Committee on Health, Education, Labor and Pensions (HELP)

"Exploring Free Speech on College Campuses"

Testimony by:

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Chairman Alexander, Ranking Member Murray, and the rest of the HELP committee: Thank you very much for inviting me to testify at today's hearing on Exploring Free Speech on College Campuses. This issue is at a critical juncture, with implications for the integrity of universities and the education we offer. There are spillover effects on our nation as a whole. So I am particularly pleased to share my views on this topic, and I am appreciative of your commitment to tackle this issue with the seriousness it deserves.

Let me begin with a story about my first visit to China as president of the University of Chicago about nine years ago. I had been invited to deliver a keynote address at Zhejiang University in Hangzhou to an audience of about 150 students and a group of faculty and university leaders. My hosts asked me to speak about American universities in general, but also about why there were so many Nobel Laureates among the faculty and alumni of the University of Chicago. I was asked, as I have been asked regularly in my many subsequent trips to China, "What is the magic UChicago sauce?"

I replied that its key ingredient was ongoing intellectual challenge and rigorous questioning. So many leading economists, physicists, chemists, and other scholars have prospered at UChicago because of the strong cultural commitment on campus to discourse, argument, and lack of deference. I described the workshops in economics, where Nobel Laureates were not immune from intense, sometimes withering, questioning by colleagues and students. UChicago attracted scholars from around the world because they understood this environment was best for developing and sharpening their ideas. And while UChicago may be extreme in this culture among universities, I explained that the lack of deference, the openness to discourse, and ongoing mutual challenge was one of the great strengths of higher education in the United States much more generally. In fact, this attribute of American higher education institutions provided a magnet for talented individuals from around the world.

The students in China were fascinated by this description and how it related to many deep aspects of Chinese culture with its focus on duty, respect, and hierarchy. In fact, over the past decade, many leaders in the Chinese academic world have been explicitly working to inject into their own institutions a tone of significantly more questioning, and with it the accompanying inventiveness.

What I did not anticipate then was that the tone in American institutions of higher education would dramatically change for the worse over the next decade. During this period, academic institutions experienced proliferating demands for decreased freedom of expression and open discourse, demands coming from within the institutions themselves. Invited speakers have been disinvited because a vocal segment of a university community found their views unsatisfactory; faculty have been pressured to make public apologies for their statements that some deemed offensive; and an entire culture has emerged in which free and open discourse, while still being formally embraced, is explicitly or implicitly being relegated to a lower priority than other concerns. Among a small sample of the disinvited are Laura Bush, Henry Kissinger, Christine Lagarde, Condoleezza Rice, and Larry Summers. While these are highly visible public figures, the list of the disinvited includes individuals from a wide range of fields and disciplines. Such episodes are now so commonplace that in some circles they are viewed as almost normal. Thus, while the Chinese academy aims to inject more argumentation and challenge into their education, many American higher educational institutions are moving in the opposite direction, sacrificing a commitment to challenge and questioning. In doing so, they avoid the difficulties of opposing the chilling effects of an emerging discourse of political correctness.

While it is necessary to focus on the threats from within universities to open discourse and argumentation on campuses, it is important to see that such threats also come from outside universities. These are particularly significant issues for public universities where overly enthusiastic public officials may have a misguided sense of protecting the public from various types of thought. External threats, both to public

and private universities, have been present throughout the history of universities and often been more menacing than internal threats. They may appear in extreme forms, for example during the McCarthy era. External threats continue today. The external actors often have totally different perspectives than internal actors—but the intended impacts of both are to limit discourse. Nevertheless, while new threats may materialize quickly, the most active threats in recent years have been from within universities themselves.

These current developments undermine our universities. There are three questions to address in considering this phenomenon: First, why is it important? Second, what are the Chicago Principles, affirming a commitment to free expression and open discourse? Third, what are the drivers of this national shift in discourse within higher education away from free expression?

