

Alberta Darling

Wisconsin State Senator

Co-Chair, Joint Committee on Finance

Testimony Before The Senate Committee on Judiciary and Public Safety
Senate Bill 39
Tuesday, March 19, 2019

Thank you, Chairman Wanggaard and committee members for holding a public hearing on Senate Bill 39. The legislation before you today takes important steps to reform Wisconsin's outdated expungement laws.

Expungement is the process where a person can petition the court to have his or her record expunged or cleared of a lower-level offense. Under this bill we are not changing the types of crimes eligible for expungement. An individual is only eligible for expungement if they meet specific criteria.

Currently, Wisconsin is the only state that requires judges to determine expungement eligibility when an individual is sentenced and one out of seven states that limit expungement opportunity on the basis of age. This presents significant challenges for judges and rehabilitated offenders that have paid their debt to society, yet still encounter needless restrictions to employment, housing, and higher education. These hurdles add complexity and make it more difficult to get back to living a productive meaningful life.

SB 39 helps bring Wisconsin in line with other states. This legislation removes the requirement that a judge must make the expungement determination at the time of sentencing and removes the arbitrary age restriction of 25. Under this bill, an ex-offender must wait 12 months after they have successfully completed their sentence before petitioning the courts for potential expungement.

Wisconsin has a well-documented labor shortage. SB 39 will help bridge the gap between employers looking for workers and potential employees that are rehabilitated. We have had record low unemployment levels, and we should not continue to punish those able bodied low-level offenders who want to work. By helping these individuals get sustainable jobs we are significantly lowering the chances of recidivism, subsequently helping to curb our increasing Department of Corrections costs.

I would like to thank Representatives Steffen and Goyke and Senator Risser for their leadership on this issue. Thank you committee members for holding a hearing on SB 39, and I hope I can count on your support.



DAVID STEFFEN

STATE REPRESENTATIVE • 4TH ASSEMBLY DISTRICT

March 19, 2019

Testimony to the Senate Committee on Judiciary and Public Safety on Senate Bill 39

Chairman Wanggaard and Committee Members,

Thank you for the opportunity to testify in favor of Senate Bill 39 relating to the expungement of records of certain crimes. I am thrilled to be here with Senator Darling and Representative Goyke and present this bipartisan solution for the workforce shortage issue facing this state. SB 39 makes common-sense revisions to Wisconsin's outdated expungement law and is an important step in connecting employers in need with potential employees who are looking to overcome their past and find success in the workforce.

Expungement refers to the current process where a person petitions to have his or her record expunged (or removed from Wisconsin's public court records) of a non-violent, lower-level offense. An individual is only eligible for expungement if they meet certain criteria. Currently, a judge can only order that an individual is eligible for expungement at the time of sentencing and it is only available to individuals under the age of 25.

This bill would allow a judge to order that a record be expunged after a person completes his or her sentence, and removes the arbitrary age limit of 25. Currently, Wisconsin is an outlier in both of these areas. The vast majority of states do not have an age limit and also allow expungement upon completion of the sentence rather than at the time of sentencing. The bill does not change what offenses are eligible for expungement, which are misdemeanors and low-level felonies (Class H & I).

Under Wisconsin's current expungement law, many able-bodied residents are forced to sit on the workforce sidelines. During a time when nearly every industry in Wisconsin is facing a workforce shortage, SB 39 plays a crucial role in connecting employers in need with this untapped workforce- which is why business organizations such as NFIB, MMAC, Wisconsin Independent Businesses and Wisconsin Small Businesses United are engaged and supportive of this measure.

Thank you for the opportunity to speak in favor of this bill I encourage you to join me in supporting this legislation.

March 19, 2019

Public Testimony of State Representative Evan Goyke

Re: Senate Bill 39 - Expungement Reform: Providing Pathways to Employment

Wisconsin's current expungement law is unique in America. We are an outlier to the rest of the country. Conservative and liberal groups have come together and made recommendations to the legislature that our current statutes need to be changed.

We are the only state that requires a judge to determine eligibility for expungement "at the time of sentencing." This requires judges to look into the future and guess whether an individual will earn expungement rather than base the decision on what the individual has done to earn expungement. Senate Bill 39 removes the "at the time of sentencing" language and replaces it with a procedure fair to all criminal justice system participants. This bill allows judges to approve (or deny) an expungement petition at the completion of the sentence.

