
AMANDA NEDWESKI

STATE REPRESENTATIVE • 61ST ASSEMBLY DISTRICT

December 5, 2023

Senate Committee on Universities and Revenue
Testimony on Senate Bill 575

SB 575 is legislation that is responsive to a series of informational hearings that the Assembly Committee on Colleges and Universities held earlier this year addressing the lack of intellectual diversity on UW and Wisconsin technical college campuses and how that is affecting outcomes and the state's workforce. Its substance is informed with evidence delivered to us through the results of a UW system-wide survey of over 10,000 students conducted last year that revealed serious concerns about the support for freedom of speech and expression on our UW campuses. The survey also reported concerning data regarding students' overall lack of knowledge about the protections of the First Amendment.

SB 575 seeks to establish freedom of expression and academic freedom standards on University of Wisconsin and technical college campuses across the state. It also outlines due process standards and penalties for those who violate these standards. This legislation enshrines the principles of University of Wisconsin System Regent Policy 4-21 into law for the purpose of clarifying and protecting the First Amendment rights of students, staff, and visitors on UW campuses going forward. If a UW institution or Wisconsin technical college were to violate this policy more than once in 5 year period, that institution's tuition would be frozen for a period of two academic years.


In an abundance of testimony, we heard that policy 4-21 has no teeth. From stakeholders across the ideological spectrum, we heard that the administration "talks the talk but doesn't walk the walk" on campus free speech. There are no penalties for violations. SB 575 addresses this. Enforcement of 4-21 is inconsistent, and some administrations inequitably and/or inconsistently apply the rules. It is not surprising that the Universities of Wisconsin do not embrace the penalty portion of this bill. Why would they? The penalties are there to make them accountable. If they were enforcing policy 4-21 successfully on their own, there would not have been a need for the survey, for the hearings, or for this bill.

The perception of the Universities of Wisconsin as a single-ideology institution IS influencing enrollment, whether that perception is fair or not. It is reflected in the survey, in transfer-out data, and in declining enrollment numbers on most UW campuses. This is a crisis for our universities and a crisis for our workforce. SB 575 is an opportunity to help change that perception.

While iterations of this legislation have come before the Legislature in previous terms, I emphasize that the survey was a first. It was authored by a self-proclaimed liberal professor, Dr. Timothy Shiel, and it received very positive feedback from faculty peers throughout the System. As a financial analyst by profession, the *measurable data* in the results of the survey are what really drove my personal commitment to move this bill forward.

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The series of informational hearings that Chairman Murphy led are also a first. First Amendment scholars, non-partisan free speech experts, administrators, faculty, and students came from far distances to weigh in on this matter because cancel culture, social media, and political divisiveness are dangerously affecting the ability of universities to promote the free exchange of ideas. As a first term legislator, these hearings were, by far, the most productive and bipartisan activity of my first session. Committee members enthusiastically engaged with speakers and with each other. There was passionate and respectful debate, with, believe it or not, a lot of listening - much like what should be happening in college classrooms.

This bill may look like old news to you, but I am asking you to consider that it is significantly changed with the input from the survey and from the hearings. SB 575 received high praise from Dr. Catherine Pfeffer-Merrill of the Bipartisan Policy Institute, as well from Joe Cohn of the non-partisan Foundation for Individual Rights and Expression (F.I.R.E.). Mr. Cohn's consultation on SB 575 was welcomed by *all* members of the committee. To paraphrase him, we have taken this legislation from the one-yard line to the one-inch line.

SB 575 is, by no means, a solution to the cultural attack on free speech, but it is an opportunity for the legislature to lead and to unify behind the First Amendment, behind our universities and technical colleges, and behind the "fearless sifting and winnowing by which alone the truth can be found."



RACHAEL A. CABRAL-GUEVARA

STATE SENATOR • 19TH SENATE DISTRICT

Senate Bill 575

Testimony before the Senate Committee on Universities and Revenue

Senator Rachael Cabral-Guevara

December 5, 2023

Thank you Chairman Hutton and committee members for allowing me to testify on Senate Bill 575 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 Universities of Wisconsin and Wisconsin Technical College System campuses from restricting constitutionally protected free speech, sanctioning groups or individuals 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 public areas as public forum and provide students and employees with instruction about First Amendment rights and academic freedom.

The rights protected by this bill are critical to the foundation of a liberal arts education and should be supported without reserve by everyone in this building. A free society cannot survive if speech is censored by government leaders; this is even more critical when those leaders are running our public universities and colleges. Restricting speech because it conflicts with political views in an academic setting is inexcusable and cannot be tolerated.

