Journal of Legal Aspects of Sport, 2025, 35, 166–186
https://doi.org/10.18060/29179

You Can't Cheer That: NCAA Division I FBS Stadium Speech Policies and the First Amendment

Neal C. Ternes and Monyae Williamson-Gourley

Fan behavior at college sporting events has long been a concern for administrators. Particularly, fan speech—including inappropriate signs, vulgar cheers, and rude images on clothing—has proven difficult for policymakers to address. Yet, as previous scholarship has demonstrated, speech policies at public university spaces intending to curtail such behavior frequently violate the First Amendment protections of students and spectators (see, e.g., Calvert & Richards, 2004; Ulian, 2016). Using a comparative analysis of speech policies published on the athletic department websites for every public university in the Division I Football Bowl Subdivision (FBS) of the National Collegiate Athletic Association (NCAA), we determined that 94 of the 102 evaluated institutions had speech codes for one or more of their sports facilities that could be used to violate the First Amendment rights of spectators. We discuss the implications of such policies for potential litigation against universities and offer recommendations for crafting better policies for fan behavior at university athletic events.

Keywords: NCAA, First Amendment, intercollegiate sports, policy

Introduction

The question of speech policies and politics in college athletics has recently drawn significant inquiry from a wide variety of perspectives. Researchers have examined the use of disinformation by opponents of transgender women in college sports (Staurowsky, 2025), the First Amendment implications of university restrictions on name, image, and likeness (NIL) activities (Ehrlich & Ternes, 2021), and the rights of athletes to engage in political protest (Horn, 2021). Comparatively, policies regarding

Neal C. Ternes, PhD, is an assistant professor of sport management in the Department of Kinesiology and Physical Education at Northern Illinois University. His research interests include examining the intersection of sport and governance policy, First Amendment law in sport, globalization and politics of sport, and intercollegiate athletics. Email: nternes@niu.edu

Monyae Williamson-Gourley, PhD, is an assistant professor of sport administration in the School of Human Services at the University of Cincinnati. Her research interests center on diversity, equity, and inclusion in sport. Email: willi8mu@ucmail.uc.edu

fan speech at college athletic events are receiving significantly less attention. Yet the regulation of fan speech at college sporting events remains, as with most questions regarding policies impacting individual expression, a significant issue.

Historically, individual colleges and universities have been responsible for regulating fan behavior on their respective campuses. However, the National Collegiate Athletic Association (NCAA) and individual conferences have become increasingly active in providing guidance and creating regulations for fan speech at their member institutions. Following a series of on-field incidents, particularly riots following an Ohio State football game in 2002, the NCAA and its league members held an emergency summit to discuss implementing reforms that would curb inappropriate fan behavior during and after games (McCurdy & Williams, 2003). While issues with fan behavior were certainly not foreign to college sports, the newly created Sportsmanship and Fan Behavior Summit produced the first association-wide strategy for what presidents and athletic directors saw as an increase in potentially dangerous fan activities.

The most profound change resulting from the 2003 NCAA Sportsmanship and Behavior Summit was the push for individual institutions to adopt their own policies regarding fan behavior and to institute procedures for fans who engaged in activities that may disrupt the decorum of college sporting events. The rules adopted in 2013 expanded the requirements for individual institutions' commitment to sportsmanship to include fan behavior and charged schools with ensuring that conduct at their individual games reflected NCAA values (see NCAA, 2024, 20.9.1.4). The NCAA does not impose specific guidelines for how schools should address fan behavior, but it has published examples of policies schools can adopt. Over time, this initiative expanded to include suggestions on policies for fan behavior that protected specific classes of individuals. For example,

> (Insert School Name) expects fans to enjoy the game experience free from fighting, thrown objects, attempts to enter the playing field, political or inciting messages and disorderly behavior, including foul, sexist, racist, homophobic, transphobic, obscene or abusive language or gestures. (Five ways to have an LGBTQ-inclusive athletics department, n.d.)

More recently, the NCAA has also provided suggested policy to limit fan behavior or expression targeting athletes who may be targets for negative comments from spectators who are engaged in sports gambling. For their part, schools have shown little resistance to these policies and have generally adopted their own policies on fan speech, though it is unclear how many draw directly from the NCAA's policy examples.

Despite attempts by the NCAA and its member institutions to curb offensive fan behavior, instances of fans behaving poorly remain a consistent problem. During a 2025 basketball game, students at the University of Arizona began a loud chant of

"fuck the Mormons" directed toward their opponents from Brigham Young University. No ejections were reported, but Arizona athletic director Desireé Reed-Francois issued a formal apology following the game (Medcalf, 2025). After losing a home game to Ohio State in 2024, Penn State football coach James Franklin challenged one heckling fan, saying "If you're man enough to talk, what's your name?" (Werner, 2024). The incident did not escalate any further. During the 2024 College World Series, two Texas A&M fans were escorted from the stadium for taunting Florida baseball coach Kevin O'Sullivan over the death of his wife's late son, who was also the team's batboy. The boy was killed in a double murder suicide by his father (Li, 2024). Both fans were ejected from the stadium and barred from reentry.

If institutions are required by the NCAA to keep and enforce fan codes of conduct, why are examples of inappropriate behavior at sporting events, most not containing punishment for spectators engaging in vulgar speech, so plentiful? One answer may be the policies themselves. Roughly 67% of NCAA institutions are public, meaning that the fan codes of conduct they are required to create and enforce are subject to scrutiny under the First Amendment. Free speech guarantees under United States law are broad and protect speech that is profane (see, e.g., Cohen v. California, 1971), offensive (see, e.g., Snyder v. Phelps, 2011), discriminatory (see, e.g., RAV v. St. Paul, 1992), or vulgar (see, e.g., Hustler v. Falwell, 1988). It may very well be that, even though institutions have created policies on inappropriate fan speech, enforcement of these policies may risk potential First Amendment litigation from affected spectators. Such policies also may pose additional institutional risks under the current administration of U.S. President Donald Trump, who has threatened to withhold funding for institutions whose speech policies may be considered to further diversity, equity, and inclusion (DEI) initiatives.

We are certainly not unsympathetic to the viewpoint that some of the fan behavior at sporting events is repulsive and we do not enjoy many of the spectator antics that have precipitated these policies. It is our view that sports, at all levels, should be welcoming environments for all. Regulations that prohibit speech, even speech we find offensive, is anathema to the concept of a truly open sporting environment. Public universities are institutionally bound to the free exchange of ideas, a fundamental element of democratic society that is the bedrock of campus life from student protests to academic freedom (see, e.g., Chemerinsky & Gillman, 2017). For better or worse, athletics are the front porch of the university, and public institutions do a disservice in demonstrating their missions and values as restricting rather than promoting free speech. The speech of some fans may be distasteful, but it is shielded by the same philosophy that is essential to people's right to freely exchange ideas on campus. We cannot sacrifice the former without undermining the latter.

