

# **Academic Freedom**

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# **Academic Freedom: Autonomy, Challenges and Conformation**

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United Kingdom – North America – Japan – India – Malaysia – China

Emerald Publishing Limited  
Howard House, Wagon Lane, Bingley BD16 1WA, UK

First edition 2021

Editorial matter and selection © 2021 Sherwood Thompson, Robert Cegile. Published under exclusive licence by Emerald Publishing Limited. Individual chapters © 2021 Emerald Publishing Limited.

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**British Library Cataloguing in Publication Data**

A catalogue record for this book is available from the British Library

ISBN: 978-1-83909-883-3 (Print)

ISBN: 978-1-83909-882-6 (Online)

ISBN: 978-1-83909-884-0 (Epub)



Certificate Number 1985  
ISO 14001

ISOQAR certified  
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# Dedication

So often we misinterpret the essence of what academic freedom is and those misinterpretations have led to ideological perspectives that higher education serves as a bastion for brainwashing students into becoming a clone of the professor, faculty not producing good student learning outcomes, and/or faculty serving as an obstacles to administrators doing good management within the institution. As a long-term faculty member and administrator, I have seen academic freedom as a way for what good shared governance really looks like. A way of thinking how we can create a continuous improvement model that increases the quality of learning and keep faculty as a core element of what higher education has been and should always value. That understood value has taken a beating in recent history, and it will take all of us to reestablish why higher education is truly valuable. To make this happen, it will take all of us continuously increasing our understanding that higher education is about learning and great teaching (in and out of the classroom) is the direct correlation to that outcome. Thus, a continuous assessment model is key to that as an outcome. What we have learned and how we get better is truly the driver of good academic freedom and ensuring that this is continually seen as imperative for great quality and quantity of educational attainment. Having faculty to be the purveyor of outstanding curriculum and pedagogy are still key to our continuous improvement but having faculty who values diversity and cultural competence and understand that we have to bring more people around the table (employers, students, faculty outside your discipline, etc.) are also critical to that improvement and understanding.

The editors and contributors of this book are adding their individual and collective knowledge to this endeavor. Their voices are key to our collective modern views of academic freedom and a powerful way for the readers of this work to form a more complete understanding of academic freedom. One voice you will hear in this work is a voice that I will always remember but will not hear again, Dr Sherwood Thompson. Dr Thompson who is the co-editor of this work has been a close colleague and a close friend of mine for many years. We lost him early in 2020 and the COVID-19 pandemic has postponed us from giving him his proper respect in words of thanks and remembrance. This book, as a part of his last work, is a way for us to do that.

I met Dr Thompson in 1999 when he was a staff member at the University of Georgia. I was keenly aware of his dedication to good student outcomes and his commitment to diversity, equity, and inclusion. Many years later, I got the chance

to renew our acquaintance and build a wonderful friendship. Indeed, I also had the pleasure to sign his contract for employment at Eastern Kentucky University. From the moment I signed that contract to Sherwood's passing, he was a machine! He pushed all of us to think better and consider better choices as academicians. He made a national and international reputation for developing conversations about research and new knowledge about the role that people of color played inside the academy. He created a platform for young Black men to go into the teaching profession and created forums that developed Black administrators. Indeed, he did much to inform us of our responsibilities if we were gifted enough to be a part of this profession. I am so proud that I got the privilege to be a part of many of his endeavors. Sherwood became a prolific scholar and produced more in a short time that many faculty don't do in a lifetime. He would say often that he was blessed and that could be clearly seen by his work, his children, and by meeting and marrying his wonderful bride Dr Doris Thompson. My friend we are blessed by knowing you and we will miss you, your wisdom, and your smile. Thank you for leaving us with your positive legacy and directions whereby we can establish ours. I lift a glass of Merlot to you my friend.

Dr Aaron Thompson  
President of the Kentucky Council on Postsecondary Education

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**Dwight C. Watson** is the Chancellor at the University of Wisconsin–Whitewater. He previously served as provost at Southwest Minnesota State University. His primary teaching focus was literacy development for young and adolescent readers. His scholarship has focused on applied research connected to the literacy and language acquisition of students of color and urban learners. His current scholarship is on diversifying the academic workforce and leadership development. His professional experience also includes teaching in Pre-K-12 classrooms.

