

The AFCON Sentinel

Newsletter of the Academic Freedom Coalition of Nebraska

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AFCON Opposes New Regents Free Expression Policy

A Statement from the Academic Freedom Coalition of Nebraska

16 March 2018

Contact AFCON President David Moshman at dmoshman1@unl.edu

The Academic Freedom Coalition of Nebraska has been increasingly concerned about Regents Policy 6.4.10 on free expression, adopted January 25 by the University of Nebraska Board of Regents. As explained below, we are particularly concerned about (1) unconstitutional restrictions on where expression is free, (2) unconstitutional restrictions on what students may say, and (3) warnings to faculty to avoid “controversial matters” in their classes. Since the passage of this policy, both UNL and UNO have taken actions confirming our worst fears.

At its March 10 meeting, the AFCON Board of Directors voted unanimously to oppose R.P. 6.4.10. Although the policy includes strong statements of commitment to free expression, First Amendment rights, and academic freedom, we concluded after thorough discussion that the policy as a whole is a major infringement on intellectual freedom at the University of Nebraska and should be rescinded.

Where speech is free

The public areas of college campuses have been widely viewed since the 1960s as traditional public forums like streets and

parks where anyone may proclaim anything they wish about any topic, as both ACLU Nebraska and the Foundation for Individual Rights in Education (FIRE) have argued. R.P. 6.4.10, in contrast, assumes that no part of any campus is a traditional public forum. Campuses are authorized to identify distinct speech zones and determine the regulations governing expression within each. First Amendment rights are fully respected only in limited areas of campus under limited circumstances, as determined by each campus.

UNO has issued draft regulations implementing the Regents policy, including limited zones for free speech and a 30-day waiting period. UNO professor emeritus Sam Walker, who met with AFCON March 10, is planning to protest the policy.

What speech is free

Contrary to what some have suggested, the University of Nebraska has not adopted the widely acclaimed University of Chicago free expression policy. Although the Regents have drawn on the Chicago policy in some places, the language has been altered to allow broader censorship and punishment of

speech. UNL already has a Student Code of Conduct and other policies that threaten constitutionally protected speech, as documented in letters it received from the Foundation for Individual Rights in Education (FIRE) in August 2014 and September 2015. The new Regents policy has not resulted in any reconsideration of UNL's restrictive speech codes.

On the contrary, since approval of the Regents policy, UNL has extended its unconstitutional restrictions into the classroom. In a February 22 email message to all faculty, UNL's Executive Vice Chancellor (and chief academic officer) distributed a one-page "TipSheet" concerning "safe and civil discourse in learning spaces." The TipSheet made clear that the UNL Student Code of Conduct applies in classrooms and should be strictly enforced. Instructors are urged to include in the syllabus of each course "a safe and civil discourse statement" making it clear to students that their speech must always meet standards of respect and civility and that any speech deemed "abusive, harassing, intimidating, or coercive" may result in expulsion from the classroom and further disciplinary action. UNL expects its faculty to enforce its unconstitutional speech code in all classes.

Controversy in the classroom

The Regents policy also briefly addresses academic freedom, focusing especially on avoiding "controversial matters" in the classroom. Regents Bylaw 4.2 on Academic Freedom mandates without exception: "Members of the professional staff are entitled to freedom in the classroom in discussing their subjects." R.P. 6.4.10 makes no reference to this bylaw. Instead it warns, "teachers are entitled to freely discuss topics in the classroom, but they should be careful not to introduce controversial matters, which

have no relation to the subject being taught."

Although the Regents academic freedom policy claims to draw on the 1940 policy statement of the American Association of University Professors (AAUP), the AAUP language has been subtly altered in a manner that rules out AAUP's 1970 interpretation. The AAUP warns faculty to avoid matters unrelated to the curriculum, especially when such matters are controversial. The Regents policy, in contrast, warns faculty to avoid controversial matters, because such matters are not part of the curriculum.

