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**STATEMENT ON THE NOMINATION OF SHELDON HACKNEY TO THE
CHAIRMANSHIP OF THE NATIONAL ENDOWMENT FOR THE HUMANITIES**

Submitted by Stephen H. Balch
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I would like to thank the United States Senate Committee on Labor and Human Resources for the opportunity to place this statement in the record.

For some time now, American academic life has been troubled by the issue of politicization. Scholars, journalists, and the general public have become increasingly aware of the extent to which the standards that have traditionally governed research, teaching, and campus life are being distorted by political and ideological pressures, above all in the humanities. With the nomination of Dr. Sheldon Hackney to the chairmanship of the National Endowment for the Humanities, this issue and its consequences for federal policy toward the humanities come before the United States Senate.

The NEH is unique among federal agencies. Its mission is the enrichment of humanistic scholarship, a responsibility requiring intellectual integrity and liberal vision. Since the chairman of the NEH oversees the agency's decision-making machinery, he must ensure that its deliberations are governed by considerations of scholarly or cultural merit, and — to the extent that this is humanly possible — insulated from political bias or interest-group pressure. This is true whether the decisions made determine support for highly specialized individual research, or projects that will receive broad public exposure.

All those who participate in these decisions, whether NEH staff or outside scholars involved in peer review, must be able to do their work in full confidence that their judgments will not be subordinated to ideological prejudice or censorship. Foremost among his duties, the NEH chairman must maintain an institutional climate in which such confidence prevails. Because of his office's visibility, the NEH chairman also bears a general responsibility for leadership within American higher education. Thus, he must be a credible and unflagging champion of intellectual freedom and scholarly integrity in all their aspects.

Sadly, it can no longer be taken for granted that most senior academic leaders have these qualities. In the case of Dr. Hackney, a confusing mixture of statements and actions seriously clouds a record otherwise possessing many merits. Recent events at the University of Pennsylvania, over which he has presided for twelve years, raise particular doubt that he has a proper regard for the essential right of free expression in academic life or the determination to defend it against political assaults. To confirm Dr. Hackney's nomination, the members of the Senate must satisfy themselves that his reactions to these events have not been so egregious as to disqualify him for leadership of the NEH. This requires, in turn, that Dr. Hackney

appropriately clarify at least one of his statements, and provide a convincing account — not yet in the public record — that would correct the impression of many individuals on the Penn campus that his administration has been impermissibly lax in disciplining students involved in a major infringement of the right to free speech.

Despite the satire lately aimed at Dr. Hackney, he is not a figure of fun. Were this so, his nomination could be lightly dismissed. It is precisely because Dr. Hackney is such a well-known, experienced academic executive that he deserves to have his case scrutinized closely and his explanations carefully weighed. Indeed, Dr. Hackney, in both his strengths and weaknesses, is representative of current American higher education leadership, and any assessment made of him will have the added benefit of revealing much about the academy's overall state of mind.

Whatever his limitations, Dr. Hackney can point to genuine accomplishments in the course of a long academic career. He has been the president of two major universities and the provost of a third. During his tenure at the University of Pennsylvania, he has greatly augmented its endowment, enhanced the appearance of its campus, generally refrained from inappropriate interference with faculty self-governance, and displayed a consistent interest in undergraduate teaching, continuing to offer a course in American history while shouldering heavy administrative burdens. Though some of the policies pursued at Penn have, in my opinion, been very misguided (most notably the introduction of a speech code and the institution of dormitory-based sensitivity programs that jeopardize the intellectual autonomy and privacy of students), Dr. Hackney, in some of his most memorable public utterances, has shown that he can be an eloquent defender of cultural freedom. Moreover, until the events of April, some knowledgeable observers of Penn believed the climate of intellectual freedom on campus to be steadily improving. For example, faced with strong campus opposition to the institution's first broadly drafted speech regulations (and the manner in which they were being implemented), Dr. Hackney displayed an admirable willingness to engage the arguments of his critics, inviting one of the most persuasive to appear before the University's board of trustees. As a result of the debate which followed, the code was narrowed and refined, limiting the definition of verbal harassment to expression only intended "to inflict direct injury on the person ... to whom ... [it] ... is directed." While this revision did not prove successful in preventing abuses and follies, Dr. Hackney's willingness to undertake it demonstrated that he possessed some apprehensions about chilling expression of opinion at Penn. Finally, in at least one case, Dr. Hackney intervened promptly and decisively when informed of harassment charges that were in transparent violation of University regulations. As a result, the charges were immediately dropped.

Unfortunately, more recent events at Penn have revived doubt about Dr. Hackney's credibility and firmness in defending basic academic principles, especially when pressures are acute (which is, of course, precisely when the most dependable commitment to principle is needed). These incidents have also undermined confidence in his ability to impart to subordinates his own personal ideals. This is particularly important because the NEH, through its peer review system and staff recruitment practices, has an intellectual culture that resembles that of the academy. Like a university, its decision-making processes can easily become tainted in the absence of leadership that is uncompromising in its opposition to politicization.

