

**PROF. AMY L. WAX'S GRIEVANCE AGAINST DEAN RUGER**

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Prof. Amy L. Wax (“Prof. Wax” or the “Grievant”), by and through her attorneys, the Shapiro Litigation Group PLLC, respectfully files this grievance against Dean Ted Ruger (the “Grievance”).

### **PRELIMINARY STATEMENT**

On March 2, 2022, Ted Ruger, Dean of the University of Pennsylvania Law School, sent Prof. Wax a “written description of charges” which he said he intended to file with the Faculty Senate. The charges are all based on statements Prof. Wax is alleged to have made inside and outside the classroom related to her academic role; materials she assigned in her class; her invitation to a guest speaker for that class; statements in her various writings; and opinions she has expressed in her academic capacity and in media appearances. Dean Ruger filed the charges with the stated goal of seeking “major sanctions” against Prof. Wax for alleged “misconduct.” Such sanctions potentially include revoking Prof. Wax’s tenure and terminating her employment with the University. His charges, therefore, are a direct attack on the academic freedoms guaranteed to Prof. Wax via various University and University-adopted standards, guidelines, policies, and rules related to academic freedom and tenure.<sup>1</sup>

Dean Ruger has also taken other action against Prof. Wax in an attempt to stifle her expression and undermine her standing as a Penn professor and academic. He has condemned her repeatedly and publicly for her positions and opinions instead of responding in a manner consistent with the Dean’s and the Law School’s professed respect for a diversity of viewpoints, which would include attempting to refute her assertions with reasoned, civil debate, facts, and argument. He has, instead, engaged in careless name-calling and labeling using scurrilous terms

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<sup>1</sup> The substantive and procedural guarantees memorialized in those policies are attached hereto as Exhibit A.

he refuses to define. He stripped her of her first-year teaching responsibilities and all committee assignments within the Law School without valid justification based on unfounded allegations of “bias.” He deliberately created courses on the same topics as the ones she teaches in order to discourage students from enrolling in her classes. And now, by bringing formal charges and taking other actions against her, Dean Ruger has grievously harmed Prof. Wax by seeking to punish her for deviating from a narrow set of acceptable opinions, thus effectively imposing a rigid orthodoxy of permissible speech and expression at the Law School. In so doing, Dean Ruger is undermining the proper role, mission, and character of the University and the Law School as places for reasoned and rigorous debate of the widest possible range of ideas and opinions. And he is grievously harming students by depriving them of opportunities to learn about and consider many alternative points of view, including those unpopular on campus but prevalent in society as a whole, which are essential and necessary to their proper education as citizens and as lawyers in a system that relies on an adversary process. It is imperative that action be taken through the grievance process to correct these harms.

By using the Faculty Handbook’s sanctions process to punish Prof. Wax for her academic viewpoints, expression, and opinions, Dean Ruger is not only violating basic principles and core academic rights of freedom of expression, but he is also engaging in an egregious and inappropriate misuse of those procedures. By bringing charges against Prof. Wax through the Handbook’s Faculty Senate procedures for punishing alleged “behavioral” violations, and by using those charges to attack Prof. Wax’s freedom of inquiry and tenure protections, Dean Ruger is abusing his position and his responsibility to protect the prerogatives and guarantees for Law School faculty, and especially for professors with tenure like Prof. Wax.

Dean Ruger’s charges are an attack on Prof. Wax’s academic freedoms and freedom of expression. And, as the University policies make clear, *only* the Faculty Grievance Commission (the “Commission”) and the Senate Faculty Committee on Academic Freedom and Responsibility (“SCAFR”) have jurisdiction over claims related to academic freedom. Prof. Wax therefore files this Grievance against Dean Ruger to block his use of the Handbook’s sanctions procedures to crush her academic freedoms. All issues related to his charges must be determined exclusively by the rules governing the Commission and SCAF.R.

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## **I. BASIS OF THE GRIEVANCE AND WHY IT SHOULD BE DECIDED BY THE COMMISSION.**

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Dean Ruger and Prof. Wax clearly disagree on a host of issues related to public policy, including the adoption and implementation of affirmative action in higher education and at the Law School and of “diversity, equity, and inclusion” measures in universities and society at large. Dean Ruger is aware that some students and alumni dislike and are disturbed by Prof. Wax’s opinions. Instead of instructing them on the importance of preserving her right to disagree with them on critical issues without penalty, as he is bound to do in accordance with University commitments and policies, Dean Ruger has instead given in to a noisy group’s demands that Prof. Wax be penalized. Activist students who disagree with Prof. Wax should have no effect on the Dean’s response to her opinions and statements. Likewise, he should ignore pressure from a few vocal alumni. He should not be placating or catering to these factions by condemning Prof. Wax, attacking her academic freedoms, depriving her of teaching responsibilities and privileges, and filing formal disciplinary charges seeking “major sanctions” against her. That is not his proper role in a university that avowedly welcomes a wide range of viewpoints, and it directly undermines that mission. Rather, he should be encouraging students

and alumni to engage in reasoned, courteous disagreement. His failure to fulfill that role has inflicted grievous harm on Prof. Wax. It has also harmed the University and the Law School and has damaged its learning environment and reputation. These harms must be rectified.

Rather than debate Prof. Wax on the merits or encourage her student and alumni critics to do the same, Dean Ruger is instead trying to shut her down by bringing charges for major sanctions against her before the Faculty Senate. Rather than foster a culture and community of the civil airing of divergent viewpoints in the marketplace of ideas, Dean Ruger decided that it would be better if Prof. Wax was charged with misconduct and penalized. He therefore asked Vivian L. Gadsden, the Faculty Senate Chair, to initiate disciplinary action against her based on her teaching, opinions, statements, and viewpoints. Dean Ruger's charges are based *solely* on what Prof. Wax teaches and assigns, and on her speech and assertions related to her academic inquiry. The charges are a direct attack on the academic freedoms guaranteed to her by the University's Handbook and numerous statements on academic free expression, including those from the American Association of University Professors (the "AAUP") and related organizations. Ex. A. Some of the charges against Professor Wax are inaccurate, distorted, or simply fabricated. Others reflect her actual statements as well as her conduct as a professor. With respect to those, the charges are about one thing and one thing only: whether Prof. Wax, as a tenured University professor, has the academic freedom, as guaranteed by the University's tenure system and the policies adopted by the University (Ex. A), to say what she is accused of saying and to teach what she is accused of teaching.

Here's what Dean Ruger's charges are not about: they do not allege that Prof. Wax had an inappropriate relationship with a student. They do not allege financial improprieties. They do

not allege a physical attack. They do not allege that she ever uttered epithets, used racial slurs, or engaged in personal, ad hominem attacks. They do not accuse her of plagiarism, dereliction of any academic duties, or any *actions* that would constitute a major sanction under the Handbook. At various points Dean Ruger has stated that minority students can “reasonably” believe that Professor Wax might be biased against them. This is a baseless and nefarious allegation. There is not a shred of evidence that Prof. Wax has ever shown bias against any student. Professor Daniel Rodriguez, investigating this question, found no evidence of bias against students. Indeed, Prof. Wax has received recognition and accolades for her teaching during her tenure at Penn, reflecting a continuous record of praise and high marks from students. In 2015 she was awarded the Lindback Prize, a prestigious university-wide prize that only a handful of law professors at Penn has ever earned. In sum, the allegations in the charges do not concern *behavior* or actions but only *expression*. The *only* thing that the charges allege is that her speech and expressions of unpopular or controversial opinions require a major sanction, including possible loss of tenure and termination.

