



SOUTHEASTERN LEGAL FOUNDATION
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August 28, 2020

VIA EMAIL

Ms. Sandy Parsons-Ellis
Acting Vice President for Student Affairs
and Dean of Students
Chico State University
skparsons@csuchico.edu

Ms. Emily Peart
Director of Student Conduct, Rights,
and Responsibilities
Chico State University
epeart@csuchico.edu

Re: Unconstitutional First and Fourth Amendment Violations: Reporting COVID-19
Concerns about Others

Dear Ms. Parsons-Ellis and Ms. Peart:

We are writing to you on behalf of concerned students regarding the Chico State University (CSU) COVID-19 Community Reporting Form (Reporting Form or Form) and related policies. These students fear that these policies not only has the potential to violate their right of privacy, but could also be unconstitutionally vague and a means to censor their speech. Thus, the students seek clarification about the Reporting Form and the University's plans to enforce the reports it receives.

Southeastern Legal Foundation (SLF) is a nonprofit public interest law firm and policy center dedicated to advocating limited government, protecting American freedom, and defending individual liberties. Through our 1A Project, we educate the public about students' First Amendment rights on college campuses. This letter seeks to inform the University about the dangerous, unconstitutional precedent this reporting scheme will set because it could be used to stifle free speech and to violate individual privacy.

Factual Background

In a recent announcement to the student body, the CSU President and Associated Students President stated, "Anyone who observes unsafe behavior [regarding COVID-19] is obligated to speak up."¹ The statement directs students to a Reporting Form where they can provide the Student Conduct, Rights, and Responsibilities Office with a description of any concerns they have

¹ See Our One Shot for a Successful Fall, attached as Exhibit A.

regarding any student's behavior related to COVID-19.² The University also declared that it "will use all of its resources to identify those who flaunt the rules, be it a club, a chapter, or an individual," and it threatened students with suspension and expulsion for failure to comply with University guidelines.³

Analysis

1. Potential First Amendment Violations

It is well-settled that a college campus is the "marketplace of ideas" where students are exposed "to that robust exchange of ideas which discovers truth."⁴ Indeed, freedom of speech and academic inquiry are "vital" on college campuses, because only through thoughtful debate and discourse can real education occur.⁵ Colleges have a duty to protect student health and safety, especially during uncertain times like these. However, even in unprecedented times, students' First Amendment rights remain unchanged. That means colleges and universities cannot engage in viewpoint or content-based discrimination, cannot enact vague and overbroad policies, and cannot chill student expression.

The CSU Reporting Form could be invoked to infringe on student speech. First, the Form appears to be vague and overbroad. A policy violates the Constitution when it is so broad that it infringes on constitutionally protected activity. The category of students who can be reported in the Form is boundless. Under these terms, a friend of a friend of a friend who has been exposed to a student who sneezes can be reported. Moreover, the Form is vague. Students have no way of knowing what will be reported and what the school will do when a symptom or activity is reported. For instance, if a student complains of a headache, can she be reported and subjected to an investigation? Will the school ask her to leave campus for two weeks? Will her roommate meet the same fate? What about her peer who sits on the other side of the lecture hall from her?

The University also warns against "unsafe behavior" without defining what that means. Is it limited to refusing to wear a mask or stay six feet apart? Or does it also include hugging friends, sharing pens, and failing to sanitize personal property? The University not only encourages students to report unsafe behavior—it tells students they are *obligated* to report others.⁶ Again, how do students know which behaviors to report? And will the University impose consequences on those who fail or refuse to report unsafe behavior? Finally, it is unclear whether this statement is an official policy of the CSU Associated Students; if so, did the Associated Students President follow the appropriate channels for drafting and implementing the policy, including seeking consent from all Standing Committees and the Board of Directors?⁷ In this way, the Form is unconstitutionally vague and overbroad because it is unclear whether it is an official policy, and it

² See Community Reporting Form, attached as Exhibit B.

³ Exhibit A.

⁴ *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967).

⁵ *Healy v. James*, 408 U.S. 169, 180 (1972).

⁶ Exhibit A.

⁷ See Duties for the Associated Students President, attached as Exhibit C.

lacks guidelines for students to follow, both who are expected to file reports and who are the subjects of the reports.

