
INDIVIDUAL AND COLLECTIVE ACADEMIC FREEDOM

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INTRODUCTION

The second Trump Administration's attacks on academic freedom require a unified response from its defenders. But the unity that this moment requires has been stymied by the inconvenient fact that academic freedom's defenders do not agree about what academic freedom means.

On one side—the better funded one¹—you will find the University of Chicago, long seen (not least by itself) as a national leader on academic freedom and free speech issues, as well as newer but increasingly prominent organizations like the Foundation for Individual Rights and Expression (“FIRE,” formerly the Foundation for Individual Rights in Education), Heterodox Academy, and the Academic Freedom Alliance. These organizations have each, and sometimes together, waged campaigns to convince or pressure colleges and universities to adopt Chicago's specific policies on academic freedom and free speech: the *Kalven Report* and the so-called Chicago Principles.² FIRE's annual and influential College Free Speech Rankings penalizes universities that fail to do so.³

Within this camp, academic freedom is primarily, if not exclusively, viewed as an individual right for professors and possibly students to speak as they choose, free of regulation by, or even competing speech from, the universities where they work or study.⁴ For some in this camp, especially FIRE, academic freedom is largely the same as free speech, and as such, it requires only minimal balancing with competing values, whether those be non-discrimination or diversity and inclusion concerns.⁵ The goal is to maximize speech by individuals on campus and any outside speakers they decide to invite.⁶

On the other side is the American Association of University Professors (“AAUP”) and its Committee A on Academic Freedom and Tenure, which has

¹ See RALPH WILSON & ISAAC KAMOLA, FREE SPEECH AND KOCH MONEY: MANUFACTURING A CAMPUS CULTURE WAR 86-92 (2021); *\$100 Million Gift Will Advance UChicago's Commitment to Free Expression*, UCHICAGO NEWS (Sep. 26, 2024), <https://news.uchicago.edu/story/100-million-gift-advance-uchicagos-commitment-to-free-expression> [https://perma.cc/D6L7-9ZXX].

² See *A History of Commitment to Free Expression*, UNIV. OF CHI., <https://freexpression.uchicago.edu/history> [https://perma.cc/R5J8-RXAZ] (last visited May 21, 2026); KALVEN COMM., UNIV. OF CHI., REPORT ON THE UNIVERSITY'S ROLE IN POLITICAL AND SOCIAL ACTION 1-3 (1967), https://provost.uchicago.edu/sites/default/files/documents/reports/KalvenRprt_0.pdf [https://perma.cc/XR7A-J5KD].

³ See FIRE, *How We Rank Colleges on Free Speech*, COLL. FREE SPEECH RANKINGS, <https://rankings.thefire.org/methodology> (last visited May 21, 2026) (awarding three points each for schools adopting something substantially similar to *Kalven Report* and Chicago Principles).

⁴ See, e.g., COMM. ON FREEDOM OF EXPRESSION, UNIV. OF CHI., REPORT OF THE COMMITTEE ON FREEDOM OF EXPRESSION 2 (2015), <https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf> [https://perma.cc/L9SY-6W33].

⁵ See, e.g., FIRE, *supra* note 3.

⁶ See *id.*

worked since 1915 to define and defend the principles of academic freedom and to censure universities that fail to live up to them.⁷ Full disclosure: I am currently a member of Committee A, though I do not speak for it here. I am also a faculty member at U.C. Davis, one of the ten campuses of the University of California system, which is arguably the leading exemplar of the AAUP's approach.⁸

This second camp shares with Chicago and FIRE a concern for the non-negotiable freedom of individual professors to teach, research, and publish as they see fit, governed only by their professional responsibilities and judged only (or at least primarily) by their disciplinary peers according to the standards of their field. These freedoms are necessary to the work of the university and its contribution to the public good.⁹ But they are not sufficient. On the AAUP's account, academic freedom also requires and supports a system of *shared governance*—the joint effort among faculty, administration, and trustees to set a university's mission and decide how best to advance it.¹⁰

To speak of “collective academic freedom” is thus to talk of the ways that academic freedom differs from an individual academic's free speech rights. Less controversially, it focuses on the prerogatives of what Robert Post calls “disciplinary communities” to enforce their standards.¹¹ More controversially, it extends to the collective judgments made as part of shared governance, the process of institutional decision-making that inevitably impacts the opportunities faculty have in teaching, research, and public expression.¹²

⁷ COMM. ON ACAD. FREEDOM & ACAD. TENURE, AM. ASS'N OF UNIV. PROFESSORS, GENERAL REPORT OF THE COMMITTEE ON ACADEMIC FREEDOM AND ACADEMIC TENURE (1915) [hereinafter AAUP, 1915 DECLARATION], reprinted in POLICY DOCUMENTS AND REPORTS 3, 3 (Gregory F. Scholtz ed., 12th ed. 2025); see *History of the AAUP*, AAUP, <https://www.aaup.org/about/history-aaup> [<https://perma.cc/Z3C9-DJNA>] (last visited May 21, 2026) (noting Committee A as part of AAUP since founding).

⁸ As Clark Kerr, University of California's former President, claimed in 1997:

The two greatest gifts to the University of California have been the institutional autonomy given to its Board of Regents in the Constitution of 1878 and the unprecedented grant of authority the board assigned to the Academic Senate in 1920. These two gifts constitute the institutional foundation for the growth in distinction of the University of California.

Clark Kerr, *Foreword* to ANGUS E. TAYLOR, THE ACADEMIC SENATE OF THE UNIVERSITY OF CALIFORNIA: ITS ROLE IN THE SHARED GOVERNANCE AND OPERATION OF THE UNIVERSITY OF CALIFORNIA, at xi (Inst. Gov't Stud. Press 1998).

⁹ See AAUP, 1915 DECLARATION, *supra* note 7, at 7.

¹⁰ Am. Ass'n of Univ. Professors, Am. Council on Educ. & Ass'n of Governing Bds. of Univs. & Colls., *Statement on Government of Colleges and Universities* [hereinafter AAUP et al., 1966 Statement], in POLICY DOCUMENTS AND REPORTS, *supra* note 7, at 119, 119; see *infra* notes 37-40 and accompanying text (explaining shared governance).

¹¹ Robert C. Post, *The Classical First Amendment Tradition Under Stress: Freedom of Speech and the University*, in THE FREE SPEECH CENTURY 106, 117 (Lee C. Bollinger & Geoffrey R. Stone eds., 2019).

¹² See, e.g., AAUP et al., 1966 Statement, *supra* note 10, at 122.

This Essay focuses primarily on the latter, more controversial sense in which academic freedom proves to be a collective enterprise. The challenge of collective academic freedom—the challenge of shared governance—is to explain how collective decision-making can be harmonized with individual rights: How to avoid letting majoritarian votes trample the academic freedom of dissenters, while still protecting the role of the faculty, as a body, to help set an institution’s mission and values.

