

**Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Hearing on “Free Speech 101: The Assault on the First Amendment on College Campuses”
June 20, 2017**

Higher education rests on the free flow of ideas. Education requires that positions be held tentatively, tested by opposing arguments that are rationally considered, and evaluated. All colleges therefore must protect free speech. Public institutions must adhere to the various guarantees of the First Amendment.

Too often, all of these fundamental principles have been under assault. Even worse, some people who have exercised their First Amendment rights have been themselves assaulted. As a result, those who would curtail free speech have been emboldened and those who disagree with the prevailing orthodoxy have been censored or chilled from speaking freely. There is no point in having a student body on campus if competing ideas are not exchanged and analyzed.

At Kellogg Community College, administrators required prior approval for speech in public forums, a two-fold violation of the First Amendment. Amazingly, students there were arrested for distributing copies of the United States Constitution. Their lawsuit against the college and against its administrators in their personal capacity is pending.

Many students erroneously think that speech that they consider hateful is violent. Yet some students engage in acts of violence against speech, and universities have failed to prevent or adequately punish that violence. At the University of California Berkeley, two invited speakers were prevented from speaking due to mob violence and other projected safety concerns that the University failed to control. That university should be reminded of a passage in one of the Supreme Court’s most important First Amendment rulings: “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics...” A lawsuit has been brought that alleges that Berkeley has systemically and intentionally suppressed speech protected by the First Amendment because its viewpoint differs from that of university administrators.

At Middlebury College, the eminent scholar Dr. Charles Murray was at first shouted down from speaking, then when the event was moved, students pulled the fire alarm to prevent him from speaking. It was not Dr. Murray, but the students, who essentially falsely yelled “fire” in a crowded theater. The Middlebury professor who moderated the debate was physically assaulted, and has yet to fully recover from her serious injuries. It was not a mere handful of students, but a mob, who engaged in such appalling conduct at an institution theoretically devoted to rationality and intellectualism. Not including those who were not captured on video, the college disciplined more than 70 students. But none was expelled or even suspended. As a practical matter, most students received no more serious punishment than the “double secret probation” immortalized in film. As Dr. Murray noted, such weak punishment will not deter any future student disruptions

The First Amendment is clear. The Supreme Court has decided that offensive speech is protected, that speech cannot be restricted based on viewpoint, that public forums must be places where free speech rights can be exercised, and that prior restraints on speech are highly disfavored. Otherwise, any speech that anyone found offensive could be suppressed. Little free speech would survive. And as Justice Holmes said, "If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought, not free thought for those who agree with us but freedom for the thought that we hate."

But on too many campuses today, free speech appears to be sacrificed at the altar of political correctness. Many administrators believe that students should be shielded from hate speech, whatever that is, as an exception to the First Amendment. Unfortunately, this censorship is no different from any other examples in history, when speech that authorities deemed to be heretical has been suppressed based on its content. Even more unfortunate, this anti-constitutional attitude is so pervasive that students are being socialized and possibly indoctrinated into favoring censorship at odds with the First Amendment. A recent Gallup poll found that students by 69-31 margin believe that it is desirable to restrict the use of slurs and other language intentionally offensive to certain groups. And by a 72-27 margin, they favor restricting expression of political views that are upsetting or offensive to certain groups.

College students vote. Not only academia, but our democracy depends on the ability to try to advocate to inform or to change minds. When universities suppress speech, they not only damage freedom today, they establish and push norms harmful to democracy going forward. These restrictions may cause and exacerbate the political polarization that is so widely lamented in our society.

Whatever the nature of the speech being suppressed, I am concerned. However, prominent liberal university administrators admit that the vast amount of disfavored speech is on the conservative side of the spectrum. Harvard President Drew Faust's recent commencement address, which I will put in the record, noted the lack of conservative ideas on campus. And as former Stanford Provost John Etchemendy has observed, "[T]here is a growing intolerance at universities . . . , a political one-sidedness, that is the antithesis of what universities should stand for." And he fears that university administrators will take the easy route of giving in to student pressure to restrict debate. I ask consent to include his excellent remarks in the record as well.

Dr. Etchemendy's fears are being realized. In a recent interview, the President of Northwestern University undercut the apparent lip service he paid to the First Amendment. Rather than making students confront the speech that makes them uncomfortable, he advocated making students feel comfortable by ensuring a safe space where they will not hear it. Even worse, when asked whether he would be comfortable were the speakers shouted down at Middlebury and Berkeley to speak at Northwestern, he replied that he would permit their appearances "on a case-by-case basis." No. The First Amendment does not permit arbitrary prior restraints on speech by university administrators on a case by case basis. That is an open invitation to discriminate based on viewpoint. That is where too many colleges are right now. Any great

university would welcome numerous speakers whose positions made the President and many others on campus uncomfortable.

Some may advocate legislation in this area. Theoretically, private colleges that accept federal funds could be subject to individual private lawsuits when free speech rights, including religious free speech rights, are violated. Some may even suggest an analogue to section 1983. Under that approach, officials of private universities that accept federal funds would be subject to individual private rights of action for damages if they violate free speech or fail to train university officials and campus police to adhere to the First Amendment.

Fortunately, not all schools adopt the censorship approach. The University of Chicago has adopted a policy that some other universities have followed, which I will also put in the record. This policy prohibits the university from suppressing speech that even most people on campus would find offensive or immoral. It calls for counter-speech rather than suppression by people who disagree with speech. And while protecting protest, it expressly prohibits “obstruct[ing] or otherwise interfer[ing] with the freedom of others to express views they reject or even loathe.” Finally, it commits the university to actively “protect that freedom when others attempt to restrict it.”

The Committee has assembled a distinguished panel to speak on this important subject. I welcome them all.