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Before the

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SUBCOMMITTEE ON THE CONSTITUTION AND CIVIL JUSTICE

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“The State of Intellectual Freedom in America”

Chairman King, Ranking Member Cohen, and Distinguished Members of the Committee:

Thank you for the opportunity to share my thoughts on intellectual freedom, political ideology, and the role of universities in civil society. I am expressing my individual views, not those of my employer, the University of Southern California.

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I. Universities' scientific, economic, and cultural contributions depend on autonomy and political independence

Albert Einstein once described universities as “Temples of Science” where

“A finely tempered nature longs to escape [from the painful crudity of everyday life] into the world of objective perception and thought; this . . . may be compared [to] the silence of high mountains, where the eye ranges freely through the still, pure air and fondly traces out the restful contours apparently built for eternity.”¹

There is no such thing as right wing or left wing physics or chemistry or mathematics. Universities do not *and should not* strive to track the shifting median policy position between competing political parties or kowtow to the preferences of donors or political leaders.²

¹ Albert Einstein, PRINCIPLES OF RESEARCH (1918), <http://www.indiastudychannel.com/attachments/Resources/67438-52231-Albert%20Einstein%20-%20Principles%20Of%20Research.PDF>.

² See, e.g., Justin H. Gross, Cosma Rohilla Shalizi & Andrew Gelman, *Does the US Media Have a Liberal Bias? A Discussion of Tim Groseclose's "Left Turn: How Liberal Media Bias Distorts the American Mind,"* 10 PERSPECTIVES ON POLITICS 767–785 (2012) (critiquing a model that assumed that the media was biased if it disagreed with the views of elected officials).

Universities instead must strive to promote rigorous, objective research using the best data, the most qualified personnel, and the best analytic tools available. To help protect researchers' and instructors' independence and insulate them from undue pressure, universities grant productive faculty academic tenure.³ Nothing comparable is available to think tank researchers or journalists, who can be and have been fired for their views.⁴ To help academics correct our own mistakes we use peer review, replication, internal debate, and other checks.

Universities' efforts to expand human knowledge have contributed to innovation and economic growth,⁵ and to rising levels of prosperity and longevity. Education boosts

³ Erwin Chemerinsky, *Is Tenure Necessary to Protect Academic Freedom?*, 41 AMERICAN BEHAVIORAL SCIENTIST 638–651 (1998); Brian Leiter, *Why Academic Freedom?*, in THE VALUE AND LIMITS OF ACADEMIC SPEECH: PHILOSOPHICAL, POLITICAL, AND LEGAL PERSPECTIVES (2018), <https://papers.ssrn.com/abstract=3083120>.

⁴ Howard Kurtz, *Conservative David Frum loses think-tank job after criticizing GOP*, WASHINGTON POST, March 26, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/25/AR2010032502336.html>; Conor Friedersdorf, *A Dissent Concerning Kevin Williamson*, THE ATLANTIC, April 8, 2018, <https://www.theatlantic.com/politics/archive/2018/04/a-dissent-concerning-kevin-williamson/484052/>.

⁵ See DEREK BOK, BEYOND THE IVORY TOWER: SOCIAL RESPONSIBILITIES OF THE MODERN UNIVERSITY 138–39 (1982) (discussing the importance of university research on technological innovations); JOHN A. DOUGLASS, THE CALIFORNIA IDEA AND AMERICAN HIGHER EDUCATION: 1850 TO THE 1960 MASTER PLAN 200–01, 1 (2000) (“We almost owe more of our economic gains in the last seven decades to investment in people than to saving and the amassment of capital. And the margin in favor of people is increasing.” (quoting John Kenneth Galbraith)); Philippe Aghion & Peter Howitt, *A Model of Growth through Creative Destruction*, 60 ECONOMETRICA 323, 324 (1992); Angel de la Fuente & Rafael Domenech, *Human Capital in Growth Regressions: How Much Difference does Data Quality Make?*, 4 J. EUR. ECON. ASSOC. 1, 1 (2006) (noting that the counterintuitive results on human capital and growth are partly due to inadequate data); Alan B. Krueger & Mikael Lindahl, *Education for Growth: Why and For Whom?*, 39 J. ECON. LIT. 1101, 1102 (2001) (arguing that studies that failed to find a connection between education and growth suffered from poor quality data, and that such relationships are evident with better data); Paul Romer, *Endogenous Technological Change*, 98 J. POL. ECON. S71, S71 (1990) (“[T]he stock of human capital determines the rate of growth [and] too little human capital is devoted to research in equilibrium.”); Jacob Mincer, *Human Capital and Economic Growth* (Nat'l Bureau of Econ. Research, Working Paper No. 803, 1981), available at <http://www.nber.org/papers/w0803>

Just as accumulation of personal human capital produces individual (income) growth, so do the corresponding social or national aggregates. . . . growth of human capital is both a condition and consequence of economic growth [h]uman capital activities involve . . . the production of new knowledge which is the source of innovation and of technical change which propels all factors of production.

earnings and employment,⁶ reduces burdens on public services,⁷ and through income and payroll taxes on skilled workers, helps fund the government.⁸

A large proportion of the benefits of education redound to public finances rather than to the educated worker. Education is generally a profitable public investment, not a mere expenditure.⁹ In fact, the public benefits from higher education in the United States are the highest in the developed world, while public costs are among the lowest,¹⁰ suggesting that public investment in higher education in the United States could profitably be increased.¹¹

The United States' universities are global leaders in innovation.¹² The U.S. is a leading destination for international students.¹³

⁶ See Jacob Mincer, *Education and Unemployment* 22 (Nat'l Bureau of Econ. Research, Working Paper No. w3838, 1991), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=226736; W. Craig Ridell & Xueda Song, *The Impact of Education on Unemployment Incidence and Re-Employment Success: Evidence from the U.S. Labor Market*, 18 LABOUR ECON. 453, 462 (2011); See ORG. FOR ECON. CO-OPERATION AND DEV. (OECD), EDUCATION AT A GLANCE: 2011 OECD INDICATORS 116–17, Chart A7.1 (2011) [hereinafter OECD], available at <http://www.oecd.org/education/preschoolandschool/educationataglance2011oecdindicators.htm> (“Higher education improves job prospects, in general, and the likelihood of remaining employed in times of economic hardship.”). The differences in unemployment between those with post-secondary degrees and those without widens during times of financial distress. *Id.* at 118–20.

⁷ See OECD, *supra* note 6, at 165, 193. A large body of literature suggests that education is positively associated with a variety of social outcomes, such as better health, stronger civic engagement and reduced crime A small but increasing number of studies further suggest that education has a positive causal effect on these social outcomes There is also research suggesting that education can be a relatively cost-effective means to improve health and reduce crime.

Completion of postsecondary education is also associated with lower rates of bankruptcy filing. Abbye Atkinson, *Race, Educational Loans and Bankruptcy*, 16 MICH. J. RACE & L. 1, 2 (2010). High levels of education for spouses is associated with lower divorce rates, particularly if the education is completed prior to marriage. Torkild Hovde Lyngstad, *The Impact of Parents' and Spouses' Education on Divorce Rates in Norway*, 10 DEMOGRAPHIC RES. 121, 138 (2004); Jessie M. Tzeng & Robert D. Mare, *Labor Market and Socioeconomic Effects on Marital Stability*, 24 SOC. SCI. RES. 329 (1995).

⁸ OECD, *supra* note 6, at 165 (2011) (“Investments in education also generate public returns from higher income levels in the form of income taxes, increased social insurance payments and lower social transfers.”).

⁹ *Id.* at 158–60 (reporting that public and private benefits of education in OECD countries, including the U.S., greatly exceed public and private investment in education).

¹⁰ *Id.* at 165–67.

¹¹ Michael Simkovic, *The Knowledge Tax*, 82 U. CHI. L. REV. 1981 (2015). The higher education earnings premium in the U.S. is often higher than expected returns in the global stock or bond markets.

¹² Shanghai Ranking Academic Ranking of World Universities 2017 results announced, TIMES HIGHER EDUCATION (THE) (2017), <https://www.timeshighereducation.com/student/news/shanghairanking-academic-ranking-world-universities-2017-results-announced>; ShareAmerica, U.S. DOMINATES GLOBAL UNIVERSITY RANKINGS SHAREAMERICA, UNITED STATES STATE DEPARTMENT (2016), <https://share.america.gov/u-s-dominates-global-university-rankings/>; US leads China in latest global university rankings - University World News, <http://www.universityworldnews.com/article.php?story=20171024082849549>.

¹³ Philip G. Altbach, *Higher Education Crosses Borders: Can the United States Remain the Top Destination for Foreign Students?*, 36 CHANGE: THE MAGAZINE OF HIGHER LEARNING 18–25 (2004); Philip Altbach, *Perspectives on Internationalizing Higher Education*, INTERNATIONAL HIGHER EDUCATION (2015), <http://ejournals.bc.edu/ojs/index.php/ihe/article/view/6975> (“International students are now a significant factor in U.S. higher education. Open Doors reports that more than a half million foreign students spend more than \$11 billion on tuition and living expenses”); Institute of International Education, ENROLLMENT IIE, <https://www.iie.org:443/Research-and-Insights/Open-Doors/Data/International-Students/Enrollment>.

Ideology and political representativeness are not part of academic institutions' mission. Academia is inherently skeptical of dogma or party platforms. Scientists believe in the pursuit of objective knowledge and truth, in adherence to standards of rigor and fairness, and in the elevation of facts above ideological or political priors.

There is no such thing as “liberal” or “conservative” science.¹⁴

Today, a serious threat to academic freedom and intellectual integrity on university campuses comes from powerful donors and outside pressure groups who sometimes seek to subtly (or not so subtly) influence ostensibly neutral and unbiased academic research to further their own business interests or other political preferences.

Many universities struggle to balance the benefits of outside funding with ethical norms that mandate academic independence and intellectual integrity. The best way to protect universities from undue influence may be to secure and expand revenue sources that are indifferent to and cannot sway the conclusions of academic research, such as university endowment¹⁵ income, tuition¹⁶, and non-discretionary public investment.¹⁷ This is analogous to the approach we take to try to protect the independence of members of the federal judiciary¹⁸ or the Federal Reserve.

¹⁴ Philip Ball, *How 2 Pro-Nazi Nobelists Attacked Einstein's "Jewish Science,"* SCIENTIFIC AMERICAN, 2015, <https://www.scientificamerican.com/article/how-2-pro-nazi-nobelists-attacked-einstein-s-jewish-science-excerpt1/>; KRISTIE MACRAKIS, SURVIVING THE SWASTIKA: SCIENTIFIC RESEARCH IN NAZI GERMANY 7476 (1993).

