



February 1, 2022

Dear Dean Treanor,

The Academic Freedom Alliance (AFA) is a coalition of faculty members from across the country and across the ideological spectrum who are committed to upholding the principles of academic freedom and professorial free speech.

Principles of free speech include the right of professors to speak in public on matters of public concern without the threat of sanctions by their university employer. We call upon Georgetown University Law Center to live up to its free speech commitments in the case of Ilya Shapiro.

Ilya Shapiro is a legal scholar with a long background in Washington, D.C., and he was recently [appointed](#) Executive Director and Senior Lecturer in the Center for the Constitution at Georgetown University Law Center. After his appointment, on January 26, 2022, Shapiro posted a series of tweets about the vacancy on the Supreme Court created by the announced retirement of Justice Stephen Breyer and [President Joe Biden's pledge](#) to name "the first Black woman ever nominated to the United States Supreme Court." Shapiro asserted that Biden's limitation on the pool of potential nominees excluded the person Shapiro thought was the "objectively best pick for Biden" and as a result Biden would choose a "lesser black woman" and that "his nominee will always have an asterisk attached." Shapiro later [deleted and apologized](#) for [those posts](#). There have been [numerous calls](#) for Shapiro to be fired. You initially stated that the tweets were "[appalling](#)" and "at odds with everything we stand for." Now [you have announced](#) that Shapiro has been placed on administrative leave pending an investigation "into whether he violated our policies and expectations on professional conduct, non-discrimination, and anti-harassment."

I write on behalf of the Academic Freedom Alliance to express our firm view that Ilya Shapiro should suffer no formal consequences as the result of these public statements. Regardless of what one thinks about Shapiro's views on the nomination and how he expressed them, Shapiro's personal opinions as expressed on his personal social media account are protected under Georgetown's own policies and cannot form an adequate basis for firing him. Significantly, Shapiro's appointment is, in part, as a senior lecturer. The policies that would apply to him would equally apply to any other member of the Georgetown University Law Center faculty. A determination that a senior lecturer can be fired for posting a controversial statement on social media would represent a dramatic erosion in the free speech protections that Georgetown claims to offer to the members of its faculty.

This call for the university to take formal action against Shapiro is a clear threat to his freedom



of speech. Such a social media post is a form of what the [American Association of University Professors](#) calls “extramural speech.” Extramural speech is a protected form of freedom of expression. When professors “speak or write as citizens, they should be free from institutional censorship or discipline.” As the AAUP has emphasized, “The controlling principle is that a faculty member’s expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member’s unfitness for the position.”

Georgetown University has explicitly embraced those principles in its [Faculty Handbook](#). Most relevant in this context, the Faculty Handbook guarantees to all members of the faculty the “[rights and responsibilities common to all citizens](#), free from institutional censorship” and foreswears any attempt by the university to hold a faculty member “accountable” for “private acts” unless those acts “substantially affect teaching, research or University service.” Moreover, the University has integrated into its Faculty Handbook a [broad policy on free expression](#) that commits to providing “all members of the University community . . . the broadest possible latitude to speak, write, listen, challenge, and learn” and promises that ideas will not suppressed even if “most members of the University community” regard those ideas to be “offensive, unwise, immoral, or ill conceived.”

There is no way to reconcile those commitments with Shapiro’s current suspension and the proposed investigation. Shapiro expressed a view about the implications of using race and sex as filtering mechanisms for the selection of a judicial nominee. Such matters of public policy and government conduct are central to what members of the faculty might address as private citizens. Their opinions on such matters might well be controversial, offensive or misguided, but the university has committed itself to tolerating such controversial and offensive private speech. If the hostility of members of the campus community to such controversial speech is itself taken as a legitimate basis for concluding that such private acts “substantially affect” a faculty member’s professional duties, then the university can hardly claim to provide “the broadest possible latitude” to such speech.

Private speech on controversial social and political topics can sometimes be heated, ill-tempered, ill-considered, and broadly offensive. We do not hold such extramural speech to the standards that we would properly expect from speech in the classroom or from scholarly research. Going down the road of punishing faculty for their political speech on social media that some members of the university community find insensitive or hurtful will leave all members of the faculty vulnerable to denunciations, investigations, and threats of termination. It would erode the protections for free expression that the university purports to provide to all members of the campus community, including the members of the faculty.



The Academic Freedom Alliance calls on Georgetown University Law Center to reaffirm and adhere to its free speech principles by making clear that Shapiro will not be sanctioned in any way for his protected private political speech.

Sincerely,

A handwritten signature in black ink, appearing to read "KW", with a long, sweeping horizontal line extending to the right.

Keith Whittington
Chair, Academic Committee, Academic Freedom Alliance
William Nelson Cromwell Professor of Politics, Princeton University

cc. Ilya Shapiro
John J. DeGioia, President
Randy Barnett, Director, Georgetown Center for the Constitution
Adam Adler, Interim Vice President and General Counsel