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**VIA FEDERAL EXPRESS
& ELECTRONIC MAIL**

Mr. Haywood D. Cochrane
Chair, UNC Board of Trustees
2016 Muirfield Court
Elon, NC 27244

Dear Chairman Cochrane,

In response to your letter dated March 16, 2018, I submit the following information relating to my decision to decline the adjustments recommended by the Faculty Grievance Committee (“Committee”) in its Report on the amended grievance filed by Professor Jay Smith on August 23, 2017. I appreciate the opportunity to provide additional information for your review while the Board of Trustees considers Professor Smith’s appeal.

I. INTRODUCTION

Professor Smith’s burden in this appeal is to establish that the Chancellor committed “clear and material error” in declining to accept the Committee’s proposed adjustments. This burden is steep and one that I believe Professor Smith cannot meet. My decision was based on my determination that the *primary* remedy sought by Professor Smith in his grievance/amended grievance had already been provided, rendering this proceeding moot, and that the other remedies sought by Professor Smith were beyond the purview of this process and the Committee. That determination is amply supported by the evidence in the hearing transcript and record documents, which were incorporated into the Report. My decision concurred with the response provided to the Chair of the Committee by Provost Robert A. Blouin on November 30, 2017, which likewise declined to accept the Report or the recommended adjustments (“Provost Response”). Without wavering on my or the University’s commitment to academic freedom, accepting the proposed adjustments of the Committee would undermine the authority of the Dean to oversee curriculum in the College of Arts and Sciences (“College”) and would conflict with the University’s accreditation requirements and its own institutional standards. For these reasons, the Board of Trustees should uphold my decision to decline to accept the Report or recommended adjustments of the Committee.

II. SCOPE OF REVIEW

In as much as my decision turns on the nature of the remedies being sought by Professor Smith and whether those remedies have already been provided or are available through the grievance process, a review of the actual grievances filed and remedies sought is in order.

As set out in the Report, “On July 6, 2017, Professor Jay Smith filed a grievance alleging that the decision not to offer during the 2017-2018 academic year one of his courses, History 383, *Big-Time College Sports and the Rights of Athletes*, violated his academic freedom and did not conform to the policies and practices of the Department of History (the “Department”). Professor Smith named as respondents the individual who made that decision, Department Chair Fitz Brundage, as well as three University officials whom Professor Smith alleges improperly interfered with that decision: then-Provost James Dean; College of Arts and Sciences Dean Kevin Guskiewicz; and, then-Senior Associate Dean for Social Sciences Jonathan Hartlyn (collectively, the “Respondents”).”

On August 9, 2017, the Respondents filed a joint response in which they asked the Committee to dismiss Professor Smith’s grievance on mootness grounds, because History 383 already had been added to the Spring 2018 schedule. On August 14, 2017, Professor Smith filed an amended grievance, requesting the Committee to proceed with a hearing on the matter, despite the fact that History 383 had been added to the Spring 2018 schedule.

The Committee Chair subsequently concluded that the amended grievance remained appropriate for review by the Committee in certain respects. In its Report, the Committee notes that the amended grievance sought four separate, additional forms of relief:

- “(i) An apology from Provost Dean, Dean Guskiewicz, and Professor Hartlyn and an admission of wrongdoing for their alleged improper interference with the scheduling of History 383;
- (ii) Truthful testimony from the Respondents about the initial decision to keep History 383 off of the 2017-18 course schedule;
- (iii) A public affirmation from Provost Dean and Dean Guskiewicz at a Faculty Council meeting that Smith will be able to teach History 383 whenever he chooses subject to departmental or College curricular needs; and,
- (iv) A requirement that all communication between the dean and/or senior associate deans of the College and department chairs concerning curricular issues be put in writing.”

