

# Cornell University University Assembly

## Cornell University Assembly

Agenda of the November 24, 2020 Meeting

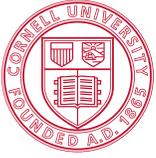
4:30 PM – 6:00 PM

Zoom

- I. Call to Order
  - a. Call to Order
  - b. Welcome and Introduction
  - c. Call for Late Additions to the Agenda
- II. Approval of the Minutes
  - a. [8/5/2020](#)
  - b. [11/10/2020](#)
- III. Business of the Day
  - a. Presentation by Amy Layton regarding “[Big Red Writes](#)”
  - b. Discussion of an additional meeting (December 1, 2020)
  - c. [Resolution 2](#): Support for Native American and Indigenous Students at Cornell’s Demands
    - i. Sponsored by Colin Benedict and Uchenna Chukwukere
  - d. [Resolution 3](#): Bylaw Changes to Require Roll Call Voting
    - i. Sponsored by Bennett Sherr
  - e. [Resolution 4](#): Acknowledging the Passing of Transgender Day of Remembrance, Upholding the University Assembly’s Commitment to Representing Trans and Genderqueer Members of the Campus Community, and Establishing the LGBTQIA+ Intermediary to the University Assembly
    - i. Sponsored by Bennett Sherr
  - f. [Resolution 5](#): In Recognition and Appreciation of Cornell University Students
    - i. Sponsored by Hei Hei Depew and the Executive Board
- IV. Committee Reports
  - a. Executive Committee
  - b. Codes and Judicial Committee
    - i. [Recommendations from the CJC](#)
    - ii. [Public Comments Document](#)
    - iii. [Public Forum Document](#)
  - c. Campus Welfare Committee
  - d. Campus Infrastructure Committee

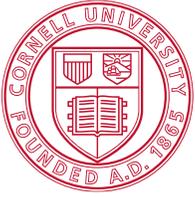
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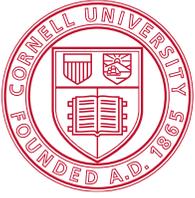
- V. Assembly Reports
  - a. Student Assembly
  - b. Graduate and Professional Student Assembly
  - c. Employee Assembly
  - d. Faculty Senate
- VI. Liaison Reports
- VII. Late Additions to the Agenda
- VIII. Adjournment



# Cornell University University Assembly

## Cornell University Assembly Minutes of the August 5, 2020 Meeting 2:00 PM – 3:00 PM Zoom Meeting

- I. Call to Order
  - a. Call to Order
    - i. R. Howarth called the meeting to order at 2:00pm
  - b. Roll Call
    - i. *Present:* A. Howell, C. Duell, C. Levine, C. Van Loan, J. Pea, L. Kenney, P. Thompson, U. Chukwukere
    - ii. *Special Guest:* Vice President of University Relations Joel Malina
- II. Call for Late Additions to the Agenda
  - a. L. Kenney asked to add a late addition to the agenda regarding tuition increase and staff/faculty cuts in pay
  - b. R. Howarth approved the addition.
- III. Business of the Day
  - a. Tuition Increase, Faculty/Staff cuts, and Covid-19 Response
    - i. L. Kenney expressed concern regarding students being able to return safely to campus. She reported dating profiles being submitted from students for shelter during Quarantine/Covid-19. Additionally, she mentioned increasing transparency between the institution and students regarding professor cuts. Lastly, she asked that the tuition increases be reconsidered being that the decision was made in January before the pandemic and thus not considering the pandemic or online learning.
    - ii. R. Howarth discussed equity in terms of socio-economic status within the families coming from Covid-19 hotspots and the topic of mental health during a stressful time.
    - iii. C. Duell expressed concern with the lack of seriousness amongst the student population in response to the 14 day quarantine. He also conveyed that his department (Physics) was directed to provide at least one class for students to be instructed in person.
    - iv. For future reference, J. Pea suggested an opt in policy for teaching modality.
    - v. C. Van Loan described the mask policy on Cornell's campus and the necessity to specify and require a mask to increase confidence in being on campus.



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- vi. Non-UA members conveyed that the school seems to be over ambitiously attempting to meet state/federal guidelines for Covid-19, but not taking into account the actual capabilities of the institution.
- vii. J. Pea responded to the concern and agreed stating a possible decrease in the compliance amongst students if they know there is not a safe place to quarantine.
- viii. U. Chukwukere stated that students are concerned about housing plans in the event that the university shuts down.
- ix. C. Van Loan asks J. Malina about faculty/staff members being cc'd on student emails as well as the institutions willingness to disclose "bad news". J. Malina said cc-ing faculty/staff on student emails is not always necessary and the university will be candid with the information distributed.
- x. A. Howell asked about financial models and J. Malina said the financial models have not been changed,; however, they are looking to minimize financial impact and recognize that some budgets will be impacted.
- xi. L. Kenney moved to extend the meeting for 10 minutes to discuss possible future action. R. Howarth asked for a second to that request and A. Howell seconded.
- xii. L. Kenney suggested either drafting a document that talks to commonalities, concerns, and suggestions from the Assembly, putting forth a formal resolution
- xiii. L. Kenney moved to draft an informal document and called for a vote by Friday by 1PM EST. J. Pea seconded this motion. R. Howarth then called for a vote and 8 "Yes" were counted, so the motion passed.

IV. Adjournment at 3:00pm

Respectfully Submitted,  
Office of the Assemblies



# Cornell University University Assembly

## Cornell University Assembly

Minutes of the November 10, 2020 Meeting

4:30 PM –6:00 PM

Zoom Meeting

- I. Call to Order
  - a. L. Kenney called the meeting to order at 4:31pm.
  - b. *Members Present:* V. Aymer, U. Chukwukere, H. Depew, C. Duell, D. Dunham, B. Fortenberry, T. Fox, J. Froehlich, A. Hong, R. Howarth, C. Huang, L. Kenney, C. Levine, J. Pea, B. Sherr, L. Smith, C. Van Loan, P. Thompson, J. Withers
  - c. *Late Addition:* J. Feit
  - d. *Also Present:* C. Benedict, M. O’Gara, B. Krause
- II. Call for Late Additions to the Agenda – 4:32pm to 4:35pm
  - a. U. Chukwukere motioned to add a presentation by C. Benedict on the demands of Native American and Indigenous Students at Cornell’s (NAISC’s) to the agenda after the approval of the meeting minutes.
    - i. C. Huang seconded the motion.
    - ii. L. Kenney asked if a resolution would accompany this presentation.
    - iii. U. Chukwukere affirmed and stated he would send the resolution to the assembly members.
    - iv. The motion **passed** with 18-0-1.
      1. Approved: V. Aymer, U. Chukwukere, H. Depew, C. Duell, D. Dunham, B. Fortenberry, T. Fox, J. Froehlich, A. Hong, R. Howarth, C. Huang, C. Levine, J. Pea, B. Sherr, L. Smith, C. Van Loan, P. Thompson, J. Withers
      2. Abstained: L. Kenney
- III. Business of the Day
  - a. L. Kenney acknowledged that it was the 245 anniversary of the Marine Corps and that tomorrow would be Veteran’s day. She thanked those who have served our country.
  - b. Approval of Meeting Minutes (Aug. 21, 2020, Oct. 20th, 2020, Oct. 27<sup>th</sup>, 2020)
    - i. C. Duell motioned to approve all three of the minutes.
      1. P. Thompson seconded the motion.
      2. The motion **passed** with 18-0-2.
        - a. Approved: V. Aymer, U. Chukwukere, H. Depew, C. Duell, D. Dunham, J. Feit, B. Fortenberry, T. Fox, J. Froehlich, A. Hong, C. Huang, L. Kenney, C. Levine, J. Pea, B. Sherr, L. Smith, C. Van Loan, P. Thompson, J. Withers



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- b. Abstained: L. Kenney, R. Howarth
- IV. Presentation by Colin Benedict on the Resolution proposed by NAISC.
- a. C. Benedict presented the history of indigenous peoples who have historically occupied New York state and the demands which the Native American and Indigenous Students at Cornell have presented.
  - b. U. Chukwukere offered to share the resolution.
  - c. L. Kenney reminded the assembly that they will be debating whether or not to consider this resolution in the next meeting.
  - d. C. Benedict continued to present the NAISAC Resolution.
  - e. L. Kenney wanted to clarify that the resolution is coming from U. Chukwukere as a co-sponser.
  - f. L. Kenney opened to floor to any questions.
  - g. V. Aymer asked if any faculty have signed onto this resolution. She also asks if this resolution also refers to South American indigenous people.
  - h. C. Benedict stated 34 faculty members have signed onto the petition. He said many of the demands were focused on acts of reparations on the basis of Cornell's status as a land-grant institution. He also said expanding indigenous student recruitment is part of a larger project in NAISAC.
  - i. C. Van Loan asked if the required courses for the AWISP minor are being added to the anti-racism initiative.
  - j. C. Benedict thanked the question and affirms that the these are courses they have in mind or, in the event of an expansion of this department, then a course also exploring ethically conducted research might be beneficial to add to the initiative.
  - k. J. Pea acknowledged the importance of C. Benedict's presentation and asks for more information on an aforementioned event on Facebook.
    - i. C. Benedict affirmed and offered to share the resource links.
  - l. U. Chukwukere motioned to table the resolution for a vote during the next meeting.
    - i. B. Sherr seconded this motion.
    - ii. J. Feit acknowledged a question in the chat by R. Platt regarding the definition of "educational purpose" and whether that encompasses housing and dining facilities.
    - iii. C. Benedict said that "educational purpose" defines any land on campus that the University actively invites individuals to hunt white tailed deer or is used for hunting purposes.
    - iv. The resolution was **tabled** for next meeting unanimously.
      1. Approved: V. Aymer, U. Chukwukere, H. Depew, C. Duell, D. Dunham, B. Fortenberry, J. Feit, T. Fox, J. Froehlich, A. Hong, R.



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Howarth, C. Huang, L. Kenney, C. Levine, J. Pea, B. Sherr, L. Smith,  
C. Van Loan, P. Thompson, J. Withers

### V. Committee Updates

#### a. Executive Committee

- i. U. Chukwukere said that they discussed issues with emergency appointments and conflicts of interest in positions within the University Hearing and Review Board.
- ii. U. Chukwukere reported that the committee also discussed a communications campaign utilizing different platforms such as Instagram and Facebook. He said they also touched on the idea of an ad hoc committee that might support this campaign.
- iii. U. Chukwukere stated the committee discussed how to support the committee chairs better in their regular operations
- iv. U. Chukuwukere said they discussed making by-law and charter changes to ensure the pronouns are gender neutral.
  1. L. Kenney said that considering the tight deadlines with the Code, they have decided to work on changes to the charter and bylaws next semester as a whole.

#### b. Campus Infrastructure Committee

- i. J. Feit said that he has been ensuring that that positions in the committee are filled. He also stated that they are currently looking to have their first organizational meeting the week of Nov. 23<sup>rd</sup>.

#### c. Campus Welfare Committee

- i. B. Sherr stated that due to health concerns there has been a bit of a delay, however they are organizing their first meeting.
- ii. B. Sherr reported they are also missing 5 seats and they will be reaching out to these various assemblies to fill those seats.
- iii. B. Sherr said that he has also contacted actors working on the Nicotine Ban in the last University Assembly (UA) cycle.

#### d. Codes and Judicial Committee

- i. B. Fortenberry said that there will be a public forum will be held on Thursday, allowing groups such as the University Counsel's Office (UCO); the Judicial Code Counselor (JCC); the Office of the Judicial Administrator (OJA); the student and campus perspective; and the UA to present from their perspective of what is important for them in terms of comments and feedback. He stated that the UA will be asked during the forum from the Counsel's Office on the CJC and UA response to the discussion of the "standard of evidence."



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- ii. B. Fortenberry asked that if the UA intends to ask any questions that they provide those in advance so other groups can prepare to answer them with information.
- iii. L. Kenney stated that as a panelist she aims to express the deadlines that have been outlined and the want for a transparent process with other groups. She asked what the members of the UA would like for her to address or ask for comment on. L. Kenney said waiting for community responses before voting on the evidentiary standard would be more in line with democratic values and ensuring that the constituents' voices are heard.
- iv. C. Van Loan asked if he could reiterate the panelists again.
- v. Brandon Fortenberry outlined the panelists as: Madelyn Wessel (UCO), Barbara Krause (OJA), Marisa O'Gara (JCC), Logan Kenney (UA), Ryan Lombardi (Vice President on Student and Campus Life), and has reached out to the Complainant Advisors (CA) group but has heard no response.
- vi. C. Van Loan asked if the biggest divergence is the evidentiary standard.
- vii. B Fortenberry said that the standard is a very clear split decision while others are more discussion based.
- viii. L. Kenney asked if the body is more comfortable with her speaking to the evidentiary standard or to speak more procedurally.
- ix. C. Van Loan supported that he would like to people to speak to the evidentiary standard in the meeting currently.
- x. L. Kenney said that she believes that in the criminal justice system when you lower the evidentiary standard you don't need as much proof to convict someone as someone guilty or responsible. She believed that this may augment unconscious or implicit bias towards students who come from a minority background or lack confidence. She supported "clear and convincing" evidence to ensure that people are not wrongly held responsible. L. Kenney also stated that the majority of the public votes in May were heavily leaning towards the "clear and convincing" standard. She also understood the other avenues to keep clear and convincing and maintain a restorative justice but that needs to be investigated further.
- xi. M. O'Gara said that there was a fear that if they kept "clear and convincing" in the code then it would have to be made uniform across all of the institution under Title IX. She states that "clear and convincing" makes it so you have to be more than 70% sure that a student is responsible. She also affirms what L. Kenney spoke to the lowering of the evidentiary standard and lowering of proof.



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- xii. B. Krause stated that this issue is not a criminal process, but rather aims to sustain an educational environment. B. Krause said that it is important to address not only individuals but also the campus as a whole. She states that in this “clear and convincing” standard it creates an unequal field in the favor of individuals.
- xiii. R. Platt said that Cornell faculty and students should be free of fear of being wrongly accused and there should be a clear case for those held responsible. R. Platt stated the process itself is traumatic so if there is no “clear and convincing” evidence then the campus shouldn’t pursue it. R. Platt also disproved of the intent by the Board of Trustees to shift the responsibility of codes away from the UA and shared governance into the Vice President and the University Counsel. He said that they need to have community-based codes and procedures for all people to ensure the same fundamental rights.
- xiv. L. Kenney wanted to clarify that the Campus Code of Conduct is not a criminal justice system as they do not have a “beyond a reasonable doubt” standard. She said that the “clear and convincing standard” can award student’s trust in the system.
- xv. M. O’Gara said in regard to the “preponderance of evidence” standard’s aforementioned unequal field one needs to keep in mind that the complainant is often the University. She said there can be harm to the individual and University if the respondent has done something wrong, however a punitive approach is not the correct approach. She believed in accountability and a restorative model. M. O’Gara agreed that hearing panels can refuse impose a disciplinary record, however that isn’t a commonplace in practice.
- xvi. B. Krause said she hopes people don’t perceive this philosophical standard as a debate between offices. She would like to note that the majority of cases have university individuals bringing the case forward on behalf of an entire community such as residence halls. B. Krause notes that the code aims to be less legalistic and less adversarial. She notes that the current proposed revision attempts to create avenues to informal and alternative dispute resolutions.
- xvii. D. Dunham moved to extend the meeting until 6:15pm.
  - 1. Seconded by B. Sherr.
  - 2. The motion passed with no opposition.
- xviii. B. Fortenberry said the forum is a 6:30pm the tomorrow. He said that they have the responsibility to take the public comments and provide it to the



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Counsel's Office and individuals have until the 17<sup>th</sup> to provide these comments.

- xix. L. Kenney said that if anyone has any further questions they are welcome to email herself or B. Fortenberry.
- xx. B. Fortenberry asked what is the turn-around from collecting comments to report them.
- xxi. G. Giambattistia said she would ask.

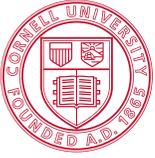
### VI. Constituent Group Updates

#### a. Student Assembly

- i. C. Huang reported that last week they passed a resolution where they unanimously supported NAISAC's demands.
- ii. She said they also passed a resolution for the University to rethink their relationship with the Ithaca Police department in response to protests downtown.
- iii. C. Huang reported that this week they will be reviewing procedures and sending out a student's activity fee.
- iv. She said that they had and will continue to have a discussion about the Cornell Police department.
- v. C. Huang stated that the Student Assembly have also been working with the Financial Aid Office to develop a pilot program to waive the Student Contribution fee.
- vi. L. Kenney asked when students were pepper sprayed.
  - 1. C. Huang said that it happened 2-3 weeks ago.
  - 2. L. Kenney expressed thanks for bringing that to their attention and report.
  - 3. T. Fox said that the Cornell Police chief used to participate in these meetings and he suggests that if they are going to be discussing current relations within law enforcement that they may want to invite the chief of police.
  - 4. C. Huang recognized that it is good to keep everyone involved.
  - 5. T. Fox asserted that they will not get rid of law enforcement and that they should have a voice on behalf of said law enforcement.
  - 6. L. Kenney asked P. Thompson to reach out to David Honen if he is interested as an ex-officio member since he has a seat on the CJC.

#### b. Graduate & Professional Student Assembly

- i. D. Dunham said yesterday Pres. Pollock came to speak with the GPSA.
  - 1. He said they discussed a greater need of structural support with wi-fi and other technological issues.

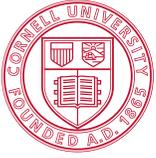


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2. D. Dunham reported that there was a discussion of vaccines under the Biden administration.
    - ii. He reported that the resolution on the Campus Code of Conduct, cohering with the JCC's perspective failed on voting.
    - iii. D. Dunham also said that the GPSA approved a resolution in finance commissioning.
  - c. Employee Assembly
    - i. H. Depew said that they are still going to work on their priorities poll.
      1. She also said that they will work through these issues as a unit using a retreat.
    - ii. They have voted on a resolution which thanked students for their commitment on social distancing measures. They aim to send said thanks to the community before the Thanksgiving break.
    - iii. H. Depew also said they were discussing with the faculty senate about endorsing the naming of an upcoming building.
  - d. Faculty Senate
    - i. C. Van Loan said that Provos is giving a financial update tomorrow.
    - ii. C. Van Loan reported that they are discussing the use of standardized test in freshman admissions.
    - iii. He said that the vote on a number of academic integrity modifications to the Academic Integrity Code was delayed as a handful of professors disagreed on whether the independent witness could be a staff member.
    - iv. C. Van Loan said that they are setting up a discussion on hate-based communication that targets faculty as that has escalated.
- VII. Open Floor Discussion
- a. L. Kenney opened the floor for discussion.
  - b. B. Sherr motioned for attaching names to the votes taken today: approval of the minutes, approval of the late addition to the agenda, and the tabling of the resolution to next week.
    - i. U. Chukwukere seconded.
    - ii. L. Kenney asked if this would also extend to further meetings.
    - iii. B. Sherr said that it was just for this meeting.
    - iv. L. Kenney Abstained twice.
    - v. The motion **passes** with 17-0-0.

The meeting was adjourned at 6:16pm.

Respectfully Submitted,

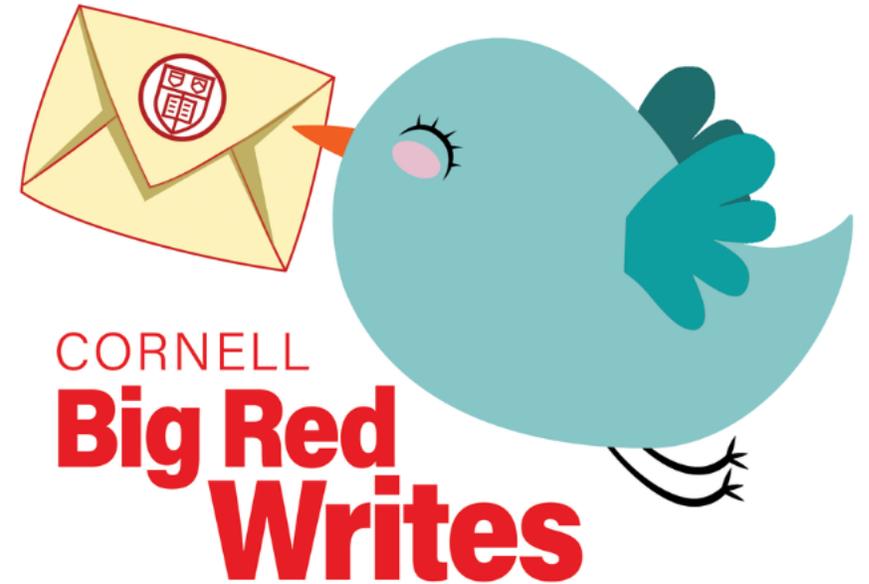


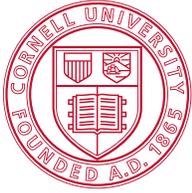
Cornell University  
University Assembly

Kassandra Jordan  
Clerk of the Assembly

# Goals

- **Build relationships across generations and/or Cornell constituencies**
- **Exposure to new experiences, skills, languages, and cultures**
- **Reduce feelings of isolation caused by COVID-19**
- **Help children develop writing/storytelling skills and improve literacy**
- **Forge lifelong friendships**





# Cornell University University Assembly

## U.A. Resolution # 2

### Support for Native American and Indigenous Students at Cornell's Demands [11/10/2020]

1 **Sponsored by: Colin Benedict '21, External Relations Chair of NAISAC and Uchenna**  
2 **Chukwukere, Student Assembly Representative**

3  
4 **On Behalf Of: Native American and Indigenous Students At Cornell (NAISAC)**

5 ABSTRACT: This resolution calls for the Student Assembly to support the demands of Native  
6 American and Indigenous Students at Cornell (NAISAC)

7 **Whereas,** the Gayogohó:no (Cayuga) Nation of the Haudenosaunee Confederacy have a historic  
8 and contemporary presence in the Ithaca area;

9 **Whereas,** the Gayogohó:no people were displaced and forcibly removed from this region by the  
10 Sullivan-Clinton Campaign in 1779, an act of attempted genocide sponsored by the United  
11 States;

12 **Whereas,** the land claims filed by the Gayogohó:no people in the courts of the United States  
13 have proven to be largely unsuccessful in reestablishing a land base for themselves in the Finger  
14 Lakes area;

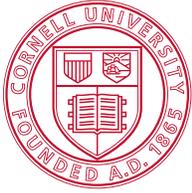
15 **Whereas,** the Morrill Land Grant Act of 1862 established a land-grant college for each state to  
16 support higher education;

17 **Whereas,** each state received 30,000 acres of land from the federal government for each member  
18 of Congress to support the funding of the land-grant college. If the state had no available lands in  
19 its boundaries, it was issued paper scrip to acquire lands in other states;

20 **Whereas,** Cornell University was established as the land grant institution for the state of New  
21 York, and 990,000 acres of land were granted to support the University endowment;

22 **Whereas,** New York had no available lands within its borders due to parceling of land in the  
23 post- Revolutionary War era;

24 **Whereas,** Ezra Cornell, John McGraw, and other Cornell founders selected land in 15 other  
25 states to fund the endowment of Cornell University;



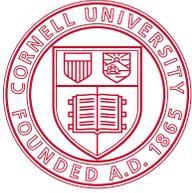
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- 26 **Whereas**, much of the land chosen by the University was available due to Indigenous  
27 dispossession and acts of genocide enacted by the United States;
- 28 **Whereas**, the University did not immediately sell the land, but let it accrue value over time,  
29 slowly selling it off years later;
- 30 **Whereas**, by 1914, an estimated 5.7 million was raised from the land sale (approximately \$148  
31 million in 2020 dollars);
- 32 **Whereas**, Cornell had raised over 4.5 times as much money as the second most profitable land-  
33 grant university, creating the basis for the endowment of Cornell University that we know today;
- 34 **Whereas**, Cornell prides itself on Diversity and Inclusion, where any person can study any  
35 subject, yet still refuses to publicly acknowledge the history of the territory that the University's  
36 Ithaca campus occupies;
- 37 **Whereas**, as an academic institution that occupies land in the Ithaca area, Cornell has a  
38 responsibility to acknowledge this history of violence, the Cayuga Nation's history with this  
39 land, and support the Cayuga Nation as they seek to recover from this history, and reclaim their  
40 territory;
- 41 **Whereas**, to this day, the University upholds a tradition of profiting from acts of colonial  
42 violence and Indigenous erasure;
- 43 **Be it therefore resolved**, in order to begin to rectify these crimes, the members of Native  
44 American and Indigenous Students At Cornell put forward the demands in Appendix A to the  
45 University Administration;
- 46 **Be it further resolved**, the University Assembly will recognize these demands, and support the  
47 efforts of Indigenous students, staff, and faculty, in moving these demands into practice;
- 48 **Be it finally resolved**, that the University Assembly calls on the University to meet these  
49 demands, acknowledge the historical and contemporary relationships that Indigenous people  
50 have with the Ithaca campus, and make steps towards a more inclusive and reconciliatory  
51 relationship with Indigenous people in the Ithaca area and beyond.

