



June 7, 2021

Martha E. Pollack, Ph.D.  
Office of the President  
Cornell University  
300 Day Hall  
Ithaca, New York 14853

*Sent via U.S. Mail and Electronic Mail (president@cornell.edu)*

Dear President Pollack:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

Since 1999, FIRE has routinely intervened when the expressive and academic freedom rights of faculty members nationwide have been threatened by institutional or outside actors, and we defend these rights without regard to the viewpoint or ideology at issue. For example, we've recently defended the expressive rights of a professor facing an investigation from his community college after his quiz questions concerning Islamic terrorism sparked social media criticism,<sup>1</sup> an adjunct faculty member fired by his community college for identifying as "antifa" in an interview with a local television station,<sup>2</sup> a faculty member suspended by his university for criticizing the idea of reparations and the perception of racism in the United States,<sup>3</sup> and a professor whose university said it was "reviewing" her tweet sharply criticizing

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<sup>1</sup> Press Release, FIRE, *VICTORY: Chancellor affirms professor's academic freedom after Arizona college panicked over test questions about Islamic terrorism* (May 11, 2020), <https://www.thefire.org/victory-chancellor-affirms-professors-academic-freedom-after-arizona-college-panicked-over-test-questions-about-islamic-terrorism>.

<sup>2</sup> Press Release, FIRE, *VICTORY: College settles with 'antifa' professor fired for criticizing President Trump on Facebook, avoids First Amendment lawsuit from FIRE* (Apr. 27, 2020), <https://www.thefire.org/victory-college-settles-with-antifa-professor-fired-for-criticizing-president-trump-on-facebook-avoids-first-amendment-lawsuit-from-fire>.

<sup>3</sup> Sabrina Conza, *FIRE calls on Saint Joseph's to reinstate and end investigation into professor for political tweets*, FIRE (Feb. 23, 2021), <https://www.thefire.org/fire-calls-on-saint-josephs-to-reinstate-and-end-investigation-into-professor-for-political-tweets>.

Rush Limbaugh on the day he died.<sup>4</sup> Our website, [thefire.org](http://thefire.org), contains additional examples of our nonpartisan commitment to faculty rights.

FIRE writes today out of concern for the threat to academic freedom and freedom of expression at Cornell posed by the proposal for a “required educational program for faculty,”<sup>5</sup> as part of an “Antiracism Initiative.”<sup>6</sup> The program would, among other things, require faculty candidates for renewal or promotion and tenure to submit a statement of contributions to diversity, equity, and inclusion (“DEI”), extending the current DEI-statement requirement applicable to applicants for faculty positions.

FIRE understands that the proposal may represent a well-intentioned effort to promote an inclusive academic environment for all students and faculty, including those from backgrounds that have been historically underrepresented in academia and American society. However, the proposal raises concerns that faculty will be compelled to affirm and promote certain views as a condition of their employment and eligibility for promotion and tenure, contrary to Cornell’s robust promises of free expression and academic freedom.

Accordingly, we ask that your administration reject the recommendation of a “required educational program” of this nature, and to ensure that any newly adopted anti-racism or DEI programs are strictly voluntary for all faculty. We also call on your administration to eliminate the existing DEI-statement requirement, in order to meet the university’s obligations to uphold free speech and academic freedom.

## **I. Cornell Faculty Senate Approves Resolutions in Support of Both Mandatory and Optional Educational Programs for Faculty**

On July 16, 2020, you issued a statement regarding “[a]dditional actions to create a more just and equitable Cornell.”<sup>7</sup> You asked the Cornell Faculty Senate to take up several initiatives, including:

Development of a new set of programs focusing on the history of race, racism and colonialism in the United States, designed to ensure understanding of how inherited social and historical forces have shaped our society today, and how they affect interactions inside and outside of our classrooms, laboratories and studios. All

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<sup>4</sup> Aaron Terr, *FIRE warns UAB not to punish professor over tweet about Rush Limbaugh’s death*, FIRE (Feb. 23, 2021), <https://www.thefire.org/fire-warns-uab-not-to-punish-professor-over-tweet-about-rush-limbaughs-death>.

