

**Readings for Tools 3 and 4:  
Social Science (Tool 3)  
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# *How Conservatives Weaponized the First Amendment*

By Adam Liptak

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WASHINGTON — On the final day of the Supreme Court term last week, Justice Elena Kagan sounded an alarm.

The court's five conservative members, citing the First Amendment, had just dealt public unions a devastating blow. The day before, the same majority had used the First Amendment to reject a California law requiring religiously oriented "crisis pregnancy centers" to provide women with information about abortion.

Conservatives, said Justice Kagan, who is part of the court's four-member liberal wing, were "weaponizing the First Amendment."

The two decisions were the latest in a stunning run of victories for a conservative agenda that has increasingly been built on the foundation of free speech. Conservative groups, borrowing and building on arguments developed by liberals, have used the First Amendment to justify unlimited campaign spending, discrimination against gay couples and attacks on the regulation of tobacco, pharmaceuticals and guns.

"The right, which had for years been hostile to and very nervous about a strong First Amendment, has rediscovered it," said Burt Neuborne, a law professor at New York University.

The Citizens United campaign finance case, for instance, was decided on free-speech grounds, with the five-justice conservative majority ruling that the First Amendment protects unlimited campaign spending by corporations. The government, the majority said, has no business regulating political speech.

The dissenters responded that the First Amendment did not require allowing corporate money to flood the political marketplace and corrupt democracy.

"The libertarian position has become dominant on the right on First Amendment issues," said Ilya Shapiro, a lawyer with the Cato Institute. "It simply means that we should be skeptical of government attempts to regulate speech. That used to be an uncontroversial and nonideological point. What's now being called the libertarian position on speech was in the 1960s the liberal position on speech."

And an increasingly conservative judiciary has been more than a little receptive to this argument. A new analysis prepared for The New York Times found that the Supreme Court under Chief Justice John G. Roberts Jr. has been far more likely to embrace free-speech arguments concerning conservative speech than liberal speech. That is a sharp break from earlier eras.

As a result, liberals who once championed expansive First Amendment rights are now uneasy about them.

"The left was once not just on board but leading in supporting the broadest First Amendment protections," said Floyd Abrams, a prominent First Amendment lawyer and a supporter of broad free-speech rights. "Now the progressive community is at least skeptical and sometimes distraught at the level of First Amendment protection which is being afforded in cases brought by litigants on the right."

Many on the left have traded an absolutist commitment to free speech for one sensitive to the harms it can inflict.

Take pornography and street protests. Liberals were once largely united in fighting to protect sexually explicit materials from government censorship. Now many on the left see pornography as an assault on women's rights.

In 1977, many liberals supported the right of the American Nazi Party to march among Holocaust survivors in Skokie, Ill. Far fewer supported the free-speech rights of the white nationalists who marched last year in Charlottesville, Va.

There was a certain naïveté in how liberals used to approach free speech, said Frederick Schauer, a law professor at the University of Virginia.

“Because so many free-speech claims of the 1950s and 1960s involved anti-obscenity claims, or civil rights and anti-Vietnam War protests, it was easy for the left to sympathize with the speakers or believe that speech in general was harmless,” he said. “But the claim that speech was harmless or causally inert was never true, even if it has taken recent events to convince the left of that. The question, then, is why the left ever believed otherwise.”

Some liberals now say that free speech disproportionately protects the powerful and the status quo.

“When I was younger, I had more of the standard liberal view of civil liberties,” said Louis Michael Seidman, a law professor at Georgetown. “And I’ve gradually changed my mind about it. What I have come to see is that it’s a mistake to think of free speech as an effective means to accomplish a more just society.”

To the contrary, free speech reinforces and amplifies injustice, Catharine A. MacKinnon, a law professor at the University of Michigan, wrote in “The Free Speech Century,” a collection of essays to be published this year.

“Once a defense of the powerless, the First Amendment over the last hundred years has mainly become a weapon of the powerful,” she wrote. “Legally, what was, toward the beginning of the 20th century, a shield for radicals, artists and activists, socialists and pacifists, the excluded and the dispossessed, has become a sword for authoritarians, racists and misogynists, Nazis and Klansmen, pornographers and corporations buying elections.”

