



BOARD OF REGENTS

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OFFICE OF THE EXECUTIVE DIRECTOR

October 22, 2019

Dear Representative Peterson:

Thank you in advance for the opportunity to appear at the October 30, 2019, Government Operations and Audit Committee (GOAC) meeting in Pierre. Below are the written responses to questions posed in your letter dated October 11, 2019.

- 1) We have been informed by various parties that the BOR is not taking the implementation of HB1087 seriously and that the BOR is instructing campuses to ignore the requirements of HB1087 and/or to “slow walk” any reforms. From recent media reports this seems to be accurate. Please explain specifically what the BOR has been telling state universities about complying with HB1087?**

The Board of Regents has judiciously implemented the provisions of HB1087.

Section 1 of HB1087 contains the definitions of “expressive activity” and “intellectual diversity” used in the Act. The definition of “intellectual diversity” is replicated in BOR Policy 1:32 and “expressive activity” is reflected in BOR Policy 6:3:1, both of which were approved for second and final reading at the BOR’s August 2019 meeting, the first BOR meeting after the law took effect.

The verbiage in Section 2 of HB1087 reflects, in-large part, the text of BOR Policy 1:32 (Commitment to Freedom of Expression), which was drastically revised to reflect its current substance and approved for second and final reading at the BOR’s December 2018 meeting.

Section 3 of HB1087 is effectuated in BOR Policy 6:13:1 (Use of Institutional Facilities and Grounds for Expressive Activity by Student Organizations, Students, Employees, and their Guests), which is a new policy that was approved for second and final reading at the BOR’s August 2019 meeting, the first BOR meeting after the law took effect.

Section 4 of HB1087 is carried out by way of BOR Policy 3:18 (Recognition and Funding of Student Organizations), which was revised to implement the changes necessitated by HB1087 at the BOR’s August 2019 meeting, the first BOR meeting after the law took effect.

Section 5 of HB 1087 states:

On or before December first of each year, the Board of Regents shall prepare and submit to the Governor and each member of the legislature a report that:

- (1) Sets forth all actions taken by each institution to promote and ensure intellectual diversity and the free exchange of ideas; and
- (2) Describes any events or occurrences that impeded intellectual diversity and the free exchange of ideas.

HB1087 took effect July 1, 2019, and as such, the time for the BOR's first report to the Governor and each member of the legislature has not yet occurred. A report containing the aforementioned content will be provided to the Governor and each member of the legislature on or before December 1, 2019.

The foregoing evidence the actions of the BOR taken to ensure compliance with the requirements of HB1087. Each institution under the control of the BOR is subject to its policies. The unequivocal message to the campuses has been compliance with state law and BOR policy.

- 2) **Dr. Beran, you told the legislature last winter that the “Board has made very clear that it wishes to promote intellectual diversity” and that you specifically promised that the BOR would “explore seminars, lecture series, courses, programs or fellow options that would further advance this effort on our campuses.” You also explained how the “University of Colorado implemented a visiting fellow of conservative thought and policy” and indicated that this was a plan that South Dakota could implement. You stated this in your letter to Senators Stalzer and Senate Majority Langer, House Majority Leader Qualm, and myself dated January 3, 2019. Specifically, what has the BOR done to create “seminars, lecture series, courses, programs or fellow options that would further advance” intellectual diversity on our campuses as you promised to do last winter?**

As explained in the letter dated January 3, 2019, the BOR's intellectual diversity policy is both fairly unique and new. There are a variety of ways we can improve on how we promote and encourage diverse viewpoints on our campuses. As you note, I mentioned in that previous letter that “The University of Colorado implemented a visiting fellow of conservative thought and policy in 2013, supported entirely by private funds, as a way to promote intellectual diversity.” That option has not been dismissed at our institutions but is still being vetted with several questions to resolve. As an example, the Colorado position is privately (not publicly) funded and a source for such funds in South Dakota has not been identified. Moreover, we are still vetting the implications such a position would have with SDCL 13-49-14 which states “no person may be employed or dismissed by reason of any sectarian or political opinions held” by the Board of Regents.

