

**Only the
Educational Mission
Justifies
Academic Freedom**

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Agenda

- Background
 - Academic Freedom
 - Framework
- Purpose & Methods
- Argument
- Application
- Recommendations
- Questions

Background

Academic Freedom, Framework, *Garcetti*

Definition of Academic Freedom

The freedom to make academic decisions autonomously and free from non-academic interference, specifically as it relates to carrying out the educational mission of institutions of higher education.

- Institutional Academic Freedom (University/College; the courts)
- Collective (Professional) Academic Freedom (Professional Organizations, “the faculty;” the AAUP)
- Individual Academic Freedom (Tenured Professor, codified in contracts)

Framework

- Educational Mission: In institutions of post-secondary education, the aim of knowledge creation and dissemination.

My framework builds on:

- Robert Post's ideas of democratic competence (2013) and managerial authority (1987)
- Judith Areen's (2009) government as educator (academic matter test)

Ahmed's (2021) *Complaint!* & Faculty Cases



Ahmed defines **Power** as “the right to suspend what is binding for others.” (p. 48)

Policy deviations lack evidentiary value.

Institutional interests dictate procedure, not policy.

Policy deviations foment feelings of Institutional Betrayal.

Garcetti v. Ceballos (2006)

- Public employee speech made pursuant to official duties is not protected by the First Amendment
 - What about faculty at public colleges and universities? (scholarship or teaching speech)
- Built on *Connick-Pickering* standards
 - Does the speech address a matter of public concern?
 - Do the government's interests in efficiency outweigh the speaker's interests in a right to free expression?

Purpose and Methods

Research Question, Data Collection, Analysis, Limitations

Research Question: Balancing Speech Rights

How can we balance the free speech rights of faculty with the rights of (especially historically marginalized) students and colleagues to create an educational environment free of harassment and discrimination?

Data & Methods



- Free Speech Cases since 2006
- Case databases, secondary literature, and case citations.
- Court opinions, dockets, and docket filings.
- Critical Discourse & Legal Analysis, Qualitative Coding

The Argument for Academic Freedom

Deferring to Faculty in Constitutional Academic Freedom Cases

Faculty

Peer

Review

Argument Overview

- Educational mission justifies academic freedom
- In shared governance, the faculty carry out educational mission
- Faculty can be at odds with administrators and boards because of differing priorities



- When the interests of the institution in fulfilling its mission are weighed against free speech of an employee, the “institution” **should** be defined as the collective faculty who carry out the mission of the institution.
- So the faculty **should** receive judicial deference as the arbiters of the interests of the institution rather than administrators or board.

An Educational-Mission Inquiry

Intramural or Extramural

Was the speech made purely external to the institution?

Educational Mission

Is the speech in support of or in opposition to the educational mission?

Advocacy or Grievance

Could someone else have addressed the same matter of public concern or was it solely personal?

Faculty Self-Governance

Did the faculty play a (final) deciding role in the alleged adverse employment action?

Interests

Did the government's interest in its mission outweigh the plaintiff's constitutional right to free speech?

Application

Centering the Educational Mission in Assessing Faculty Speech

Two Cases of Violations of Anti-Harassment Policies

Meriwether v. Shawnee State

- Professor misgendered a trans student in class
- Professor adopted a non-gendered approach for *only* the trans student
- Student was singled out
- Professor found to have violated policy; written warning.

Wozniak v. Adesida (UIUC)

- Professor was not awarded a teaching award.
- Professor confronted student leaders in charge of the award. Made student cry.
- Repeatedly harassed students.
- Professor identified crying student online in videos and on his website.

How to Handle Harassment

How should courts and institutions handle cases like Meriwether or Wozniak wherein a professor has harassed a student repeatedly for no one else's benefit but his own?

- Power Dynamic
- Prioritize inclusion of marginalized students in safe & welcoming learning environments
- Faculty Peer Review

What about loud faculty online?

What if the faculty speech goes viral? That's so much more harmful, right?

- Adverse notoriety
 - Mike Adams
 - Steven Salaita
- Faculty peer review

Disciplining Faculty? Punching down?

How and when should universities discipline faculty for controversial speech?

How should speech that “punches down” be treated differently than speech that “punches up”?

- Commitment to the educational mission?
- *Adams v. UNC-Wilmington* (2011)
- Faculty peer review (punching up vs. punching down)

Recommended Future Research

- What are the differences in outcomes when policies center the educational mission vs. centering the institution's legal vulnerabilities?
- How do institutions wield power through applying or refusing to apply policies? How does this affect academic freedom?
- What does it look like when institutions adopt policies that recognize power differentials such that there is a difference between “punching down” and “punching up”?

Summary

- Using an inquiry that refocuses on the educational mission by advocating for **faculty peer review**
- Prioritizes inclusive and safe learning environments over individual freedoms
- Protects values of academic freedom and shared governance
- Extends Areen's and Post's tailoring of First Amendment standard to academia
- Recognizes power dynamics at play in controversial or viral speech

Thank You!

Questions and Comments

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