Academic Freedom

Vikram Amar & Alan Brownstein

As a constitutional matter, the "academic freedom" of professors and teachers is something people talk about, but never seem to define. Do academics have more expressive freedom than other people? If so, who counts as an academic? Should academics receive preferential free speech protection even when they act "unacademically"? Many questions and few pat answers. Certainly courts haven't found them.[1] Disputes about what teachers and scholars at public educational institutions say in and out of the classroom – and the reactions of school administrators and external political authorities – are legion. Recent examples at universities include the protracted litigation following CCNY's decision to limit the chairman of the Black Studies department's term in response to derogatory statements he expressed about Jews in an off-campus speech.[2] More notoriously, the University of Colorado's chancellor began an "academic investigation" of a professor who published disparaging remarks about the victims of the September 11 attacks.[3]

Similar issues arise at public grammar and secondary schools. In Kentucky, a fifth grade teacher who lost her job after inviting an actor to address her class about "the environmental benefits of industrial hemp" successfully challenged her dismissal ostensibly on free speech grounds.[4] More recently, a Cupertino, California teacher unsuccessfully challenged limits placed on his teaching about religion in fifth grade history classes.[5]

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1 *See* California Teachers Association v. State Bd. of Ed., 271 F.3d 1141, 1149 n.6 (9th Cir. 2001) (describing the different tests employed by courts in adjudicating the free speech rights of teachers).

2 Jeffries v. Harleston, 52 F.3d 9 (2nd Cir. 1995).

3 Scott Smallwood, *Inside a Free Speech Firestorm*, 51 Chronicle of Higher Education, February 18, 2005, at 10.

4 Cockrel v. Shelby County School District, 270 F.3d 1036 (6th Cir. 2001).

5 Williams v. Vidmar, 367 F. Supp. 2d 1265 (N.D. Cal. 2005); Peter J. Boyer, *Jesus in the Classroom*, The New Yorker, March 21, 2005, at 62.

Although the basic conflicts in litigated cases are sharp and unambiguous, the constitutional contours of academic freedom in public schools and universities remain unclear and controversial. Teachers and scholars assert the freedom to teach and conduct research without interference. Sometimes, as in the Cupertino case, the interference comes from school administrators. If the administrators are themselves free of outside influences, these disputes involve the tension between two competing strands of academic freedom – the autonomy of the academic institution to determine its own policies and standards and the freedom of the individual teacher or scholar to speak, write, and teach as his own judgment dictates. On other occasions, outside agencies, such as school boards or state legislatures, determine educational policies based on community or political considerations that educators must obey. In both situations, the Free Speech clause of the First Amendment is invoked to mediate the ensuing conflict.

But what exactly does free speech doctrine say about the rights of teachers and professors at public schools and universities? These cases are not going to go away. Indeed, in a society fragmented by culture wars and unnerved by 9/11 anxieties and the Iraq War, schools and colleges are becoming ideological battlegrounds with academic freedom a contentious component of the rules of engagement. Courts need an effective doctrinal framework for adjudicating these disputes. They do not have one.

Surprisingly, not much has been settled about academic freedom as a constitutional matter; the case law today is as confused and fragmented as it has ever been. In this short essay, we hope to pragmatically nudge doctrine in this area towards coherence. To do that, we first critically describe the competing approaches courts use in academic freedom cases. Then we briefly identify two basic conceptual issues. Finally, we offer several suggestions to centralize the debate by resolving some tangential problems that distract courts from the critical questions they must address.

I. Academic Freedom & Free Speech Doctrine

Courts apply four different approaches to disputes between teachers and scholars and those who seek to control their expressive activities.

The Pickering/Connick/Waters *Line of Authority*

Some courts apply the *Pickering*/*Connick*/*Waters*[6] line of cases dealing with the free speech rights of public employees. Academic freedom, as such, is largely irrelevant to this analysis.[7] Teachers and professors are public employees, no different than police officers or nurses. Under this approach, public employee expression is protected when it addresses matters of public concern, but that protection is balanced against, and may be outweighed by, competing state interests.[8]

6 Waters v. Churchill, 511 U.S. 661 (1994); Connick v. Myers, 461 U.S. 138 (1983); Pickering v. Board of Education of Township High School District, 391 U.S. 563 (1968).

