

In the process of considering the BOG's request to endorse the SUS Free Expression Statement, the USF Faculty Senate formed a workgroup to further understand the content of the statement in the context of other legislation. Given the workgroup's close reading of the statement, they compiled the following questions for the BOG.

Rather than send these directly to the BOG, the USF Faculty Senate Executive Committee voted to share these questions with the ACFS for consideration and, if appropriate, ACFS could pose these questions to the BOG.

Questions for BOG re: Free Expression Statement.

1) Is the Free Expression Statement intended to apply in full to specifically instructional contexts?

Comment: The Free Expression Statement does not distinguish speech in the explicitly instructional context, such as classrooms, from speech in other contexts, such as in public areas of campus. It does mention time, place and manner restrictions, but indicates that any restrictions on the expression of opinions and ideas should be "narrowly drawn and content neutral", serving to ensure "equal ability" of campus community members "to express their ideas and opinions". In the instructional context, faculty have an obligation to direct discussion in ways that promote relevant learning. This often requires dismissing and otherwise silencing the expression of ideas and opinions that are counter-productive to that end, and this is not a content neutral process. In the course of instruction, faculty must be able effectively to dismiss, silence, or otherwise give less than equal time to the expression of opinions that are contrary to facts established within the diverse academic disciplines, when such expression would hinder instructional goals. Some pertinent examples (out of indefinitely many) include opinions denying the holocaust (history), claiming that  $\pi=22/7$  (mathematics), denying evolution (biology), asserting geocentrism (astronomy), asserting race essentialism and racial hierarchies (biology, anthropology). But if the Free Expression Statement applies to the instructional context, it seems faculty could not meet this instructional obligation consistently with meeting the commitment to honoring the Statement entailed by endorsing it. Faculty need to know whether the honoring the Statement would conflict with their instructional obligations before deciding whether or not to endorse it.

2) Are faculty included within the scope of the Free Expression Statement?

Comment: The Free Expression Statement states that "The principles of freedom of speech and freedom of expression in the United States and Florida Constitutions, in addition to being legal rights, are an

integral part of our three-part university mission to deliver a high quality academic experience for our students, engage in meaningful and productive research, and provide valuable public service for the benefit of our local communities and the state.” It goes on to assert that “Individuals wishing to express ideas with which others may disagree must feel free to do so.” It makes no exception for ideas that may be thought to be discriminatory and does not explicitly exempt any campus community members from its scope. However, Florida’s HB7 (the “Individual Freedom Act”, aka “Stop Woke Act”) prohibits faculty employed by the State of Florida from endorsing a number of “concepts”, endorsement of which it deems to be “discrimination”, in the course of their employ. Many of these prohibited “concepts” might well be propositions that state employed faculty believe to be true and that are relevant to their academic disciplines. To the contrary of the Statement’s claim that constitutional principles of freedom of speech are integral to the university mission, lawyers for the State of Florida have argued in court (Falls v. DeSantis) that “the Act regulates pure Government speech—the curriculum used in state schools and the in-class instruction offered by state employees—and the First Amendment simply has no application in this context.” If faculty in the course of their employ are engaging in Government speech, then HB7’s prohibition on faculty’s endorsement of the “concepts” enumerated therein in the course of their employ would make it illegal for faculty who espouse any of those “concepts” to express those opinions while on the job (including not just in the classroom but also, presumably, in their research, office hours, etc.). Thus, if the Free Expression Statement *does* include faculty in the course of their employ within its scope, it is in direct conflict with HB7, under the State’s interpretation of it, and (assuming HB7 is constitutional), in effect, endorses illegal conduct (see comment to question 3 below). If it *does not* include faculty, then the Statement says, in effect, that members of the campus community *other than faculty in the course of their employ* are free to express any ideas and opinions they wish. Faculty need to know whether this is the proper construal of the Free Expression Statement before deciding whether or not to endorse it.

3) Assuming faculty *do* fall within the scope of the Free Expression Statement, how can they coherently endorse the Statement when they know they do not in fact have the freedoms it describes?

Comment: Given HB7’s prohibition of endorsement of “concepts” is deems discriminatory, and assuming the Free Expression statement includes faculty within its scope, faculty endorsing the Free Expression Statement would be endorsing a principle of free speech and expression that is in direct conflict with Florida law, where the actual exercise of such freedom, respecting certain opinions, would be illegal (assuming HB7 is constitutional). Endorsement of the Statement would thus amount to endorsing a right to illegal action. Moreover, while it is logically consistent to endorse the view that one has a right while

at the same time refraining, either because it would be morally wrong or practically imprudent, from exercising that right, endorsement of the Free Expression Statement would be *pragmatically* inconsistent. This is because it would involve faculty committing themselves to the practical ideal espoused in the Statement “without fear of being bullied, threatened, or silenced” while at the same time knowing that they cannot fully exercise that freedom without threat of legal sanction. In short, how can faculty coherently commit themselves, via endorsement of the Free Expression Statement, to the claim that they have a right to the free expression of their opinions in the academic context, when they know at the same time that they are not in fact free to exercise that right?