

Working Group on Free Expression, Spring 2024
Report and Recommendations
Final Version: June 6, 2024

The Working Group on Free Expression was convened by the Provost and Faculty Senate of American University in late January of 2024 to consider issues about the state of free expression on campus. The Working Group is comprised of both faculty and staff with expertise on the issues before the group. It was not originally conceived of as a response to the [President's Message of January 25th](#), and its members played no part in the discussion and formulation of that message before it was announced. As discussed below, however, we found that it was impossible to do our work without discussing the Message of January 25th and the policy directives contained in it. We were asked to orient ourselves in this work by the commitments and values expressed in the university's guiding documents on free expression, the [University Policy on Freedom of Expression and Expressive Conduct](#) (adopted by the university in 2022) and the [Statement of Values on Free Expression](#) (adopted by the Faculty Senate in 2022). As detailed below the group met regularly throughout the spring 2024 semester, held meetings where we heard from invited members of the community, and met with and offered feedback to university officials tasked with reviewing university policies related to freedom of expression.

This report was authored by Thomas W. Merrill and Regina Curran, the co-chairs of the Working Group, who bear responsibility for the contents of the report. The insights and views of both the faculty members of the group (AbuNimer, Kaplan, Leff, Strauss, and Jayaswal) and the staff members of the group (Brown, Taylor, Wilson, Redmond, and Deal) in our meetings and during the composition of this report shaped the substance of the report, although the final responsibility for the report rests with the co-chairs. While there was broad agreement on the recommendations and spirit of the report, we recognize that there was and continues to be disagreement within the group about these issues and that some members feel that their views are not fully represented here. (A list of the members of the Working Group, with affiliations, can be found at the end of this report.) We are grateful to all the members of the group for their time and contributions throughout our deliberations.

Conclusions and recommendations

The charge for this Working Group asked the group to consider several questions related to free expression and of clear importance for the community, including tensions between individual rights of free expression and the obligations that come from having an officially recognized position at the university, the definition of substantial disruption, the importance of consistency in the application of policies across all groups on campus, problems of doxxing and online harassment, and the large problem of building an open and equitable campus culture while also protecting free expression. We recognized from the beginning that problems of antisemitism, anti-Palestinian racism, Islamophobia, and

inclusivity are real and deserve to be taken seriously. However, from very early in our work as a group, we also heard concerns about the Message of January 25th from many members of the community, in many different venues of university life. In the light of those concerns, we judged that we had to consider and address the issues around the Message of January 25th before we could begin to address the other questions listed in our charge. While the controversies surrounding the message could not be ignored, as a group we also want to note with regret the fact that our work was disrupted by those controversies and that we were not able to discuss the issues raised in our charge as deeply and as fully as we would have liked. In an important sense, we were not able to do the work we were asked to do. For this reason, we did not undertake to systematically assess levels of bias on campus and we did not reach a consensus on these issues as a group.

The group did reach a consensus on several points. Most importantly, we found that the process whereby the Message of January 25th was formulated and promulgated did not follow the familiar process for stakeholder consultation outlined in the [University Policy on the Formulation and Issuance of University Policies](#) and that, because of this flawed vetting process, the policy directives contained within the Message of January 25th were poorly drafted and contained substantive flaws, even in terms of the goals set out in the Message itself. These procedural and substantive flaws in turn contributed to controversies and heightened tensions on campus. To be blunt, while the Message of January 25th was intended to create a sense of belonging and build community on campus, the Message has itself become a source of division for the community. While we share the goal of a genuinely inclusive campus culture, the university needs to and can do a much better job of identifying the tools that are likely to achieve these goals while also honoring our commitments to protecting freedom of expression.

