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Andrea Marrero-Bosch  
*University of Central Florida*



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THE LIMITATIONS OF FREEDOM OF SPEECH REGARDING ACADEMIC  
FREEDOM: BALANCING CONSTITUTIONAL RIGHTS WITH HUMANISTIC  
RESPONSIBILITIES

by

ANDREA MARRERO-BOSCH

A thesis submitted in partial fulfillment of the requirements  
for the Honors in the Major Program in Legal Studies  
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Thesis Chair: Carlton Patrick, J.D., Ph.D.

## ABSTRACT

The value of free speech is deeply rooted in democratic principles designed to foster a marketplace of ideas where diverse viewpoints thrive and enable accountability and social progress. Simultaneously, academic freedom is essential for the pursuit of knowledge. Yet both must be exercised responsibly. This thesis examines the intricate relationship between free speech, academic freedom, and humanistic concerns like respect, inclusivity, and diversity. By exploring pivotal court cases such as *Sweezy v. New Hampshire* (1957), *Bonnell v. Lorenzo* (2001), *Axson-Flynn v. Johnson* (2004), *Tinker v. Des Moines* (1969), and *Morse v. Frederick* (2007), this paper illustrates the delicate balance needed in educational settings. The analysis suggests that schools should establish clear speech policies, prioritize education on responsible speech, and create committees to address speech-related concerns. An ideal policy balances court requirements, humanistic concerns, and promotes respectful dialogue while prohibiting harmful speech.

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## INTRODUCTION

The value and importance of free speech are deeply ingrained in the democratic principles that underlie American society. Free speech serves as a medium for the exchange of ideas, the foundation of open discourse, and the protecting of democracy itself. It allows individuals to express their thoughts, beliefs, and criticisms without fear of retribution, where diverse viewpoints can be heard and challenged. The significance of free speech extends beyond protecting popular or agreeable opinions; its true test lies in its capacity to protect dissenting or unpopular views, ensuring that all voices have a platform. In this way, free speech empowers individuals to hold those in power accountable, promotes social progress, and enables societies to adapt and evolve.<sup>1</sup> Freedom of speech is a cherished and fundamental right that must be protected, and yet there are countervailing principles suggesting that the right to free speech should not go completely unchecked, and that it should be exercised responsibly and in consideration of the broader principles of respect, inclusivity, and diversity within a democratic framework.<sup>2</sup>

Freedom of speech is a foundational principle of our Constitution and a bedrock ideal of American society.<sup>3</sup> However, its reach is not unlimited, and there are not only practical but also ethical reasons why society may wish to curb freedom of speech in certain instances. One current hotbed for this conflict is in schools, where academic freedom and the pursuit of knowledge are often balanced against potential harm to students.

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<sup>1</sup> JOHN STUART MILL, ON LIBERTY (1859); CASS R. SUNSTEIN, #REPUBLIC: DIVIDED DEMOCRACY IN THE AGE OF SOCIAL MEDIA (2017).

<sup>2</sup> RICHARD DELGADO, WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT (1993); JEREMY WALDRON, THE HARM IN HATE SPEECH (2012).

<sup>3</sup> Texas v. Johnson, 491 U.S. 397 (1989).

The right to free speech is guaranteed in the First Amendment of the United States Constitution, but the idea has much older roots. The ancient Greeks pioneered free speech as a democratic principle.<sup>4</sup> The ancient Greek word “parrhesia,” which arose in Greek literature towards the end of the fifth century B.C., means “free speech” or “to speak candidly.”<sup>5,6</sup> Today, freedom of speech is defined as “the right to speak, write, and share ideas and opinions without facing punishment from the government.”<sup>7</sup> Supreme Court Justice Benjamin Cardozo sums up its importance: , “Freedom of Speech is the matrix, the indispensable condition of nearly every other form of freedom.”<sup>8</sup> He is far from alone in his endorsement. Countless justices, scholars, philosophers, and experts have emphasized the pivotal role that freedom of speech plays in upholding and nurturing democracy.<sup>9</sup>

