



**BALL STATE
UNIVERSITY**

WE FLY

RE: Ball State University Faculty Council Resolution on the negative impact of Indiana Senate Bill 202 on academic freedom at Ball State University and at other institutions of Higher education in Indiana

Approved by Vote of Faculty Council: February 15, 2023

Rationale:

Academic freedom, and the institutional arrangements to secure them, go to the heart of the mission of the Ball State University Faculty Council. National bodies of faculty, like the American Association of University Professors (AAUP) [1], and Indiana institutions of higher education, like Ball State University [2], have a long record of acknowledging the essential importance of academic freedom for teaching and research and the duties and responsibilities that go hand-in-hand with this principle. Indeed, academic freedom is the best guarantee for intellectual diversity in academia.

At Ball State University, this commitment is embodied through multiple institutional guarantees which affirm both academic freedom and the associated but distinctly different principle of freedom of expression [3]. Ball State's policy on academic freedom affirms faculty primacy in deciding the content of inquiry and instruction [2]. Both formal and informal procedures relating to violations also reflect the primacy of the faculty in determining the parameters of academic freedom through a distinct structure of grievance committees [4]. Ball State University's current policy and procedures also affirm the importance of tenure in securing academic freedom [5]. On freedom of expression, too, the general approach of the university has been to insist on the greatest latitude to faculty (and staff and student) expression. This is also embodied in Ball State University's Beneficence Pledge, which aims to promote "high standards of scholarship and excellence," which are determined by peers, not politicians [6]. Senate Bill 202 outlines institutional arrangements that ignore the long history of placing determination of matters like academic freedom and intellectual diversity in the hands of the faculty. It replaces them with arrangements and measures certain to create state interference on these crucial questions.

A. In placing guardianship of intellectual diversity in the hands of the Boards of Trustees, SB 202 places responsibility for academic freedom in the hands of a body whose majority is politically appointed (with the bill further politicizing the process by removing input from the alumni council and requiring two of the nine members to be directly appointed by the state legislature rather than the governor) [7]. This represents a dangerous misallocation of responsibilities away from the faculty, who are in the best position to judge the quality, diversity, and rigor of academic work. SB 202 does this through Article 39.5, Chapter 2 Sec. 1 (b), Sec. 2, Sec. 4(a)(4), which gives the Board of Trustees a new power to inquire into the academic content of faculty upon the granting of tenure and promotion. Article 39.5, Chapter 4 Sec. 2 gives the Board of Trustees the power to create policy on "institutional neutrality" which has the capacity

to limit or prevent the establishment of positions, departments, institutions, schools, and colleges “on political, moral, or ideological issues to only those circumstances that affect the core mission of the institution,” which another way of saying gag order.

B. The wording of key provisions of SB 202 accords a tremendous degree of interpretive latitude. There is a clear danger of selective application of these provisions by political appointees. Examples of this are the use of the words “likely” and “unlikely” in Chapter 2 Sec. 1 b (1)-(3) and the broad latitude envisaged in Sec. 2 (a) (5).

C. Academic freedom is also assaulted by the dilution of tenure envisaged in Chapter 2 Sec. 2, which institutes a post-tenure review process with a variety of possible sanctions including termination and demotion. As mentioned in A. above, the fact that only political appointees are in charge of this process makes it possible that tenure will become a political weapon to leverage.

D. SB 202 encourages an atmosphere of suspicion and mistrust on university campuses by creating a new apparatus designed to gather complaints regarding the intellectual viewpoints expressed by faculty in class (Chapter 2 Section 4). The goal of students being able to safely express their complaints about faculty is one that we support. However, there is no evidence that existing structures for student complaints, including about faculty, are failing in their task. Additionally, the bill requires all complaints to be reported to the state, regardless of their veracity upon investigation. The fact that these complaints will be reported to state bodies after being resolved by the Ball State Board of Trustees demonstrates a lack of trust in state universities to govern and regulate themselves. It also provides an additional avenue for political interference in what faculty feel empowered to research and teach.

E. SB 202 creates an unnecessary and weighty bureaucratic structure of reporting and data gathering for complaints relating to ill-defined criteria for intellectual diversity (Chapter 5). Indeed, this seems a particularly apt instance of a bureaucratic waste of scarce university resources.

F. These considerable additional restrictions on the academic freedom of faculty in Indiana are accompanied by no robust protections for faculty subjected to complaints or sanction. Most caveats in the Bill reiterate rights guaranteed by existing federal law, for example, those relating to free speech and expression, as well as values already implemented by the Ball State Freedom of Expression Policy adopted in January 2020 [3]. The only avenue for appeal is to the Commission for Higher Education, a body also dominated by political appointees.

