

**IN THE COURT OF COMMON PLEAS
OF MONTGOMERY COUNTY, PENNSYLVANIA**

AMY WAX,
Rydal, PA 19046
Plaintiff,

v.

THE TRUSTEES OF THE UNIVERSITY OF
PENNSYLVANIA,
1 College Hall, Room 211
Philadelphia, PA 19104-6303

Defendants.

CIVIL ACTION: CONTRACT

INTRODUCTION

1. Tenure has a special place in academia. Dating back to at least 1940 in its modern form, “tenure is intended to foster academic freedom” by protecting tenured professors from being disciplined for their speech, research, or ideology. *Otero-Burgos v. Inter Am. Univ.*, 558 F.3d 1, 10 (1st Cir. 2009). “Faculty members desire tenure for the job security, but a more important feature of tenure to both the faculty member and the university is the freedom of the employee to teach and explore ideas without the fear of persecution.” Stephen J. Leacock, *Tenure Matters: The Anatomy of Tenure and Academic Survival in American Legal Education*, 45 OHIO N.U. L. REV. 115, 139-40 (2019).

2. At the University of Pennsylvania (“Penn” or the “University”), the academic freedom of tenured professors is not just a lofty ideal. Rather, those protections are enshrined in the Statutes of the Trustees and the Faculty Handbook and are therefore part of Penn’s employment contracts with its tenured professors. These explicit contractual promises limit the circumstances in which tenured professors can be suspended, demoted, or fired.

3. Plaintiff Professor Amy Wax is a tenured professor at Penn's Carey School of Law ("Penn Law School"). She brings this action because Penn breached the academic freedom protections in Professor Wax's employment contract by suspending her, revoking her named chair, and permanently reducing her salary based on statements she made on podcasts and in op-eds regarding affirmative action, immigration policies, and the relation between culture and economic advancement.

4. Penn did not hide its motivation for punishing Professor Wax. The dean of Penn Law School announced that he would seek "major sanctions" against Professor Wax just two weeks after her public statements on immigration sparked a backlash among students, alumni, and donors. He then drew up charges listing several of Professor Wax's public, extramural statements that he felt warranted sanction. Attorneys representing the dean later told an internal disciplinary board (the "Hearing Board") that Wax should be sanctioned "to make a very clear statement" that Wax's "racist" and "xenophobic ideology is not who we are. It's not who we want to be, and we will not tolerate it." The Hearing Board agreed and issued a report listing seventeen public, extramural statements for which it recommended Professor Wax be sanctioned. Penn's president accepted that recommendation without amendment or limitation.

5. By punishing Professor Wax for her public, extramural statements, Penn violated provisions of the Faculty Handbook promising, inter alia, that, "[w]hen speaking or writing as an individual, the teacher should be free from institutional censorship or discipline," Handbook § II.A, and that tenured professors could only be suspended for "a Major Infraction of University Behavior Standards," which is specifically limited to "actions," as opposed to speech or opinions deemed offensive. Handbook § II.E.16.1.B.17.

6. Penn’s disciplinary process also violated several contractual promises. For example, Penn chose a professor with an undisclosed conflict to co-chair the Hearing Board. That professor had advised the dean of the law school on whether to seek major sanctions against Professor Wax and on the strength of such charges. By not disclosing that the Hearing Board Co-Chair secretly advised one of the parties in the case before her, Penn violated basic notions of procedural fairness promised in its Handbook and deprived Professor Wax of her contractual rights to move to recuse Hearing Board members and to all documents relevant to her “procedural and substantive rights.” *See Handbook §§ II.E.16.1.A, II.E.16.4.A, B, & D.*

7. Penn also violated its contractual promise that tenured professors facing major sanction proceedings “shall have the right to confront any witnesses” against them “and to question [the witnesses] personally or through counsel.” Handbook § II.E.16.4.G. In violation of this promise, the Hearing Board Co-Chair—the same one with the undisclosed conflict—flatly prohibited Professor Wax’s attorney from cross-examining a former student who testified about comments she allegedly made in class. Worse, the Hearing Board adopted the allegations of multiple other former student “witnesses” who did not testify at all. Rather, these former students apparently made allegations to an outside law firm hired by Penn. Penn did not even offer the testimony of the outside attorneys who interviewed those witnesses, or provide those attorneys’ memoranda summarizing those interviews. Instead, the dean of the law school put isolated alleged statements of the non-testifying former students—whom he himself never interviewed—into a charging document, which the Hearing Board simply adopted wholesale into its report recommending sanctions against Professor Wax.

8. Finally, Penn violated its promise that tenured professors would only be suspended or demoted upon “pro[of] by clear and convincing evidence.” Handbook § II.E.16.4.G. Needless

to say, the triple-hearsay and un-cross-examined statements described above do not constitute “clear and convincing evidence” by any standard. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] And yet, the Hearing Board recommended that Professor Wax be sanctioned based on several triple-hearsay allegations that Professor Wax very much disputed.

9. Professor Wax respectfully requests that this Court declare Penn breached its contractual obligations, award Professor Wax damages as specified below, and enjoin Penn from enforcing the unlawful sanctions it has imposed upon her.

PARTIES

10. Plaintiff Professor Amy Wax is a resident of Rydal, Pennsylvania, within Montgomery County. From 2001 to the present, she has been employed by Defendant Penn as a tenured law professor.

11. Defendants the Trustees of the University of Pennsylvania (“Defendants”) are primarily entrusted with the governance of Penn and are primarily responsible for the conduct of the University. The University of Pennsylvania is an academic institution, which includes various departments, such as the Penn Carey School of Law. Penn’s principal place of business is in Philadelphia, Pennsylvania, and it regularly conducts business throughout Pennsylvania, including in Montgomery County. Penn employs many people who reside in Montgomery County, including Professor Wax.

JURISDICTION

12. This Court has jurisdiction over this action pursuant to 42 Pa.C.S. § 931(a), which grants the Court of Common Pleas unlimited original jurisdiction over all civil actions and proceedings, including breach of contract claims seeking damages and equitable relief.

VENUE

13. Venue is proper in Montgomery County pursuant to Pa.R.C.P. 2179. Professor Wax resides in Montgomery County, Pennsylvania, and the breaches of contract alleged herein caused Professor Wax to suffer damages in Montgomery County, including loss of income.

14. Moreover, both Penn and Professor Wax regularly conduct business in Montgomery County, and numerous transactions or occurrences out of which this suit arose took place in Montgomery County, including, but not limited to, the following:

- a. Penn has, for years, paid Professor Wax a salary by causing regular direct deposits to be made into her account at a PNC Bank, located at 808 Old York Rd., Jenkintown, PA, within Montgomery County. Penn has breached and continues to breach its contract with Professor Wax by causing those deposits to be reduced by 50% without just cause.
- b. Professor Wax regularly writes and speaks on issues of public importance from her home in Montgomery County and Penn based its decision to sanction Wax on statements and writings she made from her home in Montgomery County. For example, several podcast interviews for which Professor Wax was sanctioned as described herein were filmed in Professor Wax's home, including a December 2021 podcast with Glenn Loury and an August 2020 podcast with "The Accad and Koka Report."

FACTUAL BACKGROUND

I. Prior to Joining the Penn Faculty, Professor Wax Had a Successful Career in Law and Legal Academia.

15. Professor Wax holds a B.S. from Yale University Summa Cum Laude, an M.D. from Harvard Medical School Cum Laude, and a J.D. from Columbia Law School with honors.

16. After serving as a law clerk on the U.S. Court of Appeals for the District of Columbia Circuit, Professor Wax accepted a coveted position at the U.S. Department of Justice as an Assistant to the Solicitor General. Serving in that role from 1988 to 1994, she argued fifteen cases before the United States Supreme Court.

17. Upon leaving government service, Professor Wax forewent the riches of private practice to pursue a career in legal academia. She did so for the opportunity to freely engage in academic debate and to help train the next generation of lawyers.

18. In 1994, Professor Wax became an associate professor at the University of Virginia School of Law. She was promoted to full professor with tenure in 1999. The University of Virginia Law School is one of the best in the country, currently ranked fourth by U.S. News & World Report.

II. Penn Induced Professor Wax to Leave the University of Virginia by Offering Her a Tenured Professorship That Included Promises of Job Security and Academic Freedom.

19. In 2001, Penn induced Professor Wax to leave her professorship at the University of Virginia Law School by offering her an “appoint[ment] to the ‘Standing Faculty’ of the University of Pennsylvania, as a Professor of Law, with Tenure.” Exhibit 1, at 1 [hereinafter, “Tenure Appointment Letter”].

20. The meaning of those terms is enunciated in Penn's Faculty Handbook, which is a 172-page, highly legalistic document that describes itself in its first sentence as "a set of policies governing faculty life at Penn." Exhibit 2, at 3 [hereinafter, "Handbook"].

21. The Handbook, as well as the Statutes and Resolutions of the Trustees incorporated therein, have been provided to Professor Wax since her appointment in 2001. *See* Handbook § II.A (noting that the Handbook provisions governing "Academic Freedom and Responsibility" come from the "Statutes of the Trustees" and the "Resolutions[s] of the Executive Board of Trustees"); Exhibit 3 [hereinafter, "Statutes of the Trustees"].

22. The Handbook covers a variety of rights and responsibilities of faculty, including as they relate to such topics as student privacy, copyright, and conflicts of interest. In several places, the Handbook explicitly refers to legal obligations.

23. Unlike the Faculty Handbooks at some of Penn's peer institutions, Penn's Handbook does not contain any disclaimer denying that it creates contractual obligations.

24. To the contrary, Penn has admitted that the Handbook includes provisions that reflect or incorporate contractual obligations.

25. Outside of the Tenure Appointment Letter, the Handbook, and the Statutes of the Trustees, Penn and Professor Wax do not have any bilateral contract that specifies the terms of her employment or defines the meaning and rights of "Tenure."

26. By accepting Penn's 2001 Tenure Appointment Letter, Professor Wax entered into a binding employment contract with Penn, the terms of which include her Tenure Appointment Letter, the Handbook, and the Statutes of the Trustees. Aside from Professor Wax's personal Tenure Appointment Letter, Penn widely distributes these materials to its faculty, staff, and the general public.

27. Pursuant to this contract, Penn expects its faculty to follow the rules and procedures in the Handbook and reserves the right to discipline faculty members who violate the Handbook, with penalties up to and including termination. In turn, Professor Wax and Penn’s other tenured professors expect Penn to abide by the promises in its Handbook and believe Penn is contractually obligated to do so.

28. In reliance on the promises contained in the Handbook—in particular, the promises of academic freedom, procedural fairness, and job security discussed below—Professor Wax resigned her tenured professorship at the University of Virginia and entered in a contractual relationship with Penn.

A. Penn’s Faculty Handbook Promises Academic Freedom for Tenured Professors.

29. According to the Handbook, “[t]he term ‘Standing Faculty,’ used alone, shall refer only to those faculty members with tenure or in tenure-probationary status.” Handbook § I.E.

30. Under the heading “Tenure System at the University of Pennsylvania,” the Handbook notes that “[t]he Statutes hold that a system of tenure for faculty members is the preeminent means of fostering and protecting academic freedom,” and that “[t]he protections of academic freedom *are extended* to all members of the faculty during their terms of appointment.” Handbook § II.C.1 (emphasis added).¹

31. The “protections of academic freedom” are spelled out in Section II.A of the Handbook, which includes three such protections: “freedom in research and in the publication of results”; “freedom in the classroom in discussing his or her subject”; and, as most relevant here,

¹ As the Handbook itself notes, this portion of the Handbook codifies a Standing Resolution of the Trustees, dated September 9, 1983. *See* Handbook § II.C.I (citing Standing Resolution of the Trustees, September 9, 1983, at 11, <https://archives.upenn.edu/digitized-resources/docs-pubs/trustees-minutes/minutes-1983/september-9/>).

the promise that, “[w]hen speaking or writing as an individual, the teacher should be free from institutional censorship or discipline.” Handbook § II.A.

32. This provision was first adopted by a Resolution of the Executive Board of Trustees on February 13, 1953, which is now codified as Article 11 of the Statutes of the Trustees.²

33. Penn, like hundreds of other universities, adopted the three core principles of academic freedom, listed above, nearly verbatim from the American Association of University Professors’ (“AAUP”) canonical “1940 Statement of Principles on Academic Freedom and Tenure.”³

34. As relevant here, the third principle of academic freedom—that, “[w]hen speaking or writing as an individual, the teacher should be free from institutional censorship or discipline”—recognizes that professors enjoy near-absolute freedom from censorship in their extramural statements. *See id.* (because “[t]enure is a means to certain ends; specifically . . . freedom of . . . extramural activities,” when professors “speak or write as citizens, they should be free from institutional censorship or discipline”); *see also 1915 Declaration of Principles on Academic Freedom and Academic Tenure*, AAUP, at 292, <https://www.aaup.org/NR/rdonlyres/A6520A9D-0A9A-47B3-B550-C006B5B224E7/0/1915Declaration.pdf> (academic freedom includes “freedom of extramural utterance and action”).

35. At no point did any Penn administrator suggest to Professor Wax, or to Penn faculty at large, that the protections of academic freedom in the Handbook and the Statutes of the Trustees

² The Statutes of the Trustees contain just sixteen Articles and is “limited to principles of fundamental and continuing significance to the governance of the University.” Statutes of the Trustees, Art. I. It contains a number of highly legalistic provisions, including a provision providing for the indemnification of Penn’s trustees and officers, *see id.* at Art. 14, and provisions specifying how Penn’s assets shall be distributed upon its dissolution, *see id.* at Art. 16.

³ *See 1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments*, AAUP, at 14, <https://www.aaup.org/sites/default/files/1940%20Statement.pdf>.

were merely aspirational, or anything other than a binding contractual obligation. Nor did Penn ever express to Professor Wax or to the faculty at large that any other provision of the Handbook was aspirational, optional, or anything other than binding on both the University and its faculty.

36. Indeed, Professor Wax specifically agreed to work at Penn because they offered tenure, which she understood to provide protections of academic freedom and procedural fairness, and a promise that she could not be terminated, demoted, or suspended absent serious misconduct, as opposed to unpopular speech. The opportunity to freely explore academic topics without fear of censorship was a key inducement to Professor Wax when she accepted Penn's offer of tenure.

37. At no point did Professor Wax agree to waive her right to seek judicial review and/or enforcement of any of the promises contained in the Faculty Handbook, nor did she agree to exclusively adjudicate such claims in any sort of arbitration or employer-run internal proceeding in lieu of her right to seek enforcement of her contractual rights in court. To the contrary, the Faculty Handbook itself contemplates that the results of its internal hearing process is only "final *within the University*." Faculty Handbook § II.E.16.4.I.5 (emphasis added).

