

Testimony of Deborah C. Smith, Ph.D.
President, Kent State Chapter of American Association of University Professors
Before the House Higher Education Committee
Representative Tom Young, Chair
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Chair Young, Ranking Member Miller, and Members of the House Higher Education Committee: My name is Deborah Smith. I am a Professor of Philosophy at Kent State University and I am testifying in opposition to Sub. House Bill 151, the companion to Sub. Senate Bill 83. On April 19th, I provided opposition testimony to Senate Bill 83 as originally introduced before the Senate Workforce and Higher Education Committee from my perspective as a faculty member concerned about the restrictions that the bill would impose on the academic freedom of faculty at Ohio's institutions of higher education. My opposition testimony to Senate Bill 83 as originally introduced can be found at <file:///C:/Users/Deborah%20C.%20Smith/Downloads/SB83SmithOpponent.pdf>.

Today I am testifying in opposition to Sub. House Bill 151, in my capacity as the President of the Kent State Chapter of American Association of University Professors (AAUP-KSU), the faculty union representing Kent State's over 1200 full-time faculty. Our Chapter houses two bargaining units: one representing the roughly 700 tenured and tenure-track faculty and one representing over 500 full-time non-tenure track faculty. In addition to being President of the Chapter as a whole, I am also the President of the tenured and tenure-track faculty bargaining unit. Kent State's faculty union is one of the oldest in the State, second only to the AAUP Chapter at the University of Cincinnati. Kent State's faculty first undertook to form a union in 1974 and what is now the tenured and tenure-track faculty bargaining unit was officially recognized by the University in January of 1976. Our first Collective Bargaining Agreement was ratified and went into effect on September 16, 1978. We have a long and proud history of representing Kent State's full-time faculty and in the last decade or so have formed an excellent working relationship with the University's administration.

While I continue to worry that various provisions of the Bill—especially though not exclusively the provisions that restrict the speech of public institutions of higher education—remain likely to chill the exercise of academic freedom, I acknowledge and appreciate that the substitute bill contains a newly added provision (lines 892-895) explicitly intended to protect academic freedom. But while the substitute bill contains improvements on several provisions of the Bill as originally submitted, it has been revised in other ways that only strengthen my opposition to it. In particular, a combination of original language that has not been revised in the substitute bill along with newly added or newly revised provisions now make Sub. House Bill 151 closely resemble the infamous 2011 Senate Bill 5 that was introduced and passed into law during the 129th General Assembly but ultimately repealed in a citizen's veto referendum. Like then-Senate Bill 5, Sub. House Bill 151 would radically undermine the right of unionized faculty to collectively bargain the terms and conditions of our employment.

As was the case with the version of House Bill 151 originally introduced, Sub. House Bill 151 would completely eliminate my union's right to strike. In our nearly 50-year history, Kent State faculty have never actually declared a strike. However, the tenured and tenure-track bargaining unit has come very close to notifying SERB of our intent to strike on a few occasions—including an occasion in 2015 while I was serving as the chief negotiator for the faculty. I firmly believe that in that instance it was the credible threat of a strike in that motivated the University to accept the report issued by a neutral fact-finder and return to the table to hammer out the details of implementing the recommendations it

contained. In the absence of the right to strike, there would have been nothing to compel the University to accept the fact-finder's suggestions for reasonable compromise rather than to simply impose its last, best, final offer on Kent State's tenured and tenure-track faculty.

In addition to the elimination of the right to strike, Sub. House Bill 151 contains a number of other provisions that would radically undermine our right to collective bargaining the terms and conditions of our employment. In particular, Sub. House Bill 151 contains a radical new provision, Sec. 3345.455 (lines 1163-1173), that was not included in the original version of the bill as introduced. This new section stipulates that "the standards, policies, and systems adopted under sections 3345.45 to 3345.454 [...] are not appropriate subjects for collective bargaining" and that they "prevail over any conflicting provision of a collective bargaining agreement." Among the terms and conditions of employment that faculty unions would lose the right to collectively bargain are performance reviews, post tenure review, tenure, and retrenchment. Additionally, the bill would impose a state-wide workload minimum of 30 credit hours on all full-time faculty. There are few more essential terms and conditions of employment for full-time faculty than workload, performance reviews, tenure, and retrenchment. In what follows, I will speak to the specific implications of these provisions on the terms and conditions of Kent State's full-time faculty.

