

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO, et al.,

Plaintiffs,

v.

PATRICK MCCRORY, et al.,

*Defendants and
Defendants-Intervenors.*

No. 1:16-cv-00236-TDS-JEP

**PLAINTIFFS’ OPPOSITION TO THE UNIVERSITY OF NORTH CAROLINA
DEFENDANTS’ MOTION TO STAY PROCEEDINGS**

The motion to stay the proceedings in this case as to the UNC Defendants should be denied, and the Court should proceed to decide Plaintiffs’ motion for a preliminary injunction.¹ H.B. 2 violates Plaintiffs’ constitutional rights to equal protection and substantive due process. It also, as this Circuit’s binding precedent holds, violates Plaintiffs’ statutory right under Title IX to be free from sex discrimination. *See G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, No. 15-2056, ___ F.3d ___, 2016 WL 1567467 (4th Cir. Apr. 19, 2016). Plaintiffs are entitled to have their claims resolved, and in particular, to obtain prompt adjudication of their request for preliminary relief. None of the reasons

¹ “UNC Defendants” refers to Defendants the University of North Carolina, the Board of Governors of the University of North Carolina, and W. Louis Bissette, in his official capacity as Chair of the Board of Governors of the University of North Carolina. For purposes of this brief, “Plaintiffs” refers to Plaintiffs Joaquín Carcaño, Payton Grey McGarry, H.S., by her next friend and mother, Kathryn Schafer, and the American Civil Liberties Union of North Carolina.

proffered by the UNC Defendants to support their extraordinary request to put Plaintiffs' claims against them on hold indefinitely—while Plaintiffs continue to suffer harm— withstands scrutiny.

ARGUMENT

The Supreme Court has made clear that “[o]nly in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both.” *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936). “[I]f there is even a fair possibility that the stay . . . will work damage to someone else,” then the movant “must make out a clear case of hardship or inequity in being required to go forward.” *Id.*

The UNC Defendants have offered *no* explanation of what hardship or inequity they face in defending this case at this time; indeed, they admit that they must defend their compliance with H.B. 2 before this Court regardless of the disposition of their motion. Meanwhile, Plaintiffs endure harm every day that H.B. 2 remains in effect. *See, e.g.*, Mot. for a Preliminary Injunction, ECF No. 22 at 6-11, 40-43 (discussing harms Plaintiffs face as a result of H.B. 2). This case falls far short of the type of “rare circumstances,” *Landis*, 299 U.S. at 255, that can warrant a stay. The motion should therefore be denied.

I. THE FOURTH CIRCUIT’S BINDING PRECEDENT IN *G.G.* WARRANTS EXPEDITIOUS RESOLUTION—NOT DELAY—OF PLAINTIFFS’ TITLE IX CLAIM.

The Fourth Circuit’s decision in *G.G.* counsels in favor of expeditious resolution of Plaintiffs’ Title IX claim—not delay in resolving that claim. The Department of Education (“the Department”) has interpreted its Title IX regulations to require that “[w]hen a school elects to separate or treat students differently on the basis of sex . . . a school generally must treat transgender students consistent with their gender identity.” *G.G.*, 2016 WL 1567467, at *4; *see* ECF Nos. 23-29, 23-30. In *G.G.*, the Fourth Circuit held that the Department’s interpretation was entitled to controlling weight. *Id.* at *8.

The UNC Defendants acknowledge that *G.G.* is “relevant to the resolution of the central issues in this case,” ECF No. 39 (hereafter, “Mot.”) at 5, and that Plaintiffs’ claims here “substantially overlap with those in *G.G.*,” *id.* at 18. Yet, rather than follow the controlling legal holding in *G.G.*, the UNC Defendants cite it as a reason to *delay* resolution of this case. That reasoning makes no sense.

First, the UNC Defendants contend that this case should be stayed because the defendants in *G.G.* filed a petition for *en banc* review. Mot. at 5. That contention is now moot in light of the Fourth Circuit’s denial of the petition for *en banc* review. *See G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, No. 15-2056, ___ F.3d ___, 2016 WL 3080263 (4th Cir. May 31, 2016) (order denying *en banc* rehearing). Further, the Fourth Circuit declined to stay the issuance of the mandate in *G.G.* and accordingly recently issued its

mandate. *See* Ex. A (order denying stay of mandate), Ex. B (mandate).² “A decision of a panel of [the Fourth Circuit] becomes the law of the circuit and is binding . . . unless it is overruled by a subsequent en banc opinion . . . or a superseding contrary decision of the Supreme Court,” neither of which has occurred in the *G.G.* case. *United States v. Collins*, 415 F.3d 304, 311 (4th Cir. 2005) (quotation marks omitted).³ Thus, *G.G.*’s holding about the controlling effect of the Department’s interpretation of its regulations is currently binding on this Court. That is so even if the defendants in *G.G.* do seek review by the Supreme Court. *Cf. Fed. Nat’l Mortg. Ass’n v. Quicksilver LLC*, No. 13-cv-987, 2014 U.S. Dist. LEXIS 139792, at *8 (M.D.N.C. Oct. 1, 2014) (noting that the possibility of reversal by the state supreme court was “merely speculative” until that court actually “agreed to hear the appeal”).

Second, it appears that the UNC Defendants may be seeking a stay pending resolution of the *remand* of *G.G.* to the district court and any subsequent appeal from those proceedings.⁴ To the extent this is what the UNC Defendants seek, their proffered

² Except where otherwise specified, exhibit numbers herein (*e.g.*, Ex. _) refer to exhibits to the Declaration of Paul M. Smith in Support of Plaintiffs’ Opposition to the University of North Carolina Defendants’ Motion to Stay Proceedings (“Smith Decl.”).

³ *See also, e.g., Chambers v. United States*, 22 F.3d 939, 942 n.3 (9th Cir. 1994) (“[O]nce a published opinion is filed, it becomes the law of the circuit until withdrawn or reversed by the Supreme Court or an en banc court.”), *vacated on other grounds*, 47 F.3d 1015 (9th Cir. 1995).

⁴ It is not entirely clear from the UNC Defendants’ motion whether they seek a stay pending final resolution of the petition for *en banc* review of *G.G.*, which has since been denied, or whether they seek a stay pending the result of the remand proceedings in *G.G.* and any subsequent appeal to the Fourth Circuit. *Compare* Mot. at 6 (referencing final judgment in the *G.G.* case), *with id.* at 18 (referencing final decision in the appeal of the

reasoning—that a “final decision in [*G.G.*] might affect the outcome” of plaintiffs’ Title IX claim in this case, Mot. at 18—is woefully overbroad and insufficient to support a stay. The Fourth Circuit’s decision in *G.G.* already resolved the legal question posed by Plaintiffs’ Title IX claim: whether Title IX requires the UNC Defendants to “treat transgender students consistent with their gender identity.” *G.G.*, 2016 WL 1567467, at *4. There is nothing to be gained by waiting for the remand proceedings in *G.G.* The Fourth Circuit remanded that case because the district court applied the wrong evidentiary standard in balancing the hardships. *Id.* at *9-10. This Court is charged with considering the evidentiary record in *this* case, and with applying the controlling precedent of *G.G.* to that evidence.

II. THE PENDENCY OF *UNITED STATES V. NORTH CAROLINA* BEFORE THIS COURT LIKEWISE DOES NOT WARRANT A STAY OF THIS CASE AS TO THE UNC DEFENDANTS.

The pendency of a Title IX claim in *United States v. North Carolina*, No. 1:16-cv-00425 (M.D.N.C. filed May 9, 2016), also does not warrant a stay of Plaintiffs’ case against the UNC Defendants. It is worth noting that the UNC Defendants apparently agree that litigation challenging H.B. 2 should be allowed to proceed in some fashion, even against them, notwithstanding the pendency of *G.G.* But it makes no sense to stay the first-filed case challenging H.B. 2—in which there is already a pending motion for preliminary injunction—in favor of a later-filed case that does not even involve all of the

preliminary injunction in *G.G.* to the Fourth Circuit). Because the UNC Defendants did not submit a proposed order in support of their motion, it is not clear what specific relief they seek.

same claims. The UNC Defendants assert that, because *United States v. North Carolina* is a dispute between “the governments responsible for the enforcement of the Act and Title IX,” Mot. at 12, the instant case should be stayed. In support of this contention, the UNC Defendants state that “[i]t is in the interest of justice that, to the extent possible, the claims at issue in this case be resolved in an action between the governments that administer and enforce the relevant statutes rather than in this action between private parties and the University.” *Id.*

The UNC Defendants offer no explanation—or citation to any legal authority—for why that should be so. Nor can they: justice is not served by forcing the actual *people* affected by a law to stand aside. Plaintiffs are the ones who suffer by being forced to use facilities discordant with their gender identities. *See* Mot. for Preliminary Injunction at 6-11, 40-43 (discussing the that H.B. 2 causes Plaintiffs). The federal government’s interest in litigating Title IX, while undoubtedly important, should not preclude litigation by the actual people whose rights and dignity are affected by the law. *Cf. Cannon v. Univ. of Chicago*, 441 U.S. 677 (1979) (holding that Title IX may be enforced by private litigants). This litigation and the litigation brought by the United States are not mutually exclusive, and both can proceed in parallel.

Moreover, the instant case, unlike *United States v. North Carolina*, includes constitutional claims in addition to the Title IX claim. The UNC Defendants offer no explanation for why Plaintiffs’ constitutional claims should be halted pending resolution of the Title IX claim in *United States v. North Carolina*. Furthermore, because the UNC

Defendants seek only a stay as to themselves, the constitutional claims will nevertheless proceed as to Defendant McCrory whatever the resolution of the stay motion. That would lead to inefficient, piecemeal litigation, which undercuts the very reason that the UNC Defendants proffer for a stay.

Finally, proceeding concurrently with both this case and *United States v. North Carolina* best promotes judicial economy. Both cases are proceeding before this Court, thus eliminating the risk of inconsistent Title IX rulings. If the UNC Defendants believe their Title IX arguments are the same in both cases, then they should face little difficulty in simply cross-referencing their Title IX arguments.

The UNC Defendants accordingly have not met the burden that rests on them to demonstrate that this case is one of the “rare circumstances,” *Landis*, 299 U.S. at 255, warranting a stay pending the outcome of *United States v. North Carolina*.

III. A STAY WOULD SUBSTANTIALLY HARM PLAINTIFFS.

A stay of this case against the UNC Defendants would substantially harm Plaintiffs. Every day that H.B. 2 is not enjoined, Plaintiffs suffer. Plaintiff Joaquín Carcaño works for a UNC school, and Plaintiffs Payton Grey McGarry and H.S attend UNC schools. By requiring Plaintiffs to use restrooms on its campuses that do not align with their gender identity, H.B. 2 places Plaintiffs in the position of choosing between three harmful options: they can (1) attempt to avoid the restrooms in the places they live, work, and study—an option that will often prove impractical if not impossible, and can cause serious psychological and physical harm; (2) disclose their transgender status to

others in and around the restrooms that they use—which may cause psychological distress and lead to harassment and violence; or (3) violate both their school policy and state law, risking not only harassment and violence, but also disciplinary or other legal consequence. *See* Mot. for Preliminary Injunction, ECF No. 22 at 40-41; *see also Glenside W. Corp. v. Exxon Co., U.S.A.*, 761 F. Supp. 1118, 1133 (D.N.J. 1991) (“Courts have granted injunctive relief where the applicant for such relief shows he or she may be subjected to violence without injunctive relief.”). Moreover, every day that H.B. 2 is not enjoined, Plaintiffs suffer the dignitary harm of being declared different and less valuable by the UNC Defendants. *See Baskin v. Bogan*, 12 F. Supp. 3d 1137, 1140 (S.D. Ind. 2014) (holding that dignitary harms constitute irreparable injuries).

Instead of confronting any of the evidence Plaintiffs offered in their motion for a preliminary injunction regarding the harm they face every day that H.B. 2 is not enjoined, the UNC Defendants offer a series of evasive statements about the meaning and effect of H.B. 2, as well as contradictory assertions about their compliance with H.B. 2. The UNC Defendants’ effort to weave their way out of Court must be rejected.

First, the UNC Defendants advance mutually exclusive versions of their interaction with the challenged statute, admitting that they have taken steps to come into full *compliance* with H.B. 2, but insisting that these steps do not constitute what they view as *enforcement* of H.B. 2. That distinction is logically incoherent and factually unsupportable. H.B. 2 mandates that all public agencies in the state, including UNC, “shall require” compliance with its statutory provisions. N.C. Gen. Stat. § 143.760(b).

On April 5, 2016, President Margaret Spellings sent a memorandum to the chancellors of all 17 constituent UNC schools instructing that each of them “must require” that every multiple-occupancy restroom and changing facility be designated for and used “only by persons based on their biological sex.” ECF No. 38-5 at 1 (Ex. 4 to the Spelling Affidavit relied upon by the UNC Defendants). President Spellings’ memorandum further directs each school to take action to “fully meet their obligations under the Act.” *Id.* And President Spellings’ memorandum makes clear that “the University is required to fulfill its obligations under the law unless and until the court directs otherwise.” *Id.* at 2. Days later, on April 11, 2016, President Spellings reiterated that “[a]s a state institution, the University is bound to comply with HB2 and all other laws passed by the General Assembly and signed by the Governor.” Ex. C.

Thus, President Spellings has taken the unequivocal position that UNC will follow H.B. 2; she has communicated that position to every single school within UNC; and she has mandated that each school “must require” facility usage in accordance with so-called “biological sex,” rather than gender identity. Consistent with President Spellings’ instruction that schools must “[p]rovide notice of H.B. 2 to campus constituencies as appropriate,” ECF No. 38-5 at 2, schools have also sent campus-wide emails regarding compliance with H.B. 2, which Plaintiffs have personally received. For example, UNC-Chapel Hill officials sent an email to staff and students stating that “there is no question that many in our LGBTQ community and many others are feeling unwelcome, unsafe, and unhappy in the communities where they live and work” and that “the law relating to

public restrooms and changing facilities does apply to the University.” *See* Exs. D, E. Likewise, UNC-Greensboro sent out an email linking to President Spellings’ memorandum and noting that H.B. 2 had already had “concrete consequences” for the school. *See* Declaration of Payton McGarry at Ex. A and ¶ 1.

In light of this evidence, President Spellings’ current professed assurance that she will refrain from promulgating regulations regarding restroom usage by transgender students—an assurance offered solely in litigation, and not publicly or even in the University’s correspondence with the U.S. Department of Justice regarding H.B. 2—is irrelevant at best. Her memorandum already directed all UNC schools to *fully meet their obligations* under the Act, and she has not rescinded or altered that memorandum in any way.

Whether the UNC Defendants have taken steps to *physically remove* any transgender individuals from facilities corresponding to their gender identity is also beside the point. That is not the basis on which a Title IX claim rises or falls. The facts here are no different than in *G.G.*, where the School Board had similarly passed a resolution requiring that sex-specific facilities “shall be limited to the corresponding biological genders.” 2016 WL 1567467, at *2. The School Board’s adoption of this position was sufficient to support a Title IX claim that plaintiff had been “excluded from participation in an education program.” *Id.* The exclusion itself was unlawful, regardless of what consequences the plaintiff might have faced for violating that exclusion.

Here, too, the UNC Defendants need not barricade restroom doors or physically remove Plaintiffs from restrooms for there to be a Title IX violation with all its attendant harms. As discussed above, H.B. 2 exposes Plaintiffs to stigma, physical and psychological harm, the disclosure of private information about their transgender status, and the threat of physical violence. Regardless of whether the UNC Defendants physically block them from restrooms corresponding to their gender identity, H.B. 2 harms Plaintiffs by subjecting them to the harms arising from complying with the law or the legal risk of violating it. As a general matter, reasonable UNC students and staff will comply with what their school mandates them to do, and President Spellings has made clear that compliance with H.B. 2 is “require[d]”. ECF No. 38-5 at 2. Against that landscape, it is no answer to assert that transgender individuals can simply resort to self-help by violating these mandates—as well as state law—at their own peril. As President Spellings has admitted, H.B. 2 “remains the law of the State” and “the University has no independent power to change that reality.” ECF No. 23-27 at 2-3.

Second, the UNC Defendants rely on the remarkable contention that “[t]here is nothing in [H.B. 2] that prevents any transgender person from using the restroom consistent with his or her gender identity.” Mot. at 16. This is so, the UNC Defendants say, because H.B. 2 does not itself impose criminal penalties and because, in their view, it only regulates the University, not Plaintiffs: “[T]he Act directs the University of North Carolina to require that restrooms only be used by persons based on their biological sex. The Act contains no enforcement procedures or penalties. Therefore, until the University

takes action to enforce the Act there is nothing that prevents Transgender Plaintiffs from using the restroom of their choice.” Mot. at 16 (citation omitted).

The UNC Defendants’ newfound litigation position would certainly come as a surprise to the state’s Legislature and Governor, who enacted a law that plainly operates to prevent Plaintiffs from using the restrooms that correspond with their gender identity. *See* Ex. F at 6 (statement by State Rep. Paul Stam dismissing as “legend” UNC’s position that “HB2 has no enforcement provisions and can be disregarded”).⁵ There can be no doubt that the target of H.B. 2 is transgender North Carolinians, and not merely the government entities providing the restrooms. Just as individual gay and lesbian couples were permitted to challenge statutes and constitutional provisions prohibiting governments from recognizing same-sex marriages, *see Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014)—even though many of the relevant state laws only directly regulated the duty of county clerks who issue marriage licenses—transgender individuals may challenge the provisions of H.B. 2 at issue, which the UNC Defendants have described to all school administrators, employees, and students as mandatory, and which cause Plaintiffs harm.

⁵ *See also* N.C. Exec. Order 93 (ECF No. 23-24) § 3 (“Under current law, every multiple occupancy restroom, locker room or shower facility located in a cabinet agency must be designated for and *only used by* persons based on their biological sex.” (emphasis added)); ECF No. 23-22 at 1 (statement by State Rep. Dean Arp supporting H.B. 2 because “biological men should not . . . be in women’s showers, locker rooms and bathrooms”).

Third, and in any event, UNC's contentions are factually erroneous. The University of North Carolina does require students to comply with a Code of Conduct, which expressly requires compliance with state law. *See, e.g.*, Ex. G at 2 (UNC-Greensboro Student Code of Conduct, stating that "a violation of law may also be treated as a violation of University regulations" and that "[s]tudents are responsible for knowing and observing all federal and state laws"); Ex. H at *4 (UNC-Chapel Hill Honor Code, stating that "Violations of . . . federal, state, or local law may result in a violation of the student code of conduct and imposition of student discipline."). Violators are subject to disciplinary warnings, probation, suspension, or expulsion. Ex. G at 2. Plaintiffs thus are not, as the UNC Defendants contend, free to use the restrooms that correspond with their gender identity free of consequence, *see* Mot. at 16; instead, university regulations require them to comply with state law or face discipline. At the very least, whether actively enforced by the UNC Defendants or not, H.B. 2 subjects Plaintiffs to undue risk and legal uncertainty that limits their access to gender-appropriate facilities.

Fourth, the UNC Defendants' empty gesture toward their internal non-discrimination policies is meaningless given their avowed compliance with H.B. 2. A promise not to discriminate on the basis of sex, including gender identity, does no good when the promisor openly breaches its commitment. Presidents Spellings' message that "the University is bound to comply with HB2," Ex. C, makes clear that any internal nondiscrimination policy is subservient to state law. If state law also mandated that

restrooms be separated by race, and the school complied, the school's assurance of its philosophical commitment to nondiscrimination would ring equally hollow.

Ultimately, the UNC Defendants' effort to evade the meaning and effect of H.B. 2, and to mask their compliance with it, fails in the face of the evidence that Plaintiffs have proffered of substantial harm from the UNC Defendants' actual compliance. The UNC Defendants have fallen *far* short of their burden to "make out a clear case of hardship or inequity in being required to go forward" with this lawsuit. *Landis*, 299 U.S. at 255. Indeed, they have not offered a single example of how proceeding with this case harms them at all. To the contrary, a stay would substantially harm Plaintiffs and must therefore be denied.⁶

* * *

The UNC Defendants have offered no justification for staying these proceedings. This Court is bound by the Fourth Circuit's resolution of the Title IX interpretation in *G.G.*, and Plaintiffs are entitled to a ruling on their motion for a preliminary injunction on that claim and their constitutional claims.⁷

⁶ To the extent that the UNC Defendants' arguments regarding their alleged non-enforcement implicate standing and/or their affirmative defense of sovereign immunity, those questions are not themselves the basis for a stay. Rather, they are properly resolved as part of Plaintiffs' Motion for Preliminary Injunction, to which the UNC Defendants have already responded asserting these issues. *See generally* ECF No. 50.

⁷ Furthermore, although the UNC Defendants have couched their arguments here in the context of a motion to stay, they fail to mention that granting their motion would also have the effect of denying Plaintiffs' motion for a preliminary injunction and thus would be immediately appealable as such a denial. *See Carson v. Am. Brands, Inc.*, 450 U.S. 79, 84 (1981) (holding that 28 U.S.C. § 1292(a)(1) "provide[s] appellate jurisdiction over

CONCLUSION

For the foregoing reasons, the UNC Defendants' motion for a stay should be denied.

Dated: June 20, 2016

Respectfully submitted,

/s/ Christopher A. Brook

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*Appearing by special appearance pursuant to L.R. 83.1(d).

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orders that . . . have the practical effect of . . . denying injunctions and have serious, perhaps irreparable, consequences” (internal quotation marks omitted).

CERTIFICATE OF SERVICE

I, Christopher A. Brook, hereby certify that on June 20, 2016, I electronically filed Plaintiffs' Response to the UNC Defendants Motion to Stay Proceedings with the Clerk of the Court, as well as the supporting declarations and exhibits, using the CM/ECF system, and have verified that such filing was sent electronically using the CM/ECF system to all parties who have appeared with an email address of record.

/s/ Christopher A. Brook
Christopher A. Brook

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO; PAYTON GREY
MCGARRY; H.S., by her next friend and
mother, KATHRYN SCHAFER; ANGELA
GILMORE; KELLY TRENT; BEVERLY
NEWELL; and AMERICAN CIVIL
LIBERTIES UNION OF NORTH
CAROLINA,

Plaintiffs,

v.

PATRICK MCCRORY, in his official capacity
as Governor of North Carolina; UNIVERSITY
OF NORTH CAROLINA; BOARD OF
GOVERNORS OF THE UNIVERSITY OF
NORTH CAROLINA; and W. LOUIS
BISSETTE, JR., in his official capacity as
Chairman of the Board of Governors of the
University of North Carolina,

Defendants,

and

PHIL BERGER, in his official capacity as
President *pro tempore* of the North Carolina
Senate; and TIM MOORE, in his official
capacity as Speaker of the North Carolina
House of Representatives,

Defendants-Intervenors.

No. 1:16-cv-00236-TDS-JEP

DECLARATION OF PAUL M. SMITH

1. I am a member of the bar of the States of Maryland and New York and of the District of Columbia and have been specially admitted to this Court pursuant to L.R. 83.1(d). I am a partner in the law firm Jenner & Block LLP, counsel for Plaintiffs in this action. I make this declaration on personal knowledge, in support of Plaintiffs' Opposition to the University of North Carolina Defendants' Motion to Stay Proceedings.

2. Attached as Exhibit A to this declaration is a true and correct copy of *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, No. 15-2056 (4th Cir. June 9, 2016) (ECF No. 94) (order denying motion to stay mandate).

3. Attached as Exhibit B to this declaration is a true and correct copy of *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, No. 15-2056 (4th Cir. June 17, 2016) (ECF No. 95) (mandate).

4. Attached as Exhibit C to this declaration is a true and correct copy of Press Release, UNC, *President Spellings Comments on Public Facilities Privacy and Security Act (HB2)* (April 11, 2016), available at http://www.northcarolina.edu/sites/default/files/4.11.16_ms_statement_on_hb2_0.pdf.

5. Attached as Exhibit D to this declaration is a true and correct copy of E-mail from UNC-Chapel Hill Chancellor Carol L. Folt *et al.* to Joaquín Carcaño (April 8, 2016, 6:47 PM).

6. Attached as Exhibit E to this declaration is a true and correct copy of Office of the Chancellor, The University of North Carolina at Chapel Hill, *Message From University Leaders: Update on House Bill 2* (April 19, 2016), available at

<http://chancellor.unc.edu/2016/04/message-from-university-leaders-update-on-house-bill-2/>.

7. Attached as Exhibit F to this declaration is a true and correct copy of Rep. Paul Stam, Speaker *Pro Tem*, North Carolina House of Representatives, *Legends vs. the Truth about HB2* (June 6, 2016), available at <http://paulstam.info/wp-content/uploads/2016/06/Legends-vs-the-Truth-HB2.pdf>.

8. Attached as Exhibit G to this declaration is a true and correct copy of University of North Carolina Greensboro, *Student Policy Handbook: Student Code of Conduct* (July 1, 2015), available at <https://sa.uncg.edu/handbook/student-code-of-conduct/>.

9. Attached as Exhibit H to this declaration is a true and correct copy of an excerpt (pages 1-27) from The University of North Carolina at Chapel Hill, *The Instrument of Student Judicial Governance* (May 11, 2016), available at <https://studentconduct.unc.edu/sites/studentconduct.unc.edu/files/documents/Instrument.pdf>.

* * *

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20th day of June, 2016.

A handwritten signature in black ink, appearing to read "Paul M. Smith", is written above a horizontal line. The signature is cursive and stylized.

Paul M. Smith

**Declaration of Paul M. Smith
June 20, 2016**

EXHIBIT A

FILED: June 9, 2016

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-2056
(4:15-cv-00054-RGD-DEM)

G. G., by his next friend and mother, Deirdre Grimm,

Plaintiff - Appellant,

v.

