



March 17, 2022

Professor Robert Horwitz, Chair, Academic Council  
Assembly of the Academic Senate  
1111 Franklin Street, 12th Floor  
Oakland, CA 94607

Dear Chair Horwitz:

We are writing to **strongly oppose** the proposal to formally allow academic departments on campus to issue or endorse statements on political issues in the name of the department. Our opposition is based both on statements in the UCAF letter, and on long-standing UCOP policies, as we will detail.

It is important to note that our position is fully compatible with free speech for individual faculty; we fully support the statement in the 1970 UCOP policy on “Restrictions on the Use of University Resources and Facilities for Political Activities” that “[i]t is important to reaffirm that the University does not restrict any member of the University community—student, academic appointee, staff employee—from exercising all political rights afforded to him as a member of society.” We also support UCOP Policy PACAOS-40, the official policy that formally codifies the 1970 policy, which, in Sections 41.12 and 42.20 uses language nearly identical to paragraphs 1 and 2 of the 1970 policy. This is *not* therefore an issue of individual free speech, but rather an issue of whether a unit of the *University* as an organization should be entitled to political free speech.

We first quote from PACAOS-40, “Policy on Use of University Properties.”

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.

This regulation is very clear that the name of the University *or any of its offices or units* cannot be used for political purposes or activities. The current proposal is clearly an attempt to get around this clause by passing a regulation stating that political purposes *would* be allowed as long as it’s clear that it’s just the individual unit, and that minority views are required to be aired. The original 1970 version of this policy<sup>1</sup>, still available from the UCOP web site, contains justification for this policy that the current UCAF proposal clearly ignores. For example, the justification states:

Legally, Article IX, section 9, of the State Constitution provides in part that “The University shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs...”

The current proposal is in clear and direct violation of this element of the State Constitution. The justification goes on to state:

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<sup>1</sup><https://policy.ucop.edu/doc/1200368/FacilPolitActiv>, copy attached

A distinction must also be drawn between political activity on the one hand, and instruction and research on politically related subjects on the other; certainly, scholarly instruction and research on politics is not only appropriate but desirable. There must be an examination of all the facts and circumstances surrounding an activity and, in the last analysis, the campus administrator must be responsible for determining its appropriateness.

In one case cited in the UCAF proposal, the Feminist Studies Department at UC Santa Cruz (and other departments) condemned Israel for its actions against Palestinians in Gaza. This condemnation was a political statement because it ignored all facts that opposed the view espoused by the department, and was part of a coordinated nationwide effort to advance a particular political *opinion* about the conflict. “Scholarly instruction and research” about the conflict should be encouraged, but it should include all of the facts, both those that support and those that oppose a particular view. Moreover, political opinions such as these should not be expressed by *departments* any more than a chemical engineering department should endorse a position favoring fracking. Yet this type of statement is *precisely* the type of statement that proposed policy explicitly strives to allow.

The UCAF proposal states 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,” using PACAOS-40 for justification. However, **PACAOS-40 makes no statement that the University has free speech rights**. It clearly states [40.40] that “all *persons* may exercise the constitutionally protected rights of free expression, speech, assembly, and worship (including the distribution or sale of noncommercial literature incidental to the exercise of these freedoms)” [emphasis added] Since the document also states that the *University* must remain neutral on religious and political matters [41.10], this section that permits worship clearly cannot apply to the University. Section 41.10 further states that “the University title of a faculty or staff member or the title of a student government official shall be used only for identification” when connected to commercial, religious, or political activities or issues. The UCAF proposal also states:

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.

We reiterate that PACAOS-40 contains a clear policy on the use of the university name for political purposes:

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. [emphasis added]

The UCAF proposal that departments be allowed to endorse political statements thus not only has no support in PACAOS-40, it is *explicitly* opposed by the policy.

The UCAF proposal states:

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.

As described above, PACAOS-40 *explicitly* prohibits the University *or any of its offices or units* from being used for political issues. An individual faculty member can provide a note saying that their views are personal and not endorsed by the University or any unit thereof. An entire *department* cannot make this claim, by the very nature of

the endorsement. Similarly, a posting on an individual faculty member's web page can contain a disclaimer that the view is personal and not University-endorsed. A view posted on the departmental home page cannot make such a claim, whether the view is endorsed by the entire department or even by a majority of the department.

The fact that “departments across the system do this with some frequency on a number of varied topics” does not make it legal under UCOP policy. The need for this UCAF proposal makes it clear, in fact, that such actions are *not* currently compliant with UCOP policy; this proposal is designed to change UCOP policy to make them compliant.