Sec. 3345.452 (lines 1058-1103) calls for each institution of higher education to adopt a policy governing performance evaluations for full-time faculty. That in and of itself is not problematic. Were House Bill 151 to simply require that each institution have such a policy and leave the development of the details of that policy to the local process of shared governance at institutions without unionized faculty or to the collective bargaining process at institutions with faculty unions, I would have no concerns about this provision. The fact is that most (if not all) of Ohio's institutions of higher education already have policies and procedures for reviewing full-time faculty. What is highly problematic is that House Bill 151 (both as originally introduced and as revised in the substitute bill) not only requires that each institution have such a policy, it dictates many of the details of the policy and imposes a "one size fits all" approach to the review of full-time faculty that fails to respect the autonomy and unique academic communities of Ohio's diverse institutions of higher education. Sub. House Bill 151 makes this provision even worse in that, per Sec 3345.455, AAUP-KSU would be barred from negotiating the details of this policy and any existing language in our respective collective bargaining agreements regarding the evaluation of full-time faculty would be rendered moot. Importantly, details of the policy called for in Sec 3345.452 of the bill not only go well beyond anything currently contained in the tenured and tenure-track faculty Collective Bargaining Agreement, they directly conflict with many existing provisions of Kent State's full-time non-tenure-track faculty Collective Bargaining Agreement. Those provisions were the result of a great many concessions made by Kent State's full-time non-tenure track faculty during negotiations over several bargaining cycles—including concessions on salary and benefits. To simply render moot all of that language in the Collective Bargaining Agreement represents a significant attack on the full-time non-tenure track bargaining unit and the dedicated faculty it represents.

Sec. 3345.453 (lines 1104-1149) calls for each institution of higher education with tenured faculty to adopt a policy for post tenure review and, per 3345.455, AAUP-KSU would be barred from negotiating the details of this policy. Again, most (if not all) of Ohio's institutions of higher education already have some form of post-tenure review that was either negotiated through the collective bargaining process or developed through the process of shared governance. Most (if not all) institutions have a mechanism whereby faculty, even tenured faculty, can be disciplined up to and including termination for failure to adequately perform their duties as faculty members. At Kent State University, the tenured and tenure-track faculty Collective Bargaining Agreement (https://aaupksu.org/images/pdfs/tt_cba_2019v3.pdf) contains a robust article governing Sanctions for Cause. Were Sub. House Bill to simply require that all

institutions with tenured faculty have a policy governing post tenure review and a mechanism for sanctioning tenured faculty who fail to adequately perform their duties and leave the development of the details of that policy to the local process of shared governance at institutions without unionized faculty or to the collective bargaining process at institutions with faculty unions, that would not be a problem. However, some of the details of Sec. 3343.453 explicitly conflict with provisions of the existing Sanctions for Cause article contained in the tenured and tenure-track faculty Collective Bargaining Agreement. To the extent that this section of Sub. House Bill would supersede the provisions of our Sanctions for Cause article, the bill not only undermines the right of Kent State's tenured and tenure-track faculty to collectively bargain the terms and conditions of post tenure review, it undermines aspects of our right to collectively bargain the terms and conditions of sanctions for cause.

The original version of House Bill 151 as introduced contained provisions revising section 3345.45 of the Ohio Revised Code pertaining to instructional workloads for faculty at institutions of higher education in ways that were already problematic. Instead of continuing to allow the workload policies previously adopted by institutions of higher education to reflect the unique roles of different types of faculty at each institution, the bill would once again impose a one size fits all framework on the form that such policies can take. The workload policy currently in effect at Kent State University largely reflects a one-to-one relationship between student instructional credit hours and faculty workload hours in most instances. However, there are numerous exceptions for various types of instructional activities including labs, practicums, thesis and dissertation advising, and nursing clinicals just to name a few. Our current workload policy recognizes that the work involved in these different types of instructional activities varies by academic discipline. The details of the specific workload credit assigned to such instructional activities are left up to provisions contained in the individual academic unit handbooks developed by the local administrators and faculty advisory committee of the academic unit and approved by the Provost. Similar points apply to non-instructional aspects of the policy. For example:

- All tenured and tenure-track faculty at Kent State University are required to contribute to the research mission of the University. Our current workload policy recognizes that research expectations and the time commitments thereof vary from academic unit to academic unit and that workload for research cannot be applied uniformly. Handbook provisions specific to the academic unit governing workload credit for research are instead developed by the local administrator and faculty advisory committee of the academic unit and subject to final approval by the Provost.
- All tenured and tenure-track faculty at Kent State University are required to engage in service activities. However, the amount of work involved in such service activities varies substantially depending upon the specific committee served on and/or the specific administrative duties undertaken. Again, the current workload policy recognizes that workload regulations for service cannot be applied uniformly. And again, academic unit handbooks contain provisions developed by the local administrator and faculty advisory committee and approved by the Provost that govern appropriate workload credit for various types of significant service.

