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ACR-21 Public postsecondary education: free speech policy. (2017-2018)

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Assembly Concurrent Resolution No. 21

CHAPTER 103

Relative to public postsecondary education.

[Filed with Secretary of State July 17, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

ACR 21, Kiley. Public postsecondary education: free speech policy.

This measure would urge 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 University of California at Irvine, and the Free Expression Statement formally adopted by the University of Chicago, to consider such statements as a model for developing and adopting free speech statements.

Fiscal Committee: yes

WHEREAS, The First Amendment to the United States Constitution states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”; and

WHEREAS, The First Amendment prohibits, with narrowly defined exceptions, governmental entities such as state universities from restricting free speech; and

WHEREAS, In 2016, University of California President Janet 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”; and

WHEREAS, Furthermore, President Napolitano urged that “the way to deal with extreme, unfounded speech is not with less speech — it is with more speech, informed by facts and persuasive argument. Educating students from an informed ‘more speech’ approach as opposed to silencing an objectionable speaker should be one of academia’s key roles”; and

WHEREAS, In a 2016 speech at Howard University, former President Barack Obama stated, “There’s been a trend around the country of trying to get colleges to disinvite speakers with a different point of view, or disrupt a politician’s rally. Don’t do that – no matter how ridiculous or offensive you might find the things that come out of their mouths...There will be times when you shouldn’t compromise your core values, your integrity, and you will have the responsibility to speak up in the face of injustice. But listen. Engage. If the other side has a point, learn from them. If they’re wrong, rebut them. Teach them. Beat them on the battlefield of ideas”; and

WHEREAS, On September 23, 2016, the Chancellor of the University of California at Irvine issued the following statement on "Rights of Free Speech and Academic Freedom":

"Freedom of speech is a bedrock value of our constitutional system and is at the core of this university's mission. Courts have recognized that First Amendment principles 'acquire a special significance in the university setting, where the free and unfettered interplay of competing views is essential to the institution's educational mission.' The University of California is also committed to upholding and preserving academic freedom, which for the faculty encompasses freedom of inquiry and research, freedom of teaching, and freedom of expression and publication.

Free speech requires us to accept that we will be exposed to viewpoints, arguments or forms of expression that make us uncomfortable or even offend us. It is in precisely these circumstances that free speech often serves its most vital purpose, especially in an educational context. Throughout history, speech that challenges conventional wisdom has been a driving force for progress. Speech that makes us uneasy may compel us to reconsider our own strongly held views – in fact, a willingness to reconsider strongly held views is one of the reasons why people pursue higher education. Hearing offensive viewpoints provides opportunities for those sentiments to be exposed, engaged and rebutted.

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. As U.S. Supreme Court Justice Louis Brandeis advised in his famous *Whitney v. California* opinion in 1927, 'If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.'

Of course, freedom of speech is not and cannot be absolute. While there is no hate speech exception to First Amendment protections, threats, harassment, 'fighting words,' incitement and defamatory speech are not protected. Freedom of speech does not mean a right to say anything at any place and any time. There can and must be restrictions on the time, place and manner of speech, but the campus is committed to ensuring the availability of places for speeches and protests. And so we will safeguard freedom of speech. But in addition, I hope we will keep in mind the need to nurture other norms and practices in order for us to perform the distinctive mission of the university.

It is of value to society if there is a place where people decide that they will work together to create a scholarly community dedicated to rigorous inquiry, evidence-based reasoning, logical argumentation, experimentation, and a willingness to reassess one's perspective in light of new evidence and arguments.

These beliefs and practices – these scholarly norms – are inextricably linked to related values, including a genuine desire to engage competing perspectives and learn from those who have had different experiences or who hold different viewpoints. It is because of these values that we attempt to resolve (or at least better understand) disagreements through reasoned and sustained conversation, debate and the acquisition of new knowledge. They also prompt us to speak out in support of each other when members of our community are subject to hateful, discriminatory or inflammatory personal attacks.

If our commitment to freedom and democracy leads us to defend the rights of free speech, our commitment to scholarly inquiry and education leads us to promote norms and practices that enable us to learn from each other in an atmosphere of positive engagement and mutual respect;" and

WHEREAS, The Committee on Freedom of Expression at the University of Chicago, a private university, was appointed in July 2014 by President Robert J. Zimmer and Provost Eric D. Isaacs "in light of recent events nationwide that have tested institutional commitments to free and open discourse." The Committee's charge was to draft a statement "articulating the University's overarching commitment to free, robust, and uninhibited debate and deliberation among all members of the University's community"; and

WHEREAS, At least 16 universities across the country have adopted a version of the University of Chicago statement on free speech, which reads as follows:

"Because the institution is committed to free and open inquiry in all matters, it guarantees all members of the institution's community the broadest possible latitude to speak, write, listen, challenge, and learn. Except insofar as limitations on that freedom are necessary to the functioning of the institution, the institution fully respects and supports the freedom of all members of the institution community 'to discuss any problem that presents itself.'

Of course, the ideas of different members of the institution's community will often and quite naturally conflict. But it is not the proper role of the institution to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the institution greatly values civility, and although all members of the institution's community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a

justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.

The freedom to debate and discuss the merits of competing ideas does not, of course, mean that individuals may say whatever they wish, wherever they wish. The institution may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the institution. In addition, the institution may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt the ordinary activities of the institution. But these are narrow exceptions to the general principle of freedom of expression, and it is vitally important that these exceptions never be used in a manner that is inconsistent with the institution's commitment to a completely free and open discussion of ideas.

In a word, the institution's fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the institution community to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the institution's community, not for the institution as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the institution's community to engage in such debate and deliberation in an effective and responsible manner is an essential part of the institution's educational mission.

As a corollary to the institution's commitment to protect and promote free expression, members of the institution's community must also act in conformity with the principle of free expression. Although members of the institution's community are free to criticize and contest the views expressed on campus, and to criticize and contest speakers who are invited to express their views on campus, they may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe. To this end, the institution has a solemn responsibility not only to promote a lively and fearless freedom of debate and deliberation, but also to protect that freedom when others attempt to restrict it"; and

WHEREAS, Several campuses of the California State University and the University of California have already adopted free speech statements consistent with the principles articulated by the Chancellor of the University of California, Irvine, and the statement formally adopted by University of Chicago; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, 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 University of California, Irvine, and the Free Expression Statement formally adopted by the University of Chicago, to consider such statements as a model for developing and adopting free speech statements; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.