

**Testimony of J. Richard Cohen
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before the
Committee on Health, Education, Labor and Pensions
United States Senate**

**Exploring Free Speech on College Campuses
October 26, 2017**

My name is Richard Cohen. I am an attorney and the president of the Southern Poverty Law Center, a civil rights organization founded in 1971. I have testified before numerous congressional committees, including the Senate Committee on the Judiciary in June on the subject of free speech on college campuses. I have served on the Department of Homeland Security's Countering Violent Extremism Working Group and am a recipient of the FBI Director's Community Leadership Award. I am honored to appear before you today.

For more than three decades, my colleagues and I have been monitoring and issuing reports about radical right activity in the United States, including at colleges and universities, and have been advising law enforcement officials, civic leaders, and college administrators on how to respond to speeches and rallies held by hate groups and their leaders. A few days before the violent demonstrations in Charlottesville, Virginia, in August, we released a guide with advice to student groups on how to respond when speakers associated with the white nationalist movement come to their campuses.¹ Less than a week after the deadly Charlottesville events, we released a new edition of *Ten Ways to Fight Hate*, our community guide for responding peacefully to hate activity.² A few weeks from now, we will be releasing a training video for the law enforcement community on lessons that can be learned from the events in Charlottesville.

I'd like to make three points this morning.

First, the debate over free speech on college campuses is taking place against the backdrop of increased activity by a white nationalist movement that has been emboldened by President Trump's rhetoric and that is targeting colleges and universities.

Second, although university officials and students may find white nationalism abhorrent, they must respect the First Amendment rights of white nationalist speakers and of the students who want to listen to them.

Third, university administrators and public officials, particularly the President, must speak out forcefully against white nationalism and in support of the First

¹ *The Alt-Right on Campus: What Students Need to Know* (2017), <https://www.splcenter.org/20170810/alt-right-campus-what-students-need-know>.

² *Ten Ways to Fight Hate: A Community Response Guide* (2017), <https://www.splcenter.org/20170814/ten-ways-fight-hate-community-response-guide>.

Amendment. The President also should heed Congress's call to use his administration's resources to fight the growing prevalence of hate groups in our country.

White Nationalist Movement Emboldened by the Presidential Campaign Is Targeting Our Nation's Colleges and Universities

On the night of Friday, August 11, 2017, as the joint resolution unanimously passed by this Congress stated, "hundreds of torch-bearing White nationalists, White supremacists, Klansmen, and neo-Nazis chanted racist, anti-Semitic, and anti-immigrant slogans and violently engaged with counter-demonstrators on and around the grounds of the University of Virginia in Charlottesville."³ The shocking number of hardcore racists who came to Charlottesville reflects that our country is facing a newly energized white supremacist movement. The fact that the racists marched at the University of Virginia reflects that the movement is targeting our colleges and universities. The fact that violence erupted reflects that the threat colleges and universities are facing is very real.

Congress has recognized the "growing prevalence of ... hate groups" in our country.⁴ Our research confirms the point. During the last two years – a period that coincided with the presidential campaign – we documented a surge in the number of hate groups.⁵ The growth in the number of hardline anti-Muslim groups last year was particularly dramatic and followed a significant increase in hate crimes against Muslims the year before, according to the FBI.⁶ As former President George W. Bush noted during a speech earlier this month, "bigotry seems emboldened."⁷

Regardless of whether President Trump intended it, his campaign rhetoric "unearthed some demons," to borrow Representative Mark Sanford's words.⁸ Although white supremacists typically eschew the political process, seeing both parties as irredeemably corrupt, they took the unusual step of rallying around Mr. Trump's candidacy and celebrating his victory. On his radio show from February 2016, for example, former Klan chief David Duke told his listeners that "voting against Donald Trump ... is really treason to your heritage."⁹ On election night, he tweeted that "our

³ S.J. Res 49, 115th Cong. (2017) (enacted).

⁴ *Id.*

⁵ *Hate Groups Increase for Second Consecutive Year as Trump Electrifies Radical Right*, Southern Poverty Law Center, Feb. 15, 2017, <https://www.splcenter.org/news/2017/02/15/hate-groups-increase-second-consecutive-year-trump-electrifies-radical-right>.

