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SPEAKER OF THE WISCONSIN STATE ASSEMBLY

**Testimony on Assembly Bill 299
Assembly Committee on Colleges and Universities
May 11, 2017**

Mr. Chairman, members of the committee, thank you for the opportunity to testify on Assembly Bill 299 (AB 299). I come before you today to defend one of our most fundamental rights, the right to free speech. Campuses across the country are under attack, as intolerance and physical aggression have replaced healthy debate and a free market place of ideas. AB 299 directs the Board of Regents to implement a policy, standing against the suppression of free speech and protecting the rights of students, faculty and staff across the state.

In our own backyard, we have seen the trend of suppression of ideas as speakers have been shouted down and physically assaulted by those who do not share their beliefs. Our universities have the responsibility to encourage debate and offer up a wide range of perspectives.

While the Board of Regents has adopted a freedom of speech policy statement, last year, I challenged the UW System to practice what it preaches. My office obtained records revealing that millions of tax payer dollars are being spent primarily on liberal speakers. Colleges are a place to cultivate beliefs, but you cannot have a debate when only one side is allowed to show up.

In 1964, while the civil rights movement spurred anger, suppression, and separation throughout the nation, the University of Wisconsin – Madison stood as a pillar for free speech. Inviting controversial Alabama Governor George Wallace, civil rights activist Dion Diamond, and journalist Louis Lomax, university students encouraged a conversation from all perspectives on the “Discourses of Dissent”. Students protested the event, but that day, every voice was heard and the nation watched as Wisconsin set the bar.

Today, our nation has turned its back on the values of intellectual diversity and is instead erupting in protests challenging different views. UC Berkeley disinvited conservative speakers after protestors damaged over \$100,000 of university property. At Middlebury College in Vermont, physically violent protestors shut down a speech by Charles Murray and injured a professor. Closer to home, students at the UW-Madison disrupted a speech by Ben Shapiro, shouting obscenities and physically blocking the audience’s view of the speaker.

AB 299 encourages free speech by setting a standard within the UW System, providing definitive language in the universities’ role in protecting free speech and remaining neutral on the political issues of the day as it relates to students, faculty and staff. In addition, the bill creates a disciplinary process for those who infringe on the expressive rights of others, ensuring everyone has the opportunity to be heard.

As civil unrest continues across the country, this bill will ensure Wisconsin stands as an example of the rights provided to us by our founding fathers. An individual should not have the ability to strip the rights of others to suppress conflicting views. We must assure campuses remain a place of diversity of thought and freedom of expression.

Thank you for your time and consideration. I would be happy to answer any questions.



JESSE KREMER

STATE REPRESENTATIVE • 59TH ASSEMBLY DISTRICT

Testimony before the Assembly Committee on Colleges and Universities
State Representative Jesse Kremer
May 11, 2017

Good morning fellow members of the Assembly Committee on Colleges and Universities; and thank you, Chairman Murphy, for giving us the opportunity to speak freely with the committee on Assembly Bill 299, Wisconsin's "Campus Free Speech Act".

The 1st amendment states in-part that Congress shall make no law... abridging the freedom of speech. This right is foundational to a free society; and nowhere should this liberty be more prevalent and held more sacred than within the confines of our colleges and universities – *the free marketplace of ideas*.

Historical Context

Since the inception of the 1st amendment, free speech principals have been challenged through censorship. Within a decade of its ratification, President John Adams passed the "Alien and Sedition Acts", effectually banning criticism of the government or the president. This partisan weapon was utilized to jail newspaper editors and elected officials on the basis that their speech was untruthful. Prior to the Civil War, southern politicians sought national laws to outlaw abolitionist anti-slavery speech citing, interestingly enough, the "infliction of emotional injury" on slave owners. Following the civil war "black laws" censored and silenced Americans of color while the Victorian era ushered in the censorship of "immoral" speech. Sadly though, over the past few decades, censorship has sprouted and is now flourishing within higher academia. We have seen this gradual, yet steady erosion of free expression and free speech within our taxpayer funded colleges and universities to the point that, the "co-exist" bumper sticker no longer represents tolerance of other viewpoints, but instead is designed to shield from an "infliction of emotional injury."

The Need for More, Not Less Speech

Ironically, removing free expression from the college public square in an attempt to shield young, apparently fragile, yet critically thinking adults as offensive, has by its very nature become offensive. Attempts to stifle certain types of expression through designated "Free Speech Zones" or "Bias Response Protocols" insult the very intelligence of college students and demean the academic community as a whole.

President Obama, one not immune to hateful criticisms, stated eloquently:

"I've heard some college campuses where they don't want to have a guest speaker who is too conservative or they don't want to read a book if it has language that is offensive to African-Americans or somehow sends a demeaning signal toward women... I've got to tell you, I don't agree with that, either. I don't agree that you, when you become students at colleges, have to be coddled and protected from different points of view."



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He went on to add that groups attempting to change hearts and minds should:

"seek to understand the views, even views that are appalling to them, of the other side."

The ultimate goal of this legislation is not to promote speech that we find hateful, vile or disgusting, but to protect the liberties that allow so-called truths, ideals and the status quo to be debated within academia. If we never hear opposing viewpoints, then how can we out-argue, critique and debate long-held beliefs to effect a change within hearts and minds? Our constitutional freedoms ensure that we are authorized to make the case that opposing viewpoints are wrong. We have the right to out-argue their notions and to simply counter disagreeable speech with more speech.

Anecdotal Evidence

So the question presents itself, don't we already have policies in place? What specific grievances and unconstitutional practices are taking place within the Wisconsin university system?

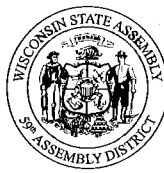
First and foremost, it should be noted that, although the Board of Regents do have a 2015 Statement affirming their commitment to freedom of expression, it has not been effective. As a student who helped to organize the Ben Shapiro and Steve Forbes protests recently noted:

*"I think if the university already has a code of conduct and [I haven't] been in trouble for it, I think that kind of says a lot on its own. **If it was disruptive, I'm sure a lot of us would be facing a penalty.**"*

Additionally, and not exclusively to the University of Wisconsin - Oshkosh, the following excerpts will also provide a flavor of the types of unconstitutional speech regulations on the books at our institutions:

1. ***Inclusivity and Diversity Handbook:*** No student should have to tolerate demeaning comments or actions of any kind.
2. ***Verbal Harassment Policies:*** The bullying, intimidation, harassment, or subjecting of another person to derogatory and/or hateful comments through means of communication.
3. ***Bias motivated Incident/Crime Reporting Form:*** The purpose is to track the nature of bias motivated incidents on and off the UW Oshkosh campus in an effort to prevent future behaviors and to help maintain a positive learning, living and working environment within our community. Examples may include but are not limited to the use of degrading language or slurs, spoken or written directed at woman, men, gays, lesbian, racist, anti-semitic, etc.

Of the subsets of speech that have been addressed by the Supreme Court, psychically hateful speech that the university system is attempting to stifle is highly subjective and protected under the 1st amendment.



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Personally, the win that the ACLU achieved in the late 1970's Skokie Trial just south of the Wisconsin border, although allowed by law, abhors me – that free expression liberties would allow a group to walk through a Jewish neighborhood with swastikas and Nazi uniforms. I find the Westboro Baptists who protested our fallen Iraqi Freedom and Enduring Freedom comrade's funerals "Thanking God for Dead Soldiers" vile and the burning of our national icon, the Stars and Stripes, disgusts me, but that does not mean that these types of expression should not be protected.

As Supreme Court Justice Louis Brandeis explained in 1927:

"If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."

Addressing Unprotected Speech

The foundational model upon which this legislation has been built stems from the Goldwater Institute. Over the course of the past few months, we have had discussions with 1st amendment attorneys at the Foundation for Individual Rights in Education (FIRE), the Goldwater Institute and Sen. Tim Neville in Colorado whose bi-partisan campus speech bill, supported by the ACLU and the University of Colorado, was recently signed into law. Every aspect of this legislation has been fleshed out and is based upon Yale and University of Chicago speech studies and prior Supreme Court precedent, including definitions and statements regarding the subsets of unprotected speech. True threat to inflict harm, quid-pro-quo sexual harassment and peer-on-peer harassment are clearly defined and will not be tolerated. Additionally, through the neutrality statement, no student or faculty member shall be compelled to express statements or viewpoints that they do not affirm.

A Behavioral Shift

One would hope that this type of legislation: ensuring, protecting and fostering free expression in Wisconsin's university system would not be necessary. Grievances by the university system, though, through unconstitutional policies that have been in place for some time and recent events have demonstrated that situations related to free expression are getting out of hand. One of the criticisms of this legislation relates to the sanction of individuals who are accused, and found guilty of, offenses that inhibit free expression. I ask you, committee members, to consider, if the university system is not able to exhibit behavioral changes through current policies, than how will we eventually stem this growing tide of unrest and the increasingly hostile "shout-down" and "heckler's veto" censorship? Under AB 299, every freshman will receive an orientation related to the 1st amendment, the freedoms that it guarantees, and the penalties for a student who tramples on the rights of others to express themselves – up to, and including expulsion.

To be fair, discipline proceedings for a student accused of free expression violations will be highly transparent, ensure due process protections, and the university system as a whole will be held to account if they do not protect the free speech of a student through the awarding of damages and attorney fees.

In closing, this is not a bill that I hoped would be necessary, but as legislators, the time to give lip-service to free expression in Wisconsin's taxpayer funded, higher education institutions is over. It is time to act



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and exact a behavioral and cultural transformation on the campus. After all, as Berkely Professor Robert Reich remarked:

"Free speech is what universities are all about. If universities don't do everything possible to foster and protect it, they aren't universities. They're playpens." (Berkely Prof. Robert Reich, also Labor Secretary to President Clinton)

Thank you again for the opportunity to testify this morning and I encourage you to support Assembly Bill 299.



State Senator Sheila Harsdorf

Date: May 11, 2017

To: Assembly Committee on Colleges and Universities

Fr: Senator Sheila Harsdorf

Re: Assembly Bill 299 - relating to free expression within the University of Wisconsin System

Dear Chair Murphy and Committee members:

Thank you for holding a public hearing on Assembly Bill 299. This proposal addresses the importance of ensuring our First Amendment right to freedom of expression.

We have seen instances on a number of campuses around the country where speakers are shut down and their safety at risk simply because some may disagree with their views. The First Amendment is intended to allow the freedom of expression of all views, not just those with which we may agree.

AB 299 calls on the Board of Regents to adopt a policy on free expression for all UW Campuses. The policy would define the primary purpose of our institutions of higher education is to share knowledge and not to shield students from free expression. This proposal would make clear that opportunities for expression are welcome on campuses by invited speakers who may have differing opinions, and that an institution of higher education shall remain neutral on public policy issues.

Our intent is to ensure and encourage the expression of varying viewpoints and allow diverse speakers to share their message without being shut down.

Again, thank you for holding a public hearing on AB 299 and I urge your support.



University of Wisconsin System President Ray Cross Testimony on 2017 AB 299

Assembly Committee on Colleges and Universities
May 11, 2017

Thank you Chairman Murphy and members of the Committee for providing the opportunity to share our thoughts on AB 299 regarding freedom of expression and freedom of speech at UW System institutions.

We would also like to thank the authors, including Speaker Vos, Representative Kremer, and Senator Harsdorf. We look forward to a continued dialogue moving forward.

One of the primary elements of the *mission* of the UW System is to help students develop intellectual and cultural sensitivities. A key part of campus culture is – and should be – to create an environment that helps students learn to engage those from different geographic areas, nations, religious and, yes, political ideologies. This includes the respectful free exchange of ideas, even those with whom we differ.

We recognize that recent events around the country have stimulated a national debate about this issue and we welcome this discussion in Wisconsin.

Therefore, we appreciate the author's interest in addressing this issue and certainly support the intent and premise of this bill. Free speech and freedom of expression needs to be given a higher priority and the substantive and material disruption of free speech cannot be tolerated within the university. Especially within the university.

We are all looking for better ways to protect the free speech and expression of speakers, while also protecting the rights of protestors. The Board of Regents, Chancellors, and university leadership recognize the need to do a better job at ensuring all voices can be heard on our campuses – liberal and conservatives alike – in the classroom, at public forums, through invited speakers, or at other events.

I have had conversations about this important issue with the legal staff at the Foundation for Individual Rights in Education (also known as FIRE), with UW-Madison Professor Emeritus Donald Downs, and with higher education colleagues around the country. There are numerous opinions and a recognition that something needs to be done, but few obvious solutions.

AB 299 offers an opportunity to discuss potential **policy changes** that could help us as we attempt to strengthen our efforts to support free speech on our campuses. The legislative authors share our goal and belief that further action on our part is needed.

In many ways, this is an extension of the action we have already taken. In December 2015, the Board of Regents adopted a resolution reaffirming our commitment to the freedom of expression, freedom of speech, and academic freedom on our campuses. This resolution language is very similar to the widely acclaimed University of Chicago policy.

The Regents acted again last fall in passing our 2020 *FWD* strategic framework, which embraced developing a premier curriculum for cultural fluency education. Within an environment of civility and respect, the university must facilitate engagement and interaction between individuals from different disciplines, different cultures, different affiliations, geographic locations, and just as importantly, between individuals holding different political ideologies.

We strongly agree with the first point of the bill in which the legislature directs the Board of Regents to develop a stronger freedom of speech/freedom of expression policy that builds on the resolution the Board adopted in December 2015. We believe a policy is needed and we agree with the authors that the Board of Regents is the most appropriate place for the development of this policy.

While we all agree on the premise of the bill, there are some areas of concern, which are very similar to the ones voiced by both the Foundation for Individual Rights in Education – or FIRE – and noted First Amendment expert, UW-Madison Professor Donald Downs:

- First, the bill uses the language of “protest” vs. “disruption.” Individuals have the right to protest, but we believe the intent of this bill is to ensure those protests do not materially and in a substantive manner unduly **disrupt** freedom of expression or speech.
- Second, the student discipline process seems overly prescriptive and inflexible and does not take into account in our current administrative code. We agree with FIRE – that “the legislature should avoid statutorily defining the minimum sanction a student must receive for engaging in this behavior....not all disruptions are equal in their severity, and sanctions should be proportional to the offense.” Any policy the Board of Regents creates should expand upon the due process and enforcement expressed in Administrative Code UWS 17, which already lists the disruption of university-authorized activities (UWS17.09(8)) as conduct subject to disciplinary action.
- Third, the bill includes an overly-broad definition of what is considered a public space, which is in conflict with the definitions prescribed under Administrative Code. This would make implementation difficult and confusing.
- Finally, the bill contains provisions that could potentially make Wisconsin a target for lawsuits from both students and invited speakers due to its enhanced private right of actions language.

Other institutions across the U.S. have developed and implemented policies that could provide guidance for Wisconsin. For example, the University of Chicago has enacted a very similar resolution to the one adopted by our Board of Regents, as well as a new policy to guide civic discourse on campus.

~~A policy similar to Chicago's would easily connect to our existing student conduct rules,~~ provide flexibility in how students are disciplined, and not include any new boards or commissions. The University of Chicago has been a national leader on this topic and I've included a copy of their policy for the committee to consider.

Of course, we recognize that policies are only as strong as the administrator's will to enforce them. You have a strong commitment from the Board of Regents, from me, and from our chancellors to take this matter seriously and to strengthen our policies and our efforts to promote freedom of expression and free speech throughout the University of Wisconsin System.

We look forward to working with the legislature and the Board to develop a policy which could help us as we strive to improve our efforts in this important matter.

Appendix V

Disciplinary System for Disruptive Conduct

I. Introduction

As recognized in the Report of Committee on Freedom of Expression, the University is fundamentally dedicated to the “preservation and celebration of freedom of expression as an essential element of the University’s culture.” The principle of freedom of expression, however, is not unlimited. The Committee on Freedom of Expression itself recognized that certain forms of expressive conduct are not protected, including violations of the law, defamation of individuals, invasion of privacy or confidentiality, and disruption of ordinary University activities. Similarly, the Report of the Ad Hoc Committee on Protest and Dissent observed that while “[v]ocal protest, and demonstrations in particular, are by their very nature disruptive to some degree,” protesters “have reciprocal obligations of respect and constructive engagement.” These obligations confer “a responsibility to not jeopardize the University’s ability to meet its commitments and obligations.” The Report further stated that the University is “entitled to impose strict limits on protest activities that threaten especially sensitive facilities and enforce those limits if they are breached.”

University Statute 21 defines and prohibits “disruptive conduct” as follows:

Disruptive conduct is conduct by an **individual or by a group of individuals** ~~one member of the University community~~ that substantially obstructs, impairs, or interferes with: (i) teaching, study, research, or administration of the University, including UCMC’s clinical mission; (ii) the authorized and other permissible use of University facilities, including meetings of University students, faculty, staff, administrators and/or guests; or (iii) the rights and privileges of other members of the University community. **Substantiality may be judged based on a single incident or on an aggregation across incidents.** ~~Anyone member of the University~~ who engages in disruptive conduct, **whether individually or as part of a group**, will be subject to disciplinary action. Disruptive conduct includes but is not limited to: (1) obstruction, impairment, or interference with University-sponsored or -authorized activities or facilities in a manner that is likely to or does deprive others of the benefit or enjoyment of the activity or facility and (2) use or threatened use of force against any member of the University community or his or her family that substantially and directly bears upon the member’s functions within the University.