To decide whether Dr. Hackney can provide appropriate leadership, two recent episodes at Penn should be examined in detail. The case of Eden Jacobowitz, an undergraduate accused of racial harassment for calling noisy sorority members "water buffalo," has attracted national and international attention. To most of the journalists and editorialists — liberal and conservative — who commented on it, the case demonstrated the self-defeating quality of speech codes in doing individual justice or reducing intergroup tension. The Jacobowitz case, as well as another serious episode that received less coverage, also exhibit the abuses that can occur when harassment codes are implemented by administrators with little grasp of the value of free expression or the nature of a university. In addition, they raise questions about the realism of some of Dr. Hackney's earlier statements that the phenomenon of "political correctness" had been "greatly exaggerated." An NEH chairman cannot afford to be a Pollyanna, and it would be well to ask Dr. Hackney whether recent troubles have led him to reconsider his once rosy view.

It would be particularly helpful to know whether, in the wake of the Jacobowitz case, Dr. Hackney still believes that the "criminalization" of accusations of prejudice, as opposed to efforts at conciliation involving moral suasion, is wise. In the Jacobowitz case, a verbal exchange — probably involving no more than a lapse of manners and temper — was elevated into a "high moral crime," subject to lengthy and cumbersome procedures, and carrying the possibility of indelibly stigmatizing the accused. The result has not done the parties, least of all Dr. Hackney and his university, any good.

Also disturbing was the reported remark of a student judicial officer that the content of Jacobowitz's utterances was less important than how it was perceived by his accusers. The use of a subjective test renders it impossible to anticipate reliably infractions, the classic definition of a "chilling effect." It also shows how a supposedly "narrow code" can still have mischievous consequences. Indeed, *The Washington Post*, on May 2, 1993 (in an editorial, "Speech Code Silliness"), argued that the use of such tests "leads to absurd difficulties and injustice," and specifically cited the Jacobowitz case as "a sobering example."

The second episode, involving a conservative *Daily Pennsylvanian* columnist, Gregory Pavlik, has even more serious implications for an assessment of Dr. Hackney's leadership. Pavlik, who had written a series of columns critical of affirmative action and Martin Luther King, was accused of harassment by the leaders of a black student organization. Instead of immediately dismissing the complaint, student judicial officers notified Pavlik that proceedings would go forward. Only when Pavlik enlisted the support of a sympathetic professor, who contacted Dr. Hackney, were the charges dismissed. Dr. Hackney's personal role in this affair was, of course, commendable, but the very necessity of his intervention indicates a disturbingly illiberal mentality on the part of key subordinates. The Senate should seek an explanation of why individuals of such limited understanding were entrusted with adjudicating harassment complaints. Failure to ensure that University middle management is chosen in a manner that guarantees the reasonable and equitable execution of sensitive policy does not bode well for Dr. Hackney's stewardship at the NEH.

It would be troubling enough if events only raised questions about Dr. Hackney's ability to choose, guide, and supervise staff. Unfortunately, the theft of almost the entire press run of

the *Daily Pennsylvanian* on the day of Pavlik's last column compels consideration of Dr. Hackney's own views about the free marketplace of ideas. It also raises a most serious question about his resolution and evenhandedness in translating principles into action when pressures come not from "traditionalists," but from groups with which he has greater personal sympathy.

In an essay in the September 6, 1989 issue of *The Chronicle of Higher Education*, Dr. Hackney was sharply critical of legislation sponsored by Senator Jesse Helms that would have prohibited the National Endowment for the Arts from funding work that "denigrates the objects or beliefs of the adherents of a particular religion or non-religion," or that "debases and reviles a group or class of citizens on the basis of race, creed, sex, handicap, age or national origin." Arguing against anything smacking of censorship, Dr. Hackney noted perceptively that art "is inherently unsettling, because it reorders the world for us, perhaps challenging our assumptions and beliefs, or reaffirming our perceptions for new reasons" (though, strangely, the University of Pennsylvania's own harassment code, promulgated that same year, contained quite similar language, explicitly prohibiting "any behavior verbal or physical that stigmatizes or victimizes individuals on the basis of race, ethnicity or national origin"). As Dr. Hackney surely knows, the justification for unfettered speech is precisely the same as that for unfettered art, and speech, like art, is also most exposed to the risk of censorship when it conveys a disagreeable view.

In examining Dr. Hackney's reactions, some contrasting features of these two episodes might usefully be kept in mind. The criticism of the NEA emanated from Christians and cultural conservatives outraged by a federally funded exhibit that included the picture of a crucifix immersed in urine. In the case of the *Daily Pennsylvanian*, the outrage was voiced by black student groups and directed at the opinions of a conservative columnist. The controversy over the Helms amendment centered on whether "offensive" art should be federally subsidized, that over the *Daily Pennsylvanian* on whether an "offensive" newspaper could simply be circulated. The action taken by those aggrieved by the NEA was the lawful one of introducing legislation, however misconceived; by contrast, the critics of the *Daily Pennsylvanian* attempted to obstruct physically, and probably unlawfully, the distribution of a newspaper.

