

**2017 HOUSE EDUCATION**

**HB 1329**

# 2017 HOUSE STANDING COMMITTEE MINUTES

Education Committee  
Coteau A Room, State Capitol

HB 1329  
1/24/2017  
Job 27344

- Subcommittee  
 Conference Committee

Committee Clerk Signature

## Explanation or reason for introduction of bill/resolution:

relating to freedom of speech at state institutions of higher education

## Minutes:

Attachment 1

Chairman- Mark S. Owens: opens hearing on HB 1329. Tells the clerk to call the roll, and then welcomes Representative Becker.

Representative Becker: see attachment 1 for testimony.

Chairman- Mark S. Owens: any questions

Vice Chairman- Cynthia Schreiber-Beck: a couple of points, you said you did have a discussion with President Kennedy, and I also. No you did not?

Representative Becker: no, I did not have a discussion with President Kennedy, I said my impression of President Kennedy from proliferate accounts.

Vice Chairman- Cynthia Schreiber-Beck: I did have a discussion with President Kennedy, a few months back. Discussing this very concept, and of course his point was that freedom of speech is guaranteed, and freedom of assembly is guaranteed in the US Constitution, therefore college campuses must abide by the constitution. Have you had any discussions with the North Dakota University system to see if that policy already exists. I have not researched it, so I am asking.

Representative Becker: the discussions that I have had, did not indicate that it exists, the actual prohibition of anything like a safe space where there is institutionalized areas of curbed free speech, my understanding in the limited discussions I have had with people from higher education is that they are fully on board with all of the concepts, they just do not like it coming from the legislature, that is my understanding. As far as the aspect of well free speech is already constitutionally protected, yes I agree with you, and yet we have safe spaces all across the nation. So obviously there is an area, where on these other campuses, where they all exist, a policy like this in place would have prevented them.

Vice Chairman- Cynthia Schreiber-Beck: I did do a little research and I found a statement regarding the judicial system and the courts, and the quote that I will read is these principals require a special significance in the university setting where the free and unfettered interplay of competing deems essential to the institutions educational mission, and it goes down to say this is in the faith of speech codes that have been litigated, as far as this writing not one has passed muster at the Federal court level. So, I am questioning whether or not the policy should be needed, based on the fact that our judicial system gives us, and the constitution gives us the free right to assemble, and free speech. Obviously peacefully, assembly. I really question if we want to put something like this that we demand university to set aside a spot, especially with cell phones, all the ways of communication today, that if you are, my understanding is you want isolated spot that they can express anything, but with the advent in this communication everything that is available today, it is allowed.

Representative Becker: I believe that there is a list of the segment of the bill that you are misunderstanding, this does not create any kind of zone or spot, this states quite the converse of that supposition. Safe spaces are designated areas or zones where free speech is limited to the point that no words or phrases that are considered micro aggressions can be used, not discussion which can hurt the feelings of people in this zone could be used, with this the college campus in and of itself is a zone of free speech, it does not set anything up, it says we are not setting aside areas that we allow the infringement of free speech, so the whole campus allows for free speech with very clear exceptions you cannot block any access, you cannot disrupt classes, you cannot take over a building, it gives a large degree of discretion of what is reasonable on a college campus because, to impede others learning then it infringes on their rights, so there are no zones, this does not set anything up, it just clarifies, this is a negative, this does not create something, it prevents the creation of something bad.

Vice Chairman- Cynthia Schreiber-Beck: then I still say, we have those rights so do we need this piece.

Representative Becker: the question of, if I were to rephrase your question say do we need this, my answer would be absolutely not, it is clear. Yet safe spaces and polices for safe spaces that permit them, and condone them, and actually encourage them are rampant across campuses, on campuses across the nation.

Rep. Corey Rep. Corey Mock: just looking at the violations section, did you, I notice its language is limited specifically to civil damages, did you give any consideration to criminal violations if, or criminal penalties if this section of law were violated.

Representative Backer: I did not specifically on this bill, I am always aware what the remedy is in the violations section, I am always remised to put in criminal recourse, I would have a tough time trying to make a reasonable argument if someone is saying to me it looks to me you are trying to turn our nice professors and administrators into criminals.

Rep. Corey Rep. Corey Mock: more along the line what the Vice Chair was asking in the line of questioning, my understanding is that sues any entity or any public institution on first amendment grounds, could be awarded civil damages. Attorney fees, it would be a civil case. How is this different than what is currently possible with the freedoms protected under

the constitution, and since there is no penalties or violations different then what you can already pursue with existing legal actions, how would this be different.

Representative Becker: if we can go back to the vice chairs comments, about what should be, and what is. What should be, this is not different, what is dramatically different. If there was a statute which prohibited the creation of safe spaces, and the campus policies that endorse safe spaces, they would not exist, and yet they exist.

Rep. Corey Rep. Corey Mock: are you aware of any complaints or law suits that have been filed.

Representative Becker: nope.

Rep. Corey Mock: no one has filed suit and said that their freedom of speech has been violated because of policies enacted by any institution of higher education in North Dakota.

Representative Becker: no, no I don't. When you see a truck coming at you, it is good to get out of the way, rather than wait until it hits your car.

Rep. Rich S. Becker: I have not studied every word in the bill, so I am not familiar with every statement. But what I wanted to ask you about is, sometimes you have to be on the offense to prevent things from happening as you said, I introduced a bill yesterday that is similar to what in some respects to your bill in the sense that it is best not to have to have a statue to correct something or prevent something. And there was a policy within the board of higher education that they were not following, over the course of 6 to 8 months, they have changed their policy to reflect what I was trying to accomplish legally, what I see the connection with your bill is a slippery slope, and I understand though that saying it is already constitutionally protected, and things of that nature, but we have seen in the last 12 months where safe spaces have grown, if you did not like the election results the colleges would pay for a therapy for you, if you do not feel like taking a test because you are upset about something, some colleges are forcing the professors to set aside extra time, there all sorts of little things that were in essence coddling a generation of you say kids, young students, and I totally understand what you are trying to help prevent from happening here in North Dakota, I am just speaking for myself, and that I too worry that this continual erosion of, we have to protect our precious children has gone way too far, and your bill is trying to address that, so I appreciate any comments that you would have, and I would hope that we give it a really serious review.

Representative Becker: I will add one little thing, that this was taken, I did a search of all states that have implemented or tried to implement any type of prohibition of safe spaces like this, and I will be honest with you, I forget where my primary, I have done a few bills this session where I was adapting from states, and I do not recall specifically is closest to this, but I will say that it was more aggressive, it required much more of the campuses with notifications of frequency all sorts of things, I tried to take it down into what I say is a North Dakota common sense, we have the policy, we set up a bill of rights, in your e-mails to the students once a year, you let them know we got this bill of free speech, so don't expect that we are going to set up a zone where no one can hurt your feelings.

Chairman- Mark S. Owens: Rep. Denton Zubke

Rep. Denton Zubke: if you look up the definition of safe spaces, you probably get a dozen different definitions of what a safe space is. But in its purest sense and form, isn't every space a safe space when we start talking about freedom of speech, so if someone says this is a safe space where you can express yourself freely, isn't that true for every place and so why do we, this appears to me to be maybe in a sense a double negative, other than from the standpoint that a safe space is supposed to be a place where you can express yourself freely.

Representative Becker: I will address the understanding of a safe space, as I am using it here with what has been occurring on college campuses. In none of those circumstances is a safe space an area where you can express yourself freely, it is exactly the opposite. It is an area where you are not permitted to express yourself freely, for instance you can have a safe space where, well it could be the whole Trump/Hillary thing, or it could be the whole Bernie/Hillary thing, they could be well the primary is going on there could be Bernie supporters that felt that they needed an area where no one would talk how great Hillary is, and then that wouldn't be permitted, you can have a safe zone for all of the people who side with the Palestinians in the middle east, and no one can talk about how the Jewish state is great, and vice versa. So they're not zones where free speech is permitted, they are zones where free speech is not permitted, this prohibits them.

Rep. Mary Johnson: not so much of a question, but more of a comment. Safe zones and spaces are growing in frequency and size. And when pretty soon you have an entire college campus that is a safe place, and I think that is what you were getting at Rep. Rich S. Becker, and that is what this is trying to curb. I tell you, I have been around a long time, and I have been on college campuses a long time. And in mid-1970's or earlier when there were protests for Vietnam out at UND, the police were there, no one stopped them, and everything was fine. Then you get into school and everyone, I don't know if everyone remembers Skokie v Illinois, but you might not like what somebody says, but you will defend the right that they can say it, nobody liked the Nazi's coming into Illinois, and there were protests, nobody, limited content, and it was fine. I just think that we are full circle now, where we cannot express ourselves now, and that is so very unfortunate, and we are doing a great disservice to students on college campus today, I know that the ACLU is supporting bills like this across the nation. So.

Rep. Corey Mock: Two questions, are you familiar with the state board of higher education policy 401.1 regarding academic freedom, if not at some point before we close this hearing or take action on this bill would you mind looking that up, and letting the committee know whether or not that addresses any of the concern that you are trying to address what this legislation, it is 401.1, it has been in place since 1984, but it relates to academic freedom. Are you familiar with that section at all?

Representative Becker: I am not.

Rep. Corey Mock: I think the committee would appreciate your insight on reviewing that, and just finding out if that addresses any of the concerns that your proposed legislation would hope to address, the second and more of a technical question on your bill, on page 3 line 29

you state in that subsection of law, that the university may restrict or require individuals who are not employed or enrolled to obtain permission in order to use a public forum on campus, on line 29 you say that the process must be processed within 48 hours, I am just concerned that the technical limitations that if a request comes in Friday afternoon, that according to this it would have to be processed by Sunday afternoon, that we are not providing enough leeway for holidays, weekends, additional time, would you be open to an amendment that removes a specific time, but says it must be processed within a reasonable amount of time.

Representative Becker: that's a good point, I definitely agree with that, a reasonable amount of time I would be a little bit hesitant to say that phrasing is adequate, because what constitutes a reasonable amount of time, a month, what would be great however one would phrase it to say two work days, or two days in which school is held, or whatever it might be, I think that is reasonable because what we do not want is to use the potential delay to curtail free speech.

Rep. Corey Mock: I believe that the attorney general's office when issuing opinions or things, I think they are supposed to operate within a reasonable amount of time, we can all agree that what is reasonable to attorney general's office may not be reasonable to the person to the person making that request, and there has been a lot of disagreement over whether turnaround time is reasonable or not, and by the way for the record 401.1 is here, so make sure that the committee has this available, and to the bill's sponsor as well, I hope you are willing to work with the committee, and maybe refine language that provides a little latitude, that does not box anyone in within a specific time.

