



FIRE QUARTERLY

WINTER 2023



PUBLIC-COMMENT CHAOS:

A Michigan mayor tried to
silence her own constituents.
So we handed them the mic. | 7

TENDING THE FLAME OF FREEDOM



As part of FIRE's expansion over the summer, we bolstered our ability to hold censors accountable in court. Our litigation team is expanding — and through the holidays, we've kept the flame of the First Amendment burning bright across the nation with Yule logs of court victories, settlements, and new cases, on campus and off.

In 2022, our team filed six lawsuits on campus, spending days, nights and weekends securing big victories for student and faculty expression.

These wins — several of which you'll read more about in this Quarterly — spanned the country.

- In **Florida**, we stopped enforcement of key provisions of the Stop WOKE Act, protecting professors' academic freedom.
- In **Texas**, we bookended the year with lessons for Collin College; winning tens of thousands of dollars for one professor wrongfully fired for her expression, then getting another professor reinstated with a six-figure teaching contract.
- In **California**, we vindicated the expressive rights of a conservative student organization and its leaders with a court ruling striking down Clovis Community College's censorial posting policy.

Meanwhile, our litigation team lit its first fires off campus with two lawsuits. In the first, we sued the City of Eastpointe, Michigan, and its mayor, who repeatedly abused her authority to silence her critics. And in December, we sued the New York attorney general to stop enforcement of a new law that forces websites and online services to publicly outline how they will respond to "humiliating" or "vilifying" online speech.

The litigation Yule log was also fueled by "friend of the court" filings across the nation to protect First Amendment rights and challenge qualified immunity and other immunity doctrines, arguing that government officials should be held accountable for violating First Amendment rights.

As the depth and breadth of our efforts show, we'll leave no stone unturned when it comes to protecting expressive freedoms. And we stand ready to assist whoever needs our help, whatever they believe and wherever they're located across the country.

To accommodate the steady demand for FIRE's work, we welcomed two senior attorneys, two mid-level attorneys, a part-time amicus attorney, and four litigation fellows in 2022. And we plan to add more key players to our all-star team in 2023, including a public records attorney and additional paralegals. With a larger team, we'll be able to take on more cases that make a positive difference in more people's lives, all while holding ourselves to the high standard of excellence you have come to expect from FIRE.

We will continue to hold government officials' feet to the "FIRE" as we begin the new year. On behalf of my colleagues, thank you for all your support to make our work possible.

Darpana Sheth
Vice President of Litigation

WINNING IN COURT AND ON CAMPUS

Judge tears down Clovis Community College's discriminatory poster policy

In November 2021, three students from a campus chapter of Young Americans for Freedom received permission from administrators to put up flyers on bulletin boards inside Clovis Community College's academic buildings. The flyers advocated for freedom and listed the death tolls of communist regimes.

However, shortly after the flyers went up, Clovis President Dr. Lori Bennett ordered them removed. Administrators used a vague and overbroad policy — prohibiting posting flyers with “inappropriate” or “offensive” language — to justify banning them.

That's when FIRE stepped in. Fighting on behalf of the students, we secured a victory in October, when a federal district court judge ordered Clovis to abandon the unconstitutional speech code. Still, we're keeping an eye on the school, ensuring it respects student rights going forward.



VICTORY! Collin College settles lawsuit with professor, reinstates her teaching contract

In January 2021, Collin College fired professor Suzanne Jones for her advocacy of unions and support for removing Confederate monuments.

But public institutions like Collin College are bound by the First Amendment: They cannot lawfully retaliate against professors for exercising their freedom of speech and association.

That's why FIRE represented Jones in a lawsuit against Collin College. Fortunately, the court saw it our way, calling the college's actions “clearly unconstitutional.” In November, administrators agreed to a settlement, reinstating the education professor with a two-year \$230,000 teaching contract and paying \$145,000 in attorneys' fees.

Court says no to 'dystopian' speech restrictions in higher ed

In September, FIRE asked a court to halt enforcement of Florida's HB 7 on behalf of professor Adriana Novoa, student Sam Recheck, and University of South Florida's First Amendment Forum.