The bill makes *no changes to current law* regarding what crimes are eligible for expungement.

SB 39 further defines what it means to successfully complete a sentence. To ensure that only individuals that have successfully completed their sentences (and have not reoffended) will be eligible for expungement, this bill clearly defines what it means to successfully complete a sentence, which includes completing community services, paying all fines, fees, restitution, and completing any community supervision without revocation.

SB 39 also removes the arbitrary age limit of 25. This policy was highlighted in research done by The Wisconsin Policy Forum and The Badger Institute. Wisconsin is one of only four states to have an age limit. The decision of whether or not to expunge a record should be based on merit and how an individual rehabilitated themselves, rather than an age.

The new procedure under SB 39 was created with the help of criminal justice system stakeholders. The process balances pressures on caseloads with the individual rights of victims and defendants. The result is a process that ensures victim input through the district attorney's office, while judges retain discretion to be the ultimate decision makers.

The expungement process under SB 39 would work like this:

1. An eligible individual is sentenced
2. The individual successfully completes his or her sentence
3. After at least one year following successful completion, the individual petitions for expungement in the same county of their conviction.
4. The court reviews whether or not the individual is currently eligible.
5. If eligible, the court forwards the petition to the District Attorney who must make an attempt to contact a victim if there is one and decide whether to contest expungement
6. Judge schedules hearing if needed, both sides argue and Judge decides
7. If denied, individual must wait 2 years before petitioning again. An individual can only petition a court twice - SB 39 does not provide unlimited petitioning.

One additional important feature of SB 39 is that it is retroactive. Retroactivity is critical to give an opportunity for eligible individuals that never had a chance for expungement. Under our current procedure, individuals that never asked for expungement at sentencing, or those that didn't know they could ask, don't have a remedy. Applying SB 39's procedure retroactively gives these individuals the opportunity at a second chance.

You will hear from some individuals today that have done everything they can to rehabilitate themselves – they've long finished the court ordered sentence, but because expungement wasn't granted "at the time of sentencing," they will be without a remedy.

Together, moving the "time of sentencing" and removing the arbitrary age limit of 25, SB 39 modernizes Wisconsin's expungement law in two important ways. Together, these changes will benefit a large number of Wisconsinites forced to the sidelines of employment because of an old criminal conviction.

Thank you for your consideration and I am happy to take any questions.



STATE BAR OF WISCONSIN

Leaders in the Law. Advocates for Justice.®

To: Members, Senate Judiciary & Public Safety Committee
From: State Bar of Wisconsin
Date: March 19, 2019
Subject: Support for SB 39 – criminal record expungement

The State Bar of Wisconsin supports passage of SB 39 expanding the ability of certain persons to expunge court records.

The State Bar commends Senators Darling and Risser and Representatives Steffen and Goyke for taking the lead on this important legislation. We also applaud the 17 Senate co-sponsors for supporting this legislation that will be a “game changer” for so many Wisconsinites trying to start their lives over.

The criminal justice system aims to prepare ex-offenders to re-enter society and successfully move forward with their lives upon release from prison, probation, or parole. All too often, however, ex-offenders encounter substantial barriers in attempting to do so, long after paying the price for their past. One of the most significant ways to remove or reduce these barriers is to allow for the expungement of criminal records.

Over the years, studies have shown time and again even minimal contact with the criminal justice system can have a significant detrimental impact on various aspects of a person’s life. The collateral consequences of a criminal record can be a life-long barrier to success, presenting obstacles to employment, housing, education, family reunification and often resulting in significant debt.

Expungement is an issue that has been before the Legislature and the Supreme Court during the last several years, yet, despite extensive study and discussion, there have been few changes made. Now is the time to reverse that trend, as well as improve the lives of those who continue to struggle long after paying their debt to society and are ready to move forward in our communities.

The State Bar of Wisconsin asks for your support of this important legislation.

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The State Bar of Wisconsin is the mandatory professional association, created by the Wisconsin Supreme Court, for attorneys who hold a Wisconsin law license. With more than 25,000 members, the State Bar aids the courts in improving the administration of justice, provides continuing legal education for its members to help them maintain their expertise, and assists Wisconsin lawyers in carrying out community service initiatives to educate the public about the legal system and the value of lawyers. For more information, visit www.wisbar.org.



