

GUIDANCE REGARDING IMPLEMENTATION OF POLICY AGAINST COMPELLED SPEECH

*Division of Legal Affairs**March 17, 2023*

After approval on January 18, 2023, by the University of North Carolina Board of Governors Committee on University Governance, on February 23, 2023, the Board of Governors amended [Section 300.5.1](#) of the UNC Policy Manual to further protect intellectual freedom and free expression in university hiring, admissions, and evaluation for professional advancement (the “Amendment”). The Amendment honors the [efforts](#) of President Bill Friday to insulate the University from politics to the extent practical, abides by the [principles](#) articulated by the University of Chicago’s Committee on Freedom of Expression, and echoes the sentiment articulated by the American Association of University Professors’ Committee A on Academic Freedom and Tenure’s August 8, 2018 “[Statement On Anti-BDS Legislation and Universities](#)”.¹

The Amendment *expressly* reaffirms three key freedoms unique to academia: i) the freedom of a faculty member to teach, speak, write, and research according to professional interests; ii) the freedom of applicants or employees to speak or write on their own behalf prior to and during the application or evaluation processes; and iii) the freedom of academic employers, admissions officers, and professional evaluators to fairly question the speech, research, and experience of applicants and employees. The Amendment also seeks to ensure that candidates for admission will be judged on merit in a viewpoint-neutral manner. Still further, the Amendment creates a mechanism for approved exceptions when warranted to fulfill the University’s mission.

While chancellors lead their campuses and the Amendment speaks for itself, the president and the Board of Governors will judge the success and completeness of the Amendment’s implementation. Accordingly, chancellors and their leadership teams should act now and should remain prepared to discuss implementation as it proceeds. Just as is the case with other legal and policy requirements that govern hiring, employment, and admissions in the University, chancellors and their leadership teams will need to interpret and apply the Amendment to myriad, concrete situations. The Division of Legal Affairs, consistent with the UNC System Office’s mission to serve, lead, and support, offers the following suggested guidance in that effort:

1. **AFFIRMING ACADEMIC FREEDOM.** Chancellors, provosts, faculty, and other leaders should take special note of Paragraph 5(d) of the Amendment in its affirmation that nothing in the Amendment “modifies or otherwise affects the University’s existing guarantee of the right of academic freedom...” This plain language dispels any confusion about the Amendment’s reach. Academic freedom unaffected by the Amendment includes UNC System faculty members’ i) freedom to teach in the classroom; ii) freedom to shape and direct their research; iii) freedom to write and seek publication in support of their professional interests; and iv) freedom to speak in their personal capacities, whether publicly or privately, about matters of contemporary political debate or social action.
2. **FOCUS FIRST ON OPEN POSTINGS AND APPLICATIONS.** Chancellors and their designees should assess employment and admissions postings and applications. They should remove any questions or

¹ The Amendment is distinct from board of trustee-specific resolutions to further memorialize a given campus’s commitment to free expression. An example of such a resolution is reported on [here](#). A separate example from another campus is reported on [here](#). Those two campuses’ resolutions are linked [here](#) and [here](#), respectively. These resolutions track [Section 1300.8](#) of the UNC Policy Manual that commits the University to the ideals espoused in the [Chicago Principles of Free Expression](#). Thus, the Amendment regulates concrete hiring, admission, and evaluation practices in a way that further supports the University’s robust commitment to free expression at all levels.

prompts that are inconsistent with the Amendment. Here, the most immediate “next step” is to modify any template employment and application descriptions, open postings, and applications for admission accordingly. Some campuses have already taken these steps. The Amendment does not affect hiring, evaluation, and admission decisions made prior to February 23, 2023.

3. IMPLEMENT COMMON SENSE SOLUTIONS. Like many large, complex public organizations, policies made by the governing board may take time to reach individual faculty, staff, and other leaders. Therefore, chancellors should ensure, via written communication with their human resources divisions in the case of employment, with their provosts in the case of faculty promotion and tenure policies, and with their admissions offices in the case of student applicants, that any instructions and guidance provided by the University related to hiring, evaluations, and admissions complies with the Amendment. At the direction of the chancellor, human resources divisions, provosts, and admissions offices should adopt common sense checks to ensure that any new job postings, faculty and staff evaluation and promotion processes, or admissions applications are free of prohibited questions or prompts.
4. ENCOURAGE OPEN-ENDED QUESTIONS AND DISCOURAGE LEADING QUESTIONS. University hiring, admissions, and evaluation processes—and private sector practices, too—resemble each other in that decisionmakers share a common goal to learn more about a given candidate and whether he or she is best qualified for employment, merits professional advancement, or is eligible for admission. Would-be employers, admissions officers, and evaluators use questions as tools among many with which to make important decisions. In such instances, there are already questions directed toward a candidate that are rightly prohibited, e.g., asking a candidate about membership in a protected class, disability, or family situation. These prohibitions are designed to protect the candidate’s privacy and insulate the decision-maker from the implication that a decision was in fact or appeared to be driven by an improper motive. The Amendment and existing practices share the common quality that they welcome questions that illuminate the candidate’s personal qualities and professional experience but do not allow questions that might imply or betray the questioners’ bias for or against personal attributes—in the case of nondiscrimination law—or the questioners’ bias for or against particular beliefs, affiliations, ideals, or principles—in the case of the Amendment.

