

Report to the Faculty Senate of the Ad hoc Committee on Freedom of Expression

May 13, 2022

Committee charge: Constituted by the Steering Committee in March 2021, the committee will review all existing university policies regarding academic freedom and freedom of expression for students, faculty, and staff. It will determine whether the University of South Carolina, Columbia should adopt a statement on the freedom of expression comparable to the “Chicago Principles.” If, in the committee’s judgment, the university should adopt such a statement, the committee will propose one for consideration by the Faculty Senate and other bodies as appropriate. In addition, the committee will recommend any modifications to existing policies that may be necessary either to conform them to the proposed policy or to make them internally consistent with each other. The committee is expected to complete most of its work in fall 2021.

Background to the committee’s work: Events across the US and in South Carolina since the constitution of the committee have sharpened our awareness of the importance of defending academic freedom and freedom of expression. In May 2021 fifteen South Carolina state representatives filed a bill ([H. 4325](#)) to prohibit teaching a set of ideas that they define as “critical race theory,” and similar bills ([H.4605](#), [H. 4799](#), [H. 4392](#), and [H. 4343](#)) followed. Also currently in committee is [H. 3076](#), which would require universities to document that their faculties “reflect the proportional ethnic diversity and political diversity of the State,” and [H. 4522](#), which would end tenure in South Carolina. On June 21, 2021, all of South Carolina’s Republican members of the House of Representatives signed a [letter](#) addressed to the presidents of UofSC and Clemson calling on them to “eradicate” classes on critical race theory. The letter, which was published on twitter, identified by name one of our colleagues and called on President Pastides to take action against what they described as her “neo-racist ideology.” We began our deliberations, then, conscious of the timeliness and importance of our efforts.

Actions of the committee: The committee first met on September 29, 2021, and on eight subsequent occasions. We began by surveying the university’s policy manual and the Faculty Manual. We found few references to academic freedom or freedom of speech, and we also found inconsistencies among divisions. Our recommendations, which follow below, aim to address both academic freedom and freedom of expression for all members of the campus community to ensure that the University of South Carolina remains an institution committed to free inquiry and instruction.

We found the history of the Carolinian Creed instructive as we discussed the most effective way to protect free speech and academic freedom on campus. Today, many members of the university – faculty, students, and staff alike – regularly invoke the principles of the Creed. Its

stature within the university, however, was in some ways a matter of happenstance, and it does not bind members of the university in any enforceable way. Its original focus was students' relationships to one another, and its adoption in 1990 was a statement of the university's aspirations – that is, it was and is not a code of behavior or a set of rules about student conduct. The hope was that students would affirm the Creed without being subject to it. It has achieved that goal with great success: witness the fact that the Faculty Senate adopted the Creed in 2010. Despite the widespread respect that it commands, the Carolinian Creed is a non-enforceable, aspirational document – a fact reiterated in *Abbott v. Pastides* in 2017.

With the example of the Carolinian Creed in mind, the committee decided to compose a statement of the university's values on academic freedom and freedom of expression and to recommend embedding it in two locations in the policy manual: in the faculty manual and in UNIV 6.00, the recently drafted policy on "Freedom of Expression and Access to Campus." The policy manual is the appropriate location for this statement because it is enforceable, and it carries more weight across campus than a senate resolution. Repeating our statement in the Faculty Manual and in UNIV similarly emphasizes that its principles apply across campus.

The committee's **Statement of Principles of Academic Freedom and Free Expression:**

The University of South Carolina supports, encourages and defends freedom of inquiry for students, faculty, and staff and recognizes that academic freedom and free speech are foundational to the work of a university. Academic institutions exist for the transmission of knowledge, the pursuit of truth, the development of students, and the general well-being of society. That mission takes place in classrooms and labs, theatres and galleries, dorm rooms and offices, and we affirm academic freedom in all of these spaces. Our identity as a public university also demands that we support free expression to the fullest extent of the First Amendment, and we embrace that charge.

The University of South Carolina values the diversity of its community. Individuals of many different ages, gender expressions, races, religions, nationalities, physical abilities, political perspectives, sexual orientations, and other diverse characteristics constitute the University of South Carolina. Speech on campus comes from many kinds of speakers, and many audiences hear it, and the university is committed to upholding the rights of them all. We affirm that this diversity is a source of intellectual strength: because of it, we learn more, produce more knowledge, enjoy greater creativity, and have a larger and more positive impact on the state of South Carolina and on the world.

Both the principles of academic freedom and the constitutional protection of free expression maintain that unpopular, distasteful, and even repugnant speech all deserve protection. One's personal conviction that speech is false, misleading, or pernicious is no reason to suppress it. We recognize that the protection of speech we disagree with is fundamental to our own right to speak, teach and learn freely. Interfering with the speech of others – the so-called heckler's veto -- violates the rights of speakers and their

audiences and ultimately damages the environment for speech on campus for us all. Fostering the capacity of members of the university to engage in debate with those with whom we disagree is fundamental to the mission of the University of South Carolina.