As is extensively documented by the AAUP, measures such as these in the name of “viewpoint diversity” have already had disastrous impacts on the freedoms of inquiry and dissemination of ideas in North Carolina, Florida, and Texas [8]. Indeed there is no robust evidence for a lack of intellectual diversity at universities in the United States [9-11]. This is a solution in search of a problem that is likely to create a host of real challenges for Ball State as it attempts to recruit and retain top-notch faculty, staff, and students. As pointed out in the 2007 Freedom in the Classroom report, “We ought to learn from history that education cannot possibly thrive in an atmosphere of state-encouraged suspicion and surveillance.” [12]

Intellectual diversity is indeed an important value. The most robust foundation for it in the university is academic freedom and independence from state interference. While claiming to stand for intellectual diversity, SB 202 would constitute a significant reduction of academic freedom, both here at Ball State University and also more generally at other Indiana institutions of higher education.

Resolution:

WHEREAS the body with the apex authority on academic matters at Ball State University is the Faculty Senate, we believe that the Senate should follow the Faculty Council to take the following actions to oppose SB 202 at Ball State and elsewhere in Indiana:

BE IT RESOLVED THAT the Ball State University Faculty Council rejects the provisions in SB 202 which grant the Board of Trustees oversight of intellectual diversity on campus. The Board of Trustees as a body is not equipped to judge matters of intellectual diversity in instruction. As a body appointed by the government of the State of Indiana, and with alumni council input removed with the bill's provisions, its actions on matters of intellectual activity in the university would represent an improper extension of state control over matters of academic freedom. We, therefore, urge all members of the Indiana General Assembly to reject this measure. We also call on all our constituents, members of the university community and supporters of academic freedom in Indiana to actively lobby their representatives to oppose this measure.

BE IT RESOLVED THAT the Ball State University Faculty Council opposes Indiana Senate Bill 202 and joins Ball State's AAUP chapter in endorsing its Statement against this legislation [13]; and,

BE IT RESOLVED THAT Faculty Council leadership will publicize its adoption of this statement to appropriate local, state and national media; and,

BE IT RESOLVED THAT the Faculty Council requests that Geoffrey Mearns, President of Ball State University and the Ball State University Board of Trustees make a public statement expressing the University's opposition to SB 202, noting in particular its deleterious impact on academic freedom and tenure.

References:

1. AAUP 1940 Statement of Principles on Academic Freedom. Available at <https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure#B5>
 2. Ball State University Faculty and Staff Handbook: “Academic Freedom” (Section 7.1.2). Available at https://www.bsu.edu/-/media/www/departamentalcontent/facprofhandbook/2023-2024-fpph/20232024-handbook-11124.pdf?sc_lang=en&hash=7A480623C67AAFB5F183081FED017CC6FC3E37CA
 3. Ball State University Freedom of Expression Committee. Available at <https://www.bsu.edu/about/freedom-of-expression/freedom-of-expression-statement>
 4. Ball State University “Anti-Harassment Policy”. Available at <https://www.bsu.edu/about/administrativeoffices/staffcouncil/otherlinks/antiharassment>
 5. Ball State University, “Guidelines for Promotion and Tenure” (Definitions 35.2.7)” Available at https://www.bsu.edu/-/media/www/departamentalcontent/vice-provost/files/faculty-services/promotion-and-tenure/university-pt-document-20232024-final.pdf?sc_lang=en&hash=3E3753E08D5EF0176C043EDC681EDD901AAE114E
 6. Ball State University Beneficence Pledge, available at <https://www.bsu.edu/about/beneficence>
 7. “Indiana Law Governing Trustees of Ball State University”, available at <https://www.bsu.edu/about/administrativeoffices/president/boardoftrustees>
- SB202 increases the number of political appointees on Boards of Trustees around the state.
8. AAUP “Statement of Political Interference in Higher Education”, January 2024, Available at <https://www.aaup.org/issues/political-interference-higher-ed>
 9. Gross, Neil and Solon Simmons(ed.s), Professors and their Politics (Baltimore: Johns Hopkins University Press, 2014).
 10. See the exchange between Naomi Oreskes and Charlie Tyson, and Phillip W. Magness in September-October 2020 in the Chronicle of Higher Education (1, 2, 3).
 11. On the reasons for Student self-censorship not primarily being fear of faculty see Megan Zahneis, ‘The Real Source of Self-Censorship’, in The Chronicle of Higher Education, March 22, 2023
 12. Finkin, Matthew, Robert Post and Cary Nelson, Freedom in the Classroom (Report prepared for the AAUP, September-October 2007) available at <https://www.aaup.org/file/ACASO07FreedomClassrmRpt.pdf>
 13. Ball State University AAUP Statement on Indiana SB 202 available at <https://bsuaaup.com/aaup-statement-on-indiana-sb-202/>