B. Penn's Faculty Handbook Defines the Rare Conditions in Which Tenured Faculty Can Be Suspended or Terminated.

38. In addition to promising robust academic freedom protections, the Handbook provides that "[t]he imposition of a sanction on a faculty member at Penn is a rare event." Handbook § II.E.16.1.A. In particular, the Handbook provides that "major sanctions," which include "suspension" and "reduction in academic base salary," may only be imposed if the professor commits "a Major Infraction of University Behavior Standards." Handbook §§ II.E.16.1.B.7-10, II.E.16.2-4.

39. The Handbook defines "a Major Infraction of University Behavior Standards" as: "An action involving flagrant disregard of the standards, rules, or mission of the University or the

customs of scholarly communities, including, but not limited to, serious cases of the following: plagiarism; misuse of University funds; misconduct in research; repeated failure to meet classes or carry out major assigned duties; harassment of, improperly providing controlled substances to, or physical assault upon, a member of the University community; the bringing of charges of major or minor infractions of University standards against a member of the University community, knowing these charges to be false or recklessly indifferent to their truth or falsity; flagrant or knowing violation of the University’s conflict of interest policy or commission of serious crimes such as, but not limited to, murder, sexual assault or rape.” Handbook § II.E.16.1.B.17.

40. This definition does not reach unpopular statements on matters of public concern that are not directed at any particular student. Instead, the illustrative examples of “major infractions” involve outrageous misconduct such as physically assaulting or dealing drugs to students, misusing university funds, and “*serious* crimes,” such as “murder,” “sexual assault,” and “rape.”

41. More importantly, the Handbook contemplates that tenured faculty can only be suspended for improper *actions*, not unpopular speech. The closest Section II.E.16.1.B.17 comes to including a speech-based infraction is the inclusion of “harassment.”

42. However, the Handbook goes out of its way to specify that punishable “harassment” must be “harassment *of . . . a member of the University community*,” as opposed to unpopular statements that are not spoken to or directed at any particular person. Handbook § II.E.16.1.B.7 (emphasis added).

43. Moreover, the Handbook’s repeated promises to protect “academic freedom” make clear that its limitation of “major infractions” to “action[s]” was intentional and that the phrase does not cover speech that is merely offensive.

C. Penn's Faculty Handbook Promises Fair and Impartial Disciplinary Procedures and the Right to Confront Witnesses.

44. In the “rare event” that a faculty member faces internal discipline, the Handbook requires that such matters “must be handled fairly” and in a manner that “protects the rights of faculty.” Handbook § II.E.16.1.A.

45. As Penn is well aware, such promises of procedural “fairness” “require, at a minimum, ‘rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary’” punishment, as well as “the basic elements of federal procedural fairness.” *Doe v. University of the Sciences*, 961 F.3d 203, 214-15 (3d Cir. 2020) (applying Pennsylvania law).

46. The Handbook specifies procedures when a faculty member is charged with a “major infraction.” “If the charging party believes that a major infraction of University standards has occurred, the charging party shall promptly request that the Chair of the Faculty Senate convene a Hearing Board.” Handbook § II.E.16.4.A-B.

47. Next, “[t]he charging party and the respondent each shall be given the opportunity to move to disqualify for prejudice any potential member of the Hearing Board designated by the Chair of the Faculty Senate.” Handbook § II.E.16.4.A-B.

48. In addition, the Handbook requires that “the charging party shall supply” to the Hearing Board and the respondent “copies of any . . . University documents that are relevant to the respondent’s procedural and substantive rights in this matter.” Handbook § II.E.16.4.D.

49. The Handbook further provides that the respondent “shall receive the cooperation of the University administration in securing the attendance of such witnesses and the production of such documents as may be relevant.” Handbook § II.E.16.4.G.

50. At the hearing, “[t]he charging party has the burden of proving by clear and convincing evidence that there is just cause for imposition of a major sanction against the respondent.” Handbook § II.E.16.4.G.

51. Additionally, “[t]he respondent and the charging party shall have the right to confront any witnesses” against them “and to question [the witnesses] personally or through counsel.” Handbook § II.E.16.4.G.

III. Professor Wax Was One of Penn Law School’s Most Beloved Instructors and Earned Penn’s Highest Teaching Award in 2015.

52. As noted by then-Dean Michael A. Fitts, “news of [Professor Wax’s] decision” to join the faculty of Penn Law School “was received very enthusiastically.” Tenure Appointment Letter at 1.

53. Professor Wax did not disappoint. Once she started her new position, she quickly earned praise for her teaching and dedication to her students and maintained an active presence at Penn from 2001 through 2025, teaching at least one class each academic year (other than the limited times she was on sabbatical).

54. In addition to her teaching responsibilities, Professor Wax committed herself to formally and informally advising both student organizations and individual students at Penn Law School. While students of all backgrounds and political affiliations sought and received Professor Wax’s teaching and mentorship, students who leaned more conservative or libertarian frequently took Professor Wax’s classes and solicited her guidance because Professor Wax was, and still is, one of only a few self-identified conservative faculty members at Penn Law School. Indeed, as noted by former students who testified at Professor Wax’s 2023 disciplinary hearing, Professor Wax “played a pastoral role when it came to conservative students at the University of Pennsylvania,” where “there aren’t that many outwardly conservative professors.”

55. Between 2001 and 2017, Professor Wax had no disciplinary record at Penn. While a few students complained about Professor Wax in 2005 and 2010 to then-Dean of Students Gary Clinton, Dean Clinton did not deem those complaints sufficiently serious to warrant discipline, reprimand, or even any kind of memorialization or notice to Professor Wax.

56. To the contrary, in 2015, Professor Wax was officially recognized with Penn's highest teaching award, the Lindback Award. This is a University-wide award that is rarely awarded to law professors.⁴

57. To receive the Lindback Award, a candidate must first withstand a rigorous review process by various University officials, as well as interviews with many students, colleagues, and alumni. In Professor Wax's case, that process was led by Dean Clinton, who was responsible for soliciting feedback about Professor Wax from students and faculty and for recommending candidates for the Lindback Award to Dean Fitts.

58. In January of 2014, upon the strong recommendation of Dean Clinton, Dean Fitts nominated Professor Wax for the Lindback Award "with great enthusiasm" in a letter to Penn's Committee on Distinguished Teaching.

59. In that letter, Dean Fitts lauded Professor Wax as an individual, faculty member, scholar, and educator: "Over the years as Dean, I have nominated many outstanding members of the Law School faculty for the Lindback Award, but none a more committed teacher than Amy. Among colleagues who are exceptional, dedicated teachers, Amy stands out as a star. Her pedagogy, rooted in the rigors of the Socratic Method, consistently inspires students to think about

⁴ Between 2000 and 2022 (the most current year included on the Penn University Archives page for the Lindback Award), only four law professors other than Professor Wax received the Lindback Award. *See Awards and Honors: Lindback Award for Distinguished Teaching*, UNIV. ARCHIVES & RECS. CTR., <https://archives.upenn.edu/exhibits/penn-people/notables/awards/lindback/> (last visited Oct. 7, 2025).

legal problems thoroughly, critically, and with assurance. She sets the bar for her students uniformly high, so that they find within themselves abilities they scarcely knew were there.”

60. Accompanying Dean Fitts’s letter was a collection of other supportive letters from Professor Wax’s colleagues, as well as a “dossier” of letters from Professor Wax’s former students.

61. As Dean Fitts observed, the letters in the dossier “attest [that] the deep understanding of the law and intellectual confidence nurtured in her classroom stay with students a lifetime. Former students many years removed from law school advise entering students not to miss the chance of studying civil procedure, remedies, or Supreme Court practice with Amy.”

62. Notably, Dean Fitts recognized that Professor Wax’s ability to challenge assumptions about the law, policy, and society in general is not a negative quality, but rather an essential feature of her academic expertise: “One final observation. Like many academics, Amy has very passionate and distinct views on the substantive field in which she teaches and writes. Many people agree with these underlying positions; many do not. Nonetheless, despite these differences, I know of no one more universally respected and admired by students and colleagues who disagree with some of her views. *She is simply a superb teacher.*”

63. Indeed, the strength of Professor Wax’s professional reputation was so apparent that even the Hearing Board that recommended Professor Wax’s sanctions admitted that Professor Wax “clearly demonstrated teaching excellence in the past.” Exhibit 4, at 5 [hereinafter, “Hearing Board Report”].

IV. Penn Begins to Turn on Professor Wax in the Face of Public Backlash Against Her Controversial Extramural Statements.

64. In 2017, Professor Wax co-wrote an op-ed for the *Philadelphia Inquirer* entitled “Paying the Price for Breakdown of the Country’s Bourgeois Culture.”⁵

65. In that essay, Professor Wax and her co-author, Larry Alexander, lamented the breakdown of the cultural “script” that “we all were supposed to follow: Get married before you have children and strive to stay married for their sake. Get the education you need for gainful employment, work hard, and avoid idleness. Go the extra mile for your employer or client. Be a patriot, ready to serve the country. Be neighborly, civic-minded, and charitable. Avoid coarse language in public. Be respectful of authority. Eschew substance abuse and crime.”

66. The op-ed thus expressed a fairly mainstream conservative position—that these “basic cultural precepts,” which “reigned from the late 1940s to the mid-1960s,” were largely good for society. While Professors Wax and Alexander acknowledged that this “period of bourgeois cultural hegemony” was far from perfect—“[t]here was racial discrimination, limited sex roles, and pockets of anti-Semitism”—they argued that the decline of this value system was destructive and has “seriously impeded the progress of disadvantaged groups.”

67. But one particular line from the op-ed generated significant controversy: “All cultures are not equal.”

68. The line was followed by the caveat that “[o]r at least they are not equal in preparing people to be productive in an advanced economy.” The op-ed then listed a number of concerning cultural trends, starting with “the single-parent, antisocial habits” of “working-class whites,” and

⁵ Amy Wax & Larry Alexander, *Paying the Price for Breakdown of the Country’s Bourgeois Culture*, PHILA. INQUIRER (Aug. 9, 2017), <https://www.inquirer.com/philly/opinion/commentary/paying-the-price-for-breakdown-of-the-countrys-bourgeois-culture-20170809.html>.

then including “the anti-‘acting white’ rap culture of inner-city blacks” and “the anti-assimilation ideas gaining ground among some Hispanic immigrants.”

69. The op-ed led to a firestorm of criticism, including calls for Penn to fire Professor Wax. Many of these calls for punishment were directed to then-Dean Ted Ruger, who received dozens of calls from alumni, faculty, staff, and students demanding Professor Wax’s termination.

70. Dean Ruger, however, resisted these demands. Even as he wrote a guest column for the *Daily Pennsylvanian* in which he “reject[ed] emphatically any claim that a single cultural tradition is better than all others,” Dean Ruger ultimately refused to sanction Professor Wax (or even reprimand her), saying both publicly and privately that her op-ed was protected by the principles of academic freedom.⁶

71. The next controversy involving Professor Wax occurred in 2018.

72. On September 10, 2017, Professor Wax appeared on a podcast hosted by Professor Glenn Loury, a well-known economist and scholar at Brown University who regularly discusses issues related to race, education, immigration, and politics.

73. Professors Loury and Wax discussed affirmative action during the podcast episode, including the topic of “mismatch theory,” which is a much-debated academic theory that posits that affirmative action actually harms its intended beneficiaries by placing them in academic environments for which they may not be best matched.⁷

⁶ Ted Ruger, *On Charlottesville, Free Speech and Diversity*, DAILY PENNSYLVANIAN (Aug. 14, 2017), <https://www.thedp.com/article/2017/08/guest-column-dean-ted-ruger-penn-law-charlottesville-amy-wax>; *see also* [REDACTED]

⁷ *See generally* Robert VerBruggen, *Does Affirmative Action Lead to “Mismatch”? A Review of the Evidence*, MANHATTAN INST. (July 7, 2022), <https://manhattan.institute/article/does-affirmative-action-lead-to-mismatch#:~:text=a%20poor%20fit.->

74. During this discussion, Professor Wax suggested that Penn Law School’s own race-conscious admission policies may be causing racial disparities in grades, observing that she could not recall seeing a Black student graduate in the top quarter of the Penn Law School class, and rarely in the top half.

75. In response, Professor Loury (who is himself Black) shared a similar observation regarding the faculty hiring process at Harvard, where he once taught.

76. At first, the interview was published online to little controversy. In March of 2018, however, a video of the podcast caught the attention of Penn students and alumni. What followed was another torrent of calls to fire Professor Wax. Penn alumni even directed a petition at Dean Ruger, demanding that he punish her for her statement.⁸

77. In response, Dean Ruger announced that Professor Wax would no longer be permitted to teach mandatory classes for first year law students.⁹ See Exhibit 5 [hereinafter, “Ruger 2018 Announcement”].

78. Dean Ruger also stated, more than once, that Professor Wax’s comments about racial disparities in grading were “false.” Ruger’s assertion that Wax spoke falsely and inaccurately was never supported or substantiated by any evidence, and neither Ruger nor Penn

,The%20Mismatch%20Theory,could%20have%20a%20demoralizing%20effect.; Ian Ayres & Richard Brooks, *Does Affirmative Action Reduce the Number of Black Lawyers?*, 57 STANFORD L. REV. 1807 (2005); Doug Williams, *Do Racial Preferences Affect Minority Learning in Law Schools?*, 10 J. EMPIRICAL LEGAL STUDIES 171 (2013).

⁸ See Madeleine Ngo, *Alums Petition U. to Address Amy Wax’s Claims that Black Students Never Graduate top of Penn Law*, DAILY PENNSYLVANIAN (Mar. 11, 2018), <https://www.thedp.com/article/2018/03/amy-wax-petition-penn-law-students-black-african-american-upenn-philadelphia>.

⁹ See Madeleine Lamon, *After “Disparaging” Comments on Black Students, Amy Wax Barred from Teaching First-Year Course*, DAILY PENNSYLVANIAN (Mar. 13, 2018), <https://www.thedp.com/article/2018/03/penn-law-dean-ted-ruger-professor-amy-wax-removed-racial-conservative-graduate-upenn-philadelphia>.

Law ever brought forward evidence about student performance to demonstrate that Wax's statements were false. Thus, Wax stands accused without any proof whatsoever of making false statements, to the detriment of her reputation, which accusation almost certainly contributed to the decision to sanction her.

79. Still, Dean Ruger's announcement went out of its way to note that his decision was a "curricular decision," that "entail[ed] no sanction or diminution of Professor Wax's status on the faculty, which remain[ed] secure." Dean Ruger reaffirmed Professor Wax's right to take controversial positions, noting that, "[a]s a scholar she is free to advocate her views, no matter how dramatically those views diverge from our institutional ethos and our considered practices." Ruger 2018 Announcement at 1-2.

