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January 22nd, 2020

Chairman Kooyenga and Senate Universities, Technical Colleges, Children and Families
Committee Members,

Thank you for holding a Public Hearing on SB 403 related to free expression within the
University of Wisconsin System.

I am honored to have worked with Senator Kapenga, Representative Vos, and Representative
Murphy on this legislation as well as the substitute amendment.

Campuses across the country have erupted in protest, including violent riots, as the growing
debate over who has the right to speak threatens our nation's first amendment. This bill will
protect free speech and ensure the free exchange of ideas at our institutions of higher learning.

SB 403 is a commitment to protect the freedom of expression on college campuses in order to
encourage the broadening of thought and growth of ideas. This bill directs the Board of Regents
to develop and adopt a policy on free expression, allowing students and faculty the freedom to
express themselves as the first amendment permits. In addition, the amendment expands these
protections to students who are part of our Wisconsin Technical College System as well.

The bill and the amendment direct the Board of Regents and the Technical College System
Board to *implement disciplinary measures for anyone who engages in violent and disorderly
conduct that interferes with the free expression of others, while allowing a person whose rights
have been violated to take action.* Suppressing a viewpoint to ensure the protection of another
stifles the growth of new thought. We must ensure universities remain a place of openness and
diversity for all opinions and viewpoints.

Too often across our state we have seen viewpoints marginalized and attacked in both the UW
System and our Wisconsin Technical College System. Disruption has led to a chilling effect on
discourse.

We can all agree to disagree respectfully but no one should feel that their voice cannot be heard,
or that their viewpoint is going to be suppressed.

We need this legislation to codify these protections for all students. We cannot stand by and
allow the system to simply regulate itself. We must stand up and demand accountability.

Thank you for your time and I am available to answer any questions you may have.



CHRIS KAPENGA

WISCONSIN STATE SENATOR

Campus Free Speech Testimony

Senate Committee on Universities, Technical Colleges, Children and Families

Wednesday January 22nd, 2020

Thank you Chairman Kooyenga and committee members for hearing testimony on Senate Bill 403 today. The free exercise of speech is a fundamental, constitutional right. Here in Wisconsin and across the country, we have seen examples of free speech being targeted and suppressed on university campuses. Part of this growing trend teaches young people that disrupting a speech or acting with violence can shut down anyone from having their voice heard or censor speech you do not agree with. This has become the blueprint for the anti-free speech movement in America.

Our bill will address this concerning movement as well as strengthen our First Amendment rights on university campuses and technical colleges. SB 403 also provides clear parameters for school policies as we have seen school administrations demand for conformity under the cover of “speech codes” or “safe spaces”.

Specifically, the UW Board of Regents and Technical College System Board are directed to implement a policy on free expression. This policy must include items such as students and faculty have the freedom to discuss anything as permitted by the First Amendment, that it is not the role of an institution to shield individuals from speech protected by the First Amendment, and that any person lawfully on campus may protest or demonstrate, but actions interfering with the expressive rights of others can be punished.

Students accused of violating this policy are entitled to a disciplinary hearing and due process in their case. Those guilty for violent or disorderly conduct disrupting the free expression of others are subject to a range of sanctions.

Agitators trying to silence public discourse have used the current system to avoid accountability for their personal actions, shouting down speech rather than engage in an open exchange of ideas. The goal of this bill is not to limit any speech protected under the Constitution but to let free speech thrive regardless of ideology or politics. With this bill, we can affirm the ability to engage in the exchange of ideas across the spectrum without the fear of intimidation or disruption.

Thank you committee members for your time and consideration of this bill. I would be happy to answer any questions you have.



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January 22, 2020

TO: Honorable Members of the Senate Committee on Universities, Technical Colleges, Children and Families

FROM: Ray Cross, UW System President 

RE: Senate Bill 403 Testimony - For Information Only

Thank you, Chairman Kooyenga and committee members, for holding this public hearing on SB 403. Thank you to Senator Kapenga and Representatives Horlacher, Vos, and Murphy for engaging in this important dialogue on freedom of expression and academic freedom.

Freedom of expression and academic freedom are at the foundations of the University. They are ingrained in the principles of the University of Wisconsin to “encourage the continual fearless sifting and winnowing,” as eloquently stated by the Board of Regents in 1894. The Board of Regents have since reaffirmed its commitment to freedom of expression and academic freedom on multiple occasions, in 1922, 1949, 1962, 1964, 1985, 1994, 2011, 2015, and most recently in 2017.

Specifically, to address academic freedom and freedom of expression, the Regents also adopted Regent Policy 4-21 in 2017. Not only does this policy codify the Board’s commitment to freedom of expression and academic freedom, but it also lays out the disciplinary process for those who violate the policy. The policy also requires an annual report on the efforts of each institution to notify the campus community of this policy and to uphold its principles of freedom of expression and academic freedom. The most recent report is attached to this testimony. The Board of Regents is currently working through the administrative rules process to amend Chapter UWS 17 to formalize the disciplinary process in Regent Policy 4-21 so it can take effect.

Concurrently, the Board of Regents is pursuing a change to Chapter UWS 18 of the administrative rules. This change is a separate issue from the disciplinary process in Regent Policy 4-21 and Chapter UWS 17. It will update administrative rules to expand the prohibition of intentional harassment through electronic communications or phone calls to include all communications that use truly threatening or intimidating language, while removing vague language such as “annoy” and “offend”. This will ensure UW System’s administrative code is narrowly tailored regarding the type of speech that is protected and prohibited. We posted the draft rule language and plain language analysis for both proposed rules to solicit public comment on the economic impact of the rules. The commenting period is open through January 27, 2020.

We remain committed to ensuring that all members of our institutions can live, work, and learn in an environment that actively promotes civility, academic freedom, and others’ rights to freedom of expression. Thank you again for the opportunity to submit testimony on SB 403.



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DATE: December 11, 2019
TO: UW System Board of Regents
FROM: Ray Cross, President 
SUBJECT: Annual Academic Freedom and Freedom of Expression Report

On October 6, 2017, the UW System Board of Regents adopted Regent Policy Document (RPD) 4-21, "Commitment to Academic Freedom and Freedom of Expression." RPD 4-21 reaffirms the UW System Board of Regents' longstanding support of academic freedom and freedom of expression. The policy recognizes that each institution in the University of Wisconsin System has a "solemn responsibility not only to promote lively and fearless exploration, deliberation, and debate of ideas, but also to protect those freedoms when others attempt to restrict them."

The policy requires UW System to prepare an annual report for the Board of Regents describing the implementation of RPD 4-21, including a description of efforts to support academic freedom and freedom of expression and a report of policy violations. This annual report describes activities implemented by UW System institutions between July 1, 2018 and June 30, 2019. To collect information for this report, the Office of Compliance & Integrity surveyed UW System institutions.

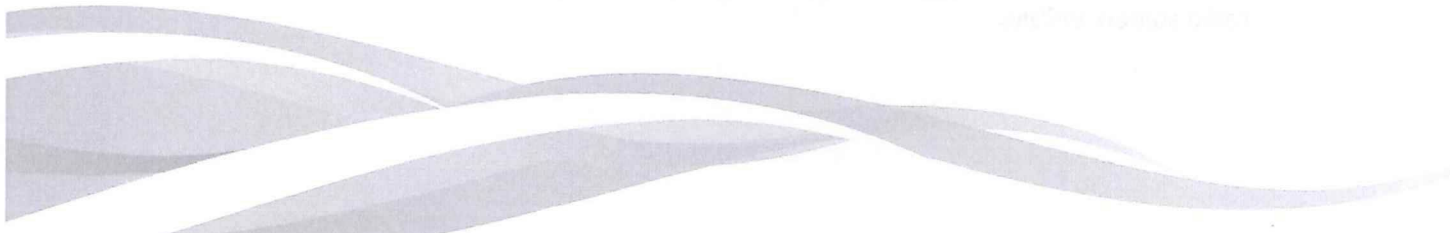
Efforts to Support Academic Freedom and Freedom of Expression

UW System institutions were asked to describe any activity endorsed by the institution to affirm a commitment to academic freedom and freedom of expression. The following report highlights examples of activities implemented by UW System institutions in support of academic freedom and freedom of expression. Institutions reported a wide variety of activities (See Attachment A, Section I).

