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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.¹ Weinstein faced outside of his classroom from those students angry racism accusations—almost outcries—and furious calls for his ouster.² 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.³

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.⁴ The impetuous beginnings lie in an assault committed by two black males upon an Olympia police officer, in which the officer shot both culprits.⁵ 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.⁶ 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.⁷ Though the Equity Plan contained other elements, the diversity training constituted the most contentious element.⁸ Further, some Evergreen State College students claimed racism on the part of the college.⁹ These students expressed this sentiment through protest at college events.¹⁰

The reason Weinstein faced this outcry relates to the college's efforts to implement more diversity training.¹¹ Weinstein opposed the proposal out of a concern that it would lead to unqualified minority hires.¹² He also expressed a concern that this campus-wide focus on professor skin color would distract from the actual educational mission of the college.¹³ Further, Weinstein saw a collective, phantom-like search for racism where none existed in the overall Equity Plan.¹⁴ Specifically, he expressed that "[w]hen

¹ Katherine Long, *Long-Simmering Discord Led to Evergreen's Viral Moment*, SEATTLE TIMES (June 10, 2017, 7:06 PM), <http://www.seattletimes.com/seattle-news/education/discord-at-evergreen-state-simmered-for-a-year-before-it-boiled-over/>.

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.”¹⁵

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

The incident at Evergreen State College, far from isolated, represents a dramatic example of the greater problem of prevailing campus culture and attitudes.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.²² This Note discusses limiting the prevalence of attitudes like those dramatically exhibited at Evergreen State College upon Professor Weinstein.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

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

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....”).

²² See *generally id.* (noting that Professor Weinstein received threats for refusing to leave campus for the “Day of Absence,” discussed *supra* Introduction).

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

²⁴ See *id.*; The Canadian Press, *A Timeline in the Scandal Involving the Dentistry School at Dalhousie University*, CITY NEWS (Can.) (June 29, 2015, 7:00 PM), <http://www.citynews.ca/2015/06/29/a-timeline-in-the-scandal-involving-the-dentistry-school-at-dalhousie-university/>; *Dalhousie Facebook Posts 'Completely Unacceptable,' Says Professor*, C.B.C. NEWS (Can.) (Jan. 4, 2015, 4:19 PM), <http://www.cbc.ca/news/canada/nova-scotia/dalhousie-facebook-posts-completely-unacceptable-says-professor-1.2889231>.

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.

²⁶ *Dalhousie University Probes Misogynistic Student 'Gentlemen's Club'*, C.B.C. NEWS (Can.) (Dec. 17, 2014, 12:00 AM), <http://www.cbc.ca/news/canada/nova-scotia/dalhousie-university-probes-misogynistic-student-gentlemen-s-club-1.2873918>.

²⁷ *Id.*

²⁸ *Id.*

Though Dalhousie University ultimately rejected the professors' complaint, the university accepted the student complaint.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.³⁰ The university also barred from graduation until the suspension's termination.³¹ Thirteen dental students—the identities of which the university declined to reveal—received such suspensions.³² Dalhousie University President Richard Florizone considered the Facebook posts “unacceptable and deeply disturbing.”³³

Despite the university's response, the administration faced criticism in its handling of the issue.³⁴ The university faced pressure to inflict even more punishment up to and including expulsion.³⁵ An internet group threatened to reveal the suspended students' identities unless the university complied with its demands by a set deadline.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.³⁷ Protesters expressing disgust at the thirteen suspended students likewise wanted the students expelled and the university to address what it considered campus sexism.³⁸ The Dalhousie

²⁹ *A Timeline in the Scandal Involving the Dentistry School at Dalhousie University*, *supra* note 24.

³⁰ *Id.*

³¹ *Dalhousie Suspends 13 Dentistry Students from Clinic amid Facebook Scandal*, C.B.C. NEWS (Can.) (Jan. 5, 2015, 11:52 PM), <http://www.cbc.ca/news/canada/nova-scotia/dalhousie-suspends-13-dentistry-students-from-clinic-amid-facebook-scandal-1.2889635>.

³² *A Timeline in the Scandal Involving the Dentistry School at Dalhousie University*, *supra* note 24.

³³ *Dalhousie University Probes Misogynistic Student 'Gentlemen's Club'*, *supra* note 26.

³⁴ See generally *Dalhousie Dentistry Facebook Scandal Prompts Protest*, C.B.C. NEWS (Can.) (Jan. 5, 2015, 9:37 PM), <http://www.cbc.ca/news/canada/nova-scotia/dalhousie-dentistry-facebook-scandal-prompts-protest-1.2890052>, (noting that Dalhousie University received complaints over the posts since Summer 2014).

³⁵ See, e.g., Marieke Walsh, *UPDATED: Online Group Claiming to Be Anonymous Targets Dalhousie over Facebook Scandal*, GLOBAL NEWS (Can.) (Jan. 7, 2015, 12:29 PM), <http://globalnews.ca/news/1742713/online-group-claiming-to-be-anonymous-targets-dalhousie-over-facebook-scandal/>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Alison Auld & the Canadian Press, *Dalhousie University Suspends 13 Dentistry Students in Facebook Scandal*, TIMES COLONIST (Can.) (Jan. 5, 2015, 5:53 AM), <http://www.timescolonist.com/dalhousie-university-suspends-13-dentistry-students-in-facebook-scandal-1.1704474>.

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

The university ultimately created a task force to identify perceived administrative problems and implement reform recommendations to avoid future problems.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.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.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.⁴³ The women in question felt no offense to the posts that garnered the most media publicity.⁴⁴ Rather, they objected the idea that they used their feminine wiles to garner better grades.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.”⁴⁶ Through it all, the suspended students experienced suicidal thoughts and wide media scrutiny probing every possible angle of the incident at Dalhousie University.⁴⁷

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

³⁹ See *Dalhousie Dentistry Scandal a Call to Action, Says Student Union*, C.B.C. NEWS (Can.) (June 30, 2015, 6:07 PM), <http://www.cbc.ca/news/canada/nova-scotia/dalhousie-dentistry-scandal-a-call-to-action-says-student-union-1.3133642>.

⁴⁰ See *id.*; *A Timeline in the Scandal Involving the Dentistry School at Dalhousie University*, *supra* note 24.

⁴¹ See *A Timeline in the Scandal Involving the Dentistry School at Dalhousie University*, *supra* note 24.

⁴² See Jennifer Tryon & Nick Logan, *Dalhousie Dentistry Students Break Silence on ‘Gentlemen’s Club’ Facebook Scandal*, GLOBAL NEWS (Can.) (May 22, 2015, 9:14 AM), <http://globalnews.ca/news/2010585/dalhousie-dentistry-students-break-silence-on-gentlemens-club-facebook-scandal/>.

⁴³ See *id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See *id.*

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.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.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.⁵¹

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

Another race related incident further drew protester ire on the University of Missouri-Columbia campus: namely the disruption of a black-student “safe-space.”⁵³ Specifically, a drunken student reportedly used racial slurs during a Legion of Black Collegians meeting.⁵⁴ The club stated that “we were... made victims of blatant racism in a space that we should be made to feel safe.”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.⁵⁶ Initially, the university acted sympathetically to these concerns by mandating training for students and faculty on diversity and inclusion.⁵⁷

All this changed in the talks between the University System

<http://www.washingtontimes.com/news/2016/mar/1/university-of-missouri-gets-tough-with-protesters/>.

⁴⁹ Compare Michael Pearson, *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 deploring 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.”).