For these reasons, we recommend these steps to the university leadership and community:

- 1. Allow the policy directives of January 25th to lapse at the end of the spring semester and allow the regular policy review process to proceed with transparency and the opportunity for all affected stakeholders to offer feedback and input.*
- 2. Reaffirm that the university is a space where protests are permitted except when those protests substantially disrupt university operations as described in the University Policy on Free Expression and Expressive Conduct and reaffirm that restrictions on expression, if necessary, should be viewpoint neutral and applied consistently across groups and speakers on campus.*
- 3. Create a standing committee or working group on free expression as a source of consultation and regular engagement with university leadership on policies and decisions that touch on free expression issues, including the issues listed in our charge which we were not able to discuss, and as a resource for community members to learn and share concerns about free expression.*

4. Commit to building a campus culture of academic inquiry and discussion by supporting programs and curricula on civic discourse and viewpoint diversity, including public dialogues on divisive issues in the public square.

5. Orient our community deliberations about free expression, inclusivity, and related topics around our academic mission, which is the fundamental purpose of American University.

In what follows, we first describe our activities as a group (Working Group Formation and Process) and then explain the reasoning behind our recommendations (Key Considerations).

Working Group Formation and Process

The Working Group on Free Expression was first convened in late January and is described in [a memo of February 5, 2024](#) from Acting Provost Vicky Wilkins and Faculty Senate Chair Thomas W. Merrill. The group included both faculty and staff and aimed to have some continuity with the 2021-22 Working Group on Free Expression, specifically including the same co-chairs. Members were chosen for their expertise and experience in various parts of the university relevant to the work of the group and with insight into recent and current controversies on campus.

The Working Group scheduled meetings as a group on January 31st, February 14th, March 20th, March 25th, April 10th, and May 8th. During some of these meetings the group heard from members of the community with direct experience related to current campus concerns, including Jason Benkendorf, Irene Calis, Saul Newman, and Malini Ranganathan. The group also participated in a series of meetings with Traevena Byrd (AU's General Counsel) and Raymond Ou (VP of Student Affairs) to review and provide feedback on proposed changes to several university policies, including some related to the directives in the Message of January 25th. (We note that our Working Group offered only feedback on those proposed changes and has no authority over the policies in question).

The co-chairs of the Working Group, Thomas Merrill and Regina Curran, also met with many members of the community to discuss issues related to the group. They were invited to speak to a faculty meeting of the School of Education, to a meeting of the Staff Council, and to a meeting of the AU Student Government. They discussed these issues and heard comment from members of the community in public meetings of the Faculty Senate. They also met one on one with several members of the community interested in these issues.

The Working Group noted (but did not take any position on) public commentary on these issues within the AU community. Examples of this public commentary included:

- [Faculty Senate Resolution on President Burwell's Message of January 25th](#)
- [AU Student Government Resolution on the President's Policy on Protesting on Campus](#)

- [Statement by AU AAUP Regarding Recent Suppression of Student Freedom of Expression](#)
- The Eagle: [Staff Editorial: Restricting Student Speech on AU's Campus Suppresses Its Changemakers](#)
- The Eagle: [When Presidents Disagree: Student Body President Edwin Santos Criticizes New Protest Policy](#)

As of the date of this report, we also note that two student organizations, Students for Justice in Palestine and Student Government, were sanctioned through the Student Conduct Code process under the policy directives in the Message of January 25th, according to [publicly available information on AU's website](#).

Key Considerations

Shared Governance as a Tool of Creating Effective and Durable Policies

As noted above, our core claim in this report is that the lack of community consultation in the formulation of the Message of January 25th contributed to substantive flaws in the policy directives in the message, leading to unwise and in some cases unworkable directives. In this section we will give reasons for our claim, looking first at the procedural problem with the Message and then at the substantive problems with the policy directives.