Public Presentations on Academic Freedom and Freedom of Expression

Several institutions reported they hosted presentations and discussions open to the campus community addressing topics related to academic freedom and freedom of expression.

- At UW-Eau Claire, The Mary L. Hilfiker Symposium featured freedom of expression as a topic during a public discussion entitled "Free Speech and Campaign Finance: Debating the First Amendment and Citizens United." The event featured Ciara Torres-Spelliscy, a law professor at Stetson University, an expert on campaign finance reform with experience drafting legislation and briefs for the US Supreme Court.



- The Division of Global Inclusion and Engagement (GIE) sponsored *An Evening with Donna Brazile and Kelly Ayotte* as part of UW-Milwaukee's ongoing Freedom of Expression Series. Donna Brazile is a well-known executive in the Democratic Party and Kelly Ayotte is a well-known politician in the Republican Party. The discussion focused on how different political ideologies can work together on common projects for the good, and how women can play a large part in making this happen in the political arena.
- UW-Oshkosh invited Robert Yablon, law professor at UW-Madison to speak for Constitution Day; his research interests include political and election law, constitutional law, federal courts, and statutory interpretation. Professor Yablon spoke on "Voting and Equal Protection". Copies of the U.S. Constitution were also given out during the day in the student union concourse. Additionally, UW-Oshkosh Veteran's Resource Center hosted *Kneeling for the Flag Veterans Panel* on November 14, 2018.
- UW-Parkside hosted a Question & Answer Session with Charlie Sykes on "Overcoming Partisan Politics for the Good of the Public." The event was sponsored by the Tommy G. Thompson Center on Public Leadership and moderated by Parkside Political Science & Law Professor Ross Astoria.
- The Contemporary Political Issues Round Table Series at UW-River Falls sponsored Ellen Kennedy, PH.D., founder and Executive Director of World Without Genocide, which works to provide education about past and current conflicts. Kennedy presented "Statelessness' and the Refugee Crisis Today". The Round Table Series also hosted the lecture/discussion "Trump's Middle East Policy" by guest speaker Nurith Zmora, Professor of American History at Hamline University.
- At UW-Stout, the Center for the Study of Institutions and Innovation (CSII) guest speaker Karith Foster-Russell, shared stories and lead dialogue on diversity, specifically how to practice compassion and inspire change during her presentation of *Stereotyped 101*.
- President of Motlow State Community College and United States Air Force Veteran Michael Torrence's speech, "Bringing Civility to Civil Discourse" was part of annual Diversity Forum at UW-Whitewater in October of 2018. And in December a diverse group of students, faculty, and staff held a World Café event, Shaping our Future Through Civil Discourse.

Engaging Campus Leadership

Leadership across the UW System demonstrated a commitment to promote lively and fearless exploration, deliberation, and debate of ideas, and to protect those freedoms when others attempt to restrict them.

- UW-La Crosse Chancellor Joe Gow formed a Joint Committee on Free Speech Promotion whose purpose is to promote awareness of the principles of free speech including RPD 4-21 and to carry out programming for the campus on these themes. The committee includes representatives of the Student Senate, Faculty Senate, Academic Staff Council, and University Staff Council, and two Chancellor's designees.
- University of Wisconsin-Madison Chief of Police Kristen Roman and Interim Dean of Students Argyle Wade discussed Protest Guidelines with Academic Staff Executive Committee. Chief Roman and Dean Wade also were interviewed about the Protest Guidelines on the campus radio station, WSUM.

- UW-Milwaukee Vice Chancellor of Global Inclusion and Engagement Joan Prince and Chief Student Affairs Officer Kelly Haag are co-chairs of the “Care, Respect and Expression” work group to examine resources, response plans, education, and support to yield improvements and progress, and make UW-Milwaukee a better university. The group’s goals include consideration of a multidisciplinary response team for hate/bias incidents, organization of available resources, a communication plan, offerings for campus speakers and other content, an assessment plan to review incidents and a review of existing responder protocol.
- A joint statement from UW-River Falls Chancellor Dean Van Galen and Student Government Association President, Rosemary Pechous, reinforced the institution’s commitment to inclusiveness. The statement reminded students that everyone can contribute to the community by valuing and learning from people with diverse points of view by engaging with civility and respect.
- In May of 2018, UW-Stevens Point Chancellor Bernie Patterson signed the Inclusive Excellence declaration after it was endorsed by the university’s Diversity Council and passed by the Common Council.

Training and Coursework

Several institutions reported they provided training or coursework about free speech issues.

- During fall of 2018, UW-Milwaukee’s Division of Global Inclusion and Engagement sponsored eleven graduate students to present in their respective classes a session regarding Freedom of Expression and Difficult Dialogues. The eleven graduate students moderated two-session *classroom dialogues in eleven different classes where they are teaching assistants (TAs)*. The sessions were offered in the following departments: History, Political Science (two graduate students), Cultural Foundations of Community Education, Psychology, African and African Diaspora Studies, Communication, Digital Arts and Culture, English, JAMS (Journalism, Advertising and Media Studies), Library and Information Science. Each TA provided a copy of an article regarding opposing political sides of an issue. The class read the article and discussed it over two class sessions. Over 1600 students were exposed to the discussion regarding freedom of expression and ways in which to incorporate these concepts into teaching and learning.
- Members of the UW-Platteville Bias Incident Team (UBIT) attended a Gehring Institute program focused on the topic of the First Amendment.
- Tom Stafford from UW System Legal conducted “Free Speech on Campus” training with the Chancellor’s Cabinet at UW-Superior.
- UW- Whitewater conducted multiple Residence Life Professional Staff Training sessions in July and August that covered topics ranging from civil discourse, the First Amendment, freedom of expression, and hate/bias reporting. UW-Whitewater also requires a module on civil discourse and dealing with difficult conversations for all new students.

Policies

Several institutions reported hosting policies related to academic freedom and freedom of expression on their websites in addition to having the full policy in student handbooks. UW-Eau Claire added a summary of RPD 4-21 to the policy section on its website. The UW-La Crosse Chancellor’s website included a page on freedom of expression with information about RPD 4-21 and other relevant resources.

Barriers to Academic Freedom and Freedom of Expression

As required under RPD 4-21, UW System institutions were asked to report any material barriers to upholding academic freedom and freedom of expression and steps they have taken to remove those barriers. No institutions indicated that they had encountered barriers to protecting the freedoms outlined in RPD 4-21. UW-Whitewater indicated an interest in redefining free speech zones and an intent to begin an annual review of the special events policy to ensure compliance with relevant laws and policies.

Violations of RPD 4-21

Under RPD 4-21, any student who has twice been found responsible for misconduct that materially and substantially disrupted the free expression of others shall be suspended for a minimum of one semester. Any student found responsible a third time is required to be expelled. However, these specific provisions of the policy are not currently in force and are the subject of on-going administrative rulemaking. Employees charged with disrupting the freedom of expression of others are subject to procedures under Ch. UWS 18, Wis. Admin. Code and UW System institution policies. Until such time as the proposed rulemaking is completed, RPD 4-21 requires the Chancellor of a UW System institution to report directly to the Board any instance where the institution does not suspend or expel a student whom the institution has found responsible on two or more occasions of disrupting the expressive rights of others.

RPD 4-21 requires UW System to include a description of any formal complaint of violations of academic freedom or freedom of expression and the administrative response to the complaint as part of the annual academic freedom and freedom of expression report.

UW System institutions reported three formal complaints of violations of expressive freedoms during the academic year July 1, 2018 - June 30, 2019, none of which resulted in the suspension or expulsion of students. UW- Milwaukee reported two violations involving students and UW-Oshkosh reported one.

The first complaint at UW-Milwaukee alleged that a student on campus held a protest sign that contained offensive material outside of a student organization event and made racist and sexist comments to passersby. The student left the institution prior to completion of the investigation. A conduct hold was placed on the student's account to complete the conduct process if and/or when the student returns. The second complaint involved a student tearing up another student's sign during a protest. The investigation found the student to be responsible and resulted in educational sanctions. This was a first-time offense.