**AMERICANS FOR
PROSPERITY**
WISCONSIN

Testimony in Support of Senate Bill 39, the Pathways to Employment Act

Chairman Wanggaard and members of the Senate Committee on Judiciary and Public Safety, thank you for the opportunity to testify in support of Senate Bill 39, the Pathways to Employment Act, which makes smart and needed reforms to Wisconsin's expungement laws. These reforms will help provide low-risk former offenders with second chances, allowing these individuals a fairer shot at putting their lives back together after fully paying their debt to society. This bill help breaks down barriers to opportunity and Americans for Prosperity (AFP) strongly supports this legislation.

Criminal records create barriers for individuals in hiring, housing, higher education and even professional licensing. Wisconsin's restrictive expungement laws put our citizens at a disadvantage when trying to successfully reenter society after serving their sentences. Senate Bill 39's modest reforms to the expungement process in Wisconsin would help people across the state get the second chances they have earned.

Under current law, a court may only expunge a person's criminal record if the person committed the crime before the age of 25 and expungement was ordered at the time of sentencing. Wisconsin is the only state in the country that requires expungement eligibility decisions at sentencing and one of only seven that limits expungement based on someone's age when committing a crime. Compared to our neighboring states, and the nation as a whole, Wisconsin has one of the most restrictive expungement laws.

The legislation would remove the current requirement only allowing expungement eligibility at sentencing. The bill would also allow people sentenced past the age of 25 to seek expungement and, importantly, allow for retroactive expungement applications. Only individuals who remain crime free for a year following the end of their sentence will be eligible for record expungement. SB 39 maintains significant discretion for judges during the expungement process. Judges are not required to issue expungement orders if they believe the individual will be dangerous or society will be harmed. Additionally, the expungement petition process allows for a District Attorney to hold a hearing if there are concerns, ensuring that all aspects of the criminal justice system are involved in any expungement decision.

Wisconsinites with a past criminal record should not face unnecessary barriers to opportunity once they complete their sentences and continue to live crime-free. These individuals deserve a chance to fully rejoin communities with a fair shot at employment, housing, education and certain professional licensing.

Americans for Prosperity strongly urges members of the Senate Committee on Judiciary and Public Safety to support this important and meaningful legislation. AFP thanks Senators Darling and Risser and Representatives Steffen and Goyke for authoring these bills. Thank you for the opportunity to support this legislation that makes significant progress toward breaking down the barriers nonviolent ex-offenders face in our communities. We are happy to answer any questions committee members may have.



March 19, 2019

Testimony in Support of Senate Bill 39
Julie Grace, Policy Analyst
Badger Institute

Chair Wanggaard and Members of the Committee:

Thank you for the opportunity to testify before you today in support of Senate Bill 39, which will make necessary reforms to Wisconsin's expungement law. I am a policy analyst for the Badger Institute, and our research on this issue has shown that a few elements of the current law render it ineffective.

Specifically, in 2017 we released a report titled, "Black Robes and Blue Collars," which examined how the state's existing expungement statute is being used in practice. We looked at more than 10,000 expunged cases with almost 21,000 different counts or charges filed in Wisconsin between Jan. 1, 2010, and April 14, 2017. We found that the prevalence of expungement varied based on an offender's age, county and race.

For instance, Milwaukee County had over three times the number of charges eligible for expungement than Outagamie, La Crosse or Kenosha counties during the period we examined. Yet, Milwaukee, with 506 total expungements, had fewer than these other counties, which had 640, 623 and 579 expungements, respectively.

Disparities exist elsewhere in the state, too. Washburn and Burnett counties each have about 15,000 residents and virtually identical household income and poverty levels. Yet during the period we studied, Washburn had 124 expungements, while Burnett had five.

These disparities and others we included in our report reveal that the current law contains a crucial flaw: judges are asked to make a determination regarding eligibility at the time of sentencing instead of at a later date when evidence of a defendant's rehabilitation would be more apparent.

We believe that decisions regarding expungement eligibility should be made after offenders serve their time and are given the opportunity to prove themselves eligible through good behavior. Not only will this allow judges to consider a defendant's post-sentencing behavior, it will also allow defendants to petition for expungement further from the chaotic time of prosecution.