52

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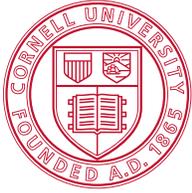
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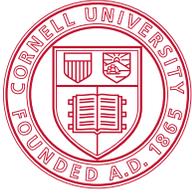
55 *Appendix A:* Cornell University was founded on Indigenous dispossession and genocide. To this  
56 day, the University upholds a tradition of profiting from acts of colonial violence and Indigenous  
57 erasure. In order to begin to rectify these crimes, the members of Native American and  
58 Indigenous Students At Cornell put forward these demands to the University:

- 59 1. The American Indian and Indigenous Studies Program shall transition to department  
60 status; this transition is to be completed within the next four years.
- 61 2. Increased funding shall be granted to the AIISP for the recruitment and retention of new  
62 Indigenous faculty members, to support the transition of the program to department  
63 status. A minimum of five new faculty members shall be hired within the next four years.
- 64 3. Increased funding shall be granted to the AIISP to support increased recruitment and  
65 retention efforts of Indigenous students. In 2017, there were only 67 Native Americans  
66 enrolled across all colleges, undergraduate and graduate. We only make up 0.3% of the  
67 overall Cornell student population<sup>1</sup>. We demand that the number of enrolled Native  
68 American/Alaska Native students be increased to 1.7% of the total Cornell student  
69 population, equal to the percentage of Native American/Alaska Natives in the United  
70 States<sup>2</sup>. The University shall make efforts to increase the number of enrolled  
71 Hawaiian/Pacific Islander students to 1% of the total student population. In order to  
72 support increased rates of retention, an additional staff member shall be hired to separate  
73 the duties of recruitment and retention efforts within the AIISP. Recruitment conducted  
74 by the University shall focus on Indigenous students from communities historically  
75 affected and/or displaced by the Morrill Land Grant Act. Any student coming from a  
76 community affected and/or displaced by the Morrill Land Grant Act shall receive a free  
77 education, regardless of field of study.
- 78 4. An Indigenous therapist will be hired by Cornell Health, to aid in addressing the unique  
79 mental health struggles affecting Indigenous students, staff, and faculty.
- 80 5. The University shall include a land acknowledgement of the Gayogohó:nq' (Cayuga)  
81 people before all Ithaca-based University-affiliated events. The land acknowledgement  
82 used will be the AIISP-approved version.
- 83 6. The University shall put out a statement acknowledging the amount of land acquired,  
84 interest accrued, and mineral rights funds received through the Morrill Land Act and thus  
85 through Indigenous dispossession. The University shall commit to a policy of refraining  
86 from mineral and resource extraction on lands gained through the Morrill Land Grant  
87 Act.
- 88 7. The University shall return all lands in the Ithaca area not immediately utilized for  
89 educational purposes to the traditional Gayogohó:nq' leadership. The University shall  
90 build  
91 and maintain channels of communication with the traditional Gayogohó:nq' leadership  
92 until the land return process is complete.
- 93 8. To ensure that all students have a basic understanding of the gravity of Indigenous  
94 genocide and their own positionality on stolen Indigenous land, the University shall



## Cornell University University Assembly

- 95 mandate that all students take an introductory Indigenous Studies course during their first  
96 year of study.
- 97 9. To ensure that monuments to historical figures of colonization and violence against  
98 Indigenous people are removed, the University shall rename Morrill Hall on the Arts  
99 Quad. Consultation with AIISP Faculty and Students in the renaming is required.
- 100 10. The Ad-Hoc Committee on Native American Affairs shall be reinstated to oversee the  
101 approval of these demands. The Committee shall be made up of Indigenous students,  
102 staff, faculty, local Indigenous leadership, and delegates from University administration.
- 103 *Supported by:*
- 104 Native American and Indigenous Students At Cornell  
105 the American Indian Science and Engineering Society  
106 Indigenous Graduate Students' Association  
107 Cornell Asian Pacific Islander Student Union  
108 La Asociación Latina  
109 Black Students Union  
110 People's Organizing Collective  
111 Black Women Support Network  
112 South Asian Council  
113 The Puerto Rican Students Association  
114 The Cornell Abolitionist Revolutionary Society  
115 Climate Justice Cornell  
116 the Caribbean Students' Association  
117 Cornell Welcomes Refugees  
118 Cornell Vietnamese Association  
119 Cornell Dream Team  
120 Thread Magazine  
121 The Gender Justice Advocacy Coalition  
122 International Students' Union  
123 First Generation Students' Union  
124 Haven  
125 Cornell Higher Education Review  
126



Cornell University  
University Assembly

## U.A. Resolution #3

### Bylaw Changes to Require Recorded Voting

[11/24/2020]

1 **Sponsored By: Bennett Sherr, Undergraduate Representative**

2 **Abstract:** This resolution proposes adding a subsection to Article II of the Bylaws of the  
3 University Assembly that would require recorded votes be taken for all voting matters outside of  
4 executive session or organizational meetings.

5 **Whereas,** Article II of the Charter of the Cornell University Assembly states, “The object of the  
6 Assembly is to improve and sustain the involvement of the campus community in the governance  
7 of campus affairs affecting the broad campus community by establishing open, effective, and  
8 efficient channels of communication between and amongst the community and university  
9 administration,”

10 **Whereas,** the University Assembly votes on decisions that are within the general interest of the  
11 Cornell community,

12 **Whereas,** students have become disinterested in and untrusting of shared governance,

13 **Whereas,** voter turnout in undergraduate elections to the SA and UA during the Fall 2020  
14 semester ranged from 16.85% to 29.77%,

15 **Whereas,** with minimal exception, Student Assembly elections have maintained turnout rates  
16 lower than 50%,

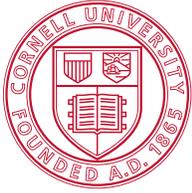
17 **Whereas,** voter turnout in Employee Assembly elections was 14.55% during the Fall 2020  
18 semester,

19 **Whereas,** students lack faith in shared governance due to the lack of transparency between the  
20 legislative bodies and the general population,

21 **Whereas,** secret ballots and non-roll call votes lessen transparency and reduce the Cornell  
22 community’s ability to hold elected representatives accountable,

23 **Whereas,** Section 2.4 of the Cornell University Assembly Bylaws requires adherence to  
24 Robert’s Rules of Order for all things not addressed in Article II of the Bylaws,

25 **Whereas,** Robert’s Rules of Order does not mandate recorded votes on all voting matters of the  
26 body,



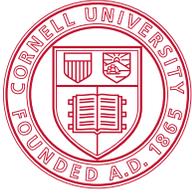
## Cornell University University Assembly

27 **Be it therefore resolved,** that the University Assembly will amend its Bylaws by adding the  
28 existing language to Article II immediately following Section 2.14, to read:

29 **“Section 2.15: Voting Protocol**

30 The Assembly will require votes be recorded in such a way that the names of the yeas, nays, and  
31 abstentions are accessible to the Cornell community for all voting matters except during  
32 executive session or organizational meetings. How the votes are taken will remain at the  
33 discretion of the Assembly and should be decided upon during the first organizational meeting;  
34 however, in the event that no decision is made, the Chair is encouraged to decide how voting  
35 should take place.”

36 **Be it finally resolved,** this change to the Cornell University Assembly Bylaws shall remain  
37 active beyond the end of the 2020-2021 academic year, or until it is removed by a subsequent  
38 amendment.



Cornell University  
University Assembly

**U.A. Resolution #4**

**Acknowledging the Passing of Transgender Day of Remembrance, Upholding the University Assembly's Commitment to Representing Trans and Genderqueer Members of the Campus Community, and Establishing the LGBTQIA+ Facilitator to the University Assembly**

[11/24/2020]

1 **Sponsored By: Bennett Sherr, Undergraduate Representative**  
2

3 **Abstract:** This resolution expresses the Cornell University Assembly's recognition of the 21<sup>st</sup>  
4 Transgender Day of Remembrance which took place on Friday, November 20<sup>th</sup>, 2020. The bill  
5 also seeks to ensure that the names of all the transgender and gender queer people who died from  
6 violence in the United States this year and all future years are documented in our record. The  
7 resolution affirms the University Assembly's support for protecting the rights and safety of  
8 LGBTQIA+ Cornellians. Finally, the resolution establishes the LGBTQIA+ Facilitator to the  
9 University Assembly, who will be elected from the voting membership to serve as the primary  
10 point of contact between LGBTQIA+ community groups and the University Assembly.  
11

12 **Whereas,** the Gay and Lesbian Alliance Against Defamation (GLAAD) describes Transgender  
13 Day of Remembrance as, "An annual observance on November 20<sup>th</sup> that honors the memory of  
14 the transgender people whose lives were lost in acts of anti-transgender violence,"  
15

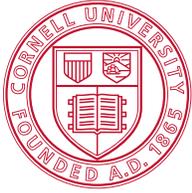
16 **Whereas,** Transgender Day of Remembrance dates back to a 1999 vigil led by transgender  
17 advocate Gwendolyn Ann Smith to honor the memory of Rita Hester, a transgender woman  
18 killed the year prior,  
19

20 **Whereas,** during 2020, the Transgender Murder Monitoring (TMM) project found 350 reported  
21 murders of trans and gender-diverse people,  
22

23 **Whereas,** a majority of the murders found by the TMM were reported in Brazil, Mexico, and the  
24 United States, representing 237 of the 350 murders, and a 6% increase in reported murders from  
25 2019,  
26

27 **Whereas,** between 2008 and the present, the TMM has found 3,664 reported cases of murder  
28 caused by anti-transgender violence spanning 75 different countries and territories across the  
29 globe,  
30

31 **Whereas,** the average age of the transgender people who were murdered in 2020 was just 31  
32 years old, the youngest victim was 15,  
33



## Cornell University University Assembly

34 **Whereas**, the Human Rights Campaign recognizes the murders of 37 transgender individuals in  
35 the United States during 2020, the most of any year since the organization began keeping track in  
36 2013,  
37

38 **Whereas**, of the over 200 known murders across the country documented by the Human Rights  
39 Campaign, two-thirds of the victims were transgender women of color and 60% of the total  
40 murders involved the presence of a firearm,  
41

42 **Whereas**, victims of anti-transgender violence are disproportionately transgender women of  
43 color,  
44

45 **Whereas**, The FBI has noted an uptick in gender-based hate crimes in 2019,  
46

47 **Whereas**, nearly three out of every four cases of anti-LGBTQ+ hate crimes are committed  
48 against transgender women,  
49

50 **Whereas**, the National Center for Transgender Equality states that one in four transgender  
51 people have faced a bias-driven assault,  
52

53 **Whereas**, transgender people experience heightened rates of family and intimate partner  
54 violence, and sexual assault,  
55

56 **Whereas**, transgender people are more likely to be revictimized when reporting physical or  
57 sexual assault,  
58

59 **Whereas**, the Anti-Violence Project reports that transgender people are 3.7 times more likely to  
60 be victims of police violence, with higher rates amongst black and brown transgender women,  
61

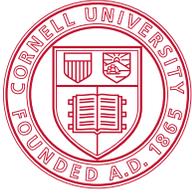
62 **Whereas**, more than one-fifth of transgender people who had interacted with the police reported  
63 police harassment, amongst black transgender people this number jumps to almost two-fifths,  
64

65 **Whereas**, violence against trans people frequently goes unreported or underreported and the  
66 previously mentioned statistics most likely do not fully encapsulate the gravity of the problem,  
67

68 **Whereas**, anti-trans violence occurs in New York State and acts of anti-trans discrimination and  
69 harassment occur on Cornell's campus,  
70

71 **Whereas**, the Cornell University Assembly first formally recognized Transgender Day of  
72 Remembrance on November 24th, 2020,  
73

74 **Whereas**, LGBTQIA+ Cornellians have specific needs that differ from the general Cornell  
75 community,



## Cornell University University Assembly

76

77 **Whereas**, LGBTQIA+ voices are traditionally underrepresented in all forms of governance,

78

79 **Be it therefore resolved**, the Cornell University Assembly acknowledges the passing of  
80 Transgender Day of Remembrance on November 20<sup>th</sup>, 2020,

81

82 **Be it further resolved**, the University Assembly pledges to recognize and commemorate all  
83 future Transgender Days of Remembrance through a reading of the names of the transgender  
84 people who were murdered within the United States that year,

85

86 **Be it further resolved**, the Chair of the Assembly is encouraged to read the names at the  
87 beginning of the public meeting closest to November 20<sup>th</sup> and all the names read should be  
88 recognized in the meeting minutes,

89

90 **Be it further resolved**, the Cornell University Assembly will affirm its commitment to fighting  
91 for the rights and safety of transgender and genderqueer Cornellians,

92

93 **Be it further resolved**, the Cornell University Assembly will commit to actively working with  
94 LGBTQIA+ student and employee groups through creating the position, "LGBTQIA+ Facilitator  
95 to the University Assembly",

96

97 **Be it further resolved**, the LGBTQIA+ Facilitator to the University Assembly shall be a non-  
98 officer role and is separate from liaisons listed within Section 6.1 of the Assembly bylaws,

99

100 **Be it further resolved**, the LGBTQIA+ Facilitator to the University Assembly will be elected  
101 from the general membership of the Assembly during the first organizational meeting,

102

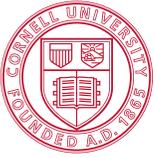
103 **Be it further resolved**, in the event that no one runs for the position or the LGBTQIA+  
104 Facilitator to the University Assembly is otherwise vacant at any point after the first  
105 organizational meeting, the Chair of the Assembly shall appoint someone from the general  
106 membership of the Assembly to fill the role,

107

108 **Be it further resolved**, the LGBTQIA+ Facilitator to the University Assembly will be charged  
109 with maintaining constant communication and cooperation with LGBTQIA+ undergraduate  
110 student, graduate and professional student, staff, and faculty groups,

111

112 **Be it finally resolved**, the LGBTQIA+ Facilitator to the University Assembly will present  
113 updates to the Assembly at least once a month during a regularly scheduled meeting.



## 1                    **UA R5: In Recognition and Appreciation of Cornell** 2                    **University Students**

3    **Abstract:** This resolution is a formal recognition of the response of Cornell University students to  
4    the COVID-19 pandemic and to thank them for their efforts to protect Cornell's Ithaca campus  
5    community.  
6

7    **Sponsored by:** Hei Hei Depew and the Executive Board of the University Assembly  
8

9    **On behalf of:** The University Assembly, our constituents, and the greater Cornell community  
10

11    **Reviewed by:** The University Assembly Executive Board, November 17, 2020  
12

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13    **Whereas,** the University Assembly acknowledges and supports Resolution 4 of the Employee  
14    Assembly, outlining the below information; and  
15

16    **Whereas,** the COVID-19 pandemic caused a global crisis; and  
17

18    **Whereas,** the COVID-19 pandemic created unprecedented public health challenges to Cornell  
19    University, and personal and professional challenges for all members of the Cornell community  
20    (Cornell faculty, staff, undergraduates, graduate and professional students); and  
21

22    **Whereas,** the university's response to the COVID-19 pandemic required drastic changes to  
23    Campus operations, research and student learning, student activities and gatherings, and adherence to  
24    behavioral expectations by its members to reduce community health risks; and  
25

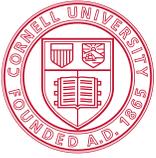
26    **Whereas,** without students doing their part in exercising good judgement, it would have been more  
27    probable that the university would have had to move to fully remote learning, the surrounding  
28    community would have been exposed to greater health risks, and our financial situation would have  
29    been further compromised; and  
30

31    **Whereas,** the University Assembly is impressed and grateful at how adaptable and quick to respond  
32    Cornell students have been in making massive and difficult changes for everyone's protection in such  
33    a short amount of time.  
34

35    **Be it therefore resolved,** the University Assembly, on behalf of all the Cornell community,  
36    expresses its deep gratitude for the service and dedication of Cornell students during the COVID-19  
37    pandemic; and  
38

39    **Be it further resolved,** the University Assembly recognizes and applauds the efforts and sacrifices  
40    made by the students to reduce the added burdens the Cornell community are facing at this time; and

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Cornell University  
Employee Assembly

- 41  
42 **Be it further resolved**, the University Assembly wishes to formally recognize and thank the students  
43 for their commitment to the safety and welfare of the Cornell community; and  
44  
45 **Be it finally resolved** that this resolution be submitted to the President of the University.



**Cornell University**  
**University Assembly**  
**Codes and Judicial Committee**

**The University Assembly Codes and Judicial Committee puts forth the following recommendations and support from motions passed at the 11/16/20 and 11/17/20 CJC meetings:**

- The CJC recommends that the University Assembly retain the supervisory role over the code, as it has been in the past and utilizing the same language of the current code which states that this code may be amended by the UA subject to the approval of the president
- CJC supports the restorative justice and alternative dispute resolution provisions in the proposed Student Code of Conduct
- CJC supports student involvement in the search and hiring process for the new OJA position
- CJC supports the Complainant's and Respondents' Codes Counselor should only be subject to removal by action of the Board of Trustees upon the recommendation by a  $\frac{3}{4}$  vote of the Student and Graduate and Professional Student Assemblies. The UA should still retain approval of finalists.

The CJC also notes the following recurring topics from the Public Forum on 11/12/20, as well as the public comments from the website:

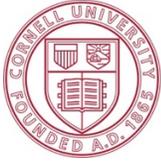
**Provisions in the University Counsel's draft that received significant support in posted comments and at Public Forum (Fall 2020):**

1. Restorative Justice and alternative dispute resolution

**Provisions in the University Counsel's draft that were opposed by a significant number of commenters in posted comments and at Public Forum (Fall 2020)**

1. Loss of independence of the Judicial Codes Counselors
2. Potential lowering of standard of proof (i.e. there was significant support in comments for retaining standard of proof of "clear and convincing evidence").

3. Loss of option for public hearings [Note: M. Wessel stated at the public forum that she intended that this option for public hearings remains]
4. Reduced ability of advisors (JCC and/or counsel) to speak on behalf of parties and to engage in questioning witnesses directly in all hearings.
5. Lack of clarity that “direct questioning” by advisors or counsel includes direct examination and cross-examination.
6. Lack of provisions for amending the Code, specifically, concern with the need to retain UA jurisdiction over the Code.



## Cornell University University Assembly

Fall 2020 Proposed Amendments to the Campus Code of Conduct  
Online comments received (as of 5:00 PM, Tues., 11/17/20)

### **Analysis (based on current comments/feedback)**

Total # of comments: 96

Total # of individual commenters: 78

Comments submitted by:

- Alumni – 16, or 16.7%
- Faculty – 7, or 7.3%
- Graduate Students – 10, or 10.4%
- Professional Students (Law, Vet, Johnson School) – 14, or 14.5%
- Staff – 9, or 9.4%
- Undergraduate Students – 40, or 41.7%

Anonymous comments: 56, or 58.3%

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### **Protecting Free Speech**

Submitted by Joseph Israel Silverstein on Tue, 2020-11-17 16:59

It is essential to protect freedom of speech on campus. I am deeply concerned that the proposed changes will limit free speech and empower the university to punish individuals and organizations that espouse controversial positions. Ensuring the free exchange of ideas should be the priority of any and all institutions of higher education.

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### **Detailed Comments of the Undersigned Greek Alumni**

Submitted by Robert C. Platt, Esq on Tue, 2020-11-17 16:52

We thank the University Assembly and its Codes and Judicial Committee for providing the important opportunity to comment. We favor the currently effective Campus Code of Conduct over the draft presented by the University Counsel (UC).

#### **1. Burden of Proof**

The current code requires the charges to be proven with clear and convincing evidence. If clear and convincing evidence does not exist, the complaint can be summarily dismissed in the respondent's favor. The UC proposal does not recommend either clear and convincing or the much weaker "preponderance of the evidence" standard, leaving the choice to the community. We support the "clear and convincing" standard because 1) it discourages frivolous complaints, 2) it protects against wrongly convicting an innocent student

and significantly impacting their future, and 3) it (or the higher “proof beyond a reasonable doubt” standard) has been used effectively since the early 1970s.

## **2. The Judicial System Should Promote Freedom of Association and Not Overreach**

The UC draft would drastically expand the scope of the Judicial System to its detriment. At present, Cornell has several adjudicatory mechanisms to handle different types of disputes in a well-tailored manner. First, the New York State-mandated Rules of the Maintenance of Public Order and associated serious violations are handled by the Campus Code of Conduct and the Judicial System managed by the University Assembly (UA). The Campus Code applies equally to students, faculty and staff. Second, sexual and certain other harassment of minority groups are handled under Policy 6.4. Third, academic misconduct is handled under codes managed by the Faculty Senate and the Dean of the Faculty. Fourth, low-level violations that stem from living together are handled by internal Judicial Boards enforcing the House Rules of living units and dorms. (This category probably has the highest total case load.) Fifth, since October 2019, registered student organizations, fraternities and sororities have a separate hearing board to address organizational misconduct and sanctions. Finally, the IFC and PanHel have a Greek Judicial Board to adjudicate their self-imposed rules on recruitment, philanthropy and other standards.

By far, the greatest stigma is attached to being called before the Judicial Administrator for a violation of the Campus Code of Conduct. Even if the transcript notation is later erased, employers, graduate schools, and state regulators of professions and security clearances ask if the applicant has ever been involved in such conduct cases, so for honest alumni, the stigma remains long past the notation. That sort of stigma does not attach to adjudication of dorm House Rules. The UC draft is a very hasty attempt to sweep a wider set of conduct under a single Student Code. The expansion of scope is unsuitable for Cornell for several reasons:

### **1. An All-encompassing List of Offenses Overlap with Other Bodies**

The UC’s proposed Section 4.21 would add as an offense, “Violation of any federal, state, or local law, regulation, or ordinance.” The Campus Code of Conduct has worked successfully for 50 years without such an all-encompassing provision. If the UA had noticed an offense that needed to be added, they could have added it to the current code expressly. Of course, some of these laws and regulations are no longer being enforced. For many years, advances in LGBTQ rights were made by judicial nullification of laws on the books, yet those laws stayed on the books unenforced for decades, and yet the UC proposal would have Cornell accept complaints based on laws courts will not enforce. Other of these regulations are already covered by Policy 6.4. Because the UC’s proposal does not define which organizations that are not registered student organizations are subject to the Code, it could be that Ithaca and Cayuga Heights zoning ordinances and building codes would become enforceable against Student Agencies as Student Code of Conduct violations. Similarly, Section 4.21 could enforce federal financial and securities regulations against student investment clubs. Graduate students seeking to organize a union would be subject to complaints under the Student Code in addition to direct regulation by the NLRB. UA or SA rules on campaigning would be enforced under the Student Code in addition to the appropriate elections committees.

This is an unworkable nightmare. The Henderson Law, NYS Education Law § 6430, requires Cornell to adopt “written rules” and to provide a “copy of such rules” to each student. If Cornell is serious about enforcing every single law (codified or unconsolidated), regulation and ordinance against every student, it would have to ship a full law library to each student. Every student would then have to be prepared to defend against formal complaints based on any law or regulation, and the UHB and URB would need greater expertise than the US Supreme Court to adjudicate those varied complaints. For 50 years the UA has carefully crafted a list of violations in the Campus Code that Cornell has a legitimate interest in enforcing, particularly to maintain the public order. Proposed Section 4.21 should be deleted.

### **1. The Student Codes Should Not Have Jurisdiction Over Fraternities and Sororities**

As noted, since October 2019, fraternities and sororities have been regulated under a new judicial mechanism that appears to be functioning well without the need for duplicate regulation under the proposed UC draft. So, there is no need for the UC's draft to expand the Campus Code to cover all Greek Houses. As with other living units, fraternities and sororities should continue to process low-level complaints through in-house judicial boards.

