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UNIVERSITY COUNSEL

October 3, 2023

Ida Namazi
Program Officer, Campus Rights Advocacy
Foundation for Individual Rights and Expression
510 Walnut Street, Suite 1250
Philadelphia, PA 19106

Via electronic mail: ida.namazi@thefire.org

Dear Ida Namazi:

I am an attorney in the Office of University Counsel providing legal representation to the University of Colorado Boulder (CU Boulder). This letter responds to your letter dated September 7, 2023, authored on behalf of the Foundation for Individual Rights and Expression (FIRE). CU Boulder respects FIRE's dedication to defending the freedom of speech and appreciates its "green light" rating. Thank you for outlining FIRE's concerns about how CU Boulder uses faculty applicant diversity statements.

CU Boulder has considered FIRE's feedback and is updating its guidance for assessing diversity statements, as addressed in more detail at the close of this letter. CU Boulder continues to believe that these statements are a valuable tool in considering the applications of those who might join our community and intends to use them in lawful ways.

Before discussing the diversity statements, however, CU Boulder would like to provide an overview of how diversity, equity, and inclusion (DEI), the freedom of expression, and academic freedom are each and together guiding principles and fundamental values at CU Boulder. These principles can and do work together to reinforce our campus mission.

CU Boulder's Guiding Principles and Fundamental Values

Regent Law and Policies governing the University of Colorado (CU), a four-campus institution of higher education of which CU Boulder is a campus, establish DEI, the freedom of expression, and academic freedom as co-existent guiding principles and fundamental values at the highest level of the institution:

Consistent with the legal obligations and responsibilities of the University of Colorado community, the university will: . . . Ensure policies, programs, procedures and practices promote a continuing commitment to building a community of faculty, students, and staff in which diversity is a fundamental value. Such policies, programs and procedures will also serve to ensure the rich interchange of ideas in the pursuit of truth and learning, including diversity of political, geographic, cultural, intellectual, and philosophical perspectives.
[Regent Policy 1.B. "Guiding Principles" #6.](#)

Likewise, CU Boulder has an entire [website devoted to free expression](#) recognizing the "(f)reedom of expression, as guaranteed under the First Amendment, and academic freedom, as defined by the Laws of the Regents, while distinctly separate concepts, are central to CU Boulder's academic mission and underlie our community values of inclusivity and critical thinking." That website provides examples of CU Boulder's long history of making diverse views available to all.

Diversity, Equity, and Inclusion

CU states its commitment to DEI in [Regent Policy 10.A](#), providing that "*The University of Colorado Board of Regents affirms its absolute commitment to the promotion of diversity in the university community and insists that **no individual or group shall be marginalized or systemically excluded.***" [Emphasis added]. CU's definition of "diversity" recognizes a broad range of individual differences and does not create preferences for particular types of diversity:

Diversity refers to the representation of our university community members who hold individual differences such as life experiences, and group/social differences such as race and ethnicity or class, protected identities as recognized in regent law, as well as cultural, political, geographical, religious, or other affiliations. Id.

[CU Boulder's Strategic Priorities](#) include DEI and implement the Regent Policies.

Freedom of Expression

Regent Law and Policy also addresses the freedom of expression. [Regent Law 1.E](#) establishes that:

The University of Colorado is committed to the principle of freedom of expression embodied in the First Amendment to the United States Constitution and Article 11, Section 10 of Colorado's State Constitution. The University of Colorado has an obligation to uphold the principle of freedom of expression. All members of the university community, defined as the Regents of the University of Colorado, the officers of the university and the administration, and the university's faculty, staff, and students, have a responsibility to protect the university as a forum for the free expression of ideas.

The same Regent Law also recognizes:

Speech related to political, academic, artistic, and social concern serve vital purposes, both in society and within the university itself. Speech related to these topics is within the boundaries of free expression, even when others construe that speech as wrong or insensitive. The proper response to ideas that members of the university community find offensive or unwarranted is to challenge those ideas through the exercise of reason and debate, rather than attempt to interfere with or suppress them.

