

## Faculty Senate Coversheet

**Resolution/Motion Title:** Proposal to Amend Faculty Legislation II-303 Protected and Unprotected Expression in a Work-Related Setting (UW-882) to Clarify Derogation and Debasement

**Faculty Document 3227 rev**

**Sponsor:** April Haynes, Senator

**Vote on document:** May 5, 2025

**Individuals/Committees Consulted:** University Committee

### **Background/Purpose (from sponsor):**

The amendments to the policy have been updated.

On January 21, 2025, the White House issued an Executive Order (J21 EO), which radically reinterpreted the Civil Rights Act of 1964 and the Equal Protection Clause of the United States Constitution to portray Diversity, Equity, and Inclusion efforts to counter various forms of bias and bigotry as “dangerous, demeaning, and immoral.” Professors of constitutional law, education law, employment law, antidiscrimination law, and civil rights have issued a Feb. 20 Memorandum urging federally funded institutions not to “interpret the J21 EO and related communications as requiring the elimination or curtailment of existing DEI initiatives.” They point out that the J21 EO expressly recognizes First Amendment protections and does not apply to academic programs or instructional speech. Moreover, common DEI initiatives are lawful under federal civil rights law and Supreme Court precedent. The 2023 SCOTUS decisions involving Harvard and the University of North Carolina pertained to admissions practices, not to internal resource allocation or instructional speech.

Nevertheless, the Department of Education’s Acting Assistant Secretary for Civil Rights used the J21 EO to apply direct pressure to educational institutions through a “Dear Colleague” letter dated February 14, 2025. The letter threatens to withhold federal funds to educational institutions that engage in DEI programming, training, or other activities and issues a 14-day ultimatum for compliance. While the letter does not clearly define the scope of targeted activities, it accuses educators broadly of having “toxically indoctrinated students with the false premise that the United States is built upon systematic and structural racism.” In short, it aims to transform American education from a system that encourages inquiry and debate into one that conforms to the current federal administration’s ideology.

Faculty members worry that hasty responses on the part of universities could have the long-term effects of eliminating entire programs, censoring instructional speech, and stifling inquiry. Such outcomes would contravene our First Amendment rights. They would also undermine the university’s unique educational mission, which includes teaching students how to engage in informed debates over power and belonging. The American Association of University Professors and civil rights groups have sued to block the vague order issued in the “Dear Colleague” letter. A federal judge has decided in their favor and issued an injunction against the threatened funding cuts. While this litigation is ongoing, administrative leaders at the University of Wisconsin-Madison have already directed schools and colleges to discontinue DEI-related scholarship programs without consulting the faculty, students, or academic staff who participate in them. The Office of Strategic Communication and the Office of Legal Affairs have also issued updated guidance about protected and unprotected speech on campus during academic years 2023-24 and 2024-25 without engaging in shared governance processes.

The University of Wisconsin-Madison has for more than a century stood as a beacon of academic freedom and shared governance. Even in this critical moment, we still have choices. While other universities might preemptively discontinue programs and curtail instructional speech, we should continue our “fearless sifting and winnowing” until the scope and legality of the recent executive orders have been decided. Then we should make deliberate decisions together through the process of shared governance to uphold the Wisconsin Idea.

We, the faculty, know that universities play a vital role in civil society. As such, it is our duty to guard against governmental overreach. We further believe that educators must have a meaningful and collective voice in university governance. The faculty’s freedom to research and teach about matters that are central to their fields of expertise goes hand in hand with students’ freedom to learn and speak about controversial subjects. The time to protect academic freedom—the freedom to research, to teach, to learn, and to uphold the autonomy of educational institutions—is now.

**Distribution (if approved):**

Jennifer Mnookin, Chancellor

Charles Isbell, Provost

Rob Cramer, Vice Chancellor for Finance and Administration

John Zumbrunnen, Senior Vice Provost for Academic Affairs

Patrick Sheehan, Chief Human Resources Officer

**A vote in favor of this means** your department supports the amendments to Faculty Legislation II-303: Protects and Unprotected Expression in a Work-Related Setting (UW-882).

**A vote against this means** your department does not support the amendments to Faculty Legislation II-303: Protects and Unprotected Expression in a Work-Related Setting (UW-882).

**Meeting Guide**

(Can be used to track amendments/changes to resolutions or motions up for consideration)

**Main Motion/Resolution Moved:** \_\_\_\_\_ **Seconded**

Discussion (This is where you can ask questions or make comments)

If no further amendments, vote is taken on main motion with amendments if any.

Vote on Main Motion Aye \_\_\_\_\_ Nay \_\_\_\_\_

**Amendment Moved:** \_\_\_\_\_ **Seconded**

Discussion (This is where you can ask questions or make comments)

Vote on Amendment Aye \_\_\_\_\_ Nay \_\_\_\_\_

If aye, amendment now included in main motion. If nay, main motion not amended.