Academic freedom, while not a constitutional principle in and of itself, is closely intertwined with the First Amendment. According to the American Association of University Professors, academic freedom refers to the liberty granted to educators and researchers in higher education, allowing them to explore and discourse upon topics within their academic domain, as well as to instruct and disseminate their discoveries without external interference from political figures, boards of trustees, donors, or other entities.<sup>10</sup> Academic freedom encompasses the right of

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<sup>4</sup> *Freedom of Speech*, HISTORY (last updated Oct. 7, 2021), <https://www.history.com/topics/united-states-constitution/freedom-of-speech>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Freedom of Speech*, LEGAL INFORMATION INSTITUTE (last updated June 2021), [https://www.law.cornell.edu/wex/freedom\\_of\\_speech](https://www.law.cornell.edu/wex/freedom_of_speech).

<sup>8</sup> Stephen J. Wermiel, *The Ongoing Challenge to Define Free Speech*, ABA (last visited Feb 3, 2023), [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/the-ongoing-challenge-to-define-free-speech/the-ongoing-challenge-to-define-free-speech/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-ongoing-challenge-to-define-free-speech/the-ongoing-challenge-to-define-free-speech/).

<sup>9</sup> *Id.*

<sup>10</sup> *FAQs on Academic Freedom*, AAUP (last visited Feb 3, 2023), <https://www.aaup.org/programs/academic-freedom/faqs-academic-freedom>.

faculty members to freely express themselves while engaged in institutional governance and also in their capacity as private citizens.<sup>11</sup> Academic freedom acts as a shield for educators, allowing them the freedom to dive into intellectual topics in their field and share their findings without outside interference. This freedom also covers the ability to speak their minds when involved in school decisions and when educators are acting as regular citizens. This connection between academic freedom and the First Amendment becomes important when we think about how speech is regulated in educational settings.

Academic freedom and freedom of speech are pivotal principles that allow for open discourse within educational institutions. These principles play a central role in facilitating the interaction and exchange of ideas in academia. The American Association of University Professors (AAUP) *Statement of Principles on Academic Freedom and Tenure* (1940) asserts that "teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties." Academic freedom, according to a 1940 statement by the AAUP, "is essential to these purposes" and encompasses the right of faculty to 1) "full freedom in research and in the publication of the results"; 2) "freedom in the classroom in discussing their subject"; and 3) "a right to speak as citizens free from institutional censorship or discipline."<sup>12</sup> The 1940 Statement became and remains the standard of academic freedom in the United States.<sup>13</sup> The AAUP 1940 Statement has been adopted by more than 200 educational organizations, and disciplinary societies and has been adopted by name or in text in several college

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

and university rules and regulations.<sup>14</sup> The intersection between the freedom of speech and academic freedom is best described by scholar Lauren K. Ross (2013). “Our country has a profound dedication to preserving academic freedom, a value that extends beyond individual educators to benefit us all. This freedom holds a unique place of importance within the First Amendment, which opposes regulations that stifle diversity of thought in educational settings.”<sup>15</sup> Thus, protecting constitutional liberties is of great significance, especially within our schools.<sup>16</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*



## IMPORTANCE OF THESE HUMANISTIC CONCERNS

However, freedom of speech and academic freedom are not the only concerns on campus. In the academic context, several interests guide the regulation of speech, all with the shared goal of maintaining a safe and conducive learning environment. The importance of these interests is highlighted by the need to establish an environment where students, faculty, and staff can engage in meaningful discourse while also upholding individual rights and nurturing a thriving intellectual atmosphere. For instance, the American Association of University Professors (AAUP) emphasizes the significance of respect, inclusivity, and diversity in fostering academic freedom and a robust educational environment.<sup>17</sup> Nevertheless, it remains a complex challenge to harmonize these principles with the principles of freedom of speech and academic freedom.<sup>18</sup> Traditional scholarship and policymaking have identified three main interests in limiting speech within academia: respect, inclusivity, and diversity.

