

# THE TENNESSEE FAINTING GOAT

The occasional electronic newsletter of the  
MTSU Chapter of the  
American Association of University Professors

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*Learned Institutions ought to be favorite objects with every free people. They throw that light over the public mind which is the best security against crafty & dangerous encroachments on the public liberty.*

*James Madison*

Dear Chapter Members,

I hope this finds you well. As I wrote in the inaugural issue of this occasional publication in March, the *Tennessee Fainting Goat* has two purposes: (1) to keep you informed about the work of the chapter; (2) to help the chapter increase our membership.

**Soooooo, what have we done for you lately?** Thank you for asking. We have been quite busy. In the March issue, I drew your attention to a potential threat to tenure at one of our community colleges. Representatives of the universities and the community colleges met Dr. Tristan Denley (VC-AA, TBR) on April 1 in Nashville to discuss our concerns, and I am pleased to report that the outcome of our discussion was a reaffirmation of the importance of tenure in line with the TBR Academic Freedom Policy, which states: “Thus, academic freedom and academic responsibility are interdependent, and academic tenure is adopted as a means to protect the former while promoting the latter. While academic tenure is essential for the protection of academic freedom, the full benefits and responsibilities of academic freedom extend to all individuals teaching in the TBR System, whether or not they are eligible for tenure.” Similarly, in an email to Alfred Lutz in early March, Dr. Denley pointed out that “[t]here was certainly never any suggestion of this contract option [the new employment category of three-year rolling instructor contracts] undermining or affecting tenure or tenure track positions in any way. The Tennessee Board of Regents is and always has been fully in support of the tenure and promotion process.” Although the TBR Faculty Sub-Council is responsible for this positive outcome, most of those primarily involved in the process are AAUP members.

Since we are talking about academic freedom, and since I have recently had conversations with several colleagues concerned about the level of protection academic freedom policies provide for their on-campus work outside the classroom, let me remind you that the TBR Academic Freedom Policy is quite robust, and it specifically protects shared-governance speech. In 2010, in response to the potential threat to academic freedom of *Garcetti v. Ceballos*, a 2006 Supreme Court decision (see page two below for an assessment), the TBR Faculty Sub-Council determined that a revision of the TBR Academic Freedom Policy was in the best interest of the

faculty and the academic mission of our system. Finally, in 2013, TBR agreed. The following is the crucial section from TBR Policy 5:02:03:30 (Academic Freedom); the language added in 2013 is highlighted in green:

Academic freedom is essential to fulfill the ultimate objectives of an educational university/college - the free search for and exposition of truth - and applies to teaching, research, and faculty participation in institutional governance. Freedom in research is fundamental to the advancement of truth, and academic freedom in teaching is fundamental for the protection of the rights of the faculty member in teaching and of the student to freedom in learning. Faculty participation in institutional governance is fundamental to the development and maintenance of effective academic policies, national and regional accreditation, and shared responsibility for the delivery of educational programs and services to students. Implicit in the principle of academic freedom are the corollary responsibilities of the faculty who enjoy that freedom.

Although this positive change was again the result of efforts by the TBR Faculty Sub-Council, the council members most actively involved in the process were almost all AAUP members.

The following is a brief assessment, written in 2010 and presented at an AAUP chapter meeting, of the threat to academic freedom, particularly shared-governance speech, *Garcetti v. Ceballos* potentially poses.

The question *Garcetti v. Ceballos* presented, in the words of Justice Kennedy's majority opinion, is "whether the First Amendment protects a government employee from discipline based on speech made pursuant to the employee's official duties." The Supreme Court drew a fundamental distinction between a public employee acting as an employee carrying out job-related duties and the employee acting as a citizen sharing his or her views with the larger public. As a result, the Court held "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," and it rejected "the notion that the First Amendment shields from discipline the expressions employees make pursuant to their professional duties."

Although Justice Kennedy's opinion also acknowledged that there "is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court's customary employee-speech jurisprudence," several cases since then – *Hong v. Grant*, *Renken v. Gregory*, and *Gorum v. Sessoms* – have extended *Garcetti* to higher education, a development Justice Souter's dissent in *Garcetti* anticipated ("...hope that today's majority does not mean to imperil First Amendment protection of academic freedom in public colleges and universities, whose teachers necessarily speak and write 'pursuant to official duties'"). *Hong v. Grant*, to mention just one example, gave a university "unfettered discretion when it restricts statements an employee makes on the job and according to his professional responsibilities."

TBR Policy 5:02:03:30 ("Academic Freedom and Responsibility") refers to faculty members' "freedom in the classroom," their "full freedom in research and in the publication of the results," and their rights to speak or write "as a citizen." It does not, as far as I can see, address faculty members' speech resulting from their engagement in shared governance, which the AAUP's 1994 statement "On the Relationship of Faculty Governance to Academic Freedom" considers to be an essential aspect of academic freedom and which *Garcetti* threatens. In addition, *Garcetti* also threatens to abridge academic freedom in teaching and in research since both are clearly faculty members' "official duties." Indeed, as Judith Areen (Georgetown Law) has recently argued in the *Georgetown Law Journal*, "[t]he *Garcetti* holding that speech made pursuant to a public employee's 'official duties' is not protected, now threatens to end all constitutional protection for the academic freedom of faculty at public colleges and universities."

The 2013 additions to the TBR Academic Freedom Policy are a powerful response by TBR to this threat. The policy now recognizes—and therefore protects—faculty members’ shared-governance speech as an essential component of the proper functioning of institutions of higher education.

This semester, the chapter has also dealt with one reappointment case, and I’m happy to report that the faculty member involved was reappointed. The conversations with the administration in this matter were productive and collegial, and conducted in a spirit of shared governance.

All of this indicates that our chapter is a vibrant presence on and off campus, and it deserves your support. Let me briefly address membership and recruitment. We have picked up several new members this month (Welcome! Thank you for joining the AAUP.), but our membership is still lower than it was as recently as 2010. On the bright side, the MTSU chapter is the eighteenth largest advocacy chapter in the nation. And several of the larger ones—University of Michigan, Ohio State University—are at institutions with much larger faculties. We are in good shape compared to many other chapters, but there is room for improvement. I hope that you will take a few minutes in the fall to talk about the AAUP to new and recent hires in your department.

I wish you a stress-free end of the semester and a productive and joyful summer.

Best wishes,

**Alfred Lutz**

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