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February 2, 2023

68<sup>th</sup> Legislative Assembly  
House Government and Veterans Affairs Committee

Dear Chair Schauer and Members of the House Government and Veterans Affairs Committee,

I am resident of Fargo, North Dakota and testify as a private citizen, not as a member or representative of any group. Having been Faculty President at my institution and the faculty advisory board member on the State Board of Higher Education (SBHE), I am certainly very knowledgeable about the 11 institutions in our State University system.

I am testifying in opposition to HB1446 which would allow University and College Presidents to single handedly fire tenured faculty. I recommend a 'do not pass' vote on this bill.

I am starting with a positive. I do actually appreciate the attempt at making workloads more equitable. But there must be better ways for doing this. Ideally, between the faculty member and their respective department Head/Chair. Especially at the larger institutions, the president can't be personally responsible for 700 or more faculty. We have a hierarchy for that reason and a reporting line. This starts at the department with the Head or Chair, moving on to college level headed by a Dean, and then further up to Provost and President level. We usually start at the bottom and work our way up when conflict arises. Then, there is always the choice between support and punishment. If a senior faculty loses their grant, it may be more worthwhile to support the faculty with bridge funding, which will increase the probability of future grants. In contrast, firing the faculty for lack of productivity will lead to a search process that takes at least a year, which is costly already, plus a pretty decent start up package.

#### Section I

- 1) *Generate more tuition or grant revenue than the expenses for the faculty.* This is unfair. Some faculty teach an introductory level class that is required for a large number of students. Others teach upper level classes that are very specific in their topic and of interest to a much smaller number of students. These specialized classes are not any easier or less work to teach. Departments are a team, not a group of individuals. Faculty generate revenue as a team, not as individuals. Also note that not everybody gets to chose and pick their courses. In some departments, the Head or Chair makes this determination. Do you wanna punish the faculty for a decision their direct supervisor makes? Likewise, some faculty's research is rather cheap and does not need as much of funding. Someone else's research be more expensive and needs larger grants. We can't punish people for having a research project that they can still do in low budget times. Besides, our institutions are non-for profit, not private businesses.
- 2) *Comply with policies etc up to the State Board of Higher Education.* This is written into job offer letters and a requirement by the institutions. The point is not needed.

- 3) *Teach and advise students equal to the average across the institution.* Much what I said about the tuition generation applies here as well. Entry level courses are larger than higher level specialized courses. Likewise, not every program has the same number of advisees. Or faculty, as a matter of fact. The important point is not that everybody has the same number of students or advisees, but that within the unit every student gets taught and advised. By somebody. In fact, some departments have professional advisors who advise all students. Some departments have lecturers who teach the bulk of the classes. Do you wanna punish tenured faculty for that? Note that faculty appointments are spelled out (in the job offer letter and annually updated job descriptions) in % teaching and % research. Sometimes also % service. Or % outreach. A faculty with a 20% teaching appointment can't be required to have the same teaching load as a faculty with a 90% teaching appointment. Job descriptions are very specific and every individual faculty is hired for a specific purpose. In the end, everybody needs to do what is written in their own job description.
- 4) *Measurable and effective activities.* Points a, b, and c until about half way through are covered by most people's job descriptions already. Helping students achieve academic success is not anything a faculty needs to be told. That is why people are in that job. The second half of point c about the social media is more tricky. The first amendment applies to all of us, including faculty in universities and colleges. Note that institutions have a harassment policy. If things get too wild on social media and a person is under series attack, there is a process in place. I think this whole section including a, b, and c is not needed.

## **Section II**

**The North Dakota constitution very clearly states in Article VIII Education, Section 6, that the State Board of Higher Education (SBHE) is responsible for the control and administration of our state higher education institutions (<https://ndlegis.gov/constit/a08.pdf>). The SBHE, not the North Dakota State Legislature. If I can make a recommendation here, I recommend checking whether these proposed changes are in line with North Dakota State law.**

*President reviews faculty.* This is not in agreement with institutional hierarchy. Every faculty, tenured or not, currently gets reviewed by their department Head/Chair. Annually. The report goes to the college. If any problem arises, the case can go up the reporting line. But it will get initiated at department level. Why on earth would the President of a large institution who has millions of other things to do (including frequent trips to Bismarck) even know when a faculty member is no longer up to speed with their job responsibilities. The best thing to do is a discussion between Head or Chair and the respective faculty to figure out the cause for the inactivity. Sometimes, the job description can be rewritten to better match a person's changing abilities and interests, while still fulfilling the needs of the department. After all, job descriptions change frequently anyways. Keep in mind that the tenure process is very meticulous and involves some 15 to 20 people between Department and President level, and takes about ¾ of a year. For details, please, see policy 352 at NDSU as an example (<https://www.ndsu.edu/fileadmin/policy/352.pdf>). Faculty who pass this extensive 6 year long

‘test’, are among the most highly qualified individuals in the country and the world. Most of these like their career and would not intentionally damage their own career. Most faculty also like their students and would not intentionally harm students either.

