



American Federation  
of Teachers, AFL-CIO

AFT Teachers  
AFT PSRP  
AFT Higher Education  
AFT Public Employees  
AFT Nurses and Health  
Professionals

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December 9, 2022

Dear General Counsel:

On behalf of the 1.7 million members of the American Federation of Teachers—300,000 of them workers in higher education, including our colleagues in the American Association of University Professors—we urge you to carefully consider the potential impacts to the Florida State University System as you implement regulation 10.003, Post-Tenure Faculty Review.

This regulation, as proposed, will result in less rigorous academic study, fewer educational opportunities for students, challenges to retaining both faculty and students, and fewer tools with which to address the pressing social and scientific issues of our time.

It is clear from the legislative debate that the proponents of the law being implemented seek to undermine the free expression of ideas and the public good. We urge you to protect academic freedom and, specifically, to prevent faculty from being subject to the preferences of a single campus administrator who holds the exclusive power to revoke tenure without just cause or progressive discipline.

Post-tenure review already exists. It has been designed and implemented by local faculty and local administrators working in tandem to produce processes that make the most sense for their institution's goals, needs and resources. That process is what brought Florida's State University System to its current world-renowned status; changing it would be a grave mistake.

#### What is tenure?

Tenure is an indefinite appointment that can be rescinded for cause or under extraordinary circumstances (such as financial exigency), and it exists to protect academic freedom. What tenure is and why it exists are frequently misunderstood, and that misunderstanding was clear in the passage of the bill that led to this regulation.

When an individual faculty member is awarded tenure, that person has been through a rigorous, yearslong process involving intense scrutiny from peers as well as supervisors. Tenure is not easy to achieve and does not represent the end of work assessment for professors. Termination following due process is already a possible outcome of post-tenure review. And the relationship of tenure and "productivity" as measured by publication is not completely clear: One 2019 study of pharmacy faculty found that research productivity, including grant activity, increased after tenure.<sup>1</sup> Another 2017 study of tenure-track

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<sup>1</sup> Scott, David, Michael Kelsch, and Daniel Friesner. 2019. "Impact of Achieved Tenure and Promotion on Faculty Research Productivity at a School of Pharmacy." *INNOVATIONS in Pharmacy* 10 (4): 21. <https://doi.org/10.24926/iip.v10i4.2153>.

computer science faculty found that four-fifths of faculty had “a rich diversity of productivity patterns,” from late-career spikes in productivity to a steady publishing output over the course of decades.<sup>2</sup> The authors also specifically cautioned that publication rates alone cannot serve as a reliable measure of productivity or success.<sup>3</sup>

Florida’s incredible State University System is composed of a broad array of programs of study and diverse and cutting-edge research topics with nearly endless subfields marked by both obviously momentous breakthroughs and steady, accumulating incremental findings. It is unreasonable to expect the board of governors to substantively evaluate this work.

There is real danger that a post-tenure review process designed and conducted in part by governors, who lack specific subject-matter expertise, will focus on superficial criteria that are easy to measure, such as number of publications, instead of the substance of those publications. Indeed, the draft regulation’s first criteria for the review process reads in part: “Such documents shall include *quantifiable* university, college, and department criteria for tenure, promotion, and merit as appropriate”<sup>4</sup> (emphasis added). This underscores why the board of governors is the wrong venue for the design or implementation of a meaningful assessment of faculty work.

### **What is the current climate for research in the United States?**

Several years ago, Patricia Brennan, an evolutionary biologist at UMass-Amherst and the recipient of a National Science Foundation Career grant, became the center of a media firestorm because of her NSF-funded research, which examined the effects of evolutionary competition on reproduction in one species. Brennan’s work was attacked by Fox News and Breitbart, which seemed to have chosen Brennan’s research to discuss on their national platform because it enabled them to say the term “duck genitals” repeatedly on the national airwaves—with the latter quipping, “If American society has been reduced to marveling at ‘bizarre animal behavior,’ we’re in for some big trouble.”<sup>5</sup>

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<sup>2</sup> Way, Samuel F., Allison C. Morgan, Aaron Clauset, and Daniel B. Larremore. 2017. “The Misleading Narrative of the Canonical Faculty Productivity Trajectory.” *Proceedings of the National Academy of Sciences* 114 (44). <https://doi.org/10.1073/pnas.1702121114>.

<sup>3</sup> “Does Faculty Productivity Really Decline with Age? New Study Says No.” 2017. CU Boulder Today. October 17, 2017. <https://www.colorado.edu/today/2017/10/17/does-faculty-productivity-really-decline-age-new-study-says-no>.

<sup>4</sup> “FLORIDA BOARD of GOVERNORS NOTICE of PROPOSED NEW REGULATION.” 2022.

