



FLORIDA STATE UNIVERSITY
FACULTY SENATE

MINUTES
SPECIAL FACULTY SENATE MEETING
FRIDAY, MARCH 12, 2021
FSU ZOOM
4:15 P.M.

I. Regular Session

A special session of the 2020-21 Faculty Senate was held on Friday, March 12, 2021. Faculty Senate President Eric Chicken presided.

The following members attended the Senate meeting:

T. Adams, S. Aggarwal, P. Aluffi, E. Alvarez, J. Ang, J. Appelbaum, A. Askew, J. Atkins, J. Bahorski, E. Bangi, A. Barbu, H. Bass, P. Beerli, B. Birmingham, D. Bish, M. Blaber, M. Bourassa, M. Buchler, G. Burnett, E. Chicken, P. Doan, J. Du, R. Duarte, D. Eccles, V. Fleury, H. Gazelle, T. Graban, A. Gunjan, W. Hanley, K. Harris, E. Hilinksi, P. Hoefflich, P. Hollis, A. Huber, J. Ingram, E. Jakubowski, K. Jones, C. Kelley, D. Kim, E. Kim, S. Lester, V. Lewis, C. Madsen, P. Marty, C. Marzen, C. McClive, A. Muntendam, I. Padavic, E. Peters, D. Peterson, K. Reynolds, L. Rinaman, N. Rogers, E. Ryan, G. Salazar, A. Semykina, J. Sobanjo, S. Stagg, J. Standley, R. Stilling, P. Sura, and G. Tyson.

The following members were absent. Alternates are listed in parenthesis:

A. Ai, I. Alabugin, P. Andrei, R. Brower, J. Brown Speights, M. Carrasco, E. Cecil, M. Duncan, I. Chiorescu, F. Dupuigrenet, S. Foo, R. Goodman, S. Grant, E. Hinchman, C. Hofacker, M. Hurdal, P. Iatarola, H. Kern, E. Klassen, T. Lee, I. MacDonald, M. McFarland, C. Moore, R. Morris, J. Munn, C. Patrick, J. Proffitt, A. Rhine, R. Singleton, L. Stepina, E. Stewart, B. Stults, M. Swanbrow-Becker, T. Van Lith, A. Vanli, M. Ye, Q. Yin (Karen McGinnis), and I. Zanini-Cordi.

II. Approval of the agenda, March 12, 2021 meeting

The agenda was approved as distributed.

III. New Business

a. Resolution on Senate Bill 264, Erin Ryan (See addendums 1, 2, and 3)

- The Steering Committee chose to call this special meeting to have the Faculty Senate vote on supporting a resolution taken earlier in the week by the Advisory Council of Faculty Senates, the leadership group of the faculty senates in all twelve universities in the State University System. The resolution is one of opposition to elements of a piece of legislation that is currently working through the Florida House and Senate. The materials provided by the Steering Committee include the proposed resolution from the FSU Faculty Senate on SB 264 (see addendum 1), the resolution unanimously approved by the Advisory

Council (see addendum 2), and additional background material on SB 264 (see addendum 3).

- Senate Bill 264 is currently in two different states in the Florida House and Florida Senate, but both versions contain language which the Advisory Council considers troublesome for faculty members throughout the Florida SUS. The bill contains three primary provisions: first, the creation of legislative entitlement for students to record classroom discussions (the Senate version of the bill also allows for public publishing of said recordings while the House version does not); second, the requirement for an “intellectual diversity survey” to be conducted annually by the Board of Governors; third, that Universities would be prevented from shielding students from 1st Amendment-protected speech or activities that the student may find uncomfortable.
- The Advisory Council supports the “anti-shielding” provision because this is roughly already the stance Universities are committed to in order to facilitate the free exchange of ideas on campus.
- The Advisory Council is incredibly concerned by the classroom recording provision specifically because it is in direct opposition to the ideal of free exchange of ideas that is at the center of the academic experience; the threat of students being able to publish classroom materials on social media and the internet, often without the context of the entire class, would have a chilling effect on the ability for the faculty to engage with students on sensitive or controversial topics and for students to feel comfortable engaging in the classroom. Longterm, this provision could make the recruitment and retention of faculty members more difficult, and overall threaten the standing of schools in the Florida University System in the national context.
- There has been a robust discourse around the provision calling for the establishment of an annual “intellectual diversity survey” because although there are elements of the idea that could be favorable, there is evidence to support the fact that there is already a great amount of intellectual diversity on campus. The current provision would be a challenging endeavor; not only would an annual survey be a substantial undertaking, but there are also questions of implementation that go unanswered in the provision, such as the questions to be asked, presentation of data, the impact of the presence of the survey on intellectual diversity itself, etc. There are likely other avenues available to satisfy the concerns of the legislators, such as a larger one-time study.
- The resolution put out by the ACFS that the Faculty Senate will vote on supporting states that the ACFS strongly opposes a legislative entitlement to record classes and a legislatively mandated intellectual diversity survey. With the help of President Thrasher, who is very knowledgeable of the legislative process, the resolution drafted by the Steering Committee to express support for the ACFS’s own resolution calls for revisions to the bill to remove the most problematic provisions, rather than just a complete opposition. Given that FSU is already committed to the sentiments of the “anti-shielding” provision, the proposed resolution is in support of said provision and opposes the other two as going against the intent of free exchange of ideas.
- As of March 12, 2021, the House version of this bill has passed all committees and will be put up for a vote, while the Senate version remains in the appropriations committee.
- The Floor was opened up for discussion.