We understand that judges – not bureaucrats – will continue to make these decisions, as it should be. But judges need better information and the ability to make informed decisions at a more appropriate time. The basic reforms included in this bill will equip judges to make better-informed decisions and will likely lead to more consistent application of the expungement option statewide.

The Badger Institute has also addressed Wisconsin's expungement laws as part of the Wisconsin Criminal Justice Coalition – a group of organizations working together to research and advance commonsense criminal justice reform in Wisconsin. In our recommendations booklet, which was released this past October, we identify solutions that we believe will decrease taxpayer expenditures on corrections and increase public safety.

We found that Wisconsin is in good company. Other states, including Indiana, Montana, Tennessee, Illinois, North Carolina, Pennsylvania, West Virginia, Colorado, North Dakota and Texas, have reformed their expungement laws.

We also determined that an arbitrary age restriction should not be a factor in determining whether a low-level offender deserves a second chance. The current age restriction simply obstructs many non-violent, one-time offenders from the same opportunity given to those of a younger age.

Expungement for low-level offenses is ultimately a pathway to employment. The Badger Institute is encouraged by the reasonable and common-sense reforms in this legislation. We look forward to continuing to provide research and analysis that will hopefully contribute to future criminal justice reforms that reduce costs, protect public safety and put people to work. I am happy to answer any questions related to our research on this topic.

LWW LEAGUE OF WOMEN VOTERS® OF WISCONSIN

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March 19, 2019

To: Senate Committee on Judiciary and Public Safety

Re: Support for SB 39

The League of Women Voters of Wisconsin believes the goal of criminal sanctions should be to protect society through deterrence, incapacitation and reform. We support SB 39 because it focuses on the reform opportunity in the justice system.

The League supports SB 39 because it allows recognition of an offender's changed behavior. In the recent past an imbalance has been created in the justice system by increasing the punitive aspect of sanctions, resulting in difficulties for ex-offenders when seeking employment. Under SB 39 an expunged conviction is not considered a conviction for employment purposes.

The process of expungement as described in SB 39 provides ample opportunity for the court to determine statutory eligibility criteria for expungement and allows the judge to rule out expungement at the time of sentencing. This will prevent misuse, as the court will determine if the ex-offender will benefit and society will not be harmed.

We supported previously proposed expungement opportunities for anyone under age 26, and we now support SB39 as an appropriate expansion of this opportunity to any age. The ability to fully participate in responsible behavior in the community not only benefits the individual, it enriches and improves our communities.

We urge your support for SB 39.



WISCONSIN FREEDOM OF INFORMATION COUNCIL

Devoted to protecting Wisconsin's tradition of open government

March 19, 2019

Sen. Van H. Wanggaard
Senate Committee on Judiciary and Public Safety
Room 313 South, State Capitol
P.O. Box 7882
Madison, WI 53707

Dear Sen. Wanggaard and members of the committee:

Thank you for this opportunity to present testimony on SB-39, which will greatly expand the availability of expungement for people convicted of minor offenses. Having served on a 2006 Legislative Council committee that reviewed the issue of expungement and a 2011 Legislative Council committee that looked at access to court records related to expungement, I heartily agree that there is a need for change in this area of the law.

People should have the right to expunge a conviction even if they fail to ask for this at sentencing. Expanding the ability of expungement to people over 25 is a good idea. So is clarifying that an expunged case cannot be considered a conviction for employment purposes.

My sole concern with the bill, as a citizen and as an advocate for open government with the Wisconsin Freedom of Information Council, is that it will lead to more case files being sealed and the removal of more information about court outcomes from the state's online court records system, or WCCA, for Wisconsin Circuit Court Access.

I know that this is being done intentionally. I know the supporters of this bill think it is essential that it become more difficult for the public to learn that these cases were ever filed. This is part of a larger pattern, which last year led to a charge in policy to remove records of dismissed cases from WCCA after two years. It is reflected also in Gov. Evers call to allow all those convicted of possessing small amounts of marijuana to have their convictions expunged.

I have argued against the removal of this information for many years, and I would like to argue against it again now, however futilely. The purging of these records is based on the belief that the public cannot be trusted with access to this information. That is a disturbing precedent, based on assumptions that have never been substantiated by any actual research and which in fact are abundantly contradicted by the available evidence.

