# CP- Courts

## 1NC

#### Counterplan Text: The Supreme Court of the United States, in the next available test case, should rule that public colleges and universities ought not restrict any constitutionally protected speech.

#### Lawsuits are piling up against free speech restrictions – the counterplan strengthens First Amendment protections and solves the entirety of the case Watanabe 14 Teresa Watanabe (covers education for the LA Times), "Students challenge free-speech rules on college campuses," LA Times, 7/1/2014 College students in California and three other states filed lawsuits against their campuses Tuesday in what is thought to be the first-ever coordinated legal attack on free speech restrictions in higher education. Vincenzo Sinapi-Riddle, a 20-year-old studying computer science, alleged that Citrus College in Glendora had violated his 1st Amendment rights by restricting his petitioning activities to a small "free-speech zone" in the campus quad. According to Sinapi-Riddle's complaint, a campus official stopped him last fall from talking to another student about his campaign against spying by the National Security Agency, saying he had strayed outside the free-speech zone. The official said he had the authority to eject Sinapi-Riddle from campus if he did not comply. "It was shocking to me that there could be so much hostility about me talking to another student peacefully about government spying," Sinapi-Riddle said in an interview. "My vision of college was to express what I think." In his lawsuit, Sinapi-Riddle is challenging Citrus' free-speech zone, an anti-harassment policy that he argues is overly broad and vague and a multi-step process for approving student group events. The college had eliminated its free-speech zones in a 2003 legal settlement with another student, but last year "readopted in essence the unconstitutional policy it abandoned," the complaint alleged. College officials were not immediately available for comment. But communications director Paula Green forwarded copies of Citrus' free-speech policy, which declares that the campus is a "non-public forum" except where otherwise designated to "prevent the substantial disruption of the orderly operation of the college." The policy instructs the college to enact procedures that "reasonably regulate" free expression. The "Stand Up for Speech" litigation project is sponsored by the Foundation for Individual Rights in Education, a Philadelphia-based group that promotes free speech and due process rights at colleges and universities. Its aim is to eliminate speech codes and other campus policies that restrict expression. In a report published this year, the foundation found that 58 of 427 major colleges and universities surveyed maintain restrictive speech codes despite what it called a "virtually unbroken string of legal defeats" against them dating to 1989. Even in California — unique in the nation for two state laws that explicitly bar free speech restrictions at both public and private universities — the majority of campuses retain written speech codes, he said. Among 16 California State University campuses surveyed by the group, for instance, 11 were rated "red" for employing at least one policy that "substantially restricts" free speech. "Universities are scared of people who demand censorship -- they're afraid of lawsuits and PR problems," said Robert Shibley, the foundation’s senior vice president. "Unfortunately, they are more worried about that than about ignoring their 1st Amendment responsibilities," he added. "The point of the project is to balance out the incentives that cause universities to institute rules that censor speech." The foundation intends to target campuses in each of four federal court circuits; after each case is settled, it will file another lawsuit. In other cases filed Tuesday: — Iowa State University students Paul Gerlich and Erin Furleigh challenged administrative rejection of their campus club T-shirt promoting legalization of marijuana. The university said the shirt violated rules that bar the use of the school name to promote "dangerous, illegal or unhealthy" products and behavior, according to the complaint. — Chicago State University faculty members Phillip Beverly and Robert Bionaz sued over what they said were repeated attempts to silence a blogd they write on alleged administrative corruption. — Ohio University student Isaac Smith challenged the campus speech code that forbids any act that "degrades, demeans or disgraces another." University officials invoked the code to veto a T-shirt by Smith’s Students Defending Students campus group — which defends peers accused of campus disciplinary offenses. The T-shirt said, "We get you off for free," a phrase that administrators found "objectified women" and "promoted prostitution," the complaint said.

**They’re mutually exclusive since it’s a process CP – if the case happens, then there are no more cases to rule on since there are no violations of speech that are brought up to the supreme court.**

#### Courts are better checks on implementation – they decide the birghtline for whether speech is constitutionally protected.