[Regent Policy 1.D.\(D\)](#) more specifically addresses faculty freedom of expression:

University faculty are members of our communities and members of a learned profession. When university faculty speak or write as citizens, not in furtherance of their university duties or in the course and scope of their university employment, on matters of political, academic, artistic, or social concern, the university shall not censor their expression, initiate disciplinary action against them, or otherwise subject the faculty members to adverse employment actions because it disapproves of the substance of their expression. Regent Policy 1.D.(D)(2).

When engaged in teaching and research, faculty enjoy the associated rights and observe the associated responsibilities of academic freedom as expressed in regent policy 5.B. Regent Policy 1.D.(D)(1).

Academic Freedom

Regent Law and Policy further addresses academic freedom. [Regent Law 5.B.2.\(A\)](#) provides that, “[a]cademic freedom is the freedom to inquire, discover, access, publish, disseminate, and teach truth as the individual understands it, subject to no control or authority save the control and authority of the rational methods by which knowledge is established in the field.”

[Regent Policy 5.B.1](#) establishes associated rights of faculty academic freedom providing, “[t]he best method for advancing the state of knowledge is engaging with the broadest range of theories, methodologies, data, and conflicting opinions” and requires that, “[t]he appointment, reappointment, promotion of all faculty, and award of tenure to tenure-track faculty, shall not be awarded or denied based on extrinsic considerations such as a faculty member’s expression of political, social, or religious views.”

These concepts and more are emphasized on the CU Boulder’s Academic Affairs [website devoted to academic freedom](#).

Diversity Statement Guidance

Given its guiding principles and fundamental values about DEI, the use of diversity statements in faculty hiring reflects CU Boulder’s legitimate interest in faculty being effective educators

who create welcoming and dynamic learning environments and who are invested in the success of every one of their students, regardless of identity or background.

Further, CU Boulder's guidance about the use of diversity statements in faculty hiring is best described as focused on an applicant's demonstrated actions, not beliefs. For example, the guidance titled, "Diversity, Equity and Inclusion (DEI) Statements in Applications" states that, "The key is to focus this prompt on asking about work, knowledge, and experience the candidate has **done or plans to do** rather than asking about or assessing what they believe regarding advancing diversity, equity, and inclusion."¹ This is harmonious with the freedom of expression and academic freedom more generally and as specifically addressed under Regent Laws and Policies.

Regardless, in recognition of being a marketplace of ideas, it is CU Boulder's spirit to welcome feedback and to strive to consistently evaluate and improve its guidance to the campus community. Thus, CU Boulder appreciates FIRE's exemplar suggestions for clarifying the guidance titled, [Guide to Assess Diversity, Equity, & Inclusion \(DEI\) Statements & Contributions](#), about how to use faculty diversity statements. CU Boulder will be updating this guidance to include two clarifying edits, as reflected in the attachment.

The first edit adds introductory language to the first page of the guidance to cite Regent Policy's Guiding Principle #6 and Regent Policy 10.A.'s definition of diversity (see discussion above on page 2 of this letter), to highlight that CU Boulder's guiding principles and commitment to DEI includes diversity of thought and value of individual differences and perspectives. CU Boulder prefers this language, rather than FIRE's example, because it captures the same concepts from FIRE's suggestion while also harnessing the organic language derived from CU's self-governance processes, including shared governance with faculty. The second edit is to the last page of the guidance to bolster the bridge between this concept and the rubric. Here, CU Boulder incorporates FIRE's suggestion verbatim.

Thank you again for bringing FIRE's concerns to CU Boulder's attention. CU Boulder believes this resolves FIRE's concerns, but If FIRE has any follow-up questions or concerns, please contact me.

Sincerely,



Michelle Krech
Senior Associate University Counsel
University of Colorado Boulder
michelle.krech@cu.edu

Attachment: *Guide to Assess Diversity, Equity, & Inclusion (DEI) Statements & Contributions*

¹ Copy available for download at: <http://www.colorado.edu/hr/diversity-inclusive-excellence/diversity-search-hiring>