

**SB 2392**

Senate Education Committee

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Chair Beard and Members of the Senate Education Committee -

My name is Lisa Johnson, and I serve as the Vice Chancellor for Academic and Student Affairs with the North Dakota University System (NDUS). I am writing in opposition to SB2392.

One of the goals of higher education is to help students develop the skills necessary to consider a wide range of viewpoints when constructing their own position on matters. Understanding diverse viewpoints is critical for developing sound arguments and articulating one's views. Contrary to the perception of some, NDUS college faculty don't tell students "what" to think, but rather provide them with opportunities to grapple with the many perspectives of complex and difficult topics.

SB2392 would impinge on the ability to discuss complex and, at times, controversial topics, that would violate current laws and policies including [NDCC Chapter 15-10.4](#) (Campus Free Speech policy), [NDCC Chapter 15-10.7](#) (Specified Topics) and [SBHE Policy 401.1](#) (Academic Freedom) each of which affirms the importance of free speech and the consideration of diverse ideas in governing the state's colleges and universities. As written, SB2392 provides no mention of academic freedom as it relates to faculty or free speech protections for students. Members of this Committee are encouraged to contact a representative from the Foundation for Individual Rights and Expression, an organization that the ND legislature has worked with extensively in the past for guidance on its free speech bills.

SB2392 lacks any data to indicate the prevalence, if any, of the "prohibited discriminatory practices" in existing policies, procedures, programs, offices, initiatives, or required training are taking place at any of the eleven public institutions under the control of the State Board of Higher Education (SBHE). When asked about the rationale for the proposed bill, sponsors either admit this is not happening in ND and its simply precautionary legislation or they relay a vague, unverifiable second-hand account of a student grievance. If a student or individual had concerns about prohibited discriminatory practices that would force them to comply with a certain ideology or viewpoint, each institution and the NDUS both offer appeal processes that allow individuals to pursue appropriate remedies.

The NDUS submits the following for further clarification from the bill sponsor(s):

**Page 1, Line 20-23:** Uncertain as to what this means.

**Page 2, Line 17:** Potentially affects 790 international/multicultural students receiving \$3.4 million in scholarships in Academic Year 2022-2023.

**Page 2, Line 20:** Numerous offices across the system serve specific student populations that include the terms “diversity”, “equity” or “inclusion” to describe the supports to their respective population. e.g. military veteran re-entry and support programs, Native American/Multi Cultural Centers, and the ASTEP program for college attending students with intellectual disabilities. Among the supports for these various groups are early registration for veterans, student scholarships, and office space on the campus. Are these to be considered among the prohibited discriminatory practices?

**Page 3, Lines 3-6:** The inclusion of this statement could significantly affect classroom assignments. SB2392 contains no reference to the protection of academic freedom for faculty. Further, institutions cannot be instructed to infringe on the rights of freedom of speech protected by the First Amendment of the United States Constitution. For reference, see language in [NDCC Chapter 15-10.7](#) (Specified Topics).

**Page 4, Lines 7-8:** See statement directly above.

**Page 4, Lines 20-22:** This would require reporting on classroom assignments to the legislature and posting those assignments online which would have a chilling effect on academic freedom and would be very difficult to manage.

**Page 4, Lines 29-31 & Page 5, Lines 1-4:** This exception provides a carve out for faculty applying for employment, tenure, or promotion but not the most important aspect of their employment--classroom teaching.

**Page 5, Lines 5-15:** Staffing this directive is a concern—unless it is permissible for campuses to conduct their own biennial review.

**Page 5, Lines 16-17:** To whose satisfaction is a violation to be resolved—the SBHE, the student, a parent, an anonymous member of the public, or an external advocacy group?

**Page 5, Lines 18-19:** Are current SBHE processes to report violations sufficient or must a new process be developed?

**Page 5, Lines 23-24:** What kind of training? By whom? How long? Do staff who are not in a classroom need training on academic freedom? The answers to these questions will determine whether a fiscal note is needed.

**Page 6, Lines 5-12:** Same concerns as cited on Page 5, Lines 5-15.

**Page 6, Lines 15-19:** As written, this would prohibit the institution or the president of an institution from speaking about incidents of antisemitism, racism, or sexism.

**Page 7, Lines 1-3:** Does the requirement to publicly post all course/training syllabi apply to academic courses, required employee training, or both? Some of the contracts with private training organizations prevent publication of their proprietary training materials.

**Page 7, Lines 4-5:** Need further clarification regarding this training requirement. A potential fiscal note depends on the response regarding the depth of training, by whom, and for which employees.

**Page 7, Line 6:** Campuses routinely provide training from a single viewpoint on an array of topics like binge drinking, substance misuse, sexual consent, human trafficking, and exploitation prevention. As written, scheduling speakers with opposing viewpoints would be counterproductive.

**Page 7, Lines 9-23:** Concerns previously cited regarding staffing the monitoring/reporting, SBHE delegation of responsibilities, and use of existing procedures.

As written, SB2392 largely replicates SB2247 (Specified Topics) from the 2023 legislative session, most of which already exists in NDCC 15-10.7. The NDUS urges a **Do Not Pass** on SB2392.