



November 21, 2024

By Email (richard.cullen@governor.virginia.gov)

The Honorable Glenn Youngkin
Governor of Virginia
By and Through Richard Cullen, Esq.
Counselor to the Governor
P.O. Box 1475
Richmond, Virginia 23218

By Email (senatorhashmi@senate.virginia.gov)

The Honorable Ghazala F. Hashmi
Chair, Senate Education and Health Committee
P.O. Box 396
Richmond, Virginia 23218

By Email (DelSRasoul@house.virginia.gov)

The Honorable Sam Rasoul
Vice Chair, House Education Committee
P.O. Box 13842
Roanoke, Virginia 24037

Dear Governor Youngkin, Senator Hashmi, and Delegate Rasoul:

In accordance with § 23.1-401.1(D) of the Code of Virginia, the University of Virginia submits this report regarding our compliance with § 23.1-401.1.

The Foundation for Individual Rights in Education (FIRE) ranks the speech policies and speech climates of over 250 universities nationwide to identify those universities that have the most open environments for free speech. The University of Virginia is currently #1 in the entire country in those rankings. See <https://www.thefire.org/college-free-speech-rankings>.

The University of Virginia maintains a website, <https://freespeech.virginia.edu/>, that features links to University policies and state regulations relevant to free speech, materials that are relevant to such policies, and the process to report incidents involving the disruption of constitutionally protected speech. The University's policies and regulations regarding constitutionally protected speech are located at <https://freespeech.virginia.edu/policies-regulations>.

These same policies and regulations are also included in the University's online student handbook for undergraduate students and graduate students at <http://records.ureg.virginia.edu/index.php>.

Materials on these policies and regulations in the form of Frequently Asked Questions (FAQs) also are featured on the website at <https://freespeech.virginia.edu/freedom-speech-faqs>. The homepage of this website prominently displays the reporting systems that our constituents may use to report an incident involving the disruption of constitutionally protected speech at <https://freespeech.virginia.edu/>, and this information is also found at <https://justreportit.virginia.edu/>.

The University of Virginia's students and employees, including those responsible for student discipline or education of free speech materials, are notified of these policy resources and the process to report incidents of disruption of constitutionally protected speech throughout the year via various communication streams, such as the above mentioned websites, student information system enrollment module for new and returning students, *see* Exhibit 1, and the University Judiciary Committee training and education, *see* Exhibit 2.

In June 2021, the University's Board of Visitors unanimously approved the University's Statement on Free Expression and Free Inquiry, <https://freespeech.virginia.edu/statement-free-expression-and-free-inquiry>, put forth by a committee representing a broad array of individuals with widely divergent viewpoints and experiences.

The University further demonstrates its commitment to freedom of expression through many initiatives, events, and curricular offerings throughout the year. The following are just a few examples of this commitment from the past year:

- (1) "Where do We Go From Here? The Future of Free Speech on College Campuses" brought Free Press founder Bari Weiss, former Indiana governor Mitch Daniels, and Oscar-winning filmmaker and UVA professor Paul Wagner together on October 17, 2024 to discuss the history and future of free speech at universities:
<https://tickets.artsboxoffice.virginia.edu/10698/10699?promoApplied=true>
- (2) "Enabling Difficult Conversations" brought Tarek El-Ariss, the Chair of Middle Eastern Studies at Dartmouth, and Susannah Heschel, Chair of Jewish Studies at Dartmouth, to UVA to discuss strategies for fostering civil debate about Israel and Palestine on college campuses:
<https://news.virginia.edu/content/experts-share-model-encouraging-respectful-debate-college-campuses>
- (3) The Karsh Institute of Democracy curates a list of events and opportunities to foster open dialogue, and in the fall of 2024 is hosting a series of "Talking Across Difference" dinners bringing together hundreds of students from groups with varying backgrounds, opinions, and perspectives:
<https://txd.karshinstitute.virginia.edu>
- (4) Democracy Dialogues brings together experts from at least two different perspectives to explore topics and challenges facing democracy, including free expression issues:
<https://millercenter.org/democracy-dialogues>
- (5) The Batten School of Leadership and Public Policy and the School of Education and Human Development host regular workshops for faculty about how to support dialogue about controversial issues in the classroom, including "Politics in the Classroom" on October 31, 2024. The University's Center for Teaching Excellence also regularly offers similar workshops, including "Teaching During Periods of Political Turmoil" on October 18, 2024:
<https://cte.virginia.edu/events/teaching-during-periods-of-political-turmoil>

