



VIA ELECTRONIC MAIL

March 16, 2024

President Lawrence Schovanec
Chancellor Tedd L. Mitchell
Texas Tech University
2500 Broadway
Lubbock, TX 79409

Dear President Schovanec and Chancellor Mitchell:

The Texas Conference of the American Association of University Professors (“TX AAUP”) expresses utmost concern over the current state of freedom of expression in the Texas Tech University System and at Texas Tech University. In particular, TX AAUP amplifies the concern expressed by National AAUP on the suspension of Dr. Jairo Fúnez-Flores in their March 11, 2024, letter below. Dr. Jairo Fúnez-Flores is an Assistant Professor in the Dept. of Curriculum and Instruction in the College of Education at Texas Tech University.

TX AAUP is an affiliate of the National AAUP, an organization that for over 100 years has set the “gold standard” for the principles of Academic Freedom, Tenure, and Shared Governance in higher education. These principles were jointly formulated with the Association of American Colleges and Universities (AAC&U), the American Council on Education (ACE), and the Association of Governing Boards (AGB) of Colleges and Universities. Texas Tech University (“the University”) is a member of AAC&U and Texas Tech University System (“the System”) is a member of AGB. Moreover,

“Texas Tech University subscribes fully to the general principles endorsed by the Association of American Colleges and Universities in January 1941, by the American Association of University Professors in December 1941, and to the statement of principles included in the standards of the Southern Association of Colleges and Schools Commission on Colleges. That statement of principles confirms that institutions of higher education are conducted by the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free speech for truth in its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental for the protection of the rights of the instructional staff and of the students to learn in an environment in which academic freedom exists.”

https://www.depts.ttu.edu/officialpublications/facultyhb/faculty_role.php

Academic freedom is the freedom from censorship by the institution in the instructional staff's teaching, research, and expression. Expression includes intramural and extramural speech. Academic freedom allows instructional staff to develop and disseminate new knowledge from all viewpoints, including conservative, moderate, liberal, and apolitical. Free inquiry, free expression, intellectual exploration, and open dissent are critical for student learning and the advancement of knowledge.

TX AAUP is aware that on March 4, 2024, you placed Dr. Jairo Fúnez-Flores, a tenure-track Assistant Professor in the Department of Curriculum and Instruction (part of the University's faculty since 2021) on immediate suspension on account of his extramural speech. Specifically, your March 4, 2024 joint statement "TTU Faculty Member Suspended Pending Investigation" states you determined that Dr. Fúnez-Flores' "tweets" (which were made on his own personal social media account as a private citizen, without any mention of his profession or place of work) were "*hateful, antisemitic, and unacceptable.*" You also indicated that an investigation had been launched at the System Office of Equal Opportunity (OEO) to determine "*whether any of the antisemitic sentiments expressed by Dr. Fúnez-Flores' social media comments have found their way into the classroom or the work environment and are deemed to be discriminatory harassment.*"

Faculty at public colleges do not relinquish their 1st Amendment rights as citizens, and a government employer cannot terminate or penalize an employee for exercising those rights. The TX AAUP is strongly opposed to the disciplinary and investigative actions Texas Tech has taken against Dr. Fúnez-Flores for his extramural utterances as a private citizen, as they infringe on his 1st Amendment Right to Freedom of Speech/Freedom of Expression and his professional and legal rights to Academic Freedom. Texas Tech's actions have also served as a form of prior restraint against all Texas Tech faculty in exercising their free speech rights as citizens. Freedom of thought and expression is the hallmark of institutions of higher education in the United States. As noted in AAUP's statement [On Freedom of Expression and Campus Free Speech Codes](#), infringement of free thought and expression is antithetical to a university's mission, for it is precisely through its inspiration of "*vigorous debate*" that a university furthers intellectual exploration and growth, even though the course of such debate may involve utterances that may be viewed as "*wrong, distasteful, or offensive.*" The statement asserts

"Free speech is not simply an aspect of the educational enterprise to be weighed against other desirable ends. It is the very precondition of the academic enterprise itself."