⁵⁰ Pearson, *supra* note 49.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *See id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *See id.*

President and Concerned Student 1950.⁵⁸ The talks occurred as a response to the protests, with Concerned Student 1950 requesting from the talks that its demands be met.⁵⁹ 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."⁶⁰ 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.⁶¹ The talks ultimately failed with the president refusing Concerned Student 1950's demands.⁶² From here, tensions further escalated, and eventually culminated in the forced resignation of the University System President anyway.⁶³

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.⁶⁴ 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.⁶⁵ 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.⁶⁶

Even the less ominous protestor activity provided but scant consolation for the students trying to go about their daily lives.⁶⁷ Communications between two members of the university administration illustrated that:

⁵⁸ See *id.*

⁵⁹ See *id.*; see also Allison Colburn & Liv Paggiarino, *Stop Making Demands: Interim UM President, Diversity Chancellor to Concerned Student 1950*, COLUM. MISSOURIAN (Feb. 26, 2016), http://www.columbiamissourian.com/news/higher_education/chuck-henson-mike-middleton-suggest-concerned-student-end-demands/article_86bcba62-dc18-11e5-ac6b-8fecdf9531f5.html.

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.

⁶⁴ See Jillian Kay Melchior, *Mizzou Records Show Students Feared Violence and Felt Targeted by Protesters*, NAT'L REV. (Apr. 20, 2016, 4:00 AM), <http://www.nationalreview.com/article/434260/mizzous-protesters-frightened-many-campus>; Colburn, et al., *supra* note 59.

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

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See Pearson, *supra* note 49; see also Colburn, et al., *supra* note 59; William Schmitt, *UM Curators Fire Melissa Click after Months of Controversy*, COLUM. MISSOURIAN (Feb. 25, 2016), http://www.columbiamissourian.com/news/higher_education/um-curators-fire-melissa-click-after-months-of-controversy/article_9651a958-dbee-11e5-98f0-67a0643587cb.html.

⁷¹ Schmitt, *supra* note 70; see Pearson, *supra* note 49.

⁷² Richard Pérez-Peña, *University of Missouri Fires Melissa Click, Who Tried to Block Journalist at Protest*, N.Y. TIMES (Feb. 25, 2016), https://www.nytimes.com/2016/02/26/us/university-of-missouri-fires-melissa-click-who-tried-to-block-journalist-at-protest.html?_r=0.

⁷³ *Id.*

⁷⁴ See Colburn, et al., *supra* note 59; Pérez-Peña, *supra* note 72; Pearson, *supra* note 49.

⁷⁵ Pérez-Peña, *supra* note 72; Tajha Chappellet-Lanier, *A Suspension for Melissa Click*, ATLANTIC (Jan. 28, 2016), <https://www.theatlantic.com/education/archive/2016/01/melissa-click-suspended-mizzou/432564/>.

Student 1950 increased its initial demands.⁷⁶ The group wanted the university to allow a student to expunge an entire semester's grades from an academic record if desired.⁷⁷ Concerned Student 1950 also pressed for a racial awareness workshop in academic and orientation programs.⁷⁸ 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.⁷⁹ 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.⁸⁰ The demands—both old and new—also came with a new condition: a deadline for implementation.⁸¹

The university administration flatly rejected these revised demands.⁸² 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."⁸³ Though this effectively halted the protests at the University of Missouri-Columbia, they already impacted the university.⁸⁴ 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.⁸⁵ 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.⁸⁶

2. Protests at Berkeley

These protests however, pale in comparison to the recent protests at U.C. Berkeley.⁸⁷ 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.*

⁸⁴ See Editorial Board, *Mizzou's Paying the Price for Lame Response to Racial Protests*, N.Y. POST (May 23, 2016, 7:58 PM) [hereinafter N.Y. POST ED. BD.], <http://nypost.com/2016/05/23/university-of-missouris-paying-a-price-for-its-lame-response-to-last-falls-racial-protests/>; Colburn, et al., *supra* note 59.

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*, BERKELEYSIDE (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.⁸⁸ Three hours before the event's planned start, protesters started their assembly outside of the event's planned venue.⁸⁹ The police already installed barricades outside the building perimeter in anticipation of protester violence.⁹⁰ The protests began peacefully enough, with protestors alleging Yiannopoulos's "fascism," and chants such as "[s]hame," serving as the most hostile reactions.⁹¹

Then nearly one hour thereafter, 150 protesters dressed in black with their faces concealed entered the fray.⁹² In their arrival to the protests, these new protesters carried black and communist-themed banners.⁹³ They came with the explicit intent to stop the event.⁹⁴ 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.⁹⁵ They also ignited lighting that created fireballs, which soared up to six feet into the air.⁹⁶ These protesters sustained this for nearly half-an-hour before Berkeley cancelled the Yiannopoulos event.⁹⁷

Though the violent protestors succeeded in stopping the Berkeley College Republicans event, the radical participants continued their violence.⁹⁸ Indeed, the victory served only to increase such impetuousness.⁹⁹ After the announcement, the protestors pitched refuse at the police, who returned paintball and pin fire.¹⁰⁰ Innocent bystanders sustained some injuries.¹⁰¹ One such person experienced injuries with a bicycle lock, and another with pepper spray.¹⁰²

Protesters Shut Down Yiannopolous Events], <http://www.berkeleyside.com/2017/02/02/chaos-erupts-protesters-shut-yiannopolous-events-banks-downtown-vandalized/>, with Pearson, *supra* note 49.

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 protestors pressed harder to include more property damage.¹⁰³ The more radical protestors by this time moved away from the planned venue for Yiannopoulos's speech.¹⁰⁴ They toppled and ignited refuse disposals, and obstructed traffic.¹⁰⁵ 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.¹⁰⁶ As all these events transpired, the Berkeley Police, despite threats to the contrary, stood and did nothing to quash the violence.¹⁰⁷ Altogether, among all the events and the 150 militant protestors that committed the approximately \$100,000 in damages, the police arrested only one person.¹⁰⁸

Protestors in black also branched into other protests.¹⁰⁹ Across the country, supporters of President Donald J. Trump held rallies in various places across the country on the fourth of March.¹¹⁰ 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.¹¹¹

The venue itself served as the cauldron, where a group of seventy-five Trump supporters confronted hundreds of anarchists and other opponents.¹¹² One of these opponents organized themselves under the name "By Any Means Necessary" (B.A.M.N.).¹¹³ This group and other anarchists joined in a

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Michael Bodley, *At Berkeley Yiannopoulos Protest, \$100,000 in Damage, 1 Arrest*, SFGATE (Feb. 2, 2017, 10:22 PM), <http://www.sfgate.com/crime/article/At-Berkeley-Yiannopoulos-protest-100-000-in-10905217.php>.

¹⁰⁹ 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>.

¹¹⁰ See, e.g., Stephen Lam & Tim Branfalt, *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>.

¹¹¹ Compare *id.*, to *Protesters Shut Down Yiannopolous Events*, *supra* note 87.

¹¹² 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>.

