

Missouri Attorney General Eric Schmitt
Address to the University of Missouri Law School Graduation
May 18, 2019

Thank you, Dean Glesner Fines. Congratulations, graduates. No doubt your family and friends are proud to see this day. Your communities can be proud of the service you are setting out to deliver. And, most importantly, today is your day to take a bow. Finally.

As the Missouri Attorney General, my job is to be the chief lawyer for the six million people of the state of Missouri, no matter their race, creed, neighborhood or political party. I take that responsibility very seriously.

In that capacity, I get around Missouri a lot, and one thing I consistently hear from people from all walks of life is we need more lawyers! Ok, no one ever has actually said that to me. Ever. But in all seriousness, in my role, I can tell you that I'm proud of you as well. You've endured a long haul, likely including late nights, a lot of outlines and now today you have made your way to the finish line.

As a sixth generation Missourian, I love this state and am honored to serve the people of Missouri. I hope that many, maybe even most of you, will stay here in Missouri and practice law. Maybe you might even make your way to the office of the Attorney General to serve the people of Missouri.

All of you today, including your friends, family and loved ones joining us, as well as every citizen of our country, should feel deep gratitude for the times in which we live. Our great grandparents could not have imagined the opportunities we have before us, the horizons we've yet to conquer, the discoveries waiting to be made. While there tends to be a focus on negativity, polarization and hardening of identities, by all objective standards, there has never been a better time to be alive.

A question pollsters often ask is "Are you better off today than you were a year ago, two years ago, four years ago?"

Bill Gates answers that by saying “the big picture is that it’s better to be born today than ever, and it will be better to be born 20 years from now than today.”¹ Child mortality rates are lower, poverty is lower, and technology is paving the way to face challenges we never even dreamed we could solve.

Consider this: For millennia up until about 100 years ago, nearly everyone who ever lived, lived on less than \$1 a day. Because of technology, innovation, and capitalism, we enjoy the highest standard of living the world has ever seen. And by a long shot. And not just in the United States.

For example, in 1820, around the time the great state of Missouri was founded, 90% of the world population lived in extreme poverty versus only 10% today.

The truth is, if our family tree goes back a couple hundred generations, only the last three have enjoyed all the things that we think make us so enlightened: electricity, indoor plumbing and modern transportation to name a few.

But, the fact is we are all still hardwired as flawed human beings, and are just as likely as our ancestors to be capable of jealousy, raw ambition and a tendency to aggregate power.

The founders of America, the authors of the great American Idea, understood this and constructed a system of limited and dispersed government that would constrain human nature and abuse to protect liberty and freedom.

To let that concept breathe a little, let's step back for a moment to consider just how special and unique the American Experiment really is.

Through the course of your time here, I know that you have learned that the Constitution of the United States is the bedrock of the legal system you are entering. It is the oldest and longest-standing written constitution in the world. The central document that framed our American Experiment and our form of government.

Before America declared its independence from Great Britain or had a Constitution, the world believed that rights came from kings. The King, in turn, derived power from simply being born into the monarchy, certainly not by any achievement or merit.

The King was sovereign, the rest of us subjects. Kings answered to no one because they claimed a divine right to rule. Kings and queens were free, the rest of us, not so much.

Americans flipped the script on this concept that had been accepted for literally thousands of years. Our Founders challenged the King and boldly proclaimed that everyone had it wrong. Rights come from God, not from kings or government.

We all know the breathtaking words: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.”

Those words started a revolution. Not just of guns and governments, but of ideas. Patriots died for that idea then and they do now as well. The American Idea is the bold declaration of universal human dignity, appreciating that each one of us is granted by our Creator rights that can't be taken away by any one or any government; like the right to say our piece; the right to persuade; and the right to practice your religion without persecution. The belief that we are all entitled to equality of opportunity and the right to pursue our dreams – the right to pursue happiness.

America is the greatest nation on earth not because of who is born here, but because we believe that every soul, every person is born with these fundamental rights. We're a creedal nation, literally the first of its kind. The first nation born of a

philosophy.

