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Cc:

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Dear University Counsel,

We write to urge the University of North Carolina at Chapel Hill (hereinafter “UNC” or “University”) to cease violating the rights of students because of their speech concerning Palestine. As we understand it, on April 26, 2024, UNC students peacefully engaged in protected free speech on the University campus. Instead of working with students to protect their rights, UNC took discriminatory, unconstitutional action against students espousing political speech in support of Palestinian lives and freedom—speech at the heart of the First Amendment’s protections. Specifically, UNC has indefinitely and summarily suspended students engaged in actions advocating for Palestinian freedom. As detailed in this letter, these actions violate the First and Fourteenth Amendments and Title VI of the Civil Rights Act. The University should take immediate steps to remedy this overreaction to students peacefully speaking out on a contentious political issue.

I. UNC Is Engaging In Viewpoint Discrimination

The UNC student protests, held in a public forum, are protected First Amendment activity. “A bedrock First Amendment principle is that citizens have a right to voice dissent from government policies.” *Tobey v. Jones*, 706 F.3d 379, 391 (4th Cir. 2013). Moreover, speech regarding “matters of public concern ... is at the heart of the First Amendment’s protection.” *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 758–59, (1985). “Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community.” *Snyder v.*



Phelps, 562 U.S. 443, 453 (2011) (cleaned up). Moreover, “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512 (1969) (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)).

The U.S. Supreme Court has also repeatedly rejected the notion that, “because of the acknowledged need for order” on university campuses, First Amendment protections apply with less force there. *Healy v. James*, 408 U.S. 169, 180 (1972). Indeed, one of the core tenets of our First Amendment is that “[a] function of free speech under our system of government is to invite dispute . . . and may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.” *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949).

While the University may “enforce regulations of the time, place, and manner of expression which are [] narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication,” such regulations must be uniformly enforced in a content-neutral manner. *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983); *Occupy Columbia v. Haley*, 738 F.3d 107, 122 (4th Cir. 2013). Public universities cannot single out for censorship, discipline, or disproportionate treatment any particular viewpoint, especially when that viewpoint is being expressed in a public forum like the Polk Place quad.

Here, UNC’s decision to summarily suspend dozens of protestors through the Emergency Evaluation Action Committee (EEAC) violates the First Amendment. Suspension through the EEAC is an extraordinary action that UNC has rarely taken against student protestors on its campus. In recent years, students have protested the Silent Sam confederate statue, the use of family names tied to white supremacy and the confederacy on UNC buildings, police brutality, the proliferation of police training centers like the one in Georgia known as “cop city,” and many more contentious political issues. To our knowledge, the University has not disciplined student protestors as it has recently with those espousing speech in support of Palestinian lives and rights. Even students accused of physically assaulting people at UNC vs. Duke basketball games have not received such severe



treatment. Several student counter-protestors accused of engaging in violent and unlawful behavior—including striking, threatening, harassing, and using racial slurs against the student protestors supporting Palestine—have not received trespass notices, summary suspensions, or been referred to disciplinary action despite engaging in behavior worse than the University’s allegations against Pro-Palestine student protestors. UNC’s targeting of student protestors supporting Palestinian lives and freedom is indicative of viewpoint discrimination, prohibited under the U.S. Constitution.

II. UNC EEAC’s Issuance of Summary Suspensions Violates Due Process

UNC’s decision to indefinitely suspend dozens of students for engaging in peaceful protest, with no pre-suspension hearing and no notice as to the specific conduct they allegedly engaged in, violates these students’ due process rights. The Supreme Court has repeatedly held that “a student’s interest in pursuing an education is included within the Fourteenth Amendment’s protection of liberty and property,” *see Goss v. Lopez*, 419 U.S. 565, 574–75 (1975), and that “a student facing expulsion or suspension from a public educational institution is entitled to the protections of due process.” *See id.* at 575–76. A student’s suspension for conduct protected by the First Amendment “raises a serious constitutional question in the absence of provision for a timely judicial determination of the First Amendment claims.” *Jones v. State Bd. of Ed. of State of Tenn.*, 397 U.S. 31, 35 (1970); *cf. Freedman v. Maryland*, 380 U.S. 51 (1965).

