

Preamble and Text to a UMB Faculty Senate Resolution on Academic Freedom Ratified on June 20, 2013

Preamble to the Academic Freedom Resolution to be included in the University of Maryland Baltimore Faculty Handbook

On September 21, 2012, the Maryland Council of University System Faculty (CUSF) passed a resolution recommending the inclusion of an “academic freedom” provision in the System’s university faculty handbooks. Based on our own examination of the CUSF resolution and our own independent research, we have largely adopted, but have also refined, the CUSF’s recommendations.

Academic freedom is critical as it allows the free search and exposition of truth which allows scholarship to flourish. Additional information on the current status of academic freedom nationwide appears on the website of the national American Association of University Professors (AAUP). The issue of academic freedom in a public university setting was traditionally thought to be protected by the First Amendment of the United States Constitution.

However, in 2006, the United States Supreme Court’s decision in *Garcetti v. Ceballos*, 547 U.S. 410 (2006) called that constitutional assumption into question. In *Garcetti*, the Court’s majority concluded 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.” According to the Court, “[r]estricting speech that owes its existence to a public employee’s professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen.”

Justice Souter, writing on behalf of Justices Ginsburg and Stevens, dissented in *Garcetti*, expressing concern about the decision’s possible negative impact in denying First Amendment rights involving academic freedom for employees of public colleges and universities.

The *Garcetti* Court majority addressed Justice Souter’s “academic freedom” concern by including what is now called the *Garcetti* reservation: that reservation leaves open the question “whether [*Garcetti*] would apply...to a case involving speech relating to scholarship or teaching.” That is, the Court chose to say that *Garcetti* does not resolve the academic freedom question, but, similarly, what was thought to be the clarity of the law prior to *Garcetti*, was ended.

As a result, lower federal appellate courts differ as to whether or the extent to which *Garcetti* applies to faculty in public universities. Indeed, the United States Court of Appeals for the Third Circuit (in which Delaware is located), in *Gorum v. Sessoms*, 561 F. 3d 179, found that speech stemming from a professor’s role as a student advisor and faculty committee member was not protected by the First Amendment. That ruling explains University of Delaware Professor Joan Del Fattore’s pessimism about the impact

of *Garcetti* on First Amendment/academic freedom issues. See Joan Del Fattore, “Defending Academic Freedom in the Age of *Garcetti*,” *ACADEME*, (Jan/Feb 2011).

In 2011, however, the United States Court of Appeals for the Fourth Circuit, whose jurisdiction includes Maryland, concluded in *Adams v. Trustees of the Univ. of N.C.-Wilmington*, 640 F.3d 550 (4th Circ. 2011) that *Garcetti* does not control the free speech rights of faculty at public universities. The Fourth Circuit strongly implied that a public university faculty member’s academic scholarship, teaching, and research capacity on issues of public importance are protected by the First Amendment so long as the faculty member is speaking about a matter of public concern and the faculty member’s free speech interest outweighs the university’s interest in restricting speech. This means that speech such as the publications and teaching or research capacity of faculty at public universities in Maryland are generally protected speech and cannot be the subject of disciplinary action.

The United States Supreme Court, if it should decide this precise First Amendment/academic freedom issue at a later time, may yet have the last word and resolve the differences that separate, for example, the Third and Fourth Circuits. However, the likelihood is that, for a considerable time, *Adams* will provide faculty First Amendment protection on those campuses within the University of Maryland System.

Nevertheless, out an abundance of caution, it is critical to faculty governance and to the protection of the important principle of academic freedom at the University of Maryland Baltimore to state clearly in our faculty handbook that “speech related to scholarship and teaching” cannot be arbitrarily thwarted.

In order to protect our academic freedom at UMB, the resolution below has been adopted by the UMB Faculty Senate. The resolution derives from AAUP’s recommended protections and the protections adopted by the following schools: University of Delaware, University of Maine, University of Michigan, as well as the CUSF.

