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A. Purposes

Emory Law is committed to the mission of a university to promote the “discovery, improvement, and dissemination of knowledge. Its domain of inquiry and scrutiny includes all aspects and all values of society. A university faithful to its mission will provide enduring challenges to social values, policies, practices, and institutions.”¹ Criticism, dissent, and discovery are essential to research, teaching, and service. To pursue these ends successfully, Emory Law must be open to a wide diversity of viewpoints and beliefs. This precondition to the Law School’s purposes is secured through the twin, sometimes overlapping pillars of academic freedom and open expression.

B. Definitions

1. “Hearing Committee” refers to the Law School Academic Freedom and Open Expression Hearing Committee described in section E.1.
2. “Standard 208 Committee” refers to the Standard 208 Committee described in section E.2.
3. “Publication” includes but is not limited to all academic journals, monographs, op-eds, conference presentations, opinion pieces, court filings, amicus briefs, libguides, blog

¹ Harrey Kalven, “Kalven Committee: Report on the University’s Role in Political and Social Action,” Chicago: The University of Chicago, 1967. Available at: https://provost.uchicago.edu/sites/default/files/documents/reports/KalvenRprt_0.pdf

posts and other social media, pre-print servers, works of fiction, biographies, or other methods of sharing research.

4. “Research” includes but is not limited to all stages of knowledge development and dissemination, including conceptualization, reference development, access to materials, sharing drafts, and publication.
5. “Teaching” includes but is not limited to formal classroom instruction, teach-ins, presentations, roundtables, development of libguides and other research materials, discussions of coursework during office hours, hosting panel discussions related to current events or law school topics, answering questions in office hours, and any other expressive activity with the purpose of conveying knowledge.
6. “Service” includes but is not limited to service to the Law School, to the University, and to the profession through, for example, work on committees and as a member of professional or civic organizations. Service also includes public-spirited, usually uncompensated work on law assessment, litigation, law reform, or in public policy through participation in regulatory, legislative, and judicial venues.
7. “Covered individuals” means all individuals eligible for protection under either subpart C (Academic Freedom) or subpart D (Open Expression).

C. Academic Freedom

1. Applicability

This policy’s academic freedom protections apply to all individuals or associations of individuals who engage in Publication, Research, Teaching, or Service in connection with their Law School responsibilities, including but not limited to all faculty of any status, librarians, staff (including full-time and part-time employees), students in any degree program, and post-docs. This policy’s academic freedom protections apply to these individuals whenever they engage in Publication, Research, Teaching, or Service in connection with their Law School responsibilities.

2. Protections

- a. Guidance on the meaning of academic freedom can be found in the American Association of University Professors, 1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments, Washington D.C.: AAUP, 1940; available at, <https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>
- b. Academic freedom includes the ability of every individual who engages in Publication, Research, Teaching, or Service in connection with their Law School responsibilities to publish, speak, engage in research they choose in the manner they choose, teach the content they choose in the courses they are assigned to teach, express themselves in performing service in connection with their Law School responsibilities, and engage in extramural speech in academic and public settings that is related in any way to their Law School responsibilities, without fear of retaliation, censorship, or other adverse consequences by the university and without actual such retaliation, censorship, or other adverse consequences.
- c. Individuals who engage in Publication, Research, Teaching, Service, or extramural speech in connection with their Law School responsibilities are entitled to academic

freedom, including in the topics they research, the viewpoints they adopt, and the publication of their results. Such individuals shall not be retaliated against, subjected to discipline, or subjected to other adverse consequences based on their exercise of academic freedom..

- d. Academic freedom protected by this policy includes, but is not limited to, the entitlement of individuals to engage in the research they choose in the manner they choose.
- e. Academic freedom protected by this policy includes, but is not limited to, the entitlement of individuals who engage in teaching to present the content of the course and related matters (such as current events that directly or indirectly impact instruction) in the manner they choose.
- f. For the avoidance of doubt about the interaction of academic freedom protections with other applicable authorities and requirements:

(i) This policy is consistent with and shall be interpreted consistent with the authority of the University (including the Law School) to determine and manage the Law School curriculum and course offerings. This includes the authority to (A) approve courses for inclusion in the curriculum, (B) identify the courses that will be taught by an instructor, (C) establish the particular topics required to be covered in courses, and (D) specify the logistical aspects of courses (including the teaching modality of a course, mandating written syllabi stating course policies, adhering to grading deadlines and standards, etc.).

