



TESTIMONY

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TRANSPARENCY IN PUBLIC UNIVERSITY CURRICULUM

By John Wright

Testimony Before the Senate Education Committee

To the Honorable Members of This Committee:

My name is John Wright, and I work as a policy researcher for the Show-Me Institute, a nonprofit, nonpartisan Missouri-based think tank that supports free-market solutions for state and local policy. The views presented here are my own.

Senate Bill 465 (SB 465) would do two things in order to increase the transparency of Missouri's public colleges and universities. First, it would require every public college and university to post online specified information related to any course of study offered by that college or university. This information would include course syllabi, reading lists, attendance requirements, extra-credit opportunities, and a description of required assignments and projects. Second, the bill would require that this information be considered public information pursuant to the state's open records law.

Existing law does not adequately protect the public's interest in transparency at our public universities and colleges. In *National Council on Teachers Quality, Inc. v. Curators of the University of Missouri*, the Missouri Court of Appeals held that the open records law did not require the University of Missouri to disclose course syllabi.¹ In that case, the National Council on Teachers Quality (NCTQ) sued the University of Missouri when the university failed to comply with a public records request for course syllabi. The university argued that the requested syllabi fell within Section 610.021(14), which authorizes a public governmental body to close "[r]ecords which are protected from disclosure by law." The university's position was that its faculty hold copyright ownership in their syllabi and that the syllabi's disclosure, particularly when copies are requested, is therefore protected by federal copyright law. The court agreed with the university and denied

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NCTQ's request to compel the university to copy and provide the course syllabi. The appellate court's decision relies on some inconsistent reasoning,² and its broader implications for the open records law are problematic.³

SB 465 addresses only the narrow issue of syllabi and course transparency at public universities. Making course information easily accessible to the public would benefit citizens who are interested in the activities of their public institutions. Citizens have a right to know how their public institutions operate; they fund them and their children often attend them. The state appropriated around \$708.8 million for four-year public universities, \$129.5 million for public community colleges, and \$300 million for grants and scholarships last year.⁴ Missouri taxpayers worked a lot of hours to produce that portion of the state budget. The public ought to have access to basic information about the higher education programs that they pay for.

In addition to the public benefit of transparency, prospective students can also benefit from having access to course syllabi for public universities. Deciding where to go to college is one of the biggest decisions of a young person's life. Prospective students, and often their parents, want to know what will be taught in a degree program, especially if the choices include an in-state school like the University of Missouri or an out-of-state school like Kansas University. By making syllabi and other course information publicly available, public universities have a chance to demonstrate their value. Open

syllabi and course content could be a good selling point for our public universities.

The public's interest in transparency and a university's interest in providing a service to prospective students need to be balanced against other interests, including the professional interests of university professors. There appear to be three major objections to the prospect of increased academic transparency as proposed in this bill.

One objection to this reform is that university professors have an intellectual property interest in the content of the classes they teach and this reform threatens professors' ability to protect their intellectual property. According to this line of thought, professors should not have their intellectual property disclosed through the state's open records law, because such disclosure increases the risk of unauthorized use or is itself an unauthorized use. While public disclosure of course syllabi will increase the ease of access to syllabi, there is no reason why professors cannot maintain a copyright claim to their syllabi. If syllabi are used for a prohibited purpose, professors maintain their ability to enforce copyright through the courts. The fact that information is publicly available would not weaken a bona fide copyright claim. This claim is also undermined by the fact that even the appeals court in NCTQ was willing to allow the syllabi to be available for inspection.

Moreover, federal copyright law has long had an exemption for "fair use." Such fair use includes reproduction of a work for purposes as diverse as

education, search engines, criticism, parody, news reporting, research, and scholarship. Although the court in the NCTQ case failed to recognize the fair use argument, state disclosure of public records may be the sort of use that qualifies as fair use under copyright law.⁵

The second objection to increased academic transparency is that it may lead to increased and potentially unwarranted scrutiny. There may be classes that would attract some level of public scrutiny if syllabi were made public. Some classes might be an "easy A," where grading is soft and assignments are perceived as a joke. For example, classes such as "Leisure in a Diverse Culture" may attract the ire of taxpayers or parents of current enrollees who, rightly or wrongly, perceive the class to lack the rigor one would expect from a world-class institution.⁶ Professors might also fear that they would be exposed to increased ideological scrutiny for the content of their courses.

