February 6, 2014

The Hon. Solomon Oliver, Jr., Council Chairperson,
Barry A. Currier, Managing Director of Accreditation and Legal Education,
Section on Legal Education and Admissions to the Bar
321 N. Clark Street, 21st Floor
Chicago, IL 60654-7958

Dear Judge Oliver, Mr. Currier and Members of the Council of the ABA Section of Legal Education:

Please find enclosed comments of AFL-CIO and AFT regarding proposed revisions to Standard 405.

Sincerely,

Craig Becker
General Counsel
COMMENTS OF AFL-CIO AND AFT REGARDING PROPOSED
REVISIONS TO STANDARD 405

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the American Federation of Teachers (AFT) write to express our opposition to the proposed changes to Standard 405. Both proposed alternatives eliminate the maintenance of a system of tenure as a requirement for ABA accreditation. We believe a tenure system is essential to protect and promote academic freedom, shared governance, and economic security in the academy. Therefore, the AFL-CIO and AFT urge that the requirement that an accredited law school maintain a system of tenure remain unchanged in Standard 405.

The AFL-CIO is a federation of 56 national and international labor organizations with a total membership of approximately 12 million working men and women. The AFT represents 1.5 million workers, including 200,000 faculty, professional staff, and graduate employee members in institutions of higher education in the U.S. Together, the organizations advocate for millions of workers, unionized and non-unionized, from grocery store clerks to college professors.

Preservation of a system of tenure in U.S. law schools is not only essential to the protection of the working conditions of law school faculty, but also to the quality of legal education and the ability of law professor to conduct research and engage in advocacy that supports workers’ rights and exposes their violation. The American Association of University Professors’ 1940 Statement of Principles on Academic Freedom and Tenure, endorsed by over 200 professional and educational associations, provides:

Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligation to its students and to society.

Policy Documents & Reports (1995 ed. 3). Tenure assures law professors that they can perform their academic duties free of the fear of losing their livelihood without meaningful due process: “Tenure, accurately and equivocally defined, lays no claim whatever to a guarantee of lifetime employment. Rather, tenure provides only that no person continuously retained as a full-time faculty member beyond a specified lengthy period of probationary service may thereafter be dismissed without adequate cause.” William W. Van Alstyne, Tenure: A Summary, Explanation, and “Defense,” 57 AAUP Bull. 328 (1971)(emphasis in original).

The economic security afforded by tenure enables law professors to exercise their academic freedom, to take contentious or unpopular positions, without fear of reprisal. Several comments provide examples of law school professors who have faced reprisals or the threat of reprisals for advocating controversial positions. See, e.g., Dean Rachel F. Moran Comment Letter, January 8, 2014, 1-3. In addition, there is a well-documented record of attempts to interfere with teaching in law school clinics by powerful parties with interests adverse to the interests of the clients students represent.

For over a century, the work of the AFL-CIO and the AFT, to lift up living standards and protect working people, has been aided by the teaching, scholarship, and public advocacy of academics – labor economists, scholars of industrial relations, law professors, and others. But like all employees who speak out in opposition to oppressive conditions, these scholar risks retaliation from their employer, often under pressure from politicians as well as the corporations and wealthy donors who increasingly fund higher education in this country. A system of tenure is essential to the preservation of the probing and honest evaluation of workplace rights legal scholars have provided as well as to their exposure of and advocacy against violations of those rights.

Tenure also promotes shared governance. Shared governance enables higher education faculty, including law professors, to participate in the academic decision-making of their schools. AAUP, Statement on Government of Colleges and Universities, Policy Documents & Reports (1995 ed.) 179, 183 (“The faculty has primary responsibility for such fundamental areas [of academic decision-making] as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which related to the educational process.”) Law schools are enriched by the participation of law professors in their governance just as all workplaces are when workers engage in collective bargaining over the terms of employment. A survey of clinical law professors shows that those with tenure felt significantly more empowered to contribute to discussions of law school governance than those without tenure. Kuehn & McCormick, supra, 24 Geo. J. Legal Ethics at 78-79. Tenure is essential to robust academic self-government.

A system of tenure further helps law schools to attract top legal minds to the teaching profession. Law professors accept lower salaries than they might otherwise command in the legal market, in exchange for the protections afforded by tenure.

A system of tenure is vital to maintaining an engaged and critical law professoriate. The proposed alternatives to Standard 405 undermine tenure, thereby threatening to deprive our society of controversial and cutting-edge viewpoints, including those that may challenge powerful interests. For those reasons, the AFL-CIO and AFT oppose any changes to the requirement of a system of tenure in Standard 405.
Submitted by:

Craig Becker
Lynn Rhinehart
Donna Euben
Maneesh Sharma
Office of General Counsel
AFL-CIO
815 16th Street, NW
Washington, DC 20006
(202) 637-5155

David Strom
General Counsel
American Federation of Teachers (AFT)
555 New Jersey Avenue, NW
Washington, DC 20001
(202) 393-7472