June 15, 2019

Kevin V. Schieffer
President
South Dakota Board of Regents
306 E. Capital Ave, Ste. 200
Pierre, SD 57501

Dear President Schieffer,

The South Dakota Board of Regents has solicited public comment on how to fulfill the intent of the new legislative requirement, recently passed in South Dakota, to promote free speech and intellectual diversity at public colleges and universities. Specifically, the Board of Regents requested recommendations on how "to develop (a) some baseline assessment on the degree to which South Dakota Regental institutions are or are not meeting that definition and objective today, (b) suggestions on how to do so more effectively (to the extent a shortcoming is defined), and (c) some legitimate and measurable metrics to help define progress in the future." We write to provide detailed suggestions to achieve these goals, even though we disagree with the spirit of HB 1087 and the reporting requirements it intends to establish. We explain our disagreements below, then offer suggestions for measuring viewpoint diversity on campuses while also maintaining a high degree of university autonomy with regards to legislative oversight.

1. Summary

We have no doubt that open inquiry in higher education is currently threatened on several fronts. Faculty have abandoned pursuit of research on politically controversial topics;[i] people from across the political spectrum have launched campaigns calling for scholars to be terminated from their positions because their work challenges a preferred narrative;[ii] and, many colleges have expanded administrative oversight and are actively encouraging people to resolve disputes through reporting, investigations, and academic reprisals rather than good-faith debate and discussion.[iii]

Many fields of study and educational institutions in the United States seem to lack sufficient viewpoint diversity. This is true both with respect to political, religious, and other ideological affiliations, and also vis-a-vis different geographic, socioeconomic, and racial/ethnic backgrounds.[iv] Many fields and departments also lack gender diversity.

Heterodox Academy (HxA) is a non-profit, non-partisan organization that is deeply concerned about the ways an absence of viewpoint diversity and intellectual or expressive freedom can undermine research and teaching. Its membership is comprised of thousands of faculty, administrators, and graduate students committed to promoting open inquiry, viewpoint diversity and constructive disagreement within institutions of higher learning. Most of the signatories are members of HxA's core team and are deeply immersed in research on these issues. We speak only for ourselves, not the other members of the organization or the organization more broadly. We appreciate the

concerns which seemed to motivate this legislation. Nevertheless, we are apprehensive about how HB 1087 is written, and how it may be implemented.

2. Concerns About HB 1087

We strongly recommend to the South Dakota Board of Regents that university autonomy be maintained as much as possible when implementing HB 1087 for South Dakota's 11 public colleges and universities.

Every institution of higher learning has a unique history, internal dynamics, and external relationships — much like the communities in which they are embedded. They may have different missions, serve different constituencies, have different areas of excellence, and face different challenges. Given this diversity, top-down or one-size-fits-all approaches are typically ill-advised.

Indeed, the U.S. Supreme Court routinely gives deference to school officials to balance free speech considerations against the need to promote educational objectives and student safety.[v] This is because "judges [or legislators] lack the on-the-ground expertise and experience of school administrators" required to make such decisions.[vi]

University faculty and administrators have unique training and expertise, putting them in the best position to determine how to promote the expressive freedom and intellectual diversity in harmony with their other institutional needs, responsibilities, and functions. Any legislation that takes this judgment away from intellectual communities threatens the ability of those communities to maintain order and advance pedagogical aims.

The expansion of administrative oversight occurring at many universities is already concerning; adding an additional layer of legislative oversight seems imprudent and will likely prove counterproductive.

Yet, although we disagree with the approach represented by HB 1087, it *is* the law in the state of South Dakota and will be implemented. Therefore, we would like to offer suggestions for how to effectively measure intellectual diversity on a given campus.

3. Measuring the Intellectual Climate on Campus

Intellectual diversity (or viewpoint diversity) occurs when members of a community approach problems and questions from a range of perspectives. An open, expressive climate exists when members of a community, regardless of their beliefs, perspectives, or other prior commitments, feel equally able to ask questions, share ideas, and otherwise participate in learning and knowledge production without risk of censure.

While intellectual diversity and an open, expressive climate are distinct issues, they are interrelated and best pursued in tandem. After all, absent a diversity of perspectives and priorities — and the contention or disagreement that arises therefrom — protections for freedom of speech, assembly, association, etc. are largely unnecessary (although the climate is still problematic). Conversely, in the absence of an open, expressive climate, differences in backgrounds, commitments or perspectives tend to be buried rather than utilized in the

service of knowledge production. That is, diversity and openness are mutually required for either to have value or substance.