It is, therefore, the purpose of this article to review speech policies at NCAA institutions to determine whether enforcement of these policies may violate First

Amendment principles. Utilizing a combination of comparative analysis and legal doctrinal analysis, we reviewed the policies at every public institution within the NCAA's Division I Football Bowl Subdivision (FBS). These schools are typically associated with the largest crowds for sporting events and were the impetus for the 2003 NCAA Sportsmanship and Behavior Summit. In this article we discuss our findings and offer recommendations for changes at institutions whose current fan speech policies could potentially trigger First Amendment litigation.

The First Amendment: An Overview

The First Amendment of the U.S. Constitution states

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (U.S. Const. amend. I)

The freedom of speech is extended to all manner of expressive behavior, including choices about what to wear (see, e.g., Cohen v. California, 1971), verbal or written communication (see, e.g., Snyder v. Phelps, 2011), and actions (see, e.g., RAV v. St. Paul, 1992). However, the protection guaranteed under the First Amendment is not limitless and the question of whether a specific type of speech is protected requires a significant amount of contextual analysis guided by centuries of jurisprudence.

Any litigation involving questions of free speech must begin by determining whether the force limiting individual speech constitutes state action. First Amendment protections only apply to state actors, specifically any entity that is a part of or significantly entwined with a government entity. For example, the University of South Carolina is unquestionably a state actor public university that receives support from both the state and federal government, under the supervision of a board of trustees who are empowered by state law and whose members include state elected officials, including the governor.

Alternatively, the University of Southern California (USC) is a private institution that is not run by the state government and would generally not be considered a state actor. However, there are specific instances where even a private entity like USC may be considered a state actor. First, private entities engaged in joint commercial activity or a symbiotic business relationship with the state may be considered state actors in the context of that relationship (see Burton v. Wilmington Parking Authority, 1961). USC home football games are played at the Los Angeles Memorial Coliseum, a venue that is owned and operated by the government, meaning restrictions on speech at those events may be considered state action depending on the nature of the economic relationship created between the team and the facility. Second, private actors may be engaged in state action when they act under the direction or influence

of the government. This is also particularly relevant for USC because the state of California has passed legislation that extends First Amendment protections to all private colleges and universities in the state, though it is unclear whether this would apply to sporting events (see Cal. Ed. Code § 94367, 2009).

Even if a speech restriction is determined to be state action, it may still be permissible within the First Amendment based on the type of forum in which the speech is restricted. Common law doctrine has established three types of forums controlled by state actors where the ability to impose restrictions on individual speech receive varying levels of scrutiny (see Perry Ed. Assn. v. Perry Local Educators' Assn., 1983), all of which are relevant in some capacity to this analysis. A traditional public forum is a space that has traditionally been open to free speech, such as sidewalks around a stadium, and where state actors may only restrict speech based on the time, place, and manner of its delivery by demonstrating a compelling state interest (see, e.g., Ward v. Rock Against Racism, 1989). Designated (or limited) public forums are spaces created by the government where entry may be restricted but are otherwise treated the same as traditional public forums as long as they remain open (see, e.g., Widmar v. Vincent, 1981). Examples of designated public forums include the spectator seating areas of sport stadiums, where the only requirement for entry is the purchase of a ticket (see, e.g., Stewart v. District of Columbia Armory Bd., D.C., 1988). Limited public forums are a subset of designated forum where the state has additional access based on a specific topic or group of speakers, but otherwise functions as a designated public forum (see, e.g., Rosenberger v. Rector and Visitors of Virginia U., 1995). Finally, non-public forums are spaces owned or operated by the government that are not intended to facilitate free speech and where restrictions on speech by state actors receive significantly less scrutiny. Importantly for this article, non-public forums include military bases and facilities (see, e.g., Greer v. Spock, 1976), which would likely extend to the athletic facilities at military institutions such as the U.S. Army, Navy, and Air Force academies.

Moreover, the content of certain types of speech also determines the extent to which that speech is protected by the First Amendment. Political and religious speech receives the highest level of protection, and the government has a significant burden when it imposes any regime that may be targeted at the content of political or religious speech (see, e.g., Cohen v. California, 1971). Alternatively, commercial speech, or speech that is intended to sell or advertise, receives relatively less Constitutional protection from government regulation (see, e.g., Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of NY, 1980). The discrepancy between highly protected political speech and commercial speech is easily evidenced by looking at sports stadiums, where religious speech inside a venue (see Stewart v. District of Columbia Armory Bd., D.C., 1988) and political speech immediately outside a venue (see Weinberg v. City of Chicago, 7th Cir., 2002) were deemed to be protected by the First Amendment,

while solicitation outside of a public stadium is not protected because it competes with the economic function of the facility (see Intern. Soc. for Krishna Consciousness v. New Jersey Sports and Exposition Authority, 3rd Cir., 1982).

Other types of speech are not protected by the First Amendment at all. Among the many types of unprotected speech, two are commonly referenced in discourse on speech codes for sports facilities. Obscenity is often colloquially used to describe many different words, phrases, or gestures that may be viewed as inappropriate. In First Amendment jurisprudence, obscenity is only used to describe material that "taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which taken as a whole, do not have serious literary, artistic, political, or scientific value" (see Miller v. California, 1973, at 24). This definition is particularly narrow and does not include the use of mere profanity (see, e.g., Cohen v. California, 1971). In fact, obscenity is so narrowly tailored that it is typically only applied to depictions of criminal sexual activity such as child pornography (see, e.g., New York v. Ferber, 1982). Thus, while obscenity is sometimes colloquially used to describe speech at sporting events, it is unlikely that much of said discourse actually meets the legal definition of obscene speech.

