

# **Mackinac Center for Public Policy**

## **Issues and Ideas Forum**

### **“Fighting for Free Speech on Michigan University Campuses”**

#### **Speakers:**

**Jim Manley,**  
Senior Attorney, Scharf-Norton Center for Constitutional Litigation,  
Goldwater Institute

**Stanley Kurtz,**  
Senior Fellow,  
Ethics and Public Policy Center

**Michigan State Senator Patrick Colbeck (R),**  
7<sup>th</sup> District

**Deion Kathawa,**  
Fellow,  
Detroit News

**Introduction and Moderator:**  
**Michael Van Beek,**  
Director of Research,  
Mackinac Center for Public Policy

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Michigan**

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MICHAEL VAN BEEK: Good afternoon, everybody. We're going to get this panel going here, get this presentation happening. Thank you all for joining us. My name is Michael Van Beek. I'm the director of research at the Mackinac Center. Thank you all for joining us, and a special welcome to the viewers who are watching this online. This presentation is being livestreamed right now, and we will have a recording of it on our website so you can view it again or share it with friends if you want to.

I want to just make a special announcement to thank Auto-Owners Insurance for sponsoring these events. This is an Issues and Ideas Forum. We host these regularly in Lansing, and we're very thankful for the support that we get from Auto-Owners Insurance for putting these events together.

The Mackinac Center is a nonprofit, nonpartisan research organization. All of the things that we do are funded by generous gifts from contributors. And if you like the work that we do and would like to see more of it, please consider giving a gift to the Mackinac Center today. The chair of our board of directors is here with us, Cliff Taylor. Thank you, Cliff, for joining us today.

This Issues and Ideas is about fighting for free speech on Michigan University campuses. And we have four excellent panelists to hear from today. After they are done presenting, we're going to have a short time for question and answers from the audience. At your table are some cards. And if you have a question for a particular panelist or the entire panel to address, please write that on the card. And we will come around and pick those up. And then I will answer – or, I will ask those questions as they are written on the cards.

So debates about free speech are popping up in the nation's institutions of higher education, including ones in Michigan. Lawmakers have introduced bills that would address this issue. And it raises an important question that needs consideration: What is the proper role of the state to regulate or protect free speech at publicly funded institutions of higher education. And with us, we have four presenters to discuss this issue.

First, you'll be hearing from Jim Manley. He is a senior attorney at the Goldwater Institute, and has litigated cases concerning free speech issues. Next will be Stanley Kurtz. He is a senior fellow at the Ethics and Public Policy Center, and a former adjunct fellow with the Hudson Institute. He has been published on a wide variety of topics and has a special interest in Americas cultural wars.

Next will be Keion Kathawa. He is a graduate of the University of Michigan with degrees in philosophy and political science. He served as the editor-in-chief of the Michigan Review while he was there and is currently a fellow with the Detroit News. And lastly will be Senator Pat Colbeck. He's a state senator from Michigan's 7<sup>th</sup> District, trained as an engineer at the University of Michigan. He is the lead sponsor on the bill – the bill being considered right now that would require public universities to adopt and enforce new free speech policies.

So first we'll hear from Jim and then go down the line, and then a Q&A afterwards.

JIM MANLEY: Thank you. Thanks for that introduction. Is this – OK, there we go. Can everyone hear me? Good.

Thank you. Yes, I'm an attorney with the Goldwater Institute. And with Stanley and one of my colleagues, we drafted a model bill that is now being considered in Michigan, as well as by half a dozen other states. And you can see the text of the model bill and our white paper, it's on the publication table in the back. I see some people have picked it up already. I won't focus too much on the details of that, because I want to talk to you more generally about free speech.

I've come here to defend free expression, full stop. Our bill is intended to protect speakers who are invited to address student groups, for protestors who come to ask challenging questions and present their own ideas, for students who want to hand out literature on campus, and for members of the public who find themselves on campus engaged in robust public policy discussions. We all have a right to speak our minds, even and especially when the world thinks that we're fools for doing so. And contrary to what you may have heard about our model bill, it places no limits on that right. It's designed to protect free speech, free expression broadly on campus.

Too broadly, if you ask some people. We've all been told that you can't shout "fire" in crowded theater. The campus speech police have decided that you can't shout Trump 2016 on a college campus. You can't question the tactics of the Black Lives Matter movement. You can't hand out Constitutions. You can't say anything that might offend someone or call into question someone's deeply held beliefs. But who is to say whether the theater is on fire, and who is to say what topics are off-limits for discussion?

Do you have the ability, the dignity, and the right to make your own decisions and determine your own destiny, as Reagan said? Or do you need a censor? Do you need me to tell you what ideas are too controversial to discuss, or are you adult enough to judge on your own truth from fiction? That's really the issue that we're debating here. When we're debating campus free speech, we're talking about whether you and I, as individuals, are smart enough and free enough to be in control of our own minds.

The soul of the American university is the free exchange of ideas. Colleges need to be places where you can think the unthinkable so that you can have that competitive marketplace of idea. When colleges disinvite a speaker because their ideas are too controversial, that competition of ideas suffers. And what should be a search for truth ends up being turned into a holy war of ideology. Now, bad ideas don't go away because the intelligentsia ignores them. They fester and amplify in the intellectual silence of the internet. And we have to study viruses to cure them. We need to understand bad ideas to challenge them and to keep them from transcending our culture.

Former presidential candidate and DNC chair Howard Dean and Ted Wheeler, the mayor of Portland have claimed that so-called hate speech is not protected by the Constitution. They've said that certain ideas are off-limits because they're harsh and offensive. I think they're right about the ideas generally, but they're wrong about the law. The point of having free speech

protections in the Constitution is to protect unpopular ideas. We don't need the First Amendment for ideas that everyone agrees with. We need to protect minority views, especially when those views are repugnant. That's the whole point of having the First Amendment in law. That's the whole point of protecting free expression, is to protect views that are unpopular.

