

July 2, 2018

Kevin Schieffer
President
South Dakota Board of Regents
306 E. Capitol
Suite 200
Pierre, SD 57501

RECEIVED

JUL 05 2018

SD Board of Regents

Dear Mr. Schieffer –

As you are aware from your recent hearing, the past legislative session witnessed an extensive debate over HB 1073 and SB 198, bills which were designed to promote free speech and debate on South Dakota's college campuses. I feel very strongly about the importance of promoting a robust atmosphere of debate at South Dakota colleges and support the intentions behind these bills. I am strongly committed to the goals underlying these pieces of legislation and I fully expect, based on conversations with my fellow legislators, that similar and related bills will be filed again during the next legislative session and that they will have the support of the governor's office. You have indicated that the Board of Regents will be conducting a full review of campus speech policies in coming months in light of the extensive discussion in the legislature this past winter and your recent hearing and you have expressed your willingness to work with legislators on these matters and I thank you for that.

In order to ensure that future legislative deliberations are based on the best information available, that the crafting of new legislation is fact-based, and that taxpayers are fully informed, I ask that you request that the BOR staff provide complete and detailed answers to the following questions. I request that your detailed answers be returned to me and to all of the sponsors of HB 1073 and SB 198 by **September 15, 2018**. We must have your written responses by this this date for the purposes of planning meetings that will be attended by several legislators this fall and for the writing of legislation.

Thank you in advance for providing any and all relevant information to help us answer these questions:

- ▶ 1) What were the speech policies at South Dakota's universities on January 1, 2018? Please provide us copies of each of the individual policies. Were any of these policies recently changed? How different were these policies from the standard BOR free speech policy? Would it be more appropriate if each individual campus adopted the speech policies set forth by the BOR instead of maintaining different policies at each campus?

▶ 2) What is the process on each individual campus for changing free speech policies? What committees or administrators review and approve changes to speech policies on each individual campus? Are representatives from campus diversity offices included in this process? Why or why not?

▶ 3) Underlying the support of the free speech legislation during the past legislative session was a concern about the lack of intellectual or viewpoint diversity on campus. Does the BOR view the absence of intellectual or viewpoint or political diversity among professors on South Dakota campuses as a problem? Why or why not? What can the BOR do to promote intellectual or viewpoint or political diversity on campus? Would the BOR adopt a policy requiring that the universities it oversees promote intellectual or viewpoint or political diversity on campus? Why or why not? Would the BOR staff support the adoption of a policy requiring that the universities it oversees include intellectual or viewpoint or political diversity as a major factor to be weighed by search committees which are hiring future faculty? Why or why not? If the BOR will not adopt an intellectual diversity policy, how should the legislature craft legislation to promote this goal?

▶ 4) In the Spring of 2016, an appointed committee of faculty, staff, and students at USD drafted a revised free speech policy modeled on portions of the University of Chicago free and open speech standards, but this effort was rebuffed by the administration at USD. Who, in particular, rejected this recommendation, and why? What process was followed when the decision was made to reject this recommendation? Given the support articulated for these policies at your recent hearing, would the University of Chicago free and open speech standards be a good model? Why or why not?

▶ 5) Several experts testified during the last legislative session that if the right to free speech is infringed on South Dakota campuses that the remedy is quite onerous. During his legislative testimony, the general counsel for the Board of Regents described a four-step process: a campus complaint is filed with a particular entity on campus; an appeal is filed with the university president; an appeal is filed with the BOR; a lawsuit is filed in court. As I am sure you appreciate, this is a long and complicated process that few students are going to use. Do you think this process can be simplified? Can you describe what particular entity on campus a student is supposed to file a complaint with and how this entity adjudicates this complaint? Please describe the process for each campus. Also, please describe the process by which university presidents and the BOR adjudicate these matters.

▶ 6) During legislative hearings last winter, a student testified that at SDSU administrators have the power to immediately remove any signs or posters or other advertising that administrators deem to be "non-inclusive." Can you describe how SDSU defines "inclusive"?

▶ 7) The free speech policies at USD in recent years were a particular cause of concern for free speech experts and the students who edit and publish the *Volante*. The USD

policies restricted speech that was not considered tolerant or might have been considered offensive or cause "hurt feelings." Where did this policy come from? Who wrote it? How was it approved? Are the administrators who were involved in crafting this policy still employed by USD? Provide the details of this process.

► 8) Most universities in South Dakota have some sort of speakers bureau or other entities which appropriate public money to bring speakers to campus. Can you describe the process by which speakers are selected? Is an effort made to invite speakers from a variety of political perspectives?

► 9) Testimony and other sources of input during the last legislative session indicate that one of the sources of pressure leading to restrictions on campus free speech comes from the offices of diversity/inclusion/equity on each campus. Please describe in detail the nature of these offices, their size, their budgets, their duties, and who is employed by them. Describe in detail when these offices were created and what specifically they do on campus. As part of this answer, describe the affirmative action offices on campus, their size, and what specifically they do on campus. Describe these functions in detail. Do South Dakota universities use affirmative action when hiring professors and other employees?

