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**Report of a Special Committee:  
Governance, Academic Freedom, and Institutional Racism in the  
University of North Carolina System<sup>1</sup>**

## I. Introduction

The University of North Carolina system is in trouble, and not the kind of trouble that record enrollments or good rankings can fix. It is the kind of trouble that festers and spreads. As one former long-time faculty member and administrator put it, “If you begin to rot in one area, it will quickly have adverse effects elsewhere.”

The charge of the undersigned special committee was to discover the extent and effects of this trouble within the UNC system. While our report was originally intended to focus on UNC–Chapel Hill as the flagship campus, the committee examined events across the entire system. AAUP special committees delve into a range of issues and analyze patterns of departures from AAUP-recommended standards that affect multiple institutions or the higher education community at large. The scope of a special committee’s report is therefore more expansive than the scope of a typical AAUP investigating committee. Those committees are charged with reporting their findings on alleged violations of specific AAUP-supported principles and standards relating either to academic freedom and tenure or to academic governance.

The events that prompted the creation of this special committee are numerous and well documented. Indeed, new events of concern in the UNC system continued to be reported in the media long after the committee had submitted its draft report. In keeping with the committee’s charge, we have organized our report around three main themes: violations of standards of shared governance, threats to academic freedom, and institutional racism. The cases discussed in each section are illustrative rather than exhaustive.

The special committee conducted interviews via Zoom from early November through mid-December 2021 with more than fifty individuals across the UNC system, including faculty members, current and former administrators, two former UNC–Chapel Hill trustees, and members of the systemwide Racial Equity Task Force. One faculty member provided us with a lengthy written report of events at UNC; others sent the committee relevant documents and media accounts not available to us elsewhere.

UNC system president Peter Hans, board of governors chair Randall Ramsey, UNC–Chapel Hill chancellor Kevin Guskiewicz, and UNC–Chapel Hill board of trustees chair David Boliek declined to be interviewed. Dr. Kimberly van Noort, senior vice president for academic affairs and chief academic officer for the UNC system, responded on behalf of Chair

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<sup>1</sup> The text of this report was written in the first instance by the members of the special committee. In accordance with Association practice, the text was then edited by the AAUP’s staff and, as revised with the concurrence of the special committee, was submitted to the Committee on College and University Governance. With that committee’s approval, it was distributed to the principal parties for comment and corrections of fact. In the light of the responses received and with the editorial assistance of the Association’s staff, this final report has been prepared for publication.

Ramsey by commending to our attention the systemwide Racial Equity Task Force and its reports.<sup>2</sup> Vice President van Noort emphasized that the system’s 2020 Racial Equity Task Force had surveyed “more than 2,000 faculty, staff, and students across the system, including at UNC–Chapel Hill” and made six recommendations with twenty-eight “action steps,” fifteen of which were considered “critical to the success of the recommendations.” In this committee’s judgment, the recommendations and action steps delineated by the Racial Equity Task Force Report are constructive, and we were encouraged by faculty members’ accounts of progress in implementing them. At the same time, as our report indicates, faculty members across the system do not believe the work of the task force has yet led to any substantial improvement in campus climate relating to race or yielded any noticeable reduction in racial inequity. Indeed, our interviewees barely mentioned the task force report on racial equity when we questioned them about these matters, suggesting their sense of its irrelevance.

## ***II. The University of North Carolina System***

The University of North Carolina was established by charter of the North Carolina General Assembly in 1789 and built by enslaved labor. Founder General William Davie, an owner of enslaved persons, laid the university’s cornerstone on October 12, 1789, just days after having “sold a young, enslaved girl named Dinah and bought an enslaved man named Joe.”<sup>3</sup> It was the first public university in the United States, admitting it is first class in 1795, and Chapel Hill was the location of its only campus. Like most other Southern colleges and universities, the University of North Carolina excluded Black students for most of its history, permitting them to attend only in the last seventy years.

By 1877, the General Assembly had begun sponsoring additional institutions of higher education, including five historically Black institutions. In 1931, the assembly redefined the university to include three state-supported institutions: the University of North Carolina at Chapel Hill, North Carolina State College (now North Carolina State University), and the Woman’s College of the University of North Carolina (now the University of North Carolina at Greensboro).

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<sup>2</sup> See “UNC System Racial Equity Task Force Final Report,” December 16, 2020, <https://www.northcarolina.edu/wp-content/uploads/unc-system-images/racial-equity/unc-system-racial-equity-task-force-final-report.pdf>. In July 2021, the system office released an updated report, which claimed some progress in addressing the 2020 report’s recommendations (“UNC System Office Racial Equity Initiative Update Report,” <https://www.northcarolina.edu/wp-content/uploads/unc-system-images/racial-equity/racialequityinitiativeupdatereport-21july2021.pdf>).

<sup>3</sup> Joe Killian, “Author Geeta Kapur Discusses Her New Book Detailing the History and Legacy of Racism at UNC,” *NC Policy Watch*, August 9, 2021, <http://www.ncpolicywatch.com/2021/08/09/pw-exclusive-author-geeta-kapur-discusses-her-new-book-detailing-the-history-and-legacy-of-racism-at-unc>.

In 1969, three additional public institutions were brought into the UNC system: the University of North Carolina at Charlotte, the University of North Carolina at Asheville, and the University of North Carolina at Wilmington. By 1971, the state's ten remaining public four-year institutions were also incorporated into the system: Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, the North Carolina School of the Arts (now the University of North Carolina School of the Arts), Pembroke State University (now the University of North Carolina at Pembroke), Western Carolina University, and Winston-Salem State University. In 2007, the North Carolina School of Science and Mathematics (a secondary school) became a constituent institution. Five of the system's constituent institutions are historically Black colleges and universities (HBCUs): Fayetteville State (established in 1867), Elizabeth City State (1891), North Carolina Agricultural and Technical State (1891), Winston-Salem State (1892), and North Carolina Central (1910). And one, UNC Pembroke, is the only state-designated historically American Indian university. In September 2021, the UNC system reported its fourth straight year of record enrollment, with more than 244,000 students enrolled at its seventeen institutions.

The system is overseen by a board of governors, which, according to state law, has responsibility for the planning, development, and overall governance of the system. The system board currently has twenty-four voting members, who are elected by the General Assembly and who select the system president.<sup>4</sup> Mr. Hans has served in that capacity since 2020, following two years as president of the North Carolina Community College System. The legislature elected him to the UNC board of governors in 2003, 2007, and 2011, and he was chair from 2012 to 2014. Each institution within the system is led by a chancellor and overseen by a board of trustees. The systemwide board of governors selects the chancellors and appoints eight of each campus's thirteen trustees, with four of the remaining trustees appointed by the General Assembly and the student government president serving *ex officio*.<sup>5</sup>

The ensuing sections of this report are best understood against the background of political interference that has recently characterized the entire UNC system. We found a broad consensus among those we interviewed that 2010 marked the start of a new era in the political and administrative life of the system. In November of that year, Republicans won majorities in both houses of the General Assembly, gaining unified control of the state legislature for the first

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<sup>4</sup> See Will Melfi and Rachel Crumpler, "Who Are the Voting Members on the UNC Board of Governors?," *Daily Tar Heel*, April 16, 2021, <https://www.dailytarheel.com/article/2021/04/unc-board-of-governors>.

<sup>5</sup> See <https://www.northcarolina.edu/leadership-and-governance/board-of-governors>.

time in more than a century. Many in the majority believed that the system, governed for decades by Democratic-leaning appointees, had become dominated by what they considered out-of-control liberalism to the detriment of conservative viewpoints. They saw the UNC board of governors, with its broad agenda-setting powers, as the key to transforming the university system.<sup>6</sup>

While board appointments have always been political to a certain degree in North Carolina (and elsewhere), the individuals we interviewed told us that prior to 2010 the General Assembly had usually sought to make appointments of political moderates and to maintain a degree of partisan balance on the university boards it oversaw. After 2010, those practices changed. Appointees were now more uniformly Republican, more interested in the political ideologies of campus actors, and less experienced with higher education than their predecessors. Several were lobbyists. If there had been any doubt that the UNC system was now subject to a new regime of partisan control, it was put to rest in late 2016, when the outgoing Republican governor signed legislation stripping his Democratic successor of the power to make appointments to campus-level boards of trustees.<sup>7</sup> Prior to that change, the governor had been responsible for appointing four of thirteen members on those boards. The Republican-sponsored legislation transferred the governor's appointment power to the legislature, which has remained in Republican hands since that time and now enjoys near-total control over appointments to campus-level boards of trustees through a combination of direct appointment power and indirect influence through the board of governors. The UNC system

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<sup>6</sup> See Nick Anderson and Susan Svrluga, "Inside the Dramas at UNC—Chapel Hill: Boards, Partisan Politics, and the Flagship," *Washington Post*, July 29, 2021, <https://www.washingtonpost.com/education/2021/07/29/unc-board-leadership-politics-republicans>.

But the UNC board of governors is hardly unique among politically appointed governing boards in seeking to advance a conservative agenda in higher education. See Peter Schmidt, "Colleges Draw Hard Lines against Calls to Restrict Speech," *Chronicle of Higher Education*, February 29, 2016, <https://www.chronicle.com/article/colleges-draw-hard-lines-against-calls-to-restrict-speech>; Jack Stripling, "How Far Will Higher Ed's Culture Wars Go? South Dakota Is Running Previews," *Chronicle of Higher Education*, March 17, 2020, <https://www.chronicle.com/article/how-far-will-higher-eds-culture-wars-go-south-dakota-is-running-previews>; Peter Schmidt, "Wisconsin's Tenure Battle Shifts to Campuses," *Chronicle of Higher Education*, March 18, 2016; Lindsay Ellis, Jack Stripling, and Dan Bauman, "The New Order: How the Nation's Partisan Divisions Consumed Public-College Boards and Warped Higher Education," *Chronicle of Higher Education*, September 25, 2020, <https://www.chronicle.com/article/the-new-order>.

<sup>7</sup> Rick Seltzer, "Trustee Appointment Takes Political Turn," *Inside Higher Ed*, December 19, 2016, <https://www.insidehighered.com/news/2016/12/19/faculty-object-legislators-take-trustee-appointments-away-north-carolina-governor>.

"The removal of the governor's ability to appoint four members of the Board of Trustees was alarming," said former Chapel Hill chancellor James Moeser. "That was the first sign that the leaders of the General Assembly had very partisan objectives in mind" (Ned Barnett, "A Right Turn at UNC: Has a Decade of Republican Maneuvering Really Harmed the UNC System?" *Raleigh News & Observer*, February 7, 2022, <https://www.newsobserver.com/article257603983.html>).

board of governors is the only statewide governing board solely appointed by the legislature without input from the governor.<sup>8</sup>

The environment for shared governance and academic freedom in the UNC system must be understood against this backdrop of pervasive and overtly partisan political control. When the board of governors began wading into campus-level matters, it often did so in thinly veiled defense of the legislative leadership that had appointed its members. This approach seems to have been especially evident in the systemwide review of campus centers that began in 2014 at the legislature's behest and culminated in the closure of three of those centers, including two headed by faculty members who had been vocal critics of state leadership: the Center for Work, Poverty, and Opportunity at the UNC–Chapel Hill School of Law; and the Institute for Civic Engagement and Social Change at North Carolina Central. The details of these closures are discussed later in this report. Here we will only note that, while the ostensible purpose of the review was to find cost savings, shuttering these centers could hardly have eased the systemwide budget since their funding came either largely or exclusively from private sources. The board bypassed all customary channels for assessing the academic merits of these centers, including faculty review, and did not even pretend that the decisions to close them were based on academic considerations. Rather, the legislature, through the board of governors, was now explicitly meddling in academic matters for expressly political reasons.

This pattern continued in 2017, when the board of governors voted to bar campus centers from engaging in litigation.<sup>9</sup> Though the policy technically applied to centers across the system, its clear target was the Center for Civil Rights, another UNC–Chapel Hill law school center. Many interpreted this action as intended to squelch legal activity of which the board of governors and the legislature disapproved. As will be shown in greater detail later in this report, in pursuing the material and ideological goals of its own members and those who had appointed them, the board acted in egregious violation of its appropriate role and responsibility, thereby

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<sup>8</sup> Models of higher education governance have varied greatly from state to state and over time. Depending on one's definitions, seventeen states currently have a model in which a single governing body oversees all or almost all the baccalaureate institutions in the state. Several other states, such as California and Connecticut, have one governing body for the "University of" system and another for the "State University" system. The general tendency over time has been toward concentration of governance in fewer local boards of trustees, but a great diversity of models remains across the country.

The typical arrangement for the seventeen statewide systems mentioned above is that members of each statewide governing body are appointed by the governor with the consent of the legislature. This provides a check on the governor's political power to shape the governing bodies, although in periods of unified government (when the same party controls both chambers of the legislature and the executive mansion), this check may be attenuated.

<sup>9</sup> Nick Roll, "UNC Board Bars Litigation by Law School Center," *Inside Higher Ed*, September 11, 2017, <https://www.insidehighered.com/news/2017/09/11/north-carolina-board-bars-unc-center-civil-rights-litigating>.

dealing a significant blow to the educational and professional development opportunities of UNC law students.

The board of governors veered yet further away from AAUP-supported governance standards in fall 2020 when it approved a new and highly unorthodox policy on chancellor searches. Under that policy, the system president acquired the unilateral power to name two candidates for chancellor positions, with the added stipulation that at least one of them must become a finalist. The policy rides roughshod over the traditional sharing of authority in such searches, where a local search and screen committee that includes faculty members decides on a list of finalists. Now the board of governors, through the system president, has the power to select finalists over the objections of search and screen committees. As one former senior administrator at UNC–Chapel Hill put it, “That is a horrifying possibility, to have people who would have been completely rejected by academic and administrative leadership getting to the final stage.” As the next section of this report discusses, this policy change has already been put into practice, causing uproars on campuses.

The change to the chancellor search policy came in the wake of several years of tumultuous relations between the board of governors and senior executive leadership. In 2015, the board abruptly forced the resignation of system president Thomas Ross despite having publicly praised his performance. According to former UNC–Chapel Hill chancellor James Moeser, this action was “an example of naked partisan politics.”<sup>10</sup> The board proceeded to appoint Ms. Margaret Spellings, who had served as secretary of education under President George W. Bush, but her tenure lasted less than two years despite her conservative bona fides. According to media accounts, the board found Ms. Spellings insufficiently conservative and unwilling to do its bidding in certain areas, and some Republican state legislators “saw her name recognition as allowing her too much independence.”<sup>11</sup> In June 2020, the board of governors elected Mr. Hans president. There was, a faculty member reported, virtually no faculty input, formal or informal, into the search. The high turnover—three presidents in less than ten years—suggests that the position of UNC system president can now be occupied only by someone who will not challenge the agenda and initiatives of the legislature working through the board of governors.<sup>12</sup>

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<sup>10</sup> See “The Case for Restructuring the Governance of North Carolina Higher Education,” Coalition for Carolina, January 21, 2022, <https://coalitionforcarolina.org/the-case-for-restructuring-the-governance-of-north-carolina-higher-education>.

<sup>11</sup> Emery P. Dalesio, “Margaret Spellings Quits UNC System Post amid Turmoil,” *Asheville Citizen Times*, October 28, 2018, <https://www.citizen-times.com/story/news/2018/10/26/margaret-spellings-quits-unc-system-post-amid-turmoil/1779257002>.

<sup>12</sup> For discussion of the influence of former political staffers in the UNC system, see “Who Is Jim Blaine? The Politically Connected Consultant Advising UNC System Leaders,” Coalition for Carolina,

The board of governors has likewise appeared to let politics dictate its approach to campus-level leadership. The departure of Dr. Carol Folt as UNC–Chapel Hill chancellor in the wake of the controversy over Silent Sam, the Confederate statue that stood on the UNC–Chapel Hill campus for more than a century, was widely interpreted as owing to the board’s displeasure with her handling of the issue, even though the board itself had made a mess of things. We discuss the Silent Sam controversy later in this report.

Political pressure has been on full display in campus-level administration as well. In 2019, the UNC–Chapel Hill board of trustees was set to elect Mr. Charles (Chuck) Duckett as its new chair. A Republican appointee, Mr. Duckett had been on the board since 2013 and had served for the previous two years as vice chair. He had also headed the project that led to the renaming of Saunders Hall at Chapel Hill, which had rankled some in the legislature.<sup>13</sup> Mr. Duckett told the special committee that between the trustees’ May and July meetings he became aware that he lacked support among the incoming board membership, which included five new trustees appointed by the legislature and the board of governors. Rather than endure losing the election, he withdrew his candidacy.<sup>14</sup>

The UNC–Chapel Hill board of trustees would soon make even bigger news by its handling of the recommendation that Professor Nikole Hannah-Jones be appointed with tenure to an endowed chair in the School of Journalism and Media. The details of the board’s actions, especially as they relate to issues of institutional racism, governance, and academic freedom, are detailed later in this report. Here we note that the board’s initial hesitancy to approve a tenured appointment for Professor Hannah-Jones raised serious governance and academic freedom concerns, as it amounted to a rebuke of the judgment and actions of the faculty, the dean, the provost, and the chancellor.<sup>15</sup>

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January 13, 2022, <https://coalitionforcarolina.org/who-is-jim-blaine-the-politically-connected-consultant-advising-unc-system-leaders/>, and Editorial Board, “Who Is Clayton Somers?,” *Daily Tar Heel*, March 3, 2021, <https://www.dailytarheel.com/article/2021/03/opinion-middle-management>.

<sup>13</sup> See “Trustees Rename Saunders Hall, Freeze Renamings for Sixteen Years,” *Carolina Alumni Review*, May 28, 2015, <https://alumni.unc.edu/news/trustees-vote-to-rename-saunders-hall-put-16-year-freeze-on-renamings/> and [https://bot.unc.edu/wp-content/uploads/sites/160/2015/04/UNC-BOT-Saunders-Hall-Transcription-edit\\_RH.pdf](https://bot.unc.edu/wp-content/uploads/sites/160/2015/04/UNC-BOT-Saunders-Hall-Transcription-edit_RH.pdf). The board of trustees’ post-Saunders moratorium on renaming campus buildings was short-lived. Passed in 2015 and meant to last for sixteen years, it was rescinded by the board in 2020 (“Trustees End Building Renaming Moratorium,” *Carolina Alumni Review*, June 17, 2020, <https://alumni.unc.edu/news/trustees-end-building-renaming-moratorium>).

<sup>14</sup> See board of trustees meeting minutes, July 8, 2019, <https://bot.unc.edu/wp-content/uploads/sites/160/2019/10/JULY-8-2019-MINUTES.pdf>.

