

**Testimony before the
Pennsylvania House of Representatives
Select Committee on Student Academic Freedom
Kathy Randolph Sproles, President
National Council for Higher Education
Testifying on behalf of the
National Education Association
June 1, 2006**

Good morning. My name is Kathy Randolph Sproles, President of the National Council for Higher Education (NCHE), the higher education voice of the National Education Association. I am testifying on behalf of NCHE, which advocates for the issues and priorities of the more than 125,000 faculty and education support professionals who teach and work in two-year and four-year public and private institutions of higher education nationwide. I am also testifying on behalf of the NEA itself, which represents 2.8 million K-12 and higher education teaching and education support professionals. I teach in the English Department at Hartnell College in Salinas, California; I have taught at community colleges in both California and Tennessee for over 30 years.

I appreciate this opportunity to share our concerns about the general topic of academic freedom in higher education. I know that you have heard from a wide variety of students, faculty, and administrators throughout the state of Pennsylvania, as well as many of us from around the country who are intimately involved in these issues. I would like to begin with a discussion of NEA's general position on academic freedom, then comment on the national debate around the so-called Academic Bill of Rights, and close with some comments on the nature of higher education. My colleague Jane Munley will discuss more specific concerns pertaining to Pennsylvania.

First, NEA has had a strong and clear position on academic freedom since 1928. You will find our current policy on Academic and Intellectual Freedom and Tenure in Higher Education in your packets, so let me highlight just a few points. As an underlying premise, NEA believes that "Intellectual freedom is a basic right of all citizens and essential to preserving American democracy." As a part of our policy, the NEA is one of the more than 180 organizations that have endorsed the AAUP's 1940 Statement of Principles on Academic Freedom and Tenure.

Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends on the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher and of the student in freedom in learning.

NEA also believes that "academic and intellectual freedom in institutions of higher education are best protected and promoted by tenure, academic due process, and faculty self-governance." NEA policy states:

Academic freedom also includes the rights of scholars to publish freely the results of their research, to retain the rights to their intellectual property, to participate in the governance of the institution, to advance in their profession without fear of discrimination and, when necessary, to criticize administrators, trustees, and other public officials without recrimination. College and university faculty and staff have the right to assist colleagues whose academic freedom and professional rights have been violated. Tenure, academic due process, and faculty self-governance promote stability, continuity, and a scholarly environment on campus.

Tenure may be defined as the expectation of continuing, indefinite, and/or permanent appointment in the institution, granted subsequent to the probationary period and extensive, objective peer and institutional review. The locus of tenure should be the institution.

Academic due process is usually a part of a system of faculty self-governance and evaluation that has been established by faculty by-laws, constitutions, and collective bargaining contracts. The courts have generally accepted a judicial form of due process similar in most respects to legal proceedings before a court of law. In such a proceeding, the burden is clearly on the administration to prove beyond reasonable doubt that a tenured faculty member should be dismissed or suffer serious sanction for incompetence or other just cause.

A separate NEA policy statement defines our conception of shared governance, which we believe is critical to the quality and vitality of higher education. The policy states:

Faculty members in higher education should have primary responsibility to:

1. Determine the curriculum, subject matter, methods of instruction, and other academic standards and processes.
2. Establish the requirements for earning degrees and certificates, and authorize the administration and governing board to grant same.
3. Exercise, where the faculty deems it appropriate, primary responsibility for determining the status of colleagues, especially appointment, reappointment, and tenure.
4. Establish procedures for awarding promotions, sabbaticals, research support, and other rewards or perquisites.

In conclusion, NEA policy affirms that “Tenure and academic due process—when accompanied by a proper system of faculty self-governance—protect the rights of all faculty members, tenured or untenured.” In more recent years, NEA has paid increased attention to the dangers to academic freedom contained within the widespread use of part-time and non-tenured faculty, an employment practice that “threaten(s) the job security vital to academic and intellectual freedom.”

It is against this background that we base our opposition to a nationwide movement to enact the proposed Academic Bill of Rights. Thus far, some 20 states have considered legislation either based directly on the Academic Bill

of Rights or loosely inspired by it, but none has enacted any mandatory provision. For your convenience, I have attached a summary of this state activity during the current 2005-2006 legislative cycle.

We do note the fact that language from the Academic Bill of Rights appears in Pennsylvania's HR 177. However, we appreciate that this committee is investigating matters of academic freedom in the state-owned and state-related institutions in the commonwealth before taking any action.

