



December 7, 2018

Dr. Kenneth D. Kitts  
President's Office  
University of North Alabama  
One Harrison Plaza, UNA Box 5004  
Florence, Alabama 35632

*Sent Via U.S. Mail and Electronic Mail (president@una.edu)*

Dear President Kitts:

As you know, 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.

We initially wrote to you on November 27 to register our concern with the University of North Alabama's (UNA's) unconstitutional "media protocol" that frustrates the ability of student journalists to ask direct questions of college employees.<sup>1</sup> Our letter noted that the university had recently been censured by the College Media Association (CMA) following concerns about UNA's removal of the adviser to the student newspaper, the *Flor-Ala*. Since November 27, additional reporting by third parties and concerned organizations (including CMA and the Southeast Journalism Conference) has brought new facts to light, including a former director's contradiction of the university's claim that it had long planned to change the adviser's role. The university's position, which it could not substantiate with credible documentary evidence, now appears to have no basis in fact.

FIRE writes to you again today to express our increasing concern that the removal of adviser Scott Morris is part of an ongoing pattern of retaliatory censorship against *Flor-Ala* student journalists. These actions are unlawful, and UNA must abandon them.

## **I. Statement of Facts**

The following is our understanding of the facts based on our conversations with individuals with direct knowledge of the events; please inform us if you believe they are incorrect or incomplete. For the sake of brevity, we incorporate by reference the facts set forth in our

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<sup>1</sup> We are in receipt of your December 6 response to FIRE regarding a separate matter. Our reply is forthcoming.

November 27 letter concerning the requirement that faculty and staff filter any media responses through public relations.

On September 6, the *Flor-Ala* published a story accusing UNA of improperly withholding public records.<sup>2</sup> On September 13, Vice President for Academic Affairs and Provost Ross C. Alexander met with *Flor-Ala* adviser Scott Morris, *Flor-Ala* editors, and Communications Department Chair Butler Cain. At that meeting, Alexander (described as “frustrated” and “angry”)<sup>3</sup> said the story contained “several inaccuracies” but did not identify them.

On September 25, the *Flor-Ala* reported that many of the previously withheld records had been disclosed.<sup>4</sup> The next day, Dean of Arts and Sciences Carmen Burkhalter called Morris into her office and informed him that his position had been eliminated by Alexander roughly two weeks earlier. That would place the decision to eliminate Morris’ position at about the same time Alexander called in Morris and the student editors to complain about the publication’s content.

CMA’s press release announcing its censure of the university was released on November 26. On November 28, UNA Director of Communications and Marketing Bryan Rachal sent a statement to the *Times Daily* asserting that the decision to replace Morris’ position with a Ph.D.-level position had been underway since late 2014.<sup>5</sup>

On November 29, the Southeast Journalism Conference (SEJC) issued a letter, enclosed, condemning UNA’s actions and providing additional details on this specific point.<sup>6</sup> First, SEJC noted that Scott Morris was hired in late 2014, an odd decision if UNA was already considering changing the job description to one with different qualifications. Second, the SEJC reported that former UNA communications department head Dr. Greg Pitts, who held the position until 2015, had categorically denied that such a change had been under consideration during his time there.<sup>7</sup>

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<sup>2</sup> Harley Duncan, *Administration denies public records, in direct violation of attorney general opinion*, FLOR-ALA, Sept. 9, 2018, available at [https://www.floralanet.net/news/administration-denies-public-records-in-direct-violation-of-attorney-general/article\\_cd0b1f52-b44e-11e8-9150-8f6ce639eadea.html](https://www.floralanet.net/news/administration-denies-public-records-in-direct-violation-of-attorney-general/article_cd0b1f52-b44e-11e8-9150-8f6ce639eadea.html). The print version of the story appeared on September 6; the website uses a different publication timeline.

<sup>3</sup> Press Release, College Media Association, College Media Association Censures University of North Alabama Following Investigation (Nov. 26, 2018), [http://www.collegemedia.org/news/article\\_cacc3c70-f19e-11e8-b0fd-c3411d22a3b9.html](http://www.collegemedia.org/news/article_cacc3c70-f19e-11e8-b0fd-c3411d22a3b9.html).