The Board of Regents has taken other actions to implement the law and promote intellectual diversity. Before any laws were passed and of our own volition, in June of 2018, the Board of Regents meeting included a Free Speech Roundtable. The Roundtable included speakers representing students, faculty, legislators, and interest groups, as well as over 100 pages of written testimony providing multiple perspectives. In June of 2019, the Board of Regents meeting included an Intellectual Diversity Public Conversation. This hearing also solicited input from students, faculty, legislators, and interest groups and also included over 100 pages of written testimony. Part of the rationale for these open discussions was to solicit ideas on fostering intellectual diversity on our campuses. The discussions produced numerous recommendations. As examples, some of which are noted above, the Board of Regents made substantive policy revisions to ensure the protection of free speech on campuses, a core component of intellectual diversity. In addition, the Board adopted the Chicago Statement on Principles of Free Expression as suggested by numerous participants and legislators, which is contained in BOR Policy 1:32. Institutions are in the process

of implementing new climate surveys, tools that will aid in assessing students' experiences with free speech and intellectual diversity, allowing each institution to identify problem areas and address issues specific to their campuses. Campuses also continue to engage on the topic through speakers and programming. As a few examples, USD and NSU hosted Constitution Day celebrations, including public presentations. USD created a new course this year in Civic Engagement; hosted a campus event featuring Charlie Kirk, founder of Turning Point USA; and is hosting an upcoming Freedom of Speech on Campus discussion with Marieke Tuthill Beck-Coon, Director of Litigation, from the Foundation for Individual Rights in Education (FIRE). SDSU hosted campus presentations titled "Evangelicals in the Age of Trump" featuring panel discussion by faculty and pastors, as well as a presentation titled "Informing the Public by Informing the News" by South Dakota native and Harvard professor Thomas Patterson.

- 3) We have specifically asked, on several occasions, about the creation of programs of study focused on the "American Constitutional Heritage," "Conservative Political Thought," "The Great Books," "The Heritage of Ancient Greece and Rome," and other various courses in American history and the Western tradition. As a part of the compromise on HB 1087 which included removing the mandate for the American history and government course requirements from the bill, President Gestring and President Dunn told me personally that they would implement those course requirements within their normal rotation of courses beginning in the Fall of 2020. What has the BOR done to create and promote such programs and courses of study on South Dakota campuses?**

The courses POLS 100 (American Government), HIST 151 (US History I), and HIST 152 (US History II) are already offered in regular rotation at all six public universities (including SDSU and USD) and can be taken as general education requirements.

The Board of Regents is not opposed to programs such as those named in the above question, "American Constitutional Heritage," "Conservative Political Thought," "The Great Books," and "The Heritage of Ancient Greece and Rome." However, it is not evident from the titles how these programs more effectively promote intellectual diversity than the existing related majors and minors in Political Science, History, and English. The Board of Regents and the six public universities would be pleased to consider additional information that you can provide related to the proposed programs. Considerable coursework options are already available at the public universities relating to the themes cited in the question. As examples, courses in Constitutional Law, Philosophy of Law, the American Presidency, the Legislative Process, and American Political Thought relate to "American Constitutional Heritage." Courses in Political Philosophy, Political Ideologies, and Political Theory relate to "Conservative Political Thought." Courses such as Introduction to Literature, American Literature, American Indian Literature, and British Literature relate to "The Great Books." Courses such as Ancient Greece, Greek Art & Archaeology, Ancient Rome, Ancient Greece & Rome, and Western Civilization relate to "The Heritage of Ancient Greece and Rome."