GLOUCESTER COUNTY SCHOOL BOARD,

Defendant - Appellee,

JUDY CHIASSON, Ph. D., School Administrator California; DAVID VANNASDALL, School Administrator California; DIANA K. BRUCE, School Administrator District of Columbia; DENISE PALAZZO, School Administrator Florida; JEREMY MAJESKI, School Administrator Illinois; THOMAS A ABERLI, School Administrator Kentucky; ROBERT BOURGEOIS, School Administrator Massachusetts; MARY DORAN, School Administrator Minnesota; VALERIA SILVA, School Administrator Minnesota; RUDY RUDOLPH, School Administrator Oregon; JOHN O'REILLY, School Administrator New York; LISA LOVE, School Administrator Washington; DYLAN PAULY, School Administrator Wisconsin; SHERIE HOHS, School Administrator Wisconsin; THE NATIONAL WOMEN'S LAW CENTER; LEGAL MOMENTUM; THE ASSOCIATION OF TITLE IV ADMINISTRATORS; EQUAL RIGHTS ADVOCATES; GENDER JUSTICE; THE WOMEN'S LAW PROJECT; LEGAL VOICE; LEGAL AID SOCIETY - EMPLOYMENT LAW CENTER;

SOUTHWEST WOMEN'S LAW CENTER; CALIFORNIA WOMEN'S LAW CENTER; THE WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH; PEDIATRIC ENDOCRINE SOCIETY; CHILD AND ADOLESCENT GENDER CENTER CLINIC AT UCSF BENIOFF CHILDREN'S HOSPITAL; CENTER FOR TRANSYOUTH HEALTH AND DEVELOPMENT AT CHILDREN'S HOSPITAL LOS ANGELES; GENDER & SEX DEVELOPMENT PROGRAM AT ANN & ROBERT H. LURIE CHILDREN'S HOSPITAL OF CHICAGO; FAN FREE CLINIC; WHITMAN-WALKER CLINIC, INC., d/b/a Whitman-Walker Health; GLMA: HEALTH PROFESSIONALS ADVANCING LGBT EQUALITY; TRANSGENDER LAW & POLICY INSTITUTE; GENDER BENDERS; GAY, LESBIAN & STRAIGHT EDUCATION NETWORK; GAY-STRAIGHT ALLIANCE NETWORK; INSIDEOUT; EVIE PRIESTMAN; ROSMY; TIME OUT YOUTH; WE ARE FAMILY; UNITED STATES OF AMERICA; MICHELLE FORCIER, M.D.; NORMAN SPACK, M.D.,

Amici Supporting Appellant,

STATE OF SOUTH CAROLINA; PAUL R. LEPAGE, In his official capacity as Governor State of Maine; STATE OF ARIZONA; THE FAMILY FOUNDATION OF VIRGINIA; STATE OF MISSISSIPPI; JOHN WALSH; STATE OF WEST VIRGINIA; LORRAINE WALSH; PATRICK L. MCCRORY, In his official capacity as Governor State of North Carolina; MARK FRECHETTE; JUDITH REISMAN, Ph. D.; JON LYNSKY; LIBERTY CENTER FOR CHILD PROTECTION; BRADLY FRIEDLIN; LISA TERRY; LEE TERRY; DONALD CAULDER; WENDY CAULDER; KIM WARD; ALICE MAY; JIM RUTAN; ISSAC RUTAN; DORETHA GUJU; DOCTOR RODNEY AUTRY; PASTOR JAMES LARSEN; DAVID THORNTON; KATHY THORNTON; JOSHUA CUBA; CLAUDIA CLIFTON; ILONA GAMBILL; TIM BYRD; EAGLE FORUM EDUCATION AND LEGAL DEFENSE FUND,

Amici Supporting Appellee,

CONSERVATIVE LEGAL DEFENSE AND EDUCATION FUND; PUBLIC ADVOCATE OF THE UNITED STATES; STATE OF KANSAS; STATE OF NEBRASKA; STATE OF TEXAS; STATE OF UTAH; 50 GLOUCESTER STUDENTS, PARENTS, GRANDPARENTS, AND COMMUNITY MEMBERS; UNITED STATES JUSTICE FOUNDATION,

Amici Supporting Rehearing Petition.

O R D E R

Upon consideration of the motion to stay mandate pending filing of petition for writ of certiorari, the court denies the motion.

Judge Floyd and Senior Judge Davis voted to deny the motion. Judge Niemeyer voted to grant the motion.

For the Court

/s/ Patricia S. Connor, Clerk

Declaration of Paul M. Smith
June 20, 2016

EXHIBIT B

FILED: June 17, 2016

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-2056
(4:15-cv-00054-RGD-DEM)

G. G., by his next friend and mother, Deirdre Grimm

Plaintiff - Appellant

v.

GLOUCESTER COUNTY SCHOOL BOARD

Defendant - Appellee

JUDY CHIASSON, Ph. D., School Administrator California; DAVID VANNASDALL, School Administrator California; DIANA K. BRUCE, School Administrator District of Columbia; DENISE PALAZZO, School Administrator Florida; JEREMY MAJESKI, School Administrator Illinois; THOMAS A ABERLI, School Administrator Kentucky; ROBERT BOURGEOIS, School Administrator Massachusetts; MARY DORAN, School Administrator Minnesota; VALERIA SILVA, School Administrator Minnesota; RUDY RUDOLPH, School Administrator Oregon; JOHN O'REILLY, School Administrator New York; LISA LOVE, School Administrator Washington; DYLAN PAULY, School Administrator Wisconsin; SHERIE HOHS, School Administrator Wisconsin; THE NATIONAL WOMEN'S LAW CENTER; LEGAL MOMENTUM; THE ASSOCIATION OF TITLE IV ADMINISTRATORS; EQUAL RIGHTS ADVOCATES; GENDER JUSTICE; THE WOMEN'S LAW PROJECT; LEGAL VOICE; LEGAL AID SOCIETY - EMPLOYMENT LAW CENTER;

SOUTHWEST WOMEN'S LAW CENTER; CALIFORNIA WOMEN'S LAW CENTER; THE WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH; PEDIATRIC ENDOCRINE SOCIETY; CHILD AND ADOLESCENT GENDER CENTER CLINIC AT UCSF BENIOFF CHILDREN'S HOSPITAL; CENTER FOR TRANSYOUTH HEALTH AND DEVELOPMENT AT CHILDREN'S HOSPITAL LOS ANGELES; GENDER & SEX DEVELOPMENT PROGRAM AT ANN & ROBERT H. LURIE CHILDREN'S HOSPITAL OF CHICAGO; FAN FREE CLINIC; WHITMAN-WALKER CLINIC, INC., d/b/a Whitman-Walker Health; GLMA: HEALTH PROFESSIONALS ADVANCING LGBT EQUALITY; TRANSGENDER LAW & POLICY INSTITUTE; GENDER BENDERS; GAY, LESBIAN & STRAIGHT EDUCATION NETWORK; GAY-STRAIGHT ALLIANCE NETWORK; INSIDEOUT; EVIE PRIESTMAN; ROSMY; TIME OUT YOUTH; WE ARE FAMILY; UNITED STATES OF AMERICA; MICHELLE FORCIER, M.D.; NORMAN SPACK, M.D.

Amici Supporting Appellant

STATE OF SOUTH CAROLINA; PAUL R. LEPAGE, In his official capacity as Governor State of Maine; STATE OF ARIZONA; THE FAMILY FOUNDATION OF VIRGINIA; STATE OF MISSISSIPPI; JOHN WALSH; STATE OF WEST VIRGINIA; LORRAINE WALSH; PATRICK L. MCCRORY, In his official capacity as Governor State of North Carolina; MARK FRECHETTE; JUDITH REISMAN, Ph. D.; JON LYNSKY; LIBERTY CENTER FOR CHILD PROTECTION; BRADLY FRIEDLIN; LISA TERRY; LEE TERRY; DONALD CAULDER; WENDY CAULDER; KIM WARD; ALICE MAY; JIM RUTAN; ISSAC RUTAN; DORETHA GUJU; DOCTOR RODNEY AUTRY; PASTOR JAMES LARSEN; DAVID THORNTON; KATHY THORNTON; JOSHUA CUBA; CLAUDIA CLIFTON; ILONA GAMBILL; TIM BYRD; EAGLE FORUM EDUCATION AND LEGAL DEFENSE FUND

Amici Supporting Appellee

CONSERVATIVE LEGAL DEFENSE AND EDUCATION FUND; PUBLIC ADVOCATE OF THE UNITED STATES; STATE OF KANSAS; STATE OF NEBRASKA; STATE OF TEXAS; STATE OF UTAH; 50 GLOUCESTER STUDENTS, PARENTS, GRANDPARENTS, AND COMMUNITY MEMBERS; UNITED STATES JUSTICE FOUNDATION

Amici Supporting Rehearing Petition

MANDATE

The judgment of this court, entered 4/19/2016, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

**Declaration of Paul M. Smith
June 20, 2016**

EXHIBIT C



President Spellings comments on Public Facilities Privacy and Security Act (HB2)

Last week, UNC General Administration issued a Q&A summary of the requirements of the Public Facilities Privacy and Security Act (HB2) enacted on March 23. That Q&A was developed in response to campus requests for guidance on how to interpret the new law and how to apply it across the University. As a state institution, the University is bound to comply with HB2 and all other laws passed by the General Assembly and signed by the Governor.

We have heard from students, faculty, and staff who see HB2 as an effort to single out individuals based on their sexual orientation or gender identity for ridicule or harassment. They are hurt, angry, and even afraid. It is apparent that our providing factual guidance on the requirements of the law has been misinterpreted by many as an endorsement of the law. Nothing could be further from the truth.

The guidance we issued simply states what the General Assembly and Governor passed into law, and it addresses some key issues:

- We clarify that UNC and its campuses will not change existing non-discrimination policies that apply to all students and employees, and that we will not tolerate any sort of harassing or discriminatory behavior on the basis of gender identity or sexual orientation;
- We explicitly say that campuses need not change existing labeling of bathrooms; and
- We caution that the law does not address enforcement and confers no authority for the University or any other public agency to undertake enforcement actions.

The University's fundamental values include a commitment to diversity, inclusion, academic freedom, free speech, free expression, and the pursuit of free inquiry. We want our campuses to be welcoming and safe places for students and faculty of all backgrounds, beliefs and identities.

I have contacted state leaders and advised them that this law is sending a chill throughout the University of North Carolina. It is adversely affecting faculty, staff, and student recruitment and retention. Some alumni are rescinding donations. This law could negatively impact the significant federal funding on which the University relies. One federal lawsuit has already been filed. And major conferences hosted by UNC campuses are now being delayed, cancelled, or moved to other states. Legislative leaders tell me they are open to hearing the University's concerns during the upcoming legislative short session, and we plan to take full advantage of that opportunity.

We will continue to share information with the University community as it becomes available.

**Declaration of Paul M. Smith
June 20, 2016**

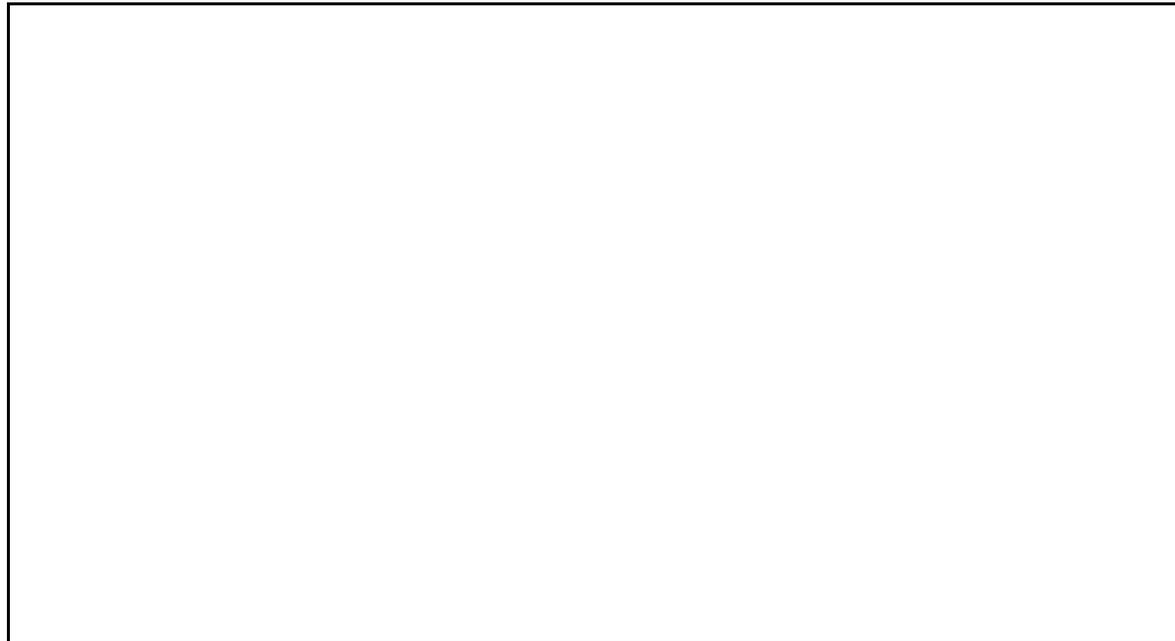
EXHIBIT D

From: no_reply@email.unc.edu [mailto:no_reply@email.unc.edu]

Sent: Friday, April 8, 2016 6:47 PM

To: Carcano, Joaquin [REDACTED]

Subject: [FORMAL NOTICE] Message from Chancellor Folt and University Leaders



Dear Campus Community:

Over the past several weeks, since House Bill 2 (HB2) became the Public Facilities Privacy and Security Act, the response to this new law on our campus has grown more intense and more quickly than any issue we've faced in recent memory. Diversity and inclusiveness are at the heart of what makes Carolina a true University of the people. And many on our campus now feel excluded and unwelcome here and in our state.

Several days ago, we received [guidance on HB2 issued](#) by UNC System President Margaret Spellings about how universities in the system should interpret and apply HB2. To be clear, this was not intended to be an endorsement of HB2 – only guidance – and **all of UNC-Chapel Hill's relevant policies remain in effect**. All that Carolina has worked hard to establish over the decades – policies including protections for sexual orientation and gender identity, and fostering a culture of acceptance, respect for one another and human dignity above all else – remain a fundamental cornerstone of what our University aspires to be.

Although the policies on our campus remain, there is no question that many in our LGBTQ community and many others are feeling unwelcome, unsafe and unhappy in the communities where they live and work. We all must work tirelessly to ensure that every

member of our community feels welcome and safe and is able to share equally in the benefits of this place where we work, study and live. We encourage you to visit the [Equal Opportunity and Compliance Office](#) for more information.

The memo from UNC General Administration also confirms that the law relating to public restrooms and changing facilities does apply to the University. This is an issue that is deeply personal and involves some of our most basic and extremely private dignities. We have been asked how the University intends to “enforce” this provision of the law. As noted in the memorandum, the law does not contain any provisions concerning enforcement. We have added and will continue to add public gender-neutral single-use restrooms and changing facilities throughout our campus and we will be adding additional signage.

It is clear that the impacts to Carolina go well beyond the personal toll. There are implications to us, ranging from conferences that will no longer send delegates to North Carolina and our campus; concerns and a pause among some prospective students, faculty, researchers and staff; current and prospective donors who are signaling a reconsideration of their gifts; grants and relationships with businesses that are now in jeopardy; and more. We will continue to share this feedback and concern about effects of the law on our campus with UNC General Administration.

What does this all mean today? We find ourselves in a complicated and uncertain legal environment, involving potential conflicts between federal and state laws that address sensitive issues about which people justifiably have strong feelings. The University must do its best to comply with all laws that govern us while taking practical steps to lessen discomfort and distress.

As University administrators and members of our Carolina community, we are in a challenging situation. We don’t agree with the Act, but as stewards of this great University we must comply with it while also ensuring Carolina is welcoming and inclusive, and continues to be an economic and innovation engine for the state. We want to reassure our community, whether they are here today, have been with us in the past, or are future Tar Heels, that Carolina is deeply committed to the ideals embedded in the soul of our beloved University.

Sincerely,

Carol L. Folt
Chancellor

James W. Dean, Jr.
Executive Vice Chancellor and Provost

Winston Crisp

Vice Chancellor for Student Affairs

Felicia A. Washington

Vice Chancellor for Workforce Strategy, Equity and Engagement

This message is sponsored by: Office of the Chancellor

**Declaration of Paul M. Smith
June 20, 2016**

EXHIBIT E

Office of the CHANCELLOR



THE UNIVERSITY
of NORTH CAROLINA
at CHAPEL HILL

(<http://chancellor.unc.edu>)

News & Messages

Message from University leaders: Update on House Bill 2

Posted April 19, 2016 & filed under [News & Messages \(http://chancellor.unc.edu/category/news-messages/\)](http://chancellor.unc.edu/category/news-messages/).

Dear Campus Community:

Over the past several weeks, since House Bill 2 (HB2) became the Public Facilities Privacy and Security Act, the response to this new law on our campus has grown more intense and more quickly than any issue we've faced in recent memory. Diversity and inclusiveness are at the heart of what makes Carolina a true University of the people. And many on our campus now feel excluded and unwelcome here and in our state.

Several days ago, we received [guidance on HB2 issued \(https://www.northcarolina.edu/sites/default/files/public_facilities_guidance_memo_0.pdf\)](https://www.northcarolina.edu/sites/default/files/public_facilities_guidance_memo_0.pdf) by UNC System President Margaret Spellings about how universities in the system should interpret and apply HB2. To be clear, this was not intended to be an endorsement of HB2 – only guidance – and **all of UNC-Chapel Hill's relevant policies remain in effect**. All that Carolina has worked hard to establish over the decades – policies including protections for sexual orientation and gender identity, and fostering a culture of acceptance, respect for one another and human dignity above all else – remain a fundamental cornerstone of what our University aspires to be.

Although the policies on our campus remain, there is no question that many in our LGBTQ community and many others are feeling unwelcome, unsafe and unhappy in the communities where they live and work. We all must work tirelessly to ensure that every member of our community feels welcome and safe and is able to share equally in the benefits of this place where we work, study and live. We encourage you to visit the [Equal Opportunity and Compliance Office \(http://eoc.unc.edu/\)](http://eoc.unc.edu/) for more information.

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Carol L. Folt
Chancellor

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Executive Vice Chancellor and Provost

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Vice Chancellor for Student Affairs

Felicia A. Washington,
Vice Chancellor for Workforce Strategy, Equity and Engagement



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**Declaration of Paul M. Smith
June 20, 2016**

EXHIBIT F



Legends vs. the Truth about HB2

By: Rep. Paul Stam, Speaker Pro Tem
North Carolina House of Representatives
June 6, 2016

The narrative of the mass media is that HB 2, ([Session Law 2016 – 3, “Public Facilities Privacy and Security Act”](#)) was a big change, an outrageous overreach which denies rights and is unenforceable. Let's take these legends one by one and explain the law.

Legend 1: HB2 was a big change in North Carolina law.

TRUTH: (with one exception discussed under *Legend Number 5*) HB2 codified what had been the law of North Carolina for years, decades and, for the most part, centuries. It:

1. Provides for single sex multiple occupancy bathrooms and changing facilities in public buildings, public schools and public agencies (while allowing accommodations by single occupancy facilities and other exceptions) – please read it for yourselves. The Charlotte ordinance tried to set its policy throughout the city, even in private businesses (and even throughout the state for businesses contracting with Charlotte). There are an estimated 20,000 private entities in Charlotte that would have been affected. The new law sets common sense policy for government facilities but leaves private business free, subject to laws concerning indecent exposure, to make reasonable accommodations.

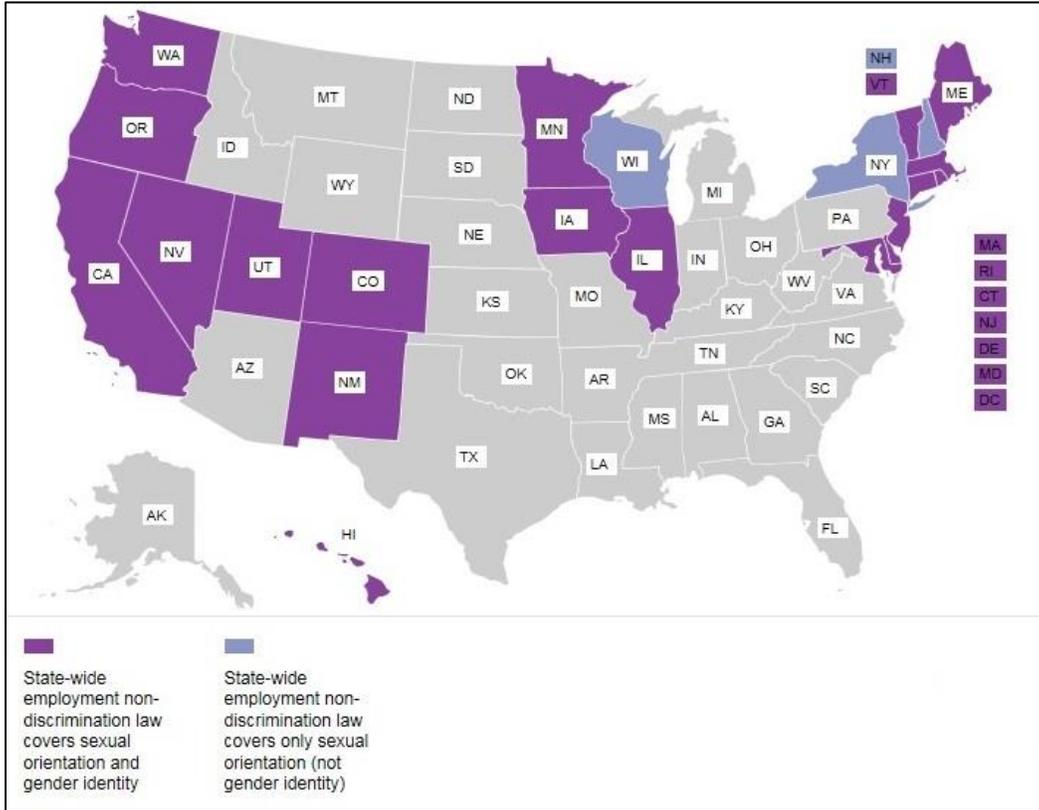
Pursuant to 180 years of NC Constitutional (Art. II Sec. 24(j) & Art. VII Sec. 1) economic policy, HB2:

2. Preempts local ordinances on employers pertaining to compensation of employees, with exceptions.
3. Prohibits cities and counties from requiring private contractors to abide by regulations on employment practices or mandate or prohibit provision of goods, services, or accommodations to any member of the public, except as required by State law.
4. Preempts local ordinances that regulate or impose requirements on employers pertaining to discriminatory practices in employment.
5. States the public policy of the state prohibiting discrimination on the basis of race, religion, color, national origin, or biological sex in public accommodations.

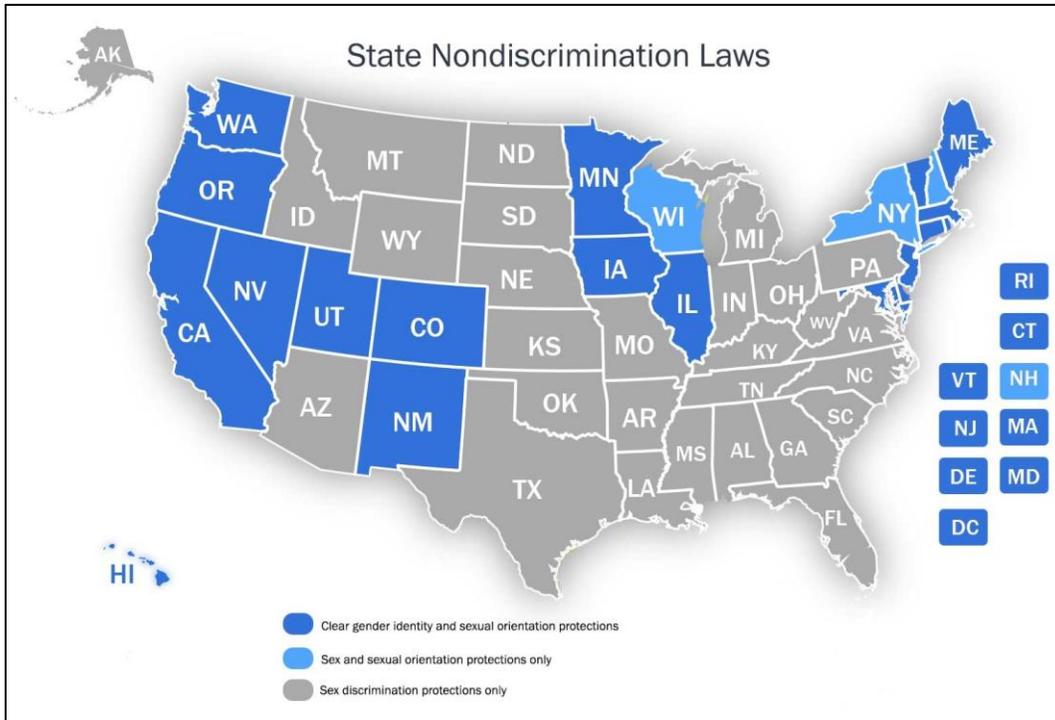
Legend 2: North Carolina is a unique outlier engaged in some vast overreach.

TRUTH: The North Carolina state law on non-discrimination is the same or very similar to that of

28 other states.¹ For visual proof please examine the two maps below compiled by opponents of HB2. On each map the gray states similar to North Carolina do not have extra special rights based on “sexual orientation” or “gender identity.”



www.aclu.org



www.transequality.org

¹See <http://paulstam.info/wp-content/uploads/2016/05/I-WANT-TO-HELP-PAYPAL.pdf>. Also see <https://www.aclu.org/map/non-discrimination-laws-state-state-information-map>.

Proponents of the Charlotte type discrimination ordinance say it has been enacted in 200 cities nationwide. Their leader, Rep. Chris Sgro, uses 100 cities. Whether it is 100 or 200 means that about 10,000 other cities and towns nationwide do not have an ordinance similar to Charlotte's.

Legend 3: Under HB2 the rights of LGBT persons are not protected. This is not true at all.

TRUTH: LGBT persons have the same rights that the rest of us do. Let me explain in detail:

What is discrimination? North Carolina residents have a full panoply of rights that come from the United States Constitution and Statutes, the North Carolina State Constitution (particularly Article I of the Declaration of Rights), and Statutes, and local ordinances. These rights are available in full to *almost* everyone.

Article I Section I of the North Carolina Constitution provides as follows:

The equality and rights of persons.

We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

There are exceptions. Aliens do not have the right to vote, whether here legally or illegally. Children do not have the right to enter into most contracts nor the right to vote nor the right to buy alcohol. Those who by mental disease are not able to conduct their own affairs may be declared incompetent by a Court. Their rights are protected and enhanced by the appointment of a Guardian. Convicted criminals lose some of their rights. But even convicted criminals have the right in most circumstances to not undress or use the bathroom or shower in the presence of a person of the opposite sex.²

Each of us has the same rights when facing the same circumstances. For historical reasons the exercise of these rights has been protected by additional constitutional or statutory provisions.