¹¹³ Valerie Richardson, *Ten Arrested at March 4 Trump in Berkeley As Protesters Engulf Rally*, WASH. TIMES (March 5, 2017), <http://www.washingtontimes.com/news/2017/mar/5/ten-arrested-at-march-4-trump-in-berkeley-as-prote/>.

bareknuckle brawl between pro-Trump and other anti-Trump protesters.¹¹⁴ In this fight, protestors also swung signs and threw smoke bombs.¹¹⁵ Police confiscated metal pipes, bricks, two-by-four wooden planks, and baseball bats from protestors.¹¹⁶ The police also arrested ten persons.¹¹⁷ It is true that the police arrested one person for resisting arrest, and five for battery.¹¹⁸ 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.¹¹⁹

The Berkeley protests on March 4 served to foreshadow and to forebode the successor protest six weeks later on April 15.¹²⁰ Both protests held similar elements in common, such as confiscated items, arrests and protester violence.¹²¹ But these elements, present in the previous protest, proved exacerbated in the April 15 protests.¹²² Further, these exacerbated elements begat new, worse elements not present in the March 4 Berkeley protest.¹²³

The police guarded the protest venue and delineated the venue limits with temporary orange netting.¹²⁴ The protest organizers intended the event to be a rally for Freedom of Speech, where prominent conservatives would speak to the target audience.¹²⁵ Organizations such as Antifa and B.A.M.N stormed the event.¹²⁶ This constituted a part of a greater concerted counter-protest effort under a coalition called “Defend the Bay! Bloc Party & Cookout.”¹²⁷ As evinced by this coalition’s Facebook page, the counter-protestors sought the explicit goal to impede and stop the Freedom of Speech Rally from transpiring.¹²⁸

¹¹⁴ Johnson, *supra* note 112.

¹¹⁵ *Id.*

¹¹⁶ Amy B. Wang, *Pro-Trump Rally in Berkeley Turns Violent As Protesters Clash with the President’s Supporters*, WASH. POST (Mar. 5, 2017), https://www.washingtonpost.com/news/post-nation/wp/2017/03/05/pro-trump-rally-in-berkeley-turns-violent-as-protesters-clash-with-the-presidents-supporters/?utm_term=.e14c32d202bb.

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.

¹²⁴ Staff, *Free Speech Rally in Berkeley Results in Several Injuries, 20 Arrests*, DAILY CAL. (Apr. 17, 2017) [hereinafter DAILY CAL. STAFF], <http://www.dailycal.org/2017/04/15/free-speech-rally-berkeley-results-several-injuries-least-4-arrests/>.

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.*

¹³¹ Annie Sciacca, et al, *20 Arrested, 11 Injured in Trump-Related Rallies in Downtown Berkeley*, MERCURY NEWS (Apr. 16, 2017, 9:49 AM), <http://www.mercurynews.com/2017/04/15/berkeley-braces-for-planned-pro-anti-trump-rallies/>.

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.*

¹³⁸ Emilie Raguso, *Berkeley Police Chief: ‘Our People Did Exactly What We Asked’ in April 15 Demo*, BERKELEYSIDE (Apr. 19, 2017, 8:53 PM) [hereinafter *Berkeley Police Chief*], <http://www.berkeleyside.com/2017/04/19/berkeley-police-chief-people-exactly-asked-april-15-demo/>.

shared a similar sentiment, stating in vulgar terminology that this type of protestor comes to disrupt violently.¹³⁹

These attitudes appear confirmed through protestor experiences.¹⁴⁰ 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.¹⁴¹ Independent sources confirmed this.¹⁴² A peaceful left-wing participant's experience with political opposites provides a stark experiential contrast to the Trump supporter's experience.¹⁴³ The woman stated that she genuinely tried to engage with her political opposites in the protests, only to hear shouts from one protester exclaiming "Obama hates blacks," and another wishing rhetorically to ask her "why she hat[ed] white people."¹⁴⁴ Though she received a hostile reception, this remained the extent of her encounter with her political opposites before walking away with her body unmolested.¹⁴⁵

Protestors began moving out of the park by noon and fully moved into downtown Berkeley nearly two hours later.¹⁴⁶ 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.¹⁴⁷ 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.¹⁴⁸ 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 protestors not entering the demarcated area.¹⁴⁹ This proximately permitted the previously mentioned protestor injuries to occur.¹⁵⁰

¹³⁹ Paige St. John & Shelby Grad, *How Berkeley Became Epicenter of Violent Trump Clashes*, L.A. TIMES (Apr. 16, 2017, 12:00 PM), <http://www.latimes.com/local/lanow/la-me-berkeley-trump-20170416-story.html>.

¹⁴⁰ 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-ln-berkeley-trump-rally-20170415-story.html>

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ See *id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ DAILY CAL. STAFF, *supra* note 124.

¹⁴⁷ Dizikes, *supra* note 109.

¹⁴⁸ *Id.*; *Berkeley Police Chief*, *supra* note 138.

¹⁴⁹ *Berkeley Police Chief*, *supra* note 138.

¹⁵⁰ 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.¹⁵¹ The Berkeley police needed and requested assistance from the nearby Oakland Police Department.¹⁵² Oakland sent 180 officers which included squads, motorcycle officers, supervisors and commanders, and even a helicopter to help police in their own efforts.¹⁵³ Even with the additional support, the police failed to disperse the protests until more than two hours later.¹⁵⁴ The added resources did permit the Berkeley protests to target specific areas where protestors acted especially violent, and did eventually quell the situation.¹⁵⁵

The police chief officially reported that eight officers experienced protest-related injuries.¹⁵⁶ Unofficial reports from the police chief totaled between sixty to seventy injured officers.¹⁵⁷ These injuries included hearing loss from illegal explosives, pepper spray exposure, and even a knee injury.¹⁵⁸ 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, 2017.¹⁵⁹ Eleven protestors sustained injuries— one of whom experienced a stabbing injury—with seven requiring hospitalization.¹⁶⁰

The protest's highlight involved violence on a right-wing protestor by a philosophy professor.¹⁶¹ During the protests, one of the participants in the Free Speech Rally sustained a blow to the head from a U-shaped bicycle lock.¹⁶² This caught the attention of 4Chan.org users who congregate on the /pol/ message board on the website.¹⁶³ The /pol/ frequenters used video of a

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 lent 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.

¹⁶¹ See generally, Emilie Raguso, *Police Arrest Eric Clanton after Bike Lock Assaults During Berkeley Protests*, BERKELEYSIDE (May 24, 2017, 11:33 PM) [hereinafter *Police Arrest Eric Clanton*], <http://www.berkeleyside.com/2017/05/24/berkeley-police-arrest-eric-clanton-bike-lock-assaults/>.

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),

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.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.¹⁶⁵ Both images of the professor's matched the image of the man swinging a bicycle lock at the protestor.¹⁶⁶

The Berkeley police conducted an investigation into the incident which led to Clanton's arrest.¹⁶⁷ The investigation also yielded other evidence sufficient for charging Clanton for two separate assault counts.¹⁶⁸ All three assault victims in this affair sustained injuries to the head or neck from a bicycle lock.¹⁶⁹ Clanton's employer removed his bio from their webpage after his arrest.¹⁷⁰ As of May 24, the Berkeley Jail held Clanton, and the court planned Clanton's arraignment on May 26.¹⁷¹ The court set Clanton's bail at \$200,000.¹⁷²

Though the last of the four protests proved the mildest by comparison, it still did not pass without incident.¹⁷³ Rather, the events immediately preceding the protests illustrate political intrigue, not violence as the main propulsion vehicle.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 15.¹⁷⁵

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

<http://www.thegatewaypundit.com/2017/04/antifa-terrorist-beat-bloodied-trump-supporter-bike-lock-identified-professor-video/>.

¹⁶⁴ Carter, *supra* note 163.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Police Arrest Eric Clanton*, *supra* note 161.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ Compare Susan Svrluga, William Wan & Elizabeth Dwoskin, *There Was No Ann Coulter Speech. But Protesters Converged on Berkeley.*, WASH. POST (Apr. 27, 2017), https://www.washingtonpost.com/news/grade-point/wp/2017/04/27/theres-no-speech-planned-but-protesters-are-converging-on-berkeley-today/?utm_term=.a4a56a1cf7fb, with Wang, *supra* note 116, and Dizikes, *supra* note 109, and *Protesters Shut Down Yiannopolous Events*, *supra* note 87.

¹⁷⁴ Svrluga, et al., *supra* note 173.

