



Academic Freedom Alliance Statement on Mandatory Statements on Values

Many universities have drafted statements emphasizing the value of diversity, inclusion and equity or a commitment to anti-racism or other politically contested sets of values. Such statements are frequently offered to faculty for possible inclusion in their individual course syllabi. Faculty are perfectly free to incorporate such statements, to the extent that they are relevant to the conduct of a class, into their course materials, whether or not such language is recommended by campus officials.

But it is a serious intrusion on the freedom of speech of the faculty to mandate or otherwise direct that such statements must be included in individual course syllabi or otherwise adopted or embraced by individual professors. The inclusion of anti-racism statements in course syllabi must be voluntary and left to the conscience of individual professors.

Mandatory anti-racism statements currently being developed are in principle indistinguishable from myriad other statements of belief that university officials have sometimes attempted to force members of the faculty to endorse in the past. No matter how widely shared or normatively desirable any particular statement of values might be, individual professors should not be directed or coerced to endorse or accept such statements.

For public universities, mandating that professors embrace such statements is a clear violation of the First Amendment of the U.S. Constitution. For private universities that have chosen to accept as their own comparable standards of individual conscience, such mandates violate those commitments. For private universities that have adopted broad principles of academic freedom, such mandates are at odds with those principles.

It is well established that public universities are constrained by the First Amendment to the U.S. Constitution. Professors at state universities enjoy certain First Amendment protections relative to their university employer, and those protections extend to their speech in the classroom. As the Supreme Court noted in *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967), “Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us, and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.” *Keyishian* itself struck down a New York law compelling public university professors to sign a loyalty oath pledging that they have never advocated the overthrow of the United States government. Similarly, when state officials sought to question a professor about allegedly subversive ideas expressed in his classroom lectures, the Supreme Court rebuffed them, asserting that the “essentiality of freedom in the community of American universities is almost self-evident” and that no one should “impose any strait jacket upon the intellectual leaders in our colleges and universities.” *Sweezy v. United States*, 354 U.S. 234, 250 (1957).



Courts across the country have emphatically rejected “the argument that teachers have no First Amendment rights when teaching.” *Hardy v. Jefferson Community College*, 260 F.3d 671, 680 (6th Cir. 2001). Courts have specifically recognized that statements in course syllabi are examples of individual professorial speech that is protected by the First Amendment. *Meriwether v. Hartop*, 992 F.3d 492, 506 (6th Cir. 2021).

The First Amendment protects individuals from having to engage in compelled speech. In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), the Court rejected a state’s requirement that public school students say the Pledge of Allegiance. There the Court insisted, “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 and force citizens to confess by word or act their faith therein.” The constitutional guarantee of freedom of speech is “a term necessarily comprising the decision of both what to say and what *not* to say.” *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 796 (1988).

As a general rule, government officials “may not compel affirmance of a belief with which the speaker disagrees.” *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557, 573 (1995). Courts have recognized that these principles mean that university officials may not compel professors “to conform to a belief and a communication to which [they] did not subscribe.” *Parate v. Isibor*, 868 F.2d 821 (6th Cir. 1989). This might well be the case even when individuals agree with the message but do not wish to be compelled to say so or say so in a particular way.

It is true that university officials have the right to engage in their own governmental speech, but their ability to make use of professors as their messengers for communicating that governmental speech is limited. As the Court has recognized, “when the government appropriates public funds to promote a particular policy of its own it is entitled to say what it wishes,” and universities can take care to ensure that an audience does not think that it has endorsed any particular message. *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 833 (1995).

But professors lecturing in a university classroom are not properly understood to be vehicles for communicating a governmental message, even when they are employed by a state university. The Supreme Court has held generally 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,” but the Court specifically refrained from applying that generalization to the specific context of “expression related to academic scholarship or classroom instruction.” *Garcetti v. Ceballos*, 547 U.S. 410, 421, 425 (2006). Classroom speech that addresses “matters of public



concern” and that is not outweighed by the interest of the university “in promoting the efficiency of the public services it performs through its employees” is constitutionally protected. *Demers v. Austin*, 746 F.3d 402, 412 (9th Cir. 2014). Constitutional concerns for academic freedom dictate that disagreement over general value statements cannot in themselves be understood to rise to the level of a disruption of the workplace.

