



January 30, 2022

William M. Treanor
Executive Vice President & Dean
Georgetown University Law Center
600 New Jersey Avenue, N.W., Suite 508
Washington, D.C. 20001

URGENT

Sent via Electronic Mail (William.Treanor@law.georgetown.edu)

Dear Dean Treanor:

FIRE¹ writes with respect to recent online comments by Ilya Shapiro, who is imminently set to begin serving as Executive Director and Senior Lecturer in the Center for the Constitution at Georgetown University Law Center (“GULC”), an academic appointment announced by the university on January 21.² Shapiro’s comments, posted on his personal Twitter account, have drawn widespread criticism, including your email condemning them as “demeaning” and “appalling.”³ They also drew a January 28 letter from student organizations calling on Georgetown’s administration to rescind Shapiro’s employment offer.⁴

In light of the mounting pressure on Georgetown to further address Shapiro’s tweets and calls for it to terminate its relationship with him, we write today to urge you to use this controversy as an opportunity to reinforce Georgetown’s laudable commitment to freedom of expression. Our understanding of the facts is based on public information, and we invite any additional information that might change our analysis.

¹ The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America’s college campuses.

² GEORGETOWN UNIV., *Constitutional Law and Supreme Court Expert Ilya Shapiro Joins the Georgetown Center for the Constitution* (Jan. 21, 2022), <https://www.law.georgetown.edu/news/constitutional-law-and-supreme-court-expert-ilya-shapiro-joins-the-georgetown-center-for-the-constitution>. Shapiro’s role requires that he teach a course and seminar, and assist in designing the Center’s programs. INSIDE HIGHER ED, *Executive Director, Georgetown Center for the Constitution Georgetown Law*, <https://bit.ly/3rcvL1> (last visited Jan. 30, 2022).

³ Karen Sloan, *Georgetown law dean calls new hire’s comments on Breyer replacement ‘appalling’*, REUTERS (Jan. 27, 2022), <https://www.reuters.com/legal/litigation/georgetown-law-dean-calls-new-hires-comments-breyer-replacement-appalling-2022-01-27>.

⁴ Letter from the Georgetown Univ. Law Ctr. Black Law Students Ass’n, et al., to the Georgetown Law Administration (Jan. 28, 2022), *available at* <https://bit.ly/3uczMQw>.

While any number of people may find Shapiro’s tweets offensive, Georgetown University has enshrined in its policies the laudable commitment to protect the “broadest latitude to speak, write, listen, challenge, and learn.”⁵ That broad latitude includes the right to offer views that are “thought by some or even by most members of the University community to be offensive, unwise, immoral, or ill conceived.”⁶ This is the “bedrock principle underlying” freedom of expression: that speech may not be limited “simply because society finds the idea itself offensive or disagreeable[.]”⁷ It is this counter-majoritarian principle that protects “insulting, and even outrageous, speech in order to provide adequate breathing space” to public debate,⁸ recognizing that those with authority “cannot make principled distinctions” between what speech is sufficiently offensive or inoffensive to suppress.⁹

This principle of abstention is particularly important in higher education, where the exchange of views may sometimes be caustic, provocative, or inflammatory. Consider, for example, a student newspaper’s use of a vulgar headline (“Motherfucker Acquitted”) and a front-page “political cartoon . . . depicting policemen raping the Statue of Liberty and the Goddess of Justice.”¹⁰ These words and images—published at the height of the Vietnam War—were no doubt deeply offensive to many at a time of deep polarization and unrest. Yet, as the Supreme Court held, “the mere dissemination of ideas,” however “offensive” to others, “may not be shut off in the name alone of ‘conventions of decency.’”¹¹ That is particularly important where, as here, speech, and the colloquy arising from it, involve discussion of core functions at the highest level of our governmental system.

This calculus is not modified where the speech “concern[s] sensitive topics like race, where the risk of conflict and insult is high,”¹² nor do the university’s important obligations to address discriminatory harassment obligate it to censor expression in the absence of “something beyond the mere expression of views, words, symbols or thoughts” that others find offensive.¹³ To the contrary, freedom of expression “embraces [the] heated exchange of views” in this context, and the “desire to maintain a sedate academic environment does not justify limitations on a teacher’s freedom to express himself on political issues in vigorous,

⁵ GEORGETOWN UNIV., *Speech and Expression Policy*, <https://studentaffairs.georgetown.edu/policies/student-life-policies/speech-expression> (last visited Jan. 29, 2022) (“Georgetown Speech and Expression Policy”). In addition to these policy commitments, Georgetown has adopted the 1940 Statement of Principles on Academic Freedom and Tenure of the American Association of University Professors. Faculty Handbook, GEORGETOWN UNIV., available at <https://facultyhandbook.georgetown.edu> (last visited Jan. 29, 2022). This commitment obligates Georgetown to refrain from imposing “institutional censorship or discipline” on faculty when they speak “as citizens,” as here. See, e.g., *McAdams v. Marquette Univ.*, 914 N.W.2d 708, 737 (Wis. 2018) (private Jesuit university breached its contract with a professor over a personal blog post because, by virtue of its adoption of the 1940 Statement of Principles on Academic Freedom and Tenure, the blog post was “a contractually-disqualified basis for discipline”).

