# DEFENDING DISSENT: SAFEGUARDING SPEECH AND POLITICAL OPPOSITION

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The beginning of the second Trump administration has been a perilous time for the free speech rights of those engaged in expression disfavored by the administration. A recent report by media policy organization Free Press outlines approximately 200 attempts of censorship in the first 11 months of the second Trump administration.[1] These actions include targeting reporters whose speech Trump disagrees with, detaining individuals with lawful immigration status in response to their political speech, the pursuit of dubious criminal charges against perceived political opponents, and pressuring law firms who represented clients and causes disfavored by the administration into agreements requiring them to provide pro bono work for causes identified by the administration.[2] This volume, *Defending Dissent: Safeguarding Speech and Political Opposition*, considers current threats to free speech—both from the federal government and otherwise—and ways to guard against them.

Joseph Tomain examines recent free speech controversies in his essay, arguing that First Amendment law alone is not enough to safeguard the speech that democracy requires.[3] Instead, robust legal protection must be accompanied by what Tomain describes as a "cultural commitment to defending dissent."[4] Tomain outlines recent promising examples of ideological opponents uniting to defend free speech and discusses the ongoing challenges in promoting commitment to free speech protections for the "thought that we hate."[5] To cultivate a culture that values free speech,

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1. Nora Benavidez, *I Counted Trump's Censorship Attempts. Here's What I Found*, N.Y. TIMES (Dec. 31, 2025), https://www.nytimes.com/2025/12/31/opinion/trump-first-amendment-dissent.html [https://perma.cc/7943-JCDJ].

2. *Id.*

3. *See generally* Joseph A. Tomain, *Cultivating Free Speech Culture*, 80 WASH. U. J.L. & POL'Y 129 (2026).

4. *See generally id.*

5. *See generally id.*

Tomain promotes making speech-protective arguments "more accessible to people with different worldviews," for example, by fostering conversations that juxtapose differing views on controversial topics to show how neutral application of free speech principles can offer each side something to gain. Tomain then outlines two such examples, considering abortion-related protests and laws that compel speech.

Tobin Raju's essay examines one particular form of the Trump administration's retaliation against opponents—the summary revocation of security clearances of attorneys who have advocated for causes or clients disfavored by the administration.[6] As Raju argues, this form of retaliation is particularly troubling in the national security context because "security clearance is often a prerequisite for representing whistleblowers and pursuing legal redress for governmental abuses."[7] For this reason, revocation of attorney security clearances for those who represent disfavored clients both threatens individual rights and chills important advocacy.[8] Raju examines how advocates could use First Amendment doctrine to challenge these summary revocations, arguing that recognized First Amendment protections for legal advocacy and First Amendment prohibitions against retaliatory actions and viewpoint-based restrictions apply in these circumstances, notwithstanding the executive's traditionally wide discretion to revoke security clearances for national security reasons.[9] Raju further argues that summary revocations of security clearances like the high profile security clearance revocation of national security litigator Mak Zaid, via a public Presidential Memorandum, amount to unconstitutional "jawboning" that threatens the rights of both whistleblowers and attorneys themselves.[10]

Two other contributions to this volume consider what safeguarding speech and political opposition requires in law schools. G.S. Hans focuses on how pressures from the government, universities, and powerful third parties have impacted the work of law school legal clinics and considers the constitutional protections available to protect clinics and their faculty from interference. Hans describes recent attacks on clinical education programs

6. *See generally* Tobin Raju, *Let's Coerce All the Lawyers: Revocation of Attorney Security Clearances as a Jawbone*, 80 WASH. U. J.L. & POL'Y 67 (2026).
7. *See generally id*.
8. *See generally id.*
9. *See generally id*.
10. *See generally id.*

by high-level federal officials, including the House Committee on Education and Workforce's demand for a wide swath of documents relating to legal clinics at Northwestern University in a letter questioning the Community and Civil Rights Clinic's representation of pro-Palestinian activists.[11] While Hans explains that this and other recent attempts to interfere with clinical programs follow a long history of such attacks, he views these more recent attempts at interference as different in their brazenness.[12] Hans explains that established First Amendment protections for legal advocacy and client representation are important sources of protection for legal clinics, but ultimately concludes they are inadequate.[13] He argues for the development of additional legal theories—drawing from the language of the Fifth and Sixth Amendments—to provide broader protections for clinical programs and the independence of the larger legal profession.[14]

Stephen A. Rosenbaum's essay argues that law schools must drastically reorient their approach to teaching—at least in the short term—to respond to what he describes as "the creeping normalization of the daily democratic dismantlement and decay."[15] Rosenbaum outlines a "legitimacy crisis" for the Supreme Court and argues that law schools, bar associations, and judges must be leaders in highlighting "the gulf between the Constitutional landscape, as it has been taught and understood for generations, and its destruction in real time."[16] To respond to this crisis, Rosenbaum calls for a shake-up of the law school curriculum, including a required first-year course that critically and frankly assesses current challenges to democracy, and incorporates aspects of clinical work focused on Rule of Law and the preservation and restoration of democratic institutions.[17] Rosenbaum also urges law schools to continuously highlight Rule of Law issues through activities such as regular guest speakers and conferences, coordination between law school leaders and bar associations to forcefully "call[] out

11. *See generally* G.S. Hans, *Clinical Academic Freedom: Old Threats, New Protections*, 80 WASH. U. J.L. & POL'Y 5 (2026).
12. *See generally id.*
13. *See generally id*.
14. *See generally id.*
15. *See generally* Stephen A. Rosenbaum, *Constructive Outrage: Law School in the Times of Trump 2.0 and the MAGA Supreme Court*, 80 WASH. U. J.L. & POL'Y 93 (2026).
16. *See generally id.*
17. *See generally id.*

autocratic actions," and reimagining legal clinic work to emphasize Rule of Law and democracy-related advocacy.[18] Finally, Rosenbaum urges judges—both retired and sitting—to find opportunities outside of their decisions or in-court statements to "call out" actions by the second Trump administration and Supreme Court that threaten the Rule of Law.[19]

Finally, Brett Johnson's article provides an important reminder that current threats to dissent are not a uniquely federal nor uniquely Trumpian phenomenon. Johnson considers the constitutionality of 'civility codes' used by municipal town councils to restrict speech during public comment periods at board meetings.[20] Johnson notes that over the past several years, disagreements over local COVID-19 policies, police brutality, and school curricula have brought impassioned participation to public meetings.[21] In many jurisdictions, local governing bodies have limited the ways that citizens can vigorously criticize their municipal officials or policies during public comment by restricting speech deemed "uncivil."[22] Johnson traces the history of Supreme Court case law providing robust constitutional protection for offensive speech and attacks on public officials and figures, examining trends from the relatively recent body of case law in lower courts that have considered First Amendment challenges to restrictions on speech by citizens during public comment periods.[23] Johnson then offers an empirical analysis of civility codes for public comment periods from 83 municipalities in six New England states, concluding that close to half of them appear to be unconstitutional on their face.[24] Johnson concludes by offering guidelines for best practices that town councils can adopt to promote civility in ways that preserve "'our profound national commitment to the principle debate on public issues should be uninhibited, robust, and wide-open and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.'"[25]

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18. *See generally id.*
19. *See generally id.*
20. *See generally* Brett Johnson, *Managing Civility in Public Comment Sessions at Town Council Meetings*, 80 WASH. U. J.L. & POL'Y 29 (2026).
21. *See generally id.*
22. *See generally id.*
23. *See generally id.*
24. *See generally id.*
25. *See generally id.* (quoting New York Times Co. v. Sullivan, 276 U.S. 254, 270 (1964)).