<sup>4</sup> Harley Duncan, *Human resources releases Gaston’s and Shield’s personnel records, sensitive material withheld*, FLOR-ALA, Sept. 25, 2018, available at [https://www.floralanet.net/news/human-resources-releases-gaston-s-and-shield-s-personnel-records/article\\_c237611e-c0ef-11e8-bbdf-fb49acfd47b9.html](https://www.floralanet.net/news/human-resources-releases-gaston-s-and-shield-s-personnel-records/article_c237611e-c0ef-11e8-bbdf-fb49acfd47b9.html).

<sup>5</sup> Russ Corey, *UNA censured by media group*, TIMES DAILY, Nov. 28, 2018, [https://www.timesdaily.com/news/una-censured-by-media-group/article\\_4e69f4b0-4990-5add-afd7-2b0e61abd453.html](https://www.timesdaily.com/news/una-censured-by-media-group/article_4e69f4b0-4990-5add-afd7-2b0e61abd453.html).

<sup>6</sup> Memo from Southeast Journalism Conference, *Re: Student media adviser position*, Nov. 29, 2018, on file with author.

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

A 2015 email chain between UNA employees, provided to CMA during the censure investigation, also suggests the administrative intent to censor the *Flor-Ala* is not isolated or new. At the time, the *Flor-Ala* had recently moved from being under the oversight of Student Affairs to being under the school of Arts and Sciences. After negative *Flor-Ala* coverage on February 19, 2015 upset a local restaurateur and university supporter,<sup>8</sup> Dean Burkhalter wrote an email on March 6 to then-communications department chair Pitts, suggesting Pitts work on “Scott [Morris]’s job description so that we can tighten it up and expand it if needed.”<sup>9</sup>

Pitts responded:

I’ve attached the position description for Student Media adviser. . . . Certainly take some time to read and review the position description. **The last thing you want to do is create a perception of an academic unit doing something that Student Affairs did not do..attempt to restrict the newspaper’s freedom to cover stories.** While many people are not happy with the [restaurant] story, the student reporters did not make a mistake in their coverage.<sup>10</sup>

Burkhalter replied that either the newspaper would have to “improve” or the department would have to “give the newspaper back to Student Affairs.”<sup>11</sup> Burkhalter also indicated that she would “reach out to other institutions” to investigate how they are structured. In his statement to the *Times Daily*, Rachal cited Burkhalter’s March 9 request to other institutions as evidence that the change in the adviser’s role had been under consideration since then—but omitted the context that it was motivated by a desire to punish student reporting.

## **II. UNA’s Purpose in Eliminating Scott Morris’ Position is Retaliatory Censorship Calculated to Chill the Speech of its Student Journalists**

As we have explained, the First Amendment is binding on public colleges like the University of North Alabama. *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted); *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.”); *see also DeJohn v.*

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<sup>8</sup> Ashley Remkus and Anna Brown, *Employment Application for two Florence restaurants raises equality questions*, FLOR-ALA, Feb. 19, 2015, [https://www.florala.net/news/employment-application-for-two-florence-restaurants-raises-equality-questions/article\\_161d5396-b772-11e4-8c6a-f3222844dbe5.html](https://www.florala.net/news/employment-application-for-two-florence-restaurants-raises-equality-questions/article_161d5396-b772-11e4-8c6a-f3222844dbe5.html).

<sup>9</sup> Email from Carmen L. Burkhalter, Dean of Arts and Sciences, to Gregory Pitts, Communication Department Chair (March, 6, 2015, 12:35 PM) (on file with author).

<sup>10</sup> Email from Pitts to Burkhalter (March 9, 2015, 7:42 PM) (emphasis added) (on file with author).

<sup>11</sup> Email from Burkhalter to Pitts, (March 9, 2015, 7:36 AM) (on file with author). While the clock time one of the machines must be either slow or fast, the emails are threaded to make clear the order they were received.

*Temple Univ.*, 537 F.3d 301, 314 (3d Cir. 2008) (on public campuses, “free speech is of critical importance because it is the lifeblood of academic freedom”).

With regard to faculty expression at public institutions, the Court has made clear that academic freedom is a “special concern of the First Amendment,” stating 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).

At a public university, the administration is prohibited from taking *any action* designed to control, punish, or influence student media content based on a dislike of the expression in which students have engaged.

