



August 4, 2021

Kevin M. Guskiewicz
Office of the Chancellor
University of North Carolina
103 South Building
Campus Box 9100
Chapel Hill, North Carolina 27599-9100

URGENT

Sent via Express Mail and Electronic Mail (chancellor@unc.edu)

Dear Chancellor Guskiewicz:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE appreciates that the University of North Carolina at Chapel Hill (UNC) is one of the few institutions in the country whose free speech policies earn a "green light" rating from FIRE. We are, however, concerned by reports that at least two faculty members are the subject of inquiry over the alleged disclosure, to the *Raleigh News & Observer*, of an agreement between the University of North Carolina at Chapel Hill Foundation (UNC Foundation) and UNC donor Walter Hussman.¹ We are concerned that the investigation into these faculty members is predicated on the mere fact that they publicly criticized the university on matters of public concern.

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us.

UNC has reportedly demanded meetings with multiple journalism faculty members, including Daniel Kreiss and Deb Aikat, both of whom have been among the more publicly

¹ See Kate Murphy, *Hussman's contract with UNC sheds light on the strings attached to the \$25 million gift*, RALEIGH NEWS AND OBSERVER, July 16, 2021, <https://www.newsobserver.com/news/local/education/article252769253.html>.

vocal faculty members criticizing UNC’s handling of Nikole Hannah-Jones’ tenure application.²

Comments Kreiss and Aikat have made on social media and to reporters are protected by the First Amendment. As state employees, professors do not “relinquish First Amendment rights to comment on matters of public interest by virtue of government employment.”³ Rather, the right of government employees to speak as individuals on matters of public concern is clearly preserved in First Amendment jurisprudence.⁴ In fact, courts recognize faculty rights to free expression as uniquely robust in order to preserve academic freedom and the university’s important role as the “quintessential marketplace of ideas.”⁵

Significantly, while both Kreiss and Aikat have publicly criticized UNC’s handling of the Hussman donation and of Hannah-Jones’ hiring, FIRE understands that neither professor had access to the donor agreement before it was disclosed to the *News & Observer* reporter. There is nothing—including in their criticism itself—to indicate that their criticism was based on access to confidential information not already obtained by the media and their own experiences as faculty in the Hussman School.

Thus, we are concerned that the course of UNC’s investigation as it pertains to faculty members such as Kreiss and Aikat owes its origin to their exercise of protected speech in public criticism of UNC and Walter Hussman, not whether they had access to the agreement. The fact that these faculty members have shared general criticisms of UNC’s handling of Nikole Hannah-Jones’ hiring and that they commented on the Hussman donor agreement *after* it was disclosed to the *News & Observer* is not evidence that they were involved in the disclosure. Absent more, there is no justification for subjecting these faculty members to inquiries with unclear authority, scope, and consequences. While we recognize UNC’s interest in preventing or addressing the unauthorized disclosure of information it believes to be confidential, the university must remain cognizant of the chilling effect that will be

² See, e.g., Brighton McConnell, *On Air Today: Deb Aikat of the UNC Hussman School of Journalism and Media*, CHAPELBORO, Jul. 6, 2021, <https://chapelboro.com/news-on-the-hill-with-brighton-mcconnell/on-air-today-with-brighton-mcconnell/on-air-today-deb-aikat-of-the-unc-hussman-school-of-journalism-and-media>; Colleen Flaherty, *Nikole Hannah-Jones Won’t Teach at Carolina*, INSIDE HIGHER ED, June 24, 2021, <https://www.insidehighered.com/news/2021/06/24/hannah-jones-confirms-shes-not-coming-carolina-july>; Joe Killian, *UNC mega-donor Walter Hussman denies exerting pressure over Hannah-Jones hiring*, NC POL’Y WATCH, June 3, 2021, <http://www.ncpolicywatch.com/2021/06/03/unc-mega-donor-walter-hussman-denies-exerting-pressure-over-hannah-jones-hiring>; Daniel Kreiss (@kreissdaniel), TWITTER, <https://twitter.com/kreissdaniel> (last visited Aug. 2, 2021); Joe Killian, *UNC journalism faculty members: Wealthy donors should not define the school’s values*, NC POL’Y WATCH, July 28, 2021, <http://www.ncpolicywatch.com/2021/07/28/unc-journalism-faculty-members-wealthy-donors-should-not-define-the-schools-values>; Jack Stripling and Andy Thomason, *Her ‘1619 Project’ Is a Political Lightning Rod. It May Have Cost Her Tenure*, CHRON. OF HIGHER EDUC., May 19, 2021, <https://www.chronicle.com/article/chapel-hill-celebrated-a-prominent-journalists-appointment-then-it-denied-her-tenure>.

³ *Connick v. Myers*, 461 U.S. 138, 140 (1983).

⁴ *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968).

⁵ *Kincaid v. Gibson*, 236 F.3d 342, 352 (6th Cir. 2001) (quoting *Healy v. James*, 408 U.S. 169, 180 (1972)) (internal quotations omitted). See also *DeJohn v. Temple Univ.*, 537 F.3d 301, 314 (3d Cir. 2008) (“[F]ree speech is of critical importance [at universities] because it is the lifeblood of academic freedom[.]”).

engendered by focusing on those faculty members who have exercised their constitutional right to free speech, including the right to criticize their institution.

Precedent is clear that an investigation targeting individuals who have exercised their First Amendment rights can itself violate the First Amendment, even if the investigation concludes in favor of the speakers. The question is not whether the university ultimately metes out formal punishment, but whether the institution’s actions “would chill or silence a person of ordinary firmness from future First Amendment activities[.]”⁶ An investigation into protected expression may meet this standard.⁷

Here, it would. Reasonable faculty members will be chilled from publicly criticizing the university if they suspect that any future violation of university policy related to the subject of that criticism—whether plausibly linked to them or not—will put them first in line to be investigated.

Statements Kreiss, Aikat, and other faculty members have made to reporters and on social media are clearly protected by the First Amendment and do not constitute any violation of university policy. UNC must be vigilant as it proceeds with this investigation to ensure that it is not unlawfully targeting faculty members as potential suspects or witnesses in its inquiry merely because they have been vocal critics of the university. We urge UNC to tread carefully as to avoid the appearance or practice of retaliating against professors for their constitutionally protected speech.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Friday, August 6, 2021, confirming that UNC will not use the mere fact that faculty members have spoken publicly as a basis to subject them to investigation.

Sincerely,



Lindsay Rank
Program Officer, Individual Rights Defense Program
Hussman School of Journalism & Media, MA Class of 2018
UNC School of Law, Class of 2018

Cc: Katie Nolan, Chief of Staff & Exec. Dir. of Strategy, Policy, & Special Projects
Catherine Pierce, Dir. of Development, Planning, & Strategic Projects
David Routh, Vice Chancellor for University Development
Robert A. Blouin, Executive Vice Chancellor and Provost

⁶ *Mendocino Envtl. Ctr. v. Mendocino Cnty.*, 192 F.3d 1283, 1300 (9th Cir. 1999).

⁷ See, e.g., *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000).