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Testimony before the Assembly Committee on Colleges and Universities
State Representative Jesse Kremer
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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and free speech within our taxpayer funded colleges and universities to the point that, the "co-exist" bumper sticker no longer represents tolerance of other viewpoints, but instead is designed to shield from an "infliction of emotional injury."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.