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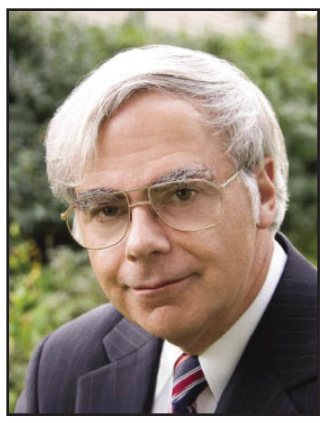
ILLINOIS ACADEME

Illinois conference of the American Association of University Professors *Spring 2018* ilaaup.org

President's Message

Michael Harkins
President, Illinois AAUP



Since our October 2017 Fall Board meeting, the officers and Board members have continued protecting academic freedom, shared governance and tenure for higher education faculty in Illinois. Our Committee A has been very effective in these areas and will continue to support and stand by faculty members needing assistance.

As we face challenges in the new reality of our profession, the Illinois Conference, in conjunction with our national office, will continue to investigate violations of academic freedom, shared governance and tenure. To continue this work and to build our membership, we need chapter support. Through regular chapter meetings, faculty members can remain current of the issues and challenges facing teaching faculty not only here in Illinois, but throughout the country. Regular Chapter meetings with speakers and programs are essential to grow our membership and engage in academic discussion and the betterment of our academic profession. Starting new Chapters is a goal of the Illinois Conference. If one does not exist at your institution, consider starting one. The State Conference and National Office will provide assistance through new Chapter start-up grants. Speakers from the State Conference will also be available for Chapter meetings and special campus events.

Over the next few months, we will engage additional challenges. Now is the time to focus on faculty unity and speaking with one clear voice. On Sat. April 21, 2018 we will hold our Annual Conference and meeting at the Robert M. Healey Center in Westmont, Illinois. The Conference is open to all higher education faculty. This year's theme is "Defending Academic Freedom, Shared Governance and Tenure in an Ever Changing Academic Landscape." Our presenters will speak on many of the key issues we now face in freedom of speech on our campuses. I encourage all Chapters to attend and participate in the Conference activities and discussions. Specific registration information and directions to the Center can be found in this issue of Academe and on our website, *ilaaup.org*.

Last December and this January, the Illinois Conference received two grants from the Assembly of State Conferences (ASC). One grant will help us continue our outreach workshops for new and existing Chapters; the second will help us revise, update, and enhance our website. More details will be provided in the next few months on both grants.

As a Board we are dedicated to the principles of AAUP, supporting higher education faculty, creating new Chapters, and increasing membership. To meet these goals we need you to volunteer for our committees. Each year we seek new faculty to join our committees.

Please take some time to review these committees on our website and contact the officers with your interest.

This June, the AAUP Annual Conference and Meeting on the State of Higher Education will be held in Arlington, Virginia June 14-16. This year's theme will highlight Free Speech on Campus. Conference sessions and presentations are scheduled June 14 and 15. The annual business meeting will be held on June 16 from 9:00 a.m. - 4:00 p.m. The Assembly of State Conferences (ASC) meeting will be held on Friday, June 15, 2018 from 9:30 a.m. - 12:00 p.m. All Conference meetings and activities will be held at the Double Tree in Arlington, Virginia. As a reminder, the AAUP Summer Institute will take place July 19 - 22, 2018 at the University of New Hampshire in Durham, New Hampshire. I highly recommend both meetings and the Summer Institute.

In closing, please join us on April 21 at the Healey Center as we focus on the common good of our profession. As higher education faculty dedicated to the principles that define us and the teaching we do, now is the time to join together in unity for Academic Freedom, Shared Governance, and Tenure for our common good.

Illinois AAUP Spring Conference

Saturday April 21, 2018

Robert M. Healey Center in Westmont, Illinois

For free registration, please email Diana Vallera at: diana@studioera2.com

Conference Theme: Defending Academic Freedom, Shared Governance and Tenure in an Ever Changing Academic Environment

9:15 A.M. - 9:30 A.M. Welcome

9:30 A.M. - 10:05 A.M. Session 1 - "The Two Day Strike at Columbia College: an Assessment," with Diana Vallera, Columbia College

10:10 A.M. - 10:45 A.M. Session 2 - "Academic Freedom and Free Speech on Campus: Speakers, Protests, and Censorship," with John K. Wilson, editor, *Illinois Academe*.

10:45 A.M. - 11:00 A.M. Break

11:00 A.M.- 12:00 P.M. Session 3 - "The Continued Death Spiral of Illinois Public Higher Education," with Linda L. Brookhart, Executive Director, State Universities Annuitants Association; and Leo Welch, Professor Emeritus of Biology, Southwestern Illinois College

12:00 P.M.- 1:15 P.M. Lunch in the foyer

1:15 P.M. - 2:00 P.M. Session 4 - "How Shared Governance Served Free Speech at Missouri: A Case Study," with Ben Trachtenberg, Associate Professor of Law, University of Missouri

2:00 P.M. - 2:15 P.M. Break

2:15 P.M. - 3:30 P.M. Session 5 - "Higher Education and Political Action: A Direction for the Future in a Changing Academic Landscape," with Michelle Paul, Director of Political Activities, Illinois Federation of Teachers, Springfield Office

3:45 P.M. - 4:00 P.M. General Membership meeting and elections

The Spring Conference will be held at the Robert M. Healey Conference Center, 500 Oakmont Lane, Westmont, IL 60559, in the North Conference Room. The conference is free and open to all faculty in higher education. Please note all attendees must pre-register with Diana Vallera, Illinois Conference Secretary by April 13th at Diana@studioera2.com. The General Membership meeting and election at 3:45 P.M. is open to all current AAUP members in good standing.

American Association of
University Professors of Illinois
3235 W. Hollywood Ave.
Chicago, IL 60659

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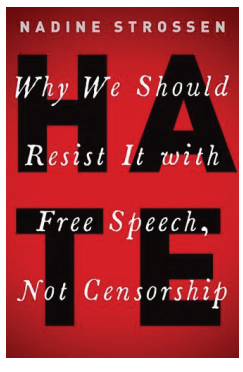


The War on Unions: *Janus* at the Supreme Court

By Leo Welch

On February 26, 2018 the United States Supreme Court heard oral argument on the issue of "fair share" fee payers on unit members of unions. The case is *Janus v. American Federation of State, County and Municipal Employees, Council 31 (AFSCME)*. The plaintiff is Mark Janus a child-support worker from Illinois. He claims that by being "forced" to join a union his "free speech" constitutional rights are being violated. Janus is the front man for Illinois Governor Bruce Rauner and other right-wing anti-union groups such as the Koch brothers. Rauner attempted to eliminate "fair share" for Illinois unions by issuing an Executive Order. This order was overturned by Associate Judge Chris T. Kolker in St. Clair County.

Rauner's Executive Order 15-13 would have prohibited state agencies under the Governor's Jurisdiction from enforcing "fair share" in the state employees collective bargaining agreements.

A legal challenge was filed in the Circuit Court, Twentieth Judicial Circuit, St. Clair County, Illinois on December 27, 2017. The plaintiffs were the Illinois AFL-CIO, the Federation of State, County and Municipal employees, Council 31; et al. The defendant was Bruce Rauner, Governor of the State of Illinois; et al.

There were three main arguments against Rauner's Executive Order. First, it violated state law and the collective bargaining agreements. The collective bargaining calls for payment of "fair share" for contractual benefits. Second, the Executive Order violates the Illinois Constitution which calls for the separation of powers. Each branch of government has its own sphere of authority that cannot be exercised by another branch. Rauner's Executive Order would violate legislative statues. Third, the Executive Order would violate federal law. The United States Supreme Court in 1977 upheld "fair share" based on *Abood v. Detroit Board of Education*.

The attempt to eliminate "fair share" fees goes back to the 1970s when the Supreme Court of the United States heard the case of *D. Lewis Abood v. Detroit Board of Education*. Some public school teachers in Detroit claimed they should not be required to pay "fair share" fees on the grounds that they opposed public sector collective bargaining and objected to the political activities of the union.

On May 23, 1977, by a unanimous decision, the Court ruled in favor of a union shop, legal in the private sector. They ruled that unit members may be assessed "fair share" fees to assist in the negotiations of a collective bargaining contract, contract administration, and the costs of a grievance. The objectors to union membership may not be assessed for ideological or political purposes.

The next U.S. Supreme Court case was heard on January 11, 2016. The case was *Rebecca Friedrichs, et al., Petitioners v. California Teachers Association, et al*. The California Teachers Association is a state affiliate of the National Education Association. Friedrichs was a grade-school teacher who disliked the fact that teachers in her school had tenure. The assumption is that teachers should be "employees at will". The case is based on a convoluted argument that her First Amendment Rights are violated by being a member of a public collective bargaining union. Justice Antonin Scalia died shortly after the case was heard and the Court was split four to four so no decision was rendered.

On June 28, 2016, the rehearing petition was submitted by the Center for Individual Rights, a right-wing organization, was denied. In 2017, after the Supreme Court regained a ninth Justice, it agreed to hear *Janus v. AFSCME*.

The war on unions is not new. Various anti-union organizations have developed over the last twenty years: The Bradley Foundation, The Donors Trust and Donors Capital Fund (founded by the Koch brothers), American Legislative Exchange Council (ALEC), State Policy Network, and Americans for Prosperity (another Koch brothers organization). In all there are about twenty of these organizations. The top ten of this group have contributed at least $57 million to promote their anti-democratic agenda. The Illinois Policy Institute has contributed $1.7 million to fight unions in Illinois.

Based on the current structure of the U.S. Supreme Court the unions are not expecting the decision to uphold "fair share."

