

APPROVED
MINUTES OF SPECIAL MEETING¹
BERKELEY DIVISION OF THE ACADEMIC SENATE
May 6, 2004

The Berkeley Division met at 3:10 p.m. on Thursday, May 6, 2004, pursuant to call, in Sibley Auditorium at the Bechtel Engineering Center. Professor Ronald Gronsky, Berkeley Division chair, presided. Chair Gronsky determined that a quorum was present and called the meeting to order.

I. Minutes of Meeting

The minutes of the April 29, 2004 Division meeting were not prepared in time to be included in the notice of the special meeting. The minutes of the April 29, 2004 meeting will be presented for approval at the fall 2004 Division meeting.

II. Business

Chair Gronsky announced that the special meeting was requested by ten faculty members to consider a resolution concerning the USA PATRIOT Act. The resolution was proposed by Judith Butler, Professor, Rhetoric/Comparative Literature; Tom Campbell, Dean, Haas School of Business; Timothy Clark, Professor, History of Art; Susan Ervin-Tripp, Professor, Psychology; Louise Fortmann, Professor, Environmental Science, Policy and Management; Abdul Janmohamed, Associate Professor, English; Claire Kramsch, Professor, German; Ann Smock, Associate Professor, French; Anne Wagner, Professor, History of Art; and W. Daniel Wilson, Professor, German.

The resolution was reviewed by counsel in the Office of the General Counsel, who found no conflicts with state or federal law. The announcement of the special meeting was posted on the Division website and Senate members were given the opportunity to submit substitute resolutions or amendments. No members submitted substitute resolutions or amendments for the special meeting.

Chair Gronsky briefly reviewed meeting management according to the *Manual of the Berkeley Division of the Academic Senate* and *Robert's Rules of Order*. Specifically, he noted that amendments that limit the scope of the motion may be considered and adopted by a simple majority. However, an amendment that falls outside the scope of the motion can only be considered by unanimous consent. Under *Robert's Rules of Order*, amendments to the "resolved" clauses would be considered first; only after any such amendments have been disposed of would amendments to the "whereas" clauses be considered.

Chair Gronsky announced that the Main Motion submitted by the requesters was now before the Meeting:

Main Motion:

WHEREAS the preservation of civil rights and civil liberties is a pillar of the American polity and is essential to the well-being of any democracy,

¹ Tapes of Divisional Meetings are available in the Academic Senate Office, 320 Stephens Hall.

particularly during times of conflict when such rights and liberties may be threatened, and

WHEREAS the USA PATRIOT Act (Public Law 107-56) and related federal actions, regulations and executive orders contain provisions that violate basic civil rights of students, faculty, and staff of the University of California at Berkeley by, among other things, authorizing

- secret monitoring of the email communications and internet activities of students, faculty, or staff, and wiretaps of phones;
- law enforcement expanded access to medical, financial, and academic records of students, faculty, or staff, without meaningful oversight or judicial review, probable cause, and notification of the person whose records are being sought;
- law enforcement directives to libraries and bookstores to maintain and produce records pertaining to circulation and/or purchase of books by students, faculty, staff, and other patrons while forbidding disclosure that such records have been requested or provided;
- the arbitrary identification of domestic groups, including political and religious groups, as "terrorist organizations";
- the deportation, or indefinite detention, of non-citizens without charging them with, or showing evidence to them of, a crime; and

WHEREAS the threat posed by these measures can create an atmosphere of fear detrimental to the free inquiry and unfettered pursuit of knowledge that are essential to the mission of the University, be it therefore

RESOLVED, that the Senate urge the Chancellor to redesignate all authority to respond to requests for information, subpoenas, and other demands received pursuant to the USA PATRIOT Act or related federal actions, regulations, and executive orders to the Chancellor, or to a single designee of the Chancellor, and that the Chancellor instruct campus employees to refer all such inquiries to this person; and be it further

RESOLVED, that the Senate urge the Chancellor and the Chancellor's designee to take every legally protected step to challenge and resist investigations, interrogations, or arrest procedures, public or clandestine, that are in violation of individuals' civil rights or civil liberties as specified in the Constitution of the United States; and be it further

RESOLVED, that the Senate urge the Chancellor to assure all campus employees that legal expenses they might reasonably incur by complying with the redesignated authority will be borne by the University; and be it further

RESOLVED that the Senate urge the Chancellor to petition the Congress to overturn the provisions of the USA PATRIOT Act and regulations and executive orders issued pursuant thereto that violate constitutional rights, to petition the Congress not to enact further such legislation, to seek and support a judicial review of these statutes, regulations, and executive orders, and to support legislation that seeks to restore civil liberties.

