



MEETING OF THE BOARD OF GOVERNORS
Committee on University Governance

January 18, 2023 at 10:15 a.m.
Via Videoconference and PBS North Carolina Livestream
UNC System Office
223 S. West Street, Room 1809
Raleigh, North Carolina

AGENDA

OPEN SESSION

- A-1. Approval of the Open Session Minutes of November 16, 2022 Alex Mitchell
- A-2. The University of North Carolina Board of Governors Self-Evaluation Norma Houston
- A-3. University of North Carolina School of the Arts Board of Trustees Appointment Philip Byers
- A-4. East Carolina University Health Board of Directors Appointment Alex Mitchell
- A-5. Fayetteville State University Board of Trustees Appointment.....Michael Williford
- A-6. Project Kitty Hawk Board of Directors Appointments.....Alex Mitchell
- A-7. North Carolina State Education Assistance Authority
Board of Directors Appointment Alex Mitchell
- A-8. Proposed Revision to Section 300.5.1 of the
UNC Policy Manual, *Political Activities of Employees*..... Andrew Tripp

CLOSED SESSION

- A-9. Approval of the Closed Session Minutes
of November 16, 2022 Alex Mitchell
- A-10. Legal Affairs Report Andrew Tripp

OPEN SESSION

- A-11. Adjourn

AGENDA ITEM

A-8. Proposed Revision to Policy 300.5.1 “Political Activities of Employees” Andrew Tripp

Situation: The proposed policy revision incorporates an amendment to 300.5.1 regarding the University’s commitment to denouncing and preventing compelling speech. The compelled speech doctrine sets out the principle that the government, and therefore public universities, cannot force an individual or group to support certain expression.

Background: A constitutional, First Amendment issue arises when universities and university systems, as a branch of the government, require or invite an employee or applicant for academic admission or employment to demonstrate their commitment to certain ideals, missions, political issues, or principles.

Requiring a statement from an employee or applicant for academic admission or employment to demonstrate an ideological commitment cuts against the constitutional rights afforded within the First Amendment of the U.S. Constitution and Article 1, Section 14 of the North Carolina Constitution. Contrary to the principles of free speech and free expression, these statements could be consulted when making hiring, admission, reappointment, evaluation, promotion, or tenure decisions. Forms of compelled speech, when required under University policies, rules, and regulations, could further function as litmus tests for adherence to prevailing socio-political views on various matters of contemporary political debate. The University System seeks to prevent this form of compelled speech. The University instead seeks to encourage employees or applicants for academic admission or employment to exercise fully and freely their right to participate, or refrain from participating in, political and other processes without fear of penalty or reprisal, consistent with the University’s commitment to encouraging the full freedom, within the law, of inquiry, discourse, teaching, research, service, and publication.

Assessment: The proposed revision to Policy 300.5.1 is intended to codify in the Policy Manual the University’s commitment to Free Expression and restrict vague or ideologically motivated statement policies of any kind across UNC campuses. If passed, this policy amendment would reduce, if not eliminate, situations whereby an employee or applicant for academic admission or employment is forced to participate in political processes and/or support certain expression.

Action: This item requires a vote by the committee, with a vote by the full Board of Governors through the consent agenda at the next meeting.

Political Activities of Employees

The Board of Governors adopts the following policy concerning political activities by University employees.

I. University employees retain the rights and obligations of citizenship provided in the Constitution and laws of the State of North Carolina and the Constitution and laws of the United States of America. Employees are encouraged to exercise fully and freely their right to participate or refrain from participating in political processes without fear of penalty or reprisal, consistent with the University's commitment to encouraging the full freedom, within the law, of inquiry, discourse, teaching, research, service, and publication. Certain types of activities by University employees related to political processes, however, may be incompatible with the general responsibilities of employment or with the particular responsibilities of University employment.

