Executive Board

(Systemwide Senate Review) Recommendations for Department Political Statements

Table of Contents

Exec Divisional Response - Academic Senate re Dept Political Statements 1
---Dear Chancellor Block and Interim Executive Vice Chancellor and Provost Levine, 1
---Sincerely, 1
Exec RH-Senate-divisions-recommendations-for-department-statements 3
---2022.05.25 Final UCAF to Council re Department Statements 5
CODEI Final Response - CODEI to EB-Recommendations for Department Political Statements (2022-0224-002) 11
CAF Final Response - CAF to EB re Systemwide Review Recommendations for Dept Political Statements 12
GC Final Response 13
FWC Final Response 14
UgC Final Response - 2022-01-21 UgC to EB re Systemwide Recommendations for Department Political Statements 15
Exec (Systemwide Senate Review) Recommendations for Department Political Statements 16
---RH-systemwide-senate-review-academic-freedom-dept-websites 16
---2021.10.20 Final UCAF to Council re Dept Statements 18

Generated 4/19/2024 4:24 PM

UCLA Academic Senate

June 9, 2022

Gene Block, Chancellor

Michael Levine, Interim Executive Vice Chancellor and Provost

Re: **Recommendations for Department Political Statements**

Dear Chancellor Block and Interim Executive Vice Chancellor and Provost Levine,

At its May 2022 meeting, the Academic Council of the systemwide Academic Senate endorsed the recommendations from the University Committee on Academic Freedom (UCAF). The recommendations address the freedom of campus academic departments to issue or endorse statements on political or controversial issues, and outline processes that ensure the judicious and transparent use of statements.

The systemwide Academic Senate asked Division Senate Chairs to facilitate the distribution of these materials to "department chairs, deans, chancellors, and campus CAFs." To that end, I ask you to transmit the attached materials to department chairs, deans and other campus administrative leaders as we share the materials with relevant Senate bodies.

Moreover, we request sufficient time for the divisional Senate's deliberative processes to review any proposed campus policy based on these recommendations.

Sincerely,

Jessica R. Cattelino
Chair
UCLA Academic Senate

Encl.

Cc: Michael Beck, Administrative Vice Chancellor
Joseph Bristow, Incoming Chair, Committee on Academic Freedom
April de Stefano, Executive Director, UCLA Academic Senate

Yolanda Gorman, Senior Advisor to the Chancellor and Chief of Staff
Andrea Kasko, Vice Chair/Chair Elect, UCLA Academic Senate
Susanne Lohmann, Chair, Committee on Academic Freedom
Mary Osako, Vice Chancellor, Strategic Communication
Emily Rose, Assistant Provost and Chief of Staff to the EVCP
Lilia Valdez, Senior Policy Analyst, UCLA Academic Senate
Shane White, Immediate Past Chair, UCLA Academic Senate

UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO SANTA BARBARA • SANTA CRUZ

Robert Horwitz
Telephone: (510) 987-0887
Email:robert.horwitz@ucop.edu

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

June 2, 2022

ACADEMIC SENATE DIVISION CHAIRS

Re: Recommendations for Department Political Statements

Dear colleagues:

At its May 2022 meeting, the Academic Council endorsed the attached recommendations from the University Committee on Academic Freedom (UCAF). The recommendations address the freedom of campus academic departments to issue or endorse statements on political or controversial issues, and outline processes that ensure the judicious and transparent use of statements.

First, the Council endorses the overriding principle articulated by UCAF that departments should not be precluded from issuing or endorsing statements in the name of the department. Freedom of expression and academic freedom are core tenets of the UC educational mission, and individual faculty members and groups of faculty have a right to speak publicly about political or controversial issues. UCAF consulted with both UC General Counsel and the relevant UC administrators to confirm that law and University policy permits departments to make statements on University-owned websites, as long as those statements do not take stands on electoral politics, so this principle does not change policy or allow something previously prohibited

Council also agrees with UCAF that departments should use their right to issue political statements responsibly and judiciously. To this end, it is important for departments to include disclaimers with statements that make clear the department does not speak for the University as a whole. UCAF also recommends that departments develop bylaws that describe the process of deliberation and communication the department will use to develop and post a statement, define the unit voting on the statement, and solicit minority or opposition statements.

