

JAN 25 2006

S.B. NO. 2849

A BILL FOR AN ACT

RELATING TO AN ACADEMIC BILL OF RIGHTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Legislature finds that:
2 (1) The central purposes of a university are the pursuit of
3 truth, the discovery of new knowledge through scholarship and
4 research, the study and reasoned criticism of intellectual and
5 cultural traditions, the teaching and general development of
6 students to help them become creative individuals and productive
7 citizens of a pluralistic democracy, and the transmission of
8 knowledge and learning to a society at large. Free inquiry and
9 free speech within the academic community are indispensable to
10 the achievement of these goals. The freedom to teach and to
11 learn depend upon the creation of appropriate conditions and
12 opportunities on the campus as a whole as well as in classrooms
13 and lecture halls. These purposes reflect the values, pluralism,
14 diversity, opportunity, critical intelligence, openness, and
15 fairness that are the cornerstones of American society.
16 (2) Academic freedom and intellectual diversity are values
17 indispensable to American universities. From its first
18 formulation in the "General Report of the Committee on Academic



1 Freedom and Tenure of the American Association of University
2 Professors," the concept of academic freedom has been premised
3 on the idea that human knowledge is a never-ending pursuit of
4 the truth, that there is no humanly accessible truth that is not
5 in principle open to challenge, and that no party or
6 intellectual faction has a monopoly on wisdom. Therefore,
7 academic freedom is most likely to thrive in an environment of
8 intellectual diversity that protects and fosters independence of
9 thought and speech. In the words of the general report, it is
10 vital to protect "as the first condition of progress, [a]
11 complete and unlimited freedom to pursue inquiry and publish its
12 results."

13 (3) Because free inquiry and its fruits are crucial to the
14 democratic enterprise itself, academic freedom is a national
15 value as well. In a historic 1967 decision, Keyishian v. Board
16 of Regents of the University of the State of New York, the
17 supreme court of the United States overturned a New York state
18 loyalty provision for teachers with these words: "Our Nation is
19 deeply committed to safeguarding academic freedom, [a]
20 transcendent value to all of us and not merely to the teachers
21 concerned." In Sweezy v. New Hampshire, 1957, the court observed



1 that the "essentiality of freedom in the community of American
2 universities [was] almost self-evident."

3 (4) Academic freedom consists in protecting the
4 intellectual independence of professors, researchers, and
5 students in the pursuit of knowledge and the expression of ideas
6 from interference by legislators or authorities within the
7 institution itself. This means that no political, ideological,
8 or religious orthodoxy will be imposed on professors and
9 researchers through the hiring, tenure, or termination process,
10 or through any other administrative means by the academic
11 institution. Nor shall legislatures impose any such orthodoxy
12 through their control of the university budget.

13 (5) This protection includes students. From the first
14 statement on academic freedom, it has been recognized that
15 intellectual independence means the protection of students, as
16 well as faculty, from the imposition of any orthodoxy of a
17 political, religious, or ideological nature. The 1915 general
18 report admonished faculty to avoid "taking unfair advantage of
19 the student's immaturity by indoctrinating him with the
20 teacher's own opinions before the student has had an opportunity
21 fairly to examine other opinions upon the matters in question,
22 and before he has sufficient knowledge and ripeness of judgment



1 to be entitled to form any definitive opinion of his own." In
 2 1967, the American Association of University Professors' "Joint
 3 Statement on Rights and Freedoms of Students" reinforced and
 4 amplified this injunction by affirming the inseparability of
 5 "the freedom to teach and freedom to learn." In the words of the
 6 report, "Students should be free to take reasoned exception to
 7 the data or views offered in any course of study and to reserve
 8 judgment about matters of opinion."

9 SECTION 2. Chapter 304, Hawaii Revised Statutes, is
 10 amended by adding a new section to be appropriately designated
 11 and to read as follows:

12 "§ 304- Academic Bill of Rights. Students have rights to
 13 a learning environment in which they have access to a broad
 14 range of serious scholarly opinion, to be graded without
 15 discrimination on the basis of their political or religious
 16 beliefs, and to a viewpoint-neutral distribution of student fee
 17 funds. These principles apply only to the University of Hawaii
 18 and its community colleges. The post-secondary student and
 19 faculty academic bill of rights include the following:

- 20 (1) Students have a right to expect a learning environment
 21 in which they will have access to a broad range of
 22 serious scholarly opinion pertaining to the subjects



1 they study. In the humanities, the social sciences,
2 and the arts, the fostering of a plurality of serious
3 scholarly methodologies and perspectives should be a
4 significant institutional purpose.

5 (2) Students have a right to expect that they will be
6 graded solely on the basis of their reasoned answers
7 and appropriate knowledge of the subjects they study
8 and that they will not be discriminated against on the
9 basis of their political or religious beliefs.

10 (3) Students have a right to expect that their academic
11 freedom and the quality of their education will not be
12 infringed upon by instructors who persistently
13 introduce controversial matter into the classroom or
14 coursework that has no relation to the subject of
15 study and serves no legitimate pedagogical purpose.

16 (4) Students have a right to expect that freedom of
17 speech, freedom of expression, freedom of assembly,
18 and freedom of conscience of students and student
19 organizations will not be infringed upon by post-
20 secondary administrators, student government
21 organizations, or institutional policies, rules, or
22 procedures.



1 (5) Students have a right to expect that their academic
2 institutions will distribute student fee funds on a
3 viewpoint-neutral basis and will maintain a posture of
4 neutrality with respect to substantive political and
5 religious disagreements, differences, and opinions.

6 (6) Faculty and instructors have a right to academic
7 freedom in the classroom in discussing their subjects,
8 but they should make their students aware of serious
9 scholarly viewpoints other than their own and should
10 encourage intellectual honesty, civil debate, and
11 critical analysis of ideas in the pursuit of knowledge
12 and truth.

13 (7) Faculty and instructors have a right to expect that
14 they will be hired, fired, promoted, and granted
15 tenure on the basis of their competence and
16 appropriate knowledge in their fields of expertise and
17 will not be hired, fired, denied promotion, or denied
18 tenure on the basis of their political or religious
19 beliefs.

20 (8) Faculty and instructors have a right to expect that
21 they will not be excluded from tenure, search, or

1 hiring committees on the basis of their political or
2 religious beliefs.

3 (9) Students, faculty, and instructors have a right to be
4 fully informed of their rights and their institution's
5 grievance procedures for violations of academic
6 freedom by means of notices prominently displayed in
7 course catalogs and student handbooks and on the
8 institutional website.

9 (10) Students, faculty, and instructors have a right to
10 prompt and efficient enforcement of the academic bill
11 of rights. The hawaii civil rights commission shall
12 have jurisdiction over the subject of discriminatory
13 practices or other acts in violation of this section.
14 Any individual claiming to be aggrieved by an alleged
15 discriminatory practice or violation of this section
16 may file with the commission a complaint in accordance
17 with the procedures established under chapter 368."

18 SECTION 3. New statutory material is underscored.

19 SECTION 4. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun, before its effective date.

22 SECTION 5. This Act shall take effect upon its approval.

S.B. NO. 2049

INTRODUCED BY:

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SB. NO. 2049

Report Title:

Academic Bill of Rights

Description:

Establishes an Academic Bill of Rights applicable to all institutions of higher education in the State.

