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# RACHAEL A. CABRAL-GUEVARA

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STATE REPRESENTATIVE • 55<sup>TH</sup> ASSEMBLY DISTRICT

Testimony before the Assembly Committee on Colleges and Universities

Representative Rachael Cabral-Guevara

December 7<sup>th</sup>, 2021

Thank you Chairman Murphy and committee members for allowing me to testify on Assembly Bill 735 today, a clear cut bill determined to defend free speech on the academic level.

Academic institutions are supposed to be bastions of intellectual diversity and independent thought. However, as we all know, campus administrators far too often decide to censor or penalize speech that does not conform to their or their institution's leanings. The purpose of this bill is to curtail this restriction of free speech at universities across the state. This bill would prohibit UW System and Technical College System campuses from restricting constitutionally protected free speech, sanctioning group or individual for speech unless it meets a federal standard of harassment, or limiting freedom of expression to designated "Free Speech Zones." Furthermore, this bill requires institutions to designate all indoor and outdoor public areas as public forums, and make every reasonable effort to prevent protected speech or demonstrations from being disrupted.

Academic freedom is something that should be nonpartisan. Seeing people restrict certain speech because it conflicts with their political views in an academic setting is inexcusable and cannot be tolerated. We as the people of Wisconsin must realize the restriction of speech as the slippery slope that it is. We must ensure our students learn in an intellectually diverse setting without fear of being persecuted for their speech.

Thank you again for allowing me to testify on this important piece of legislation. I hope you consider protecting the students of UW Schools by voting in favor of AB735.



## PATRICK TESTIN

STATE SENATOR

DATE: December 8<sup>th</sup>, 2021

RE: **Testimony on 2021 Assembly Bill 735**

TO: The Assembly Committee on Colleges and Universities

FROM: Senator Patrick Testin

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Thank you Chairman Murphy and members of the Assembly Committee on Colleges and Universities for accepting my testimony on Assembly Bill (AB) 735.

Universities were established to educate students and advance research and knowledge. Universities are often know as a “marketplace of ideas” where ideas compete. But in order to have that competition, there must be opposing ideas. Too often we hear reports of institutions denying students access to points of view and speech that run contrary to administration biases.

In April of 2020, the Wisconsin Institute for Law & Liberty (WILL), released a report looking at the attack on free speech in Wisconsin’s universities and colleges. Using the Foundation for Individual Rights in Education’s (FIRE) system of traffic lights symbols (**attached**), WILL found over half (55%) of Wisconsin’s institutions (four-year universities, two year schools, and technical colleges) received a rating of red. That means those schools had “at least one policy that both clearly and substantially restricts freedom of speech”.

WILL rated 33% of the University of Wisconsin’s four-year university’s “red”. This runs contrary to the UW Board of Regents Policy Document 4-21, *Commitment to Academic Freedom and Freedom of Expression*. That document states any UW institution that has a policy that improperly restricts speech at their institution, the institution should remove or rework its offending policy. Unfortunately, that hasn’t happened. That is why we are here today with AB 735.

AB 735 was drafted to ensure UW institutions or technical colleges protect free speech and academic freedom. It also tasks them with conducting a survey of students on their First Amendment rights, perceived political bias at the institution, and whether campus culture promotes self-censorship. AB 735 also imposes real penalties on institutions that violates any of the free speech or academic freedom provisions in the bill.

Given the amount of tax dollars Wisconsin citizens contribute to higher education institutions in Wisconsin, they deserve to know that free speech is being protected and all views are welcome, not just the ones that happened to be favored by the current administrators of the institutions. That is why I hope you will join me in supporting AB 735.

## **FIRE's Speech Code Rating System**

### **Red Light**

A “red light” institution has at least one red light policy that both clearly and substantially restricts freedom of speech. A “clear” restriction is one that unambiguously infringes on what is, or should be, protected expression. In other words, the threat to free speech at a red light institution is obvious on the face of the policy and does not depend on how the policy is applied.

In addition, when a university restricts access to its speech-related policies by requiring a login and password, it denies prospective students and their parents the ability to weigh this crucial information. At FIRE, we consider this action by a university to be deceptive and serious enough that it alone warrants a “red light” rating.

At public institutions, red light policies are unconstitutional.

### **Yellow Light**

A “yellow light” institution has at least one yellow light policy that restricts a more limited amount of protected expression or, by virtue of vague wording, can too easily be used to restrict protected expression.

For example, a ban on “posters containing references to alcohol or drugs” violates the right to free speech because it unambiguously restricts speech on the basis of content and viewpoint. However, its scope is very limited, so it may receive a yellow light.