Social science disciplines often aspire toward a similar level of data-driven, scientific objectivity. MALCOLM WILLIAMS, SCIENCE AND SOCIAL SCIENCE: AN INTRODUCTION 49–69 (2012). Humanities disciplines seek to foster critical thinking, communication, and problem solving skills, not to indoctrinate students into a particular set of political beliefs. DIANE F. HALPERN, THOUGHT AND KNOWLEDGE: AN INTRODUCTION TO CRITICAL THINKING (2013), <http://www.taylorfrancis.com/books/9781134637867>.

¹⁵ George Will, *The GOP Tax Bill's Disconcerting Raid on University Endowments,* NATIONAL REVIEW, Nov. 9, 2017, <https://www.nationalreview.com/2017/11/university-endowments-tax-terrible-idea/>.

¹⁶ Michael Simkovic, *Risk-Based Student Loans,* 70 WASH. & LEE L. REV. 527, (2013).

¹⁷ Simkovic, *supra* note 10.

¹⁸ WILLIAM REHNQUIST, 2000 YEAR-END REPORT ON THE FEDERAL JUDICIARY (2001), <https://www.supremecourt.gov/publicinfo/year-end/2000year-endreport.aspx> (“One key to the independence of the federal Judiciary is that Article III of the Constitution of the United States guarantees federal judges tenure . . . and prohibits reducing their compensation while in office. . . . in order to continue to provide the nation a capable and effective judicial system we must be able to attract and retain experienced men and women of quality . . . to perform a demanding position in the public service. The fact is that those lawyers who are qualified to serve as federal judges have opportunities to earn far more in private law practice or business than as judges. . . . We cannot afford a Judiciary made up primarily of the wealthy.”).

Cash-for-influence arrangements are commonplace at think tanks,¹⁹ public relations and advertising firms, and increasingly media organizations²⁰ which are not financially self-sustaining.²¹ Lawyers and lobbyists are openly and unabashedly paid advocates.

But Society needs universities to aspire to be objective, neutral, and rigorous precisely because we are constantly inundated with paid advocacy, often of dubious quality. Telling the difference between high-quality research and propaganda can take more time and effort than most members of the public or policymakers can afford to spend. The intellectual independence that comes with financial security would benefit all universities, as well as society more broadly.

II. Universities and think tanks have discriminated in favor of conservatives and libertarian scholarship at the behest of powerful donors

I have been asked to testify about bias and discrimination within the academy on the basis of political ideology. Discrimination in this context means that individuals who are less qualified by objective criteria of excellence in scholarship and teaching are given advantages—such as employment opportunities, resources for research, supplemental compensation, or admissions to academically selective institutions—because of their political views, political experience or powerful connections.

The clearest and most unambiguous example of this form of discrimination is the reservation of specific slots or privileges for individuals who adhere to a set of political views. This form of political discrimination clearly takes place at George Mason University in Virginia²² and Stanford University,²³ which host extremely well-funded embedded think

¹⁹ Eric Lipton, Brooke Williams & Nicholas Confessore, *Foreign Powers Buy Influence at Think Tanks*, THE NEW YORK TIMES, January 19, 2018, <https://www.nytimes.com/2014/09/07/us/politics/foreign-powers-buy-influence-at-think-tanks.html>; Oliver Wright, *Big companies ‘buy influence’ with funding for think tanks*, THE TIMES, May 12, 2018, <https://www.thetimes.co.uk/article/big-companies-buy-influence-with-funding-for-think-tanks-6x85mpx9q> (last visited Sep 17, 2018); Think tanks - SourceWatch, https://www.sourcewatch.org/index.php/Think_tanks (last visited Jun 19, 2018); Philip Rojc & David Callahan, *The Hand That Feeds: Can Think Tanks Ruled by the Wealthy Really Be Impartial?*, INSIDE PHILANTHROPY, March 28, 2017, <https://www.insidephilanthropy.com/home/2017/3/28/this-private-equity-billionaire-just-gave-big-to-support-brookings-research> (last visited Sep 17, 2018); The Political Activity of Think Tanks: The Case for Mandatory Contributor Disclosure, 115 HARVARD LAW REVIEW 1502–1524 (2002).

²⁰ Harry Browne, *Foundation-Funded Journalism*, 11 JOURNALISM STUDIES 889 (2010), <https://www.tandfonline.com/doi/abs/10.1080/1461670X.2010.501147>.

²¹ Wolf Richter, *Here’s why billionaires keep buying newspapers despite them being in a death spiral*, BUSINESS INSIDER, (2018) <http://www.businessinsider.com/why-billionaires-keep-buying-newspapers-despite-them-being-in-death-spiral-2018-2>; see also Alex Pereene, *Billionaires gone wild*, COLUMBIA JOURNALISM REVIEW, (2018), https://www.cjr.org/special_report/rich-journalism-media.php; David Weinberger, *The Ethics of Using Paid Content in Journalism*, HARVARD BUSINESS REVIEW, (2013), <https://hbr.org/2013/07/the-ethics-of-using-paid-content-in-journalism>.

²² Michael Simkovic, WHEN DO DONOR INFLUENCE AND IDEOLOGY UNDERMINE ACADEMIC INTEGRITY? BRIAN LEITER’S LAW SCHOOL REPORTS (2018), <http://leiterlawschool.typepad.com/leiter/2018/05/when-do-donor-influence-and-ideology-undermine-academic-integrity-michael-simkovic.html> (last visited Jun 13, 2018).

²³ Michael Simkovic, EXTREMELY CONSERVATIVE STANFORD GRADUATE COMPLAINS THAT THERE AREN’T ENOUGH EXTREME CONSERVATIVES ON CAMPUS BRIAN LEITER’S LAW SCHOOL REPORTS (2018), <http://leiterlawschool.typepad.com/leiter/2018/05/conservative-stanford-law-graduate-complains-that-there-arent-enough-right-wing-ideologues-on-campus.html> (last visited Jun 13, 2018).

tanks, such as the Mercatus Center and the Hoover Institution. These embedded think tanks make attractive opportunities available exclusively or preferentially to libertarian and conservative researchers and therefore do not adhere to academic norms of objectivity.

There are similar controversies surrounding allegedly inappropriate influence at state universities in Arizona²⁴ and Florida.²⁵ Large donors to universities overwhelmingly have more conservative views on economic issues such as taxes and regulation of businesses than most of the population,²⁶ and have at times sought to use their wealth to spread their views.

This can be done ethically and responsibly. For example, The John M. Olin Foundation funds the work of many scholars who simply embrace the methodology of economics, regardless of their political leanings or the policy implications of their research. However, some funders apply political litmus tests, and this is inappropriate.

A. George Mason University and the Mercatus Center Provided Funding Exclusively to Economically Conservative Scholars

At George Mason's Mercatus Center,²⁷ the language of several donor contracts indicated that only libertarian or economically conservative faculty members would be eligible to receive prestigious compensation supplements known as "chairs" or "professorships."²⁸ For example:

"The objective of the Professorship is to advance the . . . acceptance and practice of . . . free market processes and principles [as] promot[ing] individual freedom, opportunity, and prosperity . . . The occupant of the Professorship ("Professor" shall . . . be qualified and committed to the forgoing principles.)"

In contravention of academic ethical norms, donors such as the Koch family had substantial influence over which faculty members would hold chairs and professorships.²⁹

²⁴ Casey Quinlan, *\$5 Million is Going to Koch-Backed Think Tanks in Arizona Universities. Professors are angry.* THINK PROGRESS (2016), <https://thinkprogress.org/5-million-is-going-to-koch-backed-think-tanks-in-arizona-universities-professors-are-angry-a71de4fcbe00/>.

²⁵ Dave Levinthal, *Spreading the Free-Market Gospel*, THE ATLANTIC, (2015), <https://www.theatlantic.com/education/archive/2015/10/spreading-the-free-market-gospel/413239/>.

²⁶ Adam Bonica et al., *Why Hasn't Democracy Slowed Rising Inequality?*, 27 JOURNAL OF ECONOMIC PERSPECTIVES 103–124 (2013); Benjamin I. Page, Larry M. Bartels & Jason Seawright, *Democracy and the Policy Preferences of Wealthy Americans*, 11 PERSPECTIVES ON POLITICS 51–73 (2013).

²⁷ Mercatus Center - SourceWatch, *supra* note 19.

²⁸ Nell Gluckman, *Why George Mason's Agreements With the Koch Foundation Raised Red Flags*, CHRONICLE OF HIGHER EDUCATION, May 2, 2018, at 7.

²⁹ Donors such as the Koch family maintained control through representation on selection committees, evaluation committees, rights to recommend removal of chair holders, gift rescission rights, and key-man clauses for senior executives.

According to press reports, the structure used by the Charles Koch Foundation at George Mason created plausible deniability for the university regarding the level of control exercised by the Koch Foundation. The Koch Foundation was given 2 out of 5 board seats with respect to the selection and termination of chairs. The 2 out of 5 seats apparently meant that a faculty member favored by the Kochs would only need support from one of the three independent board members to receive a chair, whereas a faculty member out of favor with the Kochs would require unanimity to have a bare majority. Koch affiliated board members may have also

Rudy Fichtenbaum, president of the American Association of University Professors said “When you start getting into a study of free enterprise then you’re really, I think, stepping into a territory where you’re promoting a political agenda.”³⁰ Donors may specify a topic of study or type of expertise for a holder of a chair; but they should not specify the chair-holder’s politics.

Ideologically motivated funding affects what kind of scholarship is produced. Without supplemental compensation from Mercatus, GMU faculty compensation appears to be uncompetitive with comparable institutions.³¹ Thus, working at GMU may not have made sense financially for economists or law professors who were unlikely to obtain Mercatus

facilitated communication and information sharing with the Koch Foundation and lobbied other members of the committee. The arrangement resembles strategies used by activist investors who want de facto control over a target company without the obligations, financial costs, and liability that come with majority control. George Mason says that more recent agreements with the Kochs no longer feature some of the objectionable provisions.

Critics say additional levers of control over academic appointments and research for donors at Mercatus and George Mason include rights of major donors to rescind their gifts, including “Key-man” clauses if certain senior administrators are removed or resign. *Id.* Key-man clauses are common in research funding for principal investigator with unique and essential technical skills or institutional knowledge for a particular project. Such clauses are less common for those in executive leadership positions. Similar key-man contractual provisions were used to entrench Roger Ailes at Fox News. Brian Stelter, HOW ROGER AILES USED “KEY MAN CLAUSES” FOR HIS STARS TO PROTECT HIMSELF CNN.COM (2016), <http://money.cnn.com/2016/09/16/media/fox-news-key-man-clause-roger-ailes/index.html> (last visited Jun 13, 2018).

Executives at Mercatus may have had a disproportionate amount of influence over research topics. Chair holders were encouraged to produce “a research project . . . **decided jointly with the President and General Director of Mercatus**, and which is closely related to the [Mercatus] Center’s mission.”