But here’s the problem: because Dean Ruger’s charges are an attack on Prof. Wax’s academic freedom, the issues can only be decided by the Commission; a Hearing Board constituted by the Senate pursuant to the Handbook cannot decide these issues. Handbook hearings are not the appropriate venue for dealing with questions of academic free expression; these can only be handled by the Commission. And there are compelling reasons for that assignment of responsibility.

The Penn grievance procedures and policies that are pertinent to the Grievant's case were revised in 2013 and 2014 and became effective as of July 1, 2014.<sup>2</sup> According to the Commission's procedures, if a faculty member's claims seek to address or implicate issues of "academic freedom," then *SCAFR* must "promptly determine whether the grievance raises significant questions of academic freedom." Handbook, § III.B. *SCAFR* is then instructed to "communicate its findings to the Commission which will accept *SCAFR*'s findings with respect to the academic freedom portions of the complaint." *Id.* "If the complaint that is concerned with academic freedom is brought against a University administrator, Dean or involves more than one school or University policies of general interest, *SCAFR* will have jurisdiction." *Id.* (emphasis added). Prof. Wax's Grievance is being brought against Dean Ruger and it involves "University policies of general interest" covering protections for academic free expression. It follows that the complaint Dean Ruger brought to the Faculty Senate against Prof. Wax for "sanctions" is not the appropriate forum for the types of issues involved in this case (academic freedom and tenure).

There are significant and important differences between a *SCAFR* hearing on academic freedom and a Handbook hearing on charges seeking a major sanction. The *only* issues that are to be considered by *SCAFR* are those pertaining to academic freedom. To borrow language from the law, *SCAFR* is a tribunal of limited and exclusive jurisdiction: it only hears matters related to academic freedom, and it is charged exclusively with hearing those matters. A

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<sup>2</sup> In 2013, a cross-University faculty committee was convened to review the University's Faculty Grievance Procedure (Section II.E.12 of the Faculty Handbook), with the goals of "better aligning the policy with current procedures, removing obsolete language and clarifying key issues such as the use and confidentiality of documents." University of Pennsylvania Almanac, Volume 61, No. 02 (August 26, 2014). The committee's recommendations were further reviewed by the Faculty Senate Executive Committee and the Council of Deans, as well as by the Faculty Senate Committee on Academic Freedom and Responsibility and the Faculty Senate Committee on Faculty and the Administration.

Handbook Hearing Board, on the other hand, is constituted to consider whether there has been a “major” infraction of “University standards.” The Commission is comprised of only three (3) members, carefully chosen; a Handbook Hearing Board consists of five (5) members. SCAFR consists of nine (9) Standing Faculty members who each serve three-year terms. There is no equivalent at the faculty level for a Handbook-like hearing on “major” infractions of “University standards,” but each faculty, including the Law School, has its own Committee on Academic Freedom and Responsibility. The University, in other words, made a calculated decision in 2014 to create separate procedures and bodies for determining issues related to academic freedom as opposed to “major infractions” of “University standards” (e.g., quasi-criminal activity, dereliction of academic duties, or other non-expressive behavioral misconduct requiring penalty or termination). Charges related to academic freedom, speech, and expression must be adjudicated by the Commission and SCAFR pursuant to their rules.

The charges brought by Dean Ruger, therefore, are not in compliance with University procedures and regulations. The University’s procedures and regulations, as codified in the Handbook, dictate that only SCAFR and the Commission have jurisdiction over complaints that are “concerned” with academic freedom. Dean Ruger has sought to evade this very clear division of responsibility by relabeling issues of academic free expression as “behavior” that can be charged as “misconduct.” This facile, manipulative, and destructive trick of legerdemain should not be permitted to circumvent the proper procedures contemplated by the University rules. Dean Ruger should have brought this issue to the Commission, but he did not. The Handbook states that “A grievance is a claim that action has been taken that involves a faculty member’s personnel status or the terms or conditions of employment and that is . . . not in

compliance with University procedures or regulations.”<sup>3</sup> Under University procedures and regulations, the Commission, through SCAFR, must consider all matters concerning Prof. Wax’s utterances, statements, and teachings – the Hearing Board cannot consider or decide them. Prof. Wax files this Grievance to ensure, *inter alia*, that the University’s jurisdictional rules are enforced, and Dean Ruger’s misuse of University Procedures is corrected.

In sum, Dean Ruger’s decision to bring charges against Professor Wax instead of bringing this matter to the Commission is a clear abuse of his authority and the University rules. It is thus appropriate for Prof. Wax to bring this Grievance against Dean Ruger. The grounds for this Grievance are both procedural and substantive. First, Dean Ruger is not making use of the University’s procedures or regulations for dealing with an issue involving academic freedom and he is attempting to circumvent those procedures contrary to University rules. Second, he brought charges against Prof. Wax using the Handbook procedures in an effort to punish, penalize, and harm her for her protected and valid exercise of academic free expression as guaranteed by her tenure contract and Penn’s policies on academic freedom. This Grievance asks that both of those infractions be rectified.

## **II. THE CHARGES BROUGHT BY DEAN RUGER ATTACKING PROF. WAX’S GUARANTEED ACADEMIC FREEDOM OF EXPRESSION BELONG BEFORE THE COMMISSION AND ARE BASELESS AND MERITLESS.**

Dean Ruger’s allegations all relate to Professor Wax’s statements and writings and everything she is accused of saying is fully protected by the academic freedoms guaranteed to

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<sup>3</sup> Prof. Wax did not, as provided in the Handbook, “first review [her] complaint with . . . her Department Chair or Dean, or, alternatively, the Vice Provost for Faculty,” nor did she consult with the University Ombudsman, because to do so would have been futile given Dean Ruger’s initiation of proceedings against her. In addition, she was given a deadline to reply to the Hearing Board by January 17, 2023 and judged it best to file her Grievance on or before this date, which effectively precluded the time and opportunity for consultation. Prof. Wax would nonetheless welcome any discussions with the Faculty Vice Provost or Ombudsman prior to any further formal proceedings on this Grievance if that would facilitate an “equitable resolution” of this matter.

her pursuant to University policy. Ex. A. As they all deal with questions of academic freedom of expression, the Commission (through SCAF) has exclusive jurisdiction to adjudicate the issues raised by his charges. Moreover, as explained, the charges lack merit and should be dismissed by the Commission as they amount to a blatant and naked attack on an award-winning academic who disagrees with much of the prevailing progressive dogma on campus. Dean Ruger is attempting to use the charging process set out in the Faculty Handbook to punish Professor Wax for dissenting from the narrow orthodoxy that prevails at the University. The Commission should put a stop to this abuse.

The charges fall into categories and will be briefly addressed accordingly.

**A. TEACHING MATERIALS AND GUESTS.**

Prof. Wax teaches a Conservative Thought Seminar. As the title suggests, it is about the history and content of conservative policies, politics, theory, and practice. In connection with this seminar, she assigned an interview with Enoch Powell and invited Jared Taylor to speak. The University paid for the lunch during which Mr. Taylor made his presentation. Jared Taylor came to Penn to speak again this fall to students in Prof. Wax's seminar. That session was successful and without incident.

