

FREE SPEECH CENTER

AT MIDDLE TENNESSEE STATE UNIVERSITY



2024

ANNUAL UPDATE



FREE SPEECH
CENTER

at Middle Tennessee State University

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Celebrating our Fifth

This year marks the fifth anniversary of the founding of the Free Speech Center at Middle Tennessee State University.

In the overall scheme of things, that's not a long time. Five annual physicals. Five income tax returns. It's not much of a milestone. Even the traditional wedding gift is wood.

In the First Amendment universe, though, the past five years have been historic, with freedom of expression elevated to unprecedented levels of visibility, public debate, and political rancor.

I've worked in First Amendment law in one form or another for more than a quarter-century and was often asked what the greatest threat was to the First Amendment.

"Apathy," I would reply. The First Amendment was largely taken for granted, and fewer than 3% of Americans could name its five freedoms. Absent an occasional Supreme Court decision, there was little in the news about freedom of speech, press, religion, petition, and assembly.

Yet over the last five years, there have been endless clashes over free-speech rights in particular:

- Allegations that universities are hostile to free speech, along with claims that universities have been too tolerant of pro-Palestine protests.
- Litigation claiming that social media companies are infringing upon the free speech of their users, with concomitant claims that the companies have been too lax in limiting hateful and misleading posts.
- An unprecedented wave of book banning in public schools and libraries.
- Extensive legislative efforts to limit what public school teachers and college professors can teach or say in the classroom.
- Heated debate over COVID-era restrictions and the right to gather in places of worship.
- A gag order issued against a former U.S. president in a criminal courtroom.

It's enough to make you miss apathy.

The problem with angry battles over First Amendment freedoms is that they tend to generate heat and not light. There's a tendency to argue with emotion and not the facts that might make a debate constructive. What does the First Amendment really say? How has the Supreme Court ruled? Whom and what does the First Amendment protect us from? Have we ever been here before?

That's where the Free Speech Center comes in. As a nonpartisan, nonprofit educational center, it's our goal to build support and understanding of the First Amendment through information and analysis.

The more we know about the 45 words ratified in 1791, the better equipped we are to be engaged and insightful citizens. The free flow of ideas has made America the most inventive, creative, successful, and stable nation in the world. Preserving and protecting these freedoms should be a first priority.

—Ken Paulson
Director, Free Speech Center



By the Numbers

The First Amendment Encyclopedia is designed to give students, the public, and legal professionals insights into the history, application, and parameters of our fundamental freedoms of expression. It's no surprise that our website traffic grows dramatically beginning mid-August and continuing through the school year. The encyclopedia has become a go-to for students working on class assignments and term papers.

Our most-visited topics over the past year have included timeless foundational principles and pivotal cases, but also current controversies like the flying of inverted flags and the banning of books.

TOP 10

The most-visited topics from the past year:

- 1 Flying the flag upside down
- 2 Anti-Federalists
- 3 Book Banning
- 4 Protestant Reformation
- 5 Establishment Clause (Separation of Church and State)
- 6 Federalists
- 7 New York Times Co. v. United States (1971)
- 8 7 things you need to know about the First Amendment
- 9 Censorship
- 10 Dress Codes

Getting the Green Light

In 2024, the Foundation for Individual Rights and Expression (FIRE) recognized MTSU for its commitment to free expression.

The national free-speech advocacy organization assigned its "green light" designation as part of its ongoing review of American universities' practices and policies concerning First Amendment freedoms.

Only 68 colleges and universities nationwide received this rating, which is reserved for institutions with no written policies that seriously imperil student free-speech rights.

"MTSU has had a unique commitment to the First Amendment for nearly 40 years," FIRE wrote in its assessment and designation. It specifically cited MTSU's John Seigenthaler Chair of Excellence in First Amendment Studies, which promotes awareness of the First Amendment and quality journalism in Tennessee, and the Free Speech Center, a leading online resource housing the First Amendment Encyclopedia, a widely used collection of about 1,700 articles on First Amendment topics, court cases, and history, as well as many other educational initiatives.

"In addition to these on-campus initiatives, in 2018 the board of trustees adopted the 'Chicago Statement,'" FIRE added, "a robust articulation of an institution's commitment to free speech. Universities that adopt the policy promise not to 'shield individuals from free speech, including ideas and opinions they find offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed.'"

Ken Paulson, director of the Free Speech Center, is a member of FIRE's Legal Advisory Council. According to Paulson, vague policies previously prevented the University from receiving a green light rating from FIRE.

For example, MTSU improved its amplified-sound guidelines by deleting a provision that banned "offensive language," which could have easily been abused to censor disfavored but protected expression on campus. The revised Electronic Mail Acceptable Use policy also clarifies that "annoying" emails are permitted, but harassment via email is not.



A quick tour of the Free Speech Center's resources:

Daily news reports and analyses on First Amendment issues



The First Amendment Encyclopedia, with about 1,700 authoritative articles, all written in a highly accessible way



Free Speech Center on YouTube, a compilation of videos of Free Speech Center events and interviews, along with "explainers" of emerging issues



First Amendment teaching tools, a guide to the best free lessons for First Amendment education.



News Media Hotline, supplying journalists with the background they need to report on First Amendment issues





The First Amendment: The year in review by Dennis Hetzel

The First Amendment was ratified in 1791, but the interpretation and application of this 45-word passage remains front and center in contemporary America. Among the most significant developments over the past year:

Content moderation

The Supreme Court unanimously returned two closely watched cases—*Moody v. NetChoice, LLC* and *NetChoice, LLC v. Paxton*—to lower courts after concluding that First Amendment considerations had not been adequately explored.

