

Charlottesville, February 6, 2025

Opposition to Senate Bill 1

Written testimony of Benjamin G. Davis, Emeritus Professor of Law, University of Toledo College of Law

Chair Roegner, Vice Chair Cirino, Ranking Member Ingram, and members of the Senate Higher Education Committee, thank you for the opportunity to provide opposition testimony on Senate Bill 1.

My name is Benjamin G. Davis, and I am an Emeritus Professor of Law of the University of Toledo College of Law where I had the honor of teaching for 18 years. I am also a Chevalier, Ordre des Palmes Academiques of the Republic of France

I write in opposition to several sections of the bill (Section 1) as well as to correct the testimony of State Representative Joshua E. Williams again (Section 2) as well as speaking to the testimony of Dr. Stanley Goldfarb of Do no Harm (Section 3).

Section 1 - several sections of the bill

I refer you to the following sections of the bill followed by my comment, to wit:

- Sec. 3345.0217(A)(1) defines "Controversial belief or policy" as meaning "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."

Comment in opposition: As you well know, this listing is a disingenuous effort to squelch freedom of speech and thought by casting a chilling effect on the discussion of any of these topics. No one is so naive as to not understand precisely what this bill is trying to do to state institutions. Through this effort one can see that the discussion of any of these matters in the classroom, research, tenure and promotion evaluations, or in any aspect of education will be chilled due to the constraint placed on the leadership of the institution. That constraint will flow inexorably into the educational mission of the institution to the detriment of the students and faculty.

I am a full throated proponent of what I call full contact dialogue in an educational environment and have written about this most recently (Davis, Benjamin, Searching for the Spirit (Updated April 29, 2024) (October 11, 2023). Available at SSRN: <https://ssrn.com/abstract=4606139> or <http://dx.doi.org/10.2139/ssrn.4606139> Incorporate d by reference here. A shorter version will be published in due course).

This full contact dialogue means that to the greatest extent permitted by the First Amendment freedom of speech and thought should be maintained. This bill restricts it for one sided political purposes that are repugnant to education.

When on the faculty at the University of Toledo I argued strenuously, but unfortunately to no avail, against the adoption of speech codes that chill and limit the range of thinking that is

permitted at the school. The proposed language of SB 1 is even worse than a speech code as it is state law. It does nothing to enhance and maintain full contact dialogue. I also question whether it violates the First Amendment.

- Sec. 3345.0217(B)(1)(a)(i)-(vi) requires the board of trustees of each state institution of higher education to adopt and enforce a policy that requires *inter alia* prohibition of:
 - Any orientation or training course regarding diversity, equity, and inclusion;
 - The continuation of existing diversity, equity, and inclusion offices or departments;
 - Establishing new diversity, equity, and inclusion offices or departments;
 - Using diversity, equity, and inclusion in job descriptions;
 - Contracting with consultants or third-parties whose role is or would be to promote admissions, hiring, or promotion on the basis of race, ethnicity, religion, sex, sexual orientation, gender identity, or gender expression;
 - The establishment of any new institutional scholarships that use diversity, equity, and inclusion in any manner. For any institutional scholarships existing on the effective date of this section, a state institution shall, to the extent possible, eliminate diversity, equity, and inclusion requirements. If the state institution is unable to do so because of donor requirements, the institution may continue to offer those institutional scholarships. However, the state institution shall not accept any additional funds for the operation of institutional scholarships that have diversity, equity, and inclusion requirements.

Comment in opposition: The SFFA decision on affirmative action does not require this language and any Presidential Executive Order issued recently violates established law and precedent. Anti-DEI is the current shibboleth being used to mask what is the same old racism, misogyny, and bigotry that has plagued this country for 400 years.

I know it and you know it.

Too many have fought and died to combat these virulent retrograde aspects of American history and reality. This is merely an effort to turn back the clock to the late 19th century Plessy v Ferguson world by trying to expand the SFFA case from its narrow arena into all aspects of education.

Whatever the color or gender of the proponent, it is not the DEI that is the problem you see, the problem is the ambient animus toward women and minorities like me.

- Sec. 3345.0217(E) "The general assembly may withhold or reduce any state operating subsidy payments, state capital improvement funds, or other state appropriation to a state institution of higher education if the general assembly determines the institution has failed to comply with the requirements established under this section."

