

for the party, dubbed the “Compton Cookout,” encouraged attendees to embrace racial stereotypes of African-Americans in order to “celebrate” Black History Month. The invitation,

The event itself seems to have concluded without incident. However, on Tuesday, February 16, you and Vice Chancellor of Student Affairs Penny Rue issued a campus-wide statement regarding the invitation. The statement read:

We were distressed to learn that over the weekend an offensively themed student party, mocking the commemoration of Black History Month, took place off campus. We strongly condemn this event and the blatant disregard of our campus values. Although the party was not a UC San Diego student-organization sponsored event, participants did include UC San Diego students and that causes us great concern.

As stated in our Principles of Community, <http://blink.ucsd.edu/HR/policies/POC/principles-of-community.html>, we reject acts of discrimination based on race, ethnicity, gender, age, disability, sexual orientation, religion, and political beliefs, and, we will confront and appropriately respond to such acts. We reaffirm our Principles of Community <http://blink.ucsd.edu/HR/policies/POC/principles-of-community.html> and encourage the campus to join us in our affirmation.

On Wednesday, February 17, Vice Chancellor Rue and Associate Chancellor and Chief Diversity Officer Sandra Daley issued another statement to all UCSD students, expressing sympathy for those offended by the invitation. The statement announced that “Student Life staff are conducting a full investigation of the incident and the role of registered student organizations in it” in order to “determine if this violation of our Principles of Community is also a violation of our code of conduct.” Rue and Daley further noted that the “remedy for dangerous, offensive or extreme speech is more speech, not less,” and they urged students to engage in “[c]ritical conversations among trusted friends, College-based events, [and] vigorous classroom debate.”

On Thursday, February 18, members of the California State Legislature held a press conference in Sacramento to denounce the party and the invitation and to call for the punishment of involved students. State Representative Isadore Hall III, whose district includes Compton, urged the

On Friday, February 19, you and Vice Chancellor Rue attended a rally held by the Black Student Union to denounce the invitation, the party’s attendees, and the broadcast by members of *The Koala*. According to the *California Review*, Rue told the rally that “We need more speech. We might not be able to shut them up, but our voices can be so loud that they cannot be heard!” (“The UCSD Overreaction & the Death of Free Speech,” Alec Weisman, 2/21/10.) Also on Friday, the Los Angeles branch of the National Association for the Advancement of Colored People (NAACP) issued a public condemnation of the event and called for the punishment of those students involved. The group’s statement maintained that failing to punish participating students would “send a less than clear message that such future reckless or intentional behavior will not be tolerated, which may embolden the perpetrators, and future perpetrators’ beliefs that they will not suffer any serious consequences concerning acts of discrimination and racism, which may cause such actors to act out their racist tendencies in the future.”

At the time of this writing, no punishments from UCSD officials have been meted out to any student or student organization, at least to FIRE’s knowledge. FIRE appreciates your repeated calls for students to answer the speech they abhor with yet more speech, as well as your seeming sensitivity to the clear First Amendment issues this situation presents. However, we are troubled by San Diego Six News’ recent report that UCSD has “three attorneys and other investigators” still working on the case. Further, UCSD’s “What We Are Doing” website includes this statement:

We’ve launched aggressive investigations: We strongly believe that activities such as the racially themed party do not reflect our campus community. **Chancellor Fox has directed Vice Chancellor Penny Rue to aggressively investigate the incidents for violations of the Student Code of Conduct.** The Director of Student Policy and Judicial Affairs, Tony Valladolid, is leading an investigation related to the off campus party, and the UC San Diego Police are investigating the racist message found on campus. We take any racial incident seriously, and are exhaustively investigating the incidents. **Violations of the Student Code of Conduct range from expulsion to a letter of censure. Potential sanctions for violations of the Conduct Code may be more severe if the violations are connected with, arise from, or are motivated by bias or hate.** Criminal activity will be prosecuted. [Emphases added.]

Such statements deepen FIRE’s concern that despite UCSD’s commendably level-headed reaction thus far, your administration is not only under undue outside pressure from state legislators and others to punish protected speech, but also is preparing to do so—if not directly, then by finding a pretext to punish students for protected speech by other means. To be clear: **As a public institution, UCSD may neither punish nor investigate students for expression protected by the First Amendment.**

That the protections of the First Amendment extend fully to the public university campus is long-settled law. See, for example, *Keyishian v. Board of Regents*, 385 U.S. 589, 605–06 (“[W]e have recognized that the university is a traditional sphere of free expression so fundamental to the functioning of our society that the Government’s ability to control speech within that sphere by means of conditions attached to the expenditure of Government funds is restricted by the vagueness and overbreadth doctrines of the First Amendment”); *Healy v. James*, 408 U.S. 169,

180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools’”) (citation omitted); *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) (“With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities”).

However offensive it may be, the party invitation is entirely protected by the First Amendment. The principle of freedom of speech does not exist to protect only non-controversial speech; indeed, it exists precisely to protect speech that some members of a community may find controversial or offensive. The right to free speech includes the right to say things that are deeply offensive to many people, and the Supreme Court has explicitly held, in rulings spanning decades, that speech cannot be restricted simply because it offends people. In *Street v. New York*, 394 U.S. 576, 592 (1969), the Court held that “[i]t is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.” In *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973), the Court held that “the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’” In *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949), the Court held that “a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.” In *Texas v. Johnson*, 491 U.S. 397, 414 (1989), the Court explained the rationale behind these decisions well, saying that “[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” Under these standards, there can be no question that the language employed by the invitation is protected by the First Amendment.

Furthermore, UCSD may not “aggressively investigate” protected expression in an attempt to discover other, pretextual grounds for punishment of protected speech.

FIRE is also deeply concerned by Rue's and Daley's consideration of the possibility that a

the Constitution would have, at the least, a working understanding of the venerable principles underlying the First Amendment. Sadly, the calls put forth for suspension or expulsion of students engaged in offensive yet protected beha



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