Given the large donations the Kochs have made to George Mason’s law school and economics departments over the years, those units strong interest in attracting future donations, the explicit ideological orientations of many of the faculty in those units, the Kochs may not have needed board seats to exercise influence. However, the Koch family has used board seats and lawsuits to assert greater control over libertarian think tanks such as the Cato Institute. Jane Mayer, *The Kochs v. Cato: Winners and Losers*, THE NEW YORKER, (2012), <https://www.newyorker.com/news/news-desk/the-kochs-v-cato-winners-and-losers>; James Antle, *The Kochs and the Cato Institute: a hostile takeover?* (2012), <https://www.theguardian.com/commentisfree/cifamerica/2012/apr/02/kochs-cato-institute-hostile-takeover>; Mercatus Center - SourceWatch, *supra* note 19. Cato does not seem to have been very independent to being with, considering their advocacy on climate change and tobacco and undisclosed donations from donors’ with financial interests at stake. Mark Ames, *Independent and Principled? Behind the Cato Myth*, THE NATION, (2012), <https://www.thenation.com/article/independent-and-principled-behind-cato-myth/>; *Id.*

³⁰ In at least one case, funds for a “chair” were used to create a “Senior Research Strategist” position for an individual with extensive experience in conservative policy circles, but more limited academic experience. Democratic Senators have unflatteringly described this individual as “an anti-government zealot” and as “ideologically opposed to Social Security”—assessments echoed, rightly or wrongly, by a reporter at the Los Angeles Times. Robert Pear, *Driven by Campaign Populism, Democrats Unite on Expanding Social Security*, THE NEW YORK TIMES, (2016), <https://www.nytimes.com/2016/06/19/us/politics/driven-by-campaign-populism-democrats-unite-on-expanding-social-security.html>; Michael Hiltzik, *Has President Obama appointed a fox to guard the Social Security henhouse?*, LOS ANGELES TIMES, (2016), <http://www.latimes.com/business/hiltzik/la-fi-hiltzik-blahous-trustee-20160509-snap-story.html>.

³¹ For example, base salary from state sources for prominent senior faculty at GMU’s law school appears to be relatively low compared to compensation of faculty at similar seniority levels at similarly ranked institutions in similarly high-cost of living areas, such as the University of Maryland or UC Davis. Drew Hansen, *Who earns the biggest Virginia paychecks? Check out our new searchable database*, WASHINGTON BUSINESS JOURNAL, (2016), <https://www.bizjournals.com/washington/datacenter/who-earns-the-biggest-virginia-paychecks-check-out.html>. In the interest of propriety, I will not discuss any individual compensation numbers.

compensation supplements—i.e., those whose scholarship might support increases in taxes, an expansion of public investment or social insurance, or more stringent regulations of business. At least one moderate economics faculty member says that she “carefully chose [her] research so it wouldn’t be objectionable” to her more conservative colleagues.³²

I have corresponded with multiple senior administrators and faculty members at Mercatus and GMU. None of them were able to provide a single example of an economically progressive faculty member who received a Mercatus Chair or Professorship. Mercatus and GMU were similarly unable to provide examples of Mercatus summer stipends funding economically progressive research by reputedly progressive scholars.³³

The Koch Foundation asks its grantees to supply contact lists of conservative and libertarian students and faculty.³⁴ Once again, this is generally considered taboo. Universities typically do not track their faculty or students’ political views, perhaps because of the enduring legacy of political purges of liberals and progressives during the Red Scare and McCarthyism,³⁵ and because of recent claims of much milder forms of discrimination against conservatives.³⁶

The degree of control exercised by the Koch family and other donors—whether it was de facto control or mere influence over compensation and retention—is besides the point. Any control over faculty compensation in the hands of donors who are motivated by political or

³² Gluckman, *supra* note 29. Gluckman, *supra* note 28. Conservative and libertarian predominance at George Mason’s economics department and law school appears to have fostered a distinctive, rough-and-tumble culture. One member of the economics faculty provocatively compared redistributive taxation and pilfering food when hungry to rape. Jordan Weissmann, *Is Robin Hanson America’s Creepiest Economist?*, SLATE, (2018), <https://slate.com/business/2018/04/economist-robin-hanson-might-be-americas-creepiest-professor.html>. In correspondences with one GMU law professor about a previous essay, which critiqued techniques used by conservative activists to build support for regulating universities, a GMU professor compared my admonishments to accusations of child abuse, domestic violence, and neo-Nazism. Michael Simkovic, *A well-organized campaign to bait, discredit, and take over universities is exploiting students and manipulating the public*, BRIAN LEITER’S LAW SCHOOL REPORTS, (2018), leiterlawschool.typepad.com/leiter/2018/04/a-well-organized-campaign-to-bait-discredit-and-take-over-universities-is-exploiting-students-and-ma.html. Thankfully, this lack of decorum is not universal—in my experience, the Dean of George Mason’s Law School, Henry Butler, conducts himself as a courtly gentleman scholar, and Tyler Cowen, the faculty director of the Mercatus Center, is a thoughtful and lively scholar. Nevertheless, it is easy to imagine how moderate or liberal faculty members could find the environment at George Mason inhospitable.

³³ There are examples of prominent libertarian GMU faculty members offering tepid support for liberal policies such as a carbon tax (in lieu of more restrictive pollution limits) or quietly criticizing specific technical aspects of conservative tax legislation. <http://www.gmu.edu/resources/facstaff/senate/Mercatus%20Responses.pdf>; <https://marginalrevolution.com/marginalrevolution/2011/09/do-all-serious-economists-favor-a-carbon-tax.html>; <https://www.bloomberg.com/view/articles/2017-11-17/yes-a-corporate-tax-cut-would-increase-investment>

³⁴ Dave Levinthal, *Spreading the Free-Market Gospel*, THE ATLANTIC, 2015, <https://www.theatlantic.com/education/archive/2015/10/spreading-the-free-market-gospel/413239/>.

³⁵ Ellen Schrecker, *The Legacy of McCarthyism*, (1994) pp. 92-92, <http://www.english.illinois.edu/maps/mccarthy/schrecker6.htm>; Ellen Schrecker, *Political Tests for Professors: Academic Freedom During the McCarthy Years*, (1999), http://www.lib.berkeley.edu/uchistory/archives_exhibits/loyaltyoath/symposium/schrecker.html; Paul Caron, *Professors and Politics: What the Research Says*, TAXPROF BLOG, (2017), taxprof.typepad.com/taxprof_blog/2017/02/professors-and-politics-what-the-research-says.html; David Oshinsky, *Cold War on Campus*, THE NEW YORK TIMES, (1986), <https://www.nytimes.com/1986/09/28/books/cold-war-on-campus.html>.

ideological considerations, as opposed to in the hands of impartial subject matter experts who are motivated by producing good science, violates academic standards of ethics and independence.

B. Senior Administrators at Stanford University and Faculty at the Hoover Institution have targeted Liberals on Campus

At Stanford, the Hoover Institution has amassed nearly half a billion dollars in assets and funds most of its operations from millions of dollars in annual donations from conservative donors.³⁶ Stanford itself has also benefited from millions in conservative donations. In what may have been a clumsy attempt to encourage political neutrality, Stanford's long-serving provost recently described (ostensibly liberal) activists on campus as "the threat from within" closely echoing Senator Joseph McCarthy's accusations that liberals during the cold war constituted an "enemy from within."³⁷

Shortly after the former provost's statement, a Hoover Institution scholar asked his university-funded research assistant to help him conduct "opposition research" on a 20-year-old Stanford student who the Hoover scholar thought was too liberal.³⁸ According to his emails, the scholar wanted help "grinding [leftists] down" and wished to "intimidate them."³⁹

The Hoover scholar also enlisted the help of students who were members of the College Republicans and had connections to Turning Point USA which maintains "watchlists" of outspoken liberal faculty.⁴⁰ Professors appearing on similar watchlists have received hate mails and death threats, and some without tenure have been terminated from their jobs.⁴¹

³⁶ Ade Adeniji, *How the Hoover Institution Vacuums Up Big Conservative Bucks*, INSIDE PHILANTHROPY, April 21, 2015, <https://www.insidephilanthropy.com/home/2015/4/21/how-the-hoover-institution-vacuums-up-big-conservative-bucks.html>.

³⁷ John Etchemendy, *The Threat from Within*, STANFORD NEWS, (2017), <https://news.stanford.edu/2017/02/21/the-threat-from-within/>.

³⁸ Brian Contreras, Ada Statler & Courtney Douglas, *Leaked emails show Hoover academic conspiring with College Republicans to conduct 'opposition research' on student*, STANFORD DAILY, May 31, 2018, <https://www.stanforddaily.com/2018/05/31/emails-between-ferguson-scr-reveal-opposition-research-against-ocon-prompt-fergusons-resignation-from-cardinal-conversations-leadership-role/> (last visited Jun 14, 2018).

³⁹ Zack Beauchamp, *A conservative Stanford professor plotted to dig up dirt on a liberal student*, VOX, (2018), <https://www.vox.com/policy-and-politics/2018/6/1/17417042/niall-ferguson-stanford-emails>; Jeet Heer, *Niall Ferguson wanted opposition research on a student*, THE NEW REPUBLIC, (2018), <https://newrepublic.com/minutes/148653/niall-ferguson-wanted-opposition-research-student>; Nick Allen, *Niall Ferguson leaves Stanford role after ordering 'opposition research' on a student in free speech row*, THE TELEGRAPH NEWS, (2018), <https://www.telegraph.co.uk/news/2018/06/01/niall-ferguson-regrets-error-judgment-suggesting-opposition/>.

⁴⁰ Christopher Mele, *Professor Watchlist is Seen as Threat to Academic Freedom*, THE NEW YORK TIMES, (2016), <https://www.nytimes.com/2016/11/28/us/professor-watchlist-is-seen-as-threat-to-academic-freedom.html>.

⁴¹ Aaron R. Hanlon, *Political Correctness Has Run Amok — on the Right*, THE CHRONICLE OF HIGHER EDUCATION, 2018, <https://www.chronicle.com/article/Political-Correctness-Has-Run/242143> (last visited Jun 14, 2018).

There's some evidence that among faculty members who are terminated for controversial views, more liberals are terminated than conservatives. Zack Beauchamp, *Data Shows a Surprising Campus Free Speech Problem: Left-Wingers Being Fired for Their Opinions*, VOX, August 3, 2018, <https://www.vox.com/policy-and-politics/2018/8/3/17644180/political-correctness-free-speech-liberal-data-georgetown> (last visited Sep 25, 2018).

