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Michael Bailey, Executive Director
AAUP-UConn

Dear Michael,

You recently requested a legal opinion regarding what if any consequence could result from teaching faculty discussing the current state of the funding crisis at the University of Connecticut during instructional time. Faculty members of the AAUP-UConn are governed by the State Employee Relations Act (SERA) which does not have a lot of jurisprudence on this matter.

Faculty represented by AAUP are protected under SERA when engaged in concerted activity. Things like promoting the Union, advocating for improved working conditions as well as adequate funding of the University are all protected under state law.

Conn. Gen. Stat. §5-272 (a) Employers or their representatives or agents are prohibited from: (1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 5-271 including a lockout; (2) dominating or interfering with the formation, existence or administration of any employee organization; (3) discharging or otherwise discriminating against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under sections 5-270 to 5-280, inclusive; ... (5) discriminating in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization.

Our State Labor Board interprets these protections broadly so as to protect concerted activity.

Faculty should, however, exercise caution when discussing matters that are beyond the scope of the material one might expect to be covered in a course. It is certainly reasonable to discuss the ongoing funding crisis at the University in connection to content that is being covered in a course. The adequate funding of public higher education is clearly a matter ripe for discussion in many classrooms throughout the University. It may not, however, be a ripe topic for a course having nothing to do with public policy. It also advisable to consult with University policies to ensure compliance.

Faculty represented by AAUP enjoy rights that are protected through academic freedom and free speech. AAUP-National provides guidance on this issue that I believe is helpful:

Academic freedom is the freedom of a teacher or researcher in higher education to investigate and discuss the issues in his or her academic field, and to teach or publish findings without interference from political figures, boards of trustees, donors, or other entities. Academic freedom also protects the right of a faculty member to speak freely when participating in institutional governance, as well as to speak freely as a citizen. <https://www.aaup.org/our-work/protecting-academic-freedom>

There are two things to consider here. First, is the topic being discussed related to one's academic field? As stated above, the nexus between adequate funding for UConn and chemistry may be tenuous at best. The nexus is likely much stronger in a course relating to public policy. Secondly, faculty at UConn are public employees. This means that not all speech is protected by the First Amendment to the U.S. Constitution. There is a plethora of case law on this issue over just the past ten years or so. In short, for speech by a public employee to be protected by the First Amendment, it must be about a matter of public concern and the speech must be made as a citizen as opposed to an employee. *Garceetti v. Ceballos*, 547 U.S. 410 (2006)

Adequate funding of our state's premier public university is a matter of public concern. A faculty member's testimony for adequate funding at a public hearing would be protected speech. A faculty member publishing a statement about how their department will be cut under a proposed budget plan would be speech made by an employee and likely not protected by the First Amendment. It would, however, be protected if the speech is made as part of a concerted (Union) activity.

Speech made outside of instruction time should be protected unless it may be viewed as coercive of the students. A faculty member may invite students to attend a meeting where the funding crisis will be discussed. Attendance should not be taken and participation should not impact course outcomes (grading). The same goes for a call to action. A faculty member may publish the fact that there will be a public protest advocating for adequate funding of the University. It cannot, however, be tied in any way to course outcomes.

Hopefully this addresses your concerns. Please do not hesitate to contact me if there are any other questions or concerns I can help with.

Sincerely,

/s

Eric W. Chester