In the third complaint, a UW-Oshkosh student filed a complaint against a faculty member citing UWO policy GEN 1.2.(4). *Discrimination, Discriminatory Harassment, and Retaliation*. Subsequently the student withdrew the complaint. The review process was concluded after the student withdrew the complaint. However, University administration (Office of the Provost and Vice Chancellor for Academic Affairs) and the UWO faculty member (through the faculty member's counsel) continue to discuss the matter, as issues of classroom conduct, discipline, freedom of expression and academic freedom have been broached. No formal review or proceedings are ongoing; however, communications between UWO and the faculty member's representation continue. University administration felt it was proper to include the matter in this cycle's RPD 4-21 reporting.

Notification Requirements

The Office of Compliance & Integrity also requested information from UW System institutions regarding the status of efforts to meet the notification requirements of RPD 4-21 (See Attachment A Section II). RPD 4-21 requires each UW institution to include information regarding freedom of expression in orientation materials for freshmen and transfer students entering the institution. All institutions reported providing information about RPD 4-21 as part of their orientation sessions for new and transfer students. Information regarding RPD 4-21 was provided in various formats, for example: UW-Eau Claire provided a PowerPoint presentation as a part of the New Student Orientation, UW-La Crosse distributed pamphlets during move-in, UW-Whitewater printed the policy on the back of the Warhawk Welcome schedule during fall orientation, and UW-Milwaukee distributed campus resource cards with a QR code linking to a website for all students, which has a "First Year Students" section linked to the formal policy.

RPD 4-21 also requires institutions to notify all enrolled students and employees annually of the requirements of RPD 4-21. Institutions across UW System reported notifying students and employees with two exceptions. UW-Parkside did not notify employees during the 2018-19 academic year but has since sent a notification and updated the handbook and Human Resources (HR) website to include the policy. Going forward, the notification will be included in UW-Parkside's HR newsletter annually in September. UW Stout did not notify students specifically of RPD 4-21; however, notifications were sent to students regarding specific events demonstrating the institution's commitment to freedom of expression and academic freedom. UW-Stout plans to notify students of the policy on an annual basis going forward.

Attachment A, Section I
UW System Institution Initiatives in Support of
RPD 4-21, “Commitment to Academic Freedom and Freedom of Expression”
July 1, 2018 to June 30, 2019

Institution	Description of Activity	Date of Activity	Target Audience	Estimated Number of Students or Employees
UW-Eau Claire	A faculty panel titled “Free Speech, Hate Speech & Speaking Out: Finding your voice in the free speech debate” was held on Constitution Day. The event was widely publicized across campus digital displays, notice boards, and through an e-mail from the Dean of Students. Free pocket Constitutions were available at the event courtesy of the UW-Stout Center for the Study of Institutions and Innovation. The event was co-sponsored by the UWEC Center for Constitutional Studies, the Dean of Students office, and the Pre-Law Club; these partners typically host such a forum each Constitution Day. The event was open to the public but was primarily marketed toward students.	September 17, 2018	Students	175
UW-Eau Claire	The Mary L. Hilfiker Symposium featured freedom of expression as a topic during a public discussion entitled “Free Speech and Campaign Finance: Debating the First Amendment and Citizens United.” The event was promoted with a campus news story featured prominently on the UW-Eau Claire website, and students were engaged through digital display ads and major-specific e-mails.	October 18, 2018	Students	200

	The event featured Ciara Torres-Spelliscy, a law professor at Stetson University, an expert on campaign finance reform with experience drafting legislation and briefs for the US Supreme Court. Funding for the Hilfiker Symposium is provided through the UW-Eau Claire Foundation.			
UW-La Crosse	Free Speech Week public presentation.	November 1, 2018	Students and employees	80
UW-La Crosse	Workshop on Classroom Discussions, Free Speech, and UW System Policy.	September 25, 2018	Employees	30
UW-Madison	Interim Dean of Students Argyle Wade discussed Protest Guidelines at Division of Student Life Advisory Board.	November 1, 2018	Students	20
UW-Madison	University of Wisconsin-Madison Chief of Police Kristen Roman and Interim Dean of Students Argyle Wade discussed Protest Guidelines with Academic Staff Executive Committee.	December 6, 2018	Employee	10
UW-Madison	The campus Protest Guidelines are permanently listed in the Center for Leadership and Involvement Student Organization Resource & Policy Guide. https://guide.cfli.wisc.edu/policies/ (Protest Guidelines & Information accordion panel)	July 1, 2018 – June 30, 2019	Students	All students participating in Registered Student Organizations

UW-Madison	Chief Roman and Dean Wade also were interviewed about the Protest Guidelines on the campus radio station, WSUM.	October 2018	Students	
UW-Madison	The Center for First Year Experience co-sponsored with the Wisconsin Union Directorate Society and Politics Committee a lecture and discussion led by Political Science Professor Howard Schweber on "Free Speech and Academic Freedom."	November 19, 2018	Students	Approximately 60
UW-Milwaukee	The Division of Global Inclusion and Engagement (GIE) sponsored "An Evening with Donna Brazile and Kelly Ayotte" as part of UWM's ongoing Freedom of Expression Series. Donna Brazile is a well-known executive in the Democratic Party and Kelly Ayotte is a well-known politician of the Republic Party. The discussion focused on how different political ideologies can work together on common projects for the good, and how women can play a large part in making this happen in the political arena.	April 2, 2019	Employees and students	497
UW-Milwaukee	The Division of Global Inclusion and Engagement sponsored 11 graduate students to present in their respective classes a session regarding Freedom of Expression and Difficult Dialogues. The 11 graduate students moderated a two-session classroom dialogue in 11 different classes where they are teaching assistants (TAs). The sessions were offered in the following departments: History,	Academic Semester, Fall 2018	Students	Over 1600

	Political Science (two graduate students), Cultural Foundations of Community Education, Psychology, African and African Diaspora Studies, Communication, Digital Arts and Culture, English, JAMS (Journalism, Advertising and Media Studies), Library and Information Science. Each TA provided a copy of an article regarding opposing political sides of an issue. The class read the article and discussed it over two class sessions.			
UW-Milwaukee	Chancellor's message: Announcement of Examine Care, Respect and Expression work group, June 19, 2019. https://uwm.edu/chancellor/chancellors-update-group-to-examine-care-respect-and-expression/	June 19, 2019	Employees and students	
UW-Milwaukee	Chancellor's message: Balancing free speech and civility in response to student carrying swastika sign, May 7, 2019. https://uwm.edu/chancellor/chancellors-update-balancing-free-speech-and-civility/	May 7, 2019	Employees and students	
UW-Milwaukee	Chancellor's message: Additional response to student carrying swastika sign, May 14, 2019. https://uwm.edu/chancellor/chancellors-update-care-in-the-face-of-hate/	May 14, 2019	Employees and students	
UW-Milwaukee	Chancellor's message: Response to the Pittsburgh synagogue tragedy, Oct. 30, 2018. https://uwm.edu/chancellor/chancellors-update-pittsburgh-synagogue-tragedy/	October 30, 2018	Employees and students	

UW-Milwaukee	Chancellor's message: Compliance issues including freedom of expression, Sept. 18, 2018. https://uwm.edu/chancellor/chancellors-update-our-behavior-and-actions-matter/	September 18, 2018	Employees and students	
UW-Milwaukee	Chancellor's plenary to campus with message about guiding values and differing views, September 20, 201. Slides and video: https://uwm.edu/chancellor/fall-2018-plenary/	September 20, 2018	Employees and students	
UW-Milwaukee	Chancellor's message: Fall welcome on Guiding Values and freedom of expression events, August 23, 2018. https://uwm.edu/chancellor/chancellors-update-welcome-to-fall-at-uwm/	August 23, 2018	Employees and students	
UW-Oshkosh	Constitution Day speaker at UW-Oshkosh Campus: Robert Yablon teaches law at UW Madison; his research interests include political and election law, constitutional law, federal courts, and statutory interpretation. Copies of the constitution were also given out during the day in the student union concourse. https://uwosh.edu/adp/constitution-day/	September 17, 2018	Students	Several dozen
UW-Oshkosh	UW-Oshkosh-Fond du Lac & UW-Oshkosh-Fox Cities Campuses: Constitution Day- Posed a written question in the University Commons asking: "What does Constitution mean to YOU?"	September 17, 2018	Students	Offered to entire campus community passing by the installation