<sup>15</sup> In his written response to an invitation to comment on a prepublication draft of this report, Mr. Duckett defended the board’s conduct, noting that it had a “responsibility to ask fair questions and to make sure that policy was followed.” He stated that he asked the provost “very specific questions [that] were not answered prior to the meeting. They were fair and reasonable questions that had nothing to do with academic freedom.”



Most recently, Chapel Hill's board of trustees has sparked controversy with its management of the search for a new provost. The search culminated in December 2021 with the appointment of Dr. Christopher Clemens, a self-described "outspoken conservative" faculty member who had been serving as a senior associate dean in the College of Arts and Sciences.<sup>16</sup> The board's actions in this case underscore the impression, relayed to us by many of those we interviewed, that the UNC–Chapel Hill chancellor is constrained by and subservient to the board to an unusual degree.<sup>17</sup> It is unsurprising, then, that as a result of the tumultuous events at Chapel Hill in recent years, a group consisting of faculty, staff, alumni, students, and "allies of the University of North Carolina" and calling itself the Coalition for Carolina announced its formation in September 2021. Its stated goal is to "support and defend" the university "and its independence from partisan interference."<sup>18</sup>

According to those we interviewed, the board of governors and the campus-level boards of trustees have repeatedly exercised their considerable power in a manner that violates the AAUP-supported principles of academic governance set forth in the 1966 *Statement on Government of Colleges and Universities* (jointly formulated with the American Council on Education and the Association of Governing Boards of Universities and Colleges).

Finally, this report details a variety of ways the governance problems sketched above interact with long-standing patterns of institutional racism to make the UNC system a particularly hostile environment for faculty, staff, and students of color. The severity of the problems came through particularly clearly in the committee's interviews with faculty members at UNC–Chapel Hill, where many recent flashpoint events have taken place, several of which are discussed below. There was a deep-seated sense of pessimism and resignation among the faculty

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The UNC–Chapel Hill board caused further tensions between members of the faculty and the trustees by changing the process by which nominations for Distinguished Alumna and Alumnus Awards were sought, allowing board members to make nominations, a process which had been under the purview of the faculty since 1971. See <https://facultygov.unc.edu/wp-content/uploads/sites/261/2021/03/DAA-Regulation-BOT.pdf>. Eligibility and guidelines for the award previously in place state: "The recipients are to be recommended by a Committee on Honorary Degrees and Special Awards, on nomination by any member of the faculty. Recommendations shall be approved by the Faculty Council and Board of Trustees." The trustees changed the process through a unanimous resolution but then after backlash decided to pause implementation for a year. See Lauren Cook, "Faculty Executive Committee Talks BOT Involvement in Distinguished Alumni Award Nominations," *Daily Tarheel*, September 28, 2021, <https://www.dailytarheel.com/article/2021/09/university-fec-meeting0927>.

<sup>16</sup> Joe Killian, "UNC Board of Trustees Approves 'Outspoken Conservative' Voice as New Provost," *NC Policy Watch*, December 10, 2021, <https://ncpolicywatch.com/2021/12/10/unc-board-of-trustees-approves-outspoken-conservative-voice-as-new-provost>.

<sup>17</sup> Dr. Michael Behrent, professor of history at Appalachian State University and president of the North Carolina conference of the AAUP, told the *Raleigh News & Observer* that the supposed Republican preference for local control has been turned on its head when it comes to UNC. "No one is in favor of big government like Republicans in charge of the UNC system," he stated. "It's a takeover in a way that has disempowered all levels below it." See also Barnett, "A Right Turn at UNC."

<sup>18</sup> Coalition for Carolina, <https://coalitionforcarolina.org>.

members with whom we spoke—especially faculty members of color—and much evident pain. We hope that this report may spur university leadership to action: our interviews suggest that any steps they may currently be taking to address institutional racism are falling woefully short.

### **III. Academic Governance at UNC**

The public record indicates significant departures from normative standards of academic governance at all levels of the UNC system's operations, with the board of governors and other governing and administrative bodies exerting undue pressure and influence on those below them, often in response to, or in anticipation of, political interference from the legislature. There are also numerous examples of intrusions by administrations into areas where, under the *Statement on Government*, the faculty exercises primary responsibility.<sup>19</sup> The picture that emerges is of a university system increasingly subject to a regime of legislative-style party discipline, one at odds with the principles of shared governance under which US higher education has flourished. A few selected incidents illustrate the pattern.

#### **A. Appalachian State University: Provost Appointment**

We begin with the May 2021 elevation of Interim Provost Heather Norris to provost and executive vice chancellor at Appalachian State University (ASU) by the unilateral action of Chancellor Sheri Everts.<sup>20</sup> First appointed in 2003 to the faculty in ASU's Walker College of Business, Dr. Norris's career in administration dates to 2005, when she became assistant dean for undergraduate programs in the Walker College. Thereafter, she moved steadily up the ranks, becoming dean of the college in July 2016.

Dr. Norris became interim provost at ASU following the departure of Dr. Darrell Kruger, the previous provost, in February 2020. On February 10, 2020, the local newspaper reported the university's intention to commence a national search for the next provost that fall.<sup>21</sup> The

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<sup>19</sup> The *Statement on Government* observes that "the faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process" and, further, that "faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy."

<sup>20</sup> Responding to an invitation to comment on the draft text of this report, Chancellor Everts wrote as follows:

Chancellor Everts was well within her legal and policy rights to install Provost Norris, who was hired as dean of the Walker College of Business after a national search. N.C. Gen. Stat. § 116-34(a) provides that "[t]he chancellor shall be the administrative and executive head of the institution and shall exercise complete executive authority therein, subject to the direction of the President [of the UNC System]." In addition, The UNC Policy Manual 300.1.1, Policy on Senior Academic and Administrative Officers, Section II.A.1.d., expressly states "[t]he continuance in office of vice chancellors, *provosts*, deans, and directors of major educational, research and public services activities of the constituent institutions shall be determined by the chancellor of the institution (emphasis added)."

search did not take place. Instead, just months after Dr. Kruger left, Chancellor Everts appointed Dr. Norris to the post—over the objections of the faculty and in contravention of both established practice at ASU and AAUP-recommended principles of shared governance.<sup>22</sup>

According to Appalachian State faculty members, the unilateral appointment of Dr. Norris was not an isolated incident but part of a pattern of infringements of the principles of shared governance at ASU. Other examples shared with this committee include Chancellor Everts’s implementation of her “20 by 2020” enrollment objective—20,000 students by fall 2020—during the COVID-19 pandemic. This goal, first announced in fall 2019, was met despite faculty concerns regarding student preparation, instructional quality, greater workload, and campus and community welfare. Such concerns were amplified when the administration announced the creation of a satellite campus in Hickory with no clear indication of its educational purpose.

On August 17, 2020, the faculty senate voted no confidence in Chancellor Everts’s leadership. Within an hour of the meeting’s adjournment, the chancellor sent a letter to the entire faculty informing them that she and the provost would no longer attend senate meetings, ostensibly because some senators were plaintiffs in a class-action suit against the UNC system for reopening the campus in the midst of the pandemic (no other chancellors took similar action). The chair of the faculty senate, after receiving no substantive explanation for this rebuff from the general counsel, whose advice the chancellor was apparently following, asked for the opportunity to address the matter at a meeting of ASU’s board of trustees. The chancellor’s chief of staff replied, “The trustees asked me to thank you for your inquiry and to decline your request to speak.”<sup>23</sup>

In April 2021, the faculty senate approved a report on shared governance that contained a number of recommendations for its codification and strengthening at ASU. Then Interim Provost Norris was a member of the task force that developed the report, which approvingly quoted the *Statement on Government’s* language on faculty participation in administrative

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<sup>21</sup> Kayla Lasure, “Kruger Resigns as App State Provost, Norris Appointed as Interim,” *Watauga Democrat*, February 10, 2020, <https://www.wataugademocrat.com/news/kruger-resigns-as-app-state-provost-norris-appointed-as-interim>.

<sup>22</sup> As the AAUP’s *Faculty Participation in the Selection, Evaluation, and Retention of Administrators* notes, “The *Statement on Government* asserts the expectation that faculty members will have a significant role in the selection of academic administrators, including the president, academic deans, department heads, and chairs.”

In her response to our draft report, Chancellor Everts wrote that, during meetings with department chairs and the faculty senate, she “consistently heard positive feedback about [Provost Norris]. All were very supportive of her and confident in her leadership.”

<sup>23</sup> Professor Behrent submitted a written report, with links to relevant documents and email exchanges, describing these incidents in detail.

searches. Nonetheless, Provost Norris's permanent appointment as provost was made unilaterally by the chancellor directly *after* the report was approved. Faculty members told the committee that the report has yet to produce any tangible results, a situation they attributed chiefly to ASU's board of trustees. The board, they contend, had no intention of making "a public show of support for the [task force's] work." According to faculty members who spoke to this committee, the trustees believe that "they have the final say" in all matters relating to university operations. "Even simple, performative measures" aimed at improving the climate, they stated, "go nowhere" at ASU.

As a result, faculty members reported feeling increasingly "boxed out," "unrepresented," and "demoralized" by a top-down governance structure. Perhaps the single best illustration of the autocratic forces at work at ASU is that the university's general counsel has begun to issue "cease-and-desist" letters to faculty members who lodge criticisms against the administration, an action that impinges on the faculty members' academic freedom to dissent from and criticize administration decisions.

### ***B. Fayetteville State University: Chancellor Appointment***

On February 18, 2021, UNC system president Hans announced the selection of Mr. Darrell Allison as chancellor of Fayetteville State University (FSU), one of six board-designated historically minority-serving institutions (HMSI) in the UNC system.<sup>24</sup> Mr. Allison had stepped down from the UNC board of governors to apply for the position at FSU despite having three years remaining in his term. Faculty, student, and alumni groups protested the board's interference in the search process. Even a former FSU chancellor, Dr. Willis McLeod, criticized the process, according to news reports.<sup>25</sup> The FSU faculty senate called on the board of trustees to declare a failed search and to rescind the offer of appointment to Mr. Allison, and an alumni group collected some 2,600 signatures on a petition also calling for the revocation of the appointment, arguing that Mr. Allison lacked the requisite credentials for the position. Despite this opposition, Mr. Allison, who had earned a bachelor's degree from North Carolina Central University (NCCU) and a juris doctor from the UNC–Chapel Hill law school, was installed as FSU's twelfth chancellor in March.

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<sup>24</sup> The HMSI are the UNC system's five historically black colleges and universities—Elizabeth City State University, Fayetteville State University, North Carolina A&T State University, North Carolina Central University, and Winston-Salem State University—and the state's only historically Native American university: the University of North Carolina at Pembroke.

<sup>25</sup> Akilah Davis, "Seven Months after Some Called for Removal, FSU Chancellor Details Accomplishments since Taking Office," *ABC 11 News*, October 29, 2021, <https://abc11.com/fayetteville-state-university-fsu-chancellor-darrell-allison/11177275>.

As had been typical at FSU, a search committee including at least two faculty members had been formed a year earlier as an initial step in the search for a new chancellor. The previous chancellor had resigned in 2019, and the position had been filled by an interim appointee. Mr. Allison had served on the board of governors from 2017 to 2020, chairing its newly created Historically Minority-Serving Institutions Committee (2018–20) and on the UNC system Racial Equity Task Force (from June to September 2020). He was also one of five members of the board of governors charged with determining the fate of the Silent Sam statue (discussed later in this report).<sup>26</sup> Many critics of the appointment expressed the view that Mr. Allison’s show of loyalty to the board during that controversy earned him its favorable recommendation for the chancellor’s position. According to *NC Policy Watch*, the search committee had not included Mr. Allison on its list of candidates; the board of governors added him to the finalist list “at the last minute.” An FSU trustee admitted that Mr. Allison “was no one’s first choice in the selection process. But it was obvious that he would be the first choice of Peter Hans and the board, and he has support from the General Assembly.”<sup>27</sup>

On February 27, 2021, the FSU faculty senate issued a series of resolutions, not only calling on the board to declare a failed search and rescind the appointment offer made to Mr. Allison, but also demanding that the FSU board of trustees provide evidence that Mr. Allison had been recommended by the search committee, declaring that the faculty senate would refuse to recommend faculty members for administrative search committees until the matter was resolved, and urging the UNC faculty assembly and other system campus faculty bodies also to refuse to serve on administrative searches until the matter was satisfactorily resolved.<sup>28</sup> The faculty senate did not receive any response to its resolution from either the governing board or the administration.

On March 9, 2021, a member of the AAUP’s staff wrote to FSU board of trustees chair Stuart Augustine, advising him of Association-supported governance standards on the integrity

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<sup>26</sup> Mr. Allison and the other four members of the board of governors were also part of a scandal involving an op-ed defending the \$2.5-million deal for Silent Sam reached with the Sons of Confederate Veterans. Only after documents were released as part of a lawsuit by the *Daily Tar Heel* was it revealed that the five members of the board did not, in fact, write the op-ed. It had been written by Earl Whipple, UNC system vice president for communications. See Anna Pogarcic, “‘A Fictitious Narrative’: Silent Sam Committee Had No Role in Settlements with SCV,” *Daily Tar Heel*, February 1, 2021, <https://www.dailytarheel.com/article/2021/02/silent-sam-lawsuit-update-0201>.

<sup>27</sup> Joe Killian, “How Did Darrell Allison Cut in Line to Become the New Chancellor at Fayetteville State? It’s a Secret,” *NC Policy Watch*, February 24, 2021, <https://ncpolicywatch.com/2021/02/24/pw-special-report-how-did-darrell-allison-cut-in-line-to-become-the-new-chancellor-at-fayetteville-state-its-a-secret>.

<sup>28</sup> Fayetteville State University AAUP chapter, “Faculty Senate Votes to Declare Chancellor Search ‘Failed,’” February 26, 2021, <https://www.faystatefaculty.com/post/faculty-senate-votes-to-declare-chancellor-search-failed>.

of presidential searches and the role of the faculty in such searches. While the staff's letter acknowledged the inclusion of faculty representatives on the search committee, it noted that the five finalists the committee had identified did not include Mr. Allison. The letter took issue with the board's decision to change course and appoint Mr. Allison, which, the staff wrote, suggested that the faculty's participation in the search process was for the sake of mere appearances, calling into question "whether the search itself had been conducted in good faith." The letter further stated that the board's decision to appoint as chancellor a candidate who was not among the five finalists indicated that the "board subordinated principles of shared governance entirely by disregarding the faculty's appropriate role in the process." Board chair Augustine did not respond.

The controversial appointment of a top academic administrator can severely impair the trust among board, administration, and faculty necessary for effective academic governance. When the special committee asked faculty members about the status of shared governance at FSU, one responded cynically, "Shared governance? What's that?" Faculty members also spoke of the new chancellor's creation, without faculty consultation, of a one-stop student service center (dubbed "Bronco One Stop") in the university library during summer 2021. It was only after returning for the fall 2021 semester that many faculty members learned that the administration had reconfigured the library.

Interviewees informed our committee that the administration pays "no attention to what the faculty and students might want," as one of them put it, and employs the argument that the institution's various problems must be addressed immediately "as a cudgel to impose on the faculty without consultation." Several noted that the chancellor and the provost "have a real sense of defensiveness because of how the chancellor was installed" and that the provost had not attended faculty senate meetings until late in the fall term. Most described faculty morale as "incredibly low," with faculty members "frustrated" and "tuning out" in the absence of any "strong sense of the collective good."

### ***C. UNC–Chapel Hill: Provost Appointment***

On December 14, 2021, the UNC–Chapel Hill board of trustees voted to appoint Dr. Clemens as the university's new provost. This vote was the second the board had taken on the matter in less than a week. Its initial action to approve Dr. Clemens's appointment, on December 9, had been met with criticism for its egregious lack of transparency: the board had publicly disclosed only that it would be voting on unspecified personnel matters, an action that apparently violated the state's open meetings law, with one local attorney calling it "unequivocally illegal."<sup>29</sup> While

board chair David Boliek disputed that characterization, the board nonetheless took the highly unusual step of redoing the vote in order to ward off potential legal challenges.

The board's procedural error came at the end of a search process that led to allegations of outside political interference. A month prior to Dr. Clemens's appointment, UNC faculty chair Mimi Chapman published an extraordinary op-ed in the campus newspaper in which she alleged that Chancellor Guskiewicz was being subjected to a coordinated pressure campaign from above. As she wrote, "Our trustees and the UNC System are dictating [the chancellor's] choices to the point that he really has none to make."<sup>30</sup>

Such overt interference in the selection process for a senior campus administrator can effect lasting damage on the conditions for shared governance. As Professor Chapman put it in her op-ed, "We will all need to think carefully before saying yes to participation on an upper-level search at UNC unless we are comfortable with our dedication to a meaningful process being only for show."

In concert with the many other incidents that have strained relations between the faculty and the administration at UNC–Chapel Hill in recent years (several of which are detailed later in this report), the manner in which the board appointed Dr. Clemens as provost has only exacerbated an already bad governance situation at the system's flagship institution.

#### ***D. East Carolina and Western Carolina Universities***

The tenure of Dr. Cecil Staton as chancellor of East Carolina University (ECU) was marked by controversy arising from both a lack of transparency in the process leading to his appointment and intrusion by the board of governors afterward. Dr. Staton, a former Georgia Republican state senator, was appointed as chancellor in April 2016. In late 2017, an anonymous "dossier" began to circulate, detailing what it described as Dr. Staton's questionable conduct prior to his appointment at ECU. The late revelation of this information was enabled in part by the closed nature of the chancellor hiring process in the UNC system. As ECU's former faculty chair put it to a reporter, "If the search had been done in the light of day, I think it's probably true Staton wouldn't have been picked."<sup>31</sup> Meanwhile Mr. Harry Smith, an ECU alumnus and prominent Republican donor who became chair of the board of governors in 2018, clashed with Dr. Staton,

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<sup>29</sup> Kate Murphy, "UNC–Chapel Hill Trustees Redo Vote on Provost Hire after First Was Possibly Illegal," *Raleigh News & Observer*, December 15, 2021, <https://www.newsobserver.com/news/local/education/article256587291.html>.

<sup>30</sup> "UNC Chancellor Is Facing Pressure for New Provost Decision," *Daily Tar Heel*, <https://www.dailytarheel.com/article/2021/11/opinion-chapman-provost-letter>. See also "Faculty Executive Committee Statement regarding the Selection of the Provost," <https://facultygov.unc.edu/2021/11/29-fec-statement>.

