



May 7, 2021

Wendy E. Raymond, Ph.D.
Office of the President
Haverford College
370 Lancaster Avenue
Haverford, Pennsylvania 19041

Sent via Electronic Mail (president@haverford.edu)

Dear President Raymond:

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 by the amendments to Haverford College's Honor Code approved by a vote of the student body. The proposed amendments, along with existing language in the Honor Code, are incompatible with Haverford's commitments to its students' expressive freedom. Accordingly, we call on your administration to reject the proposed amendments and to ensure the Honor Code is free of any language restricting protected speech.

I. Haverford Students Pass Resolution to Amend the Honor Code

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us.

Twice per year, Haverford students meet in a Plenary session to consider proposed regulations governing student conduct on campus. Students may submit resolutions to the Haverford Students' Council for review and discussion. The resolutions are then voted on by a quorum of the student body. If a resolution passes, it is submitted to you and senior administrative staff for final approval.¹

¹ HAVERFORD COLL., CONST. OF STUDENTS' ASS'N art IV, § 4.02(i) (rev. 2019) ["SA CONST."], available at <http://tinyurl.com/4rvahxpf>.

The Spring 2021 Plenary virtual session is ongoing. Six students presented Resolution No. 3, which would, in part, amend the section of the Honor Code² governing social conduct as follows (additions in bold and italics):

*We must consider how external social dynamics influence our open dialogue and actions towards others while recognizing the greater importance of impact over intent. Therefore, ~~However,~~ as a community, we recognize that this open dialogue is not always possible, and that the safety **and well-being** of ~~all~~-marginalized students should be paramount. Thus, the Code requires discussion that is active, inclusive, responsible, and safe for all students, **accounting for omnipresent variables of power and privilege and the imbalances they create.** . . . We understand conduct that is not in line with these values inherently damages the community and thus violates the Code.*

In particular, we recognize that acts of discrimination, **microaggression**, and harassment, including, but not limited to, acts of racism, sexism, homophobia, transphobia, classism, ableism, tokenism, cultural insensitivity, discrimination based on citizenship status, discrimination based on religion, and discrimination based on national origin, accent, dialect, or usage of the English language are devoid of respect and therefore, by definition, violate this Code. ~~We understand that these discriminatory acts can take many forms, and smaller acts such as microaggressions are also devoid of respect and thus violate the Code. . . .~~

We also recognize that **a person's** ~~there are a range of~~ political opinions at Haverford College, **are necessarily intertwined with their values and outlook, and thus influence their practices. These practices may violate the Honor Code.** As such, ~~Thus, we expect that when expressing or encountering others' political beliefs, students will~~ **must** be respectful of community standards ~~as befits adherence to this Code. when expressing political opinions. As the Social Honor Code applies to all of our interactions at Haverford, engagement in political discourse falls within its jurisdiction, and political beliefs may not be used to excuse behavior that violates the Code. If we find that our political beliefs perpetuate~~

² The Honor Code is set forth in Article III of the Students' Association Constitution. The student-run Honor Council administers the Honor Code and has the authority to convene trials before a student jury, which may mandate "resolutions" for violations. SA CONST. art III, § 3.07(b), art. VII §§ 7.01(b), 7.02(f)(v). The Honor Code must be ratified annually. SA CONST. art III, § 3.08.

discrimination, we are obligated to re-evaluate them as we would any of our beliefs that perpetuate discrimination.

* * *

[C]onfronted students weaponizing the Code’s expectation of respect in order to silence and/or invalidate the experiences of harmed parties—including invalidating experiences of harm by claiming discrimination against a privileged identity (e.g., claims of reverse-racism) or refusing to reflect on their actions—is a violation of the Code. Using one’s political beliefs to justify disrespectful or discriminatory words or actions is also a violation of the Code.³

On May 3, a two-thirds supermajority of voting students passed Resolution No. 3.⁴ The voting on Honor Code ratification is scheduled to conclude on May 9, after which Plenary ends and all passed resolutions proceed to administrative review.

