expression in public schools and lower courts have cited these cases on school dress codes, jewelry, dyed hair, and other issues.

Five recent examples from secondary schools will demonstrate the legal complexities facing judicial authorities and school administrators when making decisions on freedom of expression cases. The rise of the Internet and all forms of social media—Facebook, Twitter, Snapchat, Instagram, You Tube, and many others—have made instant communication of information, ideas, news, skyping, and pictures a reality. Simultaneously, these computer-based technologies have made cyber-bullying, harassment, the rapid spread of rumors, and direct threats of violence and vengeance major issues in society and schools. Furthermore, these technologies have exacerbated challenges faced by judges when deciding freedom of expression cases characterized by legal nuances, special circumstances, multiple uncertainties, and the need for precise legal language. Secondary school students have First Amendment protections, albeit less than university students and adults, that schools and social studies courses must protect, precisely the places where young citizens should learn their rights and responsibilities in a democracy (Paulson, 2014).

On April 20, 2012, Wolcott High School, located in a suburb of Waterbury, Connecticut, held a Day of Silence event to promote awareness of bullying and harassment against homosexuals, bisexuals, and transgendered people (American Civil Liberties Foundation of Connecticut, 2014). Seth Groody, a junior at the school, wore a T-shirt depicting a rainbow (a common symbol of gay rights) with a slash through it to demonstrate his opposition to gay rights and homosexual marriage. No violence or disruption of educational activities based on Groody's T-shirt occurred in school. The administration summoned Groody and ordered to remove the shirt, which he did under protest. School officials claim they asked him to remove the shirt and he did so of his free volition (American Civil Liberties Foundation of Connecticut, 2014).

Groody and his father contacted the American Civil Liberties Union of Connecticut, which sent a letter to the school asking the school to acknowledge Groody's right to wear the shirt, citing the *Tinker* case. The ACLU prepared to file a lawsuit on behalf of Groody when there was no response from the school for several months. However, in 2013, the school did send a letter to Groody affirming his right to wear the anti-gay rights T-shirt, thus negating the filing of the lawsuit by the ACLU (American Civil Liberties Foundation of Connecticut, 2014).

Symbols, such as Confederate flags, swastikas, armbands, and pictures, can arouse powerful emotions, passions, and ideas that can lead to disruptions or even violence in public schools. Some people asserted that Groody's anti-gay message is a prime example of hate speech that warrants prohibition. However, interpreting hate speech—for which there is no legal definition in the United States—is difficult and subject to competing ideologies. Simultaneously, some argue that simply expressing a political viewpoint on social issues, such as gay rights, affirmative action, welfare, or capital punishment is not hate speech but is precisely the kind of political speech deserving protection in our democracy.

In 2014, Angelique Clark, a student at West Career and Technical Academy in the Clark County, Nevada School District, wanted to create a "Students for Life" club that was anti-abortion and committed to educating students about pro-life positions and resources to help pregnant women. Clark followed all of the correct procedures—completing and turning in the application signed by a faculty advisor and a list of 25 interested students, more than double the required minimum—and was denied her request by Allan Yee, the Assistant Principal (Clark v. Clark County School District, 2015).

Yee informed Angelique that her request was denied because her proposed club was not inclusive (it would make pro-choice people feel bad and look bad for the school in the media) and that abortion is controversial. Moreover, Yee stated there are "far more qualified people who know more about abortion than a high school sophomore," and public schools are "different" when it comes to First Amendment rights (Clark v. Clark County School District, 2015). Ms. Clark's high school has a Key Club, a Bible Club, and a Gay/Straight Alliance; the school's decision to deny Ms. Clark's request for a pro-life club violated, not only the First Amendment, but the 1984 Equal Access Act, which prevents schools that offer a "limited open forum" to deny any student equal access to that forum based on the content of the student's speech. This law protects students' freedom of expression and freedom of religion in public schools; students whose expression emanates from religious beliefs are just as entitled to First Amendment protection as students whose speech emanates from non-religious beliefs (Haynes et al., 2003).

In September 2015, West Career and Technical Academy, under threat of judicial action, formally granted Clark's request to start the Students for Life club. The club, while having a faculty advisor, is a non-school sponsored, student initiated and student-led pro-life group that allows Clark and other students to exercise their First Amendment rights. Regardless of one's views on the pro-life and pro-choice debate, Clark understood her constitutional rights, possessed knowledge of political affairs, researched the law, obtained legal counsel, fought persistently for her rights, and actively engaged in civic participation. This is a primary of social studies education, as defined by the National Council for the Social Studies and the "College, Career, and Civic Life" Framework created in 2013.

