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Academic Freedom and the First Amendment

By Marjorie Heins¹

I. The Origins of Academic Freedom in the United States

• Controversies over academic freedom in the U.S. began in the late nineteenth century, when corporate boards of trustees demanded the firing of activist professors who supported labor organizing and other progressive causes. In response to one such incident (the firing of economics professor Scott Nearing by the University of Pennsylvania), a group of professors from prestigious universities came together in 1915 to form the American Association of University Professors (the AAUP). The AAUP's founding document was its 1915 Declaration of Principles on Academic Freedom and Academic Tenure.²

• The AAUP's 1915 Declaration announced that the university "is a great and indispensable organ of the higher life of a civilized community" and its trustees, therefore, "have no moral right to bind the reason or the conscience of any professor." It identified three aspects to academic freedom: scholarship, classroom teaching, and "extramural utterances" – that is, expression in the public sphere on matters outside the professor's field of scholarly expertise.

• The 1915 Declaration made clear that the new AAUP did not consider any of the three elements of academic freedom to be an absolute right. Thus, the Declaration said, scholarly writings "should be set forth with dignity, courtesy, and temperateness of language"; teaching on controversial subjects should "set forth justly, without suppression or innuendo, the divergent opinions of other

¹ Author, *Priests of Our Democracy: The Supreme Court, Academic Freedom, and the Anti-Communist Purge* (2013); director, Free Expression Policy Project, www.fepproject.org.

² See *Priests of Our Democracy*, 17-24; Richard Hofstadter and Walter Metzger, *The Development of Academic Freedom in the United States* (1955), 407-442.

investigators”; and extramural utterances should “avoid hasty or unverified or exaggerated statements” and “refrain from intemperate or sensational modes of expression.”³

- By the middle of the twentieth century, most U.S. institutions of higher learning had accepted the AAUP’s three-part definition of academic freedom, but in times of political repression, neither the universities nor the AAUP itself effectively resisted attacks on teachers who were subjected to loyalty oaths, called before legislative investigative committees, or otherwise investigated and punished because of their political beliefs and associations.

- The U.S. Supreme Court first began to measure politically repressive laws and executive actions against the commands of the First Amendment in 1919,⁴ but it was not until 1931 that the Court actually struck down a so-called sedition law on First Amendment grounds,⁵ and it was to be several decades before it applied First Amendment principles to claimed assaults on academic freedom.

II. The Cold War Red Hunt

- The first mention of academic freedom in a Supreme Court opinion appeared in a dissent in the case of *Adler v. Board of Education* in 1952. *Adler* was a challenge to New York State’s Feinberg Law, a typical McCarthy era law that required detailed procedures for investigating the political beliefs and associations of every public school teacher and ousting anyone who engaged in “treasonable or seditious acts or utterances” or joined an organization that advocated the overthrow of the government by “force, violence or any unlawful means.”⁶

- The majority opinion in *Adler*, written by Justice Sherman Minton, upheld the Feinberg law on the ground that teachers have no right to their jobs and, because they work in a “sensitive area” where they shape young minds, the authorities have the power to investigate their political beliefs. But Justice William O. Douglas’s dissent protested that the Feinberg Law “proceeds on a

³ AAUP, Declaration of Principles on Academic Freedom and Academic Tenure” (1915), <http://www.aaup.org/AAUP/pubsres/policydocs/contents/1915.htm>; *Priests of Our Democracy*, 23-24.

⁴ The first major case was *Schenck v. United States*, 249 U.S. 47 (1919).

⁵ *Stromberg v. California*, 283 U.S. 359 (1931).

