

## NDLA, S TRN - Wolf, Sheldon

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**From:** Lee, Judy E.  
**Sent:** Thursday, November 11, 2021 1:09 PM  
**To:** NDLA, S TRN - Wolf, Sheldon  
**Subject:** FW: 1511

Please print for committee members.

Senator Judy Lee  
1822 Brentwood Court  
West Fargo, ND 58078  
Home phone: 701-282-6512  
Email: jlee@nd.gov

**From:** Bresciani, Dean <dean.bresciani@ndsu.edu>  
**Sent:** Thursday, November 11, 2021 12:22 PM  
**To:** Lee, Judy E. <jlee@nd.gov>  
**Cc:** Armacost, Andrew <andrew.armacost@und.edu>  
**Subject:** 1511

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Senator Lee-

President Armacost and I are in complete agreement that extraordinary and substantial damage will be done unless the bill incorporates the following:

Section 1 SubSection 4 needs to be unstruck – This one will hurt our ability to keep campuses' safe and will hurt our nursing/medical programs because we have to report to those training sites about our students vaccination status. It was the self-reported data that allowed campuses to return to in-person learning so quickly.

Section 1 SubSection 5 needs to be retained (not struck) – Failure to provide an exemption for higher education institutions that are following federal rules/guidance will prevent NDSU and UND from entering into federal contracts and potentially certain grants. This will result in devastated research productivity, the loss of tens of millions of dollars at each research universities, and substantial implications at many other campuses, and will very likely lead to significant staffing reductions.

*Dr. Dean Bresciani*

Dean L. Bresciani, President  
**NORTH DAKOTA STATE UNIVERSITY**  
MEMBER OF THE 11 CAMPUS NORTH DAKOTA UNIVERSITY SYSTEM

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## NDLA, S TRN - Wolf, Sheldon

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**From:** Lee, Judy E.  
**Sent:** Thursday, November 11, 2021 1:07 PM  
**To:** NDLA, S TRN - Wolf, Sheldon  
**Subject:** FW: Implications of H.B. 1511

Please print for committee

Senator Judy Lee  
1822 Brentwood Court  
West Fargo, ND 58078  
Home phone: 701-282-6512  
Email: jlee@nd.gov

**From:** Fitzsimmons, Katie <katie.fitzsimmons@ndus.edu>  
**Sent:** Thursday, November 11, 2021 12:39 PM  
**To:** Lee, Judy E. <jlee@nd.gov>; Weisz, Robin L. <rweisz@nd.gov>  
**Cc:** Johnson, Lisa A. <lisa.a.johnson@ndus.edu>; Olson, Eric D. <edolson@nd.gov>; Rostad, Jerry <jerry.rostad@ndus.edu>; Hagerott, Mark <mark.hagerott@ndus.edu>; Krebsbach, David <david.krebsbach@ndus.edu>; Meyer, Terry J. <terry.meyer@ndus.edu>  
**Subject:** FW: Implications of H.B. 1511

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Co-chairs Lee and Weisz:

The North Dakota University System respectfully requests the exemption for high education be restored in the bill (page 2, lines 15-19), for these reasons. Without the exemption, the institutions risk participation in athletics and contracts as well as operating in person; which would have profound impacts on all of our eleven institutions. In short, we need the ability to handle information regarding COVID-19, most of which is self-reported, in order to operate to the best extent possible. Our legal counsel, Eric Olson, will be available for explanation, if necessary.

1. The NDUS has been able to significantly narrow the intrusiveness of its COVID measures by emphasizing vaccination and testing, and by providing those who have voluntarily become vaccinated to supply proof of vaccination to avoid certain mitigation measures. Throughout, NDUS has never imposed a testing mandate or a vaccination mandate, but those have been tools that were used in determining that NDUS institutions could return to normal instruction this semester, rather than the hybrid/distance/remote learning strategies of last year. Without the ability to collect testing and vaccination status in the event of another breakthrough or variant, campuses may be forced to either close to in-person instruction, or to limit class sizes and require some students to take at least some of their classes remotely. This would likely lead to a drop in enrollment and student success rates, as was seen across the country during last year's more significant mitigation measures. This could also lead to problems with requirements imposed by outside entities, such as out-of-state hospitals who require interns and residents placed in their facilities to be vaccinated, or athletic conferences who may require vaccination or testing of athletes. It could also cause issues with collecting vaccination and testing status related to international students or for study abroad programs, where travel may require the institution to request proof of testing or vaccination.