The bill, dubbed the “Stop WOKE Act,” sought to restrict instruction on eight concepts related to “race, color, national origin, or sex” in college classrooms, and to prohibit endorsing “any opinion” unless it is “issued by the Department of Education.” But governments unilaterally legislating what cannot be discussed in a college classroom is bad for everyone — regardless of their politics.

In November, the court granted FIRE's motion and halted enforcement of key aspects of the Stop WOKE Act, calling the law “positively dystopian.” The judge explained that “the First Amendment does not permit the State of Florida to muzzle its university professors.”



“ We wanted to criticize authoritarian governments, but we had no idea that our own college would try to stop us. I'm glad we fought back, because all students should be able to speak out at college.

—Alejandro Flores, YAF Clovis founder ”



“ It is a happy day not only for Sam and me, but for the institutions of this country. I hope that the courts will defend the existence of a public education that cannot be manipulated by politicians to push any ideology, now and in the future.

—Adriana Novoa, USF professor ”



HECKLER'S VETOES: THE SHOUT-DOWNS AND SHUT-DOWNS SWEEPING THE NATION



Photo by Zach D Roberts/NurPhoto via AP

An insidious form of censorship is becoming concerningly common across U.S. campuses. It's called the "heckler's veto," and it happens when hecklers — those who seek to silence a speaker — "veto" a speech by so severely and substantially disrupting it that it cannot continue.



Cornell students disrupt Ann Coulter event

When a college cancels an event due to a disturbance — or even potential disturbance — it grants a heckler's veto to those individuals or groups seeking to cancel the event. The term also encompasses situations when a college punishes students or professors for the potential or actual reaction to their expression, such as when it imposes large security fees on student groups for hosting a controversial speaker.

In just the last few months, FIRE saw this phenomenon in action at two prominent U.S. universities.

In October, Pennsylvania State University capitulated to hecklers

after weeks of standing by its First Amendment obligations. It deplatformed a student-hosted comedy show featuring Proud Boys founder Gavin McInnes and conservative comedian Alex Stein after protesters were involved in skirmishes that included spitting and pepper spray.

And in November, Cornell University students shouted down right-wing commentator Ann Coulter during a speaking engagement. Though Cornell commendably resisted demands to preemptively cancel the event, the student attendees opposed to Coulter produced such a substantial disruption that it was cut short after just 30 minutes.

In response, FIRE confronted each university, publicly reminding them that severely disrupting events — and capitulating to disruptors by canceling events — is unacceptable. We told Penn State it must not restrict events unless absolutely necessary, and that, as a public university, it is legally obliged to provide sufficient security to ensure events proceed as planned. As for Cornell, we urged it to back up its speech-protective policies with education; to improve its culture by teaching its students that using force to silence speech is censorship — and that's not okay.

As always, we stand ready to advise schools in advance of disruptions, empowering them to stop

deplatforming efforts before they result in cancellations, for the sake of speakers and listeners everywhere. Further, we're setting the stage for more tolerance of ideas — and less tolerance of heckler's vetoes — with education and advocacy initiatives like our recently launched "Learn with FIRE" courses, which explore why free speech matters.

We urge universities to use our orientation materials to set a precedent that free expression is respected and expected.



According to FIRE's 2022-2023 College Free Speech Rankings report, **more than three-in-five students reported it acceptable to shout down a speaker.**

ACADEMIC FREEDOM IN JEOPARDY? FIRE IS ON THE CASE.

PROVIDENCE COLLEGE DROPS TERMINATION PROCEEDINGS AGAINST PROF

James Waters is an accomplished biology professor at Providence College. During a fall lecture on the mechanisms of hormonal contraception, Waters held up a box of Plan B to supplement the lesson, then told students they could come to office hours with further questions. This sparked rumors — ultimately determined to be unfounded — that Waters was actively distributing contraceptives to students on campus at the private Catholic institution.

