



BOARD OF REGENTS

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OFFICE OF THE PRESIDENT

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January 3, 2019

Senator Kris Langer
Sent via email to tjlander@siouxvalley.net

Representative Lee Qualm
Sent via email to lee.qualm@sdlegislature.gov

Representative Sue Peterson
Sent via email to sue.peterson@sdlegislature.gov

Senator Jim Stalzer
Sent via email to jim.stalzer@sdlegislature.gov

RE: Freedom of Expression & Intellectual Diversity

Dear Senators and Representatives:

Thank you for sending me a copy of the December correspondence on the above issues and those sent in July and October. This supplement to Dr. Beran's letter of this date is not for factual redundancy but really just to offer a Board member perspective. It is not intended as a formal Board position, but it is written very much with my colleagues in mind. I think it is safe to say we are all interested in a substantive agenda that will make meaningful, positive and lasting improvements. I appreciate your contribution to and kind words about the free speech initiative we recently completed, and ongoing engagement in the diversity issue. It is of the fundamental stuff I think the Board needs to spend more time wrestling with. These kinds of issues go to the heart of what we are about. Since your latest letter focuses more on intellectual diversity, I will try to address that more specifically. My primary purpose here is to outline how I intend to address this issue, subject to final decisions by my colleagues on the Board. Hopefully that will help you determine your own course of action.

INTELLECTUAL DIVERSITY:

There is a much work left to do on intellectual diversity. As noted in my earlier letter to Leader Qualm, I expect I agree with you on more of that issue than not. But we do disagree on some things. In the spirit of our new freedom of expression policy, those areas will get the most attention in this letter.

While I expect to spend a lot more time on intellectual diversity, I don't think it wise to micromanage it from the Board level. We all need to study and understand the issue much better than we do now, with an open mind. Then we can better communicate and guide, and demand account. We passed our policy to encourage and track it, not to dictate or micromanage how it is achieved. That I think is the proper Board role.

As with other broad speech principles, our policy lays out the basic intellectual diversity expectation with reasonable clarity – but it assumes an actionable and complete definition of what intellectual diversity means and what the realistic expectations and legal limitations are. You have set forth what you believe as the proper definition (#s 2 & 3, December letter). Without pretending expertise, I don't have any particular concerns about that definition in its broadest sense. But I am struck by how quickly the discussion has devolved into distractions on legal limitations and political agendas and racial diversity and the like. In short, it seems to me we need to do some work on developing an actionable consensus definition. I would expect to do that through the same kind of public dialogue we used in the speech policy hearings, hopefully in a manner that achieves the kind of viewpoint diversity that meets the Heterodox standard for higher education engagement.¹ I was impressed by this statement the first time I read it, and think it would serve us well in many situations. It is, in fact, for me the true objective of intellectual diversity. To simply have multiple viewpoints talking past each other or capturing different students within one school's polarized orbit is not in itself a great achievement. We need to hear the other perspectives on what the proper definition is, better define and articulate the legal limitations, and most importantly, define expectations for knowing whether it has been met – which leads into one of the major areas where it seems we may disagree.

To know whether we achieve the objective we need to be able to measure where we are and where we want to be. We need to both establish what defines a problem and – where one exists – and what defines meaningful progress vs. the kind of tokenism you noted as concern (#1, October letter). This seems much more difficult to me than suggested by your letters. Selected studies from one perspective about a national problem neither defines or proves a South Dakota problem. And it most definitely does nothing to gauge success or failure going forward in South Dakota. During our review of this issue last year, I read in detail all of the studies you cite in your letter and others I previously received from Heterodox. They do provide evidence of a national problem. They all appear to be from one end of the intellectual diversity spectrum on this issue – which I don't view as bad but think it is worth noting that these studies do not represent the kind of intellectual diversity we all claim to seek. Also, I have searched and found nothing in them of South Dakota or any university in our state. They do nothing to track or measure progress in addressing the problem in South Dakota – or articulate the extent to which one exists here. If we do have a problem here and we somehow correct it to even the highest standard of perfection you might believe is appropriate, these coastal-dominated studies are still going to show the same problem. So to me it is unscientific in the extreme to use those studies to definitively claim a problem in South Dakota, much less prescribe a solution. That is not to suggest they are of no value in informing this discussion. There are statistical norms that increase the random chances South Dakota universities are within rather than outside the “bell” portion of a theoretical national curve (suspending for argument sake the obvious fact that there is no South Dakota data point on the curve). It seems to me wrongheaded to rely on single perspective analyses of a largely coastal problem as the basis to claim proof that South Dakota has an *absence of intellectual diversity* – much less dictate a solution tailored to South Dakota in reliance on it. In any event, the studies your sources are relying on to claim a lack of intellectual diversity in South Dakota do not approach the kind of “direct, substantive and compelling” evidence standard your letter articulates as a requirement to demonstrate the *existence of intellectual diversity* (# 2, December letter).