Recent highly publicized conflicts between the Chicago/FIRE camp and the AAUP, on issues as important to higher education as diversity, equity, and inclusion (“DEI”), campaigns for institutional neutrality, and, especially, calls for boycotts surrounding the Israel-Gaza conflict, put the issue of collective academic freedom into stark relief.¹³ This Essay provides tools to address those conflicts by analyzing the two conflicting visions of academic freedom at their root. At stake is the question of what universities, and those who care about them, should ultimately be fighting for when they fight the unrelenting attacks on academic freedom that are currently shaping the future of higher education.

I. DISCIPLINARITY

The traditional conception of academic freedom, dating back to the AAUP’s *1915 Declaration of Principles on Academic Freedom and Tenure*, is one on which both sides of the debate at least nominally agree.¹⁴ But it is worth at least quickly reviewing its contours, if only to see the extent to which the potential dangers of collective judgment—the source of the present debate at the level of shared governance—already exist and are more widely accepted at the level of academic disciplines.

The *1915 Declaration* emphasized the collective aspect of traditional academic freedom when it asserted that universities’ “distinctive and indispensable service to society” requires “not the absolute freedom of utterance of the individual scholar, but the absolute freedom of thought, of inquiry, of discussion and of teaching, of the academic profession.”¹⁵ What academic freedom protects is not the First Amendment’s freedom to say (largely) whatever you want; “[t]he liberty of the scholar within the university to set forth his conclusions . . . is conditioned by their being conclusions gained by a scholar’s

¹³ See *infra* note 46 (collecting criticism of AAUP’s perceived shift towards collective academic freedom).

¹⁴ But see Greg Lukianoff, *The Fall of the AAUP*, ETERNALLY RADICAL IDEA (Nov. 20, 2024), <https://eternallyradicalidea.com/p/the-fall-of-the-aaup> [https://perma.cc/PJ8Q-HT PC] (“The AAUP have championed a stark distinction between free speech and academic freedom, which is dangerous to both.”).

¹⁵ See AAUP, 1915 DECLARATION, *supra* note 7, at 11; see also Robert Post, *Academic Freedom in the Time of Trump*, in ACADEMIC FREEDOM IN THE ERA OF TRUMP (Lee Bollinger & Geoffrey Stone eds., forthcoming 2026) (manuscript at 2), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5286936 (“Academic freedom does not involve individual rights, but instead the autonomous self-government of a scholarly profession dedicated to disciplinary excellence.”).

method and held in a scholar's spirit."¹⁶ And the job of deciding whether scholars have lived up to this requirement can only rest with other scholars.

University professors' teaching and research¹⁷ are routinely judged by their peers, who apply the standards of their particular discipline in hiring, tenure, or advancement decisions; in peer review before publication; and in disciplinary proceedings. Professors are free from repercussions for their teaching and research only insofar as both meet the standards of their discipline. Thus, it is the freedom to develop and enforce those standards that actually lies at the heart of academic freedom. As Robert Post has put it: "[A]cademic freedom protects neither the individual rights of professors nor the institutional rights of organizations that happen to call themselves universities. It instead safeguards the professional standards that allow true universities both to teach and to increase knowledge."¹⁸

The particulars of Post's account remain the object of some dispute.¹⁹ The head of FIRE, Greg Lukianoff, has claimed that Post and the AAUP have "championed a stark distinction between free speech and academic freedom, which is dangerous to both."²⁰ The danger to free speech is that professors, protected by a distinct thing called academic freedom, will stop standing up for the general First Amendment protections that apply to "regular mortals."²¹ Meanwhile, the danger to academic freedom is that, once "divorced" from the judicially enforceable First Amendment, professors simply have to rely on their institutions to provide them with the "tools and resources to preserve academic freedom"—what Lukianoff describes as "an unearned trust in 'management' that is truly bizarre coming from a union like the AAUP."²²

¹⁶ See AAUP, 1915 DECLARATION, *supra* note 7, at 9.

¹⁷ I put aside here the somewhat different issues that surround intramural and extramural speech by professors. Extramural speech need not be held to the profession's scholarly or pedagogical standards, but AAUP policies at least provide that discipline can be imposed for extramural speech only if it shows faculty to be unfit for the profession, and that judgment must again be "primarily reserved for faculty determination." MATTHEW W. FINKIN & ROBERT C. POST, FOR THE COMMON GOOD: PRINCIPLES OF AMERICAN ACADEMIC FREEDOM 148 (2009); see also Am. Ass'n of Univ. Professors, *Committee A Statement on Extramural Utterance*, in POLICY DOCUMENTS AND REPORTS, *supra* note 7, at 34, 34.

¹⁸ Post, *supra* note 15 (manuscript at 32 n.114).

¹⁹ FIRE, for example, claims that "because of the lack of guidance from the Supreme Court, there remains an ongoing debate over who actually possesses the right to academic freedom—students, professors, and/or the university itself." *Academic Freedom of Professors and Colleges*, FIRE, <https://www.thefire.org/research-learn/academic-freedom-professors-and-colleges> [<https://perma.cc/PCD9-QD3E>] (last visited May 21, 2026).

²⁰ Lukianoff, *supra* note 14.

²¹ *Id.*

²² *Id.* Lukianoff greatly overstates the Post/AAUP position insofar as he describes them as treating academic freedom and general First Amendment principles as "separate and non-overlapping." See *id.* At public universities, government employee speech protections obviously overlap with academic freedom protections, even if their animating logic, as Post

The central idea distinguishing academic freedom from general free speech principles is widely shared, however, even among the AAUP's critics. This is the notion that disciplinary expertise must be used to regulate the former, but, emphatically, not the latter.²³ FIRE might sometimes define academic freedom without reference to academic responsibilities, disciplinary expertise, or peer review,²⁴ but the academic institution it idolizes, the University of Chicago, clearly cares about each. Even before the AAUP was founded, the University of Chicago's first president, William Rainey Harper, had explained in a convocation address in 1900 the ways a professor could "abuse his privilege of freedom of expression."²⁵ Among them: claiming ideas as true that had not been "tested scientifically" by disciplinary colleagues, speaking on subjects that have no relation to the professor's department, and introducing partisan views into the classroom.²⁶

has shown, does not fit well with the academic enterprise. See ROBERT C. POST, DEMOCRACY, EXPERTISE, AND ACADEMIC FREEDOM: A FIRST AMENDMENT JURISPRUDENCE FOR THE MODERN STATE 85 (2012). Lukianoff's concern that professors need legally enforceable First Amendment claims only applies to those teaching at public schools, whereas universities' widespread adoption of AAUP policies into their faculty handbooks provides legally enforceable contract claims to professors at many private, as well as public, schools. See AM. ASS'N OF UNIV. PROFESSORS, FACULTY HANDBOOKS AS ENFORCEABLE CONTRACTS: A STATE GUIDE 8-12 (2023), https://www.aaup.org/sites/default/files/Faculty_Handbooks_Enforceable_Contracts_2023.pdf [<https://perma.cc/VE99-8VFV>]. And in any case, David Rabban's magisterial recent account of academic freedom as a *distinctive* First Amendment right proves we can treat academic freedom as its own category of First Amendment analysis even while recognizing how it "fosters two central First Amendment values": knowledge-production and democratic citizenship. DAVID M. RABBAN, ACADEMIC FREEDOM: FROM PROFESSIONAL NORM TO FIRST AMENDMENT RIGHT 8 (2024).

