



FIRE

Foundation for Individual
Rights and Expression

September 12, 2022

Chancellor Robert J. Jones
University of Illinois at Urbana-Champaign
Office of the Chancellor
517 Swanlund Administration Building
601 E John Street
Champaign, Illinois 61820

Sent via U.S. Mail and Electronic Mail (chancellor@illinois.edu)

Dear Chancellor Jones:

The Foundation for Individual Rights and Expression (FIRE) is a nonpartisan nonprofit dedicated to defending freedom of speech, expression, and conscience, and other individual rights on campus. FIRE is concerned by the University of Illinois at Urbana-Champaign's (UIUC's) modification of its promotion and tenure standards that added the requirement that after the 2024-25 academic year, faculty must discuss their prior contributions and plans for contributions to diversity, equity, and inclusion (DEI).

We understand universities have legitimate interests in promoting inclusive and enriching campus environments, including for students or faculty from backgrounds traditionally underrepresented in academia. However, UIUC's recent modification raises concerns that the new standards will compel faculty to voice or demonstrate commitments to prescribed views on contested questions of politics or morality to avoid adverse consequences in tenure and promotion review. Such an imperative amounts to viewpoint discrimination and compelled speech proscribed by the First Amendment, threatening to cast a pall of orthodoxy over the academic environment.

I. UIUC Revises Promotion and Tenure Policy to Include DEI Criteria

Earlier this year, UIUC modified its evaluation criteria of a faculty candidate's performance and eligibility for promotion and tenure by adding the option—and eventual requirement—for faculty to “provide (in one page or less) a personal statement detailing their specific individual and/or collaborative activities aimed at supporting diversity, equity, and inclusion, as well as access ... includ[ing] a discussion of the context, importance, and impact of their contributions

along with their future plans for contributions.”¹ UIUC also added that an evaluation of the candidate’s teaching, service, and research—the three domains evaluated—must “consider the candidate’s diversity, equity, and inclusion activities and their impact.”² It is expected that all faculty “make contributions to diversity, equity, and inclusion in at least one of the three domains” and “within each domain, activities can be at the individual, programmatic, or institutional level.”³

UIUC has also produced a guiding document explaining its interpretation of DEI and listing example activities that would meet the new requirement.⁴ The guide sets forth the university’s dedication to “providing access and opportunity for all students, faculty, and staff, regardless of race, ethnicity, gender identity, sexual orientation, socioeconomic background, language, culture, national origin, religious or spiritual commitments, age, and (dis)ability status.”⁵ The guide further explains the university’s pursuit of “equitable practices to acknowledge and address current, as well as historical, structural inequities that advantage some and disadvantage others,” as well as its pursuit of inclusivity “through intentional, ongoing efforts to ensure all members of [the] campus community are respected, enjoy a sense of belonging, and are able to participate and achieve to their full potential.”⁶

Examples of activities that may fulfill the DEI standards include (verbatim):⁷

- An English professor organizes an annual summer workshop on the work of transgender authors
- An environmental studies faculty engages with council members of tribal groups in the Southwest to co-develop multiple environmental impact studies
- An agriculture professor integrates readings and discussion on themes of equity and inclusion within a course on mental health
- A history professor creates a student advisory panel to provide input into the representation of diverse perspectives in courses department wide
- A classics professor participates in an anti-racist curriculum discussion group
- A group of faculty works with the local refugee welcome center to establish a project with an effort to support recently arrived refugees learn to start business in the community
- A political scientist embeds DEI in their professional organization’s mission, programming, and fundraising

¹ *Communication 9 – Promotion and Tenure*, UNIV. ILL. AT URBANA-CHAMPAIGN, <https://uofi.app.box.com/s/9d7miwmgcvyk4v4xpjgfgdua83jauhhs/file/936591220113> (last visited Aug. 31, 2022).

² *Id.*

³ *Id.*

⁴ *Communication 9 – Guide to Diversity, Equity, and Inclusion (DEI) Work in the Promotion and Tenure Process*, UNIV. ILL. AT URBANA-CHAMPAIGN, <https://uofi.app.box.com/s/9d7miwmgcvyk4v4xpjgfgdua83jauhhs/file/936183499479> (last visited Aug. 31, 2022).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

When these modifications went into effect in March of 2022, they included a note explaining that the personal statement on DEI activities “will be optional for candidates through academic year 2024-2025, after which the Provost will move to make it a requirement,” and that during the introductory period “a candidate who chooses not to prepare the statement faces no penalty or negative inference from this decision.”⁸ This suggests faculty who fail to prepare the statement after the introductory period *will* face adverse employment consequences.

II. The First Amendment Prohibits UIUC from Requiring Faculty to Demonstrate Commitment to Specific Ideological Views

It has long been settled law that the First Amendment is binding on public universities like the University of Illinois.⁹ Accordingly, the decisions and actions of a public university—including the maintenance of policies implicating student and faculty expression¹⁰—must be consistent with the First Amendment. When government entities wish to “disseminate an ideology, no matter how acceptable to some, such interest cannot outweigh an individual’s First Amendment right to avoid becoming the courier for such message.”¹¹

This principle applies with particular force at public institutions of higher education, as free speech is the “lifeblood of academic freedom.”¹² Universities “occupy a special niche in our constitutional tradition,”¹³ and academic freedom is an area “in which government should be extremely reticent to tread.”¹⁴ As the Supreme Court explained in overturning legal barriers to faculty members with assertedly “seditious” views:¹⁵

Our nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. . . . The nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection.