He then asked for a Senate member to make the following procedural motion.

Procedural Motion:

That a total of ten minutes be allocated to Professor Daniel Wilson and Dean Tom Campbell, speaking on behalf of the requesters of the meeting; that a total of ten minutes be allocated to any Senate member(s) speaking against the motion or proposing amendments; and that subsequent speakers be limited to at most three minutes each.

The motion was moved, seconded and approved.

Chair Gronsky recognized Professor Daniel Wilson and Dean Tom Campbell to speak on behalf of the requestors.

Professor Daniel Wilson expressed his appreciation to those who had assisted in developing the resolution. Professor Wilson emphasized the need to protect civil liberties, especially in times of crisis. Provisions in the USA PATRIOT Act, passed after 9/11, allow for searches of individual property and records without probable cause, a violation of the Fourth Amendment. A broad assertion of relevance to an on-going terrorism or foreign intelligence investigation can now be certified to a judge as justifiable reason for investigation and without evidence. The statute may also permit surveillance based on one's First Amendment activities.

This resolution was written to address the most relevant provisions of the Act for University employees and students, and to obtain strong faculty support. Other resolutions defending civil liberties have been passed in hundreds of cities, including the City of Berkeley. Individuals are encouraged to be vigilant and speak out against violations of civil liberties, and universities especially must stand up for freedom of inquiry.

Dean Tom Campbell explained the significance of the resolution to establish 'standing' for the University, a statement of position required to allow any future court action against provisions of the Act. The resolution asks the Chancellor to designate one individual on campus to respond to subpoenas of University employees. This shifts responsibility away from the University employee who has custody of the records (a librarian or computer center manager, for instance) and who may be secretly subpoenaed for confidential records, and to the one designated individual instead. If that individual refused, she or he could be held in contempt of court, thereby creating standing to challenge the constitutionality of the USA PATRIOT Act.

Chair Gronsky asked if there were any members who wished to present an amendment or to speak against the resolution. No Senate member asked to speak.

General debate

Chair Gronsky recognized individuals for the purpose of general debate. Highlights of the general debate include the following.

- One Senate member stated that he would refuse to violate the privacy of any student or colleague if subpoenaed under the USA PATRIOT Act.
- Some faculty spoke about the importance of defending civil liberties, even if that led to civil disobedience.
- Certain provisions of the USA PATRIOT Act will sunset, but President George W. Bush has asked for their extension.

Professor Stephen Barnett (Law) proposed the following amendment to the resolution. (Note: for the proposed amendments, additions to the current text are noted by an underline; deletions to the current text are noted by a strikethrough line.)

Barnett Amendment: *That the motion be amended by replacing "redesignated" with "redesignation of" in the third Resolved clause, and adding "or terminate" following "overturn" in the fourth Resolved clause.*

The amendment was seconded. Following a suggestion by a member, and without objection from the meeting, Professor Barnett modified his amendment to the following:

Revised Barnett Amendment: *That the motion be amended by replacing "redesignated" with "redesignation of" in the third Resolved clause, and by adding ", or failing that, to terminate" following "overturn" in the fourth Resolved clause.*

A motion was made and seconded to separate the two parts of the amendment. The motion to separate was approved. The meeting then took up the first part of the amendment:

Amendment 1: That the motion be amended by replacing "redesignated" with "redesignation of" in the third Resolved clause, so that the clause would read as follows:

RESOLVED, that the Senate urge the Chancellor to assure all campus employees that legal expenses they might reasonably incur by complying with the ~~redesignated~~ redesignation of authority will be borne by the University; and be it further

Amendment 1 was approved. The meeting then took up the second part of the amendment:

Amendment 2: That the motion be amended by adding ", or failing that, to terminate" following "overturn" in the fourth Resolved clause, so that the clause would read as follows:

RESOLVED that the Senate urge the Chancellor to petition the Congress to overturn, or failing that, to terminate the provisions of the USA PATRIOT Act and regulations and executive orders issued pursuant thereto that violate constitutional rights, to petition the Congress not to enact further such legislation, to seek and support a judicial review of these statutes, regulations, and executive orders, and to support legislation that seeks to restore civil liberties.

Discussion:

- Termination would at least prevent the extension of the provisions that are scheduled to sunset.
- The rest of the USA PATRIOT Act, however, does not have a definite sunset date and could be continued depending on the war against terrorism; this needs to be addressed.
- The resolution allows for judicial review of potential conflicts created by the USA PATRIOT Act which is in opposition to some existing protections and rights, by creating standing for the designated campus individual. The person whose records were searched would also have standing, but may not know their records had been searched.

- The Act holds complicit anyone who informs such a person that she or he was under investigation. The resolution creates standing for the designated campus individual to challenge the search without breaking the law against informing the person whose records were searched.
- Several speakers supported the strength of the use of the word 'overturn;' this would require the government to acknowledge errors in the Act. Overturning the relevant portions of the Act would also address those provisions that do not sunset.

Amendment 2 was defeated.

A member called the question on the main motion, as amended. The call for the question was seconded and approved. The main motion, as amended, was approved with 105 in favor and none opposed. The text of the approved resolution reads as follows.

WHEREAS the preservation of civil rights and civil liberties is a pillar of the American polity and is essential to the well-being of any democracy, particularly during times of conflict when such rights and liberties may be threatened, and

WHEREAS the USA PATRIOT Act (Public Law 107-56) and related federal actions, regulations and executive orders contain provisions that violate basic civil rights of students, faculty, and staff of the University of California at Berkeley by, among other things, authorizing

- secret monitoring of the email communications and internet activities of students, faculty, or staff, and wiretaps of phones;
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- law enforcement directives to libraries and bookstores to maintain and produce records pertaining to circulation and/or purchase of books by students, faculty, staff, and other patrons while forbidding disclosure that such records have been requested or provided;
- the arbitrary identification of domestic groups, including political and religious groups, as "terrorist organizations";
- the deportation, or indefinite detention, of non-citizens without charging them with, or showing evidence to them of, a crime; and

WHEREAS the threat posed by these measures can create an atmosphere of fear detrimental to the free inquiry and unfettered pursuit of knowledge that are essential to the mission of the University, be it therefore

RESOLVED, that the Senate urge the Chancellor to redesignate all authority to respond to requests for information, subpoenas, and other demands received pursuant to the USA PATRIOT Act or related federal actions, regulations, and executive orders to the Chancellor, or to a single designee of the Chancellor, and that the Chancellor instruct campus employees to refer all such inquiries to this person; and be it further

RESOLVED, that the Senate urge the Chancellor and the Chancellor's designee to take every legally protected step to challenge and resist investigations, interrogations, or arrest procedures, public or clandestine, that are in violation of

individuals' civil rights or civil liberties as specified in the Constitution of the United States; and be it further

RESOLVED, that the Senate urge the Chancellor to assure all campus employees that legal expenses they might reasonably incur by complying with the redesignation of authority will be borne by the University; and be it further

RESOLVED that the Senate urge the Chancellor to petition the Congress to overturn the provisions of the USA PATRIOT Act and regulations and executive orders issued pursuant thereto that violate constitutional rights, to petition the Congress not to enact further such legislation, to seek and support a judicial review of these statutes, regulations, and executive orders, and to support legislation that seeks to restore civil liberties.

III. Other matters authorized by unanimous consent (None)

The meeting adjourned at 3:50 p.m.

William G. Oldham
Secretary, Berkeley Division