Chairman- Mark S. Owens: any further questions. I completely understand you taking a proactive approach, rather than a reactive approach since you stated currently this is not an issue or problem in North Dakota, and we see it happening across campuses in the United States, but in our state and in the constitution, and in our code we provide a certain amount of, the people have provided, and then the legislature has provided a certain amount of authority to North Dakota university system, and the higher board of education. I understand exactly what you are, this is very detailed though in many aspects about a freedom that is innate in our constitution, and I am just wondering you don't view this as possibly the ability to providing authority, but no responsibility, or providing them the responsibility and no authority I should say at the higher board to administer and manage the campuses, you know and everything on their own without us coming in and saying, well you have the responsibility to do it, but we are going to tell you how to do it. You do not view it possibly that way.

Representative Becker: I understand the hesitancy to go in and trying to micro manage the affairs of higher education, and certainly that is not the intent of this bill. The idea that what has been occurring over the last couple of years on the campuses I suspect that we could theorize that similar discussions were held in other states where they said we should just leave it to the other guys to do, we trust them to do it until then one college president allows safe spaces on their campus, and there is a whole firestorm and then that governing body says, maybe we should have done this, because it is a basic constitutional right, we see what is occurring that is rampant, we can head it off at the pass, the other option is to let higher education head it off at the pass, I don't know, I don't really follow the politics of higher education, I don't know if for instance one of the presidents is of the research institutions is here in a year or two, or not here in a year or two, whatever it might be, but let's say that the

person is not and someone else comes in, again, how much control does the board of higher education have over a president practically speaking, so we as you know Mr. Chairman the delegation of responsibilities, and the understanding of those responsibilities between the chancellor or the presidents, and the board of higher education over the past decade has been somewhat of a grey area. And I believe that is being corrected and approved dramatically, but I would venture to say that there is no down side, that something as important as free speech for the legislature to say we are going to place this statute which places some basic responsibility, which you should already have, but this clarifies it so that there is no grey area.

Chairman- Mark S. Owens: and I certainly do not disagree in some aspects of what you say personally with freedom of speech, again it is in the constitution, I do not see why and necessarily we have to spell it out per se, but this is so detailed in some areas as to define freedom of speech, that is the thing that bothers me the most, its not just about insuring freedom of speech, it's the detail in which its defined that makes me a little nervous, again this is personal ok, I understand about the bill of rights, and you know and certainly again you talk about public assembly and expression, I definitely remember the 1960's and 70's we had no problem with public assembly and expression in the late 60's and early 70's, for a multitude of reasons, but it is just so specific that to me you put this in code, and now we have defined freedom of speech, so anything that is not in here is not part of freedom of speech or it can be interpreted that way, and the fact that nobody has challenged safe spaces doesn't mean they are approved or that they are right. If someone would challenge them in a court, I imagine we might find that the establishment of such places are in violation of the Bill of Rights and the constitution of the United States, so that is why I was asking you about that, and it does feel a little like micro managing, we are going to give them the responsibility, but we will govern the authority, and tell them what they can and cannot do, that is the point I was trying to make, so you did understand what I was asking.

Representative Becker: I did understand, if there are areas that seem too specific in here, it is you bill now, I guess my only other comments would be repeating what I have already said, thank you.

Rep. Mary Johnson: are you aware of the bill that went through the judiciary committee last session, where in a young man was falsely accused of rape and kicked out of college 2 weeks before graduation, have no attorney present at a kangaroo court comprised of doe eyed freshmen, and they thought the university thought that was just fine because it was an educational process, now this legislature passed that bill with no problem, the universities are their own courts system, and when they are in violation, I believe that the legislature needs to take steps to overcome that, do you agree, there is my question.

Representative Becker: I do agree, and I agree completely and I remember the case, I guess what it comes down to Mr. Chairman and Rep. Mary Johnson is trying to determine what is, and is not micro managing. What is, and is not the role of the legislature. Because it is my belief the legislature has a very distinct role with higher education, and so it will be up to you folks to determine whether this basic idea of protecting freedom of speech on all campuses is micro managing.

Chairman- Mark S. Owens: any other questions, seeing none thank you. anyone else in support of 1329

Steve Listapad: I am here speaking on behalf of the principal for Representative Becker's bill, and a specific instance of student press and student journalism, I am a Journalism educator in North Dakota, and I have been following speech, and press freedoms on college campuses in high school's across the country for quite a few years, and in 2015 my students and a bunch of others, if you were here in that session passed an act and we are very happy about that for press freedoms, and I just wanted to say that in so far as this bill goes to protect free speech on college campuses, by eliminating safe spaces, it doesn't pose any threats or any obstacles in the language as it is currently written, to student journalist and that is a major concern for me, and it relates directly to safe spaces, it did not get mentioned in the prior testimony, but if you recall Missouri had a national headline for its Melissa Click story last year, and where the photo journalist Tim Tide student, he was taking photos of people that were assembled on a public space on the campus, and he was removed, he was asked to be removed and threatened with force to be removed, we understand if you are doing something in a public space and you are within your shot and eye shot that you are free to be covered by the press, and that is an important protection for the press, if this bill, this is for you to decide but if this bill helps accomplish that, then it's a good bill in my opinion, but it is up for you to decide whether it is necessary. I remember as a college student in North Dakota and I am North Dakota born and raised, and as a college student at NDSU in the 90's I was student journalist at NDSU and we had all sort of events on public spaces on campus, one of those was camping for Kosovo, a very good student led effort that assembled people on the public space, and camping of course implies that there are going to be tents there, there were tents everywhere, and as a photo journalist I had many friends that were camping, wander around taking pictures, interviewing people was open, the tents were not open, I could not just crawl into any bodies tent and take pictures of what is going on inside of the tent, that would be the equivalent of going into purse or backpack, and that is private property, even though it is on a public space, we understand those differentiations, but we also understand that forcibly removing a journalist from a public where we can clearly see what is going on and clearly hear what is going on is not good, so. I will be happy to take any questions, but for the student journalist in the state of North Dakota this bill does not help, it does not hurt and can possibly help their cause.

Chairman- Mark S. Owens: any questions. Your comment about whatever is going on in public, and a photo journalist being able to take picture of anything, I want to ask you about this, are you aware that there are laws across the United States that says you cannot take pictures of schools, and children outside of schools, and can you imagine why that law would be in place, and the kids are out in public, the school is a public building, everything meets the qualifications you just said about I should be able to do anything I want as a journalist, but nonetheless there are laws in a number of states that you are not allowed to take pictures outside of schools.

Steve Listapad: yes, thank you Mr. Chairman, those are very specific instances, as we are not allowed to put certain types of advertising on billboards next to schools, there is a lot of limitations on free speech, and in each of those specific cases we, those are looked at very specifically, in some instances they are appropriate, and in some instances they are not.

Chairman- Mark S. Owens: that was my question earlier, to Representative Becker in reference to the safe spaces, and they are just popping up, and nobody is doing anything. You said that in this case the laws have been vetted, and these had not. I do not believe they had not been vetted yet, they have not been challenged.

Steve Listapad: that would be another concern that may enhance representative Becker's bill, working with students across the country who have had their first amendment rights violated, these are students, and they are poor, and it is a lot easier to come to a state legislature then it is to get to the supreme court. If the hundreds, thousands of instances of censorship or violations of first amendment rights imposed on students on high school campuses, college campuses, they do not get the attention they deserve because these students and their families cannot put the money towards it, we are lucky to have a Marybeth Tinker and her family that brought that forward when they were in high school, we are not always lucky in every case like that to get to the supreme court.

Chairman- Mark S. Owens: I completely understand that, that's why even every once in a while even I rely on the ACLU. Any other questions, anyone in support of 1329, anyone in opposition to 1329, anyone have neutral testimony for 1329.

Richard Rothoss: I am the Vice Chancellor for academic and student affairs at the North Dakota university system, the state board of higher education has not taken a position on bill 1329, so I appear here as neutral, there are some items of concern that the state board of education and the North Dakota University system would like the legislature to consider as this bill moves forward in the process, the main one of these you have already mentioned, there is an existing board policy on academic freedom, bill 1329 as currently written directs the board to create policy with some very specific detailed items within it, actually no that's not something the board is very happy or appreciative of on most days, that said the board has not taken a position, but they are watching it closely, our other concern with 1329 and I must say in fairness to Representative Becker, Representative Becker and I have not been able to make our schedules match to talk about this bill, so by stating these things I am not implying that I talk to him and he disagrees and he will not see it my way, we have not even had that discussion before we got here today, the biggest concerns are the levels of specificity in the bill, and how these would be workable for our institutions, the bill is pretty black and white there is legally protected speech, and there is speech that is not legally protected, so the bill says if you are engaged in lawful speech, it has to be allowed, because that is the law, if you are engaged in non-lawful speech then obviously other issues come into play, so harassment, disrupting a class, or the function of the institution, our concern is there is a lot of grey on a university campus, because a university campus is not just a place where students come in, they go to class, they engage in the learning material in that classroom, and then they go away. Students live on our campuses, they eat there, they sleep there, they spend a year or two years sometimes unfortunately six years at one of our institutions, pretty much 24 hours a day within the summer, when you have a cultural environment like that, there is just a lot of grey in that environment, I will use as a parallel a place of work, I will use the North Dakota university system on the 10<sup>th</sup> floor of the beautiful state capitol, there are all kinds of things I could say at work that are lawfully protected speech, they are also things that could be said that would be so offensive in repetition to the people I work with that would create a work environment that they would find unbearable, and there is a grey spot in between, you can say anything you want, anytime you want, there

are plenty of grey spots, you say these things so often that you clearly crossed the line into harassment, and you say these things often enough, that you make work so unpleasant, and no one wants to be around you, this is very difficult to navigate, so while certainly we do not disagree with the strong stance on free speech, it is a hallmark of the university system imbedded in 401.1, there are grey issues we have to deal with on the campuses, I bring up everyone's favorite subject, title 9, we are charged to deal with title 9, it doesn't matter whether we like it or not, it is a federal requirement we have to do it, title 9 is extremely tricky for our campuses to navigate, because title 9 requires us to provide a learning environment that is deemed by all parties to be safe enough and secure enough that they can pay attention to their studies. And that is a very different thing, then lawful speech, the goal of the university system is to educate students, create a work force for North Dakota, we need them primarily focused on their classes, and their learning, there are things that can happen on campus that fall within the parameters of lawful speech, but also create an environment that is so uncomfortable for individuals it is impossible for them to fully engage in their learning, and I think this is where we come into some of the issues that are driving everyone nuts like the coddled students, when we enroll students at the North Dakota university system we do not have a checkbox that says, have you been coddled and are you going to be difficult, we get the students who comes to us, and that is what is required, and what is right for a state university system. Within that spectrum of students there are going to be some students who are more than ready to jump into a very contentious life, and argue with people about their political views or their religious views or the state of history or evolution or whatever it is they need to argue about, we are going to get students who just plain aren't ready to engage in that. If we take away any ability to have some grey, and deal with those students it becomes a problem for us to pursue our educational mission. Like I think most of the educators, and most of the members of the committee and legislators here in the room, I have some real misgivings about some of the level of coddling again although I do not like it, that has happened across the nation, we are all very concerned with that, but if we draw a very hard line in the sand and alienate a whole bunch of our students from ever engaging in higher education, we just replaced one problem with another problem. So that does not mean there is anything wrong with the principals in this document in the bill, we are just a little concerned about the greyness, because its greyness I do not have any answers for you, I just have concerns for you, so I appear as neutral.