⁶ Mark Potok, *Anti-Muslim Hate Crimes Surged Last Year, Fueled by Hateful Campaign*, Southern Poverty Law Center, Nov. 14, 2016, <https://www.splcenter.org/hatewatch/2016/11/14/anti-muslim-hate-crimes-surged-last-year-fueled-hateful-campaign>; Fed. Bureau of Investigation, *Hate Crime Statistics, 2015* (2016), https://ucr.fbi.gov/hate-crime/2015/topic-pages/incidentsandoffenses_final.pdf.

⁷ <http://thehill.com/homenews/news/356212-george-w-bush-bigotry-seems-emboldened-in-us>

⁸ Karen Tumulty and Robert Costa, *The GOP Inherits What Trump has Wrought* (May 26, 2017), https://www.washingtonpost.com/politics/the-gop-inherits-what-trump-has-wrought/2017/05/26/4e1943ea-4177-11e7-adba-394ee67a7582_story.html?utm_term=.bc5a926d86fa

⁹ *David Duke Says a Vote against Trump is Treason to White Heritage*, Hatewatch, Feb. 26, 2016, <https://www.splcenter.org/hatewatch/2016/02/26/david-duke-says-vote-against-trump-treason-white-heritage>.

people played a HUGE role in electing Trump!”¹⁰ During a gathering of white nationalists just blocks from the White House shortly after the election, white nationalist leader Richard Spencer – who later played a prominent role in the Charlottesville demonstrations – prompted Sieg Heils from audience members after quoting Nazi propaganda in German. He responded by shouting, “Hail Trump! Hail our people! Hail victory!”¹¹

In the ten days following the election, we documented nearly 900 bias-related acts of harassment, intimidation, and violence.¹² Sixteen percent of the incidents took place on college campuses. Many of the perpetrators invoked the president-elect’s name or his slogans. *Cf. supra* note 8 (quoting Rep. Sanford) (“I’ve talked to a number of people about it back home. They say, ‘Well, look, if the president can say whatever, why can’t I say whatever?’ He’s given them license.”). During the Charlottesville demonstrations, David Duke stated, “We are determined to take our country back. We are going to fulfill the promises of Donald Trump.”¹³

Colleges and universities are a prime target of the newly energized white supremacist movement because it sees them as bastions of liberalism and multiculturalism – institutions that are “infected” with political correctness. From the movement’s perspective, making a speech on a college campus is a highly symbolic act – equivalent to going into the belly of the beast.

The statistics tell the story: Since March 2016, we have documented 329 incidents of racist recruitment flyers being distributed on 241 different college campuses across the United States – a number that continues to grow.¹⁴

A group called Identity Evropa, whose members must be of “European, non-Semitic heritage,” has been responsible for the largest number of these recruitment efforts. The group was founded by Nathan Damigo, a student who was inspired by reading David Duke’s autobiography while in prison for assaulting an Arab cab driver.¹⁵ Damigo was involved in the Charlottesville demonstrations.

Members of Vanguard America, another racist group that has been distributing flyers on college campuses, also were present in Charlottesville. Wearing white polos

¹⁰ David Duke (@DrDavidDuke), Twitter (Nov. 9, 2016, 2:14 AM), <https://twitter.com/drdauidduke/status/796249464826687488?lang=en>.

¹¹ Joseph Goldstein, *Alt-Right Gathering Exults in Trump Election with Nazi-Era Salute*, N.Y. Times, Nov. 20, 2016, https://www.nytimes.com/2016/11/21/us/alt-right-salutes-donald-trump.html?_r=0

¹² *Ten Days After: Harassment and Intimidation in the Aftermath of the Election*, Southern Poverty Law Center, Nov. 29, 2016, <https://www.splcenter.org/2016/11/29/ten-days-after-harassment-and-intimidation-aftermath-election>.

¹³ Libby Nelson, “Why we voted for Donald Trump”: David Duke explains the white supremacist Charlottesville protests, Vox, Aug. 12, 2017, <https://www.vox.com/2017/8/12/16138358/charlottesville-protests-david-duke-kkk>.