► 10) A prominent aspect of the free speech debate during this legislative session related to the film "The Honor Diaries." According to records obtained by and reported on by the *Argus Leader* (see "University of South Dakota movie incident looms large in campus free speech debate," *Argus Leader*, February 1, 2018), USD cancelled the showing of this film. According to USD, administrators intervened to "help" those showing the film by requiring them to bring in experts to give commentary about the film after its showing. Please reconcile these versions of events. Do universities in South Dakota frequently require groups to bring in opposing experts to give commentary after films or speeches or other related events? Why did it happen in this case? Was there pressure from the diversity/inclusion/equity office on campus to take this action? Does the BOR approve of such restrictions on the showing of films or other presentations? As one witness noted during legislative testimony, "the First Amendment doesn't say you have to allow a rebuttal from a speaker's opponents." Does the BOR agree?

► 11) In recent years, the University of Colorado at Boulder announced that it would create a chair in conservative thought and policy as a way to address a deep ideological imbalance on campus. Would you support similar moves at South Dakota universities? Why or why not?

► 12) Last winter, the *New York Times* ("Arizona Republicans Inject Schools of Thought Into State Universities," February 26, 2018) reported on efforts at colleges such as the University of Arizona to create schools of thought focused on constitutionalism, civics, political economy, classical history, classic books, Western heritage, etc. Would you support similar moves at South Dakota universities? Why or

why not? Are constitutionalism, civics, political economy, classical history, classic books, Western heritage, etc now areas of emphasis at South Dakota universities?

► 13) Some South Dakota citizens have expressed concerns about the prominence and influence of members of Blacks Lives Matter at SDSU (both professors and students) and noted how BLM's efforts to pressure students and administrators has led to limitations on campus discourse. Is the BOR aware of any such concerns? Have public funds in any form been used to support the efforts of BLM members at SDSU? Was this group involved in the effort to bring Trayvon Martin's mother to SDSU? If so, how much public money was spent on this event?

► 14) Some supporters of HB 1073 and SB 198 expressed concern about students on campus being fearful of joining in campus debate or speaking out for fear of reprisals, official or unofficial. They pointed to self-censorship as a major problem on campuses, which are seen as dominated by one particular political point of view. Does the BOR view this as a concern? Why or why not?

► 15) In recent years, Iowa, Missouri and other states have considered bills that would promote greater education in the area of civics and history at both the high school and college level, including the requirement that students take citizenship exams. This speaks to a growing concern about a basic lack of knowledge of government and history among college students. What is being done on South Dakota campuses to promote the study of basic American government and history and civic literacy? Are students required or urged to take courses in these areas? How many credit hours of the United States history survey courses are taught at present compared to 30 years ago? Taking into account the change in total students and the rising number of students taking AP US History in high school, have the number of students who take such courses on campus declined? If so, why? Do students graduate with no American History or American Government courses at all? If so, what is the percentage?

► 16) The Pierre *Capital Journal* (January 31, 2018) reported on diversity, multiculturalism, and/or social justice classes being taught at South Dakota universities. Are programs which operate under the rubric of diversity, multiculturalism, and/or social justice competing for resources with traditional education in civics, history, and government? How many diversity, multiculturalism, and/or social justice programs exist on South Dakota campuses, how much do they cost, and how many faculty are affiliated with these programs? More generally, what courses are offered at South Dakota universities which could be considered to be associated with the causes of "social justice" and "equity"? Who teaches these courses? What is the goal of these courses? Are courses which offer a counter point of view to "social justice" and "equity" courses offered at South Dakota universities? If so, please list them.

► 17) During the legislative debate last winter, the BOR indicated that it compiled a list of speakers invited to South Dakota campuses in recent years. Please transmit to us this list of speakers.

► 18) During the deliberations over the campus free speech bills during this legislative session, concerns were expressed about campus administrators, campus diversity officers, and/or Board of Regents staff pressuring student leaders to oppose the campus free speech bills under consideration. Did campus administrators, campus diversity officers, and/or BOR staff engage student leaders with respect to the campus free speech bills under consideration in the legislature this session? What was the nature of this engagement? Do you consider this engagement appropriate? Why or why not?

► 19) During the course of the legislature's investigation of the matters discussed in this correspondence, some experts have noted the problem of hiring committees for new faculty and how they can be stacked in a manner that undermines the potential for the hiring of an ideologically diverse faculty. Do you agree that this is a problem? Who chooses who serves on search committees which choose new faculty? Are efforts made to promote intellectual diversity on campus through the search committee process? Why or why not? Should administrators choose new faculty instead of committees of existing faculty? Is there a danger that faculty search committees could be biased or pursue their own interests instead of the interests of the broader university or the cause of intellectual diversity?

Thank you, Mr. Schieffer, for having the BOR staff provide me and the cosponsors of HB 1073 and SB 198 with detailed and complete written answers to my queries by September 15, 2018. Many discussions are going to unfold and many decisions are going to be made in coming months on these issues and legislators want to have the most thorough and accurate information possible during our deliberations. Thank you again.

Sincerely,



Representative Lee Qualm
Majority Leader
South Dakota House of Representatives
27507 John Qualm Rd.
Platte, SD 57369

CC: sponsors of HB 1073 and SB 198
Paul D. Turman, BOR
Nathan Lukkes, BOR
Guilherme Costa, BOR