

- 4) Requires the governing board of a community college district to adopt rules and regulations relating to the exercise of free expression by students upon the premises of each community college maintained by the district, which shall include reasonable provisions for the time, place, and manner of conducting such activities. Existing law provides that such rules and regulations shall not prohibit the right of students to exercise free expression, except that expression which is obscene, libelous or slanderous according to current legal standards, or which so incites students as to create a clear and present danger of the commission of unlawful acts on community college premises, or the violation of lawful community college regulations, or the substantial disruption of the orderly operation of the community college, shall be prohibited. (EC § 76120)
- 5) Authorizes a student to commence a civil action to obtain appropriate injunctive and declaratory relief as determined by the court. Upon a motion, a court may award attorney's fees to a prevailing plaintiff in a civil action pursuant to this section. (EC § 66301 and § 94367)

ANALYSIS

This resolution urges all private and public universities in California to consider free speech statements that are consistent with specified principles to be a model for developing and adopting free speech statements. Specifically, this resolution:

- 1) Finds and declares that whereas:
 - a) The First Amendment to the United States Constitution prohibits governmental entities such as state universities from restricting free speech.
 - b) University of California (UC) President Napolitano has commented about the sanctity of free speech on college campuses and warned about moving from freedom of speech to freedom from speech.
 - c) Former President Obama spoke about a trend of trying to get colleges to disinvite speakers with a different point of view, or disrupt a politician's rally.
 - d) The Chancellor of the UC at Irvine issued a statement on "Rights of Free Speech and Academic Freedom" relative to freedom of speech being a bedrock value of our constitutional system and at the core of the university's mission, and the existence of universities to provide the conditions for hard thought and difficult debate.
 - e) The Committee on Freedom of Expression at the University of Chicago drafted a statement articulating the University's overarching commitment to free, robust, and uninhibited debate and deliberation among all members of the University's community.

- f) At least 16 universities across the country have adopted a version of the University of Chicago statement on free speech.
 - g) Several campuses of the California State University (CSU) and the University of California have already adopted free speech statements consistent with the principles articulated by the Chancellor of the University of California (UC), Irvine, and the statement adopted by the University of Chicago.
- 2) Resolves that the Legislature urges all private and public universities in California, to the extent that they have not adopted free speech statements consistent with the principles articulated by the Chancellor of the UC, Irvine, and the Free Expression Statement adopted by the University of Chicago, to consider such statements as a model for developing and adopting free speech statements.

STAFF COMMENTS

- 1) ***Need for the resolution.*** According to the author, “A number of events throughout the country have raised questions about the state of free speech on America’s college campuses. In a 2016 editorial in the Boston Globe, UC President Napolitano wrote that ‘the sanctity of free speech in our country is hardly guaranteed – at least not on our college campuses, where freedom of expression and the free flow of ideas should incubate discovery and learning’ and warned about ‘how far we have moved from freedom *of* speech on campuses to freedom *from* speech.’ In a 2016 speech at Howard University, President Obama raised concerns about the state of free speech on college campuses. On September 23, 2016, the Chancellor of UCI Howard Gillman encouraged the student body to respect free speech asserting, ‘Universities exist to provide the conditions for hard thought and difficult debate so that individuals can develop the capacity for independent judgment. This cannot happen if universities attempt to shield people from ideas and opinions they might find unwelcome, or if members of the university community try to silence or interfere with speakers with whom they disagree.’”
- 2) ***Free speech and codes of conduct.*** Freedom of speech on public postsecondary educational institutions is allowed within the confines of codes of conduct and time, place and manner restrictions. Institutions cannot discipline a student for engaging in a free speech activity, but can discipline a student if the free speech activity crosses into unlawful behavior, or otherwise violates the institution’s time, place and manner restrictions.

Postsecondary educational institutions maintain time, place, and manner restrictions to ensure safety, security, and order. As an example, CSU, Sacramento’s policy states:

“A. Overview: All activities set forth in this policy are subject to these general time, place, and manner restrictions in addition to any other time, place, and manner restrictions specified below.

B. TIME: At all times, except for non-University affiliated organizations and individuals, who are limited to normal operating hours.

C. PLACE: Freedom of expression activities may take place anywhere on campus with the following exceptions: inside parking lots and structures, inside University buildings, and near any location in which instructional, educational, and/or official business activities are being conducted (generally within 20 feet). Popular locations for freedom of expression activities are the Library Quad, Main Quad, and South Green.

D. MANNER:

1. Freedom of expression, which includes marches and/or moving protests, must be conducted in a manner that (1) shall not interfere with or obstruct the free flow of pedestrian or vehicular traffic; (2) shall not interfere with or disrupt the conduct of University business; (3) shall be carried out without creating excessive noise by use of a device; (4) shall not unreasonably interfere with classes in session or other scheduled academic, educational, co-curricular, and/or cultural/arts programs; (5) shall not promote an unlawful end, such as promoting actual violence or bodily or property harms, terrorist threats, defamation, obscenity, and false advertising; and (6) shall not violate any federal, state, or local safety code, such as regulations set by the State Fire Marshal, or University policy.
2. For any public meeting, demonstration, rally, etc., held on University grounds, advance reservations are advised to avoid conflict with previously reserved activities. Use of space shall not conflict with prior reservation of that space for another use. (Casual or unscheduled users will not be allowed to interfere with scheduled, organized, or traditional use). Use of any campus buildings for this purpose requires advance reservations and is restricted to non-profit organizations or student organizations, and faculty-, staff- or administration-sponsored events. To maintain access and safety, the use of ramps, entrances, breezeways, hallways, and other pedestrian pathways is not authorized for such purposes.
3. The scheduling process will ensure order and adequate preparation for the event and a suitable space for the intended use and expected attendance. Policies and procedures for reserving campus facilities are available in the Student Organizations & Leadership office and the Office of Space Management. Requests for student organization-sponsored events shall be directed to the Student Organizations & Leadership office. Requests for faculty-, staff- and administration-sponsored, and community events shall be directed to the Office of Space Management or the office that oversees reservations for that particular venue (e.g., requests for University Union space must be made through the University Union Events Services Office). Please consult the University's Office of Space Management's website for information relating to the appropriate office to contact to make reservations for a particular location on the University's campus."
<http://www.csus.edu/umannual/student/stu-0125.htm>

- 3) ***Fiscal impact.*** Legislative Counsel has flagged this resolution as being fiscal. According to the Assembly Appropriations Committee, this resolution would have a negligible fiscal impact.
- 4) ***Related legislation.*** SB 472 (Nielsen) requires a person who wishes to engage in expressive activity on the campus of a public postsecondary institution to be permitted to do so freely, as long as that person's conduct is not unlawful and does not materially and substantially disrupt the functioning of the institution. SB 472 was held in the Senate Appropriations Committee.

SUPPORT

None received

OPPOSITION

None received

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