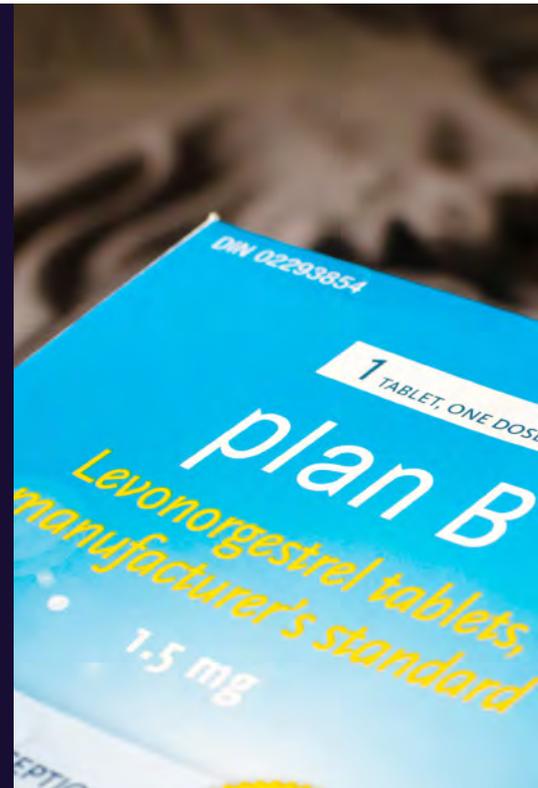
This prompted Providence Provost Sean Reid to ask if the box of contraceptives was kept in Waters' office. Waters confirmed it was, and immediately complied when asked to dispose of it. Unfortunately, in a meeting with Reid

and the dean the next day, Reid told Waters that simply having the box in their office on campus was egregious enough behavior to warrant termination. Nevermind that the professor used the box solely for pedagogical purposes.

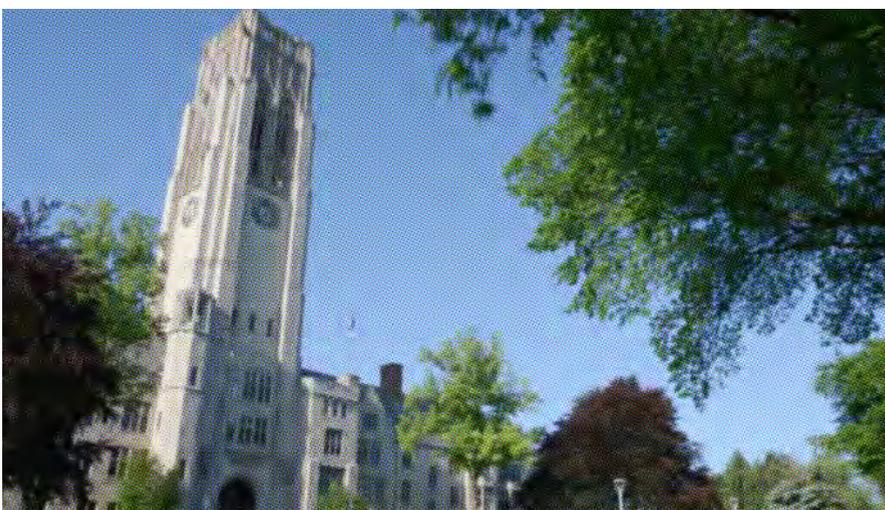
That's when Waters contacted FIRE.

We quickly reminded Providence that, while not bound by the First Amendment, its own stated commitment to academic freedom establishes that its faculty enjoy the right to possess materials for pedagogically-relevant purposes.

Within hours, Waters' job was saved, as the college ceased its investigation.



UTOLEDO WON'T REQUIRE FACULTY, STUDENTS TO USE 'CHOSEN FIRST NAMES'



In February 2022, FIRE wrote to the University of Toledo, criticizing its proposed Inclusive Gender Practices policy, which mandates that students and faculty refer to others by their chosen first names in all communications that occur “in University programs and activities, on

University property or at University sponsored events.” The proposed policy would reach personal emails, social media posts, student newspaper articles, and even private conversations.

While persistently calling someone by their non-preferred first name

could rise to the level of discriminatory harassment, that is a high bar not met by mere offense or discomfort.

So FIRE told UToledo that, as a public university, it generally cannot regulate student expression based on its content or message. We also explained that the overbroad policy infringes faculty speech outside of the classroom.

When UToledo implemented the policy in September, it incorporated some of our recommendations. We wrote the school again in November to address the remaining issues: Shortly afterward, UToledo updated the language again, this time just recommending — not mandating — that UToledo students, staff, and faculty use an individual's chosen first name.

