



FIRE

Foundation for Individual
Rights and Expression

February 21, 2023

Dr. Debra A. Schwinn
Office of the President
Palm Beach Atlantic University
901 South Flagler Drive
P.O. Box 24708
West Palm Beach, Florida 33416-4708

URGENT

Sent via U.S. Mail and Electronic Mail (pres@pba.edu)

Dear President Schwinn:

FIRE¹ is concerned about the state of academic freedom at Palm Beach Atlantic University after reports that English Professor Samuel Joeckel's contract renewal was delayed and is contingent on a review of material in the racial justice unit of his composition course.² Joeckel said a dean told him after class last week that you had "received an angry phone call from a parent" accusing Joeckel of "indoctrinating" students.³ PBA's investigation violates Joeckel's pedagogical autonomy—protected by basic tenets of academic freedom—to determine whether and how to introduce or approach material that may challenge, upset, or even deeply offend some people.

The university's course of conduct raises serious concerns about the veracity of its clear, public commitments to academic freedom, such as PBA's own statements, in its Academic Freedom and Responsibility Policy, affirming "the rights of a teacher to teach, investigate, and publish

¹ The Foundation for Individual Rights and Expression is a nonpartisan nonprofit dedicated to defending freedom of speech. For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at thefire.org.

² Scott Jaschik, *Professor's Job Endangered for Teaching About Race*, INSIDE HIGHER ED, Feb. 20, 2023, <https://www.insidehighered.com/news/2023/02/20/professors-job-endangered-teaching-about-race> [<https://perma.cc/9MNM-2QF7>]. The recitation of facts here reflects our understanding of the facts. We appreciate that you may have additional information to offer and invite you to share it with us.

³ *Id.*

freely” and “the rights of students to . . . learn[.]”⁴ Faculty members reading this unequivocal promise would be confident they have academic freedom at PBS.⁵

Any modern conception of academic freedom embraces substantial breathing room for a professor to choose whether, when, and how to teach, write, or discuss material germane to the topic of the course. The American Association of University Professors (AAUP), whose gold-standard statements on faculty rights have been cited for nearly a century, defines freedom in teaching to include the faculty’s right to determine how to teach their courses:⁶

The freedom to teach includes the right of the faculty to select the materials, determine the approach to the subject, make the assignments, and assess student academic performance in teaching activities for which faculty members are individually responsible, **without having their decisions subject to the veto of a department chair, dean, or other administrative officer.**

Courts have held that private institutions that promise free expression and academic freedom are bound to honor those commitments.⁷ PBA is also required to keep its free speech promises if it wishes to keep its accreditation. The Southern Association of Colleges and Schools Commission on Colleges, which accredits PBA, requires member institutions to protect “the right of faculty members to teach, investigate, and publish freely; and the right of students to access opportunities for learning and for the open expression and exchange of ideas.”⁸ It also enforces each “institution’s obligations to foster intellectual freedom of faculty to teach, serve, research, and publish.”⁹

As for the normative case for free expression in the classroom, the Supreme Court has stressed the critical importance of academic freedom to the very fabric of our society, writing in 1957:¹⁰

[t]he essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate

⁴ *Academic Freedom and Responsibility*, PALM BEACH ATL. UNIV. (rev. Nov. 18, 2019), <https://my.pba.edu/ICS/staticpages/policies/Academic%20Freedom%20and%20Responsibility.pdf?t=636310614553113583> [<https://perma.cc/V8FV-UUB8X>].

⁵ While not bound by the First Amendment, PBA students and faculty will reasonably interpret the university’s commitment to freedom of expression to be in line with the First Amendment’s protections.

⁶ *Statement on the Freedom to Teach*, AAUP (Nov. 7, 2013), https://www.aaup.org/file/2013-Freedom_to_Teach.pdf (emphasis added) [<https://perma.cc/WWB8-37B3>].

⁷ *McAdams v. Marquette Univ.*, 2018 WI 88, ¶84 (2018) (private Catholic university breached its contract with a professor when it punished him for a personal blog post because, by virtue of its adoption of the 1940 AAUP Statement of Principles on Academic Freedom, the blog post was “a contractually-disqualified basis for discipline”).

