



**Written Testimony of Jacqueline Pfeffer Merrill
Before the Wisconsin Assembly Committee on Colleges and Universities:
Informational Hearing on Free Speech, Intellectual Diversity, and Quality of Higher Education
April 6, 2023**

Good morning, Chairman Murphy and distinguished members of the Assembly Committee on Colleges and Universities. I commend the committee for focusing on freedom of expression, academic freedom, and intellectual diversity as essential to the mission of the University of Wisconsin System.

My name is Jacqueline Pfeffer Merrill. I am the director of the Campus Free Expression Project at the Bipartisan Policy Center, a Washington, D.C.-based think tank that actively fosters bipartisanship by combining the best ideas from both parties to promote health, security, and opportunity for all Americans.

Four years ago, the Bipartisan Policy Center took up the issue of campus free expression because—simply put—it is mission-critical for us. BPC depends on colleges and universities to prepare the next generation of bipartisan civic leaders, ready to forge constructive compromises across principled disagreement. In late 2021, BPC's Academic Leaders Task Force on Campus Free Expression published its consensus report, *Campus Free Expression: A New Roadmap*.¹ The Task Force is chaired by a bipartisan pair of former governors and includes six current or former college presidents; a vice president of diversity, equity, and inclusion; a faculty member; a civic association leader and former flagship trustee; and a recent graduate.

The Task Force's consensus report found that the chilling of campus speech is degrading higher education's capacity to carry out its missions of research, teaching, and preparing the next generation for citizenship and civic leadership. The Task Force made recommendations for campus-wide strategies to bolster academic freedom and freedom of expression, and to prepare students as independent thinkers who can tolerate contrary viewpoints and work productively with those whose views differ from their own.

I hope our conversation today leaves you with these four takeaways:

1. **Free expression is a threatened value in our country, and the campus climate for free expression and open inquiry is under tremendous stress.** It is not an exaggeration to say we have a crisis of freedom of expression.
2. **The University of Wisconsin System has taken important steps to improve the climate for free expression.** In 2015, the University of Wisconsin System Board of Regents was one of the first public university systems to affirm its commitment to a culture of open inquiry in its Commitment to Academic Freedom and Freedom of Expression (Regent Policy Document 4-21).² In 2022, the UW System surveyed its students about the culture for freedom of expression and their knowledge of the First Amendment; in February 2023, it published its findings, establishing

a benchmark against which it can measure initiatives to strengthen the culture for freedom of expression.³ The UW System is also initiating new citizenship and civic dialogue programs.⁴

3. **Yet more can be done to foster a campus climate of open exchange, and it is best that campuses take the lead.** Higher education institutions' commitment cannot be a one-and-done at first-year orientation, or with programs that touch only some students. Campuses should adopt a campus-wide strategy, implemented through policies, programs, and curricula, and with the high-profile engagement of top leadership.

4. **Fostering a free expression campus culture requires a dual track: Policies that protect against incursions on freedom of expression and academic freedom; and also policies, programs, and curricula that build the skills and dispositions for open inquiry, giving a hearing to viewpoints with which one disagrees, and discourse across difference.** It is possible to have policies that secure against the heckler's veto and other violations of expressive freedoms without a culture of students and faculty openly debating and engaging with new or controversial ideas. It is necessary both to protect against those few who would actively shut down debate and to cultivate among everyone skills for genuine intellectual discussion. Among the top requirements for campus leaders in creating a free expression culture is addressing the perceived tension between commitments to free expression and to diversity, equity, and inclusion. There is a path to harmonizing these values that furthers the mission of higher education.

Background factors: Why has the climate for freedom of expression worsened?

The climate for freedom of expression on campus should be understood in the context of our American civic culture. That culture—so admired by Alexis de Tocqueville for its civil associations and cooperative spirit—is under great stress. We are riven by divisive stereotypes about our political opposites: conservatives and liberals no longer think of their political opposites as those who have different points of view, but as bad people with the wrong values.⁵ Social media fuels polarization by rewarding those who antagonize others with callouts and its algorithms herd people into think-alike groups. At the same time, Americans increasingly live in homogeneous communities, with few neighbors whose opinions, news sources, socioeconomic status, and race are different from their own.⁶ The social distancing of the pandemic years compounded our isolation from fellow citizens, while protests over racial justice and public health policies, and a contentious national election, furthered polarization.

