# Notes

## Explanation/Guide

### File Description and General Tips

This file contains a counterplan to read against Hazelwood. There are only a few negative cards because most of the answers are contained in the Hate Speech DA.

The affirmative also has a set of answers.

A counterplan is a type of negative argument that proposes a different policy than the plan. It is introduced as an off-case position in the 1NC. The 1NC shell for the counterplan is included in this file. To extend the counterplan in the negative block, the negative should prepare blocks to each affirmative response. When doing so, the negative can make use of the backline evidence contained in this file. Students should carefully choose which extension evidence to read; it is very unlikely that students will be able to read *all* extension cards in any 2NC or 1NR.

When answering this counterplan, the affirmative should use the materials in this file to construct a 2AC. For some of the 2AC arguments, the affirmative is provided with additional extension cards that could be useful for the 1AR. Due to the intense time constraints of that speech, students should carefully choose which (if any) extension evidence to read.

### Explanation of the Negative

The counterplan argues that the federal government should expand free speech protections, but not protect hate speech. The net benefit to the counterplan is the Hate Speech DA — the plan links, but the counterplan does not.

### Explanation of the Affirmative

The affirmative has a number of responses to the counterplan:

* They argue that the counterplan does not compete. They have a permutation to do both the plan and the counterplan and a permutation to do the counterplan.
* They also have substantive responses to the counterplan, arguing that the counterplan does not solve as well for free speech. This is called a solvency deficit.
* Finally, the affirmative can make theoretical objections to the counterplan — arguing that conditional counterplans are unfair to the affirmative.

### Explanation of Conditionality

Conditionality refers to the “status” or “disposition” of the counterplan: is the negative defending only the counterplan or can they “kick” the counterplan at any time and revert to defending the status quo? When the negative defends a counterplan but reserves the right to revert to defending the status quo, they are defending the counterplan conditionally. In response, the affirmative can argue that conditionality should not be allowed. When the affirmative makes this argument, the negative must respond by defending the desirability of conditionality. This is called a theory argument.

# Hate Speech CP Negative

## 1NC

### 1NC — Hate Speech CP

#### The Supreme Court should rule that censorship of student journalists and advisors is prohibited except in instances of “racial insults.”

#### The counterplan solves censorship and avoids the Hate Speech DA.

#### First, the Counterplan creates a legal standard for regulating Hate Speech.

Byrne, Prof. Law @Georgetown, 91

(J. Peter, Racial Insults and Free Speech Within the University." Geo. LJ 79 (1990): 399.)

This article examines the constitutionality of university prohibitions of public expression that insults members of the academic community by directing hatred or contempt toward them on account of their race. I Several thoughtful scholars have examined generally whether the government can penalize citizens for racist slurs under the first amendment, but to the limited extent that they have discussed university disciplinary codes they have assumed that the state university is merely a government instrumentality subject to the same constitutional limitations as, for example, the legislature or the police. 2 In contrast, I argue that the university has a fundamentally dif ferent relationship to the speech of its members than does the state to the speech of its citizens. On campus, general rights of free speech should be qualified by the intellectual values of academic discourse. I conclude that the protection of these academic values, which themselves enjoy constitutional protection, permits state universities lawfully to bar racially abusive speech, even if the state legislature could not constitutionally prohibit such speech throughout society at large. At the same time, however, I assert that the first amendment renders state universities powerless to punish speakers for advocating any idea in a reasoned manner. It is necessary at the outset to choose a working definition of a racial insult. This definition, however, is necessarily provisional; any such definition implies the writer's views on the boundaries of constitutionally protected offensive speech, and the reader cannot be expected to swallow the definition until she has had the opportunity to inspect the writer's constitutional premises. Having offered such a caution, I define a racial insult as a verbal or symbolic expression by a member of one ethnic group that describes another ethnic group or an individual member of another group in terms conventionally derogatory, that offends members of the target group, and that a reasonable and unbiased observer, who understands the meaning of the words and the context of their use, would conclude was purposefully or recklessly abusive. Excluded from this definition are expressions that convey rational but offensive propositions that can be disputed by argument and evidence. An insult, so conceived, refers to a manner of speech that seeks to demean rather than to criticize, and to appeal to irrational fears and prejudices rather than to respect for others and informed judgment. 3

#### Second, this legal standard solves hate speech while protecting free speech generally.

Byrne, Prof. Law @Georgetown, 91

(J. Peter, Racial Insults and Free Speech Within the University." Geo. LJ 79 (1990): 399.)