Judge Robert H. Bork in 1987. “Constitutional protection should be accorded only to speech that is explicitly political,” he wrote in 1971 in a law-review article. “There is no basis for judicial intervention to protect any other form of expression, be it scientific, literary or that variety of expression we call obscene or pornographic.” Jose R. Lopez/*The New York Times*

In the great First Amendment cases in the middle of the 20th century, few conservatives spoke up for the protection of political dissenters, including communists and civil rights leaders, comedians using vulgar language on the airwaves or artists exploring sexuality in novels and on film.

In 1971, Robert H. Bork, then a prominent conservative law professor and later a federal judge and Supreme Court nominee, wrote that the First Amendment should be interpreted narrowly in a law-review article that remains one of the most-cited of all time.

“Constitutional protection should be accorded only to speech that is explicitly political,” he wrote. “There is no basis for judicial intervention to protect any other form of expression, be it scientific, literary or that variety of expression we call obscene or pornographic.”

But a transformative ruling by the Supreme Court five years later began to change that thinking. The case, a challenge to a state law that banned advertising the prices of prescription drugs, was filed by Public Citizen, a consumer rights group founded by Ralph Nader. The group argued that the law hurt consumers, and helped persuade the court, in *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, to protect advertising and other commercial speech.

The only dissent in the decision came from Justice William H. Rehnquist, the court’s most conservative member.

Kathleen M. Sullivan, a former dean of Stanford Law School, wrote that it did not take long for corporations to see the opportunities presented by the decision.

“While the case was litigated by consumer protection advocates,” she wrote in the *Harvard Law Review*, “corporate speakers soon became the principal beneficiaries of subsequent rulings that, for example, struck down restrictions on including alcohol content on beer can labels, limitations on outdoor tobacco advertising near schools and rules governing how compounded drugs may be advertised.”

That trend has continued, with businesses mounting First Amendment challenges to gun control laws, securities regulations, country-of-origin labels, graphic cigarette warnings and limits on off-label drug marketing.

“I was a bit queasy about it because I had the sense that we were unleashing something, but nowhere near what happened,” Mr. Nader said. “It was one of the biggest boomerangs in judicial cases ever.”

“I couldn’t be Merlin,” he added. “We never thought the judiciary would be as conservative or corporate. This was an expansion that was not preordained by doctrine. It was preordained by the political philosophies of judges.”

Not all of the liberal scholars and lawyers who helped create modern First Amendment law are disappointed. Martin Redish, a law professor at Northwestern University, who wrote a seminal 1971 article proposing First Amendment protection for commercial speech, said he was pleased with the Roberts court’s decisions.

“Its most important contributions are in the commercial speech and corporate speech areas,” he said. “It’s a workmanlike, common sense approach.”

Liberals also played a key role in creating modern campaign finance law in *Buckley v. Valeo*, the 1976 decision that struck down limits on political spending by individuals and was the basis for *Citizens United*, the 2010 decision that did away with similar limits for corporations and unions.

One plaintiff was Senator Eugene J. McCarthy, Democrat of Minnesota, who had challenged President Lyndon B. Johnson in the 1968 presidential primaries — from the left. Another was the American Civil Liberties Union’s New York affiliate.

Professor Neuborne, a former A.C.L.U. lawyer, said he now regrets the role he played in winning the case. “I signed the brief in Buckley,” he said. “I’m going to spend long amounts of time in purgatory.”

To Professor Seidman, cases like these were part of what he describes as a right-wing takeover of the First Amendment since the liberal victories in the years Chief Justice Earl Warren led the Supreme Court.

“With the receding of Warren court liberalism, free-speech law took a sharp right turn,” Professor Seidman wrote in a new article to be published in the Columbia Law Review. “Instead of providing a shield for the powerless, the First Amendment became a sword used by people at the apex of the American hierarchy of power. Among its victims: proponents of campaign finance reform, opponents of cigarette addiction, the L.B.G.T.Q. community, labor unions, animal rights advocates, environmentalists, targets of hate speech and abortion providers.”

The title of the article asked, “Can Free Speech Be Progressive?”

“The answer,” the article said, “is no.”

## **Shifting Right**

The right turn has been even more pronounced under Chief Justice Roberts.