80. Three years later, in April of 2021, a group of eight Penn Law School alumni sent Dean Ruger a written complaint regarding Professor Wax for a series of statements she allegedly made both in and out of the classroom through her time at Penn, mostly between 2007 and 2010.

81. The complaint demanded that Penn impose major sanctions against Professor Wax and terminate her employment, or, in the alternative, revoke her tenure.

82. In response to this, Dean Ruger and Wendy White (Penn's General Counsel) commissioned Daniel Rodriguez, a former Northwestern Law School dean, to investigate the allegations against Professor Wax in June of 2021.

83. Dean Rodriguez's August 3, 2021 final report (the "Rodriguez Report"), recounted Dean Rodriguez's interviews with 26 former students and concluded that there "was certainly no evidence . . . to suggest that [Professor Wax] graded minority students differently, denied them access to professional opportunities over which she had some modicum of control, or singled them out for special ridicule or disparagement."

84. Instead, Dean Rodriguez wrote: “At various junctures of this report, I have stressed the point that no alum has offered credible evidence that Prof. Wax has discriminated against certain students, with respect to their identity as students of color, immigrants, or LGBTQ status, or on any other basis. There have been no verifiable allegations of discrimination in grading, nor in her assistance or hindrance to any students in professional opportunities.”

85. “Rather,” Dean Rodriguez explained, “I came away with the impression that it was the content and shape of her very controversial views on matters of race, culture, remedial justice, and related matters, and her fearlessness in communicating these views as an influential scholar and public intellectual that was deeply troubling to many alums.”

86. After receiving the Rodriguez Report, Dean Ruger invoked the Handbook provision governing preliminary procedures for “Suspension or Termination for Just Cause” and convened a committee of tenured faculty members to consult with him on whether to file formal charges against Professor Wax. Handbook § II.E.16.2.A.

87. For this consultative committee Dean Ruger chose, among two others, Professor Sigal Ben-Porath, a Penn faculty member who has written two books on campus speech and academic freedom. Dean Ruger chose Professor Ben-Porath because he was familiar with and respected her opinions on these topics. Indeed, Professor Ben-Porath thanked Dean Ruger in the acknowledgments section of one of her books on these topics for being someone who “always push[es]” her “to clarify and improve [her] ideas and to check if they work in practice.”¹⁰

88. As part of her consultative committee work, Professor Ben-Porath had at least one, thirty-minute phone call with Dean Ruger to discuss the allegations against Professor Wax that

¹⁰ SIGAL BEN-PORATH, CANCEL WARS: HOW UNIVERSITIES CAN FOSTER FREE SPEECH, PROMOTE INCLUSION, AND RENEW DEMOCRACY 158 (Kindle edition 2023).

Dean Rodriguez investigated, and whether Dean Ruger should pursue disciplinary actions against Professor Wax. During this call, Professor Ben-Porath discussed the strength and weaknesses of various potential claims that Dean Ruger could bring against Professor Wax, and ultimately advised him that she did not think that the information in the Rodriguez Report was sufficient, by itself, for a major sanctions charge. Dean Ruger did not take any action against Professor Wax at that time.

89. In December of 2021, Professor Wax appeared again on Professor Loury’s podcast, where they again discussed the merits and pitfalls of policies related to education and diversity, equity, and inclusion initiatives.

90. This time, Professors Loury and Wax also discussed immigration policy, with Professor Loury taking the position that immigration from Asian countries in particular was necessary to increase the number of high-skilled workers and was generally beneficial to the United States.

91. Professor Wax disputed the notion that Americans are unable to compete on the world stage without mass immigration and argued that shared cultural values are important for creating a cohesive national identity. In her view, “elite” members of Asian countries often do not share American cultural values such as individualism and instead tend to be “more conformist.”

92. To illustrate this point, she rhetorically asked: “Does the spirit of liberty beat in their breast, Glenn?” Professor Wax immediately added that many “legacy American” elites also lack the “spirit of liberty” due to the ideology of “wokeness.”

93. Subsequently, in a written response on Professor Loury’s blog to commentary on the interview, Professor Wax argued that immigrants from Asian countries disproportionately bring political views that favor more government intervention and control, which results in pushing

American politics and government to the left. As a result, in Professor Wax's view, "as long as most Asians support Democrats and help to advance their positions, I think the United States is better off with fewer Asians and less Asian immigration."

94. These comments resulted in a fresh wave of calls for Professor Wax to be sanctioned. This time, Dean Ruger was unable to resist the intense pressure to take action against Professor Wax.

V. Dean Ruger Brings Charges Against Professor Wax Based on Her Public Statements.

95. Under the Handbook, the Dean of a professor's school acts as the "charging party" in disciplinary matters based on the Dean's decision to allege that a "major infraction" has been committed. The Dean then acts as the prosecutor of a "major infraction" case before a hearing board. Handbook § II.E.16.1.B.1.

96. Accordingly, on January 18, 2022, Dean Ruger announced that he would seek major sanctions against Professor Wax.¹¹ In his announcement, Dean Ruger explicitly stated that his decision was based on "public statements" that Professor Wax made "[s]ince at least 2017"—a reference to the op-ed she co-wrote with Larry Alexander—"and most recently again two weeks ago"—a reference to Professor Wax's comments to Glenn Loury about immigration from Asian countries.

97. Dean Ruger charged that such statements were derogatory towards "the characteristics, attitudes, and abilities of a majority of those who study, teach, and work here." Moreover, in a reference to Professor Wax's comments about Black student performance, he

¹¹ See Ted Ruger, *Statement From Dean Ted Ruger Regarding Professor Amy Wax*, UNIV. OF PENN. ALMANAC (Jan. 18, 2022), <https://almanac.upenn.edu/articles/statement-from-dean-ted-ruger-regarding-professor-amy-wax>.

alleged that, “[i]n some of those instances, she has exploited her faculty access to confidential information about students in ostensible support of her inaccurate statements.”

98. Dean Ruger’s announcement did not reference any statements that Professor Wax allegedly made directly to students.

99. Around the same time, Dean Ruger hired the law firm Quinn Emanuel to investigate Professor Wax and represent Dean Ruger at Professor Wax’s disciplinary hearing. Quinn Emanuel interviewed dozens of Professor Wax’s former students, and collected and reviewed an unknown number of documents, in an effort to build a case against Professor Wax.

100. Following this announcement, on March 2, 2022, Dean Ruger sent a document to Professor Wax that provided her “with a written description of the charges [he] intend[ed] to file with the Faculty Senate.” Exhibit 6, at 1 [hereinafter, “Written Description of Charges”]. In this document, Dean Ruger recounted a variety of statements that Professor Wax made in public settings—including on Glenn Loury’s podcast and in the *Philadelphia Inquirer* op-ed, as discussed above.

101. On June 23, 2022, Dean Ruger sent Professor Vivian Gadsden, the Faculty Senate Chair, an official request to “convene a Hearing Board to review whether Professor Amy Wax’s conduct constitutes a major infraction of University Standards under the Faculty Handbook.” Exhibit 7, at 1 [hereinafter, “Request to Form a Hearing Board”].

102. In that document, Dean Ruger charged that Professor Wax had engaged in “public commentary espousing derogatory and hateful stereotypes,” citing several statements Professor Wax made on talk shows and podcasts and wrote in blogs and op-eds. Request to Form a Hearing Board at 7-8.

103. He also cited statements that Professor Wax was alleged to have made directly to students and colleagues, including some that Dean Rodriguez evaluated in his report, and some allegations that former students allegedly made to Quinn Emanuel attorneys.

VI. Professor Wax Is Subjected to Disciplinary Proceedings That Are Flawed in Both Procedure and Substance.

A. Professor Ben-Porath Is Appointed Hearing Board Co-Chair, and Fails to Recuse Herself or Even Disclose That She Previously Advised Dean Ruger on Bringing Charges Against Professor Wax.

104. The Handbook requires the Chair of the Faculty Senate to convene a hearing board when major infraction charges are brought. Pursuant to this requirement, Professor Gadsden began assembling the hearing board for Professor Wax’s disciplinary proceedings (the “Hearing Board”) in June of 2022. Professor Gadsden did not select the Hearing Board members at random; rather, she hand-selected the professors she thought best for the assignment.

105. Professor Gadsden chose two of the five (40%) of the Hearing Board members from her own department, the Graduate School of Education, even though it is just one of Penn’s dozens of academic departments.

106. In particular, Professor Gadsden chose Professor Ben-Porath to serve on the Hearing Board—presumably for the same reason that Dean Ruger chose her to advise him on what charges to bring against Professor Wax, i.e., because Professor Ben-Porath has published two books on academic freedom and campus speech and her views on these matters are well-known.

107. Because the Graduate School of Education is widely recognized to favor the worldviews and beliefs that Professor Wax was being punished for criticizing, Professor Wax called foul and requested the production of relevant evidence that she could use to file a recusal motion.

108. In particular, Professor Wax demanded information about whether any Hearing Board members attended a presentation that Professor Anita Allen gave to the Faculty Senate (the body from which the Hearing Board is drawn) that argued for Professor Wax to be terminated. In particular, Professor Allen argued that *speech* that is “inconsistent with the core values of the university in equity, inclusion and diversity” is actually *conduct* that can be punished consistent with her understanding of academic freedom principles.

109. In a letter dated July 29, 2022, Penn’s Associate General Counsel, Sean Burke, denied Professor Wax’s request for recusal-related information, explaining that, as Penn interpreted the Handbook, Professor Wax did not have the right to “discovery in support of a potential motion for disqualification of proposed Hearing Board members.”

110. As such, neither Penn, nor Professor Ben-Porath, nor Dean Ruger ever disclosed to Professor Wax or her counsel that Professor Ben-Porath served on Dean Ruger’s consultative committee and advised Dean Ruger on whether to bring charges against Professor Wax, on which charges Professor Ben Porath considered to be strong, and which charges she considered to be weak. Nor, for that matter, would Penn disclose to Professor Wax or her counsel whether any members of the Hearing Board attended Professor Allen’s *ex parte* presentation on Wax’s case to the jury pool, i.e., the Faculty Senate.

111. Professor Ben-Porath did, however, disclose her role on the consultative committee to the rest of the Hearing Board. Not only did the other Hearing Board members—which included a law professor—vote against recusing Professor Ben-Porath, they later elected her to serve as the Hearing Board Co-Chair.

112. No one ever disclosed any of this to Professor Wax or her counsel.

113. These actions created an obvious conflict of interest, as Professor Ben-Porath had served on both the prosecution team and as a judge and juror in the same matter, and was therefore “a judge in her own case.” This conflict violated Professor Wax’s contractual rights to a fair process, to all documents relevant to her procedural rights, and to a meaningful opportunity to move to disqualify Hearing Board members, which she did not have because the conflict was hidden from her.

B. Penn’s Case Before the Hearing Board Is Based Almost Entirely on Professor Wax’s Protected Extramural Statements.

114. In May of 2023, the Hearing Board convened for three days to hear testimony and argument on Dean Ruger’s charges against Professor Wax (the “Disciplinary Hearing”). Dean Ruger, as charging party, was represented by Quinn Emanuel, who spoke on his behalf and was subject to his direction and control.

115. At the Disciplinary Hearing, Quinn Emanuel relied heavily on Professor Wax’s public, extramural statements and introduced several of them into evidence, including the 2017 op-ed and transcripts of Professor Wax’s podcast appearances. *See, e.g.*, Day 2 Tr., 15:19-24 (introducing Professor Wax’s *Philadelphia Inquirer* op-ed as an exhibit); *id.* at 25:21-24 (introducing a transcript of Professor Wax’s interview with Professor Loury as an exhibit).

116. Quinn Emanuel also offered witness testimony regarding other public statements that Professor Wax allegedly made that were protected by the academic freedom provisions of the Faculty Handbook. For example, Quinn Emanuel offered testimony from Professor Tobias Wolff regarding remarks that he alleged Professor Wax made during a panel about same-sex marriage in 2007 that he found offensive. *See* Day 1 Tr., 124:10-128:10.

117. Although, as noted above, many of these alleged and documented public statements were previously (and correctly) defended by Dean Ruger as within Professor Wax’s academic

freedom rights, at no point during the Disciplinary Hearing or subsequent deliberations did the Hearing Board co-chairs or anyone else instruct the Hearing Board that it should only consider Professor Wax's public statements for a limited purpose.

118. To the contrary, Quinn Emanuel made it abundantly clear that Penn wanted Professor Wax punished for her public statements. In her closing argument, the Quinn Emanuel attorney representing Dean Ruger told the Hearing Board that "[w]e are arguing that there's certain expression . . . that is so discredited, so far outside of the mainstream, so outside of acceptable discourse . . . that it should not be protected, should not be tolerated, and it should be the subject of major sanctions." Day 3 Tr., 144:6-13.

119. Dean Ruger's attorney then urged the Hearing Board "to have the wherewithal and the fortitude to make a very clear statement to this community, to all of us, that that kind of bigoted, racist, homophobic, sexist and xenophobic ideology is not who we are. It's not who we want to be, and we will not tolerate it." Day 3 Tr., 149:21-150:5.

120. Quinn Emanuel and Dean Ruger pursued this strategy over the advice of their own expert witness, [REDACTED] whom Penn chose to educate the Hearing Board on the meaning of Penn's academic freedom commitments and their application to Professor Wax's case.

121. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

122. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

123. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

124. Yet, as noted above, the Hearing Board did not follow [REDACTED] advice and limit its consideration of Professor Wax's extramural statements. Indeed, nothing in the Hearing Board Report mentions any such limitation and, [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

125. In so doing, the Hearing Board not only disregarded Dean Ruger's own expert witness, but also the expert witnesses offered by Professor Wax, Professors Keith E. Whittington and Michael W. McConnell.

126. Professors Whittington and McConnell both have extensive experience on the topics of academic freedom: Professor Whittington is the founding chair of the Academic Freedom Alliance, and Professor McConnell is a former Circuit Judge on the U.S. Court of Appeals for the Tenth Circuit. Both reached similar conclusions to [REDACTED], noting that longstanding principles of academic freedom and professional tenure hold that—if they are to be considered at all—a professor's public remarks or scholarly activities should not by themselves be the basis for disciplinary sanctions.

127. Yet instead of relying on even their own expert, in her closing argument, the Quinn Emanuel attorney representing Dean Ruger directed the Hearing Board to rely on the slides created by Professor Allen for her anti-Professor Wax presentation to the Faculty Senate. Day 3 Tr., 145:1-3. Professor Allen did not testify as an expert, however—only as a Penn employee and fact witness.

