



July 22, 2024

Garry W. Jenkins  
Bates College  
Office of the President  
Lane Hall, Room 204  
Lewiston, Maine 04240

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

Dear President Jenkins:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned by Bates College’s requirement that faculty applicants submit statements reflecting their contributions to diversity, equity, and inclusion (DEI). As an institution that promises its faculty members academic freedom, Bates must uphold those promises by making hiring decisions in a viewpoint-neutral manner. We therefore urge Bates to make the statements optional—or eliminate them altogether—to avoid discriminating against faculty with dissenting views.

Our concerns arise from two job postings for faculty positions. One posting for a Visiting Assistant Professor of Physics and Astronomy says applicants should submit a “statement of teaching philosophy/experience that also addresses equity and inclusion[.]”<sup>2</sup> The other, for a Visiting Assistant Professor of Earth and Climate Sciences and Physics, likewise says applicants should submit “evidence” of “past and potential contributions to equity and inclusion.”<sup>3</sup>

Yet Bates College explicitly guarantees freedom of expression and academic freedom to faculty by establishing freedom of thought and expression as “essential to any institution of higher

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

<sup>2</sup> *Visiting Assistant Professor of Physics and Astronomy*, Bates College, CHRON. OF HIGHER EDUC. (posted Jun. 10, 2024), <https://jobs.chronicle.com/job/37665726/visiting-assistant-professor-of-physics-and-astronomy> [<https://perma.cc/62DF-XVNX>].

<sup>3</sup> *Visiting Assistant Professor of Earth and Climate Sciences and Physics*, Bates College, CHRON. OF HIGHER EDUC. (posted Jun. 7, 2024), <https://jobs.chronicle.com/job/37665239/visiting-assistant-professor-of-earth-and-climate-sciences-and-physics> [<https://perma.cc/Q56B-64V5>].

learning.”<sup>4</sup> The same Code adds that a university’s mission is “testing the old and proposing the new” in the corpus of knowledge, and inspiring “vigorous debate on those social, economic, and political issues that arouse the strongest passions.”<sup>5</sup> These strong and unequivocal statements would lead reasonable applicants to expect expressive rights at Bates commensurate with those the First Amendment guarantees. They are also vital to your accreditor, the New England Commission of Higher Education, which requires accredited institutions to be “committed to the free pursuit and dissemination of knowledge” and assure “faculty and students the freedom to teach and study, to examine all pertinent data, to question assumptions, and to be guided by the evidence of scholarly research.”<sup>6</sup>

It is all but impossible to square the diversity statement requirement for applicants with these commitments. The requirement risks disfavoring applicants who do not adopt university-prescribed views on DEI or who demonstrate insufficient fealty to them. It further creates subjective criteria that Bates can easily abuse to punish applicants with minority, dissenting, or even nuanced views on DEI-related issues at odds with popular sentiment or evaluators’ views. Regardless of whether it is intended, such requirements risk turning institutions into echo chambers for only certain preferred views. Indeed, fully 50% of respondents in a 2022 national survey of 1,491 university faculty members characterized a requirement to provide a diversity statement as “an ideological litmus test that violates academic freedom.”<sup>7</sup>

Absent agreed-upon, objective, and precise definitions, “diversity,” “equity,” and “inclusion”—which carry political connotations subject to much debate and controversy—will almost certainly serve as proxies for certain viewpoints or beliefs.<sup>8</sup> This effectively leaves decisions

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<sup>4</sup> *On Freedom of Expression and Campus Speech Codes*, BATES COLL. (Adopted Nov. 1994) <https://www.bates.edu/dof/files/2015/01/On-Freedom-of-Expression-Campus-Speech-Codes.pdf> [<https://perma.cc/C2A8-TMWD>].

