



November 24, 2021

Jay C. Hartzell
President & Trammel Crow Regents Professor of Finance
The University of Texas at Austin
110 Inner Campus Drive, G3400
Austin, Texas 78712-3400

URGENT

Sent via Electronic Mail (president@utexas.edu)

Dear President Hartzell:

FIRE¹ is concerned by the suspension of research at the University of Texas at Austin in response to a citizen’s complaint to the Office for Civil Rights of the United States Department of Education.

Our understanding of the suspension of the “GoKAR!” research project—which seeks to evaluate the feasibility of a potential program to facilitate caretakers’ ability to “engage in dialogue about anti-Black racism with their preschool-aged children at home”—is drawn from the November 22, 2021, report in the *Texas Tribune*.² We incorporate by reference the assertions there and invite you to provide any additional or contrary information that would change the analysis that follows. If, however, those allegations are substantially accurate, the suspension of the GoKAR! project is at odds with UT Austin’s commitment to academic freedom and its obligations as a public university bound by the First Amendment.³

As “[o]ur Nation is committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned,” academic freedom is “a special concern of the First Amendment.”⁴ These rights, as university policy recognizes, extend to the

¹ As you may recall from prior correspondence, 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.

² Kate McGee, *UT-Austin professors criticize university for halting anti-racism study with preschoolers*, TEXAS TRIB. (Nov. 22, 2021), <https://www.texastribune.org/2021/11/22/university-texas-austin-antiracism-preschoolers>.

³ *Healy v. James*, 408 U.S. 169, 180 (1972).

⁴ *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967).

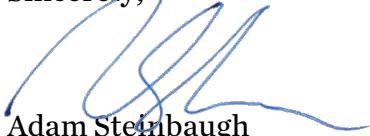
“full freedom in research,” which includes the right to “[s]tudy, investigate, discover, create, and develop professionally.”⁵

The extraordinary act of suspending faculty research risks irreparable harm to that research. Suspending research, particularly in a publicized manner, risks introducing variables unanticipated by the researchers or their peers when evaluating study design and efficacy prior to launch, as well as the possibility that prospective subjects might be dissuaded from participating. Moreover, the researchers’ right to academic freedom to conduct their research under the First Amendment is denied for as long as the suspension lasts. Because of the risks and constitutional harms accompanying the university’s action, we call on UT Austin to expeditiously resolve its inquiry and allow the research to resume.

Given the risks engendered by the suspension of the research, we have serious doubts that this extraordinary act can be justified by the university’s receipt of a complaint—from a serial complainant with no plausible claim to having been subject to discrimination—which seeks to apply federal nondiscrimination law in an unusual manner. FIRE is not aware of, and has not been able to locate, a decision of any federal court, nor any regulatory action, asserting that research into discrete populations violates the Equal Protection Clause or Title VI of the Civil Rights Act of 1964.⁶ To the contrary, guidance of the National Institutes of Health acknowledges that civil rights protections should not “alter the fundamental manner in which research projects are designed, conducted, or funded,” as “criteria in research protocols that target or exclude certain populations are warranted where nondiscriminatory justifications establish that such criteria are appropriate with respect to . . . the scientific study design [or] the purpose of the research.”⁷

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Wednesday, December 1, 2021, confirming that UT Austin has permitted the GoKAR! research to proceed as planned.

Sincerely,



Adam Steinbaugh
Director, Individual Rights Defense Program

Cc: Provost Sharon Wood
Dean Charles Martinez, College of Education

⁵ UNIV. OF TEX. SYS. BD. OF REGENTS, Rule 31004: Rights and Responsibilities of Faculty Members (rev. Dec. 10, 2004), *available at* <https://www.utsystem.edu/board-of-regents/rules/31004-rights-and-responsibilities-faculty-members>.

⁶ We are likewise skeptical that the instant research—comparable to conducting a focus group to evaluate a given population’s perspective on a planned project—can properly be characterized as a “program or activity” that excludes others’ participation or denies benefits.

⁷ NAT’L INST. OF HEALTH, Notice No. NOT-OD-15-152, *Civil Rights Protections in NIH-Supported Research, Programs, Conferences and Other Activities* (Sept. 8, 2015), <https://grants.nih.gov/grants/guide/notice-files/NOT-OD-15-152.html>.