Before the hearing, the Committee Chair informed Professor Smith that most of his requested relief was beyond the scope of what the Committee could recommend, noting “The Committee’s charge is to review decisions made by University officials concerning faculty to ensure that those decisions comply with established University policies and customs.” Professor Smith was advised, “ ... that (a) the Committee’s review of his grievance would focus solely on whether the scheduling decisions concerning History 383 conformed to University and departmental policies and customs and (b) if the Committee determined that those policies and customs were in fact violated then the relief offered by the Committee

would be limited to a recommendation that future scheduling decisions of History 383 and all Department course offerings be made in conformance with University and departmental policies and customs and be made free from inappropriate interference by officials from outside the Department. Regardless of its factual conclusions, the Committee would not recommend personal apologies, public pronouncements by University officials, or changes to University-wide policies.”

Understanding those limitations, Professor Smith agreed to proceed with the hearing.

III. FACTUAL BACKGROUND AND RESPONSE TO ASSERTIONS

It is against this procedural backdrop that we look at the facts relevant to the relief sought in the amended grievance.

Jay Smith is a long tenured Professor in the Department of History in the College of Arts and Sciences, specializing in early-modern French history. In the fall of 2015, Professor Smith submitted a draft syllabus for a new course, History 383 (originally titled “*College Sports, 1956 – present*” but subsequently re-titled “*Big-Time College Sports and the Rights of Athletes, 1956-Present*”), which focused in part on the athletic/academic controversies that involved the University for a number of years. History 383 was vetted and approved by the Administrative Board of the College, effective for Summer Session I in 2016. The course was advertised in March 2016 as a new summer course and almost immediately, questions were posed to Dean Kevin Guskiewicz from a variety of sources, about the course content as well as why History Professor Smith was teaching the course. In response, Dean Guskiewicz asked then Senior Associate Dean Jonathan Hartlyn to find out more about the course. This is as he had done in previous situations involving new courses. Dean Hartlyn then spoke with History Chair W. Fitzhugh Brundage and learned that the course had been developed by Professor Smith and approved through normal channels. Dr. Brundage was requested to let the Dean know if History 383 was to be taught again. From the transcript, it is clear that Dean Guskiewicz’s interest in making that latter request was to be able to defend the class and to be able to answer inquiries, and not to prevent or inhibit its scheduling. Professor Smith taught History 383 in Summer I 2016, and the course proved to be popular with the students.

Professor Smith was scheduled to teach an honors course, History 516H, in the fall semester of 2016 as one of his two classes. When History 383 appeared to be well received by students, while the honors course had limited enrollment as of mid-May, 2016 (6 for a seminar expected to accommodate 10-12 students), Professor Smith emailed Dr. Brundage at that time to request teaching History 383 in the Fall semester of 2016, in place of the honors class. An email that Professor Smith provided from Dr. Brundage in reply stated that he (Brundage) would “ ... fight for your right to teach this course in the academic year ...” but added, “*I suspect* that there will be resistance from the usual suspects.” [emphasis added].

The “usual suspects” were identified as Dean Guskiewicz and Dean Hartlyn. Without advising the Dean’s office as had been requested, social media about History 383 being offered as a Fall 2016 semester class was sent out.

Upon learning of the changes in the Fall schedule, Dean Guskiewicz raised questions. According to Dean Guskiewicz, the questions were posed not because of the content of History 383 or the fact that Professor Smith was teaching the course, but because it was replacing an honors course that was on the schedule and had students enrolled. Dean Guskiewicz testified at length at the hearing about the fact that in the summer/fall of 2016, the demand for honors courses in the College was at an all-time high, and the Department of History was one of the departments in the College that typically could provide a multitude of honors courses. Juxtaposed against this increased demand for honors courses was a serious budget crunch (\$2.2 million deficit) the College was facing. The Department of History, according to the Dean, had always been a large and important department in the College, but in recent years had experienced (as was true across the country) a substantial downturn in majors, and was considered to be “over-resourced”. Dramatic increases in the number of STEM majors, resulting in the need for increased financial resources for those departments, was causing the Dean to engage in a delicate balancing act when it came to allocating increasingly scarce resources among the 48 departments in the College. Using an “over-resourced” department like History to address the need for additional honors course was an important part of the Dean’s strategy. Cancelling an honors course in mid-May, based simply on low enrollment 3+ months before the start of the Fall Semester in favor of a non-honors course that might have significantly higher enrollment, caused Dean Guskiewicz concern. As Dean, it was his responsibility to make sure that the strategic needs of the College and the University to provide the *right kinds of courses* were being met, in the face of record demand for honors courses.