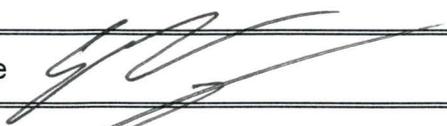
Chairman- Mark S. Owens: any questions. seeing none, thank you. Any neutral testimony, seeing none I will close the hearing.

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Coteau A Room, State Capitol

HB 1329  
1/30/2017  
Job 27616

- Subcommittee  
 Conference Committee

Committee Clerk Signature 

## Explanation or reason for introduction of bill/resolution:

Relating to freedom of speech at state institutions of higher education.

## Minutes:

No attachments

Chairman- Mark S. Owens: yes, I can't find mine, but I will accept a motion.

Rep. Mary Johnson: I move a do pass on HB 1329.

Chairman- Mark S. Owens: ok we have a do pass for 1329, is there a second, second from Rep. Matthew Ruby. Discussion?

Rep. Corey Mock: I am going to support the bill, but I recall during the question that we may have had a concern on page 3 line 29 regarding the receipt of request, that 48 hours in statute may not be a realistic timeline, I don't know what the committee would like to do if there is language we can amend just so we are not tying anyone's arms on processing requests, one comes in on a Friday.

Chairman- Mark S. Owens: I would love to read what you are talking about.

Rep. Corey Mock: it would be good if you had a bill.

Chairman- Mark S. Owens: because I cannot find mine to save my life.

Rep. Corey Mock: just so everyone recalls this section is that anyone outside of the campus, if they wish to participate, and use the campus for public forum, that the university has to process a written request within 48 hours, and the concern was that if you get in, and it comes in on a Friday or Thursday and they do not have time to process it, 48 hours it is not business days, it might make it a little difficult.

Chairman- Mark S. Owens: Thank you Rep. Corey Mock I do remember that argument now, and that was a good point, because in particular to 3 days, or what about when we shut down on Thursdays for Thanksgiving, now there is 4 days.

Rep. Corey Mock: or even winter break, there is a lot of scenarios, we are even putting a time mandatory in there, I don't want anything sitting indefinitely, you don't want anyone getting a de-facto pocket veto to a request by just not processing it in time, but if we were to, if the intent is that its processed within a reasonable timeframe I think that's really what we are after here, is that they get a request, they process it as quickly as they can, and that way the group knows whether or not they can have an event on campus.

Chairman- Mark S. Owens: any further discussion, any additional discussion. We have a motion, you would have to pull your motion back, and somebody make a motion to amend, so right now we are dealing with the motion for do pass, ok. So, but I do think that is an issue.

Rep. Mary Johnson: I will withdraw my motion.

Rep. Matthew Ruby: also withdrew his motion

Rep. Pat D. Heinert: I make a motion that on page 3 line 29, we change the word 48 hours to 2 regularly scheduled school days.

Chairman- Mark S. Owens: ok, we have a motion, do we have a second. Second from Rep. Brandy Pyle. So discussion.

Rep. Bill Oliver: I think that instead stating it that way, it needs to be stated a little different, I like the idea of stating it, to process the request with due diligence in an appropriate amount of time, is that still too vague.

Rep. Longmuir: I guess I was leaning toward something in the effect of 5 business days, because what that would do, it will take out the Thanksgiving holiday, the Friday after Thanksgiving, to some people that would not be considered a business day, and I think 5 days might be a little more appropriate, just to make sure it is being processed properly.

Rep. Corey Mock: visiting with Kyle our resident legal expert, our legal concierge if you will, had mentioned that the term reasonable is frequently used when refereeing to a, it can read in process to request within a reasonable amount of time, or some variation of that, that reasonable is a common use in statute, it doesn't close the language it leaves it fairly vague, my understanding is that it is interpreted by courts as far as what is reasonable, and what is not. But just so you are aware, I do want to check and see what language is used in other sections of code, and reasonable is the most common way of describing a time without naming a specific amount of time.

Chairman- Mark S. Owens: understand.

Rep. Andrew Marschall: (soft audio)

Chairman- Mark S. Owens: I will share with you my thoughts, I mean I am thinking on how the university system works, and there is a whole argument I can see getting into if we say 2 business days or five business days, because while the students may be gone, and some of the professors and educators, staff is gone, the university is still there functioning, and it is

still business days. So that is where the school days came in, but then now school days were limited to when classes are being done, so that bothers me too, and it seems like to me what we are talking about is here some type of freedom of speech to it actually said to protest or assemble or whatnot. It is not unusual to get a petition from a political subdivision to do this, like 2 weeks to a month out, it is not unusual to require that, but I am not saying it needs to be a defined time frame though, I am inclined to think there is reasonable as it would be interpreted by a court of law would be sufficed enough here, and then see once it's out there, because generally what happens is, when the bill first hits one side or the other on the first half, everybody finds out how we change it, if it passes and then they get nervous about it if it goes to the second half and they show up to argue about it, so. But right now we have a motion on the table for, two business days. Two school calendar days, regularly scheduled. So that's what we have to deal with right now.

Rep. Pat D. Heinert: my only thought on reasonable, is I agree with you, but why should we allow another interpretation by another court system that carries this on another 6 or 7 weeks, 8 weeks, because that is all we are going to do then, if one person thinks reasonable one way, and one person thinks it's another we are going to end up in a court with an injunction, and we are going to have a hearing and all that.

Chairman- Mark S. Owens: we do need to keep our judges employed at times, but no seriously I understand your point, ok, and that's what begs the argument, two weeks or three weeks, or not longer than two weeks which gives them the freedom. We have a motion before us, is there any further discussion, ok. I will try to do this voice vote. 2 school calendars say I, all those opposed same sign. Motion failed. What is the committees wishes. We are not going to do this bill today are we, that is fine.

Rep. Corey Mock: based on your comments I would happily move to amend on page 3 line 29 to overstrike within 48 hours of receipt of, and on line 30 we will strike the request, and replace that language with, so it reads in process to request within a reasonable amount of time.

Chairman- Mark S. Owens: ok we have a motion, do I have a second, second from Rep. Bill Oliver. Discussion. Ok. Alright, any discussions or questions. I am assuming Rep. Bill Oliver agreed with that change as the seconding. Fine not to make him talk too much. Oh yeah, today is the day to tell him to do that. Any additional comments, seeing none I will go with a voice vote. Amendment passes, we have before us 1329 as amended, what is the committees wishes.

Rep. Matthew Ruby: I move that we accept House Bill as amended.

Chairman- Mark S. Owens: alright, I have a motion for I guess a Do Pass on HB 1329 as amended. Second from Rep. Andrew Marschall. Any discussion.

Vice Chairman- Cynthia Schreiber-Beck: I will not vote in favor of this bill, either way its denying, freedom of speech is a right, I think the press has made a big issue about spaces on campus or whatever, but they are not existing in North Dakota right now, it's a very unnecessary bill, it is putting something on the university system that does not need to be there, and we all know we have a fundamental right to free speech, so I do not see why it is

necessary, I really don't. And you have the freedom to assembly, with the proper, not at NDSU? Then they have the right, its whether or not it has been exercised by the students.

Rep. Andrew Marschall: I would tend to agree with you at this time, it is not necessary, but I think the whole purpose of this was to pre-empt any possibilities in the future of the campuses coming up with free zones, which are unconstitutional as far I am concerned, this is just a pre-emptive measure, whether we need it here at this time, you are absolutely correct, we don't, we do not have an issue here in North Dakota, we could in the future, but not right now.

Rep. Brandy Pyle: I think I am going to vote no on this one, and I think there is a movie with Tom Cruise where they would arrest the people before they committed the crime, and I just kind of see that happening, I agree with Vice Chairman- Cynthia Schreiber-Beck that this is not a necessary bill, I had over thoughts, but just comments.

Rep. Rich S. Becker: when we first got this bill last week or whenever, and you can tell by the amount of discussion that we had back forth today, I have been sitting here all along, I do not have the words that Vice Chairman- Cynthia Schreiber-Beck has, but to me this has been a solution looking for a problem. I am not sure why I understand why we are spending the amount of time that we are on it, I agree with what Rep. Andrew Marschall said, that, it's a problem that does not currently exist, and I think as law makers we deal with them when they do exist, thank you.

Chairman- Mark S. Owens: any further discussion.

Rep. Mary Johnson: recently there was an effort to get a guy to speak at NDSU, there is a guy with a Greek name who is very controversial, and he is gay but he bashes everybody. And that was cancelled, entirely at NDSU before he even purchased airplane tickets. I will tell you what, back when I was in college. Like I said everyone supported free speech, it did not matter what they said, or where they said it, and the tide has turned. Those of us in law school with a moderate or conservative bent wrote our responses to test questions with a liberal bench just so we can get the grade, and that is how much this has changed over the years. I foresee this becoming a problem, because it is a problem elsewhere, and I think that in the entire picture, in the big picture it is not a solution looking for the problem, but there are problems out there, and they can certainly infiltrate, and I think they have begun to infiltrate, I think that this is a necessary bill.

Chairman- Mark S. Owens: any further discussion.

Vice Chairman- Cynthia Schreiber-Beck: I see that your wrong either way. You are just as, if you deny anybody the right to assemble and say what they want, that is what this is doing as well. So it is, it is, look at both sides of the coin, it is denying somebody else the right to assemble and say what they want, in reality. The press has named it a safe zone, but they are assembling also to say what they want, and I can assemble at a group of you know I had the rights to do so I ask to do so, I can assemble and say what I want as well. Now they cannot put me in jail for coming up and saying the opposite of what they want to say, because of what they believe, there is no way that they are going to arrest me if I come up and say, in a peaceful manner of assembly I say the opposite of what they say, here you are allowing

one, but not allowing the other, it does not make sense to me. That is the way I see it, you are penalizing one, but not penalizing the other, but it does not make sense to me.