#### **1. Cornell Can't Effectively Regulate Defunct Organizations**

The current Campus Code does not have jurisdiction over disbanded or defunct organizations. As a part of its proposal to widely expand jurisdiction, proposed Section 4.13 seeks to punish students who want to join organizations that a complainant believes are related to groups that have officially disbanded. This may result from offenses that occurred years before the accused student came to Cornell. The drafters realized the difficulty by adding the sentence, "This applies to organizations that were created by members of a de-recognized organization in an attempt to continue its presence **on campus.**" Of course, in almost every case there is **no** attempt to continue an "on campus" presence. The problem is that in most cases, once a group gets into trouble, its leadership resigns and the group disbands, yet the students remain on campus and continue to associate at friends or on the same sports teams. In the case of registered student organizations, the organization can dissolve and essentially the same group of people have the right to form a new organization under a new name the next day (without filing a full membership list with Cornell.) In the case of fraternities, each member will remain a life-long member of the national organization (which is beyond Cornell's jurisdiction.) If a student group is incorporated, at any time new corporations can be created that are legally separate from the earlier group. Well-recognized freedom of association limits Cornell's ability to stop this or even to prove that the new groups are the same as the groups that were disbanded. It will also be rare that Cornell could prove that an accused student "knowingly affiliated" with the banned group when he or she joined the new group. Since this unenforceable provision is of questionable legality, we recommend its deletion.

#### **1. The Student Code Should Not Have Jurisdiction Over Long-Term Contracts**

The last bullet of Section 4.13 states, "Student groups or organizations (including fraternities and sororities) that engage in prohibited activities as defined under this Code, or that breach their formal agreements with the university for registration or recognition, may be held accountable under this Code and associated procedures." Again, given that Section 4.21 makes any law or ordinance violation a "prohibited activity" under this code, this sentence is clearly an overreach. The UC proposal fails to define "student groups or organizations" other than stating that fraternities and sororities are included. The current Campus Code is clear -- if a student group registers, it gets the benefits of registration, but subjects itself to the Campus Code. The UC proposal would leave each organization guessing until its jurisdiction is adjudicated by the UHB and URB. There are millions of dollars at stake here. Most fraternity housing contracts are with alumni groups, and many fraternity alumni also have entered into deferred giving agreements. Disputes under these contracts should be adjudicated in real courts and not subject to the whim of any person who wishes to file a complaint under the proposed Student Code.

#### **1. Strict Vicarious Liability for Member Violations**

The UC draft does not address when and to what extent an organization can be held responsible for the actions of individual members.

Worse, the last sentence of the first bullet of proposed Section 4.13 provides, "known members of unrecognized student groups may be held accountable for prohibited conduct by these groups." This sentence imposes a strict vicarious liability upon any Cornell student for any Code violation of an "unrecognized student group" even if the accused student did not play a role in the violation. Such "guilt-by-association" serves no valid purpose.

#### **f) Single Gender Organizations Should Remain Lawful**

The second bullet of 4.13 would also prohibit, “To use age, race, ethnicity, creed, color, national origin, sexual orientation, military status, political affiliation, sex, gender identity or expression, disability, predisposing genetic characteristics, familial status, or marital status as a basis for exclusion from university or group activities on campus, except as permitted by University policy in accordance with federal law.” This is too vague. We request that the Code specifically state that single gender organizations will remain lawful.

### **3. Right to Counsel**

Cornell’s current Code protects a student’s “right to be advised and accompanied at every stage by an individual of the accused’s choice”. Restricting the participation or role of counsel violates the student’s rights to due process and fairness. Counsel could be the Judicial Codes Counselor, a private attorney, or a parent or alumnus. The procedures should require the respondent receive written notice of his right to counsel and that notice and the right to counsel should attach before the Respondent’s first interview with the Director or an Investigator. Counsel should be allowed to question witnesses and to participate actively in the hearings.

### **4. Off-Campus Conduct**

First, the Code should carefully define the “campus” and include a map to make it clear. Section 2(1) of the UC draft defines the campus as “property and space owned, leased, used, or controlled by Cornell; it also includes streets, sidewalks, and pathways adjacent to or in the immediate vicinity of the Cornell campus or property.” Section 3(A) then expands jurisdiction to include “the property of a University-related residential organization” which needs to be defined. The definition of campus in proposed Section 2(1) is also too vague. How long a distance is meant by “immediate vicinity”? Students need a clear line regarding the jurisdictional scope. We assume that privately owned houses or apartments are not a part of the campus, even if all the residents of a building are Cornell students. We also understand that “space owned, leased, used, or controlled by” a student organization or student-alumni group residence is not part of the campus, because only Cornell controlled spaces are. An official “campus boundary” map should be published and distributed with the Code so that there are no after-the-fact surprises. This same map should be used to determine when campus protests are subject to Cornell regulation or are subject to the permitting requirements of Cayuga Heights or the City of Ithaca.

On-campus conduct and off-campus conduct have different impacts. Extending the “campus” definition to cover the academic campus, university-related housing, and other locations makes it impossible to draw any distinctions based on the context. Further, Section 3(A) contemplates extending jurisdiction to off-campus if the conduct poses a “substantial threat.” This exception should be rare and applied in a non-political manner. It should not be based upon potential harm to Cornell’s “reputation” (which was added in the UC draft.) We believe that the Director should make the initial decision to charge off-campus action subject to the hearing panel finding the student “responsible” for the off-campus conduct. University administrators should not participate in the decision to charge off-campus conduct. To add to this confusion, the proposal as drafted then attempts to put residential organizations entirely within the scope of the Code regardless of whether the conduct fits the substantial threat test. The Code should treat all student groups equally, whether they are a living unit or not.

### **5. Interim Suspensions of Organizations**

The current Campus Code provides for a suspension of a registered organization while a case is pending “[i]n extraordinary circumstances and for the purpose of ensuring public order and safety....” Organization suspensions are very problematic because even when the violations of individual members are easy to establish, the degree to which the violations can be attributed to an organization is difficult to prove. For example, suppose a student assaults a second student. If both students are in the same organization, what criteria should be used to impute the organization’s accountability? UC’s proposed Section 8.1 lists a number

of factors and privileges that can be removed on an interim basis, but only lists suspension of recognition or registration for organizations. Again, given that undergraduates avoid trouble, the most common reaction of an organization to being JA'ed is to disband even before an interim suspension is ordered.

To the extent that Proposed Section 8.1 takes a respondent's prior record into account when issuing an interim suspension, there should be a time limit on the consideration of the organization's record. For example, no record entries more than 3 years in the past should be relevant, because organization membership turns over approximately once every three years,

UC's proposed Section 8.2 specifies that interim suspensions are reviewable by the Vice President for Student and Campus Life. A better review avenue would be the University Review Board.

## **6. Transparent Enforcement Focused on Fairness for All**

When the Campus Code of Conduct and the judicial procedures were instituted in the early 1970s, the Office of the Judicial Administrator and the Judicial Advisor (now the JCC) were established separate from the Central Administration. There was a concern that Cornell's conduct regulation would be influenced by the political impact of news coverage or following the Kirkpatrick Sale case<sup>[1]</sup> that the Trustees or the President might put a thumb on the scales of Cornell justice. Hence, the present structure has these offices function independently of the Administration. The UA and its Codes and Judicial Committee are the non-Administration contact for the system. These are mature groups that include a balance of students, faculty and staff. It is a big mistake to shift this role to a combination of the SA, OSA and Graduate and Professional Student Assembly.

Although the draft would have the Director as directly under the Vice President on the organization chart, the draft would also give certain roles to the Dean of Students. This is confusing. We suggest that the roles given to the Dean of Students in the current UC draft be eliminated and that all discipline be consolidated under the Director who in turn will report to the normal administration channels.

The current Campus Code can be amended by the UA subject to a Presidential veto. There is no amendment process in the UC's draft. We believe that the UA remains the best campus group to shepherd the Code over time.

## **7. Harassment**

Currently, the Campus Code defines harassment very narrowly in terms of the interaction of two individuals. Policy 6.4 (as of August 14, 2020) has two different definitions of harassment, the first dealing with sexual harassment and the second with harassment based upon sex or gender. The UC's draft expands the Campus Code definition to include a "hostile environment" but without including the reforms that became effective on August 14.

We believe that Policy 6.4 should be the lead venue for processing complaints relating to sexual harassment or harassment based upon a characteristic or status. Accordingly, just the current narrow definition in the Campus Code should be used.

Both New York State law and Department of Education regulations give important procedural protections to students in this area, and this area does not lend itself to the "one size fits all" approach that the UC's draft takes toward every aspect of student misconduct. The same conduct system cannot successfully handle both serious sexual harassment along with stealing a sandwich out of the dorm refrigerator.

## **8. Statute of Limitations**

The current Campus Code has a one-year statute of limitations, subject to an extension of the accused is on a leave of absence or if the violation was fraudulently concealed. The UC's proposed Section 5 allows complaints to be filed so long as the student remains a student and even the student graduates or leaves Cornell, if a remedy can be obtained. For organizations, there is no limit, and if the organization dissolves, new charges can continue to be filed "is deemed to be operating, even without approval or recognition." Again, this is over-reaching. After 12-months, the facts become more difficult to determine and witnesses are harder to locate. We recommend the time limit in the current Campus Code for both individuals and organizations.

## 9. Good Samaritan Policy

In 2011, New York State adopted a Good Samaritan law that prevents arrests, charging and prosecution for misdemeanor amounts of controlled substances. McKinney's N.Y. Penal Law § 220.78.1. The North American Interfraternity Conference (NIC) has adopted a requirement for a Good Samaritan Policy by each of its member organizations.[2] This policy has also been adopted by Cornell's Greek life system: Cornell Health also publicizes a protocol.[3]

It is imperative that chapters call 911 immediately if any individual at the event appears severely intoxicated and/or impaired, is having an adverse reaction to drugs or alcohol, or has sustained an injury while drinking or using other drugs. Under Cornell's Good Samaritan Policy, individuals that call for help and those that receive help in an alcohol or drug related emergency are protected from individual judicial consequences. Calling 911 in such circumstances may also be a consideration as a mitigating factor in an organizational misconduct case.[4]

Accordingly, "Section 3 Scope and Provisions" should be amended to add a new Section 3(D) stating the Good Samaritan policy as applicable to **all** Cornell students under the Code. Students involved in an on-campus emergency should be accorded at least the same Good Samaritan rights as New York law affords off-campus emergencies. For this to work, students must be confident that their 911 call will not affect their disciplinary records or any "scorecard" published by Cornell. Any doubt will make students hesitate to summon necessary medical help, with resulting avoidable harm. The handling of health emergencies is an excellent example of how the system can be made educational rather than punitive.

===Footnotes===

[1] Trustee Minutes 1957-58 pages 3316, 3327 and 3330.

2 <https://nicfraternity.org/medical-good-samaritan-policy/>

3 Good Samaritan Protocol <https://health.cornell.edu/resources/health-topics/alcohol-other-drugs/good-sam>

4 Cornell University Sorority and Fraternity Life Risk Management and Social Event Policy (January 21, 2020), <https://scl.cornell.edu/sites/scl/files/documents/Risk%20Management%20an...>

/s/ signed

David Chipurnoi '00, Alpha Epsilon Pi, Alumni Class of 2000 Council President

Mark Clemente '73, Alumni Director and General Counsel, Delta Upsilon Fraternity

H. William Fogle, Jr., '70, ΔX of ΔKE

Michael Furman, '79 President, Delta Chi Association, ΔKE

Glenn R. George, PhD, C'82 President, Epsilon Association, Inc. (on behalf of both the undergraduate and alumni chapters of Sigma Phi)

Rich Kauffeld, 80 Alpha Psi of Chi Psi Corporation President

Bob Linden '71 (A&S), '75 (Cornell Medical College), Sigma Nu

Richard Meigs '80 Lambda Chi Alpha alumni president

Whinfield Melville '63, Treasurer of the Corporation Board. Alpha Sigma Phi  
Chris Nieves '11 President, Beta Charge of Theta Delta Chi Inc  
Dennis Paese '73, Chapter Advisor, Sigma Alpha Mu Fraternity  
Jeff Perry '89 Alpha Zeta  
William Page CU '85 and '86, Pi Kappa Alpha President  
Robert C Platt '73, Immediate Past President, Delta Chi Association, ΔKE  
Lee Reed '71, Delta Chi  
Matt Roberts '98, President, Gamma Chapter House Association (Phi Sigma Kappa)  
Mathew Tabacco, '09, '10 Seal and Serpent Alumni President  
David Weber '68, Delta Chi  
Bill Wickham '86, Alpha Gamma Rho - member, alumni board of trustees

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## Executive Summary Comments of Undersigned Greek Alumni

Submitted by Robert C. Platt, Esq on Tue, 2020-11-17 16:46

We thank the University Assembly and the Codes and Judicial Committee for providing this important opportunity to comment. We are stating our main conclusions here with our full justification filed separately. In general, we favor the currently effective Campus Code of Conduct over the draft presented by the University Counsel (UC). We view the UC proposal as an incomplete solution which tries to impose a one-size-fits-all system upon the wide spectrum of student conduct while leaving unaddressed faculty and staff political activity. Meanwhile, the UC draft over-reaches to extend potential jurisdiction over arbitrary off-campus conduct and over any law, regulation or local ordinance.

**1 Standard of Proof:** The "clear and convincing" standard in the current Code offers much better protection against false accusations than does the proposed "preponderance of the evidence," especially when a student's entire future could be at stake.

**2. Limit Scope to Registered Student Organizations.** The current Code applies only to registered student organizations, but the UC proposal would also apply to living units (including fraternities and sororities) and unrecognized groups. Jurisdiction should be clearly defined now rather than an after-the-fact surprise following an accusation of misconduct. The current Code is much better and fairer.

3. The reason offered for wide expansion of the scope of the proposed Code is that it will have "educational value." This "one size fits all" approach is inconsistent with Cornell's traditions and the best interests of its students. Many residence halls and living units have their own in-house judicial systems which should not be subsumed under the proposed mechanism. There is a terrible stigma attached to any student who is JA'ed. People are asked about whether they were JA'ed when they apply for jobs, graduate school, and/or security clearances and must answer even if the notation is lifted from a transcript later. By combining "educational" low-impact violations into the same system that handles serious misconduct, Cornell is needlessly labeling students whose violations should be handled by low-key in-house J-Boards.

4. Any system that is given the power to impose sanctions upon organizations must have clear criteria for when misconduct by individual members can be attributed to the entire organization. The UC's draft lacks clarity on this.

**5. One-year limit:** The proposed Code is also unfair because it drops the one-year statute of limitations in the current Code. Organizations should only be called into account for events within the past year or the date

that the organization dissolves, whichever is earlier. (Once an organization dissolves, there is no entity to defend against any charges.)

6. Under the UC proposal, individual respondents get very few due process and hearing rights unless suspension or expulsion are on the table. The problem is that if a member of an organization is found responsible for minor violations, then Cornell can use that as a basis to punish the entire organization with a suspension. Full due process rights should be available in every case, particularly when Cornell also plans to punish organizations based on that member's conduct.

7. **Off-campus Scope:** The UC's proposal can be extended to off-campus events if "Cornell's reputation" is affected. Instead, such extension should only happen rarely if there is an imminent threat to life and property. In most off-campus cases, the local police should be called.

8. **Interim Suspension:** The proposed Code would give VP Lombardi a non-reviewable right to suspend any person or organization until the investigation and hearing can be completed. The University Review Board should be able to review and overturn such interim suspensions.

9. **Membership:** Each campus organization whether registered or not should be allowed to select its own members and leaders. The UC proposal leaves open the question whether single-gender organizations are barred by the Code. The Code should reaffirm the right of single-gender organizations to continue at Cornell. As for other membership criteria, limitations should be left to the student organization registration process rather than covered by the Code.

10. **Good Samaritan Safe Harbor:** New York law and most fraternity national organizations allow students to call 911 without fear of being prosecuted. Cornell's Code needs a similar provision. In general, it is important for a campus code of conduct and judicial system to have wide-spread acceptance by those who must live under it. Undertaking these major changes during a pandemic is not in keeping with Cornell's tradition of shared governance.

Respectfully submitted,

David Ayers '80 Phi Gamma Delta

Kevin Baradet, AVC President, NY Beta Chapter of Sigma Phi Epsilon, Inc.

David Chipurnoi '00, Alpha Epsilon Pi, Alumni Class of 2000 Council President

Mark Clemente '73, Alumni Director and General Counsel, Delta Upsilon Fraternity

H. William Fogle, Jr., '70 ΔX of ΔKE

John Howard Foote,

Michael Furman '79 President, Delta Chi Association of DKE

Glenn R. George, PhD, C'82 President, Epsilon Association, Inc. (on behalf of both the undergraduate and alumni chapters of Sigma Phi)

John Horvatis '99, Delta Phi Trustee and AIFC Representative

Rich Kauffeld, 80 Alpha Psi of Chi Psi Corporation President

Richard Meigs '80 Lambda Chi Alpha alumni president

Whinfield Melville '63, Treasurer of the Corporation Board. Alpha Sigma Phi

Chris Nieves '11 President, Beta Charge of Theta Delta Chi Inc

William Page CU '85 and '86, Pi Kappa Alpha President

Dennis Paese '73, Chapter Advisor, Sigma Alpha Mu Fraternity

Jeff Perry '89 Alpha Zeta

Robert C Platt '73 Law '76. Immediate Past President, Delta Chi Association of DKE

Lee Reed '71, Delta Chi

Matt Roberts '98, President, Gamma Chapter House Association (Phi Sigma Kappa)  
Howie Schaffer '90 Alumni President, Alpha Delta Phi at Cornell University  
Bob Straka  
Mathew Tabacco, '09, '10 Seal and Serpent Alumni President  
David Weber '68, Advisor for the Cornell chapter of Delta Chi  
Bill Wickham '86, Alpha Gamma Rho - member, alumni board of trustees

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## Comments of the Cornell Daily Sun Alumni

Submitted by Robert C. Platt, Esq on Tue, 2020-11-17 16:43

**In May 2020, a group of Sun Alumni signed on to the attached joint comments. These comments are also applicable to the University Counsel's draft. The references and quotations have been updated from the May 2020 CJC draft to the University Counsel's draft. In addition, the comments are even more on point because the University Counsel would add harm to the "University's reputation" as a separate basis for asserting jurisdiction over off-campus conduct in Section 3(A).**

### **COMMENTS OF UNDERSIGNED CORNELL DAILY SUN ALUMNI**

The undersigned alumni of *The Cornell Daily Sun* file these comments on the University Counsel's proposal. Some of us have law degrees and others of us spent our careers as working journalists. We all share a devotion to Cornell and to maintaining *The Cornell Daily Sun* as an independent journalistic voice and critic for the Cornell community, including alumni and Ithaca residents.

*The Sun's* value stems from being the Cornell community's independent newspaper since 1880. It has always operated without University subsidies or control. *The Sun* publishes the facts regardless of whether they cause embarrassment or consternation in Day Hall, including coverage of the Campus Code and the judicial system. Similarly, *The Sun* publishes a wide variety of opinions, regardless of whether those viewpoints will be vexatious to individuals or groups of students, faculty, staff, administrators or local officials. It has been that way since 1880, and so it should continue to be.

#### **1. Statement of Principles and Values Must Recognize Important First Amendment Rights**

"Section 1: Principles and Values" does not fit with the start of a Campus Code of Conduct. Certainly stating general principles and goals will be helpful in interpreting the Code, but this section does not adequately address fundamental rights such as freedom of speech, freedom of the press, freedom of religion, freedom of association and the right to petition for redress of grievances. Valuing these rights has served Cornell well for more than 150 years.

However, recently these important rights have been under attack by people seeking to establish a "speech code" to ban or punish speech that some may find offensive. The best way to avoid this proposed Code's being misinterpreted, and from trampling on protected rights, is to include a strong statement in Section 1 reaffirming these bedrock First Amendment rights.

One would think that exercising protected First Amendment rights off campus would guarantee freedom from University interference and control. Not so, under the proposed Code. The Code asserts the right to regulate and punish non-registered groups as well as off-campus conduct, which would have a chilling effect on the entire Cornell community. We know of no legal basis for this inadvisable over-reach. The University must respect First Amendment rights as a matter of tradition, as a matter of educational policy as a world leader in academic thought, and as a matter of law. We urge that the improper assertion of jurisdiction over unregistered organizations and off-campus conduct be removed entirely from the Code.

## **2. Strict Vicarious Liability For Student Members of Unregistered Organizations**

Proposed Section 4.13 provides, “known members of unrecognized student groups may be held accountable for prohibited conduct by these groups.” This sentence imposes a strict vicarious liability upon any Cornell student for any asserted Code violation by an “unrecognized student group.” If any student group published a news story, opinion piece or tweet that offended someone, the offended person or group, armed with the Code, could file a complaint with the Director alleging “harassment.” **Any student** known to be a member of that student media group could then be prosecuted for a violation of the Campus Code, even if that student had no direct role in the writing or editing of the offending article or commentary. Such “guilt-by-association” serves no educational purpose, but merely serves to chill free speech and freedom of the press. It should be removed in its entirety from the Code, thereby avoiding a challenge likely to show its enforcement would violate applicable law.

## **3. Traditional Limitations Should Be Respected for Campus Conduct Regulation**

Legalities aside, Cornell traditionally has limited its conduct regulation to on-campus activity. While registered student organizations that seek funding from Student Activity fees or use campus facilities voluntarily submit to Campus Code jurisdiction, unregistered groups such as *The Sun* do not. Unregistered organizations should not be regulated by Cornell. Further, the Campus Code should regulate only on-campus conduct, and jurisdiction should not be expanded to off-campus locations such as the Cornell Daily Sun building (located in downtown Ithaca) or to “online behavior” (Section 3(A)).

We file these comments as individuals concerned about the free exchange of information and views on campus. They do not necessarily reflect the editorial views of *The Cornell Daily Sun*. We urge the Committee to respect the rights of student journalists and the readers they interact with every day.

Signed:

Jay Branegan '72

Kathleen Frankovic '68

Andrew Kreig '70

Carl P. Leubsdorf '59

Robert C. Platt '73

Elaine S. Povich '75

Charles J. Sennet '74

Dineen Pashoukos Wasylik '94

John Schroeder '74

Rose Gutfeld '78

Erik Bierbauer '94

Zoe Ferguson '17

Dara Levy '16

Joshua Friedman '96 JD '99

Nicholas De Tullio '15

Eric Sullender '99

Jonathan Panter '12

Elizabeth Sowers '15

Gabriella Lee '16

Katerina Athanasiou '13

Eliza LaJoie '13

Michelle Feldman '15

Saman Zia-Zarifi '90 Law '93

Divyansha Sehgal '18

Kevin Milian '15

Anna Fasman '16  
Maxine Bernstein '88  
Heather Grantham Deutsch '06  
Maggie Henry '14  
Omar Harb '91  
Claudine (Chamberlain) Benmar '91  
Tyler Alicea '16 MPS '17  
Katy (Bishop) Torralbas '06  
Christopher Mitchell '05  
Erik Ferguson '99  
Rachael Ellicott '15  
Gwen Aviles '17

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## Hazing Definition

Submitted by Tim Marchell on Tue, 2020-11-17 16:43

Over the past two decades, higher education has increasingly recognized hazing as a serious threat to student health and safety. It is not an innocent rite of passage, nor is it necessary for groups to form strong bonds. The impact of hazing can range from mild to severe, and can significantly impact students' mental as well as physical health. For students already struggling with mental health problems or who have a history of trauma, the effects of hazing can be magnified. The same activity that one student experiences as annoying can be re-traumatizing for another. The medical and mental health providers at Cornell Health see this impact first-hand. We also know from experience (at Cornell and other institutions of higher education) that hazing can be fatal.

Cornell has been at the forefront of efforts to understand and prevent hazing. The [university's public health approach to hazing prevention](#) is considered a national model. Two key elements of this model are education and accountability. The university's Code definition of hazing has a vital educational function. Our ability to prevent hazing depends on establishing a shared understanding of what behaviors qualify as hazing. Research consistently finds that a high percentage of students do not accurately identify many hazing behaviors as constituting hazing. Therefore, this opportunity to revise the Code definition is an opportunity to better educate the campus community about what behaviors violate the University's standards.

In addition to providing a basis for education, the Code definition of hazing plays a critical role in deterrence. The ability of the university to hold individuals and groups accountable for violations depends on a thorough definition that addresses the nuances of this complex phenomenon.

