



# **THE UNIVERSITY OF NORTH CAROLINA SYSTEM**

## **REPORT:**

### **2021-2022 Report on Free Speech and Free Expression Within the University**

**September 21, 2022**

**University of North Carolina System Office  
Chapel Hill, North Carolina**

## UNC Board of Governors

### Committee on University Governance, acting as the designated Board Committee on Free Expression 2021-2022 Report on Free Speech and Free Expression Within the University

#### I. Executive Summary

This report addresses free speech and free expression at the constituent institutions<sup>1</sup> of the University of North Carolina System (“UNC System” or “the University”) for the period of time between July 1, 2021, and June 30, 2022, as required by the [Restore/Preserve Campus Free Speech Act](#) (“the Act”).<sup>2</sup> In preparing and publishing this report, the UNC System Board of Governors Committee on University Governance (“committee”), as the designated Committee on Free Expression,<sup>3</sup> was guided primarily by the elements required by the Act.<sup>4</sup> Additionally, the committee relied on information provided by the constituent institutions, information shared with the president and/or members of the Board of Governors, and on relevant articles and media stories published in the past year.

The committee’s intent in issuing this annual free expression report is to address the specific categories of information identified in the Act, assess institutional compliance with [Section 1300.8](#) of the UNC Policy Manual, survey the expressive events that took place at the UNC System constituent institutions during the relevant period, review progress since last year’s report, and provide recommendations for the upcoming academic year.

With the requirements of the Act in mind, this report provides background on and context for free speech and free expression at UNC System constituent institutions, highlights experiences at our institutions over the past year, identifies some key findings by the committee, and offers recommendations that are aimed at providing more awareness and transparency on issues related to free speech and free expression.

Specifically, as will be further detailed in this report, the committee found that:

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<sup>1</sup> Because of the additional protections afforded to K-12 institutions under the First Amendment, the North Carolina School for Science and Math, the University of North Carolina School of the Arts for its high school students, and any lab schools operated by a constituent institution are not included within the scope of the report. Even so, these institutions are expected to comply with Article 36 of Chapter 116 to the extent there is not a conflict with relevant First Amendment jurisprudence applicable to K-12 institutions.

<sup>2</sup> The Restore/Preserve Campus Free Speech Act was enacted in 2017 as [S.L. 2017-196](#) and is codified in the North Carolina General Statutes as Article 36 of Chapter 116.

<sup>3</sup> The Act requires the Board of Governors to establish a Committee on Free Expression. [N.C. Gen. Stat. § 116-301](#) (hereinafter G.S.). Section 10.3 of [S.L. 2018-5](#) (“Current Operations Appropriations Act of 2018”) amended G.S. 116-301 to allow the chair of the Board of Governors to designate a standing or special committee of the Board as the Committee on Free Expression.

<sup>4</sup> [G.S. 116-301\(c\)](#) articulates specific information to be provided in the annual report. See Section IV., herein, for more information.

1. The constituent institutions remain committed to promoting and protecting free speech and free expression;
2. Disruptions and interference at scheduled expressive events have been minimal;
3. Constituent institutions have developed and utilized mechanisms for receiving, investigating, and resolving complaints regarding alleged free expression policy violations;
4. The constituent institutions are regularly providing information to campus constituencies about rights and responsibilities associated with expression on campus through policies, training, and other outreach;
5. The Foundation for Individual Rights in Education (FIRE), which rates college and university speech policies, has awarded its highest rating (“green light”) to 14 UNC System constituent institutions—up from the 11 UNC System constituent institutions reported last year.<sup>5</sup>
6. No reporting constituent institutions have incurred expected or unexpected financial costs related to security surrounding speakers or expressive events on campus; and
7. Constituent institutions continue to accept the recommendations for improvement contained in last year’s report by taking actions such as thematic branding of free and open discourse, working to update and improve policies and ensuring that all student groups needing faculty or staff support can have it, and creating and maintaining “one stop” destination websites for fostering free expression on campus.

The committee acknowledges that the UNC System’s constituent institutions have a long record of hosting events without significant disruption or interference, and many successful events tend not to garner significant publicity or public attention. This past year was no exception.

In addition to work happening on each individual campus, the University’s collection of Responsible Officers, which are designated to ensure compliance with [Section 1300.8](#) of the UNC Policy Manual, have also engaged cooperatively to create and improve resources regarding free expression within the University system. The UNC System Office continues to maintain and update a webpage dedicated to providing information and resources related to free speech and free expression within the University.<sup>6</sup> Finally, new initiatives are underway systemwide. The committee is pleased to inform the

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<sup>5</sup> See Foundation for Individual Rights in Education’s Speech Code Rating Database, [https://www.thefire.org/resources/spotlight/?x=&speech\\_code=Green&y=NC&institution\\_type=Public&speech\\_code\\_advanced=Green&y\\_advanced=NC#search-results](https://www.thefire.org/resources/spotlight/?x=&speech_code=Green&y=NC&institution_type=Public&speech_code_advanced=Green&y_advanced=NC#search-results).

