

## Opponent Testimony on Am. Sub. H. B. No. 96

Senate Higher Education Committee

May 15, 2025

**Adam Kissel**

Visiting Fellow for Higher Education Reform, The Heritage Foundation<sup>1</sup>

Chair Roegner, Vice Chair Timken, Ranking Member Ingram, and Committee members, I am Adam Kissel, Visiting Fellow for Higher Education Reform at The Heritage Foundation. I am testifying in my personal capacity in opposition to the provisions of **Am. Sub. H. B. No. 96** regarding **online program management (OPM) contracts**.<sup>2</sup> Thank you for this opportunity to comment.

I have worked in higher education policy, advocacy, philanthropy, and government throughout my career. I was Deputy Assistant Secretary for Higher Education Programs at the U.S. Department of Education under Secretary Betsy DeVos in the first Trump administration.

I live in West Virginia, and I drove to Columbus because I believe so strongly in the value of free markets and private enterprise. Discouraging free enterprise in higher education will harm students by discouraging innovation and increasing costs.

I have written on OPM issues at the federal level and in Pennsylvania and North Carolina. The only state that has done anything like what Ohio is considering is Minnesota.<sup>3</sup>

I will briefly outline a few areas of overregulation.

(1) First, new Section 3332.22 subjects for-profit schools to new restrictions that are *not* faced by nonprofits. For nonprofits, OPM contracts only must be *disclosed*. But for-profits must subject their OPM contracts to the state board of career colleges for *prior approval*.<sup>4</sup>

This language restricts free enterprise by subjecting private contracts to state oversight, and it disadvantages for-profits even when they have the same contract as a nonprofit.

Furthermore, as a matter of academic freedom, a college should be allowed to decide academic matters for itself. Curriculum development, faculty assessment, admissions requirements, and institutional governance are squarely within the traditional prerogatives of a college, especially a private one. Yet OPM contracts on these matters are to be reviewed by the state regulator.<sup>5</sup>

In general, profit-seeking organizations have incentives to be efficient. Profit-seeking organizations operate better than nonprofits and government organizations because they are risking their own money, not money from donors or from taxpayers.

---

<sup>1</sup> For identification only; opponent testimony is given in my personal capacity only.

<sup>2</sup> <https://www.legislature.ohio.gov/download?key=25102> (see also the bill analysis, pp. 348–351).

<sup>3</sup> Please see my op-ed provided as additional written testimony, “Why Turn Red Ohio Minnesota Blue When It Comes to Online College Education?” *Washington Examiner*, April 30, 2025, <https://www.washingtontimes.com/news/2025/apr/30/turn-red-ohio-minnesota-blue-comes-online-college-education>.

<sup>4</sup> As passed by the House, lines 62539 ff.

<sup>5</sup> This provision is more restrictive than Minnesota’s, which requires review only by the institution’s own board.

But the OPM provisions here take the opposite approach. These provisions put an unjustified stigma on profit-seeking organizations, whether they are OPMs or proprietary colleges.

(2) Second, Madame Chair, this is why I also oppose the new OPM disclosure requirement.<sup>6</sup> Chancellor Duffey recently testified in this committee that students do not really care whether the school providing their education is a nonprofit or a for-profit. Even less should we expect a student to care whether a particular course involves an online program manager.

But the public disclosure provision is a warning label, an unjustified warning against OPMs, simply because they are for-profit—and even if the OPM merely provides “input” (line 33346).

This “input” language is overbroad, and it implicates the First Amendment. Providing “input” is protected professional speech. Section 1713.032 is at legal risk so long as “input” is in the law.

(3) Third and related: Public colleges can be put on “fiscal caution” status simply for having an OPM contract, no matter the size or scope.<sup>7</sup> This status is not just an unjustified black mark. It also subjects the college to unnecessary accounting and paperwork, including a “financial recovery plan,” as though the OPM contract is inherently a financial mistake instead of a benefit to the college and its students.

But OPM contracts save colleges money when, for example, it’s cheaper to have a third party run the tech for online courses. A college normally wouldn’t enter an OPM contract unless it actually helped the college.

(4) Fourth, I understand that the Chancellor expressed concern that a school might establish a course that does not meet state requirements for certification for an occupational license in Ohio. This would represent a substantive change and a genuine problem *whether or not* an OPM helped design the course. In other words, the risk of offering a course that does not meet state requirements exists regardless of whether that course involves an OPM.

The Chancellor and relevant boards already have tools for addressing this problem when it occurs. In fact, the Chancellor testified that successfully took action in specific cases under *current law*. This fact puts in question whether new OPM language is needed in the first place.