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# Acknowledgments

Dr Robert Ceglie would like to thank his family, Nicole, Robbie, and Jenny for their support. He would also like to recognize Dr Dixie Abernathy and Dr Amy W. Thornburg for their assistance and leadership to assist in the completion of this work. Thank you to those at Emerald who were flexible in the final stages of the editing process.

Dr Sherwood Thompson would like to thank his family for their support throughout the editing process. In addition, he would like to thank the Association for the Advancement of Educational Research International (AAERI) members who worked to support this effort. Thank you to the chapter authors who worked tirelessly to complete this book to its current form.

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# Introduction

*Academic Freedom; Autonomy, Challenges and Conformation* has one main purpose which is to echo the voices of faculty who have encountered challenges related to academic freedom within their own personal and professional careers. As you read the following 13 chapters, you will encounter authentic accounts of ways that academic freedom and the first amendment have helped and, in some cases, hindered the authors academic profession, scholarship, and teaching. Our contributors recollected occasions when they or their colleagues experienced a challenge to their ability to exchange ideas and concepts freely in the classroom, to explore and disseminate new knowledge, and to speak professionally and as a private citizen on topics on their expertise without being under duress. As you read these accounts, you will be captivated by the range of experiences that our authors have encountered.

Dixie Abernathy opens the text with a case study which explores some of the most important legal challenges of academic freedom as she explores how several high-profile cases have influenced current academic freedom.

Antija Allen, Jason L. James, Jr, and Anthony G. James follow with an exploration of ways that college faculty are challenged when dealing with the types of discussions which typically arise in their own classrooms and offer practical applications for ways that faculty can support their own and their student's voices.

Amy W. Thornburg and Jennifer Collins specifically identify the impact of academic freedom on college teacher preparation programs. They explore their understandings as teacher educators through their experience on a study abroad/professional development trip.

Eleni Oikonomidou examines the experiences of foreign-born college faculty and their response to their challenges regarding academic freedom in the US institutions. The chapter offers suggestions for ways that institutions of higher education can eliminate some of the power structures which impede this population of faculty.

Ginger C. Black and Patrice D. Petroff tackle the subtle influence that limits of academic freedom have in online learning environments. They provide several areas that college faculty must remain cognizant of as they engage in online learning.

Dwight C. Watson and Kate Borowske investigate the impact that academic freedom limits have on faculty as they navigate the selection of textbooks for their courses. They conclude with a range of suggestions that colleges and universities can employ to support their faculty and students.

Robert Ceglie provides a view of the impact of limits on academic freedom within science disciplines. Using major historical events in science as the background of this chapter, he offers perspectives on ways that science and science education have been impacted by the harmful influence of limits of academic freedom.

Nelson N. Ngoh sheds light on academic freedom from an international perspective. In this chapter, he explores the influence of limits of academic freedom on students and faculty attending schools in Cameroon. Using personal and historical experiences, he reminds us of the benefits that academic freedom has on educators.

Zachary Hopper and Suzanne Rice collaborate on an exploration of the influence that John Dewey's works have on the application of academic freedom. Using selected works of Dewey, they provide an interesting perspective on how these works support current views of academic freedom.

Andrew Ross offers a global exploration of academic freedom and its influence on its application to government and education policies. Using his personal experiences as a backdrop, he demonstrates ways that limits of academic freedom have on our rights.

Philliph Masila Mutisya, James E. Osler, II, and Larry D. Williams examine how the current status of the professorship has been negatively influenced by restrictions of academic freedom. This chapter concludes with recommendations for ways that the institutions of higher education can use a leadership model to support learning.

Janaka B. Lewis follows and offers a discussion of academic freedom using a social justice lens. She illustrates ways that the academy has limited faculty and students through boundaries placed on their academic freedom.

Bev-Freda L. Jackson closes our book with another examination of the interaction of academic freedom and social justice. She provides perspectives on ways that a social justice framework can be utilized to support educator's freedom of expression.

