



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-3385/2
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2017 ASSEMBLY BILL 440

July 14, 2017 - Introduced by Representatives JARCHOW, TITTL, KLEEFISCH and TUSLER, cosponsored by Senators VUKMIR, LASEE, NASS, CRAIG and STROEBEL. Referred to Committee on Colleges and Universities.

1 **AN ACT to create** 36.02 and 38.05 of the statutes; **relating to:** free speech at the
2 University of Wisconsin and technical college systems and granting
3 rule-making authority.

Analysis by the Legislative Reference Bureau

This bill creates statutory requirements and prohibitions regarding free speech at the University of Wisconsin and technical college systems. The bill declares that it is not the role of a UW institution or technical college to shield individuals from speech that is protected by the First Amendment of the U.S. Constitution. The bill imposes requirements throughout both systems, including the following: 1) students, faculty, and staff have the right to assemble and engage in expressive activity; 2) the campuses are open to any speaker who is invited by students, faculty, or staff; 3) the public areas of campuses are traditional public forums; 4) administrators must remain neutral on public policy controversies; 5) administrators in their official capacity may not require students, faculty, or staff to express specified viewpoints as a condition of employment or a course requirement; and 6) any person lawfully present on campus is allowed to protest or demonstrate.

The bill also requires administrators to make all reasonable efforts and make available all reasonable resources to ensure the safety of individuals invited to speak on campuses. If administrators determine that they cannot ensure an individual's safety, the bill requires that the individual must be allowed to speak in spite of that determination. The bill prohibits any protest or demonstration that infringes on the rights of others to engage in or listen to expressive activity and requires

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administrators to sanction individuals who violate that prohibition. The bill also prohibits a person from making a true threat, as defined in the bill, against a speaker.

The bill requires the UW Board of Regents and Technical College System Board to promulgate rules establishing a disciplinary process for students, faculty, and staff who violate the bill or engage in conduct that inhibits free speech. The rules must include disciplinary sanctions specified in the bill. Finally, the bill provides that it shall not be construed to prohibit the Board of Regents, a UW institution, the TCS Board, or a technical college district from regulating speech or activities that are prohibited by law or that substantially disrupt the functioning of a UW institution or technical college.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 36.02 of the statutes is created to read:

2 **36.02 Free speech. (1) DECLARATION OF POLICY.** It is not the role of a university
3 or college campus to shield individuals from speech that is protected by the First
4 Amendment of the U.S. Constitution.

5 **(2) DEFINITION.** In this section, “true threat” means a statement by a speaker
6 that the speaker would reasonably foresee that a listener would reasonably interpret
7 as a serious expression of a purpose to inflict harm, as distinguished from hyperbole,
8 jest, innocuous talk, expressions of political views, or other speech that is similarly
9 protected by the First Amendment of the U.S. Constitution.

10 **(3) REQUIREMENTS AND PROHIBITIONS.** All of the following apply throughout the
11 system:

12 (a) Students, faculty, and academic and university staff have the right to
13 assemble and engage in expressive activity.

14 (b) The campuses are open to any speaker who is invited by students, faculty,
15 or academic or university staff.

16 (c) The public areas of campuses are traditional public forums.

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1 (d) University and college campus administrators in their official capacity may
2 not require students, faculty, or academic or university staff to express specified
3 viewpoints as a condition of employment or a course requirement.

4 (e) Any person lawfully present on campus may protest or demonstrate.

5 (f) University and college campus administrators shall make all reasonable
6 efforts and make available all reasonable resources to ensure the safety of
7 individuals invited to speak on campuses.

8 (g) University and college campus administrators shall notify an individual
9 invited to speak on campus if the administrators determine that they cannot ensure
10 the individual's safety and shall allow the individual to speak on campus in spite of
11 that determination.

12 (h) Any protest or demonstration that infringes on the rights of others to engage
13 in or listen to expressive activity is prohibited and university and college campus
14 administrators shall sanction individuals who violate that prohibition. This
15 paragraph does not prohibit faculty and academic staff from maintaining order in a
16 classroom.

17 (i) No person may make a true threat toward any speaker on campus or any
18 speaker invited to attend a campus event.

19 **(4) DISCIPLINE.** (a) The Board of Regents shall promulgate rules that establish
20 all of the following:

21 1. A disciplinary process for students, faculty, and academic and university
22 staff who violate sub. (3) or engage in conduct that inhibits free speech.

