# Hate Speech DA Negative

## 1NC

### 1NC — Hate Speech DA

#### The [first/next] off-case is the Hate Speech DA.

#### First, the Supreme Court recently affirmed that hate speech is a protected form of speech. The plan prohibits limitations on this speech.

New York Times Editorial Board 17 — New York Times Editorial Board, 2017 (“Free Speech at the Supreme Court,” New York Times, June 19th, Available Online at <https://mobile.nytimes.com/2017/06/19/opinion/supreme-court-free-speech-gerrymandering.html>, Accessed 08-12-2017)

FREE SPEECH In Matal v. Tam, the justices ruled that the government can’t pick and choose which trademarks it registers based on whether they offend certain people or groups. The case was brought by the Slants, an Asian-American dance-rock band that had chosen its name — a familiar slur against people of Asian descent — to defuse its negative power. The Patent and Trademark Office rejected the name under a provision in a 70-year-old federal law prohibiting the registration of trademarks that “disparage” any “persons, living or dead, institutions, beliefs, or national symbols.” Writing for the majority, Justice Samuel Alito said the law violates a “bedrock First Amendment principle: Speech may not be banned on the ground that it expresses ideas that offend.” That’s the right call. The First Amendment bars the government from discriminating among speakers based on their viewpoints. In this case, the Trademark Office did that by blocking only registrations for trademarks it determined to have negative connotations. The free-speech clause doesn’t apply to the government’s own speech, but registered trademarks can’t be put in that category — otherwise the government would have to argue that it endorses each of the more than two million trademarks it has already registered. The decision is likely to help the Washington Redskins, who lost their trademark protections in 2014 after years of complaints from Native American groups. At the time, this page supported the Trademark Office’s decision, and we still regard the Redskins name as offensive. Based on this case, however, we’ve since reconsidered our underlying position.

#### Second, these forms of racialized hate speech reinforce dangerous white supremacy.

Moore 17 — Wendy Leo Moore, PhD. Professor of Sociology @Texas A&M, 2017 ("The Right to Be Racist in College: Racist Speech, White Institutional Space, and the First Amendment," *Law & Policy*, Vol. 39, Issue 2, pp. 99-120, 2017)

Just a small sampling of racist incidents on college and university campuses throughout ￼the post–civil rights era reveals the nature of this persistent form of racism. For example, in September of 2016 a man wearing a gorilla mask and carrying a banana on a string showed up to a Black Lives Matter rally at East Tennessee State University and walked around thrusting the banana into the faces of African American students participating in the rally (Jaschik 2016). In 2010, at the University of California at San Diego (UCSD), a group of white students organized a party called a “Compton Cookout,” which they claimed was in “celebration” of Black History Month. The invitation was posted publicly on Facebook, asking people to dress and behave in “ghetto” fashion and indicating that chicken, watermelon and malt liquor would be served. In response to this provocation, black students organized a protest, criticizing this racist depiction of blackness and black culture. The protest sparked an outburst of racist activity at UCSD, including a campus television broadcast in which white students called the black student protestors “ungrateful niggers,” the hanging of a noose from a bookcase in the main library, and the placement of a white pillowcase in Ku Klux Klan (KKK) style over a campus statue (Archibold 2010; Gordon 2010). In 2007 at Hamline University, six white student-athletes dressed for Halloween in what they called “mock African tribal outfits,” donning blackface, black Lycra suits, and Afro wigs. On the morning of November 4, 2008, the day that Barack Obama became the first African American president of the United States, a noose was found hanging from a prominent tree on campus at Baylor University (Hoffstrom 2008).2 In the spring of 2002, a white student at Harvard Law School used the law school website to outline the facts of a property case involving racially restrictive covenants and used the term “nigs” to refer to African Americans. After a protest in reaction to this incident, another white male student sent an anonymous e-mail (though he was later identified) to a first-year black woman law student that said, among other things, “We at the Harvard Law School, [are] a free, private community, ￼where any member wishing to use the word ‘nigger’ in any form should not be prevented from doing so.”3 In April 2000 at the University of Iowa College of Dentistry, faculty members received an e-mail message demanding that the school dismiss its minority students within three days, and after that three-day period had passed, students of color in the college received threatening racist e-mails (Leonard 2000). In February 1995 at UC Berkeley’s renowned School of Law, 14 students of color received letters in their mailboxes calling them “niggers,” “wetbacks,” and “chinks” and suggesting that Boalt was “for whites only” (Koury and Koh 1995). In the fall of 1986 at the Citadel Military College, five white cadets wearing KKK-type garb stormed into the dormitory room of a black freshman, yelling racial epithets and burning a paper cross (UPI 1986).¶ These examples are illustrative of incidents that have taken place at all types of histori¶ lly white colleges and universities across the nation, beginning after the legal changes of the civil rights era through which people of color gained entry to these institutions. In 1990 the National Institute Against Prejudice and Violence reported that incidents of “hate speech” on college campuses and universities could be calculated at between 800,000 to 1 million per year (Matsuda et al. 1993).4 Indeed, a 1994 report conducted by the University of Houston Institute for Higher Education Law and Governance noted that US colleges and universities are characterized by a “climate of bigotry” (Agguire 1994). Yet when instances like those discussed above occur, individuals in the media and in the academy often seem surprised, and the discourse around these incidents frames them as “recent trends” or “increasing hostilities”—as something new and/or unique (see Matsuda et al. 1993). The reality, however, is that racist expressions and activities on historically white college and university campuses have been consistent and relatively regular occurrences throughout the post–civil rights era. ￼The persistence of these forms of overt and hostile racism in national institutions, which are meant to be gateways to upward mobility, betrays a contradiction in the broader contemporary popular discourse that racism is a thing of the past that disappeared following the legal changes brought about during the era of the civil rights movement. It is perhaps this contradiction that leads scholars and pundits to frame such incidents as newly emergent, isolated, or surprising. Moreover, incidents of blatant racism on college and university campuses seem to contradict contemporary sociological analyses of the racial dynamics of the post–civil rights era. Contemporary race scholars suggest that while racist structures and hierarchies persist, racist expression typically takes place in a less overt, more subtle manner—what Eduardo Bonilla- Silva (2010) has termed “color-blind racism” (see also Coates 2011; Bobo, Kluegel, and Smith 1997; Carr 1997). Rather than expressing overt hostility, color-blind racist narratives assert a decontextualized commitment to racial equality while simultaneously ignoring or justifying— and thereby reifying—historical and structural racial inequality (Bonilla-Silva 2010; Bell and Hartmann 2007). Color-blind racist discourse, then, often takes place through an espoused commitment to “abstract liberalist” discursive tenets, which profess rhetorical commitment to equality of opportunity and, at the same time, minimize the contemporary relevance of the history of explicit racial oppression as well as contemporary institutional and structural mechanisms that perpetuate racial inequality. Many contemporary scholars of race and education have documented the manner in which color-blind racism has become a dominant discourse in educational institutions in the post–civil rights era (e.g.,; Moore 2008; Gallagher 2003; Lewis 2003; Parks-Yancy and Post 2003; Carr 1997; DiTamaso, Feagin, Vera, and Imani 1997). While the concept of color-blind racism provides invaluable theoretical insight into the persistence of racial inequality in the post–civil rights era and its continued manifestations in US institutions, ￼the current scholarship fails to explain adequately the persistence of explicit hostile racist incidents on college and university campuses like the ones described above.¶ Placing these incidents within the broader context of a racialized social structure, which is characterized by a dominant discourse based on color-blind racism, this research reveals an important connection between these overt and blatant racist expressions and the more tacit and covert racial tenets of color-blind racism. In fact, we suggest that the two forms of racial expression—explicit overt racist expression and covert color-blind racist discourse—work in connection with one another to mark and reinscribe colleges and universities as white institutional spaces. Specifically, we suggest that the explicit nature of incidents of racist expression gives rise to two important discursive frames that together tend to reinforce institutional and structural racial inequities. On the one hand, explicitly racist incidents on college and university campuses create a discursive platform for liberal college communities to publicly reject racism while tacitly delimiting the definition of racism to only explicit expressions of racial hostility. In other words, these racist incidents provide an opportunity for institutional actors to reaffirm a commitment to color-blind principles of equality in their institutions. On the other hand, these incidents create a platform for the color-blind, abstract liberalist construction of freedom of speech advocated by organized free speech absolutists and codified by US courts. More specifically, racist incidents on college and university campuses give rise to a discourse that actively defends the right to racist expression. The discursive frames that arise in conjunction with racist expressions on college and university campuses serve as a mechanism of substantive racial exclusion, functioning to reproduce the white institutional space that characterizes historically white colleges and universities in the United States.