In order to understand the status of the Message of January 25th, it helps to understand something about how policy is made at AU. At AU the creation of new policies and revisions to existing policies is governed by the University Policy on the Formulation and Issuance of University Policies, known colloquially as the Policy on Policies. This policy outlines a recognized process whereby proposed policy changes can be vetted and discussed by the community before being put into effect by the relevant policy holders. An important part of that process is the requirement to consult both with “key stakeholders” and “additional stakeholders.” This requirement allows members of the community to know about proposed policy changes and to offer feedback based on alternative perspectives on the issue and hand and experience on the ground, thereby refining and improving the proposed changes. It also allows staff members tasked with enforcing proposed policies to offer insights into possible pitfalls and obstacles to those policies and to discuss how the proposed policies harmonize with or fail to harmonize with existing policies. The Policy on Policies reflects the widespread view that shared governance produces more effective, better targeted, and more generally accepted policies.

The Message of January 25th did not go through this familiar policy review process. Technically the actions and requirements outlined in the Message are therefore not policies in the sense that the University usually uses that word. They are better described as directives that flow from the authority of high-ranking university leaders to make binding decisions in the pursuit of their responsibilities in cases where existing policy is insufficient for the issue at hand. Such directives are usually used in emergencies and have a

temporary and limited purpose. The Message of January 25th itself tacitly acknowledges its status as a directive rather than a policy by signaling that the policy directives within it will be “in place throughout the spring semester.” We understand this to mean that, absent further directives from university leadership or the completion of a formal policy review, the measures outlined in the Message of January 25th will automatically lapse at the end of the spring semester.

Please note: we do not contest the authority of university leaders to issue directives as a general matter. However, we do contend that, in this case, the failure to consult widely with key campus stakeholders contributed to substantive flaws in the policy directives themselves. One reason for the requirement for stakeholder consultation is to build consensus and trust about new policies. Because it never went through that process, the Message of January 25th never built the consensus and trust needed for durable success. Some faculty and staff who disagreed with the message reported to us that they felt unable to offer constructive criticism out of fear from professional consequences. In a time of deep polarization and mistrust, both on campus and in the world, this point about process and open consultation is not a small thing. As a community we cannot afford to undermine the fragile trust that we have.

However, the problem with the Message of January 25th is not merely a “communication” issue. There are substantive flaws in the policy directives which make them controversial and, in some cases, even unworkable. We offer two examples to illustrate what we mean.

Inclusivity in Postering and University Events. The Message of January 25th says that “posters and university events will promote inclusivity.” We understand and affirm the university’s commitment to being an inclusive place for all members of the community. However, for an academic community, inclusion cannot be defined simply as “making students feel comfortable,” and without a much more concrete consideration of what our commitment to inclusivity might mean in different settings, this requirement runs into two problems well-known to anyone experienced in campus life work or free expression work. First, the lifeblood of academic life is disagreement. To be sure, that disagreement should be based on mutual respect. However, by its nature disagreement puts interlocutors in some tension with each other and can easily make members of the community feel uncomfortable. Our job as educators is *not* to protect students and other members of our community from disagreement; it is rather to help them to learn how to navigate that disagreement productively.

Second, without further definition of the term “inclusive,” this requirement will be interpreted in terms of “every individual’s subjective feeling of whether or not they are included.” This leaves student organizations, posters, and university officials vulnerable to what is called in First Amendment jurisprudence as the “heckler’s veto.” For an academic community that thrives on discussion and disagreement this is certainly unwise and probably unworkable as written.

Ban on Indoor Protests. Based on our conversations with community members and our reading of student journalism, the ban on indoor protests is the most controversial part of the message. While the university has a clear responsibility to ensure that the basic operations of the university continue, we already possess a well-established policy on protests which allows university leaders to sanction activities that disrupt university operations. (Note that the existing policy is *not* a policy directive and did go through the regular policy review process with stakeholder consultation. It can be found in Section IV.B, 4 of the [University Policy on Freedom of Expression and Expressive Conduct](#) and has remained largely the same since the 1980s.) However, there is an important difference between the ban on indoor protests and the university's existing policy on protests that helps explain the controversy on this policy directive.

