

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT
CASE NO. SJC-13472

HENRY H. WORTIS ET AL.,

Plaintiffs-Appellants,

v.

THE TRUSTEES OF TUFTS COLLEGE,

Defendant-Appellee.

BRIEF OF AMICUS CURIAE
THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS
IN SUPPORT OF THE APPELLANTS AND SEEKING REVERSAL OF THE
SUPERIOR COURT'S JUDGMENT

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INTEREST OF AMICUS CURIAE

The American Association of University Professors (“AAUP”) is a non-profit organization with a membership that includes over 40,000 faculty members, librarians, graduate students, and other academic professionals. The AAUP’s mission is to advance academic freedom and shared governance; to define fundamental professional values and standards for higher education; to promote the economic security of faculty, academic professionals, graduate students, post-doctoral fellows, and all those engaged in teaching and research in higher education; to organize the higher education community in pursuance of its shared goals; and to ensure higher education’s contribution to the common good.

Founded in 1915, the AAUP has played a central role in establishing and maintaining academic freedom and tenure as essential values in American higher education for more than a century. *See generally* Walter P. Metzger, *The 1940 Statement of Principles on Academic Freedom and Tenure*, 53 LAW & CONTEMP. PROBS. 3 (1990); William A. Kaplin & Barbara A. Lee, THE LAW OF HIGHER EDUCATION 706–07 (5th ed. 2013) (hereinafter, “LAW OF HIGHER EDUCATION”). Throughout this time, the AAUP—both independently and in concert with other higher education organizations—has published numerous reports, statements, and policy documents, including the *1940 Statement of Principles on Academic Freedom and Tenure*, AAUP POLICY DOCUMENTS AND REPORTS 13–19 (11th ed. 2015)

(hereinafter, “1940 Statement”). These statements are widely respected and followed by American colleges and universities, and the Supreme Court of the United States and other courts have recognized them as authoritative expressions of principles adhered to by the academic profession. *E.g.*, *Bd. of Regents v. Roth*, 408 U.S. 564, 579 n.17 (1972); *Tilton v. Richardson*, 403 U.S. 672, 681–82 (1971) (recognizing institutions’ subscription to the *1940 Statement* as evidence that they were “characterized by an atmosphere of academic freedom rather than religious indoctrination”); *Gray v. Bd. of Higher Educ.*, 692 F.2d 901, 907 (2d Cir. 1982) (observing that “AAUP policy statements have assisted the courts in the past in resolving a wide range of educational controversies,” and collecting supporting caselaw); *Adamian v. Jacobsen*, 523 F.2d 929, 934–35 (9th Cir. 1975) (relying on AAUP advisory letter to further interpret university policy on extramural speech that was “adopted almost verbatim” from the *1940 Statement*); *McAdams v. Marquette University*, 914 N.W.2d 708, 730–33 (Wis. 2018) (relying on the *1940 Statement* and subsequent AAUP-authored explanatory documents to construe the scope of “academic freedom” guaranteed by a university’s faculty handbook).

In addition, the AAUP frequently submits amicus curiae briefs to federal and state courts in cases that implicate AAUP policies and that raise issues important to faculty members and higher education. *E.g.*, *DeWeese-Boyd v. Gordon College*, 163 N.E.3d 1000 (Mass. 2021); *Pernell v. Lamb*, No. 22-13992 (11th Cir. 2023);

McAdams, 914 N.W.2d at 708; *NLRB v. Yeshiva University*, 444 U.S. 672 (1980); *Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967); *Demers v. Austin*, 746 F.3d 402 (9th Cir. 2014).¹

The AAUP has a particularly strong interest in the present case due to the potentially wide-ranging ramifications that this Court's ruling may have for American higher education. As this brief explains, the time-honored understanding of tenure, articulated by the AAUP and long adhered to by the academic profession as a whole, includes a bedrock guarantee of economic security and academic freedom. That understanding of tenure applies in all situations, not just the present case. Still, the TUSM compensation plan at issue here is notable due to the harshness of its provisions, which Tufts unilaterally imposed on faculty. By showing how the Tufts plan is fundamentally incompatible with the principles of tenure, economic security, and academic freedom, the AAUP hopes that this brief will assist this Court in issuing a decision that provides clear guidance to universities and thereby averts similar efforts in the future.

