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Dr. Amy Gutmann, President
University of Pennsylvania
100 College Hall
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Dear Amy,

After years of engaged and fulfilling involvement with Penn, I am resigning as Trustee Emeritus and a Law School Overseer with this note. I am truly sorry to do so, but the treatment of Amy Wax is unacceptable. Dean Ted Ruger has mismanaged the situation badly. Unnamed "university officials", one of whom may have been you, had advance notice of Ruger's intention to terminate her first-year teaching assignments and permitted Ruger to proceed. Preventing Wax from teaching first-year students doesn't right academic or social wrongs. Rather, you are suppressing what is crucial to the liberal educational project: open, robust and critical debate over differing views of important social issues. A serious error has been made; please reconsider this illiberal ban on Wax's pedagogy.

Wax co-authored an off-campus editorial in a publication unaffiliated with Penn expressing her views about "bourgeois values." For her colleagues to gang up on her in a letter of outright condemnation without giving any reasons demolishes the façade of open intellectual debate at the Law School. This letter, that was certain to harm the school, should not have been published, but Ted did not take strong steps to stop it.

Rather, Ruger authorized an official law school statement dissociating the school from her views (as if anyone under the circumstances would have thought the op-ed was the Law School's position). Then he criticized her directly in an op-ed, while piously pretending to protect her by hiding behind the banner of free speech. An associate dean, Polk Wagner, also publicly criticized Wax, undoubtedly with Ruger's permission if not outright encouragement.

Such actions make it rather hard for him to represent *all* faculty in this or any future debate. Will those with unpopular views express them? If tenured, maybe, if they can take the heat from the gang and the dean; if not tenured, I doubt it. Ruger failed to lead, corral, jawbone, assuage and otherwise manage his faculty. Mike Fitts did that so well. I don't want to support Ted Ruger nor such un-collegial faculty any longer.

Worse yet, what started as an unduly raucous debate over "bourgeois values" and the relative merits of different cultures quickly got out of hand. We're now debating Wax's view of affirmative action, and how students admitted under that program have fared, its impact on them, and its place in our society. Very reasonable people disagree vehemently about these matters. And why not, these are important

matters. Ruger has said that Wax is wrong about her affirmative action students' performance, but won't give data to back up his views. One of the Overseers keeps saying to me: "Paul, Amy is wrong!" I say: "Well, I hope she is, but what are the facts?" He says: "Well, Ruger said she's wrong; that proves it." Really? Privately, faculty members have told me that their experiences match those of Wax.

Because Ruger has publicly said that Wax was wrong, it might be nice to know how various groups have fared at Penn Law. Each year at graduation the Law School announces membership in Order of the Coif and other honors based on grades; we know who those people are. We also know who gets clerkships. Why are general data that would help us assess the merits of racial preferences being suppressed? If Wax is right, then Ruger is letting her swing from the gallows of public opinion unfairly. Why would he not want to prevent the vilification and racist labeling of one of his faculty members when her views are well within respectable debate and her data may be correct? That is hardly fair play. If she is wrong, then so much the better. Wax would no doubt be thrilled. However, if Wax is right, and the data are available and she is punished for talking about her experiences over two decades of teaching, the University has effectively constructed a cynical firewall to suppress all discussion of affirmative action: It won't comment on its existence or student outcomes, and it punishes others for commenting publicly on student performance. That hardly seems to pass the test of intellectual inquiry expected of a university. What are the Law School and the University afraid of?

The claim that Wax is a racist is now ubiquitous at the University. Ruger is quick to criticize Wax, but where are his public condemnations of those who make such baseless, besmirching claims about his colleague with no factual underpinning?

Wax has written scholarly work about affirmative action, as have other distinguished scholars, like Richard Sander at U.C.L.A. Law, Duke University economist, Peter Arcidiacono, Harvard historian Stephan Thernstrom, and Thomas Sowell of the Hoover Institute. It is not a subject free from intense debate that roils emotions. So what! What is the University there for? It can't be to preside over an "I'm okay-you're okay," back-slapping, Pollyanna culture. I relish hearty but respectful debate. Ruger doesn't appear to because he has chilled free expression by his critical and punitive conduct. Make no mistake: Ruger's public removal of Wax from the required first-year curriculum was punitive and you have apparently done nothing to stop him.

Ruger's long memo of March 13th to the Law School community rested on the claim that Wax had violated her students' confidentiality. What rule proscribes a professor's general comments about students' grades over a 17-year period, without naming a single person, nor a single class of students, let alone her most recent civil procedure students? The video interview with Brown economist Glenn Loury was in the early fall of '17, so she could not have been referring to any of the students in her class then because they hadn't been graded yet (or her current class). Penn Law has entered the world of micro-aggressions and "snowflakes" and that is not a world I choose to be part of.

Ruger also accused Wax of falsehoods regarding Law Review admission. Admission remains meritocratic, he claimed; there is no "diversity mandate," as Wax had suggested. By coincidence, I just received a sickeningly saccharine, self-congratulatory email about how well our Law Review is doing

regarding diversity. It does so by creating a separate track for admission based on personal history, a patent stand-in for race that has nothing to do with the traditional meritocratic criteria for Law Review membership.

It is not acceptable that a professor with Wax's scholarly and teaching stature and litigation experience (15 arguments before the Supreme Court) should be barred from teaching civil procedure just because some students might be uncomfortable in her class. Her exam is a multiple choice, computer-graded exam so there can be no plausible argument that she grades discriminatorily. Adam Hobson, Penn Law '08, now a prosecutor at the U.S. Attorney's office in the Southern District of New York, wrote in *The Wall Street Journal* that he had never had a better, more even-handed teacher than Wax. Her treatment, he wrote, was shocking. This is not good publicity for Penn.

Punishing Wax for some students' subjective feelings of discomfort is unprincipled and has no limit. There is not a shred of evidence that Wax treats her students unequally. Removing Wax from the required curriculum sends a clear message to the entire university community: If you express unpopular views, even though there is no evidence that the learning environment is compromised, you will be punished.

Finally, while Ruger says he reached out to alums for their views before preventing Wax from teaching, he didn't solicit mine. There haven't been too many more important Overseers at Penn Law over the past few decades. I chaired the Board of Overseers for seven years; funded the building of the Levy Conference Center and the transformative Levy Scholars program; led the fund-raising effort and funded part of the professorships honoring then-outgoing Deans Colin Diver and Mike Fitts; funded part of the new Golkin Hall on Sansom Street; was the catalyst for and worked with Mike Fitts and Ed Rock to set up the wildly successful three-year JD/MBA programs at Wharton; served on the search committee that chose Mike Fitts as dean; led the last Campaign for Penn Law which more than doubled its stated goal of \$75 million; gave excessively to the Annual Gift program over two decades; was feted by you, President Judith Rodin and others; and more. Quite simply, Ruger did not want to encounter opposing views and I wonder if he consulted any senior members of the faculty who might have objected.

As President of a great university, more action from you to encourage and even to enforce balance and respect for the views of your professors is in order. As you launch Penn's next campaign for ever-more funds in the near future, I hope you bear in mind what universities like Penn are essentially about. Their highest goals are the pursuit of knowledge through debate and discussion and the defense of the ideal of free expression.

 Best wishes,
Paul