

November 8, 2023

To: Andrea Kasko, Chair
UCLA Academic Senate

Re: **UCLA Policy: Public and Discretionary Statements by Academic Campus Units**

The Committee had only a short time to consider the document and was unable to do so for a reasonable length at a meeting. The opinions below were assembled from comments submitted by members through email.

Allowing and regulating discretionary

Most members thought such statements should be allowed. This is in line with the opinion of UCAF. Its May 22, 2022 letter to the Academic Council stated, “a prohibition on the ability of departments to issue statements would represent a monumental change in U.C. policy and practice that neither Council nor UCAF believes is warranted.”

In spite of that support, a widely expressed concern was chilling minority viewpoints. The question was raised of the policy’s enforcement given that different ACUs might adopt different rules. Nevertheless those expressing skepticism stated that there were no good answers.

One member believed the document was unnecessary and even harmful, that members of the community already have the right to express their views as individuals, that statements on behalf of ACUs implicate the University and constitute, in practical terms, compelled speech for the dissenters. Since this member’s viewpoint touches many of the subjects below in a connected way, I have reproduced it at the end of this document.

Public statements on ballot referenda and legislation should be allowed

On page 3, the draft forbids public statements that endorse or oppose “candidates for elected or appointed government office, or . . . specific ballot referenda or legislation.” Several members did not dispute that ACUs should be silent on candidates running for office; one reason is that their platforms involve matters wider than any ACU’s expertise. However, they believed forbidding comments on current legislation or on ballot measures arbitrarily restricts academic freedom.

The UCLA draft supports this rule on the grounds that banning statements on legislation and referenda follows from “applicable laws and University policies.” No citations are given, and the question was raised whether current laws or policies do in fact forbid this. Addressing this same question of statements on candidates, legislation, and referenda, the UCAF/Academic Council documents of May 25 and June 2, 2022, cite the 1970 Policy on the Use of University Properties - 40, “As a State instrumentality, the University must remain neutral on religious and political matters.” Read literally, this seems quite restrictive but, as the UCAF/Academic Council documents point out, the phrase “political matters” in the ban has consistently been interpreted in a narrow meaning. For example, the University

filed an amicus brief on affirmative action admissions, and also sued the Trump administration over DACA.

The UCAF and Academic Council documents were somewhat inconsistent about what counts as “political”, but they conclude, “the University views departmental statements as consistent with existing policy and applicable laws so long as they do not take stands on *electoral* politics [emphasis added], and so long as they do not purport to speak for the University as a whole.” Prohibiting statements on *electoral* politics would allow statements on legislative or ballot measures since no one is being elected. Banning that included such cases would interfere with a major purpose of a university - ACUs could not convey their specialized knowledge to the public at a critical time.

Note that this UCLA draft bans not just discretionary statements about referenda or proposed legislation; it bans all *public* statements about them, i.e., including those relevant to the ACU’s daily activities. A member pointed out that if some new Congress or President wanted to cut funding for universities that teach critical race theory, the CRT Program in the Law School, the History Department, or the African-American Studies Department could say nothing publicly against it, at least until it passed. In 2024 Californians will vote on repealing Proposition 8, which prohibited same sex marriage; the current draft would tell the Williams Institute to stay silent. There will also be a ballot measure to fund early pandemic detection, but the Clinical Epidemiology and Infection Prevention Department could say nothing about that either. The proposed rule goes against not only academic freedom but the University’s major role of sharing useful knowledge with society. The phrases “specific ballot referenda or legislation” should be deleted.

Complexity of the draft’s rules

Some members felt the document was unwieldy and needed to be simplified. It should distinguish the more important rules from the less important ones and keep the former.

“Discretionary” statements

One member, while recognizing what the word meant in this context, found this confusing. All language is discretionary. The document defines the word only vaguely. It was also felt that in some contexts vagueness is desirable.

Should statements be able to claim unanimous support?

According to the draft, “[An ACU] may not specify that the statement received unanimous endorsement (even if it did). This is to avoid the generation of incentives to identify and pressure holdouts.”

Wherever an ACU sets its majority quota – unanimity, one-third or just a majority – a statement may be one vote short of passing, leading to the same incentive to pressure faculty. It was suggested that for this reason, as well as for keeping the rules simple, this portion should be omitted.

