

Free Speech Under Attack: Guidance for Members

As many of you have likely seen, in the aftermath of the Charlie Kirk murder, some in the Administration have called for the [punishment](#) of individuals who were critical of Charlie Kirk or who condoned his shooting. They have also called for the [dismantling](#) or prosecution of left-leaning organizations that the administration vaguely claims promote violence. There is never any place for violence in our politics, and the ACLU unequivocally condemns this murder. But we also condemn using this act of violence as a pretext for weaponizing the government to censor and threaten political opponents.



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Yet that is just what has happened. ABC just [pulled Jimmy Kimmel off the air](#) because FCC Chair Brendan Carr threatened affiliate broadcast licenses over Kimmel's remarks on Kirk's assassination. Trump has also promised to designate [antifa](#) as a terrorist organization, despite the fact that antifa is not a singular entity, opening the door to McCarthy-esque witch hunts.

As many politicians on both sides of the aisle have noted this week, the First Amendment prohibits the government from punishing even the most hateful or offensive speech. It is crucial that we not allow the shock and horror at Charlie Kirk's assassination to serve as cover for attacks on our rights. We encourage Members of Congress to speak out against the unconstitutional targeting of individuals, organizations and the press based on their ideology, political or charitable activities, or speech.

Below please find talking points that your office can use to discuss this matter. In addition, please find a list of quotes from individuals from across the political spectrum who defended the breadth of the First Amendment this week.

The First Amendment: Core Principles

- The First Amendment does not protect speech that is likely to and intended to provoke immediate acts of violence, or speech that expresses a serious intent to commit an act of violence. But it does protect robust free expression, which includes criticism of the past words and actions of prominent public figures.
- We have a constitutional right to free speech, belief, and association. The government may not retaliate, surveil, search, or otherwise punish people or groups for criticizing Charlie Kirk or peacefully protesting. Even actions that the government can otherwise take can violate the First Amendment if the government's goal is to silence or punish speech.



- The First Amendment protects robust free expression, which includes criticism of the past words and actions of prominent public figures, and *even* offensive or hateful speech. The Supreme Court itself put it best in *Texas v. Johnson*: "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."
- The constitution protects the freedom of the press. The government cannot interfere with the media's choices about what to cover, or how to cover it, no matter how fair or accurate the government deems that coverage.
- The solution to speech you disagree with is more speech, not censorship. Peaceful disagreement is the bedrock of our democracy. To protect public debate, the First Amendment prohibits the government from punishing speech even when it is controversial or offensive.
- None of us want the government to be able to tell us what to say, or to not say – regardless of our political views. That's why we have a First Amendment.

General Talking Points on Democracy

- There is never any place for violence in our politics. The only way to work out differences in a democracy is to work them out together – peacefully through our political system. As we have been reminded multiple times this year, including by the killing of Charlie Kirk, Rep. Melissa Hortman and her husband in Minnesota, and too many others, politically motivated killing not only takes a loved one from their family, but it endangers the free and democratic exchange of ideas.
- Those who use this act of violence as a pretext for weaponizing the government to threaten individuals, organizations, other perceived adversaries, or any class of people based not on their actions but on their views and political activities are undermining the fabric of our democracy and our most fundamental Constitutional principles.
- The freedom to speak your mind about political issues, even when others find it offensive, is essential to democracy — especially in times of national crisis. Our leaders must reject calls for unconstitutional crackdowns on our right to free speech and must take steps to safeguard the First Amendment.

Employee firings over Charlie Kirk comments



- Government actors calling for people to lose their jobs and livelihoods because they exercised their right to freely express political views that are controversial — a right Kirk himself exercised and encouraged for others — is deeply disturbing and undemocratic.
- A government employer cannot punish an employee for speaking out as a private citizen on a matter of public concern, unless the government can show that the speech caused undue disruption in the workplace.
- On Doxxing Sites: While doxxing is plainly intended to chill political speech in this country, it is nevertheless protected by the First Amendment, because it is speech on matters of public concern consisting of publicly available information.