Another type of speech commonly captured by stadium speech policies falls under a somewhat broader category known as 'fighting words,' or speech that is "likely to provoke the average person to retaliation and thereby cause a breach of the peace" (Chaplinsky v. New Hampshire, 1942, at 574). However, the definition of fighting words is particularly narrow, as the speech must be directed toward a specific person (see Cohen v. California, 1971) and must tend to bring the speaker and the addressee to a violent confrontation (see Texas v. Johnson, 1989). Moreover, restrictions on fighting words cannot be specific to the content of the message, meaning a regulation that only restricts fighting words that are profane (see, e.g., Cohen v. California, 1971), racist (see, e.g., RAV v. City of St. Paul, 1992), anti-American (see, e.g., Texas v. Johnson, 1989), or homophobic (see, e.g., Snyder v. Phelps, 2011) is unconstitutional (see specifically, RAV v. City of St. Paul, 1992, at 384-386). This does not necessarily mean that fighting words do not happen, but as DeSiato (2010) notes, it is unlikely that jeers from crowds at sporting events would generally fall under this category.

Speech at University Sports Facilities

While there are numerous exceptions to free speech protections, most of them are unavailable to U.S. colleges and universities, even in the context of their athletics programs. Public colleges and universities are state actors, and the courts have made clear that they are "not enclaves immune from the sweep of the First Amendment" (Tinker v. Des Moines Independent School District, 1969, at 503). K-12 schools have additional latitude under the First Amendment to restrict speech as part of their

mission to protect students and empower school officials to act en loco parentis (see, e.g., Morse v. Frederick, 2007; Mahanoy Area School District v. B.L., 2023). Similar allowances are not extended to college and university administration, however, as their students are almost all legal adults and the nature of most institutions of higher education is less structurally regimented than K-12 (see, e.g., Healy v. James, 1972).

Notably, attempts by college leaders to implement speech codes on campus have generally been rebuffed by the courts. The University of Missouri was rebuffed when it attempted to punish a journalism student who distributed a newspaper on campus that included a depiction of police officers raping the Statue of Liberty (Papish v. Board of Curators of Univ. of Mo., 1973). Officials at the University of Michigan were repudiated when they imposed a campus policy prohibiting discrimination and harassment that chilled the speech of a psychology graduate student who articulated highly controversial opinions about the biological determinism of race and gender (Doe v. University of Michigan, 1989). Finally, George Mason University was prohibited from enforcing sanctions against a fraternity organization that held an "ugly woman contest" that contained several racist and sexist components (Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University, 1993).

The challenge with speech codes on college campuses, even those made with the best intentions for the campus community, is that they are extremely difficult to craft narrowly enough to avoid infringing on protected forms of speech. In legal terms, speech restrictions that could potentially be used to suppress expression beyond their facially intended purpose are referred to as overbroad. Overbreadth doctrine was articulated by the Supreme Court in Broaderick v. Oklahoma (1973), where the majority explained that any attempt to restrict speech should be as narrowly tailored to fit the government's interest as possible such that, "any enforcement of a statute thus placed a issue is totally forbidden until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression" (Broaderick v. Oklahoma, 1973, at 613). For example, a ban on discriminatory speech may be instituted to protect the students at a university, but if that ban also chills or restricts speech on controversial political topics or limits potentially offensive language in contexts where it may not offend, that speech code is likely to be deemed unconstitutionally overbroad (see Doe v. University of Michigan, 1989; Dambrodt v. University of Central Michigan, 1995). Importantly, overbreadth challenges to speech restrictions can be litigated even by plaintiffs whose own rights of free expression have not been violated—allowing petitioners to challenge speech codes that may, simply by their existence, chill or otherwise, restrict the speech of others (Broaderick v. Oklahoma, 1973, at 612).

Speech codes on college and university campuses have been particularly ripe for overbreadth challenges. Notably, in Dambrodt v. Central Michigan University (1995), a basketball coach who was fired for using racial epithets in locker room speeches

to his players successfully sued the school because the university's discrimination policy was determined to be vague and overbroad. A court similarly ruled that the speech code at the University of the Virgin Islands, including a section prohibiting certain forms of behavior at sporting events and conduct that may result in emotional distress, was overbroad (McCauley v. Univ. of the V. I., 2010). Even a speech code created with significant input from faculty at the University of Wisconsin School of Law, who attempted to craft a speech code that would narrowly prohibit speech that may be considered fighting words, was deemed unconstitutional and overbroad because the regulations inevitably bled over to speech that could not be considered fighting words (UWM Post v. Board of Regents of U. of Wis., 1991).

Spectator seating areas are not immune from the free speech obligations placed on similar forums on public college campuses. Generally, spectator seating areas at sports facilities are considered limited public fora whether the government entity intended to create that facility to be a public forum or not (see Stewart v. District of Columbia Armory Bd., 1988). This means that, as long as the seating area remains open, the limitations to restricting speech under the First Amendment are the same as in any other location on campus.

While litigation against colleges and universities over speech restrictions at their sports facilities is not common—to date no judicial opinions have been filed on the subject—scholars have consistently written that restrictions on speech at university sporting events is likely to violate the free speech rights of spectators. Shortly following the NCAA's initial passage of legislation requiring individual universities to create speech policies for their sporting events, Calvert and Richards (2004) published a rebuttal noting that many of the published speech codes created in the wake of the NCAA's legislative changes were significantly overbroad and likely to unconstitutionally restrict spectators' free speech. They instead crafted a template policy that is meant to adhere to Constitutional protections, specifically by creating content-neutral restrictions where possible (prohibiting all signs and banners, limiting where spectators with clothing with any lettering can sit in the stadium, etc.; Calvert & Richards, 2004, pp. 46-51).

Shortly thereafter came a trickle of similar research pieces drawing upon legal analysis to similarly conclude that speech restrictions at college sporting events may likely violate First Amendment principles. In 2006, Wasserman extended the analysis of free speech rights at public colleges and universities to professional sports facilities, arguing that many professional venues may be sufficiently entwined with governments that they too could be considered state actors. Wasserman also echoed previous research in noting that jeering or negative speech is still protected by the Constitution, writing "Calling Roger Clemens a bum is protected cheering speech in its most ancient and revered form" (2006, p. 30). Ullian (2016) similarly concludes that existing speech policies at college sporting events likely violate the First Amendment,

and provides several similar suggestions to Calvert and Richards (2004), with the added note that officials could do more to promote positive speech during games. More recently, Williamson-Gourley and Ternes (2024) noted that First Amendment restrictions still limit the ability of administrators to stop offensive speech and that new tactics may be necessary to improve the atmosphere at these events.

Yet, while the aforementioned literature is consistent and clear about the potential First Amendment issues with speech codes at college sporting events, they do not provide any systematic study of the actual policies being used by colleges and university athletic departments to determine whether the language includes restrictions that may be used to violate the free speech rights of spectators. While a few (particularly Calvert and Richards [2004]) offer specific policy examples being used, there does not seem to be any broader discussion of this phenomenon that reviews the specific content of a large sample of policies to determine whether the hypothetical violations described in the literature are occurring and at what scale. It is this lack of systemic content analysis in the literature that we seek to address with this study. With this goal in mind, we crafted the following research questions based on our review of previously published research on speech restrictions at college sports venues;

RQ1: Do FBS schools have speech restrictions that could potentially violate free speech rights of spectators?