UW-Oshkosh	Voting 101: educating students on how to register, where to vote, etc...(UW-Oshkosh Campus):	October 10, 2018	Students	Approximately 100
UW-Oshkosh	2018 Veterans Panel – “Kneeling For The Flag” (UW-Oshkosh Campus). Event video: https://www.facebook.com/watch/?v=1088225541348743	November 13, 2018	Student	
UW-Oshkosh	Special Civil Liberties Undergraduate Student/Faculty Collaborative Research Grants support a broad range of research or creative work engaging issues of free speech, civil liberties, civil rights and academic freedom. These competitive grants provide undergraduate students with a \$3,000 scholarship and \$550 in supplies and expenses. Collaborating faculty and instructional staff will receive a stipend of \$750. UW OSHKOSH TODAY: https://uwosh.edu/today/72735/research-study-brings-student-and-professor-together-to-study-generation-zs-involvement-in-the-political-process/	Fall 2018	Students and faculty	
UW-Oshkosh	Humans of Oshkosh – Oshkosh Corp. Veteran Stories. UW OSHKOSH TODAY: https://uwosh.edu/today/73464/uw-oshkosh-student-project-tells-the-stories-of-oshkosh-corporation-veterans/	October 25, 2018	Campus Community	

	Facebook synopsis: https://www.facebook.com/notes/humans-of-oshkosh/humans-of-oshkosh-veterans-storytelling-project-veterans-and-student-storyteller/1289388181213983/			
UW-Oshkosh	American Democracy Project Debate Night - provided information about the candidates running and debated issue. Student newspaper coverage. https://advancetitan.com/news/2018/11/08/students-debate-political-issues	November 5, 2018	Students	150
UW-Oshkosh	Student Open Forum to discuss campus issues with Chancellor & Vice Chancellors.	November 15, 2018	Students	60
UW-Oshkosh	Fredric March Theatre Open Forum:- discussion of possible name change due to KKK affiliations.	March 4, 2019 April 8, 2019	Campus Community	Approx. 10
UW-Oshkosh	UW-Oshkosh Student Association Elections Debate.	March 11, 2019	Students	100
UW-Oshkosh	"Call to Action" Forum: Discussing a bias incident. https://www.postcrescent.com/story/news/education/2019/03/19/racist-homophobic-snapchat-sparks-frustration-anger-uw-oshkosh/3202560002/	March 18, 2019	Employees and students	220 to 300
UW-Oshkosh	Women and Religion Panel	March 21, 2019	Campus Community	

UW-Oshkosh	Speaker: Moving Past Hate	April 8, 2019	Campus Community	150
UW-Oshkosh	Social Justice Week: various speakers on a wide variety of topics. https://www.uwosh.edu/social_justice/social-justice-week-2019	April 16- 21, 2019	Campus Community	Dozens of faculty, students, and staff
UW-Oshkosh	Center for Excellence in Teaching and Learning sponsored "Creating an Inclusive & Equitable Campus."	April 25, 2019	Employees	
UW-Oshkosh	Campus Open Forum: discussed bias incidents on campus. Media coverage (ex.): https://fox11online.com/news/local/uw-oshkosh-chancellor-reacts-after-racist-images-involving-students-emerge	April 26, 2019	Campus Community	500 +
UW-Oshkosh	Polling location for primaries and general elections (UW-Oshkosh campus).	August 14, 2018, November 6, 2018, February 19, 2019, April 2, 2019	Students	
UW-Parkside	Guest speaker/lecturer Charlie Sykes, Topic: "Partisanship and Overcoming Partisanship in Politics." Event sponsored by the Tommy G. Thompson Center on Public Leadership at UW-Madison	April 21, 2019	Public event	75-80
UW-Parkside	Guest speaker/lecturer Jonah Goldberg, Topic: "Suicide of the West." Event sponsored by the Tommy G. Thompson Center on Public Leadership at UW-Madison.	April 9, 2019	Public Event	75-80

UW-Platteville	Members of the University Bias Incident Team (UBIT) attended a Gehring Institute program on the topic of First Amendment. Lee Bird, author of The First Amendment on Campus: A Handbook for College and University Administrators.	Week of July 8, 2018	Employees	8
UW-River Falls	Open session with Higher Learning Commission Review team on Criterion 2: Integrity: Ethical and Responsible Conduct, including component 2.D: "The institution is committed to freedom of expression and the pursuit of truth in teaching and learning."	September 15, 2018	Employees	50
UW-River Falls	Lecture/Discussion "Trump's Middle East Policy" by guest speaker Nurith Zmora, Professor of American History at Hamline University. Sponsored by the Contemporary Political Issues Round Table Series and the Department of Political Science & International Studies.	October 23, 2018	Students	60
UW-River Falls	Contemporary Political Issues Round Table Discussion of recent election with UWRF political science professors Neil Kraus and Davida Alperin.	December 5, 2019	Students	60
UW-River Falls	"Statelessness and the Refugee Crisis Today," a lecture and discussion with guest speaker Ellen Kennedy, Ph.D., director of World Without Genocide at Mitchell Hamline School of Law. Contemporary Political Issues Round Table Series.	February 11, 2019	Students	60

UW-River Falls	Joint Statement on UWRF Core Values (includes reference to "discussing political issues in ways that are fair, constructive, and respectful.")	October 2, 2018	Employees and students	Email distributed to 100 % of students and employees
UW-Stevens Point	First Amendment/Free Speech forum.	September 26, 2018	Campus community	100
UW-Stevens Point	UW-Stevens Points Chancellor Patterson signed the Inclusive Excellence declaration after endorsement by the university's Diversity Council and passing by the common council.	May 2018	Campus community	
UW-Stout	Center for the Study of Institutions and Innovation (CSII) Guest speaker, Karith Foster-Russell, spoke on relationships between stereotyping and free speech.	September 25, 2018	Students	30 Students and employees
UW-Stout	CSII held panel discussing free speech and anti-orthodoxy with independent scholar Bret Weinstein, Damon Sajnani of UW-Madison and John Sharpless of UW-Madison.	October 15, 2018	Students	30 Students and employees
UW-Stout	CSII held panel discussion on important US Supreme Court First Amendment decisions with UW-Stout faculty Richard Schutta, Kate Edenborg, and David Seim.	October 16, 2018	Employees and students	20 Students and employees
UW-Stout	CSII held panel discussion on student free speech in UW System with Casey Mattox of Koch Institute, Jim Manley from Goldwater Institute, and UW-Stout student Coltan Schoenke.	October 16, 2018	Employees and students	35 Students and employees

UW-Stout	CSII held debate on hate speech and the First Amendment with Azhar Majeed from FIRE and Laura Beth Nielsen from Northwestern.	October 17, 2018	Employees and students	30 Students and employees
UW-Superior	Chancellor's Cabinet training with Tom Stafford from System Legal	October 9, 2018	Employees	11
UW-Whitewater	President of Motlow State Community College and United States Air Force Veteran Michael Torrence's speech, "Bringing Civility to Civil Discourse" as part of annual Diversity Forum.	October 8, 2018	Employees and students	
UW-Whitewater	"Shaping our Future Through Civil Discourse." A World Café model planned by a diverse group of students, faculty, and staff from across the university.	December 15, 2018	Employees and students	100
UW-Whitewater	Residence Life Professional Staff Training conducted by Eddie Moore on micro aggressions and civil discourse.	July 2018	Employees	22
UW-Whitewater	Residence Life Professional Staff Training by the Director of Residence Life that covered civil discourse, the First Amendment, and Freedom of Expression.	August 2018	Employees	23
UW-Whitewater	Resident Assistant Training by Chief Equity, Inclusion and Diversity officer, Dr. Kenny Yarbrough "Social Justice in Community".	August 2018	Employees and students	150
UW-Whitewater	Hate/Bias Reporting and Civil Discourse Discussions. Every Resident Assistant Staff	August 2018	Students	130

	discussed hate/bias reporting and civil discourse in their communities.			
UW-Whitewater	New Student Seminar required module on civil discourse and dealing with difficult conversations.	Fall 2018 Spring 2019	Students	93% of new students
UW-Whitewater	Whitewater Student Government Constitution Study Guide Event - To encourage conversation regarding the US Constitution and Free Speech. 400 informational pamphlets were sent to student leaders and advisors.	September 17, 2018	Students	400
UW-Whitewater	Whitewater Student Government Listening Session - To encourage conversation regarding civil discourse and provide avenue for definition and exploration.	October 4, 2018	Students	
UW-Whitewater	Website. https://www.uww.edu/adminaffairs/compliance/freedom-of-expression	On-going	Campus Community	
UW-Whitewater	User Friendly Principles in English and Spanish . (http://www.uww.edu/adminaffairs/audit-risk-compliance-ethics#user-friendly-principles-)	On-going	Campus Community	