<sup>5</sup> *Pending Legislation: UFC-F Resolution : In Support of the WG-F Recommendation for a Required Educational Program for Faculty*, CORNELL UNIV. (Apr. 5, 2021), <https://theuniversityfaculty.cornell.edu/faculty-senate/archives-and-actions/ongoing-senate-business/wg-f-final-report-feedback>.

<sup>6</sup> *Ongoing Projects: The Antiracism Initiative*, CORNELL UNIV., <https://theuniversityfaculty.cornell.edu/news/the-anti-racism-initiative> (last visited May 14, 2021).

<sup>7</sup> Martha E. Pollack, *Additional actions to create a more just and equitable Cornell*, CORNELL UNIV. (July 16, 2020), <https://statements.cornell.edu/2020/20200716-additional-actions.cfm>.

faculty would be expected to participate in this programming and follow-on discussions in their departments.<sup>8</sup>

In March and April 2021, Cornell Faculty Senate working groups issued reports in support of three proposals. The report of Working Group F (“WG-F”) recommends creation of a mandatory educational program for faculty.<sup>9</sup> Last week, the Faculty Senate voted on various resolutions, including “UFC-F Resolution: In Support of the WG-F Recommendation for a Required Educational Program for Faculty,” which states that the WG-F recommendations are “worthy of careful consideration” by your administration.<sup>10</sup> The Faculty Senate passed UFC-F by a 55-46 margin.<sup>11</sup> However, the Faculty Senate also passed two other resolutions that are inconsistent with the UFC-F resolution: resolution Senator-F-1, which supports the general objective of the WG-F report but “without mandating a centralized, top-down approach,” and resolution Senator-F-2, which supports the general objective of the WG-F report but “endorses *voluntary* participation by faculty in anti-racism and bias educational programs.”<sup>12</sup> The Faculty Senate vote outcomes together with the resolutions and all supporting materials now advance to your administration to begin the “implementation phase.”<sup>13</sup>

The introduction to the WG-F report states, “Faculty must understand structural racism and the forces of systemic bias and privilege.”<sup>14</sup> The report further provides:

The goal of the educational program is to support faculty in creating an antiracist, just and equitable climate for our campus community. Doing this effectively requires faculty to understand that structural racism, colonialism, and injustice, and their current manifestations have a historical and relational basis, even as it requires that faculty learn to communicate effectively across the differences that they will encounter as they go about their work.<sup>15</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> Working Group F, *An Educational Requirement for Faculty*, CORNELL UNIV. (Apr. 5, 2021), [https://cpb-us-e1.wpmucdn.com/blogs.cornell.edu/dist/3/6798/files/2021/04/F-Report\\_FINAL-3.pdf](https://cpb-us-e1.wpmucdn.com/blogs.cornell.edu/dist/3/6798/files/2021/04/F-Report_FINAL-3.pdf). The other working groups issued reports recommending establishment of an Antiracism Center and an educational requirement for students.

<sup>10</sup> *Pending Legislation*, CORNELL UNIV., <https://theuniversityfaculty.cornell.edu/faculty-senate/archives-and-actions/ongoing-senate-business/wg-f-final-report-feedback> (last visited May 18, 2021).

<sup>11</sup> *The Antiracism Initiative: Senate Votes and Comments*, CORNELL UNIV., <https://theuniversityfaculty.cornell.edu/news/the-anti-racism-initiative/antiracism-initiative-senate-votes-and-comments> (last visited May 18, 2021).

<sup>12</sup> *Id.* (emphasis added). Senator-F-1 and Senator-F-2 received 54 and 49 “yes” votes, respectively.