RULE 17(C)(5) DECLARATION

The AAUP declares that: (a) no party or party's counsel authored this brief in whole or in part; (b) no party or party's counsel contributed money that was intended

¹ A list and summary of other amicus briefs recently filed by the AAUP is available at <https://www.aaup.org/our-work/legal-program/amicus-briefs/>.

to fund preparing or submitting this brief; (c) no person or entity—other than the amicus, its members, or its counsel—contributed money that was intended to fund preparing or submitting this brief;² and (d) neither amicus nor its counsel represent or have represented any of the parties to the present appeal in another proceeding involving similar issues, or were a party or represented party in a proceeding or legal transaction that is at issue in the present appeal.

SUMMARY OF THE ARGUMENT

I. When Tufts University School of Medicine (“TUSM” or “Tufts”) granted Plaintiffs tenure, it promised them “academic freedom” and “economic security.” In the words of Tufts’ Academic Freedom and Tenure Policy (“AFTR Policy”), which is part of the TUSM Faculty Handbook: “Academic freedom is essential to the free search for truth and its free exposition and applies to both teaching and research,” and “[t]enure is a means to . . . [a] sufficient degree of economic security to make the profession attractive to men and women of ability.” Tufts took this and other relevant language, nearly verbatim, from the *1940 Statement*, and by adopting it, Tufts bound itself, as a matter of contract law, to respect Plaintiffs’ “economic security” and “academic freedom,” not as ad hoc or idiosyncratic terms but as these concepts are understood by the academic profession.

² In the interest of full disclosure, the AAUP states that it may seek grant funding from the AAUP Foundation, a Delaware non-profit corporation, for costs associated with preparing and filing this brief.

II-A. As one of the principal architects of the *1940 Statement* and the definitive voice of the academic profession on issues concerning academic freedom, tenure, and economic security for more than 100 years, the AAUP's interpretation of these concepts is authoritative and will provide vital guidance to this Court in construing the Tufts AFTR Policy at issue in this case. The AAUP has explained that the term "economic security," as used in the *1940 Statement*, consists of two guarantees: (1) that faculty will enjoy "a sufficient degree of economic security to make the profession attractive to men and women of ability," which includes a salary adequate to the maintenance of financial independence; and (2) that faculty will not be dismissed or sanctioned without academic due process. These guarantees of economic security form the backbone of tenure and the mainstay of academic freedom, an essential component of which is the freedom of faculty to engage in research without being subjected to undue pressure from governing boards, university administrators, or other powerful influences.

II-B. When Tufts unilaterally imposed a draconian set of measures that conditioned a substantial portion of faculty salary on obtaining external grant funding and inflicted punitive reductions in lab space and full-time status for non-compliance, it ran roughshod over these guarantees of economic security and academic freedom, and thereby breached its contracts with Plaintiffs.

III. That TUSM is a medical school makes no difference to this analysis. Medical schools, like other institutions of higher education, must comply with professional standards of academic freedom, tenure, and economic security. Cognizant of the modern realities of medical schools, the AAUP has acknowledged, in a report entitled *Tenure in the Medical School*, some limited circumstances in which medical schools may permissibly develop distinct policies pertaining to salary and tenure. But those circumstances are not present in this case. This case involves a medical school’s unilateral imposition of an exceptionally severe set of policies that are fundamentally incompatible with tenure, economic security, and academic freedom, as the academic community has long understood those concepts.

The AAUP therefore respectfully urges this Court to reverse the Superior Court’s judgment and reinstate Plaintiffs’ claims against Tufts.