A. Applicability. This policy applies to all University employees who are exempt from the State Personnel Act (Chapter 126 of the General Statutes) pursuant to G.S. 126-5(c1).¹

B. Definitions. For purposes of this policy:

1. "Campaign" or "campaigning" means all acts done by a candidate and his or her adherents to obtain votes to be cast toward a nomination or in an election.
2. "Candidate" means an individual who seeks nomination or election to any elective public office whether or not the person is elected. Absent any other evidence of candidacy, an individual is deemed to be a candidate if the individual has received political contributions or made expenditures or has consented to another person receiving contributions or making expenditures with a view to bringing about the individual's nomination or election.
3. "Election" includes a primary, special, runoff, or general election.
4. "Employee" means an individual who is employed by the University of North Carolina and is exempt from the State Personnel Act (Chapter 126 of the General Statutes) pursuant to G.S. 126-5(c1).
5. "Endorse" means a public statement by an individual expressing support or approval of another individual's candidacy for public office.
6. "On duty" means the time period when an employee is: (a) in a pay status other than paid leave, compensatory time off, or excused or authorized absence (including leave without pay); (b) representing the University of North Carolina or any constituent institution or subdivision thereof in an official capacity; or (c) expected to perform services for which he or she receives compensation from the University. Provided, however, an employee who is or may be expected to perform his or her duties on a twenty-four hour per-day basis shall not be considered on duty except during regularly scheduled working hours or at other times when the employee is actually performing the duties of his or her office.
7. "Partisan" when used as an adjective means related to a political party.

8. "Partisan political group" means any committee, club, or other organization which is affiliated with a political party or candidate for public office in a partisan election, or organized for a partisan purpose, or which engages in partisan political activity.
9. "Partisan political office" means any public office for which any candidate is nominated or elected as representing a political party but does not include any office or position within a political party or affiliated organization.
10. "Political activity" means actions directed toward the success or failure of a candidate for public office, political party, or partisan political group including, but not limited to, campaigning, political management, and soliciting financial contributions for political purposes.
11. "Political management" means taking an active part in the direction, supervision, or management of a partisan political group or a campaign for public office.
12. "Political party" means a national political party, a state political party, or an affiliated organization.
13. "Political purpose" means an objective of promoting or opposing a political party, candidate for public office, candidate for partisan political office, or partisan political group.
14. "Public office" means any national, state, or local governmental position of public trust and responsibility, whether elective or appointive, which is created, prescribed, or recognized by constitution, statute, or ordinance (other than within the University of North Carolina).
15. "Senior officers" means the president, the chancellors, and the senior academic and administrative officers (SAAO) described in Policy 300.1.1, subpart I.A., who are at the rank of vice president, vice chancellor, provost, dean, and other positions of equivalent rank and responsibility.
16. "Solicit" means to request expressly of another person that he or she contribute something to a candidate, a campaign, a political party, or partisan political group.

II. Political Activities

A. Permissible Activities. An employee may engage in political activity to the extent not expressly prohibited by law or applicable policy.

1. Permissible activities include, but are not limited to:
 - a. Registering, voting, and otherwise participating in elections;
 - b. Becoming a candidate for and holding public office in accordance with University policy;
 - c. Expressing opinions privately and publicly on political subjects;
 - d. Participating in political organizations;
 - e. Participating in political campaigns;
 - f. Engaging in political management; and
 - g. Soliciting, accepting, receiving, and making financial contributions for political purposes to political parties, partisan political groups, and campaign committees of candidates for public office.

2. Subject to the prohibition against compelled speech described below, nothing in this policy prohibits, or otherwise limits, teaching, inquiry, classroom discussion or discourse concerning political issues, including campaigns, candidates, political groups or issues in campaigns for public office, that are within the subject matter of any academic program, course, curriculum, or study.
3. An employee may participate fully in public affairs in a manner that does not compromise his or her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of the University constituent institution or unit in which he or she is employed.
4. The political opinions assumed by employees are personal ones, and employees must ensure that they do not imply that such opinions are endorsed by the University.