7 *See, e.g.*, Boring v. Buncombe County Bd. of Education, 136 F.3d 364 (4th Cir. 1998); Kirkland v. Northside Independent School District, 890 F.2d 794 (5th Cir. 1989). Some courts temper the *Pickering*/*Connick*/*Waters* analysis because of concerns about academic freedom. *See* Scallet v. Rosenblum, 911 F. Supp. 999 (W.D. Va. 1996), *aff'd*, 106 F.3d 391 (4th Cir. 1997).

8 Bonnell v. Lorenzo, 241 F.3d 800 (6th Cir. 2001); Melzer v. Board of Education, 336 F.3d 185 (2nd Cir. 2003).

Taken literally, focusing on whether speech involves a matter of public concern seems to protect some teachers, but not others. Geometry teachers may seldom say anything on the job that is a matter of public concern. Their academic freedom, under this test, would be non-existent. Social studies teachers or law professors regularly speak on matters of public concern and would have most of their expression protected to some extent. If geometry ever becomes a public issue, people who teach it will receive free speech protection too.

An alternative interpretation of *Pickering*, endorsed by some courts, focuses on the distinction between speech *qua* employee and speech *qua* citizen.[9] What a public employee says as part of his job – to fulfill his assigned duties – is not protected by the First Amendment, even if it involves a matter of public concern. Only what public employees say as citizens in their private capacities receives constitutional protection.

This analysis applies uniformly to all teachers. It does not protect the academic freedom of anyone with regard to her on-the-job speech. However, this interpretation is not free from uncertainty. The scope of what constitutes employee, as opposed to citizen, speech can be unclear. Perhaps all of a teacher's statements during class can be viewed as part of the job, but what of conversations with students out of class, during lunch period, or before the school day formally begins? More problematically, how do we determine the job parameters of university professors who are often expected, as part of the scholarship and service components of their job, to speak to government, the press, professional associations, and other audiences, and to publish articles and books for diverse dissemination? If courts find such expression to be part of the job, and unprotected, then university professors may be punished for speaking in situations where they would have the most impact – when their comments are based on their professional expertise. Moreover, far from having *greater* protection for their speech than the average citizen under the rubric of academic freedom, as many people might assume, education workers would actually have considerably *less*. Most citizens do not risk their livelihood when they publish articles or books or speak out on public issues.

Finally, under either of these approaches, what protection, if any, do teachers or professors receive for speech, expressed off the job, which allegedly interferes with their ability to perform their duties? Speech as a citizen may cast doubt on an educator's competence, his ability to interact with students and colleagues of different ethnic or religious backgrounds, and even his capacity to fairly evaluate the work product of his students. While these concerns may apply to various government jobs,[10] they may be particularly acute for teachers who work with minors and represent authority figures and role models.[11] Here, again, ironically enough, teachers and professors would have less freedom of speech than other employees because their general credibility is always important to their ability to do their job.

9 Gonzales v. Chicago, 239 F.3d 939, 941–42 (7th Cir. 2001); Urofsky v. Gilmore, 216 F.3d 401, 407 (4th Cir. 2000) (en banc).

10 *See, e.g.*, McMullen v. Carson, 754 F.2d 936 (11th Cir. 1985).

11 *Melzer*, 336 F.3d 185; Ballard v. Independent School District No.4 of Bryan County, 320 F.3d 1119 (10th Cir. 2003).

The Hazelwood *Requirement of Legitimate Pedagogical Concerns*

Another approach courts employ is grounded on the Supreme Court's decision in *Hazelwood v. Kuhlmeier*[12] to uphold a high school principal's authority to censor the school newspaper – to further legitimate pedagogical concerns.[13] Although *Hazelwood* dealt with student speech at a high school, lower courts have applied it to both elementary schools and colleges and to teachers as well.[14] Under *Hazelwood*, government may regulate academic expression as long the regulation furthers legitimate pedagogical concerns.

The *Hazelwood* approach is more limited than the *Pickering/Connick/Waters* analysis. *Hazelwood* pertains to a school's *curriculum*, defined as expressive activities "the public might reasonably perceive to bear the imprimatur of the school," that are "supervised by faculty members and designed to impart particular knowledge or skills."[15] It would not apply to teacher activities conducted on their own time that are not perceived as having the school's endorsement.