(6) On November 19, 2024, “How Americans Can Disagree Better” featured Governor Phil Murphy (D-NJ) and Governor Spencer Cox (R-UT) discussing the climate of political polarization in the United States, how we can foster healthy debate that leads to a stronger democracy, and the role that states can play in setting an example of respectful disagreement and constructive dialogue that focuses on problem solving.

<https://millercenter.org/news-events/events/how-americans-can-disagree-better>

(7) In “Free Speech News,” the University publishes an ongoing list of free-expression-related news and events on the free speech website:

<https://freespeech.virginia.edu/news>

Since December 1, 2023, no complaints have been filed in a court of law to initiate a lawsuit against the University of Virginia, or an employee of the institution in his or her official capacity, for an alleged violation of the First Amendment to the United States Constitution.

On behalf of the University, I am pleased to certify that the University has fulfilled the requirements in Virginia Code § 23.1-401.1. Thank you for your service to the Commonwealth. Should you need additional information, please do not hesitate to contact me.

Best,



James E. Ryan
President

cc: Division of Legislative Automated Services (DLAS) - reportdocs@dlas.virginia.gov
Gary Nimax, Assistant Vice President for Compliance

Free Speech and Expression

In 2018, the Commonwealth of Virginia established by [statute](#) a requirement that “[e]xcept as otherwise permitted by the First Amendment to the United States Constitution, no public institution of higher education shall abridge the constitutional freedom of any individual, including enrolled students, faculty and other employees, and invited guests, to speak on campus.” The Commonwealth further required “[e]ach public institution of higher education [to] establish and include in its student handbook, on its website, and in its student orientation programs policies regarding speech that is constitutionally protected under the First Amendment to the United States Constitution and the [process](#) to report incidents of disruption of such constitutionally protected speech.

In 2021, the University’s Board of Visitors’ endorsed a [statement](#) affirming its commitment to free expression as put forward by the University’s Committee on Free Expression and Free Inquiry. This statement and the content below, published in the University’s Undergraduate and Graduate Records, reflect the University’s policies on free speech.

The University’s Statement of Students’ Rights and Responsibilities ([STAF-003](#)) begins by stating:

The University of Virginia is a community of scholars in which the ideals of freedom of inquiry, freedom of thought, freedom of expression, and freedom of the individual are sustained. The University is committed to supporting the exercise of any right guaranteed to individuals by the Constitution and the Code of Virginia and to educating students relative to their responsibilities.

The Statement of Students’ Rights and Responsibilities goes on to explain that:

...[T]he exercise and preservation of these freedoms and rights require a respect for the rights of all in the community to enjoy them to the same extent. It is clear that in a community of learning, willful disruption of the educational process, destruction of property, and interference with the orderly processes of the University or with the rights of other members of the University cannot be tolerated. Students enrolling in the University assume an obligation to conduct themselves in a manner compatible with the University’s function as an educational institution.

The First Amendment protects a wide range of speech, including on controversial topics of the day. It also protects much of what is often characterized as “hate speech.” As a result, there is natural tension between broad First Amendment rights to free expression in a public university and a desire to create and maintain a community in which everyone feels included, respected and supported. Some speech that is constitutionally protected, and thus outside the scope of formal University sanction through the University Judiciary Committee, may nonetheless impact certain members of the community disproportionately, with a potential negative impact on their educational experience. If the University is to achieve both important goals – a robust intellectual community where people feel free to speak their minds on important public issues and a diverse community where all feel included and welcome – we must be mindful of the power of our words.

To fulfill the University’s mission, each student must feel empowered to speak their mind, but do so in a way that provides space for dissenting views and allows for a true exchange of ideas. This means making a sincere effort to think about the impact of hateful rhetoric and culturally

insensitive statements even though a person may have a constitutional right to say these things. This also means engaging with those who disagree, even when the subject is a topic of great personal importance. Of course, there are some individuals who are not interested in engaging constructively or in truly listening to the views of others. They may also be interested solely in creating division or distrust, rather than seeking to understand and engage in healthy debate. Such individuals are likely to be the exception, however.