⁶ *Adler v. Board of Education*, 342 U.S. 485 (1952); see *Priests*, 3, 119-122.

principle repugnant to our society – guilt by association,” and furthermore, that it “turns the school system into a spying project,” with students, fellow teachers, parents, and administrators all on the lookout for “tell-tale signs of disloyalty.” The law would “raise havoc with academic freedom,” Douglas said; “a pall is cast over the classrooms.”⁷

- Although the Supreme Court upheld nearly every loyalty law that came before it in the McCarthy period, a rare exception came later in 1952 in *Wieman v. Updegraff*, when the Court struck down a loyalty oath imposed by the State of Oklahoma on all public employees, including teachers and professors. The Court’s grounds were narrow: the oath did not meet the constitutional requirement of *scienter* – that is, individuals cannot be punished for their political associations unless it is proven that they knew of the illegal aims of the organization in question. But Justice Felix Frankfurter’s concurring opinion in *Wieman* turned on a broader principle: academic freedom. The Oklahoma oath, Frankfurter wrote, threatened “that free play of the spirit which all teachers ought especially to cultivate and practice.” Teachers are “the priests of our democracy,” Frankfurter said, because it is their job “to foster those habits of open-mindedness and critical inquiry which alone make for responsible citizens.”⁸

- In the mid-1950s, the Supreme Court began cautiously to invalidate some aspects of the ongoing political repression. In four cases decided on the same day in June 1957, the Court:

- narrowed the sweep of the 1940 Smith Act, which had been used to put the leaders of the Communist Party in jail for conspiracy to advocate the overthrow of the government at some future time⁹;
- invalidated procedures of the federal employee loyalty program that had been used to fire a career diplomat¹⁰;
- reversed the contempt-of-Congress conviction of a labor organizer who had refused to answer some of the House Un-American Activities

⁷ *Adler*, 342 U.S. at 492-493 (majority opinion); 508-511 (Douglas, J., dissenting).

⁸ *Wieman v. Updegraff*, 344 U.S. 183, 196-197 (1952) (Frankfurter, J., concurring).

⁹ *Yates v. United States*, 354 U.S. 298 (1957).

¹⁰ *Service v. Dulles*, 354 U.S. 363 (1957).

Committee's broad-ranging political questions¹¹; and

– in *Sweezy v. New Hampshire*, reversed another contempt conviction, of a professor who had refused to answer some of the questions posed by the state's attorney general, acting as a one-man anti-subversive investigating committee.¹²

• The holding in *Sweezy* turned on due process principles: according to Chief Justice Earl Warren's opinion for the Court, the scope of the state attorney general's mandate was so broad and vague that Professor Sweezy could not have known what he was legally required to answer. But Warren's opinion made clear that academic freedom was an important underpinning of the Court's reasoning. Warren wrote: "the essentiality of freedom in the community of American universities is almost self-evident," because of "the vital role in a democracy that is played by those who guide and train our youth."¹³ In language that has been frequently quoted, Warren went on:

To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. Scholarship cannot flourish in an atmosphere of suspicion and distrust. 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.¹⁴

• Warren's paean to academic freedom in *Sweezy v. New Hampshire* focused on its importance for professors and students. A concurring opinion by Justice Frankfurter took a different approach: it would have decided the case explicitly on grounds of First Amendment academic freedom, rather than due process, but in the process, it defined the right of academic freedom in terms of universities' institutional autonomy rather than of individual rights. Frankfurter identified "four essential freedoms of a university – to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study."¹⁵ The Supreme Court to this day has not resolved the

¹¹ *Watkins v. United States*, 354 U.S. 178 (1957).

¹² *Sweezy v. New Hampshire*, 354 U.S. 234 (1957).

¹³ *Id.* at 250.

¹⁴ *Id.*

¹⁵ *Id.* at 261-263 (Frankfurter and Harlan, JJ., concurring). On the four June 1957 cases and the decision making process in *Sweezy*, see *Priests of Our Democracy*, 177-182.

inherent tension between the individual and institutional aspects of academic freedom.

- Two Supreme Court decisions in the early 1960s struck down teacher loyalty oaths on grounds of undue vagueness, but did not directly mention academic freedom or question the principle of guilt by association that underlay the loyalty investigations and purges of the era.¹⁶

- Another oath case, *Elfbrandt v. Russell*, decided in 1966, struck down an Arizona law that made it a crime (perjury) for anybody to take an affirmative oath of loyalty to the state and federal constitutions and then “knowingly and willfully” become or remain a member of the Communist Party, “any of its subordinate organizations,” or any other group that had “as one of its purposes” the overthrow of the government. The Court, per Justice William O. Douglas, ruled that the law was too broad because it punished people who joined a political group without “specific intent” to further its illegal aims.¹⁷ This “specific intent” requirement went beyond the earlier requirement of *scienter*, or mere knowledge, of a group’s illegal aims, and greatly narrowed the scope of guilt by association.

