

5 The Hard Problem of Hate Speech

Hate speech has bedeviled communities for a very long time. In democratic societies, few people believe that political views should be suppressed today. The trouble comes when one person utters words that he or she believes are protected political speech and someone hearing the same words believes it is hate speech. In the modern era, the U.S. Supreme Court has interpreted the First Amendment as protecting both political speech and most hate speech from government restriction. The United States stands essentially alone in this respect. Most other democracies—Canada and much of northern Europe, for instance—expressly restrict hate speech through national legislation even when they have broad protections for other kinds of speech.

Campuses today are split in their approach to hate speech, just as nations are. According to the latest annual survey by the Foundation for Individual Rights in Education (FIRE), 39 percent of the U.S. colleges and universities they reviewed receive a “red light” mark for campus rules for “clearly and substantially” restricting free expression on campus. Many (though far from all) of these restrictions take the form of rules against hate speech.¹ Other campuses, according to FIRE, hew more closely to the First Amendment approach when it comes to regulating

speech. (When I refer to “hate speech,” I adopt the *Oxford English Dictionary*’s definition: “speech expressing hatred or intolerance of other social groups, especially on the basis of race or sexuality.”)²

The matter is more complicated than simply saying that the U.S. Constitution protects hate speech and many schools regulate it, however. Not all hateful speech is protected speech, even under the First Amendment, which allows for certain restrictions on hate speech. For instance, harassment—whether based on gender or race—can rise to the level of restricted speech, as can words that incite violence. This “fighting words” doctrine remains controversial—many free expression advocates consider it bad law—but it is still the law of the land in the United States.

On a Saturday afternoon in April 1940 in Rochester, New Hampshire, Walter Chaplinsky, a Jehovah’s Witness, was distributing leaflets promoting his religion in a public place. A disturbance arose around Chaplinsky as townspeople objected to his reference to other religions as a “racket.” James Bowering, a city marshal, arrived on the scene. Chaplinsky claimed he was punched by one or more members of an angry mob before being escorted to the police station for his protection. Bowering, representing the state, and Chaplinsky, seeking to spread the word about his religious beliefs, ended up in a dispute.

The altercation that ensued between Chaplinsky and Bowering gave rise to today’s “fighting words” doctrine. Chaplinsky’s words spoken to the marshal lay at the heart of the case before the Supreme Court. In the course of their interaction, Chaplinsky said to Bowering, the marshal: “You are a God-damned racketeer” and “a damned Fascist.” Bowering, in turn, arrested Chaplinsky on the grounds of breaching the peace by uttering

these words in this way. Chaplinsky admitted to saying these things, though he denied uttering the name of the deity.

Chaplinsky's case wound its way up to the U.S. Supreme Court. The dispute centered on whether the statute under which Chaplinsky was convicted—chapter 378, section 2, of the Public Laws of New Hampshire—passed muster under the Constitution. The statute read:

No person shall address any offensive, derisive or annoying word to any other person who is lawfully in any street or other public place, nor call him by any offensive or derisive name, nor make any noise or exclamation in his presence and hearing with intent to deride, offend or annoy him, or to prevent him from pursuing his lawful business or occupation.³

The Supreme Court unanimously held the statute to be permissible under the First Amendment. This case has been cited for decades as standing for the proposition that the state may lawfully prohibit “fighting words.”⁴

The Supreme Court has further elucidated its opinion since the holding in *Chaplinsky*, which has long given rise to criticism from scholars.⁵ In a 2003 case, *Virginia v. Black*, the court described fighting words as “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.”⁶ The court interpreted “intimidation”—in the sense of expression not protected by the First Amendment—as a “type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.”⁷ While the notion of a “true threat” might fail the Supreme Court’s reasoning if tested again today, the “fighting words” doctrine remains good law in the United States.

I begin the discussion of hate speech with these key “fighting words” cases to draw attention to the fact that not all “hate speech” is protected speech, even under the U.S. Constitution. This subtlety is important in the context of assessing the degree to which campus administrators might restrict hate speech in a manner that is still in keeping with the First Amendment.