In reviewing the Academic Bill of Rights, we do want to acknowledge that it contains some propositions with which all of us would agree. These propositions have to do with the hiring and promotion of faculty, and the grading and evaluation of students. For example, NEA believes that "All faculty shall be hired, fired, promoted and granted tenure on the basis of their competence and appropriate knowledge in the field of their expertise" and that "No faculty shall be hired or fired or denied promotion or tenure on the basis of his or her political or religious beliefs," or "excluded from tenure, search and hiring committees on the basis of their political or religious beliefs." We believe that "Students will be graded solely on the basis of their reasoned answers and appropriate knowledge of the subjects and disciplines they study, not on the basis of their political or religious beliefs." In fact, we believe that this is already the practice in higher education. You have heard over the course of these hearings that most existing institutional policies already protect students against the harm the proposed legislation purports to prevent. I would add that these student grievance policies apply to student grievances about any reason, not just politics. In addition, the self-policing character of the faculty profession works to prevent that situation.

Second, as many have stated in testimony before this body, the Academic Bill of Rights is a solution in search of a problem. There is simply no credible evidence that college and university faculty are indoctrinating students. We have heard some outrageous anecdotes that all too often turn out to be without foundation. The example of the biology professor showing his class the movie *Fahrenheit 9-11* is a perfect example of this phenomenon.

I would like to share with you what happened when the South Dakota Senate considered and defeated HB 1222, an offshoot of the Academic Bill of Rights, which would have required public universities to annually report on the steps they took to promote intellectual diversity. Intellectual diversity was defined as “a foundation of a learning environment that exposes students to a variety of political, ideological, and other perspectives.” After investigating whether there was intellectual diversity on their campuses, the Executive Director of the South Dakota Board of Regents pointed out that there had been no reports of political bias being a problem on any campus. He also said, after reviewing a list of speakers invited to campuses, “You'd have to look pretty hard to find a more balanced list.” The South Dakota bill could have forced the Regents to hire six ombudsmen, one for each of the public campuses in the state, to deal with potential intellectual diversity complaints. At a time when the South Dakota Regents are struggling to fill existing vacancies for administrators and instructional faculty, the requirement of these additional positions would have exacerbated this hiring situation. Furthermore, if there were a charge of ideological bias on any of those campuses, the Board of Regents already has an established grievance procedure for resolving that issue.

The third major area addressed by HR 177 deals with the openness of the “academic atmosphere and the degree to which faculty have the opportunity

to instruct and students have the opportunity to learn in an environment conducive to the pursuit of knowledge and truth.” I think that it is important to stress that this is a critical and difficult question that applies to all elements of society. It is a question that we all struggle with as we try to develop a civil society that is open and tolerant to all, while avoiding strictures that inappropriately and unconstitutionally restrict student and faculty rights.

It is important to distinguish between academic freedom and free speech rights; they are similar but not identical concepts and the differences have important consequences for college and university classrooms. All of us in a campus environment, faculty and students alike, have constitutional free speech rights under the first amendment. In a classroom, the situation is somewhat different than the campus at large. Professors have academic freedom in a professional capacity, not simply as individuals. Academic freedom allows professors to exercise their professional judgment in teaching and research. It does not give them unrestricted free speech rights in the classroom. The exercise of this professional judgment is based on the years of training that faculty undergo to prepare for their work. Students do not have the same level of training to provide the expertise in the classroom or laboratory. That is not to say that students do not contribute to the production of knowledge. They often do, and good teachers incorporate those contributions into the classroom experience. But students are not responsible for the presentation of the material in the same kind of systematic professional manner as the faculty member. Education is a mutually reinforcing process, with teachers learning while they teach, and students contributing to that learning process. But that does not change the important differences between the role of the teacher and the role of the student in the classroom.

My colleague Mary Tiles of the University of Hawaii recently presented on the subject of academic freedom. In her presentation, she correctly emphasized the concept of academic integrity that is at the heart of our profession. Academic integrity guides our self-policing of our profession. Tiles went on to articulate multiple meanings of academic freedom.

Academic freedom is a negative right.

- Ensures the space for critical inquiry and academic debate
- Entails the responsibility to keep that space open in the classroom

- Is not the positive right to be able to teach whatever one wishes however one wishes

- Is not the positive right of a student not to have challenges to their pre-conceived beliefs.

Students are ill served to be told that they have the same sort of discretion in the classroom as the faculty member.

Students also need to understand the difference between offering an interpretation and indoctrinating an audience. In other words, there are important distinctions between what constitutes academic balance and what constitutes political balance.