So how did this American idea guard against erosion by way of our human nature? Safeguards, pitting ambition vs ambition and creating a protective framework of our God given rights. In other words, the Constitution. As the Founders met to craft the Constitution and later adopted the Bill of Rights, James Madison explained that the Bill of Rights was proposed not to give people rights, but to specifically protect against government infringing upon rights the people already had.² Again, government doesn't give us rights, it is merely our shared project to protect those rights.

Getting headline feature status in this Bill of Rights is our First Amendment. The First Amendment is the beating heart of our

Constitution ...and is integral to maintaining our republican (small r) form of government, to maintaining the belief that we are a country of people, who have the ability to debate big, important things, not oppressive government.

Many of you will argue over the Constitution's meaning during your careers. Some of you may even argue about it before the Supreme Court. But whatever our interpretations, each and every one of us enjoys the freedoms preserved by the Constitution every single day.

Yet a recent survey found that 40% of American adults could not name one of the five freedoms listed in the First

Amendment. Not a single one. Out of the 1,000 adults surveyed, only one person could name all five.³

Each one of these five freedoms – of religion, of speech, of the press, of assembly, and of petition – is vitally important.

If you think about it, the First Amendment protects fundamental human expression. We are all born with dignity, and we all have purpose. Our ability to pursue happiness is tied to our ability to fight for what we believe in. To make a difference. The First Amendment protects those noble efforts.

Now, elected officials and politicians don't always like how the media cover us. But, the First Amendment also protects the freedom of the press to write, broadcast, cover and uncover.

The press has covered wars, questioned decisions and uncovered important stories and continues to play a vital role in our democracy today.

Long before the Revolutionary War, Americans witnessed the oppression of speech. More than 1,200 times before 1700, the British prosecuted and punished Americans for what they called “seditious speech.” Sedition laws prohibited criticism of government, government policies, or specific government officials based on the idea that the criticism could inflame the public against the government.

Some prosecutions appear to have involved little more than sensitive feelings being hurt. For example, one woman faced prosecution after calling the governor and his team “a parcel of

pitiful beggarly curs.” A man faced prosecution after labeling the Maryland legislature “a company of turdy fellows.”

Criticism like this was punishable by large fines, public whippings, even imprisonment.⁴ Just think how busy those prosecutors would be if Twitter existed back then.

But as the Revolutionary War approached, colonists began standing up for free speech. Colonial grand juries began refusing British requests to issue indictments for criticizing the government.⁵ Colonial juries acquitted individuals accused of criticizing the government.⁶ We tossed tea to protest taxes. We printed publications denouncing the king.

Our founders signed the Declaration of Independence to proclaim to the world that America was free.

We the American people established free speech, and we preserved it in the First Amendment. We see today how important the First Amendment is by looking around our world.

Earlier this year, Vladimir Putin signed a law criminalizing speech that “disrespects” Russian officials or the Russian government.⁷ This built on laws Russia was already enforcing to jail hundreds of people, including journalists, over the last few years for criticizing the government.⁸

Look at China, where persecution of freedom of speech has somehow gotten worse since the brave student stared down the tank in bloody Tiananmen Square. China has been called the global leader in political prisoners.⁹

China's desire to spy on its people knows no limits, and now even companies such as Google are reportedly building tools to help the Chinese government censor and control its own citizens.¹⁰

The Iranian government has attempted to block social media and messaging applications and force its people to use government-run applications. And, those apps monitor and track their citizens. Not surprisingly, protestors have been killed and jailed by the Iranian government.¹¹

In Venezuela, just a few months ago, a 29-year-old posted on Twitter his opposition to the Venezuelan president. His family reports that two days later, government commandos stormed

the young man's home, dragged him outside, and shot him dead.¹²

Yes, free speech is under siege around the world. People are killed, tortured, jailed, fined, isolated, or ruined for daring to criticize their government or for standing up for the right to speak out.

In America, we believe disputes can be solved, either in the courtroom or through our politics. Not through violence.

But, make no mistake about it, we aren't just talking about "the usual suspects". The attack on free speech is underway in America as well. While we may not be killing, torturing, or jailing, the attack is serious. The authoritarian regimes we just

discussed are prosecuting speech critical of the government.