UMB Faculty Senate Academic Freedom Resolution

Academic freedom is the liberty that faculty members must have if they are to practice their scholarly profession in accordance with the norms of that profession. It is based in the institutional structure of this and other universities and is fundamental to their common mission of promoting inquiry and advancing the sum of human knowledge and understanding. This freedom emanates from the First Amendment of the United States Constitution, but it also exists, independent of any external protection, as a basic prerequisite for universities to fulfill their educational mission to our society.

Generally, academic freedom is the freedom to teach, both in and outside the classroom, to conduct research and to engage in other scholarly or creative activities, and to publish or otherwise disseminate the results. Academic freedom also encompasses the freedom to address, or not address, any matter of institutional policy or action whether or not one is a member of any agency of institutional governance.

Faculty have the freedom to address the larger community with regard to any social, political, economic, or other interest. The University should not place impediments – technical or otherwise – on or among faculty; all faculty should have the freedom to connect intellectually with their peers.

Academic freedom is most commonly exercised by individual faculty members, but remains a professional prerequisite of faculty members as a group. Academic freedom extends to all faculty whether full time or part time, tenured or non-tenured, adjunct or contingent, including those faculty who also hold administrative roles when such faculty are acting in their teaching or research capacity. Faculty must be free from any censorship, threat, restraint, retaliation, or discipline by the University with regard to the pursuit of truth in the performance of their teaching, research, publishing or service obligations. Faculty also have the right to review and be reviewed by peers and thereby to control the standards and expectations for promotion and tenure.

The policy on shared governance in the University System of Maryland concurs, stating that:

“Faculty and staff who do not hold administrative appointments, and all students, may express their opinions freely on all shared governance matters without retaliation. Administrators, including faculty holding administrative appointments, may also express their opinions freely during policy discussions, without retaliation, but once a decision is reached they are expected to support and implement policy as determined by the institutional leadership.”

This policy is available at: <http://www.usmd.edu/regents/bylaws/SectionI/I600.html>

Academic freedom includes the following specific freedoms:

- *freedom of research and publication.* Within the broad standards of accountability established by their profession and their individual disciplines, faculty members must enjoy the fullest possible freedom in their research capacity and in circulating and publishing their results. This freedom follows immediately from the university’s basic commitment to advancing knowledge and understanding. Faculty must control their own scholarship and must be able to determine the content, format, wording, methodology, tone, et cetera, of their own work.
- *freedom to determine standards.* Faculty are uniquely qualified to determine the directions and standards of their profession. Such expectations are determined by colleagues in the disciplines, including both faculty working in creative fields and faculty performing traditional research.
- *freedom of teaching.* This freedom is an outgrowth of the previous one. Faculty members must be able not only to disseminate to their students the results of research by themselves and others in their profession, but also to train students to think about these results for themselves, often in an atmosphere of controversy that, so long as it remains in a broad sense educationally relevant, actively assists students in mastering the subject and appreciating its significance.

- *freedom of internal criticism.* Universities promote the common good not through individual decision, but through broad-based engagement in the scholarly endeavor. Faculty members, because of their education and their institutional knowledge, play an indispensable role as independent participants in university decision making. By virtue of this role, they are entitled to comment on or criticize University policies or decisions, either individually or through institutions of faculty governance.
- *freedom of participation in public debate.* Both within and beyond their areas of expertise, faculty members are generally entitled to participate as citizens in public forums and debates without fear of institutional discipline or restraint, so long as it is clear that they are not acting or speaking for the University. Faculty are not institutional representatives unless specifically authorized as such.

This policy does not protect plagiarism, abuse, or any illegal activities or illegal speech. This policy also does not protect faculty from critique of their work by the other faculty or critique of the work of their students. In the latter regard, inter alia, this resolution does not replace existing grade grievance policies and procedures. Also, this policy does not apply to instances where faculty are fulfilling assigned duties that are unrelated to scholarship, teaching, or research capacity such as declaring or administering University policy, and does not apply to administrators who are not also faculty.

This resolution is intended to acknowledge and encourage the continuation of an atmosphere of confidence and freedom within the University while recognizing that the concept of academic freedom is accompanied by the corresponding concept of responsibility to the University and its students. It is of critical importance that any University policy which touches upon issues of academic freedom or which potentially minimize that freedom be developed and implemented with substantial faculty input.