On campuses, administrators must navigate complicated legal waters when it comes to hateful speech. For instance, in Massachusetts, a state law requires educational institutions to regulate hazing, harassment, and bullying.⁸ Gender and racial harassment, too, can violate both state and federal law. And in many places, administrators strive to meet another standard: ensuring that students benefit from an environment in which they can focus on learning, free from harassing speech. The hard question for administrators is how to strike an appropriate balance between protected speech that is necessary for a genuine exploration of ideas in the context of one’s education and hate speech that diminishes students’ ability to learn.

On campuses today, hate speech tops the list of the most intractable topics related to free speech and diversity. Hate speech cases are hard in large measure because they inevitably give rise to high emotion. Those who use hate speech often seek to press the limits of free expression purposely. Just as children test the limits that their parents set, those who express themselves through hateful words and actions are often testing the boundaries of what they can get away with.

This testing is not without consequence—particularly in the close confines of a learning community. The effects of hateful speech are often felt overwhelmingly by those in the minority on campuses. In other cases, hate speech targets female

students and staff who may be in the majority on some campuses but who have historically been marginalized. Much of the time, those affected have done nothing to prompt the harmful speech—they are just minding their own business, trying to get an education. Hate speech is, at the very least, an unwanted distraction to the students, faculty, and staff at whom it is directed.

Hate speech can cause real psychological harm. The inequity of hateful speech being disproportionately borne by some members of society lies at the core of the argument made by social justice advocates that campuses should have stronger speech codes, including rules that curtail hateful speech. The sharpest limit of tolerance theory—and of strong free speech rights in the context of hate speech—is that most often the burden of tolerating hate falls unevenly on those who feel marginalized for one reason or another.

Laws oriented toward educational institutions often acknowledge this problem of disproportionate harm to marginalized individuals in a community. For instance, the Massachusetts statute that regulates hazing, harassment, and bullying notes:

Each [school antibullying] plan shall recognize that certain students may be more vulnerable to becoming a target of bullying or harassment based on actual or perceived differentiating characteristics, including race, color, religion, ancestry, national origin, sex, socioeconomic status, homelessness, academic status, gender identity or expression, physical appearance, pregnant or parenting status, sexual orientation, mental, physical, developmental or sensory disability or by association with a person who has or is perceived to have 1 or more of these characteristics. The plan shall include the specific steps that each school district, charter school, non-public school, approved private day or residential school and collaborative school shall take to support vulnerable students and to provide all students with the skills, knowledge and strategies needed to prevent or respond to bullying or harassment.⁹

While this statute focuses on environments for school-age children, it makes plain an important concept. The burden of bearing hateful speech tends to fall disproportionately on those in the minority on campuses of all types.

One of many reasons to take the long view on the topic of free expression is that the dynamic of who is in the minority is likely to change. Those who find themselves in the majority at one moment may be in the minority at another, and vice versa. In nineteenth-century Boston, for instance, the dominant Protestant community regularly discriminated against Catholic immigrants from Ireland. The infamous sign “No Irish need apply” that hung in Boston shop windows stood for a deep-seated, pernicious discrimination against the Irish. But by the late twentieth century, the Irish Catholic community had become the undisputed powerhouse of Boston politics. Once the butt of harsh criticism and hate speech, many Boston Irish (among other Caucasians living in Boston at the time) paid the hate forward during the dispute over school integration and the busing of students in the 1970s. The residents of South Boston—some of them descendants of those who had been discriminated against in the nineteenth century—in turn expressed virulent racism against the African-American community in the late twentieth century. The point is not that Boston’s Protestants or Irish Catholics have been, or are today, any more racist than anyone else. The point is simply that those who are on one end of discrimination are wise to recall that they may be on the other end at another point in history.

Those arguing for stronger speech codes during the Obama administration may be thinking twice about calling for speech restrictions on campuses in a United States led by President Trump. If the machinery of censorship were to limit the use of

the term *racist* or *privileged* with respect to white men or to curb criticism of symbols such as state or national flags, the dynamic involved would take on a different cast. Principles that protect speech and call for equity serve everyone, not just the ascendant or the marginalized at any given moment.