In addition to a clear infringement on Dr. Fúnez-Flores' 1st Amendment right to free speech, Texas Tech's actions are inconsistent with the AAUP Principles of Academic Freedom set forth in its [1915 Declaration of Principles](#), the inaugural AAUP statement firmly upholding the rights of faculty as citizens:

"it is neither possible nor desirable to deprive a college professor of the political rights vouchsafed to every citizen."

The 1915 Declaration of Principles delineated three components of Academic Freedom: freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extramural

utterance and action. It was the third component, freedom of extramural utterance and action, that the founders of the AAUP recognized as having particular importance in universities, emphasizing that it is the right of faculty to “*express their opinions freely outside the university or to engage in political activities in their capacity as citizens,*” and to not be prohibited from “*lending their active support to organized movements which they believe to be in the public interest.*” A professor’s right to free expression as a citizen is echoed in the AAUP/AAC&U joint [1940 Statement of Principles of Academic Freedom and Tenure](#), which Texas Tech University fully subscribes to.

Administrations, including that of Texas Tech in this case, often cite “safety” as justification for the censorship of faculty extramural and intramural expression. But as current national AAUP President Irene Mulvaney wrote in her 2023 statement [Censorship Will Not Defeat Antisemitism](#),

“The AAUP unequivocally rejects all efforts to curtail academic freedom and compromise the autonomy of universities and the speech and associational rights of faculty and students through a false choice between “safety” and free inquiry.”

The suspension and investigation of Dr. Fúnez-Flores, which was launched without any formal complaint against him by a Texas Tech student or colleague, is not only inconsistent with AAUP principles and an obvious infringement of his State and Federal Constitutional rights, but is also in clear violation of Texas Tech System’s and University’s own regulation on freedom of expression. Texas Tech Regulation *07.04(1)(a): Freedom of Expression* reinforces the Constitutional rights of its faculty, as citizens, to freedom of speech and expression:

The Texas Tech University System (“System”) and its component universities (referred to herein collectively as the “University”) recognize freedom of speech and expression as a fundamental right and seek to ensure free, robust, and uninhibited debate and deliberations by students enrolled at the University as well as other persons. This regulation is intended to protect the expressive rights of persons guaranteed by the constitutions of the United States and the State of Texas by recognizing freedom of speech and assembly as central to the mission of the University and ensuring that all persons may assemble peaceably on University campuses for expressive activities, including to listen to or observe the expressive activities of others. For purposes of this regulation, “expressive activities” means any speech or expressive conduct protected by the First Amendment to the United States Constitution or by Section 8, Article I, of the Texas Constitution, and includes assemblies, protests, speeches, the distribution of written material, the carrying of signs, and the circulation of petitions.

The regulation (*07.04(4)(c) Restrictions Are Viewpoint-Neutral*) further specifies that decisions made by the university cannot be based on the content of a faculty member’s speech:

The University’s decisions will not be based on political, religious, philosophical, ideological, or academic viewpoints.

In your March 4, 2024 statement sent via Texas Tech System News, you stated that you determined Dr. Fúnez-Flores’s social media posts were “*hateful, antisemitic, and unacceptable.*” This assessment suggests that your decision to take action against Dr. Fúnez-Flores was based on a dislike over the particular content of his tweets, including its expression of political, religious, philosophical, ideological, and/or academic viewpoints, in violation of Regulation 07.04.

A host of U.S. Supreme Court and other high-level court cases have consistently upheld the Constitutional rights of educators as both professionals and citizens, including the right of public employees to speak and act on matters of public concern, even if such speech may be deemed offensive:

"It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." (Tinker v. Des Moines Sch. Dist., 393 U.S. 503 (1969))

"[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools" (Healy v. James, 408 U.S. 169, 180 (1972), quoting Shelton v. Tucker, 364 U.S. 479, 487 (1960))

"a State cannot condition public employment on a basis that infringes the employee's constitutionally protected interest in freedom of expression." (Connick v. Myers, 461 U.S. 138, 142 (1983))

