



## Senate Education Committee

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Chair Elkin and members of the Senate Education Committee. My name is Mark Hagerott, and I serve as the Chancellor of the North Dakota University System (NDUS). I am here today on behalf of the North Dakota University System and in opposition to SB2343, which relates to board communications and release of closed, exempt, confidential, or other related records.

I can attest that current state law and State Board of Higher Education (SBHE) policies already govern board communication and release of closed, exempt, confidential, or other records; therefore, the statutory changes proposed in SB2343 are unnecessary.

You have already or will receive testimony from former or current SBHE members and legal experts. I provide testimony from the perspective of the Office of the Chancellor.

Since assuming my current role in North Dakota, I have worked closely with four different SBHE chairs, five vice chairs, and thirty-five current and former board members. Of those three dozen SBHE members spanning more than eight years, there has been just one complaint about law and policy pertaining to protecting sensitive information. I dug deeper into historical records and could not find any additional documented complaints in recent history, other than this one issue.

I can offer additional perspectives on the benefits of maintaining current law. In short, NDCC 44-04-19.2, provides governing bodies like the SBHE with the ability to hold an executive session to consider closed, exempt, or confidential records. The law further provides governing body with the discretion to disclose the recording “upon majority vote of the governing body unless the executive session was required to be confidential.” What may not be apparent, is that the SBHE deals with exceptionally sensitive information, particularly as it relates to legal matters of a multi-billion-dollar enterprise, cyber security threats which may threaten the personal data of approximately 50,000

students and faculty, as well as highly sensitive academic searches involving candidates from across the nation.

Over eight years I have witnessed the SBHE use great discretion and exercise self-restraint in limiting the disclosure of sensitive information to protect students, faculty, academic candidates, and financial assets of the state of North Dakota. I have seen multiple situations wherein with a majority vote, the Board has limited the disclosure of sensitive information to members of itself, out of an abundance of caution, to protect candidates, the financial health of institutions, or cyber security information, to name just a few.

SB2343 would remove a public entity or governing body's discretionary authority to control access to closed, exempt, confidential, or other records which for one reason or another have been deemed so sensitive that an executive session is necessary. Removing the ability to determine who can view recordings of meetings that discuss presidential performance, personnel actions, or contract negotiations could be devastating for an individual, but also increase the possibility of release of sensitive cyber security or financial information.

In such a legal structure, the ability of the SBHE to self-discipline the release of sensitive and confidential information in presidential searches from a single, empowered SBHE member, to all ten current SBHE members or a potentially large number of future Board members. Such a profound expansion of the release of information may decrease the confidence of candidates of high-profile positions from applying, both in interim searches and the search for permanent employees. Removing the ability to determine who has access to exempt records related to presidential or other executive search committees and/or other sensitive topics could lead to failed searches or other unintended consequences.

Having observed the three dozen members of SBHE in action for eight years, under the leadership of multiple different chairs, I can assure you the SBHE already prioritizes communication with all board members while ensuring compliance with the State's open meetings and open records laws. To that end, the board has multiple committees to strengthen communication. The current



committees include Academic & Student Affairs, Audit, Budget & Finance, and Research & Governance. Agenda items/reports and action items are made available to all SBHE members & the public. Committee chairs report out at each SBHE meeting, and committee actions are either confirmed, denied, or modified by vote of the full board.

New board members participate in a thorough onboarding process to include orientation on all issues pertinent to board operations. The NDUS office staff respond expediently to board member questions and information requests, within limits of available staffing & resources.

This concludes my testimony related to SB2343. I respectfully request a **Do Not Pass** because current law and Board policies already provide for the issues contained in the bill. I will stand for questions from Committee members.