NetChoice, an industry trade group fighting restrictions on content moderation, argued that social media companies have the same First Amendment rights as other media outlets to decide what to publish. Justice Elena Kagan wrote for the majority that editorial discretion is clearly protected by the First Amendment.

The NRA's free speech

In *National Rifle Association v. Vullo*, the Supreme Court unanimously agreed that Maria Vullo, then the superintendent of the New York Department of Financial Services, pushed too hard when she urged insurers and banks to cut ties with the NRA over the group's opposition to gun control in the wake of the mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida. The Court viewed it as coercion and a clear, albeit indirect, violation of the NRA's free-speech rights by the government.

Names in trademarks

In a 9-0 ruling in *Vidal v. Elster*, written by Justice Clarence Thomas, the Supreme Court upheld the Lanham Act's prohibition of a trademark that includes the name of a living person without that person's consent.

Social media and public officials

In March, the Supreme Court issued a unanimous decision in two merged cases that asked whether public officials could block critics on their personal social media accounts that refer to their public-sector work.

The Court offered a two-part test: The official should have actual authority to speak on the subject, and exercise that authority by speaking on that subject on social media. Those circumstances may limit officials' rights to block constituents.

TikTok ban

Can the U.S. government, alleging national security concerns, shut down the Chinese-owned social media site TikTok unless it finds a new owner?

The Chinese government adamantly denies that it uses the fast-growing site to promote its political interests while harvesting the data of millions of Americans, but skeptics abound, prompting Congress to pass a law requiring that TikTok sell or shut down in America, which President Biden signed into law. The controversy prompted First Amendment challenges now ongoing in the courts.

The boom in book bans

The author-advocacy group PEN documented 4,349 efforts to ban books in fall 2023, a total higher than the entire previous year. PEN has identified book bans in 42 states since 2021.

Battles continue largely over books in public high school libraries. Critics citing "parental rights" push to remove books they disapprove of, even though their own children are not required to check out or read any of the books. The most frequently targeted topics include race, LGBTQ themes, and sexuality.

The Ten Commandments in classrooms?

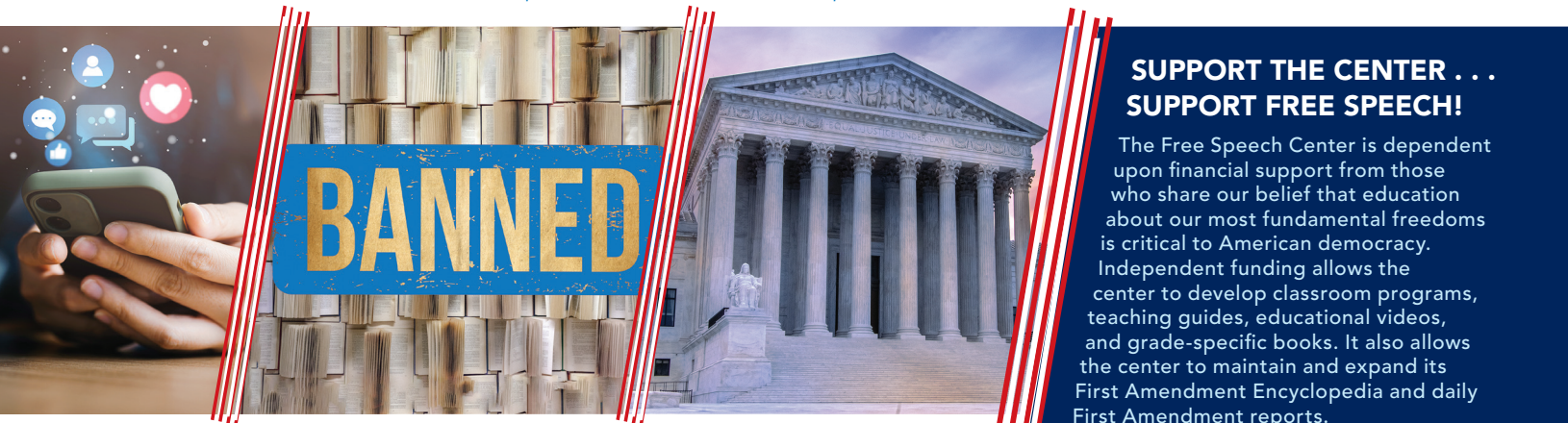
The state of Louisiana has enacted a law requiring that public schools post the Ten Commandments in classrooms. Though the First Amendment bars government activity that promotes religion, Louisiana contends that the posters are educational and not religious in nature. "If you want to respect the rule of law, you've got to start from the original lawgiver, which was Moses," Republican Gov. Jeff Landry said.

Kansas newspaper raid

A case involving a police chief who raided the office of a small local newspaper in August 2023 gained national attention.

Almost a year to the day of the raid, a special prosecutor filed a charge of interfering with the judicial process against Police Chief Gideon Cody in connection with the raid at the newspaper and two homes.

Dennis Hetzel is a correspondent for the Free Speech Center and former executive director of the Ohio News Media Association and president of the Ohio Coalition for Open Government. He lives in Holden Beach, N.C.



SUPPORT THE CENTER . . . SUPPORT FREE SPEECH!

The Free Speech Center is dependent upon financial support from those who share our belief that education about our most fundamental freedoms is critical to American democracy. Independent funding allows the center to develop classroom programs, teaching guides, educational videos, and grade-specific books. It also allows the center to maintain and expand its First Amendment Encyclopedia and daily First Amendment reports.

To support the Free Speech Center, please click on the **Donate** button at freespeech.center. Visit freespeech.center for more information and to support the center's mission.

Drop us a message at freespeechcenter@mtsu.edu.

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