Anyone may make a complaint under this system. All complaints that a student has engaged in conduct that violates Statute 21 should be made in writing and brought promptly to the attention of the Associate Dean of Students in the University for Disciplinary Affairs, and in any event no later than 60 days after the alleged misconduct occurred. The complaint should identify the name(s) of the person(s) involved, and state with specificity the nature of the misconduct, and the circumstances under which it may have been committed. In response, the University will conduct a prompt and thorough investigation as detailed below and will do so notwithstanding any external process, such as a law enforcement investigation or criminal prosecution.

II. Non-Students with a Formal University Connection

Staff employees, academic appointees, visiting academics, postdoctoral researchers, employees of affiliates and volunteers who violate Statute 21 will be subject to discipline using the disciplinary processes applicable to each category. Employees of affiliates, volunteers, visitors or guests who violate Statute 21 will be subject

to the University's Ban (No-Trespass) Policy, which governs the process by which the University denies access to some or all University property after reaching a reasoned determination that a person has engaged in, among other things, threatening, disruptive or violent conduct. Persons who are not guests and have no affiliation with the University are also subject to the Ban (No-Trespass) Policy, which may result in permanent prohibition from University property. In addition, because some conduct that violates this policy may also constitute a crime, any person who engages in disruptive conduct that constitutes a criminal act may be arrested and prosecuted.

III. Initial Fact-Gathering and Notification Process for Complaints against Students

Generally, the complainant first will discuss the allegation with the Associate Dean of Students in the University for Disciplinary Affairs (or designee). The Associate Dean of Students in the University for Disciplinary Affairs will conduct an expeditious inquiry into the facts, which may include but is not limited to interviews, information-gathering, and documentation of evidence. If warranted by the complaint and/or any other preliminary information gathered, the Associate Dean of Students in the University for Disciplinary Affairs will summon the respondent (the accused individual) to a meeting as soon as possible and provide a brief written summary of the allegation. In most cases, a respondent's refusal to participate in the initial information-gathering process will foreclose participation during later phases of the disciplinary process, including any proceeding before the Committee.

In the meeting, the Associate Dean of Students in the University for Disciplinary Affairs will inform the respondent of the alleged misconduct and will discuss the allegation and applicable investigatory and adjudicatory processes. Following the meeting, the Associate Dean of Students in the University for Disciplinary Affairs will provide the complainant and the respondent with an opportunity to provide evidence and to suggest witnesses. The Associate Dean of Students in the University for Disciplinary Affairs will not interview witnesses whose sole purpose is to provide character information about either party.

Based on the inquiry and in consultation with Faculty Chair of the Standing Disciplinary Committee on Disruptive Conduct, the Associate Dean of Students in the University for Disciplinary Affairs has the discretion and authority to dismiss the complaint. Alternatively, as explained below, the Associate Dean has the authority to resolve the complaint informally, or to refer the complaint to the Faculty Chair, who in turn may formally convene a disciplinary committee to hear the incident.

The Associate Dean of Students in the University for Disciplinary Affairs will also ensure that the complainant and respondent be updated throughout the investigative process, including timely notice of meetings where they may be present. More specifically, the complainant and respondent will be given the following written notices: (i) notice that a complaint was dismissed or that an investigation will proceed; (ii) notice of a charge filed and any information that will be used in the hearing process; (iii) notice of the date and time of any hearing and a list of hearing panel members; (iv) notice of the hearing panel's findings and, if applicable, sanctions, including an explanation of the review process; (v) notice of whether a request for review has been filed; (vi) notice of the outcome of the request for review, including whether the decision, or sanctions, have been modified; and (vii) notice when the decision and sanctions become final.

IV. Informal Resolution for Complaints against Students

With the approval of the Faculty Chair, the Associate Dean of Students in the University for Disciplinary Affairs may resolve allegations of disruptive conduct informally. As outlined above, both complainant and respondent have the opportunity to present information and suggest witnesses related to an allegation of disruptive conduct. After considering all the information available, the Associate Dean of Students in the University for Disciplinary Affairs will use the preponderance of evidence standard to determine if the respondent violated Statute 21.

If the Associate Dean of Students in the University for Disciplinary Affairs concludes that by a preponderance of the evidence, the information obtained supports a finding that the respondent violated Statute 21, then, in consultation with the Faculty Chair, the Associate Dean will determine an appropriate sanction. Sanctions may include but are not limited to, an official warning, disciplinary probation, and/or the suspension of specific student rights and privileges for a designated period. The Faculty Chair cannot issue an informal disciplinary sanction of suspension, expulsion, or degree revocation. The respondent may choose in writing to accept or reject the finding and sanction in order to reach a resolution. If the respondent rejects the finding and sanction, then the Faculty Chair will convene the Committee. If the respondent accepts the finding and sanction, the resolution of the disciplinary process becomes final and unreviewable within the University, with one exception: if the Associate Dean of Students in the University for Disciplinary Affairs or the Faculty Chair later receives new information that materially changes the evaluation of the matter, then the informal resolution may be withdrawn, and the matter heard and adjudicated by the Committee. If the respondent accepts the finding and sanction, a record of such finding and sanction will be placed in the respondent's educational record.

If the respondent is accused subsequently of disruptive conduct under Statute 21, the Associate Dean of Students in the University for Disciplinary Affairs must inform the Committee of the earlier finding and sanction if the Committee finds that the respondent violated Statute 21. The Committee then must consider the earlier finding and sanction in determining the appropriate sanction for the pending matter.

At any time before the Associate Dean of Students in the University for Disciplinary Affairs makes a finding and, if appropriate, imposes a sanction, the Associate Dean may discontinue the informal resolution process and refer the matter for formal resolution.

V. Formal Resolution for Students

If the Faculty Chair decides to convene the Committee, the Associate Dean of Students in the University for Disciplinary Affairs will ask the complainant to submit in writing the allegation as well as any available documentation supporting the allegation (to the extent such information has not already been gathered). The Associate Dean of Students in the University for Disciplinary Affairs will provide the respondent with written notice of the allegations, give the respondent a copy of these procedures, and ask the respondent to prepare a written response to the allegation. If there were witnesses to the alleged misconduct, the Associate Dean of Students in the University for Disciplinary Affairs may summon them for a meeting, ask them to submit a written statement, and summon them to appear before the Committee to answer questions.

A complainant should make every effort to include in the complaint all relevant facts known at that time and provide all available supporting materials. Normally, once the Committee is convened, the complaint will not be revised to include new or different allegations or additional supporting materials. Once the Committee is convened, the Associate Dean of Students in the University for Disciplinary Affairs may decline to investigate, or recommend that the Committee or another disciplinary committee should decide, new or different allegations based on facts that were known or reasonably should have been known to the complainant at the time of the initial complaint.

VI. The University-wide Standing Disciplinary Committee on Disruptive Conduct

The University-wide Standing Committee on Disruptive Conduct (the Standing Committee), which hears and adjudicates complaints against students, includes faculty and students drawn from all academic units, and staff representing the academic units and Campus and Student Life. At the recommendation of the Faculty Chair, an Ad Hoc Disciplinary Committee (the Committee), drawn from the Standing Committee, will convene to conduct the disciplinary proceeding.

The Committee convened to hear and adjudicate a particular complaint normally consists of three faculty

members, one student, one staff member, and the Associate Dean of Students in the University for Disciplinary Affairs (or designee). The Associate Dean of Students in the University for Disciplinary Affairs (or designee) attends the Committee proceeding in a non-voting, advisory capacity. Normally, one of the three faculty members must have a primary academic appointment in the school or division in which the respondent is enrolled at the time of the alleged misconduct. Two faculty members, including the Faculty Chair of the Committee, and one additional member (staff or student) of the Standing Committee constitute a quorum.

All members of the Committee must be able to maintain independent judgment and discharge their obligations in a fair-minded fashion, free from material bias and conflicts of interest, or they must recuse themselves. As soon as practicable before the hearing, the Associate Dean of Students in the University for Disciplinary Affairs will notify the complainant and the respondent of names and academic affiliation of Committee members. Either party may request a replacement if the participation of any member of the Committee on the grounds that such member has a genuine and material conflict of interest. Such requests must be made to the Associate Dean of Students in the University for Disciplinary Affairs within 48 hours of receiving notice of the identities of the Committee members. Requests must identify with specificity the alleged nature of the conflict of interest. Using reasoned judgment, the Faculty Chair (or designee) will decide whether the alleged conflict is genuine and material and, if so, whether it compels the Committee member's replacement via the same process.

If all Committee members agree that the information gathered by the Associate Dean of Students in the University for Disciplinary Affairs, including the written submissions of the complainant and respondent, is sufficient to make a determination (e.g., a matter in which the respondent does not dispute relevant facts), then the Committee may conclude that a hearing is not necessary. If the Committee decides that a hearing is not necessary, it will proceed directly to make a determination, including an explanation of why a hearing is not necessary.

VII. Format and Order of Student Proceedings

A. Information Considered by the Committee and the Role of the Support Person

In connection with the proceeding, the complainant and the respondent will receive the same materials, subject to compliance with FERPA (which may require redaction of certain identifying information), as received by the members of the Committee. With regard to persons summoned to appear before the Committee, if the Committee hears from other individuals, the respondent and the complainant both may be present.

The complainant and the respondent may bring to the disciplinary proceeding a person of their choice whose role is entirely limited to providing support. The support person does not function as an advocate or participate in any way during the proceeding. The Faculty Chair may decide to move forward with the proceeding if coordinating the support person's involvement causes undue delay. If the support person fails to respect the limitations of the role, engages in active advocacy, or harasses, abuses, or intimidates any participant in the proceeding, the support person will be required to leave the proceeding, which will continue in their absence. If the support person is a lawyer, a representative of the University's Office of Legal Counsel also will attend the hearing. Regardless of whether a complainant, respondent or witness is represented by counsel, at all times they are expected to speak for themselves, directly communicate with the University officials involved in the investigatory and adjudicative processes, and submit their own written statements.

B. General Process

In order to reach a fair and reasonable resolution of the complaint, Committee proceedings will generally follow the outline described below:

1. Committee proceedings are closed. The only individuals who may be present in the hearing room(s) during the proceeding are: Committee members, the Associate Dean of Students in the University for Disciplinary Affairs, the complainant and respondent (and their respective advisors), witnesses (when called), and necessary University personnel. The Associate Dean of Students in the University for Disciplinary Affairs will work with other University personnel so that any individual whose presence is required may participate in the hearing.
2. The Faculty Chair reminds all present that disciplinary proceedings are distinct from the traditional legal-judicial process, the collegiality and trust that binds all members of the University community entails an obligation of candor on the part of all involved in disciplinary proceedings, and disciplinary proceedings and their outcomes are to remain confidential.
3. The Faculty Chair notes that cell phones and any other recording devices may not be used during any part of the proceeding, and reminds those present that the Committee may set reasonable time limits for any part of the proceeding and has the authority to determine the relevance of, place restrictions on, or exclude any witnesses or information.
4. The Faculty Chair restates the basic complaint at issue before the Committee to determine what happened, whether the respondent engaged in disruptive conduct within the meaning of Statute 21, and, if so, the nature of the sanction to be imposed.
5. The Committee normally asks the respondent and complainant each to make an opening statement to the Committee about the allegations. If the proceedings involve multiple respondents accused of disruptive conduct arising out of the same event or events, the respondents each will be heard separately and not in the presence of the other respondents. If the respondent refuses to appear before the Committee, the Committee shall proceed without the respondent.
6. Committee members ask questions of the respondent and others coming before the Committee and may conduct further inquiry.
7. If the Committee hears other individuals, the respondent and complainant may be present.
8. Only the Committee may ask questions of the respondent, complainant and others who appear before the Committee; the complainant and the respondent may not cross-examine or otherwise directly engage one another or others, but may, at the discretion and direction of the Faculty Chair, suggest questions to be posed by the Committee. The Committee may revise or decline to ask any or all submitted questions.
9. When students speak to the Committee in the presence of one another, the students must maintain confidentiality of the proceeding and must not communicate about the proceeding with anyone participating in it or with others outside the proceeding.
10. At the conclusion of the proceeding, the Committee normally gives the complainant and respondent the opportunity to make concluding remarks of a reasonable duration.
11. If the respondent previously has been accused of misconduct under Statute 21, the Associate Dean of Students in the University for Disciplinary Affairs will inform the Committee of the previous accusation, other pertinent information related to the previous allegation, any finding, and any disciplinary action.
12. At the completion of the proceeding, the Committee will deliberate confidentially to consider the information obtained in the course of the proceeding and decide whether the respondent violated Statute 21 and, if so, the appropriate sanction. In making a determination, the Committee will apply a preponderance of

evidence standard. Namely, the Committee will decide whether, in consideration of all of the information before it, it is more likely than not that the respondent's conduct violated Statute 21.

13. Decisions are by majority vote of the members of the Committee.

14. The Committee will impose sanctions that are fair and reasonable given the facts and circumstances. In deciding sanctions, normally the Committee will consider the nature of disruptive conduct; the risk that the respondent may engage in additional disruptive conduct in the future; the sanctions' deterrent or permissive effect on the campus community, including on any persons or organizations aware of the disruptive conduct being adjudicated; and past precedent, if any, established by the Committee. If appropriate, the Associate Dean of Students in the University for Disciplinary Affairs will provide the Committee with the facts and circumstances of any similar, past cases and associated sanctions.

C. Sanctions

The sanctions listed below may be used singly or in combination by the Committee, which may also devise new sanctions that it deems appropriate. The same sanction options are available to the Review Board.

- **Warning:** An official letter is placed in the student's educational record. A prior warning related to misconduct under Statute 21 must be considered in determining a sanction for a current offense.
- **Disciplinary Probation:** During this defined period, a student may continue to enjoy all the rights and privileges of a student except as the Committee stipulates. A prior disciplinary probation related to misconduct under Statute 21 must be considered in determining a sanction for a current offense.
- **Loss of University Privileges:** Specific student rights and privileges, such as access to certain University buildings, events, organizations, or employment, may be suspended for a defined period.
- **Discretionary Sanctions:** The Committee may require the completion of additional academic work, community service, or restitution/fines by a given deadline.
- **Disciplinary Suspension:** For a period of no more than nine consecutive quarters, a student is prohibited from exercising any rights or privileges of a student at the University.
- **Disciplinary Expulsion:** An expelled student forfeits the rights and privileges of a student at the University. Ordinarily, the University will not consider a re-application for eleven consecutive quarters following the date of the expulsion.
- **Revocation of a Degree:** A policy violation that occurred before a degree was awarded may lead to a Committee recommendation that a degree be revoked.

D. Notification of Outcome

Normally, once deliberations have concluded, the Associate Dean of Students in the University for Disciplinary Affairs will provide the complainant and respondent with verbal or electronic notification of the outcome of the proceeding. No later than seven days after deliberations have concluded, the Associate Dean of Students in the University for Disciplinary Affairs will provide the complainant and respondent with formal, written notification of the outcome, including information regarding a request for review. The notification will include an explanation of the basis for the finding and sanction.

Decisions of disciplinary suspension or expulsion will be recorded on the respondent's transcript and usually will read "Not permitted to register from [Date] to [Date]. [Name and Title of the Dean of Students in the University], [Date]" In cases of expulsion, the notation includes a statement "Must Reapply." Other offices (*e.g.*, Housing, University Registrar) are to be notified of the finding and sanction if the action taken by the

Committee affects those offices. If required by law, permitted by law, or authorized by the respondent, the Associate Dean of Students in the University for Disciplinary Affairs may disclose allegations of misconduct and the outcome of disciplinary proceedings to third parties, including to external organizations.

The Office of Campus and Student Life will keep a written record of the matter as part of the student's educational record. This record should include all materials furnished to the Committee, a copy of the confirmation letter sent to the respondent, a statement of the main findings that were relevant to the final resolution of the disciplinary proceedings and to the sanctions imposed, as well as the considerations of the possible implications of the sanctions.

E. Requests for Review

The complainant and respondent may request a review of the resolution of the disciplinary proceeding within 15 days of being informed, in writing, of the decision. The only recognized grounds are that the prescribed procedures were not followed or that the discovery of new and material information unavailable to the Committee at the time of the proceeding bears significantly in the student's favor. A Review Board consists of one faculty member (who also serves as chair), one administrator (designated by the Dean of Students in the University), and one student. Decisions are by majority vote of the members of the Committee.