Rep. Denton Zubke: I will also vote against this. I think that the safe zone issue is something that the press picked up on, its making a big deal out of it, I think it is eventually going to implode, it may actually come to a court case someplace, but that is freedom of speech, and that I the way it should be decided, it is already in the constitution, how many times have we heard on the house floor, that this is already in the constitution, this is already in the constitution, so why do we pass another law that says this is in the constitution, so I do not think this is a necessary bill.

Rep. Mary Johnson: we can all agree that due process is in the constitution as well, and how did that work out for UND in 2010, it did not.

Chairman- Mark S. Owens: any further discussion. Seeing none I will ask the clerk to do a do pass vote as amended for HB 1329. Vote is 3-11-0. Do pass vote failed. Does the committee have another motion.

Rep. Longmuir: I move a do not pass as amended on HB 1329.

Chairman- Mark S. Owens: we have a motion for a do not pass as amended, is there a second. Oh, no it was a do pass and it failed, so it cannot leave the committee that way, now you either have to give it a do not pass and or it will leave here a do not pass or it will leave here with no recommendation, I don't think it is going that way, so. Vice Chairman- Cynthia Schreiber-Beck seconded the do not pass. Any discussion, seeing none I will call the clerk to do the roll on HB 1329. Vote is 11-3-0. Do not pass as amended vote passed, and Rep. Denton Zubke will carry this bill.

1/30/17 DO

17.0328.02001  
Title.03000

Adopted by the Education Committee

January 30, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1329

Page 3, line 29, remove "forty-eight hours of receipt of"

Page 3, line 30, replace "the request" with "a reasonable length of time"

Renumber accordingly

Date: 1/30/17

Roll Call Vote # 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1329

House Education Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Heinert Seconded By Rep Pyle

Representatives	Yes	No	Representatives	Yes	No
Chairman- Mark S. Owens			Rep. Andrew Marschall		
Vice Chairman- Cynthia Schreiber-Beck			Rep. Bill Oliver		
Rep. Rich S. Becker			Rep. Brandy Pyle		
Rep. Pat D. Heinert			Rep. Matthew Ruby		
Rep. Dennis Johnson			Rep. Denton Zubke		
Rep. Mary Johnson			Rep. Ron Guggisberg		
Rep. Donald W. Longmuir			Rep. Corey Mock		

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Rep.

If the vote is on an amendment, briefly indicate intent:  
voice vote for amendment for 2 calendar days. motion failed.

Date: 1/30/17

Roll Call Vote # 2

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1329

House Education Committee

Subcommittee

Amendment LC# or Description: *Page 3, line 29 to overstrike within 48 hours of receipt of, and on line 30 we will strike the request, and replace that language with, so it reads in process to request within a reasonable amount of time.*

- Recommendation:  Adopt Amendment
- Do Pass     Do Not Pass     Without Committee Recommendation
- As Amended     Rerefer to Appropriations
- Place on Consent Calendar
- Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Mock    Seconded By Rep. Oliver

Representatives	Yes	No	Representatives	Yes	No
Chairman- Mark S. Owens			Rep. Andrew Marschall		
Vice Chairman- Cynthia Schreiber-Beck			Rep. Bill Oliver		
Rep. Rich S. Becker			Rep. Brandy Pyle		
Rep. Pat D. Heinert			Rep. Matthew Ruby		
Rep. Dennis Johnson			Rep. Denton Zubke		
Rep. Mary Johnson			Rep. Ron Guggisberg		
Rep. Donald W. Longmuir			Rep. Corey Mock		

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Rep. \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*voice vote, motion passes.*

Date: 1/30/17

Roll Call Vote # 3

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1329

House Education Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Ruby Seconded By Rep. Marschall

Representatives	Yes	No	Representatives	Yes	No
Chairman- Mark S. Owens		✓	Rep. Andrew Marschall		✓
Vice Chairman- Cynthia Schreiber-Beck		✓	Rep. Bill Oliver		✓
Rep. Rich S. Becker		✓	Rep. Brandy Pyle		✓
Rep. Pat D. Heinert		✓	Rep. Matthew Ruby	✓	
Rep. Dennis Johnson		✓	Rep. Denton Zubke		✓
Rep. Mary Johnson	✓		Rep. Ron Guggisberg		✓
Rep. Donald W. Longmuir		✓	Rep. Corey Mock	✓	
	1	6		2	5

Total (Yes) 3 No 11

Absent 0

Floor Assignment Rep. \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*motioned failed*

Date: 1/30/17

Roll Call Vote # 4

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. B 1329

House Education Committee

Subcommittee

Amendment LC# or Description: 17.0328.02001

- Recommendation:
- Adopt Amendment
  - Do Pass  Do Not Pass
  - As Amended
  - Place on Consent Calendar
  - Without Committee Recommendation
  - Rerefer to Appropriations
- Other Actions:
- Reconsider
  - \_\_\_\_\_

Motion Made By Rep. Longmuir Seconded By Rep. Schreiber-Beck

Representatives	Yes	No	Representatives	Yes	No
Chairman- Mark S. Owens	✓		Rep. Andrew Marschall	✓	
Vice Chairman- Cynthia Schreiber-Beck	✓		Rep. Bill Oliver	✓	
Rep. Rich S. Becker	✓		Rep. Brandy Pyle	✓	
Rep. Pat D. Heinert	✓		Rep. Matthew Ruby		✓
Rep. Dennis Johnson	✓		Rep. Denton Zubke	✓	
Rep. Mary Johnson		✓	Rep. Ron Guggisberg	✓	
Rep. Donald W. Longmuir	✓		Rep. Corey Mock		✓
	6	1		5	2

Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep. Zubke.

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1329: Education Committee (Rep. Owens, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1329 was placed on the Sixth order on the calendar.

Page 3, line 29, remove "forty-eight hours of receipt of"

Page 3, line 30, replace "the request" with "a reasonable length of time"

Renumber accordingly

**2017 SENATE EDUCATION**

**HB 1329**

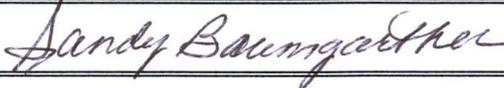
# 2017 SENATE STANDING COMMITTEE MINUTES

Education Committee  
Sheyenne River Room, State Capitol

HB 1329  
3/22/2017  
Job Number 29548

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to freedom of speech at state institutions of higher education

## Minutes:

#1, #2

**Chairman Schaible:** Let's open the hearing on HB 1329.

**Rick Becker:** Repr. of District 7 in Bismarck. I present to you HB 1329. To clarify it is said to be the Safe Space bill. It deals with what is commonly known as safe spaces or safe zones on college campuses in North Dakota. Testimony #1. Also went over the bill with committee. Free speech policy on campuses is section 1A. Student bill of rights has to be in the policy. It has public assembly and restrictions guidelines. Free speech notices about the policy is to be sent out each year to students. The House did not have any opposition when I presented it to them. I hear that higher ed. doesn't want legislature to tell them what to do. That is our job to some extent. Some say we already have the first amendment and yet we have states that have these areas of free space. Some say we don't have an issue in ND and don't have to worry about it. Minot has a picture of a free space poster on campus. This bill makes it very clear that we will not have sanctions. State board of higher ed. simply needs a policy. They simply need to have a Student Bill of Right.

**Chairman Schaible:** In the violation section at the last part of the bill, do they go directly to court and not to an administrative hearing? They might have a situation where they might want to go to a complaint procedure before they go to court. This requires them to go to court right away.

**Rick Becker:** I think the concern is if it was in the institution the outcome might have been predetermined. I agree where there might be several circumstances where simply notifying that this is the situation can you take care of it and follow the policy.

**Chairman Schaible:** You should take care of your problems in your house first before you move up the ladder. Is the attorney and courts costs going to be an enticement to see more action and cases brought to the court.

**Rick Becker:** I think there should be little to no action that would be brought to court action in which free speech is restricted.

**Chairman Schaible:** I wish that was true, but as we know when we create laws we also create recourse. With this bill you do not think that a protection for free speech in our state and federal level is adequate and we need to go farther on?

**Rick Becker:** Based on what a student sent me from Minot State, I think that is true.

**Chairman Schaible:** On the cases you know about. Have they gone through a complaint process and found results, or is nothing being done with these cases?

**Rick Becker:** What I was made aware of was brought to me a day before the House vote.

**Chairman Schaible:** Other testimony? In opposition?

**Richard Rothaus:** Vice Chancellor for Academic and Student Affairs at the ND University System. Testimony #2. I apologize to Repr. Becker for not opposing this bill in the House. We took an approach to watch and see and that is why we are doing this now. Continue with testimony. I ask the committee for a Do Not Pass on this bill.

**Chairman Schaible:** In your testimony you said there were no safe zones in ND. Can you explain that a little better?

**Richard Rothaus:** I am not familiar with that exact sign after looking at it. It looks like one of our safe zone signs that are generally in offices that work with student conflicts on campuses. Example given of roommate conflict. Then also appear on faculty doors and other places to let students know that you can come in and I will listen and not tell. There are safe zone signs out there in an unofficial way.

**Senator Vedaa:** I have a college student now and for a whole semester nothing was taught about the class, but only what was happening on the election. Is there a place he could have gone?

**Richard Rothaus:** I would recommend first he go to the chair of the department, then finally end up at board. If a faculty member is using their classroom as a platform it is unacceptable. The problem for the student is how do you time that. We find that students are hesitant to complain.

**Senator Vedaa:** Are the students told about the recourse?

**Richard Rothaus:** We have a board freedom of speech where this would cover this. We have student handbooks, freedom of speech policies, and student complain policies and procedures. We try to get the information out to the students the best we can. It is hard to inform them.

**Chairman Schaible:** Are there student advocates?

**Richard Rothaus:** All of the institutions have academic advisors and centers. In the departments we have counseling centers. We try to maintain multiple places where the students can go forward. We make sure there isn't only one pathway for a student to make a complaint.

**Chairman Schaible:** How many incidents are we looking at?

**Richard Rothaus:** We do not track student information. At my time on campus, student complaints are going up.

**Senator Kannianen:** What is the purpose of the higher ed. policy? Is there administrative policy on free speech?

**Richard Rothaus:** I would say the board policy probably in conception was even thinking of constitutional rights and freedom of speech as trying to make clear certain issues about appropriate ways freedom of speech should be manifesting on campus. The board policy is dated. In 1984 we had a policy that says speakers must be courted of an uninterrupted presentation. Just because it isn't happening today doesn't mean it wouldn't happen tomorrow.