UCAF offers a menu of options departments may choose from to describe whose views the statement represents; however, Council joins UCAF's reluctance to recommend that departmental statements always be accompanied by a list of individual supporter names, as doing so may chill speech, strain the academic freedom of those who hold minority views, and create a limited public forum that legally requires the publication of minority viewpoints. UCAF recommends that departments consult with campus Committees on Academic Freedom when considering a statement on a controversial issue to help them navigate these options and potential pitfalls.

Finally, the Council emphasizes that it endorses these recommendations as best practices, not mandates to campuses. Moreover, the specific recommendation to develop bylaws is not intended to stifle the issuance or endorsement of statements between now and when bylaws are written and approved.

We believe that these recommendations will support existing faculty free speech and academic freedom rights, while protecting the integrity and reputation of the University. We ask division chairs to facilitate their distribution to department chairs, deans, chancellors, and campus CAFs.

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

Sincerely,

Robert Horwitz, Chair
Academic Council

Cc: President Drake
Provost Brown
Chief Policy Advisor McAuliffe
Chief of Staff Kao
UCAF
Campus Senate Directors
Executive Director Baxter

Encl.

UNIVERSITY OF CALIFORNIA

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO SANTA BARBARA • SANTA CRUZ

UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM (UCAF)
Ty Alper, Chair
Clinical Professor of Law, Berkeley Law
talper@law.berkeley.edu

Assembly of the Academic Senate
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200
Phone: (510) 987-9466

May 25, 2022

ROBERT HORWITZ, CHAIR
ACADEMIC SENATE

RE: DEPARTMENT STATEMENTS

Dear Robert,

In October 2021, I wrote to you with recommendations from the University Committee on Academic Freedom ("UCAF") regarding the departmental publication of statements on controversial or "political" matters. On behalf of the Academic Council ("Council"), you circulated our recommendations systemwide, generating many varied and thoughtful comments from campuses across the system. Council discussed these comments at a meeting on March 30, 2022, which I and UCAF Vice-Chair Melike Pekmezci attended, and at a meeting on May 25, 2022, which I attended.

Council agreed generally with both of our recommendations, but in light of the comments received and the views of Council members, Council asked that UCAF consider certain revisions to its recommendations. Council expressed no desire to recommend that the University administration preclude departments from making statements or police the content of such statements. To the contrary, there was agreement on Council that the practice of departments issuing statements, which is already allowed under law and U.C. policy, must be allowed to continue – but with additional recommendations regarding best practices to ensure such statements are developed and published judiciously and with guidelines, standards, or bylaws in place that reduce the likelihood that publication of such statements will chill, suppress, or misrepresent minority viewpoints.

UCAF met on April 1, 2022 to discuss Council's requests and the comments Council received. I also consulted with UCOP General Counsel to confirm UCAF's understanding of the relevant law and U.C. policy.

Below, I clarify and reiterate that nothing in the law or University policy prohibits departments from making statements. I then discuss and briefly summarize UCAF's response to the comments Council received, with an emphasis on the danger that departmental statements pose with respect to minority viewpoints. I conclude with a discussion of UCAF's revised recommendations.

1. The widespread practice of departments making statements on controversial, arguably "political" topics is permitted under existing law and U.C. policy.

As we noted in our October 2021 letter, across the U.C. system, departments make statements on a number of topics. This is a widespread practice that is not new. It is currently allowed under law and U.C. policy. UCAF's October 2021 recommendations, as well as the revised recommendations articulated below, are intended to ensure that when departments make such statements, they do so responsibly and thoughtfully, and with transparency. To be clear, though, UCAF's recommendation is not that the University allow something that is currently prohibited. Departments are permitted to make statements. In fact, as some commenters acknowledged, a *prohibition* on the ability of departments to issue statements on controversial issues would represent a monumental change in U.C. policy and practice that neither Council nor UCAF believes is warranted or justified.

Some commenters invoked PACAOS-40, a university policy we cited in our original letter.[1] This policy states in relevant part: "The name, insignia, seal, or address (including the electronic address) of the University or any of its offices or units shall not be used for or in connection with religious, political, business or other purposes or activities except as consistent with University policy, campus implementing regulations, and applicable law."

PACAOS-40 does not preclude the practice of departmental statements on a wide variety of topics. Because relevant U.C. policy restricting use of U.C. resources for "political" purposes has long been interpreted and applied within the University as addressing *electoral* politics (candidates and ballot initiatives), and because there is no law prohibiting the University from issuing more general statements related to "political" issues, PACAOS-40 simply does not apply to statements about other matters that could be considered "political," such as Israel/Palestine, Black Lives Matter, hybrid instruction during COVID, strikes by grad students or lecturers, mask mandates, etc.

