# ILLINOIS BUSINESS LAW JOURNAL

INTERNET SPEECH AS COMMERCE: TACKLING THE VIOLENT LEFT

*NOTE*

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# I. INTRODUCTION

On May 23, 2017 Professor Bret Weinstein of Evergreen State College faced a hostile confrontation with an organized gaggle of at least fifty

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students. Weinstein faced outside of his classroom from those students angry racism accusations—almost outcries—and furious calls for his ouster. Outside of these protests, Weinstein faced threats on his person for his mere presence on campus, such that the police advised him to remain off-campus long enough so that no harm would likely come to him.

Far from being a sporadic event completely unforeseeable, the tempest in the teapot began brewing a year before the climactic burst that was the student confrontation with Weinstein. The impetuous beginnings lie in an assault committed by two black males upon an Olympia police officer, in which the officer shot both culprits. Though one of the wrongdoers became paralyzed from his assault on the officer, the court exonerated the officer from any wrongdoing, and convicted the troublemakers for the assault. Despite the wrongdoing by the men and apparent lack of wrongdoing by the officer, the university administration saw this as a call to action with the Equity Plan. Though the Equity Plan contained other elements, the diversity training constituted the most contentious element. Further, some Evergreen State College students claimed racism on the part of the college. These students expressed this sentiment through protest at college events.

The reason Weinstein faced this outcry relates to the college’s efforts to implement more diversity training. Weinstein opposed the proposal out of a concern that it would lead to unqualified minority hires. He also expressed a concern that this campus-wide focus on professor skin color would distract from the actual educational mission of the college. Further, Weinstein saw a collective, phantom-like search for racism where none existed in the overall Equity Plan. Specifically, he expressed that “[w]hen

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2 Id.
3 See id. (explaining that the police advised Weinstein to otherwise dispose of himself elsewhere for up to two days).
4 Id.
5 Id.
6 Id.
7 See id.
8 Id.
9 Id.
10 Id.
11 Id.
12 Id.
13 Id.
14 Id.
one looks for racism in all things with a confirmation bias, one will find it, even where it is not.\textsuperscript{15}

All this culminated in an event held annually at Evergreen called “Day of Absence.”\textsuperscript{16} Normally, minorities would leave campus for the day—it was voluntary—to discuss race and equality issues.\textsuperscript{17} But in the most recent “Day of Absence,” Evergreen expressed that white students and faculty optionally leave the campus instead.\textsuperscript{18} Weinstein refused to leave the campus for the “Day of Absence.”\textsuperscript{19} Weinstein’s refusal to leave camps sparked the negative reaction from the students confronting Weinstein.\textsuperscript{20}

The incident at Evergreen State College, far from isolated, represents a dramatic example of the greater problem of prevailing campus culture and attitudes.\textsuperscript{21} These attitudes enter the society-at-large when removed from the college campus, which creates a propensity for these attitudes to spread. Such attitudes inherently stifle, and contrary to contributing to discourse, limit the scope of ideas deemed acceptable in society.\textsuperscript{22} This Note discusses limiting the prevalence of attitudes like those dramatically exhibited at Evergreen State College upon Professor Weinstein.\textsuperscript{23} This requires an entire revamping, not only of the mainstream university culture, but also a restructuring of the internet landscape.

Part II provides background into the nature and depth of the more harmful attitudes on college campuses, and illustrates that these attitudes evince a systemic problem that cries for a solution. Part III proposes a solution to the problem, shows the derived source of power for the solution, and examines the constitutionality of the proposed solution. Part IV offers a recommendation, both in the proposed solution, and in implementing it.

II. BACKGROUND

Section A illustrates that multiple recent events on other college campuses have occurred to such an extent as to create publicity. Though not all of the

\textsuperscript{15} Id.
\textsuperscript{16} Id.
\textsuperscript{17} Id.
\textsuperscript{18} Id.
\textsuperscript{19} Id.
\textsuperscript{20} Id.
\textsuperscript{21} See generally id. (attributing a description of “political correctness run[ning] amok” in the Evergreen State College incident as “seem[ing] like a textbook case...”).
\textsuperscript{22} See generally id. (noting that Professor Weinstein received threats for refusing to leave campus for the “Day of Absence,” discussed supra Introduction).
\textsuperscript{23} See id.
recent events have resulted in threats of violence or violence itself, all were sufficient for media publicity. Section B shows that the recent events share a common causal ideological root and its ties to the college environment. Section C focuses on the effects that this ideological root, expressed through recent events, has had on the world outside of college campuses generally, and the political climate particularly.

A. Recent Events

Subsection 1 discusses the lead-up to the most severe tensions at Berkeley. Subsection 2 delves into the protests at Berkeley. Subsection 3 focuses on problems within college administration.

1. Protest Prelude

The recent uptick of college campus tensions most dramatically shown in Evergreen State College began late in 2014 with two complaints filed by a student, and four professors at Dalhousie University.24 Both complained of a Facebook group’s postings that contained sexual themes.25 One post conducted a poll that asked, “[w]ho would you hate f**k?” with two options provided to any who would respond.26 Another post displayed a photograph of a bikini-clad woman captioned, “[b]ang until stress is relieved or unconscious (girl),” with comments posted which responded to the post’s theme.27 A third post showed a photograph of a photograph with the photographic caption, “[d]oes this smell like chloroform to you?” again with comments consistent with the post’s theme.28

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25 A Timeline in the Scandal Involving the Dentistry School at Dalhousie University, supra note 24; Dalhousie Facebook Posts ‘Completely Unacceptable,’ Says Professor, supra note 24.


27 Id.

28 Id.
Though Dalhousie University ultimately rejected the professors’ complaint, the university accepted the student complaint.\textsuperscript{29} The student complaint prompted the university to suspend all of the students it deemed participated in the relevant posts from clinics, and ultimately classes.\textsuperscript{30} The university also barred from graduation until the suspension’s termination.\textsuperscript{31} Thirteen dental students—the identities of which the university declined to reveal—received such suspensions.\textsuperscript{32} Dalhousie University President Richard Florizone considered the Facebook posts “unacceptable and deeply disturbing.”\textsuperscript{33}

Despite the university’s response, the administration faced criticism in its handling of the issue.\textsuperscript{34} The university faced pressure to inflict even more punishment up to and including expulsion.\textsuperscript{35} An internet group threatened to reveal the suspended students’ identities unless the university complied with its demands by a set deadline.\textsuperscript{36} The group wanted expulsion, an investigation into the university’s case handling, and a plan to eliminate what it called “systemic sexism” on the campus.\textsuperscript{37} Protesters expressing disgust at the thirteen suspended students likewise wanted the students expelled and the university to address what it considered campus sexism.\textsuperscript{38} The Dalhousie

\textsuperscript{29} A Timeline in the Scandal Involving the Dentistry School at Dalhousie University, supra note 24.

\textsuperscript{30} Id.


\textsuperscript{32} A Timeline in the Scandal Involving the Dentistry School at Dalhousie University, supra note 24.

\textsuperscript{33} Dalhousie University Probes Misogynistic Student ’Gentlemen’s Club’, supra note 26.


\textsuperscript{36} Id.

\textsuperscript{37} Id.

Student Union used the incident to agitate for reforms that would take such incidents more seriously.\textsuperscript{39}

The university ultimately created a task force to identify perceived administrative problems and implement reform recommendations to avoid future problems.\textsuperscript{40} Though the university eventually lifted the suspensions, Dalhousie required the dental students to participate with the women that felt negatively affected by the Facebook posts in a “restorative justice” program.\textsuperscript{41} Though the program, run by a professor from Dalhousie’s College of Law, superficially focused on how all parties contributed to the problems facing the university, the program details provided by both parties tell another tale.\textsuperscript{42}

The suspended students indicated that they had no idea that their posts would create an issue that created widespread news publicity, and further, stated that the posts failed to portray accurately their real-life-selves.\textsuperscript{43} The women in question felt no offense to the posts that garnered the most media publicity.\textsuperscript{44} Rather, they objected the idea that they used their feminine wiles to garner better grades.\textsuperscript{45} One woman went so far as to say that “[w]e wanted to make sure that they knew they should never say it—ever.”\textsuperscript{46} Through it all, the suspended students experienced suicidal thoughts and wide media scrutiny probing every possible angle of the incident at Dalhousie University.\textsuperscript{47}

A mere year later saw a more radical bent in demands from those who objected to university administration.\textsuperscript{48} The protests at the University of

\textsuperscript{40} See id.; A Timeline in the Scandal Involving the Dentistry School at Dalhousie University, supra note 24.
\textsuperscript{41} See A Timeline in the Scandal Involving the Dentistry School at Dalhousie University, supra note 24.
\textsuperscript{43} See id.
\textsuperscript{44} Id.
\textsuperscript{45} Id.
\textsuperscript{46} Id.
\textsuperscript{47} See id.
\textsuperscript{48} Compare id., with Jessica Chasmar, University of Missouri Gets Tough with Protesters: ‘The Time for Demands Has Passed’, WASH. TIMES (March 1, 2016),
Missouri-Columbia best illustrates this shift not only over time, but in a unity of place as well.\textsuperscript{49} It began when the student government president alleged that persons in the back of a passing pick-up truck hurled racial slurs at him.\textsuperscript{50} The student government president made this information known via Facebook, where he stated:

For those of you who wonder why I’m always talking about the importance of inclusion and respect, it’s because I’ve experienced moments like this multiple times at THIS university, making me not feel included here.\textsuperscript{51}

Though the university administration called this incident “totally unacceptable,” protests still occurred because of a dissatisfaction with the response.\textsuperscript{52}

Another race related incident further drew protest ire on the University of Missouri-Columbia campus: namely the disruption of a black-student “safe-space.”\textsuperscript{53} Specifically, a drunken student reportedly used racial slurs during a Legion of Black Collegians meeting.\textsuperscript{54} The club stated that “we were... made victims of blatant racism in a space that we should be made to feel safe.”\textsuperscript{55} In response, a group called Concerned Student 1950 formed, which addressed the two incidents by creating a list of demands it presented to the university administration.\textsuperscript{56} Initially, the university acted sympathetically to these concerns by mandating training for students and faculty on diversity and inclusion.\textsuperscript{57}

All this changed in the talks between the University System

\textsuperscript{49} Compare Michael Pearson, \textit{A Timeline of the University of Missouri Protests} C.N.N. (Nov. 10, 2015, 8:21 AM), http://www.cnn.com/2015/11/09/us/missouri-protest-timeline/index.html (“Missouri Chancellor R. Bowen Loftin, the top resident official on the Missouri campus, issues a statement deploiring recent incidents of bias and discrimination. He calls them totally unacceptable."), with Chasmar, supra note 48 (“The man hired to help ease racial tensions at the University of Missouri issued a strongly worded letter to student protesters last week, declaring that the time for demands, threats and arbitrary deadlines is over.").

\textsuperscript{50} Pearson, supra note 49.

\textsuperscript{51} \textit{Id}.

\textsuperscript{52} \textit{Id}.

\textsuperscript{53} See \textit{id}.

\textsuperscript{54} \textit{Id}.

\textsuperscript{55} \textit{Id}.

\textsuperscript{56} \textit{Id}.

\textsuperscript{57} See \textit{id}.

President and Concerned Student 1950. The talks occurred as a response to the protests, with Concerned Student 1950 requesting from the talks that its demands be met. The group demanded the president’s termination, his handwritten apology, and a “comprehensive racial awareness and inclusion curriculum . . . for all students, faculty, staff, and administration.” The group also demanded a ten percent increase in black faculty and staff, a plan to retain minority students and diversity programs, an increase in counseling funding, and an increase in funding for social justice programs. The talks ultimately failed with the president refusing Concerned Student 1950’s demands. From here, tensions further escalated, and eventually culminated in the forced resignation of the University System President anyway.

The taunting, if not aggressive nature of the protests compounded the issues at the university, and set the groundwork for future issues at the university. Black students who were engaged in protests against the administration became increasingly bold in their acts, even going so far as to threaten white students on account of their race. The most radical of the sentiments can be effectively summarized in one post on Twitter:

#Mizzou black students need to stop protesting and start killing. The white supremacy made it clear they aint [sic] hearing it.