The proliferation of hate speech online is another reason to reconsider the way a campus handles this type of expression.¹⁰ The online environment is rife with hateful speech of every variety, available from anywhere through the powerful mobile devices carried around in students' pockets and pulled out in nearly any free moment. The growth of hate speech online, in communities around the world as well as on our campuses, connects the harms that our students face locally with the harms that others experience globally. While no one has a good solution to the problem of the cross-border flow of hateful speech and its effects, the reality of these changed circumstances needs to be factored into any campus-based calculation. What happens locally can reverberate online, connecting with similar occurrences elsewhere, in ways that can be consequential.

At any given historical moment, there are strong reasons to allow wide latitude for political opinions on campus to protect both free expression and academic integrity, when many schools also value diversity, equity, and inclusion in just as fundamental a way. What is to be done when these values clash in a digitally networked era?

As educators, we ought to begin by making clear to students that we consider hateful speech, on campuses and otherwise, abhorrent. One of the purposes of education can be, and should be, to teach tolerance and empathy, which in turn ought to diminish the utterance of hateful speech on campuses and beyond. This

starting point is just as important as the starting point in favor of broad discretion for speech on campuses. Educators should also give voice, unequivocally, to our obligation to ensure an environment in which all students can focus on their learning. That obligation extends not just to face-to-face encounters but to those online as well.

Campus administrators are right to listen to the claims of current students, who make us aware that hateful speech still happens on our campuses and that the effects of this speech can be deleterious to a learning environment. Often, these student activists argue that a particular conception of free speech is less important than the values of equity and inclusion on a campus. It is this clash of values that gives rise to the toughest moments: when a commitment to a genuinely diverse community comes up against an equally genuine commitment to a free and open environment for expression. The job of educators should be to ensure both values can thrive on campus to the greatest extent possible.

Administrators often create teams that address bigotry through programming and support. Arizona State University, for instance, has a long history of supporting this type of initiative, while also earning high marks for its commitment to free expression from FIRE and other observers. Today, some of this important work is conducted through its Committee for Campus Inclusion (CCI). As its webpage states, “Actions constitute harassment, if they substantially interfere with another’s educational or employment opportunities, peaceful enjoyment of residence, physical security, and they are taken with a general intent to engage in the actions and with the knowledge that the actions are likely to substantially interfere with a protected interest identified in the subsection above. Such intent and knowledge may

be inferred from all the circumstances.”¹¹ Concurrently, the CCI webpage notes: “Neither this nor any other university policy is violated by actions that amount to expression protected by the state or federal constitutions or by related principles of academic freedom. This limitation is further described in the ‘ASU First Amendment Guidelines,’ the current version of which supplements this policy.”¹² ASU purposefully sets out to honor both diversity and free expression through its campus inclusion work.

Our starting point as educators should be with efforts to prevent hate speech in the first place, while also making clear the importance of ensuring that political views of all persuasions, respectfully shared, have a place on campus. A goal of universities should be to eliminate hate speech, even as some degree of noxious expression must be tolerated by all sides in any debate. To the extent that prevention doesn’t work, a school should do what it can to mitigate the effects on those targeted. This work should happen in classrooms, in orientations, and in plenary meetings of the community. Academic communities that fail to work on teaching tolerance up front are likely to experience the ill effects of conflict as students test out their ideas in insensitive ways.

Despite our best efforts to prevent it, hateful speech arises on campuses just as it does in the world at large. There is no easy answer to how to handle hate speech on campuses when it arises—or when it seeps onto a campus from afar, via social media. If a university adopts the First Amendment as its guide, the range of permissible speech is not unlimited but is relatively wide. To limit the effect of hate speech through other means, that university might commit to a renewed emphasis on programming and support for the legitimate concerns of those affected, just as

ASU did. If a community chooses to add a campus speech code instead, the answer will always end up being case by case. Institutions that do adopt speech codes must address the critique that their implementation may curtail academic freedom and the learning that is the primary point of university life.¹³

A school's educational mission should drive its policymaking. Context matters enormously in terms of how a learning community handles clashes between claims related to free expression and the desire to clamp down on hateful speech.

