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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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September 25, 2019

Lawrence S. Bacow
President, Harvard University
Massachusetts Hall
Cambridge, Massachusetts 02138

Dear President Bacow:

The United States Senate Committee on Finance has exclusive jurisdiction within the U.S. Senate over matters of federal taxation, and as its chairman I am committed to making sure the United States' tax laws are administered fairly and effectively. As part of that commitment, it is my job to make sure that entities exempt from tax are fulfilling their tax-exempt purposes. As you are surely aware, Harvard University is an educational institution exempt from tax by way of 26 U.S.C. § 501(c)(3).

Unfortunately, over the past year I have read a variety of media reports discussing incidents in higher education involving faculty suffering difficulties with or expressing concerns about teaching or researching topics that might challenge or encourage critical thinking about the conventional wisdom or a popular ideology of the day. Recently in the *Wall Street Journal*, former Yale Law School dean and current professor Anthony Kronman criticized U.S. higher education for failing to live up to its purpose of "preserving, within the larger democratic order, islands of culture devoted to the undemocratic values of excellence and truth."¹ If this is true, it strikes at the heart of why U.S. universities are generally exempt from tax. In a case involving a college's tax-exempt status, the U.S. Supreme Court described the reason for tax exemption in this way: "Charitable exemptions are justified on the basis that the exempt entity confers a public benefit -- a benefit which the society or the community may not itself choose or be able to provide, or which supplements and advances the work of public institutions already supported by tax revenues."² The Association of American Universities (AAU) describes the tax-exempt purpose in the context of higher education as "fundamental to

¹ Anthony Kronman, *The Downside of Diversity*, WALL STREET JOURNAL, August 3, 2019, <https://www.wsj.com/articles/the-downside-of-diversity-11564758009>.

² *Bob Jones Univ. v. United States*, 461 U.S. 574, 591 (1983).

fostering the productive and civic capacity of [the Nation's] citizens.”³ Prof. Kronman invokes Tocqueville to describe this purpose as challenging “the instinct to believe what others do in order to avoid the labor and risk of thinking for oneself.”⁴ I agree with both the AAU and Prof. Kronman. Students who can work and think critically for themselves are best equipped to tackle the most difficult challenges we face and participate fully and effectively in our democracy.

A fundamental piece of this democracy-enabling purpose is that college and university professors should be free to teach and research – and students should be free to learn – to the best of their abilities in defiance of an undiscerning “instinct to believe what others do.” The United States’ higher education has long been the envy of the world for its ability to do just that. This letter respectfully requests information regarding the university’s commitment to creating such an educational environment in which its faculty can teach topics and take positions on matters that defy conventional wisdom and challenge orthodoxies in necessary but perhaps uncomfortable ways.

As you are aware, Harvard College recently declined to continue its relationship with Ronald S. Sullivan, Jr., and his wife, Stephanie Robinson, as faculty deans of Harvard’s undergraduate house, Winthrop House. According to the *New York Times*, Mr. Sullivan and Ms. Robinson had held such positions since 2009, but Mr. Sullivan attracted controversy this past January when he joined the criminal defense team for disgraced movie producer Harvey Weinstein.⁵ Apparently at that point, many Harvard students protested Mr. Sullivan’s continued position as faculty dean of Winthrop House, and vandals even spray-painted graffiti around the Harvard campus expressing a similar view. According to another report in the *New York Times*, such graffiti included statements of, “Down w Sullivan!” “Our rage is self-defense,” and “Whose side are you on?”⁶

In a letter dated May 11, 2019, Harvard College Dean Rakesh Khurana explained his decision to not renew Mr. Sullivan’s and Ms. Robinson’s deanships in the following way:

My decision not to renew the Faculty Deans was informed by a number of considerations. Over the last few weeks, students and staff have continued to communicate concerns about the climate in Winthrop House to the College. The concerns expressed have been serious and numerous. The actions that have been taken to improve the climate have been ineffective, and the noticeable lack of faculty dean presence during

³ Nonprofit Tax Compliance, Association of American Universities, at <https://www.aau.edu/issues/nonprofit-tax-compliance>.

⁴ Anthony Kronman, *The Downside of Diversity*, WALL STREET JOURNAL, August 3, 2019, <https://www.wsj.com/articles/the-downside-of-diversity-11564758009>.

⁵ Kate Taylor, *Harvard’s First Black Faculty Deans Let Go Amid Uproar Over Harvey Weinstein Defense*, NEW YORK TIMES, May 11, 2019, <https://www.nytimes.com/2019/05/11/us/ronald-sullivan-harvard.html>.

⁶ Jan Ransom and Michael Gold, *‘Whose Side Are You On?’: Harvard Dean Representing Weinstein Is Hit With Graffiti and Protests*, NEW YORK TIMES, March 4, 2019, <https://www.nytimes.com/2019/03/04/nyregion/harvard-dean-harvey-weinstein.html?module=inline>.

*critical moments has further deteriorated the climate in the House. I have concluded that the situation in the House is untenable.*⁷

This past June, Mr. Sullivan responded to his dismissal as faculty dean of Winthrop House with an op-ed in the *New York Times* in which he wrote,

In May, Harvard College announced that it would not renew the appointment of me and my wife, Stephanie Robinson, as faculty deans of Winthrop House, one of Harvard's undergraduate residential houses, because I am one of the lawyers who represented the Hollywood producer Harvey Weinstein in advance of his coming sexual assault trial. The administration's decision followed reports by some students that they felt "unsafe" in an institution led by a lawyer who would take on Mr. Weinstein as a client.