¹⁴ <https://www.splcenter.org/hatewatch/2017/10/17/white-nationalist-flirting-american-college-campuses>

¹⁵ Shane Bauer, I met the White Nationalist Who ‘Falcon Punched’ a 95-Pound Female Protester, Mother Jones, May 9, 2017, <http://www.motherjones.com/politics/2017/05/nathan-damigo-punching-woman-berkeley-white-nationalism/>.

with khakis, they chanted “Blood and Soil” while marching on the campus of the University of Virginia.¹⁶ James Fields, the man who killed Heather Heyer and injured numerous people when he ran his car into a crowd, was photographed rallying with Vanguard America.¹⁷

Richard Spencer and Milo Yiannopoulos are prominent “alt-right” figures making the rounds on campus speaking tours. Spencer is an openly racist, white nationalist leader who heads a small organization called the National Policy Institute. He has called for “peaceful ethnic cleansing” and the creation of a white ethno-state in North America.¹⁸

Propelled by the publicity he received from his Washington speech shortly after the election, Spencer launched what he called a “danger tour” of campus speaking engagements. *The Chronicle* described Spencer as a “clean-cut 38-year-old, who attempts to bring an air of respectability to a movement commonly associated with Nazis and the Ku Klux Klan.” Spencer told *The Chronicle* that he hoped to speak at “all the big” universities.¹⁹ He added that it was “really important now to go in with all guns blazing—figuratively speaking, of course—and be really radical and say I fundamentally disagree with you. The Donald Trump phenomenon was, and still is, about identity at some deep level.”²⁰ At a speech at Texas A&M University on December 6, 2016, Spencer told the audience and protestors that “America, at the end of the day, belongs to white men. . . . Our bones are in the ground. We own it.”²¹

Milo Yiannopoulos, a deliberately offensive, flamboyant provocateur who calls himself the “Dangerous Faggot,” has spoken at dozens of colleges.²² The co-author of Breitbart News’ “An Establishment Conservative’s Guide to the Alt-Right,” he described

¹⁶ See Justin Moyer et al., *Vanguard America, a White Supremacist Group, Denies Charlottesville Ramming Suspect Was a Member*, The Washington Post, Aug. 15, 2017, https://www.washingtonpost.com/local/vanguard-america-a-white-supremacist-group-denies-charlottesville-attacker-was-a-member/2017/08/15/2ec897c6-810e-11e7-8072-73e1718c524d_story.html?utm_term=.c83c07617ba0; *Deconstructing the Symbols and Slogans Spotted in Charlottesville*, The Washington Post, Aug. 18, 2017, https://www.washingtonpost.com/graphics/2017/local/charlottesville-videos/?utm_term=.e05bed64f589.

¹⁷ See Moyer, *supra* note 16.

¹⁸ Richard Bertrand Spencer, Southern Poverty Law Center, <https://www.splcenter.org/fighting-hate/extremist-files/individual/richard-bertrand-spencer-0>.

¹⁹ Katherine Mangan, *Richard Spencer, White Supremacist, Describes Goals of His “Danger Tour” to College Campuses*, The Chronicle of Higher Education, Nov. 28, 2016, <http://www.chronicle.com/article/White-Supremacist-Describes/238515>.

²⁰ *Id.*

²¹ *White Nationalists Work to Make Inroads at U.S. Colleges*, Intelligence Report, Feb. 15, 2017, <https://www.splcenter.org/fighting-hate/intelligence-report/2017/white-nationalists-work-make-inroads-us-colleges>.

²² Allum Bokhari, *Suck it up Buttercups: Dangerous Faggot Tour Returns to Colleges in September*, Breitbart News, July 6, 2016, <http://www.breitbart.com/milo/2016/07/06/milo-yiannopoulos-dangerous-faggot-tour-returns-campus-fall/>.

Spencer as one of the “intellectuals” of the movement.²³ As a former tech editor at Breitbart, Yiannopoulos was a frequent guest on Stephen Bannon’s radio show. Bannon lauded Yiannopoulos as “one of the leading voices of his generation in this whole fight against cultural Marxism, the defense of Western Civilization” and compared his courage to that of Winston Churchill.²⁴

Given the provocative nature of white nationalist activity aimed at colleges and universities, it is not surprising that we have seen a strong backlash among students. There have been instances when students shouted down speakers. And, unfortunately, there have been times when violence has broken out, including at the University of California at Berkeley and at the University of Virginia,²⁵ something that we have always denounced.

Much of the violence has been perpetrated not by students but by persons who identify with the so-called Antifa – a loose-knit, self-described anti-fascist movement. Antifa have been involved in bloody street fights with white supremacists for decades. Many are organized under a loose, national network known as Anti-Racist Action (ARA), formed by anti-racist skinheads in Minneapolis in 1988 to combat neo-Nazi skinhead gangs. ARA is dedicated, according to its website, to “eliminating racism, sexism, anti-Semitism, Islamophobia, homophobia, transphobia, and discrimination against the disabled, the oldest, the youngest, and the most oppressed people.” Its tenets include “challenging racists and fascists when they attempt to recruit, organize, mobilize, propagandize, and cause harm to people” and “refusing to ignore the violent bigots that comprise racist and fascist groups.”²⁶

Clearly, college administrators have their hands full.

