

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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<https://oversight.house.gov>

November 18, 2021

Dr. Wesley Kent Fuchs
President
University of Florida
226 Tigert Hall
P.O. Box 113150
Gainesville, FL 32611

Dear President Fuchs:

We write with deep concern about recent actions by the University of Florida (UF) to prevent professors from providing testimony and written submissions in litigation challenging the constitutionality of actions taken by the state of Florida, in violation of the First Amendment and in contravention of long-established principles of academic freedom.

According to reports, in July 2020, UF revised its conflicts-of-interest policy to require all employees to seek approval from the university before engaging in outside activities.¹ Prior to this change, employees only needed to notify the university of their outside activities and financial interests as they arose.² UF professors reportedly objected to this change, expressing concerns that the policy would be “used as a prior restraint on speech.”³ The professors’ fears were confirmed when UF subsequently prevented multiple faculty members from participating in litigation raising legal and constitutional concerns related to criminal justice reform, voter suppression laws, and the state’s ban on mask mandates.⁴

¹ University of Florida, *Conflicts of Commitment and Conflicts of Interest* (Nov. 10, 2020) (online at policy.ufl.edu/policy/conflicts-of-commitment-and-conflicts-of-interest/). According to this policy, “outside activities” are defined as “any paid or unpaid activity undertaken by an Employee outside of the University which could create an actual or apparent Conflict of Commitment or Conflict of Interest. Outside Activities may include consulting, participating in civic or charitable organizations, working as a technical or professional advisor or practitioner, or holding a parttime job with a another employer.”

² Memorandum from Joseph Glover, Provost and Senior Vice President for Academic Affairs, and Jodi Gentry, Vice President for Human Resource Services, University of Florida, *Reporting Outside Activities and Potential Conflicts of Interest* (Nov. 6, 2018) (online at hr.ufl.edu/memoranda/uf-administrative-memo-reporting-outside-activities-and-potential-conflicts-of-interest/).

³ *President Fuchs Asks University to Reverse Decision Barring Professors from Testifying*, Independent Florida Alligator (Nov. 5, 2021) (online at www.alligator.org/article/2021/11/faculty-senate-meeting).

⁴ *UF Restricted Five Other Professors’ Participation in Legal Cases Against the State*, Miami Herald (Nov. 2, 2021) (online at www.miamiherald.com/news/politics-government/article255487301.html).

We are concerned that UF is censoring its faculty based on viewpoint, which would set a dangerous precedent that flies in the face of its own commitment to freedom of expression.⁵ We are also concerned that, possibly due to pressure from trustees, politicians, or others, UF has adopted and enforced a conflicts policy that undermines the academic and free speech values that are essential to American higher education. As one of the top five public research universities in the nation, UF must ensure that it is not creating the appearance of anticipatory obedience or that it is responding to political pressure in deciding which speech activities it will permit.

In July 2020, under its new policy, UF prevented four law professors—Kenneth Nunn, Sarah K. Wolking, Teresa Jean Reid, and Mark Fenster—from referencing their university affiliation in an amicus brief submitted in support of challenges to the state legislature’s changes to a constitutional amendment restoring the voting rights of felons in Florida—the same litigation in which UF political science professor Daniel Smith participated as an expert witness in 2019.⁶ According to reports, UF subsequently denied three requests from Dr. Jeffrey L. Goldhagen, a pediatrician and UF medical school professor, to testify in lawsuits challenging Governor Ron DeSantis’s July 2021 ban on school districts’ mask mandates, even though he would not have received any compensation.⁷

In October 2021, UF initially blocked three more professors—Daniel Smith, Sharon Austin, and Michael McDonald—from testifying as experts in a lawsuit challenging Florida’s new restrictive voting law, S.B. 90.⁸ In denying the professors’ requests to testify, UF officials explained that because the school is a state institution, testifying in litigation that conflicts with Governor Ron DeSantis’s administration “is adverse to U.F.’s interests.”⁹ UF’s decision came approximately one week after two of the professors published an October 7, 2021, op-ed in the *Tampa Bay Times* accusing the state legislature of violating Florida’s 2010 anti-gerrymandering Fair Districts constitutional amendments.¹⁰

Until last year, UF had a longstanding practice of allowing professors to participate in administrative and judicial proceedings even when seemingly “adverse to the university’s interests as a state of Florida institution.”¹¹ For example, prior to July 2020, Professor Smith

⁵ University of Florida, *Freedom of Expression Statement* (Apr. 12, 2019) (online at <http://statements.ufl.edu/statements/2019/april/freedom-of-expression-statement.html>).