And that's why you can burn a cross or a flag, you can say racist things, you can shout God hates fags at a military funeral for no rational reason, and it's protected by the First Amendment. You can pretend to be a Medal of Honor winner if you've never stepped foot in a barracks. Free expression is protected very broadly under the First Amendment because it's incredibly dangerous when the government – either in the form of the legislature or the form of a university funded by taxpayers – starts to make decisions about what sort of ideas are enough within the mainstream to discuss.

And as it turns out, you can shout “fire” in a crowded theater, even if the theater is not on fire. That was Justice Oliver Wendell Holmes idea of an obvious restriction on freedom of expression, but the case wasn't about a theater, at least not in that sense. It was about the theater of war. It was about prosecuting men for urging others to not accept the draft during World War I. And so those men who wrote pamphlets discouraging draft enlistees from reporting were thrown in jail for resisting the draft. But it never should have come to that. The First Amendment should never have been twisted into something that would allow men to be imprisoned because their views were outside the mainstream.

And just as soon as Justice Holmes had made that fire analogy, he began to reverse himself. He contradicted himself just in the next free speech case that the court decided, shifting from the majority to the dissent. And now that test that was used in that case, clear and present danger, has been replaced by a standard that requires incitement to imminent lawless action before speech can be restricted. It's a higher standard that has allowed even violent political rhetoric, so long as it stops short of a genuine threat. Holmes was right to retreat from that position. The campus speech censors should likewise retreat.

It's easy to say that a provocateur like Milo Yiannopoulos or Ann Coulter should be denied a platform at a university. I would question that decision. But I think it's more difficult for a university to say that an intellectual like Charles Murray, from the American Enterprise Institute, or a college professor like Evergreen State College Professor Bret Weinstein should be silenced because we – because the university disagrees with one stance that they've taken or one book that they've written or one email that they've sent. Especially if we disagree with these people, we would all be the poorer for it if we silenced them.

We've known this at least since Mill wrote “On Liberty,” where he said, quote, “While everyone knows himself to be fallible, few think it necessary to take any precautions against their own fallibility. Only absolute princes or others who are accustomed to unlimited deference usually feel this complete confidence in their own opinions on nearly all subjects.” Now, Mill never thought to lump absolutely princes with University of Michigan undergrads, but in retrospect it's an apt comparison. Mill's point is that if we silence speech that is right we can never correct our own errors. And worse still, if we silence speech that is wrong we lose, quote, “the clearer perception and livelier impression of truth produced by its collision with error.”

That is what we're trying to achieve with our model bill. That is what we mean by restoring free expression as a living tradition on college campuses. Thank you for listening. I look forward to your questions. (Applause.)

STANLEY KURTZ: OK. So today, in talking about why the state of Michigan needs a Campus Free Speech Act, I'm going to concentrate on the problem of speaker shout-downs. Of course, the proposed Michigan Campus Free Speech Act does many things. For example, it abolishes restrictive campus speech codes. It prevents administrators from disinviting speakers. And it abolishes so-called free speech zones. Yet, arguably, the most distinctive feature of this legislation is the way it systematically addresses the problem of campus speaker shout-downs and any other sort of interference with the expressive rights of others.

Now, how does the legislation do this? Well, the Michigan Campus Free Speech Act instructs the university system to create a range of disciplinary sanctions for anyone under the jurisdiction of the institution who substantially interferes with the expressive rights of others. It also ensures that anyone charged with a violation of these rules is accorded very robust due process rights. And then the legislation creates a special commission to comment annually on the administrative handling of discipline for speaker shout-downs and related issues. And finally, this legislation ensures that students are fully informed of the school's free speech policy, including the sanctions for interfering with the expressive rights of others. And of course, this is to try to discourage shout-downs from ever happening in the first place.

Now, I want to make four key points today about campus speaker shout-downs. First, although speaker shout-downs are getting worse right now, they have a history that goes back more than 50 years. And we can learn from that history how to discourage them, because disciplining shout-downs has worked, whereas letting them go unpunished has only made the problem worse. Second, contrary to what some say, shout-downs aren't isolated cases that don't tell you much about colleges or universities. There have actually been quite a few more shout-downs lately than you might have realized. And many of those incidents chill speech both nationally and locally for a long time after they've passed.

Third, university administrators have repeatedly failed to discipline shout-downs. And there is every reason to expect that in the absence of legislative intervention, administrators will continue to let shout-downs go unpunished. And fourth, the failure of administrators to discipline shout-downs is already having very dangerous consequences. What we're seeing now beginning to arise from the administrative failure to discipline shout-downs is the spreading of violence and intimidation. The problem is already beginning to move beyond violence and intimidation directed only at visiting speakers and is moving toward violence and intimidation directed toward faculty, administrators and students. In fact, the poor – in fact the poor handling of campus shout-downs is even beginning to show the potential to create general civil strife, including violent civil strife.

So let me now elaborate briefly on each of these points. If you look at the history of speaker shout-downs, you'll see that there were a lot of them in the 1960s and early 1970s, and then things began to calm down a bit. Now, part of this reduction in speaker shout-downs came

because the violence and turbulence of the '60s eventually petered out by the mid-'70s. But part of what helped that to happen was a famous statement of campus free speech published by Yale University in 1974, and called the Woodward Report.

Now, the Woodward Report is famous for its ringing endorsement of free speech. But what a lot of people forget is that the Woodward Report was very heavily focused on the need to discipline students who shouted down visiting speakers. And the Woodward Report was very favorably received across the political spectrum.