Here in America, politically incorrect speech, offensive speech as deemed by the “thought police” is under attack and unless your speech fits into the increasing narrow bandwidth of acceptable speech, you might be next.

The results of multiple surveys are sobering. Between 40 and 50% of Americans between the ages of 18 and 35 believe the First Amendment goes too far in the rights it guarantees. Why? Because someone might say something that might hurt someone’s feelings.

Perhaps most alarming is a growing number of young adults believe that if the speech is offensive enough violence is justified.

As a student, admirer, and staunch believer in the protections afforded to us by our Founding Fathers, this frightens me.

As the Supreme Court has said “The fact that society may find speech offensive is not a sufficient reason for suppressing it.

Indeed, if it is the speaker’s opinion that gives offense, that ... is a reason for according it Constitutional protection.”

Moreover, the Courts have consistently struck down so-called “Hate Speech” laws because of their vague and arbitrary application. These policies or laws may feel good to write but can have a chilling effect on free expression.

Some in our society today seek to suppress and punish speech they disagree with by calling it “hate speech.” Ideological speakers on campus have been disinvited, shouted down, attacked, and met with riots. Campuses have literally burned. Speakers may say offensive things, and they may say stupid things. But the First Amendment does not allow us to suppress the speech because we find it offensive. And, in some cases, when people don’t hear what they want to hear, they turn to violence. Violence is not the answer to protecting free speech.

More speech, more dialogue is.

Academia, specifically college campuses, has long been regarded as a bastion of free speech, an area where students and teachers alike can debate, discuss, and yes, disagree on important questions and topics. Historic movements, major policy changes, and shifts in attitudes have all been spurred by

important discussions held and argued on college campuses across the country and around the world.

The Supreme Court has recognized the importance of the college forum, writing that “the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.”¹³ The Court has worked to ensure that protection.

In *Healy v. James*, the Supreme Court ruled that a college could not deny recognition to a student organization because of the group’s liberal activist views.¹⁴ In *Widmar v. Vincent*, the Supreme Court ruled that a college could not prohibit a student organization from meeting on campus because of the group’s religious discussion.¹⁵

Unfortunately, the winds of change are blowing and unfettered free speech has been replaced by censorship.

Last month, Texas State's student government voted to ban a conservative student organization from campus because of its views.¹⁶

The ACLU filed suit when the University of California – San Diego defunded its student newspaper after it published a satirical article mocking “trigger warnings” and “safe spaces.”¹⁷

Speech codes are also being implemented by universities across the country.

“What’s the problem with speech codes or speech zones?”, you might ask. Aren’t they just a mechanism to get people to be more respectful and to prevent emotional harm? Well, here’s the problem. By setting forth what is acceptable speech, universities can punish what they deem to be “unacceptable speech” or relegate that speech to the far corners of the quad away from the prime seating of the safe spaces. Speech that some or most may not agree with or even find offensive is still speech protected by the Constitution.

In an effort to ensure that we are fostering anti-bias environments, I believe we are seriously damaging our fundamental right to free speech, causing our students to walk on egg shells for fear of saying or doing something, even unintentionally, that someone might find offensive. If we lose

the ability to debate, disagree, reason and offer different points of view, we are losing our ability to learn, grow, persuade and develop empathy for others. We also risk being less informed. And, an informed and educated populace is critical to selfgovernment.

As Justice Oliver Wendell Holmes put it, “the best test of truth is the power of the thought to get itself accepted in the competition of the market.”

In response to the denial of free speech on college campuses, states around the country are now considering or passing “Campus Free Speech” laws, giving the rights to students of publicly funded schools to speak their minds on topics. Ladies

and gentlemen, that right to free speech already exists. And we must stand up for it. Together.

As Justice Louis Brandeis said, the founders believed that “it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones.”

And it’s not actually helping anyone to be removed from situations where they might encounter uncomfortable speech or an idea they disagree with. That’s life. And if confronted with an open mind or counter-arguments or even explaining how

the idea is a misguided one – that’s where our strength lies. Not in suppression, but greater tolerance for ideas that are good or bad or timely or offensive or well-thought out.

