

CSU

*Together
Towards
Tomorrow*

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Bakersfield
Channel Islands
Chico
Dominguez Hills
East Bay
Fresno
Fullerton
Humboldt
Long Beach
Los Angeles
Maritime Academy
Monterey Bay
Northridge
Pomona
Sacramento
San Bernardino
San Diego
San Francisco
San Jose
San Luis Obispo
San Marcos
Sonoma
Stanislaus



FREE SPEECH AND EXPRESSION ON CAMPUS



THE INTERSECTION OF UNIVERSITY CAMPUSES AND FREE SPEECH

- Public universities are generally “free speech zones” where differing viewpoints and unconventional thought are not just permitted but encouraged, and academic inquiry and robust discussion on important public and policy issues are part of the CSU’s educational mission.
- Universities must balance the right to free speech with civility, respect and tolerance for diverse viewpoints.



TOPICS

- Protected vs. non-protected speech
- Hate speech vs. threats/incitement
- Speakers
- How to respond
- Employee Speech (incl. academic freedom)
- Election issues
- Student speech
- Social media



SPEECH DEFINED

- Oral or written speech;
- Pictorial or other expressive means that convey an idea;
- Symbolic speech, in certain circumstances

Types:

- Political;
- Religious;
- Commercial

• *Each receives a different degree of protection.*



WHAT SPEECH IS NOT PROTECTED?

- Speech that promotes and incites *actual* violence or harm;
- True threats;
- Defamation (e.g., libel and slander);
- Obscenity;
- Severe harassment;
- False advertising; and
- The use of public resources for partisan politics.



WHAT ABOUT HATE SPEECH?

- Courts have made clear that there is no “hate speech” exception to the First Amendment, and that no one has a right **not** to be offended by speech.
 - Most “hate speech” is as fully protected as any other form of protected speech.
 - One is as free to condemn Muslims, Jews, African Americans, Caucasians, or undocumented immigrants, as one is to condemn capitalism, socialism, democrats or republicans.
- Hate speech might be actionable as harassment



TRUE THREATS INCITEMENT OF VIOLENCE

- True threat = *reasonable person* views as a *serious intent* to harm and prospect of *immediate* execution.
 - Is threat conditional in nature?
 - Context of the speech
 - Is statement hyperbole?

- Incitement = Speech that advocates use of force “directed to inciting or producing *imminent* lawless action” and is “*likely* to incite or produce such action.”

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HYPO:

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BDS

Boycott, Divest, Sanction

a Hamas-inspired genocidal campaign to destroy Israel, the world's only Jewish state.

The following students and faculty at San Diego State have allied themselves with Palestinian terrorists to perpetrate BDS and Jew Hatred on this campus:

-  **Alexander James**
BDS & SJP Activist
-  **Lynn Hassoun**
SJP Activist
-  **Hassan Abdinur**
SJP & MSA Activist
-  **Mustafa Alemi**
SJP & MSA Activist
-  **Osama Alkhawaja**
SJP Activist
-  **Rachel Beck**
BDS & SJP Activist
-  **Tessa Wiley**
SJP Activist

#StopTheJewHatredOnCampus

HorowitzFreedomCenter.org



TIME, PLACE, AND MANNER POLICY

- University is allowed to enact time, place and manner restrictions on free speech activities.
- Restrictions must:
 - Coordinate the appropriate use of a location for speech activities (not just prohibit speech);
 - Serve a significant government interest and not be more extensive than necessary; and
 - Leave open other channels for communication of the information.



HOW TO RESPOND TO COMPLAINTS ABOUT OFFENSIVE POSTS

- Provide general statement of CSU values to counter any assumption that the post is made on behalf of the CSU.
- Counter offensive speech with more speech.
- Use as opportunity to teach and support First Amendment rights.
- When appropriate, refer to HR or Student Conduct to evaluate whether the conduct is subject to discipline.



OUTSIDE SPEAKERS

- If the campus allows outside speakers, broad latitude must be provided for speakers from every spectrum, in both formal and informal settings.
 - There can be no viewpoint discrimination or censorship.
 - All speakers/groups must be treated equally in our terms and conditions of access.
 - May not impose a special fee on groups sponsoring a “controversial” speaker.
- Any outside speakers must comply with the campus TPM policy.



WHAT CAN THE CAMPUS DO?

- Issue a letter to the campus explaining:
 - Speaker's First Amendment right to speak, but does not speak for University
 - People may engage in peaceful protest but may not prevent the speech or commit violence
 - Location of event so people can avoid the area
- Release a statement about the campus' values to counter assumption of support of speaker's views
- Use barricades to ensure security and access and designate a location for peaceful protestors



IF TROUBLE ARISES

- Student Affairs personnel = First Line of Contact
- University Police Department available if escalation.
- If disruptive, advise participants conduct violates Policy and/or law, and give opportunity to cease disruptive conduct.
- Should conduct continue, UPD may be called in to advise and take appropriate action.



WHEN IS PUBLIC EMPLOYEE SPEECH PROTECTED?

- Public employee speech protected if speaking as private citizens on matters of public concern.
- Activity on employee's own time
- Minimize any possibility of confusion of private role and CSU role
- If employee's campus title is identified, it should be accompanied by "for identification purposes only"
- Cannot use university resources



FACULTY

- Faculty enjoy free speech and academic freedom.
- Academic freedom generally allows professors to exercise their professional judgment in teaching and research, but it is not unrestricted.
- Faculty members must perform the normal and reasonable duties of their positions



ELECTION ISSUES

GENERAL RULES OF ENGAGEMENT

- May not use public funds or resources to promote partisan positions in election campaigns.
 - State resources implicated when any state property or asset is used in election campaign, including land, facilities, equipment, supplies, telephones, computers, email, vehicles, employee time and funds.
- Non-partisan activities = OK
 - Informational material
 - Get out to vote
 - Debates
- What about speakers?



ELECTION ISSUES

EMPLOYEE RULES OF ENGAGEMENT

- Public employees may engage in political activities when acting in private capacity.
- Employees entitled to support a candidate, political party, ballot initiative, etc., but in individual capacity.
- Employees should not wear a CSU logo while engaging in a political activity
- Leafletting, posters, filming on campus subject to TPM rules
- Buttons = OK
- Academic Senate can pass resolutions



STUDENT SPEECH

- Students do not give up their free speech rights while in school
- Campus can impose reasonable restrictions on their speech
- Students don't have right to insist that a class be viewpoint neutral (e.g., students may be forced to write a paper from a viewpoint in which they disagree)
- Students may not engage in conduct or speech that *materially disrupts* class work or involves *substantial disorder or invasion* of the rights of others



SOCIAL MEDIA

- Social media is a forum for speech.
- The same freedom of speech rights apply in a social media for a.
- If an employee would be entitled to make a particular statement in the town square, the employee is entitled to make the same statement on a personal social media account.

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Questions