Let me begin the question of importance by saying what is not involved. I am sure this is well known among the members of the Committee, but because there is a common misperception I want to emphasize that for private universities the First Amendment to the U.S. Constitution is not directly germane to these issues. Rather, what is pertinent are the very purpose and mission of universities. That mission can be summarized in three words: education, research, and impact. Every question about universities' actions and policies needs to be evaluated in light of these core missions. It is here that the roles of free expression and academic freedom—and their companions, free listening and open questioning—are essential.

Every student at a university deserves an education that deeply enriches their capabilities. This necessitates acquiring knowledge, but more importantly acquiring general skills and habits of mind that will enhance their approach to future challenges. They must learn to recognize and evaluate evidence of various sorts, challenge their own and others' assumptions, effectively argue their position, grasp both power and limitations in arguments, confront complexity and uncertainty, synthesize different perspectives, understand that context matters, think through unintended consequences, and take account of change, trade-offs, and uncertainties. If the education we provide does not give students the opportunity to acquire these abilities, we are simply shortchanging them. They will be under-prepared to make informed decisions in a complex and uncertain environment, which is inevitably the world they will confront upon entering the workplace, independent of the particular path they choose.

Imparting these skills is a tall task. But it is evident from the skills I have listed that exposure to a variety of views and the arguments for and against them is not only critical to this process but lies at its very core. Conversely, permitting an environment in which students' views and assumptions are not challenged, in which they do not develop the habits of mind of recognizing and evaluating their own assumptions, and in which they cannot fully and actively participate in discourse with multiple perspectives is shortchanging them. Simply put, if we want to do an excellent and responsible job of educating students at the highest level, an environment of free expression and open exchange of ideas is critical.

The same is true for an effective research environment. Deep and impactful research entails originality—and this requires seeing in new ways. The Nobel Prize winning biologist Albert Szent-Györgyi famously said, "Discovery is seeing what everyone else has seen, and thinking what no one else has thought." A climate that fosters this level of discovery relies on great intellectual freedom. Gary Becker, a Nobel Laureate in economics at UChicago and one of the most influential social scientists of the second half of the 20th century, provides an illuminating example. Becker, who had been a doctoral student at UChicago, began applying economic ideas to a sequence of societal issues—family, discrimination, crime, drugs, education, and more. For some time, his work was viewed by many either with alarm or as worthy of dismissal. The widely accepted understanding in social science at that time was that economics methodologies had no weight in these very human problems. But Becker persisted, in an environment at

UChicago in which these unpopular ideas were free to be explored, challenged, tested, and developed. Ultimately, his ideas became widely accepted as one valuable approach to these matters and Becker himself was recognized as a great pioneer. If he had been hounded out of higher education because the academy found his ideas offensive, as many did at the time, our understanding today would be much more limited.

Why is this important not only for the nature of universities but for our country? Much of universities' impact is through the power of their faculty's research and the work of their alumni—and, as we have described, such impact at the highest level depends on an environment of free expression and open discourse and the resulting climate of challenge. To be challenged is also why many of the leading ambitious young people from around the world have come to the United States. Such is the ultimate importance and stake for the country—will our higher education system continue to be the best in the world? Will our education continue to be the most impactful? Will we continue to attract highly talented people? Or will we lose focus on the mission of universities and allow other concerns to erode the efficacy of our institutions?

Now let me turn to the second topic, namely the Chicago Principles, which are a forceful statement of one university's commitment to free expression. Unlike all the universities in the United States that preceded it, save Johns Hopkins, the University of Chicago was established as a research university from its inception. From its early days, the leadership and faculty of the University articulated the importance of free expression and open discourse to its missions of rigorous inquiry and providing an education embedded in intellectual challenge. Throughout its history, the University has stood against suppression of speech, with its faculty and many of its presidents—William Rainey Harper, Robert Maynard Hutchins, Edward Levi, and Hanna Gray as key examples—playing visible leadership roles.