"The right to provoke, offend and shock lies at the core of the First Amendment...This is particularly so on college campuses. Intellectual advancement has traditionally progressed through discord and dissent, as a diversity of views ensures that ideas survive because they are correct, not because they are popular. Colleges and universities – sheltered from the currents of popular opinion by tradition, geography, tenure and monetary endowments – have historically fostered that exchange. But that role in our society will not survive if certain points of view may be declared beyond the pale." (Rodriguez v. Maricopa Cty. Community College Dist., 605 F.3d 703 (9th Cir. 2010))

"the mere fact that a citizen's speech concerns information acquired by virtue of his public employment does not transform that speech into employee—rather than citizen—speech...when the state stifles a professor's viewpoint on a matter of public import, much more than the professor's rights are at stake." (Meriwether v. Hartop 992 F.3d 492 (6th Cir. 2021))

In summary, Texas Tech's suspension of Dr. Jairo Fúnez-Flores violates multiple Texas Tech policies, infringes on AAUP principles regarding academic freedom, tenure, and shared governance, and violates Dr. Jairo Fúnez-Flores' State and Constitutional rights. The Texas Conference of the AAUP stands with the National AAUP in urging, in the strongest possible terms, Texas Tech University System and Texas Tech University to promptly and fully reinstate Dr. Fúnez-Flores to his academic position without harm.

In closing, we acknowledge that our understanding of this matter stems primarily from Dr. Fúnez-Flores, and thus welcome your response.

Sincerely,



Brian L. Evans, PhD | aaup.texas@gmail.com | 512-516-5991

President, Texas Conference of the AAUP

Cc:

Keith Halman, Associate Vice Chancellor and Chief Information Officer, Texas Tech University System
Dr. Ron Hendrick, Provost, Texas Tech University

Dr. Jesse Mendez, Dean of Education, Texas Tech University

Dr. Jon McNaughtan, Faculty Senate President, Texas Tech University

Dr. Jeong-Hee Kim, Chair, Dept. of Curriculum and Instruction, College of Education, Texas Tech University

Dr. Jairo Fúnez-Flores, Assistant Professor, Dept. of Curriculum and Instruction, College of Education,
Texas Tech University

Carla Lovelace, Executive Assistant to the President, Texas Tech University

Mary Poteet, Office of Equal Opportunity, Texas Tech University

Dr. Tony Villanueva, Office of Faculty Representation, Texas Conference of the AAUP

Dr. Anita Levy, Dept. of Academic Freedom, Tenure & Governance, AAUP

Dr. Greg Scholtz, Dept. of Academic Freedom, Tenure & Governance, AAUP



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VIA ELECTRONIC MAIL

March 11, 2024

Dr. Lawrence E. Schovanec
President
Texas Tech University
Lubbock, Texas 79409

Dear President Schovanec:

Dr. Jairo Fúnez-Flores, an assistant professor of curriculum studies in the Department of Curriculum and Instruction in the School of Education at Texas Tech University, has sought the advice and assistance of the American Association of University Professors as a result of a March 4 letter from you notifying him of his suspension from his teaching duties.

We understand that the basis for this sanction is the pendency of a university office of equal opportunity investigation, but that no details of the allegations against the professor have been provided. We understand further that the suspension was preceded by the online publication of a February 22 *Texas Scorecard* article alleging that Professor Fúnez-Flores had posted antisemitic remarks on his social media accounts. We also understand that, on February 23, education school dean Jesse Perez Mendez informed Professor Fúnez-Flores that the *Scorecard* editors had sent the article to the administration, and that he asked Professor Fúnez-Flores to delete a tweet alluding to the article; the professor refused. We further understand that you and Texas Tech University system chancellor Tedd Mitchell issued a March 4 joint statement announcing the professor's suspension pending an investigation, which began by stating that Professor Fúnez-Flores had "posted a series of social media comments" that you found to be "hateful, antisemitic, and unacceptable."