- Despite having struck down a number of loyalty oaths, the Supreme Court still had not definitively rejected the underlying assumptions and mechanisms of public-employee loyalty programs. It was not until 1967, in *Keyishian v. Board of Regents*, that the Court finally did issue a broad ruling to this effect.¹⁸ *Keyishian* was a renewed challenge to New York State’s Feinberg Law, and arose when five faculty members at the State University of New York at Buffalo refused to sign an anti-communist loyalty oath that the state university system had adopted as a means of implementing the law. Although the plaintiffs lost their case in the lower courts (*Adler v. Board of Education* was still the controlling precedent), by the time it got to the Supreme Court, a narrow 5-4 majority was willing to

¹⁶ *Cramp v. Board of Public Instruction*, 368 U.S. 278 (1961); *Baggett v. Bullitt*, 377 U.S. 360 (1964). The Court in *Baggett* made passing reference to academic freedom in a footnote relating to the dismissal of student plaintiffs for lack of standing: “Since the ground we find dispositive immediately affects the professors and other state employees required to take the oath, and the interests of the students at the University in academic freedom are fully protected by a judgment in favor of the teaching personnel, we have no occasion to pass on the standing of the students to bring this suit.” *Id.* at 366 n5.

¹⁷ *Elfbrandt v. Russell*, 384 U.S. 11 (1966).

¹⁸ *Keyishian v. Board of Regents*, 385 U.S. 589 (1967).

overrule *Adler* and rule that public-employee loyalty laws of the type the Court had previously approved were in violation of the First Amendment.

- The majority opinion by Justice William Brennan in *Keyishian* found the section of the Feinberg Law that mandated job termination for “treasonable or seditious” acts or utterances to be unconstitutionally vague. “Our experience under the Sedition Act of 1978,” Brennan wrote, “taught us that dangers fatal to First Amendment freedoms inhere in the word ‘seditious.’” The same was true of the ban on advocating forceful overthrow of the government, for it could cover the public display of any book “containing or advocating, advising or teaching” the doctrine of revolutionary change. “Does the teacher who carries a copy of *The Communist Manifesto* on a public street thereby advocate criminal anarchy?” Brennan rhetorically asked. “Does the teacher who informs his class about the precepts of Marxism or the Declaration of Independence violate this prohibition?” Does the librarian who recommends books about the French, American, or Russian revolutions violate the Feinberg Law? The “very intricacy” of the law’s administrative mechanisms and the “uncertainty as to the scope of its proscriptions” made it “a highly efficient *in terrorem* mechanism.”¹⁹

- Brennan’s majority opinion in *Keyishian* also reiterated the holding of *Elfbrandt v. Russell* – that disqualification from employment based on the theory of guilt by association is unconstitutional unless it is shown that the employee had a specific intent to further an organization’s illegal aims. And Brennan rejected the simplistic concept underlying the *Adler* decision, that since nobody has a right to a teaching job, virtually any condition on employment is constitutional.²⁰

- In *Keyishian*, a Supreme Court majority for the first time squarely adopted the doctrine of First Amendment academic freedom. In language that has been widely quoted, the Court said:

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. ... “The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” ... The classroom is peculiarly the “marketplace of ideas.” The

¹⁹ *Id.* at 597-602.

²⁰ *Id.* at 596, 606-607.

Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth "out of a multitude of tongues, (rather) than through any kind of authoritative selection."²¹

III. The Fortunes of First Amendment Freedom After *Keyishian*

• In *Pickering v. Board of Education*,²² decided a year after *Keyishian*, the Supreme Court established a balancing test for weighing the First Amendment rights of public employees to speak out, as citizens, on matters of "public concern," against the claimed efficiency needs of their employers. After *Pickering*, the question arose whether the same balancing test should apply to the "extramural speech" of professors at public universities, or whether some different standard based on the special concerns of academic freedom should apply. That question remains unanswered by the Supreme Court, although its most recent reference to academic freedom mentions only "expression related to academic scholarship or classroom instruction," and does not refer to extramural speech.²³