23 2. A process allowing any individual to complain to a university or college
24 campus that his, her, or any other individual's free speech rights have been or will
25 be inhibited.

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1 (b) The rules promulgated under par. (a) 1. shall include the following
2 disciplinary sanctions for students:

- 3 1. A written reprimand.
- 4 2. Denial of specified university or college campus privileges.
- 5 3. Payment of restitution.
- 6 4. Educational or service sanctions, including community service.
- 7 5. Disciplinary probation.
- 8 6. Imposition of reasonable terms and conditions on continued student status.
- 9 7. Removal from a course in progress.
- 10 8. Enrollment restrictions on a course or program.
- 11 9. Suspension.
- 12 10. Expulsion.

13 (c) The rules promulgated under par. (a) 1. shall include the following
14 disciplinary sanctions for faculty or academic or university staff:

- 15 1. A written reprimand.
- 16 2. Reduction in salary or rank.
- 17 3. Suspension.
- 18 4. Dismissal.

19 **(5) CONSTRUCTION.** Nothing in this section shall be construed to prohibit the
20 Board of Regents or a university or college campus from regulating speech or
21 activities that are prohibited by law or that substantially disrupt the functioning of
22 a university or college campus.

23 **SECTION 2.** 38.05 of the statutes is created to read:

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1 **38.05 Free speech. (1) DECLARATION OF POLICY.** It is not the role of a technical
2 college to shield individuals from speech that is protected by the First Amendment
3 of the U.S. Constitution.

4 **(2) DEFINITION.** In this section, “true threat” has the meaning given in s. 36.02
5 (1m).

6 **(3) REQUIREMENTS AND PROHIBITIONS.** All of the following apply throughout the
7 technical college system:

8 (a) Students, faculty, and staff have the right to assemble and engage in
9 expressive activity.

10 (b) The campuses are open to any speaker who is invited by students, faculty,
11 or staff.

12 (c) The public areas of campuses are traditional public forums.

13 (d) Technical college administrators in their official capacity may not require
14 students, faculty, or staff to express specified viewpoints as a condition of
15 employment or a course requirement.

16 (e) Any person lawfully present on campus may protest or demonstrate.

17 (f) Technical college administrators shall make all reasonable efforts and make
18 available all reasonable resources to ensure the safety of individuals invited to speak
19 on campuses.

20 (g) Technical college administrators shall notify an individual invited to speak
21 on campus if the administrators determine that they cannot ensure the individual’s
22 safety and shall allow the individual to speak on campus in spite of that
23 determination.

24 (h) Any protest or demonstration that infringes on the rights of others to engage
25 in or listen to expressive activity is prohibited and technical college administrators

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1 shall sanction individuals who violate that prohibition. This paragraph does not
2 prohibit faculty and staff from maintaining order in a classroom.

3 (i) No person may make a true threat toward any speaker on campus or any
4 speaker invited to attend a campus event.

5 **(4) DISCIPLINE.** (a) The board shall promulgate rules that establish all of the
6 following:

7 1. A disciplinary process for students, faculty, and staff who violate sub. (3) or
8 engage in conduct that inhibits free speech.

9 2. A process allowing any individual to complain to a technical college that his,
10 her, or any other individual's free speech rights have been or will be inhibited.

11 (b) The rules promulgated under par. (a) 1. shall include the following
12 disciplinary sanctions for students:

13 1. A written reprimand.

14 2. Denial of specified technical college privileges.

15 3. Payment of restitution.

16 4. Educational or service sanctions, including community service.

17 5. Disciplinary probation.

18 6. Imposition of reasonable terms and conditions on continued student status.

19 7. Removal from a course in progress.

20 8. Enrollment restrictions on a course or program.

21 9. Suspension.

22 10. Expulsion.

23 (c) The rules promulgated under par. (a) 1. shall include the following
24 disciplinary sanctions for faculty and staff:

25 1. A written reprimand.

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1 2. Reduction in salary or rank.

2 3. Suspension.

3 4. Dismissal.

4 **(5)** CONSTRUCTION. Nothing in this section shall be construed to prohibit the
5 board or a district from regulating speech or activities that are prohibited by law or
6 that substantially disrupt the functioning of a technical college.

7 **(END)**