There are some forms of expression that are not constitutionally protected and are subject to sanction by the University. The most common of these include [harassment](#) as defined by University policy, including a subset of specific [gender-based harassment](#); disruption of University operations; preventing an invited or permitted [speaker](#) from speaking or being heard by others in attendance; directing threats to a person or group with the intention of placing them in fear of bodily harm or death; advocacy intended to and likely to incite imminent lawless action; and slander/libel/defamation. Virginia also has laws prohibiting: [“harassment by computer,”](#) criminalizing communication via computer or computer network of certain [obscene, vulgar, profane, lewd, lascivious, or indecent language, or language threatening an illegal or immoral act, with the intent to coerce, intimidate, or harass an individual;](#) and [“use of a person’s identity with the intent to coerce, intimidate, or harass,”](#) criminalizing publication of a person’s name or photograph along with either their home address or certain other [personal identifying information](#), and done with the intent to coerce, intimidate, or harass them.

Even when a statement is constitutionally protected, the University or other members of the community may use their own respective voices to criticize, denounce, or express disagreement with that statement. We are not shielded from criticism, even if we may be shielded from formal University disciplinary action. Posting something online often has negative consequences, either by placing you or others in an unfavorable light or unleashing individuals trolling online who may respond in ways never intended or expected. Regardless of whether the “doxing” activity falls within the more narrow scope of prohibited criminal conduct, it nonetheless can be potentially dangerous to the person targeted. Students should promptly report any actual threats received as a result of doxing or other social media activity using [Just Report It](#), or by dialing 911 in an emergency.

The University’s primary policy on freedom of expression on Grounds, [PRM-017](#), sets forth broad protections for the free expression rights of students, faculty and staff (collectively defined in the policy as “Affiliated Persons”). Under the First Amendment and applicable [state law](#), the University is permitted to put into place content-neutral, reasonable policies as to the time, place and manner of speech tailored to significant interests such as enabling the academic enterprise to proceed without disruption. These policies include when, where and how [amplified sound](#) may be used; the manner and location of [posting flyers and chalking](#) on sidewalks; how [space](#) may be reserved and used; and some regulations of demonstrations during certain [ceremonies and events](#). There are [Housing policies](#) specific to on-Grounds University residences. You may also wish to briefly review the helpful [FAQ](#) on PRM-017.

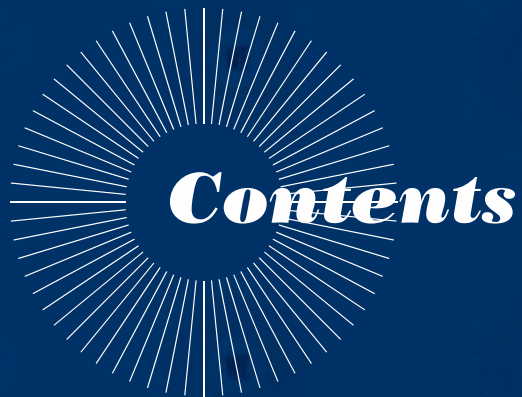
The information provided above is intended to offer insight into your broad rights to free expression as a student, links to relevant University policies and state laws, and important things to consider as you exercise these rights within a diverse intellectual community. Each of you should feel

empowered to speak passionately on subjects of interest or importance, while working to respect each other and create a truly inclusive community.

I acknowledge receipt of this statement.

Date

Save



First Amendment

1. Establishing the Context
2. First Amendment Basics
3. University Policy
4. Role and Requirements of the UJC



LIBRARY

ESTABLISHING THE CONTEXT



THE FIRST AMENDMENT:

CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

WHY IS ALL THIS IMPORTANT?

The University of Virginia is a public institution. As agents of the state, all public universities must adhere to limits imposed by the Constitution. Thus, UVA is legally bound by the First Amendment and other rights articulated in the Constitution.