<sup>6</sup> See UNC System Office “Campus Speech and Free Expression” website <https://www.northcarolina.edu/campus-free-speech>.

General Assembly, the Governor, and the public about certain Board- and System Office-level efforts to foster and facilitate free and open debate across the UNC System in accordance with the law.

## **II. Background**

### *A. University Commitment to Free Speech and Free Expression*

As the nation's first public university, the University of North Carolina System affirms its long-standing commitment to free speech and free expression for its students, faculty members, staff employees, and visitors under the First Amendment of the U.S. Constitution and Article 1, Section 14 of the North Carolina Constitution. The University and its constituent institutions protect and promote these freedoms, consistent with First Amendment jurisprudence.<sup>7</sup> Through its policies, the University has expressly established that no employment decision or academic decision shall be based on the exercise of these constitutional rights.<sup>8</sup>

The University's mission includes the transmission and advancement of knowledge and understanding, the pursuit of which is dependent upon the ability of our faculty and students to remain free to inquire, study, evaluate, and gain new maturity and understanding.<sup>9</sup> The University supports and encourages freedom of inquiry for faculty members and students to the end that they may responsibly pursue these goals through teaching, learning, research, discussion, and publication, free from internal or external restraints that would unreasonably restrict their academic endeavors.<sup>10</sup> The University has explicitly stated that faculty and students of the University share the responsibility for maintaining an environment in which academic freedom flourishes and in which the rights of each member of the academic community are respected.<sup>11</sup> Academic freedom has indeed been acknowledged by the Supreme Court as "of transcendent value to all of us" and "a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."<sup>12</sup>

### *B. Restore/Preserve Campus Free Speech Act*

Through statute, the North Carolina General Assembly has affirmed that the primary function of the University of North Carolina System and each of its constituent institutions is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching,

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<sup>7</sup> See, e.g., Sections 601, 604, and 608 of *The Code of the University of North Carolina* ("The Code"). See also Sections 101.3.1, 300.1.1., 300.2.1, 700.4.2, and 1300.8 of the UNC Policy Manual.

<sup>8</sup> See Sections 601, 604, and 608 of *The Code*. See also Sections 101.3.1, 300.1.1, 300.2.1, 700.4.2 of the UNC Policy Manual.

<sup>9</sup> See *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

<sup>10</sup> Section 600(1) of *The Code*. See also Section 700.4.2 of the UNC Policy Manual.

<sup>11</sup> Section 600(3) of *The Code*. See also Section 700.4.2 of the UNC Policy Manual.

<sup>12</sup> *Keyishian v. Board of Regents, State Univ. of N.Y.*, 385 U.S. 589, 603 (1967).

discussion, and debate. To fulfill this function, each constituent institution must strive to ensure the fullest degree of intellectual freedom and free expression. According to G.S. 116-300(2), “it is not the proper role of any constituent institution to shield individuals from speech protected by the First Amendment, including, without limitation, ideas and opinions they find unwelcome, disagreeable, or even deeply offensive.”<sup>13</sup>

The General Assembly has also established several requirements for the Board of Governors, the University of North Carolina System, and its constituent institutions regarding free expression. In response, the Board of Governors has designated a Committee on Free Expression<sup>14</sup> and adopted a University-wide free expression policy which, among other elements, maintains institutional neutrality.<sup>15</sup> A copy of the policy is linked [here](#). Additionally, the University meets its statutory obligations by providing training for institutional officers and administrators charged with responsibilities for compliance with the Act and coordinating campus-based training (“Responsible Officers”) and publishing this annual report. A list of current Responsible Officers is available at this [link](#).

### **III. Discussion of Free Speech and Free Expression at the University During the 2021-22 Academic Year and Committee Findings**

Pursuant to the Act, the University’s policy, and the Board’s interest in a broad review of free expression across the University, the committee received information from responding constituent institutions in 9 areas. The questions and summaries of the institutional responses are provided below.

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<sup>13</sup> [G.S. 116-300\(2\)](#).

<sup>14</sup> Section 10.3 of [S.L. 2018-5](#) (Current Operations Appropriations Act of 2018), which became law on June 12, 2018, amended the requirements for the committee to allow the chair of the Board of Governors to designate a standing or special committee of the Board as the Committee on Free Expression. See <https://www.ncleg.net/Sessions/2017/Bills/Senate/PDF/S99v6.pdf>. The chair of the Board of Governors has designated the Committee on University Governance as the statutorily mandated Committee on Free Expression.