The Amendment strikes a content-neutral balance. Nothing in the Amendment prohibits open-ended questions of candidates that could elicit any number of voluntary responses. For example, asking candidates why they are the best candidate for the position might elicit responses helpful to the questioner or application reviewer. As another example, asking a candidate what about his or her background suits the candidate best for the position remains fair. In both instances, an open-ended question invites a voluntary response of the candidate’s choosing. On the other hand, the Amendment prohibits leading questions that could signal to the candidate that the questioner prefers a particular answer. Leading questions about a candidate’s beliefs on matters of contemporary political debate or social action destroy the core notion of voluntariness driving the Amendment because the questions signal an expected orthodoxy or conformity from the responding candidate.

5. PROTECT FREEDOM TO INQUIRE INTO VOLUNTARY SPEECH. Nothing in the Amendment affects the ability of applications, postings, and interviewers to question an employee or applicant about public writings, public statements, messaging, or social media presence, regardless of the subject matter. This is so because the Amendment targets involuntary, i.e., compelled, speech, but does not prohibit fair inquiry into the literal and figurative speech a candidate voluntarily puts forward prior to or during the admissions, hiring, or evaluation processes, subject to applicable law.
6. FOCUS ON THE MISSION. The purpose and mission of the University of North Carolina is best described at [Chapter 116-1](#) of the North Carolina General Statutes. That statutory language

captures the broad role of the University in service to the people of North Carolina. It likely would not violate the Amendment to ask would-be employees, students, or candidates for professional advancement about their plans or ability to support the University's mission nor to ask the extent to which their background enables them to support the University's mission. These types of broad-based questions—even if asked universally—are neither specific to any one set of “beliefs, affiliations, ideals, or principals,” nor would that kind of mission-focused question signal to a candidate that the institution has a preferred orthodoxy other than the educational, research, and public service mission of the University referenced in the Amendment and established by law.

7. FOCUS ON INDIVIDUAL CANDIDATES FOR SPECIFIC POSITIONS. Chancellors and officials implementing the Amendment need not answer every conceivable hypothetical about the Amendment's reach. This is so because the Amendment directs University officials in their quest to make sound hiring, admission, and professional advancement decisions to focus on individual candidates, their experience and individual job needs, or their eligibility for admission. Generally prohibited is the practice of including topical questions across a class of job postings, promotion and tenure policies, or admissions applications that do little other than signal ideological preferences of the institutions on matters of contemporary political debate or social action. That may be appropriate for private employers. It is not for the University—which is founded on the notion that all ideas, even those that some may find disagreeable or worse, are welcome. In contrast, asking individual applicants how *their* experience and *their* expertise have prepared them for *the* role or *the* academic program in question provides ample opportunity to learn relevant information about the candidate that is directly related to the candidate's qualifications for the specific position or admission sought.
8. MECHANISM FOR SEEKING EXCEPTIONS. The Amendment contemplates that even nearly perfect rules require interpretation, application, and a mechanism for exception. So, too, here. Likely there are instances where a particular employment position requires a particular viewpoint or at least a tolerance for a viewpoint. For example, it might be useful to ask a candidate for a federal governmental relations position about his or her viewpoint on the successes (or failures) of the most recent federal Congress. Candidates for veterans' benefits director, tasked with liaising with students who are veterans about available federal benefits, might need to be asked about their viewpoints on America's duty to her veterans. Likely there are sufficiently topical faculty or teaching positions that warrant inquiry into candidates' viewpoint on and mastery of a subject matter to assess the candidates' ability to teach it. For example, a candidate for a teaching position on the topic of 20th Century social movements might be asked which movement was most politically effective—or still further, which of the movements extant today exhibit the most political durability.

These are only examples, but they bear the hallmarks of instances where the president, after discussion with the Committee on University Governance, might grant an exception. Such an exception is more likely to be granted the more a question is directly tailored to an identified employment need or an admission slot in a specific academic curriculum. As chancellors and their designees progress with implementation, bear in mind that request(s) for exception may be submitted in writing to the Office of the President in accordance with the Amendment.

9. ADDITIONAL GUIDANCE AND SUPPORT. As implementation of the Amendment proceeds, the System Office may continue to provide guidance if warranted. Additionally, upon request, the Division of Legal Affairs will assist offices of university counsel in their interpretation and application of the Amendment.