(ii) This policy does not supersede federal, state, or local law.

(iii) This policy is consistent with and shall be interpreted consistent with the standards for appointment, reappointment, and promotion set forth in the Emory Law Faculty Handbook. For example, a promotion committee may consider the quality of a candidate's teaching pursuant to the standards set forth in the Emory Law Faculty Handbook without violating this policy, but it could not treat the candidate's particular teaching choices about controversial content or terminology as an adverse factor in doing so, nor could it consider individual student evaluations targeting such choices. So too, a promotion committee may consider the quality of a candidate's scholarship pursuant to the standards set forth in the Emory Law Faculty Handbook without violating this policy, but it could not treat the candidate's viewpoint on controversial topics as an adverse factor in doing so, nor could it consider external reviews that target such choices.

(iv) The line between permissible application of an existing authority or promotion standard, on the one hand, and impermissible interference with academic freedom, on the other, may in some cases depend on subtle application of this policy and governing standards to particular circumstances by a promotion committee, Hearing Committee, Dean, or decanal designee as appropriate. In some cases, however, it is possible to draw this line more broadly. Thus, in all cases, the following shall be treated as protected exercises of academic freedom that may not be a basis for adverse consideration in any appointment, reappointment, or promotion process: (1) an instructor's choice of terminology motivated by the purpose of conveying knowledge that is not intended to single out an individual student or group of students, (2) an instructor's or researcher's expression of a viewpoint motivated by the purpose of conveying knowledge.

D. Open Expression

1. Applicability

This policy's open expression protections apply to all Emory Law faculty, staff, and students, for purposes of this policy, including but not limited to all full-time or part-time employees, students in any degree program, faculty of any status, and post-docs. This policy's open expression protections also apply to speakers invited by the Law School or by student groups consistent with content-neutral restrictions the Law School might impose on such invitations and presentations. This policy's open expression protections apply to individuals or associations of individuals described in this paragraph regardless whether those individuals would be members of the "Emory Community" as described in Emory University's open expression policy, 8.14, as revised effective March 20, 2025.

2. Protections

This policy's protections incorporate in full all the protections described in Emory University's open expression policy, 8.14, as revised effective March 20, 2025.

<https://emory.ellucid.com/documents/view/19648>,

E. Adherence

1. Law School Academic Freedom and Open Expression Hearing Committee

The process set forth in the following paragraphs is to be used by the Law School Academic Freedom and Open Expression Hearing Committee ("the Hearing Committee") when a person protected by this policy complains that the Law School has violated their academic freedom or open expression rights, as defined in this policy.

a. Composition. The Hearing Committee will be composed of three full-time Law School faculty or staff members. The party bringing the complaint (the "Complainant") and the party or parties with formal authority over the matter addressed in the complaint (the "Named Party" or "Named Parties") will each select one willing full-time Law School faculty or staff member for the Hearing Committee, and together those two Hearing Committee members will select a third willing member from among the full-time faculty of the Law School. The parties have 10 business days after receiving notice from the Law School dean that an eligible complaint has been filed to select a willing member of the Hearing Committee, and those Hearing Committee members have an additional 10 business days to select a third willing member. The Law School dean may extend each of these deadlines once for up to 10 business days for good cause (such as difficulty in finding willing members) and, if these deadlines are not met, will appoint any

outstanding Hearing Committee members.

If the alleged violation of academic freedom or open expression rights involves an adverse employment action or relates to comments in Student Evaluation of Teaching (“SET”) forms which may impact the Complainant’s employment, then the Hearing Committee shall also include:

- a. If the Complainant is tenured or tenure-stream faculty, one member of the Promotion and Tenure Committee; or
- b. If the Complainant is 405(c) or (d) faculty, or any other renewable contract faculty, one member of the Contract Faculty Review Committee.

