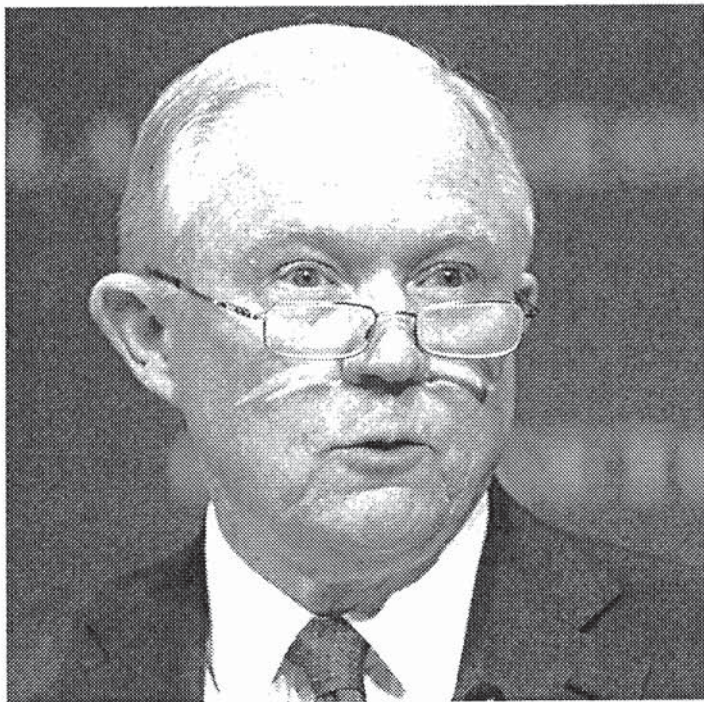


ADMINISTRATION

Inside the Free-Speech Case That Caught Jeff Sessions' Eye

By Eric Kelderman | SEPTEMBER 29, 2017



Win McNamee/Getty Images

Attorney General Jeff Sessions criticized campus free-speech policies in a speech at the Georgetown U. Law Center.

In his speech at Georgetown University this week, Attorney General Jeff Sessions announced that the Trump administration would begin intervening in public colleges' handling of disputes over free speech.

And first on the administration's agenda is a lawsuit against Georgia Gwinnett College, a public regional institution that enrolls about 12,000 undergraduates in Lawrenceville, Ga., about 30 miles from Atlanta.

The Justice Department has filed a brief supporting the complaint of a student who is suing the college over his claim that its policies and practices prevented him from religious proselytizing on campus. The Alliance Defending Freedom, a conservative advocacy group, is representing the student in court.

While other campus conflicts have captured nationwide attention in recent weeks, the Georgia Gwinnett case focuses on basic principles of both free speech and religious expression.

With its filing, the Justice Department is staking out the argument that campuses cannot fulfill their core mission if they try to protect students from controversial ideas, even those that may offend some on campus.

In a statement announcing the filing, Mr. Sessions said a "national recommitment to free speech on campus and to ensuring First Amendment rights is long overdue. Which is why, starting today, the Department of Justice will do its part in this struggle."

The court filing and Mr. Sessions' comments mark the administration's latest line of attack on higher education. In his speech, the attorney general described the typical college environment as an "echo chamber of political correctness and homogeneous thought, a shelter for fragile egos."

Aside from Supreme Court cases, said Erwin Chemerinsky, dean of the law school at the University of California at Berkeley, it's not usual practice for the federal government to be involved in such cases when they are not a party to the lawsuit.

Peter McDonough, vice president and general counsel of the American Council on Education, said Mr. Sessions is focusing on just a few high-profile events in recent months.

"I worry that there is a narrative that is being suggested — that is a false narrative — that campuses are not places that respect free speech and the rights of people to engage with and listen to speakers," said Mr. McDonough.

He and other higher-education experts said they were not yet worried about the scope and role of federal involvement in such issues.

But Geoffrey R. Stone, a law professor at the University of Chicago, questioned whether the Justice Department would really seek to protect a wide range of speech issues.

"I can see the federal government intervening to put its two cents in, but they have to be doing it in a principled and honest way," he said. "There's no evidence that they are willing to do that. They're going to pick and choose the cases that fit their perspective."

Free-Speech Zones

In contrast to the highly public protests at places like Berkeley and the University of Virginia, the issue at Georgia Gwinnett involves one student, Chike Uzuegbunam. In July 2016 he tried to distribute Christian literature and preach to students near the campus library, according to court documents.

He was told that such activity could take place only in one of the campus's designated "free-speech zones": one near a food court and the other near the student center. Using those zones requires a reservation.

