

2021 HOUSE JUDICIARY

HB 1503

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

HB 1503

2/16/2021

Relating to free speech policies of institutions under the control of the state board of higher education; and to provide a penalty

Chairman Klemin called the hearing to order at 8:30 AM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter.

Discussion Topics:

- Attorney General
- Academic freedom
- Freedom of speech
- Security fees
- Free speech zones
- Harassment cases

Rep. K. Koppelman: Introduced the bill. 8:30

Rep. M Johnson: Oral testimony

Joe Cohn, Rights in Education: #6704

Lance Kinzer, First Amendment Partnership: #6698, #6699

Christopher Dodson, ND Catholic Conference: #6717

Mark Jorritsma, Family Policy Alliance of ND: # 6716

Alyx Schmitz, 2020 Graduation of NDSU: # 6715

Andrew Varvel: Self: #6700

Lisa Johnson, ND University System: #6718, #6725, #6726, #6727, #6728, #6729, #6730, #6731, #6732, #6733, #6734, #6735, #6736, #6737, #6738

Eric Olson, Attorney for University System: Oral testimony

Chairman Klemin closed the hearing at 10:09.

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Additional written testimony: # 6665, #6693, #6695, #6701, #6705

DeLores D. Shimek
Committee Clerk by Anna Fiest

February 15, 2021

Committee on Judiciary
North Dakota House of Representatives
600 East Boulevard Avenue Room JW327B
Bismarck, North Dakota

Chairman Klemin, Vice Chair Karls, and distinguished Members of the Committee:

My name is Joe Cohn, and I am the Legislative and Policy Director at the Foundation for Individual Rights in Education (FIRE). FIRE is a national, nonpartisan, nonprofit organization dedicated to defending the free speech and due process rights of students and faculty at our nation's colleges and universities. FIRE writes today to supplement my verbal testimony in support of a substitute being prepared for HB 1503.¹

In the last legislative session, the State of North Dakota enacted SB 2320, a flawed bill that sought to advance the cause of free speech on campus. HB 1503 will build on what was good in SB 2320 and correct the aspects of that legislation that are problematic.

The central focus of SB 2320 was that it allowed institutions of higher education to maintain reasonable time, place, and manner restrictions on expressive activities provided that they satisfy the Supreme Court of the United States' requirements set forth in *Ward v. Rock Against Racism*.² SB 2320 defined "Constitutional time, place, and manner restrictions" as:

restrictions on the time, place, and manner of free speech which do not violate the First Amendment to the United States Constitution or section 4 of article I of the Constitution of North Dakota and which are reasonable, content- and viewpoint-neutral, and narrowly tailored to satisfy a significant institutional interest, and leave open alternative channels for the communication of the information or message.

While this is the proper standard for evaluating time, place, and manner restrictions in traditional and designated public forums, the problem with the way SB 2320 was crafted is that it also applied this standard in indoor spaces, which are typically not deemed traditional or designated public forums. HB 1503 would amend the statute by clarifying

¹ Throughout this testimony, the term "HB 1503" refers to the substitute version currently being prepared.

² 491 U.S. 781, 791 (1989).

that the standard applies in the “generally accessible, open, outdoor areas of the institution’s campus.”

SB 2320 also contained a flawed provision on academic freedom. It requires public institutions throughout the state to adopt a policy that “[p]rotects the academic freedom and free speech rights of faculty while adhering to guidelines established by the American association of university professors.” The problem with this language is that it does not require these institutions to adopt policies consistent with a particular policy statement set forth by the American Association of University Professors (AAUP), but instead defers these issues to the AAUP. FIRE frequently works closely with the AAUP and cites to their various policy statements to inform FIRE’s advocacy with respect to academic freedom. The problem with this statutory approach is that organizations and their policies can change over time. The HB 1503 amendment being prepared would replace the academic freedom provision of the current statute with concrete protections for faculty or at the very least anchor protections in the statute to the principles set forth in the AAUP’s 1940 Statement of Principles on Academic Freedom and Tenure by explicitly referencing the statement.

In addition to improving on what was established in 2019, HB 1503 would also:

- Allow institutions to adopt constitutional time, place and manner restrictions regulating expression on the open outdoor areas of campus generally accessible to the public, when those restrictions meet the test set forth by the Supreme Court of the United States in *Ward v. Rock Against Racism*. This language amends and improves upon the language from the 2019 statute by limiting its application to the open outdoor areas of campus generally accessible to the public and by expressly prohibiting institutions from limiting quarantining expression to misleadingly labelled free speech zones;
- Prohibit institutions from denying student activity fee funding to a student organization based on the viewpoints the student organization advocates;
- Prohibit institutions from charging students or student organizations security fees based on the content of the student’s or student organization’s speech, the content of the speech of guest speakers invited by students, or the anticipated reaction or opposition of listeners to the speech. Institutions will still be able to set security fees, consistent with the Supreme Court of the United States decision in *Forsyth v. Nationalist Movement*³ by allowing institutions to “set forth empirical and objective criteria for calculating security fees”;

³ 505 U.S. 123 (1992).

- Ensure that institutions cannot force students, faculty, student organizations to rescind invitations to guest speakers because of those speakers' viewpoints;
- Safeguard freedom of association by allowing belief-based student organizations to require their voting members and leaders to adhere to the organizations' sincerely held beliefs;
- Protect the free speech and academic freedom rights of faculty by ensuring that faculty cannot be punished for classroom speech, unless it is not germane to the subject matter of the class, as broadly construed, and also takes up a substantial amount of classroom instruction;
- Require institutions to define student-on-student discriminatory harassment consistent with the standard set forth by the Supreme Court of the United States in *Davis v. Monroe County Board of Education*;⁴ and
- Provide an effective cause of action that will ensure students have access to court when their free speech rights are violated, while capping institutional liability at \$50,000, court costs, and attorneys fees.

The State of campus free speech in North Dakota

FIRE surveyed the written policies of all public institutions of higher education in North Dakota in anticipation of this legislation, including both four-year universities and community colleges. We reviewed the written policies to determine whether the institutions were in compliance with the requirements of SB 2320 and whether their harassment policies were consistent with Supreme Court precedent. Our audit revealed comprehensive failures, demonstrating the strong need for the legislature to enforce the First Amendment.

North Dakota institutions are not abiding by Supreme Court precedent on harassment

Institutions of higher education are legally and morally responsible for addressing discriminatory student-on-student harassment. But they also have a constitutional obligation to do so without infringing on the free speech rights of students. To balance these twin obligations, the Supreme Court of the United States carefully crafted a test to determine when speech crosses the line to unprotected discriminatory conduct. In *Davis v. Monroe County Board of Education*, the Court, in addressing when federal anti-

⁴ 526 U.S. 629, 651 (1999).

discrimination law obligated institutions of higher education to intervene when students were harassing each other, defined student-on-student harassment as discriminatory conduct that is:

so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities.⁵

Not a single North Dakota institution consistently defines harassment in line with *Davis*. Slightly more than half of institutions apply a constitutional definition for Title IX cases, which are under the jurisdiction of federal government regulations explicitly requiring it. However, even when institutions do define harassment constitutionally in Title IX cases, they define harassment unconstitutionally in non-Title IX cases, creating a convoluted "dual-track system." North Dakota State College of Science maintains a particularly egregious definition for non-Title IX harassment, including any "unwelcome action," subjectively defined, that "interfere[s] with an individual's academic efforts, employment, personal safety, or participation in College sponsored co-curricular activities." Policies like this maintained by North Dakota institutions are in serious need of reform.

Enacting HB 1503 is important because overbroad anti-harassment policies are one of the most common forms of speech codes that are used to punish and sometimes even expel students who have engaged in protected speech.⁶

Institutions of higher education are already required by the federal government to use the *Davis* definition, at least with respect to defining student-on-student sexual harassment.⁷ In 2020, the Department of Education concluded a lengthy public notice-and-comment period and adopted legally binding regulations requiring institutions to use this definition to define student-on-student sexual harassment.⁸ Because the Department's jurisdiction in this regulatory process was limited to addressing sexual

⁵ *Davis* at 651.

⁶ Greg Lukianoff and Catherine Sevcenko, *Four Key Points About Free Speech and the Feds' 'Blueprint'*, FIRE, (July 15, 2013), <https://www.thefire.org/four-key-points-about-free-speech-and-the-feds-blueprint/>.

⁷ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 83 Fed. Reg. 61462 (proposed Nov. 29, 2018) (to be codified at 34 C.F.R. pt. 106), <https://www.federalregister.gov/documents/2018/11/29/2018-25314/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>.

⁸ *Id.* at 2014.

harassment, the regulations do not require that same test be used by schools when defining other forms of discriminatory harassment. Courts have repeatedly applied the Davis standard to racial and other forms of harassment outside of Title IX.⁹

Enacting HB 1503 would harmonize North Dakota’s efforts to combat all forms of discriminatory student-on-student harassment.

Courts regularly cite the *Davis* definition to protect students from censorship

Courts regularly protect students from censorship and punishment under university policies because the policies did not meet the requirements of *Davis*. *See, e.g., Nungesser v. Columbia Univ.*, 244 F. Supp. 3d 345, 366–67 (S.D.N.Y. 2017) (holding student accused of sexual assault could not invoke Title IX to “censor the use of the terms ‘rapist’ and ‘rape’” by the alleged victim of the crime on the grounds that the accusation bred an environment of pervasive and severe sexual harassment for the accused student); *B.H. ex rel. Hawk v. Easton Area Sch. Dist.*, 725 F.3d 293, 322–23 (3d Cir. 2013) (holding school district could not invoke Title IX to prohibit students from wearing “I <3 boobies” bracelets intended to increase breast cancer awareness).

Policies that fail to meet the elements of *Davis* have been consistently struck down on First Amendment grounds by federal courts for more than two decades, yet unconstitutional definitions of harassment remain widespread. *See, e.g., McCauley v. Univ. of the V.I.*, 618 F.3d 232 (3d Cir. 2010) (upholding district court’s invalidation of university harassment policy on First Amendment grounds); *DeJohn v. Temple Univ.*, 537 F.3d 301, 319 (3d Cir. 2008) (striking down sexual harassment policy reasoning that because the policy failed to require that speech in question “objectively” create a hostile environment, it provided “no shelter for core protected speech”); *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995) (declaring university discriminatory harassment policy facially unconstitutional). While *Dambrot* was issued before *Davis*, the Sixth Circuit’s analysis incorporated similar elements.).

⁹ *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 665 n.10 (2d Cir. 2012) (applying *Davis* to Title VI claim and observing that “[a]lthough the harassment in *Davis*, and the “deliberate indifference” standard outlined by the Supreme Court, arose under Title IX, we have endorsed the *Davis* framework in cases of third-party harassment outside the scope of Title IX.”); *Bryant v. Indep. Sch. Dist.* No. I-38, 334 F.3d 928, 934 (10th Cir. 2003) (applying *Davis* to Title VI claim); *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 206 n.5 (3d Cir. 2001) (acknowledging that *Davis* “applies equally” to harassment under Title VI or other federal anti-discrimination statutes).

The Davis standard successfully protects students from discriminatory harassment

Some argue that the *Davis* standard sets the bar too high, and posit that under this definition, students may harass each other with impunity. This isn't true. Courts routinely rule against schools for being deliberately indifferent to harassment that met the *Davis* standard. *See, e.g., Niesen v. Iowa St. Univ.*, 2017 U.S. Dist. LEXIS 221061 (S.D. Iowa Nov. 3, 2017) (denying motion to dismiss student's Title IX claim for retaliation that she experienced after reporting an alleged sexual assault because the university did not respond to her complaints about the retaliation); *S.K. v. N. Allegheny Sch. Dist.*, 168 F. Supp. 3d 786, 797–98 (W.D. Pa. 2016) (holding plaintiff adequately pled Title IX claim where bullying of plaintiff had grown to the point where it “was its own sport” and principal never punished the harassers); *T.E. v. Pine Bush Cent. Sch. Dist.*, 58 F. Supp. 3d 332, 365 (S.D.N.Y. 2014) (denying school district's motion for summary judgment on students' Title VI claim for anti-Semitic harassment in part because a reasonable jury could find that a “handful of assemblies . . . could not have plausibly changed the anti-Semitic sentiments of the student harassers”).

What these cases and many others like them demonstrate is that *Davis* has worked to protect students from harassment and to protect free speech rights.

North Dakota should join Alabama,¹⁰ Arizona,¹¹ Arkansas,¹² Ohio,¹³ Oklahoma,¹⁴ and Tennessee¹⁵ in requiring its public institutions to use a definition of discriminatory student-on-student harassment consistent with the *Davis* standard.

Two out of three North Dakota institutions charge potential speakers security fees in an unconstitutional manner

In *Forsyth County v. Nationalist Movement*,¹⁶ the United States Supreme Court has said that the government cannot charge potential speakers security fees based on the anticipation of a negative reaction by some because to do so would create an

¹⁰ Ala. Code § 16-68-3.

¹¹ Ariz. Rev. Stat. §15-1866.

¹² Ark. Code Ann. §§ 6-60-1001-1010.

¹³ Ohio HB 40 (2020).

¹⁴ Okla. Stat. Ann. tit. 70, § 2120.

¹⁵ Tenn. Code. Ann. §§ 49-7-2401-2408.

¹⁶ 505 U.S. 123 (1992).

unconstitutional “heckler’s veto.” In contradiction to the Supreme Court, almost two-thirds of North Dakota institutions apply security fees in this way for speakers invited by students and faculty. For example, North Dakota State University uses “historical protest activity at events of similar attendance” to determine security costs for event organizers, effectively imposing an unconstitutional tax on controversial speech.

Free speech on the open areas of campus

FIRE’s survey revealed encouraging data for free expression in open areas of campus, which was addressed by the enactment of SB 2320 in 2019 by the North Dakota legislature. FIRE could not find a single institution in North Dakota that restricts campus expression to small areas of campus, called “free speech zones,” or that requires speakers to receive the institution’s permission before engaging in expression. Indeed, nearly four-out-of-five institutions affirmatively protect the open areas of campus as available for expression and almost three-quarters affirmatively state that students needn’t receive university permission before engaging in constitutionally-protected expression. Despite the good outlook for student speech in the open outdoor areas, the HB 1503 provides much needed clarity that the time place and manner standard in the law applies only to the open outdoor areas of campus generally accessible to the public.

Conclusion

No North Dakota institution explicitly violates the First Amendment in the open areas of their campuses after the legislature’s bill in 2019. Every North Dakota institution fails to enforce the First Amendment in their harassment policies in the absence of a bill like HB 1503. This extreme disparity demonstrates the effectiveness of state legislation to enforce the First Amendment and the need to pass this legislation.

Thank you for your attention to FIRE’s perspective. I look forward to answering any questions you might have during the hearing.

Respectfully,



Joseph Cohn
Legislative and Policy Director
Foundation for Individual Rights in Education



Chairman Lawrence R. Klemin & Members of the Committee
House Judiciary Committee
North Dakota State Capitol
Bismarck, North Dakota

SUBJECT: HB 1503

Dear Chairman Klemin & Members of the Committee:

My name is Lance Kinzer, and I am the Policy Director for 1st Amendment Partnership where we are privileged to work with some of the nation's largest faith communities with respect to their common commitment to First Amendment freedoms. I am writing today in support of HB 1503, with particulate focus on paragraph 4h, on page 2 lines 26 – 30 of the bill, pertaining to discrimination against student organizations.

Across the country, public universities have attempted to prohibit student organizations from requiring that students who wish to lead a student club actually share that club's beliefs. Universities have largely enforced such limitations against faith-based groups, but not against other groups with selective leadership criteria, like sororities and fraternities. Unfortunately, as happened recently in Iowa before they passed a protective statute, this often results in divisive and expensive litigation between students and their own universities.¹

Even when student groups win in court, as they did in Iowa, much of the damage to the impacted students' educational experience is already done. No judicial remedy can adequately address the harms that universities inflict when they target student organizations, and thus their members, based upon their religious beliefs. HB 1503 is designed to prevent such litigation from being necessary in the first place, by providing a clear legal standard that simply preserves the right of belief-based student groups to choose leaders who agree with their purpose and mission.

It is commonplace across society for belief-based organizations to require their leaders to affirm and live consistently with, the principles around which such groups were formed. For decades, the right of student organizations to do just this was clear as a matter of constitutional law. A long line of United States Supreme Court cases held: that student groups can't be denied recognition by a public university merely because of their beliefs (*Healy v. James*, 1972); that belief-based student groups must be provided access to facilities under the same standards as

¹ <https://www.becketlaw.org/case/blinc-v-university-iowa/> & <https://www.becketlaw.org/case/intervarsity-christian-fellowship-v-university-iowa/>

other groups (*Widmar v. Vincent*, 1981), and; that student activity funds cannot be withheld from a group merely because they promote or manifest a particular belief system (*Rosenberger v. University of Virginia*, 1995).

Unfortunately, in more recent years many universities have attempted to take advantage of an ambiguity in this case law created by a U.S. Supreme Court decision, *Christian Legal Society v. Martinez*, (2010). That case dealt with the very uncommon situation where a university adopts a policy that says no student clubs can have any standards whatsoever for who may serve as their leaders. For obvious reasons, such a standard is unworkable and so almost no university has adopted and applied a true “all-comers” policy. But attempts by universities to expand the scope of *Martinez*, have resulted in needless litigation that harms the very students that universities exist to serve. Students at North Dakota’s public universities should never be forced to litigate against their own schools in order to exercise basic constitutional rights.

Fortunately, the *Martinez* case itself was clear that universities and state legislatures are free to adopt policies that safeguard the right of belief-based student organizations to choose leaders who agree with the club’s mission and beliefs. Fourteen states² have already passed laws that provide this kind of protection to students attending public colleges and universities. This includes your neighboring state of South Dakota. Increasingly, support for such legislation has been bi-partisan, including in Louisiana where Governor John Bell Edwards (D), signed just such a bill into law.

The kind of protections offered to belief-based student organizations by HB 1503 are common place in analogous provisions of both federal and state law. The basic reasoning of the U.S. Supreme Court in the *Widmar* case referenced above was statutorily codified for public secondary schools in 1984 when Congress adopted the *Equal Access Act*, 20 U.S.C. 4071. This current federal law protects the right of public high school students to develop associations based on shared values and core convictions.

The U.S. Supreme Court upheld the *Equal Access Act* in a 9-0 decision in *Westside Community Schools v. Mergens*, (1990). In that opinion, the Court was clear that by granting equal access for student associations to use school facilities, the state does not establish religion (nor endorse any viewpoint an organization may hold) – it merely upholds freedom. HB 1503 extends this basic idea, codified for public secondary schools for the last 37 years under the *Equal Access Act*, to public university campuses in North Dakota.

In another analogous context, federal and state³ nondiscrimination law both typically recognize the right of religious organizations to choose leaders on the basis of their religious beliefs. At the federal level, by way of example, *Title VII* explicitly provides that religious associations may use

² See attachment, “Campus Religious Freedom” infographic for a map of states that have statutes protecting belief based student groups.

³ In North Dakota, a religious employer can use religion as basis to refuse to hire where religion is a reasonably necessary bona fide occupational qualification. *N.D.C.C. § 14-02.4-08*.

religious criteria in hiring decisions. In three separate provisions, it exempts religious associations from its general provisions on religious discrimination:

- 1) 42 U.S.C. 2000e-1(a) (Act does not apply to a religious association with respect to employment of an individual to perform work connected with carrying on the association's activities);
- 2) 42 U.S.C. 2000e-2(e)(2) (Act does not apply to a religious educational institution with respect to the employment of employees that share that institution's religious convictions, where the institution is directed toward the propagation of a particular religion);
- 3) 42 U.S.C. 2000e-2(e)(1) (Any employer may hire on the basis of religion where religion is a bona fide occupational qualification).

These accommodations were upheld by the U.S. Supreme Court in *Corporation of Presiding Bishop v. Amos* (1987). Moreover, in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* (2012), the Court unanimously rejected the argument that federal nondiscrimination laws could be used to trump religious association leadership decisions. As Justice Alito and Justice Kagan stressed, while nondiscrimination laws are "undoubtedly important", "[r]eligious groups are the archetype of associations formed for expressive purposes, and their fundamental rights surely include the freedom to choose who is qualified to serve as a voice for their faith."

HB 1503, merely seeks to codify these same kind of common sense accommodations for belief based student organizations at public colleges and universities. These institutions should welcome diverse student groups as part of a vibrant campus life. By creating a clear standard, HB 1503 promotes this important goal, avoids needless litigation, and makes it certain that university administrators cannot decide who is entitled to recognition as a student organization based upon which beliefs those administrators favor or disfavor.

Respectfully,

/s/ Lance Y. Kinzer

Lance Y. Kinzer

Director of Policy & Government Relations

1st Amendment Partnership

Enclosure

CAMPUS RELIGIOUS FREEDOM

THE PROBLEM

#6699

FRATERNITIES AND SORORITIES are *welcome* on campus and are *allowed* to pick their own leaders based on certain criteria.

RELIGIOUS GROUPS are *not welcome* on campus and are *not allowed* to pick their own leaders based on certain criteria.

THE UNIVERSITY OF
DOUBLE STANDARDS



A small but growing number of colleges are effectively kicking student religious groups off campus with policies that prohibit common-sense criteria for selecting group leaders. So, a Jewish faith group cannot require that its president be Jewish or even agree with core Jewish teachings.

Student religious groups provide a much-needed sense of belonging for young people at a time when many feel all alone and are struggling to find their place in the world. Colleges should embrace these welcoming communities, not turn them away.

COMMON SENSE, PLEASE!



To be the president of the Chess Club, you must know the rules of the game.

To be the head of the American Medical Association, you must be a physician.

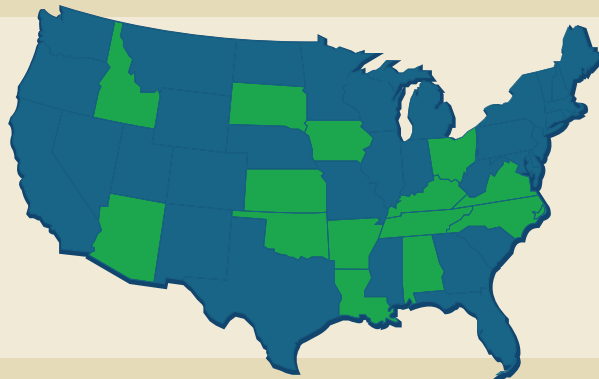
To be the President of the United States, you must be at least 35 years old.

It's important for leadership positions to have certain criteria: it's common sense!

CONTINUED ON BACK

STATES THAT MAKE THE GRADE

Some states are addressing the problem by proactively passing smart bipartisan campus religious freedom legislation.



**BUT ONLY
30%
HAVE DONE THIS**

WHO LOSES OUT?



STUDENTS



RELIGIOUS GROUPS

Lose opportunities for community and a sense of belonging

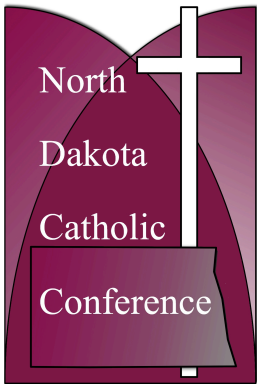
Lose opportunities for volunteer work and charity outreach

Lose an understanding of self-worth outside of academic achievement

Lose access to campus resources given to other groups

Lose access to low-cost university spaces for meetings and fellowship

Lose access to standard on-campus membership tools



Representing the Diocese of Fargo
and the Diocese of Bismarck

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To: House Judiciary Committee
From: Christopher Dodson, Executive Director
Subject: House Bill 1503
Date: February 16, 2021

The North Dakota Catholic Conference supports House Bill 1503.

Students should not lose their basic rights to speech, religious expression, and association when attending a public college or university. Unfortunately, campuses across the nation have enacted policies that infringe on those rights.

House Bill 1503 would prevent such policies at our public colleges and universities.

The conference especially supports the language in the new subsection (h) at the bottom of page 2. This language would prevent campuses from adopting policies that restrict the right of student organizations to choose leaders that share the organization's beliefs and missions. These policies, sometimes called "all comers" policies, require student groups to accept anyone as a member and even a leader, even if the individual disagrees with or is hostile to the group's mission, purpose, or beliefs. Catholics could assume control over a Baptist group, Democrats and Republicans could take over each other's clubs, and racists could insert themselves into African-American student clubs. When organizations require that its leaders or members adhere to the organization's mission, campuses have penalized organizations and prevented them from having access to meeting space.

In a closely divided and somewhat confusing opinion, the United States Supreme Court allowed campuses to adopt these these "all comers" policies in *Christian Legal Society v. Martinez* and public universities across the nation continue to adopt them. The task of protecting student clubs, therefore, rests with the legislature.¹

College Republicans have the right to be Republicans, the College Atheists have the right to be atheists, and the College Christians have the right to be Christians. HB 1503 would protect these rights. We urge a **Do Pass** recommendation on HB 1503.

¹ Federal rules adopted by the past presidential administration provide some protection against “all comers” policies to religious student organizations. (34 C.F.R. § 75.500) However, those rules could be changed or rescinded by the new administration. Moreover, they do not extend the same self-definition protection to other student organizations.

Testimony in Support of House Bill 1503

Mark Jorritsma, Executive Director
Family Policy Alliance of North Dakota
February 16, 2021

Good morning Chairman Klemin and members of the House Judiciary Committee. My name is Mark Jorritsma and I am the Executive Director of Family Policy Alliance of North Dakota. I am testifying in support of House Bill 1503 and respectfully request that you render a "DO PASS" on this bill.

Free speech at public universities and colleges is crucial to academic inquiry, and only free and robust discussion of critical issues will drive the quest for truth. That said, public institutions of higher learning are often places where people with strongly held contradictory views are in close proximity and vocal about their positions on these issues.

The subject of academic freedom of expression often rears its head when discussions shift to matters such as political positions, abortion, religion, and sexual orientation – the same contentious issues in our greater national landscape. These issues are debated with free speech in the larger societal arenas such as the media, political rallies, marches, and other modern "public squares". There is no outcry for any free speech zones on the basis of these positions. Why then does it make sense to strangle free speech and create hurdles to the active discussion of these issues in places where inquiry and original thought should be most encouraged – higher education?

Over the years, the issue of free expression has taken on a general countenance of speech codes. However, more recently, the subject has given rise to safe spaces, trigger warnings, and enhanced fears of "microaggressions". Political correctness is winning over free speech.

I remember those late-night talks about "big issues". You had lengthy debates with your roommates, friends, and sometimes professors about topics such as communism vs. capitalism, the existence of God, self-actualization of the person, and other life-shaping issues. You debated, sometimes hotly, and listened to each other while you drank coffee at 2am and avoided studying for that exam. Why? Because these things mattered, and they still do.

But here is the important part. When it was all over and time to head to bed, whether or not anyone's mind was changed, academic freedom had been exercised and you had often learned as much or more than if you had studied for that exam. Your mind was now considering new points of view. And you were all still best friends because, although it was an important subject, nobody took it personally.

The hotly contended issues we deal with today are frankly no harder or easier than they were 20, 50, or 100 years ago, and we are fooling ourselves and frankly a bit arrogant if we think so. Let's ensure that common sense, respectful debate, and discussion of society's important issues is free and encouraged in all places, including our institutions of higher learning. Some of the greatest minds of past centuries developed their foundational principles during their college years. Let's not lose that, or we will create a generation that shirks from issues, mollifies rather than stands for their beliefs, and chooses comfort over truth.

I ask you then, please protect these freedoms on our state's campuses of higher education and vote House Bill 1503 out of committee with a "DO PASS" recommendation. Thank you and I would now be happy to stand for any questions.

Alyx Schmitz in support of HB 1503

Chairman Klemin, members of the committee, my name is Alyx Schmitz and I am a December 2020 graduate of North Dakota State University. I am here to voice my support for House Bill 1503, the bill that protects college students' free speech in North Dakota.

Colleges are meant to be places where students can hear varying viewpoints freely and openly. One of the reasons I chose to attend NDSU is because I felt that my rights and opinions would be protected. I have friends who attend universities in other states as close as Minnesota, who have told me stories of when their free speech was suppressed because of university policy. As we all know, many trends or events across the United States create a ripple effect from the coasts to the Midwest. In North Dakota, we have the opportunity to be proactive by passing this bill. By passing this legislation, the State Board of Higher Education, a body of citizens appointed, not elected, cannot enact policy that hinders free speech. You can do a quick Google search and see countless stories across the United States where students from a political or religious viewpoint were silenced by their institutions for sharing a perspective that the administrators or professors did not like or agree with.

College is supposed to be a time when students can explore a new sense of independence and learn more about how to form ideas and articulate thoughts. Being able to openly express opinions is a freedom protected by the United States Constitution, a document which applies to college campuses. This bill would preserve constitutional freedoms and ensure that fear does not curb or inhibit the way that college students speak and the impact that student organizations have on campus. This bill would create a foundation of freedom of speech for students that cannot be taken away.

The State Board of Higher Education's policies almost discriminated against the operations of political clubs by not allowing them to receive funding from universities. The current policies in place would have allowed the Board to deny funding to political student organizations. As the former vice president of NDSU College Republicans, I know first-hand that university funding is necessary for the clubs to function and without these funds, the club would not have been able to expand our reach and generate our impact on our members and on campus. This is true for all student organizations affiliated with politics or political issues, including college democrats.

Lastly, I would like to share my support for a section of the policy that would eliminate 'free speech zones,' and rather allow free speech everywhere on campus. I have never understood the concept of 'free speech' zones. There are no such things as 'free speech' states or counties in America, so why do college campuses get to choose where free speech can or cannot exist? This limits students from openly expressing their views with one another and supports the

Alyx Schmitz in support of HB 1503

notion that free speech is something we do not have the right to, but rather are granted when it's convenient.

It makes me worried to hear when campus policy administrators are fearful of this bill. If they believe that there are no complaints of free speech by students and that their policies protect most of what is in this bill, why are they opposed to it? They clearly are concerned with students having full rights, as granted by the US Constitution, that all people in America have that no administrator, board, or campus can ever take away.

This is why I respectfully request a do pass of HB 1503. I stand for any questions you might have.

Testimony for the House Judiciary Committee

House Bill 1503

Andrew Alexis Varvel

February 16, 2021

Chairman Klemin and Members of the Committee:

My name is Andrew Alexis Varvel. I live in Bismarck, District 47.

So, what do I think of House Bill 1503? It's a start.

Is this a legislative intrusion into the business of the Board? Yes. Under normal circumstances, would this bill be legislative overreach? Also, yes. Would this legislation allow extremist groups to organize on campus? Yes. Would this legislation allow foreign dictatorships to send their propagandists here? Also, yes.

This legislation is probably necessary because of distrust that presently exists between legislators and university administrators. Higher education needs the money, and if the requirements of this legislation are the price for restoring funding to higher education, then passing this bill may well be worth it.

A public college or a university would be prohibited from attempting to keep Black Lives Matter, Antifa, BDS, Earth First!, Mni Wiconi, Cthulhu, or the Church of the Flying Spaghetti Monster from organizing a speech. And that would be fine.

If you don't want a student group to impose an ideological litmus test to ensure outward adherence to the religion of "critical race theory", a Marxist student group enforcing its own ideological conformity, or even a student group enforcing a belief in temple prostitution, you may wish to tweak lines 26 to 30 on page 1.

If university administrators are sufficiently fanatical and indoctrinated to warrant passage of this legislation, then obviously much more needs to be done. Job security for college faculty, including tenure, would need to be strengthened so "woke" administrators dedicated to promoting so-called "critical race theory" would think twice before imposing ideological control. Foreign dictatorships would need to be prohibited from establishing overseas secret police outposts under the guise of cultural organizations, such as a Confucius Institute at NDSU.

The Legislature should also ensure that workforce training for public employees, including people working in higher education, must be prohibited from stereotyping, scapegoating, or degrading people on the basis of race or sex.

There can be something rather humorous about seeing UND recommend that people read Era Bell Thompson's autobiography *American Daughter*. It's a good read, so I would recommend it too. Still, when people actually read her book, they might notice how her remarks about Grand Forks of that era are downright scathing. Era Bell Thompson was a witness to an era when President Kane of UND was a key ally of Halsey Ambrose of the Ku Klux Klan, against his own faculty.

It may seem far more delightful to put a celebratory face on the intersectionality of so-called “critical race theory” rather than owning up to the role of higher education in promoting systemic racism, including blackface and Garrison Dam.

Although it may be tempting for university administrators to promote the idea that the people of this region are a bunch of ignorant yokels in constant need of reeducation so they can conform to the latest trendiness of “woke” intersectional corporate capitalism, that temptation should be avoided. Trends come and go. What seems to be the inevitable future may turn out to be an embarrassing fad.

I mildly support House Bill 1503. If this bill is necessary, there is more work to do.

Thank you.

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**HB1503**

House Judiciary Committee

February 16, 2021

Lisa A. Johnson, Vice Chancellor for Academic/Student Affairs, NDUS

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Chair Klemin and members of the House Judiciary Committee: My name is Lisa Johnson, and I serve as the Vice Chancellor for Academic and Student Affairs of the North Dakota University System. I am here on behalf of the North Dakota University System, but not the SBHE, as the SBHE has not met in the week or so since this bill was filed, to provide testimony in opposition to H.B. 1503.

Last session, the North Dakota University System worked with the Legislative Assembly on S.B. 2320, which enacted N.D.C.C. Chapter 15-10.4, which required the SBHE and each institution to adopt a policy to protect student freedom of speech, assembly, and expression. As a result, the SBHE and each campus developed both systemwide and campus-specific policies implementing that Chapter before the statutory deadline of August 27, 2019. *See, e.g.,* [SBHE Policy 503.1 – Student Free Speech and Expression](#). On September 3, 2019, a copy of the SBHE Policy and each Campus Policy was sent to Legislative Management, evidencing that the SBHE and all campuses met the statutory deadline. Senator Holmberg, the lead sponsor of S.B. 2320, and SBHE Chair Nick Hacker were copied on that email. The North Dakota University System also provided the same policies to legislative management again in early December 2, 2020, in response to a November 30, 2020 request. NDUS prides itself on its responsiveness to legislative requests, and if it had received any additional requests for information, it would have provided that requested information as well. All of these policies are in the packets I provided to the committee.

Since these policies were implemented, neither the SBHE nor any of the institutions have received a single complaint asserting that their expressive rights were violated – either by the adopted policies or by someone violating the policies. Similarly, the NDUS has not heard from the Foundation for Individual Rights in Education (FIRE) since the adoption of those policies. One of the major concerns of S.B. 2320’s proponents was that NDSU’s free speech policies had been given a “yellow” rating by FIRE. However, after the policies required by S.B. 2320 were adopted, FIRE reviewed NDSU’s new policy on March 10, 2020, and gave it a “green” rating. *See* https://www.thefire.org/fire_speech-codes/ndsu-demonstrations/ and https://www.thefire.org/fire_speech-codes/ndsu-free-speech/. In fact, the NDUS has found no formal complaints of violations of free speech or freedom of expression at any NDUS campus during any of the last 12 years.

In addition, since the adoption of these student free speech policies, the SBHE, the NDUS, and the eleven campuses have taken several additional steps to enhance and protect the rights of students on campus. First, after the SBHE policy was put in place, the NDUS Office called a joint meeting of the systemwide Student Affairs Council and Academic Affairs Council to discuss the new policy and the creation of campus policies, which included a lengthy discussion and question-and-answer session with NDUS attorneys and UND’s Vice President for Student Affairs, who had previously

worked with FIRE to ensure that UND's policies met FIRE's guidelines. Additionally, working closely with the North Dakota Student Association (NDSA), the NDUS was one of the first University Systems nationwide to adopt a Student Data Privacy and Security Bill of Rights, giving students much broader visibility into how their data is used and providing the opportunity for students to opt out of the disclosure of their data, where possible. See [SBHE Policy 503.2](#). The SBHE also passed [SBHE Policy 503.3](#), which provides broad protections for student and student organization participation in political campaigns, events, and other political activities (with only a narrow limitation required by state law). The latter policy was devised with input from FIRE, and received the following positive feedback from FIRE's Azhar Majeed:

"This policy looks quite solid to me and my colleagues. We appreciate your willingness to consider our input and to adjust the policy accordingly. We likewise appreciate that the policy begins with the basic premise that students' speech rights, including political speech rights, are to be stringently protected, with only exceptions made pursuant to state law."

The NDUS was grateful for FIRE's assistance and recommendations in formulating that policy and additionally incorporated resources provided by FIRE when aiding the campuses in developing their campus specific policies in compliance with that of State Board Policy 503.1 prior to the implementation deadline of August 27, 2019.

Today, the NDUS is unsure as to the rationale for the introduction of H.B. 1503 last week. Not only is it redundant and unnecessary, it reintroduces many of the problematic elements of the earlier drafts of S.B. 2320 in 2019.

In order to demonstrate just how far NDUS has already come to meet the bill's purposes, and intends to go in the future, let's walk through the proposed changes, set out in Section 2 of the bill. Proposed Section 4(a) requires campuses to maintain the generally accessible, open, outdoor areas of campus as traditional public forums. Section 2(c)(i) of SBHE policy 503.1 already does just that:

i. Institutions shall maintain the generally accessible, open, outdoor areas of its campus as traditional public fora for free speech by students, faculty, student organizations, and members of the public, subject to reasonable and constitutional time, place, and manner restrictions. Institutions may require

By generally opening such areas of campus to expressive activity, the NDUS also complies with Proposed Section 4(b), which prohibits the restriction of student free speech to "free speech zones." As the NDUS made clear to the House Education Committee in 2019 (and in 2017), NDUS campuses do not, and have never, restricted student speech to free speech zones. NDUS's objection to using that term has always been one of definition – different people define "free speech zones" in different ways. It became clear during the 2019 testimony that some of the proponents of the bill objected to constitutional time, place, and manner restrictions and called the same "free speech zones," as opposed to the more normal definition: a broad restriction on controversial speech to a

small, sometimes inconvenient area of campus. NDUS agrees that such restrictions are unconstitutional, and has never imposed such a limitation.

Proposed Section 4(c) would prevent institutions from denying student activity fee funding to a student organization based on viewpoints the student organization advocates. To be clear, NDUS does not permit discriminating against student organizations based on their viewpoints, and enshrined this rule in Policy 503.3, Student Political Rights:

- 4. Student Organizations.** Student organizations shall be free to engage in civic engagement and political activities and advocacy without interference or restraint by the SBHE, NDUS, or any NDUS Institution, subject to the requirements and limitations of this policy.
- a. Student organizations shall be permitted to use any funding or resources provided by the institution or student government to provide educational or service-based events or experiences for members of the organization or campus community, such as (but not limited to) inviting speakers to campus, hosting debates or forums, or attending local, state, or national conferences or conventions, even if such events or experiences may be interpreted as “political” or “partisan” by an outside observer.

As a result of this and other non-discrimination provisions in SBHE and institution policies, NDUS institutions have never denied student activity fee funding to a student organization based on their viewpoint, and this requirement is unnecessary. If, however, the legislature would prefer that Policy 503.1 explicitly prohibit denying student activity fee funding to a student organization, NDUS has no objection to adding that to the policy – yet another example of a goal that could be accomplished without legislation.

Proposed Section 4(d) of the policy is also addressed by Section 2(e) of Policy 503.1, which provides that NDUS institutions may require permits only for the exclusive use of outdoor spaces. There is no permit requirement for spontaneous gatherings or assembly, and outdoor distribution of literature is only subject to constitutional time, place, and manner restrictions in institutional policies (i.e. not within a certain distance of an entrance or exit to a building).

Proposed Section 4(e), which regards security fees, of H.B. 1503 is already largely included in SBHE Policy 503.1. The only place where the current policy diverges from the proposed legislation is that the Policy permits the assessment of security fees based on anticipated security fees. This element of the policy was put in place due to budgetary concerns – the media is full of examples of campuses having to spend tens or hundreds of thousands of dollars to provide security for controversial speakers. Most or all NDUS institutions simply do not have the budget to pay for such security. However, based on federal litigation outside of North Dakota and guidance received over the last

two years, the NDUS has already begun the process to remove this allowance from the SBHE policy, and in fact campuses have long been instructed not to impose security fees based on expected protest activity without the approval of their campus attorney, so this provision has never been used. NDUS institutions have always done an excellent job facilitating the attendance of controversial speakers on campus, often without incurring additional expenses. However, should an NDUS institution incur security costs which exceed their budgetary means, it may well come to the legislature with a deficiency funding request during the next legislative session, and we hope the legislature will be amenable to reimbursing that expenditure. Again, this element of the policy could have been addressed by the proponents of H.B. simply by reaching out to the NDUS office – but no one did so.

Similarly, Proposed Sections 4(f) and 4(g) are also covered by SBHE Policy 503.1:

f. Students, faculty, and student organizations shall be permitted to invite guest speakers or groups to campus, and institutions may not prohibit or disinvite such guest speakers based on the anticipated content or viewpoint of their speech or expression.

Finally, SBHE Policy 503.1 does not currently address element 4(h) of H.B. 1503. This is for a good reason: the Supreme Court ruled in the case of *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010) that institutions could require officially recognized student organizations to not discriminate based on the factors set out in federal law, including based on religion. As a result, some NDUS institutions have limited student activity fee funding to some organizations based on some organizations' failure to allow any student to participate, become a member, or seek leadership positions in the organization, while others have not limited that funding. However, last year the Department of Education promulgated a new regulation, located at 34 C.F.R. §§ 75.500 and 76.500, which prohibits this limitation. As a result, the NDUS has already begun the process of making this change to SBHE Policy 503.1 and the institution policies, and would welcome working with H.B. 503.1's proponents to ensure that the language of the SBHE policy complies with this new regulation.

I am not here today to say that SBHE Policy 503.1 is perfect – as I have noted, there are a couple places where NDUS has already begun the process to make changes. However, given that the policy was required to be put in place in only four months, during the summer (when most NDUS stakeholders are not on campus), some work on the policy is to be expected. The NDUS has always been open to feedback from legislators, constituents, and groups like FIRE on its existing policies, and would have been happy to address those changes before we arrived here, on a delayed bill before this committee. However, the issues that I have highlighted in my testimony today

underscore why the NDUS must retain the flexibility to react to ever-changing federal law and court rulings. The previous presidential administration made expanding certain elements of campus speech rights a priority, and we expect that the new administration may well seek to either emphasize different aspects of campus speech, or to take back some of previous regulations. Moreover, Courts are consistently reaching conflicting decisions regarding campus speech issues. More than ever, the NDUS and its institutions are perfect examples of how local control can result in a more nimble and effective response to changing conditions. H.B. 1503 is unnecessary and punitive at best, and would actively harm the ability of NDUS's campuses to adapt to changing laws and regulations.

Despite all of the efforts of the SBHE, NDUS, and the institutions over the last two years, however, H.B. 1503 once again erects a confusingly written and punitive cause of action against the State of North Dakota. The cause of action section seems to intend to grant every student the right to file a lawsuit against an institution if that institution violates any of the numerous and detailed provisions set forth in the proposed bill. However, that isn't what the proposed legislation would do. The cause of action is written so confusingly that it could create a cause of action for anyone whose expressive rights were violated by an action which is not compliant with *any* state law, as the cause of action does not specify which law must be violated to support the suit.

Moreover, Chapter 15-10.4 does is require the institutions to create a policy meeting certain parameters. It is unclear how someone's expressive rights could be violated by the failure of the NDUS to establish a certain policy – expressive rights are violated by the application of policies.

Finally, assuming that the cause of action would be interpreted to grant a cause of action to individuals whose rights were allegedly violated by contraventions of SBHE and institution policy – which would likely be a first in North Dakota - the cause of action would not have the desired effect. The North Dakota Risk Management department is required by statute to defend state employees who are sued for actions they took within the scope of their authority. As a result, it would be the taxpayers of the state of North Dakota who would be paying the damages in any such lawsuit, not the NDUS or the individual who allegedly violated a person's rights.

Notwithstanding, the cause of action still encourages frivolous litigation against the state of North Dakota by the inclusion of statutory damages – particularly where there have been no reported violations of expressive rights on NDUS campuses. This part of the bill is particularly concerning where students already have two avenues to pursue if they contend that their First Amendment rights have been violated. First, they can file a complaint with their campus or the system office under SBHE Policy 501.3(5) or seek policy changes to ensure that the alleged violation does not reoccur. Second, they can file a federal lawsuit under federal civil rights laws. The bill's creation of a

new, expensive means for students to seek compensation from North Dakota taxpayers is redundant and unnecessary.

The institutions of the NDUS are unreservedly supportive of free speech. Despite the fact that our campuses have not encountered any substantiated cases of restrictions being placed on free speech, have had no speakers shouted down, no visitors assaulted, no “disinvited” speakers, and no student complaints for at least the last 12 years, which is remarkable in the current political environment, there are still external forces that continue to perpetuate the notion that North Dakota colleges and universities are actively working against free speech and freedom of expression. This is simply not true, and it devalues the hard work of NDUS employees to protect the rights of student rights over the last two years, and the decades prior.

I respectfully recommend a “do not pass” on H.B. 1503 and wish to iterate the willingness of the North Dakota University System to work with this Committee and others, including FIRE, to better understand and address any unresolved concerns. I stand for questions from the Committee.

**NORTH DAKOTA STATE BOARD OF HIGHER EDUCATION
POLICY MANUAL**

SUBJECT: STUDENT AFFAIRS

EFFECTIVE: June 26, 2019

Section: 503.1 Student Free Speech and Expression

1. Definitions for Terms Used in this Section

- a. **Constitutional time, place, and manner restrictions** – Restrictions on free speech which are content-neutral, narrowly tailored to serve a significant interest, and leave open alternative methods of communicating the message in question.
- b. **Faculty** – An individual, regardless of whether the individual is compensated by an institution, and regardless of political affiliation, who is tasked with providing scholarship, academic research, or teaching, including tenured and nontenured professors, adjunct professors, visiting professors, lecturers, graduate student instructors, and those in comparable positions. “Faculty” does not mean an individual whose primary responsibilities are administrative or managerial, unless the individual also teaches at least one credit-hour.
- c. **Free speech or Free Expression** – The rights to speech, expression, and assembly protected by the First Amendment to the United States Constitution or Article I, Section 4 of the Constitution of North Dakota. Such rights include, but are not limited to, all forms of peaceful assembly, protests, demonstrations, rallies, vigils, marches, public speaking, distribution of printed materials, the display of signs or banners, or the circulation of petitions. For the purposes of this policy, “free speech” or “free expression” is not intended to include commercial speech.
 - i. **Commercial Speech** – The promotion, sale, or distribution of a product or service. For the purposes of this section, commercial speech does not include the incidental promotion, sale, or distribution of a product as part of the exercise of non-commercial speech.
- d. **Materially and Substantially Disruptive Conduct** – Conduct by an individual or group which constitutes knowing or intentional affirmative steps to limit the free speech of an individual or a group, prevents the communication of a message, or disrupts a lawful meeting, gathering, or procession through violent or obstructive behavior. Protected conduct does not constitute a material and substantial disruption.
- e. **Protected Conduct** – Free Speech or Free Expression protected by the First Amendment to the United States Constitution or Article I, Section 4 of the Constitution of North Dakota, subject to reasonable time, place, and manner restrictions, permitting requirements under institutional policies or procedures, and

the reasonable safety and security needs of the institution.

- f. **Student** – an individual enrolled in one or more courses at an institution.
- g. **Student-on-Student Harassment** – (1) Unwelcome conduct directed to an individual which a reasonable person would find offensive or defamatory and which does not constitute protected conduct, (2) conduct which violates North Dakota criminal laws prohibiting harassment, stalking, or similar behavior, or (3) conduct which would constitute a violation of Title VI or VII of the Civil Rights Act of 1964, as amended or Title IX of the Education Amendments of 1972 (or similar state and federal laws). Institutions shall ensure that their existing codes of conduct are not enforced beyond this definition and are not used to limit protected conduct.
- h. **Student Organization** – An officially recognized organization, or an organization seeking recognition by an institution, comprised of students, whether or not that organization seeks or receives institutional funds.

2. **SBHE Policy on Student Free Speech and Expression**

- a. The SBHE recognizes that students have a fundamental right to free speech and expression under the First Amendment to the United States Constitution and Article I, Section 4 of the North Dakota Constitution, and as a result the SBHE and institutions under its control shall ensure that students have the freedom to speak, write, listen, challenge, learn, and discuss any issue, subject to reasonable and constitutionally-recognized limitations.
- b. Institutions under the control of the SBHE shall not engage in viewpoint- or content-based discrimination or suppression of speech and shall to the greatest extent possible permit and facilitate the open discussion and debate of ideas and issues, regardless of the content of those issues.
- c. As a general rule, institutions under the control of the SBHE shall not use the concepts of civility or mutual respect as a basis to suppress or limit the discussion of ideas, regardless of content, except as reasonably necessary in the educational setting.
- d. Institutions under the control of the SBHE generally shall not seek to shield individuals from the free speech or expression of others.
- e. Institutions under the control of the SBHE shall control the availability of campus spaces for free speech and expressive activity as follows:
 - i. Institutions shall maintain the generally accessible, open, outdoor areas of its campus as traditional public fora for free speech by students, faculty, student organizations, and members of the public, subject to reasonable and constitutional time, place, and manner restrictions. Institutions may require

students, faculty, student organizations, and members of the public to obtain a permit to reserve the exclusive use of an outdoor space constituting a traditional public forum. Such permits may not be issued or denied based on the content of the message or viewpoint the permit requestor seeks to convey.

- ii. Institutions may only designate as restricted or designated forums: (1) those areas inside buildings which have not otherwise been treated as traditional public fora; (2) areas in residential areas of campus during evening and overnight hours; (3) areas immediately surrounding academic buildings during times when classes are held in that building; (4) areas which must be restricted due to reasonable safety and security concerns; (5) areas which must be restricted to enable the flow of pedestrian or vehicle traffic; and (6) areas surrounding building entrances and exits to provide for safe and convenient ingress and egress from those buildings. Institutions may only designate an area of campus as a restricted or designated forum on the grounds of an educational, safety or security, or health-related reason (e.g. ensuring a quiet residential environment for students in residence halls). Institutions may grant permits to students, faculty, student organizations, or others to exercise free speech or expression in such restricted or designated fora based on content-neutral criteria.
 - iii. Institutions may close to free speech or expressive activity those areas which are not designed for the exercise of free speech or expression or which have traditionally not been open to the exercise of free speech or expressive activity.
- f. Students, faculty, and student organizations shall be permitted to invite guest speakers or groups to campus, and institutions may not prohibit or disinvite such guest speakers based on the anticipated content or viewpoint of their speech or expression.
 - g. Institutions may not impose security fees on students, faculty, or student organizations who invite guest speakers or groups to campus based on the anticipated content or viewpoint of the guest speaker or group's speech or expression, and institutions are not required to subsidize the free speech and expression of students, faculty, or student organizations. As a result, institutions may, in their discretion, impose security and logistic fees based on venue, anticipated attendance, anticipated protest activity, and other non-content-based factors. Such fees may not exceed the actual costs incurred by the institution, and the institution must refund any overpayment. Institutions shall set forth empirical and objective criteria for calculating such fees, and such criteria shall be made publicly available.
 - h. Institutions may make their facilities available to guest speakers or groups invited by students, faculty, or student organizations, and may subject such guest speakers or groups to the same terms and conditions governing use of the facilities for other outside groups. If institutions choose to make facilities available to guest speakers

or groups invited by students, faculty, or student groups, those facilities must be made equally available to all such speakers or groups.

- i. Institutions may prohibit materially and substantially disruptive conduct.
- j. Institutions may impose measures regarding student free speech and expression which comport with the First Amendment of the United States Constitution and Article I, Section 4 of the Constitution of North Dakota, including, but not limited to:
 - i. Constitutional time, place, and manner restrictions on the use of traditional public fora;
 - ii. Reasonable and viewpoint-neutral restrictions on the use of restricted or designated fora;
 - iii. Prioritizing the use of institution resources and property for students, faculty, and student organizations over individuals and groups not affiliated with the institution;
 - iv. Prohibiting or limiting speech, expression, or assemblies not protected by the First Amendment to the United States Constitution and Article I, Section 4 of the Constitution of North Dakota, such as defamatory speech, true threats, and other recognized exceptions; and
 - v. Content-based restrictions reasonably related to a legitimate educational or pedagogical purpose, such as rules for behavior in the classroom.

3. Institutional Policies on Student Free Speech and Expression

- a. Institutions shall adopt policies and procedures which shall be no more restrictive of student free expression than this SBHE Policy on Student Free Speech and Expression.

4. Institutional Policies on the Distribution of Publications, Hanging of Banners or Posters, and Chalking.

- a. Institutions shall adopt policies or procedures governing the distribution of information through publications, banners and posters, or chalking. Such policies or procedures must allow students, faculty, or other individuals and groups to access meaningful opportunities to distribute information, while ensuring safety and access to facilities, maintaining clear directional signage, minimizing disruption to the educational mission of the institution, and limiting litter and clutter on institution properties and campuses. The opportunity to distribute information through publications, banners or posters, or chalking may not be limited based on the content of the information to be distributed, but the institution may impose reasonable time, place, and manner restrictions on such distribution,

provided that such restrictions ensure the existence of meaningful alternative means of distribution.

5. **Reports of Violations of this Policy** – Individuals who believe this policy (or an institutional policy covering the same or similar subject matter) has been violated may report any violation through an existing reporting process at an institution. Alternatively, individuals may report violations to the NDUS Office's Director of Student Affairs (the "Director"). In the event that a report is made to the Director, he or she shall determine the appropriate institution official to address the report in consultation with the Vice Chancellor of Academic and Student Affairs. Pursuant to SBHE Policy 308.2, no NDUS employee, officer or member of the SBHE shall retaliate against an individual for making a report under this paragraph.
6. **Institutional Reporting** – Institutions shall annually, or at the request of the Vice Chancellor of Academic and Student Affairs, report the total number of reports made under this policy (or an institutional policy covering the same or similar subject matter), the time to resolve such reports, and the number and type of corrective actions taken to the Vice Chancellor of Academic and Student Affairs.

HISTORY: New policy, SBHE minutes, June 27, 2019.



Policy & Procedures

General/Student – Speech, Expression, and Assembly

Categories of Speakers and Users:

1. *"Academic or administrative unit"* means any office or department of Bismarck State College.
2. *"Event"* means something that occurs in a certain place during a particular interval of time; events include but are not limited to guest speakers, exhibits, tables, distribution of literature, signs, and public assemblies.
3. *"Faculty member and staff member"* includes any person who is employed by Bismarck State College.
4. *"Off-campus person or organization"* means any person, organization, or business that is not an academic or administrative unit, a student, faculty, or staff organization, or a student, faculty member, or staff member.
5. *"Student"* means a person who is currently enrolled at Bismarck State College, or has been enrolled at Bismarck State College in a prior semester or summer session and is eligible to continue enrollment in the semester or summer session that immediately follows. A student may also be a faculty or staff member. Circumstances will dictate whether an individual is considered a student or faculty or staff member for the purposes of application of this policy.
6. *"Bismarck State College person or organization"* includes academic and administrative units, student, faculty, and staff organizations, and individual students, faculty members, and staff members; this phrase describes the most inclusive category of potential speakers on campus; every person and organization of any kind is either an "off-campus person or organization" or a "Bismarck State College person or organization."

General Definitions:

1. *"Amplified sound"* means sound whose volume is increased by any electric, electronic, mechanical, or motor-powered means. Shouting, group chanting, and acoustic musical instruments are exempt from this definition and are not subject to the special rules on amplified sound, but are subject to general rules on disruption.

2. "Weekday" means an 8:00 a.m. to 5:00 p.m. calendar day, and excludes weekends, Bismarck State College holidays, and days on which regularly scheduled classes are suspended due to emergent situations. If a deadline defined in this chapter falls on a Saturday, Sunday, or Bismarck State College holiday that deadline will be moved to the next day.
3. "Room or space" includes any room or space, indoors or outdoors, owned or controlled by the Bismarck State College.