**Senator Kannianen:** To go along with that point, if there is an agency policy regarding free speech, is there a problem with establishing that in statute?

**Richard Rothaus:** I think there is. Statute allows for legal remedies and a much higher entity than a board policy. If we discover a problem in a state board policy, we can change that by the board in a month. We have done it in 2 weeks. Statute is much harder to change and adjust. It creates a burden for both someone seeking relief and an institution that has to respond to the relief. It pulls something into a court of law which is a much more complicated than an administrative hearing. I think it will make everything more complicated to pursue if you feel your rights have been limited.

**Chairman Schaible:** Other testimony?

**Katie Fitzsimmons:** Director of Student Affairs of the University System: One point of clarification, the sign that Repr. Becker talked about the safe zone, I want to clarify. A safe zone is actually a training, a project that staff or faculty would undergo. The purpose is to learn about gender and

sexual LGBTQ identity issues. So the person who has a sticker or sign that indicates this is a safe zone, it means that person is open to talking about or to LGBTQ individuals and identities. It is also a mediation space for issues. It is something you would see on a counselor or faculty door. I am equipped with that type of training and am here to be a resource for you.

**Chairman Schaible:** How does a student find out about that?

**Katie Fitzsimmons:** Students have to inform themselves and look around. If we are trying not to coddle students and power them to make their own decisions, you need to find out as much as possible from student handbooks, web-site, residence halls, student activity, e-mails, and students need to be open to be informed. I can look for a handbook and see what I can find.

**Chairman Schaible:** Any other testimony? Seeing not we will close the hearing on 1329.

# 2017 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Sheyenne River Room, State Capitol

HB 1329  
3/27/2017  
Job Number 29724

- Subcommittee  
 Conference Committee

Committee Clerk Signature *Andy Baumgardner*

**Explanation or reason for introduction of bill/resolution:**

Relating to freedom of speech at state institutions of higher education

**Minutes:**

none

**Chairman Schaible:** Discussion on 1329? I have concerns about jumping to district court and by-passing administrative rules process or at least the policy of the university. Protection of speech is already covered so I don't know if we have to validate that in state law. I oppose the attorney fees as an incentive to inspire litigation. I feel this is a solution looking for a problem.

**Senator Oban:** I think in listening to the sponsor and the university system and being able to see what the university system already has in place and reassure students the right to free speech is certainly protected I think this is one those that we want to put it into law. I don't think it is necessary. I think everybody is more highly offended more these days. I move for a Do No Pass.

**Senator Rust:** I second.

**Chairman Schaible:** Discussion? Roll called: 3 Yeas, 2 Nay, 1 Absent

**Senator Oban** will carry

Date: 3-27-17  
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1329

Senate Education Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Oban Seconded By Rust

Senators	Yes	No	Senators	Yes	No
Chairman Schaible	✓		Senator Oban	✓	
Vice-Chairman Rust	✓				
Senator Davison		absent			
Senator Kannianen		✓			
Senator Vedaa		✓			

Total (Yes) 3 No 2

Absent 1

Floor Assignment Oban

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1329, as engrossed: Education Committee (Sen. Schaible, Chairman) recommends  
DO NOT PASS (3 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING).**  
Engrossed HB 1329 was placed on the Fourteenth order on the calendar.

**2017 TESTIMONY**

**HB 1329**

HB1329 - Safe Spaces on college campuses, Prohibition thereof. Rick Becker

Why create HB1329?

There has been a wave of PC culture coming across college campuses in the last few years. Although the institutions of NDUS have had limited incursions, the effects have been growing and NDUS will be facing the pressure to create safe spaces in the near future.

"Safe spaces" are actually institution-condoned areas set aside where free speech is restricted.

Definitions

Wiki - In educational institutions, safe-space (or safe space), safer-space, and positive space originally were terms used to indicate that a teacher, educational institution or student body does not tolerate anti-LGBT violence, harassment or hate speech, thereby creating a safe place for all lesbian, gay, bisexual, and transgender students.[2] The term safe space has been extended to refer to a space for individuals who feel marginalized to come together to communicate regarding their experiences with marginalization, typically on a university campus.[3] The idea of safe-spaces has seen criticism on the grounds that it stifles freedom of speech.[4][5]

Advocates for Youth states on their website that a safe-space is "A place where anyone can relax and be fully self-expressed, **without fear of being made to feel uncomfortable**, unwelcome or challenged on account of biological sex, race/ethnicity, sexual orientation, gender identity or expression, cultural background, age, or physical or mental ability; **a place where the rules guard each person's self-respect, dignity and feelings** and strongly encourage everyone to respect others.[14] However, some people consider safe space culture as a violation of the First Amendment and a mechanism for retreating from opinions which contrast with one's own.[15]

Urban Dictionary - A place where cowards with cultural authoritarian and pro-censorship leanings go to in order to evade criticism and calling out of whatever absurd ideas they may express, as well as ideas that are even slightly opposed to the safe space dweller's ideas. These are labelled as whatever kind of bigotry would make the safe space dweller look like a victim the most.

The bill, in Sections:

- 1a. Definitions.
- 1b. State Board of Higher Ed required to adopt a Freedom of Speech policy
- 1c. Freedom of Speech policy must include a bill of student rights
- 1d. Freedom of assembly
- 1e. Restrictions on freedom of assembly
- 1f. Yearly notice of free speech policy to students
- 1g. Violation

Reason to vote DNP:

No agencies or Boards want the legislature to tell them what to do.

Reason to vote DP:

It's easy, it makes sense, it costs nearly nothing. ND takes a position that we don't tolerate erosion of the freedom of speech for the benefit of political correctness zealots.



### In the **safe spaces** on **campus**, no Jews allowed

Washington Post - Sep 15, 2016

The recent surge of progressive activism on **college campuses** across ... as "microaggressions" and "**safe spaces**" in educational settings that ...

**Campus Zionists** don't need **safe spaces**. They need self-confidence.

Jewish Telegraphic Agency - Sep 12, 2016

[View all](#)



### How Trigger Warnings Silence Religious Students

The Atlantic - Aug 30, 2016

**Safe spaces** and trigger warnings pose no real threat to free speech, .... beliefs and identities are marginalized on many **college campuses**.

University of Chicago's denouncement of '**safe spaces**' a just move ...

Opinion - Dallas Morning News - Aug 30, 2016

[View all](#)



### College Kids Aren't the Only Ones Demanding '**Safe Spaces**'

RollingStone.com - Apr 6, 2016

Reporters hot on the scent of lively copy (any "**safe space**" story is a guaranteed hit-generator) immediately descended on the **campus**, where ...

When Donald Trump Graffiti Threatens Your '**Safe Space**'

Forbes - Apr 7, 2016

[View all](#)



### Trump Supporters Also Want '**Safe Spaces**' on College Campuses

Fox News Insider - Dec 9, 2016

Some **college** students who support President-elect Donald Trump are feeling bullied on **campus**, so they're asking for "**safe spaces**." The New ...



### Trigger Warnings, **Safe Spaces** and Microaggressions: Discussing ...

New York Times (blog) - Sep 14, 2016

**Colleges** and universities should have speech codes to protect students ... Concepts like "**safe spaces**" and "trigger warnings" on **campus** are ...

**Safe spaces** are not the only threat to free speech

Opinion - The Guardian - Sep 15, 2016

[View all](#)



### UW-Madison's Young Americans for Freedom labeled hate group

The College Fix - Jan 5, 2017

2



### Point/Counterpoint: Do **safe spaces** belong on **college campuses**?

USA TODAY College - Nov 22, 2016

Whether or not to adopt **safe spaces** and to what extent has been a heated discussion on **campus** in the past year. I personally think that safe ...



### **College** students refuse to accept Trump's inauguration, protest ...

The College Fix - Jan 20, 2017

Similar protests and walkouts took place on **college campuses** across ... Ohio State University offered students a "**safe space**," which included a ...



### '**Safe spaces**' balloon on **college campuses** following Donald Trump ...

Washington Times - Nov 10, 2016

Thousands of high school and **college** students march to Sproul Plaza on the University of California, Berkeley **campus** to protest the ...



### 'Toxic masculinity'? Dude, now America's universities are turning ...

Fox News - Jan 17, 2017

**Campus Reform** recently reported on efforts to provide "**safe spaces**" to fight back against what the academic world calls, "toxic masculinity." ... of sexual assault and other forms of interpersonal violence on **college campuses**."



### Time for Obama to return to his **college campus** cocoon

Chicago Tribune - Dec 26, 2016

It is expected that Putin will most likely seek out a "**safe space**" to work out his emotions upon receipt of Obama's forceful admonishment. (Wait ...



### Amherst **College** designates chapel to protect immigrant students ...

wwlp.com - Jan 18, 2017

... a formal sanctuary on the at Amherst **College campus** Thursday afternoon. ... It's a **safe space** for immigrant and undocumented students who might be ... Students rallied last November to demand Amherst **college** protect ...



### On **Campus**, Trump Fans Say They Need '**Safe Spaces**'

New York Times - Dec 8, 2016

Amanda Delekta, 20, the political director for the **College** Republicans at the University of Michigan, in her bedroom near **campus** in Ann Arbor, ...



### The specter of the '**safe space**' is haunting **college campuses**

Washington Post - Oct 19, 2016

A specter is haunting academia, the specter of specters — ghosts, goblins and "cultural appropriation" through insensitive Halloween costumes ...

Google

safe spaces on college campus



All News Videos Images Shopping More Search tools



The danger of college campus 'safe spaces'

Los Angeles Times - Jan 9, 2017

To the editor: Safe spaces? I thought college campuses were safe spaces. ("Campuses are breaking apart into 'safe spaces,'" Opinion, Jan. 5).



Ohio State offers Inauguration Day 'safe space'

The College Fix - Jan 19, 2017

Ohio State University will offer a "safe space" for students today as the ... is to foster a safe space for the Ohio State campus community to connect with ... not respond to several requests from The College Fix seeking comment.

Ohio State Offers 'Safe Space' For Students To Cope With ...

Daily Caller - Jan 20, 2017

View all



Campuses are breaking apart into 'safe spaces'

Los Angeles Times - Jan 5, 2017

The meaning of a "safe space" has shifted dramatically on college campuses. Until about two years ago, a safe space referred to a room where ...



Major US university creates 'safe space' for Muslims in burqas

WND.com - Jan 19, 2017

Major U.S. university creates 'safe space' for Muslims in burqas ... A campus spokesperson confirmed to the College Fix that it's still in use ...