Disciplinary rules are the least effective way that a university can enhance the quality of speech or foster racial tolerance among its members. The educational program must celebrate and instruct its students in the beauty and usefulness of graceful and accurate speech and writing; a liberal education should leave students intolerant of propaganda and commercial manipulation, and competent to directly and forcefully express coherent views as citizens. Such teaching is not amoral; the graduate ought freely to prefer the exercise of skill, reflective perception, and an abiding curiosity to desires for acquisition, consumption, and domination. Without the university's consistent action on a commitment to reasoned discourse as central to its mission, the university's attempt to prohibit insulting or lewd speech may seem a hypocritical denial of its own failings. Similarly, prohibiting racial insults will advance racial harmony on a campus only when the university has effectively committed itself to educate lovingly the members of every ethnic group. Although nearly every university admits minority students using criteria that aspire in good faith to be fair, many have failed to transform themselves into truly multi-ethnic institutions. Not to have succeeded at this daunting task does not merit reproach; the university's origins and traditions are explicitly European, growth and accommodation to the extent required to create a multi-ethnic community must take time and witness false steps. However, not to have made plain that blacks, hispanics, Asians, Indians, and others who have been excluded in the past are not only now welcome, but are requested to collaborate in shaping new university structures and mores so that the benefits of advanced education will be available without regard to birth and so that the university can continue to spawn for a changing society a cosmopolitan culture based on reason and reflection standing above tribal fears and blind desires, not to have begun this work in earnest merits regret and will provoke anger. Universities that pass rules against racial insults which are not part of a comprehensive commitment to ethnic integration will serve only to exacerbate racial tensions. Schools that adopt prohibitions on racially offensive speech ought to enforce them with restraint. Certainly, when students have sought to intimidate or frighten other students with racial insults, the school should treat this behavior as a fundamental breach of university standards meriting the strongest punitive measures. But often insulting expressions will result from insensitivity or ignorance; complaints about such behavior should be seen as opportunities for teaching, and creative informal measures that make the offenders aware of the harmful consequences and injustice of their behavior should be pursued. The school should also provide succor to the victim whose hurt and anger must be acknowledged and meliorated. But severely punishing ignorant young people for expressions inherited from their parents or neighborhoods may serve to harden. and focus their sense of grievance, create martyrs, and prolong racial animosity. Deans who administer such rules must overcome their personal repugnance at racist speech and enforce the rules for the benefit of the entire community. Controversial interpretative application of the rules should be placed in the hands of faculty and students representative of the entire institution, and the accused, the victim, and the dean should have an opportunity to express their perspectives. A recurrent concern regarding rules against racial insults is their vague-ness and overbreadth. These, of course, were the bases upon which the University of Michigan's policy was declared unconstitutional, although the demonstrated propensity of the school to apply the policy to presumptively protected speech appears to have steered the Court's conclusions on these issues.17 6 In general, university disciplinary rules rarely are struck down for vagueness; courts usually permit universities to regulate student conduct on the basis of generally stated norms, so long as they give fair notice of the behavior proscribed. 177 Courts generally are more strict regarding vagueness in rules that affect speech, in no small part because of the distrust of the competence and motives of the government censor.178 A central argument of this article has been that the university can be trusted to administer rules prohibiting racial insults because it has the proper moral basis and adequate expertise to do so. It is not surprising, therefore, that I believe that vagueness concerns about such university rules are largely misplaced. This is not to deny that a university should adopt safeguards to protect accused students from the concerns that the courts have highlighted. First, the rules should state explicitly that no one may be disciplined for the good faith statement of any proposition susceptible to reasoned response, no matter how offensive. The possibility that punishment is precluded by this limitation should be addressed at every stage of the disciplinary process. Second, some response between punishment and acquittal should be available when the university concludes that the speaker was subjectively unaware of the offensive character of his speech; these cases seem to present mainly educational concerns. Third, all controversial issues of interpretation of the rules should be entrusted to a panel of faculty and students who are representative of the institution. Rules furthering primarily academic concerns about the quality of speech and the development of students should be given meaning by those most directly concerned with the academic enterprise rather than by administrators who may register more precisely external political pressures on the university. Given these safeguards and a comprehensible definition of an unacceptable insult, such as the one ventured in the introduction to this article,179 a court which accepts the underlying proposition that a university has the constitutional authority to regulate racial insults should not be troubled independently by vagueness. A difficult prudential consideration is whether a university should decline to regulate insults because of public criticism that censorship demeans the very intellectual virtues towards which the university strives, such as the superiority of persuasion over compulsion. Obviously, the adoption of such regulation has brought forth sincere and bitter criticism from many friends of higher education-the Economist, for example, went so far as to call such regulations "disgraceful."'' 80 To some extent these criticisms stem from misunderstanding about the character of academic speech and the goals of prohibitions on racial insult, but universities should admit that turning to regulation marks a sad failure in civility. A failure already has occurred, however, when students scurrilously demean other students because of their race. The university at this point can only choose among evils. It would not be true to its traditions if it did not come down on the side of protecting the educational environment for blameless students against wanton and hurtful ranting.