General Provisions:

1. Bismarck State College recognizes that students, staff, and faculty have a fundamental right to free speech and expression under the First Amendment to the United States Constitution and Article I, Section 4 of the North Dakota Constitution, and as a result the SBHE and institutions under its control shall ensure that students have the freedom to speak, write, listen, challenge, learn, and discuss any issue, subject to reasonable and constitutionally-recognized limitations. The exercise of free speech and expression shall be subject to the Political Activities Policies of the SBHE and Bismarck State College.
2. Bismarck State College will not engage in viewpoint- or content-based discrimination or suppression of speech, and will, to the greatest extent possible, permit and facilitate the open discussion and debate of ideas and issues, regardless of the content of those issues.
3. Bismarck State College will not use the concept of civility or mutual respect as a basis to suppress or limit the discussion of ideas, regardless of content, except as reasonably necessary to an educational activity.
4. Bismarck State College and its faculty and employees will not seek to shield individuals from the free speech or expression of others, except as reasonably necessary to an educational activity.
5. Except as set forth elsewhere in this policy, the generally accessible, open, outdoor areas of the campus are traditional public fora for free speech by both Bismarck State College and off-campus persons and organizations, subject to reasonable and constitutional time, place, and manner restrictions.
6. Bismarck State College designates the following areas as restricted or designated fora:
 - a. those areas inside buildings which have not otherwise been treated as traditional public fora;
 - b. areas within a fifty (50) foot radius from residential buildings during evening and overnight hours;
 - c. areas within a fifty (50) foot radius from academic buildings during times when classes are held in that building;
 - d. areas which must be restricted due to reasonable safety and security concerns, as designated by Bismarck State College's Safety and Security Manager;

- e. areas which must be restricted to enable the flow of pedestrian or vehicle traffic, as designated by Bismarck State College's Safety and Security Manager;
- f. areas within a fifty (50) foot radius from building entrances and exits to provide for safe and convenient ingress and egress from those buildings; and

Bismarck State College may require reservations or permits for the exercise of free speech or expression, including assemblies, within these restricted or designated forums.

- 7. Closed Forums – Unless otherwise identified in this Policy, all other areas of campus are considered Closed Forums. Closed Forums are those areas which are not designed for the exercise of free speech or expression or which have traditionally not been open to the exercise of free speech or expressive activity.

Prohibited Items at Assemblies:

- 1. Dangerous weapons, as defined by N.D.C.C. § 62.1-01-01(1) as any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.
- 2. Firearms, except as permitted by law. See N.D.C.C. § 62.1-02-05.
- 3. Body-armor or makeshift body-armor, helmets and other garments, such as sporting protective gear, that alone or in combination could be reasonably construed as weapons or body-armor, without written permission from Bismarck State College's Safety and Security Manager.
- 4. Open flame, unless approved in advance by Bismarck State College's Safety and Security Manager.

General Rules on Means of Expression:

- 1. Disruption
 - a. No speech, expression, or assembly may be conducted in a way that disrupts or interferes with any teaching, research, administration, or other authorized activities on the campus; free and unimpeded flow of pedestrian and vehicular traffic on the campus; or signs, tables, exhibits, public assemblies, distribution of literature, guest speakers, or use of amplified sound by another person or organization acting under the rules in this chapter.

- b. Except in the most extreme cases, interference and disruption are unavoidably contextual. Intentional physical interference with other persons is nearly always disruptive in any context. Interfering with traffic depends on the relation between the volume of traffic and the size of the passageway left open. Disruptive noise is the most contextual of all, because it depends on the activity disrupted. Any distracting sound may disrupt a memorial service. Any sound sufficiently loud or persistent to make concentration difficult may disrupt a class or library. Occasional heckling in the speaker's pauses may not disrupt a political speech, but persistent heckling that prevents listeners from hearing the speaker does disrupt a political speech. These illustrations may be helpful, but none of them includes enough context to be taken as a rule. We cannot escape relying on the judgment and fairness of Bismarck State College authorities in particular cases. In this context where difficult enforcement judgments are unavoidable, it is especially important for administrators to remember that their judgments must not be influenced by the viewpoint of those claiming disruption or of those allegedly disrupting.
2. Potentially disruptive events can often proceed without disruption if participants and administrators cooperate to avoid disruption without stopping the event. In cases of marginal or unintentional disruption, administrators should clearly state what they consider disruptive and seek voluntary compliance before stopping the event or resorting to disciplinary charges.

Damage to Property:

No speech, expression, or assembly may be conducted in a way that damages, defaces, marks, discolors, or alters in any way property of the Bismarck State College or of any person who has not authorized the speaker to damage or deface their property.

Amplified Sound:

1. General Rule on Amplified Sound
 - a. Bismarck State College academic or administrative units and student, faculty, or staff organizations may use amplified sound on campus at designated times and locations, with advance permission from Bismarck State College's Safety and Security Manager, subject to the following restrictions.
2. Location and Times of Weekday Outdoor Amplified Sound Areas
 - a. The Bismarck State College's Safety and Security Manager may prescribe rules concerning scheduling, sound levels, the location of speakers and the direction in which they are pointed, and other rules to facilitate the use of weekday amplified sound areas, to mediate any conflict with Bismarck State College functions and other nearby activities, and to manage environmental impact. All such rules will be reasonable and nondiscriminatory.

- b. Student, faculty, or staff organizations or academic or administrative units wishing to use a weekday amplified sound area must reserve a particular area at a particular time. Reservations must be made with the Bismarck State College's Safety and Security Manager on a form prescribed by the Bismarck State College's Safety and Security Manager.
- c. The Bismarck State College's Safety and Security Manager may limit the number or frequency of reservations for each student, faculty, or staff organization or academic or administrative unit to ensure reasonable access for all persons and organizations desiring to use amplified sound on weekdays.
- d. Bismarck State College persons and organizations using amplified sound are responsible for maintaining a passageway for pedestrians that is adequate to the volume of pedestrian traffic passing through the area.

3. Amplified Sound Outdoors on Evenings and Weekends

- a. With advance permission, Bismarck State College organizations may use amplified sound in any outdoor location on campus after 5:00 pm on weekdays, and after 8:00 pm on weekends.
- b. The Bismarck State College's Safety and Security Manager may prescribe reasonable and nondiscriminatory rules concerning scheduling, sound levels, the location of speakers and the direction in which they are pointed, and other rules to facilitate the use of amplified sound on evenings and weekends, to mediate any conflict with Bismarck State College functions and other nearby activities, and to manage environmental impact.
- c. Use of amplified sound on evenings and weekends requires advance permission from the Bismarck State College's Safety and Security Manager. Student, faculty, or staff organizations and academic or administrative units will apply through a process prescribed by the Bismarck State College's Safety and Security Manager.
- d. If amplified sound is authorized for an event on a Sunday, Monday, Tuesday, Wednesday, or Thursday evening, the sound must be turned off by midnight on the following day. If amplified sound is authorized for an event on a Friday or Saturday evening, the sound must be turned off by 1:00 am on the following day.

4. Amplified Sound Indoors

- a. Amplified sound sufficient to be heard throughout the room may be used in any room in any building, but the Bismarck State College's Safety and Security Manager may limit or prohibit sound that would be disruptive outside the room. Reservations may be required.

Public Assemblies without Amplified Sound:

1. General Rule on Public Assemblies

- a. "Publicly assemble" and "public assembly" include any gathering of persons, including discussions, rallies, and demonstrations.
- b. Bismarck State College persons and organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be. No advance permission is required. If the expected attendance at an event with a guest speaker is twenty-five or more people, advance notice of no less than two weeks is required.
- c. The buildings owned or controlled by Bismarck State College are not open for demonstrations, assembly, or speech by the general public. In furtherance of the Bismarck State College's educational mission, the buildings owned or controlled by Bismarck State College are limited for open only to faculty, staff, and students and their organizations.
- d. Off-campus persons and organizations may not engage in expressive activities at the Bismarck State College except in accordance with these rules.

2. Reservation of Space

- a. Bismarck State College persons, organizations, and academic or administrative units who wish to publicly assemble in a particular room or space at a particular time may reserve the room or space. Individual faculty, staff, and students may not reserve an indoor space, except as related to an educational activity of the Bismarck State College. Off-campus persons or organizations may only reserve a particular room or space for a public assembly with the advance approval of Bismarck State College's Safety and Security Manager.
- b. Reservation requests from recognized student, faculty, and staff organizations or academic or administrative units shall receive precedence over requests from individual persons, unrecognized organizations, or any off-campus persons or organizations.
- c. A Bismarck State College person, organization, or academic or administrative unit with a reservation has the right to the reserved room or space for the time covered by the reservation. Any person or organization using or occupying the room or space without a reservation must yield control of the room or space in time to permit any person, organization, or academic or administrative unit with a reservation to begin using the room or space promptly at the beginning of its reserved time. Reservations for outdoor spaces are not required but are strongly encouraged. Reservations for indoor spaces are required, although this requirement may be waived by the President or their designee.

3. Fees for Reserving Space.

- a. The Bismarck State College's Safety and Security Manager may prescribe a fee schedule for reserving specified campus spaces. The schedule shall be made available at Safety and Security on request, and shall be based on the actual expenses incurred by the campus in making the space available. The schedule must not be wholly or partially based on viewpoint- or content-based criteria, but may include security and logistic fees based on the venue, the anticipated attendance, historical protest

- activity at events of similar attendance, and other content-neutral factors. The criteria used to establish the fee schedule shall be made publicly available.
- b. The Bismarck State College may not retain funds beyond its actual expenses unless the reserving party or group charges admission to the event. The fee schedule must be applied equally to all persons or organizations, without reference to the content or viewpoint of the proposed assembly, except as otherwise governed by campus policies.
 - c. The President or their designee may waive any applicable fee for an assembly contributing to the educational mission of the institution or engaging in charitable work.
 - d. Academic and administrative units are not subject to the fee schedule.

Notice and Consultation:

- 1. Bismarck State College persons or organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be.
- 2. Students or student organizations planning a public assembly with a guest speaker and expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide advance notice of no less than two weeks to the Bismarck State College's Safety and Security Manager. Students or student organizations planning smaller assemblies or large assemblies without a guest speaker are encouraged to consult the Bismarck State College's Safety and Security Manager if there is uncertainty about applicable Bismarck State College rules, the appropriateness of the planned location, or possible conflict with other events. The Bismarck State College's Safety and Security Manager can help the planners avoid unintended disruption or other violations that may result in subsequent discipline or subsequent interference with the assembly by campus authorities.
- 3. Registered faculty organizations that are planning a public assembly with a guest speaker and an expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide notice of no less than two weeks to the Bismarck State College's Safety and Security Manager.
- 4. Registered staff organizations that are planning a public assembly with a guest speaker and an expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide notice of no less than two weeks to the Bismarck State College's Safety and Security Manager.
- 5. The notice and consultation requirements of this subchapter do not apply to academic or administrative units.
- 6. The notice and consultation requirements of this subchapter may be waived by the President or their designee.

Guest Speakers:

1. Definitions

- a. "Guest speaker" means a speaker or performer who is not a student, faculty member, or staff member, but who is invited to speak by a Bismarck State College person or organization outside of the classroom.

2. Who May Present

- a. Bismarck State College persons and organizations and academic and administrative units may present guest speakers on Bismarck State College property. In the case of speakers invited by students or student organizations, advance permission from the Vice President for Student Affairs is required. Faculty organizations are required to seek advance permission from the Vice President for Academic Affairs. Staff members and staff organizations are required to seek advance permission from the Vice President for Operations/Chief Financial Officer.
- b. The requirement of advanced permission may be waived by the President or their designee.

3. Location and Form of Presentation

- a. A guest speaker may present a speech or performance, or lead a discussion of specified duration, at a time announced in advance, in a fixed indoor location or in a fixed outdoor location approved by the President or designee.
- b. A guest speaker may not accost potential listeners who have not chosen to attend the speech, performance, or discussion.

4. Application

- a. All students, faculty members, staff members, student organizations, faculty organizations, and staff organizations that wish to present a guest speaker must apply through a prescribed process, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
- b. A student or student organization that wishes to present a guest speaker will apply to the Vice President for Student Affairs, through a process prescribed by the Vice President for Student Affairs, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
- c. A faculty member or faculty organization that wishes to present a guest speaker will apply to the Vice President for Academic Affairs through a process prescribed by the Vice President for Academic Affairs, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.

- d. A staff member or staff organization that wishes to present a guest speaker will apply to the Vice President for Operations/Chief Financial Officer through a process prescribed by the Vice President for Operations/Chief Financial Officer, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.

5. Obligations of Presenting Person or Organization

- a. A Bismarck State College person or organization that presents a guest speaker must make clear that:
 - i. the person or organization, and not the Bismarck State College, invited the speaker; and
 - ii. the views expressed by the speaker are their own and do not necessarily represent the views of the Bismarck State College, the North Dakota University System, or the State of North Dakota.
- b. The person or organization that presents a guest speaker is responsible for paying any fees assessed pursuant to the schedule set forth in this policy.
- c. Institutional funds provided to a recognized Bismarck State College organization may not be used to pay for any costs or expenses related to the presentation of a politically-oriented guest speaker unless approved in advance by an organization's faculty advisor and College President or their designee, in consultation with the College's legal counsel.

6. Equal Treatment

- a. Guest speakers reserving space at Bismarck State College facilities may be subject to the same terms and conditions governing the use of the facilities for other outside groups. If a room, space, or facility is made available to any guest speaker invited by a Bismarck State College person or organization, then that room, space, or facility must be made equally available to all such speakers or groups.

7. Disinvitation

- a. If a Bismarck State College person or organization complies with this policy when presenting a guest speaker, Bismarck State College may not prohibit or disinvite that guest speaker based on the anticipated content or viewpoint of the guest speaker's speech, performance, presentation, or other form of expression.

Responding to Speech, Expression, and Assembly:

1. General Rule on Responding

- a. Bismarck State College persons and organizations may respond to the speech, expression, or assembly of others, subject to all the rules herein.

- b. Responders may not damage or deface signs or exhibits, disrupt public assemblies, block the view of participants, or prevent speakers from being heard.
- 2. Means of response that are permitted in many locations and without advance permission or reservation, such as signs, tables, distribution of literature, and public assembly without amplified sound, may be used immediately and in any location authorized in this policy.
- 3. Means of response that require advance permission or reservation, such as banners, exhibits, and amplified sound, may be used as soon as the needed permission or reservation may be arranged. Banner space and some amplified sound areas may be unavailable on short notice because of earlier reservations, but the Bismarck State College's Safety and Security Manager will expedite approval of exhibits and available banner space and amplified sound areas where necessary to permit appropriate response to other speech, assembly, or expression.
- 4. Means of response that are confined to authorized locations, such as banners and amplified sound, may be used only in those locations. It is not permissible to respond to amplified sound with amplified sound in the same location; similarly, if an exhibit or public assembly is in a location where amplified sound is not permitted, it is not permissible to respond with amplified sound in that location. In either case, it is permissible to respond with amplified sound in another location and to use signs or distribution of literature to advertise the response at the other location.

References:

State Board of Higher Education Policy 605.1, Academic Freedom and Tenure; Academic Appointments.

Senate Bill No. 2320, 66th Legislative Assembly of North Dakota

History of This Policy:

First policy draft approved by the Faculty Senate on August 22, 2019, the Staff Senate on August 20, 2019; reviewed by the Operations Council on August 16, 2019, and approved by the Executive Council on August 26, 2019.

**DAKOTA COLLEGE AT BOTTINEAU
SPEECH, EXPRESSION, AND ASSEMBLY POLICY**

I. Categories of Speakers and Users

1. *“Academic or administrative unit”* means any office or department of Dakota College at Bottineau.
2. *“Event”* means something that occurs in a certain place during a particular interval of time; events include but are not limited to guest speakers, exhibits, tables, distribution of literature, signs, and public assemblies.
3. *“Faculty member and staff member”* includes any person who is employed by Dakota College at Bottineau.
4. *“Off-campus person or organization”* means any person, organization, or business that is not an academic or administrative unit, a student, faculty, or staff organization, or a student, faculty member, or staff member.
5. *“Student”* means a person who is currently enrolled at Dakota College at Bottineau or has been enrolled at Dakota College at Bottineau in a prior semester or summer session and is eligible to continue enrollment in the semester or summer session that immediately follows. A student may also be a faculty or staff member. Circumstances will dictate whether an individual is considered a student or faculty or staff member for the purposes of application of this policy.
6. *“Dakota College at Bottineau person or organization”* includes academic and administrative units, student, faculty, and staff organizations, and individual students, faculty members, and staff members; this phrase describes the most inclusive category of potential speakers on campus; every person and organization of any kind is either an “off-campus person or organization” or a “Dakota College at Bottineau person or organization.”

II. General Definitions

1. *“Amplified sound”* means sound whose volume is increased by any electric, electronic, mechanical, or motor-powered means. Shouting, group chanting, and acoustic musical instruments are exempt from this definition and are not subject to the special rules on amplified sound, but are subject to general rules on disruption.
2. *“Day”* means an 8:00 a.m. to 5:00 p.m. calendar day, and excludes weekends, Dakota College at Bottineau holidays, and days on which regularly scheduled classes are suspended due to emergent situations. If a deadline defined in this chapter falls on a Saturday, Sunday, or Dakota College at Bottineau holiday that deadline will be moved to the next day.

3. “Room or space” includes any room or space, indoors or outdoors, owned or controlled by Dakota College at Bottineau.

III. General Provisions

1. Dakota College at Bottineau recognizes that students and faculty have a fundamental right to free speech and expression under the First Amendment to the United States Constitution and Article I, Section 4 of the North Dakota Constitution, and, as a result, the SBHE and institutions under its control shall ensure that students have the freedom to speak, write, listen, challenge, learn, and discuss any issue, subject to reasonable and constitutionally-recognized limitations.
 - a. Non-faculty staff of Dakota College at Bottineau are also free to exercise their right to free speech and expression, as set forth above, provided that such activities do not substantially interrupt or inhibit their duties, and such exercise of free speech and expression shall be subject to the Political Activities Policies of the SBHE and Dakota College at Bottineau.
2. Dakota College at Bottineau will not engage in viewpoint- or content-based discrimination or suppression of speech, and will, to the greatest extent possible, permit and facilitate the open discussion and debate of ideas and issues, regardless of the content of those issues.
3. As a general rule, Dakota College at Bottineau will not use the concept of civility or mutual respect as a basis to suppress or limit the discussion of ideas, regardless of content, except as reasonably necessary to an educational activity.
4. Dakota College at Bottineau and its faculty and employees shall generally not seek to shield individuals from the free speech or expression of others, except as reasonably necessary to an educational activity.
5. Except as set forth elsewhere in this policy, the generally accessible, open, outdoor areas of the campus are traditional public fora for free speech by both Dakota College at Bottineau and off-campus persons and organizations, subject to reasonable and constitutional time, place, and manner restrictions.
6. Dakota College at Bottineau designates the following areas as restricted or designated forums:
 - a. those areas inside buildings which have not otherwise been treated as traditional public fora;
 - b. areas within a 50 foot radius from residential buildings during evening and overnight hours;
 - c. areas within a 50 foot radius from academic buildings during times when classes are held in that building;

- d. areas which must be restricted due to reasonable safety and security concerns, as designated by the Campus Dean;
- e. areas which must be restricted to enable the flow of pedestrian or vehicle traffic, as designated by the Campus Dean;
- f. areas within a 50 foot radius from building entrances and exits to provide for safe and convenient ingress and egress from those buildings.

Dakota College at Bottineau may require reservations or permits for the exercise of free speech or expression, including assemblies, within these restricted or designated forums.

- 7. Dakota College at Bottineau designates the following areas as closed to free speech, expressive activity, and public assembly:
 - a. all academic buildings/classrooms/offices
 - b. all residence halls
 - c. the college dining center

IV. Prohibited Items at Assemblies

- 1. Dangerous weapons, as defined by N.D.C.C. § 62.1-01-01(1) as any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.
- 2. Firearms, except as permitted by law. *See* N.D.C.C. § 62.1-02-05.
- 3. Body-armor or makeshift body-armor, helmets and other garments, such as sporting protective gear, that alone or in combination could be reasonably construed as weapons or body-armor, without written permission from the Campus Dean.
- 4. Open flame, unless approved in advance by the Campus Dean.

V. General Rules on Means of Expression

- 1. Disruption
 - a. No speech, expression, or assembly may be conducted in a way that disrupts or interferes with any teaching, research, administration, or other authorized activities on the campus; free and unimpeded flow of pedestrian and vehicular traffic on the campus; or signs, tables, exhibits, public assemblies, distribution

of literature, guest speakers, or use of amplified sound by another person or organization acting under the rules in this chapter.

- b. Except in the most extreme cases, interference and disruption are unavoidably contextual. Intentional physical interference with other persons is nearly always disruptive in any context. Interfering with traffic depends on the relation between the volume of traffic and the size of the passageway left open. Disruptive noise is the most contextual of all, because it depends on the activity disrupted. Any distracting sound may disrupt a memorial service. Any sound sufficiently loud or persistent to make concentration difficult may disrupt a class or library. Occasional heckling in the speaker's pauses may not disrupt a political speech, but persistent heckling that prevents listeners from hearing the speaker does disrupt a political speech. These illustrations may be helpful, but none of them includes enough context to be taken as a rule. We cannot escape relying on the judgment and fairness of Dakota College at Bottineau authorities in particular cases. In this context where difficult enforcement judgments are unavoidable, it is especially important for administrators to remember that their judgements must not be influenced by the viewpoint of those claiming disruption or of those allegedly disrupting.
2. Potentially disruptive events can often proceed without disruption if participants and administrators cooperate to avoid disruption without stopping the event. In cases of marginal or unintentional disruption, administrators should clearly state what they consider disruptive and seek voluntary compliance before stopping the event or resorting to disciplinary charges.

VI. Damage to Property

1. No speech, expression, or assembly may be conducted in a way that damages, defaces, marks, discolors, or alters in any way property of the Dakota College at Bottineau or of any person who has not authorized the speaker to damage or deface their property.

VII. Amplified Sound

1. General Rule on Amplified Sound
 - a. Dakota College at Bottineau academic or administrative units and student, faculty, or staff organizations may use amplified sound on campus at designated times and locations, with advance permission from the Campus Dean, subject to the following restrictions.
2. Location and Times of Weekday Amplified Sound Areas
 - a. Amplified sound is restricted to the hours of 8 AM to 9 PM daily.
 - b. Amplified sound may not be used within 100 feet of academic buildings, residence halls and the dining center.

- c. The Campus Dean may prescribe rules concerning scheduling, sound levels, the location of speakers and the direction in which they are pointed, and other rules to facilitate the use of weekday amplified sound areas, to mediate any conflict with Dakota College at Bottineau functions and other nearby activities, and to manage environmental impact. All such rules will be reasonable and nondiscriminatory.
- d. Student, faculty, or staff organizations or academic or administrative units wishing to use a weekday amplified sound area must reserve a particular area at a particular time. Reservations must be made with the Campus Dean on a form prescribed by the Campus Dean.
- e. The Campus Dean may limit the number or frequency of reservations for each student, faculty, or staff organization or academic or administrative unit to ensure reasonable access for all persons and organizations desiring to use amplified sound on weekdays.
- f. Dakota College at Bottineau persons and organizations using amplified sound are responsible for maintaining a passageway for pedestrians that is adequate to the volume of pedestrian traffic passing through the area.

3. Amplified Sound on Evenings and Weekends

- a. With advance permission, Dakota College at Bottineau organizations may use amplified sound in any outdoor location on campus after 5:00 pm on weekdays, and after 8:00 pm on weekends.
- b. The Campus Dean may prescribe reasonable and nondiscriminatory rules concerning scheduling, sound levels, the location of speakers and the direction in which they are pointed, and other rules to facilitate the use of amplified sound on evenings and weekends, to mediate any conflict with Dakota College at Bottineau functions and other nearby activities, and to manage environmental impact.
- c. Use of amplified sound on evenings and weekends requires advance permission from the Campus Dean. Student, faculty, or staff organizations and academic or administrative units will apply through a process prescribed by the Campus Dean.
- d. If amplified sound is authorized for an event on a Sunday, Monday, Tuesday, Wednesday, or Thursday evening, the sound must be turned off by midnight on the following day. If amplified sound is authorized for an event on a Friday or Saturday evening, the sound must be turned off by 1:00 am on the following day.

4. Amplified Sound Indoors

- a. Amplified sound sufficient to be heard throughout the room may be used in any room in any building, but the Campus Dean may limit or prohibit sound that would be disruptive outside the room. Reservations may be required.

VII. Public Assemblies without Amplified Sound

1. General Rule on Public Assemblies

- a. “Publicly assemble” and “public assembly” include any gathering of persons, including discussions, rallies, and demonstrations.
- b. Dakota College at Bottineau persons and organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be. No advance permission is required. If the expected attendance at an event with a guest speaker is twenty-five or more people, advance notice of no less than two weeks is required.
- c. The buildings owned or controlled by Dakota College at Bottineau are not open for demonstrations, assembly, or speech. In furtherance of the Dakota College at Bottineau’s educational mission, the buildings owned or controlled by Dakota College at Bottineau are limited fora open only to faculty, staff, and students and their organizations.
- d. Off-campus persons and organizations may not engage in expressive activities at the Dakota College at Bottineau except in accordance with these rules.

2. Reservation of Space

- a. Dakota College at Bottineau persons, organizations, and academic or administrative units who wish to publicly assemble in a particular room or space at a particular time may reserve the room or space. Individual faculty, staff, and students may not reserve an indoor space, except as related to an educational activity of the Dakota College at Bottineau. Off-campus persons or organizations may only reserve a particular room or space for a public assembly with the advance approval of the Campus Dean.
- b. Reservation requests from recognized student, faculty, and staff organizations or academic or administrative units shall receive precedence over requests from individual persons, unrecognized organizations, or any off-campus persons or organizations.
- c. A Dakota College at Bottineau person, organization, or academic or administrative unit with a reservation has the right to the reserved room or space for the time covered by the reservation. Any person or organization using or

occupying the room or space without a reservation must yield control of the room or space in time to permit any person, organization, or academic or administrative unit with a reservation to begin using the room or space promptly at the beginning of its reserved time. Reservations for outdoor spaces are not required but are strongly encouraged. Reservations for indoor spaces are required, although this requirement may be waived by the Campus Dean or his/her designee.

3. Fees for Reserving Space.

- a. The Campus Dean may prescribe a fee schedule for reserving specified campus spaces. The schedule shall be made available at the Dean's Office on request, and shall be based on the actual expenses incurred by the campus in making the space available. The schedule must not be wholly or partially based on viewpoint- or content-based criteria, but may include security and logistic fees based on the venue, the anticipated attendance, historical protest activity at events of similar attendance, and other content-neutral factors. The criteria used to establish the fee schedule shall be made publicly available.
- b. Dakota College at Bottineau may not retain funds beyond its actual expenses unless the reserving party or group charges admission to the event. The fee schedule must be applied equally to all persons or organizations, without reference to the content or viewpoint of the proposed assembly, except as otherwise governed by campus policies.
- c. The Campus Dean or his/her designee may waive any applicable fee for an assembly contributing to the educational mission of the institution or engaging in charitable work.
- d. Academic and administrative units are not subject to the fee schedule.

4. Notice and Consultation

- a. Dakota College at Bottineau persons or organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be.
- b. Students or student organizations planning a public assembly with a guest speaker and expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide advance notice of no less than two weeks to the Campus Dean. Students or student organizations planning smaller assemblies or large assemblies without a guest speaker are encouraged to consult the Campus Dean if there is uncertainty about applicable Dakota College at Bottineau rules, the appropriateness of the planned location, or possible conflict with other events. The Campus Dean can help the planners avoid unintended disruption or other violations that may result

in subsequent discipline or subsequent interference with the assembly by campus authorities.

- c. Registered faculty organizations that are planning a public assembly with a guest speaker and an expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide notice of no less than two weeks to the Campus Dean.
- d. Registered staff organizations that are planning a public assembly with a guest speaker and an expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide notice of no less than two weeks to the Campus Dean.
- e. The notice and consultation requirements of this subchapter do not apply to academic or administrative units.
- f. The notice and consultation requirements of this subchapter may be waived by the Campus Dean or his/her designee.

VIII. Guest Speakers

1. Definitions

- a. “Guest speaker” means a speaker or performer who is not a student, faculty member, or staff member, but who is invited to speak by a Campus/University person or organization.

2. Who May Present

- a. Dakota College at Bottineau persons and organizations and academic and administrative units may present guest speakers on Dakota College at Bottineau property. In the case of speakers invited by students or student organizations, advance permission from the Campus Dean is required. Faculty organizations are required to seek advance permission from the Campus Dean. Staff members and staff organizations are required to seek advance permission from the Campus Dean.

3. Location and Form of Presentation

- a. A guest speaker may present a speech or performance, or lead a discussion of specified duration, at a time announced in advance, in a fixed indoor location or in a fixed outdoor location approved by the Campus Dean.
- b. A guest speaker may not accost potential listeners who have not chosen to attend the speech, performance, or discussion.

4. Application

- a. All students, faculty members, staff members, student organizations, faculty organizations, and staff organizations that wish to present a guest speaker must apply through a prescribed process, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
- b. A student or student organization that wishes to present a guest speaker will apply to the Campus Dean, through a process prescribed by the Campus Dean, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
- c. A faculty member or faculty organization that wishes to present a guest speaker will apply to the Campus Dean through a process prescribed by the Campus Dean, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
- d. A staff member or staff organization that wishes to present a guest speaker will apply to the Campus Dean through a process prescribed by the Campus Dean, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.

5. Obligations of Presenting Person or Organization

- a. A Dakota College at Bottineau person or organization that presents a guest speaker must make clear that:
 - i. the person or organization, and not Dakota College at Bottineau, invited the speaker; and
 - ii. the views expressed by the speaker are their own and do not necessarily represent the views of Dakota College at Bottineau, the North Dakota University System, or the State of North Dakota.
- b. The person or organization that presents a guest speaker is responsible for paying any fees assessed pursuant to the schedule set forth in this policy.
- c. Institutional funds provided to a recognized Dakota College at Bottineau organization may not be used to pay for any costs or expenses related to the presentation of a politically-oriented guest speaker unless approved in advance by an organization's faculty advisor or the Campus Dean, in consultation with Dakota College at Bottineau's legal counsel.

6. Equal Treatment

- a. Guest speakers reserving space at Dakota College at Bottineau facilities may be subject to the same terms and conditions governing the use of the facilities for other outside groups. If a room, space, or facility is made available to any guest speaker invited by a Dakota College at Bottineau person or organization, then that room, space, or facility must be made equally available to all such speakers or groups.
7. Dis-invitation
- a. If a Dakota College at Bottineau person or organization complies with this policy when presenting a guest speaker, Dakota College at Bottineau may not prohibit or disinvite that guest speaker based on the anticipated content or viewpoint of the guest speaker's speech, performance, presentation, or other form of expression.

IX. Responding to Speech, Expression, and Assembly

1. General Rule on Responding
- a. Dakota College at Bottineau persons and organizations may respond to the speech, expression, or assembly of others, subject to all the rules herein.
 - b. Responders may not damage or deface signs or exhibits, disrupt public assemblies, block the view of participants, or prevent speakers from being heard.
2. Means of response that are permitted in many locations and without advance permission or reservation, such as signs, tables, distribution of literature, and public assembly without amplified sound, may be used immediately and in any location authorized in this policy.
3. Means of response that require advance permission or reservation, such as banners, exhibits, and amplified sound, may be used as soon as the needed permission or reservation may be arranged. Banner space and some amplified sound areas may be unavailable on short notice because of earlier reservations, but the Campus Dean will expedite approval of exhibits and available banner space and amplified sound areas where necessary to permit appropriate response to other speech, assembly, or expression.
4. Means of response that are confined to authorized locations, such as banners and amplified sound, may be used only in those locations. It is not permissible to respond to amplified sound with amplified sound in the same location; similarly, if an exhibit or public assembly is in a location where amplified sound is not permitted, it is not permissible to respond with amplified sound in that location. In either case, it is permissible to respond with amplified sound in another location and to use signs or distribution of literature to advertise the response at the other location.

STUDENT FREE SPEECH AND EXPRESSION

DSU Policy No. 503.1.001

DSU Policy Manual: <http://www.dickinsonstate.edu/policymanual>

DSU Employee Forms: <http://www.dickinsonstate.edu/dsushared>

Reference Documents: SBHE Policy Manual, Sections 503 and 909, DSU Student Handbook, DSU Student Code of Conduct, DSU Advertising Policy 1918.002

Policy Statement

Dickinson State University (DSU) acknowledges the rights of students and others to assemble in groups on University property for peaceful rallies, demonstrations, and gatherings. DSU may establish reasonable regulations regarding the time, place and manner in which individuals exercise their free speech rights to the extent necessary to assure the safety of the campus community and the orderly operations of the institution.

At events, demonstrations, and fixed exhibits, DSU expects the rights and privileges of all individuals to be respected and that there will be no endangerment to health or safety. Events, demonstrations, and fixed exhibits must in no way disrupt normal conduct and operation of DSU affairs or endanger DSU property. The policy facilitates the exercise of these rights of free expression and assembly, and protects the DSU community.

DSU reserves the right to designate the time, place and manner of events, demonstrations, and fixed exhibits, use of amplified sound and displays of signage or other materials, in order to protect the safety of individuals and property and avoid unwarranted disruptions of DSU operations. Actions by DSU that restrict expression or assembly under this policy shall be content-neutral and viewpoint-neutral (i.e. shall not be based upon the content or subject matter presented). However, DSU may consider the effect of such activities on the safety and orderly operations of the campus when taking such action. Nothing in this policy is intended or permit any activity which is otherwise unlawful.

The policy defines DSU's forums for exercising the rights of free speech, and peaceful assembly, and advise campus constituents regarding the exercise of those rights. This policy establishes certain standards of conduct that must be observed by demonstrators and groups while using DSU property for exercising the rights of free speech and assembly. This policy applies to all individuals while on or using DSU property.

This policy is created in accordance with the First Amendment to the Constitution of the United States and North Dakota State Board of Higher Education (SHBE) Policy 909.

DSU collects lease or rental fees sufficient to cover expenses incurred during events and short-term rentals. Additionally, liability insurance or waivers may be required when hosting an event on DSU property.

Definitions

- Commercial Speech – The promotion, sale or distribution of a product or service. For the purpose of this section, commercial speech does not include the incidental promotion, sale or distribution of a product as part of the exercise of non-commercial speech.
- Constitutional time, place and manner restrictions – Restrictions on free speech which are content-neutral, narrowly tailored to serve a significant interest, and leave open alternative methods of communicating the message in question.
- Demonstration – An event that has the potential to require campus resources for which 15-day advancement may not be provided.
- Documentation of Liability Insurance – Financial liability insurance certificate that covers risk and liability associated with the provision of these services.
- DPD – Dickinson Police Department
- DSU Event – Event which furthers the mission of DSU, providing opportunities for social growth and cultural understanding, serving the recreational needs of campus, and are sponsored/supported by a DSU group. The DSU mission reads: DSU's mission is to provide high-quality, accessible programs, to promote excellence in teaching and learning; to support scholarly and creative activities; and to provide service relevant to the economy, health and quality of life of the citizens of the State of North Dakota. The DSU Core Values include: Integrity, Accessibility, Excellence and Inquiry & Innovation.
- DSU Groups – Recognized DSU clubs, departments, or organizations.
- DSU Property – Any DSU building or property owned or controlled (i.e. classroom, auditorium, housing facilities, other buildings outdoor areas) by the institution. For information related to what constitutes DSU property, contact the Office of Facilities.
- Disruptive Activity – Disruptive activity is any act that unreasonably interferes with the rights of others to peacefully assemble or to exercise the right of free expression, disrupts the normal functioning of DSU, damages property, or endangers health or safety.
- Event – An activity or occurrence that requires or has the potential to require campus resources and/or planning. This includes, but is not limited to, large events, multiple-day events, and events that have any known or past problems or potential risks (i.e. security needs, safety issues, parking requirements, etc.). Events are approved through the submission of an event approval form.
- Event Approval Form – The form completed for each requested event. Completed forms are submitted to the Office of Student Involvement & Leadership Development (SILD) for processing and approval. The decision to have a responsible party complete a facility use agreement rests with the manager of the host facility.

- Facility Use Agreement – Agreement signed by an individual or group acknowledging the use of DSU building(s)/property under described terms and conditions.
- Fixed Exhibit – Posters, ribbons, banners, flags, displays, crosses, or signs physically placed on campus property or in campus buildings.
- Free Speech or Free Expression – The rights to speech, expression, and assembly protected by the First Amendment to the United States Constitution or Article I, Section 4 of the Constitution of North Dakota. Such rights include, but are not limited to: all forms of peaceful assembly, protests, demonstrations, rallies, vigils, marches, public speaking, and distribution of printed materials, the display of signs or banners, or the circulation of petitions. For the purpose of this policy, “free speech” or “free expression” is not intended to include commercial speech.
- Host Facility – Location where an event is held.
- Nonprofit Organization – Entity organized to achieve a purpose other than generating profit; and uses its funds to achieve its goals.
- Non-Public Area – Buildings and property of the institution that are used for the academic operational mission of the institution or are designated as high hazard or restricted based on type of research/activity or security needed to further the mission of the institution.
- Non-DSU Group – Third party entity with no relation to the institution and no instructional financial support. Entities other than DSU groups and related parties.
- North Dakota Administrative Code (NDAC) – Codification of all rules of state administrative agencies, as defined by NDCC Section 28-32-02.
- North Dakota Century Code (NDCC) – Codification of all general and permanent law enacted since statehood.
- Office of Public Safety – DSU Public Safety and Security.
- Office of Student Involvement & Leadership Development (SILD) – DSU campus activities and liaison for student clubs and organizations.
- Related Parties – DSU related foundations, recognized student clubs and organizations, governing councils, Student Senate, Housing & Dining Association, North Dakota University System (NDUS) and other NDUS institutions.
- Responsible Party – Sponsor, coordinator, or entity responsible for event.
- Sodexo, Inc. – DSU Food Service Provider.
- Waiver – Agreement signed by an individual or group releasing DSU and State of North Dakota from liability.

Principles

The First Amendment to the Constitution of the United States grants that “Congress shall make no law ...abridging the freedom of speech, or of the press, or the right of the people peaceable to assemble.” As an arm of the state of North Dakota, DSU affords and protects the rights to free expression and peaceful assembly.

DSU permits the approved use of DSU buildings and/or property by the DSU community, related parties and other individuals or groups in their presentation of events which further the mission of DSU, providing opportunities for social growth and cultural understanding and serve the recreational needs of the campus community in compliance with this policy. The DSU mission reads: DSU's mission is to provide high-quality, accessible programs, to promote excellence in teaching and learning; to support scholarly and creative activities; and to provide service relevant to the economy, health and quality of life of the citizens of the State of North Dakota. The DSU Core Values include: Integrity, Accessibility, Excellence and Inquiry & Innovation. As such, DSU welcomes tournaments, meetings, camps and other events to its campus held by DSU, related parties and non-DSU groups. DSU events are given precedence over the use of buildings/property by non-DSU or outside groups. DSU encourages the free exchange of ideas. Individuals and entities granted the use of DSU property do not necessarily express the view or opinions of DSU.

To further the effectiveness of their event, protest or demonstration the responsible party is encouraged to make a request and advance arrangements with the Office of Public Safety and/or Dickinson Police Department. Advance notification enables DSU to help ensure the event takes place in a constructive and peaceable manner.

To avoid conflict with the use of space and disruption of the orderly operation of the campus, and to ensure the safety of the campus community, DSU does not allow setting up any fixed structures, including but not limited to: tables, booths, or displays, or use of DSU property without the prior, express, written permission of the Office of Student Involvement & Leadership Development and/or the Office of Facilities. Approval may be requested by contacting the Office of Student Involvement & Leadership Development for the desired date and location. To ensure availability of the desired space in/on DSU property request should be made no later than 15 days in advance of the event. Space is granted on a first-come, first-serve basis by the appropriate facility.

DSU reviews requests to assure they do not represent an unreasonable risk of harm or interference to participants, other members of the campus community, of DSU property and operations. The Office of Student Involvement & Leadership Development will work with organizations to ensure event approval forms are completed and submitted appropriately, and will subsequently ensure the form is reviewed for approval. Non-DSU groups are required to furnish documentation on liability insurance naming DSU and State of North Dakota as additional insured. DSU may waive this liability insurance requirement for nonprofit groups only.

Additionally, some campus buildings have supplemental facility and event policies and guidelines that must be followed. When making arrangements to lease or rent buildings/property,

responsible parties should inquire of the host facility to determine if any additional policies or procedures apply.

A request may be denied, and DSU reserves the right to cancel or postpone any reservation or reserved use on one or more of the following grounds:

- Conflict with a pre-existing reservation or planned use of the location that would unreasonably interfere with either event;
- Conflict with reasonable restriction on signage, display, erection of structures, sound amplification, or other aspects of the event that would unreasonably interfere with the health and/or safety of individuals, protection of property, access, traffic or the peaceful, orderly operations of DSU; or
- Inadequate notice for purposes of providing security, facilities support, or other preparations necessary for the protection of individuals and property.

DSU collects lease or rental fees sufficient to cover expenses incurred during events and short-term rentals. With justifications, the president, a vice president, a dean or their designee may waive these fees. Departments are required to deposit revenues from events, and short-term rentals into DSU funds that are utilized to support the facility.

Guidelines and Special Arrangements

Open Public Forums

While DSU's outdoor public areas are open to all DSU groups and related parties for expressive activities, whether planned or spontaneous, all events on DSU property, whether scheduled in advance or not, must be for the purposes of carrying out lawful activities without undue disruption the DSU operations, and without harming or creating a threat of harm to individuals or property. Nothing in the policy shall be construed to limited or constrain the duties and authority of DSU, nor law enforcement authorities, to maintain order and protect the public.

Open public forums are not open for commercial expression (i.e. as solicitations, advertisements, etc.), except as provided in DSU's advertising policy 1918.002.

To further the effectiveness of their event, protest or demonstration the responsible party is encouraged to make advance arrangements with the Office of Student Services and the Office of Public Safety. Advance notification enables DSU to help ensure the event takes place in a constructive and peaceful manner.

Non-Public Areas

Demonstrations, amplified sound, and signage are prohibited in all non-public areas, as is any activity that interferes with academic or operational functions. Individuals refusing to vacate premises upon request are subject to arrest under applicable municipal and state laws and may be

subject to disciplinary action by DSU. Commercial expression is prohibited in non-public areas, except as provided in DSU's advertising policy 1918.002.

Occupancy/Hours

For events requiring the use of space in a DSU building please review procedures for additional details. For an event, attention to occupancy limits and general safety of the DSU community in the space used must be met. DSU officials may require event participants to leave to remain within building/facility occupancy limits. Observance of building hours is expected of people participating in events within a DSU building and DSU officials will require that event participants leave at the time of building closure.

Amplification

Amplified sound is generally prohibited in all non-public areas and open public forum areas, but may be permitted for approved events with the prior, express approval through the event approval process.

Sound levels are not to exceed 80 decibels at any time. The proximity of classrooms, offices, laboratories and the library will be considered in approving the use of amplification. When necessary, lower sound levels may be required to avoid undue disruption of others or the normal functioning of DSU.

Guidelines for Expression and Assembly

- Commercial Literature – Commercial literature may be distributed in designated public forums only:
 1. At DSU events where the commercial activity has been pre-approved;
 2. Through publications such as *Impressions*, whose distribution on campus is pre-approved; and
 3. On DSU-approved bulletin boards per building policy/guidelines for use of bulletin boards. All other commercial solicitations are prohibited, unless authorized under and pursuant to DSU's policy for sales and solicitations.
- Damage to Property – Any damage to DSU or personal property in the course of, or as a result of, an expressive activity is prohibited. This includes damages to campus lawns, shrubs and trees.
- Disruption – Disruptions are any act that unreasonably interferes with the rights of others to peaceably assemble or to exercise the right of free expression, disrupts the normal functioning of DSU, damages property, or endangers health and safety. Disruption activities are specifically prohibited.
- Duration – Events, protests and demonstrations are normally permitted until or unless DSU officials determine DSU operations have been compromised and/or unreasonably interfere with the rights of others.
- Food Services – Food and food services must be approved through Sodexo, Inc. According to SBHE Policy 918, alcoholic beverages are prohibited upon land or in

buildings owned by DSU. SBHE 918 gives the president authority to approve exceptions to this policy.

- Force or Violence – Any attempt to impede, impair, or interfere with the operations of DSU, including official DSU events or other lawful assemblies, by threat or use of force or violence is not permissible.
- Noise-Making – Noise-making is sustained or repeated noise made in a manner that substantially interferes with another speaker's ability to communicate their message. Such expression is not permitted. Noise levels should not interfere with classes, meetings or activities in progress or the privacy of housing facilities.
- Other laws and rules – All applicable laws, rules and regulations (including, but not limited to: DSU Student Handbook, Faculty Handbook, Adjunct Faculty Handbook, Staff Handbook) must be followed whenever engaging in activities on DSU property.
- Picketing – Picketing is an orderly manner in open public forums is permitted in accordance with this policy. Such activities should not become disruptive nor should they impede access. Picketing is not permitted inside buildings or in other non-public areas.
- Symbolic Protest – Symbolic protest includes, but is not limited to: displaying a sign, gesturing, wearing symbolic clothing, or otherwise protesting silently. Such expression is permissible unless it disrupts the normal function of DSU or impedes access to buildings/property. In addition, such acts should not block an audience's view or prevent an audience from being able to pay attention to a lawful assembly and/or an official DSU event.
- Distribution of Information - DSU permits students and student organizations to distribute information via publications, banners, and posters. Chalking (writing in chalk on campus sidewalks and streets) is not permitted. All publications, banners, and posters must be approved by the Vice President of University Relations & Student Recruitment, or designee. Approval must be 15 days in advance of the event. Posters may be hung two weeks in advance of the event. Banners may be hung one week in advance. Posters and banners must be taken down by sponsoring group no later than 48-hours after event. All banners and posters must be hung by Facilities. Distribution of publications is prohibited in nonpublic areas. Non-students and non-student organizations are not permitted to distribute information via publications, banners, and posters.

Procedures

For effectiveness of an event, protest or demonstration the responsible party is encouraged to make advance arrangements with the Office of Student Involvement & Leadership Development and the Office of Facilities. Advance notification enables DSU to help ensure an event takes place in a constructive and peaceful manner.

Event Approval

DSU groups, non-DSU groups, and related parties wanting to hold an event on campus must

complete an event approval form and facility use agreement, when appropriate. DSU groups, non-DSU groups, and related parties sponsoring an event will be responsible for the planning and execution of the event in a manner consistent with all applicable DSU policies and procedures. This is best accomplished by contacting the Office of Student Involvement & Leadership Development and/or the Office of Facilities in the early stages of planning for assistance in completing the event approval form.

An event approval form must be completed by the responsible party and submitted online to the Office of Student Involvement & Leadership Development and/or the Office of Facilities for each proposed event, and must be submitted at least 15 days prior to the desired event date for processing and approval. For protests, demonstrations, or other instances in which a 15-day notice may not be possible, a request must be submitted, preferably 48 hours before the start of the event to the Office of Student Involvement & Leadership Development and/or Office of Facilities, who will determine whether an event can be executed as requested and in accordance with this policy. With appropriate advance notice, the appropriate administration representative (i.e. student group advisor, Office of Public Safety, etc.) will engage with protesters and demonstrators during the event to help assure that the event is effective, to ensure participants' safety, and to assist organizers in seeing that the demonstration does not disrupt the normal functioning of DSU. For events occurring on city sidewalks and streets adjacent to the DSU, appropriate arrangements should be made to acquire city permits and should adhere to city ordinances and applicable state and federal law.

The Office of Student Involvement & Leadership Development and/or the Office of Facilities will facilitate approval of all event approval forms. The Office of Office of Student Involvement & Leadership Development and/or the Office of Facilities may refer a proposed event to the Assistant Dean, Student Services. Upon the request of any person who is distressed by a decision regarding a request for or use of a designated public forum, the decision may be reviewed by the Assistant Dean, Student Services, and, if the objection is not resolved, then by the Provost.

Facility Fee Schedule

<https://www.dickinsonstate.edu/Assets/uploads/files/facility-rental/DSU%20Fee%20Schedule%20-%20Updated%2009-05-2017.pdf>

Event Request and Agreement

Until DSU approves an Event Request Form and a Facility Usage Agreement is fully executed, there is no legal or binding agreement between DSU and the Event Sponsor making the request.

The Event Sponsor shall not advertise the event location until DSU has approved and confirmed the use of space submitted in the Event Request Form. Advertising such event(s) prior to this time may jeopardize future use of DSU facilities. DSU is not responsible or liable for costs/damages for advertising, printing, etc.

Request Process

- Events should be requested through the DSU Event Request Form online. Once the form is received, a delegate from DSU Student Involvement & Leadership Development or

Facility Operations will contact the interested party to discuss room availability, technical needs, estimated fees, insurance requirements and rental procedures.

- Event Request Forms should be submitted at least 15 business days in advance of the event. Exceptions may be approved at the discretion of facility operations.
- Dorothy Stickney Auditorium requires additional approvals, fees, and should be requested at least six (6) months advance notice. Events requested fewer than six (6) months in advance may not be approved.
- The Facility Operations will provide a Facility Usage Agreement to the Event Sponsor, with the agreed upon dates, times, space, and estimated charge.
- The Event Sponsor will print, sign, and initial the agreement and return the signed agreement to facility operations.
- Reservations will be confirmed via email by facility operations.
- Facility Operations must receive written notice regarding agents working on behalf the Event Sponsor.

Fees and Billing

- Invoicing occurs after the event and terms are Net 30 from date of invoice;
- Billing for events is done based on the equipment requested and/or used, personnel necessary for the event and on the basis of actual time. Time begins with the agreement starting time, including set up time, and ending at the time the facility is clear and restored to its original condition.
- If there are changes or additions to the event, the user (Event Sponsor) shall bear any additional expenses.
- An estimate of charges will be assigned upon review of the application.

Cancellations

- If it is necessary to cancel an event, the Facility Operations must be notified no later than five (5) business days prior to the scheduled event. Cancellation fees are outlined in the Facility Usage Agreement.
- All date and time changes/cancellations are required to be received in writing.

Food Service

- No outside food is allowed. Right of first refusal is given to Sodexo. Please call them at 701-483-2014. All linens can be arranged through Sodexo.

Internet

- A secured guest wireless internet connection is available. Please let the Facility Operations know that you will need wireless internet connection.
- Guests need to sign the guest login sheet which is retained by Facility Operations.

Parking

- Parking regulations are enforced seven days a week.

- Parking is permitted in marked spaces in “Student/Visitor” lots only.
- The loading ramp behind Dorothy Stickney Auditorium is for loading/unloading or accessible parking only.
- [For a full list of guidelines and rules click here.](#)

Liability

Event Sponsor will hold DSU harmless and indemnify it against any public liability and/or property damage liability which may arise or accrue by reason of the use of the premises by the Event Sponsor.

Insurance

- The Event Sponsor shall furnish to the University certificates of insurance and a copy of the additional insured endorsement showing DSU as an additional insured.
- The coverage must be for a minimum of \$1,000,000.00 of liability. The certificate of insurance must be received by the Facilities office at least 30 days prior to the scheduled event or the agreement and the event may be cancelled.
- [For a full list of guidelines and rules click here.](#)

Office of Public Safety

Events held on or in DSU property may require support from DSU Office of Public Safety at the expense of the host of the event. It is the responsible party or person requesting the event duty to contact DSU Office of Public Safety at least 15 days before the event to determine if security arrangements are necessary (including parking). For protests, demonstrations or other instances in which a 15 day notice may not be possible, a request should be submitted at least 48 hours before the start of the event to facilitate coordination and assurance that participants’ safety and to assist responsible parties in ensuring the demonstration or protest does not disrupt the normal function of DSU.

The need for Public Safety support is determined by the Assistant Dean, Student Services. The determination will be based on assessment of the event based on content and viewpoint neutral criteria including, but not limited to: size of anticipate event, type of space/building/property being utilized, nature of event, event limitation to campus community or open for general public, and other pertinent factors.

For most events, one officer is needed for every 100 people anticipated to attend; for concerts, one officer is needed for every 50 people anticipated to attend. If additional officers are needed during an event, the additional costs are born by DSU (i.e. an event hosting 1,000 attendees would need to pay for 10 officers; however, if a security review indicates four (4) more officers may be needed based on prior incidents, DSU will cover the costs of the additional officers required). The responsible party and participants must cooperate with DSU Office of Public Safety, local law enforcement and DSU with respect to all security arrangements. Individuals

that have not been approved to hold an event on DSU property in advance may be asked to reschedule based on DSU's ability to safely support the event.

Liability Insurance and Waivers

DSU strives to mitigate potential risks, and provide for well-planned, successful campus events. DSU Risk Management assesses the potential risk involved with, and under what conditions it is appropriate to hold, events on its campus. This includes reviewing events to assure they do not represent an unreasonable risk to participants, other members of the campus community, or DSU property. All assessments made by DSU Risk Management are made based on view-point and content-neutral factors.

Non-DSU groups are required to furnish documentation of liability insurance naming DSU and the state as additional insureds. The responsible party using the building/property must furnish documentation of liability insurance to the Office of Student Affairs. Liability insurance covering the event is to name DSU and the State of North Dakota as additional insureds with limits of liability no less than \$250,000 per person and \$1,000,000 per occurrence. Lower insurance limits may be approved on a case by-case basis. The Office of Public Safety will refer the responsible party to the Office of Student Affairs to discuss insurance options as necessary.

DSU may waive the liability insurance requirement for nonprofit groups and small events only. If not a nonprofit or small event, the liability insurance may be replaced by a waiver signed by all participants, and a parent or guardian of a child participant, releasing DSU and the state from liability. The decision to accept waivers in lieu of insurance is made by the Office of Student Affairs. It is the hosting department's responsibility to obtain and retain these documents. For additional information and/or clarification, the department should contact the Office of Student Affairs.

Each department with a desire to lease or rent space for tournaments, meetings, and other events must create a liability waiver form. To encourage consistency across campus, a sample template is available for modification. Other forms are available through the Office of Student Affairs. If the provided liability waiver template is used without modification, document approval from the Office of Student Affairs is not required. However, if alterations are made to the template, a department must have the liability waiver form reviewed and approved by the Office of Student Affairs. Departments are responsible to obtain and document this review and approval. It is suggested that the department include the last date the document was reviewed by the Office of Student Affairs in a footnote in the liability waiver document.

Credit is provided to the University of North Dakota who allowed DSU to model portions of the DSU Student Free Speech and Expression Policy after the UND Free Speech and Expression Policy.

Policy History

Approved/Adopted by the President's Cabinet

**Lake Region State College
Policy and Procedure Manual**

SECTION 1000.01

USE OF COLLEGE FACILITIES: SPEECH, EXPRESSION, AND ASSEMBLY

I. General Definitions

1. "Academic or administrative unit" means any office or department of Lake Region State College.
2. "Amplified sound" means sound whose volume is increased by any electric, electronic, mechanical, or motor-powered means. Shouting, group chanting, and acoustic musical instruments are exempt from this definition and are not subject to the special rules on amplified sound, but are subject to general rules on disruption.
3. "College/University person or organization" includes academic and administrative units, student, faculty, and staff organizations, and individual students, faculty members, and staff members; this phrase describes the most inclusive category of potential speakers on campus; every person and organization of any kind is either an "off-campus person or organization" or a "College/University person or organization".
4. "Day" means 7:45 a.m. to 4:45 p.m. daily and excludes weekends, College/University holidays, and days on which regularly scheduled classes are suspended due to emergency situations. If a deadline defined in this chapter falls on a Saturday, Sunday, or College/University holiday that deadline will be moved to the next day.
5. "Event" means something that occurs in a certain place during a particular interval of time; events include but are not limited to guest speakers, exhibits, tables, distribution of literature, signs, and public assemblies.
6. "Faculty member" includes any person teaching credit-bearing courses employed by Lake Region State College.
7. "Guest speaker" means a speaker or performer who is not a student, faculty member, or staff member, but who is invited to speak by a Lake Region State College person or organization.
8. "Off-campus person or organization" means any person, organization, or business that is not an academic or administrative unit, a student, faculty, or staff organization, or a student, faculty member, or staff member.
9. "Publicly assemble" and "public assembly" include any gathering of persons, including discussions, rallies, and demonstrations.
10. "Room or space" includes any room or space, indoors or outdoors, owned or controlled by Lake Region State College.
11. "Staff member" includes any person who is employed by Lake Region State College and does not qualify as a faculty member.
12. "Student" means a person who is currently enrolled at Lake Region State College, or has been enrolled in a prior semester or summer session and is eligible to continue enrollment in the semester or summer session that immediately follows. A student may also be a faculty or staff member. Circumstances will dictate whether an individual is considered a student or faculty or staff member for the purposes of application of this policy.

