

December 10, 2018

Paul B. Beran
Executive Director & CEO
South Dakota Board of Regents
306 E. Capital Ave. Suite 200
Pierre SD 57501

RE: SD Board of Regents policies on free speech
and intellectual diversity

Dear Dr. Beran –

Thank you for your letter dated November 1, 2018, which responds to the correspondence from legislators dated October 5, 2018 and the correspondence from South Dakota House Majority Leader Lee Qualm to the Board of Regents dated July 2, 2018. We have some additional questions, which are set forth below.

We would like our questions **answered by January 3, 2019**. Please circulate this letter to the relevant parties at the BOR for the drafting of *full and complete* responses. When responding to our inquiry, please send the responses to the undersigned, to the sponsors of last legislative session's bills HB 1073 and SB 198, and to those CCed on this correspondence. Also, please make Representative Qualm's original letter and the BOR's response to same and our October 1, 2018 letter and the BOR's response to same available to the public on the BOR website in order to promote transparency and public dialogue. As per your earlier inquiry, Leader Qualm agrees with this request, as indicated by his signature below.

- 1) Thank you for your strong leadership in addressing the campus speech policies at South Dakota universities and for getting this issue on the agenda. We obviously support all efforts to promote free speech. We applaud, in particular, your decision to make the promotion of intellectual diversity the official policy of the BOR. Much of this letter relates to how we take specific steps to implement the policy of promoting intellectual diversity.
- 2) In your response to our October letter you have defined "intellectual diversity" in a "comprehensive and multidimensional manner," i.e. in a manner that is completely different than the meaning of intellectual diversity that is common to a broad discourse about higher education reform that is currently ongoing in policy circles. We assume this must be a mistake on the part of the BOR and not a case of stark bad faith, so we again, for the third time, must revisit this question. For the sake of clarity and in keeping with the very common and well-known discussion about intellectual diversity at the present time, we define intellectual diversity as the presence of a wide variety of ideological and political opinions on campus and not simply the domination of one ideological bloc. This should have been very clear from the definition included in the free speech legislation discussed last legislative session.¹ We again ask: can the BOR provide direct, substantive, and compelling evidence of the existence of intellectual diversity on its campuses? For the sake of simplicity, the BOR can limit its response to the humanities and social sciences. If the BOR cannot provide direct, substantive, and compelling evidence of the existence of intellectual diversity on its campuses then the BOR should state that clearly and explain why. When answering this question, keep in mind that invoking the existence faculty "credentials" is not evidence of the existence of intellectual diversity, as the BOR asserted in response to question 4 in our October letter.
- 3) With the proper definition of intellectual diversity in mind (see above), please explain in detail how, going forward, the BOR will

¹ In recent South Dakota legislation intellectual diversity was defined as the "foundation of a learning environment that exposes students to a variety of political, ideological, and other perspectives."

aggressively pursue the promotion of intellectual diversity on South Dakota campuses. Please give detailed and specific examples.

- 4) The BOR claims that South Dakota's public campuses must maintain a large-scale and expensive diversity/equity complex in order to win favor with the Higher Learning Commission (HLC).
 - a. Provide the specific requirements in the area of diversity/equity that have been set forth for South Dakota public universities by the HLC. What specifically has the HLC demanded? Has the HLC specifically demanded the creation of the diversity bureaucracy set forth in your answer to question 13.
 - b. Since the HLC recently gave high marks to DSU and DSU has no diversity office how can it be possible that HLC forces South Dakota public universities to maintain a diversity bureaucracy?
 - c. Provide the reports from the HLC about USD from 2001 and 2011 and about SDSU from 2009 related to diversity that the BOR cites in question 14.
 - d. HLC is a quasi-federal agency and not above scrutiny. We are happy to work with Senators Thune and Rounds and Congressman Johnson to reform the HLC's allegedly coercive practices. Please set forth for us specifically how HLC's policies could be amended to make the HLC less burdensome to South Dakota public universities.
 - e. Concerns have been raised about the BOR hiding behind vague federal bureaucratic rules such as the HLC as a method of avoiding internal reforms and cost saving measures. Can the BOR assure us that this is not the case? Can the BOR provide evidence of its efforts to push back against HLC's outside interference with South Dakota public universities?
 - f. Has a prominent university in the Midwest ever lost its accreditation for not following the HLC's suggestions on diversity? If so, please provide the details of such cases.
- 5) Because these questions were not answered in the BOR's previous response, we again ask: Is the BOR aware of the report entitled "Homogenous" issued by the National Association of Scholars on April 24, 2018? Is the BOR aware of the absence of intellectual