⁶ *Id.*

⁷ *U. of Florida Doctor Says Administrators Blocked Him from Participating in Lawsuits About Masking*, Chronicle of Higher Education (Nov. 2, 2021) (online at www.chronicle.com/article/u-of-florida-doctor-says-administrators-blocked-him-from-participating-in-lawsuits-about-masking). Despite UF’s denial, Dr. Goldhagen provided written declarations in at least two cases and requested to be subpoenaed in a third case.

⁸ *Florida Bars State Professors from Testifying in Voting Rights Cases*, New York Times (Nov. 4, 2021) (online at www.nytimes.com/2021/11/04/us/florida-professors-lawsuit.html).

⁹ *In “Chilling” Decision, UF Professors Have Been Barred from Testifying Against Florida*, Miami Herald (Oct. 31, 2021) (online at www.miamiherald.com/article255409716.html).

¹⁰ *Id.*; see also *What Is the Florida Legislature Hiding*, Tampa Bay Times (Oct. 7, 2021) (online at www.tampabay.com/opinion/2021/10/07/what-is-the-florida-legislature-hiding-on-redistricting-column/).

¹¹ *Florida Bars State Professors from Testifying in Voting Rights Cases*, New York Times (Nov. 4, 2021) (online at www.nytimes.com/2021/11/04/us/florida-professors-lawsuit.html). For example, Professor Smith, one of

served as an expert witness in numerous voting rights lawsuits in which the state was named as a defendant. According to Professor Smith, in the past, UF “celebrated” professors’ involvement in activities that brought “national recognition to UF.”¹² Smith was even allowed to serve as a consulting expert in lawsuits against the university involving early voting on college campuses in Florida.¹³

After significant backlash, on November 5, 2021, you indicated plans to reverse course regarding Professors Smith, Austin, and McDonald’s participation in the S.B. 90 litigation, requesting that UF officials “approve the requests regardless of personal compensation, assuming the activity is on their own time without using university resources.” You also ordered a task force to “review UF’s practice regarding requests for approval of outside activities involving potential conflicts of interest and conflicts of commitment.”¹⁴ This was an important reversal, but many questions remain about whether UF’s conflicts-of-interest policy is still in effect and, if so, whether the university will continue to implement the policy in a manner inconsistent with the First Amendment.

The Subcommittee is investigating the extent to which your university’s actions have undermined the integrity of academic freedom and interfered with employees’ constitutional right to speak freely as private citizens on matters of great public concern. In addition, we seek to understand the extent to which federally funded universities use conflicts-of-interest policies to censor employees who oppose the interests of the political party in power.

Protecting First Amendment rights is a priority for the Subcommittee on Civil Rights and Civil Liberties and falls squarely within Congress’s constitutional oversight authority.¹⁵ The Oversight Committee, under the leadership of both Democratic and Republican chairs, has previously investigated potential deprivations of First Amendment rights by government actors—including public universities.¹⁶

the academics who was blocked from testifying against the state of Florida in the S.B. 90 litigation, has served as an expert witness in numerous voting rights lawsuits in which the governor and secretary of state were named as defendants over the past decade.

¹² *UF Professors Could Testify in Voting Rights Case if They Were Unpaid, Spokeswoman Says*, Gainesville Sun (Oct. 31, 2021) (online at www.gainesville.com/story/news/education/campus/2021/10/31/university-of-florida-spokeswoman-three-professors-could-testify-if-unpaid/6223947001/).

¹³ *Id.*

¹⁴ President Kent Fuchs, University of Florida, *Message from President Fuchs—Outside Activities by UF Employees Involving Litigation in Which the State of Florida Is a Party* (Nov. 5, 2021) (online at statements.ufl.edu/statements/2021/november/message-from-president-fuchs---outside-activities-by-uf-employees-involving-litigation-in-which-the-state-of-florida-is-a-party.html).

¹⁵ *See, e.g., Barenblatt v. U.S.*, 360 U.S. 109, 111 (“The scope of the power of inquiry, in short, is a penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.”).

¹⁶ *See, e.g.*, Subcommittee on Healthcare, Benefits, and Administrative Rules and Subcommittee on Intergovernmental Affairs, Committee on Oversight and Reform, *Hearing on Challenges to Freedom of Speech on Campus*, 116th Cong. (July 27, 2017) (online at republicans-oversight.house.gov/hearing/challenges-freedom-speech-college-campuses/); Subcommittee on Healthcare, Benefits, and Administrative Rules and Subcommittee on Intergovernmental Affairs, Committee on Oversight and Reform, *Hearing on Challenges to Freedom of Speech on*

For these reasons, we request that you produce the following information by December 2, 2021:

1. Identify all individuals who were consulted or otherwise involved in the creation, revision, or development of UF's 2020 Conflicts of Commitment and Conflicts of Interest policy and any other policies related to requests to participate in outside activities; and
2. For each request by a UF professor to engage in outside activities that was denied under UF's Conflicts of Commitment and Conflicts of Interest policy or a related policy from January 1, 2015, to the present, provide:
 - a. the name, title, and department of the professor;
 - b. the nature of the request;
 - c. a detailed explanation for the denial;
 - d. the name, title, and role of each individual involved in reviewing or denying the request; and
 - e. whether President Fuchs, Provost Glover, or any member of the board of trustees were made aware of any request prior to denial, or were involved in the decision making process;

In addition, we request that you produce the following documents by December 2, 2021:

1. All conflicts of interest policies in effect from January 1, 2015, to the present;
2. All documents, including but not limited to board of trustees meeting minutes, and communications sent, received, or created by President Fuchs, Provost Glover, Assistant Vice President Wimsett or a member of his team, or any member of the board of trustees, related to the creation, revision, or development of UF's 2020 Conflicts of Commitment and Conflicts of Interest policy, including any communications with the Executive Office of the Governor or any members of the Florida legislature;

Campus Part II, 116th Cong. (May 22, 2018) (online at republicans-oversight.house.gov/hearing/challenges-to-the-freedom-of-speech-on-college-campuses-part-ii/); Subcommittee on Civil Rights and Civil Liberties, *Briefing on First Amendment Violations at Black Lives Matter Protests*, 116th Cong. (June 29, 2020) (online at oversight.house.gov/legislation/briefings/select-subcommittee-briefing-on-first-amendment-violations-at-black-lives). At the 2017 joint subcommittee hearing, Rep. Jim Jordan, then-Chairman of the Subcommittee on Healthcare, Benefits, and Administration, stated, "This committee is committed to help colleges reinstate the freedom of speech as an important protection. After all, it is no coincidence that the Constitution's Framers prioritized the freedom of speech in the First, the First Amendment."

3. All documents and communications related to concerns, complaints, or objections raised or submitted by UF faculty or third parties in response to UF's July 2020 Conflicts of Commitment and Conflicts of Interest policy;
4. All documents and communications sent, received, or created by President Fuchs, Provost Glover, Assistant Vice President Wimsett or a member of his team, or any member of the board of trustees, related to Professors Daniel Smith and Michael McDonald's October 7, 2021, op-ed in the *Tampa Bay Times*;
5. For requests by Professors Daniel Smith, Michael McDonald, and Sharon Austin to serve as expert witnesses in *Florida Rising Together, et al. v. Lee, et al.* (Case No. 4:21-cv-00201-MW/MJF) (N.D. Fl.); by Dr. Jeffrey L. Goldhagen to participate in litigation involving Florida's mask mandates in schools; and by any UF Levin College of Law Professor, including Professors Kenneth Nunn, Sarah K. Wolking, Teresa Jean Reid, and Mark Fenster, to participate in the amicus brief filed in *Jones, et al. v. Florida, et al.* (Case No. 4:19-cv-00300) (N.D. Fl.):
 - a. Documents sufficient to show the identity of any individual with whom Assistant Vice President Wimsett, Dean David E. Richardson, Dean Laura Ann Rosenbury, or any members of their team, communicated about the requests; and
 - b. All documents and communications sent, received, or created by Assistant Vice President Wimsett, Dean David E. Richardson, Dean Laura Ann Rosenbury, or a member of their teams, related to the requests;
6. All documents and communications sent, received, or created by President Fuchs, Provost Glover, or any member of the board of trustees regarding any request to engage in outside activities responsive to Request for Information 2, above;
7. All documents and communications related to President Fuchs's task force examining outside activities by UF employees involving litigation in which the state of Florida is a party, including all preliminary and final recommendations; and
8. All communications from January 1, 2017, to present involving President Fuchs, Provost Glover, or any member of the board of trustees and anyone in the Executive Office of the Governor, the Florida Department of Education, or the Florida legislature regarding UF faculty participating in administrative or judicial proceedings related to the state.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. An attachment to this letter provides additional instructions for responding to the Committee's request. If you have any questions regarding these requests, please contact Subcommittee staff at (202) 225-5051.

We look forward to your prompt reply.

Sincerely,



Jamie Raskin
Chairman
Subcommittee on Civil Rights and
Civil Liberties



Debbie Wasserman Schultz
Member of Congress

Enclosure

cc: The Honorable Nancy Mace, Ranking Member
Subcommittee on Civil Rights and Civil Liberties

Mr. Joseph Glover, Provost
University of Florida

Mr. Gary Wimsett, Assistant Vice President for Conflicts of Interest
University of Florida

Ms. Laura Ann Rosenbury, Dean
University of Florida Levin College of Law

Mr. David E. Richardson, Dean
University of Florida College of Liberal Arts and Sciences

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.