ARGUMENT

I. Tufts contractually bound itself to respecting Plaintiffs’ “economic security” and “academic freedom,” as those concepts are articulated in the *1940 Statement* and understood by the academic profession.

When Tufts University School of Medicine granted Plaintiffs tenure, it promised them “academic freedom” and “economic security.” In the words of Tufts’ Academic Freedom and Tenure Policy (“AFTR Policy”), which is part of the TUSM Faculty Handbook: “Academic freedom is essential to the free search for truth and its free exposition and applies to both teaching and research,” and “[t]enure is a

means to . . . [a] sufficient degree of economic security to make the profession attractive to men and women of ability.”

Tufts did not pluck this language out of thin air. It deliberately took these words—virtually verbatim—from the *1940 Statement of Principles on Academic Freedom and Tenure*, which was jointly formulated by the AAUP and the Association of American Colleges and Universities, has been endorsed by more than 250 scholarly and educational organizations, and has been incorporated into hundreds of university and college faculty handbooks. *See* AAUP, *Endorsers of the 1940 Statement*, <https://www.aaup.org/endorsers-1940-statement>. Adherence to the *1940 Statement* has been recognized as one of the defining standards of an institution’s inclusion in the broader higher education community. *See* LAW OF HIGHER EDUCATION, at 704 (“Academic Freedom traditionally has been considered to be an essential aspect of higher education in the United States.”).³

For this very reason, courts routinely look to the *1940 Statement* for guidance in understanding and applying academic freedom and other principles, including in the context of contract interpretation. As one court has explained, the *1940 Statement* “represents widely shared norms within the academic community, having achieved

³ *See also* Jamie Darin Prekert, *Liberty, Diversity, Academic Freedom, and Survival: Preferential Hiring Among Religiously-Affiliated Institutions of Higher Education*, 22 HOFSTRA LAB. & EMP. L.J. 1, 57–58 (2004) (observing that “the 1940 Statement has been the authoritative document shaping the understanding of, and prescribing the procedures necessary to protect, academic freedom”).

acceptance by organizations which represent teachers as well as organizations which represent college administrators and governing boards,” and thus “the propriety of . . . considering [it] in interpreting [a] contract . . . could hardly be questioned.” *Browzin v. Catholic Univ. of Am.*, 527 F.2d 843, 847 n.8 (D.C. Cir. 1975); accord *Adamian*, 523 F.2d at 934–35; *McAdams*, 914 N.W.2d at 730–33.

By incorporating language taken from the *1940 Statement* directly into the TUSM faculty handbook, Tufts bound itself, as a matter of contract law, to respecting the “economic security” and “academic freedom” of its faculty. Such incorporation is not merely hortatory, but generally creates a binding obligation between the institution and the faculty. See *McAdams*, 914 N.W.2d at 730; LAW OF HIGHER EDUCATION, at 705. Moreover, Tufts bound itself, not to an idiosyncratic or ad hoc interpretation of these terms, but to the particular meanings that these concepts have come to hold within the academic profession. See *Greene v. Howard University*, 412 F.2d 1125, 1135 (D.C. Cir. 1969) (“Contracts are written, and are to be read, by reference to the norms of conduct and expectations founded upon them. This is especially true of contracts in and among a community of scholars, which is what a university is. *The readings of the marketplace are not invariably apt in this non-commercial context.*” (emphasis added)); Steven Poskanzer, HIGHER EDUCATION AND THE LAW 20–21 (2002) (noting that “general custom and usage within the broader academic community [are looked to] to flesh out the terms of the

institution-faculty contract”); LAW OF HIGHER EDUCATION, at 599 (noting that it is proper for a court to “look beyond the policies of the institution to the manner in which faculty employment terms are shaped in higher education generally” and that courts may therefore refer to “academic custom and usage” in resolving contractual disputes).