As we've seen these past few months, "cancel culture" is a pandemic itself that plagues social media. One need only say something that could be perceived in a remotely offensive way, and he is shouted down, unfollowed on social media, threatened, and even fired from work or expelled from school. Unfortunately, nowhere is "cancel culture" more visible than college campuses. With a Reporting Form at students' fingertips, students wishing to prevent a controversial speaker from visiting campus or to stop a student organization from garnering interest in their cause can simply report members of that organization as symptomatic or unsafe. Without stricter reporting guidelines and limits, it appears that such events could be shut down entirely with the press of a button. This may sound unlikely, but then again, who would have predicted 2020 to turn out as it has?

Finally, speech is chilled when a speaker objectively fears that speaking will result in discipline, and as a result censors her speech altogether. The Supreme Court repeatedly writes that the danger of chilling speech "is especially real in the University setting, where the State acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition."⁸ Any action taken by university authorities that has a chilling effect on student speech is unconstitutional.⁹ And even when a member of a university does not have the actual authority to impose discipline, the mere appearance of authority is enough to objectively chill and censor speech.

At CSU, the chilling effect of the Reporting Form and related policies is twofold. First, the announcement encouraging students to report unsafe behavior appears to be an official policy of both the University and the Associated Students.¹⁰ Thus, students are threatened with discipline from both bodies if they are found to be in violation of University policies. Moreover, the Reporting Form places the authority to shut down events in the hands of *all* students because they can simply report student organizations for unsafe behavior to detract from planned speech activities. This twofold chilling effect will no doubt deter students from advertising and hosting potentially controversial speech activities; investing time and money in these gatherings simply will not be worth the risk of facing suspension or expulsion.

2. Potential Fourth Amendment Violations

In addition to violating students' First Amendment rights, the Reporting Form could also violate their Fourth Amendment rights. Under the Fourth Amendment, individuals cannot be subjected to unreasonable searches and seizures. The Supreme Court has even considered that right in the context of cheek swabs.¹¹ The Court has held that a criminal arrested and charged with a serious crime can be subjected to a DNA cheek swab, so long as the charges are supported by

⁸ *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 835 (1995).

⁹ *Id.*

¹⁰ Exhibit A.

¹¹ *Maryland v. King*, 569 U.S. 435 (2013).

probable cause, meaning there must be a sufficient likelihood that the crime occurred.¹² However, a swab is unconstitutional if there is no probable cause, the charge is not criminal, or if the DNA is used to gather medical information about the criminal.¹³

Will CSU, upon receiving a report of a symptomatic student or unsafe behavior, subject that student to an invasive COVID-19 swab? Surely the University understands that this action would violate the Fourth Amendment. However, the question remains: how exactly does the University plan to investigate and enforce reports made through the Form?

Request

SLF respectfully requests that you provide clarification regarding the Reporting Form. Specifically, SLF requests that you clarify what exactly the University deems “unsafe behavior,” how the University plans to investigate reports made through the Form, and when and how the University will impose penalties on students who are reported for unsafe behavior.

Yours in Freedom,



Kimberly S. Hermann
General Counsel
Southeastern Legal Foundation

CC: Division of Student Affairs (studentaffairs@csuchico.edu)
Associated Students President (aspresident@csuchico.edu)

¹² *Id.* at 465.

¹³ *Id.* at 464, 465.

EXHIBIT A

COVID-19

View the latest updates on the [COVID-19 News & Information \(https://www.csuchico.edu/coronavirus/\)](https://www.csuchico.edu/coronavirus/) website.

CORONAVIRUS/COVID-19 INFORMATION (../INDEX.SHTML)

COVID-19 Menu ▾



[CSU, CHICO \(HTTPS://WWW.CSUCHICO.EDU\)](https://www.csuchico.edu) | [COVID-19 \(../INDEX.SHTML\)](#) | [CAMPUS UPDATES \(INDEX.SHTML\)](#) | [OUR ONE SHOT FOR A SUCCESSFUL FALL](#)

Our One Shot for a Successful Fall

President Hutchinson and Associated Students President Bre Holbert sent the following message to Chico State students strongly urging them to abide by the University's COVID-19 health and safety guidelines off campus to help prevent the spread of the virus and ensure the University can continue offering limited in-person instruction during the fall.

Announced: August 26, 2020, 3 p.m.