F. Confidentiality

The University must protect privacy and confidentiality to fulfill its commitment to address complaints of disruptive conduct fairly and expeditiously. It also has legal obligations under federal law to limit the dissemination of education record information, including the resolution of disciplinary proceedings outcomes, except in very limited circumstances generally inapplicable to matters under this policy. Maintaining the confidentiality of the disciplinary proceeding, including the resolution is the responsibility of the respondent, complainant and all others participating in or privy to the proceeding. Every member of the University community should recognize that breaches of confidentiality erode the community's trust in this process, impair the effectiveness of the disciplinary proceeding, and may have the purpose or effect of retaliating against those who participate in the process.

Fidelity to confidentiality is more likely to encourage parties and witnesses to participate in the process and share all information they possess, which is necessary for achieving fair outcomes. If parties or witnesses fear that their participation and the information they share will be revealed, then concerns about reputation, peer pressure, and retaliation may deter them and others from participating or even bringing forward complaints in the first instance.

For these reasons, all parties and witnesses involved in an investigation or proceeding under this disciplinary system are prohibited from disclosing, at any time and through any medium (including social media), the identity of the parties and witnesses, and any details or information regarding an incident, investigation, or proceeding to anyone except: (i) to University employees as necessary to implement any provisions of this disciplinary system or the business of the University; (ii) as permitted by this disciplinary system (exceptions listed below); or (iii) as permitted or required by law (e.g., information gathered in the course of an investigation may be subpoenaed by law enforcement authorities as part of a parallel investigation or required to be produced through other compulsory legal process).

In some circumstances, a person who fails to preserve confidentiality may face disciplinary action. For example, if a party or witness breaches confidentiality with the purpose or effect of retaliating against a person for his or her participation in an investigation or hearing, the Committee may hear a complaint of retaliation and impose sanctions. In addition, to ensure that parties and witnesses can participate in the investigation and any hearing in the absence of intimidation, harassment, or coercion, the University has the authority to issue a no-contact directive. A no-contact directive notifies individuals that they are forbidden

from having contact, directly or indirectly, personally or through others, and through any medium (including but not limited to social media), with others specified in the directive. Violation of a no-contact directive may result in a disciplinary proceeding and the imposition of sanctions.

As noted, there are exceptions to the principle of confidentiality. First, the complainant and respondent may share any information with certain people with whom they have a special relationship: parents or guardians, siblings, spouses, legal counsel, health care and mental health providers, clergy, and their support person as permitted by this disciplinary system. It is generally wise to limit the number of people with whom information is shared, particularly because they, too, must hold to the principle of confidentiality. The complainant and respondent's relationships with others, such as close friends, romantic or sexual partners, roommates, housemates, teammates, etc., do not constitute special relationships within which sharing of confidential information is permitted. Second, the University may disclose any information related to the matter as necessary to (1) those to whom it is necessary to give fair notice of the allegations and to conduct the investigation; (2) law enforcement officials consistent with state and federal law; (3) other University officials as necessary for coordinating interim measures or for health, welfare, and safety reasons; (4) government agencies that review the University's compliance with federal law and accreditation standards; and (5) third parties as permitted or compelled by law (e.g., in response to a lawful subpoena or in compliance with federal privacy law).

It bears noting that there may be serious and personal legal consequences for those who breach the requirement of confidentiality. Facts surrounding allegations of disruptive conduct are often in dispute and thus breaches of confidentiality have the potential to affect seriously the reputations of the individuals involved. Although statements made in good faith as part of University disciplinary proceedings are protected legally and should not be used as the basis for a defamation lawsuit, statements made outside of the proceedings lack that protection and could lead to a legal claim by a person who believes that the statements are false, invade privacy rights, or cause reputational damage.

VIII. Student as Employee

Nothing in this disciplinary system shall limit any student-employee's rights under Section 7 of the National Labor Relations Act (NLRA). The system thus would not apply to student-employees' participation in a demonstration, including a rally or picketing, who are represented by a collective bargaining agent and the demonstration arises in the course of or is incident to a labor dispute involving the University. However, the system applies to conduct not protected by the NLRA, including the prohibitions set forth in Statute 21, such as the destruction of property, threats of physical harm to others, the occupation of University facilities, and the disruption of University events.

IX. Other Information

Disciplinary proceedings under this system apply to anyone who has matriculated to the University, whether or not in residence, and for any graduate but only if the alleged misconduct occurred before the degree was awarded. If a complaint of disruptive conduct against a student who has applied for graduation has been brought to the attention of the Associate Dean of Students in the University for Disciplinary Affairs but by the date of graduation the matter has not yet been resolved informally or a Committee has not yet convened, the Faculty Chair has the discretion and authority to decide whether the respondent may receive the degree and/or participate in convocation. If the Committee has been convened by the date of graduation but the proceedings have not concluded, the respondent shall not participate in convocation, and the student's graduation shall be postponed until the disciplinary proceeding has concluded, and, as applicable, the completion of all sanctions.

Chapter UWS 17

STUDENT NONACADEMIC DISCIPLINARY PROCEDURES

UWS 17.01	Policy statement.	UWS 17.10	Disciplinary sanctions.
UWS 17.02	Definitions.	UWS 17.11	Disciplinary procedure.
UWS 17.03	Consistent institutional policies.	UWS 17.12	Hearing.
UWS 17.04	Notice to students.	UWS 17.13	Appeal to the chancellor.
UWS 17.05	Designation of investigating officer.	UWS 17.14	Discretionary appeal to the Board of Regents.
UWS 17.06	Nonacademic misconduct hearing examiner.	UWS 17.15	Settlement.
UWS 17.07	Nonacademic misconduct hearing committee.	UWS 17.16	Effect of discipline within the institution.
UWS 17.08	Nonacademic misconduct occurring on or outside of university lands.	UWS 17.17	Effect of suspension or expulsion within the university system.
UWS 17.09	Conduct subject to disciplinary action.	UWS 17.18	Petition for restoration of rights after suspension or expulsion.
		UWS 17.19	Emergency suspension.

Note: See ch. UWS 14 for student academic disciplinary procedures.

Note: Chapter UWS 17 as it existed on August 31, 1996 was repealed and a new chapter UWS 17 was created effective September 1, 1996. Chapter UWS 17 as it existed on August 31, 2009, was repealed and a new chapter UWS 17 was created effective September 1, 2009.

UWS 17.01 Policy statement. The missions of the University of Wisconsin System and its individual institutions can be realized only if the university's teaching, learning, research and service activities occur in living and learning environments that are safe and free from violence, harassment, fraud, theft, disruption and intimidation. In promoting such environments, the university has a responsibility to address student nonacademic misconduct; this responsibility is separate from and independent of any civil or criminal action resulting from a student's conduct. This chapter defines nonacademic misconduct, provides university procedures for effectively addressing misconduct, and offers educational responses to misconduct. The University of Wisconsin System is committed to respecting students' constitutional rights. Nothing in this chapter is intended to restrict students' constitutional rights, including rights of freedom of speech or to peaceably assemble with others.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09.

UWS 17.02 Definitions. In this chapter:

(1) "Chief administrative officer" means the chancellor of an institution or dean of a campus or their designees.

(2) "Clear and convincing evidence" means information that would persuade a reasonable person to have a firm belief that a proposition is more likely true than not true. It is a higher standard of proof than "preponderance of the evidence."

(2m) "Complainant" means any individual who is reported to have been subjected to sexual harassment, sexual assault, dating violence, domestic violence, or stalking, as defined in s. UWS 17.09.

(3) "Days" means calendar days.

(4) "Delivered" means sent by electronic means to the student's official university email address and, in addition, provided by any of the following methods:

(a) Given personally.

(b) Placed in the student's official university mailbox.

(c) Mailed by regular first class United States mail to the student's current address as maintained by the institution.

(5) "Disciplinary file" means the record maintained by the student affairs officer responsible for student discipline.

(6) "Disciplinary probation" means a status in which a student may remain enrolled in the university only upon the condition that the student complies with specified standards of conduct or other requirements or restrictions on privileges, for a specified period of time, not to exceed two years.

(7) "Disciplinary sanction" means any action listed in s. UWS 17.10 (1) taken in response to student nonacademic misconduct.

(8) "Expulsion" means termination of student status with resultant loss of all student rights and privileges.

(9) "Hearing examiner" means an individual, other than the investigating officer, appointed by the chief administrative officer in accordance with s. UWS 17.06 (2) for the purpose of conducting a hearing under s. UWS 17.12.

(10) "Institution" means any university, or an organizational equivalent designated by the board, and the University of Wisconsin colleges.

(11) "Investigating officer" means an individual, or his or her designee, appointed by the chief administrative officer of each institution, to conduct investigations of nonacademic misconduct under this chapter.

(12) "Nonacademic misconduct hearing committee" or "committee" means the committee appointed pursuant to s. UWS 17.07 to conduct hearings under s. UWS 17.12.

(13) "Preponderance of the evidence" means information that would persuade a reasonable person that a proposition is more probably true than not true. It is a lower standard of proof than "clear and convincing evidence" and is the minimum standard for a finding of responsibility under this chapter.

(13m) "Respondent" means any student who is accused of violating any provision of this chapter, and was registered for study in an institution for the academic period, or between academic periods for continuing students, when the misconduct occurred.

(14) "Student" means any person who is registered for study in an institution for the academic period in which the misconduct occurred, or between academic periods, for continuing students.

(15) "Student affairs officer" means the dean of students or student affairs officer designated by the chief administrative officer to coordinate disciplinary hearings and carry out duties described in this chapter.

(16) "Suspension" means a loss of student status for a specified length of time, not to exceed two years, with resultant loss of all student rights and privileges.

(17) "University lands" means all real property owned by, leased by, or otherwise subject to the control of the Board of Regents of the University of Wisconsin System.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; 2015 Wis. Act 330 s. 20: am. (17) Register April 2016 No. 724, eff. 5-1-16; CR 15-060: cr. (2m), (13m) Register June 2016 No. 726, eff. 7-1-16; correction in (2m), (13m) under 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

UWS 17.03 Consistent institutional policies. Each institution is authorized to adopt policies consistent with this chapter. A copy of such policies shall be filed with the Board of

Regents and the University of Wisconsin System office of academic affairs.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; 2015 Wis. Act 330 s. 20: am. Register April 2016 No. 724, eff. 5-1-16.

UWS 17.04 Notice to students. Each institution shall publish ch. UWS 17 on its website and shall make ch. UWS 17 and any institutional policies implementing ch. UWS 17 freely available to students through the website or other means.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09.

UWS 17.05 Designation of investigating officer. The chief administrative officer of each institution shall designate an investigating officer or officers for allegations of student nonacademic misconduct. The investigating officer shall investigate student nonacademic misconduct and initiate procedures for nonacademic misconduct under s. UWS 17.11. For allegations involving sexual assault, domestic violence, dating violence, stalking, or sexual harassment, the chief administrative officer shall involve the Title IX Coordinator, or designee, in accordance with applicable institutional policies.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; CR 15-060: am. Register June 2016 No. 726, eff. 7-1-16.

UWS 17.06 Nonacademic misconduct hearing examiner. (1) The chief administrative officer of each institution, in consultation with faculty, academic staff, and student representatives, shall adopt policies providing for the designation of a student nonacademic misconduct hearing examiner to fulfill the responsibilities of the nonacademic misconduct hearing examiner in this chapter.

(2) A hearing examiner shall be selected by the chief administrative officer from the faculty and staff of the institution, pursuant to the policies adopted under sub. (1).

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09.

UWS 17.07 Nonacademic misconduct hearing committee. (1) The chief administrative officer of each institution, in consultation with faculty, academic staff, and student representatives, shall adopt policies providing for the establishment of a student nonacademic misconduct hearing committee to fulfill the responsibilities of the nonacademic misconduct hearing committee in this chapter.

(2) A student nonacademic misconduct hearing committee shall consist of at least three persons, including at least one student, except that no such committee shall be constituted with a majority of members who are students. The presiding officer shall be appointed by the chief administrative officer. The presiding officer and at least one other member shall constitute a quorum at any hearing held pursuant to due notice.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09.

UWS 17.08 Nonacademic misconduct occurring on or outside of university lands. (1) MISCONDUCT ON UNIVERSITY LANDS. Except as provided in s. UWS 17.08 (2), the provisions contained in this chapter shall apply to the student conduct described in s. UWS 17.09 that occurs on university lands or at university-sponsored events.

(2) MISCONDUCT OUTSIDE OF UNIVERSITY LANDS. The provisions contained in this chapter may apply to the student conduct described in s. UWS 17.09 that occurs outside of university lands only when, in the judgment of the investigating officer, the conduct adversely affects a substantial university interest. In determining whether the conduct adversely affects a substantial university interest, the investigating officer shall consider whether the conduct meets one or more of the following conditions:

(a) The conduct constitutes or would constitute a serious criminal offense, regardless of the existence of any criminal proceedings.

(b) The conduct indicates that the student presented or may present a danger or threat to the health or safety of himself, herself or others.

(c) The conduct demonstrates a pattern of behavior that seriously impairs the university's ability to fulfill its teaching, research, or public service missions.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09.

UWS 17.09 Conduct subject to disciplinary action. In accordance with s. UWS 17.08, the university may discipline a student for engaging in, attempting to engage in, or assisting others to engage in any of the following types of nonacademic misconduct:

(1) DANGEROUS CONDUCT. Conduct that endangers or threatens the health or safety of oneself or another person.

(2) SEXUAL ASSAULT. Conduct defined in s. 940.225, Stats.

(3) STALKING. Conduct defined in s. 940.32, Stats.

(4) HARASSMENT. Conduct defined in s. 947.013, Stats.

(5) HAZING. Conduct defined in s. 948.51, Stats.

(6) ILLEGAL USE, POSSESSION, MANUFACTURE, OR DISTRIBUTION OF ALCOHOL OR CONTROLLED SUBSTANCES. Use, possession, manufacture, or distribution of alcoholic beverages or of marijuana, narcotics, or other controlled substances, except as expressly permitted by law or university policy.

(7) UNAUTHORIZED USE OF OR DAMAGE TO PROPERTY. Unauthorized possession of, use of, moving of, tampering with, damage to, or destruction of university property or the property of others.

(8) DISRUPTION OF UNIVERSITY-AUTHORIZED ACTIVITIES. Conduct that obstructs or impairs university-run or university-authorized activities, or that interferes with or impedes the ability of a person to participate in university-run or university-authorized activities.

(9) FORGERY OR FALSIFICATION. Unauthorized possession of or fraudulent creation, alteration, or misuse of any university or other governmental document, record, key, electronic device, or identification.

(10) MISUSE OF COMPUTING RESOURCES. Conduct that involves any of the following:

(a) Failure to comply with laws, license agreements, and contracts governing university computer network, software, and hardware use.

(b) Use of university computing resources for unauthorized commercial purposes or personal gain.

(c) Failure to protect a personal password or university-authorized account.

(d) Breach of computer security, invasion of privacy, or unauthorized access to university computing resources.

(11) FALSE STATEMENT OR REFUSAL TO COMPLY REGARDING A UNIVERSITY MATTER. Making a knowingly false oral or written statement to any university employee or agent of the university regarding a university matter, or refusal to comply with a reasonable request on a university matter.

(12) VIOLATION OF CRIMINAL LAW. Conduct that constitutes a criminal offense as defined by state or federal law.

(13) SERIOUS AND REPEATED VIOLATIONS OF MUNICIPAL LAW. Serious and repeated off-campus violations of municipal law.

(14) VIOLATION OF CH. UWS 18. Conduct that violates ch. UWS 18, including, but not limited to, provisions regulating fire safety, theft, and dangerous weapons.

(15) VIOLATION OF UNIVERSITY RULES. Conduct that violates any published university rules, regulations, or policies, including provisions contained in university contracts with students.

(16) NONCOMPLIANCE WITH DISCIPLINARY SANCTIONS. Conduct that violates a sanction, requirement, or restriction imposed in connection with previous disciplinary action.

(17) DATING VIOLENCE. Violence committed by a student against another person with whom they are in a "dating relationship" as defined in s. 813.12 (1) (ag), Stats.

(18) DOMESTIC VIOLENCE. Conduct defined as "domestic abuse" in ss. 813.12 (1) (am) and 968.075, Stats.

(19) SEXUAL HARASSMENT. Conduct defined in s. 111.32 (13), Stats., or as defined in Board of Regent Policy that addresses sexual harassment

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; CR 15-060: cr. (17), (18), (19) Register June 2016 No. 726, eff. 7-1-16.

UWS 17.10 Disciplinary sanctions. (1) The disciplinary sanctions that may be imposed for nonacademic misconduct, in accordance with the procedures of ss. UWS 17.11 to 17.13, are any of the following:

- (a) A written reprimand.
- (b) Denial of specified university privileges.
- (c) Payment of restitution.
- (d) Educational or service sanctions, including community service.
- (e) Disciplinary probation.
- (f) Imposition of reasonable terms and conditions on continued student status.
- (g) Removal from a course in progress.
- (h) Enrollment restrictions on a course or program.
- (i) Suspension.
- (j) Expulsion.

