



May 4, 2024

VIA ELECTRONIC MAIL

Tom Jackson, Jr.
President
1 Harpst Street
Arcata, CA 95521
Email: president@humboldt.edu

Re: Hard Closure of Cal Poly Humboldt Campus and Media Access

Dear President Jackson:

We write on behalf of the American Civil Liberties Union of Northern California and the First Amendment Coalition to express concern about Cal Poly Humboldt's "hard closure"¹ and restrictions to media access on campus.² Our organizations work to protect the free speech and free press values enshrined in both federal and state law. We believe that the university's policy limiting public access—and especially press access—is constitutionally suspect. We recognize that this closure has been asserted in response to the recent civil unrest and involvement of law enforcement at Cal Poly Humboldt,³ but it is precisely in these moments that reporting by a free press is essential. We urge you, in the strongest possible terms, to lift this campus-wide closure.

Pursuant to both policy and practice, Cal Poly Humboldt maintains spaces on its campus that constitute a designated public forum.⁴ Any restriction on access or speech in these spaces must therefore satisfy constitutional review. *See Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 44-46 (1983). As the U.S. Supreme Court made clear decades ago, once a university opens a space for use by the public, "it is bound by the same standards as apply in a

¹ Cal Poly Humboldt, Emergency, [Updates for Campus Hard Closure during Finals Week](#), Bulletin dated May 3, 2024 – 6:00 pm.

² See Email dated May 2, 2024 from "News@humboldt.edu" with Subject: *Process for Media Access to Cal Poly Humboldt Campus During Hard Closure*, attached as **Exhibit A**.

³ See Cal Poly Humboldt, Emergency, *Enforced Hard Closure of Campus*, Bulletin dated April 27, 2024 – 12:41 pm, <https://www.humboldt.edu/emergency>.

⁴ See, generally [Cal Poly Humboldt Policy No. EM:P10-01, Time, Place, and Manner of Free Expression Policy](#); see also *id.*, Section VI, *Designated Public Forums* ("The University Center Quad (UC Quad) area adjacent to the University Center/Student Union and the Balabanis-Art Quad (Art Quad) outside of the Van Duzer Theater are Designated Public Forums in which members of the University community and non-University community may exercise their free speech rights without special restriction").

traditional public forum.” *Id.*; see also *Widmar v. Vincent*, 454 U.S. 263, 268, n. 5 (1981) (recognizing that “the campus of a public university, at least for its students, possesses many of the characteristics of a public forum . . .”).⁵

With particular respect to the campus quads that the university has designated as a public forum, the law—at most—permits Cal Poly Humboldt to enforce content-neutral time, place, and manner restrictions that are narrowly tailored to substantial government interests and leave open ample alternatives for communication. See *Ward v. Rock Against Racism*, 491 U.S. 781, 795 n.5 (1989); *Berger v. City of Seattle*, 569 F.3d 1029, 1041 (9th Cir. 2009). A complete ban on access to public places is “narrowly tailored . . . only if each activity within the proscription’s scope is an appropriately targeted evil.” *Frisby v. Schultz*, 487 U.S. 474, 485 (1988).

Cal Poly Humboldt’s sustained blanket closure of campus fails this constitutional test. It is unbounded as to time and unreasonable as to purpose. Simply put: the university’s 24-hour ban on public access continuing day-to-day for days on end is the opposite of “narrowly tailored.”

Students, faculty, and members of the public are not an evil to be guarded against or silenced. Keeping them away from campus while the academic year is still underway is disruptive and punitive to the entire school community. Excluding these individuals from campus also contravenes the university’s stated commitment to “affording all members of the University community the protections of freedom of speech, expression, assembly, religion, and press available under the U.S. and California Constitutions”⁶

Notably, Cal Poly Humboldt’s sustained campus closure does not appear to fall within its Campus Closure Policy.⁷ That policy applies only when “an emergency or unplanned event occurs that threatens the safety of persons or property.” Whatever may have happened previously, it is difficult to see how any such emergency currently exists that could justify the complete closure of the entire campus, including its designated public forum spaces. That clean-up work might be more expedient without observation does not provide a basis to exclude observers. And the university is “not free to foreclose expressive activity in public areas on mere speculation about danger.” *Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1228 (9th Cir. 1990).