As explained in our prior filings, Jared Taylor is the head of an organization that is presently part of the conservative movement in the United States. Therefore, it is fully appropriate for students in a seminar on Conservative Thought to hear from this speaker. Prof. Wax's choice of guest speaker and reading materials is fully protected by the academic freedoms guaranteed to her by virtue of her status as a tenured Member of the University. "Academic freedom [of the teacher] comprises three elements: freedom of inquiry and research; freedom of

teaching within the university or college; and freedom of extra-mural utterance and action.” 1915 AAUP Declaration.<sup>4</sup> “[There are] special dangers to freedom of teaching in the domain of the social sciences[.]” *Id.* “Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning.” 1940 AAUP Statement of Principles. “The teacher is entitled to freedom in the classroom in discussing his or her subject.” Article 11.4(b).

Enoch Powell was the Secretary of State for Health and Social Care of the United Kingdom. He was knighted and was widely regarded as a respected classical scholar. During the Second World War, he served in both staff and intelligence positions, reaching the rank of brigadier. He was, in 1968, harshly critical of the rates of immigration into the United Kingdom, especially from the New Commonwealth, and he opposed anti-discrimination legislation. Whether he was right or wrong, of course, is irrelevant. The issue is whether the Dean of the Law School can seek to sanction a tenured Member of the University based on assigning an interview with this individual in her class. It is obvious that he cannot. Mr. Powell’s views are pertinent to the subject matter of Prof. Wax’s seminar, and she is entitled to present that material to her students.

There is no valid basis for sanctioning Prof. Wax for the conduct of her Conservative Thought class. The Dean’s charges are nothing more than an attempt to use the sanction process in the Handbook as a means of punishing and silencing the most powerful dissenting voice on campus and preventing students from being exposed to important conservative ideas.

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<sup>4</sup> Undefined terms are defined in Ex. A.

## **B. THE IMPACT OF AFFIRMATIVE ACTION ON THE LAW SCHOOL.**

The words that Prof. Wax spoke outside of the classroom on the negative effects of affirmative action in higher education, and at the Law School in particular, cannot, as a matter of University policy, be grounds for any kind of sanction, let alone termination and loss of tenure. And there are three reasons for this: (1) everything Prof. Wax said is substantially accurate and can be verified by Law School records and testimony from fellow Law School professors (if they are honest); (2) “Academic freedom covers ‘Discipline-related teaching . . . outside the classroom’” (OAH Guidelines); and (3) a university “cannot insist that all of its members favor a given view of social policy; if it takes collective action . . . it does so at the price of censuring any minority who do not agree with the view adopted.” The Kalven Report.

Academic freedom gives tenured Members of the University the right to make controversial statements on policy matters, including those that discuss minority groups:

[I]t is not . . . desirable that scholars should be debarred from giving expression to their judgments upon controversial questions, or that their freedom of speech, outside the university, should be limited to questions falling within their own specialties. . . . And, speaking broadly, it may be said in the words of a nonacademic body already once quoted in a publication of the Association, that ‘it is neither possible nor desirable to deprive a college professor of the political rights vouchsafed to every citizen.’

1915 AAUP Declaration. The Handbook couldn’t be clearer on the issue of faculty’s extra-mural speech: “The University recognizes the importance of a system of tenure for faculty members as the preeminent means of fostering and protecting academic freedom in teaching and in scholarly inquiry.” Handbook, § II.A. This includes when “*speaking or writing as an individual*” (emphasis added).

### **C. OBSERVATIONS OF U.S. MINORITY GROUPS.**

Dean Ruger wants Prof. Wax penalized because she allegedly made comments about certain racial, ethnic, or religious groups that he deems offensive and “racist.” Tenured Members of the University, however, cannot be terminated by making fact-based sociological observations about ethnic, national, and minority groups, including those in the United States. Even though at times hard to hear or read, everything Prof. Wax is accused of saying finds support in social science research and other empirically based sources and has been expressed by various critics and commentators all over the country and the world.

Whether these views, opinions, and positions are meritorious, “correct,” or amply supported by evidence is hotly contested and is irrelevant to this Grievance and the charges brought by Dean Ruger against Prof. Wax. The question is not whether Prof. Wax is ultimately determined to be right on the merits in every statement she made, but how the University should properly respond to her assertions and expressions of opinions. As the Kalven Report and other pertinent materials make clear (Ex. A), the proper response of University Members and leaders to unwelcome utterances by a professor is not to condemn her and certainly not to attempt to punish, penalize, silence, or exclude her. The response is not to try to impose an effective orthodoxy of opinion at the Law School and University by publicly moving to sanction her. Rather, it is to create an atmosphere in which such issues can be civilly and openly debated based on reason, argument, and evidence. This requires encouraging and expecting members of the University to engage in such debate without fear or favor, and without official punishment or penalty. Instead of creating an atmosphere of honest, courteous, open exchange, Dean Ruger is attacking Prof. Wax without a valid justification and is trying to punish her via a sanctions hearing. Dean Ruger’s decision to seek major sanctions against Prof. Wax undermines the

integrity of the Law School and the education offered there by signaling to the entire University community that dissenting views will not be tolerated and will potentially be met with adverse consequences, including exclusion from the University. That message is heard loud and clear by students, faculty, and alumni, which has the inevitable effect of chilling expression of unapproved, non-progressive views and preventing the balanced presentation and discussion of controversial topics.

Each of the ideas and positions attributed to Prof. Wax that Dean Ruger and some others might find offensive are presently part of the conversation among the full spectrum of intellectuals, policy analysts, researchers, politicians, and ordinary citizens in the United States. Universities today are squeezing out many opinions that deviate from a narrow set of “approved” views. The result is an unfortunate and one-sided narrowing of discourse on campus that distorts the quality and integrity of the education students and others receive and fails accurately to reflect the pros and cons of many issues.

Because of the narrowing of opportunities within the University and Law School for exploring the full spectrum of ideas in recent years, Prof. Wax has accepted invitations to participate in discussions outside the academy and in the media. The academic freedoms guaranteed to Prov. Wax as a tenured faculty Member of the University permit her to express positions in the media and elsewhere that are uncommon or unpopular in academia, no matter how much they upset individuals, including students, alumni, and other University Members who disagree. “Academic freedom [of the teacher includes the] freedom of extra-mural utterance[.]” 1915 AAUP Declaration. “[T]he right of university teachers to express their opinions freely outside the university . . . [has an importance of its own . . .].” *Id.* “It is scarcely

open to question that freedom of utterance is as important to the teacher as it is to the investigator.” *Id.* “The controlling principle is 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 for his or her position.*” 1964 AAUP Committee Statement (emphasis added). “Extramural utterances rarely bear upon the faculty member’s fitness for the position [and] [m]oreover, a final decision should take into account the faculty member’s entire record as a teacher and scholar.” *Id.* “Our basic conviction is that a great university can perform greatly for the betterment of society [and] [i]t should not, therefore, permit itself to be diverted from its mission into playing the role of a second-rate political force or influence.” The Kalven Report.

Dean Ruger does not accuse Prof. Wax of uttering epithets or taking any *action* against any member of any group. Rather, she offered observations and generalizations that some might find offensive or upsetting or believe to be invalid but that fall within legitimate arenas of public concern and discourse. Dean Ruger’s decision to use the Handbook’s sanction process to impose “major sanctions” on Prof. Wax based on these “extra mural utterances” and “opinions” – whether made on campus or off – is an attack on her academic freedom and, as such, can only be determined by the Commission. Moreover, even accepting as accurate every word attributed to her, nothing Prof. Wax has said is prohibited by explicit or articulated University rules or outside the protections of the academic freedoms guaranteed to her by University policy.