For about 10 years, the Woodward Report's emphasis on freedom of speech and discipline for speaker shout-downs carried the day. There were very few serious campus disruptions during that period. And then, in 1983, Ronald Reagan's United Nations ambassador, Jeane Kirkpatrick, was shouted down by protesters at the University of California at Berkeley. And while many people called for the protesters to be disciplined, the university regents and faculty and administration all refused to punish the students who had shouted Kirkpatrick down. And after this, slowly but surely shout-downs spread and got worse, and were only rarely punished.

And it was through going back and reading Yale's Woodward report and studying the history of campus speaker shout-downs that I came up with the original proposal that helped inspire the Michigan Campus Free Speech Act.

Now, to respond to those who tend to dismiss speaker shout-downs as isolated incidents, it's important to remember the famous words of Justice Oliver Wendell Holmes. Holmes stressed that the real test of free speech is not freedom for the thought that agrees with us, but freedom for the thought that we hate. This means that you can't judge the condition of free speech on campus by the great majority of lectures that pose no challenge to campus orthodoxies. The real test of campus free speech is from those lesser number of speakers who cut against the grain.

The real point of speaker shout-downs is to police the acceptable boundaries of speech, so even a few shout-downs of speakers who challenge the reigning orthodoxies on campus suffice to send a message – send that message to the entire campus, to the entire state, and oftentimes nowadays to the entire nation – that certain kinds of ideas can no longer be expressed on campus. So, for example, the recent attack on the very left-leaning professor at Evergreen State College in Washington has sent a message to professors nationally that even being on the political left won't protect you if you try to challenge or contradict some of today's aggrieved students. Similarly, although you may not have heard of the many shout-downs directed at pro-Israel speakers on campuses over the last few years, I assure you that campus Jewish groups are very well aware of how dangerous it has become to invite a pro-Israel speaker to their campus or to hold a pro-Israel event. Even a few such shout-downs are sufficient to chill speech on this subject nationally.

And after speaking with students at the University of Michigan in Ann Arbor, I've discovered that the terrible shout-down of a debate there over the Black Lives Matter movement last fall has had lasting effects on campus. That shout-down was never punished or even

condemned by the administration, and the result is that students on the University of Michigan's flagship campus have been engaging in self-censorship. In general, these students feel abandoned by the University of Michigan administration when it comes to their free-speech rights.

And now, here, I'm going to break into my prepared text to talk about something that came up just this morning, relevant to this Michigan shout-down that I mentioned. There was an official editorial in *The Michigan Daily*, which, as I understand it, is the official or, shall we say, the flagship student newspaper of the flagship Michigan campus, at Ann Arbor. And that editorial in *The Michigan Daily* condemned the campus free-speech legislation we are talking about, and it specifically called it a bad idea because it would interfere with shout-downs like the one I just mentioned. And I want to quote from this editorial, which is honestly one of the most outrageous and disappointing, but also I think highly revealing, student pieces of writing that I've ever read.

So *The Michigan Daily* is editorializing about how troubling this legislation is. And then it says: "For instance," one of the troubling things about the legislation is that "students at the University have expressed opposition to, and ultimately helped cancel, a debate over the Black Lives Matter Movement. But, these protests did not infringe upon the free speech rights of the speakers who the protesters were organizing against, and should not, in future cases like this, be punished." Now, they have just said that these protests caused the cancellation of the debate. "Cancellation" is actually a euphemism: the protesters were right at the debate in their hundreds, screaming obscenity-laced tirades at the debaters, who were unable to speak. The debate was effectively shut down. The resolution was never voted on. And they have said that the debate was "canceled." Now, how do you cancel a debate and not interfere with the free-speech right of the speakers? And yet, they have said both things. It doesn't make any sense. But the underlying problem is that they are defending that shout-down and that they correctly believe that this legislation would punish such shout-downs.

So this has created a very stark choice. Either the legislation passes and students begin to understand from freshman orientation on that shout-downs like this are not permissible, or the legislation fails and Michigan students continue to believe that they are allowed to go along with these shout-downs. And, by the way, these students believe that these shout-downs are not inconsistent with freedom of speech. This op-ed defends freedom of speech, but says you're allowed to shout down. So the students don't really get what free speech is all about, and they need to – they need a lesson, and they need one quickly or we're all in very serious trouble.

Now, when it comes to the current handling of administrative discipline, I recently published a study of every shout-down I could find in the current academic year. Actually, I should mention this is called "the year of the shout-down." You can Google it with my name, and that will have a detailed account of this Michigan shout-down – debate shout-down I just mentioned. Some of these cases are very famous. And some, like the Michigan shout-down, are less well-known nationally. But out of all these cases, I could not find a single instance in which students who shouted down a visiting speaker received significant discipline. In most cases, there was never even a hearing. The Middlebury case, where hearings were held under intense

national scrutiny and pressure, is the exception that proves the rule given the very weak sanctions that resulted.

Yale's Woodward Report was really a product of faculty members who believed in classic liberalism and were appalled by the weakness of Yale's administrators when it came to upholding freedom of speech. Nowadays, the proportion of faculty members who believe in the classic liberal conception of free speech is greatly reduced. And because of this change, administrators are unlikely to discipline shout-downs without outside intervention.

I was going to get into the spreading violence – the attacks on students, administrators and faculty – but I've used up my time discussing this op-ed from The Michigan Daily. I think it was worth it.

Thank you. (Applause.)

DEION KATHAWA: Can everyone hear me? OK, great.

I see my role here helping to sort of concretize some of the things that you've heard from the last two speakers, and hopefully Senator Colbeck when he discusses his bill.

