

Academic Freedom

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Prepared by the [OAH Committee on Academic Freedom](#)

Academic Freedom: What is it & Why does it matter?

Academic freedom is the principle of freedom of expression for scholars engaged in discipline-related teaching, learning, research, publication and service. Academic freedom is the foundation of intellectual discovery; it ensures an open search for knowledge and “nourishes the environment within which students develop critical habits of mind”¹ essential to the citizenry of a democratic society. Academic freedom entails both rights and responsibilities.

Components of Academic Freedom

Applies to full-time, part-time, tenure/tenure-track, contingent, graduate student instructors, research assistants.

In Research and Publication

Academic freedom includes the liberty to conduct research and draw conclusions rooted in evidence. Academic freedom defends researchers’ right to choose methodologies, draw conclusions, and assert the value of their contributions, but does not protect against critiques of their claims.

In Teaching and Learning

Academic freedom includes the individual instructor’s right to select course materials and content, pedagogy, make assignments and assess student performance. These should be germane to the subject matter. Limits may arise where (1) coordination among instructors for common courses requires agreement on matters of content, syllabi, materials and examinations;² (2) there are institutional constraints and concerns rooted in the religious aims of the university, which should be explicitly laid out in writing for instructors prior to appointment;³ (3) the manner of instruction substantially impairs the rights of others or...demonstrates that the instructor is professionally ignorant, incompetent, or dishonest with regard to their discipline or fields of expertise.”⁴

In Public Expression

Academic freedom includes the right to bring relevant expertise to “the larger community with regard to any matter of social, political, economic or other interest;” and through any mode of communication (including speech, writing and electronic media).⁵ As experts operating in the public sphere, historians should aim to “be accurate, should exercise appropriate restraint, [and] should show respect for the opinions of others.”⁶

Academic Freedom vs. Free Speech: What’s the Difference?

Academic Freedom: rights held by educators to engage in academically-recognized expression

Free Speech: expression guaranteed to the individual by the First Amendment to the U.S. Constitution

	Academic Freedom	Free Speech
To whom does this right apply?	Educators engaged in the pursuit of their discipline; in public and private institutions	All people within the jurisdiction of the United States
What does it “cover”?	Discipline-related teaching, learning, research, publication, in and outside the classroom	All forms of speech and speech content without regard to the speaker’s knowledge or accuracy
Who or what institution is charged with respecting/not violating this right?	Educational institutions at all levels	Governments, public institutions and their policies and representatives
Source(s) of this right?	Depend[s] on constitutional law, state law, institutional custom and policy, and whether the institution is public or private ⁷	1st Amendment to the U.S. Constitution and related laws and court decisions

In the Words of Scholarly Experts

“[There is a] difference between academic freedom—a protection of faculty rights based on disciplinary competence—and freedom of speech—the right to express one’s ideas, however true or false they may be.” “Student free speech is appropriately limited in the university classroom, subject to the disciplinary tutelage of the professor in charge—a professor who has been subjected to and certified by a disciplined formation of his or her own. This does not mean silent acquiescence in the face of indoctrination, far from it. It does mean learning how to critically evaluate things, how to question orthodoxy and challenge it from a position of knowledge rather than one of unexamined belief.” ~ **Joan Wallach Scott**, Historian, Institute for Advanced Study & member of AAUP Committee A on Academic Freedom and Tenure⁸.

“The First Amendment generally restricts the right of a public institution—including a public college or university—to regulate expression on all sorts of topics and in all sorts of settings. Academic freedom, on the other hand, addresses rights within the educational contexts of teaching, learning, and research both in and outside the classroom—for individuals at private as well as at public institutions.” ~ **AAUP**⁹, Statement on academic freedom and the first amendment

The Courts on Academic Freedom and Free Speech

Excerpted from: AAUP, “Academic Freedom and the First Amendment” (2007) and AAUP, “Protecting an Independent Faculty Voice: Academic Freedom after Garcetti v. Ceballos” (2009)