The first interest in limiting speech is respect. Respect serves as a cornerstone of civil discourse within academic institutions. Respect entails the recognition of the dignity and worth of every individual, regardless of their background or perspective. Respect in academia implies that disagreements should be expressed thoughtfully and considerately, encouraging healthy debates that contribute to a deeper understanding of complex issues. The American Association of University Professors (AAUP) (2013) highlights that "civility and mutual respect should be the order of the day."<sup>19</sup> While respectful disagreement is crucial for intellectual growth, institutions

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<sup>17</sup> AAUP Statement of Principles on Academic Freedom and Tenure (1940).

<sup>18</sup> *Id.*

<sup>19</sup> Lauren K. Ross, *Pursuing Academic Freedom After Garcetti v. Ceballos*, 91 TEX. L. REV. 1253 (2013).

struggle with the line between respectful discourse and offensive speech, necessitating specific responses that preserve academic freedom while fostering respect.

The second interest to consider is inclusivity. Inclusivity is aimed at ensuring that every student has equal access to education. It revolves around the creation of environments where individuals from diverse backgrounds feel welcomed, heard, and valued. However, limiting specific types of speech that may undermine inclusivity is sometimes deemed necessary to protect marginalized groups and maintain an equitable learning environment.<sup>20</sup>

The final interest to consider is diversity. Diversity among faculty, staff, and students in academic institutions is crucial for generating innovative ideas, addressing problems from a different perspective, and cultivating a broader understanding of the world. Encouraging diversity extends to curriculum development, where academic institutions strive to incorporate a variety of cultural, historical, and social perspectives.<sup>21</sup>

Abiding by these principles, speech that promotes harassment or discrimination, particularly targeting individuals or groups based on protected characteristics like race, gender, or religion, is justifiably restricted to maintain a safe and inclusive campus.<sup>22</sup> Encouraging respectful and constructive dialogue is a key interest, as this facilitates academic growth and allows diverse perspectives to be heard without fear of personal attacks.<sup>23</sup>

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<sup>20</sup> Richard J. Bonnie, *Academic Freedom, Diversity, and the First Amendment in American Higher Education*, "59 WM. & MARY L. REV. 897, 950 (2017).

<sup>21</sup> N. H. Woolf, *The Role of Academic Freedom and Freedom of Expression in Universities' Commitment to Diversity*, 17 DIVERSITY & DEMOCRACY 10, 11 (2014).

<sup>22</sup> On Freedom of Expression and Campus Speech Codes - AAUP, <https://www.aaup.org/NR/rdonlyres/CCB4207F-81FA-4286-8E25-40185AD74519/0/OnFreedomofExpressionandCampusSpeechCodes.pdf> (last visited September 10, 2023).

<sup>23</sup> On Freedom of Expression and Campus Speech Codes - AAUP, <https://www.aaup.org/NR/rdonlyres/CCB4207F-81FA-4286-8E25-40185AD74519/0/OnFreedomofExpressionandCampusSpeechCodes.pdf> (last visited September 10, 2023).

## FREE SPEECH AND ACADEMIC FREEDOM IN THE FEDERAL COURTS

Considering the important policy arguments surrounding the regulation of speech in academic settings, examining the legal framework that currently exists is crucial, particularly the relevant case law. To navigate this effectively, we must discern what legal precedents have already been established, what speech can definitively be restricted or protected, and where the law remains uncertain or unaddressed. This examination will provide insights into how policy considerations align with existing legal parameters, allowing us to better comprehend the intersection of freedom of speech, academic freedom, and the promotion of a conducive learning environment within the context of the law.

The intersection of academic freedom and free speech has been a matter of legal scrutiny in various federal court cases, shedding light on the delicate balance between protecting educational liberties and addressing potential challenges to these freedoms. Therefore, this thesis reviewed and analyzed the following cases to discern insights related to the intersection of free speech and academic freedom. The following relevant cases are analyzed and presented in chronological order.