This polarization is the backdrop to the threats to free expression in our civic culture. Citizens feel that they are walking on eggshells: a recent Cato Institute survey found 62% of Americans say they have views that they are afraid to share. At their workplaces, 32% think that, if their political opinions were known at work, there could be a career consequence, such as losing out on a promotion—or even losing their job.⁷ This feeling that we cannot frankly discuss issues that face our country is one sign of the national civic skills deficit that has undermined our national capacity to address our urgent challenges.

If people established in adulthood and careers are afraid to say what they think, it should be no surprise that those on our nation's campuses, especially those matriculating as recent high school graduates, should frequently fail to uphold the value of free expression. Even before the pandemic, thanks to cell phones and social media, college-bound Generation Z high schoolers spent an hour less per day socializing face-to-face than their Generation X parents, meaning that they were less practiced in social interactions—even friendly conversations—than those of a generation ago.⁸ Parenting practices have also changed, with today's "helicopter" or "snowplow" parents curating their children's social,

academic, and extramural activities, and running interference when their children encounter disagreements.⁹

Now, some say that there is no free expression crisis on campus—or, at least, it is not worse than what we see in our civic culture. The *Washington Post* ran an opinion piece in 2018 with the title, “The ‘campus free speech crisis’ is a myth”; other leading news publications have echoed this “myth” label. Those who say there is no crisis generally make one of three arguments: 1) isolated instances of deplatforming or deployment of the heckler’s veto are unfairly generalized to be representative of higher education¹⁰; 2) that yes, some speech is being censored, but only racist, sexist, transphobic, homophobic, and otherwise hateful speech that has no place on a campus¹¹; and 3) that students’ consideration for the feelings of others, “being nice,” and concern for making space in the conversation for underrepresented views, leads to socially-attuned restraint on speech misconstrued as problematic self-censorship.¹² Others point to students’ strong support for the First Amendment—with five in six agreeing that free speech rights are “extremely” or “very” important to our democracy, and a strong majority agreeing that colleges should allow all speech—even if it is offensive or biased.¹³

Those who say there is no crisis of free expression are simply incorrect. It is real. Let’s consider national data:

- Two-thirds of students say that the climate on their campus keeps some from sharing their views.
- Only half of students say they feel comfortable expressing disagreement in the classroom, where professors can guide conversation and make space for heterodox views; the fraction who are afraid to express disagreement is almost the same for men and women, for students of color and white students.
- Significant minorities of students support tactics to suppress expression: a third favor speech codes, a quarter favor disinviting speakers if some perceive the message as biased or offensive, one-fifth favor restricting students’ ability to express political views that are upsetting or offensive or to form a group to promote gun rights, and one-sixth favor disallowing leafletting of pamphlets with a Christian message.¹⁴
- Student governments, whose members are presumed to be leaders among their peers, are increasingly leaders in censoring expression.¹⁵
- More than half of college sophomores would not room with someone who supported the other presidential candidate in the 2020 election, and more than three in five “probably” or “definitely” would not work for a company that made financial donations to a cause at odds with their values.¹⁶
- Recent graduates are taking divisive attitudes into the workplace: a 2020 survey found 44% of those under 30 favored firing an executive who donated to former President Donald Trump, while 27% of those under 30 favored firing an executive who donated to President Joe Biden’s campaign.¹⁷

Thanks to the University of Wisconsin System's leadership in surveying its students, we have this data about students in the Badger state, which I understand will be the focus of this committee's hearing at the University of Wisconsin-Eau Claire campus:

- When asked for their perceptions of how willing their peers were to express views with which others may disagree, less than a third viewed their peers as "very" or "extremely" willing; a bit more than a third saw their peers as "somewhat" willing; and a third saw their peers as "not at all" or only "a little" willing.
- When asked about the scenario in which a student makes a statement in class that others view as harmful to a group, three in ten agreed "quite a bit" or "a great deal" that students should report that student to the administration; another three in ten agreed "somewhat," one quarter agreed "a little," and only one in six said "not at all."
- When asked whether the administrator should disinvite a speaker invited by a student group if other students believe the speaker bears an offensive message, only one quarter said the disinvitation should be considered "not at all"; more than two-fifths said a disinvitation should be considered "a little" or "somewhat;" while just under a third said the administration should consider a disinvitation "quite a bit" or "a great deal."¹⁸

Frankly, when we see such high fractions of students thinking that some views cannot be openly expressed; when half are not comfortable offering their opinions even in a classroom; when so many support speech codes or reporting a peer to an administrator, 100% of students are not having the experience they should have of learning to stress test their ideas and become mature, independent thinkers. That is a crisis.

So here is the paradoxical situation today in this crisis: a strong majority of students support free expression, value the First Amendment, and want to hear viewpoints from across the political spectrum—yet majorities also say that expression is chilled on their campus. Why is speech chilled, when strong majorities support free expression and viewpoint diversity?

The BPC Task Force identified four campus factors:

- 1. Doubts that free expression and diversity, equity, and inclusion can be harmonized.** Two-thirds of students believe that diversity and inclusion are "frequently" or at least "occasionally" in conflict with free speech.¹⁹ When students perceive a conflict between these values and worry that allowing certain kinds of expression can cause harm, they—for reasons that are understandable and with which we can sympathize—generally prioritize diversity and inclusion over freedom of expression.
- 2. Decreasing campus viewpoint diversity.** While conservatives, liberals, and moderate each represent at least a quarter of the American populace, college faculty have become increasingly left-leaning.²⁰ When viewpoint diversity is not modeled in the faculty, it is hard to foster it amongst students.²¹
- 3. A censorious minority.** While most students want to hear from a wide range of viewpoints, a censorious minority, who are willing to shout down speakers and call out others on social media, has an outsized impact on campus culture. A survey at a flagship university found that 43% of

self-identified conservatives, 25% of self-identified moderates, and 10% of self-identified liberals were worried their classroom comments would be shared on social media.²²

- 4. Widespread self-censorship.** It may be that very few students would post on social media about a peer's classroom remarks, but the damage those few can inflict make it simply too risky to express a view outside the campus mainstream; the flagship university survey mentioned just above also found students of all political stripes self-censor, and many report doing so multiple times in a course. Faculty also self-censor by deciding that some topics are too fraught to raise in the classroom or pursue in research.²³

Higher education leaders must navigate these many challenges and create a campus climate for robust intellectual exchange and a respectful learning environment for all. They must make their campus a model of respectful debate and discussion at a time when students—and the country—rarely see such interactions.

Strategies to Improve the Climate for Freedom of Expression

Free expression and academic freedom are always prerequisites to higher education's missions of research, teaching, and preparing the next generation for citizenship and civic leadership. In this moment of great stress, college leaders must have these principles top of mind. The BPC Task Force found that it is important for each campus, or university system, to develop approaches that fit its unique history, mission, and community. It also recommended that schools adopt a campus-wide strategy: the high-profile leadership of the president or chancellor engaging, through norms of shared governance, the trustees, faculty, athletic directors and coaches, and students themselves.

The Task Force made four core recommendations:

- 1. Address the perceived tension that pits academic freedom and freedom of expression against diversity, equity, and inclusion.** Everyone here has heard about the Stanford Law School controversy where the associate dean for diversity, equity, and inclusion chastised the invited speaker, a federal circuit judge, who was unable to deliver his prepared remarks. That event—and others like it involving DEI administrators—has led many to conclude that DEI undercuts freedom of expression.

Additionally, as noted above, two-thirds of students hold that diversity and inclusion is “frequently” or at least “occasionally” in conflict with free speech, and many will prioritize diversity and inclusion over freedom of expression when these values are pitted against each other. It is insufficient simply to assert that freedom of expression cannot be compromised; as the Task Force report advises that, “addressing the perceived tension between diversity, equity, inclusion, and free expression is an essential rhetorical and strategic task for campus leaders.”