Two Assembly amendments were introduced to improve the bill, which we will be introducing in the Senate. Assembly Amendment 1 adds a definition of virtual space to ensure that virtual meetings and events are included in the free speech requirements in the bill, and removes the committee of the legislature as one of the venues in which a violation may be heard, leaving those decisions up to a court. Assembly Amendment 2 removes the penalties that would impact Wisconsin Grants and creates a penalty where an institution that has been found to have violated the free speech of an individual two times in 5 years, will be required to freeze tuition for all undergraduate and graduate students.

Thank you again for allowing me to testify on this important piece of legislation. I hope you consider supporting Wisconsin's college students and protecting these critical rights by voting in favor of SB 575.



DATE: December 5, 2023

TO: Members of the Senate Committee on Universities and Revenue

FROM: Jeff Buhrandt, Vice President of the Universities of Wisconsin Office of University Relations

RE: Testimony on Senate Bill 575

Thank you, Chair Hutton and committee members, for providing the Universities of Wisconsin an opportunity to testify on Senate Bill 575.

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 Universities of Wisconsin Board of Regents (BOR) has a longstanding record of support for academic freedom and freedom of expression. This longstanding record goes all the way back to 1894, when 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. 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 the Universities of Wisconsin.

The BOR has reaffirmed its dedication to academic freedom and freedom of expression many times in the last 129 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 our universities 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 the Universities of Wisconsin 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 will be presented to the BOR on December 7, 2023. The report, compiled by the Universities of Wisconsin Office of Compliance and Integrity, describes activities implemented by the Universities of Wisconsin between July 1, 2022, and June 30, 2023. The annual report indicated that two violations of expressive freedoms were reported at our universities during the academic year. Both incidents were investigated and addressed in accordance with policy. In the last five years, there have only been seven reported incidences of free expression violations across all 13 universities. All were handled in a manner consistent with established policy.

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The 2022-23 report also outlines the robust list of activities provided by all 13 universities. Further, it highlights the work of UW-Eau Claire's Menard Center for Constitutional Studies (MCCS), UW-La Crosse's Joint Committee on Free Speech Promotion, and UW Stout's Menard Center for Constitutional Studies (MCCSII), among others. A copy of the most recent report will be shared with committee members and the full Legislature as soon as it is available.

Additionally, Universities of Wisconsin President Jay Rothman has made free expression and civil discourse a priority since he began in June of 2022. The 2023-28 Universities of Wisconsin Strategic Plan spearheaded by President Rothman, includes a focus on fostering civic engagement and civil discourse. This strategic point has become a bedrock of President Rothman's tenure. Over the last year and a half, President Rothman has engaged in numerous free speech panels with constitutional experts and legislators, has held discussions with students on the topic of free speech across our campuses, and authorized a systemwide Freedom of Speech survey. The goal of the free speech survey was, among other things, to explore Universities of Wisconsin students' knowledge of their First Amendment rights and attitudes towards viewpoint diversity. President Rothman and the BOR have taken the survey's findings seriously and continue to look at ways we can improve, such as student body awareness of the First Amendment. President Rothman and the BOR recognize the importance of free speech and viewpoint diversity on campus, and will continue to make this topic a priority for the Universities of Wisconsin.

The Universities of Wisconsin share 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 SB 575 are already in practice by the Universities of Wisconsin in RPD 4-21. However, some of these requirements are stricter than what RPD 4-21 prescribes. In addition, as noted above, there have been very few reported incidences of freedom of expression violations at the Universities of Wisconsin, all of which have been thoroughly vetted in accordance with policies already in effect. Finally, the penalties outlined in the bill would adversely impact campuses' financial positions by freezing tuition and reducing GPR allocation. At a time when our *universities are already struggling financially*, this could be devastating for our campuses and for both current and future students. The Universities of Wisconsin does appreciate that Assembly Amendment 2 removes the provision tying violation of SB 575 to Wisconsin grant allocation, but we still have concerns over the amended penalty. We also appreciate the introduction and adoption of Assembly Amendment 1, which takes away the standing legislative committee's oversight of these violations.

The Universities of Wisconsin and the BOR 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 promotes civility, academic freedom, and rights to freedom of expression.

Thank you again for the opportunity to provide testimony on SB 575.



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Assembly Bill 553 and Senate Bill 575
Senate Committee on Universities and Revenue
December 5, 2023

Chairman Hutton and Members of the Committee:

Thank you for the opportunity to provide input on AB 553 and SB 575. The Wisconsin Technical College System (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. For this reason, **WTCS does not oppose the free speech and academic freedom requirements included in AB 553 and SB 575, including the survey, reporting, and training requirements.** However, the references to free speech and academic freedom standards; civil causes of action for violation of these standards; disciplinary proceedings requirements; and penalties impacting the Wisconsin grant funding allocation provided for in the bill will have serious negative consequences for WTCS colleges and students. Therefore, we cannot support AB 553 and SB 575 in their current form.

