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Sent via Electronic Mail

Dear President [Name]:

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 writes today to notify you of a report released by David Kaye, the outgoing United Nations' Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. The report, presented to the United Nations General Assembly on October 23, 2020, encourages universities worldwide to protect the academic freedom and expressive rights of their students and faculty. **FIRE hopes you will take the report's valuable recommendations under consideration and incorporate them into your institution's policies on academic freedom and freedom of expression.**

The Special Rapporteur first issued a call for submissions from academic and advocacy groups in spring of this year. FIRE joined other organizations, including Scholars at Risk and Article 19 Brazil, in submitting comments on the threats to academic freedom around the world.¹

Citing FIRE's work, the report addresses concerns we raised regarding academic freedom in the United States and offers commentary on threats to academic freedom as well as recommendations for protecting it. The Special Rapporteur offers the following abbreviated definition of academic freedom:

In short, academic freedom should be understood to include the freedom of individuals, as members of academic communities (e.g., faculty, students, staff, scholars, administrators and community participants) or in their own pursuits,

¹ Sarah McLaughlin, *FIRE condemns threats to academic freedom in comment for United Nations study*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC. (May 14, 2020), <https://www.thefire.org/fire-condemns-threats-to-academic-freedom-in-comment-for-united-nations-study>.

to conduct activities involving the discovery and transmission of information and ideas, and to do so with the full protection of human rights law.²

The report explains that academic freedom should be broadly construed by universities, and warns institutions against punishing academics' speech:

Individuals enjoy academic freedom not only within their institutions, in the internal aspects of research, scholarship, teaching, convenings and other on-campus activities, but also “extramurally”, in their role as educators and commentators outside the institution. For instance, an academic bringing her or his expertise to bear in a hearing before a legislature, a lecture to a community, a conversation on broadcast media or a post on social media should be understood as, inter alia, an exercise of academic freedom. In other words, that framework is not limited to the institutional environment. When an academic engages in expression outside of her or his academic topic – that is, not only outside the substantive area but also methodologically – she or he retains the right to freedom of expression guaranteed by human rights law, even if that engagement is not considered a part of her or his academic freedom. It should also be emphasized that academics should not be punished by their institutions for exercising their rights to freedom of expression, association and assembly and religious belief, among others.³

It also advises institutions to “adopt and enforce policies that ensure the protection of the free expression rights of the members of their communities, resisting official or social pressure and promising human rights compliance institutionally,” arguing that these “policies should be transparent.”⁴ The report then warns universities against allowing pressure—from inside or outside the academy—to determine who can teach or what topics can be taught:

The willingness of universities to submit to public pressure can erode academic freedom and freedom of expression. In the United States of America, pressure from the public or from students has led to disciplinary reviews of academics, and in some instances, has even resulted in them being barred from campus. Broadly speaking, such a dynamic may lead to a culture of repression and self-censorship, where restrictive measures against academic staff are guided by outside pressure rather than academic achievements and activities.⁵

² David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), Rep. on the Promotion and Protection of the Right to Freedom of Opinion and Expression, at 8, U.N. Doc. A/75/261 (July 28, 2020).

³ *Id.* at 20.

⁴ *Id.* at 12.

⁵ *Id.* at 41.

This is a crucial reminder. As FIRE’s submission to the Special Rapporteur explained, there have been increasing attacks on the rights of faculty in recent years, originating from students, administrators, government officials, and the general public. While the First Amendment or institutional policies may protect academic freedom, faculty must be able to rely upon their universities to stand by those legal and moral commitments. Without confidence in the protection of their rights, faculty may choose to self-censor rather than risk administrative punishment or retaliation.

The Special Rapporteur ends the report by offering a number of recommendations to ensure the protection of academic freedom, echoing statements made earlier in the report. The “Recommendations for academic institutions” include:

- (a) Respect the rights of all members of their communities, including faculty, students, researchers, staff, administrators and outsiders who participate in academic pursuits. That respect must include the right of all members to freedom of opinion and expression, including peaceful protest on academic premises;
- (b) Ensure that members of academic communities have protection against coercion by third parties, whether the State or groups in society. This requires, in particular, institutions to stand up for members of their communities who face attack or restriction owing to the exercise of their academic freedom.⁶

FIRE is pleased to see this important issue gain the attention of the United Nations, especially as new challenges to academic freedom have arisen in recent months, in part due to the COVID-19 pandemic. We hope that your institution and its leadership will consider the Special Rapporteur’s report and recommendations, which we have enclosed in full here. **FIRE encourages you to share the report with your campus community, adopt recommendations from the report into official policy, and publicly commit to stand firm against pressure to censor or punish student and faculty expression.**

Please contact me at sarah@thefire.org or 215-717-3473 if you are interested in discussing ways your institution can ensure the protection of academic freedom and incorporate the suggestions made by the Special Rapporteur.

Sincerely,



Sarah McLaughlin
Director, Targeted Advocacy

⁶ *Id.* at 56.