²³ See, e.g., Kelly Sarabyn, *Stanley Fish Underestimates Academic Freedom*, FIRE (Sep. 4, 2008), <https://www.fire.org/news/stanley-fish-underestimates-academic-freedom> [<https://perma.cc/DBX6-GEK6>].

²⁴ See FIRE, *supra* note 19. But see Sarah Viren, *A Professor Was Fired for Her Politics. Is That the Future of Academia?*, N.Y. TIMES MAG. (June 6, 2025), <https://www.nytimes.com/2025/06/06/magazine/academic-freedom-politics.html> ("Nico Perrino, executive vice president for FIRE, told me that his organization sees academic freedom more as an individual right, but he said it also supports the idea of faculty members' governing themselves to a certain degree.").

²⁵ William Rainey Harper, President, Univ. of Chi., Convocation Address: Freedom of Speech (Dec. 18, 1900), in THE CHICAGO CANON ON FREE INQUIRY AND EXPRESSION 45, 48 (Tony Banout & Tom Ginsburg eds., 2024).

²⁶ *Id.* at 48. According to Harper, these abuses could lead the university to decide not to renew temporary appointments, but not permanent ones, which could be revoked only for immorality or when the professor "has proven himself to be incompetent to perform the service called for." *Id.* at 49. For two additional perspectives from within the Chicago camp, see Brian Leiter, *Why Academic Freedom?*, in THE VALUE AND LIMITS OF ACADEMIC SPEECH: PHILOSOPHICAL, POLITICAL, AND LEGAL PERSPECTIVES 31, 33 (Donald Alexander Downs & Chris W. Surprenant eds., 2018) ("[A]cademic freedom . . . has definite limits, but those limits are to be set by those with expert competence in the relevant *Wissenschaft* [a science, broadly understood], not by offended members of the polity at large or by politicians or

The crucial role played by peer review introduces a collective aspect into what otherwise might seem to be an individual academic freedom right regarding teaching, research, and publication. And before moving on to the far more contested way that shared governance can affect individual professors' autonomy, it is worth pausing to note the challenges that result even here, at the disciplinary level.

Joan Wallach Scott writes of the "necessarily paradoxical way" that discipline functions: "[T]he institution of the discipline, which protects the academic freedom of individuals, also operates to deny some of them that freedom."²⁷ Drawing from John Dewey and Arthur Lovejoy, Scott explains the traditional view that disciplinary communities support individual academics by "verifying [their] technical expertise and qualifications" in order to help them stand up to outside interference, whether from politicians, religious authorities, or even university administrators.²⁸ "But the inseparable other side of that regulatory and enabling authority is that it secures consensus by exclusion," Scott observes.²⁹ "And the grounds for exclusion can be, historically have been . . . difference from some representative type [male, white] . . . or difference from the reigning philosophical and methodological assumptions . . ."³⁰ Since the concept and practice of discipline are "necessarily exclusionary," threats to individual autonomy come from within the discipline, not just from outside.³¹

"Disciplines . . . live in the tension between freedom of inquiry and judgments of competence," Robert Post has written, agreeing with Scott about the internal dangers.³² According to Post: "Disciplines that do not allow freedom of inquiry wither and atrophy; but disciplines that do not evaluate the quality and merit of disciplinary work disintegrate and become incoherent."³³ Sometimes their standards of practice fail to meet changing knowledge-production needs; other times members of a discipline seek to go beyond the

business leaders whose interests might be adversely affected by *wissenschaftlich* research or teaching."); and, from the author of Chicago's *Criteria of Academic Appointment* (the *Shils Report*), Edward Shils, *Do We Still Need Academic Freedom?*, 62 AM. SCHOLAR 187, 194 (1993) ("Academic freedom certainly extend[s] to intellectual originality. It [is] for the departmental colleagues of their own university and their peers outside their own university . . . to decide whether the individual in question [is] being original, or divergent within reasonable limits, or eccentric to the point of mental incapacity, or impermissibly arbitrary, indolent, or otherwise irresponsible.").

²⁷ JOAN WALLACH SCOTT, KNOWLEDGE, POWER, AND ACADEMIC FREEDOM 24-25 (2019).

²⁸ *Id.* at 23.

²⁹ *Id.* at 24.

³⁰ *Id.* (emphasis omitted).

³¹ *Id.* at 23.

³² Post, *supra* note 11, at 116.

³³ *Id.*

methods and techniques of their discipline in order to assert what Post calls “charismatic authority” within the public sphere.³⁴

Either can provoke interference from outside the discipline. If currently existing disciplinary boundaries or methods are not meeting the problems universities exist to address, “universities possess incentives to engage in interdisciplinary approaches” or to “generate new disciplines” within the university (with correspondingly new disciplinary organizations, journals, etc. outside the university).³⁵ Traditional disciplinary boundaries are thereby eroded. If, by contrast, academics take on the role of “sage amateurs [seeking] to advise their fellow citizens,” Post says their scholarship “disclaims disciplinary authority,” “places itself outside the protective shield of academic freedom and renders itself vulnerable to the ordinary political recrimination and reprisal that envelops all citizens who enter the public realm.”³⁶

All of this is just to emphasize the challenges and dangers of disciplinarity as a collective enterprise. Overemphasize the collective’s power and you diminish the freedom of individual scholars to disrupt the orthodoxies of their field. The exclusivity meant to ensure quality can be used instead to perpetrate racial, gender, religious, or political biases. Overemphasize individual autonomy, on the other hand, and you increase the potential for charlatanism or indoctrination. Allow disciplines too much autonomy and they might fail to adapt to changing societal needs for knowledge; allow too much outside interference and the very premise of academic freedom as liberty constrained by disciplinary expertise is undermined. These problems are intractable—and note, they are the ones that arise from the aspect of academic freedom that the two sides I described above are most likely to *agree* about.

II. SHARED GOVERNANCE

What, then, of the challenges and dangers that arise when the collective aspect of academic freedom expands beyond the disciplinary level to that of a faculty engaged in shared governance?