#### **D. MISUSE OF THE RODRIGUEZ REPORT.**

On June 23, 2022, Dean Ruger asked the Chair of the Faculty Senate to convene a Hearing Board. In so doing, he stated that an August 3, 2021 report issued by Prof. Daniel Rodriguez (the “Rodriguez Report”) “credited many of the allegations made against Prof.

Wax.”<sup>5</sup> Aug. Memo, Ex. 4 at 2. He also stated that the Rodriguez Report “revealed additional instances of inappropriate conduct” (*id.*), but he identified no examples or details. The Dean’s description of the Rodriguez Report is inaccurate, to say the least, and it completely ignores findings that, in fact, *contradict and cast doubt on* the charges against Prof. Wax or state conclusions in her favor. Dean Ruger’s dishonest misuse of the Rodriguez Report, in addition to his failure to disclose it to Prof. Wax for many months, constitute a clear abuse of his position and his authority in service of his wholly unjustified effort to punish Prof. Wax for speech, political opinions, and expression. This abuse calls out for correction through the grievance process.

Attached to the Aug. Memo as Exhibit 10 is Prof. Wax’s motion to disqualify Dean Ruger as the Charging Party. In that document, Prof. Wax discusses in detail the many ways Dean Ruger ignores important aspects of the Rodriguez Report. The Dean repeats and relies on accusations based on Prof. Wax’s alleged stray remarks that Prof. Rodriguez found to be inconsequential, ambiguous, potentially inaccurate, unsupported, or exaggerated. For example, the charges cite student objections to a comment Prof. Wax allegedly made at a panel discussion at Penn Law held years ago that “you can have two plants that grow under the same conditions, and one will just grow higher than the other.” After analyzing the remark and its context, Prof. Rodriguez stated that he “cannot conclude that this statement was derogatory under the clear definition of that term.” (Aug. Memo, Ex. 10 at 15.) He added that, “*What I can say is the overall contours of Professor Wax’s scholarship on group difference and equality principles*

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<sup>5</sup> A copy of the Rodriguez Report is attached as Exhibit 2 to the August 31, 2022 Memorandum to the Faculty Chair (the “Aug. Memo”).

*does not, on my best reading, support the assertion that she views Black individuals as biologically inferior to Whites.”* *Id.* (emphasis added).

Dean Ruger’s filings also disregard other observations in the Rodriguez Report that cast doubt on the seriousness or credibility of accusations made against Prof. Wax. For example, Prof. Rodriguez states that “there is **no** basis to believe that Prof. Wax has in fact been discriminating against Black students in grading their exams,” and that the fears expressed by Black students that Prof. Wax “will not give them a fair shake” in her classes or her evaluations are “**largely unwarranted.**” *Id.* at 21 (emphasis added). Indeed, Prof. Rodriguez found that Black students’ anxiety about whether Prof. Wax would evaluate or treat them fairly had no objective or reasonable basis whatsoever. This is hardly surprising. The fears of bias are contrary to the plain evidence which details no instances of bias. And they are irrational and illogical in light of the *blind* grading protocol that is mandated in Prof. Wax’s Civil Procedure and Remedies class. In his report, Prof. Rodriguez found no evidence that Prof. Wax had ever breached those policies. She did not know the identity of students when she was grading their work and exams, and thus could not discriminate against them.

Dean Ruger fails to mention these critical facts. The charges also simply ignore Prof. Rodriguez’s important conclusion that there is **zero** evidence that Prof. Wax is biased against minority students. Contrary to the report’s findings and with no justification whatsoever, the charges nevertheless repeat the nefarious accusation that Prof. Wax’s statements would “lead reasonable students to conclude that they will be judged and evaluated based on their race, ethnicity, gender, or sexual orientation rather than on their academic performance and ‘true merit.’” Aug. Memo, Ex. 4 at 9. By affirming students’ groundless and unsubstantiated fears

about Prof. Wax's supposed "bias," and through his related decision in response to those fears to strip her of responsibility for teaching the required first year Civil Procedure, Dean Ruger has enshrined irrational emotions, untethered from reality, as a central governing principle of the Law School. The Dean's position is absurd. If students avoided a professor's classes because they believed she was the Devil incarnate, the Dean would not bring charges against that professor and remove her from teaching a required course. A law school that purports to teach and honor rationality, logic, evidence, truth, and justice would obviously not do that. Dean Ruger's charges and actions toward Prof. Wax, however, flout those principles.

Not only did Dean Ruger disregard critical findings in the Rodriguez Report, but he also failed to disclose the report to her in a timely fashion, and he attempted to hide the report from her, Penn students, and the Penn community for more than *seven months*. Indeed, Dean Ruger would have concealed the report for much longer, and perhaps forever, because Prof. Wax only found out about it by asking Prof. Rodriguez directly. Dean Ruger's attempt to hide and then blackwash the Rodriguez Report was dishonorable, dishonest, and an egregious violation of Penn's pledge of fundamental fairness towards accused University members. Dean Ruger's treatment of the Rodriguez Report supports the conclusion that his pursuit of charges against Prof. Wax is unfounded, unjustified, an abuse of his position at the Law School, and motivated by a special animus towards her and her political views. These infractions cry out for correction by the Commission through the grievance process.

#### **E. SELECTIVE PROSECUTION.**

We also ask the Commission to take notice of the fact that Dean Ruger's decision to bring charges against Prof. Wax is a classic example of selective prosecution. Dean Ruger

focused his ire on Prof. Wax because he disagrees with her politics and opinions. He would never and has never condemned or sought sanctions against a Member of the University who teaches that all white Americans are racists; that American society is irredeemably, “structurally,” or “systemically” racist; that all consensual sex is rape; or who exposes students to the ideas that white people, men, or Jews are responsible for the problems plaguing the world or that antisemitism is an aid to and instrument of Black community solidarity.

For example, Regina Austin, while at Penn Law, wrote an article that argued that anti-Jewish conspiracy theories in the Black community are not all bad because they promote community solidarity and cohesion. Regina Austin, *Beyond Black Demons & White Devils: Antiblack Conspiracy Theorizing & The Black Public Sphere*, 22 Fla. St. U. L. Rev. 1021 (1995). No dean has ever sought to sanction Prof. Austin based on the possibility that her comments would make Jewish students feel “uncomfortable,” “unwelcome,” “unwanted,” or that those students could “reasonably” believe that Professor Austin is “biased” against them or would not treat them fairly. And no university official has ever shown the slightest concern or curiosity about whether Prof. Austin’s writing or comments would have any such effect.

Yet all of the positions listed in this section, which are not uncommonly heard in the academy, are potentially quite offensive or upsetting to some people, and there could well be students or other University Members who are discomfited and emotionally disturbed by them. Yet no other Member of the University has *ever* been formally charged with an infraction of University rules based on what he or she has taught, written, assigned to students, or opined in the media. No one. This is evidence that Dean Ruger’s charges against Prof. Wax are motivated

by hostility towards her views. It is one more reason the Commission should consider, investigate, take seriously, and resolve Prof. Wax’s Grievance.