## 2NC/1NR

### Extend: “Hate Speech Restrictions Challenge Racism”

#### The counterplan avoids the Hate Speech DA — hate speech codes create legal recognition which is key to challenge a culture of racism.

Rosenfel, Prof of Human Rights @Cardozo, 03

(Michel, 24 Cardozo L. Rev. 1523 2002-2003)

The principal disadvantages to the approach to hate speech under consideration, on the other hand, are: that it inevitably has to confront difficult line drawing problems, such as that between fact and opinion in the context of the German scheme of regulation; that when prosecution of perpetrators of hate speech fails, such as in the British Southern News case discussed above,'30 regulation may unwittingly do more to legitimate and to disseminate the hate propaganda at issue than a complete absence of regulation would have;' that prosecutions may be too selective or too indiscriminate owing to (often unconscious) biases prevalent among law enforcement officials, as appears to have been the case in the prosecutions of certain black activists under the British Race Relations Act;'32 and, that since not all that may appear to be hate speech actually is hate speech-such as the documentary report involved in Jersild33 or a play in which a racist character engages in hate speech, but the dramatist intends to convey an anti-hate message-regulation of that speech may unwisely bestow powers of censorship over legitimate political, literary and artistic expression to government officials and judges. In the last analysis, none of the existing approaches to hate speech are ideal, but on balance the American seems less satisfactory than its alternatives. Above all, the American approach seems significantly flawed in some of its assumptions, in its impact and in the message it conveys concerning the evils surrounding hate speech. In terms of assumptions, the American approach either underestimates the potential for harm of hate speech that is short of incitement to violence, or it overestimates the potential of rational deliberation as a means to neutralize calls to hate. In terms of impact, given its long history of racial tensions, it is surprising that the United States does not exhibit greater concern for the injuries to security, dignity, autonomy and well being which officially tolerated hate speech causes to its black minority. Likewise, America's hate speech approach seems to unduly discount the pernicious impact that racist hate speech may have on lingering or dormant racist sentiments still harbored by a non-negligible segment of the white population.'34 Furthermore, even if we discount the domestic impact of hate speech, given the worldwide spread of locally produced hate speech, such as in the case of American manufactured Neo-Nazi propaganda disseminated through the worldwide web, a strong argument can be made that American courts should factor in the obvious and serious foreign impact of certain domestic hate speech in determining whether such speech should be entitled to constitutional protection. Finally, in terms of the message conveyed by refusing to curb most hate speech, the American approach looms as a double-edged sword. On the one hand, tolerance of hate speech in a country in which democracy has been solidly entrenched since independence over two hundred years ago conveys a message of confidence against both the message and the prospects of those who endeavor to spread hate.'35 On the other hand, tolerance of hate speech in a country with serious and enduring race relations problems may reinforce racism and hamper full integration of the victims of racism within the broader community.'36 The argument in favor of opting for greater regulation of hate speech than that provided in the United States rests on several important considerations, some related to the place and function of free speech in contemporary constitutional democracies, and others to the dangers and problems surrounding hate speech. Typically, contemporary constitutional democracies are increasingly diverse, multiracial, multicultural, multireligious and multilingual. Because of this and because of increased migration, a commitment to pluralism and to respect of diversity seem inextricably linked to vindication of the most fundamental individual and collective rights. Increased diversity is prone to making social cohesion more precarious, thus, if anything, exacerbating the potential evils of hate speech. Contemporary democratic states, on the other hand, are less prone to curtailing free speech rights than their predecessors either because of deeper implantation of the democratic ethos or because respect of supranational norms has become inextricably linked to continued membership in supranational alliances that further vital national interests. In these circumstances, contemporary democracies are more likely to find themselves in a situation like stage four in the context of the American experience with free speech rather than in one that more closely approximates a stage one experience.'37 In other words, to drown out minority discourse seems a much greater threat than government prompted censorship in contemporary constitutional democracies that are pluralistic. Actually, viewed more closely, contemporary pluralistic democracies tend to be in a situation that combines the main features of stage two and stage four. Thus, the main threats to full fledged freedom of expression would seem to come primarily from the "tyranny of the majority" as reflected both within the government and without, and from the dominance of majority discourses at the expense of minority ones. If it is true that majority conformity and the dominance of its discourse pose the greatest threat to uninhibited self-expression and unconstrained political debate in a contemporary pluralist polity, then significant regulation of hate speech seems justified. This is not only because hate speech obviously inhibits the selfexpression and oopportunity of inclusion of its victims, but also, less obviously, because hate speech tends to bear closer links to majority views than might initially appear. Indeed, in a multicultural society, while crude insults uttered by a member of the majority directed against a minority may be unequivocally rejected by almost all other members of the majority culture, the concerns that led to the hate message may be widely shared by the majority culture who regard of other cultures as threats to their way of life. In those circumstances, hate speech might best be characterized as a pathological extension of majority feelings or beliefs. So long as the pluralist contemporary state is committed to maintaining diversity, it cannot simply embrace a value neutral mindset, and consequently it cannot legitimately avoid engaging in some minimum of viewpoint discrimination. This is made clear by the German example, and although the German experience has been unique, it is hard to imagine that any pluralist constitutional democracy would not be committed to a similar position, albeit to a lesser degree.'38 Accordingly, without adopting German free speech jurisprudence, at a minimum contemporary pluralist democracy ought to institutionalize viewpoint discrimination against the crudest and most offensive expressions of racism, religious bigotry and virulent bias on the basis of ethnic or national origin