To persuade the campus community that both diversity, equity, and inclusion and freedom of expression can be honored, campus leaders must argue that both are essential, and that they can be harmonized. The way to do so is with the core mission of higher education as our loadstar.

Let me quote from an essay, cited by our report, by Princeton University William Nelson Cromwell Professor of Politics, Keith Whittington, who is also founding chair of the Academic Committee of the Academic Freedom Alliance:

We can only appreciate how the value of free speech and the value of diversity are compatible if we are clear about the core purposes of a university. The central mission of a university, I believe, is to advance the state of human knowledge and communicate what we have learned to others. Both diversity and free speech are essential to that mission. Universities were historically hobbled to the extent that they systematically excluded a wide range of participants from the campus community and the scholarly enterprise. At the same time, knowledge cannot be advanced if we circumscribe the scope of freedom of inquiry. Universities must be places where controversial ideas can be raised and freely discussed, a range of perspectives can be brought to bear on common problems, and conventional wisdom can be held up to critical scrutiny and unconventional thinking.²⁴

Professor Whittington’s comments point us to how the knowledge-seeking mission of higher education—research, teaching, and preparation for citizenship—circumscribe both free expression and academic freedom and diversity, equity, and inclusion in the higher education context.

Let us start with freedom of expression and academic freedom. The First Amendment is binding on the University of Wisconsin System, but the First Amendment does not tell us why we protect freedom of expression on campus and academic freedom. The First Amendment protects our rights, as individuals, and, as the Task Force noted, “rightly protects expression that is vile, hateful, deliberately provocative, and patently untrue”—expression that may not meet the threshold for academic discourse. A university is a unique community oriented towards the development of knowledge. The Task Force urged that:

As members of a campus community, we should choose to speak and to act in ways that inform, that question, that meet disciplinary standards of evidence, that are truthful or offered in pursuit of truth, and that affirm the opportunities of others in the community to do the same.²⁵

This explains why expression on campus is curated, channeled, and rigorously evaluated. Professors are allowed to set the syllabus, assigning some texts while leaving off others; in class, professors are allowed to tell a student that he cannot make a point without attempting to offer reasons for his or her view. Peer reviewers judge professors’ research and determine whose research makes it—or not—into publication. Hypotheses and ideas—even ones that seem outlandish—may be raised, but only to be subject to debate and scrutiny; whether they withstand these stress tests should be a question of academic merit, not of fashion or majority opinion. What is so worrying in the trends I have described this morning is that academically meritorious expression is being chilled on campuses. What happened at Stanford Law was the heckler’s veto used to shut down academically meritorious speech in the name of DEI concerns.

The Stanford Law incident—and too many others like it—do not warrant the conclusion that diversity, equity, and inclusion commitments are to be dismissed. To the contrary, the Task Force also focused on ways that campuses, while becoming more diverse have not always succeeded in becoming genuinely inclusive and respectful for all. The Task Force, for example, cited a survey of African American students at a flagship university that found these students perceived that others assumed they were on campus for athletics and that the university used them as a “prop” in campus brochures, which made them feel that they were not respected and

included as students.²⁶ At a time of rising anti-Semitism nationally, Jewish students and faculty experience exclusionary and hostile treatment.²⁷ Conservative students find many campuses unwelcoming; University of North Carolina researchers on student attitudes on free expression wrote that a “student revealing themselves as conservatives would face greater social risks than those revealing themselves a liberal.”²⁸ The failure to create a consistently respectful environment for *all* continues to hobble, to use Professor Whittington’s word, campuses by failing to bring everyone into the knowledge-seeking enterprise.