#### Finally, hate speech facilitates genocidal violence.

Tsesis 9 — Alexander Tsesis, Prof. Law @Loyola Chicago, 2009 (“Dignity and speech: The regulation of hate speech in a democracy,” *Wake Forest Law* Review, 2009, Vol. 44, Available Online at http://lawecommons.luc.edu/cgi/viewcontent.cgi?article=1040&context=facpubs)

Permitting persons or organizations to spread ideology touting a¶ system of discriminatory laws or enlisting vigilante group violence¶ erodes democracy. So it was in the Weimar Republic, where the¶ repeated anti-Semitic propaganda of vulgar ideologues like Julius¶ Streicher, who published perverse attacks against Jews in Der¶ Stiirmer, chipped away at the post-World War I German democratic¶ experiment.6¶ ' Avowedly influenced by nineteenth century antiSemitism,¶ his weekly stories of Jewish ritual murder and sexual¶ exploitation were a crude way of antagonizing the victims and¶ gaining support for widespread prejudice against Jews." It is truly¶ eerie, now, looking at photographs relating the effectiveness of Nazi¶ propaganda: respectable looking adults in suits and dresses¶ listening to long lectures on Jewish inferiority; children, barely able¶ to stand on their two feet, raising their right arm in a Nazi salute.¶ Nazi propaganda incorporated numerous well-known¶ nineteenth century slogans. To take one example, Streicher, who¶ was later sentenced to death by the Nuremberg War Crimes¶ Tribunal, 64 used an inflammatory slogan, "The Jews are our misfortune!" on his newspaper masthead.& At one point over¶ 130,000 copies of his publication were sold and displayed on public¶ message boards throughout the country.66 The phrase also became¶ prominently featured on posters throughout the Third Reich.67¶ This slogan was taken verbatim from an 1879 article by¶ Professor Heinrich von Treitschke, arguably the greatest German¶ historian of the nineteenth century.68 Its visibility in pre-World War¶ II German society helped legitimize anti-Semitism there in¶ intellectual circles.69¶ A gradual process of incitement also occurred elsewhere. In¶ many American colonies, authors and legal institutions had been¶ degrading blacks since the seventeenth century.70 By national¶ independence, in 1776, the colonies of South Carolina and Georgia¶ had long-standing commitments to retaining slavery despite the oftrepeated¶ mantra of universal natural rights. In 1787, those two states refused to endorse the proposed Constitution without¶ provisions protecting that undemocratic institution."72¶ Senator John Calhoun, Congressman Henry Wise, and other¶ powerful racist orators misled the public about the supposedly¶ benevolent slave owner, feeding his slaves and treating them like¶ his own children. 3 The repeated inculcation of supremacism proved¶ effective in misrepresenting blacks as moveable property.¶ Abolitionists like Theodore Weld, Angelina and Sarah Grimk6,¶ Frederick Douglass, and William Lloyd Garrison were unable to win¶ over the country to their abolitionist views.74 To the contrary,¶ proslavery thought monopolized the Southern marketplace of¶ ideas.' Slavery came to an end after a bloody Civil War, not¶ through articulate or even heated debate.6¶ Because intimidating hate speech has so often inflamed¶ dangerous attitudes, the value of such expression should be¶ balanced against the likelihood that it will cause harm. The risks¶ are greater when hate propaganda incorporates symbolism, like¶ swastikas, that demagogues have historically displayed to rally¶ supporters to action. Robert Post is undoubtedly correct that speech¶ is valuable because it provides a breeding ground for "collective selfdetermination."7¶ 7 The more difficult question is how self-expression¶ should be treated when it conflicts with the safety of its target.¶ As much as self-expression is fundamental to democratic¶ institutions, it can, nevertheless, be balanced against the social¶ interest in safeguarding a pluralistic culture by preventing the¶ instigation of demagogic threats. Placing no limits on speech-not¶ even on expressions blatantly intended to make life miserable for¶ minorities-preserves the rights of speakers at the expense of¶ targeted groups. Defamation statutes, zoning regulations, and¶ obscenity laws indicate that the freedom of speech is not shielded¶ where it undermines other individuals' legitimate interests. 7 Hate speech regulation undoubtedly inhibits some opportunities for selfexpression;¶ more importantly, it prevents instigative communication¶ from undermining its targets' ability to live unaccosted by¶ harassment.¶ In the many historic examples when destructive messages¶ proved to be effective in instigating violence, they caused enormous¶ social turmoil. Just like shouting "fire" in a crowded movie theater,¶ which can be prohibited without violating the First Amendment,79¶ hate speech can cause a stampede. Take Spain, for instance, which¶ expelled its Jewish population in 1492.80 The expulsion came after¶ years of Inquisition propaganda and hurt both the exiled Jews and¶ the remaining Spanish population. 1 Teachings by zealous¶ preachers like Vincent Ferrer, a later-canonized Dominican monk,¶ in the late fifteenth century brought on a nationwide anti-Jewish¶ hysteria that opposed the free practice of Judaism while decrying¶ overt violence.82 Pursuant to his instigation, a Castilian decree¶ discriminated against Jews in employment, dress, and criminal¶ punishments.83 Historian Heinrich Graetz explained the connection¶ between anti-Jewish preaching and draconian edicts: the populace¶ was "inflamed by the passionate eloquence of the preacher [and]¶ emphasized his teaching by violent assaults on the Jews." 4 Another¶ historian explained that:¶ For centuries, Christians had been encouraged to hate the¶ Jews. With preachers telling them, Sunday after Sunday, that¶ Jews were perverted and guilty of complicity in the death of¶ Christ, the faithful ended up by detesting them with a hatred 815 that was bound one day to express itself in violence .¶ Once unleashed, the expulsion of Jews from Spain followed¶ naturally from the verbal spread of hatred during the Inquisition.8 6¶ The economic consequences were grave. Many commercial enterprises in Seville and Barcelona, for instance, were ruined .¶ "Spain lost an incalculable treasure by the exodus of Jewish...¶ merchants, craftsmen, scholars, physicians, and scientists," wrote¶ the encyclopedic Will Durant, "and the nations that received them¶ benefitted economically and intellectually."88 Anti-Jewish preaching¶ in parts of Spain influenced a wide social segment of the population,¶ and the result was devastating both for the Jews who fled and for¶ the country that renounced them on dogmatic grounds. Elsewhere¶ in the ancient world, as historian Ben Kiernan has compellingly¶ documented, periodic mass massacres perpetrated against segments¶ of the native populations in Ireland, North and South America, and¶ Australia were likewise influenced by widely disseminated¶ dehumanizing statements. 9¶ The spread of ethnic and racial hatred continues to elicit¶ violence throughout the modern world. The dissemination of¶ ethnically incitable messages has precipitated tribal clashes in¶ Kenya.90 In Rwanda, ethnic stereotyping and repeated media calls¶ for the extermination of Tutsi led to a massive genocide perpetrated¶ against that group.9¶ '¶ Arab racial hate propaganda in the Sudan has catalyzed a¶ government-sponsored attempt to "cleanse" black Africans in¶ Darfur, Sudan." Likewise, in the Democratic Republic of the Congo¶ the government has relied on the incitement of ethnic hatred,¶ creating a culture where ethnic murder is a routine militia¶ practice. In the Arab world, terror organizations like Hamas and¶ Hizballah spread hatred against Jews without any interference from several governments, including Egypt, Syria, Lebanon, and Saudi¶ Arabia. 94 School texts that are "written and produced by Saudi¶ government" teach children to kill Jews and to hate Christians and¶ Jews.95¶ Hate propaganda in these countries is far more virulent than it¶ is in the United States; nevertheless, a democracy committed to the¶ protection of individual rights does not run afoul of free speech¶ principles by criminalizing group incitement that has so globally¶ proven to influence harmful social movements.¶ A First Amendment theory, as the Supreme Court made clear in¶ Virginia v. Black, must examine whether there are historical¶ reasons to believe that offensive expression against an identifiable¶ group is likely to intimidate reasonable audiences. Robert Post's¶ argument about the undemocratic nature of hate speech regulation¶ regards "the function of public discourse" to be the reconciliation of¶ "the will of individuals with the general will. Public discourse is¶ thus ultimately grounded upon a respect for individuals seen as 'free¶ and equal persons."'97 He emphasizes democracy's central obligation¶ to protect private "autonomous wills."9" His insightful¶ characterization, however, captures only part of the raison d'etre of¶ democracy; on a more community-oriented level, that system of¶ governance serves to protect the overall well-being of the polity¶ against the wanton call for discriminatory conduct or violence. And¶ Black explicitly sanctions states' use of historical records to identify¶ symbolism that is likely to terrorize the populace and, therefore,¶ detract from the common good.99 This development in First¶ Amendment jurisprudence indicates that there is more to democracy¶ than self-determination.¶ Post's most recent statement on hate speech does not address¶ Black, even though the chapter was written after the Court¶ rendered its decision. 100 He connects the expression of hate to¶ "'extreme' intolerance and 'extreme' dislike."' °¶ ' This description,¶ while correct, does not account for the connection between hate¶ speech and extreme conduct. While the Constitution does not¶ authorize laws against negative emotions, speech that is¶ substantially likely to cause discriminatory harm, especially violence, can be regulated without infringing on the fundamental¶ principles of democracy.

## 2NC/1NR

### Hate Speech Turns Free Speech

#### Free speech is *already* regulated in discriminatory ways. Restricting hate speech is important because speech has material effects more important than first amendment rights.

Nielse, Sociology @ Northwestern, 6-21-17 (Laura Beth, http://www.latimes.com/opinion/op-ed/la-oe-nielsen-free-speech-hate-20170621-story.html)