(2) One or more of the disciplinary sanctions listed in sub. (1) may be imposed for an incident of nonacademic misconduct.

(3) Disciplinary sanctions shall not include the termination or revocation of student financial aid; however, this shall not be interpreted as precluding the individual operation of rules or standards governing eligibility for student financial aid under which the imposition of a disciplinary sanction could result in disqualification of a student for financial aid.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09.

UWS 17.11 Disciplinary procedure. (1) **PROCESS.** The investigating officer may proceed in accordance with this section to impose, subject to hearing and appeal rights, one or more of the disciplinary sanctions listed in s. UWS 17.10 (1).

(2) **CONFERENCE WITH RESPONDENT.** When the investigating officer concludes that proceedings under this section are warranted, the investigating officer shall promptly contact the respondent in person, by telephone, or by electronic mail to offer to discuss the matter, review the investigating officer's basis for believing that the respondent engaged in nonacademic misconduct, and to afford the respondent an opportunity to respond. If the respondent fails to respond to the investigating officer, the investigating officer may proceed to make a determination on the basis of the available information. A complainant shall have all the rights provided to the respondent in this subsection.

(3) **DETERMINATION BY THE INVESTIGATING OFFICER THAT NO DISCIPLINARY SANCTION IS WARRANTED.** If, as a result of a discussion under sub. (2) or review of available information, the investigating officer determines that nonacademic misconduct did not in fact occur, or that no disciplinary sanction is warranted under the circumstances, the matter will be considered resolved without the necessity for further action. The investigating officer shall simultaneously notify the respondent and the complainant of this outcome and offer to discuss it separately with either one. If the investigating officer determines that nonacademic misconduct did not occur or that no disciplinary sanction is warranted, the complainant may appeal this decision in accordance with s. UWS 17.13.

(4) **PROCESS FOLLOWING DETERMINATION BY THE INVESTIGATING OFFICER THAT NONACADEMIC MISCONDUCT OCCURRED.** (a) If,

as a result of a discussion under sub. (2) or review of available information, the investigating officer determines that nonacademic misconduct did occur and that one or more of the disciplinary sanctions listed under s. UWS 17.10 (1) should be recommended, the investigating officer shall prepare a written report which shall contain all of the following:

1. A description of the alleged misconduct.
2. A description of all information available to the university regarding the alleged misconduct. Such information shall be available to the complainant and the respondent, except as may be precluded by applicable state or federal law.
3. Specification of the sanction sought.
4. Notice of the respondent's right to a hearing.
5. A copy of this chapter and of the institutional procedures adopted to implement this section.

(b) The written report shall be delivered simultaneously to the respondent and complainant, excluding any information that may be precluded by applicable state or federal law.

(c) A respondent who receives a written report under this section has the right to a hearing under s. UWS 17.12 to contest the determination that nonacademic misconduct occurred, the choice of disciplinary sanctions, or both.

1. Where the disciplinary sanction sought is one of those listed in s. UWS 17.10 (1) (a) to (g), and if the respondent desires a hearing, the respondent shall file a written request with the student affairs officer within 10 days of the date the written report is delivered to the respondent. If the respondent does not request a hearing within this period, the determination of nonacademic misconduct shall be regarded as final, and the disciplinary sanction sought shall be imposed.

2. Where the disciplinary sanction sought is one of those listed in s. UWS 17.10 (1) (h) to (j), the investigating officer shall forward a copy of the written report under par. (b) to the student affairs officer. The student affairs officer shall, upon receipt of the written report, proceed under s. UWS 17.12 to schedule a hearing on the matter. A hearing shall be conducted unless the respondent waives, in writing, the right to such a hearing.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; correction to (1) (title) made under s. 13.92 (4) (b) 2., Stats., Register August 2009 No. 644; CR 15-060: am. (2), (3), (4) (a) 2., 4., (b), (c) Register June 2016 No. 726, eff. 7-1-16.

UWS 17.12 Hearing. (1) A respondent who requests a hearing, or for whom a hearing is scheduled under s. UWS 17.11 (4) (c) 2., shall have the right to decide whether the matter will be heard by a hearing examiner or a hearing committee. In cases of sexual assault, dating violence, domestic violence, stalking, or sexual harassment the university shall have the right to decide whether the matter will be heard by a hearing examiner or a hearing committee.

(2) If a respondent requests a hearing under s. UWS 17.11 (4) (c) 1., or a hearing is required to be scheduled under s. UWS 17.11 (4) (c) 2., the student affairs officer shall take the necessary steps to convene the hearing and shall schedule it within 15 days of receipt of the request or written report. The hearing shall be conducted within 45 days of receipt of the request or written report, unless a different time period is mutually agreed upon by the respondent and investigating officer, or is ordered or permitted by the hearing examiner or committee.

(3) No less than 5 days in advance of the hearing, the hearing examiner or committee shall obtain from the investigating officer, in writing, a full explanation of the facts upon which the determination of misconduct was based, and shall provide the respondent and the complainant with access to or copies of the investigating officer's explanation, together with any other materials provided to the hearing examiner or committee by the investigating officer, including any additional available information of the type described in s. UWS 17.11 (4) (a) 2.

(4) The hearing shall be conducted in accordance with the following guidance and requirements:

(a) The hearing process shall further the educational purposes and reflect the university context of nonacademic misconduct proceedings. The process need not conform to state or federal rules of criminal or civil procedure, except as expressly provided in ch. UWS 17.

(b) The respondent shall have the right to question adverse witnesses, the right to present information and witnesses, the right to be heard on his or her own behalf, and the right to be accompanied by an advisor of the respondent's choice. The advisor may be a lawyer. In cases where the recommended disciplinary sanction is identified in s. UWS 17.10 (1) (a) to (h), the advisor may counsel the respondent but may not directly question adverse witnesses, present information or witnesses, or speak on behalf of the respondent except at the discretion of the hearing examiner or committee. In cases where the recommended disciplinary sanction is identified in s. UWS 17.10 (1) (i) or (j), or where the respondent has been charged with a crime in connection with the same conduct for which the disciplinary sanction is sought, the advisor may question adverse witnesses, present information and witnesses, and speak on behalf of the respondent. In accordance with the educational purposes of the hearing, the respondent is expected to respond on his or her own behalf to questions asked of him or her during the hearing. The complainant shall have all the rights provided to the respondent in this subsection.

(c) The hearing examiner or committee:

1. Shall admit information that has reasonable value in proving the facts, but may exclude immaterial, irrelevant, or unduly repetitious testimony.

2. Shall observe recognized legal privileges.

3. May take reasonable steps to maintain order, and to adopt procedures for the questioning of a witness appropriate to the circumstances of that witness's testimony, provided, however, whatever procedure is adopted, the complainant and respondent are allowed to effectively question the witness.

(d) The hearing examiner or committee shall make a record of the hearing. The record shall include a verbatim record of the testimony, which may be a sound recording, and a file of the exhibits offered at the hearing. The respondent and the complainant may access the record, except as may be precluded by applicable state or federal law.

(e) The hearing examiner or committee shall prepare written findings of fact and a written statement of its decision based upon the record of the hearing.

(f) A hearing examiner's or committee's finding of nonacademic misconduct shall be based on one of the following:

1. Clear and convincing evidence, when the sanction to be imposed is one of those listed in s. UWS 17.10 (1) (h) to (j).

2. A preponderance of the evidence, when the sanction to be imposed is one of those listed in s. UWS 17.10 (1) (a) to (g).

3. A preponderance of the evidence, regardless of the sanction to be imposed, in all cases of sexual harassment, sexual assault, dating violence, domestic violence, or stalking.

(g) The hearing examiner or committee may impose one or more of the disciplinary sanctions listed in s. UWS 17.10 (1) (a) to (g) that differs from the recommendation of the investigating officer. Sanctions under s. UWS 17.10 (1) (h) to (j) may not be imposed unless previously recommended by the investigating officer.

(h) The hearing shall be conducted by the hearing examiner or committee, and the university's case against the respondent shall be presented by the investigating officer or his or her designee.

(i) The decision of the hearing examiner or committee shall be prepared within 14 days of the hearing, and delivered simultaneously to the respondent and the complainant, excluding information that may be precluded by state or federal law. The decision

shall become final within 14 days of the date on the written decision, unless an appeal is taken under s. UWS 17.13.

(j) If a party fails to appear at a schedule hearing and to proceed, the hearing examiner or committee may issue a decision based upon the information provided.

(k) Disciplinary hearings are subject to the Wisconsin open meetings law and may be closed if the respondent or complainant requests a closed hearing or if the hearing examiner or committee determines that it is necessary to hold a closed hearing, as permitted under the Wisconsin open meetings law. Deliberations of the committee shall be held in closed session, in accordance with s. 19.85, Stats. As such, proper notice and other applicable rules shall be followed.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; CR 15-060: am. (1), (2), (3), (4) (b), (c) 3., (d), (f) 3., (h), (i), (j), (k) Register June 2016 No. 726, eff. 7-1-16.

UWS 17.13 Appeal to the chancellor. (1) Where the sanction prescribed by the hearing examiner or committee is one of those listed in s. UWS 17.10 (1) (h) to (j), the respondent may appeal in writing to the chief administrative officer within 14 days of the date of the written decision to review the decision of the hearing examiner or committee, based upon the record. In cases involving sexual assault, dating violence, domestic violence, stalking, or sexual harassment, the complainant shall be notified of the appeal.

(2) In cases involving sexual assault, dating violence, domestic violence, stalking or sexual harassment, the following appeal rights shall be provided:

(a) The complainant may appeal in writing to the chief administrative officer within 14 days of the date of the decision of the investigating officer pursuant to s. UWS 17.11 (3) or the hearing committee or examiner pursuant to s. UWS 17.12 (4) (i). The appeal shall be based upon the record. The respondent shall be notified of the appeal.

(b) The respondent may appeal in writing to the chief administrative officer within 14 days of the date of the decision of the hearing committee, or examiner pursuant to s. UWS 17.12 (4) (i). The appeal shall be based upon the record. The complainant shall be notified of the appeal.

(3) The chief administrative officer has 30 days from receipt of an appeal to respond and shall sustain the decision unless the chief administrative officer finds any of the following:

(a) The information in the record does not support the findings or decision.

(b) Appropriate procedures were not followed which resulted in material prejudice to the respondent or complainant.

(c) The decision was based on factors proscribed by state or federal law.

(4) If the chief administrative officers makes a finding under sub. (3), the chancellor may return the matter for consideration, or may invoke an appropriate remedy of his or her own. The chief administrative officer's decision shall be communicated simultaneously to the respondent and the complainant.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; CR 15-060: renum. (1) (intro.) to (1) and am., r. (1) (a), (b), (c), r. and recr. (2), cr. (3), (4) Register June 2016 No. 726, eff. 7-1-16; correction in (2) (a), (b) under ss. 13.92 (4) (b) 7. and 35.17, Stats., Register June 2016 No. 726.

UWS 17.14 Discretionary appeal to the Board of Regents. Institutional decisions under ss. UWS 17.11 to 17.13 shall be final, except that the board of regents may, at its discretion, grant a review upon the record, upon written request submitted by any party within 14 days of the final institutional decision. In cases involving sexual assault, dating violence, domestic violence, stalking, or sexual harassment, the non-appealing party shall receive notice of the appeal.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; 2015 Wis. Act 330 s. 20: am. Register April 2016 No. 724, eff. 5-1-16; CR 15-060: am. Register June 2016 No. 726, eff. 7-1-16.

UWS 17.15 Settlement. The procedures set forth in this chapter allow the university and a respondent to enter into a settlement agreement regarding the alleged misconduct, after proper notice has been given. Any such agreement and its terms shall be in writing and signed by the respondent and the investigating officer or student affairs officer. The case is concluded when a copy of the signed agreement is delivered to the respondent. The investigating officer shall confer with the complainant regarding the proposed settlement and provide notice of the outcome.

History: CR 08-099; cr. Register August 2009 No. 644, eff. 9-1-09; CR 15-060: am. Register June 2016 No. 726, eff. 7-1-16.

UWS 17.16 Effect of discipline within the institution. A respondent who, at the time of commencement, is subject to a continuing disciplinary sanction under s. UWS 17.10 (1) or unresolved disciplinary charges as a result of a report under s. UWS 17.11, shall not be awarded a degree during the pendency of the sanction or disciplinary proceeding.

History: CR 08-099; cr. Register August 2009 No. 644, eff. 9-1-09; CR 15-060: am. Register June 2016 No. 726, eff. 7-1-16.

UWS 17.17 Effect of suspension or expulsion within the university system. (1) Suspension or expulsion shall be systemwide in effect and shall be noted on an individual's transcript, with suspension noted only for the duration of the suspension period.

(2) An individual who is suspended from one institution in the University of Wisconsin System may not enroll in another institution in the system until the suspension has expired by its own terms, except as provided in s. UWS 17.18.

(3) An individual who is expelled from one institution in the University of Wisconsin System may not enroll in another institution in the system, except as provided in s. UWS 17.18.

(4) An individual who is in a state of suspension or expulsion from the university under this chapter, or who leaves or withdraws from the university while under nonacademic misconduct charges under this chapter, may not be present on any campus without the written consent of the chief administrative officer of that campus.

(5) Upon completion of a suspension period, an individual who is academically eligible may re-enroll in the institution which suspended him or her, provided all conditions from previous disciplinary sanctions have been met.

History: CR 08-099; cr. Register August 2009 No. 644, eff. 9-1-09; CR 15-060: am. (2), (3), (4), (5) Register June 2016 No. 726, eff. 7-1-16.

UWS 17.18 Petition for restoration of rights after suspension or expulsion. A respondent who has been suspended may petition to have his or her student status, rights, and privileges restored before the suspension has expired by its own terms under s. UWS 17.17 (2). A respondent who has been expelled may petition for the right to apply for readmission. The petition shall be in writing and directed to the chief administrative officer of the institution from which the respondent was suspended or expelled or of a different University of Wisconsin institution to which the respondent seeks admission. The chief administrative officer shall make the readmission decision. In cases of sexual harassment, sexual assault, dating violence, domestic violence, and stalking cases, the readmission decision should be made in consultation with the Title IX coordinator, and the com-

plainant should be notified of any change to the disciplinary outcome.

History: CR 08-099; cr. Register August 2009 No. 644, eff. 9-1-09; CR 15-060: am. Register June 2016 No. 726, eff. 7-1-16.

UWS 17.19 Emergency suspension. (1) The chief administrative officer may impose an emergency suspension on a respondent, pending final institutional action on a report of non-academic misconduct, in accordance with the procedures of this section.

(2) The chief administrative officer of each institution may impose an emergency suspension on a respondent when all of the following conditions are met:

(a) The investigating officer has made a reasonable attempt to offer the respondent the opportunity for discussion, either in person or by telephone.

(b) The investigating officer recommends a sanction of suspension or expulsion.

(c) The chief administrative officer concludes, based on the available information, that the misconduct occurred and that the respondent's continued presence on campus meets one or more of the following conditions:

1. Would constitute a potential for serious harm to the respondent.

2. Would constitute a potential for serious harm to others.

3. Would pose a threat of serious disruption of university-run or university-authorized activities.

4. Would constitute a potential for serious damage to university facilities or property.

(3) If the chief administrative officer determines that an emergency suspension is warranted under sub. (2), the chief administrative officer shall promptly have written notification of the emergency suspension delivered to the respondent. In cases of sexual harassment, sexual assault, dating violence, domestic violence, and stalking, the written notification of the emergency suspension shall be delivered simultaneously to the complainant and the respondent. The chief administrative officer's decision to impose an emergency suspension shall be effective immediately when delivered to the respondent and is final.

(4) Where an emergency suspension is imposed, the hearing on the underlying allegations of misconduct shall be held, either on or outside of university lands, within 21 days of the imposition of the emergency suspension, unless the respondent agrees to a later date.

(5) An emergency suspension imposed in accordance with this section shall be in effect until the decision in the hearing on the underlying charges pursuant to s. UWS 17.12 is rendered or the chief administrative officer rescinds the emergency suspension. In no case shall an emergency suspension remain in effect for longer than 30 days, unless the respondent agrees to a longer period.

(6) If the chief administrative officer determines that none of the conditions specified in sub. (2) (c) are present, but that misconduct may have occurred, the case shall proceed in accordance with s. UWS 17.12.

History: CR 08-099; cr. Register August 2009 No. 644, eff. 9-1-09; CR 15-060: am. (1), (2) (intro.), (a), (c) (intro.), 1., (3), (4), (5) Register June 2016 No. 726, eff. 7-1-16.

Good afternoon,

Let me start by introducing myself to you all. My name is Charles Kudy, and I am currently a Sophomore at the University of Wisconsin – Whitewater. Growing up in one of the most diverse parts of the state, I was exposed to a multitude of thoughts, ideas, and opinions. This diversity of thought is something that I have prided myself with growing up alongside of compared to some of my peers.