128. Professor Allen’s slides, which were provided to the Hearing Board as Exhibit 53, were entitled: “The Limits of Free Speech, Conduct and Academic Freedom in a System of Faculty Tenure, Equity, Diversity and Inclusion: A Proposed Framework.” As the presentation’s title suggested, its thesis is that a tenured professor could be fired, consistent with academic freedom principles, for making statements contrary to Penn’s core values of diversity, equity, and inclusion. For instance, the slides state as follows:

- a. “In my opinion” a “good case for termination” can be made if a professor’s statements pose a “significant hazard to the community or its core values, such as equity, inclusion and diversity.” Hearing Board Exhibit 53, at 12.
- b. A professor’s speech can be sanctioned if “[t]he faculty member’s expressed views and conduct—and controversies surrounding them—have a negative impact on recruitment and retention of diverse faculty, students and staff.” *Id.* at 13.
- c. “In view of the importance of equity, inclusion and diversity University leaders are entitled to draw the inference that a faculty member’s words and conduct are inconsistent with the core values of the university in equity, inclusion and diversity based on clear and convincing evidence and reasonable interpretations of a faculty member’s statements and publications.” *Id.* at 15.

129. In addition, Professor Allen’s slides repeatedly characterized statements that conflict with Penn’s core principles of diversity, equity, and inclusion as sanctionable “conduct,” rather than protected “speech,” a rhetorical move that the Hearing Board would later copy.

130. Notably, Professor Allen was clear that her slides were simply “my opinion.” *Id.* at 12. Professor Allen did not purport to base her theory on any longstanding or traditional understanding of academic freedom principles. Nor did Professor Allen attempt to show how an exception for statements that offend Penn’s “core values, such as equity, inclusion and diversity” could be read into the academic freedom guarantees that Penn adopted in 1953 as part of the Statutes of the Trustees and subsequently codified in the Faculty Handbook.

131. To the contrary, as Judge McConnell observed, traditional principles of academic freedom do not provide for an “exception for statements that make students or colleagues feel uncomfortable or even ‘unwelcome,’” as “[t]he purpose of education is not to reassure students of their worthiness or identity but to challenge them with information, ideas, and perspectives that may be unfamiliar or disquieting.”

132. In his view, this is true in “the discipline of law more than any other, [where] important topics of research, teaching, litigation, and contention often touch on sensitive aspects of identity—including religious freedom, race and affirmative action, immigration law, criminal justice, disability law, sexuality, abortion rights, divorce and child-rearing, sexual assault, and many others.” “Legitimate discussion of any of these issues may be uncomfortable for people with particular experiences and backgrounds,” but “[t]hat is no reason for universities to police or limit the candid and robust exchange of opinions.”

C. The Hearing Board Recommends Sanctions Against Professor Wax Based Explicitly on Public, Extramural Statements That Are Protected by the Faculty Handbook’s Academic Freedom Provisions.

133. On June 21, 2023, the Hearing Board recommended Penn impose “major sanctions” against Professor Wax, consisting of a one-year suspension at half pay; the loss of her named chair, “to reflect Professor Wax’s unsuitability for University and/or School honors”; the loss of summer pay in perpetuity; a public reprimand; and a “requirement to note in her public appearances that she is not speaking for or as [a] member of the Penn Carey Law School or the University of Pennsylvania.” Hearing Board Report at 4.

134. While the Hearing Board concluded that Professor Wax engaged in “flagrant unprofessional conduct,” Hearing Board Report at 1, the report made clear that said “conduct” consisted almost entirely of Professor Wax’s public, extramural statements on controversial issues. Indeed, while the Hearing Board Report itself contains only conclusory charges, it attached three appendices containing the statements for which Professor Wax was sanctioned. Hearing Board Report at 6-8.

135. The Hearing Board Report did not provide citations for any of the statements in any of the appendices, besides a single footnote stating that “Quotations are referenced in the Charging Party’s request to form this Hearing Board.” Hearing Board Report at 6 n.23. That is, all the alleged statements for which Professor Wax was sanctioned were taken from the charging document—i.e., Dean Ruger’s *allegations*—not from the actual *testimony* or documentary *evidence* submitted to the Hearing Board.

136. Appendix 1 lists seventeen alleged statements, which it calls “[e]xamples of inequitably targeted disrespect.” Each of the statements, if they were made at all, occurred in a public setting (e.g., on podcasts, talk shows, blogs, or in op-eds). *See* Hearing Board Report at 6

n.23. As noted above, Penn entered into the record transcripts of some of these public statements. Others, however, do not appear to have any support in the record. Still others were based on second-hand reporting, such as a *New York Times* article about what Professor Wax allegedly said in an interview conducted by a different media outlet.

137. Appendix 1 contains a list of extramural statements that are protected by academic freedom principles including, but not limited to, the following:

138. **The 2017 *Philadelphia Inquirer* op-ed.** The Hearing Board relied on Professor Wax and Professor Alexander’s 2017 op-ed in *the Philadelphia Inquirer*, which the Hearing Board selectively edited as stating that “[s]ome cultures are ‘not equal in preparing people to be productive in an advanced economy,’ including . . . ‘the anti-“acting white” rap culture of inner-city blacks,’ and ‘the anti-assimilation ideas gaining ground among some Hispanic immigrants.’” Hearing Board Report, Appendix 1, Statement 17.

139. In context, however, the op-ed championed a mainstream conservative position—that the 1950s cultural expectations, while constrictive, were largely good for society, and that their replacement in the 1960s by an “antiauthoritarian” culture of “sex, drugs, and rock-and-roll” was destructive to society as a whole, including to “disadvantaged groups.”

140. Indeed, Dean Ruger himself publicly stated at the time that the op-ed was protected by academic freedom principles, *see supra* Part IV, [REDACTED]

141. While less clear in her answers, former Penn President Liz Magill similarly indicated that such opinion pieces on matters of public concern would generally fall within academic freedom protections.

142. Yet Dean Ruger directly referenced the op-ed in his statement announcing his intent to seek sanctions against Professor Wax and in his Request to Form a Hearing Board as an example

of “bigoted statements against women, Black people, Asian people, immigrants, and members of the LGBTQ community.” Request to Form a Hearing Board at 7; *see also supra* Part V.

143. Likewise, the Hearing Board specifically referenced the op-ed in the body of its report, citing it as the *sole support* for the charge that Professor Wax made “unfounded *declarative* claims in some of her courses, campus events, and elsewhere as a representative of the University of Pennsylvania.” Hearing Board Report at 2 & n.6 (emphasis in original).

144. President Magill, for her part, would later adopt the Hearing Board Report in its entirety. *See infra* Part VI.G.

145. **Statement about “big city governments.”** Another extramural comment that the Hearing Board specifically referenced in its report was Professor Wax’s assertion that “a lot of local governments, big city governments . . . are not in the hands of what we would call legacy Americans. They’re not in traditional hands,” and are instead being run by “corrupt grifters,” but that “nobody feels like they can criticize these big city governments when, for example, they’re in black hands, that if they’re not well run, they can’t say anything negative.” Hearing Board Report, Appendix 1, Statement 15.

146. The Hearing Board cited this statement as the sole support for its claim that Professor Wax “draw[s] sweeping and unreliable conclusions.” Hearing Board Report at 2 & n.8.

147. This is a classic example of an extramural statement; it was made during a podcast interview, during which Professor Wax and the host were expressing and debating their political views.¹²

¹² The podcast in question is called *Subversive with Alex Kaschuta*, “which seeks to collect some of the most challenging conversations for our current order, be it on genetics, immigration, crime, sexuality, family, or any other of the many third rails that tolerance as our cardinal virtue has left in its wake.” Alex Kaschuta, *About*, GARDEN OF EARTHLY DELIGHTS, <https://www.alexkaschuta.com/about> (last visited Oct. 18, 2025).

148. Moreover, that city governments have corruption problems is almost unarguable, and is a topic of regular academic and journalistic inquiry.¹³

149. It is also true that many more cities today are run by first or second-generation Americans than has “traditionally” been the case.¹⁴

150. What Penn seems to have taken issue with is the central point of Professor Wax’s comment—that *because* some local governments are run by minorities, people are afraid to criticize those governments, even where criticism is warranted.

151. Putting aside the irony of Penn sanctioning Professor Wax for making a claim about people being afraid to speak their minds, any reasonable reading of “the protections of academic freedom” that Penn promised to its professors would protect an extramural statement regarding the interplay between public policy and political correctness.

152. **Statement about causes of racial disparities in the United States.** Another extramural statement upon which the Hearing Board explicitly based its sanctions was Professor Wax’s statement that “[t]he basic idea is that, at this juncture in African-American history shall we say, in the United States, the main problems that are holding blacks back are really problems of behavior and not of overt racism, discrimination, really what society is doing to us, but the choices people are making. And I identify the main areas of difficulty as educational under-

¹³ See, e.g., David Schleicher, *Big Cities, Bigger Integrity Problems*, VITAL CITY (Feb. 12, 2025), <https://www.vitalcitynyc.org/articles/big-cities-bigger-integrity-problems#:~:text=The%20absence%20of%20genuine%20competition,the%20form%20of%20petty%20corruption> (discussing this issue in light of the recent corruption scandal surrounding New York City Mayor Eric Adams).

¹⁴ See generally Shervin Ghaem-Maghami & Vincent Z. Kuuire, *Immigrants Serving in Local Government: A Systematic Review and Meta-Analysis of Factors Affecting Candidacy and Election*, 58 URB. AFFS. REV. 1719 (2021).

achievement, high crime rates and family breakdown.” Hearing Board Report, Appendix 1, Statement 4.

153. Notably, the Hearing Board Report does not identify the source of this statement. Nor does this statement appear in Dean Ruger’s Request to Form a Hearing Board. Nor does there appear to have been any evidence of this statement being put before the Hearing Board.

154. This statement does appear to reflect the thesis of a book that Professor Wax published in 2009, entitled *Race, Wrongs, and Remedies: Group Justice in the 21st Century*, which argued that the lingering effects of past racial discrimination cannot be remedied by government intervention, but only by focusing on cultural change and individual responsibility.

155. Presumably, Penn has been aware of Professor Wax’s book since its publication, as she unapologetically promoted it at the time. Yet Penn never indicated that it believed the message of her book violated Penn’s policies.

156. As such, even if Professor Wax made these statements, there is no doubt that they would be protected by academic freedom.

157. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

158. **Statements on Asian immigration.** The events that most directly led Dean Ruger to move to sanction Professor Wax were extramural comments she made in an interview with Glenn Loury, a renowned academic, on the topic of immigration and American culture. *See supra* Part IV.

159. As Professor Loury summarized the debate in the accompanying description on his website, the main question was, “Will Asian Immigration Change American Culture?”¹⁵

160. Professor Loury explained that he sees “mass immigration” from Asia as “all to the good,” but that “others, like my guest Amy Wax, have their doubts. Amy doesn’t deny these immigrants are doing well at the elite levels of society, but she questions whether they’re committed to American values like liberty and individuality. She sees them as perhaps inherently susceptible to the excesses of the woke politics that we both abhor.”

161. Professor Loury then noted that “I don’t exactly agree with Amy about that,” but “her willingness (even eagerness!) to state her position as forthrightly as possible makes her a great guest.”

162. During the interview, Professor Wax argued, as she long has, that American immigration “policy should be geared much more to cultural compatibility” and should “face up to the fact that there’s a Western world and then there’s a non-Western world . . . in which many of our values are not shared,” making people from non-Western countries, on the whole, “harder to assimilate.”¹⁶

163. Professor Loury pressed Professor Wax, arguing that Asian immigrants have been very successful in America, and asked Professor Wax, “[w]hat would be wrong with having a lot of Chinese or of Indian and or Korean engineers, physicians, computer scientists, and whatnot running around here, creating value, enlivening the society? I mean, I don’t see how we lose from that. How do we lose from that?”

¹⁵ Glenn Loury, *Will Asian Immigration Change American Culture?*, GLENN SHOW (Dec. 21, 2021), <https://glennloury.substack.com/p/will-asian-immigration-change-american>.

¹⁶ Glenn Loury & Amy Wax, *The Glenn Show: Contesting American Identity*, YOUTUBE (Dec. 24, 2021), <https://www.youtube.com/watch?v=h1vQFMxPk54>.

164. Professor Wax responded by asking Professor Loury, “Does the spirit of liberty beat in their breast, Glenn?”

165. This comment, without context, was included in the Hearing Board’s report as one of the extramural statements for which she was punished. *See* Hearing Board Report, Appendix 1, Statement 9. But Professor Wax immediately noted that one could ask the same question of “the white legacy population.”

166. She then explained that, by “spirit of liberty,” she is referring to the distinctly American ethos that is “mistrustful of centralized concentrations of authority,” as opposed to the dominant cultural and political views in many Asian countries, which “tend to be more conformist.”

167. As with Professor Wax’s other statements, the view she expressed regarding the political and cultural values that are common in many Asian countries is widely studied, discussed, and debated in academic circles. For example, a 2011 study by Derek Kenji Iwamoto of the Yale University School of Medicine and William Ming Liu of the University of Iowa published in the *Journal of Counseling Psychology* “investigated the direct and moderating effects of racial identity, ethnic identity, Asian values, and race-related stress on positive psychological well-being among 402 Asian American and Asian international college students,” and noted that “Asian cultural values and beliefs include: collectivism, conformity to norms, deference to authority, emotional self-control, family recognition through achievement, filial piety, humility, hierarchical relationships, and avoidance of shame.”

168. [REDACTED]

[REDACTED]

169. **Professor Wax’s reply to George Lee.** After the interview on Asian immigration was posted, George Lee, an anti-affirmative action activist and founder of the Chinese American Citizens Alliance of Greater New York (CACAGNY), wrote a response to Professor Wax’s positions.

170. Professor Loury published Mr. Lee’s response on his blog and invited Professor Wax to submit her own response.¹⁷ Lee and Wax, who are friends, were highly complimentary towards one another. Lee expressed thanks to Loury for his interview with Professor Wax, which Lee found “thoughtful, courageous, and provocative,” noting that “immigration should not be a s[ac]red cow.” Professor Wax, in turn, expressed “great respect” for Mr. Lee, while arguing that “he is too optimistic about the influence of Asians and Asian immigrants on our polity and culture.”

171. Professor Wax went on to note that immigrants from Asian countries overwhelmingly (and, to Professor Wax, mystifyingly) support liberal policies, concluding that, “[b]ut as long as most Asians support Democrats and help to advance their positions, I think the United States is better off with fewer Asians and less Asian immigration.”