Article I Section 19 of the North Carolina Constitution provides:

Law of the land; equal protection of the laws

No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

The 14th Amendment (Section 1) to the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person

² The North Carolina Department of Public Safety, Adult Correction and Juvenile Justice stated in a memo on May 10, 2016, that, "Convicted criminals and inmates do have privacy rights when it comes to their using the restroom or changing clothes and they have the right to not be observed by members of the opposite sex while using the restroom or changing clothes. The specific policy language is included in the Prison Rape Elimination Act (PREA), with which the Division of Adult Correction...Community Corrections and Juvenile Justice...abides."

of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Private v. Public

Some acts of discrimination may be appropriate for private persons but are not appropriate for a government. I may prefer to vacation in the mountains of North Carolina but the government of North Carolina must not say that I must go to the mountains rather than to the beach.

When Romeo met Juliet, he discriminated on the basis of (biological) sex because he chose a particular biological female. When Juliet met Romeo she discriminated on the basis of (biological) sex, choosing a particular biological male. Homosexual or lesbian persons are allowed to exercise private discrimination by choosing a partner of the same sex.

Discrimination based on some factors at sometimes may be reasonable (like choosing the mountains over the beach). A "discriminating" person is one who is discerning, one who notes "differences with nicety," one who has "excellent taste or judgment." But certain types of discrimination are improper for a government or for a provider of public accommodations. These types of discrimination are not changed by HB2.

Prior to the passage of HB2 the personal characteristics subject to extra scrutiny for discrimination have generally been race, color, national origin, sex (biological) and religion. That was true before the passage of the HB2 and that is true today. (Note: other personal character traits like age, handicap, and familial status are also used where appropriate. A complete list is included at the end of this paper.)

Legend 4: Proponents of the Charlotte type discrimination ordinance claim that HB2 sets them back a century. LGBT persons just want the same rights that everyone else already has.

The TRUTH: Please review again the maps shown under Legend 2. For many years bills have been filed to allow local governments to extend characteristics for extra scrutiny to "sexual orientation," "gender identity" and "gender expression." Some have been filed on a statewide basis. A list of those bills is attached at the end of this paper. **NONE** of these were ever passed by the General Assembly, whether in recent years or in past years, under Republican or Democratic majorities.ⁱ HB2 did not change that.

In 2009, N. C. Gen. Stat. §§115C-407.5 - 407.8. required all local schools to adopt a policy prohibiting bullying. This law references gender identity, physical appearance and sexual orientation for extra scrutiny. But that law specifically states that it is *only* to be used in the context of bullying in K-12 public schools.

There are **at least 38 characteristics** listed at the end of the paper that have obtained special scrutiny in the laws or ordinances of various states and cities for particular purposes.ⁱⁱ

None of this changes the proposition that, except in the circumstances stated at the beginning, **WE ALL HAVE THE SAME RIGHTS** when confronting the same situation.

The opponents of HB2 are demanding extra special rights. They are not asking to have the same rights that other North Carolinians have. The United States Supreme Court in its decision of July 2015 finding a constitutional right to same-sex marriage nationwide did not find that "sexual orientation" was a "suspect classification."

The primary problem with "identity"-based preferences (like "sexual orientation" or "gender identity") is subjectivity. That subjectivity translates to rule other than by law. The "identity" actor determines the law. The law that codifies the right becomes nothing more than "law cover" for the individual, a tool of individualized empowerment.

"I want to be Cherokee," said Sen. Elizabeth Warren, whose tenure at Harvard improved its diversity rating. But that did not turn her into a Native American.

Legend 5: "Sexual Orientation" is a reasonable and definable term in discrimination law.

TRUTH: No. "Sexual orientation" is inherently undefinable and undefined. What is the meaning of the word "orientation?" Is it purely subjective? Is it what is in a person's mind or does it relate to behavior?

What is meant by "sexual orientation?" Some people, male and female, have the "orientation" or "behavior" of wanting or having more than one sexual partner. For centuries we have had laws against bigamy and polygamy and there are civil consequences for adultery. Those laws are being challenged in some Western states. There are tens of thousands of polygamous marriages in those states that are not being prosecuted. In addition there are millions of Americans who see nothing wrong with polygamy or adultery, either because of their cultural background or their own personal desires.

Extra scrutiny for discrimination on the basis of "sexual orientation" would mean that a job applicant who states to his or her prospective employer or current employer that he or she has a polygamous marriage or is in a polygamous or adulterous living situation, or wishes to have multiple sexual partners, would have extra special rights to be hired or to not be fired. If the desire (or behavior) of having multiple sexual partners is not a "sexual orientation" what could be?

There are many good reasons why an employer might not want to employ a person whose "sexual orientation" is to polygamy or adultery. The employer should have the right to make that decision. Similarly, the employee should have the right to choose those employers who actually want such employees.

Legend 6: "Gender Identity" is a reasonable and definable term. False.

TRUTH: President Obama's Departments of Justice and Education have proven that "gender identity" is purely subjective.

In the recent case of *G.G. ex rel. Grimm v. Gloucester Cnty. School Bd.*, No. 15–2056, 2016 WL 1567467 (4th Cir. Apr. 19, 2016), "gender identity" was the issue. Judge Niemeyer in dissent pointed out that "gender identity" is entirely subjective as it was applied by the 2-1 majority of the 4th Circuit panel.

On May 13, 2016, the United States Departments of Justice and Education issued a joint letter to public schools nationwide, explaining a school's obligation under Title IX regarding transgender students and "gender identity."³ The letter claimed to rely on Title IX of the Education Amendments of 1972 and stated:

"[g]ender identity refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at

³ Available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

birth...Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex...Under Title IX, there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity." (*emphases added*).

This is **purely subjective**. It is left to the individual to determine whether "he," "she" or "s(he)" identifies as female or male on a day-to-day basis.

Legal lines are more acceptable when drawn on the basis of benign and immutable characteristics - e.g., race, color, national origin, sex (biological) and disabilities. Religion is included as a suspect class because of its place in the First Amendment to the U.S. Constitution and Article I Section 13 of the NC Declaration of Rights.

If individuals are allowed to justify and demand universal acceptance of their behavior by wholly self-determined "identity" claims then the law becomes lawless.

To see where this is headed, please see Facebook's new policy on updating a user's gender identity on the user's profile page: <https://www.rt.com/usa/236283-facebook-gender-custom-choice/>. Facebook offers 58 pre-populated options to choose from OR a user can create and type in the user's chosen "gender" for the public to see.

Legend 7: HB2 has no enforcement provisions and can be disregarded. I have heard this statement from one community college President and from the affidavit of the President of UNC and from many others. Those spreading this legend think that the entire *corpus juris* has to be contained within each law.

TRUTH: This legend is not true at all. There is now the same enforcement of the law concerning changing rooms, locker rooms and facilities as before HB 2. To intentionally go into a room or remain in a room that is marked for a person of the opposite sex is a misdemeanor called trespass. In the matter of S.M.S. 196 N.C. App. 170, 675 S.E. 2d (2009).

There is also enforcement by the North Carolina Building Code, which is adopted by the State Building Code Council under express delegation of authority by the General Assembly. *Greene v. City of Winston-Salem*, 287 N.C. 66, 75, 213 S.E.2d 231, 237 (1975). It governs the construction, as well as the use and occupancy, of "public accommodations." 2012 N.C. Bldg. Code § 101.2 (Int'l Code Council, Inc. 3d prtg. 2014). It expressly mandates the numbers of toilet and lavatory facilities in buildings. And it mandates that, in most commercial buildings, "[w]here plumbing fixtures are required, separate facilities shall be provided for each sex." *Id.* §§ [P] 2902.1, 2902.2, Table 2902.1 (*emphasis added*). It requires signage for each facility "designating the sex." *Id.* § 2902.4.

The law will not permit subjecting building owners and occupants to conflicting requirements: to construct, label and operate separate, sex-specific bathroom facilities, on one hand, and to not allow bathrooms designated by sex, on the other hand.

By forbidding facility operators from designating showers by sex, the Charlotte ordinance (and President Obama's interpretation of Title VII and Title IX) also would conflict with the state's criminal indecent exposure statute, which expressly forbids cross-sex exposure of "private parts" in public places. N.C. Gen. Stat. § 14-190.9.

There are other remedies as well for government officials who refuse to obey the law-injunction and mandamus for starters.

Legend 8: The employment non-discrimination provisions prohibit one from suing in state court for discrimination. This oft repeated legend is not true.

TRUTH: Under both Title VII (equal employment opportunity law) and under title 42 U.S.C. 1981, discrimination suits can be brought in state court. This is called concurrent jurisdiction. In *Yellow Freight Syst. V. Donnelly*, 494 U.S. 820 at 823 (1990), the Supreme Court construed Title VII to allow suits in state court against private employers because (1) federal and state courts are presumed to have concurrent jurisdiction over cases arising under the laws of the United States and (2) Title VII contains no language stripping state courts of their "presumptive jurisdiction." *See also* Bullock v. Napolitano, 666 F.3d 281, 283 (4th Cir. N.C. 2012). *Legend 8* is oft repeated by those who know better. It does not become true by frequent repetition.

The real complaint is that there was an overlapping state tort claim. That claim was only for wrongful discharge from employment and only for discrimination based on race, national origin, color, sex, religion, age and handicap. That overlapping tort claim is affected by HB2 and I would support reinstating that state claim.

That does not change the fact that under HB2 claims of discrimination can still be brought in state court. I have heard it said that this is inadequate because Title VII has a shorter time for filing than the state law tort claim. For claims based on race that is not true.

Title 42 USC 1981, *Equal Rights Under the Law* provides:

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

Section 1981 was enacted in 1870 after ratification of the 13th Amendment. It effectuates the purpose of that amendment, to eradicate the vestiges of slavery. For almost 50 years it has been construed to allow a private right of action against another private person for discrimination based on race. State courts have concurrent jurisdiction with federal courts. There is a four-year statute of limitations, longer than the three year statute of limitations on the state overlapping claim for wrongful discharge. Attorney fees are available. This is a much better remedy than the overlapping state tort claim.

Legend 9: HB2 takes away rights to sue for violations of the rights of the disabled. This is not true.

TRUTH: The laws for disability discrimination are in [Chapter 168A of the NC General Statutes](#) and are quite robust. It complements the *Americans with Disabilities Act* 42 U.S.C. §§12101-12213.

Legend 10: HB2 means that one cannot sue for discrimination as a veteran.

TRUTH: Wrong. Rights of veterans to sue are set out in other statutes. North Carolina has preferences and protections for veterans. Veterans have preferences under the following statutes: N. C. Gen. Stat. §§ 17C-10.1, 20-7(f)(3b) & (q), 93B-15.1, 95-28.4, 105-277.1C, 113-296, 113-174.2(c)(6), 116-143.3A, 116-209.54(b)(6), 112C-115.4, 126 art. XIII, 127A-202.1, 127B-11,12, and 14, 128-15, 143B art. XIV Parts 2, 3 & 9.

Legend 11: House Bill 2 requires one to use the locker room or changing room or restroom based on biological sex assigned at birth. That is not true.

TRUTH: The law states “as shown on the birth certificate.” Birth certificates can be changed after sex reassignment surgery. [N.C. Gen. Stat. § 130A-118\(b\)\(4\)](#). In 46 states, birth certificates can be changed under varying criteria. HB 2 gives “full faith and credit” to these decisions of other states. There is no requirement that anyone carry or present a birth certificate.

Legend 12: HB2 is a North Carolina problem. Hardly.

TRUTH: In May, the State of Texas and 10 other states sued the federal government for relief from the same Presidential attack which has been launched against North Carolina.

The Department of Justice sued North Carolina for sanctions under Title VII and Title IX. Title VII involves employment discrimination for all employers of more than 15 employees. 42 U.S.C. § 2000(e)(2) (1994). Eighty percent of the employees in America are covered under Title VII. They are in every state of the nation. The Obama administration has threatened every business in America with more than 15 employees with Title VII suits if they do not submit to its subjective and radical redefinition of the word “sex.”

Legend 13: The federal government will take education money away if states do not cave in.

TRUTH: Under Title IX schools have the right to comply within 30 days after the completion of legal proceedings. This can take years. In the 44 year history of Title IX not one school has lost funding on this ground. The Obama administration announced on [May 12, 2016](#), that it would not seek to stop Title IX funding until the litigation is concluded.

Legend 14: North Carolina will suffer financial disaster if it persists in HB 2. This is a curious claim since HB2 did not significantly change the substantive law. See Legends 2, 3 and 4.

TRUTH: The Census Bureau recently reported that since 2013 North Carolina has had the fastest growing economy in the nation. Recently, and after the enactment of HB2, *Site Selection Magazine*⁴ stated that North Carolina (despite HB2) and Texas (despite falling oil prices), were tied for FIRST PLACE in the competition to locate new businesses. Even more recently, CEO

⁴ Bruns, Adam. *Site Selection magazine*, May 2016. Available at <http://siteselection.com/issues/2016/may/prosperity-cup.cfm>.

Magazine ranked North Carolina 3rd in the nation as the BEST place to do business.⁵

A wolf will look for the crippled or sick or just born caribou calf to separate from the herd and take down. The wolf who tries to feed on the herd or the healthy will not often be successful.

It is unclear why the Human Rights Campaign decided to make an example of North Carolina. There was and is nothing unique about North Carolina's policies on non-discrimination, which were virtually the same before and after HB2.

But the campaign picked the wrong target. Of all the states, North Carolina is most likely to survive the onslaught. The other 28 states and the tens of millions of affected employees are waking up and realizing that they are all targets.

At last count more than 1.3million Americans have agreed to boycott Target for joining the attack on North Carolina.⁶

On March 16, PayPal announced that it would gladly receive \$3.6 million from the state of North Carolina to locate a new facility near Charlotte. Then on April 5th, PayPal President & CEO, Dan Schulman, announced that it would not move to North Carolina because of the passage of HB2. Certainly, this was not because of the bathroom/locker-room situation since the bill did not even apply to private business facilities. PayPal was incensed at the so-called failure of the legislation to include extra special protections for sexual orientation, gender expression and gender identity. PayPal lawyers apparently did not realize that this was the same law in effect on March 16. PayPal currently maintains its operations center and main office in Nebraska and has a technology center in Arizona as well as a data service office in Texas- all states with similar non-discrimination laws as North Carolina.

The problem for PayPal is that 28 other states (and the federal government) also lack those categories for extra special protection. So PayPal would be limited to 20 states:

California, Colorado, Connecticut, Delaware, Illinois, Iowa, Hawaii, Nevada, New Hampshire, New Jersey, New Mexico, New York, Maine , Maryland, Minnesota, Oregon, Rhode Island, Utah, Vermont, Washington, and Wisconsin

But PayPal will need to narrow its list further.

In the publication *Rich States Poor States*⁷ and the publication by the *National Tax Foundation on Tax policy*⁸, the following states are in the bottom 15 in economic or tax climate. PayPal would certainly want to avoid these states.

⁵ <http://www.bizjournals.com/charlotte/news/2015/05/08/north-carolina-is-no-3-for-business-climate-ceo.html>.

⁶ Petition by the American Family Association. Available at <https://www.afa.net/action-alerts/sign-the-boycott-target-pledge/>.

⁷ Rich States, Poor States, Alec-Laffer State Economic Competitiveness Index, 9th Edition 2016.

<https://www.alec.org/publication/rich-states-poor-states/>.

⁸ 2016 State Business Tax Climate Index, November 17, 2015.

<http://taxfoundation.org/article/2016-state-business-tax-climate-index>.

The 15 worst state rankings for fostering business development include:

| <i>2016 Rich States Poor States</i> | <i>National Tax Foundation on Tax Policy</i> |
|-------------------------------------|--|
| 36) Washington | 36) South Carolina |
| 37) West Virginia | 37) Louisiana |
| 38) Maine | 38) Arkansas |
| 39) Pennsylvania | 39) Georgia |
| 40) Montana | 40) Iowa |
| 41) Oregon | 41) Maryland |
| 42) Hawaii | 42) Ohio |
| 43) Illinois | 43) Wisconsin |
| 44) Delaware | 44) Connecticut |
| 45) Minnesota | 45) Rhode Island |
| 46) California | 46) Vermont |
| 47) Connecticut | 47) Minnesota |
| 48) New Jersey | 48) California |
| 49) Vermont | 49) New York |
| 50) New York | 50) New Jersey |

Now PayPal is down to only 5 states:

Colorado, Nevada, New Hampshire, New Mexico, and Utah

But PayPal has another problem: It does business in 25 nations where homosexual acts are a crime.⁹ So it would certainly want to reduce its footprint there. It would also want to stop its plans to expand to Cuba and would want to eliminate its operations in the People’s Republic of China. Each have brutal communist dictatorships.

Hopefully this research will be helpful to PayPal in its search for a new location more compatible with its principles.

Legend 15: The NBA, NCAA, ACC & the PGA will force North Carolina to back down. False.

The **TRUTH** is that these organizations are themselves NOT in compliance with Title VII or Title IX as defined by President Obama. If they get into compliance they would destroy almost half of their own industry.¹⁰ To understand the practical ramifications of this section, read the footnoted article which recounts a High school track meet in Alaska. A high school BOY identifying as a girl won All-State honors in a GIRLS Track and Field event.¹¹

⁹ See Press Release from Congressman Robert Pittenger, *Pittenger on PayPal Decision to Cancel Charlotte Project*, April 6, 2016.

<http://pittenger.house.gov/media-center/press-releases/pittenger-on-paypal-decision-to-cancel-charlotte-project>

¹⁰ On June 2, 2016, NBA Commissioner Adam Silver said it was not the changing room provision that was the issue but rather the failure to protect LGBT rights. But that makes little sense. See Legends 2, 3 and 4.

¹¹ Hasson, Peter. The Daily Caller. “High School Boy Wins All-State Honors in Girls Track And Field.” Retrieved on June 3, 2016 at 2:29PM Available at

<http://dailycaller.com/2016/06/03/high-school-boy-wins-all-state-honors-in-girls-track-and-field/?print=1>.

WHY is President Obama trying to end women's competitive sports?

On May 13, 2016, the United States Departments of Justice and Education issued a joint letter to public schools nationwide, attempting to explain a school's obligation under Title IX regarding transgender students.¹² It came with an implicit threat of denial of Title IX funding.

THE PROBLEM

The letter claimed to rely on Title IX of the Education Amendments of 1972 and stated:

“[g]ender identity refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth...Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex...Under Title IX, there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity.” (*emphasis added*)

This test is purely subjective. It is left to the individual to determine whether he or she identifies as female or male on any particular day or time.

Title IX requires that, “[N]o person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.”¹³ Title IX requires that schools treat females and males equally with respect to participation, opportunities, athletics scholarships and treatment of male and female teams.¹⁴ Title IX athletic regulations were extensively debated by Congress and became law in June of 1975, giving high schools and colleges three years and elementary schools one year to comply.¹⁵ A three part test was issued by the Office of Civil Rights in 1979.¹⁶ Under this test schools will be in compliance with Title IX if:

“(1) males and females participate in athletics in numbers substantially proportional to their enrollment numbers; or (2) the school has a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of members of the underrepresented sex; or (3) the institution's existing programs fully and effectively accommodate the interests and abilities of the underrepresented sex.”¹⁷

¹² Available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf> (Referred to as *The Letter*).

¹³ Title IX of the Education Amendments, 20 U.S.C. Â§1681 (1972).

¹⁴ Id.

¹⁵ Pub. L. 93-380, H.R. 69, Elementary and Secondary Education Amendments, introduced Jan. 3, 1973, passed Aug. 21, 1974. “[D]irected Secretary to prepare and publish, not more than 30 days after Aug. 21, 1974, proposed regulations implementing the provisions of this chapter regarding prohibition of sex discrimination in federally assisted programs, including reasonable regulations for intercollegiate athletic activities considering the nature of the particular sports.” See The Library of Congress at <http://thomas.loc.gov/cgi-bin/bdquery/z?d093:HR00069:>.

¹⁶ 34 C.F.R. Part 106 and 44 Fed. Reg. 71413 et. Seq (1979).

¹⁷ Id.

The Departments of Justice and Education's Solution for Athletes

According to the Department of Justice (DOJ) and the Department of Education (DOE), the solution is simple:

“Title IX regulations permit a school to operate or sponsor sex-segregated athletics teams when selection for such teams is based upon competitive skill or when the activity involved is a contact sport.”¹⁸ However, a school may not “adopt or adhere to requirements that rely on overly broad generalizations or stereotypes about the differences between transgender students and other students of the same sex (i.e., the same gender identity) or others’ discomfort with transgender students”¹⁹

One of the purposes of Title IX was to create the same opportunity and equality of treatment for male and female student-athletes.²⁰ The regulation requires that any member of the "underrepresented sex" (the sex that has the fewest opportunities) must have an opportunity to play on the team of the overrepresented sex if that player is not provided with a team of the player's own sex.²¹ Since males have more opportunities than females, a male playing on a female's team would take away a participation opportunity for an underrepresented sex (female). Thus, in the interest of the "class" (all females), males are not allowed to take spots on a female's team even though the reverse is permitted. Males have no right to try out for a female's team *if* there are more males playing sports at that particular school than females.

There is little research on the impact of students' participation based on age-appropriateness, and, as the letter notes, the policies needed at the collegiate level may not be the same at the high school or even middle school level of competition.²² “[P]olicies that may be appropriate at the college level may ‘be unfair and too complicated for [the high school] level of competition.’”²³

States and school districts have previously used discretion to enact their own policies concerning transgender students on school teams. Some have allowed transgender students to play on teams consistent with their gender identity regardless of their sex assigned at birth. Others evaluate the student's eligibility for gender-specific school activities by considering their school records, medical history or the student's gender-specific advantage of their participation. The North Carolina High School Athletic Association, adopted a rule that, “A Student's gender is denoted by what is listed on the birth certificate.”²⁴ In North Carolina and in 46 states, the birth certificate can be changed under medical certification.²⁵

¹⁸ 34 C.F.R. § 106.41(b). “Nothing in Title IX prohibits schools from offering coeducational athletic opportunities.”

¹⁹ See *The Letter*.

²⁰ Available at <http://www.ncaa.org/about/resources/inclusion/title-ix-frequently-asked-questions#benefit>.

²¹ Department of Education's “Three-Part Test,” Policy Interpretation by Office of Civil Rights, 1979. Available at <http://www.womenssportsfoundation.org/home/athletes/for-athletes/know-your-rights/athlete-resources/mythbusting-what-every-female-athlete-should-know>.

²² See *The Letter*. *On the Team: Equal Opportunity for Transgender Student Athletes* (2010) by Dr. Pat Griffin & Helen J. Carroll (*On the Team*), [https://www.ncaa.org/sites/default/files/NCLR_TransStudentAthlete%2B\(2\).pdf](https://www.ncaa.org/sites/default/files/NCLR_TransStudentAthlete%2B(2).pdf). See NCAA Office of Inclusion, *NCAA Inclusion of Transgender Student-Athletes* 2, 30-31 (2011), https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf.

²³ See *The Letter*, footnote 18.

²⁴ NCHSSA, Attachment # 9, Birth Certificate & Gender, adopted April 28, 2014. Available at <http://www.nchsaa.org/file/1610>.

²⁵ N.C. Gen. Stat. § 130A-118(b)(4): Amendment of Birth and Death Certificates.

The NCAA's Response

In April 2010, the National Collegiate Athletic Association²⁶ Executive Committee adopted policies to include transgender student-athletes. The NCAA Office of Inclusion “encourages thoughtful development of policies and practices that provide fair participation opportunities for all student-athletes, including transgender individuals.”²⁷ The two bylaws affected were 1) **mixed team status** and 2) the **use of banned substances**.²⁸ So long as the student is receiving hormone therapy, transgender students are permitted to participate in sex-segregated sports consistent with their gender identity.

There are problems with these bylaws under the President's interpretation of Title IX:

- The “mixed team status” rules violate President Obama’s new “law.”
- Students may be forced by NCAA schools to show their medical records for proof of hormone therapy. This violates President Obama’s new law.

NCAA “MIXED TEAM STATUS” POLICIES

*1. A trans male (Female to Male) student-athlete who has received a medical exception for treatment with testosterone for diagnosed Gender Identity Disorder or gender dysphoria and/or Transsexualism, for purposes of NCAA competition may compete on a men's team, but is no longer eligible to compete on a women's team without changing that team status to a mixed team.*²⁹

*2. A trans female (Male to Female) student-athlete being treated with testosterone suppression medication for Gender Identity Disorder or gender dysphoria and/or Transsexualism, for the purposes of NCAA competition may continue to compete on a men's team but may not compete on a women's team without changing it to a mixed team status until completing one calendar year of testosterone suppression treatment.*³⁰

If either of the above occurred, colleges and universities would see a decrease in the number of women's collegiate sports teams. Once a team is changed to “mixed-team status,” that team is no longer able to compete against females nor is that team classified as a female team.³¹ As of 2011, the number of female athletes was still far behind the number of male athletes (see chart below).³² The NCAA reported that the gap seems to be narrowing from its 2014-15 data with the average NCAA institution having approximately 437 student-athletes, 247 males and 190 females.³³ However, if the Departments of Justice and Education prevails on their purely subjective gender identity policy, there WILL be a decrease in the number of women's collegiate teams since they will become “mixed teams” under NCAA rules.

²⁶ NCAA, which oversees competitive sports at over 1,000 colleges & universities.

²⁷ Inclusion of Transgender Student-Athletes- Bylaws, page 7 (August 2011)
https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf.

²⁸ Id. at 12.

²⁹ Id. at 13.

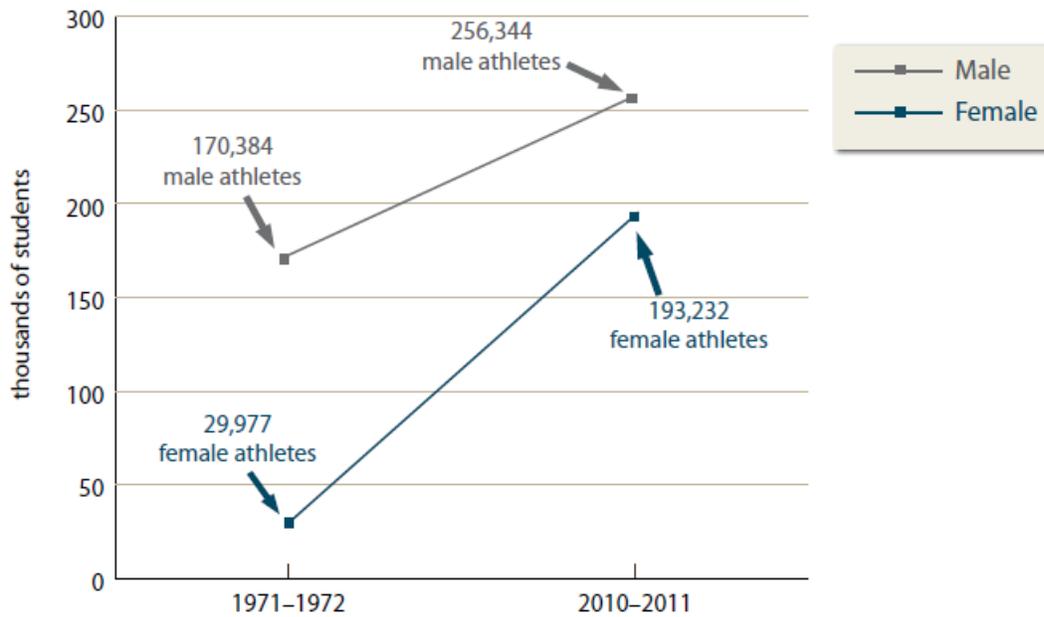
³⁰ Id. at 13.

