

**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**  
**November 15, 2023**

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 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. I am testifying in opposition to version 11 of Sub. Senate Bill 83 recently introduced into the Committee. I had previously testified before this Committee in opposition to Sub. House Bill 151, the companion to Sub. Senate Bill 83, on May 17<sup>th</sup>, 2023, and had testified in opposition to Senate Bill 83 before the Senate Workforce and Higher Education Committee on April 19<sup>th</sup>, 2023.

To be sure, there have been some minor improvements in the language of the Bill since it was first passed by the Senate. I understand that my Representative, Gail Pavliga, had a substantial role to play in seeking those improvements and I want to publicly thank her for her efforts.

Unfortunately, much of the testimony I provided in opposition to prior versions of this Bill remains relevant to the current version 11 of Sub. Senate Bill 83. My continued opposition stems from three aspects of the Bill:

- The fact that it significantly erodes the collective bargaining rights of faculty unions;
- The fact that it would significantly chill the academic freedom of faculty; and
- The fact that it represents a significant government overreach in micromanaging the affairs of Ohio's diverse public institutions of higher education.

I will further articulate each of these concerns below and discuss the ways in which these concerns might be addressed through further revision of the bill. Until and unless all of the concerns articulated herein are addressed, I urge you not to advance this Bill out of Committee.

*Erosion of the Collective Bargaining Rights of Faculty Unions:*

I am thankful that the provision that would have eliminated the right of faculty unions to strike has been removed in version 11 of the Bill. However, the right to strike means little when the right to collectively bargain important terms and conditions of employment is itself significantly infringed. Version 11 of Sub. Senate Bill 83 continues to contain the provision in Sec. 3345.455 (lines 1138-1148) that was not in the version of the Bill originally introduced into the Senate Workforce and Higher Education Committee. This 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." In this regard, version 11 of sub. Senate Bill 83 continues to closely resemble the infamous 2011 Senate Bill 5 that was introduced and passed into law during the 129<sup>th</sup> General Assembly but ultimately repealed in a citizen's veto referendum. Like then-Senate Bill 5, Sub. Senate Bill 83 would radically undermine the right of unionized faculty to collectively bargain the terms and conditions of our employment. Among the terms and conditions of employment

that faculty unions would lose the right to collectively bargain are annual performance reviews, post tenure review, tenure, and retrenchment.

In my testimony before this Committee on May 17<sup>th</sup>, I spoke at length about the negative impacts section 3345.455 of the Bill would have on Kent State University's Tenured and Tenure-Track Faculty Bargaining Unit and Full-Time Non-Tenure-Track Faculty Bargaining Unit. Here, I briefly reiterate that impact:

Sec. 3345.452 (lines 1021-1068) calls for each institution of higher education to adopt a policy governing performance evaluations for full-time faculty. That in and of itself would not be problematic were the Bill 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. However, per section 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.

Sec. 3345.453 (lines 1069-1117) 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. Moreover, some of the details of Sec. 3343.453 seem to explicitly conflict with provisions of the existing Sanctions for Cause article contained in AAUP-KSU's Tenured and Tenure-Track Faculty Collective Bargaining Agreement. To the extent that this section of Sub. Senate Bill 83 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 any post tenure review, it undermines aspects of our right to collectively bargain the terms and conditions of sanctions for cause.

Sec. 3345.454 (lines 1118-1137) 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 4<sup>th</sup>, 1970. The detailed article on Retrenchment developed by the parties was, in that context, a signature achievement. Sections 3345-455 of Sub. Senate Bill 83 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 term and condition of our employment. I note that the newly added section 3345.456 (lines 1149-1164) does nothing to mitigate this concern and only adds an unnecessary layer of complication.

The above concerns could be addressed in a revised version of the Bill that deleted all of section 3345.455 (lines 1138-1148), deleted all of section 3345-456 (1149-1169), and restored the language deleted from section 3345.45, division (B) (at lines 952-959). Such a revision would retain the status quo concerning appropriate subjects of collective bargaining for faculty unions.

*Chill on the Academic Freedom of Faculty:*

I acknowledge and appreciate that the current version 11 of the Bill (like several previous versions), contains provisions more clearly intended to protect academic freedom than the original. I also appreciate that version 11 of Sub. Senate Bill 83 removes all references to the problematic and vaguely defined notions of “specified concept” and “specified ideology.” However, while the Bill wouldn’t make it outright *illegal* for faculty to teach any of the academic content currently covered in classes at Ohio’s public institutions of higher education, it contains numerous provisions that are guaranteed to place an extreme chill on the academic freedom of faculty. In particular, provision 3345-0217 of the Bill continues to make use of the vaguely defined notion of a “controversial belief or policy” (lines 735-739) and continues to call for sanctions against faculty who fail to appropriately allow for “intellectual diversity” (lines 740-742, 856-874) in the classroom.