### **III. FACULTY GRIEVANCE PROCEDURE: WHAT HAPPENS NEXT.**

Pursuant to the Commission’s procedures, the filing of this Grievance entitles Professor Wax and her attorney to meet with the Commission Chair (or an individual designated for this role) to discuss the grounds for the Grievance. Because Prof. Wax’s Grievance raises issues of academic freedom in speech and expression, as Prof. Wax has shown, the Chair must send a copy of this Grievance to SCAFR. Furthermore, because the Grievance is against a Dean and raises significant questions of academic freedom that affect the entire University, no other university or faculty committee can adjudicate the issues raised by the Grievance. Only the Commission (through SCAFR) has jurisdiction to determine the issues here even if they are couched as grounds for a “major” sanction brought by a “Charging Party” under the Faculty Handbook. This means that the current proceedings now before the Faculty Senate must be formally terminated.

The proper tribunal to determine this Grievance is the Commission and SCAFR; it cannot be adjudicated by the Law School’s Committee on Academic Freedom and Responsibility. And that is because, pursuant to the Handbook, “If the complaint . . . is concerned with academic freedom [and] is brought against a . . . Dean, or involves . . . University policies of general interest, [then] SCAFR will have jurisdiction.” Handbook, § II.E.12.III.B. In this case, Prof. Wax’s complaint is being brought against Dean Ruger and it certainly involves “University policies of general interest” (*i.e.*, what rules govern academic speech, who a professor can invite to speak at class, etc.). Because this Grievance is being brought against the Dean of the Law

School, the Chair of SCAFR cannot forward it to the Chair of the Law School Committee on Academic Freedom and Responsibility for adjudication and resolution.

After SCAFR has communicated its findings to the Commission, we are confident that it will conclude that Prof. Wax's case against Dean Ruger indeed involves essential issues of academic freedom. And because Prof. Wax's complaint is concerned with academic freedom of expression, is being brought against Dean Ruger, and involves not just the Law School but also University policies of general interest, *only* SCAFR can determine the merits of the Grievance. Any hearing that results from this Grievance must be conducted pursuant to the rules found in Section II.E.12 of the Handbook (procedures after filing a grievance). We are confident that, once the proper processing of this Grievance is complete, SCAFR and the Commission will determine that the Dean has compromised Prof. Wax's academic freedoms in violation of University policies, regulations, and guarantees, and in contravention of her tenure contract.

Moreover, as part of the process of considering this Grievance, per the Commission's procedures, "the Commission will have access to all documentary evidence that is in the custody of or under the control of the person or persons who took the action complained of [here, Dean Ruger] or of the grievant and that is deemed by the Commission to be relevant to the grievance." Handbook, § II.E.12.IV (emphasis added). Regarding documentary evidence, the Handbook explains,

If documentary evidence is needed by the grievant . . . in the preparation of . . . her case . . . application will be made to the Presiding Officer. . . . The Presiding Officer will then obtain all relevant evidence. All such evidence will be available to the panel, the respondent, the colleagues, and, subject to the restrictions of confidentiality set forth below, to the grievant.

*Id.* As we explained in our Aug. Memo, to defend herself against Dean Ruger's charges that she made false statements, Prof. Wax must have documentary information on, among other things, the grades and class standing of Black Law School students, which Dean Ruger refuses to provide. As SCAFR has also made clear:

[N]o evidence will be considered without disclosure to both sides. If a witness does not wish such disclosure, he or she will not be permitted to testify and the proffered testimony will not be considered[.]

SCAFR Special Report (February 10, 1997) (Ex. A). In other words, pursuant to SCAFR procedures, if Dean Ruger elects not to make information on grades and class standing by race available to Prof. Wax, he cannot testify at the Grievance hearing. Specifically, he cannot be heard to claim that Prof. Wax made inaccurate statements about law student performance by race.

As the previous Aug. Memo also explains, there are many other matters of clarification which must be resolved in connection with this Grievance. The Commission and SCAFR should grant all the informational and disclosure requests in Prof. Wax's Aug. Memo. After considering Prof. Wax's Grievance, corrective action should be immediately ordered.

### **CONCLUSION AND RELIEF REQUESTED**

For the foregoing reasons, the Commission Chair must send a copy of this Grievance to SCAFR where, pursuant to its rules and procedures, the issues raised in this Grievance can be adjudicated and the following relief granted:

1. All proceedings before the Faculty Senate on Dean Ruger's charges against Prof. Wax are immediately halted and the proceedings formally terminated.
2. Dean Ruger's charges against Prof. Wax are withdrawn in their entirety.

3. Dean Ruger is ordered to restore Professor Wax's teaching responsibilities for First Year Civil Procedure.
4. Dean Ruger is ordered to stop publicly condemning Prof. Wax for her comments, opinions, and speech and must instead instruct objecting students and others on Prof. Wax's rights under University rules and her tenure contract to express her opinion freely without penalty, discipline, or sanction of any kind, and should encourage University Members to rebut or debate her views if they so desire.
5. Dean Ruger is ordered to comply with *all* of the requests for information found in Prof. Wax's Aug. Memo, including by not limited to arranging for an outside examination of student grades by race, as pertinent to his allegations that Professor Wax spoke "falsely" on the topic.
6. Dean Ruger is ordered to stop stating that students can expect Prof. Wax to be "biased" against minority students, and to correct the record by declaring publicly that there is no evidence of any such bias.
7. Dean Ruger is ordered to cease creating and authorizing courses that are redundant of the subjects that Professor Wax teaches in the law school.
8. The Commission and SCAFR should order or take any further action appropriate and necessary to correct the academic freedom violations and harms inflicted by Dean Ruger on Penn Law and Professor Wax.

Dated: January 16, 2022

SHAPIRO LITIGATION GROUP PLLC

By:



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## **EXHIBIT A**

### **I. THE SUBSTANTIVE AND PROCEDURAL ACADEMIC FREEDOMS GUARANTEED TO UNIVERSITY PROFESSORS.**

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#### **A. PROPOSALS RELATING TO THE EDUCATION OF YOUTH IN PENSILVANIA [SIC], BY BENJAMIN FRANKLIN, 1749<sup>1</sup>**

##### **1. Substantive Guarantees**

“As to their STUDIES, it would be well if they could be taught *every Thing* that is useful[.]” (emphasis and all caps in original).

“The Idea of what is *true Merit*, should also be often presented to Youth, explain’d and impress’d on their Minds, as consisting in an *Inclination* join’d with an *Ability* to serve Mankind, one’s Country, Friends and Family; which *Ability* is (with the Blessing of God) to be acquir’d or greatly encreas’d by *true Learning*; and should indeed be the great *Aim* and<sup>29</sup> *End* of all Learning.” (emphasis in original).

#### **B. DECLARATION OF PRINCIPLES BY THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS (AAUP) (1915)<sup>2</sup>**

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##### **1. Substantive Guarantees**

“Academic freedom [of the teacher] comprises three elements: freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extra-mural utterance and action.”

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<sup>1</sup> Mr. Franklin was a Founder and Trustee of the University from 1749-1790. He was also the President of Board of Trustees from 1749-1756 and from 1789-1790.

<sup>2</sup> We refer to this document hereafter as the “1915 AAUP Declaration.”

“[T]he right of university teachers to express their opinions freely outside the university . . . [has an importance of its own, since of late it has perhaps more frequently been the occasion of difficulties and controversies than has the question of freedom of intra-academic teaching].”

