UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

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Chair of the Assembly of the Academic Senate
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University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

December 2, 2021

CHAIRS OF SENATE DIVISIONS AND COMMITTEES:

Re: Systemwide Review of Recommendations for Department Political Statements

Dear Colleagues,

I am forwarding for systemwide Senate review a letter and two recommendations from the University Committee on Academic Freedom (UCAF) addressing the freedom of campus academic departments to issue or endorse statements on political issues in the name of the department.

The UCAF letter articulates an overriding principle that departments should not be precluded from issuing or endorsing political statements. The letter recommends that, consistent with the UC Electronic Communications Policy, department statements include disclaimers clarifying that the statement is not intended to represent the views of the University as a whole. It also recommends that departments clarify in such statements whose views within the department the statement represents, and make allowances for the expression of minority views.

The Academic Council is considering a systemwide approach to the issue of department political statements because principles of academic freedom guide the ten-campus UC system. The Council wants to assess the views of divisions on each of the two recommendations to ensure this wording meets faculty needs and is consistent with the practice of academic freedom on the campuses.

Please submit comments to the Academic Senate office at SenateReview@ucop.edu by March 22, 2022 to allow us to compile and summarize comments for the Academic Council's March 30 meeting. As always, any committee that considers these matters outside its jurisdiction or charge may decline to comment.

Please do not hesitate to contact me if you have additional questions.

Sincerely,

Robert Horwitz, Chair
Academic Council

Cc: Senate Directors
Executive Director Baxter

Encl.

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UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM (UCAF)
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October 20, 2021

ROBERT HORWITZ, CHAIR
ACADEMIC SENATE

RE: DEPARTMENT STATEMENTS

Dear Robert,

Academic Council has requested recommendations from the University Committee on Academic Freedom (UCAF) regarding the ability of academic departments on campus to issue, or endorse, statements on political issues in the name of the department. We have given the matter a great deal of thought, consulted with colleagues on the campus academic freedom committees as well as general counsel at UCOP, and conducted our own research.

Our conclusion is that, while such statements are sometimes ill-advised and have the potential to chill or intimidate minority views, departments should not be precluded from issuing or endorsing statements, so long as a) such statements make clear that they are not intended to represent the views of the University as a whole and b) allowances are made for minority views to be expressed in some reasonable fashion. In this letter, I provide a brief background on this issue, and provide UCAF's specific recommendations for Council.

Background

This issue has arisen recently in response to some departments within UC making public statements, as departments, regarding Israel's treatment of Palestinians. For example, see here for a statement from UCLA's Gender Studies Department, here for a statement from UCLA's Department of Asian American Studies, and here for a statement from UCSC's Feminist Studies Department. These statements have generated criticism from those who argue that they appear to impute to the University a position on a sensitive political issue and/or that they restrict the academic freedom of members of the department who do not agree with the views of "the department" as reflected in the statements. Others have argued, on the other hand, that restricting the ability of departments from making or endorsing such statements – which are, as demonstrated in the attached appendix, quite common – would itself violate the academic freedom and/or free speech of faculty members in these departments.

Council has asked UCAF for its recommendations for how to address this issue.

Recommendations

We start with the principle – uncontroversial but always worth reiterating – that individual faculty members and collectives of faculty members have a virtually unqualified right to speak publicly about anything. This is a core tenet of free speech and, to some extent, academic freedom.

It is also true that the University has free speech rights and that, with the exception of certain restrictions relating to electoral politics, the University as an entity can publicly express a viewpoint on political matters.[1] UC Board of Regents Bylaw 23.4(c) vests the Chair of the Board of Regents with the authority to speak on behalf of the Board of Regents.[2] Bylaw 30 vests the President with the authority to speak on behalf of the University,[3] and Bylaw 31 vests Chancellors with the authority to speak on behalf of individual campuses.[4]

In theory, the President or Chancellors could delegate to individual units on campuses – academic departments, for example – the right to speak on behalf of the larger institution. Not surprisingly, we are unaware of any explicit systemwide or campus policy that has expressly delegated this authority. Thus, as a practical matter, absent any express delegation, departments do not have the right to speak on behalf of the University as a whole.