It is important to understand the record testimony about Dean Guskiewicz’s oversight about these changes to the Fall 2016 curriculum, which Professor Smith characterizes as inappropriate meddling or interference on the part of the Dean’s office. Asking questions about the cancelling of an honors course that already had students enrolled is one aspect of curricular oversight that is part of Dean Guskiewicz’s written job description. Dean Guskiewicz is also charged with making certain that the requirements of UNC’s accrediting body, the Southern Association of Colleges and Schools Commission on Colleges (“SACSCOC”) are met. As his testimony before the Committee reflects, Dean Guskiewicz had no concerns with the content of History 383, nor did he have any issue with Professor Smith teaching the course. As proof, the Dean, a world renowned specialist in concussions, told the Committee how he was asked and quickly accepted Professor’s Smith’s invitation to be a guest lecturer in History 383 when it was first taught that summer (Transcript p. 24).

In contrast, Professor Smith offered only conjecture and speculation in his attempt to contradict the Dean's testimony about why he raised questions about the cancelling of an honors course in favor of History 383. He offered an email chain between himself and Dr. Brundage, wherein Dr. Brundage says he "suspects" that there will be resistance to Professor Smith teaching History 383 in the Fall semester of 2016 or in the future. His own testimony was that he was told by Dr. Brundage and Louise McReynolds, Associate Department Chair in the Department of History, that "The Deans didn't want me teaching that course." He then added, however, "But what their thinking was, why they didn't want me teaching that course, I have no idea. I can guess. I can speculate but it was never communicated to me, why they didn't want me teaching that course." (Tr. p. 8).

At the hearing, Dean Guskiewicz was asked: "Did you in the spring, or previous to that, 2016, had you told Professor Bundidge [sic] or anyone else that you did not want this course [History 383] to be offered in the regular academic year?" The Dean answered: "No, I never told Fritz [sic] that I didn't want the course to be offered at any time." (Tr. p. 29). At the hearing, Dr. Brundage corroborated the Dean's testimony: "...I don't think I ever conveyed the idea that I was ordered that the course shouldn't be taught. What I did convey was that I had the *perception* that I shouldn't schedule the course, or that scheduling the course was inconsistent with the college's strategic plan." (Tr. p. 38) [emphasis added]. He then added: "...Jonathan [Hartlyn] always said and Kevin [Guskiewicz] did, on two occasions, I can recall talking about this course with Kevin, said I needed to make the decision in the best interest of the department's strategic goals and curricular needs." (Tr. p.38).

Even though questions over the cancellation of the honors class, History 516H, in favor of History 383 were raised, Professor Smith did in fact teach History 383 in the Fall semester of 2016, the second time in as many semesters. As with the Summer I class, Dean Guskiewicz agreed to Professor Smith's request to serve as a guest lecturer for the course. The Dean testified at the hearing that he never would have agreed to be a guest lecturer had he objected to the class, its content or Professor Smith teaching the course. (Tr. p. 44).

Turning to the issue of scheduling History 383 in the 2017-2018 academic year, I note that in his amended grievance, Professor Smith states:

"I taught the course in fall 2016 to an appreciative group of 29. So successful was the course that I decided I would like to teach it again in fall 2017.

--On 10 October 2016, the Departmental deadline, I submitted my course request form to facilitate the scheduling of the 2017-2018 academic year; I listed 383 as one of my two fall courses."