C. Political leaders in North Carolina may have engaged in political retaliation against university employees for expressing their political views

At the University of North Carolina, an outspoken scholar of poverty, and former dean of the law school at UNC Chapel Hill, strongly disagreed with state leadership about their policy decisions and the factual assumptions underlying them in a series of editorials. Professor Nichol was not diplomatic in his criticism. Shortly thereafter, political leaders on the Board of Governors shut down the Poverty Center, which Nichol headed and which was fully funded by outside donors, and legislators voted to dramatically cut the budget of the law school (where Nichol taught). Many outside observers believe that these actions were political retaliation.⁴²

The charge against UNC was led by a conservative North Carolina think tank, previously known as the Pope Center.⁴³ This think tank's director of editorial content recently wrote in the National Review that UNC remains a "problem" because of its summer reading list for students.⁴⁴ One UNC campus committed the "egregious offense" of asking incoming students to critically read and discuss a Pulitzer prize winning non-fiction book which tells the story of American families struggling with the hardships of poverty. The book suggests that government programs to alleviate poverty actually sometimes help alleviate poverty.

III. Empirical objectivity and neutrality is defined by the views of scientific experts, not by political triangulation

Disagreement between knowledgeable scientific experts and median political views often do not suggest political bias on the part of scientists, but rather an effort by think tanks, media organizations, interest groups and politicians to inappropriately politicize scientific issues.

For example, the causes and consequences of Climate Change are scientific issues. The likely economic harm from such changes, and the costs of preventing or mitigating them, are also scientific issues. So are the adverse health consequences from air and water pollution or

⁴² Rob Christensen, *The GOP Crafts a Message to UNC, with a Chain Saw*, NEWS & OBSERVER, May 19, 2017, <http://www.newsobserver.com/news/politics-government/politics-columns-blogs/rob-christensen/article151560512.html> ("Because Nichol is a tenured professor, the legislature could not go after his job. So legislators did the next best thing; they went after the UNC law school budget. In 2015, the Senate [voted to] cut \$3 million from the budget. . . . This month, the Senate was at it again, this time cutting \$4 million, which represents a 30 percent cut."); Scott Jaschik, *UNC Board Panel Wants to Shut Down Center on Poverty Led by Faculty Member who Criticizes Conservatives*, INSIDE HIGHER ED, Feb. 19, 2015, <https://www.insidehighered.com/news/2015/02/19/unc-board-panel-wants-shut-down-center-poverty-led-faculty-member-who-criticizes> ("Of the 240 centers reviewed by the board panel, it wants to kill 3 that reflect scholarly interests in poverty, the environment and social justice. And 13 other research centers at which the panel wants to seek changes (but not eliminate) include programs that focus on diversity, the environment, women's issues, aging and teaching and learning.")

⁴³ The Pope Center recently changed its name to the James G. Martin Center for Academic Renewal.

⁴⁴ George Leef, *Despite North Carolina's Campus-Free Speech Act, UNC Continues to have Problems*, NATIONAL REVIEW, Aug. 27, 2018.

the health effects of smoking. So is the question of whether tax cuts can generate enough economic growth that the ratio of public debt to GDP will decline.

While scientific questions can have political and policy implications, scientific inquiry should not be politicized. The best evidence should be analyzed with the best methods, and the implications and degree of uncertainty honestly conveyed to policymakers and the public.

But according to scientific experts, many scientific issues *have* been inappropriately politicized when scientific evidence threatened private sector profits or government budgets.⁴⁵ These issues include the causes and effects of climate change,⁴⁶ the health risks of pollution,⁴⁷ and the dangers of tobacco use.

According to a Pew survey, nearly 80 percent of scientists believe that recent administrations suppressed government scientists' findings for political reasons.⁴⁸ Many scientists worry that suppression of scientific findings for political reasons is becoming more common.

⁴⁵ For example, traditional Energy companies whose businesses would suffer if restrictions on greenhouse gas emissions were imposed were deeply concerned about the policy implications of climate science. Energy companies responded by funding politicians and think tanks who would advocate on their behalf. Think tanks, politicians, and media sympathetic to the Energy Industry spread misinformation and harassed climate scientists. MICHAEL MANN, THE HOCKEY STICK AND THE CLIMATE WARS: DISPATCHES FROM THE FRONT LINES (Reprint edition ed. 2013). As with Climate Change, a similar story could be told about the role of think tanks in disputing the evidence that tobacco use causes cancer or that soda and other sweetened beverages contribute to diabetes and other illnesses. Jamie Doward, *Health groups dismayed by news 'big tobacco' funded rightwing thinktanks*, THE GUARDIAN, (2013), <https://www.theguardian.com/society/2013/jun/01/thinktanks-big-tobacco-funds-smoking>; Naomi Oreskes & Erik Conway, MERCHANTS OF DOUBT: HOW A HANDFUL OF SCIENTISTS... Investigations eventually showed that tobacco companies publicly denied links between tobacco and cancer that tobacco companies own internal research had confirmed years earlier. K M Cummings, CP Morley, & A Hyland, *Failed promises of the cigarette industry and its effect on consumer misperceptions about the health risks of smoking*, BMJ JOURNALS, A coalition of state attorney generals is now investigating analogous allegations against Energy companies. Kiah Collier & Jim Malewitz, *Rex Tillerson, Exxon Mobil, and climate change probes – and how Texas is involved*, THE TEXAS TRIBUNE, (2016), <https://www.texastribune.org/2016/12/11/everything-you-need-know-about-exxonmobil-climate-/>; Robert Post, *Exxon-Mobil is abusing the first amendment*, THE WASHINGTON POST, (2016), https://www.washingtonpost.com/opinions/exxonmobil-s-climate-change-smoke-screen/2016/06/24/2df8b29c-38c4-11e6-9ccd-d6005beac8b3_story.html?noredirect=on&utm_term=.040dcb064059.

Without decades of university-based research, free from censorship by industry or political leaders—and insulated from budgetary pressures to prioritize research that can be readily commercialized—the scientific discovery of these dangers might have remained hidden from the public for decades longer.

⁴⁶ *Id.*

⁴⁷ Recently in Michigan, university based researchers exposed serious public health dangers from contaminants in the drinking water supply after the cash-strapped government switched to a less expensive supplier. Colby Itkowitz, *The heroic professor who helped uncover the Flint lead water crisis has been asked to fix it*, THE WASHINGTON POST, (2016), https://www.washingtonpost.com/news/inspired-life/wp/2016/01/26/meet-the-heroic-professor-who-helped-uncover-the-flint-lead-water-crisis/?noredirect=on&utm_term=.4abc1b77de6c. Michigan government officials who either missed the problem or actively covered it up are facing criminal charges. Rick Pluta, *Michigan Health Chief Charged With Involuntary Manslaughter in Flint Water Crisis*, NPR, (2017), <https://www.npr.org/2017/06/14/532902398/michigan-health-chief-charged-with-involuntary-manslaughter-for-flint-water-crisis>.

⁴⁸ ANDREW KOHUT & PEW RESEARCH CENTER OR THE PEOPLE & THE PRESS, SCIENTIFIC ACHIEVEMENTS LESS PROMINENT THAN A DECADE AGO: PUBLIC PRAISES SCIENCE; SCIENTISTS FAULT PUBLIC MEDIA 33 (2009), <http://assets.pewresearch.org/wp-content/uploads/sites/5/legacy-pdf/528.pdf>; *Section 4: Scientists,*

Note that the Pew sample consists overwhelmingly of natural or “hard” scientists in fields such as medical sciences, chemistry, physics and geosciences.⁴⁹ Pew’s sample included those who work in private industry as well as those who work in government and universities.

Scientists are reportedly also alarmed by actions of the recent directors of the Environmental Protection Agency. Scientists worry that politicized leaders at the EPA will suppress science, destroy data, and expose the public to danger.⁵⁰

Recently, there have been systematic efforts by some members of Congress to weaken the role of science in informing agency rule-making and increase the role of political actors.⁵¹ Some politicians have also sought to prevent government agencies from collecting basic data about demographics, the environment, health and safety, and the economy, even if de-identified to protect individual privacy.⁵²

Politics and Religion, (2009), <http://www.peoplepress.org/2009/07/09/section-4-scientists-politics-and-religion/>.

⁴⁹ *Id.* at 1, 18.

⁵⁰ President Trump’s transition team requested detailed information about Department of Energy personnel that many civil servants and scientists worried would be used for a political purge of government scientists. David Shepardson, *U.S. Energy Department balks at Trump request for names on climate change*, REUTERS, (2016), <https://www.reuters.com/article/us-usa-trump-climate-idUSKBN1421V0>. President Trump’s cabinet picks provoked alarm about a renewed “War on Science” and generated protests. Bud Ward, *Protesters Fear “War on Science,”* YALE CLIMATE CONNECTIONS, (2016), <https://www.yaleclimateconnections.org/2016/12/protesters-fear-war-of-science/>; Sean McElwee & Philip Cohen, *The GOP vs. the pursuit of knowledge: Inside the Republican crusade against science*, SALON, (2016), https://www.salon.com/2016/04/11/the_gop_vs_the_pursuit_of_knowledge_inside_the_republican_crusade_against_science/. Government scientists feared that the new administration would delete climate and environmental data, and therefore backed up federal government data to university servers. Brady Dennis, *Scientists are frantically copying U.S. climate data, fearing it might vanish under Trump*, THE WASHINGTON POST, (2016), https://www.washingtonpost.com/news/energy-environment/wp/2016/12/13/scientists-are-frantically-copying-u-s-climate-data-fearing-it-might-vanish-under-trump/?utm_term=.83c23bd249af.