Attachment A, Section II
Notification Requirements as required by RPD 4-21, “Commitment to Academic Freedom and Freedom of Expression”
July 1, 2018 to June 30, 2019

Institution	Description of Activity	Date of Activity	Target Audience
UW-Eau Claire	During New Student Orientation’s opening day ceremonies, discussion of freedom of expression, open discussion, and academic freedom were facilitated through a PowerPoint presentation which linked to RPD 4-21	September 4, 2018 February 2, 2019	New Student Orientation
UW-Eau Claire	Prominent inclusion of UWS Policy in weekly all faculty/staff e-mail update	September 18, 2018 September 25, 2018	Employees
UW-Eau Claire	UWS Policy notification e-mailed from Dean of Students office	September 12, 2018	Students
UW-Eau Claire	RPD 4-21 summary was added to the policy section of UW-Eau Claire’s public website	January 16, 2019	Students and employees
UW-Green Bay	Face to Face review of RPD 4-21 during New Student Orientation	August 16, 2019	New Student Orientation
UW-Green Bay	UWS Policy notification emailed	October 18, 2019	Students and employees
UW-La Crosse	Distribution of pamphlets to students during move-in	August 31, 2018 – September 2, 2018	Students
UW-La Crosse	UWS Policy notification emailed from Chancellor	September 4, 2018 October 23, 2018	Students and employees
UW-La Crosse	Video presentation by the Division of Student Affairs (https://www.youtube.com/watch?v=XgE2tDFBjGY)	August 31, 2018 – September 2, 2018	New Student Orientation

UW-Madison	E-mailed article "Guidelines help students distinguish between activism and disruption" in the Student Weekly newsletter. See attached document: "Student Protest Guidelines Story final"	September 6, 2018	Employees and students
UW-Madison	Center for Leadership and Involvement sent a message to the leadership of all Registered Student Organizations	October 18, 2018	Student leaders of Registered Student Organizations
UW-Madison	Protest Guidelines appeared in Center for Leadership and Involvement Buzz Newsletter	October 15, 2018	Student leaders of Registered Student Organizations
UW-Madison	Protest Guidelines appeared in the Registered Student Organization Advisor Newsletter	October 22, 2018	Registered Student Organization advisors
UW-Madison	The University of Wisconsin-Madison's orientation process spans a student's entire first year. Conversations about student rights and responsibilities begin in summer orientation sessions, are reinforced at floor meetings in University Housing, and continue to be reiterated through all student messaging on specific topics like freedom of expression.	July 1, 2018 - June 30, 2019	New and transfer students
UW-Milwaukee	All students attending New Student, Transfer, and Adult Student Orientations received a card with a QR code on it. The QR Code links to this website: https://uwm.edu/studenthandbook/student-resources/ When the students click on "First Year Students", it takes them to this site: https://uwm.edu/studenthandbook/student-		New and transfer students

	resources/first-year-students/ where a link to the formal policy is listed		
UW-Milwaukee	<p>During in-person orientation sessions, Dean of Students Office representatives' reference and encourage students to visit and review the UWM Student Handbook, which contains various resources, policies, and procedures. Regents Policy 4-21 is located on this site: https://uwm.edu/studenthandbook/policies/student-conduct/. In addition, first year students have a separate resource website, where Regent Policy 4-21 is listed on this site: https://uwm.edu/studenthandbook/student-resources/first-year-students/</p>	June 4 – August 29, 2019	New and transfer students
UW-Milwaukee	<p>The Chancellor's welcome email to all students addressed Guiding Values and Freedom of Expression. This was a non-opt out email, meaning all students receive it regardless as to whether students have opted out of email messages from the University</p>	August 28, 2018	Students
UW-Milwaukee	<p>For branch campuses, all first-year students were shown a video at their New Student Orientation that contained information about UWM Health & Safety. In this video, students were encouraged to review the UWM Student Handbook, which contains various resources, policies, and procedures. In addition, all students receive a packet of information that contained the link for the Student Handbook. Regents Policy 4-21 is located on these sites connected to the Handbook: https://uwm.edu/studenthandbook/policies/student-conduct/ and at</p>	June 4 – August 29, 2019	Students

	https://uwm.edu/studenthandbook/student-resources/first-year-students/		
UW-Milwaukee	UW-Milwaukee delivered cards with a QR code to branch campus students which when scanned takes students to the UW-Milwaukee Student Handbook		Students
UW-Oshkosh	UWS Policy given to all new students during summer orientation	Various dates	Students
UW-Oshkosh	UWS Policy emailed to all new students and family members (Oshkosh campus)	July 30, 2018	New students and their family members
UW-Oshkosh	UWS Policy notification emailed to all students (Oshkosh campus)	September 6, 2018	Students
UW-Oshkosh	UWS Policy notification emailed to employees (Oshkosh campus)	November 19, 2018	Employees
UW-Oshkosh	UWS Policy notification emailed (Fox Cities Campus)	September 2018	Employees and students
UW-Oshkosh	Orientation materials were presented to new students on rights and responsibilities and policies related to student conduct (Fox Cities Campus)	August 29, 2018	New students
UW-Oshkosh	UWS Policy notification emailed (Fond du Lac Campus)	September 6, 2018	Employees and students
UW-Oshkosh	Orientation materials presented to new students on rights and responsibilities and policies related to student conduct (Fond du Lac Campus)	August 28, 2018	New students

UW-Parkside	"Midnight Ranger" – Weekly electronic newsletter to students. Provides a link to the Student Handbook which includes the policy on Academic Freedom and Freedom of Expression	September 1, 2018 February 2, 2019	Students enrolled for the current term
UW-Parkside	"Be a Ranger" Orientation Session for Freshmen – topics covered include Freedom of Expression, Title IX, Classroom Behavior Expectations, Campus Safety	July 10, 12, 17, 19, 24, 26, 2018; August 24, 30, 2018; January 24, 2019; June 13, 18, 2019	Freshman students
UW-Parkside	"Be a Ranger" Orientation Session for Transfer Students - topics covered include Freedom of Expression, Title IX, Classroom Behavior Expectations, Campus Safety	July 11, 18, 25, 2018; August 15, 22, 29, 2018; December 19, 2018; January 19, 2019; April 18, 2019; May 15, 2019; June 12, 19, 2019	Transfer students
UW-Platteville	New employee onboarding includes RPD 4-21 for all new employees to read and attest to having read.	July 1, 2018 – June 30, 2019	Employees
UW-Platteville	New Student Orientation included a presentation that covered a variety of topics, including RPD 4-21. Guest speaker Jason LeVasseur addressed the policy in detail	September 2, 2018	Students
UW-Platteville	Email sent to all students containing the Student Handbook, which includes the full text of the policy	December 4, 2018	Students
UW-Platteville	UWS Policy notification emailed to all employees	September 24, 2018	Employees
UW-River Falls	Email reminder of the Student Handbook on UW-River Falls website which contains specific reference to RPD 4-21	Beginning of each semester	Employees and students