The current Code definition was developed in 2001 (with an additional clause added subsequently). While it has functioned generally well as an educational tool and judicial standard, our understanding of hazing has evolved based on research, clinical experience, and [actual cases of hazing on campus](#). In short, the current wording no longer meets the needs of the community in terms of education and accountability. While the revised definition in the proposed Code addresses some of the limitations of the current Code definition, the wording is insufficient to address our educational needs and the range of hazing behaviors that have occurred among campus groups.

The revised definition that we propose below reflects the current discourse about definitions in the field of hazing prevention. There is no single, universally-accepted definition of hazing. Our proposed definition is

based on our review of hazing definitions on multiple campuses, the literature on hazing, and a review of the hazing violations that have occurred at Cornell since 2005 when we began our public archive at [hazing.cornell.edu](http://hazing.cornell.edu). We believe that this definition will serve the Cornell community by improving our ability to educate the campus about what constitutes hazing and enhance the university's ability to hold individuals and groups accountable for violations.

Timothy Marchell '82, Ph.D., M.P.H., M.Div.  
Director, Skorton Center for Health Initiatives at Cornell Health

Proposed definition:

Hazing is an act that, as an explicit or implicit condition of recruitment, admission, initiation, or affiliation with a group, club, team, organization, residential group, or academic group or cohort (whether University-recognized or unrecognized), meets any of the following criteria:

1. It is not relevant to the purpose of the group and could reasonably be perceived to risk, whether mild to severe:
  - Mental distress or harm (e.g. humiliation, intimidation, fear)
  - Physical distress or harm (e.g. pain, exhaustion, injury, illness)
  - Sexual distress or harm (e.g. embarrassment, shame, trauma)
  - Loss of dignity

OR

1. It is relevant to the purpose of the group, but conducted in a manner that could reasonably be perceived to be excessive or pose undue risk of harm, distress, or loss of dignity.

OR

3. Includes (though not limited to) any of the following:

- Servitude
- Damaging or stealing property or engaging in other illegal acts
- Consuming alcohol or other drugs (regardless of quantity)
- Consuming unpalatable substances, or palatable substances to excess
- Being forbidden to have social contact with others
- Incurring undue financial expenditures
- Having the ability to seek medical help for oneself or another restricted
- Being required to engage in mistreatment of an existing member

The above acts constitute hazing regardless of a person's willingness to participate. The fact that a person does not object to and/or appears willing to participate does not signify that the conduct is not hazing. The individual subjected to hazing does not need to identify the act as hazing.

The above constitutes hazing of an existing member or cohort of existing members when a reasonable person would view the actions to be a condition of continued group membership or status (e.g., hazing of a newly elevated group leader).

Hazing can occur on or off campus. It can be conducted by members of the group and/or others who have formal or informal affiliations with the group.

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## Please don't lower the burden

Submitted by Anonymous authenticated user on Tue, 2020-11-17 16:43 (user name hidden)

Please don't lower the burden of proof. To do so would be to lessen the fairness of the Cornell judicial system.

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## Office of the Complainants' Advisors' Comments

Submitted by Molly Huffaker on Tue, 2020-11-17 16:30

We are the Office of the Complainants' Advisors, the Office that currently serves individuals bringing complaints under Policy 6.4 and through the Office of Institutional Equity and Title IX. As our Office would become the Office of the Complainants' Codes Counselor, we have drafted the following comment after internal discussions, as well as discussions with the Judicial Codes Counselors and other relevant representatives. Looking to this future role of representing Individual Complainants, our Office suggests the following comments:

### **2.2: Student Codes Counselors** → *Communication Restrictions*

- Our office relies on collaboration and internal feedback from counselors in order to develop skills and knowledge regarding the adjudication process. Limiting our ability to communicate with each other prevents the office from providing effective guidance to students. Language in this section should include exceptions for internal office discussions and meetings. As such, we oppose the change limiting this collaboration.

### **2.2.2: Office of the Complainants' Codes Counselor** → *Representation & Hiring Process*

- First, language included in this section should clarify that we only represent "Individual Complainants" as opposed to Complainants generally where this can constitute University Officials, University Offices, or Institutional Complainants. Especially in Policy 6.4 (Office of Institutional Equity & Title IX) cases, we are often advising individuals who feel harmed by the University or by another University process in some way. These individuals would feel less confident in our advice if they saw us as another arm of the University.
- Second, the University's role in hiring and removing Respondents' Code Counselors and Complainants' Code Counselors is overbroad and imposes unnecessary oversight. This is especially important in the case of the Complainants' Code Counselors, where Code of Conduct cases would constitute the minority of the cases we take on as counselors. The University offers no justification as to why it should exercise disproportionate oversight on the basis of what is essentially a minor part of our Office's operations. Additionally, this could impact the willingness of potential Title IX complainants to come forward, as our office would lose a degree of independence and potential complainants may come to see the office as an extension of the University and its particular interests.

Thus, we are willing to propose our choice of Lead Codes Counselor to the University Assembly, who can then approve or deny this hire. All other hiring would be internal. We agree with the JCCs that it is not appropriate to have the Director involved in our hiring, removal, or supervision processes. If the goal of these changes is to increase oversight and accountability over the Counselors, this should be accomplished through increased and more effective training, not by mandating our hiring practices.

### **2.8: Training** → *Further Clarification*

- Please specify what training will be provided to each role under these Procedures (Hearing Chair, Hearing Panel, Counselors, etc.). If the goal of these Procedures is to ensure a fair and equitable process—including adequate oversight of all individuals serving an official capacity or role under these Procedures—training is the most effective way to achieve this. At the minimum, we request annual training for all roles.

**3; 10: Notice to Parties** → *Informing of and Access to Counselors/Advisors*

- The language here should be more specific as to the notice granted to individual parties regarding their entitlement to free representation through the Respondents' Code Counselors and the Complainants' Code Counselors. Notice should include the fact that this is a free service, a short summary of the kind of support we offer to parties, and contact information for the respective office. This notice should be provided to parties before any meetings or investigative interviews are conducted. These specific requirements will make it less likely that the University will meet with parties before the parties have a chance to consult with advisors.

**11; 20.8.2: Counselors'/Advisors' Role** → *Ability of Counselors to Speak*

- Where a complaint is brought against the respondent by the University through its officials, Respondents' Code Counselors should retain the ability to speak on the behalf of the Respondent. This is important in order to maintain fairness given the disparity between the parties' representation.
- In hearings adjudicating complaints brought by Individual Complainants, we support the proposed hearing process, with written submission of questions and questioning conducted by the Hearing Panel. Individual Complaints are most likely to be for serious interpersonal misconduct such as hazing and harassment, and cross-examination in these cases will discourage reporting.

**20.2: Standard of proof**

- We feel that the standard of proof should be determined by community input.

**20.8.1: Overview of Hearing Process and Format** → *Public Hearings*

- Hearings should be kept private when Complaints are brought by Individual Complainants. Public hearings in these cases are likely to discourage reporting of misconduct.
- We support allowing public hearing and amending the Code to reflect this under the following circumstances: For cases not involving Individual Complainants, hearings should be private unless (a) the Respondent notifies the Director of OSCCS no later than two (2) business days before the hearing indicating that they wish to have a public hearing and (b) the Hearing Board Chair determines that a public hearing would not result in the undue intimidation of any witnesses.

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## Protect Due Process and fair representation!

Submitted by Anonymous authenticated user on Tue, 2020-11-17 16:14 (user name hidden)

Devaluing student rights and lowering the bar for standards of evidence is a shameful thing to support and would forever erode trust in Student Assembly. Even entertaining the idea is very dangerous and disconcerting. What do you really stand for SA?

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## Cornell Student Code of Conduct Fall 2020 Revision

Submitted by Timothy VanWirt O'Connor on Tue, 2020-11-17 16:02

I find the changes and direction of the proposed version of the code of conduct disappointing in its lack of objectivity, clarity, and accordance with basic American rights. The process is not more open and friendly, it hands arbitrary discretion entirely to the University and leaves the University subject to and liable for extensive litigation and settlement for its lack of due process, ignoring true harm it does to the careers and therefore lifetime earnings of students with any interaction with the JA process. As an alumni I do not give money to Cornell to waste with such a poor process as this will be.

Key objections:

- 1) Burden of proof must be clear and convincing. Anything less becomes too open to abuse and bias, especially with the one sided nature of the investigation process where the Director holds all the control and decides what is relevant.
- 2) Respondents must be allowed access to CU Judicial Advisors for whatever part of the process they feel the need, with Advisors allowed to participate in the process on their behalf. This avoids the real need to hire attorneys which not all students can afford, but all will need with the process as written to avoid student amateurs being slaughtered by the University JA experts in the process, language, and achieving their desired outcome.
- 3) Cornell needs to explain how they will handle students of the Statutory Colleges who have defined rights that this process ignores.
- 4) Extending the reach of the code globally (universally) begs credibility to how a fair judgement can be made, and how Cornell can claim jurisdiction under its Reputational Harm. Will the University go after Alumni who embarrass and extend negative reputation on the Cornell Name?
- 5) While not entirely new the "Causes, encourages or compels another person to engage in any activity that could be reasonably perceived as likely to create a risk of mental, physical or emotional distress (vs Harm) under the example - undertake acts of service or menial tasks, would prohibit being required to volunteer as a group for Habitat for Humanity or other service causes where people work in front of others. For organizations to have a mission that includes personal responsibility and care for the organization and its assets, learning to care for, clean or maintain the same should never be twisted into some definition of hazing. Humility learned is not humiliation, and is an important life skill.
- 6) The code is unclear and therefore arbitrary in how and when an organization and its entire membership will be held vicariously responsible and treated as respondents with all the corrolary harm, for the actions of individuals. Holding organization leaders, who can not be shown to have participated or sanctioned or encouraged any violations of the code personally responsible for the activities of others only serves to prevent the best leaders from stepping forward and leading by example. No one with half a brain would volunteer for any leadership of a Cornell student organization, Fraternities or otherwise if that were to continue to be the case as has been done under the Covid-19 guidelines. This strategy by the University only serves to destroy leadership development at Cornell.
- 7) Eliminating or ignoring the Good Samaritan law is reckless and dangerous to students and public. It is imperative that the first focus of the Code of Conduct be to prevent and mitigate any further harm. The Good Samaritan Law applied to all students (and staff, faculty) is clearly understood as the best practice in that direction and should be explicitly included.

Cornell, this proposed code is disappointing and deserves an F grade resulting in dismissal. You can and must do better and be more aspirational for all involved. Fairness is a value well embedded in the history of Cornell and you should not be trying to excise it.

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[Board statement, Cornell Daily Sun](#)

Submitted by Brad Edmondson on Tue, 2020-11-17 15:55

Dear University Counsel,

The Cornell Daily Sun's Board of Directors believes that proposed revisions to the Campus Code of Conduct move in the wrong direction. The revisions broaden the Code's scope while weakening procedural rights for accused students. These concerns were expressed last May in public comments filed by a number of concerned Cornell Sun alumni. The current draft from the University Counsel does not address those concerns.

The Sun has operated independently of Cornell since 1880. We have never been a registered student organization, and we have gone to great expense to preserve our independence from Cornell, including purchasing our own office building at 139 West State Street. We believe that Cornell's judicial system should not be extended to include independent, off-campus organizations like ours. Yet proposed Section 4.13 says, "known members of unrecognized student groups may be held accountable for prohibited conduct by these groups." So, if the Sun or one of its staff members publishes a controversial article that members of an identity group consider to be "harassment" under Proposed Section 4.10 because it creates a "hostile environment", then any "known member" of the Sun staff could be subject to a disciplinary proceeding even if he or she did not actually write the offensive item.

Reasonable people have grown to expect that the Sun is not subject to the Code because it is an off-campus organization. However, the proposed Section 3 allows the Vice President to determine after the fact whether to extend Code jurisdiction to off-campus groups if conduct could harm "the University's reputation." This provision puts the Vice President in an impossible position. It also has a chilling effect on the free speech rights of The Sun.

The current Code goes into significant detail about Cornell's policies to protect free speech and free expression. These provisions are deleted in the University Counsel's proposals, and instead Cornell's "Core Values" statement is quoted in full. Well-established First Amendment case law holds that regulation of speech must be content neutral. Yet by quoting the Core Values, the document implies that the Code will be enforced in a non-neutral fashion.

The Sun's mission is to train young journalists to do their reporting dispassionately and without bias. Regulation of speech must be content-neutral in order for us to succeed in this mission. Inclusion of the Core Values document distracts from the content-neutral approach that Cornell has used for decades. The prior language, with its emphasis on freedom of speech and freedom of assembly, is superior.

Any Code case brought against a Sun staffer because of the publication's actions would be a challenge the Sun's editorial independence. Because of this, we would expect the right to a full public hearing, regardless of any promise by Cornell not to suspend or expel the accused student. We are also concerned that proposed Section 20.8.1 would give us no right to a public hearing.

In conclusion, we urge you to limit off-campus application of the Code to only those rare cases where it is necessary to protect serious injury or significant property damage. Cornell University has stood for freedom of speech and assembly, and we hope that it will continue to do so. Thank you for your consideration.

Signed,

Brad Edmondson '81, President  
Sam Roberts '68, senior board

Johnathan Stimpson '21, managing editor  
For the Board of Directors

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## Make sure undergraduates are being centered in this conversation

Submitted by Anonymous Committee Member on Tue, 2020-11-17 15:28 (user name hidden)

It seems as if several comments here are completely not based in reality of what it is like to be an undergraduate student. Why are alumni trying to push back against changes to the code that are intended to support undergraduate students, when the code and judicial processes have vastly changed since they were here on campus? It seems very out of touch and unfair for current undergraduates who are the ones actually experiencing and going through these changes and whose voices should be heard.

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## Protect students.

Submitted by Anonymous authenticated user on Tue, 2020-11-17 14:53 (user name hidden)

I do not support lowering the burden of proof. I understand the reasons given, but it is clear that these are insufficient justifications for stripping protections away from already vulnerable students. To say that such an amendment "best balances the rights" is contradictory to what the amendments actually do. Moving to a 'proponderance' risks innocent students being falsely accused and/or found guilty of misconduct— which can have a sever impact on a student's academic career and future professional prospects.

- Maintain a 'clear and convincing' evidentiary standard.
  - Protect student's right to representation.
  - Protect the right to cross-examination.
  - Protect the right to a public hearing.
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## Rights of Students

Submitted by Mathew Aaron Tabacco on Tue, 2020-11-17 14:01

I am writing as Alumni President of the Seal and Serpent Society. Seal and Serpent is an undergraduate society at Cornell University. Founded at Cornell in 1905, we are the one and only chapter of our Society. Although we withdrew our membership in the Inter-Fraternity Council, we operate as one of the oldest social clubs on campus. Our fraternity is based on the building of character through the maintenance of high ideals, assisting its members to be conscious of their social and moral obligations, and instilling in its members an appreciation of Cornell University.

We are proud to announce that Seal and Serpent's active and alumni members voted this fall to become a genderless organization this fall and of our independence from both the IFC and a national organization. However, we are extremely concerned about parts of the proposed code that undermine that independence and also unduly impinge on students' rights.

Specifically, we urge that the University clarify that Code section 4.1, 4.2, and 4.13 do not apply to groups like Seal and Serpent. Seal and Serpent voluntarily renounced its affiliation with the IFC for non-disciplinary

reasons. Seal and Serpent's property is owned by the Society, not the University. Right now, proposed Section 4.1 states that, "This [section] applies to organizations that were created by members of a de recognized organization in an attempt to continue its presence on campus."

Similarly, proposed Section 4.13 states that, "known members of unrecognized student groups may be held accountable for prohibited conduct by these groups." This sentence imposes a strict vicarious liability upon any Cornell student for any Code violation of an "unrecognized student group" even if the accused student did not play a role in the violation. Such "guilt-by-association" serves no valid purpose, especially for an organization such as Seal and Serpent which voluntarily renounced membership in the IFC and owns its house separate from any university control. As Section 4 is currently drafted, it leaves open the possibility of university overreach against a non-campus organization like Seal and Serpent.

### **Rights of Students**

We are also concerned with the change in the standard of proof. Seal and Serpent has been very careful to select amongst its members people of high character. Throughout our history, our unique culture and independence from any national organization has given Seal and Serpent the ability to recruit members who are typically opposed to joining a typical fraternity. However, we are also aware that people may make accusations against students which ruin them. In our view, a "preponderance of the evidence" or 51% likelihood of having done something does not offer adequate protection to students who have invested time and money in a Cornell degree that can be so easily devalued by a finding that does not require a higher burden of proof. The consequences for a student from a mistaken finding of "responsible" are severe and can damage chances for graduate school or finding a good job. Cornell should not be advocating reduced standards for due process and fairness, and we proudly stand with those who believe that Cornell students should be protected by a higher burden of proof, especially given how broadly parts of the code are written.

It is in a similar vein that we urge Cornell to leave alone the Good Samaritan Policy. We encourage, and want to continue encouraging our members to be Good Samaritans. Right now, under Cornell's Good Samaritan Policy, individuals that call for help and those that receive help in an alcohol or drug related emergency are protected from individual judicial consequences. Calling 911 in such circumstances may also be a consideration as a mitigating factor in an organizational misconduct case.

Thank you for giving me a forum to bring our Society's views to you. I urge you to change the code in the ways outlined above. The Code should protect students and organizations that try to do the right thing. The parts we outlined above have the unintended consequence of undermining those good purposes and should be corrected.

Respectfully,

Mat Tabacco, '09, '10

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## **NO to lowering the burden of proof. Keep representation.**

Submitted by Anonymous Committee Member on Tue, 2020-11-17 13:26 (user name hidden)

The burden of proof should not be lowered. By and large, the OJA acts as a prosecutorial office. The current verbiage states that the evidence standard is already a "lower standard than the criminal law's beyond-a-reasonable doubt standard." Why lower it more? To say that using the preponderance of evidence "best

balances the rights” of students is troubling. The current system is already a compromise from a clear and convincing evidence standard. A change to decrease the evidence standard is not in the best interest of students, or any party being accused of what is essentially criminal conduct. If this were the case, justice systems across the world would have moved from clear and convincing to preponderance of evidence years ago. Is the OJA suggesting they know better than legal systems across the world?

And why does this only apply to students? Why should the faculty be held to a different standard? They’re people too. If this was really about equity and fairness we would all be held to the same justice standard.

This entire process is troubling, not the least of which is the timing. Odd how such an important decision is being decided while undergraduates have semi-finals. It reminds me of when the student activity fee was unanimously raised a few years ago in the last meeting of the semester.

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## Do not reduce the burden of proof

Submitted by Anonymous authenticated user on Tue, 2020-11-17 12:47 (user name hidden)

It is not uncommon to hear about a student with a vendetta against another to pursue charges which are largely unfounded.

If Cornell wants to have it's own semi-judicial processes, it should hold itself to a high standard of evidence - students must be assumed innocent until proven guilty, and reducing the burden of proof to merely a "preponderance" is unacceptable and will result in more innocent students being found guilty wrongfully.

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## Aligning the Greek Standard

Submitted by Anonymous Committee Member on Tue, 2020-11-17 12:38 (user name hidden)

Was conflicted about changing the standard of evidence, but seeing as the Greek Life judicial system already uses preponderance of evidence as their standard, it makes sense to align all our judicial processes so some cases don't have different standards than others.

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## Please reconsider lowering the burden of proof

Submitted by Anonymous authenticated user on Tue, 2020-11-17 12:05 (user name hidden)

### **Student rights must be defended staunchly**

Do not lower the burden of proof. Do allow students to be able to represent themselves with an advisor, law student, or lawyer.

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## Change the system

Submitted by Anonymous Committee Member on Tue, 2020-11-17 11:41 (user name hidden)

The current system allows rich students to buy the best lawyers who can intimidate others to not come forward about allegations of hazing. Private lawyers throw muck into a system that disadvantages students who are trying to come forward with emotionally taxing accounts and to allow this gaping hole to exist is unfathomable. It is utterly ridiculous that people would support a system and code that allows the most privileged students to get away with violations that fundamentally harm the campus community. To suggest that the current system is equitable and does anything remotely to solve issues of conduct is ridiculous. While I don't particularly love how this whole code change process has gone down, I do support the changes proposed by the University Counsel because at least it attempts to address these issues.

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## Innocent until proven guilty

Submitted by Anonymous authenticated user on Tue, 2020-11-17 11:31 (user name hidden)

Do not lower the burden of proof. Do allow students to be able to represent themselves with an advisor, law student, or lawyer.

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## Preponderance of Evidence is Not an Acceptable Threshold

Submitted by Anonymous authenticated user on Tue, 2020-11-17 10:46 (user name hidden)

Please do not lower the burden of proof. Protect student's rights and maintain a clear and convincing evidentiary standard.

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## Protect Student Rights

Submitted by Anonymous authenticated user on Tue, 2020-11-17 10:33 (user name hidden)

By lowering the burden of proof from a "clear and convincing" argument to one of preponderance, it is inevitable that innocent Cornellians will be wrongly accused and found guilty of academic misconduct. Protect Cornellian rights and reject this amendment.

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## Section 4.21 Must Go: Don't Throw The Kitchen Sink at Students

Submitted by Anonymous authenticated user on Tue, 2020-11-17 09:54 (user name hidden)

The University Assembly has been doing a good job of separating conduct that is prohibited in the Code from everything else. It's job is to separate the wheat from the chaff. Now comes the University Counsel's draft that includes as a violation Section 4.21 which says, "Violation of any federal, state, or local law, regulation, or ordinance." Under this provision, if someone has a grudge against a Cornell student he can dig through every possible law and then throw the kitchen sink in a Formal Complaint against the student. Cornell will let this happen in order to provide "an educational experience" to the student.

New York State has been slow to legalize marijuana.

Many of the LGBTQ rights granted have been in the form of court cases nullifying statutory law as "unenforcible." However, those laws have remained on the books for decades after their nullification. If Section 4.21 is allowed to stand, a person could file a complaint expecting Cornell to enforce a rule that courts would not.

If Cornell graduate students try to unionize in the future, Cornell could apply federal labor regulations against those students in a manner different than the National Labor Relations Board's interpretations.

Don't allow anyone to throw the kitchen sink at students, particularly in areas where the University Hearing Board and the University Review Board lacks expertise.

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## Do not lower burden of proof

Submitted by Anonymous Committee Member on Tue, 2020-11-17 09:52 (user name hidden)

Please protect student's right by maintaining the clear and convincing evidentiary standard

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## Section 4.21 Must Go: Don't Throw The Kitchen Sink at Students

Submitted by Anonymous authenticated user on Tue, 2020-11-17 09:40 (user name hidden)

The University Assembly has been doing a reasonable job of defining what conduct violations should be enforced under the Campus Code of Conduct and leaving out the rest. They separate the wheat from the chaff. In contrast, the University Counsel's draft gives us Section 4.21, which says, "Violation of any federal, state, or local law, regulation, or ordinance." So, under 4.21 if someone has a grudge against a Cornell student, he can dig through a huge amount of legal materials and find some kitchen sink to throw at that student -- all in the name of providing the student "an educational experience" by way of a Formal Complaint.

New York State has not been at the forefront of legalizing marijuana.

New York State has a long, slow history of establishing LGBTQ rights through court cases that nullify laws on its book, yet such laws remained without enforcement for years.

See: [https://www.glapn.org/sodomylaws/sensibilities/new\\_york.htm](https://www.glapn.org/sodomylaws/sensibilities/new_york.htm) Yet, Section 4.21 says that if some conduct rule is still on the law books, it can be the basis of a valid complaint under the Code, even if no New York court would dare enforce that law.

So, if graduate students restart their efforts to unionize, Cornell can regulate their conduct using federal labor regulations in a manner inconsistent with the National Labor Relations Board's interpretations.

Cornell students deserve a clear and finite list of conduct that is prohibited by the Code, and not "everything including the kitchen sink."

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## Do not lower the burden of proof

Submitted by Anonymous authenticated user on Tue, 2020-11-17 09:36 (user name hidden)

The Preponderance Standard **will** result in the punishment of innocent students and will negatively affect the academic and professional careers of these students. Lowering the burden of proof will clearly lead to more students found culpable and punished. Such an environment is more punitive than one with a higher burden of proof-- directly contradicting the first goal of the code revisions.

Among cases where the choice of burden of proof would lead to different outcomes, what specific reasoning has led to the conclusion that the damages to students affected by code violations is greater than the damages done to innocent students who are punished? The majority of students disagree with this conclusion. The revision of the burden of proof, then, is not in the interest of the students as a whole. Please do not lower the burden of proof. Protect student's rights and maintain a clear and convincing evidentiary standard.