As a sociologist and legal scholar, I struggle to explain the boundaries of free speech to undergraduates. Despite the 1st Amendment—I tell my students—local, state, and federal laws limit all kinds of speech. We regulate advertising, obscenity, slander, libel, and inciting lawless action to name just a few. My students nod along until we get to racist and sexist speech. Some can’t grasp why, if we restrict so many forms of speech, we don’t also restrict hate speech. Why, for example, did the Supreme Court on Monday rule that the trademark office cannot reject “disparaging” applications—like a request from an Oregon band to trademark “the Slants” as in Asian “slant eyes.” The typical answer is that judges must balance benefits and harms. If judges are asked to compare the harm of restricting speech – a cherished core constitutional value – to the harm of hurt feelings, judges will rightly choose to protect free expression. But perhaps it’s nonsense to characterize the nature of the harm as nothing more than an emotional scratch; that’s a reflection of the deep inequalities in our society, and one that demonstrates a profound misunderstanding of how hate speech affects its targets. Legally, we tell members of traditionally disadvantaged groups that they must live with hate speech except under very limited circumstances. The KKK can parade down Main Street. People can’t falsely yell fire in a theater but can yell the N-word at a person of color. College women are told that a crowd of frat boys chanting “no means yes and yes means anal” is something they must tolerate in the name of (someone else’s) freedom. At the same time, our regime of free speech protects the powerful and popular. Many city governments, for instance, have banned panhandling at the behest of their business communities. The legal justification is that the targets of begging (commuters, tourists, and consumers) have important and legitimate purposes for being in public: to get to work or to go shopping. The law therefore protects them from aggressive requests for money. Consider also the protections afforded to soldiers’ families in the case of Westboro Baptist anti-gay demonstrations. When the Supreme Court in 2011 upheld that church’s right to stage offensive protetsts at veterans’ funerals, Congress passed the Honoring America’s Veterans’ Act, which prohibits any protests 300 to 500 feet around such funerals. (The statute made no mention of protecting LGBTQ funeral attendees from hate speech, just soldiers’ families). So soldiers’ families, shoppers and workers are protected from troubling speech. People of color, women walking down public streets or just living in their dorm on a college campus are not. The only way to justify this disparity is to argue that commuters asked for money on the way to work experience a tangible harm, while women catcalled and worse on the way to work do not — as if being the target of a request for change is worse than being racially disparaged by a stranger. In fact, empirical data suggest that frequent verbal harassment can lead to various negative consequences. Racist hate speech has been linked to cigarette smoking, high blood pressure, anxiety, depression and post-traumatic stress disorder, and requires complex coping strategies. Exposure to racial slurs also diminishes academic performance. Women subjected to sexualized speech may develop a phenomenon of “self-objectification,” which is associated with eating disorders. These negative physical and mental health outcomes — which embody the historical roots of race and gender oppression — mean that hate speech is not “just speech.” Hate speech is doing something. It results in tangible harms that are serious in and of themselves and that collectively amount to the harm of subordination. The harm of perpetuating discrimination. The harm of creating inequality. Instead of characterizing racist and sexist hate speech as “just speech,” courts and legislatures need to account for this research and, perhaps, allow the restriction of hate speech as do all of the other economically advanced democracies in the world. Many readers will find this line of thinking repellent. They will insist that protecting hate speech is consistent with and even central to our founding principles. They will argue that regulating hate speech would amount to a serious break from our tradition. They will trivialize the harms that social science research undeniably associates with being the target of hate speech, and call people seeking recognition of these affronts “snowflakes.” But these free-speech absolutists must at least acknowledge two facts. First, the right to speak already is far from absolute. Second, they are asking disadvantaged members of our society to shoulder a heavy burden with serious consequences. Because we are “free” to be hateful, members of traditionally marginalized groups suffer.

#### Racism harms the marketplace of ideas

Post, JD, 91

(ROBERT C. POST - Professor of Law, School of Law (Boalt Hall), University of California at Berkeley. B.A., Harvard College, 1969; J.D., Yale University, 1977; Ph.D., Harvard University, 1980. “RACIST SPEECH, DEMOCRACY, AND THE FIRST AMENDMENT.” William and Mary Law Review. 1991. <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1924&context=wmlr> )

D. Harm to the Marketplace of Ideas A fourth theme in the current debate is that racist expression harms the very marketplace of ideas that the first amendment is designed to foster. A variety of different arguments have been brought forward to support this position. It is argued that racist expression ought to be "proscribed . ..as a form of assault, as conduct" inconsistent with the conditions of respect and noncoercion prerequisite to rational deliberation. 40 It is argued that racist expression is inconsistent with rational deliberation because it "infects, skews, and disables the operation of the market .... Racism is irrational and often unconscious."'41 Finally, it is argued that racism "systematically" silences "whole segments of the population,' 42 either through the "visceral" shock and "preemptive effect on further speech" of racist words,43 or through the distortion of "the marketplace of ideas by muting or devaluing the speech of blacks and other non-whites.."44 The class of communications subject to legal sanction would depend upon which of these various arguments is accepted. Depending upon exactly how racist expression is understood to damage the marketplace of ideas, the class might be confined to communication experienced as coercive and shocking, or it might be expanded to include communication perceived as unconsciously and irrationally racist, or it might be expanded still further to encompass speech explicitly devaluing and stigmatizing victim groups.

### Hate Speech Turns Education

#### Racism interferes with and harms education

Post, JD, 91

(ROBERT C. POST - Professor of Law, School of Law (Boalt Hall), University of California at Berkeley. B.A., Harvard College, 1969; J.D., Yale University, 1977; Ph.D., Harvard University, 1980. “RACIST SPEECH, DEMOCRACY, AND THE FIRST AMENDMENT.” William and Mary Law Review. 1991. <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1924&context=wmlr> )

E. Harm to Educational Environment Each of the four categories of harm so far discussed can be caused by racist expression within public discourse. There is, however, yet a fifth kind of harm which is quite important to the contemporary controversy, but which is relevant only to the specific educational environment of institutions of higher learning. This is the harm that racist expression is understood to cause to the educational mission of universities or colleges. The prevention of this harm is central to the definition of a great number of campus regulations. Universities and colleges characteristically seek to regulate racist communications that "directly create a substantial and immediate interference with the educational processes of the University," without articulating exactly how racist expression can cause that interference. 45 Some campus regulations are more specific, focusing on the damage that racist expression is understood to cause to particular individuals or groups. For example, some regulations only proscribe racist expression that "will interfere with the victim's ability to pursue effectively his or her education or otherwise to participate fully in University programs and activities.."46 Presumably this interference will occur for reasons similar to those that we have already canvassed. In a number of instances, however, college or university regulations enunciate special educational goals that are understood to be inherently incompatible with racist expression. For example, Mount Holyoke seeks to inculcate the value of diversity, which it views as plainly inconsistent with racist expression. Accordingly Mount Holyoke's regulations provide: To enter Mount Holyoke College is to become a member of a community.... Our community is committed to maintaining an environment in which diversity is not only tolerated, but is celebrated. Towards this end, each member of the Mount Holyoke community is expected to treat all individuals with a common standard of decency.47 Marquette University defines itself "as a Christian and Catholic institution. . . dedicated to the proposition that all human beings possess an inherent dignity in the eyes of their Creator and equality as children of God."48 Accordingly Marquette's regulations seek to maintain "an environment in which the dignity and worth of each member of its community is respected" and in which "racial abuse or harassment . . . will not be tolerated. 49 Mary Washington College sets forth what appears to be a secular version of this same educational mission; its regulations provide that the "goal of the College is to help all students achieve academic success in an environment that nurtures, encourages growth, and develops sensitivity and appreciation for all people."50 Accordingly "any activity or conduct that detracts from this goal-such as racial or sexual harassment-is inconsistent with the purposes of the college community."51 In such instances, racist expression interferes with education not merely because of general harms that it may inflict on groups or individuals or the marketplace of ideas, 52 but also, and more intrinsically, because racist expression exemplifies conduct that is contrary to the particular educational values that specific colleges or universities seek to instill.5

### They Say: “Hurts Minority Speech”

#### Cooption empirically denied — it’s a scare tactic

Yun and Delgado, JDs, 94

(David, partner @Jaudon & Avery LLP, Richard, Law@Alabama, “Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulation.” California Law Review. 1994. http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1712&context=californialawreview)

B. The "Reverse Enforcement" Argument A second paternalistic argument is that enactment of hate speech rules is sure to hurt minorities because the new rules will be applied against minorities themselves.61 A vicious insult hurled by a white person to a black will go unpunished, but even a mild expression of exasperation by a black motorist to a police officer or by a black student to a professor, for example, will bring harsh sanctions. The argument is plausibile because certain authorities are racist and dislike blacks who speak out of turn, and because a few incidents of blacks charged with hate speech for innocuous behavior have occurred. Nadine Strossen, for example, asserts that in Canada, shortly after the Supreme Court upheld a federal hate speech code, prosecutors began charging blacks with hate offenses. 62 But the empirical evidence does not suggest that this is the pattern, much less the rule. Police and FBI reports show that hate crimes are committed much more frequently by whites against blacks than the reverse. 63 Statistics compiled by the National Institute Against Violence and Prejudice confirm what the police reports show, that a large number of blacks and other minorities are victimized by racist acts on campus each year.' Moreover, the distribution of enforcement seems to be consistent with commission of the offense. Although an occasional minority group member may be charged with a hate crime or with violating a campus hate speech code, these prosecutions seem rare.6 5 Racism, of course, is not a one-way street; some minorities have harassed and badgered whites. Still, the reverse-enforcement objection seems to have little validity in the United States. A recent study of the international aspects of hate speech regulation showed that in repressive societies, such as South Africa and the former Soviet Union, laws against hate speech have indeed been deployed to stifle dissenters and members of minority groups.6 6 Yet, this has not happened in more progressive countries.67 The likelihood that officials in the United States would turn hate speech laws into weapons against minorities seems remote.

#### Global empirical evidence denies cooption and benefits from speech

Yun and Delgado, JDs, 94

(David, partner @Jaudon & Avery LLP, Richard, Law@Alabama, Speech We Hate: First Amendment Totalism, the ACLU, and the Principle of Dialogic Politics, The." Ariz. St. LJ 27 (1995): 1281.)

