ALAN WILSON
ATTORNEY GENERAL

September 15, 2025

The Honorable James P. Clements, Ph.D.
President, Clemson University
201 Sikes Hall
Clemson, SC 29634

Dear President Clements:

As I understand it, your attorneys have advised you that Section 16-17-560 prevents you from firing several faculty members who have used social media to issue vile, repulsive, and even incendiary comments regarding the recent assassination of Charlie Kirk. Such social media comments can even be taken as threatening. Section 16-17-560 makes it a "'crime against public policy to fire any person because of their political beliefs.'" Culler v. Blue Ridge Elec. Coop., 309 S.C. 243, 246, 4223 S.E.2d 91, 92 (1992).

I have carefully reviewed this unique factual situation and the history and case law surrounding § 16-17-560. As South Carolina's chief prosecuting officer under Art. V, § 24 of the State Constitution, I have determined that termination of these faculty members by Clemson is not a prosecutable offense committed by Clemson or its officers. Thus, § 16-17-560 poses no obstacle from a criminal law standpoint to the termination of these individuals. Fear of criminal prosecution should not deter the President of a state university, such as Clemson, from taking the appropriate corrective action against university employees for such vile and incendiary comments on a public platform. I will explain my reasoning below.

Our Supreme Court has emphasized that while § 16-17-560 possesses criminal penalties, the statute provides a civil cause of action for wrongful discharge. Thus, the law ensures an exception, based upon public policy, to a firing if such firing is based upon one's political beliefs. Culler, id. That remedy exists primarily in a civil action, not a criminal prosecution. Accordingly, criminal prosecution of Clemson officials for doing their duty – as they see it – is hardly the appropriate means to protect any rights of free speech these Clemson professors may have in saying what they said. The civil courts, not the Court of General Sessions, exist to provide them a remedy, if any remedy exists, based upon the precise facts. See Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973) ["a private citizen lacks a judicially cognizable interest in the prosecution of another."].

It is worth noting also that the history of § 16-17-560 dates back to Reconstruction in South Carolina. Louisiana and South Carolina, at that time, enacted criminal statutes prohibiting employers from terminating employees for their political beliefs. Then, however, the First

Amendment was not applicable to the states to govern state action. See Lakier, "The Non-First Amendment Law of Freedom of Speech," 134 Harv. L. Rev. 2299, 2333 (2021). Today, however, state officials, such as at Clemson, are constrained by the First Amendment, and those claiming a violation thereof may utilize the remedy of 42 U.S.C. § 1983. Thus, if the professors believe their free speech rights were violated by termination of their employment, they have a remedy available to them.

However, it should be noted also that the First Amendment is not absolute and has substantial limitations. See Connick v. Myers, 461 U.S. 138 (1983). In determining a public employee's right of free speech, such as a Clemson employee, the employee must speak as a private citizen, voicing matters of public concern and the employee's interest "not be outweighed by any injury the speech could cause to 'the interest of the State, as an employer in promoting the efficiency of the public service it performs through its employees.'" Waters v. Churchill, 511 U.S. 661, 668 (1994) (quoting Connick). Moreover, true threats of imminent violence lie outside the protections of the First Amendment. Counterman v. Colorado, 660 U.S. 66, 72 (2023). This is for the courts to determine.

As I have said, I strongly support freedom of speech protected by the First Amendment, as defined by court decisions, as well as civil discourse conducted in a civil manner. The statements of these professors were far from civil, however. Just the exact opposite. Their actions were reprehensible and were denounced by Clemson itself as "endors[ing], glorify[ing] or celebrat[ing] political violence."

In summary, the termination of these Clemson employees is not a prosecutable offense committed by Clemson under § 16-17-560. As South Carolina's chief prosecutor, I have determined that any corrective action by Clemson, terminating these professors, will not be prosecuted in the criminal courts of this State. Nor will it be for such action by any other institution of higher learning in South Carolina. We will not criminalize or tie the hands of Clemson officials or other university officials through the criminal process. Instead, we will allow them to run the University in a manner in keeping with the high standards of that Institution. Finally, it must be remembered that these professors are employees of the State of South Carolina and that "[w]hen a citizen enters government service, the citizen must accept certain limitations on his or her freedom." Garcetti v. Ceballos, 547 U.S. 410, 418 (2006).

Sincerely,

Alan Wilson

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