



December 5, 2017

Ben Hyneman  
Chair, Board of Trustees of the University of Arkansas  
2404 North University Avenue  
Little Rock, Arkansas 72207

*Sent via U.S. Mail and Electronic Mail (bhyneman@uasys.edu)*

Dear Chairman Hyneman:

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.

FIRE, along with various stakeholders within the University of Arkansas System (UA), is concerned about the significant threat to academic freedom at UA posed by the proposed revisions to Board Policy 405.1, which regards "Appointment, Promotion, Tenure, Non-Reappointment, and Dismissal of Faculty." Chiefly, FIRE is concerned with the proposed policy's expansion of the definition of "cause" to include "[a] pattern of disruptive conduct or unwillingness to work productively with colleagues . . . ."

Under this provision, faculty members must adhere to an amorphous standard of behavior or else face potential discipline or dismissal. Such so-called "collegiality" requirements have long been criticized by the American Association of University Professors (AAUP) as a pernicious threat to academic freedom. We urge you to eliminate this provision from the Board Policy, and to affirm UA's commitment to academic freedom by adopting a policy statement in the model of the "Report of the Committee on Freedom of Expression" at the University of Chicago (the "Chicago Statement").

The AAUP's "On Collegiality as a Criterion for Faculty Evaluation" report<sup>1</sup> explains the danger of maintaining a collegiality requirement for faculty evaluation purposes, which can too easily be used to stifle dissent and place a chilling effect on speech:

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<sup>1</sup> See American Association of University Professors, *On Collegiality as a Criterion for Faculty Evaluation* (2016), available at <https://www.aaup.org/file/AAUP%20Collegiality%20report.pdf>.

[C]ollegiality may be confused with the expectation that a faculty member display “enthusiasm” or “dedication,” evince “a constructive attitude” that will “foster harmony,” or display an excessive deference to administrative or faculty decisions where these may require reasoned discussion. Such expectations are flatly contrary to elementary principles of academic freedom, which protect a faculty member’s right to dissent from the judgments of colleagues and administrators.

The AAUP’s statement additionally cautions that an “absence of collegiality ought never, by itself, to constitute a basis for nonreappointment, denial of tenure, or dismissal for cause.” By listing lack of collegiality as one of eight enumerated violations sufficient to discipline or terminate a faculty member, the proposed UA policy elevates collegiality to a distinct mechanism of evaluation, thus significantly threatening academic freedom within the university system.

While the proposed policy’s language may seem innocuous, FIRE has repeatedly seen faculty terminated or disciplined under “collegiality” or similarly vague requirements simply for expressing unpopular viewpoints or criticizing their administrations.<sup>2</sup>

Controversial speech is that which requires the most protection under the First Amendment, and the Supreme Court has held as much, stating that “the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’” *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973).

Further, although the Board has supposedly reserved discipline or termination for a “pattern of disruptive conduct,” the proposed policy language nevertheless maintains that an “unwillingness to work productively with colleagues” is grounds for discipline or dismissal. This second phrase would likely be subject to a vagueness challenge. A policy is unconstitutionally vague when it does not “give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). Here, the proposed policy gives no indication of how “unwillingness to work productively with colleagues” will be interpreted, leaving the terms prone to administrative abuse and selective enforcement.

We urge the Board to abandon the collegiality requirement of the proposed policy and instead

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<sup>2</sup> See Alex Morey, *Salaita’s ‘Why I Was Fired’ Puts Civility in the Spotlight*, FIRE NEWSDESK, Oct. 8, 2015, available at [www.thefire.org/salaitas-why-i-was-fired-article-puts-civility-in-the-spotlight](http://www.thefire.org/salaitas-why-i-was-fired-article-puts-civility-in-the-spotlight); Colleen Flaherty, *Requiring Civility*, INSIDE HIGHER ED, Sept. 12, 2013, available at [www.insidehighered.com/news/2013/09/12/oregon-professors-object-contract-language-divorcing-academic-freedom-free-speech](http://www.insidehighered.com/news/2013/09/12/oregon-professors-object-contract-language-divorcing-academic-freedom-free-speech); Erica Goldberg, *Outspoken Professor Faces Dismissal from Idaho State University*, FIRE NEWSDESK, Oct. 29, 2009, available at [www.thefire.org/outspoken-professor-faces-dismissal-from-idaho-state-university](http://www.thefire.org/outspoken-professor-faces-dismissal-from-idaho-state-university); Press Release, FIRE, *SUNY Fredonia Punishes Professor for Political Expression*, July 24, 2006, available at [www.thefire.org/suny-fredonia-punishes-professor-for-political-expression](http://www.thefire.org/suny-fredonia-punishes-professor-for-political-expression).

adopt an official policy statement committing UA to upholding open inquiry, lively debate, and the core values of the First Amendment. We encourage you to review the Chicago Statement, a copy of which I have enclosed with this letter. Since its introduction in January 2015, FIRE has enthusiastically endorsed the Chicago Statement as the gold standard for university policy statements regarding free speech and academic freedom. Indeed, over that time, we have initiated a national campaign aimed at getting colleges and universities across the country to adopt their own version of the Chicago Statement.<sup>3</sup>

The Chicago Statement provides, in relevant part:

Because the University is committed to free and open inquiry in all matters, it guarantees all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn.

...

In a word, the University's fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or wrong-headed.

Adoption of a similar statement would convey to not only faculty members, but also students, administrators, alumni, and the concerned public that UA is a place where one need not fear censorship or discipline for engaging in constitutionally protected expression, and that one will be able to fully participate in the "marketplace of ideas" on its campuses.

In conclusion, subjecting faculty members to discipline and potential termination based on an ambiguous collegiality standard sets a dangerous precedent, as this requirement can too easily be used to punish faculty dissent and chill expression. Implementation of this proposed policy would weaken academic freedom and discourage new faculty from accepting positions within the UA system. As a public institution fully bound by the First Amendment, UA must preserve academic freedom and should encourage lively debate and discourse on its campuses.

Adopting a policy statement modeled after the Chicago Statement would go a long way toward reaching these objectives, and your leadership on this issue would be welcome. FIRE would be pleased to work with the Board of Trustees to adopt an official policy statement that would send a message to faculty, students, and the public about the vital importance of freedom of expression and academic freedom at UA.

Thank you for your attention to this important matter. You can reach me at 215-717-3473 or at

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<sup>3</sup> See [www.thefire.org/cases/fire-launches-campaign-in-support-of-university-of-chicago-free-speech-statement](http://www.thefire.org/cases/fire-launches-campaign-in-support-of-university-of-chicago-free-speech-statement).

azhar@thefire.org. I look forward to hearing from you.

Sincerely,

A handwritten signature in blue ink that reads "Azhar Majeed". The signature is written in a cursive style with a long, sweeping underline.

Azhar Majeed  
Vice President of Policy Reform

cc:

Donald Bobbitt, President, University of Arkansas  
Mark Waldrip, Vice Chairman, Board of Trustees  
Morril Harriman, Secretary, Board of Trustees  
Kelly Eichler, Assistant Secretary, Board of Trustees  
David H. Pryor, Board of Trustees Member  
John Goodson, Board of Trustees Member  
Stephen Broughton, Board of Trustees Member  
C.C. "Cliff" Gibson III, Board of Trustees Member  
Sheffield Nelson, Board of Trustees Member  
Tommy Boyer, Board of Trustees Member

Encl.

Report of the Committee on Freedom of Expression at the University of Chicago