RQ2: Are FBS schools using recommendations from previous research to create policies that are more likely to survive First Amendment scrutiny?

Method

For this research, we collected and reviewed the policies for fan behavior at NCAA Division I FBS institutions that are considered state actors under the First Amendment, using legal doctrinal analysis paired with a content analysis coding framework. Legal doctrinal analysis is a commonly used methodology in legal studies and originates from the formalization of methods long historically applied by legal practitioners in analyzing jurisprudence (see Duncan & Hutchinson, 2012, p. 101). Specifically, legal research from a doctrinal approach focuses on regulations within particular categories for the purposes of noting conflicts between policies to predict future developments (see, e.g., Pearce, Campbell, & Hardin, 1987; Pradeep, 2019). In our context, legal doctrinal research serves as the analytical basis for comparing whether the institutional policies collected within our data set conflict with existing First Amendment jurisprudence. By doing this, we were able to articulate how specific policies may violate the free speech rights of spectators and predict how changes to these policies may reduce institutional liability.

A total of 134 schools were members of the FBS during the 2024-25 school year when data were collected. Of those schools, three— the U.S. Army, Navy, and Air Force academies—were excluded because their athletic facilities may be considered part of their associated military bases and therefore not subject to First Amendment protection (see Greer v. Spock, 1976). Of the remaining 131 institutions, 18 are private and were thus excluded from the sample. While it is possible that some of these institutions may be considered state actors in their entwinement with public stadiums (e.g. the University of Miami football team playing at the publicly financed Hard Rock Stadium) or under state law (e.g. Stanford University under California state law), it is not a given that these relationships would necessarily constitute state action and would each require their own unique independent analysis. We did, however, include all public universities in the FBS subdivision (a total of 113), which includes some institutions that are state actors but who utilize private facilities for their football (see, e.g., University of Pittsburgh) or men's basketball (see, e.g., University of Memphis) games. These were included because the combination of public financing for these private facilities and their agreement to sign a lease with these public entities would make it very difficult for them to escape state actor status (see Burton v. Wilmington Parking Authority, 1961).

In collecting stadium speech policies, we followed previous research evaluating facility policies (see Charmantz, Hedges-Wright, & Ward, 2011; Menaker & Connaughton, 2010) and collected policies from team websites. As other researchers have noted, collecting policies from team websites can be challenging due to the lack of uniformity between different team websites and the challenging layouts utilized (see Menaker & Connaughton, 2010). To simplify this process, we focused our data set only on policies that impacted facilities hosting football and men's and women's basketball games. Not only were these policies more prominent on institutional websites, but this also ensured that our data covered the most popular sports that were sponsored by all the schools in our sample. Moreover, we discovered in our process that many institutions used uniform fan behavior policies for their athletic department or only slightly modified policies between their facilities, so we believe that our results would be similar for sports not included in this sample. Ultimately, we were able to locate policy data for facilities at 102 of the 113 institutions in our sample (90.27%).

We utilized a systemic content analysis approach to organize policy data into manageable categories based on common First Amendment issues. While legal doctrinal research is not incompatible with other methodological approaches, the content specificity of legal research and the insular nature of academic departments have resulted in fewer examples of legal doctrinal research as an analytical framework paired with another empirical methodology. However, many legal scholars have argued for the use of content analysis in legal research, pointing out that a systemic content analysis

can better elucidate larger themes between policies and that the two methodologies share many epistemological similarities (see, e.g., Vrij, 2005; Hall & Wright, 2008; Salehijam, 2018). For our purposes, previous research on stadium speech policies have shared a consensus that college and university speech policies may violate the First Amendment (see, e.g., Calvert & Richards, 2004; Ulian, 2016), but these studies lack the detailed descriptive data a content analysis of such policies can provide to explain how such policies do violate the Constitutional rights of spectators.

Data were collected during the fall of 2024 and the full text of policies was copied into a spreadsheet. Our coding schema was developed through multiple reviews of the collected data, which were then synthesized into emergent categories based on the content of the policies and legal doctrinal analysis of First Amendment jurisprudence (see Seifried & Smith, 2011; Salehijam, 2018). The inter-coder reliability score between the two coders for this data was 97.2%, well above most thresholds for acceptability (see, e.g., Miles & Haberman, 1994; O'Connor & Joffe, 2020).

Definitions for each category were based on specific types of speech and specific text appearing in the content of the policy. For each speech code, we began by looking at whether there was a restriction of speech that may be protected by the First Amendment. This excluded prohibition on unprotected activities such as drunken behavior, entering the playing area, or physical violence, which are typically covered by state and federal criminal statutes. We also did not include prohibitions in sitting in areas other than the seat on the attendee's ticket, as it is unlikely that sitting somewhere other than a person's assigned seat would be considered a form of protected speech (see Calvert & Richards, 2004). Finally, we excluded any other restrictions on fan behavior that were not specific to the content of their speech.

All prohibited behaviors that remained in the sample were then labeled as content-specific speech restrictions and sorted into three categories based on the type of speech they sought to address: restrictions on the content of signs or banners, restrictions on the content of clothing, and restrictions on verbal speech or behavior not covered by the other two categories. We then reviewed each policy to determine whether the restrictions may be written in such a way that they may reasonably be described as overbroad, or potentially restricting speech beyond the purpose of simply protecting the general nature of the sporting event, such as potentially impacting statements based on political affiliation.

We also noted when policies specifically articulated a regime of prior restraint. In First Amendment law, prior restraint refers to attempts by state actors to restrict specific speech based on its content before it can be uttered, including restricting certain forms of speech from accessing specific forums (see, e.g., Southeastern Promotions, Ltd. v. Conrad, 1975). To survive a First Amendment challenge, prior restraint requires an extremely high burden of proof on the state actor to demonstrate

that significant and irreparable harm will be caused by the utterance of the speech in question. We thus included this category because such regimes are very likely to be found unconstitutional. Only instances of explicit prior restraint published as part of an institution's policy were included in this category (i.e., stating that guests who attempt to enter a venue with clothing or signs containing inappropriate content would be denied entry).

