

EXECUTIVE SUMMARY

ENSURING ACADEMIC FREEDOM IN POLITICALLY CONTROVERSIAL ACADEMIC PERSONNEL DECISIONS

Politically controversial cases involving college and university teachers spurred the founding of the AAUP and have recurred frequently thereafter. The Association has noted with special concern recent cases arising out of the war on terror, the conflict in the Middle East, and a resurgence of the culture wars in such fields as health and the environment. The Association's Committee A on Academic Freedom and Tenure accordingly formed a special subcommittee to report on the factors underlying the current problem, to review the history and character of politically controversial academic personnel decisions, to identify weaknesses in the principles and decision-making procedures that ensure academic freedom in politically controversial cases, and to recommend enhanced protections to ensure academic integrity in the conduct of such cases.

Because of the length and detail of the resulting report, the subcommittee has prepared this executive summary to make its recommended principles and procedures readily accessible both to the academic community and to the public, and to highlight the need for institutions to incorporate these principles and procedures into their own regulations. The full report notes the recent developments that have heightened the problem of political intrusion into the academic personnel process and fostered a climate inimical to academic freedom in which partisan political interests threaten to overwhelm professional judgment in academic personnel proceedings. It then provides a definition of political intrusion, an overview of the safeguards to academic freedom from political intrusion set forth in AAUP policy, and a reappraisal of past political intrusions in academic personnel decisions, including the challenges the Association has confronted in defending politically controversial professors. After this introduction, the main body of the report provides a detailed analysis and explanation of the principles necessary to guide academic decision making regarding politically controversial personnel decisions and of the procedural safeguards required in the consideration of such decisions. A comprehensive list of these principles and safeguards concludes this executive summary, but readers who desire to understand fully the rationale for our recommendations should refer to the text of the entire report.

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Current political threats to academic freedom have intensified with the rapid growth of the Internet and new media that have made it possible for talk-show hosts, bloggers, and well-funded interest groups to supplement the trustees, politicians, corporate and religious groups, and journalists who previously put untoward pressure on the university. At the same time, the need for faculty members to contribute their expertise to public discourse and policy debates has increased. The protection of their unfettered expression, including the ability to espouse highly controversial and unpopular views, is an essential social responsibility of universities and colleges. As the joint 1940 *Statement of Principles on Academic Freedom and Tenure* explains:

“Institutions of higher education are conducted for the common good . . . [which] depends upon the free search for truth and its free exposition.” The freedom that the common good requires, however, can be hard to maintain, as we have learned from such prior experiences as the dismissals of controversial professors and subsequent constraints on academic discourse during and after the two world wars. These events teach us that political restrictions on academic expression must not be countenanced—even when most faculty members support or at least acquiesce in them. To avoid a recurrence of such situations, the contemporary political pressures on the academic community must be countered by emphasizing how free universities contribute to the common good even as they create political tensions between the academy and society that require the protection of academic freedom.

Political intrusion, the report notes, usually arises out of controversies over political ideology, religious doctrine, social or moral perspectives, corporate practices, or public policy—not more narrowly professional disagreements and disputes among academics. It may arise from within as well as from without the university. Political intrusion from within may occur when members of the university who are sensitive to political concerns engage in self-censorship or when politically motivated academics violate or disregard sound academic principles and procedures. It may also come from outside the university when, for example, private corporations or public officials seek to persuade universities to terminate particular research activities, programs, or the services of the faculty members involved.

The AAUP’s foundational 1915 *Declaration of Principles on Academic Freedom and Academic Tenure* and its 1940 *Statement of Principles* established safeguards for academic freedom from political intrusion largely by protecting the rights of individual academics. As the McCarthy era drew to a close in 1956, the Association’s report *Academic Freedom and Tenure in the Quest for National Security* forcefully outlined the links between and among the academic freedom of the university, of the profession, and of individual professors. The 1956 report underscored the need for the mutual protection of the rights of all within the university community, an admonition that the subcommittee finds highly applicable to the obligation of tenured faculty members to protect the rights of those without tenure—an ever-increasing class of academics whose academic freedom has been eroded not so much by political intrusion as by the deterioration of the tenure system that the AAUP has championed since 1915 as the bulwark of academic freedom.

From its inception, even as the AAUP sought to protect academic freedom by strengthening tenure and instituting procedural protections, it struggled with the particular difficulties of defending faculty members embroiled in political controversy. Beginning with professional economists who ran afoul of the conservative business community in the Association’s early days, the individuals who lost their positions for political reasons have been involved with some of the most controversial issues of their time. Whether by deviating from the hyperpatriotism of World War I, or refusing to answer questions about communism during the McCarthy era, or taking an unpopular stance toward the current conflict in the Middle East, the

protagonists in these academic-freedom struggles have tested the limits of permissible dissent within the academic, as well as the broader, community. What makes the recent spate of politically controversial cases particularly alarming is how many of them involve faculty members holding contingent appointments who can be dismissed without the procedural protections their tenured and tenure-track colleagues enjoy.

