

CO-SPONSORSHIP MEMORANDUM

TO: Legislative Colleagues

FROM: Representatives Cody Horlacher, Robin Vos, and Dave Murphy
Senator Chris Kapenga

DATE: Tuesday, August 13th, 2019

RE: LRB-3437/1: Free Expression within the University of Wisconsin System [Campus Free Speech]

DEADLINE: Friday, August 23rd at 5:00 p.m.

Campuses across the country have erupted in protest, including violent riots, as the growing debate over who has the right to speak threatens our nation's first amendment. Invited speakers have been taunted, harassed, and even assaulted, leading many universities to cancel events. This is true for campuses here in Wisconsin where several UW System institutions including UW-Madison, UW-Oshkosh, UW-Stout, and UW-Stevens Point have had free speech related issues.

LRB-3437 is the Republican's promise to protect the freedom of expression on college campuses in order to encourage the broadening of thought and growth of ideas. This bill directs the Board of Regents to develop and adopt a policy on free expression, allowing students and faculty the freedom to express themselves as the first amendment permits. In addition, the bill directs the university to remain neutral as an institution on the public policy controversies of the day, preventing the institution from restraining students or faculty from public expression.

The bill directs the Board of Regents to implement disciplinary measures for anyone who engages in violent and disorderly conduct that interferes with the free expression of others while allowing a person whose rights have been violated to take action. Suppressing a viewpoint to ensure the protection of another, stifles the growth of new thought. We must ensure universities remain a place of openness and diversity for all opinions and viewpoints.

To be added on as a co-sponsor of this legislation, please reply to this email or contact Anna in Rep. Horlacher's office at 6-5715 or Sam in Sen. Kapenga's office at 6-9174 by **5:00pm on Friday, August 23rd**. All co-sponsors will be added to the corresponding companion version of the bill unless specified otherwise.

Analysis by the Legislative Reference Bureau

This bill requires the Board of Regents of the University of Wisconsin System to adopt a policy on free expression that applies at the four-year and two-year institutions of the system and supersedes and nullifies any prior Board of Regents or institution policies or rules restricting free expression. The bill allows the Board of Regents to adopt the policy without promulgating rules and requires the policy to be adopted no later than 120 days after the bill's effective date. The policy must contain statements regarding the following: 1) that the primary function of an institution is the discovery, improvement, transmission, and dissemination of knowledge; 2) that it is not the proper role of an institution to shield individuals from speech protected by the First Amendment of the U.S. Constitution; 3) that students and faculty have the freedom to discuss any problem as permitted by the First Amendment and within specified limits; 4) that any person lawfully present on campus may

protest or demonstrate, but that protests and demonstrations that interfere with the expressive rights of others are subject to sanction; 5) that campuses are open to invited speakers; 6) that public areas are public forums and open on the same terms to any speaker; and 7) that institutions must remain neutral on public policy controversies.

The policy must include a range of disciplinary sanctions for anyone under an institution's jurisdiction who engages in violent or other disorderly conduct that materially and substantially disrupts the free expression of others. In addition, the policy must provide that in disciplinary cases involving expressive conduct, students are entitled to a disciplinary hearing under published procedures that include specified rights. The policy must require a formal investigation and disciplinary hearing the second time a student is alleged to have interfered with the expressive rights of others. If a student is twice found responsible for interfering with the expressive rights of others at any time during his or her enrollment, the student must be suspended for a minimum of one semester. If a student is found responsible for such interference a third time, the student must be expelled.

The bill also requires the policy to allow any person to make a report that another person has violated the policy. In addition, a formal investigation and disciplinary hearing is required if two or more such reports are made regarding the same person.

The bill provides that institutions may restrict student expression only for expressive activity that is not protected by the First Amendment, including state or federal law violations, defamation, specified types of harassment and threats, certain invasions of privacy or confidentiality, and violations of reasonable time, place, or manner restrictions on expressive activities.

The bill also requires the Board of Regents to make annual reports to the legislature and governor that describe institutional neutrality, free expression barriers and disruptions, and administrative handling and discipline relating to those barriers and disruptions. Before a legislative standing committee can take any action regarding a report, the bill requires the committee to hold a public hearing.

In addition, the bill does the following:

- 1. Allows a person whose expressive rights are violated by a violation of the bill's requirements to bring an action to enjoin a violation and obtain reasonable attorney fees and damages.*
- 2. Allows a defendant who prevails in an action described above to recover reasonable attorney fees if the action was frivolous or brought in bad faith.*
- 3. Sets forth legislative findings regarding free expression at the institutions of the UW System.*
- 4. Requires the Board of Regents to provide notice to students upon adopting the policy required under the bill.*
- 5. Requires institutions to do the following: a) describe free expression policies and procedures in freshman and transfer student orientation programs; b) provide training on those policies and*

procedures to employees upon hiring; and c) provide annual training on those policies and procedures to instructors.

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