⁵¹ A. A. Rosenberg et al. *Congress’s attacks on science-based rules*, SCIENCE POLICY FORUM, (2015), <http://science.sciencemag.org/content/348/6238/964>; (House roll call vote results here: <http://clerk.house.gov/evs/2015/roll121.xml> and <http://clerk.house.gov/evs/2015/roll125.xml>; and Senate sponsors here: [https://www.congress.gov/bill/114th-congress/senate-bill/543/cosponsors?q=%7B%22search%22%3A%5B%22secret+science%22%5D%7D&r=1](https://www.congress.gov/bill/114th-congress/senate-bill/543/cosponsors?q=%7B%22search%22%3A%5B%22EPA+Science+Advisory+Board+Reform+Act+of+2015%22%5D%7D&r=1) and <https://www.congress.gov/bill/114th-congress/senate-bill/544/cosponsors?q=%7B%22search%22%3A%5B%22secret+science%22%5D%7D&r=1>)

⁵² Jeffrey Mervis, *U.S. House takes its whacks at planning for 2020 census and at monthly survey*, SCIENCE, (2015), <http://www.sciencemag.org/news/2015/06/us-house-takes-its-whacks-planning-2020-census-and-monthly-survey>; Gayathri Vaidyanathan, *U.S. Congress Aims to Cut Climate Science*, SCIENTIFIC AMERICAN, (2016), <https://www.scientificamerican.com/article/u-s-congress-aims-to-cut-climate-science/>; Alison Kodjak, *Congress Still Limits Health Research on Gun Violence*, NPR, (2015), <https://www.npr.org/sections/health-shots/2015/12/08/458952821/congress-still-limits-health-research-on-gun-violence>; Michael Strain, *Congress is making it harder to know how the economy is doing*, THE WASHINGTON POST, (2015), https://www.washingtonpost.com/posteverything/wp/2015/08/14/congress-is-trying-to-make-it-harder-to-know-how-the-economy-is-doing/?utm_term=.1ac6dc5f3f92; see also Benjamin Goad, *GAO: Nothing unusual in CFPB’s data collection*, THE HILL, (2014), <http://thehill.com/regulation/finance/218529-data-collection-at-cfpb-in-line-with-other-agencies-gao-finds>. There is greater political support for extensive data collection to support counter-terrorism efforts, although other dangers have long caused far more preventable deaths. Conor Friedersdorf, *NSA Surveillance Divides the Republican Party*, THE ATLANTIC, (2014), <https://www.theatlantic.com/politics/archive/2014/01/nsa-surveillance-divides-the-republican-party/283351/>; Charlie Savage & Jeremy W. Peters, *Bill to Restrict N.S.A. Data Collection Blocked in Vote by Senate*

IV. There is little direct evidence of discrimination against conservatives or libertarians

A. There is little evidence of political discrimination in hiring at universities

Some conservative academics rationalize accepting politically discriminatory funding or engaging in other inappropriate behavior by convincing themselves that such funding is needed to correct liberal bias. However, the evidence for systematic bias against conservatives is weak.

To the best of my knowledge, there are no well-funded embedded think-tanks on the left that are remotely comparable to the Hoover Institution at Stanford or the Mercatus Center at George Mason in terms of their financial resources or reach. Conservative think tanks outnumber and are better funded than liberal think tanks.⁵³

At most institutions, academic positions are not reserved exclusively for Conservatives, Libertarians, Liberals or Democrats.

In a recent test-case for academic discrimination against conservatives, Teresa Wagner (who has since changed her name to Manning) attempted to prove that she faced political discrimination for her pro-life political views when she was not selected for a competitive legal writing and analysis instructor position at the University of Iowa after obtaining job offers from less prestigious institutions. Prior to applying for this position, Ms. Wagner, had publicly made some scientifically dubious claims about the effectiveness of birth control.⁵⁴ Ms. Wagner had the benefit of an experienced and persistent lawyer, a judge appointed by a Republican president and a jury drawn from a relatively moderate to conservative district. Both the district court judge and the jury rejected Wagner's claims and found in favor of the law school dean whom she had sued.

⁵³ Republicans, THE NEW YORK TIMES, (2014), https://www.nytimes.com/2014/11/19/us/nsa-phone-records.html?_r=0; Centers for Disease Control and Prevention, *CDC estimates preventable deaths from 5 leading causes*, (2016), <https://www.cdc.gov/media/releases/2016/p1117-preventable-deaths.html>.

⁵⁴ Andrew Rich, *Think Tanks*, in INTERNATIONAL ENCYCLOPEDIA OF CIVIL SOCIETY 1543–1546 (2010), http://link.springer.com/referenceworkentry/10.1007/978-0-387-93996-4_99 (“In 2007, conservative think tanks outnumbered liberal think tanks by two to one.”); Rick Carp, WHO PAYS FOR THINK TANKS? FAIR (2013), <https://fair.org/extra/who-pays-for-think-tanks/>; ANDREW RICH, THINK TANKS, PUBLIC POLICY, AND THE POLITICS OF EXPERTISE 224 (2005).The Political Activity of Think Tanks: The Case for Mandatory Contributor Disclosure, 115 HARVARD LAW REVIEW 1502–1524, 1504–1505 (2002).

⁵⁵ Molly Redden, *Trump Set to Hand Key Family Planning Role to Anti-Contraception Advocate*, THE GUARDIAN, May 1, 2017, <http://www.theguardian.com/us-news/2017/may/01/trump-teresa-manning-family-planning-role> (last visited Jun 19, 2018).

Liberal faculty members have also sued universities for alleged viewpoint discrimination, claiming for instance that they suffered employment discrimination for opposing CIA recruitment on campus, advocating affirmative action, and defending student protestors.⁵⁵

Individual lawsuits, which often settle before appeals are exhausted, or other anecdotes are somewhat beside the point. With one to two million professors in the U.S., at least a few are likely to sue their employers. The question is whether there is systemic and pervasive discrimination or bias.

One study which examined only non-academic, entry level jobs for bachelor's degree holders found evidence that, holding resumes constant except for information suggesting political activism, conservatives were more likely to invite conservative job candidates to interviews than to invite either politically neutral or liberal activist candidates, and that liberals were more likely to invite either politically neutral or liberal candidates to interviews than conservative candidates.⁵⁶

However, these results do not appear to be generalizable to a university setting.

A secret shopper experiment found no evidence of political discrimination in graduate school admissions, the first step toward qualifying for an academic career.⁵⁷ Because graduate students in many fields teach and conduct research, many are effectively apprentices or entry-level employees.

The Institute for Humane Studies makes graduate stipends of up to \$15,000 per year, plus mentoring and networking opportunities, available exclusively or primarily to libertarian scholars.⁵⁸ IHS does not fund hard science, but only social science. IHS is largely funded by the conservative / libertarian Koch family.⁵⁹ Some controversial studies claim there is political bias against conservatives within narrow specialties such as social psychology, or

⁵⁵ Eric Freedman, FEDERAL COURTS REBUFF FACULTY DISCRIMINATION SUITS DIVERSE ISSUES IN HIGHER EDUCATION (2011), <http://diverseeducation.com/article/15284/>; Colleen Flaherty, *Northeastern Illinois Settles with Professor in Defamation Suit*, INSIDE HIGHER ED, January 28, 2014, <https://www.insidehighered.com/quicktakes/2014/01/28/northeastern-illinois-settles-professor-defamation-suit>; AAUP Illinois, LORETTA CAPEHEART'S STRUGGLE FOR ACADEMIC FREEDOM, <http://www.ilaaup.org/Fall201202.asp>.

⁵⁶ Karen Gift & Thomas Gift, *Does Politics Influence Hiring? Evidence from a Randomized Experiment*, 37 POLIT BEHAV 653–675, 661, 666 (2015).

⁵⁷ Neil Gross & Solon Simmons, *Political Bias in the Graduate School Admissions Process: A Field Experiment*, in PROFESSORS AND THEIR POLITICS 109–132 (2014), <https://muse-jhu-edu.libproxy1.usc.edu/chapter/1184958> (last visited Jun 14, 2018).

⁵⁸ Fellowships for Graduate Students Through the Institute for Humane Studies, INSTITUTE FOR HUMANE STUDIES, <https://theihs.org/fellowships-for-graduate-students/> (last visited Jun 19, 2018) (“our fellowships offer intensive mentorship combined with generous funding, challenging you to . . . advanc[e] the principles of freedom.”); Humane Studies Fellowship, INSTITUTE FOR HUMANE STUDIES, <https://theihs.org/funding/humane-studies-fellowship/> (last visited Jun 19, 2018) (“The Humane Studies Fellowship is . . . intended for graduate students with an interest in developing, teaching, and applying classical liberal ideas and the principles of a free society”).

⁵⁹ Sourcewatch, https://www.sourcewatch.org/index.php/Institute_for_Humane_Studies; http://conservativetransparency.org/basic-search/?q=Institute+for+Humane+studies&sf%5B%5D=candidate&sf%5B%5D=donor&sf%5B%5D=recipient&sf%5B%5D=transaction&sf%5B%5D=finances&order_t=contribution+DESC#transactions

political bias against liberals in more influential fields such as law and economics.⁶⁰ However, because political views vary by field and because economists and other social scientists often consider overlapping issues, a variety of perspectives are likely to be considered within the academy writ large.⁶¹

Outside of universities, there are well-funded settings in which research can be conducted, such as free-standing think tanks. Think tanks are for the most part financially dependent on donations from business interests. Their research staff lack tenure and can be readily fired if powerful donors or managers are displeased with the conclusions of their research. Standards of peer review, methodological rigor and replicability are often weaker than in a university setting, or such checks may be absent.

Nevertheless, a number of well-respected faculty at elite institutions maintain secondary affiliations with, receive compensation supplements from, or conduct commissioned research on behalf of, external think tanks. Many university faculty engage with and consider the research or policy advocacy that non-academic think tanks produce or subsidize.

B. There is little evidence of political discrimination against students

Many fields of study at universities are scientific, technical, business or economics, or career oriented.⁶² Evaluations are often objective in nature (i.e., multiple choice tests) and class sizes are often too large for professors to learn their students' political views, even if they wished to do so.⁶³

Nevertheless, some courses inevitably will touch on political issues. In my experience, most professors are careful to try to make students feel comfortable in their classrooms, and to grade them by how well they research and articulate a view point (and consider countervailing evidence and alternate view points), not by which view point they happen to articulate.

Grading is often anonymous, and professors try very hard to ensure that their own political views do not affect the grades they give to students. When class discussion requires the consideration of unpopular views, if students are unwilling to express such views,

⁶⁰ José L. Duarte et al., *Political Diversity Will Improve Social Psychological Science*, 38 BEHAVIORAL AND BRAIN SCIENCES 1 (2015); Morton J. Horwitz, *Law and Economics: Science or Politics?* 8 HOFSTRA LAW REVIEW 2 (1980).

⁶¹ A survey of 1,4000 professors found that they are almost twice as likely to describe their views as centrist than liberal, and are five times more likely to describe themselves as conservative than marxist. Neil Gross and Solon Simmons, "The Social and Political Views of American Professors," Working Paper, Sept. 24, 2007, www.conservativecriminology.com/uploads/5/6/1/7/56173731/lounsbury_9-25.pdf. See also Neil Gross and Solon Simmons, "The Social and Political Views of American College and University Professors," in Professors and Their Politics, ed. Neil Gross and Solon Simmons (Baltimore: Johns Hopkins University Press, 2014), 19-52; and Jason Blakely, "Deconstructing the 'Liberal Campus' Cliche," Atlantic, Feb. 13, 2017, www.theatlantic.com/education/archive/2017/02/deconstructing-the-liberal-campus-cliche/516336/.

⁶² According to data from the U.S. Census Bureau's ACS, degrees in such fields comprise roughly 70 to 75 percent of recent bachelor's degrees (i.e., degrees of those under age 30).

⁶³ Markus Kemmelmeier, Cherry Danielson & Jay Basten, *What's in a Grade? Academic Success and Political Orientation*, 31 PERS SOC PSYCHOL BULL 1386-1399 (2005).

professors—who may not necessarily agree with these views—will articulate them themselves and attempt to treat them fairly.