For example, a state university cannot retaliate against content by punishing or firing editors; withdrawing, withholding, or limiting funding; censoring articles or issues; “stacking” a publications board; or *any other act* with the effect or intent of manipulating, prohibiting, or inhibiting constitutionally protected expression. *Kincaid v. Gibson*, 236 F.3d 342 (6th Cir. 2001) (*en banc*) (prohibiting prior restraint); *Stanley v. Magrath*, 719 F.2d 279 (8th Cir. 1984) (prohibiting making student fee optional); *Bazaar v. Fortune*, 476 F.2d 570 (5th Cir. 1973), *modified en banc per curiam*, 489 F.2d 255 (5th Cir. 1973) (prohibiting publication delays); *Joyner v. Whiting*, 477 F.2d 466 (4th Cir. 1973) (prohibiting funding withdrawal); *Lueth v. St. Clair County Community College*, 732 F. Supp. 1410 (E.D. Mich. 1990) (prohibiting advertising restrictions); *Schiff v. Williams*, 519 F.2d 257 (5th Cir. 1975) (prohibiting firing editors); *Trujillo v. Love*, 322 F. Supp. 1266 (D. Colo. 1971) (prohibiting suspending editors from their job); *Antonelli v. Hammond*, 308 F. Supp. 1329 (D. Mass. 1969) (prohibiting prior review).

Just as the First Amendment protects freedom of expression, it protects individuals against state action designed to punish them for expression. *Bennett v. Hendrix*, 423 F.3d 1247, 1255 (11th Cir. 2005) (“This Court and the Supreme Court have long held that state officials may not retaliate against private citizens because of the exercise of their First Amendment rights.”) A state actor engages in unconstitutional retaliation when “the defendant’s allegedly retaliatory conduct would likely deter a person of ordinary firmness from the exercise of First Amendment rights.” *Id.* at 1254. In order to state a claim, the speaker must have engaged in constitutionally protected speech; the government’s retaliatory conduct must have adversely affected that speech; and that there must be a connection between the retaliatory action and the adverse effect. *Id.* at 1250; *see also Barnes v. Zaccari*, 592 Fed. Appx. 859, 867-68 (11th Cir. 2015) (reversing dismissal of retaliation claim where college president “academically withdrew” student for critical Facebook post).

No one has alleged, and no one could reasonably allege, that the stories at issue are beyond the Constitution’s protection. The removal of an adviser can be retaliatory action, if improperly motivated, and can have an adverse effect on publication. *Moore v. Watson*, 838 F. Supp 2d. 735, 760 (N.D. Ill. 2012) (ruling that adviser’s termination violated First Amendment rights of both adviser and editor and ordering adviser be returned to his position); *Coppola v. Larson*,

2006 U.S. Dist. LEXIS 51205, No. 06-2138 (D. N.J. July 26, 2006) (issuing a preliminary injunction reinstating adviser where termination appeared based on content).

In the present case there is a strong, if not conclusive, nexus between Morris' removal and administrative statements suggesting an intent to control, influence, or punish the content of the *Flor-Ala*. Among those connections:

- 1) A 2015 email chain where Dean Burkhalter promises to "investigate" how other institutions are set up when she didn't like an article on a local restaurant owner;
- 2) The claim that the intent to change the structure of the publication dated to Morris' hiring, directly contradicted by the then-Communication Department Chair, a direct supervisor of the adviser role;
- 3) An "angry" meeting<sup>12</sup> in September between the Provost, the adviser, and the editors over a dislike of content, followed almost contemporaneously by the removal of the adviser; and
- 4) Negative coverage of the decision to eliminate Morris' role followed by an ill-defined directive to college employees that they should send all media requests through the public relations department, which is itself an unconstitutional prior restraint, as explained in our November 27 letter.

In addition, the absence of a legitimate motive suggests an illegitimate one. Between FIRE's request, CMA's request, SEJC's interviews, and the extensive media coverage this issue has been given, UNA has had ample opportunity to provide documentary evidence to substantiate its stated claim of innocence. Instead, what little documentation it has provided has reinforced the connection between its attempts to control the *Flor-Ala* and its adverse job actions against Morris, and its statements have been contradicted by a former employee who would have had reason to know of their truth. It is difficult to imagine a non-retaliatory motivation UNA would have could have used to call Morris into a meeting to yell at him, then terminate him, and then impose a staff gag order that frustrates coverage of the aftermath.