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## Do not lower the burden of proof

Submitted by Anonymous authenticated user on Tue, 2020-11-17 09:19 (user name hidden)

The preponderance standard is just an excuse to punish students in the absence of convincing evidence. How is this fair? This university is comprised of very high achieving students with great prospects in their future. We are all very driven and capable. But the preponderance standard could easily become a hurdle for many that may jeopardize our abilities to land a job or gain further education or research opportunities.

Even the United States court system uses an "innocent until proven guilty" standard. Why does Cornell deserve the right to be the judge and jury without even having all of the information? Disgusting.

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## Preponderance standard supports the community as a whole

Submitted by Barbara Louise Krause on Tue, 2020-11-17 07:50

In response to the comments posted below asking which students could possibly favor the "preponderance" standard, I respectfully suggest that it could be students who have experienced the effects of conduct that violates our community standards - students who have been directly affected or who have experienced the impact of such behavior in their communities. The conduct process does not "prosecute" or "convict" students. Its purpose is to support an educational environment in which all students can study and learn in a supportive, safe community. The OJA believes that the preponderance standard best balances the rights of complainants, respondents, and the community as a whole.

The Campus Code of Conduct was established in essentially its current form some fifty years ago, in the face of concerns by students who felt the conduct process did not adequately protect their interests. In 2017, another group of students raised concerns based on their experiences at Cornell. Those concerns led to the Presidential Task Force on Campus Climate, charged with making recommendations for institutional change that would lead to a more diverse and inclusive campus climate. A subcommittee of that task force recommended a conduct process that was more educational and less formal (except in the most

serious cases, in which it is appropriate to provide a more formal process with additional protections for respondents). The proposed revision of the code of conduct came in response to those concerns, among others, and to incorporate the student conduct function under the umbrella of Student and Campus Life.

Barbara Krause, Interim Judicial Administrator

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## Do not lower the burden of proof

Submitted by Anonymous authenticated user on Tue, 2020-11-17 07:41 (user name hidden)

Lowering the burden of proof will result in many innocent students being punished. How can anyone be okay with such injustices as punishing the innocent? You should uphold our American values of freedom and liberty, not suppress them from innocent people with such a low burden of proof. That goes against the founding principles of our country. As Benjamin Franklin said, "That it is better 100 guilty Persons should escape than that one innocent Person should suffer, is a Maxim that has been long and generally approved."

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## This harms students and the university's reputation

Submitted by Anonymous authenticated user on Tue, 2020-11-17 02:54 (user name hidden)

Lowering the burden of proof harms students. The committee should focus on improving the school for everyone rather than pushing through wildly unpopular and unfair policies.

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## Please do not limit our voices

Submitted by Anonymous authenticated user on Tue, 2020-11-17 02:01 (user name hidden)

Please do not lower the burden of proof. Protect student's rights and maintain a clear and convincing evidentiary standard.

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## Lowering the burden of proof

Submitted by Steven B Booth on Tue, 2020-11-17 01:00

It's interesting to see you seek to rework the code to have an "educational and aspirational rather than a punitive, quasi-criminal tone" while simultaneously increasing the power disparity between the OJA and students. I advocate **against** lowering the standard of proof. You're lowering the standard of proof to the lowest level required in civil law. In civil law, you have a defense being put together by lawyers whose livelihood depends on successfully defending clients. At Cornell, you have a defense being put together by full-time law students who are juggling dozens of responsibilities and already putting in countless hours of work towards other tasks. If you can't see the issue there, than the Student Assembly clearly doesn't advocate for the interests of the Student Body.

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## Do not lower the burden of proof

Submitted by Anonymous authenticated user on Tue, 2020-11-17 00:58 (user name hidden)

You were the chosen one, SA! It was said that you would fight for students' rights, not destroy them!

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## Lowering burden of proof is anti-student.

Submitted by Will Terry Hintlian on Tue, 2020-11-17 00:52

Do not lower the burden of proof. Protect student's rights and maintain a clear and convincing evidentiary standard. Advisors should be present and assisting as a counsel in hearings.

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## Do not lower the burden of proof

Submitted by Anonymous authenticated user on Tue, 2020-11-17 00:49 (user name hidden)

Lowering the burden of proof to a "preponderance of evidence" standard is lazy, shameful, and dangerous. The level of hubris required to try and push through such a wildly unpopular change to the campus code of conduct is truly distopian--a nearly absurdist attempt. Acting on something because it is "more likely than not" should be regarded as a simple heuristic and not a standard of evidence.

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## Please do not lower the

Submitted by Anonymous authenticated user on Tue, 2020-11-17 00:15 (user name hidden)

Please do not lower the burden of proof. Protect student's rights and maintain a clear and convincing evidentiary standard.

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## Do not lower the burden of proof

Submitted by Anonymous authenticated user on Mon, 2020-11-16 23:55 (user name hidden)

Please protect student rights and do not lower the burden of proof

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## Isn't it ironic, don't you think?

Submitted by Antonio Frank Saporito on Mon, 2020-11-16 22:14

The SA is supposed to be a group of people which represents the student body, its interests, and most importantly, advocate for the rights of the students. However, passing this resolution accomplishes none of that. By lowering the burden of proof, students will be more susceptible to unjust university rulings. Students will therefore succumb to this massive power imbalance and be at the thumb of university jurisdiction. The SA is, counterintuitively, advocating **against** student rights. They are lessening the ability for already stressed, underrepresented, and underprepared students to defend themselves against Cornell administration.

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## Burden of proof

Submitted by Anonymous Committee Member on Mon, 2020-11-16 22:03 (user name hidden)

Do not lower the burden of proof. There is no reason to make it easier to convict students and it could lead to more wrongful convictions. Most undergraduate students would disagree with the proposal to lower the burden of proof, so please listen to the student body.

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## Lowering burden of proof???

Submitted by Anonymous authenticated user on Mon, 2020-11-16 21:01 (user name hidden)

Some of my peers have already articulated it better than I can, but I strongly oppose lowering the burden of proof for code violations. This institution's purpose is to educate its students, and making it easier to punish them and possibly derail their academics is completely contradictory to the mission of this university. It's beyond me how the SA who supposedly represent the student body are in support of this, when it's obvious that the majority of the students do not agree.

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## Do not lower burden of proof

Submitted by Reagan Lind Brownell on Mon, 2020-11-16 20:59

Do not lower the burden of proof. Keep clear and convincing evidence. Lowering the burden of proof would increase the rate of wrongful convictions against students and tip the scales even further against them. On a matter that directly affects the student body such as this one, listen to the student body - we are strongly pushing back against the proposed change to preponderance of the evidence (the lowest possible BoP - one that would only increase the power imbalance that already exists between the JA and the student body).

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## Burden of Proof

Submitted by Erik Dylan Szakiel on Mon, 2020-11-16 20:42

I **strongly** advocate **against** lowering the burden of proof for code violations. Not only does it increase the risk of punishing students for something that they might not have done, but it unfairly tilts the scales against students. A standard of a preponderance of the evidence will enforce a judging criteria of "who do you believe more?" among hearing panels. There is an inherent, strong bias for someone to trust evidence

presented by an official body -- in this case, the Judicial Administrator of Cornell University -- rather than to believe an individual student. No amount of training can wholly account for this bias, and it sets a dangerous precedent for future potential code violations. There already exists such an incredibly large imbalance between the Judicial Administrator and the student in terms of resources, knowledge, credibility, and time. I think a good way to look at it is this -- preponderance of the evidence is the **lowest** burden of proof used in civil proceedings -- when both sides have (in theory) equally skilled representation, equal opportunities to view the other side's evidence and prepare, and no inherent bias in the jury. This isn't the case at all at Cornell. You have on one hand an entire office of Judicial Administrators, whose job it is to pursue code violations, stacked against law students who are juggling classes, clinics, and an equal amount of cases. You have Judicial Administrators who can compel students to come in for interviews, record them, and use them in proceedings, stacked against students who are unable to even request to see copies of the same, and who are judged harshly if they attempt to talk to/interview any potential witnesses. Add these imbalances to the incredible amount of stress placed on students who stand at the receiving end of these proceedings, and the difference becomes clear. This isn't a "he said, she said" situation -- we need a **safeguard** against the power imbalance that already exists in our system.

The Student Assembly **does not at all** represent the interests of the undergraduate student population when it urges the University Assembly to lower the burden of proof. No student with any legitimate experience in this system would **ever** advocate for the same. No matter how you cut it, the Judicial Administrator is more so a prosecutors office than a group of "rule enforcers." Lowering the standard will encourage so many more frivolous code violation proceedings, increase the likelihood of improper convictions, and make the University so much worse off. We're not "behind the curve" when it comes to our higher burden of proof as compared to other Universities -- we're ahead of it. We stand for our students, and we should continue to do so.

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## I Strongly Disagree

Submitted by Anonymous authenticated user on Mon, 2020-11-16 20:26 (user name hidden)

Literally, by definition, the university is taking something away from students with this revision: if passed, it will be significantly more likely that a student will face consequences in any given case. These consequences are real and they really do impose restrictions and punishments on real people. This is not an amicable process where everyone goes in with equal power to agree on an outcome. This is a hearing. Furthermore, it is a hearing by full-time employees of the university against full-time students of the university. Students have so many other time commitments. It is neither fair nor right to demand even more from them in the case of a hearing by making it harder to fight the charges on their already limited time.

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## Lowering the burden of proof

Submitted by Anonymous authenticated user on Mon, 2020-11-16 20:24 (user name hidden)

Lowering the amount of evidence needed to convict students will only increase the amount of wrongful convictions. The JA should not be able to punish students and negatively impact their time at Cornell and their future beyond this unless they are certain that the student is guilty. Simply basing the burden of proof as preponderance risks each students right to a fair trial. All students deserve a fair trial.

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## Burden of Proof Change

Submitted by Alexander James Myers on Mon, 2020-11-16 20:19

I don't understand why the SA supports lowering the standard of proof from clear and convincing to preponderance. No one I know agrees with that decision. It's hard enough to defend accusations of violations on a student's schedule, to weight the scales further against students is unfair and especially damaging to those on this campus who are less privileged. More penalties and convictions for students is not the right way to go about lowering violations or improving Cornell's campus, just look at how harsh penalties and convictions have impacted the US justice system. Do not lower the burden of proof.

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## Burden Change

Submitted by Danny Shokry on Mon, 2020-11-16 19:54

This proposed change to the burden is clearly unfair. It tips already unfair odds further against students, especially POC and low income students. The burden should be clear and convincing evidence. A move to a preponderance of the evidence would be a blatant disregard of the students at Cornell.

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## Do not lower the burden of proof

Submitted by Anonymous authenticated user on Mon, 2020-11-16 19:51 (user name hidden)

What student would want to decrease the evidence needed to JA them? This will only result in more false punishments and can be easily abused by power hungry staff. In no circumstance is this okay, all students deserve a fair trial and should only be convicted with substantial and evident proof. Preponderance is too low of a burden and the university should provide clear and convincing evidence.

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## Comments on Proposed Amendments

Submitted by Anonymous authenticated user on Mon, 2020-11-16 19:35 (user name hidden)

Undergraduate students strongly support the clear and convincing standard of proof for code violations, irrespective of the Student Assembly's false and misleading impressions of its contingency's preferences. Only 16% of students voted in the Student Assembly Elections this year, an historic low. This means that, for many issues, the SA does not adequately represent the undergraduate community at Cornell, especially in regards to the Code revisions.

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## Dumb rule

Submitted by Eli Benjamin Bienstock on Mon, 2020-11-16 19:30

Do not lower the burden of proof. Keep clear and convincing.

No student in their right mind would ever vote FOR this. Why would they risk being found responsible for things they may not have committed?!

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## "Cornell Statement on Responsible Speech and Expression"

Submitted by Robert C. Platt, Esq on Mon, 2020-11-16 16:08

In reply to the 11/16 posting of Prof. Lieberwitz posting the AAUP Statement on Responsible Speech and Expression:

Many thanks for posting the statement in which I am in general agreement. It is the responsibility of every student, faculty, non-academic staff member, Trustee and alumni to protect freedom of speech, freedom of inquiry and academic freedom on the Cornell campus.

However, we need to avoid circular reasoning here. The problem with the current UC proposal before the CJC and the UA is that it seeks to define away many important free speech rights and would bring a chilling effect on free speech by way of a new Judicial system that strips away important due process safeguards. Since 1970, Cornell has held students, faculty and staff to the same standards when dealing with protests, demonstrations, audience reaction to invited speakers, etc. The University Senate and later its successor the University Assembly has hammered out what rules should apply, and students, faculty and staff all sit in judgment on hearing panels when there is an alleged violation. The process was kept separate from Day Hall. I acknowledge that few faculty or staff have been called before the Judicial Administrator over the past 50 years. But isn't it comforting that if a faculty or staff is accused of such misconduct, they have the ability to get a fair hearing outside the internal politics of their academic department or college? In today's cancel culture, some members of the Cornell community are demanding that specific faculty be fired merely because of expressing unpopular political views outside of the classroom. The answer is: the community has agreed upon rules and a method for adjudicating how those rules are applied. Day Hall has been long removed from such debates. Unfortunately, some would ask the Board of Trustees on Dec 10 to overturn all of that and turn the whole issue back to Day Hall to the peril of students, faculty, staff and even campus visitors. Like George Orwell's *Animal Farm*, the definition of any word in the AAUP Statement could then be redefined to take away the protections intended.

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## Section 4.10: Harassment / Humiliation

Submitted by Anonymous Committee Member on Mon, 2020-11-16 15:21 (user name hidden)

The comment filed on 11/15 at 20:48 makes an excellent point. The definition of harassment has been expanded well beyond the current Campus Code of Conduct which defines the offense as: "To harass another person (1) by following that person or (2) by acting toward that person in a manner that is by objective measure threatening, abusive, or severely annoying and that is beyond the scope of free speech."

This clear and precise definition is easy to understand and could be applied by any fact-finder on a hearing panel. The proposed Section 4.10 would introduce the word "humiliation" at two points, which makes the violation far broader and **more subjective**.

Aside from vagueness there is also the problem that Section 4.10 tries to describe the boundaries of free speech. This is because most harassment incidents involve verbal, written or symbol speech. The current definition expressly excludes "free speech" from the definition. However, proposed Section 4.10 backpedals from this important protection:

Because of protections afforded by principles of free speech and academic freedom, expression will not be considered harassment unless the expression also meets one or both of the following criteria:

- it is meant to be either abusive or humiliating toward a specific person or persons; or
- it persists despite the reasonable objection of the person or person targeted by the speech.

This is not the correct boundary of free speech. In 1999, the U.S. Supreme Court in *Davis v. Monroe County Board of Education*, interpreted Title IX to create a test that the conduct must be "so severe, pervasive, **and** objectively offensive" that it denies its victims equal access to education. The Department of Education has incorporated the *Davis* test into its definition of sexual harassment, and logic would dictate that harassment outside the sexual context would be at least as protective of free speech.

The UC draft having gone from an express protection of free speech to the above quote, then appears to even strip that protection away. It adds, "Offensive conduct that does not by itself amount to harassment as defined above may be the basis for educational or other non-punitive interventions to prevent such conduct from becoming harassment if it were repeated or intensified." This sentence creates an impermissible chilling effect on campus free speech. Either conduct is a prohibited violation or it is not. If a complainant alleges conduct which does not violate Section 4.10, no complaint should be accepted and the respondent should not be subject to "non-punitive interventions." There are many mechanisms on campus to mediate disputes from RAs in the dorms to the Ombudsman. The stigma and burden of a Campus Judicial proceeding should not attach to a student offending another student while exercising free speech rights. Accordingly, this sentence should be deleted from the definition of "harassment."

It bears repeating. Unlike some other colleges, Cornell has never adopted a "speech code." Cornell values free speech and academic freedom, as reflected in the current Campus Code. Proposed Section 4.10 is a backdoor attempt to regulate free speech and should be rejected. The current Campus Code definition should be retained.

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## Code Jurisdiction Concerns

Submitted by Logan Rue Kenney on Mon, 2020-11-16 14:32

I believe that the Codes and Judicial Committee ("CJC") and University Assembly ("UA") must deeply discuss the impact that the Code revisions may have on the jurisdiction of the Code. It is imperative that the Code revisions process remain with the UA, primarily through the CJC bringing action to the UA and subsequent approval / consideration of such changes by the President. As such, there needs to be clarity in the proposed Code changes that maintains language found in the Preamble and Article IV of the current Code:

Preamble: "This Title is necessarily general. Its purpose is to inform the Cornell community of the general principles and policies upon which the Cornell judicial system operates, and to give general guidance to the judicial system as it handles specific cases arising under regulations authorized by the Board of

Trustees, **including legislation adopted by the University Assembly (or its successor) and approved by the President as representative of the Board.**"

Article IV: "The Regulations for Maintenance of Public Order were adopted by the Board of Trustees and may be amended only by action of the Board of Trustees, **upon the recommendation of or after consultation with the University Assembly**".

The proposed Code changes are silent or vague on whether this jurisdiction is maintained, as the only relevant wording is as follows:

Proposed Code Change: "Authority and administration of the Code and associated Procedures are vested with the Vice President for Student and Campus Life (VP SCL), *in consultation with the elected Assemblies of the University*".

**The University Assembly encompasses each constituent group on campus and historically amendments have come through our body.** This is a different situation altogether as rather than an amendment, or amendments, we were asked to revise an entire Code. I believe that amendments should still come through the UA, then to the CJC, back to the UA, and then to the President for approval.

Proposed Code Change: In addition to this, the University Assembly is not one of the designated groups that advises to the appointment of the OSCCS Director, the Complaint's Codes Counselors, and the Respondent's Codes Counselors under the proposed code. **Under the current code**, the appointment of Judicial Administrator and the Judicial Codes Counselor, the equivalent to the Complaint's Code Counselor and Respondent's Code Counselors respectively, are approved by the UA as stated in **Section 3.2 of the University Assembly Charter**. It is important for all relevant constituencies to be involved in this appointment process, not only the SA, GPSA, and the OSA but also the UA given its jurisdiction over the Code.

I am writing this here because comments are closing tomorrow and I believe this is pertinent for all community members to be aware of.

Best, Logan Kenney, Chair of the UA

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## **"Cornell Statement on Responsible Speech and Expression"**

Submitted by Risa L. Lieberwitz on Mon, 2020-11-16 00:11

Submitted by Risa Lieberwitz, Professor, ILR School, and President of the Cornell University Chapter of the AAUP:

**The Cornell University Chapter of the American Association of University Professors (AAUP) endorses and recommends for adoption as Cornell policy the following proposed "Statement on Academic Freedom and Freedom of Speech and Expression" (amending the proposed "Cornell Statement on Responsible Speech and Expression":**

**Fall 2020 - Cornell Statement on Academic Freedom and Freedom of Speech and Expression**

***General Principles***

Cornell University is committed to fundamental principles of academic freedom and rights of free expression. Freedoms to engage in research and scholarship, to teach and to learn, to express oneself and to be heard, and to assemble and to protest peacefully and lawfully, are essential to the function of the University as an educational institution. As stated in the American Association of University Professors (AAUP) 1940 Statement of Principles of Academic Freedom and Tenure, “Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.”

The University’s Statement of Core Values affirms the fundamental nature of ***Free and Open Inquiry and Expression***:

We are a community whose very purpose is the pursuit of knowledge. We value free and open inquiry and expression—tenets that underlie academic freedom—even of ideas some may consider wrong or offensive. Inherent in this commitment is the corollary freedom to engage in reasoned opposition to messages to which one objects. <https://president.cornell.edu/initiatives/university-core-values/>

The University recognizes and affirms the importance of extending to all students and employees the core values of free and open inquiry and expression. The University further recognizes and affirms employees’ right to communicate freely outside of the scope of their Cornell employment in their capacity as a private citizen.

The University endorses the ***Faculty Statement on Academic Freedom and Responsibility*** adopted by the University Faculty on May 11, 1960, which provides:

Academic Freedom for the Faculty means: Freedom of expression in the classroom on matters relevant to the subject and the purpose of the course and of choice of methods in classroom teaching; from direction and restraint in scholarship, research, and creative expression and in the discussion and publication of the results thereof; to speak and write as a citizen without institutional censorship or discipline. . . .

Academic freedom is valued very highly at Cornell, and the University Faculty defends it tenaciously; nevertheless, the same University Faculty is disinclined to see the concept abused. Academic freedom does not imply immunity from prosecution for illegal acts of wrongdoing, nor does it provide license for faculty members to do whatever they choose.

The University recognizes and affirms that academic freedom also encompasses the freedom to address any matter of institutional policy or action whether or not as a member of any institutional governance body.

The University further affirms that “a faculty member’s expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member’s unfitness to serve. Extramural utterances rarely bear upon the faculty member’s fitness for continuing service. Moreover, a final decision should take into account the faculty member’s entire record as a teacher and scholar.” [AAUP 1940 Statement of Principles of Academic Freedom and Tenure, with 1970 Interpretive Comments, n.6]

### ***Responsibilities***

The Cornell community, including the University Assembly and other elected governance bodies, have a responsibility for protecting freedom of speech and academic freedom. Towards that end, the President or the President’s designee shall consult with the University Assembly, Faculty Senate, Student Assembly, Graduate and Professional Student Assembly, Employee Assembly, and other elected campus governance

bodies on a regular basis to ensure that the community's fundamental commitments to free expression, academic freedom, and respect for others are safeguarded.

Responsible enjoyment and exercise of these rights includes respect for the rights of all. Infringement upon the rights of others, including the rights to speak and to be heard, or interference with the peaceful and lawful use and enjoyment of University premises, facilities, and programs, violate this principle.

The University is committed to protecting academic freedom and to creating a learning, living, and working environment free of discrimination, harassment, and sexual and related misconduct. Based on the protections afforded by academic freedom, speech and other expression will not be considered prohibited conduct unless this speech or expression meets the definition of discrimination, harassment, and sexual and related misconduct under Cornell policy and also meets one or both of the following criteria: a reasonable person in the setting would find it to be abusive or humiliating toward a specific person or persons; or it persists despite the reasonable objection of the person or persons targeted by the speech. [See, Cornell University Policy 6.4, Prohibited Bias, Discrimination, Harassment, and Sexual and Related Misconduct and Procedures <http://titleix.cornell.edu/procedures/> ]

The University recognizes that outdoor picketing, marches, rallies, and other demonstrations are traditional and legitimate forms of self-expression and dissent on campus. In recognition of their importance to freedom of speech, no university permit is required for such outdoor activities for members of the Cornell community; however, consultation with the university is encouraged to ensure the safety and protection of rights for all those involved.

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## Re: Section 4.10

Submitted by Anonymous Committee Member on Sun, 2020-11-15 20:48 (user name hidden)

Some of the language of Section 4.10 seems vague compared to other parts of the code. In particular, the use of the word "humiliating" is of concern. The section does not make clear what the definition of "humiliating" would be. Is "humiliating" someone something serious, like maliciously trying to embarrass them or causing them to feel shame (in which case, it should be included in the Judicial Code revision)? Or, could it be something more innocent/simple like politely pointing out the broken promises made by someone running for office or highlighting the flaws in one's argument in the course of public debate (both of which could cause embarrassment and, in turn humiliation)? In any case, before these changes are adopted to the Campus Code, the University should make the definition of the word "humiliating" more clear.

Now, if the University aspires to uphold academic freedom above all else, it would be wise to put forth a narrower, more serious definition for the word "humiliating". In my view, it seems as though the University intends to prevent harmful and unwanted harassment from occurring in the Cornell community, a goal which I fully support. Malicious harassment should be stopped and absolutely has no place in a community like Cornell University.

However, there are moments in contentious and spirited debate in which one may feel embarrassed or humiliated, due to the facts and arguments presented. In my experience, those who engage in controversial debate and campus discourse do not intend to embarrass their peers. Rather, they intend to build them up, through the rigorous processes of formulating ideas, testing them, and rethinking them again and again. These moments, though they may cause temporary humiliation and embarrassment, should not be punished. Rather, they are a critical part of the learning process and the free, provocative academic setting we find ourselves in today.

