Testimony of Dean Emeritus Joseph P. Tomain
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 Workforce and Higher Education Committee:

My name is Joseph P. Tomain, I am Dean Emeritus and Professor of Law at the University of Cincinnati where I have taught for 40 years. I do not represent the College of Law, I am testifying as a private citizen in opposition to Senate Bill 83. I am also testifying as a grandfather who wants his grandchildren to have the highest and best available education that Ohio can offer. I want them to learn in an environment that is academically sound, intellectually free, and learn in an environment where opinions can be expressed, criticized, and openly debated so that they can form their own opinions and reach their own conclusions.

In addition to teaching law, I have served as Chair of an Ohio education philanthropy called the KnowledgeWorks Foundation for 20 years. As a teacher and as Board Chair, I have learned one lesson about education. If standards are set low, then students will reach it. The opposite is also true; if standards are set high, students will attain them. We should not underestimate the talents of our children.

SB 83 lowers standards. It does not, as its title suggests, enhance education; rather it constrains it in several particulars.

I am not unaware of the current political environment. Rather than politics, though, let me focus on first principles. The first principle of legislation is to address outstanding problems. It is not clear what problem SB-83 is attempting to address.

If the legislation is concerned about free speech in institutions of higher education, let me share a personal note. Over my career, I have been associated with, advised, and reviewed programs of nearly three dozen universities. At no time have I witnessed the imposition of orthodoxy or the silencing of speech that occasionally makes headlines like the recent ones about Stanford Law. These headlines are not the norm, they are outliers. Universities manage these things quite well.

If the legislation is concerned about limiting free speech, then institutions should be encouraged to adopt the types of free speech principles that have been announced at the universities of Chicago, Vanderbilt, Harvard, and Cornell.

Quoting the Chicago principles, we should be committed to the principle that “debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most . . . to be offensive, unwise, immoral, or wrong-headed. It is for individuals . . . to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose.” These ideas are “an essential part of the University’s educational mission.” These principles are consistent with the intent of SB-83 but not with its requirements.

If the purpose of the legislation is to prevent an institution from imposing orthodoxy, SB-83 imposes a uniformity of its own. SB-83 is not legislation in search of a problem, it is legislation that creates one.

If the purpose of the legislation is to broaden the learning environment rather than narrow it, a better alternative to this legislation is an aggressive anti-discrimination policy. Institutions of higher education should be prohibited from discriminating based on race, religion, ethnicity, gender, or political ideology when recruiting students, hiring and promoting faculty and staff, and designing curricular and extracurricular programming.

Weaknesses of SB 83 include, first, its costs. The legislation requires a designated administrator to monitor its requirements, it also requires periodic reporting and other compliance issues. These are costs that will detract from the academic budget.

Second, provisions such as requiring the adoption of affirmation statements and state-drafted mission statements, prohibitions on some mandatory courses while mandating others, and prohibitions against controversial topics are intrusive measures that constrain any environment of free inquiry.

Third, the requirement to publicly post a syllabus for each lecture or discussion opens faculty to targeting and harassment. Faculty should be open to criticism and debate in the classroom, at the lunch table, or in symposia. Faculty need not confront day-to-day politics based on a published syllabus out of context.

Teacher evaluations are now widely used and uniform state requirements distract from an institution's individual needs, add more costs, and do not improve a student's education. Further, evaluations in any single year have little formative or summative assessment value. Instead, evaluations show progress over time.

Finally, several definitions such as "intellectual diversity, "specified concept," "specified ideology," "intellectual diversity rubrics," are vague and ill-defined raising serious concerns under the First Amendment and the Due Process clause of the Constitution. These open-ended definitions subject faculty to unnecessary criticism and invite litigation which imposes additional costs on the state's universities. Similarly, prohibitions about endorsing, opposing, commenting, or acting on "public policy controversies of the day" constrain universities and are antithetical to their fundamental educational missions. More troubling is the fact that sanctions can be imposed on faculty and institutions with little to no due process guarantees in the legislation.

In brief, SB-83 fails any cost benefit analysis. The legislation adds unnecessary regulatory and compliance costs; it imposes a chill on learning and education; and it opens faculty and universities to unnecessary harassment and litigation. In exchange for these costs and risks, there are no discernible benefits. Free and open institutions can be protected by adopting freedom of speech principles mentioned above and by aggressively opposing discrimination in education.

Joseph P. Tomain
3009 Springer Ave.
Cincinnati, Ohio 45208
joseph.tomain@uc.edu
(513) 602-6985