In addition, college officials told Mr. Uzuegbunam that he would have to submit any written materials for approval.

He was in one of the free-speech zones that August, after making a reservation and having his written materials approved. But a campus police officer stopped him from speaking because of complaints, according to the court filings.

He could engage only in one-on-one conversations, the officer told him, or risk violating the student conduct code.

Later, according to court documents, a college official told the plaintiff that it was a violation of college policy for "anyone to express a fire-and-brimstone message" on campus.

In December, Mr. Uzuegbunam filed a federal lawsuit against Georgia Gwinnett, arguing that it had violated his constitutional rights. He has been joined in the suit by another student, Joseph Bradford, who also wishes to preach on the campus.

After changing its policies on free speech and student conduct, the college has asked the court to dismiss the lawsuit, saying the students' complaints had been rendered moot.

"Under the revised policy," the college said, students such as plaintiffs may speak anywhere on campus without having to obtain a permit, unless they are planning an activity of more than 30 students.

In a written statement, a college spokeswoman said: "Though the College cannot comment on pending litigation, it has ensured and will continue to ensure that individuals are able to exercise their First Amendment rights on campus,"

Travis C. Barham, the lawyer representing the plaintiffs in the case, said the college's policy changes have not gone far enough and make it less clear where students can engage in free speech. "Also, students still have to submit literature for approval," he said. "There's no justification for that."

'Heightened Interest'

As a judge in U.S. District Court in Atlanta considers Georgia Gwinnett's motion to dismiss the case, the Justice Department has voiced its support for the student plaintiffs.

In its statement, the department argues that the "United States has a heightened interest" in the case because the claims of a First Amendment violation are combined with discrimination based on religious beliefs.

The government's brief also cites the complaint that colleges enable a "heckler's veto" by shutting out speakers or speech only because it offends others or causes "emotional distress."

A department spokesman declined to specify why this lawsuit in particular had gained the attention of the federal government.

Mr. Sessions is familiar with the work of the Alliance Defending Freedom and, in July, gave a private speech to the organization, which has been criticized for opposing LGBTQ rights.

In his speech at Georgetown, Mr. Sessions also referred to two other legal disputes over free speech, involving lawsuits against community colleges in California and Michigan, where students associated with the advocacy group Young Americans for Liberty have said they were prevented from distributing copies of the Constitution.

Mr. Barham said he had not been informed that the federal government was going to file a brief supporting the students. The "critical issue" in this case, he said, is that "public universities have a responsibility to uphold constitutional rights of students on campus."

Adam Steinbaugh, a spokesman for the Foundation for Individual Rights in Education, which often supports legal actions against college speech codes, said he didn't know why this case would get the Justice Department's attention.

"We haven't really asked ourselves why they picked this one," he said.

Whose Speech?

Mr. Chemerinsky, at Berkeley, said the government is right to be concerned about upholding the First Amendment on college campuses. But he was concerned, he said, that the attorney general was not paying attention to some of the more difficult issues around free speech on campus.

For example, he said, how much does a college have to spend to secure the safety of participants? Berkeley recently spent an estimated \$800,000 for security at a four-day event billed as a "free-speech week," which was canceled before it began.

"I do think there's a hard issue: Is there a point at which the campus could or should say 'We can't afford this?'" he said.

The debate over free speech sometimes conflates constitutional rights with personal civility, Mr. Chemerinsky added. Just because the First Amendment gives a people the right to say something controversial doesn't mean they should say it, he said. "And just because I condemn someone else's speech doesn't mean I'm suppressing speech."

Mr. Stone, at Chicago, said he was cynical about the Justice Department's motives. "Imagine," he said, if a person were prohibited from handing out pro-choice material on a campus. "Sessions would not be intervening."

Mr. McDonough, of the American Council on Education, said the Justice Department's actions could be seen as "fundamentally a defense of what we all hold near and dear."

Most colleges now enroll students with a broader set of experiences and perspectives than ever before, he said, meaning there is naturally a wider range of opinion expressed on campuses.

And despite what some have described as the attorney general's contradictory positions on campus free speech and professional athletes' protests, Mr. McDonough said he hoped there was no political motive in Mr. Sessions' remarks. "If there is a motive informed by politics or persuasion," he said, "that would be ironic, wouldn't it?"

Eric Kelderman writes about money and accountability in higher education, including such areas as state policy, accreditation, and legal affairs. You can find him on Twitter @etkeld, or email him at eric.kelderman@chronicle.com.

Clarification (10/2/2017, 2:05 p.m.): This article has been updated to clarify remarks by Peter McDonough, of the American Council on Education, in which he said that he hoped that there was no political motive behind Attorney General Jeff Sessions' remarks.

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