“In the case of most of our privately endowed institutions, the situation is really not different [from the public universities]. They cannot be permitted to assume the proprietary attitude and privilege, if they are appealing to the general public for support. Trustees of such universities or colleges have no moral right to bind the reason or the conscience of any professor. All claim to such right is waived by the appeal to the general public for contributions and for moral support in the maintenance, not of a propaganda, but of a nonpartisan institution of learning. It follows that any university which lays restrictions upon the intellectual freedom of its professors proclaims itself a proprietary institution, and should be so described whenever it makes a general appeal for funds; and the public should be advised that the institution has no claim whatever to general support or regard.”

“[I]t seems desirable at this time to restate clearly the chief reasons, lying in the nature of the university teaching profession, why it is to the public interest that the professional office should be one both of dignity and of independence.”

“It is not, in our opinion, desirable that men should be drawn into this profession by the magnitude of the economic rewards which it offers; but it is for this reason the more needful that men of high gifts and character should be drawn into it by the assurance of an honorable and secure position, and of freedom to perform honestly and according to their own consciences the distinctive and important function which the nature of the profession lays upon them.”

[T]he proper fulfillment of the work of the professoriate requires that our universities shall be so free that no fair-minded person shall find any excuse for even a suspicion that the utterances of university teachers are shaped or restricted by the judgment, not of professional scholars, but of inexpert and possibly not wholly disinterested persons outside of their ranks."

"So far as the university teacher's independence of thought and utterance is concerned - though not in other regards - the relationship of professor to trustees may be compared to that between judges of the Federal courts and the Executive who appoints them. University teachers should be understood to be, with respect to the conclusions reached and expressed by them, no more subject to the control of the trustees than are judges subject to the control of the President with respect to their decisions; while of course, for the same reason, trustees are no more to be held responsible for, or to be presumed to agree with, the opinions or utterances of professors than the President can be assumed to approve of all the legal reasonings of the courts."

"The importance of academic freedom is most clearly perceived in the light of the purposes for which universities exist. These are three in number. A. To promote inquiry and advance the sum of human knowledge. B. To provide general instruction to the students. C. To develop experts for various branches of the public service."

"It is scarcely open to question that freedom of utterance is as important to the teacher as it is to the investigator. No [one] can be a successful teacher unless he enjoys the respect of his students, and their confidence in his intellectual integrity. It is clear, however, that this confidence will be impaired if there is suspicion on the part of the student that the teacher is not expressing himself fully or frankly, or that college and university teachers in general are a

repressed and intimidated class who dare not speak with that candor and courage which youth always demands in those whom it is to esteem.”

“It is obvious that here again the scholar must be absolutely free not only to pursue his investigations but to declare the results of his researches, no matter where they may lead him or to what extent they may come into conflict with accepted opinion.”

“[T]he university cannot perform its threefold function without accepting and enforcing to the fullest extent the principle of academic freedom. The responsibility of the university as a whole is to the community at large, and any restriction upon the freedom of the instructor is bound to react injuriously upon the efficiency and the *morale* of the institution, and therefore ultimately upon the interests of the community.” (emphasis in original).

“The special dangers to freedom of teaching in the domain of the social sciences are evidently two. The one which is the more likely to affect the privately endowed colleges and universities is the danger of restrictions upon the expression of opinions which point toward extensive social innovations, or call in question the moral legitimacy or social expediency of economic conditions or commercial practices in which large vested interests are involved.”

“When to this is added the consideration that benefactors, as well as most of the parents who send their children to privately endowed institutions, themselves belong to the more prosperous and therefore usually to the more conservative classes, it is apparent that, so long as effectual safeguards for academic freedom are not established, there is a real danger that pressure from vested interests may, sometimes deliberately and sometimes unconsciously, sometimes openly and sometimes subtly and in obscure ways, be brought to bear upon academic authorities.”

“In more recent times the danger zone has been shifted to the political and social sciences—though we still aehv [sic] sporadic examples of the former class of cases in some of our smaller institutions. But it is precisely in these provinces of knowledge in which academic freedom is now most likely to be threatened, that the need for it is at the same time most evident.”

“One of [the university’s] most characteristic functions in a democratic society is to help make public opinion more self-critical and more circumspect, to check the more hasty and unconsidered impulses of popular feeling, to train the democracy to the habit of looking before and after. It is precisely this function of the university which is most injured by any restriction upon academic freedom; and it is precisely those who most value this aspect of the university's work who should most earnestly protest against any such restriction.”

“In all of these domains of knowledge, the first condition of progress is complete and unlimited freedom to pursue inquiry and publish its results. Such freedom is the breath in the nostrils of all scientific activity.”

“[I]t is not . . . desirable that scholars should be debarred from giving expression to their judgments upon controversial questions, or that their freedom of speech, outside the university, should be limited to questions falling within their own specialties. It is clearly not proper that they should be prohibited from lending their active support to organized movements which they believe to be in the public interest. And, speaking broadly, it may be said in the words of a nonacademic body already once quoted in a publication of the Association, that "it is neither possible nor desirable to deprive a college professor of the political rights vouchsafed to every citizen.”

## **C. STATEMENT OF PRINCIPLES ON ACADEMIC FREEDOM AND TENURE, AAUP (1940)<sup>3</sup>**

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### **1. Substantive Guarantees.**

“The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to ensure them in colleges and universities. 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. Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning.”

“Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. The intent of this statement is not to discourage what is “controversial.” Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material which has no relation to their subject.”

### **2. Procedural Guarantees.**

“In pressing . . . charges [that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher’s fitness for his or her position] the administration

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<sup>3</sup> We refer to this document hereinafter as the “1940 AAUP Statement of Principles.” The Executive Board of the University of Pennsylvania formally endorsed the 1940 AAUP Statement of Principles on February 13, 1953.

should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.”

“There should be a full stenographic record of the hearing available to the parties concerned.”

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**D. RESOLUTION OF THE EXECUTIVE BOARD OF TRUSTEES (FEBRUARY 13, 1953)**

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**1. Substantive Guarantees.**

“The Acting-President, Mr. DuBarry, reviewed the background leading to the preparation of ‘A STATEMENT REGARDING ACADEMIC FREEDOM AT THE UNIVERSITY OF PENNSYLVANIA.’ The statement has been approved in principle by the Deans and by the Policy Committee of the Educational Council. It has also been brought to the attention of the entire body of the Educational Council, the President of the University Senate, and the Chairman of the Committee on Academic Freedom of the Senate.”<sup>4</sup>

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<sup>4</sup> To recognize how dangerous it can be to attack a tenured Member’s academic freedom, consider the following addition suggested in 1953 by a member of the Executive Board:

One of the most important current problems of academic freedom is the question of the retention within the University of a person who fairly or unfairly is charged with or is suspected of being disloyal or subversive to our government. The gravity of the problem is heightened by the awareness that our way of life is threatened by enemies from without and irresponsible spreaders of suspicion from within. The University will continue to strive to secure and retain a loyal faculty and staff.

“The University of Pennsylvania is convinced now, as in the past, that academic freedom is one of the most precious assets of a free society. It is essential to our very survival and imposes serious responsibilities on all connected with the teaching profession.”

“We believe it important that there be clear expression of the special privileges and the special responsibilities of the academic profession. The University of Pennsylvania endorses the 1940 Statement of Principles of Academic Freedom of the American Association of University Professors[.]”

