

**HB 1446:**

**Testimony in opposition to a pilot program for tenured faculty review at institutions of higher education**

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Dear chairman and members of the House Government and Veterans Affairs committee:

We submit testimony today in opposition of HB 1446 and urge you not to pass this bill, which would undermine tenure and academic freedom in North Dakota higher education. Founded in 1915, the American Association of University Professors, a non-profit membership association, has helped to shape American higher education in service of the common good by developing principles and standards on academic freedom, tenure, and governance. Many of the AAUP's key recommended principles and standards, often formulated in cooperation with other higher education organizations, have become widely accepted at both public and private colleges and universities. Many institutions of higher education, for example, incorporate into their regulations the [1940 Statement of Principles on Academic Freedom and Tenure](#), which the AAUP formulated in cooperation with what is now the American Association of Colleges and Universities, an organization of presidents and which more than 250 scholarly societies and higher-education organizations have endorsed.

We note that North Dakota State Board of Higher Education policies include the following references to the 1940 *Statement*: "The State Board of Higher Education recognizes, as set forth in the 1940 *Statement of Principles on Academic Freedom* adopted by the American Association of University Professors with 1970 Interpretive Comments, the essential nature of academic freedom and responsibility to the institutions under its control, and reaffirms its commitment to ensuring that the institutions of the NDUS shall foster a free and open academic community for faculty members, students, and all other NDUS employees who engage in scholarly work" (SBHE 401.1) and "The purpose of tenure is to assure academic freedom. Academic freedom applies to all scholarly pursuits. Freedom in scholarship is fundamental to the advancement of knowledge and for the protection of the rights of the faculty members and students. It carries with it duties and responsibilities correlative with rights. These duties and rights are set forth in SBHE Policy 401.1, relating to academic freedom, and the 1940 *Statement of Principles on Academic Freedom and Tenure* with 1970 Interpretive Comments, adopted by the American Association of University Professors and the Association of American Colleges" (SBHE 605.1)

The 1940 *Statement* asserts that "institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole" and that the common good "depends upon the free search for truth and its free exposition." Academic freedom is therefore "essential to these purposes and applies to both teaching and research" and "carries with it duties correlative with rights."

The AAUP has thus long recognized that

- The central purposes of higher education are the pursuit of truth, the discovery of new knowledge, the study and reasoned criticism of intellectual and cultural traditions, the teaching and general development of students to help them become creative individuals and productive citizens of a constitutional republic, and transmission of knowledge and learning to society at large.
- Free inquiry and free speech with the academic community are indispensable to achieving these central purposes

Under the 1940 *Statement*, the purpose of tenure—which the AAUP understands as an indefinite appointment that can be terminated only for adequate cause or under extraordinary circumstances on grounds of financial exigency or program discontinuance—is to protect academic freedom. It is thus “indispensable to the success of an institution in fulfilling its obligations to its students and to society.”

In practical terms, tenured faculty members, unlike faculty members serving on renewable term appointments, do not have to undergo reappointment every year but have some assurance of continued employment as long as they continue to perform their responsibilities competently and ethically. This security allows them to follow their best professional judgment and the standards of their discipline in conducting their research and teaching their students without having to fear they will lose their jobs for reasons that have nothing to do with the quality of their work. In our 108 years, our Association has investigated and issued reports on hundreds of cases in which faculty members were summarily dismissed for reasons that had nothing to do with the quality of their teaching or research but frequently because someone with power over them found their words or ideas offensive.

Contrary to myth, however, tenure is not a guarantee of lifetime employment. A tenured appointment can be terminated for the reasons mentioned above, and tenure assuredly does not protect incompetence or misconduct. As SBHE 605.3 states, before enumerating six general grounds for dismissal, “A faculty member may be dismissed at any time for adequate cause.”

Under the 1940 *Statement* and derivative AAUP policy documents, dismissal for cause requires a procedure that depends on peer review, based on the assumption that professional peers are best suited to pass judgment on their fellow faculty members and to appreciate the meaning and importance of academic freedom. It also requires the administration to bring charges and to bear the burden of demonstrating in a hearing before a faculty body that the faculty member is professionally unfit. Most colleges and universities have incorporated dismissal procedures that are based on AAUP standards. In North Dakota public higher education, those procedures are set forth in Section 605.3 of the SBHE policy manual.

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The provisions of Section 2 of proposed House Bill No. 1446 afford “the president of each institution of higher education under the control of the state board of higher education” the right to review all tenured faculty members within his or her institution, to determine whether “a tenured faculty member has failed to comply with a duty or responsibility,” and unilaterally to “not renew the contract” of such a faculty member. Such a review “is not appealable or reviewable by a faculty member or faculty committee.”

Under this proposed bill, a president would have the power to dismiss any tenured faculty member and that faculty member would be denied any right to appeal to a faculty body, much less the right to the sort of dismissal hearing that makes tenure a reality. Thus, if this bill were to be adopted, it would nullify Section 605.3 of the SBHE policy manual and would eradicate tenure in the covered institutions. In our long history, we have never witnessed a state legislature abolish tenure in its system of higher education.

Since we believe that academic freedom and the benefits it brings to society require the protections of tenure, we would view the eradication of tenure in all or some of North Dakota's public colleges and universities as a fatal blow to academic freedom, with unfortunate consequences for the quality of teaching and research in those institutions, their reputation and competitiveness, their contributions to the state's economy, and their ability to cultivate an educated citizenry. We strongly urge you to not pass this bill.