We also documented instances where previous recommendations for First Amendment appropriate policies from the literature were implemented in part. Specifically, we reviewed the previous research published by Calvert and Richards (2004), Wasserman (2006), and Ulian (2016) and documented instances where schools banned all uses of signs or banners and where they explicitly mentioned harassment or a hostile work environment as part of the rationale for their policy. Blanket prohibitions on signs and banners can be justified under the premise that they can obstruct spectator viewing, present potential safety hazards, and are not a specific ban on the content of any single sign or banner, making such bans acceptable as mere time, place, and manner restrictions rather than content-specific speech restrictions (2016). Harassment was only explicitly discussed in the literature by Calvert and Richards (2004), who mention it mostly in part of their suggestion that policymakers should include language that specifically references the potential for discriminatory language based on a person's status within a protected class to create a hostile work environment (see p. 31, 50). None of the other referenced papers mention harassment; however, we chose to include it after seeing the term mentioned in several policies so that we might compare its use there to the hostile work environment framework suggested by Calvert and Richards (2004).

Results and Discussion

Overall, we found that of the 102 schools we could find published policies for, 94 (or 92.16%) had some element of their speech policy that included a content-specific restriction on spectator speech. Regarding RQ1, "Do FBS schools have speech restrictions that could potentially violate free speech rights of spectators?" the answer is mostly yes, with only a small number of exceptions. More specifically, we found 88 schools with policies that impose content-specific restrictions on verbal speech or behavior, 58 with content-specific restrictions on sign speech, and 24 with content-specific restrictions on clothing worn inside the venue. This is a very large number of FBS schools with policies that restrain free speech, and it could suggest that institutional policymakers are ignorant of the potential litigation that could stem from these policies or simply believe that the previous litigation on this issue means that the risk of maintaining these policies is worthwhile given whatever benefit to stadium atmosphere and decorum they theoretically provide.

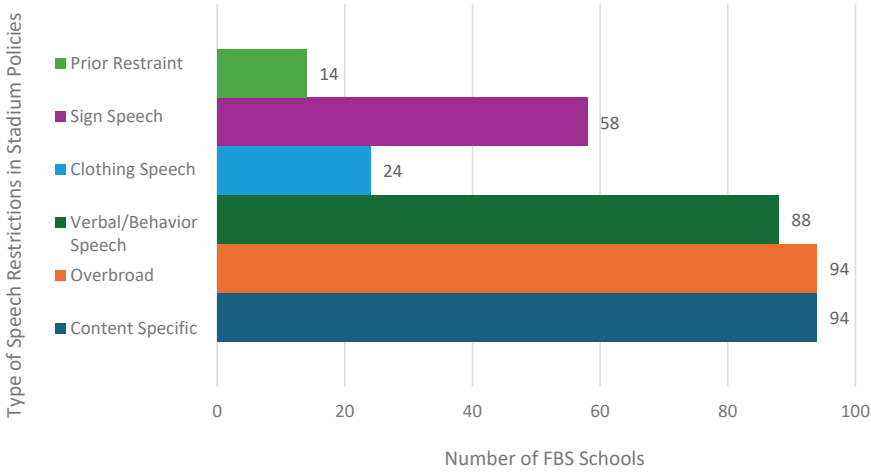

Figure 1. Total FBS speech restrictions by type.

Moreover, all 94 of those policies containing content-specific speech restrictions included material that could be considered overbroad (see Figure 1). While this number may seem high, it speaks to the vagueness that was very common in many of these policies. For example, the University of Georgia fan policies contain a line that reads, "Foul or offensive language or obscene gestures" (University of Georgia Athletics, n.d.). There is certainly potential that this policy could be used to limit political speech, such as in 2021 when crowds at a Missouri-Georgia football game in Athens began chanting "let's go Brandon" when a plane bearing the same message flew over the stadium (Colton, 2021). The slogan, meant to stand for "Fuck [President] Joe Biden," could certainly be considered offensive such that the offending individuals could be removed from the event under the university's written policy, but this would also likely violate the First Amendment rights of the chanting fans to engage in political speech—hence its categorization as overbroad.

In another example, the fan behavior policy for Neyland Stadium at the University of Tennessee-Knoxville asks visiting fans to "not engage in cheers that are vulgar, crass or demeaning" (University of Tennessee Athletics, n.d.). Based on survey information in its 2026 review of colleges and universities, the Princeton Review rated the University of Tennessee the No. 4 most LGBTQ-unfriendly college in the country (The Princeton Review, n.d.). Would a group of fans chanting "trans rights are human rights" at a Volunteers football game be considered engaging in speech that was vulgar or crass based on the politics of other students or stadium personnel around them? Regardless of how stadium officials would respond, the fact

that the institution's written policy on fan behavior accommodates the possibility of pro-transgender political chants at its football games is a very clear example of overbreadth.

That all 94 of the institutions we identified with content-specific restrictions were also categorized as overbroad speaks to the general difficulty in crafting speech policies with content-specific elements. Notably, policies on general fan speech or behavior were by far the most common, with 88 of the 94 (93.62%) schools having such a policy (see Figure 1), and these represent a particularly difficult form of speech to develop restrictions for without violating the free speech of speakers. As previous litigation has shown, even regulations crafted with meticulous care by Constitutional law professors have struggled to survive judicial scrutiny (see UWM Post v. Board of Regents of Univ. of Wis.,1991). Moreover, these policies often fail to capture crucial context and intent when trying to single out bad behavior. For example, while it is not a bad thing to see many universities seeking (presumably) to protect minority and marginalized populations, policies such as the one at Rutgers University, which prohibits "racist, sexist, homophobic, transphobic or demeaning remarks or gestures" (see Rutgers Athletics, 2024, p. 18), are so broad that they could potentially be used to limit many types of speech based on the political beliefs of the individuals encountering the speech or enforcing the policy (see Dambrodt v. Central Michigan University, 1995).

There is another issue with the predominance of overbroad policies. In addition to the many potential enforcement issues, the prevalence of overbreadth in FBS stadium policies ought to be particularly alarming for school officials because overbreadth challenges can be brought by litigants who have not been directly impacted by the relevant policy (see Broadrick v. Oklahoma, 1941). In short, a motivated attorney with a general knowledge of overbreadth doctrine and First Amendment law could potentially file a potentially tricky lawsuit against these university athletic departments on behalf of a third party (see also, Monhagan, 1981). This was the case in Doe v. University of Michigan (1989), when a grad student successfully sued the school over its policy prohibiting racially offensive or derogatory remarks despite never having been reprimanded by that policy (see 858-861). Importantly, just because more potential litigants exist does not mean that the universities will automatically lose any lawsuit brought against them over these policies. In Doe, the plaintiff had significant evidence of the policy's enforcement by the University of Michigan and comments by administrators to demonstrate that the policy did and was intended to have a general chilling effect on speech (at 859-861). While potential litigants against athletic departments would likely have a greater challenge to present similar evidence, the potential for an expensive challenge on behalf of third-party litigants means many FBS schools are currently in a risky position.