The bills establish due process guarantees and requirements related to disciplinary proceedings or investigations. While WTCS supports due process rights for students, employees, and organizations, the provisions within the bill establish a standard that resembles a judicial body, a role for which WTCS is not equipped. Compliance with the requirements under the bill will require significant legal expertise and will therefore be administratively burdensome – and costly – for technical colleges to implement. As an example, the bill prohibits overlapping administrative or adjudicative roles for disciplinary proceedings and specifies that an individual may not serve in more than one of six identified roles. As a result of this provision, technical colleges will be required to supply multiple individuals with sufficient legal expertise to serve in these roles. As relatively small institutions that operate on lean administrative budgets, many WTCS colleges rely upon staff that perform multiple functions. The requirements under the bill significantly expand the scope and administrative costs associated with due process functions.

In addition, SB 575 prohibits Wisconsin grant allocations to technical colleges that violate any of the due process provisions more than once in 10 years for a period of at least one fiscal year. The violation resulting in this Wisconsin grant penalty may be found by a state or federal court; the Higher Educational Aids Board (HEAB); or a legislative standing committee having jurisdiction over matters relating to higher education. These provisions raise process and implementation concerns for WTCS, specifically, the following:

- What criteria and process will be used by HEAB or the Legislative committees to determine whether a violation of the due process provisions has occurred?

- How, or could, a determination of a violation by HEAB or the Legislative committee be appealed?
- Would the additional administrative responsibilities affect HEAB's award and distribution process and timelines?
- Would the penalties disproportionately impact smaller, rural institutions and thus the communities they serve?

In addition to these important process and implementation questions and concerns, the WTCS opposes the *use of student financial aid as a means to ensure institutional compliance with state and federal law*. As open access institutions, WTCS serves many students with significant financial need. The neediest WTCS students – those eligible for need-based aid – should not suffer any delay or complication in their Wisconsin grant awards due to institutional behavior.

WTCS is committed to providing and protecting free speech for our students and employees and providing transparency to the Legislature and the public in our efforts to do so. However, the provisions related to free speech and academic freedom standards; civil causes of action for violation of these standards; disciplinary proceedings requirements; and penalties impacting the Wisconsin grant funding allocation will negatively impact college operations and student access to technical college programs. We welcome the opportunity to work with the Legislature to address these concerns. Thank you for your consideration.

FREE SPEECH FOR CAMPUS

Free Speech For Campus testimony before the Senate Committee on Universities and Revenue December 5, 2023 by Tim Higgins

Chairman Hutton and members of the Senate Committee on Universities and Revenue, thanks for allowing me to testify. My name is Tim Higgins, and I am speaking today on behalf of Free Speech For Campus, a Wisconsin corporation with tax-exempt status, founded in 2019. Free Speech For Campus is a grass-roots movement that brings together concerned citizens of Wisconsin to promote and protect free speech and due process rights on our college campuses.

This hearing and this bill, SB 575, represent a milestone for academic freedom, freedom of expression and due process on our state university campuses. You should be proud of yourselves because this excellent bill is the fruit of a responsible, extensive, and transparent legislative process.

The process began in 2021 when the then Senate Committee on Universities and Technical Colleges held a series of hearings on the structure of the University of Wisconsin System (UWS). One hearing concentrated on the plight of free expression on campus. The committee heard testimony from several professors about the question of ideological orthodoxy. Among the Committee's recommendations was to form a commission that, "...would review free speech incidents on campuses and develop recommendations for improvements to be made by the Board of Regents or the legislature."

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Then, in the spring of 2022 when Professor Tim Shiell, Director of the Menard Center for the Study of Institutions and Innovation agreed to bring a research group together to create a survey of UW System students probing their understanding of and attitude toward First Amendment issues. Soon after taking office, System President Jay Rothman endorsed the survey and provided System resources to help administer it. Your parallel Assembly Committee on Colleges and Universities has heard expert testimony verifying that the survey was an academically rigorous instrument designed to return unbiased data, and that student participation considerably exceeded the threshold for statistical validity.

The survey revealed that there are very different college experiences depending on an individual student's characteristics. One of the most alarming results involved whether students ever felt "pressured by an instructor to agree with a specific political or ideological view being expressed in class." 61% of Republican students reported feeling such classroom pressure. And almost half of that group felt pressured "often" or "extremely often."

Democratic and liberal students, however, experienced something else entirely. Only 19.7% of Democratic students reported ever feeling pressure to agree with the instructor, and only 3% felt pressured to agree "often" or "extremely often."

