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Testimony Before the Senate Education Committee

HB 1446

March 13, 2023

Chairman Elkin and members of the Senate Education Committee, for the record my name is Nick Archuleta, and I am the president of North Dakota United. Respectfully, I rise today to urge a **do not pass** recommendation for HB 1446.

To begin, Mr. Chairman, I find it valuable to cite, in part, the North Dakota State Board of Higher Education's policy on Academic Freedom and Tenure:

"The purpose of tenure is to assure academic freedom. Academic freedom applies to all scholarly pursuits. Freedom in scholarship is fundamental to the advancement of knowledge and for the protection of the rights of the faculty members and students. It carries with it duties and responsibilities correlative with rights..." (605.1 Academic Freedom and Tenure; Academic Appointments, Section 2)

Academic freedom allows our campuses to thrive as centers for free thought and expression, to pursue and debate conflicting ideas openly, and to give students and faculty opportunities to engage in innovative research and scholarship that advances our understanding of the world around us and our ability to address the complex challenges we face. By undermining tenure, HB 1446 would infringe upon this freedom, impacting faculty, students, and our institutions of higher education.

Chairman Elkin and members of the Committee, to be considered for tenure, a faculty member must first complete six years of probationary service to their institution. During these six years, that faculty member's performance is evaluated at least annually by the institution. When a faculty member wishes to apply for tenure status, they must follow a lengthy, thorough process that has been established by their institution to evaluate their scholarship in teaching, contribution to a discipline or profession through research, other scholarly or professional activities, service to the institution and society, and additional criteria as that institution may seem fit. It is important to note that Bismarck State College (BSC), Dickinson State University (DSU), and every other institution in the state is required to design their tenure evaluation and recommendation process in a way that is consistent with the nature and mission of that individual institution. Thus, BSC and DSU already have the ability to match their tenure process with their unique needs and evolving missions. Only after successfully receiving a recommendation from the institution's individual tenure process, a recommendation from the institution's president, and a recommendation from the Chancellor, may the State Board of Higher Education (SBHE) award a faculty member with tenure.

Mr. Chairman, it is important to note that tenure as it exists in the North Dakota University System (NDUS) today is not an unchecked privilege. Even after being granted tenure, all full-time faculty are required to be evaluated annually, and, if there are unsatisfactory evaluations, institutions are required to take appropriate remedial action. Generally

speaking, if an institution is suffering from certain financial issues or if a tenured faculty member is not meeting the responsibilities and duties of their job, they can be terminated. That is the reality under current state law and current SBHE policy. Institutions and the SBHE already have flexibility if they are experiencing financial distress. Accountability for faculty—tenured or not—is already baked into the system. There is no need to further complicate the employee evaluation process. In doing so, unfortunately, this would mean faculty and administrators will have to take even more time out of their regular duties to prepare paperwork, participate in meetings, and more, which will have the effect of minimizing the time faculty will spend educating and supporting their students.

Chairman Elkin and members of the Committee, HB 1446 claims to address the need for accelerating workforce development; however, its approach is misguided. High quality educators are attracted to institutions with reasonable tenure policies because it allows them to engage in research and scholarly pursuits that tackle big issues without fear of retribution. Focusing on solutions to today's biggest problems is made all the more difficult if we restrict free thought and expression. It is difficult to do one's work when one is constantly concerned with the unchecked power of an institution's president.

Members of the Committee, HB 1446 has already attracted national attention that has cast a negative light on North Dakota's institutions of higher learning. If we cannot assure current and prospective faculty that academic freedom is valued and respected in North Dakota, they will look elsewhere for employment. And when that happens, the quality of education will decline, and we will not be able to compete with institutions in other states that do prioritize academic freedom. We must not fail to provide competitive, high-quality education to our students if are to effectively address current and future workforce development issues.

Chairman Elkin, a glaring deficiency of this bill is that it eliminates a meaningful appeals process. The lack of basic due process rights further erodes the confidence of faculty that the important work they do is respected. The bill would allow a faculty member to appeal to the Chancellor of the NDUS, but the Chancellor and the SBHE rarely, if ever, override the broad autonomy that campus presidents already hold. If the SBHE is not overturning college presidents' decisions now, how can we be confident that meaningful review of those actions is happening? This so-called appeal would come after a process that must include a written assessment but contains no guidance on how the faculty member will be assessed besides the vague criteria of Section 1. Faculty will certainly lack understanding and confidence in a process that may produce no clear evidence of how they are falling short, but so will North Dakota citizens. How are we to trust that our institution presidents are using this power appropriately? The SBHE oversees the campus presidents, but how can it oversee a nonrenewal conducted with flimsy documentation and based on a host of vague criteria, including the vague catchall "other relevant factors?" So, I have to ask, if there are already policies and procedures in place to give institutions flexibility in times of financial distress or to address a tenured faculty member who is neglecting their duties and responsibilities, why is HB 1446 even necessary? Could this bill be used to go after faculty who challenge the status quo in the best interests of their students and their institution? Could it have a chilling effect on a faculty member's willingness to shine a light on fraud or misuse of taxpayer dollars at an institution if they know they could be subject to an abrupt non-renewal of their contract?

Chairman Elkin and members of the Committee, to summarize:

- Tenure in North Dakota already comes with responsibilities and duties that tenured faculty must follow, and SBHE policy provides institutions with flexibility if they are experiencing financial distress.
- All faculty, tenured or not, must be accountable to their students and their school, and SBHE policy already requires that accountability. If BSC, DSU, or other institutions need to adjust their tenure process to better fit their missions, they can already do so.
- There is no need to further complicate the tenure process.
- HB 1446, if enacted, will cloud the reputations of our great North Dakota institutions of higher education, threaten academic freedom, and deter high quality educators from coming to and staying in North Dakota, ultimately preventing our students from receiving the quality of education and opportunities they deserve.

For these reasons, Chairman Elkin and members of the Senate Education Committee, I respectfully ask for a ***do not pass*** recommendation for HB 1446. This concludes my testimony, and I am happy to stand for questions.

References:

- SBHE Policy 604.3 Performance Evaluations: Benefited Employees
 - <https://ndusbpos.sharepoint.com/:w:/s/NDUSPoliciesandProcedures/EZndAqyypOtNqaTsL1IwUugBkgEF1y|qsht4N|Qb619Qkw?e=WZBrLg>
- SBHE Policy 605.1 Academic Freedom and Tenure; Academic Appointments
 - <https://ndusbpos.sharepoint.com/:w:/s/NDUSPoliciesandProcedures/EUaO9faO|ShNo04DUaFS3icBPTeEsuTyamvD7nkYCznjsw?e=anHtr2>
- SBHE Policy 605.3 Nonrenewal, Termination or Dismissal of Faculty
 - <https://ndusbpos.sharepoint.com/:w:/s/NDUSPoliciesandProcedures/ERHiZFLrsWNBvnqnYkIDu8EBqqeV|wX98aslb|mcAZab6g?e=OpABxB>
- Forbes article
 - <https://www.forbes.com/sites/michaelnietzel/2023/01/24/north-dakota-is-about-to-consider-a-really-bad-faculty-tenure-bill/?sh=28f1df891558>