- 1) *Written assessment.* The written assessment is already provided annually by the department Heads or Chairs. For every faculty, tenured, tenure track, or non-tenure track.
- 2) *Failure to comply.* This whole section sounds like the author assumes there is no process to fire a tenured faculty. Actually, there is. For an example, please, see policy 350.3 at NDSU ([https://www.ndsu.edu/fileadmin/policy/350\\_3.pdf](https://www.ndsu.edu/fileadmin/policy/350_3.pdf)). This faculty termination policy is built upon SBHE policies 605.1, 605.2, 605.3, 605.4, which means the other 10 institutions have similar policies. In summary, tenure just means the faculty cannot be fired WITHOUT CAUSE. Tenured faculty can be fired WITH CAUSE. Or because of an institutional financial exigency, as declared by the SBHE. Tenure is about academic freedom, which is a form of free speech and covered by the first amendment. A tenured faculty cannot be fired because someone (*e.g.* President) does not like their research project. Or their teaching content. That is not a lack of compliance.
- 3) *Delegation to administrator.* Seeing as every faculty is already reviewed annually by their department Head/Chair, one could consider this the delegation. After all, delegation of responsibility is part of why we have a reporting line.
- 4) *Other factors.* I have to admit that this paragraph makes me suspicious. Factors that are not mentioned in the job description? What could those be? The job description should be in alignment with the institutional goals. Of course, if a President closes a program or department, this may mean that faculty will be laid off. This is not firing, though. And it can be done already. So, what is the point here?
- 5) *Review is not viewable and not appealable.* This is getting downright scary here. Why not? To hide something? If the faculty really has not done their job duties, there is no need to deprive them of the opportunity to review and appeal. Unless the reason for the firing is unspeakable, there should not be a need to hide the justification. If the faculty needs to be held accountable, so does the President. And who is the commissioner of higher education? I know of a State Board of Higher Education, which has a Chair. And the North Dakota University System, which has a Chancellor.
- 6) *No retaliation.* Of course not. That is why institutions have retaliation policies. For an example, please see policy 156 at NDSU (<https://www.ndsu.edu/fileadmin/policy/156.pdf>). However, an appeal or a lawsuit is not retaliation. Retaliation is a counterattack with the intent to hurt the other person. An appeal does not hurt anybody. Neither does the lawsuit. Note that the lawsuit would probably not be against the person but the institution anyways.

### Section 3

What is the emergency? Does the author of this bill think there are hundreds of faculty that need to be fired? If so, where is the evidence for this? We are happy about every faculty we can keep in town.

My primary concern with all of the above is recruitment and retention of faculty to North Dakota. It is already difficult to recruit people to North Dakota and I am talking about qualified faculty. People with a Ph.D., especially in the STEM sciences, have many opportunities, among

them positions in the private sector which pay much better than academia can match. Tenure and the academic freedom that it provides rank high among the reasons why people decide for the academic career. Still, there are plenty Universities and Colleges nationwide and worldwide that recruit faculty. This includes OUR faculty. If tenure in essence gets disabled, there is concern that people won't come here anymore. Likewise, faculty already in the system are permanently facing the question whether they want to stay here or move on. Other institutions are poaching, and it is easy to figure out which faculty they will target. It is not the unqualified ones. And their research dollars will go with the faculty, at least to other academic institutions in the US. Many faculty have moved on in the past years thanks to budget cuts and political climate. I can see how someone could say, well every faculty less is one person less on our payroll. However, these are not targeted budget cuts of units that no longer meet the institutions goals. These are random losses that can hit any department and potentially cripple a successful and much needed department. To keep our institutions functional, we need faculty to teach our students. And we owe our students that these faculty are the most qualified ones we can get. Tenure is needed for this.

I realize that HB1446 at this point in time only applies to two of North Dakota's Colleges and not any of the two Research Universities. My personal experience is with three Research Universities across the US, I have never been at a 2 or 4 year College. However, 2 years at the SBHE have instilled in me an appreciation for all 11 of our institutions, including the ones I may not be able to understand quite as well. I hope I was able to give you an overview of faculty concerns that I think may apply to colleagues at other institutions in the system. With the understanding that I can no longer represent them, but I still appreciate them as a private citizen.

I like to conclude with a short note of thank you everybody on the House Government and Veterans Affairs Committee, as well as the author of bill HB1446. Your service to the State is much appreciated.

Sincerely and respectfully

Birgit Pruess