



December 2, 2021

Dr. W. Kent Fuchs  
Office of the President  
University of Florida  
226 Tigert Hall  
P.O. Box 113150  
Gainesville, Florida 32611

**URGENT**

*Sent via U.S. Mail and Electronic Mail (president@ufl.edu)*

Dear President Fuchs:

FIRE<sup>1</sup> appreciates that the University of Florida (UF) is one of the few institutions in the country whose policies earn a “green light” rating from FIRE. However, we are concerned by reports, including those alleged in a faculty grievance, that UF has pressured faculty to avoid the use of the terms “critical” or “critical race” in syllabi or course design due to concerns that these materials will attract negative attention from lawmakers or the public.<sup>2</sup>

We understand that the university has, through a spokesman, countered that the grievance contains “a number of inaccuracies,” and we invite the university to share with us what those inaccuracies may be. However, if the allegations as reported are substantially true, they raise considerable concerns for the state of faculty members’ academic freedom, which secures faculty members’ right to design their courses and communicate pedagogically relevant material and ideas, as well as accurate descriptions of those courses, to students.

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<sup>1</sup> As you may recall, 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.

<sup>2</sup> Divya Kumar, *At UF, someone used ‘critical’ and ‘race’ in a sentence. Trouble ensued.*, TAMPA BAY TIMES (Nov. 30, 2021), <https://www.tampabay.com/news/education/2021/11/30/at-uf-someone-used-critical-and-race-in-a-sentence-trouble-ensued>; Emma Pettit, *‘It Just Felt Wrong:’ U. of Florida Faculty Say Political Fears Stalled an Initiative on Race*, CHRON. HIGHER EDUC. (Nov. 30, 2021), <https://www.chronicle.com/article/it-just-felt-wrong-u-of-florida-faculty-say-political-fears-stalled-an-initiative-on-race> (describing a faculty grievance as painting “a portrait of university administrators who are hesitant to rile a potentially hostile Republican legislature, and who are willing to compromise faculty autonomy to avoid essentially poking the bear.”).

It has long been settled that the First Amendment is binding on public universities like UF.<sup>3</sup> The First Amendment protects the academic freedom of faculty at public universities, which is “a special concern to the First Amendment” as “[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.”<sup>4</sup> Apart from faculty members’ expressive rights, the First Amendment also protects the rights of students to receive information unfettered by the “pall of orthodoxy.”<sup>5</sup>

UF itself recognizes the importance of academic freedom and promises to protect it, stating in university policy that “academic freedom and responsibility are essential to the full development of a true university.”<sup>6</sup> Likewise, UF’s collective bargaining agreement with faculty provides that “academic freedom is a right protected by this Agreement in addition to a faculty member’s constitutionally protected freedom of expression and is fundamental to the faculty member’s responsibility to seek and to state truth as he/she sees it.”<sup>7</sup> UF further “recognizes that internal and external forces may seek at times to restrict academic freedom, and the University shall maintain, encourage, protect and promote academic freedom.”<sup>8</sup>

The reports alleging that UF administrators directed faculty to avoid specific words in course titles or program design, if accurate, pose a serious chilling effect on the academic freedom protected by the First Amendment and UF policy. Limits on specific words in this context, whether by practice or policy, will frustrate the ability of faculty to communicate accurate information to students about the subject matter of their courses, and deter faculty from including the subjects at all. Academic freedom requires that faculty be given wide latitude to use their academic judgment and expertise in deciding how to approach and describe particular subjects, questions, and material. The First Amendment broadly protects the academic freedom of faculty members to discuss material “germane to the classroom subject matter” in the manner of their choosing, even if it causes “discomfort” or offends activists or politicians outside of the classroom.<sup>9</sup>

Requiring or asking faculty to avoid certain words inhibits their ability to communicate accurate information to students. For example, public reporting notes that Ester de Jong, Director of the School of Teaching and Learning, told Busey to change the title of the concentration “Critical Study of Race, Ethnicity, and Culture in Education,” adding that Busey could continue teaching as he had been.<sup>10</sup> Ordering faculty to alter their language in response to political concerns—language that is essential to the effective communication of

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<sup>3</sup> *Healy v. James*, 408 U.S. 169, 180 (1972).

<sup>4</sup> *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

<sup>5</sup> *Bd. of Educ. v. Pico*, 457 U.S. 853, 871 (1982).

<sup>6</sup> Freedom of Expression Statement, UNIV. OF FLA., <http://statements.ufl.edu/statements/2019/april/freedom-of-expression-statement.html> (last visited Dec. 1, 2021).

<sup>7</sup> Collective Bargaining Agreement between the University of Florida Board of Trustees and the United Faculty of Florida § 10.1 (2021-24), available at <https://hr.ufl.edu/wp-content/uploads/2021/08/2021-2024-UFF-UF-Collective-Bargaining-Agreement.pdf>.

<sup>8</sup> *Id.*

<sup>9</sup> *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 675–683 (6th Cir. 2001).

<sup>10</sup> Kumar, *supra* note 1.

ideas—violates their right to academic freedom. In this instance, students will in turn be unable to rely on accurate information to decide which courses to take and what to expect from those courses.

Administrators’ apparent justification for these restrictions—minimizing the possibility of drawing negative attention from the public or from political leaders opposed to the teaching of certain subjects—strongly suggests that the censorship of the curriculum will not be limited to course or program titles. Even if it were so limited, UF’s actions will cause faculty to obscure the true nature and content of courses and programs protected by academic freedom.

Moreover, limiting faculty’s use of specific, pedagogically relevant words is futile and misguided. As the Supreme Court said in *Cohen v. California*, “the state has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us,” so it is a fool’s errand to distinguish one word from any other polarizing word.<sup>11</sup> UF’s actions run contrary to this principle.

Finally, UF cannot decide what courses its colleges and departments will teach at the behest of lawmakers. Taking such action because of the *anticipated* response from lawmakers violates UF’s commitment to resist “external forces [that] may seek at times to restrict academic freedom” and imposes the impermissible pall of orthodoxy warned of in *Keyishian*. In that case, the Court held that state lawmakers could not interfere directly in the academic activities of faculty through statutes and regulations.<sup>12</sup> If lawmakers could not act directly to impose the “pall of orthodoxy” in *Keyishian*, it follows that the mere fear that they *might* act cannot justify administrators placing limits on academic speech.

We call on UF to affirm that it will not discipline or interfere with the pedagogical autonomy of Busey or any other faculty member based on the language that they choose to describe their courses, programs, or concentrations or the content therein. We request receipt of a response to this letter by December 9, 2021.

Sincerely,



Joshua Bleisch  
Faculty Legal Defense Fund Fellow

Cc: Chris Haas, Associate Provost for Academic and Faculty Affairs  
Glenn Good, Dean, School of Human Development and Organizational Studies in  
Education

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<sup>11</sup> See, *Cohen v. California*, 403 U.S. 15, 25 (1971).

<sup>12</sup> *Keyishian v. Bd. of Regents*, 385 U.S. 589, 609–10 (1967).