AMERICAN CIVIL LIBERTIES UNION
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Comments in Opposition to Assembly Bill 672

The ACLU of Wisconsin appreciates the bill authors' commitment to defending the constitutionally protected free speech, expression, and belief of all people. While AB-672 is intended to target acts of transnational repression (TNR), the overbroad language and undefined terms in the bill raise significant First Amendment concerns and risk targeting the very communities this bill intends to protect. Further, Wisconsin law already provides a penalty enhancer for crimes that target an individual based on race, religion, color, national origin, or ancestry.

For over 100 years, the ACLU and its state affiliates have defended the First Amendment as a cornerstone of our democracy, protecting every person's right to speak out by ensuring the government does not use times of crisis – or labels like hate speech – as an excuse to censor views it doesn't like.[1] The U.S. Supreme Court has held that political speech is "at the core of what the First Amendment is designed to protect."[2] Non-citizens in the United States also have First Amendment rights, and those rights protect against punishment or retaliation (including through deportation) for speech. But in reality, government agencies sometimes use other legal tools (like alleged or pretextual immigration violations) to silence dissent.

In 2026, it is also the reality that immigrant communities live in daily fear and uncertainty due to actions taken by the federal administration over the past twelve months, including but not limited to: terminating Temporary Protected Status for individuals from a dozen countries; limiting humanitarian parole; upending the refugee resettlement process; summarily revoking international students' visas[3] (including for communities vulnerable to TNR); severely limiting eligibility for asylum and relief under the U.N. Convention Against Torture; invoking the Alien Enemies Act to deport individuals without due process; removing noncitizens to third countries while bypassing due process

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[1] *See, e.g., DeJonge v. Oregon*, 299 U.S. 353 (1937) (holding a labor organizer's Communist affiliation was not sufficient grounds for restricting his rights to free speech and assembly); *Kunz v. New York*, 340 U.S. 290 (1951) (invalidating an ordinance requiring a permit to hold public worship meetings on the streets); *Watkins v. U.S.*, 354 U.S. 178 (1957) (reversing a labor leader's conviction for refusing to answer questions from the House UnAmerican Activities Committee); *Keyishian v. Board of Regents*, 385 U.S. 589 (1967) (striking down a Cold War-era law requiring public school teachers to sign a loyalty oath); *Brandenburg v. Ohio*, 395 U.S. 444 (1969) (holding the government can only penalize direct incitement to imminent lawless action); *Tinker v. Des Moines* (1969) (holding that a prohibition against wearing armbands in public school, as a form of symbolic protest, violated students' freedom of speech); *Cohen v. California*, 403 U.S. 15 (1971) (convicting an anti-war protester for breach of the peace for wearing a jacket emblazoned with "Fuck the Draft" violated his freedom of expression); *Nat'l Socialist Party v. Village of Skokie*, 432 U.S. 43 (1977) (holding strict procedural safeguards, including immediate appellate review, are required when prior restraint of speech is asserted); *Texas v. Johnson*, 491 U.S. 397 (1989) (holding that burning the American flag during a protest rally was protected expression under the First Amendment).

[2] *Morse v. Frederick*, 551 U.S. 393, 403 (2007) (*quoting Virginia v. Black*, 538 U.S. 343, 365 (2003)).

[3] "ACLU of Wisconsin Requests the Federal Court Provide Protection for Immigrant Students, Regardless of DOJ Claims That DHS is Rolling Back Its Illegal Revocation of Student Status for Thousands of Students" (April 28, 2025), https://www.aclu-wi.org/press-releases/aclu-wisconsin-requests-federal-court-provide-protection-immigrant-students/.

regarding Convention Against Torture protections; invoking the specter of terrorism[4] to issue travel bans and target protesters; threatening to denaturalize citizens; drastically expanding federal/state/local law enforcement surveillance infrastructure, information sharing, and collaboration in immigration enforcement; escalating militarized enforcement actions that have targeted individuals based on skin color or speaking with an accent; and arresting and detaining U.S. citizens, green card holders, and others with legal status.

Hundreds of lawsuits have been filed challenging these actions on constitutional and other grounds, but this general context cannot be ignored when analyzing the potential impacts of Assembly Bill 672. AB-672 has three components:

1. It requires the Wisconsin Department of Justice to:
    - develop a training program for law enforcement officers on how to identify and respond to TNR;
    - maintain a list of countries and foreign terrorist organizations that perpetrate TNR frequently;
    - develop best practices for preventing TNR within communities;
    - develop a public awareness campaign to help individuals identify and report possible cases of trans TNR, including within higher education institutions with foreign student populations;
    - create a digital portal on the DOJ website for reporting suspected cases of TNR; and
    - submit an annual report to the legislature detailing identified cases of TNR.

2. It creates a penalty enhancer if a person commits, solicits, conspires, or attempts to commit a crime if:
    - the action is taken by a person acting as an agent of or on behalf of a foreign government or foreign terrorist organization; and
    - the action is taken with the intent to harass, intimidate, silence, punish, or otherwise impose the foreign government's or foreign terrorist organization's control, preferences, viewpoints, or laws upon a dissident; exile; activist; journalist; political opponent; member of a religious, ethnic, or political minority group; or citizen of another country due to their political view.

