

Testimony of Leo F.J. Wilking in Favor of H.B. 1256
Senate Human Services Committee
March 13, 2023

Chairwoman Lee, members of the committee:

I submit these comments in support of H.B. 1256.

I am an attorney in private practice in Fargo, North Dakota. I have been a licensed attorney in North Dakota for 43 years. During the past 12 years my practice has been almost exclusively focused on plaintiff's employment law, including discrimination, harassment, unemployment benefits, minimum wage and overtime, severance contracts, etc. A significant portion of that practice has involved faculty, staff and students at colleges and universities within the North Dakota University System. I have represented clients at NDSU, UND, Valley City State, Minot State, and other institutions of higher learning.

I support H.B. 1256 because I have seen the devastating impact which false accusations of sexual harassment, discrimination, and Title IX violations can have on senior faculty. One client, a tenured professor, waited eight months for a hearing on a complaint by a colleague based on Title IX and alleged harassment. After three days of hearing before an administrative law judge, the complaint was dismissed for insufficient evidence. During that entire eight months, my client was barred from teaching classes, barred from campus, prohibited from having any contact with students or faculty, and was stripped of his university e-mail address. In effect he was treated as guilty until proven innocent. This contradicts all our established norms of due process and fair play.

H.B. 1256 is narrow in scope. It would only allow a complainant to be charged with a misdemeanor if the state's attorney finds the allegations had "no basis in fact or law." That is a high bar.

It will be argued that this legislation is unnecessary because false allegations are already subject to prosecution under N.D.C.C. § 12.1-11-02. Not so. The relevant language of that statute is below:

12.1-11-02. False statements.

1. A person is guilty of a class A misdemeanor if, in an official proceeding, he makes a false statement, whether or not material, under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, if he does not believe the statement to be true.

I know for a fact that harassment and Title IX violations at the University of North Dakota are not made under oath, and the testimony by witnesses at a hearing before an administrative law judge is also not under oath. Instead, the witness is read the following statement:

I want to remind you that knowingly providing false information during this hearing is a violation of University policy. Do you promise to answer all questions today truthfully to the best of your recollection and ability?

I respectfully submit that agreeing to avoid “violation of University policy” is a far cry from lying under oath, making one subject to perjury laws.

Title IX and harassment policies at our colleges and universities have been “weaponized” by faculty members who have political or professional differences with one of their colleagues. They can file a complaint, whether it has any basis in fact or law or not, and unfairly wreak havoc on the personal and professional life of the accused. H.B. 1256, if passed by the Senate and signed by Governor Burgum, would provide a needed layer of protection against patently false and unjustified accusations. I urge a “Do Pass” vote on this bill.

Respectfully submitted,

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