<sup>15</sup> In this context, “institutional neutrality” specifically means only that “the constituent institution may not take action, as an institution, on the public policy controversies of the day in such a way as to require students, faculty, or administrators to publicly express a given view of social policy.” [G.S. 116-300\(3\)](#).

QUESTIONS SENT TO THE CONSTITUENT INSTITUTIONS	SUMMARY OF INSTITUTIONAL RESPONSES
(1) A description of any barriers to or disruptions of free expression within the constituent institution, including specific incidents and/or particularized complaints. <sup>16</sup>	<ul style="list-style-type: none"> <li>• No constituent institution reported an institutional barrier or disruption of free expression during the academic year.</li> <li>• Notwithstanding the foregoing, Fayetteville State University noted the bomb threat it experienced in February of this year. Understandably, that threat delayed or cancelled student events for reasons unrelated to the content of any one speech or event.</li> <li>• The UNC School of the Arts received a complaint about the title and tone of an event. The matter was investigated, and the event did not occur for other reasons.</li> </ul>
(2) A description of the administrative handling and discipline relating to disruption or barriers identified in response to (1). <sup>17</sup>	<ul style="list-style-type: none"> <li>• No responding institutions had administrative action to report.</li> </ul>
(3) Identification and description of any difficulties, controversies, and successes in maintaining a posture of administrative and institutional neutrality about political or social issues. <sup>18</sup>	<ul style="list-style-type: none"> <li>• The responding institutions reported consistently that the work of free expression went on.</li> <li>• The responding institutions consistently reported steady and regular efforts to foster a culture of free expression.</li> </ul>

<sup>16</sup> [G.S. 116-301\(c\)\(1\)](#) and Section 1300.8, VIII.C.1 of the UNC Policy Manual.

<sup>17</sup> [G.S. 116-301\(c\)\(2\)](#) and Section 1300.8, VIII.C.2 of the UNC Policy Manual.

<sup>18</sup> [G.S. 116-301\(c\)\(3\)](#) and Section 1300.8, III and VIII.C.3 of the UNC Policy Manual.

QUESTIONS SENT TO THE CONSTITUENT INSTITUTIONS	SUMMARY OF INSTITUTIONAL RESPONSES
(4) Any assessments, criticisms, commendations, or recommendation the constituent institution would like the committee to consider in preparing the annual report. <sup>19</sup>	<ul style="list-style-type: none"> <li>• None reported.</li> </ul>
(5) Confirmation of whether the institution fulfilled the University policy requirements to disseminate information about institutional policies during the 2021-22 academic year.	<ul style="list-style-type: none"> <li>• All responding institutions indicated that they had disseminated information as required by policy.</li> </ul>
(6) Identification of representative institutional policies that reinforce commitment to free speech and free expression (e.g., academic freedom, tenure regulations, facilities use, etc.).	<ul style="list-style-type: none"> <li>• Many institutions reported amending or adopting policies, including facilities use policies, student codes of conduct, and student organization policies or referenced back to having previously undertaken those efforts in prior years.</li> <li>• UNC Asheville, and specifically Interim General Counsel John Dougherty, worked tirelessly to help UNC Asheville earn the coveted “Green-Light” status from the Foundation for Individual Rights and Expression.</li> <li>• So, too, did the UNC School of the Arts through tireless work by David Harrison, the General Counsel at the school.</li> <li>• Notably, UNC Chapel Hill’s Board of Trustees passed a resolution affirming the University’s commitment to academic freedom and freedom of speech on campus.</li> </ul>

<sup>19</sup> [G.S. 116-301\(c\)\(4\)](#) and Section 1300.8, VIII.C.4 of the UNC Policy Manual.

QUESTIONS SENT TO THE CONSTITUENT INSTITUTIONS	SUMMARY OF INSTITUTIONAL RESPONSES
(7) Examples of speakers or other events that have been held at the institution during the 2021-22 academic year.	<ul style="list-style-type: none"> <li>• Institutions provided representative samplings of events and all institutions reported multiple speakers or free expression events during the academic year.</li> <li>• Several institutions reported instances of speakers engaging in free expression on campus without invitation or registration.</li> </ul>
(8) Identification of communications, trainings, or other educational outreach regarding free speech and free expression that have been provided during the 2021-22 academic year.	<ul style="list-style-type: none"> <li>• All institutions identified free expression communications, trainings, or outreach that had taken place during the academic year. One noteworthy effort occurred at Appalachian State University where various divisions of the school’s leadership came together to launch their Free Speech website. Additionally, Elizabeth City State University offers an example of a triple pronged approach to Free Speech and Expression Training during its 21-22 academic year. Finally, NCSU maintains multiple outlets, including a dedicated website and email addresses to foster conversations regarding and awareness of the importance of free speech.</li> </ul>
(9) Information about security and other costs associated with protecting and affirming free expression on campus.	<ul style="list-style-type: none"> <li>• Institutions report either no or minimal additional security costs associated with expressive events. Multiple campuses reported the policy framework each has in place to impose fees and assess costs against sponsoring organizations.</li> </ul>