• Several Supreme Court decisions since *Keyishian* have recognized an institutional right to academic freedom:

– In *Regents of the University of California v. Bakke* in 1978, the Court struck down a program of affirmative action in admissions to a medical school, but Justice Lewis Powell's opinion for the Court recognized that a university's judgment about its need for a diverse student body is an element of academic freedom. Powell quoted Justice Frankfurter's concurrence in *Sweezy v. New Hampshire*, describing the "four essential freedoms of a university" – including who will be admitted to study.²⁴

²¹ *Id.* at 602-603, quoting in part *Shelton v. Tucker*, 364 U.S. 479, 487 (1960); *United States v. Associated Press*, 52 F.Supp. 362, 372 (D.D.C 1945). For extensive background on the *Keyishian* litigation and the Supreme Court's decision making process in that case, see *Priests of Our Democracy*, 193-222.

²² *Pickering v. Board of Education*, 391 U.S. 563 (1968).

²³ *Garcetti v. Ceballos*, 547 U.S. 410, 425 (2006). See text accompanying notes 28-30 and the other materials for more on *Garcetti*.

²⁴ *Regents of the University of California v. Bakke*, 438 U.S. 265, 312 (1978). The Court reiterated this view of affirmative action in *Grutter v. Bollinger*, 539 U.S. 306, 328 (2003).

– The Court recognized the tension between institutional and individual academic freedom in a 1985 case involving a student’s unsuccessful challenge to his university’s decision to stop his advancement toward a medical degree. Justice John Paul Stevens wrote for the Court that academic freedom “thrives not only on the independent and uninhibited exchange of ideas among teachers and students, ... but also, and somewhat inconsistently, on autonomous decision making by the academy itself.”²⁵

– The Court recognized an argument for institutional academic freedom in a 1990 case involving the Equal Employment Opportunity Commission’s subpoena for confidential peer-review materials in the context of an investigation of a professor’s discrimination complaint; but the argument did not prevail. Justice Harry Blackmun’s opinion for the Court acknowledged that the “four essential freedoms” of a university include the right to determine who may teach, but found the university’s argument that the “quality of instruction and scholarship” would decline if the confidential materials were released was too vague and speculative. The EEOC was not seeking to “second-guess” any academic judgments, Blackmun reasoned, but only to enforce the law against race and sex discrimination.²⁶

- The possible chilling effect of the public disclosure of confidential communications among professors remains a controversial issue. Recent public records requests by ideologically motivated individuals or groups for private e-mails and incomplete research results are reminiscent of the politically driven investigations of the 1950s. Thus, although transparency is an important value in academia, sometimes it must be balanced against the need to protect scholars from harassment.

- One circuit court has expressed the view that if academic freedom is any part of the First Amendment, it is only as an institutional right. In *Urofsky v. Gilmore* in 2000, a majority of the *en banc* Fourth Circuit Court of Appeals concluded that “to the extent the Constitution recognizes any right of ‘academic freedom’ above and beyond the First Amendment rights to which every citizen is entitled, the right inheres in the University, not in individual professors.”²⁷ The

²⁵ *Regents of the University of Michigan v. Ewing*, 474 U.S. 214, 226 n12 (1985).

²⁶ *University of Pennsylvania v. EEOC*, 593 U.S. 182, 196-200 (1990).

²⁷ *Urofsky v. Gilmore*, 216 F.3d 401, 410 (4th Cir. 2000)(*en banc*). Of the twelve judges on the *en banc* court, only six agreed with this statement. Chief Judge Harvie Wilkinson concurred in the court’s judgment, but not in its statement about academic freedom.

case involved a challenge to a Virginia law that prohibited all public employees, including state university professors, from accessing any “sexually explicit” content on their office computers without advance permission from their supervisors.