5. Prohibition on Compelling Speech

a. To mitigate the risk of compelled speech that undermines the intellectual freedom and fostering of free expression required of the University of North Carolina by Article 36 of Chapter 116 of the General Statutes and embraced in Chapter VI of the UNC Code and Section 1300.8 of UNC Policy, the University shall neither solicit nor require an employee or applicant for academic admission or employment to affirmatively ascribe to or opine about beliefs, affiliations, ideals, or principles regarding matters of contemporary political debate or social action as a condition to admission, employment, or professional advancement. Nor shall any employee or applicant be solicited or required to describe his or her actions in support of, or in opposition to, such beliefs, affiliations, ideals, or principles. Practices prohibited here include but are not limited to solicitations or requirements for statements of commitment to particular views on matters of contemporary political debate or social action contained on applications or qualifications for admission or employment or included as criteria for analysis of an employee's career progression. Any constituent institution believing a requirement or solicitation prohibited hereby to be necessary for reasons related to the educational, research, or public service mission of the University established in G.S. 116-1 shall obtain prior written approval to include such a requirement or solicitation from the President following discussion in open session of a meeting of the Committee on University Governance attended by the requesting constituent institution's chancellor, its provost, and its chair of its board of trustees.

b. Any employee who acts in contravention of the foregoing prohibition on compelling speech, violating Section 5(a) above, shall be subject to existing disciplinary measures taken against employee(s).

c. Except as provided under current law, nothing in Section 5 creates or vests a private remedy or claim in any employee or applicant for admission or employment subjected to a practice prohibited hereby.

d. Nothing in Section 5 modifies or otherwise affects the University's existing guarantee of the right of academic freedom in its faculty's academic scholarship or classroom instruction, or research pursuits, subject only to institutional academic tenure policies as contemplated in Section 602 of *The Code*, as well as applicable law and UNC Code and Policy.

e. Nothing in Section 5 infringes upon the ability of an employee or applicant for academic admission or employment to voluntarily opine or speak regarding any matters, including those of contemporary political debate or social action, as contemplated in Section 5(a). Nor shall anything in Section 5 prohibit discussion

with, or questioning of, an employee or applicant regarding the content of the employee's or applicant's resume, curriculum vitae, or body of scholarship, or other written work or oral remarks presented by the employee or applicant in his or her own support.

f. Nothing in Section 5 modifies or affects the University's ability to ensure its employees comply with applicable federal or state law or existing employment requisites under the law or agency policy, such as employment oaths, appointment affidavits, and licensure and certification requirements.

B. Prohibited Activities. An employee may not:

1. Participate in political activity while on duty;
2. Use the authority of his or her position, University funds, services, supplies, equipment, information technology resources, vehicles, or other University property, to endorse, campaign for, secure support for or oppose any candidate, political party, partisan political group, referendum, or issue in an election, or affect the results thereof; or
3. Make any promise of preferential treatment (or actually confer such preference) or make any threat of detrimental treatment (or actually impose such detriment) to any person, including with respect to any condition or incident of employment over which the employee has authority, control, or influence, for purposes of inducing support of or opposition to any candidate for public office, political party, or partisan political group.

C. Senior Officers. The University will supply to any candidate for public office information of a substantive nature, whether it is information on agriculture, economics, education or any other topic. It is important that all candidates know they can receive factual information from the University, but it should be made clear that the administration of the University will not be identified with any candidate or any party. Accordingly, in addition to the restrictions set forth in subpart II.B., above, a senior officer may not:

1. Solicit, accept, or receive financial contributions from other persons or organizations on behalf of any candidate for partisan political office or the campaign committee of any candidate for partisan political office; or
2. Endorse or oppose a candidate for partisan political office or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material.

D. Violations. Violation of the prohibitions contained in subparagraphs B. and C., above, shall be cause for appropriate disciplinary action, including discharge from employment.

III. Other Matters.

A. Effective Date. The requirements of this policy shall be effective upon adoption by the Board of Governors.

Policies of Constituent Institutions. The board of trustees of each constituent institution shall adopt policies governing political activities of employees. Policies adopted or substantively amended by a board of trustees regarding political activities of employees shall be effective upon approval by the president.

B. Relation to Other Laws. This policy is designed to supplement and does not purport in any way to supplant or modify, those statutory enactments and rights which may govern or limit the political activities of employees of the State of North Carolina.

C. Regulations and Guidelines. This policy shall be implemented and applied in accordance with such regulations and guidelines as may be adopted by the president.

¹For employees subject to the [State North Carolina Personnel Human Resources Act \(SPASHRA\)](#), political activities are governed by Article 5, Chapter 126 of the North Carolina General Statutes, policies adopted by the Office of State Human Resources (OSHR) and campus policies adopted in accordance therewith.