

UNIVERSITY OF ILLINOIS
URBANA-CHAMPAIGN SENATE

Committee on University Statutes and Senate Procedures
(Final; Action)

SP.15.07 Revisions to the *Statutes*, Article X, Section 2 – Academic Freedom

BACKGROUND

On December 6, 2010, the Urbana-Champaign Senate voted to approve SP.10.11 authorizing changes to the *University Statutes*, Article X, Section 2 governing Academic Freedom. Specifically, SP.10.11 included in its definition of academic freedom activities addressing “any matter of institutional policy or action whether or not as a member of an agency of institutional governance.” In addition, SP.10.11 extended the provisions governing academic freedom to all academic staff members. Appendix A contains the text of SP.10.11.

After the Senates for the Chicago and Springfield campuses adopted these changes to the *University Statutes*, the University Senates Conference (USC) forwarded SP.10.11 to the President. After considering these amendments, the President and his staff raised concerns about the language. A small working group including members of USC and the President’s staff met to make revisions to address those concerns. USC approved those revisions, designated ST-72 and presented in this proposal, on March 18, 2014. In forwarding ST-72 to the three campuses, the Chair of USC stated that ST-72 offered “stronger language that better defines who is covered in Article X, Section 2 and removes ambiguity between references to academic freedom and to First Amendment rights.” Appendix A also contains the text of ST-72.

The Senate Committee on Academic Freedom and Tenure (AFT) reviewed ST-72 and concluded that the proposed language clarified the objectives of the original amendments to Article X – extending academic freedom to participation in shared governance. AFT did not address the proposed changes to the coverage for academic staff.

In its review of ST-72, the Senate Committee on University Statutes and Senate Procedures (USSP) regrets that ST-72 restricts coverage to academic staff members “directly engaged in teaching and research,” a limitation that did not appear in SP.10.11 as previously adopted. In addition, USSP members found the phrasing of the paragraph 2.a of SP.10.11 preferable because it was clearer and more straightforward. Yet most members thought that the changes did not affect the meaning of academic freedom in a significant way. USSP also notes that the last sentence of paragraph 2.a of SP.10.11 has been moved to paragraph 2.c, and the last sentence of paragraph 2.c has been incorporated into paragraph 2.d; these rearrangements may somewhat clarify the text, and do not seem to change its meaning.

RECOMMENDATION

The Senate Committee on University Statutes and Senate Procedures and the Senate Committee on Academic Freedom and Tenure recommend approval of the following revisions to the *Statutes*. Text to be added is underscored and text to be deleted is indicated by ~~strikeout~~ (e.g., ~~sample text for deletion~~).

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

1
2 Section 2. Academic Freedom

- 3
4 a. Academic freedom includes the freedom to teach, both in and outside the classroom, to conduct
5 research and to publish the results of those investigations. The practice of shared governance that
6 structures institutional decision-making depends on the right of a member of the faculty, or an
7 academic staff member directly engaged in teaching or research, to address any matter of
8 institutional policy or action, whether or not as a member of an agency or institutional
9 governance, without fear of retaliation. This right is a core aspect of academic freedom.

- 10 [a.] b. It is the policy of the University to maintain and encourage full freedom within the law of inquiry,
11 discourse, teaching, research, and publication and to protect any member of the academic staff
12 against influences, from within or without the University, which would restrict the member's
13 exercise of these freedoms in the member's area of scholarly interest, as well as to maintain full
14 freedom of discourse regarding University policies and actions whether or not uttered as a
15 member of an agency of institutional governance. The right to the protection of the University
16 shall not, however, include any right to the services of the university counsel or the counsel's
17 assistants in any governmental or judicial proceedings in which the academic freedom of the staff
18 member may be in issue.
- 19 [b.] c. ~~As a citizen, a faculty member may exercise the same freedoms as other citizens without~~
20 ~~institutional censorship or discipline.~~ Members of the faculty, and academic staff members who
21 are directly engaged in teaching or research, have the freedoms identified in Article X, Section
22 2.a above and have the freedom to speak to any matter of social, political, economic, or other
23 interest to the larger community. International members of the faculty, and academic staff shall
24 enjoy these same freedoms. ~~A faculty member should be mindful, however, that accuracy,~~
25 ~~forthrightness, and dignity befit association with the University and a person of learning and that~~
26 ~~the public may judge that person's profession and the University by the individual's conduct and~~
27 ~~utterances.~~
- 28 [c.] d. All the rights enumerated in sections X.2. a, b and c above are subject to the applicable standards
29 of academic conduct. Further, a member of the faculty, and any academic staff member, should
30 be mindful that accuracy, forthrightness, and dignity befit association with the University and a
31 person of learning and that the public may judge that person's profession and the University by
32 the individual's conduct and utterances. If, in the president's judgment, a ~~faculty member of the~~
33 ~~faculty or academic staff who is directly engaged in teaching or research ; exercises freedom of~~
34 ~~expression as a citizen and fails to heed the these admonitions of Article X, Section 2[b],~~ the
35 president may publicly disassociate the Board of Trustees and the University from and express
36 their disapproval of such objectionable expressions.
- 37 [d.] e. A staff member of the faculty, or an academic staff member directly engaged in teaching or
38 research, who believes that he or she does not enjoy the academic freedom which it is the policy
39 of the University to maintain and encourage shall be entitled to a hearing on written request
40 before the Committee on Academic Freedom and Tenure of the appropriate campus senate. Such
41 hearing shall be conducted in accordance with established rules of procedure. The committee
42 shall make findings of facts and recommendations to the president and, at its discretion, may
43 make an appropriate report to the senate. The several committees may from time to time
44 establish their own rules of procedure.

