



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