172. The Hearing Board sanctioned Professor Wax based on this last statement. Hearing Report, Appendix 1, Statement 10.

173. As an initial matter, this comment was more disparaging to Democrats than it was to Asians, as it indicated that Professor Wax was judging the desirability of immigrants from certain countries based on their voting patterns, rather than their skin color. As such, this is another

¹⁷ See Glenn Loury, *Amy Wax Redux*, THE GLENN SHOW (Jan. 2, 2022), <https://glennloury.substack.com/p/amy-wax-redux>.

extramural comment expressing political views, which is within the core of academic freedom protections. Indeed, political partisans of all stripes frequently prognosticate about the voting patterns of demographic groups and frequently advocate for immigration policies that benefit their political party.

174. [REDACTED]

175. In any event, arguing for more restrictive immigration policies is protected by academic freedom principles. And Professor Wax was clear in her interview with Professor Loury that she advocated setting immigration policy based on cultural compatibility, not skin color. Although Professor Wax candidly admitted that her policies would have disparate racial impacts, she was clear that she did not intend or favor discrimination in immigration policy on the basis of skin color.

176. Specifically, at the beginning of her interview with Professor Loury, Professor Wax noted that adopting the immigration policy for which she advocates—that is, prioritizing immigration from countries where Western cultural values are widespread—*“unfortunately . . . might result in a shift in the racial profile of people who come in.”* Professor Wax very clearly denied her critics’ charge that “Amy Wax advocates for, you know, excluding people of color from immigration,” but she admitted, candidly, that while she does not advocate for excluding people because of their race, her proposed focus on culture could have a disparate impact on the demographic breakdown of immigrant populations.

177. Indeed, Penn has consistently and deliberately misrepresented Professor Wax’s views on immigration, several times repeating the charge that Wax asserted at a 2019 National Conservatism conference in Washington, D.C., that “America would be better off with more

whites and fewer nonwhites.” Wax said no such thing. Rather, in advocating for more immigration from countries culturally compatible with the U.S., she acknowledged that such a policy, while racially neutral, might lead to admitting fewer minorities, thus giving rise to unfair accusations of a racial motive against proponents of such a policy. Penn’s false accusation against Wax, implying that she harbors a racial motive, rests on conflating race-based disparate treatment with a neutral policy with a racially disparate impact. This is an important legal and practical distinction well-known to her accusers at Penn, which was deliberately ignored in an attempt to tar Wax as a racist.

178. **Statement on racial disparities and affirmative action.** Similarly, the Hearing Board sanctioned Professor Wax for admitting that, because racial groups have “different levels of . . . demonstrated abilities” in terms of standardized test scores, in a world without affirmative action, we will “have to accept, without apology, that blacks are not going to be evenly distributed through all occupations” and “[t]hat’s not due to racism. That’s due to these differences.” Hearing Board Report, Appendix 1, Statement 2.

179. This is not just Professor Wax’s view; proponents of affirmative action, as well as universities themselves, have long insisted that, without affirmative action, racial diversity would decrease in colleges and universities—as well as among elite professions—due to different average scores on conventional academic achievement metrics, such as standardized testing scores, across racial groups. *See, e.g.*, Brief for Respondent at 4, *Students for Fair Admissions v. Harvard*, 600 U.S. 181 (2023) (No. 20-1199) (arguing that “overruling *Bakke*, *Grutter*, and *Fisher* would undermine a critical tool” for ensuring “student-body diversity”)¹⁸; Brief for Brown University et

¹⁸ As reported in a *New York Times* article covering the “precipitous drop-off in the percentage of Black, Hispanic, Native American and Pacific Islander students” admitted to the Massachusetts Institute of Technology (MIT) in the wake of the *Students for Fair Admissions* decision, “the

al. as *Amici Curiae* Supporting Respondent at 3-4, *Students for Fair Admissions*, 600 U.S. 181 (No. 20-1199) (“A decision by this Court forbidding all consideration of race in the admissions process would undercut *Amici*’s vital efforts to attain diverse student bodies.”).¹⁹

180. Professor Wax was thus sanctioned for agreeing with her critics—not that a decrease in racial diversity is desirable or intended—but that it would, at least in the short term, be the result of adopting the colorblind policies for which she advocates.

181. As Professor Wax explained to Professor Loury during their podcast discussion on immigration, “[p]eople need to get their head on straight, that under current conditions, if they’re going to go back to colorblindness, if they’re going to go back to impartiality and the classic meritocracy, we are not going to see proportional outcomes.”

182. This is yet another example of Professor Wax being sanctioned for her intellectual honesty—that is, for candidly admitting the controversial results that are likely to flow from her own ideological positions.

183. **Statement calling students “cowed” and “benighted.”** As yet another example of an extramural statement for which Professor Wax was sanctioned, the Hearing Board relied on

decline in Black enrollment was ‘as depressing as it is predictable’” in light of the data presented during the *Students for Fair Admissions* lawsuits: “The lawsuits argued that Black students, who on average scored lower on standardized tests, like the SAT, were being given a significant boost, while Asian students were being penalized. With the elimination of race-conscious admissions, Black enrollment could be expected to go down, and Asian American student numbers could be expected to go up. . . . [T]he [MIT] numbers were consistent with what [expert witnesses] had predicted at trial would happen if race were taken out of the equation.” Anemona Hartocollis & Stephanie Saul, *At M.I.T., Black and Latino Enrollment Drops Sharply After Affirmative Action Ban*, N.Y. TIMES (Aug. 21, 2024), <https://www.nytimes.com/2024/08/21/us/mit-black-latino-enrollment-affirmative-action.html>.

¹⁹ The full list of universities that joined the *amici* brief taking this position includes Brown University, the California Institute of Technology, Carnegie Mellon University, Columbia University, Cornell University, Dartmouth College, Duke University, Emory University, Johns Hopkins University, Princeton University, the University Of Chicago, Vanderbilt University, Washington University in St. Louis, and Yale University. Penn also joined this brief.

Professor Wax’s statement during an interview with Professor Gad Saad on his podcast, *The Saad Truth*, asserting that modern university students “have become these cowed, benighted sheeple . . . not only are they, you know, thoroughly intimidated, as they should be, but they are ignorant. They know nothing.”²⁰ Hearing Board Report, Appendix 1, Statement 12.

184. This was a major motivating factor for at least one of Professor Wax’s leading critics, Professor Allen, who told Dean Ruger just before he brought major sanction charges against Professor Wax that this comment was the proverbial straw that broke the camel’s back to warrant bringing sanctions against Professor Wax.

185. It is hard to understand how these statements could be sanctionable under any conception of academic freedom; indeed, when asked that question, both Dean Ruger and President Magill conceded that this statement, at least on its own, was protected by academic freedom and not sanctionable.

186. It is undisputed that these statements concerned students in general, not ones of any particular race or ethnicity. *See* Hearing Board Report, Appendix 1, Statement 12 (noting that Professor Wax was “[s]peaking of University Students”).

187. And Professor Wax’s critique, properly understood, was less a criticism of students than it was of university administrators and faculty, who have created an atmosphere of political correctness wherein students do not feel free to speak candidly. After all, she stated students are “thoroughly intimidated, *as they should be*.” (emphasis added).

188. Complaining about the state of current students is certainly a legitimate area of academic discourse. In fact, perhaps the most influential essay on the state of higher education in

²⁰ Gad Saad & Amy Wax, *The Saad Truth: My Chat with Law Professor and Neurologist Dr. Amy Wax*, YOUTUBE (Jan. 24, 2022), <https://www.youtube.com/watch?v=AhyeUd7vOe4>.

the last decade has made the same argument as Professor Wax: i.e., that university students have become unable to handle challenges to their ideas because they have been “coddled” and protected from “hurtful” ideas by well-meaning, but meddlesome university administrators. *See* Greg Lukianoff & Jonathan Haidt, *The Coddling of the American Mind*, ATLANTIC (Sept. 2015).²¹

D. The Hearing Board Relies on Statements Professor Wax Allegedly Made to Students Without Providing an Opportunity to Cross Examine Those Students.

i. *The Hearing Board Relies on Multiple Levels of Hearsay.*

189. In addition to relying on extramural statements that are protected by academic freedom, the Hearing Board relied upon unsupported accusations from students who did not testify, did not submit to cross-examination and, in some cases, did not even submit an affidavit.

190. For example, the Hearing Board repeatedly relied on the allegation that Professor Wax told “a student that black students do not perform as well as white students because they are less well prepared, and that they are less well prepared because of affirmative action.” Hearing Board Report, Appendix 2, Statement 3; *see also* Hearing Board Report n.5, 10, & 16 (all citing Appendix 2, Statement 3 to support findings in the body of the report).

191. While the Hearing Board did not cite a source for this statement, it appears to have come from Dean Ruger’s Request to Form a Hearing Board, in which the statement appears in a list of accusations that former students either “reported to Quinn Emanuel” or Dean Rodriguez. Request to Form a Hearing Board at 4-5.

²¹ <https://www.theatlantic.com/magazine/archive/2015/09/the-coddling-of-the-american-mind/399356/>. In 2018, the authors of this article published a full-length book on the same topic. *See* GREG LUKIANOFF & JONATHAN HAIDT, *THE CODDLING OF THE AMERICAN MIND: HOW GOOD INTENTIONS AND BAD IDEAS ARE SETTING UP A GENERATION FOR FAILURE* (2018).

192. But the former student who supplied this accusation never testified before the Hearing Board or even submitted an affidavit to the Hearing Board. Accordingly, this statement is at least triple hearsay: The former student was alleged to have reported this remark to a Quinn Emanuel attorney and/or Dean Rodriguez; that statement was included in an interview memorandum and, eventually, Quinn Emanuel's report to Dean Ruger (or the Rodriguez Report); and Dean Ruger then reported the statement to the Hearing Board, which adopted it as fact.

193. In addition, because Penn claimed privilege over Quinn Emanuel's report and memoranda of witness interviews, Professor Wax was not even given the time, place, or context of this alleged statement.

194. Another example of an unsupported hearsay statement is the allegation that Professor Wax, "after a series of students with foreign-sounding names introduced themselves," commented "that one student was 'finally, an American' adding, 'it's a good thing, trust me.'" Hearing Board Report, Appendix 3, Statement 2. This statement appeared in the Request to Form a Hearing Board but, again, the student who apparently made the allegation to Quinn Emanuel or Dean Rodriguez did not submit an affidavit or testify before the Hearing Board.

195. Yet another example of an unverified statement that the Hearing Board used to justify sanctioning Professor Wax was the allegation that she "[s]tated in class that people of color needed to stop acting entitled to remedies, to stop getting pregnant, to get better jobs, and to be more focused on reciprocity." Hearing Board Report, Appendix 3, Statement 3. This statement was allegedly made to Dean Rodriguez.

196. While the student who supplied this allegation testified before the Hearing Board, he or she did not repeat that allegation or those words during his or her testimony. Moreover, Dean Rodriguez, who interviewed the former student and is the Hearing Board's sole source for the

allegation in the prior paragraph, found the former student's allegation ambiguous, writing in his report that "[i]t wasn't clear from this interview whether these comments were made in one fell swoop or had occurred at different times during the semester." Because Dean Rodriguez did not testify before the Hearing Board, Professor Wax did not even get the chance cross-examine Dean Rodriguez to attempt to clarify the nature of the allegation (e.g., did the former student allege that Professor Wax actually said those words? Or was the former student paraphrasing his/her interpretation of Wax's views? Was this based on comments Wax allegedly made in civil procedure class? Or from the student's reading or understanding of her book? Or from online commentary about Professor Wax's supposed views?).

197. This statement also made its way into the Hearing Board Report through a process of multi-layered hearsay: a former student recounted the alleged statements to Dean Rodriguez over the phone, not under oath, years after they were allegedly made; Dean Rodriguez described his understanding of the statements in his report; Dean Ruger incorporated the Rodriguez Report into his Request to Form a Hearing Board; and then the Hearing Board adopted it as fact without hearing from the witness directly.

ii. *The Hearing Board Refuses to Allow Cross-Examination of a Key Witness and Then Adopts Penn's Misrepresentation of the Witness's Testimony.*

198. Quinn Emanuel, representing Dean Ruger, called a former student to testify about Professor Wax's teaching of *Peña-Rodriguez v. Colorado*, 137 S. Ct. 855 (2017), during a class lecture in Fall 2017.

199. In that case, the Supreme Court reversed a sexual assault conviction based on affidavits from jurors claiming that another juror stated during deliberations that, in the juror's "experience as an ex-law enforcement officer, Mexican men had a bravado that caused them to believe they could do whatever they wanted with women."

200. The Supreme Court recounted that, under Federal Rule of Evidence 606(b) and common-law practice dating back to 1785, parties cannot impeach a verdict with juror testimony.

201. However, the Court held that the Equal Protection Clause required a narrow exception to Rule 606(b)'s non-impeachment rule limited to "race-based discrimination." Justices Thomas and Alito dissented.

202. While discussing this case in class, Professor Wax echoed Justice Alito's dissent and questioned whether *Peña-Rodriguez*'s purportedly narrow exception for "race-based discrimination" would serve as a slippery-slope to undermine the confidentiality of jury deliberations.

203. Professor Wax pointed out that even the facts of *Peña-Rodriguez* were not limited to its purportedly narrow exception for "race-based discrimination" since the statement about Mexican men concerned a nationality, rather than a race. To illustrate this point, she questioned whether a juror statement that "Germans are punctual" would likewise fall under the *Peña-Rodriguez* exception.

204. Professor Wax further noted that jurors are everyday people who tend to make any number of comments containing a wide variety of generalizations and at times stereotypes, and that allowing litigants to impeach verdicts on that basis could undermine the jury system.

205. The former student's testimony about Professor Wax's lecture on *Peña-Rodriguez*, while uncharitable, at least bore some relation to what Professor Wax actually said.

206. According to the former student, "Professor Wax made very clear that she did not think comments along those lines were racist because they were not about race, they were about national origin. And she compared it to the stereotype, for example, that Germans are punctual. And she also expressed concern that this decision would mean that jurors couldn't stereotype in

jury deliberations, which she thought was unfortunate because stereotyping is just how people think.” Day 2 Tr., 330:19-331:4.

207. The former student stated their opinion that Professor Wax’s position wrongly “pretended that generalizations” about Mexicans “had nothing to do with race,” whereas, to the former student, “[i]t seemed obvious that race plays into those stereotypes, even if they are technically about national origin.” Day 2 Tr., 332:10-22.

208. The former student also characterized Professor Wax’s position in favor of a strong anti-impeachment rule as holding that “jurors should absolutely be able to stereotype in this way.” Day 2 Tr., 332:23-24. The former student called Professor Wax’s comments “strange” and “intellectually dishonest.” Day 2 Tr., 332:10-13.