- **Faculty Speech in the Classroom:** “In *Bonnell v. Lorenzo*, [2001] a federal appeals court upheld Macomb Community College’s suspension of John Bonnell, a professor of English, for creating a hostile learning environment. A female student sued the professor, claiming that he had repeatedly used lewd and graphic language in his English class. While recognizing the importance of the First Amendment academic freedom of the professor, the court concluded that “[w]hile a professor’s rights to academic freedom and freedom of expression are paramount in the academic setting, they are not absolute to the point of compromising a student’s right to learn in a hostile-free environment.” Significantly, unlike the speech in *Hardy*, the court found Bonnell’s use of vulgar language “not germane to the subject matter” and therefore unprotected.”¹⁰
- **Student Speech in the Classroom:** *Head v. Bd. of Trustees of California State University*, [2007] The [appeals] court further held: “Public university instructors are not required by the First Amendment to provide class time for students to voice views that contradict the material being taught or interfere with instruction or the educational mission. Although the First Amendment may require an instructor to allow students to express opposing views and values to some extent where the instructor invites expression of students’ personal opinions and ideas, nothing in the First Amendment prevents an instructor from refocusing classroom discussions and limiting students’ expression to effectively teach.” The court concluded by affirming that “institutional assessments of a student’s academic performance ... necessarily involve academic determinations requiring the special expertise of educators”¹¹
- **Free Speech at Private Institutions:** Private universities are largely not subject to the constitutional requirements described above, and students, faculty, and staff at most private universities therefore do not enjoy a “First Amendment” right of protection against discipline for speech-related infractions. They may, however, have certain free-speech-related rights deriving not from the First Amendment but from policies adopted by the institution.¹²
- **Faculty Speech Related to Institutional and Public Policies:** In *Garcetti v. Ceballos*, [2006] the Supreme Court allowed a Los Angeles district attorney’s office to discipline a deputy district attorney for having criticized his supervisors’ actions; the Court ruled that when public employees speak “pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.” Although the majority expressly left open whether its ruling should apply to “speech related to scholarship and teaching” in public colleges and universities, subsequent decisions in the lower federal courts concerning faculty speech have disregarded this reservation and now threaten to diminish severely the constitutional protection of the academic freedom of professors whose engagement in governance, as well as their teaching and research, is considered part of their “official duties.” ... In *Hong v. Grant* (2007), a district judge, citing *Garcetti* ... 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.” Such responsibilities included participation in institutional governance. Appeals courts in both *Renken v. Gregory* (2008) and *Gorum v. Sessoms* (2009) adopted similarly restrictive interpretations ... based on the broad definition of “official duties” employed in these post-*Garcetti* rulings, only faculty speech on topics beyond the speaker’s expertise may be constitutionally protected and that there now may exist a “negative or inverse correlation between the scope of a professor’s (or a faculty’s) role in shared governance and the breadth of potential protection for expressive activity. . . . In brief,

as the cases stand now, one could argue that the less of a stake you have in your institution's shared governance, the freer you are (as a First Amendment matter) to criticize how it is governed, and vice versa." ... the [AAUP] subcommittee report reiterates the imperative of making the case for academic freedom at both public and private institutions, not as a matter of law, but as a principle vital to the effective functioning of institutions of higher learning. ... The subcommittee also calls upon AAUP chapters and faculty senates at both public and private colleges and universities to develop policy statements at the institutional level that will explicitly incorporate protections for faculty speech on institutional academic matters and governance... most institutions have policy statements that recognize academic freedom as it pertains to teaching, research, and publication, but typically, such statements do not refer to speech relating to governance. The report concludes by providing the Minnesota language and two other draft policy statements as examples of language that might be incorporated into faculty handbooks or other institutional regulations ... ”¹³

Best Practices in Defense of Academic Freedom

1. **Develop a good understanding of the principles, rights and responsibilities of Academic Freedom** and abide by these rights and responsibilities. Recommended starting points:
2. These OAH Guidelines on Academic Freedom
 - [AAUP Statement on Academic Freedom and Tenure](#)
 - [“Defining Academic Freedom”](#) by AAUP past-president Cary Nelson
3. **Promote the development and application of policies at your institution** to guide administration, faculty at all ranks, and students in understanding and exercising rights, responsibilities, and procedures in situations where academic freedom is felt to be threatened or abused. This may occur through one or more of the following:
 - Faculty Handbook, Faculty Constitution, By-laws and/or Shared Governance policies
 - Collective Bargaining Contracts
 - Institution and Governing Board policies (including adherence to Accreditation standards)
4. **Approach academic freedom as a cornerstone of scholarly inquiry.** This could take the form of:
 - Individually- or departmentally-developed syllabus &/or web statement
 - Individually- or departmentally-developed curriculum
5. **Assess your scholarly and personal practices and statements** in light of the rights and responsibilities of academic freedom to ensure that you are:
 - Exercising Academic Freedom with integrity and professionalism.
 - Academic Freedom protects disciplinary competence in research, teaching and learning, and public service.
 - [AAUP Statement on Professional Ethics](#)
 - [The History Discipline: Profile and Core Concepts](#) [AHA Tuning Project]
 - Exercising Academic Freedom & Free Speech with integrity and discretion in the digital age.
 - Identifying one's disciplinary competence and institutional affiliation is a free speech right; stating or implying that your speech represents or is legitimated by the institution is *not* protected free speech or academic freedom.

