



First Amendment Conversation with UofL Staff Senate

Federal Law: The Constitution & The First Amendment

The First Amendment to the Constitution identifies six protections, five explicit and one implicit that restrict the government from interfering, in large part, with the:

- freedom of religion**
- freedom of speech**
- freedom of the press**
- freedom of assembly**
- freedom to petition the government**
- freedom of association**

These civil liberties are considered the cornerstone of our democracy and the government is constrained from limiting them.

Kentucky State Laws

Kentucky Campus Free Speech Protection Law

- Broad Protection for Free Expression for Students and Faculty, not Staff.
- Viewpoint Neutrality and Equal Treatment
- Limits on Disruption

KRS 164.348

An Act Relating to Initiatives Regarding DEI

- Ban on DEI Programs in Public Colleges and Universities
- Prohibition on Differential Treatment Based on Protected Characteristics
- Compliance Enforcement and Reporting Requirements

KRS 164.2895

Joint Resolution to Combat Antisemitism

- Mandates Anti- Semitism Policies at Public Colleges/Universities
- Outlines Policy Requirements and Protections
- Requires Data Reporting and Oversight

Acts Ch. 157

University of Louisville Policies & Practices

University Policies and Resources

[Free Speech Website](#)

[Speech and Distribution of Literature](#)

[Use of Grounds Policy](#)

Policies in Relation to Students

[Code of Student Rights and Responsibilities](#)

[Code of Student Conduct](#)

Policies in Relation to Faculty and Staff

[University Code of Conduct](#)

[Viewpoint Neutrality Policy](#)

42 USC 1983

Government Definition

Every person who, under color of any statute, ordinance, regulation, custom or usage of any state or territory, subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in any action at law, suit in equity, or other proceedings.

Definition We Understand

If someone working for the government (like a state or local official) uses their authority to violate constitutional rights or freedoms, legal action against them. They can be held responsible in court for any harm they caused you

Defining What it Means to be a State Actor

- Those who are paid by the state are state actors and they ARE the government (This includes ALL of us who work at public institutions).
- The constitution only applies when “**state actors**” (the government) interact with individuals ... most colleagues and students fail to understand this and yet it is the cornerstone to understanding this complex set of issues ... the interaction of the government with the individual is what **causes the constitution to apply**.

Remember, when you work at a public institution of higher education
you are the government,
your colleagues are the government, and
your bosses are the government.

When State Actors Get In Trouble

- Violating clearly established law:(actual and constructive knowledge . . . “Knew or should have known.”)
Defining: The employee broke a law or constitutional right that any reasonable employee in their position would know about.
- Operating outside of role of employment
Defining: The employee takes an action they have **no authority to take**, because it is not part of their job at all.
- Operating outside of scope of employment
Defining: The employee is performing a task related to their job but doing it in a way that is far outside what is allowed, appropriate, or authorized.

Levels of Free Speech Protections

- Faculty in the classroom and on topic, and in their research activities
- Students anywhere they are and in most everything they do, they are engaging in protected speech. (Remember free speech protections do not give one the right to be disruptive.)
- Staff have fewer protections for their speech.

Staff First Amendment Rights in Public Spaces

Garcetti v. Ceballos **(2006)**

If you are a government employee and you make statements as part of your job duties, the First Amendment does not protect you from employer discipline.

If you speak as a private citizen on a matter of public concern, you may have First Amendment protection.

Employees cannot automatically claim free speech protection for things they report or say while performing their official job tasks, even if it exposes wrongdoing.

NAACP v. Patterson **(1958)**

The Court emphasized that anonymity is often essential to protect individuals engaged in lawful advocacy.

States must show a compelling interest, narrowly tailored, before demanding membership information.

Government actions that chill participation in advocacy groups violate the First and Fourteenth Amendments.

Shelton v. Tucker **(1960)**

The Court required a narrow tailoring standard when state regulations affect First Amendment associational rights.

Mandatory disclosure of broad membership information can discourage participation in lawful organizations.

Even valid state interests cannot justify sweeping, intrusive, and overly broad reporting requirements.