



320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

January 8, 2016

EDDIE ISLAND, Chair
Regents Working Group to Consider Principles Against Intolerance

Subject: Comments of the Berkeley Division of Academic Senate

Dear Regent Island,

At its December 14, 2015 meeting, the Divisional Council of the Berkeley Division of the Academic Senate endorsed the attached comments drafted by the Berkeley Division's Academic Freedom Committee. We hope that the Working Group will consider these comments and we thank the Working Group in advance for doing so.

On behalf of the Divisional Council,

A handwritten signature in blue ink, appearing to read 'B. E. Hermalin', enclosed in a thin black rectangular box.

Benjamin E. Hermalin
Chair, Berkeley Division of the Academic Senate
Schneider Distinguished Professor of Finance & Professor of Economics

Enclosure (1)

cc: Dan Hare, Academic Council Chair
David Wagner, Chair, Berkeley Division Committee on Academic Freedom

We thank the Regents' Working Group for the opportunity to comment on this critical issue.

As members of the Berkeley community, we write to advocate for the importance of freedom of expression and academic freedom. UC Berkeley is the birthplace of the Free Speech Movement, and freedom of expression has long played a core role in the campus's culture and values. We are dismayed by recent incidents of discrimination and intolerance across the UC system; at the same time, we urge that these incidents not be used as a reason to limit freedom of expression or academic freedom.

Based on our analysis, we propose several guiding principles:

1. Freedom of expression is central to the campus's mission of education, research, and service. Diluting it could irreparably harm these missions.
2. It is important to distinguish between an expression of a belief or opinion and an act already prohibited by law. Generally, the First Amendment protects expression of a wide range of opinions, including expressions of intolerance. In contrast, prohibitions on acts of discrimination, harassment, vandalism, violence, hate crimes, or intolerance may present a more fruitful area for future policy. We note that the recent incidents on UC campuses involved prohibited acts. We urge that the distinction between action already prohibited by law and expression be clearly delineated and respected.
3. We propose that members of the campus community should enjoy at least as much protection for their freedom of speech on campus as they do off-campus. As faculty, it is our responsibility to ensure an environment that permits open, unfettered intellectual discussion, without fear of official or unofficial reprisals for expressing an unpopular viewpoint; restricting free speech on campus would be contrary to these values.
4. As a corollary of these principles, University policy that regulates expression should strive to be viewpoint-neutral, rather than seeking to punish, chill, or promote the expression of favored or disfavored viewpoints or ideas. Expression deemed intolerant should remain protected, regardless of how objectionable, offensive, or disturbing some might take the viewpoint to be. We do not believe it is possible to create content-based definitions of intolerance that avoid chilling expression of protected intellectual viewpoints and positions. Punishing or prohibiting expressions—as opposed to already-prohibited acts—of intolerance is inconsistent with our commitment to free speech and free debate.

We are aware that some have proposed formally adopting the State Department's definition of anti-Semitism. Doing so would be incompatible with principles of academic freedom. The State Department definition is not viewpoint-neutral and seeks to identify certain viewpoints as acceptable and others as unacceptable. To adopt a State Department guideline as university policy governing free expression would reflect a misunderstanding of the substantial differences between the factors shaping the formulation of foreign policy and the needs of academic freedom. Rather than subordinate UC Berkeley policy to governmental policy, we should foster an arena for vigorous debate.

We suggest that in the long term the most effective response to expressions of intolerance may well be more open discussion—more speech, not less. We see it as entirely appropriate for University administrators, faculty, students, and staff to use their positions to advocate for values of inclusion and tolerance, but any policy should be carefully crafted to avoid implying that expression of disfavored viewpoints is prohibited or punishable.

We recommend the 2015 Report of the Committee on Freedom of Expression from the University of Chicago (<http://provost.uchicago.edu/FOECommitteeReport.pdf>) for the Working Group to adopt as a model framework for ensuring that its policies protect academic freedom.