Our interest in Professor Fúnez-Flores' case arises from our Association's longstanding commitment to basic tenets of academic freedom, tenure, and due process as enunciated in the enclosed 1940 *Statement of Principles on Academic Freedom and Tenure*, which was jointly formulated by the AAUP and the American Association of Colleges and Universities and has gained the endorsement of more than 250 scholarly societies and other higher-education organizations. Procedural standards derived from the 1940 *Statement* are set forth in the AAUP's

Recommended Institutional Regulations on Academic Freedom and Tenure and the “Committee A Statement on Extramural Utterances” (also enclosed).

The AAUP’s opposition to punishing academics for their expressions as citizens rather than scholars dates back to the 1940 *Statement of Principles*, which asserts in paragraph 3 that

[c]ollege and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.

However, the statement adds this qualification:

If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph 3 of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher’s fitness for his or her position, it may proceed to file charges under paragraph 4 of the section on Academic Tenure. In pressing such charges, the administration should remember that teachers are citizens and should be accorded the freedom of citizens

The 1964 “Committee A Statement on Extramural Utterances” further provides,

The controlling principle is that a faculty member’s expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member’s unfitness for his or her position. Extramural utterances rarely bear upon the faculty member’s fitness for the position. Moreover, a final decision should take into account the faculty member’s entire record as a teacher and scholar.

With regard to Professor Fúnez-Flores’ suspension, the AAUP has long considered the action of denying a faculty member the right to perform his or her primary responsibilities (even with pay) as a major sanction, second only to dismissal in severity. As the AAUP investigating committee noted in its report on a 1966 case at St. John’s University, “The profession’s entire case for academic freedom and its attendant standards is predicated upon the basic right to employ one’s professional skills in practice, a right, in the case of the teaching profession, which is exercised not in private practice but through institutions. To deny a faculty member this opportunity without adequate cause, regardless of monetary compensation, is to deny him his basic professional rights. Moreover, to a good teacher, to be involuntarily idle is a serious harm in

itself..... To inflict such injury without due process and, therefore, without demonstrated reason, destroys the academic character of the University.”

As a result, the AAUP has insisted that an administration can deprive a faculty member of that right only after demonstration of adequate cause for doing so in an adjudicative hearing of record before an elected faculty body. Regulation 7a of the *Recommended Institutional Regulations* accordingly provides as follows: “If the administration believes that the conduct of a faculty member, although not constituting adequate cause for dismissal, is sufficiently grave to justify imposition of a severe sanction, such as suspension from service for a stated period, the administration may institute a proceeding to impose such a severe sanction; the procedures outlined in Regulation 5 will govern such a proceeding.”

We are deeply concerned that the administration’s action against Professor Fúnez-Flores has occurred in the context of escalated political and legislative demands that institutions of higher education restrict what can be expressed on and off campus. As the AAUP’s October 24, 2023, statement *Academic Freedom in Times of War* notes,

It is in tumultuous times that colleges’ and universities’ stated commitments to protect academic freedom are most put to the test. As the Israel-Hamas war rages and campus protests proliferate, institutional authorities must refrain from sanctioning faculty members for expressing politically controversial views and should instead defend their right, under principles of academic freedom, to do so.

The information upon which we have based our comments has come to us primarily from Professor Fúnez-Flores and media reports, and we appreciate that you may have additional information that might alter our interpretation of events. If so, we would welcome your further comments. Absent such information, we urge that the administration immediately rescind Professor Fúnez-Flores’ suspension and return him with a clear record to his academic responsibilities.

We look forward to your prompt response.

Sincerely,

A handwritten signature in black ink that reads "Anita Levy". The signature is written in a cursive, flowing style.

Anita Levy, Ph.D.
Associate Secretary

Enclosures via email

cc: Dr. Tedd L. Mitchell, Chancellor
Dr. Ronald Hendrick, Provost
Dr. Jesse Perez Mendez, Dean, College of Education
Dr. Jeong-Hee Kim, Chair, Department of Curriculum and Instruction
Professor Jairo Fúnez-Flores
Professor Brian Evans, President, Texas AAUP Conference

Links to Enclosures

[1940 Statement of Principles on Academic Freedom and Tenure](#)

[Recommended Institutional Regulations on Academic Freedom and Tenure](#)

[Committee A Statement on Extramural Utterances](#)