It is imperative that the University, before adopting these changes:

- 1) Explicitly defines what "humiliating" means.
  - 2) Chooses a definition of "humiliating" that only covers situations in which someone intentionally and maliciously engages in this sort of conduct, not situations inherent in the learning process or academic debate/discourse.
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## Strongly Oppose these Changes

Submitted by Anonymous Student Role on Sun, 2020-11-15 14:22 (user name hidden)

Do NOT make any changes that will:

1. Eliminate the right to cross-examination
  2. Deny the right to a public hearing
  3. Reduce the "clear and convincing evidence" burden of proof
  4. Prohibit or inhibit the participation of independent counselors
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## Standard of Proof and Other Models

Submitted by Anonymous Committee Member on Sun, 2020-11-15 11:33 (user name hidden)

Thank you for your thoughtful comments. When the University Senate first adopted the Code and the Judicial Procedures, the standard was "proof beyond a reasonable doubt." It was subsequently reduced to "clear and convincing evidence" which is the standard **now in effect**. The Foundation for Individual Rights in Education (FIRE) also has a model code which recommends the "clear and convincing evidence" standard. The University Counsel's proposal would drastically broaden the scope of the Code to include any organization which has Cornell students as members. So, student-alumni, student-faculty, professional and town-gown organizations are now having their rights and property at risk. Given the broaden scope, the process cannot be said to be "about student development."

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## Consideration of Bias: Harassment and Sanctions Generally

Submitted by Anonymous Committee Member on Sun, 2020-11-15 09:45 (user name hidden)

**Historically, the Cornell judicial system (as well as the nation's criminal justice system) strives to attain "blind justice" that is without regard to the status of the complainant or respondent. Indeed, Section 1 of the University Counsel's draft states, "The Code is drafted to safeguard individual rights as well as those rights conferred by the University, reflecting its dedication to fairness in the treatment of all members of the university community." Section 1 also declares Cornell to be a place "where students, faculty, and staff with different backgrounds, perspectives, abilities, and experiences can ... feel empowered to engage in any community conversation." The University Counsel's draft departs from goal at two points. First,**

Section 4.10 definition of the elements of Harassment provides, “The fact that the conduct targets a group that has historically experienced discrimination may be relevant to a contextualized judgment about whether the conduct creates a hostile environment.” This provision is being added to the current Code. Second, the University Counsel’s draft is based upon the Presidential Task Force on Campus Climate Subcommittee on the Regulation of Speech and Harassment whose final report (at 8) recommended:

We believe that nondiscrimination is a core university value. As such, we believe the university should at least have the option of suspending or expelling from our community someone who violates the campus code when the violation was motivated by bias.

To meet Cornell’s stated goals of fairness, the consideration of “bias” or the status of the parties must be separated from proving each element of the alleged offenses. For this reason, The Spring CJC draft (at Section 6.8) provided for two hearing phases: first to establish responsibility and second to establish sanctions or remedies. The University Counsel’s current draft (Section 20) does not contemplate a further sanction phase of the hearing and merely asks the parties to have written impact statements ready for the panel once responsibility has been determined.

By way of comparison, NYS Penal Law § 485.05 defines a hate crime in terms of a set of underlying crimes with the additional requirement that the accused selected the victim because of his characteristic or committed the act in substantial part because of a belief that the victim had the characteristic. The hate crime law adds an important limitation, “Proof of race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of the defendant, the victim or of both the defendant and the victim does not, by itself, constitute legally sufficient evidence satisfying the people's burden.” Section 20 of the General Counsel’s draft does not provide for the “bias” penalty enhancement. However, should the UA decide to add one, it should also contain the caveat that proof of the complainant's and respondent’s characteristics alone is not sufficient to establish the bias penalty enhancement.

Finally, the elements in the definition of harassment in Section 4.10 should not include subjective evaluation of a “hostile environment.” All elements of each offense should be based upon an objective standard. If a complainant wishes to raise his status, the hearing panel should wait for the sanction and remedy phase to consider it. Accordingly, the quoted sentence should be removed from Section 4.10 and relocated as a special case in Section 20.10:

“For a party found responsible for harassment (as defined in Section 4.10), the panel may consider the race, religion, gender, gender expression age, disability or national origin (etc) of the complainant in setting sanctions and remedies. However, the complainant must prove that respondent’s acts were motivated in large part by his belief that the complainant had those characteristics for this to be relevant to the proceeding.”

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## Aspirational tone my ass

Submitted by Saleh Ibrahim Hassen on Fri, 2020-11-13 19:43

"your plain english" changes removes cross-examination & right to a public hearing, lowers burden of proof, and removes participation of independent counselors. Winnie the Pooh is applauding your efforts of making your procedures more "efficient". Also love the spin with the summary above.

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## The proposed changes will disadvantage students not benefit them

Submitted by Anonymous authenticated user on Fri, 2020-11-13 01:56 (user name hidden)

These changes will fundamentally alter student rights if you are ever accused of violating the Code of Conduct.

The rights we will lose:

1. Cross-examination (in almost all circumstances)
2. Right to a public hearing
3. The "clear and convincing evidence" burden of proof
4. Participation of independent counselors

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## Concerned Graduate Student

Submitted by Anonymous Student Role on Thu, 2020-11-12 18:07 (user name hidden)

At a moment when so many Americans are questioning the discipline and punishment model of American prisons, it is unclear why Cornell would move to *lower* the standard of evidence used to punish students for misconduct and to strip them of their rights. In addition to the substantive arguments offered by law students and others in this thread, it seems like an especially bad move from a public relations standpoint. Certainly, there will be students and professors who will not remain silent about these changes.

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## Standard of Proof

Submitted by Anonymous Committee Member on Thu, 2020-11-12 13:58 (user name hidden)

I have done some research on standards of proof for colleges and universities, and spent some of my professional career doing conduct work. It is not surprising that the law school students and their advisors want a clear and convincing standard of proof, they are trained to think that way and believe that student conduct cases should be treated like courtroom battles where there is a winner and a loser. This just isn't the case in higher education. Nobody wins after a hearing, there is no victory, pay out or time in jail. Higher educational institutions don't have the authority to command witnesses to participate or subpoena documents for evidence. The standard of fairness is applied. This includes giving notice of the violation and an opportunity to be heard by a trained professional in student conduct, which again is a very different skill set than training for litigation in a courtroom. Conduct officers don't go into a hearing hoping to win, they want to talk about the violation, learn about what happened, and use developmentally appropriate training and sanctioning to determine the outcome. There is not an us v. them or a University v. students. We all need each other to coexist in a community where we feel proud and can be ourselves in a safe environment. Ultimately, the process is about student development!

The model code and the exemplar process written and supported by ASCA (Association for Student Conduct Administration) explains that the preponderance standard is the standard best suited for colleges and universities to navigate campus conduct violations. Students do not lose rights, students are adults and can

speak for themselves in campus proceedings (and honestly they should want to), and students should not be guided by the fear that the university is taking something away from them with this revision, this is not the truth.

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## Response to comments about cross examination

Submitted by Barbara Louise Krause on Thu, 2020-11-12 13:53

Several public comments and other reporting have stated that cross examination is not allowed under the proposed Code revision. To be clear, under the Fall 2020 proposal:

Procedures Section 20.8.2 (Testimony) states that a "question-and-answer format" will be used in hearings. Questioning is primarily conducted by hearing panel members but may be supplemented by the hearing panel chair.

Procedures Section 11 (Counselors/Advisors and Support Persons) states that in cases where suspension or expulsion might be imposed, counselors and advisors must have "a reasonable opportunity to participate fully in the hearings, *including engaging in direct questioning of the parties* if they choose to testify." (Emphasis added).

It is my understanding that the proposed Code does not use the term "cross examination," based on the recommendation to make the Code less legalistic and write it in "plain English." That recommendation came from a subcommittee of the Presidential Task Force on Campus Climate whose final report was released in June of 2018. The dean of the Law School co-chaired that subcommittee. (To be clear: I don't mean to suggest that the subcommittee made a specific recommendation about cross examination or questioning during hearings; the recommendation I am referencing was more general: "Where possible, the code should be written in plain English....And, except where the most severe sanctions are at stake, adjudicative processes should be simpler and less formal." The quote appears on page 9 of the report that appears at this [link](#).)

The purpose of conduct hearings is to provide respondents a fair opportunity to address the allegations against them. Minimizing the amount of direct confrontation during questioning is not inconsistent with that goal - especially when direct questioning is specifically allowed in cases involving possible suspension or expulsion. Campus conduct proceedings on many other campuses require questions to be asked through the hearing board chair and/or panel members. The purpose of that structure - and the effect, on other campuses - is to minimize the confrontational nature of questioning during student conduct hearings. The OJA believes that this approach provides a fair process to respondents while also providing fairness to other students in the process, including, potentially, individual complainants and other witnesses.

Barbara Krause, Interim Judicial Administrator

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## Comments from a concerned undergrad

Submitted by Anonymous authenticated user on Thu, 2020-11-12 13:06 (user name hidden)

As a student, my biggest concern about not allowing Codes Counsellor's to speak during hearings is primarily concerning because it inherently de-levels the playing field. Students' writing and speaking skills will play a much larger role in their hearing and may overshadow the facts of the situation. Furthermore, by the point a referral reaches the UHRB, the involved parties have probably faced months of anxiety and stress which may further impair their ability to eloquently and properly deliver their facts, feelings, and ideas during the hearing process. Having to face five adults knowing that their future at Cornell could be determined in that meeting is a lot for anyone. I agree with the OJA that being a part of the Cornell community is in fact a privilege over anything else; nevertheless, students should be entitled to their due process to fairly determine the range of their sanctions. Reducing the role of the JCC makes the OJA process inherently more punitive than restorative, contradicting the goals of the new amendments. During these proceedings, students look to their Codes Counsellors as an advisor and a role of support as they take on a role of helping the student with the knowledge of the process. However, these new rules shrinks their ability to provide this support by limiting their involvement in hearings. As someone who struggles with anxiety and public speaking, I know that I am not alone. I know for a fact that my peers struggle with the same issues, and a JCC can serve to mitigate these concerns during a hearing which have been described by these same peers as "downright scary." I hope that the university takes these concerns into consideration.

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## A Second Attempt to Reduce Students' Process Rights

Submitted by Zachary R Sizemore on Thu, 2020-11-12 12:32

While there are some good changes proposed in this set of revisions, as a third-year law student I am still very troubled by some key revisions that the University has reintroduced. For the second time in a calendar year, revisions to the Code have been proposed to make the Code "more educational," and according to the new changes, less "punitive," and less "quasi-criminal." But that is simply not an accurate description of what the changes to the Code would do. For brevity, I'll only address a couple of select things.

First, I would begin by addressing the claim that the Code would be less "punitive" and less "quasi-criminal" in tone. This is the justification for trying to get rid of various rights enjoyed by students at the school. But what was true in the spring (when the school attempted to make drastic changes to the process rights of students) is true today: That the punishments and ramifications for those students still subject to the Code are (on the whole) certainly punitive. The University's retention of pretty much all its sanctioning power (which I don't write to dispute) requires that respondents have as many process rights available as possible, including, inter alia, the retention of a higher standard of proof (clear and convincing), the ability to question witnesses (both through a respondent themselves and their counselor), and the continued independence of the RCC (discussed *infra*).

So, it is strange to me that while the Code largely retains the criminal-like sanctions available to the authorities imposing them, those proposing the changes are once again attempting to get rid of the criminal-like process rights enjoyed by those who might be subject to the retained sanctions. The fact that we as a community are discussing some of these issues, such as the burden of proof, for the second time this calendar year is troubling. This is especially true because this reconsideration is occurring in the middle of a pandemic and just months after a large class of freshman, who will be subject to this revised Code for the next four years, have just begun their college careers.

Second, the University has still, after more than half of a year of claiming that these changes are "educational," failed to define that term in any meaningful way. In both a written comment on the proposed

revisions in the spring and during the forum to discuss those changes, I pointed out that this term does not appear to be used in any way that could traditionally be squared with the understanding of “educational.” Considering that this is the purported underlying premise of every revision, I find it troubling that after several months the University itself consistently does not define this term or provide any evidence that it accomplishes this goal. And the failure to use this term in a way that can be understood by an observer—and the inability to define it—cuts against the University’s goal of having the Code and process “use ‘plain English.’” If the community of this University is to truly understand the ramifications, and justifications, of these revisions, we are entitled to more transparency of the underlying policy justifications.

I’d also like to address the noneducational process that the University has used in proposing these revisions in the spring and now. In the spring, the University put out the proposed revisions while everyone in our community was grappling with the then-new COVID-19 pandemic. Many people I know were extremely distracted and busy adapting to the situation, and they learned about the proposed revisions, not from the University, but from myself and other students who were concerned about the revisions. While the process does not feel quite as rushed this time, I find what the University has done now even worse: it has not highlighted any of the changes to the old Code for reference. In fact, while I hope I am mistaken, I don’t think the current Code is even linked on this proposal. This makes it extremely difficult for some people to understand the breadth and significance of these changes, and this is evidenced by at least one other comment noting the lack of clarity because of this omission. And, as I pointed out above, some members of our community just began college a couple of months ago, giving them less time to become familiar with the existing Code than some of us have enjoyed. I think this lack of clarity itself should justify deferring *any* change until a time when the student body is presented with this information in an easily digestible, educational way. The University’s educational interest, if it justifies anything, should justify changes and processes that allow our community to be educated, before adoption, on what the new Code will be and what rights we might lose compared to the existing Code. These last two rounds of proposals have not given us this opportunity.

Finally, I’d like to use the remainder of this comment to mention that it is also concerning that the University has made continual efforts to erode the independence of the now-Respondents’ Code Counselors. Independence of the counsel, counselors, and advisors to those accused of wrongdoing is one of the most fundamental values in our system of justice (both country and university-wide). I am unsure why, then, the University feels that the Director of the office charging students with disciplinary violations should play a role in the hiring or firing of a student’s advisor. Even if the changes do not *actually* erode the independence of the office (a questionable assumption I am making for the sake of argument), the appearance of impropriety and lack of independence alone would justify keeping the office independent. Knowing that the RCC Office is not a fully independent body (and, quite frankly, knowing that the University has made continual efforts to ensure that it is not one), will erode the trust that respondents and others have in the process. Speaking only for myself, my trust in the process would be eroded without this feature. The RCCs do amazing work for this University, ensuring that the process enjoyed by our accused students is fair and impartial, and nothing should be coded into the process that puts that work at risk. If students don’t feel safe speaking with their advisor, it is as if the right to an advisor does not exist at all.

In sum, I think that some of the new, more restorative proposals in the revisions are good. I do not contest those. But coupled with them are a group of revisions that the University has now continued to make that would erode the process rights of students at Cornell. I am not sure why the University is so dedicated to making some of these changes, but I believe its important for us as a community to continue to oppose these sorts of process changes. I thank the University for the opportunity to comment on these proposals.

Zachary Sizemore

J.D. Candidate, Cornell Law School, Class of 2021

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## Concerning Developments in the Code

Submitted by James Augustin Martin Richards on Thu, 2020-11-12 10:52

I am a second-year law student at Cornell, and I have only recently become aware of these changes to the Code. It seems like they are a large step toward restricting the rights of students, with little or no upside. A lower burden of proof and the proposed limitations imposed on student representatives are particularly concerning alterations. The system in place prior to these changes was designed to reflect the severity of a JA disciplinary action--students were able to enlist the aid of an advisor with legal knowledge to provide a meaningful defense and prevent wrongful prosecution. The recent changes will only serve to "load the deck" against students, while simultaneously compromising the reliability and legitimacy of any successful disciplinary actions. Apart from a harsher and more oppressive disciplinary process, I fail to see what Cornell or the students themselves serve to gain from these changes.

To save the disciplinary process, it is crucial that the Cornell code retain the Clear and Convincing standard, allow students access to representation unaffiliated with the administration to speak on their behalf (ensuring candor and impartiality), give students the ability to freely call witnesses, and allow *true* cross-examination (the posited cross-examination is unlike anything I've seen in the legal field). I also fail to understand the school's issue with public hearings, which diminish transparency and further erode the legitimacy of the disciplinary outcomes. These are integral aspects of our country's criminal justice system, yet the school believes it is acceptable to limit these rights, despite the weighty significance these hearings and their outcomes can have on individual students' lives and careers. The university can pretend the disciplinary process is nothing like the criminal justice system, but that is a weak argument considering the accusatorial nature of the proceedings. I believe we can have a strong restorative justice model, consistent with the criminal justice system, but the answer is not to lower the burden of proof and limit student rights in the process.

Why move toward the Title IX investigative model when it makes no sense in this context? Keep preponderance for Title IX, keep Clear and Convincing for Disciplinary Actions. This is how we can best protect our students and limit the possibility of false findings of responsibility.

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## What is good for the goose is good for the gander

Submitted by Randy O. Wayne on Thu, 2020-11-12 02:58

It is reported in the Sun, "Advisors should be involved primarily to guide students through that process," wrote Barbara Krause, the judicial administrator. "The OJA does not believe that positioning advisors as adversarial representatives for students supports that overarching goal." Does the OJA also believe that the position of the University Council should be eliminated as it also participates in adversarial actions? A line of reasoning that is good for the goose is good for the gander.

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## Recommendations of the Judicial Code Counselors

Submitted by Richard F. Bensel on Wed, 2020-11-11 17:40

In the October 28 meeting of the Faculty Senate, the JCC's made a wonderfully clear and powerful presentation in which they proposed very important changes to the University Counsel draft of the Campus Code of Conduct. In the recent past, the most serious violations of student rights have, in fact, been committed by the University (e.g. the Daniel Marshall and Mitch McBride cases). The text written by the University Counsel would make such violations even easier to commit. The JCC's are absolutely right that their changes are extremely important in order to protect student rights.

Richard Bensel

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## Cross Examination Should be Allowed

Submitted by Benedict C Bussmann on Wed, 2020-11-11 14:13

It seems like these revisions preclude cross-examination of witnesses. Student's charged with code violations need the opportunity to cross examine witnesses for these hearings to be fair and accurate. It would be strange for a right enshrined in the Bill of Rights to be entirely unavailable here. If I am reading the amendments incorrectly, please clarify the Code to make the opportunity to cross examine more apparent.

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## Re: Law School faculty advisor for Complainants' Codes Counselor

Submitted by Marisa A O'Gara on Wed, 2020-11-11 13:47

Yes, the Complainants' Codes Counselors are a pre-existing group and have a law school faculty advisor as well, and we (as JCCs) are, of course, supportive of them having that support.

Marisa O'Gara, Judicial Codes Counselor

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## why only students?

Submitted by Anonymous Student Role on Wed, 2020-11-11 10:21 (user name hidden)

By narrowing its focus to student only, the Code of Conduct strips away a vital protection against harrassment, retaliation, and sexual exploitation by employees, faculty, administration, and other non-student members of the Cornell community. This will make graduate student workers still more vulnerable to exploitation.

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## Law School faculty advisor for Complainants' Codes Counselors?

Submitted by Anonymous Committee Member on Wed, 2020-11-11 09:45 (user name hidden)

The JCC comment below (11/02/2020 post, Item 2) states that their Law School faculty advisor provides an important level of accountability to JCCs (Respondents' Codes Counselor in the proposed revision). Will a law school faculty member also mentor and advise Complainants' Codes Counselors?

I actually hate to ask this question, because I think it continues to emphasize a legalistic structure that we should move away from. But if Respondents' advisors are going to have support from Law School faculty, do the JCCs think it would be important for Complainants' advisors to have support from Law School faculty, too? Would JCCs advocate for that support?

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## Authoritative Administration Strikes Again

Submitted by Anonymous Committee Member on Tue, 2020-11-10 20:13 (user name hidden)

When the administration did not get its way, it manipulated the undergraduate students and threatened shared governance by taking control of the code. Literally by threatening bodies. The proposed changes are just ridiculous and even worse than the proposed changes spoken about years ago.

1. Stop calling punitive measures restorative justice
2. No one wants to move away from clear and convincing (except administration and the students that administration has targetted)
3. Clear and convincing for the campus code does NOT alter Title IX proceedings in any way (and administration wrongly stated those standards must be the same)
4. Stop saying a lower burden of proof is "educational" or "restorative." This is just a lie.
5. Do not take away individuals' rights to have representatives speak for them. They can opt against that. But they should deserve this right which is akin to the Constitutional protection.
6. Leave the JCCs alone. They should be an independent group.
7. Leave the OJA alone. They should be an independent group.
8. Lastly, stop interfering with shared governance. This administration is embarrassing us all. I wonder if the board knows about the threats or if they hear lies about the flawed system they have deeply contributed to. Notice how we have short comment periods YET AGAIN. Coincidental? I think not.

The administration has been trying to pass revisions, which continue to be rejected in the past. Let us not allow them to do this again under false promises of restorative justice which is a sad mask for more punitive procedures. Give shared governance back its role. This power grab is shameful.

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## Disability training and accommodations

Submitted by Anonymous authenticated user on Tue, 2020-11-10 14:46 (user name hidden)

I appreciated seeing that there would be diversity and inclusion training for hearing boards. This should include awareness of disability experience and when modifications or accommodations may be needed for either the complainant or respondent to participate in the process. Similarly, it would be important for the OJA to ask parties involved early on if they need any disability access accommodations or considerations in order to engage in the process. This may necessitate calling upon Student Disability Services for assistance or guidance to help ensure this important part of the University procedures and protocols remains accessible

to, inclusive of, and not inadvertently discriminatory against, community members with disabilities. Thanks for your consideration, and for your hard work on this important effort!

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## Restorative Justice

Submitted by Anonymous Committee Member on Tue, 2020-11-10 12:25 (user name hidden)

Many parties want to shift towards a model of restorative justice, one that allows for an "educational component" and alternative conflict resolution when cases arise. If that is the case, more clarity needs to be provided in terms of that procedural structure as well. Two potential models could be used to ensure that most of the cases, specifically the minor ones, go through the alternative conflict resolution:

Model 1 involves the OSCCS referring minor cases to alternative conflict resolution **prior** to the formal proceedings mentioned in the Code of Conduct.

Model 2 involves the OSCCS including minor cases **into** the formal proceedings and with the hope that alternative conflict resolution can arise **during or at the end of the process**.

Currently, the Code Changes reads as both - however this becomes problematic when attempting to justify other aspects of the code such as the evidentiary standard. It may be best that if Model 1 is taken that the evidentiary standard is kept at "clear and convincing" to only allow for more severe cases to go through formal proceedings. With that said, the current reading of the Code Changes is also fully dependent on its environment and whether there are systems in place on campus for enacting restorative justice or educational programs. As of now, it is only maintained within the Scheinman Institute in ILR - it needs to be independently assessed (not in this code) whether that needs to be expanded. Yet without that insight, it remains difficult to interpret the current procedural code changes to fully support and align with its Principles and Values (in Section 1).

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## Rules without consequences may as well not exist

Submitted by Anonymous authenticated user on Tue, 2020-11-10 12:02 (user name hidden)

If the past few years have shown us, it does not matter how aspirational or well intentioned rules, laws, traditions, etc are, if there are no real consequences for failing to meet them, then they may as well not exist. It creates a system where the rules will be ignored by the worst of us, and only have an impact on the folks who already were capable of remorse in the first place.

As for plain English, again needs to be backed up with concrete definitions and wording, otherwise it just leaves the door open for a lack of accountability as folks weave their way around the wording.

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## Keep Evidentiary Standard

Submitted by Anonymous Committee Member on Thu, 2020-11-05 20:43 (user name hidden)

As many other members of our community have remarked, the 'clear and convincing' standard of evidence appears to be the most just option when the rights of the accused students are at stake. I can understand the desire to revise the code to make it less 'criminal' in tone, but we should not forget that we are dealing with proceedings in which the norms of a criminal process must still hold, and the majority of offenses covered here would be best served by a 'clear and convincing' standard that gives due protection to the rights of the accused. I am not a lawyer, but this seems to be the choice that best serves the rights of students. Furthermore, I oppose any change that would reduce the independence of the Judicial Codes Counselor, such as in Procedures 2.2.1. While it seems that the OSA may have a limited influence over the Respondents' Code Counselor, any university control over the hiring process seems to detrimentally affect the credibility of the counselor to be a fair and impartial representative for students. Lastly, I would like to emphasize that the revised code, as shown here, does not make the changes entirely clear, with the notable exception of the Standard of Evidence. For those of us who were not knowledgeable about this process from the beginning, we need a way to realistically understand the differences of this code in a more detailed way. The overview is helpful, but as many others here have noted, there are other substantial changes that students must be aware of.