Justice Frankfurter's influence, as seen in *Wieman v. Updegraff* (1952), significantly shaped the Court's perspective on academic freedom.<sup>24</sup> Frankfurter introduced the concept of the "four essential freedoms" of a university, emphasizing the institution's autonomy to decide who may teach, what subjects may be taught, the teaching methods, and student admissions.<sup>25</sup> This

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<sup>24</sup> *Wieman v. Updegraff*, 344 U.S. 183 (1952).

<sup>25</sup> *Id.* at 195-98.

notion emphasized the authority universities should have in shaping their academic programs and policies without external interference.

*Sweezy v. New Hampshire* (1957) was a pivotal Supreme Court case that established academic freedom as a constitutionally protected right, reinforcing its critical role in preserving democratic values and intellectual diversity within educational institutions.<sup>26</sup> The case centered on Sweezy, a University of New Hampshire faculty member, who faced an investigation into his possible communist connections.<sup>27</sup> He declined to fully cooperate with the inquiry, asserting his belief that "Marxism was morally superior to capitalism."<sup>28</sup>

The Court ruled in favor of Sweezy.<sup>29</sup> His case further highlighted that academic freedom extends not only to teaching but also to the freedom to express academic and intellectual viewpoints, even when they challenge prevailing ideologies. The Supreme Court, in its ruling, endorsed the constitutional protection of academic freedom, recognizing its integral role in higher education. This historic decision laid the legal foundation for protecting academic freedom, promoting intellectual discourse, diversity of thought, and the pursuit of knowledge in the American educational system.

The legal landscape surrounding academic freedom and free speech in educational institutions has evolved significantly since *Sweezy* firmly established academic freedom as a constitutionally protected right.<sup>30</sup> As we discuss *Tinker v. Des Moines* (1969), it's essential to consider how the principles set forth in *Sweezy* might have influenced subsequent decisions.<sup>31</sup>

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<sup>26</sup> *Sweezy v. State of N.H. by Wyman*, 354 U.S. 234 (1957).

<sup>27</sup> *Id.* at 238-43.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 255.

<sup>30</sup> *Id.*

<sup>31</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

Both cases grapple with the boundaries of free speech in educational settings, but they do so in distinct contexts, emphasizing the ongoing dialogue regarding students' rights to expression and the responsibilities of educational institutions.

In *Tinker*, students in Des Moines, Iowa, planned to wear black armbands as a silent protest of the Vietnam War.<sup>32</sup> When the principal learned of this, he warned the students that wearing the armbands could lead to suspension, citing concerns about disruption.<sup>33</sup> Despite the warning, some students wore the armbands and were indeed suspended.<sup>34</sup> This led to a lawsuit by the students' parents, who claimed that the school violated their children's free speech rights.<sup>35</sup> Initially, both the U.S. District Court for the Southern District of Iowa and the U.S. Court of Appeals for the Eighth Circuit ruled in favor of the school, justifying the prohibition of armbands as a measure to prevent disruption.<sup>36</sup> However, the case eventually reached the Supreme Court of the United States, which issued a 7-2 decision in favor of the students.<sup>37</sup>

Justice Abe Fortas, writing for the majority, articulated a fundamental principle: students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," establishing that students retain their First Amendment rights while on school grounds.<sup>38</sup> The majority held that school officials could not suppress students' speech solely on the suspicion that it might cause disruption.<sup>39</sup> They emphasized that restrictions on free speech within a school environment must be based on concrete evidence that the speech or expression will

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<sup>32</sup> *Id.* at 504.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 505.

<sup>37</sup> *Id.* at 514.

<sup>38</sup> *Id.* at 506.