II. Neither the Current Nor Proposed Honor Code Can Be Reconciled With Haverford’s Strong Commitments to Freedom of Expression

Haverford makes robust promises of free speech to its students. At its core, the right of free speech is a counter-majoritarian, individual right, shielding speech from punishment on the basis that it is offensive or unpopular. Even if well-intended, Resolution No. 3 and ratification of the Honor Code will hollow out the promises of free speech Haverford makes to its students, imposing a broad civility code on student political expression.

A. Haverford Makes Institutional Commitments to Freedom of Expression

While private institutions like Haverford are not bound by the First Amendment, Haverford has made clear, affirmative commitments to protect its students’ freedom of expression. These commitments to uphold students’ expressive rights represent not only a moral obligation but a contractually binding legal duty on the part of the university.⁵

For example, Haverford’s “Academic Freedom” policy provides:

³ RESOLUTION NO. 3 [SOCIAL CODE] at 4-6 (on file with author).

⁴ Email from Nicholas Lasinsky to Haverford students (May 3, 2021, 3:56 PM) (on file with author); SA CONST. art. IV § 4.02(h)(iii).

⁵ *Barker v. Trustees of Bryn Mawr Coll.*, 122 A. 220, 221 (Pa. 1923) (“[T]he relation between the student and the college is solely contractual in character.”); *Swartley v. Hoffner*, 734 A.2d 915, 919 (Pa. Super. Ct. 1999) (“The contract between a private institution and a student is comprised of the written guidelines, policies, and procedures as contained in the written materials distributed to the student over the course of their enrollment in the institution.”).

Haverford College holds that open-minded and free inquiry is essential to a student’s educational development. Thus, the College recognizes the right of all students to engage in discussion, to exchange thought and opinion, and to speak or write freely on any subject. To be complete, this freedom to learn must include the right of inquiry both in and out of the classroom and must be free from any arbitrary rules or actions that would deny students the freedom to make their own choice regarding controversial issues.

Further, the College endeavors to develop in its students the realization that as members of a free society they have not only the right, but also the obligation to inform themselves about various problems and issues; and that they are free to formulate and express their positions on these issues.⁶

Given this strong commitment to expressive freedom, unequivocally recognizing free and open discussion as foundational to educational development, students who matriculate at Haverford would naturally expect to be “free to formulate and express their positions” on controversial political issues without facing institutional discipline. The United States Supreme Court—whose interpretations of the principle of freedom of speech provide insight into what students and faculty reasonably expect when an institution promises to protect free speech—has recognized that protection of political speech is a “core” purpose of the First Amendment, which “reflects a ‘profound national commitment’ to the principle that ‘debate on public issues should be uninhibited, robust, and wide-open.’”⁷

Haverford is morally and legally bound to adhere to its promises of free expression.

B. The Honor Code’s Speech Policies Are Incompatible with Haverford’s Commitment to Students’ Expressive Rights

Haverford cannot guarantee its students the right “to speak or write freely on any subject” while also approving policies that threaten to punish students for exercising that right.

Yet, even without the proposed amendments, the Honor Code contains highly problematic language that could be used to restrict speech otherwise protected by Haverford’s free speech promises. For example, the Code requires “discussion that is active, inclusive, responsible, and safe for all students” and prohibits “microaggressions” and “acts of discrimination and

⁶ HAVERFORD COLL., *Dean’s Office & Student Life, Policies & Student’s Guide*, <https://www.haverford.edu/deans-office-student-life/policies-students-guide> (last visited May 3, 2021); *see also* HAVERFORD COLL., EXPRESSIVE FREEDOM AND RESPONSIBILITY (rev. 2017),

<https://www.haverford.edu/sites/default/files/Office/Deans/Expressive-Freedom-and-Responsibility-Policy.pdf> (stating that Haverford “has consistently and actively affirmed all students’ rights to free inquiry, assembly, and expression in the broad context of its educational mission”).