To: Students

From: President Gayle Hutchinson & Associated Students President Bre Holbert

We are three days into the fall 2020 semester and we've received daily reports from concerned citizens and students regarding the behavior of Chico State students who are disregarding the health guidelines created to keep them and the community safe.

Every time a student defies the order to wear a mask, physically distance, and avoid large gatherings, it jeopardizes the one thing that all students say they want—to return to campus for the Chico Experience we all know and love.

The University will use all of its resources to identify those who flaunt the rules, be it a club, a chapter, or an individual. We will sanction all the way to removal of University support and recognition for groups, and suspension or expulsion for individuals. Flagrant violations of the Student Code of Conduct that place members of the campus community and greater Chico community in jeopardy will be dealt with swiftly by the office of Student Conduct, Rights, and Responsibilities.

We know that most students are doing their part, but it will continue to be challenging as long as there are those who are not taking personal responsibility for maintaining safety in our community. This is a responsibility that we all must own—students, faculty, and staff. Those among us who are selfishly violating COVID-19 safety protocols are effectively stealing the college experience from those who are following health and safety guidance.

Anyone who observes unsafe behavior is obligated to speak up. Just as we would ask those in our community to report violence against another person, we ask our campus and community to be proactive and report unsafe behavior so we can help educate if needed, or sanction if necessary. Report unsafe behavior to Student Conduct, Rights, and Responsibilities [here \(https://cm.maxient.com/reportingform.php?CSUChico&layout_id=9\)](https://cm.maxient.com/reportingform.php?CSUChico&layout_id=9).

Finally, we must recognize what the application of the COVID-19 safety standards, like distancing, wearing face coverings, washing hands, look like when applied to college life. Here is what we expect:

- **No parties**—Don't host or attend large gatherings.
- **Monitor for symptoms**, including fever, chills, loss of taste or smell, body aches, fatigue and persistent headache. Take your temperature if you feel you have a fever, and stay home and self-isolate if you have symptoms. Call Chico State's **COVID-19 hotline at 530-898-2222** for advice.
- **Self-report** if you suspect you may be infected or have been exposed to someone who is infected. Report to the **COVID-19 Hotline, 530-898-2222**, right away, share information about who you may have come in close contact with so others can know and get assistance, and self-quarantine until cleared by health officials.

The University is already reporting COVID-19 cases on campus and to be clear, if this continues, we will be forced for the safety of our campus and the community to revert to exclusively virtual learning.

Wildcats, we believe we can do this, but so far, we have not. We want you to understand we have one shot to be successful. The campus worked diligently over the summer to prepare for the small number of in-person courses. If students don't adhere to the Chico State COVID-19 commitments, we be forced to pivot to all-virtual instruction this fall.

Today does decide tomorrow. Be responsible and make the right choice for your education and your community.

[COVID-19 News & Information \(../index.shtml\)](#)

[Campus Updates \(index.shtml\)](#)

[Combating COVID-19 Together \(../combatcovid.shtml\)](#)

[Student Resources \(../students.shtml\)](#)

Important Links

[Butte County Public Health Department \(http://www.buttecounty.net/ph/\)](http://www.buttecounty.net/ph/)

[Testing Locations in \(https://www.buttecounty.net/ph/COVID19/Testing\)](https://www.buttecounty.net/ph/COVID19/Testing) [Butte County \(https://www.buttecounty.net/ph/COVID19/Testing\)](https://www.buttecounty.net/ph/COVID19/Testing)

[California Department of Public Health \(https://www.cdph.ca.gov/\)](https://www.cdph.ca.gov/)

[Centers for Disease Control and Prevention \(https://www.cdc.gov/\)](https://www.cdc.gov/)

Contact Information

Chico State
COVID-19 Hotline
[530-898-2222 \(tel:530-898-5241\)](tel:530-898-2222)

Butte County COVID-19
Call Center
[530-552-3050 \(tel:530-552-3050\)](tel:530-552-3050)

WellCat Counseling Center
[530-898-6345 \(tel:530-898-6345\)](tel:530-898-6345)



[Contact Us \(https://www.csuchico.edu/contact/index.shtml\)](https://www.csuchico.edu/contact/index.shtml)



[Need Help? \(https://www.csuchico.edu/help/index.shtml\)](https://www.csuchico.edu/help/index.shtml)



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[\(https://twitter.com/chicostate\)](https://twitter.com/chicostate)