Even the less ominous protestor activity provided but scant consolation for the students trying to go about their daily lives. Communications between two members of the university administration illustrated that:

58 See id.
60 Colburn, et al., supra note 59.
61 Id.
62 Pearson, supra note 49; see Colburn, et al., supra note 59.
63 Pearson, supra note 49.
65 Melchior, supra note 64.
66 Id.
67 See id.
The protestors are willing to interrupt non-related events to protest. . . . Our concern is that the longer we wait to have...[a meeting]...[to address the situation], the more we risk violence. The longer we wait, the greater the risk of violence.68

Protestor actions demonstrably affected other students, in that the non-minority students increasingly grew fearful of the protests, and made quiet administrative complaints accordingly.69

Despite the president’s resignation, this apparent victory for Concerned Students 1950 proved to be the group’s zenith, with the nadir already forming, undermining the group’s influence and clout.70 On November 9, 2015, the same day as the president’s downfall, Tim Tai, a photographer for the university newspaper, found himself covering a protest.71 In media res Melissa Click, a professor in the university’s communications department ordered Tai to leave, and ordered the police to remove him from the protest area.72 In having the police remove Tai, she stated explicitly, “Hey, who wants to help me get this reporter out of here? I need some muscle over here.”73

Protests and other tensions continued on the campus for months after both the president’s ouster and the photographer’s removal by Click.74 Because of Click’s actions, the university placed her on suspension in January 2016, and terminated her employment in March.75 Meanwhile, Concerned

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68 Id.
69 Id.
71 Schmitt, supra note 70; see Pearson, supra note 49.
73 Id.
74 See Colburn, et al., supra note 59; Pérez-Peña, supra note 72; Pearson, supra note 49.
Student 1950 increased its initial demands. The group wanted the university to allow a student to expunge an entire semester’s grades from an academic record if desired. Concerned Student 1950 also pressed for a racial awareness workshop in academic and orientation programs. The group also wanted the university to implement a hiring program that targeted black faculty, a diversity class prerequisite to graduation, and a new university “hate-crime” policy. Further, Concerned Student 1950 additionally demanded 14 new psychologists or councilors at the university’s counseling center, money for a new statue, and expansion of the university’s black cultural center. The demands—both old and new—also came with a new condition: a deadline for implementation.

The university administration flatly rejected these revised demands. In the refusal, the interim vice-chancellor stated that “[i]f you sincerely want better relationships, the time for demands, threats and arbitrary deadlines is over—you don’t need them.” Though this effectively halted the protests at the University of Missouri-Columbia, they already impacted the university. In the aftermath, the university experienced “a very significant budget shortfall due to an unexpected sharp decline in first-year enrollments and student retention,” according to the university’s interim chancellor. In total, the University of Missouri-Columbia faced a 1,500-student enrollment drop, and a thirty-two-million-dollar budget shortfall in the 2016-17 school year.

2. Protests at Berkeley

These protests however, pale in comparison to the recent protests at U.C. Berkeley. The Berkeley College Republicans invited the writer and

76 See Colburn, et al., supra note 59.
77 Id.
78 Id.
79 Id.
80 Id.
81 Id.
82 Id.
83 Id.
85 N.Y. POST ED. BD., supra note 84.
86 See id.
87 Compare Berkeleyside Editors, Chaos Erupts, Protesters Shut Down Yiannopolous Events, Banks in Downtown Vandalized, BERKELEY (Feb. 2, 2017, 9:15 AM) [hereinafter
provocateur-extraordinaire Milo Yiannopoulos to speak at its on-campus sponsored event as part of Yiannopoulos’s “Dangerous Faggot” tour. Three hours before the event’s planned start, protesters started their assembly outside of the event’s planned venue. The police already installed barricades outside the building perimeter in anticipation of protester violence. The protests began peacefully enough, with protesters alleging Yiannopoulos’s “fascism,” and chants such as “[s]hame,” serving as the most hostile reactions.

Then nearly one hour thereafter, 150 protesters dressed in black with their faces concealed entered the fray. In their arrival to the protests, these new protesters carried black and communist-themed banners. They came with the explicit intent to stop the event. These protesters inflamed the protest’s tone by throwing rocks, Molotov cocktails, and the police barricades, and shooting commercial grade fireworks at university buildings and businesses. They also ignited lighting that created fireballs, which soared up to six feet into the air. These protesters sustained this for nearly half-an-hour before Berkeley cancelled the Yiannopoulos event.

Though the violent protestors succeeded in stopping the Berkeley College Republicans event, the radical participants continued their violence. Indeed, the victory served only to increase such impetuosity. After the announcement, the protestors pitched refuse at the police, who returned paintball and pin fire. Innocent bystanders sustained some injuries. One such person experienced injuries with a bicycle lock, and another with pepper spray.

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Protesters Shut Down Yiannopolous Events,

88 Id.
89 Id.
90 Id.
91 See id.
92 Id.
93 Id.
94 See id.
95 Id.
96 Id.
97 Id.
98 Id.
99 See id.
100 Id.
101 Id.
102 Id.
Though the more civically-minded protesters cleaned some of the mess left behind by others, the protesters pressed harder to include more property damage.\footnote{Id.} The more radical protesters by this time moved away from the planned venue for Yiannopoulos’s speech.\footnote{Id.} They toppled and ignited refuse disposals, and obstructed traffic.\footnote{Id.} They then scattered into the City of Berkeley, where they smashed windows of banks and other businesses and burned A.T.M.s to destruction.\footnote{Id.} As all these events transpired, the Berkeley Police, despite threats to the contrary, stood and did nothing to quash the violence.\footnote{Id.} Altogether, among all the events and the 150 militant protestors that committed the approximately $100,000 in damages, the police arrested only one person.\footnote{Id.}

Protestors in black also branched into other protests.\footnote{Id.} Across the country, supporters of President Donald J. Trump held rallies in various places across the country on the fourth of March.\footnote{See Cynthia Dizikes, Arrests Made as Protesters Clash at Pro-Trump Rally in Berkeley, SFGATE (Apr. 16, 2017, 3:45 PM), http://www.sfgate.com/bayarea/article/Protesters-clash-at-pro-Trump-rally-in-Berkeley-11075595.php.} One of these rallies transpired on the campus at U.C. Berkeley, and like the Yiannopoulos event, this rally also took a turn toward violence where black-clad masked aggressors intervened.\footnote{See, e.g., Stephen Lam & Tim Brantfalt, In Day of Pro-Trump Rallies, California March Turns Violent, REUTERS (Mar. 6, 2017, 10:26 AM), https://www.reuters.com/article/us-usa-trump-supporters-idUSKBN16B0O8.}

The venue itself served as the cauldron, where a group of seventy-five Trump supporters confronted hundreds of anarchists and other opponents.\footnote{Compare id., to Protesters Shut Down Yiannopolous Events, supra note 87.} One of these opponents organized themselves under the name “By Any Means Necessary” (B.A.M.N.).\footnote{Lizzie Johnson, Violence Erupts at Pro-Trump Rally in Berkeley, S.F. CHRON. (Mar. 5, 2017, 11:16 AM), http://www.sfchronicle.com/bayarea/article/Scattered-fist-fights-break-out-at-pro-Trump-10977508.php.} This group and other anarchists joined in a

bareknuckle brawl between pro-Trump and other anti-Trump protesters. In this fight, protesters also swung signs and threw smoke bombs. Police confiscated metal pipes, bricks, two-by-four wooden planks, and baseball bats from protesters. The police also arrested ten persons. It is true that the police arrested one person for resisting arrest, and five for battery. The police further arrested the other four persons for assault with a deadly weapon; and one of these four held a dagger as the weapon of choice.

The Berkeley protests on March 4 served to foreshadow and to forebode the successor protest six weeks later on April 15. Both protests held similar elements in common, such as confiscated items, arrests and protester violence. But these elements, present in the previous protest, proved exacerbated in the April 15 protests. Further, these exacerbated elements begat new, worse elements not present in the March 4 Berkeley protest.

The police guarded the protest venue and delineated the venue limits with temporary orange netting. The protest organizers intended the event to be a rally for Freedom of Speech, where prominent conservatives would speak to the target audience. Organizations such as Antifa and B.A.M.N stormed the event. This constituted a part of a greater concerted counterprotest effort under a coalition called “Defend the Bay! Bloc Party & Cookout.” As evinced by this coalition’s Facebook page, the counterprotestors sought the explicit goal to impede and stop the Freedom of Speech Rally from transpiring.

114 Johnson, supra note 112.
115 Id.
117 Id.
118 Id.
119 Id.
120 Compare id., with Dizikes, supra note 109.
121 Compare Wang, supra note 116, with Dizikes, supra note 109.
122 Compare Wang, supra note 116, with Dizikes, supra note 109.
123 Compare Wang, supra note 116, with Dizikes, supra note 109.
125 See id.
126 See id.
127 Id.
128 Id.
The night before the Freedom of Speech Rally, Berkeley police issued a notice that any attendees would have “implement[s] of riot” such as sticks, poles, pipes, eggs, and pepper spray confiscated if present on their person.129 To this end, the police confiscated mace, pepper spray, bear spray, a stun gun, an axe handle, and a concrete-filled can, along with a cache of sticks, wooden dowel rods, and poles.130 The police also confiscated knives, flagpoles, skateboards “and other blunt” instruments.131 Despite the warning and the itemized confiscation, the counter-protestors attempting to disband the Freedom of Speech Rally still managed to unleash their onslaught upon the rally-goers—armed with dangerous implements.132

Organizations that sought to stop the protests threw fruit, shoes, soda cans and bottles at the protestors.133 They also shot fireworks at the people attending the Freedom of Speech Rally.134 Organizations such as B.A.M.N. broke through the orange netting and engaged in fist fighting with the rally attendees, which resulted in injuries.135 Though the police reestablished a boundary between the rally-goers, and the protestors trying to stop the Rally for Freedom of Speech from occurring, bouts of shouting between the two groups still transpired.136 Further, the barriers proved ineffective against anarchist disruptors—such as Antifa—who hoisted their red and black banners and clashed with the Rally for Freedom of Speech attendees.137 Andrew Greenwood, Berkeley’s Chief of Police, reported that Antifa caused the protests to take the aggressive turn that created the violence that day.138 Dan Mogulof, the Vice-Chancellor and Spokesman for U.C. Berkeley,

129 Id.
130 Id.
132 See, e.g., Dizikes, supra note 109.
133 Id.
134 Id.; Sciacca, et al., supra note 131.
135 Dizikes, supra note 109.
136 Id.
137 See id.

These attitudes appear confirmed through protestor experiences.\footnote{See Paige St. John, 21 Arrested As Hundreds of Trump Supporters and Counter-Protesters Clash at Berkeley Rally, L.A. TIMES (Apr. 15, 2017, 6:35 PM), http://www.latimes.com/local/lanow/la-me-In-berkeley-trump-rally-20170415-story.html} A protestor demonstrating his support for Trump reported that a dozen persons in black masks surrounded him, beat him with sticks, and used pepper spray on him.\footnote{Id.} Independent sources confirmed this.\footnote{Id.} A peaceful left-wing participant’s experience with political opposites provides a stark experiential contrast to the Trump supporter’s experience.\footnote{See id.} The woman stated that she genuinely tried to engage with her political opposites in the protests, only to hear shouts from one protestor exclaiming “Obama hates blacks,” and another wishing rhetorically to ask her “why she hat[ed] white people.”\footnote{Id.}

Though she received a hostile reception, this remained the extent of her encounter with her political opposites before walking away with her body unmolested.\footnote{Id.}

Protestors began moving out of the park by noon and fully moved into downtown Berkeley nearly two hours later.\footnote{DAILY CAL. STAFF, supra note 124.} Even before the protests fully relocated to downtown, the police believed that the protests created a sufficiently hostile climate to warrant a temporary closure of its downtown headquarters.\footnote{Dizikes, supra note 109.} Though the protests did not create property damage downtown, local businesses temporarily closed their establishments, and local banks boarded up their A.T.M.s.\footnote{Id.; Berkeley Police Chief, supra note 138.} These fears proved well-founded: Berkeley’s Chief of Police noted that their weapons removal system failed to confiscate all weapons due to undermanned protest checkpoints and protesters not entering the demarcated area.\footnote{Berkeley Police Chief, supra note 138.} This proximately permitted the previously mentioned protestor injuries to occur.\footnote{See St. John, supra note 140; Berkeley Police Chief, supra note 138.}
The initial police placement of seventy officers proved insufficient to handle the protests that culminated in the violent spectacle in downtown Berkeley. The Berkeley police needed and requested assistance from the nearby Oakland Police Department. Oakland sent 180 officers which included squads, motorcycle officers, supervisors and commanders, and even a helicopter to help police in their own efforts. Even with the additional support, the police failed to disperse the protests until more than two hours later. The added resources did permit the Berkeley protests to target specific areas where protestors acted especially violent, and did eventually quell the situation.

