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Via email

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Dear Dean Treanor,

After full consideration of the report of the Office of Institutional Diversity, Equity, and Affirmative Action (“IDEAA Report”), and upon consultation with counsel, family, and trusted advisers, it has become apparent that my remaining at Georgetown has become untenable. Although I celebrated my “technical victory” in the *Wall Street Journal*, further analysis shows that you’ve made it impossible for me to fulfill the duties of my appointed post.

You cleared me on a jurisdictional technicality, but the IDEAA Report—and your own statements to the Law Center community—implicitly repealed Georgetown’s vaunted Speech and Expression Policy and set me up for discipline the next time I transgress progressive orthodoxy.

You told me when we met last week that you want me to be successful in my new role and that you will “have my back.” But instead, you’ve painted a target on my back such that I could never do the job I was hired for, advancing the mission of the Center for the Constitution.

First, the IDEAA Report speciously found that my tweet criticizing President Biden for selecting Supreme Court justices by race and sex had a “significant negative impact,” requiring “appropriate corrective measures” to address my “objectively offensive comments and to prevent the recurrence of offensive conduct based on race, gender, and sex.” It found that my comments “could have the effect of limiting Black women students’ access to courses taught by [me]” and “discourage Black women and their allies from seeking internships and employment at the Center.” You reiterated these concerns in your June 2 statement to the Georgetown Law community, further noting the “harmful” nature of my tweets and the “pain” they have caused.

Contrary to your June 2 statement, no reasonable person acting in good faith could construe what I tweeted to be “objectively offensive.” It’s a complete miscomprehension to read what I said to suggest that “the best Supreme Court nominee could not be a Black woman,” as you did in your very first statement back on January 27, or that I considered all black women to be “lesser than” everyone else. Although my tweet was inartful, as I’ve readily admitted many times, its meaning that I considered one possible candidate to be best and thus all others to be *less qualified* is clear. Only those acting in bad faith to get me fired because of my political beliefs would misconstrue what I said to suggest otherwise.

Second, any harm done by my tweet was done by those seeking that Georgetown fire me. I deleted my tweet well before any student was likely to learn of it. Screen captures of the tweet were then disseminated by others seeking to harm me because of my political views. It was they, not I, who intentionally and knowingly caused any harm to any student who later came to learn of and read their screen captures of the tweet. It is they, not I, who are morally culpable for any such resulting harm.

Third, under the reasoning of the IDEAA Report, none of this objective textual analysis even matters. As the report put it, “The University’s anti-harassment policy does not require that a respondent intend to denigrate or show hostility or aversion to individuals based on a protected status. Instead, the Policy requires consideration of the ‘purpose or effect’ of a respondent’s conduct.” According to this theory, the mere fact that many people were offended, or claimed to be, is enough for me to have violated the policies under which I was being investigated. Although there was no formal finding of a violation because of the procedural fact that I wasn’t an employee when I tweeted and so not subject to those policies, so long as some unstated number of students, faculty, or staff claim that a statement “denigrates” or “show[s] hostility or aversion” to a protected class, that’s enough to constitute a violation of Georgetown antidiscrimination rules. The falsity of such a claim is immaterial to being found guilty. Georgetown has adopted what First Amendment jurisprudence describes as an impermissible “heckler’s veto.”

Fourth, regardless even of the “effect” of what I tweeted on January 26, the IDEAA Report found that “if [I] were to make another, similar or more serious remark as a Georgetown employee, a hostile environment based on race, gender, and sex *likely would be* created.” (emphasis added.) On this theory, all sorts of comments that someone—anyone—could find offensive would subject me to disciplinary action. This would be a huge Sword of Damocles over my head as I try to engage in my educational mission. Consider the following quite realistic hypotheticals:

- Later this month, I laud Supreme Court decisions that overrule *Roe v. Wade* and protect the right to carry arms. A campus activist claims that my comments “deny women’s humanity” and makes her feel “unsafe” and “directly threatened with physical violence.”
- In August, when I’m meeting with students concerned about my ability to treat everyone fairly, as you’ve asked me to do, one attendee, upon hearing my defense of free speech and equality of opportunity, files a complaint because I am “disingenuous” and the “embodiment of white supremacy.”
- In October, when the Court hears arguments in the Harvard/UNC affirmative action cases, I express the opinion that the Fourteenth Amendment prohibits racial preferences in college admissions. Hundreds of Georgetown community members sign a letter asserting that my comments “are antithetical to the work that we do here every day to build inclusion, belonging, and respect for diversity” (quoting your statements of January 31 and June 2).
- Later this fall, in a class I’m teaching, a student feels uncomfortable with his assigned position in a mock oral argument in *303 Creative LLC v. Elenis*, a case on next term’s docket that considers whether a designer can be compelled to create a website for a same-sex wedding. “To argue that someone can deny

service to members of the LGBTQIA+ community is to treat our brothers and sisters as second-class citizens and I will not participate in Shapiro's denigrating charade," he writes on the student listserv.

