

Preamble

The We the People – Elon Law Constitutional Law Journal (“We the People”) strives to advance legal education and scholarship through the contribution of intelligent discussion and analysis of the United States Constitution and constitutional law related issues.

We the People does not have a particular political agenda or affiliation. Rather, the goal of this journal is to elicit and encourage fair and even discussion on constitutional law. Thus, publication of any article is not in itself an endorsement of the beliefs, values, arguments or viewpoints held by the article or its author. This journal’s focus is on constitutional law broadly, and it is not limited to a certain sphere or sub-practice of constitutional law. This journal is a student-edited periodical dedicated to the realization of such aims.

Foreword

To achieve such aims, *We the People* strives to uplift the voices of all, including those who are often silenced. The journal’s staff is composed of students who hail from a variety of backgrounds and experiences, and we are proud to claim political neutrality in a legal subject that is often fraught with political bias. *We the People* urges its readers to approach articles with the same civil yet critical mindset.

Fair and even discussion about constitutional law is built upon the concept of free speech. Free speech, a once-noncontroversial backbone of American culture, has become a polarizing political dog whistle. In American higher education, it is particularly paramount to nurture free speech between students and faculty. *We the People* has a vested interest in promoting the voices and opinions of those who have otherwise been stifled. Freedom of expression, freedom of the press, and freedom of speech itself are the inherent values of a student-led American constitutional law journal.

Recent litigation highlights significant threats to freedom of speech in educational contexts. Last week, a federal district judge in Tallahassee granted a partial preliminary injunction against Florida’s Individual Freedom Act. The bill prohibits teachers and professors in public schools from discussing a set of forbidden topics with their students. Critics of the law argue that the Individual Freedom Act “violate[s] professors’ First Amendment rights by illegally constraining what viewpoints they can espouse on a range of topics related to race, sex, and gender.”¹ State control over the speech of educators flies in the face of free discourse, and the

¹ Emma Camp, *A Federal Court Blocks Florida’s Stop WOKE Act. Again.*, REASON (Nov. 17, 2022), <https://reason.com/2022/11/17/a-federal-court-blocks-floridas-stop-woke-act-again/>.

presiding judge concluded that the newly enacted Florida law was directly at odds with the First Amendment.²

One thing is crystal clear—both robust intellectual inquiry and democracy require light to thrive. Our professors are critical to a healthy democracy, and the State of Florida's decision to choose which viewpoints are worthy of illumination and which must remain in the shadows has implications for us all. If our "priests of democracy" are not allowed to shed light on challenging ideas, then democracy will die in darkness. But the First Amendment does not permit the State of Florida to muzzle its university professors, impose its own orthodoxy of viewpoints, and cast us all into the dark.³

State governments are not the only institutions that push against the protections offered within our Constitution. In a case closer to this journal's home, a renowned author and professor found herself the target of university administrators, who censored her views to the detriment of free speech on campus.

The foregoing article references this very incident, involving Pulitzer Prize-winning writer for The New York Times Magazine, and author of the 1619 Project, Nikole Hannah-Jones. In April of 2021, the university announced that Hannah-Jones would be appointed to the Knight Chair in Race and Investigative Journalism position at UNC's Hussman School of Journalism and Media. Susan King shared her excitement for UNC alumna Hannah-Jones' hiring, calling her "one of the most respected investigative journalists in America" who would now "be working with our students on projects that will move their careers forward and ignite critically important conversations."⁴

However, not everyone was thrilled by the university's decision. Walter Hussman, the namesake of UNC's School of Journalism and Media, was not so pleased. Notably, Hussman had donated 25 million dollars to the department in September 2019.⁵ "I worry about the controversy of tying the UNC journalism school to the 1619 Project," Hussman wrote in an email to King following the university's announcement.⁶ "Based on [Hannah-Jones's] own words, many will

² *Pernell v. Fla. Bd. of Governors*, 2022 U.S. Dist. LEXIS 208734 (N.D. Fla. Nov. 17, 2022) (order granting in part and denying in part motions for preliminary injunction).

³ *Id.* at *151.

