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**PROFS President Michael Bernard-Donals' Statement on Campus Free Speech
Senate Committee on Universities and Technical Colleges
Wednesday, February 24, 2021**

Thank you for giving me time with the committee. My name is Michael Bernard-Donals; I am an English Professor and the President of PROFS, the Public Representation Organization of the Faculty Senate of UW-Madison. PROFS is linked to the shared governance structure of the university; the executive committee of the Faculty Senate serves as the PROFS board of directors.

Senator Roth has asked the committee to hear from interested parties on the issue of free speech on campus. I'll start by saying since, from the founding of the state, the right of free speech has been protected in the very first article of the Wisconsin constitution, and by the First Amendment to the United States constitution. Free speech is a right held by all of those who live in the state of Wisconsin, including those who live, work, and study at its universities.

Some of my colleagues have wondered, then, why members of the legislature think that universities, of all places, would need additional scrutiny when it comes to free speech, since one of the clear aims of the state's public universities is to provide its students with the capacity to speak freely, to discern the truth of the matters on which they speak, and to understand the effects of what they say on the members of their communities. Robert Post, a leading American legal scholar at Yale University, calls this aim "democratic competence." He defines it as the "cognitive empowerment of persons within public discourse, which in part depends on their access to disciplinary knowledge," and he sees the job of universities to provide this knowledge. That's what the liberal arts do: they empower people, through the study of the arts and sciences, to distinguish good ideas from bad ones. The protections of free speech, and of academic freedom, are crucial to this undertaking, since the undertaking needs to be shielded from unchecked political control over what makes a good or a bad idea. (I'll come back to this in a minute.) The point here is that universities and colleges are where free speech is most highly valued, because it's the free interchange of ideas through which people can deliberate about which ideas are the good ones and which ones should be ignored.

Knowing just how necessary free speech is to the aims of a university, the universities in the System themselves have put into place policies that ensure that it's protected and promoted on their campuses, and they've made sure that faculty members have the academic freedom necessary to provide access to the disciplinary knowledge necessary for democratic competence. Let me give you a couple of examples. The University of Wisconsin-Madison's policies on faculty rights and responsibilities state that faculty "individually enjoy and exercise all rights secured to them by the Constitution of the United States and the State of Wisconsin," free speech included. It specifically mentions the right to speak or write on matters of public concern without institutional interference. It goes on to say that to be free means to be able to "seek the truth, develop wisdom, and contribute to society those expressions of the intellect that ennoble [hu]man kind." In 2015, the University of Wisconsin's Board of Regents adopted a statement of commitment to the principles of free speech and academic freedom, part of which reads that free speech involves the right to discuss all matters both inside and outside the classroom, and that it isn't the proper role of the university to "shield individuals from ideas and opinions they, or others, find unwelcome, disagreeable, or even deeply offensive." So it's not like there's a free speech problem at the University of Wisconsin; the university has, quite to the contrary, declared in very strong terms that not only must there be free speech on its campuses, but that the capacity to speak freely is one of its central aims.

So I wonder, again, why free speech on campus is considered to be a problem at UW. Maybe it's because there have been a couple of notable instances on some college campuses where invited speakers have drawn

demonstrations against them. At the University of Wisconsin, anyway, that problem has been addressed by a ban on what's sometimes known as the heckler's veto: in what I think is a over-broadly-worded addition to the Board of Regents policy on academic freedom, "disorderly conduct that materially or substantially disrupts the free expression of others" is now punishable by suspension or expulsion, and the UW-Madison's student code of conduct also gives students due process when they've been accused of interfering with others' free expression. PROFS argued at the time that these new policies were redundant, seeing as the Board of Regents already had a strong free-speech policy. And PROFS also argued at the time that this kind of reach-in by the Board to say what was and wasn't allowed – just what qualifies as a disruption, anyway? – is exactly the kind of reach-in that the First Amendment protections of free speech *were meant to guard against*. That's why, a little over a year ago, PROFS registered against Assembly Bill 299 and Senate Bill 403. Those bills would have had the opposite effect from what they claimed to be aiming for: they would have chilled speech by including ambiguous language about what constituted free speech; they would have imposed a broadly-worded restriction on institutions from speaking on public issues; and they would have imposed strict sanctions for anyone who violated its restrictions. If passed, they would almost certainly have been challenged in court for stifling speech allowable by the First Amendment to the US constitution and the First Article of the Wisconsin constitution.

Maybe legislators are worried about free speech on campus because they read somewhere that students are being indoctrinated by their professors, or that they're afraid speak. But there's absolutely no evidence of this. There are anecdotal reports of students who are dissatisfied that their political, ideological and intellectual positions are challenged in the classroom. But this is just what college is supposed to do: to become democratically competent, a student has to learn how to understand the strength and weakness of their positions, their relation to other, competing positions, understand the facts behind those positions, and figure out what to do as a result. Some of these anecdotes refer to conservative-leaning students feeling unduly challenged by their professors. But again, and contrary to Professor Pesta's assertion, there's no evidence of a broader problem; in fact a campus climate survey conducted a couple of years ago showed that on the UW-Madison campus, conservative students reported that their ideas were respected by their teachers and peers at the same or a higher level as progressive students, and reported higher levels of feeling like they felt heard on the campus and in the classroom. And it suggests that despite Professor Owens' statistics about the politics of faculty members – and Shields and Dunn only surveyed 150 faculty members, so I have to wonder about how reliable they are -- those politics don't have a significant effect on faculty members fairness or effectiveness in the classroom, or on their expertise in their subject matter.

The point is that there already is a strong culture of free speech at the state's public universities, and especially at UW-Madison. University faculty understand that fostering and encouraging free speech is necessary for their students to hone their abilities to learn, to critically engage with ideas, and to obtain the disciplinary knowledge they'll need to productively participate as citizens in both the workplace and in democratic self-governance. And while many of those same faculty and students didn't think it was really necessary – since there's no evidence that freedom of speech is in any way jeopardized here – the Board of Regents and the campuses adopted policies that reiterated that commitment to free speech. This action is consistent with the idea that institutions of higher education should have the autonomy to address their own speech issues; appropriate institutional autonomy is itself an important aspect of academic freedom. Given all of this, we don't believe that there's any need for new legislation to address a free speech "problem" in the state's public universities. We don't believe there is one.

I'm happy to answer any questions you may have.