⁷ *Boos v. Barry*, 485 U.S. 312, 318 (1988) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)).

harassment, including, but not limited to, acts of racism, sexism, homophobia, transphobia, classism, ableism, tokenism, [and] cultural insensitivity.”⁸ Such acts, within the context of a larger pattern of behavior, could certainly constitute harassment that falls outside of the protection of Haverford’s commitments to freedom of expression. However, by broadly prohibiting *any* speech that might, for example, be labeled irresponsible or culturally insensitive, the Honor Code can too easily be invoked to justify punishment of speech that merely offends others. This almost certainly has a detrimental chilling effect on legitimate speech, as students carefully avoid saying anything that might be perceived as violating these vague restrictions.

Resolution No. 3 goes even further, amending the Honor Code to extend its jurisdiction over “political discourse” and stating that “political beliefs [that] perpetuate discrimination” or are used to “justify disrespectful or discriminatory words” violate the code.⁹ The proposed amendments also openly discriminate against speech on the basis of viewpoint, specifically banning students from asserting “discrimination against a privileged identity.”¹⁰

While it is doubtlessly true that one’s political beliefs are not a defense to or justification for unprotected conduct, harassment, or threats, a prohibition on disapproved “political beliefs” is inconsistent with a commitment to freedom of expression. Haverford may institute objective and clear policies prohibiting harassment¹¹ and discriminatory conduct, but those policies cannot be defined so expansively as to encompass expression of disfavored political beliefs or any speech that offends many or even most others. Haverford can no more ban claims of “reverse-racism” than it could claims of racism, and the proposed policy goes so far as to prohibit even *defending* “disrespectful” words—let alone *using* words deemed “disrespectful”—if the speaker’s political views are disfavored. Freedom of expression protects “not only informed and responsible criticism,” but also the “freedom to speak foolishly and without moderation,” particularly in criticizing “public men and measures.”¹² Mandating silence in order to prevent “disrespect” is the wrong response to offensive speech. In an academic environment that truly supports open discourse, the appropriate response is not enforced silence, but *more* speech. Shutting down the conversation only deprives students of the opportunity to learn and grow from further and deeper discussion with their peers.

The net effect of the proposed policy would be to establish a civility code for political expression. Students will likely be further deterred from engaging in political discourse, fearful that any expression of dissenting political views could be caught up in the Honor Code’s broad sweep based on how that expression is subjectively perceived by others. The ambiguity about what speech will later be deemed insufficiently respectful leaves the political

⁸ SA CONST. art. III, § 3.04(b).

⁹ RESOLUTION No. 3 [SOCIAL CODE], *supra* note 3, at 5-6.

¹⁰ *Id.* at 5.

¹¹ See *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 650 (1999) (defining peer harassment in the educational setting as conduct that is “so severe, pervasive, and objectively offensive that it can be said to deprive the victim[] of access to the educational opportunities or benefits provided by the school.”).

¹² *Baumgartner v. United States*, 322 U.S. 665, 673-74 (1944).

speech of *every* student at Haverford—no matter their viewpoint—subject to punishment. Even if students trust their current leaders or administrators to fairly adjudicate civility codes, they cannot predict what pressures will come to bear on Haverford in the future, whether from students, administrators, legislators, or the public.

It takes little imagination to see how the proposed restraints on political discourse—especially when combined with the Honor Code’s current speech restrictions—would result in suppression of a broad range of speech on contentious political issues. For example, would students be punished for advocating for Palestinian rights and sharply criticizing Israel and Zionism, based on claims that their speech is polarizing or anti-Semitic?¹³ What about students who defend Israel and its posture toward Palestinians—could they face discipline if they are accused of Islamophobia? Would a student’s advocacy against abortion qualify as an Honor Code violation because others claim it is disrespectful or sexist?¹⁴

Or, to take a familiar recent example, what fate would await the anonymous Haverford student who publicly criticized the campus strike over racial injustice in an article that generated fervent condemnation by other students?¹⁵ One essay in rebuttal criticized the student’s purported claims of “reverse-racism” and accused them of “reproduc[ing] the very structures and systems that oppress and subjugate BIPOC by championing free speech over the actual lives of human beings” and “speaking against the needs and demands of the most marginalized in the Haverford Community.”¹⁶ This vividly illustrates how a student’s disagreement with the prevailing campus orthodoxy on sensitive political issues can be framed as “unsafe” speech that “perpetuates discrimination.” The strike critic’s speech—clearly protected by Haverford’s free speech policies—could paradoxically have no protection under the repressive Honor Code.

