

# VERMONT LAW SCHOOL

Donald J. Polden, Chair (by email and U.S. mail)  
Standards Review Committee  
Dean, Santa Clara Law School  
Santa Clara University  
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March 30, 2011

Dear Dean Polden:

We, the undersigned members of the Vermont Law School faculty, join with the other organizations, including AALS (Association of American Law Schools), SALT (Society of American Law Teachers), AALL (American Association of Law Librarians), CLEA (Clinical Legal Education Association) and many professors who urge the Standards Review Committee to make no substantive changes to the existing standards and interpretations regarding security of position, for the sound reasons in their several letters and statements.

These changes would dramatically reduce the ABA's longstanding commitment to a system of tenure and of security of position for traditional faculty, clinical faculty, legal writing faculty, and librarians. The undersigned faculty vigorously opposes these proposed changes, on the grounds that they would:

- (1) Undermine the quality of legal education;
- (2) Undermine academic freedom in the legal academy;
- (3) Undermine faculty governance in the legal academy; and
- (4) Undermine the academy's movement to bring clinical law professors, legal writing professors, and library directors into full membership in the academy.

Given the current political environment, the ABA's commitment to the existing standards has never been more important. Several recent initiatives pose threats to the academic freedom and shared governance rights of academic institutions and their faculty. Legislators in one-third of the states have attempted to impose an "Academic Bill of Rights" requiring ideological 'balance' in all public educational institutions.<sup>1</sup> Also at the state level, the Texas legislature unanimously passed "a law . . . [that] requires public universities to post online the budget of each academic department, the curriculum vitae of each instructor, full descriptions and reading lists for each course and student evaluations of each faculty member."<sup>2</sup> Both the Maryland and Louisiana legislatures sought to affect legal clinic funding based on political dissatisfaction with the clinics' litigation choices. In Virginia, Attorney General Ken Cuccinelli ordered all state colleges and universities to rescind policies that ban discrimination based on sexual orientation, claiming the schools lacked the authority to adopt such statements. Such political efforts represent attempts by the general public to insert themselves

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<sup>1</sup> Robert M. O'Neil, *Bias, "Balance," and Beyond: New Threats to Academic Freedom*, 77 U. COLO. L. REV. 985,998-1009 (2006).

<sup>2</sup> Stephanie Simon & Stephanie Banchemo, *Putting a Price on Professors*, WALL ST. J., Oct. 23, 2010, at C1.

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into the academic decision-making process, ultimately limiting institutional and individual academic freedom. At the federal level, a recent Supreme Court decision, *Garcetti v. Ceballos*, restricts the free speech rights of public employees when speaking about matters relevant to their job and field of professional expertise.<sup>3</sup> The decision, if applied to public law schools, could transform a governance structure in which faculty and administration work collaboratively to an employer-employee relationship in which faculty must defer to administrators.

Based on the foregoing, we end where we started, firmly opposed to any changes to the current standards. We appreciate the Committee's work on this issue and our ability to comment on the proposed standards.

Sincerely,

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Director, General Practice Program

Betsy Baker, Associate Professor of Law  
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<sup>3</sup> *Garcetti v. Ceballos*, 547 U.S. 410 (2006). Many commentators discuss the potential academic-freedom implications of *Garcetti*. See, e.g., Robert M. O'Neil, *Protecting an Independent Faculty Voice: Academic Freedom after Garcetti v. Ceballos*, 96 BULL. AM. ASS'N U. PROFESSORS, 64, 67–88 (2010); Robert J. Tepper & Craig G. White, *Speak no Evil: Academic Freedom and the Application of Garcetti v. Ceballos to Public University Faculty*, 59 CATH. U. L. REV. 125 (2009); Judith Areen, *Government as Educator: A New Understanding of First Amendment Protection of Academic Freedom and Governance*, 97 GEO. L.J. 945 (2009); Robert M. O'Neil, *Academic Speech in the Post-Garcetti Environment*, 7 FIRST AMENDMENT L. REV. 1 (2008); Sheldon Nahmod, *Academic Freedom and the Post-Garcetti Blues*, 7 FIRST AMENDMENT L. REV. 54 (2008); Robert S. Rosborough IV, Comment, *A "Great" Day for Academic Freedom: The Threat Posed to Academic Freedom by the Supreme Court's Decision in Garcetti v. Ceballos*, 72 ALB. L. REV. 565 (2009).

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