The AAUP has been responding to these new threats to academic freedom by releasing new policy statements emphasizing the rights of non-tenure-track faculty members and academic professionals and defending the integrity of the classroom. But even in cases where politically controversial individuals receive the full complement of AAUP-recommended procedural guarantees, there is increasing concern that mere adherence to due process or weak or substantively biased faculty committees may provide politicized decision making with a veneer of legitimacy. As the past century of political threats to academic freedom has revealed, although procedural protections—such as providing adequate notice, a statement of specific charges, and a hearing before one’s peers—are crucial to the defense of academic freedom, they may not be sufficient in themselves, especially in cases where the dissenting faculty member confronts a strong mainstream consensus in support of repression.

The fundamental principle is that academic evaluation should be grounded on considerations that substantially affect the performance of academic responsibilities. This means especially that the selection and interpretation of course material should be assessed solely on the basis of educationally appropriate criteria and that the exclusion of controversial material on other than professional grounds stifles academic freedom and the opportunity for student learning. Since academic professionals are best prepared to distinguish professional from political or other extraneous concerns, the procedures recommended to implement these principles seek to ensure and give great weight to the findings of collegial committees.

We therefore recommend the following principles and procedures to enhance the protection of academic freedom in politically controversial academic personnel decisions:

Principles To Guide Decision Making Regarding Politically Controversial Academic Personnel Decisions:

The fundamental principle is that *all* academic personnel decisions, including new appointments and renewal of existing appointments, should rest on considerations that demonstrably pertain to the effective performance of the academic’s professional responsibilities.

A. Assessing Charges of Indoctrination in the Classroom

1. Only the proven demonstration of the use of “dishonest tactics” to “deceive students”—not the political views, advocacy, or affiliations of the faculty member—may provide grounds for adverse action.

2. In a politically controversial proceeding, the admonition to tailor questions narrowly to permissible issues of academic fitness and to avoid any inquiry into political affiliations and beliefs is plainly imperative.
3. Neither the expression nor the attempted avoidance of value judgments can or should in itself provide a reasonable ground for assessing the professional conduct and fitness of a faculty member.
4. "So long as opinion and interpretation are not advanced and insisted upon as dogmatic truth, the style of presentation [in the classroom] should be at the discretion of the instructor" (*Freedom in the Classroom*).
5. Whether a specific matter or argument is essential to a particular class or what weight it should be given is a matter of professional judgment, based on the standards of the pertinent disciplines and consistent with the academic freedom required if the disciplines themselves are to remain capable of critical self-reflection and growth.
6. Exclusion of controversial matter, whether under the persistent-intrusion clause of the 1970 Interpretive Comment 2 on the 1940 *Statement* or in the name of protecting students from challenges to their cherished beliefs, stifles the free discussion necessary for academic freedom.

B. Collegiality and Civility Are Not Appropriate Independent Criteria for Evaluation

The academic imperative is to protect free expression, not collegiality. In keeping with the general admonition that evaluation should focus on professional fitness, the statement *On Collegiality as a Criterion for Faculty Evaluation* maintains that whatever is pertinent with regard to collegiality should emerge through an evaluation based on the standard considerations of teaching, scholarship, and service.

C. Consideration of Extramural Speech in Politically Controversial Personnel Decisions

1. Consideration of the manner of expression is rarely appropriate to an assessment of academic fitness.
2. An administration should not discipline a faculty member for an off-campus statement that the faculty member could freely make on campus.
3. We find no basis upon which an institution might properly discipline a faculty member for extramural speech unless that speech implicates professional fitness.
4. We recommend, therefore, that institutions be especially careful in bringing charges shortly after controversial extramural expression and that, should disciplinary hearings be found necessary, the administration, board, and faculty all take special care to ensure full, fair, and equitable proceedings and judgments.
5. Academic institutions should take special care to ensure that the sanctions resulting from judicial determinations of criminal activity involving expressive conduct are not unnecessarily compounded by institutional sanction: for faculty, as for students, institutional authority should never be used merely to duplicate the functions of general laws. If, however, institutions are legally compelled to take such action, or if the faculty committee considers it pertinent to an evaluation of professional fitness, then academic

hearings should be confined to the issue of whether the alleged conduct has substantially impaired the professional fitness of the academic appointee.

D. Compelled Political Declarations: Loyalty Oaths and Disclaimers

A faculty member's principled refusal to sign a loyalty oath should not be a justifiable reason for not appointing a faculty member or for terminating an appointment.