2. Removing the federal preemption and direct loss language included in paragraph 5 (as presented to delayed bills, and as would be removed under some proposed amendments) would significantly harm NDUS institutions, in particular UND and NDSU, as federal preemption does not necessarily apply to contracts. NDUS institutions may be required to terminate contracts if they cannot demonstrate compliance with federal vaccine requirements due to a state law prohibition on collecting that information, as federal law does not require campuses to maintain or renew contracts. If the federal contractor vaccine mandate survives litigation, then NDUS institutions may be forced to terminate these contracts, which could result in, conservatively, a \$40-50 million loss annually at UND and NDSU alone.

Katie Fitzsimmons (she/her)

Director of Student Affairs

NORTH DAKOTA  
University System

600 E Boulevard Ave, Dept 215

Bismarck, ND 58505-0230

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✉: [katie.fitzsimmons@ndus.edu](mailto:katie.fitzsimmons@ndus.edu)

💻: [ndus.edu](http://ndus.edu)

**From:** Olson, Eric D. <[edolson@nd.gov](mailto:edolson@nd.gov)>

**Sent:** Thursday, November 11, 2021 12:27 PM

**To:** Fitzsimmons, Katie <[katie.fitzsimmons@ndus.edu](mailto:katie.fitzsimmons@ndus.edu)>

**Cc:** Johnson, Lisa <[lisa.a.johnson@ndus.edu](mailto:lisa.a.johnson@ndus.edu)>; Hagerott, Mark <[mark.hagerott@ndus.edu](mailto:mark.hagerott@ndus.edu)>; Meyer, Terry <[terry.meyer@ndus.edu](mailto:terry.meyer@ndus.edu)>; Rostad, Jerry <[jerry.rostad@ndus.edu](mailto:jerry.rostad@ndus.edu)>

**Subject:** Implications of H.B. 1511

Katie -

Here are my concerns on the elimination of both the NDUS exemption and the federal preemption language in paragraph 5.

I will be present for this afternoon's hearings if issues arise or you have further questions.

Thanks,

Eric

**Eric D. Olson**

Assistant Attorney General

Office of Attorney General

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## NDLA, S TRN - Wolf, Sheldon

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**From:** Lee, Judy E.  
**Sent:** Thursday, November 11, 2021 11:51 AM  
**To:** NDLA, S TRN - Wolf, Sheldon  
**Subject:** FW: NDUS Exemptions

Please print for all committee members.

Senator Judy Lee  
1822 Brentwood Court  
West Fargo, ND 58078  
Home phone: 701-282-6512  
Email: jlee@nd.gov

**From:** Fitzsimmons, Katie <katie.fitzsimmons@ndus.edu>  
**Sent:** Thursday, November 11, 2021 10:57 AM  
**To:** Weisz, Robin L. <rweisz@nd.gov>; Lee, Judy E. <jlee@nd.gov>  
**Subject:** Fwd: NDUS Exemptions

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Co-chairs Lee and Weisz:

This message is from our legal counsel (see below). Rep. Porter's amendments put the University System in a precarious position. We respectfully ask for the higher Ed exemption (lines 15-19 on page 2) to be restored.

Sincerely,  
Katie Fitzsimmons  
NDUS Director of Student Affairs

Sent from my iPhone

Begin forwarded message:

**From:** "Fitzsimmons, Katie" <katie.fitzsimmons@ndus.edu>  
**Date:** November 11, 2021 at 10:52:01 AM CST  
**To:** [sroersjones@nd.gov](mailto:sroersjones@nd.gov), [krhanson@nd.gov](mailto:krhanson@nd.gov), [jbakke@nd.gov](mailto:jbakke@nd.gov)  
**Subject:** Fwd: NDUS Exemptions

Representatives and Senators:

This is from our legal counsel in regards to Rep. Porter's proposed amendments. We respectfully ask for the NDUS exemption to be restored.

-Katie Fitzsimmons, NDUS

Sent from my iPhone

Begin forwarded message:

**From:** "Olson, Eric D." <[edolson@nd.gov](mailto:edolson@nd.gov)>  
**Date:** November 11, 2021 at 10:47:21 AM CST  
**To:** "Fitzsimmons, Katie" <[katie.fitzsimmons@ndus.edu](mailto:katie.fitzsimmons@ndus.edu)>  
**Subject:** NDUS Exemptions

Katie -

NDUS contracts would not be preempted by federal law - it would force NDUS to terminate those contracts without paragraph 5, as there is no federal law requiring NDUS to keep contracts. Instead, without the ability to comply with the vaccination requirement, they would be forced to terminate.