The Supreme Court has agreed to hear a larger share of First Amendment cases concerning conservative speech than earlier courts had, according to the study prepared for The Times. And it has ruled in favor of conservative speech at a higher rate than liberal speech as compared to earlier courts.

The court’s docket reflects something new and distinctive about the Roberts court, according to the study, which was conducted by Lee Epstein, a law professor and political scientist at Washington University in St. Louis; Andrew D. Martin, a political scientist at the University of Michigan and the dean of its College of Literature, Science and the Arts; and Kevin Quinn, a political scientist at the University of Michigan.

“The Roberts court — more than any modern court — has trained its sights on speech promoting conservative values,” the study found. “Only the current court has resolved a higher fraction of disputes challenging the suppression of conservative rather than liberal expression.”

The court led by Chief Justice Earl Warren from 1953 to 1969 was almost exclusively concerned with cases concerning liberal speech. Of its 60 free-expression cases, only five, or about 8 percent, challenged the suppression of conservative speech.

The proportion of challenges to restrictions on conservative speech has steadily increased. It rose to 22 percent in the court led by Chief Justice Warren E. Burger from 1969 to 1986; to 42 percent in the court led by Chief Justice William H. Rehnquist from 1986 to 2005; and to 65 percent in the Roberts court.

The Roberts court does more than hear a larger proportion of cases concerning conservative expression. It is also far more likely than earlier courts to rule for conservative speech than for liberal speech. The result, the study found, has been “a fundamental transformation of the court’s free-expression agenda.”

In past decades, broad coalitions of justices have often been receptive to First Amendment arguments. The court has protected videos of animal cruelty, hateful protests at military funerals, violent video games and lies about military awards, often by lopsided margins.

But last week's two First Amendment blockbusters were decided by 5-to-4 votes, with the conservatives in the majority ruling in favor of conservative plaintiffs.

On Tuesday, Justice Clarence Thomas wrote for the majority that requiring health clinics opposed to abortion to tell women how to obtain the procedure violated the clinics' free-speech rights. In dissent, Justice Stephen G. Breyer said that was a misuse of First Amendment principles.

"Using the First Amendment to strike down economic and social laws that legislatures long would have thought themselves free to enact will, for the American public, obscure, not clarify, the true value of protecting freedom of speech," Justice Breyer wrote.

On Wednesday, in announcing the decision on public unions, Justice Samuel A. Alito Jr. said the court was applying settled and neutral First Amendment principles to protect workers from being forced to say things at odds with their beliefs. He suggested that the decision on public unions should have been unanimous.

"Compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command, and in most contexts, any such effort would be universally condemned," he wrote. "Suppose, for example, that the State of Illinois required all residents to sign a document expressing support for a particular set of positions on controversial public issues — say, the platform of one of the major political parties. No one, we trust, would seriously argue that the First Amendment permits this."

In response, Justice Kagan said the court's conservatives had found a dangerous tool, "turning the First Amendment into a sword." The United States, she said, should brace itself.

"Speech is everywhere — a part of every human activity (employment, health care, securities trading, you name it)," she wrote. "For that reason, almost all economic and regulatory policy affects or touches speech. So the majority's road runs long. And at every stop are black-robed rulers overriding citizens' choices."

*Follow Adam Liptak on Twitter: [@adamliptak](https://twitter.com/adamliptak).*

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# 1940 Statement of Principles on Academic Freedom and Tenure

## with 1970 Interpretive Comments

In 1915 the Committee on Academic Freedom and Academic Tenure of the American Association of University Professors formulated a statement of principles on academic freedom and academic tenure known as the 1915 *Declaration of Principles*, which was officially endorsed by the Association at its Second Annual Meeting held in Washington, D.C., December 31, 1915, and January 1, 1916.

In 1925 the American Council on Education called a conference of representatives of a number of its constituent members, among them the American Association of University Professors, for the purpose of formulating a shorter statement of principles on academic freedom and tenure. The statement formulated at this conference, known as the 1925 *Conference Statement on Academic Freedom and Tenure*, was endorsed by the Association of American Colleges (now the Association of American Colleges and Universities) in 1925 and by the American Association of University Professors in 1926.