<sup>13</sup> *The Antiracism Initiative: Senate Votes and Comments*, CORNELL UNIV., <https://theuniversityfaculty.cornell.edu/news/the-anti-racism-initiative/antiracism-initiative-senate-votes-and-comments> (last visited May 18, 2021).

<sup>14</sup> *An Educational Requirement for Faculty*, *supra* note 9, at 1.

<sup>15</sup> *Id.* at 2.

To that end, the program would (1) require that all faculty candidates for renewal or promotion and tenure submit a statement of DEI-related efforts (extending the current requirement applicable to applicants for faculty positions); (2) require faculty to dedicate 1.5 to 2 hours per semester to participation in workshops on DEI; (3) include a DEI-related question in course evaluations; and (4) require “DEI climate statements” to be part of each department chair’s annual report to the dean.<sup>16</sup> If the DEI-workshop requirement is implemented by your office, faculty members who do not fulfill it would not be permitted to teach, serve on a search committee, hire students or staff for research in their labs or field offices, or perform various other job duties and functions.

The WG-F report asserts that the proposed program does not offend principles of academic freedom because it “does not impinge in any way on what faculty choose to teach, write, or think about.”<sup>17</sup>

## II. The Mandatory Faculty Educational Program Would Violate Faculty Members’ Academic Freedom and Freedom of Conscience

Although, for purposes of the present matter, Cornell University may not be a state actor bound by the First Amendment,<sup>18</sup> Cornell has nevertheless made morally and legally binding commitments to the freedom of expression and academic freedom of its faculty. These commitments preclude Cornell from requiring faculty to affirm, support, or teach beliefs they may not hold.

### A. *Cornell Makes Robust Promises of Free Expression and Academic Freedom*

Cornell recently adopted a “Policy Statement on Academic Freedom and Freedom of Speech and Expression.”<sup>19</sup> The policy statement provides that “[f]reedoms to engage in research and scholarship, to teach and to learn, to express oneself and to be heard, and to assemble and to protest peacefully and lawfully, are essential to the function of the University as an

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<sup>16</sup> *Id.* at 3–5.

<sup>17</sup> *Id.* at 5.

<sup>18</sup> See *Alderson v. N.Y. State Coll. of Agric. & Life Scis.*, 825 N.E.2d 585 (N.Y. 2005) (“Under the Education Law, [Cornell] University manages four ‘statutory colleges’ that are supported, in part, by public funds. Cornell has significant autonomy over academic activities at the colleges but is accountable to the trustees of the State University of New York (SUNY) and other state agencies for the manner in which public funds are expended.”); *Curto v. Smith*, 248 F. Supp. 2d 132, 139 (N.D.N.Y. 2003) (state regulation and receipt of state funding did not render Cornell University or its statutory colleges a “state actor” in its creation and enforcement of policies relating to student discipline, academic standards, and other day-to-day operations).

<sup>19</sup> *The Faculty Handbook: Cornell Policy Statement on Academic Freedom and Freedom of Speech and Expression*, CORNELL UNIV., <https://theuniversityfaculty.cornell.edu/the-new-faculty-handbook/statement-on-academic-freedom-and-freedom-of-speech-and-expression> (last visited May 14, 2021). Explaining the prominent placement of the policy statement at the front of the faculty handbook, Dean of Faculty Charles Van Loan said academic freedom “really is at the heart of everything.” James Dean, *Cornell affirms commitment to academic freedom, free speech*, CORNELL CHRONICLE (Mar. 29, 2021), <https://news.cornell.edu/stories/2021/03/cornell-affirms-commitment-academic-freedom-free-speech>.

educational institution.”<sup>20</sup> Quoting the university’s Statement of Core Values, the policy further states:

We are a community whose very purpose is the pursuit of knowledge. We value free and open inquiry and expression—tenets that underlie academic freedom—even of ideas some may consider wrong or offensive. Inherent in this commitment is the corollary freedom to engage in reasoned opposition to messages to which one objects.<sup>21</sup>

Academic freedom includes “[f]reedom of expression in the classroom on matters relevant to the subject and the purpose of the course and of choice of methods in classroom teaching,” as well as freedom “from direction and restraint in scholarship, research, and creative expression.”<sup>22</sup>

The proposed required program for faculty risks transgressing these principles to the extent it would penalize those who demonstrate insufficient fealty to the university’s views on DEI, structural racism, privilege, colonialism, and related issues.