The First Amendment Rights of All Speakers and Listeners Must Be Protected

Last week, the organizer of Richard Spencer’s campus speaking tour filed a lawsuit against Ohio State University for refusing to rent a campus venue to him for a Spencer speech.²⁷ The organizer is likely to win, just as he won a similar lawsuit against

²³ Allum Bokhari & Milo Yiannopoulos, *An Establishment Conservative’s Guide to the Alt-Right*, Breitbart, Mar. 29, 2016, <http://www.breitbart.com/tech/2016/03/29/an-establishment-conservatives-guide-to-the-alt-right/>.

²⁴ Keegan Hankes, *How Stephen Bannon Made Milo Dangerous*, Hatewatch, Feb. 23, 2017, <https://www.splcenter.org/hatewatch/2017/02/23/how-stephen-bannon-made-milo-dangerous>.

²⁵ Carlo David & Frances Dinkelspiel, *Chaos Erupts, Protesters Shut Down Yiannopolous Events, Banks In Downtown Vandalized*, Berkeleyside (Feb. 2, 2017, 9:15 AM), <http://www.berkeleyside.com/2017/02/02/chaos-erupts-protesters-shut-yiannopolous-events-banks-downtown-vandalized/>; *Events Surrounding White Nationalist Rally in Virginia Turn Fatal*, NPR: The Two-Way (Aug. 12, 2017, 5:00 AM), <http://www.npr.org/sections/thetwo-way/2017/08/12/542982015/home-to-university-of-virginia-prepares-for-violence-at-white-nationalist-rally>.

²⁶ “About Anti-Racist Action,” available at <https://antiracistaction.org/about/>.

²⁷ Compl., *Padgett v. Bd. of Trs. of The Ohio State Univ.*, No. 2:17-cv-00919 (S.D. Ohio Oct. 22, 2017), <https://mgtvwmh.files.wordpress.com/2017/10/osu-complaint.pdf>.

Auburn University earlier this year.²⁸ Although many universities, particularly after Charlottesville, would like to refuse to allow Spencer to speak on their campuses,²⁹ they will all almost certainly lose if they try to do so, absent unusual circumstances, in light of settled First Amendment jurisprudence.

The First Amendment is a bedrock principle of our diverse democracy. It protects the right to an open dialogue, described by the Supreme Court as a “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.”³⁰ Crucial to that commitment is that the Constitution does not merely protect expression that is beautiful, or moral, or wise. It commits us to protecting speech and acts that may be disagreeable or even downright offensive to some.³¹ That commitment safeguards both the rights of students to peacefully protest³² and the rights of anti-war activists to burn the American flag.³³

Public colleges and universities are state actors.³⁴ They must ensure that their campuses both uphold the First Amendment and are safe, welcoming, and supportive environments for students of all backgrounds.³⁵ Although private school administrators are not legally bound by the same obligations,³⁶ most typically assume those duties regardless, given their role in building a society in which First Amendment freedoms are paramount.

The First Amendment firmly protects the right to receive information from all manner of sources, from controversial speakers to books and pamphlets.³⁷ No matter how repugnant one may find a speaker’s views, as long as a college has a policy of allowing student groups to invite people from outside their campus to speak, college administrators cannot pick and choose based on the views the speaker holds.³⁸ This is why Middlebury

²⁸ Prelim. Inj., *Padgett v. Auburn Univ.*, No. 3:17-cv-00231 (M.D. Ala. Apr. 18, 2017), ECF No. 9.

²⁹ Ramsey Touchberry, *Penn State Becomes Fifth University to Deny White Nationalist Richard Spencer*, USA Today College, Aug. 22, 2017, <http://college.usatoday.com/2017/08/22/penn-state-becomes-fifth-university-to-deny-white-nationalist-richard-spencer/>.

³⁰ *N.Y. Times v. Sullivan*, 376 U.S. 254, 270 (1964).

³¹ *Snyder v. Phelps*, 562 U.S. 443, 458 (2011); *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 209–10 (1975).