Safe Spaces for Fascists

FrontPage Magazine - Jan 17, 2017

The more safe spaces a campus has, the less freedom of speech the students ... UC Davis administrators had intimidated UC Davis College ...

in deadline

Safe spaces and trigger warnings on college campuses: Daycare, or ...

ABC27 - Dec 27, 2016



Is it reasonable for college students to expect safe spaces and trigger warnings on campus, or are today's students too soft? In the latest ...



Arizona Republicans Demand a Safe Space from 'Social Justice ...

4/

3-22-17  
HB 1329  
# 1 p. 1

HB1329 - Safe Spaces on college campuses, Prohibition thereof. Rick Becker

Why create HB1329?

There has been a wave of PC culture coming across college campuses in the last few years. Although the institutions of NDUS have had limited incursions, the effects have been growing and NDUS will be facing the pressure to create safe spaces in the near future.

"Safe spaces" are actually institution-condoned areas set aside where free speech is restricted.

Definitions

Wiki - In educational institutions, safe-space (or safe space), safer-space, and positive space originally were terms used to indicate that a teacher, educational institution or student body does not tolerate anti-LGBT violence, harassment or hate speech, thereby creating a safe place for all lesbian, gay, bisexual, and transgender students.[2] The term safe space has been extended to refer to a space for individuals who feel marginalized to come together to communicate regarding their experiences with marginalization, typically on a university campus.[3] The idea of safe-spaces has seen criticism on the grounds that it stifles freedom of speech.[4][5]

Advocates for Youth states on their website that a safe-space is "A place where anyone can relax and be fully self-expressed, **without fear of being made to feel uncomfortable**, unwelcome or challenged on account of biological sex, race/ethnicity, sexual orientation, gender identity or expression, cultural background, age, or physical or mental ability; **a place where the rules guard each person's self-respect, dignity and feelings** and strongly encourage everyone to respect others.[14] However, some people consider safe space culture as a violation of the First Amendment and a mechanism for retreating from opinions which contrast with one's own.[15]

Urban Dictionary - A place where cowards with cultural authoritarian and pro-censorship leanings go to in order to evade criticism and calling out of whatever absurd ideas they may express, as well as ideas that are even slightly opposed to the safe space dweller's ideas. These are labelled as whatever kind of bigotry would make the safe space dweller look like a victim the most.

The bill, in Sections:

- 1a. Definitions.
- 1b. State Board of Higher Ed required to adopt a Freedom of Speech policy
- 1c. Freedom of Speech policy must include a bill of student rights
- 1d. Freedom of assembly
- 1e. Restrictions on freedom of assembly
- 1f. Yearly notice of free speech policy to students
- 1g. Violation

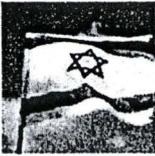
Reason to vote DNP:

No agencies or Boards want the legislature to tell them what to do.

Reason to vote DP:

It's easy, it makes sense, it costs nearly nothing. ND takes a position that we don't tolerate erosion of the freedom of speech for the benefit of political correctness zealots.

3-22-17  
HB 1329  
#1p2



### In the **safe spaces** on campus, no Jews allowed

Washington Post - Sep 15, 2016

The recent surge of progressive activism on college campuses across ... as "microaggressions" and "safe spaces" in educational settings that ...

Campus Zionists don't need **safe spaces**. They need self-confidence.

Jewish Telegraphic Agency - Sep 12, 2016

[View all](#)



### How Trigger Warnings Silence Religious Students

The Atlantic - Aug 30, 2016

**Safe spaces** and trigger warnings pose no real threat to free speech, .... beliefs and identities are marginalized on many college campuses.

University of Chicago's denouncement of '**safe spaces**' a just move ...

Opinion - Dallas Morning News - Aug 30, 2016

[View all](#)



### College Kids Aren't the Only Ones Demanding '**Safe Spaces**'

RollingStone.com - Apr 6, 2016

Reporters hot on the scent of lively copy (any "safe space" story is a guaranteed hit-generator) immediately descended the campus, where ...

When Donald Trump Graffiti Threatens Your '**Safe Space**'

Forbes - Apr 7, 2016

[View all](#)



### Trump Supporters Also Want '**Safe Spaces**' on College Campuses

Fox News Insider - Dec 9, 2016

Some college students who support President-elect Donald Trump are feeling bullied on campus, so they're asking for "safe spaces." The New ...



### Trigger Warnings, **Safe Spaces** and Microaggressions: Discussing ...

New York Times (blog) - Sep 14, 2016

Colleges and universities should have speech codes to protect students ... Concepts like "safe spaces" and "trigger warnings" on campus are ...

**Safe spaces** are not the only threat to free speech

Opinion - The Guardian - Sep 15, 2016

[View all](#)



### UW-Madison's Young Americans for Freedom labeled hate group

The College Fix - Jan 5, 2017

3-22-17  
WB 1329  
#1 p.3



Point/Counterpoint: Do **safe spaces** belong on **college campuses**?

USA TODAY College - Nov 22, 2016

Whether or not to adopt **safe spaces** and to what extent has been a heated discussion on **campus** in the past year. I personally think that safe ...



**College** students refuse to accept Trump's inauguration, protest ...

The College Fix - Jan 20, 2017

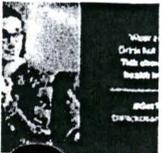
Similar protests and walkouts took place on **college campuses** across ... Ohio State University offered students a "**safe space**," which included a ...



'**Safe spaces**' balloon on **college campuses** following Donald Trump ...

Washington Times - Nov 10, 2016

Thousands of high school and **college** students march to Sproul Plaza on the University of California, Berkeley **campus** to protest the ...



'Toxic masculinity'? Dude, now America's universities are turning ...

Fox News - Jan 17, 2017

**Campus Reform** recently reported on efforts to provide "**safe spaces**" to fight back against what the academic world calls, "toxic masculinity." ... of sexual assault and other forms of interpersonal violence on **college campuses**."



Time for Obama to return to his **college campus** cocoon

Chicago Tribune - Dec 26, 2016

It is expected that Putin will most likely seek out a "**safe space**" to work out his emotions upon receipt of Obama's forceful admonishment. (Wait ...



Amherst **College** designates chapel to protect immigrant students ...

wvlp.com - Jan 18, 2017

... a formal sanctuary on the at Amherst **College campus** Thursday afternoon. ... It's a **safe space** for immigrant and undocumented students who might be ... Students rallied last November to demand Amherst **college** protect ...



On **Campus**, Trump Fans Say They Need '**Safe Spaces**'

New York Times - Dec 8, 2016

Amanda Deleka, 20, the political director for the **College Republicans** at the University of Michigan, in her bedroom near **campus** in Ann Arbor, ...



The specter of the '**safe space**' is haunting **college campuses**

Washington Post - Oct 19, 2016

A specter is haunting academia, the specter of specters — ghosts, goblins and "cultural appropriation" through insensitive Halloween costumes ...

# Google safe spaces on college campus

3-22-17  
WB 1329  
#1p.4

All News Videos Images Shopping More Search tools



## The danger of college campus 'safe spaces'

Los Angeles Times - Jan 9, 2017

To the editor: **Safe spaces?** I thought college campuses were safe spaces. ("Campuses are breaking apart into 'safe spaces,'" Opinion, Jan. 5).



## Ohio State offers Inauguration Day 'safe space'

The College Fix - Jan 19, 2017

Ohio State University will offer a "safe space" for students today as the ... is to foster a safe space for the Ohio State campus community to connect with ... not respond to several requests from The College Fix seeking comment.

Ohio State Offers 'Safe Space' For Students To Cope With ...  
Daily Caller - Jan 20, 2017

View all



## Campuses are breaking apart into 'safe spaces'

Los Angeles Times - Jan 5, 2017

The meaning of a "safe space" has shifted dramatically on college campuses. Until about two years ago, a safe space referred to a room where ...



## Major US university creates 'safe space' for Muslims in burqas

WND.com - Jan 19, 2017

Major U.S. university creates 'safe space' for Muslims in burqas ... A campus spokesperson confirmed to the College Fix that it's still in use ...



## Safe Spaces for Fascists

FrontPage Magazine - Jan 17, 2017

The more safe spaces a campus has, the less freedom of speech the students ... UC Davis administrators had intimidated UC Davis College ...

on deadline

## Safe spaces and trigger warnings on college campuses: Daycare, or ...

ABC27 - Dec 27, 2016

Is it reasonable for college students to expect safe spaces and trigger warnings on campus, or are today's students too soft? In the latest ...