As a result of the information gathered, it appears again this year that (1) the constituent institutions remain committed to promoting and protecting free speech and free expression; (2) disruptions and interference at scheduled speaking or expressive events have been minimal over the past year; (3) the constituent institutions continue to work to provide information to various campus constituencies about rights and responsibilities associated with speech and expression on campus



through policies, training, and other outreach; (4) the Foundation for Individual Rights in Education (FIRE), which rates college and university speech policies, has awarded its highest rating (“green light”) to 14 UNC System constituent institutions—up from 11 reported last year; and (5) no constituent institutions have reported incurring meaningful additional costs related to security surrounding speakers or expressive events on campus, likely due to the use of virtual platforms.

#### **IV. Implementation of Past Report Recommendations**

Constituent institutions reported a variety of processes and resources that have been introduced or improved to implement recommendations from the committee’s 2021-22 free expression annual report.

#### **V. New Initiatives & Committee Recommendations for 2021-22**

The committee recognizes that there are always opportunities for improving the University’s commitment to free speech and free expression. Specifically, the UNC System Office proudly moved forward under President Peter Hans’ leadership with the expansion of an earlier study of free expression by a trio of University of North Carolina at Chapel Hill professors entitled “[Free Expression and Constructive Dialogue at the University of North Carolina at Chapel Hill](#).” This study was discussed in last year’s report. Since then, President Hans directed funds to expand the study to include 8 different UNC campuses, including UNC Chapel Hill. The product of the expanded study was presented to the Governance Committee in May 2022 and is available online.

That Governance Committee itself has redoubled its efforts to foster free expression and proudly hosted two events discussing the climate of discourse on UNC System campuses at two of its regular meetings. At its November 17, 2021 meeting, the committee heard from Chief Justice of North Carolina Paul Martin Newby and Associate Justice Mike Morgan. On May 25, 2022, at the same meeting attended by the studying professors described above, the committee participated in a lengthy discussion with two former Solicitors General of the United States, Seth Waxman and Noel Francisco. Both discussions foster an “upfront” mentality on enabling free speech across the UNC System. If we are talking about it, our campuses are thinking about it.

Within the Office of Legal Affairs, lawyers working for the UNC System Office are working to obtain recognition from FIRE for the longstanding commitment to free expression memorialized in the UNC Policy and thinking about ways to reach “green” status for the remaining UNC System campuses.

This annual report provides a welcome opportunity to consider options that will demonstrate our System-wide leadership and action in support of free speech and free expression. The committee

therefore offers these recommendations for consideration for implementation by the UNC System Office:

1. Continue to foster opportunities for free speech and free expression among campus communities that are geographically disconnected due to social distancing guidelines.
2. Continue to adapt traditional free expression expectations within increased virtual instruction and online interaction.
3. Continue to provide training to constituent institution administrators who have transitioned into the Responsible Officer title.
4. Continue to foster a culture of conversation among all stakeholders about the importance of free expression. High repetition of low intensity reminders pays dividends in the way that all campus stakeholders consider the importance of free expression in their daily lives.
5. Seek universal “green” status across the UNC System from FIRE.

#### **V. Conclusion**

The committee continues to support the UNC System Office’s and the constituent institutions’ work and efforts in promoting and protecting free speech and free expression, increasing awareness and understanding of the broad protections for speech and expressive activities on campus, and taking action, when needed, to prevent substantial disruption or interference in scheduled events.

Our constituent institutions offer a range of speakers, topics, and outreach, and we recognize the efforts of our faculty, administrators, and students to invite different, and even unpopular, views and opinions on important issues.

The annual obligations that produce this report effect a culture of periodic “well visits” checking into the health of free expression on our campuses. This report confirms that the transparency and accountability required by the originating legislation are having their desired effect. While the content of this report remains consistent generally year over year, the report serves as an annual “well visit” for the state of discourse at the University. The reporting and survey responses document that the importance of free expression is at the fore of our responding campuses’ minds and creating neutral forums in which diverse thought is fostered has become a habit at our campuses and within the committee itself.

**Accepted by the UNC System Board of Governors Committee on University Governance, the designated Board Committee on Free Expression on September 21, 2022.**