¹⁷⁵ Compare *id.*, with Wang, *supra* note 116.

having Ann Coulter speak to the event's audience.¹⁷⁶ The organizers set their event's date for April 27.¹⁷⁷ On April 19, the university administration cancelled the event, and informed the organizers of the cancellation.¹⁷⁸ 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.¹⁷⁹ Coulter offered similar concessions personally as well.¹⁸⁰ The university administration expressed a concern for violence, in light of the cancellation of the Yiannopoulos event as their proffered reason for cancelling.¹⁸¹ The university offered a May 2 slot, which Coulter rejected due to low turnout potential.¹⁸² 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.¹⁸³ 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."¹⁸⁴

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.¹⁸⁵ The groups organizing the event indicated that they would explore legal options to compel U.C. Berkeley to permit the speech.¹⁸⁶ Even the American Civil Liberties Union—normally Coulter's political opposite—shared this perspective.¹⁸⁷ Coulter expressed that she expected U.C. Berkeley to

¹⁷⁶ Nanette Asimov, *UC Berkeley Orders Cancellation of Ann Coulter Speech*, SFGATE (Apr. 19, 2017, 7:37 PM) [hereinafter *Berkeley Orders Cancellation*], <http://www.sfgate.com/bayarea/article/UC-Berkeley-orders-cancellation-of-Ann-Coulter-11084299.php>.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Nanette Asimov, *Ann Coulter Rejects Cal Offer to Switch Date of Speech*, SFGATE (Apr. 21, 2017, 8:46 AM) [hereinafter *Ann Coulter Rejects Cal Offer*], <http://www.sfgate.com/education/article/UC-Berkeley-changes-plans-invites-Ann-Coulter-to-11087363.php>.

¹⁸³ *Berkeley Orders Cancellation*, *supra* note 176.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Natalie Orenstein & Frances Dinkelspiel, *Coulter Blames UC Berkeley for Cancellation of Her Talk*, BERKELEYSIDE (Apr. 26, 2017, 1:07 PM), <http://www.berkeleyside.com/2017/04/26/ann-coulter-says-uc-berkeley-radical-thuggish-institution-blame-cancellation-talk/>.

compensate her for damages for free speech restrictions.¹⁸⁸ Coulter expressed further defiance by expressing that she would speak on April 27 with or without university approval.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.¹⁹⁰ Some that attended the protest hoped to hear Coulter address them and other attendees.¹⁹¹ The International Socialist Organization responded by organizing an “Alt-Right Delete” counter-rally.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.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.¹⁹⁴ The group echoed U.C. Berkeley in citing safety concerns as the reason for pulling its sponsorship.¹⁹⁵ Later, BridgeUSA cited similar concerns in pulling their support.¹⁹⁶ Coulter personally withdrew from any planned appearance at U.C. Berkeley thereafter.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.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

¹⁸⁸ *Berkeley Orders Cancellation*, *supra* note 176.

¹⁸⁹ *Id.*

¹⁹⁰ Elliott C. McLaughlin, Holly Yan & Carma Hassan, *Berkeley Protests: No Ann Coulter, but Demonstrators Gather*, C.N.N. (Apr. 27, 2017, 10:14 PM), <http://www.cnn.com/2017/04/27/us/berkeley-ann-coulter-canceled-speech-protests/index.html>; Orenstein, et al., *supra* note 187.

¹⁹¹ See Berkeleyside Editors, *Pro-Trump ‘Free-Speech’ Rally Draws Hundreds for Peaceful Protest Downtown*, BERKELEYSIDE (Apr. 27, 2017, 4:19 PM) [hereinafter *Pro-Trump ‘Free-Speech’ Rally*], <http://www.berkeleyside.com/2017/04/27/pro-trump-free-speech-rally-draws-hundreds-peaceful-protest/>.

¹⁹² McLaughlin, et al., *supra* note 190.

¹⁹³ Natalie Orenstein, *UC Berkeley Students Protest April 27 Arrest and Heavy Police Presence*, BERKELEYSIDE (Apr. 28, 2017, 3:31 PM), <http://www.berkeleyside.com/2017/04/28/uc-berkeley-students-protest-april-27-arrest-heavy-police-presence/>.

¹⁹⁴ Orenstein, et al., *supra* note 187.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ McLaughlin, et al., *supra* note 190; Orenstein, et al., *supra* note 187.

planned Yiannopoulos event.¹⁹⁹ Specifically, the police indicated that it held a low tolerance for protestor violence.²⁰⁰ 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.²⁰¹ In addition, the police prohibited items such as baseball bats and projectiles, and kept Antifa protestors away from the protest.²⁰²

The protests themselves did have some minor incidents: the police arrested seven persons, and confiscated numerous weapons.²⁰³ The “Alt-Right Delete” protest effectively proceeded as a news conference where the International Socialist Organization expressed its hope to oppose the right wing.²⁰⁴ 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.²⁰⁵ Even some nearby high school students and faculty engaged with the Trump-supporting protestors.²⁰⁶ 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.²⁰⁷ Antifa first appeared at about four in the afternoon.²⁰⁸ By then, most of the protestors left the scene, and the right-wingers that organized the event encouraged those that remained to leave.²⁰⁹ Though the environment remained tense, the protests mostly ended by six in the evening.²¹⁰ The police ended their activity related to the demonstration and resumed normal operations about ten minutes after nine on that evening.²¹¹

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.²¹² The strains impressed through the

¹⁹⁹ See Orenstein, et al., *supra* note 187.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Svrluga, et al., *supra* note 173.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Orenstein, *supra* note 193.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*; Svrluga, et al., *supra* note 173.

²¹⁰ Svrluga, et al., *supra* note 173.

²¹¹ Orenstein, *supra* note 193.

²¹² See *id.*; David French, *A Suicide in Texas*, NAT’L REV. (Apr. 12, 2017, 5:32 PM), <http://www.nationalreview.com/article/446681/thomas-klocke-suicide-texas-university-student-commits-suicide-after-being-accused>.

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 Klocke 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 Klocke typed "gays should die" into his laptop on a web browser.²¹⁶ Klocke 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 Klocke.²¹⁸ Watson then claimed that Klocke, while mockingly yawning and under his breath, said "[w]ell, you're a faggot."²¹⁹ Watson expressed in his allegations that he told Klocke to leave the class.²²⁰ Watson further averred that Klocke told him in response that "[y]ou should consider killing yourself."²²¹

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

²¹³ See Jonathan Turley, *Opinion: Obama's legacy is hurting college students across America*, THE HILL (Apr. 17, 2017, 3:00 PM), <http://thehill.com/blogs/pundits-blog/education/329130-how-americas-colleges-caved-to-the-feds-and-sacrificed-students>; Bradford Richardson, *Father Files Lawsuit against Late Son's College*, WASH. TIMES (Apr. 12, 2017), <http://www.washingtontimes.com/news/2017/apr/12/wayne-klocke-files-lawsuit-against-university-of-a/>.

²¹⁴ See Keith Griffith, *Student's Father Sues Texas University Claiming 'Harsh Punishment' for 'Unsupported' Sexual Harassment Claims against His Son Led to His Suicide*, DAILY MAIL (Apr. 13, 2017, 3:58 PM), <http://www.dailymail.co.uk/news/article-4410100/Thomas-Klocke-suit-claims-harassment-probe-led-suicide.html#ixzz4p2UUkS00>; French, *supra* note 212.

²¹⁵ See Jason Silverstein, *University of Texas-Arlington Student Committed Suicide after School Unfairly Punished Him for Sex Assault Claim: Suit*, N.Y. DAILY NEWS (Apr. 13, 2017, 11:43 AM), <http://www.nydailynews.com/news/national/texas-college-student-killed-accusation-suit-article-1.3051681>; Richardson, *supra* note 213.

