



Hugh Stevens*
K. Matthew Vaughn
Michael J. Tadych
Karen M. Rabenau*
William P. Janvier**
Kathleen O'Malley
Ashley N. Fox

* Of Counsel to the Firm
+Board Certified Specialist
in Business and Consumer Bankruptcy

Direct: (919) 582-2319
E-mail: mike@smvt.com

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VIA EMAIL ONLY to attripp@northcarolina.edu, djenglish@northcarolina.edu,
and bctrahan@northcarolina.edu

Andrew Tripp
Senior Vice President for Legal Affairs & General Counsel
The University of North Carolina System
223 S. West St.
Suite 1800
Raleigh, NC 27603

David English
Senior Vice President for Academic Affairs & Chief Academic Officer
The University of North Carolina System
223 S. West St.
Suite 1800
Raleigh, NC 27603

Brad Trahan
Senior Associate General Counsel
The University of North Carolina System
223 S. West St.
Suite 1800
Raleigh, NC 27603

Re: Proposed revisions to Chapter VI, Academic Freedom, of *The Code and Policies of the University*

Dear Messrs. Tripp, English, and Trahan:

We write on behalf of our client, the North Carolina State Conference of the American Association of University Professors, Inc. ("NCAAUP") regarding proposed revisions to Chapter VI, Academic Freedom, of *The Code and Policies of the University* ("*The Code*"), which were circulated to chancellors of the University of North Carolina System's ("UNC System") constituent institutions on 5 December 2025.

At the outset, we wish to note that the proposed revisions to Chapter VI of *The Code* differ considerably from the language adopted in the UNC Faculty Assembly's Resolution on Academic Freedom on 10 October 2025 (the "Resolution"). There, the UNC Faculty Assembly proposed the following definition of academic freedom:

Academic freedom is the foundational principle that protects the rights of faculty to engage in teaching, research/creative activities, service, and scholarly inquiry without undue influence. It ensures that faculty can freely pursue knowledge; express, discuss and debate ideas; and contribute to the advancement of knowledge and understanding related to their areas of expertise.

The Resolution further provides that:

Academic freedom includes:

1. *Classroom Practice: Faculty have the responsibility to determine pedagogical strategies, instructional materials, evaluation methods, and classroom discourse that support student learning, provided these methods align with professional standards.*
2. *Course Development: Faculty have the responsibility to design, revise, and implement curricular content and learning outcomes within their academic expertise, subject to departmental and institutional review processes.*
3. *Research/Creative Activities: Faculty have the responsibility to pursue, design, conduct, disseminate, and publish research/creative activities consistent with professional and academic standards.*
4. *Scholarly Inquiry: Faculty have the responsibility to teach and research ideas relevant to the subject matter or student skill development, to express scholarly opinion, and to present perspectives relevant to the subject matter that may be controversial or unpopular.*

In contrast, the proposed revisions to *The Code* as circulated in December 2025 include, in part, the following definition of academic freedom in Section 601A:

(2) Academic Freedom Defined: Academic freedom is the foundational principle that protects the rights of all faculty to engage in teaching, research, service, and scholarly inquiry without undue influence. It ensures that faculty can freely pursue truth; express, discuss and debate ideas; and contribute to knowledge within their areas of expertise.

(3) Academic freedom includes the following rights and responsibilities of faculty:

- a. *Classroom Practice: To determine pedagogical strategies, instructional materials, evaluation methods, and classroom discourse that best support student learning, provided these methods align with professional, departmental, and institutional standards;*
- b. *Course Development: To design, revise, and implement curricular content and learning outcomes within their academic discipline, subject to departmental and institutional review processes.*
- c. *Research: To pursue, design, conduct, disseminate, and publish research consistent with professional, departmental, and institutional standards.*
- d. *Scholarly Inquiry: To teach and research controversial or unpopular ideas relevant to the subject matter; to express scholarly opinions; and to present various perspectives relevant to the subject matter.*

(4) However, academic freedom is not absolute and must be exercised within the parameters established by academic disciplines, professions, and institutional standards. University administrators and faculty have a shared right and responsibility to:

- a. *Ensure Alignment with Institutional Mission: Ensure that faculty activities support the university's mission and meet accreditation standards.*
- b. *Uphold Professional and Ethical Standards: Intervene when faculty conduct violates professional norms, creates a hostile learning environment, or undermines the institution's educational objectives.*
- c. *Protect Management Prerogatives: Maintain oversight of resource allocation, program viability, and institutional reputation, including the authority to set broad curricular frameworks, approve or eliminate programs, and ensure compliance with legal and regulatory requirements.*

(5) The Parameters of Academic Freedom Include:

- a. *Teaching and researching controversial or unpopular ideas relevant to the discipline or subject matter.*
- b. *Expressing scholarly opinions and presenting diverse perspectives relevant to the discipline or subject matter.*

- c. *Assessing student performance based on academic criteria.*
- d. *Engaging in shared governance related to academic matters.*

(6) The Parameters of Academic Freedom Do Not Include:

- a. *Teaching content clearly unrelated to the course description or outside one's area of expertise.*
- b. *Using the classroom as a platform for political or ideological advocacy that is clearly unrelated to the course content or academic objectives.*
- c. *Refusing to comply with institutional policies or accreditation standards.*

A more recent version of the proposed revision proposes the following language:

(2) Academic Freedom Defined: Academic freedom is the foundational principle that protects the rights of all faculty to engage in teaching, research/creative activities, service, and scholarly inquiry without undue influence. It ensures that faculty can freely pursue truth; express, discuss and debate ideas; and contribute to knowledge within their areas of expertise.

(3) Academic freedom includes the following rights and responsibilities of faculty:

- a. *Classroom Practice: To determine pedagogical strategies, instructional materials, evaluation methods, and classroom discourse that support student learning, provided these methods align with professional standards;*
- b. *Course Development: To design, revise, and implement curricular content and learning outcomes within their academic expertise, subject to departmental and institutional review processes.*
- c. *Research: To pursue, design, conduct, disseminate, and publish research/creative activities consistent with professional standards and in compliance with institutional policies, regulations, and rules;*
- d. *Scholarly Inquiry: To teach and research ideas relevant to the subject matter or student skill development; to express scholarly opinions; and to present various perspectives relevant to the subject matter.*

(4) Academic freedom is not absolute. Faculty have the responsibility to exercise academic freedom within the parameters established by academic disciplines, professions, and in compliance with institutional policies, regulations, and rules. Administrators and faculty have the shared right and responsibility to implement the University's mission as defined in G.S. 116-1, to discover, create, transmit, and apply knowledge to address the needs of individuals and society. This includes:

- a. Ensuring Alignment with Institutional Mission: Ensure that faculty activities support the university's mission and meet accreditation standards.*
- b. Upholding Professional and Ethical Standards: Intervene when faculty conduct violates professional norms, creates a hostile learning environment, or undermines the institution's educational objectives.*
- c. Protecting Management Prerogatives: Management is responsible for resource allocation and program viability, including the authority to set broad curricular frameworks, approve or eliminate programs, and ensure compliance with UNC policy and legal and regulatory requirements.*

(5) The Parameters of Academic Freedom Include:

- a. Teaching and researching controversial or unpopular ideas related to the discipline or subject matter.*
- b. Expressing scholarly opinions and presenting diverse perspectives related to the discipline or subject matter.*
- c. Assessing student performance based on academic criteria.*
- d. Engaging in shared governance related to such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process.*

(6) The Parameters of Academic Freedom Do Not Include:

- a. Teaching content clearly unrelated to the course description or unrelated to the discipline or subject matter.*
- b. Using university resources for political or ideological advocacy in violation of university policy.*

c. *Refusing to comply with institutional policies or accreditation standards to which the university is subject.*

While the proposed revisions to *The Code* contain similar language as was adopted in the Resolution, the proposed revisions also include lists of “parameters” that effectively weaken the definition and historical scope of academic freedom. Sections 601A(4)-(6) do not appear in the Resolution. This language, and the concepts, limitations, curtailments, and exclusions should be, at a minimum, brought to the Faculty Assembly and its constituent Faculty Senates for consideration if this change to *The Code* is to be compliant with the System principles of shared governance (UNC Policy Manual, Chapter V, Section 502 D). Much of the language in the Resolution and proposed additional language is also vague and, therefore, risks creating an academic environment that is inconsistent with principles of academic freedom and free speech articulated by the United States Supreme Court and the Fourth Circuit. Irrespective of rationale, the impulse to fence in academic freedom should be disregarded and eschewed. The convenience of defining an academic freedom “box” is antithetical to case law, our constitutions, and historical approaches. Like the Universe, the benefits to our state and beyond as a result of unrestricted academic freedom is ever expanding.

The Supreme Court has repeatedly recognized the importance of academic freedom, free expression, and free association in democratic society. In *Sweezy v. New Hampshire*, 354 U.S. 234 (1957), the Court recognized that:

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. 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.

Equally manifest as a fundamental principle of a democratic society is political freedom of the individual. Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents. All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been the vanguard of democratic thought and whose programs were ultimately accepted. Mere unorthodoxy or dissent from the prevailing mores is not to be condemned. The absence of such voices would be a symptom of grave illness in our society.

