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Ms. Laura Rosenbury  
President of Barnard College  
3009 Broadway  
New York, NY 10027

Dear President Rosenbury:

We write in support of a coalition of faculty members from the Women's, Gender, and Sexuality Studies Department (WGSS) of Barnard College to object strenuously to a recently promulgated college policy regarding the content of material published on departmental websites. The recently announced policy requires departments to submit the content of their websites for review and approval by the Office of the Provost prior to posting such content. This requirement imposes a "prior restraint" in violation of fundamental free speech principles and in a manner incompatible with a sound understanding of "academic freedom." We, therefore, suggest an alternative policy. We urge the College to allow academic departments to curate their websites as they see fit subject to a requirement that the websites identify the author or authors whose views are being published and that the websites employ disclaimers, where needed, to distinguish the views of faculty and students from those of the College.

Our assertion that the newly imposed policy violates principles of academic freedom rests upon several conclusions: first, that the central tenet of academic freedom holds that donors, politicians and administrators must not be permitted to intrude into the province of scholarly discourse and must not dictate the content of academic speech; second, that this principle is not limited to the classroom and must be extended to departmental websites which perform important pedagogical functions and provide significant opportunities for scholarly discourse; third, that this principle should also extend to protect scholars from retaliation or punishment based upon their personal opinions and political associations; fourth, that the intrusions into academic freedom, in this case, are exacerbated by the imposition of vague standards governing what will or will not be permitted on departmental websites; and fifth, that at this time, when academic freedom is under attack, it is vital that the academic community stand together in support of its most fundamental principles. Each of these conclusions will be amplified below.

## I.

In the early twentieth century the concept of academic freedom emerged in this country as an important protection of scholarly discourse. With the development and growth of prominent universities, scholars came to fear that a variety of powerful forces might intrude into the academic domain and seek to dictate the content of scholarship. In response to these concerns, the American Association of University Professors (AAUP) was created in 1915 to ensure that scholars have the “freedom to perform honestly and according to their own consciences the distinctive and important function which the nature of the profession lays upon them... and to impart the results of their own and of their fellow-specialists’ investigations and reflections, both to students and the general public without fear or favor.” Not only must scholars be able to pursue their research without interference by powerful interests; they must also be able to communicate to the general public the understandings developed from this research. Universities are meant to provide an institutional site for the unfettered cultivation of ideas that are to be communicated within the academy and to the outside world, as well. In this way, the social value of scholarly research can be nurtured and realized as those ideas originating in the academy enter into the public marketplace of ideas and influence democratic discourse.

The fundamental principles of academic freedom rest upon concerns that scholarship might be corrupted by external pressures on public universities from state legislatures demanding political conformity. Similar concerns also arise in private institutions. The AAUP’s founding principles of academic freedom focus specifically on the dangers presented by constrictive action from Boards of Trustees at private institutions: “[T]he relationship of professor to trustees may be compared to that between judges of the federal courts and the executive who appoints them. University teachers should be understood to be, with respect to the conclusions reached and expressed by them no more subject to the control of the trustees, than are judges subject to the president with respect to their decisions; while of course for the same reason, trustees are no more to be held responsible for, or to be presumed to agree with, the opinions or utterances of professors, than the president can be assumed to approve of all the legal reasonings of the courts.” The principles of academic freedom raise similar concerns about outside influence from wealthy donors and large corporations. All of these threats may be perceived as incursions into independent intellectual inquiry and discourse.

## II.

It is well recognized that the concept of academic freedom embraces research, publishing and teaching. It is also the case that the protections of academic freedom are not limited to the classrooms, laboratories or research libraries. They extend, as well, to any venue where scholars seek to convey the product of their academic research or where they seek to impart their specialized knowledge to students or the public at large.