II. As AAUP statements explain, “economic security” means that faculty will enjoy a degree of security sufficient to make the profession attractive to men and women of ability and to maintain their financial independence, and that they will not be dismissed or sanctioned without being afforded academic due process; by unilaterally imposing its draconian compensation plan and other punitive measures, Tufts violated Plaintiffs’ economic security and academic freedom, and thereby breached its contracts with them

A. AAUP statements provide authoritative guidance for this Court’s interpretation of the terms “economic security” and “academic freedom.”

As one of the principal architects of the *1940 Statement* and the definitive voice of the academic profession on issues concerning academic freedom, tenure, and economic security for more than 100 years, the AAUP’s interpretation of these concepts will provide vital guidance to this Court in construing the Tufts AFTR Policy at issue in this case. As explained in the Interest of Amicus Curiae section of this brief, above, the AAUP’s understanding of academic freedom, tenure, and economic security—as those concepts are used in the *1940 Statement*—is considered authoritative and respected by courts and universities alike. *See Mayberry v. Dees*, 663 F.2d 502, 513 (4th Cir. 1981) (noting that the AAUP was a framer of “the 1940

Statement of Principles on Academic Freedom and Tenure, the fundamental document on the subject”); *Adamian*, 523 F.2d at 935 (“That the University has adopted the [1940] Statement of Principles virtually word for word suggests that it also accepts the narrowing interpretation placed on it by the Association.”); *McAdams*, 914 N.W.2d at 730, 733.

The AAUP has explained that the term “economic security,” as used in the *1940 Statement*, consists of a two-part guarantee: (1) that faculty will enjoy “a sufficient degree of economic security to make the profession attractive to men and women of ability,” which entails a salary adequate to the maintenance of financial independence; and (2) that faculty will not be dismissed or sanctioned without being afforded academic due process. *1940 Statement*, at 14 (referring to the protections provided by tenure as offering “a sufficient degree of economic security” to make the academic calling attractive to talented individuals); *see also Tenure in the Medical School*, AAUP POLICY DOCUMENTS AND REPORTS 73, 75 (11th ed. 2015) (hereinafter, “*Tenure in the Medical School*”). This dual guarantee forms the backbone of tenure⁴ and the mainstay of academic freedom, an essential component

⁴ “Tenure” refers to the principle that, after the expiration of a probationary period, faculty should be entitled to guaranteed employment, subject to termination or other severe sanction only for certain, specified reasons and only after certain procedural safeguards have been satisfied. *1940 Statement*, at 15 (explaining that the guarantee of “permanent or continuous tenure” means that faculty’s “service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies”); *Recommended*

of which is the freedom of faculty to engage in research without being subjected to undue pressure from governing boards, university administrators, or other powerful influences.⁵ *1940 Statement*, at 14 (affirming that faculty “are entitled to full freedom in research and in the publication of the results”). A university’s adherence to the principle of academic freedom requires that it abjure “any restriction upon” the freedom of faculty to research. *1915 Declaration of Principles on Academic Freedom and Academic Tenure*, AAUP POLICY DOCUMENTS AND REPORTS 3, 8

Institutional Regulations on Academic Freedom and Tenure, AAUP POLICY DOCUMENTS AND REPORTS 79, 82 (11th ed. 2015) (allowing for termination in accordance with program discontinuance for educational reasons as determined by the faculty). The *1940 Statement*’s reference to a guarantee of “permanent or continuous tenure” does not simply mean the continuance of an employment relationship between the faculty member and the university, regardless of the terms and conditions of employment. As the *Recommended Institutional Regulations on Academic Freedom and Tenure* explain, it means that imposing “dismissal or other severe sanction” on a tenured faculty member is prohibited unless such action is taken in compliance with the requirements of academic due process. *Id.* at 85.