AAUP, NEA File Aminus Brief in *Janus v. AFSCME*

The National Education Association and the American Association of University Professors submitted an amicus brief on Jan, 19, 2018 with the Supreme Court in the case of *Janus v. AFSCME, Council 31*. The National Right to Work Committee, which is behind the case, is asking the Court to read into the First Amendment a right-to-work law for the entire public sector. As the brief explains, the First Amendment has never been so interpreted and doing so would conflict with the Court's long-established deference to state decisions about their public workforces. At issue in Janus is whether non-union members, who share in the wages, benefits and protections that have been negotiated into a collectively bargained contract, may be required to pay their fair share for the cost.

"Strong unions help to create strong schools for students and even stronger communities that benefit all of us," said Lily Eskelsen García, a sixth grade teacher from Salt Lake City, Utah who was elected to serve as the president of the National Education Association. "For generations, unions have been the best path to the middle class for working people, especially people of color and women. But in this rigged economy, unions are under attack, and those attacks are coming not just from the White House and Capitol Hill. They're happening at the ballot box and at the Supreme Court with cases like *Janus v. AFSCME*."

A comprehensive report issued last year by the Economic Policy Institute detailed how collective bargaining plays an essential role in the labor market, by raising working people's wages and supporting a fair and prosperous economy as well as a vibrant democracy. Unions and their ability to bargain collectively are an important force in reducing inequality and ensuring that low- and middle-wage workers receive a fair return on their work. Another recent report titled, "Strong Unions, Stronger Communities," reviewed numerous case studies where members of labor unions have used their freedom to join strong unions and collective voice to fight for improvements that benefit all working families in communities throughout America.

"This case is part of a broader effort to weaken the freedom and power of working people, undermine public services, and to erode the common good. The Supreme Court should consider the benefits of robust collective bargaining and unionization for public employers, employees and the general public, including improved government services, better educational outcomes and higher economic mobility," said AAUP General Counsel Risa Lieberwitz. "The court also should not ignore the fact that many of the groups who filed briefs in support of Janus only want to manipulate and weaponize the court's decision to attack unions and deprive state and local governments of broad societal benefits that accompany collective bargaining."

The *Janus* case presents a real test for the court. If facts, merit and law are considered, then the justices must rule in favor of upholding 40 years of precedent that support the authority of state and local governments to choose to have strong public sector systems of collective bargaining.

"The politically-motivated backers behind Janus know this case is nothing more than a smokescreen for what they're really trying to do," added Eskelsen García. "Point blank, this case is an assault on the freedoms of working people to earn a better life for themselves and their families. The case's backers are attempting to write the rules further in favor of their own special corporate interests and other billionaires. The justices on the Supreme Court cannot allow themselves to be fooled."

The Arrest, Release, and Suspension of Jay Rosenstein at the University of Illinois

By John K. Wilson

University of Illinois Jay Rosenstein, who authored the feature on University of Illinois athletics that appeared in the Fall 2017 issue of *Illinois Academe*, was suspended by the University of Illinois in January 2018 and removed from teaching his classes. The Administration reinstated him four weeks later, finding that he had not violated any policies in recording someone in a bathroom dressed up as Chief Illiniwek.

Rosenstein announced, "I knew all along I would be totally vindicated. The whole thing was garbage from the beginning, nothing but an act of political revenge."

Ivan "Alex" Dozier, who dresses up as Chief Illiniwek and made the complaint against Rosenstein, said: "I think the community should be outraged, and if the chancellor won't fire Rosenstein, perhaps they both need to go."

John Bambenek, a part-time UI lecturer who was appointed by Gov. Bruce Rauner to the Illinois Board of Higher Education, declared: "Putting Rosenstein back in the classroom without sanction is a gross abdication of the University's responsibility to protect students."

Professor Bruce Rosenstock criticized the Administration for failing to follow proper procedures by suspending a professor without the required due process or emergency justification, and has drafted a resolution for the Faculty Senate to prevent this from happening again. Rosenstock called the reinstatement "a total vindication of everything that everybody has said all along, that this was not a proper move on the part of the chancellor and the administration to impose a so-called nondisciplinary suspension on Jay."

University of Illinois Campus Faculty Association Statement, January 26, 2018

The struggle over the university's refusal to enforce its own regulations on the retirement of racist mascots continues. On the evening of Monday, January 22, a person dressed and behaving in racist and mocking ways was allowed, once again, to attend and perform in the stands at the U of I/Michigan State men's basketball game at the State Farm Center. That night, Prof. Jay Rosenstein was arrested due to his efforts to video document possible collusion between university employees and the people who continue to inflict unauthorized representations of a racist mascot at University of Illinois events.

On the night of Prof. Rosenstein's arrest, The News-Gazette gave prominent attention to a pro-mascot U of I alumnus who accused Prof. Rosenstein of filming him while urinating. Upon his release, Prof. Rosenstein publicly stated that that he did no such thing. He entered a public restroom but did not film anyone in any state of undress.

University authorities have suspended Prof. Rosenstein, placing him on "paid administrative leave" pending "an investigation." In cases of alleged faculty misconduct, the University Statutes provide for "severe sanctions short of dismissal" and "sanctions including dismissal." In both cases, Senate committees and a hearing must be involved. However, Prof. Rosenstein has been not been informed of the provisions under which he has been suspended, nor of the procedures which are being followed.

The University should pay attention to the fact that although Prof. Rosenstein was arrested and spent a night in the county jail, he was released immediately the next morning when Julia Reitz, the State's Attorney, determined that no charges would be brought against him.

The Campus Faculty Association states its continued support of efforts to eradicate the evil of the unwanted, corrosive and provocative presence of the racist mascot from our campus. The CFA supports Prof. Rosenstein's legitimate and, sadly, still much-needed efforts in this regard.

We ask: why does the University of Illinois continue to take no action against the vocal and obnoxious supporters of racism?

We therefore demand that the University:

--State under what provisions of the University Statutes Prof. Rosenstein has been suspended.

--End the "investigation" and issue a public statement which clears Prof. Rosenstein of wrongdoing on January 22, 2018, as the State's Attorney has already done.

--Investigate how supporters and enactors of the racist mascot are still allowed to perform on campus.

--Enforce University agreements and regulations banning representations of racist mascots from campus events and property, implement the recent student government resolution for removal of such representations from university buildings, and educate students at large on the offensive nature of such images.

Illinois Legislative Report By Leo Welch

Higher Education Centers of Excellence: HB 4103 (Brady) and SB 2234 (Rose) requires the Board of Higher Education to establish a uniform admission process online, which must be used at all public institutions of higher education; sets forth what components this admission process must include; requires the Board (i) to ensure that any high school student in this State with a 3.0 cumulative grade point average or better on a 4.0 scale (or the equivalent on a 5.0 scale) receives access to the opportunity of higher education, and (ii) to guarantee admission to a public university; requires cooperation by the State Board of Education, high schools, and public universities; requires the Board to conduct a study of the academic programs offered at each public university campus; sets forth the Board's duties concerning the study; requires the Board to use the results of the study and other specified factors to determine which academic programs should be prioritized at campuses of public universities and to create and designate Higher Education Strategic Centers of Excellence; requires the Board to work with the Illinois Community College Board (ICCB) to develop recommendations to integrate community colleges into this plan; sets forth additional Board of Higher Education duties concerning evaluating programmatic expansions and new programs and studying student financial aid and multi-year budgeting; and amends various Acts relating to the governance of public universities to make conforming changes.

This legislation changes the role of IBHE from a coordinating board to a governing board that directs the operations of the public institutions and in some instances this includes community colleges.

Prohibition on Nonessential Expenses: HB 4251 (Halbrook) amends the State Budget Law to provide that for the fiscal years ending June 30, 2019, June 30, 2020, and June 30, 2021, no state-funded agency, board, commission, department, university, or other entity organized within State government shall expend any funds on specified nonessential items and travel.

"Nonessential items" are defined to include but are not limited to, items of tangible personal property for purposes of promoting or advertising the name of the State government entity or its programs, missions, duties, or functions, such as magnets, buttons, bumper stickers, ribbons, awards, prizes, trophies, stationary, writing implements, legal pad holders, book bags, or other similar items.

"Nonessential travel" is defined to mean travel for any member of the governing body or employee of a state-funded agency, board, commission, department, university, or other State entity to attend seminars, conferences, or other similar events, whether conducted in this State or any other state.

Vocational Academy Opportunity Act: HB 4495 (Thapedi) creates the two vocational academies, one located in Cook County (Chicago) and the other in St. Clair County (East St. Louis), which shall be residential institutions. The bill provides that each academy shall be a State agency, funded by State appropriations, private contributions, and endowments. The Act further provides that the academies shall be governed by a single Board of Trustees for the collective operation and oversight of the academies. The bill specifies the duties and powers of the Board and provides that each academy shall be empowered to lease or purchase real and personal property on commercially reasonable terms for use of the academy.

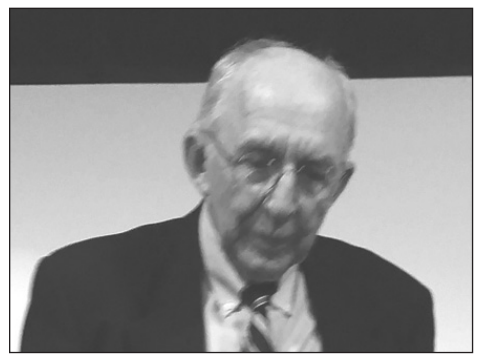
Three-year Teaching Degree: HB 4956 (Cavaletto) amends the Educator Licensure Article of the School Code to provide that, beginning with the 2019-2020 academic year, every public university in this State that offers an educator preparation program must offer to those students enrolled in the educator preparation program a three-year degree completion program. The bill provides that prior to implementation of the program, a public university shall submit to the Board of Higher Education the curriculum and requirements of its program for approval and provides that upon completion of the program, a student shall receive a bachelor's degree and qualify for entitlement for licensure.