Controversy is of course central to academic work. The new Regents policy is utterly inconsistent with AAUP policy, with the Regents' own Bylaws, and with any conception of academic freedom.

Conclusion

With R.P. 6.4.10 and subsequent campus actions, the University of Nebraska is (1) restricting free speech on campus through speech codes and speech zones that violate the First Amendment and (2) maintaining classrooms in which no one will feel disrespected or offended, even at the expense of curricular freedom for the instructor and freedom of discussion for students. AFCON is happy to assist anyone at the University of Nebraska or elsewhere in developing policies that respect intellectual freedom for students, teachers, and researchers in all academic contexts and in resisting infringements on academic freedom. Contact AFCON President David Moshman at dmoshman1@unl.edu.



AFCON Testimony Against Abolishing the State Board of Education

My name is Robert Haller. I am testifying on behalf of the *Academic Freedom Coalition of Nebraska*. I was its founding President 30 years ago when I was a Professor of English at UNL and active in the *American Association of University Professors*, both the Nebraska State Conference and the University.

I am here to speak in opposition to LR285CA.

Since coming to Nebraska I have been impressed by the wisdom of those who, long ago, created a Constitution which properly recognizes the integrity of its public educational institutions. The Board of Education, like the Board of the University of Nebraska, is elected on a non-partisan basis by the voters of the state, just as are the Senators. The Board is thus independent of the Legislature and the Governor, but possesses the same legitimacy by virtue of its direct accountability to the voters of the state. Its one focus is education in the common schools, schools which themselves are governed by Boards elected in their own districts.

The state Constitution has from its first writing made education compulsory and free, recognizing that residents of the state must be trained to live productive lives, contributing to the economy and civility of the state. Their teachers must therefore be people whose mastery of the various scientific, humanistic and practical disciplines gives them the ability to pass on to students the findings and methods that they will use to achieve the good life we want for all our people. The Commissioner they now hire has the unique task of serving to make policies which enhance the success of the schools and satisfy the communities in which education takes place.

Our Constitution thus provides for the maximum autonomy for public education possible when the funding is dependent on the Legislature and Governor. The Board has every reason to support the work of its direct employees as of the school leaders and the teachers who need its assistance and approval. The arrangement gives educators in the schools the fruitful academic freedom of those who know they have the backing of a Commissioner and a Board sharing their vision for and focus on the schools.



The politicizing of the Department of Education that is the objective of LR285CA radically alters the relationship between the citizens and educators. The elimination of the State Board removes dedicated citizens from the policy-making process. A Department of Education operating at the direction of the Legislature and Governor will be less responsive to educators and less able to work with teachers on the unique problems of their work. LR285CA in particular abolishes the insight of Nebraska's founders, for whom education was too important to be put in the hands of the Governor and Legislature, but rather belonged to the citizens, working together with educators so that intellectual work would not be compromised by politics but would have the freedom and autonomy it required.

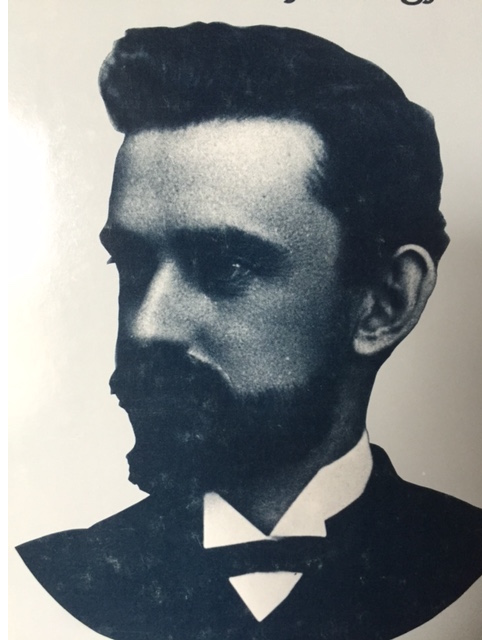
Harry K. Wolfe and the 1918 Nebraska Professors Trial

David Moshman

A century ago this spring, the University of Nebraska Board of Regents initiated an extraordinary trial of professors. Among the most prominent victims was Harry Kirke Wolfe, who had graduated from the university in 1880 and later earned his doctorate at the University of Leipzig in Germany under the direction of Wilhelm Wundt, the central figure in the 1870s emergence of psychology as a scientific discipline distinct from philosophy.