The police chief officially reported that eight officers experienced protest-related injuries. Unofficial reports from the police chief totaled between sixty to seventy injured officers. These injuries included hearing loss from illegal explosives, pepper spray exposure, and even a knee injury. The police arrested twenty-one persons in the protests and the immediate aftermath, and arrested another ten and issued fifteen further arrest warrants as of April 19, 2017. Eleven protestors sustained injuries—one of whom experienced a stabbing injury—with seven requiring hospitalization.

The protest’s highlight involved violence on a right-wing protestor by a philosophy professor. During the protests, one of the participants in the Free Speech Rally sustained a blow to the head from a U-shaped bicycle lock. This caught the attention of 4Chan.org users who congregate on the /pol/ message board on the website. The /pol/ frequenters used video of a

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151 See St. John, supra note 140; see generally id. (250 officers present in downtown Berkeley); Berkeley Police Chief, supra note 138 (the Oakland Police Department leant Berkeley’s Police Department 180 officers for the downtown protests).
152 Berkeley Police Chief, supra note 138.
153 Id.
154 Id.
155 Id.
156 Id.
157 Id.
158 Id.
159 Id.; St. John, supra note 140.
160 DAILY CAL. STAFF, supra note 124; St. John, supra note 140.
162 Id.
163 Id.; Carter, Antifa Terrorist Who Beat Trump Supporter in Head WITH BIKE LOCK Identified as Local Professor, GATEWAY PUNDIT (Apr. 20, 2017, 1:11 PM),

Illinois Business Law Journal
masked man using the bicycle lock on the protestor, then compared this with
stills of a man wearing similar clothing and having a similar general
appearance and physique at the protest.\textsuperscript{164} They then used photograph-
altering technology for facial recognition purposes, and compared both
images to outside images of a philosophy professor teaching at Diablo Valley
College called Eric Clanton.\textsuperscript{165} Both images of the professor’s matched the
image of the man swinging a bicycle lock at the protestor.\textsuperscript{166}

The Berkeley police conducted an investigation into the incident which
led to Clanton’s arrest.\textsuperscript{167} The investigation also yielded other evidence
sufficient for charging Clanton for two separate assault counts.\textsuperscript{168} All three
assault victims in this affair sustained injuries to the head or neck from a
bicycle lock.\textsuperscript{169} Clanton’s employer removed his bio from their webpage after
his arrest.\textsuperscript{170} As of May 24, the Berkeley Jail held Clanton, and the court
planned Clanton’s arraignment on May 26.\textsuperscript{171} The court set Clanton’s bail at
$200,000.\textsuperscript{172}

Though the last of the four protests proved the mildest by comparison, it
still did not pass without incident.\textsuperscript{173} Rather, the events immediately
preceding the protests illustrate political intrigue, not violence as the main
propulsion vehicle.\textsuperscript{174} The events leading into the protest occurred over
the course of a week, as opposed to the overnight rising action from the protests
on April 15.\textsuperscript{175}

U.C. Berkeley’s College Republicans, Young America’s Foundation and
BridgeUSA all contributed in organizing an event where they planned on

\textsuperscript{164} Carter, supra note 163.
\textsuperscript{165} \textit{Id.}
\textsuperscript{166} \textit{Id.}
\textsuperscript{167} \textit{Police Arrest Eric Clanton, supra note 161.}
\textsuperscript{168} \textit{Id.}
\textsuperscript{169} \textit{Id.}
\textsuperscript{170} \textit{Id.}
\textsuperscript{171} \textit{Id.}
\textsuperscript{172} \textit{Id.}
\textsuperscript{173} Compare Susan Svrluga, William Wan & Elizabeth Dwoskin, \textit{There Was No Ann}
\textit{Coulter Speech. But Protesters Converged on Berkeley.}, \textit{WASH. POST} (Apr. 27, 2017),
planned-but-protesters-are-converging-on-berkeley-today?utm_term=.a4a56a1cf7f, with
Wang, supra note 116, and Dizikes, supra note 109, and Protesters Shut Down
Yiannopoulos Events, supra note 87.
\textsuperscript{174} Svrluga, et al., supra note 173.
\textsuperscript{175} \textit{Compare id., with Wang, supra note 116.}
having Ann Coulter speak to the event’s audience. The organizers set their event’s date for April 27. On April 19, the university administration cancelled the event, and informed the organizers of the cancellation. The organizers pointed out that this cancellation came in the event that they, accepted concessions to the administration—such as an earlier start and end time—in order to hold the event. Coulter offered similar concessions personally as well. The university administration expressed a concern for violence, in light of the cancellation of the Yiannopoulos event as their proffered reason for cancelling. The university offered a May 2 slot, which Coulter rejected due to low turnout potential. However, because of the cancellation after proffering concessions, both the event organizers and Coulter alleged bad faith on U.C. Berkeley’s administration’s part. Coulter stated of the cancellation that “I acceded to Berkeley’s every silly demand (never made of [leftist] speakers). Called their bluff [and] they canceled anyway.”

The cancellation initially deterred neither the organizers nor Coulter, as both expressed in no uncertain terms that the administration’s cancellation constituted a prior restraint tantamount to restricting free speech. The groups organizing the event indicated that they would explore legal options to compel U.C. Berkeley to permit the speech. Even the American Civil Liberties Union—normally Coulter’s political opposite—shared this perspective. Coulter expressed that she expected U.C. Berkeley to

177 Id.
178 Id.
179 Id.
180 Id.
181 Id.
183 Berkeley Orders Cancellation, supra note 176.
184 Id.
185 Id.
186 Id.
compensate her for damages for free speech restrictions.\textsuperscript{188} Coulter expressed further defiance by expressing that she would speak on April 27 with or without university approval.\textsuperscript{189}

Some right-wingers—including some that planned the previous two rallies—so disliked that U.C. Berkeley cancelled Coulter’s speech that they planned an impromptu rally on the day Coulter planned to make her speech.\textsuperscript{190} Some that attended the protest hoped to hear Coulter address them and other attendees.\textsuperscript{191} The International Socialist Organization responded by organizing an “Alt-Right Delete” counter-rally.\textsuperscript{192} In the middle of these activities, the U.C. Berkeley’s police force received intelligence reports that showed a prospect for violence if Coulter appeared on campus.\textsuperscript{193}

After the university claimed to have no safe venues available for the event, Young America’s Foundation pulled its support from the immediate event, but filed suit for the event cancellation.\textsuperscript{194} The group echoed U.C. Berkeley in citing safety concerns as the reason for pulling its sponsorship.\textsuperscript{195} Later, BridgeUSA cited similar concerns in pulling their support.\textsuperscript{196} Coulter personally withdrew from any planned appearance at U.C. Berkeley thereafter.\textsuperscript{197} Though Coulter did appear to have a safety concern, she felt that the support her former sponsors gave proved inadequate, to the point of betrayal.\textsuperscript{198}

The police indicated that it would manage whatever emerged from the protests in a different way than their apparently more lax approach than the

\textsuperscript{188} Berkeley Orders Cancellation, supra note 176.
\textsuperscript{189} Id.
\textsuperscript{194} Orenstein, et al., supra note 187.
\textsuperscript{195} Id.
\textsuperscript{196} Id.
\textsuperscript{197} Id.
\textsuperscript{198} McLaughlin, et al., supra note 190; Orenstein, et al., supra note 187.
planned Yiannopoulos event. Specifically, the police indicated that it held a low tolerance for protestor violence. Prior to the protests, the U.C. Berkeley and City of Berkeley police forces worked together to prepare a broad workable plan to keep any violent outburst and incidents at a minimum. In addition, the police prohibited items such as baseball bats and projectiles, and kept Antifa protestors away from the protest.

The protests themselves did have some minor incidents: the police arrested seven persons, and confiscated numerous weapons. The “Alt-Right Delete” protest effectively proceeded as a news conference where the International Socialist Organization expressed its hope to oppose the right wing. Though some Trump-supporters dressed in protective armor, the supporters engaged at times with political opponents and others in a largely civil manner, and certainly without any reported violence from them. Even some nearby high school students and faculty engaged with the Trump-supporting protestors. Though other left-wing protestors showed their presence in the late morning and into the afternoon, Antifa failed to appear during this time in the day. Antifa first appeared at about four in the afternoon. By then, most of the protestors left the scene, and the right-wingers that organized the event encouraged those that remained to leave. Though the environment remained tense, the protests mostly ended by six in the evening. The police ended their activity related to the demonstration and resumed normal operations about ten minutes after nine on that evening.

Though protest such as those prompted by U.C. Berkeley’s cancellation of Coulter’s speech exemplify tensions in college, sexual harassment allegations pose this challenge too. The strains impressed through the

199 See Orenstein, et al., supra note 187.
200 Id.
201 Id.
202 Sylwuga, et al., supra note 173.
203 Id.
204 Id.
205 Orenstein, supra note 193.
206 Id.
207 Id.
208 Id.
209 Id.; Sylwuga, et al., supra note 173.
210 Sylwuga, et al., supra note 173.
211 Orenstein, supra note 193.
tension only increase when conflicting accounts muddy waters and confuse outsiders to such an interpersonal situation as to the matter’s truth.213 Such tension delves into the almost farcical when the conflicting account in question involves something as mundane as pure speech.214

3. Administrative Issues

This background led to the untimely demise of a graduate-school-aspirant Thomas Kloccke by his own hand in 2016, with one credit required for graduation.215 Nicholas Watson, a gay student at the University of Texas-Arlington, alleged that Kloccke typed “gays should die” into his laptop on a web browser.216 Kloccke supposedly felt prompted to type this during a class discussion about privilege.217 Watson averred that he typed “I’m gay” on his own laptop in response to Kloccke.218 Watson then claimed that Kloccke, while mockingly yawning and under his breath, said “[w]ell, you’re a faggot.”219 Watson expressed in his allegations that he told Kloccke to leave the class.220 Watson further averred that Kloccke told him in response that “[y]ou should consider killing yourself.”221

Kloccke presented a diametrically opposite version of events.222 Kloccke stated that Watson approached him unprompted, sat beside him, addressed


216 Richardson, supra note 213.

217 Griffith, supra note 214.

218 Richardson, supra note 213.

219 French, supra note 212; Richardson, supra note 213.

220 Richardson, supra note 213.

221 [Id.]

222 See, eg., id.
him by name, and called him “beautiful.” Klocke wrote on his laptop “stop— I’m straight,” according to his statements to college administration officials. Klocke’s statements indicate that Watson said “I’m gay” in response. Klocke noted that Watson continued staring at him, which prompted him to type “stop” in his laptop again. Klocke’s story illuminated that Watson moved away from Klocke to another classroom seat, eventually.

After class, Watson told his class professor his version of events, and the professor referred Watson to student services. Watson did not use the university’s student services. Instead he told his version of events to an administrator who he knew personally: Heather Snow, the university’s Vice-President of Student Affairs and the Dean of Students. Snow helped Watson draft his complaint against Klocke, and did not refer the case to the university’s Title IX coordinator. Indeed, no one informed the Title IX coordinator of the case during the investigation. Instead, Snow assigned the case to Daniel Moore, the university’s Associate Director of Academic Integrity.