Free speech and our acceptance of that idea as a unifying concept can be a rallying point in our often toxic but important debate about where we are headed culturally.

Yes, here in America our rights of free speech are under attack by the thought police, trying to silence opinion and dissent.

Each of us may find some of what is said objectionable, emotionally upsetting, and even hateful. But, if we allow the government to limit our rights, if we allow the goalposts to move, where will it end?

As Justice Hugo Black wrote, the freedoms of the First Amendment “must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish.”¹⁸

None of these arguments deny that some speech may cause harm. But part of the point in protecting speech is that speech, words, our arguments can, in fact, move people, persuade, influence others, positively and negatively. Speech cannot be censored or muted because of how it may affect hearts and minds.

Viewpoint restrictions are dangerous and are antithetical to free thought, expression, or as the Supreme Court has said, even the concept of self-government itself.

This is precisely why free speech must be guarded jealously and why a typically divided Supreme Court speaks almost in unison on this issue. Moreover, a clear understanding of what free speech is and who it protects should bridge partisan divides because these principles protect all speakers, conservative and liberals and everyone in-between.

Again, how do we fight back against offensive speech? Not censorship, not violence. More speech. Better arguments.

Simply put, empowering government to pick and choose what's acceptable is a cure worse than the disease.

So I believe that these serious issues deserve a serious response from every one of us, particularly lawyers as defenders of the law of our land.

First, we must defend free speech, especially in this era where civics education is being removed from our curriculum. The ACLU recognizes the importance of protecting speech we may disagree with by stating: “Restricting the speech of one group or individual jeopardizes everyone’s rights because the same laws or regulations used to silence bigots can be used to silence you.”¹⁹

Moving forward, people will look to you for your insight and your opinion. Take the opportunity to communicate why free speech is important and must be protected, even if we disagree with what is being said, written, shouted or protested. Describe

why people have the right to say things that you may disagree with.

You all are the ambassadors for the rule of law now and by extension this beautiful system set up to protect the rights of our brothers and sisters. Be the voice of reason, pull people back from the brink.

As Missouri's Attorney General, I am committed to protecting free speech, and my office will be vigilant in finding and opposing efforts to suppress speech ... on campus and off. We must not allow a narrow-minded hegemony to determine what narrow bandwidth of speech is acceptable or can be heard in the first place.

Second, we must respect and dialogue with those with dissenting views. It can feel at times like people are at each other's throats 24/7. And if people want to, they can have their already previously held views validated all the time in a virtual silo, walled off from meaningful dissent or other points of view. Diversity of thought is incredibly important and should be celebrated, not shouted down by a hecklers' veto. So, be respectful. There's a lot of wisdom out there. Hear the other person out. Try to persuade and be willing to be persuaded. Agree to disagree agreeably.

Remember that protecting the right of another to say things you don't agree with is central to freedom and liberty. Have an

open mind. We all can continue to learn new things or sharpen our own arguments by listening.

Finally, get involved. As Ronald Reagan said, “freedom is never more than one generation away from extinction.” We need you to wade into the collective citizenry and be a leader and an advocate for the American idea. And I do not necessarily mean necessarily public service, I mean in your workplaces, on the boards you’ll serve on, in your families, in your communities.

Some folks will highlight that our time seems increasingly divisive, and in some ways in Washington, D.C., it is. But strong communities aren’t built by faceless folks from far-away places – they’re built by real people living in them.

That's why it's so important to get involved. When famed French observer Alexis de Tocqueville came to America and wrote back to Europe about what was happening here, he discovered the greatness of America wasn't that we had better bureaucrats than in Europe but rather, it was the people, the volunteerism, the cultural pluralism and the strength and depth of our mediating institutions. What he found was rich and layered communities. It's different now 200 years later, but you can still find it.

By defending free speech in our communities, our houses of worship, our organizations, our campuses and our governments, we can ensure that the freedoms we cherish are passed on to our children and our children's children.

This American experiment we are all part of is worth fighting for. We all have a role to play to keep America the greatest country on earth. Preserving free speech is our duty.

You only get one shot at this life, this journey, to make a difference. So be guardians of the American Idea. The world looks to America as that shining city on a hill. Do your part to help us shine brightly, with a path guided by freedom and liberty for all our brothers and sisters.