E. Civil Disobedience

In matters involving civil disobedience, as in disciplinary or other personnel proceedings generally, assessment of a particular charge of misconduct should be considered in the light of the faculty member's professional record considered as a whole. Institutions should be similarly cautious about imposing sanctions on the basis of inferences about a controversial individual's supposed lack of remorse and possible future activities.

Procedural Safeguards Required In The Consideration Of Politically Controversial Academic Personnel Decisions

A. Sound and Fair Policies and Procedures.

The institution should have in place sound and fair procedures consistent with AAUP-recommended standards. Faculty members and administrators should be familiar with these procedures and understand the need to safeguard academic freedom.

B. Measures to Deter Political Intrusion into Routine Personnel Processes

1. Complaints regarding alleged classroom statements forwarded by outside agencies or individuals should be generally ruled out of consideration in initiating or conducting personnel reviews.
2. When complaints regarding alleged classroom speech arise from or are promoted by student political groups, the complaints should be respected only to the extent merited by the complaints and only when they are based on evidence from students who were actually enrolled in the course or courses in which the alleged inappropriate conduct occurred and who were present to observe that conduct.
3. Established policies should provide for thorough professional review and care in the selection of outside expert reviewers. In the event of politically controversial reviews, special care should be taken to ensure that those external and internal academics invited to provide a professional evaluation are able and willing to conduct a review without regard to political concerns and in keeping with appropriate scholarly and disciplinary standards.

C. Measures to Ensure Dispassionate Review in Passionate Circumstances

1. Although some institution-specific faculty review procedures, such as those for hearings on charges of professional misconduct or sexual harassment, may not call for this

preliminary consultation, the AAUP generally considers that such a faculty review is necessary in all cases and is essential prior to the filing of charges in any case arising from or in the midst of a political controversy.

2. To the extent that members of a preliminary consultative or hearing committee believe the process is too hasty or ill-considered, or the outcome predetermined, they must explain their views in the advice they provide to the president and firmly recommend that, if the hearing goes forward despite their recommendation, the administration should defer the proceeding until it can occur free of undue political constraints or, failing this, at least without injudicious haste and with all the essential procedural safeguards. If, or to the extent that, the president proceeds regardless of this advice, the public nature of the decision to proceed should relieve the committee of any impediment to explaining publicly its concerns to and requesting support from the faculty senate or other faculty governance body that has the responsibility to scrutinize the process and to ensure that the faculty member involved receives all the procedural protections required for safeguarding academic freedom.

D. Weighing Charges

In politically controversial cases, the need for specific charges narrowly formulated with “reasonable particularity” does not relieve the committee or the governing board of the responsibility to weigh these charges in the light of the faculty member’s “entire record as a teacher and scholar” (1970 Interpretive Comment 4 on the 1940 *Statement of Principles*).

E. Composition of Academic Hearing Committees

1. It is essential that the hearing committee be elected by the faculty or appointed by an appropriate elected faculty body.
2. In rare cases, experts from outside the university may be appointed to a hearing committee. They could be designated jointly by the administration and the accused faculty member, chosen separately by them, selected by the hearing committee, or engaged through some combination of these methods at the committee’s discretion.

F. Confidentiality and Transparency

1. The committee should give great weight to the preference of the faculty member in these circumstances, both as to the openness of the hearing and the right to speak publicly on the issues. Of course, if the faculty member speaks out publicly or insists on an open hearing, the committee and the administration have a right to respond. The deliberations of the committee should be conducted in private.
2. The governing board would be well advised to follow the advice of the faculty committee, particularly in politically controversial cases in which academic freedom is at stake. If, after such consideration, the board nonetheless reaches a determination contrary to the recommendations of the hearing committee or increases the severity of sanctions, the board must provide the faculty committee and the individual with

written, detailed, and compelling reasons for reversing or substantially altering the committee's recommendation.

G. Ensuring Substantive Due Process

The decision should be one that an experienced, informed, and disinterested academic might reach on the basis of clear and convincing evidence and the academic principles at issue, even if it is not the only possible such decision.

H. Obligations of the Hearing Committee

1. In politically controversial dismissal cases, a written, reasoned opinion is essential.
2. Substantive due process requires that the written reasons resulting from such academic proceedings be consistent with the evidence and with sound academic principles.

I. Obligations of the Administration and the Governing Board

In those politically controversial cases in which a governing board exercises its extraordinary authority to reverse or substantially alter the faculty recommendation, it is also imperative that the board fully meet its obligation to provide written compelling reasons stated in detail. The board's reasoning must be consistent with the basic requirement that "[a]dequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens" (Regulation 5a of the *Recommended Institutional Regulations on Academic Freedom and Tenure*).