### **III. Conclusion**

FIRE joins the calls of CMA, SEJC, and the *Flor-Ala* student editors in demanding that UNA abandon its path of retaliation and censorship, starting by reinstating Scott Morris as adviser and rescinding its "media protocols."

We request a response to this letter no later than the close of business on December 21, 2018.

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<sup>12</sup> According to *Inside Higher Ed*, "Morris and the students characterized Provost Ross Alexander as 'angry' and 'frustrated.'" Jeremy Bauer-Wolf, *U of North Alabama Censured Over Free Press Issues*, INSIDE HIGHER ED, Nov. 27, 2018, <https://www.insidehighered.com/quicktakes/2018/11/27/u-north-alabama-censured-over-free-press-issues>.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam Goldstein', with a long horizontal flourish extending to the right.

Adam Goldstein  
Program Officer, Individual Rights Defense Program

Cc:  
College Media Association  
Southeast Journalism Conference

Encl.



To: Kenneth Kitts, Ph.D., president, University of North Alabama  
Ross C. Alexander, Ph.D., provost, University of North Alabama

CC: Butler Cain, communications department head  
Jim Purcell, Ed.D., executive director, Alabama Commission on Higher Education  
Mr. Charles Ball, chairman, Alabama Commission on Higher Education  
Mr. Martin Abroms, UNA Board of Trustees  
Ms. Libby S. Jordan, UNA Board of Trustees  
Mr. Marcus A. Maples, UNA Board of Trustees  
Mr. Todd C. Oulette, UNA Board of Trustees  
Mr. Steven F. Pierce, UNA Board of Trustees  
Mr. William A. Trapp, UNA Board of Trustees  
Ms. Felicia Mason, executive director, Alabama Press Association

From: Southeast Journalism Conference  
Date: November 29, 2018  
Re: Student media adviser position

The Southeast Journalism Conference, of which the University of North Alabama is a member, wishes to join the College Media Association and Foundation for Individual Rights in Education in condemning what we regard as an unjust, unnecessary and seemingly punitive action in forcing media adviser Scott Morris from his position. We are also troubled by your new faculty protocols that mandate that any requests for media interviews with faculty must be screened through the administration. This not only infringes on students' First Amendment rights but undermines the principle of academic freedom as well.

The SEJC's concerns go beyond those outlined by the CMA. In his response to the CMA report that Dr. Alexander sent to faculty and staff, he insists that discussions to upgrade the media adviser's position to that of a tenure-track, full-time faculty with a Ph.D. date to "late 2014." That seems strange, as that is the same semester Mr. Morris was hired. Even if it were true that the decision had been under discussion for four long years, we agree with the CMA that the timing of the announcement, just days after the controversial Flor-Ala article that distressed the administration, seems suspiciously coincidental.

Not only that, but Dr. Greg Pitts, who was communications department head at UNA from 2009-2015, when Mr. Morris was hired and when these discussions allegedly began, disputes your contention. He emailed us:

"I NEVER initiated a request to convert the line to a tenure-track position. I don't believe anyone can produce evidence of such a request at a level above me.

*“There was no money for a faculty line in journalism and little opportunity to move the UNA program ahead. The chance to align the student newspaper with the Department of Communication, after having received an initial approval for ACEJMC accreditation, made sense. But there was no talk of converting the position to a faculty line. A Ph.D. faculty member also would not likely have the experience to serve as an adviser.*

*“If UNA asserts that discussion started in 2014 to change the position to a tenure-track line, I must add that it did NOT begin with me. If anyone asserts that I made this request, I would describe their claim as FALSE. At best, a wrong conclusion and at worst, a distortion attributed to me because I am no longer at the university and part of the discussions.”*

Please understand that we regard this as more than a simple personnel matter, or our rallying to the defense of a colleague. This involves the students' First Amendment rights. If the media adviser were to be replaced every time an article in the student paper displeases the administration, you'd need a revolving door on the Flor-Ala office. The only other alternative is to stifle your student newspaper through prior censorship and/or to place it under the control of the university's PR office to ensure milquetoast news content. That would not be the way to train student journalists for the real world of journalism.