There are thousands of colleges and universities within the United States, and some specifically market themselves to conservative or religious students.⁶⁴ Students have a choice, both about where to study and what to study. Most universities strive to attract the best students, regardless of their political views, and take pride in their successful alumni. Admissions is driven largely by neutral criteria, such as grades and test scores.⁶⁵

Students do not appear to be harmed by exposure to views with which they disagree. Many conservatives who believe their institutions were predominantly liberal report that they found college challenging but rewarding, did not become less conservative because of it, and would not change institutions.⁶⁶

Students sometimes get lower grades than they believe they deserve. A study found that students with a strong concern for grades and a sense of entitlement are more likely to believe that their instructor is biased.⁶⁷ As previously noted, most students have options when they chose an institution, a field of study, a class, and a professor, and it should be relatively easy for students who believe a priori that they might face political discrimination to avoid it. Instructor and student political views vary, on average, across fields of study.⁶⁸ I am not aware of any peer-reviewed study that shows that students systematically receive lower grades when they take required classes with professors who have different political views from themselves.

⁶⁴ For example, the *National Review* has promoted Hillsdale College—a small liberal arts college in the town of Hillsdale Michigan—as “the Conservative Harvard”—a claim to excellence often made by Hillsdale alumni and parents. Jay Nordlinger, *Hillsdale Journal National Review* (2014), <https://www.nationalreview.com/2014/02/hillsdale-journal-jay-nordlinger/>; Emily Eaken, *God and Man at Hillsdale*, LINGUA FRANCA, September 1996.

Based on objective criteria like incoming students’ standardized test scores and acceptance rates, Hillsdale is more selective than the Michigan Technological University but less selective than the University of Michigan, Ann Arbor. U.S. Department of Education, National Center for Education Statistics, IPEDS Database.

⁶⁵ *Id.* Gross and Simmons, *supra* note 57.

⁶⁶ Scott Jaschik, *Professors and Politics: What the Research Says*, <https://www.insidehighered.com/news/2017/02/27/research-confirms-professors-lean-left-questions-assumptions-about-what-means> (last visited Jun 12, 2018); AMY J. BINDER & KATE WOOD, BECOMING RIGHT: HOW CAMPUSES SHAPE YOUNG CONSERVATIVES (1 edition ed. 2013).

Multiple studies have found that students do not become more liberal or less religious when they attend college, even at institutions with predominantly liberal faculty. See, e.g., Mack D. Mariani & Gordon J. Hewitt, *Indoctrination U.? Faculty Ideology and Changes in Student Political Orientation*, 41 PS: POLITICAL SCIENCE & POLITICS 773–783 (2008) (“Faculty political orientation at the institutional level does not significantly influence student political orientation. . . student orientation when leaving college is not significantly different than the population at large.”); Jeremy E. Uecker, Mark D. Regnerus & Margaret L. Vaaler, *Losing My Religion: The Social Sources of Religious Decline in Early Adulthood*, 85 SOCIAL FORCES 1667–1692 (2007) (finding that students who attend college see smaller declines in religious participation than those who do not).

⁶⁷ Darren L. Linvill & Will J. Grant, *The Role of Student Academic Beliefs in Perceptions of Instructor Ideological Bias*, 22 TEACHING IN HIGHER EDUCATION 274–287 (2017).

⁶⁸ Markus Kemmelmeier, Cherry Danielson & Jay Basten, *What’s in a Grade? Academic Success and Political Orientation*, 31 PERS SOC PSYCHOL BULL 1386–1399 (2005) (“faculty in HE departments tend to be more conservative than their counterparts in HA departments. . . social science students are more likely to blame social problems such as poverty and unemployment as residing in the political system, whereas business students are more likely to blame the poor and unemployed themselves ”).

There is some evidence that in relatively conservative fields of study, such as economics and business, more conservative undergraduate students may receive better grades than liberal students with similar standardized test scores and other characteristics that predict performance.⁶⁹ However, in more liberal fields of study such as sociology, liberal students do not appear to earn higher grades than similar conservative students.⁷⁰ Higher grades for conservative students in more business-oriented fields is likely due to such students' interest in and enthusiasm for the material, not to instructor bias.⁷¹

There is evidence that some fields which tend to be in higher demand in the labor market, are more academically rigorous and that grades are lower for *all* students in such classes.⁷² Instructors in such courses earn more money, and such courses may therefore be more expensive for universities to provide. Lower grading distributions may be a way to limit enrollments and manage access to faculty with skills and expertise that are greatly in demand.⁷³ Lower and wider grading distributions may also encourage more student time and effort in studying.⁷⁴

C. Universities practice affirmative action in hiring to comply with federal regulations

Many—though not all—universities practice affirmative action based on race, ethnicity, sex, disability and veteran status. Supporters of affirmative action believe that such policies help ameliorate discrimination or overcome systemic inequalities or unfairness in resources and opportunities. Outreach efforts tend to be relatively uncontroversial, but preferences and quotas are more contentious. Critics contend that preferences in hiring force employers to hire less qualified workers and reduce efficiency. Critics tend to believe that unequal opportunity would be better addressed by universally improving access to high quality education and expending more resources on anti-poverty programs.

Some critics interpret preferences for racial or ethnic minorities and women as an indirect form of political discrimination, since whites are more likely to be conservative than blacks

⁶⁹ Markus Kemmelmeier, Cherry Danielson & Jay Basten, *What's in a Grade? Academic Success and Political Orientation*, 31 PERS SOC PSYCHOL BULL 1386–1399, 1396 (2005) (“a conservative political orientation benefited students when they took [hierarchy-enhancing] courses [such as economics and business] but remained without consequences when they attended [hierarchy attenuating] courses [such as sociology]. This pattern unambiguously supports the notion that individuals are more successful in environments in which they fit”).

⁷⁰ *Id.* at 1395. (“our data demonstrate that conservatism does play a role in HE environments but not in HA environments, even when respondents are kept constant across environments.”).

⁷¹ *Id.* at 1396–97.

⁷² Kemmelmeier, Danielson, and Basten, *supra* note 69; Kevin Rask, *Attrition in STEM Fields at a Liberal Arts College: The Importance of Grades and Pre-Collegiate Preferences*, 29 ECON. EDUC. REV. 892–900 (2010); Talia Bar, Vrinda Kadiyali & Asaf Zussman, *Grade Information and Grade Inflation: The Cornell Experiment*, 23 J. ECON. PERSP. 93–108 (2009).

⁷³ Michael Simkovic, *Risk-Based Student Loans*, 70 WASH. & LEE L. REV. 527 (2013).

⁷⁴ *Id.*

or Hispanics and men are more likely to be conservative than women.⁷⁵ However, it should be noted that minorities who are conservative have benefitted from affirmative action, and veterans, who also benefit from affirmative action preferences, tend to be more conservative than those who have not served in the armed forces.

The prevalence of affirmative action in hiring on campuses may not reflect the political preferences of faculty members or senior university officials—opinion polls show academics are divided.⁷⁶ Many university officials believe that they are legally obligated, or at least strongly encouraged, to practice affirmative action in hiring because—as recipients of research grants from the U.S. military, the NIH, and the NSF—universities are arguably federal contractors.⁷⁷ Affirmative action programs can also be implemented to reduce the risk of employment discrimination lawsuits or as a remedy for past discrimination.

Universities, like other federal contractors, seek to comply with federal laws and regulations, and like other organizations, seek to minimize litigation risk. While the Supreme Court requires strict scrutiny for affirmative action,⁷⁸ few university administrators may be willing to risk noncompliance with clear statutory, regulatory and administrative mandates based on ambiguous case law.

If it is the view of Congress that preferences are a form of reverse discrimination, then Congress has the power to amend the law and clearly and unambiguously prohibit such practices. The President also has the power to amend or clarify executive orders that mandate affirmative action. Indeed, Congress and the President have had this power for decades, but no administration has elected to exercise it. This implies that, rhetoric aside, political leaders from both parties support, or at least do not oppose, affirmative action.

V. University employees may be less likely to identify as Republican because of underfunding of universities

⁷⁵ James Lindgren, *Measuring diversity: Law faculties in 1997 and 2013*, 39 HARV. J. LAW & PUB. POL'Y 89 (2016) (“hiring women and minorities . . . will increase the variety of viewpoints on the left, but will [reduce the share of conservatives].”).

⁷⁶ The best data addresses affirmative action in admissions, not in hiring of faculty candidates, but there are some surveys of the latter. Neil Gross & Solon Simmons, *The Social and Political Views of American Professors*, 76, 51–53 (2007) (“a slim majority [of professors] favor affirmative action in college admissions. . . [most believe that] lack of educational opportunities is a cause of racial inequality . . . fewer . . . cite ongoing discrimination”); Roger Clegg, *Faculty Hiring Preferences and the Law*, THE CHRONICLE OF HIGHER EDUCATION, 2006, <http://www.chronicle.com/article/Faculty-Hiring-Preferences-and/26171> (last visited Jun 15, 2018) (“Surveys, like a 1996 study by the Roper Center for Public Opinion Research and a 2000 study in Connecticut by the Center for Survey Research and Analysis, show that most professors are opposed to preferences [in faculty hiring].”).

⁷⁷ Harry J. Holzer & David Neumark, *Affirmative Action: What Do We Know?*, 25 JOURNAL OF POLICY ANALYSIS AND MANAGEMENT 463–490 (2006) (“universities may be bound by affirmative action in employment in their role as federal contractors . . . affirmative action in university admissions [is voluntary]”); Affirmative Action | United States Department of Labor, <https://www.dol.gov/general/topic/hiring/affirmativeact> (last visited Jun 12, 2018) (“For federal contractors and subcontractors, affirmative action must be taken by covered employers to recruit and advance qualified minorities, women, persons with disabilities, and covered veterans.”). Whether the view is correct is debatable, in light of some recent case law.

⁷⁸ Adarand Constructors v. Pena, 515 U.S. 200 (1995)

A. Most academics are not very politically active

Although there is little evidence of discrimination in the process by which academics are hired or promoted, some research suggests that academics are somewhat more likely to donate money to democrats than republicans. What many of these studies also indicate is that the overwhelming majority of academics are not that actively involved with electoral politics, at least as measured by donations.

One study by John McGinnis has been misinterpreted as providing evidence of liberal dominance at elite law schools. Professor McGinnis's study found that 80 to 90 percent of law professors at elite institutions do not make sizeable donations to *either* Democrats or Republicans.⁷⁹ Academics on the whole almost certainly make political donations even less frequently than elite law professors.⁸⁰ However, among the relatively small proportion of law professors who do make donations, the study found more donations to Democrats than Republicans. What this means is open to interpretation.