209. The former student’s contemporaneous class notes, which Dean Ruger introduced as an exhibit, were consistent with this testimony. The notes stated that “Wax thinks generalizing about Mexicans has nothing to do with race.” The notes did not, however, say anything about Professor Wax stating that the stereotype espoused by the juror was accurate. Day 2 Tr., 333:2-6.

210. But the Quinn Emanuel attorney conducting the direct examination of the former student tried to lead the witness to go further and support an accusation contained in Dean Ruger’s Request to Form a Hearing Board, which had claimed the witness told Quinn Emanuel that Professor Wax “[s]tat[ed] in class that Mexican men are more likely to assault women and remark[ed] such a stereotype was accurate in the same way as ‘Germans are punctual.’” Request to Form a Hearing Board at 5.

211. The Quinn Emanuel attorney asked the former student (leadingly): “So in your view [Professor Wax] equated Mexicans harassing or assaulting women to be no different than Germans being punctual? It was just a cultural trait?” Day 2 Tr., 331:5-8.

212. The former student responded, “Correct. She saw that as a stereotype based on national origin.” Day 2 Tr., 331:9-10.

213. Later, the Quinn Emanuel attorney again tried to get the witness to say that Professor Wax had agreed with the juror that Mexicans were more likely to assault women: “Did you walk away with the impression that Professor Wax was equating Mexicans assaulting women as being equivalent of Germans being punctual?” Day 2 Tr., 334:3-6.

214. The witness responded: “*In that* it’s just about national origin and nothing to do with race, yes.” Day 2 Tr., 334:7-8 (emphasis added). Thus, it appears that the former student did not allege that Professor Wax stated that the juror’s stereotype was *accurate*; rather, his/her allegation was that Professor Wax stated that it was not a *racial* stereotype.

215. A simple cross-examination would have cleared the matter up. Professor Wax’s counsel would have asked: “Did Professor Wax ever state that the juror’s stereotype about Mexicans is accurate? Did she ever imply that the stereotype is accurate? Or, is your criticism simply that Professor Wax thought the particular stereotype was not racial in nature?”

216. In the unlikely event that the witness alleged that Professor Wax did in fact say or imply that the stereotype is accurate, Professor Wax’s attorney would have asked why the student’s notes did not reflect that shocking statement, or why the witness would describe such a blatantly offensive statement as merely “intellectually dishonest” and “at least verging on inappropriate.” Day 2 Tr., 330:2.

217. A cross-examination would have also explored whether Professor Wax endorsed stereotyping as a positive good as opposed to suggesting that it would do more harm than good to allow juror affidavits as a means to rooting out juror stereotyping.

218. Yet, Professor Wax was never allowed to conduct a cross-examination. Instead, immediately after the witness’s direct testimony, Professor Ben-Porath began to excuse the witness. Day 2 Tr., 338:7-19.

219. Professor Wax’s counsel interjected, asking “Do I get anything?” Day 2 Tr., 338:9. Professor Ben-Porath responded “I think we are all set,” excused the witness, and concluded the hearing for the day. Day 2 Tr., 338:7-19. The Quinn Emanuel attorney representing Dean Ruger did not say anything to protect Professor Wax’s right to cross-examine her accuser.

220. When the Hearing Board produced its final report, it adopted the allegation from Dean Ruger’s Request to Form a Hearing Board verbatim, claiming that the former student testified under oath that Professor Wax “[s]tat[ed] in class that Mexican men are more likely to assault women and remark[ed] such a stereotype was accurate in the same way as ‘Germans are punctual.’” Hearing Board Report, Appendix 3, Statement 1.

221. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

E. The Hearing Board Failed to Find Facts by “Clear and Convincing” Evidence.

222. It appears the Hearing Board did not even make a finding that Professor Wax *made* the statements listed in the Hearing Board Report, much less did it make that finding by “clear and convincing” evidence, as required by the Handbook.

223. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

224. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

225. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

F. The Hearing Board Failed to Determine Whether the Statements for Which It Recommended Professor Wax Be Punished Were Protected by the Academic Freedom Provisions of the Faculty Handbook.

226. The Hearing Board did not even attempt to determine whether any of Professor Wax's alleged statements were protected by academic freedom.

227. [REDACTED]

[REDACTED]

G. President Magill Affirms the Hearing Board Recommendation Based on Improper Standards.

228. Under the Handbook, the next step after the Hearing Board submits its report is for the University President to decide whether to accept the Hearing Board's recommendations.

Handbook § II.E.16.4.I.

229. The President makes this decision based on the Hearing Board Report, any other materials forwarded by the Hearing Board, and "objections submitted by the respondent."

Handbook § II.E.16.4.I.1.

230. The Handbook notes that the President "shall normally accept the Hearing Board's recommendations," but may depart from them in "exceptional circumstances," "to reduce the severity of recommended sanctions or to dismiss the charges for failure of proof." Handbook §

II.E.16.4.I.1-2.

231. The President may also "request reconsideration of the decision recommended by the Hearing Board or remand the matter to the Hearing Board because there has been a significant defect in procedure." Handbook § II.E.16.4.I.3-4.

232. In her August 11, 2023, decision, however, President Magill accepted the Hearing Board's recommendation of major sanctions, applying a very deferential standard of review. *See* Exhibit 8 [hereinafter, "Magill Decision"].

233. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

234.

[REDACTED]

235.

[REDACTED]

236. As noted in her official decision letter, President Magill's decision to uphold the Hearing Board's recommendations was based on her sense "that the Board gave Professor Wax ample opportunity to make her case, carefully considered all of her arguments, including on the critical point about academic freedom, and relied on a well-developed factual record in reaching its conclusions." Magill Decision at 7.

237. As noted above, however, this was not true:

[REDACTED]

238.

[REDACTED]

239.

240.

241.

242. In fact, it appears that the “reasonably wonder” standard cited by President Magill in her decision cannot be found in any authoritative source regarding academic freedom and professional responsibilities—not any source published by the AAUP, or any other authority cited by [REDACTED], Professor Whittington, or Professor McConnell. Rather, it seems to have been based on the standards concocted by Dean Ruger and Professor Allen for Professor Wax, and for Professor Wax alone: i.e., that her public commentary, is sanctionable “conduct” because it “has led students to reasonably conclude that she is unable to evaluate them fairly based on their individualized merit rather than on unmistakable biases she possesses related to race, sex, national origin, and socioeconomic class.” Request to Form a Hearing Board at 7; *see also supra* Part

VI.A.²² Moreover, there was no evidence in the record to indicate that such a conclusion was in any way “reasonable”; to the contrary, an independent investigation conducted by a respected law school dean chosen by Penn found no evidence that Professor Wax was biased or partial in her evaluation or treatment of any student.

H. Professor Wax’s Appeal Is Denied, Concluding an Unfair Process in Which No One with Decision-Making Authority Ever Even Attempted to Apply the “Protections of Academic Freedom” Contained in the Faculty Handbook.

243. Following President Magill’s decision, Professor Wax appealed the matter to the Faculty Senate Committee on Academic Freedom and Responsibility (“SCAFR”), pursuant to Section II.E.16.4.J of the Handbook.

244. Although Section II.A of the Handbook states that SCAFR “shall have power to make investigations, reports, and recommendations on any matter relating to academic freedom and responsibility within the University,” SCAFR declined to exercise this authority in its May 29, 2024 report to then-Interim President J. Larry Jameson.” Exhibit 9 [hereinafter, “SCAFR Report”].²³

245. Notably, during the appeal process, “SCAFR did not reach its own conclusion on the substance of the matter (that is, whether the Charging Party met its burden of proof of establishing “just cause” for imposition of a major sanction).” SCAFR Report at 2 (emphasis in original). SCAFR explained that this was because, “[u]nder the Handbook, that substantive

²² Dean Rodriguez determined there was no evidence that Professor Wax ever actually evaluated students unfairly, as noted by the Rodriguez Report. [REDACTED]

²³ J. Larry Jameson, *Final Determination of Complaint Against Professor Amy Wax*, UNIV. OF PENN ALMANAC (Sept. 24, 2024), <https://almanac.upenn.edu/articles/final-determination-of-complaint-against-professor-Amy-Wax>.

determination rests with the Hearing Board as does the determination of which sanctions were warranted in this case.”

246. Accordingly, by the conclusion of the disciplinary process, *no one* at Penn *ever* purported to make a determination as to whether the statements Professor Wax was accused of making were protected by the academic freedom provisions of the Handbook.

247. The Hearing Board did not believe it was obligated to consider the question, and President Magill mistakenly believed the Hearing Board had already decided that question when she deferred to its (nonexistent) judgment on the matter. Then, when the matter came before SCAFR, no determinations were made on the substance of the case.

248. Nor did *anyone* at Penn make any findings of fact, much less any findings by the “clear and convincing” standard of proof required by the Handbook.

VII. Penn’s Contractual Violations Were the Proximate and But-For Cause of Professor Wax’s Sanctions.

249. Professor Wax’s extramural statements, summarized above, which should have been protected by the academic freedom provisions of Penn’s Handbook and Statutes of the Trustees, were the driving force and a substantial and motivating factor in Penn’s decision to sanction her. That is, those protected statements were the proximate cause of Professor Wax’s suspension.

250. In addition, Professor Wax’s protected extramural statements were the but-for cause of Penn’s decision to sanction her because, but for Penn’s improper reliance on Professor Wax’s protected extramural statements, Penn would not have sought, recommended, or approved major sanctions against her.

251. As recounted above, Dean Ruger explicitly cited Professor Wax’s protected extramural statements in his announcement of intent to seek sanctions against her and in his

Request to Form a Hearing Board; lawyers representing Dean Ruger before the Hearing Board explicitly relied on Wax's extramural statements and told the Hearing Board to sanction her based on her "ideology"; and the Hearing Board itself explicitly relied on protected extramural statements in its report recommending sanctions, which President Magill adopted without limitation.

252. While the Hearing Board also cited seven statements in Appendices 2 and 3 that Professor Wax allegedly made in class or directly to students, those charges were purely pretextual, not the motivating force behind the sanctions, and were themselves the result of procedural violations at the Disciplinary Hearing, including the reliance on multiple levels of hearsay and the refusal to allow cross-examination.

253. Moreover, most of the statements Professor Wax allegedly made to students occurred a decade or more ago. Yet such alleged statements were never viewed as cause for reprimand, or as a bar to Professor Wax's 2015 Lindback Award. It was not until Professor Wax's statements on Professor Loury's podcast and blog triggered intense pressure on Penn to punish her that Dean Ruger decided to pursue major sanctions.

254. In addition, Dean Ruger was made aware of the alleged statements listed in Appendices 2 and 3 of the Hearing Board report by at least April 2021, when he received a written complaint against Professor Wax from Penn Law School alumni.

255. He then hired Dean Rodriguez to conduct an independent investigation of the complaint and surrounding circumstances. Dean Rodriguez concluded there was no evidence that Professor Wax discriminated in grading or that she singled anyone out for disparate treatment.

256. Dean Ruger then sought advice from Professor Ben-Porath as to whether to seek major sanctions against Professor Wax based on these student complaints, and after reviewing the

Rodriguez Report, Professor Ben-Porath advised Dean Ruger that she did not believe the allegations analyzed in that report were sufficient for a major sanctions case. Dean Ruger thus did not take action against Professor Wax at that time.

257. As such, when Dean Ruger first announced his intent to seek sanctions against Professor Wax in 2022, he did not mention these alleged private statements to students; instead, he just mentioned her public statements “since at least 2017,” as well as her most recent statements on Professor Loury’s podcast and blog, which was the immediate impetus to Dean Ruger seeking major sanctions against Professor Wax.

258. Penn’s procedural violations were also extremely prejudicial to Professor Wax, and a but-for and proximate cause of her sanction, because they allowed the Hearing Board to adopt false, fabricated, and uncorroborated allegations against her and those allegations gave Penn a fig-leaf of legitimacy to justify what was otherwise a facial assault on academic freedom.

VIII. Penn’s Claim That Professor Wax Violated Its Student Privacy Rules Is False and a Pretext for Punishing Protected Extramural Statements.

259. The Hearing Board claimed Professor Wax’s statements about racial disparities in grades violated Penn’s policy on the “Confidentiality of Student Records.” Hearing Board Report at 3 & n.19.

260. But that policy states, under the heading “Scope,” that “[t]his policy pertains to personally identifiable information,” which it defines to include “the name of the student” or any other information that “would allow a reasonable person in the school community, without personal knowledge of relevant circumstances, to identify the student with reasonable certainty.”²⁴

²⁴ *Confidentiality of Student Records*, UNIV. OF PENN, <https://catalog.upenn.edu/pennbook/confidentiality-student-records/> (last visited Oct. 18, 2025).

261. Professor Wax’s comments concerned broad demographic trends that she observed during her years of teaching at Penn Law School; they did not identify any student “with reasonable certainty.”

262. According to its “Statement of Purpose,” Penn’s privacy policy is intended to implement the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (“FERPA”), which is not violated by disclosing student records “in statistical, summary form,” even if they include the “ethnicity of each student.” *Ke v. Drexel Univ.*, No. 11-6708, 2014 U.S. Dist. LEXIS 36531, at *17-18 (E.D. Pa. Mar. 20, 2014).

263. Moreover, Penn itself publishes at graduation (and thereafter permanently on its website) the names of the students who graduated from the law school with grades qualifying them for summa cum laude, magna cum laude, or cum laude.²⁵

264. Taken together, and given the curve that is applied in Penn’s grading, approximately 70 to 75 students out of Penn’s graduating class of approximately 250 students graduate with such honors every year. In short, Penn publishes the names of the students who graduate in the top 25% to 30% of the class.

265. Accordingly, Penn cannot claim that Professor Wax improperly disclosed the grades of any particular student “with reasonable certainty” when she stated, “I don’t think I’ve ever seen a Black student graduate in the top quarter of the class.” This would not reveal with “reasonable certainty” whether or not any particular Black student graduated in the top 25% of the class and, even if it did, Penn already publishes which student did (and did not) graduate in the top 25% to 30% of each class.

²⁵ See Penn Carey Law, *Class of 2025 Honors*, UNIV. OF PENN., <https://www.law.upenn.edu/live/files/13478-honors-and-distinction-class-of-2025> (last visited Oct. 18, 2025).

266. Rather, Professor Wax’s actual infraction was criticizing Penn’s own affirmative action policies, which she believes are more focused on admitting a statistically diverse class than with setting minority students up for success once they arrive on campus.

267. Moreover, the Hearing Board repeatedly faulted Professor Wax for allegedly stating that “black students do not perform as well as white students because they are less well prepared, and that they are less well prepared because of affirmative action.” Hearing Board Report, Appendix 2, Statement 3; *see also* Hearing Board Report n.5, 10, & 16 (all citing Appendix 2, Statement 3 to support the finding in the body of the report). But this statement clearly does not reveal any student’s personal information with “reasonable certainty.” Rather, it is the statement’s message that warranted sanction.

