

Comments of Cornellians United for Free Speech on the October 8 Interim Report on Institutional Voice

Cornellians United for Free Speech hereby submits its comments on the [interim report](#). While we deeply appreciate the hard work of the Committee to date, we urge the Committee to expand the scope of its final report and address a number of pressing institutional voice issues left unaddressed to date.

Cornellians United is a group of students, faculty and alumni who care deeply about fostering free expression on the Cornell campus, academic freedom and due process. We have long advocated for the adoption of the [Kalven Report](#) and welcome the work of this committee as a step in the right direction.

The Nature of the Problem

As indicated by survey data conducted by the Foundation for Individual Rights and Expression (FIRE), higher education is currently experiencing a high degree of self censorship and a lack of robust debate on the issues of the day. One could think of a spectrum for classifying university campus culture. On one end would be a campus with no self-censorship and earnest yet civil discussion of every possible topic without fear of straying from political correctness. Students at this end of the spectrum feel free to think for themselves and look forward to honing their views by engaging with a diversity of viewpoints.

At the other end of the spectrum is a censorious campus with a large litany of orthodox views where students, faculty or staff fear cancellation for expressing any thought that veers from what the institution has approved. Community members are trained, starting with their onboarding process, not to question authority or share their own beliefs.

Cornell was long associated with a position on the spectrum near the former end, but each year over the past 20 years it has shifted more and more toward the latter end. The nationwide movement to adopt the Kalven Report or something similar was seen as a good vehicle for shifting a campus climate more toward the free expression end of the spectrum.

To serve this valuable goal, the Committee's final report should explain, perhaps with more passion, the ultimate goal of this policy shift. One hopes that as the scope of institutional statements are drastically reduced, individual students, faculty and staff will give voice to a wide variety of views on the issues of the day.

The Final Report should inspire every member of the Cornell community to view every action, policy and pronouncement with the goal of maximizing freedom on campus. As noted on page 2 of the interim report,

“On matters beyond the scope of the university’s mission, the individual voices of the university’s constituencies—faculty, staff, students, alumni, and families—rise to the surface as they appropriately exercise their freedom to speak where they deem it necessary and appropriate. A robust exchange of ideas and opinions through free expression and academic freedom is the best way to ensure open dialogue and mutual respect within the university community.”

Simply put, on most matters, Cornellians do not need to be told what to think and should be left to express their own thoughts. As the Kalven Report explained, “By design and by effect, it is the institution which creates discontent with the existing social arrangements and proposes new ones. In brief, a good university, like Socrates, will be upsetting.”

A major problem of many universities, including Cornell under prior administrations, is that the official pronouncements of the administration so filled the mental landscape, that students and faculty were not left with room to disagree. And if a student or faculty member did express an upsetting view, great political pressure was placed on the President or college deans to publicly denounce such views or utterances. In an extreme, statements attributed to a prospective first year student were deemed grounds to rescind an offer for admission.

The interim report offers a detailed analysis of what is appropriate at each level of the University, with a recognition that there must be a lot of restraint at the top and more latitude at lower levels. There are two dangers in this approach. First, an institutional voice policy can be misused as a sword rather than as a defensive shield. For example, following the murder of Charlie Kirk, a number of figures around the country made personal comments, and some of them were penalized for their remarks as a [violation of an "institutional voice" policy](#). Instead, the Final Report should clarify that the policy is designed to maximize the free expression of all viewpoints, by minimizing leadership statements and acts of censorship.

Second, the sheer volume of complex rules confuses the forest for the individual trees. We hope that the final report will simplify its reasoning. Although special cases should be addressed, it should be in the context of opening up the campus to allow students, faculty and staff to fill the void through thoughtful debate and civil expression.

Enforcement Mechanism

A key flaw in the interim report is the lack of an enforcement mechanism. This can only be accomplished from inside the University. External investigations, such as those just settled with the Trump Administration, are inherently an infringement upon academic freedom.

One solution would be to establish a new half-time position for a Vice Provost for Academic Freedom and Free Expression, who would be a senior tenured faculty member with expertise on these issues. The Vice Provost would have a seat at the table when policies or pronouncements are debated to advocate for an approach that maximizes the campus climate of freedom and viewpoint diversity.

The Vice Provost could also conduct training for student-facing staff to counteract the censorious approach that took hold of the Student and Campus Life staff during the past decade.