In 1940, following a series of joint conferences begun in 1934, representatives of the American Association of University Professors and of the Association of American Colleges agreed on a restatement of the principles that had been set forth in the 1925 *Conference Statement on Academic Freedom and Tenure*. This restatement is known to the profession as the 1940 *Statement of Principles on Academic Freedom and Tenure*.

Following extensive discussions on the 1940 *Statement of Principles on Academic Freedom and Tenure* with leading educational associations and with individual faculty members and administrators, a joint committee of the AAUP and the Association of American Colleges met during 1969 to reevaluate this key policy statement. On the basis of the comments received, and the discussions that ensued, the joint committee felt the preferable approach was to formulate interpretations of the 1940 *Statement* from the experience gained in implementing and applying it for over thirty years and of adapting it to current needs.

The committee submitted to the two associations for their consideration *Interpretive Comments* that are included below as footnotes to the 1940 *Statement*.<sup>1</sup> These interpretations were adopted by the Council of the American Association of University Professors in April 1970 and endorsed by the Fifty-Sixth Annual Meeting as Association policy.

1. The Introduction to the Interpretive Comments notes: In the thirty years since their promulgation, the principles of the 1940 "Statement of Principles on Academic Freedom and Tenure" have undergone a substantial amount of refinement. This has evolved through a variety of processes, including customary acceptance, understandings mutually arrived at between institutions and professors or their representatives, investigations and reports by the American Association of University Professors, and formulations of statements by that association either alone or in conjunction with the Association of American

The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to ensure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole.<sup>2</sup> The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.<sup>3</sup>

Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession

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Colleges. These comments represent the attempt of the two associations, as the original sponsors of the 1940 "Statement," to formulate the most important of these refinements. Their incorporation here as Interpretive Comments is based upon the premise that the 1940 "Statement" is not a static code but a fundamental document designed to set a framework of norms to guide adaptations to changing times and circumstances.

Also, there have been relevant developments in the law itself reflecting a growing insistence by the courts on due process within the academic community which parallels the essential concepts of the 1940 "Statement"; particularly relevant is the identification by the Supreme Court of academic freedom as a right protected by the First Amendment. As the Supreme Court said in *Keyishian v. Board of Regents*, 385 US 589 (1967), "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."

2. The word "teacher" as used in this document is understood to include the investigator who is attached to an academic institution without teaching duties.

3. First 1970 comment: The Association of American Colleges and the American Association of University Professors have long recognized that membership in the academic profession carries with it special responsibilities. Both associations either separately or jointly have consistently affirmed these responsibilities in major policy statements, providing guidance to professors in their utterances as citizens, in the exercise of their responsibilities to the institution and to students, and in their conduct when resigning from their institution or when undertaking government-sponsored research. Of particular relevance is the "Statement on Professional Ethics" adopted in 1966 as Association policy (AAUP, *Policy Documents and Reports*, 11th ed. [Baltimore: Johns Hopkins University Press, 2015], 145–46).

attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

### Academic Freedom

1. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
2. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.<sup>4</sup> Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.<sup>5</sup>
3. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.<sup>6</sup>

4. Second 1970 comment: The intent of this statement is not to discourage what is "controversial." Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material which has no relation to their subject.

5. Third 1970 comment: Most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 "Statement," and we do not now endorse such a departure.

6. Fourth 1970 comment: This paragraph is the subject of an interpretation adopted by the sponsors of the 1940 "Statement" immediately following its endorsement:

If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph 3 of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph 4 of the section on Academic Tenure. In pressing such charges, the administration should remember that teachers are citizens and should be



## Academic Tenure

After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

In the interpretation of this principle it is understood that the following represents acceptable academic practice:

1. The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.
2. Beginning with appointment to the rank of full-time instructor or a higher rank,<sup>7</sup> the

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accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

Paragraph 3 of the section on Academic Freedom in the 1940 "Statement" should also be interpreted in keeping with the 1964 "Committee A Statement on Extramural Utterances," *Policy Documents and Reports*, 31, which states inter alia: "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position. Extramural utterances rarely bear upon the faculty member's fitness for the position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar."