### They Say: “Conditionality Bad”

#### Conditionality is good —

#### ( ) Most Logical — the judge should never be forced to choose between a bad plan and a bad counterplan when the status quo is a logical third option. Logic is an objective and fair standard that teaches valuable decision-making skills.

#### ( ) Argument Innovation — because debaters are risk-averse, they won’t introduce new positions unless they retain a reliable fallback option. Innovation keeps the topic interesting and encourages research and preparation.

#### ( ) Gear-Switching — being able to change gears and defend different positions over the course of a debate teaches valuable negotiation skills and improves critical thinking. Deciding what to go for is a useful skill.

#### ( ) No Infinite Regression — each additional position has diminishing marginal utility. We’ve only read one counterplan. This is reciprocal: they get the plan and permutation and we get the counterplan and status quo.

#### ( ) Strongly Err Neg — the judge should be a referee, not a norm-setter. Unless we made the debate totally unproductive, don’t vote on conditionality — doing so gives too much incentive for the aff to abandon substantive issues in pursuit of an easy theory ballot.

# Hate Speech CP Affirmative

### Permutations

#### Permute: do both.

#### Permute: do the counterplan. The affirmative expands protections for student journalists — it need not defend free speech in *all* cases.

### Conditionality

#### ( ) Conditionality is a Voting Issue — the neg should get the status quo or an unconditional counterplan, not both. Conditionality creates an unproductive argument culture because it values coverage more than engagement. This discourages in-depth clash and argument resolution (because less time is spent on each position) and lowers the barrier of entry for low-quality arguments (because the neg is trying to distract the 2AC). Different advocacies should be debated in different debates, not crammed into this one. Vote for the theoretical position that best encourages high-quality debates.

### No Solvency- Net Benefit

#### Restrictions fail due to definition issues, and tradeoff with political challenges to egregious behavior

Malik, Senior Visiting Fellow at the University of Surrey, 12

(Kenan, . NBB/history of science @Imperial College <https://kenanmalik.wordpress.com/2012/04/19/why-hate-speech-should-not-be-banned/> 4-19)