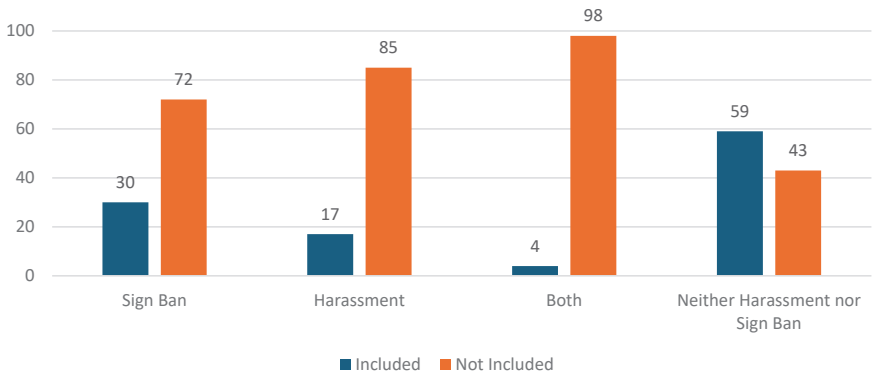

Figure 2. Total policies to limit First Amendment litigation exposure.

It is similarly noteworthy that many schools were not following the policy recommendations found in previous scholarship. In addressing RQ2, "Are FBS schools using recommendations from previous research to create policies that are more likely to survive First Amendment scrutiny?" we found that, of the 102 school policies reviewed, only 30 (29.41%) used a blanket prohibition on signs and banners at their facilities (see Figure 2). It is worth noting that not having a restriction on banners or signs did not automatically mean that a school had a policy that was content specific, as whether an institution had a sign ban and whether it had a sign policy that contained content specific restrictions were addressed separately. The University of Virginia policy, for example, states that "banners, signs, and flags are allowed in athletics facilities provided they do not impede another guest's view of the competition, cover any facility signage, and/or are not attached to the facility" and also notes that "Banners, signs, and flags on poles or sticks are prohibited" (University of Virginia Athletics, n.d.). Conversely, simply because a school prohibited signs and banners did not mean that other policies for its athletic facilities could not potentially violate visitors' free speech rights.

Harassment was even less common among school policies, with only 17 of the 102 (16.67%) reviewed policies specifically mentioning harassment as a rational for the policy or type or prohibited behavior. Moreover, the use of harassment in these policies did significantly differ from the employment law rationale provided by Calvert and Richards (2004). Primarily, this is because the use of harassment in these policies is intended to encompass interactions between fans and other fans or athletes who the schools and the NCAA have maintained—despite significant legal pressure—should not be considered employees. Moreover, many of the school policies used definitions of harassment that are substantially different from statutory definitions of both employment-related harassment and civil instances of harassment, such

that it is unlikely that the meaning of the term adopted by the schools would describe the type of criminal behavior that would preclude First Amendment protection.

For example, Fresno State University's football stadium code of conduct not only extends protection from harassment to its 'definitely not employee' athletes and other fans but it includes, "any verbal harassment in the form of abusive, obscene or discriminatory (on the basis of gender, sexual orientation, gender identification, age, race, national origin, religion, military status, disability status or any other protected category) language or gestures" (Fresno State University Athletics, n.d.). Verbal harassment in this policy goes beyond California's definition of harassment in its civil harassment and stalking statutes, which are the only other relevant uses of the term in the state's penal code not related to employment. Specifically, California's civil harassment statute, which is the closest to the definition of harassment used in the Fresno State policy, does not address specific classes of individuals and importantly requires that "the course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner" (California Code of Civil Procedure, Chapter 3 § 527.6(b)(3)). In many ways, the Fresno State policy is an attempt to extend the class-specific restrictions of employee harassment statutes to the context of civil harassment while broadening their scope to generally include language and gestures that may or may not cause substantial emotional distress. Put another way, the Fresno State attempt at incorporating harassment into its policy creates a legally unrecognizable definition of the term that is likely unconstitutionally overbroad.

The Fresno State example is typical of what we found with schools that attempted to incorporate harassment into their policies. While this is not to say that it is an inappropriate use of the more colloquial definition of the term, it is probably best not to conflate its use in these policies with the relation to employment law and an athletic administrator's legitimate concern for ensuring that they are not creating a hostile work environment for their employees. In practice, the use of harassment in these policies more closely resembles the attempts to incorporate fighting words doctrine into campus speech policies, which we have already discussed was unsuccessful because of similar issues with overbreadth (see UWM Post v. Board of Regents of Univ. of Wis., 1991).

Thus, in answer to RQ2, "Are FBS schools using recommendations from previous research to create policies that are more likely to survive First Amendment scrutiny?" we believe that the answer is largely no. While some institutions have banned signs and banners from their facilities, it has not necessarily prevented them from creating other policies that violate spectators' free speech rights. Meanwhile, colloquial rather than legal definitions of harassment used in these policies have generally blunted the viability of that strategy to curtail negative speech that could create a hostile work environment for gameday employees.

Limitations

Perhaps the most significant limitation to this study is the discrepancy between the written policies being studied and the enforcement of those policies, which could have noteworthy effects on the extent to which free speech at FBS venues is being limited. This is best demonstrated by the data on clothing restrictions; there are more policies restricting clothing (24 or 25.53% of the 94 schools with content-specific restrictions) than explicit mentions of prior restraint (14, only 14.98% of the 94 schools with content-specific restrictions). It is possible that these numbers demonstrate that the method for recording prior restraint significantly underrepresented the actual implementation of prior restraint regimes at FBS athletic facilities because only explicit mentions of prior restraint were counted. For example, the policy for Ohio State University's basketball arena prohibits "clothing or garments deemed offensive (determined at the exclusive discretion of management)" (Schottenstein Center, n.d.). It was not counted as prior restraint because it does not explicitly note that fans with garments deemed offensive will be denied entry to the venue. However, it is certainly possible that a fan could be denied entry by a stadium official following the policy, thus creating a form of prior restraint. This is generally applicable for all the policies regarding clothing as well as signs and banner restrictions (which were 58 or 61.70% of the schools who had content-specific policies) as it might be logical to assume that stadium staff are instructed to prevent clothing, signs, or banners with content that would violate facility policies from being allowed inside.

