

This article argues that within a marketplace academy, the academic freedom of faculty is placed at risk by a shift of pedagogical authority from the professoriate to student consumers. Case law suggests that the judiciary is becoming more receptive to student rights claims concerning what is taught, how it is taught, and the forms of expression deemed acceptable in the classroom. In the context of a growing accountability movement and the increasing legal protections afforded students, the ubiquitous institutional reliance on student ratings for purposes of faculty review is argued to, in effect, redefine excellence in teaching as that which satisfies students' tastes and preferences. Recent federal appellate court decisions have signaled a willingness of courts to ascribe academic freedom to universities but not their teaching faculty, as well as a reluctance to make judgments about the efficacy of the criteria used to evaluate faculty.

When a faculty member's pedagogy is put on trial, course content and teaching methods are scrutinized by judges who, lacking any pedagogical expertise, render decisions based on non-academic grounds. The courts, then, are found to leave faculty at the mercy of administrators who seek to monitor and manage them in ways that result in high student evaluations, thereby leading to the demise of faculty speech rights and academic authority, as well as greater student power to shape the education institutions offer them. In closing, this article outlines some implications of the growing case law that denies faculty pedagogical authority, recognizes students' claims of educational injustices, and empowers students with consumer sovereignty over higher education.