Part 1

# **Faculty and Students Striving and Surviving the Academic Freedom Challenge**

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## Chapter 1

# **The Unique Intersect Between Classroom Academic Freedom, Political Advocacy, and First Amendment Rights: A Legal and Case Study Analysis**

*Dixie Abernathy*

### **Abstract**

During the months leading up to and immediately following President Donald Trump's election, the unique intersection of classroom academic freedom and teacher and students' first amendment rights would be duly tested, as headlines reminded citizens, parents, and pundits that the reach of raw emotions and political viewpoints did not stop at the schoolhouse door. School and classroom-based events would eventually test the norms of community, the interpretation of legal precedents, the resolve of district and school leadership, and the rights or limits thereof of the teachers themselves. This analysis is grounded on case studies of eight such incidents, all of which occurred at the high school level in public school districts. These eight cases are analyzed in terms of the incidents, the teacher's actions or speech, the consequences, the relevant legal precedents surrounding academic freedom, the parental, student, and community reaction, and the short- and long-term impacts moving forward.

*Keywords:* Academic freedom; case study; classroom conflict; law and education; politics in the classroom; school leadership; student freedom

### **Introduction**

As established through the First Amendment of the Constitution and later interpreted through the 1968 landmark *Pickering* Supreme Court ruling, public school teachers have a constitutional right to speak out freely on issues of concern or

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**Academic Freedom: Autonomy, Challenges and Conformation, 3–29**

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**doi:**[10.1108/978-1-83909-882-620211001](https://doi.org/10.1108/978-1-83909-882-620211001)

interest to them, just as all citizens do. Likewise, students have the same rights regarding free speech and their First Amendment protections, as supported by the landmark *Tinker* case. It is recognized as a norm and a professional expectation that teachers conduct themselves not only as role models but also in ways that do not influence students nor infringe on students' own fundamental rights and freedoms. It is also generally expected and even considered by the courts that a student's speech not present a danger to anyone and not cause any substantial disruption to the school climate or the learning environment of other students. Yet at what point or in what situations might teacher speech or decisions, specifically those related to political advocacy or beliefs, under the cloak of "academic freedom," infringe on the rights of students, the effectiveness of the learning environment, or the execution of official school functions? The point at which the academic and personal rights and freedoms of the teacher may collide with any or all of these tasks is that hallowed place known to all as the American classroom.

In examining this topic, it is relevant to emphasize the difference between public school teachers and private school teachers regarding free speech issues. While the speech of all teachers is afforded constitutional protections under the First Amendment, the degree to which this is applied or by which the school may regulate the teacher's speech varies depending on private or public status.

The First Amendment provides free-speech protection to public, not private, employees because the Bill of Rights applies only to governmental actions. This means that a private employer generally can discipline an employee as he sees fit .... While the private employer probably can fire an employee whose speech he dislikes, the First Amendment governs the circumstances under which public employers may discipline employees for their speech. On the other hand, government has more authority to regulate the speech of its employees than it does to regulate the speech of the general citizenry. ([Hudson, 2002](#), p. 2)

A careful analysis of the predominant legal precedents that relate to teacher speech and freedoms and the application of such to specific incidents of teacher speech reveals quite a bit about the sanctity of the classroom and the teacher's approach to such. As demonstrated through the *California Teachers Association* ruling, as well as other cases on this topic, the Supreme Court and other courts have consistently recognized the significant influence, persuasion, and power that instructors, especially K-12 teachers who work with elementary and secondary age students, have in in their classrooms ([Superior Court of San Diego, 1996](#)). For this very reason, it is vital that cases and situations involving academic freedoms and teacher speech in the K-12 classroom be examined.