⁵ Other essential elements of academic freedom are the freedom of faculty to teach; the freedom of faculty to engage in intramural expression and action, which means to speak and act as participants in the governance of the institution; and the freedom of faculty to engage in extramural expression and action, which means the freedom to speak and act as citizens. *1940 Statement*, at 14; *On the Relationship of Faculty Governance to Academic Freedom*, AAUP POLICY DOCUMENTS AND REPORTS 123–25 (11th ed. 2015) (“The academic freedom of faculty members includes the freedom to express their views . . . on matters having to do with their institution and its policies . . .”).

(11th ed. 2015) (hereinafter, “*1915 Declaration*”).⁶ Impermissible infringements upon this freedom include “any exercise of pressure upon professorial opinions and utterances,” including “pressure from vested interests [which] may, sometimes deliberately and sometimes unconsciously, sometimes openly and sometimes subtly and in obscure ways, be brought to bear upon academic authorities.” *Id.* at 8–9.

The notion of tenure therefore includes an assurance of both economic security and academic freedom, not just in this case but in general. When properly understood, it becomes clear that economic security is inextricably intertwined with the principle of academic freedom. Economic security in the sense of a guaranteed degree of security sufficient to attract persons of ability to the profession and a salary adequate to the maintenance of financial independence serves as an essential safeguard for academic freedom because it removes one of the chief avenues by which faculty may be brought to conform their research to the whims of powerful interests: the application of undue financial pressure. Similarly, economic security in the form of restrictions on when a faculty member can be dismissed or sanctioned guarantees stability in employment and thereby helps to preserve academic freedom by preventing the use of discipline as a means of infringing upon the freedom of faculty to engage in research and other activities.

⁶ The *1915 Declaration* is the AAUP’s founding document and was the first authoritative statement concerning academic freedom in the United States. LAW OF HIGHER EDUCATION 706–07.

B. Tufts breached its contracts with Plaintiffs because its draconian compensation plan and punitive policies concerning laboratory space and reductions in faculty full-time status violated their economic security and academic freedom.

As just explained, “economic security” entails a two-part guarantee of reasonable security and stability in the terms and conditions of employment enjoyed by faculty. The Tufts compensation plan, and the attendant Tufts policies relating to laboratory space and reduction in full-time faculty status, plainly ran afoul of this guarantee. First, the sheer size of the salary reduction faced by faculty who did not meet the external grant funding requirements utterly undermined any semblance of a degree of security sufficient to attract talented individuals to the profession and for faculty to maintain their financial independence. What is more, the consequences faced by faculty who did not meet those requirements—reduction in, or elimination of, lab space, and reduction in full-time status—were extremely punitive and served only to further reduce the ability of faculty to achieve a level of compensation necessary to the maintenance of financial independence.

Second, the unilateral manner by which Tufts imposed these policies violated Plaintiffs’ economic security because it bypassed the normal procedures of academic due process entirely. Salary reductions—certainly of the size contemplated by the Tufts policy—are, without question, “severe sanctions.” *See, e.g., AAUP Report on Stillman College, available at <https://www.aaup.org/report/academic-freedom-and-tenure-stillman-college/>* (“In the investigating committee’s view, the deprivation of

nearly a half-month's salary constituted a severe sanction.”). So, too, are sanctions such as reductions in a faculty member's full-time status or restrictions on access to laboratory space, because those actions by Tufts significantly impaired the compensation and conditions under which faculty worked.

The Tufts policies also plainly violated the contractual guarantee of “academic freedom.” Tufts' new, unilateral requirement that faculty obtain a large amount of external research funding—or else face severe salary cuts and additional consequences that would render making ends meet even more difficult—infringed upon Plaintiffs' freedom to research because it unduly pressured them into conforming their research to the desires of the external sources of funding. The distortive effect of such a policy was therefore just as much a violation of academic freedom as overtly penalizing faculty researchers out of opposition to the subject matter of their research or the conclusions reached by their research. Moreover, the unilateral imposition of this policy by Tufts ran contrary to the basic premise that the faculty as a whole must have primary responsibility over matters within its realm of competence and authority, which includes research. *See Statement on Government of Colleges and Universities*, AAUP POLICY DOCUMENTS AND REPORTS 117, 120 (11th ed. 2015) (“[T]he faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, *research*, faculty

status, and those aspects of student life which relate to the educational process.” (emphasis added)).⁷

In sum, when Tufts unilaterally imposed an extraordinarily harsh set of measures that conditioned a substantial portion of faculty salary on obtaining external grant funding and inflicted punitive reductions in lab space and full-time status for non-compliance, it ran roughshod over the contractual guarantees of economic security and academic freedom, and thereby breached its contracts with Plaintiffs.