### ***B. Cornell Cannot Require Faculty to Assent to Specific Ideological Views***

Cornell cannot, consistent with its strong promises of freedom of expression and academic freedom, prescribe orthodoxy for its faculty on questions of politics or ideology. Yet some of the WG-F recommendations would, in practice, require faculty to adopt or express alignment with the university’s preferred views on hotly debated issues related to race, diversity, and history.

FIRE has serious reservations about the proposal’s various requirements, including mandatory DEI statements, mandatory DEI workshop participation, the inclusion of a DEI-related question in course evaluations, and the submission of DEI climate statements from each department. The proposal provides little detail on the content of these requirements, and the threat of viewpoint discrimination is amplified by the proposal’s express goal of inculcating in all faculty a certain understanding of structural racism, systemic bias, privilege, colonialism, and related concepts.

For example, the proposal’s statement that “Faculty must understand structural racism and the forces of systemic bias and privilege,” requires faculty to adopt the viewpoint that these concepts are real and meaningful, when, in fact, their very existence is a matter of current and lively ideological debate.<sup>23</sup> The fact that this requirement is nevertheless included provides

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<sup>20</sup> *Policy Statement on Academic Freedom and Freedom of Speech and Expression*, *supra* note 19.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Compare Katherine Cartwright, *Teaching children that racism is structural is key to finally eradicating it*, WASH. POST (Mar. 10, 2021), <https://www.washingtonpost.com/outlook/2021/03/10/teaching-children-that-racism-is->

ample reason for concern that prospective and current faculty will be judged not simply on their legitimate qualifications, but also on their loyalty to a political cause.

Also of special concern is the DEI-statement requirement. Cornell currently requires all applicants for tenure-track and tenured faculty positions to submit a statement of their contributions to DEI. The WG-F proposal recommends extending this problematic mandate to faculty being considered for renewal or tenure and promotion.

In the current rubric for assessing DEI statements, an example of a “weak” statement is one that shows no “awareness or understanding of challenges underrepresented individuals in higher education face and the factors influencing underrepresentation of particular groups in academia.”<sup>24</sup> This criterion suggests that candidates will be penalized for disagreeing with the university’s or their evaluator’s views of challenges facing certain underrepresented groups, the causes of their underrepresentation, or how to address those issues. A “strong” statement, by contrast, demonstrates “[s]ophisticated understanding of differences stemming from ethnic, socioeconomic, racial, gender, disability, sexual orientation,” provides evidence of “[s]ignificant direct experience advancing [DEI] through research, service and teaching,” and “[d]etails plans to promote [DEI] through research, service and teaching at Cornell and within their department and/or campus-wide.”<sup>25</sup>

Will faculty members score poorly on the rubric if, after conducting their own academic research or inquiry, they disagree with the prevailing “understanding of differences” that result from various identity characteristics, and/or have not significantly dedicated their teaching, research, and service activities to a particular ideological conception of DEI? This university-wide mandate—applicable to all faculty in all areas of study—simply cannot be reconciled with Cornell’s guarantee to faculty of freedom “from direction and restraint in scholarship, research, and creative expression.”<sup>26</sup>

Moreover, to the extent that the guidelines and rubric for DEI statements do not precisely define terms such as “diversity,” “equity,” and “inclusion,” that vagueness provides space for subjective, arbitrary, and viewpoint-discriminatory decision-making. Without agreed-upon, objective, and precise definitions, these terms—which carry salient political connotations that are the source of much disagreement and controversy<sup>27</sup>—will likely serve as a proxy for

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structural-is-key-finally-eradicating-it, with Isaac Schorr, *The Problem with ‘Systemic Racism’*, NAT’L REV. (Jan. 28, 2021), <https://www.nationalreview.com/2021/01/the-problem-with-systemic-racism>.