This is an unequivocal win for UToledo students and faculty.

EASTPOINTE RESIDENTS FIND THEIR VOICE, SPEAK UP TO MAYOR WHO SILENCED THEM AT CITY COUNCIL MEETING

Mary Hall-Rayford
Plaintiff



Eastpointe Mayor Monique Owens has a problem with criticism.

During the public-comment period of a September city council meeting, Owens berated and censored three constituents, insisting that Eastpointe residents have no First Amendment right to directly criticize her — throwing a temper tantrum that ultimately derailed the entire meeting.

So, on Nov. 9, FIRE filed a federal lawsuit against Owens and the City of Eastpointe, seeking an injunction to stop the mayor's censorship and to allow criticism of her during the Eastpointe City Council's public-comment period. A month later, the city folded, agreeing to a preliminary injunction that barred Owens and Eastpointe from, among other things, cutting off criticism of Owens, prohibiting discussion of her various scandals, and prohibiting directly criticizing her.

This marks a significant victory for the citizens of Eastpointe, as, before FIRE's intervention, their expressive rights were publicly stifled by Owens in dramatic fashion.

During the council meeting where the controversy began, Eastpointers attempted to weigh in on a scandal involving their elected officials; Owens herself and Councilman Harvey Curley. Owens claims that in June, the 85-year-old councilman assaulted her at a community car parade, which he



Eastpointe Mayor Monique Owens sits by herself after derailing a September city council meeting by silencing community members who wished to speak

“Mayor Owens may not want to hear our feedback, but we have the right to speak up. Change doesn’t happen when people sit quietly.”

Mary Hall-Rayford
Plaintiff

denies. Eastpointe police declined to arrest Curley, and prosecutors did not file charges. And, during the public-comment period of the meeting, Owens did not let Eastpointers express their thoughts on the matter.

At the meeting, Eastpointe’s city attorney pushed back, correctly explaining that “members of the public have a right to address the city council” and “may speak individually about a member of the council as well.”

But Owens didn’t listen. She continued to shout down and cut off her critics. So FIRE handed four Eastpointers the mic, suing to protect their right to criticize public officials and to challenge the unconstitutional city council policy

prohibiting the public from directing comments at an individual member during the public-comment segment of council meetings.

“I love Eastpointe. Eastpointe is my home,” said plaintiff Mary Hall-Rayford, a community activist, former chaplain, and school board member who attempted to speak at the meeting. “But every resident should have the freedom to express their thoughts about what happens in their community. Mayor Owens may not want to hear our feedback, but we have the right to speak up. Change doesn’t happen when people sit quietly.”

Indeed, members of the public have both a constitutional right and a civic duty to debate and discuss how their government is performing. A democracy requires citizens to pointedly critique government officials — to test the soundness of their policies and the mettle of their leadership. That is why political speech, specifically, lies at the heart of the First Amendment.

“City council meetings aren’t safe spaces for elected officials,” said FIRE attorney Harrison Rosenthal. “They’re opportunities for politicians to get honest feedback from the public. FIRE will make sure that Owens and other mayors tempted to abuse their authority get the message that the First Amendment trumps their egos.”



“This is Michigan, not Moscow. Public officials are elected to serve the people, not silence them.”

Conor Fitzpatrick,
FIRE attorney



1.9 Million
The number of views generated by FIRE’s video exposing the mayor’s treatment of her constituents



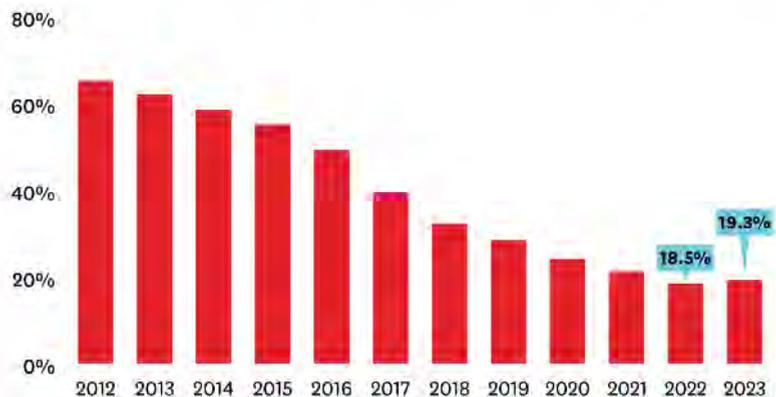
2023 SPOTLIGHT ON SPEECH CODES SHOWS MIXED RESULTS FOR CAMPUS EXPRESSION POLICIES