³⁴ See Robert Post, *Debating Disciplinarity*, 35 CRITICAL INQUIRY 749, 761-64 (2009).

³⁵ *Id.* at 755-56. Post points to developments in environmental science, artificial intelligence, and racial and gender issues as problems that create a need for universities to push for interdisciplinarity or the creation of new disciplines. *Id.*

³⁶ *Id.* at 764. Writing of the challenge universities face to “successfully distinguish between scholarship and charlatanism,” Dennis Arjo has recently noted that “a chorus growing louder by the day insists that a sizable number of entire disciplines now exist that do little but provide sinecures for political activists posing as scholars.” Dennis Arjo, *Academic Standards in an Age of Mistrust*, AM. ASS’N U. PROFESSORS J. ACAD. FREEDOM, 2024, at 1, 2; see also Leiter, *supra* note 26, at 39 (describing problem of “demarcating *Wissenschaften* from pretenders” and identifying fields that fail to uphold their side of academic freedom bargain, given “there are no necessary and sufficient conditions for what makes a mode of inquiry epistemically reliable”).

Shared governance, as the AAUP explained in its 1966 *Statement on Government of Colleges and Universities*³⁷ and its 1994 report *On the Relationship of Faculty Governance to Academic Freedom*,³⁸ involves a joint effort among the governing board, administration, and faculty, with each taking the lead in areas where they have the most expertise and responsibility. Since the faculty “has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process,” its voice should be authoritative there.³⁹ “[T]he faculty should have primary authority over decisions about such matters—that is, the administration should ‘concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.’”⁴⁰

The 1994 *Report* argues that “a sound system of institutional governance is a necessary condition for the protection of faculty rights and thereby for the most productive exercise of essential faculty freedoms.”⁴¹ This is where the AAUP and the FIRE/Chicago types tend to part ways: in emphasizing the necessity of shared governance to academic freedom.

The academic freedom individualists in the FIRE/Chicago camp are surely right to fight (as the AAUP does as well) to protect individual professors’ freedom of teaching, research, and publication. But that freedom is not worth much if those professors’ departments get shut down, graduate admissions get paused, or their labs are not funded. If their individual academic freedom is to be meaningfully employed, faculty need a genuine voice in larger institutional decisions on topics like these. And this requires collective activity: that of the faculty (or its subdivisions) acting together as part of shared governance.

Of course, no one has an academic freedom right to a certain level of funding for their lab facilities or travel, or a certain number of graduate students and colleagues to work with. Individual faculty do not have a right to dictate their institution’s curricular priorities (what gets included in general education requirements, for example), or the way it balances its values through its DEI or freedom of expression policies, budgetary compromises, or public statements.⁴² Yet each of these decisions is likely to affect the opportunities individual

³⁷ AAUP et al., *1966 Statement*, *supra* note 10, at 119.

³⁸ Am. Ass’n of Univ. Professors, *On the Relationship of Faculty Governance to Academic Freedom*, in *POLICY DOCUMENTS AND REPORTS*, *supra* note 7, at 35 [hereinafter AAUP, *1994 Report*].

³⁹ AAUP et al., *1966 Statement*, *supra* note 10, at 122.

⁴⁰ AAUP, *1994 Report*, *supra* note 38, at 36 (quoting AAUP et al., *1966 Statement*, *supra* note 10, at 123).

⁴¹ *Id.* at 35.

⁴² See generally BRIAN SOUCEK, *THE OPINIONATED UNIVERSITY: ACADEMIC FREEDOM, DIVERSITY, AND THE MYTH OF NEUTRALITY IN AMERICAN HIGHER EDUCATION* (2026) (treating all of these choices as ways individual universities determine and express their particular mission).

professors have to exercise their academic freedom. These decisions shape, in potentially decisive ways, the context in which their teaching, research, and publication occur—or, at the extreme, whether they will be able to occur at all.

This is why the AAUP argues both that academic freedom for intramural speech is a necessary condition “for the practice of governance unhampered by fear of retribution”⁴³ and, more controversially, that shared governance is a necessary condition for academic freedom itself to flourish.⁴⁴ Necessary is not the same as sufficient, however. Shared governance is no guarantee that academic freedom will be protected. As the *1994 Report* notes:

Even with a sound governance system in place and with a faculty active in self-government and operating under rules and regulations protective of academic freedom, dysfunctions that undermine academic freedom may still occur: subtle (or not so subtle) bullying on the part of the faculty itself, a covertly enforced isolation, a disinclination to respect the views of the off-beat and cranky among its members.⁴⁵

The AAUP’s critics sometimes lose sight of this and act as if insisting on shared governance just reduces academic freedom to anything a majority within some faculty senate or department decides. As Len Gutkin of the *Chronicle of Higher Education* recently summarized the view:

It certainly seems true that the AAUP has in the last two years come to emphasize the corporate over the individual aspects of academic freedom, as in Committee A’s 2024 pronouncement that an “appropriate larger group, such as a faculty senate or a department,” can require DEI statements from faculty members for hiring or promotion. In a similar vein, the AAUP now believes that individual faculty members can be forced to conform to the terms of an academic boycott so long as “there was a democratic process followed” In both cases, academic freedom as an individual right is subordinated to one or another vision of social justice, so long as that vision has some kind of majority support. As Yale Law’s Keith E. Whittington, an expert on the law and theory of academic freedom, wrote last year, “Some in the AAUP increasingly conflate academic freedom with majoritarian decision-making. That will not end well.”⁴⁶

⁴³ AAUP, *1994 Report*, *supra* note 38, at 35.

⁴⁴ *See id.*

⁴⁵ *Id.* at 37.

⁴⁶ Len Gutkin, *The Review: The AAUP’s Revised Concept of Academic Freedom*, CHRON. HIGHER EDUC. (Oct. 27, 2025) [hereinafter Gutkin, *Revised Concept*] (first quoting *Diversity, Equity, and Inclusion Criteria for Faculty Evaluation*, BULL. AM. ASS’N U. PROFESSORS (Am. Ass’n of Univ. Professors, Washington, D.C.), Summer 2025, at 36, 36 [hereinafter AAUP, *DEI Criteria*]; then quoting Len Gutkin, *The Review: Does the AAUP Know What It Means?*, CHRON. HIGHER EDUC. (Sep. 16, 2024), <https://www.chronicle.com/newsletter/the-review/2024-09-16> (quoting Rana Jaleel, chair of AAUP’s Committee A); and then quoting Keith E. Whittington (@kewhittington), X (Sep. 11, 2024, at 13:12 ET), <https://x.com/kewhittington/status/1833916660388168162> [<https://perma.cc/94BF-HNQC>] (reposted from Jeffrey

These allegations present a genuine challenge, as what Gutkin and others describe would be a serious threat to academic freedom coming from within the faculty. Taking the threat seriously, however, does not mean that we have to abandon collective decision-making in order to maximize individual freedom. Nor need we, or should we, reduce academic freedom to whatever the majority decides.

