



July 20, 2017

Chancellor Carol Folt  
University of North Carolina, Chapel Hill  
Office of the Chancellor  
103 South Building  
Campus Box 9100  
Chapel Hill, NC 27599-9100

*Sent via U.S. mail and electronic mail (chancellor@unc.edu)*

Dear Chancellor Folt:

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. Our website, [thefire.org](http://thefire.org), will give you a greater sense of our identity and activities.

FIRE has closely followed the University of North Carolina, Chapel Hill's (UNC's) recent transgression against the academic freedom of Professor Jay Smith by refusing his requests to teach the course "Big-Time College Sports and the Rights of Athletes, 1956 to the Present" during the 2017–18 fall semester. We write to echo the concerns raised by 45 members of your faculty in a statement issued in November 2016 after Professor Smith was notified of the administration's decision not to schedule the class, and we ask you to follow your accrediting agency's preferred policy of directing administrative concerns about course content to the Faculty Council. Given that UNC earns FIRE's highest, "green light" rating for campus free speech, we are hopeful that your institution will act promptly and decisively to uphold the academic freedom of its faculty.

This is our understanding of the facts; please inform us if you believe we are in error.

In 2015, Professor Smith co-authored a book titled *Cheated: The UNC Scandal, the Education of Athletes, and the Future of Big-Time College Sports*. Professor Smith then developed a class, based in part on the book, covering the history of college sports, the power dynamics and lack of bargaining opportunities for athletes, and the financial pressures inherent within the

system.<sup>1</sup> According to *Inside Higher Ed*, roughly 20 percent of the class’s curriculum focused on the 2014 exposure of UNC’s creation of fake “paper classes” to ensure athletes had passing grades.<sup>2</sup> Despite Athletic Director Bubba Cunningham’s offer to teach the class instead,<sup>3</sup> Professor Smith received approval and successfully taught the course in summer 2016.

When an honors history class Professor Smith was scheduled to teach had low enrollment in fall 2016, he sought to offer the “Big-Time College Sports” course in its place. Fitz Brundage, history department chair, told Professor Smith he suspected “that there will be resistance” to requests to teach the course “from the usual suspects.” In an email, Brundage told Smith: “I have no idea about on what basis the higher administration can interfere in course scheduling but I anticipate that they will try to do so.”<sup>4</sup> The course was eventually approved.

In November 2016, Professor Smith expressed interest in teaching the class again during the fall semester of the 2017–18 academic year. However, this time Brundage denied Professor Smith’s request. Brundage claims he was approached by higher-level administrators with concerns about the course; per Brundage, it was the first time in four years that administrators had approached him with concerns about a specific class.<sup>5</sup> According to an article in *The Chronicle of Higher Education*, the dean of the College of Arts and Sciences, Kevin M. Guskiewicz, and senior associate dean Jonathan Hartlyn admit that they raised concerns about the class being taught during the fall 2016 semester, but deny that they or anyone else in the administration pressured Brundage to leave the class off the schedule in 2017.<sup>6</sup> When asked why the class was not scheduled, Brundage claimed that it was for “programmatically and strategic reasons.”<sup>7</sup>

After Smith was informed in November 2016 that the class would not be scheduled for the following fall semester, 45 members of the history department issued a statement calling the university’s actions “unprecedented.”<sup>8</sup> The statement alleges that “the College took this action to block broader understanding of the recent scandals in UNC’s major intercollegiate athletic programs and other violations of legal, moral, and academic standards in the history of modern college athletics.” Furthermore, the faculty requested that UNC follow

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<sup>1</sup> Colleen Flaherty, *A Course Too Hot to Handle?*, INSIDE HIGHER ED (June 5, 2017), <https://www.insidehighered.com/news/2017/06/05/why-did-unc-call-course-based-chapel-hill-athletic-academic-scandal>.

<sup>2</sup> *Id.*

<sup>3</sup> Email from Bubba Cunningham, Director of Athletics, to Jay Smith, Professor (May 1, 2016, 2:34 PM) (on file with author) (“I am offering to teach this class myself for free . . . I believe I would be better suited to teach this class . . . I look forward to athletics teaching this subject matter to university students.”).

<sup>4</sup> Email from Fitz Brundage, Chair, Department of History to Jay Smith, Professor (May 16, 2016, 10:39 AM) (on file with author).

<sup>5</sup> J. Clara Chan, *Can a Single Course Jeopardize an Academic Department?*, CHRON. HIGHER EDUC. (June 8, 2017), <http://www.chronicle.com/article/Can-a-Single-Course-Jeopardize/240299>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Signed Statement from history department faculty to University of North Carolina, Chapel Hill administration (Nov. 2016), available at <http://www.chronicle.com/article/Can-a-Single-Course-Jeopardize/240299>.