Each of these purported offenses would subject me to investigation and discipline under the logic of the IDEAA Report. Nobody can work that way. Ironically, it is you and IDEAA who have created an unacceptably hostile work environment for me on account of my political views and affiliations.

Fundamentally, what you've done, what you've allowed IDEAA to do, is to repeal the Speech and Expression Policy that you claim to hold so dear. The IDEAA Report states that "IDEAA respects Georgetown university's commitment to the free and open discussion of ideas and does not seek to infringe speech that does not violate the University's non-discrimination or anti-harassment policy. *However...*" (emphasis added). The freedom to speak unless someone finds what you say offensive or infringing some nebulous conception of equity is no freedom at all.

What's worse, your treatment of me—starting with the launch of a sham investigation that apparently could've been resolved by looking at a calendar—shows how the University applies even these self-contradicting free speech "principles" in an inconsistent manner, depending on where on the ideological spectrum an "offense" arises. Contrast my situation with these recent examples:

- In 2018, Georgetown protected this tweet from Professor Carol Christine Fair during Justice Kavanaugh's confirmation process: "Look at this chorus of entitled white men justifying a serial rapist's arrogated entitlement. All of them deserve miserable deaths while feminists laugh as they take their last gasps. Bonus: we castrate their corpses and feed them to swine? Yes." When Prof. Fair advocated mass murder and castration based on race and gender, Georgetown did not initiate an investigation, but instead invoked Georgetown's free-expression policy.
- In 2020, Georgetown took no action when law professor Heidi Feldblum tweeted "law professors and law school deans" should "not support applications from our students to clerk for" judges appointed by President Donald Trump. "To work for such a judge," Prof. Feldblum continued, "indelibly marks a lawyer as lacking in the character and judgment necessary for the practice of law." These comments have the potential to threaten the careers of all of our conservative and libertarian students, or indeed anyone who clerks for duly confirmed Article III judges.
- In April of this year—well after my own tweet—Prof. Feldblum tweeted, "we have only one political party in this country, the Democrats. The other group is a combination of a cult and an insurrection-supporting crime syndicate." She went on to reference Ron DeSantis, Ted Cruz, and Mitch McConnell and say, "The only ethically and politically responsible stance to take toward the Republican 'party' is to consistently point out that it is no longer a legitimate participant in U.S. constitutional democracy." As you know, unlike me, Prof. Feldblum teaches 1Ls in mandatory courses. On the IDEAA theory, this pattern of remarks certainly created a hostile educational environment for our Republican students, who are a protected class under D.C. antidiscrimination law. Yet no investigation of these tweets was instigated after they were brought to your attention, after the precedent

of investigating my tweets had already been established. Instead, a month after they were first published, they were quietly deleted without apology.

- Just last month, law professor Josh Chafetz tweeted: “The ‘protest at the Supreme Court, not at the justices’ houses’ line would be more persuasive if the Court hadn’t this week erected fencing to prevent protesters from coming anywhere near it.” He added, “When the mob is right, some (but not all!) more aggressive tactics are justified.” Later, he tagged Georgetown Law in a tweet saying that the law school was “not going to fire me over a tweet you don’t like.”

Prof. Chafetz was surely right about the last point. You and your colleagues on main campus were also right in choosing not to launch investigations of Profs. Fair and Feldblum. All of these tweets were protected under Georgetown’s free-expression policy. But now they would all merit at least an “investigation” to determine whether they violate the IDEAA’s theory of hostile educational environment that was selectively applied in my case. Apparently it’s free speech for thee, not for me.

It’s all well and good to adopt free-speech policies that track the gold standard, the University of Chicago Principles of Freedom of Expression—and more broadly that same university’s 1967 Kalven Report, which states that “the neutrality of the university . . . arises out of respect for free inquiry and the obligation to cherish a diversity of viewpoints”—indeed, it’s essential. But it’s not enough. If university administrators aren’t willing to stand up to left-wing activists, Georgetown’s enacted free speech and expression policy is a mere “pixel barrier.”

What’s worse, the problem isn’t limited to fearful administrators. The proliferation of IDEAA-style offices (more typically styled Diversity, Equity, and Inclusion) enforce an orthodoxy that stifles intellectual diversity, undermines equal opportunity, and excludes dissenting voices. Even a stalwart T-14 law school dean bucks these bureaucrats at his peril.

Since I accepted your offer of employment, I’ve come to learn that Georgetown is by no means a follower in these trends. Instead, it’s a leader. In contrast to the Jesuitical values that you’re fond of reciting, this institution no longer stands for tolerance, respect, good faith, self-reflective learning, and generous service to others.

On the GULC website it reads: “Our motto ‘Law is but the means, justice is the end’ sums up the core commitment of Georgetown Law.” But your and IDEAA’s treatment of me suggests that neither the due process of law nor justice actually prevails.

I cannot again subject my family to the public attacks on my character and livelihood that you and IDEAA have now made foreseeable, indeed inevitable. As a result of the hostile work environment that you and they have created, I have no choice but to resign.

Sincerely,

/s/
Ilya Shapiro