Increased scrutiny may very well be an effect of increased transparency; however, such scrutiny is often a good thing. Public scrutiny may incentivize professors to develop better class content. And with the public providing a significant source of income for public universities,⁷ an argument can be made that the public deserves to know how these resources are being spent. While the risk of increased ideological scrutiny in a more transparent university is real, we should also consider that a more open academy might foster greater academic inquiry and rigor, rather than stifle it. Why wouldn't professors who are educating the next generation

be willing to substantiate the value of their courses?

The third objection is that the language of SB 465 might require professors to produce certain course information that they do not already produce. The bill requires public universities to post course syllabi, reading lists, attendance requirements, extra-credit opportunities, and a description of required assignments and projects online. The language is written such that these materials must be posted online if produced. If there is real concern that this language will be misconstrued, a simple edit will fix that issue. SB 465 is intended to shine a light on public university education, not regulate the way professors instruct students or the content of their courses.

The transparency requirements of SB 465 would provide a benefit to the public at large insofar as increased transparency allows citizens to hold public universities more accountable. This law, which imposes a minimum burden on universities to let the public know what is being taught, strikes a nice balance between the interests of public university professors, the students, and the public.

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NOTES

1 *National Council of Teachers Quality, Inc., v. Curators of the University of Missouri*, WD76785 (Mo. Court of Appeal, Western District, August 26, 2014).

2 In reaching its decision, the court of appeals made judgments under federal copyright law that the syllabi are subject to copyright and that disclosure pursuant to state open records laws would violate provisions of federal copyright law. The court then stated that it does not have jurisdiction to address a major exception to federal copyright law, the fair use doctrine. It is curious that the court made a judgment under federal law, and then asserted it did not have jurisdiction to look at the exceptions to the federal law.

3 This opinion gives public agencies a powerful new tool for avoiding the open records and open meetings law. Some have feared, including the plaintiffs in the above-mentioned case, that public agencies will begin treating records they do not want to disclose as copyrighted work-product. If the tactic used in the instant case is successful generally, it would eviscerate the open records law.

4 The figure for four-year universities comes from adding the appropriations in FY 2014 for University of Central Missouri, Southeast Missouri State University, Missouri State University, Lincoln University, Truman State University, Northwest Missouri State, Missouri Southern State University, Missouri Western State University, Harris-Stowe University, and University of Missouri. The figure for community colleges comes from adding the FY 2014 appropriations for Crowder College, East Central College, Jefferson College, Metropolitan Community College, Mineral Area College, Moberly Area Community College, North Central Missouri College, Ozarks Technical Community College, St. Charles Community College, St. Louis Community College, State Fair Community College, and Three Rivers Community College. The figure for grants and scholarships comes from adding the FY 2014 appropriations for Department of Education Grant and

Scholarship Administration, the Academic Scholarship Program, the Access Missouri Financial Assistance Program, the A+ Schools Scholarship Program, the Advanced Placement Grants, the Public Service Survivor Grant Program, the Vietnam Veterans Survivors Scholarship Program, the Marguerite Ross Barnett Scholarship Program, the Veteran's Survivors Grant Program, the Minority Teaching Scholarship Program, the Minority and Underepresented Environmental Literacy Program, the Gear Up Program, and the Missouri Student Loan Program.

5 To determine whether use of copyrighted material is fair use, courts apply a multifactor test. Factors include the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use upon the potential market for or value of the copyrighted work.

6 "Leisure in a Diverse Culture" is a course offered at Southeast Missouri State University, <http://cstl-hhs.semo.edu/kkim/rc100/coursedescription.htm>.

7 In FY 2014, \$708.8 million was appropriated for four-year public universities. See note 5 above.



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