

Rutgers has a record of robust shared governance, going back almost 50 years to the founding of the University Senate. Our University Senate is more inclusive than Senates at virtually all of our peer institutions. In addition there are active Faculty Councils and vigorous engaged student governments on all three campuses. One *sine qua non* of successful shared governance is freedom for all participants to articulate their views without fear of negative consequences.

For many years we believed that speech related to university governance, the performance of the administration, and related topics of public concern was protected by the First Amendment. But in the *Garcetti v Ceballos* (2006) decision, the Supreme Court held that when public employees make statements in the course of performing their official duties, they are not insulated by the Constitution from employer discipline. A number of universities responded specifically to that finding by adopting language that made it clear that academic freedom for faculty extends beyond the classroom and research laboratory. In fact, the Supreme Court recommended in *Garcetti* that government employers who wish to protect employees' free speech should enact regulations for that purpose.

For example, at the University of Delaware the following language was agreed to by the faculty and administration: "[faculty have the] freedom to address the larger community with regard to any social, political, economic, or other interest" and to do so "without institutional discipline or restraint." At the University of Minnesota, a board-adopted policy on academic freedom and responsibility, enacted several years after *Garcetti*, accords faculty members "the freedom, without institutional discipline or restraint, to... speak or write on matters of public concern as well as on matters related to professional duties and the functioning of the University."

While it is true that recent lower court rulings seem to have provided some exemption to faculty from the *Garcetti* decision, the question is far from resolved. In addition, the participation of more vulnerable groups such as staff and even students in shared governance at Rutgers requires us to provide specific protections for all from "institutional discipline or restraint" in connection with their participation in shared governance.

Even if the question of whether public employees in higher education have the same constitutional free speech protections as all citizens is resolved, surely we do not wish to require participants in shared governance at Rutgers to initiate mutually expensive legal proceedings to defend their rights. In order for Rutgers to have the most constructive and effective system of shared governance, Rutgers must have policies and procedures in place that ensure the freest, most open participation of members of the University community.

It should be noted that for a number of years, the University Senate has been seeking to work with the administration to craft a policy statement that would provide appropriate protections for its members and other participants in shared governance. Unfortunately it has not succeeded.

Resolved

The NBFC calls upon the University to incorporate the following statement into the University Policy Library.

All faculty or students or staff who are participants in shared governance shall be free to communicate about the functioning of the University without restraint or fear of discipline.