

UNIVERSITY OF ILLINOIS
URBANA-CHAMPAIGN SENATE

Committee on University Statutes and Senate Procedures
(Second Reading; Action)

SP.10.11 Revisions to the *Statutes*, Article X, Section 2 – Academic Freedom

BACKGROUND

The principles of academic freedom are intended to prevent the disciplining of a member of the academic staff whose teaching, research, or publications might be controversial or unpopular. Although these freedoms are core values in universities, they enjoy little formal legal protection. In the United States, academic freedom is largely protected through University policies. At the University of Illinois, Article X, Section 2 of the *University Statutes* both defines and secures academic freedom.

According to a recent report prepared by the American Association of University Professors (AAUP), several recent decisions by the U.S. Supreme Court and lower courts have raised questions about the limits of academic freedom for faculty and academic staff at public universities.¹ In these cases, the courts have limited the rights of public employees who criticize their employers. In *Garcetti v. Ceballos*, the Supreme Court allowed the Los Angeles district attorney's office to discipline an assistant district attorney who had publicly criticized the way the office was being run. The Supreme Court stated, in relevant part, 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."

In *Garcetti*, the Supreme Court did not address the question of faculty speech in public universities and colleges, and it explicitly recognized that academic freedom could pose a separate set of questions. Nevertheless, lower federal courts have applied the *Garcetti* rule to faculty at public universities and upheld discipline of faculty members. For example, Juan Hong, a tenured professor of civil engineering at the University of California, Irvine criticized his college's hiring and promotion practices as violating university governance standards. He later sued when he was denied a merit raise, allegedly based on his statements. The trial court ruled that his statements were made in the course of his "official duties." The court explained: "[A] faculty member's official duties are not limited to classroom instruction and professional research. [His] professional responsibilities . . . a wide range of academic, administrative, and personnel functions in accordance with UCI's self governance principle." The court also held that the university "is entitled to unfettered discretion when it restricts statements an employee makes on the job and according to his professional responsibilities." The trial court's decision is currently being appealed in the Ninth Circuit federal appeals court.

The trial court's decision in *Hong* – and other similar judicial decisions around the country – raises serious concerns about the scope of academic freedom at public universities. In particular, these decisions seem to limit the right of faculty who criticize the administration in the course of performing their duties of institutional governance. Thus, the AAUP recommends that academic institutions clarify their policies to include faculty governance within the scope of academic freedom.

Because this judicial trend narrows the freedom of academics to participate in governance of their institutions and civic discourse in general, the Committee on Academic Freedom and Tenure has proposed that the

¹ American Association of University Professors (2009). "Protecting an Independent Faculty Voice: Academic Freedom After *Garcetti v. Ceballos*." <http://www.aaup.org/AAUP/comm/rep/A/postgarcettireport.htm> (accessed July 7, 2010)

language of Article X, Section 2 of the *University Statutes* be strengthened to more specifically define the scope of academic freedom and to affirm the freedom of the University of Illinois' academic staff to teach, conduct research, and participate in faculty governance and civic discourse without interference. The proposed changes to Section 2 also clarify that academic freedom is a right of all university staff who are engaged in teaching and research, including those who are not U.S. citizens.

RECOMMENDATION

The Senate Committee on University Statutes and Senate Procedures recommends approval of the following revisions to the *Statutes*. Text to be added is underscored and text to be deleted is indicated in [square brackets].

PROPOSED REVISIONS TO THE *STATUTES*, ARTICLE X, SECTION 2

1
2 Section 2. Academic Freedom
3

4 a. Academic freedom is the freedom to teach, both in and outside the classroom, to conduct research
5 and to publish the results of those investigations, and to address any matter of institutional policy
6 or action whether or not as a member of an agency of institutional governance. Academic staff
7 members have the freedom to speak to any matter of social, political, economic, or other interest
8 to the larger community, subject to the applicable academic standards of conduct.

9 [a.] b. It is the policy of the University to maintain and encourage full freedom within the law of inquiry,
10 discourse, teaching, research, and publication and to protect any member of the academic staff
11 against influences, from within or without the University, which would restrict the member's
12 exercise of these freedoms in the member's area of scholarly interest, as well as to maintain full
13 freedom of discourse regarding University policies and actions whether or not uttered as a
14 member of an agency of institutional governance. The right to the protection of the University
15 shall not, however, include any right to the services of the university counsel or the counsel's
16 assistants in any governmental or judicial proceedings in which the academic freedom of the staff
17 member may be in issue.

18 [b.] c. As a citizen, an [faculty] academic staff member may exercise the same freedoms as other
19 citizens without institutional censorship or discipline. International members of the academic
20 staff shall enjoy these same freedoms. An [faculty] academic staff member should be mindful,
21 however, that accuracy, forthrightness, and dignity befit association with the University and a
22 person of learning and that the public may judge that person's profession and the University by
23 the individual's conduct and utterances.

24 [c.] d. If, in the president's judgment, an [faculty] academic staff member exercises freedom of
25 expression as a citizen and fails to heed the admonitions of Article X, Section 2[b]c, the president
26 may publicly disassociate the Board of Trustees and the University from and express their
27 disapproval of such objectionable expressions.

28 [d.] e. An academic staff member who believes that he or she does not enjoy the academic freedom
29 which it is the policy of the University to maintain and encourage shall be entitled to a hearing on
30 written request before the Committee on Academic Freedom and Tenure of the appropriate
31 campus senate. Such hearing shall be conducted in accordance with established rules of
32 procedure. The committee shall make findings of facts and recommendations to the president
33 and, at its discretion, may make an appropriate report to the senate. The several committees may
34 from time to time establish their own rules of procedure.

UNIVERSITY STATUTES AND SENATE PROCEDURES

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