

Testimony of Deborah C. Smith, Ph.D.  
Professor of Philosophy, Kent State University  
Before the Senate Workforce and Higher Education Committee  
Senator Jerry Cirino, Chair  
April 19, 2023

Chair Cirino, Vice Chair Rulli, Ranking Member Ingram, and Members of the Senate Workforce and Higher Education Committee: My name is Deborah Smith. I am a Professor of Philosophy at Kent State University. I submit this testimony to express my opposition to Senate Bill 83 and the restrictions that it would impose on the academic freedom of faculty at public and private institutions of higher education.

Last year, I had the pleasure of extensive conversation with Senator Cirino regarding my concerns that provisions in the original version of what was then Senate Bill 135 would have had a chilling effect on academic freedom. Senator Cirino invited me to suggest some revisions, several of which ended up in the final version of the bill. I understand that then-Senate Bill 135 ultimately enjoyed widespread bipartisan support. My current concerns about the ways in which Senate Bill 83 (and especially Section 2 of that bill) will have a chilling effect on academic freedom far exceed those I initially had about then-Senate Bill 135. However, in this case, I do not think that there is any way to revise the relevant provisions of Senate Bill 83 so as to preserve academic freedom and/or merit widespread bipartisan support.

I know that Senator Cirino's motivation for sponsoring this bill is rooted in his desire to ensure that our institutions of higher education are places wherein a wide diversity of viewpoints can be expressed, debated, and have their intellectual stock rise or fall in the marketplace of ideas. Based on our previous conversations, I think that Senator Cirino and I largely share a vision of what an institution of higher education can and should be. I too 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 our shared vision is one that necessitates that institutions of higher education value a wide diversity of viewpoints and perspectives.

However, as I argue here in my testimony, there is no way to *legislate* that value without infringing on the academic freedom of faculty—another value that is integral to the vision of higher education that Senator Cirino and I share. I recognize that the bill contains language (lines 225-228 and 249-253) that is intended to safeguard academic freedom. However, I believe that neither that nor any other language would be adequate to safeguard academic freedom given the provisions in Section 2 of Senate Bill 83 that explicitly limit what can occur in the classroom (see especially lines 170-173, 216-219, 683-686) and that regulate the manner in which faculty are to be evaluated (see especially lines 415-417, 466-468).

My argument in broad outline can be stated fairly succinctly:

Whether or not an individual instructor is engaging in inappropriate viewpoint discrimination 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 this issue would thereby have a chilling impact on academic freedom and negatively impact the faculty expert's ability to provide a high-quality education to their students.

Most of the weight of this argument rests on the claim in its initial premise and the majority of my testimony is focused on providing support for that claim. I'm going to start with an example that is plausibly irrelevant to any of the provisions of the bill about which I am concerned, but that clearly illustrates my underlying point. I will then work my way toward examples that more relevantly engage the provisions of this bill and argue that the same underlying point applies to those examples as well.

As a philosophy professor with an expertise in a particular subfield of philosophy, I teach a course in which it would be appropriate for a student to articulate and defend any of the following philosophical viewpoints with respect to the relation between the mind and the world:

- That there is no such thing as the external, physical world and that the only things that exist are minds and the ideas and conscious experiences they contain.
- That there may be an extra mental world, but that it is impossible to know anything about it if it exists.
- That I am the only thing that exists and that everything else is just a figment of my imagination.

A student who took any one of these positions (or any of a variety of other positions), expressed it clearly, and adequately defended it with reasons would receive a good grade in my class. My class is a class that, as Senator Cirino would say, teaches students how to think and not what to think. However, in a class on, e.g., atomic physics, it would not be appropriate for a student to express and defend the claim that our contemporary theory of atomic physics is false because, e.g., there is no such thing as the external, physical world and hence no such things as atoms. Academic context matters.

To be sure, there is much that a student can learn about how to think and especially about scientific methodologies when taking a course on atomic physics. However, that is not its aim. The aim of a course in atomic physics is to teach students what our best scientific theory says concerning the structure and properties of the atom, what evidence supports the theory, and what the implications of the theory are. Students taking such a course should expect to be evaluated on their understanding of the theory, the evidence for it, and its implications. A student who came into such a class sincerely holding any one of the philosophical viewpoints I mentioned earlier might very well come out of a class on atomic physics believing that there is an external, physical world, that we can and do know quite a lot about it, and perhaps even desiring to major in physics. If that were to happen, it would not be evidence of undue "indoctrination." It would be evidence of the power of education.

This is not to say that, when it comes to a course on a well-established scientific theory, there is no room for any debate. Students in such a course should be encouraged to:

- Question whether something presented as evidence for the theory really counts as evidence,
- Evaluate and debate the relative merits of competing sub-variants of the theory, and
- Debate whether or not something really is a consequence of the theory.

But in the context of a course on atomic physics, the legitimate areas of debate are necessarily limited. The theory must be presented and discussed in a way that presupposes that it (at least largely) correct. This is in part because there is widespread expert consensus concerning the structure and property of the atom. It is also because atomic theory grounds other theories in physics and chemistry and because those theories cannot be learned until one has adequately understood atomic physics.