Paragraph 5 of the "Statement on Professional Ethics," *Policy Documents and Reports*, 146, also addresses the nature of the "special obligations" of the teacher:

As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of these obligations in the light of their responsibilities to their subject, to their students, to their profession, and to their institution. When they speak or act as private persons, they avoid creating the impression of speaking or acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full-time probationary and the tenured teacher, but also to all others, such as part-time faculty and teaching assistants, who exercise teaching responsibilities.

7. Fifth 1970 comment: The concept of "rank of full-time instructor or a higher rank" is intended to include any person who teaches a full-time load regardless of the teacher's specific title. [For a discussion of this question, see the "Report of the Special Committee on Academic

probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution, it may be agreed in writing that the new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years.<sup>8</sup> Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period.<sup>9</sup>

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Personnel Ineligible for Tenure," *AAUP Bulletin* 52 (September 1966): 280–82.]

8. Sixth 1970 comment: In calling for an agreement "in writing" on the amount of credit given for a faculty member's prior service at other institutions, the "Statement" furthers the general policy of full understanding by the professor of the terms and conditions of the appointment. It does not necessarily follow that a professor's tenure rights have been violated because of the absence of a written agreement on this matter. Nonetheless, especially because of the variation in permissible institutional practices, a written understanding concerning these matters at the time of appointment is particularly appropriate and advantageous to both the individual and the institution. [For a more detailed statement on this question, see "On Crediting Prior Service Elsewhere as Part of the Probationary Period," *Policy Documents and Reports*, 167–68.]

9. Seventh 1970 comment: The effect of this subparagraph is that a decision on tenure, favorable or unfavorable, must be made at least twelve months prior to the completion of the probationary period. If the decision is negative, the appointment for the following year becomes a terminal one. If the decision is affirmative, the provisions in the 1940 "Statement" with respect to the termination of service of teachers or investigators after the expiration of a probationary period should apply from the date when the favorable decision is made.

The general principle of notice contained in this paragraph is developed with greater specificity in the "Standards for Notice of Nonreappointment," endorsed by the Fiftieth Annual Meeting of the American Association of University Professors (1964) (*Policy Documents and Reports*, 99). These standards are:

Notice of nonreappointment, or of intention not to recommend reappointment to the governing board, should be given in writing in accordance with the following standards:

1. *Not later than March 1 of the first academic year of service*, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination.

3. During the probationary period a teacher should have the academic freedom that all other members of the faculty have.<sup>10</sup>
4. Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges and should have the opportunity to be heard in his or her own defense by all bodies that pass judgment upon the case. The teacher should be permitted to be accompanied by an advisor of his or her own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from the teacher's own or from other institutions. Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution.<sup>11</sup>

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2. *Not later than December 15 of the second academic year of service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.*

3. *At least twelve months before the expiration of an appointment after two or more years in the institution.*

Other obligations, both of institutions and of individuals, are described in the "Statement on Recruitment and Resignation of Faculty Members," *Policy Documents and Reports*, 153–54, as endorsed by the Association of American Colleges and the American Association of University Professors in 1961.

10. Eighth 1970 comment: The freedom of probationary teachers is enhanced by the establishment of a regular procedure for the periodic evaluation and assessment of the teacher's academic performance during probationary status. Provision should be made for regularized procedures for the consideration of complaints by probationary teachers that their academic freedom has been violated. One suggested procedure to serve these purposes is contained in the "Recommended Institutional Regulations on Academic Freedom and Tenure," *Policy Documents and Reports*, 79–90, prepared by the American Association of University Professors.

11. Ninth 1970 comment: A further specification of the academic due process to which the teacher is entitled under this paragraph is contained in the "Statement on Procedural Standards in Faculty Dismissal Proceedings," *Policy Documents and Reports*, 91–93, jointly approved by the

5. Termination of a continuous appointment because of financial exigency should be demonstrably bona fide.

### Endorsers

Note: Groups that changed names subsequent to endorsing the statement are listed under their current names.