- **Phillip Sura, Arts & Sciences** – requested a summary of the rights an instructor currently has in regards to student recording of classroom material as well as what rights fellow students have. Erin Ryan responded that at FSU the instructor has decision-making over recording rights in their classroom, and many opt to allow students to record lectures to consult at a later date. Many instructors now actively make their own recordings available online for students who are struggling with remote learning, although even this has had some faculty members notice changes in classroom dialogue. The legislative provision would remove the right of the faculty members to make their own decision on this matter.
- **Eric Chicken, Senate President, Arts & Sciences** – Asked for clarification From Erin Ryan on the language in Senate Bill 264 and the surrounding resolutions referencing student litigation. Erin Ryan clarified that the student recording provision could potentially introduce issues of intellectual property rights in the classroom, such as the use of third-party material in lectures and the distribution of scholarly works outside their traditional public publishing. The Senate version of this provision specifies that student recordings are only to be used for personal use, with the exception that these recordings could be used in disciplinary proceedings in the University or in a court of law.
- **Amy Huber, Fine Arts** – Stated that she shared the text of the provision with a colleague who has a background in law who believed that students already had the right to record. Erin Ryan responded that there is already a separate law in place which establishes protection of privacy for interpersonal communication; this proposed provision would supersede the current law, although it is still unclear from a legal standpoint whether the current law in question would apply to the classroom.
- **Peter Hoeflich, Arts & Sciences** – Questioned why a traditional non-disclosure agreement between professors and students would not suffice in resolving the concerns the faculty has over distribution of classroom recordings and material. Erin Ryan clarified that although faculty members want to be as accommodating to the needs of students as possible, the concern is that this provision would put the decision in the hands of the Legislature, not the instructors and their students.
- **Michael Blaber, Medicine** – Asked if a faculty member would be able to state in their syllabus that the material being presented is copyrighted by the professor and thus unable to be distributed without consent. Erin Ryan responded by recalling a message she received from Lisa Scoles, who is of the opinion that classroom lectures delivered via remote instruction remain the joint intellectual property of the instructor and the university.
- **Petra Doan, Social Sciences & Public Policy** – Mentioned past experiences with professors who teach very fast and agreed with the sentiment that recording of lectures can be beneficial for some students. However, the Senator is not in favor of the current provision, citing experience teaching classes that approach sensitive topics and agreeing with the concern that the fear of being recorded without consent would impact student participation.
- **Robert Stilling, Arts & Sciences** – Commented that the copyright issues would be very relevant for some fields that rely heavily on engaging with copyrighted material for educational purposes. The Senator also directly opposed the lines in the provision mandating the hosting of constitutionally protected speech, citing provocateurs like the

Proud Boys movement and Milo Yiannopoulos who indirectly promote violence on campus through their campus events. Erin Ryan noted that the language of the provision only pertains to “constitutionally protected free speech,” a term which excludes incitement of violence.

- **Tarez Graban, Arts & Sciences** – Thanked the faculty senate for their discussion on SB 264 and asked what the next step would be should the bill be passed into law in its current state. Erin Ryan responded that all parties involved have been doing everything they can to withhold the passing of SB 264, and discussions about responses to its passing will occur if the efforts to impact the bill fail.
- **Will Hanley, Arts & Sciences** – Expressed support for the adoption of the resolution and stated that opposition to this bill is important in part because it is part of a broader agenda of legislative manipulation of academia. Senate Bill 741 from 2019 followed a similar trajectory as this bill, problematically defining antisemitism in such a way that academic discussion of Israel was made more difficult.
- **The Motion to Adopt the Resolution expressing support for the ACFS Resolution opposing Senate Bill 264 was Approved.**

The meeting adjourned at 4:55 p.m.