If protecting hate speech and pornography were essential to safeguarding freedom of inquiry and a flourishing democratic politics, we would expect to find that nations that have adopted hate speech rules and curbs against pornog-raphy would suffer quickly a sharp erosion of the spirit of free inquiry. But this has not happened. n46 A host of indus-trialized nations, including Sweden, Italy, Canada, and Great Britain, have instituted laws against hate speech and hate propaganda, n47 in many cases to comply with international treaties and conventions requiring such action. n48 Many of these countries traditionally respect free speech at least as much as the United States does. n49 No such na-tion has reported any erosion of the atmosphere of free speech or debate. n50¶ At the same time, the United States, which until recently has refused to put such rules into effect, has a less than perfect record of protecting even political speech. United States agencies have persecuted communists, n51 hounded Hollywood writers out of the country, n52 and harassed and badgered such civil rights leaders as Josephine Baker, n53 Paul Robeson, n54 and W. E. B. DuBois n55 in a campaign of personal and professional smears that ruined their reputations and destroyed their ability to earn a living. In recent times, conservatives inside and outside the Administra-tion have disparaged progressives to the point where many are now afraid to describe themselves [\*1291] as "liberals." n56 Controversial artists are denied federal funding. n57 Museum exhibits that depict the atomic bombing of Hiroshi-ma have been ordered modified. n58 If political speech lies at the center of the First Amendment, its protection seems to be largely independent of what is taking place at the periphery. There may, indeed, be an inverse correlation. Those institutions most concerned with social fairness have proved to be the ones most likely to promulgate anti-hate speech rules. n59 Part of the reason seems to be the recognition that hate speech can easily silence and demoralize its victims, discouraging them from participating in the life of the institution. n60 If so, enacting hate speech rules may be evi-dence

### They Say: “Prevents Counter Speech”

#### Counter speech works vs a small subset of racists but is used to justify all hate speech

Farber, PhD Sociology, 2-27-17

(Samuel, Professor Emeritus of Political Science @Brooklyn College, <https://www.jacobinmag.com/2017/02/garton-ash-free-speech-milo-yiannopoulos/>)

When we turn to public figures invited to speak about controversial topics, we must distinguish between racist persuaders and violent racist intimidators. People like Arthur Jensen, Richard Herrnstein, and Charles Murray, who propagate offensive racist myths under the guise of social science, are racist persuaders. Their pronouncements take place entirely within the realm of discourse, to which opponents can respond through rational discussion and careful refutation. Other free speech rights, including the venerable traditions of picketing and heckling, stop short of using force to stop figures like these from speaking. Even the sharpest ideological struggle abides by implicit rules that social movements have occasionally violated when they have replaced persuasion with the use of force. This not only violates the speakers’ fundamental rights, but is also bad strategy. Protests ignoring the right to free speech alienate both the audience attending the event, whom protesters should be trying to win over, and those who wish to preserve free speech. This differs from racist or antisemitic acts of intimidation perpetrated by organized groups with a history of physical violence. The 1936 march organized by the British Union of Fascists in the Jewish-majority East End of London illustrates this distinction. Oswald Mosley, the demonstration’s leader, did not intend to persuade the Jews living in that neighborhood to join their group. Rather, he wanted to terrify them. Nor did the American neo-Nazi group that applied for a march permit in the also heavily Jewish Chicago suburb of Skokie in 1978 set out to convert the residents, many of whom were Holocaust survivors, into Nazis. In London, Mosley and his followers were met by twenty thousand antifascist demonstrators, who clashed with the six thousand police trying to protect a couple thousand fascists in the now famous Battle of Cable Street. Things went differently in Skokie. The local authorities tried to prevent the march, but the American Civil Liberties Union (ACLU) sued to allow it, causing many of its members to resign. Despite the ACLU’s legal victory, the neo-Nazis decided to stage a rally in downtown Chicago instead. In some ways, this mirrors Mosley’s East London march. But it differs importantly: Nazism was rising in the 1930s, but, by 1978, American neo-Nazism had become a small, fringe group. Regardless of their relative power, both forces belonged to an organized political current with a history of physical violence and a strategy of seizing political power. The ACLU’s defense included two arguments relevant to the present discussion. On the one hand, they pointed to the dangers posed by allowing the state, local, or federal government to limit or regulate speech, fearing it would set a precedent that could be turned against other social movements’ democratic rights, including organized labor, minority groups, and the Left. Indeed, the danger of empowering the state to limit free speech rights is precisely why socialists cannot rely on the state when confronting violent intimidators. Secondly, the ACLU claimed that because the march did not pose an intended, likely, and imminent danger of violence, it counts as constitutionally protected speech. This clarifies an important distinction between the antiracist left and the more broadly liberal ACLU. For groups like the ACLU, violent intimidators should enjoy the same free speech rights as racist persuaders like Jensen, Hernstein, and Murray until the speech becomes dangerous. For the antiracist left, violent intimidators are categorically different from racist persuaders. The relationship between groups like neo-Nazis or the KKK and democratic social movements is one of open belligerence rather than ideological struggle. Violent intimidators are not trying to persuade, but to intimidate. Their language is the language of violence. As far as the social movements are concerned, the otherwise reasonable rule that speech is protected until violence appears imminent should not apply to these violent intimidators: instead, that principle allows them the choice to select the time, place, and manner most favorable for their violent actions.

#### Fighting speech with speech obscures material violence that students of color face.

Carpenter ‘16

(Bennett Carpenter is a graduate student of Duke in the literature department. “Free speech, Black lives and white fragility.” The Chronicle. January 19, 2016. <http://www.dukechronicle.com/article/2016/01/free-speech-black-lives-and-white-fragility> )

As I write my first column, I am thinking a lot about speech. I am thinking about how an urgent and overdue conversation about racism—on our campus and across our country—has been derailed by a diversionary and duplicitous obsession with the First Amendment. I am thinking about how quickly the conversation has shifted from white supremacy to white fragility—and how this shift is itself an expression of white supremacy. White fragility refers to a range of defensive behaviors through which white people (or more accurately, people who believe they are white) deflect conversations about race and racism in order to protect themselves from race-based stress. Because white people tend to live in environments where whiteness is both dominant and invisible, they grow accustomed to racial comfort, as a result of which even a small amount of racial stress becomes intolerable. This helps explain why talking about white supremacy can feel more painful to white people than white supremacy itself, why the ostensible "stifling" of debate can feel more pressing than the literal strangulation of Eric Garner and how "free speech" seems more important than Black lives. Needless to say, it requires an astounding degree of narcissism, ignorance and— yes—fragility to scan headlines detailing the daily, state-sanctioned slaughter of people of color and somehow conclude that speech is the real problem. White fragility weighs the minimal discomfort of being confronted with painful realities about race and racism against the literal death of Black and brown bodies and decides that the latter matter less than white discomfort. Which is how we end up here, talking about speech on campus and reading a dozen iterations of the same editorial in which students describe—with utterly unintentional irony—how being called out by anti-racist activists makes them feel upset and hurts their feelings. This leaves those of us committed to abolishing white supremacy in a double bind. To engage with this debate is to fall for a diversionary tactic in which we again center the conversation on white feelings. To refuse to engage grants the latter a monopoly on the airways, drowning out more vital issues in an ocean of white noise. Still, in the interests of the open, honest debate the free speechers ostensibly advocate, let me try to address the constitutional and philosophical principles at play here. The first point to make is that, despite the hand-wringing, I have yet to see a single example of student activists violating the First Amendment. Indeed, it is hard to imagine how they could do so, given that the latter proscribes government abridgment of speech while student activists are private citizens. Many seem to confuse "free speech" with some banal notion of civility, forgetting that the very freedoms they invoke to defend racist drivel permit anti-racists to respond—whether by calling someone out or calling for their resignation. This would seem to set up a nice equivalence between racists and anti-racists—both exercising free-speech freedoms, which must be equally and indiscriminately defended. What this ignores, however, is the centuries-long history of racialized oppression to which hate speech contributes. Hate speech is thus both violent and an incitement to further violence. The courts already prohibit walking into a crowded theater and shouting "fire." How is this any different from walking into a white supremacist society and shouting racial slurs? It has become almost a truism that there is no hate speech exception to the First Amendment. Historically speaking, this is inaccurate. As M. Alison Kibler details in her "Censoring Racial Ridicule," the U.S. has a long history of regulating forms of speech that expose racialized groups to "contempt, derision or obloquy." Indeed, as recently as 1952, the Supreme Court upheld an Illinois law applying the standards of libel (another free-speech exception) to hate speech. It is only in recent years that the courts have, as the National Center for Human Rights Education puts it, "privileged white racists to express themselves at the expense of the safety of African-Americans and other people of color." Key to this new interpretation is a firm separation between speech and action, a legal variant on the old childhood adage: "sticks and stones may break your bones, but words will never hurt you." The problem—as anyone who has been the victim of hate speech can tell you—is that this simply isn't true. Words hurt as much as actions; indeed, words are actions. Within the context of white supremacy, any distinction between a defaced poster, a racist pamphlet and legal or extralegal murder can be only of degree.

### They Say: “Acts as a Safety Valve”

#### Speech doesn’t act as a release valve- there are different incentive structures for violence

Dharmapala and McAdams, PhDs, 05

(Dhammika, Economics @Connecticut, Richard H., Law @Illinois, "Words that kill? An economic model of the influence of speech on behavior (with particular reference to hate speech)." The Journal of Legal Studies 34.1 (2005): 93-136.)