We also believe that it would be helpful to explain the process by which new academic programs are created. The development of new academic programs typically starts on campuses by institutional curriculum committees, followed by review and recommendation by the system Academic Affairs Council, before review and approval by the Board of Regents. For all new academic programs, the Board of Regents considers proposed learning outcomes provided by the program, evidence of student demand for the program, evidence of workforce demand for graduates with the skills and knowledge the program would provide, the potential cost of the

program (e.g., facilities, equipment, course development, faculty, etc.), potential duplication issues, and the potential for the program to drive new enrollment within the system. Our institutions continue to assess methods for promoting intellectual diversity as well as the demands of students and employers in regards to academic programming. The creation of new programs in the areas you cite would also include consideration of these variables.

- 4) We have asked you on multiple occasions about the creation of Freedom Schools at the University of Arizona and Arizona State University which are designed to promote intellectual diversity on campus. See for example the story “AZ Funds ‘Freedom Schools’ to Counter Liberal Hegemony on Campus” in Campus Reform (February 27, 2018). Specifically, what has the BOR done to create and promote such schools, programs, and courses of study on South Dakota campuses?**

The Board of Regents is not opposed to the creation of entities such as the Freedom Schools at the University of Arizona (UA) and Arizona State University (ASU). We have been reviewing those entities for ways we can incorporate their functions into our university system. As the article you cite states, as do other articles on the creation of those schools, the entities were initially funded by a private investment (e.g., the Charles Koch Charitable Foundation) and later augmented with a multimillion dollar appropriation by the Arizona State Legislature. It is important to note, however, that at the moment, neither the private funding nor a state appropriation is available to fully replicate these entities.

UA’s Center for the Philosophy of Freedom (i.e., “the Freedom Center”) is a research entity and does not house “courses of study” or specific academic programs such as a minor or major. To quote from their website, “the Freedom Center offers no curriculum of its own” and emphasizes supporting scholarship related to “some aspect of freedom.” Research centers at South Dakota’s public universities have typically related to hard sciences and economic development. Specifically, the UA Center for the Philosophy of Freedom most commonly supports research opportunities for graduate studies in Philosophy, an area in which public universities in this state do not offer graduate programming.

In contrast to the UA program, the functions of ASU’s School of Civic and Economic Thought and Leadership provides a framework for initiatives that can be more readily adopted in South Dakota’s university system. This entity’s mission is to “engage students in civic life through the investigation of great works of political, economic, civic, and moral thought.” The school provides panel discussions and speaker series, in addition to oversight of one major and one minor in the field of Civic and Economic Thought and Leadership. These academic programs are designed for students to examine “broad and fundamental concepts and questions across human civilization, and the challenges and possibilities of leadership and statesmanship in the 21st century world.” As discussed in the responses to other questions, our universities and academic committees are exploring options for increasing the number of campus dialogues about free speech and intellectual diversity, as well as potential academic programs (such as a minor) similar to those offered at ASU. As is standard for the creation of all new academic programs, there is a process in place to establish that there is (1) student demand for such a program, (2) evidence of workforce demand for graduates of the proposed program, (3) determination of potential costs, and (4) the development of proposed learning outcomes. The universities are currently engaged in these discussions and any related proposal that would come forth to the Board of Regents for approval would likely occur during the 2020 calendar year.

- 5) During the extensive legislative debates over the past few years over intellectual diversity we have discussed higher education reform with entities such as Heterodox Academy, the National Association of Scholars, the American Council of Trustees and Alumni, and the Claremont Institute, among many others. Has the BOR brought any experts from any of these organizations to South Dakota to consult with you and discuss the implementation of HB1087? Has the BOR engaged these organizations in any way when attempting craft reforms? Wouldn't it be wise to engage key experts such as these about how to actively promote intellectual diversity on campus?**