Be exposed to all of these thoughts, ideas, and opinions led to me being able to not only learn how to cooperate with others that were different than me, but taught me how to learn from them.

I grew up in the era of Scott Walker's first term as our governor and of Act 10. Now, growing up in Milwaukee county I was surrounded by people who were very unhappy with the decisions that their state government was making at that time, and I was made well aware of that because of how neighbors, peers, and even my teachers during class, expressed their ideas.

I remember during school having multiple teachers missing because they were exercising their First Amendment rights by going to protest our government in one of the largest protests that this state has ever seen.

I remember teachers and students staging a half-handed "walk-out" during one of our class periods to protest the state's decision. All using their first amendment rights to justify their choices.

However, this right was just not limited to them. When they would bring such topics up within our classes, I would use my first amendment right to counter them. To bring up alternative points to what they were trying to make. To try and show my fellow students that there was more than just the opinion of the teacher. To show them that it was okay to challenge ideas.

As I progressed through middle and high school, I would find myself in this position a lot: always trying to provide counter points, always trying to provoke debate, and always unafraid of receiving repercussions because I was doing so. I was unafraid because I knew that we had the God-given right to freedom of speech and freedom of expression not just within our state, but within our country.

Fast forward to Senior year of high school: the 2016 Presidential Election is in full swing and Donald Trump is now at the top of the GOP primary and is looking to secure the nomination. In my AP Government and Politics Class we always had open discussions about current events, be it Donald Trump or the death of Supreme Court Justice Antonin Scalia or the US Senate Race within our state.

I took that AP Government and Politics Class because I was told it would prepare me for college, along with having a hankering for anything political. It is because of that class, and the breeding ground for ideas and opinions that it provided, that I became excited to get involved at college.

I was excited to enter into discussions with my professors, where it was rightfully applied to the material, about the current events and the state of our country. However, as I progressed further into my college career I kept hearing stories from my peers. Stories about the quelling of opinions within certain aspects of our university.

I have had friends share stories of being told to leave a class if they support our President, I have had friends told that if they support a certain politician that they are not worthy to participate in debate, and I have heard of troubles with bringing on speaker's onto our college campus.

It was because of incidents like this that initiated the passing of Resolution ### through the Whitewater Student Government supporting freedom of speech and expression on our campus. Student's need to know that their governing bodies support them in exploring different ideas during their tenure at our wonderful university system. Be that through academic exploration, listening to different speakers that are brought on campus, or even debating within the classroom when the material sanctions it.

These are just some of the things that have propelled me to come to speak in favor of Assembly Bill 299 today.

Bills like this are sadly needed today when individuals cannot seem to separate politics out from their daily work lives, or even separate it out from interfering with working relationships. The students of the University of Wisconsin System need to know that their leaders support them and their right to freedom of speech and freedom of expression, and will not tolerate them being quieted in any form.

This bill outlines that while free speech is a right that all students have without question, their free speech is not allowed to impede on other's. By stating the guidelines in which they are then impeding upon other's rights I feel that this bill protects not just the student expressing themselves, but the student who is listening, the student who is going to be effected by their expression.

Overall, freedom of speech is the reason that I, as a university student, get to come before this committee today and speak on this bill's behalf. I high encourage you on the behalf of my fellow students to pass this bill and reaffirm your commitment to freedom of speech and freedom of expression within the University of Wisconsin System.

Testimony Before The Assembly Committee on Colleges and Universities
Tyler Brandt - UW Madison Student
Speaking In Favor of AB299

Thank you Chairman Murphy and members of the Assembly Committee on Colleges and Universities for the opportunity to speak with the committee today on Assembly Bill 299.

We have increasingly seen assaults on free speech and open discourse not only here at UW-Madison, but across the country. It has become normative for far left campus groups to shut down right-leaning or libertarian speakers because they disagree with their viewpoint.

Riots have ensued at UC-Berkeley over controversial speakers such as Milo Yiannopoulos and Anne Coulter. Antifa and other left leaning orgs are will to resort to physical violence and coercion to shut down views which they disagree with.

This has also happened right here at UW Madison. When conservative commentator Ben Shapiro came to campus last fall, his speech was interrupted when the left leaning group, student coalition for progress coercively took over the stage and started to shout Shapiro down. To take it even further after that, they decided to brand the group who bought him, YAF, as a hate group.

This is targeted defamation to advance a political agenda. They want to have the majority voice on campus and are using any tactic viable to silence conservatives

They fling egregious claims such as their safety being threatened due to the presence of YAF on this campus. They claim that the mere presence of Shapiro on the campus caused them to feel betrayed and unwelcome, which is why they decided to shut him down.

Any rational person can see why students invading and taking over an event claim they do so because their safety is threatened is a completely ludicrous claim

it represents the lack of tolerance for political discourse. When we have a generation of kids being taught that it is acceptable to mislabel, defame, and shut down dissenting groups we are in for a rough political future.

Standing in line with the tradition of open academic discourse, I really hope that UW-Madison stands up for free speech.

Conservatives already constitute a minority opinion on campus and I genuinely believe a lot of them are afraid to stand up for what they believe. Many students keep their opinions quiet because they know the danger it could have to their image as a student on a traditionally liberal campus

If the administration truly believes in the future of UW as fostering academic discourse, they will stand with right to free speech.

The goal of a college education is to foster a diverse environment with a broad range of opinions and ideas. Students should be able to hear opinions they disagree with and rebut appropriately. If one side of a debate is disallowed it leaves an imbalance and will harm the academic excellence that UW-

Madison strives to provide. Without hearing altering opinions nobody grows or learns. I hope that UW will stand strong in their tradition of open discourse and allow free speech to prosper for all.

John Stuart Mill - On Liberty - Of the Liberty of Thought and Discussion - Justification for the search of truth

"If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind"

"But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generations; those who dissent from the opinion, still more than those who hold it."

"If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong. They lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error"

"We can never be sure that the opinion we are endeavoring to stifle is a false opinion; and if we were sure, stifling it would still be an evil"

"If any opinion is compelled to silence, that would assume that one is wholly right, to deny this is our infallibility"

In other words, the only way you will ever develop your knowledge of the wrong is if you hear it.

In conclusion, overtime, if we allow free speech, we may reach a general agreement. The University is a space to articulate strange and crazy ideas. We should leave here with enough knowledge that some things are bad and some things are good, and they will be strongly grounded. This is how arguments are strengthened and ideas are brought to fruition. This is why I believe in free speech and open discourse, which the university should commit itself to.

Thank you

May 11, 2017

Statement by David J. Vanness, PhD

I want to thank the Committee for allowing me to speak. My name is Dave Vanness, and I am an Associate Professor at UW-Madison; I am also a member of the UW Madison Chapter of the American Association of University Professors, a chapter founded over 100 years ago by Professor Richard T. Ely, whose attempted deposal from his chair for teaching about so-called "radical" economic philosophies led to the now famous 1894 statement by the UW Board of Regents proclaiming the "fearless sifting and winnowing by which alone the truth may be found." I want to make clear, however, that I am speaking on my own behalf, and not on behalf of UW or the UW-Madison Chapter of the AAUP.

I believe that our public universities have a duty to serve as the great supercollider of ideas. Ideas must be free to flow from all directions and clash (often energetically), if we are ever to break through our own personal or disciplinary biases. In any public forum, and particularly at a public university, any attempts to limit expression must be done with extreme caution, reflecting compelling institutional interests and respecting the First Amendment. While I agree with much of the intent of this legislation, I am extremely concerned that, as drafted, a combination of ambiguous language and mandatory sanctions will have the perverse effect of chilling constitutionally protected expression at the UW.

I refer specifically to subsection (4), paragraph (a), subparagraph 4 "that protests and demonstrations that interfere with the rights of others to engage in or listen to expressive activity shall not be permitted and shall be subject to sanction" and subsection (4), paragraph (b), subparagraph 3, which "[r]equire[s] suspension for a minimum of one semester or expulsion of any student who has twice been found responsible for interfering with the expressive rights of others."

It is important to note that the term "expressive activities" has been construed to be extremely broad. In the case of *Roberts v. United States Jaycees*, Justice Brennan wrote that "Determining whether an association's activity is predominantly protected expression will often be difficult, if only because a broad range of activities can be expressive. It is easy enough to identify expressive words or conduct that are strident, contentious, or divisive, but protected expression may also take the form of quiet persuasion, inculcation of traditional values, instruction of the young, and community service." 468 U.S. 609, 636

The Supreme Court has ruled on this issue specifically within the context of the UW System. In *Board of Regents of Univ. of Wis. System v. Southworth*, Justice Kennedy wrote: "To name but a few, RSO's included the Future Financial Gurus of America; the International Socialist Organization; the College Democrats; the College Republicans; and the American Civil Liberties Union Campus Chapter. As one would expect, the expressive activities undertaken by RSO's are diverse in range and content, from displaying posters and circulating newsletters throughout the campus, to hosting campus debates and guest speakers, and to what can best be described as political lobbying." 529 U.S. 217, 223 (2000)

A recent piece by AAUP First Vice President Hank Reichman quotes Greg Lukianoff, executive director of the Foundation for Individual Rights in Education (FIRE) saying "Universities should be a chaotic paradise. It should be an exciting, challenging, sometimes difficult place but never all that quiet." Compare this to language in subsection (4), paragraph (b), subparagraph 1 describing sanctions for

individuals who engage in conduct that is “boisterous” or “unreasonably loud” when it “interferes with the free expression of others.”

With the term “interfering” having no qualification, and the interpretation of “expressive activity” so broad, opposing groups of contentious individuals could charge nearly anyone with such interference. Even if those charges are against the intent of this legislation, when the penalty is mandatory suspension or expulsion, the risks to students of participation in any form of expression would be enormous. Under such a climate of fear of reprisal, no sifting and winnowing can occur. And we will all be the poorer because of it.

I ask you please to reconsider this language.

David J. Vanness

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TO: Honorable Members of the Assembly Committee on Colleges and Universities

**FROM: Eric Bott, State Director
Americans for Prosperity-Wisconsin**

DATE: May 11th, 2017

RE: Support Assembly Bill 299, The Campus Free Speech Act

Chairman Murphy and members of the committee, thank you for taking testimony today regarding Assembly Bill 299, the Campus Free Speech Act. Americans for Prosperity – Wisconsin is a grassroots organization with more than 130,000 activists in Wisconsin committed to recruiting, educating, and mobilizing citizens in support of the policies and goals of a free society. Our efforts include protecting the freedom of speech rights of all Americans.

Make no mistake, free speech is under attack at college campuses across our country. Once cherished concepts like academic freedom and the marketplace of ideas are being set aside in favor of speech codes and zones, censorship, or outright intolerance.

A recent survey of 440 American universities found that almost half adopt policies that infringe on the first amendment rights of students. Some colleges have adopted rules requiring students to obtain permission from school administrators days or even weeks before being allowed to engage in free expression. Incidents of prominent public figures from both sides of the political spectrum being disinvited from campus speaking engagements, shouted down, or violently protested are on the rise.

In Wisconsin, the Foundation for Individual Rights in Education (FIRE) ranks two colleges as having a speech code of red, meaning the institution maintains a policy that substantially restricts freedom of speech. Not a single college in our state currently meets FIRE's requirements to receive a green rating, meaning the institution at least nominally supports free speech.

The efforts of Speaker Vos, Representatives Kremer and Murphy, and Senator Sheila Harsdorf to reaffirm in statute fundamental free speech protections for students and others on our public university campuses are not only justified but most certainly needed. Assembly Bill 299 is an excellent starting point and we strongly support its goals including:

- Allowing students and campus faculty to engage in free expression
- Protecting the marketplace of ideas by ensuring the rights of individuals to speak freely on campuses
- Reaffirming that public areas of campus are public forums
- Protecting students and faculty against compulsion to express specified viewpoints
- Guaranteeing the right to lawfully protest

Additionally, we would like to draw attention to a series of opportunities to improve AB 299, which have been identified in detail by the Wisconsin Institute for Law and Liberty in their written testimony to the committee today. Americans for Prosperity – Wisconsin looks forward to working with the authors and members of this committee to improve and advance AB 299.

Thanks again for making free speech a priority and for taking testimony on this bill.

For more information, please contact Eric Bott at ebott@afphq.org.

DEFEND FREE SPEECH ON CAMPUS

FREE SPEECH is under attack on university campuses – the very place where rigorous debate and intellectual diversity should be embraced. Many universities fail to uphold the promises of free expression, assembly, and religion to students and faculty through vaguely written speech codes or speech “zones” that unconstitutionally prohibit free expression.¹

THE SOLUTION: Pass AB 299 to repeal unconstitutional speech codes and promote free expression on college and university campuses.

HIGH LEARNING, LOWER FREEDOMS

1. A recent survey of 440 American universities found that almost half adopt policies that seriously infringe on the first amendment rights of students.²

2. Many institutions require students to obtain permission from the school administration “days or even weeks before being allowed to speak their minds,” and engage in free expression.³

3. A recent survey of over 800 students across the country revealed that 51 percent favored imposing speech code restrictions on other students. A full 30 percent of self-described liberal students believed that the First Amendment was “outdated.”⁴

WISCONSIN NEEDS REFORM

There is not place where tolerance of free speech and expression should be more valued than America’s colleges and universities. Unfortunately, there are serious First Amendment issues that need to be addressed in the Wisconsin university system.

1. According to the Foundation for Individual Rights in Education, two colleges in Wisconsin have been given the speech code rating “red”, which means the institution has at least “one policy that both clearly and substantially restricts freedom of speech.” Another five earned a less severe “yellow” light.

2. Not a single college in the state has been given the rating of “green” which means the institution at least nominally supports free speech.



REAL SOLUTIONS FOR FREE SPEECH

Open and rigorous debate is an essential part of a college or university’s duty to foster creative ideas for the next generation. To uphold this principle, AB 299 proposes the following:

1. FREEDOM TO SPEAK:

That students and faculty have the freedom to discuss any problem that presents itself, as the First Amendment of the U.S. Constitution permits and within the limits of reasonable viewpoint — neutral and content — neutral restrictions on time, place, and manner of expression that are consistent with this section and that are necessary to achieve a significant institutional interest, provided that these restrictions are clear, published, and provide ample alternative means of expression. Students and faculty shall be permitted to assemble and engage in spontaneous expressive activity as long as

such activity is not unlawful and does not materially and substantially disrupt the functioning of an institution, subject to the requirements of this section.

2. FREEDOM OF EXPRESSION:

That the primary function of an institution is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate. This statement shall provide that, to fulfill this function, an institution must strive to ensure the fullest degree of intellectual freedom and free expression.

3. EDUCATING STUDENTS ON UNIVERSITY’S COMMITMENT TO FREE SPEECH:

Each institution shall include in freshman orientation programs a section describing to all students the policies and rules regarding free expression consistent with this section.

SOURCES

1. FIRE defines a speech code as any campus regulation that punishes, forbids, heavily regulates, or restricts a substantial amount of protected speech, or what would be protected speech in society at large.
2. Spotlight on Speech Codes 2016: The State of Free Speech on Our Nation’s Campuses, FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION (2016).
3. Nat Hentoff, “Speech on Public College Campuses Liberated in One State,” Cato Institute, (Apr. 16, 2014).
4. Notable & Quotable: Unfree Speech on Campus,” WALL ST. J. (Oct. 22, 2015)
4. Notable & Quotable: Unfree Speech on Campus,” WALL ST. J. (Oct. 22, 2015)

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GENERATION OPPORTUNITY IS A PROJECT OF
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Testimony Before the Committee on Colleges and Universities of the Wisconsin State House

On

The Goldwater Proposal for State-Level Legislation on Campus Free Speech

By

Stanley Kurtz

Senior Fellow, Ethics and Public Policy Center

Thursday, May 11 2017

Thank you for this opportunity to testify before the distinguished members of the Committee on Colleges and Universities. 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 co-author of a report recently published by Arizona's Goldwater Institute entitled, "Campus Free Speech: A Legislative Proposal." In my testimony today I will lay out the key provisions of that proposal and the rationale behind them. This bears on the purpose of today's hearing because the proposed Wisconsin Campus Free Speech Act is in important respects modeled upon the Goldwater proposal.

Freedom of speech, that cornerstone of our liberty and most fundamental constitutional right, is under siege on America's college campuses. Speakers who challenge campus orthodoxies are too seldom sought out, are often disinvited when called, and are too often shouted down or otherwise disrupted while on campus. Speech codes that substantially limit First Amendment rights are widespread. So-called "safe spaces" shelter students from the give-and-take of discussion and debate. When protesters disrupt speakers, or break in on meetings to take them over and list demands, administrators frequently look the other way. Many students have come to take it for granted that they will face no discipline for such disruptions. Administrators themselves often disinvite controversial speakers and limit the exercise

of liberty to narrow and highly regulated so-called free speech zones. University boards of trustees rarely act to curb these administrative abuses.

To address these problems, Arizona's Goldwater Institute and I have collaborated to devise model state-level legislation designed to restore freedom of speech to the American academy. We call this model legislation the Campus Free Speech Act.