Peter Molnar: Would you characterize some speech as ‘hate speech’, and do you think that it is possible to provide a reliable legal definition of ‘hate speech’? Kenan Malik: I am not sure that ‘hate speech’ is a particularly useful concept. Much is said and written, of course, that is designed to promote hatred. But it makes little sense to lump it all together in a single category, especially when hatred is such a contested concept. In a sense, hate speech restriction has become a means not of addressing specific issues about intimidation or incitement, but of enforcing general social regulation. This is why if you look at hate speech laws across the world, there is no consistency about what constitutes hate speech. Britain bans abusive, insulting, and threatening speech. Denmark and Canada ban speech that is insulting and degrading. India and Israel ban speech that hurts religious feelings and incites racial and religious hatred. In Holland, it is a criminal offense deliberately to insult a particular group. Australia prohibits speech that offends, insults, humiliates, or intimidates individuals or groups. Germany bans speech that violates the dignity of, or maliciously degrades or defames, a group. And so on. In each case, the law defines hate speech in a different way. One response might be to say: Let us define hate speech much more tightly. I think, however, that the problem runs much deeper. Hate speech restriction is a means not of tackling bigotry but of rebranding certain, often obnoxious, ideas or arguments as immoral. It is a way of making certain ideas illegitimate without bothering politically to challenge them. And that is dangerous.