“Academic freedom, like other living principles, must constantly be reexamined and reapplied. This is particularly true in these days of tension and trial.”

"The teacher is entitled to full freedom in research and in the publication of results, subject to the adequate performance of his other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution."

“The teacher is entitled to freedom in the classroom in discussing his subject, but he should be careful. not to introduce into his teaching controversial matter which has no relation to his subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.”

“The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in-the community imposes special obligations.”

**E. STATED MEETING OF THE CORPORATION ON ACADEMIC TENURE  
(OCTOBER 16, 1959)**

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**1. Substantive Guarantees.**

“The tenure provisions permit the establishment of an essentially self-perpetuating body of scholars enjoying continuity of existence, freedom to determine its own rules of behavior and the propriety of its customs, assurance of equitable policies regarding remuneration without recourse to the usual bargaining procedures of industry, and the exercise of that authority over the academic program in which it is engaged which derives in turn from the responsibility which it assumes for the academic institution of which it is a part.”

“Academic tenure is an important means of assuring freedom of teaching and research, freedom of extramural activities that ought not be proscribed, and a sufficient degree of economic security to make the profession attractive to persons of ability. Academic freedom and economic security are essential to the success of the faculty of the University in fulfilling its obligations to its students and to society.”

**F. AAUP “COMMITTEE STATEMENT ON EXTRAMURAL UTTERANCES,”  
POLICY DOCUMENTS AND REPORTS, 31 (1964)<sup>5</sup>**

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**1. Substantive Guarantees.**

“The controlling principle is 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 for his or her position.”

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<sup>5</sup> This document is referred to hereafter as “1964 AAUP Committee Statement.”

“Extramural utterances rarely bear upon the faculty member’s fitness for the position. Moreover, a final decision should take into account the faculty member’s entire record as a teacher and scholar.”

#### **G. THE KALVEN REPORT (NOV. 1967)**

##### **1. Substantive Guarantees**

“[T]he university . . . is a community which cannot take collective action on the issues of the day without endangering the conditions for its existence and effectiveness. There is no mechanism by which it can reach a collective position without inhibiting that full freedom of dissent on which it thrives. It cannot insist that all of its members favor a given view of social policy; if it takes collective action, therefore, it does so at the price of censuring any minority who do not agree with the view adopted. In brief, it is a community which cannot resort to majority vote to reach positions on public issues.”

#### **H. SENATE COMMITTEE ON ACADEMIC FREEDOM AND RESPONSIBILITY (1996-97)**

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##### **1. Procedural Guarantees**

“No other group on campus has the same interest in preserving the integrity of the faculty that the Senate does; nor can any other group speak with as much authority on matters of faculty conduct. Questions about the appropriateness of faculty conduct would benefit greatly from input from a properly constituted faculty body. Further, we recognize that there may be sound legal reasons for continuing the [Senate Committee on Conduct]. Finally, we are concerned that eliminating the CoC might be misconstrued by the University community.”

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**I. PROCEDURAL PRINCIPLES FOR HANDLING COMPLAINTS  
CONCERNING ACADEMIC FREEDOM AND RESPONSIBILITY (SENATE  
COMMITTEE ON ACADEMIC FREEDOM AND RESPONSIBILITY) (1996-  
1997)**

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**1. Procedural Guarantees.**

“In these principles [the Senate Committee on Academic Freedom and Responsibility (“SCAFR”)] has sought to capture the long-established consensus concerning the fundamental elements of such procedures. The development and planned dissemination of these principles is in accord with SCAFР's responsibility to "advise and consult with each faculty's (CAFR), and with administrative officers, on the establishment of appropriate procedures to be followed in the event of a claim of violation of academic freedom or responsibility."

“The absence of such a statement [regarding Procedural Principles for Handling Complaints Concerning Academic Freedom and Responsibility] presenting the long-standing principles that have governed SCAFР and CAFR proceedings contributed, in our view, to a challenge to SCAFР's jurisdiction and procedures that arose in the context of a case considered in 1995-96.”

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**J. ACADEMIC FREEDOM AND RESPONSIBILITY: PROCEDURAL  
PRINCIPLES FOR SCHOOL COMMITTEES: A SPECIAL REPORT OF  
THE SENATE COMMITTEE ON ACADEMIC FREEDOM AND  
RESPONSIBILITY (FEBRUARY 10, 1997)**

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**1. Procedural Guarantees**

“The purpose of a procedure for handling complaints of violations of academic freedom is to give all parties a fair, impartial hearing. There has long been a general consensus concerning the fundamental elements of such a procedure, a consensus that is reflected in the principles that follow.”

“The procedures should assure impartiality.”

“The school Committee on Academic Freedom and Responsibility (CAFR) and any body that the CAFR constitutes must both be impartial and appear to be impartial. This requires recusal in cases where a member of the CAFR has been involved in the controversy, has a special relationship with one of the parties, or otherwise is not able, or does not appear to be, impartial.”

“The school CAFR should establish standing procedures that will be followed at a hearing, if the matter cannot be resolved amicably. They should include an opportunity for both sides to testify, present witnesses and documentary evidence, and cross-examine the witnesses of the other side. The rules should make clear that no evidence will be considered without disclosure to both sides. If a witness does not wish such disclosure, he or she will not be permitted to testify and the proffered testimony will not be considered by the CAFR. Proceedings should be tape-recorded, and the recordings made available to the parties.”

## **K. ARTICLE 11 (NOVEMBER 2, 2001)**

### **1. Substantive Guarantees.**

11.1 The University recognizes the importance of a system of tenure for faculty members as the preeminent means of fostering and protecting academic freedom in teaching and in scholarly inquiry.

11.4 It is the policy of the University of Pennsylvania to maintain and encourage freedom of inquiry, discourse, teaching, research, and publication and to protect any member of the academic staff against influences, from within or without the University, that would restrict him or her in the exercise of these freedoms in his or her area of scholarly interest.

(a) The teacher is entitled to freedom in research and in the publication of results, subject to the adequate performance of his or her other academic duties, and to the institutional policies and procedures as set forth in the research policies of the University. Research for pecuniary return should be based upon an understanding with the authorities of the institution.

(b) The teacher is entitled to freedom in the classroom in discussing his or her subject.

(c) The teacher is a member of a learned profession and of an educational institution.

When speaking or writing as an individual, the teacher should be free from institutional censorship or discipline, but should note that a special position in the community imposes special obligations. As a person of learning and a member of an educational institution, the teacher should remember that the public may judge the profession and the institution by his or her utterances. Hence the teacher should at all times show respect for the opinions of others, and should make every effort to indicate when he or she is not speaking for the institution.

## **L. A SPECIAL REPORT OF THE SENATE COMMITTEE ON ACADEMIC FREEDOM AND RESPONSIBILITY (FEBRUARY 10, 1997)**

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### **1. Procedural Guarantees.**

“The purpose of a procedure for handling complaints of violations of academic freedom is to give all parties a fair, impartial hearing.”

“The procedures should assure impartiality.”

“Any committee determining issues related to academic freedom] must both be impartial and appear to be impartial. This requires recusal in cases where a member of the CAFR has been involved in the controversy, has a special relationship with one of the parties, or otherwise is not able, or does not appear to be, impartial.”