Here, the academic freedom problems of shared governance start to resemble those surrounding disciplinarity, canvassed earlier. Just as we cannot give up on disciplinary standards or ignore the way they can ossify and unjustly exclude, neither can we just give up on collective decision-making as part of governance nor on the autonomy of individual academics. Following Joan Wallach Scott's advice, instead of "attempt[ing] to resolve the necessary tension . . . by forcing a choice between them," we should engage in what she describes as an "ethical practice" in which we determine how best to navigate the space between "what is and what ought to be."⁴⁷ Practically, this means we need individuals who recognize that they do not control on their own the conditions and context in which their academic freedom is exercised. But we also need shared governance that respects individuals' academic freedom and can be criticized when it violates it, even through democratic processes.

Recent statements by the AAUP on institutional neutrality, DEI criteria for faculty evaluation, and academic boycotts each attempt to carve out this space for ethical practice and then, to varying extents, offer guidance on how it might best be navigated. I want to suggest, adapting Scott's words again, that it is the statements' shared failure to "resolve the necessary tension" between collective and individual academic freedom "by forcing a choice between them" that makes them so unsatisfying to critics, particularly those in the individualist camp.⁴⁸

Sachs, (@JeffreyASachs)), <https://www.chronicle.com/newsletter/the-review/2025-10-27>; see also Jeffrey Sachs (@JeffreyASachs), X, *Consider the implications. What the @AAUP is saying is that when a department votes to deny you conference funding for political reasons (it's a Zionist dept. and the conference is in Qatar), that is not necessarily a violation of academic freedom.* (Sep. 11, 2024, at 13:08 ET), <https://x.com/JeffreyASachs/status/1833915638664089751> [<https://perma.cc/DC46-6PVS>] (reposted from American Association of University Professors, @AAUP).

For another, similar claim from within the University of Chicago, pitting his school's vision of academic freedom against that of the AAUP, see Tom Ginsburg, *Can Academic Freedom Survive the AAUP?*, CHRON. HIGHER EDUC. (Feb. 18, 2025) [hereinafter Ginsburg, *Academic Freedom*], <https://www.chronicle.com/article/can-academic-freedom-survive-the-aaup> ("Rather than focusing on the academic freedom of the individual scholar, Committee A emphasizes collective academic freedom, which it conflates with 'shared governance.' It offers us a vision of higher education in which departments promiscuously opine on politics, diversity screening is imposed in hiring and promotion, and unlimited encampments have the warrant of academic freedom. Let's see how that works out.").

⁴⁷ Scott, *supra* note 27, at 26, 36 (quoting Michel de Certeau, *History: Science and Fiction*, in *HETEROLOGIES: DISCOURSE ON THE OTHER* 199 (Brian Massumi trans., 1989)).

⁴⁸ *Id.* at 18, 26.

A. *On Institutional Neutrality*

The tension is easily seen in the context of statements made by universities or their departments on contested social or political issues. The University of Chicago has long applied a “heavy presumption” that these statements should instead be left to the individual, since “if [the university] takes collective action . . . it does so at the price of censoring any minority who do not agree with the view adopted.”⁴⁹ The AAUP’s recently expressed position, by contrast, is that “institutional neutrality is neither a necessary condition for academic freedom nor categorically incompatible with it. But like many of the other decisions a university makes, choices about when it will speak . . . must always be made in ways that respect and advance the principles of academic freedom.”⁵⁰

The insistence that institutional and departmental speech is not categorically different from other institutional and departmental actions is important here. We are used to the tension between collective and individual autonomy in regard to any number of institutional actions aside from speech. When a department makes a curricular decision through its established voting procedures, feelings might run hot. Untenured members of the department, caught in the cross-fire, might keep their heads down, their expression chilled. Once a decision is made, say, about the classes that count toward a major, some professors’ teaching preferences will be affected. Their individual freedom will be constrained by the department’s new curricular needs. But making a collective choice—*some* collective choice—is necessary here.

That does not mean that we should not worry about ways the majority could unnecessarily violate their colleagues’ academic freedom. If the vote was motivated by illicit considerations like race, gender, religion, or irrelevant political beliefs, the majority would have violated the AAUP’s standards of professional ethics⁵¹ and infringed the academic freedom of those unfairly affected, regardless of whether this violation could be proven or redressed. The same would be true if the majority dictated what viewpoints professors had to express in their classes. Decisions are not consistent with academic freedom simply because a majority of faculty voted for them.

So too with statements. Nothing about them is categorically incompatible with academic freedom—as suggested by the fact that Chicago imposes a presumption rather than a rule against them.⁵² But it does not follow that

⁴⁹ KALVEN COMM., *supra* note 2, at 1-2.

⁵⁰ *On Institutional Neutrality*, BULL. AM. ASS’N U. PROFESSORS (Am. Ass’n of Univ. Professors, Washington, D.C.), Summer 2025, at 42, 43 [hereinafter AAUP, *On Institutional Neutrality*].

⁵¹ Am. Ass’n of Univ. Professors, *Statement on Professional Ethics* [hereinafter AAUP, *Statement on Professional Ethics*], in POLICY DOCUMENTS AND REPORTS, *supra* note 7, at 167.

⁵² Robert Post, *The Kalven Report, Institutional Neutrality, and Academic Freedom*, in REVISITING THE KALVEN REPORT: THE UNIVERSITY’S ROLE IN SOCIAL AND POLITICAL ACTION (Keith E. Whittington & John Tomasi eds., forthcoming) (manuscript at 5 & n.14), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4516235.

universities or their units should issue statements cavalierly, without considering the chilling effect they might have on people who disagree. As the AAUP notes, this chill “is likely to vary based on the subject matter of the statements, the way they are formulated, and the background policies and culture surrounding the protection of dissent at the institution in question.”⁵³

There is one other important point to note in the AAUP’s approach: its refusal to identify institutional statements solely with university administration. At the Symposium that gave rise to this Essay, a speaker described the tension between university administrators taking positions and individual faculty doing so.⁵⁴ But those are not the only two options. A university is not its administration. The faculty should also be able to speak collectively on behalf of their university, school, or department. This can be an important part of shared governance. And when they do so, at least on topics within their disciplinary expertise, it is hard to see any difference between their speech acts and any other actions the faculty might collectively authorize.

B. *Diversity, Equity, and Inclusion Criteria for Faculty Evaluation*

One action that the faculty might collectively authorize is to “institutionally value (1) recruiting and retaining a diverse student population, (2) recruiting and retaining a diverse faculty to teach those students, and (3) teaching, research, and service that respond to the needs of a diverse global public.”⁵⁵ Those are not neutral positions, to be sure, and a university’s choice of values will inevitably lead to dissent.