The key difference between the Message of January 25th and the University Policy on Freedom of Expression concerns the standard by which the university judges when a protest is appropriate under university policy and when it is not. The established policy on protests uses what might be called the "substantial disruption" standard. It states: "The University protects counter-speech and protest so long as the community member engaging in speech and protest does not . . . substantially disrupt or interfere with classes, operations, or other University-sponsored programs or disrupt the protected expression of other members of the community or invited guests." The policy goes on to give a detailed list of activities that would count as substantial disruption of university operations. Note that this policy is viewpoint neutral; is applicable not merely to protest but to anything that might interfere with class or other university operations; and is not limited to indoor activity.

The ban on indoor protests, however, does not offer a clear definition of what protest means for the sake of the policy directive. Is the standard basically the same as the long-standing university policy, substantial disruption? Or is the standard something like political expression, advocacy, and dissent? The Message of January 25th is not clear on this point and to our knowledge university leaders have offered no authoritative clarification of it. It is worth spelling out why defining protest as political expression, advocacy, and dissent for the purposes of this policy would be problematic. Once the university starts deciding which speech is allowed or not allowed on the basis of the content of the speech, it will be very difficult for the university to avoid the appearance of "picking sides" on issues that divide our community. Picking sides or appearing to pick sides causes mistrust in the community, heightens tensions on campus, and in the long run undermines the social trust that leaders need to govern effectively. It is also not in keeping with our academic mission of helping students learn how to make up their own minds about difficult issues, rather than having an authority do it for them.

Many members of the AU community read the Message of January 25th as "picking sides." This fact by itself explains a considerable portion of the controversy about the indoor protest ban on campus.

This comparison of the pre-existing university policy on protests with the indoor protest ban illustrates our most important criticism of the message. This semester is not the first time the university has confronted tensions over the proper relationship between free expression and inclusivity. Lots of people on campus have experience in navigating these kinds of issues and none of the problems we have just outlined would be surprising to people with experience in campus life and free expression issues. We know that balancing these considerations is easy or obvious. But because of the flawed process of consultation, as a community we failed to bring our best collective wisdom on these issues to bear on our current problems. We have an obligation to do better.

Community & Inclusion

Based on both our direct experience and in what we hear from members of our community, we are in agreement that AU has a “problem with community.” Many members of the AU community feel that the university lacks a sense of purpose or common, positive identity. We lack a vision of what we share, even when we disagree with each other, We feel fragmented, divided, and lacking meaningful opportunities to come together across difference. This Working Group does not discount the work and efforts of many dedicated faculty and staff across the university, but the university’s “problem with community” is a reality, nonetheless. In this way, we agree with the stated goal of inclusion in the Message of January 25th. As a group, we agree that inclusion is an important value of the university and we want all students and other members of the community to feel that they belong on campus (bearing in mind that a sense of belonging is not the same thing as everyone agreeing with each other).

The Working Group is clear that our role is limited and that we did not and could not address the existing community fragmentation. However, we acknowledge the problem and ask that senior leadership prioritize inclusion for ALL members of the AU community. Communities with low levels of social trust are especially vulnerable to the kinds of social conflict we have seen at American University and across the country in the recent past and we strongly suspect that that conflict is contributing to community members’ reported experiences of discrimination, harassment, and exclusion. However, we recommend to the university leaders and members of the community the university’s existing [Policy on Freedom of Expression and Expressive Conduct](#) and [Statement of Values on Free Expression](#) as a good place to begin thinking about what does unite us as a community. While these documents will not provide us answers or solutions for the complex issues around free expression, they reflect longstanding principles and practices of the institution and can help us think about the role and value of free expression more deeply.

We offer three points for considering the intersection of free expression, inclusion, and campus culture. First, we note that policy by itself and policy directives are generally poor tools to address culture problems. Policies provide the framework within which members of the community pursue their goals and interact with each other. If done poorly, policies

can undermine community and a positive culture by focusing on punitive outcomes first; but even if done well, policies cannot substitute for the individual actions of community members in creating a shared culture. In the current situation, American University as a community needs to think much more, and much more concretely, about positive ways to draw community members into the shared activity of the university rather than relying on solely on policy.