<sup>31</sup> Pam Kelley, "The Ill-Fated Chancellor," *The Assembly*, March 2, 2021, <https://www.theassemblync.com/long-form/the-ill-fated-chancellor/>.

who charged that the board chair's meddling hampered his ability to lead. Among Chair Smith's proposals was an ultimately rejected scheme to profit personally from an apartment complex near the ECU campus: "Smith suggested that ECU could buy [the apartments], or he could buy them, then lease them to ECU for student housing and split the profits."<sup>32</sup> Dr. Staton resigned under pressure in 2019, and Chair Smith left the board of governors shortly thereafter. Dr. Staton sued the UNC system and former chair Smith for defamation in 2020, alleging that his exit resulted from the chair's "irrational and obsessive vendetta" against him.<sup>33</sup> Although Dr. Staton alleged in his suit that Chair Smith or a subordinate had compiled the aforementioned dossier, a former ECU faculty member subsequently filed an affidavit in which she claimed to be the sole author.<sup>34</sup> Meanwhile, at Western Carolina University, a 2018 chancellor search fell victim to meddling by Mr. Tom Fetzer, a member of the UNC board of governors and former state Republican Party chair. Mr. Fetzer reportedly coveted the interim chancellor position for himself and "gave confidential information about the chosen candidate to a friend's private company for a background check," after which the candidate withdrew and the search was postponed.<sup>35</sup>

### ***E. COVID-19 and Faculty Governance***

In May 2021, the AAUP issued a special investigative report on the impact of the COVID-19 pandemic on faculty governance, focusing on cases at eight institutions.<sup>36</sup> That report concluded, "The COVID-19 pandemic has presented the most serious challenges to academic governance in the last fifty years." Hence, it can hardly be claimed that UNC's pandemic experience has been unique. Indeed, the system appears to have avoided some of the worst outrages documented in that report—including suspension of faculty handbooks, imposition of force majeure provisions, unsubstantiated declarations of financial exigency, imposed program closures, and mass faculty layoffs. Nonetheless, the significant degradation of shared governance already underway in the UNC system when the virus first hit ensured that conflicts over responses to the virus would not only be contentious but also jeopardize the cooperation among faculty, administration, and governing board that the *Statement on Government* regards

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<sup>32</sup> Kelley.

<sup>33</sup> Kate Murphy, "Former ECU Chancellor Cecil Staton Sues UNC System and Former Board Chair over His Exit," *Raleigh News & Observer*, June 22, 2020, <https://www.newsobserver.com/news/local/education/article243715872.html>.

<sup>34</sup> "Details Emerge in Ex-ECU Chancellor's Lawsuit against UNC," *Business North Carolina*, August 9, 2020, <https://businessnc.com/details-emerge-in-ex-ecu-chancellors-lawsuit-against-unc>. The litigation appears to be ongoing.

<sup>35</sup> Sara Pequeño and Ned Barnett, "Across the UNC System, Signs of Republican Influence," *Raleigh News & Observer*, February 9, 2022, <https://www.newsobserver.com/opinion/article257810788.html>.

<sup>36</sup> "Special Report: COVID-19 and Academic Governance," *Academe*, July–August 2021: 2–41, <https://www.aaup.org/report/covid-19-and-academic-governance>.



as essential. As the AAUP has stressed in its COVID-19 guidance, “The health and safety of students, faculty, and staff should be the primary consideration in decision-making about when to reopen a campus as well as decisions about all aspects of campus operation during the pandemic. . . . Campus administrations should include all affected members of the campus community in decisions about whether to remain open and how best to control the outbreak. In response to growing concern over unilateral actions taken by governing boards and administrations during the COVID-19 pandemic, the AAUP affirms that the fundamental principles and standards of academic governance remain applicable even in the current crisis.”<sup>37</sup>

As North Carolina AAUP conference chair Behrent reported to this committee, “The onset of the pandemic precipitated a further loss of campus autonomy and accentuated a trend toward centralized and opaque decision-making by the UNC system and board of governors.” In spring 2020, after all campuses had moved to online instruction, the system’s interim president suddenly decreed that all campuses would be “open”—that is, would offer in-person instruction—in the fall. Faculty representatives were not consulted at either the system or the campus level.

The UNC system administration insisted that the system, not individual chancellors, would make decisions regarding whether campuses could move online in the face of a pandemic surge. At its meeting in July 2020, the board of governors learned that the state of North Carolina had witnessed more than 100,000 COVID-19 cases and more than 1,600 deaths, with about 1,100 hospitalizations and a dramatic increase of cases among eighteen- to twenty-two-year-olds. After that meeting, board chair Ramsey said the system might evaluate each university differently but stressed that the board wanted to ensure that no campus would make a decision to close on its own.<sup>38</sup> In the meantime, as one media account later summarized the situation, “Republicans in the state legislature were pushing to end COVID-related shutdowns, and the message to the legislature’s appointees on the UNC board of governors was clear: Don’t shut down the campuses.”<sup>39</sup>

By contrast, faculty members repeatedly warned of the dangers of reopening with in-person teaching. Their expressions of concern, however, had little impact on campus policy, even when they echoed those of health professionals. In June 2020, the executive committee of the UNC–Chapel Hill faculty council issued a report on faculty views about fall 2020. The report

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<sup>37</sup> AAUP, “Pandemic Resources: Guidance for Campus Operation,” <https://www.aaup.org/issues/covid-19-pandemic/pandemic-resources-guidance-campus-operation>.

<sup>38</sup> Kate Murphy, “No Tuition Refunds, Contingency Budget Cuts: UNC Schools Ready for Reopening Challenges,” *Raleigh News & Observer*, July 23, 2020, <https://www.newsobserver.com/news/local/education/article244404477.html>.

<sup>39</sup> Pequeño and Barnett, “Across the UNC System.”

noted that faculty members were disappointed that they had “not been able to give full voice to their concerns and questions about the return to teaching in the fall of 2020 in the context of the COVID-19 pandemic.”<sup>40</sup> On July 21, the faculty chair wrote to the chairs of the UNC–Chapel Hill board of trustees and the board of governors to convey the faculty’s serious concerns about fall reopening. Faculty members at Appalachian State and UNC–Chapel Hill published open letters urging students to stay away from campus. UNC-Pembroke, whose home county was seeing the state’s highest rates of infection, announced a widely denounced reopening plan that a *Chronicle of Higher Education* reporter characterized as “laden with mortal risk.”<sup>41</sup>

In August, faculty members learned that the Orange County Health Department had recommended that UNC–Chapel Hill (located in Orange County) alter its plans for fall reopening. The Chapel Hill faculty council responded by writing to Chancellor Guskiewicz, calling his failure to consult with the faculty about reopening the campus a “serious breach of trust.”<sup>42</sup> Not long after, the university’s student newspaper obtained documents indicating that “the administration [had] received warning months [earlier] from top medical professionals at the university” about the dangers of reopening in the midst of the pandemic. On August 10, seventeen system faculty and staff members filed a class action lawsuit alleging that

UNC and its constituent institutions cannot, in the face of this pandemic, provide conditions and places of employment safe or “free from” recognized hazards associated with COVID-19 by returning students to these campuses and the communities in which they are located under the current plans, where they will live and learn in poorly ventilated dormitories and classroom spaces [and] be expected (as college-aged students) to fully comply, both on-campus and off-campus, with the “mandatory” mask and “social-distancing” rules, when . . . UNC and its constituent institutions that have already had students return to . . . campus . . . know that [this] IS NOT happening.<sup>43</sup>

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<sup>40</sup> Office of Faculty Governance, “Teaching in Fall 2020 Survey Data,” June 15, 2020, <https://facultygov.unc.edu/2020/06/teaching-in-fall-2020-survey-data>.

<sup>41</sup> Francie Diep, “Its Plan Is Risky, Its Community Is Vulnerable, and Cases Are Surging. Why Is This University Reopening?,” *Chronicle of Higher Education*, July 31, 2020, <https://www.chronicle.com/article/its-plan-is-risky-its-community-is-vulnerable-and-cases-are-surging-why-is-this-university-reopening?>

<sup>42</sup> Joe Killian, “Chair of UNC-CH Faculty: ‘A Serious Breach of Trust’ Campus Not Aware of Orange County Health Recommendation,” *NC Policy Watch*, August 5, 2020, <http://pulse.ncpolicywatch.org/2020/08/05/chair-of-unc-ch-faculty-a-serious-breach-of-trust-faculty-were-not-aware-of-county-health-recommendation>.

<sup>43</sup> Michael Perchick, “UNC Workers File Class Action Complaint against Board of Governors over COVID-19 Policies,” *ABC 11 News*, August 19, 2020, <https://abc11.com/education/unc-faculty-members-file-class-action-complaint/6376493>; emphasis in original.

In the summer of 2020, a petition signed by roughly one-fifth of the faculty at North Carolina State University asked for the flexibility to hold classes online, campus-wide mask requirements, rigorous testing, no budget penalties for departments that moved most of their classes online, and assurances that the institution's COVID response going forward would be determined in consultation with the faculty. Chancellor Randy Woodson supported most of the requests but stated, "It is critical that we all understand that much of this is out of our hands and subject to the leadership of our State Government and UNC System."

The upshot of the system's decision to mandate in-person classes for fall 2020 was that within days of reopening, three UNC campuses—Chapel Hill, North Carolina State, and East Carolina—were forced to move quickly online as the virus ran rampant.

When vaccines became available, many private universities in North Carolina—including Duke, Shaw, Wake Forest, and Elon—enacted policies requiring most students and employees to be vaccinated. The UNC system, however, did not require vaccinations for students or employees, citing a "lack of clear legal authority" to do so. In response, faculty members argued that state law does not prevent universities from requiring students to get the vaccine. Indeed, in August 2021, the Chapel Hill faculty executive committee adopted a resolution urging that all campus employees be required to provide proof of vaccination against COVID-19 or be subject to regular testing. The next month faculty members at North Carolina State endorsed a similar resolution. Six former North Carolina state health directors also called upon the UNC system to mandate vaccinations for students and employees before the start of the fall semester.<sup>44</sup>

The lack of both transparency and advance discussion of the conditions under which remote education might be allowed raised questions for the UNC–Chapel Hill faculty council. Faculty chair Mimi Chapman argued that the administration should have communicated earlier with the council. She further argued that, in addition to infectious disease experts and administrators, more faculty members, university employees, and representatives of the student body should have been able to provide input. "It's best when we're all thinking together," she said. "That's why it would be great to have more voices at the table earlier."<sup>45</sup>

## **F. Conclusion**

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<sup>44</sup> Martha Quillin, "Faculty Want UNC-CH to Be Able to Require Proof of Vaccination from Students, Employees," *Raleigh News & Observer*, August 4, 2021, <https://www.newsobserver.com/news/local/education/article253262893.html>; Kate Murphy, "Despite Pressure from Campuses, UNC System Leaders Aren't Pushing for a Vaccine Mandate," *Raleigh News & Observer*, September 16, 2021, <https://www.newsobserver.com/news/local/education/article254278218.html>.

<sup>45</sup> Claire Tynan, "UNC Faculty Council Members Express Concerns about Spring COVID-19 Policies," *Daily Tar Heel*, January 17, 2022, <https://www.dailytarheel.com/article/2022/01/university-covid-leadership-tensions>.

As the *Statement on Government* notes, “The variety and complexity of the tasks performed by institutions of higher education produce an inescapable interdependence among governing board, administration, faculty, students, and others. The relationship calls for adequate communication among these components and full opportunity for appropriate joint planning and effort.” In addition, and in anticipation of a governing board’s attempting to interfere in areas outside its purview, the *Statement on Government* also asserts that “[t]he governing board of an institution of higher education, while maintaining a general overview, entrusts the conduct of administration to the administrative officers—the president and the deans—and the conduct of teaching and research to the faculty. *The board should undertake appropriate self-limitation*” (emphasis added).

The examples presented in this section of the report indicate the frequency with which the UNC board of governors failed both to participate in joint planning and effort with local administrations and faculties and to engage in self-limitation. Its actions suggest that the system board appears to view itself, not as part of an interdependent relationship with other institutional components, but as an independent—and superordinate—component.

With respect to presidential searches, the *Statement on Government* emphasizes that “[j]oint effort of a most critical kind must be taken when an institution chooses a new president. The selection of a chief administrative officer should follow upon a cooperative search by the governing board and the faculty, taking into consideration the opinions of others who are appropriately interested. The president should be equally qualified to serve both as the executive officer of the governing board and as the chief academic officer of the institution and the faculty. The president’s dual role requires an ability to interpret to board and faculty the educational views and concepts of institutional government of the other. The president should have the confidence of the board and the faculty.”

The AAUP statement *Faculty Participation in the Selection, Evaluation, and Retention of Administrators* further stipulates that “the board, with which the legal power of appointment rests, should either select a name from among those submitted by the faculty committee or should agree that no person will be chosen over the objections of the faculty committee.” In addition, “searches for presidents and other chief academic officers should have an open phase that allows individual faculty members as well as faculty bodies to review the credentials of finalists, ask questions, and share opinions before a final decision is made.” The board’s actions in the cases discussed above—such as making unilateral changes to search procedures and appointing individuals without meaningful faculty involvement in the search—clearly contravene AAUP-recommended standards on searches for academic administrators.

By all accounts conveyed to this committee, UNC system boards of trustees (and the legislature through those boards) are actively and too often inappropriately seeking to expand their purview into the day-to-day operations of system campuses.<sup>46</sup> One former UNC–Chapel Hill trustee told the committee, “The board of governors has been given marching orders [from the Republican legislature] to fix the ‘crazies’ in Chapel Hill. At least six lobbyists have been appointed to the board of governors; it’s outrageous. Does the legislature care about institutional damage? No, not at all.”

The failure of responsibility alluded to by this former trustee is worth emphasizing. As fiduciary bodies, governing boards are entrusted with ensuring the welfare of the institutions they oversee. As the *Statement on Government* puts it, “When ignorance or ill will threatens the institution or any part of it, the governing board must be available for support. In grave crises it will be expected to serve as a champion.” Not only are the UNC governing boards (campus boards of trustees and the system-level board of governors in this case) not exercising the “appropriate self-limitation” called for in the *Statement*, but they have also failed to fulfill their responsibility to serve as their institutions’ “champions” in areas where such support is urgently needed. Indeed, some embody the very threats from which they should be defending their institutions.

#### **IV. Academic Freedom**

This section examines how the environment for academic freedom throughout the UNC system has been affected by the politicization and increased centralization of system governance and by mounting political interference. The impact of these factors varies across the system. Where academic freedom has been threatened, the pressure has often been indirect—but chilling nonetheless.

Faculty leaders at several campuses told the committee that, in their view, academic freedom was not imperiled at their institutions. The senate chair at East Carolina declared her “wholehearted belief” that faculty members enjoy academic freedom for research and advocacy. “You can have any freedom if you are willing to stand up,” another senate chair told us. At a third campus, a faculty leader stated that faculty members’ ability to work on topics of their choice “has not been compromised.”

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<sup>46</sup> Judging by this media account of the inappropriate interference of a Chapel Hill trustee in an online debate between candidates for student body president, board members consider even student elections fair game: Joe Killian, “UNC–Chapel Hill Trustee’s Involvement in Debate between Candidates for Student Body President Sparks Controversy,” *NC Policy Watch*, February 23, 2022, <https://ncpolicywatch.com/2022/02/23/unc-chapel-hill-trustees-involvement-in-debate-between-candidates-for-student-body-president-sparks-controversy>.

Nevertheless, we did hear frequent complaints about low faculty morale and a “deep-seated malaise,” with potential implications for academic freedom. One Appalachian State professor complained of a “dystopian atmosphere” that he said pervaded the entire UNC system. A faculty member at UNC–Chapel Hill said that ideological scrutiny from right-wing groups had been “baked into” into her career at the institution. Another senior professor told a reporter that “many professors feel a chill from conservative scrutiny.”<sup>47</sup> With respect to the freedom to criticize the institution, a UNC–Chapel Hill faculty member said that, while he did not feel threatened, “other people do.” A journalism professor told us that in the wake of the Hannah-Jones controversy, junior faculty members have shown a “real reluctance . . . to sign on to writing [critical] public pieces.” Another UNC–Chapel Hill faculty member asserted that, while administrators are not telling faculty members to avoid certain topics, some professors have suffered repercussions for critical expression, given a culture where “people who stay silent are rewarded” and “those who are outspoken are put on an unofficial blacklist.” Concluded another faculty member, “Everybody’s looking over their shoulder. Senior and junior faculty have experienced the chilling effect.”

As the AAUP’s statement *On the Relationship of Faculty Governance to Academic Freedom* recognizes, “Allocation of authority to the faculty in the areas of its responsibility is a necessary condition for the protection of academic freedom within the institution.” The erosion of that authority in the UNC system, documented in this report, must therefore inevitably degrade the climate for academic freedom, even if adverse actions against individual professors are still relatively infrequent.

Specific controversies—regarding instruction, campus policy centers, the university press, and tenure—have raised significant academic freedom concerns. Several of these are detailed below, along with an account of the 2017 North Carolina Restore Campus Free Speech Act, the punitive provisions of which may also adversely affect academic freedom, though to what extent remains to be seen.

### **A. Teaching**

In 2016, Dr. Jay Smith, a tenured history professor at UNC–Chapel Hill and a specialist in European history, developed a course on the history of big-time college sports. Chapel Hill had been embroiled since 2010 in an unprecedented grading scandal. A department chair and his assistant created hundreds of fake courses over roughly a twenty-year period, providing athletes with high course grades based on a single paper, often wholly or partially plagiarized. Professor Smith coauthored a book on the scandal, which presented the university in an

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<sup>47</sup> Barnett, “A Right Turn at UNC.”

unflattering light. As a consequence, his new course attracted unusual scrutiny. After teaching the course in a summer session, he proposed to teach it again during the regular academic year, but his proposal met with administrative resistance. When his department sought to place it on the course schedule, Chancellor Guskiewicz, then dean of the college of arts and sciences, told the chair, “We don’t want that course taught again.” When Professor Smith pushed back, administrators blamed his chair. The provost would later assert at a faculty council meeting in November that the cancellation was “not really an academic freedom issue,” and then dean Guskiewicz at another meeting with the faculty dismissed the incident as merely a “departmental scheduling issue.” A faculty grievance committee, however, found otherwise. “I now know firsthand that the political sensibilities of administrators or the donors they continually cultivate can trump common sense, institutional integrity, academic freedom, and a faculty’s commitment to good teaching,” Professor Smith concluded.<sup>48</sup>

### **B. Policy Centers**

In 2015, the board of governors closed three of the system’s university-based policy centers—East Carolina’s Center for Biodiversity, North Carolina Central’s Institute for Civic Engagement and Social Change, and UNC–Chapel Hill’s Center for Poverty, Work, and Opportunity—all of which were privately funded. The poverty center had been launched in 2005 by former US senator and 2004 Democratic Party vice-presidential candidate John Edwards, a UNC–Chapel Hill law school alumnus, together with then Chapel Hill law dean Gene Nichol. Its goal was to bring together UNC faculty members and other national public policy experts “to examine innovative and practical ideas for moving more Americans out of poverty and into the middle class.” The center’s advisory committee consisted of senior faculty members from multiple disciplines. In 2008, when Edwards left the center to run for president, Professor Nichol, who had stepped down from the deanship in 2005, took over as director.<sup>49</sup>

Prominent North Carolina conservatives had opposed the poverty center from its inception. Among them was the millionaire John W. Pope, whose eponymous foundation had invested heavily in the UNC–Chapel Hill Pope Center for Higher Education Policy (a think tank founded in 2003 and renamed the James G. Martin Center for Academic Renewal in 2016). When Republicans took control of the legislature and the governorship, Director Nichol joined the state’s Moral Mondays civil disobedience movement and became an outspoken critic of state government, often writing articles and opinion columns for local newspapers.<sup>50</sup>

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<sup>48</sup> Jay Smith, “Academic Freedom, Meet Big-Time College Sports,” *Academe*, September-October 2017, 31–35.