Upon receiving the complaint, Moore wasted no time in barring Klocke from attending the same class as Watson and entering the building where the class took place. Additionally, Moore forbade Klocke from even talking to the students in that class, whether directly, through an intermediary or otherwise, while permitting the same for Watson. Additionally, Klocke received no information as to the specific nature of the charge, the charges against him, or who made the allegations against him. Moore only told Klocke in the immediate aftermath of Watson’s allegations that his alleged actions constituted potential “involve[ment] in an alleged violation of the University Student Code of Conduct.” In fact, Moore levied two student

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223 See Griffith, supra note 214.
224 See id.
225 See id.
226 See id.
227 See id.
228 French, supra note 212; Richardson, supra note 213.
229 Richardson, supra note 213.
230 Griffith, supra note 214; Richardson, supra note 213.
231 Richardson, supra note 213.
232 Id.
233 Id.
234 Id.
235 Turley, supra note 213; French, supra note 212; Richardson, supra note 213.
236 Richardson, supra note 213.
237 Id.
conduct code violation charges against Klocke, and summoned him to a
hearing to address the charges levied against him.\textsuperscript{238} Moore reportedly barred
Klocke from bringing his attorney father to the hearing as his counsel.\textsuperscript{239}

Klocke reportedly denied all the allegations made by Watson at the
hearing where he first heard of the allegations.\textsuperscript{240} The only witness at the
hearing reportedly heard the words “I think you should leave,” but no other
substantive fact beyond this.\textsuperscript{241} A report stated that both Snow and Moore
acknowledged that they lacked evidence to levy punishment on Klocke.\textsuperscript{242}
Despite this, the Moore and Snow reportedly found Klocke guilty of
harassment against Watson.\textsuperscript{243} Though he could participate in outside group
projects, the administration prohibited him from attending any live classes.\textsuperscript{244}
More directly, Moore placed Klocke on disciplinary probation according to
reports—something that negatively impacts employment and graduate school
prospects.\textsuperscript{245} Six days elapsed from the original allegations to the final
punishment.\textsuperscript{246} Klocke committed suicide a week thereafter.\textsuperscript{247}

A year after these events, Wayne Klocke, Thomas Klocke’s father and an
attorney, filed charges against the University of Texas-Arlington and
Watson.\textsuperscript{248} The father alleged in his suit that the university inflicted “swift
and harsh punishment” for “bare, unsupported” harassment allegations made
by Watson in order “to preserve the appearance of their leadership” in
matters relating to gender and sex.\textsuperscript{249} Though the university said that it
followed all proper protocols, the suit further alleges that the false charges
placed upon Klocke because he stood as an “accused male aggressor.”\textsuperscript{250} It
also states that the sanctions and charges created “such embarrassment, rage,
frenzy, and mental or emotional anguish and pain [upon Klocke] that he
took his own life.”\textsuperscript{251}

\textsuperscript{238} Id.
\textsuperscript{239} French, supra note 212.
\textsuperscript{240} Richardson, supra note 213.
\textsuperscript{241} Id.
\textsuperscript{242} Id.
\textsuperscript{243} Id.
\textsuperscript{244} French, supra note 212.
\textsuperscript{245} Eg., Richardson, supra note 213; accord, Turley, supra note 213.
\textsuperscript{246} Turley, supra note 213.
\textsuperscript{247} Id.
\textsuperscript{248} See Griffith, supra note 214; Richardson, supra note 213.
\textsuperscript{249} Griffith, supra note 214.
\textsuperscript{250} Silverstein, supra note 215.
\textsuperscript{251} Griffith, supra note 214.
Though Klocke’s suicide appears a dramatic, extreme example of on-campus tensions, battles over Halloween costumes serve as an exemplar of the campus battleground culture as well.\(^{252}\) Further, students like Klocke are not the only group that fall prey to the tenuous college climate.\(^{253}\) Administrators that deviate from the politically correct ‘party line’ face problems to where fellow administrators and students threaten the administrator’s employment if not the administrator physically.\(^{254}\) Nicholas and Erika Christakis, administrators at Yale University, faced this fate in 2015.\(^{255}\)

Yale University’s Intercultural Affairs Committee in October 2015 distributed an email to its student body that encouraged avoiding “culturally unaware and sensitive” costumes out of fear of offending minority students.\(^{256}\) The email delineated guidelines that called for avoiding costumes that featured blackface, feathered headdresses, or turbans.\(^{257}\) At least thirteen administrators contributed to the guideline’s and email’s creation.\(^{258}\)

The email reportedly frustrated a number of students, to the point where these students levied complaints about the email to Mrs. Christakis.\(^{259}\) This prompted her to write her own email on behalf of the frustrated students.\(^{260}\) In the email, she acknowledges that there existed a possibility that certain costume choices carried offensive connotations.\(^{261}\) However, she made a bigger point that far too often, costume choices carry no intent at causing offense.\(^{262}\) She drew analogies from her preschool teaching experiences of a little girl dressing as Mulan, and offered a comparison of an eight-year-old versus an eighteen-year-old dressing as Tiana the Frog Princess.\(^{263}\) Mrs.


\(^{253}\) Compare Richardson, supra note 213, with *The New Intolerance of Student Activism*, supra note 252.

\(^{254}\) Compare Richardson, supra note 213, with *The New Intolerance of Student Activism*, supra note 252.

\(^{255}\) See *The New Intolerance of Student Activism*, supra note 252.


\(^{257}\) Id.

\(^{258}\) *The New Intolerance of Student Activism*, supra note 252.

\(^{259}\) Stack, supra note 256.

\(^{260}\) Id.

\(^{261}\) *The New Intolerance of Student Activism*, supra note 252.

\(^{262}\) Id.

\(^{263}\) Id.
Christakis indicated from this point that a large degree of individual intent factors into the equation of a Halloween costume’s offensiveness. She expressed, led to a slippery slope that she “prefer[ed] not to cross.” She further indicated that she “[could not] defend [her “Halloweenish standards”] anymore than [administrators] could defend [theirs].”

Mrs. Christakis also questioned the guidelines wisdom: she asked, “Is there no room anymore for a child or young person to be a little bit obnoxious . . . a little bit inappropriate or provocative or, yes, offensive?” She then turned to an accusatory tone in her email in stating:

American universities were once a safe space not only for maturation but also for a certain regressive, or even transgressive, experience; increasingly, it seems, they have become places of censure and prohibition. And the censure and prohibition come from above, not from yourselves! Are we all okay with this transfer of power? Have we lost faith in young people’s capacity—in your capacity—to exercise self-censure, through social norming, and also in your capacity to ignore or reject things that trouble you?

The email proved a spark that set alight the student body in a pitch over more than merely Halloween costumes, but upon race issues generally. Students immediately called for Mrs. Christakis’s resignation. These active resignation calls also extended to Mr. Christakis by virtue of relation and proxy. Mrs. Christakis later recalled that the original outcry proved more severe than originally reported: she reported that administrators and deans, along with students called for her and her husband’s resignation. Almost

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264 See id.
265 Id.
266 Id.
267 Id.
268 Id.
269 See Rahel Gebreyes, Yale Student Explains Why Students Were Offended By Halloween Costumes Email, HUFF. POST (Nov. 12, 2015, 2:59 PM), http://www.huffingtonpost.com/entry/yale-student-halloween-costumes-christakis_us_5644b82e4b045bf3dedf1e; The New Intolerance of Student Activism, supra note 252.
270 The New Intolerance of Student Activism, supra note 252.
271 See id.
272 Compare Erika Christakis, My Halloween Email Led to a Campus Firestorm—and a Troubling Lesson about Self-Censorship, WASH. POST (Oct. 28, 2016), https://www.washingtonpost.com/opinions/my-halloween-email-led-to-a-campus-firestorm--
one thousand students, administrators and deans altogether called for her and
her husband’s ouster. These calls also extended to their removal from their
campus home.

Mrs. Christakis further noted that some persons who viewed her email
disdainfully went further than merely calling for her firing. Some wanted
her and her husband to make an apology for any “unintended racial
insensitivity.” In this regard, Mrs. Christakis indicated she had no
objection to this. Rather, Mrs. Christakis winced at the notion that she
should make a complete disavowal for her expression of her ideas over
Halloween costumes. She also indicated some also wanted to have advance
warning whenever she appeared in Yale’s dining hall “so that students
accusing me of fostering violence wouldn’t be disturbed by the sight of
me.”

This context set the stage for Mr. Christakis to experience public
beratement and humiliation by a group of over one hundred students who
felt aggrieved by Mrs. Christakis’s email. Mr. Christakis not only held a
faculty position at Yale, but also served as the head of a Yale residence hall, or
a “Master.” In his confrontation with this group, Mr. Christakis gave his
full, undivided attention to the crowd, but to one student in particular,
because she occupied Mr. Christakis’s attention the most. That student
asserted that he needed to make a place of comfort and home for the students
because his job required it. Mr. Christakis disagreed, and explained that his
position required him to create an intellectual space. The student lividly
responded to Mr. Christakis that:

If that is what you think about being a master you should step
down! It is not about creating an intellectual space! It is not!

273 Christakis, supra note 252.
274 Id.
275 Id.
276 Id.
277 Id.
278 Id.
279 Id.
280 Id.; The New Intolerance of Student Activism, supra note 252.
281 The New Intolerance of Student Activism, supra note 252.
282 Id.
283 Id.
284 See id.
Do you understand that? It’s about creating a home here. You are not doing that.  

The student concluded by telling Mr. Christakis, “You should not sleep at night! You are disgusting!” Mrs. Christakis noted that in that vulgarity-laced exchange—which constituted a small part of a greater two-hour long exchange—several of the one hundred students made explicit threats against her husband. Four deans witnessed this exchange and the threats that accompanied it, and none of the deans or anyone else did anything to stop or rebuke the threats.

In addition, some students began a petition that formally called for both Mr. and Mrs. Christakis’ resignations. The petition targeted the Christakis in stating:

You ask students to ‘look away’ if costumes are offensive, as if the degradation of our cultures and people, and the violence that grows out of it is something that we can ignore….We were told to meet the offensive parties head on, without suggesting any modes or means to facilitate these discussions to promote understanding.

This petition garnered signatures from students, alumni, and even select few Yale faculty members. These tensions continued into graduation, where some graduating Yale students, clearly hostile to Mr. Christakis, refused to receive their diploma from Mr. Christakis. These events prompted both Mr. and Mrs. Christakis to resign from their administrative positions after the graduation commencement.  

285 Id.
287 Christakis, supra note 272; The New Intolerance of Student Activism, supra note 252.
288 Christakis, supra note 272.
289 The Perils of Writing a Provocative Email at Yale, supra note 286.
290 Id.
291 Id.
292 Id.
293 Id.
retained his position as a professor, Mrs. Christakis opted against further teaching at Yale.294

B. Common Ideological Roots

All the incidents mentioned in the previous section possess at least some radically left-wing identitarian political motivation.295 Dalhousie University published a report in the aftermath of its dentistry scandal which detailed what it saw as problems in the university.296 The independent report stated that through allowing the dental students involved to express themselves in the way they did, the dental school permitted "sexism, misogyny, homophobia and racism" to run rampant.297 The report went even further in stating that this incident illustrated that the dentistry faculty permitted all of this, culturally in the College of Dentistry.298 The report also noted that “[g]iven the number, the duration and the range of people who told us about them, [the allegations] cannot be dismissed as isolated.”299 The report’s tone became encapsulated in their claim that “[o]ne alumnus said that dentistry lived in a ‘time warp,’ oblivious to social progress that has rendered some behaviour unacceptable.”300

The report’s language mirrors what the Gender & Women’s Studies Department at Dalhousie University teaches to its students, and garnered a full endorsement from Dalhousie’s Student Union.301 The Gender &

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294 Id.
295 Compare Timeline in the Scandal Involving the Dentistry School at Dalhousie University, supra note 24, and Dalhousie University Probes Misogynistic Student ‘Gentlemen’s Club’, supra note 26, with Melchior, supra note 64, and Protesters Shut Down Yiannopoulos Events, supra note 87, and Wang, supra note 116, and Berkeley Police Chief, supra note 138, and Orenstein, et al., supra note 187, and French, supra note 212, and The New Intolerance of Student Activism, supra note 252.
297 Id.; see A Timeline in the Scandal Involving the Dentistry School at Dalhousie University, supra note 24; Dalhousie Facebook Posts ‘Completely Unacceptable,’ Says Professor, supra note 24.
299 Id.
300 Id.
301 Dalhousie Dentistry Scandal a Call to Action, Says Student Union, supra note 39; Dalhousie Dentistry Report: University Had Culture of ‘Misogyny, Homophobia and Racism’, supra note 296; What will I learn?, DALHOUSIE U. GENDER & WOMEN’S STUD.
Women’s Studies Department states that among other things, students learn from its departmental faculty:

[H]ow aspects of gender, race, class, sex, age, sexual orientation, and health contribute to complex social relationships—and all too frequently, to injustice and discrimination.\(^{302}\)

The department took the scandal seriously enough to host a forum with the Dalhousie Student Union at the climax of the scandal.\(^{303}\)

One participant, Judy Haiven, proposed as a remedy to the dentistry scandal, that all media events hosted in or by the university must include at least one female, non-emcee member.\(^{304}\) She also put forth the idea that all athletes who involved themselves in what she considered misogyny receive a six-month suspension from the university, including suspension from being on-campus.\(^{305}\) She further proposed that any public official that committed any misogynistic act toward a woman must write an open letter of apology.\(^{306}\) She also expressed that she require that women always have the opportunity to speak first.\(^{307}\) In her remarks, she also thanked the student union, particularly the executive board, for all their advocacy in advancing a resolution favorable to the panel in the dentistry scandal.\(^{308}\)

The Dalhousie Student Union in the heat of the dentistry scandal expressed wholehearted support for the female dentistry students that complained about the Facebook posts.\(^{309}\) As such, the student union fully endorsed the findings of the report.\(^{310}\) In this endorsement, the union stated that it “showcase[d] . . . that this is not just a problem within the faculty of dentistry. It’s a problem with the entire institution. It’s not a case-by-case basis, it’s not one bad apple, it’s a whole institution.”\(^{311}\) This language closely

\(^{302}\) See Dalhousie Student Union, Dalhousie Forum on Misogyny, YOUTUBE (Jan. 15, 2015), https://www.youtube.com/watch?v=iDKIHqYG92E.