It is similarly true that enforcement of the policies studied here may be significantly less strict than the language included in them would imply. This may be a target for future research, as tracking incident reports for sporting events may provide some insight into the level of enforcement utilized for fan codes of conduct provided such records are maintained and specific enough to delineate that the cause of a disciplinary action was specifically due to the their violation of speech codes and not also related to other illegal behavior such as public intoxication or physical violence. We cannot say for certain whether such records even exist, however, as schools would be disincentivized to maintain these logs if they could potentially be used as evidence in a claim that their policies were overbroad.

Finally, we would also acknowledge that the policies posted on athletic department websites may not represent the current written policy of these institutions. It is certainly possible that some websites are not updated to reflect policy changes that could impact the overall data. We do not believe that this is likely so prevalent as to invalidate the general findings of this study, but it may have some small implications on the data.

Conclusion

We found through this research that the majority of public NCAA Division I FBS institutions have policies restricting fan speech at their athletic events that are likely violating First Amendment principles. Moreover, these policies are, in many cases, overbroad and could invite legal challenges from individuals who are not directly affected by the policies. Finally, we noted that long-extant recommendations from legal scholars on how to craft policies that are more defensible to First Amendment litigation have mostly been ignored. Our findings suggest that athletic department administrators are either ignorant of the issues with their current policies or are content with the tradeoff between the risks they present and whatever benefit they may provide as written. It is also low-hanging fruit, but worth repeating, that, as state actors, these institutions are legally obligated to uphold First Amendment rights, and, therefore, must ensure their policies align with constitutional law.

Maintenance of overbroad and potentially unconstitutional speech policies in public university sports stadiums is both a legal liability and a contradiction of the philosophies that protect the vital functions of those institutions. We are not unsympathetic to the desire to curb fan behavior that causes individuals to feel unwelcome or unsafe at college sporting events. At their core, the policies reviewed in this article aim to foster a positive gameday atmosphere by encouraging sportsmanlike conduct. While these objectives are noble, it is equally important that the associated policies also reflect Constitutional values. Universities have large platforms to positively espouse the myriad virtues of fostering an inclusive environment, including their sports teams. Rather than restricting speech, colleges can and should use their own speech to espouse and model good behavior. With refinement, it is possible to further the intent of stadium speech policies while also ensuring that they do not punish lawful expression or silence particular views—actions that contradict the ideals of institutions of higher learning.

To this point, our data also showed eight schools with policies that did not include content-specific restrictions on fan speech. Generally, these policies focus on general statements promoting fan behavior. For example, the University of Virginia policy on fan behavior simply states, “University of Virginia athletics events should be an enjoyable experience for all guests. To help us reach this goal for fans, staff, and student-athletes, we ask for your assistance in displaying a high degree of sportsmanship at all times” (University of Virginia Athletics, n.d.). These statements are compatible with First Amendment regulations and demonstrate one way institutions can use their speech to promote better behavior. We believe that further research on the effects of these messages and experimental new messages is crucial to refining their delivery and improving efficacy.

Finally, we would also suggest that future research is necessary to see whether the content of some of the provided codes of conduct change due to recent political moves seeking to discourage policies that target protections for individuals based on protected class status. While many of these political maneuvers are not intended to further the spirit and purpose of free expression guaranteed by the First Amendment, it is possible that policymakers in college athletic departments could respond by changing their current regulations in ways that more closely protect free speech rights. In addition to the recommendations for research on policy implementation we have given in previous sections of this article, additional research into changes in policy over time may better elucidate the motivations influencing athletic policymakers on issues related to fan expression.

References

Broadrick v. Oklahoma, 413 U.S. 88 (1940).

Burrick, D. (2003, September 24). NCAA issues report discussing unruly fan behavior. *The Daily Pennsylvanian*. https://www.thedp.com/article/2003/09/ncaa_issues_report_discussing_unruly_fan_behavior

Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961).

California Code of Civil Procedure, Chapter 3 § 527.6.

California Education Code § 94367 (2009).

Calvert, C., & Richards, R. D. (2004). Fans and the First Amendment: Cheering and jeering in college sports. *Virginia Sports and Entertainment Law Journal, 4*(1), 1–53.

Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of NY, 447 U.S. 557 (1980).

Charmatz, M., Hedges-Wright, L. L., & Ward, M. A. (2011). Personal foul: Lack of captioning in football stadiums. *Valparaiso University Law Review, 45*(3), 967–1032.

Chaplinsky v. New Hampshire, 315 U.S. 568 (1942).

Chemerinsky, E., & Gillman, H. (2017). Free speech on campus. *Yale University Press*. https://doi.org/10.2307/j.ctv1bvnfnb

Cohen v. California, 43 U.S. 15 (1971).

Colton, E. (2021, November 8). College football fans greeted with massive 'Let's go Brandon' banner flying over Georgia-Missouri game. *FoxNews.com*. https://www.foxnews.com/us/college-football-lets-go-brandon-banner-plane-georgia-missouri

Dambrodt v. Central Michigan University, 55 F.3d 1177 (6th Cir. 1995).

Doe v. University of Michigan, 721 F. Supp. 852 (E.D. Mich. 1989).

Duncan, N. J., & Hutchinson, T. (2012). Defining and describing what we do: Doctrinal legal research. *Deakin Law Review, 17*(1), 83–119.

Ehrlich, S. C., & Ternes, N. C. (2021). Putting the First Amendment in play: Name, image, and likeness policies and athlete freedom of speech. *Columbia Journal of Law & the Arts, 45,* 47–94.

Fresno State University Athletics. (n.d.). Valley Children's Stadium gameday information. *Fresno State Athletics*. https://gobulldogs.com/sports/2021/7/25/gameday-info-vcs

Greer v. Spock, 424 U.S. 828 (1976).

Hall, M. A., & Wright, R. F. (2008). Systematic content analysis of judicial opinions. *California Law Review, 96*(1), 63–122.

Healy v. James, 408 U.S. 169 (1972).

Horn, T. M. (2021). Power to the player: Freedom of speech, the right to protest, and student-athlete claims against the NCAA. *Marquette Sports Law Review, 32*, 317–331.

Hustler v. Falwell, 485 U.S. 46 (1988).

Intern. Soc. For Krishna Consciousness, Inc. v. New Jersey Sports and Exposition Authority, 691 F. 2d 155 (3rd Cir., 1982).

Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University, 993 F. 2d 386 (4th Cir. 1993).

