

Comments on Assembly Bill 501/Senate Bill 498

For over 100 years, the ACLU and its state affiliates have defended the First Amendment as a cornerstone of our democracy. Restrictions on speech by public colleges and universities amount to government censorship, in violation of the Constitution. Such restrictions deprive students of their right to invite speech they wish to hear, debate speech with which they disagree, and protest speech they find bigoted or offensive. The Supreme Court has forcefully rejected the premise that, “because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large.”¹ “Quite to the contrary,” the court stated, “the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.”

We appreciate the bill authors’ commitment to free speech and expression on college campuses at a time when many legislative and executive actions in other states have moved to restrict what can be taught in college classrooms² and restrict expression and protest activity on campuses,³ and the Trump Administration has issued executive orders and communications⁴ and taken administrative actions⁵ to chill protected speech in higher education.

This bill establishes standards and requirements related to free speech and academic freedom at University of Wisconsin System (UWS) and Wisconsin Technical College System (WTCS) institutions. The bill generally prohibits UWS and WTCS institutions from restricting or regulating speech and expressive activity in public indoor and outdoor areas on campus and virtual spaces designated as

¹ *Healy v. James*, 408 U.S. 169 (1972).

² For example, Florida’s “Stop WOKE Act” (HB 7) limits instruction on topics related to race, gender, and systemic inequality in higher education. Following a lawsuit filed by the ACLU, ACLU of Florida, and Legal Defense Fund arguing the law violates the First and Fourteenth Amendments by imposing viewpoint-based restrictions on instructors and students in higher education that are vague and discriminatory, a court enjoined enforcement of the law.

³ For example, Texas recently enacted S.B. 2972 which limited bipartisan free speech protections passed in 2019 by banning expressive activities from 10 p.m. to 8 a.m., banning student groups from a host of protected expression during the last two weeks of any semester or term. The Foundation for Individual Rights and Expression (FIRE) filed a lawsuit on behalf of a group of students and student organizations challenging the law on First Amendment grounds. Just yesterday, a federal district court issued a preliminary injunction blocking the University of Texas System from enforcing the law, <https://www.thefire.org/news/victory-federal-court-halts-texas-no-first-amendment-after-dark-campus-speech-ban>. A federal district court in Indiana recently enjoined enforcement of a similar policy issued by Indiana University, <https://www.aclu-in.org/sites/default/files/pidecision.pdf>.

⁴ After Trump Admin Threats, ACLU Sends Letter of Support to Universities, Urging Them to Protect Campus Speech (March 4, 2025), <https://www.aclu.org/press-releases/after-trump-admin-threats-aclu-sends-letter-of-support-to-universities-urging-them-to-protect-campus-speech>.

⁵ Mahmoud Khalil, a Palestinian lawful permanent resident and recent Columbia University graduate, was arrested by ICE agents on March 8 because of his advocacy on Columbia’s 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 on March 25 in retaliation for co-authoring an op-ed criticizing Tufts University’s response to student resolutions on the war in Gaza.

public forums, provided the speech or expression is lawful and protected by the First Amendment of the U.S. Constitution.

If a state or federal court finds by a preponderance of the evidence, that an educational institution violated any of these free speech and academic freedom provisions, a disclaimer notice must be sent to admitted students for four years stating the institution “has violated the free speech or academic freedom provisions in the Wisconsin statutes.” Additionally, the bill creates a state cause of action whereby a person whose expressive rights were violated, the attorney general, or a district attorney may bring a lawsuit seeking injunctive relieve and/or damages, court costs, and attorney fees.

The bill also establishes due process guarantees for any student, employee, or organization involved in a disciplinary hearing at a UWS or WTCS institution, including:

- The right of the student, employee, or organization to notice that a complaint has been made against them prior to initiating a disciplinary proceeding or investigation;
- The right to be represented by an attorney or non-attorney advocate, at the accused’s expense, who shall be permitted to fully participate during the disciplinary proceeding;
- Written notice of the student’s, employee’s, or organization’s rights before a disciplinary proceeding is scheduled, and at least 2 business days before a student, employee, or organization may be questioned by an institution or agent of the institution about allegations of disciplinary or conduct rules violations; and
- A guarantee for all parties to a disciplinary proceeding—including, if applicable, the accusing student—to have access to all material evidence at least one week prior to the start of a formal hearing or adjudicatory proceeding

While Sections 1 and 3 of the bill relate to campus free speech and academic freedom, bill Sections 2 and 4 relate to any disciplinary proceedings or investigations, not just in the free speech context. These due process guarantees apply when a student is accused of violating any academic or non-academic conduct rules; when an employee is accused of violating disciplinary or conduct rules; or when a student organization, employee organization, or independent organization officially recognized by an institution is accused of violating disciplinary or conduct rules. Under the bill, if a UWS or WTCS institution is found to have violated the bill’s due process guarantees more than once in a 5-year period, the board “shall freeze tuition for all students for the 2 academic years immediately following the finding of the violation giving rise to this penalty.”

ACLU-WI supports the provisions in the bill regarding free speech and academic protections that simply codify established First Amendment protections for students. We do have some questions about the enforceability of the broad principles outlined in the bill and full scope of what constitutes a “virtual space” under the definition. Additionally, ACLU-WI supports due process protections guaranteed to students in disciplinary proceedings, including the right to representation and right to material evidence ahead of time. However, the penalty provision requiring a two-year tuition freeze for more than one violation of any of these due process guarantees raises several concerns. First, the language is unclear as to what constitutes a “violation” of these due process guarantees and who or what entity could make a “finding” to trigger the penalty. Second, this high-stakes financial penalty has broad impacts for the entire student body and educational institution’s financial stability rather than targeting the specific individual(s) responsible for the due process violation. While a tuition freeze theoretically benefits students, it is an indirect and arbitrary remedy for the student, employee, or organization who suffered the due process violation.