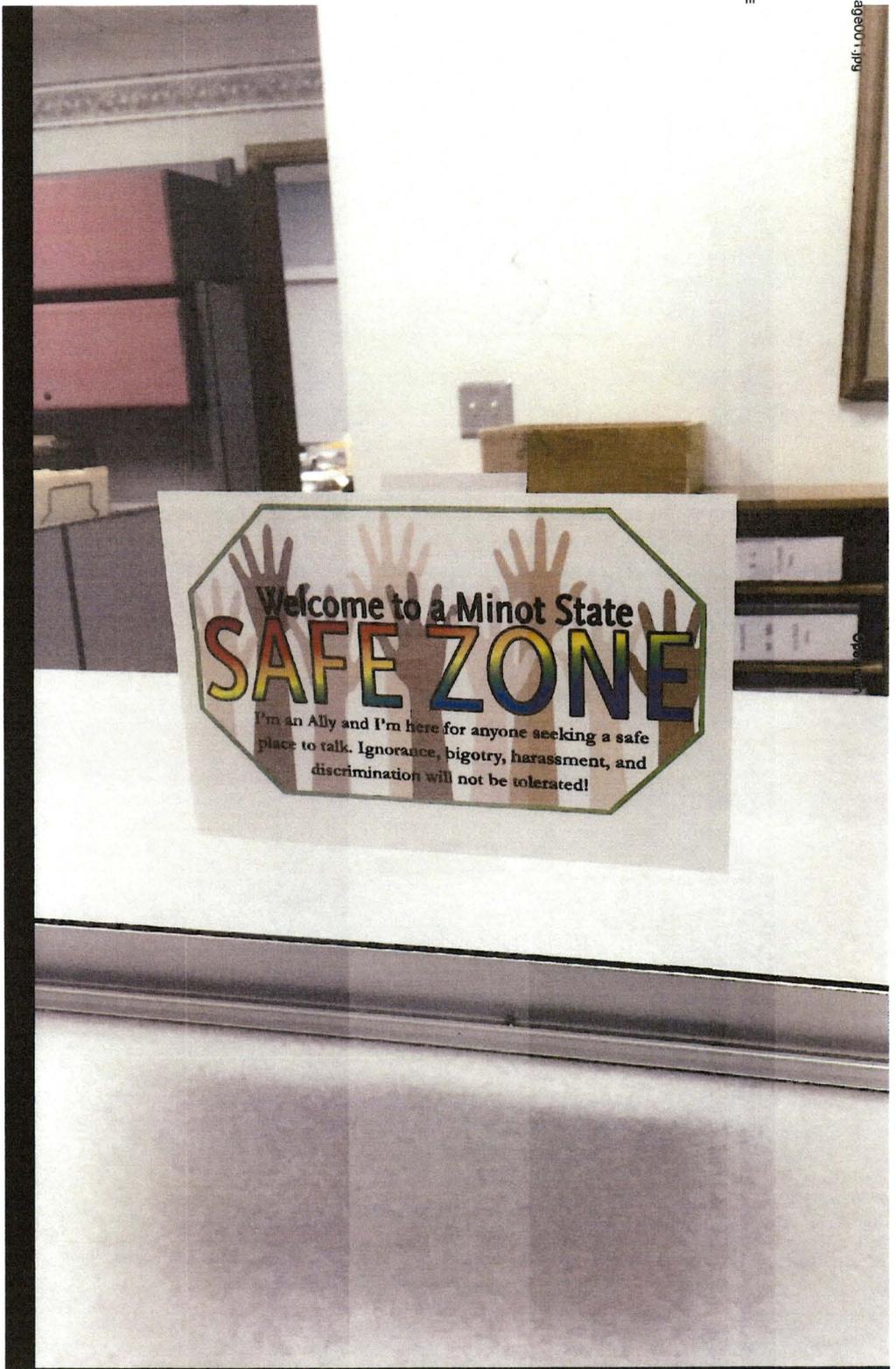


## Arizona Republicans Demand a Safe Space from 'Social Justice ...

3-22-17  
AB 1329  
#1p5

- Gmail
- COMPOSE
- Inbox (298)
- Starred
- Important
- Sent Mail
- Drafts (1)
- Circles
- [Gmail]
- Bakke
- HST
- Notes
- Personal
- Travel
- More

image001.jpg



HB 1329  
3-22-17  
H/pb

Dear Chairman Schaible and distinguished members of the Senate Committee on Education:

I am writing to express the Foundation for Individual Rights in Education's (FIRE) support for House Bill 1329. FIRE is a nonpartisan nonprofit organization dedicated to defending the free speech rights of students and faculty at institutions of higher education nationwide.

HB 1329 is an important piece of legislation that deserves your support. Despite the fact that it has literally been decades since there was any question that students at public colleges and universities have fully vested free speech rights under the First Amendment of the Constitution, censorship on college campuses remains persistent. According to FIRE's latest research, roughly 93% of institutions maintain at least one policy that would likely be found unconstitutional if it were challenged in court. Approximately 34% of public institutions have at least one policy that is blatantly unconstitutional.

One of the most common ways that institutions infringe on their students' rights to freedom of expression is through policies that restrict the locations on campuses where students can engage in expressive activities protected by the First Amendment. These policies often quarantine student expression into misleadingly labeled "free speech zones" or require students to obtain prior approval from administrators before speaking their minds. For example, North Dakota State University requires that students who wish to "protest, rally or demonstrat[e]" must first register with campus administrators and police. Students should not have to get prior approval from government actors before they may exercise their First Amendment rights.

Across the country, similar policies have been used to silence student speech on gun rights, veganism, and the National Security Agency. They have even prohibited distribution of copies of the U.S. Constitution—in fact, students at a Michigan community college were recently arrested for distributing copies of the Constitution on campus. If HB 1329 were passed, these unfortunate incidents could be avoided in North Dakota. Other states—including Virginia, Missouri, Arizona, and Kentucky—have recently passed similar provisions with overwhelming bipartisan support, and legislation in Utah is currently sitting on the Governor's desk.

The continued maintenance of free speech zones at our nation's public institutions benefits no one. Institutions risk losing lawsuits. Students risk punishment for protected speech and learn the wrong lesson about their expressive rights, concluding that self-censorship is safer than risking discipline for speaking their mind. Establishing that outdoor areas on public campuses are public forums, subject only to reasonable, content- and viewpoint-neutral time, place and manner restrictions, will ensure that our public universities continue to be a traditional space for debate aptly and memorably recognized by the Supreme Court as "peculiarly the 'marketplace of ideas.'"

HB 1329  
3-22-17  
#1p7

Another common form of censorship on campus that HB 1329 would end is the use of overbroad anti-harassment policies. Harassment is not a form of protected speech, but colleges often define harassment so broadly that they prohibited speech that is protected under the First Amendment. Helpfully, the United States Supreme Court defined peer-on-peer harassment for which colleges could be held liable if they ignored in *Davis v. Monroe County Board of Education* (1999). In that case, the Court defined sexual harassment as conduct “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.” HB 1329 would codify this precise definition, ensuring a student’s right to learn in an environment free from discriminatory harassment without punishing speech that is protected.

Protecting freedom of speech on college campuses is of critical importance. If we do not vigorously defend free speech on campus, we will condition future generations of leaders to accept that censorship is normal, routine, and maybe even desirable. HB 1329 would help ensure that ideas are exchanged freely at each of the public institutions in North Dakota.

Thank you for your attention to FIRE’s support for HB 1329. If you have any questions about the bill, please feel free to call me at (215) 717-3473.

Respectfully submitted,

Joe Cohn  
Legislative & Policy Director  
Foundation for Individual Rights in Education  
510 Walnut Street, Suite 1250  
Philadelphia, PA 19106  
(215) 717-3473  
(215) 717-3440 fax  
twitter: @JoeatFIRE

HB 1329  
3-22-17  
#2 p.1

## HB1329

Senate Education Committee

March 22, 2017

Richard M. Rothaus, Vice Chancellor for Academic and Student Affairs  
701.328.4132 | [richard.rothaus@ndus.edu](mailto:richard.rothaus@ndus.edu)

Mr. Chair, Members of the Committee, I am Richard Rothaus, Vice Chancellor for Academic and Student Affairs at the North Dakota University System and I'm here today to testify on behalf of the State Board of Higher Education against HB1329. The State Board of Higher Education as well as all of our institutions are, of course, unreservedly supportive of free speech. We oppose this bill because it does nothing to preserve or enhance freedom of speech. Our opposition is on three grounds: 1) HB1329 is duplicative of rights already provided by law, 2) HB1329 is a solution in search of a problem, and 3) HB 1329 as written is so full of problems, it is not viable.

The highest law of the land, the U.S. Constitution, guarantees freedom of speech. I don't need to remind this committee of the expansiveness and importance of the First Amendment. There is a long history of case law supporting a very broad interpretation of free speech rights. HB1329 is unable to enhance or expand rights already so enshrined.

State Board of Higher Education Policy 401.1 (attached) thoroughly defends much of what HB1329 attempts. A few excerpts are as follows:

- The academic community must be hospitable . . . and it must welcome the conflict of ideas likely to ensue. Academic responsibility to provide opportunity for expression of diverse points of view generates academic freedom.
- [Students] have a right to intellectual disagreement with their instructors and associates, and to question them, without fear of recrimination or punishment.
- It is not necessary that [a speaker's] point of view presented be congenial to the campus, members of the staff or student body individually, or to individual members of the wider community. The speaker must be accorded the courtesy of any uninterrupted presentation. . . .

The Constitution as well as Board policy already protect freedom of speech. HB1329 will do nothing to increase rights that are already the envy of much of the world.

Our second point of objection is that HB1329 is a solution in search of a problem. Rep. Becker himself has referred to this as an "anti-safe space" bill. I surveyed our campuses last week; we have a total of zero designated safe-spaces on the campuses of our eleven institutions. Zero places identified that allow someone to restrict discourse. There are currently no safe spaces for this bill to be against. The closest we have are temporary safe zones, which are used for conflict mediation. Certainly there has been and continues to be media attention on free speech, or lack thereof, on college campuses. Like the bill sponsors, we are greatly concerned by anything that limits the free exchange of ideas. However, I would urge the legislature to not generalize from publicized cases as to what is happening at public colleges and universities in North Dakota. It would be foolish to ignore that free speech is a problem at some institutions. But it does not follow that our institutions will suddenly become just like UC Berkeley or Middlebury College.

I would like to contrast HB 1329 with a bill from last session, SB2150- the student right to counsel bill. SB2150 was a legislative reaction to a demonstrated issue at our institutions, and it informed by a problematic case that caused great problems for a student. The legislation resulted in a very forward-thinking law that

serves students. For HB 1329, we have no example cases that point to the need for such a law. We have had no speakers shouted down, no visitors assaulted, no student lawsuits.

The third part of our objection is that HB1329, as written, is full of specifics that are confusing, duplicative, or unclear. To make my point, I will just quickly identify some of the problems in the definitions section alone:

- Item 2 uses a non-standard definition of harassment. Federal standards point to “severe, pervasive and persistent” discriminatory conduct. HB 1329 uses the phrase “objectively offensive”. What does that mean? Who gets to decide if it is offensive, much less objectively offensive?
- Item 3 identifies a public forum as an open outdoor area. If we restrict speech to open outdoor areas in North Dakota, the freezing gusts of winter alone would limit free speech. Our campuses have forum spaces in many indoor and outdoor locations.
- Item 5 has a definition of students so narrow that it would exclude protection for students who have not yet declared majors. It also would define organizations as students, which is exceedingly problematic.
- Item 6 defines true threat as coming from statements. Threats come from actions, not just words. Moreover, item 6 fails to include the most likely true threat from a speaker; not a direct threat of violence, but rather inciting others to acts of violence.

These problems persist throughout the bill. Rather than continue reading examples, I have attached a redlined version of the bill that the committee can review and use if they see fit. The point is that the bill would create a law that is unclear, unworkable, and unenforceable. In fact, by including so many specifics, that bill inadvertently creates limits on free speech that are currently not there.

Let me point out that even if I am wrong – even if there are places on our campuses where speech is being restricted, HB1329 would do nothing to change that. If students are encountering incidents where their freedom of speech is limited, they have existing opportunity to seek legal redress, or enforcement of Board policy. If they choose not to seek such relief, establishing a State law is not going to make them more likely to do so. I suspect, in fact, establishing an untested state law would only serve to make it more cumbersome and expensive to seek relief by complicating rights already established by the very first amendment to our Constitution.

It would be foolhardy to pretend there are not clashes of politics and ideology between citizens, state and universities. In the middle of the 19<sup>th</sup> century, when universities as we know them were solidifying, the tensions were already there. In France, for example, critics claimed that teaching calculus would transform students into the worst sort of socialists. The criticism manifests in different forms in different eras. Maybe the critics are right and that is why we are seeing the tensions now. I do not think so, but even if that is true, this bill does nothing to address such concerns, nor improve free speech. I ask the Committee to recommend “do not pass” on this bill.