Association of American Colleges and Universities.....	1941
American Association of University Professors.....	1941
American Library Association (adapted for librarians).....	1946
Association of American Law Schools.....	1946
American Political Science Association.....	1947
American Association for Higher Education and Accreditation.....	1950
American Association of Colleges for Teacher Education.....	1950
Eastern Psychological Association.....	1950
Southern Society for Philosophy and Psychology.....	1953
American Psychological Association.....	1961
American Historical Association.....	1961
Modern Language Association.....	1962
American Economic Association.....	1962
Agricultural and Applied Economic Association.....	1962
Midwest Sociological Society.....	1963
Organization of American Historians.....	1963
Society for Classical Studies.....	1963
American Council of Learned Societies.....	1963
American Sociological Association.....	1963

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American Association of University Professors and the Association of American Colleges in 1958. This interpretive document deals with the issue of suspension, about which the 1940 "Statement" is silent.

The "Statement on Procedural Standards in Faculty Dismissal Proceedings" provides: "Suspension of the faculty member during the proceedings is justified only if immediate harm to the faculty member or others is threatened by the faculty member's continuance. Unless legal considerations forbid, any such suspension should be with pay." A suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process.

The concept of "moral turpitude" identifies the exceptional case in which the professor may be denied a year's teaching or pay in whole or in part. The statement applies to that kind of behavior which goes beyond simply warranting discharge and is so utterly blameworthy as to make it inappropriate to require the offering of a year's teaching or pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally.

Southern Historical Association .....	1963	American Speech-Language-Hearing Association.....	1968
American Studies Association.....	1963	Association of Social and Behavioral Scientists .....	1968
Association of American Geographers .....	1963	College English Association.....	1968
Southern Economic Association .....	1963	National College Physical Education Association for Men.....	1969
Classical Association of the Middle West and South.....	1964	American Real Estate and Urban Economics Association.....	1969
Southwestern Social Science Association.....	1964	Council for Philosophical Studies .....	1969
Archaeological Institute of America .....	1964	History of Education Society.....	1969
Southern Management Association.....	1964	American Musicological Society.....	1969
American Theatre Association (now dissolved) .....	1964	American Association of Teachers of Spanish and Portuguese.....	1969
South Central Modern Language Association.....	1964	Texas Community College Teachers Association.....	1970
Southwestern Philosophical Society.....	1964	College Art Association of America.....	1970
Council of Independent Colleges.....	1965	Society of Professors of Education .....	1970
Mathematical Association of America.....	1965	American Anthropological Association.....	1970
Arizona-Nevada Academy of Science.....	1965	Association of Theological Schools .....	1970
American Risk and Insurance Association.....	1965	Association of Schools of Journalism and Mass Communication.....	1971
Academy of Management .....	1965	Academy of Legal Studies in Business.....	1971
American Catholic Historical Association.....	1966	Americans for the Arts .....	1972
American Catholic Philosophical Association.....	1966	New York State Mathematics Association of Two-Year Colleges.....	1972
Association for Education in Journalism and Mass Communication.....	1966	College Language Association.....	1973
Western History Association .....	1966	Pennsylvania Historical Association.....	1973
Mountain-Plains Philosophical Conference ...	1966	American Philosophical Association.....	1974
Society of American Archivists .....	1966	American Classical League .....	1974
Southeastern Psychological Association.....	1966	American Comparative Literature Association.....	1974
Southern States Communication Association.....	1966	Rocky Mountain Modern Language Association.....	1974
American Mathematical Society.....	1967	Society of Architectural Historians.....	1975
Association for Slavic, East European, and Eurasian Studies.....	1967	American Statistical Association.....	1975
College Theology Society .....	1967	American Folklore Society .....	1975
Council on Social Work Education.....	1967	Association for Asian Studies.....	1975
American Association of Colleges of Pharmacy .....	1967	Linguistic Society of America .....	1975
American Academy of Religion .....	1967	African Studies Association .....	1975
Association for the Sociology of Religion .....	1967	American Institute of Biological Sciences .....	1975
American Society of Journalism School Administrators (now merged with the Association of Schools of Journalism and Mass Communication).....	1967	North American Conference on British Studies.....	1975
John Dewey Society .....	1967	Sixteenth-Century Society and Conference ...	1975
South Atlantic Modern Language Association.....	1967	Texas Association of College Teachers.....	1976
American Finance Association .....	1967	Association for Jewish Studies .....	1976
Association for Social Economics.....	1967	Association for Spanish and Portuguese Historical Studies .....	1976
Phi Beta Kappa Society .....	1968	Western States Communication Association.....	1976
Society of Christian Ethics .....	1968	Texas Association of Colleges for Teacher Education.....	1977
American Association of Teachers of French .....	1968	Metaphysical Society of America.....	1977
Eastern Finance Association .....	1968	American Chemical Society .....	1977
American Association for Chinese Studies .....	1968	Texas Library Association.....	1977
American Society of Plant Biologists.....	1968	American Society for Legal History .....	1977
University Film and Video Association .....	1968	Iowa Higher Education Association .....	1977
American Dialect Society .....	1968	American Physical Therapy Association .....	1979