- The Supreme Court’s 2006 decision in *Garcetti v. Ceballos* raised the question of whether the current Court majority would recognize the First Amendment right to individual academic freedom as set forth in *Keyishian*. *Garcetti* involved a non-academic public employee (an assistant district attorney) who had reported fraud in search warrant affidavits to his superiors and had testified to this effect at a subsequent hearing. The Court, per Justice Anthony Kennedy, ruled that “[w]hen 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.”²⁸

- Justice David Souter, dissenting in *Garcetti*, expressed particular alarm at the Court’s creation of an “ostensible domain beyond the pale of the First Amendment [that] is spacious enough to include even the teaching of a public university professor.” Souter hoped that the majority did not “mean to imperil First Amendment protection of academic freedom in public colleges and universities, whose teachers necessarily speak and write ‘pursuant to ... official duties.’”²⁹

- In response to Justice Souter’s dissent, Justice Kennedy added the following caveat in the *Garcetti* majority opinion:

There is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court’s customary employee-speech jurisprudence. We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching.³⁰

Judge Clyde Hamilton concurred, but only because he thought a prior decision of the court, with which he disagreed, was a controlling precedent. Four judges dissented.

²⁸ *Garcetti*, 547 U.S. at 421.

²⁹ *Id.* at 438-439 (Souter, J., dissenting).

³⁰ *Id.* at 425.

- Courts confronted with academic freedom claims in the years since *Garcetti* have come to different conclusions. A panel of the Fourth Circuit ruled in 2011 that the fact that publicly employed professors engage in writing and public appearances does not make these activities “official duties” within the meaning of *Garcetti*.³¹ In 2014, a panel of the Ninth Circuit held that *Garcetti* did not preclude a professor’s First Amendment complaint of retaliation for his statements critical of the administration in a pamphlet and a forthcoming book.³²

- In January 2014, the Supreme Court granted certiorari in a case with facts quite similar to *Garcetti*: an employee of a community college’s program for at-risk youth who had brought fraudulent payroll activity to the attention of his superiors and testified at a subsequent criminal trial claimed he was terminated in retaliation for First Amendment-protected speech. The Eleventh Circuit dismissed his claim in an unpublished opinion, citing *Garcetti*.³³ The question presented in the certiorari petition is whether the government is “categorically free under the First Amendment to retaliate against a public employee for truthful sworn testimony that was compelled by subpoena and was not a part of the employee’s ordinary job responsibilities.”³⁴

IV. The Status of First Amendment Academic Freedom Today

- Academic freedom is recognized today as a matter of good educational policy at both public and private universities. However, its viability and scope as a “special concern of the First Amendment” are unclear. Some open questions are:

- Does First Amendment academic freedom exist as an individual right?
- If so, how broad is its scope? Does it include only the core functions of teaching and scholarship, or does it also include “extramural speech”? Conversely, is extramural speech by publicly employed professors

³¹ *Adams v. Trustees of University of North Carolina-Wilmington*, 640 F.3d 550, 564 (4th Cir. 2011).

³² *Demers v. Austin*, No. 11-35558 (9th Cir. Jan. 29, 2014), withdrawing and replacing 729 F.3d 1011 (9th Cir. 2013).

³³ *Lane v. Central Alabama Community College*, No. 12-16192 (11th Cir. 2013), available at <https://casetext.com/case/lane-v-cent-ala-cmtty-coll/>.

³⁴ *Lane v. Franks*, S.Ct. No. 13-483 (cert. granted Jan. 17, 2014).

simply analyzed under the *Pickering* balancing test that applies to speech on matters of public concern by all public employees?

– How does professors’ speech on matters of university governance fit in? The Supreme Court ruled in 1984 that professorial participation in governance is not a part of First Amendment academic freedom.³⁵ Are at least some statements made with respect to administration and governance matters of public concern within the meaning of *Pickering*?

- Although questions about First Amendment academic freedom usually arise at public universities, the First Amendment applies to all actions by government officers, including legislators, executive branch officials, and public university administrators. Thus, government intrusion into the operation of private institutions, as often occurred in the 1950s when legislative investigating committees subpoenaed professors and administrators at both public and private universities, implicates the First Amendment.

- Similarly, government-mandated loyalty oaths that apply to private as well public employees raise First Amendment concerns, as do pressures by government officials to fire controversial professors, and laws that cut funding to academic institutions for reasons of politics or ideology.³⁶

- Today, social media sites such as Twitter and Facebook dominate communications worldwide on all subjects. Professors participate in these social media sites, sometimes pursuant to official duties (by communicating with students or posting syllabi, for example), but more often by engaging in extramural speech. Therefore, when evaluating claims that university administrators or other public officials have retaliated against professors for speech on social media sites, the *Pickering* balancing test should usually govern.