⁸ *Id.*

⁹ *Healy v. James*, 408 U.S. 169, 180 (1972).

¹⁰ *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

¹¹ *Wooley v. Maryland*, 430 U.S. 705, 717 (1977); *see also Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. Of Bos.*, 515 U.S. 557, 573 (1995) (government “may not compel affirmance of belief with which the speaker disagrees”).

¹² *DeJohn v. Temple Univ.*, 537 F.3d 301, 314 (3rd Cir. 2008); *see also Rosenberger v. Rectors of the Univ. of Va.*, 515 U.S. 819, 836 (1995) (“For the University, by regulation, to cast disapproval on particular viewpoint of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation’s intellectual life, its college and university campuses.”).

¹³ *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003).

¹⁴ *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

¹⁵ *Keyishian v. Bd. Of Regents*, 385 U.S. 589, 603 (1967) (cleaned up).

UIUC therefore may not condition faculty employment or advancement on pledging allegiance to a contested set of ideological beliefs or on pursuing activism or other activities to promote those beliefs. Yet these new DEI standards, in practice, transgress First Amendment principles by requiring faculty members to do precisely that: embrace university-approved perspectives on disputed political and ideological issues and embed those beliefs in their academic activities to be eligible for promotion and tenure. Such a litmus test impinges on faculty members' scholarly autonomy and freedom to dissent from the prevailing consensus on issues of public or academic concern without suffering diminished career prospects.

Even if unintentional, impermissible viewpoint-based outcomes are unfortunately easy to imagine. For example, UIUC presumably would recognize as a DEI contribution rigorous research that shows benefits of affirmative action, but it is far from clear—particularly given the university's example list of acceptable DEI contributions—that the university would also credit published research concluding affirmative action causes more harm than good. Likewise, conservative professors—believing that their views are not widely represented at UIUC—might argue that attending the Conservative Political Action Conference (CPAC) should be rewarded under the proposed criterion as a professional development activity that contributes to the “diversity of backgrounds, perspectives, and experiences” that UIUC says “enriches campus conversations in and out of the classroom.”¹⁶ However, such perspectives are not represented in UIUC's examples of activities, and evaluators of DEI statements may be loath to credit them. Rather, all of the example activities lean in one ideological direction, which reinforces the conception that only one orthodoxy is expected by faculty.

FIRE would not object to UIUC recognizing faculty members' voluntarily chosen and relevant teaching, research, and service activities and accomplishments that might happen to be characterized as DEI contributions. But even if the new DEI requirement will give faculty some leeway in choosing activities to fulfill it, the requirement will still threaten their academic freedom. It will coerce faculty whose academic interests may lie elsewhere—but who wish to maximize their chances of obtaining tenure or promotion—to substantially reorient their scholarly pursuits or service activities to conform with UIUC's ideological preferences and help fulfill social goals the university deems desirable. The requirement will even reach beyond the classroom and laboratory, recognizing “[o]ther efforts to foster DEI on campus and/or in one's field.”¹⁷ Selectively rewarding faculty who engage in DEI-focused teaching, research, or activism, and disadvantaging those who do not, is inconsistent with UIUC's obligation to honor its faculty's academic freedom.

Moreover, UIUC's note that candidates who do not prepare a DEI personal statement through the 2024-25 academic year will not face penalty suggests that following that year, UIUC will impermissibly penalize faculty who fail to affirm their devotion to DEI values in their personal statement and to demonstrate that commitment across a range of activities.

However strongly UIUC may believe in certain tenets of DEI, it has no authority to force its faculty to take any particular side of this prominent debate. Yet the new standards will

¹⁶ *Communication 9 – Guide to Diversity, Equity, and Inclusion (DEI) Work in the Promotion and Tenure Process*, *supra* note 4.

¹⁷ *Id.*

establish a means to discriminate against faculty who disagree with—or whose track record reflects insufficient dedication to—UIUC’s positions on DEI. FIRE is concerned that faculty with minority, dissenting, or unpopular views on the subject will face a marked disadvantage in seeking tenure and promotion.

To further illustrate our concern by analogy, we trust UIUC would readily recognize the problem with evaluating faculty based on affirmation of the importance of “patriotism,” “racial colorblindness,” or “individualism,” or their demonstration of activities that promote these values. Just as with DEI, these criteria entail inherently political or moral viewpoint-dependent assessments that impose negative consequences on faculty with personal or professional beliefs and commitments that differ from those of their colleagues or the university. This would infringe faculty members’ academic freedom and liberty to follow the dictates of their own conscience.

III. Conclusion

FIRE urges UIUC to consider the consequences that DEI tenure and promotion criteria will have on faculty whose views, pedagogical choices, or associations are unpopular or simply out-of-step with the majority on or off campus. UIUC should judge those faculty based on the quality of their academic work, not their degree of conformity to certain ideological tenets. To protect academic freedom, honor faculty members’ individuality, and meet the university’s binding legal obligations, FIRE calls on UIUC to eliminate or revise the forthcoming mandate.

We appreciate your time and attention to our concerns. We respectfully request a response to this letter no later than September 26, 2022.

Sincerely,



Haley Gluhanich
Program Officer, Campus Rights Advocacy

Cc: Timothy L. Killeen, President, University of Illinois System
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