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.”²²³ Klocke wrote on his laptop “stop—I’m straight,” according to his statements to college administration officials.²²⁴ Klocke’s statements indicate that Watson said “I’m gay” in response.²²⁵ Klocke noted that Watson continued staring at him, which prompted him to type “stop” in his laptop again.²²⁶ Klocke’s story illuminated that Watson moved away from Klocke to another classroom seat, eventually.²²⁷

After class, Watson told his class professor his version of events, and the professor referred Watson to student services.²²⁸ Watson did not use the university’s student services.²²⁹ 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.²³⁰ Snow helped Watson draft his complaint against Klocke, and did not refer the case to the university’s Title IX coordinator.²³¹ Indeed, no one informed the Title IX coordinator of the case during the investigation.²³² Instead, Snow assigned the case to Daniel Moore, the university’s Associate Director of Academic Integrity.²³³

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.²³⁴ 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.²³⁵ Additionally, Klocke received no information as to the specific nature of the charge, the charges against him, or who made the allegations against him.²³⁶ 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.”²³⁷ In fact, Moore levied two student

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.²³⁸ Moore reportedly barred Klocke from bringing his attorney father to the hearing as his counsel.²³⁹

Klocke reportedly denied all the allegations made by Watson at the hearing where he first heard of the allegations.²⁴⁰ The only witness at the hearing reportedly heard the words “I think you should leave,” but no other substantive fact beyond this.²⁴¹ A report stated that both Snow and Moore acknowledged that they lacked evidence to levy punishment on Klocke.²⁴² Despite this, the Moore and Snow reportedly found Klocke guilty of harassment against Watson.²⁴³ Though he could participate in outside group projects, the administration prohibited him from attending any live classes.²⁴⁴ More directly, Moore placed Klocke on disciplinary probation according to reports—something that negatively impacts employment and graduate school prospects.²⁴⁵ Six days elapsed from the original allegations to the final punishment.²⁴⁶ Klocke committed suicide a week thereafter.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.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.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.”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.”²⁵¹

²³⁸ *Id.*

²³⁹ French, *supra* note 212.

²⁴⁰ Richardson, *supra* note 213.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ French, *supra* note 212.

²⁴⁵ *Eg.*, Richardson, *supra* note 213; accord, Turley, *supra* note 213.

²⁴⁶ Turley, *supra* note 213.

²⁴⁷ *Id.*

²⁴⁸ See Griffith, *supra* note 214; Richardson, *supra* note 213.

²⁴⁹ Griffith, *supra* note 214.

²⁵⁰ Silverstein, *supra* note 215.

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.

²⁵² Compare Richardson, *supra* note 213, with Conor Friedersdorf, *The New Intolerance of Student Activism*, THE ATL. (Nov. 9, 2015) [hereinafter *The New Intolerance of Student Activism*], <https://www.theatlantic.com/politics/archive/2015/11/the-new-intolerance-of-student-activism-at-yale/414810/>.

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.

²⁵⁶ Liam Stack, *Yale's Halloween Advice Stokes a Racially Charged Debate*, N.Y. TIMES (Nov. 8, 2015), <https://www.nytimes.com/2015/11/09/nyregion/yale-culturally-insensitive-halloween-costumes-free-speech.html>.

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.²⁶⁴ This, she expressed, led to a slippery slope that she "prefer[ed] not to cross."²⁶⁵ She further indicated that she "[could not] defend [her "Halloweenish standards"] anymore than [administrators] could defend [theirs]."²⁶⁶

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?"²⁶⁷ 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?²⁶⁸

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.²⁶⁹ Students immediately called for Mrs. Christakis's resignation.²⁷⁰ These active resignation calls also extended to Mr. Christakis by virtue of relation and proxy.²⁷¹ 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.²⁷² Almost

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_5644baa8e4b045bf3dedfe1e; *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.²⁷³ These calls also extended to their removal from their campus home.²⁷⁴

Mrs. Christakis further noted that some persons who viewed her email disdainfully went further than merely calling for her firing.²⁷⁵ Some wanted her and her husband to make an apology for any "unintended racial insensitivity."²⁷⁶ In this regard, Mrs. Christakis indicated she had no objection to this.²⁷⁷ Rather, Mrs. Christakis winced at the notion that she should make a complete disavowal for her expression of her ideas over Halloween costumes.²⁷⁸ 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."²⁷⁹

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.²⁸⁰ Mr. Christakis not only held a faculty position at Yale, but also served as the head of a Yale residence hall, or a "Master."²⁸¹ 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.²⁸² That student asserted that he needed to make a place of comfort and home for the students because his job required it.²⁸³ Mr. Christakis disagreed, and explained that his position required him to create an intellectual space.²⁸⁴ 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*!

and-a-troubling-lesson-about-self-censorship/2016/10/28/70e55732-9b97-11e6-a0ed-ab0774c1eaa5_story.html?utm_term=.302dc4cfc12b, with *The New Intolerance of Student Activism*, *supra* note 252, and Stack, *supra* note 256.

²⁷³ Christakis, *supra* note 272.

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!²⁸⁵

The student concluded by telling Mr. Christakis, "You should not sleep at night! You are disgusting!"²⁸⁶ 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.²⁸⁷ 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.²⁸⁸

In addition, some students began a petition that formally called for both Mr. and Mrs. Christakis' resignations.²⁸⁹ 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....[W]e were told to meet the offensive parties head on, without suggesting any modes or means to facilitate these discussions to promote understanding.²⁹⁰

This petition garnered signatures from students, alumni, and even select few Yale faculty members.²⁹¹ These tensions continued into graduation, where some graduating Yale students, clearly hostile to Mr. Christakis, refused to receive their diploma from Mr. Christakis.²⁹² These events prompted both Mr. and Mrs. Christakis to resign from their administrative positions after the graduation commencement.²⁹³ Though Mr. Christakis

²⁸⁵ *Id.*

²⁸⁶ Conor Friedersdorf, *The Perils of Writing a Provocative Email at Yale*, THE ATL. (May 26, 2016) [hereinafter *The Perils of Writing a Provocative Email at Yale*], <https://www.theatlantic.com/politics/archive/2016/05/the-peril-of-writing-a-provocative-email-at-yale/484418/>.

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 &

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 Yiannopolous 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.

²⁹⁶ *Dalhousie Dentistry Report: University Had Culture of 'Misogyny, Homophobia and Racism'*, C.B.C. NEWS (Can.) (Jun. 29, 2015, 1:58 PM), <http://www.cbc.ca/news/canada/nova-scotia/dalhousie-dentistry-report-university-had-culture-of-misogyny-homophobia-and-racism-1.3131522>.

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.

²⁹⁸ *Dalhousie Dentistry Report: University Had Culture of 'Misogyny, Homophobia and Racism'*, *supra* note 296.

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

DEP'T (last visited Aug. 8, 2017), <https://www.dal.ca/academics/programs/undergraduate/gws/what-will-I-learn.html>.

³⁰² *What will I learn?*, *supra* note 301.

³⁰³ See Dalhousie Student Union, *Dalhousie Forum on Misogyny*, YOUTUBE (Jan. 15, 2015), <https://www.youtube.com/watch?v=iDKIHqYG92E>.

³⁰⁴ *Id.*

³⁰⁵ See *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.³¹²

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

Anti-fascists, or Antifa, does not exist as a formal organization, but rather serves as an identifier or label.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.³¹⁷ The members claim opposition to fascism and Nazism.³¹⁸ Those that identify with Antifa define fascism as a political position that they perceive opposes a group they express an interest in protecting.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.³²⁰ The group described the speaker as:

[A] fascist, a white supremacist, a warhawk, 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.³²¹

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.