³² *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

³³ *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

³⁴ *Nat’l Collegiate Athletic Ass’n v. Tarkanian*, 488 U.S. 179, 192 (1988) (“A state university without question is a state actor.”).

³⁵ *Davis ex rel. LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 633 (1999); see also Letter from Russlynn Ali, Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ., to Colleagues (Oct. 26, 2010), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

³⁶ See, e.g., *Rendell-Baker v. Kohn*, 457 U.S. 830, 843 (1982) (holding that a private high school for troubled students need not observe First Amendment rights of a teacher fired for criticizing school officials).

³⁷ See, e.g., *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (internal citations omitted) (“It is now well established that the Constitution protects the right to receive information and ideas. . . . This right to receive information and ideas, regardless of their social worth is fundamental to our free society.”).

³⁸ *Widmar v. Vincent*, 454 U.S. 263, 277 (1981) (“Having created a forum generally open to student groups, the University seeks to enforce a content-based exclusion of religious speech. Its exclusionary policy

College's student chapter of the conservative American Enterprise Institute (AEI) had a right to invite Charles Murray to speak to them on campus.³⁹ And it is why neither other students nor college administrators should be allowed to stop someone from speaking merely because they dislike the speaker's ideas.⁴⁰

When controversial speakers like Richard Spencer come to college campuses without the invitation of a student group, they have the same right as anyone else to use a public space to promote their message: if a school allows those outside its community to use or rent a space on campus, then any group or speaker has just as much of a right to use that space as anyone else.⁴¹

In the Auburn case, the court stated that the university presented no evidence that Spencer's speech was "likely to incite or produce imminent lawless action."⁴² The court also emphasized that the university could not cancel Spencer's speech for fear that protestors would object violently to his message. The court quoted a Supreme Court case stating that "[l]isteners' reaction to speech is not a content-neutral basis for regulation."⁴³ The court also noted that the university was prepared to provide security and that Spencer had provided insurance against damage and paid for extra security.⁴⁴ After a preliminary injunction was entered against the university, it had to pay \$29,000 in attorneys' fees to the lawyer for Spencer's organizer.⁴⁵

Richard Spencer is a wealthy individual. Most controversial speakers will not be able to afford the cost of extra security and, in any event, the law is decidedly against imposing the cost of security on speakers to control those who may violently protest their messages.⁴⁶ Were the law otherwise, protestors could raise security costs to such a degree that they would amount to a classic "heckler's veto." This leaves us, as Professor Erwin Chemerinsky, a staunch First Amendment advocate, has pointed out, with a dilemma.

violates the fundamental principle that a state regulation of speech should be content-neutral, and the University is unable to justify this violation under applicable constitutional standards.").

³⁹ See Taylor Gee, *How the Middlebury Riot Really Went Down*, Politico, May 28, 2017, <http://www.politico.com/magazine/story/2017/05/28/how-donald-trump-caused-the-middlebury-melee-215195>.

⁴⁰ See *Healy v. James*, 408 U.S. 169, 187–88 (1972) ("Whether petitioners did in fact advocate a philosophy of 'destruction' thus becomes immaterial. The College, acting here as the instrumentality of the State, may not restrict speech or association simply because it finds the views expressed by any group to be abhorrent.").

⁴¹ *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 108–09, 112–13 (2001) ("[The school] has opened its limited public forum to activities that serve a variety of purposes . . . [It] engaged in viewpoint discrimination when it excluded the [religious] Club from the afterschool forum.").

⁴² Prelim. Inj., *Padgett v. Auburn Univ.*, *supra* note 28, at 2.

⁴³ *Forsyth Cty. v. Nationalist Movement*, 505 U.S. 123, 135 (1992).

⁴⁴ Prelim. Inj., *Padgett v. Auburn Univ.*, *supra* note 28, at 3.

⁴⁵ Jay Reeves, *Auburn to Pay \$29K for Trying to Block Controversial Speaker Richard Spencer*, Montgomery Advertiser, May 16, 2017, <http://www.montgomeryadvertiser.com/story/news/2017/05/16/auburn-pay-29-k-trying-block-controversial-speaker-richard-spencer/324661001/>.

⁴⁶ See, e.g., *Forsyth Cty. v. Nationalist Movement*, 505 U.S. at 136-37.

At what point can a university say that it cannot afford the necessary security precautions and therefore must cancel a speaker because public safety cannot be assured? The law provides no clear answer to this question.