3. It creates a new felony crime of intentionally engaging in the prevention, detection, investigation, monitoring, surveilling, or prosecution of an offense under the law or rule of a foreign government or foreign terrorist organization at the direction of the foreign government or foreign terrorist organization.

As illuminated during the public hearing, many terms in the bill are undefined, including "acting as an agent of," "[acting] on behalf of," "foreign terrorist organization," "imposing the [foreign government/foreign terrorist organization]'s preferences" or "viewpoints," "dissident," "exile," "activist," "political minority group," and "political opponent." This sweepingly broad language could encompass constitutionally protected expression, casting a chilling effect on speech that is expanded further for the inchoate crimes of solicitation, conspiracy, or attempt.

[4] Exec. Order No. 14161, 90 Fed. Reg. 8451, Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats, https://perma.cc/82VD-C7ND (Jan. 20, 2025).

Under the bill, a typical crime charged in relation to protest activity such as disorderly conduct, obstruction, damage to property, or graffiti (all Class A misdemeanors) would be transformed into a Class I felony based on an allegation of intent to impose a purported "terrorist" organization's viewpoints upon a political opponent.

The line between acting "on behalf of" a foreign government or organization and being an activist politically aligned with a foreign government or organization while engaging in protest is not always clear. In the debate surrounding a California proposal regarding law enforcement training on TNR[5] (which was ultimately vetoed by Governor Newsom), opponents of the bill feared it could institutionalize biases against diaspora communities from specific countries of origin and empower law enforcement to criminally prosecute diaspora groups and community organizations who merely speak out against terrorism and extremism by accusing them of being foreign agents.

Human rights organizations working to address transnational repression caution that any legislation addressing the issue must be narrowly tailored because even good faith efforts to detect and disrupt transnational repression could result in increased scrutiny and surveillance of lawful conduct and protected speech among immigrant communities.

Increased scrutiny and surveillance alone, even if a criminal charge is never filed, can pose profound risks to the immigration status of individuals in vulnerable communities. For example, Mahmoud Khalil, a Palestinian lawful permanent resident and recent Columbia University graduate, was arrested by ICE and described as a "national security threat" because of his pro-Palestinian advocacy on campus. His detention, and threatened deportation, hinged on an unprecedented interpretation of a provision of the Immigration and Nationality Act referred to as the "foreign policy ground." Rümeysa Öztürk, a Turkish PhD student and Fulbright scholar, was grabbed off the street by masked ICE agents and spent over six weeks in a rural Louisiana detention center in retaliation for co-authoring an op-ed criticizing Tufts University's response to student resolutions on the war in Gaza.

Finally, if an individual commits a crime that targets an individual based on a protected class, there is already a remedy under state law. Wisconsin's existing hate crime increases the maximum penalty for a crime in which the victim was intentionally selected because of the actor's belief or perception regarding the victim's race, religion, color, disability, sexual orientation, national origin or ancestry.[6] In 1993, a unanimous U.S. Supreme Court upheld the constitutionality of Wisconsin's hate crime statute under the First Amendment.[7]

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[5] "Vetoed California bill divides Indian Americans over protecting political dissidents from foreign threats," Prism (Oct. 16, 2025), https://prismreports.org/2025/10/16/california-sb-509-indian-sikh-hindu/.

[6] Wis. Stat. § 939.645.

[7] *Wisconsin v. Mitchell*, 508 U.S. 476 (1993). The NAACP Legal Defense Fund, American Jewish Committee, and ACLU were among the organizations filing amicus briefs in support of the law. The ACLU has historically opposed legislation that would punish the mere expression of thoughts, opinions or beliefs, including expressions of bigotry. However, penalty enhancement laws—if properly drawn—do not punish protected speech or associations; rather, they reflect the heightened seriousness with which society treats criminal acts that also constitute invidious discrimination and are intended to or have the effect of depriving persons of legal rights or the opportunity to participate in their community's political or social life simply because of their race, religion, gender, national origin, sexual orientation, disability or other group characteristic.

From Japanese internment during World War II to post-9/11 profiling and surveillance of Arab and Muslim communities to the targeting of Chinese American scientists and academics in recent years, the unjust targeting and profiling of ethnic and religious communities in America under the guise of national security isn't new, but it's about time we stop repeating history.

Over half a century after the U.S. government forcibly relocated and incarcerated 120,000 people of Japanese descent in concentration camps, Fred Korematsu—who was among the incarcerated and challenged President Franklin Roosevelt's Executive Order[8]—cautioned, "No one should ever be locked away simply because they share the same race, ethnicity, or religion as a spy or terrorist. If that principle was not learned from the internment of Japanese Americans, then these are very dangerous times for our democracy."

[8] https://www.aclu.org/news/civil-liberties/during-japanese-american-incarceration-the-aclu-lost-and-then-found-its-way