



March 21, 2018

Dean Theodore Ruger
University of Pennsylvania Law School
3501 Sansom Street
Philadelphia, Pennsylvania 19104

Sent via U.S. Mail and Electronic Mail (deanruger@law.upenn.edu)

Dear Dean Ruger:

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

FIRE is monitoring closely the developing situation involving Professor Amy Wax, who has been at the center of controversy both on and off campus since her August 2017 editorial arguing for a return to "bourgeois" cultural norms. That controversy has intensified in recent weeks with the emergence of a September 2017 video clip in which Professor Wax, in a guest appearance on a podcast hosted by Brown University economics professor Glenn Loury, discussed her views on the "mismatch" theory of affirmative action, citing her own students at Penn Law as evidence.

We are aware that your administration is facing pressure to take action against Professor Wax based on the perceived offensiveness of her views. While we respect Penn's right to enforce its confidentiality policies, any further action taken against Professor Wax would be inappropriate and inconsistent with Penn's asserted commitment to free speech and academic freedom.

The following is our understanding of the facts; please inform us if you believe we are in error.

On August 9, 2017, Professor Wax and University of San Diego law professor Larry Alexander published a *Philadelphia Inquirer* editorial entitled "Paying the price for the breakdown of the country's bourgeois culture."¹ In it, Wax and Alexander argued for a return to "the hegemony

¹ Amy Wax and Larry Alexander, "Paying the price for breakdown of the country's bourgeois culture," *The Philadelphia Inquirer*, (Aug. 9, 2017), <http://www.philly.com/philly/opinion/commentary/paying-the-price-for-breakdown-of-the-countrys-bourgeois-culture-20170809.html>.

of the bourgeois culture,” with its emphasis on marriage before children, patriotism, and civic-mindedness.

The publication of that article touched off a firestorm that culminated in an open letter by 33 Penn Law faculty members denouncing their colleague. While not explicitly calling on the administration to take action against Professor Wax, the letter concluded with a plea to students to report any experiences of “bias or stereotype” they might encounter at the law school.²

On February 16, 2018, Wax published an op-ed in *The Wall Street Journal* discussing the controversy and criticizing the way her colleagues had responded. She also alleged that you had come under “pressure to banish [her] for [her] unpopular views,” and had asked her to take a leave of absence and to stop teaching mandatory first-year courses.³

In the weeks after Wax’s *Wall Street Journal* op-ed, video surfaced of a September 2017 appearance she made on the podcast of Brown University economics professor Glenn Loury.⁴ On an episode entitled “The Downside to Social Uplift,” Wax discussed her views on the “mismatch” theory of affirmative action. Wax commented that “I don’t think I’ve ever seen a black student graduate in the top quarter of the [Penn Law School] class and rarely, rarely in the top half,” and that “I can think of one or two students who’ve graduated in the top half of my required first-year course.”

An online petition was circulated demanding that you remove Wax from teaching 1Ls and from any “committees that involve leading and directing the law school.”⁵ Several days later, on March 13, 2018, you announced, in an email to the Penn Law community, that Wax would no longer be teaching “required first-year courses.” Your email cited the fact that Wax’s comments had contravened “the policy that student grades are confidential,” potentially a legitimate concern. But it also cited your distaste for the views she had expressed, such as the fact that you found her comments “belittling.”

FIRE respects Penn Law’s right to enforce its policies on the confidentiality of student grades, so long as those policies are fairly and consistently enforced. However, such policies must not be used pretextually to punish Wax for the substance of her views, and your administration must resist the pressure to take action against her for those views. FIRE has learned that the head of Black Lives Matter Pennsylvania has demanded that Wax be

² “Open letter to the University of Pennsylvania community,” *The Daily Pennsylvanian*, Aug. 30, 2017, <http://www.thedp.com/article/2017/08/open-letter-penn-law-faculty>.

³ Amy Wax, “What Can’t Be Debated on Campus,” *The Wall Street Journal*, Feb. 16, 2018, <https://www.wsj.com/articles/what-cant-be-debated-on-campus-1518792717>.

⁴ Bloggingheads.tv, “The Glenn Show – The Downside to Social Uplift,” *YouTube* (Sept. 11, 2017), <https://www.youtube.com/watch?v=cb9Ey-SsNsg&t=1s>.

⁵ “Petition to Dean Ruger re: Wax Video,” https://docs.google.com/forms/d/e/1FAIpQLSd_SCzQ04t3uiima8U-lulEHmztArIiTkReUSeh2TNv8PqcYg/viewform?entry.713729840&entry.218029281&entry.2042363387&entry.138380231.

“fired” because “[a]nyone with the types of beliefs she holds teaching Black and brown students is a danger to them and their future,” and that he intends to cause disruption at the law school if this demand is not quickly met.⁶

Penn Law’s commitment to academic freedom is meaningless unless it protects those whose speech challenges or offends others. It is with contentious issues such as those discussed by Professor Wax that an institution’s commitment to academic freedom is truly tested. While students may have been offended by Wax’s words, if every person had the power to punish those who expressed ideas they found offensive, we would all soon be reduced to silence. The ability to discuss controversial ideas and topics is nowhere more important than in the halls of the nation’s colleges and universities, which have been described by the Supreme Court as “peculiarly the marketplace of ideas.” *Healy v. James*, 408 U.S. 169, 180 (1972) (internal quotation marks and citation omitted). Any university that would attempt to shield its community from offense would soon see the death of intellectual vitality, and the waning of its influence in society.

Again, we understand that to the extent Wax’s comments on The Glenn Show may have raised concerns about student confidentiality (despite not having named any students), Penn Law is within its rights to address the matter. But it is essential that this decision be made independently of the substance of the views that raised those concerns. Given that your March 13 email to the community is presented as a resolution to that concern, any additional action taken against Professor Wax—particularly given the pressure you are now facing—would raise significant free speech and academic freedom concerns.

We request a response to this letter by April 9, 2018.

Sincerely,



Samantha Harris L’02
Vice President of Policy Research

⁶ John N. Mitchell, “Black Lives Matter leader: Penn has to fire ‘racist’ professor,” *The Philadelphia Tribune*, (Mar. 17, 2018), http://www.phillytrib.com/news/black-lives-matter-leader-penn-has-to-fire-racist-professor/article_c60c2c33-ac4f-5631-ad47-84f2540d0743.html (“Khalif said he has reached out to Penn and notified the university that if Wax, who has suggested that African-American students are inferior, is not fired he will begin disrupting classes and other campus activities with a wave of protests that could begin as soon as Friday.”)