North Central Sociological Association.....	1980	Council of Teachers of Southeast	
Dante Society of America.....	1980	Asian Languages .....	1994
Association for Communication		American Association of Teachers of Arabic...	1994
Administration.....	1981	American Association of Teachers of	
National Communication Association.....	1981	Japanese.....	1994
American Association of Physics Teachers.....	1982	Academic Senate for California	
Middle East Studies Association .....	1982	Community Colleges.....	1996
National Education Association.....	1985	National Council for the Social Studies.....	1996
American Institute of Chemists.....	1985	Council of Academic Programs in	
American Association of Teachers		Communication Sciences and Disorders ....	1996
of German.....	1985	Association for Women in Mathematics .....	1997
American Association of Teachers of Italian...	1985	Philosophy of Time Society.....	1998
American Association for Applied		World Communication Association .....	1999
Linguistics.....	1986	The Historical Society.....	1999
American Association for Cancer Education...	1986	Association for Theatre in Higher Education..	1999
American Society of Church History.....	1986	National Association for Ethnic Studies.....	1999
Oral History Association.....	1987	Association of Ancient Historians .....	1999
Society for French Historical Studies .....	1987	American Culture Association .....	1999
History of Science Society.....	1987	American Conference for Irish Studies .....	1999
American Association of Pharmaceutical		Society for Philosophy in the	
Scientists.....	1988	Contemporary World.....	1999
American Association for Clinical		Eastern Communication Association.....	1999
Chemistry.....	1988	Association for Canadian Studies	
Council for Chemical Research .....	1988	in the United States.....	1999
Association for the Study of Higher		American Association for the History of	
Education.....	1988	Medicine.....	2000
American Psychological Association .....	1989	Missouri Association of Faculty Senates.....	2000
Association for Psychological Science.....	1989	Association for Symbolic Logic .....	2000
University and College Labor Education		American Society of Criminology.....	2001
Association.....	1989	American Jewish Historical Society .....	2001
Society for Neuroscience .....	1989	New England Historical Association .....	2001
Renaissance Society of America.....	1989	Society for the Scientific Study of Religion ....	2001
Society of Biblical Literature .....	1989	Society for German-American Studies .....	2001
National Science Teachers Association .....	1989	Society for Historians of the Gilded Age	
Medieval Academy of America .....	1990	and Progressive Era.....	2001
American Society of Agronomy .....	1990	Eastern Sociological Society .....	2001
Crop Science Society of America .....	1990	Chinese Historians in the United States.....	2001
Soil Science Society of America .....	1990	Community College Humanities	
International Society of Protistologists.....	1990	Association.....	2002
Society for Ethnomusicology .....	1990	Immigration and Ethnic History Society .....	2002
American Association of Physicists		Society for Early Modern Catholic Studies.....	2002
in Medicine.....	1990	Academic Senate of the California State	
Animal Behavior Society.....	1990	University.....	2004
Illinois Community College Faculty		Agricultural History Society .....	2004
Association.....	1990	National Council for Accreditation	
American Society for Theatre Research.....	1990	of Teacher Education .....	2005
National Council of Teachers of English.....	1991	American Council on the Teaching	
Latin American Studies Association.....	1992	of Foreign Languages.....	2005
Society for Cinema and Media Studies.....	1992	Society for the Study of Social Biology .....	2005
American Society for Eighteenth-Century		Society for the Study of Social Problems .....	2005
Studies.....	1992	Association of Black Sociologists.....	2005
Council of Colleges of Arts and Sciences.....	1992	Dictionary Society of North America .....	2005
American Society for Aesthetics.....	1992	Society for Buddhist-Christian Studies.....	2005
Association for the Advancement		Society for Armenian Studies.....	2006
of Baltic Studies.....	1994	Society for the Advancement of	
American Council of Teachers of Russian .....	1994	Scandinavian Study .....	2006