<sup>49</sup> “Edwards to Direct New Center at UNC to Address Poverty,” *Carolina Alumni Review*, February 4, 2005, <https://alumni.unc.edu/news/edwards-to-direct-new-center-at-unc-to-address-poverty>.

In his interview with our committee, Professor Nichol reported that on five or six occasions between 2012 and 2015, the dean of the law school had relayed to him threats from legislators and the governor's office concerning articles he had written and speeches he had delivered. He was informed that if he did not stop publishing, the poverty center would be closed. In 2013, just days after he published an article critical of a recently passed voter suppression law, the conservative policy organization Civitas Institute filed a public records request for all his email and correspondence. Although his dean remained supportive, the provost informed the professor that the chancellor was under considerable pressure from political leaders to act against him. Notwithstanding such threats, Professor Nichol continued to speak out.

In 2014, with budget reductions to the UNC system looming and Civitas recommending funding cuts to the system's centers and institutes, the poverty center, despite its private funding, was targeted for closure by a board of governors working group charged with reviewing the system's centers. Six of the seven working group members were Republicans. Of the 237 centers reviewed by the group, the only three recommended for closure involved scholarly interests in poverty, the environment, or social justice. Among the thirteen other research centers for which the panel recommended changes but not elimination were programs that focused on diversity, the environment, women's issues, aging, and teaching and learning.

At its February 27, 2015, meeting, the board of governors voted to close the poverty center. Among those opposing the board's action were the chancellor; the law school dean, who wrote an eloquent defense of the center; the UNC–Chapel Hill AAUP chapter; the Chapel Hill faculty executive committee and the faculty council, both of which adopted a resolution stating that oversight of centers (and decisions about their continuation) should rest with campuses, not the system board; and 139 individual faculty members, including the overwhelming majority of the law school's faculty. Faculty members, students, and other critics alleged that the board, in addition to overstepping its governance prerogatives, was acting in retaliation against Professor Nichol for his political expression.<sup>51</sup>

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<sup>50</sup> See Cleve R. Wootson Jr., "Rev. William Barber Builds a Moral Movement," *Washington Post*, June 29, 2017, <https://www.washingtonpost.com/news/acts-of-faith/wp/2017/06/29/woe-onto-those-who-legislate-evil-rev-william-barber-builds-a-moral-movement>, and Michael A. Cooper Jr., "The War on the War on Poverty," *New Republic*, February 15, 2015, <https://newrepublic.com/article/121062/north-carolina-republicans-battle-uncs-gene-nichol-poverty-center>.

<sup>51</sup> Sarah Ovaska-Few, "UNC Law Professors Speak Out against Proposal to Close Poverty Center," *NC Policy Watch*, February 23, 2015, <http://pulse.ncpolicywatch.org/2015/02/23/unc-law-professors-speak-out-against-bogs-possible-closure-of-poverty-center>.



The national AAUP issued a statement prior to the decision criticizing the proposed closure as antithetical to principles of academic freedom. “To be true to their mission, public universities must serve all members of our society, the poor as well as the privileged,” the statement declared. “Externally funded centers must be free to sponsor curricular and extracurricular programs and provide services to the public across the broadest range of perspectives and approaches.”<sup>52</sup> The statement went on to compare the action taken against the poverty center with a 1968 case at the University of Mississippi. That university’s law school had obtained a federal grant to establish Lafayette County Legal Services to provide free legal assistance to people who could not afford to pay for it. Local opponents quickly managed to separate the federally funded program from the state-funded university. Faculty members who had appointments that included legal services work were informed that they could no longer perform that work, even on their own time without remuneration.

The Mississippi case was investigated jointly by an AAUP ad hoc committee and a committee appointed by the Association of American Law Schools (AALS). With respect to two professors dismissed because they had declined to cease involvement with the legal services project, the report of the AAUP’s committee concluded that the “appointments were terminated for reasons violative of their academic freedom . . . because they were accused of being engaged in civil rights activities on behalf of poor people (many of whom are black) in the local community.”<sup>53</sup>

In a statement published in the *Raleigh News & Observer*, Professor Nichol responded to the board’s action:

The university’s governing board moved to abolish an academic center in order to punish its director for publishing articles that displease the board and its political benefactors. The governors said to a member of the faculty: We cannot allow your writings to go without rebuke. We may not be able to fire you, but we will do all we can to suppress your efforts. Criticisms of this governor and of this General Assembly, at this public university, are not to be tolerated.

These acts of state-imposed censorship, of course, constitute a core violation of the First Amendment. Lying about the motive for closure does nothing to assuage the transgression. The board’s laughable charade of independent, merit-

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<sup>52</sup> AAUP, “Statement on the Proposed Closure of the University of North Carolina Law School Poverty Center,” <https://www.aaup.org/povertycenter>.

<sup>53</sup> “Academic Freedom and Tenure: The University of Mississippi,” *AAUP Bulletin*, Spring 1970, 75–86. The AALS investigators reported that the violations of academic freedom were so serious that, if not redressed, they could justify expulsion of the law school from the Association.

based “centers review” has fooled no one. Dishonest censorship is no improvement over straightforward suppression.<sup>54</sup>

Professor Jarvis Hall, who directed the Institute for Civic Engagement and Social Change at North Carolina Central, one of the other centers eliminated in 2015, told our committee that, while the center’s “shoestring budget” included nominal, mainly in-kind, support from the university, it was funded overwhelmingly by external foundations, including George Soros’s Open Society Foundation, a frequent target of conservative ire. Among its projects were voter education efforts, a conference on religious faith in politics, and a statewide survey of faith and political engagement. The center was housed in the Department of Political Science, which even conservative students lauded for being “open and tolerant of different ideas.”

Professor Hall also served at the time as political chair of the North Carolina chapter of the National Association for the Advancement of Colored People (NAACP), then headed by the Reverend William Barber, founder of the Moral Mondays demonstrations. When Hall, like Professor Nichol, became involved in the activities of the Moral Mondays, the two centers sponsored a joint “poverty tour” in 2012. Soon thereafter, the board of governors began its review of centers. Although the board’s public justification for terminating the center was fiscal, Professor Hall responded, “We didn’t cost the UNC system anything. All was funded externally. The *study* cost more than any savings from closing the Institute.”

In 2017, the board of governors turned its attention to the Center for Civil Rights in the UNC School of Law. The governors proposed prohibiting the center from participating in litigation, although similar centers at other law schools routinely engage in such activity. While the ban technically applied to all UNC system centers and institutes that engaged in litigation, it affected only the legal center, because it was the only center so engaged.

The center was founded at the UNC–Chapel Hill law school in 2001 by the prominent civil rights attorney Julius Chambers, who entered the law school in 1959; served on the first UNC system board of governors from 1972 until 1977, when he resigned in protest of the board’s handling of desegregation; and was chancellor of North Carolina Central University for eighteen years ending in 2001. Mr. Chambers created a model of community lawyering through the center, which brought together staff attorneys and law students to provide legal assistance to disempowered communities in North Carolina. It had successfully litigated numerous cases

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<sup>54</sup> *Raleigh News & Observer*, February 28, 2015, <https://www.newsobserver.com/opinion/op-ed/article12479222.html>. Professor Nichol reviewed the controversy and his role at length in “Lessons on Political Speech, Academic Freedom, and University Governance from the New North Carolina,” *First Amendment Law Review* 16 (2018): 39–72.

around the state involving issues of environmental justice, school desegregation, fair housing, and other racial equity issues.<sup>55</sup>

The effort to ban center litigation was led by board member Steve Long, a Raleigh attorney who had previously served on the board of the Civitas Institute. Board members supporting the ban argued that it was improper for faculty members earning salaries from UNC–Chapel Hill to engage in legal action against other state government entities such as school districts and county boards. In a 2017 interview, Professor Judith Welch Wegner, a distinguished professor emerita and former dean of UNC’s law school who had been closely tied to the center, responded to that charge and explained the center’s educational purpose:

All law schools around the country prepare students for possible work as litigators, teaching them to write documents needed by the courts, understand and use rules of evidence, and engage in trial advocacy. All law schools have clinics of various sorts that provide students with contextualized training, for example by representing juvenile defendants, assisting low-income taxpayers in disputes with the IRS, handling immigration and asylum claims, or assisting with landlord-tenant, consumer fraud, special education, or wage disputes. All law schools do this kind of thing and indeed, have been required to add other forms of “experiential learning” by American Bar Association accreditors.<sup>56</sup>

When the board met in July 2017 to consider the proposed ban, Dr. Belle Wheelan, president of the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC), which accredits all the institutions in the system, cautioned the board against being unduly influenced by state legislators and other politicians. SACSCOC had received a memorandum from the system’s faculty assembly (made up of representatives from the seventeen public campuses) concerning actions taken by the state legislature and the system board of governors that the faculty feared would put the accreditation of the state’s public universities at risk. The memorandum included a January 2017 faculty assembly resolution expressing serious concerns about the implications of the actions of the legislature and board.<sup>57</sup>

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<sup>55</sup> Jane Stancill, “Center Has Kept Out Landfills and Fought for Safer Water. Now Its Days May Be Numbered,” *Raleigh News & Observer*, September 4, 2017, <https://www.newsobserver.com/news/local/education/article170838392.html>.

<sup>56</sup> Michael Behrent, “Why Litigation Is Academic Freedom,” *Academe Blog*, July 5, 2017, <https://academeblog.org/2017/07/05/why-litigation-is-academic-freedom>.

<sup>57</sup> Mark Barrett, “Education Official Cautions on Political Influence on UNC System,” *Asheville Citizen Times*, July 14, 2017, <https://www.citizen-times.com/story/news/local/2017/07/14/education-official-cautions-political-influence-unc-system/479663001>; Resolution 2017-9, “On the Proposal to Bar UNC Centers and Institutes from Engaging in Legal Actions,” <https://facultygov.unc.edu/wp-content/uploads/sites/261/2016/02/FECRes20179OnCivilRightsFINAL.pdf>.

Wheelan, however, told the board of governors that her appearance at the meeting was the only action the accreditor would take in response to the memorandum.

The proposed ban was opposed by then UNC–Chapel Hill chancellor Carol Folt and the university’s law school dean, as well as by the law school at NC Central and more than 600 law professors, clinicians, and deans from around the country. Then AAUP president Rudy Fichtenbaum released a statement calling on the board “to cease interfering with the educational mission of the center.” President Fichtenbaum and Professor Michael DeCesare, then chair of the AAUP’s Committee on College and University Governance, subsequently published an op-ed decrying “such a brazen attempt, seemingly by one zealous member of the UNC board of governors [Mr. Long], to prevent the center from continuing to engage in litigation on behalf of North Carolina’s most vulnerable citizens” as “an affront to principles of democracy” and “a deeply troubling departure from longstanding principles of academic freedom and institutional governance.”<sup>58</sup>

Some faculty critics alleged that the proposed ban was racially motivated, a charge based on board members’ objections to the law center’s involvement in civil rights litigation, which frequently involved advocacy on behalf of Black, Indigenous, and other clients of color. With regard to board member Long’s championing the litigation ban, civil rights center director Ted Shaw was quoted as stating, “The one thing that is clear to me about him is that he is someone who has an antipathy to the work that we do on behalf of black and brown people.”<sup>59</sup>

The UNC–Chapel Hill faculty executive committee passed a resolution urging the board to vote against the proposed ban on the grounds that it would place “arbitrary and unjustified constraints on how we train students.” The resolution also emphasized the respective roles of the board and the faculty in shared institutional governance, stating, “While it is appropriate for” the board of governors “to set general policies, matters of curriculum and student training should be left to faculty, who are in the best position to judge how to focus their efforts in these areas.”<sup>60</sup>

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<sup>58</sup> Gwendolyn Bradley, “UNC Center for Civil Rights under Fire,” *Academe Blog*, May 8, 2017, <https://academeblog.org/2017/05/08/unc-center-for-civil-rights-under-fire>, and Rudy Fichtenbaum and Michael DeCesare, “UNC Board Should Remember UNC Mission,” *Raleigh News & Observer*, July 31, 2017, <https://amp.newsobserver.com/opinion/opn-columns-blogs/opinion-shop/article164519777.html>. Also see Henry Reichman, “UNC Board Committee Votes against Center for Civil Rights,” *Academe Blog*, August 1, 2017, <https://academeblog.org/2017/08/01/unc-board-committee-votes-against-center-for-civil-rights>.

<sup>59</sup> Stancill, “He’s the Driving Force Who Wants to Ban UNC’s Civil Rights Center from Litigating,” *Durham Herald-Sun*, July 27, 2017, <https://www.heraldsun.com/news/local/education/article163939422.html>.

<sup>60</sup> Resolution 2017-9, “On the Proposal to Bar UNC Centers and Institutes from Engaging in Legal Actions,” <https://facultygov.unc.edu/wp-content/uploads/sites/261/2016/02/FECRes20179OnCivilRightsFINAL.pdf>.

Ultimately the governors voted twenty-four to three, with one abstention, to bar the Center for Civil Rights from taking on new clients.<sup>61</sup> Following the vote, the administration terminated the positions of the center's two staff attorneys, who subsequently reestablished the Julius L. Chambers Center for Civil Rights under the auspices of the Lawyers Committee for Civil Rights, where it currently operates.

### **C. UNC Press**

In 2021, the UNC system board of governors decided, without explanation, not to reappoint distinguished professor of law Eric Muller to the University of North Carolina Press board, despite positive recommendations from both that board itself and Chancellor Guskiewicz.

The UNC Press is a nonprofit publisher of both scholarly and general-interest books and journals. Established in 1922, its largely self-governing board has eighteen members, fifteen of whom are named by the UNC board of governors, though the board of governors does not initiate nominations. Elected members of the press board serve for five-year terms and may be reelected for up to two additional terms. Currently, thirteen of eighteen press board members are faculty members from UNC system campuses.

In June 2021, the UNC Press board unanimously nominated Professor Muller for a third five-year term and unanimously reelected him as chair, a capacity in which he had served for the previous six years. Professor Muller had received high praise from authors, faculty leaders, and fellow press board members for helping the board diversify in terms of race, gender, and geography by adding members from UNC campuses around the state. When his nomination was submitted to the UNC board of governors' university governance committee along with two others, however, the committee chair asked Chancellor Guskiewicz to submit a name other than Professor Muller's, which the chancellor declined to do. The board then approved the other two nominations but did not take up Professor Muller's, an action, Professor Muller told the committee, "unprecedented since the 1970s." According to media accounts, no one at the press or in the university had been contacted in advance by the board of governors. The press board asked the board of governors to explain its decision, but no explanation came.<sup>62</sup>

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<sup>61</sup> Until 2017, the board of governors had consisted of thirty-two voting members. Legislation enacted that year shrank the board to its current size of twenty-four. The litigation ban vote was held during a transitional period when the board had twenty-eight members. The legislation to shrink the board was signed by Democratic governor Roy Cooper despite concerns that it could lead to a decline in diversity among the board's membership. See Matthew Burns, "House Ignores Plea for Diversity, OKs Slimmed-Down UNC Board," *WRAL-TV*, February 8, 2017, <https://www.wral.com/house-ignores-plea-for-diversity-oks-slimmed-down-unc-board/16514855>.

<sup>62</sup> Joe Killian, "UNC Press Now in the Crosshairs of Board of Governors, Which Is Refusing to Reappoint Professor Who Criticized Handling of Silent Sam Monument," *NC Policy Watch*, June 21, 2021, <http://www.ncpolicywatch.com/2021/06/21/unc-press-now-in-the-crosshairs-of-board-of-governors-which-is-refusing-to-re-appoint-professor-who-criticized-handling-of-silent-sam-moment>.

Professor Muller, left in the dark regarding the basis for the decision, posted a June 21 press release on Twitter suggesting possible reasons for his having been “singled out” by the board.

I would hate to think it had something to do with my public commentary in recent years on matters of law, race, and history, such as the law on removal of Confederate monuments, the abortive \$2.5-million legal settlement with the Sons of Confederate Veterans, the moratorium on renaming UNC buildings, or the removal of the portrait of slave-trading judge Thomas Ruffin from the courtroom of our state’s highest court. I would hate to think it had something to do with my focusing public attention on ways in which the law has ignored and harmed the interests of African Americans—and still does. These are matters within my expertise as a legal scholar and historian, the very stuff of the work I do as a university professor.

It would be an ominous sign for the values of a leading research university and of a celebrated academic press if our System’s Board of Governors were to single out faculty members for punishment for voicing their views on matters within their expertise and research.<sup>63</sup>

Unfortunately, it appears that that is precisely what happened. Professor Muller’s scholarship has focused on the history of slavery in North Carolina and the legacy of Jim Crow. He also readily acknowledged to this special committee that he was heavily engaged in writing op-eds and posting to social media on issues surrounding race, including the Silent Sam controversy, in which he was “invariably rather critical of the decisions that the system and UNC–Chapel Hill were making.” He told the special committee that a reporter had informed him that some board members had privately and anonymously acknowledged their discomfort with his public expression.