NORTH DAKOTA STATE BOARD OF HIGHER EDUCATION  
POLICY MANUAL

SUBJECT: ACADEMIC AFFAIRS      EFFECTIVE: May 11, 1984

Section: 401.1 Academic Freedom

1.      General Principles - The primary responsibility of the academic community is to provide for the enrichment of intellectual experience. Essential to the realization of this ideal is a free and open academic community which takes no ideological or policy position itself. The responsible academic community welcomes those who do take an ideological or policy position and jealously guards their right to do so. Conflict of ideas cannot occur unless there is opportunity for a variety of viewpoints to be expressed. Toleration of what may be error is an inescapable condition of the meaningful pursuit of truth. The academic community must be hospitable even to closed minds and it must welcome the conflict of ideas likely to ensue. Academic responsibility to provide opportunity for expression of diverse points of view generates academic freedom.

2.      Faculty - Faculty members are entitled to full freedom in research and in the publication of results, subject to the adequate performance of their other academic duties. They are also entitled to freedom in lecturing or conducting demonstrations in their subject or field of competence. They are 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 express their opinions as individual 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 respect the rights of others to express opinions. They must make clear that their actions, their statements and their memberships do not necessarily represent views of the academic community. If there are controls to be exercised over faculty members, they are the controls of personal integrity and the judgment of their colleagues.

3.      Students - Students are entitled to be taught by unfettered teachers and to have access to all information pertinent to their subjects of study. They are entitled to as complete freedom as possible in the selection of their curriculum, teachers, and associates. Moreover, they have a right to intellectual disagreement with their instructors and associates and to question them without fear of recrimination or punishment. They also are entitled to seek the publication of their views, to seek membership in voluntary groups, to seek or hold public office, and to take lawful action in accordance with their views. Students also have the responsibility to make clear that their actions, memberships, and statements do not represent the views of the academic community.

4.      Guest Speakers, Movies, and Other Programs - A college or university by its very nature cannot pay lip service to the concept of freedom of expression and then deny persons with whom it is in disagreement the opportunity of giving expression to their views. Furthermore, a policy that extends the right of freedom of expression to some persons and denies to the others, places the institution in the position of endorsing the past records and views of those who are given permission

HB 1329  
3-22-17  
#2p.4

to speak. Therefore, a speaker, performer, or program may be presented under the sponsorship of any duly recognized student, faculty, or administrative organization or any individual officer of instruction. It is not necessary that the point of view presented be congenial to the campus, members of the staff or student body individually, or to individual members of the wider community. The speaker must be accorded the courtesy of any uninterrupted presentation. Except for ceremonial occasions, speakers must accept as condition of their appearance the right of their audience to question or challenge statements made in their address. Questions must be permitted from the floor unless prevented by physical limitations, or the size of the audience. The invitation or scheduling of such a program must represent the desire of the institutional sponsor and not the will of external individuals or organizations. The sponsor must establish full responsibility for the program and should help to establish the concept that the point of view expressed in an address or performance does not necessarily represent the position of the academic community. Such presentations must at all times be consistent with the laws of North Dakota and the United States.

HISTORY: Replaces Article II, Section 4-A, pages II-15, 16.  
SBHE Minutes, May 10-11, 1984, page 5242.

HB 1329  
3-22-17  
# 2 p 5

A BILL for an Act to create and enact a new chapter to title 15 of the North Dakota Century Code, relating to freedom of speech at state institutions of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 15 of the North Dakota Century Code is created and enacted as follows:

Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Free speech" means the clauses of section 4 of article I of the Constitution of North Dakota and the first amendment to the Constitution of the United States which protect freedom of speech and forbid laws abridging freedom of speech.

2. "Peer - on - peer harassment" means discriminatory conduct directed toward a student on the basis of the student's real or perceived membership in a protected class which is so severe, pervasive, ~~or persistent and objectively offensive~~ that it deprives the student of access to the educational opportunities or benefits provided by a state institution of higher education. Peer - on - peer harassment does not include constitutionally protected expressive activity.

Commented: Makes language consistent with federal standards

3. "Public forum" means an ~~open, outdoor~~ area on the campus of a state institution of higher education ~~or any facility the institution has opened to students for expression.~~

Commented: Institutions have forums that are both inside and outside.

4. "~~Semester~~" means ~~one half of an academic year at an institution of higher education.~~

Commented: This definition doesn't account for summer sessions. I adjusted language below to make this definition unneeded.

5. "Student" means an individual enrolled ~~at in a course of study in~~ a state institution of higher education, ~~and organizations comprised of individuals currently enrolled at a state institution of higher education.~~

Commented: This language would exclude non-matriculated students.

6. "True threat" means a statement ~~or actions~~ through which the speaker means to communicate a

~~serious expression of an intent to commit an act of unlawful violence or to incite an act of violence to a particular individual or group of individuals, regardless of whether the speaker intends to carry out the threat.~~

Commented: A speaker can cause a threat by his/her actions or through inciting violence in others

Formatted: Indent: First line: 0.5"

Freedom of speech policy.

HB 1329  
3-22-17  
# 2p.6

The state board of higher education shall adopt a policy on free speech that must apply to all students. The policy:

1. Must confirm free speech is a fundamental right, and each state institution of higher education is committed to free and open inquiry by students in all matters.

2. Must ~~guarantee~~ provide students with the broadest possible latitude to speak, write, listen, challenge, and learn to discuss any issue that presents itself on campus.

Commented: "guarantee" is an aspirational word, not a statutory word

3. May not shield individuals from constitutionally protected expression merely because it is considered unwelcome, disagreeable, or offensive. provided, however, nothing prevents an institution or individuals from providing information about the speech or expressive activity or to permissibly challenge the speech or expressive activity.

4. May not prohibit any type of speech or expressive activity, except as otherwise provided in this chapter.

Formatted: Indent. Left: 0"

5. Must prohibit each state institution of higher education from restricting speech or expressive activity except for situations that involve:

- a. Violations of state or federal law.
- b. ~~Defamatory speech~~ Expression that a court has deemed defamation.
- c. True threats or peer - on - peer harassment.
- d. An ~~unjustifiable~~ invasion of privacy or confidentiality.
- e. An action that directly conflicts with the function of an institution.
- f. Reasonable viewpoint-neutral and content-neutral restrictions on the time, place,

Commented: A court determines that something is defamatory after it is said/published, not before

Commented: Is there a justifiable invasion of privacy?

and manner of expression, consistent with state law and in service of a significant institutional interest, if the restrictions are clear, published, and provide ample alternative means for expression. The restrictions must allow members of the university community to assemble spontaneously and contemporaneously and distribute literature in the open, outdoor areas of campus.

Commented: Needs to include all law, not just federal

Commented: This language is far too broad. You can't have reasonable restrictions and an ability to "spontaneously" organize. This issue is dealt with below.

6. Must permit ~~authorize~~ any student to criticize and contest the views of the community of a state institution of higher education, except the student may not obstruct or otherwise interfere with the freedom of others to express views contrary to the student.

7. Must encourage respect for ~~promote~~ freedom of speech and expression ~~lively and fearless freedom of debate and deliberation while protecting~~

Commented: The original language is aspirational, not statutory. It is also duplicative of Section 1 so it's not really needed.

HB 1329  
3-22-17  
# 2 p. 7

~~free speech when a state institution of higher education or its community condemns or attempts to restrict speech.~~

Formatted: Indent: First line: 0.5"

**Bill of student rights.**

The state board of higher education free speech policy must include a bill of student rights that:

1. Recognizes there are certain fundamental and indisputable rights to freedom of inquiry, freedom of thought, and freedom of expression in each state institution of higher education.
2. Encourages students to seek truth and knowledge and does not abridge the right of a student to reveal findings, by both spoken and written word, even if in so doing the student might be at variance with peers or the community.
3. Reassures students that dissenting or disagreeing with generally accepted truth and knowledge is acceptable and essential to free debate and inquiry, and that a student may not be subject to any non-academic punishment, discipline, or censorship by a state institution of higher education for the content of the student's lawful speech.
4. Recognizes that, in exercising freedom of speech, students may not interfere with the academic process of a class.

**Public assembly and expression.**

Formatted: Font: Bold

Subject to the limitations in this chapter, each state institution of higher education shall allow peaceful assembly and the expression of ideas and opinions in any public forum to facilitate **robust debate and the free exchange of ideas.** ~~Institutions may impose reasonable viewpoint-neutral and content-neutral restrictions on the time, place, and manner of assembly, consistent with law and in service of a significant institutional interest, if the restrictions are clear, published, and provide alternative means for expression.~~

Commented [REDACTED]: This section is duplicative of the next section.

~~Limited restrictions on assembly and expression.~~

- ~~1. A state institution of higher education may require any individual who is not employed by or enrolled in the institution to obtain prior permission or authorization from the institution to use a public forum to demonstrate, protest, or assemble to exercise the right to free speech. If prior permission or authorization is required, the appropriate institution administrator shall evaluate the request using content-neutral and~~

HB 1329  
3-22-17  
H2P8

~~viewpoint—neutral criteria, and process the request within a reasonable length of time.~~

~~2. Subject to reasonable time, place, and manner restrictions, this chapter does not limit the right to student expression at any public place on the premises of a state institution of higher education if the expressive activity or related student conduct does not substantially disrupt essential activities and functions of the institution by:~~

~~a. Substantially obstructing building entrances, walkways, and rights-of-way.~~

~~b. Obstructing vehicular or pedestrian traffic on or adjacent to the institution.~~

~~c. Interfering with classes, meetings, events, or ceremonies, or other essential processes of the institution.~~

#### Free speech notices.

Each state institution of higher education shall provide notice of the protections for free speech in this chapter to all students, faculty members, and employees ~~within seven days after the commencement of each fall semester when FERPA notices are issued.~~ The notice must be communicated by electronic mail

or other electronic communication, and must include the student bill of rights and the practices prohibited by this chapter.

#### Violations—Injunctions.

~~If the state board of higher education or an institution under its control is in violation of this chapter, a student may file a complaint or petition for an injunction in a court with proper jurisdiction. If the student prevails in the court case, the court shall award actual damages, if applicable, plus attorney's fees and court costs.~~

Commented [REDACTED]: This is too early in the semester to actual reach all enrolled students. We have provided a better alternative.

Commented [REDACTED]: Student already have a right under federal law to pursue a claim in federal court. Allowing for recovery of plaintiff's legal charges encourages lawsuits and penalizes other students/taxpayers.