Bill Lueders, President

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✉ c/o WNA, 34 Schroeder Ct #220, Madison, WI 53711

We are told again and again that there is a large group of people who cannot under any circumstances find employment because of prior criminal convictions, no matter how minor these offenses or how long ago they occurred. Let's do the math.

The first line of the executive summary of "A Fresh Start," Wisconsin Policy Forum's recent report in support of changes to Wisconsin's expungement laws, states: "In Wisconsin, an estimated 1.4 million individuals have criminal records, which may pose a major impediment to securing a job."

The state of Wisconsin's has a workforce of around 3.1 million people, according to the Bureau of Labor Statistics; its unemployment rate is 3 percent, or about 94,000 workers. Even if every unemployed worker in Wisconsin has a criminal record, that still means 1.3 million of the 1.4 million state residents with criminal records have managed to find jobs.

Maybe that's because employers need workers. Maybe it because employers are reasonable people. Maybe the vast majority of Wisconsin residents are reasonable, and will not immediately discriminate against anyone who has at some point been convicted of a crime. Maybe the whole premise of this rush to seal and remove records is faulty.

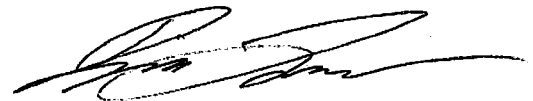
I would prefer if we could expand the availability of expungement and clarify that expunged cases cannot be considered in employment decisions without removing all record of these cases from WCCA. I would prefer that the records of these cases not be sealed. But if you cannot find a way to do that without bollixing up this whole bill, I would say as a citizen and not as an advocate for open government that you should pass this bill anyway.

Just be aware that this is going to create fresh demands from other groups for similar removal. Why should traffic offenses continue to appear? Why should records of divorces — whose business is that?

And what will happen as a result of these purges is that WCCA will no longer be a comprehensive source of information about what happens in our court system. Rather, it will become more and more a compendium of guilty people — those who are unable to get their names and case information removed.

I believe the people of Wisconsin can be trusted to know the truth about what happens in our courts. They can even be allowed to know that some convictions are expunged, because a court decided that was in the public interest. Maybe — probably — some people will abuse this information. But I believe they will be among the few and not the many.

Sincerely,



Bill Lueders President
Wisconsin Freedom of Information Council

Members of the committee:

Please understand how 'Expungement Reform' would have a significant positive impact on my personal life, work life, & my overall sense of pride as a Wisconsinite & single American woman navigating as a lower/middle class citizen & student, unable to afford higher priced lawyers to protect me.

Having grown up in a very Catholic background my whole life, I was raised very protected at home. When I finally had the chance to get out of the house or away from home, I made a few mistakes. When I moved to Madison, there was an upperclassman from high school I knew who was going to take me to see the town who didn't show, so I ended up meeting up with some people I met a few times through dorm friends to have a few drinks and watch football. It turned out to be an all guy affair after a while. I ended up driving home even after planning to stay the night, my gut told me to leave; I didn't recall what happened to get me there in my car. Time went on & the shock & horror of having done this shook me to my core. I felt trapped that I had to live with it on my record FOREVER, & thought about it every day. I was bullied enough in high school, as it was. I was told I had no chance of pleading anything other than guilty & paying terrible fines. Over the years I talked to many others in WI & wondered what was different for them that they managed to get their first DUI expunged, it didn't seem fair to me or add up. I was sentenced to time consuming courses telling me I was an alcoholic, when I was really only trying to make some friends. I know I didn't choose the right people to trust, but they weren't criminals, they were immoral 20 somethings.

4th of July rolled around a few years later & I had never been out on a boat in the sun on my birthday & I was taking care of my elderly Grandma for the summer, & even as an adult begged my family to let me go. I trusted that old friend too much, when he said we were going to camp there. My parents knew it was a bad idea, but I was desperate to make friends. This person ended up leaving half way through the day after being on a boat with some 'Wop' concoction all day. I went into panic when he randomly changed the plans for the day saying he had to go back to work for a whirlpool company. I was alone & shook in disbelief my plans were crashing down. I felt unsafe, & went to my car down the road because I felt very embarrassed, & didn't realize what I was doing at all. The cops found me in my car with the keys in the ignition & I got a second DUI on my birthday, July 4th. I never thought this could happen to me again. It was crushing.