<sup>24</sup> *Rubric Assessing Candidate on Diversity, Equity and Inclusion*, CORNELL UNIV., <https://facultydevelopment.cornell.edu/rubric-assessing-candidate-on-diversity-equity-and-inclusion> (last visited May 14, 2021).

<sup>25</sup> *Id.*

<sup>26</sup> *Policy Statement on Academic Freedom and Freedom of Speech and Expression*, *supra* note 19.

<sup>27</sup> See, e.g., Nicholas C. Burbules, *Antinomies in the Concepts of Diversity, Equity and Inclusion*, INSIDE HIGHER ED (Apr. 15, 2021), <https://www.insidehighered.com/views/2021/04/15/conflicts-between-peoples-interpretations-diversity-equity-and-inclusion-opinion> (exploring different meanings of “diversity,” “equity,” and “inclusion” for people who support these values); Conor Friedersdorf, *Can Chloé Valdary Sell Skeptics on DEI?*, THE ATLANTIC (Jan. 31, 2021), <https://www.theatlantic.com/ideas/archive/2021/01/can-chloe-valdary->

particular viewpoints or beliefs. These terms necessarily signify different meanings and conceptual frameworks to different people—effectively leaving decisions regarding satisfaction of these criteria to the discretion of the evaluator. This discretion will all but inevitably be abused to punish views at odds with popular sentiment, Cornell’s stated positions, and/or the views of the individuals tasked with evaluating a candidate’s DEI commitment. FIRE is troubled by the possibility that this requirement functions as a litmus test to screen out candidates with minority, dissenting, or simply unpopular views.

To further illustrate our concerns by analogy, we trust that Cornell would readily recognize the problem with requiring faculty to “understand the importance of patriotism,” and evaluating faculty based on their involvement in patriotic organizations and demonstration of “plans to promote patriotism through research, service and teaching at Cornell.” Just as with “diversity, equity, and inclusion,” evaluating broad, subjective terms like “patriotism” requires an inherently political, viewpoint-dependent calculation. Faculty whose personal or professional beliefs and commitments differ from those of the university must not face negative consequences for following the dictates of their own conscience.

The WG-F proposal’s other requirements are also troubling in light of the program’s overall purpose. For instance, will the “DEI-related question” in course evaluations, in effect, encourage students to negatively evaluate instructors simply because of their views on structural racism, systemic bias, privilege, and related issues, even where the instructors have neither discriminated against nor treated any students unfairly?

FIRE’s recent casework provides evidence that faculty are increasingly facing disciplinary action for classroom speech that some deem offensive, and even investigations of their extramural speech outside of the classroom because of a purported link between faculty members’ personal views and their ability to teach effectively.<sup>28</sup> Suspect proposals like the one at issue here heighten these risks to academic freedom.

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sell-skeptics-dei/617875 (describing proliferation of DEI programs in the aftermath of the police killing of George Floyd: “The diversity, equity, and inclusion industry is booming as corporations, government agencies, high schools, colleges, and nonprofit organizations clamor for its services. Advocates insist that formal instruction in anti-racism yields more inclusive, equitable institutions. Skeptics object to what they characterize as coerced indoctrination in esoteric theories, or charge that prominent consultants like Robin DiAngelo, author of the best-selling *White Fragility*, traffic in false and divisive racial stereotypes.”).