Eric Chicken
Faculty Senate President

FSU FACULTY SENATE RESOLUTION ON SB 264/ HB 233

The Florida State University Faculty Senate Supports the Free Exchange of Ideas on Campus and Therefore Opposes the Legislative Entitlement to Record Classes and Mandatory Survey Proposed in SB 264 and HB 233.

The FSU Faculty Senate hereby concurs with the unanimous ACFS resolution of March 9, 2021 strongly opposing the legislative entitlement to record classes and the legislatively mandated intellectual diversity survey proposed in Senate Bill 264 and House Bill 233.

We support the free exchange of ideas that is at the center of the academic experience, and for that reason we oppose these mandates, which will undermine learning, ideological diversity, and faculty recruitment and retention, and have the unintended effect of shielding students from viewpoints that make them uncomfortable. We believe these legislative mandates will negatively impact the reputation and competitiveness of all universities in the State University System, including our own.

We recommit ourselves to hearing all voices on campus and hosting constitutionally protected speech even when it is uncomfortable. Ensuring open access to ideas on campus is the best way to protect the values of free expression and intellectual diversity that undergird higher education, and are already the hallmarks of excellence in the State University System of Florida.

Attachment: ACFS RESOLUTION OF MARCH 3, 2021

ACFS RESOLUTION, MARCH 3, 2021:**ACFS Supports the Free Exchange of Ideas on Campus and Therefore Opposes a Legislative Entitlement to Record Classes and Mandatory Survey**

Whereas, the Advisory Council of Faculty Senates (ACFS) is charged with advising the Chancellor of the State University System (SUS), the Board of Governors, the State Board of Education, the Legislature, the Governor and other officials and organizations involved in the establishment of policies, administration, or funding of public higher education in Florida, and

Whereas, the members of the ACFS strongly support freedom of speech and the role that free expression plays in the education of our students and the creative endeavors of our faculty, and

Whereas, protecting intellectual freedom and ensuring space for competing ideas and perspectives is vital to the integrity of our member institutions and the SUS as a whole, and

Whereas, the Board of Governors and Presidents of each of the State Universities have endorsed a clear statement on Free Expression to support and encourage full and open discourse and the robust exchange of ideas and perspectives on our respective campuses in 2019, and

Whereas, university campuses and classrooms are environments in which students and faculty openly share viewpoints and ideas alongside opposing viewpoints in a constructive way, and

Whereas, a recording entitlement will have the counterproductive effect of limiting the range of viewpoints expressed in class, because students and faculty will choose not to experiment with new ideas, discuss sensitive or controversial issues, or engage in what they fear will be disfavored speech, when they understand that their speech might be made permanently available without their consent, and potentially out of context, on the internet or in others' hands, and

Whereas, a right to record and potentially publish classroom activities without consent may violate the intellectual property rights of individual faculty, institutions, and even publishers who make copyrighted material available for instructional use, thus inviting litigation, and

Whereas, there are legitimate reasons to record classes, but it is a highly individualized decision that should be made between students, faculty, and universities in order to account for the pedagogical, privacy, intellectual property, and free speech interests of others in the space, and

Whereas, the ability to recruit and retain faculty in the SUS will be substantially harmed by a student entitlement to record class, reducing the competitiveness of our institutions and threatening the SUS's recent, hard-won gains in its national ranking, and

Whereas, a legislatively imposed intellectual diversity survey, even if administered well, would create many of the same negative impacts as a recording entitlement—chilling speech, impeding faculty recruitment and retention, and threatening our national standing, therefore:

BE IT RESOLVED that ACFS supports the free exchange of ideas that is at the center of the academic experience, and for that reason, strongly opposes a legislative entitlement to record classes and a legislatively mandated intellectual diversity survey. Both mandates will undermine learning, ideological diversity, faculty recruitment, and university rankings, and have the unintended effect of shielding students from viewpoints that make them uncomfortable. We recommit ourselves to hearing all voices on campus and hosting constitutionally protected speech even when it is uncomfortable. Ensuring open access to ideas on campus is the best way to protect the values of free expression and intellectual diversity that undergird higher education.