This narrow definition of "political" explains why the University regularly takes stands on controversial topics in the exercise of its governmental right to free speech, despite direction in PACAOS-40 that, "[a]s a State instrumentality, the University must remain neutral on religious and political matters." While this provision prevents the University from taking a position on, say, the outcome of the race for Governor of California, it does not preclude the University from, say, suing the Trump administration for rescinding the DACA program,[2] filing an amicus brief in the U.S. Supreme Court in support of affirmative action,[3] praising the jury verdict in a high profile murder case,[4] or commenting on a

[1] *See* October 20, 2021 Letter from UCAF to Academic Council at 2 n.5.

[2] *See* Press Release, *University of California sues Trump administration on unlawful repeal of DACA program*, Sept. 8, 2017 (quoting then-President Janet Napolitano: "Neither I, nor the University of California, take the step of suing the federal government lightly . . . . To arbitrarily and capriciously end the DACA program, which benefits our country as a whole, is not only unlawful, it is contrary to our national values and bad policy"), available at https://www.universityofcalifornia.edu/press-room/university-california-sues-trump-administration-unlawful-repeal-daca-program.

[3] *See* Press Release, *UC files amicus brief in affirmative action case*, Nov. 2, 2015 (explaining that the University's brief "offers the court compelling evidence of the challenge institutions of higher education face when trying to promote diversity — among other critical educational objectives — when they are prohibited from using race-conscious measures in college admissions"), available at https://www.universityofcalifornia.edu/press-room/uc-files-amicus-brief-affirmative-action-case.

[4] *See* Press Release, UC commends Chauvin murder trial verdict, April 20, 2021 ("As the prosecution made abundantly clear, Derek Chauvin grossly and maliciously overstepped his duties as a police officer when he killed George Floyd."), available at https://www.universityofcalifornia.edu/press-room/uc-commends-chauvin-murder-trial-verdict.

governmental policy decision related to climate change.[5] For this reason, the University views departmental statements as *consistent with* existing systemwide policy and applicable law, so long as they do not take stands on electoral politics, and so long as they do not purport to speak for the University as a whole.

2. Departmental statements have the potential to infringe on academic freedom.

The fact that existing law and policy permits departments to issue statements does not resolve the matter. It is true that some commenters feel strongly that the publication of such statements can constitute an important expression of academic freedom. Others believe that departmental *silence* on controversial topics represents a form of expression, such that departments have an obligation to speak lest their silence be construed as lack of interest in, or support of, the status quo. A majority of the commenters, however, warned that departmental statements can, under certain circumstances, *infringe* on academic freedom and are often unwise and ill-advised.

UCAF agrees that departmental statements can threaten or violate the academic freedom of members of the department who do not share the views of a majority of their colleagues. We noted in our October 2021 letter 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."

Many commenters agreed with, and amplified, this sentiment. Some pointed out that not only may department statements *suppress* minority views, they also may unfairly *misrepresent* minority views. For example, when a department issues a statement without disclaimer or qualification, it purports to speak for the entire department. Presumably, the statement represents the views of all department faculty, but it may also be construed as representing department staff and students as well. Unless the department has undergone a process to secure agreement from all of these individuals, it is possible the statement ascribes to members of the department who do not agree with the statement (or who do not agree that the department should issue such statements) a viewpoint they do not actually share.

To say that these members have the right to publish their own statements in opposition to the departmental statement is not sufficient. A member of a department has the right not to speak at all on a particular matter and should not be conscripted to do so only for the purpose of noting their disagreement with colleagues whose views would otherwise be attributed to them. It violates academic freedom to speak for a department member who does not agree with the statement, and it violates academic freedom to coerce a department member to speak on a matter about which they do not wish to speak.

A majority of UCAF members do not believe the University should change its policy and practice to prohibit department statements.[6] However, UCAF's view is that most departments that issue statements

[5] *See* Press Release, UC President Napolitano statement on the Paris climate agreement, June 1, 2017 ("UC supports the efforts of the governor, California's congressional delegation, and state legislators to ensure that California stays at the forefront of combating climate change."), available at https://www.universityofcalifornia.edu/press-room/uc-president-napolitano-statement-paris-climate-agreement.

