**ABSTRACT**

**The Professoriate and the First Amendment: A Challenged Relationship**

**October 18, 2023 12 pm**

Audrey Wolfson Latourette, M.A., J.D., Distinguished Professor of Business Law

The precedent setting case of *Healy v. James*, 408 U.S. 169 (1972) clearly established that the vigilant protection of First Amendment rights is inherently vital in public American schools and universities, which must serve as the “true marketplace of ideas.” Private universities not bound by the First Amendment create a reasonable expectation of free speech where such institutions advertise themselves as supportive of the free exchange of ideas. Prior to 2021, litigation was primarily related to students’ exercise of that right via unconstitutional speech codes, burdensome requirements regarding requisite permits to engage in on campus speech, and penalties imposed regarding students’ social media expressions. Students violated First Amendment protections as well via their employment of the heckler’s veto and efforts to deplatform conservative speakers, both of which violate the mandates of the First Amendment. Commencing in 2021, a wave of litigation addressing the manner in which the First Amendment rights of the professoriate have been violated commenced, and has continued to markedly expand in 2023 under the advocacy of the Foundation for Individual Rights in Expression, formerly known as the Foundation for Individual Rights in Education. In the relative absence of advocacy by the ACLU, FIRE has represented faculty in a broad array of cases wherein the First Amendment rights of the professoriate were violated, which include: a faculty member was wrongfully penalized for criticizing the concept of microaggressions by a university that engaged in explicit viewpoint discrimination; a vaunted university cancelled the presentation of a faculty member who argued that academic evaluation should be premised solely on merit and not on DEI; a faculty member was suspended for refusing to grade minority students more leniently in light of the civil unrest prompted by the George Floyd murder; a faculty member’s free expression was violated when he was penalized for attending a rally protesting the removal of a statue of Robert E. Lee; and faculty were penalized for criticizing an outgoing president, thus chilling faculty speech and violating the college’s obligations under the First Amendment.

Professor Latourette has received recognition for her work in this arena, which includes: Recipient of “Distinguished Presentation Award for Outstanding Scholarship.” Awarded by the Pacific South West Academy of Legal Studies in Business (PSWALSB) “in recognition and with deep appreciation of your outstanding scholarship” for “First Amendment Rights on University Campuses” at its annual conference in Palm Springs, CA, February 13-16, 2020. Further, she delivered an invited presentation by The Faculty Collaborative, a Consortium of Colleges and Universities Dedicated to Professional Development, “The Professoriate and the First Amendment: A Threatened Relationship” to an audience of faculty members representing national and international universities which was presented via Zoom on March 31, 2023. Latourette has authored “Title IX Office of Civil

Rights Directives: An Assault Against Due Process and First Amendment Rights,” invited submission, 23 Journal of Law, Business & Ethics, 1-19 (lead article, Winter 2017) published by the

Pacific South West Academy of Legal Studies in Business. Her work as a scholar participating in the

Faculty Resource Network of New York University was most recently highlighted in Diverse: Issues

in Higher Education June 2023.