



July 18, 2022

Dear President Magill,

On January 16, 2022, in a [letter](#) to then-President Amy Gutmann, the Academic Freedom Alliance (AFA) called upon the University of Pennsylvania (Penn) to reaffirm and adhere to its free speech principles by making it clear to the public that Professor Amy Wax, Robert Mundheim Professor of Law, would not be sanctioned in any way for her exercise of academic freedom. It has come to our attention that Dean Theodore W. Ruger of the University of Pennsylvania Carey Law School, in a letter dated March 3, 2022, has asked Penn’s Faculty Senate to impose “a major sanction” on Professor Wax for dozens of her public statements and several teaching decisions. We regard this as a threat to Professor Wax’s tenure and her employment as a professor at the Law School, and a grave violation of her academic freedom.

The AFA, as a coalition of faculty members from across the country and across the ideological spectrum committed to upholding the principles of academic freedom and professorial free speech, now asks that the University Faculty Senate conclude its current consideration of Dean Ruger’s referral letter. This 12-page document accuses Professor Wax of making controversial statements on issues of law and public policy—statements we regard as fully protected by principles of academic freedom—and inviting a controversial speaker to lecture to her class. The University of Pennsylvania should take no action against Professor Wax and state unequivocally that tenure remains a fundamental protection for all of its diverse faculty as they teach as University of Pennsylvania professors and speak as private citizens.

In our January 16, 2022, letter, the AFA noted that Dean Ruger had issued a [statement](#) saying that Wax’s comments were protected by principles of academic freedom. Specifically, he observed that Professor Wax spoke “as a faculty member with tenure, a status that has done, and continues to do, important work in protecting the voices of scholars on a range of controversial topics.” The AFA had expressed concern that “unspecified ‘action’ . . . [was] under consideration” by the University in response to demands to take formal action against Professor Wax. Unfortunately, it now appears that in Professor Wax’s case, the University of Pennsylvania may not see tenure as an indispensable means of protecting academic freedom.

According to [Article 11.1](#) of the Statutes of the Trustees, “The University recognizes the importance of a system of tenure for faculty members as the preeminent means of fostering and protecting academic freedom in teaching and in scholarly inquiry.” Given the controversial nature of Professor Wax’s comments, opinions she expressed that bear on the subject of her research and teaching, Penn should take this opportunity to affirm that upholding tenure is especially imperative when statements by faculty are not popular. Academic freedom cannot be a privilege of those who only espouse prevailing views but a protected right of all faculty within a university. As [Article 11.4](#) of the Statutes of the Trustees states, “It is the policy of the University



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

The AFA also stated in its January 16, 2022, letter, that public statements do not warrant punishment of any kind by the University. We noted that public comments are a form of what the [American Association of University Professors](#) calls “extramural speech.” Specifically, it 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.” The University of Pennsylvania has explicitly embraced those principles in Article 11 of the Statutes of the Trustees. The university has stated clearly that faculty members have the right to express their personal opinions as citizens and “when speaking or writing as an individual, the teacher should be free from institutional censorship or discipline.”

As the AFA noted earlier, Professor Wax’s personal opinions do not exhibit “a ‘flagrant disregard of the standards, rules, or mission of the University or the customs of scholarly communities’ that might give rise to disciplinary action under the Faculty Handbook, and the list of major infractions provided in the Handbook in no way resemble the actions at issue here.”

The notion that extramural comments, even those with which a majority of Penn faculty do not agree, would subject a professor to sanctions, possibly extending to dismissal and removal of tenure, is nothing short of draconian. It would not promote Penn’s truth-seeking mission. It would not equip Penn’s students to do their best work as graduates entering the legal field. [Article 11.4\(c\)](#) of the Statutes of the Trustees stipulates, “When speaking or writing as an individual, the teacher should be free from institutional censorship or discipline.” Some students, alumni, and faculty find Professor Wax’s comments offensive. Evidently, Dean Ruger does too. However, the fact that a professor’s comments offend some members of an academic community is no ground for investigation with an eye to sanctions of any kind, much less to removal or tenure and dismissal from one’s job as a professor.

The central reason for tenure is to ensure the academic freedom of faculty to explore a diverse array of topics, pursue lines of inquiry, conduct research, and teach and publish conclusions that bear on the pursuit of knowledge regardless of the popularity of any of those elements of inquiry. According to [Article 10.14](#) of the Statutes of the Trustees, “Suspension, termination, or threat thereof may not be used to restrain or interfere with faculty members in their exercise of academic freedom or other rights.” That is what is being contemplated by the Faculty Senate.



Nearly all of the comments by Professor Wax cited by Dean Ruger are unquestionably protected by academic freedom, and none of her comments provide legitimate, non-pretextual grounds for finding a “major infraction of University behavioral standards” as defined by Section II. E. 16, 1(B), point 7, of the Faculty Handbook. The Faculty Senate should therefore conclude its proceedings with a complete exoneration of Amy Wax for her multiple exercises of academic freedom, both in her teaching and public statements. Moreover, the University should publicize the Faculty Senate’s conclusion and reaffirm Penn’s commitment to tenure as “the preeminent means of fostering and protecting academic freedom in teaching and in scholarly inquiry.”

Sincerely,

Janet Halley, Goldston Professor of Law, Harvard University*, and
Lucas E. Morel, John K. Boardman, Jr. Professor of Politics, Washington and Lee University*
Co-Chairs, Academic Committee, Academic Freedom Alliance

** Affiliations for identification purposes*

Cc: Professor Amy Wax
Professor Theodore W. Ruger, Dean of the Law School
Professor Vivian L. Gadsden, Chair, Faculty Senate
Wendy S. White, Senior Vice President and General Counsel