\(^{303}\) Id.

\(^{304}\) See id.

\(^{305}\) Id.

\(^{306}\) Id.

\(^{307}\) Id.

\(^{308}\) Id.

\(^{309}\) See Dalhousie Dentistry Scandal a Call to Action, Says Student Union, supra note 39.

\(^{310}\) See id.

\(^{311}\) Id.
reflects the report, and the Gender & Women’s Studies Department’s general education mission.\textsuperscript{312}

The students that protested on campus found their motivation in expressing opposition to what they categorized as misogynistic Facebook posts.\textsuperscript{313} The protest organizer felt appalled at the university’s willingness to give the dental students accreditation.\textsuperscript{314} All the students involved stated a preference for the university to inflict harsher, swifter punishment on the dental students.\textsuperscript{315}

Anti-fascists, or Antifa, does not exist as a formal organization, but rather serves as an identifier or label.\textsuperscript{316} In this vein, Antifa expresses an interest in protecting Hispanic and black persons, women, trans-people, Muslims, illegal aliens, and L.G.B.T.Q. community members.\textsuperscript{317} The members claim opposition to fascism and Nazism.\textsuperscript{318} Those that identify with Antifa define fascism as a political position that they perceive opposes a group they express an interest in protecting.\textsuperscript{319} This bears a resemblance to the reasons a student group from Pomona College wanted to have the university revoke a speaking engagement from someone that believed the Ferguson riots encouraged an urban crime wave.\textsuperscript{320} The group described the speaker as:

[A] fascist, a white supremacist, a war hawk, a transphobe, a queerphobe, a classist, and ignorant of interlocking systems of domination that produce the lethal conditions under which oppressed peoples are forced to live.\textsuperscript{321}

\textsuperscript{312} Compare id., with Dalhousie Dentistry Report: University Had Culture of ‘Misogyny, Homophobia and Racism’, supra note 296, and What will I learn?, supra note 301.
\textsuperscript{314} Id.
\textsuperscript{315} See Dalhousie Dentistry Facebook Scandal Prompts Protest, supra note 34.
\textsuperscript{317} Id.
\textsuperscript{318} Id.
\textsuperscript{320} See Tuttle, supra note 319.
\textsuperscript{321} Id.
These attitudes mirror the attitudes of the protesting students at the University of Missouri and Yale University and those critical of the dental students at Dalhousie University. However, as Ian Tuttle noted in his writings, Antifa distinguishes itself fundamentally from this type of student by committing to a willingness to use violence as a means to achieve goals.

Deriving these facts, Antifa members interpret an attack on one minority group as an attack on all of them, or an us-versus-them mentality. Antifa sees Trump and those aligned with Trump as among those that attack at least one of the minorities that it wishes to protect. In Antifa’s eyes, that makes Trump and his political allies fascists. Antifa members became more concerned after Trump’s victory in the 2016 Presidential Election. Because Trump won the U.S. Presidency through America’s free speech electoral system, Antifa believes that outcries in favor of free speech serve as a way for fascism to gain a foothold. Because of this, Antifa sees this institution as co-opted by fascists, which therefore legitimizes the use of violence. Though Antifa’s members generally avoid social media, Antifa chapters use the internet to express political views and to inform the Antifa community of events it plans to disrupt.

B.A.M.N. expresses a similar proclivity to violence. Yvette Felarca, a leader of B.A.M.N., took some credit for her and her group’s actions in shutting down the Yiannopoulos speech. In an interview with Tucker Carlson, Felarca justified shutting down the event in saying that Yiannopoulos “should not be able to speak in public to spread his racist, misogynistic and homophobic lies.” Felarca explicitly defended her use of violence as a means to achieve that end. She has also said, apparently

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322 Compare id., with Melchior, supra note 64, and Pearson, supra note 49, and Gebreyes, supra note 269, and Dalhousie Forum on Misogyny, supra note 303.
323 See Tuttle, supra note 319.
324 See Beale, et al., supra note 316; Tuttle, supra note 319.
325 Beale, et al., supra note 316.
326 See id.
327 Id.
328 Id.
329 Id.
330 See id.
331 Compare id., with Frances Dinkelspiel, Rage against Yvette Felarca Mounts after Fox News Interview, BERKELEY (Feb. 14, 2017, 2:01 PM) [hereinafter Rage against Yvette Felarca Mounts], http://www.berkeleyside.com/2017/02/14/rage-yvette-felarca-mounts-fox-news-interview/.
332 Rage against Yvette Felarca Mounts, supra note 331.
333 Id.
334 Id.
categorizing “raci[m], misogyny[] and homophobi[a]” with facism in the same way as Antifa does, that “[t]here is no free speech for fascists.”

Felarca and B.A.M.N. previously demonstrated their political proclivities. Future B.A.M.N. members, Felarca included, held membership in a group that superficially interested itself in abortion rights in the 1980s. In practice, these members tried to use this group as a front to create a worker’s revolution, and discuss such wider issues to that end. Felarca and others founded B.A.M.N. in 1995 as a way to promote affirmative action. Chris Thompson, a writer that had first-hand knowledge of the activist left-wing, noted that the group seemed a front for the Trotskyist party, the Revolutionary Worker’s League. This point and members’ previous rhetoric fits with the some Antifa members’ communist ideology. B.A.M.N. also has a reputation of attracting violent black-bloc protestors such as Antifa, wherever it goes in protesting efforts.

From the start, B.A.M.N. engaged in disruptive if not outright violent behavior towards others that wished to protest. In an extreme early instance, a group member during a demonstration snuck behind a speaker, and fought the speaker for microphone possession, while exclaiming that militant action fast approached. B.A.M.N. also commonly, coincidentally scheduled a venue for a rally at the exact same time and place as another group, then proceed to confront other venue-goers, and even police.

337 Id.
338 Id.
339 Id.
340 Id.
341 Compare id., with Beale, et al., supra note 316.
343 See Thompson, supra note 336.
344 Id.
345 Id.
Students in that time often complained that B.A.M.N., among other problems, liked engaging in “race-baiting.”

B.A.M.N. members at one point also took over a group that committed themselves solely to opposing an anti-gay marriage proposal in that time called Prop 22. Upon taking over, the B.A.M.N. members passed motions calling for a revolutionary worker’s movement, which frustrated other members—including the two founding members—to the point where they departed. One political activist in that time stated of B.A.M.N. members that “[t]hey’re just weird, like a cult.” This served as a harbinger for Robert Jacobsen’s petition calling for Felarca’s firing from her schoolteacher job. Jacobsen cited an open letter by a former B.A.M.N. member, and commented that “They recruit impressionable young people, isolate them from their family and friends, and indoctrinate them with their violent ideology . . . . That’s practically ‘Cult 101.’” B.A.M.N. also engaged in these same takeover tactics in the Oakland Teacher’s Union, beginning with some B.A.M.N. members becoming teachers. This continued with B.A.M.N. members in the union increasing internecine political activity where other union members merely wished to occupy themselves with the job of teaching. Eventually, the Federal Bureau of Investigation published a document that identified B.A.M.N. as a campus organization “involved in terrorist activities” in 2005.

Thomas Klocke’s suicide on account of the disciplinary problems created by his college’s administration serve as an extreme example in college administrative disciplinary policy problems. Jonathan Turley, a law professor at George Washington University, noted that part of the administrative overreach comes from pressure placed by President Obama’s

346 Id.
347 Id.
348 Id.
349 Id.
350 Compare id., with Max Cherney, Petition to Fire Berkeley Teacher Garners 500 Signatures, BERKELEYSIDE (July 14, 2016, 1:00 PM), http://www.berkeleyside.com/2016/07/14/petition-to-fire-berkeley-teacher-garners-500-signatures/.
351 Cherney, supra note 350.
352 Thompson, supra note 336.
353 Id.
355 See French, supra note 212; Richardson, supra note 213.
Department of Education (D.O.E.). The D.O.E.’s “Dear Colleague” letter from 2011 noted that “schools would need to curtail due process protections on the right to representation, the standard of proof, and other basic rights,” in order to achieve equality. This included the right to confront witnesses under penalty of universities losing federal funds.

Turley summarized his observations of the Obama-era policy by noting that:

As a result, the Obama administration substituted honest efforts to investigate claims of sexual harassment with an approach that borders on a type of Vietnam body count culture, measuring success by the rate of conviction.

To add insult to injury, Turley noted that if the claims in Klocke’s father’s suit prove true, then the University of Texas-Arlington failed to meet even the levels of due process protection under the Obama administration.

David French, a lawyer and writer, put a human face to this problem by noting that:

During my own legal career, I’ve worked with students who’ve experienced many of the same things that Thomas Klocke’s family claims that he experienced. I’ve represented students whose parents were barred from disciplinary meetings, leaving them to face the wrath of administrators alone. I’ve seen students exploit existing relationships with administrators to achieve favorable outcomes in campus controversies. And I’ve also seen the speed and authority with which universities will respond to complaints by members of favored progressive victim groups.

But there’s something else I’ve seen. I’ve seen the cost imposed on students accused of misconduct—the fear and the stress as they feel like their reputations, their careers, and their dreams are vanishing before their very eyes. When they’re in the middle of the battle, and an entire school seems set

356 See Turley, supra note 213.
357 See id.
358 Id.
359 Id.
360 See id.; Richardson, supra note 213.
against them, it can be hard to maintain perspective and to see through to the other side.\textsuperscript{361}

French concludes by noting in accordance with his experiences that:

Lawsuits are filling courtrooms from coast to coast, men and women face terrifying on-campus witch hunts, and the ideological and financial incentives are pushing universities to shove aside students’ and professors’ unalienable rights to meet the impossible demands of unreasonable campus radicals.\textsuperscript{362}

Though these do not necessarily translate to violence, views such as those that Antifa and B.A.M.N. hold about minorities carry prevalence among academics, as shown in peer-reviewed studies.\textsuperscript{363} One example comes from \textit{Social Science & Medicine}, where the authors describe “whiteness and capitalism in the [United States]” and how the privileges of both can affect white persons’ health.\textsuperscript{364} An abstract to a paper published by \textit{Qualitative Inquiry}, and written by Shawn E. Edmonds, presented without further comment, states that:

The massacre at the Pulse nightclub in Orlando, Florida, impacted the lives of queer people across the world. As a gay White male living hundreds of miles from the horrific events, I was intimately connected with the aftermath through social media, blogs, and news reports. Through autoethnographic exploration of three distinct text-based digital conversations in the days following the massacre, I reflect on the ways that virtual and nonvirtual communication intra-acted to produce and mediate powerful emotional moments. As a performative

\textsuperscript{361} French, supra note 212.

\textsuperscript{362} Id.

