



# FIRE

Foundation for Individual  
Rights and Expression

December 15, 2023

Minouche Shafik  
Columbia University  
Office of the President  
202 Low Library  
535 W. 116 St., MC 4309  
New York, New York 10027

**URGENT**

*Sent via U.S. Mail and Electronic Mail (officeofthepresident@columbia.edu)*

Dear President Shafik:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned by Columbia University's announcement that calls for genocide violate university policy<sup>2</sup> and that language "that promotes or supports violence in any manner" is prohibited.<sup>3</sup> At a moment of heightened tension surrounding the ongoing conflict in the Middle East and widespread calls for censorship of both pro-Israeli and pro-Palestinian voices, it has never been more vital for an institution with free speech commitments as laudable as Columbia's to stand by them and to avoid punishing protected speech or eliminating opportunities for spontaneous political expression on campus. We therefore urge Columbia to stand by its commitments to protect student speech.<sup>4</sup>

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<sup>1</sup> For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at [thefire.org](https://thefire.org).

<sup>2</sup> Columbia University (@Columbia), X, (Dec. 7, 2023, 8:12 PM), <https://twitter.com/Columbia/status/1732931212568641545> [<https://perma.cc/3GLZ-AG78>]. The recitation here reflects our understanding of the pertinent facts, which is based on public information. We appreciate that you may have additional information to offer and invite you to share it with us.

<sup>3</sup> *Id.*

<sup>4</sup> *Rules of University Conduct*, §440. Affirmative Statement, COLUMBIA UNIV. <https://universitypolicies.columbia.edu/content/rules-university-conduct> [<https://perma.cc/F69F-57RC>]. While Columbia is a private university and thus is not bound by the First Amendment, its commitments to

We acknowledge our request follows widespread criticism of congressional testimony in which the presidents of the University of Pennsylvania, Harvard University, and the Massachusetts Institute of Technology all correctly articulated the correct legal standard—that whether speech construable as calling for genocide of Jews would violate their institution’s policies is “a context-dependent decision.”<sup>5</sup> In response to intense criticism of this testimony, Columbia issued a statement addressing its “reaction to calls for genocide against Jews.”<sup>6</sup> That statement declared that Columbia “supports free speech and expression, but our rules of conduct do not allow or condone language that promotes or supports violence in any manner.”<sup>7</sup> It further stated that “[c]alls for genocide against the Jewish community or any other group are abhorrent, inconsistent with our values and against our rules.”<sup>8</sup>

But a blanket declaration that political slogans or the abstract advocacy of violence represent unprotected speech contradicts Columbia’s longstanding stated commitment to upholding free speech rights.<sup>9</sup> That commitment promises students that the rules of university conduct “are intended to ensure that all members of our community may engage in our cherished traditions of free expression and open debate,” and rightfully notes the university “has a special role in fostering free inquiry.”<sup>10</sup> Campus leaders cannot reconcile trying to censor their way to a more tolerant and welcoming campus with maintaining these strong promises.<sup>11</sup>

Schools like Columbia must address, to be sure, any “call for genocide” that falls into one of the narrowly defined categories of unprotected speech. Conversely, it may please some critics to punish generalized calls for violence that do not constitute true threats,<sup>12</sup> incitement,<sup>13</sup> or discriminatory harassment<sup>14</sup> (or that do not fall into some other unprotected category)—but it

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free expression mean that First Amendment jurisprudence provides guidance for the rights Columbia students and faculty can expect to enjoy.

<sup>5</sup> Susan Snyder, Ximena Conde & Joseph N. DiStefano, *Penn President Liz Magill is facing criticism from Gov. Shapiro, White House and others for comments at a congressional hearing on antisemitism*, PHILA. INQUIRER (updated Dec. 6, 2023, 8:08 PM), <https://www.inquirer.com/education/upenn-liz-magill-congress-hearing-antisemitism-20231206.html>.

<sup>6</sup> Columbia, *supra* note 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *The Rules of University Conduct*, *supra* note 4. This policy statement also echoes the principles set forth by the free speech policy statement produced by the Committee on Freedom of Expression at the University of Chicago.

<sup>10</sup> *Id.*

<sup>11</sup> Zach Greenberg, *A world without hate speech*, FIRE (Oct. 12, 2017), <https://www.thefire.org/news/world-without-hate-speech>.

<sup>12</sup> A “true threat” is a statement through which “the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003).

<sup>13</sup> Speech amounts to incitement only where the speech is “directed to inciting or producing imminent lawless action and ... likely to incite or produce such action.” *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

<sup>14</sup> In order for conduct (including expression) to constitute actionable harassment, it must be (1) unwelcome, (2) discriminatory on the basis of gender or another protected status, and (30) “so severe, pervasive, and

will do nothing to address the root causes of campus anti-Semitism. Columbia should instead inform its campus community that robustly protecting political speech—as is vitally needed in times of intense disagreement over global affairs—must include allowing rhetorical hyperbole, conceptual endorsements of violence,<sup>15</sup> or even assertions of the moral propriety or necessity for a resort to force or violence.”<sup>16</sup> And it can explain how this protection balances fundamental rights to discuss public issues with the obligation to ensure campus safety.

If Columbia chooses to water down its free speech commitments to exempt any calls for genocide from its scope of protected speech, it opens the door to more censorship of a vast array of views on campus, to the detriment of robust academic debate and the ability of opposing activists to find common ground. More importantly, the vagueness of making “calls for genocide” prohibited speech means members of the campus community cannot know prospectively which speech is sanctionable. Examples of problematic applications of such a vague standard are not difficult to conceive: Are pro-abortion protesters on campus calling for the genocide of the unborn? Would a faculty member teaching the gender binary be advocating for genocide of trans people? Is an Israeli Defense Forces officer defending Israel’s military response in Gaza advocating Palestinian genocide? These extrapolations are not fanciful but rather are frequently made on campus, and they reinforce how impossible it would be to implement a “calls for genocide” standard in practice. Students and faculty will face having to choose between speaking at risk of investigation and punishment or self-censoring. This will lead many to keep quiet, which will gravely undermine Columbia’s mission of fulfilling its “special role in fostering free inquiry.”

We request a substantive response to this letter no later than Friday, December 29.

Sincerely,



Graham Piro  
Program Officer, Campus Rights Advocacy

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objectively offensive that it can be said to deprive the victim[] of access to the educational opportunities or benefits provided by the school.” *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999).

<sup>15</sup> *Watts v. United States*, 394 U.S. 705, 708 (1969).

<sup>16</sup> *Noto v. United States*, 367 U.S. 290, 297-98 (1961).