



June 24, 2024

To the Members of the Harvard Open Inquiry and Constructive Dialogue Working Group:

As **Harvard Alumni for Free Speech** seeks to promote free speech, academic freedom and viewpoint diversity within the Harvard community, we are deeply interested in the work of the Open Inquiry and Constructive Dialogue Working Group. The charge to the Working Group states a great university must build and protect an environment in which members of the community ask hard questions, challenge accepted truths and make mistakes. Based on what we have seen transpiring over the past several years, Harvard must honestly face the question of whether it is doing so.

As you are most likely aware, Harvard has consistently ranked very poorly in the College Free Speech Rankings of Universities by the Foundation for Individual Rights and Expression (FIRE). The results of their student survey responses show many students do not view Harvard as a place to ask hard questions and challenge accepted truths. Only slightly more than a quarter reported they were comfortable disagreeing with their professors on controversial political topics. Only a third think it is very or extremely clear that the administration protects free speech on campus. Thirty percent find using violence to stop speech is acceptable in some situations.

FIRE's results are similar to those reported this past year by Dean Rakesh Khurana:

Yet, on this campus, many students and faculty report feeling they cannot express their views. In last year's senior survey of the Class of 2023, completed by nearly the entire class, only 36% of students reported feeling comfortable expressing opposing views on controversial topics in their courses. Only 44% of graduating seniors reported having expressed opposing views on controversial topics even when they thought it was essential to do so. I have spoken to many faculty, students, and staff members who believe that speaking about controversial topics means risking being ostracized or "canceled" for expressing opinions that do not conform with the perceived consensus on a topic and issue

These beliefs are reflected in actions. There have been at least 34 instances where unpopular speakers have been deplatformed at Harvard. Clearly, a problem exists that must be addressed.

The cancelation of Kit Parker's class on "Data Fusion in Complex Systems: A Case Study" show how the search for knowledge can be cut short at Harvard. Many factors go into whether one should engage in a particular policing strategy but surely effectiveness is one of those factors. However, objectors to the class opposed an examination of the data allowing no other version of the truth other than their own. As one student put the matter, "Looking at the merits of this type of policing, when we already know that this type of policing creates more violence, is not a useful exercise in any way and just legitimizes a racist practice that kills Black and Brown kids." (The Harvard Crimson, January 26, 2021)

The University should not cancel a class or research because it reaches a conclusion that challenges beliefs and/or makes people uncomfortable.

Changing the situation will, we believe, require significant policy changes as well as substantial commitments by all Harvard stakeholders to change

the culture within the Harvard community. We recommend the Working Group give particular attention to four specific areas:

- Support Academic Freedom
- Promote Intellectual and Viewpoint Diversity
- Adopt and Support a Free Speech Code
- Develop a Culture of Civility and Tolerance, together with Willingness to Listen to Disagreeable Views

I. Support Faculty and Students in the Pursuit of Knowledge

Faculty must have the freedom to explore and teach ideas even when those ideas differ from the prevailing beliefs. No member of the faculty should be required to teach any viewpoint or have to fear consequences from taking controversial positions. No classes should be cancelled or faculty rebuked in any way because students or the public find the positions uncomfortable or distasteful.

Similarly, faculty should support the freedom of students to explore ideas, particularly ones that some others may disagree with vehemently. While we understand that classroom discussions must be orderly and respectful, students should not fear expressing their views. Faculty and Harvard's administrators must ensure that teaching assistants and others working for the University follow these same principles.

II. Promote Viewpoint Diversity

In hiring and promotion, academic achievement and promise must be the key. We favor efforts to develop faculty with a variety of viewpoints. In a country that is about equally divided politically, the fact that the faculty leans massively in one direction is concerning. ("Among teaching staff, 270 faculty members contributed a total of \$317,835 to Biden, while just five

faculty members contributed a total of \$3,030 to Trump." The Harvard Crimson, November 17, 2020)

To be clear, we are not advocating any preferential hiring, promotion or admissions scheme for those with political views that differ from what is the mainstream at Harvard. We do believe, however, that Harvard must make a far greater effort to attract and retain faculty and students whose ideological and political views are far less well represented at Harvard than they are in the general population.

Faculty should not be required to express a particular view as preconditions or requirements for hiring or promotion. To that end, we support the recent decision of the Faculty of Arts and Sciences to eliminate DEI statements, which we believe unfairly biased this process for those that did not advocate a maximalist DEI position.