II. General Provisions

1. Lake Region State College (LRSC) recognizes that students and faculty have a fundamental right to free speech and expression under the First Amendment to the United States Constitution and Article I, Section 4 of the North Dakota Constitution, and as a result the SBHE and institutions

under its control shall ensure that students have the freedom to speak, write, listen, challenge, learn, and discuss any issue, subject to reasonable and constitutionally-recognized limitations.

- a. Staff members of LRSC are also free to exercise their right to free speech and expression, as set forth above, provided that such activities do not substantially interrupt or inhibit their duties, and such exercise of free speech and expression shall be subject to the Political Activities Policies of the SBHE and LRSC.
2. Lake Region State College will not engage in viewpoint- or content-based discrimination or suppression of speech, and will, to the greatest extent possible, permit and facilitate the open discussion and debate of ideas and issues, regardless of the content of those issues.
3. As a general rule, LRSC will not use the concept of civility or mutual respect as a basis to suppress or limit the discussion of ideas, regardless of content, except as reasonably necessary to an educational activity.
4. Lake Region State College and its faculty and employees shall generally not seek to shield individuals from the free speech or expression of others, except as reasonably necessary to an educational activity.
5. Except as set forth elsewhere in this policy, the generally accessible, open, outdoor areas of the campus are traditional public fora for free speech by both LRSC and off-campus persons and organizations, subject to reasonable and constitutional time, place, and manner restrictions.
6. Lake Region State College designates the following areas as restricted or designated forums:
 - a. those areas inside buildings which have not otherwise been treated as traditional public fora;
 - b. areas within a 100-foot radius from residential buildings during evening and overnight hours;
 - c. areas within a 100-foot radius from academic buildings during times when classes are held in that building;
 - d. areas which must be restricted due to reasonable safety and security concerns, as designated by Vice President of Academic & Student Affairs;
 - e. areas which must be restricted to enable the flow of pedestrian or vehicle traffic, as designated by Vice President of Academic & Student Affairs;
 - f. areas within a 50-foot radius from building entrances and exits to provide for safe and convenient ingress and egress from those buildings; and
 - g. areas to include: Leever's Welcome Center, Learning Commons, classrooms/labs, Bergstrom Technical Center lobby, Student Union, Dining Room, Precision Ag Center, courtyard, Robert Fawcett Auditorium, gymnasium, and public meeting rooms.

Lake Region State College requires reservations or permits for the exercise of free speech or expression, including assemblies, within these restricted or designated forums.

7. Lake Region State College designates the following areas as closed to free speech, expressive activity, and public assembly: Gilliland Hall, North Hall, South Hall, wind turbine location and surrounding property within 1,000 feet of the wind turbine. Receiving and within 100 feet of loading dock area, weight room, faculty and staff offices, restrooms, and hallways in all LRSC buildings are also closed.

III. Prohibited Items at Assemblies

1. Dangerous weapons, as defined by N.D.C.C. § 62.1-01-01(1) as any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring,

compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.

2. Firearms, except as permitted by law. See N.D.C.C. § 62.1-02-05.
3. Body-armor or makeshift body-armor, helmets and other garments, such as sporting protective gear, that alone or in combination could be reasonably construed as weapons or body-armor, without written permission from Vice President of Academic & Student Affairs
4. Open flame, unless approved in advance by Vice President of Academic & Student Affairs.

IV. General Rules on Means of Expression

1. Disruption
 - a. No speech, expression, or assembly may be conducted in a way that disrupts or interferes with any teaching, research, administration, or other authorized activities on the campus; free and unimpeded flow of pedestrian and vehicular traffic on the campus; or signs, tables, exhibits, public assemblies, distribution of literature, guest speakers, or use of amplified sound by another person or organization acting under the rules in this chapter.
2. Except in the most extreme cases, interference and disruption are unavoidably contextual. Intentional physical interference with other persons is nearly always disruptive in any context. Interfering with traffic depends on the relation between the volume of traffic and the size of the passageway left open. Disruptive noise is the most contextual of all, because it depends on the activity disrupted. Any distracting sound may disrupt a memorial service. Any sound sufficiently loud or persistent to make concentration difficult may disrupt a class or library. Occasional heckling in the speaker's pauses may not disrupt a political speech, but persistent heckling that prevents listeners from hearing the speaker does disrupt a political speech. These illustrations may be helpful, but none of them includes enough context to be taken as a rule. We cannot escape relying on the judgment and fairness of LRSC authorities in particular cases. In this context where difficult enforcement judgments are unavoidable, it is especially important for administrators to remember that their judgments must not be influenced by the viewpoint of those claiming disruption or of those allegedly disrupting.
3. Potentially disruptive events can often proceed without disruption if participants and administrators cooperate to avoid disruption without stopping the event. In cases of marginal or unintentional disruption, administrators should clearly state what they consider disruptive and seek voluntary compliance before stopping the event or resorting to disciplinary charges.

V. Damage to Property

1. No speech, expression, or assembly may be conducted in a way that damages, defaces, marks, discolors, or alters in any way property of LRSC or of any person who has not authorized the speaker to damage or deface their property.

VI. Amplified Sound

1. General Rule on Amplified Sound
 - a. Lake Region State College academic or administrative units and student, faculty, or staff organizations may use amplified sound on campus at designated times and locations, with advance permission from Vice President of Academic and Student Affairs, subject to the following restrictions.
2. Location and Times of Weekday Amplified Sound Areas

- a. The Vice President of Academic & Student Affairs may prescribe rules concerning scheduling, sound levels, the location of speakers and the direction in which they are pointed, and other rules to facilitate the use of amplified sound areas, to mediate any conflict with LRSC functions and other nearby activities, and to manage environmental impact. All such rules will be reasonable and nondiscriminatory.
- b. The Vice President of Academic & Student Affairs may limit the number or frequency of reservations for each student, faculty, or staff organization or academic or administrative unit to ensure reasonable access for all persons and organizations desiring to use amplified sound.
- c. Lake Region State College persons and organizations using amplified sound are responsible for maintaining a passageway for pedestrians that is adequate to the volume of pedestrian traffic passing through the area.

VII. Public Assemblies without Amplified Sound

1. General Rule on Public Assemblies

- a. Lake Region State College persons and organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be. No advance permission is required. If the expected attendance at an event with a program, guest speaker, or performer is twenty-five or more people, advance notice of no less than two weeks is required.
- b. The buildings owned or controlled by LRSC are not open for demonstrations, assembly, or speech. In furtherance of LRSC's educational mission, the buildings owned or controlled by LRSC are limited for and open only to faculty, staff, and students and their organizations.
- c. Off-campus persons and organizations may not engage in expressive activities at LRSC except in accordance with these rules.

2. Reservation of Space

- a. Persons, organizations, and academic or administrative units who wish to publicly assemble in a particular room or space at a particular time may reserve the room or space by following the established procedure. Individual faculty, staff, and students may not reserve an indoor space, except as related to an educational activity. Off-campus persons or organizations may only reserve a particular room or space for a public assembly by following the established procedure.
- b. Reservation requests from recognized student, faculty, and staff organizations or academic or administrative units shall receive precedence over requests from individual persons, unrecognized organizations, or any off-campus persons or organizations.
- c. An LRSC person, organization, or academic or administrative unit with a reservation has the right to the reserved room or space for the time covered by the reservation. Any person or organization using or occupying the room or space without a reservation must yield control of the room or space in time to permit any person, organization, or academic or administrative unit with a reservation to begin using the room or space promptly at the beginning of its reserved time. Reservations for outdoor spaces are not required but are strongly encouraged. Reservations for indoor spaces are required, although this requirement may be waived by the President, Vice President of Academic and Student Affairs, Vice President of Administrative Affairs, and program directors with responsibility for specific campus locations.

3. Fees for Reserving Space

- a. Lake Region State College prescribes a fee schedule for reserving specified campus spaces. The schedule shall be made available at the information window on request, and shall be based on the actual expenses incurred by the campus in making the space available. The schedule must not be wholly or partially based on viewpoint- or content-based criteria, but may include security and logistic fees based on the venue, the anticipated attendance, historical protest activity at events of similar attendance, and other content-neutral factors. The criteria used to establish the fee schedule shall be made publicly available.
 - b. Lake Region State College does not retain funds beyond its actual expenses unless the reserving party or group charges admission to the event. The fee schedule must be applied equally to all persons or organizations, without reference to the content or viewpoint of the proposed assembly, except as otherwise governed by campus policies.
 - c. The President may waive any applicable fee for an assembly contributing to the educational mission of the institution or engaging in charitable work.
 - d. Academic and administrative units are not subject to the fee schedule.
4. Notice and Consultation
- a. Lake Region State College persons or organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be.
 - b. Students or student organizations planning a public assembly with a guest speaker and expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide advance notice of no less than two weeks to the Vice President of Academic & Student Affairs. Students or student organizations planning smaller assemblies or large assemblies without a guest speaker are encouraged to consult the Vice President of Academic & Student Affairs if there is uncertainty about applicable LRSC rules, the appropriateness of the planned location, or possible conflict with other events. The Vice President of Academic & Student Affairs can help the planners avoid unintended disruption or other violations that may result in subsequent discipline or subsequent interference with the assembly by campus authorities.
 - c. Faculty, staff, and related organizations that are planning a public assembly with a guest speaker and an expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide notice of no less than two weeks to the Vice President of Academic & Student Affairs.
 - d. The notice and consultation requirements of this subchapter do not apply to academic or administrative units.
 - e. The notice and consultation requirements of this subchapter may be waived by the President.

VIII. Guest Speakers

1. Who May Present

- a. Lake Region State College persons and organizations and academic and administrative units may present guest speakers on LRSC property with advance permission from the Vice President of Academic & Student Affairs.

2. Location and Form of Presentation

- a. A guest speaker may present a speech or performance, or lead a discussion of specified duration, at a time announced in advance, in a fixed indoor location or in a fixed outdoor location approved by the Vice President of Academic & Student Affairs.
 - b. A guest speaker may not accost potential listeners who have not chosen to attend the speech, performance, or discussion.
- 3. Application
 - a. All students, faculty members, staff members, student organizations, faculty organizations, and staff organizations that wish to present a guest speaker must request permission from the Vice President of Academic and Student Affairs at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
- 4. Obligations of Presenting Person or Organization
 - a. An LRSC person or organization that presents a guest speaker must make clear that:
 - i. the person or organization, and not LRSC, invited the speaker; and
 - ii. the views expressed by the speaker are their own and do not necessarily represent the views of LRSC, the North Dakota University System, or the State of North Dakota.
 - b. The person or organization that presents a guest speaker is responsible for paying any fees.
 - c. Institutional funds provided to a recognized LRSC organization may not be used to pay for any costs or expenses related to the presentation of a politically-oriented guest speaker unless approved in advance by an organization's faculty advisor and the President in consultation with LRSC's legal counsel.
- 5. Equal Treatment
 - a. Guest speakers reserving space at LRSC facilities may be subject to the same terms and conditions governing the use of the facilities for other outside groups. If a room, space, or facility is made available to any guest speaker invited by a LRSC person or organization, then that room, space, or facility must be made equally available to all such speakers or groups.
 - b. If an LRSC person or organization complies with this policy when presenting a guest speaker, LRSC may not prohibit or disinvite that guest speaker based on the anticipated content or viewpoint of the guest speaker's speech, performance, presentation, or other form of expression.

IX. Responding to Speech, Expression, and Assembly

- 1. General Rule on Responding
 - a. Lake Region State College persons and organizations may respond to the speech, expression, or assembly of others, subject to all the rules herein.
 - b. Responders may not damage or deface signs or exhibits, disrupt public assemblies, block the view of participants, or prevent speakers from being heard.
- 2. Means of response that are permitted in many locations and without advance permission or reservation, such as signs, tables, distribution of literature, and public assembly without amplified sound, may be used immediately and in any location authorized in this policy.
- 3. Means of response that require advance permission or reservation, such as banners, exhibits, and amplified sound, may be used as soon as the needed permission or reservation may be arranged. Banner space and some amplified sound areas may be unavailable on short notice because of earlier reservations, but the Vice President of Academic & Student Affairs will

expedite approval of exhibits and available banner space and amplified sound areas where necessary to permit appropriate response to other speech, assembly, or expression.

4. Means of response that are confined to authorized locations, such as banners and amplified sound, may be used only in those locations. It is not permissible to respond to amplified sound with amplified sound in the same location; similarly, if an exhibit or public assembly is in a location where amplified sound is not permitted, it is not permissible to respond with amplified sound in that location. In either case, it is permissible to respond with amplified sound in another location and to use signs or distribution of literature to advertise the response at the other location.

History

Revised 08/26/2019

Speech, Expression and Assembly

I. Categories of Speakers and Users

1. *"Academic or administrative unit"* means any office or department of Mayville State University.
2. *"Event"* means something that occurs in a certain place during a particular interval of time; events include but are not limited to guest speakers, exhibits, tables, distribution of literature, signs, and public assemblies.
3. *"Faculty member and staff member"* includes any person who is employed by Mayville State University.
4. *"Off-campus person or organization"* means any person, organization, or business that is not an academic or administrative unit, a student, faculty, or staff organization, or a student, faculty member, or staff member.
5. *"Student"* means a person who is currently enrolled at Mayville State University, or has been enrolled at Mayville State University in a prior semester or summer session and is eligible to continue enrollment in the semester or summer session that immediately follows. A student may also be a faculty or staff member. Circumstances will dictate whether an individual is considered a student or faculty or staff member for the purposes of application of this policy.
6. *"Mayville State University person or organization"* includes academic and administrative units, student, faculty, and staff organizations, and individual students, faculty members, and staff members; this phrase describes the most inclusive category of potential speakers on campus; every person and organization of any kind is either an "off-campus person or organization" or a "Mayville State University person or organization."

II. General Definitions

1. *"Amplified sound"* means sound whose volume is increased by any electric, electronic, mechanical, or motor-powered means. Shouting, group chanting, and acoustic musical instruments are exempt from this definition and are not subject to the special rules on amplified sound, but are subject to general rules on disruption.
2. *"Day"* means an 8:00 a.m. to 5:00 p.m. calendar day, and excludes weekends, Mayville State University holidays, and days on which regularly scheduled classes are suspended due to emergent situations. If a deadline defined in this chapter falls on a Saturday, Sunday, or Mayville State University holiday that deadline will be moved to the next day.

3. “Room or space” includes any room or space, indoors or outdoors, owned or controlled by the Mayville State University.

III. General Provisions.

1. Mayville State University recognizes that students and faculty have a fundamental right to free speech and expression under the First Amendment to the United States Constitution and Article I, Section 4 of the North Dakota Constitution, and as a result the SBHE and institutions under its control shall ensure that students have the freedom to speak, write, listen, challenge, learn, and discuss any issue, subject to reasonable and constitutionally-recognized limitations.
 - a. Non-faculty staff of the Mayville State University are also free to exercise their right to free speech and expression, as set forth above, provided that such activities do not substantially interrupt or inhibit their duties, and such exercise of free speech and expression shall be subject to the Political Activities Policies of the SBHE and Mayville State University.
2. Mayville State University will not engage in viewpoint- or content-based discrimination or suppression of speech, and will, to the greatest extent possible, permit and facilitate the open discussion and debate of ideas and issues, regardless of the content of those issues.
3. As a general rule, Mayville State University will not use the concept of civility or mutual respect as a basis to suppress or limit the discussion of ideas, regardless of content, except as reasonably necessary to an educational activity.
4. Mayville State University and its faculty and employees shall generally not seek to shield individuals from the free speech or expression of others, except as reasonably necessary to an educational activity.
5. Except as set forth elsewhere in this policy, the generally accessible, open, outdoor areas of the campus are traditional public fora for free speech by both Mayville State University and off-campus persons and organizations, subject to reasonable and constitutional time, place, and manner restrictions.
6. Mayville State University designates the following areas as restricted or designated forums:
 - a. those areas inside buildings which have not otherwise been treated as traditional public fora;
 - b. areas within a 100-foot radius from residential buildings during evening and overnight hours;
 - c. areas within a 50-foot radius from academic buildings during times when classes are held in that building;

- d. areas which must be restricted due to reasonable safety and security concerns, as designated by the Vice President for Student Affairs, Vice President for Business Affairs or designee;
- e. areas which must be restricted to enable the flow of pedestrian or vehicle traffic, as designated by the Vice President for Business Affairs.
- f. areas within a 25-foot radius from building entrances and exits to provide for safe and convenient ingress and egress from those buildings; and
- g. areas within a 100-foot radius from building entrances and exits of the Mayville State Child Development Center.

Mayville State University may require reservations or permits for the exercise of free speech or expression, including assemblies, within these restricted or designated forums.

- 7. Mayville State University designates the following areas as closed to free speech, expressive activity, and public assembly:
 - a. Residence Halls;
 - b. Individual classrooms, academic buildings, etc.;
 - c. Bathrooms, locker rooms, etc.;
 - d. Mayville State Child Development Center.

IV. Prohibited Items at Assemblies

- 1. Dangerous weapons, as defined by N.D.C.C. § 62.1-01-01(1) as any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.
- 2. Firearms, except as permitted by law. *See* N.D.C.C. § 62.1-02-05.
- 3. Body-armor or makeshift body-armor, helmets and other garments, such as sporting protective gear, that alone or in combination could be reasonably construed as weapons or body-armor, without written permission from by the Vice President for Student Affairs, Vice President for Business Affairs or designee;
- 4. Open flame, unless approved in advance by the Vice President for Student Affairs, Vice President for Business Affairs or designee;

V. General Rules on Means of Expression

1. Disruption

- a. No speech, expression, or assembly may be conducted in a way that disrupts or interferes with any teaching, research, administration, or other authorized activities on the campus; free and unimpeded flow of pedestrian and vehicular traffic on the campus; or signs, tables, exhibits, public assemblies, distribution of literature, guest speakers, or use of amplified sound by another person or organization acting under the rules in this chapter.
- b. Except in the most extreme cases, interference and disruption are unavoidably contextual. Intentional physical interference with other persons is nearly always disruptive in any context. Interfering with traffic depends on the relation between the volume of traffic and the size of the passageway left open. Disruptive noise is the most contextual of all, because it depends on the activity disrupted. Any distracting sound may disrupt a memorial service. Any sound sufficiently loud or persistent to make concentration difficult may disrupt a class or library. Occasional heckling in the speaker's pauses may not disrupt a political speech, but persistent heckling that prevents listeners from hearing the speaker does disrupt a political speech. These illustrations may be helpful, but none of them includes enough context to be taken as a rule. We cannot escape relying on the judgment and fairness of Mayville State University authorities in particular cases. In this context where difficult enforcement judgments are unavoidable, it is especially important for administrators to remember that their judgments must not be influenced by the viewpoint of those claiming disruption or of those allegedly disrupting.

2. Potentially disruptive events can often proceed without disruption if participants and administrators cooperate to avoid disruption without stopping the event. In cases of marginal or unintentional disruption, administrators should clearly state what they consider disruptive and seek voluntary compliance before stopping the event or resorting to disciplinary charges.

VI. Damage to Property

1. No speech, expression, or assembly may be conducted in a way that damages, defaces, marks, discolors, or alters in any way property of Mayville State University or of any person who has not authorized the speaker to damage or deface their property.

VII. Amplified Sound**1. General Rule on Amplified Sound**

- a. Mayville State University academic or administrative units and student, faculty, or staff organizations may use amplified sound on campus at designated times and locations, with advance permission from [insert campus official], subject to the following restrictions.

2. Location and Times of Weekday Amplified Sound Areas

- a. Amplified sound is generally prohibited in all non-public areas and open public forum areas, but may be permitted for approved events with the prior, express approval through the event approval process.
 - i. Sound levels are not to exceed 80 decibels at any time. The proximity of classrooms, offices, the Mayville State Child Development Center, and the library will be considered in approving the use of amplification. When necessary, lower sound levels may be required to avoid undue disruption of others or the normal functioning of the University.
- b. The the Vice President for Student Affairs, Vice President for Business Affairs or designee may prescribe rules concerning scheduling, sound levels, the location of speakers and the direction in which they are pointed, and other rules to facilitate the use of weekday amplified sound areas, to mediate any conflict with Mayville State University functions and other nearby activities, and to manage environmental impact. All such rules will be reasonable and nondiscriminatory.
- c. Student, faculty, or staff organizations or academic or administrative units wishing to use a weekday amplified sound area must reserve a particular area at a particular time. Reservations must be made with the Office of Student Life and/or Office of Campus Security on a form prescribed by the Vice President for Student Affairs/Vice President for Business Affairs.
- d. The Vice President for Student Affairs may limit the number or frequency of reservations for each student, faculty, or staff organization or academic or administrative unit to ensure reasonable access for all persons and organizations desiring to use amplified sound on weekdays.
- e. Mayville State University persons and organizations using amplified sound are responsible for maintaining a passageway for pedestrians that is adequate to the volume of pedestrian traffic passing through the area.

3. Amplified Sound on Evenings and Weekends

- a. With advance permission, Mayville State University organizations may use amplified sound in any outdoor location on campus after 5:00 pm on weekdays, and after 8:00 pm on weekends.
- b. The Vice President for Student Affairs or Vice President for Business Affairs may prescribe reasonable and nondiscriminatory rules concerning scheduling, sound levels, the location of speakers and the direction in which they are pointed, and other rules to facilitate the use of amplified sound on evenings and

weekends, to mediate any conflict with Mayville State University functions and other nearby activities, and to manage environmental impact.

- c. Use of amplified sound on evenings and weekends requires advance permission from the Vice President for Student Affairs. Student, faculty, or staff organizations and academic or administrative units will apply through a process prescribed by the Vice President for Student Affairs.
 - d. If amplified sound is authorized for an event on a Sunday, Monday, Tuesday, Wednesday, or Thursday evening, the sound must be turned off by midnight on the following day. If amplified sound is authorized for an event on a Friday or Saturday evening, the sound must be turned off by 1:00 am on the following day.
4. Amplified Sound Indoors
- a. Amplified sound sufficient to be heard throughout the room may be used in any room in any building, but the Vice President for Student Affairs may limit or prohibit sound that would be disruptive outside the room. Reservations may be required.

VII. Public Assemblies without Amplified Sound

1. General Rule on Public Assemblies
- a. “Publicly assemble” and “public assembly” include any gathering of persons, including discussions, rallies, and demonstrations.
 - b. Mayville State University persons and organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be. No advance permission is required. If the expected attendance at an event with a guest speaker is twenty-five or more people, advance notice of no less than two weeks is required.
 - c. The buildings owned or controlled by Mayville State University are not open for demonstrations, assembly, or speech. In furtherance of the Mayville State University’s educational mission, the buildings owned or controlled by Mayville State University are limited fora open only to faculty, staff, and students and their organizations.
 - d. Off-campus persons and organizations may not engage in expressive activities at Mayville State University except in accordance with these rules.
2. Reservation of Space

- a. Mayville State University persons, organizations, and academic or administrative units who wish to publicly assemble in a particular room or space at a particular time may reserve the room or space by following the established room reservation guidelines (do we have a formal procedure for that?) Individual faculty, staff, and students may not reserve an indoor space, except as related to an educational activity of the Mayville State University. Off-campus persons or organizations may only reserve a particular room or space for a public assembly with the advance approval of the President's Office?.
 - b. Reservation requests from recognized student, faculty, and staff organizations or academic or administrative units shall receive precedence over requests from individual persons, unrecognized organizations, or any off-campus persons or organizations.
 - c. A Mayville State University person, organization, or academic or administrative unit with a reservation has the right to the reserved room or space for the time covered by the reservation. Any person or organization using or occupying the room or space without a reservation must yield control of the room or space in time to permit any person, organization, or academic or administrative unit with a reservation to begin using the room or space promptly at the beginning of its reserved time. Reservations for outdoor spaces are not required but are strongly encouraged. Reservations for indoor spaces are required, although this requirement may be waived by the President or their designee.
3. Fees for Reserving Space.
- a. The Vice President for Business Affairs may prescribe a fee schedule for reserving specified campus spaces. The schedule shall be made available on request, and shall be based on the actual expenses incurred by the campus in making the space available. The schedule must not be wholly or partially based on viewpoint- or content-based criteria, but may include security and logistic fees based on the venue, the anticipated attendance, historical protest activity at events of similar attendance, and other content-neutral factors. The criteria used to establish the fee schedule shall be made publicly available.
 - b. Mayville State University may not retain funds beyond its actual expenses unless the reserving party or group charges admission to the event. The fee schedule must be applied equally to all persons or organizations, without reference to the content or viewpoint of the proposed assembly, except as otherwise governed by campus policies.
 - c. The President or their designee may waive any applicable fee for an assembly contributing to the educational mission of the institution or engaging in charitable work.

- d. Academic and administrative units are not subject to the fee schedule.

4. Notice and Consultation

- a. Mayville State University persons or organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be.
- b. Students or student organizations planning a public assembly with a guest speaker and expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide advance notice of no less than two weeks to the Vice President for Student Affairs. Students or student organizations planning smaller assemblies or large assemblies without a guest speaker are encouraged to consult the Vice President for Student Affairs if there is uncertainty about applicable Mayville State University rules, the appropriateness of the planned location, or possible conflict with other events. The Vice President for Student Affairs can help the planners avoid unintended disruption or other violations that may result in subsequent discipline or subsequent interference with the assembly by campus authorities.
- c. Registered faculty organizations that are planning a public assembly with a guest speaker and an expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide notice of no less than two weeks to the Vice President for Business Affairs.
- d. Registered staff organizations that are planning a public assembly with a guest speaker and an expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide notice of no less than two weeks to the Vice President for Business Affairs.
- e. The notice and consultation requirements of this subchapter do not apply to academic or administrative units.
- f. The notice and consultation requirements of this subchapter may be waived by the President or their designee.

VIII. Guest Speakers

1. Definitions

- a. “Guest speaker” means a speaker or performer who is not a student, faculty member, or staff member, but who is invited to speak by a Campus/University person or organization.

2. Who May Present

- a. Mayville State University persons and organizations and academic and administrative units may present guest speakers on Mayville State University property. In the case of speakers invited by students or student organizations, advance permission from the Vice President for Student Affairs is required. Faculty organizations are required to seek advance permission from the Vice President for Business Affairs. Staff members and staff organizations are required to seek advance permission from the Vice President for Business Affairs.

3. Location and Form of Presentation

- a. A guest speaker may present a speech or performance, or lead a discussion of specified duration, at a time announced in advance, in a fixed indoor location or in a fixed outdoor location approved by the Vice President for Student Affairs or designee.
- b. A guest speaker may not accost potential listeners who have not chosen to attend the speech, performance, or discussion.

4. Application

- a. All students, faculty members, staff members, student organizations, faculty organizations, and staff organizations that wish to present a guest speaker must apply through a prescribed process, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
- b. A student or student organization that wishes to present a guest speaker will apply to the Vice President for Student Affairs or designee, through a process prescribed by the Office of Student Affairs, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
- c. A faculty member or faculty organization that wishes to present a guest speaker will apply to the Vice President for Business Affairs through a process prescribed by the Office of Business Affairs, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
- d. A staff member or staff organization that wishes to present a guest speaker will apply to the Vice President for Business Affairs through a process prescribed by the Office of Business Affairs, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.

5. Obligations of Presenting Person or Organization

- a. A Mayville State University person or organization that presents a guest speaker must make clear that:
 - i. the person or organization, and not the Mayville State University, invited the speaker; and
 - ii. the views expressed by the speaker are their own and do not necessarily represent the views of the Mayville State University, the North Dakota University System, or the State of North Dakota.
- b. The person or organization that presents a guest speaker is responsible for paying any fees assessed pursuant to the schedule set forth in this policy.
- c. Institutional funds provided to a recognized Mayville State University organization may not be used to pay for any costs or expenses related to the presentation of a politically-oriented guest speaker unless approved in advance by an organization's faculty advisor or Vice President for Student Affairs, in consultation with the Mayville State University's legal counsel.

6. Equal Treatment

- a. Guest speakers reserving space at Mayville State University facilities may be subject to the same terms and conditions governing the use of the facilities for other outside groups. If a room, space, or facility is made available to any guest speaker invited by a University person or organization, then that room, space, or facility must be made equally available to all such speakers or groups.

7. Disinvitation

- a. If a Mayville State University person or organization complies with this policy when presenting a guest speaker, the Mayville State University may not prohibit or disinvite that guest speaker based on the anticipated content or viewpoint of the guest speaker's speech, performance, presentation, or other form of expression.

IX. Responding to Speech, Expression, and Assembly

1. General Rule on Responding

- a. Mayville State University persons and organizations may respond to the speech, expression, or assembly of others, subject to all the rules herein.
 - b. Responders may not damage or deface signs or exhibits, disrupt public assemblies, block the view of participants, or prevent speakers from being heard.
2. Means of response that are permitted in many locations and without advance permission or reservation, such as signs, tables, distribution of literature, and public assembly without amplified sound, may be used immediately and in any location authorized in this policy.
3. Means of response that require advance permission or reservation, such as banners, exhibits, and amplified sound, may be used as soon as the needed permission or reservation may be arranged. Banner space and some amplified sound areas may be unavailable on short notice because of earlier reservations, but the University will expedite approval of exhibits and available banner space and amplified sound areas where necessary to permit appropriate response to other speech, assembly, or expression.
4. Means of response that are confined to authorized locations, such as banners and amplified sound, may be used only in those locations. It is not permissible to respond to amplified sound with amplified sound in the same location; similarly, if an exhibit or public assembly is in a location where amplified sound is not permitted, it is not permissible to respond with amplified sound in that location. In either case, it is permissible to respond with amplified sound in another location and to use signs or distribution of literature to advertise the response at the other location.

Adopted: Fall, 2019

Sponsors: Vice President for Student Affairs

SPEECH, EXPRESSION, AND ASSEMBLY

I. Categories of Speakers and Users

1. *"Academic or administrative unit"* means any office or department of Minot State University.
2. *"Event"* means something that occurs in a certain place during a particular interval of time; events include but are not limited to guest speakers, exhibits, tables, distribution of literature, signs, and public assemblies.
3. *"Faculty member and staff member"* includes any person who is employed by Minot State University.
- 4.
5. *"Off-campus person or organization"* means any person, organization, or business that is not an academic or administrative unit, a student, faculty, or staff organization, or a student, faculty member, or staff member.
6. *"Student"* means a person who is currently enrolled Minot State University
7. or has been enrolled at Minot State University in a prior semester or summer session and is eligible to continue enrollment in the semester or summer session that immediately follows. A student may also be a faculty or staff member. Circumstances will dictate whether an individual is considered a student or faculty or staff member for the purposes of application of this policy.
8. *"Minot State University person or organization"* includes academic and administrative units, student, faculty, and staff organizations, and individual students, faculty members, and staff members; this phrase describes the most inclusive category of potential speakers on campus; every person and organization of any kind is either an "off-campus person or organization" or a "Minot State University person or organization."

II. General Definitions

1. *"Amplified sound"* means sound whose volume is increased by any electric, electronic, mechanical, or motor-powered means. Shouting, group chanting, and acoustic musical instruments are exempt from this definition and are not subject to the special rules on amplified sound but are subject to general rules on disruption.
2. *"Day"* means an 8:00 a.m. to 5:00 p.m. calendar day, and excludes weekends, Minot State University holidays, and days on which regularly scheduled classes are suspended due to emergent situations. If a deadline defined in this chapter falls on a Saturday, Sunday, or Minot State University holiday that deadline will be moved to the next day.
3. *"Room or space"* includes any room or space, indoors or outdoors, owned or controlled by Minot State University.

III. General Provisions.

1. Minot State University recognizes that students and faculty have a fundamental right to free speech and expression under the First Amendment to the United States Constitution and Article I, Section 4 of the North Dakota Constitution, and as a result the SBHE and institutions under its control shall ensure that students have the freedom to speak, write, listen, challenge, learn, and discuss any issue, subject to reasonable and constitutionally-recognized limitations.

- a. Non-faculty staff of the Minot State University are also free to exercise their right to free speech and expression, as set forth above, provided that such activities do not substantially interrupt or inhibit their duties, and such exercise of free speech and expression shall be subject to the Political Activities Policies of the SBHE and Minot State University.
2. Minot State University will not engage in viewpoint- or content-based discrimination or suppression of speech, and will, to the greatest extent possible, permit and facilitate the open discussion and debate of ideas and issues, regardless of the content of those issues.
3. As a general rule, Minot State University will not use the concept of civility or mutual respect as a basis to suppress or limit the discussion of ideas, regardless of content, except as reasonably necessary to an educational activity.
4. Minot State University and its faculty and employees shall generally not seek to shield individuals from the free speech or expression of others, except as reasonably necessary to an educational activity.
5. Except as set forth elsewhere in this policy, the generally accessible, open, outdoor areas of the campus are traditional public fora for free speech by both Minot State University and off-campus persons and organizations, subject to reasonable and constitutional time, place, and manner restrictions.
6. Minot State University designates the following areas as restricted or designated forums:
 - a. those areas inside buildings which have not otherwise been treated as traditional public fora;
 - b. areas within a 50 ft. radius from residential buildings during evening and overnight hours;
 - c. areas within a 50 ft. radius from academic buildings during times when classes are held in that building;
 - d. areas which must be restricted due to reasonable safety and security concerns, as designated by the Director of Safety and Security;
 - e. areas which must be restricted to enable the flow of pedestrian or vehicle traffic, as designated by the Director of Safety and Security;
 - f. areas within a 50 ft. radius from building entrances and exits to provide for safe and convenient ingress and egress from those buildings; and

Minot State University may require reservations or permits for the exercise of free speech or expression, including assemblies, within these restricted or designated forums.

7. Minot State University designates the following areas as closed to free speech, expressive activity, and public assembly:

Demonstrations, amplified sound, and signage are prohibited in all non-public areas, as is any activity that interferes with academic or operational functions.

IV. Prohibited Items at Assemblies

1. Dangerous weapons, as defined by N.D.C.C. § 62.1-01-01(1) as any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.
2. Firearms, except as permitted by law. *See* N.D.C.C. § 62.1-02-05.
3. Body-armor or makeshift body-armor, helmets and other garments, such as sporting protective gear, that alone or in combination could be reasonably construed as weapons or body-armor, without written permission from the Director of Safety and Security.
4. Open flame, unless approved in advance by the Director of Safety and Security.

V. General Rules on Means of Expression

1. Disruption
 - a. No speech, expression, or assembly may be conducted in a way that disrupts or interferes with any teaching, research, administration, or other authorized activities on the campus; free and unimpeded flow of pedestrian and vehicular traffic on the campus; or signs, tables, exhibits, public assemblies, distribution of literature, guest speakers, or use of amplified sound by another person or organization acting under the rules in this chapter.
 - b. Except in the most extreme cases, interference and disruption are unavoidably contextual. Intentional physical interference with other persons is nearly always disruptive in any context. Interfering with traffic depends on the relation between the volume of traffic and the size of the passageway left open. Disruptive noise is the most contextual of all, because it depends on the activity disrupted. Any distracting sound may disrupt a memorial service. Any sound sufficiently loud or persistent to make concentration difficult may disrupt a class or library. Occasional heckling in the speaker's pauses may not disrupt a political speech, but persistent heckling that prevents listeners from hearing the speaker does disrupt a political speech. These illustrations may be helpful, but none of them includes enough context to be taken as a rule. We cannot escape relying on the judgment and fairness of Minot State University authorities in particular cases. In this context where difficult enforcement judgments are unavoidable, it is especially important for administrators to remember that their judgements must not be influenced by the viewpoint of those claiming disruption or of those allegedly disrupting.
2. Potentially disruptive events can often proceed without disruption if participants and administrators cooperate to avoid disruption without stopping the event. In cases of marginal or unintentional disruption, administrators should clearly state what they consider disruptive and seek voluntary compliance before stopping the event or resorting to disciplinary charges.

VI. Damage to Property

1. No speech, expression, or assembly may be conducted in a way that damages, defaces, marks, discolors, or alters in any way property of the Minot State University or of any person who has not authorized the speaker to damage or deface their property.

VII. Amplified Sound

1. General Rule on Amplified Sound

- a. Minot State University academic or administrative units and student, faculty, or staff organizations may use amplified sound on campus at designated times and locations, with advance permission from the Vice President for Administration and Finance (VPAF), subject to the following restrictions.

2. Location and Times of Weekday Amplified Sound Areas

- a. The Director of Safety and Security may prescribe rules concerning scheduling, sound levels, the location of speakers and the direction in which they are pointed, and other rules to facilitate the use of weekday amplified sound areas, to mediate any conflict with Minot State University functions and other nearby activities, and to manage environmental impact. All such rules will be reasonable and nondiscriminatory.
- b. Student, faculty, or staff organizations or academic or administrative units wishing to use a weekday amplified sound area must reserve a particular area at a particular time. Reservations must be made with the Student Center Director on a form prescribed by the Student Center Director.
- c. The Student Center Director may limit the number or frequency of reservations for each student, faculty, or staff organization or academic or administrative unit to ensure reasonable access for all persons and organizations desiring to use amplified sound on weekdays.
- d. Minot State University persons and organizations using amplified sound are responsible for maintaining a passageway for pedestrians that is adequate to the volume of pedestrian traffic passing through the area.

3. Amplified Sound on Evenings and Weekends

- a. With advance permission, Minot State University organizations may use amplified sound in any outdoor location on campus after 5:00 pm on weekdays, and after 8:00 pm on weekends.
- b. The Student Center Director may prescribe reasonable and nondiscriminatory rules concerning scheduling, sound levels, the location of speakers and the direction in which they are pointed, and other rules to facilitate the use of amplified sound on evenings and weekends, to mediate any conflict with Minot State University functions and other nearby activities, and to manage environmental impact. (See Noise Ordinance Chart in Section d. below)
- c. Use of amplified sound on evenings and weekends requires advance permission from the President's Staff., which is comprised of the MSU President, Director of Athletics, Vice Presidents for Student Affairs, Academic Affairs, Advancement, and

Administration and Finance. Student, faculty, or staff organizations and academic or administrative units will apply through a process prescribed by the President's Staff.

- d. If amplified sound is authorized for an event on a Sunday, Monday, Tuesday, Wednesday, or Thursday evening, the sound must be turned off by midnight on the following day. If amplified sound is authorized for an event on a Friday or Saturday evening, the sound must be turned off by 1:00 am on the following day.

	City of Minot Noise Ordinance	Residential (R1, R2, R3, R4, PD-MH)	Commercial (C1, C2, C3, C4)
Maximum number of decibels permitted from 7:00 a.m. until 11:00 p.m., daily		55	65
Maximum number of decibels permitted from 11:00 p.m. until 7:00 a.m. of the following day		50	60

4. Amplified Sound Indoors

- a. Amplified sound sufficient to be heard throughout the room may be used in any room in any building, but the President's Staff may limit or prohibit sound that would be disruptive outside the room. Reservations may be required.

VIII. Public Assemblies without Amplified Sound

1. General Rule on Public Assemblies

- a. "Publicly assemble" and "public assembly" include any gathering of persons, including discussions, rallies, and demonstrations.
- b. Minot State University persons and organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be. No advance permission is required. If the expected attendance at an event with a guest speaker is twenty-five or more people, advance notice of no less than two weeks is required.
- c. The buildings owned or controlled by Minot State University are not open for demonstrations, assembly, or speech. In furtherance of the Minot State University's educational mission, the buildings owned or controlled by Minot State University are limited for open only to faculty, staff, and students and their organizations.
- d. Off-campus persons and organizations may not engage in expressive activities at the Minot State University except in accordance with these rules.

2. Reservation of Space

- a. Minot State University persons, organizations, and academic or administrative units who wish to publicly assemble in a particular room or space at a particular time may reserve the room or space by Contacting Facilities Management at <https://www.minotstateu.edu/plant/facility-rental.shtml>, the Registrar's Office at https://www.minotstateu.edu/records/faculty_staff.shtml, Student Center Director at 858-3364 or leon.perzinski@minotstateu.edu. Individual faculty, staff, and students may not reserve an indoor space, except as related to an educational activity of the Minot State University. Off-campus persons or organizations may only reserve a particular room or space for a public assembly with the advance approval of the Student Center Director.
- b. Reservation requests from recognized student, faculty, and staff organizations or academic or administrative units shall receive precedence over requests from individual persons, unrecognized organizations, or any off-campus persons or organizations.
- c. A Minot State University person, organization, or academic or administrative unit with a reservation has the right to the reserved room or space for the time covered by the reservation. Any person or organization using or occupying the room or space without a reservation must yield control of the room or space in time to permit any person, organization, or academic or administrative unit with a reservation to begin using the room or space promptly at the beginning of its reserved time. Reservations for outdoor spaces are not required but are strongly encouraged. Reservations for indoor spaces are required, although this requirement may be waived by the President or their designee.

3. Fees for Reserving Space.

- a. The VPAF may prescribe a fee schedule for reserving specified campus spaces. For information on renting space on campus see information at <https://www.minotstateu.edu/plant/facility-rental.shtml>. The schedule must not be wholly or partially based on viewpoint- or content-based criteria but may include security and logistic fees based on the venue, the anticipated attendance, historical protest activity at events of similar attendance, and other content-neutral factors. The criteria used to establish the fee schedule shall be made publicly available.
- b. Minot State University may not retain funds beyond its actual expenses unless the reserving party or group charges admission to the event. The fee schedule must be applied equally to all persons or organizations, without reference to the content or viewpoint of the proposed assembly, except as otherwise governed by campus policies.
- c. The President or their designee may waive any applicable fee for an assembly contributing to the educational mission of the institution or engaging in charitable work.
- d. Academic and administrative units are not subject to the fee schedule.

4. Notice and Consultation

- a. Minot State University persons or organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be.
- b. Students or student organizations planning a public assembly with a guest speaker and expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide advance notice of no less than two weeks to the Student Center Director. Students or student organizations planning smaller assemblies or large assemblies without a guest speaker are encouraged to consult the Student Center Director if there is uncertainty about applicable Minot State University rules, the appropriateness of the planned location, or possible conflict with other events. The Student Center Director can help the planners avoid unintended disruption or other violations that may result in subsequent discipline or subsequent interference with the assembly by campus authorities.
- c. Registered faculty organizations that are planning a public assembly with a guest speaker and an expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide notice of no less than two weeks to the Vice President for Academic Affairs (VPAA).
- d. Registered staff organizations that are planning a public assembly with a guest speaker and an expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide notice of no less than two weeks to the VPAF.
- e. The notice and consultation requirements of this subchapter do not apply to academic or administrative units.
- f. The notice and consultation requirements of this subchapter may be waived by the President or their designee.

IX. Guest Speakers

1. Definitions

- a. "Guest speaker" means a speaker or performer who is not a student, faculty member, or staff member, but who is invited to speak by a Campus/University person or organization.

2. Who May Present

- a. Minot State University persons and organizations and academic and administrative units may present guest speakers on Minot State University property. In the case of speakers invited by students or student organizations, advance permission from the Student Center Director is required. Faculty organizations are required to seek advance permission from the VPAA. Staff members and staff organizations are required to seek advance permission from the VPAF.

3. Location and Form of Presentation

- a. A guest speaker may present a speech or performance, or lead a discussion of specified duration, at a time announced in advance, in a fixed indoor location or in a fixed outdoor location approved by the Director of Safety and Security.
 - b. A guest speaker may not accost potential listeners who have not chosen to attend the speech, performance, or discussion.
4. Application
- a. All students, faculty members, staff members, student organizations, faculty organizations, and staff organizations that wish to present a guest speaker must apply through a prescribed process, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
 - b. A student or student organization that wishes to present a guest speaker will apply to the VPSA through a process prescribed by the VPSA, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
 - c. A faculty member or faculty organization that wishes to present a guest speaker will apply to the VPAA through a process prescribed by the VPAA, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
 - d. A staff member or staff organization that wishes to present a guest speaker will apply to the VPSA through a process prescribed by the VPSA, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
5. Obligations of Presenting Person or Organization
- a. A Minot State University person or organization that presents a guest speaker must make clear that:
 - i. the person or organization, and not the Minot State University, invited the speaker; and
 - ii. the views expressed by the speaker are their own and do not necessarily represent the views of the Minot State University, the North Dakota University System, or the State of North Dakota.
 - b. The person or organization that presents a guest speaker is responsible for paying any fees assessed pursuant to the schedule set forth in this policy.
 - c. Institutional funds provided to a Minot State University organization may not be used to pay for any costs or expenses related to the presentation of a politically-oriented guest speaker unless approved in advance by an organization's faculty advisor and President's Staff, in consultation with the Minot State University's legal counsel.
6. Equal Treatment

- a. Guest speakers reserving space at Minot State University facilities may be subject to the same terms and conditions governing the use of the facilities for other outside groups. If a room, space, or facility is made available to any guest speaker invited by a Minot State University person or organization, then that room, space, or facility must be made equally available to all such speakers or groups.

7. Disinvitation

- a. If a Minot State University person or organization complies with this policy when presenting a guest speaker, the Minot State University may not prohibit or disinvite that guest speaker based on the anticipated content or viewpoint of the guest speaker's speech, performance, presentation, or other form of expression.

X. Responding to Speech, Expression, and Assembly

1. General Rule on Responding

- a. Minot State University persons and organizations may respond to the speech, expression, or assembly of others, subject to all the rules herein.
 - b. Responders may not damage or deface signs or exhibits, disrupt public assemblies, block the view of participants, or prevent speakers from being heard.
2. Means of response that are permitted in many locations and without advance permission or reservation, such as signs, tables, distribution of literature, and public assembly without amplified sound, may be used immediately and in any location authorized in this policy.
 3. Means of response that require advance permission or reservation, such as banners, exhibits, and amplified sound, may be used as soon as the needed permission or reservation may be arranged. Banner space and some amplified sound areas may be unavailable on short notice because of earlier reservations, but the VPAF will expedite approval of exhibits and available banner space and amplified sound areas where necessary to permit appropriate response to other speech, assembly, or expression.
 4. Means of response that are confined to authorized locations, such as banners and amplified sound, may be used only in those locations. It is not permissible to respond to amplified sound with amplified sound in the same location; similarly, if an exhibit or public assembly is in a location where amplified sound is not permitted, it is not permissible to respond with amplified sound in that location. In either case, it is permissible to respond with amplified sound in another location and to use signs or distribution of literature to advertise the response at the other location.



POLICY & PROCEDURE MANUAL

North Dakota State College of Science

Free Speech and Solicitation Policy

Source: NDSCS President

Applies to: All NDSCS Students, Employees, and Visitors

1. Introduction

- 1.1. NDSCS recognizes the fundamental right of its students to free speech and expression under the First Amendment to the United States Constitution and the North Dakota Constitution. NDSCS is committed to ensuring that students and employees have the freedom to speak, write, listen, challenge, learn, and discuss any issue, subject to reasonable and constitutionally-recognized limitations. As part of this commitment, NDSCS is dedicated to promoting free speech and expression while providing a safe and non-discriminatory College community that supports diversity of thought and people. The goal of this Policy is to articulate the spaces available for exercising the rights of Free Speech and Expression, to communicate the parameters of any such expressive activity, to ensure the safety of the College community, and to minimize disruption to NDSCS's educational mission.

2. Definitions

- 2.1. Amplified sound – means sound whose volume is increased by any electric, electronic, mechanical, or motor-powered means. Shouting, group chanting, and acoustic musical instruments are exempt from this definition and are not subject to the special rules on amplified sound, but are subject to general rules on disruption.
- 2.2. Commercial Speech – The promotion, sale, or distribution of a product or service. For the purposes of this section, commercial speech does not include the incidental promotion, sale, or distribution of a product as part of the exercise of non-commercial speech.
- 2.3. Constitutional Time, Place, and Manner Restrictions – Restrictions on free speech which are content-neutral, narrowly tailored to serve a significant interest, and leave open alternative methods of communicating the message in question.
- 2.4. Disruptive Conduct – Any act that: unreasonably interferes with the rights of others to peaceably assemble or to exercise the right of free speech or expression; impedes the flow of pedestrian and/or vehicular traffic; disrupts the normal functioning of the College; damages property; or endangers health or safety.
- 2.5. Employee - means any person acting on behalf of NDSCS in an official capacity, temporarily or permanently, with or without compensation. The term does not include an independent contractor.

- 2.6. Free Speech or Free Expression – The rights to speech, expression, and assembly protected by the First Amendment to the United States Constitution or the Constitution of North Dakota. Such rights include, but are not limited to, all forms of peaceful assembly, protests, demonstrations, rallies, vigils, marches, public speaking, distribution of printed materials, the display of signs or banners, or the circulation of petitions. For the purposes of this policy, “free speech” or “free expression” is not intended to include Commercial Speech.
- 2.7. Protected Conduct – Free Speech or Free Expression protected by the First Amendment to the United States Constitution or the Constitution of North Dakota, subject to reasonable Time, Place, and Manner restrictions; reservation requirements under institutional policies or procedures; and the reasonable safety and security needs of NDSCS.
- 2.8. Student – an individual enrolled in one or more courses at NDSCS, or has been enrolled at the NDSCS in a prior semester or summer session and is eligible to continue enrollment in the semester or summer session that immediately follows.
- 2.9. Student Organization – An officially recognized organization, or an organization seeking recognition by the College, comprised of students, whether or not that organization seeks or receives institutional funds.

3. General Provisions

- 3.1. NDSCS will not engage in viewpoint or content-based discrimination or suppression of speech, and will, to the greatest extent possible, permit and facilitate the open discussion and debate of ideas and issues, regardless of the content of those issues.
- 3.2. NDSCS will not use the concept of civility or mutual respect as a basis to suppress or limit the discussion of ideas, regardless of content, except as reasonably necessary to an educational activity. NDSCS does, however, encourage that all such discussions take place in an atmosphere of mutual respect, free from racism, sexism, and other forms of bias.
- 3.3. NDSCS and its employees shall generally not seek to shield individuals from the Free Speech or Free Expression of others. However, it shall not be considered shielding when employees provide information about upcoming events to the campus community.
- 3.4. No speech, expression, or assembly may be conducted in a way that disrupts or interferes with any teaching, research, administration, or other authorized activities on the campus. Nor may such speech, expression, or assembly be conducted in a way that interferes with the rights of others to Free Speech and Free Expression. Due to the contextual nature of Disruptive Conduct, NDSCS is reliant on the judgment and fairness of College employees and authorities in determining what constitutes Disruptive Conduct. Such judgment must be content neutral and focused on the disruptive nature of the conduct and not the message of the disruption. Disruptive Conduct is prohibited.

4. Free Speech Areas

- 4.1. Open Public Forums - The generally accessible, open, outdoor areas of NDSCS’s campus are considered open forums for free speech, subject to reasonable and constitutional time, place, and manner restrictions. If a group desires to utilize amplified

sound or have exclusive use of an Open Public Forum, NDSCS requires the group to obtain a reservation (See Section 6).

- 4.2. Designated Public Forums – NDSCS has identified the following areas as restricted or designated forums (Utilization of these areas for free speech or expressive activity requires a reservation - see Section 6):
 - 4.2.1. Areas inside buildings which have been identified as areas which may be rented or reserved.
 - 4.2.2. Areas surrounding residential buildings during evening and overnight hours (between 9 p.m. and 8 a.m.);
 - 4.2.3. Areas surrounding academic buildings during times when classes are held in that building;
 - 4.2.4. Areas which must be restricted due to reasonable safety and security concerns, as designated by Executive Director of Student and Residential Life or designee;
 - 4.2.5. Areas which must be restricted to enable the flow of pedestrian or vehicle traffic, as determined by appropriate College official(s).
- 4.3. Closed Forums – Unless otherwise identified in this Policy, all other areas of campus are considered Closed Forums. Closed Forums are those areas which are not designed for the exercise of free speech or expression or which have traditionally not been open to the exercise of free speech or expressive activity.

5. Public Assemblies and Guest Speakers

- 5.1. Any public assembly or guest speaker taking place in an Open Public Forum with an expected attendance of more than 25 participants, including counter-demonstrators, requires a reservation (See Section 6).
- 5.2. Any public assembly or guest speaker taking place in an Open Public Forum utilizing Amplified Sound requires a reservation (See Section 6).
- 5.3. When organizing a public assembly taking place in an Open Public Forum with an expected attendance less than 25 participants, including counter-demonstrators, or without the use of Amplified Sound, organizers are encouraged to consult the Executive Director of Student and Residential Life or designee. The Executive Director of Student and Residential Life or designee will help ensure that the event is effective, safe, and does not disrupt the normal functioning of the College.
- 5.4. Reservations for public assemblies and Guest Speakers are not required for academic or administrative units.

6. Reservation of Space and Fees

- 6.1. To request a reservation of space, NDSCS requires organizers to complete and submit a reservation form to the Customer Service Desk at NDSCS Wahpeton and Front Desk at NDSCS Fargo. The application must be submitted 14 days in advance of the event. The reservation of indoor space may also require the submission of a Facility Use Agreement.

For protests, demonstrations, or other instances in which a 14 day notice may not be possible, a request must be submitted, preferably 48 hours before the start of the event to

the Customer Service Desk at NDSCS Wahpeton and Front Desk at NDSCS Fargo in consultation with the Executive Director of Student and Residential Life or designee, who will determine whether an event can be executed as requested and in accordance with this policy. With appropriate advance notice, the appropriate administration representative (e.g., student group advisor, NDSCS Police Department) will engage with participants during the event to help ensure that the event is effective and safe, and to assist organizers in seeing that the demonstration does not disrupt the normal operation of the College.

- 6.2. If multiple requests are made for the same space during the same time, reservation requests from recognized student, faculty, and staff organizations or academic or administrative units shall receive precedence over requests from individual persons, unrecognized organizations, or any off-campus persons or organizations.
- 6.3. A space reservation affords the group the right to the reserved space for the time covered by the reservation. Any person or organization using or occupying the reserved space without a reservation must yield control of the reserved space in time to allow for the reservation and any time that may be needed to setup the space for the reservation.
- 6.4. Fees - The Customer Service Desk at NDSCS Wahpeton and Front Desk at NDSCS Fargo may prescribe a fee schedule for reserving specified College spaces. The schedule shall be made available at these locations on request, and shall be based on the actual expenses incurred by the College in making the space available. The advertising fee schedule is set annually by the Executive Director of Student and Residential or their designee and is available at the Customer Service Desk at NDSCS Wahpeton.
 - 6.4.1. The space fee schedule and advertising fee schedule must not be wholly or partially based on viewpoint- or content-based criteria, but may include security and logistic fees based on the venue, the anticipated attendance, historical protest activity at events of similar attendance, and other content-neutral factors. The criteria used to establish the fee schedule shall be made publicly available.
 - 6.4.2. The Executive Director of Student and Residential Life or their designee may waive any applicable fee for an assembly contributing to the educational mission of the College.
 - 6.4.3. Academic and administrative units are not typically subject to the space fee schedule.

7. Prohibited Items at Assemblies

- 7.1. Dangerous weapons, as defined by N.D.C.C. § 62.1-01-01(1).
- 7.2. Firearms, except as permitted by law. See N.D.C.C. § 62.1-02-05.
- 7.3. Body-armor or makeshift body-armor, helmets and other garments, such as sporting protective gear, that alone or in combination could be reasonably construed as weapons or body-armor, without written permission from Executive Director of Student and Residential Life or designee.
- 7.4. Open flame, unless approved in advance by Executive Director of Student and Residential Life or designee.

8. Advertising & Solicitation General Provisions

- 8.1. Advertising and mediums for sales and solicitation are subject to approval.
- 8.2. Advertising associated with sales and solicitation is only permitted through the methods listed below; fees may be charged for these mediums, see section 6 of this policy for further information about the advertising fee schedule:
 - 8.2.1. Student Life controlled social media.
 - 8.2.2. Student Life controlled text messaging.
 - 8.2.3. Vendor tables.
 - 8.2.4. Video advertisements developed or adopted by the NDSCS Media Squad.
 - 8.2.5. Advertising related to athletic events.
 - 8.2.6. Auxiliary Services promotion.
- 8.3. Any person or group of persons wishing to advertise, distribute literature or solicit on NDSCS College properly may do so within the procedures outlined within this policy. No promotion of any kind will be permitted for alcohol, tobacco, and other drugs, gambling, or sexually explicit material. Sales, solicitation, distribution of literature and non-NDSCS sponsored advertising are not permitted within residential facilities.
- 8.4. Use of the NDSCS website events calendar is restricted to events supported by student fees, important dates and deadlines for the College community and information about major events at NDSCS. Non-NDSCS events, announcements, or advertising is not permitted on the events calendar.
- 8.5. The NDSCS e-mail system is intended to enable College communications among faculty, students and staff for academic purposes and to communicate important information. Acceptable use of email and electronic resources is governed by relevant policies, including SBHE Policy 1202.1, and applicable laws, including N.D.C.C. 16.1-10-02.
- 8.6. Sales representatives or vendors dealing in supplies, equipment, or services under NDSCS contracts may conduct business in accordance with those contracts and applicable NDSCS policies.
- 8.7. Non-employees may not solicit employees on NDSCS premises at any time, unless they are following the procedures associated with this policy. In addition, non-employees may not utilize the college's phone system, e-mail or other communication means that are established and governed by the College. Employees may not solicit other employees during work times, except in connection with NDSCS approved or sponsored event or organization.
 - 8.7.1. All individuals or organizations advertising, soliciting or distributing literature at the College must be identified on the literature and/or medium of distribution.
 - 8.7.2. All individuals or organizations will be held responsible for cleaning up all litter resulting from advertising, solicitation, and/or literature distribution.
 - 8.7.3. Distributing literature, advertising, or soliciting by pursuing, accosting and hawking is prohibited as is any interference with normal College functions or interruption of free flow traffic inside or outside a building.