Id. at 250; *see also Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967) (“Our 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.”); *Regents of Univ. of Michigan v. Ewing*, 474 U.S. 214, 226 (1985) (“Added to our concern for lack of standards is a reluctance to trench on the prerogatives of state and local educational institutions and our responsibility to safeguard their academic freedom, ‘a special concern of the First Amendment.’”); *Garcetti v. Ceballos*, 547 U.S. 410, 425 (2006) (limiting the free speech rights of public employees but recognizing that “[t]here is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court’s customary employee-speech jurisprudence” and declining to decide whether the analysis in *Garcetti* applies to “speech related to scholarship or teaching”).

Similarly, in *Adams v. Trustees of the Univ. of North Carolina – Wilmington*, 640 F.3d 550 (4th Cir. 2011), the Fourth Circuit declined to extend *Garcetti*’s limits on public employee speech to a public university faculty member’s speech related to scholarship and teaching. In doing so, the Fourth Circuit distinguished scholarship and teaching from other “assigned duties,” including “declaring or administering university policy,” and explained that *Garcetti* may apply to the latter. *Id.* at 563. The Fourth Circuit further recognized that:

Applying *Garcetti* to the academic work of a public university faculty member under the facts of this case could place beyond the reach of First Amendment protection many forms of public speech or service a professor engaged in during his employment. That would not appear to be what *Garcetti* intended, nor is it consistent with our long-standing recognition that no individual loses his ability to speak as a private citizen by virtue of public employment.

Id. at 564. Unsurprisingly, these cases are consistent with the UNC System’s own Policy on Free Speech (Chapter 1300.8).

The proposed language in Section 601A does little to clarify key terms, leaving open the possibility for certain actors to retaliate against instructors with whom an institution, an administrator, or an outside party disagrees thereby increasing the threat of self-censorship among faculty members in such a way that is inconsistent with the free exchange of ideas necessary for a successful and functional university system.

For instance, the proposed language makes repeated use of phrases like “institutional policies,” “institutional review processes,” and the “institutional mission,” without clarification as to what those policies, processes, or mission(s) may be. This language creates a risk that courses, programs, or research relating to “disfavored” topics may be eliminated. The proposed language also fails to articulate with specificity what constitutes a “hostile learning environment” (Section 601A(4)(b)) or “political or ideological advocacy in violation of university policy” (Section 601A(6)(b)). Both “hostile” and “political or ideological advocacy” are inherently subjective and, therefore, create a risk that they may be interpreted to retaliate against instructors with

“unpopular” viewpoints. Moreover, the language’s prohibition on “political ideological advocacy” is inconsistent with the Fourth Circuit’s decision in *Adams* and our Nation’s commitment to free expression of political opinions.

Further, the proposed language makes multiple references to “relevant” or “related” subject matters. If the University community is to “always remain free to inquire, to study and to evaluate, to gain new maturity and understanding,” then faculty must be free to determine which subjects and materials are “relevant” or “related” to their courses and research without fear of administrative intervention. The proposed language creates a possible scenario where administration could restrict the range of issues about which faculty may teach, particularly if faculty teach controversial topics, and subject faculty to sanctions for introducing such topics in the classroom. Indeed, part of higher education is connecting ideas learned in the classroom to other disciplines and current events. An ethnomusicology instructor exploring the musical traditions of the Middle East may deepen their students’ knowledge and understanding by exploring how political conflicts in the region affect the culture of the people who live there.

The proposed revisions to *The Code* also include, in part, specific protections for students in Section 601B(2):

(2) Academic freedom gives students three specific protections:

- a. *The protection of freedom of expression in the classroom. Students are free to take “reasoned exception” to concepts and theories presented in their classes, and to disagree with opinions they hear from their faculty, even as they continue to be responsible for learning assigned course content and are responsible for maintaining standards of academic performance established for each course in which they are enrolled.*
- b. *The protection against improper academic evaluation. Faculty are prohibited from evaluating students based on their views or beliefs or in an otherwise arbitrary and capricious manner.*
- c. *The protection against improper disclosure. A student’s views, beliefs, and political opinions shared with a faculty during professional interactions should be kept confidential where it is reasonably understood by the faculty to be confidential under the circumstances and should not be shared by the faculty with others, except where required or authorized by law or policy. Judgments of ability and character may be provided under appropriate circumstances, normally with the knowledge and consent of the student.*