diversity on campus described in this report? Does the BOR agree that this report describes a deep and troubling problem (from the previous BOR responses it appears that the BOR does not think this is a problem so clarification is needed)? Given the dramatically one-sided nature of the national faculty pool what is the BOR plan to encourage greater balance in hiring?

- 6) Because these questions were not answered in the BOR's previous response, we again ask: Will it continue to be the position of the BOR that the faculty on South Dakota's public university campuses exhibit the same "intellectual, viewpoint, and political diversity" as the "citizen population in South Dakota"? Is the BOR aware that such a claim stands in great contrast to the report entitled "Homogenous" issued by the National Association of Scholars on April 24, 2018? Does the BOR have any evidence to support this claim? Isn't it a fair statement that the "citizen population in South Dakota" holds views quite distinct from a large majority of faculty on campus?
- 7) In response to question 7 the BOR restates the existing facts, but does not answer our questions. Because these questions were not answered in the BOR's previous response, we again ask: Some universities report that they include "diversity offices" in the process of writing campus speech codes. Is this wise given the propensity of diversity offices to advance restrictions on free speech? Can the campuses which include "diversity offices" in the process of writing campus speech codes please explain why these offices are included and what these offices do in the process?
- 8) The BOR staff response to question 8 indicates that the BOR does not pressure campuses to bring in speakers from a variety of ideological viewpoints. Is that correct?
- 9) The BOR did not respond to the bulk of questions in query 9. Please revisit them and respond properly and thoroughly.
- 10) SDSU has asserted that its \$300,000 budget for its "Diversity, Inclusion, Equity, and Access" office is designed to make the university "more representative." Similar comments are sprinkled throughout the BOR correspondence and in the official materials generated by South Dakota public universities. With such large

expenditures involved, the BOR must explain what precisely “representative” means. No context or baseline is given. We do not know what goals are being pursued.

- 11) Because question 10 on affirmative action was not answered in the BOR’s previous response, we again ask: Who benefits from the use of affirmative action and who is penalized? Be very specific when describing how campuses use affirmative action and describe which offices on campus enforce affirmative action policies.
- 12) With respect the question 11, the BOR offers a circular response: “The Offices of Diversity/Inclusion/Equity assist the campuses with information about, and activities related to, an equitable and inclusive university.” Please explain to us in detail what “equitable and inclusive” means. What activities take place under this banner? What are the goals? It is not responsive to say that the goal of equity is to be more equitable. We respectfully ask for a full and specific explanation.
- 13) The cost of the diversity/equity/inclusion offices on South Dakota public campuses set forth in the BOR answer to question 13 seems to approximate \$500,000—is this correct? Is it correct to say that BHSU, NSU, and DSU do not have diversity/equity/inclusion offices and therefore have no diversity/equity/inclusion expenses because no such expenses are listed in the answer to question 13? Do the costs of the affirmative action offices at BHSU, SDSU, and USD total \$562,000? Since no costs are listed, do DSU, SDSMT, and NSU not have affirmative action offices? With respect to the existing diversity/equity/inclusion and affirmative action offices please set forth how this money is spent (as we requested in our earlier letter, but which was ignored in the BOR response) and who specifically is paid and what these people do.
- 14) With respect to the BOR’s frequent invocation of Executive Order 11246, is the BOR following the current Supreme Court case *Students for Fair Admissions v. Harvard*? Will the alleged requirements set forth in the BOR answer to question 13 be nullified if the plaintiffs win this case? If the plaintiffs prevail will the BOR be able to save \$562,000 in affirmative action expenses?

