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Dear Sen. Sasse:

I much appreciate the opportunity to answer the follow-up questions that you sent June 27. Here are some quick responses, though I've taken the liberty of reordering the questions to some extent:

1. *Given the near impossibility of establishing objective standards for what is offensive, is it fair to use "offensiveness" as a benchmark for rules governing speech on campus? As you might gather, I think the answer is "no."* This is partly for the very reason you suggest: "offensiveness" is always subjective, and it is human nature to view statements as "honest zeal and righteous indignation" (in John Stuart Mill's words) when they come from one's friends and to view the same sort of statements as offensive and "intemperate ... invective" when they come from one's enemies.

To be sure, one role of universities is to teach students how to present any *viewpoint* without needlessly alienating listeners through one's *manner*. I often try to teach my law students precisely this, since lawyers especially need this skill. But here we should lead by persuasion and example, not by suppression, precisely because any administrative "civility codes" will never be fairly applied.

2. *Does it concern you that so many students and, frankly, professors and higher education administrators, seem uneducated on or unconvinced of the importance of free speech—one of the core liberties enshrined in the Bill of Rights?* It does, though it especially concerns me when such views are held—and acted on—by public university administrators, because it is their job to know the First Amendment rules and to make sure that the universities adhere to them.

What responsibility do professors and administrators have in the free speech debate? On the whole, are professors and administrators living up to this responsibility? As I mentioned, I think that administrators should know free speech law, and should follow it. Some administrators do that scrupulously. Others don't, and those should be admonished.

As to professors, they can't be expected to be knowledgeable about all fields. I hope theoretical physicists don't expect me to know theoretical physics; I can't expect them to know the often complicated rules of free speech law.

But when professors do call for speech restrictions—as it is their right to do, of course, even if I disagree with them—they should make sure that they learn a bit about the rules governing such restrictions. They have a responsibility to their students, the public, and to themselves to make sure that what they say on the subject is thoughtful and accurate.

3. *Do you believe that the lack of viewpoint diversity contributes to the growing climate of hostility toward free speech on college campuses? What are the ramifications of viewpoint discrimination on liberal education in America?* The ramifications are dire, and the hostility toward free speech is just one of them.

Effective scholarship and learning come from taking seriously all the arguments. But if the faculty in a department—or sometimes, even in an entire discipline, throughout the whole country—are ideologically homogeneous (or nearly so), many arguments won't be aired, and won't be seriously considered.

Emerging scholars won't be exposed to them. Senior scholars won't be constantly challenged by them. Students won't learn how to deal with arguments on both sides of the debate. Even people who agree with the dominant view will be deprived of the opportunity to better learn how to defend that view.

4. *What steps should higher education administrators take to ameliorate this problem? In your view, why aren't more institutions doing so?* These are very hard problems to solve, unfortunately. I don't support political preferences for supposedly underrepresented political groups, just as I don't support race-based preferences for various racial groups, or religious preferences for various religious groups. I think everyone should be hired without regard to such factors.

This having been said, I acknowledge that even fair-minded faculty will often subconsciously discriminate based on ideology. After all, they are supposed to hire the best scholars—but it's so tempting for all of us to treat people who agree with us as especially smart (after all, they agree with us!) and to look askance at the work of those who disagree with us. And that is true even for faculty who are trying hard to be fair-minded; human nature being what it is, not all faculty will try.

5. *Do you believe the campus you are affiliated with is engaging in viewpoint discrimination, either in its hiring practices or its handling of guest events on campus?*

Do you believe all students should be able to host and attend events with guest speakers on campus? Do you believe there should be consequences for students who exercise the "hecklers veto"—i.e., those students who shout down a speaker or prevent fellow students from entering the speaking location?

a. Hiring practices: Again, human nature being what it is, I suspect the answer is that there is some ideological discrimination in hiring at the University of California, as there

would be at any institution. But I don't know of specific evidence on this score, and I can't speak to what the magnitude of this effect is likely to be.

b. Handling of guest events: I'm sorry to say that UC campuses have indeed sometimes failed to provide adequate security for conservative speakers. They have sometimes failed to stop the shouting down of conservative speakers. On one occasion, a UC department even removed a book that the coorganizers of an event were displaying (though in that last case, the dean promptly apologized for the incident, which happened as a result of an on-the-spot decision by a lower-ranking administrator). I don't think UC is unusually bad on this score, but I wish it did better.

Fortunately, this problem can indeed be ameliorated, much more easily than the problems with faculty hiring. Here, universities can and should adopt firm rules that guarantee police protection for speakers (even when that means extra effort by university police departments and city police departments). They should adopt and enforce rules that forbid students from shouting down speakers. And they should make sure that administrators know not to try to remove material because it is seen as offensive.

6. *Why do you believe so many abuses of free speech, such as "speech zones" and "safe spaces," still go unchallenged?* Fighting such abuses takes time, effort, and a willingness to ruffle feathers. Fighting them in court takes either money or legal expertise. Unsurprisingly, many students and faculty are too busy with their schooling or their day jobs to wage such battles; and many might understandably worry about retaliation from administrators.

Fortunately, to answer another question (*What more can federal, state, and local governments—separate and apart from higher education institutions—do to ensure the First Amendment is upheld on college campuses?*), state legislatures can help out. For starters, they can enact statutes that reaffirm student free speech rights. Such statutes can clearly and effectively distill the First Amendment precedents, in a way that administrators will notice.

They can also enact statutes that require public universities to affirmatively protect speakers from being attacked, shut down, or shouted down. (They can similarly forbid the mass seizure of student newspapers, and other similar misconduct.) Such statutes can make clear that public universities should view such protection as a core part of their tasks, even when the protection involves spending money for extra police protection. And public universities should punish interference with free speech just as they punish academic dishonesty and similar forms of misconduct.

7. *If current trends continue, what will the state of free speech on campus be in 50 years? What can college students, parents, professors, and administrators do to help ensure we pass on the ideals of the First Amendment to the next generation?* I always hesitate to make long-term predictions, but I agree that students who are taught that they should try to

suppress ideas they find offensive—rather than listening to them and figuring out how to argue against them—are likely to propagate such teachings to future generations.

Instead, administrators should teach by example, even when doing so involves effort and political hostility. They should create environments where hard issues, including ones related to race, sex, sexual orientation, religion, immigration, abortion, and similar topics, are thoughtfully and thoroughly debated.

And the rest of us should make sure that administrators get pushback when they fall down on the job. Many administrators, I think, view restricting speech in response to demands by a vocal minority as the path of least resistance. They need to see that the pro-free-speech forces can offer resistance, too. In the words of that great Senator, Everett Dirksen, “When I feel the heat, I see the light.” Supporters of free speech have to be constantly ready to provide political heat to counteract the heat being applied by opponents.

Sincerely Yours,

A handwritten signature in cursive script that reads "Eugene Volokh".

Eugene Volokh