Moreover, even if the sustained campus-wide closure did somehow comport with the law (and to be clear, it does not), the university’s severe restrictions on press access are constitutionally problematic. These restrictions also hurt the public’s ability to be informed. So long as officials are publicly conducting official business on campus that is a matter of public concern—which the recent campus protests and mass arrests undoubtedly are—the First Amendment to the U.S. Constitution and Article I section 2 of the California Constitution protect the right to report on

⁵ LoMonte & Greenberg, *(Not) Ready for Their Close-Up: Camera-Shy Colleges Lose First Amendment Focus in Restricting Campus Filming*, 84 U. Pitt. L. Rev. Spring 2023 (providing forum analysis under First Amendment).

⁶ [Cal Poly Humboldt Policy No. EM:P10-01, Time, Place, & Manner of Free Expression Policy](#);

⁷ [Cal. Policy Humboldt Policy No. EM:P03-04, Campus Closure Policy](#).

that conduct. *See Askins v. U.S. Dep’t of Homeland Sec.*, 899 F.3d 1035, 1044 (9th Cir. 2018); *see also Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 831 (9th Cir. 2020) (concluding that, in light of the “limited time and resources” that most people have “to observe at first hand the operations of [] government,” the press has long been understood to play a vitally important role in holding the government accountable”).

California lawmakers have made explicitly clear that the press serves a crucial role in keeping communities informed in moments like these. In 2021, the Legislature passed a law to ensure that the press has access to “document[] history and inform[] the public” so that all manner of newsworthy events may be observed and reported on without interference. Cal. Sen., Third Reading for 2021 Cal. S.B. 98, at 2 (Sept. 3, 2021); *see also* Cal. Penal Code §§ 409.5(d), 409.7(a). The Court of Appeal has similarly stated that California law demands “the news media must be afforded special access to disaster sites in order that they may properly perform their function of informing the public.” *Leiserson v. City of San Diego*, 184 Cal. App. 3d 41, 51 (1986) (citing Cal. Penal Code § 409.5(d)).

Given the strong legal principles favoring press access, Cal Poly Humboldt’s recently distributed Process for Media Access is far too limited. *See* Ex. A. The process adopts an overly restrictive approach with respect to both credentialing and timing. First, the process demands that reporters email in advance their “press credential” or “authorization from your news outlet.” *Id.* But California law does not require that a reporter be on assignment from a particular news organization to gain press access.⁸ Nor does the law necessarily require reporters to provide identification or contact information for themselves or others. As recognized by the Los Angeles Police Department—one of the largest municipal police departments in the country—“the inability to produce identification does not preclude an individual from acting as a member of the media.”⁹ And second, it is untenable that members of the press would have to limit themselves to “check-in” between the hours of 7:30 a.m. and 2 p.m. The news does not typically operate on a schedule.

Lastly, and in regards to reports that a member of the press was detained by law enforcement officers or otherwise prevented from newsgathering while on campus this week, we would like to take this opportunity to respectfully remind the university that the press, including student journalists, are not the enemy. They are people doing the brave, tireless, and sometimes messy work of reporting on public events. They should be afforded the university’s respect, and the public’s gratitude.

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⁸ *See, e.g.*, Cal. Penal Code § 409.7 (no definition of term “duly authorized representative of any news service, online news service, newspaper, or radio or television station or network”); *id.* § 409.5 (same).

⁹ *See* Los Angeles Press Club, *Definition of Protected Journalist for Penal Code 409.7(a)*, <https://lapressclub.org/definition-protected-journalist-penal-code-section-409-7a/>.

For the foregoing reasons, we urge you to lift the “hard closure” on campus. We believe this complete and sustained exclusion of the public, including non-resident students, faculty, and the press, is wrong on the law and misguided as to policy.

Sincerely,



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