While we agree that the university setting should be a place for students to explore varying ideas and express those ideas without fear of retaliation, we are concerned that the language of 601B(2) is vague and could be weaponized against faculty members with whom a student or an outside actor disagrees. For example, Section 601B(2)(a) provides that students may take “reasoned exception” to concepts and theories presented in their classes, but it provides no further guidance as to what constitutes “reasoned exception” or how far it may extend. If a physics student disagrees with Newton’s laws, is that disagreement “reasoned?” Perhaps more realistically, if an environmental sciences student disagrees, without providing scientific support, that climate change is a real phenomenon, does that disagreement constitute “reasoned exception?” Moreover, students who enroll in a particular course agree not only to learn the “assigned course content” but also to satisfy the learning objectives and requirements for that course. If a student in a humanities course submits a research paper disagreeing with a concept introduced by their instructor, but does not meet the course’s requirement to properly cite any authority to support his position, does Section 601B(2)(a) prevent their instructor from assigning a poor grade or open his instructor up to adverse employment action for doing so?

Similarly, Section 601B(2)(b) protects students from “arbitrary or capricious” academic evaluation without providing any further guidance on what constitutes “arbitrary or capricious” evaluation or what procedure an institution will use to determine whether an evaluation is “arbitrary or capricious.” The proposed revisions also do not articulate a similar protection for faculty members against “arbitrary or capricious” evaluations submitted by students.

As noted above, we are concerned that much of the proposed language in Sections 601A and 601B creates a risk of retaliation against faculty who engage with disfavored subjects or who discuss unpopular viewpoints as part of their teaching, research, or creative scholarly pursuits. As you know, such retaliation would violate the First Amendment to the United States Constitution. It would also violate the “Free Speech and Free Press Clause” found in Article I, section 14 of the North Carolina Constitution and the “Fruits of Their Labor Clause” found in Article I, section 1 of the North Carolina Constitution. The North Carolina Supreme Court has explained that:

Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.” N.C. Const. art. I, § 14. The words “shall never be restrained” are a direct personal guarantee of each citizen’s right of freedom of speech.


Corum v. University of North Carolina, 330 N.C. 761, 781, 413 S.E.2d 276, 289 (1992). More recently, the North Carolina Supreme Court explained that the “Fruits of Their Labor Clause” protects people “engaging in any legitimate business, occupation, or trade,” and “bars state action burdening these activities unless ‘the promotion or protection of the public health, morals, order, or safety, or the general welfare makes it reasonably necessary.’” *Kinsely v. Ace Speedway Racing, Ltd.*, 386 N.C. 418, 424, 904 S.E.2d 720, 726 (2024). In *Corum*, the North Carolina Supreme Court further clarified that, “in the absence of an adequate state remedy, one whose state constitutional rights have been abridged has a direct claim against the State under our Constitution.” *Id.* at 782, 413 S.E.2d at 289; *see also Askew v. City of Kinston*, 386 N.C. 286, 286, 902 S.E.2d 722, 724 (2024) (explaining that *Corum* recognized a “direct action under the

State Constitution against state officials for violation of rights guaranteed by the Declaration of Rights,” and plaintiffs need not exhaust administrative remedies to establish subject-matter jurisdiction for *Corum* claims; rather, the “prospect of agency relief” goes to an element of the *Corum* analysis). Eliminating vagueness from the proposed language would reduce the risk of retaliation and, as a result, unnecessary litigation. The potential for future *Corum* claims following vague and imprecise policy may unnecessarily expose the System to both legal and financial risks.

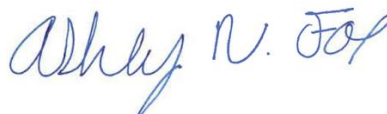
Finally, we believe the timing and process followed for soliciting comments regarding the proposed revisions was inconsistent with the responsibility of shared governance between faculty and administrators. The request for comments was sent to chancellors of the constituent universities on 5 December 2025. It did not specifically seek comments from the faculty, the group who will be most impacted by the revisions. Rather, it asked chancellors to “[p]lease review and provide comments on the attached draft with input from your senior staff *and others as you deem appropriate*.” (emphasis added). To the extent that chancellors did, in fact, seek comments from faculty members at their institution, that request came while faculty were administering and grading final exams, finalizing and submitting grades, potentially leaving campus to spend time with family during the holidays, and processing and/or learning how to comply with the UNC System’s recent policy change regarding syllabi. We were pleased to learn that drafting the proposed revisions remains an ongoing process, and we appreciate you taking the time to consider our concerns regarding the proposed revisions to *The Code* before they are presented to the Board of Governors.

We respectfully request that the proposed revisions to Chapter VI of *The Code* be put on indefinite hold and not be presented to the Board of Governors for consideration to permit further review, input from faculty and students, and revisions to address and embrace the aforementioned concerns and others which may present themselves during the process. At your convenience, we would welcome any opportunity to discuss this matter further.

Very truly yours,



Michael J. Tadych



Ashley N. Fox