A July 20, 2021, “Statement of the [UNC–Chapel Hill] Faculty Executive Committee regarding Academic Freedom and the UNC Press Board” asserted, “As a matter of academic freedom and of UNC System policy, faculty members must be able to speak freely without fear of reprisal or retaliation.” Expressing “dismay” at the board’s failure to reappoint Professor Muller, the statement concluded, “We expect decisions from our governing bodies to reflect mutual respect and regard for academic freedom, both at the Press and throughout the University System.”<sup>64</sup>

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<sup>63</sup> Eric Muller @el munc, Twitter, June 21, 2021, <https://twitter.com/elmunc/status/1407019172295499776>.

UNC Press is well known among scholars for publishing books on race, labor, and other topics that can raise conservative hackles. Professor Muller assured this committee that while he was on the board “there was never any pressure about the publishing program.” Nonetheless, he expressed “worry about the possibility that this is about more than shutting up a loudmouth law professor.” Although, as he told our committee, the press is largely financially independent, like virtually all other university presses, it depends partially on subsidies from the system’s budget, which is approved by the board of governors.

#### **D. “Free Speech” Legislation**

On July 31, 2017, the North Carolina Restore Campus Free Speech Act became law. Passed by the Republican-controlled legislature over the recently elected Democratic governor’s veto, the law was lifted almost directly from a model bill proposed in January 2017 by the Goldwater Institute, an Arizona-based conservative think tank.<sup>65</sup> The law requires the imposition of strict disciplinary measures on individuals accused of violating what it characterizes as the free-speech rights of others. It also requires the UNC board of governors to produce annual reports on conditions for free speech on its campuses. Lastly, the law mandates that universities remain neutral on public controversies.

Later that year the board of governors adopted a policy that implemented the law on UNC’s seventeen campuses. “Free Speech and Free Expression within the University of North Carolina” banned expression that “substantially interferes with the protected free speech rights of others,” including “protests and demonstrations that materially infringe upon the rights of others to engage in and listen to expressive activity.”<sup>66</sup>

The North Carolina AAUP conference opposed the law and policy through a petition drive. First Amendment scholar William P. Marshall, the William Rand Kenan Jr. Distinguished Professor of Law at UNC–Chapel Hill, concluded “that the policy is overbroad and will work to chill constitutionally protected speech.” As Professor Marshall told AAUP state conference leaders,

Taken literally, this policy means that a student could be sanctioned for protesting (or maybe even just vehemently disagreeing with) an unscheduled speaker (which presumably could mean anybody, including a fellow student) almost anywhere on campus—given that the word ‘speaker’ is not defined, and

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<sup>64</sup> <https://facultygov.unc.edu/2021/07/fec-statement-regarding-academic-freedom-and-the-unc-press-board>.

<sup>65</sup> On the Goldwater Institute model and these laws more generally see “Campus Free-Speech Legislation: History, Progress, and Problems,” *Academe*, July–August 2018, 38–47.

<sup>66</sup> <https://www.ncleg.net/Sessions/2017/Bills/House/PDF/H527v5.pdf>.

most areas of college campuses are nonpublic fora. This means students could be disciplined if they attempted to shout down a speaker outside their dorm room or eating hall. . . . [The] policy and statute are unclear as to what it means to interfere with the rights of others to ‘listen to expressive activity.’ Is speaking too loudly near an unscheduled speaker sanctionable? Is trying to talk over the speech of another person a possible subject of discipline? The policy discusses actual physical obstruction with access [to] or egress [from] the location where the speaker is speaking, but the language of both the policy and the statute reach[es] far more than physical obstruction. . . . As the policy purports to recognize, the First Amendment protects both speech and counter speech. The approach taken by both the policy and the statute, however, creates a preference for only one type of speech, a policy that is inconsistent with First Amendment principles and treads far too broadly into core First Amendment expression.<sup>67</sup>

### **E. Conclusion**

The committee finds that while most faculty members in the UNC system seem to enjoy the basic protections of academic freedom, actions by the board of governors and campus administrations have placed these protections in growing jeopardy, making the overall environment for the exercise of academic freedom insecure. Further, given deteriorating governance conditions and the frequent bypassing of faculty authority, academic freedom in the UNC system will likely face increasing threats. This impression is reinforced by a recent comment from Dr. Clemens, UNC–Chapel Hill’s new provost, whose controversial appointment was discussed above. In an interview conducted shortly after taking office, he said, “I think we owe it to our faculty to take some time to work on aligning our objectives with those of all the stakeholders and to make sure we’re doing what the state expects of us, because they send us a lot of money and we’d like to use it well.”<sup>68</sup> As the AAUP’s statement *On the Relationship of Faculty Governance to Academic Freedom* asserts, “While no governance system can serve to guarantee that academic freedom will always prevail, an inadequate governance system—one in which the faculty is not accorded primacy in academic matters—compromises the conditions in which academic freedom is likely to thrive.”

### **V. Institutional Racism**

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<sup>67</sup> Quoted in Michael Behrent, “‘Free Speech’ Policy Could ‘Chill’ Protected Speech on UNC Campuses,” *Academe Blog*, November 3, 2017, <https://academeblog.org/2017/11/03/free-speech-policy-could-chill-protected-speech-on-unc-campuses>.

<sup>68</sup> Logan Ward, “Advocate-in-Chief Chris Clemens Takes Office,” *The Well*, March 28, 2022, <https://thewell.unc.edu/2022/03/28/advocate-in-chief-chris-clemens-takes-office/>.



Everybody I know will leave here at the first opportunity. This place doesn't work for non-white people: we see it in faculty ranks, leadership, classes . . . . We always say 'UNC[–Chapel Hill] is a great place to be *from*.' It's developing a reputation of being hostile to faculty, especially non-white people. I plan to leave . . . . There is no commitment to racial equity.

We have a lot of issues touching on the history of race on campus. . . . In the wake of the George Floyd protests, they refused to rename a dorm named for someone invested in the sex-slave trade. During "Silent Sam" there were people on the board of governors calling for the monument to be resurrected after it was torn down. It is disheartening and intimidating to hear people who run the system say this. People on campus are mostly silent. Those of us who speak out are not the people who are promoted. There are very few people of color who are full professors . . . . There are no Black deans in our college; hard to imagine that path here. No deans have been outspoken in any way, shape, or form.

These statements by Black UNC faculty members interviewed by the special committee highlight the most significant issues, both cultural and structural, involving race in the UNC system. First and foremost is the issue of racial climate, displayed in the recent controversies over Silent Sam and the very public tenure debacle of Professor Hannah-Jones. Another is the issue of institutional inequities as manifested in the racial composition of the administration and faculty and in the distribution of power and authority. The final issue is retention of faculty and staff of color.

The UNC system is not unique in facing these challenges. Institutions of higher education across the country have been confronting similar issues, especially over the last few years, as a racial reckoning pushes institutions to reconcile their histories with their values and mission. This committee, however, does not believe that the frequency and intensity of challenges within UNC are merely reflective of a national trend. What we find uniquely alarming about the UNC system, and what has in part prompted this report, is the system leadership's consistent mishandling—and exacerbation—of race-related issues.

### **A. Racial Climate**

Understanding the racial climate at UNC requires the examination of two recent controversies, the first over Silent Sam and the second over the botched appointment of Professor Hannah-Jones to a tenured chair in the journalism school.

#### *1. Silent Sam*

Beginning in summer 2017, the UNC–Chapel Hill campus was thrust into a major conflict over a Confederate monument. The battle over the fate of the monument is significant, not only for what it reveals about contemporary attitudes toward the country’s racial history but also for what it suggests about institutional racism in the UNC system. The way the battle played out, furthermore, “sheds light on a regular dynamic in the UNC system, whereby the board of governors, with sticks and the occasional carrot, pressures campus chancellors to do its bidding,” to quote one of the faculty members who met with our committee.

Tensions surrounding the monument have a long history. A bronze statue of a Confederate soldier, later nicknamed Silent Sam, stood for 105 years on a platform at historic McCorkle Place, a location described as “the front door” of the university and “a position of honor.” Given to the university in 1909 by the United Daughters of the Confederacy, the statue was dedicated in 1913. In a speech delivered at the dedication, Julian Carr, a university trustee, local industrialist, and Ku Klux Klan supporter, praised Confederate soldiers for “sav[ing] the very life of the Anglo-Saxon race in the South.” He also fondly recalled the “pleasing duty” of how, as a young man, he once had “horse-whipped a negro wench until her skirts hung in shreds, because upon the streets of this quiet village she had publicly insulted and maligned a Southern lady and then rushed for protection to these University buildings where was stationed a garrison of one hundred Federal soldiers.”<sup>69</sup>

Silent Sam had attracted controversy for at least fifty years prior to its removal in 2018. In 1965, a discussion about the monument’s meaning and history filled the letters-to-the-editor section of the UNC–Chapel Hill student newspaper. Following the 1968 assassination of Dr. Martin Luther King Jr., the statue was vandalized with iridescent paint depicting a hammer and sickle. In the 1970s, Silent Sam was the site of several demonstrations by Black students. In 1971, the monument was defaced with paint following a basketball victory. Students again gathered by the statue after Los Angeles police officers were found not guilty in the 1992 Rodney King trial and once more in 1997 at a Martin Luther King Jr. Day march focusing on issues facing UNC housekeepers.

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<sup>69</sup> “Julian Carr’s Speech at the Dedication of Silent Sam,” <https://hgreen.people.ua.edu/transcription-carr-speech.html>. As of early this year one could still find the following innocuous description of the monument on the UNC–Chapel Hill website’s “landmarks” section: “Impressions of this monument are varied, ranging from the belief that it is a symbol of ongoing racial oppression to the belief that Sam is a symbol of regional pride, and cover most of the territory in between. . . . Nowadays, many students view Silent Sam as simply another place to sit on a warm spring afternoon, but the controversies that have surrounded him over the years invite those of us who have not seen to come and take a look, and those of us who have, perhaps to come and take another, and to remember the issues that have demanded the attention of Chapel Hill’s citizens throughout the years.” Graduate School at UNC–Chapel Hill, “Confederate Monument (‘Silent Sam’),” 2004, [https://gradschool.unc.edu/funding/gradschool/weiss/interesting\\_place/landmarks/sam.html](https://gradschool.unc.edu/funding/gradschool/weiss/interesting_place/landmarks/sam.html).

Efforts to protest Silent Sam in earnest began in 2011 when the Real Silent Sam Committee initiated a campaign to replace the monument's plaque with one that told "the true history of the confederate soldier."<sup>70</sup> In 2015, the statue became the site of repeated protests, with the words "Black Lives Matter," "KKK," and "murderer" painted on its base. That year the North Carolina General Assembly passed SL 2015-170, the Cultural History Artifact Management and Patriotism Act. The act states, "An object of remembrance [defined as 'monument, memorial, or work of art'] located on public property may not be permanently removed." The law does allow an object to be relocated, but only with the approval of the North Carolina Historical Commission and only "to a site of similar prominence, honor, visibility, availability, and access . . . within the boundaries of the jurisdiction from which it was relocated."<sup>71</sup>

Protests and calls to remove the monument intensified in August 2017, prompting UNC–Chapel Hill administrators to write the governor to ask for assistance, predicting that it was only a matter of time before the statue was toppled and warning of a risk to public safety. The board of governors condemned the request as a "wholly unacceptable unilateral decision" that should have been reviewed and approved by the entire board. The board said it would not have approved the administration's letter, which, it stated, "exuded a weakness and hand wringing that does not accurately reflect the Board's opinion about how the potential of campus unrest should be treated."<sup>72</sup> In the end, UNC–Chapel Hill officials were obliged to acknowledge that "any petition to the North Carolina Historical Commission requesting the removal of the statue would have to come from the UNC system board of governors," while also conceding that "that body has shown no public interest in doing so at this point."<sup>73</sup>

The 2017–18 academic year saw repeated demonstrations and rallies protesting the statue. In October, thirty-five professors from the law school posted a statement that included the following:

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<sup>70</sup> The Real Silent Sam blog, an early version of what later became the Real Silent Sam Committee, described itself as follows: "We are a coalition composed of students, faculty, and community members who are devoted to bringing historical accuracy to the physical and mental landscapes at the University of North Carolina at Chapel Hill and our surrounding communities. We do this with the understanding that historical precision is absolutely necessary in order to foster an anti-oppressive community, and a safe space that truly welcomes" (<https://realsilentsam-blog.tumblr.com>).

<sup>71</sup> Kasi E. Wahlers, "North Carolina's Heritage Protection Act: Cementing Confederate Monuments in North Carolina Landscape," *North Carolina Law Review* 94, no. 6 (2016): 2176–200.

<sup>72</sup> Jane Stancill, "UNC Board Members Criticize Leaders' Handling of Silent Sam Statue," *Raleigh News & Observer*, September 7, 2017, <https://www.newsobserver.com/news/local/education/article171704477.html>.

<sup>73</sup> Blake Hodge, "More UNC Faculty Join Call to Remove Silent Sam," *Chapelboro.com* (website of WCHL-AM, a Chapel Hill radio station), December 15, 2017, <https://chapelboro.com/news/unc/unc-faculty-join-call-remove-silent-sam>.

This disparaging and marginalizing symbol has no place at the core of an inclusive learning environment . . . [T]he message it sends undercuts the University's mission "to teach a diverse community of undergraduate, graduate, and professional students to become the next generation of leaders." Maintaining this monument undercuts the value of equality protected by North Carolina law and the United States Constitution. We note that federal law obliges the University to provide an inclusive learning environment free of racial hostility. . . . If the University remains uncertain of its legal ability to act, we ask it to seek a declaration in court to affirm UNC's right to remove the statue. This path would spare our students and faculty from the distraction, expense, and pain of suing their home institution.<sup>74</sup>

The following months saw many additional faculty statements, with one group of seventeen tenured professors declaring, "We do not fear arrest," and vowing that they would "remove the statue [them]selves if the Chancellor's office does not do so."<sup>75</sup> The statue was repeatedly defaced, and student activists posted documents online revealing that the university's police department had assigned an undercover officer to gather information on the protesters, a fact the administration confirmed. From July 1, 2017, to June 30, 2018, UNC-Chapel Hill spent \$390,000 on security for the monument, of which \$387,000 was spent on law enforcement personnel.<sup>76</sup> In an August 15, 2018, press release, the North Carolina Historical Commission stated that it had "received requests from private individuals to relocate the Silent Sam monument at the University of North Carolina at Chapel Hill, but ha[d] not received a petition from the university, the UNC system, or its governing body, the Board of Governors."<sup>77</sup>

On August 20, 2018, protesters pulled down the statue from its pedestal.<sup>78</sup> After the

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<sup>74</sup> "Undersigned Faculty Statement on Silent Sam," October 26, 2017, <https://web.archive.org/web/20180926160313/http://www.law.unc.edu/news/2017/10/26/faculty-statement-on-silent-sam>.

<sup>75</sup> Henry Reichman, "UNC Faculty to Chancellor: Remove 'Silent Sam' or We Will," *Academe Blog*, February 26, 2018, <https://academeblog.org/2018/02/26/unc-faculty-to-chancellor-remove-silent-sam-or-we-will>.

<sup>76</sup> Jane Stancill and Andrew Carter, "UNC Details Security Costs near Silent Sam for the Last Year," *Raleigh News & Observer*, July 12, 2018, <https://www.newsobserver.com/news/local/education/article214790180.html>.

<sup>77</sup> NC Department of Natural and Cultural Resources, "Confederate Monuments Study Committee and N.C. Historical Commission to Meet Aug. 22 in Raleigh," August 15, 2018, <https://www.ncdcr.gov/news/press-releases/2018/08/15/confederate-monuments-study-committee-and-nc-historical-commission>.

<sup>78</sup> The following account of Silent Sam draws heavily from posts on the *Academe Blog* and an unpublished account by Appalachian State University professor and North Carolina AAUP conference president Michael Behrent. Parts of the written account are incorporated here with Professor Behrent's permission.

statue's toppling, the board of governors directed Chancellor Folt and the campus board of trustees to come up with a plan for the statue's future. The chancellor, reportedly under considerable pressure from the board of governors, issued an August 31 statement declaring that "Silent Sam has a place in our history and on our campus . . . but not at the front door of a safe, welcoming, proudly public research university."<sup>79</sup> Board of governors chair Smith criticized the chancellor's remarks to a reporter, stating, "I was very disappointed in Folt's hasty release with such strong statements on her opinion on the relocation."<sup>80</sup> Republican politicians were also critical. House Speaker Tim Moore said, "There is no place for the destruction of property on our college campuses or in any North Carolina community; the perpetrators should be arrested and prosecuted by public safety officials to make clear that mob rule and acts of violence will not be tolerated in our state."<sup>81</sup>

Later that fall, on October 12, the UNC–Chapel Hill faculty council passed a resolution declaring that "returning the statue to the UNC–Chapel Hill campus would reaffirm the values of white supremacy that motivated its original installation" and "undermine the moral and physical security of all members of our community."<sup>82</sup> The resolution also endorsed a published statement signed by more than four dozen Black faculty members. "A symbol of racism, violence, and white supremacy," that statement concluded, "has no place on our twenty-first century campus often called the 'University of the People.'"<sup>83</sup>

On December 3, Chancellor Folt and the trustees, evidently seeking to placate the board of governors, proposed a plan for relocating the statue. Their plan, however, ignored the principles of shared governance exemplified in the faculty council's resolution. The chancellor and the trustees proposed establishing a "university history and education center" on campus, at an estimated cost of \$5.3 million, in which to house the statue.<sup>84</sup> The plan was immediately

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<sup>79</sup> University of North Carolina at Chapel Hill, "Message from Chancellor Folt on the Future of the Confederate Monument," August 31, 2018, <https://www.unc.edu/posts/2018/08/31/message-from-chancellor-folt-on-future-of-monument>.

<sup>80</sup> Jane Stancill, "UNC Chancellor Wants to Find a New Home for Silent Sam Confederate Statue—on Campus," *Raleigh News & Observer*, September 5, 2018, <https://www.newsobserver.com/news/local/article217660110.html>.

<sup>81</sup> Jane Stancill, "Some UNC System Chancellors Get Big Pay Raises, While Others Do Not," *Raleigh News & Observer*, November 9, 2018, <https://www.newsobserver.com/news/local/article221427200.html>.

<sup>82</sup> UNC Faculty Council, "Resolution 2018-5: On Supporting a Statement from UNC Black Faculty on the Permanent Removal of Silent Sam from Campus," October 12, 2018, [https://facultygov.unc.edu/files/2018/10/Res-2018-5\\_10.12.18.pdf](https://facultygov.unc.edu/files/2018/10/Res-2018-5_10.12.18.pdf).

<sup>83</sup> "Letter: UNC Black Faculty Call on the University to Permanently Remove Silent Sam," *Daily Tar Heel*, <https://www.dailytarheel.com/article/2018/09/letter-black-faculty-silent-sam-0907>.