Without the NDUS exemption, the bill would bar NDUS institutions from requiring documentation of testing or vaccination for any reason - institutions would no longer be able to engage in mitigation efforts which utilize testing (including antibody testing) or vaccination status. Campuses would be forced to go back to limiting class size and hybrid (partial in person and partial digital) instruction.

Eric

## NDLA, S TRN - Wolf, Sheldon

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**From:** Lee, Judy E.  
**Sent:** Thursday, November 11, 2021 1:15 PM  
**To:** NDLA, S TRN - Wolf, Sheldon  
**Subject:** FW: State Hospital CMS status

Please print for committee members.

Senator Judy Lee  
1822 Brentwood Court  
West Fargo, ND 58078  
Home phone: 701-282-6512  
Email: jlee@nd.gov

---

**From:** Lee, Judy E. <jlee@nd.gov>  
**Sent:** Thursday, November 11, 2021 1:15 PM  
**To:** Lee, Judy E. <jlee@nd.gov>  
**Subject:** State Hospital CMS status

Senator Lee, this is Rosalie Etherington. I understand that you are considering amendments for 1511. I wanted to inform you that all psychiatric residential treatment facilities of North Dakota fall under the CMS rule

Senator Judy Lee

## **NDLA, S TRN - Wolf, Sheldon**

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**From:** Lee, Judy E.  
**Sent:** Thursday, November 11, 2021 1:15 PM  
**To:** NDLA, S TRN - Wolf, Sheldon  
**Subject:** FW: State Hospital CMS status

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Senator Judy Lee  
1822 Brentwood Court  
West Fargo, ND 58078  
Home phone: 701-282-6512  
Email: jlee@nd.gov

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**From:** Lee, Judy E. <jlee@nd.gov>  
**Sent:** Thursday, November 11, 2021 1:15 PM  
**To:** Lee, Judy E. <jlee@nd.gov>  
**Subject:** State Hospital CMS status

Senator Lee, this is Rosalie Etherington. I understand that you are considering amendments for 1511. I wanted to inform you that all psychiatric residential treatment facilities of North Dakota fall under the CMS rule

Senator Judy Lee



## NDLA, S TRN - Wolf, Sheldon

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**From:** Lee, Judy E.  
**Sent:** Thursday, November 11, 2021 1:40 PM  
**To:** NDLA, S TRN - Wolf, Sheldon  
**Subject:** FW: Philosophical/Moral Exemption -- Health Care

Please print this for committee members.

Senator Judy Lee  
1822 Brentwood Court  
West Fargo, ND 58078  
Home phone: 701-282-6512  
Email: jlee@nd.gov

**From:** Levi Andrist <landrist@gagroup.law>  
**Sent:** Thursday, November 11, 2021 1:25 PM  
**To:** Lee, Judy E. <jlee@nd.gov>  
**Cc:** Weisz, Robin L. <rweisz@nd.gov>; Porter, Todd K. <tkporter@nd.gov>; Clark, Jennifer S. <jclark@nd.gov>; Melissa Hauer <mhauer@ndha.org>; Tim Blasl <tim@ndha.org>; Courtney Koebele <courtney@ndmed.com>; Amy Cleary <acleary@gagroup.law>  
**Subject:** Philosophical/Moral Exemption -- Health Care

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Senator Lee (cc: Rep. Porter & Rep. Weisz),

As you requested, after conferring with Melissa Hauer, NDHA's General Counsel, you are correct that a philosophical exemption already exists in state law, but only in the context of childhood/minor immunizations related to school—not voluntary, at-will employment of adults, which is what section 2 of the bill addresses. Per Senator Anderson's amendment, which health care fully supports (in addition to Rep. Porter's amendments to section 1 of the bill), health care organizations support the exemptions in the bill to mirror those in federal law—medical exemptions and religious exemptions.

I've copied the code section below for ease of reference. I've also copied Jenn Clark of Legislative Council, who's input on existing state law is welcome.

Best,  
Levi

**NDCC 23-07-17.1(3)** – Any minor child, through the child's parent or guardian, may submit to the institution authorities either a certificate from a licensed physician stating that the physical condition of the child is such that immunization would endanger the life or health of the child or a certificate signed by the child's parent or guardian whose religious, *philosophical, or moral beliefs* are opposed to such immunization. The minor child is then exempt from the provisions of this section.

Levi Andrist  
GA Group, PC

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