- 8.8. Sidewalk Chalking - Chalking of sidewalks on College property is limited to NDSCS student event promotions only and requires permission. Seek approval for chalking at the Customer Service Desk at NDSCS Wahpeton and Front Desk at NDSCS Fargo.
- 8.9. Mail Services - Commercial literature may be distributed by student organizations into the student mailboxes provided approval has been granted by the NDSCS Student Senate. The College retains the right to investigate any and all requests for using the mail system. Advisor supervision is required to maintain mailroom security. There are no mailboxes at NDSCS Fargo
- 8.9.1. An individual candidate, or groups sponsoring an individual for public office, may not utilize the mailroom or mailboxes to distribute political information.
- 8.9.2. This policy does not impact any U.S. Postal service mail that is received by the NDSCS mailroom through its regular operation.
- 8.9.3. The NDSCS mail system is not a U.S. Post office and is not governed by postal regulations.
- 8.9.4. Employees may not stuff mailboxes for personal gain.
- 8.10. Bulletin boards: Public bulletin boards are available in a variety of locations throughout the College, contact the Customer Service Desk for locations in Wahpeton or the Front Desk for board locations in Fargo.
- 8.10.1. Advertisements and other materials relevant to the mission of the College may be posted, unless statements, imagery, other messaging on the posting violates NDSCS Policy.
- 8.10.2. All posted materials must either have the official NDSCS logo on the poster for an NDSCS recognized student event or activity or be date stamped with the official NDSCS-approved posting stamp. All materials not stamped or carrying the NDSCS logo or that are not promoting an NDSCS student event or activity will be removed. All postings will be removed after 2 weeks unless otherwise approved.
- 8.10.3. Posting of materials or advertising in NDSCS Buildings or facilities or elsewhere on College property is prohibited; including bulletin boards, white boards, or other spaces as these are not designated as public.

Where to obtain additional information:

Students: Contact the Student Life Department at 701-671-2404 or the Vice President for Student Affairs at 701-671-2627

Employees: Contact your supervisor and/or call the Human Resources office at 701-671-2903 (e-mail: ndscs.hr@ndscs.edu)

Approved by:



John Richman, Ph.D.



Date

North Dakota State University

Policy Manual

SECTION 154

FREEDOM OF SPEECH, EXPRESSION, AND ASSEMBLY

SOURCE: President's Office

1. Introduction

1.1. North Dakota State University recognizes and supports the fundamental right of its students and others to free speech and expression under the First Amendment to the United States Constitution and the North Dakota Constitution. NDSU values and encourages the free exchange of ideas while maintaining the safety of the campus community and the orderly operations of the institution. To that end, NDSU is committed to ensuring the freedom to speak, write, listen, challenge, learn, and discuss any issue, subject to reasonable and constitutionally-recognized limitations. As part of this commitment, NDSU is dedicated to promoting free speech and expression while providing a safe and non-discriminatory campus climate that supports diversity of thought and people.

This policy defines the spaces available for exercising the rights of free speech and expression and communicates the parameters of any such expressive activity, to protect the safety of campus, and to minimize disruption to NDSU's educational mission. This policy establishes certain standards of conduct that must be observed by demonstrators and groups and applies to all individuals while using University property for exercising the rights of free speech and assembly.

2. Definitions

- 2.1. Amplified sound – means sound whose volume is increased by any electric, electronic, mechanical, or motor-powered means. Shouting, group chanting, and acoustic musical instruments are exempt from this definition and are not subject to the special rules on amplified sound, but are subject to general rules on disruption.
- 2.2. Commercial Speech – The promotion, sale, or distribution of a product or service. For the purposes of this section, commercial speech does not include the incidental promotion, sale, or distribution of a product as part of the exercise of non-commercial speech.
- 2.3. Constitutional Time, Place, and Manner Restrictions – Restrictions on free speech which are content-neutral, narrowly tailored to serve a significant interest, and leave open alternative methods of communicating the message in question.

- 2.4. Disruptive Conduct – Any act that: unreasonably interferes with the rights of others to peaceably assemble or to exercise the right of free speech or expression; impedes the flow of pedestrian and/or vehicular traffic; disrupts the normal functioning of the University; damages property; or endangers health or safety.
- 2.5. Employee - means any person acting on behalf of NDSU in an official capacity, temporarily or permanently, with or without compensation. The term does not include an independent contractor.
- 2.6. Free Speech or Free Expression – The rights to speech, expression, and assembly protected by the First Amendment to the United States Constitution or the Constitution of North Dakota. Such rights include, but are not limited to, all forms of peaceful assembly, protests, demonstrations, rallies, vigils, marches, public speaking, distribution of printed materials, the display of signs or banners, or the circulation of petitions. For the purposes of this policy, “free speech” or “free expression” is not intended to include Commercial Speech.
- 2.7. Protected Conduct – Free Speech or Free Expression protected by the First Amendment to the United States Constitution or the Constitution of North Dakota, subject to reasonable Time, Place, and Manner restrictions; reservation requirements under institutional policies or procedures; and the reasonable safety and security needs of NDSU.
- 2.8. Student – an individual enrolled in one or more courses at NDSU.
- 2.9. Student Organization – An organization recognized or seeking recognition by NDSU’s Congress of Student Organizations, whether or not that organization seeks or receives institutional funds.

3. General Provisions

- 3.1. NDSU will not engage in viewpoint or content-based discrimination or suppression of speech, and will, to the greatest extent possible, permit and facilitate the open discussion and debate of ideas and issues, regardless of the content of those issues.
- 3.2. NDSU will not use the concept of civility or mutual respect as a basis to suppress or limit the discussion of ideas, regardless of content, except as reasonably necessary to an educational activity. NDSU does, however, encourage that all such discussions take place in an atmosphere of mutual respect, free from racism, sexism, and other forms of bias.
- 3.3. NDSU and its employees shall generally not seek to shield individuals from the Free Speech or Free Expression of others. However, it shall not be considered shielding when employees provide information about upcoming events to the campus community.
- 3.4. No speech, expression, or assembly may be conducted in a way that disrupts or interferes with any teaching, research, administration, or other authorized activities on the campus. Nor may such speech, expression, or assembly be conducted in a way that interferes with the rights of others to Free Speech and Free Expression. Due

to the contextual nature of Disruptive Conduct, NDSU is reliant on the judgment and fairness of University employees and authorities in determining what constitutes Disruptive Conduct. Such judgment must be content neutral and focused on the disruptive nature of the conduct and not the message of the disruption. Disruptive Conduct is prohibited.

4. Free Speech Areas

- 4.1. Open Public Forums - The generally accessible, open, outdoor areas of NDSU's campus are considered open forums for free speech, subject to reasonable and constitutional time, place, and manner restrictions. If a group desires to utilize amplified sound or have exclusive use of an Open Public Forum, NDSU requires the group to obtain a reservation (See Section 6).
- 4.2. Designated Public Forums – NDSU has identified the following areas as restricted or designated forums. Utilization of these areas for free speech or expressive activity requires a reservation (See Section 6):
 - 4.2.1. Areas inside buildings which have been identified as areas which may be rented or reserved.
 - 4.2.2. Areas surrounding residential buildings are restricted from 10 am-10 pm and closed from 10 pm-10 am. Any sound production must not constitute Disruptive Conduct;
 - 4.2.3. Areas surrounding academic buildings are closed during times when classes are held in that building and restricted when not in session. Any sound production must not constitute Disruptive Conduct;
 - 4.2.4. Areas which must be restricted due to reasonable safety and security concerns, as designated by appropriate campus official(s);
 - 4.2.5. Areas which must be restricted to enable the flow of pedestrian or vehicle traffic, as determined by appropriate campus official(s).
- 4.3. Closed Forums – Unless otherwise identified in this Policy, all other areas of campus are considered Closed Forums. Closed Forums are those areas which are not designed for the exercise of free speech or expression or which have traditionally not been open to the exercise of free speech or expressive activity.

5. Public Assemblies and Guest Speakers

- 5.1. Any public assembly or guest speaker taking place in an Open Public Forum with an expected attendance of more than 25 participants, including counter-demonstrators, requires a reservation (See Section 6).
- 5.2. Any public assembly or guest speaker taking place in an Open Public Forum utilizing Amplified Sound requires a reservation (See Section 6).
- 5.3. When organizing a public assembly taking place in an Open Public Forum with an expected attendance less than 25 participants, including counter-demonstrators, or without the use of Amplified Sound, organizers are encouraged to consult the Dean of

Students Office. The Dean of Students Office will assist in the event taking place in an effective and safe manner that does not disrupt the normal functioning of the University.

5.4. Reservations for public assemblies and Guest Speakers are not required for academic or administrative units.

6. Reservation of Space and Fees

To further the effectiveness of an event, protest, assembly, or demonstration, organizers are encouraged to make advance arrangements with the Dean of Students Office. Advance notification enables the University to assist in the event taking place in a constructive and peaceful manner. Additionally, with appropriate advance notice, the appropriate administration representative (e.g., student group advisor, University Police, etc.) will engage with participants during the event to help ensure that the event is effective and safe, and to assist organizers in seeing that the event does not disrupt the normal functioning of the University.

6.1. Most routine events can be approved within 48 hours, however, the scope of an event may impact how long it takes to process a request. The Dean of Students Office will determine whether an event can be executed as requested and in accordance with this policy. To request a reservation of space, NDSU requires organizers to submit a Free Speech Event Registration form to the Dean of Students Office. Some events may also require the submission of a Facility Use Agreement and/or coordination with specific buildings, offices, or departments. Reservations must be made following the process in place for each particular space.

6.2. If multiple requests are made for the same space during the same time, reservation requests will be processed in the order in which they were received.

6.3. A space reservation affords the group the right to the reserved space for the time covered by the reservation. Any person or organization using or occupying the reserved space without a reservation must yield control of the reserved space in time to allow for the reservation and any time that may be needed to setup the space for the reservation.

6.4. Fees - The University may prescribe a fee schedule for reserving specified campus spaces. The schedule shall be made available on request, by the area responsible for a particular space or venue, and shall be based on the actual expenses incurred by the campus in making the space available. The schedule must not be wholly or partially based on viewpoint- or content-based criteria, but may include security and logistic fees based on the venue, the anticipated attendance, historical protest activity at events of similar attendance, and other content-neutral factors. The cost of security will be set by the University Police and Safety Office. The criteria used to establish the fee schedule shall be made publicly available.

6.5. The University may waive any applicable fee for an assembly contributing to the educational mission of the institution or engaging in charitable work.

6.6. Academic and administrative units are not subject to the fee schedule.

7. Prohibited Items at Events Covered by this Policy

7.1. Dangerous weapons, as defined by N.D.C.C. § 62.1-01-01(1).

7.2. Firearms, except as permitted by law. See N.D.C.C. § 62.1-02-05.

7.3. Body-armor or makeshift body-armor, helmets and other garments, such as sporting protective gear, that alone or in combination could be reasonably construed as weapons or body-armor, without written permission from appropriate campus official(s).

7.4. Open flame, unless approved in advance by appropriate campus official(s).

8. Distribution of Literature and Chalking

8.1. Commercial Literature may be distributed in designated public forums only:

8.1.1. At University events where the commercial activity has been pre-approved;

8.1.2. On University-approved bulletin boards per building's policy/guidance for use of bulletin boards. All other commercial solicitations are prohibited, unless authorized under and pursuant to NDSU Policy 150 and 700;

8.1.3. Through publications such as The Spectrum student newspaper, whose distribution on campus is pre-approved; and

8.1.4. In the Free Speech Literature rack and contact tables in the main level of Memorial Union (contact tables are available through reservation in the Memorial Union and a fee is charged to off-campus entities).

8.2. Chalking is only allowed for Residence Hall Move-in and NDSU Homecoming with permission from Facilities Management.

HISTORY:

New	July 1990
Amended	July 2001
Amended	December 2002
Amended	April 2005
Amended	November 2005
Amended	October 2007
Housekeeping	September 2015
Housekeeping	August 25, 2017
Amended	October 29, 2018
Amended	August 23, 2019

Current Status: Active

PolicyStat ID: 8284064



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 Last Revised: 07/2020
 Next Review: 01/2021
 Owner: Eric Plummer: Associate VP for Public Safety
 Area: Public Safety
 References: COVID-19, NDAC, NDCC, SBHE Policy, UND Policy

Events, Demonstrations, Fixed Exhibits, and Short-Term Rentals

UND recognizes the positive impact of social engagement and participation in campus activities. UND will strive to provide students, faculty, staff and campus visitors with opportunities to engage in campus events outside the classroom while mitigating the spread of COVID-19. Given the fluid nature of COVID-19, event plans may need to be adjusted as conditions change to support the health and safety of the campus community. In addition to the content below, please reference the [fall 2020 event guidelines](#) for expectations for on-campus events.

UND pays special attention to the North Dakota Smart Restart guidelines, among other sources of expert advice. Because of the density and mobility of our community, UND's policies/guidelines may be stricter than those of the state or federal governments.

POLICY STATEMENT

The University of North Dakota (UND/University) acknowledges the rights of students and others to assemble in groups on University property for peaceful rallies, demonstrations, and gatherings. UND may establish reasonable regulations regarding the time, place, and manner in which individuals exercise their free speech rights to the extent necessary to assure the safety of the campus community and the orderly operations of the institution.

At events, demonstrations, and fixed exhibits, the University expects the rights and privileges of all individuals to be respected and that there will be no endangerments to health or safety. Events, demonstrations, and fixed exhibits must in no way disrupt the normal conduct and operation of University affairs or endanger University property. This policy both facilitates the exercise of these rights of free expression and assembly, and protects the University community.

The University reserves the right to designate the time, place, and manner of events, demonstrations, and fixed exhibits, use of amplified sound and displays of signage or other materials, in order to protect the safety of individuals and property and avoid unwarranted disruptions of University operations. Any action by the University that restricts expression or assembly under this policy shall be content-neutral and viewpoint-neutral (i.e. shall not be based upon the content or subject matter presented). However, the University may consider the effect of such activities on the safety and orderly operations of the campus when taking such action. Nothing in this policy is intended to authorize or permit any activity which is otherwise unlawful.

UND collects lease or rental fees sufficient to cover expenses incurred during events and short-term rentals. Additionally, liability insurance or waivers may be required when hosting an event on University property.

REASON FOR POLICY

This policy defines the University's forums for exercising the rights of free speech and peaceful assembly, and to advise campus constituents regarding the exercise of those rights. This policy establishes certain standards of conduct that must be observed by demonstrators and groups while using University property for exercising the rights of free speech and assembly. This policy applies to all individuals while on or using University property.

This policy is created in accordance with the First Amendment to the Constitution of the United States and North Dakota State Board of Higher Education (SBHE) Policy 909 and 503.1.

SCOPE OF POLICY

This policy applies to:

- President
- Vice Presidents
- Deans, Directors & Department Heads
- Area Managers & Supervisors
- Faculty
- Staff
- Students
- Others **Outside (non-campus) Entities**

RELATED INFORMATION

Grand Forks Public Health Department – Guidelines for Food Safety at Temporary Events	www.grandforksgov.com/home/showdocument?id=586
NDAC Chapter 33-33-04 – Food Code	https://www.legis.nd.gov/information/acdata/pdf/33-33-04.1.pdf
NDCC Chapter 32-12.2 – Claims Against the State	www.legis.nd.gov/cencode/t32c12-2.pdf
SBHE Policy 503.1 – Student Free Speech and Expression	https://ndusbpos.sharepoint.com/:w/s/NDUSPoliciesandProcedures/EX8AUokbJNJGpio2LpwHygQBSrJ1XHYCAuppxpSJhkcoOg?rtime=S_ljlt0V10g
SBHE Policy	https://ndusbpos.sharepoint.com/:w/s/NDUSPoliciesandProcedures/

909 – Real Property Leases	EZEzulPio9BPj_Om8rbfm9EBGSHyN1vBK2K70om_zZG8qw?rtime=PPIQ2t0V10g
SBHE Policy 918 – Alcoholic Beverages	https://ndusbpos.sharepoint.com/:w:/s/NDUSPoliciesandProcedures/EWcJ9jkIH9BCmgPcy2PKHHMBNu9_m6F6v9U6p4aSArmYAA?rtime=rnTU5N0V10g
UND Code of Student Life	https://UND.policystat.com/?lt=nEb9f5IPhIT42yu4MIKV8w&next=/policy/6747183/latest/
UND Faculty Handbook	https://UND.policystat.com/?lt=nEb9f5IPhIT42yu4MIKV8w&next=/policy/5300700/latest/
UND Fall 2020 Event Guidelines	https://campus.UND.edu/safety/fall-2020-event-guidelines/
UND Guidelines for Sanitation: Food and Food Services	https://campus.UND.edu/safety/public-safety/additional-resources/sanitation.html
UND Health Hawks - COVID-19 Safety Levels	http://blogs.UND.edu/coronavirus/healthy-hawks-restart/
UND Policy - Sales and Solicitations	Pending. Contact the Policy Office for additional information.
UND Policy – Access to and Security of Campus Facilities	https://UND.policystat.com/?lt=nEb9f5IPhIT42yu4MIKV8w&next=/policy/6517276/latest/
UND Policy – Alcohol and Drugs	https://UND.policystat.com/?lt=nEb9f5IPhIT42yu4MIKV8w&next=/policy/6517835/latest/
UND Staff Handbook	https://UND.policystat.com/?lt=nEb9f5IPhIT42yu4MIKV8w&next=/policy/6664675/latest/
USDA – Cooking for Groups: A Volunteer's Guide to Food Safety	www.fsis.usda.gov/wps/wcm/connect/82770ed6-4ec5-4075-9b09-4a24bef24af6/Cooking_for_Groups.pdf?MOD=AJPERES

CONTACTS

Specific questions should be directed to the following:

Subject	Contact	Telephone	Office or Department E-Mail / Web Address
Policy Clarification	Controller Office of Safety	(701) 777-3178 (701) 777-3341	https://campus.UND.edu/finance/index.html https://campus.UND.edu/safety/public-safety/index.html
Alcohol Exception	Office of the President	(701) 777-2121	https://campus.UND.edu/operations/alcohol-exception.html
Event Approval Forms	Office of Safety	(701) 777-3341	https://campus.UND.edu/safety/resources/forms.html#d28e90-1
Fee Schedules	Budget	(701) 777-3924	https://campus.UND.edu/finance/resource-planning-allocation/index.html
Initial Approval of Facility Use Agreement Template	Legal Counsel	(701) 777-6398	
Liability Insurance	Office of Risk Management and Insurance	(701) 777-3341	https://campus.UND.edu/safety/public-safety/index.html
Liability Waivers	Office of Risk Management and Insurance	(701) 777-3341	https://campus.UND.edu/safety/resources/forms.html#d28e90-9
Parking	Parking and Transportation Services	(701) 777-3551	https://campus.UND.edu/transportation/parking/index.html
Temporary Food Service	Grand Forks Public Health Department	(701) 787-8100	http://www.grandforksgov.com/publichealth
University Property	Facility Management	(701) 777-2523	https://campus.UND.edu/facilities-management/

DEFINITIONS

Commercial Activity/ Speech	Any sales or solicitation in an effort to obtain customers or members, or signs promoting a business or sale of goods (e.g., leafletting, handing out coupons, other forms of advertisement, company approaching students/faculty/staff to secure sales).
Demonstration	An event that has the potential to require campus resources, but for which two-week advanced notice may not be provided.
Documentation of Liability Insurance	Certificate of Insurance, Certificate of Financial Liability or other document of financial insurance.

Event	An activity or occurrence that requires or has the potential to require campus resources and/or planning. This includes, but is not limited to, large events, multiple-day events, symposiums, workshops, trainings, conferences, concerts, orientations, internships/co-ops, and events that have any known or past problems or potential risks (i.e., security needs, safety issues, parking requirements, etc.). Events are approved through the submission of an event approval form.
Event Approval Form	The form completed for each requested event. Completed forms are submitted to Office of Safety for processing and forwarded to the Event Review Board for approval. The decision to have a responsible party to complete a facility use agreement rests with the manager of the host facility.
Event Review Board	The team of UND employees assigned the ongoing task of reviewing and approving/denying all event approval forms. Membership consists of representatives from Office of Safety, Office of Student Rights and Responsibilities, Facilities Management, Memorial Union, Transportation and Parking Services, University Police Department, Housing, Dining, and the host facility.
Facility Use Agreement	Agreement signed by an individual or group acknowledging the use of University of North Dakota buildings/property under described terms and conditions.
Fixed Exhibit	Posters, ribbons, banners, flags, displays, crosses, or signs physically placed on campus property or in campus buildings.
Host Facility	The location where an event is held.
Nonprofit Organization	Entity organized to achieve a purpose other than generating profit, and uses its funds to achieve its goals.
Non-Public Areas	Buildings and property of the institution that are used for the academic and operational mission of the institution or are designated as high hazard or restricted based on type of research/activity or security needed to further the mission of the institution.
Non-University Group	Third party entities with no relation to the institution and no institutional financial support. Entities other than University Groups and Related Parties.
North Dakota Administrative Code (NDAC)	The codification of all rules of state administrative agencies, as that term is defined by NDCC Section 28-32-02.
North Dakota Century Code (NDCC)	The codification of all general and permanent law enacted since statehood.
Office of Safety	UND department responsible for services related to safety, risk management, and insurance.
Related Parties	UND-related foundations, recognized student organizations, governing councils, Student Government, Association of Residence Halls, Greek organizations, NDUS, and other NDUS institutions.
Responsible Party	Sponsor, coordinator, or entity responsible for event.
SBHE	State Board of Higher Education

Short-Term Rental	A rental that is in effect for less than one year.
Small Event	An event of less than 20 people occurring in one location, and not spanning a time frame of more than a week.
United States Department of Agriculture (USDA)	A cabinet-level agency that oversees the American farming industry. USDA duties range from helping farmers with price support subsidies, to inspecting food to ensure the safety of the American public.
University Events	Events which further the mission of the University, provide opportunities for social growth and cultural understanding, serve the recreational needs of the campus community, and are sponsored/supported by a University group.
University Group	UND departments.
University Property	Any University building or property owned or controlled (e.g., classroom, auditorium, residence hall, other building, outdoor area) by the institution. For information related to what constitutes University property, contact Facilities Management.
UPD	University Police Department
Waiver	Agreement signed by an individual or group releasing the University of North Dakota and State from liability.

PRINCIPLES

Overview

The First Amendment to the Constitution of the United States grants that "Congress shall make no law...abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble." As an arm of the state, the University affords and protects the rights to free expression and peaceful assembly.

UND permits the approved use of University buildings and/or property by the University community, related parties, and other individuals or groups in their presentation of events which further the mission of the University, provide opportunities for social growth and cultural understanding, and serve the recreational needs of the campus community in compliance with this policy. As such, UND welcomes tournaments, meetings, and other events to its campus held by University, related parties and non-University groups. University events are given precedence over the use of buildings/property by non-University or outside groups.

The University of North Dakota encourages the free exchange of ideas. Individuals and entities granted the use of University property do not necessarily express the views or opinions of the University.

To further the effectiveness of their event, protest, or demonstration the responsible party is encouraged to make a request and advance arrangements with the Office of Safety and University Police Department. Advance notification enables the University to help ensure that the event takes place in a constructive and peaceable manner.

To avoid conflicts in the use of space and disruption of the orderly operation of the campus, and to ensure the safety of the campus community, UND does not allow setting up any fixed structures, including but not limited to, tables, booths, or displays, or use of University property without the prior, express, written permission of Office of Safety. Approval may be requested by contacting the Office of Safety for the desired date and

location. To ensure availability of the desired space in/on UND property request should be made at least 14 days in advance of the event. Space is granted on a first-come, first-serve basis by the appropriate facility.

UND reviews requests to assure they do not represent an unreasonable risk of harm or interference to participants, other members of the campus community, or University property and operations. The Office of Safety will work with organizations to ensure event approval forms are completed and submitted appropriately, and will subsequently ensure the form is reviewed for approval. Non-University groups are required to furnish documentation of liability insurance naming the University and state as additional insured. UND may waive this liability insurance requirement for nonprofit groups and small events only.

Additionally, some campus buildings have supplemental facility and event policies and guidelines that must be followed. When making arrangements to lease or rent buildings/property, responsible parties should inquire of the host facility to determine if any additional policies or procedures apply.

A request may be denied, and the University reserves the right to cancel or postpone any reservation or reserved use on one or more of the following grounds:

- a. Conflict with a pre-existing reservation or planned use of the location that would unreasonably interfere with either event;
- b. Conflict with reasonable restriction on signage, display, erection of structures, sound amplification, or other aspects of the event that would unreasonably interfere with the health or safety of individuals, protection of property, access, traffic or the peaceful, orderly operations of the campus; or
- c. Inadequate notice for purposes of providing security, facilities support, or other preparations necessary for the protection of individuals and property.

UND collects lease or rental fees sufficient to cover expenses incurred during events and short-term rentals. With justifications, these fees may be waived by the president, a vice president, a dean, or their designees. Departments are required to deposit revenues from events, and short-term rentals into University fund(s) that are utilized to support the facility. Any amount collected and not used will be returned.

For public safety concerns, the following are not allowed on campus for use in an event, protest, or demonstration without the express prior approval: wires, rope, chains, and any other object that might injure oneself or others; unauthorized signage or displays; and graffiti.

Guidelines and Special Arrangements

Open Public Forums

While the University's outdoor public areas are open to all University groups and related parties for expressive activities, whether planned or spontaneous, all events on UND property, whether scheduled in advance or not, must be for the purposes of carrying out lawful activities without undue disruption to the University's operations, and without harming or creating a threat of harm to individuals or property. Nothing in this policy shall be construed to limit or constrain the duties and authority of the University, nor law enforcement authorities, to maintain order and protect public safety.

Open public forums are not open for commercial expression (such as solicitations and advertisements), except as provided in UND's policy on sales and solicitations (see [Related Information](#)).

To further the effectiveness of their event, protest, or demonstration the responsible party is encouraged to make advance arrangements with the Department of Public Safety. Advance notification enables the University to help ensure that the event takes place in a constructive and peaceable manner.

Non-Public Areas

Demonstrations, amplified sound, and signage are prohibited in all non-public areas, as is any activity that interferes with academic or operational functions. Individuals refusing to vacate the premises of a non-public area upon request are subject to arrest under applicable municipal and state laws and may be subject to disciplinary action by the University. Commercial expression is prohibited in non-public areas, except as provided in UND's policy on sales and solicitations (see [Related Information](#)).

Building Occupancy/Hours

For events requiring the use of space in a university building please review the procedures section of this policy for additional details. For an event, attention must be paid to the occupancy limits and general safety of the University community in the space used. University officials may require individuals leave a building to remain within building/facility occupancy limits. Adherence to building hours is expected of people participating in events within a University building and University officials will require that event participants leave at the time of building closure.

Additionally, some campus buildings have supplemental event policies and guidelines that must be followed.

Amplification and Chalking

Amplified sound is generally prohibited in all non-public areas and open public forum areas, but may be permitted for approved events with the prior, express approval through the event approval process.

Sound levels are not to exceed 80 decibels at any time. The proximity of classrooms, offices, laboratories, and the library will be considered in approving the use of amplification. When necessary, lower sound levels may be required to avoid undue disruption of others or the normal functioning of the University.

Chalking is allowed only on the horizontal concrete ground (not on paving stones or walls) of UND property and must be at least 10 feet from any entrance or awnings. To prevent property damage only washable chalk may be used; no spray chalk, paint, or similar materials may be used on University property.

Guidelines for Expression and Assembly: Time, Place, and Manner

Disruptive Activity

Disruptive activities are any act that materially and substantially interferes with the rights of others to peaceably assemble or to exercise the right of free expression, disrupts the normal functioning of the University, damages property, or endangers health or safety. Disruptive activities are specifically prohibited.

Picketing

Picketing in open public forums is permitted in accordance with this policy. Individuals participating in picketing are should adhere to University policies, city ordinances and applicable state and federal laws. Such activities should be not become disruptive nor should they impede access. Picketing is not permitted inside buildings or in other non-public areas.

Commercial Literature

Literature for the purpose of commercial activity or speech may be distributed in designated public forums only:

1. At University events where the commercial activity or speech has been pre-approved;
2. Through publications such as the Dakota Student Newspaper, whose distribution on campus is pre-approved; and
3. On University-approved bulletin boards per building's policy/guidance for use of bulletin boards.

All other commercial solicitations are prohibited, unless authorized under and pursuant to UND's policy for sales and solicitations.

Symbolic Protest

Symbolic protest includes, but is not limited to, displaying a sign, gesturing, wearing symbolic clothing, or otherwise protesting silently. Such expression is permissible unless it disrupts the normal functioning of the University or impedes access to buildings/property. In addition, such acts should not block an audience's view or prevent an audience from being able to pay attention to a lawful assembly and/or an official University event.

Noise-Making

Noise-making that is sustained or repeated noise made in a manner that substantially interferes or limits the free speech of another speaker is prohibited. Such noise-making is not permitted. Noise levels that do not interfere with classes, meetings, or activities in progress or the privacy of residence hall and students apartments is permitted.

Force or Violence

Any attempt to impede, impair, or interfere with the operations of the University, including official University events or other lawful assemblies, by threat or use of force or violence is not permissible.

Damage to Property

Any damage to University or personal property in the course of, or as a result of, an expressive activity is prohibited. This includes damage to the campus lawns, shrubs, and trees.

Duration

Events, protests, and demonstrations are normally permitted until or unless University officials determine that University operations have been compromised and/or unreasonably interfere with the rights of others.

Other Laws and Rules

All applicable laws, rules, and regulations (including, but not limited to, the Code of Student Life, Faculty Handbook, Staff Handbook) must be followed whenever engaging in activities on UND property.

Food and Food Services

The food and food services guidelines (see [Related Information](#)) addressed by the Office of Safety apply to all members of the UND community, related-parties, non-university groups, including visitors while on-campus hosting an event.

All raw or prepared food and food related services at public events held on campus must be acquired through licensed food and food service providers. All food served at public events must be transported, prepared, and served in a manner consistent with Chapter 33-33-04 of the North Dakota Administrative (NDAC) Section Code (Food Code).

In addition to acquiring products and service through a licensed food and food service provider, public events requiring temporary food service, such as outdoor fundraisers, barbecues, and promotions, must follow Grand Forks Public Health Department requirements.

Events held on campus but not open to the general public must also follow general sanitation guidelines. Individuals in charge of organizing or preparing food for such events should be familiar with the food preparation sanitation guidelines provided by the United States Department of Agriculture (USDA).

Alcoholic Beverages

According to SBHE policy 918, alcoholic beverages are prohibited upon land or in buildings owned by the University of North Dakota. However, SBHE 918 gives the president (or designee) authority to approve exceptions to this policy. All exceptions are subject to applicable state and local laws and ordinances. Exceptions are considered if UND students are not the primary event audience. To seek an exception, entities must complete an exception form and submit it to the appropriate vice president at least three weeks prior to the event. If endorsed by a vice president, the form will be submitted to the president for final approval. Contact the Office of the President for additional information.

PROCEDURES

To further the effectiveness of their event, protest or demonstration the responsible party is encouraged to make advance arrangements with the Office of Safety. Advance notification enables the University to help ensure that the event takes place in a constructive and peaceable manner.

Event Approval

University groups, non-University groups, and related parties wanting to hold an event in or on UND-owned property or via virtual/remote event must complete an event approval form and facility use agreement, when appropriate. Academic courses and department/staff meetings are not considered campus events and do not need to have event approval forms submitted. Event approval forms do not need to be submitted for events held at off-campus locations (e.g., Ralph Engelstad Arena, Alerus Center, Empire Arts Theater, etc.). UND-sponsored events held at off-campus locations must be approved by the respective dean, director or vice president and they must follow the respective safety level guidelines (see [Related Information](#): UND Fall 2020 Event Guidelines). Exceptions to the published fall 2020 campus event guidelines may be considered through the event approval process or by the University president.

University groups, non-University groups, and related parties sponsoring an event will be responsible for the planning and execution of the event in a manner consistent with all applicable University policies and procedures. This is best accomplished by contacting the Office of Safety in the early stages of planning for

assistance in completing the event approval form.

An event approval form is completed by the responsible party and submitted (preferably electronically) to the Office of Safety for each proposed event at least 14 days prior to the desired event date for processing and approval. For protests, demonstrations, or other instances in which a 14-day notice may not be possible, a request must still be submitted, preferably 48 hours before the start of the event to the Office of Safety, who will determine whether an event can be executed as requested and in accordance with this policy. With appropriate advance notice, the appropriate administration representative (e.g., student group advisor, University Police Department, etc.) will engage with participants during the event to help assure that the event is effective, to ensure participants' safety, and to assist organizers in seeing that the demonstration does not disrupt the normal functioning of the University. For events or demonstrations occurring on city sidewalks and streets adjacent to the University, appropriate arrangements should be made to acquire city permits and should adhere to city ordinances and applicable state and federal law.

The Office of Safety will facilitate approval of all event approval forms. The Office of Safety may refer a proposed event to the Event Review Board. Upon the request of any person who is aggrieved by a decision regarding a request for or use of University property, the decision may be reviewed by the Event Review Board, and, if the objection is not resolved, then by the associate vice president for public safety/chief of police.

The Event Review Board will review the event approval form for referred proposed events. The Event Review Board will provide responses and information regarding the proposed event to the Office of Safety. Specific event criteria may be established based on the review of the event approval form and recommendation of the Event Review Board. University events are given precedence over the use of buildings/property by non-University or outside groups.

Facility Use Agreements

The event approval form does not replace a facility use agreement (see [Appendix/Attachment 1](#)) between the University (one of its departments) and a responsible party sponsoring an event. Hence, the completion and submittal of the event approval form does not mean that arrangements, services, or reservations will be automatically planned. Responsible parties need to make their own arrangements as they relate to reserving buildings/property, rooms, equipment, or the scheduling of services/security.

The space use/rentals governed by this policy are short-term (12 months or less). Prior to completing the facility use agreement (see [Appendix/Attachment 1](#)), the responsible party using the building may be required to submit an event approval form to the Office of Safety by the host facility. The host facility should make the responsible party aware of any facility use agreement and when it should be completed. A written, signed facility use agreement must be completed for any non-University sponsored event. This agreement must be signed by the president, a vice president, a dean, or their designees.

The responsible party sponsoring an event will be responsible for all costs associated with any support (e.g., security, health and safety requirements) of the proposed event which may be necessary to enhance safety of the individuals and property throughout the campus, as required by the University.

The responsible party must comply with all guidelines established for an event by University administration and other applicable University policies and procedures. It is the responsible party's duty to check with the host facility to determine if any additional policies or procedures apply. Failure to comply with all conditions set by policy and procedures may result in an immediate termination of the event.

To encourage consistency across campus, a sample facility use agreement template is available for

modification (see [Appendix/Attachment 1](#)).

If the provided facility use agreement template is used without modification, document approval from legal counsel is not required. However, if alterations are made to the template, a department must have the facility use agreement reviewed and approved by legal counsel. Departments are responsible to obtain and document this review and approval. It is suggested that the department include the last date the document was reviewed by legal counsel in a footnote in the facility use agreement document. All facility use agreement templates must be reviewed by the legal counsel every two years.

Event/Rental Fee Schedule

Only departments with an interest to lease or rent space for tournaments, meetings, and other events must create a fee schedule and facility use agreement document. An event fee schedule and a documented explanation for the establishment of event and short-term rental fees must be kept on file in the department. To create a fee schedule, departments must contact the Budget Office.

UND collects lease or rental fees sufficient to cover expenses incurred during these events. If fees are not collected, those waiving the fee (the president, vice presidents, deans, or their designees) must be able to provide justification as to why fees are not collected. UND departments are not required to collect fees when renting to other UND departments or related parties; however, a negotiated rental fee set at or below the fee schedule may be established for these instances.

Revenues from events and short-term rentals must be deposited into University fund(s) that are utilized to support the building/property. Deposits should contain the account code "472015" and the verbiage "lease-rental of rooms-bldg."

University Police Department

Events held on or in UND property may require support from the University of North Dakota Police Department (UPD) at the expense of the host of the event. It is the duty of the responsible party or person requesting the event to contact UPD at least 14 days before the event to determine if security arrangements are necessary (For parking issues, contact Parking and Transportation Services). For protests, demonstrations, or other instances in which a 14-day notice may not be possible, a request should be submitted at least 48 hours before the start of the event to facilitate coordination and assurance that participants' safety and to assist responsible parties in ensuring the demonstration or protest does not disrupt the normal functioning of the University.

The need for police support is determined by the associate vice president for public safety/chief of police (or designee). The determination will be based on assessment of the event based on content- and viewpoint-neutral criteria including, but not limited to, the size of the anticipated event, the type of space or building/property being utilized, the nature of the event, whether the event is limited to the campus community or open to the general public, and other pertinent factors.

For most events, one officer is needed for every 100 people anticipated to attend; for concerts, one officer is needed for every 50 people anticipated to attend. If additional officers are needed during an event, the additional costs are born by the University. (i.e., an event hosting 1,000 attendees would need to pay for 10 officers; however, if a security review indicates 4 more officers may be needed based on prior incidents, the institution will cover the costs of the additional officers required).

The responsible party and participants must cooperate with law enforcement and the University with respect to all security arrangements. Individuals that have not been approved to hold an event on UND property in

advance may be asked to reschedule based on the University's ability to safely support the event.

Liability Insurance and Waivers

UND strives to mitigate potential risks, and provide for well-planned, successful campus events. Office of Risk Management and Insurance assesses the potential risk involved with, and under what conditions it is appropriate to hold, events on its campus. This includes reviewing events to assure they do not represent an unreasonable risk to participants, other members of the campus community, or University property. All assessments made by Office of Risk Management and Insurance are made based on view-point and content-neutral factors.

Non-University groups are required to furnish documentation of liability insurance naming the University and state as additional insureds. The responsible party using the building/property must furnish documentation of liability insurance to Office of Safety/Risk Management. Liability insurance covering the event is to name UND and the state as additional insureds with limits of liability no less than \$250,000 per person and \$1,000,000 per occurrence. Lower insurance limits may be approved on a case-by-case basis. The Office of Safety will refer the responsible party to Office of Risk Management and Insurance to discuss insurance options as necessary.

UND may waive the liability insurance requirement for nonprofit groups and small events only. If not a nonprofit or small event, the liability insurance may be replaced by a waiver signed by all participants, and a parent or guardian of a child participant, releasing UND and the state from liability. The decision to accept waivers in lieu of insurance is made by Office of Risk Management and Insurance. It is the hosting department's responsibility to obtain and retain these documents. For additional information and/or clarification, the department should contact Office of Risk Management and Insurance.

UND may require both liability insurance and waivers (see [Appendix/Attachment 2](#)) based on the results of a pre-event risk assessment.

Each department with a desire to lease or rent space for tournaments, meetings, and other events must create a liability waiver form. To encourage consistency across campus, a sample template is available for modification. Other forms are available through the Office of Risk Management and Insurance website.

If the provided liability waiver template is used without modification, document approval from Office of Risk Management and Insurance is not required. However, if alterations are made to the template, a department must have the liability waiver form reviewed and approved by Office of Risk Management and Insurance. Departments are responsible to obtain and document this review and approval. It is suggested that the department include the last date the document was reviewed by Office of Risk Management and Insurance in a footnote in the liability waiver document.

Campus/Community Notification

Approved events may be posted to the UND calendar accessible from the UND home page for review by interested UND faculty, staff and students, and community members. The responsible party must submit the event notification to University Marketing and Communications if they want the event included on the UND calendar.

RESPONSIBILITIES

Event Review Board	• Review event approval forms as necessary
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Legal Counsel	<ul style="list-style-type: none"> • Review and approve initial facility use agreement • Review and approve any revisions made by departments to the facility use agreement document
Host Facility	<ul style="list-style-type: none"> • Create a fee schedule • Facility use agreement: <ul style="list-style-type: none"> ◦ Create a facility use agreement document by either using the sample facility use agreement template as is or by altering it ◦ Send facility use agreement – if altered from sample template – to General Counsel for review and approval ◦ Retain documentation of General Counsel's review and approval of facility use agreement document ◦ Retain signed facility use agreement according to retention schedule • Event approval form: <ul style="list-style-type: none"> ◦ Assist responsible party in the completion of the event approval form • Retain signed waivers according to retention schedule • Deposit revenue into fund(s) that are utilized to support the facility; include account code "472015" and the verbiage "lease-rental of rooms-bldg"
President, Vice Presidents, and Deans	<ul style="list-style-type: none"> • Delegate authority to waive rental fees as necessary • Maintain copy of document delegating authority to waive rental fees • Delegate authority to enter into short-term rental agreements as necessary • Maintain copy of document delegating authority to enter into short-term rental agreements • Approve UND-sponsored events held at off-campus locations ensuring they follow the respective Safety Level Guidelines (see Related Information)
Responsible Party Submitting an Event Approval Form	<ul style="list-style-type: none"> • Complete an event approval form and submit it to Office of Safety at least 2 weeks prior to event • Provide documentation of liability insurance with event approval form (as necessary) • Sign facility use agreement and return to host facility for review and approval (as necessary) • Sign liability waiver form and/or have participants sign waiver forms and submit to host facility (as necessary) • Make all necessary arrangements (parking, catering, security, permits, etc.) • Submit events to University Marketing and Communications for posting to the UND calendar
Office of Safety	<ul style="list-style-type: none"> • Work with responsible parties to ensure event approval form is completed appropriately • Review event information after receiving event approval form

**UND Office of Risk
Management and
Insurance**

- Notify applicant, facility and Event Review Board of event approval
- Review and approve any revisions made by departments to the liability waiver document
- Determine whether waivers will be accepted in lieu of insurance
- Assess the potential risk involved with and under what conditions it is appropriate to hold events on campus
- Provide information regarding TULIP insurance (when necessary)

FORMS

Alcohol Exception Form <https://campus.UND.edu/operations/alcohol-exception.html>

Event Approval Form <https://campus.UND.edu/safety/special-events.html>

Liability Waiver Templates <https://campus.und.edu/safety/resources/forms.html#d20e84-10>

APPENDICES

Appendix/Attachment 1 – Sample Facility Use Agreement

Appendix/Attachment 2 – Sample Liability Waive

Attachments

[Attachment 1: Short-Term Facility Use Agreement](#)

[Attachment 2: Waiver of Liability, Indemnification, and Medical Release](#)

Approval Signatures

Approver	Date
Andrew Armacost: President	07/2020
Jennifer Rogers: Policy Office	07/2020
Jennifer Rogers: Policy Office	07/2020
Eric Plummer: Associate VP for Public Safety	07/2020



WILLISTON STATE COLLEGE POLICY MANUAL

SUBJECT: SPEECH, EXPRESSION, AND ASSEMBLY EFFECTIVE: 8/21/2019

I. Categories of Speakers and Users

1. *“Academic or administrative unit”* means any office or department of the Williston State College (known as “College” from now on).
2. *“Event”* means something that occurs in a certain place during a particular interval of time; events include but are not limited to guest speakers, exhibits, tables, distribution of literature, signs, and public assemblies.
3. *“Faculty member and staff member”* includes any person who is employed by the College.
4. *“Off-campus person or organization”* means any person, organization, or business that is not an academic or administrative unit, a student, faculty, or staff organization, or a student, faculty member, or staff member.
5. *“Student”* means a person who is currently enrolled at the College, or has been enrolled at the College in a prior semester or summer session and is eligible to continue enrollment in the semester or summer session that immediately follows. A student may also be a faculty or staff member. Circumstances will dictate whether an individual is considered a student or faculty or staff member for the purposes of application of this policy.
6. *“Williston State College person or organization”* includes academic and administrative units, student, faculty, and staff organizations, and individual students, faculty members, and staff members; this phrase describes the most inclusive category of potential speakers on campus; every person and organization of any kind is either an “off-campus person or organization” or a “Williston State College person or organization.”

II. General Definitions

1. *“Amplified sound”* means sound whose volume is increased by any electric, electronic, mechanical, or motor-powered means. Shouting, group chanting, and acoustic musical instruments are exempt from this definition and are not subject to the special rules on amplified sound, but are subject to general rules on disruption.

2. “*Day*” means an 8:00 a.m. to 4:30 p.m. calendar day, and excludes weekends, College holidays, and days on which regularly scheduled classes are suspended due to emergent situations. If a deadline defined in this chapter falls on a Saturday, Sunday, or College holiday that deadline will be moved to the next day.
3. “*Room or space*” includes any room or space, indoors or outdoors, owned or controlled by the College.

III. General Provisions.

1. The College recognizes that students and faculty have a fundamental right to free speech and expression under the First Amendment to the United States Constitution and Article I, Section 4 of the North Dakota Constitution, and as a result the SBHE and institutions under its control shall ensure that students have the freedom to speak, write, listen, challenge, learn, and discuss any issue, subject to reasonable and constitutionally-recognized limitations.
 - a. Non-faculty staff of the College are also free to exercise their right to free speech and expression, as set forth above, provided that such activities do not substantially interrupt or inhibit their duties, and such exercise of free speech and expression shall be subject to the Political Activities Policies of the SBHE and the College.
2. Williston State College will not engage in viewpoint- or content-based discrimination or suppression of speech, and will, to the greatest extent possible, permit and facilitate the open discussion and debate of ideas and issues, regardless of the content of those issues.
3. As a general rule, Williston State College will not use the concept of civility or mutual respect as a basis to suppress or limit the discussion of ideas, regardless of content, except as reasonably necessary to an educational activity.
4. Williston State College and its faculty and employees shall generally not seek to shield individuals from the free speech or expression of others, except as reasonably necessary to an educational activity.
5. Except as set forth elsewhere in this policy, the generally accessible, open, outdoor areas of the campus are traditional public fora for free speech by both Williston State College and off-campus persons and organizations, subject to reasonable and constitutional time, place, and manner restrictions.
6. Williston State College designates the following areas as restricted or designated forums:

- a. those areas inside buildings which have not otherwise been treated as traditional public fora;
- b. areas within a 100 foot radius from residential buildings during evening and overnight hours;
- c. areas within a 100 foot radius from academic buildings during times when classes are held in that building;
- d. areas which must be restricted due to reasonable safety and security concerns, as designated by the College President;
- e. areas which must be restricted to enable the flow of pedestrian or vehicle traffic, as designated by the College President;
- f. areas within a 50 foot distance radius from building entrances and exits to provide for safe and convenient ingress and egress from those buildings; and

Williston State College may require reservations or permits for the exercise of free speech or expression, including assemblies, within these restricted or designated forums.

IV. Prohibited Items at Assemblies

1. Dangerous weapons, as defined by N.D.C.C. § 62.1-01-01(1) as any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.
2. Firearms, except as permitted by law. *See* N.D.C.C. § 62.1-02-05.
3. Body-armor or makeshift body-armor, helmets and other garments, such as sporting protective gear, that alone or in combination could be reasonably construed as weapons or body-armor, without written permission from the College President.
4. Open flame, unless approved in advance by the College President.

V. General Rules on Means of Expression

1. Disruption
 - a. No speech, expression, or assembly may be conducted in a way that disrupts or interferes with any teaching, research, administration, or other authorized

activities on the campus; free and unimpeded flow of pedestrian and vehicular traffic on the campus; or signs, tables, exhibits, public assemblies, distribution of literature, guest speakers, or use of amplified sound by another person or organization acting under the rules in this chapter.

- b. Except in the most extreme cases, interference and disruption are unavoidably contextual. Intentional physical interference with other persons is nearly always disruptive in any context. Interfering with traffic depends on the relation between the volume of traffic and the size of the passageway left open. Disruptive noise is the most contextual of all, because it depends on the activity disrupted. Any distracting sound may disrupt a memorial service. Any sound sufficiently loud or persistent to make concentration difficult may disrupt a class or library. Occasional heckling in the speaker's pauses may not disrupt a political speech, but persistent heckling that prevents listeners from hearing the speaker does disrupt a political speech. These illustrations may be helpful, but none of them includes enough context to be taken as a rule. We cannot escape relying on the judgment and fairness of Williston State College authorities in particular cases. In this context where difficult enforcement judgments are unavoidable, it is especially important for administrators to remember that their judgements must not be influenced by the viewpoint of those claiming disruption or of those allegedly disrupting.

2. Potentially disruptive events can often proceed without disruption if participants and administrators cooperate to avoid disruption without stopping the event. In cases of marginal or unintentional disruption, administrators should clearly state what they consider disruptive and seek voluntary compliance before stopping the event or resorting to disciplinary charges.

VI. Damage to Property

1. No speech, expression, or assembly may be conducted in a way that damages, defaces, marks, discolors, or alters in any way property of the College or of any person who has not authorized the speaker to damage or deface their property.

VII. Amplified Sound

1. General Rule on Amplified Sound
 - a. Williston State College academic or administrative units and student, faculty, or staff organizations may use amplified sound on campus at designated times and locations, with advance permission from College President subject to the following restrictions.
2. Location and Times of Weekday Amplified Sound Areas

- a. The College President may prescribe rules concerning scheduling, sound levels, the location of speakers and the direction in which they are pointed, and other rules to facilitate the use of weekday amplified sound areas, to mediate any conflict with Williston State College functions and other nearby activities, and to manage environmental impact. All such rules will be reasonable and nondiscriminatory.
- b. Student, faculty, or staff organizations or academic or administrative units wishing to use a weekday amplified sound area must reserve a particular area at a particular time. Reservations must be made with the College President on a form prescribed by the College President.
- c. The College President may limit the number or frequency of reservations for each student, faculty, or staff organization or academic or administrative unit to ensure reasonable access for all persons and organizations desiring to use amplified sound on weekdays.
- d. Williston State College persons and organizations using amplified sound are responsible for maintaining a passageway for pedestrians that is adequate to the volume of pedestrian traffic passing through the area.

3. Amplified Sound on Evenings and Weekends

- a. With advance permission, Williston State College organizations may use amplified sound in any outdoor location on campus after 5:00 pm on weekdays, and after 8:00 pm on weekends.
- b. The College President may prescribe reasonable and nondiscriminatory rules concerning scheduling, sound levels, the location of speakers and the direction in which they are pointed, and other rules to facilitate the use of amplified sound on evenings and weekends, to mediate any conflict with Williston State College functions and other nearby activities, and to manage environmental impact.
- c. Use of amplified sound on evenings and weekends requires advance permission from the College President. Student, faculty, or staff organizations and academic or administrative units will apply through a process prescribed by the College President.
- d. If amplified sound is authorized for an event on a Sunday, Monday, Tuesday, Wednesday, or Thursday evening, the sound must be turned off by midnight on the following day. If amplified sound is authorized for an event on a Friday or Saturday evening, the sound must be turned off by 1:00 am on the following day.

4. Amplified Sound Indoors

- a. Amplified sound sufficient to be heard throughout the room may be used in any room in any building, but the College President may limit or prohibit sound that would be disruptive outside the room. Reservations may be required.

VII. Public Assemblies without Amplified Sound

1. General Rule on Public Assemblies

- a. “Publicly assemble” and “public assembly” include any gathering of persons, including discussions, rallies, and demonstrations.
- b. Williston State College persons and organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be. No advance permission is required. If the expected attendance at an event with a guest speaker is twenty-five or more people, advance notice of no less than two weeks is required.
- c. The buildings owned or controlled by Williston State College are not open for demonstrations, assembly, or speech. In furtherance of the Williston State College’s educational mission, the buildings owned or controlled by Williston State College are limited fora open only to faculty, staff, and students and their organizations.
- d. Off-campus persons and organizations may not engage in expressive activities at the College except in accordance with these rules.

2. Reservation of Space

- a. Williston State College persons, organizations, and academic or administrative units who wish to publicly assemble in a particular room or space at a particular time may reserve the room or space by [insert procedure]. Individual faculty, staff, and students may not reserve an indoor space, except as related to an educational activity of the College. Off-campus persons or organizations may only reserve a particular room or space for a public assembly with the advance approval of College President.
- b. Reservation requests from recognized student, faculty, and staff organizations or academic or administrative units shall receive precedence over requests from individual persons, unrecognized organizations, or any off-campus persons or organizations.
- c. A College person, organization, or academic or administrative unit with a reservation has the right to the reserved room or space for the time covered by the reservation. Any person or organization using or occupying the room or

space without a reservation must yield control of the room or space in time to permit any person, organization, or academic or administrative unit with a reservation to begin using the room or space promptly at the beginning of its reserved time. Reservations for outdoor spaces are not required but are strongly encouraged. Reservations for indoor spaces are required, although this requirement may be waived by the President or their designee.

3. Fees for Reserving Space.

- a. The College President may prescribe a fee schedule for reserving specified campus spaces. The schedule shall be made available at Williston State College on request, and shall be based on the actual expenses incurred by the campus in making the space available. The schedule must not be wholly or partially based on viewpoint- or content-based criteria, but may include security and logistic fees based on the venue, the anticipated attendance, historical protest activity at events of similar attendance, and other content-neutral factors. The criteria used to establish the fee schedule shall be made publicly available.
- b. The College may not retain funds beyond its actual expenses unless the reserving party or group charges admission to the event. The fee schedule must be applied equally to all persons or organizations, without reference to the content or viewpoint of the proposed assembly, except as otherwise governed by campus policies.
- c. The President or their designee may waive any applicable fee for an assembly contributing to the educational mission of the institution or engaging in charitable work.
- d. Academic and administrative units are not subject to the fee schedule.

4. Notice and Consultation

- a. Williston State College persons or organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be.
- b. Students or student organizations planning a public assembly with a guest speaker and expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide advance notice of no less than two weeks to the College President. Students or student organizations planning smaller assemblies or large assemblies without a guest speaker are encouraged to consult the College President if there is uncertainty about applicable College rules, the appropriateness of the planned location, or possible conflict with other events. The College President can help the planners

avoid unintended disruption or other violations that may result in subsequent discipline or subsequent interference with the assembly by campus authorities.

- c. Registered faculty organizations that are planning a public assembly with a guest speaker and an expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide notice of no less than two weeks to the College President.
- d. Registered staff organizations that are planning a public assembly with a guest speaker and an expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide notice of no less than two weeks to the College President.
- e. The notice and consultation requirements of this subchapter do not apply to academic or administrative units.
- f. The notice and consultation requirements of this subchapter may be waived by the President or their designee.

VIII. Guest Speakers

1. Definitions

- a. “Guest speaker” means a speaker or performer who is not a student, faculty member, or staff member, but who is invited to speak by a Campus/University person or organization.

2. Who May Present

- a. Williston State College persons and organizations and academic and administrative units may present guest speakers on College property. In the case of speakers invited by students or student organizations, advance permission from the College President is required. Faculty organizations are required to seek advance permission from the College President. Staff members and staff organizations are required to seek advance permission from the College President.

3. Location and Form of Presentation

- a. A guest speaker may present a speech or performance, or lead a discussion of specified duration, at a time announced in advance, in a fixed indoor location or in a fixed outdoor location approved by the College President.
- b. A guest speaker may not accost potential listeners who have not chosen to attend the speech, performance, or discussion.

4. Application

- a. All students, faculty members, staff members, student organizations, faculty organizations, and staff organizations that wish to present a guest speaker must apply through a prescribed process, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
- b. A student or student organization that wishes to present a guest speaker will apply to the College President, through a process prescribed by the College President, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
- c. A faculty member or faculty organization that wishes to present a guest speaker will apply to the College President through a process prescribed by the College President, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
- d. A staff member or staff organization that wishes to present a guest speaker will apply to the College President through a process prescribed by the College President, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.