[https://www.flbog.edu/wp-content/uploads/2022/11/NoticeofProposedNewRegulation\\_10.003\\_Nov2022.pdf](https://www.flbog.edu/wp-content/uploads/2022/11/NoticeofProposedNewRegulation_10.003_Nov2022.pdf). Page 3, section (3) Review Requirements

<sup>5</sup> Bigelow, William. 2013. “Scientist Bemoans Criticism of Gov Funded Duck Genitalia Research.” Breitbart. April 4, 2013. <https://www.breitbart.com/politics/2013/04/03/why-i-study-duck-genitalia/>.

Brennan's responses to these attacks in *BioScience*<sup>6</sup> and *Slate*<sup>7</sup> are worth reading, especially for the list of valuable practical applications arising from basic science research, but these political attacks should not have occurred in the first place.

The attacks continue, including in Florida. In 2021, under political pressure from the governor, the University of Florida attempted to prevent three tenured political science faculty from testifying about their research findings as expert witnesses in a voting rights case. After an outcry, the university substantially revised its conflict-of-interest policy—and a federal judge awarded the researchers a preliminary injunction against even the revised policy, pointing out that board of governors members' stated commitment to avoiding offending state lawmakers meant there was a credible threat that faculty voice would be stifled even after the policy changes.

More attacks like this are all but inevitable if this regulation is implemented. And we note that faculty members' rights to academic freedom are not currently protected in this draft regulation; the term doesn't appear at all. Tenured academics have left other states where state laws have put their academic freedom, and therefore the legitimacy of their academic work, in doubt (Wisconsin, for example). Florida is likely to lose talented faculty because of this law and subsequent regulation.

### **What are other states doing?**

By suddenly demanding perpetual dossiers of work that will be reviewed by political actors, Florida will chill intellectual inquiry. Faculty may implicitly or explicitly shape their work to avoid the threatened consequences of the "unsatisfactory" or "does not meet expectations" labels. This type of evaluation is out of step with peer institutions in other states, universities that will undoubtedly seem to Florida faculty like friendlier employers. From a sampling of peer institutions identified by Florida State University:<sup>8</sup>

- The University of Minnesota Twin Cities Board of Regents "reaffirms the principles of academic freedom and responsibility. These are rooted in the belief that the mind is ennobled by the pursuit of understanding and the search for truth, and the state well served when instruction is available to all at an institution dedicated to the advancement of learning."<sup>9</sup>
- The policy of Rutgers University states in part that "academic freedom—the right of our faculty in the discharge of their duties to express their ideas and to challenge

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<sup>6</sup> Brennan, Patricia L. R., Duncan J. Irschick, Norman Johnson, and R. Craig Albertson. 2014. "Oddball Science: Why Studies of Unusual Evolutionary Phenomena Are Crucial." *BioScience* 64 (3): 178–79. <https://doi.org/10.1093/biosci/bit039>.

<sup>7</sup> Brennan, Patricia. 2013. "Duck Penises Are Worth Studying. And They're Spectacular." *Slate Magazine*. April 2, 2013. <https://slate.com/technology/2013/04/duck-penis-controversy-nsf-is-right-to-fund-basic-research-that-conservatives-misrepresent.html>.

<sup>8</sup> Review of *How FSU Stacks up to Its Peers: National Views of FSU*. 2009. Office of the President. Florida State University. November 2009. <https://president.fsu.edu/wp-content/uploads/2009/11/2009-11-bot.pdf>.

<sup>9</sup> "Board of Regents Policy: Academic Freedom and Responsibility Category: Academic BOARD of REGENTS POLICY: Academic Freedom and Responsibility." n.d. Accessed December 9, 2022. [https://regents.umn.edu/sites/regents.umn.edu/files/2019-09/policy\\_academic\\_freedom\\_and\\_responsibility.pdf](https://regents.umn.edu/sites/regents.umn.edu/files/2019-09/policy_academic_freedom_and_responsibility.pdf).

the ideas of others without fear of retribution—is a cornerstone of American higher education.”<sup>10</sup>

- Oregon State University’s policy on academic freedom reads, in part: “As a matter of policy the Board neither attempts to control, sway nor limit the personal opinion or expression of that opinion of any person on the faculty.”<sup>11</sup>
- The University of Illinois at Chicago not only recognizes academic freedom as essential but describes an adjudication process with faculty input: “Alleged abuse of the proper role of the faculty with regard to academic freedom and faculty responsibility should be identified and adjudicated by appropriate faculty bodies already in existence in the university community in accordance with established principles and procedures of due process. In accordance with University of Illinois [Statutes](#), these evaluations are initially made by departmental administrators with the counsel of faculty bodies; subsequent evaluation is made by academic deans, campus- and university-level administrators, and the board of trustees with adequate counsel of faculty bodies.”<sup>12</sup>

### **What impacts will the proposed regulation have?**

A diminished reputation will affect not only individual professors, but the SUS system as a whole and the citizenry the university system is meant to serve.

As faculty leave, their federal research grant resources will go with them, affecting both graduate and undergraduate research opportunities. In 2021, Florida State University alone received more than \$33 million in National Institutes of Health research funding through 90 separate awards.<sup>13</sup> It should be noted that applying for and receiving such awards is another layer of accountability from reviewers with the appropriate credentials to evaluate academic work, something the board of governors cannot provide through this proposed process.