Second, we want to raise a question about the meaning of inclusion: whenever we use the word inclusion, we should ask ourselves, inclusion into what? A good starting point may be found in the 2022 Statement of Values on Free Expression endorsed by the Faculty Senate:

Our community aims to achieve [our] mission by fostering an ethos and culture of inquiry. By inquiry, we mean an open-ended process of questioning the world, opinions and points of view prevalent in our time and place, and our own beliefs. . . . we affirm the value of inquiry, even when it is challenging, because we believe in the dignity of individuals to investigate the world for themselves and to make up their minds about what they discover.

The thing we are trying to include our students and other members of the community in is a culture of inquiry. We aim, not to tell students what to think, but to help them practice a willingness to engage with a variety of perspectives, including perspectives which we as individuals disagree with or facts that we as individuals may not want to be true. *Genuine inclusivity for our community means making it possible for all members of the community to participate in our core activity of academic inquiry and discussion, which requires the ability to speak freely and to engage with a wide range of points of view, including those with which we as individuals disagree.*

Finally, we acknowledge that fostering the ethos of inquiry both as an individual matter and as a matter of a shared campus culture is complex and involves considerations that can be in tension with each other. The culture we seek to build requires both inclusivity *and* free expression. The Statement of Values does *not* speak of an absolute right to say anything at any time; AU's policies have always recognized that harassment, threats, and intimidation are not protected speech. The Statement of Values does speak of a community responsibility to help all of us meaningfully engage for ourselves in the activity of inquiry in the context of a community of values. That is what we hope to include our ALL students—and ourselves—in. As educators, we should not only attempt to teach about, but fully engage in the work of confronting the hard questions of the world and challenging our assumptions. That requires an environment where the diversity of experiences and perspectives are fully engaged and where human dignity is deeply respected. As a community that espouses a value of lifelong learning, we too, have an obligation to consider situations before us, that challenge our assumptions and our prerogatives and ask ourselves how our decisions exclude or include members of our community. How to balance free expression and inclusivity is an ongoing conversation within the university. The members of this Working Group may well not agree with each other about how best to

strike that balance. However, as a group we recognize that that is the essential starting place for the conversations our community needs to have.

The Path Forward

As noted earlier, the Working Group was not able to discuss adequately all the issues listed in our charge. Indeed, many of the most important questions will still call out for serious discussion and deliberation long after the current controversies subside. For example, the standard for judging protests that we affirm in this report, the substantial disruption standard, calls out for further discussion and definition in the light of recent controversies about encampments and the like, which we did not discuss during our work this semester. In offering this report, we hope to prepare the way for those discussions to come. However, we conclude this report with two points that summarize our work and that we hope will inform future discussions on freedom of expression at AU.

First, on topics as intimate to the university community as free expression and inclusivity, shared governance is essential. Shared governance produces more effective, better targeted, and more generally accepted policies, thereby improving the chances that the policy will achieve its goals. As noted earlier in this report, because the Message of January 25th never went through the normal process for policy changes, that message never built the consensus and community trust needed for durable success. In a time of deep polarization and mistrust, both on campus in the world, this point about process is not a small thing. As the university moves forward to consider the complex issues around free expression and inclusivity, we strongly recommend that university leaders find ways of working through these issues that build community rather than undermine it.

Second, we will not be able to work through these issues adequately unless we keep our academic mission firmly in view as the top priority of the university. Our goal is to allow every member of the community to practice the ethos of inquiry as fully as they can. That mission should guide us as we engage our full community in building a genuinely inclusive campus culture that respects the dignity of each of its members. Allowing each of us the freedom to say what we think and to pursue our inquiries wherever they may lead, in conversation with the rest of the community, is the foundation of genuine inclusion. While the members of this group do not have answers to all the controversies that arise in this arena, we agree that the university's academic mission is the essential starting point for the conversations and deliberations to come.

Members of the Working Group

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