\textsuperscript{363} See generally, @RealPeerReview, TWITTER, https://twitter.com/RealPeerReview (last visited Aug. 9, 2017), for examples shown in academic paper abstracts. While this Twitter account devotes itself to facially absurd, peer-reviewed literature generally, enough research in fields of feminism, race, sexuality, and the like overlaps in the mind of the account’s administrator to feature the papers.

work told in three(ish) acts, I contextualize these conversations in the fears, desires, and frustrations of my lived experience.\textsuperscript{365}

Hannah Partis-Jennings described in her paper the relation between a marine convicted of an Afghan insurgent’s murder, and a line that he spoke to that insurgent while killing him, from Shakespeare’s play, \textit{Hamlet}.\textsuperscript{366} Partis-Jennings then relates these back to “access to military masculinity; the banishing of the feminine; and a process of mediation, performance, and interpretation.”\textsuperscript{367}

Heidi M. Gansen wrote in her literature published in \textit{Sociology of Education} that teachers in preschool construct gendered identities among preschoolers.\textsuperscript{368} Gansen found that these teachers at times disrupt the preschoolers’ sexual identities that they wish to construct for themselves—and occasionally resist such constructions.\textsuperscript{369} Preschoolers express these gendered attitudes in their play, and reproduce it in “peer interactions.”\textsuperscript{370} Gansen made these findings after analyzing “ethnographic data” from nine classrooms for a ten-month period.\textsuperscript{371}

Academics exert influence over their students through their social interactions to a point where the student adopts some or all of the academic’s worldview.\textsuperscript{372} Edward Ward, then a student at DePaul University, stands as such an example.\textsuperscript{373} Ward experienced an objectively difficult freshman year,
which included a spiral into a suicidal depression after a breakup with a girlfriend.\textsuperscript{374} One of his professors, Valerie Johnson, saw his struggles, and steered him in a direction that allowed him to focus on self-improvement.\textsuperscript{375} By all accounts, Johnson’s mentoring and influence helped Ward become more civic-minded, engage in volunteerism and the community at-large, allow education to refine him, and focus on becoming a better man.\textsuperscript{376}

Unfortunately, Ward, with some fellow academic colleagues, felt it necessary to interrupt an event hosted on campus by the DePaul College Republicans.\textsuperscript{377} The group made Milo Yiannopoulos their guest speaker for the evening.\textsuperscript{378} The event at first progressed as planned before Ward and his associates stormed the stage, and disrupted the event to the point where they stopped it.\textsuperscript{379} Ward stated that he refused to “apologize for refusing to allow a racist, bigot to spew his hatred on DePaul’s campus,” or “for shutting the event down.”\textsuperscript{380} In a later interview, Ward said that he felt physically threatened by Yiannopoulos’s speech, and said that he accepted free speech, but not hate speech.\textsuperscript{381} Johnson backed Ward’s disruption of the Yiannopoulos event and affirmed his perspective that the event exhibited “bigotry.”\textsuperscript{382}

C. Effects beyond the University Environment

In affirming narrowly-tailored remedial racial diversity state university admissions policies, Justice O’Connor wrote in \textit{Grutter v. Bollinger} that:

\begin{quote}
[N]umerous studies show that student body diversity promotes learning outcomes, and “better prepares students
\end{quote}

\begin{itemize}
\item \textsuperscript{374} Id.
\item \textsuperscript{375} Id.
\item \textsuperscript{376} Id.
\item \textsuperscript{377} Emma Krupp, Kirsten Onsgard & Matthew Paras, \textit{Protesters Shut Down Yiannopoulos Speech}, \textit{The Depaulia} (May 24, 2016), http://depauliaonline.com/2016/05/24/depaul-protesters-shut-down-yiannopoulos/.
\item \textsuperscript{378} Id.
\item \textsuperscript{379} Id.
\item \textsuperscript{380} Id.
\item \textsuperscript{381} Interview by Lukas Mikelsonis, Reporter, Heat Street, with Edward Ward (May 25, 2016).
\item \textsuperscript{382} Allum Bokhari, \textit{Meet Valerie Johnson, The Radical Professor Indoctrinating DePaul’s Black Students}, \textit{Breitbart} (May 25, 2016), http://www.breitbart.com/milo/2016/05/25/meet-radical-professor-indoctrinating-depauls-black-students/.
\end{itemize}

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for an increasingly diverse workforce and society, and better prepares them as professionals.” [citations omitted]

These benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints. [citations omitted] What is more, high-ranking retired officers and civilian leaders of the United States military assert that, “[b]ased on [their] decades of experience,” a “highly qualified, racially diverse officer corps . . . is essential to the military’s ability to fulfill its principle mission to provide national security.” [citation omitted] The primary sources for the Nation’s officer corps are the service academies and the Reserve Officers Training Corps (ROTC), the latter comprising students already admitted to participating colleges and universities. [citation omitted] At present, “the military cannot achieve an officer corps that is both highly qualified and racially diverse unless the service academies and the ROTC used limited race-conscious recruiting and admissions policies.” [citation omitted] (emphasis in original) To fulfill its mission, the military “must be selective in admissions for training and education for the officer corps, and it must train and educate a highly qualified, racially diverse officer corps in a racially diverse educational setting.” [citation omitted] (emphasis in original)\(^{383}\)

*Grutter* demonstrates clearly that both corporate business and government have certain employment demands, and that both fulfill these employment demands by hiring students after graduation from college.\(^{384}\) When students accept these jobs from areas of government or big business, they contribute not only their labors, but their ideas also—their experiences and what they learned in college.\(^{385}\)

Recently, Google involved itself in an imbroglio over an initially internal memo which leaked to the outside world, and received coverage in


\(^{384}\) See id.

\(^{385}\) See id.
the news. Damore, a Google engineer, wanted to address a problem that he saw in Google’s culture: a strong, stifling left wing bias that valued diversity and gender equity to a point of morality. Damore began by noting from the start that he favored diversity and gender equality, but noted that Google had a policy of affirmative discrimination against white males in its pursuit of these goals. He suggested in his memorandum that Google address gender parity problems by creating more executive positions that accommodate camaraderie traits—a trait more common among females, he noted. He further maintained that the culture at Google, and how it treats ideas that run counter to the company mainstream, that:

While Google hasn’t harbored the violent leftists protests that we’re seeing at universities, the frequent shaming… in our culture has created the same silence, psychologically unsafe environment.

He also noted that this mentality comes from an empathy for the perceived downtrodden minorities—that Google’s culture embraced to the point of blocking out other options. He also noted in a footnote that the oppressor-oppressed dynamic bore similarities to and had origins in Marxist theory. Damore explained that Google puts itself in danger as a company for this because conservatives possessed traits that Google’s current mainstream lacked.

Google issued a formal initial response within hours of the memorandum’s public publication from its Vice-President of Diversity, Integrity & Governance, Danielle Brown. She condemned the memorandum as offensive to women and minorities. Google also fired

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388 See Conger, supra note 386.
389 Id.
390 Id.
391 Id.
392 Id.
393 See id.
394 Id.
395 Id.
Damore for “advancing harmful gender stereotypes” in contravention of Google’s company rules. Further, some fellow ex-associates leaked internal Google postings where Google employees stated their intention to create a blacklist for those who opposed Google’s diversity programs. In the aftermath, Damone, reiterated that Google’s virulent left-wing culture of the nature revealed in his memorandum, stating that the workplace culture made right-wingers conceal their true views. YouTube’s chief, Susan Wojcicki, invoking her own daughter’s emotions, thought it a tragedy that new generation had exposure to Damore’s views. Google owns YouTube as one of its properties.

Google also owns AdSense, a company that distributes advertisements within YouTube videos within its terms and service conditions. The British Government, and a number of companies, such as A.T.&T., Verizon, Audi, Toyota and McDonald’s began an advertisement boycott on Google, AdSense and YouTube. The governing bodies cited concerns that YouTube and AdSense showed their advertisements on content containing hate speech—such as white nationalism, homophobia, and sexism—and terrorist advocacy.

Google responded by conducting a full review of how it blocked and allowed advertisements on YouTube videos, which lasted two months. At the conclusion, Google announced that AdSense would no longer target an entire website, and shifted to targeting web pages.

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397 Id.
398 Schmidt, supra note 387.
399 Id.
400 Id.
403 Statt, supra note 402.
404 O’Reilly, supra note 402.
405 Google Promises Stricter Control, supra note 401.

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targeting regime, Google indicated a reluctance to halt AdSense revenues to sites that signed a terms of service agreement unless the site committed repeated violations of terms of service.\textsuperscript{406} In the new page-targeting regime, Google’s Director of Sustainable Ads, Scott Spencer noted that “[p]age level action lets us be more surgical on how we take policy action. We can do so more quickly because we don’t need a certain number.”\textsuperscript{407} Though Google appeared to change the policy to placate its advertising partners, it did gain revenues to $24.8 billion dollars in April, in the heat of the boycott.\textsuperscript{408} Google’s 67.5% market share holding as of March 2014 only adds to the impression of largess.\textsuperscript{409}

YouTube recently changed how it identified and remove what it classifies as inappropriate video content.\textsuperscript{410} YouTube noted that it placed an increased reliance on robots flagging videos.\textsuperscript{411} The robots flagged more than three-quarters of the removed videos “before receiving a single human flag.”\textsuperscript{412} YouTube also announced that it implemented a search engine system which contained trip wires for certain keywords.\textsuperscript{413} If a word in the search engine matches any “sensitive keywords,” the search engine directs the user to videos designed to counteract “extremist messages.”\textsuperscript{414} Further, YouTube also created an entire separate video state for certain flagged videos that do not violate YouTube’s Terms of Service, but contain what it terms “controversial religious or supremacist content.”\textsuperscript{415} YouTube plans on preventing monetization through AdSense of these videos, disabling comments, and ratings, and blocking the video from ever featuring on YouTube’s main page.\textsuperscript{416} As of August 2017, YouTube holds the second-most active users on

\textsuperscript{406} See id.
\textsuperscript{407} Id.
\textsuperscript{408} See id.
\textsuperscript{411} Id.
\textsuperscript{412} Id.
\textsuperscript{413} Id.
\textsuperscript{414} Id.
\textsuperscript{415} Id.
\textsuperscript{416} See id.

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its social media website with one-and-a-half billion users worldwide. Only Facebook tops this with its over two billion active users.

Twitter represents another platform that exhibits signs of silencing opinions it deems unsavory. Twitter did this at one time to the race realist figure Richard Spencer by suspending his account; though his content delved into racism, his post contained nothing otherwise objectionable. Twitter also did the same to Kassy Dillon, a conservative columnist. Twitter engaged in a prolonged battle with Milo Yiannopoulos, where it initially de-verified his account, then suspended it altogether after he sent his Twitter followers to poke fun at the actress Leslie Jones. The President Trump’s son, Eric Trump, accused Twitter of censorship after it obscured a tweet because it contained sensitive content. The tweet covered a story featured on the Drudge Report that covered the monthly job reports. Further, during arguments in a state social media case, Justices Kennedy, Alito, Kagan and Ginsburg all indicated a willingness to regard social media as a public square, and subject to free speech jurisprudence. Alexa ranks Twitter as the twelfth most visited site in the world and eighth in the United States. Statista notes that Twitter has the tenth-most active users for August 2017 at 328 million.

418 Id.
420 Frum, supra note 419.
422 See Frum, supra note 419.
424 Id.
427 August 2017 Most Famous Social Network Sites Worldwide, supra note 417.
Facebook’s operations in Silicon Valley operates in a way that suggests a serious desire and means for expansion. In describing efforts at buyouts and copying competitor social media products and features, Vanity Fair noted that:

Facebook has been carefully targeting Silicon Valley upstarts, cataloging potential rivals in an internal database and leveraging its massive user base to neutralize any that begin to pose a threat [to them].

Facebook engaged in mood manipulation research by manipulating the Trending News feed to input happy and sad stories, and a lack of stories to study about the user mood effects. Though the study told of only a small shift in Facebook’s aggregate users’ mood, the study clearly demonstrated a shift, and the large user numbers suggested a measurable numeric impact. The study also possibly underestimated emotive impacts, as the computer systems observing user emotions lumped false positives into true negative messages, and vice versa. Facebook’s head and founder, Mark Zuckerberg also noted that his company has research for telepathy technology for Facebook ongoing.

The C.O.O. of Facebook, Sheryl Sandberg, advocates for revamping an entire business structure to ensure gender and racial parity. Specifically, she states that:

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429 Id.
431 Id.
432 Id.

