

Chapter 8
FREE SPEECH
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CHAPTER 8
FREE SPEECH
PREAMBLE

"Freedom either is a growing thing or it is not freedom Principles remain unchanged while the understanding of them grows and their application enlarges."

Irving Brant, The Bill of Rights
Its Origin and Meaning, Indianapolis,
The Bobbs-Merrill Co., 1965, pp. 52, 78.

Freedom of expression is a cornerstone of a democratic society and is essential to the educational process. A university by its very nature and mission must be a forum for ideas, values, and opinions no matter how unpopular or controversial they may be. Individuals grow and learn when confronted with differing views, alternative ways of thinking and conflicting values. Therefore a university has a special obligation not only to tolerate but to encourage and support freedom of expression. Within this context it must be recognized that personal expression may take a variety of forms including speeches, signs, written materials, parades, demonstrations and artistic representation. Acknowledging the central role free speech plays in learning, the University shall afford individuals wide latitude in exercising this freedom and recognizes that merely causing discomfort is not, of itself, a basis for limiting free speech.

"Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, ... is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest."

Justice Jackson in Terminiello v.
Chicago 337 U.S. 1 (1949)

Freedom of expression, however, is not an absolute right. It coexists with other rights and the need for public order. "The choice is not between liberty and order, it is between liberty with order and anarchy without either." [Justice Jackson in Terminiello v. Chicago 337 U.S. 1 (1949).] In practical situations this choice is often a matter of human judgment. In exercising this judgment freedom of expression shall be restricted only when there is a clear and imminent danger to physical welfare, property and legitimate institutional activities. Further, it is recognized that as the university responds to issues of freedom of speech, it is teaching students about their rights and responsibilities; and, thus, has an obligation to adhere to the highest standards of human rights and dignity.

In keeping with the commitment to free speech as an essential condition, specific areas have been designated as free speech areas, however, this action should not be construed to mean that free speech is limited to those areas. Free speech is an individual right and, therefore, is not restricted to place. Free speech areas serve to provide a designated place open to all for free expression; and depending on the time, place, and manner of the activity, free expression will occur in other areas of the campus.

800 FREE SPEECH

801 Off-Campus Issues

In publicly expressing opinions on off-campus issues, faculty or staff members have an obligation to take every reasonable precaution to make it clear that they are expressing their personal views and not purporting to represent the University.

802 Political Activity

Except for solicitation or receiving of campaign funds and the use of political influence, State employees have the same rights and privileges as other citizens in regard to political activities within limits described in this section of CAM. (See Sections 3201-3209, California Government Code, for specific prohibitions on campaign fund solicitation, political influence, etc.)

803 Visiting Speakers, Public Meetings, Performances, Rallies and Similar Public Events.

Facilities are available to students, faculty, and staff in compliance with University policies. Recognizing the contribution of cocurricular activities to the educational experience of students, the University encourages the discussion of ideas.

The President of the University has ultimate responsibility and authority for the use of campus facilities within statutes and policies set by various governmental agencies of the State of California.

804 Visiting Speakers

804.1 Regulations Concerning Visiting Speakers

The following regulations concerning visiting speakers have been established to provide general guidelines for all visiting speakers to the campus.

- A. The regular instructional class program of the University must have first priority in the use of University facilities.
- B. University facilities made available to visiting speakers are to be used only in conformance with University policies. (See Section 230).
- C. The institutional control of campus facilities must not be used as a device for censorship. A speaker may not be precluded because of disagreement with the views to be presented. No individual or group shall abridge, halt or disrupt the right of a speaker to present his/her views during a speech or presentation.
- D. Every reasonable effort should be made to assure that over a period of time varied points of view are presented.
- E. The right of self-expression does not extend to preventing self expression by others.

804.2 Speakers Invited to Classes

Any faculty member may invite speakers to the campus to speak to his or her class.

804.3 Speakers Invited by Students or Student Groups

Students or student groups may invite speakers to the campus subject to the following:

- A. The Activities Planning Center should be notified prior to the event.
- B. If commercialism is involved or if equipment is required, a Form 81, which is available from the Activities Planning Center, must be completed.

Added October, 1984

804.4 Faculty and staff members may invite speakers to make appearances on campus. Communications and Special Events.

805 Public Meetings, Performances, Rallies, and Similar Events

The president of the campus may permit the use of campus buildings and grounds for public meetings, performances, rallies, and similar events held in accordance with reasonable directives issued by the respective campus president as to the time, place and manner thereof. Any such event occurring on campus in violation of established campus directives regarding time, place and manner is prohibited."

[5 Cal. Adm. Code 42353(a)]

805.1 Time Schedule for Events

These events may be held Monday through Sunday with starting hours scheduled between 7 a.m. and midnight if they are to be held indoors. If they are to be held outdoors without amplification or other disturbing noises, they may continue until midnight. If they are outdoors and amplification is to be used, they must begin no earlier than 9 a.m. and conclude by 10 p.m.

