



Ohio House State and Local Government Committee

HB 322 and HB 327

Opponent Testimony

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Written-Only Testimony

We write in unremitting opposition to House Bill HB327, whether it applies to P-12 and higher education or only to P-12. Fundamentally, we oppose this bill because (i) it stands in direct conflict of The Ohio State Board of Education’s 2020 resolution “To condemn racism and to advance equity and opportunity for Black students, indigenous students, and students of color” (Resolution, 2020, p. 2); and (ii) it attempts to prohibit our faculty as well as our students who graduate to become teachers in P-12 schools from carrying out responsibilities to teach students accurate history. Teaching the truths of historical and contemporary divisions in society is essential for students to learn to understand and dismantle biases that perpetuate racism, sexism, and other forms of oppression. Furthermore, we anticipate that by violating the US Constitution, HB327 will unleash an avalanche of lawsuits, while casting a pall of reluctance over enrollments at our institutions.

Our four main concerns with this bill include:

1. Contradiction

There is conflict in how HB 327 and its analysis may find some material “admissible” but similar content ‘inadmissible’. For example, would including material from the *Queer America* and *Teaching Hard History* podcasts, be admissible because they are objective and accurate historical materials, or inadmissible because, according to the Bill, they are deemed critical or contested and, therefore, “divisive”?

2. Lawsuits

HB 327, if enforced, would lead especially to Breach of Contract lawsuits. Current Ph.D. students with approved plans of study would be entitled and persuaded to sue The University of Toledo as this bill questions the legitimacy and legality of Ph.D. students' work, particularly those whose dissertations are utilizing CRT or similar approaches focused on equity and social justice. As per this bill, students who are applying CRT and similar approaches related to equity and social justice will not be able to complete their dissertations, resulting in thousands of dollars lost in dissertation credits, plus the costs of three or more years of lost income (estimated around or \$240,000) as they delay the start of their professional careers. This bill will therefore force a university to choose either to take on those lawsuits with their attendant costs, or to disregard the legislation entirely.

3. Dissuasion

We can foresee that passage of the Bill would discourage enrollment at both the undergraduate and graduate levels, and simultaneously it would be detrimental to retaining students and thus future teachers. Young people today know that the world is full of contradictions and divisions. They want an education that helps them make sense of the world and act responsibly and effectively in it. Many of them are choosing to become teachers because they want to help future young people do the same. We feel certain that passage of a bill that makes this mission dangerous and perhaps impossible will have a chilling effect and will dissuade future students and teachers from participating in higher education and from choosing teaching as a career, at a time when a shortage of qualified teachers is becoming a national emergency.

4. Rights and Responsibility

Bill 327 is a rapacious assault on the U.S. Constitution and on democratic education, as well as a violation of the human right of freedom of expression, guaranteed not only in the U.S. Bill of Rights but also in the Universal Declaration of Human Rights. In the JHCOE, undergraduate and graduate students study democratic education and human rights. Ironically, our faculty would only be able to use HB 327 as an example of attacks on democratic education! However, our graduates, entering the workforce in P-12 schools, would be in danger of losing their teaching licenses if they taught their students the fundamentals of democracy and human rights, and the historical and contemporary threats to them.

The U.S. Supreme has strongly upheld basic First Amendment rights of students and teachers in schools. In *Tinker v. DesMoines* (1969), for example, the court held:

“First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years.” *Tinker*, 393 U. S. 505.

In *West Virginia v. Barnette* 319 U. S. 624 (1943), the Supreme Court articulated a fundamental principle of education in a constitutional republic:

"The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures -- Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." 319 U. S. 637.

These opinions are based upon the general proposition that "state-operated schools may not be enclaves of totalitarianism. . . . In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate." *Tinker v. Des Moines School Dist.*, 393 U. S. 503, 511 (1969). The Court in *Tinker* thus rejected the view that "a State might so conduct its schools as to 'foster a homogeneous people.'" *Id.*, at 511, quoting *Meyer v. Nebraska*, 262 U. S. 390, 402 (1923). Similarly, *Keyishian v. Board of Regents*, 385 U. S. 589 (1967) held that "[t]he classroom is peculiarly the 'marketplace of ideas'"; the First Amendment therefore "does not tolerate laws that cast a pall of orthodoxy over the classroom." *Id.*, at 603. The Court therefore rejected the idea that the imposition of "ideological discipline" was a justifiable practice of school authorities, including State governments. These considered opinions yield a general principle: "the State may not suppress exposure to ideas absent sufficiently compelling reasons." The school must perform all its functions "within the limits of the Bill of Rights," *Barnette*, 319 U. S., at 637.

In our opinion, HB 327 offends these basic constitutional freedoms.

Moreover, this constitutional understanding is compatible with Article VI of the Ohio State Constitution, which mandates that the State government "secure a thorough and efficient system of common schools throughout the State" (Article VI Section 2). In the interests of a thorough and efficient education HB 327 prohibits the teaching of "divisive concepts". This mandate purports to prevent a disruption in learning, and thus if valid the teaching of "divisive concepts" would provide a sufficiently compelling reason to limit academic freedom.

However, exposing students to diverse points of view and engaging them in the processes of critical scrutiny, reasoning, and inquiry is the very essence of education. The proposed Bill interferes with these essential processes of inquiry and betrays the fundamental value of authentic learning and education. As has been well-established within the plurality of academic disciplines, the key to settling and establishing knowledge is to submit our beliefs, hypotheses, hunches, and opinions for checking and testing, subjecting them to the processes of public critical scrutiny and disconfirmation through the application of replicable methods and standards of inquiry. In a free and open society there is continual disagreement about propositions and beliefs; this disagreement is a feature of a free system of knowledge creation and democratic discourse. Freedom of thought, conscience, inquiry, speech, and association generates diverse points of view and thus disagreement. However, for the knowledge system to work and thus for authentic education to take place diverse points of view and disagreement generated through

protected freedom are required. Pluralism (diversity of points of view) is a fundamental value of the constitution of knowledge and of authentic education. The teaching of diverse points of view is not disruptive but an essential element of a thorough and efficient education. As Justice Brennan stated:

'The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.' @ 364 U. S. 487. The classroom is peculiarly the 'marketplace of ideas.' The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, [rather] than through any kind of authoritative selection.'

In our opinion, HB 327 also offends the processes of inquiry and learning, and, thus, a thorough, efficient, and effective education.

In conclusion, to take our own advice: we submit this letter with great respect for any differing views, but simultaneously with deep regard for the fear that our country's most formidable enemy may be our own disempowering of **Truth, Honesty** and the **Charity of Diversity**. We, the Educators, stand firm in our belief: *let the light shine in, and the people will progress.*