³¹³ *Dalhousie Dentistry Facebook Posts Prompt Rally at School*, C.B.C. NEWS (Can.) (Dec. 19, 2014, 10:41 PM), <http://www.cbc.ca/news/canada/nova-scotia/dalhousie-dentistry-facebook-posts-prompt-rally-at-school-1.2879111>.

³¹⁴ *Id.*

³¹⁵ See *Dalhousie Dentistry Facebook Scandal Prompts Protest*, *supra* note 34.

³¹⁶ See Andrew Beale & Sonner Kehrt, *Behind Berkeley's Semester of Hate*, N.Y. TIMES (Aug. 4, 2017), https://www.nytimes.com/2017/08/04/education/edlife/antifa-collective-university-california-berkeley.html?_r=0.

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ See *id.*; Ian Tuttle, *The Roots of Left-Wing Violence*, NAT. REV. (June, 5, 2017, 4:00 AM), <http://www.nationalreview.com/article/448275/antifa-protest-donald-trump-roots-left-wing-political-violence>.

³²⁰ See Tuttle, *supra* note 319.

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.³²² 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.³²³

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.³²⁴ Antifa sees Trump and those aligned with Trump as among those that attack at least one of the minorities that it wishes to protect.³²⁵ In Antifa's eyes, that makes Trump and his political allies fascists.³²⁶ Antifa members became more concerned after Trump's victory in the 2016 Presidential Election.³²⁷ 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.³²⁸ Because of this, Antifa sees this institution as co-opted by fascists, which therefore legitimizes the use of violence.³²⁹ 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.³³⁰

B.A.M.N. expresses a similar proclivity to violence.³³¹ 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.³³² 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."³³³ Felarca explicitly defended her use of violence as a means to achieve that end.³³⁴ She has also said, apparently

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*, BERKELEYSIDE (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 “racis[m], misogyny[] and homophobi[a]” with facism in the same way as Antifa does, that “[t]here is no free speech for fascists.”³³⁵

Felarca and B.A.M.N. previously demonstrated their political proclivities.³³⁶ Future B.A.M.N. members, Felarca included, held membership in a group that superficially interested itself in abortion rights in the 1980s.³³⁷ 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.³³⁸ Felarca and others founded B.A.M.N. in 1995 as a way to promote affirmative action.³³⁹ 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.³⁴⁰ This point and members’ previous rhetoric fits with the some Antifa members’ communist ideology.³⁴¹ B.A.M.N. also has a reputation of attracting violent black-bloc protestors such as Antifa, wherever it goes in protesting efforts.³⁴²

From the start, B.A.M.N. engaged in disruptive if not outright violent behavior towards others that wished to protest.³⁴³ 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.³⁴⁴ 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.³⁴⁵

³³⁵ Compare *id.*, with Frances Dinkelspiel, *Yvette Felarca to Return to Berkeley Classroom Today*, BERKELEYSIDE (Nov. 2, 2016, 9:00 AM) [hereinafter *Yvette Felarca to Return to Berkeley Classroom Today*], <http://www.berkeleyside.com/2016/11/02/yvette-felarca-to-return-to-berkeley-classroom-today/>, and Beale, et al., *supra* note 316.

³³⁶ See Chris Thompson, *Class Struggle*, EAST BAY EXPRESS (Apr. 20, 2001), <https://www.eastbayexpress.com/oakland/class-struggle/Content?oid=1065288&showFullText=true>.

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ Compare *id.*, with Beale, et al., *supra* note 316.

³⁴² See Beale, et al., *supra* note 316; Dianne Emmett, *Op-ed: BAMN’s protest plans calculated to cause violence*, BERKELEYSIDE (Dec. 14, 2014, 6:52 PM), <http://www.berkeleyside.com/2014/12/14/op-ed-bamns-protest-plans-calculated-to-cause-violence/>.

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.”³⁴⁶

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 22.³⁴⁷ 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.³⁴⁸ One political activist in that time stated of B.A.M.N. members that “[t]hey’re just weird, like a cult.”³⁴⁹ This served as a harbinger for Robert Jacobsen’s petition calling for Felarca’s firing from her schoolteacher job.³⁵⁰ 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.’”³⁵¹ 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.³⁵² 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.³⁵³ Eventually, the Federal Bureau of Investigation published a document that identified B.A.M.N. as a campus organization “involved in terrorist activities” in 2005.³⁵⁴

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.³⁵⁵ 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.*

³⁵⁴ Kris Turner, *Local Terrorist Activity Suspected*, THE ST. NEWS (Aug. 30, 2005), <https://web.archive.org/web/20060530134437/http://www.statenews.com/article.phpml?pk=31230> (original link extant).

³⁵⁵ See French, *supra* note 212; Richardson, *supra* note 213.

Department of Education (D.O.E.).³⁵⁶ 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.³⁵⁷ This included the right to confront witnesses under penalty of universities losing federal funds.³⁵⁸

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.³⁵⁹

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.³⁶⁰ 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.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.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.³⁶³ One example comes from *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.³⁶⁴ An abstract to a paper published by *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

³⁶¹ French, *supra* note 212.

³⁶² *Id.*

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.

³⁶⁴ Jennifer Malat, Sarah Mayorga-Gallo, David R. Williams, Abstract: *The Effects of Whiteness on the Health of Whites in the USA*, SCI. DIRECT (first published July 3, 2017), <http://www.sciencedirect.com/science/article/pii/S0277953617304100> (last viewed Aug. 9, 2017).

work told in three(ish) acts, I contextualize these conversations in the fears, desires, and frustrations of my lived experience.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, *Hamlet*.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."³⁶⁷

Heidi M. Gansen wrote in her literature published in *Sociology of Education* that teachers in preschool construct gendered identities among preschoolers.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.³⁶⁹ Preschoolers express these gendered attitudes in their play, and reproduce it in "peer interactions."³⁷⁰ Gansen made these findings after analyzing "ethnographic data" from nine classrooms for a ten-month period.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.³⁷² Edward Ward, then a student at DePaul University, stands as such an example.³⁷³ Ward experienced an objectively difficult freshman year,

³⁶⁵ Shawn E. Edmonds, Abstract: *Connected to Orlando: An Autoethnography in Three(ish) Acts*, SAGE J. (first published July 25, 2017), <http://journals.sagepub.com/doi/abs/10.1177/1077800417718293?journalCode=qixa> (last viewed Aug. 9, 2017).

³⁶⁶ Hannah Partis-Jennings, Abstract: *Military Masculinity and the Act of Killing in Hamlet and Afghanistan*, SAGE J. (first published July 13, 2017), <http://journals.sagepub.com/doi/abs/10.1177/1097184X17718585?journalCode=jmma> (last viewed Aug. 9, 2017).

³⁶⁷ *Id.*

³⁶⁸ Heidi M. Gansen, Abstract: *Reproducing (and Disrupting) Heteronormativity: Gendered Sexual Socialization in Preschool Classrooms*, 90 SOC. OF EDUC. 255, <http://journals.sagepub.com/doi/abs/10.1177/0038040717720981> (last visited Aug. 9, 2017).

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² See, e.g., Donyae Lewis, *From Homeless to Leader*, Student Eyes State Office, THE DEPAULIA (Feb. 16, 2016), <http://depauliaonline.com/2016/02/14/homeless-to-leader-edward-ward-move/>.

