

## **Statement from Nadine Strossen on the Ilya Shapiro Free Expression Controversy**

I wrote to Georgetown Law School Dean William Treanor to stress that I have no doubt of Ilya Shapiro's commitment to the values of equality and inclusivity for all people, based on my extensive professional collaborations and personal interactions with Ilya, since 2008. Consistent with concepts of proportionality and restorative justice, I urged that Ilya should be judged in light of his overall long, distinguished record of actions and communications, not on the basis of a few words in one Twitter stream, for which he promptly apologized. The poorly chosen words do not accurately reflect his actual views, and although such a regrettable communication is appropriately subject to strong criticism – including Ilya's own self-criticism – they should not be the basis for any punitive action. In my letter to Dean Treanor, I focused on the general considerations of fairness and justice that support this conclusion.

This conclusion is also supported by concerns of free speech and academic freedom, which protect a faculty member's extra-mural speech on all matters of public concern, such as those at issue: speech in the faculty member's capacity as a member of the community, and not speech in the specific job-related capacities as professor or scholar. Accordingly, FIRE (as well as other defenders of free speech and academic freedom) have consistently, correctly objected to any adverse employment action taken against any faculty member – including those, such as Ilya, who have been hired but have not yet begun to work – based on extra-mural speech, including on social media. This position holds true regardless of the ideological or other content of the extra-mural speech that prompted the employers' sanctions.

A situation that is factually analogous in the details that are pertinent to the free speech/academic freedom concerns – although strikingly different in the content of the controversial messages (which is not relevant to the free speech/academic freedom principles) – is the case of Steven Salaita. In 2013, he accepted an offer to join the American Indian studies program at the University of Illinois at Urbana-Champaign (UIUC) as a tenured professor, and he was scheduled to begin in August 2014. However, in July 2014, in response to the Gaza war, Salaita issued hundreds of tweets that were harshly critical of Israel and Zionism, and widely considered to convey anti-Semitic views. Examples include:

- “I wish all the fucking West Bank settlers would go missing.”
- “Zionists: transforming anti-semitism from something horrible into something honorable since 1948.”
- “At this point, if Netanyahu appeared on TV with a necklace made from the teeth of Palestinian children, would anybody be surprised?”

In response to pressure from donors and others, UIUC rescinded Salaita's professorship. Even people who strongly condemned Salaita's ideas and harsh rhetoric, believing they evinced discrimination against Jews and Israelis, also strongly condemned the university's punitive,

retaliatory action as inconsistent with free speech and academic freedom principles. The American Association of University Professors censured UIUC for its treatment of Salaita, citing a due process violation in the dismissal of an already-appointed faculty member. Calling Salaita's dismissal "one of the more significant violations of academic freedom this decade," the chair of the AAUP's Committee A on Academic Freedom and Tenure, Henry Reichman, professor emeritus of history at California State University at East Bay, commented: "One may consider the contents of his tweets to be juvenile, irresponsible, and even repulsive and still defend Salaita's right to produce them."

Again, I must underscore the striking factual distinctions between the scope, content, and tenor of Salaita's tweets, and Ilya Shapiro's. But those factual distinctions only underscore the importance of honoring the general principles that are common to both situations; extra-mural social media posts about public issues do not justify any retaliatory action by the university, specifically including the withdrawal of a job.

Although Georgetown Law School, as a private sector entity, is not directly bound by the First Amendment, it is contractually, as well as morally, bound to respect the same general free expression and academic freedom rights by virtue of its commendably strong pledges to do so. For example, Georgetown's Faculty Handbook adopts the American Association of University Professors' 1940 Statement on Academic Freedom. Moreover, the Faculty Handbook states that its "commitment to academic freedom supports all faculty (and professional librarians) in research, teaching, and professional service in and beyond the University by protecting free inquiry and free expression."

Another private university recently garnered high marks for respecting academic freedom and free speech – in stark contrast to the UIUC/Salaita incident – in a situation that was also comparable to Ilya Shapiro's in terms of the general principles at stake (although not, again, in terms of the specific ideas at issue). In 2020, Dorian Abbot, a professor in the University of Chicago's (UChicago) Department of Geophysical Science, posted four YouTube videos critiquing affirmative action and diversity, equity, and inclusion initiatives. Many members of his department, as well as other members of the UChicago community, demanded that he should be punished, maintaining that he had "threaten[ed] the safety and belonging of all underrepresented groups within the department." Rather than yielding to such pressures, the then-UChicago President, Robert Zimmer, promptly issued a statement that summarized that university's commitment to free speech, and therefore categorically refused to impose "any. . . disciplinary consequences" on any faculty member for any statement, including one inconsistent with the university's own policies. As Zimmer explained: "[N]o individual member of the faculty speaks for the University as a whole on any subject, including on issues of diversity. In turn, the University will continue to defend vigorously any faculty member's right to publish and discuss his or her ideas." By not expressly referring to Abbot or his contested ideas, Zimmer's

letter underscores the university's commitment to consistently enforce the general academic freedom/free speech principles it has pledged to honor, regardless of the speaker's identity or ideas.

Notably, Zimmer's letter is based in substantial part on the well-known UChicago "Report of the Committee on Freedom of Expression," better known as the "Chicago Principles." Georgetown is one of many universities that have adopted a version of those Principles. Accordingly, Georgetown promises that "[d]eliberation or debate 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 ill conceived."

Since the particular positions for which Georgetown hired Ilya Shapiro are Executive Director and Senior Lecturer at the Georgetown Center for the Constitution, his case provides an especially compelling context for Georgetown to abide by the important constitutional norms that it has committed to honor.

*New York Law School Professor Emerita Nadine Strossen, past national President of the American Civil Liberties Union (1991-2008), is a leading expert and frequent speaker/media commentator on constitutional law and civil liberties, who has testified before Congress on multiple occasions. She serves on the advisory boards of the ACLU, Foundation for Individual Rights in Education (FIRE), Heterodox Academy, and National Coalition Against Censorship, and is a Founding Member of the new Academic Freedom Alliance (launched in March, 2021). The National Law Journal has named Strossen one of America's "100 Most Influential Lawyers." Her 2018 book HATE: Why We Should Resist It with Free Speech, Not Censorship was selected by Washington University as its 2019 "Common Read."*