The problem with this approach is that it requires courts to determine what constitutes a legitimate pedagogical concern. The Constitution, of course, does not answer this question. Nor does it assign responsibility for the answer to any one of the various stakeholders having a legitimate interest in public education. Some argue, reasonably, that this issue is intrinsically value-based and can only be answered through political channels of decision making by different communities. Accordingly, a legitimate pedagogical concern is whatever the school board or board of regents says that it is.[16] That kind of absolute deference to educational policy makers rejects any commitment to academic freedom for the individual teacher or professor entirely, for expressive activities that bear the imprimatur of school support.

Other interpretations of "legitimate pedagogical concern" are possible. Federal courts could monitor curricular and pedagogical decisions under some judicially determined theory of "sound educational policy." Here the courts become *de facto* educational policy committees, school boards, and university governing boards of every school system and public university in the country. Years ago, some courts tiptoed into these uncharted waters.[17] Most have struggled to steer clear of such an intrusive role during the last two decades.

Another alternative emphasizes "legitimate" rather than "pedagogical." School and governmental authorities are entitled to great deference in setting and implementing educational policy, but, at the extreme, some decisions are too ideologically limiting and oppressive to be accepted. Once we move beyond religion, or other separate constitutional constraints, however, courts have little basis for their conclusions. It is easier to condemn "a pale of orthodoxy," in theory, than it is to explain why public schools may promote some normative values, such as racial tolerance, but not others.

12 Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988).

13 *Id.* at 273.

14 *See, e.g.*, Ward v. Hickey, 996 F.2d 448 (1st Cir. 1993); Vanderhurst v. Colorado Mountain College District, 208 F.3d 908 (10th Cir. 2000).

15 *Hazelwood*, 484 U.S. at 271.

16 *See, e.g.*, Settle v. Dickson County, 53 F.3d 152 (6th Cir. 1996).

17 *See, e.g.*, East Hartford Education Association v. Board of Education of Town of East Hartford, 562 F.2d 838 (2nd Cir. 1977) (en banc).

Absolute Deference – Government Speech, Government Funding & Editorial Discretion

Some courts suggest that educational policy decisions are essentially unreviewable for free speech purposes. Three justifications are offered to support these conclusions – all of which seem starkly inconsistent with the protection of academic freedom. The first we noted previously in discussing the *Hazelwood* standard. For structural reasons, educational policy decisions are inappropriate subjects for judicial review under the free speech clause. The judiciary lacks manageable standards or objective criteria for evaluating allegedly legitimate pedagogical concerns.[18] Determining educational policy is particularly the domain of community and political deliberation.[19] This argument is far more convincing when we are talking about a first grade classroom as opposed to a university laboratory, however. Courts may have limited expertise in determining the appropriate content of organic chemistry courses, but no less so than local or state government.

A potentially more convincing rationale justifies government control of curricular and pedagogical decisions on the ground that this constitutes "government speech." *Rosenberger v. Rector and Visitors of the University of Virginia*[20] states this proposition explicitly,[21] albeit in dicta.

There is intrinsic power and simplicity in this basic approach. It is, after all, the government's speech and the government's money. The state says what it wants to say and subsidizes only those messages it supports. Yet neither the government speech nor the government funding rationale for judicial abdication is fully persuasive. Again, the problem lies primarily with universities. Higher education involves the communication of inconsistent and diverse perspectives. Scholars and professors disagree about facts and the inferences that can be drawn from them. There are no conductors harmonizing the diverse players in an academic orchestra. Indeed, harmony is rarely the goal of the enterprise. If we take public universities as they are, it is difficult to describe the competing arguments and approaches expressed there as reflecting government speech. The justification for giving government unlimited discretionary authority when it functions as an educator should be grounded on something more than the bare notion that the government's ability to express its own point of view is unconstrained by free speech guarantees.

Justice Kennedy's opinion in *Arkansas Educational Television Commission v. Forbes*[22] provides a more pragmatic argument for judicial restraint. Judicial review of content or viewpoint discriminatory decisions is inappropriate, Kennedy suggests, when the government engages in functions – such as developing a university curriculum – that require editorial discretion.[23] In part, this conclusion rests on a broader understanding of the nature of government speech. When the government presents diverse and even conflicting messages, it is still engaged in

18 *See, e.g., Boring*, 136 F.3d at 372.

19 *See, e.g., id.* at 371–72 (Wilkinson, J., concurring) (Luttig, J., concurring); *East Hartford*, 562 F.2d at 846–48 (Meskill, J., dissenting).