University-wide policy forbids *individual* faculty members from purporting to speak on behalf of the university. If a faculty member's statement "might reasonably be construed as implying the support, endorsement, or opposition of the University with regard to any commercial, religious or political activity or issue, the identification shall be accompanied by a disclaimer: an explicit statement that the individual is speaking for himself or herself and not as a representative of the University or any of its offices or units."[5]

Many campuses have some variation on a policy that is consistent with this approach. For example, UC Irvine policy states that "[w]ebsites and webpages belonging to individuals published on UCI web servers . . . [s]hall not give the impression that they are representing, giving opinions, or otherwise making statements on behalf of the University or any unit of the University unless appropriately authorized to do so." UCI's policy goes on to require that, "[w]here appropriate, an explicit disclaimer shall be included unless it is clear from the context that the author is not representing the University. An appropriate disclaimer would be: 'The opinions or statements expressed herein should not be taken as a position or endorsement of the University of California.'"[6]

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[1] As a matter of law, the University is prohibited from electioneering (i.e., advocating for or against a candidate or party for elective political office) or from campaigning for or against a measure on the ballot. The prohibition on electioneering applies to UC as a 501(c)(3) charitable organization. The prohibition on ballot initiative campaigning applies to UC as a state entity and is derived from a long line of California Supreme Court cases (see *Stanson v. Mott* (1976) 17 Cal.3d 206 and *Vargas v. City of Salinas* (2009), 46 Cal. 4th 1). *See also* California Government Code Section 8314, which makes it unlawful for any state employee to use or permit others to use public resources for a campaign activity. Accordingly, pursuant to University of California policy, "As a State instrumentality, the University must remain neutral on religious and political matters." https://policy.ucop.edu/doc/2710524/PACAOS-40

[2] https://regents.universityofcalifornia.edu/governance/bylaws/bl23.html

[3] https://regents.universityofcalifornia.edu/governance/bylaws/bl30.html

[4] https://regents.universityofcalifornia.edu/governance/bylaws/bl31.html

[5] https://policy.ucop.edu/doc/2710524/PACAOS-40; see also page 9 of UCOP policy on Electronic Communications: "Users of electronic communications resources shall not give the impression that they are representing, giving opinions, or otherwise making statements on behalf of the University or any unit of the University unless appropriately authorized to do so." https://policy.ucop.edu/doc/7000470/ElectronicCommunications

[6] https://www.policies.uci.edu/policies/pols/800-16.php#partb13

We are unaware of any policy that similarly warns *departments* about the need to refrain from issuing statements that could reasonably be construed as advancing the views of the larger institution, or that requires a disclaimer. That said, we are also unaware of any policy delegating to departments the ability to speak on behalf of the larger institution, nor would such a blanket delegation make sense. Because it appears that department statements are just as (or more) likely as the statements of individual faculty members to be construed as representing the views of the University as a whole, it seems prudent to recommend that they contain a disclaimer when such confusion is reasonably foreseeable. Such a disclaimer is both reasonable and unlikely to infringe in any way on anyone's free speech or academic freedom rights.

The harder question is whether academic freedom or free speech rights are implicated when departments issue statements in the name of the department. As reflected in the appendix to this letter, departments across the system do this with some frequency on a number of varied topics.

We are concerned that, when departments issue statements in the name of the department – or when they endorse, as a department, a statement issued by someone else – minority viewpoints within the department may be suppressed. Especially for those within the department who enjoy less power and authority – for example, students, staff, and untenured faculty – the departmental statement may have a chilling effect on their speech that can infringe on academic freedom. At the same time, we also recognize that, under certain circumstances, the collective voice of a department may be important to convey publicly and that these statements can constitute a valued form of expression.

We do not believe the University can or should police the *content* of departmental speech. Some have suggested, for example, that departments should not speak on issues beyond their expertise. We reject the notion that this is an appropriate subject of inquiry when it comes to the rights of departments to issue statements. Departments have the right to determine which topics they wish to speak about, as long as they make clear they are not speaking for the university as a whole.