Conventional criticisms of hate speech frequently focus on the subjective harm it imposes¶ on its targets. This focus, however, creates severe practical obstacles to regulation because it may¶ not be possible to prevent that harm. There are two problems. First, there is an unappealing¶ trade-off in how one defines hate speech: an overly broad definition may burden non-offensive¶ speech, while a narrow definition – one that attempts to raise the costs only for the harmful¶ speech – may allow racists to shift to a different form of expression, arguably causing the same¶ ill effects on targets as the prohibited expression. American history is full of racially coded¶ phrases, whereby one raises racist concerns without explicit references to race. One might claim,¶ therefore, that any narrowly targeted regulation will fail to raise the cost of hate speech, while¶ any broad regulation is excessively restrictive. A second problem is anonymity. Speakers may¶ react to the formal or informal penalties on hate speech by shifting to anonymous speech, writing¶ their hate messages on buildings or sidewalks when no one is watching, or distributing such¶ messages in untraceable flyers. While this makes detection and enforcement very difficult, it¶ may cause the same harm to the targets as would identified (non-anonymous) messages.¶ These practical problems are less severe, however, when the harm to be avoided is the¶ one we identify: the incentives hate speech gives to potential hate offenders. First, under our¶ approach, the definitional trade-off is less stark because a relatively narrow definition of hate¶ speech may be sufficient to reduce hate crime. For example, to reduce the expected esteem¶ benefits from committing a racially motivated murder, it is only necessary to raise the costs of¶ speech that conveys approval of such murders. Because most people disapprove strongly of¶ murder, it requires strong and explicit language to convince others than one actually approves of it. One can create the benefit we identify merely by raising the costs of this strong and explicit¶ language.¶ Second, the problem of anonymous hate speech is likely to be irrelevant in our¶ framework. The harm we identify from hate speech is that it conveys credible information about¶ the number of individuals who will esteem perpetrators of hate crimes (or do so to a certain¶ intense degree). Overt hate speech, where the speakers are clearly identified, provides more¶ credible information about the number of hate crime approvers than does anonymous hate¶ speech. The reason is that, when one cannot identify the source of many anonymous messages,¶ one usually cannot know how many sources there actually are. It is always possible that just one¶ individual produces all the anonymous messages (an anonymous message may of course claim to¶ represent a large number of individuals, but such claims are usually cheap talk). Thus, potential¶ offenders using Bayesian inference will tend to discount anonymous speech in estimating the¶ number of approvers.32 Although the correspondence bias suggests that people will infer more¶ hate crime approval from more hate speech, it does not suggest any particular bias to this¶ discounting of anonymous speech. Thus, if potential offenders are subject to the correspondence¶ bias, their downward revision of their estimate following a reduction in the level of identified¶ hate speech will not be fully offset even if all or some speakers engage in anonymous speech.¶ 5.2) Are Hate Speech and Hate Crime Substitutes?¶ Finally, we briefly consider a contrary theory. Our model of the behavior of potential¶ offenders has conceptually separated them from speakers – those whose esteem is sought.¶ However, it is also possible that the same individual’s choice of speech may interact with her¶ decision regarding whether to commit the crime. If so, then hate speech and hate crime may be¶ either complements or substitutes. In the latter case, allowing the individual the chance to “blow¶ off steam” by engaging in hate speech may reduce the likelihood that she will also commit a hate¶ crime; this would represent a caveat qualifying some of the claims we have made in this paper.¶ However, it is likely that the distribution of intrinsic utility (B – C) across individuals is such that¶ there are very few individuals who would commit a hate crime, even for a high level of esteem,¶ while there are many more individuals who may engage in hate speech if the costs are¶ sufficiently low. Then, most speakers are inframarginal with respect to the choice of whether to¶ commit the crime, while their hate speech does influence the (relatively small number of) individuals who are on the margin with respect to the crime. Moreover, the opportunities for¶ gaining esteem from racists for being one of a relatively large number of individuals engaging in¶ hate speech are severely limited in comparison to the esteem that can be gained by committing¶ hate crimes. Thus, any “substitution effect” is likely to be a very minor factor.

#### Hate speech isn’t a productive dialogue- it doesn’t change minds

McConnel 12

Reed E. McConnel. “Why Harvard's Hate Speech Policies Are Necessary”. The Harvard Crimson. April 18, 2012. <http://www.thecrimson.com/article/2012/4/18/hate-speech-libertarians/>

The most common argument I have encountered for unrestricted free speech on college campuses is that if we prohibit people from saying certain things, they will simply never talk about them. As a result, their prejudice and oppression—the problems that we are trying to stamp out in the first place with restrictions on speech—will continue quietly, unchecked. However, the argument goes, if we allow people to express these thoughts openly, then there will be discussion about them that leads to greater understanding. This was the view expressed by the member of the Harvard Libertarian Forum quoted in the article, and one that I think is fundamentally misguided. There certainly should be dialogue around issues of racism, sexism, homophobia, and other forms of oppression. If someone has prejudices, a good way to erase these prejudices can indeed be to engage in dialogue with that person in order to understand where their attitude is coming from and educate them about the moral and logical fallacies of their prejudice. But there is also a need to protect people from having violence perpetrated against them. When someone calls a black person the “n” word out of hatred, he or she is not expressing a new idea or outlining a valuable thought. They are committing an act of violence. Speech has great power. It can—and often does—serve as a tool to marginalize and oppress people. Laws that restrict hate speech simply seek to prevent violence against marginalized, oppressed groups in order to prevent them from becoming further marginalized and oppressed. There are freedoms to do things, and there are freedoms from things. When our freedom to speak our mind impinges on someone’s freedom from fear, or on someone’s right to feel safe in their community, then that freedom should not stand unregulated in any group that wishes to create a safe and respectful society for its members. We cannot create a respectful learning environment at our university if students from marginalized groups feel that their administration condones acts of violence against them. University regulations against hate speech are entirely necessary for maintaining respect and dignity among the student body, and Harvard’s policies to this end are well thought-out and fair—and certainly not worthy of protest.

### They Say: “Pushes Hate Speech Underground”

#### Hate speech bans are good – underground movements are less effective and destructive, and there are still plenty of people who would be deterred and they allow for coalitions of targeted groups to fight back

Parekh, PhD @LSE, 12

(Bhikhu, Is there a case for banning hate speech? In The Content and Context of Hate Speech Ed. Herz and Molnar)

It is sometimes argued that banning hate speech drives extremist groups under- ground and leaves us no means of knowing who they are and how much support they enjoy. It also alienates them from the wider society, even makes them more detennined. and helps them recruit those attracted by the allure of forbidden fruit. This is an important argument and its force should not be underestimated. How- eyer, it has its limits. A ban on hate speech might drive extremist groups underground, but it also persuades their moderate and law-abiding members to dissociate them- selves from these groups. When extremist groups go underground, they are denied the oxygen of publicity and the aura of public respectability. This makes their oper- ations more difficult and denies them the opportunity to link up with other similar groups and recruit their members. While the ban might alienate extremist groups, it has the compensating advan- tage of securing the enthusiastic commitment and support of their target groups. Besides, beyond a certain point, alienation need not be a source of worry. Some religious groups are alienated from the secular orientation of the liberal state, inst as the communists and polyamoronsly inclined persons bitterly resent its commitment (respectively) to market economy and rnonogamy. We accept such forms of alien- ation as inherent in collective life and do not seek to redress them by abandoning the liberal state. The ban might harden the determination of some, but it is also likely to weaken that of those who seek respectability and do not want to be associated with ideas and groups considered so disreputable as to be banned, or who are deterred by the cost involved in supporting them. There is the lure of the prohibited, but there is also the attraction of the respectable.

#### Racism can be cured by rules — it’s not inevitable

Yun and Delgado, JDs, 94 (David, partner @Jaudon & Avery LLP, Richard, Law@Alabama, The Neoconservative Case Against Hate-Speech Regulation." Https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2112274. 1994)

How should we see the bellwether argument? In one respect, the argument does make a valid point. All other things being equal, the racist who is known is less dangerous than the one who is not, when she argument ignores is that there is a third alternative, namely the racist who is cured, or at least deterred by rules, policies, end official statements so as to no longer exhibit the behavior he or she once did. Since most conservatives behave that roles and penalties change conduct (indeed they are emote the strongest AmPonents of hanry penalties for crime), the possibility that campus guidelines against hate speech and assault would decrease those behaviors ought to be conceded, Of course, the conservative may argue that regulation has costs of its own—something even the two of us would concede—but this is a different argument from the bellwether on, Another neoconservative objection is that silencing the racist through legislation might deprive the mauve comminity of the 'down hall" opportunity it has to discuss and analyse issues of race when incidents of racism come to light.. But campuses could told three meetings and discussions anyway. The rules are not likely to suppress hate speech entirely; even with them in place, that will continue to be some number of incidents of racist week and behavior. The difference is that now there will be the possibility of campus discipline, hearings, which are even more barely to instigate the "town hell" discussions the argument assumes are desirable. Because the bellwether argument ignores that wiles will have at least some editing effect and that there are other ways of having campuswide discussions short of allowing racial confrontation to flourish, the argument appears to deserve little weight.

### They Say: “Spills Over to Other Speech Restrictions”

#### We control uniqueness- hate speech silences in the status quo

Cohen 15

(Tanya Cohen, Here Is Why It’s Time To Get Tough On Hate Speech In America, Thought Catalog, January 5, 2015 http://thoughtcatalog.com/tanya-cohen/2015/01/here-is-why-its-time-to-get-tough-on-hate-speech-in-america/)

Minorities already face widespread discrimination in our society. America’s Orwellian notion of “freedom of speech” as protecting hateful speech is even more abhorrent when you consider how the voices of minorities are persistently marginalized and how they are routinely denied a voice while the rich and powerful are allowed to demean and dehumanize minorities under the guise of “free speech”. How are vulnerable minorities expected to speak up about the injustices that they face when they are always shouted down by the hateful voices of the rich and powerful? Hate speech is not “freedom” to people of color who face constant racist abuse, transgender people who receive non-stop harassment and misgendering, or women visiting abortion clinics who get heckled and called murderers. Not to mention, the right of minorities to NOT be exposed to hate speech is infinitely more important than the so-called “right” of bigots to spew hate speech at minorities. Freedom of speech is extremely important, but so are basic human rights and human decency.

# Hate Speech DA Affirmative

## 2AC — Hate Speech DA Answers

### 2AC — Hurts Minority Speech

#### Hate Speech restrictions get coopted

Tambini, Comparative Media @Oxford, 12-8-03

(Damian, The Guardian)

Thinktanks close to the US president and international organisations have also launched projects on hate speech this year and clearly in a more transparent, more media-focused world, the monitoring of incitement is more than a passing fad. "We have high hopes for hate speech monitoring, but it is crucial that at an early stage we isolate the key principles that are really at stake," says Westcott. Monitoring for hate speech can surely help to prevent violent conflict but it also presents fundamental dilemmas: just how do we recognise hate speech, and how can we ascertain if it is likely to lead to violence? If speech that constitutes genuine incitement is detected, what would be the appropriate international legal channels to pursue? If national authorities are not to be trusted to be fair in separating hate speech from valid criticism, how can international monitoring appear legitimate? And - following the closure of an Iraqi newspaper for criticism of US occupiers - at what point could a legitimate anti-colonial discourse be classified as hate speech? Fundamentally, where unequal societies cleave politically and economically along ethnic grounds - as was the case in Rwanda - antagonism and debate across ethnic lines is a necessary safety valve. The job of determining what constitutes legitimate political debate and what constitutes incitement is clearly ultimately for courts. What monitoring can do is provide reliable evidence and engage diplomatic pressure: a role surely strengthened after the decisions last week.