Yet while these Ingredients are necessary for a healthy and dynamic intellectual community, they are also insufficient. After all, viewpoint diversity and openness are perfectly consistent with an environment where people are talking *past* one-another, or *at* one-another. Yet effectively producing and disseminating knowledge requires instead that we speak *with* one-another, and work collaboratively and iteratively to understand and address difficult problems.   This requires institutional norms and culture based on mutual respect — and a commitment to *constructive* disagreement. These cultural components cannot be effectively legislated or imposed, but they can be measured.

An effective assessment of a campuses' intellectual climate would, therefore, require an evaluation of 1) whether or not a school's policies protect or undermine free expression, 2) how diverse the Intellectual community is, and 3) how free students and faculty from different groups feel to share their views or express disagreement.

The Foundation for Individual Rights in Education (FIRE) attempts to systematically track and evaluate schools on the basis of their formal policies towards free expression (corresponding to the first essential component above). Heterodox Academy has developed the Campus Expression Survey to help assess the other critical dimensions of a college or university's intellectual climate.

4. The Campus Expression Survey

Heterodox Academy has developed the Campus Expression Survey (CES) to assess how students perceive the expression climate on their campus and in the classroom.[vii] Provided to any instructor or administrator free of charge, the CES consists of a Core Module, the Experience on Campus Module, and the Viewpoint Diversity Module.

In the Core Module, students complete a baseline assessment asking if they are comfortable or reluctant expressing their views on a *non-controversial* topic. They are also asked if they are comfortable or reluctant expressing their views on *controversial topics* such as gender, politics, race, religion, and sexuality. Students respond to the following item, which is repeated for each controversial arena:

> Think about being at your school in a class that was discussing a controversial issue about <u>RACE</u>. How comfortable or reluctant would you feel speaking up and giving your views on this topic.

Four answer options are offered:

- I would be very comfortable giving my views.
- I would be somewhat comfortable giving my views.
- I would be somewhat reluctant giving my views.
- I would very reluctant giving my views.

Students who report any reluctance expressing their views are then asked how concerned they are about a series of potential consequences of expressing their views. These include concerns about how the professor would react, how other students would react, being criticized on social media, and being accused of harassment or violating a campus code of conduct. This module provides universities with a way to measure how free students from different groups personally feel to share their views or express disagreement.

The Core Module of the CES provides faculty and administrators with a direct and fine-grained measure of *who* self-censors their views within the classroom, *which* controversial topics they self-censor their views on, and *why* they engage in self-censorship. Additionally, the items of the Core Module are easily modified by faculty and administrators, thus providing flexibility to assess localized concerns. For instance, a campus-specific controversy may occur, such as the controversy over Hawaiian Day at the University of South Dakota.[viii] The basic item format of the Core Module can easily be modified to assess the expression climate in regard to this campus-specific controversy:

> Think about being at your school in a class that was discussing the controversy over HAWAIIAN DAY. How comfortable or reluctant would you feel speaking up and giving your views on this topic.

The Experience on Campus Module of the CES assesses student perceptions of how they are treated by others on campus on the basis of their sex or gender, their race or ethnicity, their religious views, their political beliefs, and their sexual orientation. Students are also asked about their perception of how different groups of students experience the classroom expression climate (e.g., LGBT students; liberal students; conservative students). This module provides a way for universities to measure student perceptions of how free students from different groups feel to share their views or express disagreement.

The Viewpoint Diversity Module asks students how often their college or university encourages them to consider a wide variety of viewpoints and perspectives. Students then are asked about their perception of how diverse the ideological viewpoints are on campus among their peers, the faculty, and the administration. This module measures student perceptions of how diverse the intellectual community on campus is.

Finally, a set of demographic questions make it possible to assess how diverse the respondents are — both in terms of demographics and beliefs.

Heterodox Academy, in collaboration with Qualtrics, has administered the CES online to three different national samples of college students.[ix] These samples were collected in June of 2018, October of 2018, and April of 2019. A number of consistent patterns are evident in these data:

- Roughly 70% of students report that their college or university frequently or very frequently encourages students to consider a wide variety of perspectives and viewpoints.
- Roughly 55% to 60% of students report that the climate on their campus prevents some people from saying things because others might find them offensive.

- A small percentage of students (8% to 10%) report reluctance expressing their views on a non-controversial topic.
- Roughly three times as many students report reluctance expressing views on controversial topics.
- Roughly 35% to 40% of students report they are reluctant to express their views on a controversial political issue.
- Reluctance expressing views on a controversial political issue is heightened among Asians, self-identified moderates and conservatives, and women. Among women, the reluctance is particularly heightened for self-identified conservatives.
- Roughly 25% to 30% of students report reluctance expressing views on the remaining controversial topics assessed.
- Among students reluctant to express their views, the primary concerns reported are about other students criticizing one's views as offensive, and about the professor criticizing one's views as offensive, assigning a lower grade, or declaring the views wrong.