B. Low academic pay relative to the private sector could deter the most qualified conservatives and libertarians from working at universities

A leading study found that academics are more likely to be moderates than either liberals or conservatives.⁸¹ But academics may be more likely to be liberals or democrats than conservatives or republicans, just as petroleum geologists or air force pilots may be more likely to be conservatives or republicans. What could explain this?

One possibility is self-selection and demographic differences across occupations.⁸² An important reason for conservative underrepresentation on faculties may be underfunding of universities and relatively low pay for faculty leading conservatives to self-select out of academic careers.

Job requirements mandate that academics must be more highly educated than the general population. Academics are required to have advanced degrees, typically a professional degree, a PhD, or both. According to the U.S. Census Bureau only around three percent of the U.S. population has a PhD or Professional Degree. Indeed, only a third has a bachelor's degree.

⁷⁹ John O. McGinnis, Matthew A. Schwartz & Benjamin Tisdell, *The Patterns and Implications of Political Contributions by Elite Law School Faculty*, 93 GEO. L.J. 1167–1212, 1207 (2005).

⁸⁰ Individuals with higher incomes are more likely to be political donors, and law professors at elite institutions have higher incomes than academics at less well-funded institutions and in less lucrative fields.

⁸¹ Neil Gross & Solon Simmons, *The Social and Political Views of American Professors* at 27 (2007).

⁸² Neil Gross & Ethan Fosse, *Why are professors liberal?*, 41 THEORY AND SOCIETY 127–168 (2012) (“that professors are more liberal than other Americans because a higher proportion possess advanced educational credentials, exhibit a disparity between their levels of education and income, identify as Jewish, non-religious, or non-theologically conservative Protestant, and express greater tolerance for controversial ideas.”); NEIL GROSS, WHY ARE PROFESSORS LIBERAL AND WHY DO CONSERVATIVES CARE? (2013), <http://www.jstor.org/stable/j.ctt2jbrvr> (last visited Jun 14, 2018).

Political Scientists and sociologists have long known that as education levels increase—assuming one holds race, sex, and income constant—people tend to become more liberal. Political scientists and sociologists have also found that—holding race, sex, and education level constant—as incomes increase, people tend to become more conservative.⁸³

Education typically boosts earnings, but academics typically earn far less than individuals with comparable skills and training who work in the private sector.⁸⁴ It may be the case that highly educated and capable conservatives tend to prefer higher incomes and faster-paced work outside of academe—or feel that they need such work to support their families—while comparably educated and capable liberals tend to be more willing to trade somewhat lower pay for working conditions they find more pleasant or work they find more meaningful.

There is some evidence from the General Social Survey that religious or cultural conservatives tend to have larger families,⁸⁵ which likely require a higher income to comfortably support. There is also evidence that socially conservative women are less likely to work outside of the home;⁸⁶ thus socially or religious conservatives couples may be more likely to depend on a single parent income. There is evidence that economic conservatives or libertarians tend to have stronger preferences for luxury consumption than those with more egalitarian values,⁸⁷ and that conservative college students place greater emphasis on earning a higher income.⁸⁸

There is evidence that universities struggle to attract and retain faculty with skills that are highly valued in the private sector. Computer scientists and economists are leaving even the most prestigious universities for technology firms.⁸⁹ Universities tend to be relatively

⁸³ Neil Gross & Solon Simmons, *Political Bias in the Graduate School Admissions Process: A Field Experiment*, in PROFESSORS AND THEIR POLITICS 109–132 (2014), <https://muse-jhu-edu.libproxy1.usc.edu/chapter/1184958>

⁸⁴ JOHN BARNSHAW & SAMUEL DUNIETZ, BUSTING THE MYTHS: THE ANNUAL REPORT ON THE ECONOMIC STATUS OF THE PROFESSION, 2014-15 (2015), <https://www.aaup.org/reports-publications/2014-15salarysurvey> (last visited Jun 14, 2018) (“professors make less on average than those in nonacademic professional settings.”); Keith A. Bender & John S. Heywood, *Job Satisfaction of the Highly Educated: The Role of Gender, Academic Tenure, and Earnings*, 53 SCOTTISH JOURNAL OF POLITICAL ECONOMY 253–279, 258 (“Overall, academics have an average salary of \$59,881, while nonacademics earn \$80,070 on average. Across disciplines this ranges from lows of almost \$54,000 for academic social scientists to highs of over \$100,000 for management scientists and health scientists in the nonacademic sector.”); WILLIAM G. TIERNEY, FACULTY PRODUCTIVITY: FACTS, FICTIONS AND ISSUES 129 (1999) (“Compared to an index of salaries in professionalized fields outside higher education [health professions, law, engineering, and nonacademic scientists], faculty salaries have lost substantial ground since the late 1970s.”).

⁸⁵ Arthur C. Brooks, *The Fertility Gap*, WALL STREET JOURNAL, August 22, 2006, <https://www.wsj.com/articles/SB115620797029641746> (last visited Jun 14, 2018).

⁸⁶ MARVIN B. SUSSMAN, SUZANNE K. STEINMETZ & GARY W. PETERSON, HANDBOOK OF MARRIAGE AND THE FAMILY 514 (2013).

⁸⁷ Nailya Ordabayeva et al., *Better or Different? How Political Ideology Shapes Preferences for Differentiation in the Social Hierarchy*, J CONSUM RES, <https://academic.oup.com/jcr/advance-article/doi/10.1093/jcr/ucy004/4827909> (last visited Jun 14, 2018).

⁸⁸ Markus Kemmelmeier, Cherry Danielson & Jay Basten, *What's in a Grade? Academic Success and Political Orientation*, 31 PERS SOC PSYCHOL BULL 1386–1399, 1396 (2005).

⁸⁹ Daniela Hernandez & Rachael King, *Universities' AI Talent Poached by Tech Giants*, WALL STREET JOURNAL, November 24, 2016, <https://www.wsj.com/articles/universities-ai-talent-poached-by-tech-giants-1479999601> (last visited Jun 14, 2018); Gautam S. Kumar, *CS Professor To Leave Harvard For Google*, HARVARD CRIMSON, November 17, 2010, <https://www.thecrimson.com/article/2010/11/17/welsh-computer-welshs-science/> (last visited Jun 14, 2018); Julia Chen, *ECONOMISTS ADDING UP AT AMAZON.COM, MICROSOFT, GOOGLE*

shorthanded in high-demand fields like computer science, some engineering specialties, accounting, and economics.⁹⁰

Many law schools already have far more full-time tenure track faculty in public law than private law, even though the career opportunities for their students are far better in the private sector. The former dean of Stanford law school left the academy to practice law. Tax professors have left tenured positions for higher pay at accounting or law firms.

If under-funding of education leads to under-representation of political conservatives on faculties—while also reducing student access to professors with marketable skills—one uncontroversial approach to increasing conservative representation on campus would be to increase funding for higher education without ideological strings attached, so that academic positions become more competitive with opportunities in the private sector.

C. Concerns about Republican funding priorities could discourage conservative and libertarian university employees from supporting Republican governance

Another interpretation of relatively tepid support for Republicans among university employees may be that citizens sometimes consider how policies will affect the jobs upon which they rely to feed their families.

Democrats tend to be somewhat more likely than Republicans to support public funding for education, science, infrastructure, and healthcare, while Republicans tend to be more likely to support public funding for the military. Republicans tend to be less likely than Democrats to favor environmental regulations intended to mitigate the dangers of global warming and air and water pollution, but which can adversely affect the fossil fuel industry.

In light of efforts by some Republicans to deprioritize university funding, conservative and libertarian academics who are concerned about funding for their industry might reasonably decide to support democratic candidates, just as liberals working in the petroleum or coal industries or in the military might decide to support Republicans.

Recent tax legislation specifically increased taxes on universities while leaving other 501(c)(3) educational organizations such as think tanks unscathed. The final legislation included a tax

INVESTOR'S BUSINESS DAILY (2016), <https://www.investors.com/news/technology/amazon-microsoft-among-techs-that-say-employing-economists-adds-up/> (last visited Jun 14, 2018).

⁹⁰ Colleen Flaherty, *System Crash*, INSIDE HIGHER ED, (2018), <https://www.insidehighered.com/news/2018/05/09/no-clear-solution-nationwide-shortage-computer-science-professors>; Nancy Mead et al., *Shortages of qualified software engineering faculty and practitioners: challenges in breaking the cycle*, Proceedings – International Conference on Software Engineering, https://www.researchgate.net/publication/221555190_Shortages_of_qualified_software_engineering_faculty_and_practitioners_panel_session_challenges_in_breaking_the_cycle; Bureau of Labor Statistics, *STEM crisis or STEM surplus? Yes and yes*, U.S. Department of Labor, <https://www.bls.gov/opub/mlr/2015/article/stem-crisis-or-stem-surplus-yes-and-yes.htm>; Carol C Bishop & al., *Transitioning into academia: A new pathway for practitioners*, JOURNAL OF ACCOUNTANCY, (2016), <https://www.journalofaccountancy.com/issues/2016/mar/accounting-professor-pathways.html>; Scott Jaschik, *Humanities Job Woes*, INSIDE HIGHER ED, (2016), <https://www.insidehighered.com/news/2016/01/04/job-market-tight-many-humanities-fields-healthy-economics>.

on university endowments.⁹¹ The House version of the legislation would have dramatically increased taxes on graduate students by treating tuition waivers as phantom income.⁹²

These anti-education policies drew criticism from many *conservatives*. Punishing an industry by raising its taxes is not consistent with principles of good governance.⁹³ While there is a case for Pigouvian taxation of negative externalities such as pollution,⁹⁴ the externalities of education—improvements in economic growth, innovation, labor productivity—are almost universally acknowledged as *positive*.

Per-student real public support for higher education at the state level has generally declined since the early 1980s. Some evidence suggests that the decline in government support for education is linked to the growth of anti-taxation political movements.⁹⁵ Thus, even educators who share many conservative or libertarian values may be reluctant to support candidates who are inclined to shift funding away from education and scientific research.

For all of its contributions to our collective well-being and economic prosperity, education remains under-funded. (The high returns are a sign that education is underfunded). Less than 3 percent of GDP is spent on higher education every year. Only one third of the population has a bachelor's degree or more.

VI. Universities leaders' moral values are often inspired by Christian faith

To the extent that U.S. academic leaders articulate moral or political views, they are often informed or inspired by faith, typically Christian or Catholic. According to the Department of Education's IPEDS database, of the nearly 1600 private non-profit post-secondary institutions in the United States, nearly 900 have a religious affiliation. Many of the rest used to have a religious affiliation and continue to be shaped by the ethical precepts of their founders.

