



March 12, 2014

The Honorable Nikki R. Haley
Office of the Governor
1205 Pendleton Street
Columbia, South Carolina 29201

Sent via U.S. Mail and Facsimile (803-734-5167)

Dear Governor Haley:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, thefire.org, will provide a greater sense of our identity and activities.

FIRE writes you today to express our grave concern over the serious threat to the First Amendment and academic freedom presented by the South Carolina House of Representatives' recent passage of a state budget that imposes funding cuts on the College of Charleston and the University of South Carolina Upstate as punishment for the content of readings assigned to incoming students. Specifically, the budget would reduce funding to the College of Charleston and the University of South Carolina Upstate by \$52,000 and \$17,142, respectively. The reductions are intended by legislators to match the cost of assigning readings that involve lesbian, gay, bisexual, and transgender issues to incoming students as part of institutional reading programs.

Both readings were selected by faculty members as part of established first-year reading initiatives. The College of Charleston chose "Fun Home," author Alison Bechdel's award-winning autobiographical account of growing up as a lesbian in rural Pennsylvania, for use in its First Year Experience program, directed by Dr. Christopher Korey. The University of South Carolina Upstate selected "Out Loud: The Best of Rainbow Radio," a collection of stories featured in a South Carolinian gay and lesbian radio show and edited by the Reverend Candace Chellew-Hodge and Dr. Ed Madden, for use in its Preface program, directed by Dr. Peter Caster.

Legislative intrusions into faculty decision-making such as that presented here plainly violate the basic precepts of academic freedom. As the Supreme Court of the United States has repeatedly made clear in rulings spanning decades, academic freedom is protected by the First Amendment, which is fully binding on public institutions of higher education—and, of course, state governments. Punishing South Carolina’s public colleges for pedagogical choices made by faculty members, as the proposed budget does, is a clear violation of this fundamental constitutional right and of freedom of expression more generally.

The Supreme Court has observed that academic freedom is a “special concern of the First Amendment,” holding that “[o]ur nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned.” *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967). As the Court remarked in *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957):

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate 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.

Inflicting financial punishments upon state universities because of the content of texts assigned to students imposes precisely such a strait jacket and is thus an unacceptable result under long-established and legally binding First Amendment jurisprudence. The intellectual inquiry of students and faculty at South Carolina’s public institutions of higher learning cannot lawfully be constrained by legislators’ apparent desire to prohibit certain viewpoints from campus, memorably and aptly identified by the Court as “peculiarly the ‘marketplace of ideas.’” *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted).

To illustrate the principles threatened by the House of Representative’s disregard for academic freedom, Felix Frankfurter’s concurring opinion in *Sweezy* offers an eloquent warning against the “grave harm resulting from governmental intrusion into the intellectual life of a university”:

Progress in the natural sciences is not remotely confined to findings made in the laboratory. Insights into the mysteries of nature are born of hypothesis and speculation. The more so is this true in the pursuit of understanding in the groping endeavors of what are called the social sciences, the concern of which is man and society. The problems that are the respective preoccupations of anthropology, economics, law, psychology, sociology and related areas of scholarship are merely departmentalized dealing, by way of manageable division of analysis, with interpenetrating aspects of holistic perplexities. For society’s good—if understanding be an essential need of

society—inquiries into these problems, speculations about them, stimulation in others of reflection upon them, must be left as unfettered as possible. Political power must abstain from intrusion into this activity of freedom, pursued in the interest of wise government and the people's well-being, except for reasons that are exigent and obviously compelling.

These pages need not be burdened with proof, based on the testimony of a cloud of impressive witnesses, of the dependence of a free society on free universities. This means the exclusion of governmental intervention in the intellectual life of a university. It matters little whether such intervention occurs avowedly or through action that inevitably tends to check the ardor and fearlessness of scholars, qualities at once so fragile and so indispensable for fruitful academic labor.

Sweezy, 354 U.S. at 261–62 (Frankfurter, J., concurring).

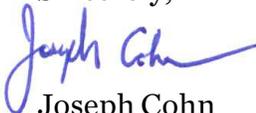
FIRE opposes attempts by elected officials to stifle discussion at public universities by threatening their funding when they assign texts or spark conversations that the officials dislike. We hope that with your leadership, South Carolina's elected officials will recognize the tremendous benefits our society has gained from affording our institutions of higher education independence and academic freedom. That this freedom may sometimes result in consideration of ideas that politicians oppose is inevitable—but in our free society, we must answer ideas we dislike through open debate and discussion, not threats and coercion from those in power.

The politicians who support punitive actions against the College of Charleston and the University of South Carolina Upstate must understand that attempts to punish or preempt intellectual inquiry are not only unwise, but also bring more public attention to the opinions that they wish to suppress and to strengthen the resolve of those who hold those opinions. Americans famously and rightfully prize freedom of speech and academic freedom and look suspiciously upon those who, rather than engage in debate on the merits of their ideas, seek to stop that debate from happening at all.

We urge you to take decisive action to protect academic freedom in South Carolina. In order to preserve the marketplace of ideas at South Carolina's public campuses, the Legislature's attempt to punish educators because of the content of assigned readings must be rejected and removed immediately.

Thank you for your attention to this important issue.

Sincerely,



Joseph Cohn
Legislative and Policy Director