This range of approaches on campuses establishes a form of pluralism that in itself is a good thing. FIRE conducts an annual survey of campus speech codes, providing an important guide to students and administrators regarding the range of policies.¹⁴ Major universities with a strong free expression tradition, such as the University of Chicago, are right to make plain their philosophy to prospective scholars and students alike.¹⁵ Columbia University, under the leadership of First Amendment scholar Lee Bollinger, makes clear to its students that it, too, will follow the principles of the First Amendment on campus.¹⁶ State universities and those funded directly by the government may not have a choice: they are commonly deemed to be "state actors" that must uphold the First Amendment protections.¹⁷

Even for a state school, it is possible to craft campus policies, including disciplinary codes, that are devoted to balancing free expression with tolerance for a broad range of students and faiths. Schools and universities often disallow speech that amounts to gender or racial harassment; intimidating other students through phone calls or online messaging; or inciting violence against other students. Schools also strike this balance by distinguishing between speech and conduct—a blurry and sometimes unhelpful line, but one that is often invoked.¹⁸ Speech that

is directed toward an individual and interferes with their ability to engage in the educational program can and should be treated as a disciplinary matter. No student should be able to harass another student. These rules can be, and often are, crafted in such a way that they are consistent with the First Amendment.

In a legal sense, private schools and religious institutions have more room to maneuver than state schools, should they wish to restrict speech further than the First Amendment would permit. A religious school, driven in its decision making by a different mission, might adopt a different set of speech rules than a secular institution. A private high school, with younger students and a mission to develop strong character as well as a spirit of inclusion, likewise might decide to impose tighter limits on permissible speech than a major public university would.

As critical as I was in chapter 2 of the ham-handed letter from the University of Chicago dean at the start of the 2016 school year, the policy of the university at large is laudable, especially insofar as it is consistent with, and tied directly to, the university's long-standing goals. As the University of Chicago stated in its recent *Report of the Committee on Freedom of Expression*, "From its very founding, the University of Chicago has dedicated itself to the preservation and celebration of the freedom of expression as an essential element of the University's culture."¹⁹ The University of Chicago places freedom of expression at the center of its set of values and makes that commitment clear to students and faculty from the outset. No student or faculty member joining the community could reasonably mistake the university's policy for anything other than full-throated support for free expression.

The hard questions tend to arise when a private school decides to impose a speech restriction to curtail hate speech

that would not be permissible under the First Amendment. My view is that a private school certainly may invoke restrictions that are more protective of campus minorities than the First Amendment would permit. That is especially true in the context of K–12 schools where the stage of development of the learners is different in meaningful ways from the stage of development of university students. It is also plausible that private colleges and universities may adopt a set of rules deviating from the requirements of the First Amendment.

A student attending a private school with a different history and a different mission than, say, the University of Chicago, might reasonably expect that the institution would adopt a different posture when hate speech arises. For instance, a school founded in the Catholic tradition might adopt practices in line with the teachings of that faith. A Jewish university, likewise, might sensibly adopt rules distinct from the rules set by the Constitution. A historically black college or university (HBCU), established for the purpose of educating young people of African or African-American descent, might adopt yet another set of rules that favor certain forms of inclusion over its commitment to free expression in certain cases. A women's college might make choices based on the commitment to single-sex education that lies near the heart of its mission. Private institutions should be admired when they clearly state their values and then carry them out with fidelity even when conflicts arise.

As critics from FIRE and elsewhere rightly contend, the main concern when it comes to the speech restrictions of private institutions is duplicity. If a private school says one thing about its commitment to free expression and then does something else, the school has misled incoming students. Many of the speech

codes that arose in the 1980s and 1990s ran afoul of this concern. As FIRE establishes on its website:

Private colleges and universities are contractually bound to respect the promises they make to students. Many institutions promise freedom of expression in university promotional materials and student conduct policies, but then deliver selective censorship once the first tuition check is cashed. They may not be bound by the First Amendment, but private institutions are still legally obligated to provide what they promise. Private institutions may not engage in fraud or breach of contract.