20 Rosenberger v. Rector and Visitors of University of Virginia, 515 U.S. 819 (1995).

21 *Id.* at 833. Some courts have applied this kind of government speech analysis to justify restrictions on teachers' speech. *See, e.g.* Edwards v. California University of Pennsylvania, 156 F.3d 488, 491–92 (3rd Cir. 1998); Downs v. Los Angeles Unified School Dist., 228 F.3d 1003, 1011–1017 (9th Cir. 2000).

22 Arkansas Educational Television Commission v. Forbes, 523 U.S. 666 (1998).

23 *Id.* at 674.

"speech activity" – just as the choices made by the editor of the op-ed page in a newspaper involve the editor's speech, even when he selects columns that challenge the paper's own editorial position. As Kennedy explains, while these editorial decisions "often involve the compilation of the speech of third parties, the decisions nonetheless constitute communicative acts," and as such are beyond the scope of free speech review.[24] Judicial deference also furthers the institutional and practical goals of preventing the courts from assuming unacceptably intrusive roles they are ill equipped to perform.[25]

Academic Freedom as a Distinct Constitutional Value

A few courts recognize academic freedom as a distinct constitutional principle. Generally, these older cases build on decisions emanating from the McCarthy era – when direct assaults on the integrity of academic institutions provoked the Court to develop a makeshift shield around higher education under the rubric of the free speech clause.[26] Free speech case law was less formally doctrinal in those days. The language of the Court's opinions include passionate references to academic freedom.[27] But the cases say little about the nature or scope of the right that distinguishes it from generally applicable freedom of speech principles. Thus, for example, the Court notes the need to carefully review regulations limiting academic freedom for vagueness and overbreadth,[28] but exactly how that admonition differs from conventional doctrine remains unclear.

In recent cases, some lower courts refer to academic freedom as a distinct constitutional value, but are uncertain as to how it should influence their decisions. An occasional decision applies an indeterminate balancing test grounded on the importance of protecting academic freedom – without any clear doctrinal foundation for doing so.[29] Other courts mention academic freedom, but do not explain how it influences their analysis or their decision.[30] It is as if courts recognize the ideal of academic freedom, but do not know how and when they should take it into account.

II. The Conceptual Foundations of Doctrinal Alternatives

Evaluating Speech Regulations Under Generic Doctrine

One fundamental question underlies all the doctrinal conflicts described above. Should regulations restricting the speech of public school teachers and university professors receive some kind of distinct review or should they be evaluated under generic free speech principles? Teachers and professors are state employees as are police officers, government bureaucrats, and a host of other workers on the government payroll. Similarly, public educational institutions are not unlike government owned and operated libraries, museums, and other organizations that have

24 *Id.*

25 *Id.* at 674–75.

26 *East Hartford Education Association*, 562 F.2d 838 (2nd Cir. 1977) (en banc); Kingsville School Dist v. Cooper, 611 F.2d 1109 (5th Cir. 1980).

27 Keyishian v. Board of Regents of The University of the State of New York, 385 U.S. 589, 603 (1967) *citing* Sweezy v. New Hampshire, 254 U.S. 234, 250 (1957).

28 *Keyishian*, 385 U.S. at 604.

29 *Bishop v. Aarinov*, 926 F.2d 1066 (11th Cir. 1991).

30 *See Jeffries*, 52 F.3d at 14–15.

an essentially expressive function. Thus, one way of thinking about the judicial review of speech regulations directed at public school teachers and professors is to base that evaluation on generic free speech principles – the rules that govern restrictions on the speech of public employees or that evaluate government decisions with regard to its own speech. Academic freedom receives no special protection under this approach.

Justifying Distinctive Protection for Academic Freedom Under a Functional Analysis

Alternatively, academic freedom can be defended as a distinct constitutional value under a functional analysis. Arguably, educational institutions serve unique purposes in our society that deserve constitutional recognition. The problem, of course, is determining what those purposes are and explaining why they cannot be democratically altered if a majority of society no longer believes they deserve support.

A functional analysis has the virtue of flexibility. Elementary schools serve different purposes than universities. The objectives of a military academy or a medical school may require the imposition of constraints on professors that are unnecessary in general education courses for undergraduates at a large university.

Still there is some functional common ground. Many universities play a unique role in our society in pressing beyond accepted wisdom to critique and expand our knowledge of the world. Universities also serve as an independent source of values and authority and as such operate as a check on government power – in a similar way that the press or organized religion can serve as a check on government abuses or mistakes. The difficulty with applying that argument to public universities, however, is that we would be asking the government to fund a check on its own authority. The idea is not entirely unworthy of consideration. The basic idea is, after all, intrinsic to the separation of powers; the legislature funds the courts, for example, which serve as a check on legislative authority. But much more needs to be said to support such an argument.