### 2AC — Prevents Counter Speech

#### Empirics show speech codes promote rather than combat discrimination

Strossen, ACLU president, 01

(Nadine, Law @NYU, Incitement to Hatred: Should There Be a Limit Copyright (c) 2001 Board of Trustees of Southern Illinois University Southern Illinois University Law Journal Winter, 2001 25 S. Ill. U. L. J. 243)

Based on actual experience and observations in countries around the world, the respected international human rights organization, Human Rights Watch, concluded that suppressing hate speech does not effectively promote equality or reduce discrimination. In 1992, Human Rights Watch issued a report and policy statement opposing any restrictions on hate speech that go beyond the narrow confines permitted by traditional First Amendment principles. Human Rights Watch's policy statement explains its position as follows: The Human Rights Watch policy attempts to apply free speech principles in the anti-discrimination context in a manner that is respectful of both concerns, believing that they are complementary, not contradictory. While we recognize that the policy is closer to the American legal approach than to that of any other nation, it was arrived at after a careful review of the experience of many other countries . . . . This review has made clear that there is little connection in practice between draconian "hate speech" laws and the lessening of ethnic and racial violence or tension. Furthermore, most of the nations which invoke "hate speech" laws have a long way to go in implementing the provisions of the Convention for the Elimination of Racial Discrimination calling for the elimination of racial discrimination. Laws that penalize speech or membership are also subject to abuse by the dominant racial or ethnic group. Some of the most stringent "hate speech" laws, for example, have long been in force in South Africa, where they have been used almost exclusively against the black majority. n42 Similar conclusions were generated by an international conference in 1991 organized by the international free speech organization, Article 19, [\*259] which is named after the free speech guarantee in the Universal Declaration of HumanRights. That conference brought together human rights activists, lawyers, and scholars, from fifteen different countries, to compare notes on the actual impact that anti-hate-speech laws had in promoting equality, and countering bias and discrimination, in their respective countries. The conference papers were subsequently published in a book, Striking A Balance: Hate Speech, Free Speech, and Non-Discrimination. n43 The conclusion of all these papers was clear: not even any correlation, let alone any causal relationship, could be shown between the enforcement of anti-hate-speech laws by the governments in particular countries and an improvement in equality or inter-group relations in those countries. In fact, often there was an inverse relationship. These findings were summarized in the book's concluding chapter by Sandra Coliver, who was then Article 19's Legal Director: Laws which restrict hate speech have been flagrantly abused by the authorities. Thus, the laws in Sri Lanka and South Africa have been used almost exclusively against the oppressed and politically weakest communities. In Eastern Europe and the former Soviet Union these laws were vehicles for the persecution of critics who were often also victims of state-tolerated or sponsored anti-Semitism. Selective or lax enforcement by the authorities, including in the United Kingdom, Israel and the former Soviet Union, allows governments to compromise the right of dissent and inevitably leads to feelings of alienation among minority groups. Such laws may also distract from the need for effective legislation to promote non-discrimination. The rise of racism and xenophobia throughout Europe, despite laws restricting racist speech, calls into question the effectiveness of such laws in the promotion of tolerance and non-discrimination. One worrying phenomenon is the sanitized language now adopted to avoid prosecution by prominent racists in Britain, France, Israel and other countries, which may have the effect of making their hateful messages more acceptable to a broader audience. n44

### 2AC — Acts as a Safety Valve

#### Censorship is a pyrrhic victory — it drives increased conservatism that turns the impact.

Peters 17

(Charlie, 2-18, second-year Philosophy student at the University of Edinburghhttp://www.telegraph.co.uk/education/2017/02/17/student-lefts-culture-intolereance-creating-new-generation-ofconservatives/)

Student demands for censorship get a lot of coverage. Spiked Online’s Free Speech University Rankings, now in its third annual edition, argues that there is a “crisis of free speech on campus”. By analysing the censorious policies and actions that have taken place on British campuses, Spiked concluded that 63.5 per cent of universities actively censor speech and 30.5 per cent stifle speech through excessive regulation. You can barely go a few days without encountering a new op-ed covering censorship on campus. Maajid Nawaz describes the students demanding censorship as members of the “regressive left”. Milo Yiannopoulos calls them “snowflakes”. With all of this book-burning and platform-denying madness sweeping up much of the media’s interest in campus culture, the gradual rise of another group of students has gone under-reported. British and American millennials and post-millennials – also known as ‘Gen Z’ – are warming to conservatism. To understand why this is happening, it is important to consider the vast changes that have taken place in Western student politics over the last fifty years. Students were once in favour of free speech. In the mid-1960s, students of the University of California, Berkeley undertook a mass-movement for free speech. Under the leadership of Leftist heroes like Jack Weinberg, Bettina Aptheker and Jackie Goldberg, students demanded that the university administration retracted their on-campus ban of political activities. They demanded their freedom of speech. Mario Savio delivered what is generally recognised as the iconic speech of the University of California, Berkeley's (UCB) free speech movement. Here is the speech’s most powerful section: “There is a time when the operation of the machine becomes so odious, makes you so sick at heart, that you can't take part. You can't even passively take part! And you've got to put your bodies upon the gears and upon the wheels, upon the levers, upon all the apparatus, and you've got to make it stop! And you've got to indicate to the people who run it, to the people who own it — that unless you're free, the machine will be prevented from working at all!” Savio’s speech helped push the movement towards success. Berkeley students won their full rights. Students, now liberated from the “machine” of university censorship, were able to create the anti-Vietnam student movement, another famous campus protest. Nowadays, the student Left are unwilling to honour Savio’s legacy. On the 2nd of February, violent protests at Berkeley shut down a talk by popular conservative speaker Milo Yiannopoulos. Instead of maintaining a liberal and free atmosphere for speech and argument, Berkeley students have become the gears, wheels and levers of the machine that Savio wanted to stop. In the space of fifty years, Berkeley students have gone from rioting against a university administration that limited their freedom of speech to violently opposing the presence of a speaker they disagree with. In the modern era, students have often been attracted to the politics of the Left. 1968 saw pivotal student protests around the world. In the United States, students were central to the civil rights movement. In France, students joined forces with millions of striking workers to protest against capitalism. The conservative philosopher Roger Scruton was in Paris during the 1968 riots and has said that it was whilst witnessing the uprising that he became a conservative. The violence at Berkeley mirrors the street protests in Paris from 1968. Privileged and excitable students living in one of the most blessed parts of the world went out and created havoc in order to overthrow an opponent that they refused to tolerate. The Parisians, at least, had a deeper political cause – but the Berkeley students carried out the ugliest form of protest. It is the form of protest that says “I don’t like that view, therefore you must not be allowed to express it” and it is causing a lot of students to have their own ‘Scruton moment’. There have been several responses to campus censorship in the United Kingdom and the United States. One of the most interesting developments has been the rise in demand for conservative thought. In the United States, college tours by speakers popular with conservatives such as Milo Yiannopoulos, Steven Crowder, Ben Shapiro and Christina Hoff Sommers have become huge events. There has been a spike in membership in conservative college clubs including Young Americans for Liberty, which boasts 804 chapters filled with 308,927 members. In the United Kingdom, free speech societies have been started across the country. ‘Speakeasy’ groups have been founded at the LSE, Leeds, Queen Mary, Cardiff, Oxford, Manchester and at Edinburgh, where I study. In these groups, ‘unacceptable’ conservative thoughts are debated amongst liberally-minded (as all good conservatives are) students. Moreover, some student unions have voted to disaffiliate from the National Union of Students (NUS). Analysis from market research firm, The Gild, shows that ‘Gen Z’ is the most conservative generation since 1945. The research reveals that ‘Gen Z’ Britons are more likely to favour conservative spending, dislike tattoos and body-piercings, and oppose marijuana legislation. The youth and student members of the British Left have given up trying to win arguments on principle, preferring to shut down the views of those they opponents. But ‘Gen Z’ live in the time of mass media where anyone’s political views can be shared worldwide at ease. By pushing a “you can’t say that” attitude, the young Left in the UK and the US are reducing their opportunity to respond to conservative ideas, and, as a result of this, conservatism is on the rise. Nowadays, the only thing that is stopping a student from accessing a new idea is a censorious gag from a student union or NUS apparatchik. Whilst the student Left have historically campaigned in support of causes that the West’s youth have been favourable towards, such as the anti-war and anti-austerity movements, they are now picking on something that is dear to us: freedom of information. Students of my generation have grown up in an era of mass-communication. Each year has brought new tools for the flow of ideas, conversation and media. The rapid expansion of affordable technology has been matched by the growth of the social media market. When it is common for students to be able to easily interact with anyone in the world via a portable computer that fits in their pocket, nothing seems more silly to us than cliquey calls for censorship. That is why young people and students are becoming conservatives – they’re the only people making the case for a freedom that they love.

