



August 3, 2020

Executive Vice President & Provost Bruce A. McPheron  
Office of Academic Affairs  
The Ohio State University  
203 Bricker Hall  
190 North Oval Mall  
Columbus, Ohio 43210

*Sent via Electronic Mail (mcpheeron.24@osu.edu)*

Dear Dr. McPheron:

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 is concerned about reports that students and faculty at the Ohio State University (OSU) will be required to sign a "Together As Buckeyes Pledge"<sup>1</sup> in order to return to campus this fall.<sup>2</sup>

The Pledge includes a number of general statements regarding the COVID-19 pandemic and commitments relating to conduct in furtherance of protecting health and safety on campus, but also requires pledgees to affirm the following:

I believe in excellence in all that we do and that it is important to embrace diversity in people and ideas; foster the inclusion of all Buckeyes; allow for access and affordability of an Ohio State education; subscribe to innovation around keeping the Buckeye community safe; and rely on collaboration and multidisciplinary endeavors to guide best practices. Last, I believe in the importance of transparency, integrity and trust.

I have read, understand, and agree to comply with this Together as Buckeyes Pledge.<sup>3</sup>

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<sup>1</sup> *Together As Buckeyes Pledge*, OHIO ST. UNIV. (last visited Aug. 3, 2020), <https://safeandhealthy.osu.edu/pledge>.

<sup>2</sup> Josh Blackman, *Faculty and Student Pledges*, REASON (Aug. 1, 2020), <https://reason.com/2020/08/01/faculty-and-student-pledges>.

<sup>3</sup> *Together As Buckeyes Pledge*, *supra* note 1.

FIRE calls on OSU to either rescind the pledge or to make clear that students and faculty may decline to sign it without penalty or repercussion.

It has long been settled law that the First Amendment is binding on public colleges like OSU. *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted).

The First Amendment protects the right to speak as well as the right to *refrain* from speaking. *See Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (“[T]he right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all.”). Compelling speech, in the form of requiring students or faculty members to affirm what they “believe,” contradicts the protections afforded by the First Amendment, is inconsistent with the role of university as a “marketplace of ideas,” and simply cannot be enforced at a public institution. “[I]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943) (striking down as unconstitutional the requirement of saluting the flag as a condition of attending public schools).

To require students and faculty to affirm that they hold a particular belief as a condition to return to campus threatens to impose a “pall of orthodoxy” prohibited at a public institution of higher education. *See Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967); *see also Baggett v. Bullitt*, 377 U.S. 360, 373 (1964) (striking down the University of Washington’s loyalty oath). In order to uphold its constitutional obligations, OSU must either rescind the pledge or clarify that those who choose not to sign it may do so without threatening their return to campus.

We request receipt of a response to this letter no later than the close of business on August 17, 2020.

Sincerely,



Katlyn A. Patton

Program Officer, Individual Rights Defense Program and Public Records