805.2 Regulations Regarding Events

Such events may be held on campus subject to the following:

- A. People may gather on the campus in a manner consistent with the orderly conduct of university affairs, the maintenance of university property, and the free flow of traffic and persons. Interference with entrances to building and university functions or activities held in campus facilities, disturbances of offices, or activities held in campus facilities, disturbances of offices, classes, and study facilities, and harm to property are prohibited.
- B. Students or student groups should notify Student Life and Activities prior to the event. If commercialism is involved or if equipment is required, a Form 81, which is available at the Student Life and Activities, must be completed.
- C. Faculty and staff members should notify Communications and Special Events prior to the event.
- D. Non-university groups or individuals who want to use campus facilities should contact the Facility Services Department.

806 Distribution of Written or Printed Matter

The distribution of written or printed matter shall be permitted on campus, subject, however, to reasonable directives by the campus president as to the time, place and manner thereof. All directives issued by a campus president pursuant to this section shall be available to the public at places designated pursuant to Section 42354. Distribution of written or printed matter in violation of established campus directives regarding time, place and manner is prohibited.

[5 Cal. Adm. Code 42352(b)]

Students, faculty, and staff may distribute non-commercial announcements, statements or materials at any outdoor area or in any lobby of the University Union subject to the following restrictions:

- A. These activities must not interfere with classes or meetings, harass or involuntarily detain people, or obstruct the free flow of pedestrian or vehicular traffic. These activities must not occur on roadways or in parking lots. No items will be placed on vehicles
- B. These activities must be done without unauthorized voice amplification or other loud noises.
- C. Efforts must be made to avoid litter.
- D. If the distribution is to occur during Poly Royal weekend from 1 p.m. Thursday to 1 a.m. Sunday, the distribution must be consistent with the policies of the Poly Royal Board. A copy of the Poly Royal policy concerning Free Speech, Advertising and Petitions is available from the Activities Planning Center.

807

Amplification of Music

- A. Activities using amplified music may be scheduled on Thursday morning 11 a.m. to noon or at other times when University classes are not in session. In all cases, however, such amplification must begin no earlier than 9 a.m. and conclude by 10 p.m.
- B. Such activities can be held on the outdoor platform/stage area on the east side of the Theater/Music Building, in the University Union Plaza (an outside area bounded by the Mustang Lounge, El Corral Bookstore, the covered area adjacent to the west side of the area) or on the Dexter lawn, patio and concourse (an outside area south of the Dexter Building, bounded by Pepper Lane, Cuesta Avenue, and Inner Perimeter Road).
- C. For scheduling purposes as well as equipment use, it is necessary to complete a Form 81, which is available from the Activities Planning Center. A copy of the regulations regarding amplification of music is available at the Activities Planning Center.

808

Voice Amplification

- A. Activities using voice amplification may be scheduled Monday through Friday from 11 a.m. to noon in the University Union Plaza area described below and Thursday from 11 a.m. to noon in the Dexter lawn area described below.
- B. These activities can be held on the platform/stage area on the east side of the Theater/Music Building, in the University Union Plaza (an outside area bounded by the Mustang Lounge, El Corral Bookstore, the covered area adjacent to the west side of the area) or on the Dexter lawn, patio and concourse (an outside area south of the Dexter Building, bounded by University Drive, Cuesta Avenue, and Poly View Drive).
- C. For scheduling purposes as well as equipment use, it is necessary to complete a Form 81, which is available from the Activities Planning Center. This activity must not interfere with classes in session or obstruct the free flow of pedestrian traffic. It must be carried out without deliberate harassment. The volume must be adjusted to reach no further than the audience present. A copy of the regulations regarding amplification of voice is available at the Activities Planning Center.

809

Speeches Without Voice Amplification

- A. Speeches not using voice amplification may be held any day in the areas described below.
- B. Speeches can be held on the outdoor platform/stage area on the east side of the Theater/Music Building, in the University Union Plaza (an outside area bounded by the Mustang Lounge, El Corral Bookstore, the covered area adjacent to the west side of the area) and on the Dexter lawn, patio and concourse (an outside area south of the Dexter Building, bounded by University Drive, Cuesta Avenue, and Poly View Drive).

Added October, 1984

- C. Speeches must not interfere with classes in session or obstruct the free flow of pedestrian traffic. The speeches should be carried out without voice amplification or deliberate harassment.

810 COMMERCIALISM

811 Commercial Transactions

"Commercial transactions and the display of property or services for sale on a campus is prohibited except with written permission by the campus president. Such permission shall be granted if: (i) the proposed activity aids achievement of the educational objectives of the campus, does not reasonably interfere with the operation of the campus and is not prohibited by law, or (ii) the prospective buyer has agreed in writing in advance to an appointment, for any day, and such appointment does not interfere with the operation of the campus."