In 2016, The American Civil Liberties Union of Tennessee (ACLU-TN) announced a settlement in favor of Rebecca Young, whose shirt promoting homosexual rights earned her discipline from a school administrator. The principal publicly reprimanded Young and said wearing the shirt would make her target and provoke other students; Young wore the shirt the entire day without

any disruptions to the educational process or student safety. The Giles County, Tennessee school system changed its discriminatory dress that banned pro-LGBT speech. This decision, like the Clark case, affirms students' First Amendment rights that content-based school restrictions on political speech are unconstitutional.

In 1986, the Supreme Court ruled, in *Bethel School District No. 403 v. Fraser*, that schools might prohibit lewd, vulgar, or plainly offensive student speech even if the speech presents very little risk of disrupting the educational process and the speech lacks any social or political content. However, this standard was successfully challenged in 2014 by Brianna Hawk and Kayla Martinez; the two girls attended Easton Area Middle School in 2010 and chose to express their support for Breast Cancer Awareness Day by wearing bracelets to school that stated "I ♥ Boobies (KEEP A BREAST)" and had the sponsoring organization's logo on the bracelet. The Keep a Breast Foundation desires to destigmatize breasts and breast health by using language that appeals to younger people and can get them engaged in honest discussions about breast cancer (*B.H. ex rel. Hawk v. Easton Area School District*, 2014).

However, school officials gave both girls in-school suspensions and prohibited them from attending the school's Winter Bawl for refusing to remove the bracelets, which the school banned because they were considered "lewd, vulgar, indecent, and plainly offensive" (*B.H. ex rel. Hawk v. Easton Area School District*, 2014). The girls sued arguing there were no educational disruptions or threats to student safety and the school illegally violated their First Amendment rights to political speech. The Third Circuit Court ruled by a 9-5 vote that the bracelets are protected speech because they speak to a political and social issue, which despite being "ambiguously lewd," is protected speech. Thus, the Third Circuit Court offered a distinction between plainly vulgar, lewd, or offensive speech that schools could prohibit even if it speaks to political and social issues, and speech deemed lewd but comments on political and social issues. The Court conceded that its ruling was controversial, complex, and would require school officials and the judiciary to continue to make difficult decisions in future cases; however, the Court believed that this was necessary to protect students' rights and teach them how to reconcile competing ideas in a democracy.

Finally, a 2012 case generated enormous controversy and outrage when Tanya Dixon-Neely, a social studies teacher in Rowan County, North Carolina clearly violated the First Amendment rights of students in her class (*Civitas*, 2012). The class was debating several political issues when Dixon-Neely told students that it was a crime to criticize President Obama and she prohibited "slander" or "disrespect" toward the President of the United States. The conversation, which was recorded by a student to show Dixon-Neely does not allow any dissent in her classroom and constantly indoctrinates students, demonstrated that the students did not slander President Obama (which, given that he is a public figure, would be extremely difficult to do in this capacity) but simply criticized him and his policies (*Civitas*, 2012).

The situation escalated into a shouting match and the student contacted his father; the episode quickly made national news. After an investigation, the school district suspended Dixon-Neely for ten days without pay and placed her on a professional growth. It is very disconcerting to social studies educators, scholars, lawyers, and secondary school teachers that a social studies

teacher displayed a blatant disdain for students' First Amendment rights (Civitas, 2012). Students have a right to be educated in the art of debate and a free and civil discussion of competing ideas, beliefs, and ideologies; Dixon-Neely betrayed her professional obligations and the basic tenets of social studies education in a free and pluralistic democracy.

These examples demonstrate the complex issues that arise when students' First Amendment rights may conflict with the school's obligation to maintain an orderly and safe learning environment (Hudson, 2018). Balancing individual rights with community rights is inherent in a pluralistic democracy where individuals and groups have competing interests, values, and diverse political ideologies. Yet, studying these university and secondary school First Amendment cases provide educators with excellent opportunities to engage students in civic participation. The final section of this paper will describe how educators can teach and defend the First Amendment in social studies courses that comport with the law and are pedagogically sound practices.

Educators: Defending and Teaching the First Amendment

Combating censorship and illegal speech codes on university campuses and secondary schools is essential for social studies education; democracy and its correlates of liberty, limited government, equal opportunities, and the rule of law must be continually safeguarded via active citizen participation (First Amendment Center, 2018; Haynes et al., 2003; Hudson, 2018; NCSS, 2016; Paulson, 2014; Powers, 2015). However, civic participation requires knowledge of the Constitution, as well as history, which is replete with examples of authoritarian or totalitarian regimes destroying peoples' rights. Educators and students can take several measures to expose illegal censorship and defend the First Amendment in universities and schools. Simultaneously, teachers stress the importance of rational discourse, tolerance for dissent, and civility.