³¹ “A mixed team is a varsity intercollegiate sports team on which at least one individual of each gender competes. A mixed team shall be counted as one team. A mixed team shall count toward the minimum sponsorship percentage for men's championships... Once a team is classified as a mixed team, it retains that status through the remainder of the academic year without exception.” <http://www.smith.edu/admission/studygroup/docs/NCAA-Policy-on-Transgender-Student.pdf>.

³² NCAA Sports Sponsorship and Participation Report, 1971-72 – 2010-11.

³³ Student-Athlete participation, 1981-82-2014-15; NCAA Sports Sponsorship and Participation Rates Report, available at <http://www.ncaa.org/sites/default/files/Participation%20Rates%20Final.pdf>.

Male and Female Participation in College Sports, 1972–2011



SOURCE: NCAA Sports Sponsorship and Participation Report, 1971-72–2010-11.

In order to comply with Title IX funding, women and men must be provided *equitable* opportunities to participate in sports.³⁴ There is no requirement to offer identical sports but rather an equal opportunity to play.³⁵ **If more teams transition to mixed teams, female athletes will suffer.** Mixed teams are permitted to play all-male teams and compete in the men’s championships, but mixed teams are NOT permitted to play against all female teams nor are they permitted to participate in the women’s NCAA Championship.³⁶ If there is a team of 30 females and 1 male, the team must compete in the men’s championship. Female teams will ultimately suffer from a lower level of competition.³⁷ Some very talented female athletes will be less likely to join athletic teams since they will only be playing other mixed teams or all male teams.

Institutions must also demonstrate a history and continuing practice of program expansion for the underrepresented sex.³⁸ However, where more female teams transition to mixed teams, this will no longer be expanding opportunities for the underrepresented sex: female. Eventually, no schools will be in compliance with the rules required under President Obama’s new law on Title IX.

³⁴ 34 CFR 106.41 – Athletics.

³⁵Id. See also <http://www.ncaa.org/about/resources/inclusion/title-ix-frequently-asked-questions#how>

³⁶ *Supra*, NCAA Inclusion of Transgender Student-Athletes, 12. see also

<http://www.smith.edu/admission/studygroup/docs/NCAA-Policy-on-Transgender-Student.pdf>.

³⁷ 34 CFR 106.41(c)(1) – Athletics. “In determining whether equal opportunities are available, the Director will consider [several] factors...(1) whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes[.]”

³⁸ Id.

USE OF BANNED SUBSTANCES

The NCAA's bylaws states that,

“Any transgender student-athlete who is not taking hormone treatment related to gender transition may participate in sex-separated sports activities in accordance with his or her assigned birth gender.

- **A trans male (FTM) student-athlete who is not taking testosterone related to gender transition may participate on a men's or women's team.**
- **A trans female (MTF) transgender student-athlete who is not taking hormone treatments related to gender transition may not compete on a women's team.**³⁹

The provisions in these bylaws are in direct conflict with President Obama's new law.

In 2010, a female identifying as a male was allowed to play on a women's collegiate NCAA basketball team because the individual had not undergone hormone treatments.⁴⁰ If this player had undergone hormone treatment or the transgender athlete was a biological male identifying as a woman who wanted to play on the women's team, the player could not have participated.

A transgender student-athlete in track and field won many honors and a national championship in women's hammer throw but identified as a male.⁴¹ The athlete was allowed to continue competing in the women's category because the athlete had not undergone reassignment surgery or hormonal treatment which is consistent with NCAA regulations. If this athlete *had* undergone hormonal treatment, the student would have had to compete in the men's division according to NCAA policies.

The NCAA provides additional considerations for the student-athlete when transitioning to the other sex. The student must submit a letter of request to participate on a sports team to the director and include with that letter a note from the student's physician documenting the transition status and identifying the hormonal treatment and documenting of the student's testosterone levels if relevant.⁴² This NCAA requirement is in direct conflict with President Obama's new law on Title IX.

The Effect on Women and Title IX Funding

According to the Department of Justice “there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity.”⁴³ The Department of Justice's interpretation of Title IX concludes that these athletes should have been able to participate on *either* team that their self-determined gender aligned with, regardless whether they had taken hormones or sex reassignment surgery. No medical diagnosis or treatment should be required since “requiring students to produce such identification documents in order to

³⁹ *Supra*, NCAA Inclusion of Transgender Student-Athletes, 13.

⁴⁰ http://www.nytimes.com/2010/11/02/sports/ncaabasketball/02gender.html?_r=1

⁴¹ <http://www.usatoday.com/story/sports/college/2015/08/03/ncaa-transgender-athlete-guidelines-keelin-godsey-caitlyn-jenner/31055873/>.

⁴² *Supra*, NCAA Inclusion of Transgender Student-Athletes, 14.

⁴³ See *The Letter*, page 2.

treat them consistent with their gender identity may violate Title IX when doing so has the practical effect of limiting or denying students equal access to an education program or activity.”⁴⁴

According to the DOJ’s analysis of Title IX, the 1000 member schools of the NCAA WILL BE IN VIOLATION OF TITLE IX and will lose federal funding if they do not amend their policies concerning athletes and sex-reassignment surgery and hormone treatments. BUT THEN, if they do comply, what would be the effect on competition? A male could self-identity as a female and demand a position on the team. In addition to the competitive issue, will women put up with having an anatomically correct male in their shower rooms after practice and in their hotel rooms on travel days? Some will; most will not.

TITLE VII

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, sex and national origin.⁴⁵ Under Title VII, an employee may sue on the basis of disparate treatment, disparate impact and retaliation. Private schools can be sued under Title VII if they employ over 15 employees and are not “controlled” by a religious institution.⁴⁶ Most private schools are not “controlled” by a religious institution, even if they have a religious mission. Examples of those who can sue under Title VII in competitive sports include professional athletes, coaches, referees, and all others who are classified as an “employee.”⁴⁷ The WNBA⁴⁸ and the National Women’s Soccer League will have to employ males as athletes who self-identify as female athletes or be sued by the Equal Employment Opportunity Commission under Title VII. That will be the end of women’s professional sports.

Olympic Athletes

In 2004, the International Olympic Committee released rules for transgender-athletic competition.⁴⁹ The athlete must have (1) had gender reassignment surgery, (2) have legal recognition of the assigned gender, and (3) have at least two years of hormone therapy.⁵⁰ In November 2015, the Committee proposed new guidelines that mirror the NCAA policies concerning transgender guidelines.⁵¹ These guidelines will permit those who transition from female to male eligible to compete in the male category without restriction.⁵² Those who transition from male to female will have conditions for competition in the female category.⁵³ However, the committee stated in the same letter that, “To avoid discrimination, if not eligible for female competition the athlete should be eligible to compete in male competition.”⁵⁴

⁴⁴ See *The Letter*, page 2.

⁴⁵ 42 U.S.C. § 2000(e)(2) (1994).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Women’s National Basketball Association.

⁴⁹ <http://edition.cnn.com/2004/SPORT/05/17/olympics.transsexual/>.

⁵⁰ <http://www.dailymail.co.uk/news/article-3412969/Olympics-change-policies-allow-transgender-athletes-compete-without-having-gender-reassignment-surgery.html>.

⁵¹ http://www.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf

⁵² *Id.*

⁵³ *Id.* Some exceptions include: if the athlete declares its gender identity as female, she is prohibited from changing it for a minimum of four years. The athletes’ testosterone level must be below 10 nmol/L at least 1 year prior to competition.

⁵⁴ *Id.* In response to the interim award dated 24 July 2015 in *Chand v AFI and IAAF CAS 2014/A/3759*, the IOC Consensus Meeting.

It is unclear whether Title VII would apply to the US Olympic Team. It would be ironic if the Olympic Team for the United States was only able to compete this summer because it was NOT subject to President Obama's new law. But the effect on future Olympic competitions for women would be catastrophic as the collegiate and professional pipeline would dry up.

CONCLUSION

If the letter of the Departments of Justice and Education is converted into a law by the Federal Courts then the days are numbered for high school, collegiate, and professional women's sports. Of course, this will not apply to sports like gymnastics where women outperform men.

Title IX was conceived as a boon to women in sports but, in the hands of President Obama, will be used as a weapon against them.

ⁱ **Sexual Orientation Related Bills Applicable to Local or State Government**

| Session | Bill No. | S. L. No. | Short Title |
|---------|----------------------|-----------|---|
| 1999 | H844 | | Orange County Civil Rights |
| 2001 | H941 | | County Antidiscrimination Ordinances |
| 2001 | S864 | | County Anti-Discrimination Ordinances |
| 2009 | H459 | 2009-74 | Rocky Mount/ Fair Housing Ordinance |
| 2009 | H721 | 2009-115 | Carrboro/Housing Discrimination |
| 2011 | S305 | | Carrboro/Housing Discrimination |
| 2011 | H478 | | Nondiscrimination in State/Employment |
| 2013 | H429 | | Nondiscrimination in State/ Employment |
| 2013 | H647 | | Nondiscrimination in State/Teacher Employment |
| 2015 | H443 | | Nondiscrimination in Public Employment |
| 2015 | S180 | | Carrboro/Housing Discrimination |

ⁱⁱ **Protected Classes (N.C. Gen. State. Ann. § 143-422.2)**

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| <p><i>Suspect Class</i></p> <ol style="list-style-type: none"> 1. Race 2. Religion 3. Color 4. National origin 5. Sex (quasi-suspect) <p><i>Non-comprehensive list of others in US states including North Carolina:</i></p> <ol style="list-style-type: none"> 6. Disability (N. C. Gen. Stat. 168A) (See Legend #9) 7. Age (N.C. Gen. Stat. § 143-422.2) 8. Victim of domestic/sexual violence status (N.C. Gen. Stat. §50B-5.5) 9. AIDS/HIV status (N.C. Gen. Stat. § 130A-148(i)) 10. Sickle cell trait (N.C. Gen. Stat. § 95-28.1) 11. Hemoglobin C trait (N.C. Gen. Stat. § 95-28.1) 12. Genetic testing (N.C. Gen. Stat. §95-28.1A) 13. Genetic counseling (N.C. Gen. Stat. §95-28.1A) 14. Genetic information (N.C. Gen. Stat. §95-28.1A) 15. Enlisted military (N.C. Gen. Stat. §127A-202.1) 16. Jury Service (N.C. Gen. Stat. §9-32(a)) 17. Pregnancy (Vermont, Utah, West Virginia, Missouri, Kentucky, Hawaii, Alaska) 18. Veteran status (See Legend #10) 19. Marital status (Oregon, Virginia, Illinois, Florida) 20. Familial status (North Dakota, Minnesota, North Carolina) | <ol style="list-style-type: none"> 21. Sexual orientation (21 states) 22. Gender identity (20 states) 23. Gender expression (20 states) 24. Arrest history (Wisconsin, Delaware) 25. Convict status (Wisconsin, Hawaii) 26. Incarceration history (New York, Illinois) 27. Credit history (Oregon, Vermont, Hawaii, Delaware) 28. Source of income (New York, Michigan) 29. Caregiver status (D.C.) 30. Occupation (Oregon) 31. Ancestry (Rhode Island) 32. Weight (Michigan) 33. Height (Michigan, Kansas) 34. Place of birth (Vermont) 35. Homelessness (Connecticut) 36. Political affiliation 37. Student status (Michigan) 38. Public benefit status (North Dakota, Minnesota, 39. Refusal to perform abortion or sterilization (many states) 40. Use of service animal (Washington) 41. Off the job use of tobacco (Wyoming) 42. Medical marijuana (New York, Nevada, Minnesota, Maine, Illinois) 43. Black lung disease (Kentucky) |
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**Declaration of Paul M. Smith
June 20, 2016**

EXHIBIT G

The University of North Carolina at Greensboro

Student Affairs

Student Policy Handbook

Student Code of Conduct

The University of North Carolina at Greensboro

(Last Revised by the Dean of Students, July 1, 2015)

This policy may be updated from time to time to reflect changes in departmental practices and/or required mandates. The revised date will be updated and a notice will be placed on the site notifying you of such modification.

Section 1: Purpose

Members of the University community embrace fundamental principles to ensure a campus environment conducive to peaceful and productive living and study. These principles include five values: honesty, trust, fairness, respect, and responsibility. Members of the community who adopt these principles will seldom have need of the Student Code of Conduct (the Code). When members of the University community fail to observe these principles, the Code is used to affirm these values through adjudication of allegations involving violations of these values. Allegations made against individual students or student groups/organizations include reference to the general principle that is at risk as well as the specific conduct alleged to be a violation of the Code.

Section 2: Scope

1. The Code is one of three formal policies governing student conduct at UNCG. The Code addresses general student conduct, usually excluding academic responsibilities. The Code details the fundamental fairness and process requirements for student conduct proceedings; it does not duplicate or replace the purposes of the Academic Integrity Policy or of other graduate or professional policies related to schools, departments, or professions.
2. The Academic Integrity Policy (the AIP) governs student conduct directly related to the academic life of the University. The AIP is applicable to any academically related experience involving UNCG students (or alumni in cases where violations are discovered after graduation) whether occurring on the campus or at host institutions or sites. All alleged violations of the AIP must be resolved in accordance with the AIP and under the direct authority of a UNCG faculty member or the Dean of Students Office.
3. Graduate or professional schools within the University may initiate charges against students for alleged violations of professional standards or ethics as a separate issue or as an extension of alleged acts of academic dishonesty or violations of the Code. Double jeopardy is not implicated since the student is simultaneously accountable to multiple and separate jurisdictions—institutional standards of academic dishonesty and/or general conduct, or a departmental conduct officer in cases of alleged violations of departmental policies.^[1]

Section 3: Authority

By action of the Board of Governors of The University of North Carolina, the Chancellor is responsible for all matters of student conduct. This responsibility is normally delegated to the Vice Chancellor for Student Affairs for the purpose of implementing approved policies and procedures. However, the Chancellor's ultimate authority in the regulation of student conduct, including direct intervention by the Chancellor when deemed appropriate, is presumed by this Code. Students play a major role through the Student Government Attorney General and the Dean of Students offices in the formulation of rules for student conduct and in the adjudication of cases involving alleged breach of those rules.

Section 4: Interpretation and Revision

Any questions of interpretation regarding the Code shall be referred to the Dean of Students Office for final determination. The Code shall be reviewed annually under the direction of the Dean of Students Office. Students and other University community members may make policy suggestions directly to the Dean of Students Office.

Section 5: Jurisdiction Over Student Conduct

1. The Code and the processes for its administration and enforcement exist for the protection and advancement of the University community's particular institutional interests. The Code applies to individual students and student groups/organizations and is used to enforce University policies and regulations. Regardless of how it is handled by the court system, a violation of law may also be treated as a violation of University regulations.
2. Conduct proceedings on campus are designed to deal developmentally with student behavior in the University community that is prohibited or is deemed unacceptable to the University community. When the behavior is aggravated or presents a continuing danger to the University community, students found responsible for a violation of the Code are subject to separation from the University.
3. Conduct action is not a substitute for judicial mechanisms of the larger community. Criminal prosecution in the court system is designed to be punitive and to provide social consequences for convicted offenders. Student offenders may be charged under either or both systems. University sanctioning power, therefore, applies only to instances of student misconduct that are basic to its appropriate interests, as follows:
 1. The opportunity of all members of the University community to attain educational objectives;
 2. The protection of the health, safety, welfare, and property of all persons in the University community; or
 3. The protection of the University's integrity and its property.
4. Each student is responsible for their conduct even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of enrollment (and even if the conduct is not discovered until after a degree is awarded). The Code applies to a student's conduct even if the student withdraws from school while a disciplinary matter is pending.
5. The University's jurisdiction extends to all students while they are present on premises owned by the University, on city streets running through or adjacent to the campus, and in off-campus buildings occupied by students by virtue of their association with a group/organization given formal recognition by the University or at a host institution or other site for an academic or extracurricular University-related experience. In addition, this Code may also be invoked against students whose off-campus behavior:
 1. Potentially harms the institutional educational interests of the University. This standard is fulfilled when the behavior creates general and negative public opinion of the University or its students or employees; or
 2. Threatens the well-being of its students or employees. This standard is fulfilled when the behavior has already threatened a member or members of the general public and there is reason to believe that such behavior might threaten or endanger students or employees if not addressed in the institutional community.
6. On occasion, instances of student misconduct may constitute offenses against the larger community. Students are responsible for knowing and observing all federal and state laws, and local ordinances. Under agreement with the City of Greensboro, the University Police will notify the Greensboro Police Department of incidents involving felony level offenses and may choose to report other offenses. The fact that a student is or has been prosecuted in criminal court for a violation of law or the dismissal of criminal court charges does not preclude University jurisdiction over the misconduct. Civil or criminal authorities are not precluded from taking action against students for on-campus violations of public laws and ordinances.

Section 6: Violations of the Code

Specific violations of the Code are listed as examples only. Individual students and student groups/organizations are expected to exercise good judgment and discretion in their actions at all times.[\[2\]](#)

1. Honesty

An academic community of integrity advances the quest for truth and knowledge by requiring intellectual and personal honesty in learning, teaching, research, activities, and service. Cultivating honesty lays the foundation for lifelong integrity, developing the courage and insight to make difficult choices and accept responsibility for actions and their consequences, even at personal cost.^[3] Violations of Honesty may include but are not limited to: furnishing false information to any member of the University community; falsification; forgery; fraud; or misuse of documents, keys, identification cards, and parking permits.

2. Trust

An academic community of integrity fosters a climate of mutual trust, encourages the free exchange of ideas, and enables all to reach their highest potential. Only with trust can members of the University community believe in and rely on others and move forward as a community. Only with trust can the community believe in the social value and meaning of an institution's scholarship and degrees.^[4] Violations of Trust may include but are not limited to: misuse of access privileges to University premises; violation of a position of trust or authority; misuse of University or organization names and images; possession of stolen property; theft; misuse of restricted areas, misuse of University computing facilities, passwords, accounts, or information.

3. Fairness

An academic community of integrity establishes clear standards, practices, and procedures and expects fairness in the interactions of students, groups/organizations, faculty, and staff. For students and groups/organizations, important components of fairness are predictability, clear expectations, and a consistent and just response to dishonesty. Faculty and staff also have a right to expect fair treatment from students and from colleagues.^[5] Violations of Fairness may include but are not limited to: disruption of University operations; obstruction of freedom of movement of community members or visitors; interference, or failing to comply in University processes including Conduct and Academic Integrity hearings.

4. Respect

An academic community of integrity recognizes the participatory nature of the learning process and honors and respects a wide range of opinions, ideas, and cultures.^[6] Violations of Respect may include but are not limited to: threatening or causing physical harm or harassment; hazing; acts of sexual misconduct; conduct which disturbs the peace of the community; trespass on University property or premises; conduct which is disorderly; infringement on the rights or property of members of the University community; failure to comply with directions of University officials; hate crimes, violation of a No Contact Order; any act or omission that a reasonable college student knows, or should know, infringes on the rights or property of members of the University community.

5. Responsibility

An academic community of integrity upholds accountability and depends upon action in the face of wrongdoing. Every member of an academic community—student, group/organization, faculty member, and staff—is responsible for upholding the integrity of the community.^[7] Violations of Responsibility may include but are not limited to: violation of University policy or law regarding alcohol^[8]; violation of University policy or law regarding firearms or other weapons; attempted or actual damage to property; violation of University policy or law regarding drugs (possession, knowledge, use, or transfer of a controlled substance); facilitating or accepting improper behavior; violation of the fire code; assisting in the violation of University policies or public laws; violation of University policies; violations of federal or state laws, or local ordinances which affect the interests of the University community; the knowledge of or unintentional failure of any organized group to exercise preventive measures relative to violations of this Code by its members.

6. Threats, Coercion, Harassment, Intimidation, or Hostile Environments

The University embraces and strives to uphold the freedoms of expression and speech guaranteed by the First Amendment of the U.S. Constitution and the North Carolina Constitution. The University has the right under appropriate circumstances to regulate the time, place, and manner of exercising these and other constitutionally

protected rights. All students are responsible for conducting themselves in a manner that helps enhance an environment of learning in which the rights, dignity, worth, and freedom of each member of the academic community are respected. Violations of University policies, rules or regulations, or federal state, or local law may result in a violation of the Code and imposition of student discipline. The following provisions addressing specific student conduct that could lead to disciplinary action shall be included:

1. No student shall threaten, coerce, harass or intimidate another person or identifiable group of persons, in a manner that is unlawful or in violation of a valid University policy, while on University premises or at University sponsored activities based upon the person's race, color, religion, sex, sexual orientation, gender identity, national origin, political affiliation, genetic information, veteran status, disabling condition, or age.
2. No student shall engage in unlawful harassment leading to a hostile environment. Unlawful harassment includes conduct that creates a hostile environment by meeting the following criteria: It is:
 1. Directed toward a particular person or persons;
 2. Based upon the person's race, color, religion, sex, sexual orientation, gender identity, national origin, political affiliation, genetic information, veteran status, disabling condition, or age;
 3. Unwelcome;
 4. Severe or pervasive;
 5. Objectively offensive; and
 6. So unreasonably interferes with the target person's employment, academic pursuits, or participation in University-sponsored activities as to effectively deny equal access to the University's resources and opportunities.
3. In determining whether student conduct violates these provisions, all relevant facts and circumstances shall be considered. Care must be exercised in order to preserve freedoms of speech and expression, as articulated in current legal standards. Legal advice should be sought from the Office of the General Counsel, as appropriate.

Section 7: Notification of Conduct Allegations

1. Allegations concerning violations of this Code must be brought in writing to the attention of the Dean of Students Office within 120 days of discovery of the alleged offense. Violations alleged to have occurred more than 120 days earlier will be considered "stale" and normally will not be subject to conduct action. Exceptions to this policy will be made at the sole discretion of the Vice Chancellor for Student Affairs or designee. Such exceptions may involve allegations that are still under investigation or cases in which the safety of individuals or the University community is deemed by that official to be at risk.
2. Allegations of Code violations will be presented to respondent(s) by means of written notification from the Dean of Students Office or designee. This notice will contain the substance of the allegations and refer the student to the Dean of Students Office. Prior to meeting with and formally charging the student, the Dean of Students Office, in consultation with appropriate offices, will proceed based upon one of the following procedures:
 1. In instances when action is either pending or completed against a student in a state or federal court and when the University's interests are at issue, the Dean of Students Office in consultation with appropriate officials will determine whether action is required by the University to protect its interests regardless of whether the student withdraws from the University. If the Dean of Students Office believes that the University's interests have been affected, the student will be formally charged, or
 2. Receive and review allegations as described below:
 1. Allegations shall be prepared in writing and directed to the Dean of Students Office. Such allegations shall be submitted as soon as possible after the incident takes place, preferably within thirty (30) days of the discovery of the violation.
 2. The conduct officer will conduct a preliminary screening of the allegations to determine whether (1) the

allegations, if proven, would constitute a violation under the Code; and (2) based upon the allegations, there is reasonable belief that such a violation may have occurred. This screening may involve reading of the description of the alleged conduct, or discussion with the individual(s) making the allegations, as appropriate to the situation. The University may decide to proceed with charges without the complainant/accuser's consent, if in the professional judgment of the Dean of Students Office, the University community's interests are best served by proceeding with the conduct process.

3. All correspondence regarding conduct processes are communicated via email to the student's UNCG email address. Students are responsible for checking their email account. Conduct processes may proceed whether or not the student appropriately responds to email communication.

Section 8: Fundamental Fairness Guarantees

Students are guaranteed the following elements of fundamental fairness throughout the student conduct process:

1. In cases involving a hearing before a hearing panel or conduct officer:

The respondent shall be afforded a fair and timely hearing to respond to the allegations;

1. Both the respondent and the complainant shall have the opportunity to challenge for cause the conduct officer, or panelists, or composition of any hearing panel;
2. The respondent shall be informed of the accusations and the evidence;
3. Both the respondent and the complainant shall be afforded adequate time to prepare for the hearing;
4. Both the respondent and the complainant shall be able to offer relevant evidence and witnesses who can provide direct information; and to question witnesses present at the hearing;
5. The respondent may be represented, at their own expense, by a licensed attorney or non-attorney advocate of their own choosing in non-academic misconduct matters in accordance with the Guidelines for Attorney/Non-Attorney Advocates (<http://sa.uncg.edu/dean/attorney-advocate-guide/>). In cases involving an alleged act(s) of sexual misconduct and/or interpersonal violence, a complainant may also be represented by a licensed attorney or non-attorney advocate of their own choosing. The attorney/non-attorney advocate may fully participate only to the extent and in the same manner afforded to the student(s) they represent. The attorney/non-attorney advocate may not provide testimony.
6. The respondent shall have the opportunity to consult with a Student Conduct Advisor.
7. The complainant shall have the opportunity to consult with a Student Case Coordinator.
8. The respondent shall receive in writing the outcome of the hearing. In cases involving sexual misconduct or interpersonal violence, both the respondent and the complainant shall receive in writing the outcome of the hearing;
9. The respondent may appeal the outcome of the hearing. In cases involving sexual misconduct or interpersonal violence, both the respondent and the complainant may appeal the outcome of the hearing;
10. Both the respondent and the complainant shall be afforded confidentiality in the handling of the conduct process in accordance with applicable policy and law.

2. The following considerations apply equally to the complainant and respondent:

1. The University will not voluntarily release the complainant's/respondent's name to the public or media except as required by law.
2. Further, University staff will, upon request by the complainant/respondent:
 1. meet at a reasonable place, to discuss the situation in a confidential manner;
 2. treat the complainant/respondent with courtesy, understanding, and professionalism; assist in privately contacting counseling, advising, and other available resources should the individual so choose;
 3. arrange that the complainant/respondent or any persons acting on their behalf not have contact with

- the other in the form of a No-Contact Order;
4. continue to be available to answer questions, explain the systems and processes involved, and be a willing listener; keep him/her informed on the progress of the case as allowed by law and policy;
 5. provide assistance regarding University residential housing, including a request to change housing assignments or to leave University housing;
 6. assist with requests for academic relief or other exceptions to current academic regulations;
 7. in cases involving allegations of sexual misconduct or interpersonal violence, arrange at the discretion of the conduct officer, an alternative to giving a statement in a face-to-face setting; and
 8. arrange for the opportunity to make a statement concerning the impact of the incident on his or her life in the hearing.