There are certainly some matters of university policy that university officials can expect professors to faithfully communicate to their students. Such information reflects university policies that individual faculty do not have the discretion to countermand and messages that are clearly understood to reflect the speech of the university rather than the individual professor. Individual course syllabi might even be an appropriate vehicle for communicating such policies, and thus professors can be directed to include such content in their syllabi. Courts have recognized that there are policy matters that “universities must be allowed to set,” and a result such matters as “homework load and grading policy are core university concerns.” *Lovelace v. Southeastern Massachusetts University*, 793 F.2d 419, 426 (1st Cir. 1986). Universities may require professors to specify, for example, the criteria by which grades are to be determined. *Johnson-Kurek v. Abu-Absi*, 423 F.3d 590 (6th Cir. 2005). Universities might require faculty to communicate, and comply with, general harassment policies.

For universities to require faculty to communicate *and affirm* contestable statements of political and social value falls outside the scope of what universities can appropriately require in the name of the effective functioning of an institution of higher education. Even values that are fundamental to many modern American universities, such as the commitment to the ideals of inclusion, free speech, democracy, sustainability, human improvement, and economic growth, can be questioned, challenged, and criticized by members of the faculty, and a university that values freedom of thought will not mandate what thoughts faculty members are obliged to have or profess.

Many private universities have voluntarily bound themselves to the same principles of free speech and individual conscience that are found in the First Amendment. As a consequence, for many private universities their own preexisting understanding of academic freedom on their campuses is incompatible with mandatory statements of belief. Moreover, broad principles of academic freedom that are generally recognized by American universities are inconsistent with requirements that faculty affirm contestable statements that impinge on either their personal beliefs or their scholarly judgements.¹

¹ We recognize that some religious institutions require new members of the faculty to affirm a statement of belief in the religious principles upon which the institution was founded. Such statements of faith are incompatible with the broad principles of academic freedom generally embraced by American universities, and would of course be unconstitutional if a public university were to attempt to implement them. To the extent that individual institutions have explicitly adopted such faith requirements for members of their faculty, any limitations



At the very core of traditional principles of academic freedom is the freedom of professors to engage in research and scholarly inquiry without predetermined conclusions, to teach controversial issues in their subject in accord with professional standards, and to speak freely as citizens without fear of institutional sanction. When the American Association of University Professors examined the problem of loyalty oaths in the 1950s, it found that such oaths were inconsistent with the precepts of academic freedom.² It reaffirmed that assessment when reconsidering the problem of political declarations and controversial academic personnel decisions more recently.³ The ability of institutions of higher education to acquire new knowledge and to communicate the fruits of past learning depends on professors having freedom of thought and expression and the freedom to engage in critical inquiry with no preconceptions about where an honest investigation might lead. It is a betrayal of the mission of universities to cultivate and advance human knowledge to require members of the faculty to forswear controversial beliefs, to affirm ideas that they do not think are true, and to commit to blunting their skepticism and limiting the scope of their inquiries. Professional fitness, not intellectual conformity, is the standard by which scholars and teachers are to be judged consistent with academic freedom. Principled commitment to “full freedom in research” and “freedom in the classroom in discussing their subject” cannot be reconciled with the imposition of mandatory affirmations of creedal orthodoxies.

If professors have a constitutional right to express views advocating the violent overthrow of the American government in their classrooms, then they certainly have the constitutional right to express other controversial views with which students, university administrators, and government officials might disagree. If university officials can mandate that professors affirm statements regarding the value of diversity or the reality of systemic racism, then they can equally mandate that professors affirm statements on a wide variety of other contested political and social issues. They could mandate that faculty specifically deny the existence of systemic racism or endorse the view that all lives matter or profess belief in color-blind neutrality. Such loyalty oaths are inconsistent with the fundamental values and purposes of a modern university. Universities should be places where professors can freely disagree about and debate over precisely such questions. Universities that accept the First Amendment and broad principles of academic freedom should not be places that mandate orthodoxies or require faculty to express their agreement with ideas that they do not believe or dictate that faculty record their allegiance to a roster of propositions.

of academic freedom should be clearly stated in writing as specified in the 1940 Statement on Principles on Academic Freedom and Tenure.

² “Academic Freedom and Tenure in the Quest for National Security: Report of a Special Committee of the American Association of University Professors,” *AAUP Bulletin* 42 (Spring 1956): 49.

³ “Ensuring Academic Freedom in Politically Controversial Academic Personnel Decisions,” *AAUP Bulletin* 97 (August 2011): 88.