It is important to note, however, that if a private college wishes to place a particular set of moral, philosophical, or religious teachings above a commitment to free expression, it has every right to do so. The freedom to associate voluntarily with others around common goals or beliefs is an integral part of a pluralistic and free society. If a private university states clearly and publicly that it values other commitments more highly than freedom of expression, that institution has considerably more leeway in imposing its views on students, who have given their informed consent by choosing to attend.²⁰

The best approach for administrators is to establish clear expectations for students on campus. Where a college, university, or school expects that it might restrict speech more than the First Amendment would allow, it should say so, and it should act accordingly when its values come into conflict. The number of institutions that do so effectively, according to FIRE's reporting, is very low. Only 6 percent (27) of the 449 schools reviewed by FIRE in its 2017 Spotlight report earned a "green light," up from 22 in the previous year's report.²¹

Arizona State University is not the only institution that appears to be balancing these interests effectively. According to FIRE, the "green light" institutions include several others that have also enacted significant diversity-related policies. Duke

University and Purdue University, for instance, have strong policies on bias, hate speech, and peaceable assembly on their books along with strong support for free expression. Policies are necessary but not sufficient; getting it right in practice can often be far harder than striking a balance on paper. But sound policies are nonetheless a crucial step in the process toward strong, inclusive communities that also value free expression.

When might it be appropriate for a private school or university to restrict hate speech more than the First Amendment would allow? Recall, again, that the First Amendment allows for a degree of restriction of hate speech—that which falls under the “fighting words” doctrine or that which constitutes gender or racial harassment, for instance. Imagine, though, that the speech involved does not meet the strict requirements of today’s Supreme Court doctrine when it comes to hate speech. When could the school or university reasonably intervene in the interest of protecting minorities, or any target of hate speech, in a campus environment?

Suppose, for example, that a group espousing hatred—say, the KKK or a neo-Nazi group—were to begin a march on the grounds of a private college or university campus in the middle of a school day. The same march in the town square two miles away would be frowned on by the locals but it would be hard, if not impossible, for the government to shut it down under the First Amendment. The famous case involving the neo-Nazi group that sought to demonstrate publicly in the town of Skokie, Illinois, established the First Amendment protection for such hateful expression.²² Would a school administrator be within his or her rights to call campus security to force the marchers to leave the campus?

In my view, the answer is plainly yes, especially if the school had been clear up front about its values and policies, and established that its commitment to a diverse, equitable, and inclusive campus is on a par with its commitment to free expression. In this show of hate speech on the campus green, in front of the students who have freely assembled together in the school community, the neo-Nazi marchers would be acting in a manner inconsistent with the values of the school. The right to free expression of the marchers is not greater than the right of the campus community members to a learning environment free of this sort of hate. The balance points exactly the other way: the intrusion of this hateful speech exceeds the value of permitting this particular form of speech in the campus community.

This example demonstrates the extent to which there is a reasonable limit as to how and when a campus community must practice tolerance. While certain political speech—even obnoxious speech—must be permitted on campuses in order to pursue the truth and to allow free and open debate, there must be a limit to the degree of hatefulness of the speech that the community should allow.

The paradox of tolerance lies at the heart of this example. Must the tolerant always tolerate the intolerant?

We teach more than just mathematics, science, writing and reading, languages, the arts, and other academic topics in our schools. We also teach character and moral development. Many schools do so explicitly, through the lessons that we choose; all schools do so implicitly, through the personal examples that faculty members, coaches, administrators, and staff set for our students. Whether parents like it or not, there is no way for

teachers to avoid teaching character to some extent; after all, our students watch us as they learn.

At the core of this character development, we ought to teach tolerance. But tolerance can be an extremely tricky value to convey when it comes down to it. Never in recent memory has it been trickier than in the wake of the 2016 presidential election.

It is extremely easy to be a tolerant person when everyone around you is tolerant. It is easy to tolerate the tolerant. It is easy to teach the tolerant. If everyone in a learning community commits to this principle, things go well. Schools should aim for a community in which everyone commits to a deep, abiding sense of tolerance. That would make matters much more straightforward—in this respect, anyway.