Alternatively, a policy banning “verbal abuse” could be applied to prohibit a substantial amount of protected speech, but is not a red light violation because “abuse” might refer only to unprotected speech, such as harassment (as properly defined by law) or threats of violence. In other words, the extent of the threat to free speech would depend on how such a policy is applied.

At public institutions, yellow light policies are unconstitutional.

### **Green Light**

If a college or university's policies do not seriously imperil speech, that college or university receives a “green light.” A green light does not by itself guarantee that a school actively supports free expression. It simply means that FIRE is not currently aware of any serious threats to students' free speech rights in the written policies on that campus. Individual policies that do not threaten free expression also receive green light ratings.



# DAVE MURPHY

State Representative • 56th Assembly District

## Assembly Committee on Colleges and Universities

Public Hearing, December 8, 2021

Assembly Bill 735

### Testimony of State Representative Dave Murphy

The bill in front of you today is a cut and dry solution to prevent our public colleges and universities from violating the First Amendment to the U.S. Constitution. Yes, it is already illegal for these state institutions to run roughshod over the rights of citizens; however, the current repercussions for doing so are nearly non-existent and individuals face an uphill battle just to get their day in court when they go up against the higher education bureaucracy.

Unlike previous attempts to bolster free speech by targeting the student disciplinary process, this bill focuses on the institutions and administrators directly responsible for upholding the Constitutional guarantees provided in public spaces on public property.

The bill is carefully crafted to ensure that students will not be retaliated against for exercising their free speech rights and no faculty members will have their academic freedom, inside or outside of the classroom, curtailed.

Under the bill, UW System and Wisconsin Technical College System institutions are prohibited from:

- Restricting noncommercial speech that is protected under the First Amendment;
- Restricting expressive activities in outdoor public areas except under limited circumstances
- Limiting freedom of expression to designated “free speech zones”
- Charging security fees based on anticipated content of speech or anticipated reactions to it
- Sanctioning individuals or groups for speech unless it meets the federal standard for harassment
- Sanctioning any student or faculty member for exercising their academic freedom

The bill also requires all institutions to:

- Designate all indoor and outdoor public areas as public forums
- Make every reasonable effort to prevent protected speech, events, activities, and instruction from being disrupted
- Annually conduct a survey of all students and employees on First Amendment rights, academic freedom, perceived political or other bias at the institution or technical college, and whether campus culture promotes self-censorship
- Annually submit a report to the legislature detailing the results of this survey
- Provide all students and employees with instruction in academic freedom, due process, and First Amendment protections

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If an institution violates any above freedom of expression or academic freedom provisions, it is placed on probation for a ten year period, during which, if responsible for a second violation, it would become ineligible for the Wisconsin Grant program for at least one year. During this probation period, the institution would be required to notify all admitted students that it has violated free speech or academic freedom rights found in state law. The institution would not be reinstated for Wisconsin Grant program eligibility until the administrator responsible for the violation is reassigned or dismissed. The bill requires an institution in violation to cover the cost of any lost Wisconsin Grant funding through its own administrative budget, ensuring that students in need would not suffer due to an institution breaking the law.

Although this penalty is severe, it does not rise to the level of loss of all federal aid that institutions risk when they violate similar US Department of Education rules. After a single violation it is very likely that an institution would take corrective measures to prevent any such loss of Wisconsin Grant eligibility.

Furthermore, an institution could only be found to violate these provisions with a preponderance of evidence by a court, the Higher Educational Aids Board, or the Senate or Assembly committee responsible for oversight of higher education.

In addition to this state sanction for multiple infractions, individuals would also be empowered under the bill to sue an institution for damages up to \$100,000 plus legal fees.

These steps will ensure that only bad actors refusing to uphold the U.S. Constitution will face the consequences.

We should all agree that there should be real consequences for public officials who deny people their constitutional rights.



Dr. Morna K. Foy, President

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## MEMORANDUM

DATE: December 8, 2021

TO: Representative David Murphy, Chair and  
Members of the Assembly Committee on Colleges and Universities

FROM: President Morna K. Foy, PhD  
Wisconsin Technical College System

SUBJECT: Assembly Bill 735

Thank you for the opportunity to provide input on AB735. Layla and I will be commenting together on behalf of Wisconsin's 16 technical colleges and the System Board.

The WTCS supports freedom of expression. We consider it a core responsibility of public institutions generally, and higher education institutions specifically, to protect free speech and to promote the free expression of diverse opinions and discourse.