³⁵ *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 261 (1984).

³⁶ A recent example is the proposed New York law that denies funding to any institution that reimburses professors for membership in the American Studies Association, in retaliation for the ASA’s vote in favor of an academic boycott of Israeli universities. Such punishment amounts to viewpoint discrimination in violation of the First Amendment. See statements by the AAUP and the Center for Constitutional Rights: “AAUP Opposes New York Assembly Bill A.8392,” Jan. 27, 2014; Letter to New York State Assembly, Jan. 30, 2014, <http://ccrjustice.org/files/1%2030%2014%20%20CCR%20NLG%20NYC%20Letter%20to%20NY%20Assembly%20Members%20FINAL.pdf> .

- The *Pickering* balancing test when applied to the public university as an employer should rarely result in a finding that a professor's speech on matters of public concern interfered with the efficient operation of the workplace. This is because disagreement and dissent, not uniformity and obedience to official pronouncements, are essential components of a healthy – and efficient – academic workplace.

- A policy regarding the use of social media, enacted by the Kansas Board of Regents in December 2013, represents a significant threat to the First Amendment rights of employees at public academic institutions in the state. The policy prohibits: "improper use of social media," which it defines to include any communication that is "contrary to the best interests of the university" or "impairs discipline by superiors or harmony among co-workers."³⁷ In December 2013, the AAUP issued a statement condemning the Kansas policy.³⁸

³⁷ Kansas Board of Regents, Policy Chapter IIC: "Suspensions, Terminations and Dismissals," http://www.kansasregents.org/policy_chapter_ii_c_suspensions; see Charles Huckabee, "Kansas Board Says Universities Can Fire Employees for 'Improper' Tweets," *Chronicle of Higher Education*, Dec. 19, 2013, <http://chronicle.com/blogs/ticker/kansas-board-says-universities-can-fire-employees-for-improper-tweets/70721>.

³⁸ AAUP Statement on the Kansas Board of Regents Social Media Policy, Dec. 30, 2013, <http://www.aaup.org/file/KansasStatement.pdf>. See also the AAUP's draft report, "Academic Freedom and Electronic Communications," <http://www.aaup.org/report/academic-freedom-and-electronic-communications-2013>.

Kansas Board Says Universities Can Fire Employees for ‘Improper’ Tweets

December 19, 2013 by Charles Huckabee

The Kansas Board of Regents unanimously approved new policy language on Wednesday that gives state university leaders the authority “to suspend, dismiss, or terminate from employment any faculty or staff member who makes improper use of social media.”

Fred Logan, the board’s chairman, told the *Lawrence Journal-World* that the policy change had been “inspired by” the uproar over a controversial tweet about the National Rifle Association that was posted by David W. Guth, a faculty member at the University of Kansas, in the wake of the September 16 shootings at the Washington Navy Yard.

The new language is an addition to a section of the Board Policy Manual that deals with suspensions, dismissals, and terminations. It outlines a number of ways in which use of social-media sites like Twitter, LinkedIn, and Facebook might be considered improper. Among them are any communication made through social media that is pursuant to an employee’s official duties and “contrary to the best interests of the university.” Other improper uses include inciting violence or disclosing protected information like student records, or any communication that “impairs discipline by superiors or harmony among co-workers.”

Mr. Logan said in a news release that the goal of the policy was “to provide guidance to all university employees and university administration regarding the use of social media.” He said the board had drawn on language from U.S. Supreme Court cases “to acknowledge the right of employees generally to speak as private citizens on matters of public concern while also recognizing the right of employers to take action in situations involving unprotected speech.”

Mr. Guth, an associate professor of journalism, was placed on leave in September after his Twitter post angered many people who thought he was wishing death on the children of NRA members. He has since returned to work, performing administrative duties. The university has said he will not be allowed to return to the classroom this year.

Mr. Logan declined to speculate on whether Mr. Guth could have been fired under the new policy.

<http://chronicle.com/blogs/ticker/kansas-board-says-universities-can-fire-employees-for-improper-tweets/70721>