When asked why conservative students self-censor in much higher proportions than liberal students, Joe Cohn, Director of the Legislative and Policy Department at the Foundation for Individual Rights and Expression,

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testified that those whose views are in the minority get censored. He noted, “Censorship is not a partisan sport, but it’s wielded in a partisan way depending on who is in power.”

Many students who responded to the survey aren’t willing to even entertain viewpoints that don’t agree with their own. A substantial minority, in contravention of the First Amendment, expressed a willingness to require a university to disinvite a speaker who has views that could offend their peers.

Considering this information and other concerns raised by the survey, Chairman Murphy organized a series of informational hearings by the Assembly Committee on Colleges and Universities. Those hearings were held in April and May of this year.

During those four hearings, Representatives listened to more than twenty hours of testimony from experts from several national policy organizations, from UW students, from faculty both active and emeritus, from Chancellors, and from President Rothman.

They heard from UW-Madison Professor Ryan Owens that:

“Higher education today suffers from an ideological monopoly. This monopoly threatens students and threatens higher education itself. It leads to politicized education, poor teaching, and a loss of legitimacy. Those in charge of higher education must undertake some soul searching and engage in reforms.”

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He said, “The lopsided nature of higher education also has led to poor collegiate experiences for students and a lack of learning, all of which harm the state of Wisconsin.”

President Rothman testified that, “Last fall we conducted a survey of student attitudes toward free speech. The response was strong. More than 10,000 undergraduate students took the survey, for a response rate of more than 12 percent. While no survey is perfect, this one provided some valid insight into what is happening on our campuses and identified opportunities for us to improve.”

He continued, “The vast majority of our students say our faculty are doing a good job in facilitating a robust exchange of ideas in the classroom. Yet many students – from all political persuasions but more so among conservatives – say they don’t feel comfortable speaking up in class. That’s mostly because they worry about what other students will think. But some worry about what the faculty will think – or even that their grade might be affected.”

Addressing the question of what can be done to improve the climate for free expression on our UW campuses, several speakers urged the Committee to pursue a bifurcated strategy. Dr. Jacqueline Pfeffer Merrill, Director of the Campus Free Expression Project of the Bipartisan Policy Center stated that, “Free expression is, at its root, a matter of culture, and campus culture can only be established on campus, by administrative leaders, faculty, staff, and students.”

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She noted, though, that there is a role for the legislature, “To the extent that the legislature considers acting on issues of campus free expression, it should:

1. affirm protections for free expression well established in case law,
2. affirm the academic freedom of faculty to research, teach, and express opinions on matters of public concern,
3. affirm that no one should be compelled to avow or disavow any particular viewpoint, principle, or ideology,
4. and support university and system-led free expression, civil dialogue, and civics initiatives.”

When asked his opinion on the role of the legislature, Joe Cohn responded by saying that legislators should, “Legislate with evergreen principles. Don’t try to ban ideas from college classrooms and put affirmative academic freedom protections in place – no idea will ever be banned.”

The bill before you, SB 575, rigorously follows the advice of Dr. Merrill and Mr. Cohn. It is the appropriate legislative framework within which the UW System should be working to restore a campus culture that values academic freedom, encourages free expression, and seeks to expand viewpoint diversity. For those reasons I urge you to support SB 575 and encourage your colleagues to do so, too.

I will conclude by addressing the campus culture aspect of Dr. Merrill’s bifurcated strategy, Free Speech For Campus has been optimistic about the commitment of President Rothman to “championing the democratic principles of free expression, academic freedom, and civil discourse.” He

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made it one of the pillars of his strategic plan. Last November he announced the creation of the Wisconsin Institute for Citizenship and Civil Dialogue to “help coordinate our numerous academic centers that focus on the Constitution and public affairs as a way of elevating, enhancing and promoting their existing excellent programming and research.”

There is cause for optimism when the administrative chief of the System agrees that campus culture needs to be changed – and creates a vehicle for facilitating the process. Unfortunately, it has been over a year since the President’s announcement and that institute has yet to be established. We urge President Rothman to fulfill his promise and we ask the legislature to remain vigilant.

While, in the opinions of those experts who testified, the legislature has an important, but secondary, role when it comes to addressing the challenges to intellectual diversity on our campuses. It was, nevertheless, the Wisconsin legislature that created the university system in the public interest. Thus, you have an obligation to hold it accountable on behalf of your constituents, the tax and tuition payers of Wisconsin, for fulfilling its public mission – educating citizens who can think critically, communicate well, and solve problems in their economic, social, and civic roles.

Thanks again for allowing me to testify.