All of this is a little odd for me to argue because in anecdotal ways I do sense a problem. But given the import of this issue, I think we need to find a stronger foundation on which to rest that case. South Dakota may well have a problem. But both you and I know of enough conservative South Dakota university professors working on or engaged in this very exchange of letters to know that we are not without strong conservative voices in this state's academy. Part of my goal going forward will be to engage them and some of their liberal colleagues (and hopefully even a moderate voice or two) in a more transparent discussion of this issue from within South

¹ "Viewpoint diversity refers to the state of a community or group in which members approach questions or problems from multiple perspectives. **When a community is marked by intellectual humility, empathy, trust, and curiosity, viewpoint diversity gives rise to engaged and civil debate, constructive disagreement, and shared progress towards truth.** Viewpoint diversity enables colleges and universities to realize their twin goals of producing the best research and providing the best education." (emphasis added for application to BoR work)

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Dakota's academy, guided by the kind of mutual respect and honest debate we all claim to want in our speech and with the kind of humility and other viewpoint diversity elements that drive meaningful progress. To the extent a problem exists, we can find a better way to define and address it in South Dakota terms.

Similarly, to the extent we can legally and effectively provide the flexibility for Presidents to apply earmarked "diversity" funding to this issue, I would support and encourage that. But I do not think it wise to demand or mandate it. Importantly, unless I am missing something in the debate, this needs to be a decision that ultimately rests with the Presidents as they prioritize diversity needs within their respective institutions. The same principle I think applies to the extensive discussion you raised about addressing HLC reviews. It's easy to second guess and nitpick the hundreds of decisions made on these issues. But they need to be made. That does not insulate Presidential decisions from Board scrutiny. But these decisions are theirs to make and defend.

I have searched in vain for an objective measure of intellectual diversity applied to any institution in this state. I expect we will need to develop one if we are going to make meaningful progress on this issue, and that is something the Board – hopefully with the constructive assistance from all stripes of our academy and Presidents and students and other higher education constituencies – can achieve. That is my goal. I cannot promise it will be achieved. But I do promise my committed effort to replicate the care and attention we gave to the free speech policy process, including public hearings and a lot of hard work in between, followed by a written report on our conclusions and serious follow-up with and by the Presidents.

After we get some consensus and guidance on specific diversity objectives and legal guidelines, our Presidents will have clearer guidance. They are very capable and talented, and I think committed to honoring Board directives. They understand their institutions and people and how best to implement the policies at each unique institution. Our Executive Director is equally capable of and committed to making sure the uniqueness of each institution does not water down the consistency of the common system objectives, which at least for the present to me is well summarized by the "viewpoint diversity" description referenced above.

RESPONSIVENESS:

I think it is important for me to take serious exception to the characterizations in this series of letters on two other matters, if only to provide some perspective for the broader audience not directly involved in the minutia of this letter exchange:

First, I strongly disagree with the repeated claims that the Board staff has failed to answer questions. Those claims are made with such frequency as to suggest to me that repetition of the charge is being used as a substitute for evidence of the alleged crime. I have reviewed the exhaustive list of questions and even more exhausting list of answers in more detail than a sane person might. With very few exceptions I believe they have been fairly answered and addressed with more diligence and good faith than the repeated claims of non-responsiveness can support. I can appreciate that those writing the questions may not agree with or appreciate the answer, but I think objective readers who take the time to review the content and the tone of more than a hundred questions and hundred answers will find the Board replies are both professional and responsive.

Second, your letters frequently cite unnamed sources that make or imply very serious allegations against regental institutions. For example, concerns were expressed that "campus administrators, campus diversity officers, and/or Board of Regents staff pressur[ed] student leaders to oppose ... free speech bills" during legislative hearings (#18, July letter). Another cited unnamed sources suggesting students were fearful to speak out on campus issues for fear of university reprisals (#14, July letter). Another claimed of "reports that university faculty are already organizing against any attempts to promote intellectual diversity" (para 1, October letter). In the course of this exchange, I have asked repeated times for some insight into such claims so we could address them. Receiving nothing in reply, I have independently done what I thought possible to determine if there was any basis to such claims. I found none, and in the case of student leaders being pressured to speak out against the free speech legislation can say from first-hand experience that their concerns on that issue are very real and widely held by students who engage on this issue. I don't raise these issues

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because of thin skin. I raise them because of a concern that the broader audience who reads these unsupported claims may place more credence in them than I have been able to find.

GOING FORWARD:

I would like to close on a positive note, expressing sincere appreciation for the effort put into this important policy discussion. It has helped advance and inform the discussion and resulting policy formulation. We are very serious about a desire to work together on finding as much common ground as possible and having respectful and hopefully illuminating debates as this effort continues. I underscore and second Dr. Beran's outreach effort, and stand ready to meet or talk at any time. We are working to organize a number of meetings with experts and interested parties on this subject in anticipation of future actions. It would benefit that process to be as inclusive and transparent and open as possible. We would welcome your participation and hope you encourage or invite others to join us. If you or anyone you respect on these issues wishes to be included in the organizational effort in that regard, feel free to call or email me via the contact info above so we can add them to the distribution list.

Thank you again for your interest and for your most constructive contributions to the debate. It is appreciated more than you know. I look forward to working with you as we move forward.

Respectfully submitted,

Kevin V. Schieffer
President
South Dakota Board of Regents

cc: Representative Steven Haugaard
Senator Brock Greenfield
Senator Jim Bolin
HB 1073 & SB 198 Sponsors
South Dakota Regents
South Dakota University Presidents
Paul Beran, BoR Executive Director
Nathan Lukkes, BoR General Counsel