We offer these results as examples of benchmark CES data. A university that administers the CES can compare their findings to our benchmark data and see how students on their campus compare to students nationally. Such comparisons can help universities identify how they are doing relative to other institutions in fostering intellectual diversity. These comparisons can also help identify the areas where CES-administering university is falling short of its goals and needs to make concerted efforts to improve.

Currently, the CES is designed to be administered to students. To fully assess the intellectual climate, it is prudent to measure the extent of that faculty self-censorship occurs in the classroom, in the research process, and in faculty meetings. We therefore intend to develop a Faculty CES, which would be populated by items relevant to the faculty experience (e.g., "Think about being in a department meeting in which colleagues were discussing the merits of MICROAGRESSION TRAINING. How comfortable or reluctant would you feel speaking up and giving your views on this topic?").

Beginning in September 2019 Heterodox Academy will partner with a select number of universities to develop additional metrics to measure the campus expression climate and determine if it is characterized by open inquiry, intellectual diversity, and constructive disagreement. At the same time, we will also develop and validate a number of applicable interventions that can be employed on campuses to foster a community characterized by open inquiry, intellectual diversity, and constructive disagreement. We would welcome the opportunity to work with faculty and administrators in the South Dakota system when developing these additional metrics and applied interventions.

Sincerely,

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[i] Sean T. Stevens, Lee Jussim, Stephanie M. Anglin, Richard Contrada, Cheryl A. Welch, Jennifer A. Labrecque, et al., (2017). "Political exclusion and discrimination in social psychology: Lived experiences and solutions." In: Jarret T. Crawford and Lee Jussim (Eds.) The Politics of Social Psychology. Abingdon, United Kingdom: Routledge.

[ii] Greg Lukianoff and Jonathan Haidt (2018). "The coddling of the American mind: How good intentions and bad ideas are setting up a generation for failure." New York, NY: Penguin Press.

[iii] Jeffrey Aaron Snyder and Amna Khalid. "The rise of 'bias response teams' on campus." The New Republic, March 30, 2016, https://newrepublic.com/article/132195/rise-bias-response-teams-campus.

The Foundation for Individual Rights in Education (20117). "Bias response team: Report 2017." Retrieved from: https://www.thefire.org/research/publications/bias-response-team-report-2017/ on June 10, 2019.

[iv] Musa al-Gharbi, "Data on how ideological (under) representation on campus compares to (under) representation along the lines of race, gender, or sexuality." Heterodox Academy, March 29, 2018, https://heterodoxacademy.org/ideological-underrepresentation-compared-to-race-gender-sexuality/.

[v] See e.g., Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cty. v. Rowley, 458 U.S. 176, 102 S.Ct. 3034, 73 L. Ed. 2d 690 (1982); Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260, 273, 108 S.Ct. 562, 98 L.Ed.2d 592 (1988) (noting the "oft-expressed view that the education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges"); Healy v. James, 408 U.S. 169, S.Ct. 2338, 33 L.Ed.2d 266; and Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, 89 S.Ct. 733 (1969).

Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the Law v. Martinez, 561 U.S. 661, 130 S. Ct. 2971, 2976, 177 L. Ed. 2d 838 (2010).

[vi] David Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the Law v. Martinez, 561 U.S. 661, 130 S. Ct. 2971, 2976, 177 L. Ed. 2d 838 (2010).

[vii] Sean T. Stevens, Paul Quirk, Lee Jussim, and Jonathan Haidt (2017). The campus expression survey. Manual available from Heterodox Academy, New York, NY: http://www.heterodoxacademy.org.

viii Trevor Mitchell and Jonathan Ellis (March 2, 2019). "USD president launches investigation into law schools 'Hawaiian Day' decision." *Sioux Falls Argus Leader*.

ix Heterodox Academy's Campus Expression Survey has been administered to a national non-probability student panel three times. The Summer 2018 sample was collected between July 10 and July 16, 2018. A total of 873 college students were surveyed, 759 were enrolled at 4 year-colleges and universities. The remaining students were enrolled either at a community college (N = 76) or a for-profit college or university (N = 38). Data from the full sample is presented. The Fall 2018 sample was collected between October 8 and November 2, 2018. A total pf 1,347 college students were surveyed. All students surveyed were enrolled at a 4-year college or university. The Spring 2019 sample was collected between March 27 and May 9, 2019. A total of 1,357 college students were surveyed. All students surveyed were enrolled at a 4-year college or university. Because of the time frame, we compared students who were surveyed during final exam period (N = 27) to those not surveyed during final exam period (N = 1,330). Differences were minimal so data for all 1,357 respondents are presented. In all samples, data are weighted by census region, gender, and race/ethnicity.