## Report of the Committee on Freedom of Expression

*The Committee on Freedom of Expression at the University of Chicago was appointed in July 2014 by President Robert J. Zimmer and Provost Eric D. Isaacs “in light of recent events nationwide that have tested institutional commitments to free and open discourse.” The Committee’s charge was to draft a statement “articulating the University’s overarching commitment to free, robust, and uninhibited debate and deliberation among all members of the University’s community.”*

*The Committee has carefully reviewed the University’s history, examined events at other institutions, and consulted a broad range of individuals both inside and outside the University. This statement reflects the long-standing and distinctive values of the University of Chicago and affirms the importance of maintaining and, indeed, celebrating those values for the future.*

From its very founding, the University of Chicago has dedicated itself to the preservation and celebration of the freedom of expression as an essential element of the University’s culture. In 1902, in his address marking the University’s decennial, President William Rainey Harper declared that “the principle of complete freedom of speech on all subjects has from the beginning been regarded as fundamental in the University of Chicago” and that “this principle can neither now nor at any future time be called in question.”

Thirty years later, a student organization invited William Z. Foster, the Communist Party’s candidate for President, to lecture on campus. This triggered a storm of protest from critics both on and off campus. To those who condemned the University for allowing the event, President Robert M. Hutchins responded that “our students . . . should have freedom to discuss any problem that presents itself.” He insisted that the “cure” for ideas we oppose “lies through open discussion rather than through inhibition.” On a later occasion, Hutchins added that “free inquiry is indispensable to the good life, that universities exist for the sake of such inquiry, [and] that without it they cease to be universities.”

In 1968, at another time of great turmoil in universities, President Edward H. Levi, in his inaugural address, celebrated “those virtues which from the beginning and until now have characterized our institution.” Central to the values of the University of Chicago, Levi explained, is a profound commitment to “freedom of inquiry.” This freedom, he proclaimed, “is our inheritance.”

More recently, President Hanna Holborn Gray observed that “education should not be intended to make people comfortable, it is meant to make them think. Universities should be expected to provide the conditions within which hard thought, and therefore strong disagreement, independent judgment, and the questioning of stubborn assumptions, can flourish in an environment of the greatest freedom.”

The words of Harper, Hutchins, Levi, and Gray capture both the spirit and the promise of the University of Chicago. Because the University is committed to free and open inquiry in all matters, it guarantees all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn. Except insofar as limitations on that freedom are necessary to the functioning of the University, the University of Chicago fully respects and supports the freedom of all members of the University community “to discuss any problem that presents itself.”

Of course, the ideas of different members of the University community will often and quite naturally conflict. But it is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.

The freedom to debate and discuss the merits of competing ideas does not, of course, mean that individuals may say whatever they wish, wherever they wish. The University may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the University. In addition, the University may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt the ordinary activities of the University. But these are narrow exceptions to the general principle of freedom of expression, and it is vitally important that these exceptions never be used in a manner that is inconsistent with the University’s commitment to a completely free and open discussion of ideas.

In a word, the University’s fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the University community, not for the University as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the University community to engage in such debate and deliberation in an effective and responsible manner is an essential part of the University’s educational mission.

As a corollary to the University’s commitment to protect and promote free expression, members of the University community must also act in conformity with the principle of free expression. Although members of the University community are free to criticize and contest the views expressed on campus, and to criticize and contest

speakers who are invited to express their views on campus, they may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe. To this end, the University has a solemn responsibility not only to promote a lively and fearless freedom of debate and deliberation, but also to protect that freedom when others attempt to restrict it.

As Robert M. Hutchins observed, without a vibrant commitment to free and open inquiry, a university ceases to be a university. The University of Chicago's long-standing commitment to this principle lies at the very core of our University's greatness. That is our inheritance, and it is our promise to the future.

Geoffrey R. Stone, Edward H. Levi Distinguished Service Professor of Law,  
*Chair*

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