268. That message, however, is protected by academic freedom. Indeed, the argument that affirmative action harms its intended beneficiaries by leading to worse academic results is a common criticism, advanced by Justice Thomas, among others. *See Students for Fair Admissions*, 600 U.S. at 269 (Thomas, J., concurring) (“[S]tudies suggest that large racial preferences for black and Hispanic applicants have led to a disproportionately large share of those students receiving mediocre or poor grades once they arrive in competitive collegiate environments.” (collecting studies)).

269. [REDACTED]
[REDACTED]
[REDACTED]

IX. Meanwhile, Penn Allows Speech Endorsing Violence Against Jews and Left-wing Politically Motivated Violence.

270. Penn’s selective invocation of academic freedom further illustrates that it failed to consistently apply those contractual protections to Professor Wax. Indeed, at the same time that Penn punished Professor Wax, Penn invoked academic freedom to justify failing to take any action against a number of faculty and employees who explicitly called for or endorsed political violence—something Professor Wax has never even been accused of and never done.

271. For example, in the years following the October 7, 2023, Hamas terrorist attacks against Israel, Penn took no action against students, faculty, and staff who openly advocated for violence against Jewish people.

272. Indeed, Penn was one of the many campuses with an “encampment,” a gathering of anti-Israel protestors using campus property to protest the continued war against Hamas terrorists. In May 2024, the Faculty Senate Executive Committee at Penn voted against disbanding the encampment, despite a request from Governor Shapiro to do so in the name of public safety. Even Interim President Jameson conceded that the encampment featured serious harassment, particularly of Jewish students.

273. Other reports were made of terrorist flags, weapons, and vandalism on campus at Penn. Much of this went unpunished. The encampment was not disbanded for months, until May 10, 2024, when Penn finally allowed Philadelphia police to come on campus and arrest 33 persons.

274. Further, Penn declined to sanction Professor Anne Norton, a member of the Faculty Senate Executive Committee, who either shared or posted herself on X that Hamas’s sexual

atrocities on October 7 were “alleged,” that “[p]laying the victim is what Jews are best at,” and that the hostages in Hamas captivity were actually held in good conditions.²⁶

275. Penn likewise took no action against Penn Health employee Ibrahim Kobeissi, who posted the Wikipedia page about “Expulsions and exoduses of Jews” to his X account and added: “Interesting.... How do you explain then since 733/2 BCE nobody wanted the Jews either. Maybe because they knew as well. Every damn century, weird.”²⁷ Kobeissi has also publicly denied sexual assault by Hamas on October 7, suggested the government of Israel orchestrated October 7, referred to members of Congress as “retards” for supporting Israel, and said “Zionists have no God. They worship Satan. They are not Jews.”

276. Penn also declined to sanction lecturer Dwayne Booth for publishing a series of inflammatory cartoons, including one depicting Jews as Nazis drinking the blood of Palestinians, which was a modern recasting of the Medieval Blood Libel that Jews engage in the drinking of the blood of Christian children. *See* Exhibit 10.

277. Neither did Penn sanction Jill Richards, a Penn librarian, for posting on Facebook after October 7 “I <3 Hamas” (i.e., “I love Hamas” translated from emoticon),²⁸ nor Professor Ahmad Almallah, a Palestinian poet and artist-in-residence and lecturer at Penn, for leading a rally where he chanted, “There is only one solution: intifada revolution” and “Resistance is justified” (calls for violence against Jews).²⁹

²⁶ *See* StopAntisemitism (@StopAntisemitism), X (Dec. 7, 2003, 7:00 PM), <https://x.com/StopAntisemitism/status/1732913120891355286>.

²⁷ Ibrahim Kobeissi (@Gopic), X (Nov. 2, 2023, 4:58 PM), <https://archive.is/SOBQL>.

²⁸ Safe.Campus, INSTAGRAM (Dec. 29, 2024), https://www.instagram.com/reel/DEKxepFxtkP/?utm_source=ig_web_copy_link.

²⁹ 3 *Contentious Exchanges at the College Antisemitism Hearing*, N.Y. TIMES (Dec. 6, 2023), <https://www.nytimes.com/2023/12/06/us/harvard-mit-penn-presidents-antisemitism-hearing.html>.

278. Perhaps most egregiously, Professor Huda Fakhreddine, an associate professor of Arabic literature at Penn’s Middle East Center, has a history of unpunished antisemitic speech, including praising Hamas’s October 7 terrorist attack, endorsing that Israelis are “legitimate military targets,” bringing antisemitic speakers to campus,³⁰ and posting in Arabic—*on the morning of October 7*—“While we were asleep, Palestine invented a new way of life.”³¹

279. Indeed, Professor Fakhreddine was “criticize[d] [] by name for her statements about Israel” in a January 24, 2024, letter to Penn from the House Committee on Education and the Workforce “expressing the Committee’s ‘grave concerns regarding the inadequacy of Penn’s response to antisemitism on its campus.’”³²

280. Penn has not only ignored and permitted Fakhreddine’s antisemitic speech and conduct: it has actually institutionalized and rewarded that speech and conduct by allowing Fakhreddine to teach a course subtitled “Resistance from Pre-Islamic Arabia to Palestine” in the

³⁰ Professor Fakhreddine was a co-organizer of the “Palestine Writes Literature Festival,” held at Penn from September 22-24, 2023. It was sponsored by several campus groups, including the Department of Near Eastern Languages and Civilizations. As reported in the *Washington Free Beacon*, the event highlighted speakers like Roger Waters, who “wore Nazi regalia on stage at a concert in Germany, blamed the Jewish state for George Floyd’s death, and downplayed Hamas’s Oct. 7 attack, accusing Israel of ‘making up stories.’” “Others have likened Israel to the Nazis, claimed ‘most Jews’ are ‘evil,’ and blamed Jews for destroying Europe’s economy.”

³¹ Sam Koffler, *Upenn, Fire Your Antisemitic Professors!*, JNS (Oct. 26, 2023), <https://www.jns.org/upenn-fire-your-antisemitic-professors/>.

³² *Fakhreddine v. Univ. of Pa.*, No. 24-CV-1034, 2024 WL 3106186, at *1 (E.D. Pa. June 24, 2024). After this letter was sent, Fakhreddine—along with Penn Professor Eve Troutt Powell and an association called Penn Faculty for Justice in Palestine—“sued Penn to stop it from complying with a request for documents” in the letter. *Id.* The lawsuit has since been dismissed for lack of standing. *See id.*

semester immediately following the October 7 attacks, attacks Fakhreddine had praised with the term “resistance.”³³

281. Given Professor Fakhreddine’s prior public statements, Penn was amply aware that she considered the murder, torture, rape, and kidnapping of Jews to be legitimate “resistance.” Yet Penn still devoted University resources to providing a platform for her hateful views—which unambiguously are more “harmful” than the speech for which Penn punished Professor Wax.

282. Unsurprisingly, Professor Fakhreddine’s course on Palestinian “resistance” drew severe public criticism. In response to that criticism, Penn declined to institute any disciplinary actions against Professor Fakhreddine for praising and implicitly endorsing the commission of terrorist attacks against Jews. Instead, Penn allowed Professor Fakhreddine to continue teaching the same course, but simply modified the previously revealing subtitle to the more innocuous “Arabic Grammar and Rhetoric.”³⁴ Despite the whitewashing of the course’s title, the course’s description is *identical* to the prior course on Palestinian “resistance.”³⁵

283. In addition to allowing speech that explicitly calls for violence against Jews, Penn has permitted others to applaud and endorse acts of left-wing political violence.

³³ Middle Eastern Languages & Cultures, *ARAB4050 – Arabic Readings in Belles-Lettres: Resistance from Pre-Islamic Arabia to Palestine*, PENN ARTS & SCIS., <https://melc.sas.upenn.edu/node/1526> (last visited Jan. 7, 2025).

³⁴ The course is currently called ARAB4050, Arabic Readings in Belles-Lettres: Arabic Grammar and Rhetoric, but has an identical course description to the Spring 2024 version. *See id.*; Middle Eastern Languages & Cultures, *Courses for Spring 2025*, PENN ARTS & SCIS., <https://melc.sas.upenn.edu/index.php/course-list/2025A/all/all> (last visited Jan. 7, 2025).

³⁵ *Id.*

284. For example, Professor Julia Alekseyeva posted a video openly celebrating the fact that the alleged murderer of Brian Thompson, the CEO of UnitedHealth Group, was a recent alumnus of Penn and called the assassin “[t]he icon we all need and deserve.”³⁶

285. Professor Alekseyeva captioned the video with a statement that she “ha[s] never been prouder to be a professor at the University of P3nnsylvania [sic],” thereby explicitly reveling in the politically motivated assassination.

286. Not only has the University taken no action to discipline Professor Alekseyeva to date, but it has previously lauded her with a Dean’s Award for Mentorship. Professor Alekseyeva is thus “proud[.]” of the University for producing an alumnus who committed a political assassination, while the University is proud of the values that Professor Alekseyeva is inculcating in its students through her mentorship.

287. Likewise, according to recent reporting, “[t]he University of Pennsylvania appears to be standing by a prominent professor who shared a post calling assassinated conservative Charlie Kirk the ‘head of Trump’s Hitler youth,’ in addition to other controversial posts.”³⁷

288. The professor in question, David Mann, previously “reposted a fake headline that called on then-President Joe Biden to ‘drone strike Donald Trump.’ He captioned the post, ‘I agree

³⁶ Annie McCormick, University of Pennsylvania assistant professor under fire for TikTok video praising CEO murder, 6 ABC ACTION NEWS (Dec. 11, 2024), <https://6abc.com/post/university-pennsylvania-assistant-professor-fire-tiktok-video-praising-murder-unitedhealthcare-ceo/15642658/>.

³⁷ Amanda Prestigiacomo, *UPenn Stands By Top Professor Who Shared Post Calling Charlie Kirk ‘Head Of Trump’s Hitler Youth’*, DAILYWIRE (Sept. 18, 2025), <https://www.dailywire.com/news/upenn-stands-by-admin-who-shared-post-calling-charlie-kirk-head-of-trumps-hitler-youth?topStoryPosition=undefined&author=Amanda+Prestigiacomo&category=News+and+Co+mentary&elementPosition=2&row=1&rowHeadline=Top+Stories&rowType=Top+Stories&title=UPenn+Stands+By+Top+Professor+Who+Shared+Post+Calling+Charlie+Kirk+%E2%80%98Head+Of+Trump%E2%80%99s+Hitler+Youth%E2%80%99>.

with the multiverse NYT editorial.’” And although he eventually deleted the Charlie Kirk “Hitler Youth” post, he wrote a separate post mocking the assassination as “white on white violence” that “has gotten out of hand,” in an apparent jab at Kirk’s statements regarding black-on-black crime.

COUNT I
(Breach of Contract for Violation of the Academic Freedom Provisions of the Faculty Handbook and the Statutes of the Trustees)

289. Professor Wax realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

290. The Faculty Handbook and the Statutes of the Trustees, specifically the academic freedom provisions of those documents discussed above and specified below, constitute part of the binding contract between Professor Wax and Penn.

291. By sanctioning Professor Wax based on her extramural statements, Penn breached its contract with Professor Wax, specifically, the academic freedom provisions of its Handbook and Statutes of the Trustees.

292. Professor Wax was and is a tenured professor at Penn.

293. Under the heading, “The Tenure System at Penn,” the Handbook notes that “[t]he Statutes hold that a system of tenure for faculty members is the preeminent means of fostering and protecting academic freedom,” and that “[t]he protections of academic freedom *are extended* to all members of the faculty during their terms of appointment.” Handbook § II.C.1 (emphasis added).

294. The “protections of academic freedom” are spelled out in Section II.A of the Handbook, which includes three such protections: “freedom in research and in the publication of results,” “freedom in the classroom in discussing his or her subject,” and, as most relevant here:

“When speaking or writing as an individual, the teacher should be free from institutional censorship or discipline.” Handbook § II.A.

295. Penn breached these provisions by sanctioning Professor Wax based on her extramural statements, i.e., her “speaking and writing as an individual.”

296. As set forth in detail above, the overwhelming majority of the statements upon which Penn relied in sanctioning Professor Wax were extramural statements—statements made on podcasts, in op-eds, on blogs, and in other public fora outside of Penn.

297. These statements addressed matters of significant public concern, including affirmative action, immigration policy, cultural assimilation, racial disparities in academic performance, and the state of higher education.

298. The Handbook explicitly promised that “[w]hen speaking or writing as an individual, the teacher should be free from institutional censorship or discipline.”

299. Professor Wax’s protected extramural statements were the motivating and driving force, a substantial factor, and a but-for and proximate cause of Professor Wax’s sanction.

300. By imposing major sanctions on Professor Wax based on these extramural statements, Penn directly violated this promise.

301. Penn’s breach of the academic freedom provisions in the Handbook was willful and deliberate.

302. As a result of Penn’s breach, Professor Wax has suffered and will continue to suffer substantial damages, including, but not limited to, the following, as stated more fully below.

- a. Loss of income during the one-year suspension at half pay;
- b. Loss of her named chair as the Robert Mundheim Professor of Law;
- c. Loss of summer pay in perpetuity; and

d. Loss of the ability to teach and mentor students during the suspension period.

COUNT II
(Breach of Contract for Violation of the “Major Infraction” Provisions of the Faculty Handbook)

303. Professor Wax realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

304. The Faculty Handbook, specifically the “major infraction” provisions discussed above and specified below, constitutes part of the binding contract between Professor Wax and Penn.

305. Penn’s Handbook provides that “major sanctions,” which include “suspension” and “reduction in academic base salary,” may only be imposed if the professor commits “a Major Infraction of University Behavior Standards.” Handbook §§ II.E.16.1.B.7-10, II.E.16.2-4.

306. The Handbook defines “a Major Infraction of University Behavior Standards” as: “An action involving flagrant disregard of the standards, rules, or mission of the University or the customs of scholarly communities, including, but not limited to, serious cases of the following: plagiarism; misuse of University funds; misconduct in research; repeated failure to meet classes or carry out major assigned duties; harassment of, improperly providing controlled substances to, or physical assault upon, a member of the University community; the bringing of charges of major or minor infractions of University standards against a member of the University community, knowing these charges to be false or recklessly indifferent to their truth or falsity; flagrant or knowing violation of the University’s conflict of interest policy or commission of serious crimes such as, but not limited to, murder, sexual assault or rape.” Handbook § II.E.16.1.B.17.

