Dear Sir:

My comments on proposed revisions to law school tenure requirements may seem to reflect poor grace on my part, as one who was protected by tenure systems at two universities before my retirement. I have no defense to such criticism, except to point out that I once chaired a faculty committee on post-tenure review that was designed to provide some accountability for tenured law school faculty. Upon presentation, it was voted down with virtually no discussion - by the tenured and tenure-track faculty. Upon leaving the meeting, one colleague remarked that he had no interest in changing his indolent life style.

Academic freedom has been the rallying call for faculty members since the McCarthy era of the 1950s, when loyalty oaths were in fashion. Those days are long gone, and today tenure protects the indolent and those who choose to teach niche courses that serve no needs of prospective lawyers and often generate little interest.

An NEA organizer and former faculty member once told me that tenure was unnecessary as long as a school had standards and provided due process. With that I heartily agree, and support Alternative 2. Current rules are sufficiently ambiguous that they allow a caste system, where non-tenure track faculty are subject to a periodic review that tenured faculty do not face, and often have limited roles in important governance subjects such as faculty appointments. This limit in particular is harmful because the contract faculty are often much more in touch with the professional needs of students than are the tenured faculty. The result has been the disappearance of some "practical" areas of the curriculum, such as commercial law, because tenured faculty do not find them interesting subjects for scholarship. Eliminating tenure would democratize faculty governance in an important way.

As law schools enter an era of resource constraints and the possibility of reductions in the size of the faculty, under the current system the contract faculty will be the first to depart, upon non-renewal of their term contracts. Either their important courses will be neglected or taught by adjunct professors, who have little time for student engagement outside the classroom. A two-tiered system avoids the more difficult choices that could be made if all faculty members had the same protections - which could lead to termination of formerly tenured faculty whose productivity has fallen or veered from a path that provides value for students.

William J. Carney
Charles Howard Candler Professor Emeritus
Emory University School of Law