Religious Institution Exemption: HB 5067 (Sauer) and SB 2822 (McConchie) amends the Private Business and Vocational Schools Act of 2012, the Private College Act, and the Academic Degree Act. The bill defines "religious institution" in these Acts and provides that any religious institution (instead of any institution devoted entirely to the teaching of religion or theology) shall not be considered to be a private business and vocational school, makes related changes, provides that no religious institution shall be subject to the educational requirements, standards or demands contained in the Private College Act or the Academic Degree Act or in those Acts' administrative rules. The bill also requires a religious institution to notify each of its students in writing that the religious degree being earned or course work earned at a religious, non-accredited, post-secondary educational institution may not transfer to other institutions.

Automatic Admission: SB 3565 (Rose) requires the Board of Higher Education (i) to ensure that any high school student in this State with a 3.0 cumulative grade point average or better on a 4.0 scale (or the equivalent on a 5.0 scale) receives access to the opportunity of higher education, and (ii) to guarantee admission to a public university, and requires cooperation by the State Board of Education and public universities. The bill requires all high schools to provide the time, opportunity, and guidance to fill out a Free Application for Federal Student Aid for any student wishing to do so.

Online Uniform Admissions Process: SB 3566 (Rose) requires the Board of Higher Education to establish a uniform admission process online, which must be used at all public institutions of higher education.

Access to financial assistance for undocumented students: HB 4503 (Hernandez) is intended to provide access to publicly funded student financial aid, excluding the need-based MAP grant, for Illinois students who are undocumented but are already eligible for in-state tuition at our state's public universities.



IBHE/ICCB/ISAC Consolidation: SB 2597 (Rose) amends the Board of Higher Education Act, the Public Community College Act, and the Higher Education Student Assistance Act. The bill decreases the membership of the Board of Higher Education from 16 to 15. Gubernatorial appointments would be increased from 10 to 13, with at least 6 representing public universities and at least 6 representing public community colleges. Of the 13 members, one member shall be a faculty member of a public university in this State, one member shall be a faculty member of a private college or university in this State, one member shall be a faculty member of a public community college in this State, and one member shall represent the views of non-traditional students and shall be at least 24 years old. These appointees are to be citizens of the State and confirmed by the Senate. The bill provides for two non-voting student members, one from a public university and one from a community college. The student members are to be appointed by the Student Advisory Committee of the Illinois Board of Higher Education (IBHE), The bill makes allowances for current serving Board members but reduces the number of members that may be of the same political party from 7 to 6.

The bill provides that all of the rights, powers, duties, and functions vested by law in the ICCB and ISAC are transferred to the IBHE on January 1, 2019 and transfers all employees of ICCB and ISAC on January 1, 2019. The bill designates the IBHE as the successor agency for the purposes of transferring appropriations made to the ICCB and ISAC. The bill abolishes the Illinois Community College Board and the Illinois Student Assistance Commission and provides for the transfer of personnel and property on that date.

AAUP Calls for Sensible Gun Control

The recent mass shooting of fourteen students and three adults at Marjory Stoneman Douglas High School in Parkland, Florida, has refocused efforts to stem the epidemic of gun violence plaguing the nation. This time the effort has been initiated and led by the surviving students, supported by their teachers, parents, and students across the country. The American Association of University Professors salutes these brave and eloquent young people, many of whom will soon enter colleges and universities. We hope they will continue their activism on our campuses.

Gun violence is not a problem limited to high schools. Colleges and universities have been sites of mass shootings ever since Charles Whitman climbed to the top of the tower at the University of Texas at Austin on August 1, 1966, with an arsenal of high-powered weapons and began shooting, killing at least sixteen people and injuring thirty-one. More recent tragedies at Virginia Tech in 2007, Northern Illinois University in 2008, and Umpqua Community College in Oregon in 2015, among others, compel us to reflect on how we can best ensure the safety of our campuses.

The AAUP has long opposed the presence of firearms on college and university campuses. In 2008 the AAUP Annual Meeting passed a resolution to that effect. In November 2015, the AAUP, the American Federation of Teachers, the Association of American Colleges and Universities, and the Association of Governing Boards of Universities and Colleges issued a joint statement opposing legislation—so-called "campus carry" statutes—that would permit the carrying of guns on campus. The statement said:

> Colleges and universities closely control firearms and prohibit concealed guns on their campuses because they regard the presence of weapons as incompatible with their educational missions. College campuses are marketplaces of ideas, and a rigorous academic exchange of ideas may be chilled by the presence of weapons. Students and faculty members will not be comfortable discussing controversial subjects if they think there might be a gun in the room. . . .
>
> [We] strongly support efforts to make college campuses as safe and weapon-free as possible for students, faculty, staff, parents, and community members. We therefore oppose efforts to enact "campus carry" laws and call for their repeal where they already exist. We encourage colleges and universities to embrace critical incident planning that includes faculty and staff and to advise all faculty and staff of these plans. We further call on these institutions to rely on trained and equipped professional law-enforcement personnel to respond to emergency incidents. State legislative bodies must refrain from interfering with decisions that are properly the responsibility of the academic community.

In November 2017, the AAUP, along with the Giffords Law Center to Prevent Gun Violence and the Brady Center to Prevent Gun Violence, submitted an amicus curiae brief in the case of Glass v. Paxton, in which a group of faculty members at the University of Texas have challenged as a violation of academic freedom the Texas law permitting concealed handguns in university classrooms. That brief stated:

> The decision whether to permit or exclude handguns in a given classroom is, at bottom, a decision about educational policy and pedagogical strategy. It predictably affects not only the choice of course materials, but how a professor can and should interact with her students—how far she should press a student or a class to wrestle with unsettling ideas, how trenchantly and forthrightly she can evaluate student work. Permitting handguns in the classroom also affects the extent to which faculty can or should prompt students to challenge each other. The law and policy thus implicate concerns at the very core of academic freedom: They compel faculty to alter their pedagogical choices, deprive them of the decision to exclude guns from their classrooms, and censor their protected speech.

The AAUP continues to oppose unequivocally any legislation or policy that would compel colleges and universities to permit firearms, concealed or openly carried, on campus. In this we stand with the overwhelming majority of educators across the country, as evidenced by the fact that in the twenty-two states that allow colleges and universities to set their own policies about guns on campus, almost every school has elected not to permit them. Over a dozen other states and the District of Columbia bar guns from campus by statute.

Given the widespread availability of the most deadly weaponry and the growing number of instances in which such weapons have wreaked havoc, however, it is not sufficient only to champion the right of colleges and universities to bar their presence. To ensure the safety of our students, of our faculties, and of all those who work at or visit our campuses, we must speak out in support of broader sensible gun control measures like those proposed by the students at Marjory Stoneman Douglas High School.

Specifically, the AAUP calls on our members and all faculty and students, on college and university administrators and trustees, and most of all on our political leaders to support

- a total ban on the sale and possession of military-style assault weapons, designed solely to kill human beings, and on high-capacity magazines and bump stocks;
- comprehensive background checks for all who purchase firearms, whether in a gun store or at a gun show, with reasonable restrictions on access to weapons for those with diagnosed mental illness or with a history of violence, including domestic violence;
- a complete universal database of those banned from buying firearms;
- raising the minimum age to purchase firearms to twenty-one.

We therefore also endorse the March 24 March for Our Lives in Washington, DC, as well as the efforts of students to protest gun violence with peaceful walkouts on March 14 and April 20.

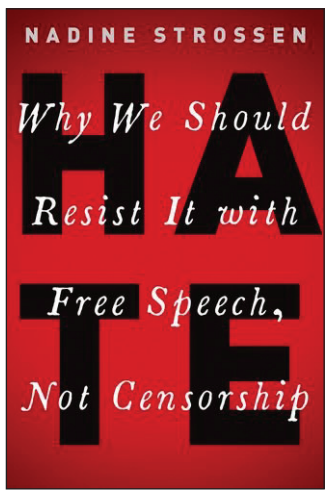
Interview with Nadine Strossen on *HATE*

Nadine Strossen, the former ACLU President (1991-2008) and Professor of Constitutional Law at New York Law School, is the author of a new book, **HATE: Why We Should Resist It with Free Speech, Not Censorship** *(Oxford University Press). She will be speaking May 20 at the Evanston Literary Festival and May 21 at North Central College in Naperville. John K. Wilson interviewed her via email for* Illinois Academe*:*

Q: One challenge for free speech comes from harassment law: If regulating hate speech is essential to create equity in the workplace or schools, why shouldn't it be regulated in the entire society to create more equity? Why should legal equality end at the office door?

A: Let me start with the bottom-line answer: If a specific instance of "hate speech" satisfies one of the Supreme Court's three appropriately narrow definitions of speech that, in particular contexts, is punishable as harassment, that "hate speech" could be punishable as harassment "in the entire society," not only in the workplace or educational settings. To be sure, two of the three types of punishable harassment—"quid pro quo" and "hostile environment"—are most likely to occur in workplace or educational settings, because they entail the kinds of power relationships that exist in those settings. However, these concepts could be enforced in any other context in which similar exploitation occurred. Moreover, the third type of punishable harassment—which is individually targeted harassment—can be invoked to punish any expression "in the entire society," including "hate speech," that unduly interferes with the target's freedom and privacy.