**The WTCS does not oppose requiring any of the proposed five protections or the survey, reporting and training requirements in AB735.**

We do, however, have concerns about some of the process or implementation provisions in the current version of the bill. For example:

- What will be the criteria of "reasonable" restrictions or effort used by HEAB or the Legislative committees empowered to resolve these disputes?
- How, or could, a decision by the Board or Committee be appealed?
- How would employees due process rights be protected?
- Would the additional administrative responsibilities affect HEAB's award and distribution process/timelines?
- Would the penalties disproportionately impact smaller, rural institutions and thus the communities they serve?

Our greatest concern is the use of student financial aid as a means of ensuring institutional compliance with state and federal law. Our neediest students, those eligible for need based aid, should not suffer any delay or complication in their awards because of institutional behavior.

We want to reiterate the Wisconsin Technical College System's deep commitment to providing and protecting free speech for our students and employees and providing transparency to the Legislature and the public of our efforts to do so. We'd be happy to answer any questions.



Office of Government Relations

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DATE: December 8, 2021

TO: Members of the Assembly Committee on Colleges and Universities

FROM: Jeff Buhandt, UW System Interim Vice President of University Relations

RE: Testimony on Assembly Bill 735

Thank you, Chair Murphy and committee members, for providing UW System (UWS) an opportunity to speak to you today about Assembly Bill 735.

Academic freedom and freedom of expression are not only rights enshrined to individuals in the U.S. Constitution, but are fundamental to the vitality of our institutions of higher learning. As such, the UW System Board of Regents (BOR) has a longstanding record of support for academic freedom and freedom of expression. In 1894, there was a trial before the Board of Regents against Richard Ely a professor at the University of Wisconsin Madison whose controversial beliefs and teachings were the subject of much scrutiny at the time, on the charges that his teachings on socialism encouraged strikes and boycotts. The Board of Regents final report on the trial includes this statement; "Whatever may 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 Regents cleared Professor Ely unanimously and used his trial to make a loud and clear statement about the importance of freedom of speech and expression at UWS.

The BOR has reaffirmed its dedication to academic freedom and freedom of expression many times in the last 127 years. Today, our campuses are governed by Regent Policy Document (RPD) 4-21, "Commitment to Academic Freedom and Freedom of Expression", adopted on October 6, 2017. RPD 4-21 outlines the commitment to academic freedom, provides procedures for violations to this policy, and requires UW institutions to annually provide notice of this policy to students and employees—in addition to providing this information to incoming freshman and transfer students. RPD 4-21 also requires UWS to provide a written report to the BOR describing the implementation of the policy, which includes a description of efforts to support academic freedom and freedom of expression and a report of policy violations.

The most recent annual report was presented to the BOR on November 4, 2021. The report, compiled by the UWS Office of Compliance and Integrity, describes activities implemented by UWS between July 1, 2020, and June 30, 2021. The annual report indicated that no formal complaints of violations of expressive freedoms were reported at UWS institutions during the academic year. The report also outlines the robust list of activities

(Cont.)

and notifications provided by all 13 institutions. It highlights the work at UW-Stout's Menard Center for the Study of Institutions and Innovation (MSCII), UW-Madison's Tommy Thompson Center on Public Leadership, and UW-Eau Claire's Menard Center for Constitutional Studies. Further, as part of UWEC's Menard Center for Constitutional Studies, a user-friendly [website](#) was developed for students and faculty to easily access and comprehend their first amendment rights on campus.

UW System shares the bill's authors commitment to freedom of expression on our campuses. However, we believe that our adherence to constitutional law and current board policy best serves to uphold this commitment. Many of the requirements of AB 735 are already in practice by UWS in RPD 4-21. UWS and the Board of Regents have a robust, longstanding commitment to academic freedom and freedom of expression. Our current policy recognizes that each institution 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." We remain committed to ensuring that all members of our institutions can live, work, and learn in an environment that actively promote civility, academic freedom, and rights to freedom of expression. Thank you again for the opportunity to provide testimony on AB 735.



*Representing UW-Madison Faculty.  
Strengthening Wisconsin.*

## **Testimony to the Assembly Colleges and Universities Committee in Opposition to Assembly Bill 735, relating to free speech, academic freedom, and causes of action**

**December 8, 2021**

The Public Representation Organization of the Faculty Senate of the University of Wisconsin-Madison (PROFS) is registered against Assembly Bill 735, which purports to provide First Amendment protections at University of Wisconsin institutions, and which allows any individual who believes their expressive rights to have been violated to sue the University.

PROFS believes this bill is yet another instance of legislative overreach, and that it is a wild overreaction to a very small number of anecdotal reports of alleged free speech violations at a Wisconsin technical college and at college campuses outside the state of Wisconsin. It also creates a vigilante system of reporting alleged violations of the law – not unlike the vigilante system set up under Texas’s anti-reproductive rights bill – and removes adjudication of reported free speech violations from the courts, where it belongs, to the Legislature, a circumvention of due-process protections for members of the university community.