Shortly thereafter, Professor Smith stated that he was informed by Louise McReynolds that History 383 was not going to be scheduled in the 2017-2018 academic year. Professor Smith immediately assumed that there must have been interference by the Dean's office, including implied threats to the Department, relating to scheduling of History 383 in 2017-2018. I find it curious that in his appeal letter to the Board of Trustees, Professor Smith now denies that he sought to teach History 383 in the 2017-2018 academic year. Specifically, Professor Smith states in the 4th paragraph of his March 8, 2018 letter to Chairman Cochrane:

“The Chancellor claims ‘the primary relief sought in [my] grievance’ was ‘History 383 being placed on the Spring 2018 semester schedule.’ This statement is false – even if the idea is borrowed from an inaccurate and offhand assertion in the Grievance Committee report itself. *I did not request, nor did I expect, the scheduling of HIS 383 in the 2017-2018 academic year; ...*” [emphasis added].

For Professor Smith to deny that he sought to teach History 383 in the Fall of 2017 or during the 2017-2018 academic year is disingenuous and contrary to his own statements in a number of documents that are part of this record, including documents provided by Professor Smith.

To the contrary, much focus is placed by Professor Smith on alleged threats to Department of History Chair Brundage supposedly coming from then Senior Associate Dean Hartlyn in the fall of 2016 – to the effect that if History 383 is scheduled in the 2017-2018 academic year, there would be “consequences” to the Department of History’s budget and resources. Professor Smith claims that it violated his right to academic freedom to have been denied the right to teach History 383 in the Fall 2017 semester or to even have anyone in the Dean’s office or administration question his “right” to teach the course essentially when he wanted. While I have been and continue to be an ardent supporter of academic freedom at UNC, I strongly disagree with Professor Smith’s interpretation of the facts, or perhaps more accurately, his perception of what he believed were all the facts. It is important to review the overall state of affairs in the College at that time, and how that impacted curriculum and scheduling. It reveals a much larger picture than what Professor Smith may have been seeing.

Without question, the College was experiencing serious budget constraints in the 2016-2017 academic year, that were expected to (and did) worsen in the 2017-2018 academic year. Those budget constraints, specifically a \$2.2 million budget deficit in 2016-2017, as the Respondents testified, impacted all of the College’s 48 departments, not just the Department of History and certainly not just History 383.

The record evidence establishes that despite Professor Smith’s attempts to turn this over-arching budget shortfall into a personal vendetta against him and his academic freedom,

Professor Smith was told – both to him directly and to larger audiences within the College in other forums – by Dean Guskiewicz and other members of the University administration, that there were no threats, implied or otherwise, against the Department of History relating to the Department scheduling History 383 in 2017-2018. Dean Guskiewicz testified without contradiction at the hearing that his consistent message in meetings with Dr. Brundage in the fall of 2016 was that decisions on individual courses being scheduled was up to each department, based on its strategic goals for its own curricular demands and contributions to the general curriculum of the College and University. According to Dean Guskiewicz, commenting on meetings he had with Dr. Brundage during this time frame: “I’m not making this decision about whether or not you’ll teach the course next year, the following year, or whenever.’ That’s a departmental decision. And I said it’s very consistent with what we said all along. If it meets the strategic needs and priorities for the department then it should be taught.” (Tr. p. 35).

Both Professor Smith and Dean Guskiewicz testified about a meeting they had on November 3, 2016 to discuss Professor Smith’s concerns. The meeting took place within a matter of weeks of when Professor Smith learned from Louise McReynolds that History 383 was not going to be scheduled in the 2017-2018 academic year. At the meeting, the Dean explained to Professor Smith that it was not his decision to make as to whether History 383 was on the schedule for any given semester – it was up to the department to decide. If the course met the strategic needs of the department, college and university, then the department should go ahead and schedule the course, working within the budget limitations that the department may face at any given time. He described it as a balancing act that all departments were facing, as opposed to something unique to the Department of History. Budget cuts are real and difficult for all departments to have to address, but that is the reality that they all face. Professor Smith testified that he left the meeting believing that Dean Guskiewicz had approved History 383 for scheduling.