Background information for consideration of FSU Faculty Senate Resolution on SB 264

From: Erin Ryan
Sent: Friday, March 5, 2021
Subject: SB 264

Thanks again for meeting with us today. As you know, faculty statewide are gravely concerned that SB 264 will chill classroom speech, interfere with student learning, obstruct faculty hiring and retention, and threaten to knock Florida's system of higher education out of the top ranked position nationally. You requested that I follow up our meeting with this brief summary of our discussion, especially regarding the question about potential amendments to SB 264 that could be framed as a compromise.

Bill Overview. The bill has three main components: (1) The first requires an annual survey of intellectual freedom and viewpoint diversity conducted by the BOG (for the SUS) and Board of Education (for the State Colleges). (2) The second mandates that Florida students not be shielded from speech protected by the First Amendment that may make them uncomfortable. (3) The third creates a legislative entitlement for students to record and publish classroom discussions without the consent of those being recorded.

Since we are especially troubled by the legislatively conferred right to record class discussions without consent, [we discussed] what we could live with in exchange for getting rid of that provision. Though we couldn't speak for the full faculty before consulting them, here were the preliminary ideas we shared:

Right to Record Class Should Go. We agreed that the most important objective is to get rid of the right to record class provision, which will have the result of suppressing the very exchange of free speech and ideas that higher education is designed for. There are legitimate reasons for students to record classes, but that decision should be made between the student and the faculty member and university, and must account for the pedagogical, privacy, intellectual property, and free speech interests of others in the classroom. The legislature should not preempt these highly individualized decisions by statute.

Anti-Shield Provision Should Stay. We recommended that the centerpiece of the amended bill be the second element, which mandates that students not be shielded from points of view that make them uncomfortable. This element is consistent with the ethos of universities as centers for public discourse and the free exchange of ideas. It follows from conventional First Amendment principles, and indeed, has already been carefully worded to apply only to speech that is protected by the First Amendment, and not constitutionally unprotected forms of speech, such as incitements to violence. ****Ensuring open access to ideas on campus by this measure is the best way to protect the values of free expression and ideological diversity that the bill's proponents are concerned about. If this provision is executed faithfully, the other proposed provisions, which could serve to undermine those very values, are unnecessary.** [Note: text in red added later to emphasize key points of ACFS discussion with Chancellor.]

Viewpoint Survey Should Change. The annual survey of intellectual freedom and viewpoint diversity required by the bill is the most complicated. On the one hand, such a survey may be reassuring to bill proponents, because we expect it to reveal that there already is substantial viewpoint diversity on campuses. On the other hand, a top-down annual assessment of campus viewpoints imposed by lawmakers has troubling overtones of McCarthyism that are intimidating to both students and faculty. Even if such surveys were administered well, the move would still have the potential to create

many of the same negative impacts as the right to record provision. It could still impede us from retaining and recruiting new faculty, and threaten our standing at the top of the national rankings for public higher education.

Is there another way to satisfy the interests of legislators in learning about our ideological diversity without an annual survey that intimidates campus communities on an annual basis? We strongly prefer removing this provision entirely, but if that absolutely cannot be accomplished, then perhaps the bill could be amended to require something else, say, a one-time study of the matter by the BOG. There would still be costs to morale and retention, but a single study that (if satisfactory) ends the inquiry would be preferable.

Summary of Recommendations. We should act swiftly to lobby for amendments to the bill while it is still moving through committees that would (1) frame the anti-shield provision as the centerpiece of the bill, (2) remove the right to record class provision, and (3) replace the annual intellectual diversity survey with an alternative, perhaps a one-time study of ideological diversity on campus that could provide legislators with the reassurance they are looking for. We should try to satisfy lawmakers' interests in learning about the viewpoint diversity that already exists on campus without legislative measures that could inadvertently weaken it. Best,

--Erin

On Mar 6, 2021, at 11:48 AM, Erin Ryan <ERyan@law.fsu.edu> wrote:

P.S. [I] have to share these final thoughts. I want to be clear that I don't think faculty will support any version of the intellectual diversity survey, because [it's not clear what] good can come of it.

It's unclear what the legislature wants to see, and what they will do with the information if they get it. Students and faculty will worry about some kind of mandate from above about what campus community members should think, and in what proportion. What is the correct balance of different points of view? How do we discern between different points of view? How will asking these questions itself intimidate people from holding different points of view?

Meanwhile, all of us should be concerned about negative budget impacts to the SUS if the legislature is unhappy with the results of the survey, whatever they are. Will universities who meet their requirements be rewarded budgetarily, and those that do not be punished? The bottom line is that state universities should not become tools of ideological leverage for state legislators.

So to answer [the] question about what part of the bill we can live with, I want to underscore my sense that the anti-shield provision is really the only part that will not do irreparable harm.

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