<sup>84</sup> UNC Office of the Chancellor, "Message from Chancellor Carol L. Folt and Provost Robert A. Blouin: Update on the Confederate Monument," December 3, 2018, <https://chancellor.unc.edu/posts/2018/12/03/message-chancellor-carol-l-folt-update-confederate-monument>.

criticized by faculty members and students. As one UNC–Chapel Hill graduate student tweeted, “UNC will be the only institution to ERECT A CONFEDERATE MONUMENT IN 2019” (emphasis in original).<sup>85</sup>

At its December 14 meeting, the board of governors rejected the proposal. In explanation, Chair Smith said, “The \$5.3 million is, I think, pretty tough for a lot of us to swallow.”<sup>86</sup> Instead, the chair asked five board members to work with Chancellor Folt and the Chapel Hill trustees to develop another recommendation to the UNC board of governors.<sup>87</sup>

In January 2019, Chancellor Folt simultaneously announced her resignation and the removal of the base and other remnants of Silent Sam.<sup>88</sup> Many believed that the chancellor could make such a unilateral move regarding the statue only because she coupled it with her resignation.<sup>89</sup> The board of governors immediately moved to accelerate her departure, soon after which she assumed the presidency of the University of Southern California.

On November 27, 2019, the board of governors unveiled an agreement whereby the UNC system would pay the Sons of Confederate Veterans \$2.5 million to build an off-campus site for the statue. The announcement reportedly came two minutes after the Sons of Confederate Veterans filed suit against the system and its board. The agreement was widely criticized by university faculty members and students, who accused the board of making a backroom deal with white supremacists. “I don’t even have words for how insane this is. It’s like something out of a movie,” assistant professor of history William Sturkey told the campus newspaper. “Obviously, we should stop subsidizing the Confederacy.”<sup>90</sup> A graduate student tweeted, “UNC tried to build a \$5-million shrine for white supremacy on campus last year. Now they’re giving the statue back to the racists and spending \$2.5 million to build a shrine for them

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<sup>85</sup> Alyssa Ann Bowen, Twitter, December 3, 2018,

<https://twitter.com/AlyssaAnnBowen/status/1069604158968381440>.

<sup>86</sup> “UNC Board of Governors ‘Cannot Support’ \$5.3m Plan to House Silent Sam Statue on Campus,” *ABC 11 News*, <https://abc11.com/politics/unc-board-of-governors-cannot-support-trustees-silent-sam-plan/4897075>.

<sup>87</sup> University of North Carolina System, “University of North Carolina System Summary Regarding the November 21, 2019 Agreement between the University of North Carolina and the North Carolina Division of the Sons of the Confederate Veterans Made Pursuant to Settlement Agreement with the Daily Tar Heel,” February 1, 2021, <https://www.documentcloud.org/documents/20470096-unc-system-summary-on-silent-sam-deals>.

<sup>88</sup> University of North Carolina at Chapel Hill, “Chancellor Folt Announces Resignation, Orders Confederate Monument Pedestal to Be Removed Intact,” January 14, 2019, <https://www.unc.edu/posts/2019/01/14/folt-resignation-orders-confederate-monument-pedestal-removed>.

<sup>89</sup> Rick Seltzer, “More Division at UNC,” *Inside Higher Ed*, January 16, 2019, <https://www.insidehighered.com/news/2019/01/16/unc-board-moves-accept-folt-resignation-month-earlier-expected>.

<sup>90</sup> Maeve Sheehey, “‘It’s a Disgrace’: UNC Will Give Silent Sam to Sons of Confederate Veterans after Suit,” *Daily Tar Heel*, November 27, 2019, <https://www.dailytarheel.com/article/2019/11/silent-sam-settlement-1127>.

somewhere they won't need to deal with it, forcing other communities to face it."<sup>91</sup> No public meeting was held to discuss the settlement, nor was any public announcement of the lawsuit or potential deal made until it was consummated.

In December 2019, newly appointed interim chancellor Guskiewicz assured an appalled faculty council, "No, we were not asked to approve the board of governors' settlement, and therefore no, we were not consulted." However, documents released in February 2021 in response to a lawsuit by the *Daily Tar Heel* suggest otherwise. It turns out that Mr. Clayton Somers, vice chancellor for public affairs, was among four people who negotiated the deal. Before joining the UNC–Chapel Hill administration in 2017—in a new position created by the General Assembly—Somers had served as chief of staff to Republican house speaker Tim Moore.<sup>92</sup> Mr. Somers, two system attorneys, and Mr. Boyd Sturges, a lawyer for the Sons of the Confederacy, negotiated a settlement on November 21, 2019, days before the lawsuit was filed and before the chancellor denied to the faculty council that UNC administrators were involved.

"It's really disappointing to know that there was an upper-level UNC–Chapel Hill administrator who was involved in the . . . lawsuit and the idea of settling for \$2.5 million," said law professor Eric Muller, a member of UNC–Chapel Hill's faculty executive committee, who, as described previously in this report, would himself soon become a target of board of governors interference. "That [the interim chancellor] would continue in those discussions is surprising, given the university's values," Professor Muller added. "It's surprising that senior leadership, the chancellor, would maintain we had no involvement in it when it appears we did."<sup>93</sup> In February 2021, Chancellor Guskiewicz issued a statement to the campus correcting his earlier claim: "While I did not participate in the negotiations regarding any settlement, as I have previously stated, I was aware discussions were occurring through the UNC System."<sup>94</sup>

On February 12, 2020, after the statue and money had been handed over to the Sons of the Confederacy, the judge who had originally approved the settlement overturned it, noting that the deal had been reached before the lawsuit even existed and ruling that the Sons of the

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<sup>91</sup> Brock Read, "UNC Will Give Silent Sam to a Confederate Group—along with a \$2.5-Million Trust," *Chronicle of Higher Education*, December 1, 2019, <https://www.chronicle.com/article/unc-will-give-silent-sam-to-a-confederate-group-along-with-a-2-5-million-trust>.

<sup>92</sup> "Who Is Clayton Somers?," *Daily Tar Heel*, March 3, 2021, <https://www.dailytarheel.com/article/2021/03/opinion-middle-management>.

<sup>93</sup> Joe Killian, "New 'Silent Sam' Revelations Contradict Past Public Assurances Offered by UNC Chancellor Guskiewicz," *NC Policy Watch*, February 4, 2021, <https://ncpolicywatch.com/2021/02/04/new-silent-sam-revelations-contradict-past-public-assurances-offered-by-unc-chancellor-guskiewicz>.

<sup>94</sup> See Kate Murphy, "UNC Leader, under Fire, Discusses Silent Sam Deal. What We Know, What Questions Remain," *Raleigh News & Observer*, February 12, 2021, <https://www.newsobserver.com/news/local/education/article249194025.html>.

Confederacy lacked standing for the suit. The statue and most of the money (minus legal expenditures) were subsequently returned.<sup>95</sup>

The impact of the Silent Sam controversy on UNC's racial climate cannot be overstated. Strolling through campus on the way to one's office should be a mundane and uneventful occurrence. Yet many of our interviewees, especially faculty members of color, described the trauma they experienced in simply walking through campus and passing the various monuments and buildings named after Confederate soldiers and white supremacists. What is the effect on people of color—on their sense of belonging and safety, on their ability to work, teach, and learn—when their environment clearly signals a lack of interest in their well-being? Faculty members described a chaotic and unsafe campus during the Silent Sam debacle. One told the committee:

We had a public history crisis here around our Confederate monument, in the wake of Trump, a week after Charlottesville. It was the most frightening week on campus. . . . There were double rows of barricades in front of Silent Sam and a protest that morning, everybody wondering whether someone would run a car into the crowd like Charlottesville. There were police with sniper rifles across the street and police with riot gear on the ground; it was utterly fucking chaotic and terrifying. Multiple people with knives got pulled out of the crowd by police. Nothing happened. . . . Administration did nothing, nothing to help the community understand the history of the monument. There was just constant news coverage of ongoing sit-ins/protests. It was all really stressful, and people just wanted the university to say something. They are very lucky no one got hurt. We had some neo-Confederates bring guns onto campus in violation of policy, shaking hands with police. You wanted [the administration] to say this was immoral, that the KKK was immoral, that Jim Crow was immoral, but nobody said anything.

With the institution failing to address these injustices, the work of grappling with the racial climate, the racial inequities, and the history of these monuments and building names fell to faculty members at UNC–Chapel Hill, already stretched thin as students sought them out for counsel and media outlets solicited their comments. Faculty members found themselves also having to devote time to developing new courses to address the crises that engulfed their campus. Yet, as some informed the investigating committee, they were compensated pitifully no matter how highly enrolled their courses or how precarious their own sense of security as they

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<sup>95</sup> Francie Diep, "UNC's Silent Sam Settlement Sparked a Backlash. Now a Judge Has Overturned the Deal," *Chronicle of Higher Education*, February 12, 2020, <https://www.chronicle.com/article/uncs-silent-sam-settlement-sparked-a-backlash-now-a-judge-has-overturned-the-deal>.



addressed these fraught issues in their classrooms. As one faculty member explained to the committee: “I had to be very buttoned up when I was teaching that course. Everything had to be airtight. I talked with the dean about the possibility that white nationalist protesters might try to shut us down. We decided we didn’t have to have security there at all times, but it was a concern. . . . I got paid \$2,500 for that class; at the end of all that, they [were willing to] give \$2.5 million to a white nationalist organization for the statue’s preservation. I certainly struggled with my mental health around this; I lost an academic year to it. I will never forget or forgive that stuff.”

Indeed, Silent Sam was still very much present in the minds of the faculty members and administrators with whom this committee spoke. Moreover, the damage that the \$2.5-million deal caused to the sense of trust and belonging of people of color may well be irreparable.

## 2. Professor Nikole Hannah-Jones

Professor Hannah-Jones is a star UNC–Chapel Hill graduate; the founder of the Ida B. Wells Society for Investigative Reporting, housed at the university’s Hussman School of Journalism and Media; and a 2017 MacArthur Fellowship (“genius grant”) recipient. Her widely celebrated work on the 1619 Project focused on reframing “the country’s history by placing the consequences of slavery and the contributions of black Americans at the very center of our national narrative.”<sup>96</sup> In 2020, the work won a Pulitzer Prize.<sup>97</sup> For several years, Hussman School dean Susan King had been attempting to recruit Professor Hannah-Jones to the faculty, but it was not until 2020, when the dean raised the possibility of appointing her to an endowed chair—the Knight Chair in Race and Investigative Reporting—that Professor Hannah-Jones accepted the invitation to apply. She thus began the “rigorous tenure process” described in her July 6, 2021, statement, “Decision to Decline Tenure Offer at University of North Carolina–Chapel Hill and to Accept Knight Chair Appointment at Howard University”: “As part of the months-long tenure process, I had to write a teaching statement, a creative statement, and a service statement. I had to teach a class while being observed by faculty. Dean King solicited letters to assess my portfolio of work and professional accomplishments from several academic experts in the field of journalism whom I did not personally know. I presented to the journalism faculty. Following these steps, my tenure was put to vote by all the full professors of the journalism school, who were overwhelmingly in support.”<sup>98</sup>

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<sup>96</sup> “The 1619 Project,” *New York Times*, August 14, 2019, <https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html>.

<sup>97</sup> See Jake Silverstein, “Why We Published the 1619 Project,” *New York Times Magazine*, December 20, 2019, <https://www.nytimes.com/interactive/2019/12/20/magazine/1619-intro.html>.

<sup>98</sup> National Association for the Advancement of Colored People Legal Defense Fund, “Nikole Hannah-Jones Issues Statement on Decision to Decline Tenure Offer at University of North Carolina–Chapel Hill

Following the majority vote of the tenure and promotion committee, her candidacy was to be presented as part of a slate of tenure candidates to the UNC–Chapel Hill board of trustees.<sup>99</sup> According to her July 6, 2021, statement, “The day of the [November] Trustees meeting, we waited for word, but heard nothing. The next day, we learned that my tenure application had been pulled but received no explanation as to why. The same thing happened again in January [at the January 28 trustees meeting]. Both the university’s Chancellor and its Provost refused to fully explain why my tenure package had failed twice to come to a vote or exactly what transpired.”

Professor Hannah-Jones’s credentials, Dean King’s glowing assessment of her tenure package as “the best” she had ever seen, and widespread faculty and administrative support were not enough to persuade the trustees to vote to approve her appointment with tenure. It was subsequently revealed that the board’s decision not to review her candidacy was prompted by the intervention of Mr. Duckett, chair of the board’s university affairs committee, who had raised “questions for clarification about [Professor Hannah-Jones’s] background” and “suggested more time and postponed the review to consider those questions and her overall application.”<sup>100</sup> In his written comments on the prepublication draft of this report, Mr. Duckett disputed Professor Hannah-Jones’s characterization of the timing of events: “The tenure issue for Ms. Jones did not come before the board in November and was not on our docket. I delayed the vote on the January meeting only and agreed to take it up in March once questions were answered. Once questions were answered, votes were held. This was true in her case, too. The inconvenient truth is that questions were not answered until the vote came forward in June.”<sup>101</sup>

Opposition to the appointment of Professor Hannah-Jones had been growing quietly since the summer, generated by *Arkansas Democrat-Gazette* publisher Walter Hussman Jr.,

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and to Accept Knight Chair Appointment at Howard University,” press release, July 6, 2021, <https://www.naacpldf.org/wp-content/uploads/NHJ-Statement-CBS-7.6.21-FINAL-8-am.pdf>.

<sup>99</sup> Under UNC–Chapel Hill policy, candidates for tenure must be reviewed and recommended at the “Departmental and School levels,” reviewed and recommended by the tenure and promotion committee, and reviewed and recommended by the provost, after which the slate of tenure candidates is submitted to the University Affairs Committee of the board of trustees, which is “charged with reviewing” the provost’s recommendations. University of North Carolina at Chapel Hill, Academic Personnel, “Dossier: Format for Tenure Track or Tenured Faculty Review,” <https://academicpersonnel.unc.edu/policies-and-procedures/faculty-appointments/dossier-format-for-tenure-track-or-tenured-faculty-review>.

<sup>100</sup> “UNC-CH Officials Discuss Controversy over Tenure Decision,” *WRAL-TV*, May 20, 2021, <https://www.wral.com/uncch-officials-discuss-controversy-over-tenure-decision/19688143>.

Commenting on the draft text of this report, Mr. Duckett wrote that in reviewing Professor Hannah-Jones’s tenure recommendation, the board “never, ever discussed race. . . . Not a single professor up for tenure during the eight years I was on the board prior to this was offered tenure that had not taught.”

<sup>101</sup> For the timeline of events, see Joe Killian, “Deadline Set for Lawsuit in Nikole Hannah-Jones Tenure Controversy,” *North Carolina Policy Watch*, May 29, 2021, <https://pulse.ncpolicywatch.org/2021/05/29/pw-exclusive-deadline-set-for-lawsuit-in-nikole-hannah-jones-tenure-controversy>, which notes that the case was on the board’s November docket.

who in 2019 had donated \$25 million to the UNC–Chapel Hill journalism school, which was then renamed in his honor. Mr. Hussman had numerous concerns about Professor Hannah-Jones. According to email messages he wrote to top administrators, including Chancellor Guskiewicz, vice chancellor for development David Routh, and Dean King, one of his concerns was Professor Hannah-Jones’s support for payment of reparations to Black Americans.<sup>102</sup> Worth quoting at length is Mr. Hussman’s September 16, 2020, message to the three administrators:

I do not dispute Nicole Heather-Jones [*sic*] having her convictions in favor of reparations, nor do I dispute her right to advocate for it as strongly as possible. But I believe giving her a platform to argue for this as a tenured professor in the journalism school will not be beneficial, but instead detrimental, to the school. I believe it will be detrimental because it will be so controversial, contentious, and divisive. I worry that because she is already somewhat of a celebrity, reparations will become what the school is primarily known for with the public. She will still be a writer for the *New York Times*, living in New York, and can advocate for reparations there. But she will also be able to advocate it at the journalism school, too. No one knows exactly what she will say in the future. But she could be fired from the *New York Times*. But as I understand it, she could not be fired as a tenured professor.<sup>103</sup>

Mr. Hussman subsequently sent at least four lengthy messages to administrators and trustees addressing his “concerns” with the 1619 Project, chief among them its “controversial claim” that “the purpose of the American Revolution was not independence from England but rather to perpetuate slavery.”<sup>104</sup>

The wealthy publisher was not alone in his opposition to the journalist’s appointment—and to the 1619 Project—which was rapidly becoming a flashpoint for highly politicized debates about US history, race, and slavery.<sup>105</sup> It also became the impetus for

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<sup>102</sup> Nikole Hannah-Jones, “What Is Owed,” *New York Times*, June 30, 2020, <https://www.nytimes.com/interactive/2020/06/24/magazine/reparations-slavery.html>.

<sup>103</sup> Walter Hussman to David Routh, Kevin Guskiewicz, Susan King, September 16, 2020, [https://www.documentcloud.org/documents/21031143-20210531-\\_-mccconnell-\\_-response-07302021-encl-1](https://www.documentcloud.org/documents/21031143-20210531-_-mccconnell-_-response-07302021-encl-1).

<sup>104</sup> Hussman to Kelly Hopkins, November 2, 2020, [https://www.documentcloud.org/documents/21031143-20210531-\\_-mccconnell-\\_-response-07302021-encl-1](https://www.documentcloud.org/documents/21031143-20210531-_-mccconnell-_-response-07302021-encl-1). For more on Hussman’s criticism of the 1619 Project, see John Drescher, “Nikole Hannah-Jones, a Mega-Donor, and the Future of Journalism,” *The Assembly*, May 30, 2021, <https://www.theassemblync.com/long-form/nikole-hannah-jones-a-mega-donor-and-the-future-of-journalism>, and Jack Stripling, “How Chapel Hill Bungled a Star Hire,” *Chronicle of Higher Education*, July 6, 2021, <https://www.chronicle.com/article/how-chapel-hill-bungled-a-star-hire>.