Let me be clear: I strongly believe that our institutions of higher education should be places where everyone can be heard, where no one is silenced, and where no one is pressured to assert things that they do not believe. And I agree that it is necessary that institutions of higher education value a wide diversity of viewpoints and perspectives. However, as I argued in my April 19<sup>th</sup> testimony before the Senate Workforce and Higher Education Committee, there is no way to *legislate* that value without infringing on the academic freedom of faculty.

The fact that there is political or religious controversy around a given matter does not mean that the matter is regarded as at all controversial by the scientists and other academic disciplinary experts in a position to obtain and understand relevant empirical evidence and develop robust theories concerning the matter. Academic freedom exists precisely to allow faculty the freedom to exercise their disciplinary expertise in the classroom without fear of being censored merely because some element of their academic discipline is politically or religiously controversial. Institutions of higher education and the faculty they employ have a duty to follow the empirical evidence and to offer classes in which the theories supported by scientific inquiry are taken to be (at least largely) correct regardless of whether a particular theory has gotten entangled in the “culture wars” of the day.

Importantly, whether or not an individual instructor is engaging in inappropriate viewpoint discrimination and/or unduly restricting intellectual diversity depends upon the details of the specific academic context. One and the same viewpoint can be such that it would be inappropriate to exclude it in some academic contexts and appropriate to exclude it in others. Since there is no way to craft legislation that is appropriately sensitive to such details of context, any attempt to legislate the value of intellectual diversity would thereby have a chilling impact on academic freedom and negatively impact faculty experts’ ability to provide a high-quality education to their students.

This problem is only exacerbated by the provision of the Bill at 3345.029 (lines 630-712) requiring that a detailed course syllabus for each course taught by each faculty member be made publicly available. That provision would be completely innocuous in almost any other context. However, in the context of section 3345-0217, it increases the likelihood that individuals wholly unaffiliated with the institution of higher education in question will seek out and harass individual faculty teaching content they find objectionable. To avoid such harassment, faculty (especially pre-tenure and non-tenure track faculty) are likely to self-censor what they cover in the classroom.

Together, sections 3345.0217 and 3345.029 will substantially increase the number of allegations of inappropriate viewpoint discrimination and/or undue restrictions of intellectual diversity—including by individuals wholly unaffiliated with the institution of higher education. Individuals unhappy with the institution's response to any such allegation would presumably be able to sue the institution alleging a violation of the Ohio Revised Code. Courts, rather than content experts, would then be put in the position of determining whether, given the details of a specific case, a violation had actually occurred. This is something that courts are simply not equipped to determine. The decisions they might render could severely curtail academic freedom. Moreover, institutions of higher education would likely face pressure to avoid such legal exposure by taking steps that would severely curtail academic freedom.

When academic freedom is abridged, the faculty member as disciplinary expert is essentially taken out of the classroom and the quality of the education an institution of higher education can provide is radically degraded. When academic freedom is eliminated or restricted, it is students who suffer.

I do not see any way to address this concern in any version of the bill that contains section 3345.0217.

#### *Government Overreach:*

Even if the Bill did not contain section 3345-455 prohibiting faculty unions from negotiating the policies mandated by sections 3345.45-3345.454, those and other provisions of the Bill would still be examples of significant government overreach into and micromanagement of the individualized governance of Ohio's diverse institutions of higher education. (It is worth noting that version 7 of Sub. Senate Bill 83 substantially mitigated this concern, but that versions 8 and all subsequent versions largely reverted to the more problematic text of the Bill passed by the Senate).

The Ohio Revised Code, section 3345.45 currently requires all institutions of higher education to have a policy on faculty workload (and prohibits faculty unions from bargaining this policy). Sub. Senate Bill 83 proposes revisions to section 3345.45 (lines 939-1000) that, instead of continuing to allow the workload policies previously adopted by institutions of higher education to reflect the unique roles of the different types of faculty at each institution, would impose a one size fits all framework on the form that such policies can take.

As mentioned above, Sec. 3345.452 (lines 1021-1068) of the Bill calls for each institution of higher education to adopt a policy governing performance evaluations for all full-time faculty. 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. However, Sub. Senate Bill 83 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.

The aforementioned Sec. 3345.452 would already require that all full-time faculty, including tenured faculty undergo an annual performance evaluation. Section 3345.453 (lines 1069-1117) additionally calls for each institution of higher education with tenured faculty to adopt a policy for post tenure review. The details of the post-tenure policy mandated by section 3345.453 would give broad authority to the administration of an institution of higher education to call for the post-tenure review of a tenured faculty member at any time, thereby essentially eliminating meaningful tenure at Ohio's public institutions of higher education. Given that 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, there is no need to include section 3345.452 in Sub. Senate Bill 83.

Until and unless all of the aforementioned concerns are addressed, I urge you not to advance this Bill.

Thank you.