Most college students in the United States should be able to expect that freedom of expression will be upheld on their campuses. Public institutions are legally bound by the First Amendment, and the vast majority of private institutions promise their students free speech rights. However, FIRE’s annual review of our 2023 Spotlight on Speech Codes report paints a murkier picture, revealing that the reality on campus doesn’t always match the admissions brochure.

Unfortunately, the percentage of schools earning an overall “red light” rating — meaning they maintain policies that clearly and substantially restrict free speech — increased for the first time in 15 years. This reverse in progress was caused, in part, by the Minnesota State Colleges and Universities system, which adopted a new, restrictive harassment policy. On the bright side, the number of overall “green light” schools — whose policies do not seriously imperil free speech — reached an all-time high.

In light of these mixed results, students who value free expression

The percentage of schools earning an overall red light rating increased for the first time in 15 years, from 18.5% last year to 19.3% this year.



must critically examine the state of free speech at the specific school they attend or are considering attending. Fortunately, FIRE has the resources they need. The “Find a School” page on our website enables students and parents to view speech code ratings and specific policies at more than 475 colleges and universities. Students can also view our College Free Speech Rankings to evaluate other factors that contribute to a school’s overall free speech climate.

As always, we will continue to work tirelessly with college and university administrators throughout the nation to combat restrictive policies directly, recommending changes that bring them in line with First Amendment standards.

See how your alma mater stacks up at: thefire.org/spotlight

FREE SPEECH IN THE NORTHEAST: COMBATING UNLAWFUL SPEECH RESTRICTIONS IN NY AND PA

Since FIRE announced its expansion in June, we've ramped up our off-campus litigation and advocacy efforts to protect expressive rights throughout America — whenever and wherever they're violated. Here are a few of the off-campus cases we've addressed post-expansion.



NY CRACKS DOWN ON ONLINE SPEECH

On Dec. 1, FIRE sued New York Attorney General Letitia James on behalf of First Amendment expert Eugene Volokh, who runs the legal blog, “The Volokh Conspiracy,” as well as on behalf of social media platforms Rumble and Locals. The lawsuit challenges a new state law that forces websites and apps to address online speech that someone, somewhere, finds humiliating or vilifying.

“New York politicians are slapping a speech-police badge on my chest because I run a blog,” said Volokh.

“I started the blog to share interesting and important legal stories, not to police readers’ speech at the government’s behest.”

As Volokh explains in a Dec. 1 op-ed in the Wall Street Journal, under this law, internet platforms of all stripes are forced to publish a policy explaining how they will respond to online expression that could “vilify, humiliate, or incite violence” based on race, color, religion, or other protected categories. Further, they’re required to create a way

for visitors to complain about “hateful” content and to answer such complaints with a direct response. Refusal to comply could mean investigations from the attorney general’s office, subpoenas, and daily fines of \$1,000 per violation.

“In the name of combating ‘hateful conduct,’ New York’s law aims to regulate a vast amount of everyday speech — jokes, political debates, random commentary, you name it,” said FIRE senior attorney Jay Diaz. “That’s a problem. The First Amendment protects all of us, and this new law doesn’t.”

At FIRE, we know that no government entity can legally compel blogs or other internet platforms to police speech. That’s why we’ll continue to fight this restrictive law until free speech rights are restored.

PA PUBLIC PARK PROHIBITS POLITICAL SPEECH

If the First Amendment protects anything, it protects political speech in a public park.

On June 11, Kevin Gaugen, board member of Pennsylvania’s Keystone Party, and Dave Kocur, former Keystone Party candidate, went to Fort Hunter Park to collect signatures for Dave to be

on the ballot. But while they were there, Dauphin County Parks and Recreation Director Anthea Stebbins told Kevin and Dave they were not allowed to collect ballot signatures, saying that the county prohibits all political activity in the large public park.

But this prohibition is unconstitutional. The Supreme Court has long held that members of the public have every right to engage in political activity in public parks.