Section 9: Alternative Dispute Resolution

Except in cases involving sexual misconduct or interpersonal violence, upon mutual request and agreement of the respondent(s) and the complainant(s), and with the consent of the conduct officer, alternative dispute resolution, including negotiated settlements between the parties, mediation or similar forums, may be pursued in lieu of the normal conduct process outlined below.

Section 10: Enrollment

Respondents who are not students at the time of the conduct proceeding may be subject to a Student Affairs Hold on their records which prevents further registration at the University pending resolution of outstanding conduct allegations. The University may adjudicate the charges against the respondent(s) regardless of whether the respondent is currently a student. In addition, the Student Affairs Hold can be extended to prevent release of transcripts and/or diplomas. The conduct records of students attempting to transfer to another institution are subject to disclosure to the transfer institution.

Section 11: Student Conduct Conference

1. Once allegations are brought to the attention of the Dean of Students Office, the respondent will be contacted in writing via the student's UNCG email address regarding the scheduling of a Student Conduct Conference (SCC). The University has no further obligation to notify the respondent. The SCC provides the respondent with:
 1. Opportunity to discuss the allegations and provide information;
 2. Opportunity to review fundamental fairness guarantees/procedures (see Section 8);
 3. Notice of formal charges resulting from allegations;
 4. Notification of the process for resolving formal charges through conduct proceedings; and
 5. Opportunity to accept or deny responsibility for formal charges.
2. A conduct officer will discuss with the respondent the facts of the allegations and other related information and will explain the procedures to be followed.
3. Following this conference, the conduct officer will inform the respondent as to whether a formal conduct charge will be pursued to resolve the allegations.
4. If the respondent is formally charged with a conduct violation, the conduct officer will inform the student of his/her rights, options available for resolution, and procedures in cases of failure to respond or withdrawal from the University in the face of conduct charges.
5. The respondent will be asked to select one of the following options in response to the charge:
 1. Plead "Not Responsible" to the charge and have a hearing before a hearing panel or conduct officer where a determination of responsibility will be made through procedures described in the Conduct Hearings section. If the student is found Responsible by the conduct officer/hearing panel, appropriate sanctions will also be

imposed.

2. Plead "Responsible" to the charge and waive a hearing on the question of responsibility. An appropriate sanction(s) will be imposed by the conduct officer/hearing panel.
 3. Enter a "Postponement of Plea" during the Student Conduct Conference which allows the student up to two business days (48hrs.) to enter a plea.
6. A respondent who fails to respond to a charge letter by attending the SCC or who at any time fails to respond to notification regarding the conduct process or refuses to abide by the conduct procedures, forfeits the right to have a SCC and waives their right to a hearing. The hearing officer will conduct the SCC in absentia of the respondent and make a determination of responsibility based on the information available. The respondent will be notified by a certified letter via hand-delivered mail, US mail, or e-mail of a scheduled review with a hearing officer or hearing panel. At the review, the hearing officer or hearing panel will assign appropriate sanctions. This scheduled review hearing will proceed whether or not the respondent is present. Written notification of the decision and sanctions will be sent to appropriate University parties (including the complainant when applicable) and to the respondent by email to the student's UNCG email address. The written notification shall include a description of the student's appeal rights, if any, and the deadline for exercising those rights.

Section 12: Conduct Reviews

Following the SCC, the conduct officer will hold a conduct review of the allegations as follows:

1. Meet with the respondent(s) to seek information relevant to the circumstances of the alleged offending conduct prior to assigning a sanction(s).
2. At the discretion of the conduct officer in cases where there is an admission of responsibility and the respondent or complainant requests the opportunity to present new information concerning aggravating or mitigating factors in the case, a modified review may be conducted. In this review, parties will be permitted to offer relevant information, documents or other evidence, including character evidence prior to the sanction decision by the conduct officer.
3. In cases where the respondent requests an immediate decision on sanctions, the conduct officer may deem further review unnecessary and proceed with sanctioning.

Section 13: Conduct Hearings

1. Respondent(s), who plead "Not Responsible" to the charge(s) or fail or refuse to enter a plea, for whatever reason, will be scheduled for a conduct hearing with either the conduct officer or with a hearing panel.
2. The respondent(s) may request a hearing before a hearing panel and the conduct officer may, at his/her discretion, grant this request if, in his/her professional judgment, the complexity or seriousness of the allegations support this request. The request is normally granted if the sanctions of suspension or expulsion are likely.
3. After the SCC occurs, or was scheduled to occur, hearings are scheduled within a reasonable time, with written notice to the parties no fewer than five (5) calendar days prior to the date of the hearing.
4. At the discretion of the conduct officer, a one-time postponement for cause in the scheduled hearing date may be granted upon request of any party to the hearing action. This postponement for cause, when granted, will not exceed ten (10) calendar days in the absence of extraordinary circumstances, to be determined by the conduct officer.
5. Cases occurring during summer sessions for which a hearing is granted present special problems due to the brief term and the limited availability of hearing panelists. Such hearings shall be conducted, when necessary, through ad hoc hearing panels appointed by the Dean of Students Office. Carryovers of hearings may also be utilized for students, other than students nearing graduation, when there is not sufficient time remaining in the regular academic year to arrange for the hearing process.
6. Hearings are closed to the public, subject to applicable policy and law. In addition to the conduct officer and/or members of the hearing panel, only the following normally are allowed to attend: a support person for the respondent

or the complainant (a support person shall be a silent observer and may not have an active role in the hearing); attorney/non-attorney advocate; the respondent; the Student Conduct Advisor of the respondent, if engaged; the Student Case Coordinator who advises the complainant; witnesses or persons who have been asked to provide a statement by either the respondent or complainant. In hearings involving allegations against student groups/organizations, the president or chief officer of the charged group/organization will be expected to participate in the hearing on behalf of the group/organization. The conduct officer or hearing panel may also recommend charges be brought against individual members of the group/organization as a result of information obtained in the course of the hearing.

7. Such witnesses or persons asked to provide a statement and the complainant shall be present only for the portion of the hearing that involves their statement and questions arising from that statement. In keeping with federal law, complainants of violence, whose status is determined by the conduct officer, may be present for the duration of the hearing and provided the results of the hearing. The conduct officer will preside over the hearing. Admission of any additional persons to the hearing shall be at the sole discretion of the conduct officer.
8. Hearings, whether held before a conduct officer or hearing panel, are unlike courts. These conduct processes engage in a full discussion of charges and circumstances. Rules of evidence, procedures, and involvement of attorneys differ from proceedings before criminal or civil authorities as follows:
 1. The conduct officer has sole discretion to decide what evidence and witnesses are allowed. Evidence will be allowed if, in the judgment of the conduct officer, it bears on the facts of the case.
 2. Evidence relevant to both the issue of responsibility and appropriate sanctions is normally allowed.
 3. Written statements by witnesses or others having knowledge of the allegations may be allowed in the absence of a personal appearance at the hearing by the author of the statement. Such signed statement must be delivered in person to the Dean of Students Office by the author accompanied with matching picture identification. If the author is unable to deliver the statement in person to the Dean of Students Office, the statement must be notarized. Statements by a sworn law enforcement officer or professional or student employee of the University do not have to be notarized. Such statements may be considered by the hearing panel/conduct officer on the basis of their content and relevance.
 4. The testimony of a witness will be heard if the conduct officer deems that it is offered in good faith, bears upon the facts of the case, and is not merely cumulative, i.e. does not simply repeat prior statements. The testimony of two (2) character witnesses may be heard, but only for decisions of sanctions and cannot be used to draw conclusions about the responsibility of the respondent for the charges. Character witnesses are permitted to testify only if a finding of responsibility occurs.
 5. Information that is not from a firsthand source may be considered in the course of a hearing under certain conditions; the legal rules of hearsay evidence do not apply. The conduct officer will rule on whether such information is appropriate and may be admitted in the hearing. In no case should the hearing outcome be decided solely on such information.
 6. In some cases, the conduct officer may issue a notice to appear as indicated below. Such internal notices are not issued unless the expected statements would be clearly relevant, and will not be issued with the intent to embarrass or harass a potential witness.
 1. All University students are expected to comply with notices to appear. University students who, absent good cause, fail to respond to such notices are in violation of this Code. Third parties not subject to the Code who may be requested to appear in a Conduct Hearing are expected to make every effort to assist the conduct process. The unavailability of such third parties to a hearing procedure will be treated as set forth below.
 2. If the conduct officer determines that a fair hearing cannot be held without the testimony of a particular witness, and if after good faith attempts are made, the witness either fails to or refuses to appear, the

hearing may be postponed until the witness agrees to appear or provide a written statement; or the charges may be dismissed, at the sole discretion of the conduct officer.

7. In an effort to ensure that conduct hearings provide equal opportunity to the respondent and the complainant and so that the University will be prepared for the hearing, the following procedures apply:
 1. The parties must submit to the conduct officer a written list of the names of all witnesses they intend to present at the hearing and the expected subject matter of the witnesses' statements no later than noon (12:00 p.m.) three (3) business days prior to the hearing date for approval by the conduct officer.
 2. The parties must submit to the conduct officer a written list of the written evidence they intend to present at the hearing no later than noon (12:00 p.m.) three (3) business days prior to the hearing date for approval by the conduct officer. The parties shall at the same time deliver two (2) copies of all written evidence identified in their list, except for written evidence that both the other party and the conduct officer already have.
 3. The parties may contact the Dean of Students Office after noon (12:00 p.m.) two (2) business days prior to the hearing to review the opposing party's witness list, and to review all written evidence, as applicable.
 4. If, at the time of the hearing, either the complainant/Student Case Coordinator or the respondent/Student Conduct Advisor calls a witness or presents written evidence that was not previously identified, either party may challenge the admissibility of the witness testimony or written evidence. Such challenges will be reviewed by the conduct officer and affirmed or denied in his/her sole discretion.
8. The following procedures apply to conduct hearings:
 1. The conduct officer will facilitate introductions of those present and will explain the hearing procedures to the parties.
 2. The respondent and the complainant will be given the opportunity to challenge a hearing panelist or conduct officer on the grounds of conflict with, bias about, or interest in, the case. It is at the conduct officer's discretion to support or refuse the challenge, unless the conduct officer is the subject of the challenge, in which case an official within the Dean of Students or designee shall be brought in to hear the challenge and make the final determination. If a challenge is granted and a hearing panelist or conduct officer is disqualified then the hearing may be postponed as necessary in the discretion of the conduct officer/Dean of Students or designee.
 3. The conduct officer will state the charge(s) against the respondent.
 4. The complainant or Student Case Coordinator will be provided the opportunity to make an opening statement. This opening statement is limited to no more than five (5) minutes.
 5. The respondent or Student Conduct Advisor will be provided the opportunity to make an opening statement. This opening statement is limited to no more than five (5) minutes.
 6. The complainant/Student Case Coordinator will present evidence in support of the charge(s) and may also present written evidence and witnesses.
 7. The hearing panel/Conduct Officer will be provided access to copies of all written evidence submitted by the Student Case Coordinator.
 8. The hearing panel/Conduct Officer may directly question the complainant/Student Case Coordinator and witnesses. The respondent/Student Conduct Advisor has the right to question the complainant/Student Case Coordinator and the witnesses who appear. However, in cases involving allegations of sexual misconduct (rape, sexual assault, and sexual harassment) or interpersonal violence (dating violence, domestic violence, and stalking), the complainant and the respondent may not directly question one another. All questions, including those directed to any witnesses, must be

- asked through the Case Coordinator for the complainant and through the Student Conduct Advisor for the respondent. The complainant may be visually screened during questioning.
9. The respondent may respond to the charge(s) and may present evidence in the form of written evidence or testimony of the respondent or other witnesses.
 10. The hearing panel/Conduct Officer will be provided access to copies of all written evidence submitted by the respondent.
 11. The hearing panel/Conduct Officer may then question the witnesses presented by the respondent and may also question the respondent. The complainant/Student Case Coordinator may then question the witnesses, including the respondent/Student Conduct Advisor.
 12. The complainant or Student Case Coordinator will be provided the opportunity to make a closing statement. This closing statement is limited to no more than five (5) minutes.
 13. The respondent or Student Conduct Advisor will be provided the opportunity to make a closing statement. This closing statement is limited to no more than five (5) minutes.
 14. The conduct officer will conclude the evidentiary portion of the hearing and set a time for deliberations to begin at the earliest possible time.
 15. The University will be responsible for preparing a transcript or other verbatim recording of all hearings conducted by hearing panels, but not conduct officers. The transcript or recording shall not include the deliberations of the hearing panel.
 16. During conduct hearings, deliberations about responsibility of the respondent are conducted by the hearing panel/conduct officer in a closed session. Other parties are excused from the hearing room during this time. Once begun, the deliberations normally will continue until a decision as to responsibility has been reached. Recesses will be granted at the sole discretion of the conduct officer.
9. All issues before hearing panels/conduct officers must be decided according to the preponderance of evidence standard (whether it is "more likely than not"). In finding responsibility of the respondent under this standard of proof, the hearing panel/conduct officer must be convinced, based solely upon the information presented in the course of the hearing, that the conduct alleged is more likely than not to have occurred.
 10. Except in those cases where the respondent has already plead Responsible as charged, hearing panels shall decide whether the respondent is Responsible or Not Responsible by simple majority vote of the panelists present. In the case of hearings before a conduct officer, the decision of the officer will determine whether the respondent is found Responsible or Not Responsible for the violation.
 11. The hearing will reconvene and the parties will be advised of the decision on responsibility.
 12. In the event of a finding of responsibility, recommendations for sanctions shall then be heard from the Student Case Coordinator, the respondent/Student Conduct Advisor, and up to two (2) character witnesses. The conduct officer may introduce past student conduct records and/or precedent cases. Deliberations about sanctions are then conducted by the hearing panel/conduct officer in a closed session. Other parties are excused from the hearing room during this time.
 13. In assigning appropriate sanctions, the hearing panel/conduct officer may consider relevant precedents and the conduct history of the respondent. Consideration may also be given to aggravating or mitigating circumstances including but not limited to:
 1. intent to act in the manner described, regardless of motive;
 2. intent to violate the policy or regulation described;
 3. prior experience, age, and understanding;
 4. prior violations or related behavior;
 5. other personal circumstances that might have affected the respondent student at the time of the violation; and

6. how the conduct violation impacted or potentially impacted or still has the potential to impact others.
14. Repeated violations of the Code may result in the imposition of progressively more severe sanctions, although any sanction may be imposed as appropriate under the circumstances.
15. If an appeal follows a student conduct review or hearing, all sanctions resulting from the review or hearing may be held in abeyance pending the outcome of the appeal at the sole discretion of the conduct officer.
16. The hearing will reconvene and the parties advised of the decision concerning sanctions.

At the conclusion of the conduct process, the conduct officer will provide verbal and written notification of the decision and sanctions to the respondent and, if applicable the complainant, in cases involving sexual misconduct or interpersonal violence. The written notification shall include a description of the appeal rights, if any. In all cases, written notification of the decision and sanctions will be sent to the student's UNCG email account.

Section 14: Dean of Students Office-Level Hearings

1. A representative from the Dean of Students Office designated by the Vice Chancellor for Student Affairs will serve as the conduct officer.
2. All cases that may result in expulsion or suspension from the University shall be referred to the Dean of Students Office designee.
3. In cases referred to hearing panels, the Dean of Students Office designee will assemble a hearing panel which will normally consist of six trained persons: three (3) students, and three (3) members of the faculty/staff. In no case shall a panel consist of less than four (4) nor more than six (6) members with students and faculty/staff equally represented. At least one (1) panelist may be the Student Government Attorney General or his/her designee. In sexual misconduct or interpersonal violence cases, the hearing panel will consist of entirely faculty and staff. This panel will hear appropriate cases as brought by University officials or students.

Section 15: Adjudication in Other Departments of Student Affairs

The designated departmental conduct officers outside the Student Affairs Division Office may hear cases which will not result in separation or interim suspension from the University. Reviews of allegations in which the respondent student(s) plead Responsible may be conducted in accordance with procedures described in this Code. Administrators of such other departments have discretion to refer adjudication of any violation to the Student Affairs Division conduct officer.

1. Office of Housing and Residence Life

1. Violations of the student Housing Contract constitute violations of the Code and shall be processed as regular violations under the Code. The Director of Housing and Residence Life shall designate a staff member to serve as the conduct officer in such cases.
2. Other minor offenses of this Code occurring in the residence halls will be subject to reviews by the Office of Housing and Residence Life and be resolved under policies as stated by each residential area.

2. Campus Recreation and the Office of Campus Activities and Programs

1. Campus Recreation and the Office of Campus Activities and Programs review most cases involving alleged violations by students or student groups/organizations of departmental policies and regulations. (Exceptions are noted above, in addition to cases where the alleged violations, if true, would likely result in revocation of the group's charter which may be referred to the conduct officer in the Student Affairs Division Office.)
2. The administrative head or designee of each office will serve as the conduct officer in conducting an administrative review of the alleged violation. Following such review, an organization held Responsible for violations of the Code or of departmental regulations shall receive appropriate sanctions.

3. Other Departments

Other departments are required to consult with the Dean of Students Office before the hearing in the following cases:

1. Requests for referrals for assessment or treatment not included in this Code; or
2. Actions under the [University Drug Policy](#).

Section 16: Sanctions

1. Sanctions for Individual Students

The primary purpose of sanctions in the University setting is to provide incentive and opportunity for education of the student as well as due consideration of the needs of the larger University community. Except in some specified offenses, such as drug violations, sanctions under this Code may be tailored to suit the circumstances of each violation. Though maximum sanctions are identified by this Code, lesser sanctions may be selected, depending on the circumstances. Alcohol and/or drug usage may be considered an aggravating factor in determining sanctions. Referral for assessment may be required prior to sanctioning or as a sanction. Sanctions of suspension and expulsion affect the student's academic enrollment at the University. In order that students under expulsion, suspension, or limited participation in daily campus life not contravene the terms of the sanction, the Offices of Athletics, Undergraduate Studies, Cashier, Financial Aid, Graduate School, Parking Services, Registrar, Housing and Residence Life, and University Police will be notified in writing. Other offices may be notified based upon "the need to know" as defined in applicable law and policy. When a student returns to the University following a period of suspension, that student must reapply to the University and, if readmitted shall be placed on mandatory probation for a minimum of one semester (Fall or Spring). Information about suspension or expulsion is maintained permanently in the student's conduct record. Current suspensions and all expulsion information are maintained on the University of North Carolina System suspension/expulsion database which is accessible to the admissions officers of the 16 public universities. In cases involving student groups/organizations that have been suspended, the group/organization will be placed on social probation for a minimum of one (1) year following the end of the suspension period. Sanctions for Minor Violations under the Code range from warning to probation with conditions. Sanctions for Major Violations under the Code may range from warning with conditions to expulsion from the University. Lack of intent or knowledge may be a mitigating factor in determining sanctions but does not excuse harm to persons or property. Any one of the following sanctions or their combinations, or others, as appropriate, may be imposed at the discretion of the conduct officer/hearing panel:

1. **Disciplinary Expulsion:** Permanently severs the relationship of the student with the University. In addition, the student may not attend any of the other University of North Carolina institutions. Expulsion therefore is reserved for the most severe violations where the student's conduct has shown him/her to be unfit to continue or ever return as a member of the University Community and/or where the student likelier than not constitutes a continuing danger to the physical safety or well-being of members of the University Community and/or property, which danger cannot be adequately mitigated through lesser sanctions such as suspension. The sanction of expulsion comes to the Associate Vice Chancellor for Student Affairs as a recommendation that is not effective until approved.
2. **Disciplinary Suspension:** Severs the relationship of the student with the University for a finite period, the terminal date of which coincides with the official ending of an academic semester or summer session. Suspension is imposed when other sanctions are deemed ineffective to deal with the severity of the conduct committed and/or in cases of aggravated or repeated violations of the Code. Suspension is appropriate where the student's conduct has shown him/her to be unfit to continue as a member of the University Community for a set period of time and/or where it is believed that the student will be fit to return if certain conditions are satisfied. Suspension may carry conditions that must be satisfied prior to future re-admission to the University and/or probationary conditions following re-enrollment. Students should contact the Office of Admissions to determine the re-enrollment process after the suspension period is complete.
3. **Disciplinary Probation:** Permits continuation as a student at the University, but imposes certain requirements on the student for a specified period of time, the terminal date of which coincides with the official ending of an

academic semester or summer session. Any further proven violations by the student under probation will likely result in the student's suspension or expulsion from the University.

4. **Disciplinary Warning:** The warning period provides a time for the student to reflect upon the violation and to consider the responsibilities of a University citizen. A warning gives notice that any subsequent violation of the Code may result in more serious consequences because of the warning.
5. **Miscellaneous:** In addition to the above, any one or a combination of the following may be imposed concurrently by a hearing panel or conduct officer. Such sanctions listed below are only examples and do not limit the discretion of hearing panels/conduct officers: restitution, cancellation of future registration, community service hours, administrative room change or removal, restriction of privileges (e.g., attendance at events, use of library, use of computer facilities, use of UNCG bookstore, parking, etc.), loss of computer network privileges, reflection or research projects, SMART Planning, No Contact Orders, Trespass orders, prohibition from being in or around specific areas of campus and/or individuals, prohibition from participation in organized student or University groups or activities, required counseling, counseling assessment, substance abuse assessment, anger management assessment, behavioral contracts, drug screens, behavioral or educational programs or classes, warning, probation, suspension, etc. A copy of the sanction letter is contained in files of the Dean of Students Office and will be available as evidence of relevant past behavior to hearing panels/conduct officers.

2. Sanctions for Student Groups/Organizations

1. **Disciplinary Expulsion:** Permanently severs the relationship of the student group/organization with the University. Expulsion therefore is reserved for the most severe violations where the group/organization's conduct has shown them to be unfit to continue or ever return as a member of the University Community and/or where their presence likelier than not constitutes a continuing danger to the physical safety or well-being of members of the University Community and/or property, which danger cannot be adequately mitigated through lesser sanctions such as suspension. The sanction of expulsion comes to the Associate Vice Chancellor for Student Affairs as a recommendation that is not effective until approved.
2. **Disciplinary Suspension:** Severs the relationship of the student group/organization with the University for a finite period, the terminal date of which coincides with the official ending of an academic semester or summer session. Suspension is imposed when other sanctions are deemed ineffective to deal with the severity of the conduct committed and/or in cases of aggravated or repeated violations of the Code. Suspension is appropriate where the group/organization's conduct has shown them to be unfit to continue as a member of the University Community for a set period of time and/or where it is believed that the group/organization will be fit to return if certain conditions are satisfied. Suspension may carry conditions that must be satisfied prior to future re-admission to the University and/or probationary conditions following re-enrollment. Student groups/organizations should contact the Office of Campus Activities and Programs to determine the re-affiliation process after the suspension period is complete. Suspension for groups/organizations carries the immediate revocation or restriction of University Affiliation.
3. **University Affiliation Revocation:** The removal of University affiliation until such time, if ever, that the group/organization is able, in the discretion of the University, to meet stated conditions for reconsideration of affiliation. Affiliation revocation may be imposed upon any group, club, society, or organization. It is appropriate where the group/organization's conduct has shown it to be unfit to continue as a member of the University Community for a set period of time and/or where it is believed that the group/organization will be fit to return if certain conditions are satisfied. This action carries a recommendation to any National/International Headquarters for charter revocation.
4. **Restriction of University Affiliation:** The temporary restriction of University Affiliation. Typically, the minimum time period for restrictions will be no less than one (1) full academic semester. While under restriction the group may continue, but it may not seek or add members, it may not hold or sponsor events in the University

community, and it may not enjoy any of the privileges removed as a result of the Social Probation described below.

5. **Social Probation:** Imposed for a specific period of time but for not less than four (4) weeks of a regular academic semester. This action prohibits the group/organization from sponsoring or participating in any organized social activity, party, or function, including philanthropy events.
6. **Social Warning:** An official reprimand. Any subsequent violation of the same nature by the group/organization within a period of two (2) years may result in suspension as a minimum penalty.
7. **Other:** In addition to the above, any one or combination of the following may be concurrently recommended by a hearing panel or review process provided that the time period not exceed the term of the major sanction:
 1. Exclusion from intramural competition
 2. Restitution
 3. Denial of use of University facilities for meetings, etc.
 4. Recruitment Probation
 5. Task Assignment/Community Service

Section 17: Referrals

In cases where a hearing panel or conduct officer believes additional information is needed prior to decision or sanction, the respondent(s) may be referred for assessment or evaluation by internal or external agencies for psychological or substance abuse concerns. In such cases, the hearing shall be deferred until such time as the requested assessment, evaluation and/or treatment is completed.

