

**SS-S97-3**

At its special session of March 17, 1997, the Academic Senate unanimously approved the following Sense-of-the-Senate Resolution presented by David McNeil for the Executive Committee.

**SENSE OF THE SENATE RESOLUTION****CONDEMNING THE "SOLOMON AMENDMENT"****AND AFFIRMING OUR COMMITMENT TO****CIVIL RIGHTS AND ACADEMIC FREEDOM**

Whereas, The Academic Senate of San Jose State University has repeatedly resolved (SS-S97-1, F94-1, SS-S92-9, SS-S91-3, S85-9, SS-S84-6, SS-S83-14, etc.) that discrimination on the basis of sexual orientation is deplorable and inconsistent with the academic principles of equal opportunity and respect for human dignity; and

Whereas, The SJSU "Statement on Equal Opportunity, Affirmative Action, and Non-Discrimination reads:

"San Jose State University is guided by the principle of equal opportunity, including the conviction that there will be no differential treatment or harassment of persons because of race, color, religion, national origin, age, sex, marital status, pregnancy, disability, Vietnam veteran's status, or sexual orientation. This principle is expected to be observed in the admission, housing and education of students; in policies and practices governing programs of extracurricular life and activities; and in the employment of faculty, staff, and student personnel.

"The University has a firm and unambiguous commitment to the active elimination of discrimination, and the affirmative recruitment of a diverse, multi-racial community of students, faculty and staff."

and

Whereas, The Department of Defense policy that excludes from military ranks homosexuals who self-identify or are known or *thought* to engage in homosexual relations applies to ROTC Programs and prohibits compliance of ROTC Programs with the University's policy on nondiscrimination, the CSU policy of nondiscrimination, first amendment protection, and basic human rights; and

Whereas, This policy restricts free expression in a discriminatory fashion, for only homosexuals are punished by expulsion from the military for the expression of their sexual orientation or for expression of their first amendment rights; and

Whereas, Such discrimination, being inimical to the ideals of the University, tends to weaken the regard which students of the University have for the United States government and its agencies; and

Whereas, The discrimination practiced by the ROTC corrupts freedom of expression throughout the entire academy since self-disclosure by an ROTC student, in any class or office on campus--including non-ROTC classes--could be repeated and become the basis for the visitation of punishment on that student; and

Whereas, Limits on freedom of expression of homosexual students are directly repugnant to our academic values of freedom of expression, inquiry, and information, in addition to cherished principles of equal opportunity and respect for human dignity; and

Whereas, For all these reasons, the Academic Senate of SJSU passed and President Handel Evans signed F94-1, "Disassociation of San Jose State University with the Reserve Officers Training Corps" which reluctantly and sadly brought an end to SJSU's association with an otherwise worthy program; and

Whereas, Since the policy of disassociation was passed, the practices of discrimination and suppression of freedom of speech by ROTC programs have not ceased; in fact the current policy of "don't ask, don't tell, don't pursue" mistakenly treats a variable and changeable social behavior (i.e. homo/bi/heterosexuality) as though it were a single, verifiable personal characteristic, and attempts to create scientific or social fact simply by edict; and

Whereas, The policy "don't ask, don't tell, don't pursue" is a also demonstrated failure, with 850 military personnel having being discharged in fiscal year 1996 for being suspected of being gay; and

Whereas, In September 30, 1996, President Clinton signed into law the 1997 Omnibus Appropriations Act which included the "Solomon Amendment" that created the Campus ROTC Access Act which modifies the armed Forces Code (Title 10) of the United States Code to include the following provision:

"DENIAL OF FUNDS FOR PREVENTING ROTC ACCESS TO CAMPUS: None of the funds made available to this or any other Department of Labor, Health and Human Services and Related Agencies Appropriations Act for any fiscal year may be provided by contract or by grant (including a grant of funds to be available for student aid) to a covered educational entity if the Secretary of Defense determines that the covered educational entity has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents:

(1) the maintaining, establishing, or operation of a unit of the Senior Reserve Office Training Corps (in accordance with section 454 of title 10, United States Code, and other applicant Federal laws) at the educational entity; or

(2) a student in the covered educational entity from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education."; and

Whereas: The Department of Defense has communicated in writing that "the university's position represents an `anti-ROTC policy'...with associated ineligibility for certain funding," which we estimate will encompass at least \$18 million in federal grants; and

Whereas: This coercion by the Department of Defense is morally repugnant, as it would damage faculty careers, destroy the livelihood of 509 employees, and unemploy 215 students who depend for grant income to provide jobs to assist with their education; and

Whereas: Compliance with the Department of Defense would also be morally repugnant, as it would

knowingly allow an organization to perpetrate discrimination on our students, who may not ethically be sacrificed by the University even for the principal of the greater good; and

Whereas: The actions of the United State Congress and the Department of Defense have thus produced a moral dilemma for SJSU, one from which there is no ethical escape; and

Whereas: The Campus ROTC Access Act is also a direct attack on the principle of collegial governance, using coercive measures to control aspects of the curriculum of SJSU, setting aside numerous policies related to professional standards, ignoring University Policy on Academic Freedom, and generally mocking our system of academic governance; and

Whereas: In the face of this moral dilemma, President Caret has chosen the course of action that appears to do the least harm to the institution of SJSU as possible, and has suspended the implementation of our ROTC disassociation policy; now, therefore, be it

Resolved: That the Academic Senate of San Jose State University understands and sympathizes with the moral dilemma forced upon President Caret; we affirm our support for his leadership of SJSU; and we appreciate his courage in standing by the principles of equal opportunity and nondiscrimination longer than any other president in the CSU, even in the face of enormous coercion of the institution he is entrusted to protect; be it further

Resolved: We affirm our belief that discrimination in any form, such as that practiced by the ROTC against people who are known to be homosexual, is evil and in violation of the SJSU equal opportunity and anti-discrimination policies; be it further

Resolved: Acknowledging the need for a liberally-educated military, SJSU reaffirms its position that it would willingly become a willing host to ROTC programs at such time that they no longer practice discrimination against our students; be it further

Resolved: That the Academic Senate of San Jose State University condemns the forced presence of a discriminatory organization on our campus, and will use every legal and ethical means at its disposal to uphold our cherished principles of equal opportunity, nondiscrimination, academic freedom, and shared collegial governance; be it further

Resolved: That the Academic Senate of San Jose State University encourage other faculty and student organizations to join with us in a search for ways to uphold these principles.