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AUG 22 2017

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August 17, 2017

By U.S. Mail and Email

Margaret Spellings, President
UNC General Administration
910 Raleigh Road
Chapel Hill, NC 27514
president@northcarolina.edu

Thomas C. Shanahan, General Counsel
UNC General Administration
910 Raleigh Road
Chapel Hill, NC 27514
tcshanahan@northcarolina.edu

Re: Religious message on university website

Dear Ms. Spellings and Mr. Shanahan:

We have received a complaint regarding a UNC professor posting proselytizing material on an official university website. Specifically, we understand that Professor Gary Bishop created a page titled *What's Really Important* on the Department of Computer Science website. This webpage contains verses from the Epistle to the Romans, collectively known as *The Roman Road to Salvation*, as well as excerpts from Christian evangelical writings. See Gary Bishop, *What's Really Important*, <https://www.cs.unc.edu/~gb/important/> (last visited Aug. 17, 2017). We write to inform you that a university official's display of religious messages on the university's official website violates the Establishment Clause of the First Amendment to the U.S. Constitution, and to ask that you promptly remove the message.

The Establishment Clause prohibits governmental bodies from taking any action that communicates "endorsement of religion." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 305 (2000). When government officials endorse religion in general or one religion in particular, they "send[] the ancillary message to . . . nonadherents 'that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the community.'" *Santa Fe*, 530 U.S. at 309-10 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)).

Accordingly, public employees, including public-university professors, must not communicate religious messages to members of the public. *See, e.g., Cooper v. U.S. Postal Serv.*, 577 F.3d 479, 493 (2d Cir. 2009) (Establishment Clause prohibited religious displays in post-office space); *Berry v. Dep't of Soc. Servs.*, 447 F.3d 642, 657 (9th Cir. 2006) (public employer's interest in avoiding Establishment Clause violation justified prohibiting employee who had regular in-person contact with the public from displaying religious items in plain view in his cubicle); *ACLU of Ohio Found., Inc. v. Ashbrook*, 375 F.3d 484, 490-92 (6th Cir. 2004) (display of Ten Commandments poster in courtroom violated Establishment Clause); *Knight v. Conn. Dep't of Pub. Health*, 275 F.3d 156, 164-66 (2d Cir. 2001) (Establishment Clause concerns justified reprimand of sign-language interpreter and home-healthcare worker who promoted religious messages to clients receiving state services); *Asselin v. Santa Clara Cty.*, No. 98-15356, 1999 WL 390984, at *3 (9th Cir. May 25, 1999) (firing of probation officer who incorporated religious messages into his work with minors was justified because accommodation of his beliefs would violate the Establishment Clause); *N.C. Civil Liberties Union v. Constangy*, 947 F.2d 1145, 1151-53 (4th Cir. 1991) (judge violated Establishment Clause by opening court sessions with prayer); *Roberts v. Madigan*, 921 F.2d 1047, 1057 (10th Cir. 1990) (public-school teacher violated Establishment Clause by displaying poster reading, "You have only to open your eyes to see the hand of God" and keeping Bible on his desk where it would be visible to students); *Hall v. Bradshaw*, 630 F.2d 1018, 1019-22 (4th Cir. 1980) (state violated Establishment Clause by issuing maps with "Motorists' Prayer"). Professor Bishop's use of an official university website to post proselytizing material cannot be reconciled with this constitutional mandate.

Public employees simply do not have the "right to make the promotion of religion a part of their job description." *Grossman v. South Shore Pub. Sch. Dist.*, 507 F.3d 1097, 1098-99 (7th Cir. 2007). The courts have thus consistently upheld public schools' authority to prohibit employees from injecting religion into the public-school setting and to discipline employees who do so. *See Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 960-74 (9th Cir. 2011) (public-school teacher properly prohibited from displaying religious banners in classroom); *Borden v. Sch. Dist.*, 523 F.3d 153, 168-74 (3d Cir. 2008) (public-school football coach properly prohibited from joining students in prayer); *Lee v. York Cty. Sch. Div.*, 484 F.3d 687, 700 (4th Cir. 2007) (public school properly removed religious items from teacher's classroom bulletin board); *Grossman*, 507 F.3d at 1098-99 (public school properly removed guidance counselor for praying with and disseminating religious messages to students); *Marchi v. Board of Coop. Educ. Servs.*, 173 F.3d 469, 475-77 (2d Cir. 1999) (public-school teacher properly restricted from communicating religious

messages to students or parents); *Edwards v. Cal. Univ. of Pa.*, 156 F.3d 488, 491-92 (1998) (university professor properly prohibited from advancing religious beliefs through lectures and class materials); *Helland v. S. Bend Cmty. Sch. Corp.*, 93 F.3d 327, 330 (7th Cir. 1996) (public-school teacher properly removed from substitute-teacher list for reading Bible aloud in class and for distributing religious pamphlets to students); *Pelozo v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 522 (9th Cir. 1994) (public school properly reprimanded teacher for discussing religious views with students during noninstructional times).

These decisions are fully applicable to UNC, even though it is an institution of higher education rather than a secondary school. The Establishment Clause's prohibitions against advancing or endorsing religion apply as much to public colleges and universities as to grade schools and high schools. See, e.g., *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 837-45 (1995) (analyzing public university's student-activities fund under Establishment Clause); *Stark v. St. Cloud State Univ.*, 802 F.2d 1046, 1048-52 (8th Cir. 1986) (university's placement of its student teachers at parochial schools violated Establishment Clause); *Daniel v. Waters*, 515 F.2d 485, 490-91 (6th Cir. 1975) ("the state may not adopt programs or practices in its public schools or colleges which 'aid or oppose' any religions"). Indeed, in *Bishop v. Aronov*, 926 F.2d 1066, 1077 (11th Cir. 1991), the court held that a university could limit a physiology professor's classroom religious instruction and recognized that "[b]ecause of the potential establishment conflict, even the appearance of proselytizing by a professor should be a real concern to the University."

It is our experience that violations of this nature sometimes arise from public employees' unfamiliarity with constitutional requirements or from a school's lack of specific knowledge of individual employees' conduct. Accordingly, we write to inform you of the legal requirements, and to ask that you remove this religious content from the university website. We would appreciate a response to this letter within thirty days. If you have questions, please contact John McGinnis at (202) 466-3234 or mcginnis@au.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "John K. McGinnis". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard B. Katskee, Legal Director
Alex Luchenitser, Associate Legal Director
John McGinnis, Legal Fellow