

AAUP Legal Brief Supports NEIU Prof Who Spoke Out

The AAUP has filed an amicus brief in the U.S. Court of Appeals for the Seventh Circuit in support of Loretta Capeheart, a tenured professor at Northeastern Illinois University (NEIU). Professor Capeheart sued NEIU after the provost disregarded a faculty vote electing Capeheart chair of the Justice Studies Department. Capeheart alleges that the provost refused to appoint her to the position in retaliation for her advocating on behalf of two students who were arrested by campus police while protesting CIA recruiters at the university's job fair. Capeheart further claims that she was retaliated against because she made statements at a campus event, featuring the provost, blaming excessive administrative spending for budget problems that she claimed led to a low number of Latino faculty. In her lawsuit, Capeheart argues that the provost's decision is in retaliation for this advocacy and speech and, therefore, NEIU has violated her First Amendment speech rights.

Relying on the Supreme Court's 2006 decision in *Garcetti v. Ceballos*, the district court dismissed Capeheart's case, ruling that her statements and advocacy were not protected because "the speech at issue was made pursuant to Capeheart's professional responsibilities." In addition to taking a very broad view of what are a faculty member's "official duties," the district court also refused to recognize an exception in the *Garcetti* decision specific to speech made by faculty at public colleges and universities, saying that "since *Garcetti*, courts have routinely held that even the speech of faculty members of public universities is not protected when made pursuant to their professional duties." The district court concluded, therefore, that "Capeheart's speech regarding military and CIA recruiting on campus and the university's treatment of student protesters is not protected under the First Amendment."

Capeheart has appealed the District Court's decision to the Court of Appeals for the Seventh Circuit. The AAUP's amicus brief in support of Capeheart argues that "the district court arrived at [its] distressing resolution of Professor Capeheart's First Amendment claim by misapplying *Garcetti*'s "official duties" analysis and disregarding the express limits of *Garcetti*'s holding," and urges the appellate court to overturn the district court's holding. The intent of AAUP's brief is to highlight the academic freedom and First Amendment issues implicated by the case and to shine a light on the District Court's harmful and incorrect decision. The filed brief emphasizes that "the message of the district court's ruling is chilling and clear: university administrators need not tolerate outspoken faculty dissent on matters of broad public concern or on the university's institutional response to those concerns."

To read the AAUP amicus brief, go to aaup.org. The 7th Circuit Court of Appeals will hear oral arguments in Capeheart's case on December 8, 2011 at 9:30am, 219 S. Dearborn, 27th floor. Capeheart is a member of the Illinois AAUP Committee A.