



October 31, 2021

President Kent Fuchs
University of Florida
Gainesville, FL 32611

President Fuchs,

The Academic Freedom Alliance (AFA) is a coalition of faculty members from across the country and across the ideological spectrum who are committed to upholding the principles of academic freedom and professorial free speech.

The AFA is concerned by a major violation of well-established principles of freedom of speech at the University of Florida. Three professors in the Department of Political Science at the University of Florida requested from the dean of the College of Liberal Arts and Sciences permission to serve as expert witnesses for the plaintiffs in a lawsuit against the state on a question of the constitutionality of the recently enacted electoral law. This request was denied, reportedly on the grounds that such outside activities “[may pose a conflict of interest](#) to the executive branch of the state of Florida” and thus may “create a conflict for the University of Florida.” The University has responded to this report by stating that it has “a [long track record](#) of supporting free speech and our faculty’s academic freedom” but denying that its actions in these circumstances violated these principles. It instead asserted that “full-time employees” could not undertake “outside paid work that is adverse to the university’s interests as a state of Florida institution.”

I write on behalf of the Academic Freedom Alliance to express our firm view that this decision is a serious violation of the academic freedom principles to which the University of Florida is committed. The university is mistaken in thinking that this decision is consistent with the principles of free speech and academic freedom and has construed the potential conflicts of interest in this case in a manner that is incompatible with maintaining academic freedom in the future. It has long been a central feature of academic freedom in the United States that when university professors “[speak or write as citizens](#), they should be free from institutional censorship or discipline.” Whatever interest a state university might have in preventing members of its faculty from acting as political partisans when operating within their duties as state employees, that interest cannot be understood to extend to restricting the speech activities in which professors might engage when operating outside their university duties and acting as private citizens.

The university’s own policies guarantee the academic freedom of the faculty. The university has recognized that academic freedom is “[essential to the integrity of the University](#)” and “integral



to the conception of the University as a community of scholars engaged in the pursuit of truth and the communication of knowledge in an atmosphere of tolerance and freedom.” Moreover, the university has declared that the academic freedom of the faculty shall be exercised consistent with the “academic responsibility of the faculty” to perform their duties for the university and support the responsible exercise of academic freedom by others.

The university has contended that this action is consistent with academic freedom to the extent that such testimony would represent a conflict of interest. The university’s general statement on academic freedom suggests no such conflict. That statement instead emphasizes that the exercise of academic freedom should be consistent with a faculty member continuing to “[perform appropriate duties](#)” at the university. There is no credible claim that work as expert witnesses at issue here would prevent these faculty members from fully and competently performing their own normal duties as members of the faculty. There is no suggestion that their work would interfere with their ability to engage in “teaching, research, scholarship/creative activities, and service” for the university.

The university’s policy on outside activity and conflict of interest in [Article 26](#) of the Collective Bargaining Agreement recognizes that outside activities “may support professional growth and reputation, create and disseminate new knowledge and ideas, and further the University’s mission of excellence in education, research, and service.” The agreement specifies that faculty must act in the “best interests” of the university and not engage in activities that “conflict with their University duties and responsibilities.” It commits the university to not using this provision in a way that would “deny or retaliate against the legitimate exercise of rights protected by this Agreement,” specifically including the rights of academic freedom. “Conflict of Interest” is defined narrowly in the agreement to refer to private interests that adversely influence the faculty member or create unlawful conflicts.

The suggestion by the university that impermissible conflicts of interest should be read so broadly as to bar expert witness testimony that is adverse to the state government’s interests is deeply inimical to academic freedom principles and the specific language of the university’s own policies. Long-held principles of academic freedom clearly hold that professors are free to criticize both university and government policies, and even call into question the legitimacy of the government itself. Construing a faculty member’s obligation to work in the best interests of the university to prohibit criticism of the state government’s policies undercuts the very purpose of academic freedom protections in state universities, which is to ensure that scholars have an independent voice to serve the broader public and are not placed under the supervision of the incumbent executive officers of the state government or constrained to advance the political and policy interests of incumbent government officials.



Members of the faculty must have the freedom to pursue the truth as best they understand it and to communicate their understandings to others, including in this case the judiciary and parties to a lawsuit. They should be able to articulate those views in the classroom, in their scholarship, and in their public writings and speeches. There is nothing distinguishable about providing testimony about those scholarly judgments in a courtroom, whether on a paid or unpaid basis. Individual members of the faculty have no obligation to agree with the wisdom or constitutionality of university or state government policies. As the university recognizes, they have only the obligation to “do so in ways that [do not] unreasonably obstruct the functions of the University.” Testifying in open court can in no way be understood to unreasonably obstruct the functions of the university.