So I'm a graduate of the University of Michigan. I have some firsthand experience with some of these kinds of cases. I was on campus when the Black Lives Matter, you know, rush into that debate that, you know, Stanley was mentioning and shut it down.

So there are sort of two instances that I think are very instructive of sort of the culture of the university. In the run-up to the election, there were some posters put up by ostensibly the alt-right, you know, exhorting white women not to date black men, talking about how black men were more criminal, things like that. The university sent out an email; didn't officially, you know, condone taking down the posters from the public spaces, but sort of very heavily stressed that that would be consistent with its values of diversity and inclusion. So it makes it clear that, you know, repugnant as the posters are, it's clear to me that they would probably treat, you know, sort of mainstream conservative views very similarly, where they don't treat left-wing views like that. Because when you walk around campus, there are lots of posters about inclusion for trans folks, Black Lives Matter posters that just go up, and they're really nice posters – it's almost like they were professionally done – that are never taken down.

And then, post-election, a lot of you will remember President Schlissel's remarks about how 95 percent of the campus, you know, rejected the, you know, idyllic past that never existed and the hate with, you know, the election of Trump. And again, that sort of sends the signal to, you know, folks that don't, you know, toe the line on the progressive, you know, orthodoxy on campus, that their ideas are less than and certainly not, you know, blessed by the official administration.

And so I think, going deeper, there are sort of three key areas that you could break up the university: there's the classroom, there's sort of the public space, and then there's institutionally.



So I'll speak from my own experience in the classroom. I've never experienced the kinds of bias that people say exist on campus. I don't doubt that it does exist. You can look up a video of a University of Michigan professor teaching about history of popular music right before the election going on an anti-Trump tirade that's on video for The College Fix, talking about how if Trump wins, you know, there won't be a minimum wage, women will lose reproductive freedom, you know, on and on, the standard litany of horrors from him. So it does happen. So I'll say that, in my experience, the classroom has always been a place where I can express myself and be challenged, and I think that's good, but there are certainly cases where that's not the case.

I think publicly is the largest area that's a problem, and I think this bill is a good – a good start to fixing that. So lots of students, as sort of outlined by the last two speakers, they just don't understand what the First Amendment actually means or entails. They think that hate speech is a legal category, when I – I'm constantly telling them that it's a European construct, it's a Canadian construct, has no analogue in America. They just keep asking questions about, you know, hate speech: What about hate speech? Well, it's not real. It's not a legal thing.

I was putting forward a resolution for the Central Student Government to bolster free speech, to have us adopt the Chicago principles, and you know, I was asked seven, eight questions. Half of them were about hate speech: Well, I mean, how would you deal with, you know, someone, you know, shouting anti-gay slurs? Well, I mean, that's not – there's no legal sort of, you know, construct for that. So they don't understand what it means. The resolution was defeated by an overwhelming margin; I think 31 – 35-3 it was defeated.

Students, again, they just don't understand what the First Amendment means. They think that they're so unassailably correct in their view of their ideas, they don't think that they need to hear other people's opinions. And there are so few students who are willing to speak out that it – sort of they never get challenged, and they don't even know that there is another view out there that, you know, reasonable people can hold. A lot of times I'll have conversations with peers, and they've just never heard someone who's espousing, you know, whatever view it is that I'm espousing. They just – it's like I'm a unicorn. They've just never heard someone my age talking, you know, the way that I talk and espousing the views that I espouse. And so that's another big problem. Just as a public matter, students are very, you know, conditioned to think in a certain way, and campus is constantly reinforcing them.

And I think institutionally – I have some unique experience institutionally. I was a resident adviser in one of the residence halls on campus. Don't ask me why I did it. Looking back, I realize that it was just breeding grounds for social justice activists, and I never should have done it. But it did help pay the bills for a little bit.

So I would – I am pretty active on Facebook just posting about current events. Lots of my peers knew about that. Some of them were friends with me on Facebook, some weren't. I would post various things. Then I was consistently called into disciplinary hearings about Facebook posts that were – the administrators were sent screenshots of things that I'd written, and I would spend an hour or two sort of talking about what they wanted me to do about the Facebook posts. They never told me explicitly that I had to stop posting, but the implication was very clear that if I continued to post I would, you know, continue to be brought into meetings

that would waste my time and, you know, frustrate everyone. And so, at an institutional level, there's these pockets in the university, especially in housing and, you know, the diversity administration that are really sort of – they put a lot of pressure on students, and they – and they certainly create sort of this expectation of conformity that I think is very dangerous.

And so my hope is that the bill that, you know, Senator Colbeck has drafted will help to stiffen the spines of the schools that are – that feel like they might want to waver on protecting students' free-speech rights, and it will help to sort of break the logjam of, you know, constant conformity that we see on campus. A lot of the problem is students just have not encountered enough views that differ from theirs, and I think helping student groups feel like they have the protection of the law to bring in speakers that will, you know, speak against the orthodoxy I think will help make it more acceptable to hold those views or at least entertain them seriously in a debate.

So I look forward to any questions you have about my experiences. Thank you.  
(Applause.)

MICHIGAN STATE SENATOR PATRICK COLBECK (R-7<sup>TH</sup> DISTRICT): Well, thank you very much for the opportunity to speak on this very important topic.

And I want to thank Jim and Stanley for their support on getting this legislation ready, and going off and doing the due diligence that we needed to do in order to make this something we could present in front of the Senate and actually be able to withstand challenges.

And I also want to thank Deion for demonstrating that it is possible for a conservative to get an RA position at Bursley. (Laughter.) I applied; I didn't get it. But we won't go into the details on that.