Departmental websites are one such venue. While departmental websites perform administrative functions by informing students about the curriculum, course offerings, and academic requirements, they also serve important scholarly and pedagogical functions. They provide opportunities for academics to communicate regarding the application of their research to the events of the day via blogs, reports, statements and short written commentaries. And they

allow faculty to pursue pedagogical interests in providing students and the public with bibliographic materials and academic publications that will better inform readers on the subject matter under discussion. In fact, the WGSS website performed just such a pedagogical function in a posting last month regarding the Israeli-Palestinian conflict only to have Barnard administrators insist that the posting must be withdrawn, presumably because it criticized policies and practices of the Israeli government.

One of the ways in which the College offers students a wide-ranging education is by providing communications of different types on different parts of the websites. For example, the library offers pedagogical online book exhibits based on the expertise of the college librarians. Academic centers like the Barnard Center for Research on Women (BCRW) publish the results of research projects by faculty and students. The BCRW also publishes a peer-reviewed journal, a blog with contributions by students and scholars and videos that provide educational access to scholars and the broader public. The faculty describe their own research on college sites, including faculty pages, and it is important that these descriptions accurately reflect faculty understandings of their own research. Offering students differing analyses of social relations and current events through different college websites is crucial for students who hope to understand a complex world as well as diverse academic perspectives that might be called upon to explain it.

### III.

Moreover, the protections of academic freedom reach beyond pedagogy and scholarship. They extend to protecting the extramural expression of faculty members and they bar college administrators from retaliating against faculty on the basis of the faculty member's political views. Indeed, the initial recognition of the need for academic freedom first developed in response to several controversial efforts to punish scholars for publicly taking political positions in ways that offended donors or administrators. In the 1890s, E.A. Ross, a respected economist at Stanford University, was ultimately terminated from his faculty position for expressing a variety of political views that offended the widow of Leland Stanford. And, during World War I, a Columbia University professor of psychology was fired for urging members of Congress to oppose the military draft.

Episodes of political retribution of this sort recurred dramatically in the 1950s during the McCarthy era. Consequently, in 1957 the Supreme Court was called upon to consider a state investigation into claims of "subversive activities" where a professor was required to answer questions about the content of lectures he presented to students in the classroom and was also required to testify about his personal beliefs and political associations. For refusing to answer inquiries into these matters, he was sanctioned.

In *Sweezy v. New Hampshire*, 354 U.S. 234 (1957), the Supreme Court reversed the sanctions concluding that the state's inquiry was unconstitutional. In an opinion joined by Justices Black, Douglas and Brennan, Chief Justice Warren found that the state's inquiry violated principles of academic freedom as well as rights of political expression. Recognizing a parity between free speech and academic freedom principles the Chief Justice wrote: "The essentiality of freedom in the community of American universities is almost self-evident .... Teachers and students must always remain free to inquire, to study and to evaluate, to gain new

maturity and understanding; otherwise, our civilization will stagnate and die .... Equally manifest as a fundamental principle of a democratic society is political freedom of the individual.” In a concurring opinion Justices Frankfurter and Harlan joined in upholding the important academic freedom principles that were at stake in the case. They observed: “It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation.” The *Sweezy* opinions demonstrated the convergent nature of academic freedom and political expression. A lesson drawn from that case suggests that academic freedom principles can be found to protect not only classroom presentations but the capacity of scholars to maintain their own views and political associations free from recriminations. Such an interpretation of academic freedom honors the historical origins of the concept.

#### IV.

In announcing the new departmental website policy in a November 3 email, the Barnard administration purported to explain the need for such a change. The email claimed that the departmental websites “are in many cases outdated, factually incorrect, not easily navigated, and burdensome to maintain without centralized editorial and technical support.” This new policy requiring departments to submit website content to the Provost’s Office for review and approval was, therefore, defended as necessary to promote “more effective communication...with students and the community.” While the logistical reasons for the policy may have some merit, it is clear that the new policy enables the college to control and censor the academic content of these sites. We remain concerned that this newly asserted authority to review the content of departmental websites opens the door to this or any other college administration now or in the future to curtail robust academic discourse.