1. Psychological Evaluation/Counseling

Requests for psychological evaluation may be made by a conduct officer or hearing panel through the conduct officer if, in their judgment, the behavior of the respondent, as shown by evidence, is unexplained or appears beyond the actions of a reasonable person informed of policies of the University, or if the behavior of the respondent suggests a threat to the University community. Such consultation or evaluation is undertaken with the following conditions:

1. Conduct action may involve prior consultation between the staff of the Counseling Center and the conduct officer concerning questions related to student conduct so long as such consultations are held in keeping with confidentiality protections of the student if the student is a client of the Counseling Center.
2. Students presenting such behavior may be referred for assessment or other intervention in consultation with the Director or designee of the Counseling Center.
3. Following adjudication and the imposition of sanctions, students suspended from the University as a result of such sanctions may be required by the conduct officer to submit evidence of psychological evaluation and recommendation as to their readiness to re-enroll at the University under existing conduct and academic conditions. Such evaluation shall be at the expense of the student and through agencies external to the University, subject to the approval of the conduct officer. The University retains the right to have a separate evaluation conducted at the University's expense if the University desires a second opinion or has any concern about the documentation provided by an external entity.
4. All primary documents related to psychological evaluation will be retained by the evaluative agency and, as such, do not become part of the student's educational record under FERPA.
5. Responsibility for violations of the Code is based on inappropriate behavior and will not be excused based upon any potential cause of such behavior including, but not limited to, the diagnosis of behavioral or psychological disabilities. However, such a diagnosis may be considered as a mitigating factor for purposes of the imposition of sanctions.
6. A student suffering from a mental disorder who is respondent of a Code violation may or may not be diverted

from the disciplinary process unless, as a result of the mental disorder, the student lacks the capacity to respond to the charges. In such case, the student will be subject to the Student Involuntary Medical Withdrawal policy. (<http://sa.uncg.edu/handbook/policies/>)

2. Substance Abuse Assessment/Treatment

Students found Responsible for any first or subsequent alcohol or other substance related violation which suggests a history of substance abuse or related behavioral problems with potential harm to others may, at the discretion of the hearing panel/conduct officer, be placed, at minimum, on disciplinary warning and be referred to an appropriate agency for an alcohol or other substance abuse screening, at the expense of the student, as follows:

1. A student appearing before either a conduct hearing panel or officer who exhibits a possibility or history of substance abuse or behavioral problems may be referred to the Vacc Counseling and Consulting Clinic or a licensed agency or therapist that is acceptable to the University for an assessment. The student shall be required to:
 1. complete a consent to share information from the office of the appropriate conduct officer;
 2. contact the Vacc Counseling and Consulting Clinic to schedule an appointment;
 3. provide a written consent to the Vacc Counseling and Consulting Clinic for the purpose of providing information concerning this screening to the conduct officer, and;
 4. complete the screening process with the Vacc Counseling and Consulting Clinic in a timely manner as directed.
2. A summary of treatment recommendations, based upon this evaluation, will be provided by the Vacc Counseling and Consulting Clinic to the appropriate conduct officer, noting any recommendation for further evaluation or treatment.
3. The hearing panel/conduct officer shall consider the findings of the hearing, past conduct record, and recommendation of the Vacc Counseling and Consulting Clinic in deciding on sanctions appropriate to the behavior.
4. Treatment of a diagnosed substance problem may constitute grounds for deferral of some conduct sanctions, pending successful resolution of the problem. Where further alcohol or other substance related assessment or treatment is indicated, the first referral shall be identified in consultation with the Vacc Counseling and Consulting Clinic, a professional in the Counseling Center, or a physician in the Student Health Services for further assessment or long-term intervention. Other professional resources may be utilized at the discretion of the hearing panel/conduct officer and with appropriate information and consultation with other members of the University community. Costs of treatment programs are the responsibility of the student.
5. All records concerning conduct actions under this procedure shall be maintained in the Dean of Students Office. Medical or other assessment related records and materials (other than summary assessments or recommendations) shall remain in the files of the agency professional responsible for assessment procedures. All student records shall be protected in accordance with the University's FERPA Policy located at <http://www.uncg.edu/reg/Policy/Ferpa/>.

Section 18: Appeals

1. Each student who has received a disciplinary sanction shall be notified in writing of his or her appeal rights. This notice must be given no later than the date the written decision is delivered, whether emailed or by hand. Only the student who has been found responsible for a violation under the Code may appeal, except as allowed in cases involving relationship violence, sexual misconduct, or stalking, where the complainant also has the right to file an appeal.
2. Any disciplinary decision resulting in sanctions less than suspension, except where the respondent has waived his or

- her right to appeal, may be appealed to the Dean of Students or designee whose decision is final, and no further appeal of the decision is permitted.
3. Any disciplinary decision resulting in suspension, except where the respondent has waived his or her right to appeal, may be appealed to the Vice Chancellor for Student Affairs or designee, whose decision is final, and no further appeal of the decision is permitted.
 4. Expulsion decisions may be appealed to the Vice Chancellor for Student Affairs or designee. This decision on appeal shall be the final decision at the university. A further appeal may be made to the UNC Board of Governors. Appeals to the Board of Governors should be sent by certified mail, return receipt requested, to the President of the University of North Carolina within ten (10) calendar days after the student receives the final University decision. The mailing address for appeals to the Board of Governors is: c/o Vice President and General Counsel, Office of the President, University of North Carolina, P.O. Box 2688, Chapel Hill NC 27515-2688. A copy of the written notice of appeal to the Board of Governors must also be delivered to the Dean of Students Office.
 5. Under the appeal rights set by the UNC Board of Governors and applicable at the University of North Carolina at Greensboro, an appeal of a disciplinary decision is limited to allegations that the decision violates due process rights, meaning there has been a material deviation from the procedural and/or substantive due process standards adopted by the UNC Board of Governors. Therefore the appeal must allege a violation of
 1. Procedural Standards; and/or
 2. Substantive Standards.
 6. On appeal, a respondent has the burden of showing that the disciplinary decision violates Procedural and/or Substantive Standards.
 1. Violation of Procedural Standards means that the respondent was not provided the required notice or an opportunity for a fair hearing due to specified procedural errors, or errors in interpretation of University policies or regulations, that were so substantial as to effectively deny the respondent a fair hearing. Reasonable deviations from the procedures set out in this regulation will not invalidate a decision or proceeding unless the respondent can show that, but for the deviation or error, there likely would have been a different outcome in the case.
 2. Violation of Substantive Standards means there is a lack of information in the record that could support the decision or sanction(s). This last ground for appeal does not mean the information presented at the hearing can be re-argued on appeal; rather, it requires a showing that no reasonable person could have determined the respondent was responsible or could have imposed the sanction that was issued.
 7. In all cases resulting in an appeal, the decision, the complete record of the proceeding (including documentary evidence and any recording or transcript of testimony), the appeal materials filed by the student, and any other relevant information, will be compiled by the Dean of Students Office and delivered to the person designated to review the appeal.
 8. Written notice of appeal must be submitted by the respondent or the complainant to the Dean of Students Office within three (3) business days of the date of written notification of the decision of the hearing panel or the conduct officer provided at the time of the decision. Failure to submit the appeal within this time limit will render the original decision final and conclusive. Appeals that fail to cite one or more criteria as listed in Section 18.5., or to allege facts supporting at least one of the above criteria, shall be dismissed without further action. When a student group/organization makes an appeal, that group's/organization's president or chief officer will be required to submit the notice of appeal.
 9. The appeal must be delivered in person to the Dean of Students Office and must contain the following:

1. A copy of the decision being appealed;
 2. A statement of the grounds for appeal, which at a minimum should contain a list of alleged errors in the decision or procedure and statement of why the decision or sanctions are in error;
 3. A requested remedy; and
 4. The signature of the appellant and date the appeal is being submitted.
10. The imposition of sanctions will go into effect immediately, but may be deferred during the pendency of appellate proceedings, at the discretion of the person(s) reviewing the appeal, upon written request of the respondent. Where sanctions are deferred during the pendency of the appellate proceedings and the student's appeal is ultimately unsuccessful, students may fail to receive grades or credit for courses or assignments already completed while awaiting a decision, or, in cases resulting in the sanction of suspension or expulsion, cause a student to pay back previously received financial aid for the semester completed.
11. Appeals will be decided on the record of the original proceedings. New hearings will not be conducted on appeal.
12. Following their review, the official reviewing the appeal may:
1. Uphold the original decision;
 2. Overturn the original decision;
 3. Modify the sanction (s); or
 4. Remand for a new hearing. (In all remanded cases, the conduct officer may elect to dismiss the case rather than re-hear it).
13. A student group/organization aggrieved by a decision covered by this section of the Code may appeal to the Vice Chancellor for Student Affairs or designee by giving written notice within three (3) business days after the decision of the hearing panel/conduct officer is announced. The decision of the Vice Chancellor for Student Affairs or designee shall be final, and conclusive, and the sanction(s) will be imposed as directed if previously held in abeyance.

Section 19: Interim Measures

1. Interim Suspensions

1. Individual Students

A student whose presence, in the opinion of the conduct officer, poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately interim suspended by the Vice Chancellor for Student Affairs or designee. The student will be notified by the Vice Chancellor for Student Affairs or designee in writing to the student's UNCG email address of the intent to suspend effective immediately, and the opportunity to respond within a specified time period. The following procedures apply to interim suspensions of student:

1. Any appeal of the intent to suspend must be made within twenty-four (24) hours of delivery to the student.
2. A respondent wishing to oppose such suspension must provide a written response or request a personal interview within the above-specified time to the Vice Chancellor for Student Affairs or designee.
3. After such an appeal has been reviewed, the Vice Chancellor for Student Affairs or designee will notify the student in writing of action on the suspension.
4. Following such suspension, an expedited hearing process will be held to resolve all matters related to the interim suspension.
5. During the interim suspension, students may be denied access to the residence halls and to the

campus (including classes) and all other activities or privileges for which the student might otherwise be eligible.

6. The interim suspension may be extended through the completion of the appeal process. The regular conduct process will resume after this interim suspension as soon as practical.

2. Student Groups/Organizations

In the event of serious allegations, a student organization may be suspended on an interim basis pending the outcome of the conduct process. Interim suspension mandates the immediate cessation of all organization activity including recruitment, meetings, social gatherings, programs, etc. This decision will be communicated to the President of the organization by the Campus Activities and Programs conduct officer or designee. The President of the organization may appeal the interim suspension by requesting a personal meeting or delivering a written request within twenty-four (24) hours of receipt of the letter to an Associate Vice Chancellor for Student Affairs as designated by the Vice Chancellor for Student Affairs.

2. Interim Removal from University Residence Halls

In the event of serious allegations, a student may be removed from University housing immediately, pending the outcome of the conduct process. Such removal will be imposed when, in the opinion of the Director of Housing and Residence Life or the conduct officer, the allegations against the student constitute such serious violations of the Code as to create a danger to the larger residential community. The conduct process will follow this interim removal as soon as practical. The student will be notified in writing by the Director of Housing and Residence Life or University conduct officer of the interim removal from housing and the opportunity to appeal within a specified time period. The time period for such appeal will be no more than twenty-four (24) hours. A respondent wishing to oppose such removal will provide a written response or request a personal interview within the specified time to the Director of Housing and Residence Life. If the Director upholds the interim removal, the student may appeal the decision to the Vice Chancellor for Student Affairs or designee. After such response has been reviewed, the Vice Chancellor for Student Affairs or designee will send written notification to appropriate University parties and to the student at their UNCG e-mail address.

Section 20: Other Actions

1. Parental Notification

Student misconduct involving violence, alcohol, or drugs normally leads to a minimum sanction of probation. Because probation advises the student that further misconduct is likely to lead to separation from UNCG and as consistent with federal law, parents or legal guardians of dependent students under the age of 21 may be advised by the Dean of Students Office of such misconduct involving crimes of violence, alcohol, or drugs when it results in a sanction of probation or separation from the University. This notification may occur once the appeal process is complete and the sanctions are final.

2. Conduct non-compliance

If a student fails, without good cause, to comply with the requirements of the conduct process, a University administrative officer may seek sanctions against the student under the section on Sanctions for failure to comply with directives of University officials. Sanctions may include but are not limited to: cancellation of pre-registration, a Student Affairs Hold being placed on the student's record, suspension from the University, and/or preventing the awarding of a degree due to noncompliance with conduct directives, and potential loss of up to 100% of tuition and fees. Failure to comply with the requirements of the conduct process may include failure to submit a statement, failure to attend a meeting/hearing, or failure to fulfill a sanction. A Student Affairs Hold may prevent, among other things, registration, enrollment, or the awarding of a degree.

Section 21: Confidentiality and Records

1. Pursuant to the Family Educational Rights and Privacy Act (FERPA), conduct proceedings will be closed in order to protect education records and information from such records. Conduct proceedings are considered to be confidential and, therefore, are not to be divulged outside the hearing, subject to applicable policy and law. Violation of the confidentiality of a hearing is a violation of this Code.
2. Records generated by the hearing procedure are maintained in the Dean of Students Office. These are considered part of the student's educational record under FERPA. These records are accessible only to the student and others as provided by that Act and University policy. These records are also used to follow progress of students under assigned sanctions, including warning, probation, or for assessment/evaluation requirements. Such records are created and purged according to the Student Records Policy (FERPA at <http://sa.uncg.edu/handbook/policies/>). Information about expulsion and Academic Integrity violations are maintained permanently in the student's conduct record.
3. Students who wish to contest information contained in the record, including a request for removal of information from the record, must address such requests in writing to the Vice Chancellor for Student Affairs or designee, who shall review the request and notify the student of any actions related to the contention or request pursuant to FERPA and University policy.
4. All transcripts or recordings of each panel hearings shall be preserved in accordance with the University's Record Retention Policy (http://policy.uncg.edu/electronic_records/). Following this period, the transcript or recording shall be destroyed. The transcript or electronic recording and any written record pertaining to the hearing process shall remain the property of the University and may be reviewed by the parties, by appointment. Reasonable conditions for this review will be established by the Dean of Students or designee.

Section 22: Definitions

1. Case Coordinator: Student representative of the Dean of Students Office who advises the complainant of the conduct process and will assist in the preparation and presentation of information to the conduct officer or hearing panel.
2. Complainant: Person(s) bringing forth an alleged violation of the Student Code of Conduct.
3. Conduct Advisor: Student representative of the Student Government Attorney General's Office who advises the respondent of the conduct process and is available to assist in the preparation and presentation of information to the conduct officer or hearing panel.
4. Conduct Which is Disorderly: any conduct that creates a disturbance or endangers the values, health, or safety of the university community. Some examples may include but are not limited to: vulgar and obscene language, public drunkenness, loitering, violent or seriously disruptive behavior, or unreasonable noise.
5. Consumption: Ingesting of substances orally or by injection or inhalant devices.
6. Facilitating or Accepting Improper Behavior: Choosing not to confront a person violating the Code, choosing not to leave such a situation, or choosing not to tell a University staff member about the Code violation. Making this choice is an ethical interpersonal communication issue. As such, the typical sanction is a warning and/or a workshop that teaches students how to confront others in difficult situations, decision-making skills, and interpersonal communication. Facilitating or Accepting Improper Behavior is a violation that can be adjudicated only once. The University expectation is that students who are found Responsible for this violation will learn from it and not repeat it. In cases where students are accused of Facilitating or Accepting Improper Behavior a second time, additional charges beyond Facilitating or Accepting Improper Behavior (e.g. possession) will usually be incurred with their resulting sanctions.
7. Good Conduct Standing: A student or organization in Good Conduct Standing with the University is regarded as having no prior conduct violations imposed or has complied with all required educational sanctions and is no longer on warning, probation, suspension, or expulsion.
8. Hate Crime: Physical or verbal conduct directed at an individual or their property on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, political affiliation, genetic information, veteran status,

- disabling condition, or age that is sufficiently severe or pervasive so as to substantially interfere with the individual's employment, education, or access to university programs, activities, and opportunities...and detrimentally affects the individual in question and would also detrimentally affect a reasonable person under the same circumstances.
9. Major Violations: Violations which involve conduct which could result in criminal charges at the felony level or which, in the discretionary judgment of the conduct officer, presents an unreasonable danger to self or others, or aggravated or repeat violations. Where the sanction is not specified or the circumstances of the plea may subject the student to separation from the institution, the conduct officer may choose to review the consequences of a Responsible plea with the respondent or refer the matter to a hearing panel.
 10. Minor Violations: Violations which do not involve conduct which may result in criminal charges at the felony level and which, in the discretionary judgment of the conduct officer, involve no unreasonable danger to self or others.
 11. No Contact Order: The Dean of Students Office may issue a "No Contact Order" to any member of the University community if, in their professional judgment, a member of the University feels threatened or unsafe in that individual's presence. The No Contact Order will continue until a conduct resolution is reached, or the Dean of Students Office rescinds the Order. Typically, a No Contact Order will include the prohibition of direct or indirect contact with an individual. This includes, but is not limited to, phone calls, text messages, e-mails, instant messaging, Facebook, Twitter, all forms of social media, letters, verbal conversations or having others contact the individual, or being within 100 feet of the individual. Violation of the No Contact Order is a violation of Respect under the Code. If individuals who have a dispute must be in each other's presence (i.e. same class or residence hall) then decisions about how to mediate that situation will be made on a case by case basis. Failure to comply with a No Contact Order directive may result in suspension from the University.
 12. Not Responsible: The student does not accept responsibility for conduct allegations and agrees to appear before a conduct officer or hearing panel for resolution. If there is a finding of Not Responsible, no further action will be taken. A finding of responsibility by the conduct officer or hearing panel will lead to sanctions.
 13. Possession: Possession as used in this Code is defined as having actual knowledge of a substance or property, consumption, and/or being in such close proximity to the substance or property that it is a reasonable presumption that one had knowledge of the substance or property. For example, those in a room where a controlled or prohibited substance is present would be presumed to be in Possession of the substance absent compelling evidence to the contrary. Note: A student in the presence of a policy violation and who is not actively involved, has three choices: 1) leave the situation; 2) ask the student(s) to stop the behavior and/or take it out of the room; or 3) seek assistance from a University staff member (for example: Resident Advisor or UNCG Police). A student, who does not do any of the above, can be held Responsible for the policy violation.
 14. Respondent: A student accused of a violation of the Student Code of Conduct.
 15. Responsible: Student acknowledges responsibility for conduct allegations and agrees to appear before a conduct officer or hearing panel for sanctioning or a finding determined by a hearing panel or conduct officer based on the preponderance of the evidence.
 16. Student: Any person from the time he or she accepts admission to UNCG up through the date of graduation. This includes, but is not limited to, new students at orientation, persons not currently enrolled but who are still seeking a degree from UNCG, and any other person enrolled in a credit earning course offered by UNCG. For purposes of exercising jurisdiction for University discipline, it also includes any person who has graduated from UNCG if the university determines that his/her graduation or receipt of credit may have involved misconduct while he/she was working toward a degree.
 17. Student Affairs Hold: Placed on accounts of students who have been suspended or expelled or have been found under this Code to be in non-compliance of directives by a university official, without reasonable cause for being in non-compliance. Holds prevent students from being able to do such things as register for classes or pay account balances. Typically, a hold will be removed once a student is back in Good Conduct Standing or may temporarily be

removed for a student previously enrolled to receive records such as transcripts.

18. Trespass: Being found in or having been in an area of controlled access, without regard to condition of doors or locks controlling access to the area. Controlled access may be implied by fences or other barriers or directly conveyed by signage or policy. A student found in such an area may be considered in Trespass if a reasonable person could have been expected to perceive fences, barriers, signage, or usage to be limited to permission of the facility management. Trespass also includes remaining upon or returning to premises where the student has been told by the Police or another person in authority over the premises to not be present upon the premises.

ENDNOTES:

[1] Affiliated organizations for students are registered with the Office of Campus Activities and Programs under affiliation policies.

[2] Adapted from the Center for Academic Integrity's Fundamental Principles project, 2000.

[3] Adapted from the Center for Academic Integrity's Fundamental Principles project, 2000.

[4] Adapted from the Center for Academic Integrity's Fundamental Principles project, 2000.

[5] Adapted from the Center for Academic Integrity's Fundamental Principles project, 2000.

[6] Adapted from the Center for Academic Integrity's Fundamental Principles project, 2000.

[7] Information in this section was adapted from language used in Gehring, D. and Pavela, G. (1986) Issues and Perspectives on Academic Integrity, second edition, Washington: National Association of Student Personnel Administrators.

[8] The Amnesty Protocol ensures that a student's safety and health comes first in cases of underage possession and/or consumption of alcohol. The Dean of Students Office and Housing and Residence Life will not pursue conduct action if: (1) The intoxicated student reports the incident, and/or (2) If the intoxicated or other student(s) involved is actively seeking medical and/or health assistance from a university official or medical provider. This Protocol does not exempt students from being charged criminally by any law enforcement agency.

UNCG students cannot be covered under the Protocol if one of the following conditions is met:

- An intoxicated student and/or other students involved allegedly committed any other violation(s) of the student code of conduct (i.e., sexual assault, vandalism, etc.) during the incident in which they are seeking amnesty.
- An intoxicated student and/or other students involved have been previously found responsible for possession of alcohol and/or drugs.
- An intoxicated student and/or other students involved have already been covered by the Amnesty Protocol for a previous underage possession and/or consumption of alcohol charge while a student at UNCG.

The Dean of Students Office will decide on a case by case basis if conduct action will be pursued for those seeking assistance for others on more than one occasion.

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**Declaration of Paul M. Smith
June 20, 2016**

EXHIBIT H

The
Instrument of
STUDENT JUDICIAL
GOVERNANCE



Amended May 11, 2015

The University of North Carolina at Chapel Hill

THE INSTRUMENT IS SUBJECT TO CHANGE

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The
Instrument of
STUDENT JUDICIAL
GOVERNANCE

The University of North Carolina at Chapel Hill

Effective August 1, 2014

I. PREAMBLE

This *Instrument* of Student Judicial Governance for the University of North Carolina at Chapel Hill (“*Instrument*”) is adopted in furtherance of the University community’s shared commitment to the pursuit of truth, and the dissemination of knowledge to succeeding generations of citizens devoted to the high ideals of personal honor and respect for the rights of others. These goals can only be achieved in a setting in which intellectual honesty and personal integrity are highly valued; other individuals are trusted, respected, and fairly treated; and the responsibility for articulating and maintaining high standards is widely shared.

A. Premises. This *Instrument*, including the Honor Code and the stated means for its enforcement, is adopted based on the following premises:

1. **Students’ Commitment.** Ideals of academic honesty, personal integrity, and responsible citizenship are essential to the performance of all academic work and all other activities of students while members of the University community. These ideals are embodied in the Honor Code set forth in this *Instrument*, with the support of students, faculty, and staff. Application by a student for admission and subsequent enrollment in the University presupposes a commitment to the principles embodied in the Honor Code. Such action also represents consent to be bound by its terms at any time between a student’s application for enrollment and the granting of his degree or other termination of enrollment, including the period between academic semesters.
2. **University Interests.** In keeping with its nature and purpose, the University endeavors to instill in each student a love of learning, a commitment to fair and honorable conduct, and respect for the safety and welfare of others. It also strives to protect the community from those who, for whatever reason, do not embody these values in their conduct, and to protect the integrity of the University and its property for the benefit of all.

3. **Educational and Other Activities.** The activities of students, as well as other members of the University community outside the classroom, influence the educational process and learning environment, just as the intellectual atmosphere of the campus contributes to students' growth and development. Many forms of nonacademic conduct, as well as all facets of the academic process, are therefore areas of proper concern and regulation by the University community.
4. **Responsible Exercise of Freedom.** The guiding principle of University regulation of conduct should be that of the responsible exercise of freedom. Members of the University community should be accorded the greatest possible degree of self-determination correlative with the acceptance of the full responsibility for their conduct and the consequences of their actions.
5. **Chancellor's Responsibilities.** The Chancellor remains solely responsible for all matters of student discipline, in accordance with the expectations of the Board of Governors of the University of North Carolina. Nevertheless, the Chancellor has traditionally shared the responsibility of setting basic policy concerning student conduct and applying overarching requirements in individual cases with students and the faculty in order to achieve the University's underlying goals.
6. **University and Broader Community.** The University has a special interest in assuring that students refrain from academic misconduct, respect the safety and welfare of members of the University community, and protect its institutional integrity and resources. The standards for student conduct and the means of enforcement set forth in this *Instrument* are adopted in furtherance of University interests and serve to supplement, rather than substitute for the enforcement of the civil and criminal law applicable at large. Therefore it is not double jeopardy for the University to sanction conduct that is also sanctioned under local, state or federal law.

B. Allocation of Responsibility between Faculty, Students, and Administrative Personnel

1. **Responsibilities of Students and Faculty.** In order to ensure effective functioning of an honor system worthy of respect in this institution, specific responsibilities of students are set forth in this *Instrument* and elaborated upon in Appendix A. Responsibilities of faculty members are articulated by the Faculty Council and embodied in Appendix B. These responsibilities are the minimum expected of members of the student body and the faculty. They are not mutually exclusive, and the failure of a student or a faculty member to live up to the stated expectations does not lessen or excuse any failure of the other to comply with relevant requirements.
2. **Location of Conduct and Reservation of Discretion.** Conduct by students on University premises or the premises of groups affiliated with the University, as well as conduct that occurs elsewhere, may give rise to offenses prohibited by this *Instrument* if University interests are implicated. Violations of campus or University policies, rules or regulations, or federal, state, or local law may result in a violation of the student code of conduct and imposition of student discipline. Determinations of whether such conduct should be addressed pursuant to this *Instrument* in instances in which University interests are implicated are reserved to the discretion of the Student Attorney General and campus authorities with associated responsibilities.

3. **Action Outside of this *Instrument*.** This *Instrument* is intended to govern the means for imposing disciplinary sanctions on any student for conduct covered under its terms, except to the extent other forms of redress or action are recognized herein. Such forms of redress include civil and criminal law as previously referenced; authority reserved to the Chancellor pursuant to policies established by the Board of Governors or Board of Trustees; and authority assigned by the Chancellor to particular administrative units (such as the Department of Transportation and Parking Services, Department of Housing and Residential Education or the University Cashier) or other appropriate authorities responsible for addressing emergency situations involving danger to members of the University community or other extraordinary circumstances.

II. OFFENSES UNDER THE HONOR CODE

A. General Responsibilities. It shall be the responsibility of every student at the University of North Carolina at Chapel Hill to:

1. Obey and support the enforcement of the Honor Code;
2. Refrain from lying, cheating, or stealing;
3. Conduct themselves so as not to impair significantly the welfare or the educational opportunities of others in the University community; and
4. Refrain from conduct that impairs or may impair the capacity of University and associated personnel to perform their duties, manage resources, protect the safety and welfare of members of the University community, and maintain the integrity of the University.

Offenses proscribed by this section include, but shall not be limited to, those set out in Sections II.B. and II.C. Additional guidance concerning the interpretation of Section II of this *Instrument* may from time to time be issued by the Committee on Student Conduct as provided in Section V.E.

B. Academic Dishonesty. It shall be the responsibility of every student enrolled at the University of North Carolina to support the principles of academic integrity and to refrain from all forms of academic dishonesty including, but not limited to, the following:

1. **Plagiarism** in the form of deliberate or reckless representation of another's words, thoughts, or ideas as one's own without attribution in connection with submission of academic work, whether graded or otherwise.
2. **Falsification, fabrication, or misrepresentation** of data, other information, or citations in connection with an academic assignment, whether graded or otherwise.
3. **Unauthorized assistance or unauthorized collaboration** in connection with academic work, whether graded or otherwise.

