

FIRE

Foundation for Individual
Rights and Expression

March 7, 2022

Cynthia K. Larive
Chancellor's Office
Kerr Hall
University of California, Santa Cruz
Santa Cruz, California 95064

Sent via U.S. Mail and Electronic Mail (chancellor@ucsc.edu)

Dear Chancellor Larive:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned about the state of press freedom at UCSC after a recent article in *Lookout Santa Cruz* revealed UCSC restricts employees from speaking directly to the media. FIRE calls upon UCSC, as a public institution bound by the First Amendment, to revise its restrictive press practices and reaffirm its commitment to freedom of the press, including the rights of student journalists.

In recent reporting about the reorganization of UCSC's Center of Agroecology, for example, university employees were instructed to refer media inquiries to Scott Hernandez-Jason, UCSC Assistant Vice Chancellor of University Relations or other university marketing, public relations, or legal personnel.² When asked about this request, Hernandez-Jason implied that this practice is university-wide, claiming "It is neither unusual, nor does it go against First Amendment rights."³

In actuality, barring campus employees, including faculty and student employees, from speaking directly to reporters on matters of public concern **does** violate the First Amendment by limiting not only the free press rights of journalists—including student journalists—but also by limiting the expressive rights of the employees themselves. In fact, practices that mandate faculty, student employees, or other staff secure permission before granting media interviews

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, press, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at thefire.org.

² Hillary Ojeda, *Lawyer says USCS media relations practices 'raise very significant First Amendment problems,'* LOOKOUT SANTA CRUZ (Feb. 16, 2023), <https://lookout.co/santacruz/ucsc-cabrillo/story/2023-02-16/uc-santa-cruz-media-relations-raise-very-significant-first-amendment-problems-lawyer-says>.

³ *Id.*

impose an unconstitutional prior restraint⁴ that violates these individuals' right to speak as private citizens on matters of public concern.⁵

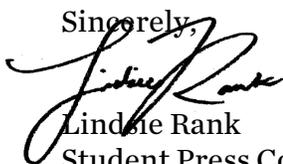
Beyond violating the rights of university constituents, restrictive press policies harm the public and—ultimately—the public's trust in its institutions of higher education. The right of government employees to speak freely in their individual capacities on matters of public concern, including to the media, finds a close corollary in the public's right to know. As the Supreme Court has observed, blanket infringements on government employees' speech “also impose[] a significant burden on the public's right to read and hear what Government employees would otherwise have written and said.”⁶

The press is an important conduit for the public's right to know. Courts have recognized that the media act as “surrogates for the public” in keeping a watchful eye on the operations of government.⁷ Obstructing journalists' access to gather information related to UCSC thus not only often violates employees' rights to speak, but also the public's right to know about UCSC's operations. Student journalists, as members of the campus community, play an especially important part in informing the public of the actions of university officials. When lack of access or other restrictions impede student media, it impairs their ability to cover important campus issues—and inform the public of them.

The unique function of public universities like UCSC as “peculiarly the ‘marketplace of ideas’”⁸ cannot be squared with burdening either the journalistic right to seek information or employee rights to share that information in their individual capacities. FIRE calls upon UCSC to revise its press practices to in order to meet its First Amendment obligations. As UCSC undertakes this process, FIRE is more than happy to offer our assistance to protect your institutional interests without burdening expressive rights of those employed at UCSC—a balance we have historically and successfully worked with many campuses to strike.

We request receipt of a response to this letter no later than the close of business on March 21, 2023.

Sincerely,



Lindsey Rank
Student Press Counsel

Cc: Scott Hernandez-Jason, Assistant Vice Chancellor of University Relations

⁴ See *Watchtower Bible & Tract Soc'y of N.Y. v. Village of Stratton*, 536 U.S. 150, 165–66 (2002) (requiring approval from officials before speaking is “offensive—not only to the values protected by the First Amendment, but to the very notion of a free society.”); see also *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976) (a prior restraint is “the most serious and least tolerable infringement on First Amendment rights.”).

⁵ See *Garcetti v. Ceballos*, 547 U.S. 410, 425 (2006); *United States v. National Treasury Employees Union (NTEU)*, 513 U.S. 454, 468 (1995); *Pickering v. Bd. Of Educ.*, 391 U.S. 563, 568 (1968).

⁶ *NTEU*, 513 U.S. at 470; see also *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (it is “well established” that freedom of expression “protects the right to receive information and ideas”).

⁷ *Richmond Newspapers v. Virginia*, 448 U.S. 555, 573 (1980).

⁸ *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967).