Dr. Brundage’s testimony corroborated Dean Guskiewicz that there were no “threats” to the Department of History over scheduling of History 383. In Dr. Brundage’s words:” ... so I was aware of the emphasis on the strategic plan, the emphasis on limited resources, the emphasis on aligning departments like history with the needs of the college at a time when STEM and other disciplines were in [inaudible 01:35:53], so that’s the larger context in which I said, ‘Okay, we have’...” (Tr. p. 32).

He added: “Based on my experience with Jonathan [Hartlyn] and Kevin [Guskiewicz], I had no reason to think that the department would be punished, so no, I did not think the department would be punished.” (Tr. p. 32).

By the late fall of 2016, Dr. Brundage had made the decision that History 383 would not be scheduled for the Fall 2017 semester. In his original grievance, Professor Smith relates a conversation with Dr. Brundage about scheduling History 383 that occurred almost immediately following Professor Smith's meeting with Dean Guskiewicz on November 3, 2016. According to the grievance, Dr. Brundage says in that conversation that he was aware that Professor Smith had announced that he was planning to teach History 383 in the Fall of 2017, but added that if Professor Smith approved, he wanted to place History 383 on the Spring 2018 schedule. Smith admits that he "happily agreed" to that change. (See grievance dated July 11, 2017, page 4). That decision is in sync with Dr. Brundage's description of discussions he had with Deans Hartlyn and Guskiewicz on the subject: "I do want to affirm that at the end of every meeting that I can remember, Jonathan said and Kevin said this as well, that I should make whatever big decision I thought was in the best interest of the department."

When asked at the hearing about his "perception" that the administration did not want History 383 offered in the 2017-2018 academic year and what had caused that perception, Dr. Brundage testified: "Because my understanding of what I was hearing was that this course did not mesh with the college's largest strategic plans. It was ... the department should be positioning itself to meet the needs that the college was identifying as part of its strategic plan, and, for example, more honors courses, all of the things that Kevin has discussed." (Tr. p. 30).

Dr. Brundage was then asked: "Was your understanding at all based on the substance, the controversy that might be connected to this course?" To which Dr. Brundage replied: "No." (Tr.p.30).

So, despite significant rhetoric generated by Professor Smith in the public domain about undue interference on the part of the Dean's office in the scheduling of History 383 in the 2017-2018 academic year, allegedly resulting in violation of Professor Smith's academic freedom, the record is devoid of any credible evidence to support those assertions. To the contrary, Professor Smith is teaching History 383 at this very moment, as he and Dr. Brundage discussed in late fall 2016, and despite his latest pronouncement to Chairman Cochrane that he never requested nor expected to teach History 383 at all in the 2017-2018 academic year. In point of fact, this is the third time Professor Smith has taught History 383 in less than two years. And the evidence in the record makes clear that there is no reason to believe that the course will not be taught again in the future. That decision will be made by the Department of History based on its determination as to whether the course is consistent with the Department's strategic plans, as well as the needs of the College, the University and the students, as of the time the scheduling decisions are made.

So, I reiterate my belief that Professor Smith has received the primary relief he was seeking through his grievance – that he be allowed to teach History 383 in the 2017-2018 academic year. This is not about Professor Smith's academic freedom being infringed in some fashion. That scheduling decision had been made and implemented prior to his filing his amended grievance. That is why I believe this grievance is moot and no adjustments are necessary.