<sup>39</sup> *Id.* at 514.

significantly disrupt the educational process.<sup>40</sup> However, two justices dissented, contending that the First Amendment does not grant students the right to express any opinion at any time.<sup>41</sup> They argued that students attend school primarily to learn, not to teach, and that the armbands were a distraction that could legitimately be regulated by school authorities.<sup>42</sup>

This decision has had a lasting impact on students' rights in U.S. public schools, setting a significant legal precedent for cases involving student free speech rights. Known as the "Tinker test," it recognizes students' constitutional rights while acknowledging the authority of schools to regulate speech when it poses a substantial disruption to the learning environment.<sup>43</sup>

It is also important to consider the broader context of free speech rights within educational settings, *Tinker's* landmark decision laid the foundation for understanding students' rights to expression and the delicate balance between those rights and the responsibilities of educational institutions.<sup>44</sup> *Bonnell v. Lorenzo* (2001), deals with a different aspect of free speech in academia, impacted by the principles established in *Tinker* and how it further contributes to the evolving discourse on free speech within the educational environment.<sup>45</sup>

In *Bonnell*, a federal appeals court upheld the suspension of John Bonnell, an English professor at Macomb Community College, for creating a hostile learning environment.<sup>46</sup> A student had sued him, alleging that he repeatedly used lewd and graphic language in his English class,

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<sup>40</sup> *Id.* at 508.

<sup>41</sup> *Id.* at 516-26.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 514.

<sup>44</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

<sup>45</sup> *Bonnell v. Lorenzo*, 241 F.3d 800 (6th Cir. 2001).

<sup>46</sup> *Id.* at 827.

raising questions about the boundaries of academic freedom and freedom of expression within the educational context.<sup>47</sup>

The Court's decision recognized that while a professor possesses rights to academic freedom and freedom of expression in an academic setting, these rights are not absolute.<sup>48</sup> The Court emphasized the need to balance these rights against a student's right to learn in a hostile-free environment, highlighting the Court's concern for maintaining a safe and respectful learning atmosphere that ensures students can effectively pursue their education without undue interference.<sup>49</sup>

The Court's finding that Bonnell's use of explicit language was "not germane to the subject matter and therefore unprotected" is a vital point, suggesting that the Court evaluated the appropriateness of the language used in the context of the course content.<sup>50</sup> This supports the idea that academic freedom and freedom of expression should be exercised in ways directly related to the subject matter being taught and should promote a focused and respectful learning environment.

*Bonnell* demonstrates the intricate balance between academic freedom, freedom of expression, and educators' responsibility to maintain a conducive and respectful learning environment. While professors have certain rights, those rights are not absolute and must be exercised in a manner consistent with the educational purpose of the institution. It emphasizes the importance of context and relevance in assessing the boundaries of these rights within the academic setting.

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<sup>47</sup> *Id.* at 803.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

*Axson-Flynn v. Johnson* (2004), like *Bonnell*, delves into the complexities of maintaining a productive and respectful learning environment while respecting academic freedom and freedom of expression.<sup>51</sup> It focuses on the necessity of contextual relevance, emphasizing the importance of the boundaries of these rights within the educational context.

In *Axson-Flynn*, a significant conflict developed between curriculum requirements and the Constitutional rights of students.<sup>52</sup> Christina Axson-Flynn, a Mormon student at the University of Utah, had expressed her reluctance to use certain language due to her religious beliefs and personal values before being accepted into the theater program.<sup>53</sup>

Axson-Flynn's professors informed her that she could not modify scripts in future assignments, setting the stage for the conflict between her freedom of speech and religious exercise and the academic requirements of the program.<sup>54</sup> She ultimately withdrew from the program and filed a lawsuit against her professors, asserting that her First Amendment rights to free speech and free exercise of religion had been infringed upon.<sup>55</sup>

The federal trial court ruled against Axson-Flynn, raising concerns that if her objections were considered a First Amendment violation, it might create a precedent where students could refuse to engage with certain course topics based on personal beliefs, potentially disrupting the academic curriculum.<sup>56</sup>

While the federal appeals court recognized the importance of faculty members' professional judgment in academic matters, it stressed the relevance of the First Amendment in

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<sup>51</sup> *Axson-Flynn v. Johnson*, 356 F.3d 1277 (10th Cir. 2004).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 1281.

<sup>54</sup> *Id.* at 1283.

