

WHAT IS A HECKLER'S VETO?

INTRODUCTION

The purpose of this guidance document is to explain the concept of a "heckler's veto."

DEFINITION OF A "HECKLER'S VETO"

The right to free speech, protected by the First Amendment, includes many rights, one of which is the right to speak, and another is the right to hear another's speech if one wishes to do so. Those who disagree with a message might engage in conduct to disrupt a speaker to prevent the message from being conveyed. They may create noise that drowns out the speaker, or they may create a disruption that causes the speaker to leave or the event to be shut down. Actions like these which are designed to prevent a message from being conveyed are forms of "heckler's vetoes." The First Amendment prohibits the government from taking action which constitutes or effectuates a "heckler's veto," i.e., silencing particular speech or a particular speaker due to actual or anticipated disorderly reaction from the audience.

ILLUSTRATIVE EXAMPLES

Example 1

At an open space on campus (in an area designated by the campus as "public") a lone speaker stands amid the crowd and begins to speak in a way that some in the crowd (i.e., students, staff or members of the public) find offensive. If those in the crowd begin to attack the speaker to silence him (ripping his signs, physically pushing him, pulling off his shoes, pouring water on him, etc.), the government (i.e., the campus staff responsible for monitoring speech events) is obligated to stop those who are unlawfully attacking the peaceful lone speaker. If government officials were to direct the lone peaceful speaker to leave the area or cease speaking in order to restore calm to the area, issuing that directive to the speaker could effectuate a "heckler's veto." It would be stopping the speech due to the reaction of others.

Example 2

A student group decides to invite a speaker to campus, and fully complying with all campus requirements, decides to host an event which consists of an interview with that speaker in a conference room, as a ticketed event. The event is widely advertised and well attended. During the event, other students who oppose the speaker's viewpoint enter the room with megaphones and chant so loudly at the back of the room that the speaker cannot be heard by the audience. If the university staff decide to end the event, thereby silencing the speaker, the ending of the event would effectuate a "heckler's veto."

HOW TO RESPOND TO AUDIENCE DISRUPTION

Where speech invokes a disruptive reaction on the part of "hecklers," i.e., those who do not like the speaker's comments or viewpoint, government officials, such as University administrators, are required to deal with those causing the disruption. The University may not avoid having to deal with the upset audience members who are attempting to silence the controversial speaker by instead closing the event or trying to stop the speech of the controversial speaker. The government is permitted to value "safety" of all involved, but it cannot simply point to "safety" generally and end the event; instead, it must first act in ways that are "less speech-restrictive" than stopping the speaker altogether.

In the case of the members of the crowd attacking the lone speaker, the staff responsible to monitor speech events could have taken some or all of the following steps all while allowing the lone speaker to continue speaking:

- required the crowd to step back from the lone speaker,
- erected a barricade of some kind where the two sides could hear one another but were physically separated,
- warned those attacking the lone speaker that any sort of physical altercation would result in removal or even arrest,
- remove or arrest those who chose to engage in physical altercation against the speaker.

CSU staff should regularly remind the campus community that speech will occur in this open area that they could find offensive and remind them that there are other pathways they can use. If they choose to go and listen, they must remain peaceful. Finally, they could be reminded that if they wish to state a different view, they can hold a counterprotest and allow their own voice and viewpoint to be heard.

In the case of the ticketed event on campus, campus staff could have directed the students with the megaphones that they had to stop using the megaphones and disrupting the event; if they refuse to stop using the megaphones, they must be ordered to leave. These students should be informed that they are violating the speaker's right to speak and the audience's right to hear the speaker. Although the university staff would need to require the students with the megaphones to stop using the megaphones, they could allow them to protest by standing at the back of the room holding signs, for example, or in other ways that did not involve making disruptive noise, so the speaker could still be heard. Alternatively, the students who wanted to protest the speaker could be directed to go outside of the conference room to another campus location where they could use the megaphones and protest (such as outside the building, or in the quad) so that the speaker could finish speaking (and be heard by the audience) and their opposing remarks could be heard by the audience who had come to hear them.

CONCLUSION

A "heckler's veto" is prohibited by CSU policy. Section VIII.A. of the CSU's Interim Systemwide Time, Place and Manner Policy states that the following is prohibited on CSU property:

No Disruption or Interference with the Speech of Others (Heckler's Veto Prohibited)

Individuals or groups may not suppress the speech of another individual by shouting down or otherwise drowning out or preventing the individual from being heard, otherwise known as a "heckler's veto." Individuals may protest speakers on Campus with whom they disagree, but they may not do anything that prevents the speaker from expressing their views or prevents members in the audience from hearing or seeing the speaker. This prohibition also applies to the removal or erasure of written or printed expressive activities that are otherwise in compliance with this Policy and the applicable Campus Addendum. <https://calstate.policystat.com/policy/16412929/latest/>.

University staff who are confronted with a situation where a speaker cannot be heard because of an audience reaction will take steps to separate the two and ensure the safety of the speaker and the audience. Physical altercations between speaker and audience will not be allowed, and audience members wishing to engage in expressive activity that would interfere with the speaker should be directed to a different place, with the goal that no physical altercations should occur, and all speakers should be able to be heard by their audience.

Of course, if there is a true danger created from the conflict, steps must be taken to ensure the safety of all. However, shutting down the speaker or event should be avoided whenever possible.