First, social studies educators must teach about the First Amendment in their classes, this is especially true in American History, Comprehensive Law Studies, and American Government. These lessons could include a rationale for defending freedom of expression, the narrow exceptions to freedom of expression crafted by the judicial system, examples of numerous freedom of expression cases. Generally, the First Amendment is relevant and interesting for students because it relates to their lives in terms of political speech, music, art, literature, and other forms of expression (symbolic speech, such as dress codes). Moreover, teaching about the First Amendment is a superb method for stimulating critical thought, analyzing competing legal and moral claims, understanding diversity of thought and competing interests, sharpening debate skills, and respecting the judicial process for settling disputes.

However, studies reveal that students are ignorant or unappreciative of their First Amendment rights (Dautrich, 2011; First Amendment Center, 2018); this often allows violations to go unchallenged. Apathy and ignorance can be fatal to self-governance and it would be hubris to believe that a lethargic and ill-informed citizenry could long retain its sovereignty. Research shows that students receiving instruction regarding the First Amendment demonstrated increased tolerance for the expression of radical, unpopular, and controversial opinions;

however, in 2011, only 64% of students received instruction on the First Amendment. This 8% decline from 2007 is disconcerting to First Amendment advocates and social studies educators (Dautrich, 2011).

Furthermore, the 2018 State of the First Amendment Report, a survey of public knowledge and attitudes regarding the First Amendment, shows that 40% of respondents could not name a single First Amendment freedom (Freedom Forum Institute, 2018, p. 3). Moreover, while 56% of all respondents could name freedom of speech, only 15% or less could identify freedom of religion, assembly, press, and petition (p. 3). In a 2017 survey, the First Amendment Center found twenty-two percent of respondents believed that the First Amendment went too far in protecting individual rights (p.2). Forty-three percent of respondents asserted that colleges should have the right to ban controversial speakers. Thus, a significant minority supports speech codes that are anathema to a liberal arts education, which by definition requires dissent, debates, compromises, and a thorough discussion of radical and controversial ideas. Expanding and improving teaching about the First Amendment is essential to maintaining and strengthening our increasingly diverse democracy.

Second, it is essential that colleges and secondary schools that are violating students' First Amendment rights are exposed and forced—via litigation, media coverage, dialogue, and education—to amend their speech code to ensure they comport with the law. The courts have struck down numerous unlawful speech codes in Ohio, Texas, Michigan, and other states (Foundation for Individual Rights in Education, 2013). Several organizations monitor universities and assist students whose rights have been violated. For example, the Foundation for Individual Rights in Education was founded in 1999 for the express purpose of protecting students' First Amendment rights, as well as 14th Amendment rights, such as due process and equal protection under the law.

The American Civil Liberties Union (ACLU) defends the First Amendment and accepts cases from individuals or groups that span the political spectrum. The ACLU, which often generates praise and condemnation from all points on the political spectrum, will take on controversial causes understanding that the people holding the most radical and offensive views still deserve First Amendment protection. It is important that students understand that supporting free speech is not synonymous with supporting the behaviors, attitudes, or values expressed in the speech. The law can place no restrictions on thought, some narrowly tailored exceptions on expression, and numerous restrictions on behavior. The ACLU has been very effective in helping secondary school students whose rights have been violated by school administrators or teachers.

The American Library Association's (ALA) Office for Intellectual Freedom provides education for librarians and the public about the importance of freedom of expression in libraries, including freedom of expression utilizing all forms of social media. This is important because book banning is common in public schools and numerous classics—*The Adventures of Huck Finn*, *The Catcher in the Rye*, or controversial topics—have been removed from libraries (Ravitch, 2003). Throughout American educational history, numerous groups have attempted to control the curriculum, especially in English, science, and social studies courses, to further specific agendas;

censoring curriculum materials to indoctrinate students into the “correct” view must be resisted by educators (Ravitch, 2003; Schubert, 1986).