Yet, it is a very real and difficult issue. If [Ben] Shapiro [another controversial speaker] and Yiannopolous and others like them announced they were coming every week, no campus could possibly afford it. Never should anyone be prevented from speaking because of his or her views, but there must be a point at which a campus can say the financial bill is just too high. The law needs to develop in this area to provide guidance to campus administrators.⁴⁷

Texas A&M University recently instituted a rule that will require all campus speakers to be sponsored by an organization or person affiliated with the university. Such a rule would prevent strangers to the university, such as the organizer for Spencer’s speaking tour, to rent a university venue. “If the university is going to incur security and overtime costs associated with controversial speakers,” a Texas A&M spokesperson said, “at least it will be for its own students.”⁴⁸

In the SPLC’s student campus guide, we emphasize the critical importance of the First Amendment. “Neither other students nor administrators,” we explain, “can stop someone from speaking merely because they dislike the speaker’s ideas.” We urge students “to deprive the speaker of the thing he or she wants most – a spectacle.”

Alt-right personalities know their cause is helped by news footage of large jeering crowds, heated confrontations and outright violence at their events. It allows them to play the victim and gives them a larger platform for their racist message. Denying an alt-right speaker of such a spectacle is the worst insult they can endure.

While there’s nothing wrong with peaceful student protests against a hateful ideology, it’s best to draw attention to hope instead. Hold an alternative event – away from the alt-right event – to highlight your campus’s commitment to inclusion and our nation’s democratic values.⁴⁹

⁴⁷ Erwin Chemerinsky, *Why UC Berkeley Was Right Not to Ban Milo, and Other Lessons from Free Speech Week*, The Sacramento Bee, Oct. 3, 2017, <http://www.sacbee.com/opinion/california-forum/article176680106.html>.

⁴⁸ Christine Hauser, *Campuses Grapple with Balancing Free Speech and Security After Protests*, N.Y. Times, Mar. 29, 2017, <https://www.nytimes.com/2017/03/29/us/texas-aandm-speaking-policy-richard-spencer.html>.

⁴⁹ See *supra* note 1.

If students choose to protest, we urge them to be peaceful. We also recognize that ridicule and mockery, when used peacefully, may be effective tactics “to disarm protestors who espouse bigotry and white supremacy.”⁵⁰

**College Administrators and Public Officials, Including the President,
Should Speak Out against White Nationalism and in Support of the First
Amendment; the President Also Should Heed Congress’s Call to Address the
Growth of Hate Groups**

Although public colleges and universities cannot ban those invited to campus by student groups or forbid speakers whose messages they abhor from using otherwise publicly available facilities, nothing in the First Amendment requires public colleges to respond *neutrally* to these speakers.⁵¹ As the Supreme Court recently affirmed, “[W]hen the government speaks it is entitled to promote a program, to espouse a policy, or to take a position. In doing so, it represents its citizens and it carries out its duties on their behalf.”⁵² Colleges and universities may not censor speakers like Richard Spencer, but they can censure them.

Many college presidents have issued forceful statements denouncing the messages of racist speakers and affirming their commitment to maintaining welcoming and inclusive campuses. Often, they have coupled such statements with affirmations of their school’s commitment to the First Amendment as well. The statement issued by Michael Young, the president of Texas A&M University, is a good example.⁵³

Freedom of speech is a First Amendment right and a core value of this university, no matter how odious the views may be.

Outrage and indignation are emotions understandably running high; I share these sentiments. At the same time, I am also truly heartened by the clear message that the Aggie community is sending in reaction to this intrusion – the firm resolve to speak up in opposition to these views, the resounding affirmation that they do not represent the Aggie values we espouse and to which we aspire, and the call to action to reject these views.

Both aspects of such statements are important. By denouncing the racist messages of speakers like Spencer and affirming their commitment to maintaining welcoming and inclusive campuses, university presidents distance their schools from racism and reassure students who may be troubled by the presence of incendiary speakers on campus. By

⁵⁰ Tina Rosenberg, *Neo-Nazis in Your Streets? Send in the (Coup Clutz) Clowns*, N.Y. Times, Sept. 6, 2017, <https://www.nytimes.com/2017/09/06/opinion/comedy-protest-taxes-nazis.html>.

⁵¹ *Johanns v. Livestock Mktg. Ass’n*, 544 U.S. 550, 553 (2005) (“[T]he Government’s own speech . . . is exempt from First Amendment scrutiny.”). *But see Pleasant Grove City v. Summum*, 555 U.S. 460, 468 (2009) (“[G]overnment speech must comport with the Establishment Clause.”).