<sup>105</sup> The committee is aware that some historians have criticized elements of the 1619 Project. The task of this committee was not to evaluate the merits of her work or critiques of it, but to ask what went wrong

conservative legislators in various states to introduce bills to ban or otherwise circumscribe teaching about racism in American history and society. Conservative groups with ties to the UNC board of governors, among them the James G. Martin Center for Academic Renewal (formerly the John W. Pope Center for Higher Education Policy), called on the UNC–Chapel Hill board of trustees to block her appointment. If they were unwilling to do so, a Martin Center columnist opined, then the UNC board of governors should amend system policies to require that every faculty appointment be vetted by each campus’s board of trustees.<sup>106</sup> Two members of Congress from North Carolina, Ms. Virginia Foxx and Mr. Greg Murphy, also attempted to block the appointment because of Professor Hannah-Jones’s work on the 1619 Project. In a May 5, 2021, letter to Chancellor Guskiewicz, they wrote that “her portrayals of ‘White America’ are purposely divisive, a characteristic that objectively questions her ability to lead a program at UNC.”<sup>107</sup>

In February 2021, the administration offered Professor Hannah-Jones a term contract with an opportunity for tenure review at the end of five years, which, according to her own account, she signed. As she subsequently wrote in her July 6 statement, “I was the first Black Knight Chair at UNC since the position was founded and the only one to be appointed without tenure. I would come to learn that not only had there been political interference, but the school’s top donor had been lobbying against me and questioning my credentials and integrity as a journalist. I was determined to remain silent and to not comment to the press or to engage in the controversy, even as the man whose name is on the school of journalism where I would work continuously impugned my character and my work in the media.”

Dean King informed our committee that, concerned that the university might lose Professor Hannah-Jones, the provost and chancellor made the “bold move in light of the opposition on many fronts” to offer her an untenured position as professor of the practice, an offer Dean King had approved. According to the two former board members interviewed by this committee, once that deal was struck, there was nothing for the board to do, as board members do not review proposed non-tenure-track faculty appointments.<sup>108</sup> Thus, after the contract was

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after the positive tenure recommendations of the school of journalism’s review committee, the school’s faculty, the university review committee, and the campus administration.

<sup>106</sup> Shannon Watkins, “UNC’s 1619 Project Hire: A Case Study of Failed University Governance,” May 10, 2021, <https://www.jamesgmartin.center/2021/05/uncs-1619-project-hire-a-case-study-of-failed-university-governance>.

<sup>107</sup> Matt Shuham, “GOP Reps Objected to Nikole Hannah-Jones’s Hiring in Letter to UNC Chancellor,” *Talking Points Memo*, August 3, 2021, <https://talkingpointsmemo.com/news/gop-reps-objected-to-nikole-hannah-jones-hiring-in-letter-to-unc-chancellor>.

<sup>108</sup> In fall 2021, in a move that was widely viewed as a reaction to the Hannah-Jones fiasco—“this is the Nikole Hannah-Jones amendment,” said one interviewee—the board of trustees approved a new resolution expanding their purview over non-tenure-track appointments and removing the authority from

signed, the board of trustees was no longer considering Professor Hannah-Jones's appointment.

When the board's decision became public in May 2021, many Chapel Hill faculty members expressed anger and disbelief. Dean King warned of its "chilling effect," while fifty journalism school faculty members signed on to a statement in which they pronounced themselves "stunned" by the failure to offer a tenured appointment to Professor Hannah-Jones, notwithstanding faculty and administration support and in violation of "long-standing norms and established processes relating to tenure and promotion."<sup>109</sup>

On May 25, the university's faculty personnel committee resubmitted Professor Hannah-Jones's tenure application to the Chapel Hill board of trustees. After another month's delay and much public pressure, the trustees finally voted during a June 30 special meeting to grant Professor Hannah-Jones tenure on appointment. She declined the offer, however, opting instead to accept a Knight Chair appointment with tenure at Howard University. As she explained in her July 6 statement, "How could I believe I'd be able to exercise academic freedom with the school's largest donor so willing to disparage me publicly and attempt to pull the strings behind the scenes?" She refused, she concluded, to accept an appointment at a university "whose leadership permitted this conduct and has done nothing to disavow it."

As Professor Hannah-Jones suggested in the previously quoted sentences, the outside role played in her situation by publisher Hussman, "the school's largest donor," was fraught with troubling implications. Although the details remain obscure, it appears that he may have had access to confidential information in Professor Hannah-Jones's tenure file, empowering his damaging interference.<sup>110</sup> Moreover, the controversy shed new light on the terms of his donation. Although those terms were confidential, the media soon learned through a leak that one condition required the university to engrave "the core value statement" of Mr. Hussman's *Arkansas Democrat-Gazette* on a granite wall in "within the lobby of the UNC School of Media

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school deans to make appointments to highly paid (more than \$100,000) positions of more than three years duration. The board instead delegated this authority to the chancellor ("UNC—Chapel Hill Trustees Set New Power, Pitch Higher Tuition," *WUNC Public Radio*, November 5, 2021, <https://www.wunc.org/education/2021-11-05/unc-chapel-hill-trustees-set-new-power-pitch-higher-tuition>).

<sup>109</sup> "Stunned: UNC Hussman Faculty Statement on Nikole Hannah-Jones," May 19, 2021, <https://hussmanfaculty.medium.com/stunned-unc-hussman-schfaculty-statement-on-nikole-hannah-jones-6333c5f5d072>. Some Hussman School faculty members interviewed by this committee expressed the view that Dean King did not initially understand the problematic nature of the deal she had helped broker for Professor Hannah-Jones. Once she understood the gravity of appointing Professor Hannah-Jones without also granting her tenure, the dean changed her mind about the appropriateness of the non-tenure-track offer.

<sup>110</sup> Joe Killian, "UNC Questioning Professors, Accessing Emails in Hussman Contract Probe," *NC Policy Watch*, August 4, 2021, <https://pulse.ncpolicywatch.org/2021/08/04/breaking-unc-questioning-professors-accessing-emails-in-hussman-contract-probe>.

and Journalism.” While that condition understandably rankled many faculty members, who wondered who had authorized endorsing a private publication’s policy statement as the school’s own, they found the administration’s response even more troubling—the initiation of an investigation into the source of the leak.<sup>111</sup> Our committee was told that, before the investigation was quietly dropped, efforts had begun to investigate the electronic records of at least two faculty members. A news report, however, revealed that the investigation covered as many as twenty-two additional faculty members and included not just reviews of these faculty members’ emails but inspections of their backup electronic storage systems.<sup>112</sup>

The fallout from the Silent Sam controversy and the Hannah-Jones tenure case has been significant. These two events, while specific to UNC–Chapel Hill, reverberated throughout the system and, according to our sources, sent a message to faculty members of color across the system, making them feel unwelcome, undervalued, and insecure. In interviews with this committee, faculty members from other system campuses named these two events as shaping their sense of belonging and security. Faculty members were not alone in experiencing the adverse impact of these events. In the days leading up to the final tenure decision on Professor Hannah-Jones, UNC–Chapel Hill student body president Lamar Richards (a voting member of the board of trustees who had called for the special meeting of the board to reconsider the Hannah-Jones case), wrote an open letter to the UNC community.<sup>113</sup> It reads, in part,

The sincerest thing I can share with each of you is that Carolina is not prepared. . . . for the “reckoning” of which it continues to speak, and it is certainly not prepared to face the reality of having to undo the entire system upon which it was built—and rebuild.

Until this rebirth occurs, Carolina is not deserving of your talents, aspirations, or successes. If you are a student, staff member, or academic from a historically marginalized identity exploring UNC, I invite you to look elsewhere. If you are considering graduate school, law school, medical school, or other

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<sup>111</sup> “UNC to Open Investigation on ‘Leak of Confidential Information’ Regarding Hussman’s Donor Agreement,” <https://abc11.com/walter-hussman-jr-unc-school-of-journalism/10892266>. Although faculty groups were working with school leadership to find a way to honor that agreement, but also to contextualize it, they were informed in February 2022 that any decision on how the values statement would be displayed was strictly up to the campus administration and that the terms of the agreement would be fulfilled.

<sup>112</sup> See Joe Killian, “Documents Show New Details in ‘Sweeping and Disturbing’ UNC-Chapel Hill Faculty Investigation,” *NC Policy Watch*, April 6, 2022, <https://pulse.ncpolicywatch.org/2022/04/06/documents-show-new-details-in-sweeping-and-disturbing-unc-chapel-hill-faculty-investigation>.

<sup>113</sup> Lamar Richards, “Chapel Hill Student Body President: It’s Past Time for a Genuine Reckoning at UNC,” *NC Policy Watch*, June 17, 2021, <https://ncpolicywatch.com/2021/06/17/chapel-hill-student-body-president-its-past-time-for-a-genuine-reckoning-at-unc>.

professional programs at UNC, I challenge you to seek other options. While Carolina desperately needs your representation and cultural contributions, it will only bring you here to tokenize and exploit you. And to those that will attempt to misconstrue these words—my words—understand this: I love Carolina, yes, but I love my people and my community more.

As we will see in greater detail below, these sentiments are shared by many in the UNC community. While more than these two events have contributed to the deteriorating racial climate at UNC, they should be seen as vivid examples of the larger pattern of issues facing the system.

Various groups have been demanding for several years that the UNC system and individual campuses address the racial climate. In June 2020, a group of Black faculty members, Indigenous faculty members, and other faculty members of color at UNC–Chapel Hill put together what they termed the Roadmap for Racial Equity.<sup>114</sup> The Carolina Black Caucus, alongside the Racial Equity Task Force, which was appointed by the board of governors in 2020, specifically asked for the launching of a racial climate study.<sup>115</sup> Based on our interviews, the special committee understands that no such study has been launched.

### ***B. Power, Leadership, and Institutional Inequities***

The people of the state of North Carolina fund our universities, but the people that lead them are only the wealthy elites. It was founded largely to educate wealthy, white, slave-owning children, and, basically, wealthy whites still run everything.<sup>116</sup>

While the two controversies discussed in the preceding section illustrate the climate at UNC–Chapel Hill, institutional forms of racism pervade the system. Institutional racism is not about individual mistreatment (though the committee heard considerable evidence of that). It is, rather, about systemic forms of inequity with regard to the distribution of power, privilege, and resources.

Given the state of governance in the UNC system and the growing power of the system board of governors and campus boards of trustees, it becomes imperative to look at the racial

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<sup>114</sup> “Black Faculty, Faculty of Color, and Indigenous Faculty Roadmap for Racial Equity at the University of North Carolina at Chapel Hill,” June 22, 2020, <https://docs.google.com/document/u/1/d/e/2PACX-1vQhpLlf5nWdUzTeDCAB9wtS-cBd-Bk0V4uPllmEH5zwH6vszmXigDIUV3MmMAcwwkPzPEWRxzihZrn9/pub>.

<sup>115</sup> The Carolina Black Caucus (<https://www.unccbc.com>) was formed in 1974, with the mission to “advocate for, engage, and empower UNC Black Faculty and Staff.”

<sup>116</sup> William Sturkey, an associate professor of history at UNC-Chapel Hill, quoted in “Imminent Nikole Hannah-Jones Decision Brings UNC Board’s Diversity Issues to Light,” *WRAL-TV*, June 29, 2021, <https://www.wral.com/imminent-nikole-hannah-jones-decision-brings-unc-board-s-diversity-issues-to-light/19749069>.

composition of the boards and ask whose interests these bodies represent—and serve. As recent reports reveal, trustees at colleges and universities in the country remain mostly white and male,<sup>117</sup> and, as student and faculty populations diversify, students and faculty members often find themselves at odds with the values and agendas of their institutions' governing boards.<sup>118</sup> It is worth emphasizing that it was a student who finally brought about the board vote on a tenured appointment for Professor Hannah-Jones.

The composition of the boards of trustees and the board of governors in the UNC system has been the subject of many open letters, petitions, statements, and task force reports by faculty members, staff, and students. The Racial Equity Task Force, appointed by the board of governors in 2020 to examine issues of race and racism within the UNC system, recommended diversifying the board of governors and boards of trustees, having found that 68 percent of all UNC trustees were white. This number increased to 84 percent when the system's six historically minority serving institutions (HMSI) are excluded. The percentage of African Americans on UNC boards of trustees is 26 percent at all institutions and 12 percent with the HMSI excluded. All other racial categories are under 2 percent systemwide.<sup>119</sup> In addition, according to several faculty members who spoke to our committee, more and more frequently new appointees to the boards have had little to no academic experience, their ties to local politicians and wealthy families having evidently been a more important consideration. As this report has illustrated, once installed, board members can exercise their authority to appoint friends and supporters to administrative positions within the university system. Given the racial makeup of North Carolina's Republican-controlled General Assembly and its successful efforts to ensure even less diversity within that body, these structural means of excluding people of color from positions of power will likely endure.<sup>120</sup> In the statement explaining her decision to decline the UNC-Chapel Hill tenure offer, Professor Hannah-Jones offered the following advice to the university's leaders: "Advocate to change the role that the Boards of Trustees and the

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<sup>117</sup> Jack Stripling, "As Race Looms Large, College Trustees Remain Mostly White," *Chronicle of Higher Education*, December 2, 2021, <https://www.chronicle.com/article/as-race-looms-large-college-trustees-remain-mostly-white>.

<sup>118</sup> As of July 2021, nine out of thirteen members of the board of trustees at UNC–Chapel Hill are white, a notable decrease from eleven out of thirteen in June 2021. However, the political orientation of the board remains conservative. See Kyle Ingram, "New Members Join UNC Board of Trustees, Shifting Demographics but Likely Not Ideologies," *NC Policy Watch*, July 8, 2021, <https://ncpolicywatch.com/2021/07/08/new-members-join-unc-board-of-trustees-shifting-demographics-but-likely-not-ideologies>.

<sup>119</sup> University of North Carolina System, *UNC System Racial Equity Task Force Final Report*, December 16, 2020, <https://www.northcarolina.edu/wp-content/uploads/unc-system-images/racial-equity/unc-system-racial-equity-task-force-final-report.pdf>.

<sup>120</sup> Lynn Bonner, "GOP Legislative Maps All but Assure a Less Racially Diverse General Assembly," *NC Policy Watch*, November 11, 2021, <https://ncpolicywatch.com/2021/11/11/gop-legislative-maps-all-but-assure-a-less-diverse-general-assembly>.



Board of Governors have over faculty governance and commit to respecting faculty governance and academic freedom at this institution. This requires a change to the way the boards are appointed so that they actually reflect the demographics of the state and the student body, rather than the whims of political power.” This committee concurs. While increased diversity of representation in leadership is not by itself sufficient to bring about meaningful structural change, it is nonetheless a critical step toward advancing racial equity.

In addition to the composition of the board of governors and boards of trustees, a related issue is whether faculty members of color can move into positions of leadership and authority within their institutions. The Racial Equity Task Force found that “almost half of the employees surveyed by the task force believe there is not equitable access to leadership and promotion opportunities. Four in ten faculty members and staff feel opportunities for leadership roles, tenure track, or promotions are, at best, ‘only sometimes’ equitable.”<sup>121</sup> Echoing similar concerns, the 2020 Roadmap for Racial Equity (endorsed by 145 of the university’s Black and Indigenous faculty members along with other faculty members of color) observed that 86 percent of UNC–Chapel Hill’s leadership is white. In her statement about declining UNC’s tenure offer, Professor Hannah-Jones noted that she would have been only the second Black woman to be granted tenure in the seventy-year history of the university’s school of journalism and the first Black woman to attain the rank of full professor. And, as she also noted, “Black women account for just 1.9 percent of tenured faculty at UNC[–Chapel Hill], and Black professors together account for just 5 percent in a state that is 22 percent Black and at a university where the student body is 11 percent Black.” Clearly the lack of equitable representation in the faculty ranks is a problem not confined to a few specific cases; these demographic data indicate that racism and inequity in the UNC system are systemic.

What limits the ability of faculty members of color to enter and advance in the UNC system? According to one interviewee,

Part of the difficulty is that UNC has a mom-and-pop quality to it. There’s a desire to hire people who get the “Carolina Way” and all that that entails. The chancellor, the board of governors, etc., utilize that in a means to suppress any leadership that might appropriately challenge certain things. . . . [W]ithin departments, across campus, morale is very low. . . . It’s a very inbred system in terms of who’s hired to be chancellor, provost, etc. It’s intentional, meant to allow the board of governors and boards of trustees to continue to call the shots. . . . [And by “Carolina Way”] I

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<sup>121</sup> The Racial Equity Task Force in conjunction with a consultant firm launched a systemwide survey of students and employees to gather their perspectives on issues of racism and equity. More than 16,000 students and employees completed the survey.

mean someone who bleeds Carolina blue. It's somebody who is typically a graduate or otherwise connected with the university. Of course, that usually has a race and gender connotation to it, . . . and usually it's a preference for a white man in the mold of the Carolina Way, often passing up people who might be more qualified or dynamic. It's someone who's not going to make too many waves.

The "mom-and-pop" quality is, in other words, a continuation of the good old (white) boys' network that is a part of UNC's past and present. One Appalachian State professor told the committee that "the plantation model of governing is alive and well" in the UNC system. "They hire managers, not leaders," he said, adding, "The fish rots from the head."

Faculty members of color find themselves in a bind: they could agitate against what they perceive to be a racist and inequitable system, hoping thereby to change it, but in doing so they may jeopardize their own chances at advancement within the system, where they could work to overcome structural forms of inequity. That certain groups have limited access to positions of authority within the UNC system reinforces systemic forms of racism and exclusion. For these reasons, faculty members and students have proposed better ways to recruit and fill leadership positions. The Roadmap for Racial Equity, for example, includes the following recommendations:

- Institute policies to ensure that all administrative positions involve searches, rather than ad-hoc appointments. Interim administrative appointments should include a search before a permanent appointment is made. All administrative searches should follow established best practices.
- Create set terms and term limits for positions such as department chair and senior associate dean to ensure that historically underrepresented faculty have access to leadership positions.

These seemingly simple recommendations can disrupt a system that rewards being well connected and compliant to authority, a system in which patterns of cronyism ensure that faculty members who have challenged past practices, filed grievances, and demanded that the institution and its leaders be held to a higher standard are rarely appointed to positions of authority enabling them to bring about meaningful change. Such a system adds to the burdens facing faculty members, especially faculty members of color, who engage in uncredited labor trying to make their workplaces more inclusive and more tolerable for themselves, colleagues, students, and staff at the expense of their own personal advancement.

At other times, faculty members engage in meaningful effort only for their accomplishments to be undone by those in authority. Such occurrences speak to the way that

decision-making power is consolidated at the top in the UNC system—with the result that hours, days, and even years of labor can be rendered meaningless with the stroke of a pen or click on a keyboard. The demise of the Campus Safety Commission at UNC–Chapel Hill provides an example. Formed by Chancellor Guskiewicz in April 2019, the commission was charged with addressing the “crisis of trust” that the institution was facing, especially after the events regarding Silent Sam. On August 9, 2021, members of the commission wrote asking the chancellor to dissolve it, offering the following explanation:

We have played virtually no role in the most significant threat to campus safety in a generation: [the] University[’s] response to the Covid pandemic. . . .