But as Committee A wrote in its 2024 statement, *Diversity, Equity, and Inclusion Criteria for Faculty Evaluation*:

While faculty members have the right to engage in extramural or intramural expression criticizing any such policies—as they do with any other institutional policy—the AAUP does not consider it a violation of academic freedom per se when an appropriate larger group, such as a faculty senate or a department, collectively adopts an educational policy or goal and evaluates individual faculty members’ performance by reference to [it] even though they dissent.⁵⁶

This is the qualified support Committee A gave for diversity statements, which universities were increasingly requiring until they recently became targets of conservative backlash and started getting legislatively banned.⁵⁷ Let us say a

⁵³ AAUP, *On Institutional Neutrality*, *supra* note 50, at 45.

⁵⁴ Aaron Saiger, Albert A. Walsh Chair in Real Est., Land Use & Prop. L. & Professor of L., Fordham Univ. Sch. of L., Remarks at the Boston University Fall 2025 Law Review Symposium: The University and Democracy (Nov. 14, 2025) (on file with author).

⁵⁵ AAUP, *DEI Criteria*, *supra* note 46, at 2.

⁵⁶ *Id.*

⁵⁷ Vimal Patel, *University of California Will Stop Requiring Diversity Statements in Hiring*, N.Y. TIMES (Mar. 20, 2025), <https://www.nytimes.com/2025/03/20/us/diversity-state>

university—I will use mine as an example—decides through a process of shared governance that diversity is “integral to the University’s achievement of excellence.”⁵⁸ Having done so, it realizes that it should reward teaching, research, and service activities that advance that aspect of the university’s mission. Faculty and administration work together to revise the faculty manual to treat DEI contributions as a type of merit within the faculty personnel process. Recognizing this merit means that faculty need to report what contributions they have made. Diversity statements are the way they do that.

The idea of faculty, acting collectively, setting educational policies or goals and then deciding on procedures to evaluate what individual faculty do to advance those goals is nothing unusual. That does not mean, though, that the goals they set or the means they establish for judging faculty against those goals are always consistent with academic freedom. A faculty vote does not make it so.

For example, certain educational policies or goals may be contrary to principles of academic freedom either because they are not really educational, or because they presuppose or impose an orthodoxy that cuts off potentially promising areas of research or ways of teaching. Some think this is true of universities’ commitments to diversity.⁵⁹ The AAUP has, for over fifty years, taken a different path, emphasizing how efforts to overcome discrimination and systemic disadvantage and advance faculty and student body diversity are “essential to fulfill[ing] the promise of academic freedom.”⁶⁰ The basic idea here is that a university’s efforts to discover and disseminate knowledge should not be abstracted from questions about who produces and, especially, who benefits from that knowledge.

ments-university-of-california.html; *DEI Legislation Tracker*, CHRON. HIGHER EDUC. (Aug. 22, 2025), <https://www.chronicle.com/article/here-are-the-states-where-lawmakers-are-seeking-to-ban-colleges-dei-efforts> (tracking legislation on anti-DEI initiatives).

⁵⁸ *Regents Policy 4400: Policy on University of California Diversity Statement*, UNIV. OF CAL. (Nov. 14, 2024), <https://regents.universityofcalifornia.edu/governance/policies/4400.html> [<https://perma.cc/5SG3-DEHQ>]. The history of the University of California’s use of diversity statements is described in Brian Soucek, *Diversity Statements*, 55 U.C. DAVIS L. REV. 1989 (2022).

⁵⁹ See generally Matthew W. Finkin, *The Collapse of AAUP Credibility* 22-27 (Univ. of Ill. Coll. of L., Legal Stud. Rsch. Paper No. 25-5, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5118255 (arguing DEI requirements can pressure faculty research, teaching, and service choices).

⁶⁰ *On Eliminating Discrimination and Achieving Equality in Higher Education*, BULL. AM. ASS’N U. PROFESSORS (Am. Ass’n of Univ. Professors, Washington, D.C.), Summer 2024, at 51, 52; see also Marx W. Wartofsky et al., *Affirmative Action in Higher Education: A Report by the Council Commission on Discrimination*, 59 AM. ASS’N U. PROFESSORS BULL. 178, 181 (1973) (arguing diversity broadens the base of intellectual inquiry); Am. Ass’n of Univ. Professors, *On Discrimination*, in POLICY DOCUMENTS AND REPORTS, *supra* note 7, at 229.

Some critics accept diversity concerns as valuable, but believe diversity statements are the wrong way to advance them.⁶¹ The AAUP's response, here again, strives for nuance: "when implemented appropriately in accordance with sound standards of faculty governance, DEI criteria—including DEI statements—can be a valuable component in the efforts to recruit, hire, and retain a diverse faculty with a breadth of skills needed for excellence in teaching, research, and service."⁶²

This response needs to be parsed because it can easily be read to support critics' claims that the AAUP simply equates majoritarian decision-making with academic freedom.⁶³ But it can, and I think should, be read in the other direction, as recognition that there are sound and unsound ways of using diversity statements. Complying with "sound standards of faculty governance" is necessary if universities are going to use diversity statements the right way.⁶⁴ As I have argued at length elsewhere, diversity statements should be treated like other elements of a faculty application or advancement file: evaluated not top down by administrators but by disciplinary experts according to rubrics they have set based on needs within their field or particular department. It is the content of what is asked and the process in place for evaluating the answer—not the diktat of a governing faculty majority—that makes diversity statements consistent with academic freedom.

C. *Statement on Academic Boycotts*

The previous two AAUP statements share a common structure: each rejects the categorical claim that a particular practice (expressing institutional or departmental opinions, requiring diversity statements) is inconsistent with academic freedom—or, for that matter, necessary for it. Having opened up this space for ethical practice, the statements go on to say a bit more (in the former case) or less (in the latter) about what that practice must look like to comply with the principles of academic freedom.

A third and even more controversial statement, about academic boycotts, takes the same form and has, for similar reasons, been accused of subordinating individual freedom to collective action. It provides an especially concrete test case for exploring what ethical practice could look like when individual and collective academic freedom stand in tension.

In 2006, Committee A released a statement, *On Academic Boycotts*, officially opposing them as a tactic even for "obtaining better conditions for academic

⁶¹ See generally OPEN TO DEBATE, *Debate: Are DEI Mandates for University Faculties a Bad Idea?* (YouTube, Nov. 2, 2023), <https://www.youtube.com/watch?v=eKay5lcv7lc&t=4s> (on file with the Boston University Law Review) (featuring Randall L. Kennedy arguing mandatory DEI statements can function like a pledge of allegiance).

⁶² AAUP, *DEI Criteria*, *supra* note 46, at 1.

⁶³ See Gutkin, *Revised Concept*, *supra* note 46.