Identifying the functions of public lower schools is even a more demanding undertaking. The range of stakeholders is broader. More important, public school education involves a mixture of values and cultural inculcation – that is teaching children what society wants and needs them to accept – as well as the development in students of intellectual maturity, independence, and the ability to think for themselves. A functional analysis here may be beyond the scope of constitutional adjudication.

III. Practical Modifications that Promote Academic Freedom

We cannot resolve these core conceptual and doctrinal conflicts here. However, we can offer a few pragmatic suggestions to clarify doctrine and protect academic freedom – without seriously short-circuiting any of the most serious arguments in the on-going debate.

In elementary, junior high and high schools, we think the argument for protecting the academic freedom of teachers is largely unpersuasive. The academic role here has little to do with research, the development of new knowledge, or freewheeling inquiry, nor do public schools serve any checking function on government. For free speech purposes, schools boards and administrators control the curriculum and pedagogical decisions, the how and what of classroom teaching. Further, we would define the

scope of that control broadly. We doubt that any teacher-student interactions on school grounds during the school day are beyond the control of school authorities. To the extent that teachers have free speech rights under the *Pickering/Connick/Waters* line of authority as public employees, we think that protection only extends to their speech as citizens. On the job, in their role as teachers, their speech is subject to state control.[31]

We also believe, however, that the manner in which that control is exercised is critically important. In that regard, unlike conventional free speech orthodoxy which is suspicious of all content-based regulations and supports after-the-fact sanctions over prior restraints, we suggest that public school restrictions on teacher speech should emphasize substantial before-the-fact control, while curtailing the availability of after-the-fact sanction.[32]

First, we propose that clear, detailed, and thorough statements of curriculum and pedagogical parameters should be encouraged, not rejected. The failure of a teacher to comply with such standards is a presumptively appropriate ground for discipline. Second, when teachers discuss controversial subjects, such as abortion or the Israeli-Palestinian conflict, a formal process through which proposed programs and materials can be vetted before they are used in the classroom should be available and its use required.

How does more rigorous curriculum control protect academic freedom? The problem these recommendations are designed to avoid is the chilling of teacher speech; a fear of sanction that discourages teachers from addressing controversial questions even when doing so may fall within curricular parameters. The public school teacher academic freedom cases that bother us do not involve teacher defiance of curricular requirements. Rather, they are cases where teachers are disciplined even when they reasonably tried to comply with applicable pedagogical standards.

Two situations illustrate our concerns. We call one problem teacher sandbagging. A teacher plans to discuss a curriculum appropriate, but nonetheless controversial, subject in class. She discusses her plans with her supervisor and receives informal permission to go forward. The community reacts negatively and complains to the school board. The supervisor who approved the teacher's plan now denies doing so or argues that she did not receive an adequate description of what the teacher proposed. In response to the community's complaints, the teacher is disciplined.[33]

Our solution to this problem protects teachers and recognizes community concerns. Teachers may be subject to sanction for failing to comply with the mandatory vetting procedures.[34] Once they comply with the process and receive approval, however, they can not be sanctioned. A school may reconsider its approval and alter its curricular requirements prospectively. But it cannot discipline a teacher for presenting an ap-

31 *See Kirkland*, 890 F.2d at 802.

32 *See* Doug Rendleman, *Civilizing Pornography: The Case of an Exclusive Obscenity Nuisance Statute*, 44 U. Chi. L. Rev. 509 (1977), for a similar analysis favoring the use of specific injunctions to regulate obscenity to avoid a chilling effect resulting from prosecutions under vague statutory standards.

33 *Cockrel*, 270 F.3d 1036 is just such a case. So is *Boring*, 136 F.3d 364 (4th Cir. 1998) (Hamilton, J. dissenting) (noting the case involved a dedicated teacher who did not violate curriculum requirements but "who nevertheless lost her position … for the sole purpose of shielding the principal and Board from the wrath of the public outcry").