UW-River Falls	New Student and Family Programs outlines the Commitment to Academic Freedom and Freedom of Expression within the New Student and Family Program Handbook that is distributed to all incoming students and families who attend the required New Student Registration program	Distributed in August 2018, January 2019, and June 2019 for incoming students for the Fall 2018, Spring 2019, and Fall 2019 semesters.	New students
UW-Stevens Point	UWS Policy notification emailed to new and transfer students	July 24, 2018	New and transfer students
UW-Stevens Point	Free speech forum invitation emailed	September 25, 2018	Employees and students
UW-Stout	UWS Policy notification emailed to all employees	November 28, 2019	Employees
UW-Stout	Orientation for all new and transfer students included session on reporting incidents of hate or bias and included information on RPD 4-21	September 23, 2018	New and transfer students
UW-Superior	UWS Policy notification emailed from Chancellor	September 12, 2018	Employees and students
UW-Superior	UWS Policy notification emailed from Dean of Students Office	October 1, 2018	Students
UW-Superior	Dean of Students Office reviewed policy and posted on UW-Superior website	August 12, 2018	Employees and students
UW-Superior	UWS Policy statement included in written material distributed to first year students who attend Weekend of Welcome	September 3, 2018	New students

UW-Superior	UWS Policy statement included in online orientation for first year students who were unable to attend Weekend of Welcome	September 3, 2018	New students
UW-Whitewater	RPD 4-21 Academic Freedom and Freedom of Expression Announcement	September 13, 2018	Employees and students
UW-Whitewater	Students were given a copy of the Board of Regents Policy 4-21 during Warhawk Welcome (fall orientation) check-in. In an effort for students to read the policy it was printed on the back of the Warhawk Welcome events schedule.	September 2-3, 2018	New and transfer students



*Representing UW-Madison Faculty.
Strengthening Wisconsin.*

Statement to the Senate Committee on Universities, Technical Colleges, Children and Families in Opposition to Senate Bill 403, Relating to “Free Expression” Within the University of Wisconsin System

January 22, 2020

PROFS is the Public Representation Organization of the (UW-Madison) Faculty Senate, which represents the interests of the UW-Madison faculty. PROFS is linked to the shared governance structure at the university. The University Committee, the elected executive committee of the Faculty Senate, serves as the PROFS Board of Directors.

PROFS opposes Senate Bill 403 as introduced and also opposes Senate Substitute Amendment 1. Both the original bill and substitute amendment start with a “Legislative Finding” that is inaccurate on its face: “In recent years, institutions have abdicated their responsibility to uphold free speech principles... “

Have the authors of the bill made any effort to actually know and understand what UW-Madison has done when it comes to free speech? We do not believe they have.

What has been happening at UW-Madison? The governance structure at the university has been working diligently on speech issues. Faculty, students, and staff have all been engaged in this process, which has laid out a transparent and fair system for dealing with potentially volatile situations. The university has had many speakers from a variety of perspectives speak at the university in recent years, and problems have been minimized.

Also in recent years, UW-Madison has used the Handbook for Civic Discourse on Campus, prepared by Emeritus Professor Donald Downs, a campus free speech expert, to educate freshmen on free speech principles. And the UW-Madison Faculty Senate has enacted policies that protect speech at the university.

Perhaps most importantly, PROFS opposes SB 403 because the legislation would very likely have the opposite effect of what the bill’s authors say it will do. It will actually chill free speech, not protect it, by combining ambiguous language with strict sanctions. If passed, the law would certainly be challenged in court, leading to big legal bills for taxpayers, and it would most likely be found unconstitutional.

All higher education institutions – including UW-Madison and other universities in the UW System – should be given the autonomy to address their own speech issues. Appropriate institutional autonomy is itself an aspect of academic freedom.

This is a politically-driven solution in search of a problem. The legislation is not needed and should be defeated.

Thank you for considering the views of the UW-Madison faculty.

CONGRESSIONAL TESTIMONY

Protecting Free Speech on Campus

Wisconsin Senate Committee on Universities, Technical Colleges, Children,
and Families

January 22, 2020

Jonathan Butcher
Senior Policy Analyst
The Heritage Foundation

Good morning, my name is Jonathan Butcher and I am a senior policy analyst at The Heritage Foundation, a public policy, research, and educational organization in Washington, D.C. and a senior fellow at the Goldwater Institute, a research organization headquartered in Arizona. My views are my own and do not reflect an institutional position for either institute.

In October 2017, a student group invited TownHall.com editor Katie Pavlich to speak on the University of Wisconsin-Madison campus.¹ Protestors gathered outside of the room where she was speaking and held a protest. Members of the media at the event asked the protestors if they were going to shout down the Pavlich event, and the group responded that the “Heckler’s Veto” is not always out of the question.

However at the Pavlich lecture, the students in the demonstration did not shout down speaker. When the media asked why, the protestors cited

specifically the new university policy relating to consequences for violating others’ right to be heard—a policy that shares many of the same provisions with the proposal before you today. As a result, students still held a demonstration, and the invited speaker was able to give her remarks.

This is the appropriate result of policies meant to protect expression on campus.

University officials should allow anyone lawfully present on a public college campus to protest or demonstrate there, as long as they do not interfere with the ability of others to do the same.

And those on both sides of current ideological debates are badly in need of such proposals. For example, at almost exactly the same time as the University of Wisconsin incident, the executive director of the American Civil Liberties Union was prepared to deliver

¹Lilly Price and Lawrence Andrea, “Pro-Gun Speaker Event Goes on Without a Hitch Despite Cocks Not Glocks Protest,” *The Daily Cardinal*, October 10, 2017,

<https://www.dailycardinal.com/article/2017/10/p-ro-gun-speaker-event-goes-on-without-a-hitch-despite-cocks-not-glocks-protest>.

remarks at The College of William & Mary.² As she began to speak, Black Lives Matter protesters took over and shouted her down—ending the event and silencing her. Again, stated plainly: Black Lives Matter protestors used the Heckler’s Veto to silence an attorney from the ACLU.

One more example: In 2018, Morgan Bailey, a Clemson University student, set up a pro-life display on Clemson’s campus.³

The exhibit, which included small crosses and signs, was to stay in place for three days. Bailey and other students from her Young America’s Foundation chapter made themselves available to talk to interested students.

Bailey told me in an interview that on the second day of the display, Morgan left to get coffee, and when she returned just minutes later, she discovered someone had torn the signs down.

A video recording showed students destroying the display, and Bailey found pieces in different trashcans around campus.

Because she knew debates on the abortion issue can be fierce, Bailey was not surprised at the vandalism, “just really disappointed.”

We can find these problems outside of Wisconsin, Clemson’s campus, or the grounds of William & Mary. Again, a pervasive culture of censorship threatens students from both

sides of the ideological divide at colleges today.

Just in the past few years, students have shouted down and even chased off of a stage the presidents of Duke University and the University of Oregon. Not to mention the events at Middlebury or Evergreen State or Berkeley—university names that have become buzzwords in the national conversation about free expression on campus.

For the right and the left, and as both a deeply held commitment and a living tradition, freedom of speech is dying on our college campuses and is increasingly imperiled in society at large.

The individual stories cited above are just the beginning. Surveys demonstrate how widespread these problems are:

- In a 2018 survey, “15 percent of college presidents said that shout-downs are acceptable.”⁴
- Among students, there are other more troubling numbers: “10 percent of college students say it is acceptable sometimes to use violence to prevent someone from speaking. Thirty-seven percent of college students also believe shouting down speakers is sometimes acceptable.”
- Approximately two out of three respondents to a student survey said “their campus climate precludes students from expressing their true opinions because their

²Jeremy Bauer-Wolf, “ACLU Speaker Shouted Down at William & Mary,” *Inside Higher Ed*, October 5, 2017, <https://www.insidehighered.com/quicktakes/2017/10/05/aclu-speaker-shouted-down-william-mary>.

³Jonathan Butcher, “It’s Not a College’s Job to Protect Students from New Ideas,” *The Post and Courier*, January 24, 2019, [https://www.postandcourier.com/opinion/commentary/it-s-not-a-college-s-job-to-protect-](https://www.postandcourier.com/opinion/commentary/it-s-not-a-college-s-job-to-protect-students/article_53072cb4-2000-11e9-9e3f-b389ebac338e.html)

[students/article_53072cb4-2000-11e9-9e3f-b389ebac338e.html](https://www.postandcourier.com/opinion/commentary/it-s-not-a-college-s-job-to-protect-students/article_53072cb4-2000-11e9-9e3f-b389ebac338e.html).

⁴Lorelei L. Espinosa, Jennifer R. Crandall, and Elizabeth Howard, “For College Students and Presidents Alike, Free Speech Is a Balancing Act,” *Higher Education Today*, April 9, 2018, <https://www.higheredtoday.org/2018/04/09/college-students-presidents-alike-free-speech-balancing-act>.

classmates might find them offensive.” By pairing this response with the proclivity for shout downs and violence, we find a disturbing description of campus climates.