The proposed policy’s vague, subjective, and viewpoint-discriminatory restrictions on speech, combined with the emphasis on the “greater importance of impact over intent,” would eviscerate Haverford’s free speech promises. If the Honor Code is approved with this language—which is not merely aspirational, but provides for the punishment of students who

¹³ See, e.g., Press Release, FIRE, *FIRE, NCAC Call on Fordham to Recognize Students for Justice in Palestine* (Jan. 25, 2017), <https://www.thefire.org/fire-ncac-call-on-fordham-to-recognize-students-for-justice-in-palestine> (urging university to reverse its refusal to grant Students for Justice in Palestine official student group recognition based on the group’s viewpoint and fear that debate on the Israeli-Palestinian conflict will lead to “polarization”).

¹⁴ See, e.g., Katlyn Patton, *University of Northern Iowa administration must correct its student government’s refusal to recognize ‘hate group’ Students for Life*, FIRE (Oct. 16, 2020), <https://www.thefire.org/university-of-northern-iowa-administration-must-correct-its-student-governments-refusal-to-recognize-hate-group-students-for-life> (calling on university to overturn student government’s refusal to recognize a pro-life group on the basis that the group’s speech was “hateful” and “infring[ed] on human rights”).

¹⁵ Publius, *Why I Oppose the Strike*, POL. SCI. AT HAVERFORD COLL. (Nov. 2, 2020), <https://pols.sites.haverford.edu/studentvoices/why-i-oppose-the-strike>.

¹⁶ DisruptHaverford, *Response to a Concerned Group of Students*, POL. SCI. AT HAVERFORD COLL. (Nov. 3, 2020), <https://pols.sites.haverford.edu/studentvoices/response-to-a-concerned-group-of-students>.

fail to adhere to these ill-defined standards—Haverford cannot credibly continue to advertise itself as a venue for “open-minded and free inquiry.”¹⁷

Further, it is of no moment that the current proposal enjoys broad support. The principle of free speech does not exist only to protect speech approved by the majority. After all, speech which is uncontroversial or enjoys the community’s approval hardly needs protection. Rather, freedom of speech is a bulwark against the suppression of dissent and speech that angers or offends others. Therefore, a majority of students cannot be permitted to vote away the free speech rights of the minority, and vice versa.¹⁸ Haverford must not renege on its promise of students’ “freedom to make their own choice regarding controversial issues.”¹⁹

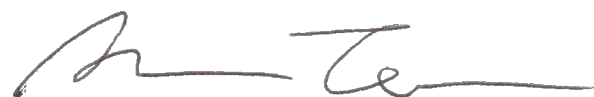
III. Haverford Must Ensure the Honor Code Does Not Restrict Protected Speech

If the Honor Code is ratified and approved by your administration, it will authorize the wholesale suppression of unpopular political opinions. The Haverford administration and student government have every right to exercise their own freedom of speech to *encourage* respectful discourse and criticize views with which they disagree. However, Haverford’s laudable commitments to free expression preclude it from punishing protected speech, whether directly or by delegating that authority to a student-run institution.

FIRE calls on your administration to reject the adoption of Resolution No. 3 and to work to revise the Honor Code to reflect Haverford’s clear promises of free expression. FIRE would be pleased to work with Haverford’s students and administration to accomplish that goal.

We respectfully request receipt of a response to this letter no later than the close of business on May 21, 2021.

Sincerely,



Aaron Terr

Program Officer, Individual Rights Defense Program and Public Records

¹⁷ *Policies & Student’s Guide*, *supra* note 5.

¹⁸ As the vote on Resolution No. 3 required a quorum of only 66% of the student population living at Haverford, it is not clear that the resolution was even approved by a majority of all Haverford students. *See* SA CONST. art. IV § 4.02(h)(i).

¹⁹ *Id.*