5. Obligations of Presenting Person or Organization

- a. A College person or organization that presents a guest speaker must make clear that:
 - i. the person or organization, and not the College, invited the speaker; and
 - ii. the views expressed by the speaker are their own and do not necessarily represent the views of the College, the North Dakota University System, or the State of North Dakota.
- b. The person or organization that presents a guest speaker is responsible for paying any fees assessed pursuant to the schedule set forth in this policy.
- c. Institutional fund provided to a recognized Williston State College organization may not be used to pay for any costs or expenses related to the presentation of a politically-oriented guest speaker unless approved in advance by an organization's faculty advisor or College President in consultation with the College's legal counsel.

6. Equal Treatment

- a. Guest speakers reserving space at Williston State College facilities may be subject to the same terms and conditions governing the use of the facilities for other outside groups. If a room, space, or facility is made available to any guest speaker invited by a College person or organization, then that room, space, or facility must be made equally available to all such speakers or groups.

7. Disinvitation

- a. If a Williston State College person or organization complies with this policy when presenting a guest speaker, the College may not prohibit or disinvite that guest speaker based on the anticipated content or viewpoint of the guest speaker's speech, performance, presentation, or other form of expression.

IX. Responding to Speech, Expression, and Assembly

1. General Rule on Responding

- a. Williston State College persons and organizations may respond to the speech, expression, or assembly of others, subject to all the rules herein.
- b. Responders may not damage or deface signs or exhibits, disrupt public assemblies, block the view of participants, or prevent speakers from being heard.

2. Means of response that are permitted in many locations and without advance permission or reservation, such as signs, tables, distribution of literature, and public assembly without amplified sound, may be used immediately and in any location authorized in this policy.

3. Means of response that require advance permission or reservation, such as banners, exhibits, and amplified sound, may be used as soon as the needed permission or reservation may be arranged. Banner space and some amplified sound areas may be unavailable on short notice because of earlier reservations, but the College President will expedite approval of exhibits and available banner space and amplified sound areas where necessary to permit appropriate response to other speech, assembly, or expression.

4. Means of response that are confined to authorized locations, such as banners and amplified sound, may be used only in those locations. It is not permissible to respond to amplified sound with amplified sound in the same location; similarly, if an exhibit or public assembly is in a location where amplified sound is not permitted, it is not permissible to respond with amplified sound in that location. In either case, it is permissible to respond with amplified sound in another location and to use signs or distribution of literature to advertise the response at the other location.

HISTORY: New policy, SBHE minutes, June 27, 2019, Faculty Senate approved August 19, 2019, Faculty Council approved August 20, 2019, President Approval August 21, 2019

**VALLY CITY STATE UNIVERSITY
POLICY MANUAL**

SUBJECT: STUDENT AFFAIRS

EFFECTIVE: AUGUST 26, 2019

Section: 503.1 Student Free Speech and Expression

1. Definitions for Terms Used in this Section

- a. **Constitutional time, place, and manner restrictions** – Restrictions on free speech which are content-neutral, narrowly tailored to serve a significant interest, and leave open alternative methods of communicating the message in question.
- b. **Faculty** – An individual, regardless of whether the individual is compensated by an institution, and regardless of political affiliation, who is tasked with providing scholarship, academic research, or teaching, including tenured and nontenured professors, adjunct professors, visiting professors, lecturers, graduate student instructors, and those in comparable positions. “Faculty” does not mean an individual whose primary responsibilities are administrative or managerial, unless the individual also teaches at least one credit-hour.
- c. **Free speech or Free Expression** – The rights to speech, expression, and assembly protected by the First Amendment to the United States Constitution or Article I, Section 4 of the Constitution of North Dakota. Such rights include, but are not limited to, all forms of peaceful assembly, protests, demonstrations, rallies, vigils, marches, public speaking, distribution of printed materials, the display of signs or banners, or the circulation of petitions. For the purposes of this policy, “free speech” or “free expression” is not intended to include commercial speech.
 - i. **Commercial Speech** – The promotion, sale, or distribution of a product or service. For the purposes of this section, commercial speech does not include the incidental promotion, sale, or distribution of a product as part of the exercise of non-commercial speech.
- d. **Materially and Substantially Disruptive Conduct** – Conduct by an individual or group which constitutes knowing or intentional affirmative steps to limit the free speech of an individual or a group, prevents the communication of a message, or disrupts a lawful meeting, gathering, or procession through violent or obstructive behavior. Protected conduct does not constitute a material and substantial disruption.
- e. **Protected Conduct** – Free Speech or Free Expression protected by the First Amendment to the United States Constitution or Article I, Section 4 of the Constitution of North Dakota, subject to reasonable time, place, and manner restrictions, permitting requirements under institutional policies or procedures, and

the reasonable safety and security needs of the institution.

- f. **Student** – an individual enrolled in one or more courses at an institution.
- g. **Student-on-Student Harassment** – (1) Unwelcome conduct directed to an individual which a reasonable person would find offensive or defamatory and which does not constitute protected conduct, (2) conduct which violates North Dakota criminal laws prohibiting harassment, stalking, or similar behavior, or (3) conduct which would constitute a violation of Title VI or VII of the Civil Rights Act of 1964, as amended or Title IX of the Education Amendments of 1972 (or similar state and federal laws). Institutions shall ensure that their existing codes of conduct are not enforced beyond this definition and are not used to limit protected conduct.
- h. **Student Organization** – An officially recognized organization, or an organization seeking recognition by an institution, comprised of students, whether or not that organization seeks or receives institutional funds.

2. VCSU Policy on Student Free Speech and Expression

- a. VCSU recognizes that students have a fundamental right to free speech and expression under the First Amendment to the United States Constitution and Article I, Section 4 of the North Dakota Constitution, and as a result VCSU shall ensure that students have the freedom to speak, write, listen, challenge, learn, and discuss any issue, subject to reasonable and constitutionally-recognized limitations.
- b. VCSU shall not engage in viewpoint- or content-based discrimination or suppression of speech and shall to the greatest extent possible permit and facilitate the open discussion and debate of ideas and issues, regardless of the content of those issues.
- c. As a general rule, VCSU shall not use the concepts of civility or mutual respect as a basis to suppress or limit the discussion of ideas, regardless of content, except as reasonably necessary in the educational setting.
- d. VCSU generally shall not seek to shield individuals from the free speech or expression of others.
- e. VCSU shall control the availability of campus spaces for free speech and expressive activity as follows:
 - i. VCSU shall maintain the generally accessible, open, outdoor areas of its campus as traditional public fora for free speech by students, faculty, student organizations, and members of the public, subject to reasonable and constitutional time, place, and manner restrictions. Institutions may require students, faculty, student organizations, and members of the public to obtain a permit to reserve the exclusive use of an outdoor space constituting a

traditional public forum. Such permits may not be issued or denied based on the content of the message or viewpoint the permit requestor seeks to convey.

- ii. VCSU designates as restricted or designated forums: (1) those areas inside buildings which have not otherwise been treated as traditional public fora; (2) areas in residential areas of campus during evening and overnight hours; (3) areas immediately surrounding academic buildings during times when classes are held in that building; (4) areas which must be restricted due to reasonable safety and security concerns; (5) areas which must be restricted to enable the flow of pedestrian or vehicle traffic; and (6) areas surrounding building entrances and exits to provide for safe and convenient ingress and egress from those buildings. VCSU may grant permits to students, faculty, student organizations, or others to exercise free speech or expression in such restricted or designated fora based on content-neutral criteria.
- f. Students, faculty, and student organizations shall be permitted to invite guest speakers or groups to campus, and VCSU may not prohibit or disinvite such guest speakers based on the anticipated content or viewpoint of their speech or expression.
- g. VCSU may not impose security fees on students, faculty, or student organizations who invite guest speakers or groups to campus based on the anticipated content or viewpoint of the guest speaker or group's speech or expression, and VCSU is not required to subsidize the free speech and expression of students, faculty, or student organizations. As a result, VCSU may, in its discretion, impose security and logistic fees based on venue, anticipated attendance, anticipated protest activity, and other non-content-based factors. Such fees may not exceed the actual costs incurred by VCSU, and VCSU must refund any overpayment. VCSU shall set forth empirical and objective criteria for calculating such fees, and such criteria shall be made publicly available.
- h. VCSU may make their facilities available to guest speakers or groups invited by students, faculty, or student organizations, and may subject such guest speakers or groups to the same terms and conditions governing use of the facilities for other outside groups. If VCSU chooses to make facilities available to guest speakers or groups invited by students, faculty, or student groups, those facilities will be made equally available to all such speakers or groups.
- i. VCSU may prohibit materially and substantially disruptive conduct.
- j. VCSU may impose measures regarding student free speech and expression which comport with the First Amendment of the United States Constitution and Article I, Section 4 of the Constitution of North Dakota, including, but not limited to:
 - i. Constitutional time, place, and manner restrictions on the use of traditional public fora;

- ii. Reasonable and viewpoint-neutral restrictions on the use of restricted or designated fora;
- iii. Prioritizing the use of institution resources and property for students, faculty, and student organizations over individuals and groups not affiliated with the institution;
- iv. Prohibiting or limiting speech, expression, or assemblies not protected by the First Amendment to the United States Constitution and Article I, Section 4 of the Constitution of North Dakota, such as defamatory speech, true threats, and other recognized exceptions; and
- v. Content-based restrictions reasonably related to a legitimate educational or pedagogical purpose, such as rules for behavior in the classroom.

3. Distribution of Publications, Hanging of Banners, or Chalking

Reference VCSU Policy 401.02.

- 4. **Reports of Violations of this Policy** – Individuals who believe this policy (or an institutional policy covering the same or similar subject matter) has been violated may report any violation through an existing reporting process at an institution. Alternatively, individuals may report violations to the NDUS Office’s Director of Student Affairs (the “Director”). In the event that a report is made to the Director, he or she shall determine the appropriate institution official to address the report in consultation with the Vice Chancellor of Academic and Student Affairs. Pursuant to SBHE Policy 308.2, no NDUS employee, officer or member of the SBHE shall retaliate against an individual for making a report under this paragraph.

**NORTH DAKOTA
STATE BOARD OF HIGHER EDUCATION
Policy Manual**

Policy: 503.2 – Student Data Privacy and Security Bill of Rights

Effective: May 29, 2020

The SBHE, the NDUS, and NDUS institutions are committed to responsibly collecting, storing, and using the Personally Identifiable Information (PII) of students, while protecting student PII from unauthorized access or disclosure. This Policy reflects the reality that students are the owners of their PII and should control access to and distribution of their PII to the greatest extent possible, but many NDUS programs and technologies require student PII to function for the students' benefit. This Policy outlines student rights related to the privacy and security of their educational and personal data.

1. Students have the right to know what types of PII are collected by the NDUS, including its institutions, along with general information regarding how such information is stored and used. The NDUS and NDUS institutions shall, to the greatest extent possible in light of existing systems and processes, make information available concerning what types of student PII is provided to NDUS's vendors and contractors, and may provide more detailed information when a requested by an individual student, if available.
2. The NDUS and NDUS institutions shall adhere to the requirements of the Federal Education Rights and Privacy Act (FERPA). As part of this compliance, NDUS and its institutions designate certain PII as "directory information," as set forth in NDUS Procedure 1912.2. This directory information constitutes a public record under N.D.C.C. § 44-04-17.1, *et seq.* Students may, at any time, request that their directory information not be disclosed (and thereby not be treated as a public record), but understand that such requests may limit the ability of institutions to provide services to students in certain circumstances.
3. Pursuant to FERPA and this Policy, students shall have the right to inspect and review the contents of their educational record maintained at any applicable NDUS institution by filing a written request to the institution in question. The NDUS institution may place limitations on the means of access to the educational record to ensure the security of such educational record.
4. Pursuant to FERPA and this Policy, students shall have the right to challenge the accuracy and completeness of the student educational record information collected and maintained by filing a written request through the process established by the NDUS institution in question.
5. Neither NDUS nor any NDUS institution shall sell, release, or otherwise disclose non-directory information student PII for commercial or advertisement purposes.
6. The NDUS and NDUS institutions shall responsibly engage with third-party providers of educational services and vendors to ensure that student PII disclosed to those providers and vendors is protected as per industry standards and best practices as part of any contracts executed with such providers and vendors, and shall as a business practice ensure that only the

PII required for the product in question is disclosed. At all times the NDUS and NDUS institutions should weigh the value of a product to the NDUS or institution against the risks of disclosure to protect the best interests of students.

7. Students shall not be required to disclose their PII to a third-party service provider as a course requirement unless the terms and conditions of that disclosure have been reviewed and approved (or negotiated) by NDUS Core Technology Services or an institution's administration, in consultation with NDUS or institution legal counsel. If a faculty member seeks to use a software product that does not meet the terms of this section, such as a free smartphone application, in a course, an alternative must be provided which does not require students to disclose their data, at the student's request, at no additional cost to the student. Students shall be protected from punitive educational consequences for their refusal to disclose PII in compliance with this section. This section does not apply to open educational resources, online course materials, or other substantive educational materials (e.g. online supplements to textbooks, Lexis-Nexis, etc.) or to services which require disclosure of only name and state-provided email address.
8. While the NDUS and NDUS institutions may utilize student educational data for research purposes, to inform assessment, accreditation, and accountability, or to shape policies at the institution or program levels, students shall not experience punitive educational consequences as a result of findings from such assessment or educational research. Nothing in this Policy shall prohibit the NDUS or any NDUS institution from offering students, generally or individually, additional services or resources based on such assessment or research.
9. When student data is included in published or publicly-presented reports, NDUS and NDUS institutions shall use appropriate safeguards to prevent the identification of students through the use of PII, including adhering to research best practices with respect to deidentifying data, minimum cell sizes, and other prudent steps as recommended by applicable Institutional Review Boards, and the NDUS Institutional Research office.
10. The NDUS and NDUS Institutions are committed to implementing data security safeguards meeting or exceeding industry standards and best practices under state and federal laws to protect student PII. General information on the types of safeguards employed shall be made available to students on written request.
11. Students shall have the right to file complaints about violations of this Policy or other possible breaches of student data, and to have those claims addressed in a fair, reasonable, and appropriate manner. The Chancellor shall establish a process to address complaints directed to the NDUS or NDUS Core Technology Services. Student complaints regarding NDUS institutions should be directed to the institutional grievance process.

References: 20 U.S.C. 1232g; 34 C.F.R. Part 99; N.D.C.C. § 44-04-18.1 *et seq.* NDUS Procedure 1912.2.

**NORTH DAKOTA
STATE BOARD OF HIGHER EDUCATION
Policy Manual**

Policy: 503.3 Student Political Rights

Effective: May 29, 2020

1. **Policy.** The State Board of Higher Education recognizes, affirms, and supports the rights of students to exercise their First Amendment political rights, including, but not limited to participating in political activities, advocacy, and expression or civic engagement without interference by the SBHE, NDUS, or NDUS institutions. This policy is not intended to limit such rights in any way, and is instead meant to protect the exercise of such rights. As a result, nothing in this policy should be read to limit the First Amendment free expression, assembly, association, or other political rights of NDUS students while outside the classroom, and this Policy shall be read narrowly to avoid infringing on those rights.
2. **Protection from Retaliation or Discrimination.** No student of an NDUS institution may face discipline or retaliation of any kind related to participation in any activities which comply with the terms of this policy. The SBHE and NDUS strictly prohibit any NDUS employee from coercing, based on educational or other consequences, any student to engage in any kind of politically-oriented activity, including the making of monetary contributions.
3. **Student Employees.** If a student is acting as a paid employee of an institution, their on-duty actions are subject to the provisions of SBHE Policy 308.3. This paragraph does not apply to students designated as employees solely due to their service in student government or other elected or nominated leadership roles within an institution, the NDUS, or the SBHE.
4. **Student Organizations.** Student organizations shall be free to engage in civic engagement and political activities and advocacy without interference or restraint by the SBHE, NDUS, or any NDUS Institution, subject to the requirements and limitations of this policy.
 - a. Student organizations shall be permitted to use any funding or resources provided by the institution or student government to provide educational or service-based events or experiences for members of the organization or campus community, such as (but not limited to) inviting speakers to campus, hosting debates or forums, or attending local, state, or national conferences or conventions, even if such events or experiences may be interpreted as “political” or “partisan” by an outside observer.
 - b. Notwithstanding, student organizations may not use funding or resources provided by the institution or student government for electioneering, as that term is defined in this Policy.
 - c. Student organizations may use NDUS or institution phone, email, social media, and similar systems to advertise meetings, educational opportunities, and events, except that such systems may not be used for electioneering, as defined in this Policy. A student organization that sends a communication using a NDUS- or institution-owned phone, email, social media account, or similar system must include a disclaimer in

substantially the following form in any such communication: “This communication is sent [by/on behalf of] [insert name of group]. The content of this communication is the responsibility of [insert name of group], and does not represent the views or policy of [name of institution], the North Dakota University System, or any other entity.”

- d. If a student organization publishes any posting, communication, or advertisement on an institution- or NDUS-administered website (i.e. a website with a “.edu” extension) which the institution, in its sole discretion, determines creates the impression that the institution has endorsed a particular candidate, or particular side or viewpoint of a public referendum or public debate, the institution may require, as a condition of hosting the site, that a disclaimer be included stating that the opinions expressed are those of the author or sponsoring student organization, and do not represent the views of the institution, NDUS, or any other entity.
5. **Electioneering.** North Dakota state law, N.D.C.C. § 16.1-10-02, strictly prohibits the use of state property, including funds provided by the SBHE, NDUS, an institution, or a student government, for electioneering.
- a. For the purposes of this policy, “electioneering” means:
 - i. Any activity undertaken in support of or in opposition to a statewide initiated or referred measure, a constitutional amendment or measure, a political subdivision ballot measure, or the election or nomination of a candidate to public office, which activity includes the use of the phrases “vote for,” “oppose,” or any similar support or opposition language; and
 - ii. In the period thirty days before a primary election and/or sixty days before a special or general election, any activity in which a candidate’s name, office, district, or any term meaning the same as “incumbent” or “challenger” is used in support of or in opposition to the election or nomination of a candidate to public office.
 - iii. Electioneering does not include:
 1. Activities undertaken in the performance of the duties of a public office, including elected student office, or a position taken in any bona fide news story, commentary, or editorial, including in any student-led or student-run publication;
 2. Presenting factual information regarding a ballot question solely for the purpose of educating voters, provided that the information does not advocate for or against or otherwise reflect a position on the adoption or rejection of the ballot question; or
 3. The incidental use of the terms “vote for,” “oppose,” “incumbent,” “challenger” or other terms ordinarily constituting electioneering if such use occurs during a debate, forum, speaker, or other event

sponsored by a student organization or outside group, if such event did not have electioneering as its primary intended purpose.

- b. For the purposes of this policy, "state property" means State-owned motor vehicles, telephones, technology, funds of money, and buildings. The use of SBHE, NDUS, or Institution-owned buildings by any candidate, political party, committee, or organization for electioneering activities is permitted, provided that such use complies with the provisions of SBHE Policy 308.3 or other state law.

References: U.S. Const., Amend. 1; N.D.C.C. 16.1-10-02; SBHE Policy 308.3.



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1310 L Street NW
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February 15, 2021

The Honorable Lawrence Klemin
Chair
Judiciary Committee
North Dakota House of Representatives
600 East Boulevard
Bismarck, ND 58505

The Honorable Karen Karls
Vice Chair
Judiciary Committee
North Dakota House of Representatives
600 East Boulevard
Bismarck, ND 58505

Re: Oppose HB 1503 – Don’t Permit Discrimination in Public Institutions of Higher Education

Dear Chair Klemin and Vice Chair Karls:

On behalf of the North Dakota members and supporters of Americans United for Separation of Church and State, I write to urge you to oppose HB 1503 insofar as it could exempt religious student organizations and other student groups from nondiscrimination policies at public universities and colleges. The bill should be rejected because it is unnecessary and could sanction discrimination.

Student organizations are an important part of campus life. Research shows that they contribute to overall student satisfaction and success. Having robust non-discrimination policies in place ensures that all students are able to access various organizations and explore different ideas and identities. To prevent discrimination on campus, promote equality and fairness, and foster inclusionary practices for student organizations, many public colleges and universities have “accept-all-comers” policies. These nondiscrimination policies generally withhold funding¹ and official recognition from student groups that are not open to all students. This bill, in contrast, would undermine these policies.

This bill isn’t even necessary—federal law already exempts religious student clubs from “accept-all-comers” policies. Recently adopted federal regulations state that public colleges and universities that receive federal funding may not deny a religious club “any right, benefit, or privilege . . . because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards.”² As a result, religious student clubs can escape the nondiscrimination provisions that apply to all other officially recognized and funded student clubs.

¹ The revenue stream for such funding, which is common at universities throughout the country, is created by a mandatory student activity fee imposed on students.

² 34 C.F.R. § 75.500; 34 C.F.R. § 76.500.

Neither the federal law nor HB 1503 create the level playing field they promise. Instead, they actually allow clubs to discriminate. For example, a Christian student group could turn away a student because he is gay or she is a single mom. This bill could even allow a white supremacist group to demand university funding and recognition.

The provision in the bill is not required by the First Amendment. Any student club can become a recognized group and access funds if it adheres to its school's nondiscrimination policy. And if a club decides it wants to impose requirements for membership and leadership that conflict with the school policy, it will not be silenced or driven off campus; instead, it, like any other club, simply will not receive official recognition and funding. In fact, the Supreme Court upheld an "accept-all-comers" policy in *Christian Legal Society v. Martinez*³ against claims that it violated the religious freedom of Christian student groups. The Court explained that the policies do not violate the First Amendment because the denial of benefits is based on the group's *conduct*, not their *views*.⁴

The North Dakota legislature should not support divisive legislation that fosters discrimination in the state's public institutions of higher education. It should not undermine the power of public institutions of higher education to safeguard their students from discrimination and mandate that student activity fees paid by all students only support those groups that are open to all students. I have enclosed with this letter a document that has more information on the problems with this bill. Thank you for your consideration on this important matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Nikolas Nartowicz", with a stylized flourish at the end.

Nikolas Nartowicz
State Policy Counsel

cc: Members of the House Judiciary Committee

³ See *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010).

⁴ *Id.* at 696-7.



Discrimination by Student Groups at Public Colleges and Universities

The opportunity to both join and lead student groups is an essential part of the educational experience. Student groups contribute to the breadth and quality of collegiate life and allow students to build their experience and their resumes. To ensure all students can participate, colleges and universities often have nondiscrimination policies that require officially recognized student groups to allow any student to join, participate in, and seek leadership in those groups. These policies, also known as “all-comers” policies, are important because they prevent student groups from discriminating, including on the basis of religion or sexual orientation.

State legislators, with the support of special interest groups, have pushed bills that would prohibit schools from enforcing all-comers policies. Instead of upholding the fundamental American values of equality and nondiscrimination, these bills would create special exemptions for religious clubs.

All-comers policies promote equality by ensuring that public colleges and universities do not subsidize discrimination with tax dollars and tuition fees.

Funding for student groups comes from taxpayer dollars and, often, mandatory student activity fees paid by students. All-comers policies guarantee that students are not forced to fund a group that would reject them as members.

All-comers policies treat religious student groups the same as all other student groups.

Organizations of any political, religious, or ideological stripe can become recognized groups and access funds provided they adhere to the nondiscrimination policy.

All-comers policies protect religious freedom, which gives us all the right to believe or not as we see fit.

Religious freedom does not include a right to use religion to discriminate—especially not while using taxpayer dollars or using the tuition fees of the very students who are being excluded.

Bills to overturn all-comers policies would actually sanction discrimination, not bar it.

Supporters of these bills argue that all-comers policies discriminate against religious groups. But instead of treating all groups equally, the bills would treat religious groups specially and force schools to support discrimination.

The Supreme Court has held that all-comers policies are constitutional.

In the 2010 case *Christian Legal Society v. Martinez*, the Court explained that the policies do not violate the First Amendment. Religious student groups still have free exercise rights and can continue to meet on campus. They do not, however, have the right to force a public university to subsidize their discriminatory policies—and neither does any other student group.

Public universities have a strong interest in preventing discrimination on campus and fostering inclusionary practices for on-campus student organizations.

Student groups are an essential part of the educational experience. Therefore, all public institutions of higher education should have the right to ensure that the mandatory student activity fees paid by all students only support those groups that are open to all students.

For more information, please contact:

Nik Nartowicz

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Chairman Lawrence Klemin and Members of the Committee
House Judiciary Standing Committee
North Dakota State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

February 15, 2021

635 Science Drive
P.O. Box 7895
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intervarsity.org

Dear Chairman Klemin and members of the House Judiciary Standing Committee,

InterVarsity Christian Fellowship/USA supports over 1100 student-led chapters on over 770 campuses across the country. In North Dakota, we sponsor 5 student- and faculty-led chapters on three campuses. InterVarsity welcomes all students to participate in our activities and to join our groups as members. All that we ask is that the *leaders* of our diverse groups—fifty-four percent of whom are students of color or international students—embrace our faith in Jesus Christ.

Unfortunately, increasing numbers of universities are interpreting otherwise good nondiscrimination policies in ways which prohibit religious groups from using religious criteria in leadership selection (e.g., prohibiting Sikh student groups from requiring their leaders to be Sikh or banning Muslim student groups because they require their leaders to be Muslim.)

North Dakota students should be protected from this kind of behavior. Therefore, we support the Free Association provision of HB 1503 (the "Bill"), especially 15-10.4-02(4)(h) as amended, because religious student organization need protection from this kind of administrative overreach by universities and colleges.

The problem is national and growing

Recently, three of our chapters which serve the University of Iowa faced derecognition because they require their leaders to be Christians. These groups remain on probationary status pending the outcome of litigation against the university.

InterVarsity is not the only religious group that was targeted by the University of Iowa. In July 2018, when the University of Iowa officially deregistered InterVarsity, it also deregistered other religious student groups, including the Sikh Awareness Club, the Chinese Student Christian Fellowship, the Imam Mahdi Organization, Geneva Campus Ministry, and the Latter-day Saint Student Association. And on February 1, 2019, the university admitted in federal court that it had placed 32 religious groups—and *only* religious groups—on a type of probationary status pending the resolution of ongoing litigation.

To be clear, InterVarsity supports nondiscrimination policies and believes that they should be used to protect against invidious discrimination. But those otherwise good policies are being misinterpreted in ways which selectively prohibit religious groups from using religious criteria in leadership selection. It makes no sense to

prohibit LDS student groups from requiring their leaders to be Latter-Day Saints or ban Muslim student groups because they require their leaders to be Muslim.

Nondiscrimination requirements should *protect* rather than *penalize* religious groups that want to retain their distinct religious character.

Unfortunately, this problem is not limited to our InterVarsity chapter at the University of Iowa. InterVarsity currently faces similar problems nationwide, including at Michigan's Wayne State University (where we have filed a similar lawsuit after the university abruptly derecognized a 75-year old chapter), and SUNY-Buffalo.

Why religious student groups need religious student leaders

InterVarsity values a tolerant, inclusive, welcoming campus environment; therefore, our groups welcome all students to be active participants and members. In fact, nearly 26% of InterVarsity's active participants do not identify as Christians. It's partially for this reason that religious student groups require clear religious-based criteria for leadership.

1. Religious-based leadership criteria help religious student groups remain faithful to their original religious tradition, purpose, and goals even as large numbers of non-adherents participate in the group.
2. Every religious tradition lays down specific requirements for their religious leaders. The Bill protects the right of students to select their religious leaders in a manner that is consistent with their faith, which reflects the best First Amendment jurisprudence and the highest aspirations of a tolerant and diverse campus environment.
3. Religious leadership requirements describe the necessary skills and conditions for student religious leaders to accomplish their religious leadership responsibilities. They ensure that religious meetings—bible studies, prayer meetings, mentoring new converts, worship times—are led by people who embrace that religion. These leadership requirements are akin to the skill requirements commonplace in intercollegiate athletics or in music and drama departments.

The Bill strengthens current nondiscrimination policies

Some with political motives may mischaracterize this bill as a "right to discriminate" bill. We disagree. This bill ensures that university nondiscrimination policies achieve their purpose of creating a robust diversity of viewpoints and student groups, including religious student groups.

1. Religious student groups make their most distinct and valuable contribution to campus life when they remain true to their religious purposes. This requires leadership that embraces and embodies specific religious purposes. Religious student groups should be permitted to create

leadership teams who can lead worship, prayer, and scripture study with integrity.

2. The bill protects students from state-sponsored overreach. The state of North Dakota should not entangle itself in the internal organization of religious groups, and state-sponsored actors like a public university should not be permitted to determine how religious groups interpret and apply their religious teachings (including how they select their religious leaders). True separation of church and state means that North Dakota should not pick pastors, rabbis, imams or other religious leaders. It also means that its agents in higher education should not dictate how religious student groups pick their religious leadership.
3. Universities that value inclusion should welcome religious communities that authentically represent their religious traditions. They should use nondiscrimination policies to encourage, not inhibit, these groups.
4. The Bill requires universities to apply their nondiscrimination policies equitably, giving religious groups (which require leaders to hold conforming religious beliefs) the same deference they offer to fraternities and sororities (which make membership decisions along gender lines), intercollegiate athletics or performing arts groups (which make membership decisions based, in part, on gender and able-bodied status), and non-religious advocacy groups (which can limit leadership to members who reflect the group's creed or mission.)
5. To the extent that North Dakota universities and colleges already act in accordance with this bill, it affirms their current practice, imposes no financial cost, and creates no new administrative burden.

Without the protections of the Bill, students in North Dakota will find it increasingly difficult to find a safe, authentic, and welcoming religious community on campus. This will hurt all students, and we believe that it will particularly impact the retention of ethnic minority students who rely on supportive religious communities on campus.

I urge you and your committee to approve the Bill and send it to the full House for a vote. Also, I respectfully request that this letter be included in the record for this Committee's hearing on HB 1503.



Gregory L. Dao
Director of Campus Access
& Senior Assistant to the President

Dear Committee Members,

Universities across the country are enforcing leftist worldviews and philosophies by censoring freedom of thought and speech of students and faculty. A 2019 report by Foundation for Individual Rights in Education analyzed the written policies at 466 of America's top colleges and universities for their protection of free speech. The report found that 89.7 percent of American colleges maintain policies that restrict student and faculty expression. These restrictions not only violate the 1st Amendment, they threaten a free society by giving our youth the false impression that freedom of speech is a privilege and not a right. This will lead to more and more authoritarian government overreach. Approximately 800,000 students at top US colleges must find a "free speech zone" to exercise their right to speak freely. This teaches students to avoid critical thinking so as not to come to a conclusion that may result in disciplinary action. The manipulation of free speech policies on college campuses is happening in the wider context of the current and widespread censorship of conservative voices. We must make our voices loud and clear: Freedom of speech is essential to a free and intellectual society. We must encourage, not limit, the free exchange of ideas in any sector of society, but especially in our institutions of higher learning. Please render a DO PASS on HB 1503.

Thank you for your leadership and service to the state of North Dakota.

Sincerely,

Amber Vibeto
Minot, District 3
amvibeto@gmail.com

Spotlight on Speech Codes 2019: The State of Free Speech on Our Nation's Campuses

<https://www.thefire.org/resources/spotlight/reports/spotlight-on-speech-codes-2019/>

Free Speech Zones

<https://www.thefire.org/issues/free-speech-zones/>

9 in 10 American Colleges Restrict Free Speech

<https://www.thefire.org/report-9-in-10-american-colleges-restrict-free-speech/>



Chairman Lawrence R. Klemin
Vice Chairman Karen Karls
Members of the Committee
House Judiciary Committee
North Dakota State Capitol
600 E. Boulevard Avenue
Bismarck, North Dakota 58505

Re: Christian Legal Society Supports HB 1503

Dear Chairman Klemin, Vice Chairman Karls, and Members of the Committee:

Christian Legal Society ("CLS") is an association of Christian attorneys, law students, and law professors, with student chapters at approximately 90 law schools. CLS student chapters typically are small groups of students who meet for weekly prayer, Bible study, and worship at a time and place convenient for the students. All students are welcome to participate in CLS meetings. As Christian groups have done for nearly two millennia, CLS requires its leaders to agree with a statement of faith, signifying the leaders' agreement with the traditional Christian beliefs that define CLS's message and mission.

For several decades, like many other religious student groups, CLS student chapters have sometimes been threatened with exclusion from campus because of their religious beliefs, speech, and leadership standards. HB 1503 would ensure that religious student groups of all faiths would be allowed to continue to serve their campuses in numerous positive ways. HB 1503 achieves this result through its proposed § 15-10.4-02(4)(h), which states:

(h) An institution may not discriminate against a student organization with respect to a benefit available to any other student organization based on a requirement of the organization that leaders or voting members of the organization: (1) Adhere to the organization's viewpoints or sincerely held beliefs; or (2) Be committed to furthering the organization's beliefs or religious missions.

By protecting religious student groups, HB 1503 will ensure there is a healthy range of ideological diversity, including religious diversity, on North Dakota campuses. For these reasons, CLS wholeheartedly supports HB 1503, especially § 15-10.4-02(4)(h), and hopes the Committee will approve it without delay or changes.

While many colleges and universities protect religious student groups' right to organize and choose their leaders according to their religious beliefs,¹ other universities have threatened to

¹ Many universities have policies that protect religious groups' religious leadership criteria. For example, the University of Minnesota provides: "Religious student groups may require their voting members and officers to

exclude religious student groups because they require their leaders to agree with their religious beliefs. For example, CLS has been a recognized student group at the University of Iowa since the 1980s. But in 2018, CLS and 31 other religious groups were told that they would be derecognized because they required their leaders to agree with their religious beliefs. The 32 religious groups threatened with exclusion included Jewish, Muslim, Catholic, Evangelical Christian, Orthodox Christian, Sikh, and other faith groups.²

In 2019, an Iowa federal district court ruled that the University had unconstitutionally excluded one of the religious groups based on its religious viewpoint.³ Six months later, the court ruled in favor of another religious student group.⁴ But this time, the district court ruled that three of the college administrators had forfeited their qualified immunity and could be held personally liable for their unconstitutional treatment of the religious student groups.⁵ The issue of qualified immunity in both cases is on appeal to the Eighth Circuit.

The Iowa Legislature enacted Iowa Code § 261H.3(3), to protect religious student groups on public university campuses and to prevent wasteful expenditures of taxpayer funds on litigation resulting from college administrators' exclusion of religious student groups from campus. In doing so, it joined the legislatures of thirteen other states that have enacted laws like HB 1503 to protect religious student groups, including: Arizona (2011), Ohio (2011), Idaho (2013), Tennessee (2013), Oklahoma (2014), North Carolina (2014), Virginia (2016), Kansas (2016), Kentucky (2017), Louisiana (2018), Arkansas (2019), Iowa (2019), South Dakota (2019), and Alabama (2020).⁶ Five of those states have protected only religious students; six

adhere to the organization's statement of faith and its rules of conduct." The University of Florida has a model nondiscrimination policy that reads: "A student organization whose primary purpose is religious will not be denied registration as a Registered Student Organization on the ground that it limits membership or leadership positions to students who share the religious beliefs of the organization. The University has determined that this accommodation of religious belief does not violate its nondiscrimination policy." The University of Texas provides: "[A]n organization created primarily for religious purposes may restrict the right to vote or hold office to persons who subscribe to the organization's statement of faith."

² The 32 religious groups that the University of Iowa intended to exclude were: Agape Chinese Student Fellowship; Athletes in Action; Bridges International; Business Leaders in Christ; Campus Bible Fellowship; Campus Christian Fellowship; Chabad Jewish Student Association; Chi Alpha Christian Fellowship; Chinese Student Christian Fellowship; Christian Legal Society; Christian Medical Association; Christian Pharmacy Fellowship; Cru; Geneva Campus Ministry; Hillel; Imam Mahdi Organization; International Neighbors at Iowa; InterVarsity Graduate Christian Fellowship; J. Reuben Clark Law Society; Latter-day Saint Student Association; Lutheran Campus Ministry; Multiethnic Undergrad Hawkeye InterVarsity; Muslim Students Association; Newman Catholic Student Center; Orthodox Christian Fellowship; Ratio Christi; The Salt Company; Sikh Awareness Club; St. Paul's University Center; Tau Omega Catholic Service Fraternity; Twenty Four Seven; Young Life.

³ *Business Leaders in Christ v. University of Iowa*, 360 F. Supp.3d 885 (S.D. Iowa 2019), appeal docketed, No. 19-1696 (8th Cir. Apr. 3, 2019).

⁴ *InterVarsity Christian Fellowship v. University of Iowa*, 408 F. Supp.3d 960 (S.D. Iowa 2019), appeal docketed, No. 19-3389 (8th Cir. Nov. 5, 2019).

⁵ *Id.* at 990 (quotation marks and citations omitted).

⁶ Ala. Code 1975 § 1-68-3(a)(8) (all student groups); Ariz. Rev. Stat. § 15-1863 (religious and political student groups); Ark. Code Ann. § 6-60-1006 (all student groups); Idaho Code § 33-107D (religious student groups); Iowa Code § 261H.3(3) (all student groups); Kan. Stat. Ann. §§ 60-5311-5313 (religious student groups); Ky. Rev. Stat. Ann. § 164.348(2)(h) (religious and political student groups); La. Stat. Ann.-Rev. Stat. § 17:3399.33 (belief-based student groups); N.C. Gen. Stat. Ann. § 116-40.12 (religious and political student groups); Ohio Rev. Code § 3345.023 (religious student groups); Okla. St. Ann. § 70-2119.1 (religious student groups); S.D. Ch. § 13-53-52

have protected religious and political, or belief-based, student groups; and three have protected all student groups.

These state laws demonstrate that there is a need for protection for religious student groups on public college campuses. They validate the approach taken by HB 1503. No subsequent problems have arisen in states that have adopted these protections; and to date, there have been no challenges to these laws.⁷ By providing clarity to college administrators, these laws have decreased the likelihood of litigation while preserving religious freedom and promoting religious diversity on their campuses. These laws allow religious student groups to continue to bring positive benefits to their campuses, such as increasing student well-being and satisfaction.

HB 1503 also respects the holdings of the United States Supreme Court in *Widmar v. Vincent*⁸ and *Rosenberger v. University of Virginia*⁹ that the Establishment Clause is not violated when religious student groups are officially recognized, meet on campus, and receive student activity fee funding. Indeed, HB 1503 respects the Court's warnings in *Widmar* and *Rosenberger* that there is a greater risk of violating the Establishment Clause when college administrators interfere with religious groups than when they leave the groups alone to function according to their own understanding of their core religious beliefs.¹⁰

It should be common ground with even the most ardent proponents of strict separation of church and state that government officials, including college administrators, should not penalize a religious group because of its religious beliefs and speech. Nor should government officials interfere in religious groups' internal governance, particularly their choice of their leaders. As the Supreme Court has cautioned, "According the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions."¹¹

Perhaps most importantly, HB 1503 will increase ideological diversity on college campuses at a time when there is rising concern that our society as a whole is becoming increasingly intolerant of other Americans' differing viewpoints. Colleges must be places where students learn to listen to others' ideas, beliefs, and values if we hope to preserve a healthy civil society that cherishes all Americans' freedoms of speech and religion.

Respectfully submitted,
/s/ Kim Colby
Kim Colby
Director, Center for Law & Religious Freedom
Christian Legal Society
(703) 919-8556/kcolby@clsnet.org

(ideological, political, and religious student groups); Tenn. Code Ann. § 49-7-156 (religious student groups); Va. Code Ann. § 23.1-400 (religious and political student groups).

⁷ The Iowa litigation, however, is ongoing.

⁸ 454 U.S. 263 (1981).

⁹ 515 U.S. 819 (1995).

¹⁰ *Widmar*, 454 U.S. at 270 n.6, 272 n.11; *Rosenberger*, 515 U.S. at 845-46.

¹¹ *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 188-89 (2012).

Dear Committee Members,

Universities across the country are enforcing leftist worldviews and philosophies by censoring freedom of thought and speech of students and faculty. A 2019 report by Foundation for Individual Rights in Education analyzed the written policies at 466 of America's top colleges and universities for their protection of free speech. The report found that 89.7 percent of American colleges maintain policies that restrict student and faculty expression. These restrictions not only violate the 1st Amendment, they threaten a free society by giving our youth the false impression that freedom of speech is a privilege and not a right. This will lead to more and more authoritarian government overreach. Approximately 800,000 students at top US colleges must find a "free speech zone" to exercise their right to speak freely. This teaches students to avoid critical thinking so as not to come to a conclusion that may result in disciplinary action. The manipulation of free speech policies on college campuses is happening in the wider context of the current and widespread censorship of conservative voices. We must make our voices loud and clear: Freedom of speech is essential to a free and intellectual society. We must encourage, not limit, the free exchange of ideas in any sector of society, but especially in our institutions of higher learning. Please render a DO PASS on HB 1503.

Thank you for your leadership and service to the state of North Dakota.

Spotlight on Speech Codes 2019: The State of Free Speech on Our Nation's Campuses

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#6705-Taya Sakala

#6708-Cionda Holter

#6709-Brittany Wold

#6711-Jacob Holter

#6714-Thea Holter

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

HB 1503

2/17/2021

Relating to free speech policies of institutions under the control of the state board of higher education; and to provide a penalty

Chairman Klemin called the meeting to order at 11:18 AM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter.

Discussion Topics:

- Discriminatory harassment
- Lawsuits

Chairman Klemin: Testimony #6818, #6819 11:18

Rep. Roers Jones: Do Not Pass Motion

Rep. Paur: Seconded

Roll Call Vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	N
Rep Becker	N
Rep. Christensen	N
Rep. Cory	N
Rep T. Jones	N
Rep Magrum	N
Rep Paulson	N
Rep Paur	Y
Rep Roers Jones	Y
Rep B. Satrom	N
Rep Vetter	N
Rep Buffalo	Y
Rep K. Hanson	Y

5-9-0 Failed

Rep. Vetter: Motion made to adopt amendment 21.0929.02002

Rep. Satrom: Seconded

Voice vote carried

Rep. Vetter: motion do pass as amended

Rep. Vetter: Withdrew motion

Rep. Roers Jones: Moved to remove lines 1-11; Section 2

Rep. Karls: Seconded

Roll Call Vote:

:Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Rick Becker	Y
Representative Ruth Buffalo	Y
Representative Cole Christensen	N
Representative Claire Cory	N
Representative Karla Rose Hanson	Y
Representative Terry B. Jones	N
Representative Jeffery J. Magrum	N
Representative Bob Paulson	N
Representative Gary Paur	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Steve Vetter	N

8-6-0 - Passed

Rep. T. Jones: Do Pass as amended

Rep. Magrum: Seconded

Roll Call Vote:

:Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	Y
Representative Rick Becker	Y
Representative Ruth Buffalo	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Karla Rose Hanson	N
Representative Terry B. Jones	Y
Representative Jeffery J. Magrum	Y
Representative Bob Paulson	Y
Representative Gary Paur	N
Representative Shannon Roers Jones	N
Representative Bernie Satrom	Y
Representative Steve Vetter	Y

10-4-0 - Passed **Carrier: Rep. Cory**

Chairman Klemin stopped 11:45 a.m.

DeLores D. Shimek
Committee Clerk

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1503

Page 1, line 17, overstrike "while adhering to"

Page 1, overstrike line 18

Page 1, line 20, after the overstruck period insert "by guaranteeing, at a minimum, no faculty member will face adverse employment action for classroom speech, unless the speech is not reasonably germane to the subject matter of the class as broadly construed and comprises a substantial portion of classroom instruction"

Page 1, line 21, after "4." insert "Prohibits student-on-student discriminatory harassment consistent with the following requirements:

- a. An institution may not enforce the student-on-student discriminatory harassment policy by disciplining or otherwise imposing any sanction on a student for a violation of the policy stemming from expression unless:
 - (1) The speech or expression is unwelcome, targets the victim on a basis protected under federal, state, or local law, and is so severe, pervasive, and objectively offensive that a student effectively is denied equal access to educational opportunities or benefits provided by the institution; or
 - (2) The speech or expression explicitly or implicitly conditions a student's participation in an education program or activity or bases an educational decision on the student's submission to unwelcome sexual advances or requests for sexual favors.
- b. An institution may sanction or discipline student-on-student speech or expression that does not meet the definition of student-on-student harassment only when the speech or expression is not protected under the first amendment to the United States Constitution or section 4 of article I of the Constitution of North Dakota.
- c. An institution may respond to student-on-student speech that is not discriminatory harassment by taking nonpunitive actions designed to promote a welcoming, inclusive environment.

5."

Page 2, line 2, after "restrictions" insert "on free speech, assembly, and expression which are applicable to the publicly accessible outdoor areas of campus, do not violate the first amendment to the United States Constitution or section 4 of article I of the Constitution of North Dakota, and are clear, published, reasonable, content-neutral, viewpoint-neutral, and narrowly tailored to satisfy a significant institutional interest, and leave open alternative channels for the communication of information or a message"

Page 3, line 5, after "action" insert "against an institution of higher education and the institution's agents acting in their official capacities"

Page 3, line 9, replace "twenty-five" with "fifty"

Renumber accordingly

JP
2/17/21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1503

Page 1, line 1, remove "create and enact section 15-10.4-03 of the North Dakota Century Code,"

Page 1, line 2, remove "relating to higher education student and faculty free speech; to"

Page 1, line 3, remove "; and to provide a penalty"

Page 1, line 17, overstrike "while adhering to"

Page 1, overstrike "guidelines established by the American association of university professors"

Page 1, line 20, after the overstruck period insert "by guaranteeing, at a minimum, no faculty member will face adverse employment action for classroom speech, unless the speech is not reasonably germane to the subject matter of the class as broadly construed and comprises a substantial portion of classroom instruction"

Page 1, line 20, remove "and"

Page 1, line 21, after "4." insert "Prohibits student-on-student discriminatory harassment consistent with the following requirements:

- a. An institution may not enforce the student-on-student discriminatory harassment policy by disciplining or otherwise imposing any sanction on a student for a violation of the policy stemming from expression unless:
 - (1) The speech or expression is unwelcome, targets the victim on a basis protected under federal, state, or local law, and is so severe, pervasive, and objectively offensive that a student effectively is denied equal access to educational opportunities or benefits provided by the institution; or
 - (2) The speech or expression explicitly or implicitly conditions a student's participation in an education program or activity or bases an educational decision on the student's submission to unwelcome sexual advances or requests for sexual favors;
- b. An institution may sanction or discipline student-on-student speech or expression that does not meet the definition of student-on-student harassment only when the speech or expression is not protected under the First Amendment to the United States Constitution or section 4 of article I of the Constitution of North Dakota; and
- c. An institution may respond to student-on-student speech that is not discriminatory harassment by taking nonpunitive actions designed to promote a welcoming, inclusive environment; and

5."

Page 2, line 2, after "restrictions" insert "on free speech, assembly, and expression which are applicable to the publicly accessible outdoor areas of campus, do not violate the First Amendment to the United States Constitution or section 4 of article I of the Constitution

of North Dakota, and are clear, published, reasonable, content-neutral,
viewpoint-neutral, and narrowly tailored to satisfy a significant institutional interest, and
leave open alternative channels for the communication of information or a message"

af
2/17/21

Page 3, remove lines 1 through 11

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1503: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1503 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "create and enact section 15-10.4-03 of the North Dakota Century Code,"

Page 1, line 2, remove "relating to higher education student and faculty free speech; to"

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 - (2) The speech or expression explicitly or implicitly conditions a student's participation in an education program or activity or bases an educational decision on the student's submission to unwelcome sexual advances or requests for sexual favors;
- b. An institution may sanction or discipline student-on-student speech or expression that does not meet the definition of student-on-student harassment only when the speech or expression is not protected under the First Amendment to the United States Constitution or section 4 of article I of the Constitution of North Dakota; and
- c. An institution may respond to student-on-student speech that is not discriminatory harassment by taking nonpunitive actions designed to promote a welcoming, inclusive environment; and

5. "

Page 2, line 2, after "restrictions" insert "on free speech, assembly, and expression which are applicable to the publicly accessible outdoor areas of campus, do not violate the First Amendment to the United States Constitution or section 4 of article I of the Constitution of North Dakota, and are clear, published, reasonable, content-neutral, viewpoint-neutral, and narrowly tailored to satisfy a significant institutional interest,

and leave open alternative channels for the communication of information or a message"

Page 3, remove lines 1 through 11

Renumber accordingly

21.0929.02002

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1503

Introduced by

Representatives K. Koppelman, Becker, M. Johnson, Satrom

Senators Dever, Dwyer, Holmberg

(Approved by the Delayed Bills Committee)

- 1 A BILL for an Act to create and enact section 15-10.4-03 of the North Dakota Century Code,
2 relating to higher education student and faculty free speech; to amend and reenact section
3 15-10.4-02 of the North Dakota Century Code, relating to free speech policies of institutions
4 under the control of the state board of higher education; and to provide a penalty.

5 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

6 **SECTION 1. AMENDMENT.** Section 15-10.4-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 15-10.4-02. Adoption of campus free speech policy.

9 ~~By August 27, 2019, the~~

10 The state board of higher education and each institution shall adopt a policy that:

- 11 1. Protects students' rights to free speech, assembly, and expression;
12 2. Permits institutions to establish and enforce reasonable and constitutional time, place,
13 and manner restrictions on free speech, assembly, and expression;
14 3. ~~Permits students, faculty, or student organizations to invite guest speakers or groups~~
15 ~~to present regardless of the viewpoint or content of the anticipated speech of the guest~~
16 ~~speaker or group; and~~
17 4. Protects the academic freedom and free speech rights of faculty ~~while adhering to~~
18 ~~guidelines established by the American association of university professors.~~

19 ~~Upon adoption of the policies under this section, the state board of higher education shall~~
20 ~~provide a copy of the policies to the legislative management.~~ by guaranteeing, at a minimum, no
21 faculty member will face adverse employment action for classroom speech, unless the speech
22 is not reasonably germane to the subject matter of the class as broadly construed and
23 comprises a substantial portion of classroom instruction; and

*Note - This "and" belongs
on pg. 2, line 20, not here.
LC will fix after adoption of
amendment*

1 4. Prohibits student-on-student discriminatory harassment consistent with the following
2 requirements:

3 a. An institution may not enforce the student-on-student discriminatory harassment
4 policy by disciplining or otherwise imposing any sanction on a student for a
5 violation of the policy stemming from expression unless:

6 (1) The speech or expression is unwelcome, targets the victim on a basis
7 protected under federal, state, or local law, and is so severe, pervasive, and
8 objectively offensive that a student effectively is denied equal access to
9 educational opportunities or benefits provided by the institution; or

10 (2) The speech or expression explicitly or implicitly conditions a student's
11 participation in an education program or activity or bases an educational
12 decision on the student's submission to unwelcome sexual advances or
13 requests for sexual favors.

14 b. An institution may sanction or discipline student-on-student speech or expression
15 that does not meet the definition of student-on-student harassment only when the
16 speech or expression is not protected under the first amendment to the United
17 States Constitution or section 4 of article I of the Constitution of North Dakota.

18 c. An institution may respond to student-on-student speech that is not
19 discriminatory harassment by taking nonpunitive actions designed to promote a
20 welcoming, inclusive environment.

21 5. Complies with the following principles of free speech:

22 a. An institution shall maintain the generally accessible, open, outdoor areas of the
23 institution's campus as traditional public forums for free speech by students,
24 faculty, and invited guests, subject to reasonable time, place, and manner
25 restrictions on free speech, assembly, and expression which are applicable to the
26 publicly accessible outdoor areas of campus, do not violate the first amendment
27 to the United States Constitution or section 4 of article I of the Constitution of
28 North Dakota, and are clear, published, reasonable, content-neutral,
29 viewpoint-neutral, and narrowly tailored to satisfy a significant institutional
30 interest, and leave open alternative channels for the communication of
31 information or a message;

Sixty-seventh
Legislative Assembly

- 1 b. An institution may not restrict students' free speech to particular areas of campus,
2 sometimes known as "free speech zones";
- 3 c. An institution may not deny student activity fee funding to a student organization
4 based on the viewpoints the student organization advocates;
- 5 d. An institution may not establish permitting requirements prohibiting spontaneous
6 outdoor assemblies or outdoor distribution of literature, except an institution may
7 maintain a policy granting an individual or organization the right to reserve the
8 exclusive use of certain outdoor spaces, and may prohibit spontaneous
9 assemblies or distribution of literature inside reserved outdoor spaces;
- 10 e. An institution may not charge students or student organizations security fees
11 based on the content of the student's or student organization's speech, the
12 content of the speech of guest speakers invited by students, or the anticipated
13 reaction or opposition of listeners to the speech. Any security fees charged to a
14 student or student organization may not exceed the actual costs incurred by the
15 institution, and the institution shall refund any overpayment. Institutions shall set
16 forth empirical and objective criteria for calculating security fees and shall make
17 the criteria available to the public;
- 18 f. An institution shall allow students, student organizations, and faculty to invite
19 guest speakers to campus to engage in free speech regardless of the views of
20 the guest speakers or viewpoint or content of the anticipated speech;
- 21 g. An institution may not retract or compel a student, student organization, or faculty
22 member to retract a guest speaker's invitation to speak at the institution based on
23 the guest speaker's viewpoints or the content of the anticipated speech; and
- 24 h. An institution may not discriminate against a student organization with respect to
25 a benefit available to any other student organization based on a requirement of
26 the organization that leaders or voting members of the organization:
- 27 (1) Adhere to the organization's viewpoints or sincerely held beliefs; or
28 (2) Be committed to furthering the organization's beliefs or religious missions.

29 **SECTION 2.** Section 15-10.4-03 of the North Dakota Century Code is created and enacted
30 as follows:

1 **15-10.4-03. Cause of action.**

2 The attorney general or a person whose expressive rights are violated by an action that is
3 not compliant with the law may bring an action ~~against an institution of higher education and the~~
4 ~~institution's agents acting in their official capacities~~ in a court of competent jurisdiction to recover
5 compensatory damages and reasonable court costs. If the court finds a violation of the law, the
6 court shall award the aggrieved party a minimum of five thousand dollars. Excluding reasonable
7 court costs, the total compensatory damages in a case arising from a single violation of this
8 section may not exceed ~~twenty-five~~~~thirty~~ thousand dollars, regardless of the number of plaintiffs
9 awarded damages. If there are multiple plaintiffs in an action under this section, the court shall
10 divide any compensatory damages equally among the plaintiffs.

21.0929.02002
Title.

Prepared by the Legislative Council staff for
Representative K. Koppelman
February 16, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1503

Page 1, line 17, overstrike "while adhering to"

Page 1, overstrike line 18

Page 1, line 20, after the overstruck period insert "by guaranteeing, at a minimum, no faculty member will face adverse employment action for classroom speech, unless the speech is not reasonably germane to the subject matter of the class as broadly construed and comprises a substantial portion of classroom instruction"

Page 1, line 21, after "4." insert "Prohibits student-on-student discriminatory harassment consistent with the following requirements:

- a. An institution may not enforce the student-on-student discriminatory harassment policy by disciplining or otherwise imposing any sanction on a student for a violation of the policy stemming from expression unless:
 - (1) The speech or expression is unwelcome, targets the victim on a basis protected under federal, state, or local law, and is so severe, pervasive, and objectively offensive that a student effectively is denied equal access to educational opportunities or benefits provided by the institution; or
 - (2) The speech or expression explicitly or implicitly conditions a student's participation in an education program or activity or bases an educational decision on the student's submission to unwelcome sexual advances or requests for sexual favors.
- b. An institution may sanction or discipline student-on-student speech or expression that does not meet the definition of student-on-student harassment only when the speech or expression is not protected under the first amendment to the United States Constitution or section 4 of article I of the Constitution of North Dakota.
- c. An institution may respond to student-on-student speech that is not discriminatory harassment by taking nonpunitive actions designed to promote a welcoming, inclusive environment.

5."

Page 2, line 2, after "restrictions" insert "on free speech, assembly, and expression which are applicable to the publicly accessible outdoor areas of campus, do not violate the first amendment to the United States Constitution or section 4 of article I of the Constitution of North Dakota, and are clear, published, reasonable, content-neutral, viewpoint-neutral, and narrowly tailored to satisfy a significant institutional interest, and leave open alternative channels for the communication of information or a message"

Page 3, line 5, after "action" insert "against an institution of higher education and the institution's agents acting in their official capacities"

Page 3, line 9, replace "twenty-five" with "fifty"

Renumber accordingly

2021 SENATE EDUCATION

HB 1503

2021 SENATE STANDING COMMITTEE MINUTES

Education Committee
Room JW216, State Capitol

HB 1503
3/22/2021

A BILL relating to free speech policies of institutions under the control of the state board of higher education.

