



KANSAS BOARD OF REGENTS

House Higher Education Budget Committee Neutral Testimony HB 2460

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Good afternoon, Chair Howe, and Members of the Committee. Thank you for the opportunity to appear today to speak about HB 2460.

HB 2460 would apply to public postsecondary educational institutions in Kansas: the state universities, Washburn University, community colleges, and technical colleges. The bill would prohibit the institutions from conditioning admission, financial aid, and faculty employment decisions upon candidates' support of, or opposition to "any political ideology or movement, including a pledge or statement regarding diversity, equity, inclusion, patriotism or related topics"; from basing those decisions on viewpoints expressed in unsolicited statements on such matters; and from requesting or requiring any such pledge or statement from an applicant or faculty member. To enforce the prohibitions, HB 2460 would create a private right of action for equitable relief, damages, costs and attorney fees. It would also authorize a \$100,000 administrative penalty per violation.

We have heard the concerns voiced about diversity, equity and inclusion initiatives and practices in the Kansas higher education system. I am, however, concerned about the ambiguity in the subject matter at which this bill is aimed. That subject matter is expansive and open-ended making it difficult to determine what types of statements or viewpoints are covered by its prohibition—especially the catchall term "or related topics."

I am also troubled by the portion of this bill that establishes a new cause of action. This creates potential liability exposure to the system that would not otherwise exist, and defending complaints would impose additional costs to the institutions and the system.

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Imagine, for example, that a job applicant makes an unsolicited, unprompted expression on a covered subject in application materials or during an interview, such as a belief against the American dream or the American way of life.

If the applicant is not hired and sues under the bill, litigating such factually intensive claims as whether the university's decision was "based on" the unsolicited statement could be time consuming and expensive. Litigating the claims would detract from our mission of pursuing measurable continuous improvement in the quality and effectiveness of the public postsecondary educational system in Kansas, while expanding participation for all qualified Kansans.

Thank you for the opportunity to offer testimony on this legislation.