[\(https://instagram.com/chicostate\)](https://instagram.com/chicostate)

[Report an accessibility issue \(https://www.csuchico.edu/ati/procedures/web-accessibility.shtml\)](https://www.csuchico.edu/ati/procedures/web-accessibility.shtml)

[Report a broken link on this page \(https://www.csuchico.edu/contact/change-request/?change=link&ref=https%3A%2F%2Fwww.csuchico.edu%2Fcoronavirus%2Fstories%2F8-26-one-shot-to-be-successful.shtml\)](https://www.csuchico.edu/contact/change-request/?change=link&ref=https%3A%2F%2Fwww.csuchico.edu%2Fcoronavirus%2Fstories%2F8-26-one-shot-to-be-successful.shtml)

[Title IX \(https://www.csuchico.edu/title-ix/index.shtml\)](https://www.csuchico.edu/title-ix/index.shtml)

EXHIBIT B

Community Reporting Form

Reporting form for public and community concerns related to off-campus student activities. See the [Student Conduct, Rights, and Responsibilities website \(http://www.csuchico.edu/scrr\)](http://www.csuchico.edu/scrr) for more information regarding campus conduct policies.

If this is an emergency and/or you are in need of immediate assistance, please contact your local police department or call 9-1-1.

Background Information

Please note that a students' conduct records are a part of their educational records and they have a right to obtain a copy of this report if requested. Therefore this report is not confidential. While anonymous reports are accepted, you are **STRONGLY encouraged to provide your name and contact information in order to allow us to most effectively address the concerning behavior.**

Your full name:

Your preferred phone number:

Your email address:

Nature of this report (Required):

Please Choose...

Date of incident (Required)

mm/dd/yyyy



Time of incident:

Location of incident (Required):

Select one



Specific location:

Involved Parties

Please list the individuals involved (excluding yourself), including as many of the listed fields as you can provide. For non-students, please state N/A in the block labeled ID Number.

Name or Organization

Select Role

Wildcat ID Number **(Failure to provide will result in processing delays)**

DOB (YYYY-MM-DD)

Phone number (if known)

Email address (if known)

Address (if known)

Add another party

Questions

Please complete the following questions to the best of your ability; be as detailed as possible.

I understand that this form must NOT be used to report emergencies requiring immediate response. (Required)

- Yes
- No (Contact CSU, Chico Police or Dial 911)

Description/Narrative - (WHO, WHAT, WHEN, WHERE, WHY, and/or HOW) Please describe in as much detail as possible the specific incident that occurred. Avoid using pronouns, i.e., he, she, etc. to identify people. Use the person's real name when known in your description otherwise the name you know the person by. Indicate specific words, phrases, interaction, and behavior. Give dates and times. If a subject used profa

made threats, or spoke of harming him/herself, indicate specific words/phrases used. If a student was loud or disruptive, indicate behaviors associated with the disruption, and describe any injury or damage to a person(s) or property. If this is a student welfare concern, please describe the change in student's behavior that has prompted this report. Include name(s) of campus personnel you contacted and actions taken, if any.

(Required)

What are the main concerns about the students behavior? (If this concern is related to the COVID-19 mandates or safety guidelines, please select (7), (16) and (17). (Required)

- (2) Unauthorized entry or misuse of campus property
- (3) Disrupt / Obstruct campus activity or event
- (4) Disrupt / Infringe normal campus operations or the rights of others
- (5) Obstruction of traffic
- (6) Disorderly / Lewd Behavior
- (7) Threaten or endanger the health and safety of any person
- (8) Hazing
- (9) Drug violation
- (10) Alcohol Violation
- (11) Theft
- (12) Destruction of property
- (13) Weapons violation (including replicas)
- (14) Unauthorized recording or publication
- (15) Misuse of computer facility or resource
- (16) Violation of published campus policy / presidential order
- (17) Failure to comply with campus officials or offices
- (18) Violation of federal, state or local law
- (20) Encourage / Permit / Assist others in action that could lead to discipline
- Other

Is there a concern of continued behavior? (Required)

Please Choose...

Were police contacted? (Required)

Please Choose...

If yes, please provide details regarding the agency's response. Include a case or report number if known.