III. That TUSM is a medical school did not authorize it to breach Plaintiffs’ contracts with impunity; it was required to comply with its contractual guarantees of “economic security” and “academic freedom,” and no special circumstances justified its drastic violation of those guarantees.

Medical schools, like other institutions of higher education dedicated to the common good, must respect fundamental professional standards of academic freedom, tenure, and economic security consistent with the *1940 Statement. Academic Freedom in the Medical School*, AAUP POLICY DOCUMENTS AND REPORTS 71–72 (11th ed. 2015) (hereinafter, “*Academic Freedom in the Medical*

⁷ The 1966 *Statement on Government of Colleges and Universities*—jointly formulated by the AAUP, the American Council on Education, and the Association of Governing Boards of Universities and Colleges—is the classic statement on shared governance calls for shared responsibility among the different components of institutional government and specifies areas of primary responsibility for each, with the weight of each group’s voice on a particular issue determined by the extent of its responsibility for and expertise on that issue.

School”) (emphasizing the fundamental importance of the freedom of medical school faculty to research, to teach, and to question and criticize). Indeed, both of the AAUP’s statements concerning medical schools—*Academic Freedom in the Medical School* and *Tenure in the Medical School*—are founded upon the *1940 Statement* and simply apply its general principles to the medical school setting. *Id.*; *Tenure in the Medical School*, at 75–76 (repeatedly referencing and relying upon the *1940 Statement* and emphasizing that “the specific realities of the teaching and research environment in medical schools” are not “so peculiar as to warrant placing all faculty in such schools . . . outside the generally accepted standards set forth in the *1940 Statement* and derivative policies of [the AAUP]”).

Within the authoritative framework provided by the *1940 Statement*, the AAUP has acknowledged that modern medical schools have certain unique features that distinguish them from other academic institutions. For example, in *Academic Freedom in the Medical School*, the AAUP noted that “[t]he modern medical school has many of the attributes of a complex, market-driven healthcare system with professors often acting as entrepreneurs in research and in patient care.” *Id.* at 71. With respect to the freedom to research, the statement observed that “[t]he intense competition for private or governmental funding can affect the choice of research subjects, and in some instances, scientists in academic medicine are finding it

difficult to secure funding for unorthodox research or research on matters that are politically sensitive.” *Id.*

But far from justifying a wholesale disregard for basic academic standards, these tensions mean that “[a]cademic freedom should be especially nurtured and supported” in medical schools. *Id.* Thus, the AAUP has forcefully reaffirmed the freedom to research in medical schools, stating, in part, that: “The freedom to pursue research and the correlative right to transmit the fruits of inquiry to the wider community—without limitations from corporate or political interests and without prior restraint or fear of subsequent punishment—are essential to the advancement of knowledge.” *Id.*

At the same time, the AAUP has acknowledged some limited circumstances in which medical schools may permissibly develop policies pertaining to salary and tenure that may be distinct from other institutions. In a report entitled *Tenure in the Medical School*, the AAUP noted the requirement by some medical schools that certain categories of faculty (primarily clinical faculty) obtain external funding for a portion of their salary. *Id.* at 73–75. After quoting the *1940 Statement*’s references to academic freedom and economic security, the report observed that “the ability of the faculty member to defend academic freedom, his or her own or the principle in general, is linked to whether the salary is adequate to the maintenance of financial independence.” *Id.* at 75. The report arrived at an accommodation by recognizing