Dr. Alexander cites the ACEJMC accreditation report, in which the ACEJMC regards it as positive that UNA has nine out of 12 faculty members with a terminal degree. We agree. That still leaves three others without a terminal degree, but the ACEJMC seemed satisfied that the glass was three-fourths full. Dr. Alexander ignored the next paragraph of the ACEJMC report, which states:

*"Many faculty members have worked in their fields of expertise, from newspaper, television and radio reporting and producing to documentary producing and consulting. While it is sometimes a challenge to find qualified communications adjuncts in smaller communities, the department has been fortunate to hire local professionals who bring years of experience as reporters, broadcasters, videographers and PR professionals into the classroom."*

It is not unusual, indeed it is quite common, for a university to have someone with a bachelor's degree and several decades of professional experience in lieu of an advanced degree to serve as student media adviser and even full-time or adjunct faculty. Several of our schools have such advisers. It is the same principle as having a writer-in-residence, or journalist-in-residence, as Alabama-Tuscaloosa has with Rick Bragg.

UNA has indeed been fortunate to have a media adviser with 30 years of professional experience, something you won't have with a newly minted Ph.D. The Flor-Ala has won numerous accolades on Scott Morris' watch, more than the average, we would estimate, for a school your size. We have examined his students' record of achievement. These are some of the garlands the Flor-Ala and its staff have achieved in just the past year:



- *Outstanding College Newspaper, American Scholastic Press Association, 2018*
- *First place with special merit, American Scholastic Press Association, 2018*
- *Outstanding front page, American Scholastic Press Association, 2018*
- *Outstanding investigative reporting, Ciera Golliver, American Scholastic Press Association, 2018 (for calendar year 2017)*
- *2<sup>nd</sup> place, best news graphic designer, David San Miguel, SEJC Best of the South, 2018 (for calendar year 2017)*
- *2<sup>nd</sup> place, best opinion-editorial writer, Monday Sanderson, SEJC Best of the South, 2018 (for calendar year 2017)*
- *Finalist, general news reporting, Harley Duncan, Society of Professional Journalists Mark of Excellence Award, 2018*
- *Finalist, feature writing, Tyler Hargett, SPJ Mark of Excellence Award, 2018*
- *Finalist, breaking news, Hillary Taylor, SPJ Mark of Excellence Award, 2018*
- *Finalist, sportswriting, Jacob Cole, SPJ Mark of Excellence Award, 2018*

SEJC's Best of the South competition has roughly 30 schools from seven states competing in most categories, including flagship schools. In the best college newspaper category, against that kind of stiff competition, the Flor-Ala placed fifth for calendar year 2015, fourth for 2016 and eighth for 2017. That is truly remarkable for a school the size of UNA.

In the SPJ Mark of Excellence competition, UNA is competing against schools in Region 3, which encompasses Alabama, Florida, Georgia, South Carolina, Puerto Rico and the U.S. Virgin Islands. Each category has one winner and two finalists.

Moreover, the Flor-Ala finished the 2018 fiscal year with the largest net profit of the past 10 years. That is a remarkable accomplishment in a time of dwindling newspaper advertising revenue nationwide. As professors and advisers, we continually hear stories from our colleagues about their difficulties stemming from losses in sales. The profit and resulting financial stability that the Flor-Ala currently enjoys could not have happened without experienced and dedicated leadership. Thus, your decision is not only ethically irresponsible, it is financially unwise.

We urge you to rethink that decision. To use the old axiom, "If it ain't broke, don't fix it." The Flor-Ala ain't broke. Don't tinker with proven success, not if you care about the kind of journalism education you say you want for your students.

Something else for you to consider is that UNA was suggested at our last convention as the site for the 2021 SEJC convention. Our conventions average 290-320 students and faculty from seven states. Hosting a SEJC convention brings prestige for accreditation purposes, as well as being an economic boost to the community. That would prove impossible with a brand-new hire who is unfamiliar with the organization.

The SEJC is an organization dedicated to the furtherance of excellence in journalism education and student press freedom. It is composed of almost 40 college and university journalism programs, in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi and Tennessee.

Yours most respectfully,

Leon Alligood, Ph.D.  
Middle Tennessee State University  
SEJC president

Robert Buckman, Ph.D.  
University of Louisiana at Lafayette (retired)  
SEJC past president

Bryce McNeil, Ph.D.  
Georgia State University  
SEJC Treasurer, past president

Tomi McCutchen, M.A.  
University of Tennessee at Martin  
SEJC past president  
(former colleague of Mr. Morris at the Decatur Daily)