If the alleged violation involves a student, the Hearing Committee will include the Associate Dean of Academic Programs and Students or their designee, acting as a non-voting *ex officio* member.

b. Jurisdiction. The Hearing Committee’s jurisdiction shall be limited as described below. A primary limit shall be that jurisdiction shall reach only matters alleging that a person or entity formally performing a Law School function has violated or is reasonably expected to violate a complainant’s academic freedom or open expression rights. Law School functions and the person(s) and entities who perform them are ordinarily described in written handbooks, bulletins, policies, or other Law School governing materials. The exercise of academic freedom under section C of this policy is not a Law School function for purposes of this section. Thus, while the Hearing Committee would have jurisdiction over a claim that a person’s exercise of a Law School function violated another’s academic freedom, the Hearing Committee would not have jurisdiction over a claim that a person’s exercise of academic freedom itself violated another’s academic freedom or open expression.

Matters over which the Hearing Committee would have jurisdiction would include but not be limited to a complaint that a Law School committee’s non-promotion recommendation infringes on open expression or is likely to do so, a complaint that a Law School administrator’s refusal to approve an event infringes on open expression, or a complaint that a Law School student organization has violated a student’s open expression rights by expelling them from leadership for refusal to sign a petition. Matters that fall outside the Hearing Committee’s jurisdiction and are not permissible subjects of a complaint include a complaint challenging a decision by a student or group of students not to take a particular class due to disapproval of a viewpoint of the instructor and a complaint related to an instructor’s teaching of a course including, but not limited to, selecting course material, lecture and discussion pedagogy, providing feedback to students, and grading. A purpose of this jurisdictional limit is prophylactic, so the matters listed in the preceding sentence fall outside the Hearing Committee’s jurisdiction regardless whether they entail an exercise of academic freedom.

c. Complaint. An individual who believes their academic freedom or open expression rights have been or are reasonably likely to be violated by a person or entity formally performing a Law School function may file a complaint with the office of the Law School dean specifying exactly how the Complainant's academic freedom or open expression has been violated or is expected to be violated. The complaint must specify the person(s) or entity(s) whose exercise of a Law School function allegedly contributed to (or would likely contribute to) the violation ("Named Party"), must be brought by and name a person whose academic freedom or open expression rights were (or would be) allegedly violated, and must specify the associated Law School function. Complaints may not be anonymous. If the Law School dean or the dean's designee, acting in consultation with the Chair of the Standard 208 Committee, determines that the Complaint alleges facts which, if true, would come within the jurisdiction of the Hearing Committee, then the Law School dean shall establish a Committee according to the terms of the procedure set forth in subsection a. If the dean or the dean's designee makes a no-jurisdiction finding, the dean or the dean's designee shall promptly inform the Standard 208 Committee of the nature of the complaint and reason for the no-jurisdiction finding, though the Complainant and Named Party shall not specifically be identified.

d. Response. If the Hearing Committee determines that the Complaint states facts that, if proven, could constitute a violation of academic freedom or open expression, the Committee shall deliver a copy of the complaint to each Named Party. A Named Party may file a written response with the Committee within 10 days of receiving the complaint, but is not required to do so.

e. Pre-Hearing Meeting. The Hearing Committee will hold a pre-hearing meeting with the parties to (a) simplify the issues, (b) generate stipulations of facts, (c) provide for the exchange of evidence or information, and/or (d) achieve other appropriate pre-hearing objectives as will make the hearing fair and expeditious. At that meeting, with the consent of the parties, the Committee may try to achieve an amicable resolution of the complaint. The Hearing Committee may opt to hold this meeting before or after calling for or receiving a response from the Named Party, and may choose to hold multiple such meetings.

f. The Hearing. If a pre-hearing meeting has not resolved the dispute, the Committee shall:

- (a) schedule a hearing on a date that is mutually acceptable to all parties;
- (b) hold the hearing in private;
- (c) permit the Complainant and each Named Party to be accompanied by a representative, who might be a lawyer, but if the Named Party is accompanied by a representative then the Law School dean shall endeavor to identify a representative to assist the Complainant;
- (d) make an audio-recording of the hearing;
- (e) provide a copy of the recording to the parties after the hearing;
- (f) permit the Complainant and each Named Party to produce witnesses and cross-examine other witnesses; and