## Historical Context

While this analysis will focus primarily on academic freedom, teacher free speech, and classroom integrity in the age of President Trump, challenges involving these



topics are not limited to Mr Trump's presidency. For example, in 2010, a math teacher in Alabama was suspended following a geometry lesson in which he shared the correct angles to use if one were planning on assassinating President Barack Obama (Adams, 2010). In 2006, a Denver teacher was placed on administrative leave after comparing President George W. Bush to Hitler following the State of the Union address (Associated Press, 2006). The debates and discussions regarding the appropriate exercise of teacher academic freedoms and the minimal classroom culture that should be accessible for student learning have a longstanding history. Yet, it is a topic that appears even more relevant in light of the close presidential election of 2016 and the heated political battle that preempted and followed its result.

The First Amendment speaks for itself, but the idea of academic freedom as a First Amendment right was first established by the US Supreme Court in the 1967 *Keyishian v. Board of Regents* ruling. During the age of McCarthyism, as states were seeking to dismiss through legal means public school employees for words or ideas that may be viewed as treasonous, the Supreme Court justices overturned such laws and clearly established the classroom as “a marketplace of ideas” and an environment for which constitutional freedoms must be protected (Sadler & Oats, 2013, p. 349). In establishing the school as this haven for ideas, the court also clearly rejected the notion that schools can be a place of “viewpoint discrimination.” As shared in Hudson's (2002) analysis:

[A] law prohibiting citizens from criticizing elected officials would be impermissible because it would discriminate on the basis of content, allowing praise of government officials but not allowing criticism. Nor could the government enforce a law prohibiting criticism of the Republican Party but allowing criticism of other parties, because this would be an even more egregious constitutional violation known as “viewpoint discrimination.” In other words, the First Amendment, above all else, rejects laws that favor some ideas or viewpoints while excluding others. Such laws limit the scope of the “marketplace of ideas,” the metaphorical public forum whose protection has been the focus of First Amendment jurisprudence for the past 80 years. (p. 3)

The school leader's role is significant in how incidents of this nature are addressed, managed, or worsened. While Standard 2 of the Professional Standards for Educational Leaders requires principals and superintendents to respect the rights of teachers to freely express their thoughts and opinions, Standard 3 also requires that any speech or actions by teachers that are disruptive to student learning must be addressed (NPBEA, 2015). As stated by Sadler and Oats (2013), “the balance between the rights of a teacher to express her or his opinion and the interest of the board of education in promoting harmony and efficacy to support quality instruction and student learning is often a matter of perspective” (p. 340).

Leaders faced with situations involving employees who engage in speech that disrupts the learning climate or otherwise makes it difficult for teaching to be carried out effectively must carry out dual roles: (1) effectively providing public services and (2) leading an educational institution that is governed by the First Amendment. Determining whether a teacher's individual speech is actually protected under the First Amendment or is more predominantly an act of insubordination can be a tricky scenario through which a leader must navigate (Hudson, 2002).

In examining the teacher's expansive umbrella of academic freedom and general First Amendment rights, the courts and the public in general must always consider the balance between public interest and private interest. In discovering where the teacher's rights end and the school's interests begin, the courts often consider the degree to which a teacher's expression or conduct may prevent or affect their ability to carry out their teacher responsibilities, whether through the actual conduct or through the repercussions of that conduct, such as notoriety or parental concerns (Alexander & Alexander, 1985). In fact, "basic free-speech rules that apply outside the workplace sometimes have little relevance for public employees" (Hudson, 2002, p. 2). In writing the opinion of the court in *Pickering v. Board of Education*, Justice Marshall stated:

the problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interests of the State, as an employer, in promoting the efficiency of the public services it performs through its employees. (Alexander & Alexander, 1985, p. 568)

There are many landmark cases, including *Pickering* and *Kiyishan*, which together set precedents that "limit somewhat state school power in favor of individual freedom of choice for the teacher and student" (Alexander & Alexander, 1985, p. 250). Thirteen such rulings are highlighted here, many of which guide the actual academic protections of teachers while teaching in their classrooms and First Amendment protections while living their lives outside of their classrooms.

