

Testimony of Deborah C. Smith, Ph.D.
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Before the Senate Higher Education Committee
Senator Roegner, Chair
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Chair Roegner, Ranking Member Ingram, and Members of the Senate Higher Education Committee: My name is Deborah Smith. I am the President of the Kent State United Faculty Association (KSUFA), the faculty union representing Kent State's over 1100 full-time faculty. I am testifying in **opposition** to Senate Bill 1 recently introduced into the Committee.

Like Senate Bill 83 introduced during the 135th General Assembly, Senate Bill 1 has been touted as a bill that would enhance free speech on the campuses of Ohio's public institutions of higher education. However, Senate Bill 1 would have the opposite effect. It **explicitly censors the speech of Ohio's public institutions of higher education** and would **severely chill the freedom of expression of faculty and academic administrators** at Ohio's public institutions of higher education. Moreover, it would **severely chill the academic freedom of faculty** at Ohio's public institutions of higher education. (A series of court cases has established a relationship between academic freedom and the First Amendment freedom of expression. See especially, *Sweezy v. New Hampshire*, 354 U.S. 234 (1957) and *Keyishian v. Board of Regents*, 385 U.S. 589 (1967).) In addition to the explicit restrictions and implicit chilling effects the bill would have on freedom of expression, the bill contains provisions that would **significantly erode the collective bargaining rights of faculty unions**. Finally, the Bill represents a significant government overreach into and micromanagement of the individualized governance of Ohio's diverse institutions of higher education.

I will further articulate these concerns below. However, I want to make clear upfront that, in light of these concerns, **I urge you not to advance this Bill out of Committee.**

Explicit and Implicit Restrictions on the Freedom of Expression:

Senate Bill 1 restricts the free speech and freedom of expression of Ohio's public institutions of higher education. Section 3345.0217.B.6 of the Bill explicitly prohibits any public institution of higher education from taking any position as an institution on "any controversial belief or policy". The Bill defines a "Controversial belief or policy" as "any belief or policy that is the subject of political controversy" and lists examples such as "climate policies, electoral politics, foreign policy, diversity, equity, and inclusion programs, immigration policy, marriage, or abortion." Strangely, the Bill specifies that an institution may "endorse the congress of the United States when it establishes a state of armed hostility against a foreign power" even though such an action would almost certainly prove to be subject to political controversy. The fact that the Bill would allow institutions to take a stance with respect to one type of controversial policy suggests that the aim of this section of the Bill is not to promote free expression in general, but to censor the speech of institutions of higher education with respect to the specific beliefs and policies explicitly listed.

Although the Bill contains a provision (section 3345.0217.B.7) prohibiting institutions of higher education from encouraging, discouraging, requiring, or forbidding students, faculty, or administrators from

endorsing, assenting to, or publicly expressing “a given ideology, political stance, or view of a social policy,” it is often challenging for faculty and administrators to wholly shed their identities as faculty and administrators of the institution in question when speaking as private citizens. As a result, the **provisions prohibiting the institution from engaging in certain types of expression are very likely to have a chill on the free expression of faculty and administrators.**

Chill on the Academic Freedom of Faculty:

Senate Bill 1 will almost certainly place an extreme chill on the academic freedom of faculty at Ohio’s public institutions of higher education via the provisions of the Bill discussed above that explicitly limit the free expression of institutions of higher education with respect to controversial beliefs and policies. 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, there is no way to *legislate* that value without infringing on the academic freedom of faculty.

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. **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. 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.

To be sure, the Bill contains language in Section 3345.0217.B.7 (lines 702-704) seemingly intended to protect academic freedom: “Divisions (B)(6) and (7) of this section do not apply to the exercise of professional judgement about whether to endorse the consensus or foundational beliefs of an academic discipline.” However, students and the general public may have a difficult time understanding the difference between a faculty member articulating the expert consensus or foundational beliefs within their academic discipline concerning a controversial matter and the institution itself taking a stance on that matter. Moreover, the language (in lines 705-706) that immediately follows, “unless that exercise [of professional judgment] is misused to take an action prohibited in division (B)(6) of this section,” seems to explicitly invite the blurring of the distinction between the exercise of professional judgement on the part of a faculty member in the classroom and a stance on a controversial matter by the institution itself in a way that would chill 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.**

Erosion of the Collective Bargaining Rights of Faculty Unions:

Senate Bill 1 contains a provision in Sec. 3345.455 (lines 1053-1063) that 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, Senate Bill 1 closely resembles 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, Senate Bill 1 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 what follows, I articulate the negative impact that these provisions would have on Kent State’s Tenured and Tenure-Track Faculty Bargaining Unit and Full-Time Non-Tenure-Track Faculty Bargaining Unit.

Sec. 3345.452 (lines 920-967) 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, KSUFA 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 968-1016) calls for each institution of higher education with tenured faculty to adopt a policy for post tenure review and, per Sec. 3345.455, KSUFA 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 KSUFA’s Tenured and Tenure-Track Faculty Collective Bargaining Agreement. To the extent that this section of Senate Bill 1 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 1017-1052) requires institutions of higher education with tenured faculty to adopt a policy on tenure and retrenchment. And again, per Sec. 3345.455, KSUFA 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’s faculty union 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. Sections 3345-455 of Senate Bill 1 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

inclusion of section 3345.456 (lines 1064-1084) does nothing to mitigate this concern and only adds an unnecessary layer of complication.

By undermining our right to collectively bargain essential aspects of the terms and conditions of our employment, the provisions of Senate Bill 1 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 the Bill will make it harder for the University to continue to attract and retain a world-class faculty. The result of these provisions will be the polar opposite of an advancement in higher education.

I note that Senate Bill 1 contains revisions to ORC 4117.14.D.1 (lines 1986-2010) that would completely eliminate my union's right to strike. To be sure, KSUFA would prefer to retain the right to strike. However, if the restrictions imposed on subjects of collective bargaining and discussed above were removed from the Bill, the conciliation process that would replace the right to strike might be acceptable to our union. Such a revision would involve deleting all of section 3345.455 (lines 1053-1063), deleting all of section 3345-456 (lines 1064-1084), restoring the language deleted from section 3345.45, division (B) (at lines 851-858), and deleting lines 873-899 of section 3345.45. Enacting these revisions would thereby retain the status quo concerning appropriate subjects of collective bargaining for faculty unions.

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 as currently written would still be examples of **significant government overreach into and micromanagement of the individualized governance of Ohio's diverse institutions of higher education.**

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). Senate Bill 1 proposes revisions to section 3345.45 (lines 873-899) 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 920-967) 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, Senate Bill 1 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 968-1016) 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 3345.453 in Senate Bill 1.

In light of the aforementioned concerns, I urge you not to advance this Bill.

Thank you for your consideration.