<sup>55</sup> *Id.* at 1301.

<sup>56</sup> *Id.* at 1290.



the university context.<sup>57</sup> The court ruled that it should defer to faculty members' professional judgment but sent the case back to the trial court.<sup>58</sup> The trial court's ultimate ruling was based on the idea that a substantial question arose about whether the professors' requirement for script adherence was a genuine pedagogical necessity, or if it concealed religious discrimination as a pretext.<sup>59</sup> Even though the court did not explicitly establish a separate right of academic freedom under the First Amendment, it emphasized that First Amendment principles should be applied within the university context.<sup>60</sup>

This case demonstrates the delicate process of reconciling academic requirements with students' constitutional rights, including free speech and religious exercise. *Axson-Flynn* provides context for understanding the complexities inherent in the 2007 case of *Morse v. Frederick*, where we discuss a high school student's controversial banner and the school's response.<sup>61</sup>

In *Morse*, the case centered on Joseph Frederick, a high school senior at Juneau-Douglas High School in Juneau, Alaska, who displayed a banner reading "Bong Hits 4 Jesus" during the Olympic Torch Relay.<sup>62</sup> His principal, Deborah Morse, instructed him to put away the banner due to concerns about its association with advocating illegal drug use.<sup>63</sup> Despite Morse's request, Frederick refused, leading to the confiscation of the banner and a subsequent ten-day suspension for violating a school policy against advocating illegal drug use.<sup>64</sup>

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<sup>57</sup> *Id.* at 1284.

<sup>58</sup> *Id.* at 1301.

<sup>59</sup> *Id.* at 1285.

<sup>60</sup> *Id.* at 1284.

<sup>61</sup> *Morse v. Frederick*, 551 U.S. 393 (2007).

<sup>62</sup> *Id.* at 396.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

The U.S. District Court for the District of Alaska in Juneau ruled in favor of the principal, asserting that Frederick's actions were not protected by the First Amendment.<sup>65</sup> However, the U.S. Court of Appeals for the Ninth Circuit reversed this decision, deeming Frederick's banner constitutionally protected.<sup>66</sup> Morse appealed, and the U.S. Supreme Court granted certiorari.<sup>67</sup>

In a 5-4 decision, the U.S. Supreme Court ruled that the First Amendment did not prevent school administrators from restricting student expression that reasonably appeared to promote illegal drug use.<sup>68</sup> The majority opinion referenced the precedent set in *Tinker*, which held that students' speech could only be restricted if it substantially disrupted the educational process.<sup>69</sup> The majority distinguished Frederick's non-political message from the political speech represented by the anti-Vietnam War armbands in *Tinker*.<sup>70</sup>

Furthermore, the majority emphasized that schools have a compelling interest in preventing and addressing student speech that could reasonably be seen as encouraging illegal drug use, allowing them to take steps to protect students from such speech without infringing on their First Amendment rights.<sup>71</sup>

This case represents a significant Supreme Court decision that delineated the boundaries of students' free speech rights within the school environment. While students possess First Amendment rights, the ruling emphasized schools' legitimate interest in maintaining a safe and productive educational atmosphere.

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<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 400.

<sup>68</sup> *Id.* at 410.

<sup>69</sup> *Id.* at 406-07.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

## ANALYSIS

The legal protections afforded to students and faculty in public high schools and public universities stem from the First Amendment to the United States Constitution, which protects the freedom of speech. This fundamental right applies to individuals in both high school and college or university settings because the First Amendment's protection is not contingent on the level of education but rather applies broadly to all public institutions. The Supreme Court has consistently ruled in cases such as *Tinker* that students in public schools do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."<sup>72</sup>

Balancing freedom of speech and academic freedom is an intricate issue that requires careful consideration and analysis. Freedom of speech is a fundamental right that should be protected, but it should not be used to harm or discriminate against others. Simultaneously, academic freedom is crucial for the pursuit of knowledge and the advancement of society, but it should not be used to promote harmful or discriminatory ideas.