<sup>28</sup> See, e.g., *Memory-Holed: Universities and Internet Speech*, FIRE,

<https://www.thefire.org/research/publications/miscellaneous-publications/memory-holed-universities-and-internet-speech>; Sabrina Conza, *FIRE calls on University of San Diego Law to cease investigating professor for criticizing Chinese government*, FIRE (Mar. 23, 2021), <https://www.thefire.org/fire-calls-on-university-of-san-diego-law-to-cease-investigating-professor-for-criticizing-chinese-government>; Katlyn Patton, *NYU ignores academic freedom, investigates Mark Crispin Miller’s course content, blog post*, FIRE (Nov. 30, 2020), <https://www.thefire.org/nyu-ignores-academic-freedom-investigates-mark-crispin-millers-course-content-blog-post>; Alex Morey, *Duquesne flouts academic freedom, risks massive liability in punishing professor Gary Shank for racial slur discussion*, FIRE (Sept. 17, 2020), <https://www.thefire.org/duquesne-flouts-academic-freedom-risks-massive-liability-in-punishing-professor-gary-shank-for-racial-slur-discussion>.

Cornell, having enshrined freedom of expression and academic freedom in its written policies—including “freedom to engage in reasoned opposition to messages to which one objects”—cannot require its faculty to affirm any specific political or ideological perspective. Nor can it require them to demonstrate commitment to a preferred set of beliefs with evidence of their efforts to promote or raise awareness of it. To do so amounts to compelled speech and puts a straitjacket around academic freedom and freedom of conscience. Contrary to what the WG-F report states, its recommendations *do* “impinge . . . on what faculty choose to teach, write, or think about.”

Our nation is only a few generations removed from university faculty being required to submit to state interrogation regarding their possible involvement with “subversive” organizations or being forced to sign loyalty oaths disavowing socialism or communism as a condition of employment. Because of the bravery of faculty who challenged the constitutionality of these requirements in federal court, the Supreme Court has made clear that they violate the First Amendment.<sup>29</sup> Similar requirements are equally untenable under institutional policies—like those Cornell has rightly adopted—protecting academic freedom and free expression.

FIRE recognizes that Cornell may shape and express *its own* aspirational values as an institution, including the promotion of diversity, equity, and inclusion, in whatever manner the university may define those concepts within the bounds of the law. Cornell may also, of course, ensure that its educational environment is free from unlawful discriminatory conduct. What Cornell may not do, however, is force current or prospective faculty to profess by word and act their faith in the university’s perspective on political or ideological issues.

### **III. Cornell Must Reject and Eliminate Any Mandates That Encroach on Faculty Members’ Academic Freedom**

We urge Cornell to think carefully about the consequences of the proposed mandatory educational program on faculty whose views, pedagogical choices, or associations are unpopular or simply out-of-step with the majority on- or off-campus. Notably, UFC-F faced significant faculty opposition, with almost half of the voting faculty members opposing its recommendation of a mandatory, university-wide approach to addressing DEI. And resolution Senator-F-2, which recommends *voluntary* participation in anti-racism and bias education programs, received more “yes” votes than “no” votes.

To adhere to its own promises of academic freedom and freedom of expression, and to honor the individuality of both current and prospective faculty members, we urge your administration to reject the implementation of WG-F’s viewpoint-discriminatory recommendations as mandatory for all faculty. We further call on your administration to eliminate the existing DEI-statement requirement for applicants for faculty positions.

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<sup>29</sup> See *Sweezy v. New Hampshire*, 354 U.S. 234, 235–36 (1957); see generally *Keyishian v Bd. of Regents*, 385 U.S. 589 (1967).



We appreciate your time and attention to our concerns. We respectfully request receipt of a response to this letter by the close of business on June 21, 2021.

Sincerely,

A handwritten signature in dark ink, appearing to read 'A. Terr', with a long horizontal flourish extending to the right.

Aaron Terr

Program Officer, Individual Rights Defense Program and Public Records

Cc: Michael I. Kotlikoff, V.M.D., Ph.D., Provost