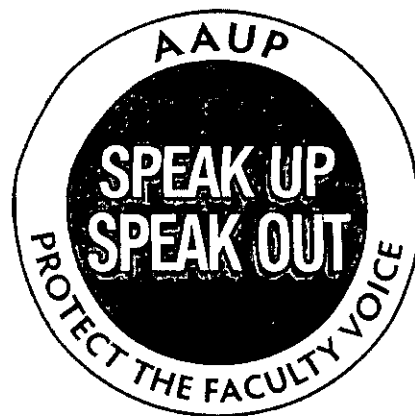


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American Association of University Professors
Academic Freedom for a Free Society



Academic Freedom Under Threat

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During the 20th century, America's system of higher education became the most admired in the world. This was due in no small part to the growing recognition of the importance of academic freedom and allowing faculty, because of their academic expertise, to play a major role in academic decision-making. The freedom to teach and conduct research, and to speak out on matters of institutional policy, were essential to the rise of American colleges and universities to a position of global preeminence, but these freedoms have never been fully protected as a matter of law.

Recently, a series of court rulings threatens to undermine academic freedom and the practice of shared governance, and thereby the quality of American higher education. It will undoubtedly come as a surprise to many people not only that the First Amendment provides, at best, limited protection for academic freedom (and only at public, not private, institutions), but also that government employees, including professors at public colleges and universities, do not enjoy the same free speech rights as other citizens.

In the 2006 case of *Garcetti v. Ceballos*, the U.S. Supreme Court ruled that when public employees speak pursuant to their "official duties," the First Amendment does not protect them from employer discipline. As Oliver Wendell Holmes explained many years ago, a policeman (or other government employee) "may have a constitutional right to talk politics, but he has no constitutional right to be a policeman."

Although the Supreme Court in *Garcetti* left open whether its decision applied to public employees engaged in teaching and research, later lower court rulings have permitted universities to discipline faculty for speech related to their official duties. In *Hong v. Grant* (2007), a federal district judge ruled that the University of California "is entitled to unfettered discretion when it restricts statements an employee makes on the job and according to his professional responsibilities."

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Under such an interpretation, a college or university administration might seek to discipline a professor for publishing research that antagonized a major corporate donor to the university, or for criticizing, either publicly or privately, the college president. If administrations throughout the country actually sought to engage in what now might be considered such legally permissible actions, the ability of America's colleges and universities to serve the common good and to retain their preeminent status in the world would be severely undermined.

As chair of the American Association of University Professors' Committee on College and University Governance, I have seen that there are already too many institutions where faculty members are afraid to speak their minds on issues of institutional governance, for fear of retaliation by their administrations.

If recent court rulings go unchallenged, both in and outside the courts, such fears may well become more widespread. This should be a concern not only to faculty, but to all Americans. It is particularly important that faculty should feel unrestrained not only in their pursuit of new knowledge, but also in utilizing their expertise to shape decisions about college curricula, admissions, the selection of colleagues, and other academic matters.

The AAUP is working through friend-of-the-court filings to reverse the current, dangerous trend of judicial decisions. More broadly, all Americans should support efforts by faculty and enlightened administrations and governing boards to establish institutional guarantees for a robust concept of academic freedom.

Academic freedom and the principle of faculty primacy in academic decision-making cannot depend solely on the protection of law. They must be seen by all citizens as necessary to the health of a free society.