

February 23, 2026

**Dear University of North Carolina Board of Governors
and Chancellors of North Carolina’s Public Colleges and
Universities:**



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

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We are attorneys with the American Civil Liberties Union of North Carolina (ACLU-NC), a nonprofit dedicated to defending the civil rights of all North Carolinians. We write in the spirit of a shared commitment to academic freedom and recognition of the critical importance of free speech on university campuses.

In this moment, free speech and academic freedom on university campuses are under grave threat. As the Board of Governors prepares to adopt a new definition of academic freedom, we wish to remind you that the “vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” *Shelton v. Tucker*, 364 U.S. 479, 487 (1960). Faculty must be free to express views—even views that are controversial or offensive—without fear of government retaliation or discipline. The ACLU-NC, along with civil rights organizations across the country, are closely monitoring universities’ adherence to these fundamental freedoms and, where appropriate, will take legal action to enforce them.

This past academic year alone, we have seen several instances of the UNC System infringing upon First Amendment activity. For example, in October, UNC Chapel Hill professor Dwayne Dixon was placed on administrative leave following unsubstantiated allegations that the disbanded political group he once belonged to was responsible for disbursing flyers on Georgetown University’s campus, hundreds of miles from Chapel Hill.¹ Even worse, one of the conditions of his leave was that he have no contact with any UNC Chapel Hill students or employees, past or present, creating an unconstitutional gag order.

In the Fall, North Carolina State University administrators distributed a “best practices” guide regarding faculty social media presence. The guide makes brief mention of the importance of

¹ Brandon Kingdollar, [UNC professor Dwayne Dixon reinstated after suspension over anti-fascist ties](https://ncnewslines.com/2025/10/03/unc-professor-dwayne-dixon-reinstated-after-suspension-over-anti-fascist-ties/), NC Newslines (Oct. 3, 2025), <https://ncnewslines.com/2025/10/03/unc-professor-dwayne-dixon-reinstated-after-suspension-over-anti-fascist-ties/>



freedom of expression but contains language that chills the exercise of free speech and suggests university employees should censor themselves or risk losing their jobs. Just this past month, a North Carolina State University employee was fired after comments related to the university’s DEI policy were secretly recorded and released.² And a new UNC Chapel Hill policy allows administrators to secretly record professors, will undoubtedly have a profound chilling effect on faculty speech.³

Now the Board of Governors is considering a new definition of academic freedom. Though the proposed new language⁴ adopts the definition approved by the Faculty Assembly this past October, it also includes new “parameters” on the rights of faculty and “protections” for students.⁵ The policy states “academic freedom is not absolute. Faculty have the responsibility to exercise academic freedom . . . in compliance with institutional policies, regulations, and rules.” Specifically, it prohibits “[t]eaching content that lacks pedagogical connection to the course, discipline or subject matter . . . [and] [u]sing university resources for political activity in violation of university policy.” This added language gives us significant pause.

² Jane Winik Sartwell, NC State Pride Center official no longer employed after new undercover video, News & Observer (Feb. 9, 2026), <https://www.newsobserver.com/news/local/education/article314600319.html>

³ Matt Hartman, UNC-Chapel Hill Sets New Policy on Recording Professors, The Assembly (Feb. 9, 2026), <https://www.theassemblync.com/news/education/higher-education/unc-chapel-hill-policy-recording-professors/>

⁴ Ch. VI- Academic Freedom and Tenure, The UNC Policy Manual, *The Code*, 100.1 (Amended XX/XX/XX) available at <https://www.northcarolina.edu/apps/bog/doc.php?id=68662&code=bog>

⁵ Korie Dean, UNC System Board Weighs Defining, Setting ‘Parameter’ for Academic Freedom, The Assembly (Jan. 23, 2026), <https://www.theassemblync.com/news/education/higher-education/unc-system-board-governors-parameters-academic-freedom/>

While the principle of academic freedom is somewhat distinct from that of free speech, it is still “a special concern of the First Amendment.” *Keyishan v. Board of Regents*, 385 U.S. 589, 603 (1967). Indeed, “[o]ur Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.” *Id.* And to “impose a strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.” *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).



Regulations of academic speech are governed by *Pickering v. Board of Educ.*, 391 U.S. 563 (1968) and *Connick v. Myers*, 461 U.S. 138 (1983). *See Adams v. Trs. of the Univ. of N.C.-Wilmington*, 640 F.3d 550, 562 (4th Cir. 2011) (finding the *Pickering-Connick* test is applicable in the academic context). The *Pickering-Connick* test protects academic speech when it addresses a matter of public concern and outweighs any state interest in prohibiting that speech. *See id.* at 560-61.

“Speech involves a matter of public concern when it involves an issue of social, political, or other interest to a community.” *Urofsky v. Gilmore*, 215 F.3d 401, 406 (4th Cir. 2000). “[H]ow interesting or important the subject of a [faculty member’s] speech and the place where the speech occurs is . . . irrelevant.” *Adams*, 640 F.3d at 565 (cleaned up). “First Amendment rights must be analyzed in light of the special characteristics of the school environment . . . [but] no deference is owed a public university in considering whether a university has exceeded constitutional constraints,” *Dames v. Roberts*, ___ F.Supp.3d___, 2026 WL 332327, *6 (M.D.N.C. Feb. 4, 2026) (cleaned up).

The First Amendment requires “precision of regulation,” especially concerning regulations on speech at universities, “an area so closely touching our most precious freedoms.” *Keyishan*, 385 U.S. at 603 (cleaned up). When educators “must guess what utterance may lose [them their] position, one necessarily will ‘steer far wider of the unlawful zone.’” *Id.* at 604 (quoting *Speiser v. Randall*, 357 U.S. 512, 526 (1958)). “The danger of that chilling effect upon the exercise of vital First Amendment rights must be guarded against by sensitive tools which clearly inform teachers what is being proscribed.” *Id.* at 604. Indeed, district courts have recently



enjoined “anti-DEI” measures prohibiting speech on “divisive concepts” at public universities and schools because they failed to properly define key terms and left the public uncertain as to what conduct was prohibited. *See, e.g., National Education Association v. U.S. Dep’t of Educ.*, 779 F. Supp. 3d 149, 176 (D. N.H. 2025); *Jackson Federation of Teachers v. Fitch*, 799 F. Supp. 3d 571, 585 (S.D. Miss. 2025).

The academic freedom policy here does not define “political activity” or “pedagogical connection,” rendering it likely unconstitutionally vague and overbroad. There are many ways a faculty member may find themselves teaching content beyond the course description that could involve the expression of a political viewpoint — during a robust discussion guided by students, for example. The policy seems to require faculty members to abruptly cut off genuine intellectual curiosity and academic discourse simply because it may touch on relevant subjects outside the course description. What’s more, the sweeping nature of the policy would also restrict protected speech under *Pickering-Connick*. A restriction of speech addressing matters of public concern is not likely to be justified by any state interest when a core part of UNC system’s mission is to “prepare its students to communicate well with one another across deep differences and disagreements, including about the most challenging topics.”⁶

Faculty and students alike must be free to express their views. We urge the Board of Governors to reaffirm the necessity of defending speech and academic freedom. “Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.” *Sweezy*, 354 U.S. at 250. As the nation’s oldest public university system, it is crucial that UNC avoid the temptation to silence unpopular opinions and remain committed to the exercise of free speech and academic freedom.

⁶ <https://freespeech.unc.edu/academic-freedom/#:~:text=UNC%2DChapel%20Hill%20seeks%20to,all%20people%20of%20North%20Carolina> (last visited Feb. 23, 2026).

Sincerely,

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