NORTH DAKOTA
UNIVERSITY SYSTEM

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SB2199

Senate Judiciary Committee
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Chair Larson and members of the Senate Judiciary 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 opposing testimony to SB2199.

The colleges and universities of the North Dakota University System process over 7,500 applications for new freshmen alone each year from individuals not only from North Dakota, but throughout the U.S., Canada, and many international countries. The NDUS serves an additional 14,400 individuals through its TrainND, non-degree, customized training with courses that can range from hours to days or weeks in length. These figures don't even begin to include the applicants to graduate school, summer campus for kids, continuing education, senior courses/workshops and other registered events throughout the year.

The proposed language in SB2199, particularly in Section 1, subsections 2 and 4 generated the following questions:

- Would colleges and universities be permitted to accept the self-reported sex of an applicant?
- What is the process to challenge the sex of an individual and to what state office or agency is it referred?
- If "sex" is not permitted as directory information, how does the campus respond?
- Who is pays for a deoxyriboneucleic acid test?
    - Can individuals submit the results of an at-home DNA kit or must it be under the supervision of a medical professional?
    - Is a fiscal note necessary for this bill?
    - Does an individual have a right to refuse submission to a DNA test based on deeply held or religious beliefs?
- If it is illegal to target individuals solely on the basis of sex, must all applicants supply a copy of their birth certificate to be admitted to a college or university?
- It is unclear whether the penalty (or fee) in Subsection 4 is intended to be applicable to the staff member or employee who enters self-reported data that is later deemed to be inconsistent with DNA results or whether the fee is intended to be assessed to the individual applicant whose self-reported sex is being challenged?
- If an allegation challenging one's sex is found to be false, will the individual have rights under proposed HB1256?

- And perhaps most concerning is how will campuses comply with the constitutional rights of employees and students while complying with this proposed bill? Our employees and students have 1st Amendment rights. Academic freedom and the right to the freedom of expression in higher education are embedded in 1st Amendment Constitutional protections. How would the NDUS comply with SB 2199 and honor those rights? Students and employees have the right to Equal Protection under the 14th Amendment. The 14th Amendment has been held to include certain specific rights to allow individuals to define and express their identity. In addition, Title IX and the Department of Education's current directives instruct our campuses to ensure all students have equal access to education without discrimination based upon sexual orientation or gender. How would campuses comply with the 14th Amendment and Title IX while following the proposed parameters of SB 2199?

The colleges and universities of the North Dakota University System feel strongly that the potential additional requirements erect barriers to admission and access to education that limits our ability to compete in an already highly competitive environment to attract and retain students in North Dakota to fulfill workforce needs.

This concludes my testimony related to SB2199. I respectfully request a "Do Not Pass" on SB2199 and stand for questions from members of the Committee.