An explanation of the foregoing conclusions requires nothing short of a summary of the most fundamental First Amendment principles, which I'm happy to provide! It gives me an opportunity to illustrate a major point that the book discusses, which is not nearly as well-known as it should be: that "hate speech" is neither absolutely protected nor absolutely unprotected. Rather, our law draws sensible distinctions between protected and punishable "hate speech."



I (along with other commentators) regularly put the term "hate speech" in quotation marks to underscore that it has no specific definition, precisely because the Supreme Court never has identified or defined a category of speech with a hateful message that is excluded from full First Amendment protection solely due to its message. To the contrary, the Court repeatedly has held that permitting government to punish or regulate speech that conveys a hateful, hated message would violate the cardinal "viewpoint neutrality" principle, which the Court has hailed as the "bedrock" of our free speech jurisprudence: that government may generally not punish speech based on disapproval of its viewpoint or message. The Court unanimously reaffirmed that core principle in one of its most recent rulings, in June 2017. It struck down a federal statute that barred trademark protection for ethnic slurs, and thus allowed an Asian-American rock band to trademark its name, "The Slants," which band members had chosen in order to reclaim the term and assert pride in their Asian heritage.

In this key sense, "hate speech" is distinguishable from constitutionally unprotected obscenity, a subset of sexually oriented expression that the Court has defined in terms of its content and held to be an exception to the general viewpoint-neutrality rule. I should note that the Court-created obscenity exception to general First Amendment principles has been heavily criticized, including by many Justices.

Although "hate speech" may not be regulated based on dislike of its viewpoint or content, it—along with speech conveying other messages—may be regulated if, in a particular context, it directly causes specific, imminent serious harm, which cannot be averted by any means short of punishing or suppressing the speech. Sometimes this situation is summarized by stating that the speech poses a "clear and present danger" or an "emergency."

Since the 1960s, the Supreme Court has increasingly strongly protected speech whose messages have been widely disapproved or viewed as controversial. Not coincidentally, many of these decisions arose in the context of the Civil Rights movement, protecting expression of civil rights demonstrators, whose ideas were feared and hated in many communities. Since then, the Court has reduced the number and scope of exceptions to the viewpoint neutrality principle. Likewise, it has enforced the emergency principle strictly, requiring speech to comply with demanding criteria in order to be punishable consistent with that principle. This is true of the three types of expression that may be punished as harassment.

While we use the term "harassment" relatively loosely in colloquial conversation, the Supreme Court has defined expression that may be treated as punishable harassment narrowly, to ensure that the expression is punishable not solely because its viewpoint is disliked, but rather because it directly causes specific imminent serious harm.

As I already noted, the Court has recognized three types of harassing expression that may be punished if they meet the pertinent criteria. Quid pro quo harassment is a type of extortion by someone in a position of power. This occurs, for example, if a professor says to a student, "Sleep with me and I'll give you an A," or if a supervisor makes a similar statement to a workplace subordinate. Such extortionate expression may be punished consistent with both the viewpoint neutrality and emergency principles; it is being punished not because of dislike of any idea it conveys, but rather because of the direct harm it causes to the relatively powerless person it targets.

Second, expression that directly targets an individual or small group of individuals in a manner that unduly harries or intrudes upon their freedom or privacy may be punished as harassment. This kind of harassment can occur in any setting "in the entire society," and violates criminal laws, as well as affording the basis for a tort lawsuit. A classic example would be repeated unwanted telephone calls in the middle of the night.

Third, the Court has recognized that expression may constitute punishable "hostile environment" harassment in the workplace or educational setting. Any conduct, including expression, may be punished as hostile environment harassment in the workplace if it is sufficiently "severe or pervasive to alter the conditions of employment and create an abusive working environment." Likewise, the Court has enforced parallel standards in the educational setting. It has stressed that offensive expression alone usually will not give rise to a claim of hostile environment harassment, and that it could do so only if the expression were "so severe, pervasive, and objectively offensive, that it effectively bars the victim's access" to the workplace or "to an educational opportunity or benefit."

If "hate speech" (or speech conveying any other message) satisfied these strict standards, it could be sanctioned as hostile environment harassment. The federal Equal Employment Opportunity Commission (EEOC) recently settled a case in which it charged that a company's African-American employees had been subjected to a racially hostile work environment due to multiple incidents of "hate speech": a noose was displayed at the worksite; derogatory racial language was used by a direct supervisor and a manager of these employees, including references to the Ku Klux Klan; and the employees had been targeted with racial insults.

In contrast with the Supreme Court's sensible concepts of punishable harassment, too many campuses have enforced a much broader concept, which squarely violates the viewpoint neutrality principle and does not satisfy the emergency principle. Specifically, too many campuses punish—and too many advocates call for punishing—any expression about sex or gender that any member of the community subjectively views as "unwelcome," making her/him "uncomfortable." This sweeping concept was endorsed by the Department of Education's Office of Civil Rights and the Department of Justice during the Obama Administration and was, justly, severely criticized by many commentators, including in a scathing report by the American Association of University Professors. Critics also included prominent feminist professors and activists. As these critics observed, this distorted concept led to the punishment and chilling of even pedagogically valuable expression in classroom settings. Moreover, by suppressing expression about the vital topics of sex and gender, this wrongheaded concept of punishable harassment undermined equality values, far from promoting them. I refer to this concept in the past tense because Secretary of Education Betsy DeVos suspended the pertinent regulations, which her department is now in the process of re-examining.

Q: Do you believe that free speech needs to have particular protection on college campuses, above and beyond anywhere else? How do you respond to critics who argue that the desire for high-quality speech on campus should override the belief that anyone, no matter how stupid or offensive, should be allowed to speak at a college?

A: As the Supreme Court has recognized, freedom of speech on college/university campuses is especially important, along with academic freedom, not only for the sake of the students and faculty, but also for the sake of our entire society. This is so because higher educational institutions play such key roles in promoting knowledge, research, and the search for truth, and also in preparing students to be effective and engaged members and leaders of the larger community.

The fundamental viewpoint neutrality principle should be enforced as strictly on campus as elsewhere. Nonetheless, universities could decide, for legitimate pedagogical reasons, to impose certain viewpoint-neutral limits on determining which speakers may be invited to address campus audiences in campus forums. After all, there are only a finite number of speakers who can be accommodated, given space and scheduling constraints. While the university could offer these limited speaking slots on a first-come, first-served basis, it could also make a pedagogical determination that it would be more educationally valuable to allocate them according to certain viewpoint-neutral criteria. For example, it could require that any speaker be invited or sponsored by members of the campus community, rather than permitting speakers with no university connections. As another example, the university could require that any speaker must make a certain portion of the allotted time available for audience questions and comments. Likewise, it could require that any speaker must permit media coverage of the event.

Even assuming that a particular speaker is "stupid or offensive," such that her/his remarks do not constitute "high-quality" speech, it could still be educationally valuable for students and other campus community members to have the opportunity to listen to and engage with that speaker. For instance, such a speaker might play an influential role in our society, notwithstanding views that many would consider "stupid or offensive." In any such case, it would be valuable for members of the campus community to hear the speaker's ideas and to subject them to the exposure, analysis, and rebuttals that would be facilitated through the speaking engagement. In other words, far from endorsing the speaker's ideas and making them more likely to gain support from campus community members, such a speaking engagement might well increase opposition to those views not only in the campus community, but also beyond.

I should note that private colleges and universities are not bound by the First Amendment, since the Constitution (with a few exceptions) governs only public sector individuals and institutions, including public higher educational institutions. Nonetheless, most private higher educational institutions undertake to honor the same basic academic freedom and free speech principles as their public counterparts, as being integral to their institutional missions. To cite one prominent example, the University of Chicago recently adopted a set of robust free speech principles, which have served as a model for other colleges and universities.

Q: You seem to accept defamation law as a legitimate restriction on free speech, as the courts have. But if hate speech arguably causes greater social harms than defamation and is less valuable speech, why shouldn't it also be subject to legal regulation? Why should wealthy white celebrities get to have courts silence speech that harms

INTERVIEW continued on next page

Book Review: *Free Speech on Campus*

By Steve Macek, North Central College

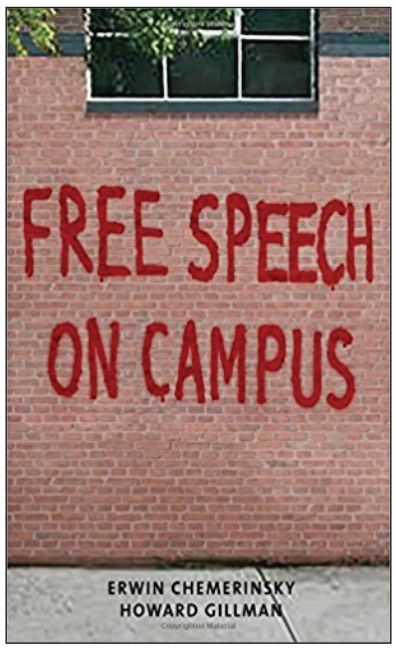
Erwin Chemerinsky and Howard Gillman, *Free Speech on Campus* (Yale University Press, 2017)

Over the past few years, colleges have been rocked by fierce battles over attempts to impose limits on campus expression in the interests of creating a more inclusive, "safer" learning environment for all students. Right-wing ideologues—like former Breitbart News editor Milo Yiannopoulos and Bell Curve author Charles Murray—have had their lectures at universities disrupted by student protestors or preemptively canceled by administrators. Faculty have faced pressure to preface classroom discussions of potentially sensitive topics (race relations, sexual violence, etc.) with "trigger warnings." Students have been disciplined for putting up deliberately offensive posters or for the racially or sexually derogatory things they have said on social media. Indeed, commentators and civil libertarians have expressed growing concern over recent opinion polls suggesting that support for the First Amendment and free speech principles among the current generation of college students is eroding, with significant proportions of those polled saying they believe it is necessary for colleges to prohibit speech that is insulting to or biased against certain groups.

