



TBR ACADEMIC FREEDOM POLICY: A SIGNIFICANT MOVE FORWARD FOR ALL TBR FACULTY

From: *The Fainting Goat*, issue 2, MTSU AAUP chapter; ed. Becky King, Alfred Lutz.

In March, there was a potential threat to tenure at one of our community colleges. Representatives of the universities and the community colleges met Dr. Tristan Denley (VC-AA, TBR) on April 1 in Nashville to discuss our concerns, and I am pleased to report that the outcome of our discussion was a reaffirmation of the importance of tenure in line with the TBR Academic Freedom Policy, which states: "Thus, academic freedom and academic responsibility are interdependent, and academic tenure is adopted as a means to protect the former while promoting the latter. While academic tenure is essential for the protection of academic freedom, the full benefits and responsibilities of academic freedom extend to all individuals teaching in the TBR System, whether or not they are eligible for tenure." Similarly, in an email to Alfred Lutz in early March, Dr. Denley pointed out that "[t]here was certainly never any suggestion of this contract option [the new employment category of three-year rolling instructor contracts] undermining or affecting tenure or tenure track positions in any way. The Tennessee Board of Regents is and always has been fully in support of the tenure and promotion process." Although the TBR Faculty Sub-Council is responsible for this positive outcome, most of those primarily involved in the process are AAUP members.

Since we are talking about academic freedom, and since I have recently had conversations with several colleagues concerned about the level of protection academic freedom policies provide for their on-campus work outside the classroom, let me remind you that the TBR Academic Freedom Policy is quite robust, and it specifically protects shared-governance speech. In 2010, in response to the potential threat to academic freedom of Garcetti v. Ceballos, a 2006 Supreme Court decision (see page two below for an assessment), the TBR Faculty Sub-Council determined that a revision of the TBR Academic Freedom Policy was in the best interest of the faculty and the academic mission of our system. Finally, in 2013, TBR agreed. The following is the crucial section from TBR Policy 5:02:03:30 (Academic Freedom); the language added in 2013 is highlighted in green: (cont'd p. 2)

Learned institutions ought to be favorite objects with every free people. They throw that light over the public mind which is the best security against crafty & dangerous encroachments on the public liberty.

James Madison "

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Academic freedom is essential to fulfill the ultimate objectives of an educational university/college - the free search for and exposition of truth - and applies to teaching, research, and **faculty participation in institutional governance**. Freedom in research is fundamental to the advancement of truth, and academic freedom in teaching is fundamental for the protection of the rights of the faculty member in teaching and of the student to freedom in learning. **Faculty participation in institutional governance is fundamental to the development and maintenance of effective academic policies, national and regional accreditation, and shared responsibility for the delivery of educational programs and services to students**. Implicit in the principle of academic freedom are the corollary responsibilities of the faculty who enjoy that freedom.

Although this positive change was again the result of efforts by the TBR Faculty Sub-Council, the council members most actively involved in the process were almost all AAUP members.

The following is a brief assessment, written in 2010 and presented at an AAUP chapter meeting, of the threat to academic freedom, particularly shared-governance speech, *Garcetti v. Ceballos* potentially poses.

The question *Garcetti v. Ceballos* presented, in the words of Justice Kennedy's majority opinion, is "whether the First Amendment protects a government employee from discipline based on speech made pursuant to the employee's official duties." The Supreme Court drew a fundamental distinction between a public employee acting as an employee carrying out job-related duties and the employee acting as a citizen sharing his or her views with the larger public. As a result, the Court held "that when public employees make statements 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," and it rejected "the notion that the First Amendment shields from discipline the expressions employees make pursuant to their professional duties."

Although Justice Kennedy's opinion also acknowledged that there "is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court's customary employee-speech jurisprudence," several cases since then – *Hong v. Grant*, *Renken v. Gregory*, and *Gorum v. Sessoms* – have extended *Garcetti* to higher education, a development Justice Souter's dissent in *Garcetti* anticipated ("...hope that today's majority does not mean to imperil First Amendment protection of academic freedom in public colleges and universities, whose teachers necessarily speak and write 'pursuant to official duties'"). *Hong v. Grant*, to mention just one example, gave a university "unfettered discretion when it restricts statements an employee makes on the job and according to his professional responsibilities."