³⁷³ See *id.*

which included a spiral into a suicidal depression after a breakup with a girlfriend.³⁷⁴ One of his professors, Valerie Johnson, saw his struggles, and steered him in a direction that allowed him to focus on self-improvement.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.³⁷⁶

Unfortunately, Ward, with some fellow academic colleagues, felt it necessary to interrupt an event hosted on campus by the DePaul College Republicans.³⁷⁷ The group made Milo Yiannopoulos their guest speaker for the evening.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.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."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.³⁸¹ Johnson backed Ward's disruption of the Yiannopoulos event and affirmed his perspective that the event exhibited "bigotry."³⁸²

C. Effects beyond the University Environment

In affirming narrowly-tailored remedial racial diversity state university admissions policies, Justice O'Connor wrote in *Grutter v. Bollinger* that:

[N]umerous studies show that student body diversity promotes learning outcomes, and "better prepares students

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ *Id.*

³⁷⁷ Emma Krupp, Kirsten Onsgard & Matthew Paras, *Protesters Shut Down Yiannopoulos Speech*, THE DEPAULIA (May 24, 2016), <http://depauliaonline.com/2016/05/24/depaul-protesters-shut-down-yiannopoulos/>.

³⁷⁸ *Id.*

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ Interview by Lukas Mikelionis, Reporter, Heat Street, with Edward Ward (May 25, 2016).

³⁸² Allum Bokhari, *Meet Valerie Johnson, The Radical Professor Indoctrinating DePaul's Black Students*, BREITBART (May 25, 2016), <http://www.breitbart.com/milo/2016/05/25/meet-radical-professor-indoctrinating-depauls-black-students/>.

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

³⁸³ *Grutter v. Bollinger*, 123 S. Ct. 2325, 2340 (2003).

³⁸⁴ *See id.*

³⁸⁵ *See id.*

the news.³⁸⁶ James 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.³⁸⁷ 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.³⁸⁸ 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.³⁸⁹ 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.³⁹⁰

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.³⁹¹ He also noted in a footnote that the oppressor-oppressed dynamic bore similarities to and had origins in Marxist theory.³⁹² Damore explained that Google puts itself in danger as a company for this because conservatives possessed traits that Google's current mainstream lacked.³⁹³

Google issued a formal initial response within hours of the memorandum's public publication from its Vice-President of Diversity, Integrity & Governance, Danielle Brown.³⁹⁴ She condemned the memorandum as offensive to women and minorities.³⁹⁵ Google also fired

³⁸⁶ See Kate Conger, *Exclusive: Here's The Full 10-Page Anti-Diversity Screed Circulating Internally at Google [Updated]*, GIZMODO (Aug. 5, 2017, 7:25 PM), <http://gizmodo.com/exclusive-heres-the-full-10-page-anti-diversity-screed-1797564320>.

³⁸⁷ *Id.*; see Samantha Schmidt, 'I'm Not a Sexist': Fired Google Engineer Stands Behind Controversial Memo, WASH. POST (Aug. 10, 2017, 7:15 AM), https://www.washingtonpost.com/news/morning-mix/wp/2017/08/10/im-not-a-sexist-fired-google-engineer-stands-behind-controversial-memo/?utm_term=.94b509d4b843.

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.³⁹⁶ 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.³⁹⁷ In the aftermath, Damore, 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.³⁹⁸ YouTube’s chief, Susan Wojcicki, invoking her own daughter’s emotions, thought it a tragedy that new generation had exposure to Damore’s views.³⁹⁹ Google owns YouTube as one of its properties.⁴⁰⁰

Google also owns AdSense, a company that distributes advertisements within YouTube videos within its terms and service conditions.⁴⁰¹ 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.⁴⁰² 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.⁴⁰³

Google responded by conducting a full review of how it blocked and allowed advertisements on YouTube videos, which lasted two months.⁴⁰⁴ At the conclusion, Google announced that AdSense would no longer target an entire website, and shifted to targeting web pages.⁴⁰⁵ Under the website-

³⁹⁶ Daisuke Wakabayashi, *Contentious Memo Strikes Nerve Inside Google and Out*, N.Y. TIMES (Aug. 8, 2017), <https://www.nytimes.com/2017/08/08/technology/google-engineer-fired-gender-memo.html>.

³⁹⁷ *Id.*

³⁹⁸ Schmidt, *supra* note 387.

³⁹⁹ *Id.*

⁴⁰⁰ *Id.*

⁴⁰¹ James Titcomb, *Google Promises Stricter Control over Advertising Network*, THE TELEGRAPH (U.K.) (May 15, 2017, 5:01 AM) [hereinafter *Google Promises Stricter Control*], <http://www.telegraph.co.uk/technology/2017/05/15/google-promises-stricter-control-advertising-network/>.

⁴⁰² *Id.*; Nick Statt, *AT&T and Verizon Pull Ads from Google and YouTube over Hate Speech*, THE VERGE (Mar. 22, 2017, 6:09 PM), <https://www.theverge.com/2017/3/22/15029214/att-verizon-google-youtube-pull-ads-boycott-hate-speech>; Lara O’Reilly, *Google Responds to YouTube Advertiser Boycott: ‘We Can Do a Better Job’*, BUS. INSIDER (Mar. 17, 2017, 6:12 AM), <http://www.businessinsider.com/google-responds-to-youtube-ad-boycott-we-can-do-a-better-job-2017-3>.

⁴⁰³ Statt, *supra* note 402.

⁴⁰⁴ O’Reilly, *supra* note 402.

⁴⁰⁵ *Google Promises Stricter Control*, *supra* note 401.

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.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...."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.⁴⁰⁸ Google's 67.5% market share holding as of March 2014 only adds to the impression of largess.⁴⁰⁹

YouTube recently changed how it identified and remove what it classifies as inappropriate video content.⁴¹⁰ YouTube noted that it placed an increased reliance on robots flagging videos.⁴¹¹ The robots flagged more than three-quarters of the removed videos "before receiving a single human flag."⁴¹² YouTube also announced that it implemented a search engine system which contained trip wires for certain keywords.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."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."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.⁴¹⁶ As of August 2017, YouTube holds the second-most active users on

⁴⁰⁶ See *id.*

⁴⁰⁷ *Id.*

⁴⁰⁸ See *id.*

⁴⁰⁹ *comScore Releases March 2014 U.S. Search Engine Rankings*, COMSCORE (Mar. 2014) [hereinafter *March 2014 U.S. Search Engine Rankings*], <http://www.comscore.com/Insights/Press-Releases/2014/4/comScore-Releases-March-2014-U.S.-Search-Engine-Rankings> (last visited Aug. 10, 2017).

⁴¹⁰ See *An Update on Our Commitment to Fight Terror Content Online*, YOUTUBE OFFICIAL BLOG (Aug. 1, 2017), <https://youtube.googleblog.com/2017/08/an-update-on-our-commitment-to-fight.html>.

⁴¹¹ *Id.*

⁴¹² *Id.*

⁴¹³ *Id.*

⁴¹⁴ *Id.*

⁴¹⁵ *Id.*

⁴¹⁶ See *id.*

its social media website with one-and-a-half billion users worldwide.⁴¹⁷ Only Facebook tops this with its over two billion active users.⁴¹⁸

Twitter represents another platform that exhibits signs of silencing opinions it deems unsavory.⁴¹⁹ 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.⁴²⁰ Twitter also did the same to Kassy Dillon, a conservative columnist.⁴²¹ 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.⁴²² The President Trump's son, Eric Trump, accused Twitter of censorship after it obscured a tweet because it contained sensitive content.⁴²³ The tweet covered a story featured on the Drudge Report that covered the monthly job reports.⁴²⁴ 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.⁴²⁵ Alexa ranks Twitter as the twelfth most visited site in the world and eighth in the United States.⁴²⁶ Statistica notes that Twitter has the tenth-most active users for August 2017 at 328 million.⁴²⁷

⁴¹⁷ *Most Famous Social Network Sites Worldwide As of August 2017, Ranked by Number of Active Users (in Millions)*, STATISTICA [hereinafter *August 2017 Most Famous Social Network Sites Worldwide*], <https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/> (last visited Aug. 11, 2017).