The goal, the Task Force wrote, must be to establish a “sense of inclusion in an academic community of learning and inquiry” and confidence that there are “no arbitrary barriers, such as race, religion, or sex, to participation in the community of knowledge-seekers.”²⁹ The Task Force wrote:

As a task force, we believe that free expression is an essential means to an inclusive campus. It is through discourse that we are able to examine, discuss, and ultimately understand others’ experiences, viewpoints, and opinions. While profound disagreements and differences may remain, through respectful, serious conversations the campus can become an inclusive community of learners and knowledge-seekers.³⁰

If the committee will excuse the pun, for us, this was not purely academic. Task Force members have wrestled with harmonizing free expression and DEI on their own campuses. DePauw University President Lori White faced a controversy and apparent conflict between these values when a faculty member quoted a racial epithet in a classroom discussion; President White responded with a campus memo that acknowledged the epithet is hurtful and has been used to dehumanize Black people, but that to disallow racial epithets might require disallowing classic texts such as *To Kill a Mockingbird*, thus undermining teaching and learning.³¹ Texas Tech University Vice President for Diversity, Equity & Inclusion Carol A. Sumner was part of the leadership team that rescinded a diversity, equity, and inclusion litmus test for hiring in a Texas Tech department when that policy came to light and initiated a review of hiring practices.³² Both of these leaders—and others on the Task Force—have aimed at a community of learning and inquiry, where a sense of inclusion is built around a shared sense of being knowledge seekers in an academic community.

2. **Cultivate viewpoint diversity on campus.** The good news is that most students do want to hear from both sides of the aisle: University of North Carolina researchers described a “hidden consensus on free expression,” namely that students on both sides of the political spectrum want more opportunities to hear diverse viewpoints.³³ Many faculty do make it a point of pride to play “devil’s advocate” or to represent viewpoints that they think have not been represented in a class discussion.

Nevertheless, as John Stuart Mill wrote, “Nor is it enough that [a student] should hear the opinions of adversaries from his own teachers, presented as they state them, and accompanied by what they offer as refutations. He must be able to hear them from persons who actually believe them...he must know them in their most plausible and persuasive form.”³⁴ That is why college leaders should identify gaps in the range of viewpoints heard on campus and take steps to fill them. The Task Force identified many ways to fill these gaps, such as speakers series hosted by the president or chancellor and symposia and panels organized by faculty-led

institutes and student groups. Professor's syllabi and classroom discussions bring divergent viewpoints into conversation.

- 3. Adopt strong policies for the protection of free expression and academic freedom.** The answer to a censorious minority is robust policies that assure students, faculty, and staff that controversial and unorthodox viewpoints may be expressed. A policy against the heckler's veto—enforced in the face of controversial speech—is a safeguard for student groups and faculty who wish to invite a speaker who will be controversial to the campus; the University of Wisconsin System adopted such a policy in 2017.³⁵ The Foundation for Individual Rights and Expression (FIRE) holds out the University of Wisconsin-Madison's bias incident policy as a model for its protection of student rights.³⁶ FIRE has rated seven of the University of Wisconsin System's 13 universities; six have "yellow" ratings (Madison, Milwaukee, Eau Claire, Green Bay, La Crosse, and Stout); one has a "red" rating (Oshkosh),³⁷ indicating that these schools could revise existing policies or adopt new policies that would better protect against violations of academic freedom and freedom of expression.

Policies that protect freedom of expression are important, but those policies must also be readily accessible and understandable. The Task Force recommended that campuses create detailed, easy-to-access guides about expressive activities, covering protest, counterprotests, hosting events, leafletting, chalking, tabling, and more, and cited examples of such.³⁸ Detailed policies and guidelines both support students in exercising their expressive freedoms and enforcing those freedoms when peers would infringe upon them. Given the pressures social media put on campus expression, the Task Force cited an example of a school policy disallowing students from attributing another student's classroom remark by name on social media as a way to alleviate fears about raising a potentially contentious opinion in class.³⁹

- 4. Teach the skills and habits of mind necessary for academic and civil discourse.** We have a national civics skills deficit; students frequently see politicians and celebrities rewarded for contemptuous or glib speech and too infrequently see models of civil discourse on the national stage. It is possible to safeguard against violations of free expression and academic freedom, and yet to have a campus where people lack the skills to vigorously debate ideas; the courage to raise an idea that they think few (or maybe no one) will endorse; the humility to admit their initial idea was wrong; and the grace to challenge another's idea without attacking the person. Students need strategies for encounters with ideas that seem surprising or offensive; the Task Force noted even simple verbal strategies such as being ready to ask "help me understand why you see it that way" are useful.