VIRGINIA STATE LAW

Virginia Code § 23.1-401:

No public institution of higher education shall impose restrictions on the time, place, and manner of student speech that (i) occurs in the outdoor areas of the institution's campus and (ii) is protected by the First Amendment to the United States Constitution unless the restrictions (a) are reasonable, (b) are justified without reference to the content of the regulated speech, (c) are narrowly tailored to serve a significant governmental interest, and (d) leave open ample alternative channels for communication of the information.

Virginia Code § 23.1-401.1:

- A. Except as otherwise permitted by the First Amendment to the United States Constitution, no public institution of higher education shall abridge the constitutional freedom of any individual, including enrolled students, faculty and other employees, and invited guests, to speak on campus.
- B. Each public institution of higher education shall establish and include in its student handbook, on its website, and in its student orientation programs policies regarding speech that is constitutionally protected under the First Amendment to the United States Constitution and the process to report incidents of disruption of such constitutionally protected speech.
- C. Each public institution of higher education shall develop materials on the policies established pursuant to subsection B and notify any employee who is responsible for the discipline or education of enrolled students of such materials.

WHY IS ALL THIS IMPORTANT?

UJC is an agent of the University and, by extension, the Commonwealth of Virginia.

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UJC is responsible for the discipline of enrolled students.

= Under law, UJC must not interfere with Constitutionally protected speech.

WHY IS ALL THIS IMPORTANT?

- Free and open inquiry is the basis for the scientific method and all other modes of investigation that produce, expand, and refine knowledge.
- The educational endeavor for students requires freedom to speak, write, inquire, listen, challenge, and learn, including through exposure to a range of ideas and cultivation of the tools of critical thinking and engagement.
- While some ideas we may personally find distasteful, offensive, uncomfortable, or just plain bad, suppressing them removes an opportunity to explore and challenge them – and in doing so being able to connect with another person. Hearing other ideas helps us challenge and refine our own.

A young man with dark hair and glasses is shown in profile, looking towards the left. He is wearing a grey t-shirt. The background is a blurred image of a person's face, overlaid with a red and white halftone pattern. On the left side, there is a dark blue triangular shape with a white sunburst graphic consisting of many thin lines radiating from a central point. The text 'FIRST AMENDMENT BASICS' is written in white, bold, sans-serif capital letters across the center of the image, partially overlapping the sunburst and the man's face.

FIRST AMENDMENT BASICS

WHAT IS FREE SPEECH?

- Right of any person to express ideas, opinions, or viewpoints without punishment or interference from federal, state, or local government.
- Speech can be written, verbal, or “symbolic” (clothing, signs, pictures/images, protests, and vigils).
- Can include controversial or unpopular ideas. There is no “hate speech” exception to the First Amendment unless it also falls within well-recognized exceptions to free speech (e.g., obscenity, perjury, child pornography, incitement, true threats, etc.)
- Allowing speech to occur does not equate to condoning or endorsing the content of the speech.

WHAT ISN'T PROTECTED BY 1A?

- **Fighting words**: Words which “by their very utterance, inflict injury or tend to incite an immediate breach of peace.” (provoke immediate and violent reaction)
- **True threats**: 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**. The speaker does not have to act on his or her words (e.g., commit a violent act) in order to communicate a true threat.
- **Incitement**: Speech that is directed to inciting or producing imminent lawless action, and the speech is likely to incite or produce such action.
- **Obscenity**: Speech or materials may be deemed obscene (and therefore unprotected) if the speech meets the following (extremely high) threshold: It (1) appeals to the “prurient” interest in sex, (2) is patently offensive by community standards and (3) lacks literary, scientific or artistic value.

WHAT ISN'T PROTECTED BY 1A?

- **Defamation**: An intentional and false statement about an individual that is publicly communicated in written (called “libel”) or spoken (called “slander”) form, causing injury to the individual.
- **Fraud and perjury**
- **Speech integral to criminal conduct**

WHAT ISN'T PROTECTED BY 1A?

- **Certain types of harassment**: Speech and/or conduct based on a protected category that is so **severe, persistent or pervasive and objectively offensive**, and that so **undermines and detracts from the victim's educational experience**, that the victim is effectively **denied equal access to an institution's resources and opportunities**.
- **Certain symbolic actions**: But only if the actions are otherwise illegal, such as tagging, graffiti, littering or burning a cross on private property with the intent to intimidate.
- **Material and substantial disruption**: An action that materially and substantially disrupts the functioning of the university or that substantially interferes with the protected free expression rights of others.

