

SB2247

Senate Education Committee

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Chair Elkin and members of the Senate Education Committee, my name is Lisa Johnson, and I serve as the Vice Chancellor of Academic and Student Affairs for the North Dakota University System. I am here today on behalf of the North Dakota University System and its eleven institutions to provide neutral testimony related to SB2247 as the State Board of Higher Education has not met nor articulated a position related to SB2247.

Some of you have heard the Chancellor's comments to members of the Appropriations Committee, the Senate Workforce Development Committee, and other committees and events where he cited CA author, John Ellis, reflecting largely upon the educational and political state of the country as a whole and observed that the colleges and universities in the Midwest are some of the last places in the U.S. that welcome the open exchange of ideas and debate and in Ellis' words questioned, "is the Athens of the next generation somewhere on the Great Plains"? If you think that vastly differing viewpoints and debate around divisive topics are new, they are not. The colleges and universities of the North Dakota University System have successfully navigated this precarious arena without shouting down invited guests or disinviting controversial speakers while supporting both academic freedom and the protected rights of free speech for students, staff, and faculty. Colleges and universities have been long-serving facilitators of open dialogue in nearly every subject since their inception.

I can understand legislative interest in what I would describe as stakeholder "guardrails" in this matter—if nothing else, a proactive measure against something which is not necessarily widespread among NDUS colleges and universities. In fact, much of the bill's proposed language is already enshrined in state statute and/or federal law that prohibits discrimination on the basis of sex, race, religion, creed, political affiliation, and social class.

The proposed language in SB2247 is nearly identical to a bill enacted by the state of Tennessee in 2022. Their intent was likely the same. I would, however, point out one section contained within Tennessee's bill that is noticeably absent in SB2247. If the Committee is inclined to support SB2247, I respectfully request the Committee's consideration for the inclusion of the following amendment to Section 15-10.6-05. Construction and Purpose:

This chapter shall not be interpreted to: (1) Prohibit public institutions of higher education from training students or employees on the non-discrimination requirements of federal or state law; (2) Infringe on the rights of freedom of speech protected by the First Amendment to the United States Constitution; (3) Infringe on the rights of academic freedom of faculty in public institutions of higher education; (4) Require an employee of a public institution of higher education to: (A) Violate any federal or state law, rule, or regulation; or (B) Fail to comply with any applicable

academic accreditation requirement; (5) Prohibit an individual who provides training from responding to questions regarding one (1) or more divisive concepts, so long as the response does not endorse or advocate for divisive concepts; or (6) Prohibit public institutions of higher education from promoting diversity, equity, and inclusion; provided, that such efforts are consistent with the provisions of this statute.

SB2247 is problematic for many reasons, but is amplified by the absence of any statement in support of free speech or academic freedom, which was removed from the ND version. These are important distinctions that clarify an important difference between what is allowed in academic settings versus in training programs. As a consequence, this bill runs counter to the free speech bill (HB 1503) passed in the last legislative session.

The requirement of a “biennial survey of students and employees to assess the campus climate regarding diversity of thought and the respondents’ comfort level in speaking freely on campus, regardless of political affiliation or ideology” presents conflicting language with that on Page 3, lines 1-3 that explicitly prohibits colleges and universities under the control of the State Board of Higher Education to even inquire about an ideological or political viewpoint of a student, job applicant, employee, or candidate for promotion or tenure. Yet the required biennial survey would somehow necessitate that respondents disclose elements related to their specific ideology or political affiliation.

Again, I appreciate what the sponsors of SB2247 are attempting to solidify. My testimony remains neutral as the State Board of Higher Education has not taken a position on the bill. However, the proposed amendments, mirroring those of the Tennessee bill, are worthy of consideration. This concludes my testimony related to SB2247. I remain available to members of the Committee for additional questions.