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Businesses should conduct pay audits by gender and race and ensure fairness in hiring and promotions. They can do this by putting in place clear and consistent criteria, training managers to spot gender bias in their decision making, and tracking outcomes to make sure they’re not systematically passing up women or rating them more harshly.\textsuperscript{435}

Sandberg also expressed concern that in order to close what she perceives as a “wage gap,” there needs to be parity among the sexes in promotions.\textsuperscript{436} She has stated that Facebook practices all of the foregoing proposals “for many years.”\textsuperscript{37} This analysis which Google also expresses within the workplace culture prompted Damore to speak out about the problems that this culture brings in his memorandum.\textsuperscript{438}

Facebook employees also manipulated the platform’s trending news section, but unlike researcher manipulation, these employees engaged in active, blatant censorship.\textsuperscript{439} Gizmodo described the typical employee manned at the trending news section, called “curators,” as:

>[A] small group of young journalists, primarily educated at Ivy League or private East Coast universities, who curate the “trending” module on the upper-right-hand corner of the site.\textsuperscript{440}

Some curators who spoke on the condition of anonymity revealed that Facebook’s trending news section did not operate as a body that merely allowed news stories to rise and fall on the platform organically.\textsuperscript{441} Rather, the curator’s supervisors told these curators and other curators to suppress content covering stories that had a right-wing bent or interest, such as the

\textsuperscript{435} Id.
\textsuperscript{37} See id.; Sandberg, supra note 434.
\textsuperscript{438} Compare Brancaccio, supra note 436, and Sandberg, supra note 434, with Conger, supra note 386.
\textsuperscript{440} Nunez, supra note 439.
\textsuperscript{441} Id.
I.R.S. scandal with Lois Lerner. These curators also noted that their supervisors also wanted to inject stories into the trending news section that otherwise would not rise organically that had a left-wing bent or interest, such as a Black Lives Matter protest. Though Facebook claimed that an internal non-independent investigation revealed no such manipulation, the curators had notes in their possession of what stories they blocked that bolstered their story.

Ideological concerns which criticize attitudes perceived as expressing anti-minority sentiments appear more prevalent in Western Europe than in the United States, expressed through Google’s attitudes. In a northern English city called Rotherham, a court of law convicted eight Paki men of numerous rape, grooming, indecent assault, and false imprisonment of teenage girls from a white working class background. In the shadow of the trial, the British government published a report that showed that the police refused to investigate reports coming from the victims of these crimes, in the face of D.N.A. evidence and other credible evidence. The report cited an internal culture and political pressure from Rotherham’s left-wing council of not appearing racist toward Pakistanis as the reason why the police refused to investigate credible reports. Further, news reports note that this type of ‘anti-racist’ culture remains firmly in place in Rotherham and elsewhere in the United Kingdom.
III. ANALYSIS

The problems illustrated in the previous section definitively come from a virulent strain of left-wing ideology that implements implicitly an oppressor-oppressed model to guide its common goals and actions. Supra note 386. Left-wingers who do not subscribe to these general parameters, however, do not represent the problem. See Conger, supra note 386; Beale, et al., supra note 319. Accordingly, this ideology becomes distinct and delineable from the greater left-wing. See Conger, supra note 386; Beale, et al., supra note 319. The ideology perceives the oppressors as the white male, and the oppressed as any non-white and any woman. See Conger, supra note 386; Beale, et al., supra note 319. These attitudes permeate throughout corporate culture, particularly in technology companies that control large shares of their markets, universities and academia, and even areas of the federal government itself. See Conger, supra note 386; Beale, et al., supra note 319. The fact that these attitudes found a deeper foundation abroad suggests, and this culture of protest motivated by this ideology confirms, that the possibility of the United States falling prey to this ideology’s throes. See Conger, supra note 386; Beale, et al., supra note 319. Such is the threat that this grouping of people—the Violent Left—to United States citizens, that it demonstrates “an actual problem in need of solving.”

To this end, this Note proposes:

- First, That Congress pass, pursuant to its War Powers, and the President sign into law the following provisions which shall remain in effect for five years:

  1. A prohibition of any educational institution instructing its student body on theories implementing an oppressor-oppressed model using race, sex, gender, orientation, and the like or successor theories.

  2. A grant of federal funds totaling ten percent of total gross company revenues or one-hundred-million


450 See Conger, supra note 386; Beale, et al., supra note 319.
451 See Conger, supra note 386; Beale, et al., supra note 319.
452 See Conger, supra note 386; Beale, et al., supra note 319.
453 See Conger, supra note 386; Beale, et al., supra note 319.
454 See Grutter, 123 S. Ct. at 2340; Conger, supra note 386; Beale, et al., supra note 319; Edmonds, supra note 365; Turley, supra note 213; French, supra note 212.
455 See, e.g., Beale, et al., supra note 319; Halliday, supranote 445.
457 See U.S. CONST. art. I, § 8, cl. 11.
dollars (whichever is greater) to any video or social media platform accessible via the internet that modifies its algorithmic formulae to discourage theories implementing an oppressor-oppressed model using race, sex, gender, orientation, and the like or successor theories.

3. A federal tax credit to video content creators that make content in opposition to theories implementing an oppressor-oppressed model using race, sex, gender, orientation, and the like or successor theories at a rate of two dollars per minute of video played by a viewer other than the content creator, where such video airtime can be demonstrated to the Internal Revenue Service.

- Second, That Congress pass, pursuant to its Spending Powers, and the President sign into law, a measure that requires that a learning institution refrain from maintaining indoctrinal courses and coursework as a condition for remaining eligible for future federal teaching and research grants. Religious learning institutions and courses are exempt from this provision within the context of instruction of its own religious practices.

The proposal accounted for Justice Jackson’s concurring analysis in Youngstown where he made the observation that executive power reaches its apex when exercised with Congressional approval. In such circumstances, courts only strike down such an act when it reaches beyond the federal government’s authority.

With this in mind, Brown requires that a restriction on speech “must be actually necessary to the solution,” in order for such a law to pass strict scrutiny. In this context, the Supreme Court’s admonishment, that “[i]t is rare that a regulation restricting speech because of its content will ever be

460 Id.
461 Brown, 131 S. Ct. at 2738; see also U.S. CONST. amend. I (“Congress shall make no law...abridging the freedom of speech....”).

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permissible,” cannot go unnoticed.462 The Playboy case also stated explicitly that strict scrutiny applied in content-based regulations, regardless of whether the regulation amounted to a ban, or merely an increased burden in expressing the speech.463 Thus, where a compelling government interest exists, the government must normally adopt the more narrowly tailored policy as an alternative to the policy pursued by the government if a narrower option exists.464 “[S]ituations presenting some grave and imminent danger the government has the power to prevent” provides a possible outlet for content-based restrictions, though remains “most difficult for the government to prevail.”465

Also, because the proposal touches and concerns the internet, the newest form of communications and commercial intercourse, it must conform to the bounds of the Commerce Clause.466 Lopez requires that legislation regulate the use of channels or commodities in interstate commerce, protect an instrument or thing in such commerce, or otherwise “substantially affect” such commerce to conform to these bounds.467 Courts subject such power’s exercise to a rational review test.468 Accordingly, the court strikes down such laws only when no logical reason for a law facially appears or attaches from an offer of proof, or inordinately infringes on fundamental rights.469

The exercise of the spending power must attach in pursuit of “the general welfare,” and bear a relation to a federal interest.470 If this power places conditions on a State to receive funds, these conditions “must [attach] unambiguously . . . , enable[ing] the States to exercise their choice knowingly, cognizant of the consequences of their participation.”471 Further, Congress cannot use the spending power to entice States to commit to an independently unconstitutional enterprise.472

463 Id. at 1886.
464 See id.
466 See U.S. CONST. art. I, § 8, cl. 3.
469 Id. at 783, 783 n.4.
471 Id.
472 Id. at 2798.
Most of the proposal implicates War Powers that allow more in the exercise of federal power than otherwise. Even so:

[The war power is] a power to wage war successfully, and thus it permits the harnessing of the entire energies of the people in a supreme co-operative effort to preserve the nation. But even the war power does not remove constitutional limitations safeguarding essential liberties.

Nonetheless, so long as it falls within the scope of the needed powers, the war power implicates speech restrictions. Further, economic emergencies may also permit powers under the Commerce Clause that would otherwise not be permitted.

Section A applies the case law to the educational institution prohibitions in the context of the War Power and Freedom of Speech. Section B implements the Commerce and Spending Powers case law upon the federal fund grant to the online-media-platforms, and the per-minute-tax-credit-for-content-creators provisions. Section C uses Spending Powers jurisprudence on the anti-indoctrination provision.

A. The War Power & the Free Speech Restrictions Provisions

The Supreme Court’s general normal standard for speech outside of war and emergency contexts presents itself in *Brandenburg* where punishment cannot attach for speech unless it creates “imminent lawless action.” Nothing in this opinion will change *Brandenburg*’s core standard inasmuch as it applies in all contexts outside of war. But protestor violence emerging from speech of the type concerned here receives its propellant as to basic premises from corners of society ranging from academia, to the internet. This problem remains entrenched without an end in sight, without

475 See, e.g., Schenck v. United States, 39 S. Ct. 247, 249 (1919); but c.f., Brandenberg v. Ohio, 89 S. Ct. 1827, 1832 (1969) (Douglas, J., concurring) (“Though I doubt if the ‘clear and present danger’ test is congenial to the First Amendment in time of a declared war, I am certain it is not reconcilable with the First Amendment in days of peace.”).
476 See Wickard v. Filburn, 63 S. Ct. 82, 89–91 (1942).
477 See *Brandenburg*, 89 S. Ct. at 1830.
478 Id.
479 See, e.g., Beale, et al., supra note 319; Nunez, supra note 442; Lewis, supra note 376.
government addressing this problem in a meaningful way.\textsuperscript{480} This situation creates an emergency sufficient to warrant using the War Power; for without this vigilance, the nation risks total subversion.\textsuperscript{481} Such a warrant, combined with the War Power's use necessitates a different standard from \textit{Brandenburg}, for this power contains the power to levy a successful defense.\textsuperscript{482} The original standard applicable to speech in \textit{Schenck}, which required that the speech's content must pose a “clear and present danger” for evils that Congress sought to prevent, found first application in an emergency context.\textsuperscript{483} The defendant created, printed and distributed pamphlets to military men called to arms to defend the United States during the First World War for the purpose of causing obstruction of war efforts and insubordination.\textsuperscript{484} For this, the trial court tried and convicted him for a violation of the Espionage Act.\textsuperscript{485} The Supreme Court upheld his conviction unanimously, and in doing so, noted that:

\begin{quote}
When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured . . . \textsuperscript{486}
\end{quote}

The Supreme Court applied this standard in contexts outside of war, but in situations where the perceived climate and act proved so severe that the “clear and present danger” standard applied in such an emergency context.\textsuperscript{487} The \textit{Dennis} court faced a defendant that tried to organize a communist society into a political party, and have that party topple the United States government, through advocacy.\textsuperscript{488} The trial court convicted the defendant of the charges based upon that broad fact pattern.\textsuperscript{489} The Supreme Court applied Judge Hand’s formulation of “clear and present danger,” which took the

\begin{footnotes}
\item[480] See \textit{Grutter}, 123 S. Ct. at 2340; \textit{Conger}, supra note 386; Beale, et al., supra note 319; Edmonds, supra note 365; Turley, supra note 213; French, supra note 212.
\item[482] Compare \textit{Brandenburg}, 89 S. Ct. at 1830, \textit{with Korematsu}, 65 S. Ct. at 197–98 (Frankfurter, J., concurring).
\item[483] See \textit{Schenck}, 39 S. Ct. at 249.
\item[484] Id. at 248.
\item[485] Id. at 247–48.
\item[486] Id. at 249.
\item[487] See \textit{Dennis}, 71 S. Ct. at 861–62, 867–68.
\item[488] Id. at 861–62.
\item[489] Id.
\end{footnotes}
“gravity of the evil” sought and subtracted from it the evil’s “improbability.” The court praised this interpretation as the most inclusive one available. Through this application, the Supreme Court affirmed the defendant’s conviction.

The case at hand does not project a perfect analog to Dennis: there exists no discernable, concerted effort to topple the government in the case at bar. However, there does exist mutual interests between multiple factions that create a real propensity toward a similar result. Such a result appearing more prevalently in the United Kingdom only adds weight to this concern. The severity of the case at bar certainly creates more of a societal danger than handing out some pamphlets to the troops telling them not to fight.