It is unclear why those bringing the bill forward believe there is a free speech problem at the University of Wisconsin. The protections of free speech, and of academic freedom, are crucial to the project of higher education, since colleges and universities should be shielded from unchecked political control over what makes a good or a bad idea.

The universities in the System themselves have put into place policies that ensure that free speech and academic freedom are protected and promoted on their campuses, and they’ve made sure that faculty members have the academic freedom necessary to provide access to the disciplinary knowledge necessary for democratic competence.

University of Wisconsin-Madison policy allows faculty to “enjoy and exercise all rights secured to them by the Constitution of the United States and the State of Wisconsin,” free speech included. It specifically mentions the right to speak or write on matters of public concern without institutional interference. It goes on to say that to be free means to be able to “seek the truth, develop wisdom, and contribute to society those expressions of the intellect that ennoble [hu]man kind.”

In 2015, the University of Wisconsin System Board of Regents adopted a statement of commitment to the principles of free speech and academic freedom, part of which reads that free speech involves the right to discuss all matters both inside and outside the classroom, and that it isn’t the proper role of the university to “shield individuals from ideas and opinions they, or others, find unwelcome, disagreeable, or even deeply offensive.”

There isn’t a free speech problem at the University of Wisconsin; the university has, quite to the contrary, declared in very strong terms that not only must there be free speech on its campuses, but that the capacity to speak freely is one of its central aims.

There is no evidence that freedom of speech is threatened on UW campuses. A campus climate survey released in 2017 showed that on the UW-Madison campus, conservative students reported that their ideas were respected by their teachers and peers at the same or a higher level as progressive students and reported higher levels of feeling like they felt heard on the campus and in the classroom.

And contrary to statistics provided by Political Science Professor Ryan Owens earlier this year at a public hearing of the Senate Committee on Universities and Technical Colleges, faculty members' political leanings have no significant effect on their fairness or effectiveness in the classroom, or on their expertise in their subject matter.

Several years ago, there were reports that invited speakers may be shouted down or prevented from delivering their talks, but no guest speakers at the University of Wisconsin-Madison were prevented from speaking.

The bill itself is also redundant: it enumerates a list of actions the universities may not take, including restrictions of speech allowed under the First Amendment; time, place, and manner restrictions on expression in public areas; designation of free speech zones; and sanctioning individuals for harassment that doesn't meet the threshold of severity, pervasiveness, or protected class status.

All of these provisions are already well established in constitutional law through decisions by the United States Supreme Court and the Supreme Court of the State of Wisconsin, and there is a well-recognized body of law that would take corrective action if any of these provisions were violated.

A section of the bill barring the university from charging fees for security to protect campus speakers and university community members and others is just contrary to common sense, since a university's job, in addition to fostering open inquiry, is to protect those on its campus. The point is that the bill addresses a problem that doesn't exist, because it fails recognize that there are already policies and procedures in place to prevent the violations enumerated in them and provide remedies for such violations should they occur.

In addition, the bill sets up a vigilante system and removes adjudication from the courts whose judges presumably have the expertise to decide free speech cases and where such cases belong and shifts the process to partisan legislators.

Under the bill, in section 36.41 (5)(b), any person whose expressive rights have purportedly been violated can bring action against the university. It provides no way to adjudicate whether there is enough evidence to sustain such a charge, which means that any person whose feelings are hurt or who believes that their rights to speak have been curbed can bring the matter directly to a circuit court and possibly win damages of up to \$100,000.

Moreover, these individuals can circumvent the courts altogether and go to standing committees of the Legislature (36.45 [4][e]) – committees whose leadership have brought this bill forward in the first place. It strains credulity that any matter brought before the highly polarized Senate Committee on Universities and Technical Colleges or the Assembly Committee on Colleges and Universities would consider matters in a non-partisan or neutral manner, let alone with the knowledge of the constitutional implications of such cases.

There is a strong culture of free speech at the state's public universities, and especially at UW-Madison. University faculty understand that fostering and encouraging free speech is necessary for their students to hone their abilities to learn, to critically engage with ideas, and to obtain the disciplinary knowledge they'll need to productively participate as citizens in both the workplace and in democratic self-governance.

The Board of Regents and the universities have already adopted policies that reiterate that commitment to free speech and put into place reasonable sanctions when that commitment falls short. The Board's and the UW-Madison's actions are consistent with the idea that institutions of higher education should have the autonomy to address their own speech issues; appropriate institutional autonomy is itself an important aspect of academic freedom. Given all of this, we register against Assembly Bill 735, which seek to address a free speech "problem" in the state's public universities, since we don't believe there is one.