

# Policy Recommendations

There are two potential avenues through which to address these abuses in the University of North Carolina System: through the judicial system or through the legislature.

## Judicial

One way to address the unconstitutional policies in force in the University of North Carolina System is by mounting legal challenges to one or more of the policies. As discussed in detail in this Report, speech codes similar to those in North Carolina have been struck down in federal courts across the country, including in Michigan, Pennsylvania, Texas, and Wisconsin. Moreover, several public institutions in North Carolina maintain policies *nearly identical* to those struck down by other courts, and so they are particularly ripe for legal challenge.

Based on existing legal precedent, we believe that speech codes at the following institutions are particularly vulnerable: Appalachian State University, East Carolina University, North Carolina Central University, North Carolina School of the Arts, UNC Asheville, UNC Charlotte, UNC Greensboro, UNC Pembroke, UNC

Wilmington, and Winston Salem State University. In FIRE's experience,<sup>1</sup> this type of litigation has an extremely high success rate, and litigation in the North Carolina system has the potential to set precedent for the whole region.

## Legislative

Another potential avenue for addressing these unconstitutional policies is through North Carolina's legislature. The Pennsylvania House of Representatives recently created a committee on student academic freedom, before which then-FIRE President David French recently testified. In response to a legislator's question about how the legislature might address the numerous unconstitutional speech codes in Pennsylvania state schools, French suggested that one possibility was to craft a uniform anti-harassment policy, based on the state's constitutional

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<sup>1</sup> FIRE has an ongoing Speech Codes Litigation Project, in which cooperating attorneys from FIRE's Legal Network challenge unconstitutional speech codes at institutions across the country. To date, four institutions have been successfully sued as part of the Project, and there have been no unsuccessful lawsuits.

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workplace harassment policy, which would replace the existing unconstitutional policies and would constitute the only such policy at each and every institution in the Pennsylvania system.

Perhaps if the abuses in the University of North Carolina System were brought to the attention of North Carolina's legislators, the legislature would be willing to consider a similar measure.

# Conclusion

The foregoing Report illustrates the unfortunate reality that North Carolina's state-supported institutions of higher education are, in many cases, failing to uphold the most basic constitutional rights of their students and faculty.

In numerous cases across the country, federal courts have held that public universities' speech codes are unconstitutional. And a federal court in North Carolina recently held that the nondiscrimination policy in force at many North Carolina institutions is likely unconstitutional as well. North Carolina's public colleges and universities should know that it is unlikely—if not impossible—that most of the policies discussed in this Report could survive a constitutional challenge.

Unconstitutional restrictions of fundamental American freedoms are, of course, not confined to North Carolina's colleges and universities alone—this is a national scandal. Nonetheless, North Carolina's institutions of higher education should not be content to maintain a low standard in the area of fundamental American rights.

While North Carolina's state-funded institutions of higher education might seem at times to believe that

they exist in a vacuum, the truth is that neither our nation's courts nor its people look favorably upon speech codes or other restrictions on basic freedoms.

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*The information contained in this Report was gathered from the University of North Carolina System schools' websites and from printed materials and was last checked in December 2005. The Pope Center for Higher Education Policy and the Foundation for Individual Rights in Education are not responsible either for changes made to the policies after this date or for changes that were made but not applied to the language of the policies before this date. Excerpted text reflects our judgment about what will be of interest to the general public. The excerpted text is only a small portion of a campus' policies. All policies cited in the Report are on file with the Foundation for Individual Rights in Education.*