

'Dumpster Fire': Free Speech and the Classroom

51 Rutgers L. Rec. 116 (2024) | [WestLaw](#) | [LexisNexis](#) | [PDF](#) **I. INTRODUCTION**

Even casual observers of American politics know that the fight for control over classrooms continues to rage as one of the most intense proxies of the broader culture war. Across college campuses, many activists make no bones about elevating certain values over the First Amendment, a phenomenon that collapses the boundaries of acceptable speech on campus.¹ Although some on the political right have capitalized, rhetorically and politically, on the illiberal bent of this movement, Republican lawmakers have also sought to gain an edge in the struggle for young minds at the expense of the same constitutional safeguards.² While this battle is hardly new, parents of school-age children today are rightly vexed by the torrent of outrage-producing headlines, and many are injecting themselves into political debates about education and becoming a force in local elections.³ Though there are a host of other reasons, perceived indoctrination has contributed to American parents' lack confidence in the public school system.⁴

This article will argue that the scope of students' free speech rights in high school and college classrooms should be expanded, especially "high value" speech, or speech political in nature; and while this expansion surely will not serve as a panacea, it is both constitutionally justifiable and functionally optimal. First, the article will consider underlying First Amendment theory applicable to the classroom setting, and how the current doctrine is ripe for development. Next, it will explore different compelled speech tests used by the Circuit Courts for determining if a student's First Amendment right has been violated, and argue for why a more protective test is necessary. The article will then consider the issue through the lens of public forum doctrine and argue that perhaps the classroom is the public forum for the student and thus should be treated as such. Finally, the article will contemplate two variations of a hypothetical, as a means of concretizing for the reader what the expanded right would look like in practice.

¹ Commentators in the media demonstrate the controversy between the right and left on the topic. See Katy Steinmetz, *The Fight Over Free Speech on Campus Isn't Just About Free Speech*, TIME (Oct. 12, 2017, 6:54 AM), <https://time.com/4979235/the-campus-culture-wars/>; Bari Weiss, *We Got Here Because of Cowardice. We Get Out With Courage? Say No to the Woke Revolution*, COMMENTARY (Nov. 2021), <https://www.commentary.org/articles/bari-weiss/resist-woke-revolution/> ("[I]n a war, the normal rules of the game must be suspended?"); Ben Burgis, *What the Left Keeps Getting Wrong About Free Speech*, THE DAILY BEAST (Apr. 2, 2022, 4:09 AM), <https://www.thedailybeast.com/what-the-left-keeps-getting-wrong-about-free-speech> (After making the argument that free speech is a leftwing value, the author relents that he is unfortunately "not surprised that some mainstream progressives make excuses for attempts to shut down events on college campuses that offend some students?").

² See *Pernell v. Fla. Bd. of Governors of the State Univ. Sys.*, 641 F.Supp.3d 1218, 1230 (N.D. Fla. 2022) (declaring the State's "Individual Freedom Act," formerly the "Stop W.O.K.E.? Act," "positively dystopian?"); see also Sarah Schwartz & Eesha Pendharkar, *Here's the Long List of Topics Republicans Want Banned From the Classroom*, EDUCATIONWEEK, (Feb. 02, 2022), <https://www.edweek.org/policy-politics/heres-the-long-list-of-topics-republicans-want-banned-from-the-classroom/2022/02>.

³ See Henry Redman, *Culture War Battles in Local School Boards Aren't Slowing Down*, LA ILLUMINATOR (Mar. 29, 2022, 9:00 AM), <https://lailluminator.com/2022/03/29/culture-war-battles-in-local-school-boards-arent-slowing-down/>; Stephen Sawchuk, *Why School Boards Are Now Hot Spots for Nasty Politics*, EDUCATIONWEEK (July 29, 2021), <https://www.edweek.org/leadership/why-school-boards-are-now-hot-spots-for-nasty-politics/2021/07/>; Anya Kamenetz, *Why Education was a Top Voter Priority this Election*, NPR (Nov. 4, 2021, 6:00 AM), <https://www.npr.org/2021/11/04/1052101647/education-parents-election-virginia-republicans>.

⁴ See Lydia Saad, *Confidence in Public Schools Turns More Partisan*, GALLUP (July 14, 2022), <https://news.gallup.com/poll/394784/confidence-public-schools-turns-partisan.aspx> ("Americans' confidence in U.S. public schools remains low, with 28% saying they have a great deal or quite a lot of confidence in the institution," nearing the all-time low of 26%

measured in 2014).

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