Free Speech on Campus

- Colleges and universities are pillars of free expression and open inquiry. Students and faculty—regardless of their nationality or immigration status — must be able to freely engage in political discourse without fear of official retaliation.
- We urge universities to remember that while it can be challenging to balance public safety with the need for vigorous public debate, the Constitution requires the government to protect the free speech rights of everyone, not just those with whom it agrees.
- We call on school districts and university presidents to hold fast to our country's best traditions and reject baseless calls to investigate or punish students or faculty that have done nothing more than exercise their free speech rights.

Domestic Terrorism / Material Support

- Government officials and others are using “terrorism” and “material support” labels to cast stigma and suspicion on people who are exercising their First Amendment rights to engage in political debate. These inflammatory government labels have a chilling effect across the country.
- Democracy requires dissent, and our leaders should not be exposing individuals to potentially decades in prison for engaging in protected political speech.

- The President does not have legal authority to designate U.S. groups or individuals as terrorists. Congress has passed no such law because it would raise serious First Amendment and due process concerns.

Freedom of the Press/Kimmel

- Only with freedom of the press can our nation's citizens stay informed, make their own decisions, and hold the government to account when it does not have their citizens' best interests at heart.
Threats against the press can cast a chilling effect on reporting. We need a free press that can speak truth to power without fear.
- The government intimidating outlets into compliance is an insult to the First Amendment and to the checks and balances our democracy relies on. The bar for revoking broadcast licenses is extraordinarily high, and the FCC cannot use costly review processes and threats to punish outlets into silence.
- The FCC should not be used as the president's private speech police.
- Weaponizing the licensing powers of the FCC is a direct threat to our First Amendment rights.



Quotes This Week on the Importance of Free Speech, From Across the Political Spectrum

- **Senator Ted Cruz (R-TX):** "The First Amendment absolutely protects speech. It absolutely protects hate speech. It protects vile speech. It protects horrible speech. What does that mean? It means you cannot be prosecuted for speech, even if it is evil and bigoted and wrong."
- **Supreme Court Justice Sonia Sotomayor:** "Every time I listen to a lawyer-trained representative saying we should criminalize free speech in some way, I think to myself, that law school failed."
- **Speaker of the U.S. House of Representatives Mike Johnson (R-LA):** "Look, in America, it's a very important part of our tradition that we do not—this is a conservative principle and certainly an American principle—we do not censor and silence disfavored viewpoints... People in America are allowed to say crazy things."
- **Megyn Kelly, The Megyn Kelly Show:** "We on the right do not crack down on hate speech. We don't believe in that nonsense."
- **Brit Hume, Fox News:** "Hate speech,' repulsive though it may be, is protected by the First Amendment."



- **Karl Rove, former Deputy Chief of Staff and Senior Advisor to President George W. Bush:** “Our republic’s continuance depends on debating important ideas with both passion and mutual respect... Reasoned discourse is essential to our democracy.”
- **Matt Walsh, The Daily Wire:** “But there obviously shouldn’t be any legal repercussions for ‘hate speech,’ which is not even a valid or coherent concept. There is no law against saying hateful things, and there shouldn’t be.”
- **Governor of Pennsylvania Josh Shapiro:** “Using the long arm of government to silence people, silence businesses and nonprofits and restrict their right to free speech — that will not solve this problem... It is dangerous for the government to become the thought police or the speech police.”
- **Governor of Utah Spencer Cox:** “We will never be able to solve all the other problems, including the violence problems that people are worried about... If we can’t have a clash of ideas safely and securely, especially those ideas with which you disagree.”
- **Senator Chris Coons (D-DE):** “We have to find our way through this together in a way that offers some grace and humility while celebrating the free speech that is the foundation of our republic.”
- **Conor Friedersdorf, The Atlantic:** “Although the statement ‘It’s okay what happened to Charlie’ is abhorrent and warrants social stigma, it is also—undoubtedly—protected speech.”

Thank you, and please don’t hesitate to reach out to Jenna Leventoff (jleventoff@aclu.org) if we can support your work protecting your constituents’ rights to free speech.