From the cases outlined in this thesis, one can deduce the outlines of a general policy regarding speech in the classroom. For educators, the general rule is that while speech that is "truly pedagogical to academic concerns" is protected, speech that creates a "hostile learning environment" is restricted, as seen in *Axson-Flynn* and *Bonnell* respectively.<sup>73</sup>

On the other hand, for students, the framework is distinct. The general rule is that speech that may be disruptive to the learning environment can be restricted, as demonstrated in *Tinker*, as well as speech that could encourage drug use, as in *Morse*.<sup>74</sup>

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<sup>72</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

<sup>73</sup> *Axson-Flynn v. Johnson*, 356 F.3d 1277 (10th Cir. 2004); *Bonnell v. Lorenzo*, 241 F.3d 800 (6th Cir. 2001).

<sup>74</sup> *See Tinker*, 393 U.S. at 503; *Morse v. Frederick*, 551 U.S. 393 (2007).

With this legal framework, educational institutions have specific guidelines to follow. Educational institutions must ensure that educators do not create a hostile learning environment or promote content that is not genuinely pedagogical, while also preventing students from engaging in disruptive or potentially harmful speech. Consequently, educational institutions have the flexibility to establish policies that effectively balance these competing concerns. On one hand, they must foster an environment where the free exchange of ideas can flourish, and on the other hand, they must ensure that this freedom is exercised responsibly, considering the broader principles of respect, inclusivity, and diversity within the educational framework. To achieve this balance, schools can consider several measures.

First, institutions should establish clear and comprehensive speech policies that align with constitutional principles. These policies should emphasize that free speech is a valued right but also emphasize the commitment to maintaining an inclusive and respectful learning environment. Such policies might include guidelines for classroom conduct, codes of ethics for educators, and procedures for addressing speech-related disputes. *Tinker* emphasizes the importance of having clear policies that strike a balance between free speech rights and maintaining a conducive learning environment.<sup>75</sup> The "Tinker Test" requires policies that are focused on preventing substantial disruption to the educational process while respecting students' constitutional rights.<sup>76</sup>

Second, educational institutions should prioritize education on responsible and respectful speech. *Sweezy* emphasizes the value of academic freedom in promoting responsible and respectful speech.<sup>77</sup> This entails incorporating curricular components that teach students about the value of

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<sup>75</sup> See *Tinker*, 393 U.S. at 503.

<sup>76</sup> *Id.*

<sup>77</sup> *Sweezy v. State of N.H. by Wyman*, 354 U.S. 234 (1957).

diversity, inclusivity, and the power of constructive dialogue. By fostering an environment that promotes dialogue over discord, schools can empower students to engage in meaningful conversations while respecting differing viewpoints.

Third, schools should establish dedicated committees or offices responsible for addressing speech-related concerns. *Morse* recognizes the need for schools to address speech that promotes illegal activities.<sup>78</sup> These entities can serve as impartial mediators, helping to assess whether speech crosses the line into creating a hostile environment or promoting harm. They can work collaboratively with faculty, students, and administrators to investigate complaints and recommend appropriate actions when necessary.

Lastly, *Bonnell* highlights the importance of distinguishing between academic content and speech that creates a hostile learning environment.<sup>79</sup> Educational institutions can draw from the principles discussed in this case to create policies that allow for the exploration of controversial subjects while ensuring a safe and respectful environment for learning. *Axson-Flynn* emphasizes the need for policies that consider the constitutional rights of students while maintaining the integrity of academic programs.<sup>80</sup> It emphasizes the importance of policies that respect both academic freedom and students' rights.

In essence, the key is to create policies that strike a delicate balance between freedom and responsibility, with a strong emphasis on education, dialogue, and inclusivity. By fostering an

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<sup>78</sup> See *Morse*, 551 U.S. at 393.

<sup>79</sup> *Bonnell v. Lorenzo*, 241 F.3d 800 (6th Cir. 2001).