- Academic Freedom is always in flux – keep current on emerging problems and practices; engage thoughtfully and prudently.
6. **Seek the input and perspectives of colleagues** as you contemplate research, publications, digital communications, and teaching that might tempt challenges to your academic freedom.
 - Build a community of scholars within and across disciplines that regularly shares, reflects on, and offers advice about academic freedom concerns or experiences.
 - Similar to a good peer review, this can strengthen your professional work and preclude unnecessary errors of omission and commission.
 - If questions arise this can demonstrate adherence to disciplinary practices.
 7. **Keep a detailed record of incidents or situations** that have, or you think could, become fodder to challenge your academic freedom.
 - Be a good archivist of your own practice.
 - Share relevant concerns and materials with professional colleagues.
 8. **Contact the OAH** when you have concerns about specific actions, incidents or policies that violate or threaten to violate academic freedom.

Other OAH Best Practices on Threats or Challenges to Academic Freedom

[Program Redesign without Shared Governance](#)

[Ad hominem condemnations/ disciplinary action](#)

[Funder Influence](#)

[Guns on Campus](#)

Additional Resources on Academic Freedom

What Academic Freedom Means (and does not mean)

[AAUP Statement of Principles on Academic Freedom and Tenure](#) (1940), formulated with and jointly accepted by the national trade association representing universities and colleges

[“Defining Academic Freedom”](#), excellent elaborated explanation of AF by Cary Nelson, past president of AAUP (2010)

[“Academic Freedom Is Not a First Amendment Right for University Employees”](#) by Robert Post, past AAUP General Counsel

Court Cases Related to Academic Freedom and Free Speech

[Academic Freedom and the First Amendment](#), text of presentation by AAUP Senior Counsel explaining the legal and juridical issues; includes summaries of relevant court decisions (2007)

[Protecting an Independent Faculty Voice: Academic Freedom after *Garcetti v. Ceballos*](#) (2009)

Statements and Reports on Academic Freedom by Professional Organizations

OAH, [Open Discourse and Academic Freedom](#) (2014)

American Council on Education, “[Statement on Academic Rights and Responsibilities](#)” (June 2005)

National Education Association, “[Academic Freedom and Higher Education Employees](#)” (December 2007) and “[Legal Issues Concerning Academic Freedom](#)” (March 2007)

American Council of Learned Societies, “[Statement Defending Tenure and Academic Freedom in Wisconsin](#)” (June 2015)

Academic Freedom and Collective Bargaining

AAUP, [Academic Freedom Provisions](#)

NEA, [Shared Governance and Academic Freedom: Yes, This is Union Work](#)

AFT, [Academic Freedom](#)

Academic Freedom and Contingent Faculty

[Contingent Appointments and the Academic Profession](#) (includes discussion of the precarious state of academic freedom for contingent faculty)

Stephen A. Smith “Contingent Faculty and Academic Freedom in the Twenty-First Century,” *First Amendment Studies*, 49:1 (2015): 27-30.

Academic Freedom in the Digital Age

[AAUP One Faculty One Resistance](#): large repository of materials on targeted harassment and social media

[The Changing Media and Academic Freedom](#) (AAUP 2016)

[Academic Freedom and Electronic Communications](#) (AAUP 2013)

Academic Freedom and Guns on Campus

American Association of University Professors [UP]

- “Academic Freedom Under the Gun: A Report from Kansas,” (vol. 9, 2018), *AAUP Journal of Academic Freedom*
- “AAUP Calls for Sensible Gun Control Measures” with link to Statement in Support of Gun Control Measures, (March 6, 2018) AAUP Updates
- “Campus Carry Violates Academic Freedom,” with link to amicus brief supporting challenge to Texas state law, (Nov. 27, 2017), *Academe Blog*
- “Legal Watch: Academic Freedom and Guns on Campus” (Jan.-Feb. 2018), *Academe*

“Concealed Carry Laws and Permit Numbers by State,” (6/23/2019) , *Campus Safety*

“Campus Carry: The Movement to Allow Guns on College Grounds, Explained ,”(updated 4/23/ 2018), *The Trace*

“The University of Utah Reassigned A Graduate Assistant After He Syllabus Restricted Students With Concealed Guns to a ‘Second Amendment Zone,’” (8/21/2018), *Salt Lake Tribune*

“Campus Gun Ban Struck Down,” (3/6/2012), *Inside Higher Education*

Brandi Hephner LaBanc, Kerry Brian Melear, Brian O. Hemphill, “The Debate over Campus-Based Gun Control Legislation,” *Journal of College and University Law*, 40:3 (October 1, 2014): 397-424.