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## Judicial Codes Counselors' Comments

Submitted by Marisa A O'Gara on Mon, 2020-11-02 20:07

I am a third-year law student and currently serve as the Judicial Codes Counselor. The Judicial Codes Counselors (JCCs) are tasked with advising and advocating on behalf of students accused of misconduct in the campus disciplinary systems governed by the Campus Code of Conduct, Academic Integrity, and Policy 6.4. In that capacity, I personally have advised over 60 undergraduate and graduate and professional students and care deeply about ensuring that all students at Cornell have access to a fair process when accused of violating campus policy. While I am heartened to see some additional flexibility provided in this new proposed Code that allows for the resolution of alleged violations through alternative dispute resolution and restorative justice models, this proposed Code doesn't go nearly far enough in that direction to justify the blatant stripping of students' fair process rights that we see throughout its text. Below I will elaborate on the ways that this proposed Code misses the mark in giving students access to a fair process.

### **Current Campus Code of Conduct**

### **Proposed Campus Code of Conduct**

1. **Respondents'/Advisors' Ability to Speak and to Question Witnesses** (Current Code: (Title II Article II B); Proposed Code: Procedures at 11; 20.8.2)
  - The JCC's oppose these changes. Both complainants and respondents (both themselves and through advisors) should be afforded the opportunity to question witnesses directly.
    - Respondents' Ability to Question Witnesses: Allowing respondents to ask questions themselves is important for the following three reasons: (1) The parties know the facts of the case best and are best positioned to ask questions; (2) It's the parties' interests that are at stake. Allowing them to ask questions at their own hearing is a necessary component to ensuring the campus community can have confidence in the fairness of this process; and (3) Requiring the Chair to ask all questions will likely slow down the process and lead to unnecessary confusion. Further, if a Hearing Chair is the only person allowed to verbally ask questions, parties would need to submit written

questions to the Chair well before knowing what a witness's testimony would be. Parties would also be unable to immediately ask follow-up questions directly relevant to the witness' testimony without continuously stopping the Hearing to submit additional questions to the Chair. This is neither efficient nor practicable. Finally, while witness intimidation is a legitimate concern, language in the current Code is cognizant of that and provides a safeguard to prevent any potential witness intimidation: "the Hearing Board Chair may require certain questioning to be conducted by written questions read aloud to the witness by the Hearing Board Chair." Outside of these rare situations, however, parties should be afforded the right to question witnesses to ensure that their testimony is subjected to appropriate scrutiny before any violations are imposed on a student respondent.

- Advisors' Ability to Speak and to Question Witnesses: At hearings, the Complainant, in the overwhelming majority of cases, will be the University, and the University will be represented by University staff members who have the resources of the University available to them. It is inherently unfair to allow full-time professionals with the authority of the University to oppose an inexperienced, student-respondent without the active involvement of their advisor during a hearing. It can be incredibly difficult and intimidating for a student-respondent to tell their story clearly and concisely using their evidence and witnesses. Students' oral presentation skills should not affect whether they are found responsible or not responsible. Likewise, students who may have a harder time with spoken or written English may be at an unfair disadvantage. In addition, forcing a respondent to lead and speak in the hearing without the assistance of an advisor in the name of making the process an "educational experience" overlooks the anxiety, stress, and fear a student experiences during campus disciplinary proceedings, as well as what is at stake for the student in this process. Silencing advisors exacerbates that emotional toll and makes the process more intimidating and likely less educational for the student. Allowing advisors to continue to speak at hearings would not make hearings more "litigious" either. Attorneys and outside advisors may only speak during limited circumstances. And as JCCs, we always encourage students to make statements on their own behalf during the hearing when they feel comfortable. To prevent the process from becoming unfair and needlessly daunting, advisors must continue to be allowed to speak during proceedings.

2. **Oversight and Accountability** (Current Code: (Title II Article II B 5); Proposed Code: Procedures at 2.2.1)

- The JCC's oppose these changes and believe that the JCC (now Respondents' Code Counselor) Office should remain completely independent from the Office of Student Conduct and Community Standards. Specifically, the Office of Student Conduct and Community Standards should not play any role in the hiring or removal of the Respondents' Code Counselor, even in a consulting capacity. This new proposed Code creates a fundamentally unfair imbalance by giving the Director a newfound ability to influence the hiring and removal of the RCC, thereby threatening the independence that leads students to trust their advisors in the first place. Some have also suggested that these changes should go even further and that moving the JCC under Student Conduct and Community Standards would "increase accountability, understanding of other aspects of student life, and make the process less legalistic and more educational". First, it is completely inappropriate for the Director of that Office—the Office

that investigates students charged with disciplinary violations in the first place—to play a role in the hiring, removal, or supervision process of a student’s trusted advisor, whether formally or informally. Second, the Respondents’ Codes Counselor should only be subject to removal by action of the Board of Trustees upon the recommendation by a ¾ vote of the Student and Graduate and Professional Student Assemblies. Third, the JCCs are already held accountable in three ways: (1) first, by the diverse body of University stakeholders who sit on our hiring committee; (2) second, through our law school faculty advisor—who has been responsible for revising Cornell’s codes for over 20 years; (3) and third and most importantly, by our clients, whose interests we proudly serve. Additionally, under these proposed procedures and Policy 6.4, administrators from the Office of Campus and Student Life (including the OJA and the Vice President of Student and Campus Life) pursue formal complaints against respondents, impose and uphold interim measures against respondents, and rule on appeals that affect the respondent. How (and why) would respondents trust their advisors if they too fall under the same umbrella as those administrators? Third, given that JCCs are students themselves and meet with and interact with students every day through their work, what else must the JCCs do to understand other aspects of student life? Many JCCs take on the position to become more involved in the greater Cornell community. This position frequently attracts law students who attended Cornell as undergrads—our current Office composition reflects this.

3. **Evidentiary Standard** (Current Code: Title Three Article III E(9)); Proposed Code: Procedures at 20.2)

- The JCC’s believe that the clear and convincing evidence standard best advances principles of fairness and due process, ensures accurate outcomes, and creates trust in the misconduct process. In a hearing, respondents, who are often still teenagers and frequently are first time offenders, face University employees and the resources available to them. If the University switches to a preponderance of the evidence standard, the Code would effectively be putting its thumb on the scale of justice against a side that is already systematically disadvantaged. This may be especially harmful to students from low-income backgrounds who are unable to afford an attorney. Some people have raised concerns that the University has had difficulty in meeting this burden. However, no evidence has been presented to support that argument, and clear and convincing evidence has been the longstanding standard used in non-sexual assault campus misconduct proceedings at Cornell. The clear and convincing evidence standard signals to the campus community that the University is committed to avoiding finding the innocent responsible, thereby giving the community the confidence that the campus adjudicatory system is operating fairly. Further, the entire justification for shifting to the preponderance of the evidence standard—that the new Title IX regulations were expected to require that the standard of evidence for Title IX cases be the same as the standard applied to other student conduct cases—is no longer applicable as the new Title IX regulations were released and explicitly do not require that evidentiary standards be uniform across campus codes. Finally, it makes sense to have different evidentiary standards for the Title IX process and the Campus Code of Conduct process given that Title IX cases rarely have witnesses other than the Complainant and the Respondent and it is much more difficult to obtain evidence in those cases. That is not the case in Campus Code of Conduct proceedings. The evidentiary standard should, accordingly, remain different in these two very different administrative processes.

4. **Right of Accused to be Informed in Writing of their Right to an Advisor** (Current Code: Title Three Article III A(2)); Proposed Code: None)

- The right of the accused to be “afforded the assistance of an advisor provided through the Offices of the Complainants’ Code Counselor and Respondents’ Code Counselor to assist and advise... at all stages under these Procedures” (Procedures at 11) can only be realistically protected if students are aware of that right in the first place. Under the current Code, students *must* be informed in writing of their right to be afforded the assistance of an advisor prior to the beginning of conduct proceedings, and yet still, countless students contact the JCC and report after proceedings have ended that they were not sufficiently aware of this right. If anything, the Code should implement additional measures to ensure awareness of this right. It is quite difficult to understand why the University would remove this provision and hide this right from students unless its desire is for them not to exercise it in the first place.

5. **Confidentiality** (Current Code: Title II Article II B); Proposed Code: Procedures at 2.2)

- The JCC’s oppose this change. The JCCs understand the importance of confidentiality and always keep confidential information within the Office unless otherwise required by law. However, for years, the JCCs have been effective, in large part, because we have been able to share confidential information within our Office and thereby, collaborate and work together. We remain in essentially constant communication with each other to discuss questions as they arise. We meet on a regular basis to help each other prepare, answer each other’s questions, and solve problems. This allows the more experienced JCCs (now Respondents’ Code Counselors) to have the ability to take the lead and answer questions on harder cases and train the newer JCCs, creating an environment where a few people always feel qualified to answer a question or know which campus resource to ask for more information. Students deserve to benefit from the institutional knowledge and wisdom that this collaborative environment helps create.

6. **Temporary Suspensions** (Current Code: Title III Article III 3(B)(c)(1)); Proposed Code: Procedures at 8.1; 8.2)

- The JCC’s support the addition of the qualifiers of only “where immediate action is necessary to protect the Complainant or the University community” and only “when less restrictive measures are deemed insufficient to protect the Complainant or the University Community” added to the standard for imposing a temporary suspension, but would recommend (1) that the phrase only “in extraordinary circumstances” from the current Campus Code of Conduct be added back in and (2) we oppose the shift to having temporary suspensions reviewed by the VP SCL instead of independent hearing panels composed of members of the University community. The qualifiers that were added are important because they impose an immediacy requirement and ensure that temporary suspensions are only used as an interim measure when other less burdensome options are unavailable to address the potential threat to campus safety. We believe that it’s important to explicitly indicate that this intrusive interim measure should not be used in ordinary circumstances because temporary suspensions are imposed before an individual has had an opportunity to have their case adjudicated on the merits. That means they haven’t had an opportunity to provide evidence or share their side of the story. It is a very serious measure which forces students to vacate campus and deprives them of the opportunity to access their education. Accordingly, it should only be imposed in serious *and* unusual circumstances. Second, having an independent panel consisting of a combination of student, faculty, and staff perspectives functions as a critical check on the unilateral decision of the Director of Student Conduct and Community Standards and maintains campus-wide trust and faith in the integrity of the disciplinary process.

7. **Public Hearings** (Current Code: (Title III Article III E(3)(b)(7)); Proposed Code: Procedures at 20.8.1)

- The JCC's oppose this change. Allowing respondents the option of having a public hearing serves as an important check on the University administration. To understand why, consider the OJA's decision to charge Mitch McBride with violations under the Campus Code of Conduct in 2017 for leaking documents from a University working group. After he asked to have a public hearing, the OJA objected. However, the hearing chair allowed the public hearing to occur and the hearing was streamed to a packed room of concerned members of our community. The hearing panel found McBride not responsible. The way to appropriately balance the privacy interests of complainants and other members involved in the hearing process is not to eliminate this right entirely—but to give the hearing chair discretion to determine whether a public hearing is appropriate in circumstances given the competing interests

8. **Statute of Limitations (Time Within Which a Complaint Must be Brought)** (Current Code: (Title III Article III D(4)); Proposed Code: Procedures at 5)

- The JCC's oppose these changes. It is important that if a student respondent is found responsible for a violation of the Campus Code of Conduct that that finding is based on evidence that has not deteriorated or become less reliable due to the passage of time. We believe that one year affords a generous amount of time within which to bring a complaint, and extending that time window any further threatens the fairness of the process for students respondents. The proposed Code itself seems to recognize this, in that it says: "A delay may affect the Director's ability to gather relevant and reliable information, contact witnesses, investigate thoroughly and respond meaningfully, and may also affect the imposition of appropriate discipline upon a Respondent who has engaged in prohibited conduct." We would also recommend that the second provision, which refers to Cornell graduates, be re-drafted to read: "If the Respondent is no longer a student at the time of the Formal Complaint, and the Director is unable to pursue resolution, the Director will assess whether any remedial steps outside of the Code can be taken to address any prohibited conduct or its effects on the Complainant or others." It's completely inappropriate and without justification to subject former students to Campus Code of Conduct proceedings. If any remedial action needs to be taken to address the effects of former students' conduct, it should be taken outside of the Code and not at the direction of the Director of the Office of Student Conduct and Community Standards. For example, perhaps a student Complainant has suffered academically because of an incident involving a former student and needs to have an assignment deadline extended or an exam re-scheduled. The ability to seek these types of accommodations is important, but the Code should be clear that that is what this provision is referring to, as opposed to taking disciplinary action against former students.

9. **Jurisdiction** (Current Code: (Article III E3(b)9(a); Article II C 2(b)); Proposed Code: Code of Conduct 3(A))

- The JCC's are comfortable with the shift to granting the University jurisdiction over all registered student organizations and living groups, but do not think it is appropriate for the University to have jurisdiction over off-campus conduct except for as specified under the 'Grave Misconduct' provision in the current Code.

10. **Addition of the Office of the Complainants' Code Counselor** (Current Code: No applicable language; Proposed Code: (Procedures 2.2.3))

- The JCC's support this change.
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## A lot is at stake

Submitted by Kevin M. Clermont on Tue, 2020-10-27 15:55

The community should be aware that a lot is at stake in this revision. It is the culmination of a long process by which the administration has worked to take over the community's Campus Code. The administration criticized the Code as too "rights-based" and said that we had to have a Code that was "educational rather than punitive" in purpose. Do not let those slogans hide the fact that what the administration wants is to discipline without those pesky rights getting in the way. When the community last had a say on the administration's campaign, back in 2006-2008, it resoundingly rejected the administration's position.

Title IX procedures (like its lowered standard of proof) can be justified because they are addressing a stubborn social problem. But the Campus Code addresses less fraught offenses. Some are serious (like hazing), but these can be treated by substantive revisions (like those proposed by the OJA), without throwing out our procedural protections.

This time when the administration again did not get its way with its sought overhaul, it just took the Code away from the UA and its CJC. It did so on the basis of a completely false legal reason, but it changed nothing when it had to acknowledge its error. It is a power grab, plain and simple. Clearly, this whole project should be given back to the community. Clearly, the administration will not do so.

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## Office of the Judicial Administrator Comments

Submitted by Barbara Louise Krause on Tue, 2020-10-27 11:17

The Office of the Judicial Administrator (OJA) supports the Fall 2020 Proposed Amendments to the Campus Code of Conduct as a whole. This post offers context for the OJA's position, as well as a few general comments, specific suggestions, and one lingering concern.

The OJA believes that a student conduct code exists to promote a supportive educational environment for all Cornell students. This fundamental purpose underlies the existing Campus Code of Conduct and is reflected in the Principles and Values section of the proposed Code. Among other reasons, the OJA supports the proposed comprehensive Code revision because it better balances the rights of complainants, respondents, and the campus community as a whole; is less adversarial and procedurally more coherent; and is firmly centered in the work of the Division of Student and Campus Life, so that responses to student conduct concerns can be better integrated into the student experience.

The OJA appreciates all those who have been working since September of 2018 to address President Pollack's charge to revise the Code. That charge followed upon the recommendations of the 2017 Presidential Task Force on Campus Climate and has resulted in two years of effort by the University Assembly, the UA's Codes and Judicial Committee (CJC), and others across campus. The OJA expresses its appreciation to all of those who have carefully considered and debated potential changes to the Code. The OJA especially appreciates the Office of University Counsel's most recent work, which has drawn from two documents submitted to the

UA in spring 2020 – one from the CJC and one from the Office of the Student Advocate – to create the Fall 2020 proposal now available for public comment.

As stated above, the OJA supports the Fall 2020 Proposed Amendments to the Code as a whole. (Unless specifically stated otherwise, references in these comments to the “Code” refer to the group of three documents that comprise the Fall 2020 Proposed Amendments: the Cornell Statement on Responsible Speech and Expression, the substantive section of the Code, and the procedural section of the Code.) Without attempting to summarize for present purposes arguments that have been made and considered previously, the OJA simply notes here a number of changes the OJA believes are fundamentally important:

- Most significantly, the proposed Code moves student conduct under the umbrella of Student and Campus Life.
- The proposed Code applies to students only, removing provisions relating to faculty and staff that have rarely led to referrals.
- The proposed Code applies to all University-recognized and registered student organizations and living groups, including sororities and fraternities.
- The proposed Code requires that all persons involved in its implementation must receive training focused on diversity, equity, and inclusion.
- The proposed Code procedures, overall, are more coherent, less procedurally burdensome, and less adversarial than the current Code.
- The proposed Code procedures explicitly favor alternative dispute resolution and summary resolution over more formal hearing options.

The OJA believes that the features above will fundamentally re-cast and improve Cornell’s approach to student conduct in a way that benefits complainants, respondents, and the Cornell community more broadly. In addition to supporting the Fall 2020 Proposed Amendments to the Code as a whole, the OJA offers the following comments and suggestions, each of which will be addressed more fully below:

- On the key question of what standard of proof should apply, the OJA strongly favors the “preponderance of evidence” standard.
- The OJA proposes a substitute definition of hazing, which we strongly urge be at least as broad as the current Code definition.
- The OJA continues to have significant concerns about the proposed structure of Student Codes Counselors.

### **OJA’s strong preference for “preponderance of evidence” standard**

The Office of the Judicial Administrator strongly urges adoption of the “preponderance of the evidence” standard for student conduct matters, because it best balances the rights of accused students (respondents), the rights of the complainant or victim, and the rights of Cornell’s educational community as a whole. The preponderance standard puts complainants and respondents on equal footing and allows disciplinary action to be taken when evidence establishes that it is “more likely than not” that an alleged violation occurred. The “clear and convincing” standard, on the other hand, puts respondents in a considerably more favorable position compared to complainants or victims, who must meet a significantly higher threshold of evidence in order to achieve the secure and nourishing educational environment which the Code exists to protect.

Use of the preponderance standard in higher education student conduct processes is favored by the Association for Student Conduct Administration (ASCA), the leading national organization devoted to developing and supporting student conduct professionals. See C. Loschiavo and J. Waller, *The Preponderance*

*of Evidence Standard: Use in Higher Education Campus Conduct Processes* (November 2015), which can be found at this [link](#). Moreover, other Cornell student conduct procedures currently use the preponderance standard, including adjudications of alleged fraternity and sorority organizational misconduct and adjudications under Policy 6.4 (Prohibited Bias, Discrimination, Harassment, and Sexual and Related Misconduct). The OJA believes that the same standard of evidence should apply in all types of behavioral conduct matters.

The OJA acknowledges that disciplinary action against a student, especially when it creates a disciplinary record, is a great concern for students. Respectfully, based on its experience reporting out student conduct records, the OJA believes that student concern on this point generally does not reflect the reality of repercussions for having a student conduct record. In any event, the OJA believes more fundamentally that membership in the Cornell community is a privilege rather than a right, and the community should be able to enforce its standards of behavior based on an evidentiary standard that is balanced toward all members of the campus community and the community itself.

### **OJA's proposal for a revised definition of "hazing"**

Cornell, like other colleges and universities across the country, has recognized hazing as a public health issue. President Pollack has consistently taken a firm stance against hazing and has demonstrated her commitment to achieving a culture change on our campus. The Fall 2020 Proposed Code's definition of hazing, however, is narrower than the definition in the current Code. The OJA believes it is absolutely critical to define hazing broadly, in order to educate students about harmful behaviors and to eliminate them from our campus. Accordingly, the OJA proposes the following definition of hazing (2020 Proposed Code [substantive section], Section 4.11):

Hazing is any act that, as an explicit or implicit condition of recruitment, admission, or initiation into, affiliation with, or new or continued membership status within a group, team, organization, living group, or academic group or cohort, does one or more of the following:

1. Causes, encourages, or compels another person to engage in any activity that could reasonably be perceived as likely to create a risk of mental, physical or emotional distress or harm; examples include but are not limited to:
  - a. Undertake acts of servitude or menial tasks
  - b. Undergo undue financial expenditures
  - c. Engage in acts relevant to those of the group (for example practice or training activities), but in a manner that a reasonable person would consider excessive or dangerous
  - d. Abuse, humiliate, degrade, or taunt another person or persons
2. Involves any of the following:
  - a. Consumption of alcohol or drugs
  - b. Consumption of unpalatable substances, or palatable substances to excess
  - c. Damage to or theft of property, or any other illegal act
  - d. Violation of any University policy
3. Subjects any other person (including an existing member or cohort of existing members of the group) to any of the above activities

Hazing can occur on or off campus, and in person or in virtual settings. The individual subjected to hazing does not need to regard or identify the act as hazing. The fact that an individual does not object to and/or appears willing to participate in the activity, does not signify the conduct is not hazing.

### **OJA's continued concern about the proposed structure of Student Codes Counselors**

The OJA acknowledges that the proposed structure of Student Codes Counselors (2020 Proposed Code Procedures, Section 2.2) represents a compromise of ideas proposed in the CJC and OSA versions of the Code submitted to the UA in the spring of 2020. The OJA is prepared to accept that compromise, because it believes the positive changes reflected in the proposed procedures far outweigh these concerns. The OJA, however, believes that even as re-worked, the structure of Student Codes Counselors is very problematic. Among other concerns:

- The benefit of independence of the Student Codes Counselors under the proposed structure is outweighed by the fact that the structure removes them from Student and Campus Life professionals and from broader conversations about Cornell's philosophy and approach to student development – including the educational and restorative goals of the conduct process.
- The concept of separate offices for Complainants' Codes Counselors and Respondents' Codes Counselors unnecessarily perpetuates an adversarial approach in student conduct proceedings.
- The Student Codes Counselors are selected and can only be removed by the Student Assembly, the Graduate and Professional Student Assembly, and the Office of the Student Advocate. (The Director has only a consultative role in these functions.) It is unclear how these three large and independent shared governance bodies will fulfill what would otherwise be supervisory responsibilities of professional staff members.
- The Student Codes Counselors are to receive administrative support from the University. It is unclear, however, what office will provide that administrative support.

As indicated above, the OJA accepts the proposed structure of Student Codes Counselors as a compromise in order to move forward with this long overdue comprehensive revision of Cornell's conduct code. The OJA believes a better structure, however, would be to have these advisors located administratively within Student and Campus Life.

Nothing in this comment should be viewed in any way as a critique of those who have served as Judicial Codes Counselors under the current Code. The OJA has enjoyed good working relationships with JCCs and has great respect for the work they do. The OJA's views on this point simply reflect a philosophical difference as to how student conduct concerns should be addressed on a college campus.

## **Conclusion**

Subject to the suggestions and concerns expressed above, the OJA is pleased to support the Fall 2020 Proposed Amendments to the Campus Code of Conduct. Specifically, the OJA urges adoption of the "preponderance" standard of evidence, adoption of the "hazing" definition proposed in the OJA's comments, and reconsideration of the Codes Counselors structure.

Most importantly, the OJA urges compliance with the schedule requested by President Pollack so that a final proposal can be submitted for Board of Trustees' approval as soon as possible. The issues under consideration now (including debate over what standard of evidence should apply) have been discussed within Cornell's shared governance bodies for many years, including in the late 2000s following issuance of a comprehensive review of the Code in 2006 (archival materials available at this [link](#)); and, more significantly, since 2017 when President Pollack convened the Presidential Task Force on Campus Climate. It is time for a comprehensive restructuring of Cornell's conduct process to better support all Cornell students and the campus community as a whole.

Barbara L. Krause

Cornell J.D. 1986  
Interim Judicial Administrator

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## Substantive portion (Code Changes) - Section 5

Submitted by Anonymous Student Role on Mon, 2020-10-26 19:54 (user name hidden)

The link on this page regarding other policies, specifically Academic Integrity, (<http://theuniversityfaculty.cornell.edu/academic-integrity/>) is yielding a server error. Has this page been updated with new policies, or is this a link to existing policies that the University does not intend to change?

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## Evidence Standard

Submitted by Anonymous authenticated user on Fri, 2020-10-23 21:34 (user name hidden)

Please stick with the clear and convincing evidentiary standard for all disciplinary decisions; the university's decision in disciplinary cases is going to be considered the final word on the matter for students seeking employment afterwards, so there should be substantial evidence that they are truly guilty.

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## 4.22

Submitted by Anonymous Student Role on Fri, 2020-10-23 10:44 (user name hidden)

"...any weapon or other object that can be used to cause physical harm..." is absurdly vague. Does this mean the baseball team is violating this policy? Baseball bats could be considered dangerous since more people were killed by blunt objects like hammers and bats than rifles every year for the past 5 years. And what about umbrellas? Some have handles designed to look like sword handles, does this make them "reasonably perceived to be a weapon"? This section needs to be far more specific.