Chair Schaible opened the hearing at 2:43 PM

Discussion Topics:

- First amendment
- Constitutional rights
- Due Process
- Speaker fees
- Davis vs. Monroe court case
- FIRE audit
- Free speech zones
- Membership and leadership rights
- Academic inquiry

Senator	Attendance
Chairman Schaible	P
Senator Elkin	P
Senator Conley	P
Senator Lemm	P
Senator Oban	P
Senator Wobbema	P

Rep Kim Koppelman, Dist 13 – introduced the bill

Rep Mary Johnson – testified in support #10388

Cale Dunwoody – Americans for Prosperity- testified in support #10331

Caden Wurzbacher – NDSU student - testified in support #10335

Christopher Dodson – ND Catholic Conference - testified in support #10339

Linda Thorson – ND Concerned Women – testified in support #10187

Mark Jorritsma, Ex Dir Family Policy Alliance – testified in support #10319

Lance Kinzer- 1st Amendment Partnership – testified via Zoom support #10227, #10226

Joseph Cohn, FIRE, Philadelphia – testified via Zoom in support #10293

Gregory Jao, InterVarsity Christian Fellowship - testified via Zoom in support #10326

Joy Dahlen, ND College Republicans – testified via Zoom in support #10244

Lisa Johnson, Vice Chancellor NDUS – testified opposed #10365, #10364

Gracie Lian, Pres - ND Student Assoc – testified opposed #10251, #10250

Lia Legerski – Prof at UND – testified opposed #10341

Jane Vangsness, VP - NDCS Student Affairs – testified via Zoom opposed #10353

Donna Smith, UND Title 9 Coordinator – testified via Zoom opposed #10333

Nick Archuleta – ND United – testified opposed #10340

Eric Olson – legal – University System – testified neutral

Additional written testimony:

Heather Hass – support #10275

Kenneth Tarkinton – support #10361

Lindsay Presteng – support #10358

Kimberlee Colby – support #10211

Eldon Johnson – support #10215

Alyx Schmitz – support #10231

Jacob R. Holter - support #10280

Cionda N. Holter - support #10282

Thea L. Holter - support #10289

Amber Vibeto - support #10190

Nikolas Nartowicz - opposed #10219

Birgit M. Pruess - opposed #10205

Alison Gill – opposed #10178

Adjourned at 4:55 PM

Lynn Wolf, Committee Clerk

North Dakota State University

Provision: No free speech zones, guarantee of public forums

HB 1503 Language:

An institution shall maintain the generally accessible, open, outdoor areas of the institution's campus as traditional public forums for free speech by students, faculty, and invited guests, subject to reasonable time, place, and manner restrictions on free speech, assembly, and expression which are applicable to the publicly accessible outdoor areas of campus, do not violate the First Amendment to the United States Constitution or section 4 or article I of the Constitution of North Dakota, and are clear, published, reasonable, content-neutral, viewpoint-neutral, and narrowly tailored to satisfy a significant institutional interest, and leave open alternative channels for the communication of information or a message

An institution may not restrict students' free speech to particular areas of campus, sometimes known as 'free speech zones'

Policy Redline: No Changes Necessary, Policy Already Compliant

Open Public Forums - The generally accessible, open, outdoor areas of NDSU's campus are considered open forums for free speech, subject to reasonable and constitutional time, place, and manner restrictions. If a group desires to utilize amplified sound or have exclusive use of an Open Public Forum, NDSU requires the group to obtain a reservation (See Section 6).¹

Provision: Spontaneous Expression

HB 1503 Language:

An institution may not establish permitting requirements prohibiting spontaneous outdoor assemblies or outdoor distribution of literature, except an institution may maintain a policy granting an individual or organization the right to reserve the exclusive use of certain outdoor spaces, and may prohibit spontaneous assemblies or distribution of literature inside reserved outdoor spaces

Policy Redline: No Changes Necessary, Policy Already Compliant

Open Public Forums - The generally accessible, open, outdoor areas of NDSU's campus are considered open forums for free speech, subject to reasonable and constitutional time, place, and manner restrictions. If a group desires to utilize amplified sound or have

¹ <https://www.ndsu.edu/fileadmin/policy/154.pdf>

exclusive use of an Open Public Forum, NDSU requires the group to obtain a reservation (See Section 6).²

...

Any public assembly or guest speaker taking place in an Open Public Forum with an expected attendance of more than 25 participants, including counter-demonstrators, requires a reservation (See Section 6).

Commented [1]: The precise number of students that should trigger a reservation requirement should be different depending on the size of an institution. FIRE takes this into account on an individual institution basis.

...

Most **routine** events can be approved within 48 hours, however, the **scope size and nature** of an event may impact how long it takes to process a request. The Dean of Students Office will determine whether an event can be executed as requested and in accordance with **the content and viewpoint neutral criteria set forth in this policy**. To request a reservation of space, NDSU requires organizers to submit a Free Speech Event Registration form to the Dean of Students Office. Some events may also require the submission of a Facility Use Agreement and/or coordination with specific buildings, offices, or departments. Reservations must be made following the process in place for each particular space.³

Provision: Distribution of literature

HB 1503 Language:

An institution may not establish permitting requirements prohibiting spontaneous outdoor assemblies or outdoor distribution of literature, except an institution may maintain a policy granting an individual or organization the right to reserve the exclusive use of certain outdoor spaces, and may prohibit spontaneous assemblies or distribution of literature inside reserved outdoor spaces

Policy Redline: **No Changes Necessary, Policy Already Compliant**

Free Speech or Free Expression - The rights to speech, expression, and assembly protected by the First Amendment to the United State Constitution or the Constitution of North Dakota. Such rights include, but are not limited to, all forms of peaceful assembly, protests, demonstrations, rallies, vigils, marches, public speaking, distribution of printed materials, the display of signs or banners, or the circulation of petitions. For the purposes of this policy, "free speech" or "free expression" is not intended to include Commercial Speech.⁴

² <https://www.ndsu.edu/fileadmin/policy/154.pdf>

³ <https://www.ndsu.edu/fileadmin/policy/154.pdf>

⁴ <https://www.ndsu.edu/fileadmin/policy/154.pdf>

Provision: Protection of Faculty Speech in the Classroom

HB 1503 Language:

Protects the academic freedom and free speech rights of faculty by guaranteeing, at a minimum, no faculty member will face adverse employment action for classroom speech, unless the speech is not reasonably germane to the subject matter of the class as broadly construed and comprises a substantial portion of classroom instruction

Policy Redline: **No Changes Necessary, Policy Already Compliant**

Faculty: Members of the faculty are as entitled as any other member of the community in which they live to establish membership in voluntary groups, to seek or hold public office, to interact with their elected officials, to express their opinions as individuals on public questions and to take action in accordance with their views. Cognizant of their responsibilities to their profession and to their institution, faculty accept certain obligations; they should attempt to be accurate, to exercise sound judgment and to respect the right of others to express opinions. They must make clear that their actions, statements and memberships do not necessarily reflect the views of either NDSU, or the ND University System. If there are controls to be exercised over faculty members, they are the controls of personal integrity and the judgment of their colleagues.

- a. Research and creative activities: Members of the faculty have full freedom to pursue their research and/or creative activities and to publish their results, free from ridicule, recrimination, or reprisal by colleagues, administrators, SBHE members or other government officials. They are free to involve interested students and other professionals in their University research and to pursue extramural funding to support it.
- b. Instruct: Faculty are entitled to freedom in teaching their assigned courses. That freedom includes, but is not limited to, design of pedagogical approach, selection and delivery of course content and reference materials beyond what is considered baseline in their degree program(s). Freedom further extends to conducting of class meetings and demonstrations, creating assignments and examinations to assess student performance, and assigning grades.⁵

Provision: Student-on-Student Discriminatory Harassment

HB 1503 Language:

Prohibits student-on-student discriminatory harassment consistent with the following requirements:

⁵ <https://www.ndsu.edu/fileadmin/policy/325.pdf>

- a. An institution may not enforce the student-on-student discriminatory harassment policy by disciplining or otherwise imposing any sanction on a student for a violation of the policy stemming from expression unless:
- The speech or expression is unwelcome, targets the victim on a basis protected under federal, state, or local law, and is so severe, pervasive, and objectively offensive that a student effectively is denied equal access to educational opportunities or benefits provided by the institution; or
 - The speech or expression explicitly or implicitly conditions a student's participation in an education program or activity or bases an educational decision on the student's submission to unwelcome sexual advances or requests for sexual favors;

Policy Redline:

NDSU Policy Manual: Section 156 - Discrimination, Harassment, and Retaliation
Complaint Procedures

Harassment - A form of discrimination, unwelcome oral, written, graphic, or physical conduct, based on one or more of the protected classes (see 2.1.1) of an individual (or group), that is sufficiently severe, ~~persistent, or~~ pervasive, and objectively offensive so as to ~~unreasonably interfere with effectively deny the victim-student(s) access to their~~ education, employment, or other participation in educational programs or activities ~~or that creates a working, learning, or educational program or activity environment that a reasonable person would find hostile, intimidating, or abusive.~~ Harassment may include, but is not limited to ~~when they are part of a pattern of conduct that rises to the level of the standard set forth above,~~ threats, physical contact or violence, ~~offensive jokes, insults or put-downs,~~ slurs or name calling, ~~or vandalism/graffiti, or offensive objects or pictures.~~ Petty slights, annoyances, and isolated incidents (unless very serious) typically do not rise to the level of harassment.⁶

Commented [2]: FIRE has seen countless examples of students being punished under harassment policies for insults or displaying subjectively offensive objects and pictures when these expressions were not part of a course of conduct that would satisfy the criteria of Davis v. Monroe County Bd of Education. While their inclusion here is not technically unlawful once the language we proposed is added, its inclusion invites abuse nonetheless. These phrases would not need to be deleted to be compliant with the bill, but we would strongly recommend deleting them.

Provision: Viewpoint-neutral security fees

HB 1503 Language:

An institution may not charge students or student organizations security fees based on the content of the student's or student organization's speech, the content of the speech of guest speakers invited by students, or the anticipated reaction or opposition of listeners to the speech. Any security fees charged to a student or student organization may not exceed the actual costs incurred by the institution, and the institution shall refund any overpayment. Institutions shall set forth empirical and objective criteria for calculating security fees and shall make the criteria available to the public

⁶ <https://www.ndsu.edu/fileadmin/policy/156.pdf>.

Policy Redline:

Fees - The University may prescribe a fee schedule for reserving specified campus spaces. The schedule shall be made available on request, by the area responsible for a particular space or venue, and shall be based on the actual expenses incurred by the campus in making the space available. The schedule must not be wholly or partially based on viewpoint- or content-based criteria, but may include security and logistic fees based on the venue, the anticipated attendance, ~~historical-protest-activity-at-events-of similar attendance~~, and other content-neutral factors. The cost of security will be set by the University Police and Safety Office ~~and shall not exceed actual costs incurred by the University. Any overpayment shall be refunded once actual costs are calculated after the event.~~ The criteria used to establish the fee schedule shall be made publicly available.⁷

Provision: No compulsory disinvitations

HB 1503 Language:

An institution may not retract or compel a student, student organization, or faculty member to retract a guest speaker's invitation to speak at the institution based on the guest speaker's viewpoints or the content of the anticipated speech

Policy Redline:

3. General Provisions

3.1 NDSU will not engage in viewpoint or content-based discrimination or suppression of speech, and will, to the greatest extent possible, permit and facilitate the open discussion and debate of ideas and issues, regardless of the content of those issues.

3.2 NDSU will not use the concept of civility or mutual respect as a basis to suppress or limit the discussion of ideas, regardless of content, except as reasonably necessary to an educational activity. NDSU does, however, encourage that all such discussions take place in an atmosphere of mutual respect, free from racism, sexism, and other forms of bias.

3.3. NDSU and its employees shall ~~generally~~ not seek to shield individuals from the Free Speech or Free Expression of others. ~~The University shall not itself rescind, nor require or take steps to compel a student, student organization, faculty member, or other campus-affiliated host to retract, a guest speaker's invitation to speak based on that speaker's viewpoints or the expected content of the speech.~~ However, it shall not be considered shielding when employees provide information about upcoming events to the campus community.

⁷ <https://www.ndsu.edu/fileadmin/policy/154.pdf>

3.4 No speech, expression, or assembly may be conducted in a way that disrupts or interferes with any teaching, research, administration, or other authorized activities on the campus. Nor may such speech, expression, or assembly be conducted in a way that interferes with the rights of others to Free Speech and Free Expression. Due to the contextual nature of Disruptive Conduct, NDSU is reliant on the judgment and fairness of University employees and authorities in determining what constitutes Disruptive Conduct. Such judgment must be content neutral and focused on the disruptive nature of the conduct and not the message of the disruption. Disruptive Conduct is prohibited.⁸

Provision: Viewpoint-neutral student organization disbursement

HB 1503 Language:

An institution may not deny student activity fee funding to a student organization based on the viewpoints the student organization advocates

Policy Redline:

4.4. Recognition

Recognition of student organizations is granted by the Congress of Student Organizations Commission and registered in the Student Activities Office in Memorial Union. Although student organizations are independent units which exist at NDSU and are not considered agents of the University, they are expected to uphold and comply with institutional and North Dakota University System (NDUS) policies and local, state, and federal laws.

Students and student organizations are free to examine and express opinions publicly and privately. They are free to support causes by orderly means that do not disrupt regular and essential operations of the University. **Recognition and funding decisions will not be based on a student organization's point of view, no matter how controversial or unpopular. Criteria used to evaluate funding proposals, recognition and registration requests shall be applied in the same manner to all organizations, with no consideration of the viewpoints the student organization advocates.** At the same time, it should be made clear to the academic and larger community that in their public expressions or demonstrations, students or student organizations speak only for themselves.⁹

Provision: No Viewpoint Discrimination Against Student Organizations

⁸ <https://www.ndsu.edu/fileadmin/policy/154.pdf>

⁹ <https://www.ndsu.edu/fileadmin/policy/601.pdf>

HB 1503 Language:

An institution may not discriminate against a student organization with respect to a benefit available to any other student organization based on a requirement of the organization that leaders or voting members of the organization:

1. Adhere to the organization's viewpoints or sincerely held beliefs; or
2. Be committed to furthering the organization's beliefs or religious missions.

Policy Redline:

4.5 Membership

Membership in student organizations and affiliated University groups is limited to current students, faculty, and staff of NDSU.¹⁰

Student organizations may enact requirements that leaders or voting members of the organization adhere to the organization's viewpoints and demonstrate a commitment to furthering the organization's core beliefs, viewpoints, or religious missions. The University shall not deny a benefit afforded to any other student organization on the basis of the organization's viewpoints, sincerely held beliefs or membership requirements related to those viewpoints or beliefs.

¹⁰ <https://www.ndsu.edu/fileadmin/policy/601.pdf>

HB 1503

Senate Education Committee

March 22nd, 2021

2:30 PM

Chairman Schaible and members of the Senate Education Committee,

My name is Cale Dunwoody, I currently serve as a Grassroots Engagement Director for Americans for Prosperity—North Dakota. Americans for Prosperity breaks down barriers to allow individuals to achieve their full potential. Freedom of expression is one of our major priorities—we believe that for someone to reach self-actualization they must be subject to equal rights under the law. House Bill 1503 protects the speech of students, organizations, and faculty who occupy our higher education system. This bill ensures our campuses continue fostering openness and diversity. I am respectfully asking this committee to give House Bill 1503 a DO PASS recommendation and further protect North Dakotan's First Amendment.

As a lifelong resident of North Dakota, I have had the opportunity to live, learn, and work in our wonderful state. During my time at North Dakota State University, I was an active member of a collegiate political organization. Serving as a chapter President, I was responsible for magnifying the voice of like-minded students and members. While promoting personal ideology is important, it is essential that we continue to promote the debate of ideas.

“Freedom is never more than one generation away from extinction. We didn't pass it to our children in the bloodstream. It must be fought for, protected, and handed on for them to do the same, or one day we will spend our sunset years telling our children and our children's children what it was once like in the United States where men were free”.

Former U.S. President, Ronald Reagan



Americans for Prosperity is not only a supporter of free expression but an advocate of education and life-long learning. House Bill 1503 further protects the rights of students and staff, while granting Universities the capability of implementing reasonable and constitutional restrictions. This bill promotes spontaneous free speech while protecting access to events featuring diverse opinions.

This bill is a pre-emptive step to protect our student's First Amendment rights. House Bill 1503 requires that students be treated equally and fairly, no matter which public university they attend. Higher education is teaching our next generation of leaders to think critically, evolve, and discover. Without civil discourse and challenges, our next generation of leaders may be ill-prepared.

Today, I respectfully ask that this committee protect speech for our next generation and give House Bill 1503 a favorable recommendation.

I will now stand for any questions.

Cale Dunwoody
Grassroots Engagement Director
Americans for Prosperity—North Dakota

HB 1503
Senate Education
03/22/21 – 2:30pm

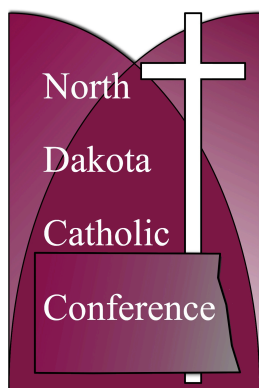
Chairman Schaible and members of the Senate Education Committee,

For the record, my name is Caden Wurzbacher and I am a student at North Dakota State University. House Bill 1503 is currently one of the most important pieces of legislation that impacts future college students. We must ensure our campuses continue to offer students unique experiences, exposing them to a variety of ideological differences. I would ask that this committee give this legislation a do pass recommendation and the State Senate place these protections in our state's Century Code.

The state of North Dakota is, and has always been, a place of common sense. I believe it is common sense that we further protect our constitutional right to free speech. During my time at North Dakota State University, I have had the opportunity to take part in different student organizations and activities. Through my participation across campus, I have been subject to differences of opinions, debates and ideological discussions. These conversations have crafted my ideology and contributed to my passion for politics. This bill guarantees that my fellow classmates and future students have the same right to participate and learn outside the classroom.

In closing, we must take progressive steps in furthering our states safeguards on the first amendment. Respectfully, I ask that this committee recommend a do pass.

Caden Wurzbacher- NDSU Student



Representing the Diocese of Fargo
and the Diocese of Bismarck

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To: Senate Education Committee
From: Christopher Dodson, Executive Director
Subject: HB 1503 - Religious and Free Speech Rights of Students on State Campuses
Date: March 22, 2021

The North Dakota Catholic Conference supports House Bill 1503.

Students should not lose their basic rights to speech, religious expression, and association when attending a public college or university. Unfortunately, campuses across the nation are enacting policies that infringe on those rights. House Bill 1503 would respect our students and protect their rights on our public colleges and universities.

The conference especially supports the language in the new subsection (h) at the bottom of page 3. This language would ensure that student groups can adopt membership and leadership requirements that reflect their beliefs and missions. Unfortunately, campuses around the nation are adopting policies that require student groups to accept anyone as a member and a leader, even if the individual disagrees with, or is hostile to, the group's mission, purpose, or beliefs. Catholics could assume control over a Baptist group, Democrats and Republicans could undermine each other's clubs, and racists could insert themselves into African-American student clubs. When organizations require that their leaders or members follow the organizations' mission, campuses have penalized the organizations and prevented them from having the same benefits available to other groups such as access to meeting space, message boards, tables at events, and student activity funds.

In a closely divided and somewhat confusing 2010 opinion called *Christian Legal Society v. Martinez*, the United States Supreme Court found that these policies were sometimes permissible.¹ Some colleges and universities have since interpreted the CLS case as an invitation to enact more of these discriminatory policies, leaving the task of protecting student clubs to state legislatures. That is what has happened in North Dakota.

In its testimony in opposition to HB 1503 in the House, the North Dakota University System (NDUS) acknowledged that some of the state's campuses have enacted these discriminatory policies.² According to NDUS's testimony, these campuses deny otherwise available student activity funds to clubs that seek to preserve their purpose by asking their members or leaders to agree with the organizations' beliefs or missions.

NDUS's testimony is an acknowledgment that, to some degree, it is not in compliance with federal regulations. The Trump Administration last year enacted rules that prohibit public universities from applying such policies to religious organizations.³ To its credit, NDUS stated that it intends to revise its statewide policies to bring them into compliance. This overture, however, does not negate the need for HB 1503. The need still exists for several reasons.

First, NDUS acknowledges that it is only revising its policies because it is required to do so by the federal rule. This federal rule, however, could be modified or even rescinded by the new presidential administration. Moreover, some of the same opponents to HB 1503 who argue the bill is not necessary because of the federal regulation are suing to invalidate that very same regulation.⁴ In short, without state legislation, there is no guarantee NDUS would not change its policies again and that protection for religious clubs on North Dakota's campuses would again not exist.

Second, the federal rule applies only to religious clubs. Correspondingly, NDUS has only indicated willingness to revise its policies as they relate to religious clubs. There is no protection for the rights of non-religious clubs, such as political groups, pro-life organizations, LGBTQ advocacy clubs, or environmental societies to preserve their missions and identities.

Third, the door opened by the *CLS* case for these discriminatory policies is very narrow. It is not clear that the policies on NDUS campuses, even after the promised change to comply with the federal rule, would protect students' constitutional rights. Other state university systems have seen protracted legislation stemming from policies like those NDUS acknowledges currently exist.⁵ Students should not have to resort to court to protect their rights. The language in the new subsection (h) on page 3 would meet constitutional muster and prevent litigation.

Fourth, the very fact that NDUS allowed our state's campuses to enact these discriminatory policies in the first place, and the fact that it is only now willing to address the issue because of federal regulations, indicates that legislation is needed to protect students' religious, speech, and association rights on the state-run campuses. This is a matter that should be and needs to be addressed here.

College Republicans have the right to be Republicans, College Atheists have the right to be atheists, and College Christians have the right to be Christians. HB 1503 would protect these rights and contribute to the richness of our university system.

We urge a **Do Pass** recommendation on HB 1503.

¹ *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010).

² "Finally, SBHE Policy 503.1 does not currently address element 4(h) of H.B. 1503. This is for a good reason: the Supreme Court ruled in the case of *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010) that institutions could require officially recognized student organizations to not discriminate based on the factors set out in federal law, including based on religion. As a result, some NDUS institutions have limited student activity fee funding to some organizations based on some organizations' failure to allow any student to participate, become a member, or seek leadership positions in the organization, while others have not limited that funding. However, last year the Department of Education promulgated a new regulation, located at 34 C.F.R. §§ 75.500 and 76.500, which prohibits this limitation. As a result, the NDUS has already begun the process of making this change to SBHE Policy 503.1 and the institution policies, and would welcome working with H.B. 503.1's proponents to ensure that the language of the SBHE policy complies with this new regulation." Testimony of Lisa A. Johnson, Vice Chancellor for Academic/Student Affairs, NDUS, https://www.legis.nd.gov/assembly/67-2021/testimony/HJUD-1503-20210216-6718-A-JOHNSON_LISA_A.pdf

³ 34 C.F.R. 75.500.

⁴ *Secular Student Alliance v. U.S. Department of Education*, U.S. District Court, D.C., Case 1:21-cv-00169. The plaintiffs are represented by Americans United for the Separation of Church and State and American Atheists, both of whom rely on the federal regulation in their submitted testimony in opposition to HB 1503.

⁵ See, e.g. *Business Leaders in Christ v. University of Iowa*, 360 F. Supp.3d 885 (S.D. Iowa 2019), appeal docketed, No. 19-1696 (8th Cir. Apr. 3, 2019); *InterVarsity Christian Fellowship v. University of Iowa*, 408 F. Supp.3d 960 (S.D. Iowa 2019), appeal docketed, No. 19-3389 (8th Cir. Nov. 5, 2019). Litigation has also initiated against Wayne State University and SUNY-Buffalo (see testimony of Gregory Joa at: https://www.legis.nd.gov/assembly/67-2021/testimony/SEDU-1503-20210322-10229-F-JAO_GREGORY_L.pdf)

CONCERNED
WOMEN *for* AMERICA
LEGISLATIVE ACTION COMMITTEE

March 22, 2021
Senate Education Committee
Testimony in Support of HB 1503

Chairman Senator Donald Schaible and members of the committee, I am Linda Thorson, State Director of Concerned Women for America (CWA) of North Dakota, testifying for Concerned Women for America Legislative Action Committee. At [CWA](#), we are working to see the protection and preservation of religious liberty as provided in the United States Constitution.

I am here today on behalf of our North Dakota members in support of HB 1503, which clarifies the North Dakota Century Code relating to free speech policies of institutions and students' rights to free speech, assembly, and expression. Also clarified in this legislation is the free association provision of the U.S. Constitution. An institution may not discriminate against a student organization based on a requirement of the organization that leaders or voting members of the organization adhere to the organization's viewpoints and be committed to the organization's mission (15- 10.4-02(4)(h) as amended).

This legislation is a forward-thinking approach to ensure the protection of faculty and students' right to religious liberty and freedom of speech which have been infringed upon on campuses across the nation. The adoption of a state-wide campus policy for all public colleges and universities under the control of the state board of higher education shows a firm commitment by the state of North Dakota to the protection of free speech rights for students and faculty. It also ensures an institution may not discriminate against a student organization with respect to a benefit available to other college organizations.

The Vice-Chancellor for Academic and Student Affairs of the North Dakota University System, Lisa Johnson, [testified in opposition to HB 1503](#) and said this legislation is not needed (in North Dakota). However, Rep. Claire Cory, a senior at the University of North Dakota, told [kxnet.com](#), [free speech violations](#) occur, "I do think there's room for improvement because free speech is a really big issue. A lot of the times, people are afraid to speak out because of their grades, and they're worried their professors are going to retaliate."

The American Center for Law & Justice (ACLJ) defends religious freedom on campuses across America. They have represented [students](#) who have been punished – receiving failing grades, or being downright expelled for viewpoints expressed through speech, including religious convictions. The ACLJ successfully defended a conservative Christian [professor](#) denied a promotion because of his free speech. In another case, the ACLJ successfully defended a Christian [campus ministry](#) from attempts to prohibit the use of faith-based criteria in hiring decisions.

Under the Constitution, students and faculty do not lose their First Amendment rights when they walk through the doors of a university. [Clubs of all faiths](#) bring vibrancy and diversity of belief, opinion, and experience, creating a more robust university environment to engage in the free exchange of ideas. That is at the heart of what a university is meant to be.

On behalf of our North Dakota members, we support HB 1503 and urge your **“Do Pass” vote**. Campuses across the nation have enacted policies that infringe on First Amendment rights. House Bill 1503 clarifies and ensures policies at public colleges and universities in North Dakota are [constitutional](#).



Testimony in Support of House Bill 1503

Mark Jorritsma, Executive Director
Family Policy Alliance of North Dakota
March 22, 2021

Good morning Chairman Schaible and members of the Senate Education Committee. My name is Mark Jorritsma and I am the Executive Director of Family Policy Alliance of North Dakota. I am testifying in support of House Bill 1503 and respectfully request that you render a "DO PASS" on this bill.

Free speech at public universities and colleges is crucial to academic inquiry, and only free and robust discussion of critical issues will drive the quest for truth. That said, public institutions of higher learning are often places where people with strongly held contradictory views are in close proximity and vocal about their positions on these issues.

The subject of academic freedom of expression often rears its head when discussions shift to matters such as political positions, abortion, religion, and sexual orientation – the same contentious issues in our greater national landscape. These issues are debated with free speech in the larger societal arenas such as the media, political rallies, marches, and other modern "public squares". There is no outcry for any free speech zones on the basis of these positions. Why then does it make sense to strangle free speech and create hurdles to the active discussion of these issues in places where inquiry and original thought should be most encouraged – higher education?

Over the years, the issue of free expression has taken on a general countenance of speech codes. However, more recently, the subject has given rise to safe spaces, trigger warnings, and enhanced fears of "microaggressions". Political correctness is winning over free speech.

I remember those late-night talks about "big issues". You had lengthy debates with your roommates, friends, and sometimes professors about topics such as communism vs. capitalism, the existence of God, self-actualization of the person, and other life-shaping issues. You debated, sometimes hotly, and listened to each other while you drank coffee at 2am and avoided studying for that exam. Why? Because these things mattered, and they still do.

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But here is the important part. When it was all over and time to head to bed, whether or not anyone's mind was changed, academic freedom had been exercised and you had often learned as much or more than if you had studied for that exam. Your mind was now considering new points of view. And you were all still best friends because, although it was an important subject, nobody took it personally.

The hotly contended issues we deal with today are frankly no harder or easier than they were 20, 50, or 100 years ago, and we are fooling ourselves and frankly a bit arrogant if we think so. Let's ensure that common sense, respectful debate, and discussion of society's important issues is free and encouraged in all places, including our institutions of higher learning. Some of the greatest minds of past centuries developed their foundational principles during their college years. Let's not lose that, or we will create a generation that shirks from issues, mollifies rather than stands for their beliefs, and chooses comfort over truth.

I ask you then, please protect these freedoms on our state's campuses of higher education and vote House Bill 1503 out of committee with a "DO PASS" recommendation. Thank you and I would now be happy to stand for any questions.



Chairman David Schaible & Members of the Committee
Senate Education Committee
North Dakota State Capitol
Bismarck, North Dakota

SUBJECT: HB 1503

Dear Chairman Schaible & Members of the Committee:

My name is Lance Kinzer, and I am the Policy Director for 1st Amendment Partnership where we are privileged to work with some of the nation's largest faith communities with respect to their common commitment to First Amendment freedoms. I am writing today in support of HB 1503, with particulate focus on paragraph 4h, on page 3 lines 24 – 28 of the bill, pertaining to discrimination against student organizations.

Across the country, public universities have attempted to prohibit student organizations from requiring that students who wish to lead a student club actually share that club's beliefs. Universities have largely enforced such limitations against faith-based groups, but not against other groups with selective leadership criteria, like sororities and fraternities. Unfortunately, as happened recently in Iowa before they passed a protective statute, this often results in divisive and expensive litigation between students and their own universities.¹

Even when student groups win in court, as they did in Iowa, much of the damage to the impacted students' educational experience is already done. No judicial remedy can adequately address the harms that universities inflict when they target student organizations, and thus their members, based upon their religious beliefs. HB 1503 is designed to prevent such litigation from being necessary in the first place, by providing a clear legal standard that simply preserves the right of belief-based student groups to choose leaders who agree with their purpose and mission.

It is commonplace across society for belief-based organizations to require their leaders to affirm, and live consistently with, the principles around which such groups were formed. For decades, the right of student organizations to do just this was clear as a matter of constitutional law. A long line of United States Supreme Court cases held: that student groups can't be denied recognition by a public university merely because of their beliefs (*Healy v. James*, 1972); that belief-based student groups must be provided access to facilities under the same standards as

¹ <https://www.becketlaw.org/case/blinc-v-university-iowa/> & <https://www.becketlaw.org/case/intervarsity-christian-fellowship-v-university-iowa/>

other groups (*Widmar v. Vincent*, 1981), and; that student activity funds cannot be withheld from a group merely because they promote or manifest a particular belief system (*Rosenberger v. University of Virginia*, 1995).

Unfortunately, in more recent years many universities have attempted to take advantage of an ambiguity in this case law created by a U.S. Supreme Court decision, *Christian Legal Society v. Martinez*, (2010). That case dealt with the very uncommon situation where a university adopts a policy that says no student clubs can have any standards whatsoever for who may serve as their leaders. For obvious reasons, such a standard is unworkable and so almost no university has adopted and applied a true “all-comers” policy. But attempts by universities to expand the scope of *Martinez*, have resulted in needless litigation that harms the very students that universities exist to serve. Students at North Dakota’s public universities should never be forced to litigate against their own schools in order to exercise basic constitutional rights.

Fortunately, the *Martinez* case itself was clear that universities and state legislatures are free to adopt policies that safeguard the right of belief-based student organizations to choose leaders who agree with the club’s mission and beliefs. Fourteen states² have already passed laws that provide this kind of protection to students attending public colleges and universities. This includes your neighboring state of South Dakota. Increasingly, support for such legislation has been bi-partisan, including in Louisiana where Governor John Bell Edwards (D), signed just such a bill into law.

The kind of protections offered to belief-based student organizations by HB 1503 are common place in analogous provisions of both federal and state law. The basic reasoning of the U.S. Supreme Court in the *Widmar* case referenced above was statutorily codified for public secondary schools in 1984 when Congress adopted the *Equal Access Act*, 20 U.S.C. 4071. This current federal law protects the right of public high school students to develop associations based on shared values and core convictions.

The U.S. Supreme Court upheld the *Equal Access Act* in a 9-0 decision in *Westside Community Schools v. Mergens*, (1990). In that opinion, the Court was clear that by granting equal access for student associations to use school facilities, the state does not establish religion (nor endorse any viewpoint an organization may hold) – it merely upholds freedom. HB 1503 extends this basic idea, codified for public secondary schools for the last 37 years under the *Equal Access Act*, to public university campuses in North Dakota.

In another analogous context, federal and state³ nondiscrimination law both typically recognize the right of religious organizations to choose leaders on the basis of their religious beliefs. At the federal level, by way of example, *Title VII* explicitly provides that religious associations may use

² See attachment, “Campus Religious Freedom” infographic for a map of states that have statutes protecting belief based student groups.

³ In North Dakota, a religious employer can use religion as basis to refuse to hire where religion is a reasonably necessary bona fide occupational qualification. *N.D.C.C. § 14-02.4-08*.

religious criteria in hiring decisions. In three separate provisions, it exempts religious associations from its general provisions on religious discrimination:

- 1) 42 U.S.C. 2000e-1(a) (Act does not apply to a religious association with respect to employment of an individual to perform work connected with carrying on the association's activities);
- 2) 42 U.S.C. 2000e-2(e)(2) (Act does not apply to a religious educational institution with respect to the employment of employees that share that institution's religious convictions, where the institution is directed toward the propagation of a particular religion);
- 3) 42 U.S.C. 2000e-2(e)(1) (Any employer may hire on the basis of religion where religion is a bona fide occupational qualification).

These accommodations were upheld by the U.S. Supreme Court in *Corporation of Presiding Bishop v. Amos* (1987). Moreover, in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* (2012), the Court unanimously rejected the argument that federal nondiscrimination laws could be used to trump religious association leadership decisions. **As Justice Alito and Justice Kagan stressed, while nondiscrimination laws are “undoubtedly important”, “[r]eligious groups are the archetype of associations formed for expressive purposes, and their fundamental rights surely include the freedom to choose who is qualified to serve as a voice for their faith.”**

HB 1503, merely seeks to codify these same kind of common sense accommodations for belief based student organizations at public colleges and universities. These institutions should welcome diverse student groups as part of a vibrant campus life. By creating a clear standard, HB 1503 promotes this important goal, avoids needless litigation, and makes it certain that university administrators cannot decide who is entitled to recognition as a student organization based upon which beliefs those administrators favor or disfavor.

Respectfully,

/s/ Lance Y. Kinzer

Lance Y. Kinzer

Director of Policy & Government Relations

1st Amendment Partnership

Enclosure

THE PROBLEM

FRATERNITIES AND SORORITIES are *welcome* on campus and are *allowed* to pick their own leaders based on certain criteria.

RELIGIOUS GROUPS are *not welcome* on campus and are *not allowed* to pick their own leaders based on certain criteria.

THE UNIVERSITY OF
DOUBLE STANDARDS



A small but growing number of colleges are effectively kicking student religious groups off campus with policies that prohibit common-sense criteria for selecting group leaders. So, a Jewish faith group cannot require that its president be Jewish or even agree with core Jewish teachings.

Student religious groups provide a much-needed sense of belonging for young people at a time when many feel all alone and are struggling to find their place in the world. Colleges should embrace these welcoming communities, not turn them away.

COMMON SENSE, PLEASE!



To be the president of the Chess Club, you must know the rules of the game.

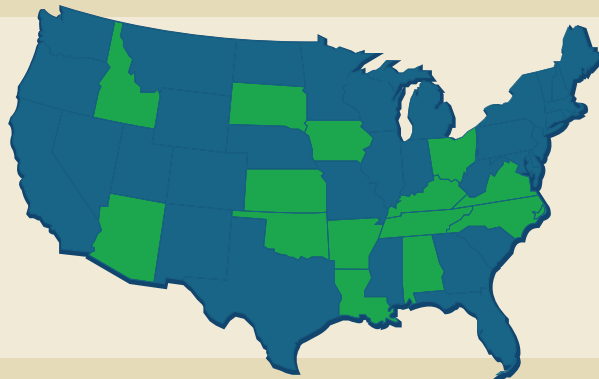
To be the head of the American Medical Association, you must be a physician.

To be the President of the United States, you must be at least 35 years old.

It's important for leadership positions to have certain criteria: it's common sense!

STATES THAT MAKE THE GRADE

Some states are addressing the problem by proactively passing smart bipartisan campus religious freedom legislation.



**BUT ONLY
30%
HAVE DONE THIS**

WHO LOSES OUT?



STUDENTS



RELIGIOUS GROUPS

Lose opportunities for community and a sense of belonging

Lose opportunities for volunteer work and charity outreach

Lose an understanding of self-worth outside of academic achievement

Lose access to campus resources given to other groups

Lose access to low-cost university spaces for meetings and fellowship

Lose access to standard on-campus membership tools

March 22, 2021

Committee on Education
North Dakota Senate
600 East Boulevard Avenue Room JW216
Bismarck, North Dakota

Chairman Schaible, Vice Chair Elkin, and distinguished Members of the Committee:

My name is Joe Cohn, and I am the Legislative and Policy Director at the Foundation for Individual Rights in Education (FIRE). FIRE is a national, nonpartisan, nonprofit organization dedicated to defending the free speech and due process rights of students and faculty at our nation's colleges and universities. FIRE writes today to supplement my verbal testimony in support of a substitute being prepared for HB 1503.¹

In the last legislative session, the State of North Dakota enacted SB 2320, a flawed bill that sought to advance the cause of free speech on campus. HB 1503 will build on what was good in SB 2320 and correct the aspects of that legislation that are problematic.

The central focus of SB 2320 was that it allowed institutions of higher education to maintain reasonable time, place, and manner restrictions on expressive activities provided that they satisfy the Supreme Court of the United States' requirements set forth in *Ward v. Rock Against Racism*.² SB 2320 defined "Constitutional time, place, and manner restrictions" as:

restrictions on the time, place, and manner of free speech which do not violate the First Amendment to the United States Constitution or section 4 of article I of the Constitution of North Dakota and which are reasonable, content- and viewpoint-neutral, and narrowly tailored to satisfy a significant institutional interest, and leave open alternative channels for the communication of the information or message.

While this is the proper standard for evaluating time, place, and manner restrictions in traditional and designated public forums, the problem with the way SB 2320 was crafted is that it also applied this standard in indoor spaces, which are typically not deemed traditional or designated public forums. HB 1503 would amend the statute by clarifying

¹ Throughout this testimony, the term "HB 1503" refers to the substitute version currently being prepared.

² 491 U.S. 781, 791 (1989).

that the standard applies in the “generally accessible, open, outdoor areas of the institution’s campus.”

SB 2320 also contained a flawed provision on academic freedom. It requires public institutions throughout the state to adopt a policy that “[p]rotects the academic freedom and free speech rights of faculty while adhering to guidelines established by the American association of university professors.” The problem with this language is that it does not require these institutions to adopt policies consistent with a particular policy statement set forth by the American Association of University Professors (AAUP), but instead defers these issues to the AAUP. FIRE frequently works closely with the AAUP and cites to their various policy statements to inform FIRE’s advocacy with respect to academic freedom. The problem with this statutory approach is that organizations and their policies can change over time. The HB 1503 amendment being prepared would replace the academic freedom provision of the current statute with concrete protections for faculty or at the very least anchor protections in the statute to the principles set forth in the AAUP’s 1940 Statement of Principles on Academic Freedom and Tenure by explicitly referencing the statement.

In addition to improving on what was established in 2019, HB 1503 would also:

- Allow institutions to adopt constitutional time, place and manner restrictions regulating expression on the open outdoor areas of campus generally accessible to the public, when those restrictions meet the test set forth by the Supreme Court of the United States in *Ward v. Rock Against Racism*. This language amends and improves upon the language from the 2019 statute by limiting its application to the open outdoor areas of campus generally accessible to the public and by expressly prohibiting institutions from limiting quarantining expression to misleadingly labelled free speech zones;
- Prohibit institutions from denying student activity fee funding to a student organization based on the viewpoints the student organization advocates;
- Prohibit institutions from charging students or student organizations security fees based on the content of the student’s or student organization’s speech, the content of the speech of guest speakers invited by students, or the anticipated reaction or opposition of listeners to the speech. Institutions will still be able to set security fees, consistent with the Supreme Court of the United States decision in *Forsyth v. Nationalist Movement*³ by allowing institutions to “set forth empirical and objective criteria for calculating security fees”;

³ 505 U.S. 123 (1992).

- Ensure that institutions cannot force students, faculty, student organizations to rescind invitations to guest speakers because of those speakers' viewpoints;
- Safeguard freedom of association by allowing belief-based student organizations to require their voting members and leaders to adhere to the organizations' sincerely held beliefs;
- Protect the free speech and academic freedom rights of faculty by ensuring that faculty cannot be punished for classroom speech, unless it is not germane to the subject matter of the class, as broadly construed, and also takes up a substantial amount of classroom instruction;
- Require institutions to define student-on-student discriminatory harassment consistent with the standard set forth by the Supreme Court of the United States in *Davis v. Monroe County Board of Education*;⁴ and
- Provide an effective cause of action that will ensure students have access to court when their free speech rights are violated, while capping institutional liability at \$50,000, court costs, and attorneys fees.

The State of campus free speech in North Dakota

FIRE surveyed the written policies of all public institutions of higher education in North Dakota in anticipation of this legislation, including both four-year universities and community colleges. We reviewed the written policies to determine whether the institutions were in compliance with the requirements of SB 2320 and whether their harassment policies were consistent with Supreme Court precedent. Our audit revealed comprehensive failures, demonstrating the strong need for the legislature to enforce the First Amendment.

North Dakota institutions are not abiding by Supreme Court precedent on harassment

Institutions of higher education are legally and morally responsible for addressing discriminatory student-on-student harassment. But they also have a constitutional obligation to do so without infringing on the free speech rights of students. To balance these twin obligations, the Supreme Court of the United States carefully crafted a test to determine when speech crosses the line to unprotected discriminatory conduct. In *Davis v. Monroe County Board of Education*, the Court, in addressing when federal anti-

⁴ 526 U.S. 629, 651 (1999).

discrimination law obligated institutions of higher education to intervene when students were harassing each other, defined student-on-student harassment as discriminatory conduct that is:

so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities.⁵

Not a single North Dakota institution consistently defines harassment in line with *Davis*. Slightly more than half of institutions apply a constitutional definition for Title IX cases, which are under the jurisdiction of federal government regulations explicitly requiring it. However, even when institutions do define harassment constitutionally in Title IX cases, they define harassment unconstitutionally in non-Title IX cases, creating a convoluted "dual-track system." North Dakota State College of Science maintains a particularly egregious definition for non-Title IX harassment, including any "unwelcome action," subjectively defined, that "interfere[s] with an individual's academic efforts, employment, personal safety, or participation in College sponsored co-curricular activities." Policies like this maintained by North Dakota institutions are in serious need of reform.

Enacting HB 1503 is important because overbroad anti-harassment policies are one of the most common forms of speech codes that are used to punish and sometimes even expel students who have engaged in protected speech.⁶

Institutions of higher education are already required by the federal government to use the *Davis* definition, at least with respect to defining student-on-student sexual harassment.⁷ In 2020, the Department of Education concluded a lengthy public notice-and-comment period and adopted legally binding regulations requiring institutions to use this definition to define student-on-student sexual harassment.⁸ Because the Department's jurisdiction in this regulatory process was limited to addressing sexual

⁵ *Davis* at 651.

⁶ Greg Lukianoff and Catherine Sevcenko, *Four Key Points About Free Speech and the Feds' 'Blueprint'*, FIRE, (July 15, 2013), <https://www.thefire.org/four-key-points-about-free-speech-and-the-feds-blueprint/>.

⁷ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 83 Fed. Reg. 61462 (proposed Nov. 29, 2018) (to be codified at 34 C.F.R. pt. 106), <https://www.federalregister.gov/documents/2018/11/29/2018-25314/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>.

⁸ *Id.* at 2014.

harassment, the regulations do not require that same test be used by schools when defining other forms of discriminatory harassment. Courts have repeatedly applied the Davis standard to racial and other forms of harassment outside of Title IX.⁹

Enacting HB 1503 would harmonize North Dakota’s efforts to combat all forms of discriminatory student-on-student harassment.

Courts regularly cite the *Davis* definition to protect students from censorship

Courts regularly protect students from censorship and punishment under university policies because the policies did not meet the requirements of *Davis*. *See, e.g., Nungesser v. Columbia Univ.*, 244 F. Supp. 3d 345, 366–67 (S.D.N.Y. 2017) (holding student accused of sexual assault could not invoke Title IX to “censor the use of the terms ‘rapist’ and ‘rape’” by the alleged victim of the crime on the grounds that the accusation bred an environment of pervasive and severe sexual harassment for the accused student); *B.H. ex rel. Hawk v. Easton Area Sch. Dist.*, 725 F.3d 293, 322–23 (3d Cir. 2013) (holding school district could not invoke Title IX to prohibit students from wearing “I <3 boobies” bracelets intended to increase breast cancer awareness).

Policies that fail to meet the elements of *Davis* have been consistently struck down on First Amendment grounds by federal courts for more than two decades, yet unconstitutional definitions of harassment remain widespread. *See, e.g., McCauley v. Univ. of the V.I.*, 618 F.3d 232 (3d Cir. 2010) (upholding district court’s invalidation of university harassment policy on First Amendment grounds); *DeJohn v. Temple Univ.*, 537 F.3d 301, 319 (3d Cir. 2008) (striking down sexual harassment policy reasoning that because the policy failed to require that speech in question “objectively” create a hostile environment, it provided “no shelter for core protected speech”); *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995) (declaring university discriminatory harassment policy facially unconstitutional). While *Dambrot* was issued before *Davis*, the Sixth Circuit’s analysis incorporated similar elements.).

⁹ *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 665 n.10 (2d Cir. 2012) (applying *Davis* to Title VI claim and observing that “[a]lthough the harassment in *Davis*, and the “deliberate indifference” standard outlined by the Supreme Court, arose under Title IX, we have endorsed the *Davis* framework in cases of third-party harassment outside the scope of Title IX.”); *Bryant v. Indep. Sch. Dist.* No. I-38, 334 F.3d 928, 934 (10th Cir. 2003) (applying *Davis* to Title VI claim); *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 206 n.5 (3d Cir. 2001) (acknowledging that *Davis* “applies equally” to harassment under Title VI or other federal anti-discrimination statutes).

The Davis standard successfully protects students from discriminatory harassment

Some argue that the *Davis* standard sets the bar too high, and posit that under this definition, students may harass each other with impunity. This isn't true. Courts routinely rule against schools for being deliberately indifferent to harassment that met the *Davis* standard. *See, e.g., Niesen v. Iowa St. Univ.*, 2017 U.S. Dist. LEXIS 221061 (S.D. Iowa Nov. 3, 2017) (denying motion to dismiss student's Title IX claim for retaliation that she experienced after reporting an alleged sexual assault because the university did not respond to her complaints about the retaliation); *S.K. v. N. Allegheny Sch. Dist.*, 168 F. Supp. 3d 786, 797–98 (W.D. Pa. 2016) (holding plaintiff adequately pled Title IX claim where bullying of plaintiff had grown to the point where it “was its own sport” and principal never punished the harassers); *T.E. v. Pine Bush Cent. Sch. Dist.*, 58 F. Supp. 3d 332, 365 (S.D.N.Y. 2014) (denying school district's motion for summary judgment on students' Title VI claim for anti-Semitic harassment in part because a reasonable jury could find that a “handful of assemblies . . . could not have plausibly changed the anti-Semitic sentiments of the student harassers”).

What these cases and many others like them demonstrate is that *Davis* has worked to protect students from harassment and to protect free speech rights.

North Dakota should join Alabama,¹⁰ Arizona,¹¹ Arkansas,¹² Ohio,¹³ Oklahoma,¹⁴ and Tennessee¹⁵ in requiring its public institutions to use a definition of discriminatory student-on-student harassment consistent with the *Davis* standard.

Two out of three North Dakota institutions charge potential speakers security fees in an unconstitutional manner

In *Forsyth County v. Nationalist Movement*,¹⁶ the United States Supreme Court has said that the government cannot charge potential speakers security fees based on the anticipation of a negative reaction by some because to do so would create an unconstitutional “heckler's veto.” In contradiction to the Supreme Court, almost two-

¹⁰ Ala. Code § 16-68-3.

¹¹ Ariz. Rev. Stat. §15-1866.

¹² Ark. Code Ann. §§ 6-60-1001-1010.

¹³ Ohio HB 40 (2020).

¹⁴ Okla. Stat. Ann. tit. 70, § 2120.

¹⁵ Tenn. Code Ann. §§ 49-7-2401-2408.

¹⁶ 505 U.S. 123 (1992).

thirds of North Dakota institutions apply security fees in this way for speakers invited by students and faculty. For example, North Dakota State University uses “historical protest activity at events of similar attendance” to determine security costs for event organizers, effectively imposing an unconstitutional tax on controversial speech.

Free speech on the open areas of campus

FIRE’s survey revealed encouraging data for free expression in open areas of campus, which was addressed by the enactment of SB 2320 in 2019 by the North Dakota legislature. FIRE could not find a single institution in North Dakota that restricts campus expression to small areas of campus, called “free speech zones,” or that requires speakers to receive the institution’s permission before engaging in expression. Indeed, nearly four-out-of-five institutions affirmatively protect the open areas of campus as available for expression and almost three-quarters affirmatively state that students needn’t receive university permission before engaging in constitutionally-protected expression. Despite the good outlook for student speech in the open outdoor areas, the HB 1503 provides much needed clarity that the time place and manner standard in the law applies only to the open outdoor areas of campus generally accessible to the public.

Conclusion

No North Dakota institution explicitly violates the First Amendment in the open areas of their campuses after the legislature’s bill in 2019. Every North Dakota institution fails to enforce the First Amendment in their harassment policies in the absence of a bill like HB 1503. This extreme disparity demonstrates the effectiveness of state legislation to enforce the First Amendment and the need to pass this legislation.

Thank you for your attention to FIRE’s perspective. I look forward to answering any questions you might have during the hearing.

Respectfully,



Joseph Cohn
Legislative and Policy Director
Foundation for Individual Rights in Education



Chairman Donald Schaible and Members of the Committee
Senate Education Standing Committee
North Dakota State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

March 21, 2021

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Madison, WI 53707

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Dear Chairman Schaible and members of the Senate Education Standing Committee,

InterVarsity Christian Fellowship/USA supports over 1100 student-led chapters on over 770 campuses across the country. In North Dakota, we sponsor 5 student- and faculty-led chapters on three campuses. InterVarsity welcomes all students to participate in our activities and to join our groups as members. All that we ask is that the *leaders* of our diverse groups—fifty-four percent of whom are students of color or international students—embrace our faith in Jesus Christ.

Unfortunately, increasing numbers of universities are interpreting otherwise good nondiscrimination policies in ways which prohibit religious groups from using religious criteria in leadership selection (e.g., prohibiting Sikh student groups from requiring their leaders to be Sikh or banning Muslim student groups because they require their leaders to be Muslim.)

North Dakota students should be protected from this kind of behavior. Therefore, we support the Free Association provision of HB 1503 (the "Bill"), especially 15-10.4-02(4)(h) as amended, because religious student organization need protection from this kind of administrative overreach by universities and colleges.

To be clear, InterVarsity supports nondiscrimination policies and believes that they should be used to protect against invidious discrimination. But those otherwise good policies are being misinterpreted in ways which selectively prohibit religious groups from using religious criteria in leadership selection. It makes no sense to prohibit LDS student groups from requiring their leaders to be Latter-Day Saints or ban Muslim student groups because they require their leaders to be Muslim.

Nondiscrimination requirements should *protect* rather than *penalize* religious groups that want to retain their distinct religious character.

The Bill strengthens current nondiscrimination policies

Some with political motives may mischaracterize this bill as a "right to discriminate" bill. We disagree. This bill ensures that university nondiscrimination policies achieve their purpose of creating a robust diversity of viewpoints and student groups, including religious student groups.

1. Religious student groups make their most distinct and valuable contribution to campus life when they remain true to their religious purposes. This requires leadership that embraces and embodies specific religious purposes. Religious student groups should be permitted to create leadership teams who can lead worship, prayer, and scripture study with integrity.
2. The bill protects students from state-sponsored overreach. The state of North Dakota should not entangle itself in the internal organization of religious groups, and state-sponsored actors like a public university should not be permitted to determine how religious groups interpret and apply their religious teachings (including how they select their religious leaders). True separation of church and state means that North Dakota should not pick pastors, rabbis, imams or other religious leaders. It also means that its agents in higher education should not dictate how religious student groups pick their religious leadership.
3. Universities that value inclusion should welcome religious communities that authentically represent their religious traditions. They should use nondiscrimination policies to encourage, not inhibit, these groups.
4. The Bill requires universities to apply their nondiscrimination policies equitably, giving religious groups (which require leaders to hold conforming religious beliefs) the same deference they offer to fraternities and sororities (which make membership decisions along gender lines), intercollegiate athletics or performing arts groups (which make membership decisions based, in part, on gender and able-bodied status), and non-religious advocacy groups (which can limit leadership to members who reflect the group's creed or mission.)
5. To the extent that North Dakota universities and colleges already act in accordance with this bill, it affirms their current practice, imposes no financial cost, and creates no new administrative burden.

Why religious student groups need religious student leaders

InterVarsity values a tolerant, inclusive, welcoming campus environment; therefore, our groups welcome all students to be active participants and members. In fact, nearly 26% of InterVarsity's active participants do not identify as Christians. It's partially for this reason that religious student groups require clear religious-based criteria for leadership.

1. Religious-based leadership criteria help religious student groups remain faithful to their original religious tradition, purpose, and goals even as large numbers of non-adherents participate in the group.
2. Every religious tradition lays down specific requirements for their religious leaders. The Bill protects the right of students to select their religious leaders in a manner that is consistent with their faith, which reflects the best

First Amendment jurisprudence and the highest aspirations of a tolerant and diverse campus environment.

3. Religious leadership requirements describe the necessary skills and conditions for student religious leaders to accomplish their religious leadership responsibilities. They ensure that religious meetings—bible studies, prayer meetings, mentoring new converts, worship times—are led by people who embrace that religion. These leadership requirements are akin to the skill requirements commonplace in intercollegiate athletics or in music and drama departments.

Without the protections of the Bill, students in North Dakota will find it increasingly difficult to find a safe, authentic, and welcoming religious community on campus. This will hurt all students, and we believe that it will particularly impact the retention of ethnic minority students who rely on supportive religious communities on campus.

The problem is national and growing

Recently, three of our chapters which serve the University of Iowa faced derecognition because they require their leaders to be Christians. These groups remain on probationary status pending the outcome of litigation against the university.

InterVarsity is not the only religious group that was targeted by the University of Iowa. In July 2018, when the University of Iowa officially deregistered InterVarsity, it also deregistered other religious student groups, including the Sikh Awareness Club, the Chinese Student Christian Fellowship, the Imam Mahdi Organization, Geneva Campus Ministry, and the Latter-day Saint Student Association. And on February 1, 2019, the university admitted in federal court that it had placed 32 religious groups—and *only* religious groups—on a type of probationary status pending the resolution of ongoing litigation.

Unfortunately, this problem is not limited to our InterVarsity chapter at the University of Iowa. InterVarsity currently faces similar problems nationwide, including at Michigan's Wayne State University (where we have filed a similar lawsuit after the university abruptly derecognized a 75-year old chapter), and SUNY-Buffalo.

I urge you and your committee to approve the Bill and send it to the full Senate for a vote. Also, I respectfully request that this letter be included in the record for this Committee's hearing on HB 1503.



Gregory L. Rao
Director of Campus Access
& Senior Assistant to the President

HB 1503
Senate Education
03/22/2021 – 2:30 pm

Chairman Schaible and members of the Senate Education Committee,

My name is Joy Dahlen. I currently serve as the State Chair of the North Dakota College Republicans. Our organization prioritizes the expansion of conservative ideals on college campuses, while granting students the opportunity for involvement in the Republican Party. Today, I ask this committee to further protect the free speech of college students across our state and give HB 1503 a favorable recommendation.

