colleges can’t ban hateful speech but there is much they can do to fight it

By Erwin Chemerinsky and Howard Gillman

Above all, the First Amendment means that all ideas, even deeply offensive ones – can be expressed on a college campus. The courts have been consistent that we all hope never would be voiced, but it would contravene the First Amendment if it is a speech that the government may not prohibit the expression of as long as it does not incite violence. Society finds the idea itself offensive or disturbing.

In 2017, the American Civil Liberties Union asked the University of California to ban any advocacy for the genocide of Jews on their campus. The presidents of the University of California publicly took a deep breath and noted that they would have no authority to censorship the speech at universities. The university must act if speech rises to the level of harassment, which usually requires a conscious disregard that the speech would be regarded as a threat to safety – which is in a madhouse where there might be inanimate objects would allow punishment of advocacy of genocide. And a university must act if speech rises to the level of harassment, which usually requires that the speech be so severe and pervasive as to constitute an interference with educational opportunities based on race, sex, religion or national origin. What also was not expressed is that there is much that university officials can and should do besides punishing speech when there is hateful speech. Indeed, legal requirements that colleges not “deliberately indifferent” when there is harassment. University officials have many tools, including using their codes to censor hateful speech, providing protections against harassment and antisemitism of the type and bigotry, and providing support for students. If people are advocating genocide, that must be so that line could be an abhorrent thing. And, they can do that by introducing new laws that criminalize discrimination.

Regarding “Bush won either way” (Letters to the Editor, Dec. 8): George W. Bush and Howard Gillman are both right. Bush won either way. As for Steffner’s claim, this is all easily Googled: Media organizations later analyzed the voting machines that produced the ballot in Florida later retired the punch-card voting machines that produced the ballot in Florida. Florida later retired the punch-card voting machines that produced the ballot in Florida. And therein lies the problem. The Voice of the West

Richard C. Lechowicz

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