

Date of Hearing: August 27, 2013

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Das Williams, Chair
ACR 76 (Lowenthal) – As Introduced: August 15, 2013

SUBJECT: Freedom of speech: Institutions of higher education.

SUMMARY: Recognizes the supreme importance of the right to freedom of speech on college campuses as a mechanism for sharing and discussion of diverse ideas and opinions; condemns biased, hurtful, and dangerous speech intended to stoke fear and intimidation in its listeners; and encourages public postsecondary institutions to ensure that they provide a safe, encouraging environment for exercising the right to freedom of speech and for the vibrant discussion of ideas and opinions from people of all walks of life. Further, this resolution finds:

- 1) The people of the United States enjoy a long history of the right to freedom of speech and the ability to engage in vigorous political debate, and nowhere is this better exhibited than in California.
- 2) Free speech is the cornerstone of American culture and the American political system, and it is therefore no coincidence that this freedom is enshrined in the First Amendment to the United States Constitution and Article I of the California Constitution.
- 3) California's college campuses are forums for the sharing and discussion of diverse and sometimes competing ideas and opinions, and they provide an ideal setting for interactions among diverse student populations of differing identities, heritages, and persuasions.
- 4) Of all environments, college campuses should be safe harbors for fair and reasoned debate that invites the views and voices of all Americans, including conservatives and liberals alike, people of faith and nonbelievers alike, or any other combination of people whose ideas may differ, but who can and will respect each other's constitutional right to free speech.
- 5) Speech critical of an idea or opinion does not always equate to criticism of the individual, just as speech that condemns a government policy does not implicitly condemn a government's citizenry, nor is speech critical of a religious organization inherently critical of a faith or its followers.
- 6) Unfortunately, college campuses are also sometimes home to some of the most vitriolic speech directed at individuals.
- 7) Freedom of speech sometimes requires that society tolerate the intolerant, but not without limitation.
- 8) A positive response to intolerance is for fair-minded, decent men and women of all political persuasions to exercise their own constitutionally protected right to free speech to condemn biased, hurtful, and dangerous speech that is intended to stoke fear and intimidation in its listeners.

- 9) It is incumbent upon students, professors, administrators, and other school officials at all campuses across the state to create a safe and enriching learning environment for all students that protects and encourages an individual's right to free speech.

EXISTING LAW:

- 1) Requires the Regents of the University of California (UC), the Trustees of the California State University (CSU), and the governing board of every community college district (CCD), to adopt, and inform students of, specific rules and regulations governing student behavior along with applicable penalties for violation of the rules and regulations. (Education Code §66300).
- 2) Prohibits the UC Regents, CSU Trustees, and CCD governing boards from making or enforcing a rule subjecting a student to disciplinary sanction solely on the basis of conduct that is speech or other communication that, when engaged in outside a campus of those institutions, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution. Authorizes a student to commence a civil action against an institution that has made or enforced such a rule. (EC §66301).
- 3) Clarifies that the aforementioned law does not prohibit the imposition of discipline for harassment, threats, or intimidation, unless constitutionally protected; nor does it prohibit an institution from adopting rules and regulations designed to prevent hate violence from being directed at students in a manner that denies full participation in the educational process, if the rules and regulations conform to constitutional rights. (EC §66301).
- 4) Prohibits an employee from being dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against solely for acting to protect a student engaged in conduct protected by the constitution or the aforementioned laws, or for refusing to infringe upon conduct that is protected by the constitution or the aforementioned laws. (EC §66301).
- 5) Requests the UC Regents, the CSU Trustees, and the governing boards of CCD, adopt and publish policies on harassment, intimidation, and bullying. (EC §66302).
- 6) Requires the CSU Trustees, and requests the UC Regents, designate an individual to serve as a liaison between campus law enforcement agencies and students exercising constitutionally guaranteed rights. (EC §66302).
- 7) Establishes protected classes for the purposes of guaranteeing civil rights and labor rights, fair employment and housing, prohibiting public employment discrimination, and prosecuting hate crimes. (Civil Code §51, Labor Code §1101, §1102, Government Code §11135, §12920, §12955, Penal Code §422.55-§422.56).

FISCAL EFFECT: None.

COMMENTS: Purpose of this resolution. According to the author, ACR 76 seeks to recognize the supreme importance of the right to freedom of speech and its rightful place on college campuses as a mechanism for the sharing and discussion of diverse ideas and opinions, including those that challenge a person to consider the merits of his or her own positions.

Background. Freedom of speech is a fundamental American freedom, and many believe that nowhere should it be more valued and protected than at colleges and universities. Recognizing the importance of protecting freedom of speech on college campuses, the state and federal government have enacted a series of laws ensuring campus policies do not infringe on a student's First Amendment right. However, incidents of hate crimes and hate speech on campuses has led students, campus leaders, and policy makers to question the appropriate role of colleges and universities in ensuring the safety and well-being of the campus community, as well as creating an environment that is free of hate and bigotry.

The Assembly Higher Education Committee has convened several oversight hearings on campus climate issues in recent years, including *Hate, Violence, and Bigotry on Public College and University Campuses* (June 2010) and two hearings on the appropriate use of force in response to unlawful student protest (December 2011 and May 2012). As witnesses at all hearings observed, the underlying challenge is determining when speech or action cross the line into violence or fear of violence or infringes upon others' Constitutional rights.

The segments have systemwide policies that prohibit discrimination, harassment and retaliation against students and govern campus organizations and sponsored activities on campus, as well as student and faculty codes of conduct.

Clarifying amendments. The author has proposed the following clarifying amendments:

On Page 2, Lines 22-26:

WHEREAS, A positive response to intolerance is for fair-minded, decent men and women of all political persuasions to exercise their own constitutionally protected right to free speech to condemn biased, hurtful, and dangerous speech that is intended to stoke fear and intimidation in its listeners, including speech that promotes discrimination based on a protected characteristic such as race, color, national origin, religion, sex, disability, age, genetic information, marital status, sexual orientation and identity, medical condition, and political activities or affiliations; and

On Page 2, Lines 32-38:

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature recognizes the supreme importance of the right to freedom of speech, as protected by the First Amendment to the United States Constitution, and its rightful place on college campuses as a mechanism for the sharing and discussion of diverse ideas and opinions, including those that challenge a person to consider the merits of his or her own positions; and be it further

On Page 3, Lines 1-3:

Resolved, That the Legislature hereby condemns biased, hurtful, and dangerous speech intended to stoke fear and intimidation in its listeners, including speech that promotes discrimination based on a protected characteristic such as race, color, national origin, religion, sex, disability, age, genetic information, marital status, sexual orientation and identity, medical condition, and political activities or affiliations; and be it further

REGISTERED SUPPORT / OPPOSITION:

Support

Faculty Association of California Community Colleges
Long Beach City College District

Opposition

None on file

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