⁶ Georgetown Speech and Expression Policy at 4(L).

⁷ *Snyder v. Phelps*, 562 U.S. 443, 458 (2011), citing *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

⁸ *Boos v. Barry*, 485 U.S. 312, 322 (1988) (cleaned up).

⁹ *Cohen v. California*, 403 U.S. 15, 25 (1971).

¹⁰ *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

¹¹ *Id.*

¹² *Rodriguez v. Maricopa Cnty. Comm. Coll. Dist.*, 605 F.3d 703, 708 (9th Cir. 2009).

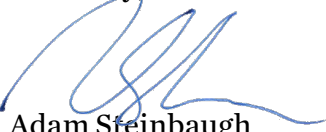
¹³ U.S. Dep’t of Educ., Dear Colleague Letter from Gerald A. Reynolds, Assistant Sec’y for Civil Rights (July 28, 2003), available at <https://www2.ed.gov/about/offices/list/ocr/firstamend.html>.

argumentative, unmeasured, and even distinctly unpleasant terms.”¹⁴ Freedom of expression protects both Shapiro’s tweets and the criticism that followed. Shapiro asserts that his critics have misinterpreted his remarks. He must be free to argue as much without fear of termination, just as his critics must not fear reprisal for their interpretations. The dialogue between Shapiro and his critics must be allowed to continue. Academic freedom relies on this exchange of ideas, however sharp and uncomfortable it may sometimes be.

Georgetown’s policies correctly recognize it is the role of the *constituents* of the university, not the institution itself, to “judge the value of ideas” and challenge them “by openly and vigorously contesting those arguments and ideas.”¹⁵ Beyond noting their protected nature, FIRE takes no position on the merits of Shapiro’s tweets or on those of his detractors, and trusts that his remarks, as well as the response they engendered will—as they have been—be dissected, interrogated, and challenged. That process is one of “more speech”¹⁶ and open discussion, the remedy preferred over the “authoritative selection” of views in academia.¹⁷

These policies must be implemented in a steadfastly viewpoint-neutral manner, as diluting their strength to penalize an instance of unpopular speech will imperil the rights of others. We appreciate that the current controversy places pressure on you to meet unpopular speech with action contrary to Georgetown’s stated values. This challenge presents an opportunity to remind students, faculty, and the public—as institutions, including Georgetown, have when facing similar challenges¹⁸—that administrators do not possess the authority to take such action, precisely *because* it would be used to suppress speech across the ideological spectrum.¹⁹

Sincerely,



Adam Steinbaugh
Director, Individual Rights Defense Program

Cc: John J. DeGioia, President, Georgetown University
Randy E. Barnett, Director, Georgetown Center for the Constitution

¹⁴ *Id.*

¹⁵ Georgetown Speech and Expression Policy.

¹⁶ *Whitney v. California*, 274 U.S. 357, 377 (1927).

¹⁷ *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

¹⁸ For example, Georgetown’s leadership—to its credit—defended freedom of expression in the face of calls for termination in reaction to a professor’s hyperbolic tweets about support for Brett Kavanaugh (“Look at [this] chorus of entitled white men justifying a serial rapist’s arrogated entitlement. All of them deserve miserable deaths while feminists laugh as they take their last gasps”). Graham Piro, *Title IX complaint filed against Georgetown following professor’s controversial tweets*, COLLEGE FIX (Oct. 12, 2018), <https://www.thecollegefix.com/title-ix-complaint-filed-against-georgetown-following-professors-controversial-tweets>. Other institutions have assembled faculty panels to discuss controversies to help others articulate criticisms of the offending speaker’s views, or encouraged speakers to substantively engage with critics, or criticized the speaker directly themselves. These are forms of “more speech.”

¹⁹ Witness, for example, legislative attempts to suppress discussion of “divisive concepts” in universities. Joe Cohn, *New wave of bills on race and sex stereotyping violate academic freedom*, FIRE (Jan. 26, 2022), <https://www.thefire.org/new-wave-of-bills-on-race-and-sex-stereotyping-violate-academic-freedom>.