

May 11, 2021

Dr. Mark R. Hagerott, Chancellor
North Dakota University System
10th Floor, State Capitol
600 East Boulevard Ave, Dept. 215
Bismarck ND 58505-0230

Dear Dr. Hagerott,

As NDUS Chancellor, you have the authority to request the legal opinion of ND Attorney General Wayne Stenehjem on a law that directly impacts faculty and students across the system's 11 campuses. As the executive officers of the NDSU Faculty Senate, we ask that you use this prerogative to solicit AG Stenehjem's input on Senate Bill 2030, which passed in the ND Legislature, but was line-item vetoed by Governor Burgum on Friday, May 7, 2021. Although the Governor struck from the original bill the multimillion-dollar penalty to be levied on institutions and criminal charges to be imposed on the contract signers, the bill now signed into law remains a threat to academic freedom. Sections 2 and 4 restrict NDUS institutions' eligibility for challenge grant matching funds if they engage in any organizational partnerships deemed antithetical to the ND Legislature's ideological commitments. Moreover, the vague formulation and broad scope of the language contained in the law will instill a climate of insecurity and fear of retribution, as researchers attempt to understand how to comply with its ramifications.

Consequently, in his legal opinion, AG Stenehjem can weigh in on what this prohibition or restriction actually means and, more specifically, provide input on two issues: 1) the constitutionality of the Legislature's bill and 2) the legality of what the Legislature wrote. In other words, do the ND legislators have the authority to write this law into ND Century Code? Is the prohibition in this bill even legal? Further, how the law will apply broadly to faculty research is left unclear. For example, the language that gives preference to "normal childbirth" is ambiguous. Does this restrict research focused on in vitro fertilization? Do the restrictions on partnerships with organizations that perform or promote abortions restrict partnering with pharmaceutical companies that also manufacture emergency contraception or abortion-inducing medications?

Equally concerning are the restrictions this law will place on curriculum design in a broad range of disciplines. The convoluted legal language leaves unreasonable room for interpretation related to the dissemination and endorsement of materials "of any type or from any organization" to be used in "any program" if such materials "do not give preference, encouragement, and support to normal childbirth." This sweeping stipulation seems to imply that any program or courses that

deal directly or indirectly with aspects of human sexuality and reproduction (e.g., Health Sciences, Human Development and Family Science, Gender Studies, or Education) could contravene this law. Would any textbooks or course materials examining the difference or options between abortion and normal childbirth in any pedagogical context be considered unacceptable under this law?

It is plainly clear to us that the lawmakers' interference into academic freedom has not been stopped by the Governor's partial veto of SB 2030. This codifies into law undisputed license for legislators to take similar or even more drastic lawmaking action in the future to prohibit and penalize research or course content they simply do not agree with. The implications of the recently signed and only partially vetoed SB 2030 and the consequences of violating it, whether deliberately or not, need immediate clarification. Therefore, we strongly urge you to use your authority as NDUS Chancellor to seek that clarification from AG Stenehjem.

Respectfully,



Dr. Florin Salajan
Faculty Senate President



Dr. Molly Secor-Turner
Faculty Senate Past President



Dr. Anastassiya Andrianova
Faculty Senate President Elect