Currently, I am in my third year at North Dakota State University, in my first year of Pharmacy School. My involvement in College Republicans started as soon as I enrolled in college. I believe in protecting the rights of students to express their beliefs fully under the constitution without fear of recourse by the University. I have felt the need to hide my involvement with College Republicans from my college for fear of not being treated equally because of my political affiliation.

HB 1503 grants our students, student organizations, and university faculty the much-needed protections from violations of the First Amendment. While the opponents of this bill highlight the lack of violations and the redundancy of these protections, I would challenge that objection.

- 1) A lack of reporting does not indicate a lack of violations.
- 2) The Century Code applies to the entire state and is more ridged than campus policies.

No matter which public campus a student chose to attend, they should be subject to the same free speech protections. College Republicans currently have official chapters on two public

universities and one private university. Each of our members, at public institutions, should be allowed to voice their concerns without burdensome oversight and restrictions.

This bill allows organizations, such as the one I represent, the protections to continue expanding to other campuses. While we are in a time of division and tribalism in politics, it is important to hear all sides of an issue. House Bill 1503 simply places another layer of protection, to ensure our next generation is not subject to unreasonable and unconstitutional restrictions on their free speech.

College is a time where students can further explore their ideology and express their concerns with our political system. Whether you consider yourself a Democrat, Republican, Libertarian, or some other political affiliation, your rights should be protected. Our students need to experience the difference in opinion, the hard conversations, and the opportunities that student organizations offer.

Mr. Chairman, I ask this committee to give House Bill 1503 a **DO PASS RECOMMENDATION** and great greater safeguards for our college students.

I will now stand for any questions.

Joy Dahlen
President
North Dakota College Republicans

**H.B. 1503**

Senate Education Committee

March 22, 2021

Lisa A. Johnson, Vice Chancellor for Academic/Student Affairs, NDUS

701.328.4143 | lisa.a.johnson@ndus.edu

Chair Schaible and members of the Senate Education Committee: My name is Lisa Johnson, and I serve as the Vice Chancellor for Academic and Student Affairs of the North Dakota University System (NDUS). I am here on behalf of the North Dakota University System to provide testimony in opposition to H.B. 1503.

Last session, the NDUS worked with the Legislative Assembly and this committee on S.B. 2320, which enacted N.D.C.C. Chapter 15-10.4, which required the SBHE and each institution to adopt a policy to protect student freedom of speech, assembly, and expression. As a result, the SBHE and each campus developed both systemwide and campus-specific policies implementing that Chapter before the statutory deadline of August 27, 2019. *See, e.g.,* [SBHE Policy 503.1 – Student Free Speech and Expression](#). On September 3, 2019, a copy of the SBHE Policy and each Campus Policy was sent to Legislative Management, as evidence that the SBHE and all campuses met the statutory deadline. Since that date, the NDUS had not received any complaints or negative feedback about the policy adopted by the SBHE until the introduction of H.B. 1503. This is buttressed by the fact that there have been no substantiated reports of student free speech violations in at least 12 years within the NDUS.

In addition, since the adoption of these student free speech policies, the SBHE, the NDUS, and the eleven campuses took the additional step to enhance and protect the rights of student organizations on campus. Working closely with the North Dakota Student Association (NDSA), the SBHE adopted [SBHE Policy 503.3](#), which provides broad protections for students and student organization participation in political campaigns, events, and other political activities (with only a narrow limitation required by state law). This new, student-centric policy was devised with input from FIRE, and received positive feedback from FIRE's Azhar Majeed:

"This policy looks quite solid to me and my colleagues. We appreciate your willingness to consider our input and to adjust the policy accordingly. We likewise appreciate that the policy begins with the basic premise that students' speech rights, including political speech rights, are to be stringently protected, with only exceptions made pursuant to state law."

The NDUS was grateful for FIRE's assistance and recommendations in formulating that policy and additionally incorporated resources provided by FIRE when aiding the campuses in developing their campus specific policies in compliance with that of State Board Policy 503.1 prior to the implementation deadline of August 27, 2019. The SBHE and NDUS have a policy process which promotes constant review and improvement, and take seriously policy concerns raised from both inside and outside of the NDUS. Had NDUS been made aware of the audit referenced by Mr. Cohn

in his testimony, NDUS could have worked on improvements which could have saved everyone's time today.

However, even up until today, the NDUS is unsure as to the rationale for the introduction of H.B. 1503 rather than working through the policy process. Not only is it redundant and unnecessary, it reintroduces many of the problematic elements of the earlier drafts of S.B. 2320 in 2019.

In order to demonstrate just how far NDUS has already come to meet the bill's purposes, and intends to go in the future, I'd like to walk through the proposed changes, set out in Section 1, Subsections 1-5 of the H.B. 1503 and point out that nearly every single aspect of the proposed bill is already encompassed or is already proposed for inclusion in SBHE Policy 503.1. H.B. 1503 is nothing more than a solution seeking a problem that does not exist in North Dakota.

Subsection 1 of H.B. 1503 that guarantees students the right to free speech is already recognized in SBHE Policy 503.1 Section 2.

2. SBHE Policy on Student Free Speech and Expression

- a. The SBHE recognizes that students have a fundamental right to free speech and expression under the First Amendment to the United States Constitution and Article I, Section 4 of the North Dakota Constitution, and as a result the SBHE and institutions under its control shall ensure that students have the freedom to speak, write, listen, challenge, learn, and discuss any issue, subject to reasonable and constitutionally-recognized limitations.

Subsection 2 of H.B. 1503 recognizing constitutional time, place, and manner restrictions is detailed in SBHE Policy 503.1 Section 2, Subsection (c)(i-iii).

- e. Institutions under the control of the SBHE shall control the availability of campus spaces for free speech and expressive activity as follows:
- i. Institutions shall maintain the generally accessible, open, outdoor areas of its campus as traditional public fora for free speech by students, faculty, student organizations, and members of the public, subject to reasonable and constitutional time, place, and manner restrictions. Institutions may require students, faculty, student organizations, and members of the public to obtain a permit to reserve the exclusive use of an outdoor space constituting a traditional public forum. Such permits may not be issued or denied based on the content of the message or viewpoint the permit requestor seeks to convey.
 - ii. Institutions may only designate as restricted or designated forums: (1) those areas inside buildings which have not otherwise been treated as traditional public fora; (2) areas in residential areas of campus during evening and overnight hours; (3) areas immediately surrounding academic buildings during times when classes are held in that building; (4) areas which must be restricted due to reasonable safety and security concerns; (5) areas which must be restricted to enable the flow of pedestrian or vehicle traffic; and (6) areas surrounding building entrances and exits to provide for safe and convenient ingress and egress from those buildings. Institutions may only designate an area of campus as a restricted or designated forum on the grounds of an educational, safety or security, or health-related reason (e.g. ensuring a quiet residential environment for students in residence halls). Institutions may grant permits to students, faculty, student organizations, or others to exercise free speech or expression in such restricted or designated fora based on content-neutral criteria.
 - iii. Institutions may close to free speech or expressive activity those areas which are not designed for the exercise of free speech or expression or which have traditionally not been open to the exercise of free speech or expressive activity.

As you can see, the SBHE policy (and the campus policies which are based on this policy) are clear regarding which areas are open to expression and which are restricted. Quite frankly, the ambiguity Mr. Cohn mentioned regarding what areas were required to be a public forum under existing law does not exist.

Subsection 3 of H.B. 1503 attempts to address issues related to academic freedom for faculty stating that “at a minimum, no faculty member will face adverse employment action for classroom speech, unless the speech is not reasonably germane to the subject matter of the class as broadly construed and comprises a substantial portion of classroom instruction.” However, this definition is far too narrow, as it excludes much of the faculty’s academic work, including in office hours, mentoring, research, grant applications, participation in academic conferences, publishing in peer-reviewed journals, and similar areas. The language itself is also so vague as to be arguably unconstitutional, or

at least unworkable: what do the phrases “classroom speech” or “reasonably germane” mean? How can campuses hold faculty members to these standards when they are not defined?

I’d like to point out to the Committee that academic freedom is more fully outlined in SBHE [Policy 401.1](#) Academic Freedom, but addresses the same issues raised in H.B. 1503.

4. Classroom Speech and Expression. Faculty at institutions under the control of the SBHE shall generally adhere to the 1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments adopted by the American Association of University Professors, which provides that “Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.” Notwithstanding, faculty shall not face discipline or adverse employment action based on classroom speech unless such speech violates other institutional policies or procedures.

The policy, as does current law, refers to the AAUP, which is the standard often relied upon by accreditation organizations.

Subsections 4(a)(b) and (c) lay out a highly restrictive definition of student-on-student harassment. The NDUS has now proposed a revised definition of student-on-student harassment in SBHE Policy 503.1, based on the feedback from the House hearing earlier this session:

g. Student-on-Student Harassment – An institution may only discipline students for student-on-student harassment which meets one or more of the following criteria:

- i. (1) (1) Unwelcome verbal, written, or physical conduct directed to another student or a specified group of students; (2) -directed to an individual which a reasonable person would find offensive or defamatory and which does not constitute protected conduct that is lewd, obscene, defamatory, unlawful, has the purpose of causing distress, or is based on the student's (or students') actual or perceived personal characteristics; and either (3a) objectively and subjectively creates a hostile or disruptive environment or substantially interferes with the student's educational work; or (3b) the conduct is so severe, pervasive, or objectively offensive that it is reasonably likely, based on specific and documented facts, to create a substantial disruption to the educational environment or to effectively deny a student equal access to educational opportunities or benefits provided by the institution;-**
- ii. (2) eConduct which violates North Dakota criminal laws prohibiting harassment, stalking, menacing, criminal coercion, or similar behavior;-**
or
- iii. (3) eConduct which would constitute a violation of Title VI or VII of the Civil Rights Act of 1964, as amended or Title IX of the Education Amendments of 1972 (or similar state and federal laws).**

This proposed language, which was drafted by NDUS's legal counsel in consultation with the attorneys for the campuses, meets all of the requirements set forth in caselaw for student harassment policies.

On the other hand, the proposed statutory definition in H.B. 1503 is taken from a case named *Davis v. Monroe County School Board*, and is the standard adopted by the Supreme Court for students who sue their school for failing to stop harassment, not the standard for preventing students from harassing each other. This proposed definition is identical to the standard for Title IX violations under federal regulation, but the federal regulators reassured campuses that they would be able to address conduct which does not meet this strict standard using a campus student code of conduct. This standard is also far more strict than the requirements of Title VI of the Civil Rights Act and other federal anti-discrimination legislation, which will be discussed in more detail by Donna Smith, the Director of Equal Opportunity & Title IX at the University of North Dakota.

The proposed definition in H.B. 1503 would also prevent NDUS institutions from taking action to stop criminal conduct under North Dakota Law, including menacing (N.D.C.C. 12.1-17-05), criminal coercion (N.D.C.C. 12.1-17.06), harassment (N.D.C.C. 12.1-17-07), or stalking (N.D.C.C. 12.1-17-07.1), unless based on a protected class and meeting this almost impossible definition.

Our general counsel is here and would be happy to answer questions on these and other legal points at the conclusion of our testimony.

Proposed Section 5(a) requires campuses to maintain the generally accessible, open, outdoor areas of campus as traditional public forums. Section 2(e)(i) of SBHE policy 503.1 already does just that:

- i. Institutions shall maintain the generally accessible, open, outdoor areas of its campus as traditional public fora for free speech by students, faculty, student organizations, and members of the public, subject to reasonable and constitutional time, place, and manner restrictions. Institutions may require

By generally opening such areas of campus to expressive activity, the NDUS also complies with Proposed Section 5(b), which prohibits the restriction of student free speech to “free speech zones.” As the NDUS made clear to the House and Senate Education Committees in 2019 (and in 2017), NDUS campuses do not, and have never, restricted student speech to free speech zones. NDUS’s objection to using that term has always been one of definition – different people define “free speech zones” in different ways. It became clear during the 2019 testimony that some of the proponents of the bill objected to constitutional time, place, and manner restrictions and called the same “free speech zones,” as opposed to the more normal definition: a broad restriction on controversial speech to a small, sometimes inconvenient area of campus. NDUS agrees that such restrictions are unconstitutional, and none of its campuses has ever imposed such a limitation.

Proposed Section 5(c) would prevent institutions from denying student activity fee funding to a student organization based on viewpoints the student organization advocates. To be clear, NDUS does not permit discriminating against student organizations based on their viewpoints, and enshrined this rule in Policy 503.3, Student Political Rights:

4. **Student Organizations.** Student organizations shall be free to engage in civic engagement and political activities and advocacy without interference or restraint by the SBHE, NDUS, or any NDUS Institution, subject to the requirements and limitations of this policy.
- a. Student organizations shall be permitted to use any funding or resources provided by the institution or student government to provide educational or service-based events or experiences for members of the organization or campus community, such as (but not limited to) inviting speakers to campus, hosting debates or forums, or attending local, state, or national conferences or conventions, even if such events or experiences may be interpreted as “political” or “partisan” by an outside observer.

As a result of this and other non-discrimination provisions in SBHE and institution policies, NDUS institutions have never denied student activity fee funding to a student organization based on their

viewpoint. The NDUS, however, has drafted additional language for the Board's consideration regarding Policy 503.1 that explicitly prohibits denying student activity fee funding to a student organization.

Proposed Section 5(d) of the policy is also addressed by Section 2(e) of Policy 503.1, which provides that NDUS institutions may require permits only for the exclusive use of outdoor spaces. There is no permit requirement for spontaneous gatherings or assembly, and outdoor distribution of literature is only subject to constitutional time, place, and manner restrictions in institutional policies (i.e. not within a certain distance of an entrance or exit to a building).

Proposed Section 5(e), which regards security fees, of H.B. 1503 is already largely included in SBHE Policy 503.1. The only place where the current policy diverges from the proposed legislation is that the Policy permits the assessment of security fees based on anticipated security fees. This element of the policy was put in place due to budgetary concerns – the media is full of examples of campuses having to spend tens or hundreds of thousands of dollars to provide security for controversial speakers. Most or all NDUS institutions simply do not have the budget to pay for such security. However, based on federal litigation outside of North Dakota and guidance received over the last two years, the NDUS has already begun the process to remove this allowance from the SBHE policy, and in fact campuses have long been instructed not to impose security fees based on expected protest activity without the approval of their campus attorney, so this provision has never been used. NDUS institutions have always done an excellent job facilitating the attendance of controversial speakers on campus, often without incurring additional expenses. However, should an NDUS institution incur security costs which exceed their budgetary means, it may well come to the legislature with a deficiency funding request during the next legislative session, and we hope the legislature will be amenable to reimbursing that expenditure. This is an example of a concern which could have been addressed by simple communication.

Similarly, Proposed Sections 5(f) and 5(g) are also covered by SBHE Policy 503.1:

f. Students, faculty, and student organizations shall be permitted to invite guest speakers or groups to campus, and institutions may not prohibit or disinvite such guest speakers based on the anticipated content or viewpoint of their speech or expression.

Proposed Section 5(h) would require that “an institution may not discriminate against a student organization with respect to a benefit available to any other student organization based on a requirement of the organization that leaders or voting members of the organization: (1) Adhere to

the organization's viewpoints or sincerely held beliefs; or (2) Be committed to furthering the organization's beliefs or religious missions”.

The NDUS does not take a position as to this particular provision, but notes that this is already required by federal regulation for religious student organizations. As a result, the following language has been proposed to be added to Policy 503.1:

g. Institutions may not treat a student organization differently (i.e. more favorably or more negatively) than other student organizations with respect to the provision of any right, benefit, or privilege based on a requirement in the organization's constitution or bylaws that leaders or voting members of the organization shall (1) adhere to the organization's viewpoints or sincerely held beliefs; or (2) be committed to furthering the organization's viewpoint or mission.

Please note that the NDUS has gone farther than is required by the regulation, which only protects religious student organizations. As we do not consider it appropriate to seek to define what makes a student organization “religious,” we have included language that protects all student groups.

I am not here today to say that SBHE Policy 503.1 is perfect – as I have noted, there are places where NDUS has already proposed edits to be more closely aligned with the intent of H.B. 1503. However, given that the existing policy was required to be put in place in only four months, during the summer (when most NDUS stakeholders are not on campus), some work on the policy was to be expected. The NDUS has always been open to feedback from legislators, constituents, and groups like FIRE on its existing policies, and welcomes continued and open dialogue with these same constituencies.

However, the issues that I have highlighted in my testimony today underscore why the NDUS must retain the flexibility to react to ever-changing federal law and court rulings. Courts are consistently reaching conflicting decisions regarding campus speech issues, and the current administration has already ordered reviews of the new Title IX regulations and the provisions which protect religious student organizations. More than ever, the NDUS and its institutions are perfect examples of how local control can result in a more nimble and effective response to changing conditions. H.B. 1503 is unnecessary and punitive at best, and would actively harm the ability of NDUS's campuses to adapt to changing laws and regulations.

The institutions of the NDUS are unreservedly supportive of free speech. Despite the fact that our campuses have not encountered any substantiated cases of restrictions being placed on free speech, have had no speakers shouted down, no visitors assaulted, no “disinvited” speakers, and no student

complaints for at least the last 12 years, which is remarkable in the current political environment, there are still external forces that continue to perpetuate the notion that North Dakota colleges and universities are actively working against free speech and freedom of expression. While that may be true of certain coastal institutions, this is simply not true of NDUS institutions.

I respectfully recommend a “do not pass” on H.B. 1503 and wish to iterate the willingness of the North Dakota University System to work with this Committee and others, including FIRE as we have in the past, to better understand and address any unresolved concerns. Additionally, if there is a concern that there are ongoing free speech issues on NDUS campuses, the NDUS wholeheartedly supports the amendment of H.B. 1503 into a study of free speech on NDUS campuses. I stand for questions from the Committee.

NORTH DAKOTA STATE BOARD OF HIGHER EDUCATION POLICY MANUAL

SUBJECT: STUDENT AFFAIRS

EFFECTIVE: June 26, 2019

Section: 503.1 Student Free Speech and Expression

PROPOSED DRAFT CATEGORY:	Amend
NDUS LIAISON:	Lisa Johnson
PRIMARY COUNCIL:	Student Affairs
SBHE COMMITTEE:	Academic and Student Affairs

1. Definitions for Terms Used in this Section

- a. **Constitutional time, place, and manner restrictions** – Restrictions on free speech which are content-neutral, narrowly tailored to serve a significant interest, and leave open alternative methods of communicating the message in question.
- b. **Faculty** – An individual, regardless of whether the individual is compensated by an institution, and regardless of political affiliation, who is tasked with providing scholarship, academic research, or teaching, including tenured and nontenured professors, adjunct professors, visiting professors, lecturers, graduate student instructors, and those in comparable positions. “Faculty” does not mean an individual whose primary responsibilities are administrative or managerial, unless the individual also teaches at least one credit-hour.
- c. **Free speech or Free Expression** – The rights to speech, expression, and assembly protected by the First Amendment to the United States Constitution or Article I, Section 4 of the Constitution of North Dakota. Such rights include, but are not limited to, all forms of peaceful assembly, protests, demonstrations, rallies, vigils, marches, public speaking, distribution of printed materials, the display of signs or banners, or the circulation of petitions. For the purposes of this policy, “free speech” or “free expression” is not intended to include commercial speech.
 - i. **Commercial Speech** – The promotion, sale, or distribution of a product or service. For the purposes of this section, commercial speech does not include the incidental promotion, sale, or distribution of a product as part of the exercise of non-commercial speech.
- d. **Materially and Substantially Disruptive Conduct** – Conduct by an individual or group which constitutes knowing or intentional affirmative steps to limit the free speech of an individual or a group, prevents the communication of a message, or disrupts a lawful meeting, gathering, or procession through violent or obstructive behavior. Protected conduct does not constitute a material and substantial disruption.
- e. **Protected Conduct** – Free Speech or Free Expression protected by the First

Amendment to the United States Constitution or Article I, Section 4 of the Constitution of North Dakota, subject to reasonable time, place, and manner restrictions, permitting requirements under institutional policies or procedures, and the reasonable safety and security needs of the institution.

f. **Student** – an individual enrolled in one or more courses at an institution.

g. **Student-on-Student Harassment** – An institution may only discipline students for student-on-student harassment which meets one or more of the following criteria:

i. (1) ~~(1)~~ Unwelcome verbal, written, or physical conduct directed to another student or a specified group of students; (2) ~~directed to an individual which a reasonable person would find offensive or defamatory and which does not constitute protected conduct~~ that is lewd, obscene, defamatory, unlawful, has the purpose of causing distress, or is based on the student's (or students') actual or perceived personal characteristics; and either (3a) objectively and subjectively creates a hostile or disruptive environment or substantially interferes with the student's educational work; or (3b) the conduct is so severe, pervasive, or objectively offensive that it is reasonably likely, based on specific and documented facts, to create a substantial disruption to the educational environment or to effectively deny a student equal access to educational opportunities or benefits provided by the institution;

ii. (2) ~~e~~ Conduct which violates North Dakota criminal laws prohibiting harassment, stalking, menacing, criminal coercion, or similar behavior;
or

iii. (3) ~~e~~ Conduct which would constitute a violation of Title VI or VII of the Civil Rights Act of 1964, as amended or Title IX of the Education Amendments of 1972 (or similar state and federal laws).

~~g.~~ Institutions shall ensure that their existing codes of conduct are not enforced beyond this definition and are not used to limit protected conduct.

h. **Student Organization** – An officially recognized organization, or an organization seeking recognition by an institution, comprised of students, whether or not that organization seeks or receives institutional funds.

2. **SBHE Policy on Student Free Speech and Expression**

a. The SBHE recognizes that students have a fundamental right to free speech and expression under the First Amendment to the United States Constitution and Article I, Section 4 of the North Dakota Constitution, and as a result the SBHE and institutions under its control shall ensure that students have the freedom to speak, write, listen, challenge, learn, and discuss any issue, subject to reasonable and constitutionally-recognized limitations.

b. Institutions under the control of the SBHE shall not engage in viewpoint- or

content-based discrimination or suppression of speech and shall to the greatest extent possible permit and facilitate the open discussion and debate of ideas and issues, regardless of the content of those issues.

- c. As a general rule, institutions under the control of the SBHE shall not use the concepts of civility or mutual respect as a basis to suppress or limit the discussion of ideas, regardless of content, except as reasonably necessary in the educational setting.
- d. Institutions under the control of the SBHE generally shall not seek to shield individuals from the free speech or expression of others.
- e. Institutions under the control of the SBHE shall control the availability of campus spaces for free speech and expressive activity as follows:
 - i. Institutions shall maintain the generally accessible, open, outdoor areas of its campus as traditional public fora for free speech by students, faculty, student organizations, and members of the public, subject to reasonable and constitutional time, place, and manner restrictions. Institutions may require students, faculty, student organizations, and members of the public to obtain a permit to reserve the exclusive use of an outdoor space constituting a traditional public forum. Such permits may not be issued or denied based on the content of the message or viewpoint the permit requestor seeks to convey.
 - ii. Institutions may only designate as restricted or designated forums: (1) those areas inside buildings which have not otherwise been treated as traditional public fora; (2) areas in residential areas of campus during evening and overnight hours; (3) areas immediately surrounding academic buildings during times when classes are held in that building; (4) areas which must be restricted due to reasonable safety and security concerns; (5) areas which must be restricted to enable the flow of pedestrian or vehicle traffic; and (6) areas surrounding building entrances and exits to provide for safe and convenient ingress and egress from those buildings. Institutions may only designate an area of campus as a restricted or designated forum on the grounds of an educational, safety or security, or health-related reason (e.g. ensuring a quiet residential environment for students in residence halls). Institutions may grant permits to students, faculty, student organizations, or others to exercise free speech or expression in such restricted or designated fora based on content-neutral criteria.
 - iii. Institutions may close to free speech or expressive activity those areas which are not designed for the exercise of free speech or expression or which have traditionally not been open to the exercise of free speech or expressive activity.

f. Institutions may not deny student organizations funding from the student activity fee based on the viewpoints of the student organization; however, institutions may create content-neutral criteria which permit the distribution of limited funds to student organizations. Student activity fee funding may not be reduced based on

outside funding received by a student organization.

g. Institutions may not treat a student organization differently (i.e. more favorably or more negatively) than other student organizations with respect to the provision of any right, benefit, or privilege based on a requirement in the organization's constitution or bylaws that leaders or voting members of the organization shall (1) adhere to the organization's viewpoints or sincerely held beliefs; or (2) be committed to furthering the organization's viewpoint or mission.

f.h. Students, faculty, and student organizations shall be permitted to invite guest speakers or groups to campus, and institutions may not prohibit or disinvite such guest speakers based on the anticipated content or viewpoint of their speech or expression.

g.i. Institutions may not impose ~~security~~ fees on students, faculty, or student organizations who invite guest speakers or groups to campus based on the anticipated content or viewpoint of the guest speaker or group's speech or expression or the anticipated reaction thereto, ~~and but~~ institutions are not required to subsidize the free speech and expression of students, faculty, or student organizations. As a result, institutions may, in their discretion, impose ~~security and logistic facility use~~ fees based on venue, anticipated attendance, ~~anticipated protest activity~~, and other non-content-based factors. Such fees may not exceed the actual costs incurred by the institution, and the institution must refund any overpayment. Institutions shall set forth empirical and objective criteria for calculating such fees, and such criteria shall be made publicly available. Institutions may not consider the potential reaction to speech when calculating facility use fees.

h.j. Institutions may make their facilities available to guest speakers or groups invited by students, faculty, or student organizations, and may subject such guest speakers or groups to the same terms and conditions governing use of the facilities for other outside groups. If institutions choose to make facilities available to guest speakers or groups invited by students, faculty, or student groups, those facilities must be made equally available to all such speakers or groups.

i.k. Institutions may prohibit materially and substantially disruptive conduct.

j.l. Institutions may impose measures regarding student free speech and expression which comport with the First Amendment of the United States Constitution and Article I, Section 4 of the Constitution of North Dakota, including, but not limited to:

- i. Constitutional time, place, and manner restrictions on the use of traditional public fora;
- ii. Reasonable and viewpoint-neutral restrictions on the use of restricted or designated fora;
- iii. Prioritizing the use of institution resources and property for students, faculty, and student organizations over individuals and groups not affiliated with the

institution;

- iv. Prohibiting or limiting speech, expression, or assemblies not protected by the First Amendment to the United States Constitution and Article I, Section 4 of the Constitution of North Dakota, such as defamatory speech, true threats, and other recognized exceptions; and
- v. Content-based restrictions reasonably related to a legitimate educational or pedagogical purpose, such as rules for behavior in the classroom.

3. Institutional Policies on Student Free Speech and Expression

- a. Institutions shall adopt policies and procedures which shall be no more restrictive of student free expression than this SBHE Policy on Student Free Speech and Expression.

4. Institutional Policies on the Distribution of Publications, Hanging of Banners or Posters, and Chalking.

- a. Institutions shall adopt policies or procedures governing the distribution of information through publications, banners and posters, or chalking. Such policies or procedures must allow students, faculty, or other individuals and groups to access meaningful opportunities to distribute information, while ensuring safety and access to facilities, maintaining clear directional signage, minimizing disruption to the educational mission of the institution, and limiting litter and clutter on institution properties and campuses. The opportunity to distribute information through publications, banners or posters, or chalking may not be limited based on the content of the information to be distributed, but the institution may impose reasonable time, place, and manner restrictions on such distribution, provided that such restrictions ensure the existence of meaningful alternative means of distribution.

5. Reports of Violations of this Policy – Individuals who believe this policy (or an institutional policy covering the same or similar subject matter) has been violated may report any violation through an existing reporting process at an institution. Alternatively, individuals may report violations to the NDUS Office’s Director of Student Affairs (the “Director”). In the event that a report is made to the Director, he or she shall determine the appropriate institution official to address the report in consultation with the Vice Chancellor of Academic and Student Affairs. Pursuant to SBHE Policy 308.2, no NDUS employee, officer or member of the SBHE shall retaliate against an individual for making a report under this paragraph.

6. Institutional Reporting – Institutions shall annually, or at the request of the Vice Chancellor of Academic and Student Affairs, report the total number of reports made under this policy (or an institutional policy covering the same or similar subject matter), the time to resolve such reports, and the number and type of corrective actions taken to the Vice Chancellor of Academic and Student Affairs.

HISTORY: New policy, SBHE minutes, June 27, 2019.



March 22nd, 2021

#10251

Chair Schaible and Members of the Committee,

My name is Gracie Lian, and I am the current President of the North Dakota Student Association (NDSA). The NDSA is an organization that is directly funded through a small student fee paid by all students attending North Dakota University System (NDUS) institutions, and our organization is tasked with representing and advocating for students across all eleven of North Dakota's public institutions.

This testimony is **submitted in opposition of HB 1503 as written** on the behalf of the NDSA. At our most recent General Assembly meeting, on February 20th, the NDSA delegation voted overwhelmingly to oppose the current wording of the bill with "NDSA-20-2021: A Resolution in Opposition to HB 1503 as Written."

Our organization and our power to advocate on the behalf of our peers depends entirely on the ability of students to speak freely. Therefore, the free speech of students is one of our top priorities and our decision to oppose this bill was not made without heavy consideration. We voted to oppose HB 1503 as it currently stands because if implemented, it would be more likely to harm students than it would be to protect their free speech. The specific sections we have identified are 4(a-c), 5(e), and 5(h).

First, Section 4 would dangerously limit the definition of student-on-student harassment and limit a university's ability to take any preventative action in harassment cases. Section 4(a) states that a university may not discipline or sanction a student for harassment activity unless "(1) The speech or expression is unwelcome, targets the victim on a basis protected under federal, state, or local law, and is so severe, pervasive, and objectively offensive that a student effectively is denied equal access to educational opportunities or benefits provided by the institution; or (2) The speech or expression explicitly or implicitly conditions a student's participation in an education program or activity or bases an educational decision on the student's submission to unwelcome sexual advances or requests for sexual favors." If left as written, students would not be able to find recourse through their institution of higher education for harassment until that harassment had already limited their access to education. The job of our universities should be to prevent such barriers to education before they happen. This bill would make that mitigation of debilitating harassment impossible until after the harassment has already occurred.

Second, Section 5(e) would allow a university to charge student organizations a security fee based on empirical and objective criteria for an event or speaker they have brought to campus in preparation of protests or confrontations. This is an allowance already exists in State Board of Higher Education (SBHE) policy. However, the NDUS has proposed removing this section to forbid universities from charging such a fee as it could limit opportunities for students to bring events or speakers to a campus at no fault of the organization's own. The NDSA supports this change. If section 5(e) were to be implemented, it would be detrimental to students and the financial stability of their organizations on campus.

Finally, Section 5(h) adheres to a federal ruling implemented by a President Trump's administration. This section stipulates that an institution may not discriminate against a student organization with respect to a benefit available to any other student organization, such as the allocation of student fees or university funding, based on any discriminatory membership requirements of that organization such as requiring that members adhere to the organization's religious beliefs. While the NDSA supports complying with federal rulings, it does not support such federal rulings related to higher education being cemented into state law. A future presidential administration could reverse such a ruling during a time when the North Dakota legislature is not in session, and thus the NDUS would be unable to comply with federal guidelines until the next biennial session. The NDUS and



SBHE are currently updating their policies to reflect this ruling and the NDSA believes these bodies should be the ones to do so as they can quickly react to any changes in federal rulings.

Beyond the formerly listed sections, the NDSA does not have any further concerns with the content of HB 1503 as it is currently written. While the NDSA is thankful to the legislature and its intent to protect student free speech, we would like to urge the legislature to consider supporting an alternative option to HB 1503 that would still protect student free speech. The NDUS has proposed amendments to SBHE Policy 503.1: Student Free Speech and Expression in lieu of passing this bill that would respect the original intent of HB 1503 while removing and changing the sections over which students have voiced concern.

The NDSA has a history of working well with the NDUS and SBHE on student free speech policies. Our organization was thoroughly consulted throughout the process of implementing the legislature's required changes to SBHE Policy 503.1 after the 2019-2021 legislative session. Throughout that process the student voice was respected and taken into consideration. The NDSA would like the opportunity to continue serving as such an important voice at the table during discussions about our free speech on campuses. Working with the NDUS and SBHE, where we have voting student representatives on councils and in governing bodies, provides us with the ability to contribute immediate feedback and input.

On the behalf of the 40,000+ students of higher education in North Dakota, **we respectfully urge a do not pass vote on HB 1503 while it contains the aforementioned sections of concern.** Furthermore, **we respectfully ask the committee to consider the SBHE Policy amendments as an alternative to HB 1503** as we all work to protect the free speech of our higher education students. I am available to answer any questions that you may have. Thank you.

Sincerely,

Gracie Lian

President

North Dakota Student Association

gracie.lian@und.edu | 701.213.7097





NDSA-20-2021

#10250

A Resolution in Opposition to HB 1503 as Written

WHEREAS, the North Dakota Student Association (NDSA) represents the voice of North Dakota's 45,000 public college and university students; and,

WHEREAS, the purpose of NDSA is to represent all students enrolled in the North Dakota University System (NDUS) and advocate on issues of higher education in support of access, affordability, quality, and the student experience; and,

WHEREAS, the NDSA has a strong history of advocating for students of higher education in North Dakota and their right to free speech on campus and in academic settings; and,

WHEREAS, this historical support has been most recently embodied by NDSA work done in conjunction with the State Board of Higher Education (SBHE) and North Dakota University System (NDUS) over the 2018–2019 and 2019–2020 academic years; and,

WHEREAS, this recent support of free speech can be embodied by the work the NDSA did with the NDUS and SBHE to create SBHE policy 503.3: Student Political Rights¹, a policy that separates student political rights from those of state employees and that ensures specific rights related to student political activities and electioneering would be preserved; and,

WHEREAS, the NDSA also worked closely with the NDUS and SBHE after North Dakota's 19-21 legislative session to develop and implement systemwide and campus-specific free speech policies as directed by that biennium's legislation SB 2320², resulting in SBHE Policy 503.1: Student Free Speech and Expression³; and,

WHEREAS, HB 1503⁴, a bill in relation to the free speech policies of institutions under the control of the State Board of Higher Education, has been introduced to the North Dakota legislature; and,

WHEREAS, this bill amends and reenacts section 15-10.4-02 of North Dakota Century Code; and,

WHEREAS, the NDSA has specific concerns about sections 4(a-c), 5(e), and 5(h), and feels that these sections could be harmful rather than helpful to NDUS students; and,

WHEREAS, section 4(a-c) dangerously narrows the definition of student-on-student harassment, restricting the right of an institution to discipline or sanction a student for harassment activity unless "(1) The speech or expression is unwelcome, targets the victim on a basis protected under federal, state, or local law, and is so severe, pervasive, and

¹https://ndusbpos.sharepoint.com/:w:/s/NDUSPoliciesandProcedures/EexdrZtJDtNFrSpeSdjJKoBiBOW_PodGbnfZdtqUVTbxQ

² <https://www.legis.nd.gov/files/resource/66-2019/library/sb2320.pdf>

³<https://ndusbpos.sharepoint.com/:w:/r/sites/NDUSPoliciesandProcedures/Policies/Student%20Free%20Speech%20and%20Expression.docx?d=w8952007f241b46d2a63a362e9c07ca04&csf=1&web=1&e=6Tgx82>

⁴ <https://www.legis.nd.gov/assembly/67-2021/documents/21-0929-03000.pdf>



objectively offensive that a student effectively is denied equal access to educational opportunities or benefits provided by the institution; or (2) The speech or expression explicitly or implicitly conditions a student's participation in an education program or activity or bases an educational decision on the student's submission to unwelcome sexual advances or requests for sexual favors;" and,

WHEREAS, this amendment would prevent universities from taking protective and preventative action in the case of student on student harassment; therefore, a student who is a victim of harassment could not take action until after the harassment has become so severe that their education has been irrevocably impacted, in addition to requiring the victim be considered part of a protective class and thus not protecting all students from harassment; and,

WHEREAS, section 5(e) allows a university to charge student organizations a security fee based on empirical and objective criteria for an event or speaker they have brought to campus in preparation of protests or confrontations; and,

WHEREAS, the NDUS is currently revising its own policies to remove this allowance, prohibiting universities from charging their students and student organizations a security fee for any event or speaker they have brought to campus; and,

WHEREAS, section 5(h) stipulates that an institution may not discriminate against a student organization with respect to a benefit available to any other student organization, such as the allocation of student fees or university funding, based on any discriminatory membership requirements of that organization such as requiring that members adhere to the organization's religious beliefs; and,

WHEREAS, this section comes from a federal ruling⁵ implemented by the Trump Administration; and,

WHEREAS, the NDUS is currently revising its own policies in order to ensure that NDUS institutions are in compliance with this ruling; and,

WHEREAS, cementing this federal ruling into state law would inhibit the ability of the NDUS to efficiently update this policy if a future presidential administration reversed the current ruling unless the ND legislature happened to be in session, which could result in the forfeiture of federal grant money for higher education; and,

WHEREAS, while the NDSA does not have any additional concerns about specific sections of HB 1503, the organization is concerned that this bill relating to the student free speech policies of NDUS institutions was brought to the state legislature without the consultation, knowledge, or input of any students – the main stakeholders of this bill; and,

WHEREAS, the NDSA has been consistently involved in the monitoring and revising of NDUS and SBHE free speech policies through student positions on NDUS councils, the position of the student member of the state board of higher education, and continuous conversations between these governing bodies and our student leaders; so,

⁵ [regulations.gov/document/ED-2019-OPE-0080-0001](https://www.regulations.gov/document/ED-2019-OPE-0080-0001)



THEREFORE, BE IT RESOLVED, barring the specific sections of HB 1503 that were mentioned above, the North Dakota Student Association does not oppose any section of HB 1503 that is already addressed by SBHE and NDUS policies or that is already embedded in state law; and,

BE IT FURTHER RESOLVED, NDSA opposes the version of HB 1503 that includes the policies specified above and urges the state legislature to remove them from HB 1503 while cautioning that the removal of these specific parts of the bill will not signal tacit support by NDSA of HB 1503; and,

BE IT FURTHER RESOLVED, NDSA fully supports and advocates for the right of students and faculty to practice free speech and freedom of expression; and,

BE IT FURTHER RESOLVED, that NDSA thanks the NDUS and SBHE for their continuous support and work to protect and encourage student and faculty free speech while ensuring that students are part of the conversation; and,

BE IT FURTHER RESOLVED, that the NDSA urges caution when implementing highly specific student free speech laws into state statute as it reduces the ability of the NDUS and SBHE to respond to emerging changes in federal rulings related to higher education and free speech in addition to reducing the ability of students to advocate for or against and change the free speech policies that directly affect them.

Approved by the NDSA General Assembly on Saturday, February 20th, 2021.

March 22, 2021

#10341

Dear Chairman Schaible and members of the Committee:

Thank you for allowing me to submit testimony regarding House Bill 1503, regarding the adoption of campus free speech policies (15-10.4-02 ND Century Code).

My name is Liz Legerski and I am an Associate Professor of Sociology at the University of North Dakota (UND). This year I am also acting as the Chair of the UND Senate and serving on the Council of College Faculties as the Faculty Advisor to the State Board of Higher Education.


As you know, during the last legislative session this same policy came before the Legislative Assembly and the North Dakota University System (NDUS) responded by developing overarching guidelines for campus free speech policies. As a result, each of the 11 NDUS institutions responded by developing and implementing their own Free Speech policies that both protect student and faculty rights to free speech while also establishing reasonable and constitutional institutional restrictions. This process remains an excellent example of the “unity, but not uniformity” approach to the NDUS.

The faculty of the NDUS, who I represent, value and respect free speech protections, not only for themselves, but also for their students. Principles of free speech are central to notions of academic freedom and inquiry, which form the bedrock of university teaching and research endeavors.

Given the NDUS’s quick response to, and compliance with, ND Century Code 15-10.4-02 adopted during the 66th Legislative Assembly, it was surprising to see this bill come up again during this 67th Legislative Assembly. And it begs the question, why? Why is this change to Century Code necessary? The NDUS response last time was quick and sufficient. To my knowledge, there have not been any problems with or challenges to the NDUS policies which were developed. Thus, rather than addressing a problem, this legislation appears to simply be the result of external lobbying organizations, who seek to set up policies that advance their own economic interests.

The authors of this legislation have taken a simple, yet effective, section of Century Code and amended it in a number of ways that are unnecessary and may also be problematic. SBHE Policy 401.1 already addresses academic freedom, academic responsibilities, and guidelines around classroom speech and expression. In fact, SBHE policy explicitly states, “essential to this principle [of academic freedom] is the toleration of the conflict of ideas and the opportunity for the expression of diverse points of view.” SBHE policy also includes the admonition of the American Association of University Professors (AAUP) that, “teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.” These sentiments are already included in existing policy.

Unfortunately, HB 1503 introduces conditions that are not well defined and likely would be difficult to enforce. For example, how do we define what is “reasonably germane” to the subject matter of a discipline and whether content “comprises a substantial portion of classroom instruction”? Faculty members are experts in their respective fields, which are constantly evolving as technology and



society change. The most engaging kind of teaching involves taking abstract concepts and connecting them to real-world events. Thus, faculty and their peers serve as the best judge of the relevance of course materials, and pedagogical best practices support applying those materials to current events as they unfold in real-time.

In short, you have the choice between existing Century Code, which is parsimonious and effective, or the convoluted and prescriptive policy recommendations of an outside lobbying group with financial interests in litigation. By voting against these suggested amendments to existing Century Code 15-10.4-02 you show you trust our institutions of higher education, the responsiveness and nimbleness of the State Board of Higher Education, and the “unity, not uniformity” motto which guides the NDUS.

As a result, I ask that you please do not recommend the passage of HB 1503.

Thank you for your time.

Respectfully,



Liz Legerski, PhD





H.B. 1503 Hearing

March 22, 2021 – 2:30 p.m. – Senate Education Committee

Jane Vangsness Frisch, Ph.D.

Vice President for Student Affairs

Chair Schaible and Committee Members: my name is Dr. Jane Vangsness Frisch, and I serve as the Vice President for Student Affairs at the ND State College of Science.

Serving in my role at a relatively small two-year college allows me to ‘wear various hats’ – including serving as the Title IX Coordinator, Student Senate co-advisor, Science of Leadership Mentor – just to name a few. Based on this varied perspective I am here in opposition of H.B. 1503.

It is through these roles that I am, along with my colleagues, able to encourage, educate, and foster freedom of speech and the freedom of expression among our students and on our campus. We do this through having effective policies that ensure free speech and expression is protected, provide avenues to voice concerns if they feel their freedoms have been impacted, and by offering educational resources on their rights through co-curricular programming and traditional classroom instruction.

I am proud that following the last legislative session, we were able to enhance our Free Speech policy – making it more clear and aligned with the enhanced ND University System (NDUS) policy. Most of what is encompassed in H.B. 1503 is already covered in those recently updated NDUS and NDSCS policies.

What is most concerning about H.B. 1503, as presented, is that it could have an unintended harmful impact on our students. As the Title IX Coordinator I recognize both our federal and ethical requirement to respond to students that are unable to access or continue their education because they are being harassed and/or stalked. It is my interpretation that H.B. 1503 would require our campuses to adopt a new, narrow definition of harassment which could prevent us from assisting or intervening if we are made aware of harassment and/or stalking as they are currently defined in North Dakota Century Code. It could also put us in conflict with federal definitions and requirements.

Our students at NDSCS have various resources that help them overcome non-academic barriers so they can access their education and ultimately be successful. One of these resources is a well-publicized and utilized “concern page” that allows students to voice concerns both named and anonymously (in addition to other avenues). As you can imagine, we get numerous concerns – from the brand of ranch dressing in the dining center, to roommate concerns, to much more serious concerns such as harassment. H.B. 1503, will impact our ability to respond to these serious concerns, and perhaps even impact our ability to operate the concern page – both of these results will negatively impact the students we serve in the name of free speech. However, during my tenure at NDSCS, and to the knowledge of my longer-serving colleagues, NDSCS has not experienced any free speech issues on campus – we have not had a substantiated violation of free speech, we have not ‘disinvited’ any speakers, we have not had

speakers 'shouted down', etc. In fact, NDSCS has a robust student life and leadership program, and our NDSCS Student Senate equitably funds and recognizes more than 30 clubs and organizations – regardless of their viewpoint or membership criteria.

We encourage, educate, and invite students to practice free speech and expression. Myself and my colleagues work hard to educate students on these rights and encourage them. It is my perspective that H.B. 1503 is redundant and unnecessary. More important, however, as presented, this bill will negatively impact our students by compromising our ability to address safety concerns brought forward by students.

I respectfully recommend a “do not pass” on H.B. 1503; I stand for questions from the Committee.

Thank you.

SB 1503

Senate Education Committee

March 22, 2021

Donna Smith, Director, Equal Opportunity & Title IX, UND

701.777.4172, donna.smith@UND.edu

Chair Schaible and members of the Senate Education Committee: My name is Donna Smith and I serve as the Director of Equal Opportunity & Title IX and Title IX Coordinator at the University of North Dakota. I am here on behalf of the North Dakota University System to provide testimony in opposition to SB 1503.

My department is charged with overseeing UND's compliance with state and federal laws related to discrimination and harassment based upon protected characteristics such as race, sex, national origin, color, disability, and others. Our department takes the lead in drafting UND's policies prohibiting discrimination and harassment. We receive and resolve reports of employee-on-employee and employee-on-student harassment and collaborate with UND's Office of Student Rights & Responsibilities to receive and resolve reports of student-on-student harassment. I was asked to provide testimony from the perspective of a university practitioner whose work is directly related to free speech on our campus.

My concerns regarding SB 1503 fall into two categories. First, the bill is not necessary because most of the bill's provisions are already addressed by SBHE and institutional policies. Second, the narrower definitions contained in the bill conflict with other federal regulations, would impair institutions' ability to react swiftly to any changes in federal law, and would prevent institutions from taking action to address some criminal activity.

Many of the amendments contained in SB 1503 are already addressed by SBHE 503.1 and recent proposed changes to that policy. I will not discuss those specifically here, as other representatives of the NDUS will address the specifics of SBHE 503.1. However, because the concerns sought to be addressed by SB 1503 are already addressed by SBHE 503.1, the proposed legislation is redundant and not necessary.

In addition, NDUS and its institutions do not have a history of violating or infringing upon student or employee free expression rights. NDUS found no formal complaints of free speech violations at NDUS institutions in at least 12 years. NDUS and its institutions have demonstrated that we take these issues seriously and manage them appropriately and lawfully. We can be trusted to continue doing that in the future.

If there are particular concerns to be addressed, NDUS and its campuses are capable of responding to those concerns through the structure of our already existing policies. No additional legislation is required.

UND has worked with the Foundation for Individual Rights in Education (FIRE) to review its policies and has held a "green light" rating for several years. See <https://www.thefire.org/>. FIRE initially reviewed our Code of Student Life, discrimination and harassment policy, and websites

before giving the green light rating. Following the 2020 changes to Title IX regulations, we worked with FIRE again as we amended our harassment and Title IX-related policies. We have found FIRE easy to work with and responsive to any questions. FIRE's Azhar Majeed recently wrote in an email to me:

Also, you may be aware that there are legislative discussions taking place in ND regarding campus free speech, and my colleagues in FIRE's legislative department, to the extent they are involved, have been extolling the virtues of UND's green light rating (which is a good model for other schools in the state to follow).

NDUS has also worked with FIRE recently and passed FIRE's resources along to other campuses. These efforts should demonstrate the commitment of NDUS and its campuses to protect free speech. While not all schools have a green light rating, the framework and partnerships are present to build upon the work that has already begun. The policies are in place. SB 1503 is unnecessary.

Second, the definition of harassment contained in proposed section 4(a) of SB1503 is quite narrow and could actually prevent our universities from responding to some criminal activity or place us in conflict with federal law.

Limiting actionable conduct to that which is severe and pervasive conflicts with a school's obligations under Title VI of the Civil Rights Act of 1964. The Department of Education Office for Civil Rights (OCR), which enforces civil rights in educational institutions, requires institutions receiving federal funding to respond to racial and national origin harassment that is "sufficiently serious to deny or limit a student's ability to participate in or benefit from the [school's] education programs and activities (i.e., creates a hostile environment)." [OCR Race and National Origin Discrimination](#)). Complying with SB 1503 and its narrow definition of harassment would mean an institution would not be able to respond to behavior as required by OCR under its broader definition. The university would then have to choose between complying with state law or federal law.

The proposed definition is identical to the definition of sexual harassment found in the recently revised Title IX regulations. However, the Title IX definition is not required to be applied to other forms of harassment. The Title IX regulations make it clear that schools are permitted to enact other policies to respond to conduct that does not meet the narrower Title IX definition. There is no prohibition against utilizing a broader definition outside the scope of Title IX.

In addition, SB 1503's proposed definition of actionable speech does not allow for a campus to respond to incidents of criminal harassment, criminal menacing, or stalking, which have different definitions under North Dakota law. This would leave universities unable to sanction a student for such dangerous conduct.

Finally, SB 1503 may negatively impact NDUS' and campuses' ability to respond to changes in federal law in the next two years. It is likely that federal harassment laws may change before the next legislative session, leaving universities with a choice between violating federal law and state law. On March 8, 2021, President Biden issued an Executive Order directing the Secretary

of Education to review Title IX regulations, issue new guidance, and consider changes to the regulations. The Biden administration is also expected to make changes to religious and other civil rights protections. NDUS and its institutions need to have the flexibility to adjust and amend our policies in response to federal statutory or case law changes between legislative sessions. The proposed legislation would make that difficult or impossible and could result in a conflict between state and federal law.

I am fortunate to work with colleagues who are passionate about students and our universities. We support freedom of speech and expression for everyone on our campuses. We work hard every day not only to protect the rights of our students and employees but also to ensure that our universities remain in compliance with the myriad state and federal laws that govern us. This bill is not necessary and would make our work much more difficult. If there are concerns to be addressed, I am confident that NDUS and its institutions can partner with this Committee, and others, to find a resolution.

I respectfully encourage a “do not pass” on SB 1503.



Testimony on HB 1503
Senate Education Committee
March 22, 2021

Chairman Schaible and members of the Committee, I am Nick Archuleta, president of North Dakota United. ND United is a union of professionals including higher ed faculty and education support staff. I am appearing before you today to urge a Do Not Pass recommendation for HB 1503. Mr. Chairman, ND United opposes HB 1503 for a variety of reasons including:

- There have been no verified violations of free speech at any of the campuses governed by the North Dakota University System for the last dozen years. No complaints. No lawsuits. None.
- HB 1503 prohibits institutions from restricting students' free speech to "free speech zones," even though there is not a single campus in the NDUS that has a "free speech zone."
- The North Dakota Student Association is four-square against the passage HB 1503. The NDSA has identified specific sections of HB 1503 that "could be more harmful than helpful to NDUS students." That is ironic considering that this bill was drafted purportedly to help students.
- HB 1503 will have a chilling effect on academic freedom. Whereas this section of law once called on the SBHE and each institution to adopt a policy that "Protects the academic freedom and free speech rights of faculty *while adhering to guidelines established by the American Association of University Professors*," if passed, the new language will have those same institutions adopt a policy that, "Protects the academic freedom and free speech rights of faculty *by guaranteeing, at minimum, no faculty member will face adverse employment action for classroom speech, unless the speech is not **reasonably germane** to the subject matter of the class as **broadly construed** and comprises a substantial portion of classroom instruction.*" Mr. Chairman and members of the Committee, who is to decide what is *reasonably germane* and how broad is *broadly construed*?
- After the adoption of a policy that addressed concerns raised by the Foundation for Individual Rights in Education (FIRE), FIRE gave the policy its coveted "green" rating on March 10, 2020. So why is that not good enough now?

Chairman Schaible and members of the Committee, the SBHE and the NDUS have written and implemented policies that protect free speech on its university campuses. Who says so? Well, students say so. FIRE said so. And higher education faculty say so. HB 1503 is unnecessary, and unwelcome. On behalf of the members of North Dakota United, I urge a DO NOT PASS recommendation for HB 1503.

Dear Committee Members,

Universities across the country are enforcing leftist worldviews and philosophies by censoring freedom of thought and speech of students and faculty. A 2019 report by Foundation for Individual Rights in Education analyzed the written policies at 466 of America's top colleges and universities for their protection of free speech. The report found that 89.7 percent of American colleges maintain policies that restrict student and faculty expression. These restrictions not only violate the 1st Amendment, they threaten a free society by giving our youth the false impression that freedom of speech is a privilege and not a right. This will lead to more and more authoritarian government overreach. Approximately 800,000 students at top US colleges must find a "free speech zone" to exercise their right to speak freely. This teaches students to avoid critical thinking so as not to come to a conclusion that may result in disciplinary action. The manipulation of free speech policies on college campuses is happening in the wider context of the current and widespread censorship of conservative voices. We must make our voices loud and clear: Freedom of speech is essential to a free and intellectual society. We must encourage, not limit, the free exchange of ideas in any sector of society, but especially in our institutions of higher learning. Please render a DO PASS on HB 1503.

Thank you for your leadership and service to the state of North Dakota.

Spotlight on Speech Codes 2019: The State of Free Speech on Our Nation's Campuses

<https://www.thefire.org/resources/spotlight/reports/spotlight-on-speech-codes-2019/>

Free Speech Zones

<https://www.thefire.org/issues/free-speech-zones/>

9 in 10 American Colleges Restrict Free Speech

<https://www.thefire.org/report-9-in-10-american-colleges-restrict-free-speech/>

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1503

Introduced by

Representatives K. Koppelman, Becker, M. Johnson, Satrom

Senators Dever, Dwyer, Holmberg

(Approved by the Delayed Bills Committee)

1 A BILL for an Act to amend and reenact section 15-10.4-02 of the North Dakota Century Code,
2 relating to free speech policies of institutions under the control of the state board of higher
3 education.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 15-10.4-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **15-10.4-02. Adoption of campus free speech policy.**

8 ~~By August 27, 2019, the~~

9 The state board of higher education and each institution shall adopt a policy that:

- 10 1. Protects students' rights to free speech, assembly, and expression;
11 2. Permits institutions to establish and enforce reasonable and constitutional time, place,
12 and manner restrictions on free speech, assembly, and expression;
13 3. ~~Permits students, faculty, or student organizations to invite guest speakers or groups~~
14 ~~to present regardless of the viewpoint or content of the anticipated speech of the guest~~
15 ~~speaker or group; and~~
16 4. ~~Protects the academic freedom and free speech rights of faculty while adhering to~~
17 ~~guidelines established by the American association of university professors.~~

18 ~~Upon adoption of the policies under this section, the state board of higher education shall~~
19 ~~provide a copy of the policies to the legislative management by guaranteeing, at a minimum, no~~
20 ~~faculty member will face adverse employment action for classroom speech, unless the speech~~
21 ~~is not reasonably germane to the subject matter of the class as broadly construed and~~
22 ~~comprises a substantial portion of classroom instruction;~~

23 4. Prohibits student-on-student discriminatory harassment consistent with the following
24 requirements:

- 1 a. An institution may not enforce the student-on-student discriminatory harassment
2 policy by disciplining or otherwise imposing any sanction on a student for a
3 violation of the policy stemming from expression unless:
 - 4 (1) The speech or expression is unwelcome, targets the victim on a basis
5 protected under federal, state, or local law, and is so severe, pervasive, and
6 objectively offensive that a student effectively is denied equal access to
7 educational opportunities or benefits provided by the institution; or
 - 8 (2) The speech or expression explicitly or implicitly conditions a student's
9 participation in an education program or activity or bases an educational
10 decision on the student's submission to unwelcome sexual advances or
11 requests for sexual favors;
- 12 b. An institution may sanction or discipline student-on-student speech or expression
13 that does not meet the definition of student-on-student harassment only when the
14 speech or expression is not protected under the First Amendment to the United
15 States Constitution or section 4 of article I of the Constitution of North Dakota;
16 and
- 17 c. An institution may respond to student-on-student speech that is not
18 discriminatory harassment by taking nonpunitive actions designed to promote a
19 welcoming, inclusive environment; and
- 20 5. Complies with the following principles of free speech:
 - 21 a. An institution shall maintain the generally accessible, open, outdoor areas of the
22 institution's campus as traditional public forums for free speech by students,
23 faculty, and invited guests, subject to reasonable time, place, and manner
24 restrictions on free speech, assembly, and expression which are applicable to the
25 publicly accessible outdoor areas of campus, do not violate the First Amendment
26 to the United States Constitution or section 4 of article I of the Constitution of
27 North Dakota, and are clear, published, reasonable, content-neutral,
28 viewpoint-neutral, and narrowly tailored to satisfy a significant institutional
29 interest, and leave open alternative channels for the communication of
30 information or a message;

- 1 b. An institution may not restrict students' free speech to particular areas of campus,
2 sometimes known as "free speech zones";
- 3 c. An institution may not deny student activity fee funding to a student organization
4 based on the viewpoints the student organization advocates;
- 5 d. An institution may not establish permitting requirements prohibiting spontaneous
6 outdoor assemblies or outdoor distribution of literature, except an institution may
7 maintain a policy granting an individual or organization the right to reserve the
8 exclusive use of certain outdoor spaces, and may prohibit spontaneous
9 assemblies or distribution of literature inside reserved outdoor spaces;
- 10 e. An institution may not charge students or student organizations security fees
11 based on the content of the student's or student organization's speech, the
12 content of the speech of guest speakers invited by students, or the anticipated
13 reaction or opposition of listeners to the speech. Any security fees charged to a
14 student or student organization may not exceed the actual costs incurred by the
15 institution, and the institution shall refund any overpayment. Institutions shall set
16 forth empirical and objective criteria for calculating security fees and shall make
17 the criteria available to the public;
- 18 f. An institution shall allow students, student organizations, and faculty to invite
19 guest speakers to campus to engage in free speech regardless of the views of
20 the guest speakers or viewpoint or content of the anticipated speech;
- 21 g. An institution may not retract or compel a student, student organization, or faculty
22 member to retract a guest speaker's invitation to speak at the institution based on
23 the guest speaker's viewpoints or the content of the anticipated speech; and
- 24 h. An institution may not discriminate against a student organization with respect to
25 a benefit available to any other student organization based on a requirement of
26 the organization that leaders or voting members of the organization:
27 (1) Adhere to the organization's viewpoints or sincerely held beliefs; or
28 (2) Be committed to furthering the organization's beliefs or religious missions.

