



## University Assembly - Codes and Judicial Committee R. 5: Amend Resolution to Clarify Responsible Free Expression in the Campus Code of Conduct #1

*Sponsor: Randy Wayne  
Propose on April 19th, 2013*

1 The committee seeks comment on two alternative proposals under consideration (A and B)  
2 below, before determining how to proceed in selecting one or making any further modification.  
3 Both proposals seek to address and resolve the conflict between the Use of University  
4 Property process and present language in the Campus Code as described in President  
5 Skorton's report to the Assembly.

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7 In this resolution **\*\*additions to the Code are in bold\*\*** and *\*deletions are in italic\** typeface.

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9 **\*\*Proposal A\*\***

10  
11 Amend Title One, Article III. B. 3 to clarify that permits are not required for outdoor picketing,  
12 marches, rallies, and other demonstrations. Remove references to "reasonable time, place,  
13 and manner restrictions" from the Code (in Title I, Article III.B.1 (c), Title IV, Article 2.A.9) and  
14 replace them with a clear statement that limits free expression only when it threatens the safety  
15 of persons or property, or prevents others from exercising their rights (including their right to  
16 free expression).

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18 Title One, Article III.B.1 would be changed as follows:

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20 B. Protests and Demonstrations on Campus

21  
22 1. Protected Expressive Conduct in General

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24 The University will treat as within the basic protection of a right to free expression such lawful  
25 conduct as satisfies the following tests, where lawful means not in violation of state or federal  
26 law. The conduct should (a) be intended for expressive purposes, (b) be reasonably  
27 understood as such by the University community, and *\*(c) comply with such reasonable time,*  
28 *place, and manner restrictions as are consistent with the other provisions of this Article and as*  
29 *may be authorized from time to time by the President.\** **\*\*c) does not create an imminent threat**  
30 **to the safety of persons or property, or prevent others from exercising their rights (including**  
31 **their right to free expression).\*\***

32  
33  
34 *\*Even in regard to conduct that is intentionally expressive and perceived as such, the*  
35 *University may impose reasonable time, place, and manner restrictions on such conduct to*  
36 *preserve other important values and interests of the University community. An accused*  
37 *charged with such conduct may assert as a defense that he or she has complied with such*  
38 *time, place, and manner restrictions.\**

1  
2 All protection and regulation of expressive conduct should be content-neutral. A group's  
3 persuasion or point of view should have no bearing on the grant of permission or the conditions  
4 regulating that group's expressive conduct.

5  
6 Title Four, Article 2.A.9 would be eliminated:

7 9. \*To fail to comply with any time, place, and manner regulation authorized by Article III of Title  
8 One.\*

9 The second paragraph of Title One. Article III. B. 3 would be amended, as follows:

10 Because outdoor picketing, marches, rallies, and other demonstrations generally pose no  
11 threat of long-lasting exclusive use of University grounds or property, there \*appears to be\*  
12 \*\*is\*\* no need for a mandatory permit procedure for such outdoor activities.

13  
14 Rationale:

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16 The Campus Code currently recognizes that permits are generally not required for outdoor  
17 picketing, marches, rallies, and other demonstrations. To be consistent with the Code,  
18 University policies and practices should implement the Code by eliminating any permit  
19 requirement for such expressive activities. A permit requirement creates overly broad  
20 restrictions on freedom of speech, expression, assembly and academic freedom [hereinafter  
21 referred to as "speech"]. It constitutes a "prior restraint" on speech; that is, requiring a permit  
22 regulates speech prior to its occurrence. The requirement to obtain a permit creates a "chilling  
23 effect" on speech by requiring individuals or groups to disclose to authorities their plans to  
24 engage in speech and to identify the purpose or content of their speech/assembly event.  
25 Requiring a permit gives administrators (or other issuing authorities) significant discretion and  
26 therefore poses the potential for regulating speech based on content of the speech or  
27 viewpoint of the speaker. Further, a permit requirement eliminates the possibility of  
28 spontaneous protests/demonstrations or counter demonstrations.

29  
30 The phrase "reasonable time, place, and manner restriction" (in the Current Code) is too  
31 vague, and gives too much latitude to administrators to restrict expression for the sake of  
32 convenience or orderliness. Restrictions on free expression are only acceptable where they are  
33 needed to protect the safety of persons or property, or the rights of others. This proposal  
34 retains for the university administration the ability to restrict the use of outdoor university  
35 property where conditions create an actual danger to safety of persons or property. However, it  
36 puts the focus where it ought to be, on the prohibition of bad behavior, rather than on whether  
37 or not someone has a permit.

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39 **\*\*Proposal B\*\***

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41 RESOLVED that, following such modification of the UUP process, the first three paragraphs of  
42 Title One, Article III, Section B.3 of the Code are amended as follows:

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44 **\*\*Outdoor p\*\***icketing, marches, rallies, and other demonstrations are traditional and legitimate  
45 forms of self-expression and dissent on campus. \*The limiting principle for such activities is  
46 that demonstrators must\* **\*\*Such activities are permitted so long as they do\*\*** not disrupt other  
47 University functions, including, without limitation, regular and special curricular activities,  
48 extracurricular activities, academic processions and events, conduct of University business,  
49 \*and \*employment interviews, and **\*\*any other activities specifically authorized by an agent of  
50 the University to occur at a specified time and place and in a specified manner\*\***. The right to  
51 free expression here, as in other contexts, requires respect for the rights of others.  
52

1 \*Because o\* \*\*Outdoor picketing, marches, rallies, and other demonstrations generally pose no  
2 threat of long-lasting exclusive use of University grounds or property.\*\* \*, there appears to be  
3 no need for a\* \*\*No\*\* \*mandatory\* \*\*permit\*\* \*procedure for\* \*\*is required for such outdoor  
4 activities, provided they conform with applicable policies that are consistent with this Code and  
5 with the principles of free expression contained herein, and they do not disrupt University  
6 functions.\*\*

7  
8 \*\*Even when not required, event organizers are encouraged to consider submitting a Use of  
9 University Property form to assure they are informed of and able to mitigate risks of disruption  
10 of University functions, damage to University property, and harm to campus health or safety.\*\*

11  
12 As to indoor demonstrations such as sit-ins, owners of private property, and even the  
13 administrators of public property, are not required to permit the occupation of buildings by  
14 those who are not present to transact the business or pursue the other purposes that the  
15 offices in the building are intended to serve. Classrooms, libraries, laboratories, living units,  
16 and faculty and administrative offices are dedicated to specific purposes, which the University  
17 must be free to pursue without disruption. The law of trespass and the right of free speech are  
18 not mutually exclusive and, indeed, have always coexisted in our legal system.

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20 Rationale:

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22 Clarify that community members do not have any blanket obligation under the Code to seek a  
23 permit. Suggest that organizations register their events as a means of proactively anticipating  
24 and mitigating risk factors, which is a major reason for the UUP process. Tie limitation on  
25 outdoor demonstrations to the University functions already defined in previous paragraph.  
26 Make clear that the right to demonstrate outdoors does not trump another organization's (an  
27 extracurricular event for a space that any organization may reserve first come, first served) or  
28 even a private party's right (for example a wedding held on campus grounds) to use that space  
29 for an event if the organization or private party has obtained explicit permission to use that  
30 space during the specified time/place and in the specified way.