[6] In particular, we find compelling the concerns about enforcement of such a policy articulated by U.C. Berkeley's Committee on

on controversial topics under-appreciate the concerns noted above. While we recognize that departmental statements are permitted by law and policy, we agree with Council that it is appropriate to recommend best practices for departments to consider adopting to lessen the impact of the concerns raised by commenters across the U.C. system.

We turn to those recommendations now.

Reiteration of Recommendation #1: Departmental statements should always be accompanied by a clear disclaimer that the department is not speaking for the University.

The vast majority of commenters across the system endorsed the first recommendation in UCAF's October 2021 letter, that departmental statements be accompanied by a clear disclaimer that the department does not speak for the University.

In light of some confusion about the meaning of the word "political" in this context, we recommend an additional clarification, represented in the second sentence of the paragraph immediately below.

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. This recommendation applies to any statements that could be construed as political or controversial, with the exception of departmental statements advocating for or against candidates running for electoral office or initiatives on the ballot for a vote by the electorate, which are prohibited by law and University policy.

Revised Recommendation #2: Departments should establish bylaws, guidelines, or standards governing the publication of departmental statements to ensure the judicious and transparent use of such statements.

We cannot dictate what departments do. We hope, though, that we can encourage departments to be more thoughtful and judicious in their publication of statements about controversial topics. To that end, and in light of Council's request, we have reconsidered and revised our recommendations with respect to how departments report whose views a departmental statement represents.

We had previously recommended that when departments issue such statements, they should "indicate in some manner whose views within the department the statement represents." We also recommended that departments "ensure that minority viewpoints are provided a reasonable and proportionate opportunity to express their views on the same platform as the departmental statement."

Academic Freedom (ACFR): "ACFR expressed significant reservations about the enforcement process for such a policy. At minimum, it would require deans, vice provosts, or senior university officers to decide what speech is permissible for departments in a collective capacity. ACFR drew two conclusions: i. Such a concentration of power to police speech is itself a potential threat to academic freedom. ii. Such a policy would potentially require senior university officers to sanction department chairs for violating the policy. ACFR was not confident that said officers could articulate a clear standard for such sanctions and would be willing to follow through on them."

Upon reflection, and consideration of the comments received, we revise our recommendations as follows:

1) Departments should develop standards governing the practice of issuing statements on controversial topics. The concerns expressed in the comments Council received are too important to ignore. UCAF believes departments would do well to deliberate and decide for themselves whether, when, and how they will issue such statements, and then memorialize these standards in written bylaws or guidelines that govern departmental practice and are publicly available. These bylaws or guidelines should be flexible enough to take into account the varied contexts within which the desire to issue a statement might arise.

2) As part of this process, departments should decide who is included in the "department" when the department makes a statement. Is it tenured faculty? All faculty? Staff? Graduate students? All undergraduate majors? The answers may vary from department to department, but departments should be transparent about who is included when the department speaks as a department. Departments ought to include in their deliberations all those for whom they claim to speak when issuing departmental statements. And, whenever possible, departments should collect the vote anonymously to minimize chilling effect or pressure on members of the department with minority views.

3) Any department statement on a controversial matter should be accompanied by some explanation of whose views it represents. Such an explanation can take a number of forms. For example, departments could:

    a. accompany all statements with a disclaimer that the statements do not necessarily reflect the views of every member of the department;

    b. accompany all statements with a report that the statements reflect "unanimity," "a supermajority," "majority" of the department members, whatever the case may be;

    c. issue all statements in the name of the Dean or chair of the department;[7]

    d. list the results of a departmental vote on whether to issue the statement (i.e., "25 out of 30 department members voted to endorse this statement"); or

    e. list the individual names of department members who agree with the statement.

    We are inclined towards the first two options listed above, which ensure that departmental statements are not misconstrued as representing the views of everyone in the department and do not risk identifying department members with minority views who may not wish to be publicly identified. We also note, as we did in our October 2021 letter, that the final option – listing the names of people who support the department statement – risks creation of a limited or designated public forum that legally *requires* the publication of minority viewpoints on the same platform. We are persuaded by the commenters who questioned the wisdom of opening up departmental websites

[7] Such statements would be considered departmental speech, as distinguished from individual/private statements that any U.C. employee (including deans and chairs) can make in their personal capacity without use of UC resources.

as a forum for debate on controversial issues, which is an additional reason why we do not favor the final option listed above.