### No Solvency- Precedent

#### Precedent of the CP guts the bedrock of the first amendment- content neutrality

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 ACLU staunchly supports the traditional, strictly speech-protective, FirstAmendment standards concerning hate speech, and opposes any relaxation even in thealleged service of such laudable goals as promoting equality and reducing discrimination. As I already noted, though, the traditional standards do not provide that all speech is absolutely protected. Thus, in the campus context, we would not oppose a code that simply reflected longstanding, legitimate limits on speech that the ACLU never has opposed in any other context-for example, prohibitions on threats. On this point, the relevant ACLU policy reads as follows: This policy does not prohibit colleges and universities from enacting disciplinary codes aimed at restricting acts of harassment, intimidation and invasion of privacy. Although these are imprecise terms susceptible of impermissibly overbroad application, each term defines a type of conduct which is legally proscribed in many jurisdictions when directed at a specific individual or individuals and when intended to frighten, coerce, or unreasonably harry or intrude upon its target. Threatening telephone calls to a minority student's dormitory room, for example, would be proscribable conduct under the terms of this policy. Expressive behavior which has no other effect than to create an unpleasant learning environment, however, would not be the proper subject of regulation.The fact that words may be used in connection with otherwise actionable conduct does not immunize such conduct from appropriate regulation. For example, intimidating phone calls, threats of attack, extortion and blackmail are unprotected forms of conduct which include an element of verbal or written expression. n20 A. Restricting Hate Speech Would Violate Cardinal Free Speech Principles To allow restrictions on hate speech beyond these traditional, contextual limitations on all speech in other words, to allow restrictions on hate speech because of its offensive content-would violate the two most fundamental principles underlying the First Amendment's free speech guarantee. The first [\*250] such principle specifies what is a sufficient justification for restricting speech,and the second prescribes what is not a sufficient justification. I already have touched on the first cardinal free speech principle, which isoften encapsulated by the phrase, "clear and present danger." It holds that a restriction on speech may be justified only when necessary to avert imminent harm to an interest of compelling importance, such as physical safety. As former Supreme Court Justice Oliver Wendell Holmes observed in a much-quoted opinion, consistent with this principle, the First Amendment would not protect someone who falsely shouted "Fire!" in a theater and caused a panic. n21 To be restricted consistent with this principle, the speech must clearly pose an imminent, substantial danger. Allowing speech to be curtailed on the speculative basis that it might indirectly lead to some possible harm sometime in the future would inevitably unravel free speech protection. All speech might lead to some potential danger at some future point. As Justice Holmes put it, "[e]very idea is an incitement." n22 Therefore, under such a watered-down approach, scarcely any idea would be safe, and surely no idea that challenged the status quo would be. Until the 1960s, the United States Supreme Court did apply this relaxed, so- called "bad tendency" approach to free speech. Over dissents by such respected Justices as Holmes and Brandeis, the Court allowed government to suppress any speech that might have a tendency to lead to some future harm. n23 This approach endangered all critics of government policy and advocates of political reform. For example, during the World War I era, thousands of Americans were imprisoned for peacefully criticizing United States participation in the war and other government policies. Likewise, at the height-or depth-of the Cold War, members of left-wing political groups were imprisoned for criticizing capitalism or advocating socialism. In light of this history, it is ironic that people toward the left of the political spectrum would now champion a return to the censorial standards that were so long used to suppress their ideas. Yet, that is precisely what the advocates of hate speech codes are doing. In the modern era, the Supreme Court has resoundingly repudiated this bad tendency rationale for suppressing controversial speech. In the modern era, moreover, the high Court has recognized the crucial distinction between advocacy of violent or unlawful conduct, which is protected, and intentional, [\*251] imminent incitement of such conduct, which is not. The Court enshrined thisdistinction in a landmark 1969 ACLU case, Brandenburg v. Ohio. n24 InBrandenburg, the Court unanimously upheld the First Amendment rights of a Ku KluxKlan leader who addressed a rally of supporters, some of whom brandished firearms and advocated violence and discrimination against Jews and blacks. n25 The Court held that this generalized advocacy was neither intended nor likely to cause immediate violent or unlawful conduct, and therefore could not be punished. n26 Notably, the Supreme Court consistently has applied Brandenburg's critical distinction between protected advocacy and unprotected incitement to shelter incendiary expression of every stripe-not only racist hate speech, but also fiery rhetoric in support of civil rights causes and protests. n27 Once again, the recent controversy surrounding Matthew Hale's case is instructive. The Illinois authorities denied his license to practice law because of his advocacy of white supremacist views, with no allegation-let alone evidence-that he had crossed the line between protected advocacy and prohibited incitement. If the United States Supreme Court had applied a similar standard in the important 1982 case of NAACP v. Claiborne Hardware, n28 the NAACP (National Association for the Advancement of Colored People) and its leaders would have faced severe penalties that would have threatened the ongoing viability of this leading civil rights organization. In stark contrast with the stance of Illinois bar officials and judges toward Matthew Hale, who was punished for advocating peaceful law reform to enshrine his racist views, the Supreme Court held that NAACP leaders had a First Amendment right to advocate not only violence, but indeed violence against African-Americans. Specifically, the Court protected the right of NAACP leaders to advocate violent reprisals against individuals who violated an NAACP-organized boycott of white merchants who allegedly had engaged in racial discrimination. n29 Even though some violence was subsequently committed against blacks who patronized white merchants, it occurred weeks or months after the inflammatory addresses. Accordingly, in a major victory for the civil rights cause, as well as for free speech principles, the Supreme [\*252] Court overturned a lower court ruling that had declared the boycott unlawful and heldthe NAACP responsible for white merchants' large financial losses. n30 TheCourt explained the fundamental free speech principles at stake as follows: The [NAACP leaders'] addresses generally contained an impassioned plea for black citizens to unify, to support and respect each other, and to realize the political and economic power available to them. In the course of those pleas, strong language was used . . . . Strong and effective extemporaneous rhetoric cannot be nicely channeled in purely dulcet phrases. An advocate must be free to stimulate his audience with spontaneous and emotional appeals for unity and action in a common cause . . . . To rule otherwise would ignore the "profound national commitment" that "debate on public issues should be uninhibited, robust, and wide- open." n31 The second fundamental free speech principle that would be violated by suppressing hate speech requires "content neutrality" or "viewpoint neutrality." It holds that government may never limit speech just because any listener-or even, indeed, the majority of the community-disagrees with or is offended by its content or the viewpoint it conveys. The Supreme Court has called this the "bedrock principle" of our proud free speech tradition under American law. n32 In recent years, the Court has steadfastly enforced this fundamental principle to protect speech that conveys ideas that are deeply unpopular with or offensive to many, if not most, Americans-for example, burning an American flag in a political demonstration against national policies, n33 or burning a cross near the home of an African- American family that had recently moved into a previously all-white neighborhood. n34 The viewpoint-neutrality principle was also essential to protect expression by pro-civil rights demonstrators during the Civil Rights Movement in the 1960s. In many Southern communities where Martin Luther King, Jr., and other civil rights activists demonstrated and aired their ideas, their views were seen as deeply offensive, abhorrent, and dangerous to traditional community mores and values concerning racial segregation and discrimination. Efforts [\*253] to censor and punish these expressions, though, were thwarted by court rulings enforcing the viewpoint-neutrality principle. n35 So this core principle is firmly entrenched in United States law. But it stillmeets a lot of public resistance, at least on first impression. I can illustrate this through a story about my own beloved father. After he retired, Dad moved to San Diego. About 15 years ago, I was invited to give a lecture there, following some well-publicized, ugly incidents of anti-Semitic and racist expression. I was asked to explain why the ACLU defends free speech even for racist and religious bigots, and why we win those cases. My father came to hear my talk. Now, mind you, he was not a card-carrying ACLU member! But he still came because he had not heard me give a speech since my high school commencement address-which, incidentally, he also disagreed with! Anyway, he listened very attentively. Afterwards, he came up to me and said: "I appreciate that excellent explanation of ACLU positions and constitutional law. I now understand that the ACLU is correctly interpreting the First Amendment. Thank you for making it clear to me that the problem is the First Amendment." I don't mean to pick on my dear Dad unfairly. To the contrary, his reaction was quite typical. Most people don't realize the importance of defending free speech for ideas that they find outrageous until or unless their own ideas are subject to censorship because other people find them outrageous.