However, because of our concerns about the potential chilling effect of departmental statements, we believe departments have a responsibility to make clear who is being spoken for when departments speak as departments. This can be accomplished by listing the names of members who sign on to the statement. (See here for an example from the UCSC Department of Astronomy and Astrophysics.) If a department chooses not to list individual signatories to each statement, it should explain the manner by which it was determined what would be represented as the views of the department. (For example: "Department statements are determined by a majority vote of the faculty members in the department, and do not necessarily reflect the views of all faculty, staff, or students in the department.")[7]

No matter how departments indicate who is being spoken for, we believe departmental websites should provide opportunity and space for minority viewpoints to express their views, with regard to any commercial, religious or political activity or issue on which the department takes a position. (The

[7] In some instances, in lieu of issuing statements on behalf of the department, a department might choose to allow a portion of its website to be used by individuals or groups of department members (faculty, staff, students) to express their individual views. In such instances, however, it is important to recognize that, by allowing one individual viewpoint to be expressed on a University website, the department is likely creating a "limited public forum" that requires people with other viewpoints to be given an equal opportunity to air their views on the same subject. The expression of a departmental position (as opposed to an individual viewpoint) would not create such a "limited public forum," but nonetheless in our view it would support academic freedom for minority voices in the department to be given an opportunity to express their opposing views.

question of how departments meaningfully solicit the views of all members is an important one, but one that we think is outside the purview of our committee, given that the composition, needs, and resources of each department are unique and likely require individualized approaches.)

Conclusion

Below are the summaries of our two recommendations:

Recommendation #1: When a departmental statement is issued or endorsed indicating support, endorsement, or opposition with regard to any commercial, religious, or political activity or issue, the statement should be accompanied by a disclaimer in the form of an explicit statement that the department's statement should not be taken as a position or endorsement of the University of California, or of the campus, as a whole.

Recommendation #2: When a department chooses to issue or endorse a statement with regard to any commercial, religious, or political activity or issue, it should indicate in some manner whose views within the department the statement represents. In addition, departments should ensure that minority viewpoints are provided a reasonable and proportionate opportunity to express their views on the same platform as the departmental statement.

UCAF appreciates the opportunity to comment on this matter.

Sincerely,

Ty Alper, Chair

Appendix:

Below is a list of links to departmental or school websites across the U.C. system. It is meant purely to illustrate the kinds of statements posted on these websites. It is by no means exhaustive:

UCLA Faculty of the Asian American Studies Department's Statement of Solidarity with Afghanistan (Sept. 14, 2021): https://asianam.ucla.edu/2021/09/14/the-faculty-of-the-asian-american-studies-department-statement-of-solidarity-with-afghanistan/

UC Davis Asian American Studies Department Public Statements (most recent September 2021): https://asa.ucdavis.edu/public-statements

UCLA Gender Studies Department Statement in Solidarity with Palestinian Feminist Collective (May 24, 2021): https://gender.ucla.edu/news/gender-studies-departments-in-solidarity-with-palestinian-feminist-collective

UCLA Asian American Studies Department's Statement of Solidarity with Palestine (May 21, 2021): https://asianam.ucla.edu/2021/05/21/asian-american-studies-departments-statement-of-

solidarity-with-palestine/

UC Santa Cruz Feminist Studies Department Statement on Palestine (May 14, 2021): https://feministstudies.ucsc.edu/news-events/department-news/palestine-statement-2021.html

UC Santa Barbara Department of East Asian Languages & Cultural Studies Support for Asian and Pacific Islander Graduate Student Alliance (March 18, 2021): https://www.eastasian.ucsb.edu/support-for-asian-and-pacific-islander-graduate-student-alliance/

UC Santa Barbara History Department Statement on Floyd Uprising (July 2, 2020): https://www.history.ucsb.edu/2020/07/02/ucsb-history-department-statement-on-floyd-uprising/

UC Berkeley Linguistics Department Statement on George Floyd Killing (undated): https://lx.berkeley.edu/statement-george-floyd-killing

UC Berkeley School of Public Health, Black Lives Matter Statement (undated): https://publichealth.berkeley.edu/news-media/school-news/a-statement-from-the-uc-berkeley-school-of-public-health-black-lives-matter/

UC Irvine BioSci Department of Ecology and Evolutionary Biology Black Lives Matter Statement (undated): https://ecoevo.bio.uci.edu/blm-statement/

UC Riverside College of Natural & Agricultural Science Statement of Solidarity (undated): https://cnas.ucr.edu/solidarity-statement

UC Riverside School of Medicine, Department of Social Medicine, Population, and Public Health Statement on Black Lives Matter (undated): https://healthycommunities.ucr.edu/black-lives-matterstatement-solidarity

UCSD Department of Communication Commitments to Actions in Response to the Murder of George Floyd (undated): https://communication.ucsd.edu/about/blm.html

UCSD Department of Sociology Statement of Solidarity with Black Students, Faculty, Staff, and Others (undated): https://sociology.ucsd.edu/about/statement-of-solidarity.html