[5 Cal. Adm. Code 42350.1 (a)]

"This section shall not apply to private sales."

[5 Cal. Adm. Code 42350.1 (b)]

812 Sales of Nonpublished Materials

A. Campus Store, El Corral Bookstore, and Foundation sales are permitted in accordance with established State or University regulations.

B. All other sales are subject to the following:

1. The sales must be conducted by a recognized campus organization.
2. Student organizations must complete a Form 81 which is available from the Activities Planning Center.
3. Other campus organizations must complete an application, which is available from the Activities Planning Center.
4. Only members of the campus community may actually sell goods.
5. Generally, sales are limited to:
 - a. Items produced by the campus community;
 - b. Food items;
 - c. Tickets for admission to campus events.

813 Solicitation

The definition of solicitation as contained in Title 5 is as follows:

"'Solicitation' means to importune, or endeavor to persuade or obtain by asking, but does not include 'commercial solicitation'."

[5 Cal. Adm. Code 42350 (c)]

"Solicitation shall be permitted on a campus subject, however, to reasonable regulation by the campus president as to time, place and manner thereof. Solicitation in violation of established campus directives regarding time, place and manner is prohibited."

[5 Cal. Adm. Code 42350.5 (a)]

813.1 Commercial Solicitation

The definition of commercial solicitation as defined in Title 5 is as follows:

"'Commercial transaction' means selling or purchasing or both selling and purchasing by any person in the course of employment in, or in the carrying on of, a trade or business."

[5 Cal. Adm. Code 42350 (e)]

Added October, 1984

"Commercial solicitation on a campus is prohibited unless prior written authorization has been obtained from the campus president. Permission for commercial solicitation shall be granted by the campus president subject, however, to regulation as to time, place and manner thereof, unless such solicitation for sale would be in violation of law."

[5 Cal. Adm. Code 42350.6 (a)]

814

Selling of Published Materials

"Except in the case of private sales and commercial transactions to which Section 42350.1 applies, the selling or displaying for sale of any books, newspapers, pamphlets and other published materials shall be permitted on campus provided: (i) such published materials are not available for sale at the campus bookstore, and (ii) the selling or display of such published materials is conducted in compliance with any time, place and manner directives adopted by the president, and (iii) the published materials displayed or offered for sale are not in violation of the provisions of Chapter 7.5, Title 9, Part 1 (commencing with Section 311) of the Penal Code (relating to the sale and distribution of obscene matter), or of Chapter 6, Title 3 (commencing with Section 66400) of the Education Code (relating to the preparation, sale and distribution of term papers, theses and other materials to be submitted for academic credit)."

[5 Cal. Adm. Code 42351 (a)]

"Selling or displaying for sale of published materials in violation of subsection (a) is prohibited."

[5 Cal. Adm. Code 42351 (b)]

- A. El Corral Bookstore sales are permitted in accordance with established State or University regulations.
- B. Groups of individuals licensed to use campus facilities for entertainment and cultural events may be permitted to sell souvenir programs under conditions established in the license.
- C. Companies or individuals may offer for sale newspapers on campus through standard newspaper vending machines, located at sites approved by the Office of Business Affairs. Where space is limited, allocation of vending machine spaces shall be made in an equitable manner.
- D. All other sales are subject to the following:
 - 1. The sales must be conducted by a recognized campus organization.
 - 2. Student organizations must complete a Form 81, which is available from the Activities Planning Center.
 - 3. Other campus organizations must complete an application, which is available from the Activities Planning Center.

815

Solicitation/Sales (During Poly Royal)

If the solicitation or sale of either published or nonpublished materials is to occur during Poly Royal weekend from 1 p.m. Thursday to 1 a.m. Sunday, the action must be consistent with the policies of the Poly Royal Board. A copy of the Poly Royal Free Speech, Advertising and Petition policy is available from the Activities Planning Center.

816

Advertising (on Campus)

816.1

Advertising in Publications

- A. Advertising is possible in publications of faculty, staff and alumni organizations.

- B. Advertising in the Mustang Daily and other student publications is approved in accordance with existing guidelines.
- C. Additional guidelines relating to advertising in campus publications are contained in Sections 726, 726.1, and 726.2.

816.2 Advertising on University Property

816.21 Advertising on Public Bulletin Boards

Advertising by individual students and employees as well as student and employee organizations on public bulletin boards is approved as follows:

<u>Location</u>	<u>Policy</u>
Kiosks	No permission needed
Residence Halls, inside boards	At least one bulletin board shall be available in each residence hall where no permission to post is necessary
Library, inside boards	Director of University Library approval needed
Instructional Departments	Department Head approval needed
University Union, interior	Permission granted consistent with University Union policies
Employee Relations Bulletin Boards in various buildings	As agreed through collective bargaining and implemented by the Director of Personnel and Employee Relations

816.22 Handbills and Circulars

"No person or persons shall, upon any of the grounds of any campus cast, throw, deposit, or distribute any advertising handbills or circulars which contain false, misleading, or illegal advertising."

