MEMORANDUM

To: The Law School Community

From: Richard Revesz

Date: July 22, 2009

Re: Visiting Global Law Professor Li-Ann Thio (Typo Corrected)

I am writing to let you know that Professor Li-ann Thio informed me today that she is canceling her Fall visit to NYU School of Law as a Global Visiting Professor, explaining that she was disappointed by the hostility of some members of our community to her views regarding homosexuality and gay rights, and by the low enrollments in her classes. The Law School will therefore cancel the course on Human Rights in Asia and the seminar on Constitutionalism in Asia, which she had been scheduled to teach.

As I observed on July 9 in an earlier statement, this issue brings two of our core values—academic freedom and a commitment to non-discrimination on the basis of sexual orientation—in tension with each other. On the one hand, NYU is fully committed to the principle of academic freedom and intellectual diversity. The Hauser Global Law School Program—under the auspices of which Professor Thio was invited as a visitor for one semester—grew out of our early recognition that the practice of law has escaped the bounds of any particular jurisdiction, and that legal education must take account of the intertwined nature of legal systems. The program seeks to expose our community to legal scholars who come from and have been shaped by their experiences in different countries, regions, and cultures. Needless to say, the value of the program would be seriously diminished if the visiting scholars all thought of difficult legal issues in the same way. We can learn from these visitors, and—we hope—they can learn from us.

NYU is equally committed to non-discrimination on the basis of sexual orientation. NYU and the School of Law extended partner benefits to gay couples long before New York law mandated such benefits. In 1978, NYU Law School became the first law school in the United States to deny access to its career services to employers who discriminate on the basis of sexual orientation, a practice that the Association of American Law Schools would later require all accredited law schools to follow. We also were leaders in the suit brought by the Forum for Academic and Institutional Rights ("FAIR") to challenge the Solomon Amendment.

Reasonable individuals can disagree about the relative importance of these values, as evidenced by the many thoughtful messages I have received over the last month regarding Dr. Thio's appointment. I would like to take this opportunity to respond to some recurring questions I have received.

At the time that the faculty members voted on Professor Thio's appointment, were they aware of the speech she made to the Singapore Parliament on October 23, 2007, forcefully arguing against the decriminalization of consensual sexual acts between men?

When the Global Appointments Committee met in December 2007 to recommend that the faculty vote a visiting appointment to Professor Thio based on her teaching and scholarship, none of its members was aware of the speech. The tenured and tenure-track faculty considered this recommendation during its meeting on January 30, 2008. I was not aware of her speech at that time, and I do not believe my colleagues were aware of it either.

Of course, an electronic search of her public statements would have produced the text of the speech. We did not conduct such a search in considering this appointment, and we have not conducted such searches in considering other appointments. Consistent with the norms of the legal academy, we generally limit our inquiry to the review of academic publications and works in progress, teaching evaluations, and reputation for collegiality.

Should the speech have played a role in the decision as to whether to invite Professor Thio to visit, had the faculty been aware of its existence?

The position taken in the speech should have been irrelevant to our evaluation of Professor Thio, although the argumentation supporting the position might properly have played a role in that evaluation.

Professor Thio's position in that speech is inimical to the Law School's position against discrimination on the basis of sexual orientation. Nonetheless, I do not believe that Professor Thio's opposition to our institutional position should have played any role in our evaluation of her. Leading academic institutions benefit greatly from a diversity of perspectives, not from hiring only people who share the same views.

At the same time, our evaluation of Professor Thio's strength as a scholar might have been usefully informed by an assessment of the analytic cogency and methodological integrity of the arguments and evidence she marshaled for her position. It would be up to the individual faculty member to determine what, if any, weight to give to the speech to Parliament in judging her as a scholar.

After becoming aware of the speech to Parliament, did NYU Law School ask Professor Thio to withdraw?

It did not.

Should the Law School have revoked the offer once it became aware of Professor Thio's speech before Parliament?

Once the faculty extends an offer (whether visiting, tenure-track, or tenured) to a professor, it does not revisit that particular offer by continuing to evaluate the strength of the individual's work. To engage in such continuous evaluation would place an unsustainable burden on the

faculty. Such a practice would also undermine the legitimate reliance interest recipients have in their offers. Of course, subsequent work or subsequently discovered work can and does play a role in determining whether future offers are made to that individual.

Should the Law School have revoked the offer once it became aware of Professor Thio's recent comments to our students?

In the last few weeks, a number of members of our community wrote to Professor Thio to convey their objections to her appointment as a visiting professor. She has indicated that she considers some of these messages to be offensive. In turn, she replied in at least one case in a manner that many members of our community—myself included—consider insulting and hurtful. These exchanges have been posted on various blogs. Members of our community have questioned whether Professor Thio's statements create an unwelcoming atmosphere that would have prevented students in her classes from having an effective educational experience.

Determining when the academic freedom of a professor is superseded by the need to preserve a viable learning environment for his or her students requires a difficult, case-by-case judgment based upon context, the history of the relationship, and many other factors. But it would be an extraordinary measure, almost never taken by universities in the United States, to cancel a course on the basis of e-mail exchanges between a faculty member and a member of the student body. To do so would eviscerate the concept of academic freedom and chill student-faculty debate. Professor Thio's withdrawal makes it unnecessary for us to engage in that inquiry.

Should an academic opposed to the recognition of certain important human rights be allowed to teach a human rights course?

An academic's views on a substantive issue should be irrelevant to his or her suitability to teach a course in a particular area as long as the opposing views are treated fairly in the classroom: A proponent or opponent of the death penalty can be equally qualified to lead a seminar on capital punishment, for example. Any other stance by a university would be a serious affront to academic freedom, would lead to endless political litmus tests, and would greatly impoverish academic institutions, which gain so much from the robust discussion of controversial legal issues. Moreover, we need to recognize that values that might be widely shared in U.S. academic institutions can be highly contested in other countries, and that any serious global educational program, particularly one dealing with international human rights, must pay attention to these differences.

Undoubtedly, the issues raised by Professor Thio's appointment are among the most difficult faced by academic communities. What are the limits of academic freedom? How should an institution with a proud tradition—as is the case of NYU Law School's support of the LGBT community—interact with those who disagree strongly with such a tradition? My answers to the questions raised by our community will not be persuasive to everyone. I also stress that they are my personal views, not the consensus view of any decisionmaking body at the Law School. But situations such as these, despite the serious pain that they inflict, also serve as learning experiences. I appreciate the thoughtful messages I have received from students, alumni, and

others as the debate unfolded and I am sorry about the considerable pain many members of our community have felt during these discussions.