To somehow twist Dean Guskiewicz's legitimate questioning about cancelling an honors course in which students have enrolled, so that Professor Smith could teach History 383 when he desired, ignores completely the responsibility of the Dean of the College of Arts and Sciences to oversee curricular matters as part of his stated duties; that responsibility is spelled out in his job description. While Professor Smith does not deal with budget reductions and how to equitably distribute scarce resources within 48 departments that would each like to have more resources, all in the context of accommodating record demands for honors courses, that is the stark reality Dean Guskiewicz confronted. And it is not as though the Dean did not respect Professor Smith's right to academic freedom or that he was oblivious to Professor Smith's belief that his class was being singled out for scrutiny. But his priority was to make sure that the needs of the College, University and its students were being met. As Dean Guskiewicz said in his closing remarks: "We've publicly affirmed our commitment to academic freedom at least eight different times, as I mentioned earlier. With this hearing, we yet, again, provided Jay with an explanation of the events regarding the History 383 course." (Tr. p. 45). The Dean's personal commitment to respecting Professor Smith's right to teach History 383 was evidenced by the fact that he readily accepted Professor Smith's invitations on at least two occasions to guest lecture and contribute to the success of History 383.

That public affirmation of the commitment to academic freedom was also articulated by then Provost Dean and Dean Guskiewicz in a letter to FIRE responding to criticisms leveled against UNC on behalf of Professor Smith. After noting inaccurate assertions in the Background section of FIRE's letter, Provost Dean and Dean Guskiewicz write: "However, the larger issue we have both made clear is that this is a scheduling issue, not an academic freedom issue. *Academic freedom does not give individual faculty members the right to unilaterally decide what courses they will teach in a given semester or academic year. Academic deans, chairs and faculty work collaboratively to determine the curricular needs of the College and its departments.*" [emphasis added]. The letter goes on to cite a number of public forums in which Dean Guskiewicz and other members of the administration had reaffirmed the University's commitment to the principles of academic freedom and faculty governance. (See letter of June 23, 2017 attached to Respondents' joint response to the Faculty Grievance Committee.) Dean Guskiewicz testified to that same effect at the hearing. (Tr. p.9).

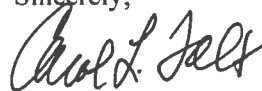
One final issue that I want to address in this response; namely, Professor Smith's desire that relief arising out of his amended grievance go far enough to ensure that the University policies and guidelines would not be violated with respect to future scheduling of History 383. As I stated in my original decision on February 26, 2018: "I believe that such a proposed *future* remedy is beyond the purview of this Committee and this process, for the reason that it deals with a hypothetical rather than actual controversy. See Section 101.3.2 of the UNC Policy Manual (emphasizing that a faculty member asserting a grievance "must establish that the faculty member experienced a *remedial* [*sic, remediable*] injury attributable to the allegation [*sic, alleged*] violation...") (emphasis added). In this case, the Committee's purported recommended adjustment focuses on a potential, future injury; it does not relate to any actual remedial [*sic, remediable*] injury." And I would repeat my suggestion from that letter: if Professor Smith believes that his academic freedom rights have been violated with respect to any *future* scheduling of History 383, he certainly would have the right to file a new grievance challenging that scheduling decision. But providing any such adjustment in the instant grievance would inhibit the Dean of the College's ability to exercise the full scope of his responsibilities for overseeing curriculum within the College, thereby violating the University's institutional standards and potentially jeopardizing UNC's accreditation.

In closing, I reiterate what I stated in my original decision: "I fully support and embrace the University's commitment to protect academic freedom for our faculty, in accordance with our policies, our accreditation requirements, and the law. At the same time, I will continue to support the authority of the deans and department leaders to make certain that we are offering courses that meet our strategic goals and our commitment to offer our students a sound education."

IV. CONCLUSION

The Provost declined to accept the recommended adjustment of the Committee, believing the primary relief sought by Professor Smith has already been provided and that the proposed adjustment conflicts with the University's accreditation requirements and its own institutional standards. For all of the reasons noted in this response, I concur with the Provost's decision and likewise decline to accept the Report or the adjustment proposed by the Committee. I believe that Professor Smith has failed to sustain his burden of establishing that I have committed "clear and material error" in reaching my decision and as a result, his appeal should be dismissed.

Sincerely,



Carol L. Folt
Chancellor

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Cc: Mary Crosby