## **M. RECOMMENDED INSTITUTIONAL REGULATIONS ON ACADEMIC FREEDOM AND TENURE (AAUP) (2018)**

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### **1. Substantive Guarantees**

“All members of the faculty, whether tenured or not, are entitled to academic freedom as set forth in the 1940 Statement of Principles on Academic Freedom and Tenure, formulated by the Association of American Colleges and Universities and the American Association of University Professors.”

“Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens.”

## **N. FACULTY HANDBOOK: SECTION II.A. (ACADEMIC FREEDOM AND RESPONSIBILITY) AND II.C.1 (PURPOSE OF THE TENURE SYSTEM) (AUG. 1, 2022)**

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### **1. Substantive Guarantees**

“The University recognizes the importance of a system of tenure for faculty members as the preeminent means of fostering and protecting academic freedom in teaching and in scholarly inquiry.” This includes when “speaking or writing as an individual.”

“It is the policy of the University of Pennsylvania to maintain and encourage freedom of inquiry, discourse, teaching, research, and publication and to protect any member of the academic staff against influences, from within or without the University, which would restrict a member of the academic staff in the exercise of these freedoms in their area of scholarly interest. The teacher is entitled to freedom in research and in the publication of results, subject to the adequate performance of their other academic duties, and to the institutional policies and procedures as set forth in the research policies of the University. Research for pecuniary return should be based upon an understanding with the authorities of the institution.”

“The teacher is entitled to freedom in the classroom in discussing their subject. The teacher is a member of a learned profession and of an educational institution. When speaking or writing as an individual, the teacher should be free from institutional censorship or discipline, but should note that a special position in the community imposes special obligations. As a person of learning and a member of an educational institution, the teacher should remember that the public may judge the profession and the institution by their utterances. Hence the teacher should at all times show respect for the opinions of others, and should indicate when they are not speaking for the institution.”

“The protection of the academic freedom of individual teachers and scholars is the instrument by which society at large is protected from hindrances to the search for knowledge and from limits on the dissemination of knowledge.”

“The tenure system consists of rules and procedures that establish an essentially self-regulated body of scholars enjoying the continuity of existence and economic security within which academic freedom is both fostered and protected. The protections of academic freedom are extended to all members of the faculty during their terms of appointment. The rights and privileges embodied in the tenure system are extended to all members of the Standing Faculty during their terms of appointment. Certain of these rights and privileges are also extended to members of the Associated Faculty during their terms of appointment.”

## **2. Procedural Guarantees**

“[The Senate Committee on Academic Freedom and Responsibility (the “SCAFR”)] shall advise and consult with each faculty's Committee on Academic Freedom and Responsibility, and with administrative officers, on the establishment of appropriate procedures to be followed in the

event of a claim of violation of academic freedom or responsibility.” Each faculty shall have a “Committee on Academic Freedom and Responsibility” (the “FCAFR”).

“Each [FCAFR] shall . . . represent the faculty in all proceedings that involve temporary exclusion of or imposition of a major sanction on a faculty member; suspension or termination of the appointment of a faculty member, some matters arising from financial exigency proceedings, or other questions concerning an individual faculty member’s claim of violation of their academic freedom.”

## **O. THE SENATE COMMITTEE ON ACADEMIC FREEDOM AND RESPONSIBILITY (AUG. 1, 2022).**

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### **1. Substantive Guarantees**

“The University recognizes the importance of a system of tenure for faculty members as the preeminent means of fostering and protecting academic freedom in teaching and in scholarly inquiry.”

### **2. Procedural Guarantees.**

“SCAFR advises and consults with each school faculty's Committee on Academic Freedom and Responsibility ("CAFR") and with administrative officers on the establishment of appropriate procedures to be followed in the event of a claim of violation of academic freedom or responsibility.”

## **II. OTHER RELEVANT AUTHORITIES OF WHICH THE FACULTY GRIEVANCE COMMISSION SHOULD BE AWARE.**

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### **A. ACADEMIC FREEDOM GUIDELINES AND BEST PRACTICES, ORGANIZATION OF AMERICAN HISTORIANS (2022)<sup>6</sup>**

#### **1. Substantive Guarantees.**

“Academic freedom is the principle of freedom of expression for scholars engaged in discipline-related teaching, learning, research, publication and service. Academic freedom is the foundation of intellectual discovery; it ensures an open search for knowledge and “nourishes the environment within which students develop critical habits of mind” essential to the citizenry of a democratic society.”

“Academic freedom includes the individual instructor’s right to select course materials and content, pedagogy, make assignments and assess student performance. These should be germane to the subject matter.”

“Academic freedom includes the right to bring relevant expertise to “the larger community with regard to any matter of social, political, economic or other interest;” and through any mode of communication (including speech, writing and electronic media).”

“Academic Freedom: rights held by educators to engage in academically-recognized expression.”

Academic freedom covers “Discipline-related teaching, learning, research, publication, in and outside the classroom.”

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<sup>6</sup> We refer to this document hereinafter as the “OAH Guidelines.”

“Academic freedom . . . addresses rights within the educational contexts of teaching, learning, and research both in and outside the classroom—for individuals at private as well as at public institutions.”

**B. “DEFINING ACADEMIC FREEDOM,” BY AAUP PAST-PRESIDENT CARY NELSON<sup>7</sup>**

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**1. Substantive Guarantees.**

“Academic freedom means that faculty members . . . can engage in intellectual debate without fear of censorship or retaliation.”

“Academic freedom establishes a faculty member’s right to remain true to his or her pedagogical philosophy and intellectual commitments. It preserves the intellectual integrity of our educational system and thus serves the public good.”

“Academic freedom in teaching means that . . . faculty members . . . can make comparisons and contrasts between subjects taught in a course and any field of human knowledge or period of history.”

“Academic freedom gives . . . faculty the right to express their views — in speech, writing, and through electronic communication, both on and off campus — without fear of sanction, unless the manner of expression substantially impairs the rights of others or, in the case of faculty members, those views demonstrate that they are professionally ignorant, incompetent, or dishonest with regard to their discipline or fields of expertise.”

“Academic freedom gives . . . faculty the right to study and do research on the topics they choose and to draw what conclusions they find consistent with their research, though it does not

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<sup>7</sup> <https://www.insidehighered.com/views/2010/12/21/defining-academic-freedom>

prevent others from judging whether their work is valuable and their conclusions sound. To protect academic freedom, universities should oppose efforts by corporate or government sponsors to block dissemination of any research findings.”

“Academic freedom means that the political, religious, or philosophical beliefs of politicians, administrators, and members of the public cannot be imposed on students or faculty.”

“Academic freedom protects faculty members . . . from reprisals for disagreeing with administrative policies or proposals.”

“Academic freedom gives faculty members . . . the right to challenge one another’s views, but not to penalize them for holding them.”

“Academic freedom protects a faculty member’s authority to assign grades to students, so long as the grades are not capricious or unjustly punitive. More broadly, academic freedom encompasses both the individual and institutional right to maintain academic standards.”

“Academic freedom gives faculty members substantial latitude in deciding how to teach the courses for which they are responsible.”

## **2. Procedural Guarantees**

“Academic freedom guarantees that serious charges against a faculty member will be heard before a committee of his or her peers. It provides faculty members the right to due process, including the assumption that the burden of proof lies with those who brought the charges, that faculty have the right to present counter-evidence and confront their accusers, and be assisted by an attorney in serious cases if they choose.”