



December 6, 2024

Harrison Keller
Office of the President
University of North Texas
1155 Union Circle, #311425
Denton, Texas 76203-5017

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

Dear President Keller:

FIRE, a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is deeply concerned by the University of North Texas's infringement upon faculty's academic freedom rights. Specifically, we are concerned that UNT has misinterpreted a state law to impose significant, chilling changes on undergraduate and graduate course titles, descriptions, and syllabi. We urge UNT to refrain from unlawfully ordering changes to faculty's pedagogical material as part of UNT's overreaching compliance with state law.

According to a report from the Chronicle of Higher Education, UNT administrators conducted comprehensive reviews of and made revisions to faculty members' classroom instruction materials because of recent revisions to Texas Education Code §51.3525, which now bans DEI offices and certain DEI initiatives.² For example, at the time of the article's publication, this review had resulted in 130 administratively-mandated changes to undergraduate course titles, descriptions, and syllabi, as well as 78 such changes to graduate courses.³ One such change included renaming a graduate course from "Race, Class and Gender Issues in Education" to "Critical Inquiry in Education," and eliminating mentions of race, class, or gender from its

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's university campuses. You can learn more about our mission and activities at thefire.org.

² Megan Zahneis, *A Texas University Tells Professors Their Teaching and Research Will Be Under 'Intense Scrutiny'*, CHRON. OF HIGHER ED. (Nov. 13, 2024), <https://www.chronicle.com/article/a-texas-university-tells-professors-their-teaching-and-research-will-be-under-intense-scrutiny>. The recitation here reflects our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us.

³ *Id.*

description.⁴ These changes violate UNT's First Amendment obligations,⁵ which bar the university from abridging academic freedom by dictating what pedagogically relevant topics faculty may or may not teach.⁶

Simply put, no statute can authorize UNT to violate faculty's First Amendment rights. (Nor, as discussed below, does the text of §51.3525 require such a violation.) The First Amendment protects faculty pedagogy even with regard to topics or viewpoints elected officials might find odious.⁷ Free speech is the "lifblood of academic freedom,"⁸ and academic freedom is "a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."⁹ Higher education depends on "wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection."¹⁰

To be meaningful at all, academic freedom requires that faculty, not administrators, determine whether, when, and how to teach, write, or discuss material germane to the topic of their courses. As the American Association of University Professors (AAUP) pointed out in 2013, freedom in teaching includes faculty's right to determine how to approach their subjects "without having their decisions subject to the veto of a department chair, dean, or other administrative officer."¹¹ After all, universities rely on faculty members, not administrators, to be the experts on their courses' subject matter. It is no surprise, then, that courts have held that faculty pedagogical choices are "protected by the First Amendment" when the comments are "germane to the classroom subject matter."¹² This principle, which UNT violates by making unilateral changes to course content, gives necessary breathing room to faculty members' syllabi, course materials, and other pedagogical choices, even when they may be objectionable to those outside the classroom—or in it.

Even setting aside UNT's speech-restrictive changes, the university's "comprehensive review" of faculty syllabi likely violates the First Amendment. The question is whether the institution's actions "would chill or silence a person of ordinary firmness from future First Amendment

⁴ *Id.*

⁵ *Healy v. James*, 408 U.S. 169, 180 (1972) ("[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, 'the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.')" (internal citation omitted).

⁶ *Dambrot v. Cent. Mich. Univ.*, 55 F. 3d 1177 (6th Cir. 1995).

⁷ *See, e.g., Hardy v. Jefferson Cmty. Coll.*, 260 F. 3d 671, 680 (6th Cir. 2001).

⁸ *DeJohn v. Temple Univ.*, 537 F. 3d 301, 314 (3d. Cir. 2008); *see also Rosenberger v. Rectors of the Univ. of Va.*, 515 U.S. 819, 836 (1995) ("For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital center for the Nation's intellectual life, its college and university campuses.").

⁹ *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

¹⁰ *Id.* at 603 (cleaned up).

¹¹ *Statement on the Freedom to Teach*, AM. ASSOC. OF UNIV. PROFESSORS (Nov. 7, 2013), <https://www.aaup.org/report/freedom-to-teach>

¹² *See Hardy* at 683.

activities[.]”¹³ For public university faculty, even “governmental action which falls short of a direct prohibition on speech”¹⁴ can lead faculty to self-censor as they design courses with an eye toward satisfying administrators or political leaders rather than accurately and effectively teaching their students.¹⁵ Here, knowing UNT’s review has taken place, faculty will surely refrain from proposing course topics, titles, or content they fear administrators will disapprove. Similar efforts have historically led to destructive, even tragic, results.¹⁶

Finally, monitoring teaching and research as a response to §51.3525, UNT threatens academic freedom rights in ways that the law does not require. Indeed, the statute explicitly carves out “academic course instruction” and “scholarly research or creative work” by students, faculty, or other research personnel from the law’s dictates.¹⁷ It is therefore difficult to understand why UNT saw the need to review or change any academic courses, as opposed to administrative efforts, offices, and initiatives outlined in the statute.

As the Supreme Court warned some 65 years ago, scholarship “cannot flourish in an atmosphere of suspicion and distrust,” but rather, professors and students alike “must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise, our civilization will stagnate and die.”¹⁸ Accordingly, the “essentiality of freedom in the community of American universities” is “self-evident.”¹⁹ UNT violates that freedom when it dictates course content, overriding faculty expertise because of content or viewpoint. We request a substantive response to this letter no later than the close of business on December 20, 2024, confirming UNT will acknowledge the academic freedom rights of its faculty to which it is constitutionally bound and will refrain from unlawfully ordering changes to faculty syllabi.

¹³ *Mendocino Env’t Ctr. v. Mendocino Cnty.*, 192 F. 3d 1283, 1300 (9th Cir. 1999).

¹⁴ *Levin v. Harleston*, 966 F. 2d 85, 89 (2d Cir. 1992).

¹⁵ *Id.* (administrators’ “[f]ormation of the alternative [course] sections...[not] done to further a legitimate educational interest” and expressly premised on the professor’s speech constituted a First Amendment violation); *see also Silva v. Univ. of N.H.*, 888 F. Supp. 293, 318 (D.N.H. 1994) (university creation of alternative courses contributed to “a deprivation of plaintiff’s property and liberty interests in his employment as a tenured professor” at a public university.).

¹⁶ *See, e.g., Sarah Zielinski, When the Soviet Union Chose the Wrong Side on Genetics and Evolution*, SMITHSONIAN MAGAZINE (Feb. 1, 2010), <https://www.smithsonianmag.com/science-nature/when-the-soviet-union-chose-the-wrong-side-on-genetics-and-evolution-23179035/> (explaining how a Soviet Union government administrator’s rejection of the scientific consensus of plant and animal genetics resulted in food shortages and crop failures) .

¹⁷ Tex. Bill S.B. 17, Subsection C (enacted Sept. 1, 2023), <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/SB00017L.pdf>.

¹⁸ *Sweezy*, 354 at 250.

¹⁹ *Id.* at 234.

Sincerely,

A handwritten signature in black ink, appearing to read "Gm Piro". The signature is fluid and cursive, with the first name "Gm" and the last name "Piro" clearly distinguishable.

Graham Piro

Faculty Legal Defense Fund Fellow

Cc: Michael McPherson, Provost and Vice President for Academic Affairs
Michael R. Williams, Chancellor, UNT Systems
Clay Simmons, Vice President and Chief Integrity
Alan Stucky, Vice Chancellor and General Counsel