It was in this historical context and against the backdrop of the shifts in the American academy over the past decade, that in July 2014, I appointed and charged a faculty committee chaired by UChicago Law School professor Geoffrey Stone. The committee was charged with *"articulating the University's overarching commitment to free, robust, and uninhibited debate and deliberation among all members of the University's community."* In other words, the committee was asked to provide a concrete statement that encapsulated the underlying and broadly understood culture and views on free expression of the University of Chicago, a culture that had been present at the University since its founding. In response, the Stone Committee put forth a thoughtful, powerful, and clear articulation of the University's stance, laying out a set of principles now becoming known as the Chicago Principles. Below, I will summarize three such principles from the report.

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

In the same vein, relevant to current considerations, it states:

"*it is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the University greatly values civility,*

and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community."

The second principle is that the University recognizes, indeed embraces, non-disruptive protest as a legitimate means of free expression, and as such supports the rights of all members of the University community to engage in such protest.

The third principle the report articulates is that disruptive protest or other means of limiting the rights of others to engage in free expression, work, and open discourse is not acceptable, and is in fact a violation of the University's commitment to free expression. The distinction between non-disruptive and disruptive protest is essential. Preventing others from speaking and listening is arrogating to oneself the right of free expression, but denying it to others.

The Chicago Principles are a powerful statement. However, stating principles is not the same as implementing them. At UChicago, we recognize that implementation requires constant work. We have the benefit of an institutional culture with a long history of support for free expression, a willingness to express views contrary to popular trends, wide support of the faculty and deans on one hand and the board on the other, and a student body and faculty that, in most cases, are at UChicago because of a commitment to an environment of rigorous inquiry and open discourse. Nevertheless, we have thousands of new students coming to campus every year, and it is essential for us to be articulating, explaining, demonstrating, and engaging in discourse about these principles and how to implement them.

Let me turn now to my third question—what drivers have enabled the current movement against free expression within higher education? I will address four such drivers.

First, free speech is not a natural state of human affairs. Most people actually do not like it. They like the speech of those they agree with, which they will defend at great length—but there are fewer who are so enthusiastic about the free speech of those with whom they disagree. As a result, people are often inclined to silence, or at least condone silencing, those who disagree with them. They justify this in a variety of ways—morality, politics, acceptable behavior, preservation of authority, challenge to authority, opposing change, demanding change, and more. Such individuals rarely imagine that in preventing others from expressing views that they are sowing the wind—and ultimately may reap the whirlwind of someone suppressing their own speech. Fostering an environment of free expression and open discourse starts with the fundamental problem that for many people, free expression itself is suspect.

One consequence for universities is that a necessary part of a student's education is gaining understanding of the importance of free expression within the most enabling and powerful education they can have. Functioning in an environment of free expression and rigorous argumentation is not simple, nor is it necessarily intuitive. It is our collective responsibility in providing an excellent education to help students understand, value, and participate fully in this environment.

Second, suppression of speech today is a misguided response to an important national issue, namely that of diversity and inclusion. Our country, like all countries, has a history of powerful exclusionary behavior. A history of slavery and racism, closing of opportunities for women, discrimination on the basis of religion, and exclusionary and even criminalizing responses to same sex relationships are examples of real and serious issues that the country faces in fulfilling an aspiration of providing opportunities for all. Our country has surely made and continues to make very significant progress, but the legacy of this history remains salient, impactful, and even painful today. From the perspective of a university, what

should this mean? It should mean a serious commitment to full inclusion of all our students in the most enriching education we can possibly provide. This in turn entails ensuring that all our students are fully included in open discourse, challenge, free expression, and argumentation that lie at the very core of providing such an education. What it does not mean is protecting students from this discourse. It is a misguided view to think that we are helping students—particularly students from groups who may have been the victims of exclusionary behavior—by protecting them from speech. This misguided view is a major problem—it is in fact just the opposite that should be happening. We should be helping these students—just as we need to help all students—to fully participate. We should not facilitate retreat and separation from the most enriching education we can provide. Doing so would be an abdication of our responsibilities as educators.