III. Update the Speech Code to Promote Free Expression

To encourage students to think freely and explore challenging ideas, Harvard's Speech Code should be reviewed with a goal of making it largely co-extensive with the First Amendment as construed by the courts. In those situations where additional restrictions are appropriate for the university setting, the reasons for any such exceptions should be clearly explained and applied fairly without regard to content. The current Harvard Free Speech Guidelines date back to the 1990s and represent more of a rule book of what cannot be expressed on campus rather than a code promoting free speech and academic freedom.

It is essential that any rules purporting to limit speech should be clear and not overly broad. Broad and ambiguous rules create situations where students interested in engaging in protected speech with a controversial message will not dare to do so for fear of possible reprisals from administrators who are given broad discretion on how to interpret and apply the rules.

Appropriate time, manner and place restrictions within the Code are reasonable, and indeed necessary. Conduct—blocking access to events,

assaulting individuals, trespassing, damage to property, etc., — is distinguishable from speech. Harvard can and should appropriately regulate such conduct. However, such regulation should be done with a view to promoting the goal of the university to create a space where ideas can be exchanged and debated. For instance, if a group is blocking access to a venue where a speaker is about to discuss a controversial topic, removing the protestors would be appropriate. Canceling the talk would not.

While the university can and should regulate conduct, great care must be taken to ensure that the application of any such regulation does not favor or disfavor certain viewpoints. Consistent application of any regulation across all viewpoints is essential. If how conduct is regulated depends on the viewpoint expressed, students, alumni and, indeed, the public at large will conclude that statements about encouraging diversity of views are merely a façade.

There are a number of good speech codes that Harvard could draw on as examples, which we would be happy to bring to your attention.

IV. Build a Culture of Civility and Tolerance while Teaching Stakeholders to Listen to Ideas they Disagree with

Some of the most troubling aspects of what we see now at Harvard are the unwillingness to listen to viewpoints that are disagreeable, and worse, the urge to vilify and shun those who express those ideas. It's critical that these practices end. We believe that a good starting point is by requiring a mandatory program for all students on the principles of free expression, critical thinking, academic freedom and viewpoint diversity. Although we are anxious to learn more about the Intellectual Vitality Initiative, this seems to us a promising step in this direction. Implementation will be critical, of course. The goal must be to promote the ability of members of the Harvard community to raise controversial ideas and have conversations about difficult and sensitive topics without the fear of cancellation.

To be sure, colleges can set aspirational standards of civility towards which students can strive, and they can teach students about engaging

productively with those with whom they disagree. And, when inside the classroom, faculty have wide latitude in managing that setting, and can ask students to stop speaking if they're being disruptive or off-topic.

Encouraging a respectful manner in engaging with others is a highly desirable goal. However, civil discourse does not mean that one acquiesces to the viewpoints of the other speakers.

Intellectual vitality requires that speakers be able to state views regarding medicine, religion, politics, gender, race, etc., that may be contrary to the views of others and may even be profoundly troubling to the hearer. Speakers should not be censored or chastised for using words or phrases with which others disagree. Civil discourse must not become a protocol for censoring views.

'Civil discourse' should not be used to restrict the words that can be used to express ideas. Particular care should be taken to avoid prohibiting or disparaging terms that have long been used as such restrictions can dramatically narrow the scope of the debate. For example, elimination of the phrase 'illegal immigration' tends to divide the world into those who approve and those who oppose immigration, impeding conversations about the terms on which immigration should be permitted. Except in situations where language is intended to harass or denigrate a particular person or group of persons, it is important that the university remain neutral.

As FIRE has noted:

But civility is in the eye of the beholder. Take the way different people interpret the phrases "Black Lives Matter" and "Blue Lives Matter" — allowing campus administrators to decide what speech is too hostile to be expressed means they have the power to discriminate based on viewpoint. And, unfortunately, FIRE's case history shows civility requirements are all too often wielded in this way.

Requiring civility from students can even limit their ability to persuade others. As one federal judge put it, "Mandating civility could deprive speakers of the tools they most need to connect emotionally with their audience, to move their audience to share their passion."

We appreciate your consideration of our views and willingness to help Harvard remain a center of intellectual freedom. We would be delighted to answer any questions and to assist in any way we can, so please do not hesitate to reach out to us.

Thank you for taking on this critical project for Harvard.

William A Schmalzl
Secretary, Harvard Alumni for Free Speech