That anyone would feel it acceptable to use violence to prevent someone else from speaking is a threat to liberty everywhere. It is central to the historical and philosophical conceptions of freedom that even if one person thinks differently from everyone else, policymakers should protect that person’s right to speak.

Fortunately, Wisconsin lawmakers have examples to follow from your state and other states on how to restore the conditions that allow for the pursuit of truth in the academy and protect free expression for anyone lawfully present on a public college campus. Lawmakers in Alabama, Arizona, Georgia, and North Carolina, along with the Wisconsin Board of Regents have adopted important provisions in recent years to protect everyone’s right to listen and speak in state university systems.⁵

Specifically, the idea that students could face consequences for violating someone else’s right to speak is not a new one. In fact, provisions such as those in North Carolina and in this senate substitute amendment trace their roots to a 1969 U.S. Supreme Court ruling (*Tinker v. Des Moines*) and “the Woodward Report,” a proposal Yale issued in 1974 to protect free expression on campus.⁶

If an incident on campus involves violations of state or local ordinances—laws involving arson or physical assault, for example—then

universities should refer such issues to the proper authorities. However, university officials have the responsibility hold those committing shout downs and other disruptions of campus expression responsible for their actions.

Finally, in my conversation two years ago with Jake Lubenow, a University of Wisconsin-Madison student at the time who was active with the College Republicans, he said the Wisconsin Regent’s policies were “long overdue” and called them “a good first step.”⁷

Lubenow said the new provisions were not limiting speech. “It’s not a complicated policy. If you go into the room, you stop the speech, you’re violating the policy. If you don’t, you’re not,” he said.

Lubenow described an event involving Jordan Peterson, professor at the University of Toronto who has been outspoken on many issues, including free speech. Lubenow said protests occurred outside the building where Peterson spoke but did not interfere with the lecture. *The Daily Cardinal* reported that a student group opposed to Peterson’s ideas held a “Pronouns Workshop” at the same time.

This the kind of environment that policies protecting campus speech should create: An environment where both sides of a discussion engage in civil discourse, can listen, and can be heard.

Thank you.

⁵Jonathan Butcher, “Executive Order to Protect Free Speech on Campus Recognizes Ongoing Challenge,” The Heritage Foundation Issue Brief No. 4942, March 27, 2019, <https://www.heritage.org/sites/default/files/2019-03/IB4942.pdf>.

⁶Report on the Committee of Free Expression at Yale, December 23, 1974,

<https://yalecollege.yale.edu/deans-office/reports/report-committee-freedom-expression-yale>.

⁷Butcher, “How the University of Wisconsin Protected Its Students and First Amendment Rights.”

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Testimony in Support of Wisconsin Senate Bill 403

Dear Committee Members,

I write to you in support of the Campus Free Speech Act.

I have spent most of my professional life in a Tier 1 research university, and I have always believe in the Ivory Tower model of higher education in which students and teachers, scholars and researchers, may study and inquire without the interference of political forces. I am reluctant, then, to back legislative action that bears upon the intellectual workings of the university.

But that ideal only holds if the university maintains norms of candid expression, open inquiry, and academic freedom. If the campus itself doesn't uphold principles of academic curiosity, if it allows people to restrict a debate that others on campus wish to hear, if the campus becomes actually more constrained than the public square relative to the range of opinion on controversial matters, then it is the duty of the people's representatives to act. The public university must remain a forum of cogent and wide-ranging criticism, analysis, conjecture, refutation, and argument. It must not be allowed to succumb to disruption, censorship, sensitivity, and orthodoxy.

I earned my doctorate at UCLA in English in 1988. I taught there for one year before joining the faculty at Emory University, where I taught undergraduate and graduate courses until retiring five months ago. I have been a visiting professor at University of Colorado and Princeton University, and I worked as a political appointment in the Federal government 2003-05 (at the National Endowment for the Arts). I have written or edited ten books, contributed essays to the major journals in my field, and published opinions and reviews in New York Times, Wall Street Journal, Washington Post, Philadelphia Inquirer, Chronicle of Higher Education, etc. I am an editor of First Things magazine.

Here is the situation on college campuses throughout the country: everybody is nervous. Most people who work in higher education are generally open-minded, moderate in their reactions to contrary opinions, and eager to get on with their work and go home at night. They lean liberal on political affairs, but are willing to hear conservative opinions expressed in intelligent fashion.

As for most of the students, we have the same tendency. They want college to be a time of intellectual growth, career advancement, and social fun. They lean liberal, too, but aren't motivated to close down an event because they don't like the speaker. They have other things to do, exams pending, parties to attend, a football game coming up . . .

But we have a vocal minority on campus, among the students, faculty, and staff, who believe otherwise. They have organized around sensitive themes of race, sexuality, religion, and nation and sought to enforce a dogma in university affairs. If a speaker is invited to campus to voice

tight limits on immigration, they will seek to discredit that speaker and undermine the event. If they read an op-ed in the student newspaper that opposes affirmative action in college admissions, they will organize a campaign to shun and smear the author. A professor who openly espouses a biblical conception of marriage and sexuality may find himself the target of a Title IX complaint process.

This is a common condition, and it has had a terrible effect on the campus climate. As I said above, it has made everyone anxious. The vast majority of the university population doesn't want to get involved in these disputes. Even if they don't like the forms of disruption and vilification that the protesters have followed, they prefer to keep their heads down, stay on task, and return to their dwellings. It only takes a few cases of trouble for everyone else to say, "I don't want that to happen to me." They have learned to censor themselves.

This is the opposite of what the college experience is supposed to be. Every large institution is going to have periodic occasions of illiberal conduct, of course, but we passed the line of acceptable frequency of them long ago. We now have a permanent population of anti-free speech denizens with us on every major campus in the country. They are on the lookout for individuals and groups who violate the dogma of progressive opinion, and they are ready to act against them.

The university leaders have shown that they are incapable of handling this problem by themselves. Because the figureheads of the censors and protesters often come from historically-disadvantaged identities, they are uneasy with taking a strong stand against them. In a word, they fear charges of racism, sexism, homophobia, Islamophobia, and xenophobia. They don't like tensions at their schools; they prefer to show the public a happy world of diversity and flowering. But they feel the pressures of political correctness like an anvil on their chests. They can't fight it.

This is why the Free Speech Act is necessary. Campus leaders won't like it, but I see nothing in the Act that licenses abuse or exploitation. The stipulations in the bill are fully in accord with principles of academic freedom.

Yes, campus leaders will say they don't like it, but it may very well be the opposite it the case. They are in a tight spot. When a controversial speaker comes to campus and a student group complains, they want to show sympathy to the offended ones while also maintaining the grounds as an open society. The best solution is to tell the protesters, "I understand how you feel, but the show must go on."

But that only exposes the official himself to protests. If the legislature, however, makes the allowance of that controversial speaker a matter of state law, the campus leader is off the hook. This is no longer his decision to make. The people of Wisconsin have decreed it. The official won't say so, but he will be mighty relieved not to be on the spot.

This bill is a chance for Wisconsin's highest public officials to reaffirm the ideals of academic debate and discovery. The University of Wisconsin is a gem, one of the great systems of public higher education in the United States. My father taught math at Madison for two years in the late-Sixties, and he admired the school for the rest of his life. This bill is not a punishment of the system. It is a reinforcement of it.

Sincerely,

Mark Bauerlein

Testimony in Support of the Senate Substitute Amendment to Wisconsin Senate Bill 403

Submitted by

Stanley Kurtz

Senior Fellow, Ethics and Public Policy Center, Washington, DC

For a hearing in the Wisconsin State Senate on

January 22, 2020

My name is Stanley Kurtz, and I am a senior fellow at the Ethics and Public Policy Center in Washington DC. I am also a contributing editor at National Review Online. I hold a doctorate in social anthropology from Harvard University and have been a lecturer in the Committee on Degrees in Social Studies at Harvard University, a post-doctoral fellow at the Committee on Human Development of the University of Chicago, and Dewey Prize Lecturer in Psychology at the University of Chicago. I have covered K-12 and higher education at National Review Online, among other journalistic outlets, for nearly 20 years. I am also a co-author of the model campus free speech bill first published by Arizona's Goldwater Institute in 2017. The Goldwater model serves as a key inspiration for the Senate Substitute Amendment to Wisconsin Senate Bill 403. Since 2017, I have testified on campus free speech and related issues before legislatures in Alabama, Georgia, Florida, and Michigan. I also testified on a bill similar to the one currently under consideration by the Wisconsin Senate before the Wisconsin State Assembly in 2017.

