



## Foundation for Individual Rights in Education

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January 15, 2010

President James F. Barker  
Office of the President  
201 Sikes Hall  
Clemson University  
Clemson, South Carolina 29634

*Sent via U.S. Mail and Facsimile (864-656-4676)*

Dear President Barker:

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

FIRE is concerned about the threat to freedom of expression, academic freedom, and freedom to petition public officials posed by Clemson University's e-mail prohibiting faculty and staff from contacting government officials without both arrangements by and notice to the university. This is our understanding of the facts. Please inform us if you believe we are in error.

On January 12, 2010, Clemson University Media Relations sent an e-mail to all university employees, purportedly to explain "two policies designed to help coordinate contacts between public officials and university administrators, faculty and staff. **Most importantly, these policies are also designed to ensure compliance with state and federal ethics laws.**" (Emphasis in original.)

Accordingly, Media Relations wrote, in relevant part:

**Any meeting between a Clemson University administrator, faculty or staff member and members of Congress or their staff must be arranged by the director of federal relations.**

Meetings between administrators, faculty or staff and federal agency directors or staff must be reported to the director of federal relations. Clemson University is required by federal ethics laws to report quarterly on any contact between the federal government and the university.

[...]

**Any meeting between a Clemson University administrator, faculty or staff member and members of the S.C. General Assembly or their staff must be arranged by a member of the Governmental Affairs staff in Columbia.**

Meetings between administrators, faculty or staff and State agency directors or staff must be reported to the Office of Governmental Affairs. Clemson University, as a state agency, is required by state ethics laws to report any contact between state government and the university. [Emphasis in original.]

This e-mail misrepresents one of the two policies at issue, the “Contacting Public Officials” policy at <http://www.clemson.edu/governmentalaffairs/contactingpo.html>. That policy correctly acknowledges the First Amendment rights of Clemson employees when they act outside of their professional responsibilities:

Clemson University acknowledges that state employees are entitled to engage in political activities during their own time and provided that no Clemson University or South Carolina public resources are used. This includes the right to meet with and/or communicate with public officials, provided such contact is clearly in their personal capacity and not as part of their public employment.

The Media Relations e-mail, however, fails to include this acknowledgement and thus has the effect of chilling personal contacts between, for instance, a faculty member and a public official.

Moreover, the e-mail (and, on its face, the official policy) violates the academic freedom of faculty members whose academic work involves contact with public officials, such as when political science professors engage in research involving active public officials. Although such Clemson faculty members’ academic work is performed using the university’s resources, it is unacceptable, under any proper understanding of academic freedom, to demand that “any meeting” between them and public officials must be both arranged by and reported to university administrators.

By enacting this blanket restriction, the Media Relations e-mail and the “Contacting Public Officials” policy are in clear violation of Clemson’s legal obligation to uphold the First Amendment on campus. We trust you understand that as a public university, Clemson is legally bound by the United States Constitution’s guarantee of freedom of speech and freedom to petition the government for the redress of grievances. Faculty members at Clemson enjoy this right in full. As the Supreme Court famously stated, “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 506 (1969). Indeed, the Court has emphasized that “[t]he college classroom with its surrounding environs is peculiarly the ‘marketplace of ideas.’” *Healy v. James*, 408 U.S. 169, 180 (1972). Elsewhere, the Court has declared, “Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs.” *Mills v. Alabama*, 384 U.S. 214, 218 (1966). The Court has made clear that academic freedom is a “special concern of the First Amendment” and that “[o]ur [n]ation is deeply committed to safeguarding academic freedom, which is of transcendent value

to all of us and not merely to the teachers concerned.” *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967) (internal citations omitted).

Given these declarations, it is untenable for Clemson, a public university, to deny its faculty the right to freely contact public officials, either in their personal capacity or as a function of their research and teaching, in light of the First Amendment and the principles of academic freedom. Clemson University must make clear, in no uncertain terms, that individuals and faculty members are free to engage in the speech and contact activities that the First Amendment protects. FIRE hopes to resolve this situation amicably and swiftly. We will continue to pursue this matter, however, until Clemson University reaffirms these First Amendment rights.

We request a response to this letter no later than 5:00 p.m. Eastern Time on January 29, 2010.

Sincerely,

A handwritten signature in cursive script, appearing to read "Adam Kissel".

Adam Kissel  
Director, Individual Rights Defense Program

cc:

William Bowerman, President, Faculty Senate, Clemson University  
Doris R. Helms, Vice President for Academic Affairs and Provost, Clemson University  
Cathy Sams, Chief Public Affairs Officer and Assistant to the President, Clemson University  
Angie Leidinger, Executive Director of Governmental Affairs, Clemson University  
Kathy Coleman, Director of State Relations, Clemson University  
Katy Bayless, Director of Federal Relations, Clemson University  
Beth McInnis, Director of Advocacy, Clemson University