You know, I've got a unique perspective. These guys have been on the front lines for this issue for quite a while. My first 44 years – I graduated from, as Michael was talking about, as an aerospace engineer. So we were debating the laws of physics, not the Constitution, so – (chuckles) – it was a much different venue. But I got my wakeup call about seven years ago, and I realized that, you know, folks weren't guarding home plate, that we're supposed to be guarding home plate. The purpose of government is to secure the rights of the governed, and I felt like those rights had been infringed for quite a while and it's about time that we stood up. Now, this wasn't the main issue that got me woken up, but this is – definitely fits within that purpose of government as defined in our Declaration of Independence, and it's very important.

You know, whenever I get a student group that comes up to visit me at the Capitol or when I go out and visit them at Boy Scout troops, at Eagle Scout Courts of Honor, I invariably quiz the kids. They probably hate me coming up and doing this all the time. I said: What are the five freedoms guaranteed in your First Amendment? And there's a little bit of hummina-hummina for a while, as my former colleague Senator Pappageorge would say. And invariably they'll remember freedom of speech because, you know, they got to debate their position with their mom and dad at home, right? And then they kind of drag on and they struggle sometimes to get some of the other freedoms out. And I go, you know what? If you don't know what those

freedoms are, you're not going to be able to have them pretty soon. If you don't know what they are, you can't assert them. You can't defend them. And it really sinks home with them.

And this is what this is all about right now, is that, frankly, this is belts-and-suspenders legislation, if you know what I mean. We got a First Amendment that says you have the right to free speech. So why do we need laws to say we need to have the right to free speech? So we've already got the belt; why do we need the suspenders? (Chuckles.) And so it's sad that we actually need that, and there's no area in our society right now that demonstrates the need for this, from my perspective, than what happens in our universities.

And I got a firsthand knowledge of this over the past year and a half. The State Board of Education in Michigan actually proposed a series of social studies and science standards for our K-12 standards in the state. And over a year and a half ago, I looked at those standards, participated in all these focus groups, and was amazed at how one-sided these standards were. And I submitted a letter that got the signature of 17 of my colleagues along with it that highlighted 15 issues associated with this set of standards that they were proposing. State Board of Ed, Michigan Department of Education got together, and to their credit, while they ignored me on the science standards that I proposed – as an engineer of some-odd 20 years or whatever, I figure I knew a little bit about science, especially designed a life-support system. Anyway, it was very frustrating. But moving on from that, on the social-studies standards, they said, you know what, I think he's got something there, and they formed a focus group. And for the last year and a half, we were engaged in a focus group. And I was joined by folks like Judge Michael Warren, and we engaged with educators coming out of the university environment that were all experts on various topics in history and social studies, et cetera.

But they were experts from one perspective. And when I started off the discussions on this focus group, I said, tell you what, we're going to be very happy at the end of this if you just meet two criteria in everything we put in this: number one, that the standards we put together are politically neutral; and, number two, that they're accurate. So we had a lot of discussions. And you know what, I think everybody on both sides of the equation got a lot out of this discussion.

I mean, we had simple debates on democracy versus republic. You know, they kept saying we're a democracy. I go, well, you show me where your evidence is that says we're a democracy and I'll show you mine in regards to Article IV, Section 4 of the Constitution; the Pledge of Allegiance; Ben Franklin coming out of the Constitutional – we can talk about all that. Just show me yours on democracy. And it led to some great discussions with people that were pretty much ideologically opposed on the – 180 degrees away from myself and Judge Warren. And we were outnumbered, typically, on a 20:1 basis on a regular basis. But it was an example what can happen when you actually foster open communications on sensitive subjects.

Things like LGBT rights. They wanted to have a whole section in the social-studies standards on LGBT rights. I go, well, you know, I'm not an advocate of that, but you need to have a balanced discussion on this talking about religious rights, which are actually documented in our Constitution. We need to be able to go off and have that discussion. You cannot afford to have a one-sided dialogue on issues that shape our next generation of leaders. It's extremely important.

So I'm happy to say we got compromise on all 15 of those items. Now, whether or not that's what got converted into the document that I just received this morning that was reviewed by the writers, that remains to be seen. But I'm happy to say in our dialogues, fostered by an attention to free speech, we were able to get some consensus.

So this is – it's important to me to foster this in our university environment because this is where their ideas are getting shaped, this is where, when they go out – when we worry about the discourse that we have in society now, we worry about the coarsening of discourse – and short of legislating love your neighbor as yourself, we're going to have some coarsening that goes on with that discourse – we need to go off and to at least foster the idea of open dialogue and open discussion.

I came – probably because I went to engineering school I kind of came to this realization late, but I – this January I felt the urge to go off and read “1984” by George Orwell. Now, how many here have not read that book yet? OK, so I'm in the right spot. (Laughter.) All right. I think it was actually good that I didn't read it till later in life. It was quite chilling, because I'm seeing all the stuff that's talked about in that book happening right now in our society. In particular, I think the universities have kind of become that Ministry of Truth. And I – and there's been a narrowing of our acceptable dialogue, so we can't touch certain topics. And I don't want to have anyone calling people names or defaming them or – that's not what we should be having in society, and that's a reflection of the coarsening of values in our society. But you know what, it's much better than this Orwellian society that has none of that dialogue.

And our First Amendment was not put in there to protect us from speech that we like. We don't need a constitutional protection for saying, gee, Senator Colbeck, I really like your smile today. You need that First Amendment for all the other stuff they say about Senator Colbeck. (Laughter.)