4) Time permitting, departments should consult with their campus Committee on Academic Freedom (CAF) when considering publication of a departmental statement on a controversial issue. As UCAF noted in our October 2021 letter, we reject the notion that the University administration should police the content of departmental statements to determine whether they are within the purview of the department's expertise. At the same time, we urge departments to be judicious in their use of such statements. By recommending consultation with CAFs on campus, we are encouraging conversation with faculty and students who have been specifically charged with considering potential violations of academic freedom. Only more thoughtful exercise of departmental expression can result from such discussion. Likewise, while we do not seek formal University enforcement of the recommendations contained in this letter, we do view the campus CAFs as reasonable venues for individual faculty members to seek guidance if they believe a department statement with which they disagree has infringed on or violated their academic freedom rights.

UCAF appreciates the opportunity to comment further on this matter.

Sincerely,

Ty Alper, Chair

UCLA Academic Senate
Committee on Diversity, Equity & Inclusion

February 24, 2022

To: Jody Kreiman, Chair
UCLA Academic Senate

Re: Systemwide Senate Review- Recommendations for Department Political Statements

Dear Chair Kreiman,

At its meeting on February 14, 2022, the Committee on Diversity Equity and Inclusion (CODEI) reviewed and discussed the Recommendations for Departmental Political Statements.

It was agreed that Departments should not be commenting on issues on behalf of others, but the length as to what Departments can comment on requires further discussion. Committee members share a general sentiment that the policy should be avoided as a Department's political support statement should not be sparred down to identify individuals nor implicitly or clandestinely used as a measurement stick in departmental reviews of academic personnel actions.

The committee feels the proposed recommendations do not support UCLA's ideas and efforts in regards to Diversity, Inclusion, and Equity. Due to its large impact on Academic Freedom, the committee believes this topic deserves further consideration. This position encourages like minded faculty on political issues, across a campus, to gather and express their opinions, analyses, and positions on issues, as public intellectuals, as a way of promoting discussions and exchange of views on these political issues, including petitioning the Regents on these issues regards their public actions.

Thank you for the opportunity to review and comment on this policy. If you have any questions, please do not hesitate to contact me at reynaldo@chavez.ucla.edu or the Committee on Diversity, Equity, and Inclusion Analyst, Lilia Valdez at lvaldez@senate.ucla.edu.

Sincerely,

Professor Reynaldo Macias, Chair
Committee on Diversity, Equity and Inclusion
UCLA Academic Senate

UCLA Academic Senate
Committee on Academic Freedom

January 14, 2022

To: Jody Kreiman, Chair
Academic Senate
Re: Systemwide Review: Recommendations for Department Political Statements

Dear Chair Kreiman,

The Committee on Academic Freedom (CAF) reviewed the Systemwide Review: Recommendations for Department Political Statements proposal at its meeting on December 10, 2021. CAF members unanimously approved a motion to endorse the proposal. Here are members' perspectives that were voiced in the meeting:

All members agreed as to the importance of a clearly articulated public process.

Members variously suggested that the proposal seemed vague; that it should require department members who endorse or oppose a particular political statement to be listed by name; that the opposition should be given the opportunity to provide a rejoinder; and that the oppositional minority should have an opportunity equal to that of the majority to present their perspective.

Some members noted that values are important, and individuals should be allowed to share those values and not just facts.

Other members suggested that functional units (e.g. department, clinical area, student group) should not represent themselves as the university. A member asked whether there would be an option to discourage the posting of political statements by departments.

Student representatives endorsed the proposal. They agreed that departments should be allowed to make statements, and they further agreed that departments should avoid presenting the departmental positions as the university position. They raised concerns that representing opposing viewpoints can inflict harm on marginalized communities. As such, they suggested that opposing viewpoint may not need equal footing.