⁴ Katie Robertson, *U.N.C. Denies Tenure to Writer On 1619 Project*, N.Y. Times, May 21, 2021, at B3.

⁵ Seth Thomas Gullede, *UNC renames journalism school after receiving historic \$25M donation*, TRIANGLE BUSINESS JOURNAL (Sept. 10, 2019),

<https://www.bizjournals.com/triangle/news/2019/09/10/unc-renames-journalism-school-after-receiving.html>

⁶ Paul Farhi & Jeremy Barr, *One of the Voices Objecting to Nikole Hannah-Jones's Hiring at UNC: A Newspaper Baron — and Major Donor*, Wash. Post (June 2, 2021, 4:16 PM), https://www.washingtonpost.com/lifestyle/media/one-of-the-voices-objecting-to-nikole-hannah-jones-hiring-at-unc-a-newspaper-baron--and-major-donor/2021/06/02/b4abf72c-c2f3-11eb-9a8d-f95d7724967c_story.html.

conclude she is trying to push an agenda, and they will assume she is manipulating historical facts to support it,” he also said.⁷

Although the two previous holders of the Knight Chair in Race and Investigative Journalism position at UNC’s Hussman School of Journalism and Media had received tenure, Hannah-Jones was only offered a five-year contract as a professor, with an option for review. Many believe, including Hannah-Jones herself, that Hussman’s comments played a significant role in the university’s decision to not offer her a tenured position.

Hannah-Jones said, in a statement following her decision to join the faculty of Howard University rather than UNC, that she has “loved the University of North Carolina at Chapel Hill since [she] was a child watching Tar Heels basketball on television,” and that when she was accepted into the master’s program at the journalism school at UNC, she “cried from joy.”⁸ “UNC took a woman with ambition but no practical journalism training and provided the foundation for all that I would become,” she said.⁹

However, Hannah-Jones also shared her disappointment and hurt from being silenced and discouraged by a university that she had come to love so dearly. “I cannot imagine working at and advancing a school named for a man who lobbied against me, who used his wealth to influence the hires and ideology of the journalism school, who ignored my 20 years of journalism experience, all of my credentials, all of my work, because he believed that a project that centered Black Americans equaled the denigration of white Americans.”¹⁰

The United States Constitution has stood as this country’s foundation of both its legal and political values for nearly two and a half centuries. In that time, much has changed. However, much has remained the same.

“I confess that there are several parts of this Constitution which I do not at present approve, but I am not sure I shall never approve them,” said Benjamin Franklin at the Constitutional Convention of 1787. “For having lived long, I have experienced many instances of being obliged by better information, or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise.”¹¹

⁷ *Id.*

⁸ *Nikole Hannah-Jones Issues Statement on Decision to Decline Tenure Offer at University of North Carolina-Chapel Hill and to Accept Knight Chair Appointment at Howard University*, NAACP Legal Defense Fund (July 6th, 2021), <https://www.naacpldf.org/press-release/nikole-hannah-jones-issues-statement-on-decision-to-decline-tenure-offer-at-university-of-north-carolina-chapel-hill-and-to-accept-knight-chair-appointment-at-howard-university/>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Famous Quotes*, Constitution Facts (last visited Nov. 26, 2022), <https://www.constitutionfacts.com/?section=funZone&page=famousquotes.cfm>.

From the moment these words left Franklin's lips, to the moment that you hold this very volume in your hands, his sentiments remain an integral part of intellectual conversation and debate surrounding the Constitution. Discourse is, and will likely always be, at the core of human intellectual growth. And it is the discourse, the discussion, and the analysis, of the constitution, and the issues it has birthed and will birth, that make it perhaps the greatest document in the history of mankind. The freedom to approve, to disapprove, only to be "obliged by better information" or "fuller consideration" and to change one's own mind, perhaps even back again, embodies the essence of the First Amendment. The silencing of particular kinds of speech, those deemed too "controversial," then is destructive.

It is important to question who holds the power in any given situation. *We the People* urges its readers to question who decides which ideas are controversial and which are not; which expression should be celebrated, and which expression should be censored; and how others with experiences different from our own would answer the very same questions.