307. This definition does not reach unpopular statements on matters of public concern that are not directed at any particular student.

308. The illustrative examples of “major infractions” in Section II.E.16.1.B.17 involve outrageous misconduct such as physically assaulting or dealing drugs to students, misuse of university funds, and “*serious* crimes,” such as “murder” and “rape.”

309. More importantly, the Handbook contemplates that tenured faculty can only be suspended for improper *actions*, not unpopular speech.

310. Professor Wax’s alleged conduct—making public, extramural statements on matters of public concern—does not constitute an “action involving flagrant disregard” of University standards within the meaning of Section II.E.16.1.B.17.

311. The closest Section II.E.16.1.B.17 comes to including a speech-based infraction is the inclusion of “harassment,” but only “harassment *of . . . a member of the University community.*” Handbook § II.E.16.1.B.7 (emphasis added).

312. Professor Wax’s extramural statements were not directed at any particular member of the University community and did not constitute “harassment” as defined by the Handbook or as understood under applicable law.

313. By imposing major sanctions on Professor Wax for conduct that does not constitute a “Major Infraction of University Behavior Standards,” Penn breached its contract with Professor Wax.

314. As a result of this breach, Professor Wax has suffered the damages set forth in Count I, which are incorporated herein by reference.

COUNT III
(Breach of Contract for Violation of the “Confrontation and Question” Provision of the Faculty Handbook)

315. Professor Wax realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

316. The Faculty Handbook, specifically the “confrontation” and “question” provision discussed above and specified below, constitutes part of the binding contract between Professor Wax and Penn.

317. Penn’s Handbook explicitly provides that “[t]he respondent and the charging party shall have the right to confront any witnesses . . . and to question them personally or through counsel.” Handbook § II.E.16.4.G.

318. This provision guarantees Professor Wax the right to confront and cross-examine “any witnesses” whose allegations constitute part of the basis for Penn’s imposition of major sanctions.

319. As set forth in detail above, during the hearing, the Hearing Board co-chair explicitly refused to allow Professor Wax to cross-examine a former student who testified.

320. In addition, the Hearing Board relied on and adopted the testimony of several witnesses who merely made statements to Quinn Emanuel but did not testify before the Hearing Board, thus violating Professor Wax’s contractual “right to confront any witnesses . . . and to question them personally or through counsel.” Handbook § II.E.16.4.G.

321. These contractual violations caused prejudice, as explained in more detail above, including by preventing Professor Wax from learning the context of the alleged statements and clarifying what she was alleged to have said.

322. The denial of the right to cross-examine constituted a material breach of the Handbook and deprived Professor Wax of fundamental procedural fairness.

323. The denial of the right to cross-examine resulted in the Hearing Board erroneously relying on disputed statements attributed to Professor Wax. These findings were highly prejudicial and a but-for and proximate cause of Wax's sanction.

324. As a result of this breach, Professor Wax has suffered the damages set forth in Count I, which are incorporated herein by reference.

COUNT IV
(Breach of Contract for Violation of the "Fair Process" Provision of the Faculty Handbook)

325. Professor Wax realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

326. The Faculty Handbook, specifically the "fair process" provision discussed above and specified below, constitutes part of the binding contract between Professor Wax and Penn.

327. Penn's Handbook requires that internal disciplinary matters "must be handled fairly" and in a manner that "protects the rights of faculty." Handbook § II.E.16.1.A.

328. Such promises of procedural fairness "require, at a minimum, 'rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary'" punishment, as well as "the basic elements of federal procedural fairness." *Doe v. University of the Sciences*, 961 F.3d 203, 214-15 (3d Cir. 2020) (quotations omitted).

329. Penn breached its promise to handle Professor Wax's disciplinary matter fairly in numerous ways, including but not limited to:

- a. **Conflicts of interest:** Neither Professor Ben-Porath nor Dean Ruger disclosed to Professor Wax that Professor Ben-Porath had served on the "consultative committee"

that advised Dean Ruger on whether to bring charges against Professor Wax. This created an obvious conflict of interest and violated Professor Wax's right to move to disqualify biased Hearing Board members. Indeed, basic norms of procedural fairness prevent someone from advising one party, Dean Ruger, on whether to bring the case and on what charges to bring and then also serving as the judge and a juror when the case is eventually brought. Basic norms of due process and procedural fairness require separation between the judicial and prosecutorial functions.

- b. **Relying on extramural speech:** To the extent the Hearing Board was allowed to consider Professor Wax's controversial public statements at all, basic procedural fairness, as well as the particular academic freedom provisions of the Handbook, required Penn to limit the use of such public statements only to what is relevant to evaluating allegations of on campus conduct that, if true, would constitute a major infraction. Indeed, Penn's own chosen expert on academic freedom advised the Hearing Board of this important limitation on how any extramural statement could be used. But, instead, attorneys representing Dean Ruger ignored these limitations and incessantly used Professor Wax's controversial public statements as the core basis for their recommended sanctions. The Hearing Board, likewise, ignored any limitation on the use of Professor Wax's extramural statements and punished her for the viewpoints and ideology expressed in those statements.
- c. **Relying on Unverified Allegations Without an Opportunity for Cross-Examination:** Dean Ruger claimed on several occasions that Wax's statements about racial disparities in student performance were false without offering any support or evidence, which was solely within Penn's control, to back up his claim of falsity,

resulting in damage to Wax’s reputation and fueling demands that she be removed from teaching duties, disciplined, or fired. In addition, the Hearing Board violated basic procedural fairness by relying on and adopting multi-layered hearsay allegations and on live witnesses whom Professor Wax was not allowed to cross-examine. Even if the Handbook did not specifically guarantee confrontation rights, this process would still violate the “fair process” promised by the Handbook. *See Doe v. University of the Sciences*, 961 F.3d 203 (3d Cir. 2020)

- d. **Creating and retroactively applying new behavioral standards:** Dean Ruger, Professor Allen, and the Hearing Board created a new standard distinguishing protected “speech” from unprotected “conduct,” and allowing punishment of viewpoints and “ideology” inconsistent with Penn’s “core values,” that had never before been applied at Penn, and retroactively applied this new standard to Professor Wax. These parties, as well as President Magill, likewise created and retroactively applied a novel “reasonably wonder” standard to punish Professor Wax, not for discriminating against students, but for making otherwise protected extramural statements that could make a student “reasonably wonder” whether Professor Wax *might* discriminate against them. In any event, this entirely novel standard was misapplied. Despite thorough investigation, there is no objective evidence that Wax has discriminated against any student, and thus the concerns about bias are completely unsupported and imaginary.
- e. **Misapplying the major infraction procedures:** Penn employed the “major infraction” procedures of Section II.E.16.4 rather than the “minor infraction” provisions of Section II.E.16.3, despite Professor Wax’s alleged conduct utterly failing to meet the Handbook’s definition of “major infraction.”

- f. **Conducting the hearing in bad faith:** Penn conducted the hearing in bad faith by mischaracterizing Professor Wax's speech, taking statements out of context, crediting uncorroborated and implausible allegations, and failing to engage in even the most rudimentary evaluation of the evidence, let alone an evaluation based on the required "clear and convincing" evidentiary standard.
- g. **Failing to provide specific findings:** The Hearing Board Report failed to provide any findings of fact to back up its conclusions and failed to identify which specific statements formed the basis for sanctions.

330. These cumulative violations of the "fair process" guarantee in the Handbook constitute a material breach of Penn's contract with Professor Wax.

331. The process afforded to Professor Wax was so fundamentally unfair that it deprived her of any meaningful opportunity to defend herself against the charges, causing her severe prejudice and leading to her sanction.

332. As a result of these breaches, Professor Wax has suffered the damages set forth in Count I, which are incorporated herein by reference.

COUNT V
(Breach of Contract for Violation of the "Clear and Convincing Evidence" Provision of the Faculty Handbook)

333. Professor Wax realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

334. The Faculty Handbook, specifically the "clear and convincing evidence" provision discussed above and specified below, constitutes part of the binding contract between Professor Wax and Penn.

335. Penn's Handbook provides that "[t]he charging party has the burden of proving by clear and convincing evidence that there is just cause for imposition of a major sanction against the respondent." Handbook § II.E.16.4.G.

336. This provision requires the Hearing Board to make specific factual findings supported by clear and convincing evidence.

337. Penn's Hearing Board violated this provision by failing to find any facts whatsoever and by failing to verify whether several allegations against Professor Wax that were based on hearsay statements were credible. The Hearing Board Report ignored and failed even to mention, let alone discuss, any witness testimony or submissions in Wax's favor at the hearing.

338. As noted above, the statements attributed to Professor Wax in the appendices to the Hearing Board Report were simply copied from Dean Ruger's Request to Form a Hearing Board.

339. [REDACTED]

340. By failing to conduct proper fact-finding and by failing to apply the "clear and convincing evidence" standard required by the Handbook, Penn breached its contract with Professor Wax, resulting in the imposition of major sanctions.

341. As a result of this breach, Professor Wax has suffered the damages set forth in Count I, which are incorporated herein by reference.

COUNT VI
(Breach of Contract for Violation of the "Relevant Information" and "Opportunity to Move to Disqualify Provision of the Faculty Handbook")

342. Professor Wax realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

343. The Faculty Handbook, specifically the “Relevant Information” and “Opportunity to Move to Disqualify” provisions discussed above and specified below, constitutes part of the binding contract between Professor Wax and Penn.

344. Penn’s Handbook requires that “the charging party shall supply” to the Hearing Board and the respondent “copies of any . . . University documents that are relevant to the respondent’s procedural and substantive rights in this matter.” Handbook § II.E.16.4.D.

345. The Handbook further provides that the respondent “shall receive the cooperation of the University administration in securing the attendance of such witnesses and the production of such documents as may be relevant.” Handbook § II.E.16.4.G.

346. The Handbook further provides that “[t]he charging party and the respondent each shall be given the opportunity to move to disqualify for prejudice any potential member of the Hearing Board designated by the Chair of the Faculty Senate.” Handbook § II.E.16.4.A-B.

347. Penn violated these provisions by failing to provide Professor Wax with relevant documents and information, including but not limited to information about the Hearing Board members, including Professor Ben-Porath’s previous service on Dean Ruger’s “consultative committee” for the Wax case and whether any members attended the prejudicial Allen Presentation; and memoranda of witness interviews and other investigative materials compiled by Quinn Emanuel.

348. These documents and information were clearly relevant to Professor Wax’s procedural and substantive rights, as they: were necessary for Professor Wax to exercise her right to challenge biased Hearing Board members; and were necessary to evaluate the credibility and the basis of allegations against her.

349. Moreover, by denying Professor Wax knowledge of Professor Ben-Porath's service on Dean Ruger's consultative committee, Penn denied Professor Wax "the opportunity to move to disqualify" her on that basis. Handbook § II.E.16.4.A-B.

350. Penn's refusal to provide this relevant information constituted a material breach of the Handbook and deprived Professor Wax of the ability to mount a full and fair defense, causing her severe prejudice and leading to her sanction.

351. As a result of these breaches, Professor Wax has suffered the damages set forth in Count I, which are incorporated herein by reference.

COUNTS VII-XII
(Promissory Estoppel – Pled in the Alternative to Breach of Contract)

352. Professor Wax realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein

353. Pursuant to Pa. R.C.P. 1020(c), Professor Wax pleads the allegations set forth in Counts I-VI, in the alternative, as promissory estoppel claims.

354. Penn's Faculty Handbook contains the following clear and definite promises, which it made to Professor Wax through its widely-available Faculty Handbook:

- a) "Academic Freedom" promises specified in Count I (now pled in the alternative as Promissory Estoppel as Count VII)
- b) "Major Infraction" promises specified in Count II (now pled in the alternative as Promissory Estoppel as Count VIII)
- c) "Confrontation and Question" promises specified in Count III (now pled in the alternative as Promissory Estoppel as Count IX)

- d) “Fair Process” promises specified in Count IV (now pled in the alternative as Promissory Estoppel as Count X)
- e) “Clear and Convincing Evidence” promise specified in Count V (now pled in the alternative as Promissory Estoppel as Count XI)
- f) “Relevant Information” and “Opportunity to Move to Disqualify” promises specified in Count VI (now pled in the alternative as Promissory Estoppel in Count XII)

355. Penn reasonably expected and intended that Professor Wax would rely upon its above-specified promises, including in her decision to join Penn and continue her employment at Penn to the exclusion of other professional opportunities, and in other professional decisions, such as which research, writing, and speaking opportunities to pursue.

356. Professor Wax did in fact reasonably rely upon Penn’s promises specified above, including in her decision to leave her tenured professorship at the University of Virginia Law School to join Penn, in her decision to continue her employment at Penn for over twenty years to the exclusion of other professional opportunities, and in other professional decisions, such as decisions about which research, writing, and speaking opportunities to pursue.

357. As a result of her reliance on Penn’s broken promises, specified above, Professor Wax has suffered the damages set forth in Count I, which are incorporated herein by reference.

358. Injustice can only be avoided by enforcement of Penn’s above-specified promises.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Professor Amy Wax, respectfully requests that this Court:

- A. Enter judgment in favor of Plaintiff on all counts;
- B. Declare that Penn breached its contract with Professor Wax by:

- i. Violating the academic freedom protections in the Handbook and Statutes of the Trustees;
 - ii. Imposing major sanctions for conduct that does not constitute a “Major Infraction of University Behavior Standards”;
 - iii. Denying Professor Wax her right to cross-examine witnesses;
 - iv. Failing to conduct a fair process that protects faculty rights;
 - v. Failing to conduct proper fact-finding under a clear and convincing evidentiary standard; and
 - vi. Failing to provide relevant information or an opportunity to move to recuse Hearing Board members;
- C. Award Professor Wax compensatory damages, including but not limited to:
 - i. Lost wages and benefits, including but not limited to library services and yearly stipend, during the suspension period;
 - ii. Loss of her named chair and associated financial loss; and
 - iii. Loss of summer pay;
- D. Issue a permanent injunction vacating all sanctions imposed against Professor Wax;
- E. Award Professor Wax attorneys fees and costs; and
- F. Grant such other and further relief as the Court deems just and proper.

Dated: November 13, 2025

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Respectfully submitted,

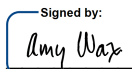
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VERIFICATION

I, Amy Wax, hereby state that I am the Plaintiff in this action and that the facts set forth in the foregoing are true and correct in part upon personal knowledge and in part to the best of my information and belief. I understand that the statements herein are made pursuant to 18 Pa. Cons. Stat. Ann. § 4904 relating to unsworn falsification to authorities.

Dated: 11/13/2025 _____

Signature:  _____
Plaintiff

Signed by:
B455A697A7184DD...

Printed Name: Amy Wax _____