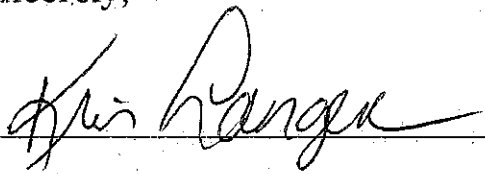
- 15) Because these questions were not answered in the BOR's previous response, we again ask: Since some campuses have no diversity/inclusion/equity etc offices or administrative units it then seems perfectly acceptable, does it not, for all campuses to have no diversity/inclusion/equity etc offices or administrative units? Why does the HLC supposedly demand diversity/inclusion/equity offices for some campuses but not others?
- 16) Because these questions were not answered in the BOR's previous response, we again ask: Is the BOR aware of the 2016 report from the American Council of Trustees and Alumni describing the "crisis in civic education"? The report found that only 18% of colleges require an American history course for graduation and that college graduates are extremely uninformed about basic American history and the basic workings of government. Is the BOR concerned about these findings? Should the BOR adopt policies to bolster civic education and awareness among students at South Dakota public universities?
- 17) Because these questions were not answered in the BOR's previous response, we again ask: Do only 38% of USD graduates take any American history or government courses? What is the percentage for other colleges? DSU did not appear to respond to our original query. Does the BOR believe that 62% of USD students taking no American history or government courses and solely relying on an American history course in high school is sufficient to support strong civic engagement throughout a student's life? Would the BOR support increasing college history/government requirements? Texas requires that students at Texas universities take at least 6 hours of American history courses—would the BOR support a similar requirement?
- 18) Because these questions were not answered in the BOR's previous response, we again ask: Should the BOR consider advocating that South Dakota public universities offer minors in "American Constitutional Heritage," "Conservative Political Thought," "The Great Books," or "The Heritage of Ancient Greece and Rome"? Why or why not? In general, can the BOR develop/advocate more minors similar to "The Great Books" and fewer similar to "Inclusion and Equity" and wouldn't such a reprioritization better meet the


expectations of parents, taxpayers, and students? Wouldn't such a reprioritization promote intellectual diversity?

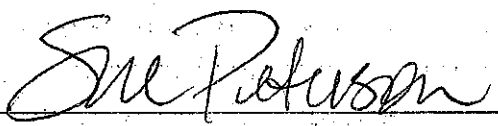
- 19) The BOR staff response appears to indicate that no effort is being made to promote intellectual diversity, properly defined (see above), on campus within the work of hiring committees. Is this correct?
- 20) There appears to be confusion about how public dollars are spent at South Dakota public universities. Would line item budgeting be more open and transparent and therefore more beneficial to the general public?

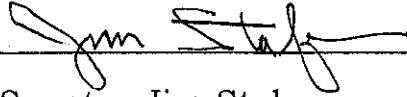
Again, please be completely forthcoming in your responses to this query so that we do not have to engage in further information requests. We are about to begin the legislative session and we need complete and accurate and good faith answers to these questions in order to formulate legislation. To repeat, your deadline for responses is **January 3, 2019**. When responding to our inquiry, please send the responses to the undersigned and the sponsors of HB 1073 and SB 198. Also, please make all of the correspondence associated with our series of inquiries available to the public on the BOR website in order to promote transparency and public dialogue. Thank you for your cooperation.

Sincerely,


Senate Majority Leader Kris Langer


House Majority Leader Lee Qualm


Representative Sue Peterson

A handwritten signature in black ink, appearing to read "Jim Stalzer", is written over a solid horizontal line.

Senator Jim Stalzer

CC:

Kevin Schieffer, SD BOR President

Nathan Lukkes, SD BOR General Counsel

Speaker of the House Steven Haugaard

Senator Brock Greenfield, President Pro Tempore

Senator Jim Bolin