The problem with tolerance is when it comes to the intolerant. To the extent that some people in society are intolerant of other people—and we know that to be true—there becomes, all of a sudden, a problem with tolerance. The tolerant are called on to tolerate the intolerant. Meanwhile, the intolerant, in turn, are not asked to tolerate anyone.

To some degree, in a democracy, we must tolerate intolerance; that is part of the deal. We do not just give votes to the tolerant. It is also true that we grow and learn when we tolerate the views of others with whom we disagree. As Lee Bollinger argued in *The Tolerant Society*, a community, and individuals, grow stronger through the extraordinary self-control of tolerating harmful speech.

But the idea of tolerance must also have its limits. The philosopher Karl Popper, writing in 1945, defined this “paradox of tolerance”: “Unlimited tolerance must lead to the disappearance of tolerance. If we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society

against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them." In this famous passage, Popper went a great deal further in exploring when intolerant political philosophies should be suppressed:

In this formulation, I do not imply, for instance, that we should always suppress the utterance of intolerant philosophies; as long as we can counter them by rational argument and keep them in check by public opinion, suppression would certainly be unwise. But we should claim the right to suppress them if necessary even by force; for it may easily turn out that they are not prepared to meet us on the level of rational argument, but begin by denouncing all argument; they may forbid their followers to listen to rational argument, because it is deceptive, and teach them to answer arguments by the use of their fists or pistols. We should therefore claim, in the name of tolerance, the right not to tolerate the intolerant. We should claim that any movement preaching intolerance places itself outside the law, and we should consider incitement to intolerance and persecution as criminal, in the same way as we should consider incitement to murder, or to kidnapping, or to the revival of the slave trade, as criminal.²³

Popper went too far in this powerful statement, but the essence of his point still rings true today. One need not extend the argument so far as he does—say, to the criminalization of incitement to intolerance (with which I do not agree)—to grasp the rationale for a degree of liberal intolerance. Writing these words in Europe at the end of World War II, Popper had good reason to wish there had been an earlier restriction of intolerance.

There is no reason why a private campus should be required to play host to a group that espouses racial or ethnic hatred that is counter to a core value of the institution. Even if that same speech would be permitted in the city square, an administration that allows it to disrupt an otherwise functional learning environment does more harm than good. It may be that a democracy

will come to a point at which it can tolerate all forms of hateful speech in all its educational institutions, but I do not believe that we are at that point today. The disruptive psychological toll of the most extreme, hateful speech is too high a price for members of marginalized groups on campuses to be expected to pay—especially during this period of steady diversification and growing, but incomplete, equity and inclusion on campuses.

Though the law almost certainly says otherwise today, I believe that even public colleges and universities ought to be able to reach the same decision when it comes to keeping the most hateful speech—of the sort embodied, say, in a KKK or neo-Nazi rally—off campus. The value in terms of teaching and learning of this sort of expression in the context of an academic community does not compensate for the distraction and harm caused to students. The fact that the harm and the distraction would fall disproportionately on a subset of students should factor into the analysis by educators. If schools are in fact about ensuring that a diverse group of young people have a place to learn, administrators should be able to choose whether the most hateful forms of speech have a place on campus. A specific statute or a new Supreme Court holding might be required to make such campus rules possible at a state university. While those who believe that free speech is more important than diversity might disagree, a conversation about line drawing at the edges of permissible speech on campus is well worth having.

Even as we all must tolerate views we hate up to a point in a democracy, there must also be a point at which the tolerant are allowed to be intolerant of those who are intolerant. Our study of history points to examples when it was a terrible mistake to tolerate intolerance for too long. This paradox of tolerance is much on our minds today, once again, as we seek a way forward

after a wrenching election season in 2016. As schools and as a democracy at large, we need to determine where the line falls between hateful speech that we must tolerate and intolerant speech that we must resist.