Comprehensive Standard 3.4.10 of the Commission on Colleges of the Southern Association of Colleges and Schools (SACSCOC 2016) and require UNC administrators in the future to place “primary responsibility for the content, quality, and effectiveness of the curriculum with its faculty.”

FIRE shares the faculty’s concerns and reiterates the demands outlined in their statement.

We remind you that academic freedom is protected by the First Amendment, which is binding on public institutions of higher education. The Supreme Court of the United States has made clear that academic freedom is a “special concern of the First Amendment,” finding that “[o]ur nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned.” *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967). As the Court remarked 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. 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 . . . 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.

The intellectual inquiry of students and faculty at UNC cannot lawfully be constrained by the administration’s apparent desire to prohibit certain viewpoints from campus, or prevent the university’s prior mistakes from being the subject of scrutiny and exploration. Justice Felix Frankfurter’s concurring opinion in *Sweezy* offers an eloquent warning against the “grave harm resulting from governmental intrusion into the intellectual life of a university:”

For society’s good—if understanding be an essential need of society—inquiries into these problems, speculations about them, stimulation in others of reflection upon them, must be left as unfettered as possible. Political power must abstain from intrusion into this activity of freedom, pursued in the interest of wise government and the people’s well-being, except for reasons that are exigent and obviously compelling.

354 U.S. at 261–62.

To our knowledge, UNC has put forth no “exigent” and “obviously compelling” reason for refusing to schedule “Big-Time College Sports.” Instead, the class appears to have been cancelled in part because of its focus on the university’s prior mistakes. That academic freedom may sometimes result in consideration of ideas or contemplation of previous wrongs of an institution is inevitable. We must learn from mistakes in order to avoid their repetition. Refusing to schedule the class deprives UNC students of a valuable opportunity to understand the relationship between universities and athletics at a time in which that relationship is the


subject of litigation and public discussion.<sup>9</sup> Equally dangerously, the administration's apparent refusal to schedule classes concerning controversial subject matter sets a dangerous precedent for your institution and other colleges. This *de facto* censorship is contrary to basic tenets of academic freedom and runs afoul of your educational mission and your obligations to uphold the First Amendment.

Following the release of the report detailing UNC's bogus paper class practices in 2014, you stated: "Academic freedom does not mean freedom from accountability. Instead, I believe very strongly that we have to hold each other accountable."<sup>10</sup> In this spirit, we ask you to reaffirm your commitment to following SACSCOC 2016 to ensure the faculty retain primary control over the curriculum. Although you claim that the class is to be scheduled again in 2018,<sup>11</sup> we ask that you adopt a policy that directs the administration to take up future objections to course curriculum with the Faculty Council.

Since earning FIRE's green light rating for campus free speech in 2015, UNC has sent a clear message to those both on and off campus that it values the First Amendment rights and academic freedom of its students and faculty.<sup>12</sup> In light of the university's green light status, we urge you to take decisive action to protect academic freedom on UNC's campus and to uphold the core rights of your faculty.

Thank you for your attention to this important issue. We request a response to this letter no later than August 10, 2017.

Sincerely,



Ari Z. Cohn, Esq.

Director, Individual Rights Defense Program.  
AZC/KTB

cc:

Carol Folt, Chancellor

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<sup>9</sup> See, e.g., *O'Bannon v. National Collegiate Athletic Ass'n*, 802 F.3d 1049 (9th Cir. 2015); *In re: National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*, 2016 WL 4154855, (N.D. Cal. 2016).

<sup>10</sup> Jake New, *Two Decades of 'Paper Classes'*, INSIDE HIGHER ED (Oct. 23, 2014), <https://www.insidehighered.com/news/2014/10/23/report-finds-academic-fraud-u-north-carolina-lasting-nearly-20-years>.

<sup>11</sup> Chan, *supra* note 5.

<sup>12</sup> Press Release, Foundation for Individual Rights in Education, University of North Carolina at Chapel Hill Earns FIRE's Highest Rating for Free Speech (July 7, 2015), *available at* <https://www.thefire.org/university-of-north-carolina-at-chapel-hill-earns-fires-highest-rating-for-free-speech/>.

Fitz Brundage, History Department Chair

Kevin M. Guskiewicz, Dean of the College of Arts and Sciences

Jonathan Hartlyn, Senior Associate Dean

Mark W. Merritt, Vice Chancellor and General Counsel