We stand by as we witness an accelerating stampede of faculty and staff of color decide that Carolina is not a hospitable place for them to pursue their talents and move on to greener pastures.

We know that the work we have done during the past two years has been valuable. Marginalized students and community members who have not felt welcomed at Carolina have found a voice with us. . . . But the Commission’s hard work in listening and talking cannot provide a counterpoint to harmful actions of other actors on campus and beyond.

Our University’s governance structure is in crisis. . . . We cannot work only with your administration here at the Chapel Hill campus in order to resolve the issues of trust that plague us. But we have no access to nor influence over the actors who are nonetheless part of the UNC governance structure and whose actions have created the crisis of trust that is only deepening. As the problem is greater than our campus, so the solution must be as well.<sup>122</sup>

A systemwide initiative—the Racial Equity Task Force discussed above—represented another instance of co-opted effort. Although it might have been a step toward identifying problems and offering solutions for the entire system, the experience of the task force, as one of its members informed this committee, was “most frustrating.” What should have been an attempt at addressing and fixing issues related to race quickly became a form of what some faculty participants characterized as “appeasement.” As an example, they cited the task force recommendation to create a cabinet-level position in the system office for a diversity, equity, and inclusion (DEI) officer who would report directly to the system president. Instead, the system administration

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<sup>122</sup> Campus Safety Commission to Chancellor Guskiewicz, August 9, 2021, <https://s3.amazonaws.com/snwceomedia/dth/fefdc6f-356d-433e-8a94-a10e6a8d808d.original.pdf>.

created a staff-level human resources position with a DEI title. “The system does not do what it needs to do to effect real change,” said a task force member, a sentiment repeated by several others.

Finally, no discussion of institutional racism and inequity in the UNC system can overlook the specific challenges facing the system’s historically minority serving institutions. The pressures of budget cuts, deferred maintenance, low salaries, and increased workloads (heavier teaching schedules, more advising and mentoring to ensure “student success”) have created added burdens on faculty members at these institutions who, they say, are then subject to criticism for their supposedly lower research productivity. In addition, until recently the system had a long-standing policy of restricting out-of-state enrollment to no more than 18 percent, which disproportionately affected HMSIs. “Elizabeth City State University is very close to Virginia, but it cannot recruit many students from Virginia’s heavily populated Tidewater region,” explained one interviewee.

In April 2021, the board of governors amended this policy to allow HMSIs to recruit up to 25 percent of their students from out of state.<sup>123</sup> And there are additional promising developments for these institutions. The state is now investing in some long-overdue physical facilities repairs and funding the tuition-lowering NC Promise,<sup>124</sup> which, although controversial initially, has created much-needed improvement in institutional circumstances, especially for Elizabeth City State University.<sup>125</sup>

In general, however, legislative budget-cutting trends suggest that UNC will be forced more and more to recruit from wealthier families. The *Raleigh News & Observer* reports that per-student appropriations for higher education in North Carolina decreased by 13 percent between 2008 and 2020, when adjusted for inflation. The US average in that same time period was just a 2 percent decrease. . . . Despite tuition freezes and the implementation of NC Promise, the out-of-pocket cost of attending college has increased dramatically, most of all for low-income families. Between 2008 and 2020, the average net price of tuition at UNC System universities increased by nearly 120 percent for families at the bottom of the

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<sup>123</sup> “Policy on Non-Resident Undergraduate Enrollment,” UNC Policy Manual 700.1.3., Adopted April 7, 2022, <https://www.northcarolina.edu/apps/policy/doc.php?id=789>.

<sup>124</sup> According to the UNC system website, “Through NC Promise, the State Has Significantly Reduced Student Tuition Cost to \$500 per Semester at Three UNC System Institutions: Elizabeth City State University, the University of North Carolina at Pembroke, and Western Carolina University.” Two of these (Elizabeth City State University and University of North Carolina at Pembroke) are HMSIs (<https://www.northcarolina.edu/future-students/nc-promise>).

<sup>125</sup> Sarah Brown, “Model or Fluke?” *Chronicle of Higher Education*, January 13, 2022, <https://www.chronicle.com/article/model-or-fluke>.

income distribution, data show, compared to just 17 percent for those at the top. The average net price of tuition represents what a family actually pays for college: tuition, fees, housing, books and supplies, minus any financial aid or scholarships. Tuition freezes didn't stop the UNC System from imposing fee increases over the years, and the rising cost of living has significantly outpaced any increases in household income.<sup>126</sup>

Given the overlap between racial and class inequality in the United States in general and North Carolina in particular, the above findings have significant implications for those whom the UNC system serves—specifically, for the kinds of inequalities the system reinforces, in society at large and within its own institutional structure.<sup>127</sup>

### **C. Retention of Faculty Members of Color**

Given the issues discussed above, it should come as no surprise that almost everyone with whom this committee spoke expressed concern regarding the system's ability to retain talented faculty members, particularly talented faculty members of color. We heard repeatedly that faculty morale is at an all-time low. As one example, two of the most prominent names associated with the work of the Roadmap for Racial Equity, Professors Malinda Maynor Lowry and Kia Caldwell, left UNC–Chapel Hill in 2021. According to a North Carolina Public Radio story on the departures of prominent faculty members of color from UNC–Chapel Hill over the last two years, Professor Lowry, a North Carolina native, was the only Indigenous female full professor at the university. She was also the director of the Center for the Study of the American South. “Her roots are deep, and she speaks about the power of public education with awe—but she'd had enough,” the article stated. As Professor Lowry explained, “The pressures that create these departures are partly because of individual decisions. But they're also because of accumulated, recognizable patterns of decision-making . . . which make it difficult for people like me to thrive.”<sup>128</sup> The “recognizable patterns” she noted include limited resources, low salaries combined with lack of raises, marginalization in terms of recognition of one's work, being bypassed for leadership positions, and overrepresentation of faculty members of color in contingent or non-tenure-track ranks. Another example provided to this committee and

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<sup>126</sup> Paige Masten, “North Carolina Has Cut Spending on Higher Education—at the Expense of Everyone Else,” *Raleigh News & Observer*, February 6, 2022, <https://www.newsobserver.com/opinion/article257812848.html>.

<sup>127</sup> “New Report Details Racial Inequality, Poverty, and Gentrification in Durham,” *NC Policy Watch*, August 22, 2018, <https://ncpolicywatch.com/2018/08/22/new-report-details-racial-inequality-poverty-and-gentrification-in-durham>.

<sup>128</sup> See Liz Schlemmer, “‘Time to Go’: Faculty of Color Explain What Made Them Ready to Leave UNC–Chapel Hill,” WUNC Public Radio, June 21, 2021, <https://www.wunc.org/education/2021-06-21/time-faculty-color-explain-made-ready-leave-unc-chapel-hill-education>.

mentioned in the media was that of Professor Jennifer Ho, who had been at UNC–Chapel Hill for fourteen years and when she left was associate director of the Institute of Arts and Humanities. She had applied for the institute’s directorship, but after failing to make it through the first round of interviews, she told a local media outlet, she watched two white men progress in the search. She then applied for, was offered, and accepted the position of director the Center for Humanities & the Arts at the University of Colorado Boulder.

At Appalachian State University, the Faculty/Staff of Color Affinity Working Group saw three of its four members—all faculty members of color—resign or announce their retirement shortly before the working group completed its report. That report, which the committee produced in summer and fall 2021, detailed, among other problems, a toxic work environment, an unwelcoming culture, implicit and explicit bias, and a pervasive impression on the part of faculty members of color that they were not only being tokenized but overburdened with inequitable service and mentoring obligations. Interviewees told this committee that when the working group sent its report to the university’s director of inclusive excellence, the provost prevented it from going any further on the dubious grounds that it contained information that might make it possible to identify specific faculty members. A redacted version had to be sent to the senate and the student government association. Other Appalachian State interviewees complained that the university’s “upper administration responds to problems with ‘window-dressing’” such as weekly “pro forma emails from associate deans concerning diversity and equity.” One professor told us that ASU administrators, while obfuscating and hiding data to forestall genuine change, acted as if they believed that empty rhetorical statements were sufficient to address real problems. “African American students see through the [administration’s] lack of commitment,” he added.<sup>129</sup>

The Racial Equity Task Force also addressed the issue of retention and added burdens faced by faculty members of color:

While System data show that faculty, staff, and students of color are underrepresented at many of the UNC System institutions, this does not diminish their assignments on racial diversity panels, task forces, and committees or the request to have them mentor, advise, or facilitate discussions that involve faculty members, staff, and students of color. These additional hours of service are not accounted for, nor do they equate to opportunities for raises, promotions, or

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<sup>129</sup> In her comments on the prepublication draft of this report, Chancellor Everts wrote regarding this passage, “App State’s three-year and five-year retention data show that retention rates for non-white faculty and staff at App State are comparable to the retention rates for white faculty and staff, and increasing retention rates remains a priority.”

recognition. Often students and employees of color welcome the invitation to assist a . . . colleague, but disproportionately lose time studying [and] focusing on teaching and research, or miss out on other meaningful activities. Moreover, the need to support ongoing diversity initiatives can contribute to feelings of being overtaxed and burnt out—ultimately hindering a positive campus experience. This concern was shared by student leaders, chief diversity officers, and faculty and staff members.<sup>130</sup>

To address the problem, the task force recommended conducting campus climate studies, collecting data through exit interviews, and requiring more “granularity” in the data collected on race and ethnicity across all positions and ranks. However, many interviewees told the committee that the system administration, instead of initiating meaningful changes in response to the task force’s report, had employed it as just another empty public relations strategy.

In the meantime, the system continues to see faculty departures, especially of faculty members of color. Until the UNC system administration becomes serious about addressing issues of race and racism, this trend is likely to continue, and faculty members of color will continue to experience the university as, in the words of one faculty member, “a traumatic and unbearable space.”

#### ***D. Conclusion***

The AAUP’s statement *On the Relationship of Faculty Governance to Academic Freedom* argues that “sound governance practice and the exercise of academic freedom are closely connected, arguably inextricably linked. While no governance system can serve to guarantee that academic freedom will always prevail, an inadequate governance system—one in which the faculty is not accorded primacy in academic matters—compromises the conditions in which academic freedom is likely to thrive.”

While this section has focused on issues of institutional racism throughout the UNC system, it should be clear that these issues arise from a governance structure widely perceived to be broken and from persistent and pervasive threats to academic freedom.

With regard to the failure to appoint Professor Hannah-Jones, some trustees blamed “administrative bungling,” while administrators accused the trustees of violating long-standing practices and expectations. Faculty members informed this committee of having been left in the dark as to what was happening after the tenure and promotion committee had deliberated and made its recommendations to appoint Professor Hannah-Jones with tenure. No communication

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<sup>130</sup> See footnote 2.

came from the dean, provost, or trustees to the faculty committee responsible for the recommendation. While the motivations of various parties may be unclear, what is clear is that the faculty's role in institutional governance, as performed by the faculty tenure and promotion committee, was entirely ignored.

The *Statement on Government* observes that “the faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty.”

Regarding faculty status specifically—an area that includes “appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal”—the *Statement on Government* asserts that “the governing board and president should . . . concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.” To date, the board has not communicated to anyone, including the faculty committee, any reasons, let alone “compelling” ones, for its initial failure to take action on that committee's favorable recommendation on Professor Hannah-Jones's tenure candidacy.

In the case of Silent Sam, while the exact role that the UNC–Chapel Hill chancellor played in the \$2.5-million deal remains unclear, what is clear is that the board of governors, in reaching that agreement, did not exercise the “appropriate self-limitation” called for in the *Statement on Government*. As noted above, that document recognizes an “inescapable interdependence” among governing board, administration, and faculty that requires “adequate communication among these components and full opportunity for appropriate joint effort.” There had been no communication, let alone adequate communication, from the systemwide board of governors or the campus board of trustees regarding the Silent Sam deal ahead of its conclusion. The *Statement on Government* also specifically calls for “joint effort” in decision-making regarding physical resources: “The board, president, and faculty should all seek agreement on basic decisions regarding buildings and other facilities to be used in the educational work of the institution.” No such agreement was sought, and no joint effort was undertaken in deciding the fate of Silent Sam.

In the case of retention of faculty members and administrative officers of color, while the individual motivations for their departures may be unclear, what is clear is that in one way or another a culture of exclusion, a lack of transparency and inclusion in decision-making, the



chilling of academic freedom, discounting certain kinds of scholarship and teaching, and the constant threat of political interference have combined to fuel what some have called an “exodus” from the UNC system.<sup>131</sup>

In the cases of the policy centers closed in 2015 and of the litigation ban imposed on the Center for Civil Rights in 2017, the board of governors’ intentions may be unclear. What is clear is that once again decisions were made and actions taken without appropriate faculty input or deliberation and therefore in violation of principles of shared governance. What is clear is that the singling out of particular centers and scholars has had a chilling effect on the climate for academic freedom. What is clear is that, by taking these actions, the UNC system board not only reinforced institutional racism by denying legitimacy and status to certain kinds of scholars and scholarship but also reinforced structural racism and classism within the state of North Carolina by denying valuable resources to its underserved, underprivileged, and marginalized populations.

## **VI. The Future of UNC**

The history of the University of North Carolina is marked by contradictions. As the first public university in the nation, it expanded the promise of education to those not wealthy enough to attend the elite institutions of the time. But it was also built by enslaved labor and actively fought to exclude Black students for much of its history. These contradictions remain. In order for UNC to live up to the promise of its flagship institution—to be “a university of the people”—it will need to come to terms with that history.

This report has detailed patterns of political interference by the North Carolina legislature into the administration of the UNC system, overreach by the board of governors and boards of trustees into specific campus operations, outright disregard for principles of academic governance by campus and system leadership, institutional racism, and a hostile climate for academic freedom across the system. Some of these patterns reflect national trends. Yet, as noted earlier, the frequency and intensity of controversies at UNC, coupled with constant mismanagement on the part of the system and campus boards, is unique to UNC. The cumulative effect of these tumultuous events, especially since 2010, leaves the UNC system in a precarious position. How does a system of higher education that is home to the nation’s oldest public university, one that promised *Lux, Libertas* but has been shrouded in secrecy and mired in controversies, live up to its promise?

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<sup>131</sup> Praveena Somasundaram, “‘In a Difficult Place’: Exodus of Leaders Hits UNC,” *UNC Hussman School of Journalism Media Hub*, November 21, 2021, <https://mediahub.unc.edu/in-a-difficult-place-exodus-of-leaders-hits-unc>.

The committee asked interviewees to speculate about the university's condition in ten or twenty years. Most responses were negative, with concerns about faculty salaries, retention, and governance most prominent. Faculty members said they worry about their campuses being "poachable" because of low faculty salaries and an unsupportive climate.<sup>132</sup> Some were concerned that the "erosion" of quality will be "uneven"—that there will be a devaluing of the humanities, arts, and social sciences and a glorification of the sciences, engineering, and medicine throughout the UNC system. In a representative comment, one faculty member said, "What you'll see more of is doubling down on nonpolitical aspects of the university: medical research, sciences broadly. There has been a steady decline in the status of arts and humanities. Areas of growth in the future will be the apolitical ones. In terms of bigger reputational stuff, at the end of the day the university will tell the story of more and more grant funding, higher enrollment, and good metrics on the *U.S. News & World Report*. What will be under threat constantly is the work of people like . . . Nikole Hannah-Jones, and a vibrant intellectual community debating issues of our time."

And while some, especially those who serve at the system's smaller, less prominent institutions, referred to the future in harsh terms—one referred to her university as "circling the drain"; another to his becoming a "diploma mill"—others stated their belief that strong leadership could change the course for the system, that there was still time to "right the ship." A former dean and long-time faculty member told the committee that setting UNC on the right path would require several changes: "There used to be strong forces on the board who were unmistakably devoted to preserving academic freedom. That's what a university is about! There needs to be a recommitment to decision-making at the unit level, without interference from the board of governors. . . . There needs to be hands-off governance on [the board's] part. Also, we would need to see a change in appointing board members and trustees less exclusively from the legislature. People don't understand that [political interference] is killing the goose that laid the golden egg."

With regard to the importance of recruiting talented and principled leaders, one faculty member said, "I think we need some intervention. Leadership will dictate a great deal of our future. There are lots of good things that keep people here, but there are many challenges on the governance front. I think the university is at a really dangerous point. It's become clear with the Nikole Hannah-Jones debacle that there are outside forces that have too much say over what happens. It's going to take leaders with courage to buck some of the political desires and

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<sup>132</sup> Former UNC–Chapel Hill chancellor Holden Thorp, who resigned in 2013 and became provost at Washington University in St. Louis, said that at his new institution, "We hired a lot of people from Carolina. It was easy to beat them on the money, and that's not good" (Barnett, "A Right Turn at UNC").

take whatever consequences come with that. . . . We're at the precipice. Our future will be dictated by what kind of leadership we have in place. One more big debacle might push the university over the cliff." Another faculty member stated, "We are so beholden to wealthy white families in the region. There is a fear of donors; they are driving the thought and decision-making. There is no innovation or fresh ideas. Our most talented people are suppressed, and we're losing out on leaders."

UNC needs strong and independent leadership at all levels—leadership that respects the faculty, defers to faculty expertise, and observes widely accepted principles of academic governance; leadership that protects and defends academic freedom, especially when threatened by political pressure; leadership willing to do more than simply pay lip service to the idea of equity. Under the *Statement on Government*, the governing board has "a special obligation to ensure that the history of the college or university shall serve as a prelude and inspiration to the future." This report suggests that the system and campus-level governing boards must seek to fulfill this obligation to ensure that the history of the University of North Carolina inspires and serves as a prelude to a future that looks very different from its past and its present.

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*Special Committee*

The Committee on College and University Governance has by vote authorized publication of this report on the AAUP website and in the *Bulletin of the American Association of University Professors*.

Chair: **ALLISON BUSKIRK-COHEN** (Psychology), Delaware Valley University

Members: **MARCUS ALFRED** (Physics), Howard University; **BETHANY CARSON** (English), Santa Fe Community College; **SIMON FITZPATRICK** (Philosophy), John Carroll University; **SHAWN GILMORE** (English), University of Illinois at Urbana-Champaign; **PIPPA HOLLOWAY** (History), University of Richmond; **AFSHAN JAFAR\*** (Sociology), Connecticut College; **SUSAN JAROSI** (Art History and Women's and Gender Studies), Hamilton College; **JULIA SCHLECK** (English), University of Nebraska-Lincoln; **BRIAN TURNER\*** (Political Science), Randolph-Macon College; **IRENE MULVEY** (Mathematics), Fairfield University, ex officio

\*Did not participate in the vote.