However, nothing guarantees speakers an approving or even a passive audience. Members of the university are free to express their disagreement with speech on campus. The leadership of the university, speaking for the community as a whole, may also express its disapproval of speech that violates the values of diversity, inclusion, tolerance, and mutual respect expressed in the Carolinian Creed.

The freedom to debate and discuss the merits of competing ideas does not, of course, mean that individuals may say whatever they wish, wherever they wish. The university may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the university. In addition, the university may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt the ordinary activities of the University of South Carolina. But these are narrow exceptions to the general principle of freedom of expression, and it is vitally important that these exceptions never be used in a manner that is inconsistent with the University of South Carolina's commitment to a completely free and open discussion of ideas.

Preserving academic freedom and other forms of free expression is the shared responsibility of all members of the university community. Creating a culture of free expression, respectful and productive engagement and disagreement on campus requires on-going educational effort, not merely a mechanical application of rules. Nonetheless, the university does have a duty to develop policies and procedures that safeguard this freedom. The broadest possible participation of the members of the academic community should shape both the formulation and the application of these policies and procedures.

In addition to recommending this statement of principles, the committee reviewed the entire policy manual in detail, and we recommend several specific changes to different divisions of the manual.

Several of the committee's most important recommendations seek to establish explicit protection for academic freedom of all instructors and librarians, including those not on the tenure track. To that end, we recommend that the Libraries division of the policy manual guarantee academic freedom for all librarians, and we propose new language for the Faculty Manual that specifies that our adherence to the American Association of University Professors' "Statement of Academic Freedom" includes the 1970 interpretive comments, which include non-tenure track faculty.

Recommendations for revision of the university policy manual

1. Academic Affairs (ACAF)

The Workplace Bullying policy should include language protecting academic freedom and freedom of expression.

ACAF 1.80: Workplace Bullying (<https://www.sc.edu/policies/ppm/aca180.pdf>)

The **Faculty Advisory Committee** and the **Faculty Senate ad hoc committee on Professional Conduct** are drafting a substantial revision to address the broader construct of faculty incivility as well as freedom of expression and academic freedom.

2. Athletics (ATHL)

Student athletes retain all of the academic freedom rights of students. The ATHL policy division should refer to the Statement of Principles Concerning Academic Freedom and Free Expression in the UNIV 6.00 policy on academic freedom described in section 7 below.

ATHL 1.00: Intercollegiate Athletics – General
(<https://www.sc.edu/policies/ppm/ath100.pdf>)

Maria Hickman, Executive Associate Athletics Director, is the policy liaison for the Athletic Department.

3. Communications (COMM)

The Public /Media Relations policy currently requires faculty to notify communications staff of all contact with the media and to provide them with all articles or op-eds prior to publication. The communications staff may edit that material “as necessary to conform to accepted journalistic style and standards.”

Faculty are unlikely to be aware of policy in the COMM division. The Faculty Manual simply states that “when faculty members speak or write as citizens, they shall be free from institutional censorship or discipline. They shall indicate that they are not speaking for the university” (pp. 51-2).

COMM 3.00: Public/Media Relations (<https://www.sc.edu/policies/ppm/comm300.pdf>)

Larry Thomas is the policy liaison for Communications.

4. Equal Opportunities Programs (EOP)

Equal Opportunities policies have not been updated since 2014 and do not mention freedom of expression or academic freedom.

EOP 1.00: Equal Opportunity and Affirmative Action

<https://www.sc.edu/policies/ppm/eop100.pdf>

EOP 1.01: Equal Opportunity Complaint Processing Procedures

<https://www.sc.edu/policies/ppm/eop101.pdf>

EOP 1.02: Sexual Harassment <https://www.sc.edu/policies/ppm/eop102.pdf>

EOP 1.03: Prohibition of Unlawful Discrimination and Harassment

<https://www.sc.edu/policies/ppm/eop103.pdf>

EOP 1.06: Sexual Harassment, Sexual Misconduct, and Interpersonal Violence (Interim)

<https://www.sc.edu/policies/ppm/eop106.pdf>

The **Office of Civil Rights and Title IX** will revise these policies. The **Senate ad hoc committee on Professional Conduct** will consult on matters relevant to harassment and bullying.

5. Human Resources (HR)

In light of the University of Florida's recent efforts to use HR policy to prevent faculty members from offering expert testimony, the "Conflict of Commitment" language in the "Outside Employment" policy needs revision to protect academic freedom. Because the definition of "conflict of commitment" appears in more than one policy division, revisions should be coordinated.

HR 1.30: Outside Employment <https://www.sc.edu/policies/ppm/hr130.pdf>

Note that revisions should ensure consistency with "conflict of commitment" language in ACAF 1.50 ("Outside Professional Activities for Faculty"), RSCH 1.06 ("Disclosure of Financial Interests and Management of Conflicts of Interest Related to Sponsored Projects"), and BTRU 1.18 ("Conflict of Interest").

Caroline Agardy is responsible officer and Connie Thompson is the policy liaison for Human Relations. Frank DiSilvestro is the Conflict of Interest Compliance Manager.

6. Libraries (LIB)

Library policies include no mention of academic freedom or freedom of expression, and the committee is particularly concerned about non-faculty librarians whose employment is not governed by the Faculty Manual.