Wolfe brought the new scientific psychology to the University of Nebraska in 1889, initiating the work that led ultimately to the founding of the Psychology Department. In 1895, he helped bring child study expert George Washington Andrew Luckey to Nebraska to found the new Department of Pedagogy. This led to the 1908 founding of the Teachers College (now the UNL College of Education and Human Sciences), where Wolfe founded and briefly headed the new department of educational psychology.

An early proponent of active learning, critical analysis, and lifelong inquiry, Wolfe encouraged his students, all undergraduates, to form and justify their own ideas. He founded and maintained one of the first psychological laboratories in the United States and actively encouraged student research. He also highlighted the relevance of the new science of psychology to issues of education and human welfare. Many of his students, including a number of women, went on to earn doctorates and make major contributions to psychology and education.



Harry Kirke Wolfe

After the United States declared war on Germany in 1917, popular and political pressure was brought to bear on the University of Nebraska to ensure that its professors were sufficiently patriotic and its curriculum sufficiently attuned to the war effort. On May 28, 1918, the Board of Regents initiated a public hearing in the Law building to consider charges of “hesitating, halting, and negative support of the government” against what turned out to be more than a dozen professors, including Wolfe and Luckey, whose loyalty was suspect or whose courses were not sufficiently anti-German in ideology.

The hearings lasted two weeks and generated intense publicity. One by one, before a panel of Regents and a large crowd of Nebraska citizens, the professors faced hostile questions about their patriotism and their teaching. Newspapers across the state called for the University to “clean its house.” The Governor concurred. Chancellor Samuel Avery acknowledged problems with Professor Luckey’s “attitude.” The newly founded American Association of

University Professors concluded that academic freedom did not protect the teaching of ideas that might undermine the war effort.

On June 18, the Board of Regents announced its verdicts. Three professors, including Luckey, were asked to resign. Wolfe, though still employed, had been disgraced and humiliated as a teacher whose classes undermined the patriotic values of Nebraska youth. He died unexpectedly, apparently of a heart attack, on July 30.

A century later, the University of Nebraska Board of Regents has a new "free expression" policy that authorizes individual campuses to sharply restrict speech in the public areas of the campus. The new policy also cautions faculty not to introduce "controversial matters" into their classes. UNL recently sent all faculty members a notice extending the reach of its unconstitutional speech code into the classroom, specifically authorizing punishment of any speech that fails to meet vague standards of respect and civility.

Wolfe's last published article, which appeared the month of his death, addressed the relation of education and individuality. "Society," he wrote, "should now be strong enough to do justice to the individual and not seek to crucify or to dwarf him.... There is no institution in society worth preserving that cannot withstand all attacks of individual iconoclasts." "Too much obedience," Wolfe warned, "may ruin character, may dwarf the intellect, may paralyze the will of children and of adults."



"It reduces the university to a child care center. You can play with your blocks there, but you can't play with them over here. You can play democracy over there, but you can't exercise your democratic rights, your free speech rights here."

--UNO Professor Emeritus Sam Walker, commenting in the Lincoln Journal Star on UNO's proposed speech zones and the new Regents policy on which they are based.