TBR Policy 5:02:03:30 ("Academic Freedom and Responsibility") refers to faculty members' "freedom in the classroom," classroom," their "full freedom in research and in the publication of the results," and their rights to speak or write "as a citizen." It does not, as far as I can see, address faculty members' speech resulting from their engagement in shared governance, which the AAUP's 1994 statement "On the Relationship of Faculty Governance to Academic Freedom" considers to be an essential aspect of academic freedom and which *Garcetti* threatens. In addition, *Garcetti* also threatens to abridge academic freedom in teaching and in research since both are clearly faculty members' "official duties." Indeed, as Judith Areen (*Georgetown Law*) has recently argued in the *Georgetown Law Journal*, "[t]he *Garcetti* holding that speech made pursuant to a public employee's 'official duties' is not protected, now threatens to end all constitutional protection for the academic freedom of faculty at public colleges and universities."

The 2013 additions to the TBR Academic Freedom Policy are a powerful response by TBR to this threat. The policy now recognizes—and therefore protects—faculty members' shared-governance speech as an essential component, AAUP Chapter President, MTSU

AAUP MEMBERS INSTRUMENTAL IN EXPANDING THE LANGUAGE OF THE TBR ACADEMIC FREEDOM POLICY

The 2013 additions to the TBR Academic Freedom Policy are a powerful response by TBR to this threat. The policy now recognizes—and therefore protects—faculty members' shared-governance speech as an essential component of the proper functioning of institutions of higher education. Though this change was the result of efforts by the TBR Faculty Sub-council, council members most actively involved in the process were almost all AAUP members. — Alfred Lutz. MTSU

President Obama in TN Speaking on Education Fall 2015



Tennessee AAUP at the National Convention, June 2015

Troy D. Smith of TTU was a Hopper Travel Fund recipient which helped Dr. Smith attend the National Convention in Washington D.C. in June. Hopper Travel Fund Grants are for individuals attending their first AAUP annual meeting. Candidates may be nominated by either a chapter or a conference. Dr. Smith is past president of the TTU AAUP and current TN conference secretary.

Dr. Smith gave a paper entitled “Hanging Together or Hung Out Separately: Academic Freedom and the Politics of Division”

Dr. Josie McQuail, TTU, TN conference Vice President for 4 Year Public Universities as well as secretary for the Assembly of State Conferences, gave a paper entitled **“Academic Freedom: Free Speech on Shared Governance Matters.”**



2015 is the Centennial of the AAUP. Pictured: Henry Reichman, AAUP Vice-President (2016); Rudy H. Fichtenbaum, AAUP President (2016) at the AAUP Annual Convention., Washington, DC, June 2015

Tennessee Conference of the AAUP Wins AAUP Grant

The Tennessee conference applied for and received a Conference Development Grant of \$1,000 from the National Assembly of State Conferences. TN conference President Scott McMillan and Vice President for 2 Year Community Colleges Jennifer Pitts wrote a proposal for the grant and plan to use it to revitalize the Tennessee AAUP Conference Website.

AAUP ANNUAL CONFERENCE

The AAUP Annual Conference on the State of Higher Education will be held June 15-19, 2016, in conjunction with the AAUP Annual Meeting in Washington, DC. As we move into our second century, we invite reflection on racial, social, and labor justice in higher education. **Deadline for proposals is**

Dec. 7, 2015. For Questions e-mail: proposal@aaup.org

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THE AAUP believes that higher education is a fundamental human right to which freedom of inquiry and expression are integral.

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JOIN AAUP

Your AAUP membership gives you exclusive access to the expertise of AAUP staff, members, and leaders. Our lineup of guidebooks, toolkits, and webinars put the resources to defend academic freedom, ensure economic security, and advance faculty governance for all faculty at your fingertips.

When you join the AAUP, make sure you sign up to pay dues to your state conference — we do a lot for you! <http://www.aaup.org/membership/join>

Many professional development opportunities are available to AAUP members, and through AAUP you can help keep higher ed in TN

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