The 2016 election has given rise to hard conversations on this point. What made that election so painful for many people was that too much of the rhetoric was about exclusion, not inclusion; it was about hate, not about love; it was about elevating some people above others. The winning presidential candidate, Donald Trump, espoused hatred during his campaign toward Mexicans and Muslims in particular—and as president immediately moved to put restrictive policies in place toward both groups. During the campaign, Trump failed to denounce hate groups that target underrepresented people of color. He mocked the disabled on national television. He demonstrated a misogynist streak that made members of his own party denounce his candidacy in large numbers—and led to one of history's largest demonstrations, in dozens of cities, the day after his inauguration. The rhetoric during the campaign, from all sides, emphasized division and supremacy of some over others, not equity and inclusion. It is also a fact that this patently divisive approach to running for president resulted in his victory in the Electoral College, if not in the popular vote. We are a divided nation, separated from one another in some fundamental way. The 2016 election cycle was structured around this divide.

These facts are not presented in a manner meant to be partisan. The problem is not about Democrats and Republicans. It is about the values that we hold as educational institutions and how to honor them as we teach our young people. Many of the views expressed during the 2016 campaign are inconsistent with the kinds of values that many, if not virtually all, of our schools

stand for—the kinds of values, including tolerance, that we seek to teach.

In our schools, we value and support all our students and their well-being equally. That must include those who are Muslim and Mexican, and those who come from all faiths and all racial and ethnic backgrounds. That must include conservatives as well as liberals. In our classrooms, those on the right must tolerate those on the left; those on the left must tolerate those on the right. No one should be bullied or otherwise mistreated because of who they are or who they or their parents voted for. Serious political discussion must have a place in our academic communities as well as in society at large. Students need to have equal support when it comes to their learning and growth, no matter their perspective or background. (The expectation of equality and inclusion is not limited to our school environments. Recall that we are expected to value and support all people equally in society at large, too, in the plain language of our Declaration of Independence and our Constitution.)

Hateful speech, targeting individuals and groups on our campuses, is not serious political discussion; it should have no place in our schools. In the hyped-up context of campus and electoral events between 2014 and 2017, we must be vigilant for the way our students interpret political events and their lessons. We must focus on where the line should fall between the political speech that we must tolerate and the hateful speech that we should not.

As an educator, I believe we must do everything we can to focus on building tolerance and respect for one another so we do not find ourselves, as school communities, faced with this paradox repeatedly. As a citizen, I believe the same is true for the United States at large. We ought to make extensive room for the

conversations we need to have about politics and difference. But intolerance of one another on our campuses, and in our communities, is something that we ought to find ways to prevent and to resist.

No speech code or disciplinary handbook—no matter how carefully drafted—can anticipate every controversy, especially of this sort. The approach of educational leaders should be to state clearly the values of the institution; to teach tolerance and limit hateful speech in the first place; to teach about the values of free expression and the free exchange of ideas as a general matter; to be clear with students and adults up front about how disputes will be handled; and to ensure that the ensuing debates are as open and constructive as possible. Despite these best efforts, the most complicated acts of expression by those wishing to push the boundaries will prompt case-by-case analysis. Just as they do in the courts, these cases will always give rise to strong emotions and heated debates.²⁴

For a democracy comprised of diverse constituents to work, everyone must be tolerant of others to a very large degree. Both those liberals and those conservatives who espouse tolerance of others' views as a key virtue must be prepared to tolerate a great deal of speech with which they disagree. Serious philosophical disagreement must be able to take place on campuses or the intellectual enterprise is lost.

Our system of governance must also allow for a point at which the tolerant may become intolerant of intolerance. The intolerant should not be able to dominate merely by calling on the tolerant to tolerate their intolerance. The hard problem of hate speech is where that line—between the political speech we

must tolerate, no matter how obnoxious, and the hate speech we should not tolerate—is drawn. Educational communities may have to struggle through more hard cases, not fewer, as campuses become more heterogeneous. Some campuses are plainly getting more adept than others at managing this heterogeneity. A full-throated commitment to both diversity and free expression, interdependent and mutually supporting, should preface, and then carry through, each instance of that struggle.