And so it's my honor to work with Stanley and Jim and everybody else in this room that's dedicated to free speech to move forward on Senate Bill 349 and 350. You know, I think the best way to put it for me, it's about time that we started penalizing – or we started focusing as legislators, kind of renewing our commitment to the idea that the purpose of government is to secure the rights of the governed. And in that context, we need to start penalizing those who would seek to infringe the right to free speech, rather than the people who are just simply attempting to exercise their free speech.

Thank you. (Applause.)

MR. VAN BEEK: All right. Thank you, panelists.

We have time now for a Q&A session. So if you have questions, jot them down on those cards at your table and we'll have somebody – one of my colleagues will come around and pick them up and deliver them up here to me.

Senator Colbeck, since you were – your tongue is loose and ready to continue addressing this issue – (laughter) – the first question for you.

SEN. COLBECK: Some would say too lose sometimes, but I – (laughter) – yeah.

MR. VAN BEEK: First question for you. What are the prospects of these bills as they stand right now?

SEN. COLBECK: That's a good question, and I don't want to prematurely steer it in a direction that I don't want it to go right now. But there's – we've been given a pretty high bar to get this pushed through committee right now, and I don't mind high bars. But I think we've got a pretty decent shot. Now, we're working with trying to get the ACLU to go off and support this legislation, so this is very much in the realm of civil liberties. I think we've got them onboard for Senate Bill 349, and I think we've got some other – the folks here in Michigan very much onboard with some of the things that we're looking at potentially meeting them halfway on, if you will, in regards to Senate Bill 350. So I think there's a pretty decent shot.

It's not a light push, because now we're getting into some real details around specific language in the bill, and we've got to walk it through a scenario every single time. So a shout-down scenario, for example, how does that happen in that shout-down scenario? We really – with some of these changes, are we going to be putting at risk some of the things that we're trying to actually adopt with this legislation?

So I would say it's too early to go off and make that prognostication right now, but I can tell you we've got a lot of folks – especially Stanley, who's been working with us very heavily – that are – we're open to this discussion. So, I mean, free speech, well, you go to be open to discussion, and we're very much open to discussion. And I'm happy to say I think we've seen some movement in the positive direction on that.

MR. VAN BEEK: A follow-up question for you on that. Is there any Democratic support that you've – that you've garnered so far?

SEN. COLBECK: Senator Bieda has expressed some support, and he serves on Judiciary, as far – but, you know, he's got – there's always some caveats there. But I think directionally he's a pretty even-headed senator that's open to this type of discussion. So we'll see. I think we got a pretty decent shot of getting his support.

AUDIENCE MEMBER: One guy?

SEN. COLBECK: Well, I mean, it's only one on Judiciary. That's the first step on this. So I serve on Senate Judiciary. That's where the bill's before right now. And there's not too many Democrats in the Senate, frankly, so it's – (laughter) – I – so we got 10 others we could work on.

MR. VAN BEEK: All right. Very good.

Stanley, talking about shout-downs, there's a question here about, how do you address the concern that punishing students who shout down a speaker could be viewed as an assault on their free expression, their rights to free expression?

MR. KURTZ: Right. Well, a lot of students, and other people as well, I think misunderstand what free speech is. Just as your right to swing your hand ends at someone else's chin, your right to speak ends when, in a substantial and consistent way, you make it impossible for others to speak or for others to hear who is speaking. That is not free speech. That's the opposite of free speech.

So the bill explicitly emphasizes and establishes that there is a right to protest. And the language of the bill has been strengthened to say that when you interfere with someone else's rights, you're only punished if you do so in a way that is substantial and material. So that mean if you just say "boo!" a couple of times, that's not a problem.

But free speech has never involved shouting and making noise consistently in such a way as to make it impossible for others to speak or to be heard. And, as we saw in that editorial today, a lot of – a lot of students just don't understand that that's the case. They think their free-speech right includes the right to engage in a kind of shouting contest with speakers, and that's just not the case.

MR. VAN BEEK: Are there alternatives that you would recommend to shout-downs? And then, also, I wondered what your thoughts were on – I think I have the details right on this – what happened when Vice President Pence spoke at Notre Dame, right, where the students walked out. What's your views on that?

MR. KURTZ: Sure, there are a lot of alternatives. You can walk out. You can stand up and turn your back. Or – this used to be the common thing – you would just – there would be allowed a demonstration outside of the venue, where you would have signs and you could make noise and shout to your heart's content, but people inside of the venue could hear the speaker. And you could – you could have speeches, you know, railing against the speaker, which is a really good idea because you want to get your points out there as to why you object to the speaker. And then there's the really original idea of listening to the speaker – (laughter) – and asking a critical question afterwards. Whoa, wouldn't that be fascinating? And so those are all options.

MR. VAN BEEK: All right. I'll open this up to anybody.

The University of Chicago last fall sent a letter to students telling them that the university will not recognize trigger warnings or safe spaces. What do you think of this action? And have other schools followed the University of Chicago's actions?

MR. MANLEY: Well, I think it's fantastic. I think, as we discussed, the university is a place to have difficult discussions. It's not a place to censor yourself, or to have the university censor the students, or the people that the students would invite to campus to have a discussion.

So I think the University of Chicago is continuing a long tradition that that school has had in protecting free expression by doing away with things like trigger warnings and safe spaces.

Unfortunately, a lot of other schools are not following suit. We just had the University of Arizona put out a job posting for social justice advocates who would be, per the job description, essentially speech police, reporting on other students saying things that might upset another student with the intention of chilling expression and causing people to second-guess what they might say in a heated discussion. I think that destroys the open dialogue that should be the heart of the university experience and it deprives students of the experience of hearing views that they disagree with. Hearing people who are impolite and are presenting their views in a – in a(n) uncivil way and learning how to respond to that – the way that the universities are teaching students to respond to uncomfortable speech now is to run to the administration and tattle. That's not a way to create a productive civil society. We need to empower these students to deal with difficult views in a constructive way.

