

TO: House Higher Education Committee
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio
DATE: November 29, 2023
RE: Sub. Senate Bill 83 – Opponent testimony

To Chairman Young, Vice Chair Manning, Ranking Member Miller, and members of the House Higher Education Committee, thank you for this opportunity to provide opponent testimony on Substitute Senate Bill 83.



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Senate Bill 83 has experienced many changes throughout its legislative history. Some of these changes have been positive, but that is admittedly a low bar. After all, SB 83 was a bill with language so incredibly broad it once outlawed, for example, single-sex dormitory rooms, or allowing universities to target any amount of advertising to prospective applicants from marginalized and underrepresented communities, and university literature and trainings focused on women students to minimize being victims of sexual assault.

Despite these welcome changes, SB 83 remains a confusing, restrictive, counterproductive, and arguably unconstitutional bill. To be clear, the ACLU of Ohio does and always has supported robust free speech, academic freedom, and intellectual diversity protections on Ohio's college and university campuses. However, we believe SB 83 is contrary, not complimentary, to these goals.

Some policy matters can be legislated and regulated in clear, concise, and practical ways to the benefit of all, most, or many involved. **Micromanaging university classrooms and mandating a one-size-fits-all approach for academic courses and university operations is not among them.**

The ACLU of Ohio's most serious concerns are summarized as follows. (For the benefit of the committee, language from SB 83 appears in bold and italics, with line numbers identifying the precise location):

“CONTROVERSIAL BELIEFS OR POLICIES” AND “INTELLECTUAL DIVERSITY”

The most bizarre and nonsensical parts of SB 83 are the provisions regarding “controversial beliefs or policies” and “intellectual diversity.”

Controversial Beliefs or Policies

Senate Bill 83 mandates that *faculty and staff shall allow and encourage students to reach their own conclusions about all controversial beliefs or policies and shall not seek to indoctrinate any social, political, or religious point of view.* (Lines #767-770)

Of course, nobody ever wants our state institutions of higher education indoctrinating students on any social, political, or religious point of view. But the language of SB 83 begs the question how much authority an instructor or department may have in requiring knowledge and mastery of specific subjects.

After all, this is how SB 83 defines “controversial beliefs or policies” –

"Controversial belief or policy" means any belief or policy that is the subject of political controversy, including issues such as climate policies, electoral politics, foreign policy, diversity, equity, and inclusion programs, immigration policy, marriage, or abortion. (Lines #735-739)

Quite literally, as written, any belief or policy that is the subject of “political controversy” qualifies as “controversial.” In what appears to be an attempt to clarify, SB 83 cherry picks specific, individual subjects, such as abortion and marriage. It then applies the same micromanagement to others that are incredibly broad, such as electoral politics and foreign policy.

Indoctrination is intolerable. In the real world, it is defined on a sliding scale. Some students who may have their way of thinking challenged may feel they are being indoctrinated. Some instructors will curtail their teaching methodologies and entirely avoid certain subject matters for fear of indoctrination claims.

Intellectual diversity

SB 83 then doubles down on its unhelpful mix of broad mandates and laser focus on individual classroom instruction with its “intellectual diversity” provisions.

SB 83 defines intellectual diversity as - *multiple, divergent, and varied perspectives on an extensive range of public policy issues.* (Lines #740-742)

Intertwined with this definition is SB 83’s requirement that universities *affirm and declare that....the institution shall ensure the fullest degree of intellectual diversity.* (Lines #764-766)

Read together, SB 83 requires individual instructors, in individual classrooms, to not only “both sides” issues such as U.S. slavery and the Jewish Holocaust, but to teach all sides. After all, is that not “the fullest degree of intellectual diversity” according to the bill’s very definition?

Perhaps SB 83 anticipates this tension when it attempts (but fails) to further clarify matters with this language - ***Nothing in this section prohibits faculty or students from classroom instruction, discussion, or debate, so long as faculty members remain committed to expressing intellectual diversity and allowing intellectual diversity to be expressed.*** (Lines #847-850)

In the real world, exactly how much “intellectual diversity expression” must a professor tolerate from a student in a crowded classroom to satisfy SB 83’s supporters? Indoctrination is intolerable. But SB 83 overshoots by rolling out the red carpet for each and every classroom statement, lesson, exam, or paper to be subject to the shaky definitions and fuzzy requirements of this bill.