Program Redesign without Shared Governance

American Association of University Professors [AAUP]

- [Statement on Government of Colleges and Universities](#). (1966) Jointly formulated by AAUP, American Council on Education and the Association of Governing Boards of Universities and Colleges.
- [Statement on the Relationship of Faculty Governance to Academic Freedom](#). (1994) Elaborates the relationship between shared governance and academic freedom, with a particular focus on the reciprocal relationship between shared governance and academic freedom.
- [Reaffirmation of the Principles of Academic Government](#). (2016) Article, rather than a formal organizational statement, unpacks the meaning and continued relevance shared governance and its relationship to the protection and maintenance of academic freedom.
- [Role of the Faculty in Conditions Financial Exigency](#). Policy documents and recommendations addressing the growing transfer of power over curriculum arising from administration-driven program closures pursued in the name of financial *emergency*, but not consistent with requirements that such closures meet an educationally-grounded standard of financial *exigency*.
- [Statements and Reports on Intellectual Property](#). Provides links to AAUP policy statements, assessments of case law and communications related to specific incidents and concerns related to intellectual property rights and limits in academia; includes situations related to distance education, on-line courses, patents and copyright, amongst others.
- [Fact Sheets on Intellectual Property](#). Intended “to help organize faculty activism around IP issues, to educate those involved in faculty senate or contract negotiations about IP, and to hand out during IP seminars or public lectures.”

Chronicle of Higher Education. [‘Alt-Ed’ Ventures Could Gain Traction in an Uncertain Fall](#) April 2020

Gerber, Larry. *The Rise and Decline of Faculty Governance*. Baltimore: Johns Hopkins University Press, 2014. Also see review in AAUP, *Academe*, May-June 2015)

Newfield, Christopher. "[Academic Freedom as Democratization](#)," AAUP *Academe*, Spring 2020.

Reichman, Hank. [The Time for Engagement](#), *Inside Higher Education*, April 2019.

Reichman, Henry. *The Future of Academic Freedom*. Baltimore: Johns Hopkins University Press, 2019. Also see review in AAUP, *Academe*, Winter 2020.

Wallach Scott, Joan. *Knowledge, Power and Academic Freedom*. New York: Columbia University Press, 2019. Also see review in AAUP, *Academe*, Winter 2020.

More?

Joan DelFattore, *Knowledge in the Making: Academic Freedom and Free Speech in America's Schools and Universities*. New Haven: Yale University Press, 2010.

Matthew W. Finkin and Rober C. Post, *For the Common Good: Principles of American Academic Freedom*. New Haven: Yale University Press, 2009.

Cary Nelson, *No University is an Island: Saving Academic Freedom*. New York: New York University Press, 2010."

Forum on Academic Freedom," *First Amendment Studies*, 49:1 (2015): 1-30.

AAUP Founded in 1915, the AAUP continues to be the lead professional organization engaged in developing and advocating nationally recognized principles and policies regarding academic freedom. The AAUP website provides public access to documents, statements, and reports related to the [AAUP's work protecting academic freedom](#).

1. "Scholarly Associations Defend Tenure and Academic Freedom in Wisconsin," June 11, 2015. <http://www.acrl.ala.org/acrlinsider/archives/10415> Accessed January 27, 2018.

2. AAUP Statement on the Freedom to Teach, <https://www.aaup.org/news/statement-freedom-teach#.WpyF3OjwauU>; Rachel Levinson, "Academic Freedom and the First Amendment" (July 2007). <https://www.aaup.org/our-work/protecting-academic-freedom/academic-freedom-and-first-amendment-2007> Accessed January 28, 2018.

3. AAUP, Statement on Academic Freedom and Tenure, 1940.

4. Cary Nelson (AAUP president), "Defining Academic Freedom" *Inside Higher Education* (Dec. 21, 2010). Accessed January 28, 2018.

5. AAUP statement by Hank Reichman on "Academic Freedom in the Classroom" (October 4, 2017). <https://www.youtube.com/watch?v=M7NL55LwOUY> Accessed January 28, 2018.

6. AAUP, "1940 Statement."

7. Rachel Levinson (AAUP Senior Counsel), American Association of University Professors [AAUP], "Academic Freedom and the First Amendment, July 2007. [accessed 2/20/2018 at <https://www.aaup.org/our-work/protecting-academic-freedom/academic-freedom-and-first-amendment-2007>]
8. Joan Scott, "On Free Speech and Academic Freedom," AAUP Journal of Academic Freedom, Vol. 8. (2017).
9. Levinson, "Academic Freedom and the First Amendment."
10. Ibid.
11. Ibid.
12. Ibid.
13. "Protecting an Independent Faculty Voice: Academic Freedom after Garcetti v. Ceballos." [accessed 2/21/2018]