Helping students fully participate is itself not simple. Universities often provide educational support for students based on their individual situations. There are times when engaging free expression may be particularly difficult for students who are a target of exclusionary rhetoric. This should be recognized and students appropriately supported. Likewise, all students should be helped to recognize the importance of a civil society. But both issues should be addressed in the context of helping students participate fully in open discourse, not in the context of creating an ambient environment of restricted discourse.

A third driver is too much unreflective moral certainty in too many circumstances—that one knows what is right and that anyone who holds other perspectives is not just wrong but morally flawed. Simply declaring the unacceptable presence of villainy, while not confronting intellectual challenge, is just a short stop away from suppression of speech. Within many aspects of public life, we have seen just how unproductive, even destructive, moral fervor in demonizing others can be. Inside universities, where learning to confront those with whom you may passionately differ is a key part of education, such demonization is particularly and deeply troubling.

The fourth and final driver that I want to address is the all too common de-historicized view of the world, in this case applied to the role of universities. Universities are institutions with a long history and the prospects for a very long future. The particular contributions they alone can make to society—inquiry, discovery, and enriching education—are critical societal needs that will far outlast any particular political issue of the day, no matter how important it is. The environment of free expression, academic freedom, and open discourse that is critical to universities' effectiveness cannot be taken for granted. It has been hard-won over the course of a millennium and history demonstrates its fragility. It is always tempting to respond to the urgency of the present and fail to consider long-term consequences. A de-historicized view of the importance of free expression, in conjunction with an all too easy attitude that allows for minimizing its importance in return for a moment of political expediency, is another contributor to the situation we now confront.

In the many examples of suppression of speech that we are seeing on campuses, some combination of these four forces is at play. It is their complexity, lack of transparency in revealing themselves, and mutual interactions that make combating them a significant challenge.

Now that I have addressed these three questions—namely the importance of free expression, the Chicago Principles, and the drivers of our current situation—let me turn to how reactions in the academic community to the Chicago Principles illuminate the issues.

Two related questions I am frequently asked concerning the Chicago Principles are: first, why doesn't every institution just sign on to them or, alternatively, present its own equivalent statement? And second, why don't those institutions that have made such statements in the past actually live by them?

My answer begins with a reminder that a select number of universities or their faculty have adopted these principles or articulated similar ones, and strive to live up to them. So UChicago is not alone. On the other hand, many institutions are still grappling with the issues. This uncertainty, not surprisingly, invites caution in response.

What do I think some institutions and their leaders are uncertain about?

Every institution needs to decide what it is and what it aspires to be. As I have described, at UChicago we have had a great sense of clarity about this since the University's inception. But all universities need not be identical. Institutions can and do—either explicitly or implicitly—make choices that define them. These definitions can differ, legitimately so. Institutions with religious affiliations, those with defined social missions, and military academies are all examples where the Chicago Principles may not be the appropriate articulation of values.

What the current situation and the Chicago Principles pose for many institutions is a clear question—how much are free expression and open discourse, along with all the challenges these present, a central defining feature of its education, or is it just one of the many values they have that can be traded off against others? This in turn raises the question of the actual nature of the education they are committed to—and what they believe is of sufficient importance to this education that they will defend it in challenging circumstances such as we face today?

I believe many institutions remain uncertain and are still clarifying their responses to these questions. Do they subscribe to the Chicago Principles, even if articulated in their own words? What actions would they take in supporting these principles? There is no reason to suppose that all institutions will come to the same conclusion.