⁶⁴ See AAUP, *DEI Criteria*, *supra* note 46, at 1.

freedom” in places where it is lacking.⁶⁵ Committee A acknowledged that its position sat uncomfortably with the AAUP’s longstanding practice of censuring colleges and universities that violate principles of academic freedom. But the censure list is different, Committee A suggested, because it “leav[es] it to individuals to decide how to act on the information they have been given”; “AAUP engages in no formal effort to discourage faculty from working at these institutions or to ostracize the institution and its members from academic exchanges.”⁶⁶

Similarly, the 2006 *Boycott Statement* “recognize[d] the right of individual faculty members or groups of academics not to cooperate with other individual faculty members or academic institutions with whom or with which they disagree.”⁶⁷ But it held that “when such noncooperation takes the form of a systematic academic boycott, it threatens the principles of free expression and communication on which we collectively depend.”⁶⁸

In 2024, Committee A reversed course, at least on the permissibility of what the earlier statement had referred to as a “systematic academic boycott.”⁶⁹ The 2024 *Statement on Academic Boycotts* concluded instead “that individual faculty members and students should be free to weigh, assess, and debate the specific circumstances giving rise to calls for systematic academic boycotts and to make their own choices regarding their participation in them. To do otherwise contravenes academic freedom.”⁷⁰ According to the 2024 *Boycott Statement*,

⁶⁵ Joan Wallach Scott, Ernst Benjamin, Robert M. O’Neil & Jonathan Knight, Am. Ass’n of Univ. Professors, *On Academic Boycotts*, ACADEME, Sep.-Oct. 2006, at 39, 42 [hereinafter AAUP, 2006 *Boycott Statement*].

⁶⁶ *Id.* at 40.

⁶⁷ *Id.* at 42. Some critics fail to highlight the fact that the 2006 *Boycott Statement* allowed not just individual action, but action by “groups of academics.” See, e.g., Cary Nelson, *The AAUP Abandons Academic Freedom*, CHRON. HIGHER EDUC. (Aug. 13, 2024), <https://www.chronicle.com/article/the-aaup-abandons-academic-freedom> (“Individual students and faculty have always had the right to advocate for academic boycotts, and it is disingenuous to suggest otherwise.”); Jeffrey Sachs, *The AAUP’s Incoherent New Boycott Policy*, CHRON. HIGHER EDUC. (Aug. 16, 2024), <https://www.chronicle.com/article/the-aaups-incoherent-new-boycott-policy> (“While recognizing the right of each individual academic to refuse collaboration with a given university, [the AAUP] has opposed what it calls a ‘systematic academic boycott’ . . .” (quoting AAUP, 2006 *Boycott Statement*, *supra* note 65, at 42)). This elision matters, as it allows some critics to ascribe dangers to the 2024 *Boycott Statement*, see *infra* note 70 and accompanying text, that were already present in the group boycotts allowed under the 2006 *Boycott Statement*. See, e.g., Ginsburg, *Academic Freedom*, *supra* note 46 (linking to article in which harms experienced by individual Israeli scholars are not traced to systematic academic boycotts as opposed to those 2006 *Boycott Statement* already allowed).

⁶⁸ See AAUP, 2006 *Boycott Statement*, *supra* note 65, at 42.

⁶⁹ *Id.*

⁷⁰ *Statement on Academic Boycotts*, BULL. AM. ASS’N U. PROFESSORS (Am. Ass’n of Univ. Professors, Washington, D.C.), Summer 2025, at 34, 35 [hereinafter AAUP, 2024 *Boycott Statement*].

both support for and opposition to academic boycotts should be protected under academic freedom.⁷¹ It urges those considering an academic boycott to first consider alternative tactics, bars political and religious tests in determining the targets of a boycott, limits any boycott to institutions, not individual “scholars and teachers engaged in ordinary academic practices, such as publishing scholarship, delivering lectures and conference presentations, or participating in research collaborations.”⁷²

These limits did little to assuage critics. “The AAUP Abandons Academic Freedom,” said one headline—for an article written by the AAUP’s former president.⁷³ “The AAUP’s credibility has been destroyed,” wrote its former general counsel and Committee A chair.⁷⁴ A more measured response spoke of “The AAUP’s Incoherent New Boycott Policy.”⁷⁵ A less measured one asked whether “Academic Freedom Can Survive the AAUP.”⁷⁶

One of the AAUP’s more nuanced critics, political scientist Jeffrey Sachs, started one essay by admitting that he did not know whether the *2024 Boycott Statement* was “a tempest in a teapot” or “a disaster in the making” because he could not fully understand what the policy actually means.⁷⁷ “Even worse,” he wrote, “the AAUP doesn’t seem to know either.”⁷⁸ What follows, then, is my—not the AAUP’s—attempt to figure out what the *2024 Boycott Statement* should be read to entail.⁷⁹

An initial interpretive question goes to the main issue on which the AAUP’s two boycott statements differ: What are these “systematic academic boycotts” that AAUP no longer sees as inconsistent with the principles of academic freedom?⁸⁰

I understand a “systematic” boycott to differ from a boycott by “groups of academics” (which the *2006 Boycott Statement* allowed) insofar as it involves a process through which individuals come to speak not just for themselves, but some larger collective.⁸¹ If a department or center within a university, or a

⁷¹ *Id.*

⁷² *Id.*

⁷³ Nelson, *supra* note 67.

⁷⁴ Finkin, *supra* note 59 (manuscript at 2).

⁷⁵ Sachs, *supra* note 67.

⁷⁶ Ginsburg, *supra* note 46. Authors are seldom responsible for the headlines their op-eds are given, but in these cases, the articles themselves are equally incendiary.

⁷⁷ Sachs, *supra* note 67.

⁷⁸ *Id.*

⁷⁹ I am grateful to Sachs for his correspondence on these issues. I was not involved in the drafting of the *2024 Boycott Statement*, although I had joined AAUP’s Committee A by the time it was approved.

⁸⁰ See Finkin, *supra* note 59 (manuscript at 10, 14) (arguing even in 2006 Statement, “the distinction between allowable individual and disallowed systematic group action was not further explained nor the line between them explored; it should have been”).

⁸¹ See AAUP, *2006 Boycott Statement*, *supra* note 66, at 42.

learned society within a discipline, were to employ its usual decision-making procedures to declare *the department's*, *center's*, or *society's* boycott of some particular institution, this would be a systematic boycott. By contrast, when a group of faculty members all decide to boycott that same institution, they are not conducting a systematic boycott; they are just forming one of the 2006 *Boycott Statement's* "group of academics" who have an unquestioned right not to cooperate with schools "with which they disagree."⁸² (The right may have been unquestioned by the 2006 *Boycott Statement*, but I think individual faculty and groups of faculty could easily have violated the AAUP's *Statement on Professional Ethics* in making these choices.)⁸³ Even if the entire faculty of a department decided as a group to boycott a certain university, this would not be a *systematic* boycott unless they did so on behalf of their department, using whatever procedures are needed to make that the case.⁸⁴

This understanding of a systematic academic boycott as one which leverages the voice of some official collective, like a department, as opposed to an ad hoc group that individuals can join and leave at will, is one that puts the tension between collective and individual academic freedom in starkest relief. A systematic boycott, by definition, applies at least in some ways to the members of the collective whether they support the boycott or not. The question is, in *what* ways can the collective boycott bind individuals who do not themselves endorse it?