Sincerely,

Susanne Lohmann, Chair
Committee on Academic Freedom

Cc: Jessica Cattelino, Vice Chair/Chair Elect, UCLA Academic Senate
April de Stefano, Executive Director, UCLA Academic Senate
Shane White, Immediate Past Chair, UCLA Academic Senate
Members of the Committee on Academic Freedom

UCLA Academic Senate
Graduate Council

3125 Murphy Hall
410 Charles E. Young Drive East
Los Angeles, California 90095

February 6, 2022

To: Jody Kreiman, Chair, UCLA Academic Senate

From: Leah Lievrouw, Chair, Graduate Council

Re: (Systemwide Senate Review) Recommendations for Department Political Statements

At its meeting on January 28, 2022, the Graduate Council reviewed and discussed the *Recommendations for Department Political Statements* and offers the following observations for the Executive Board's consideration:

Members were generally supportive of Recommendation #1, which states that when a departmental statement is issued or endorsed that indicates support or endorsement of, or opposition to, a given commercial, religious, or political activity or issue, the statement should be accompanied by an explicit disclaimer stating that the department's statement should not be taken as the position of or endorsement by the University of California, or by the campus as a whole.

In addition, members echoed the UCLA Faculty Welfare Committee's observations and reservations about Recommendation #2.

We appreciate the opportunity to express our views on this matter. If you have any questions, please contact us via Graduate Council's Analyst, Estrella Arciba, at earciba@senate.ucla.edu.

UCLA Academic Senate
Faculty Welfare Committee

January 27, 2022

To: Jody Kreiman, Chair
Academic Senate

From: Carson T. Schutze, Chair
Faculty Welfare Committee

Re: Systemwide Senate Review: Recommendations for Department Political Statements

Dear Chair Kreiman,

At its meeting on January 13, 2022, the Faculty Welfare Committee (FWC) reviewed and discussed the Systemwide Recommendations for Department Political Statements. Members offered the following comments.

Members were in support of recommendation #1 but expressed reservations on recommendation #2.

"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."

Members noted that the meaning of "proportionate opportunity" is unclear; what is it intended to mean? That the number of people holding each viewpoint should be proportionate to the amount of space occupied by the statement of their viewpoint (e.g. on a department website)? Or does proportionate refer to the relative length of time for which the various viewpoints must be posted? Etc.

Additionally, some members expressed concerns over departments issuing a proclamation which may have an intimidating effect on those who disagree. Finally, members suggested that it might be helpful to clarify, when statements are issued/signed by a chair, whether they represent solely the chair's point of view or whose views they represent. This might be addressed by inserting in the first sentence of Recommendation #2 "or its leaders" after the first three words "When a department".

Thank you for the opportunity to review.

cc: Jessica Cattelino, Vice Chair/Chair-Elect, Academic Senate
Shane White, Immediate Past Chair, Academic Senate
April de Stefano, Executive Director, Academic Senate
Elizabeth Feller, Assistant Director, Academic Senate
Renee Rouzan-Kay, Senior Policy Analyst, Faculty Welfare Committee
Members of the Faculty Welfare Committee

UCLA Academic Senate
Undergraduate Council

3125 Murphy Hall
410 Charles E. Young Drive East
Los Angeles, California 90095

January 21, 2022

To: Jody Kreiman, Chair, Academic Senate

From: Kathleen Bawn, Chair, Undergraduate Council

Re: Systemwide Senate Review: Recommendations for Department Political Statements

At its meeting on January 7, 2022, the Undergraduate Council reviewed the Recommendations for Department Political Statements issued by the University Committee on Academic Freedom (UCAF).

Members were sympathetic to the recommendation to ensure transparency in the process through which department political statements are crafted. The posting of political statements, members felt, should be equally transparent: disclaimers should not simply exist on a website and be impossible to find. Posted statements should be an exercise of free speech without having a chilling effect on that of others.

Thank you for the opportunity to opine. If you have any questions, please contact me via the Undergraduate Council's analyst, Julia Nelsen, at jnelsen@senate.ucla.edu.

CC: Jessica Cattelino, Vice Chair/Chair-Elect, Academic Senate
April de Stefano, Executive Director, Academic Senate
Julia Nelsen, Committee Analyst, Undergraduate Council
Peter Petersen, Vice Chair, Undergraduate Council
Shane White, Immediate Past Chair, Academic Senate

Robert Horwitz
Telephone: (510) 987-0887
Email:robert.horwitz@ucop.edu

Chair of the Assembly of the Academic Senate
Faculty Representative to the Regents
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.

UNIVERSITY OF CALIFORNIA

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO

SANTA BARBARA • SANTA CRUZ

UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM (UCAF)
Ty Alper, Chair
talper@law.berkeley.edu

Assembly of the Academic Senate
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200
Phone: (510) 987-9466

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]

---

[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