For coverage of Sam Walker's protest plans and AFCON's concerns about the decline of free expression at the University of Nebraska, see these articles:

http://journalstar.com/news/local/education/nu-s-free-expression-policy-lets-campus-restrict-speech-critics/article_be4d278e-d328-5f6e-9d18-0a39ff28e4ea.html

http://www.omaha.com/news/education/nu-s-free-speech-controversy-won-t-die-groups-express/article_4d5a4f1f-d33b-56ca-8547-83c08868b549.html

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Ally Halley, Treasurer

AFCON now accepts PayPal! Use your PayPal account to join or renew. We have two ways to pay: send a direct payment to us at afcon.freedom@gmail.com or use the PayPal button on our website <https://www.academicfreedomnebraska.org/join-afcon.html>. The button on the website will auto-renew your membership each year so you don't have to manually submit a payment when it's time to renew. If you do not have a PayPal account, send us a check at 3015 S 35 Ave, Omaha, NE 68105. Memberships are \$120 for organizations and \$15 for individuals.

March Minutes

Peggy Adair

Board of Directors Meeting

Eiseley Library, Lincoln, Nebraska
March 10, 2018

Present:

Peggy Adair, secretary, legislative liaison
Russ Alberts, president elect, director at large
John Bender, representing UNL Faculty Senate
Nancy Comer, representing Nebraska State
Reading Association
Bob Haller, chief baker, representing AAUP
and all things wise and wonderful
Ally Halley, sous chef, representing Fine Lines
Burch Kealey, representing UNO Faculty
Senate
Laurie Thomas Lee, representing ACLU
Nebraska
David Moshman, president, policy coordinator
Katie Schroder, representing Nebraska
Library Association
Rod Wagner, immediate past president,
representing Nebraska Center for the Book

Sam Walker, guest

Todd Schlechte, guest

MINUTES

President Dave Moshman convened the meeting at 10:10 a.m.

UNL and UNO FREE EXPRESSION POLICIES:
The board discussed the status of free expression and academic freedom in post-secondary public education institutions in Nebraska. Guest Sam Walker outlined his plans for public challenge to UNO's free expression policy. Alberts made the following motion: "AFCON shall officially oppose the Regents' policy on free expression; support peaceful action to challenge said policy; and coordinate with ACLU, FIRE, and other organizations that support free expression." Schroder seconded the motion. Motion carried on a voice vote.

MINUTES: A motion was made by Haller, second by Halley, to approve minutes of the AFCON board meeting held on January 13, 2018. Motion carried on a voice vote.

TREASURER'S REPORT: Halley reported she has received dues from four members. She will develop an invoice for organizational members and will digitize old treasury records. Balance on hand as of March 10, 2018, is \$2,246.13.

LEGISLATIVE REPORT: Adair reported on the status of legislative bills of interest to AFCON. The following bills are still in committee and unlikely to move further this year: LB718, the Higher Education Free Speech Act; LB886, the Student Journalist bill; LB898, which requires post secondary institutions to conduct annual sexual assault climate surveys; LB1094, requiring financial literacy and entrepreneurship curriculum standards; and LR285CA, which abolishes the Nebraska State Board of Education. LB1069, which requires students to take the 100-question Naturalization test, is Senator Brasch's priority bill and will likely be debated this year. LB295, which establishes a tax credit for contributions to private schools and takes the resulting revenue loss away from public schools, is Senator Linehan's priority bill and will likely be debated this year. Senator Harr and others plan to filibuster the bill.

POLICY ON PUBLIC STATEMENTS: The board discussed the draft policy on public statements. Adair will edit the policy as discussed and present an amended draft to the board at the April meeting.

TREAT OF THE DAY: Homemade blueberry muffins (still warm!) with powdered sugar topping. Thank you, Baker Bob!

NEWSLETTER AND WEBSITE: Moshman will continue to produce a scaled-down version of the *Sentinel* until a new editor can be found. Kealey offered to take a look at the AFCON website to see if he can assist in updating.

There being no further business, the AFCON board adjourned at 11:58am.

Respectfully submitted,
Peggy Adair, Secretary