Religiously affiliated institutions often require their leaders to subscribe to their faith. Seton Hall University, where I worked for 7 years, requires its president to be Catholic and until

⁹¹ George F. Will, *The GOP Tax Bill's Disconcerting Raid on University Endowments*, NATIONAL REVIEW, November 8, 2017, <https://www.nationalreview.com/2017/11/university-endowments-tax-terrible-idea/> (last visited Jun 14, 2018); Letter to Congress by University Presidents, Mar. 7, 2018, <http://www.middlebury.edu/system/files/media/Official%20Endowment%20Tax%20Letter%20to%20Leadership.pdf>; John K. Wilson, *Why the Endowment Tax Is Unconstitutional*, INSIDE HIGHER ED, January 16, 2018, <https://www.insidehighered.com/views/2018/01/16/tax-college-endowment-unconstitutionally-targets-institutions-opinion> (last visited Jun 14, 2018).

⁹² Gabriel Rossman, DO NOT RAISE TAXES ON PH.D. STUDENTS NATIONAL REVIEW (2017), <https://www.nationalreview.com/2017/12/do-not-raise-taxes-phd-students/> (last visited Jun 14, 2018).

⁹³ McCulloch v. Maryland, 17 US 316 (1819) ("the power to tax involves the power to destroy.").

⁹⁴ William J. Baumol, *On Taxation and the Control of Externalities*, 62 AM. ECON. REV. 307–322 (1972).

⁹⁵ See Robert B. Archibald & David H. Feldman, *State Higher Education Spending and the Tax Revolt*, 77 J. Higher Educ. 618 (2006).

recently required that he be a *Catholic Priest*.⁹⁶ USC's neighbor to the west, Pepperdine University, similarly requires its administrative leadership to be members of the Churches of Christ.

Many universities explicitly state that Christian values and beliefs are part of their mission.⁹⁷ There is a great deal of variety of views within Judeo-Christian traditions. Religious values can sometimes manifest in university leaders taking conservative positions, especially on social issues.⁹⁸ However, some stereotypically liberal values—compassion for the weak, the sick, and the poor, tolerance,⁹⁹ and good stewardship of the environment¹⁰⁰—are at least implicitly grounded in popular interpretations of Judeo-Christian religious ethics.¹⁰¹

When university leaders articulate these moral values, some politicians may struggle to differentiate Judeo-Christian values from political ones.¹⁰² Some religious leaders argue that

⁹⁶ Lisa W. Foderaro, *Seton Hall University Names New President*, THE NEW YORK TIMES, January 11, 2011, <https://www.nytimes.com/2011/01/12/nyregion/12seton.html> (last visited Jun 14, 2018).

⁹⁷ My research assistant has thus far identified over 400 such mission statements, looking at a subset of universities whose names start with a letter in the alphabet up to "G." A bit more than half of private non-profit university mission statements explicitly discuss religious values.

⁹⁸ Richard J. Stellway, *The Correspondence between Religious Orientation and Socio-Political Liberalism and Conservatism*, 14 SOCIOLOGICAL QUARTERLY 430–439 (1973) ("Christian conservatism was significantly and positively related to socio-political status quo orientation and to conservative political party preference. Conversely, Christian liberalism was found to be significantly and positively related to socio-political change orientation and to liberal political party preference."); Kim Strosnider, *Pepperdine Makes No Apologies for Its Contrarian Role in Academe*, THE CHRONICLE OF HIGHER EDUCATION, 1998, <http://www.chronicle.com/article/Pepperdine-Makes-No-Apologies/98401> (last visited Jun 15, 2018); KENNETH R. WEISS, *Pepperdine to Elevate Its Top V.P. to Presidency*, LOS ANGELES TIMES, December 8, 1999, <http://articles.latimes.com/1999/dec/08/local/me-41875> (last visited Jun 15, 2018); Erik Eckholm, *In Hillsdale College, a 'Shining City on a Hill' for Conservatives*, THE NEW YORK TIMES, December 22, 2017, <https://www.nytimes.com/2017/02/01/education/edlife/hillsdale-college-great-books-constitution-conservatives.html> (last visited Jun 15, 2018).

⁹⁹ POPE FRANCIS, LAUDATO SI, ENCYCLICAL ON THE ENVIRONMENT AND HUMAN ECOLOGY 9 (2015), <https://laudatosi.com/watch> ("[Saint Francis of Assisi] shows us just how inseparable the bond is between concern for nature, justice for the poor, commitment to society, and interior peace.").

¹⁰⁰ POPE FRANCIS, *supra* note 104 ("Christians . . . realize that their responsibility within creation, and their duty towards nature and the Creator, are an essential part of their faith. It is good for humanity and the world at large when we believers better recognize the ecological commitments which stem from our convictions. . . Climate change is a global problem with grave implications: environmental, social, economic, political and for the distribution of goods. It represents one of the principal challenges facing humanity in our day.").

¹⁰¹ DOUG ROSSINOW, THE POLITICS OF AUTHENTICITY: LIBERALISM, CHRISTIANITY, AND THE NEW LEFT IN AMERICA 92 (1998) ("The University Y stood as a vindication of Christian liberalism . . . Liberal Christianity could be . . . activist"); Stellway, *supra* note 63 ("Christian liberalism was found to be significantly and positively related to socio-political change orientation and to liberal political party preference"); CHRISTOPHER H. EVANS, LIBERALISM WITHOUT ILLUSIONS: RENEWING AN AMERICAN CHRISTIAN TRADITION (2010), <https://muse.jhu.edu/book/100> (last visited Jun 15, 2018) ("By the 1930s most mainline Protestant traditions promulgated the key tenets of liberalism, especially an embrace of modern intellectual theory along with theological and religious pluralism."); Timothy Samuel Shah, *Making the Christian World Safe for Liberalism: From Grotius to Rawls*, 71 POLITICAL QUARTERLY 121–139 ("liberalism emerged from within a divided and conflicted Christianity, split asunder by the Reformation. Once Christendom was divided into a plurality of confessions each of which claimed exclusive authority, the question for European Christians became: 'How can we [Christians] of [any] one confession treat rival confessions and their members in a way that is faithful to the law of Christ--a law that demands, simultaneously, absolute fidelity to Christ's Truth and absolute obedience to Christ's Love?'").

¹⁰² Martin Stoltz, *Rare Protests at Brigham Young Over a Planned Cheney Appearance*, THE NEW YORK TIMES, April 11, 2007, <https://www.nytimes.com/2007/04/11/us/11byu.html> (last visited Jun 15, 2018) ("Some of the faculty

free-market economics and religious faith are antagonistic because of the ways individualism and market pressures can undermine community, tradition, and family.¹⁰³

In Western Europe, Christian political parties are often almost as eager as Social Democrats to support social insurance and government-funded anti-poverty efforts.¹⁰⁴

Questioning the values and beliefs of the members of a university community is not too far removed from questioning the values and beliefs of a faith-based community. Government authorities typically grant a great deal of autonomy to faith-based communities because of the tradition of religious freedom and separation of church and state. It may be sensible to extend the same deference to universities.

Universities are hardly monolithically liberal on economic issues. U.S., economic conservatives—those who favor low taxes, a small public sector, deregulation and privatization, and market mechanisms—are the dominant force in elite economics departments, business schools and law and economics programs.

Indeed, economically conservative views are so pervasive among donors that both mainstream political parties in the U.S. have embraced them, widening the policy gulf between the U.S. and the rest of the developed world.¹⁰⁵

Thanks to this rightward shift, many modern Democratic leaders are (economically) more conservative than Republicans of the 1960s.¹⁰⁶

and . . . students, who are overwhelmingly Republican, have expressed concern about the Bush administration's support for the war in Iraq and other policies, but most of the current protest has focused on Mr. Cheney's integrity, character and behavior. Several students said, for example, that they were appalled at Mr. Cheney's use of an expletive . . . Students and faculty at Brigham Young — a private university sponsored by the Church of Jesus Christ of Latter-day Saints — are expected to adhere to an honor code, which emphasizes 'being honest, living a chaste and virtuous life, abstaining from alcohol and tobacco, using clean language' and following church doctrines. They are also required to follow strict modesty guidelines . . .").

¹⁰³ Opinion Pages, *Has Capitalism Become Incompatible with Christianity?* THE NEW YORK TIMES, <https://www.nytimes.com/roomfordebate/2014/06/25/has-capitalism-become-incompatible-with-christianity>; Url Scaramanga, *Do Christianity and Capitalism Clash?*, CHRISTIANITY TODAY, (2011), <https://www.christianitytoday.com/pastors/2011/april-online-only/do-christianity-capitalism-clash.html>.

¹⁰⁴ Kees van Kersbergen, SOCIAL CAPITALISM: A STUDY OF CHRISTIAN DEMOCRACY AND THE WELFARE STATE, (1995). In the United Kingdom, the conservatives, the Christian Democrats, support the National Health Service—the British equivalent of Medicare for All. In the U.S., even most Democrats do not advocate Medicare for All. Most U.S. Democrats and affiliated think tanks are to the right of much of the rest of the world's Conservatives.

¹⁰⁵ Adam Bonica et al., *Why Hasn't Democracy Slowed Rising Inequality?* AMERICAN ECONOMIC ASSOCIATION, JOURNAL OF ECONOMIC PERSPECTIVES, (2013), <https://www.aeaweb.org/articles?id=10.1257/jep.27.3.103>; Benjamin L Page et al., *Democracy and the Policy Preferences of Wealthy Americans*.

¹⁰⁶ Nixon at 100: Was He 'America's Last Liberal?', NATIONAL REVIEW (2013), <https://www.nationalreview.com/2013/01/nixon-100-was-he-americas-last-liberal-john-fund/>; Bruce Bartlett, *Obama Is a Republican*, THE AMERICAN CONSERVATIVE, October 21, 2014, <http://www.theamericanconservative.com/articles/obama-is-a-republican>.

As previously noted, many U.S. universities are global institutions, drawing in students,¹⁰⁷ scientists and scholars from around the world.¹⁰⁸ Because political views outside of the United States tend to be more liberal than views inside of the United States, comparing the views of faculty or students at U.S. universities and colleges to median views in the U.S does not make much sense. Indeed, the views of most natural scientists, are “liberal,” at least when judged by U.S. standards.¹⁰⁹

¹⁰⁷ See *supra* notes 12 & 13 and accompanying text.

¹⁰⁸ Jennifer Hunt & Marjolaine Gauthier-Loiselle, *How Much Does Immigration Boost Innovation?*, 2 AMERICAN ECONOMIC JOURNAL: MACROECONOMICS 31–56 (2010); Alison Herget, *Foreign-Born Faculty Face Challenges*, HIGHER ED JOBS, August 18, 2016, <https://www.higheredjobs.com/Articles/articleDisplay.cfm?ID=1012>.

¹⁰⁹ KOHUT AND PEW RESEARCH CENTER OR THE PEOPLE & THE PRESS, *supra* note 48 at 33–35.