The University of Wisconsin System has taken a key step by requiring the orientation for matriculating and transferring students to include information about freedom of expression.⁴⁰ University of Wisconsin-Eau Claire Chancellor James Schmidt took a leading part in the [video](#), which also included faculty and students, that was shown to all matriculating students this academic year. Classroom experiences under the guidance of faculty and first-year programs led by student affairs staff can inculcate empathy; a commitment to disagree with others' ideas without reviling them; the humility to change one's mind; and the courage to make an argument even suspecting others will disagree; and, when a decision must be made, willingness to compromise.

Increasing skills and habits of mind for open exchange and civil discourse must be woven throughout the four years. The Task Force also recommended orientation free expression topics

and school policies be included in orientation for new trustees and new faculty, as well as graduate student professional education.⁴¹

Next Steps: Fostering a Free Expression Campus Culture

This is a moment of profound stress on freedom of expression in our country—and on our campuses. However, as a country—and on campuses—we have navigated such moments before and found ways to strengthen the culture of open exchange. Whether we think of the McCarthy era, or the tumults of the 1960s Civil Rights and Vietnam protests, there were pressures on free expression on campus, and campus leaders found ways to reestablish norms of open inquiry.

Let me conclude by respectfully making a few suggestions for the committee’s consideration.

1. **There is a dual track to a free expression campus culture: policies that safeguard free expression against a censorious minority infringing on freedom of expression and academic freedom; and also policies, programs, and curricula that support skills and dispositions for dialogue across difference.**
2. **Fostering a culture of free expression and open inquiry on college campuses is ultimately a matter for campus governance and leadership.** As BPC Task Force co-chairs former Vermont Governor Jim Douglas and former Washington Governor Christine Gregoire wrote, campuses should provide leadership “to get ahead of the curve on free expression issues to discourage legislative interference in matters that are properly matters of campus governance.”⁴² 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.
3. **To the extent that the legislature considers acting on issues of campus free expression, it should:**
 - a. **Affirm protections for free expression well established in case law** (for example, that student activity fees be allocated in viewpoint-neutral manner);
 - b. **Affirm the academic freedom of faculty to research, teach, and express opinions on matters of public concern;**
 - c. **Affirm that no one should be compelled to avow or disavow any particular viewpoint, principle, or ideology;**
 - d. **Support university and system-led free expression, civil dialogue, and civics initiatives.**

I commend this committee for convening this hearing, and the one soon to be held at the University of Wisconsin-Eau Claire, to illuminate the deep challenges to open inquiry and free expression in our country and on campuses. Political communities that cannot talk about hard issues are brittle; free expression, which should be a value that we can take for granted, is a contested value today. Thank you for this opportunity to examine and affirm this value.

My thanks again to Chairman Murphy and the committee for your attention to freedom of expression, academic freedom, and intellectual diversity as core values in our nation’s higher education institutions and the role of higher education in raising the bar for national discourse and strengthening our civic culture.

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- ³ University of Wisconsin System, *UW System Student Views on Freedom of Speech*, February 1, 2023. Available at: <https://www.wisconsin.edu/civil-dialogue/download/SurveyReport20230201.pdf>.
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¹⁴ This and the above two bullet points: Ipsos and Knight Foundation, *College Student Views on Free Expression and Campus Speech*, January 2022 7. Available at: https://knightfoundation.org/wp-content/uploads/2022/01/KFX_College_2022.pdf, 21, 25, 27.

¹⁵ Philip Goodrich, "Complicated and Messy," *Inside Higher Ed*, September 27, 2022. Available at: <https://www.insidehighered.com/views/2022/09/27/gauging-student-gov-leaders-views-free-speech-opinion>); Nick Gonnerman, "Student Governments Fast Becoming a Focal Point of the Campus Free Speech Crisis," Bipartisan Policy Center, July 13, 2021. Available at: <https://bipartisanpolicy.org/blog/free-expression-crisis/>.

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