Consider a range of things that Department Y's boycott of Institution X might involve:

- (1) Department Y releases a public statement in its name condemning Institution X for its violations of academic freedom or the fundamental rights on which academic freedom depends.
- (2) Y ends a special partnership such as a faculty exchange or a study abroad program with X.

⁸² See *id.*

⁸³ Compare *id.* ("[AAUP] recognizes the right of individual faculty members or groups of academics not to cooperate with other individual faculty members or academic institutions with whom or with which they disagree."), with AAUP, *Statement on Professional Ethics*, *supra* note 51, at 167 ("As colleagues, professors have obligations that derive from common membership in the community of scholars. Professors do not discriminate against or harass colleagues. They respect and defend the free inquiry of associates, even when it leads to findings and conclusions that differ from their own. Professors acknowledge academic debt and strive to be objective in their professional judgment of colleagues.").

⁸⁴ Matthew Finkin, the AAUP's former general counsel, disagrees with the claim that there is a relevant difference between a department statement and one by a large group of its faculty: [T]hat the department was not identified as the actor would seem to be a distinction without a difference as the impact on students . . . who wish to pursue academic work in Israel or on incumbent or potential faculty members who would wish to engage in collaborative projects there would seem to be as much as were the department to have acted in its name

Finkin, *supra* note 59 (manuscript at 13-14).

- (3) Y ends its recruiting trips to X, where it traditionally participated in X's grad school fair.
- (4) Y refuses to co-sponsor conferences with X.
- (5) Y prohibits the use of its competitively awarded faculty travel stipends for travel to X.
- (6) Y refuses to approve sabbatical leave for faculty who plan to spend their sabbatical at X.
- (7) Y prohibits its professors from writing recommendation letters for students wanting to study at University X.
- (8) Y allows its professors to decline to write recommendation letters for students wanting to study at X.

Each of these steps has the potential to impact an individual faculty member's academic freedom. The question here is how the collective can achieve its goals without unduly coopting the freedom of its members. After all, some collective decisions are unavoidable, and unavoidably collective: The department will either have a faculty exchange program with University X or it will not. It will speak out about University X's bad actions or it will not. Doing these things potentially affects everyone in the department, but that cannot be helped. Other actions on the list, however, do not just affect individual faculty; they compel individual faculty members' participation. Thinking of academic freedom as an ethical practice tasked with navigating the space between collectives and individuals requires us to make prudential judgments about where to draw the line.

To my mind, the real crux of the issue is the divide between options (1), (2), (3), and (4) on the one hand, and options (5) and (6) on the other. Option (1), the departmental statement, would have been allowed even under the AAUP's 2006 policy, which called "the adoption of resolutions . . . entirely appropriate."⁸⁵ Meanwhile, options (2), (3), and (4) all involve actions taken by the department itself. These are necessarily collective decisions about programming, spending, recruitment, and the use of the department's name.

By contrast, the way a faculty member chooses to use their research or travel grants or spend their sabbatical is something their department or school should judge without reference to the boycott. Faculty can be denied funding for financial reasons (if the money runs out) or because other faculty's scholarly projects are deemed more important or promising. But it would violate the faculty member's academic freedom to withhold funding or benefits to which they would otherwise be entitled, simply because they do not support the department's boycott. The same would be true if a faculty member did not support a labor strike or a curricular decision and lost funding as a result. The *2024 Boycott Statement* gets at this, somewhat obliquely, in saying that "[f]aculty members' choices to support or oppose academic boycotts should not

⁸⁵ See AAUP, *2006 Boycott Statement*, *supra* note 66, at 42.

themselves be the basis of formal reprisal.”⁸⁶ The guiding principle is that faculty research projects should only be judged by experts in the discipline based on relevant scholarly criteria—not based on the applicant’s agreement with collectively decided departmental policies.

There is a close analogy here to free speech doctrine surrounding government speech versus limited public forum funding, especially funding for university student groups that bring in outside speakers. The university has wide leeway to decide whom it wants to honor or invite to speak, but it can’t control who student groups bring to campus, even when they use university funds to do so.⁸⁷

This leaves the issue of recommendation letters. Prohibiting faculty from writing them, as in option (7), would be an obvious academic freedom violation. Allowing faculty to withhold recommendations as part of a boycott, as in option (8), is a much more complicated issue—though, notably, it is one that was as likely to arise under the 2006 *Boycott Statement* as the new one.⁸⁸ In this collision of *individual versus individual* rights—the freedom of a faculty member versus that of a student—as opposed to individual versus collective ones, I think the student’s interest should prevail. Just as a professor should not grade students based on their politics and cannot refuse to teach them because of the ways they might eventually use their knowledge, neither should a professor be able to limit their students’ opportunities by withholding a recommendation as part of a boycott.

CONCLUSION

The AAUP’s critics are right to notice a common theme in its recent statements: On the topic of boycotts, DEI considerations in faculty hiring and advancement, and institutional neutrality, the AAUP has pushed for nuance while recognizing the importance of collective action by the faculty. When it comes to academic freedom, some find “it depends” to be an unhelpful form of guidance; in place of nuance, they want rules—rules that maximize the academic freedom rights of individual professors.

But crucial as it is to defend individual professors’ freedom to teach, research, and publish, that defense cannot simply ignore the unavoidable, collective decisions made in each of the areas the AAUP has recently examined. These collective decisions shape the environment in which teaching, research, and publication occur. To treat the collective as simply a threat to individual academic freedom is to give up on the possibility that the faculty will be

⁸⁶ AAUP, *2024 Boycott Statement*, *supra* note 70, at 35.

⁸⁷ See SOUCEK, *supra* note 42, at 121-24.

⁸⁸ Len Gutkin, *Academic Freedom’s Fierce Internal Fracas*, CHRON. HIGHER EDUC. (Nov. 21, 2025), <https://www.chronicle.com/article/academic-freedoms-civil-war> (“[A] lot of the supposed harms that people bring up around academic boycotts happened under the old policy as well. Those included . . . people not writing or choosing not to write letters of recommendation that involved places that they believed were violating academic freedom or human rights.” (quoting Committee A chair Rana Jaleel)).

collectively involved in making the decisions that shape their work, and that universities, as institutions, might be seen as more than just their administrations.