⁵² *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239, 2246 (2015).

⁵³ “Aggies United” Event Planned for Dec. 6 at Kyle Field (Nov. 29, 2016), <http://president.tamu.edu/messages/aggies-united.html>.

affirming their commitment to the First Amendment, university presidents take advantage of a teachable moment at a time when there is widespread confusion among students about the constitutional protections afforded to freedom of expression.⁵⁴ It is important, in my view, that statements such as that issued by Mr. Young come from university presidents or other high-ranking officials, rather than from a disembodied institutional office.⁵⁵ Actions, of course, speak louder than words.

Ironically, the Goldwater Institute is promoting model legislation that, in the name of protecting free speech on state college campuses, actually could circumscribe the ability of college presidents to speak out against racism.⁵⁶ The model legislation provides that state colleges and universities “shall strive to remain neutral, as an institution, on the public controversies of the day.”⁵⁷ Although the Goldwater Institute states that this section of its model legislation is “aspirational,” it also states that “[d]espite the aspirational language,” certain policies “would be a fairly straightforward *violation* of the principle of institutional neutrality.”⁵⁸ The model legislation does not define the term “public controversies of the day,” so one is left to wonder.

Fortunately, Congress has not remained neutral. In the joint resolution it unanimously passed after the shocking incidents in Charlottesville in August, it unequivocally “reject[ed] White nationalism, White supremacy, and neo-Nazism as hateful expressions that are contradictory to the values that define the people of the United States.” Congress urged the President to likewise “speak out against hate groups that espouse racism, extremism, xenophobia, anti-Semitism, and White supremacy.”⁵⁹

Unfortunately, the President’s post-Charlottesville statements have appeared equivocal at times.⁶⁰ He also has sent mixed messages when it comes to his support of the First Amendment.⁶¹ Given his bully pulpit, the President should speak more clearly, more forcefully, and more often about our country’s commitment to the constitutional values embodied in both the First and Fourteenth Amendments. He also should take

⁵⁴ *Views among College Students regarding the First Amendment: Results from a New Survey* (Sept. 18, 2017), <https://www.brookings.edu/blog/fixgov/2017/09/18/views-among-college-students-regarding-the-first-amendment-results-from-a-new-survey/>.

⁵⁵ The statement that Auburn University issued on the eve of Richard Spencer’s appearance on campus is an example of an ineffective one coming from an institutional voice rather than from the university president. *Auburn University Statement on Richard Spencer*, AUBURN UNIV. (Apr. 12, 2017), http://ocm.auburn.edu/newsroom/news_articles/2017/04/auburn-university-statement-on-richard-spencer.htm.

⁵⁶ *Campus Free Speech: A Legislative Proposal* (2017), http://goldwaterinstitute.org/wp-content/uploads/cms_page_media/2017/2/2/X_Campus%20Free%20Speech%20Paper.pdf.

⁵⁷ *Id.* at 20.

⁵⁸ *Id.* at 9 (emphasis added).

⁵⁹ <https://www.congress.gov/115/bills/sjres/49/BILLS-115sjres49enr.pdf>

⁶⁰ *Hayes: Where Are Trump’s ‘Very Fine People’?* (Aug. 17, 2017), <http://www.weeklystandard.com/hayes-where-are-trumps-very-fine-people/article/2009330>; *Trump Gives White Supremacists an Unequivocal Boost* (Aug. 15, 2017), https://www.nytimes.com/2017/08/15/us/politics/trump-charlottesville-white-nationalists.html?_r=0.

⁶¹ *A Brief History of Donald Trump’s Mixed Messages on Freedom of Speech* (Sept. 29, 2017), https://www.washingtonpost.com/politics/a-brief-history-of-donald-trumps-mixed-messages-on-freedom-of-speech/2017/09/28/dd44160c-a3b6-11e7-ade1-76d061d56efa_story.html?utm_term=.2be8d2b6dc07.

responsibility for the fact that he has “unearthed some demons,” to use Representative Sanford’s words again,⁶² and heed Congress’s call to “use all resources available” to his administration to “address the growing prevalence of ... hate groups in the United States.”⁶³

⁶² *See supra* note 8.

⁶³ S.J. Res 49, 115th Cong. (2017) (enacted).