It is my pleasure and honor to submit written testimony in favor of the Senate Substitute Amendment to Wisconsin Senate Bill 403. I would happily have appeared in person to testify in support of this bill if I hadn't had a prior commitment on the hearing date. I will focus my testimony on the discipline provisions of the Substitute Amendment, since these are the most distinctive features of the bill.

I strongly favor the provisions of the Substitute Amendment that allow for discipline of students who interfere with the expressive rights of others, very much including the provisions that mandate suspension for a second offense and expulsion for a third offense. I believe that these provisions are just, and also effective at deterring shout-downs of speakers such as the University of Wisconsin, Madison experienced in the case of Ben Shapiro in 2016. In fact, as I shall detail shortly, these provisions have already successfully worked to deter shout-downs since they were instituted as policy by the Wisconsin Board of Regents in 2017. The core purpose of these provisions is not to punish students but to deter shout-downs. In most cases, simply having the discipline provisions in law will work to prevent shout-downs from happening in the first place, thereby safeguarding freedom of speech while rendering discipline unnecessary.

It is important to recognize that the discipline provisions in this amendment do not exist in isolation but work in tandem with other key features of the amendment that help to ensure against any excess or abuse of disciplinary authority. I list these features below.

First) the bill carefully defines the phrase “materially and substantially disrupts,” and specifically excludes “minor, brief, or fleeting nonviolent disruptions of events that are isolated and short in duration;” Second) the bill includes robust due process rights for any student accused of materially and substantially disrupting the speech of others; Third) the bill ensures that new students will be informed of the discipline policy from their very first days on campus; Fourth) the annual oversight system instructs the governing board(s) of the public university system to monitor the administrative handling of discipline related to free speech, allowing it to comment if discipline is either too harsh or too lax.

Taken together, these provisions protect the rights of students, help ensure against administrative abuse, and enhance the deterrent effect of the discipline provisions in a way that makes them less likely to be invoked in practice.

The Substitute Amendment invokes Yale's storied Woodward Report of 1974, rightly taken as the model statement and policy affirming and protecting freedom of speech on college and university campuses. It is notable that Yale's Woodward Report recommended suspension or expulsion for even one incident in which a student participated in a shout-down. In mandating suspension only after a second incident, and expulsion only after a third, the Substitute Amendment is taking a notably more mild approach than the Woodward Report itself. That report was lauded in its day by liberals and conservatives alike.

It may be objected by some that a student who participates in a shout-down a second or even a third time may do so with varying degrees of severity in each case. Perhaps the student in question led a shout-down the first time, but merely participated under the leadership of others on a subsequent occasion. Why, some may ask, should we lock in punishment in such cases without waiting to evaluate the severity of each successive incident?

This objection overlooks the fact that the student in question would have been educated about the consequences of multiple offenses from the moment they arrived on campus, and warned again after being found responsible for silencing others the first time. If, under these circumstances, a student continues to silence others, they must bear full responsibility for their actions, even if the second or third offense was different in detail or severity from the first.

We are at a great advantage today in 2020, over 2017, when similar provisions for the discipline of students who infringe on the speech rights of others passed the Wisconsin State Assembly. Since the Board of Regents adopted the mandatory discipline policy for repeat offenses in 2017, deterrence has worked. Notably, the leader of a student protest against Katie Pavlich, an invited speaker who defended Second Amendment rights on the UW Madison campus, acknowledged to the *Daily Cardinal* that her group had decided not to disrupt Pavlich's talk because of the mandatory discipline policy then just

adopted by the Regents. Instead, the students held a robust protest against Pavlich outside the venue. In other words, everyone's speech was protected, regardless of their position on the issue. This is the model of how the discipline policy should, and in most cases will, work. Students will be deterred from shouting down speakers, protecting the expressive rights of all and making student punishment unnecessary.

I have focused on the discipline provisions, but I want to make it clear that there are many other wise and necessary provisions in this bill. The cause of action, for example, will serve as a powerful protector of free speech rights and a deterrent to administrative abuse of such rights. The annual oversight report will also have a particularly beneficial effect. The oversight report is hardly heavy-handed, since it relies strictly on the power of sunlight and persuasion. Yet involving the governing board of the university system in active oversight, and making these reports available to the governor, the legislature, and the public, will surely help to ensure that administrators safeguard free speech rights as fully as they deserve to be.

In sum, I strongly support passage of the Senate Substitute Amendment to Senate Bill 403, and I am grateful to the Wisconsin Senate for the opportunity to testify on this important measure.

CIVIL RIGHTS & LIBERTIES SECTION

To: Members, Senate Universities, Technical Colleges, Children and Families Committee
From: Civil Rights & Liberties Section, State Bar of Wisconsin
Date: January 22, 2020
Re: SB 403 – UW free expression

The Civil Rights & Liberties Section opposes SB 403 re: free expression within the UW System. The board believes this legislation restricts counter-protests and demonstrations on college campuses by requiring college administrators to investigate and punish students and staff who "materially and substantially disrupt" by blocking or just *hindering* the ability of others to attend, listen to, view, or otherwise participate in expressive activity.

This "material and substantial disruption" is intended to protect expressive activity of certain groups who reserve space for their exclusive control. By its very nature it seeks to regulate the content of speech by protecting certain groups against protest from other groups. In addition, specific provisions concerning when "speech" loses its protection create legal shelter for hateful or harmful actions now labeled as "speech." Discriminatory harassment that is so severe as to force a student or staffer to leave school, *quid pro quo* sexual harassment, and a true threat (aka fighting words) are excluded from the definitions of protected speech here.¹ "Minor, brief, or fleeting nonviolent disruptions of events that are isolated and short in duration" are also not considered to constitute material and substantial disruptions to speech. What qualifies a disruption as minor, brief, or fleeting is undefined and appears largely to turn on the feelings and observations made when lodging a complaint over the disruption. To that end, this proposal grants individuals whose "expressive" rights have been interfered with a cause of action for \$1000 or actual damages (whichever is greater) as well as attorney's fees and costs.

As such, this proposal turns free speech rights upside down by giving anyone who claims disruption with their speech the ability to demand investigations of those who oppose them as well as claims against the university should no action be taken. Given its extremely limited conceptions of harassment and discrimination, this proposal also essentially shields those who stalk students and staff or harass them because of race or gender, for instance, in ways not severe enough to cause the victims to leave school despite the harassment and stalking being prohibited under numerous other laws and policies.

On October 11th, the UW Board of Regents voted to start the process for amending administrative policy in line with what is in SB 403. As noted above, enactment of these changes would: (a) undermine the laws and policies intended to protect women and persons of color and numerous other protected groups from harassment and discrimination and (b) give those doing the harassment and discrimination a cause of action against their victims for their interference with now-protected "expressive" activity. Such an

¹ As a result, many levels of discriminatory and harassing behavior are now protected as "speech." For example: A female student who is verbally harassed because of her sex will probably *only* have a viable sexual harassment claim against her harasser if she quits school because of that harassment. Under this proposal, sexual harassment is protected free speech activity unless the victim can demonstrate that she is being deprived of access to and the benefits of educational opportunities because of that sexual harassment.



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outcome goes against the very heart and ideal of what a university education and open debate should entail.

A proposed substitute amendment, addressing some illegal outcomes in the original legislation, still leaves major problems in regards to the First Amendment and anti-discrimination law that have been noted above. The amendments, moreover, expand these outcomes to include both the UW system and Wisconsin's technical colleges.

For these reasons, the Civil Rights & Liberties section opposes SB 403 and respectfully requests you do not support these changes.

For more information, please do not hesitate to contact our Government Relations Coordinator, Lynne Davis, ldavis@wisbar.org or 608.852.3603.

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The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.