SEN. COLBECK: Yeah, I kind of prefer the approach that I think as Dr. Everett Piper out at Oklahoma Wesleyan University. For those of you who are familiar, I think he said they have obligatory – this is, obviously, a private institution, so it's not a public institution. But they have required attendance at sermons on a regular basis, and they had a sermon on 1 Corinthians Chapter 13, which is “love is patient, love is kind.” So it's talking about love. One of the kids afterwards came up and addressed the president and said, I don't think I should be subject to this type of discussion. And I think he replied, this isn't a nanny state – I'm not your nanny or something, I think that was the exact expression on it. And it was a case where he said he wants to foster a learning environment that actually encourages people to be exposed to things that they may be uncomfortable with.

And the removal of the trigger warnings and of the safe space warning for the University of Chicago, I think, is definitely a movement in the right direction. I wish all universities would actually kind of get back into basic First Amendment mode.

MR. VAN BEEK: So University of Chicago, private school. I believe that's right, despite the name. So another question we have: What role, if any, should the government have in regards to free speech on private college campuses? My understanding is the bill just addresses Michigan's public universities. Is there – isn't there a slippery slope here that may lead to infringement of private colleges' rights to set guidelines for dialogue on campus if they had mandates from the legislature, for instance, on certain types of free-speech codes that they had to maintain?

MR. KURTZ: Well, I think there's a – there's a bounce-back effect from this bill to private colleges that I – that I like, and that is that it starts a national debate and sets a model. I think if you see states passing this legislation, there will be more likelihood of discussion and debate at private universities about having similar policies, although it can't be forced on them. I also think there's the option, particularly at the federal level rather than the state level – and this is controversial, and not all even conservatives agree with this – but there is the argument that the federal government is spending massive amounts of money, and it really is a massive amount of money, subsidizing private and public higher education, and it already insists that there not be

discrimination based on race or sex. So why not protect the fundamental right of free speech as a condition of federal aid?

Now, the conservative response to that usually is, well, better to just, you know, cut the aid programs entirely. But there's zero chance that federal aid to student loans, that is ever going to be cut. So the federal government is caught in a choice: Do we – do we continue to effectively subsidize some of the anti-free-speech policies of the private schools that take our aid, or do we insist that schools that receive our aid follow these conditions? And it could be objected that, well, those are private school. But on the other hand, there is no obligation of the government to subsidize your private school.

So I tend to come down on the side that says the federal government should include strings on aid to private schools. Some conservatives disagree, but I think you're going to see that increasingly debated. But nothing in this legislation does that. Now, there is a bill – a version of our bill that has added something that is not at all in the Goldwater proposal, where they make California state aid conditional on following this free speech, and so that's part of that bill. But that's definitely not part of the Goldwater model.

MR. VAN BEEK: Anybody else?

MR. KATHAWA: Yeah. So just quick point. Greg Lukianoff at the Foundation for Individual Rights in Education – they're a free-speech watchdog group – has talked about the idea that private universities, while they're not necessarily bound by the First Amendment as private institutions, if they make promises in their mission statement about free speech, that it might be acceptable to sort of hold them accountable in other ways. And I think, going off Stanley's idea of holding them accountable with state aid if they – sort of if they take it upon themselves to make the promise that they'll be, you know, sort of enclaves of free speech, that you should hold them accountable because holding people to their promises is important. So I think that's something we should do.

MR. KURTZ: And let me make – this is an important qualification. Even to the extent that I favor, say, federal strings on free speech, I strongly also believe that there needs to be a religious exemption – exemption for religious schools, just as there is on Title IX. And, in fact, if you look at the current Higher Education Act, if not only affirms the right to free speech, it affirms the right to religious freedom, another one of the fundamental freedoms there. And so I would never want to see something where there was not a religious exemption.

MR. MANLEY: And let me just add very briefly that I think one important way that the – any sort of monetary strings needs to be designed is to put the pressure on the administration rather than on individual students, because it would be all too easy for the administration to just ignore the plight of students or to use the students as a foil to redirect from free speech to the plight of these poor students who've lost their funding because of the horrible conservatives. So we need to be careful in the way we craft that to not create a new group of victims.

MR. VAN BEEK: Next question here. Michigan's Constitution affords universities autonomy, specifically in the Constitution. I assume that's relatively unique around the country.



I'm not an expert on that. So what limitation does that provide on this proposal? And, you know, how do you – how do you interact with that constitutional-granted autonomy for public universities?

SEN. COLBECK: Well, I can take the first crack at that if you'd like.

What it effectively did is convert “shall” language into intent language for many provisions inside the legislation. So, in regards to some of the policies that we're promoting, it was intent language, not “shall” language. Now, we do set up a commission or committee that's going to examine free speech. That's got “shall” language in it. But it kind of tied our hands, saying we'd like your participation on this committee that tracks infringements of free speech. So that's in our “shall” part. But everything else, in regards to some of the policies that we'd like to see, unfortunately we had to put it into an intent language.

Now, Representative Runestad actually has a resolution that's before the legislature that would go off and modify the Constitution to allow for better oversight in areas like this. But, you know, in our language, we were a little bit hamstrung, which is good. Constitution's supposed to hamstring us legislators, right? (Laughter.)

MR. MANLEY: Well, and I will add that there are other universities that have made this claim. In the first case that I litigated, the University of Colorado claimed to be above the concealed-carry law that the legislature had passed, and we defeated that argument in Colorado because it is the province and duty of the legislature to protect – or to guard the home plate, as Senator Colbeck said. I'm going to steal that for sure. That's great. That is what the legislature is there for, to protect our rights from all infringements, including from the university. So I'd like to see the law pushed forward in that area to be more protective of individual rights and less protective of the university's whims.