(5) Finally, two wording changes are crucially necessary.<sup>8</sup> For a state institution or a career college, if the state regulator invalidates an OPM contract, the entire institution must shut down because it may not enroll *any* new students, regardless of the size and scope of the contract.

The right remedy, if any, is not to kill off the entire institution. It is only to *suspend* enrollment in the particular courses or programs involved, pending compliance.

Madame Chair and Committee members, thank you again for the opportunity to comment.

---

<sup>6</sup> New Section 1713.032, lines 33391 ff.

<sup>7</sup> New Section 3345.721, line 64065.

<sup>8</sup> New Section 3333.0420, line 62884; new Section 3332.22, line 62559.

This is more than 1 week old.

## Why turn Red Ohio Minnesota Blue when it comes to online college education?



*FILE - The William McKinley Monument is silhouetted in front of the west side of the Ohio Statehouse, April 15, 2024, in Columbus, Ohio. (AP Photo/Carolyn Kaster, File) FILE - The William McKinley Monument ... more >*

---

COMMENTARY

By Adam Kissel

*Wednesday, April 30, 2025*

---

## **OPINION:**

It's a head-scratching moment: Ohio legislators are preparing to interfere with academic freedom and the freedom of contract at public and private colleges across the state. Such intervention would make conservative Ohio look a lot more like progressive Minnesota.

The issue is online program management (OPM) contracts, which public and private colleges use to serve students and increase innovation. It's at the heart of the huge appropriations bill known as HB 96.

HB 96, which is currently more than 5,000 pages, includes policies that would require prior approval from Ohio's chancellor of higher education for every agreement between colleges and OPMs, even for private colleges and regardless of the size and scope of the contract.

---

Just as outrageously, the policies in the bill hit the core of academic freedom: a college's ability to decide academic matters for itself. Curriculum development, faculty assessment, admissions requirements, and institutional governance are squarely within the traditional prerogatives of a college, especially private ones. Yet OPM contracts on these matters would be reviewed by the state regulator.

Furthermore, public colleges can be put on "fiscal caution" status simply for having an OPM contract, no matter the size or scope.

This status is not just an unwelcome black mark. It also subjects the college to a great deal of unnecessary accounting and paperwork, including a “financial recovery plan,” as though the OPM contract is inherently a financial mistake instead of a benefit to the college and its students. Indeed, OPM contracts save colleges money when, for example, it’s cheaper to have a third party run the tech for online courses.

Why is Ohio contemplating provisions that would subject private university contracts to a state regulator’s review? It all started with a now-closed community college, Eastern Gateway Community College. Eastern had contracted with a third-party servicer to set up “free” college courses for union members, but this program died once the U.S. Department of Education declared that it violated provisions governing federal student aid.

## MY TIMES

[VIEW ALL](#) 

EDITORIAL **Mr. Trump’s first 100 days**

**Court backs Trump on Alien Enemies deportations but grants 21-day grace period before removals**

EDITORIAL **Chicago lawmakers’ corruption on trial with shady push for speed cameras**

Enter the anti-market forces. Having passed the House with little debate, the bill has moved to the Senate, where it is likely to receive more scrutiny in the coming weeks.

ADVERTISEMENT

---

If a private college wants to do business in Ohio, some kinds of regulations are legitimate. For example, model legislation from The Heritage Foundation would require private colleges to suspend or expel foreign students who become deportable by supporting terrorism, as defined by federal law.

But interfering with academic freedom and private contracts is not the kind of interference that conservative legislators should pursue. There is no reasonable angle for consumer protection or even transparency, as though a deal with a for-profit entity automatically deserves a warning label and an alarm.

Ohio's proposed policies here are considerably worse than those passed in Minnesota, an increasingly progressive and oppressive state. In 2024, Minnesota passed HF 4024, which prohibited public universities from contracting with OPMs for tuition sharing, transfer of intellectual property rights, or certain other functions. Any OPM contract with a public college in Minnesota must be approved by that institution's governing board.

Ohio legislators have used much of the same language, but the proposed policies are worse in three ways. For one, all private and career colleges would be included. Two, it's not the college's own board that must review

and approve OPM contracts, but the state regulator. Third, the “fiscal caution” status incorrectly and unjustly tags OPM contracts as bad instead of good.

Such policies should be intolerable in a free society. Yet, Minnesota is where Ohio is headed unless the principles of free enterprise return.

---

ADVERTISEMENT

---

*Adam Kissel is a visiting fellow in the Center for Education Reform at The Heritage Foundation.*

Copyright © 2025 The Washington Times, LLC. [Click here for reprint permission.](#)

**Please read our comment policy before commenting.**