⁸ SOUTHERN ASS’N OF COLLEGES AND SCHOOLS COMM’N ON COLLEGES, *The Principles of Accreditation: Foundations for Quality Enhancement* (effective Dec. 2017), <https://sacscoc.org/app/uploads/2019/08/2018PrinciplesOfAccreditation.pdf> [<https://perma.cc/T9MG-HNZH>].

⁹ *Id.*

¹⁰ *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation . . . Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

Joeckel’s pedagogical choice to include a racial justice unit in a writing course is germane to the subject and wholly protected by academic freedom. While an institution may generally decline to renew a faculty member’s contract for a good reason, a poor reason, or no reason at all, it *cannot* do so for a retaliatory reason, including retaliation for the expression of protected speech.¹¹ Nor may a university that promises free expression investigate faculty for their protected speech alone, as doing so casts an impermissible chilling effect over professors who may fear that teaching controversial material may jeopardize their jobs. Here, PBA has made clear its investigation and any subsequent non-renewal would be in retaliation for Joeckel’s speech alone. Such a result cannot stand at any institution that promises faculty academic freedom. PBA accordingly must reverse course.

We note that PBA’s action against Joeckel for allegedly “indoctrinating” students coincided with a visit by Gov. Ron DeSantis, who has pledged to eliminate “woke indoctrination” in higher education, including through Florida’s House Bill 7—known as the “Stop W.O.K.E. Act”—which limits what public college faculty can say about gender and race.¹² HB7 not only violates public faculty’s First Amendment-protected right to academic freedom but interferes with students’ right to receive information about these issues unfettered by a “pall of orthodoxy” in higher education.¹³ If PBA’s action is motivated by concern for its obligations under the Stop W.O.K.E. Act, that concern is unwarranted. Setting aside whether the Act would restrict teaching at a private institution at all, its enforcement in the context of both public universities and private entities has been enjoined by a federal court due to its chilling effect on expression and academic freedom.¹⁴ Against this backdrop, PBA must meet its binding legal, moral, and accreditation-related commitments to honor academic freedom even amidst intense public pressure to abandon these important principles.

¹¹ See, e.g., *Perry v. Sindermann*, 408 U.S. 593, 598 (1972) (“[T]he nonrenewal of a nontenured public school teacher’s one-year contract may not be predicated on his exercise of First and Fourteenth Amendment rights.”) (internal citations omitted); see also *Jones v. Matkin*, ___ F.Supp.3d ___, 2022 U.S. Dist. LEXIS 153258 (E.D. Tex.) (institutions violate faculty members’ First Amendment rights by non-renewing them for protected activity).

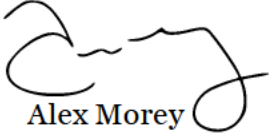
¹² Press Release, *Governor DeSantis Announces Legislative Proposal to Stop W.O.K.E. Activism and Critical Race Theory in Schools and Corporations*, Dec. 15, 2021, <https://www.flgov.com/2021/12/15/governor-desantis-announces-legislative-proposal-to-stop-w-o-k-e-activism-and-critical-race-theory-in-schools-and-corporations> [<https://perma.cc/2KL7-NUFQ>].

¹³ *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) (cleaned up).

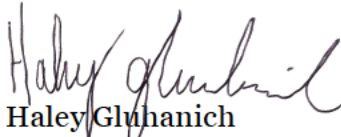
¹⁴ *Honeyfund.com, Inc. v. DeSantis*, No. 4:22cv227-MW/MAF (N.D. Fla. Aug. 18, 2022), ECF No. 55 (enjoining enforcement of private employer provisions of the Stop WOKE Act); *Pernell v. Fla. Bd. of Governors of the State Univ. Sys.*, Nos. 4:22cv304-MW/MAF (N.D. Fla. Nov. 13, 2022), ECF No. 63 (enjoining enforcement of Stop WOKE Act in public universities).

Given the urgent nature of this matter, we request a substantive response to this letter no later than the close of business on Friday, February 24, 2023, confirming that PBA will reaffirm its commitment to academic freedom and renew Joeckel's contract.

Sincerely,



Alex Morey
Director, Campus Rights Advocacy



Haley Gluhanich
Program Officer, Campus Rights Advocacy

Cc: Dr. Chelly Templeton, Provost and Chief Academic Officer, c/o Debbie Konynenbelt
Dr. Robert Lloyd, Dean, School of Arts and Sciences