Then came 2013, I was working at Guitar Center and moved to Appleton. I started having weird feelings I was being stalked & harassed & tried talking to my managers but they were not much help. I looked for another job @ a local wine bar, even though I had not touched alcohol in so long, to make ends meet. The managers pressured me to drink after my shift, to get to know more wine and staff. It was my first shift! Somehow, I ended up insisting to drive home even after calling a cab, when pressured to have a drink of after my first shift to get to know the staff. I ended up getting pulled over for a warning I found in my car the next day, & crashed into another vehicle rear ending them. No one was hurt physically, thank heaven. It finally woke me up to never drink again EVER, & I found a path to enlightenment through yoga. I had always loved flexibility so it is a good fit. DUIs are hard and my point is that when in treatment you may not actually be a chronic drinker, but you are told you are one. I was diagnosed with alcohol dependency, it hurt my image of self. The world of music is hard enough to navigate, because it tends to be man's world. I got my degree from Oshkosh in Organizational Administration, & have high hopes. I may never want to drive again. I certainly cannot afford to have a car. I filed bankruptcy after my third DUI.

The impact of my record being public is people are always free to be judging me on the sad scenarios I got myself into, which really does little to reflect my day to day character other than the jail and hard time I responsibly dealt with for them. I haven't drank since 2013 for the record, not that I was a binge drinker to begin with. I've worked at our local Lululemon yoga store, and a few other places, & felt personally harassed by comments where it seemed people were looking me up online, & management was judging me based on my past. It's hard to explain, but I felt it in my heart. The comments were snarky and always embarrassing in front of other people to limit my potential because they saw me as competition,

for whatever reason. I have so much fear to develop my yoga business further and find a good job, fear of harassment and belittlement mental games, 'being used' by others. I didn't want to be a person who's past owned them, in the light. I want to break free of the chains of my past so I can move on with my life! There are parts of my story I will share, of course, but I want to be the one to share them, & not have to live my life here like it is a local Hollywood, where I am open to condemnation in the workplace daily. I've inspired many more popular good friends to teach yoga, & it's the attitude I sense metaphysically. I can inspire. Though, I hold a sinking feeling of can I really help people to the best of my ability to get over their past, with them knowing my deepest past weakness, & always being able to use that to cancel me out. I know most people mean well, but it's an inevitable energy.

I even studied abroad in New Zealand & Australia in 2017 for leadership. I almost had to fly back alone from NZ because I was told there was not a problem with my VISA until way later. The university told me I was good when I told them about my DUIs, only to find out I was wrong! Miraculously, probably because of the grace of my Mom emailing and calling to the embassy with me, like mad helping me, on borrowed time! Literally, at the last hour I was given the go ahead after months of back and fourth. I went on the trip thinking it was all set, until I had to be fearful for days I'd have to go home alone. It was brutal, but worth the strength it is given me in the end. It hurt to find out another gal on my trip had a DUI & lied about it, because her lawyer told her it was alright. When all was said & done I looked a fool, because I told everyone I was going home. The plane tickets were switched. It was literally a last minute race of God scenario. I need to show people that grace. I am tired of living behind this shadow of DUI. I accept full responsibility for my past and I want everyone else to know it! That's why this is so important to me. I've seen both sides and the fight in me is surely strong, but there is always trouble in life and this public condemnation around my past has only led to unnecessary judgements on my character by employers, anxiety, & hurt evidence for me & ultimately I believe only confusing thoughts to others, not safety. Mental confusion and judging a person illegally in the workplace and through potential online harassment & the like, doesn't make anyone feel safe.

I need to live safe and free, as much as anyone & live to my full potential. I wish this for all, I want to help recovery programs, through yoga. This could be my life's purpose! I wish more than anything to others to know there is HOPE not forever condemnation, for their past.

Thank you.

With all of my heart,
~Erin Schilke

I also want to add I worked as a registrar in an ER & with the elderly in a healthcare community. I've certainly seen many walks of life, on my journey. I can only hope to be seen by my peers the way those in need saw me, as I find future work! Thanks.