Here is an example of what an institution might honestly say if it came to a different conclusion:

"We believe in free expression most of the time, and believe that you as a student will have an inspiring education and that you as a faculty member will have a wonderful environment for research and teaching. However, this institution will on occasion decide, based on the passionate views of a segment of the community or our own views of morality, that we will disinvite speakers or implicitly condone the disruption of their speech and you will therefore not have the opportunity to hear or question them. This institution will on occasion decide that views expressed by a faculty member are not acceptable and, accordingly, they may be asked to apologize for their statements or to stop raising certain issues. We accept the chilling effect this can have on discourse and the resulting education, because we believe other values are at stake."

As members of the Committee can surmise, I would not be pleased to see many universities take this stance, either explicitly or implicitly, because I do not believe it provides the best education or environment for research. On the other hand, it could be an honest and legitimate institutional stance. But there is a grave danger that by not confronting the question head on, many institutions are drifting into this position even if they are not stating it in a forthright manner. The combination of uncertainty, lack of clarity about the foundations of education being offered, and the increasing opposition to free expression I have described have led many institutions to reflection and understandable caution. I hope that as institutions think through the issues, many more will conclude the need for a strong articulation of the centrality of free expression and open discourse to the education they offer and the quality of their research, and that their actions will come to reflect this determination.

These considerations lead naturally to my final topic: What is to be done? How do we repair, or at least begin to repair, the situation in which the drift into restricted rather than open discourse is so prevalent?

Addressing these issues ultimately means addressing the culture of an institution. Where the culture of free expression and open discourse is strong, that culture needs to be purposefully reinforced. For every year, thousands of new students come to campus who may be unaware of the centrality of free expression to the efficacy of their education. On the other hand, where the culture of free expression and open discourse is not strong, the institution needs to undertake a purposeful attempt to change this culture. We all know how difficult culture change in an institution can be. It certainly cannot happen quickly and it requires sustained work.

In either situation, leadership is required, and inevitably that means university presidents, provosts, and deans. These individuals are responsible for overseeing and sustaining great universities, where free expression, free listening, and free challenge are indispensable. Therefore, the responsibility of these positions demands that leaders reinforce these values as central to the meaning of universities. To be effective, the president in particular needs the clear support of the Board of Trustees on this matter.

Likewise, in either situation, the role of the faculty and leadership within the faculty is critical. The faculty have ultimate responsibility for educational programs, and a clear view by the faculty on the importance of academic freedom and freedom of expression for the efficacy of that education is necessary. There are a number of institutions in which faculty are grappling with this question, and without a firm commitment from a significant portion of the faculty, it is difficult to imagine progress.

Finally, the receptivity of students to a challenging education of open discourse has a significant impact on a university's culture. College students in particular are at a singular moment in their lives. They will be challenged in new ways—by unfamiliar ideas, varying perspectives, different assumptions, and a diverse community. Embracing this challenge and growing personally through the discomfort it may bring will serve them well for their entire lives. It is also possible for students to take the easy route and seek a framework of comfortable and restricted discourse. This would be to miss a personal opportunity that will not return.

Cultural reinforcement or cultural change is a long process that needs long term commitment and long term focus as a high priority. How many institutions are willing and able to undertake this? We shall see.

Am I optimistic that the trend we see now can be reversed? There are some hopeful signs. Until recently, it was frankly difficult on many campuses to even discuss these issues. Areas where many would not tread are now being openly discussed. There are many more statements coming out in favor of free expression. But there is a long way to go and the outcome, frankly, is not certain. As always, this will come down not simply to what institutions say is good, but to what trade-offs they are willing to make and what they are prepared to do.

To stifle free expression and open discourse and suppress speech that you don't like is just an invitation for others to do the same. Accepting this behavior sets universities on a path that is antithetical to fulfilling our highest aspirations. For the sake of our students and their future success, our faculty and their capacity to develop original and impactful research, and our country remaining a magnet for the most talented from around the world, all this suppression needs to be resisted.

I thank you very much for the invitation to share my thoughts on this important topic. I again want to express my appreciation to the Chairman, Ranking Member, and the rest of the HELP Committee for

convening this forum to discuss this issue that is so important to the academy, to our students, and to our country.