### No Solvency- Rollback

#### PICS are rolled back- no chance they survive constitutional challenge

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)

These two cases remain the only two challenges to campus speech codes in federal court. In both cases, the district courts [\*216] struck down the codes as unconstitutionally vague and overbroad. This track record does not bode well for public university administrators who seek to protect their campus and students by limiting student speech. The speech that administrators want to prohibit through speech codes is difficult to precisely define. If the code covers too much speech, the courts are likely to find that the code is overbroad. If the code covers too little speech, administrators are unlikely to achieve their goal of a safer campus because much of the speech they seek to prohibit will be allowed. If the speech code seeks to be undefined enough to cover all the speech the administrators find harmful, the courts are likely to find that the code is unconstitutionally vague. If speech codes can be written in a way that satisfies both the Constitution and the goal of a safe and supportive campus, the road to such a code is a narrow one indeed.

#### Speech codes are impossible to defend vs breadth challenges

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)

Content-based regulation is not the only stumbling block faced by those who would institute campus speech codes. Another crucial problem with campus speech codes is that they are both overbroad and vague because the codes prohibit protected speech as well as speech outside the protection of the First and Fourteenth Amendments. Also, the exact language prohibited by the codes can be hard to define, giving those students punished under the codes little or no advance notice as to exactly what speech has been prohibited. Several Justices disagreed with the majority's rationale in R.A.V., but agreed with the result. n41 Instead of using the "underbreadth" theory presented by the majority, these Justices would have struck down the Minneapolis ordinance because it was overbroad. n42 In addition to prohibiting a narrow category of "fighting words," the ordinance also prohibited "a substantial amount of expression that, however repugnant, is shielded by the First Amendment." n43 Justice White reiterated the Court's long-standing position that hurt feelings alone are not sufficient grounds for removing First Amendment protection from speech. n44 The ordinance was "fatally overbroad and invalid on its face" n45 because so much protected speech was affected by the ordinance. The overbreadth theory may make it nearly impossible to write a campus speech code that would survive a constitutional challenge; any such code needs to be extremely narrowly tailored to avoid sweeping in protected, if "repugnant," speech.

#### Empirics prove true for university speech codes

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)

Federal district courts have cited to the overbreadth problem when striking down campus speech codes. In Doe v. University of Michigan, n46 the district court declared the speech code adopted by the University of Michigan to be unconstitutional. n47 The court first drew a distinction between "pure" speech and conduct, stating that the latter was open to prohibition and punishment while speech alone generally was not. n48 The court went on to discuss the types of speech that the university might be able to regulate, including "fighting words" and speech "which has the effect of inciting imminent lawless action." n49 Regulations aimed at prohibiting such speech must be carefully targeted so it affects only the unprotected speech. If the regulation also bans a significant amount of speech protected by the First Amendment, the regulation is overbroad and cannot withstand constitutional challenge. The Michigan speech code was not so carefully targeted. Instead it prohibited both protected speech and potentially unprotected speech. n50 The University's code vaguely described which types of speech were prohibited and the administration never considered whether the speech complained of might be protected by the First Amendment. n51 The University noted that speech that did violate the code included classroom discussions on the origins of homosexuality n52 and informal [\*214] discussions about the challenges faced by dentistry students. n53 Intense debate over the treatment of minorities in an academic program or the reasons an individual is homosexual are not the kind of speech contemplated by the "fighting words" doctrine. n54 Yet those topics were exactly the kind of speech the university saw as sufficiently harmful to warrant full hearings, counseling, and forced apologies. n55 Such an overbroad scope ensured the unconstitutionality of the speech code because it conflicted with the protections of the First Amendment. n56