Applying the Hand formulation in Dennis, adherents of the ideology concerned seek to have their beliefs enshrined throughout American society. Whether by legitimate means or otherwise in the context of emergency remains irrelevant: the most radical among these ranks produce an evil result—the curtailment of the rights of others. Further, the goal not only has a real probability of success: to some extent, the adherents already succeeded. The improbability of success renders itself lessened when the United Kingdom’s police situation allows itself to elucidate its transmission into ideological success.

490 Id. at 867–68.
491 Id. at 868.
492 Id. at 871.
493 Compare id. at 868–69, with Grutter, 123 S. Ct. at 2340, and Conger, supra note 386, and Beale, et al., supra note 319, and Edmonds, supra note 365, and Turley, supra note 213, and French, supra note 212.
494 Compare Dennis at 868–69, with Grutter, 123 S. Ct. at 2340, and Conger, supra note 386, and Beale, et al., supra note 319, and Edmonds, supra note 365, and Turley, supra note 213, and French, supra note 212.
495 Compare Mail Online Reporter, supra note 449, and Halliday, supra note 445, with Grutter, 123 S. Ct. at 2340, and Conger, supra note 386, and Beale, et al., supra note 319, and Edmonds, supra note 365, and Turley, supra note 213, and French, supra note 212.
497 Dennis at 869.
498 See Grutter, 123 S. Ct. at 2340; Conger, supra note 386; Beale, et al., supra note 319; Edmonds, supra note 365; Turley, supra note 213; French, supra note 212.
499 See Grutter, 123 S. Ct. at 2340; Conger, supra note 386; Beale, et al., supra note 319; Edmonds, supra note 365; Turley, supra note 213; French, supra note 212.
500 See Grutter, 123 S. Ct. at 2340; Conger, supra note 386; Beale, et al., supra note 319; Edmonds, supra note 365; Turley, supra note 213; French, supra note 212.
501 See Mail Online Reporter, supra note 449; Halliday, supra note 445.
Curtailing this type of speech to places outside of the proposal’s targeted areas allow a more searching scrutiny of these ideas in a way not currently provided now.\textsuperscript{502} In doing so, the proposal otherwise keeps the rights of all unmolested. This addresses the university situation.

B. Spending Powers As Applied to Online Platforms

The free speech arguments use substantially the same fact pattern.\textsuperscript{503} Accordingly the arguments that allow the curtailing of speech in educational settings permit it on online platforms.\textsuperscript{504} Thus, the online provisions pass constitutional muster if Congress holds such power to pass such provisions under the Commerce Clause and the Spending Clause.\textsuperscript{505}

Major internet companies produced online platforms that generate much in the way of information that many persons use and visit.\textsuperscript{506} Two billion people actively use Facebook alone.\textsuperscript{507} One-and-a-half billion actively use YouTube; another over 300 million people use Twitter.\textsuperscript{508} Google by far dominates the remainder of the search engine market by boasting more than two-thirds of the entire search engine market share.\textsuperscript{509} AdSense’s distribution of advertisements to YouTube video makers helps contribute in Google’s $24.8 billion take for April 2017 alone.\textsuperscript{510}

This commercial and monetary largess allows for a finding that the worldwide web, at minimum, “substantially affects commerce” on its face—the minimum requirement under \textit{Lopez}.\textsuperscript{511} The policy touches and concerns no fundamental rights besides the speech question previously addressed.\textsuperscript{512} Accordingly, a logical relation for the policy, whether facially obvious or

\textsuperscript{502} See generally Grutter, 123 S. Ct. at 2340; Conger, supra note 386; Beale, et al., supra note 319; Edmonds, supra note 365; Turley, supra note 213; French, supra note 212.

\textsuperscript{503} See supra Part III, Section A.

\textsuperscript{504} See id.

\textsuperscript{505} See \textit{Lopez}, 115 S. Ct. at 1630; \textit{Dole}, 107 S. Ct. at 2796; \textit{Carolene Products}, 58 S. Ct. at 783, 783 n.4.

\textsuperscript{506} See, e.g., \textit{August 2017 Most Famous Social Network Sites Worldwide}, supra note 417.

\textsuperscript{507} Id.

\textsuperscript{508} Id.

\textsuperscript{509} March 2014 U.S. Search Engine Rankings, supra note 409.

\textsuperscript{510} See Google Promises Stricter Control, supra note 401.


\textsuperscript{512} See supra Part III, Section A.
proffered, suffices to meet constitutional muster under the Commerce Clause.\textsuperscript{513}

The spending under this proposal seeks to maneuver largess away from the heavily centralized giants of Google, Facebook, YouTube, and Twitter.\textsuperscript{514} The proposal creates two outlets for doing just this. First, the provisions create financial incentives for currently existing, much smaller competitors to cooperate with government. Second, the provisions offer an incentive for individuals to enter the market, and target the centralized giants’ market share. The provisions conform to Chief Justice Roberts’s admonition that a law does not “compel[] individuals to become active in commerce by purchasing a product,” because the product in question already exists.\textsuperscript{515} Further, the provisions correspond to eroding what clearly amounts to a monopoly, given the market share and money flowing through these entities alone.\textsuperscript{516} The Supreme Court long ago considered this a constitutionally valid power that conforms to a perfectly rational reason for Congress to intervene in economic matters.\textsuperscript{517} This permits a finding of full \textit{Lopez} compliance for these provisions under the Commerce Clause.

The facts mentioned also permit compliance under \textit{Dole}.\textsuperscript{518} The company facts show a clear federal interest in pursuit of “the general welfare.”\textsuperscript{519} As mentioned before, no other constitutional violation apparently

\begin{footnotes}
\textsuperscript{513} Carolene Products, 58 S. Ct. at 783.
\textsuperscript{514} See August 2017 Most Famous Social Network Sites Worldwide, supra note 417; March 2014 U.S. Search Engine Rankings, supra note 409; Google Promises Stricter Control, supra note 401.
\textsuperscript{516} See August 2017 Most Famous Social Network Sites Worldwide, supra note 417; March 2014 U.S. Search Engine Rankings, supra note 409; Google Promises Stricter Control, supra note 401.
\textsuperscript{517} See Standard Oil Co. of New Jersey v. United States, 31 S. Ct. 502, 519 (1911).
\end{footnotes}
exists. Because the entities in question are companies and not State governments, the requirements for States do not apply.

C. Spending Powers in Learning Institutions

The anti-propaganda provision implicates itself here. The fact patterns that applied in the other sections apply substantially here. The provisions specifically avoid the only other constitutional concern—an Establishment Clause question—by exempting religious institutions from this provision within the scope of its religious practices. Accordingly, because the provisions carry the possibility of implicating some state-run universities, the sole inquiry questions whether the conditions:

[Attach] unambiguously . . . , enabl[ing] the States to exercise their choice knowingly, cognizant of the consequences of their participation.

The provision’s purpose foresees a time after the other provisions lapse, and rather rewards state university that avail itself to anti-propaganda measures by contributing toward university coffers. The state university always has the option to refuse the funding, and requires an affirmative choice on the university’s part to gain the funding. Thus, the provision conforms to Dole’s previously mentioned admonition with regard to the federal government’s relation to the States, and therefore passes constitutional scrutiny.

IV. RECOMMENDATIONS

There may be a risk of certain governmental sectors that show hostility to the provisions or otherwise refuse to enforce them. Strict enforcement of

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520 See Dole, 107 S. Ct. at 2798; supra Part III, Section A.
522 See supra Part III, Sections A–B.
523 See generally U.S. CONST. amend. 1 (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ”).
524 See Dole, 107 S. Ct. at 2796. This concern does not apply to private universities, and as such, the provisions pass constitutional muster as to private universities. See Id. at 2796, 2798; supra Part III, Sections A–B.
525 See Dole, 107 S. Ct. at 2796.
526 See, e.g., Turley, supra note 213.
An analog to espionage similar to the type in Korematsu for non-government civilians permits more stringent enforcement, and should attach to the enforcement state. An administrative task force within the Department of Justice and corresponding executive orders for the provisions permit its enforcement on the ground in universities and in the corresponding internet companies create an avenue for a civilian enforcement analog.

To enforce the provisions designed to remove this ideology most effectively, the executive needs to provide oversight over the courses and materials taught to college pupils. To that end, pursuant to the provisions, all universities would need prior governmental approval before it could teach a particular course or materials, or a corresponding deviance from an original course syllabus. For this, a board of censors in the Department of Education working in tandem with the Department of Justice task force shall peruse any submitted course syllabus, materials or amendment therein. This board would outline this purpose to enforce the tax credit university provisions for participating universities, and enforce this provision in a similar manner to the ideological removal provisions.

In order to ensure best that internet media and video platforms that avail themselves of the federal funds from algorithm modifications, the government must require such platforms to claim and prove compliance. Thus, if a company fails to claim this, it shall receive no funds. Government can determine compliance by keeping federal officers in the headquarters where the company employees make algorithm modifications. Government can also use spy resources to delve into the company’s algorithmic programming to ensure compliance. Government can cross-reference this by having other employees search for content relating to the ideology in question, or its opposition. YouTube, for example, already has the ability to so program it algorithms this way, because it currently programs its algorithms to target content its corporate culture finds repugnant.

Similar procedures could be used to ensure compliance among participating content makers. Though the number of content makers would likely prove too great to have a federal officer check every single one, the government could still provide additional space on tax forms to ensure compliance for the subsidy. The content maker would then use this additional space to provide channel and video information, including the title

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527 See, e.g., id.
528 See Korematsu, 65 S. Ct. at 216–17.
529 See An Update on Our Commitment to Fight Terror Content Online, supra note 410; Schmidt, supra note 387.

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for the channel and applicable videos and the corresponding web link. From here, federal authorities would cross-check this information with duplicate claims from others—which would require further investigation—and spy resources to ensure the truth of the claimant’s production claims. This includes checking the video’s content and the creator’s public claims to ensure against subversion and for conflict against the ideology in question. Any irregularities would warrant further governmental investigation.

V. CONCLUSION

Protestors at universities, such as those belonging to Antifa and B.A.M.N.—a number of which are students—promote a culture of violence at universities. Faculty and administration encourage this by promoting a world view that touches, concerns and fosters violence. This ideological culture also contributes to a culture of silence among dissenters which hinders or disables the normal discourse of ideas expected in a healthy environment. This culture of violence and silence corrode political society by hindering the normal flow of communicative discourse. Thus, these cultures must cease with all haste. Accordingly, the federal government should halt all instruction and class material distribution fueling this culture consistent with the foregoing policy prescriptions in this Note.

Internet search engine companies, and social media and video platforms share blame in abetting this culture of silence and violence. These companies promote similar views in their corporate culture, and act upon these views by removing income sources from dissenters, and hindering political opposition from promoting its message through such services’ use. The size of these corporations ensure an economic and therefore political ideological monopoly.

Offering financial subsidies to such platforms helps to remedy the ideological problems in three ways. First, the companies in question receive a financial incentive to reform their behavior and remove any bad actors from their corporations that would hinder this goal. Second, competing and otherwise lesser companies receive support necessary to offer themselves as competition and an alternative to the companies in question. This allows competitors to grow and ensure a fairer market distribution balance. Third, people that want to offer an alternative to the corporations in question now have a financial means of doing so. This provides an additional check on these corporations’ monopoly, and provides yet another outlet for an erosion of a monopoly. Thus, the federal government should offer such subsidies consistent to those offered within this Note.

Offering financial subsidies to video content creators allows a parallel benefit created on search engine and media platform companies to exist
among content creators. However, there also exists a collateral benefit of promoting content that promotes an ideological perspective hostile to the one dominant on universities and these corporate realms. This encourages a multiplier effect, promotes a repulsion from this ideology in question, and helps entrench a counter-culture of sorts. Further, the five year limit on all the War Powers provisions serves to prevent the ideological opposite from becoming violent, and instead permits a more even playing field that discourages violence in the future. As such, the federal government should create such subsidies consistent to those offered within this Note.

In a similar vein, the interest in removing ideological entrenchment from the universities exists to promote a freer campus environment for those that wish no harm or ill-will. Accordingly, the anti-propaganda measures exist in the interest of preventing other such future problems. This provision allows the government to stem any such overwhelming ideological tide to entrench itself into campus propaganda in classwork. This permits a more permanent de-escalation. Therefore, the federal government should permit such a subsidy consistent with the foregoing policy prescriptions in this Note.