Johnson, G. (2009, January 15). NCAA launches RESPECT initiative to promote sportsmanship. *The NCAA News*. https://ncaanewsarchive.s3.amazonaws.com/2009/Association-wide/ncaa-launches-respect-initiative-to-promote-sportsmanship---1-15-09---ncaa-news.html

Li, D. K. (2024, June 18). Fans kicked out of stadium after allegedly taunting coach over double-murder and suicide involving batboy. *Yahoo! Sports*. https://sports.yahoo.com/fans-kicked-stadium-allegedly-taunting-013124146.html

Mahanoy Area School District, Petitioner v. B.L., 141 S. Ct. 2038 (2021).

McCauley v. Univ. of the V.I., 618 F.3d 232 (3rd Cir. 2010).

McCurdy, B., & Williams, T. (2003, February 20). Summit addresses riotous behavior. *The Lantern*. https://www.thelantern.com/2003/02/summit-addresses-riotous-behavior/

Medcalf, M. (2025, February 23). Arizona apologizes for fans' derogatory chant aimed at BYU. *ESPN*. https://www.espn.com/mens-college-basketball/story/_/id/43980544/arizona-apologizes-fans-derogatory-chant-aimed-byu

Menaker, B., & Connaughton, D. P. (2010). Stadium alcohol policies: A comparison of policies available on college athletic department websites. *International Journal of Sport Communication, 3,* 151–162.

Miles, M. B., & Huberman, A. M. (1994). *Qualitative data analysis: An expanded sourcebook*. Sage.

Miller v. California, 413 U.S. 15 (1973).

Monaghan, H. P. (1981). Overbreadth. *The Supreme Court Review*, 1–39.

Morse v. Frederick, 551 U.S. 393 (2007).

NCAA. (n.d.). Five ways to have an LGBTQ-inclusive athletics department. https://www.ncaa.org/sports/2016/12/8/five-ways-to-have-an-lgbtq-inclusive-athletics-department.aspx#FCOC

NCAA. (2013, November 22). RESPECT; Guide for planning and implementing a sportsmanship program. *NCAA.org*. https://s3.amazonaws.com/ncaa/files/sportsmanship/guide-planning-impl-sportsmanship-prog-20160711.pdf

NCAA. (2024). Division I 2024-25 manual. *NCAA.org*. https://www.ncaapublications.com/productdownloads/D125.pdf

New York v. Ferber, 458 U.S. 747 (1982).

O'Connor, C., & Joffe, H. (2020). Intercoder reliability in qualitative research: Debates and practical guidelines. *International Journal of Qualitative Methods, 19,* 1–13.

Papish v. Board of Curators of Univ. of Mo., 410 U.S. 667 (1973).

Pearce, D., Campbell, E., & Harding D. (1987). *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission*. Australian Government Publishing Service, AU.

Perry Ed. Assn. v. Perry Local Educators' Assn., 460 U.S. 37 (1983).

Pradeep, M. D. (2019). Legal research: Descriptive analysis on doctrinal methodology. *International Journal of Management, Technology, and Social Sciences, 4*(2), 95–103. http://doi.org/10.5281/zenodo.3564954.

R.A.V. v. St. Paul, 505 U.S. 377 (1992).

Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819 (1995).

Rutgers Athletics. (2024). Fan Visitors Guide. *Rutgers University*. https://digitalprograms.learfield.com/rutgersu/general/6536/1

Salehijam, M. (2018). The value of systematic content analysis in legal research. *Tilburg Law Review, 23*(1–2), 34–42. https://doi.org/10.5334/tilr.5

Schottenstein Center. (n.d.). A-Guide. *schottensteincenter.com*. https://www.schottensteincenter.com/guest-services/a-z-guide

Seifried, C., & Smith, T. (2011). Congressional hearings and the Division I (Football Bowl Subdivision) postseason arrangement: A content analysis on letters, testimonies, and symposiums. J*ournal of Issues in Intercollegiate Athletics, 4,* 1–23.

Snyder v. Phelps, 562 U.S. 443 (2011).

Southeastern Promotions Ltd. v. Conrad, 420 U.S. 546 (1975).

Staurowsky, E. J. (2025). "Burned at the stake": Unpacking disinformation in the story of a coach allegedly "terminated" for expressing anti-transgender women athlete beliefs. *Journal of Issues in Intercollegiate Athletics, 18*(1), 68–97. https://doi.org/10.51221/sc.jiia.2025.18.1.5

Stewart v. District of Columbia Armory Bd., 863 F. 2d 1013 (D.C., 1988).

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

The Princeton Review. (n.d.). LGBTQ-Unfriendly. https://www.princetonreview.com/college-rankings/?rankings=lgbtq-unfriendly

Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969).

Ullian, D. M. (2016). Rope, tree, hang the referee: Exploring the First Amendment boundaries of offensive fan speech regulation in college sports. *Sports Lawyer Journal, 23,* 1–18.

University of Georgia Athletics. (n.d.). Zero tolerance. *ugaathletics.com*. file:///C:/Users/A2039972/Downloads/17UGA_ZeroTolerance.pdf

University of Tennessee Athletics. (n.d.). Gameday central. *utsports.com*. https://utsports.com/sports/2019/7/23/gameday-central.aspx#conduct

University of Virginia Athletics. (n.d.). Gameday central. *virginiasports.com*. https://virginiasports.com/football-gameday/

U.S. Const. amend. I.

UWM Post v. Board of Regents of U. of Wis., 774 F. Supp. 1163 (E.D. Wis., 1991).

Vrij, A. (2005). Criteria-based content analysis: A qualitative review of the first 37 studies. *Psychology, Public Policy, and Law, 11*(1), 3–41.

Ward v. Rock Against Racism, 491 U.S. 781 (1989).

Wasserman, H. M. (2006). If you build it, they will speak: Public stadiums, public forums, and free speech. *NINE: A Journal of Baseball History and Culture, 14*(2), 15–26.

Weinberg v. City of Chicago, 310 F. 3d 1029 (7th Cir., 2002).

Werner, B. (2024, November 2). James Franklin gets into it with heckling fan after Penn State loss. *Yahoo! Sports*. https://sports.yahoo.com/james-franklin-gets-heckling-fan-200601553.html

Widmar v. Vincent, 454 U.S. 263 (1981).

Williamson-Gourley, M., & Ternes, N. C. (2024). Distasteful yet protected? 'Russia!' & fan code of conduct policies in US College Athletics. *International Journal of Sport Policy and Politics, 17*(1), 147–153. https://doi.org/10.1080/19406940.2024.2404217