What is the best way to contact you? (Required)

Supporting Documentation

Please include any supporting documentation or digital media which is relevant to this incident (ie: picture or video files, written correspondence, lease agreements, etc.). 1GB maximum total size. **Attachments require time to upload, so please be patient after submitting this form.** 5GB maximum total size.

Attachments require time to upload, so please be patient after submitting this form.

Choose files to upload

Choose Files

Submit report

EXHIBIT C

DUTIES FOR THE ASSOCIATED STUDENTS PRESIDENT

I. NAME

This document shall be called Duties for the Associated Students President.

II. AUTHORITY

These duties shall be established by the authority given in Article VIII, Section 2 of the Restated Bylaws of the Associated Students (AS) of California State University, Chico (CSUC).

III. PURPOSE

The purpose of these duties is to define the role and responsibilities of the AS President.

IV. DATE OF EFFECTIVENESS

These duties shall be effective upon approval of the Board of Directors (BOD).

V. AMENDMENTS

These duties may be amended by a 2/3 approval of the BOD.

VI. TERM OF OFFICE AND ATTENDANCE

- A. Term of office shall be consistent with elected directors as outlined in Article VIII, Section 4 of the Restated Bylaws of the AS of CSUC.
- B. Attendance shall be governed by the Elected Officers' Attendance Policy.

VII. DUTIES AND RESPONSIBILITIES

- A. Shall be a voting member of the BOD. The AS President and Chair of the Board, subject to control of the BOD or of any standing committee having authority over such, shall generally supervise and direct the business and the officers of the corporation.
- B. Shall be a voting member of the Government Affairs Committee (GAC), serving as Vice Chair of the GAC.
- C. Shall attend the California State Student Association (CSSA) Board of Directors monthly plenary meetings as the voting member for CSU, Chico, unless otherwise determined by the AS BOD.
- D. Shall be a voting member of the Initial Review Board (IRB).
- E. Shall preside at all meetings of the members and at all meetings of the BOD.
- F. Shall be an official representative of the corporation on campus, in the community, and with schools and organizations thereof and shall appoint, where appropriate, members to posts on all University boards, committees, councils or panels outside the direct jurisdiction of the BOD or of any standing committee of the BOD, unless otherwise provided, which appointments shall be subject to the approval of the BOD by a simple majority.
- G. Shall have such powers and duties as may be prescribed by the BOD or the Bylaws.
- H. Shall have the power to issue written Executive Orders as necessary for the conduct of AS business in the absence of appropriate legislative action.

- I. Shall coordinate student involvement in University budgeting procedures as approved by the University President.
- J. Shall work to ensure productive relationships with the student body, University Administration, the Faculty, the Staff, the Community and Corporate Management.
- K. Shall coordinate a public forum at least monthly to discuss the current status of the AS.
- L. Shall be the liaison to the campus Alumni Association.
- M. Shall serve or designate a representative to serve as a member of the Student Academic Senate.
- N. Shall ensure that a rolling Five Year Master Plan is updated annually and that the plan is adhered to.
- O. Shall be an active member, or select a designee, for the appropriate University Boards, committees and councils including, but not limited to:

- University Alumni Association
- University Academic Senate
- University Staff Council
- University Budget Committee
- University Enrollment Management Committee
- Instructionally Related Activities (IRA)
- Campus Fee Allocation Committee
- Campus Planning Committee

- P. Shall work with the Executive Vice President to coordinate trainings and transition for outgoing and incoming officers.
- Q. Shall be in charge of Policy Agenda formation and implementation oversight for the Associated Students.
 - 1. The AS President will seek input from all of the elected AS Officers and Senators to begin the formation process based on the Mission of the AS.
 - 2. After a draft document has been put together, the President will seek consent of the Student Academic Senate, Government Affairs Committee, Bell Memorial Union Committee, and the Associated Students Businesses Committee.
 - 3. Once consent by all of the Standing Committees of the BOD and the Student Academic Senate has been received, the President will seek approval from the BOD for the Policy Agenda.

Approved GAC:	3/1/96
Approved BOD:	3/8/96
Clean-up Changes:	Summer 1999
Revisions Approved BOD:	8/28/00
Revisions Approved BOD:	10/23/00
Revisions Approved BOD:	4/16/03
Revisions Approved BOD:	5/4/15
Revisions Approved BOD:	4/26/17
Revisions Approved BOD:	5/10/17
Revisions Approved BOD:	9/20/17