Comment in opposition: Through this thinly veiled threat to use the power of the purse to discipline educational

institutions, a thumb is put on the scale in order to turn education away from its broad and rich mission toward indoctrination. There are many ideas with which we may disagree, but the space for such disagreement must be kept as wide as possible to ensure intellectual curiosity is not dampened and impeded due to narrow retrograde political agendas.

In sum, this bill seeks to turn back the clock to a time when there were no worker protections, virulent racism was applauded, women did not have the right to vote, and there were few if any protections of children from child labor. This dystopian vision undergirds this proposed law and we shall not go back.

Section 2. Correction of State Representative Joshua William's testimony

I am proud that a former student in one of my classes at Toledo has gone so far. I wish him well.

At the same time, because his testimony besmirches me again I am constrained to correct it.

Improving over his last version of testimony, State Representative Williams indicates partially what he says was on social media. A while back State Representative Williams confirmed to me that these references he was making were to an exchange we had had on Facebook.

What State Representative Williams appears to have overlooked is the fact that periodically on my Facebook page I sent out a public service announcement that my Facebook page was a space for full contact dialogue. And if someone was not happy with a post, I suggested that they were free to unfriend me.

Since that last exchange and about four weeks ago, I deleted my Facebook account in protest of the puerile subservience to power demonstrated by Mark Zuckerberg so I am unable to give you an example of that public service announcement without inadvertently triggering the reopening of an account of a social media system whose leadership I abhor. Compare for example, Edwin Black, IBM and the Holocaust, detailing subservience of corporate power to oppressive government. Never forget. Never again.

In his testimony, State Representative Williams has at least now mentioned that it was a post on social media. He was not so clear in his prior testimony and gave the impression that comments that bothered him were done by a professor in his administrative law class. Not teaching administrative law and knowing the professor most likely to have been teaching administrative law at the time he took the course, his comments were so out of character for that professor. Thus, they were repugnant.

In addition, that students in his class took issue with his views and that he thought his views were mainstream ironically misses the greater point which is that the kind of full contact dialogue in the classroom he experienced is precisely the kind of challenging environment one would hope for in a law school classroom. Professors encourage students to hone their advocacy skills with each other in class. Feelings get hurt, but that happens in state houses and courts too. One learns to deal with the hurt and not let feelings blur lucidity. It should be obvious to all that I had and have no control over what students say to each other inside or outside of class at the College of Law.

I would add that I have heard many things over the years that I have found appalling in many academic and other environments. Yet I have defended the freedom of those to speak their truth making comments that may even be experienced as hurtful by me or others.

The reason is that the First Amendment requires that of me.

Because of that mischaracterization of me and of the University of Toledo College of Law, I merely invited State Representative Joshua Williams to apologize for casting such aspersions on me. To this date, he has declined to do so due to his busy schedule.

My point is there is a mixing of apples of classroom and law school discussion and the oranges of social media full contact dialogue being done here and your committee should not be duped.

Section 3 Correction of Dr Stanley Goldfarb's Do no harm testimony

When he came to speak at Boar's Head here in Charlottesville, I had the pleasure of challenging all of the premises of Dr. Goldfarb's thought on DEI. One must remember, as I noted to him then that when he went to college and medical school, he was there at a time when discrimination against anyone who was not a white male was rampant throughout k-12 and higher education. I know as I integrated schools from first grade on. So his view of what is normal is colored by what he thought was normal.

But what he thinks is normal and propounds is not normalcy but backsliding from integration in a multiracial democracy. Over my nearly 70 years I have watched the ebb and flow of opposition to integration - whether massive resistance to Brown v Board of Education, interposition, the anti-busing movement, housing discrimination, anti-affirmative action, and now onto DEI. It is the same old wine of oppression just placed in new bottles.

Please discount his testimony.

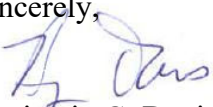
Section 4 - Summary and Conclusion

Senate Bill 1 is the newest version of the repugnant massive resistance effort of the 1950's, itself drawing from the history of segregation and slavery and misogyny. Ohio is better than what this bill seeks to bring us back to - late 19th century thinking.

People and people's representatives should reject this abomination.

Thank you for your time.

Sincerely,



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