SPECIAL EMPHASIS: TRUE THREATS

SOC 2: Conduct which **intentionally or recklessly threatens** the health or safety of any person on University-owned or leased property, at a University sanctioned function, at the permanent or temporary local residence of a University student, faculty member, employee or visitor, or in the city of Charlottesville or Albemarle County.

Speech (non-behavioral) context for SOC 2 must follow the True Threat Doctrine: **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.**

Or the Incitement Doctrine:

Speech that is intended to incite imminent lawless action and is likely to produce such action

ELEMENTS OF A TRUE THREAT

To find that the Respondent violated SOC 2 based on the speech at issue, the Complainant must prove a beyond a reasonable doubt that:

- The Respondent ***subjectively intended to convey*** the speech at issue as a threat. That is, the Respondent said/communicated the words for the ***purpose of issuing a threat***, or with ***knowledge that the speech will be viewed as a threat***; and
- The content of the speech contained a “true threat.” That is, an ordinary, ***reasonable recipient*** who is familiar with the context in which the speech/statement is made ***would interpret the words as a serious expression of an intent to do harm***.
- The Complainant need not prove that the Respondent had the intent or ability to **carry out** the threat in evaluating whether the speech at issue constituted a true threat.

SPECIAL EMPHASIS: HARASSMENT

University definition of harassment: Unwelcome conduct directed against a person based on one or more of that person's protected characteristics or statuses, which conduct is so **severe or pervasive** that it **interferes** with an individual's employment, academic performance or participation in University programs or activities, **and** creates a working, learning, program or activity environment that a reasonable person would find **intimidating, hostile or offensive**.

-Based on federal and state laws and policies: Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, ADA of 1990, and others.

SPECIAL EMPHASIS: HARASSMENT

Protected characteristics or statuses: age, color, disability, gender identity or expression, marital status, military status (which includes active duty service members, reserve service members, and dependents), national or ethnic origin, political affiliation, pregnancy (including childbirth and related conditions), race, religion, sex, sexual orientation, veteran status, and family medical or genetic information.

Jurisdiction: Speech that potentially qualifies as harassment falls under the jurisdiction of the ***University's Equal Opportunity & Civil Rights (EOCR) Office*** (which includes Title IX). The University must follow certain federal policies and investigatory standards in addressing these matters.

Questions of appropriate jurisdiction in potential UJC cases are discussed among UJC Exec, Asst. VP of Student Affairs, University Counsel, and (where appropriate) Assoc. VP of EOCR.



UNIVERSITY POLICY

UNIVERSITY POLICIES RELATED TO SPEECH

[PRM-017: Use of University Facilities or Property, and Limits on Direct Solicitation and Advertising](#)

[SEC-039: Protests, Demonstrations and Other Expressive Activities during Official University Ceremonies and Events held at the Academical Village](#)

[Amplified Sound Policy](#)

[PRM-008: Exterior Posting and Chalking](#)

[Homepage | Free Speech \(virginia.edu\)](#)



ROLES AND RESPONSIBILITIES OF THE UJC

THE UJC ROLE

- In case situations, determine appropriate jurisdiction in partnership with Student Affairs and University Counsel.
- Understand and comply with First Amendment requirements; support the University's statement on free speech and expression (remember, we are agents of the University and Commonwealth of Virginia).
- Serve as a resource for the University Community regarding free speech parameters (this can be challenging!!)
- Apply appropriate rules and standards (as clarified by Counsel) in cases that may involve speech related issues.

QUESTIONS FOR REFLECTION & DISCUSSION

What makes sense to you about First Amendment policies and their application at the University? What doesn't make sense?

What questions do you have about your roles or responsibilities?

Where do you get more information or go for questions?

- <https://freespeech.virginia.edu/>
- Marsh Pattie; jmpattie@virginia.edu; Rotunda – Northeast Wing
- Nerissa Rouzer; uty6kg@virginia.edu; Madison Hall; (434) 924-6437