The same, of course, is true with respect to the theory of evolution—a theory that, while not explicitly mentioned in this bill, is arguably implicated given that instruction in the theory of evolution could be viewed as discriminating against or inculcating a particular religious perspective. There are legitimate academic contexts in which we might debate, e.g., whether or not the theory of evolution is inconsistent

with the account of creation contained in the books held sacred by various religions. Multiple viewpoints on such a question could be expressed and defended in such a context and all should be respected. However, the viewpoint that evolution is false because it is inconsistent with a text held sacred by a given religion is not appropriately expressed and defended in the context of a course on evolutionary biology. The reason here is the same as the reason that it is inappropriate to express the viewpoint that atomic theory is false because there is no such thing as the external, physical world in a course on atomic physics.

But here, it is worth considering more subtle aspects of the context. Consider the following scenarios involving a student taking a course on evolutionary biology who believes that the theory of evolution is false because, e.g., God created the world much as it is now in six days:

Scenario 1: Early in the course, Student A asserts in class that the theory of evolution is clearly false because God created the world much as it is now in six days and quotes passages from the Christian Bible in support of this claim. The professor responds to the student by explaining that there are many ways to interpret the passages quoted and that the theory of evolution need not be seen as being in conflict with Christian beliefs. At every possible opportunity thereafter, Student A interrupts the professor's lecture expressing and attempting to defend the same religious viewpoint. Eventually, the professor takes steps to curtail Student A's behavior in this regard.

Scenario 2: Early in the course, Student B asserts that the theory of evolution is clearly false because God created the world much as it is now in six days and receives the same response from the professor as Student A did in Scenario 1. Thereafter, Student B asks only questions that would be appropriate in the context of the class. However, on all assignments and exams designed to assess the extent to which students have learned the details of the theory, the evidence supporting it, and its implications, Student B simply writes "evolution is false because God created the world much as it is now in six days." The Professor gives Student B a failing grade.

Given that evolutionary biology grounds much of the rest of biology, it is right and appropriate that an institution of higher education offers a course that presents and engages it in a way that takes it to be (at least largely) correct. In neither of these scenarios should the professors' respective responses to the student be viewed as an instance of inappropriate viewpoint discrimination or an undue infringement of anyone's intellectual diversity rights. In fact, it could plausibly be maintained that the steps taken by the professors in these two scenarios were necessary in order to safeguard the academic integrity of the course. After all:

- in scenario 1, Student A's continuing behavior impacted the ability of other students to achieve the learning outcomes associated with this course,<sup>1</sup> and

---

<sup>1</sup> It is relevant here to note that, in his sponsor testimony to this Committee, Senator Cirino himself cites an example in which it is the context that determines whether or not the expression of a viewpoint is appropriate or inappropriate on campus. While I disagree with most of the conclusions that Senator Cirino draws from the recent incident at Stanford Law School, I completely agree with him that it was highly inappropriate for Judge Stuart Duncan (or any invited speaker) to be shouted down, interrupted, or disrespected during a presentation. As he notes, speech and behavior that is to be tolerated in the context of a protest outside the speech venue is completely inappropriate when it occurs within a context that disrupts the talk itself.

- in scenario 2, Student B did not evidence achievement of any of the learning outcomes associated with this course.

By contrast, consider this scenario:

Scenario 3: Early in the course, Student C asserts that the theory of evolution is clearly false because God created the world much as it is now in six days and receives the same response from the professor as Student A did in Scenario 1. Thereafter, student C asks only questions that would be appropriate in the context of the class and performs well on all assignments and exams designed to assess the extent to which students have learned the details of the theory, the evidence in its favor, and its implications. However, at the bottom of each such assignment and exam, student C writes “And yet evolution is false because God created the world much as it is now in six days.” The professor decides to give Student C a lower grade than other students performing similarly on the assignments and exams given that Student C does not accept the theory of evolution.

I believe that, in scenario 3, the professor has engaged in inappropriate viewpoint discrimination. Student C has evidenced achievement of the learning outcomes for this class—the very learning outcomes that are necessary for further study of biology—and so should receive a grade consistent with that achievement.

It is important to note that the students in all three scenarios might genuinely believe that the professor had engaged in inappropriate viewpoint discrimination and that the way they were treated by the professor and/or the grade they received in this class was fundamentally unfair. However, I would submit that that would only be true in the third scenario. Students taking a course in evolutionary biology should expect to be evaluated on their understanding of the theory, the evidence for it, and its implications. Academic context matters.

Another important lesson to take away from this example is that 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. If a student goes into such a class with a sincere commitment to a viewpoint on one side of a political or religious controversy that entails that the theory being taught in the class is false and comes out of the class having accepted the theory, that is not evidence of undue indoctrination. That is again evidence of the power of education.

