



FIRE

Foundation for Individual
Rights and Expression

December 7, 2023

M. Elizabeth Magill
Office of the President
University of Pennsylvania
1 College Hall, Rm 100
Philadelphia, Pennsylvania 19104-6380

Sent via U.S. Mail and Electronic Mail (president@upenn.edu)

Dear President Magill:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is deeply concerned by your announcement last night that the University of Pennsylvania will revise its free speech promises to apparently punish expression protected by First Amendment standards. Weakening Penn's laudable commitment to free speech will inflame existing campus tension around the Israeli-Palestinian conflict and dimmish Penn's core mission of knowledge-building and truth seeking. Fulfilling that mission requires the maximally open climate for speech and debate to which Penn's policies already commit. FIRE urges Penn in the strongest possible terms to stand by its free speech commitment.

After your congressional testimony where you correctly stated² that whether individuals calling for genocide of Jewish people violates Penn's rules is "a context-dependent decision,"³

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

² See Nico Perrino, *FIRE to Congress, university presidents: Don't expand censorship. End it.*, FIRE (Dec. 6, 2023), <https://www.thefire.org/news/fire-congress-university-presidents-dont-expand-censorship-end-it>; Eugene Volokh, *Should Universities Ban "Advocacy of Genocide"?*, REASON: VOLOKH CONSPIRACY (Dec. 6, 2023, 4:36 PM), <https://reason.com/volokh/2023/12/06/should-universities-ban-advocacy-of-genocide> ("There's no 'advocacy of genocide' exception to the First Amendment, or to the contractual promises of student free speech that many private universities rightly implement."); see also Will Creeley, *As campuses reel, a reminder of the First Amendment's boundaries*, FIRE (Nov. 3, 2023), <https://www.thefire.org/news/campuses-reel-reminder-first-amendments-boundaries>.

³ 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>.

you announced, “Penn’s policies have been guided by the Constitution and the law,” but now, “these policies need to be clarified and evaluated,” a process you indicated would commence “immediately.”⁴

Penn’s longstanding stated commitment to upholding free speech rights consistent with First Amendment principles needs no revision. University leaders cannot censor their way into a more tolerant and welcoming campus.⁵ Punishing calls for violence that are not true threats (or otherwise unprotected) may please some lawmakers, but it will do nothing to address anti-Semitism on campus. Penn wisely cautioned against misguided efforts to punish hateful but protected speech, explaining that “[h]ate speech is very hard to define in a way that would allow institutions to address it. ... Universities can invest their efforts and resources in educating their members and in creating spaces and contexts for productive dialogue, but they cannot legitimately punish members—students, staff, and faculty—who choose not to participate in those, or who profess bigoted and other hateful views.”⁶

As a leading Ivy League university, Penn is uniquely situated to counter hateful speech with education instead of censorship. Using your institution’s profound power to enlighten is a far better alternative than attempting to repress hate by punishing protected student and faculty speech. Penn can inform its campus community how the robust protection for political speech—of vital necessity in times of intense disagreement on global affairs—encompasses rhetorical hyperbole, the conceptual endorsement of violence,⁷ or assertions of the “moral propriety or even moral necessity for a resort to force or violence.”⁸ And it can explain how this protection balances the fundamental right to discuss public issues with universities’ obligation to ensure campus safety.

If Penn chooses to water down its free speech commitments to exempt calls for genocide from its scope of protected speech, it will lead only to more censorship of a limitless array of views on campus, to the detriment of tolerance, robust academic debate, and the ability of opposing activists to find compromise. FIRE urges Penn to instead stand up for free speech by holding fast to its laudable commitment to First Amendment standards, and we would be pleased to help Penn educate its campus community on the value of that commitment. We request a substantive response to this letter no later than the close of business on December 21, 2023.

Sincerely,



Zachary Greenberg
Senior Program Officer, Campus Rights Advocacy

⁴ *Video message from President Magill on Congressional Hearing*, UNIV. OF PENN. OFFICE OF THE PRESIDENT, <https://president.upenn.edu/content/video-message-president-magill-congressional-hearing> [<https://perma.cc/U35N-SSGG>].

⁵ Zach Greenberg, *A world without hate speech*, FIRE (Oct. 12, 2017), <https://www.thefire.org/news/world-without-hate-speech>.

⁶ *Free Speech FAQs*, UNIV. OF PENN., <https://supporting-our-community.upenn.edu/free-speech-faqs> [<https://perma.cc/58PS-TS62>].

⁷ *Watts v. United States*, 394 U.S. 705, 708 (1969).

⁸ *Noto v. United States*, 367 U.S. 290, 297–98 (1961).