The differences in the origins of these threats to free expression should not have affected Dr. Hackney's reaction to them, though differences in their nature might well have argued for a more vehement response in the affair of the *Daily Pennsylvanian*. Surprisingly, however, Dr. Hackney's immediate comment on the confiscation of the *Daily Pennsylvanian* (printed on April 20th in the University's official publication, *Almanac*) conveyed an equivocation and uncertainty wholly absent from his earlier statements repudiating artistic censorship. Rather than issuing the simple straightforward condemnation that this atrocious and unacceptable act clearly called for, Dr. Hackney felt obliged to make his now famous observation that "two important university values, diversity and open expression, seem to be in conflict." While he did go on to affirm that there could be no compromise regarding First Amendment rights, he thought the context required that he also stress that there should be "no ignoring the pain that expression may cause." (Indeed, a very large part of his statement consists of apologetic reassurances — not, as one might expect, to the staff and readership of the *Daily Pennsylvanian*, but to the "minority community at Penn" — as to how tensions between the campus security force and minority students would be investigated and reduced.) Concluding his statement, Dr. Hackney urged that members of the University of Pennsylvania community work together "to narrow the

distance that now seems to preclude ... [the] ... peaceful coexistence" of diversity and open expression, arguing that "Penn must be both a diverse and welcoming community for all its members, and one in which freedom of expression is the supreme common value." How this circle might be squared was never explained. Debate, of course, can be sharp *and civil*, but to expect that debate be congenial is to misunderstand its nature and, perhaps, subtly to encourage its constraint.

In an institution devoted to the life of the mind, diversity is not in tension with controversy; rather, diversity requires that controversy flourish. A university agenda devoted to narrowing differences of opinion in search of a "welcoming community," instead of exploring them in the pursuit of liberating knowledge, is illegitimate and self-defeating.¹ This would be equally and painfully true at the NEH, where scholars of every outlook must be assured not of a "welcome" but of statutorily mandated fair, disinterested evaluation.

As a requirement for approval of his nomination, Dr. Hackney should be expected to dispel the ambiguity that now exists regarding his understanding of the nature and consequences of intellectual freedom, and to provide assurances that he does not utilize a double standard when open expression is jeopardized.

Both in his April 20th statement and in another carried on April 22nd in *Penn News* (an administrative publication of the University of Pennsylvania), Dr. Hackney assured the Penn community that violators of University policies would be subject to the provisions of the University judicial system. To date, however, none of those suspected in the theft of the *Daily Pennsylvanian* appears to have faced a hearing, nor does it seem that anyone was actually charged until a complaint was filed by a faculty member — rather than the administration itself — several weeks after the event. Ironically, the one security officer who did detain students caught in the act of carrying away copies of the *Daily Pennsylvanian* was reassigned to desk work, pending an investigation of *his* actions.

In light of the gravity of the offense, hesitation in identifying and charging suspected perpetrators would constitute a serious dereliction of duty. Moreover, since the misdeed was immediately visible to everyone on campus, ensuring a vigorous investigation was from the first a matter of presidential responsibility.

Dr. Hackney must clarify the record. As a requirement for approval of his nomination, he should be expected to describe in some detail — and with appropriate chronology — the actions his administration took to identify and charge the perpetrators of the *Daily Pennsylvanian* theft. This description should contain convincing evidence of an investigation whose vigor and dispatch was commensurate with the severity of the offense. A university willing to proceed with charges in the case of an ill-tempered remark can certainly be expected to move swiftly against those who would block the circulation of its

¹ This point was made forcefully in a letter to Dr. Hackney signed by the dean of the University of Pennsylvania Law School and fifteen of its faculty members, who observed that the "removal of the newspapers struck at the heart of the most fundamental diversity which the university should foster — diversity of thought, views and expression."

campus newspaper. Unless Dr. Hackney can assure reasonable observers that his administration has not been uncertain or negligent in this matter, confidence in his ability to enforce the laws and regulations governing the NEH will be seriously impaired.

It is a decidedly unhappy circumstance when a distinguished educator and leader of one of America's most esteemed universities must be asked publicly to reaffirm his dedication to principles that only a few years ago were taken for granted, not only in academic life but in American society at large. Though Dr. Hackney has significant merits, the events that have coincided with his nomination require that he explain his seemingly weak and equivocating response. They particularly require that he remove the impression that his defense of intellectual freedom and willingness to enforce rules varies with the political winds. The American people have the right to a National Endowment of the Humanities whose policies are categorically committed to intellectual freedom and procedural fairness. Can Dr. Hackney ensure that he will follow such policies?