On Oct. 13, FIRE demanded the county rescind its unconstitutional policy or face a lawsuit. And we’re not backing down. On behalf of Kevin, Dave, and all Pennsylvanians, we won’t rest until the right to use public parks for core political speech is restored.

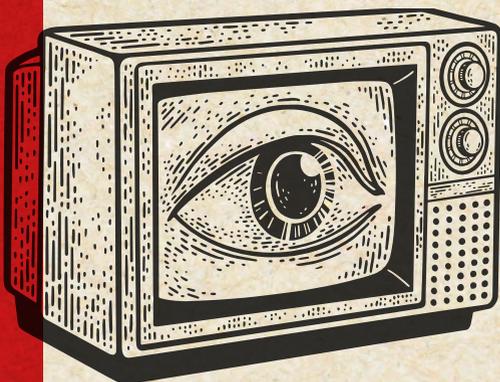


THE GOVERNMENT DECIDING WHAT IS TRUE IS A FREE SPEECH NIGHTMARE



In April, the Department of Homeland Security unveiled a new board to tackle what the government believed — and still believes — is an existential crisis facing American democracy: disinformation. The Disinformation Governance Board's creation, however, did not go over well. Comparisons to George Orwell's "Ministry of Truth" flooded social media.

Within three weeks of its announcement, the board was put on ice and its first executive director, Nina Jankowicz, resigned. The Department of Homeland Security apparently saw how unpopular it was and shuttered it. Nevertheless, the problem of disinformation — and its siblings, misinformation and malinformation — is not going away anytime soon.



So, what is misinformation, disinformation, and malinformation?

DISINFORMATION is essentially a lie uttered with malicious intent. The individual or entity speaking knows what they're saying isn't true and is intentionally trying to deceive people into believing something false to achieve an objective.

MISINFORMATION occurs when someone inadvertently spreads false information. Unlike disinformation, people who share misinformation do not intend to lie or deceive. People believe many things that aren't true, so bad information proliferates with no ulterior motives.

MALINFORMATION is the most Orwellian of the three concepts. The government's description for this one deserves to be quoted. According to DHS, "malinformation is genuine information, typically private or revealing, that may be distributed in a campaign to cause harm to a person's reputation in furtherance of the campaign's objective."

That's a useful definition of the term. But it's also so vague that it can be used to discredit, disparage, or suppress all sorts of speech and expression. Giving the government free rein to determine what constitutes "malinformation" — and the power to stifle it — is guaranteed to result in abuse.

Even if the reported flood of disinformation, misinformation, and malinformation poses a threat to our ability to readily separate truth from falsehood, an overzealous government response that chills or otherwise censors constitutionally protected speech isn't the answer:

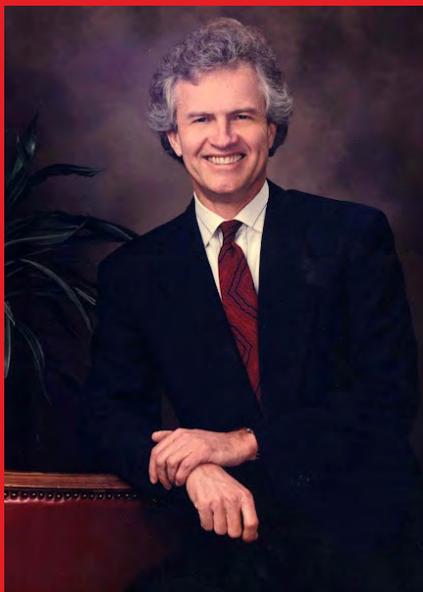
If the government is allowed to determine truth and falsehood for its people, we're no longer citizens but subjects.

That's why FIRE is "watching the watcher" on this issue, remaining vigilant to the government's use of these designations to police speech as well as its influence on Big Tech platforms. While we're at it, we're keeping up with all things online speech-related: Head over to FIRE's Newsdesk or check out recent episodes of our podcast, "So to Speak," on "jawboning," Elon Musk's Twitter acquisition, and what the First Amendment protects on social media for our experts' latest takes on free speech and censorship in the digital age.