Finally, it is crucial that all teacher education programs ensure that all teacher candidates acquire a basic knowledge and understanding of the First Amendment, as well as the political ideals—democracy, freedom, equality under the law, individual rights and responsibilities—that are the philosophical foundation for the Constitution. Several organizations (The Bill of Rights Institute, Deliberating in a Democracy, The Center for Civic Education, Civic Mission of Schools, and The First Amendment Center) that can provide university professors and secondary school teachers with guidance, lesson plans, interactive activities, First Amendment cases, and Supreme Court decisions. Furthermore, these organizations offer a plethora of resources and materials for teaching about the Constitution and the Bill of Rights, including a comprehensive examination of crucial judicial cases. *The First Amendment in Schools* (2003), published by the First Amendment Center, is an excellent guide for all educators regarding students’ and teachers’ rights in public schools. The book contains fifty legal cases, a brief history of the First Amendment, and comprehensive information on all five First Amendment rights.

If teacher candidates are thoroughly prepared to teach the First Amendment in social studies courses, their secondary students will receive a proper civic education. Moreover, there will be a significant reduction in secondary school students having their rights violated if teachers and administrators know the First Amendment and are faithful to the judicial decisions regarding public school students (Haynes et al., 2003; Hudson, 2018). Effective social studies education requires intellectual discourse—research, readings, debates, discussions, simulations, and lectures—that comports with the law and established guidelines from the NCSS (2016).

The National Council for the Social Studies (NCSS 2016) provides guidelines for teachers concerning their rights and responsibilities as professional educators. Academic freedom for social studies teachers includes the right and responsibility to study, investigate, present, interpret, discuss, and debate relevant facts, issues, and ideas in fields of the teacher’s professional competence (Haynes et al., 2003; Hudson, 2018). However, academic freedom, like all freedoms and rights in a democracy are not absolute; teachers’ freedom of expression must concern a public issue and indoctrination must be avoided (NCSS, 2016). Thus, educators must present multiple and competing views and ideas, this is especially prudent concerning highly combustible controversial issues, and allow students to dissent without any academic or behavioral recriminations. Since public schools are not public forums, teachers face more restrictions on freedom of expression than university professors (Haynes et al., 2003) do. Academic freedom for students in social studies courses provides the right to study, question, interpret, and discuss relevant facts, ideas, and issues under consideration in those courses. These freedoms imply no limitations, within the guidelines of the subject area (NCSS, 2016).

Democracies thrive when open and honest discussions of all ideas, laws, and policies are allowed and dissent and criticism are welcome; no religion or political ideology should be immune to scholarly analysis. Educators and students should be free to examine any controversial and complex topic, including all religious traditions and political ideologies in a

rational manner where they have access to all relevant materials, diverse viewpoints (however controversial they may be), and scholars are committed to the objective pursuit of knowledge. (NCSS, 2016). Social studies education is inherently controversial and can spark debates, passionate dissent, and inform students about diversity of ideologies, values, and goals. Indeed, for many teachers and students, the passion associated with competing ideas that spawns dynamic and intellectually rewarding discussions that makes social studies courses interesting and informative. Thus, squashing dissent, requiring intellectual conformity, ostracizing minority or unpopular viewpoints is anathema to social studies education, as well as American law and damages rational civic participation (NCSS, 2016).

However, it is imperative that all secondary school teachers realize that they have less academic freedom and more restrictions on their First Amendment rights than university professors (Haynes et al., 2003; Hudson, 2018). Moreover, the courts have ruled that secondary school classrooms are not public forums and teachers do not have a First Amendment right to undermine the established curriculum, and schools have the right to limit teachers' freedom of expression for legitimate educational reasons (*Miles v Denver Public Schools*, 1991). Teachers must avoid indoctrination, present multiple perspectives, and encourage diversity of thought. Students, however, are free from this obligation and will benefit from hearing dissenting views from the teacher or other students. In addition, teachers must model civility and teach students to be respectful, calm, rational, and measured in their behavior; this is even more crucial when students and citizens encounter opinions and values they may find morally repugnant.

Freedom of expression is not a privilege bequeathed to people by a magnanimous government; it is a natural human right deserving protection. Furthermore, repressing freedom of expression based on viewpoint discrimination retards scientific progress and the pursuit of truth, diminishes the dignity of individuals, and presents an existential threat to representative democracy (Haynes et al.2003; Hudson, 2018). Educators must defend freedom of expression and teach students to oppose political groups that advocate for unconstitutional censorship. Simultaneously, holding school administrators and others who implement policies that violate the First Amendment accountable is crucial to protecting academic freedom. The National Council for the Social Studies in their 2007 position paper defending the rights and obligations of social studies teachers supports academic freedom. Advocates of censoring speech based on any political ideology, religion, a desire to prevent hurt feelings, protect minority groups, or stifle offensive opinions would do well to remember the words of Louis Menard — “The censor always rings twice” (Schlesinger 1992, p.163).

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