Students Need the Most Protection

Students need the most protection under an institutional voice policy, because they are at greatest risk for having their free expression rights curtailed. Footnote 2 of the interim report is a disappointment. While Student Organizations and their internal policies for authorizing statements may not be of interest, the impact of the proposed policy changes on students should be central to the committee's task. For example, if a student group wants to bring a controversial speaker to campus, such as Ben Shapiro or Ann Coulter, the institutional voice should be supportive and content-neutral. Nobody should be authorized, not even the Event Team, to suggest that it would be better to invite someone less controversial.

There is a tendency for student-facing administrative staff to argue from authority as if speaking for the University, at times with subtle threats of retaliation, rather than using reasoning and civil discussion. Cornell's definition of "harassment", "hazing" and violating the lawful order of a university official are so vague as to raise serious due process concerns with any subsequent conduct process. When "the University" becomes the Complainant in a conduct proceeding, that is an important exercise of institutional voice, which should be governed by your final report. Beyond any conduct process, Cornell also has bias response teams designed to intrude on difficult conversations that do not rise to misconduct. The invocation of the full weight of Cornell authority should be used with great restraint and in a manner that maximizes free expression and viewpoint diversity. Cornell thrived for more than a century without all of these landmines that drive any reasonable student to self-censorship.

Land Acknowledgments

Cornellians United's initial comments as supplemented by an additional email, made a case that an official recital of a statement to open meetings, such as the current "land acknowledgment" is an exercise of institutional voice. Such recitals are problematic because they present one viewpoint without any opportunity for the opposing view to be expressed. We hope that the Committee will examine the issue of such recitals, and who is authorized to conduct them.

Campaigns for Elective Office

The interim report goes to great length to discuss areas of restraint. In general, if an issue affects the functioning of the university as it carries out its mission, statements are allowed. We argue that there may be areas where no university position should ever be expressed no matter how central to the University's mission, core values or core functions.

First, under the Internal Revenue Code and implementing regulations, section 501(c)(3) organizations such as Cornell cannot "participate in, or intervene in (including the publishing or

distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.” While there are detailed regulations and case law on this [requirement](#), it is clear that no high or low level Cornell employee (in his Cornell capacity) may endorse or oppose a candidate for public office or use Cornell-resources in such an effort. However, individual Cornell students, faculty or staff are free to engage in a wide range of political activity in their personal capacity.

A second restriction should be added to the final report for elections to “non-public” offices. Such a restriction is motivated by a need to avoid tangled hierarchies and to assure that elected-leaders authentically represent their voters rather than the Cornell administration. Even if a candidate would not be in the best interest of Cornell and its mission, Cornell should not exercise its institutional voice to try to affect the outcome of such elections.

For example, in 2019, the Cornell Athletic Department sent out [two emails](#) to students and coaches indicating support for a Student Trustee candidate who happened to be a varsity football player. Ultimately, the email was ruled to be a violation of campaign finance limitations, but as a matter of principle, the email was a clear misuse of [institutional voice](#), regardless of any campaign finance rules. Cornell employees, who are not students, should not try to influence the outcome of student trustee elections. The same rule should apply to faculty trustees, employee trustees, alumni trustees,¹ or any other elected office even though it was not a “public” one. This is because the office holder should owe his or her selection to the voters, not to someone who weighed in as “Cornell University.”

The same problem can arise as people seek election to other posts, such as Cornell alumni class officers, the Student Assembly, the Graduate and Professional Student Assembly, the local UAW chapter,² the local CGSU-UE chapter, the directors and officers of the Cornell Daily Sun or the Cornell Daily Sun Alumni Association, Quill and Dagger, the Interfraternity Council and Panhellenic Council and their alumni counterparts, the Ithaca Tenants Union, etc. The rule should be that Cornell should respect the independence of such groups and refrain from making any statement regarding any of the candidates. This must be true even if a Cornell official is convinced that some candidates will make Cornell’s mission easier to achieve than others.

The Committee should realize that subtle support is impossible and any Cornell election intervention is incompatible with a campus climate fostering robust debate and viewpoint diversity.

In sum, Cornellians United appreciates the work of the Committee and urges it to modify its final report in the manner described above.

Respectfully,
Cornellians United for Free Speech

¹ An argument can be made that to the extent that NYS Education Law Section 5703(1)(d) specifies these trustee elections, they are a “public office” for the purpose of the Internal Revenue Code.

² See Sections 7 and 8(a)(1) of the National Labor Relations Act.