In Free Speech on Campus, two eminent legal scholars, Erwin Chemerinsky (dean of University of California-Berkeley law school) and Howard Gillman (chancellor of University of California-Irvine) respond to what they see as growing support for the punishment of certain sorts of speech on campus with a powerful polemic for preserving the university as a haven for unfettered intellectual exchange and the expression of even noxious and hurtful ideas.

The authors begin their argument with an overview of the key reasons why freedom of expression, in general, is so important. They argue that freedom of expression is essential to freedom of thought as well as to democratic self-governance. They also assert that the alternative to freedom of expression, state-sponsored censorship, has proven to be "disastrous" for societies.

Having established the social value of free speech, Chemerinsky and Gillman proceed to examine the historical development of legal protections for free speech in 20th century America. They explain how a series of Supreme Court rulings in the wake of the World War I-era clamp down on "disloyal" immigrants and socialists—which had criminalized the speech of dissidents like Eugene V. Debs—gradually expanded the sorts of expression understood to be covered by the First Amendment. In the space of a few decades, the Court invalidated a government attempt to punish a political radical for advocating revolution as an abstract principle (*Yates v. United States* (1957)), overturned the conviction of an antiwar protestor who used profanity to express opposition to the draft (*Cohen v. California* (1971)) and declared unconstitutional a New York law banning "blasphemous" motion pictures (*Burstyn v. Wilson* (1952)). As Chemerinsky and Gillman point out, "the most important beneficiaries of this new conception of free speech were the most vulnerable members of society and those who most strongly advocated for social change, especially labor unions, religious minorities, political radicals, civil rights demonstrators, anti-war protestors and nonconformists."



The authors next devote a lengthy chapter to the evolution and importance of academic freedom and institutional safeguards for unfettered expression on college campuses. Historically, they remind us, colleges and universities existed not to foster rigorous scholarly inquiry or promote debate but to propagate sectarian religious dogma. According to Chemerinsky and Gillman, this changed in part because of a post-Civil War generation of visionary college presidents who understood the importance of faculty autonomy in the quest for new knowledge. However, they also underscore the central role played by the AAUP in setting in motion "a decades-long effort to protect faculty members from being punished merely because their views are considered wrongheaded or harmful." The authors draw a distinction between colleges' and universities' commitment to "academic freedom"— which in their view is linked to an investment in "the norms of an expert, professional, scholarly community"— and their commitment to free speech more generally. Both are necessary to a vibrant campus culture, they claim, but a commitment to "academic freedom" may in fact require colleges and universities to "impose extensive regulation on speech in professional settings." Thus, they claim that it is legitimate for colleges to restrict the sorts of topics being discussed by professors in their teaching to the general subject matter of the course and to prohibit abusive or profane language in the classroom that would be protected speech outside it.

After setting out their general view of academic freedom, Chemerinsky and Gillman turn their attention to the most contentious topic they address in the book: "hate speech." As they explain, debates about the boundaries of free expression on campus have long been muddied by confusion over whether or not racist, sexist or homophobic invective is constitutionally protected. Hate speech—expression degrading people on the basis of race, sex, religion or national background—is indeed prohibited by law in many countries across the world, particularly in Europe. For instance, in Scotland, a fan of Protestant soccer club Rangers spent eight months in jail for insulting Catholics, the Pope and supporters of traditionally Catholic club Celtic on Facebook.

Here in the United States, speakers enjoy a much wider latitude for the expression of group animus. In a famous 1977 case involving a small group of neo-Nazis seeking a permit to parade through the suburb of Skokie, the Illinois Supreme Court struck down an injunction preventing the marchers from displaying swastikas on First Amendment grounds. In the 1972 U.S. Supreme Court case *Gooding v. Wilson*, the justices ruled that the verbal abuse hurled by an antiwar demonstrator who called a police officer a "white son of a bitch" was protected speech. In the 2003 case *Virginia v. Black*, the Court held that even the use of burning crosses by the Ku Klux Klan is protected by the First Amendment (provided that the crosses are not used as a "means of communicating a serious intent to commit an act of unlawful violence"). While the courts have held that hateful expression which takes the form of "true threats" is not protected, and have said that hate speech can be used as evidence of motivation in deciding on punishments for bias-motivated crimes, most of what gets labeled "hate speech" in current disputes about the limits of expression on campus cannot be legally prohibited.

Yet this fact has not prevented college administrators, students and even faculty from attempting to suppress constitutionally-protected expression that allegedly demeans people on the basis of race, sex, religion or sexual orientation. Chemerinsky and Gillman note that in the 1990s "over 350 colleges and universities adopted codes restricting hate speech" and every single time these codes were challenged in court they were found to be unconstitutional. The authors contend that such codes would be a bad idea even if they were legally permissible. Codes prohibiting demeaning expression are, they contend, inevitably vague and overbroad. Moreover, such codes are often enforced in politically slanted or discriminatory ways and "are often used to punish the speech of people who were not their intended targets." Thus, African American students were repeatedly charged with violations of the speech code in force at the University of Michigan during the 1990s but white racist speech was never charged or punished.

Despite their insistence that free speech is absolutely foundational for the scholarly mission of the academy, Chemerinsky and Gillman concede that colleges and universities also have an obligation to create non-discriminatory learning environments. Toward the end of the book, they spell what schools can and cannot do within the limits of the law to address the hate and discrimination that students from underrepresented groups often face.

The authors point out that while merely offensive or hateful speech cannot be censored, harassing or genuinely threatening speech can be punished. They underscore that campuses must allow protestors the opportunity to "get their views across in an effective way," but that restrictions may prevent protests from unduly disrupting classes, research and other routine academic work. They explain that schools cannot prevent students or faculty from using words that might be interpreted as "microaggressions" but that they can and should educate faculty and students about the adverse effect such expression might have on members of the college community. They also argue that it is not unreasonable to expect college administrators to speak out against "especially egregious speech acts" but contend that expecting administrators to speak about every offensive speech act is unrealistic.

Sadly, Chemerinsky and Gillman do not discuss the Goldwater Institute's divisive Campus Free Speech Act which has become law in the state of North Carolina and become official policy at both the University of Wisconsin and the University of North Carolina. The Act mandates draconian punishments, including expulsion, for students who disrupt "the free expression of others" and is so broadly worded that it will inevitably have a chilling effect on even polite and well-ordered student protests. It would have been interesting to read the authors' views on the model bill, especially since a growing number of other states (e.g., Nebraska, Georgia) are currently considering adopting their own versions.

Overall, though, this book provides an excellent overview of the evolution of free speech law and academic freedom policies in this country and a powerful argument for why both free speech and academic freedom remain so vital to the mission of the academy today. It definitely deserves a place on every AAUP member's bookshelf.

Interview with Nadine Strossen continued from page 4

them, but maligned minorities do not?

A: Speech that satisfies the sensibly strict standards for defamation satisfies the emergency principle, and is not punishable solely because its viewpoint is disfavored. Specifically, to constitute punishable defamation, speech must constitute a false statement of fact that injures someone's reputation, causing tangible economic damage. Moreover, if the speech is about a public official or public figure, it cannot be punished unless the speaker intentionally or recklessly lied. These demanding prerequisites for defamation actions mean that it is very hard for "wealthy white celebrities . . . to have courts silence [defamatory] speech that harms them," even when it does in fact harm them. This is precisely the reason why Donald Trump, both as candidate and as President, has repeatedly advocated revising our defamation law, to make it less unfriendly to powerful defamation complainants.

In fact, it would be easier for a "maligned minorit[y]" group member who is not a "wealthy celebrity" to recover in a defamation action than for "wealthy white celebrities" to do so. That is because non-celebrities will prevail without having to show that the defamatory lie was told intentionally or with reckless disregard for the truth; in contrast, they need only show that the defamatory lie was told negligently, or without reasonable care about the truth.

In contrast with individual defamation claims, which may proceed in accordance with the principles outlined above, group defamation claims have implicitly been ruled inconsistent with key First Amendment principles, including the viewpoint neutrality rule. The Supreme Court has not had occasion to declare this explicitly. Nonetheless, experts concur that, in a series of cases, the Court has implicitly overruled its 1952 *Beauharnais v. Illinois* decision, in which a 5-4 majority narrowly rejected a First Amendment challenge to Illinois's group defamation statute.

Statements about groups involve generalizations, making them more akin to expressions of opinion than to the false statements of fact that constitute a prerequisite for a defamation claim. As the Court observed, "There is no such thing as a false idea."

Far from aiding "maligned minorities," group defamation actions would actually undermine their equality causes. Justice William O. Douglas's dissenting opinion in *Beauharnais* stressed this point:

> Today a white man stands convicted for protesting...our decisions invalidating restrictive covenants. Tomorrow a Negro will be hailed before a court for denouncing a lynch law in heated terms. Farm laborers...who compete with field hands...from Mexico,...a minority which finds employment going to members of the dominant religious group—all of these are caught in the mesh of today's decision.... It is a warning to every minority.

I would also like to take issue with the question's premise that "hate speech" is "less valuable" than defamation. By definition, defamation consists of a factually false statement that demonstrably damages someone's reputation, inflicting tangible economic harm. Many would consider such speech to lack value.

In contrast, as I explained in response to Question #1, the term "hate speech" has no agreed-upon definition, but

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Committee A Report: Letter on Western Illinois University

Illinois Committee A on Academic Freedom and Tenure

Dr Holly Stovall was laid off at Western Illinois University. We found the layoff was in violation of the AAUP academic due process requirements. She clearly is academically qualified to serve in other departments! Twice an arbitrator awarded her restitution but the administration appealed the decision which is now before the IELRB.