Over time, challenges in both retention and recruitment will lead to a diminished faculty and a poorer student experience. This will cause students to opt for other educational alternatives—including those outside the state.

Accreditation will also be affected. All reputable accreditors, such as the Higher Learning Commission, the Southern Association of Colleges and Schools, and others, assess whether the university has protections in place against outside influence by donors, elected officials or other external parties. Policies that undermine tenure rights and academic freedom make institutions more vulnerable to outside influence, and politically motivated attacks on

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<sup>10</sup> Rutgers University. 2021. “On Academic Freedom and Freedom of Speech,” November 13, 2021. <https://www.rutgers.edu/president/academic-freedom-free-speech>.

<sup>11</sup> “Academic Freedom.” 2017. University Policies and Standards. May 28, 2017. [https://policy.oregonstate.edu/UPSM/580-022\\_academic-freedom](https://policy.oregonstate.edu/UPSM/580-022_academic-freedom).

<sup>12</sup> “Academic Freedom and Faculty Responsibility | Faculty Handbook | University of Illinois Chicago.” n.d. Accessed December 9, 2022. <https://facultyhandbook.uic.edu/sections/section-5-policies-governing-faculty-appointments/academic-freedom-and-faculty-responsibility/>.

<sup>13</sup> “NIH Awards by Location and Organization - NIH Research Portfolio Online Reporting Tools (RePORT).” 2021. Nih.gov. 2021. [https://report.nih.gov/award/index.cfm?ot=&fy=2021&state=FL&ic=&fm=RP\\_SB,RP,SB,RC,OR,TR,TI,C&orgid=513804&distr=&rfa=&om=n&pid=#tab2](https://report.nih.gov/award/index.cfm?ot=&fy=2021&state=FL&ic=&fm=RP_SB,RP,SB,RC,OR,TR,TI,C&orgid=513804&distr=&rfa=&om=n&pid=#tab2).

campus speech and research encourage faculty to respond to political pressures. Any adverse action taken by an accreditor would negatively affect the value of existing degrees and the SUS's ability to recruit students and would continue to damage its reputation. As the general counsel may know, the political situation with Florida's regional accreditor is already fraught because of questions SACS has raised about political influence. The Florida Legislature's recent action to force all the state's colleges and universities to new accreditors as a punishment to SACS for raising such questions will also give pause to potential new accreditors and the U.S. Department of Education before they grant new accreditation applications. Adding fuel to the fire would be extremely shortsighted.<sup>14</sup> The loss of accreditation would threaten access to federal financial aid for students—a catastrophic result for the state of Florida as well as for students themselves.

### **What should you do instead?**

Each campus in the State University System has rigorous and autonomous tenure processes in place, including post-tenure review schedules. For example, the University of Florida's Sustained Performance Evaluation System<sup>15</sup> reviews the work of tenured faculty every seven years, with the department chair and peer faculty leading a process to keep educational standards high.

We urge you to wholly revise the top-down nature of the draft regulations and return this authority to the local campus level, where it belongs. The Sustained Performance Evaluation System is working; other agreements just like it are working across the states. Differences among these systems do not sacrifice academic integrity or academic freedom but reflect changes relevant to local conditions and program realities. Where post-tenure review processes do not yet exist, they could be created.

The final and most important point the board must consider when implementing these regulations is the impact on students. Students already sacrifice a great deal to attend college, and they deserve the highest-quality education Florida can provide. The sum effect of these legislative and regulatory efforts, even if unsuccessful, is to chill free speech and to paint the SUS as an unwelcoming place. Students, as a result, will not be exposed to the same diversity of ideas and viewpoints that characterize a robust higher education. They will be taught by professors with outsize paperwork burdens to the state, encroaching on time to write recommendation letters or advise job searches.

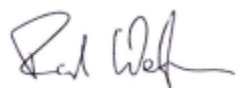
Public education is a public good. Our progress and growth as a nation depend on meaningful access to high-quality educational opportunities beyond high school. We urge you to recraft this entire regulation with that as the central thesis.

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<sup>14</sup> "Florida House Takes Aim at College Accreditation Process." n.d. Tampa Bay Times. Accessed December 9, 2022. <https://www.tampabay.com/news/florida-politics/2022/02/03/florida-house-takes-aim-at-college-accreditation-process/>.

<sup>15</sup> See 18.8 "Collective Bargaining Agreement." n.d. Accessed December 9, 2022. <https://hr.ufl.edu/wp-content/uploads/2021/08/2021-2024-UFF-UF-Collective-Bargaining-Agreement.pdf>.

Sincerely,

A handwritten signature in dark ink, appearing to read "Randi Weingarten". The signature is fluid and cursive, with the first name "Randi" being more prominent.

Randi Weingarten

President

American Federation of Teachers

A handwritten signature in dark ink, appearing to read "Irene Mulvey". The signature is fluid and cursive, with the first name "Irene" being more prominent.

Irene Mulvey

President

American Association of University Professors