DONOR SPOTLIGHT DON CRAWFORD

President, *The Percy Fund*



“Give me liberty or give me death,” said Patrick Henry, the fiery revolutionary. The liberty he demanded came only as a result of the brilliant minds of our Founding Fathers in the form of the greatest document ever written, the Constitution of the United States.

The core of liberty for all humankind can be found in the First Amendment. There is no liberty, no freedom of any kind without the first liberty, the freedom of religion. What’s more, the federal government is absolutely forbidden to infringe upon the right to free speech.

Our Constitution and its First Amendment envisioned a battlefield, not of weapons, violence, intimidation or prohibition, but one of ideas, constructive argumentation, and rational debate without intimidation or fear of retribution. Those incredible rights, those constitutional freedoms, are now, more than ever, in danger of modification or even elimination. We as a society now fail to realize that these freedoms: These inalienable rights, this liberty and justice we now

take for granted, are in extreme danger of serious erosion or elimination. If any are lost, they are lost forever!

FIRE knows that. It protects and defends the oppressed, exposes and prosecutes the oppressors and stands with all its might for First Amendment freedoms, and especially for freedom of speech. We, the Percy Fund, support FIRE, believe in its cause and stand with it in protecting the right of free expression, no matter the content. If that precious constitutional right ever goes away, much of our great country, and our liberty, will go with it. There is no America without these inalienable First Amendment freedoms!

The Percy Fund, under the leadership of Don Crawford, is a valued and dedicated partner of FIRE. We are deeply grateful to have Don and the foundation on our team. You can learn more about supporting FIRE’s work at thefire.org/donate. If you would like to discuss FIRE’s options for giving, please contact Ashley Adams at ashley@thefire.org or 215-717-3473.

CALLING ALL LAW STUDENTS: BECOME A 2023 HELLMAN FELLOW

Are you a law student committed to free expression? Join America’s premier defender of free speech.

Each year, FIRE offers a select group of law students a \$7,000 stipend to complete a 10-week program that runs from June through August: the Arthur D. Hellman Fellowship in First Amendment Litigation. The fellowship trains and inspires students, who build a long-term relationship with FIRE upon completing the program. Many past participants have returned to

work at FIRE as full-time employees; joined our legal network, through which they take their own cases pro bono; authored supporting amicus briefs; or served as our local counsel.

**Apply by Feb. 14 at:
thefire.org/careers**

“As an aspiring First Amendment litigator, I could not have had a more valuable summer experience than the Hellman Fellowship. From the very first day, all of the Fellows in my cohort were given challenging and important assignments, included in strategy meetings for ongoing and planned cases, and supported by the FIRE team.”
— Theo Tamayo, Class of 2022





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We're bringing friends, allies, and supporters together at a special gala celebrating FIRE's new era of advocacy.

Join us:
thefire.org/gala2023



BUT WAIT! There's more...

FIRE AND NEW TOLERANCE CAMPAIGN RALLY SUPPORT FOR PRO-FREE SPEECH PRESIDENT AT EMERSON COLLEGE

In 2022, FIRE placed Emerson College on its 2022 "10 Worst Colleges for Free Speech" list after Emerson administrators suspended and investigated a student group for handing out stickers critical of the Chinese government that read "China Kinda Sus." In light of this, it's a positive sign that Emerson's presidential search prospectus describes an "[a]ppreciation for diverse ideas and the free expression of them" as a "non-negotiable value." We agree, and, along with the New Tolerance Campaign, launched a public email campaign encouraging Emerson's search committee to appoint a president who supports free expression.

So far, more than 3,000 messages have already been sent to Emerson Presidential Search Committee members. And with just a few clicks, you, too, can do your part to ensure Emerson becomes a safer place for student expression.

To join the campaign, visit: p2a.co/uLCqjNK

'FREE SPEECH MAKES FREE PEOPLE' BILLBOARDS BRING FIRE TO MICHIGAN

In November, we took our message directly to the people, kicking off a billboard campaign in Detroit, Michigan, to highlight the importance of protecting free speech. The billboards, which read "Free Speech Makes Free People" remind Michiganders that the First Amendment protects their right to speak freely: A fitting message in the state where we launched our first off-campus lawsuit. The billboards will remain up into 2023: If you see one, be sure to snap a pic and tag us on social media!