And we all can be proud of our shared journey together to make this world a better, freer place.

Thank you, good luck, and God bless.

- ¹ MIT Technology Review, Bill Gates Explains Why We Should All Be Optimists, Feb. 27, 2019, <https://www.technologyreview.com/s/612924/bill-gates-explains-why-we-should-all-be-optimists/>.
- ² James Madison speech to the House of Representatives, June 8, 1789, <https://www.usconstitution.net/madisonbor.html>.
- ³ Freedom Forum Institute, 2018 State of the First Amendment, June 2018, https://www.freedomforuminstitute.org/wpcontent/uploads/2018/06/2018_FFI_SOFA_Report.pdf.
- ⁴ Larry D. Eldridge, “Before Zenger: Truth and Seditious Speech in Colonial America,” 1995 https://www.jstor.org/stable/845791?read-now=1&seq=22#page_scan_tab_contents
- ⁵ Stephen D. Solomon, “Revolutionary Dissent: How the Founding Generation Created the Freedom of Speech,” 2016, https://books.google.com/books?id=aLSpCgAAQBAJ&printsec=frontcover&dq=Revolutionary+Dissent:+How+the+Founding+Generation+Created+the+Freedom+of+Speech&hl=en&sa=X&ved=0ahUKEwimxrCG_vfhAhVOLK0KHTeBDwYQ6AEIKjAA#v=onepage&q=Revolutionary%20Dissent%20How%20the%20Founding%20Generation%20Created%20the%20Freedom%20of%20Speech&f=false; Stephen D. Solomon, The Cost of Criticism, 2017, <https://www.history.org/Foundation/magazine/Winter17/PastForward.cfm>. ⁶ History Magazine, Freedom of Speech: The King vs. John Peter Zenger, 2006, <https://www.chisd.net/cms/lib5/TX01917715/Centricity/Domain/868/Peter%20Zenger%20Freedom%20of%20Speech%20Article.pdf>.
- ⁷ The Atlantic, Putin’s Crackdown on Dissent is Working, Mar. 22, 2019, <https://www.theatlantic.com/international/archive/2019/03/putins-new-law-makes-it-illegal-disrespectrussia/585502/>; BBC, Russia Laws Ban “Disrespect” of Government and “Fake News,” Mar. 7, 2019, <https://www.bbc.com/news/world-europe-47488267>.
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- ⁹ Arch Puddington, China: The Global Leader in Political Prisoners, Aug. 31, 2018, <https://freedomhouse.org/blog/china-global-leader-political-prisoners>. ¹⁰ The Intercept, Google Is Conducting a Secret “Performance Review” of Its Censored China Search Project, Mar. 27, 2019, <https://theintercept.com/2019/03/27/google-dragonfly-china-review/>.
- ¹¹ Human Rights Watch, Iran: Free People Jailed for Peaceful Protests, <https://www.hrw.org/news/2018/08/31/iranfree-people-jailed-peaceful-protests>.
- ¹² NBC News, Human Rights Groups Say Deaths of Venezuelan Protesters Appears to be Targeted Killings, Feb. 20, 2019, <https://www.nbcnews.com/news/latino/human-rights-groups-say-deaths-venezuelan-protesters-appear-betargeted-n973651>.
- ¹³ *Healy v. James*, 408 U.S. 169, 180 (1972) (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)).
- ¹⁴ *Healy v. James*, 408 U.S. 169, 194 (1972).
- ¹⁵ *Widmar v. Vincent*, 454 U.S. 263, 269 (1981).
- ¹⁶ <https://www.washingtonexaminer.com/news/texas-state-university-student-government-votes-to-ban-turningpoint-usa-from-campus>
- ¹⁷ <https://www.aclusandiego.org/defending-freedom-speech-everyone-aclu-sues-ucsd-enforce-first-amendmentrights-student-press/>
- ¹⁸ *Communist Part of U.S. v. Subversive Activities Control Bd.*, 367 U.S. 1, 137 (1961) (Black, J., dissenting).
- ¹⁹ <https://www.aclu.org/other/speech-campus>