**Arthur 11** (Joyce, Founder and Executive Director of the Abortion Rights Coalition of Canada, a national political pro-choice group, “The Limits of Free Speech,” Sep 21, 2011, <https://rewire.news/article/2011/09/21/limits-free-speech-5/> //

A common objection to prosecuting hate speech is that it might endanger speech that counters hate speech. For example, a critique may repeat the offending words and discuss their import, or it may subvert the hate message in a subtle or creative way that could be misunderstood by some. But context is everything when determining whether speech is actually hateful or not, so this objection seems nonsensical. Any reasonable judge should be able to discern the difference in intent or effect behind a hateful message and the speech that critiques it.

#### Court action spurs a national dialogue and social movements: Friedman 2004

**Friedman 04** [Barry Friedman, NYU law professor, 2004, The Importance of Being Positive: The Nature and Function of Judicial Review ]

From a descriptive posture then, the Supreme Court is not the Supreme Ruler that poses a hope or a threat; rather, the Supreme Court acts as a catalyst for debate, fostering a national dialogue about constitutional meaning. Prompting, maintaining, and focusing this debate about constitutional meaning is the primary function of judicial [\*1296] review. n147 The claim is not that the country is incapable of having a constitutional discussion absent a Supreme Court pronouncement, only that constitutional dialogue seems the inevitable result of an important or controversial constitutional decision. The debate over slavery is just one example of a national conversation about constitutional meaning that, while helped along by a judicial decision, was not only a result of judicial intervention. n148 However, because the nature of a judicial decision is to cast something in constitutional terms, when that decision is debated, the Constitution more typically plays a central role. Congressional debates, to pick a counter-example, less commonly display this constitutional nature, even if that would be warranted. n149 At least it seems that way, absent some empiricism that suggests otherwise. Perhaps this is to be expected, even preferred, given the exact nature of Congress's task, i.e., doing the nation's business. And when the Constitution does appear in congressional debate, typically it is because of a question of how the Court will react much as what the Constitution should mean. Nothing here is intended to speak to the counterfactual-that is, what if there was no judicial review. Thayer famously took the view that too much judicial review dampened broader constitutional debate. n150 Maybe this is so, maybe not. But in the world in which we live, the courts foment and sustain constitutional dialogue. This is the central role of judicial review. Although this largely has been a positive account, it is worth making the normative turn, if ever so briefly. On examination, it is possible to see that the positive account points to a role for judicial review that [\*1297] disarms complaints about judicial review. It ought to be clear from this account that although the hope of judicial review may be overstated, the threat is overstated as well. Critics challenge the hegemony of judicial interpretations of the Constitution, but this drastically overstates the case. Many judicial interpretations raise no controversy. n151 But when they do, what occurs is not obeisance to the courts, but a healthy process of constitutional debate and often constitutional change. This process of constitutional dialogue and constitutional change matters, because this ultimately ensures that the Constitution is owned by all of us. n152 As Richard Fallon says, with regard to constitutional legitimacy, "the first crucial point is the fact of widespread acceptance." n153 Some judicial decisions do strike a national nerve, and when they do, they rouse opposition. That opposition invites participation in the process of reaching consensus about constitutional meaning. Participation can occur at great levels but also trivial ones, like sending a small check to an interest group. The cumulative effect of this political activity concerning a constitutional issue may be a shift and coalescing of public opinion. However-and this is important-the Supreme Court's responsiveness to public opinion is not to immediate popular preference so much as to a body of opinion that endures over time. This is the case precisely because constitutional law is sticky, changing only after an appropriately intense national conversation occurs. The conversation can be short-lived but intense enough to generate an immediate supermajority, such as when a constitutional amendment is passed in response to a court decision. Or, constitutional law can change-as it more typically does -only after a long, drawn-out process of political engagement. The benefit of the process of constitutional change is that it serves the separating function, of helping to determine and distinguish between immediate political preference and deeper commitments. The stickiness of constitutional law means that most political change occurs only after a sustained campaign during which public opinion can become educated and coalesce, a period of time over which immediate popular preference becomes tested. Alternatively, new constitutional law comes [\*1298] about because immediate preference is so intense as to do what so rarely is done: forge a constitutional amendment.