<sup>5</sup> *Id.* The Code acknowledges that in such debates, views “will be expressed that may seem to many wrong, distasteful, or offensive,” but this is “the nature of freedom[.]” *Id.*

<sup>6</sup> *Standards for Accreditation*, Integrity, Transparency, and Public Disclosure, NECHE, Integrity 9.3 (enacted Jan. 1, 2021) <https://www.neche.org/wp-content/uploads/2020/12/Standards-for-Accreditation-2021.pdf>.

<sup>7</sup> *The Academic Mind in 2022: What Faculty Think About Free Expression and Academic Freedom on Campus*. FIRE (last visited July 18, 2024), available at <https://www.thefire.org/research-learn/academic-mind-2022-what-faculty-think-about-free-expression-and-academic-freedom>. FIRE survey data further suggests that mandatory DEI statements particularly dissuade politically conservative faculty from applying, as 90 percent of conservative faculty respondents saw mandatory DEI statements as political litmus tests.

<sup>8</sup> The concept of “equity,” for example, is a subject of significant debate in higher education. See, e.g., Todd Zakrajsek, *Do we need equity or equality to make things ‘fair’? Actually we need both*, TIMES HIGHER EDUC. (Sept. 25, 2022), <https://www.timeshighereducation.com/campus/do-we-need-equity-or-equality-makethingsfair-actually-we-need-both> (arguing for the application of universal design to teaching because equity “in higher education is exceedingly important, but without equality many faculty and students will probably persist with the belief that it’s unfair to give some students additional time on exams or allow them to videotape a presentation instead of delivering it live”); Steven Mintz, *How to Stand Up for Equity in Higher Education*, INSIDE HIGHER ED (Apr. 20, 2022), <https://www.insidehighered.com/blogs/higheredgamma/how-stand-equity-higher-education> (arguing equity wrongly requires “active discrimination against those who’d do too well under equal treatment” and defines fairness as “whatever it takes to produce matching results for disparate groups”); Dan Morenoff, *We Must Choose ‘Equality,’ Not ‘Equity,’* NEWSWEEK (Apr. 25, 2022), <https://www.newsweek.com/we-must-choose-equality-not-equity-opinion-1699847> (arguing that equity

regarding DEI requirements to the discretion of the evaluators, inviting subjective and arbitrary decision-making and allowing them to censor ideas and enforce their own personal preferences.<sup>9</sup>

To illustrate our concern by analogy, we trust Bates would readily recognize the problem with rewarding faculty members/applicants who commit to promoting “patriotism.” Indeed, our nation is but a few generations removed from university faculty being required to submit to state interrogation regarding possible involvement with “subversive” organizations, or to sign loyalty oaths disavowing socialism or communism as a condition of employment. Because of the bravery of faculty who challenged the constitutionality of such mandates in federal courts, the Supreme Court has made clear they violate the First Amendment.<sup>10</sup>

FIRE would not object to Bates recognizing relevant teaching, research, and service activities and accomplishments potentially characterizable as DEI contributions that applicants share voluntarily. But colleges succeed in their unique role as “peculiarly the ‘marketplace of ideas’” only by engaging in the objective search for knowledge unburdened by undue pressures.<sup>11</sup> To protect academic freedom and honor the individuality of Bates’s faculty, we request a substantive response to this letter no later than close of business on Monday, August 5 confirming that Bates will rescind the DEI statement requirement for open job postings.

Sincerely,



Graham Piro  
Fellow, Faculty Legal Defense Fund

Cc: Malcolm S. Hill, Vice President for Academic Affairs and Dean of the Faculty

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“implies much more than equal opportunity; it entails equality of resources, ideas, respect and outcomes” and extends to pedagogical reforms such as “decolonizing the curriculum”).

<sup>9</sup> *Grayned v. City of Rockford*, 408 U.S. 104 n.22 (1972).

<sup>10</sup> See *Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967); see also *Sweezy v. New Hampshire*, 354 U.S. 234 (1957).

<sup>11</sup> *Keyishian*, 385 U.S. 589, 603 (1967).