



Unprotected Expression Definitions

Defamation – “False communications that harm an individual’s reputation, cause the general public to despise or disrespect them, or injure them in their business or employment” (USC, 2018). “Private and public figures are able to sue someone for statements they have made. Public figures must prove that the person made the statement with malice, which means knowing the statement was false or having a reckless disregard for the truth or falsity of the statement. (See *New York Times v. Sullivan*). Private figures must prove the person failed to act with reasonable care when they made the statement.” (Cornell Law School, 2021)

Destruction of Property – “injury to real or personal property through another’s negligence, willful destruction” (Legal Dictionary, Law.com, n.d.)

Discriminatory Harassment – “A form of unlawful discrimination including verbal and/or physical conduct based on legally protected characteristics and/or membership in a protected class that: has the purpose or effect of creating an objectively intimidating, hostile or offensive work or educational environment; has the purpose or effect of unreasonably interfering with an individual’s work or educational opportunities; or otherwise unreasonably adversely affects an individual’s employment or educational opportunities.” (). “threats, intimidation, harassment, coercion or violence that: interferes with a person’s civil or constitutional rights; and is motivated in part by that person’s actual or perceived race, creed, color, national origin, gender, sexual orientation, age, disability, or immigration or citizenship status or other protected status.” (NYC.gov, 2024)

“Fighting words” – Face-to-face communication of abusive and insulting language that, by its very utterance, inflicts injury, or tends to incite an immediate breach of the peace (USC, 2018). “Words meant to incite violence such that they may not be protected free speech under the First Amendment. The U.S. Supreme Court first defined them in *Chaplinsky v New Hampshire* (1942) as words which “by their very utterance, inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.” (Cornell Law School, 2021)

“Heckler’s veto” – Speech that infringes on the First Amendment rights of others. (USC, 2018)

Incitement to Imminent Violence – “If a person has the intention of inciting the violations of laws that is imminent and likely, while directing this incitement at a person or groups of persons, their speech will not be protected under the First Amendment. This test was created by the Supreme Court in *Brandenburg v. Ohio*.” (Cornell Law School, 2021)

Obscenity and Indecency – “In *Alliance for Community Media v. FCC*, the Supreme Court found that obscenity and child pornography have no right to protection from the First Amendment, and as such, the government has the ability to ban this media altogether. But when it comes to indecency, which is generally defined by the courts as something describing or depicting offensive sexual activity, the Supreme Court has found this speech protected. But the government can regulate this speech on radio and television, so long as it’s for a compelling reason and is done in the least restrictive manner.” (Cornell Law School, 2021)

True Threats – “Statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” (USC, 2018)

Violence – “ ‘the maltreating, physically or psychologically, by injury, attack, or ill-use of persons or property, when engaged with great energy, or when especially incendiary or malicious in its forcefulness.” (Office of Justice Programs, 1981)