The system is so rigged against women whom dare challenge the patriarchy and the status quo. It really is a disgrace how higher ed in this country is no longer envied or admired by those who understand higher ed. The empire will fall when it destroys its educational system and puts robotic faculty in the classroom and in online-silly courses where no one sees anyone but dollar signs and education-on -the-cheap. Frequently continuous tenure is aborted by a neoliberal administration that is more concerned about bottom lines than learning outcomes that emanate from critical thinking and in this case the humanities. This is the letter Illinois Committee A sent to Western Illinois president Jack Thomas.

February 14, 2018
Dr. Jack Thomas
President, Western Illinois University

Dear President Thomas:

Dr. Holly Stovall contacted by email the Illinois Conference of the American Association of University Professors Committee A on Academic Freedom and Tenure on February 2, 2018. It was a complaint over her layoff and failure of Western Illinois University to restore her position in areas that she is academically trained to teach and in which there is ongoing programming. Prior to her layoff, she achieved the rank of associate professor and was awarded tenure. For twelve years she taught at the university.

Dr. Stovall was initially informed orally on December 10-11, 2015 that she would be subject to a layoff and that her Department of Women's Studies would be reviewed for elimination—the Academic Program Elimination Review Committee per Article 26 of the Collective Bargaining Agreement had not yet met, but Women's Studies immediately began plans to join the Department of Liberal Arts and Sciences. In December, 2015, approximately forty (40) other faculty were notified that they would be laid off. Twelve of these faculty were tenured, and three had completed the work of tenure and were preparing tenure files that were submitted on January 15, 2016. Holly belonged to the latter group. In January, 2016, allegedly negative publicity induced the administration to "unlayoff" faculty who were actually tenured.

President Jack Thomas notified Dr. Stovall in a letter on February 26, 2016 that she would be laid off effective May 17, 2017. During the interval between notification and implementation of the layoff, President Thomas notified Dr. Stovall on May 6, 2016 that he would recommend the granting of tenure to the board of trustees! He even stated at the conclusion of his letter, "I look forward to your continuing contributions to Western Illinois University." This followed the president's layoff notice of February 26. On June 10, 2016, the Board of Trustees granted her tenure.

Dr. Stovall claims she was the only tenured faculty member that was terminated at WIU effective May 17, 2017. She alleges none of the twelve-tenured faculty originally laid off, were ultimately subjected to separation in this manner. Of the three (3) that received tenure June, 2016, she is the only one whose contract was terminated due to layoff.

We see a clear violation of American Association of University Professors standards as articulated in the Redbook (Policy Documents and Reports). Specifically, AAUP's Recommended Institutional Regulations on Academic Freedom and Tenure serves as a national model for academic due process across the academy, when there are disruptions of continuous tenure either for financial exigency and other financial considerations. While Western Illinois did not declare financial exigency, you did announce the layoffs were related to projected financial shortfalls arising of budgetary defunding under Governor Bruce Rauner.

Regulation 4(c) requires a good faith effort to relocate a tenured faculty member into teaching areas in order to defend and honour the tenure commitment that was previously rendered by your institution:

> (5) Before terminating an appointment because of financial exigency, the institution, with faculty participation, will make every effort to place the faculty member concerned in another suitable position within the institution.

The American Association of University Professors Illinois Committee A on Academic Freedom and Tenure does not see a good faith effort, much less "every effort" and is deeply troubled that Dr. Stovall has not been restored to her appointment as an associate professor with tenure.

Article 25 of the 2010-2015 Collective Bargaining Agreement states in 25.1:

> The university (Western Illinois) may transfer an employee from one department/unit to another…as a result of reorganization or program need.

We are concerned that she was the only faculty member with continuous tenure who was eventually laid off. Her tenured appointment was within the Women's Studies Department that was eliminated along with Religious Studies, Philosophy, and African-American Studies. Dr. Stovall claims she would be the only member of the professoriate with an advanced degree in Women's Studies. She earned a master's degree in Women's History at Sarah Lawrence College in Bronxville, NY which is a seamless fit given the relocation of Women's Studies as a minor with the Department of Liberal Arts and Sciences. Professor Stovall, prior to her layoff, was a member of that reconstituted department and we recommend, given adequate enrollment, that she be allowed to teach courses within that minor.

More importantly in terms of full-time restoration of her teaching load, Dr. Stovall has two advanced degrees in foreign languages. She has a Ph.D. in Hispanic and Luso-Brazilian Literatures and Languages from The Graduate School and University Center of the City University of New York, and an M. Phil., Hispanic and Luso-Brazilian Literatures and Languages, The Graduate School and University Center of the City University of New York. Western Illinois offers several degrees in Spanish which Dr. Stovall is obviously prepared to teach. Within the Department of Foreign Languages and Literature, the department offers three degrees in Spanish-language instruction: a B.A. in Spanish; a B.A. in Spanish Teacher Certification; an undergraduate minor in Spanish.

Dr. Stovall has extensive experience in teaching Spanish: This includes ten (10) years of teaching Spanish-language classes and other courses that integrate Hispanic culture and bilingual texts into Women's Studies classes. In fact, Dr. Stovall's first teaching assignment at WIU was in the Department of Foreign Languages and Literature. She taught Spanish literature at Western Illinois during the 2005-2006 academic year, and had previously taught Spanish-language classes at Manhattan College, College of Mount Saint Vincent and Pace University. In addition, she has two publications in *Letras Hispanas*, a peer-reviewed journal on Spanish language and culture. It would be a seamless restoration of her position without any need for professional development investment or retooling. She is ready to teach vital courses within her expertise, and offers a compelling case concerning the obligation of an institution to allow tenured faculty after program discontinuance, to teach relevant and current courses within their discipline(s) after a layoff.

Professor Stovall had two grievance hearings. The first was February 26, 2016. The University Professionals of Illinois argued in her favor. The second was June 22, 2016. Again, the UPI argued in her favor. The university denied both grievances. Then her grievance went into arbitration. An arbitrator, Fredric R. Dichter, was jointly selected by UPI and WIU. The first arbitration hearing was April 24, 2017. In July 2017 he ordered the administration to reinstate Dr. Stovall as a tenured associate professor but this was rejected by your university. There was a hearing on January 16, 2018 to determine if this and other arbitrator awards of faculty were implemented. Legal briefs are to be filed we understand subsequent to this hearing.

We are struck by the fact that Interim Provost and Academic Vice President Kathleen Neumann in her September 12, 2017 letter, in responding to the arbitrator award, claims there was a "reasonable effort" at identifying an alternative academic position. Provost Newmann asserts deans, librarians, executive directors all examined Dr. Stovall's résumé. Yet nowhere does she mention the language and women's studies training that she supposedly examined in Dr. Stovall's résumé. We do not see a "reasonable effort" claim is sustained given the obvious training, competence and experience that is clearly included on the cited curriculum vita.

Dr. Stovall claims, when given her layoff notice, a full-time tenure-track probationary colleague in Women's Studies was not laid off despite only two years of service. The probationary colleague chose Women's Studies for her department tenure line, but her appointment was a joint one with FLL—she was to teach in each department. The other colleague was transferred to Foreign Languages and Literatures (FLL) (though actually, her teaching duties remained the same—about half German and half Women's Studies). In January 2017, this colleague resigned. Dr. Stovall requested that she inherit the joint position between Women's Studies and FLL. That request was denied.

We find unconvincing and without any substantiative evidence your claim on December 15, 2016 that transferring Dr. Stovall to Foreign Languages and Literature would "displace a current faculty member." Nor is there a hint of a claim that Dr. Stovall lacked the requisite academic credentials. Tenure is a sacred commitment on the part of an institution and cannot be arbitrarily revoked through layoffs without a determined, good faith effort at relocation.

We have examined several documents from the administration but realize that those at WIU with administrative responsibilities may have additional information that would contribute to our understanding of what has occurred. We shall, therefore, welcome your comments.

The AAUP Committee A on Academic Freedom and Tenure (Illinois) strongly recommends that Dr. Stovall receive a joint appointment in the Departments of Foreign Language and Literature and Liberal Arts and Sciences. In both departments she has previously served and is qualified and prepared to do so again.

Other members of the Illinois Committee A on Academic Freedom and Tenure are: Professor Iymen Chehade, School of the Art Institute of Chicago; Professor Michael Harkins, William Rainey Harper College, President Illinois AAUP Conference; Professor Alan Iliff, North Park University, Treasurer, Illinois AAUP Conference

Sincerely,

Professor Peter N. Kirstein, Chair, Committee A on Academic Freedom and Tenure (Illinois), Saint Xavier University

AAUP Amicus Brief Supports "Sanctuary Jurisdictions"

The AAUP joined with other groups, including members of the California Community College System, in filing an amicus brief in support of a permanent injunction against a Trump administration executive order that sought to strip federal funding from "sanctuary jurisdictions." The lawsuit resulting in the injunction was filed by the city of San Francisco. The AAUP's interest in the case stems from the potential application of the executive order to colleges and universities. Such an extension would negatively impact colleges' and universities' ability to carry out their public mission and their interests in developing a diverse student body. Allowing the executive order to stand would also set a dangerous precedent for the proposition that the president may unilaterally use the threat of withholding federal funding in a broad and punitive manner as part of an effort to coerce colleges and universities to participate in federal immigration enforcement. Joining this amicus brief enables the AAUP to participate in a precedent-setting case on issues of great national significance that affect the ability of universities to develop and support a diverse student body, regardless of students' immigration status. The case, now in front of the US Court of Appeals for the Ninth Circuit, is the City and County of San Francisco v. Trump.