It is axiomatic in free speech cases that, where government regulators impose “prior restraints” or otherwise engage in content discrimination, such regulation will be impermissible unless the government can show that there are no “less restrictive alternatives” to accomplish its legitimate goals. *See Sable Communications v. FCC*, 492 U.S. 115, 126 (1989). A similar standard should apply here where academic freedom principles are implicated. Accordingly, if the College is concerned that statements on the websites might be misinterpreted as reflecting the views of the College, there are solutions short of pre-emptive review and censorship to address that concern. Departmental websites could contain disclaimers that make it clear that the views expressed on the websites are not those of the College but simply reflect the opinions of the faculty identified with the statement or of the department itself.

Instead of offering such “less restrictive” approaches, subsequent College meetings where the new policy was presented became a source of heightened faculty concerns. In meetings with the WGSS faculty, the College Faculty, Governance, and Planning Committee, and the College’s Department Chairs, administrators announced that no “political” expressions of any kind will henceforth be permitted on departmental websites. Yet it remains unclear what the College regards as a “political” statement. If by “political” the College seeks to restrict partisan electoral politics from the website, such a limited restriction might be regarded as reasonable. But, if the prohibition against “political” expression is intended to restrict any statement of an ideological nature, such a limitation is obviously excessive. Political ideology commonly enters into academic discourse and does so in a variety of ways and at various levels

of nuance. And if a broad definition of the term “political” is employed as a standard for distinguishing between permissible and impermissible statements on departmental websites, such a regime will inevitably serve as a license for censorship. In this respect, the standard suffers from two primary vices of vague regulations directed at expression. First, it confers excessive discretion upon the officials called upon to enforce the standard. Second, it provides inadequate notice to the parties that must comply with the standard in determining what speech is permitted and what is not permitted.

## V.

Academic freedom is currently under attack. Donors seek to use the power of the purse to dictate the content of academic discourse and campus speech. Politicians seek to ridicule good faith efforts by university administrators to strike an appropriate balance between free speech principles and the need to create a safe environment for students and scholars. In retreat, administrators, in some circumstances, now yield to political pressure and donor-influence and seek to curtail the free and open exchange of ideas in ways that violate academic freedom principles.

In a 2002 public letter entitled “Defending the Idea of the University in Troubled Times,” former Provost and Dean of Faculties at Columbia University, Jonathan Cole, laid out the importance of academic freedom principles and how they apply to both public and private institutions. He wrote: “When the national toleration of dissent and discourse is at its lowest ebb, the voices of universities must be heard, especially the voices of those who have been given special protection to speak without fear of reprisal – the tenured faculty.” He spoke to the need to defend academic freedom and freedom of expression because of their unique role in a democratic society, and he argued that protecting this vital responsibility places moral and societal claims on private institutions such as Columbia University, as well as on public institutions where speech on campus is protected by the First Amendment. As Cole observed, “[u]niversities are unique institutions in which unfettered speech is not only tolerated but also encouraged.... What is at issue here is perhaps less about ‘rights’ than about the right thing to do in responding as individuals to the ideas of others, and in responding as an institution of higher education endowed with power, not unlike the government, to reward and punish members of the community.” Crucially too, Cole noted that “[t]ruth rests less in product and more in process.” And the process by which scholars undertake to seek truth is through the free exchange of ideas, scholarly debate, peer review, academic publication, and further contestation.

In the end, it is important to make clear what we are and are not saying. We are not saying that academic scholarship and the views of scholars are above reproach and immune from criticism. We are saying that those who disagree with the views expressed by the faculty should have every right to explain why those views are misguided or erroneous. But there is a difference between criticism and suppression. Some may find the statement that WGSS issued on its website last month to be objectionable. But, if so, the critics should explain the basis for the objection rather than resort to censorship. Under our system of free expression, the appropriate response to objectionable ideas is “more speech” to explain why the ideas are objectionable or erroneous. The appropriate response is not and cannot be coerced silence. Yet that seems to be the response embodied in the new policy governing departmental websites.

This is unfortunate. For now, more than ever, is a time when the college community must come together in defense of academic freedom.

We are happy to discuss these issues with you, at your convenience.

Sincerely,

//s//

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