the potential permissibility of certain alternative arrangements as to tenure and salary in medical schools according to the nature of faculty appointments, but only insofar as such arrangements do not undermine academic freedom or tenure. Furthermore, the report repeatedly indicated that certain faculty appointments, such as those held by the Plaintiffs in this case—tenured, research-oriented faculty positions in the basic sciences—offer the least justification for departing from the basic academic principles applicable to every other institution of higher education. *Id.* at 75–76 (“[F]aculty members who offer medical education under substantially the same expectations of performance applicable to tenure-track faculty in other disciplines at that institution must have the same opportunity to benefit from freedom of inquiry . . . includ[ing] sufficient economic security to provide a safeguard for the exercise of academic freedom”); *see also id.* at 76 (“[W]e see no reason to consider the extension of such a practice [lengthening the probationary period] to researchers in the basic sciences when expectations for the award of tenure conform to those extant in connection with appointments elsewhere in the university.”).

The result of this application of the *1940 Statement* can be found in Statement of Policy No. 5 of the report. After stressing the importance of tenure to both academic freedom and economic security, the AAUP’s report emphasizes that all faculty should be guaranteed a “minimum salary adequate to the maintenance of support at a level appropriate to faculty members in the basic sciences, . . . on a

formula to be determined . . . after consultation with a representative body of the faculty.” *Id.* at 76–77. The report then underscores that “[t]he faculty of a particular school should be involved in arriving at a specific recommendation” regarding an appropriate guarantee. *Id.* at 76 & n.9. Furthermore, the report specifies what is *not* consistent with the guarantee of economic security: “The unilateral administrative abrogation of a portion of that salary, absent a prior understanding as to the extent of its guarantee,” which “may reasonably be interpreted not as an exercise of fiduciary responsibility but as an attack on the principle of tenure.” *Id.* at 77. In that same vein, the report emphasizes that “the participation of the faculty in governance is as essential to educational quality in the medical school context as in any other part of the university.” *Id.*

The limited circumstances in which a policy conditioning a portion of faculty salary on obtaining external grant funding may be permissible are not present in this case. As explained above, the sheer size of the reduction in faculty salary for noncompliance with the requirement, particularly when combined with the additional penalties in terms of reduction in laboratory space and cuts to full-time states, is too large and does not assure a “minimum salary adequate to the maintenance of support at a level appropriate to faculty members in the basic sciences.” In addition, it is undisputed that Tufts acted unilaterally when it imposed the policy on Plaintiffs, and that unilateral implementation runs afoul of the

requirement that such a policy be implemented only “after consultation with a representative body of the faculty.”

The Tufts compensation policy and related measures violate fundamental professional standards of tenure, economic security, and academic freedom, which Tufts expressly adopted in its AFTR Policy, which are defined in the *1940 Statement*, and which have been further explained in *Tenure in the Medical School*.

CONCLUSION

This case involves a medical school’s unilateral imposition of a particularly severe set of faculty compensation policies that are fundamentally incompatible with tenure, economic security, and academic freedom, as those terms have long been understood by the academic community. With the aid of the AAUP’s authoritative statements and reports, this Court should find that Tufts breached its contracts with Plaintiffs. The AAUP accordingly urges this Court to reverse the judgment below.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(k) of the Massachusetts Rules of Appellate Procedure, I hereby certify that this brief complies with the Massachusetts Rules of Appellate Procedure. This brief is in 14-point Times New Roman font and is 4,503 non-excluded words. It was prepared in Microsoft Word for Microsoft 365.

/s/ James A.W. Shaw
James A.W. Shaw

CERTIFICATE OF SERVICE

Pursuant to Rule 13(e) of the Massachusetts Rules of Appellate Procedure, I hereby certify that this document was served on counsel for Plaintiffs-Appellants and Defendant-Appellees via the Massachusetts Tyler Host electronic filing system.

/s/ James A.W. Shaw
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