Faculty members offer interpretations all the time, and it is important that they do so. Especially in the humanities and the social sciences, higher education is about learning how to develop interpretations, how to communicate those interpretations, and most critically, how to support those interpretations with facts, theories, models, and the other tools of scholarly interpretation. A faculty member offering a scholarly interpretation is emphatically not the same thing as telling students how to vote in next Tuesday's election.

We at NEA emphasize that we all need to respect differences of opinion, but it does not follow that all opinions have the same weight. The history of the development of scholarly knowledge is a history of contested viewpoints. Some views that were considered minority opinions, or even outlandish opinions, have gathered more scholarly respect as scholars have continued to study the questions. However, some outlandish views have remained outlandish. Other questions have been transformed to historical curiosities. We no longer study astrology, alchemy, or whether the earth is flat. These changes take place within a history of disciplinary development – even in those cases where the imperatives of the questions outgrow disciplinary boundaries and force the development of new disciplines. This is another topic the committee has heard a great deal about as witnesses have discussed the emergence of disciplines such as women’s studies, ethnic studies, and other products of interdisciplinary development.

Yet another of the problems with the proposed Academic Bill of Rights is that it combines extreme relativism about the nature of ideas with a vagueness about who has the responsibility of determining how to deal with that relativism. The proposal argues that

- Academic disciplines should welcome a diversity of approaches to unsettled questions.
- To perform these functions adequately, academic institutions and professional societies should maintain a posture of organizational neutrality with respect to the substantive disagreements that divide researchers on questions within, or outside, their fields of inquiry.
- Exposing students to the spectrum of significant scholarly viewpoints on the subjects examined in their courses is a major responsibility of faculty.

The real question is who determines what is included within the “diversity of approaches” or for that matter, who decides what are the “unsettled questions.” NEA believes wholeheartedly in the proposition contained in the last bullet above. We do believe “exposing students to the spectrum of

significant scholarly viewpoints on the subjects examined in their courses is a major responsibility of faculty." However, we interpret the proposition literally: we believe faculty have that responsibility. The whole point of this campaign is that some self-appointed outside entities have decided that faculty are not fulfilling that responsibility. Therefore, those self-appointed entities are determining what "diversity of approaches" need to be discussed about whatever particular "unsettled questions" they have decided are unsettled.

NEA believes that it is inappropriate intrusion into the academic process, and a serious violation of academic freedom for any outside entity to determine academic questions that are properly the responsibility of faculty. And we believe this whether it is state or federal government, self proclaimed activist or other outsider determining these questions – even when that outside entity is claiming to enforce academic freedom.

I would also like to add a practical objection. When the Academic Bill of Rights was before the Florida House of Representatives, a Department of Education analysis concluded, and I quote, that "Each institution would incur significant costs related to legal assistance and training to comply with the bill. The department estimates a potential total cost of \$4.2 million." This figure was based on the cost of hiring attorneys at a cost of \$109,503 at each of 39 institutions. Surely transferring curriculum and student evaluation policy from the faculty to the government or the courts is not something that any of us would like to see.

I would like to close with a comment about the purposes of higher education. I believe that the most important thing those of us in higher education do is instill a love of learning in students. We need to teach basic

material, but our goal is to teach students how to think – and to do that students have to want to learn. Strong views strongly expressed are essential to draw students into the material and out of their pre-existing state of mind. Students in higher education must be challenged on their basic assumptions about the community and the world they inhabit. That is not to say they must change their assumptions, but they must be challenged. They must learn how to articulate ideas, reflect on those ideas, and learn how to rationally organize and defend those ideas. Society demands citizens who can engage in critical thinking about the world around them. I would also remind the committee and the larger audience: disagreement is not discrimination. If we are to survive in a global society, we are all going to have to learn how to deal with disagreement and still find a way to work together.

In that regard, I would like to add a comment about these hearings themselves. We have been watching the process of these hearings within the context of a national debate that has not always found a way to handle disagreement. To be candid, after the passage of HR 177, we viewed the prospect of committee hearings with a great deal of concern. However, I want to go on record on behalf of the NEA and its members and commend the committee for the way you have conducted these hearings. You have dealt with a situation that could have easily degenerated into a vitriolic exchange of name-calling and denunciation; however, you have kept this debate at an extremely civil level and have focused on concrete policies and real issues. I want to thank you, Representative Stevenson, and you, Representative Curry, as well as all the committee members for that accomplishment.

In thinking about this testimony, I was reminded that no less an authority than the United States Supreme Court has commented on the special place academic freedom occupies in our institutions of higher learning. In 1957, in the case of *Sweezy v. New Hampshire*, the court wrote that “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.” [*Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).] Thank you.