Chairman Donald Schaible
Vice Chairman Jay Elkin
Members of the Committee
Senate Education Committee
North Dakota State Capitol
600 E. Boulevard Avenue
Bismarck, North Dakota 58505

Re: Christian Legal Society Supports HB 1503

Dear Chairman Schaible, Vice Chairman Elkin, and Members of the Committee:

Christian Legal Society (“CLS”) is an association of Christian attorneys, law students, and law professors, with student chapters at approximately 90 law schools. CLS student chapters typically are small groups of students who meet for weekly prayer, Bible study, and worship at a time and place convenient for the students. All students are welcome to participate in CLS meetings. As Christian groups have done for nearly two millennia, CLS requires its leaders to agree with a statement of faith, signifying the leaders’ agreement with the traditional Christian beliefs that define CLS’s message and mission.

For several decades, like many other religious student groups, CLS student chapters have sometimes been threatened with exclusion from campus because of their religious beliefs, speech, and leadership standards. HB 1503 would ensure that religious student groups of all faiths would be allowed to continue to serve their campuses in numerous positive ways. HB 1503 achieves this result through its proposed § 15-10.4-02(5)(h), which states:

(h) An institution may not discriminate against a student organization with respect to a benefit available to any other student organization based on a requirement of the organization that leaders or voting members of the organization: (1) Adhere to the organization’s viewpoints or sincerely held beliefs; or (2) Be committed to furthering the organization’s beliefs or religious missions.

By protecting religious student groups, HB 1503 will ensure there is a healthy range of ideological diversity, including religious diversity, on North Dakota campuses. For these reasons, CLS wholeheartedly supports HB 1503, especially § 15-10.4-02(5)(h), and hopes the Committee will approve it without delay or changes.

While many colleges and universities protect religious student groups’ right to organize and choose their leaders according to their religious beliefs,¹ other universities have threatened to

¹ Many universities have policies that protect religious groups’ religious leadership criteria. For example, the University of Minnesota provides: “Religious student groups may require their voting members and officers to

exclude religious student groups because they require their leaders to agree with their religious beliefs. For example, CLS has been a recognized student group at the University of Iowa since the 1980s. But in 2018, CLS and 31 other religious groups were told that they would be derecognized because they required their leaders to agree with their religious beliefs. The 32 religious groups threatened with exclusion included Jewish, Muslim, Catholic, Evangelical Christian, Orthodox Christian, Sikh, and other faith groups.²

In 2019, an Iowa federal district court ruled that the University had unconstitutionally excluded one of the religious groups based on its religious viewpoint.³ Six months later, the court ruled in favor of another religious student group.⁴ The second time, however, the district court ruled that three of the college administrators had forfeited their qualified immunity and could be held personally liable for their unconstitutional treatment of the religious student groups.⁵ The issue of qualified immunity in both cases is on appeal to the Eighth Circuit.

The Iowa Legislature enacted Iowa Code § 261H.3(3), to protect religious student groups on public university campuses and to prevent wasteful expenditures of taxpayer funds on litigation resulting from college administrators' exclusion of religious student groups from campus. In doing so, it joined the legislatures of thirteen other states that have enacted laws like HB 1503 to protect religious student groups, including: Arizona (2011), Ohio (2011), Idaho (2013), Tennessee (2013), Oklahoma (2014), North Carolina (2014), Virginia (2016), Kansas (2016), Kentucky (2017), Louisiana (2018), Arkansas (2019), Iowa (2019), South Dakota (2019), and Alabama (2020).⁶ Five of those states have protected only religious students; six

adhere to the organization's statement of faith and its rules of conduct." The University of Florida has a model nondiscrimination policy that reads: "A student organization whose primary purpose is religious will not be denied registration as a Registered Student Organization on the ground that it limits membership or leadership positions to students who share the religious beliefs of the organization. The University has determined that this accommodation of religious belief does not violate its nondiscrimination policy." The University of Texas provides: "[A]n organization created primarily for religious purposes may restrict the right to vote or hold office to persons who subscribe to the organization's statement of faith."

² The 32 religious groups that the University of Iowa intended to exclude were: Agape Chinese Student Fellowship; Athletes in Action; Bridges International; Business Leaders in Christ; Campus Bible Fellowship; Campus Christian Fellowship; Chabad Jewish Student Association; Chi Alpha Christian Fellowship; Chinese Student Christian Fellowship; Christian Legal Society; Christian Medical Association; Christian Pharmacy Fellowship; Cru; Geneva Campus Ministry; Hillel; Imam Mahdi Organization; International Neighbors at Iowa; InterVarsity Graduate Christian Fellowship; J. Reuben Clark Law Society; Latter-day Saint Student Association; Lutheran Campus Ministry; Multiethnic Undergrad Hawkeye InterVarsity; Muslim Students Association; Newman Catholic Student Center; Orthodox Christian Fellowship; Ratio Christi; The Salt Company; Sikh Awareness Club; St. Paul's University Center; Tau Omega Catholic Service Fraternity; Twenty Four Seven; Young Life.

³ *Business Leaders in Christ v. University of Iowa*, 360 F. Supp.3d 885 (S.D. Iowa 2019), appeal docketed, No. 19-1696 (8th Cir. Apr. 3, 2019).

⁴ *InterVarsity Christian Fellowship v. University of Iowa*, 408 F. Supp.3d 960 (S.D. Iowa 2019), appeal docketed, No. 19-3389 (8th Cir. Nov. 5, 2019).

⁵ *Id.* at 990 (quotation marks and citations omitted).

⁶ Ala. Code 1975 § 1-68-3(a)(8) (all student groups); Ariz. Rev. Stat. § 15-1863 (religious and political student groups); Ark. Code Ann. § 6-60-1006 (all student groups); Idaho Code § 33-107D (religious student groups); Iowa Code § 261H.3(3) (all student groups); Kan. Stat. Ann. §§ 60-5311-5313 (religious student groups); Ky. Rev. Stat. Ann. § 164.348(2)(h) (religious and political student groups); La. Stat. Ann.-Rev. Stat. § 17:3399.33 (belief-based student groups); N.C. Gen. Stat. Ann. § 116-40.12 (religious and political student groups); Ohio Rev. Code § 3345.023 (religious student groups); Okla. St. Ann. § 70-2119.1 (religious student groups); S.D. Ch. § 13-53-52

have protected religious and political, or belief-based, student groups; and three have protected all student groups.

These state laws demonstrate that there is a need for protection for religious student groups on public college campuses. They validate the approach taken by HB 1503. No subsequent problems have arisen in states that have adopted these protections; and to date, there have been no challenges to these laws.⁷ By providing clarity to college administrators, these laws have decreased the likelihood of litigation while preserving religious freedom and promoting religious diversity on their campuses. These laws allow religious student groups to continue to bring positive benefits to their campuses, such as increasing student well-being and satisfaction.

HB 1503 also respects the holdings of the United States Supreme Court in *Widmar v. Vincent*⁸ and *Rosenberger v. University of Virginia*⁹ that the Establishment Clause is not violated when religious student groups are officially recognized, meet on campus, and receive student activity fee funding. Indeed, HB 1503 respects the Court's warnings in *Widmar* and *Rosenberger* that there is a greater risk of violating the Establishment Clause when college administrators interfere with religious groups than when they leave the groups alone to function according to their own understanding of their core religious beliefs.¹⁰

It should be common ground with even the most ardent proponents of strict separation of church and state that government officials, including college administrators, should not penalize a religious group because of its religious beliefs and speech. Nor should government officials interfere in religious groups' internal governance, particularly their choice of their leaders. As the Supreme Court has cautioned, "According to the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions."¹¹

Perhaps most importantly, HB 1503 will increase ideological diversity on college campuses at a time when there is rising concern that our society as a whole is becoming increasingly intolerant of other Americans' differing viewpoints. Colleges must be places where students learn to listen to others' ideas, beliefs, and values if we hope to preserve a healthy civil society that cherishes all Americans' freedoms of speech and religion.

Respectfully submitted,

Kim Colby
Director, Center for Law & Religious Freedom
Christian Legal Society
(703) 919-8556/kcolby@clsnet.org

(ideological, political, and religious student groups); Tenn. Code Ann. § 49-7-156 (religious student groups); Va. Code Ann. § 23.1-400 (religious and political student groups).

⁷ The Iowa litigation, however, is ongoing.

⁸ 454 U.S. 263 (1981).

⁹ 515 U.S. 819 (1995).

¹⁰ *Widmar*, 454 U.S. at 270 n.6, 272 n.11; *Rosenberger*, 515 U.S. at 845-46.

¹¹ *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 188-89 (2012).

Alyx Schmitz in support of HB 1503

Chairman Klemin, members of the committee, my name is Alyx Schmitz and I am a December 2020 graduate of North Dakota State University. I am here to voice my support for House Bill 1503, the bill that protects college students' free speech in North Dakota.

Colleges are meant to be places where students can hear varying viewpoints freely and openly. One of the reasons I chose to attend NDSU is because I felt that my rights and opinions would be protected. I have friends who attend universities in other states as close as Minnesota, who have told me stories of when their free speech was suppressed because of university policy. As we all know, many trends or events across the United States create a ripple effect from the coasts to the Midwest. In North Dakota, we have the opportunity to be proactive by passing this bill. By passing this legislation, the State Board of Higher Education, a body of citizens appointed, not elected, cannot enact policy that hinders free speech. You can do a quick Google search and see countless stories across the United States where students from a political or religious viewpoint were silenced by their institutions for sharing a perspective that the administrators or professors did not like or agree with.

College is supposed to be a time when students can explore a new sense of independence and learn more about how to form ideas and articulate thoughts. Being able to openly express opinions is a freedom protected by the United States Constitution, a document which applies to college campuses. This bill would preserve constitutional freedoms and ensure that fear does not curb or inhibit the way that college students speak and the impact that student organizations have on campus. This bill would create a foundation of freedom of speech for students that cannot be taken away.

The State Board of Higher Education's policies almost discriminated against the operations of political clubs by not allowing them to receive funding from universities. The current policies in place would have allowed the Board to deny funding to political student organizations. As the former vice president of NDSU College Republicans, I know first-hand that university funding is necessary for the clubs to function and without these funds, the club would not have been able to expand our reach and generate our impact on our members and on campus. This is true for all student organizations affiliated with politics or political issues, including college democrats.

Lastly, I would like to share my support for a section of the policy that would eliminate 'free speech zones,' and rather allow free speech everywhere on campus. I have never understood the concept of 'free speech' zones. There are no such things as 'free speech' states or counties in America, so why do college campuses get to choose where free speech can or cannot exist? This limits students from openly expressing their views with one another and supports the

Alyx Schmitz in support of HB 1503

notion that free speech is something we do not have the right to, but rather are granted when it's convenient.

It makes me worried to hear when campus policy administrators are fearful of this bill. If they believe that there are no complaints of free speech by students and that their policies protect most of what is in this bill, why are they opposed to it? They clearly are concerned with students having full rights, as granted by the US Constitution, that all people in America have that no administrator, board, or campus can ever take away.

This is why I respectfully request a do pass of HB 1503. I stand for any questions you might have.



Nikolas Nartowicz
State Policy Counsel

(202) 466-3234
(202) 898-0955 (fax)
americansunited@au.org

1310 L Street NW
Suite 200
Washington, DC 20005

March 21, 2021

The Honorable Donald Schaible
Chair
Education Committee
North Dakota Senate
600 East Boulevard
Bismarck, ND 58505

The Honorable Jay Elkin
Vice Chair
Education Committee
North Dakota Senate
600 East Boulevard
Bismarck, ND 58505

Re: Oppose HB 1503 – Don’t Permit Discrimination in Public Institutions of Higher Education

Dear Chair Schaible and Vice Chair Elkin:

On behalf of the North Dakota members and supporters of Americans United for Separation of Church and State, I write to urge you to oppose HB 1503 insofar as it could exempt religious student organizations and other student groups from nondiscrimination policies at public universities and colleges. The bill should be rejected because it is unnecessary and could sanction discrimination.

Student organizations are an important part of campus life. Research shows that they contribute to overall student satisfaction and success. Having robust non-discrimination policies in place ensures that all students are able to access various organizations and explore different ideas and identities. To prevent discrimination on campus, promote equality and fairness, and foster inclusionary practices for student organizations, many public colleges and universities have “accept-all-comers” policies. These nondiscrimination policies generally withhold funding¹ and official recognition from student groups that are not open to all students. This bill, in contrast, would undermine these policies.

This bill isn’t even necessary—federal law already exempts religious student clubs from “accept-all-comers” policies. Recently adopted federal regulations state that public colleges and universities that receive federal funding may not deny a religious club “any right, benefit, or privilege . . . because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards.”² As a result, religious student clubs can escape the nondiscrimination provisions that apply to all other officially recognized and funded student clubs.

¹ The revenue stream for such funding, which is common at universities throughout the country, is created by a mandatory student activity fee imposed on students.

² 34 C.F.R. § 75.500; 34 C.F.R. § 76.500.

Neither the federal law nor HB 1503 create the level playing field they promise. Instead, they actually allow clubs to discriminate. For example, a Christian student group could turn away a student because he is gay or she is a single mom. This bill could even allow a white supremacist group to demand university funding and recognition.

The provision in the bill is not required by the First Amendment. Any student club can become a recognized group and access funds if it adheres to its school's nondiscrimination policy. And if a club decides it wants to impose requirements for membership and leadership that conflict with the school policy, it will not be silenced or driven off campus; instead, it, like any other club, simply will not receive official recognition and funding. In fact, the Supreme Court upheld an "accept-all-comers" policy in *Christian Legal Society v. Martinez*³ against claims that it violated the religious freedom of Christian student groups. The Court explained that the policies do not violate the First Amendment because the denial of benefits is based on the group's *conduct*, not their *views*.⁴

The North Dakota legislature should not support divisive legislation that fosters discrimination in the state's public institutions of higher education. It should not undermine the power of public institutions of higher education to safeguard their students from discrimination and mandate that student activity fees paid by all students only support those groups that are open to all students. I have enclosed with this letter a document that has more information on the problems with this bill. Thank you for your consideration on this important matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Nikolas Nartowicz", with a stylized flourish at the end.

Nikolas Nartowicz
State Policy Counsel

cc: Members of the Senate Education Committee

³ See *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010).

⁴ *Id.* at 696-7.



Discrimination by Student Groups at Public Colleges and Universities

The opportunity to both join and lead student groups is an essential part of the educational experience. Student groups contribute to the breadth and quality of collegiate life and allow students to build their experience and their resumes. To ensure all students can participate, colleges and universities often have nondiscrimination policies that require officially recognized student groups to allow any student to join, participate in, and seek leadership in those groups. These policies, also known as “all-comers” policies, are important because they prevent student groups from discriminating, including on the basis of religion or sexual orientation.

State legislators, with the support of special interest groups, have pushed bills that would prohibit schools from enforcing all-comers policies. Instead of upholding the fundamental American values of equality and nondiscrimination, these bills would create special exemptions for religious clubs.

All-comers policies promote equality by ensuring that public colleges and universities do not subsidize discrimination with tax dollars and tuition fees.

Funding for student groups comes from taxpayer dollars and, often, mandatory student activity fees paid by students. All-comers policies guarantee that students are not forced to fund a group that would reject them as members.

All-comers policies treat religious student groups the same as all other student groups.

Organizations of any political, religious, or ideological stripe can become recognized groups and access funds provided they adhere to the nondiscrimination policy.

All-comers policies protect religious freedom, which gives us all the right to believe or not as we see fit.

Religious freedom does not include a right to use religion to discriminate—especially not while using taxpayer dollars or using the tuition fees of the very students who are being excluded.

Bills to overturn all-comers policies would actually sanction discrimination, not bar it.

Supporters of these bills argue that all-comers policies discriminate against religious groups. But instead of treating all groups equally, the bills would treat religious groups specially and force schools to support discrimination.

The Supreme Court has held that all-comers policies are constitutional.

In the 2010 case *Christian Legal Society v. Martinez*, the Court explained that the policies do not violate the First Amendment. Religious student groups still have free exercise rights and can continue to meet on campus. They do not, however, have the right to force a public university to subsidize their discriminatory policies—and neither does any other student group.

Public universities have a strong interest in preventing discrimination on campus and fostering inclusionary practices for on-campus student organizations.

Student groups are an essential part of the educational experience. Therefore, all public institutions of higher education should have the right to ensure that the mandatory student activity fees paid by all students only support those groups that are open to all students.

For more information, please contact:

Nik Nartowicz

nartowicz@au.org | 202-898-2135



Birgit Pruess, Ph.D.
3696 Harrison St. S
Fargo, ND 58104

March 21, 2021

67th Legislative Assembly
State of North Dakota
Senate Education Committee

Chair Schaible and members of the Education Committee,

My name is Birgit Pruess and I am resident of Fargo, North Dakota. While I am an employee of the state university system, I am here testifying as a private citizen, with a solid knowledge of the North Dakota Higher Ed system. I am providing testimony against HB1503.

I testified on behalf of the respective free speech bill during the last legislative session. I was actually very happy with the outcome of this bill, where the State Board of Higher Education (SBHE) and the eleven institutions had to come up with their own free speech policies. I did not think the narrow deadline would be possible to meet, but was pleasantly surprised that everybody did.

I am surprised that the topic is being brought up again. General concerns I have about legislature dictating free speech, as opposed to the SBHE, are the following:

- 1) The SBHE assumes jurisdiction over our Higher Ed institutions (Century Code 15-10-01.1).
- 2) As requested during the 2019 legislative session, the SBHE now has a free speech policy (policy 503.1).
- 3) Legislature meets once every two years. The SBHE meets almost every month of the year and is much quicker at addressing needed changes.

In particular, I am opposed to the new statement under point 4 “by guaranteeing, at a minimum, no faculty member will face adverse employment action for classroom speech, unless the speech is not reasonably germane to the subject matter of the class as broadly construed and comprises a substantial portion of classroom instruction”. The concerns I have with this statement are the following:

- 1) Free speech is guaranteed to ALL citizens by the United States Constitution, amendment 1. Faculty are citizens.
- 2) Who determines what kind of speech is ‘reasonably germane to the subject matter’? The student? One would think that it should be the course instructor who decides what is included in the subject matter.

Altogether, I just don’t see a need for a continuation of a free speech discussion, as this has been addressed previously and policies are in place. I am therefore testifying in opposition of HB1503.

Sincerely and respectfully



Birgit Pruess



AMERICAN ATHEISTS

March 19, 2021

The Honorable Sen. Donald Schaible
Chairperson, Senate Education Committee
600 E Boulevard Ave., Sheyenne River Room
Bismarck, North Dakota 58505

Re: OPPOSE HB 1503, Testimony from American Atheists in opposition to campus license to discriminate legislation

Dear Chairperson Schaible and Members of the Senate Education Committee:

American Atheists, on behalf of our constituents in North Dakota, writes in opposition to HB 1503, a controversial bill that would undermine the ability of public colleges and universities to provide an open and inclusive campus that prohibits discriminatory conduct. Although we believe this bill may be well-intentioned to promote free speech on college and university campuses, as written, the bill would instead allow for invidious discrimination by student organizations. We urge you to reject this bill or at least to amend the legislation to remove its discriminatory elements.

American Atheists is a national civil rights organization that works to achieve religious equality for all Americans by protecting what Thomas Jefferson called the “wall of separation” between government and religion created by the First Amendment. We strive to create an environment where atheism and atheists are accepted as members of our nation’s communities and where casual bigotry against our community is seen as abhorrent and unacceptable. We promote understanding of atheists through education, outreach, and community-building and work to end the stigma associated with being an atheist in America. As advocates for religious liberty, American Atheists believes that no young person should be denied educational opportunities based on their religious beliefs.

The majority of public colleges and universities within the US have rules in place that require student organizations to comply with the institution’s non-discrimination policy,¹ which generally prohibits discrimination based on race, sex, disability, sexual orientation, religion, and other categories.² The US Supreme Court has endorsed this practice as constitutional and in alignment with First Amendment principles of freedom of speech and of assembly.³

¹ For example, “all comers” policies are those in which the college or university treats all student organizations neutrally by requiring them to accept all students who might wish to participate as members of the organization.

² For example, Campus Pride has identified over 1,000 public and private institutions of higher education that prohibit discrimination on the basis of sexual orientation and gender identity. Campus Pride, Colleges and Universities with Nondiscrimination Policies that Include Gender Identity/Expression, *available at* <https://www.campuspride.org/tpc/nondiscrimination/>.

³ *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010).

These policies are important because they create an open atmosphere on campuses and foster freedom of speech by prohibiting discrimination and allowing every student to participate fully in student organizations. Research shows that participation in student organizations contributes to overall student satisfaction and success. These organizations provide opportunities for peer-to-peer connection, reduce isolation, develop leadership skills, and relieve stress.⁴ Because of these benefits, and to foster student engagement, most public colleges and universities strive to offer a variety of student organizations and to encourage students to participate. On the other hand, if student organizations are allowed to discriminate, it limits the ability of disfavored students (whether due to their religion, sex, sexual orientation, disability, or race) from fully participating in campus life.

Unfortunately, HB 1503 would undermine these critical student nondiscrimination protections for public colleges and universities in North Dakota. The bill provides that:

h. An institution may not discriminate against a student organization with respect to a benefit available to any other student organization based on a requirement of the organization that leaders or voting members of the organization:

- (1) Adhere to the organization's viewpoints or sincerely held beliefs; or
- (2) Be committed to furthering the organization's beliefs or religious missions.

This language would prevent a college or university from enforcing its policies to prevent discrimination, thereby allowing student organizations to exclude students, impose dangerous or discriminatory rules on students, or sanction harassment. Based on this language, for example, a “College Christian Nationalist Club” could form and exclude Jewish Students, Black students, and even Christians with differing beliefs, such as Mormons or Catholics, or those they deem insufficiently pious. They could do so while receiving monies and resources provided by taxpayers and by other students at the institution.

By framing this provision as a novel “principle of free speech” and framing it in terms of discrimination *against organizations* (for failing to comply with the rules), the bill masks the fact that it is simply authorizing discrimination *against other students*.

Colleges and universities know their students and their individual cultures better than lawmakers – the state should not apply a one-size-fits-all policy on institutions of higher learning. Instead, colleges and universities and the students that attend them should be free to set appropriate nondiscrimination rules for their campuses. In fact, this bill may conflict with federal and state laws that prohibit discrimination on college campuses, including Title IX of the Education Amendments of 1972⁵ and Title VI of the Civil Rights Act of 1964.⁶

Moreover, this provision would make North Dakota public institutions of higher education less competitive compared to those of other states and private institutions, as students are much less likely

⁴ See, e.g., Foubert J.D. and Grainger L.U., Effects of Involvement in Clubs and Organizations on the Psychosocial Development of First-Year and Senior College Students, *NASPA Journal*, 2006, Vol. 43, No. 1, available at https://www.albany.edu/involvement/documents/effects_of_involvement.pdf.

⁵ 20 U.S.C.A. §§ 1681-1688.

⁶ 42 U.S.C.A. §§ 2000d, et seq.

to attend institutions where they could face discrimination, harassment, or exclusion. Finally, students are usually charged a student fee in order to help fund student organizations and pay for the benefits provided to student organizations. However, students should not be forced to pay for student groups that are discriminatory and exclusionary.

Public colleges and universities should be welcoming places for all of North Dakota's students – not ones where student groups are given free rein to discriminate against fellow students with their own student fees. If you should have any questions regarding American Atheists' opposition to HB 1503, please contact me at 908.276.7300 x309 or by email at agill@atheists.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'AGill', with a long, sweeping horizontal line extending to the right.

Alison Gill, Esq.
Vice President, Legal & Policy
American Atheists

2021 SENATE STANDING COMMITTEE MINUTES

Education Committee
Room JW216, State Capitol

HB 1503
3/29/2021

A BILL relating to free speech policies of institutions under the control of the state board of higher education.

Chair Schaible called to order at 3:37 PM

Discussion Topics:

- Committee Work

Sen Elkin moved a **Do Not Pass**

Sen Oban seconded

Roll Call Vote: 4 Yea; 2 Nay; 0 AB Motion Passed

Additional written testimony:

Lisa Johnson - NDUS Vice Chancellor - **#10977**

Adjourned at 3:45 PM

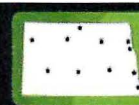
Lynn Wolf, Committee Clerk

Senator	Attendance
Chairman Schaible	Y
Senator Elkin	Y
Senator Conley	Y
Senator Lemm	Y
Senator Oban	Y
Senator Wobbema	Y

HB 1503	Vote
Chairman Schaible	Y
Senator Elkin	Y
Senator Conley	N
Senator Lemm	Y
Senator Oban	Y
Senator Wobbema	N

REPORT OF STANDING COMMITTEE

HB 1503, as engrossed: Education Committee (Sen. Schaible, Chairman) recommends
DO NOT PASS (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB
1503 was placed on the Fourteenth order on the calendar.



NDSA-22-2021

A Resolution Supporting Amendments to SBHE Policy 503.1

WHEREAS, the North Dakota Student Association (NDSA) represents the voice of North Dakota's 45,000 public college and university students; and,

WHEREAS, the purpose of NDSA is to represent all students enrolled in the North Dakota University System (NDUS) and advocate on issues of higher education in support of access, affordability, quality, and the student experience; and,

WHEREAS, on February 20th, 2021 the NDSA General Assembly (GA) passed NDSA-20-2021: "A Resolution in Opposition to HB 1503 as Written"; and,

WHEREAS, NDSA-20-2021 opposed specific language of HB 1503¹, a bill presented to the North Dakota legislature intended to protect the free speech of North Dakota students; and,

WHEREAS, the GA concluded that aspects of the bill, specifically sections 4(a-c), 5(e), and 5(h), would make the bill more harmful rather than helpful to North Dakota students; and,

WHEREAS, the link to NDSA-20-2021, where the NDSA's concerns are fully outlined, can be found in the footnotes²; and,

WHEREAS, the NDSA has always been an ardent supporter and protector of students' first amendment right to free speech in the North Dakota University System (NDUS); and,

WHEREAS, in response to HB 1503, the NDUS has developed amendments³ to State Board of Higher Education (SBHE) Policy 503.1: "Student Free Speech and Expression" that continue to protect student free speech while addressing and respecting the NDSA's outlined concerns with HB 1503; and,

WHEREAS, the amendments would define student-on-student harassment in a way that would allow NDUS institutions to take preventative action before any harassment has become so severe that a student is denied access to education, while HB 1503 would not allow such preventative action, in addition to protecting all students, not just those students who qualify as part of a protected class; and,

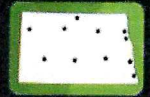
WHEREAS, the amendments would ensure the SBHE and NDUS are in compliance with federal rules that require the protection and fair treatment of organizations who mandate that their organization's leaders and members adhere to the organization's viewpoints and sincerely held beliefs; and,

WHEREAS, the amendments would remove an existing rule that allows institutions to impose security fees on students, faculty, or student organizations who have brought a guest speaker

¹ <https://www.legis.nd.gov/assembly/67-2021/documents/21-0929-03000.pdf>

² <https://ndsa.ndus.edu/wp-content/uploads/sites/5/2021/02/NDSA-20-2021.pdf>

³ https://ndusbpos.sharepoint.com/:b:/s/ndstudentassociation/EeklsgbNQWhMjK55W46G9CQBQ1dIQWslOPPG_n2SH71mpA?e=qbc43N



or event to campus that may incite protest and/or require additional security forces; and,

WHEREAS, the current policy explicitly states that the SBHE “recognizes that students have a fundamental right to free speech and expression under the First Amendment to the United States Constitution and Article I, Section 4 of the North Dakota Constitution, and as a result the SBHE and institutions under its control shall ensure that students have the freedom to speak, write, listen, challenge, learn, and discuss any issue, subject to reasonable and constitutionally-recognized limitations,” and outlines those reasonable and constitutionally-recognized limitations; and,

WHEREAS, the NDUS has not received a formal complaint about student free speech violations in over twelve years, in large part thanks to the continuous monitoring and revising – when deemed necessary – of free speech policies in order to ensure they best protect students; and,

WHEREAS, the NDSA has historically always been consulted on changes to SBHE policy that directly affect student free speech; and,

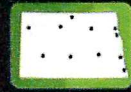
WHEREAS, the NDSA wishes to continue this relationship and provide input on the proposed amendments to SBHE Policy 503.1; so,

THEREFORE, BE IT RESOLVED, that the North Dakota Student Association supports the proposed amendments to SBHE Policy 503.1: Student Free Speech and Expression, both on their own merits and as an alternative to HB 1503; and,

THEREFORE, BE IT FURTHER RESOLVED, that the North Dakota Student Association thanks the North Dakota University System and State Board of Higher Education for their consistent support of North Dakota students and for their continued dedication to ensuring that students are involved in the conversations on policy changes, such as free speech policies and political activities policies, that have a direct and influential impact on students.

Respectfully Submitted

Gracie Lian
President



NDSA-20-2021

A Resolution in Opposition to HB 1503 as Written

WHEREAS, the North Dakota Student Association (NDSA) represents the voice of North Dakota's 45,000 public college and university students; and,

WHEREAS, the purpose of NDSA is to represent all students enrolled in the North Dakota University System (NDUS) and advocate on issues of higher education in support of access, affordability, quality, and the student experience; and,

WHEREAS, the NDSA has a strong history of advocating for students of higher education in North Dakota and their right to free speech on campus and in academic settings; and,

WHEREAS, this historical support has been most recently embodied by NDSA work done in conjunction with the State Board of Higher Education (SBHE) and North Dakota University System (NDUS) over the 2018–2019 and 2019–2020 academic years; and,

WHEREAS, this recent support of free speech can be embodied by the work the NDSA did with the NDUS and SBHE to create SBHE policy 503.3: Student Political Rights¹, a policy that separates student political rights from those of state employees and that ensures specific rights related to student political activities and electioneering would be preserved; and,

WHEREAS, the NDSA also worked closely with the NDUS and SBHE after North Dakota's 19-21 legislative session to develop and implement systemwide and campus-specific free speech policies as directed by that biennium's legislation SB 2320², resulting in SBHE Policy 503.1: Student Free Speech and Expression³; and,

WHEREAS, HB 1503⁴, a bill in relation to the free speech policies of institutions under the control of the State Board of Higher Education, has been introduced to the North Dakota legislature; and,

WHEREAS, this bill amends and reenacts section 15-10.4-02 of North Dakota Century Code; and,

WHEREAS, the NDSA has specific concerns about sections 4(a-c), 5(e), and 5(h), and feels that these sections could be harmful rather than helpful to NDUS students; and,

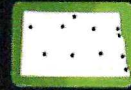
WHEREAS, section 4(a-c) dangerously narrows the definition of student-on-student harassment, restricting the right of an institution to discipline or sanction a student for harassment activity unless "(1) The speech or expression is unwelcome, targets the victim on a basis protected under federal, state, or local law, and is so severe, pervasive, and

¹https://ndusbpos.sharepoint.com/:w:/s/NDUSPoliciesandProcedures/EexdrZtJDtNFrSpeSdjJKoBjBOW_PodGbnfZdtqUVTbxQ

² <https://www.legis.nd.gov/files/resource/66-2019/library/sb2320.pdf>

³<https://ndusbpos.sharepoint.com/:w:/r/sites/NDUSPoliciesandProcedures/Policies/Student%20Free%20Speech%20and%20Expression.docx?d=w8952007f241b46d2a63a362e9c07ca04&csf=1&web=1&e=6Tgx82>

⁴ <https://www.legis.nd.gov/assembly/67-2021/documents/21-0929-03000.pdf>



objectively offensive that a student effectively is denied equal access to educational opportunities or benefits provided by the institution; or (2) The speech or expression explicitly or implicitly conditions a student's participation in an education program or activity or bases an educational decision on the student's submission to unwelcome sexual advances or requests for sexual favors;" and,

WHEREAS, this amendment would prevent universities from taking protective and preventative action in the case of student on student harassment; therefore, a student who is a victim of harassment could not take action until after the harassment has become so severe that their education has been irrevocably impacted, in addition to requiring the victim be considered part of a protective class and thus not protecting all students from harassment; and,

WHEREAS, section 5(e) allows a university to charge student organizations a security fee based on empirical and objective criteria for an event or speaker they have brought to campus in preparation of protests or confrontations; and,

WHEREAS, the NDUS is currently revising its own policies to remove this allowance, prohibiting universities from charging their students and student organizations a security fee for any event or speaker they have brought to campus; and,

WHEREAS, section 5(h) stipulates that an institution may not discriminate against a student organization with respect to a benefit available to any other student organization, such as the allocation of student fees or university funding, based on any discriminatory membership requirements of that organization such as requiring that members adhere to the organization's religious beliefs; and,

WHEREAS, this section comes from a federal ruling⁵ implemented by the Trump Administration; and,

WHEREAS, the NDUS is currently revising its own policies in order to ensure that NDUS institutions are in compliance with this ruling; and,

WHEREAS, cementing this federal ruling into state law would inhibit the ability of the NDUS to efficiently update this policy if a future presidential administration reversed the current ruling unless the ND legislature happened to be in session, which could result in the forfeiture of federal grant money for higher education; and,

WHEREAS, while the NDSA does not have any additional concerns about specific sections of HB 1503, the organization is concerned that this bill relating to the student free speech policies of NDUS institutions was brought to the state legislature without the consultation, knowledge, or input of any students – the main stakeholders of this bill; and,

WHEREAS, the NDSA has been consistently involved in the monitoring and revising of NDUS and SBHE free speech policies through student positions on NDUS councils, the position of the student member of the state board of higher education, and continuous conversations between these governing bodies and our student leaders; so,

⁵ [regulations.gov/document/ED-2019-OPE-0080-0001](https://www.regulations.gov/document/ED-2019-OPE-0080-0001)



THEREFORE, BE IT RESOLVED, barring the specific sections of HB 1503 that were mentioned above, the North Dakota Student Association does not oppose any section of HB 1503 that is already addressed by SBHE and NDUS policies or that is already embedded in state law; and,

BE IT FURTHER RESOLVED, NDSA opposes the version of HB 1503 that includes the policies specified above and urges the state legislature to remove them from HB 1503 while cautioning that the removal of these specific parts of the bill will not signal tacit support by NDSA of HB 1503; and,

BE IT FURTHER RESOLVED, NDSA fully supports and advocates for the right of students and faculty to practice free speech and freedom of expression; and,

BE IT FURTHER RESOLVED, that NDSA thanks the NDUS and SBHE for their continuous support and work to protect and encourage student and faculty free speech while ensuring that students are part of the conversation; and,

BE IT FURTHER RESOLVED, that the NDSA urges caution when implementing highly specific student free speech laws into state statute as it reduces the ability of the NDUS and SBHE to respond to emerging changes in federal rulings related to higher education and free speech in addition to reducing the ability of students to advocate for or against and change the free speech policies that directly affect them.

Approved by the NDSA General Assembly on Saturday, February 20th, 2021.



H.B. 1503

Senate Education Committee

Response to Rebuttal Testimony from Mr. Joe Cohn, Foundation for Individual Rights in Education
Lisa A. Johnson, Vice Chancellor for Academic/Student Affairs, NDUS
701.328.4143 | lisa.a.johnson@ndus.edu

Chairman Schaible and Members of the Senate Education Committee:

Thank you for the opportunity to provide a response to the rebuttal testimony provided by Mr. Cohn and the Foundation for Individual Rights in Education (FIRE). As we noted during our testimony at the Monday, March 22, 2021 hearing, the NDUS has a solid relationship with FIRE, and both the NDUS and its institutions regularly work with its Vice President of Policy Reform, Azhar Majeed, and his staff, at both the system and institution level. As a result, we do not in any way intend to portray FIRE as proceeding in bad faith or from a purely partisan position, and we deeply regret any impression to the contrary.

That said, FIRE is an advocacy organization, and it is entitled to have a preferred policy position. The NDUS's concern regarding FIRE's stated policy positions, particularly with regard to the *Davis* liability standard, is that they have been portrayed not as a preference, but as a constitutional requirement, both in written testimony and Mr. Cohn's spoken testimony to the Committee.

The NDUS's highest concern is for the education, rights, and well-being of its students, and is open to all arguments as to the best way to ensure these goals, including FIRE's. In pursuit of these goals, the NDUS and its institutions are advised by six Assistant Attorneys General who, combined, bring decades of legal experience to their roles. They have wide-ranging backgrounds in business law, contracts, employment law, education law, data privacy and security, criminal prosecution and defense, intellectual property, and constitutional litigation. Each campus also has a highly-trained student affairs staff, including Title IX Coordinators and other Title IX staff. Both attorneys and student affairs staff attend extensive annual training on legal and policy issues affecting students.

As a result, the NDUS deeply regrets that the author of the rebuttal chose to portray the testimony of those who were in opposition to H.B. 1503 as "legally inaccurate" and "false." As NDUS will demonstrate below, the opposite is true.

Because of the length of this response and knowing the tight schedules of the Committee Members, the NDUS will provide the following summary of its response for convenience's sake, and will address each point in detail below.

1. The alleged incidents cited by the rebuttal were not violations of free speech or academic freedom, and in any event did not constitute substantiated free speech complaints upon which the NDUS or institutions could take action.
2. The *Davis* liability standard applies to institutional failure to address student-on-student harassment, and none of the cases the rebuttal supplies apply the *Davis* liability standard to student-on-student harassment policies.
3. There is no constitutional requirement that the *Davis* liability standard be applied to the institutional student-on-student harassment policies under Title VI.
4. The *Davis* liability standard, when combined with the vague language of Sections 4(b) and 4(c), prevents institutions from addressing criminal harassment and other conduct which violates a number of state criminal statutes.
5. The NDUS has never argued that a student must have withdrawn from school to meet the requirements of the *Davis* liability standard, but the *Davis* liability standard requires that students be deprived of equal access to education *before* the NDUS can address the conduct.
6. The NDUS has never charged security fees based on anticipated protest activity, and will never do so, as that part of Policy 503.1 is being rescinded.
7. The existing statute is neither legally nor constitutionally deficient, and is working as intended.

The Committee members should be aware that last Friday and Saturday, the North Dakota Student Association held its March meeting and passed Resolution NDSA-22-2021, which supports the NDUS's proposed revisions to SBHE Policy 503.1. This follows Resolution NDSA-20-2021, which was passed on February 20, 2021 and opposes H.B. 1503 as it is currently written.

In addition, the rebuttal testimony again references a number of institutional policies which allegedly violate the First Amendment. However, the NDUS cannot meaningfully follow up on these allegations, as the NDUS still has not received any information from FIRE regarding their audit (or survey) of institutional policies on student free speech and academic freedom. If NDUS does receive this information, the NDUS and its institution will review those findings and will determine if actions need to be taken.

The NDUS respectfully requests a "do not pass" on H.B. 1503.

1. **There have been no free speech complaints in the NDUS.**

First and foremost, the NDUS's testimony that there have been no substantiated complaints related to free speech violations for at least the last 12 years was accurate. The rebuttal testimony does not contradict that statement. The NDUS generally cannot take action in the absence of a complaint, which, in turn, it takes news reports of one recent campus event (and one older event) which drew media coverage and extrapolates that the institutions violated the free speech rights of the individuals involved. Respectfully, rebuttal testimony confuses publicized incidents with substantiated reports.

First, the rebuttal cites a 2020 incident where NDSU students were alleged to have made racially inflammatory statements in a Snapchat group. The NDUS cannot, and will not, comment on any individual actions taken or not taken with respect to an individual student, as required by the Federal Educational Rights and Privacy Act (20 U.S.C. § 1232g; 24 C.F.R. Part 99). The [Valley News Live article](#) cited by the rebuttal inaccurately paraphrases the quoted NDSU spokesperson, who noted only that the situation was "all addressed within 48 hours." Respectfully, the NDUS refers the Committee to the [Campus Update](#) issued by President Bresciani on December 3, 2020:

I am writing to address hate speech on our campus. It should go without saying that hate speech has no place on NDSU campus, but I am saying it and saying it loudly.

Incidents involving hate speech are antithetical to what we stand for as an educational community. The actions of people who participate in hate speech do not reflect the mission and values of our university nor our community. [. . .]

*Making this issue even more frustrating is that colleges have so few legally permissible tools to react **because federal courts have established that hate speech is protected speech**. However, doing nothing is not an option, so I am establishing a crisis response team for NDSU, which will begin meeting tomorrow to determine what immediate steps can be taken to improve the climate and safety of campus. Membership will be diverse and reflective of all areas of campus.*

We regret that the rebuttal testimony extrapolated from a news story that mischaracterized NDSU's spokesperson's statement to assert that NDSU violated the free speech rights of the students involved.

The rebuttal testimony also asserts that a journalism professor resigned from UND in protest in Spring 2017, asserting that his academic freedom rights had been violated due to UND denying his request to hold seminars on the Standing Rock protests. Again, this assertion, which, to be fair, is based on an inaccurate article, is baseless. First and foremost, Dr. Trahant did not resign during Fall 2017, as the cited article claims. He remained the Charles R. Johnson Endowed Professor of Journalism at UND until May of 2018, when he became editor of Indian Country Today. Contrary to the media reports, Dr. Trahant left UND not out of protest over being denied permission to put on seminars about the Standing Rock Protests, but to go back to engaging in journalism full time.

In 2016, Dr. Trahant sought to focus UND's Hagerty Lecture on the Dakota Access protests in the spring of 2017, but the funding available for the Hagerty Lecture was not sufficient,¹ so the plan was tabled and no Hagerty Lecture took place that year. In October 2017, Dr. Trahant proposed an ambitious three-day lecture series surrounding the Dakota Access protests and social media's role in the same. While there were initial hiccups regarding the scope, funding and speakers for the event – including at least one speaker seeking speaking fees which were above the budget for the event – UND funded, and Dr. Trahant organized, a full-day seminar on April 19, 2018 titled “[Standing Rock & The Media](#),” which included hosting Jenni Monet, an American Indian journalist, to give the Hagerty Lecture. Emails from around the time of both of Dr. Trahant's proposals showed that the UND administration was excited about Dr. Trahant's proposals, but initially failed to identify a funding source and date that would not conflict with other major campus events.

The second publicized case cited in the rebuttal testimony does not support an allegation that UND violated academic freedom.

2. The *Davis* liability standard is a standard of liability, not the required standard for non-Title IX student-on-student harassment policies.

As the NDUS's legal counsel testified at the hearing on H.B. 1503, in *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999) established a liability standard, not the requirements for all student-on-student harassment policies. Under *Davis*, in order to be held liable for failing to address student-on-student sexual harassment under Title IX of the Education Amendments of 1972, the student must demonstrate that the school was “deliberately indifferent to sexual harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.” *Id.* at 650. This is not the requirement for student-on-student harassment policies, but for a court finding a school liable for not enforcing Title IX.²

The cases cited by the rebuttal do not establish otherwise. The primary case cited by the rebuttal, *B.H. ex rel. Hawk v. Easton Area School District*, 725 F.3d 293 (3rd Cir. 2013), does not support the rebuttal's point. This case involved five middle-school students who wore silicone bracelets emblazoned with the emblem “I ♥ Boobies! (KEEP A BREAST)” in support of a breast cancer non-profit. School administrators banned the bracelets district-wide under the School District's dress code policy, and disciplined the students for “disrespect, defiance, and disruption.” *Id.* at 300.

¹ The Hagerty Lecture, which was funded by an endowment from the Grand Forks Herald in honor of their long-time editor, Jack Hagerty, was generally not held every year, due to the interest on the endowment not covering the costs of the event and lack of student interest.

² The NDUS agrees and acknowledges that, as a result of the 2020 Final Rule on Title IX, the *Davis* liability standard *does apply* to student-on-student harassment which is actionable under Title IX. However, that is a regulatory standard, not a constitutional requirement.

The court in *Hawk* halted the bracelet ban for a number of reasons, in the process rejecting the school district's argument that permitting the bracelet ban put them at risk of violating Title IX, citing *Davis*'s "severe and pervasive" standard. *Id.* at 322-323. Again, this is an argument based in the potential liability of the school, and nowhere requires that schools adopt this standard for their own student-on-student harassment policies.

Respectfully, the other cases cited by the rebuttal also do *not* establish *Davis* as the required standard for an institution to discipline all cases of student-on-student harassment, and it is difficult to see how a fair reading could lead to that conclusion.³

The final case cited by the rebuttal, *Meriwether v. Hartop*, which was only decided on March 26, 2021, involved a professor who repeatedly misgendered a transgender student. *See* No. 20-3289, ___ F.3d ___, 2021 WL 1149377 (6th Cir. Mar. 26, 2021). This case did not involve a student-on-student harassment policy (or student-on-student harassment at all), so is irrelevant to the *Davis* discussion.

The NDUS has proposed a definition of student-on-student harassment that clearly follows the guidance from a broad sampling of the caselaw on student-on-student harassment, including many of the cases cited by the rebuttal. The NDUS respectfully submits that the NDUS's testimony did not in any way misrepresent the *Davis* standard.

3. The *Davis* liability standard applies to institutional liability under Title VI, but is not required for student-on-student harassment policies by Title VI.

The rebuttal testimony asserts that the *Davis* liability standard is also mandated for student-on-student harassment policies by Title VI. Respectfully, the cases cited by the rebuttal again only address cases where institutions, school districts, or schools faced potential liability for not intervening to stop student-on-student harassment which qualifies under Title VI.⁴

³ Compare *Davis*, 526 U.S. at 650 (setting liability standard for violating Title IX for failing to address student-on-student harassment, and requiring student-on-student harassment to be severe *and* pervasive) with *McCauley v. Univ. of the V.I.*, 618 F.3d 232, 249 (3rd Cir. 2010) (overturning harassment policy that was so broad that it "could conceivably be applied to cover any speech . . . th[at] offends someone. Absent a showing of severity *or* pervasiveness – that is, a requirement that the conduct objectively and subjectively creates a hostile environment or subjectively interferes with an individual's work – [the policy] provides no shelter for core protected speech." (citation omitted, alteration added)), *DeJohn v. Temple University*, 537 F.3d 301, 320 (3d Cir. 2008) (requiring harassment policy to include a "severe *or* pervasive" requirement in order to avoid suppressing "core protected speech"); and *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995) (finding that discriminatory harassment policy was void for overbreadth and vagueness – and not discussing the "severe and pervasive" requirement set forth in *Davis*).

⁴ See *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 665 n.10 (2d Cir. 2012) (noting that the *Davis* "deliberate indifference" standard applies to lawsuits against public schools for failing to address student-on-student harassment under Title VI); *Bryant v. Indep. Sch. Dist. No. 1-38*, 334 F.3d 928, 934 (10th Cir. 2003) (same); *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 206 n.5 (3d Cir. 2001) (same); *T.E. v. Pine Bush Central School District*, 58 F. Supp. 3d 332, 355-356 (S.D.N.Y. 2014) ("to be covered by Title VI, the harassment must be severe, pervasive, and objectively offensive and discriminatory in effect." (quoting *Zeno*, 702 F.3d at 665) (internal quotations omitted))).

The NDUS regrets the rebuttal's characterization of the NDUS's position regarding Title VI, but it is legally clear that a lower standard applies to Title VI student-on-student harassment policies than does Title IX, thanks to the new Title IX regulations implemented in 2020, which apply the *Davis* standard to Title IX student-on-student harassment policies. There are no equivalent regulations or caselaw which apply that standard to Title VI student-on-student harassment policies.

To be clear, the NDUS agrees with the rebuttal that agency guidance must yield to applicable regulations, court cases, and constitutional provisions. However, as none of these binding sources of authority require the *Davis* standard for Title VI student-on-student harassment policies, the NDUS should follow the guidance issued by the Department of Education's Office for Civil Rights, which adjudicates complaints of Title VI violations.

4. H.B. 1503, as written, arguably prohibits NDUS institutions from acting to stop criminal harassment, menacing, and criminal coercion, along with possibly stalking.

The rebuttal testimony substitutes its own position for NDUS's, asserting that the *Davis* standard does not prevent NDUS institutions from taking action to stop "stalking, domestic violence, or dating violence." The NDUS has never contended that the *Davis* standard barred action against domestic violence or dating violence – while stalking resides in a relative gray area. There are arguments that stalking could be based solely on expressive activity, based on N.D.C.C. § 12.1-17-07.1.

However, NDUS's greatest concern has always been with respect to criminal harassment, criminal coercion, or menacing – and the rebuttal does not address those offenses. These offenses may be based entirely on speech or expressive activity. *See* N.D.C.C. 12.1-17-05, -06, and -07. It may well be that the rebuttal's author views these offenses as unconstitutional. However, system and institution policy on student-on-student harassment is not the right place to litigate the constitutionality of the duly-enacted criminal laws of the state of North Dakota. It seems beyond question that the NDUS must retain the ability to address conduct that the Legislative Assembly has deemed to be criminal under state law.

The rebuttal also asserts that Section 4(b) of the proposed revised statute protects NDUS's ability to address conduct which is not protected by the First Amendment to the Constitution. That is one plausible reading of the section. However, the draft language of Section 4 is vague at best on this point, and NDUS is concerned about relying on conflicting language when it comes to student rights.

Specifically, Section 4 makes clear that the section applies to "discriminatory student-on-student harassment," and Section 4(a) uses the *Davis* liability standard to define "discriminatory student-on-student harassment." Section 4(b) either introduces a new concept (non-discriminatory "student-on-

student harassment”) or simply omits the word “discriminatory” from the phrase. The latter option seems more plausible, as Section 4(b) refers to a “definition” of “student-on-student harassment” – and the only definition present in Section 4 is that of “discriminatory student-on-student harassment” – the *Davis* liability standard. Finally, Section 4(c) refers to “student-on-student speech” and “discriminatory harassment,” without providing any definition of these terms. Either way, Section 4 provides no guidance to the NDUS and its institutions as to how to deal with the differences, if any, between “discriminatory student-on-student harassment,” “discriminatory harassment,” “student-on-student harassment,” and “student-on-student speech,” while ensuring that the NDUS does not violate either the statute or rights protected by the First Amendment and the North Dakota Constitution.

5. The *Davis* liability standard, if applied to all student-on-student harassment, would render NDUS institutions unable to stop or discipline harassment until the victim is denied the benefits of their education.

By definition, the *Davis* liability standard **requires** that institutions may not intervene via the student code of conduct until “a student is effectively denied equal access to educational opportunities or benefits provided by the institution.” The rebuttal has created an attractive straw man, stating that “[t]here have been no courts that have required that a student actually leave school to find remedy under *Davis*.” But that is not at all NDUS’s argument. H.B. 1503, as written, would require that a victim of student-on-student harassment suffer severe effects – so severe as to deny equal access to their education – before the institution can intervene. The NDUS and its institutions need the ability, just like every school in the nation, to intervene through the disciplinary process *before* the harassment reaches that level.

Again, the rebuttal cites to cases where the *Davis* liability standard was used to find that the institution or school acted with deliberate indifference by failing to act to prevent student-on-student harassment. These are just not cases where a student successfully sued for being punished under a student-on-student harassment policy that did not incorporate the elements of the *Davis* liability standard.

Even more, the rebuttal’s compromise that institutions could take nonpunitive measures such as offering supportive measures to a victim of harassment is no compromise at all. First and foremost, these types of supportive measures, which are common in the Title IX space, often involve offering options which are often seen by the subject of harassment as punishing the victim – moving the subject out of their housing, changing the subject’s class schedule, etc. Second, the cases cited by the rebuttal establish that some types of non-punitive measures, including offering educational resources

to the harassers or putting on seminars about diversity and acceptance,⁵ are half-measures which could even be used as evidence to support a finding of deliberate indifference in the event that the victim sues the institution.⁶

6. No NDUS institution has ever charged security fees based on anticipated response to speech, and no NDUS institution will.

The NDUS agrees that the current provision in Policy 503.1 permitting the charging of security fees based on anticipated protest activity fees is unenforceable. All NDUS campuses have been instructed not to impose such fees, and no such fees have *ever* been imposed. The policy is a nullity to the extent that it permits the imposition of such fees, and is being revised. The inquiry should end there.

7. The existing statute has worked as intended, and does not suffer from the deficiencies the rebuttal claims.

In 2019, this Committee and the NDUS worked together to create a statute which would protect the rights of NDUS students and employees, while still providing the NDUS the agility it needs to respond to ever-changing regulations and court decisions. That statute has worked. The NDUS and its institutions implemented policies, on an extremely short timetable, which meet all of the requirements of the statute, and actually implemented a number of the elements of 2019's S.B. 2023 which were not required by the eventual statute. The NDUS went even further, and worked with FIRE and the North Dakota Student Association to implement a policy strongly protecting student political rights in advance of the 2020 elections. The existing statute is working.

However, the rebuttal has identified two areas where it contends that the existing statute is "fatally flawed." This is far from the case.

First, the rebuttal asserts that Paragraph 2 of the existing statute is unconstitutionally overbroad. This is not the case. The existing paragraph requires SBHE and institution policies to "[p]ermit[] institutions to establish and enforce *reasonable and constitutional* time, place, and manner restrictions on free speech, assembly, and expression." (emphasis added). The paragraph has two requirements: reasonability and constitutionality. These two elements permit the SBHE and its institutions to adopt whatever limitations are necessary, so long as those restrictions are reasonable and constitutional. The rebuttal testimony instead reasons that the statute reclassifies all outdoor and indoor spaces as equivalent, and limits all restrictions to only "time, place, and manner" restrictions. The plain language of the statute does not support this argument.

⁵ See *T.E. v. Pine Bush Cent. School Dist.*, 58 F. Supp. 3d 332, 365 (S.D.N.Y. 2014).

⁶ *Id.*

Second, the rebuttal claims that the Legislative Assembly may not defer to the American Association of University Professors to protect academic freedom, and raises several reasons why the rebuttal's author believes this provision is inappropriate. However, the statute does not require that the SBHE and institutions adopt the AAUP's *most recent* guidance. The SBHE, in Policy 401.1, adopted the AAUP's 1940 Statement of Principles on Academic Freedom with its 1970 Interpretive Comments. The SBHE, in fact, has gone even farther to protect faculty rights than that AAUP guidance, providing that "faculty shall not face discipline or adverse employment action based on classroom speech unless such speech violates other institutional policies or procedures." *See* SBHE Policy 401.1(4). Moreover, the SBHE Policy specifically recognizes the applicability of academic freedom to arenas outside the classroom. *See* SBHE Policy 401.1(2).

Based on the last two years of on-the-ground experience, the NDUS has seen the existing statute work. H.B. 1503 is a solution searching for a problem.

Conclusion

The NDUS sincerely appreciates the concern that FIRE has shown for the First Amendment rights of NDUS students and faculty. However, neither the bill sponsors nor FIRE ever sought the input of NDUS students or faculty: the two groups whose rights H.B. 1503 purports to protect, and both groups now oppose the bill. Respectfully, H.B. 1503 remains a solution searching for a problem, and is a solution which will only lead to more problems.

The NDUS respectfully recommends that the Committee issue a "do not pass" recommendation.