

**NDSA-20-2021****A Resolution in Opposition to HB 1503 as Written**

**WHEREAS**, the North Dakota Student Association (NDSA) represents the voice of North Dakota's 45,000 public college and university students; and,

**WHEREAS**, the purpose of NDSA is to represent all students enrolled in the North Dakota University System (NDUS) and advocate on issues of higher education in support of access, affordability, quality, and the student experience; and,

**WHEREAS**, the NDSA has a strong history of advocating for students of higher education in North Dakota and their right to free speech on campus and in academic settings; and,

**WHEREAS**, this historical support has been most recently embodied by NDSA work done in conjunction with the State Board of Higher Education (SBHE) and North Dakota University System (NDUS) over the 2018–2019 and 2019–2020 academic years; and,

**WHEREAS**, this recent support of free speech can be embodied by the work the NDSA did with the NDUS and SBHE to create SBHE policy 503.3: Student Political Rights<sup>1</sup>, a policy that separates student political rights from those of state employees and that ensures specific rights related to student political activities and electioneering would be preserved; and,

**WHEREAS**, the NDSA also worked closely with the NDUS and SBHE after North Dakota's 19-21 legislative session to develop and implement systemwide and campus-specific free speech policies as directed by that biennium's legislation SB 2320<sup>2</sup>, resulting in SBHE Policy 503.1: Student Free Speech and Expression<sup>3</sup>; and,

**WHEREAS**, HB 1503<sup>4</sup>, a bill in relation to the free speech policies of institutions under the control of the State Board of Higher Education, has been introduced to the North Dakota legislature; and,

**WHEREAS**, this bill amends and reenacts section 15-10.4-02 of North Dakota Century Code; and,

**WHEREAS**, the NDSA has specific concerns about sections 4(a-c), 5(e), and 5(h), and feels that these sections could be harmful rather than helpful to NDUS students; and,

**WHEREAS**, section 4(a-c) dangerously narrows the definition of student-on-student harassment, restricting the right of an institution to discipline or sanction a student for harassment activity unless "(1) The speech or expression is unwelcome, targets the victim on a basis protected under federal, state, or local law, and is so severe, pervasive, and

<sup>1</sup>[https://ndusbpos.sharepoint.com/:w:/s/NDUSPoliciesandProcedures/EexdrZtJDtNFrspeSdjJKoBiBOW\\_PodGbnfZdtqUVTbxQ](https://ndusbpos.sharepoint.com/:w:/s/NDUSPoliciesandProcedures/EexdrZtJDtNFrspeSdjJKoBiBOW_PodGbnfZdtqUVTbxQ)

<sup>2</sup> <https://www.legis.nd.gov/files/resource/66-2019/library/sb2320.pdf>

<sup>3</sup><https://ndusbpos.sharepoint.com/:w:/r/sites/NDUSPoliciesandProcedures/Policies/Student%20Free%20Speech%20and%20Expression.docx?d=w8952007f241b46d2a63a362e9c07ca04&csf=1&web=1&e=6Tgx82>

<sup>4</sup> <https://www.legis.nd.gov/assembly/67-2021/documents/21-0929-03000.pdf>



objectively offensive that a student effectively is denied equal access to educational opportunities or benefits provided by the institution; or (2) The speech or expression explicitly or implicitly conditions a student's participation in an education program or activity or bases an educational decision on the student's submission to unwelcome sexual advances or requests for sexual favors;" and,

**WHEREAS**, this amendment would prevent universities from taking protective and preventative action in the case of student on student harassment; therefore, a student who is a victim of harassment could not take action until after the harassment has become so severe that their education has been irrevocably impacted, in addition to requiring the victim be considered part of a protective class and thus not protecting all students from harassment; and,

**WHEREAS**, section 5(e) allows a university to charge student organizations a security fee based on empirical and objective criteria for an event or speaker they have brought to campus in preparation of protests or confrontations; and,

**WHEREAS**, the NDUS is currently revising its own policies to remove this allowance, prohibiting universities from charging their students and student organizations a security fee for any event or speaker they have brought to campus; and,

**WHEREAS**, section 5(h) stipulates that an institution may not discriminate against a student organization with respect to a benefit available to any other student organization, such as the allocation of student fees or university funding, based on any discriminatory membership requirements of that organization such as requiring that members adhere to the organization's religious beliefs; and,

**WHEREAS**, this section comes from a federal ruling<sup>5</sup> implemented by the Trump Administration; and,

**WHEREAS**, the NDUS is currently revising its own policies in order to ensure that NDUS institutions are in compliance with this ruling; and,

**WHEREAS**, cementing this federal ruling into state law would inhibit the ability of the NDUS to efficiently update this policy if a future presidential administration reversed the current ruling unless the ND legislature happened to be in session, which could result in the forfeiture of federal grant money for higher education; and,

**WHEREAS**, while the NDSA does not have any additional concerns about specific sections of HB 1503, the organization is concerned that this bill relating to the student free speech policies of NDUS institutions was brought to the state legislature without the consultation, knowledge, or input of any students – the main stakeholders of this bill; and,

**WHEREAS**, the NDSA has been consistently involved in the monitoring and revising of NDUS and SBHE free speech policies through student positions on NDUS councils, the position of the student member of the state board of higher education, and continuous conversations between these governing bodies and our student leaders; so,

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<sup>5</sup> [regulations.gov/document/ED-2019-OPE-0080-0001](https://www.regulations.gov/document/ED-2019-OPE-0080-0001)



**THEREFORE, BE IT RESOLVED**, barring the specific sections of HB 1503 that were mentioned above, the North Dakota Student Association does not oppose any section of HB 1503 that is already addressed by SBHE and NDUS policies or that is already embedded in state law; and,

**BE IT FURTHER RESOLVED**, NDSA opposes the version of HB 1503 that includes the policies specified above and urges the state legislature to remove them from HB 1503 while cautioning that the removal of these specific parts of the bill will not signal tacit support by NDSA of HB 1503; and,

**BE IT FURTHER RESOLVED**, NDSA fully supports and advocates for the right of students and faculty to practice free speech and freedom of expression; and,

**BE IT FURTHER RESOLVED**, that NDSA thanks the NDUS and SBHE for their continuous support and work to protect and encourage student and faculty free speech while ensuring that students are part of the conversation; and,

**BE IT FURTHER RESOLVED**, that the NDSA urges caution when implementing highly specific student free speech laws into state statute as it reduces the ability of the NDUS and SBHE to respond to emerging changes in federal rulings related to higher education and free speech in addition to reducing the ability of students to advocate for or against and change the free speech policies that directly affect them.

*Approved by the NDSA General Assembly on Saturday, February 20th, 2021.*