<sup>80</sup> *Axson-Flynn v. Johnson*, 356 F.3d 1277 (10th Cir. 2004).

environment that respects both individual rights and the collective well-being of the educational community, schools can navigate this issue successfully.

## CONCLUSION

Balancing freedom of speech and academic freedom is a complex task, but it is necessary for fostering an inclusive and respectful educational environment. By drawing insights from crucial court cases and acknowledging the significance of humanistic concerns such as respect, inclusivity, and diversity, educational institutions can develop policies that strike the right balance. These policies should uphold free speech while preventing harm, discrimination, or disruption. They should also prioritize education on responsible speech and establish mechanisms to address concerns impartially. This paper emphasizes the importance of nurturing a learning space where individual rights harmonize with the collective well-being of the educational community. By doing so, schools can navigate free speech and academic freedom successfully, ensuring a productive and respectful environment.

## REFERENCES

- AAUP Statement of Principles on Academic Freedom and Tenure (1940).
- Axson-Flynn v. Johnson, 356 F.3d 1277 (10th Cir. 2004).
- Bonnell v. Lorenzo, 241 F.3d 800 (6th Cir. 2001).
- Brandenburg v. Ohio, 395 U.S. 444 (1969).
- CASS R. SUNSTEIN, #REPUBLIC: DIVIDED DEMOCRACY IN THE AGE OF SOCIAL MEDIA (2017).
- Chaplinsky v. State of New Hampshire, 315 U.S. 568 (1942).
- FAQs on academic freedom*, AAUP (last visited Feb 3, 2023), <https://www.aaup.org/programs/academic-freedom/faqs-academic-freedom>.
- Fighting words*, LEGAL INFORMATION INSTITUTE (last visited Feb 5, 2023), [https://www.law.cornell.edu/wex/fighting\\_words](https://www.law.cornell.edu/wex/fighting_words).
- Freedom of Speech*, HISTORY (last updated Oct. 7, 2021), <https://www.history.com/topics/united-states-constitution/freedom-of-speech>.
- Freedom of Speech*, LEGAL INFORMATION INSTITUTE (last updated June 2021), [https://www.law.cornell.edu/wex/freedom\\_of\\_speech](https://www.law.cornell.edu/wex/freedom_of_speech).
- JEREMY WALDRON, THE HARM IN HATE SPEECH (2012).
- Joint Statement on Rights and Freedoms of Students, AAUP (2022), <https://www.aaup.org/report/joint-statement-rights-and-freedoms-students> (last visited September 5, 2023).
- JOHN STUART MILL, ON LIBERTY (1859).
- Lauren K. Ross, *Pursuing Academic Freedom After Garcetti v. Ceballos*, 91 TEX. L. REV. 1253 (2013).
- Morse v. Frederick, 551 U.S. 393 (2007).
- N. H. Woolf, *The Role of Academic Freedom and Freedom of Expression in Universities' Commitment to Diversity*, 17 DIVERSITY & DEMOCRACY 10, 11 (2014).



On Freedom of Expression and Campus Speech Codes - AAUP,  
<https://www.aaup.org/NR/rdonlyres/CCB4207F-81FA-4286-8E25-40185AD74519/0/OnFreedomofExpressionandCampusSpeechCodes.pdf> (last visited September 10, 2023).

Sweezy v. State of N.H. by Wyman, 354 U.S. 234 (1957).

Stephen J. Wermiel, *The Ongoing Challenge to Define Free Speech*, ABA (last visited Feb 3, 2023),  
[https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/the-ongoing-challenge-to-define-free-speech/the-ongoing-challenge-to-define-free-speech/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-ongoing-challenge-to-define-free-speech/the-ongoing-challenge-to-define-free-speech/).

RICHARD DELGADO, WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT (1993).

Richard J. Bonnie, *Academic Freedom, Diversity, and the First Amendment in American Higher Education*, 59 WM. & MARY L. REV. 897, 950 (2017).

Texas v. Johnson, 491 U.S. 397 (1989).

Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969).

Wieman v. Updegraff, 344 U.S. 183 (1952).