October 23, 2015

The Honorable Pat McCrory
Office of the Governor
116 W. Jones Street
Raleigh, North Carolina 27603-8001

Sent via U.S. Mail and Electronic Mail (governorsoffice@nc.gov)

Dear Governor McCrory,

My name is Will Creeley. I am the Vice President of Legal and Public Advocacy for the Foundation for Individual Rights in Education (FIRE), a nonpartisan, nonprofit organization dedicated to defending the core constitutional rights of students and faculty members at our nation's colleges and universities. Our website, thefire.org, will provide you with a greater sense of our identity and activities.

I write you today to express FIRE's concern about the policies restricting student and faculty speech maintained by North Carolina's public colleges and universities, and to offer our assistance in remedying the constitutional problems they present.

Like public institutions of higher learning nationwide, North Carolina's colleges and universities are legally required to honor the First Amendment rights of their students and faculty members. Indeed, it has long been settled law that the First Amendment is fully binding on public university campuses. *See, e.g.*, *Widmar v. Vincent,* 454 U.S. 263, 268–69 (1981) ("With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities.").

Accordingly, campus speech codes—university regulations prohibiting expression that would be constitutionally protected in society at large—have been consistently struck down on First Amendment grounds by federal and state courts in a virtually unbroken series of decisions dating back more than 25 years.[1] These courtroom defeats demonstrate

[1] *See McCauley v. University of the Virgin Islands*, 618 F.3d 232 (3d Cir. 2010); *DeJohn v. Temple University*, 537 F.3d 301 (3d Cir. 2008); *Dambrot v. Central Michigan University*, 55 F.3d 1177 (6th Cir. 1995); *University of Cincinnati Chapter of Young Americans for Liberty v. Williams*, 2012 U.S. Dist. LEXIS 80967 (S.D. Ohio Jun. 12, 2012); *Smith v. Tarrant County College District*, 694 F. Supp. 2d 610 (N.D. Tex. 2010); *College Republicans at San Francisco State University v. Reed*, 523 F. Supp. 2d 1005 (N.D. Cal. 2007); *Roberts v. Haragan*, 346 F.

conclusively that the First Amendment does not tolerate the threat of censorship on campus.

But despite the unanimity of this precedent, research conducted by FIREattorneys indicates that a majority of public colleges and universities nevertheless maintain policies that threaten First Amendment rights. For example, in 2014, FIREreviewed policies governing student and faculty expression at 333 public institutions. Shockingly, 54.1% of the colleges and universities surveyed maintained at least one policy that substantially restricts freedom of speech. Disappointingly, at least five public colleges in North Carolina are among them, as indicated on our website at thefire.org/spotlight.

I trust that you will find this result as unacceptable as we do. Freedom of speech on campus is of critical importance to the continued vitality of our democracy. As the Supreme Court of the United States recognized in *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957): "The essentiality of freedom in the community of American universities is almost self-evident. … To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation."

FIREis far from alone in our concern for the expressive rights of students and faculty at our public colleges and universities. This past August, Representative Bob Goodlatte, Chairman of the U.S. House Judiciary Committee, sent letters to the presidents of 161 public colleges and universities across the country whose policies earned a "red light" rating from Ð indicating that they clearly and substantially restrict freedom of expression on campus. In his letter, Chairman Goodlatte asked each recipient "what steps your institution plans to take to promote free and open expression on its campus(es), including any steps toward bringing your speech policies in accordance with the First Amendment."

Whenever possible, we work collaboratively with students, faculty, and administrators to reform policies that restrict protected speech on campus, and we have achieved significant success by doing so. For example, FIREhas partnered with campus community members to successfully eliminate or revise 57 speech codes at 31 different colleges and universities to date this year, guaranteeing the expressive rights of over 550,000 students. We were proud to announce earlier this year that the University of North Carolina at Chapel Hill had worked productively with FIREto eliminate all of its restrictions on student and faculty speech.

In a related effort, we have also undertaken a campaign asking colleges and universities to adopt the free speech policy statement produced by the Committee on Freedom of Expression at the University of Chicago earlier this year. The statement, a copy of which I

Supp. 2d 853 (N.D. Tex. 2004); *Bair v. Shippensburg University*, 280 F. Supp. 2d 357 (M.D. Pa. 2003); *Booher v. Northern Kentucky University Board of Regents*, 1998 U.S. Dist. LEXIS 11404 (E.D. Ky. July 21, 1998*); Corry v. Leland Stanford Junior University*, No. 740309 (Cal. Super. Ct. Feb. 27, 1995) (slip op.); *UWM Post, Inc. v. Board of Regents of the University of Wisconsin*, 774 F. Supp. 1163 (E.D. Wisc. 1991); *Doe v. University of Michigan*, 721 F. Supp. 852 (E.D. Mich. 1989).

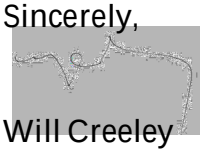
have enclosed, guarantees "all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn," and makes clear that "it is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive."

We are proud of the progress we have made towards ending campus censorship by working directly with colleges and universities. But given the depressing pervasiveness of campus speech codes, we have also begun aggressive new initiatives in recent years to achieve First Amendment compliance. For example, in July 2014, we launched our Stand Up For Speech Litigation Project, a national effort to eliminate unconstitutional speech codes through targeted First Amendment lawsuits. To date, we have filed 10 lawsuits, three of which remain ongoing. The seven suits completed thus far have resulted in successful settlements and policy revisions restoring the free speech rights of almost 200,000 students and securing over $350,000 in damages and attorney's fees. FIREwill continue to file lawsuits against public institutions that shirk their constitutional obligations to their students and faculty until full First Amendment compliance is achieved.

Of course, were public colleges and universities to voluntarily reform their speech-related policies in favor of freedom of expression, the need for litigation would be obviated. Your leadership on this issue would be welcome. Not only would eliminating speech codes at North Carolina's public colleges and universities benefit the students and faculty who study and work at those institutions, it would send an invaluable message to all citizens about the importance of freedom of expression in our democracy.

My colleagues and I would be very pleased to discuss our concerns about speech codes on North Carolina's campuses with you further at your convenience. I very much appreciate your attention to our concerns.

Sincerely,



Will Creeley
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Foundation for Individual Rights in Education

cc:
Paul Bennecke, Executive Director, Republican Governors Association
State Senator Curt Bramble, President Pro Tem, National Conference of State Legislatures
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