Illinois AAUP Speakers Bureau

The Illinois AAUP offers speakers to AAUP chapters and other groups, and the Illinois AAUP can cover most expenses for AAUP chapters or those interested in starting one. Speakers include Michael Harkins, Leo Welch, and John K. Wilson, and topics can include academic freedom, shared governance, policy reforms,.and how to start and build an AAUP chapter. For information, email collegefreedom@yahoo.com.

Write to Illinois Academe

Send letters or submissions for Illinois Academe to collegefreedom@yahoo.com.

Banning Bannon?

Being reminded of bad things, past and present, is not the harm. If it were, we would have to ban all speakers and classes who talk about racism and oppression. The harm comes from what Bannon did in electing Trump as president, not from his talking about it. When people imagine that speech is the harm, they create a dangerous regime of censorship.

Freedom of expression means that ideas we dislike are not banned. And there's good reason for it. Should every homophobe who ever opposed gay marriage (such as Barack Obama) be banned from campus? Should outspoken atheists be banned from universities for being anti-Catholicism, anti-Judaism, and anti-Islam?

Having a speaker at the University of Chicago is not what normalizes hate speech; electing a bigoted president is what normalizes hate speech. Banning speakers won't change that reality. A university models inclusion by exposing and refuting hate, and not by banning hateful beliefs.

When a University of Chicago professor in January invited Steve Bannon to speak, it sparked protests on campus and a letter from faculty (below) asking the administration to ban Bannon. John K. Wilson comments on the letter to the left.

As faculty representing the breadth of the University's intellectual community and committed to critical and rigorous intellectual exchange, we are deeply concerned that Stephen Bannon, the founding member and executive chairman of the board of Breitbart News and former Chief Strategist to President Donald J. Trump, has been invited to speak at the University of Chicago. Bannon traffics in hate speech, promoting white supremacist ideologies meant to demean and dehumanize those most marginalized, often people of color. His presence on campus sends a chilling message not only to students, staff and faculty at the University, but also to the young people who attend the University of Chicago Charter School and Laboratory School and to the primarily black neighbors who surround the university.

Specifically, when speakers who question the intellect and full humanity of people of color are invited to campus to "debate" their worthiness as citizens and people, the message is clear that the University's commitment to freedom of expression will come at the expense of those most vulnerable in our community.

We, therefore, believe that having Bannon on campus stands in fundamental opposition to the diverse and inclusive community the University professes to want to build.

Over the past couple of years, the University has made clear its commitment to free speech and has positioned itself as a national leader in defending freedom of expression. As academics, we understand that our work is only possible in a context where intellectual inquiry is afforded the space and freedom to push the boundaries of knowledge. At the same time, we believe that our mission of setting global standards for excellence in research and teaching is only possible in an environment where every member of our community is valued and hate speech that is meant to undermine their full participation is not tolerated.

The defense of freedom of expression cannot be taken to mean that white supremacy, anti-semitism, misogyny, homophobia, anti-Catholicism, and islamophobia must be afforded the rights and opportunity to be aired on a university campus.

Bannon's positions as articulated in Breitbart News and the policies he helped to promote during his tenure at the White House do not open opportunities for debate and exchange; they diminish such opportunities. These positions represent neither reasonable speech nor evidence-based and rigorous intellectual inquiry.

He is cited as the most consequential proponent of a recent ban on immigration, which is currently embroiled in legal challenges for its discriminatory targeting of majority Muslim countries. He has unabashedly advocated for more general restrictions of historically legal forms of immigration, in ways inconsistent with generally accepted ideals of openness embraced here on campus. Moreover, he is a founding board member of and, until very recently, had been an executive at the media company Breitbart, espousing the most detestable facets of the so-called "alt-right" movement, including a blatantly racist "news" section explicitly devoted to associating black people with crime.

Our decisions about who we provide access and opportunity to speak on campus cannot be separated from the our country's extensive historical legacies of oppression and inequality in which the University of Chicago is deeply embedded.

In the current social and political climate of the country–in which the rights and safety of immigrant, black, Muslim, and LGBTQ communities are routinely threatened–the hate speech represented in Bannon's body of work are not the insignificant musings of a fringe political group, but rather the governing philosophy of the chief executive and a newly emboldened political movement based on white supremacy and religious intolerance. Rather than normalizing hate speech by granting it a privileged forum, the university should model inclusion for a country that is reeling from the consequences of racism, xenophobia, and hate.

As a University we must do the difficult work of collectively judging how we enact our espoused principles and adjudicating between principles that point us in different directions. We believe that Bannon should not be afforded the platform and opportunity to air his hate speech on this campus.

Moreover, we believe his presence will have deleterious consequences on our ability to build a diverse and inclusive intellectual community—a principle that is also central to the University's mission.

Interview with Nadine Strossen CONTINUED FROM PAGE 5

rather is used to stigmatize whatever message the person using it finds hateful and hated. Given the ideological diversity in our society, it is not surprising that one person's "hate speech" is someone else's cherished speech, which s/he might well even deem loving and of great value. For example, some Christians have sought to persuade LGBT individuals that their sexual orientation or gender identity is sinful, in an attempt to save their souls. While some LGBT individuals (and others) plausibly view this as homophobic or transphobic "hate speech," the speakers plausibly maintain that they are motivated by love, compassion, and concern.

The epithet "hate speech" has been hurled at expression conveying a dizzying array of perspectives on seemingly every public policy issue. For example, that charge has been leveled against T-shirts emblazoned with many diverse messages, ranging from "Trump" to "Black Lives Matter." In France, the head of an LGBT rights group recently was convicted of "hate speech" for labeling the head of an anti-gay-rights group a "homophobe." Student government leaders at the University of California Irvine recently declined to display the U.S. flag because they thought it could be viewed as "hate speech." Many people denounce the Confederate flag as "hate speech," whereas others consider such denunciations to constitute "hate speech." Etcetera, etcetera. Given the malleable, limitless concept of "hate speech," one can hardly claim that such speech has little or no value.

To the contrary, as the foregoing examples illustrate, the label "hate speech" is consistently applied to the category of speech that the Supreme Court has always held to be the most valuable in our democratic republic: speech about public affairs. As the Court declared: "Speech concerning public affairs is more than self-expression; it is the essence of self-government."

Q: Many of your arguments seem aimed at convincing left-wing critics of free speech. Do you think leftists in the US today are a greater threat to free speech (and have a declining devotion to it) than conservatives?

A: Public opinion surveys, as well as anecdotal evidence, indicate that those on the liberal end of the political spectrum tend to be more supportive than others of censoring hateful speech that conveys discriminatory views. After all, arguments in favor of "hate speech" restrictions maintain that such restrictions would promote various liberal values (which I personally share), including: equality, dignity, diversity, and inclusivity. Therefore, it is important to explain that censoring "hate speech" does not effectively promote these values, but in fact might well undermine them. For this reason, many human rights activists in other countries and in international organizations have become increasingly critical of the "hate speech" restrictions that they have observed in operation. Accordingly, they have called for greater use of non-censorial alternative measures for countering hateful, discriminatory attitudes and actions, including vigorous counterspeech and enforcement of anti-discrimination laws.

While liberals on the whole tend to be more supportive of laws censoring "hate speech," conservatives on the whole tend to be more supportive of laws censoring other speech whose viewpoints they abhor, according to public opinion surveys, as well as anecdotal evidence. Expression that conservatives are more likely to favor censoring include burning the U.S. flag, athletes taking a knee in protest of racial injustice, and Black Lives Matter demonstrations.

Writer Nat Hentoff well captured the tendency of most people to advocate censoring the expression of views that they especially detest in the title of a book he authored: *Freedom of Speech for Me, But Not for Thee; How the Left and Right Relentlessly Censor Each Other*. This general tendency is precisely why the viewpoint neutrality and emergency principles are so essential; absent the constraints they impose on officials' censorial power, officials would inevitably exercise that power to suppress whatever messages are relatively unpopular and whatever speakers are relatively disempowered. We certainly saw that pattern during earlier periods in U.S. history, when the Supreme Court permitted government to censor speech that was feared to pose a vague threat of harm; that power was wielded to suppress speakers who challenged the status quo and advocated law reform, including abolitionists, suffragists, civil rights protestors and anti-war demonstrators.

Q: What do you see as the state of free speech of America today? Are the courts, the political leaders, the media, and the general society moving toward greater protection of free speech, or do you think liberty is under greater threat today than in the past?

A: In recent decades, the Supreme Court has moved toward greater protection of free speech, on the whole, than at any time in U.S. history. Notably, Justices across the ideological spectrum have consistently supported freedom for many kinds of controversial expression, including ideas that are both hateful and hated. For example, in 2011 the Court upheld the right of protestors to picket outside funerals of slain military veterans with signs conveying messages that were virulently anti-Catholic, anti-gay, and anti-military, even though the Court recognized that this expression would "inflict great pain" upon the deceased veterans' family members and friends. Moreover, the Court has strongly enforced the speech-protective viewpoint neutrality and emergency principles, and sharply reined in previously recognized exceptions to these principles. For example, in the funeral protest case, the Court explained that, "As a Nation we have chosen. . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate."

I have not read any studies about the media's stance toward free speech. However, I assume that they generally tend to be supportive of robust free speech, which after all is integral to their own mission.

When it comes to political leaders and society in general, evidence indicates at least rhetorical support for free speech in general, but a willingness – even eagerness – to suppress particular speech whose ideas are disliked, or that is feared to potentially contribute to some harm, even if it does not satisfy the emergency test. This is the pattern that was captured by Nat Hentoff's book title that I cited in response to the prior question. After all, it seems like just plain common sense that speech conveying negative ideas might lead to negative consequences.