#### Speech is a safety valve that prevents greater violence

Bhagwat, Law @UC Davis, 15

(Ashutosh, Free Speech Without Democracy Copyright (c) 2015 Regents of the University of California UC Davis Law Review November, 2015 UC Davis Law Review 49 U.C. Davis L. Rev. 59)

Hate Speech and Pornography The First Amendment has generally been understood to grant complete protection to speech denigrating minorities and women, including hate speech and pornography that falls short of obscenity. n238 This approach has been subjected to strong criticism on the grounds that hate speech and pornography silence the voices of disempowered [\*111] groups such as women and racial minorities, thereby interfering with their ability to participate fully in society and the political process. n239 Seen purely from the democracy-enhancement perspective, there is indeed a completely plausible argument that hate speech and pornography, far from advancing democratic self-governance, actually detract from it because such speech silences important voices, and the ideas expressed by hate speech and pornography (such as they are) have no legitimate role in a liberal democracy. There are, of course, counterarguments to the attack on hate speech based on traditional free speech theory. n240 The analysis presented here, however, suggests yet another reason why the First Amendment should protect hate speech: the role of hate speech as a safety valve. Explicitly racist and misogynistic ideas are very much at the margins of modern American political culture. As a result, individuals who hold such views are very likely to feel silenced and disempowered. That such people are disempowered is obviously a good thing; but suppressing their ability to express their ideas is likely to increase resentment and potentially violence. There is a non-trivial argument to be made that just as autocratic regimes should tolerate some dissenting speech in order to siphon off emotion, so too liberal democracies should tolerate hate speech - which after all, is dissenting speech in our societies - for the same reason. It should be noted that the argument for protecting hate speech as a safety valve is limited to the modern context. In an earlier time, when hate speech was common rather than in a marginalized position and society itself was officially discriminatory, hate speech did not primarily function as a safety valve. It was instead the expression of the dominant political position, whose impact was to suppress rather than [\*112] enhance democratic politics. Interestingly, therefore, the argument for protecting hate speech is reliant on the political collapse of the ideas hate speech embodies. In a different situation, the argument for protection would be much weaker, n241 but, perversely, so would the likelihood of regulation.

### 2AC — Pushes Hate Speech Underground

#### Problematic speech shouldn’t be suppressed- that magnifies the impacts-prefer my evidence because it has internal weighing

Alexander,Law @San Diego, 13

(Larry, Is Freedom of Expression a Universal Right San Diego Law Review Summer, 2013 San Diego Law Review 50 San Diego L. Rev. 707)

One commentator has characterized the consequentialist considerations for freeing up some speech that might be suppressed because of two-step harms in the following way: First, being able to speak our minds makes us feel good. True, we tailor our words to civility, persuasion, kindness, or other purposes, but that is our choice. Censors claim the right to purge other people's talk - all the while insisting that it is for our own good. Second, much censorship appears irrational and alarmist in retrospect because the reasons people choose and use words are vastly more interesting than the systems designed to limit them. It's not hard to make a list of absurdities - I'm particularly fond of a rash of state laws that forbid the disparagement of agricultural products - but simplistic explanations and simple-minded responses are as dangerous as they are ditzy. In one of the few places that postmodern theory and common sense intersect, it is obvious that the meaning and perception of words regularly depend on such variables as speaker and spoken to, individual experience and shared history, and the setting, company, and spirit in which something is said. To give courts or other authorities the power to determine all this is, to put it mildly, mind-boggling. Third, censorship is inimical to democracy. Cloaking ideas and information in secrecy encourages ignorance, corruption, demagoguery, a corrosive distrust of authority, and a historical memory resembling Swiss cheese. Open discussion, on the other hand, allows verities to be examined, errors to be corrected, disagreement to be expressed, and anxieties to be put in perspective. It also forces communities to confront their problems directly, which is more likely to lead to real solutions than covering them up. Fourth, censorship backfires. Opinions, tastes, social values, and mores change over time and vary among people. Truth can be a protean thing. The earth's rotation, its shape, the origins of humankind, and the nature of matter were all once widely understood to be something different [\*719] from what we know today, yet those who challenged the prevailing faith were mocked and punished for their apostasy. Banning ideas in an attempt to make the world safe from doubt, disaffection, or disorder is limiting, especially for people whose lives are routinely limited, since the poor and politically weak are the censor's first targets. Finally, censorship doesn't work. It doesn't get rid of bad ideas or bad behavior. It usually doesn't even get rid of bad words, and history has shown repeatedly that banning the unpalatable merely drives it underground. It could be argued that that's just fine, that vitriolic or subversive speech, for example, shouldn't dare to speak its name. But hateful ideas by another name - disguised as disinterested intellectual inquiry, or given a nose job like Ku Klux Klansman David Duke before he ran for governor of Louisiana - are probably more insidious than those that are clearly marginal. n22 Let me close with a couple of examples. So-called hate speech - speech that disparages ethnic, racial, or religious groups - is generally prohibited in most Western countries but not in the United States, where it is constitutionally protected as a matter of freedom of speech. If we leave aside the one-step harm of offense and focus on the two-step harms of inciting others to violence or to discrimination against members of the disparaged groups, we can understand why some countries, given their history and culture, would be quite fearful of the effects hate speech might have. For example, think of Germany and anti-Semitic speech. On the other hand, in the twenty-first-century United States, the dangers of hate speech pale in comparison to the dangers of suppressing it. Suppression drives haters underground, where they may be more dangerous than if they were more visible. Suppression is frequently not evenhanded: disparagement of some favored groups is punished, but disparagement of other groups is not. Frequently, suppression of hate speech is an expression of power wielded by some groups over other groups rather than an expression of concern about violence or discrimination. Sometimes, suppression of hate speech is just partisan politics. In the United States, some groups have tried to label messages such as opposition to racial preferences as racist hate speech. And political correctness surely infects enforcement of hate speech laws. Consider the prosecution of Mark Steyn in British Columbia because of his book expressing political concerns over [\*720] the ever-increasing percentage of Muslims in Europe. n23 So whether hate speech laws are a good or bad thing will undoubtedly vary with the country, its history, its culture, and its politics. The same point can be made with respect to restrictions on culture-coarsening expression - pornography, violent video games, public profanity, and so forth. Culture coarsening is a real harm, and its baleful effects may even prove catastrophic. On the other hand, whether legal restrictions on expression that contributes to coarsening is a good idea will vary with the place, the time, the institutions, the current state of the culture, and so forth. Governments are generally pretty ham-fisted when it comes to defining culture-coarsening messages. The history in the United States of attempts to ban pornography is not reassuring. Other countries with other institutions may do a better job.

## 1AR — Hate Speech DA Answers

### 1AR — Extend: “Hurts Minority Speech”

#### Cooption outweighs- causes more hostility and circumvention means no benefits to outweigh

Massaro, Law@Arizona, 91

(Toni M., FREE SPEECH AND RELIGIOUS, RACIAL, AND SEXUAL HARASSMENT: EQUALITY AND FREEDOM OF EXPRESSION: THE HATE SPEECH DILEMMA William & Mary Law Review WINTER, 1991 32 Wm. & Mary L. Rev. 211)

Practical problems add to the theoretical difficulties. First, both of the proposed "solutions" to the problem of hate speech -- suppression and protection -- evoke nonfrivolous charges that they will cause serious social harms. They conjure up the dual spectres of McCarthyism on the one hand and spirit-murdering n21 denials of equality on the other. Second, both proposals may trigger forceful opposition. Protecting hate speech, especially in controlled environments like the workplace or school, fosters an atmosphere of incivility and tension, which can give rise to unrest and even physical disruptions. Yet, suppressing hate speech, especially under the "one-way" proposals of some civil rights theorists, risks charges of censorship or reverse discrimination, which likewise can give rise to intergroup hostilities and potential disruptions. Another student expressed this latter concern during a seminar discussion of this problem. As he put it, "There is no [\*215] way, in the high school that I attended, that the students would accept a rule that said the blacks could call the whites racist names, but the whites could not call the blacks racist names. The students would laugh in your face, or worse." n22 Finally, there are the formidable problems of defining an epithet or slur and containing the adverse consequences of restricting this speech. Is it racist, for example, to state that African-Americans are better athletes than whites? n23 Is it homophobic to declare that AIDS is a product of reckless gay male sexual practices? n24 People express concern that the rules that restrict hate speech will be overbroad and could stultify intergroup discourse or chill academic discourse, n25 political satire or social commentary, n26 contemporary rap music, or other forms of artistic expression. n27 Many worry that regulation of hate speech will lead [\*216] to regulation of other forms of offensive and confrontational speech, like flag burning or other political expression. Some grouse that the attempt to control hate speech may be manipulated to attempt to enforce "politically correct" attitudes, with a strong tilt toward the left. Others, more sympathetic to the regulation proposals, worry that once hate speech regulation identifies certain terms as unlawful epithets and slurs, inventive racists will coin new ones faster than the regulators can master the new vocabularies. Indeed, the effort to regulate may inspire these inventions or send them underground. n28 Many people argue, therefore, that no workable solution to hate speech is possible. Any regulation would be either too chilling of good speech or so narrow as to be purely symbolic and likely unenforceable.

### 1AR — Extend: “Prevents Counter Speech”

#### Psychological studies prove counterspeech works

Strossen, ACLU president, 01

(Nadine, Law @NYU, Incitement to Hatred: Should There Be a Limit Copyright (c) 2001 Board of Trustees of Southern Illinois University Southern Illinois University Law Journal Winter, 2001 25 S. Ill. U. L. J. 243)

A study that was done by a professor at Smith College in Massachusetts demonstrated the effectiveness of this kind of counterspeech in combating bias and prejudice. It showed that when a student who hears a statement conveying discriminatory attitudes also promptly hears a rebuttal to that statement-especially from someone in a leadership position-then the student will probably not be persuaded by the initial statement. Dr. Fletcher [\*276] Blanchard, a psychologist at the college who conducted the experiment, concluded that"A few outspoken people who are vigorously anti-racist can establish the kind of social climate that discourages racist acts." n82 Thus, this study provides empirical social scientific support for the free speech maxim, discussed above, that the appropriate response to any speech with which one disagrees is not suppression but rather counterspeech.