[5 Cal. Adm. Code 42352 (a)]

"The distribution of written or printed matter shall be permitted on campus, subject, however, to reasonable directives by the campus president as to the time, place and manner thereof. All directives issued by a campus president pursuant to this section shall be available to the public at places designated pursuant to Section 42354. Distribution of written or printed matter in violation of established campus directives regarding time, place and manner is prohibited."

[5 Cal. Adm. Code 42352 (b)]

- A. The distribution and/or posting of handbills, posters, and circulars by any recognized campus organization is approved if intention to advertise is stated on Form 81 (Request to Sponsor a Student Activity) and properly approved. Faculty and staff organizations require the approval of the Director of the Activities Planning Center.
- B. The distribution and/or posting of materials within this directive shall be as follows:

<u>Location</u>	<u>Policy</u>
In the interior of the University Union and in the University Union Plaza	Permission granted consistent with University Union policies
In the public areas of the residence halls	Permission granted consistent with on-campus housing policies

Added October, 1984

<u>Location</u>	<u>Policy</u>
In student rooms within the residence halls	Permission granted consistent with on-campus housing policies
In the interior of campus buildings other than residence halls	As directed by the Department Head, or administrator in charge of that area
In individual faculty and staff offices	No approval needed
Lawn areas	Temporary signs, posters, and banners with nothing larger than lath-sized stakes permitted assuming they do not obstruct entrances or exits of buildings or the line of vision to vehicular or pedestrian traffic

- C. Temporary signs, handbills, posters, circulars, or banners shall not be placed on the exterior of any buildings or on cars, trees, fences, steps, sidewalks, hillsides, traffic signs, poles, trash cans, vending machines or containers for distribution of publications such as the Mustang Daily and the weekly calendar of student activities published by the Activities Planning Center, nor may they obstruct the entrances or exits of buildings or the line of vision of vehicular or pedestrian traffic.
- D. All handbills, circulars, posters, signs and banners shall clearly identify the name of the organization sponsoring the activity.
- E. The advertising by handbills and circulars by the Campus Store, El Corral Bookstore and Foundation sales are permitted in accordance with established State or University regulations.

816.3 Advertising During Poly Royal

If this is to occur during Poly Royal weekend from 1 p.m. Thursday to 1 a.m. Sunday, the advertising must be consistent with the policies of the Poly Royal Board. A copy of the Poly Royal policy concerning Free Speech, Advertising and Petitions is available from the Activities Planning Center.

817 Commercial Sponsorship of Campus Events

817.1 Student Organization Commercial Enterprise

Any student organization planning to have an outside commercial enterprise involved in the sponsorship, advertising or promoting of a campus event needs to inform the Activities Planning Center and the Director of Public Affairs.

817.2 Campus (Nonstudent) Organization Commercial Enterprise

A campus (nonstudent) organization seeking an outside commercial entity to help fund, sponsor or promote an event on campus needs to inform the Director of Public Affairs.

817.3 Guidelines for Commercial Sponsorship

- A. It is permissible for an outside commercial agency to co-sponsor a campus event.
- B. In all promoting of an event involving a commercial co-sponsor, the promotional material must indicate that the event is co-sponsored and the letter of the Cal Poly group's name must be at least the same size as that of the outside commercial sponsor.
- C. While a banner, poster, or paid ad might include the outside agency's logo, it should not include any wording that implies Cal Poly endorsement of the commercial co-sponsor's product.

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- D. Banners should not be hung on the outside of buildings.
- E. After informing the Public Affairs Office, banners used indoors must meet the approval of the person(s) responsible for the facility being used for the activity, e.g., the Physical Education Building Gymnasium.

818 Appeals Board

818.1 Appeals Board Members

The Appeals Board shall consist of three members chosen as follows:

- A. An administrative representative chosen by the University President.
- B. A faculty representative chosen by the Chair of the Academic Senate.
- C. A student representative chosen by the ASI.

818.2 Items Which Can Be Appealed

Items which can be appealed include:

- A. Form 81 (Request to Sponsor a Student Activity) decisions.
- B. Permit decisions concerning commercial activities of faculty and staff organizations.
- C. Decisions related to posting on bulletin boards.
- D. Decisions of the Poly Royal Board or agency of the Poly Royal Board.
- E. Recommendations of the Interhall Council which have been overruled by the Director of Housing or his/her designee.

818.3 Appeals Board Decisions

The decisions of the Appeals Board shall be final unless overturned by the President of the University.