As referenced above, the BOR conducted a public hearing on intellectual diversity on June 26, 2019 at its meeting in Brookings, which lasted over two and a half hours and included multiple panel discussions with representatives from various constituencies, Q&A between the various panels and the BOR, and written commentary. The hearing included in-person participation by representatives from the American Council of Trustees and Alumni, National Association of Scholars, South Dakota Voices for Peace, student government, the student federation, faculty, legislators, the Sioux Falls Area Chamber of Commerce, alumni, and current students. Additionally, written comments were provided by Regional Health, the Ethics and Public Policy Center, the American Council of Trustees and Alumni, National Association of Scholars, the James G. Martin Center for Academic Renewal, American Enterprise Institute, American Civil Liberties Union South Dakota, student government, out-of-state faculty, the student federation, the Heterodoxy Academy, legislators, Governor Noem, Dow Chemical, and the South Dakota Chamber of Commerce & Industry. The video of the public hearing, as well as the written comments, are available on the BOR website.

- 6) We have discussed at various times reorganizing, reforming or simply re-creating the diversity offices on South Dakota campuses and spending that \$3 million a year to promote intellectual diversity in the manner described above. Has the BOR discussed using the millions it spends on "politically correct" diversity efforts to instead promote intellectual diversity?**

The \$3 million figure referenced as supporting the diversity offices on South Dakota campuses is not correct. At the October meeting of the Board, the Regents asked each diversity office to present information about their daily functions, structure and staff, and budget. The following information comes from those presentations:

- A. Center for Inclusion, SD School of Mines & Technology: total budget is \$98,804.80
- B. Office of Diversity, Inclusion, Equity and Access, South Dakota State University: total budget is \$210,270.78
- C. Office for Diversity, University of South Dakota: total budget is \$173,548.

The goal for Diversity offices is to create workforce ready students who understand the depth and breadth of the world in which they live and will be working. Recently at the last BOR Board Meeting at Dakota State University on October 2 and 3, two groups presented on the subject of diversity. On October 2, business professionals representing the South Dakota Chamber of Commerce & Industry, the South Dakota Retailers Association, and three prominent industry representatives including Regional Health, Daktronics, and Raven Industries discussed the importance of employees learning and understanding the realities of a diverse and inclusive work environment. Their message was clear: hiring and subsequent success in business and industry is dependent on each employee being able to interact and work with people from all cultures and different walks of life. On October 3, the SD School of Mines & Technology Center for Inclusion

Director, the South Dakota State University Office of Diversity, Inclusion, Equity, and Access Director, and the University of South Dakota Office for Diversity Director presented what they do on their respective campuses to focus on preparing students for employment in diverse and inclusive work environments.

The videos of both sessions are available on the BOR website at this URL under the heading, Free Speech - Intellectual Diversity Efforts:

<https://www.sdbor.edu/administrative-offices/infogovtrelations/Pages/Free-Speech-Intellectual-Diversity-Efforts.aspx>

Eliminating the Diversity offices or the activities they engage in will directly negatively impact our students' abilities to be adequately workforce ready. Their existence supports three of the most important goals in 21st Century South Dakota higher education: graduate students who have strong job skills who become employed in South Dakota and pay South Dakota taxes.

- 7) We have been informed that the video of the June 26 BOR meeting in Brookings in which speakers attacked HB1087 has been deleted or marked private and is inaccessible. Is this accurate? If so, why? If the BOR removed or made this video inaccessible, please post it again and make it public.**

The link to the video of presentations from the June 26, 2018, meeting has been continuously posted on the BOR website since that meeting. However, we did learn that this web link had become inactive after a recent update of SDSU website services, where the video archive is hosted. As of Friday, October 11, the broken web link has been fixed and the material continues to be accessible from the BOR website.

- 8) Have all the various diversity reports you shared with me this summer been posted on the BOR website? If not, please post them. We would like to discuss some of the material included in these diversity reports at the GOAC hearing.**

Yes, they are available at this URL under the heading, Diversity Reports:
<https://www.sdbor.edu/administrative-offices/infogovtrelations/Pages/Free-Speech-Intellectual-Diversity-Efforts.aspx>

Thank you for the opportunity to share the South Dakota Board of Regents' commitment to intellectual diversity.

Sincerely,



Dr. Paul B. Beran
Executive Director & CEO