In a previous hearing, when concerns such as these were raised, they were waved off as not the intention of the sponsor or focus of the bill. But, as this committee knows full well, legislation passed into law is not interpreted by judges, courts, legal counsel, or stakeholders by relying on a bill sponsor’s stated intentions or opinions about its scope. They examine and analyze the wording of the statute. SB 83 skeptics are right to be alarmed and concerned about how this all will play out in actual practice.

But Senate Bill 83 does not stop there. It also prohibits universities themselves from endorsing or opposing ***as an institution, any controversial belief or policy, except on matters that directly impact the institution's funding or mission of discovery, improvement, and dissemination of knowledge.*** (Lines #780-786)

Again, an idea that may reflexively sound like welcome regulation. Nobody thinks it’s a good idea for the University of Cincinnati to endorse a candidate for governor. On the other hand, some people sincerely believe the minimum voting age should be reversed back to age 21. Or voting should be exclusive to property owners. If Bowling Green State University posts a sign on campus encouraging, in the most generic way possible, students to vote in the next election, is that not endorsing a “controversial belief or policy?” Under SB 83, it certainly is to those who want to change property or age requirements.

Senate Bill 83’s cluttered, contradictory, and unclear language invites confusion, uneven application, and the chilling of expression and speech. Again, some policy matters invite and require oversight precision from state legislatures. This is not one of them.

DIVERSITY, EQUITY, AND INCLUSION TRAININGS

To put it simply, SB 83 severely limits the purposes for and application of diversity, equity, and inclusion trainings and anything that resembles them. It does this in two distinct ways:

First, SB 83 bans all mandatory DEI-type trainings except for such purposes as professional

licensing, those to obtain or retain accreditation, and a few other purposes added as SB 83 has wound its way through the legislature. (Lines #749-759).

Second, as is a consistent theme with this bill, DEI-type trainings are micromanaged by SB 83. For example, this includes outlawing any mention of such concepts as the unconscious bias of an individual or group of people leading to structural racism or sexism, or racist or sexist systems, even if that is not the intended result. (Lines #1305-1332).

Taken together, the results are predictable. Proactive DEI-type efforts for all staff or employees can help prevent future problems or rectify current ones. But that is illegal under SB 83. Explaining and discussing with people how their words and actions can lead to unfriendly or harmful workplaces, classrooms, or entire systems is apparently so frightening a revelation SB 83 outlaws it, despite claims SB 83 protects speech and ideas. And so, these problems will continue with universities unable to determine for themselves what best fits in this regard for their particular situation, student body, or campus.

NON-DISCRIMINATION

It should also be noted SB 83 contains general anti-discrimination language explaining all universities must:

Treat all faculty, staff, and students as individuals, hold every individual to equal standards, and provide those individuals with equality of opportunity with regard to those individuals' race, ethnicity, religion, or sex (Lines #1297-1300); and

Provide no advantage or disadvantage to faculty, staff, or students on the basis of race, ethnicity, religion, or sex in admissions, hiring, promotion, tenuring, or workplace conditions. (Lines #1301-1304).

Previous versions of SB 83 wisely included sexual orientation, gender identity, and gender expression among the protected categories and people. However, this most recent version of SB 83 scraps all that language. Apparently, Ohio's LGBT+ students and staff are not deserving of such protections and will receive none under SB 83. In that sense, SB 83 fosters discrimination instead of preventing it.

Members of this committee, this testimony could be 50 pages long, detailing each and every concern of ours with SB 83. This is the abbreviated version. Suffice to say, SB 83 causes far more problems than it will ever solve. Its contradictory language is open to an endless amount of interpretation and will sow confusion. Protecting free speech, intellectual diversity, and independent thought on Ohio's campuses is a laudable goal. But SB 83 is the proverbial bull in a china shop, dictating precisely how individual classrooms and instructors operate, with zero recognition of the First Amendment academic freedom rights of university instructors.

For all these reasons, and many more, the ACLU of Ohio urges your rejection of Substitute Senate Bill 83.