The fact that a professor’s speech might anger government officials or help dismantle existing government policies can in no way alter the calculation of whether such speech is contrary to the interests of a properly functioning university. If a university were to hold that professors at a state university must refrain from saying things that might undercut the political and policy commitments of incumbent government officials, then that university would have abandoned any credible commitment to academic freedom.

The university’s interpretation of its conflict of interest policies in this case are also at odds with the university’s obligations to comply with the First Amendment. It is well established that state universities like the University of Florida are constrained by the First Amendment of the U.S. Constitution. Professors at state universities enjoy certain First Amendment protections relative to their university employer, and state universities cannot discipline or sanction members of their faculty for constitutionally protected speech. In particular, the U.S. Supreme Court observed in *Connick v. Myers*, 461 U.S. 138, 140 (1983) that “a public employee does not relinquish rights to comment on matters of public interest by virtue of government employment.” The Court has sharply limited when government employers can interfere with such speech, insisting that “so long as employees are speaking as citizens about matters of public concern, they must face only those speech restrictions that are necessary for their employers to operate efficiently and effectively.” *Garcetti v. Ceballos*, 547 U.S. 410, 419 (2006). The mere fact that the government disagrees with the content of the speech is no constitutionally valid reason for restricting the private speech of a government employee. As the Court noted in *Rankin v. McPherson*, 483 U.S. 378, 384 (1987), “vigilance is necessary to ensure that public employers do not use authority over employees to silence discourse, not because it hampers public functions but simply because superiors disagree with the content of employees’ speech.” Precisely because the speech at issue here involves an outside activity by these members of the faculty, the university’s constitutional authority to restrict that speech is quite limited.



Federal circuit courts have specifically emphasized that professors may not be barred by their state universities from testifying as expert witnesses in cases that they government disfavored. As one court simply concluded when confronted with such a restriction,

Whatever else we might say about that “justification”, the State's amorphous interest in protecting its interests is not the sort which may outweigh the free speech rights of state employees under *Pickering* [*v. Board of Education*, 391 U.S. 563 (1968)]. The notion that the State may silence the testimony of state employees simply because that testimony is contrary to the interests of the State in litigation or otherwise, is antithetical to the protection extended by the First Amendment. The scope of state interests which may outweigh the free speech rights of state employees is much narrower than that. Indeed, the only state interest acknowledged by *Pickering* and its progeny, which may outweigh the right of state employees to speak on matters of public concern, is the State's interest, “as an employer, in promoting the efficiency of the public services it performs through its employees.” *Hoover v. Morales*, 164 F.3d 221, 226 (5th Cir. 1998).

The same circuit swept away a similar claim of “conflict of interest” that would bar instructors employed by the government from providing expert testimony in a suit against the state, observing “the defendants' asserted notion of ‘conflicts of interest’ sweeps so broadly as to undermine its status as a legitimate government interest that can properly weigh in the *Pickering* balance.” *Kinney v. Weaver*, 367 F.3d 337, 365 (5th Cir. 2004). Especially in the context of a scholar employed by a state university, the government employer’s interest in preventing a scholar from providing expert testimony that might be damaging to the political and policy interests of incumbent government officials cannot properly be understood as a legitimate government interest for purposes of *Pickering-Connick-Garcetti* balancing.

Academic freedom is grounded in the belief that there is a public interest in scholars at universities being able to develop expertise in a subject and to communicate their scholarly judgments to others, including members of the broader public. It cannot be consistent with the First Amendment for a state institution to declare that the public interest requires that it suppress criticisms of the government and its policies. The university’s asserted conflict of interest here is simply inconsistent with any proper understanding of the rights of academic freedom and freedom of speech of these faculty members.



The Academic Freedom Alliance calls on the University of Florida to respect the rights of the members of its faculty and reverse this decision and allow these three members of its faculty to serve as expert witnesses in this suit.

Sincerely,

A handwritten signature in black ink, appearing to read "KW", with a long horizontal flourish extending to the right.

Keith Whittington
Chair, Academic Committee, Academic Freedom Alliance
William Nelson Cromwell Professor of Politics, Princeton University

cc. Morteza Hosseini, Chair, Board of Trustees
David Richardson, Dean of the College of Liberal Arts and Sciences
Amy Meyers Hass, Vice President and General Counsel
David Bloom, Chair, Faculty Senate