



Legislative Testimony
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**Written Testimony Supporting House Bill 6770, An Act Concerning
Academic Freedom**

Senator Slap, Representative Haddad, Ranking Members Kelly and Haines, and distinguished members of the Higher Education Committee:

My name is Jess Zaccagnino, and I am the policy counsel for the American Civil Liberties Union of Connecticut (ACLU-CT). I am writing to testify in support of House Bill 6770, An Act Concerning Academic Freedom.

The ACLU-CT believes in everyone's right to free expression, and that includes speech by faculty members at public institutions of higher education on their scholarship, research, teaching, and on matters of public interest. Whether faculty express popular or unpopular ideas, in many cases, their speech is protected by the United States and Connecticut Constitutions. Under the First Amendment, the government cannot discriminate against protected speech because of the speaker's viewpoint.

In the face of today's polarized climate, it is vital for universities to maintain equitable learning environments for all students, while upholding the free expression of students and faculty alike. It is important to protect higher education faculty from adverse employment actions due to their public or private expression regarding their scholarship, academic research, teaching, or matters of public concern. Protecting faculty's speech about political, social, or economic issues is essential to our democracy and to teaching students the value of free speech.

John Dewey and Arthur Lovejoy founded the American Association of University Professors (AAUP) to safeguard academic freedom in 1915, in response to the firing of a professor due to his personal views on immigrant labor and railroad monopolies.¹ In their founding year, the AAUP articulated three elements of academic freedom: freedom of inquiry and research, freedom of teaching within the university or college, and freedom of extramural utterance and action.² Academic freedom is a universal principle that stands outside of a particular political context deployed as a check against abuses of power.³ The Supreme Court has noted that academic freedom is “therefore a special concern for the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.”⁴

House Bill 6770 is particularly important because it comes at a time when the U.S. Supreme Court has placed public university professorial speech in a zone of uncertainty. Previously, courts applied a three-prong balancing test to the discipline of public employees related to speech, which considered whether their speech was on a matter of public concern, whether the employee’s interest in free speech outweighed the employer’s interest in an efficient work environment, and whether the employee’s speech was a motivating factor for disciplinary action.⁵ In 2006, the Supreme Court adopted a rigid categorical rule in *Garcetti v. Ceballos* that can be read to “deny First Amendment protection of any kind to speech simply made during the course of a public employee’s employment, or speech related to a public employee’s employment.”⁶ This flies in the face of one of our nation’s deepest principles. Justices Sotomayor and Souter emphasized in their dissent that this is extremely concerning as applied to public university professors, as the vast majority of their job responsibilities implicate scholarly speech.⁷ The result is a paradox, where on the one

¹ *History of the AAUP*, AM. ASS’N OF UNIV. PROFESSORS (accessed Mar. 1, 2023), <https://www.aaup.org/about/history-aaup>.

² AM. ASS’N OF UNIV. PROFESSORS, GENERAL REPORT OF THE COMMITTEE ON ACADEMIC FREEDOM AND TENURE 393 (1915).

³ JOAN WALLACH SCOTT, KNOWLEDGE, POWER, AND ACADEMIC FREEDOM 119 (2019).

⁴ *Keyishian v. Bd. of Regents*, 385 U.S. 598, 603 (1967); see also JOAN DELFATTORE, KNOWLEDGE IN THE MAKING: ACADEMIC FREEDOM AND FREE SPEECH IN AMERICA’S SCHOOLS AND UNIVERSITIES 219 (2010).

⁵ See *Pickering v. Bd. of Ed.*, 391 U.S. 562 (1968); *Connick v. Myers*, 461 U.S. 138 (1983).

⁶ Scott R. Bauries, *Individual Academic Freedom: An Ordinary Concern of the First Amendment*, 84 MISS. L.J. 677, 686 (2014).

⁷ *Garcetti v. Ceballos*, 547 U.S. (2006).

hand, a century of cases recognize academic freedom as special, but on the other hand, this shift signals the absolute exclusion of academic speech from First Amendment protection.⁸

As we see a wave of efforts to ban books and censor discussions of race, sexual orientation, gender, and systemic inequality, it is vital for Connecticut to protect academic freedom and democracy.⁹ The consequences of *Garcetti*'s narrow rule on free speech protections for public employees and, by extension, public university professors are exemplified by a \$736,000 whistleblower lawsuit by a professor against the University of Connecticut.¹⁰ This case concerns a professor whose position at the university was eliminated after he complained about possible labor law violations at a university-administered program. Initially, the professor attempted to pursue a First Amendment claim, but was barred from doing so because of the narrowed speech protections that public employees are afforded after *Garcetti*. Because the Supreme Court is unlikely to reverse *Garcetti* in the immediate future, public institutions of higher education should be required to adopt academic freedom policies to address the obvious gap identified by Justices Sotomayor and Souter in their dissents.

Regrettably, there are also examples of a need to protect academic freedom at Connecticut's private colleges and universities. For example, a Trinity College professor who, while speaking out in support of racial justice, posted comments and shared a hashtag and link on his personal Facebook page faced criticism for alleged violations of school policies in 2017.¹¹ Though we commend Trinity College's conclusion that the professor did not violate school policies by expressing his political views on his personal social media page, it is clear that Connecticut's higher

⁸ J. Peter Byrne, *Neo-orthodoxy in Academic Freedom*, 88 TEX. L. REV. 143, 163 (2009).

⁹ *Defending Our Right to Learn*, ACLU (Mar. 10, 2022), <https://action.aclu.org/petition/defend-every-students-right-learn>.

¹⁰ *University of Connecticut Professor Awarded \$736,000 in Whistleblower Lawsuit*, WSHU (July 8, 2022), <https://www.wshu.org/connecticut-news/2022-07-08/university-of-connecticut-professor-awarded-736-000-in-whistleblower-lawsuit>.

¹¹ *Trinity Professor Cleared of Wrongdoing Following Controversial Facebook Posts*, HARTFORD COURANT (July 14, 2017), <https://www.courant.com/2017/07/14/trinity-professor-cleared-of-wrongdoing-following-controversial-facebook-posts/>.

education institutions and their faculty would benefit from a clear statewide standard on academic freedom. Although a good example of why this bill is needed, Trinity College and other private higher education institutions would not be covered by this proposed bill.

In addition to protecting expressions regarding matters of political, social, or economic significance, this bill would protect faculty from adverse employment actions because of public or private expressions related to their scholarship, academic research, or teaching, or any matters of public concern, including but not limited to matters of political social, or economic significance or critical of institutional policy or administration. In a time where many states are considering and enacting laws directly attacking academic freedom and freedom of thought, Connecticut should be a leader by requiring its public institutions of higher education to adopt a uniform policy protecting academic freedom. As such, the ACLU-CT supports House Bill 6770, and urges this Committee to do the same.