Before I describe and explain the provisions of the Campus Free Speech Act, let me note that the first duty of a legislature is to protect the rights of its citizens, and chief among those rights is freedom of speech. Freedom of speech as guaranteed by the First Amendment to the Constitution of the United States already legally applies to public university campuses. Unfortunately, the central problem with this First Amendment guarantee is that it is too often ignored, unenforced, or even directly violated by university administrators. I note as well that Article I Section 3 of the Wisconsin State Constitution guarantees freedom of speech. If these federal and state constitutional guarantees of free speech are endangered by neglect or lax enforcement, then it is not only the prerogative but the duty of the legislature to secure these constitutional rights by statute.

It is in this spirit that the Campus Free Speech Act would first instruct the Board of Regents of a state university system to craft a university-wide policy statement that unmistakably affirms the centrality of free expression. The statement would make it clear that it is not the proper role of a university to shield individuals from ideas or opinions they find unwelcome, disagreeable, or even deeply offensive. By legislative provision, this new statement would supersede and nullify any restrictive speech codes adopted by any constituent school of the state university system.

Second, the system's campuses would be declared open to any speaker whom students, student groups, or members of the faculty have invited. This would prevent administrators from disinviting speakers, however controversial, whom members of the campus community wish to hear from.

Third, the bill would expressly bar students, faculty members, employees, or any other members, of the university system from interfering with the freedom of others to express their views. This means no more shouting down of visiting speakers, and no more obstruction of legitimate meetings and events. In order to protect the free-speech rights of visiting speakers, and of everyone else on campus, the bill would authorize a range of disciplinary sanctions for those who interfere with the speech of others, with particularly strong penalties for anyone who commits a second offense. Equally important, the model bill includes very strong protections for the due process rights of students accused of interfering with the expressive rights of others.

In authorizing disciplinary sanctions for those who interfere with the free speech rights of others, the Goldwater proposal draws inspiration from the classic affirmation and defense of campus free speech, Yale University's Woodward Report of 1974. The Woodward Report not only eloquently upheld the centrality of free expression to the university's mission, it also laid out a strategy for fairly but firmly punishing those who had forcibly silenced the speech of others. The discipline policy devised by the Woodward Report remains in Yale's regulations to this day, and the Campus Free Speech Act takes a leaf from that book.

Unfortunately, we tend to take it for granted nowadays that students, and even faculty members, can disrupt university functions, interrupt, and shout down speakers they don't like, and yet suffer no penalty whatever. That is wrong. Legitimate protest must of course be permitted and protected. Peaceful protest is a proud American tradition and a positive good. Yet persistently interrupting, physically assaulting, or shouting down speakers is tyranny, pure and simple, and cannot be tolerated by any community that cherishes and protects free expression.

Freedom is not a license to attack your foes. License of that sort is the opposite of freedom. If you want to understand freedom, consider what Justice Oliver Wendell Holmes of the Supreme Court famously said in 1929: (quote) "If there is any principle of the Constitution that more imperatively calls for

attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate.” (end-quote)

If true freedom of speech is “freedom for the thought that we hate,” then freedom is actually a form of self-mastery. Far from being license, true freedom is an act of self-control, a refusal to physically extinguish even the speech we abhor. Freedom is a refusal to attack our opponents with everything we’ve got. Campus demonstrators too often mistakenly elevate what they think of as sensitivity and civility over the principle of free expression. Yet the truth is, freedom of speech itself is the ultimate act of civility.

This means that the minor passing offenses that are the price for our tolerance of free speech are well worth putting up with, because in the long run a society that practices freedom is a society that promotes civility. In the long run, free speech is our most certain path to mutual respect and civil peace, while the rejection of free speech almost guarantees descent into civil strife.

When a speaker is disrupted, not only have the speaker’s rights been violated, but so have the rights of the listeners. That is why disciplining those who interfere with the expressive rights of others is legitimate. And let me add that federal law recognizes this as well. Title I, Section 112 of the federal Higher Education Act, which deals with the protection of student speech and association rights, explicitly permits the imposition of sanctions on any student who has (quote) “willfully participated in the disruption or attempted disruption of a lecture, class, speech, presentation, or performance made or scheduled to be made under the auspices of [an] institution of higher education.” (end quote)

And there’s more to this proposed legislation than a powerful affirmation of the right to free speech, a provision discouraging speaker disinvitations, and the creation of a fair but firm discipline policy for those who interfere with the speech of others. The model bill would also instruct the state university system’s Board of Regents to issue a statement that defines and defends the principle of institutional neutrality on public policy controversies of the day.

It's often forgotten that institutional neutrality is a critical component of campus free speech. If a university, as an institution, were to take a public stand on controversial issues such as military intervention in the Middle East or the role of government in health care, this would put tremendous pressure on any faculty or students who disagreed with the university's posture.

We see this problem play out today in crusades to have colleges and universities divest themselves of any stock in oil companies, or in the state of Israel. It's often argued that colleges ought to avoid such divestment schemes because of their fiduciary responsibility to protect and enlarge their endowments. Yet the most important reason to avoid politicized divestment schemes too often remains unspoken. Any college that joins in the fossil-fuel divestment crusade, or that acquiesces to the campaign to boycott, divest, and sanction the State of Israel is taking an institutional stand that inevitably places unfair pressure on faculty and students who do not share these political views.

The classic statement in defense of the need for institutional neutrality at universities is the University of Chicago's Kalven Report of 1967. The Kalven Report rightly argues that the neutrality of the university at the official institutional level is in fact the surest guarantee of free inquiry and viewpoint diversity in its members. The fullest freedom for faculty and students, as individuals, to participate in political action and social protest actually requires the institutional political neutrality of the university itself. And the Kalven Report is a crucial inspiration for this provision of the Campus Free Speech Act.

Note, however, that this provision of the bill is written in such a way as to affirm the general principle of institutional neutrality, while still leaving the university considerable flexibility in deciding exactly how that principle ought to be applied in practice. In effect, the proposal invites the Board of Regents, through their annual committee report, to exercise their judgement on how best to uphold the general principle of institutional neutrality.

The model bill would also instruct the state university system's Board of Regents to include in freshman orientation programs a section describing all of these various policies and regulations. The idea is to

explain to the students from the very beginning of their time at the university how vital the principles of free speech are. It's also critically important that students understand from the start the discipline policy for interfering with the free speech rights of others. The goal, of course, is not to punish students for interfering with the expressive rights of others, but to deter them from undertaking such actions in the first place.

Additionally, the model bill would mandate the creation of a Committee on Free Expression within the university system's board of governors, and would charge it with issuing an annual report to the public, to the governor, and to the state legislature on the status of free expression, on the status of administrative discipline for the disruption of speech, and on the status of institutional neutrality in the state university system. In effect, this provision institutionalizes what Yale did in the 1970s when it created the Committee on Free Expression that issued the famous Woodward Report.

Such a public report would also create a counterforce to pressure on university administrators from demonstrators who interfere with the free speech rights of others. Now university administrators will have to worry about more than angering demonstrators who suppress the speech of others. Under the model bill, every year, university administrators will have to answer to the people of their state for their defense of free speech, for their willingness to discipline those who would interfere with the speech of others, and for their willingness to uphold the critical principle of institutional neutrality.

Keep in mind that this is merely a public report, the real power of which lies strictly in the light that it sheds, and in its ability to persuade. Yet simply exposing the betrayal of free expression at Yale and making recommendations for improvement was enough to bring positive change to that university in the 1970s. A public report by a Committee on Free Expression worked then for Yale, and would work now and in the years ahead for our various state university systems.

Bear in mind that all of these provisions are designed to work in concert. By strongly affirming the core principles of free expression, creating a discipline policy for those who interfere with the freedom of

others, informing students of the principles of free speech and of the penalty for disregarding it, and then holding administrators publicly accountable for failure to enforce the provisions of the bill, the model bill is designed to create a virtuous cycle that will prevent speaker shout-downs and disinvitations from ever happening in the first place.

Another provision of the Campus Free Speech Act prevents public universities from creating restricted so-called free speech zones. In fact, individuals who are prevented from speaking on campus, are relegated to unreasonably limited and over-regulated so-called free speech zones, or are discriminated against based on the content of their speech will have recourse to the courts. Universities may be compelled by the courts to compensate successful plaintiffs for reasonable court costs and attorney fees. And this, of course, creates yet another incentive for university administrators to protect free speech.

In short, the Campus Free Speech Act is an ambitious attempt to restore freedom of speech to our public colleges and universities, an attempt that can and should serve as a model for private universities as well.

Virtually everything in this proposed bill is based on the very best models we have for defending free speech at our universities, from Yale's Woodward Report to the University of Chicago's Kalven Report and its more recent Stone Report. Liberals and conservatives alike should be able support the Campus Free Speech Act, just as Yale's Woodward Report in its day was praised and supported across the political spectrum.

The model Campus Free Speech Act embodies the common understanding of liberty that unites all of us as Americans, even as it allows us to work out our differences through the democratic process.

Testimony Before The Assembly Committee on Colleges and Universities
Cahleel Copus – UW Madison Student
Speaking In Favor of AB299

Thank you Chairman Murphy and members of the Assembly Committee on Colleges and Universities for the opportunity to speak openly with the committee today on Assembly Bill 299.

In all my time I spent learning about civics and American government, I never imagined the first amendment would be up for debate. I never imagined I would be surrounded by students who questioned free exchange of ideas while attempting to shut down libertarian and conservative voices. I never imagined I would attend a university bent on keeping students from ideas rather than having them engage in meaningful dialogue. I never imagined I would attend a university that is too focused on flattering calls for diversity that they have drowned out voices calling for reason and truth. I never thought I would be in this position, but I am here before you, hoping to convey to you the reality of my campus.

We all know and understand the idea behind free speech and it can be summed up in a quote by Dr. Ron Paul. "We don't have the freedom of speech to talk about the weather," he said. "We have the first amendment so we can say some very controversial things." Our legal system has time and time again backed up this claim. Essentially, speech, so long as it does not directly call for violent action against someone nor of libelous and slanderous nature, is protected and, yes, this includes speech considered hateful.

Unfortunately, it seems that university professors have not been the best communicator of this basic idea.

This past winter, conservative speaker Ben Shapiro came to my campus, here in Madison, to speak on social and economic issues from the conservative viewpoint. He provided facts and reason for why he thought that way he did, and while I do not agree with everything that he said, I, being a student of the humanities, allowed him to present his ideas. Before any meaningful dialogue between speaker and audience could be had, a coalition of left-wing campus groups stormed the podium with chants of "Safety" and "Shame!" I ask you, when did a university's purpose become to provide intellectual safety, a "safe space", for students? More importantly, when did the University of Wisconsin - Madison inoculate this anti-free exchange behavior in students?

What did the university police say about the disruption? Well they told us that if one of these left-wing students became a martyr for their cause and got arrested, then the entire event would be shut down. What choice did I have as a student and as a listener? The rest of the event was in the hands of the protesters. Young Americans for Freedom was coerced by these students to either wait until someone got arrested or allow the protesters to continue to disrupt their event.

I want to bring to your attention what this trend means for myself and the rest of the students testifying today. It means that the students lack in their ability to engage in any meaningful dialogue. It means they prefer coercive protest with hopes of silencing ideas rather than engaging with them in a civil and peaceful manner. Consider the Qin Dynasty's decision to burn books and kill philosophers. That proved nothing more than their inability to launch an intellectual response to those ideas. For some reason, we seem to think we have elevated ourselves out of that attitude, out of the violence and

coercion needed to suppress information. However, we need look no further than the events that happened last November to show us that this is not the case.

The purpose of the University of Wisconsin is to teach students to use reason and knowledge to fight against ideas they consider to be wrong. This is not what is happening on my campus and certainly not what is happening across the nation. Time after time, intellectuals attempt to lecture, to share their ideas about the world and society, and rather than being met with an intellectual counterpoint from the student, they are met with chants and coercive tactics in an attempt to disregard completely the lecturer's ideas. Is this what our university system has become? To shame and silencing the ideas rather than confront them?

It is clear, based off of the violence and riots that have happened on other campuses, as well as the coercive nature of the students on our campus, that universities severely neglect their role in creating intellectuals. It severely neglects the purpose of giving students the avenues for debate.

I intended on coming to the university to pursue political and philosophical ideas and to debate the validity of them. I did not come to the university to be lectured as to what you can say and what you can't.

My great university should be focused on research and knowledge, not be extorted at the whims of political correctness culture. My great university should push us to defend and criticize all ideas, from socialism to capitalism, from world affirmation to nihilism, from collectivism to individualism, and all things in between. Students need to relearn the virtues of free exchange of ideas.

I ask the Board of Regents to fulfill their promise and uphold the University of Chicago free speech principles. Students have been coerced by other students to accept their version of the truth, while the Board of Regents engages in all talk and no action.

I desire all schools in the University of Wisconsin system to abandon calls for racial and sexual diversity and instead refocus on the true meaning of university: making all individuals, no matter their color or creed, focused on free exchange of ideas in pursuit of truth.

The next generation of people, the people that will be filling all of your positions, must be willing to seek dialogue. They must be taught and shown the true nature of civil debate before they take the next steps and hold the reins, and even the police and military power, of government. They must understand, espouse, and cherish the ideas of peaceful and civil exchange. The direction that the students in the University of Wisconsin system are heading in right now will take away that future.

It is of the utmost importance that our Wisconsin universities believe and show students this ideal, so that we can all live and express our ideas in a peaceful and civil manner.

Thank you.

Jessica Murphy – Testimony in favor of AB 299

Thank you Mr. Chair and committee members.

My name is Jessica Murphy and I am a rising senior at the University of Wisconsin - Green Bay. I am here before you today to testify on behalf of free speech in the UW System.

For the past two years, I have been a State Chair with a national nonprofit that has a campaign dedicated to fighting for free speech on college campuses. In this capacity, I worked with both public and private universities across Wisconsin to challenge unconstitutional campus speech policies, with a specific focus on the UW System. This offered me an in depth look at the experiences with free speech on campuses other than my own, throughout the UW System.

Unlike the testimonies delivered by other students today, my experiences on these campuses did not deal with contentious speakers, but rather giant inflatable beach balls. One of our notorious activism events is rolling around “free speech” balls on campus. We invite passersby to write whatever they want on the ball and the point of the event is to encourage free speech and foster healthy debate.

While rolling one of these speech balls around UW Oshkosh this past fall, we were stopped by police and a member of the campus administration who were called by a professor who thought that the messages on the ball were offensive. The police proceeded to ask the chapter president for his ID and check if he had any outstanding warrants. A student advocating for free speech was treated like a criminal.

I reached out to the champion for free speech at UW Oshkosh, Jakub Nowak, for an update on the campus climate. He was told by the assistant dean of students that the next time he does a free speech ball, he has to tell students to be respectful, effectively censoring the student body and individual thought, and the chancellor refused to acknowledge the unconstitutional speech codes on campus despite being contacted by the Foundation for Individual Rights in Education, a nonprofit that specializes in civil liberties in academia.

Last year, I had the privilege of attending the Foundation for Individual Rights in Education summer conference, where we delved into the notion of free speech, what kind of speech is constitutional, and how to advocate for free speech and reclaim student rights on campus.

They also walked us through their policy rating system -- ranked at green, yellow, and red. Green light policies are constitutional and uphold the students’ rights to free speech on a public campus, yellow light policies tend to be vague or broad and need more narrowly tailored language in order to fully protect students’ speech rights, and red light policies blatantly violate student rights -- most often by having a “free speech zone” on campus.

We actually have one of these “free speech zones” on my campus, although we have a yellow light rating from FIRE. The zone is out near the main entrance of the Union, by the bell tower on a small hill, surrounded by bushes, and fenced off from the main walking paths. This was one of those outdated policies on the book that few knew about, until last spring when a Democracy and Justice Studies senior seminar group was forcibly removed from the University

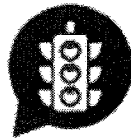
Union, where they were holding a demonstration raising awareness about sexual assault, and told to go to the “free speech zone”.

This situation highlights the necessity for clearer policies as the Union staff were not sure how to respond, and this also did a disservice to the students who had to go out of their way to engage with the group.

As you all probably know, the UW Board of Regents adopted their own version of the University of Chicago principles of free speech in 2015 and reaffirmed them in 2016. These principles embody the First Amendment and the notions of free expression and a free academia. So far these have only been empty promises. Despite their legal and moral obligation to provide for the students, the Board of Regents has not enforced policy changes to be made at the university level. While the sentiment of the Chicago Principles is important to embody, it is vital to push for change at the level that will directly affect the students.

Representative Dianne Hesselbein said “I believe strongly in free speech, and I think we have it now.” Respectfully, the reality is that we don’t. Free speech should be a nonpartisan issue and I implore you all to support the UW System students by ensuring our constitutional right to free speech.

I thank you again for inviting us to speak with you today and ensure that student voices are heard.