Another foundational document on free speech at universities, the 1967 Kalven Report<sup>2</sup>, states:

The instrument of dissent and criticism is the individual faculty member or the individual student. The university is the home and sponsor of critics; it is not itself the critic. [...] To perform its mission in the society, a university must sustain an extraordinary environment of freedom of inquiry and maintain an independence from political fashions, passions, and pressures.

The Kalven Report is clear that the role of the university is to *host* free discussion, not to become a political advocate in itself. The current proposal completely opposes this foundational view on the role of the university in society.

The UCAF letter concludes by disclaiming any idea of how *how* minority views might be reasonably expressed:

The 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.

This issue is one we address next: the problem of department-level political statements severely *chilling* free speech, both among faculty members and students. A department-level statement issues a proclamation to all that those who don't agree with us are less welcome. Consider, for example, an economics department that issues a statement formally supporting capitalism as the best form of economic government, ahead of socialism and communism. Would such a statement discourage students who favor socialism from engaging in the academic life of the department? Such a statement would be allowed under the UCAF proposal. Or, consider a statement that all heterosexual white males are guilty of sexism, racism, and homophobia. Such a statement is in line with the beliefs of many people in the country, including many faculty, and they are allowed to express it. However, such a statement on a *departmental web site* would create an environment of intimidation for heterosexual white male students, since such a belief is *endorsed* by the department and not just by individual faculty acting as individuals. More insidiously, classes taught by the department would have to support such a statement, regardless of whether evidence supports it or not. If the opinion were simply one endorsed by individual faculty, an instructor could teach that many heterosexual white males were *not* racist without contradicting a departmental diktat.

However, there is a chilling effect on faculty as well. We are aware of cases at UC Santa Cruz in the Department of Computer Science where individual faculty were targeted for their political beliefs; in one case, a faculty member was told by two former department chairs that “if we had known your political beliefs, we wouldn't have given you tenure.” Of course, it's straightforward to keep one's beliefs private, as long as the department itself is formally apolitical. But if the department is allowed to endorse political positions—the UCAF proposal lists multiple departments that have done so—it's impossible to keep one's politics private, as is the *right* of every member of society, including faculty. Instead, a faculty member would have the impossible dilemma of implicitly endorsing a political statement with which they disagree or speaking out and suffering the consequences of publicly expressing an opinion unpopular with their colleagues.

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<sup>2</sup><https://www-news.uchicago.edu/releases/07/pdf/kalverpt.pdf>, copy attached

Most seriously, a department that formally endorses a political view creates an atmosphere of **intimidation**, particularly among the most vulnerable members: untenured and non-tenure track faculty. Untenured faculty will legitimately fear for their careers if they express a non-conforming political viewpoint, or fail to go along with the department consensus. The purpose of tenure is to protect free expression; junior faculty lack that protection. Non-tenure track faculty, likewise, will have their freedom of speech curtailed because opposition to the departmental orthodoxy will result in non-reappointment. Non-tenure track faculty will *always* lack the protection of tenure, *permanently* denying them freedom of expression. The proposal's "solution" of offering faculty a chance to formally provide an opposing statement will only make matters worse by clearly identifying those who oppose the department's politics and subjecting them to intimidation from the majority.

We reiterate that current policy places *no* restrictions on the free speech of individual faculty, something that we strongly support. The only restriction is on the association of such speech with the University rather than the individual, as PACAOS-40 makes very clear.

[...] the University title of a faculty or staff member or the title of a student government official shall be used only for identification. If such identification 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.

The neutrality of the university isn't merely a nod to preserving an environment of free inquiry, however—it is also necessary to preserve public support for the university. As long as the University and its units are officially politically neutral, the case can be made for public funding. If University units were to be allowed to formally adopt political positions, however, those positions could be used as justification to reduce or even eliminate funding for those specific units or even the University as a whole. Faculty are welcome to hold beliefs as members of the public, as long as they abide by the requirements of PACAOS-40. However, once departments are allowed to hold political beliefs, the University has become a place of political indoctrination rather than education, and the public may not favor funding such a University. If this becomes the case, as it likely will if this proposal is adopted, the University stands to lose *all* state funding.

Diversity of *thought* and *opinion* is critical to a well-functioning university. Difference of opinion with existing beliefs is necessary to advancing new beliefs in *all* fields. Allowing departments and other University units to formally endorse political views will allow them to intimidate contrarian voices into silence, limiting individual free speech and stifling the pursuit of new knowledge. This is completely opposite to the purpose of a university as a center for the discovery and preservation of knowledge.

For these reasons, we ***strongly discourage*** the Academic Council from adopting this proposal to allow departments to endorse political views.

Signed:

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