4. **Cheating** on examinations or other academic assignments, whether graded or otherwise, including but not limited to the following:
 - a. Using unauthorized materials and methods (notes, books, electronic information, telephonic or other forms of electronic communication, or other sources or methods), or
 - b. Representing another's work as one's own.
5. **Violating procedures pertaining to the academic process**, including but not limited to the following:
 - a. Violating or subverting requirements governing administration of examinations or other academic assignments;
 - b. Compromising the security of examinations or academic assignments;
 - c. Submitting an assignment that is the same as or substantially similar to one's own previously submitted work(s) without explicit authorization of the instructor; or
 - d. Engaging in other actions that compromise the integrity of the grading or evaluation process.
6. **Deliberately furnishing false information** to members of the University community in connection with their efforts to prevent, investigate, or enforce University requirements regarding academic dishonesty.
7. **Forging, falsifying, or misusing University documents**, records, identification cards, computers, or other resources so as to violate requirements regarding academic dishonesty.
8. **Violating other University policies** that are designed to assure that academic work conforms to requirements relating to academic integrity.
9. **Assisting or aiding another** to engage in acts of academic dishonesty prohibited by Section II.B.

C. Student Conduct Adversely Affecting Members of the University Community or the University. It shall be the responsibility of every student enrolled at the University of North Carolina to refrain from conduct that impairs or may impair the right of all members of the University community to learn and thrive in a safe and respectful environment; or the capacity of University and associated personnel to perform their duties, manage resources, protect the safety and welfare of members of the University community, and maintain the integrity of the University. To these ends, no student or student group shall engage in conduct, or assist another in conduct, that adversely affects or creates a substantial risk of adversely affecting University interests including but not limited to the following:

1. Conduct Affecting Persons

- a. **Fighting** or other conduct that unreasonably endangers or inflicts physical injury upon another.

- b. **Threats** that involve violation of restraining orders or no-contact orders imposed by government or campus authorities, stalking, or other activities that create a reasonable apprehension of physical or emotional harm to an individual following a request or order to desist.
- c. *[Effective May 11, 2015, this provision is reserved for future codification.]*
- d. **Hazing** that causes or permits an individual, with or without consent, to engage in activities that subject that individual or others to risks of physical injury, mental distress, or personal indignities of a highly offensive nature, in connection with recruitment, initiation, or continued membership in a society, fraternity or sorority, club, or similar organized group, whether or not recognized by the University.
- e. **Possessing or carrying any weapon or dangerous substance**, whether openly or concealed, unless expressly authorized by University policies.
- f. **Operating a motor vehicle:**
 - i. while impaired by alcohol, drugs, or other substances, and/or
 - ii. in a reckless manner so as to create a significant threat to members of the University community.
- g. **Engaging in recklessly dangerous, disorderly or obscene conduct** affecting University interests, students or other personnel.
- h. **Controlled Substances:**
 - a. Illegally possessing, manufacturing, selling, or delivering a controlled substance as defined by state or federal laws or applicable policies of the Board of Trustees or Board of Governors; **or**
 - b. Illegally possessing with intent to manufacture, sell, or deliver a controlled substance as defined by state or federal laws or applicable policies of the Board of Trustees or Board of Governors.
 - i. **Engaging in violent, forceful, threatening, intimidating, or disruptive conduct, or inciting others to engage in such individual or collective conduct**, that willfully disrupts any normal operation, function, or activity of the University or any of its organizations, personnel, or guests.
 - j. **Engaging in conduct, or inciting others to engage in conduct that improperly restrains freedom of movement, speech, assembly, or access to premises or activities** by any individual who is a member of the University community or guest of the University or of any of its organizations in connection with that individual's performance of legitimate activities or duties within or at the University.
 - k. **Engaging in conduct within a University classroom that substantially disrupts the academic environment.**
 - l. **Misrepresenting oneself as another** or otherwise adversely interfering with their credit, academic standing, privacy or personal information.
 - m. **Misusing, removing, tampering with, or otherwise making less effective, equipment** (including but not limited to, fire extinguishers, fire alarms, smoke

detectors, and emergency call boxes) intended for use in improving or protecting the safety of members of the University community, either on University premises or on the premises of a student organization officially recognized by the University.

- n. **Assisting or aiding another** to engage in acts prohibited by Section II.C.1. of this *Instrument*.

2. Conduct Affecting Property

- a. **Stealing, destroying, damaging or misusing property** belonging to the University or another individual or entity.
- b. **Violating University policies regarding use or management of resources** including but not limited to computers, electronic resources, library resources, equipment, or supplies.
- c. **Forging, falsifying, or misusing** documents, records, identification cards, computers, data, library materials, or other resources created, maintained, or used by the University or members of the University community.
- d. **Trespassing** upon housing units, offices, classrooms, laboratories or other facilities or unauthorized intrusion into electronic records owned or managed by the University, an affiliated organization, or another member of the University community.
- e. **Assisting or aiding another** to engage in acts prohibited by Section II.C.2. of this *Instrument*.

3. Conduct Affecting the Integrity of the University

- a. **Knowingly abusing a position of trust** or responsibility within the University community.
- b. **Disregarding the Honor Code or interfering with the judicial procedures** established under this *Instrument* by refusing to identify oneself to a University official in pursuit of his or her duty, refusal to appear before University officials or disciplinary bodies when directed to do so, or lying to the Honor Court or judicial officials in the discharge of their duties.
- c. **Violating the terms of disciplinary proceedings** or of any sanction imposed pursuant to such proceedings.
- d. **Using the name of the University** or the names of members or organizations in the University community without authorization.
- e. **Knowingly misrepresenting academic standing, performance, or accomplishments** to members of the University community or others in order to gain an undue advantage.
- f. **Knowingly violating officially adopted University policies designed to protect the integrity and welfare** of the University and members of the campus community.
- g. **Deliberately furnishing false or misleading information** to University personnel acting in the exercise of their official duties.
- h. **Assisting or aiding another** to engage in acts prohibited by Section II.C.3. of this *Instrument*.

4. **Group Offenses.** Societies, clubs, or similar organized groups in or recognized by the University are subject to the same standards as are individual members of the University community. The commission of any offense within this section by such a group or its members acting in concert, or the failure of such a group to exercise preventive measures relative to violations of the Honor Code by its members shall constitute a group offense that may be sanctioned in addition to sanctions imposed for offenses by individual students.

D. Application to Students Acting in Capacity of University Instructors or Employees. Where conduct prohibited by provisions of Section II involves a student acting in the capacity of University instructor or employee, such conduct may be addressed under pertinent University policies such as those relating to sexual misconduct, discrimination, harassment, falsification of information, or misuse of University resources, rather than under this *Instrument*, if handling under such applicable University policies is deemed to be more appropriate by responsible University officials in their sole discretion.

III. SANCTIONS

A. Guiding Principles. In keeping with the University's central mission, students who have violated the Honor Code should learn to take responsibility and learn from their mistakes. Student educational development should therefore play a central role in the development and imposition of sanctions pursuant to this *Instrument*. The imposition of sanctions should concern the shared interest of students, faculty, staff, and the greater University in academic integrity, maintenance of a safe and respectful environment conducive to learning, the protection of the University community, and protection of other University interests.

1. **Relevant Factors.** The Honor Court shall take into account the following factors in imposing sanctions:
 - a. **The gravity of the offense in question** including, but not limited to: intent and deliberation involved in committing the offense; implications for other members of the campus community; and University interests impacted by the offense.
 - b. **The value of learning through experience** so as to develop a greater sense of responsibility for one's actions and consequences to others, including, but not limited to: demonstrated sense of responsibility; demonstrated respect for the importance of academic and/or personal integrity; existence of plans to correct the offense and/or prevent future offenses; and any relevant recurring patterns of misconduct.
 - c. **The importance of equitable treatment for similar offenses** including the minimum and usual sanctions and sanctioning guidelines established in Section III of this *Instrument*.
 - d. **Other compelling circumstances.** In some cases, it is appropriate for the Honor Court to consider other factors that would render a sanction unduly punitive, including, but not limited, to, extraordinary personal circumstances of the student; the educational goals of the University; and University interests in a student's participation in the campus community.

2. **Instructor Recommendations.** In cases charged under Section II.B. of this *Instrument*, the course instructor's grade recommendation is binding upon the Honor Court. Instructors are encouraged to consult with relevant Honor System personnel and the sanctioning guidelines in Section III.D. when deciding a grade recommendation. If the instructor declines to make a grade recommendation or is otherwise unable to do so, the Honor Court shall select the grade penalty from within those available under Section III.B.1.a. of this *Instrument*.
3. **Flexibility and Available Sanctions.** The Honor Court may impose any combination of the available sanctions outlined in Sections III.B. or III.C., as well as other sanctions it deems appropriate, provided that the sanctions not conflict with other provisions of this *Instrument*.
4. **The Importance of Honesty.** The Honor Code values the importance of honesty within the University community. If the Honor Court, or any member of the Honor System staff, believes that a student has furnished false information in connection with any and all Honor System proceedings, the matter will be referred to the applicable Student Attorney General, who may charge the student with an additional violation under Section II.C.3.g. or Section II.B.6. of this *Instrument*.

B. Available Sanctions: Individuals. The following sanctions alone or in combination may be imposed in connection with offenses under this *Instrument*:

1. Academic Sanctions including but not limited to the following:

- a. **Failing Grade.**
 - i. **"XF" Grade.** Receipt of a failing grade in the course designated as an "XF" grade on the student's transcript. Any failing grade in a course that results from academic misconduct shall be designated as an "XF". No sooner than one full semester following assignment of the "XF", a student may petition to have the "X" notation removed from his or her transcript and the grade converted to an "F". The student's petition shall indicate satisfactory completion of a course of study or other educational requirement focusing on academic integrity and approved, in advance, by the Office of Student Conduct in coordination with the Committee on Student Conduct. A student need not be registered in classes in order to petition to have the "X" designation removed. The "X" designation may not be removed from any future "XF" grade received after the first.
 - ii. **Other Failing Grade.** Receipt of a failing grade in a component or aspect of a course or on an assignment.
- b. **Educational Assignment.** Satisfactory completion of an additional educational assignment, course, or program with or without credit.
- c. **Other Requirements.** Other requirements or conditions designed to assure that prior academic misconduct is remedied and does not recur in the future.
- d. **Implications for Academic Retention of Graduate or Professional School Students.** In the case of graduate or professional school students, the imposition of an academic sanction in the form of a failing grade in a course shall not in itself be grounds for terminating the affected student's enrollment in the academic

program in which he or she is enrolled, except when the pertinent academic authorities independently determine that such termination is warranted pursuant to pertinent academic rules and requirements.

2. Conduct Sanctions including but not limited to the following:

- a. **Drug or Alcohol Suspension** including completion of a drug or alcohol education and counseling program, participation in specified forms of community service, and acceptance of such other conditions and requirements as shall be approved by the Judicial Programs Officer.
- b. **Drug or Alcohol Probation** including completion of a drug or alcohol education and counseling program, participation in specified forms of community service, and acceptance of such other conditions and requirements as shall be approved by the Judicial Programs Officer. A refusal or failure to comply with the terms of a drug or alcohol program, as determined by the Vice Chancellor for Student Affairs, will result in suspension for the unexpired term of the probation.
- c. **Behavior Management.** Completion of projects, programs, or requirements designed to help the student manage behavior and understand why it was inappropriate.
- d. **“No Contact” Orders.** Compliance with orders of no contact that limit access to specific university areas or forms of contact with particular persons.
- e. **Community Service.** Completion of up to 60 hours of community service over a period not to exceed twelve weeks under guidelines established by the Judicial Programs Officer.
- f. **Restitution.** Where applicable, payment of restitution in an amount determined by the hearing board and paid under guidelines established by the Judicial Programs Officer.
- g. **Other Requirements.** Where applicable, taking necessary steps to inform affected parties, correct misrepresentations, or otherwise remedy the effects of misconduct.

3. Loss of privileges including but not limited to those relating to the following:

- a. **Participation** on or in:
 - i. Athletic teams (including intramural teams) as a member, coach or manager;
 - ii. Activities or organizations sponsored by or representing the University;
 - iii. Recruitment of new members, induction in, or continuing membership in any student organization (including but not limited to sororities or fraternities).
- b. **Attendance** at campus events or sports activities.
- c. **Use of University facilities or resources** including but not limited to the following:
 - i. **Parking** an automobile or driving an automobile on campus;
 - ii. **Residing** in University residence units;
 - iii. **Using privileges** relating to information technology, computers, or telecommunications.

- d. **Representation** of the University or its affiliated organizations as a tour guide, intern, researcher, or otherwise.
 - e. **Receipt of special recognition or distinction** including but not limited to the following:
 - i. Any award, prize or other recognition bestowed by the University;
 - ii. A fellowship or assistantship that permits the student to act on behalf of the University (including a teaching position or resident assistantship, but not forms of financial aid based on need or merit).
4. **Penalties of Record** that are reflected both on a student's academic transcript (during the period they remain in effect) and in a student's disciplinary records provided under governing policies, including the following:
- a. **Disciplinary Probation** for a definite or indefinite period, including probation with associated conditions or requirements. Probation means that a student may remain at the University but may be required to satisfy specified conditions or requirements, report regularly to the Judicial Programs Officer, and be barred from holding any office or participating in any activity in which the student represents the University or University-recognized student organizations either within or outside the University community. The sanction of probation prohibits graduation until the period of probation has ended and the student has complied with all requirements as established by the Honor Court and the Judicial Programs Officer.
 - b. **Disciplinary Suspension** including the following forms of suspension with associated conditions or requirements:
 - i. **Suspension for a Definite or Indefinite Period** means that the student is removed from good standing and must leave the University for a definite or indefinite period. Suspension anticipates that the student may eventually return if applicable conditions are satisfied. Academic work completed at another institution during a period in which a student is under suspension from the University may not be transferred toward the degree, but applicable health care or insurance benefits may be continued.
 - ii. **Permanent Suspension from the University of North Carolina at Chapel Hill** means that the student is removed from good standing and must leave the University permanently without an expectation that the student may eventually return to the Chapel Hill campus. A student permanently suspended from the campus is not barred from seeking admission to another UNC system university, if that university wishes to permit such application following disclosure of the student's disciplinary record at UNC-Chapel Hill. Permanent suspension may only be imposed with the concurrence of the Chancellor and will remain in effect until the Chancellor who imposed or approved the sanction or his or her successor concludes on the basis of the former student's petition and any supportive documentation that the individual should be given a new opportunity to pursue higher education at UNC-Chapel Hill.
 - c. **Expulsion** if approved by the Chancellor. Expulsion means that a student is removed from the University permanently and may not be admitted to any UNC system university, unless and until the Chancellor who imposed or approved the sanction or his or her successor concludes on the basis of the former student's

petition and any supportive documentation that the individual should be given a new opportunity to pursue higher education within the UNC system.

5. **Written warning** in the form of an official reprimand that is formally communicated by a letter giving the student notice that any subsequent Honor Code violation will carry more serious sanctions.

C. Additional Sanctions: Group Violations. In addition to the imposition of sanctions on individual students, where appropriate, the following group sanctions may be imposed in connection with violations of this *Instrument*:

1. **Written warning** in the form of an official reprimand that is formally communicated by a letter to the group, its advisers and members, giving notice and warning that any subsequent Honor Code violation will carry more serious sanctions.
2. **Conduct sanctions** including but not limited to the following:
 - a. **Educational activities** such as presentations or completion of projects, programs or requirements designed to understand the nature and implications of the misconduct and prevent similar misconduct from arising in the future.
 - b. **Community service** such as completion of specified service programs or projects on or off campus within a specified period.
 - c. **Payment of restitution**, if applicable.
 - d. **Other requirements.** Where applicable, taking necessary steps to inform affected parties, remedy the effects of misconduct, prevent similar conduct from arising in the future, or comply with other requirements or conditions.
3. **Loss of group privileges** including but not limited to the following:
 - a. **Activity restrictions** prohibiting the group from sponsoring any organized social activity, party, or function for a specified period of not less than four weeks of a regular academic term, or otherwise limiting group activities (other than seeking and adding members) for a specified period.
 - b. **Restrictions on participation** in intramural competitions or other activities or events sponsored by the University or University affiliated organizations.
 - c. **Restrictions on use** of University facilities for meetings or other activities.
 - d. **Loss of such other privileges as deemed appropriate** to deter future misconduct.
4. **Sanctions Affecting Group Status or Charter.** The following sanctions may be imposed:
 - a. **Group probation**, which restricts group activities and privileges (other than seeking and adding members) for a specified period of time, upon pain of immediate restriction or revocation of the group's charter or status as a University-affiliated or recognized organization in the event of repeated violations during the period of the sanction.

- b. **Restricted status**, which restricts a group's charter, temporarily removes a group's status as recognized or affiliated with the University, or imposes related restrictions on recruitment or addition of members, sponsoring or conducting events in the University community, or enjoyment of privileges other than the right to continue to occupy or hold property for a period of one semester in addition to the semester in which the offense occurred.
- c. **Revocation of group charter or affiliation** including permanent removal of University recognition for the group in question, if approved by the Chancellor.

D. Gravity of Offenses

1. **Usual and Minimum Sanctions.** In determining the appropriate sanction to be imposed in individual cases, consideration shall be given to usual and minimum sanctions specified in this section as well. For purposes of this *Instrument*, "usual" sanctions are those that are to be applied in individual cases except to the extent that relevant factors listed in Section III.A. provide a compelling basis for imposition of a lesser or greater sanction in order to do justice in a particular case. "Minimum sanctions" are the least serious sanction possible in light of the gravity of the conduct in question, although a more substantial sanction may be imposed in order to do justice in a particular case.
2. **Academic Dishonesty**
 - a. **For an initial instance of academic dishonesty**, the minimum sanction shall be a failing grade in the course, component or aspect of the course, or on that assignment as recommended by the instructor; an additional educational assignment or other requirements as appropriate; and a written warning that further academic misconduct will lead to more serious sanctions.
 - b. **For a second or subsequent instance of academic dishonesty**, the minimum sanction shall be disciplinary suspension for at least one full academic semester.
 - c. **Sanctioning Guidelines for Academic Dishonesty Cases.** The sanctioning chart below exists to provide a starting point for discussion during the deliberation of appropriate sanctions by the Honor Court. Because the Honor Court must consider all four relevant factors described in Section III.A.1. of this *Instrument*, this chart should not be viewed as an assurance or predictor of sanctions in individual cases. The Honor Court may deviate from any usual sanction described in the chart based on other aspects of the gravity of the offense, the value of learning, the importance of equitable treatment, or other compelling circumstances. Neither adherence to nor deviation from the usual sanctions established in this chart alone shall constitute grounds for appeal under Section I.1.b.ii. of Appendix C.
 - d. **Academic Sanctioning Chart – Usual Sanction.** For purposes of this section, "usual sanction" does not indicate the sanction that will be imposed in the majority of cases. "Usual sanction" refers to the sanction that will be imposed unless a majority of the hearing panel finds compelling reason to deviate from the usual sanction based on the Relevant Factors established in Section III.A.1. of this *Instrument*.

| CATEGORY | DESCRIPTION | USUAL SANCTION |
|---|--|---|
| Minimal | The student committed academic dishonesty despite a clear intent and effort to produce honest work. | Instructor's recommended grade sanction, a written letter of warning, and an educational assignment or written apology. |
| Reckless AND/OR Minor | The student committed academic dishonesty whereby he or she did not desire to violate standards of academic honesty but foresaw or should have foreseen the risk of doing so and did not take requisite precautions to prevent it. <i>AND/OR</i> The student committed academic dishonesty that did not have the potential to (a) give a substantial undue advantage over other students or (b) allow him or her to subvert a substantial amount of academic work. | Instructor's recommended grade sanction and one semester of disciplinary probation. |
| Deliberate AND Substantial | The student consciously acted in a way that he or she knew or should have known constituted a violation of the Honor Code. <i>AND</i> The student committed academic dishonesty that had the potential to (a) give a substantial undue advantage over other students or (b) allow him or her to subvert a substantial amount of academic work. | Instructor's recommended grade sanction and one semester of disciplinary suspension. |

3. Conduct Adversely Affecting Persons

- a. For **illegally possessing, manufacturing, selling, or delivering a controlled substance** as defined by state or federal law, sanctions established by relevant policies of the Board of Trustees, including as specified, drug probation, suspension, or expulsion, depending upon the gravity of the offense and prior history of misconduct.
- b. For **operating a motor vehicle while impaired by alcohol, drugs, or other substances**,
 - i. The **usual sanction** shall be drug or alcohol suspension for at least one full academic semester.
 - ii. The **minimum sanction** shall be probation for at least one full academic semester.

4. **Group Offenses.** In instances in which a group has committed a violation of the same type within a period of two years for which a written warning was issued, the minimum sanction shall be group probation.
5. **Repeat Offenses.** For offenses of the same or similar type for which a student has previously received at least probation, the minimum sanction shall be suspension for at least one academic semester with appropriate conditions.

E. Administration of Sanctions

1. **Duration and Effective Date.** The duration and effective date of sanctions shall be determined by the hearing panel. A sanction specified to extend over an academic semester means a semester within the academic year and does not include summer sessions. If a timely appeal is filed as provided in Appendix C, no sanction shall take effect until such time as the relevant appeal has been withdrawn or has been finally determined and a decision rendered by the University Hearings Board or, in applicable cases, by the Chancellor or his or her designee. When, because of an appeal, a sanction of suspension or expulsion becomes effective during the middle or at the end of a semester or term, the student shall receive no credit for any courses undertaken or completed in the semester or term in which the judgment of the hearing panel was initially rendered. Students who have been expelled or suspended from the University are granted 96 hours from the time the sanction becomes effective to depart from the campus. Sanctions of record (expulsion, suspension, and probation) shall be entered on the student's transcript by the Dean of Students following conclusion of any relevant appeals.
2. **Review.** A student who is placed on definite or indefinite probation or suspension may be required to meet periodically with the Judicial Programs Officer.
3. **Removal of Sanctions.** Upon completion of the requisite period, a student who has satisfied any pertinent conditions or requirements may submit a formal petition requesting removal of a probationary sanction or reinstatement following suspension. The petition shall be reviewed by the Judicial Programs Officer who shall prepare a recommendation, and submit the matter for determination by the appropriate court. The court shall consider the student's petition as soon as practicable.
4. **Records of Student Discipline.** Only disciplinary cases pending and currently active sanctions of probation, suspension, or expulsion shall be noted as part of a student's transcript. Records of all disciplinary actions and sanctions imposed pursuant to this *Instrument* shall be maintained by appropriate offices in the Division of Student Affairs as part of a student disciplinary record separate from the transcript and shall be retained for a period of 10 years from the date on which all appeal rights have expired or have been exhausted, and thereafter destroyed, unless destruction at the end of a lesser period shall be permitted in accordance with a disciplinary records retention policy adopted by the Chancellor upon recommendation by the Committee on Student Conduct as provided in Section V.E. Files on pending cases will be maintained indefinitely. Disciplinary files and records of cases that resulted in "not guilty" findings shall be destroyed immediately. Recordings or transcripts of judicial hearings in which an accused student is found guilty shall be retained for 12 months following the conclusion of any available appeal and then destroyed.

IV. Procedural Rights of Students and Complainants

A. Rights of the Accused Student. A student accused of a violation of the Honor Code under Section II of this *Instrument* shall have the following rights:

1. **Information and Informed Choices.** The right to examine this *Instrument*; to be advised of the charge, the character of the evidence against him or her, the alternatives for responding, the possible sanctions, their rights, and their responsibilities to appear for relevant proceedings; and to make choices of the student's own free will, including the choice to waive any rights provided by this *Instrument* after receiving an explanation of the possible consequences so long as any such waiver is made in writing.
2. **Presumption of Innocence.** The right to be presumed innocent until proven guilty, and to plead not guilty without fear that the plea itself (as distinct from any related lies or misrepresentations) may give rise to a charge of lying should the student be found guilty of violating the Honor Code.
3. **Counsel¹.** The right to an assigned student counsel or a student counsel of his or her own choosing, provided that neither a licensed attorney nor a person who has passed a state bar examination may serve as the investigator or defense counsel or be present during proceedings. Only currently enrolled undergraduate students at UNC-Chapel Hill may serve as investigator or defense counsel in cases involving undergraduate students and only currently enrolled students, preferably from within the pertinent academic program, may serve as investigator or counsel to the accused student in cases involving graduate or professional students. However, in the event the offense charged is also the subject of criminal charges, the accused student may be accompanied to the hearing by a licensed attorney who may confer with the student during the hearing so long as the attorney does not address the hearing panel, those hearing the appeal, or other parties or witnesses, and so long as the attorney does not delay or disrupt the proceeding.
4. **Fair Hearing.** The right to a fair, impartial, and speedy hearing, including a separate hearing upon request.
5. **Self-Incrimination.** The right to refuse to respond to questions that would tend to be self-incriminating.

¹In accordance with N.C.G.S. 116-40.11, for allegations of misconduct received by the University on or after August 23, 2013, any student or student organization accused of violations outlined in section II.C. of the Instrument may be represented, at their own expense, by a licensed attorney or non-attorney advocate of their own choosing. This provision shall not apply to cases heard by a student Honor Court (i.e., a board or panel that is composed entirely of students). Students or student organizations that choose to have a licensed attorney or non-attorney advocate represent them must notify the Office of Student Conduct, in writing, of the attorney's or non-attorney advocate's participation in the Honor System process at least five business days prior to any hearing. The notice must specify (a) the identity of the licensed attorney or non-attorney advocate; (b) whether the individual is a licensed attorney or a non-attorney advocate; and (c) current contact information (e.g., address, email, and phone) for the attorney or non-attorney advocate. In addition, the student or student organization must complete and submit a written authorization that meets the requirements of a valid consent as specified by the

6. **Evidence and Witnesses.** The right prior to the hearing to review written evidence and obtain a list of anticipated witnesses; to hear or face witnesses testifying against him or her and question any material witnesses; to challenge and rebut any evidence or written testimony; to present material and character witnesses; and to testify and present evidence in his or her own behalf provided that such evidence is relevant to the charge or other evidence presented and does not otherwise infringe the rights of other students.
7. **Proof that is Clear and Convincing.** The right to have an alleged offense proven by evidence that is clear and convincing, where “clear and convincing” means that the evidence is substantially more likely to be true than not and that the panel has a firm belief or conviction in it.
8. **Appeals and Rehearing.** The right to pursue a subsequent appeal to the extent specified in this *Instrument* and to be free from rehearing under this *Instrument* for the same offense after being found not guilty, except to the extent that a new hearing may be required on an original charge pursuant to Appendix C.