• **University of Wisconsin - Oshkosh**



- **University of Wisconsin - Eau Claire**
- **University of Wisconsin - Green Bay**
- **University of Wisconsin - La Crosse**
- **University of Wisconsin - Madison**
- **University of Wisconsin - Stout**

Ladies and Gentlemen of the committee on Colleges and Universities, I appreciate the opportunity to testify today about campus free speech and Bill 299. In the fall I will be a senior at UWGB. Where I've been active in Student Government and other political organizations. In three years at UWGB I've seen free speech in action, and how universities in Wisconsin handle problems when opposing rights related to free speech clash.

First I'd like to acknowledge Eric Wimberger an attorney in Green Bay that helped me get a better understanding of the law to articulate what I've seen and experienced.

Recently, I've visited other campuses to see speeches and I've seen presentations on the internet that took place in Wisconsin Universities. We all saw what happened in Berkley and on other campuses. I believe Bill 299 is a good start to address the problems I've seen.

The common tactic I see starts with demonizing both people and ideas. Then, the opposing group who does the demonizing feels a sense of moral justification that extreme tactics are necessary to stop the speaker. If the

speaker is allowed to speak, then people might be persuaded to become hateful. Students might not feel safe on campus.

By the time of the speech, a group dedicated to extreme tactics forms to make students feel unsafe for listening to the speaker. The speaker either cancels for the sake of security or the school cancels the event for security. All happening without really having any sort of logical debate to understand the views. Often at the events being shouted down or blocked, the police do nothing to stop them.

I've seen students occupy administrative offices and try to shut down school activities until their demands were met. To stop that behavior, the universities created an area such as the "Bell Tower" at UWGB. It's just a public forum designating a spot for speech in a manner that does not stop the University from accomplishing its job.

Restriction of speech to a Public Forum does not have an impact on the communicated idea. It has an adverse effect on the opportunity to communicate. To restrict opportunity to speak to a regulated area can be

good when people don't get along. As long as people are given an equal access to the public forum, then simply requesting that people take turns respectfully is not unreasonable. No one is denied the expression of ideas that way.

When the university creates a public forum and limits speech to particular areas, it cannot "close adequate alternative channels" for communications. The regulations regarding the public forum must be "narrowly tailored" to serve a "significant government interest." In Bill 299 the concept is to protect a significant government interest of exposing people to all types of ideas. Then, those people can accept or reject the ideas. No one is telling opposing groups they can't use that public forum next or a different public forum at the same time. No one is telling opposing groups that they can't circulate a newspaper or pamphlets simultaneously with their views. When using the public forum, however, unfortunately there are people who think they are morally justified and obligated to prevent others from communicating ideas in it by threatening and using force.

It is important to understand that the constitution does not treat all speech equally. For instance, shouting "fire" in a theater is speech, but the speech can be punished because a significant government interest exists in preventing people from dying in panic to escape fire. Unruly and disorderly speech that shouts others down is not as protected as speech done in a respectful manner.

I have heard the argument that stopping the people who stop speech is stopping their speech. That is like saying my attorney can stop you from getting an attorney because to prohibit my attorney from stopping your right to an attorney is prohibiting my right to an attorney. Or, my newspaper can stop your newspaper from printing because to prevent my ability to stop your newspaper from printing affects my ability to free press. It is simply not accurate.

I have also heard the argument that the bill may be what's called "overbroad" or "vague." The things prohibited in the bill are exactly the things prohibited in the current disorderly conduct statute. The disorderly conduct statute has

been held as *not* unconstitutionally vague or overbroad since at least 1965 in State v. Givens (135 N.W.2d 780, 28 Wis.2d 109 (Wis., 1965))

Bill 299 authorizes the University's "investigating officer" to discipline students who would otherwise be committing disorderly conduct even when the police look the other way. It is specifically aimed to stop people who have the stated intent to disrupt and prevent speech of people they disagree with. I wish such regulation were not necessary and all people could let people say what they wanted to say, and choose what they wanted to support after hearing it. But, unfortunately, there are people on campus who are not interested in open dialogue. This bill addresses the problem.

3580 S. 18th Street
Milwaukee, WI 53221

May 9, 2017

Wisconsin State Assembly
Committee on Colleges and Universities
Wisconsin State Capitol
2 E. Main St.
Madison, WI 53703

Dear Committee:

It is no secret that the freedom of speech protected by our First Amendment is being threatened on college campuses across the nation. College students are having their events shut down, being relegated to small "free speech zones", and even being arrested for an act as simple as handing out pocket Constitutions. This trend has dangerous implications for American society. By creating the impression that some students' opinions and values are not allowed, our universities are teaching future generations of leaders and voices that one of our most fundamental rights is no longer valid in the Land of the Free.

The universities of Wisconsin and America in general, as true institutions of higher learning, should serve as beacons of intellectualism to the rest of the world. The greatest lessons a student can learn from the university experience are those with roots in civil discourse. The ability to listen and understand all sides of an argument, and when necessary the ability to defend one's own beliefs, is an invaluable skill that college students acquire through discussion. Unfortunately, universities too often disallow these discussions to occur, or moderate speech in favor of only a particular set of viewpoints and opinions. The continuous tendency of permitting the stifling of free speech, debate, and education spell a poor future for American intellect and individuality.

I am confident that AB 299, if passed, will establish the necessary safeguards to free speech at public universities in Wisconsin to ensure that American ideals, intellectualism, and individualism are protected for the future of our great State.

Sincerely,

Logan Hansen

1716 W. Wisconsin St.
Milwaukee, WI 53233

May 8, 2017

Wisconsin State Assembly
Committee on Colleges and Universities
Wisconsin State Capitol
2 E. Main St.
Madison, WI 53703

Dear Committee:

Free speech is under attack on college campuses across the country, and indeed across the great State of Wisconsin. This is largely due to the fact that students at many universities are forced to abide by unconstitutional speech codes that stifle their inalienable right to self-expression. This phenomenon is certainly a detriment to academic freedom. It also poses a threat to the American way of life, as these policies are teaching our country's next generation of leaders that it is okay to suppress dissent and censor those whom they disagree with.

Free speech is a vital part of any flourishing society. The great thinker and founding father of this country, Benjamin Franklin once wrote, "Without Freedom of thought there can be no such thing as wisdom; and no such thing as public liberty, without freedom of speech." Free speech allows individuals to share ideas with one another and as such, it fosters freedom of thought—something that should be sought after at **every** institution of higher learning. Furthermore free speech challenges us to confront ideas with which might not agree with. This is opposed to censorship, which teaches us to act as though conflicting ideas do not exist. Most importantly, though, free speech promotes inclusion and equality. When speech is truly free, everyone has a voice and is able to express their thoughts and feelings.

I am confident that if AB 299 is passed, it will be a step in the right direction for free speech at public universities in Wisconsin.

Sincerely,

Christopher P. Czarnecki
Wisconsin State Chair, Young Americans for Liberty



203 South Paterson Street, Suite 100 / Madison, WI 53703-3689 / 608 255-4260 / www.wisdc.org

**Statement to the Assembly Committee on Colleges and Universities
In opposition to Assembly Bill 299
Relating to free expression within the University of Wisconsin System
By Matt Rothschild, Executive Director, Wisconsin Democracy Campaign**

May 11, 2017

Chairman Murphy, and distinguished members of the Assembly Committee on Colleges and Universities, it's an honor to be with you today. I'm Matt Rothschild, the executive director of the Wisconsin Democracy Campaign, now in its 22nd year as a nonprofit and nonpartisan watchdog on the issue of money in politics and an advocate for clean, open, and transparent government, where everyone has an equal voice. In our mission statement, we extol "citizen participation" and "respect for constitutional rights," and that is why we are testifying today.

We oppose this bill for the following reasons:

1. It is unconstitutional

The bill would penalize anyone at the UW's schools "who engages in violent, abusive, indecent, profane, boisterous, obscene, unreasonably loud, or other disorderly conduct that interferes with the free expression of others."

This clause is so broad and vague that it won't hold constitutional muster, and I even heard Representative Kremer cop to this on Wisconsin Public Radio.

For instance, what does "boisterous" mean?

What is "unreasonably" loud?

What is "abusive"?

And does "profane" include blurting out the word "God," or "Jesus!"?

And what exactly does "interfering with the free expression of others" mean?

If someone boos for two seconds after an outrageous comment from a speaker, does that constitute “interference”?

If people turn their back on a speaker, does that constitute “interference”?

The Wisconsin Democracy Campaign believes that everyone has the right to speak on campus and that no one should be shouted down such that they can't finish their speech. But the Wisconsin Democracy Campaign also recognizes traditional free speech rights of students to respond to statements they find offensive with the occasional boo or hiss or shout or other expression of disapproval. That, too, is free speech. That, too, is part of the give and take of a university.

2. The punishment for violators is too harsh and inflexible.

The punishment for violating this policy twice is too harsh and inflexible: automatic suspension for a minimum of one semester. This exceeds the punishment for other “non-academic offenses,” as spelled out in the statute governing the UW system (UWS 17.09), which are more severe. For instance, there is no automatic suspension for twice engaging in “conduct that endangers or threatens the health or safety of oneself or another person” and there is no automatic suspension for twice throwing “rocks or other dangerous objects at law enforcement” or for selling or delivering “a controlled substance.” But if you boo two speakers, you're suspended? Plus, the bill would take all discretion out of the hands of the university for the second speech offense, whereas all the statute says is that “the university may discipline” any student who runs afoul of the rules. You are micromanaging each campus, and not allowing each institution to look at the totality of the individual's actions and any extenuating circumstances.

3. This bill is unnecessary because the current statute already covers the subject.

In 17.06(3), it states that the university may discipline a student “for intentional conduct that obstructs or seriously impairs or attempts to obstruct or seriously impair university run or university-authorized activities.” It also specifies that the university may discipline a student who “engaged in shouted interruptions, whistling, derisive laughter, or other means which by itself or in conjunction with the conduct of others prevented or seriously interfered with a fair hearing of the speech or program.” And while this seems vague and overly broad—what does

“seriously interfered with” mean?—it’s already covered, and so this bill is unnecessary.

4. The bill gags the university.

The bill states that UW institutions shall “strive to remain neutral, as an institution, on public policy controversies.”

So the University of Wisconsin stem cell researchers, and the deans of the departments where they work, would not be allowed to take a position on the importance of stem-cell research to cure diseases?

Or the leaders of the Nelson Institute for Environmental Studies would not be allowed to argue that climate change is real, and caused primarily by the burning of fossil fuels?

You are saying that the chancellor of the University of Wisconsin-Madison would not be allowed to weigh in on whether student debt should be lessened, or whether higher education should be free of charge.

You are saying that the University of Wisconsin must remain neutral on the subject of sexual harassment and rape.

Or, to bring up an old example, you are saying the University of Wisconsin institutions should remain neutral on the question of Darwin and natural selection versus creationism. This is ludicrous and hidebound.

Far from protecting free speech, this bill would interfere with it.

It would turn “sifting and winnowing” into “gagging and suppressing.”

That’s why we at the Wisconsin Democracy Campaign oppose it.

Thanks for considering our views. And I welcome any questions you might have.

ISSUES REGARDING 2017 ASSEMBLY BILL 299

Presented by Steven C Underwood

I have carefully reviewed Assembly Bill 299. I have questions concerning interpretation of some of its contents.

1. In Section 1 (4) (a) 3. The Act says "that ***students and faculty*** have the freedom to discuss any problem as permitted by the First Amendment and within specified limits." Emphasis supplied. I believe it is not the drafters' intent to provide this protection only to "students and faculty." I assume it is intended to apply to all members of the institutional community, including, but not limited, to academic staff, administrators, secretaries, supervisors and the like.
2. The same issue in 2. above, can be found in Section 1 (4) (a) 5.
3. Section 1 (4) (b) is titled *Discipline*. In 1 (4) (b) 1. it requires the board to include "a range of disciplinary sanctions for anyone under the jurisdiction of the institution" for certain conduct interfering with free speech. In 1 (4) (b) 2. The board is required to provide procedural due process for students who are subject to discipline for expressive conduct. Reading these two subsections in conjunction with each other, it appears that the legislation requires the board to provide procedural due process in disciplinary actions for expressive conduct only to students, but the board is not required to provide all others under its jurisdiction with procedural due process. I note as well that there exists UWS Chapter 17, Wisconsin Administrative Code titled Student Non-Academic Disciplinary Procedures. These

procedures, having the force and effect of law in Wisconsin, could easily be applied when student expressive conduct is at issue. This application would also mean that the 26 or so campuses across the state would be applying a uniform set of procedures rather than being required to adopt their own procedures.

From April 28-29th, 2017, students of various ideologies from schools around the country came to the University of Chicago to discuss the importance of free expression in education, and to craft a Statement of Principles for students, alumni, and faculty from around the world to sign onto. This conference led to the formation of Students for Free Expression, which we hope will expand to campuses throughout the country in the next academic year.

A key component of what we discussed is the need for our legislatures to take action on state and national levels to ensure that free expression is actively supported. We are thrilled to see Speaker Robin Vos's bill that will "protect the First Amendment on college campuses, encouraging the debate of ideas and promoting diversity of thought."

Speaker Vos is entirely correct in saying that "all across the nation and here at home, we've seen [protesters] trying to silence different viewpoints. We need more speech, not less; it's time to put in appropriate measures to ensure all speech is protected at our universities." This bill is a critical step forward in advancing free expression on campuses, and we hope that more states are willing to follow Wisconsin's leadership on this issue.

Matthew Foldi, University of Chicago

Michael J. Hout, University of Massachusetts Amherst

Christopher Zhen, New York University

Roy (Shan) He, University of Michigan

Patrick Murray, City Colleges of Chicago

Maximilian A. Zoia, Northwestern University

John Minster, DePaul University

Julia Cohen, Northwestern University

Zach Talley, Clemson University

Abbie Wade, DePaul University

Ivy Ziedrich, University of Nevada, Reno

Angela Kaczynski, Grand Valley State University

Allison Berger, Princeton University

Nick Gricus, DePaul University

Gefen Kabik, University of Maryland

Cameron Erickson, DePaul University

Christian Caruso, James Madison University

TESTIMONY ON AB299

Jordan Ellenberg
John D. MacArthur Professor of Mathematics
University of Wisconsin-Madison

I am a proponent of free speech on campus and believe that our students benefit from being exposed to all kinds of views, even those that denigrate, mock, or directly attack the values they were raised with by their families.

However, I oppose this bill. Here's why.

1. The behavior prohibited by this bill: "boisterous, obscene, unreasonably loud, or other disorderly conduct that interferes with the free expression of others" is described much too vaguely. Disagreement should never be violent but it should often be boisterous, and what "interferes with the free expression of others" means is not well-defined. Vague laws like this one, while aimed at free speech, inevitably end up suppressing it, as students have no way of knowing whether they can be punished for boisterous opposition to a speaker's ideas.
2. The bill takes away the University's discretion to assign suitable punishments for disciplinary infractions. Nowhere else in section 36 is such a condition imposed. If a student physically assaults a classmate or vandalizes a campus building, state statute doesn't dictate suspension or expulsion. Those violations are no less serious.
3. The requirement that "each institution shall strive to remain neutral, as an institution, on the public policy controversies of the day" is also much too broad. The University must be allowed to advocate, as an institution, for funding of scientific research and humanistic scholarship, for free speech on campus, and for support for our students. All of these are controversial matters of public policy in which the University has a direct stake.

It pains me to oppose this bill, because I strongly support the principles asserted in 36.02(1). But this is not good law.

**The Assembly Colleges and Universities Committee
Testimony by Regent Tim Higgins
Supporting AB 299 the Campus Free Speech Act
May 11, 2017**

Chairman Murphy and committee members, thank you for the opportunity to testify today on Assembly Bill 299. My name is Tim Higgins. I reside in Appleton where I am a constituent of Representative Murphy's. I have a consulting practice in value stream management for health care providers. While I am well known to Representative Murphy and have had the opportunity to meet several of your committee colleagues I believe that it will be useful to you if I share my background with the University as it will give you an idea of the experience that shapes my testimony in support of AB 299, the Campus Free Speech Act.

I matriculated at UW-Madison in 1968, early in the era of student unrest. In 1971 I was elected President of the Wisconsin Student Association (WSA), which was then the student representative organization for the Madison campus. That is the same year that the legislature passed, and Governor Lucy signed, the act that merged the UW and Wisconsin State University Systems. During my association with WSA I was involved, as an organizer and participant, in many demonstrations and protests.

My career as a student activist was capped in August of '72 at the National Student Congress in Washington, D.C., when I was elected President of the US National Student Association. During my year in office I visited nearly 50 campuses from Catholic University in DC to UC Berkeley and from SUNY Stony Brook to small private colleges in Miami to meet with local student leaders and learn about their concerns.

After I graduated from the UW I remained connected through the Wisconsin Alumni Association, as a member and serving on the boards of the local chapters in Chicago and the Fox Valley and as a member of the national board of directors for two terms. I was also a member of the association's Diversity and Inclusivity Council for a decade and was chosen Alumni Advocate of the Year in 2005.