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## Standard of evidence

Submitted by David Forbes Delchamps on Thu, 2020-10-22 12:51

Please stick with the clear and convincing evidentiary standard. FWIW, the Code of Academic integrity uses clear and convincing. Based on my long experience as an Academic Integrity Hearing Board chair, I find that standard appropriate for both the AI Code and the Code of Conduct.

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## Bias and impartiality

Submitted by Anonymous Student Role on Wed, 2020-10-21 19:10 (user name hidden)

I agree with the comment to get rid of the additional penalties for crimes committed concomitant with bias. It will be difficult to remain impartial. As an example, last week's violent counter-protest in Ithaca appeared to involve students who clearly violated the COVID gathering restrictions. Will these students be punished? Should there be an additional penalty based on their anti-Trump protester animus? How would that be adjudicated?

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## What about employee code of conduct ?

Submitted by Rich Gourley on Wed, 2020-10-21 17:41

With the Code of conduct only applying to students, it leaves very little in the way of alternatives for employees who are accused of violations of the law (code). Law enforcement will only have the option of criminal referrals for faculty and employees.. That just doesn't seem right or fair.

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## Modifications should be clearly indicated

Submitted by Anonymous Committee Member on Tue, 2020-10-20 22:48 (user name hidden)

As a previous commenter expressed, the parts of the code that have been modified should be highlighted so that it is easier for community members to see what the changes are. In past requests for community comments, changes were clearly indicated -- it seems disingenuous not to clearly mark them in this case.

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## Treading cautiously

Submitted by Vincent Damon Martinez on Tue, 2020-10-20 08:38

Understanding the need to maintain a safe and enriching Academic environment, it is disconcerting that the language in the text throughout maintains a tone of subjectivity vs. definitive and finite language. If the intent is to preserve good order and discipline, then clearly stated actions and consequences must be outlined so there is zero misinterpretation.

The language further makes so the the Law of Due process may potentially be skirted in support of a favored outcome, this in turn may result in litigation at multiple tiers causing a tarnished reputation to the institution, staff, and student body. This is a very pernicious course of action which should be treaded carefully in that it does not cause undue harm out of fear of reprisal from unsubstantiated claims. (In plain language: be clear, to the point with rules and punishment for all that break them. Don't try to appeal to any specific group out of fear of protest, ensure all people have the opportunity to face their accusers (according to United States Constitutional Law), do not cause harm to the school, faculty, and students. All claims should/must be investigated properly with outcomes set out according to the violation, do not punish prior to outcome because of an accusation, doing so may lead to hefty lawsuits further harming the reputation of the school and those that are involved in it).

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## Thoughts from a Grad Student

Submitted by Nikola Danev on Mon, 2020-10-19 20:11

I think that the University is not drawing enough attention to this and purposefully making it very difficult to see what the changes are so that fewer students express their opinions. Under the guise of simplifying language, the code is being changed so that it can be more loosely interpreted. University Counsel did not sufficiently take into consideration the submissions by anyone that disagreed with the original text.

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## Right to cross-examination?

Submitted by Anonymous authenticated user on Mon, 2020-10-19 18:55 (user name hidden)

Am I missing something or did they remove the right to cross-examination? If true, that is deeply troubling.

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## It is redundant, but I think

Submitted by Sam Steiger on Mon, 2020-10-19 18:11

It is redundant, but I think it is for the benefit of the reader. Sections 4.1 through 4.20 explicitly state prohibited actions. Section 4.21 seems to be a catch-all for "breaking the law."

If 4.21 was present without 4.7, then a reader would have a much harder time understanding the drug-related expectations under the Code.

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## Process complaints

Submitted by Nick Fanelli on Mon, 2020-10-19 17:34

This entire process has been distorted and shady from the beginning. Between the CJC controversy and then the University's push to adopt them without input/rushed through while students were off campus, the entire thing needs to be redone with students at the center.

why does the code apply only to students? And why has the university decided to lower the burden of proof while exempting itself from any consequences this lower burden of proof would cause? I fail to see any other reason for this rather than the current Administration wanting to crack down on students for what they know to be unsubstantiated claims and evidence-less infractions.

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## Stick with "Clear and Convincing"!!

Submitted by Arielle Rose Johnson on Mon, 2020-10-19 17:17

In section 20.2, there is a proposal to change the standard of proof to "preponderance of evidence" when in the past it has been "clear and convincing". I strongly believe that our campus should operate under the

principle "innocent unless proven guilty". Stick with "clear and convincing"! (Yes, "preponderance" should be applied to Policy 6.4/ Title IX issues especially because there is a real danger to survivors of sexual assault, but the Campus Code of Conduct hearing process doesn't handle that set of cases.)

I also want to say-- I am all for hearings that are open to the public with an opportunity for "cross-examination", and it's not clear whether this code revision is getting rid of that. The more transparency the better. Counselors should be able to talk about their cases with each other, the public should be able to know what's going on, etc.

The university is supposed to be a space of intellectual freedom. If we change the standard for all cases to "preponderance of evidence", I'm worried that members of the Cornell community with unusual viewpoints and/or marginalized identities will be more likely to be wrongfully convicted. And the less transparent the hearing process is, the more likely it is that those wrongful convictions will be allowed to happen.

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## CJC & OSA Drafts Now Available

Submitted by Logan Rue Kenney on Mon, 2020-10-19 17:07

Right above the Cornell Statement on Responsible Speech and Expression, you will now find the resolution passed by last year's UA asking the University Counsel to work within two drafts. These drafts, by the Codes and Judicial Committee and Office of the Student Advocate, are now posted as well.

Best,  
Logan Kenney  
Chair, University Assembly  
[Lrk74@cornell.edu](mailto:Lrk74@cornell.edu)

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## Feedback on Student Code of Conduct

Submitted by Anonymous Student Role on Mon, 2020-10-19 17:07 (user name hidden)

I'm hesitant to support the below two provisions. While well-intentioned, clauses such as these can be enforced in a manner that is far more severe than intended with minimal evidence. I would recommend deleting these clauses.

- permitting enhanced penalties for harassment or assault violations that are motivated by bias;
- expanding the code's treatment of harassment to include all categories protected under New York state's Human Rights Law and aligning the code's definitions of harassment with the way in which harassment is defined under Policy 6.4

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## 4.7 redundancy

Submitted by Anonymous Committee Member on Fri, 2020-10-16 09:26 (user name hidden)

Given 4.21 why is 4.7 included? Isn't it redundant?

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## Revision of the Student Code of Conduct

Submitted by Richard F. Bensel on Wed, 2020-10-14 15:00

The process under which the Revised Code was considered in the University Assembly last year was seriously flawed. For example, the President of the University, along with the President of the University Assembly, endorsed a text that the Student Assembly had prepared at the last minute. Although there was not enough time to thoroughly examine that text, we did discover that the vast majority of the text in fact came from a text submitted by the University Counsel at the beginning of the academic year. In any event, the agenda under which the student text was brought before the University Assembly violated the Bylaws of the UA and should not have been the format for deliberations. There were other violations of procedure during that session that raise serious doubts about the entire process. In my opinion, the whole process should begin again, taking the draft submitted by the CJC last spring and resubmitting it to the CJC as a basis for their deliberations. If the central administration wishes to resubmit (the now revised) text prepared by the University Counsel, that should be done as well. Any other way of proceeding has the effect of legitimating a very manipulative and heavy-handed process that cannot help but undermine the legitimacy of the Code.

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## Hard to comment when we can only see the revised version

Submitted by Anonymous authenticated user on Wed, 2020-10-14 10:31 (user name hidden)

Why not post the old version with edits shown, if the document was lightly edited, or side by side versions of the old and new documents, if the document was heavily edited?

Seeing both versions at once would make the reply and comment process much easier for readers.

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Question	Asker Name	Asker Email	Answer(s)
1 Brandon will you please record this? Moderator: The UC's code delegates to VP Lombardi in consultation with the Assemblies. In contrast, the current UA Charter gives the UA the right to amend the Code, subject to President's approval. Once a Student Code of Conduct replaces the "Campus Code" will the UA retain the same level of jurisdiction over that Code?	Robert Platt	rcplatt@gmail.com	live answered
2 that Code?	Robert Platt	rcplatt@gmail.com	Live Answered
Moderator: If a group of students, faculty and staff all stage a protest disrupting traffic at the corner of Tower Road and East Avenue, it would be best if everyone is subject to the same behavioral standards and expectations regardless of their status. That is the case at present. Once a Student Code is adopted, how would the standards of conduct applied to the student demonstrators be different than those applied to the faculty or staff? Who would handle alleged violations by faculty or staff? Why is it that the other colleges in New York State can have a combined system to implement the Henderson Law, but that Cornell is now dropping that approach?	Robert Platt	rcplatt@gmail.com	Not Answered
3 Cornell is now dropping that approach?	Robert Platt	rcplatt@gmail.com	Not Answered
Has the authoring office made a list of the changes available for review?	Anonymous Attendee		Only new draft is on the website
5 I have only been able to find the new drafts.	Anonymous Attendee		Only new draft is on the website
What is the logic behind bringing an end to public hearings and lowering the burden of proof? It seems like this will result in less transparency and less chance of a fair hearing, but I can't see any corresponding benefits.	James Richards	jar646@cornell.edu	live answered
6 but I can't see any corresponding benefits.	James Richards	jar646@cornell.edu	live answered
Isn't the pay difference between respondent and complainant advisors due to workload difference? One office works under only one code and the other works under 3 codes?	Anonymous Attendee		Not Answered
7 code and the other works under 3 codes?	Anonymous Attendee		Not Answered
The new title ix regulations don't require a preponderance of the evidence standard. If the administration is concerned with differential standards of proof, why don't we amend policy 8.6.4 back to the earlier standard?	Anonymous Attendee		live answered
8 6.4 back to the earlier standard?	Anonymous Attendee		live answered
Why do people continue to (falsely) imply the code only applies to undergraduate students, and their opinions therefore matter more than other students? The undergrad students have been heard and the SA president then went on to silence the graduate students by telling them how to vote on a resolution within their own constituent group. Why are the graduate students being ignored/overlooked?	Anonymous Attendee		live answered
10 students being ignored/overlooked?	Anonymous Attendee		live answered
Ms. Krause mentioned that we should not "favor" respondents in this process—but why not? Why is it not appropriate for the complainant to have a "higher" burden when the complainant is a University with a multi-billion dollar endowment and the respondent is one single student?	Anonymous Attendee		live answered
11 is one single student?	Anonymous Attendee		live answered
Residential communities also operate under a set of House Rules. Why do these have a different standard than the code? Has there been talk of revisiting them to make them more equitable?	Anonymous Attendee		live answered
12 more equitable?	Anonymous Attendee		live answered
Moderator: When a series of minor violations are taken into account for disciplinary actions against a membership organization, is it fair to claim that cases that do not involve suspension or expulsion do not have serious consequences?	Robert Platt	rcplatt@gmail.com	Not Answered
13 consequences?	Robert Platt	rcplatt@gmail.com	Not Answered
There is no provision in the proposed Code of Conduct stating that students accused of violating the Campus Code of Conduct must be informed in writing that they have the right to an advisor before the disciplinary process begins.			
I believe the Code should be modified to add language requiring both Complainants and Respondents to be notified of the services of the Complainants' Codes Counselor and Respondents' Codes Counselor, respectively, before any interviews take place.			
This would ensure that students have the opportunity to meet with their advisor and learn about their rights within the process before they have to meet with someone conducting an investigation.			
The current code does this and the new code should too.	Joanna Schacter	js649@cornell.edu	Joanna's point is an excellent one and is an easy enhancement to make.
14 should too.	Joanna Schacter	js649@cornell.edu	Joanna's point is an excellent one and is an easy enhancement to make.
I'd like to pick up on the idea in one comment that what is good for the goose is good for the gander: Without being presented with evidence of it, it seems a little concerning to me that "educational values" seem to overwhelm result in the elimination of the rights of the respondent. Why is it that these values have resulted in no restriction on the power of the University to sanction? One comment online said that these hearings have no "payout," but that itself is not even true, as fines are explicitly able to be imposed. Could someone in support of the changes explain to those of us without the relevant training why they result in this?	Zachary Sizemore	zrs8@cornell.edu	live answered
15 they result in this?	Zachary Sizemore	zrs8@cornell.edu	live answered
Moderator: If this is "amount the community", why not let the community decide whether we want these changes?	Anonymous Attendee		live answered
16 want these changes?	Anonymous Attendee		live answered
A separate question from my other question: One comment online said that the University can't subpoena people for information, which can justify some of the changes. But isn't there a duty to cooperate? Unless the University commits to never enforcing this I worry that this is not functionally true. What is the force of this provision?	Zachary Sizemore	zrs8@cornell.edu	live answered
17 of this provision?	Zachary Sizemore	zrs8@cornell.edu	live answered
It's disheartening to hear that there is no change - I appreciate the number of people who are educated on this matter, been aware of it, and had time to do their research - but for many of us this just came to our attention, especially if we just joined this semester, and could use resources to meaningfully contribute. Having worked in policy drafting processes, it is standard procedure to share the draft changes.	Anonymous Attendee		Comment - Not Answered
18 draft changes.	Anonymous Attendee		Comment - Not Answered
Comment for the Moderator: Advisors need to be completely independent or else students won't trust them. If they don't trust them, they won't take advantage of their right to an advisor in the first place. But we've said as a community that we think students should have that right. So, let's make sure they feel comfortable exercising it by (1) informing them of that right (not currently required by the 19 code) and (2) keeping the RCC independent.	Matthew Sunday	mjs729@cornell.edu	live answered
19 code) and (2) keeping the RCC independent.	Matthew Sunday	mjs729@cornell.edu	live answered
Martha Pollack told the UA that University Counsel's reading of title 9 regs required the same standard of proof for all codes on campus (this was told to us after the final regulations were released). Trusting this legal advice, the UA rejected its own proposed code and handed it over to the University Counsel. Now, we learned that the Martha Pollack and counsel's reading of the regulations was incorrect. Can Counsel please explain why the UA was misled by President Pollack?	Anonymous Attendee		live answered
20 by President Pollack?	Anonymous Attendee		live answered

Hi Robert, this is being recorded. Thank you.

Just to add to my answer - as stated, my email is nd398@cornell.edu and the link was just shared in the chat.

live answered

21	<p>It's not entirely clear to me how preponderance puts everyone on an "even playing field." The very nature of having the interests of the "university as a whole" and the power of the university brought against you inherently creates an uneven playing field for respondents. By nature of being accused of an offense and investigated there is a power imbalance there built in. It seems to me that clear and convincing is how you even the playing field, since that accounts for the inherent power imbalance between the accused student and the whole accusing campus community.</p>	Anonymous Attendee		Comment - Not Answered
22	<p>Currently the code gives the President the right to extend the code to off-campus activity if it is an "imminent Threat". The new proposal would allow VP Lombardi to extend the code to off-campus activity if it poses a threat to "Cornell's reputation?" Why this expansion and does it chill free speech rights?</p>	Anonymous Attendee		live answered in part - Barb spoke to the language of the proposed code
23	<p>A panalist said that the new, lower evidentiary standards would help convict students who, for example, were drunk or aggressive in a dorm. These seem like cases where even a 99% burden of proof would convict. These also seem to be examples where less proof needed to convict would only deemphasize investigating these often highly emotionally charged situations as, under the new code, less evidence from such investigations would be needed. If the examples given for why this lower burden is necessary are ones that don't seem to actually require less proof, for what cases specifically would this lower burden be useful?</p>	Anonymous Attendee		Not Answered
24	<p>Would you agree that the higher burden of proof, "clear and convincing," would systematically protect innocent respondents who risk facing serious consequences (for example, one day being forced to disclose violations to the state bar)? Why or why not, and is it acceptable error to punish the innocent respondent for the speculative benefit of vindicating the rights of the campus community? At what point, in your mind, would the risk of punishing an innocent respondent be significant enough to justify a higher burden of proof?</p>	Alyssa Ertel	abe33@cornell.edu	Not Answered
25	<p>For Moderator: Regarding the previous question about the benefits of a lower burden of proof, I am struggling to see why placing the complainant on a level footing with the respondent, before any evidence has been shown, is more fair. In civil court there is a primary threshold (summary judgement standard) that must be crossed before the preponderance standard can be applied. So isn't it a much different situation? (I would like JCC O'gara or professor Clermont to respond)</p>	Anonymous Attendee		live answered
26	<p>Moderator: Hasn't the same question of standard of proof already been decided in the criminal law setting? It's the public against the suspect and everyone has already decided that a higher standard of proof is appropriate for real crimes. I know some have said that this is meant to be an educational process, but it's called a disciplinary code, not an educational code</p>	Anonymous Attendee		Have the Complainant's advisors weighed in on the standard of proof?
27	<p>How can you justify a lower burden of proof as more educational? It is, to my understanding, the direct opposite of the tenants of restorative justice.</p>	Anonymous Attendee		Answered previously
28	<p>It's harder for non-native-english-speaking students and students not familiar with the code or similar laws to represent themselves without counsel. Doesn't refusing to let students have counsel in all but the most serious cases unfairly penalize those members of our community?</p>	Anonymous Attendee		live answered
29	<p>MODERATOR: How will you deal with the impact of a lower evidence standard on students who cant afford their own attorney? Those who can't afford their own attorney will be significantly more likely to be erroneously punished when innocent. If the University switches to a preponderance of the evidence standard, this may be especially harmful to students from low-income backgrounds who are unable to afford an attorney. Clear and convincing evidence has been the longstanding standard used in non-sexual assault campus misconduct proceedings at Cornell, and there is no evidence that suggests the University has had any difficult finding students responsible for violations under this standard.</p>	Anonymous Attendee		Answered previously
30	<p>I haven't heard any discussion of the logic behind forcing students to speak instead of their advisors. I think the point that a students public speaking skills shouldn't dictate whether they are responsible or not is an important one, and it's just not clear to me there is any legitimate reasoning being presented for taking away students ability to have their representative speak for them.</p>	Anonymous Attendee		live answered
31	<p>There have been comments that this is not a criminal process but an administrative process. Other schools probably have student conduct processes and I am wondering what standard is used in those processes and if it is different from Cornell, why are we different? Why are we the outlier?</p>	Anonymous Attendee		live answered
32	<p>Under the current code, respondents can ask witnesses questions. Under the current code, only the hearing chair can ask questions. How is this not a plain reductions of rights?</p>	Anonymous Attendee		Not Answered
33	<p>The President's Task Force recommended expanding the definition of harassment rather than enacting a speech code. They relied upon the then-effective Title IX rules. The current Title IX rules have narrowed the definition of harassment. How would a complaint go about showing that an individual engaged in creating a hostile environment against a student? How could this standard be applied in a content-neutral manner to protect students' free speech rights?</p>	Anonymous Attendee		Not Answered
34	<p>Moderator: If the concern is about over-aggressive lawyers pressuring students, why not stop lawyers from speaking in hearings, but permit student advocates (respondents advisers and complainants advisers) to speak?</p>	Benedict Bussmann	bcb98@cornell.edu	live answered
35	<p>People keep saying the changes are fundamental, but as Zachary said, all of the changes have to do with what accused students are allowed to do. The penalties available haven't changed, the actual role of alternative dispute resolution and when it's available is not at all made clear, and it's not evident at all that this is a fundamental change. What is so fundamental here? That students will be accused (potentially wrongly) and their accuser will be represented by another student? That's not really fundamental at all, it's the same system with different actors. As someone not well-versed in this topic, does the lowering of the standard of proof affect the impact that implicit bias may have in the decision made by the University Hearing &amp;</p>	Anonymous Attendee		Comment - Not Answered
36	<p>Review Board?</p>	Anonymous Attendee		live answered

37	Moderator: Would it make sense to restrict council to only Judicial Codes Councilor rather than professional lawyers? That might level the playing field.	Charles Walcott	cw38@cornell.edu	live answered
38	For Moderator: Isn't it strange to implement such sweeping changes to the code during this pandemic, when there is much lower student input, less chance for mobilization of student opposition to the changes, and much diminished student-to-student discussion of the changes? It seems like a referendum without true, organic consensus.	Anonymous Attendee		Comment - Not Answered
39	How are diverse social identities being represented in the leadership and decision making process of all this? While it would be rude and irresponsible to make assumptions about all the identities of the panelists, it does seem quite homogenous and I'm concerned about how the lived experiences, voices, and perspectives of marginalized identities seem to be missing from this critical conversation since this affects a diverse student body.	Anonymous Attendee		live answered
40	I'm confused as to why graduate students are trying to take ownership of a code that does not truly affect them. The graduate students that are speaking have a larger role as members of the UA who have a duty to represent all constituents. Also, graduate students have silenced and harassed undergraduates at SA meetings as if it's sport. If the code doesn't truly affect graduate/professional students, why are we not in favor of a code that supports undergraduates?	Anonymous Attendee		live answered
41	There is an emphasis on making the process less adversarial, while also requiring students to conduct live cross examination against each other where suspension or expulsion is concerned - how do we come to terms with these seemingly conflicting positions?	Anonymous Attendee		Not Answered
42	From an undergrad perspective, I think this is just all so confusing to hear about and not understand how it plays out in actual scenarios. With the changes in the lower burdening of proof, it seems like students are having to give up protection so that the majority of cases go smoother, even though these protections are in place to protect students in the more extreme cases. Too often, I will be talking to peers about the different levels of evidence, and everyone has a different understanding of how it either hurts or benefits the respondents. Is there a better way to disperse this information to the student body? If we truly are to get the undergrad opinion, more has to be done to get students involved and to understand this process and who all is involved. I think if this is were to be done, we would have a much different reaction from the undergrad community.	Nicholas Matolka	nsm55@cornell.edu	live answered
43	Isn't it illogical to impute the Title IX standard of proof to the rest of the code when that lower Title IX standard was devised because of the inherent difficulty in proving sexual assault and discrimination cases, which applies only to Title IX and not other offenses?	Anonymous Attendee		Not Answered
44	As a follow up to this speaking for themselves thing, I understand students are encouraged to do so now. The logic of forcing them to isn't there. Students who aren't native speakers, who have mental health concerns that make speaking difficult, who are emotionally overwhelmed by what is happening to them - none of the responses have been sensitive to them at all. No answer has explained what is educational about being made to speak when speaking will actually harm them or be very detrimental to them.	Anonymous Attendee		Comment - Not Answered
45	Will the expansion of the complainants advisors office involve also looking at the current resources and workload of the respondents office and seeing if more resources might be warranted for them as well? I was under the impression the offices were somewhat similarly sized right now. Just want to be sure the school intends that both offices are on equal footing and intends to ensure that by looking at the resources currently available to both offices. I know both offices work hard and make sacrifices already, and I think as long as the resources of the complainants office are being looked at it makes sense to see if the respondents office is adequately resourced given the workload as well.	Anonymous Attendee		Not Answered
46	Moderator: "Legalistic" has been thrown around several times this evening, and is sounding like a buzzword. I would appreciate if someone would speak to what that actually means, in particular in a process that by its very nature is based on a code of rules. In particular, it does not sit well with me that the stated goals are to make the process less "legalistic" while also lowering the burden of proof, a legal standard with all the deficiencies that have been pointed out by commenters before me.	Anonymous Attendee		Not Answered
47	Comment for the Moderator:  The standard for imposing a temporary suspension in the proposed Code does not include important language from the current Code: "in extraordinary circumstances." Temporary suspensions should be used only when appropriate, and only as an interim measure. Temporary suspensions are imposed before a student has been found responsible, and therefore must not be used indiscriminately. To this end, not only should the language in the code reflect this, but an independent panel should review these rather than the VP SCL.	Joanna Schacter	js649@cornell.edu	live answered
48	A standard less than "clear and convincing" amplifies the risks of punishing innocent students; undermines the fairness of the process in favor of those with attorneys and away from those with less resources and inadequate self-advocacy skills; and moves us farther away from the truth in a situation. Students can have amazing respondents advisors as their counsel, but that is not the same as a person who is a FULL-TIME attorney, which many students cannot afford. Even with student advisors, lowering the evidence standard puts all students, undergraduates and graduates, in danger. The "clear and convincing" standard better ensures we get to the truth in a situation and don't punish innocent people.	Victor Flores (he/his/him)	vmf6@cornell.edu	Comment - Not Answered
49	Thank you to the UA and the panelists for considering the many valid concerns raised this evening. I understand that there are still a few days to submit comments on the revised Code. What can the Cornell community expect after that? How can we bring unity and closure to this process?	Anonymous Attendee		live answered
50	I just want to clarify that if an RA documents an incident they then have to go to the hearing and defend what they wrote in their report it seems an undue burden on the RA	Anonymous Attendee		Not Answered