B. Rights of the Complainant. A complainant who asserts that an accused student has violated the Honor Code shall have the following rights:

1. **Notification.** In accordance with the Federal Family Educational Rights and Privacy Act (FERPA), in cases of alleged academic misconduct, the complainant has the right to be notified of the outcome of the case if the complainant has a legitimate educational interest in the outcome. A complainant who is an alleged victim of an offense that involves the use, attempted use, or threatened use of physical force against the person or property of another, or is a felony that, by its nature, involves a substantial risk that physical force may be used against the person or property of another in the course of committing the offense, has the right to be notified of the following matters, pursuant to FERPA and policies of the University Board of Governors: the name of the student assailant, the violation charged or committed, the essential findings supporting the conclusion that the violation was committed, the sanction if any imposed, the duration of the sanction, and the date the sanction was imposed.
2. **Privacy.** The right to have his or her name or other personally identifiable information withheld from release to the public, the press, or others who are not directly involved in the case, by members of the Student Attorney General’s

Family Educational Rights and Privacy Act (FERPA). At least five business days prior to any hearing, the attorney or non-attorney advocate shall provide a signed certification affirming that they have read and understand (1) The Instrument of Student Judicial Governance, (2) Section 700.4.1 of the UNC Policy Manual, and (3) Information for Attorneys and Non-Attorney Advocates Participating in the Honor System. All documents are available from the Office of Student Conduct (studentconduct.unc.edu).

A student or student organization that chooses to be represented at any hearing by a licensed attorney or non-attorney advocate may also be assigned a trained student counsel to serve in an advisory capacity. However, unless otherwise provided in the Instrument, the student or student organization may be accompanied to the hearing and represented by only one individual (licensed attorney, non-attorney advocate, or student counsel).”

staff, any student court or University Hearings Board, or the Office of the Vice Chancellor for Student Affairs.

3. **Comments and Recommendations.** The right to challenge or to request the Student Attorney General's office to challenge the qualifications of any member of a student court or University Hearings Board to hear the case; the right to recommend the forum in which the case should proceed as specified in Appendix C; the right to make a written or oral statement during the sanctioning phase of a hearing; and the right to notice and an opportunity to make an oral or written statement in any proceeding for the removal of a sanction of indefinite suspension or indefinite probation in a case involving a student against whom the complainant filed a complaint.
4. **Presence.** The right to be present during court proceedings except during court deliberations, the announcement of the judgment, the sanctioning phase or any appellate proceedings as provided in Appendix C.
5. **Additional Rights in Certain Cases.** In certain types of cases, the complainant shall have additional rights as stated below.
 - a. **Academic Dishonesty.** The right of an instructor to recommend a failing grade (from within the options set forth in Section III.B.1. of this *Instrument*), and to have the recommended penalty imposed in the event that the accused student is found guilty as charged.
 - b. **Other Conduct Involving Injuries to Persons.** In offenses involving other forms of conduct resulting in injuries to persons under Section II.C.1., the right to be present, except for any court deliberations (during an original hearing, evidentiary proceeding, or appellate proceeding), to the extent permissible under pertinent state and federal law.

C. Additional Student Rights. From time to time, additional student rights may be created or recognized by the University, including rights to privacy and free expression set forth in Appendix D.

V. HONOR SYSTEM OFFICERS, RESPONSIBILITIES, AND STRUCTURES

A. Student Honor System Officers

1. Undergraduate Honor System

a. Undergraduate Student Attorney General

- i. **Appointment and Qualifications.** The Office of the Undergraduate Student Attorney General shall be led by the Undergraduate Student Attorney General, who shall be appointed by the Student Body President, with the approval of the Student Congress, during the spring semester and shall serve a term of 12 calendar months from date of appointment or until a successor has been appointed. Only undergraduate students who have attained at least second

semester sophomore status and who have at least two semester's experience on the Student Attorney General's staff shall be eligible for appointment.

- ii. **Duties.** The Undergraduate Student Attorney General, and, as he or she may determine, members of the Attorney General's staff, shall be responsible for performing the following functions:
 - 1) **Recruitment, appointment, training, certification, and oversight of members of the Undergraduate Student Attorney General's Staff.** The staff of the Undergraduate Student Attorney General shall be responsible for investigating all alleged violations of the Honor Code by undergraduate students, providing defense counsel as requested, and presenting matters to the Honor Court for resolution. In making staff appointments, the Undergraduate Student Attorney General should endeavor to assemble a staff whose diversity reflects that of the student body as a whole. In the event of disagreement between the Attorney General and the Vice Chancellor for Student Affairs concerning training or certification, the issue shall be decided by the Committee on Student Conduct.
 - 2) **Review and investigation of alleged violations of the Code of Student Conduct.** The Undergraduate Student Attorney General (or his or her designee) shall receive complaints of all alleged violations by undergraduate students; investigate such complaints to determine whether there is sufficient evidence to refer the incident to the Honor Court; formulate and bring charges; advise students to be charged concerning their rights, the availability of counsel, and procedures to be employed; bring charges to the Honor Court; and respond to appeals as necessary.
 - 3) **Contribution to cooperative efforts to strengthen the campus Honor System.** In cooperation with other members of the Honor System Outreach Coordinator Search Committee, the Undergraduate Student Attorney General shall recommend to the Undergraduate Student Body President one or more qualified candidates to serve as Honor System Outreach Coordinator. The Undergraduate Student Attorney General shall also serve as an appointed or ex officio member of the Committee on Student Conduct, foster cooperation between the Student Attorney General's Office and the Office of the Undergraduate Honor Court, work closely with the Faculty Advisory Panel on the Honor System, and advise the Judicial Programs Officer, Vice Chancellor for Student Affairs, Chancellor, and Chair of the Faculty about matters relating to the Honor System and Honor Code.

b. **Office of the Undergraduate Honor Court**

i. **Appointment and Qualifications**

- 1) **Undergraduate Honor Court Chair.** The Office of the Undergraduate Honor Court shall be led by the Undergraduate Honor Court Chair, who shall be appointed by the Undergraduate Student Body President, with the advice of the outgoing Chair and Vice Chairs, and shall be confirmed by Student Congress, during the spring semester to serve for a term of 12 calendar months or until a successor has been named. The Chair shall have attained at least second semester sophomore status and have at least a full two semester's experience on the Undergraduate Court prior to selection in the Spring semester.
- 2) **Undergraduate Honor Court Vice Chairs.** The Honor Court Chair may be assisted by a minimum of two vice chairs or additional vice chairs as the

Committee on Student Conduct determines to be necessary for it to conduct its business. Vice Chairs shall have attained at least second semester sophomore status and have at least a full semester's experience on the Undergraduate Court prior to selection. Vice Chairs shall be selected by election among the members of the Undergraduate Honor Court during the spring semester and serve for a period of 12 months or until successors have been named.

- 3) **Members of the Undergraduate Honor Court.** The Undergraduate Honor Court shall be composed of a minimum of 25 undergraduate students (including the chair and vice chairs) or a larger number recommended by the Committee on Student Conduct as necessary to conduct the Court's business. Members shall be appointed by the Student Body President, and approved by Student Congress. Members of the Court shall be recommended during the spring semester by a nominating committee composed of the outgoing and incoming Chair and Vice Chairs, from among a pool of candidates who have been members of the academic community for at least a full semester (or two summer sessions). In reaching its recommendations, the nominating committee shall consider the candidacy of any interested undergraduate student; endeavor to recruit candidates whose diversity reflects that of the student body as a whole; conduct interviews and evaluate personal qualifications using criteria designed to assure effective operation of the Court. Members shall be appointed for a 12-month term and shall serve until successors are named.
- ii. **Duties of the Chair and Vice Chairs.** The Chair of the Undergraduate Honor Court and, as he or she may determine, Undergraduate Honor Court Vice Chairs shall be responsible for the following duties:
 - 1) **Recruitment, nomination, training, certification, and oversight of members of the Undergraduate Honor Court.** Members of the Honor Court may not sit on a hearing panel until they have been found to be knowledgeable concerning the regulations, provisions, procedures, sanctions, and functioning of the Honor System as delineated in this *Instrument*, and accordingly certified as "qualified" by the Chair of the Undergraduate Honor Court and the Vice Chancellor for Student Affairs. In the event that the Chair and the Vice Chancellor for Student Affairs disagree over procedures for certification, the issue shall be decided by the Committee on Student Conduct.
 - 2) **Administration of the Honor Court.** The Chair shall assign hearing panels composed of the Chair or a Vice Chair (as presiding officer) and the requisite number of Court members to conduct hearings and to serve on University Hearings Boards. The Chair shall make such assignments by random selection using a separate presiding officer pool (composed of the Chair and Vice Chairs) and a panel member pool (composed of the remaining members of the court). The Chair shall also perform such other duties as may be appropriate consistent with this *Instrument*.
 - 3) **Contribution to cooperative efforts to strengthen the campus Honor System.** In cooperation with other members of the Honor System Outreach Coordinator Search Committee, the Chair of the Undergraduate Honor Court shall recommend to the Undergraduate Student Body President one or more qualified candidates to serve as Honor System Outreach Coordinator. The Chair of the Undergraduate Honor Court shall also serve as an appointed or ex officio member of the Committee on Student Conduct, foster cooperation between the Student Attorney General's Office and the Office of the Undergraduate Honor

Court, work closely with the Faculty Advisory Panel on the Honor System, and advise the Judicial Programs Officer, Vice Chancellor for Student Affairs, Chancellor, and Chair of the Faculty about matters relating to the Honor System and Honor Code.

- iii. **Summer School: Special Provisions.** During summer session, the authority of the Undergraduate Honor Court shall be exercised by a Summer School Court composed of members, who shall meet the minimum qualifications and be chosen by the procedures set forth in Section V.A.1.b.i.(3). and shall serve for the duration of the summer session. Vacancies that exist at the beginning of or during the summer session may be filled by appointment of the Student Body President and confirmation by Student Congress. The Chair of the Summer School Honor Court shall be appointed by the Student Body President with the advice of the Chair and Vice Chairs of the Undergraduate Honor Court and shall be confirmed by Student Congress. Two vice chairs shall be elected by the members of the Summer School Honor Court, with preference for students who have attained at least second semester sophomore status and who have with at least a full semester's experience. Hearing panels during summer session shall be composed of a presiding officer who is selected by random drawing from a pool of the Summer School Chair and Vice Chairs, and members selected by random drawing from a pool composed of the remaining members of the Summer School Court.

c. **Honor System Outreach Coordinator**

i. **Appointment and Qualifications.**

- 1) **Appointment.** The Office of Honor System Outreach shall be led by the Honor System Outreach Coordinator, who shall be appointed by the Student Body President, with the advice of the Honor System Outreach Coordinator Search Committee, and with confirmation by Student Congress. Candidates for this position may be drawn from the general student body and from students who have served in the Honor System, and shall have extensive knowledge of the Honor System. Candidates from the undergraduate student body shall have attained at least a second semester sophomore status, and candidates from the graduate and professional student body shall have completed at least one full academic year of study. Among candidates otherwise equally well-qualified for the position, preference shall be given to candidates who have at least two semesters' experience as members of the Office of Honor System Outreach. The Honor System Outreach Coordinator shall serve a 12-month term or until a successor is selected.
 - 2) **Honor System Outreach Coordinator Search Committee.** The Honor System Outreach Coordinator Search Committee shall be chaired by the outgoing Honor System Outreach Coordinator, and shall additionally include the outgoing Undergraduate Student Attorney General, the outgoing Graduate and Professional Student Attorney General, the outgoing Undergraduate Honor Court Chair, the outgoing Graduate and Professional Court Chair, the outgoing Graduate and Professional Student President, and a member of the Office of Student Conduct. The member of the Office of Student Conduct will serve as an ex officio member of the committee.
- ii. **Duties.** The Honor System Outreach Coordinator, and, as he or she may determine, members of the Honor System Outreach Staff, shall be responsible for performing the following functions:

- 1) **Recruitment, appointment, training, and oversight of Honor System Outreach Members.** The Honor System Outreach Coordinator shall make staff appointments of Honor System Outreach members, and shall oversee the recruitment, training, and outreach efforts of Honor System Outreach members. In making staff appointments, the Honor System Outreach Coordinator should endeavor to assemble a staff whose diversity reflects that of the student body as a whole.
- 2) **Coordination and Promotion of Outreach Activities.** The Honor System Outreach Coordinator shall coordinate and promote outreach activities by the Office of the Honor System; work with the Faculty Honor System Advisory Committee to improve information and education relating to academic integrity issues; work with the student government and other student organizations to foster information and education regarding student conduct issues; and such other related coordination and outreach activities as may be appropriate after consultation with the Undergraduate Student Attorney General, Office of the Undergraduate Honor Court, the Graduate and Professional Attorney General, the Graduate and Professional Honor Court Chair, the Graduate and Professional Honor System Outreach Officer, the Judicial Programs Officer, the Dean of Students, and the Committee on Student Conduct. The Honor System Outreach Coordinator shall also serve as an appointed or ex officio member of the Committee on Student Conduct.

2. Graduate and Professional Honor System

- a. **Graduate and Professional Honor System.** The graduate student governance agency shall appoint a Graduate and Professional Attorney General and Graduate and Professional Honor Court Chair in accordance with its governance and judicial structures. The Graduate and Professional Honor System shall be responsible for charges against students enrolled in a degree program in the University's Graduate or Professional Schools or any course in post baccalaureate study except as provided in Section V.A.2.b. Except as provided in Appendix C, all other sections of this *Instrument* shall apply.
- b. **Graduate and Professional Attorney General.** Only Graduate or Professional students in good standing at the University who have at least one semester of experience on the Graduate and Professional Attorney General's staff shall be eligible for appointment to the Graduate and Professional Attorney General position. The Graduate and Professional Attorney General shall also serve as an appointed or ex officio member of the Committee on Student Conduct; foster cooperation between the Graduate and Professional Attorney General's Office and the Office of the Graduate and Professional Honor Court; work closely with the Faculty Advisory Panel on the Honor System; and advise the Judicial Programs Officer, Vice Chancellor for Student Affairs, Chancellor, and Chair of the Faculty about matters relating to the Honor System and Honor Code.
- c. **Graduate and Professional Honor Court Chair.** Only Graduate or Professional students in good standing at the University who have at least one semester of experience on the Graduate and Professional Honor Court staff shall be eligible for appointment to the Graduate and Professional Honor Court Chair position.
- d. **Graduate and Professional Honor System Outreach Officer.** The incoming Honor System Outreach Coordinator, with advice from the Graduate and Professional Honor System Outreach Officer Search Committee, shall appoint a graduate or professional student candidate to serve as Graduate and Professional Honor System Outreach Officer. Among candidates otherwise equally well-qualified for

the position, preference shall be given to those candidates who have served for at least one semester in the Office of Honor System Outreach. The Graduate and Professional Honor System Outreach Officer shall work closely with and shall report to the Honor System Outreach Coordinator in working to address the unique needs of the graduate and professional student body as related to Honor System Outreach. The Graduate and Professional Honor System Outreach Officer shall serve a 12-month term or until a successor is selected.

- i. The Graduate and Professional Honor System Outreach Officer Search Committee shall be chaired by the incoming Honor System Outreach Coordinator, and shall additionally include the incoming Graduate and Professional Student Attorney General, the incoming Graduate and Professional Court Chair, the incoming Graduate and Professional Student President, and a member of the Office of Student Conduct. The member of the Office of Student Conduct will serve as an ex officio member of the committee.”

e. **Honor Systems for Graduate Students Enrolled in Designated Professional Schools**

- i. The student government agencies and academic authorities of designated professional schools may request authorization to appoint a professional school attorney general and the chair and members of a professional school honor court and to operate a judicial system responsible for operation of the Honor System as it applies to students enrolled in post-baccalaureate programs, within the requesting professional school. A professional school requesting such authority must file a proposal with the Committee on Student Conduct describing the proposed judicial system, arrangements for its operation, and the need for its establishment. After consultation with the affected parties, the Dean of Students, and the graduate student governance agency, the Committee on Student Conduct may recommend that this *Instrument* be amended to authorize the establishment of the proposed professional school honor court, in accordance with procedures set forth in Section VII.B. of this *Instrument*. Except as provided in Appendix C, all other sections of this *Instrument* shall apply to all professional school judicial systems applicable to post-baccalaureate students. Designated professional schools include the Schools of Dentistry, Law, Pharmacy, Business, and Medicine.

B. Faculty Honor System Advisory Committee

1. **Appointment.** The Chair of the Faculty shall appoint a five-member Faculty Honor System Advisory Committee, drawn from faculty members with interest and experience concerning the campus Honor System. In making the requisite appointments, the Chair of the Faculty shall take into account recommendations by the Undergraduate Student Attorney General, the Chair of the Undergraduate Honor Court, and the Graduate and Professional Attorney General. In making appointments, the Chair of the Faculty should strive to maintain a committee that is broadly representative (in terms of academic units and faculty rank) and possesses relevant expertise (such as experience with legal systems, knowledge of undergraduate and graduate-level issues, experience with instructional development, and awareness concerning the operation of the Honor System). Members of the advisory committee shall serve for overlapping three-year terms or until their successors have been appointed.

2. **Duties.** The Faculty Honor System Advisory Committee shall have the following duties: providing advice when appropriate to the Undergraduate Attorney General and Graduate and Professional Attorney General regarding difficult academic charge decisions; communicating to student judicial officers information regarding faculty concerns or suggestions for improvement of the Honor System; assisting the student judicial officers with outreach and educational activities to involve academic departments and the greater campus community in discussion of issues of honor and integrity; assisting in the development of training materials for use in the Honor System; serving as a source of expertise and advice on educational sanctions; and such other duties as may be appropriate to bolster the effectiveness and smooth operation of the Honor System.

C. Faculty Hearings Boards Panel. The Chair of the Faculty, in consultation with the Chair of the Committee on Student Conduct, shall establish a standing panel of at least 50 faculty members, whose interest and expertise qualifies them for service on University Hearings Boards charged with responsibilities to hear original or appellate matters and on Honor Court panels as described in Section E.1.a. of this *Instrument*. The Faculty Hearings Boards Panel should be drawn from a cross-section of departments, disciplines, and ranks of faculty in order to provide a diverse and representative pool of faculty who are known and respected by their peers. Graduate students at the University who also act in undergraduate instructor roles are eligible for membership on the faculty panel. Appointments to the Faculty Hearings Board Panel shall be for three years. After selection, all members of the Faculty Hearings Boards Panel must meet the qualifications of Student Honor Court members as described in Section V.A.1.b.ii.1. shall be provided relevant training concerning the operation of the campus honor system and other related matters.

D. Judicial Programs Officer. The Vice Chancellor for Student Affairs shall provide requisite resources and appoint necessary personnel to support the Honor System, including a Judicial Programs Officer who shall perform the following functions:

1. **Coordinator.** Serve as the designate of the Vice Chancellor for Student Affairs in coordinating and advising the Honor System.
2. **Adviser.** Provide reports, monitor data, evaluate and apprise the Vice Chancellor for Student Affairs, the Committee on Student Conduct, and other University officers of matters regarding student conduct and the Honor System.
3. **Supervisor.** Supervise compliance with conditions and requirements imposed upon students and groups subject to disciplinary sanctions, including, as appropriate, scheduling mandatory conferences with students placed on probation and with student officers of organizations with an active sanction, overseeing compliance by students and student organizations with the terms of disciplinary sanctions, and providing reports and recommendations to the courts concerning removal of sanctions.
4. **Trainer.** Provide support and oversight of training of Court members, Student Attorney General's staff, and faculty members serving as members of the Honor System Advisory Committee and University Hearings Boards.

5. **Outreach and Program Planner.** Work with students, faculty, and staff, to develop strategies, materials, resources, and programs to inform members of the University community about the Honor Code and Honor System.

E. Committee on Student Conduct

1. **Appointments and Terms.** The Committee on Student Conduct (“COSC”) shall be composed of three persons appointed by the Chancellor, three members of the faculty selected by the Chair of the Faculty, and six students (four undergraduate and two graduate/professional students who are representative of their student constituencies as well as the diversity of the student community). Student members shall be selected through an application process by the Student Body President, or designee, and by the President of the Graduate and Professional Student Federation, or designee, respectively. All Attorneys General, Court Chairs, and Outreach Coordinators shall serve as non-voting ex officio members. In no case shall a member’s term of appointment be less than one year or more than three years. Although it is not mandatory, the Chair of COSC shall usually be a member of the University faculty or a Chancellor’s appointee who has been a member of COSC for one or more years or who has experience in student judicial matters. The Chair shall be elected for a one-year term at the beginning of the fall semester by a majority of committee members.
2. **Procedures.** COSC shall meet regularly, or upon call by the Chair, or by a petition from a majority of the members of the committee presented to the Chair. A quorum shall consist of four students, two faculty members, and two appointees of the Chancellor. A quorum is not required for committee action. Action taken without a quorum, however, shall not become effective until five calendar days have elapsed following the transmittal of the committee minutes describing such action. If within the five-day period any committee member files with the Chair a request for review of the action taken, the action will be held in abeyance until reviewed by the committee when a quorum is present. A majority vote of those present at the meeting shall be determinative of any issue.
3. **Responsibilities.** COSC shall have the following responsibilities:
 - a. **Overseeing** the operation of this *Instrument* and the Honor System;
 - b. **Developing, promulgating, and monitoring policies and guidelines** regarding operational procedures for implementation of this *Instrument* and the Honor System as provided in Section VI;
 - c. As necessary and appropriate, **interpreting this *Instrument*** and developing guidelines and policies regarding its meaning and operation, including but not limited to designation of offenses as “minor” or “serious” as provided under policies of the University Board of Trustees or Board of Governors;
 - d. **Advising student judicial officers, the Judicial Programs Officer, the Vice Chancellor for Student Affairs, and the Chancellor** regarding this *Instrument* and the Honor System as appropriate;
 - e. **Proposing, reviewing, and coordinating** action on amendments to this *Instrument* appropriate to its increased effectiveness;

- f. **Performing such other duties** as specified in this *Instrument*; and
- g. **Reporting to the Chancellor, Faculty Council, and Student Congress** annually in writing.

VI. OPERATIONAL PROCEDURES

The Committee on Student Conduct shall develop policies and guidelines relating to the implementation and operation of the Honor System including, but not limited to, policies and guidelines regarding reports of violations, initiation of charges, authority of the courts, procedural protections relating to evidence and witnesses, proceedings of student courts and the University Hearings Board, expedited hearing panels, appeals, and other specific arrangements for the effective operation of the Honor System. All such guidelines and policies shall be promulgated as part of Appendix C to this *Instrument* in accordance with the procedures for amendment set forth in Section VII.

VII. AMENDMENTS

A. Proposed Amendments. Amendments to any provision of this *Instrument* may be proposed by the Chancellor, the Faculty Council, the Student Congress, or the Committee on Student Conduct.

B. Approval of Amendments

1. **Amendments to Sections I-VII of this *Instrument*.** Amendments to this *Instrument* will become effective when approved by the Student Congress, the Faculty Council, and the Chancellor.
2. **Amendments to Appendix C.** Amendments to Appendix C may be proposed from time to time by the Committee on Student Conduct as a means of improving the operational performance of the Honor System or providing additional guidance to its meaning and interpretation. Amendments to Appendix C will become effective when approved by the Chancellor, upon the recommendation of the Committee on Student Conduct, without formal action by Student Congress and the Faculty Council, provided that the Committee on Student Conduct provides Student Congress and the Faculty Council with written notice of any such proposed amendment and that Student Congress and the Faculty Council are afforded at least 30 calendar days during the academic year in which to advise the Chancellor of their views prior to any action by the Chancellor to approve or reject a proposed amendment.

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO, et al.,

Plaintiffs,

v.

PATRICK MCCRORY, et al.,

*Defendants and
Defendants-Intervenors.*

No. 1:16-cv-00236-TDS-JEP

DECLARATION OF PAYTON GREY MCGARRY

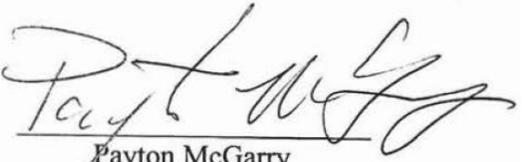
I, Payton Grey McGarry, declare as follows:

1. Attached as Exhibit A is a true and correct copy of an email that I received to my UNC email address on April 15, 2016 from Chancellor Franklin Gilliam, Jr. regarding H.B. 2.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 20, 2016.

By:


Payton McGarry

**Declaration of Payton Grey McGarry
June 20, 2016**

EXHIBIT A

From: university_messages@uncg.edu
Date: April 15, 2016 at 10:30:52 AM EDT
To: uncgstaff-1@uncg.edu, uncgstudent-1@uncg.edu
Subject: Update on HB 2

A Message from
the University



In the spirit of continuing to keep you informed, I want to provide a brief summary of recent policy and guidance related to [HB 2](#). This week, Governor McCrory issued [Executive Order 93](#) clarifying his position on HB 2. The Executive Order does not change the obligations or policy of UNC Greensboro or the UNC System. As specified in [guidance issued by General Administration](#) last week and affirmed in a [letter issued by President Spellings](#) on Friday:

- Neither UNC Greensboro nor the UNC System has changed or will change existing non-discrimination policies that apply to all students and employees. We affirm our commitment to providing an educational and work environment that is free of harassment or discrimination of any sort.
- UNC Greensboro and the UNC System are committed to the following fundamental values: diversity, inclusion, academic freedom, free speech, free expression, and the pursuit of free inquiry.
- The law does not confer authority to the University or any other public agency to undertake enforcement actions.

It is likely that information regarding HB 2 will continue to evolve over the coming weeks, particularly given the legislative short session that begins the end of this month. We know this has generated, and will continue to generate, concern and concrete consequences for our students, faculty, staff, and larger community. We have shared with UNC General Administration the negative impact this law has already had on our campus. We will continue to keep you informed to the best of our ability on this volatile and quickly moving topic.

In conclusion, let me say that the senior leadership team and I are deeply committed to serving the best interests of the University – and more specifically to serving the people who make it what it is. In these complex times, we want to ensure that our campus is a welcoming and safe place for students, staff, and faculty of all backgrounds, beliefs, and identities.

Franklin D. Gilliam, Jr.
Chancellor

This email is an official communication from The University of North Carolina at Greensboro. You may verify official university emails by checking the [Verified Campus Communications Repository](#). If you have questions about the VCCR or the authenticity of an email message you have received, please contact the sender of the message or [search the UNCG website for "VCCR."](#)

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[PROPOSED] ORDER

Having reviewed the Motion to Stay Proceedings filed by Defendants University of North Carolina, Board of Governors of the University of North Carolina, and W. Louis Bissette, Jr. (collectively, “UNC”), ECF No. 38, and Plaintiffs’ response thereto, it is hereby ORDERED that the Motion for Stay is DENIED.

In accordance with the Court’s prior order, ECF No. 45, UNC shall respond to Plaintiffs’ First Amended Complaint, ECF No. 9, within thirty (30) calendar days.

Dated: _____

Hon. Thomas D. Schroeder
United States District Judge