In 2011 Speaker Vos appointed me to The Special Task Force on UW Restructuring and Operational Flexibilities. Later that year Governor Walker included me among his

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first citizen appointees to the UW System Board of Regents. As a regent I have served on the Executive Committee, the Business and Finance Committee, the Education Committee and on the Research Economic Development and Innovation (REDI) Committee, chairing that committee for several years. I am one of three regent members of the UW Health Board of Directors and I serve as Regent Liaison to the Wisconsin Partnership Program, the UW-Green Bay Council of Trustees and the UW-Oshkosh Business Success Center.

I apologize for boring you with this list of particulars but I want to underscore the fact that the UW has been an important part of my life for fifty years and, during that time, I have paid attention to what's been happening on campus and with the legislature.

From that perspective and with my history of involvement with and support for the UW I conclude that passage of the Campus Free Speech Act is necessary to stem the erosion of First Amendment rights on our campuses. I say this with regret because several of my friends within the university, respected scholars of academic freedom and freedom of speech issues, argue that the university should be given the opportunity to put its own house in order. Unfortunately, I don't believe that the university is capable any longer of doing so. One of the sources I've provided Chairman Murphy for distribution is a recent National Review article by Stanley Kurtz, a senior fellow at the Ethics and Public Policy Center, titled Understanding the Campus Free Speech Crisis. Kurtz notes that, "...today's pattern is an intensification of a long-standing crisis...", and "What's clear after 50-some years is that the academy has proven itself incapable of solving its free-speech problem on its own." He concludes that "...state and federal legislators cannot look the other way but must act to restore our most basic liberties to the academy. [T]he underlying problem will not be solved until [university] administrators are pressed to restore discipline..."

By adopting the Campus Free Speech Act you would be directing the university to adopt policies that require immediate and significant consequences for those who have

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engaged in disruptive activity. By doing so you would be recognizing that condoning, rationalizing or ignoring disruptive activity harms our state university's commitment to academic freedom and free speech. You would recognize that denying a speaker's right to be heard challenges the constitutional and normative principles of a free society. You would be protecting Wisconsin taxpayers' investment in the UW System that they have proudly supported for nearly 50 years.

Moving on to other provisions of AB 299 I want to specifically support the creation of a Council on Free Expression. I believe that mandating the creation of the Council and tasking it with producing an annual report will keep this very important topic in focus. However, I believe that the proposed constitution of the Council will undermine the legislature's intent. Here are my reasons:

1. A fifteen-person body is too large. It's hard to find meeting times. It's easy for individual members of the group to recede into the background and not contribute to the work product.
2. A group dominated by appointees from UW System campuses will not be objective. Campus representatives will represent their institutions and that doesn't necessarily mean that disinterested self-criticism will predominate.

I suggest that the Council be made-up of nine members including:

1. Two legislative representatives as prescribed in the current version of the act
2. Three representatives of UW System campuses with one representative from one of the research institutions, a representative from one of the comprehensive institutions and a representative from the colleges/extension
3. One member of the Board of Regents who will act as liaison between the Council and the Board
4. Three citizen members to represent the interests of Wisconsin citizens

Since the Council will report on barriers and difficulties and make recommendations I conclude that it will also be responsible for monitoring the implementation and success

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of remedies adopted to remove those barriers and difficulties. I have learned that one of the outstanding characteristics of working in academia is that it takes a long time to get anything done. While the legislation does not specify how long Council members' terms will last I suggest that, with the exception of the legislative members, terms be at least four years and that those terms be staggered.

Finally, I caution you to pass the Campus Free Speech Act with the understanding that it will be vigorously challenged. No matter how you draw the line between demonstration and disruption, activist administrators, faculty and students will devise creative ways to test the limits. The media will be no help to us. It exists to package audiences for advertisers. It's easier to do that by sympathetically telling the story of an attractive, dedicated, passionate young person who will suffer a suspension or expulsion because of his/her conduct than by explaining the abstract concept of how that conduct undermined one of the foundation stones of our free society. Pass the Campus Free Speech Act knowing that the University will need your support, financial and political, as it strives to throw off fifty years of neglect and, once again, begins to shoulder the burden it must carry as a pillar of our democracy.

Thanks for your kind attention. I'll be happy to answer any questions.

**University of Wisconsin System Board of Regents' 2015 Statement
Reiterating the Board's Commitment to Academic Freedom
and Affirming its Commitment to Freedom of Expression**

EDUCATION COMMITTEE

Resolution I.1.k.

The Board of Regents of the University of Wisconsin System has a longstanding tradition of support for academic freedom, dating back to 1894 and the famous "sifting and winnowing" statement contained in the University of Wisconsin Board of Regents' Final Report on the Trial of Richard Ely. The Board of Regents of the University of Wisconsin System hereby reiterates its commitment to the principle of academic freedom and affirms its commitment to the principle of freedom of expression.

Academic freedom includes the freedom to explore all avenues of scholarship, research and creative expression, and to reach conclusions according to one's own scholarly discernment. Freedom of expression includes the right to discuss and present scholarly opinions and conclusions on all matters both in and outside the classroom. These freedoms include the right to speak and write as a member of the university community or as a private citizen without institutional discipline or restraint, on scholarly matters or on matters of public concern. The UW System is committed to these principles and provides all members of the university community the broadest possible latitude to explore ideas and to speak, write, listen, challenge, and learn.

Of course, different ideas in the university community will often and quite naturally conflict. But it is not the proper role of the university to attempt to shield individuals from ideas and opinions they, or others, find unwelcome, disagreeable, or even deeply offensive. Although the university greatly values civility, concerns about civility and mutual respect can never be used as justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members within the university community.

The freedom to debate and discuss the merits of competing ideas does not mean that members of the university community may say whatever they wish, wherever they wish. Consistent with longstanding practice informed by law, institutions within the System may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the university. In addition, the institutions may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt ordinary activities. But these are narrow exceptions to the general principle of freedom of expression, and it is vitally important that these exceptions never be used in a manner that is inconsistent with each institution's commitment to a completely free and open discussion of ideas.

These principles carry responsibilities. Academic freedom carries the responsibility for the faithful performance of professional duties and obligations. All members of the university community at each of the institutions in the University of Wisconsin System share in the responsibility for maintaining civility and a climate of mutual respect. Although members of the university community at each institution are free to criticize and contest the views expressed on campus, they may not obstruct or otherwise interfere with the freedom of others, including speakers who are invited to campus, to express views they reject or even loathe. Freedom of expression also carries the obligation to make clear that when speaking on matters of public interest or concern, one is speaking on behalf of oneself, not the institution.

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. Exploration, deliberation, and debate may not be suppressed because the ideas put forth are thought by some or even by most members of the university community (or those outside the community) to be offensive, unwise, immoral, or wrong-headed. It is for the members of the university community, not for the institution itself, to make those judgments for themselves, and to act on those judgments not by seeking to suppress exploration of ideas or expression of speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the university community to engage in such debate and deliberation in an effective and responsible manner is an essential part of each institution's educational mission.

Accordingly, the University of Wisconsin System Board of Regents expresses its expectation that the principles of academic freedom and freedom of expression will be upheld because today, as previously stated by Regents on September 18, 1894:

“Whatever may be the limitations which trammel inquiry elsewhere, we believe the great state University of Wisconsin should ever encourage that continual and fearless sifting and winnowing by which alone the truth can be found.”

Sources: Richard Ely Trial Committee Final Report, September 18, 1894, University of Wisconsin Board of Regents; Report of the Committee on Freedom of Expression at the University of Chicago; Johns Hopkins University Statement on Academic Freedom; Princeton University Statement on Freedom of Expression; Purdue University Commitment to Freedom of Expression.



Written Testimony on
The Campus Free Speech Act (AB299)

Rick Esenberg, *President and General Counsel*

Tom Kamenick, *Deputy Counsel*

Clyde Taylor, *Associate Counsel*

May 11, 2017

Dear Chairman Murphy and Members on the Assembly Committee on Colleges and Universities,

Thank you for the opportunity to testify today. We are attorneys at the Wisconsin Institute for Law & Liberty. WILL is a nonprofit legal center and policy organization engaged in strategic litigation, advocacy, policy research and public education to advance free markets, individual liberty, constitutionally limited government and a robust civil society.

We have a long-standing interest in freedom of expression, particularly as it applies to university and college campuses. In fact, we are currently engaged in litigation against Marquette University, which is trying to fire Professor John McAdams for simply blogging. We will be releasing a full legal analysis of the free speech bills early next week.

Today, we are here to testify for informational purposes only on AB 299. But while we are not endorsing these particular bills, we commend the effort to protect free speech on campus.

The University of Wisconsin (UW) System has had a history of supporting freedom of expression among its students and teachers. In 1894, Oliver Wells, the State Superintendent of

Education and ex-officio member of the Board of Regents, charged Professor Richard Ely with teaching and advocating socialism. The board appointed a committee to examine the charges. Ely was exonerated and the committee proclaimed, "*Whatever be the limitations which trammel inquiry elsewhere, we believe that the great state University of Wisconsin should ever encourage that continual and fearless sifting and winnowing by which alone the truth can be found.*" The committee's statement is now enshrined on a plaque on Bascom Hall at the heart of the UW-Madison campus.

But, as we all have become aware, the freedom of expression that this sifting and winnowing requires has come under systematic attack. There is a developing ideology that supports restriction of speech. In a recent *New York Times* column, Ulrich Baer, an administrator at NYU, endorsed the rejection of the "old" and "pure model of free speech," citing post-modern philosophy to suggest that speech which some might think "discredit[s]" or "delegitimize[s]" groups is somehow "less worthy of participation in the public exchange of ideas." One can see the implications of Baer's ideology by reviewing the list of speakers who have been "disinvited" from college campuses which includes Laura Bush, Bill Maher, Condoleezza Rice, Ayaan Hirsi Ali, Alec Baldwin, and George Will.

In addition, we have seen attempts to physically obstruct or "shout down" speakers. This is not an exercise of legitimate protest. It does not seek to express ideas or respond to them. It is a tactic that seeks to silence speech. We are familiar with the sorry episodes such as the attacks on Dr. Charles Murray at Middlebury and Heather MacDonald at Claremont-McKenna.

So it is appropriate the legislature act, but in doing so, there are some guiding principles to keep in mind.

- Universities should welcome and defend the expression of diverse viewpoints, even those that some may regard as offensive or disturbing. College is a place to learn to engage the world and expand one's horizons; not a place to be kept safe and secure in your own presuppositions.
- The expression of viewpoints themselves can never be considered interference with another's right to speech or harassment. The expression of an opinion does not prevent anyone else from expressing counter opinion.
- Shouting down or interference with another's freedom of expression should not be permitted, although the right to protest should also be protected.
- The right of protest must be adequately protected. All limitations on the time place and manner of speaking must be necessary, narrow and clear, and permit adequate alternative avenues for speaking.

Assembly Bill 299

We have reviewed the bill that is before the committee. We believe that it goes a long way to address the problem. It is a good start. But there are a few areas where improvements should be considered.

1. Protection of Free Speech

Proposed section 36.02(4)(a)(4) requires the Regents to make clear “that protests and demonstrations that interfere with the rights of others to engage in or listen to expressive activity shall not be permitted and shall be subject to sanction.” While one might think that this language is clear enough, a growing ideology believes that the expression of unwelcome opinions interferes with the “right” of others to speak. In light of this, the bill can be improved to better protect free expression, including the right of protest, by adding the following language:

The policy must make clear that the expression of a particular viewpoint, without more, does not constitute interference with the rights of others to engage in expressive activity. Criticism – or the expression of an opinion that some find unwelcome disagreeable or even deeply offensive – does not constitute interference with the expressive rights of those who disagree with that criticism or opinion.

2. Disciplinary Sanctions Provision

Proposed section 36.04(b)(1) directs the Regents to specify disciplinary sanctions for anyone who engages in “violent, abusive, indecent, profane, boisterous, obscene, unreasonably loud or other disorderly conduct that interferes with the free expression of others.” This provision of the bill has attracted criticism with some suggesting that the language is unconstitutional.

It is important that permissible regulation of speech be scrupulously clear and narrow. Protests that are “indecent,” “profane,” or “boisterous” may well be protected by the First Amendment. Terms like “abusive,” “unreasonably loud,” or “disorderly” are vague. While the proposal’s structure should be read to permit discipline of only such conduct that “interferes with the free expression of others,” not all levels of “interference” would constitutionally justify discipline. For that reason, we suggest that this section be amended as follows:

Subject to the protections for expressive conduct set forth elsewhere in the policy prescribed by the Regents, including but not limited to those required by sec. 36.02(4)(a)(4), and consistent with the dictates of sec. 36.02(4)(a)(3) and limitations of sec. 36.02(9), the policy shall include a range of disciplinary sanctions for anyone under the jurisdiction of the institution who engages in conduct that substantially and materially interferes with the free expression of others.

3. Neutrality

Section 36.02(4)(a)(7) requires the Regents to provide that universities – as institutions – “strive to remain neutral . . . on the public policy controversies of the day.” This provision has been incorrectly described as “requiring” neutrality (it is only aspirational) and as prohibiting faculty from taking such provisions even as part of their scholarly pursuits. It does no such thing.

But it is not clear that it should be included. It is certainly a good idea for a public university – as an institution – to remain neutral on most public controversies. Universities are a forum in which faculty and students are free to express themselves and engage in the “sifting and

winnowing” that the University of Wisconsin, when it has been at its best, has been committed to. There is always a danger that when it weighs in – as an institution – it will exert a chilling effect on that free expression that this “sifting and winnowing” requires.

On the other hand, there are public controversies relating to the functioning of the university and in which it is a participant, such as disputes over budgetary policy, admissions, and even free speech on campus. For this reason, the policy is properly aspirational but can be strengthened by adding the following language:

Each institution should be reluctant to take a position on the public policy controversies of the day, and may not require students or faculty to publicly express or affirm any view on those controversies. Notwithstanding the foregoing, individual members of the university community are free to take positions on the public controversies of the day as more fully described and protected elsewhere in this policy.

4. Punishment for Violation of Free Expression Policy

AB 299 specifies that a student who has twice been found to have violated the policy against interfering with freedom of speech must be suspended or expelled. In light of the need to report the outcome of disciplinary complaints by the council of free expression, this is well-intentioned and designed to prevent administrators from ignoring anti-speech activities. However, WILL does not believe that the legislature should prescribe the particular punishment for violations of this policy. We believe that the requirement that the council report to the legislature will aid public oversight of enforcement. And rather than mandate particular punishment, we believe the bill should list various options for discipline and require that discipline be progressive.

Other, more technical suggestions will be made in the report we release next week. Thank you again for the opportunity to testify, and we would be happy to answer any questions.



FOR IMMEDIATE RELEASE

May 11, 2017

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Vos Directed Campus Free Speech Attack

Speaker's Office Ignored Attorney Concerns Over Problematic Language

MADISON, Wis. — Assembly Speaker Robin Vos was the legislator who initiated and directed the development of legislation threatening students with expulsion for exercising their First Amendment right to denounce hate speech on University of Wisconsin campuses, according to a review of drafting records. Documents reviewed by One Wisconsin Now show how a staff person from Vos' office requested model legislation written by a right wing think tank be drafted as a bill for consideration by the Wisconsin legislature.

"The records show this attack on the First Amendment rights of students and faculty to create mandatory safe spaces for racist, sexist, homophobic or xenophobic right-wing provocateurs was instigated at the behest of Robin Vos and overseen by his office," commented One Wisconsin Now Executive Director Scot Ross. "Doesn't the most powerful guy in the Assembly have something better to do with his time than drafting bills to bully students and intimidate faculty?"

According to an email the Vos office requested a bill be "drafted as is stated in the attachment." The "Campus Free Speech Act" was produced by the Goldwater Institute, an Arizona based think tank whose operations are underwritten by some of the largest right wing funders including the Bradley, Koch and Walton foundations.

A Vos staffer also added a provision requiring a policy to sanction students for engaging in protests judged to be "indecent, profane or boisterous," despite concerns raised by the drafting attorney that the language was problematic due to the terms being broad and ambiguous.

In addition to the threats to students, the bill includes a provision requiring institutions to remain "neutral on public policy controversies" that could restrict faculty from doing research or commenting on public policy issues facing the state and the nation.

After directing the drafting of the bill, Vos appears to have turned the bill over to "lead author" fellow Assembly Republican Rep. Jesse Kremer. In a recent radio interview, ostensible bill author Kremer admitted "I agree" with critics who call the bill unconstitutional.

Ross concluded, "Not only would this bill expel students for using their constitutional right to free speech, but also it could inhibit professors from conducting research and releasing research on critical public policy issues. It's worse than big government, it's Big Brother."

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One Wisconsin Now is a statewide communications network specializing in effective earned media and online organizing to advance progressive leadership and values.