“At the very minimum, therefore, students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing.” *Goss*, 419 U.S. at 579. Students suspended through the EEAC “may not come to campus” or “participate in remote/online or in-person classes, exams, academic programs, or on-campus events, organizations, or employment connected to UNC-Chapel Hill.” These students have lost their liberty and property interests in attending the University without a hearing or even particularized notice about the alleged conduct giving rise to the suspension. A post-suspension hearing cannot fully remedy the harm of these due process violations. Indeed, the students’ due process interests are in avoiding “unfair or mistaken exclusion from the educational process, with all of its unfortunate consequences.” *Jones*, 397 U.S. at 34. The need for a hearing before



suspension is especially critical in this case given that many of the students were days or weeks away from completing their final exams.

III. UNC Police’s Command to Disperse Was Unlawful

UNC’s letter informing students of their suspensions explains that the suspensions are based on students’ arrests for second degree trespassing and resisting, delaying, or obstructing a police officer. The letter does not allege any individualized conduct that violated University policies. The University, through the use of law enforcement, cannot issue commands to disperse a protest that is protected First Amendment activity and occurring in a public forum, and then punish students for failing to obey the unlawful command to disperse.

North Carolina law permits a law enforcement officer to issue a command to disperse constitutionally protected conduct **only** when the officer witnesses three or more protestors engaging in disorderly conduct. General Statute § 14-288.4 defines disorderly conduct as a public disturbance intentionally caused by any person who does any of the following: “(1) Engages in fighting or other violent conduct or in conduct creating the threat of imminent fighting or other violence; or (2) Makes or uses any utterance, gesture, display or abusive language which is intended and plainly likely to provoke violent retaliation and thereby cause a breach of the peace.” At least one federal court in North Carolina has specifically prohibited arresting individuals for failure to disperse when those individuals are engaging in First Amendment protected activity while in a public forum. *Fuller v. Scott*, 328 F. Supp. 842, 852 (M.D.N.C. 1971). That court explained:

Where there is no violence, nor imminent threat of violence, and words do not fall within that small class which are intended to provoke retaliation from a reasonable man, the officer cannot act under this subsection to disperse or arrest merely because the group becomes noisy, or because its ideas and manner of protest alarm or disturb listeners or because a “physically offensive” condition is thereby deemed to exist.



The UNC EEAC letter notifying students of their indefinite and immediate suspension, the trespass citations issued by UNC Police, and the arresting documents all lack any mention of violent or threatening conduct the students engaged in that led to the order to disperse.

IV. UNC's Actions Violate Title VI

Universities must also comply with civil rights laws that guarantee all students access to education, including, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. Under Title VI, UNC cannot discriminate based on “race, color, or national origin” and must also keep its students safe from discriminatory harassment. If a university targets Palestinian students, or students who are perceived with Palestinian students and groups, for discipline, that could be evidence of its discriminatory treatment of those students in violation of Title VI. When a recipient applies different procedural processes or substantive standards to minorities and non-minorities, the use of such different processes or standards, when a non-minority receives more favorable treatment, may raise an inference of discriminatory intent. In fact, the record need not contain evidence of “bad faith, ill will or any evil motive on the part of the [recipient]” to demonstrate a violation of Title VI. *Williams v. City of Dothan*, 745 F.2d 1406, 1414 (11th Cir. 1984). UNC has treated these students differently by summarily suspending them through EEAC.

Furthermore, UNC is violating Title VI of the Civil Rights Act by failing to respond to the hostile environment created by counter-protesters towards students of Palestinian or Arab descent and those perceived to be associated with Palestinians. On Friday, April 5, Palestine Legal filed a federal civil rights complaint with the U.S. Department of Education’s Office for Civil Rights (OCR) urging an immediate investigation into UNC-Chapel Hill’s systemic pattern of discriminatory treatment against Palestinian students and their allies. We urge you to take immediate steps to limit this hostility, not to further entrench it.

We urge the University to drop all disciplinary charges against the students and call for dismissal of all criminal charges.

We trust that you will give this matter prompt attention.