UNIVERSITY STATUTES AND SENATE PROCEDURES

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**SP.15.07, Revisions to the *Statutes*, Article X, Section 2 – Academic Freedom
Appendix A**

STATUTES – CURRENT

SP.10.11 – Approved by the Senate 12/6/2010

USC ST-72 – Approved by USC 3/18/14

ARTICLE X, SECTION 2

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

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

Section 2. Academic Freedom

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

a. Academic freedom includes the freedom to teach, both in and outside the classroom, to conduct research and to publish the results of those investigations. The practice of shared governance that structures institutional decision-making depends on the right of a member of the faculty, or an academic staff member directly engaged in teaching or research, to address any matter of institutional policy or action, whether or not as a member of an agency of institutional governance, without fear of retaliation. This right is a core aspect of academic freedom.

a. It is the policy of the University to maintain and encourage full freedom within the law of inquiry, discourse, teaching, research, and publication and to protect any member of the academic staff against influences, from within or without the University, which would restrict the member's exercise of these freedoms in the member's area of scholarly interest. The right to the protection of the University shall not, however, include any right to the services of the university counsel or the counsel's assistants in any governmental or

[a.] b. It is the policy of the University to maintain and encourage full freedom within the law of inquiry, discourse, teaching, research, and publication and to protect any member of the academic staff against influences, from within or without the University, which would restrict the member's exercise of these freedoms in the member's area of scholarly interest, as well as to maintain full freedom of discourse regarding University policies and actions whether or not uttered as a member of an agency of institutional governance. The right to the protection of the University shall not, however, include any right to the services of

[a.] b. It is the policy of the University to maintain and encourage full freedom within the law of inquiry, discourse, teaching, research, and publication and to protect any member of the academic staff against influences, from within or without the University, which would restrict the member's exercise of these freedoms in the member's area of scholarly interest, as well as to maintain full freedom of discourse regarding University policies and actions whether or not uttered as a member of an agency of institutional governance. The right to the protection of the University shall not, however, include

judicial proceedings in which the academic freedom of the staff member may be in issue.

the university counsel or the counsel's assistants in any governmental or judicial proceedings in which the academic freedom of the staff member may be in issue.

any right to the services of the university counsel or the counsel's assistants in any governmental or judicial proceedings in which the academic freedom of the staff member may be an issue.

b. As a citizen, a faculty member may exercise the same freedoms as other citizens without institutional censorship or discipline. A faculty member should be mindful, however, that accuracy, forthrightness, and dignity befit association with the University and a person of learning and that the public may judge that person's profession and the University by the individual's conduct and utterances.

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

[b.] c. [As a citizen, a faculty member may exercise the same freedoms as other citizens without institutional censorship or discipline.]Members of the faculty, and academic staff members who are directly engaged in teaching or research, have the freedoms identified in Article X, Section 2.a above and have the freedom to speak to any matter of social, political, economic, or other interest to the larger community. International members of the faculty, and academic staff shall enjoy these same freedoms. [A faculty member should be mindful, however, that accuracy, forthrightness, and dignity befit association with the University and a person of learning and that the public may judge that person's profession and the University by the individual's conduct and utterances.]

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

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

[c.] d. All the rights enumerated in sections X.2. a, b and c above are subject to the applicable standards of academic conduct. Further, a member of the faculty, and any academic staff member, should be mindful that accuracy, forthrightness, and dignity befit association with the University and a person of learning and that the public may judge that person's profession and the University by the individual's conduct and utterances.

If, in the president's judgment, a [faculty] member of the faculty, or academic staff who is directly engaged in teaching or research [, exercises freedom of expression as a citizen and] fails to heed these admonitions of ~~Article X, Section 2[b]~~, the president may publicly disassociate the Board of Trustees and the University from and express their disapproval of such objectionable expressions.

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

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

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

SP.15.07, Revisions to the Statutes, Article X, Section 2 – Academic Freedom
Appendix B: Background Statement from SP.10.11, provided to the
Senate when revision was first adopted, December 6, 2010

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 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.

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)