Only after considering the consequences of permitting government to suppress speech because of such a feared "bad tendency" can we appreciate that investing officials with such sweeping discretionary power may well do more harm than good. Among other problems, it predictably leads to disproportionate censorship of speech by political dissidents, advocates of law reform, and members of minority groups. As Justice Brandeis observed, in advocating the strict emergency test in lieu of the bad tendency test that the Court enforced in his era: "Fear of serious injury cannot alone justify suppression of free speech. . . . Men feared witches and burnt women." He went on to explain why we must protect freedom even "for the thought that we hate" (quoting that other pioneering free speech champion on the Court, Oliver Wendell Holmes) and that we fear to have a bad tendency:

> "[N]o danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence. Only an emergency can justify repression."

Why Censorship Is Not a Joke

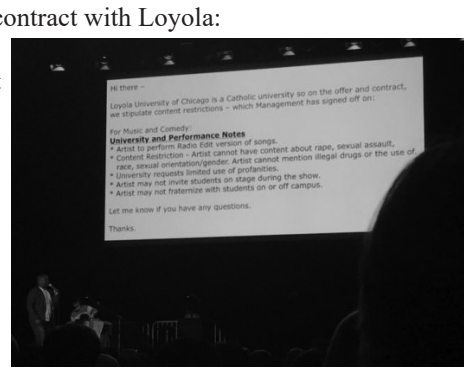
By John K. Wilson

LOYOLA UNIVERSITY CHICAGO

Preparing people to lead extraordinary lives

A funny thing happened during comedian Hannibal Buress' set at Loyola University of Chicago on March 17: The Administration cut off his mic. And then when Buress tried to continue his performance unamplified, the Administration turned up the music to drown him out. Eventually, Buress was allowed to return to the stage and finish his act, as long as he abided by the contractual censorship that caused this controversy.

That contract is a direct violation of the standards of free speech on campus. To start his show, Buress projected the terms of his contract with Loyola:



"Loyola University of Chicago is a Catholic university so on the offer and contract we stipulate content restrictions." That contract states, "For Music and Comedy" this: "Content Restriction – Artist cannot have content about rape, sexual assault, race, sexual orientation/gender. Artist cannot mention illegal drugs or the use of."

Buress began making jokes about the Catholic Church and child molestation, which immediately led to him being silenced. After a break, Buress came back on stage and obeyed the content restrictions, but joked about having his mic cut off. Buress said that he had originally planned to follow the contract, but then he realized that he'd already been paid.

Loyola's contract is bizarre, and one that no university should ever impose. But it's particularly strange for Buress because he is a comedian who became famous for publicly denouncing Bill Cosby as a rapist and sparking the movement that exposed Cosby's crimes—and Loyola wants him not to mention rape?

Loyola also censored the DJ who opened for Buress, Tony Trimm, apparently because he played music with swearing rather than the censored "radio edit" required by Loyola's basic contract for all music. Trimm wrote on Twitter, "I got about 15 minutes into my set before they cut me. Thanks Loyola. Saving the world one cuss at a time."

Loyola's policy is not just repressive, it's also racist, sexist, and homophobic: Many people of color, women, and LGBT comedians bring identity into their acts, because talking about their lives often raises those issues. No university should ever make race, gender, sexuality, or profanity off limits on campus, not even if the performer is "merely" a musician or a comedian rather than an academic. Loyola's censorship may be extreme, but it's not uncommon.

Documentaries such as *Can We Take a Joke?* and the forthcoming *No Safe Spaces* argue that left-wing Political Correctness is ruining comedy and repressing free speech on campus. But as Loyola shows us, what's killing comedy on campus is not leftist Political Correctness, it's Administrative Correctness. To be sure, sometimes left-wing students will object to something they find offensive, but so will right-wingers. The key issue is the response of the administration, which typically seeks to suppress controversy from ever happening.

Back in 2015, I argued that the attacks of Bill Maher and Jerry Seinfeld on college students for killing humor were deeply misguided. Scott Blakeman, a leftist comic, noted at the time that he had been losing gigs because his clean show that promotes peace was considered too controversial by college organizations. Blakeman recounted how an administrator "saw me reading the campus newspaper (as I always do to make the show as specific to each school as possible), and asked me not to mention any of the campus news stories, so no one in the audience could possibly be offended." Even when programming is ostensibly run by a student group, there is usually an enormous amount of influence by an ever-growing staff of student affairs administrators.

Bizarrely, FIRE made a partial defense of Loyola's censorship, writing that "a university has the right to demand preconditions of a performer it hires." According to FIRE, "Buress was invited by the administration itself…, which is free to place restrictions on speakers it invites. That differs from, for example, administrators imposing restrictions or conditions on speakers invited by students or faculty."

No, administrators should not impose contractual content restrictions on any performers. Administrators hire many people, including performers, commencement speakers, and faculty. None of them should be censored. And it's not clear that Loyola's contract applies only to speakers arranged by administrators, since the contract Buress showed seems to apply to any musician or comedian paid by the University, which would include those arranged by student groups.

This censorship is a violation of Loyola's Respect the Conversation policy ("We embrace and create opportunities for forums and discussions to share differing viewpoints to gain greater understanding; We support events and programs that explore a wide variety of experiences to help broaden understanding and insight into our many and varied communities living and thriving in society today") and Loyola's Free Expression Policy ("As an institution committed to social justice and higher education in the Jesuit tradition, Loyola University Chicago recognizes the importance of its role as a marketplace of ideas, where freedom of inquiry and open exchange of conflicting viewpoints is supported and encouraged."}.

So what should be done? Instead of falsely blaming oversensitive students for being too politically correct, we need to face the actual problem of administrative censorship and pressure that's used to silence comedians and many others on campus.

All colleges should adopt policies prohibiting content restrictions in their contracts with performers, and defending the right of performers to express controversial ideas.

Performers and students should reveal which colleges try to secretly impose content restrictions (email me at collegefreedom@yahoo.com if you know of any), so that this can be publicly exposed and shamed.

Instead, colleges should actively seek out controversial speakers and performers and encourage them to push the boundaries and make people uncomfortable.

And if administrators won't do that (and they won't), students should create their own campus organizations that are willing to give performers the freedom to offend people. And national groups should help them by going around NACA and organizing tours for controversial comedians and musicians who are not afraid to speak out.

Loyola has made itself the punchline for criticism about repression of comedy on college campuses. But Loyola's content restrictions are only the tip of the iceberg of censorship on campus.

Governance Committee Denounces Remarks by Wisconsin System President

In October 2017, news broke of University of Wisconsin system president Ray Cross's decision to propose a merger of the system's two- and four-year institutions. It was the latest in a number of unilateral and secretive actions taken by system leaders, the state legislature, and Governor Scott Walker, condemned at the time by the AAUP and AFT Wisconsin as constituting "a concerted attack on the university as a public good and on the university's role in fostering democratic participation."

The day after the news of the proposed merger, President Cross, facing backlash from faculty, staff, and students, wrote the following in an email message to a system regent: "Getting hammered by the 'shared governance' leaders because they weren't involved in the process; however, had they been involved we wouldn't be doing anything!!"

President Cross's remarks, which came to light last week, have drawn quick condemnation. The lone student representative on the twenty-five-member restructuring committee immediately released a statement that read in part: "It is my sincere hope that divisive sentiments toward the employees and students of the University of Wisconsin System will no longer be tolerated. The comments made were simply inappropriate and must be addressed immediately."

The UW-Madison chapter of the AAUP followed with an open letter to President Cross, expressing its "deep concern about your willful disregard for the role of shared governance" and concluding:

With the surfacing of your emails, it is particularly difficult for people who are supposed to share responsibility with you in governing this institution to have any confidence in your leadership. When you treat the core principle of shared governance as a concept so worthy of derision and disregard that you surround it with "air quotes" in an email to a member of the Board of Regents, it is difficult to envision ever regaining that confidence. In short, your attitude and words have done further damage to an already damaged relationship.

The AAUP's Committee on College and University Governance joins the growing chorus of voices denouncing President Cross's ill-judged remarks and calling on him to explain them.

The committee further calls on President Cross to actively work with faculty, staff, and students on developing policies and practices that will restore a meaningful and productive system of shared governance.

To inform that effort, the committee recommends: 1) the AAUP's Statement on Government of Colleges and Universities, which was jointly formulated with the Association of Governing Boards of Universities and Colleges (AGB) and the American Council on Education more than fifty years ago; and 2) a recent AGB white paper on shared governance, which concludes that "shared governance is an essential component of America's higher education institutions that needs to be preserved and enhanced."

AAUP Annual Conference

The AAUP's Annual Conference on the State of Higher Education includes panel presentations, plenary speakers, and the annual business meetings of the AAUP. It will be held June 14-16 at the DoubleTree by Hilton Hotel Crystal City in Arlington, VA. This year, conference sessions exploring free speech on campus, as well as other topics of interest to academics, will occur on Thursday and Friday, June 14-15. The 104th Annual Meeting will take place Saturday, June 16. On June 13, there will workshops on union organizing and a public session held at the Newseum in Washington, DC. For more information and to register, visit aaup.org.

2018 AAUP Summer Institute

The 2018 AAUP/AAUP-CBC Summer Institute is coming to the University of New Hampshire in scenic Durham, New Hampshire. From July 19 to July 22, more than hundreds of higher education professionals from around the country will gather for four days of exciting workshops and special programs. We bring in organizers, data analysts, seasoned campaigners, and issue experts to build your skills as an advocate for AAUP principles, collective bargaining, and higher education. Visit aaup.org to register.

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The Greater Our Numbers, the Stronger Our Voice

If you care enough about the future of higher education, we hope you'll now take the next step and encourage your colleagues to join the AAUP at www.aaup.org.