34 *See, e.g.*, Board of Education of Jefferson County District R-1 v. Wilder, 960 P.2d 695 (Colo. 1998) (en banc).

proved program to her class.[35]

Another problem involves teacher speech in what we call "curricular gaps." A curricular gap may occur in a variety of situations. The required content of a course may identify only a few key topics that must be covered, leaving a significant part of classroom discussion to the discretion of the teacher. Alternatively, unanticipated events, necessarily beyond the curricular parameters of the course, may require discussion. The attack on the World Trade Center in 2001 was not part of any school's curriculum – but it would be a rare social studies teacher who did not address the subject at all during the weeks after the tragedy.

Clearly, teacher expression within curricular gaps is subject to curricular control. School authorities may fill such gaps once they become aware of their existence and the need to set standards for future classroom presentations. It is less clear that such speech should be the basis for after-the-fact sanction, however. By definition, teacher speech within a curricular gap does not defy the prescribed curriculum, because there are no curricular requirements to violate. Thus, protecting teacher speech in these situations does not conflict with the primacy of administrative and political control of educational programs. Accordingly, a presumption against teacher discipline should be recognized here.[36]

Turning to higher education, we believe there is some persuasive force to the functional justification for protecting the academic freedom of professors. As to the extent and scope of such protection, again, we offer two practical suggestions. First, we argue that state governments and public universities cannot have their cake and eat it too with regard to guarantees of academic freedom. If a public university claims to guarantee professors significant academic freedom, it must abide by that commitment until it formally alters its procedures and rules. Whether academic freedom is a constitutionally protected right or not, it is clearly a benefit of significant value to academics. A combination of free speech and due process values supports protecting academic freedom as an entitlement on which professors can rely if it is formally recognized by the institution that hires them.[37]

Second, we suggest that university professors, engaged in activities outside of the classroom, should have the same freedom to speak and write on matters of public concern as the average citizen who is not a public employee. The idea of academic freedom has always been anomalous in this respect. It is asserted as if it involves a special degree of freedom, unavailable to those outside of the university. But, of course, in at least one important sense, the exact opposite is true. No citizen can be punished for writing a book that angers the state legislature – no matter how outrageous or offensive the book might be. Under several of the doctrinal approaches we have described, professors at public universities may lose their livelihood for doing so.

The state may insist, for example, that

35 As one judge noted "[T]he school approved in advance the subject matter and the speaker. It now must pay the penalty for giving prior approval, because it cannot now be heard that such conduct by Cockrel was disruptive." *Cockrel*, 270 F.3d at 1060 (Siler, J., concurring).

36 Some cases support our analysis. Reflecting concerns expressed in *Keyishian* about vagueness and overbreadth, they require that teachers receive notice about what they cannot say before they can be disciplined. Ward v. Hickey, 996 F.2d 448 (1st Cir. 1993); Keefe v. Geanakos, 418 F.2d 359 (1st Cir. 1969); Lacks v. Ferguson, 147 F.3d 718 (8th Cir. 1998). Stanley Ingber, *Article: Socialization, Indoctrination, or the "Pall of Orthodoxy": Value Training in the Public Schools*, 1987 U. Ill. L. Rev. 15, 85.

37 Ingber, 1987 U. Ill. L. Rev. 15 (noting that the courts have used due process and procedural safeguards to indirectly protect academic freedom in public schools).

it cannot be required to pay employees to write and publish works it considers useless, dangerous, or offensive. Moreover, because the nature of a professor's professional responsibilities are so poorly defined and indeterminate in their scope, what is found to constitute on-the-job expression may include a great deal of public commentary – speech that is the essence of what the First Amendment protects. Further, even if the work is written and presented on the professor's own time (whatever that may mean) its author may be sanctioned because his expression casts doubt as to his competence, impartiality, or other characteristics important to the performance of his professional responsibilities.[38]

We would reverse this presumption to a limited degree. We believe that an academic should not be subject to sanctions for expression off-campus – particularly if the speech is self-identified as not constituting any part of the professor's professional responsibilities. Neither an expansive description of a professor's job nor alleged connections between his public statements and his capacity to perform his duties should be grounds for suppressing his participation in the public life of the community. At least there should be a powerful presumption against sanctions in these cases. This would provide professors at public universities the same freedom to speak out on public policy issues as citizens who are not public employees. GB

38 *See, e.g.*, *Jeffries*, 52 F.3d 9 (university reduces professor's term as Department Chair because his off-campus comments will disrupt the efficient operation of the Department); Levin v. Harleston, 966 F.2d 85 (2nd Cir. 1992) (university alleges extracurricular comments denigrating African-Americans may affect professor's teaching ability).