### 1AR — Extend: “Acts as a Safety Valve”

#### Pro censorship arguments misunderstand shifting power dynamics –pyrrhic victory

Blumner, JD, 16

(Robyn E., Int. J. Appl. Psychoanal. Studies 2016; 13: 245–246)

The essays are typically more about power than speech. Many work off this basic premise: The powerful white male majority is in a position to subordinate powerless ethnic and racial minorities and women, which transmogrifies demeaning speech into demonstrable acts of harm by normalizing and legitimizing discrimination and terrorizing and silencing the target. In an essay titled “Subordinating Speech,” Maitra argues that people who use hate speech, even if they have no apparent authority, can nonetheless gain authority through the act of speaking down to a racial minority. Which is one way to elide the modern‐day reality that our president and attorney general are Black while millions of white males hold no economic or political power. McGowan suggests some racial hate speech has the equivalent impact of a “Whites Only” sign – speech we may legally prohibit when used by a business proprietor.An essay by Caroline West says societal equality aside, free speech itself is enhanced by restricting racist hate speech, because racist speech silences and marginalizes the targets of the speech, making their speech less likely to be offered, heard or comprehended. Laura Beth Nielsen reinforces this silencing theme with an essay titled, “Power in Public: Reactions, Responses, and Resistance to Offensive Public Speech.” Nielsen suggests that street harassment of a sexual or racial variety leads people to choose no response rather than a potentially dangerous confrontation. All to suggest that the typical tonic for offensive speech – more speech – is an unreasonable and unworkable prescription. Nielsen compares First Amendment protection for racial and sexual hate speech with the raft of laws limiting aggressive pan handling. She claims that because targets of panhandling are society's privileged the courts allow the First Amendment to bend so elites may feel comfortable walking public streets, but no such consideration is granted women who receive unwanted catcalls. Failing to recognize that white male supremacy is an eroding model of social power is one of the blind spots in this book. Somehow, women, racial and ethnic minorities and gays and lesbians have been able to win tremendous gains despite America's commitment to free speech – and I would argue because of it. Who is powerful and who is powerless is becoming less clear. But the essays give no ground on this. Another blind spot is failing to recognize that not everyone agrees on what speech is harmful. One only need look at the throngs of Americans throwing enthusiastic support behind Donald Trump's GOP (Republican Party) presidential bid to understand that, as US Supreme Court Justice John Marshall Harlan wrote, “one man's vulgarity is another's lyric.” Trump's claim that Mexican immigrants are rapist; his demand that Muslims be barred from entering the country, undoubtedly sound like harmful hate speech to some. Yet, to others he is singing their song. Long ago I wrote that free speech is not a matter of good speech versus bad speech, but who has the power to decide which is which. Better that we not give anyone in government the power to censor. Because it just might be Trump who is the decider‐in‐chief.(246)

#### Venting outweighs their internal link

St. Louis Post-Dispatch 3-27-98

It's too glib to say that hate speech leads to hate crimes. The need to denigrate and scapegoat others is also driven by feelings of personal, economic and cultural impotence that communities must address. Hate speech may be a private safety valve for people who conduct themselves, in public at least, with greater respect for otherness.

### 1AR — Extend: “Pushes Hate Speech Underground”

#### Restrictions drive speech underground, tradeoff with more effective remedies

Levinson, Law@Valparaiso, 13

(Rosalie Berger, Targeted Hate Speech and the First Amendment: How the Supreme Court Should Have Decided Snyder Suffolk University Law Review 2013 Suffolk University Law Review 46 Suffolk U. L. Rev. 45)

In addition, First Amendment advocates argue that hate speech should be protected because it mobilizes social change and societal awareness. n225 They contend that allowing the expression of hate speech in the marketplace has the double positive effect of exposing poisonous ideas to the light of day and serving to transform an inert public into one mobilized for action. n226 They assert that restricting hate speech will not stop hatred; it simply drives the expression underground where it becomes more dangerous. n227 In contrast, permitting targeted victims to sue for IIED does not stifle or chill speech, nor is that the goal; it merely holds speakers liable when they purposefully target and exploit particularly vulnerable individuals with what are arguably unprotected "fighting words" that cause severe emotional distress. n228

#### Martyrdom and state power outweigh their impact

Australian 8-24-16

There is much to commend the view that a provision such as section 18C has no place in a liberal democracy. In her biography of Voltaire, Evelyn Beatrice Hall -famously remarked: "I disapprove of what you say, but I will defend to the death your right to say it". (This quotation is often misattributed to Voltaire himself.) Many other champions of liberty have expressed the same sentiment. I especially like Noam Chomsky's version: "If you believe in freedom of speech, you believe in freedom of speech for views you don't like. Stalin and Hitler, for -example, were dictators in favour of freedom of speech for views they liked only. If you're in favour of freedom of speech, that means you're in favour of freedom of speech precisely for views you -despise." I also have a great faith in the common sense of Australians. The best way to defeat "hate speech" is not to drive it underground, as has occurred, for example, with David Irving, the notorious Holocaust denier, anti-Semite and racial bigot who has been banned from entering or speaking in several countries (Australia included). This has succeeded only in clothing Irving in the guise of a martyr and fuelling the absurd theory that Western governments would not be so concerned about Irving if there were no truth in what he said. Far better to let such creatures air their despicable views in public, where his vile opinions can be assessed, -addressed and repudiated for the nonsense they demonstrably are.

#### Underground turn flips their minority protection impact (Flips Phil NC)

Haigh, JD Candidate, 06

(Ryan F., SOUTH AFRICA'S CRIMINALIZATION OF "HURTFUL" COMMENTS: WHEN THE PROTECTION OF HUMAN DIGNITY AND EQUALITY TRANSFORMS INTO THE DESTRUCTION OF FREEDOM OF EXPRESSION Washington University Global Studies Law Review 2006 5 Wash. U. Global Stud. L. Rev. 187)

Hate speech laws may be important in redrawing the limits of what is acceptable in any society and in setting new standards of behavior. n144 However, hate speech laws are not accomplishing these goals in South Africa. As Thomas Paine stated, "he that would make his own liberty secure must guard even his enemy from oppression; for if he violates this duty he establishes a precedent that will reach to himself." n145 Dignity is a [\*210] tool which can be used to inform individuals about the past and to provide a vision of the future. n146 It should not be used as a means to restrict essential freedoms, such as speech, thereby stripping individuals of the very qualities that they are trying to instill into society.

### They Say: “Hate Speech Turns Free Speech”

#### Minority rights are best protected through free speech.

Strossen, ACLU president, 01

(Nadine, Law @NYU, Incitement to Hatred: Should There Be a Limit Copyright (c) 2001 Board of Trustees of Southern Illinois University Southern Illinois University Law Journal Winter, 2001 25 S. Ill. U. L. J. 243)

In his 1994 book, Hate Speech: The History of an American Controversy, Samuel Walker shows that, throughout the twentieth century, the equality rights of African- Americans and other minority groups were dependent on a robust free speech concept. He further shows that, realizing the importance of protecting even speech viewed as hateful or dangerous-because their own speech certainly was so viewed in many Southern and other communities-the major American civil rights organizations consistently opposed efforts to restrict hate speech. As Walker concluded, "The lessons of the civil rights movement were that the interests of racial minorities and powerless groups were best protected through the broadest, most content-neutral protection of speech." n51

#### Responding to hateful speech is empowering and other community members solve

Strossen, ACLU president, 01

(Nadine, Law @NYU, Incitement to Hatred: Should There Be a Limit Copyright (c) 2001 Board of Trustees of Southern Illinois University Southern Illinois University Law Journal Winter, 2001 25 S. Ill. U. L. J. 243)

The viewpoint-neutrality principle reflects the philosophy, first stated in pathbreaking opinions by former United States Supreme Court Justices Oliver Wendell Holmes and Louis Brandeis, that the appropriate response to speech with which one disagrees in a free society is not censorship but counterspeech-more speech, not less. Persuasion, not coercion, is the solution. n38 Accordingly, the appropriate response to hate speech is not to censor it, but to answer it. Recall, as I discussed earlier, that this is the strategy that the Anti-Defamation League has been pursuing so effectively in response to Internet hate speech.

This counterspeech strategy is better than censorship not only in principle, but also from a practical perspective. That is because of the potentially empowering experience of responding to hate speech with counterspeech. I say "potentially,"since I realize that the pain, anger and other negative emotions provoked by being the target of hate speech could well have an incapacitating effect on some targeted individuals, preventing them from engaging in counterspeech. Even in such a situation, though, other members of the community who are outraged by the hate speech could engage in counterspeech, and that is likely to have a more positive impact than a censorial response. Furthermore, once other community members denounce the hate speech, it should be easier for the target to join them in doing so.

#### The first amendment is essential to minority rights protections.

Rabe, MA/JD, 03

(Lee Ann, STICKS AND STONES: THE FIRST AMENDMENT AND CAMPUS SPEECH CODES The John Marshall Law Review Fall, 2003 37 J. Marshall L. Rev. 205)

The struggle over free speech continues at universities today. In addition to speech codes, some universities have adopted "free [\*227] speech zones." n134 In these zones, students and other protesters are free to express themselves on any issue they choose. After creating these zones, the universities then use them as leverage to justify limiting speech on other parts of the campus. n135 These "free speech zones" have not yet been challenged in court, but they are as unlikely to withstand constitutional challenge as are speech codes. Donna Shalala, as Chancellor of the University of Wisconsin in 1988, spoke about universities and the First Amendment: The First Amendment is not something that we can honor when we choose and disregard when we do not like what we hear ... freedom is never easy, and a great university is not a place to play with constitutional rights. It is a laboratory for open debate, a haven for diverse opinions. It must be a special place where those rights are protected and where principles of freedom are taught to citizens ... University administrators cannot abandon those principles to satisfy the will of a few, or even of many, at the expense of civil rights guaranteed to us all. n136 A robust exchange of ideas, even offensive, sometimes hurtful ideas, is a central part of the learning and intellectual exploration essential on university campuses. While preserving civility on campuses is a noble goal, it is a goal that must take second place to the freedoms guaranteed by the First Amendment.

#### Their driven out impact reinforces victim culture

Strossen, ACLU president, 01

(Nadine, Law @NYU, Incitement to Hatred: Should There Be a Limit Copyright (c) 2001 Board of Trustees of Southern Illinois University Southern Illinois University Law Journal Winter, 2001 25 S. Ill. U. L. J. 243)

I will illustrate these practical benefits of a non-censorial, counterspeech response to hate speech in the campus context. Far from being paternalistic, counterspeech is empowering to students; it transforms students who would otherwise be seen-and see themselves-largely as victims into activists and reformers. It underscores their dignity, rather than undermines it.