MR. VAN BEEK: I've got a couple questions here trying to get to the root of this problem.

So one question is: Isn't the problem really that progressive university administrators hire progressive university presidents who hire progressive university faculty? You know, this – I think it's well-documented, you know, the bias on college campuses towards one political ideology. Is that – is that the root of the problem? Imagine an alternate universe where there was more balance on campuses. Would we be having this discussion now if that were the case?

MR. KURTZ: Oh, I think that the – that issue is a very large part of the problem, maybe not all of it. But, of course, we can't and shouldn't legislatively tell the university what professors to hire and such. But if you want to ask just as a matter of understanding and analysis, as I mentioned in my talk, there are just fewer faculty members.

Let me talk about this C. Vann Woodward, who authored the Woodward Report. C. Vann Woodward was a famous liberal. He was a hero of the civil rights movement. His book was praised – his book on segregation was praised by Martin Luther King as the historical bible of the civil rights movement, and he advised Thurgood Marshall when Marshall was an attorney

arguing the Brown versus Board of Education case. And yet, Woodward was appalled when Yale's administrators disinvited George C. Wallace from a speaking engagement at Yale, and that's part of the pressure that brought about the Woodward Report. So here we had a civil rights hero and a true liberal defending the right of George Wallace, the arch-segregationist, to speak on campus.

Where are the professors like C. Vann Woodward? They are few and far between. And if they were still on our campuses, no, we would not be having this problem. We wouldn't need legislation, because in the old days the faculty used to keep the administrators in line. And unfortunately, that's just not happening anymore.

Now, there are some things that probably to some degree transcend ideology. Administrators don't like publicity, and so they probably regardless and just because of their position have a tendency to give in to demonstrators. You know, there aren't a lot of conservative demonstrators and shout-downers that I've ever heard of, but if there were maybe an administrator would want to capitulate to them just to get things off the front pages. So it's not all ideological, but of course that's an important component.

SEN. COLBECK: Hey, Michael, I'd just like to add that I actually – like, I think we have to blame Governor Snyder because Justice Larsen was actually a conservative professor at the University of Michigan, and he appointed her to Supreme Court and took her out of the university, so – (laughter) – that's only tongue-in-cheek. She's been great there. But she is phenomenal.

And I – when I first started out in the legislature, one of the first tasks that I gave to some interns was to go off and catalog all the courses that were offered at our universities, in particular around civics and history. And I broke them all out, did just a thumbnail; we looked at the abstract for all the different courses and analyzed it. And literally 97 percent of the courses, it was not even close as far as which side of the political aisle and which worldview they were going off and promoting. And, out of the other 3 percent, it's best to say it was neutral. (Chuckles.)

So I think that is one of the core issues. And that's why I highlight that we have to start here because this isn't just a university problem, this is a society problem, because after they graduate from the universities, those are the ideas that they're going to carry forward.

MR. VAN BEEK: So time for one more question, and again it's trying to get to the root of the problem here. Isn't the most significant problem here the coddling and protection that is provided to young people like Deion here, and that they're – you know, they feel offended by any concern that might go against their worldview or their thinking?

MR. KURTZ: There has been this argument, the coddling argument, and I don't disagree with it. I don't think that coddling in the raising of students and constantly protecting them from any potential harm – I don't think that's irrelevant. I agree that that's a factor. But I think that explanation tends to underplay the ideological dimensions of this, right?

I would go back to about 1994, I think it was. There was a big debate over the national history standards. Lynne Cheney objected to these very, very left-leaning and biased national history standards, and the U.S. Senate condemned them by a vote of 99-1. Even so, they were more or less instituted in K-through-12 education, and what you're really looking at now is the generation that has come to maturity under that new curriculum. And I think that's a big part of what's going on. And while the coddling explanation is part of the picture, I think the problems with our K-12 curriculum that have been going on for 20-some years now are a huge and unacknowledged part of it.

MR. MANLEY: Well, I think to some extent the coddling is the ideology. It is this misunderstanding about what free expression means and this idea that it is limited to only the approved orthodoxy. And that, in and of itself, is the problem. It's the fact that free expression is no longer a core value at our universities or in our culture at large to some extent, and that's really what we're fighting against.

MR. KATHAWA: I think we're running short on time. But to put – to put a name to the ideology, postmodernism, neo-Marxism. Just Google Jordan B. Peterson on YouTube. He talks about postmodernism all the time. It's this discourse between oppressed groups and privileged groups, and everything that a privileged person says – you know, straight white males – is just inherently suspect just based on their social class. There's no truth to pursue. It's all just, you know, varying discourses and many truths, many narratives between the things. And so no one feels like they have to actually listen to anyone else because if they're listening to someone like, you know, Stanley or I, we're just – you know, we're just using language as a mask for our continued oppression of those groups. And so it's just – it's all nonsense, but that's the name of it if you were wondering.

MR. VAN BEEK: All right, good. Well, we are, in fact, out of time. So join me in thanking our panelists one more time. (Applause.)

Thank you all, again, for coming today. The next Issues and Ideas Forum that we have is next week, on June 14, same place. And the topic that day is going to be about home sharing, Airbnb and allowing people the ability to rent out spaces in their homes or their entire homes. And that issue has gotten attention because some cities are restricting people's ability to rent out their own property to other people. So join us next Wednesday.

Thanks again to Auto-Owners Insurance for their support of this.

And if you'd like to learn more about the work that we do at the Mackinac Center, go to [Mackinac.org](http://Mackinac.org).

We'll see you again soon. Thanks a lot. (Applause.)

(END)