Removing statements from UCLA sites at the end of each term

Two members expressed the view that this was overdone and a year might be better. “Renewal of any statement must follow the procedures associated with the production of statements above.” Requiring it term by term would call for full meetings, discussions, and revotes every three months, and would increase the pressure on dissenters that the draft wants to avoid.

Consultation with CAF

Two members stated that the draft should include the 2022 recommendation of UCAF and Academic Council, “Time permitting, departments should consult with their campus Committee on Academic Freedom (CAF) when considering publication of a departmental statement on a controversial.” A reason was that we are attuned to the issues, and might notice a problem not foreseen in the rules and guidelines. Concern was expressed that it would increase our workload; on the other hand, there was doubt that many ACUs would do it.

A member’s skepticism about the overall project

One member wrote the following:

“As a practical matter, much of this ‘policy’ would be unworkable, as this document implicitly admits in several places. The key problem is with ‘Discretionary Statements’ -- a euphemistic way of describing statements of opinion, and in particular opinions on political controversies. The proposal requires such statements be ‘responsible’ and ‘judicious’, without providing useful guidance on how that will be guaranteed. The document admits that it raises serious problems of how Discretionary Statements are proposed, written, debated, voted upon and publicized (when, how, and by whom). It correctly admits that ‘It is difficult to protect anonymity’ and that there may be ‘pressures to identify and pressure holdouts’, again without providing clear protections.

“It further acknowledges that the common usage of ‘subgroups’ to produce statements may ‘conflict in content with a statement of the broader academic unit’. So they should only be considered ‘cautiously’, as the ‘Guidance’ vaguely recommends. The document admits the ‘risks of intra-unit conflict [not to mention inter-unit conflicts]’, ‘and the misattribution of statements to members of the community who do not wish a public association with those statements.’ This highlights the fundamental problem with collective speech--that some people (with a majority view) end up speaking on behalf of other people (with a different, minority view, private or no particular view). The Policy states that ‘Unanimity cannot be required’. Thus my academic freedom is violated when a group of my colleagues makes a statement which I did not sign, and with which I do not agree, while doing so officially ‘on my behalf’. Even if a ‘broad consensus’ disagrees with me, this compelled speech violates my rights. I could perhaps try to provide some kind of dissent. But once the official (majority) statement is announced by my UCLA Academic Unit (however that might be defined), we all know that peculiar legal niceties (e.g.: ‘This statement represents the views of ...some kind of majority...of...those who were included in this group, and only during the current academic term’) will be ignored in the subsequent public discussion and reverberations throughout social media. This document correctly admits that even knowing who is speaking is problematic: ‘These delineations [about subgroups and subsets] may not be well-understood by students and the public.’

“In fairness to the writers of the Proposal, many of its unanswered questions and problems are not necessarily the result of sloppiness. Instead, they have no good answers. The more basic reason may be inherent in what this document is attempting to do, which is to enable official statements about matters far from, or even disconnected from, the core mission of UCLA faculty. Our number one mission is to educate our students. When Academic Units issue official opinions that stray too far from that, little will be gained, but much can be lost.

“This document is too fundamentally flawed to be even a starting point for a policy. Even with heavy editing, it will cause more (unintended) harm than its purported benefits.

“Fortunately, this document is a non-solution to a non-problem. Every UCLA employee, including every faculty member of any rank, and every researcher, clinician and graduate student, already enjoys individual freedom of speech to express their opinions on any issue—in their own name. And if, for example, a group—large or small—of UCLA employees wishes to band together to sign a Letter or Petition—even on a political controversy or ‘global event’ --they are free to do so, making it clear that each signer speaks for themselves. Their UCLA affiliation of course does not mean that UCLA officially endorses—or officially condemns—what they wrote. This simple fact also protects the EVC and Provost from attacks, more effectively than this misguided Policy proposal could.”

The committee appreciates the opportunity to comment on this matter and looks forward to reviewing this policy again should we be asked. If you have any questions, please contact me (barry.oneill@polisci.ucla.edu) or Academic Senate Policy Analyst, Lilia Valdez (lvaldez@senate.ucla.edu).

Sincerely,

Barry O’Neill, Chair
Committee on Academic Freedom

cc: Kathy Bawn, Vice Chair/Chair-Elect, UCLA Academic Senate
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