(g) grant an adjournment if needed by anyone involved to investigate evidence produced at the hearing.

g. Burdens of proof. The Complainant has the burden of making a prima facie case that the Complainant's academic freedom or open expression has been or will be violated. If the Complainant makes a prima facie case and if a Named Party defends the actions complained of, the Named Party has the burden of proving by a preponderance of the evidence that those actions did not or would not violate the Complainant's free speech or academic freedom rights.

h. Evidence. The Hearing Committee is not bound by strict rules of legal evidence and may admit any evidence probative in determining the issues involved. The Law School shall make witnesses and evidence available if requested by the Complainant, the Committee, or a Named Party.

i. Report and findings. The Hearing Committee shall produce a written report explaining its findings of fact and its determination of whether the Complainant's free speech or academic freedom rights have been violated. The name of the Complainant and the Named Party shall not be included in the report. Unless a student (or group of students) is a Named Party, the Committee shall deliver its report to the Complainant, each Named Party, the Law School dean, and the Standard 208 Committee. Nothing precludes the Law School from making such a report available to the ABA during the accreditation process if the ABA requests it. The Law School dean, as appropriate, may refer the Committee's findings to the appropriate Law School body.

j. Professional Conduct Code. If a student or group of students is a Named Party, the Hearing Committee will share the report only with the Associate Dean of Academic Programs and Students or their designee. The Associate Dean or their designee may share the report, as appropriate, with the Honor Court. The findings of the Law School Open Expression and Academic Freedom Committee are not binding on the Honor Court and the normal procedure of a professional conduct code violation as set forth in the Student Bulletin shall be enforced. Statements made by students in complaints or other communications to the Hearing Committee are themselves subject to the Professional Conduct Code.

k. Interaction with other University and Law School processes. Pursuit of a complaint through the Hearing Committee is an optional supplement to other university and Law School processes. Complainants are free to pursue other processes if they wish, either before, after, or in parallel with filing and pursuing a complaint. That said, those responsible for other processes may suggest or require pursuit of a complaint with the Committee as part of their own process in their discretion if they have authority to do so. For example, a Law School promotion committee might suggest a candidate seek an advisory opinion about whether this policy precludes the promotion committee from considering particular matters or materials in its own process before rendering its own decision. Similarly, the Honor Court might suggest an advisory opinion be obtained through the Hearing Committee before completing its own consideration of a matter.

l. Confidentiality of the process, records, and reports. To protect Complainants, Named Parties, and witnesses, complaints dismissed for lack of jurisdiction or found to lack merit before or after a hearing shall be strictly confidential (including but not limited to confidentiality of Complainants and Named Parties) except as provided in (c) above. In cases ultimately found to be meritorious by the Hearing Committee, the proceedings shall be strictly confidential except for the report provided in Section (i) above. The Hearing Committee may share the nature of any complaints and anticipated timing of review as appropriate with the Law School dean and any relevant Law School committees or bodies, without sharing the identities of Complainants or Named Parties.

m. Limitation on jurisdiction over repeat filings. If a Complainant has previously filed two or more complaints within the preceding 12 months that were resolved for lack of jurisdiction or merit before or after a hearing, then the Dean, or the dean's designee, may (but need not) determine that the Complainant is a repeat filer and dismiss their subsequent complaints for lack of jurisdiction. In such a case, the Dean must inform the Complainant of this reason for dismissal. The Dean shall also inform the Standard 208 Committee of the dismissal, without revealing the name of the filer.

n. Recusal. If the Dean or a decanal designee is the Named Party in a complaint or has a similar conflict of interest, they should recuse from the matter and a decanal designee without such a conflict shall be identified.