Prior to each semester, all full-time faculty regardless of tenure status or eligibility receive a workload statement for the semester that makes explicit how many workload credit hours they will receive for the teaching, research, and service activities assigned that semester.

It was already unclear how Kent State University would be able to comply with the provisions of this section of HB 151 and adopt a single University-wide policy that would provide a "definition of justifiable credit hour equivalents for activities other than teaching, including research, clinical care, administration, service, and other activities as determined by the state institution of higher education"(lines 1025-1028). But Substitute House Bill 151 contains revisions that render this section of the bill far more problematic than it was originally. The original version of the bill recognized that not all full-time faculty are employed on twelve-month appointments. It set the minimum workload for twelve-

month faculty at 30 credit hours per year and allowed for pro-rated workload minima for faculty with less than a twelve-month appointment. However, the analogous provision of substitute House Bill 151 (lines 1016-1024) no longer recognizes that many (indeed most) full-time faculty at Ohio's institutions of higher education are employed only for the nine-months of the regular academic year. Under Kent State's current workload policy, tenured and tenure-track faculty with nine-month appointments have a workload of 24 credit hours per academic year. That is consistent with the original version of House Bill 151. However, Sub. House Bill 151 requires that "Full-time faculty shall have a workload minimum equal to thirty credit hours" thereby increasing the workload for full-time tenured and tenure-track faculty on nine-month appointments by 25%! This mandate, unilaterally imposed by the State, would be the single most radical change in the terms and conditions of employment of Kent State's tenured and tenure-track faculty in over fifty years. Meanwhile, eradicating our right to strike would make it unlikely that we would be able to negotiate the 25% increase in salary that would be appropriate given the 25% increase in workload. Far from enhancing higher education in Ohio, this provision would drive Kent State's talented tenured and tenure-track faculty to seek employment outside of Ohio thereby undermining the quality of education provided to our students and jeopardizing Kent State University's newly achieved R1 research status.

Sub. House Bill 151 also contains a newly added Sec. 3345.454 (lines 972-1037) that requires institutions of higher education with tenured faculty to adopt a policy on tenure and retrenchment. And again, per Sec 3345.455, AAUP-KSU would be barred from negotiating the details of this policy and the existing language in our Collective Bargaining Agreement concerning retrenchment would be rendered moot. When the Kent State Chapter of AAUP and Kent State University began negotiating the first Collective Bargaining Agreement that would be ratified in 1978, they did so under the long shadow of the tragic events that occurred on our campus on May 4th, 1970. The detailed article on Retrenchment developed by the parties was, in that context, a signature achievement. That Article has remained with only minor revisions over the years in the tenured and tenure-track faculty Collective Bargaining Agreement and has never been formally invoked by the University. It has provided a measure of stability and clarity of process that have been much appreciated both by the tenured and tenure-track faculty and by the University. This measure of stability and clarity of process was particularly important during the campus closure and transition to remote instruction necessitated by the COVID 19 pandemic. The new sections included in Sub. House Bill 151 would eradicate what has been a singular achievement of collective bargaining at Kent State University and eliminate the right of tenured and tenure-track faculty to collectively bargaining this crucial aspect of the terms and conditions of our employment.

In addition to the immediate limitations to the right to collectively bargain terms and conditions of faculty employment that Sub. House Bill 151 would impose, the inclusion of Sec. 3345.455 into the Ohio Revised Code creates the framework for excluding more and more aspects of the terms of conditions of employment of faculty from collective bargaining over time. It threatens to limit, just as then-Senate Bill 5 did, the range of topics that are mandatory subjects of collective bargaining to salary and benefits alone. The citizens of Ohio have already made crystal clear what they think of such extreme restrictions on the right of public employees to collectively bargain.

In summary, by undermining our right to collectively bargain essential aspects of the terms and conditions of our employment, the provisions of Sub. House Bill 151 mentioned above will undermine the collegial relationship that my faculty union currently enjoys with the administration of Kent State University and will have a severe negative impact on the morale of all of Kent State's full-time faculty. Because Kent State University, like all other institutions of higher education, competes on a national and international playing field when it comes to hiring full-time and especially tenured and tenure-track

faculty, the radical changes in the terms and conditions of faculty employment that would be imposed by Sub. House Bill 151 will make it harder for the University to continue to attract and retain a world-class faculty. The provisions of Sub. House Bill 151 will further make it difficult for Kent State to retain its newly acquired status as an R1 research university. The result of these provisions will be the polar opposite of an enhancement in higher education.

I urge you not to advance this bill.

Thank you.