University Libraries will be revising the LIB division, and the committee recommends that they consider academic freedom protections.

The Dean of Libraries is the responsible policy officer.

7. University Administration (UNIV)

The committee proposes a revision to UNIV 6.00: "Freedom of Expression and Access to Campus."

We suggest expanding the scope of the policy with a new statement of purpose:

This policy outlines academic freedom, speech and expression, as it relates to access to campus for students, faculty members, staff members, and members of the public as they participate in the teaching, research, or other official or non-official functions of the University.

The "Definitions" section of the policy could include "Academic Freedom: the freedom of instructors to investigate, discuss, teach and publish in their academic fields, and the freedom of students to learn without interference from political figures, boards of trustees, donors, or other entities."

We recommend replacing the first paragraph of the policy statement with a version of the committee's Statement of Principles of Academic Freedom and Free Expression.

The policy liaison for UNIV is Cheryl Addy.

8. Faculty Manual

Committees on Professional Conduct and **Professional-Track Faculty** and the **Faculty Advisory Committee** are currently revising many sections of the Faculty Manual, and this committee is confident that the result of their efforts will be a Manual that respects and protects academic freedom to a greater extent than before.

The description of the **Grievance Committee** (pp. 37-38) suggests that it exists to adjudicate personnel issues (non-renewal, denial of tenure, etc.). The description does

not mention grievances related to academic freedom. Manual revisions related to grievances and professional conduct should take academic freedom into account.

The section on **Professional-Track Faculty** (p. 46) offers these instructors no academic freedom protections. Their substantial role in providing instruction to our students demands that they enjoy similar rights. Explicitly extending the University's commitment to AAUP principles to include the association's 1970 interpretive comments to the 1940 Statement of Principles on Academic Freedom and Tenure" is an important step in this direction: the fifth 1970 comment reads: "The concept of 'rank of full-time instructor or a higher rank' is intended to include any person who teaches a full-time load regardless of the teacher's specific title."

The section on **Academic Freedom** (pp. 51-52) reads: "The university adheres in principle to the American Association of University Professors' "Statement of Academic Freedom." The university shall defend academic freedom against any encroachment," and it briefly summarizes several AAUP principles. We recommend adding the committee's Statement of Principles of Academic Freedom and Free Expression and making the reference to the AAUP statement more precise:

ACADEMIC FREEDOM

The University of South Carolina supports, encourages and defends freedom of inquiry for students, faculty, and staff and recognizes that academic freedom and free speech are foundational to the work of a university. Academic institutions exist for the transmission of knowledge, the pursuit of truth, the development of students, and the general well-being of society. That mission takes place in classrooms and labs, theatres and galleries, dorm rooms and offices, and we affirm academic freedom in all of these spaces. Our identity as a public university also demands that we support free expression to the fullest extent of the First Amendment, and we embrace that charge.

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all deserve protection. One's personal conviction that speech is false, misleading, or pernicious is no reason to suppress it. We recognize that the protection of speech we disagree with is fundamental to our own right to speak, teach and learn freely. Interfering with the speech of others – the so-called heckler's veto -- violates the rights of speakers and their audiences and ultimately damages the environment for speech on campus for us all. Fostering the capacity of members of the university to engage in debate with those with whom we disagree is fundamental to the mission of the University of South Carolina.

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The university adheres in principle to the American Association of University Professors' 1940 "Statement of Principles on Academic Freedom and Tenure" as well as the association's 1970 interpretive comments, available here: <https://www.aaup.org/file/1940%20Statement.pdf>. The statement affirms that

“Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.” The university shall defend academic freedom against any encroachment.

Faculty members are entitled to full freedom in research and in the publication of its results, subject to the adequate performance of all other academic duties, but research for pecuniary return shall be based upon an understanding with the appropriate university authorities. See also "Copyright Policy."

Faculty members are entitled to freedom in the classroom in discussing their subjects, but shall not introduce controversial matters that have no relation to the subjects.

When faculty members speak or write as citizens, they shall be free from institutional censorship or discipline. They shall indicate that they are not speaking for the university.

Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full-time probationary and the tenured teacher, but also to all others, such as part-time faculty and teaching assistants, who exercise teaching responsibilities.

The section on **Workplace Civility** (pp. 52-3) will need to be updated to reflect the work of the Senate Ad hoc Committee on Professional Conduct.

The **Faculty Advisory Committee** will oversee revisions of the Faculty Manual.

Members of the committee:

Carol Harrison, Chair (CAS History)
Cheryl Addy (Office of the Provost)
Kay Banks (South Carolina Honors College)
Susan Bon (College of Education)
Bob Brookshire (College of Engineering and Computing)
Shirley Carter (School of Journalism and Mass Communication)
Scott Decker (CAS Psychology)
Audrey Korsgaard (Darla Moore School of Business)
Kim McMahon (Student Life)
Marc Shook (Division of Student Affairs)
Henry White (Office of General Counsel)
Julian Williams (Office of Diversity, Equity, and Inclusion)
Chris Wuchenich (Law Enforcement and Safety)