Examples: The following examples illustrate typical potential complaint processes employing the process set out above.

i. Retaliation for speech. *A faculty member designs a classroom exercise that illustrates a class concept but includes a case that shows Emory Law in a bad light. The faculty member is placed on administrative leave. The faculty member challenges this action through existing personnel practices, but is unsuccessful. The faculty member then files a complaint with the Law School dean or the dean's designee. The complaint would indicate the administrator who placed the faculty member on leave as the Named Party. The Dean should find this complaint to be within the jurisdiction of the Hearing Committee and proceed with the complaint process. Ultimately, if the Hearing Committee issues an adverse report, that report must be distributed to the Complainant, each Named Party, the Law School dean, the Section 208 Committee, and nothing in this policy prevents release of the report to the ABA during the reaccreditation process if the ABA requests it.*

ii. Anticipatory complaint. *A faculty member writes a history article related to their research that shows several other law school faculties in a bad light. The faculty member becomes concerned when they go up for promotion to tenure that their external reviews may be prejudiced against them for their prior speech. While a complaint naming unknown or known reviewers directly would be beyond the jurisdiction of the Hearing Committee, the tenure and promotion committee could suggest the faculty member pursue an advisory complaint naming the tenure and promotion committee to obtain guidance on the appropriate treatment of allegedly prejudiced reviews in its own promotion process. This way, the matter could be resolved in advance, without the risk of tainting the promotion and tenure committee's process.*

iii. Amicable resolution. *A faculty member believes that negative comments in SET forms should be excluded from consideration in their application for promotion because some of the comments in the SET forms suggest a particular student's retaliation for the professor's use of the phrase "pro-life" to describe abortion opponents, or a group of students' such retaliation. The professor might include a sentence in their statement to the promotion committee noting this belief and asking the committee either to decline to consider those SET forms or, alternatively, to inform the faculty member if it plans to do so so that the faculty member might consider pursuing a complaint. Alternatively, the professor might ask the ex officio administrative member of the committee, or another member, to raise this concern informally and alert them if the promotion committee intends to consider the SET forms despite the concerns raised. If the committee indicated an intention to consider the forms despite the concerns raised, the professor could file a complaint alleging that such consideration would intrude upon their academic freedom and a Hearing Committee would be formed. The Hearing Committee would meet with the faculty member and, after discussions, all participants might agree amicably that, in lieu of blanket exclusion of the SET forms, the Hearing Committee would prepare a version of the SET forms that redacts potentially-retaliatory comments for the promotion committee's consideration and re-calculates quantitative measures removing the two lowest scores. The matter would then be amicably resolved. Alternatively, absent amicable resolution, a hearing could proceed to assess the promotion committee's violation of academic freedom or open expression through consideration of the SET forms.*

iv. Offensive use of committee to interfere with academic freedom. *A law journal student is disappointed about their journal's decision not to publish their comment, which employs "law and economics" to shed new light on medical malpractice. They file a complaint with the Law School dean naming the law journal as the Named Party and credibly alleging that an editorial board member stated, "I will never support any comment using law and economics, because I do not believe in it." They allege this constitutes impermissible viewpoint discrimination. If the Law School dean determines that the editorial board's judgment is protected academic freedom under this policy, then the dean should determine that the Hearing Committee lacks jurisdiction and set aside the complaint without constituting a committee. Under subsection b, exercises of academic freedom are not "Law School functions" within the jurisdiction of the Hearing Committee.*

2. ABA Standard 208 Committee

Each academic year, the Law School dean shall constitute an ABA Standard 208 Committee ("Standard 208 Committee"). The Standard 208 Committee shall be comprised of one member of the executive committee, one 405(c) or (d) faculty member, one staff member, and one student. One of these four members shall be named as chair of the committee. Any *ex officio* member shall be non-voting except in the case of a split among the voting members. The charge of the Standard 208 Committee shall be determined by the dean but shall include at least the following three elements: First, at least every three years the Standard 208 Committee shall review the Law School's adherence to this policy and write a report of its review to be shared with the law

faculty. Second, the Standard 208 Committee shall periodically review the Law School's academic freedom and open expression policy and recommend any appropriate changes to the faculty. Third, the Standard 208 Committee shall retain records related to the Law School's adherence to its open expression and academic freedom policies, including those designated in the last subsection. Members of the Standard 208 committee shall be eligible to serve as members of any Hearing Committee constituted pursuant to the last subsection.