...

I would hope that any student who felt unsafe as a result of my representation of Mr. Weinstein might, after a reasoned discussion of the relevant facts, question whether his or her feelings were warranted. But Harvard was not interested in having that discussion. Nor was Harvard interested in facilitating conversations about the appropriate role of its faculty in addressing sexual violence and the tension between protecting the rights of the criminally accused and treating survivors of sexual violence with respect.

Instead, the administration capitulated to protesters. Given that universities are supposed to be places of considered and civil discourse, where people are forced to wrestle with difficult, controversial and unfamiliar ideas, this is disappointing.

Harvard has been silent in other disappointing ways. Not long ago, I was taking my 9-year-old son to school when we saw that "Down with Sullivan" had been spray-painted on the wall abutting our home. I had to explain to my son that representing unpopular clients serves an important constitutional role in our democracy and that I had done nothing wrong. As you might imagine, it was hard to see my son read that piece of graffiti.

*The administration said and did nothing in response to the vandalism. Yet again, reasoned discourse lost out to raw feelings.*⁸

⁷ Letter from Dean Rakesh Khurana to Winthrop House, May 11, 2019, available at <https://int.nyt.com/data/documenthelper/877-harvard-letter-winthrop-house/62dd9758ae971129b5a9/optimized/full.pdf#page=1>.

⁸ Ronald S. Sullivan, Jr., *Why Harvard Was Wrong to Make Me Step Down*, NEW YORK TIMES, June 24, 2019, <https://www.nytimes.com/2019/06/24/opinion/harvard-ronald-sullivan.html>.

To be clear, it is generally Harvard College's business as to what faculty members it employs and how it employs them, and to the extent Mr. Sullivan's and Ms. Robinson's dismissals from Winthrop House were the result of individual or human resources-related reasons, they are none of my business nor the business of the Finance Committee. Moreover, this letter is certainly not about Harvey Weinstein. The allegations made against him are heinous and disgusting, and I am grateful he will face justice. But this episode raises significant concerns that have implications for the state of tax-exempt higher education in the United States and how it is preparing the next generation of our Nation's leaders. To that end, I have the following questions:

1. The American Bar Association's Model Rule of Professional Conduct 1.2(b) states, "A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities."⁹ Do you believe it is important for students of Harvard College, whether they intend to engage in the legal profession in some future capacity or not, to appreciate the essence of this rule and the implications it has for the concept of due process afforded to individuals accused of committing crimes in the United States? How heavily did Harvard College weigh consideration of this value when it decided to discontinue its relationship with Ronald S. Sullivan, Jr., and his wife, Stephanie Robinson, as faculty deans of Winthrop House?
2. In recent years the word "unsafe" seems to have taken on a broader definition. I have always understood this word to have an obvious meaning, generally referring to objects or activities that might give rise to medically unhealthy or physically dangerous situations. But more and more, the word "unsafe" seems to also refer to ideas that some people don't like. This troubles me, and Prof. Sullivan alleges in his piece in the *New York Times* that some students complained that his position as faculty dean of Winthrop House made them feel "unsafe" because of his representation of a certain criminal defendant.
 - a. Is Prof. Sullivan correct that some students complained that his faculty deanship of Winthrop House made them feel "unsafe" because of his legal representation of a certain criminal defendant?
 - b. If so, does Harvard College take the position that the presence of a lawyer who represents an unpopular criminal defendant can reasonably make someone else unsafe, and if so, how?

⁹ American Bar Association, Model Rules of Professional Conduct, *available at* https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_2_scope_of_representation_allocation_of_authority_between_client_lawyer/

- c. If some students complained that Prof. Sullivan's faculty deanship of Winthrop House made them feel "unsafe," was that concern given any credence in the decision to discontinue Prof. Sullivan's position as faculty dean of Winthrop House?
 - d. Does Harvard College take the position that a faculty member who challenges, or encourages critical thinking about the conventional wisdom or a popular ideology of the day can reasonably make a student unsafe?
 - 3. Are the allegations of vandalism throughout the Harvard campus directed at Prof. Sullivan, as reported in the *New York Times* and discussed above, generally correct?
 - a. Did any personnel at Harvard College investigate such vandalism?
 - b. If so, what were the results of that investigation?
 - c. If these acts of vandalism did occur, is it your understanding that Harvard College students committed them?
 - d. To the extent not described above, and without revealing personally identifiable information, were there in fact resulting consequences for such acts of vandalism described, and what were those consequences?
 - 4. I assume Harvard College has orientation programming for its new students. During such programming, how does Harvard College communicate to those new students the importance of academic freedom, if at all? Please provide copies of any materials used for such programming.

This is to ask that you respond to the Committee no later than October 25, 2019. Furthermore, please answer the questions on a question-by-question basis, indicating which questions you are answering. Of course, while the Finance Committee has a responsibility to ensure the tax laws are administered fairly and effectively, I do not wish to interfere with the legitimate exercise of Harvard's academic freedom and I would certainly invite a discussion of that as well, if you are so inclined. Should you have any questions, please contact John Schoenecker or Quinton Brady at (202) 224-4515. Thank you in advance for your assistance in this matter.



Charles E. Grassley
Chairman
Senate Finance Committee