## Precedents in Academic Freedom Case Law

### *West Virginia Board of Education v. Barnette* (1943)

This case was one in which the US Supreme Court ruled on the ability of schools and teachers to require students to participate in a flag salute. One of the most important parts of this case decision, as it relates to teacher and student rights, was the establishment of the teacher as exactly that – teacher. This ruling clarified that this role does not place a teacher in the position of supreme controller of all classroom thoughts, convictions, or ideas (National Education Association, 2007). The court's ruling included this critical direction:

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox

in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us. We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to restrict from all official control. (Alexander & Alexander, 1985, p. 204)

***Sweezy v. State of New Hampshire, 354 US 234 (1957)***

This court ruling established the far-reaching possibilities inherent in academic freedom (National Education Association, 2007). The Court decision in *Sweezy* deemed it as unconstitutional to “impose any strait jacket upon the intellectual leaders in our colleges and universities” and that “teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die” (Alexander & Alexander, 1985, p. 250).

***Keyishian v. Board of Regents (1967)***

In 1953, a New York law which included a loyalty-oath requirement was extended to state colleges and universities. A provision in the law allowed for dismissal for state employees who refused to sign the loyalty-oath agreement. In this landmark case involving academic freedom, the US Supreme Court established a teacher’s academic freedom as a First Amendment right. In doing so, the Court defined the classroom as “the marketplace of ideas” (Alexander & Alexander, 1985, p. 587) and emphasized that in no way should anyone be in the position to be “casting a pall of orthodoxy over the classroom” (Sadler & Oats, 2013, p. 339). As part of this ruling, the court recognized that students will only be effectively taught and that learning and leadership will only develop if the classrooms of our nation are places where ideas are freely exchanged and expressed (Hudson, 2002).

***Pickering v. Board of Education (1968)***

This was the first case to establish that while all citizens enjoy constitutionally protected free speech, and while teachers have a First Amendment right to academic freedom in the classroom, citizens who are also government employees fall under a certain governmental authority that can be exercised in restricting that free speech (National Education Association, 2007; Sadler & Oats, 2013). In 1961, Marvin Pickering, a public school teacher, was dismissed by his school district due to his opinions, as shared through a letter to a local newspaper, regarding a recent tax increase. The Court ruled that Pickering was speaking as a citizen on a matter of public concern, and thus was empowered to do so. In its ruling, the US Supreme Court also clarified and established a much-needed balance between

teacher rights and school and system authority for a conducive learning environment through a three-pronged test (known as the *Pickering* balance):

1. Protected speech cannot interfere with maintaining either discipline by immediate superiors or harmony among coworkers.
  2. Protected speech cannot interfere with the personal loyalty and confidence necessary to proper school functioning
  3. Protected speech cannot damage professional reputations.
- ([Sadler & Oats, 2013](#))

Put simply, a teacher's expression of ideas, opinions, or thoughts is not protected under the First Amendment and is not appropriate for the classroom if it interferes with the teacher's execution of their duties of teaching or interferes with the regular operation of the school ([Hudson, 2002](#); [National Education Association, 2007](#)).

### ***Tinker v. Des Moines Independent School District (1969)***

While ruling on the famous "black armband" case during the Vietnam War era, the US Supreme Court began a critical trend toward the recognition and respect of student First Amendment rights within the school and classroom. Part of this decision was the oft-quoted statement declaring that "it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the school gate" ([Sadler & Oats, 2013](#), p. 365). The decision went on to explain that this student speech, even when controversial, can proceed as long as it does so without interference to the operation of school functions or interruption to the rights of others. In applying this ruling to the daily life of educators, students, and schools, the ruling differentiates clearly what is and is not acceptable. Teacher and student speech that is simply uncomfortable is protected speech, but that which interrupts the learning of others or the function of a school as a learning environment, is not appropriate and is not protected.

Yet, even with this clarity, *Tinker*, like many of these cases, includes ambiguity when compared to reality in schools. In the most difficult or controversial of school situations and in applying the principles of *Tinker*, one must ask two key questions:

- 1) At what point did the situation substantially disrupt the learning environment?
- 2) Who, exactly, is causing the disruption? The student? Or those in opposition to the student's views? ([Sadler & Oats, 2013](#))

As part of the *Tinker* ruling, Justice Fortas also added:

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as out of school are "persons" under our Constitution. They are possessed of fundamental rights