What I’ve said here about the theory of evolution is also true of other theories more explicitly referenced as “controversial beliefs” in this bill including:

- the theory that the world is undergoing climate change predominantly caused by the burning of fossil fuels,
- the theory that, despite the passage of various laws against racial and gender-based discrimination, there continues to be systemic racism and sexism in our society/culture, and

- the theory that each of us has implicit biases for or against individuals that we perceive as members of certain races, ethnicities, genders, sexual orientations, etc.

I recognize that some may find it odd to describe these as theories rather than as beliefs. However, the theories to which I refer go beyond merely the belief that the claims in the bullet points above are true. They, like other theories in the physical or social sciences, invoke complex physical, psychological, and/or historical mechanisms in their explanations of the phenomena they concern. They make predictions that can be and have been empirically tested and thereby inform other areas of inquiry. They are in turn informed by developments in those other areas of inquiry in a way that shapes their own further development. Although politically controversial, there is a significant amount of empirical evidence supporting each of these theories and each is widely accepted by experts in the relevant physical or social sciences.

As is the case with other physical or social scientific theories, there are academic contexts in which the viewpoint that these theories are false would be appropriate to express and defend and in which one would reasonably expect that one's grade in a course would depend on how well one articulated and defended one's viewpoint and not on the viewpoint itself. Given the relative newness of these theories, there may even be a wider range of such contexts than there is with respect to the theories of atomic physics or evolutionary biology. However, it is important to recognize, in a way I fear this bill does not, that there are academic contexts in which such a viewpoint would be inappropriate to express and defend in the classroom.

And again, the reason is the same as in the original example involving an atomic physics course and the subsequent example concerning the evolutionary biology course. Just as atomic physics and evolutionary biology ground other theories, so too do the theories just mentioned:

- The theory of human caused climate change grounds a number of other theories in ecology, environmental science, and environmental ethics.
- The theory that systemic racism and sexism exist and the theory that we all have implicit biases both ground a number of other theories in psychology, sociology, history, and philosophy.

There is no way to learn those further theories unless the student has a sufficient understanding of the underlying theory that grounds them obtained in a course in which the underlying theory is taken to be (at least largely) correct.

That doesn't mean that the student in such a course ultimately has to believe or accept the theory in question. But it does mean that a student who doesn't accept the theory probably should not major or minor in an academic discipline area for which the theory in question is a grounding theory. It also means that such a student should either find an alternative course to satisfy a general education requirement (and, at least at Kent State University, there are always such alternatives available to students) or be prepared to engage the theory—even if only for the sake of the course—as if it were (at least largely) correct. Students taking a course on such a theory should expect to be evaluated on their understanding of the theory, the evidence for it, and its implications. If it turns out that some students who enter the course not accepting the theory come out of the course having changed their minds, that is no more evidence of undue indoctrination in these cases than it is in the analogous cases involving courses on atomic physics or evolutionary biology.

As I see it, the central problem with attempting to legislate against inappropriate viewpoint discrimination and in favor of intellectual diversity is twofold:

- 1) Not all (and perhaps not even most) cases in which a student is or would feel discouraged from expressing a given viewpoint in the classroom are instances of inappropriate viewpoint discrimination and/or the infringement of intellectual diversity rights, and
- 2) There is no way to define or otherwise articulate all and only cases in which discouraging the expression of a certain viewpoint would constitute inappropriate viewpoint discrimination and/or the infringement of intellectual diversity rights.

Because the details of the context matter, there is no way to tell from responses on student evaluations or from reviews of instructors' syllabi, required readings, or other course materials whether or not an allegation of inappropriate viewpoint discrimination and/or undue infringement of intellectual diversity rights has merit. That can only be determined on a case by cases basis via a formal complaint procedure initiated by the student—a procedure that provides due process protections for both complainant and respondent and that includes (at a minimum) having appropriate content experts conduct separate interviews with the complainant and respondent and review relevant evidence submitted by each party. In the vast majority of cases, that evidence will necessarily include the student's specific responses on assignments and exams before an informed determination can be rendered.

It is worth noting that Kent State University, like most (if not all) other State institutions of higher education, already has a detailed policy governing student academic complaints. When such a complaint is found to have merit, Kent State University, like most (if not all) other State institutions of higher education, has a process under which faculty members (even tenured faculty members) engaging in inappropriate viewpoint discrimination or any other behaviors inconsistent with the satisfactory performance of their roles as faculty members can be sanctioned. While I can't speak to what happens at other institutions, I can assure you that Kent State University has not hesitated to use this sanctions process when appropriate.

This bill, were it to become law, would substantially increase the number of allegations of inappropriate viewpoint discrimination—including by individuals wholly unaffiliated with the institution of higher education in question—well beyond the current levels. 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.

The result of this bill would be, not an expansion of free speech and intellectual diversity, but a limitation of the educational opportunities available to Ohio students. The result would be, not an enhancement, but a degradation of the quality of education that the world class faculty at Ohio's institutions of higher education would be able to provide to their students.

This bill is not necessary in order to turn the vision that Senator Cirino and I both share of what higher education can and should be into a reality. It would in fact move the reality of higher education in Ohio farther away from that vision.

I urge the Committee not to advance this bill.

Thank you for your time and consideration.