⁴¹⁸ *Id.*

⁴¹⁹ Compare Conger, *supra* note 386, with David Frum, *Twitter's Misbegotten Censorship*, THE ATL. (Nov. 16, 2016), <https://www.theatlantic.com/politics/archive/2016/11/twitter-censorship-will-only-empower-the-alt-right/507929/>.

⁴²⁰ Frum, *supra* note 419.

⁴²¹ Rudy Takala, *Move over Milo: Twitter Bans Another Conservative Journalist*, WASH. EXAM'R (July 25, 2016, 11:42 AM), <http://www.washingtonexaminer.com/move-over-milo-twitter-bans-another-conservative-journalist/article/2597565>.

⁴²² See Frum, *supra* note 419.

⁴²³ Ali Breland, *Eric Trump Accuses Twitter of Censorship*, THE HILL (Aug. 4, 2017, 3:56 PM), <http://thehill.com/policy/technology/345377-eric-trump-thinks-twitter-censored-him>.

⁴²⁴ *Id.*

⁴²⁵ Mark Grabowski, *Twitter's Censorship May Be Unconstitutional*, WASH. EXAM'R (Mar. 14, 2017, 8:00 AM), <http://www.washingtonexaminer.com/twitters-censorship-may-be-unconstitutional/article/2617261>.

⁴²⁶ *twitter.com Traffic Statistics*, ALEXA, <http://www.alexa.com/siteinfo/twitter.com> (last visited Aug. 11, 2017).

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.⁴²⁸ 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].⁴²⁹

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.⁴³⁰ 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.⁴³¹ The study also possibly underestimated emotive impacts, as the computer systems observing user emotions lumped false positives into true negative messages, and *vice versa*.⁴³² Facebook's head and founder, Mark Zuckerberg also noted that his company has research for telepathy technology for Facebook ongoing.⁴³³

The C.O.O. of Facebook, Sheryl Sandberg, advocates for revamping an entire business structure to ensure gender and racial parity.⁴³⁴ Specifically, she states that:

⁴²⁸ See Maya Kosoff, *Is Mark Zuckerberg Killing Silicon Valley?*, VANITY FAIR (Aug. 10, 2017, 4:00 PM), <https://www.vanityfair.com/news/2017/08/mark-zuckerberg-competition-silicon-valley>.

⁴²⁹ *Id.*

⁴³⁰ Robinson Meyer, *Everything We Know About Facebook's Secret Mood Manipulation Experiment*, THE ATL. (June 28, 2014), <https://www.theatlantic.com/technology/archive/2014/06/everything-we-know-about-facebooks-secret-mood-manipulation-experiment/373648/>.

⁴³¹ *Id.*

⁴³² *Id.*

⁴³³ James Titcomb, *Mark Zuckerberg Confirms Facebook Is Working on Mind-Reading Technology*, THE TELEGRAPH (U.K.) (Apr. 19, 2017, 8:09 PM) [hereinafter *Facebook Is Working on Mind-Reading Technology*], <http://www.telegraph.co.uk/technology/2017/04/19/mark-zuckerberg-confirms-facebook-working-mind-reading-technology/>.

⁴³⁴ Sheryl Sandberg, *Sheryl Sandberg: Pay Gap Holds Us All Back*, U.S.A. TODAY (Apr. 4, 2017, 5:02 AM), <https://www.usatoday.com/story/opinion/2017/04/04/pay-gap-women-equal-sheryl-sandberg-column/99954086/>.

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.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.⁴³⁶ She has stated that Facebook practices all of the forgoing proposals "for many years."⁴³⁷ 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.⁴³⁸

Facebook employees also manipulated the platform's trending news section, but unlike researcher manipulation, these employees engaged in active, blatant censorship.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.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.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

⁴³⁵ *Id.*

⁴³⁶ See David Brancaccio, *Sheryl Sandberg: 'We All Deserve Equal Pay'*, MARKETPLACE (Apr. 4, 2017, 5:42 AM), <https://www.marketplace.org/2017/04/04/business/sheryl-sandberg-lean-interview>.

⁴³⁷ See *id.*; Sandberg, *supra* note 434.

⁴³⁸ Compare Brancaccio, *supra* note 436, and Sandberg, *supra* note 434, with Conger, *supra* note 386.

⁴³⁹ Compare Michael Nunez, *Former Facebook Workers: We Routinely Suppressed Conservative News*, GIZMODO (May 9, 2016, 9:10 AM), <http://gizmodo.com/former-facebook-workers-we-routinely-suppressed-conser-1775461006>, with Meyer, *supra* note 430.

⁴⁴⁰ Nunez, *supra* note 439.

⁴⁴¹ *Id.*

I.R.S. scandal with Lois Lerner.⁴⁴² 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.⁴⁴³ 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.⁴⁴⁴

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.⁴⁴⁵ In a northern English city called Rotherham, a court of law convicted eight Pakistani men of numerous rape, grooming, indecent assault, and false imprisonment of teenage girls from a white working class background.⁴⁴⁶ 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.⁴⁴⁷ 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.⁴⁴⁸ Further, news reports note that this type of 'anti-racist' culture remains firmly in place in Rotherham and elsewhere in the United Kingdom.⁴⁴⁹

⁴⁴² *Id.*

⁴⁴³ *Id.*

⁴⁴⁴ *Id.*

⁴⁴⁵ Compare Josh Halliday, *Rotherham: Eight Men Jailed for Sexually Exploiting Teenage Girls*, THE GUARDIAN (U.K.) (Nov. 4, 2016, 9:42 PM), <https://www.theguardian.com/uk-news/2016/nov/04/rotherham-child-sexual-exploitation-eight-men-jailed>, with Schmidt, *supra* note 391.

⁴⁴⁶ Halliday, *supra* note 445.

⁴⁴⁷ Adam White, *Three Girls: what really happened in the Rochdale sex abuse scandal?*, THE TELEGRAPH (U.K.) (July 3, 2017, 6:28 PM), <http://www.telegraph.co.uk/tv/0/three-girls-does-start-really-happened-rochdale-sex-abuse-scandal/>; Safraz Manzoor, *The England That Is Forever Pakistan*, N.Y. TIMES (Sept. 15, 2014), <https://www.nytimes.com/2014/09/16/opinion/multiculturalism-and-rape-in-rotherham.html>.

⁴⁴⁸ Manzoor, *supra* note 447.

⁴⁴⁹ See Mail Online Reporter, *Is Telford the New Rotherham? Horrific Reports of Widescale Grooming and Abuse in Town Dubbed Britain's 'Child Sex Capital'*, THE DAILY MAIL (Aug. 27, 2016, 6:43 PM), <http://www.dailymail.co.uk/news/article-3761809/Is-Telford-new-Rotherham-Horrific-reports-widescale-grooming-abuse-town-dubbed-Britain-s-child-sex-capital.html#ixzz4pTMjlQUZ>; Nick Gutteridge, *Rotherham Abuse Scandal: Horrific Reality of 'Industrial Scale' Child Grooming Revealed*, THE DAILY EXPRESS (Aug. 10, 2016,

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.⁴⁵⁰ Left-wingers who do not subscribe to these general parameters, however, do not represent the problem.⁴⁵¹ Accordingly, this ideology becomes distinct and delineable from the greater left-wing.⁴⁵² The ideology perceives the oppressors as the white male, and the oppressed as any non-white and any woman.⁴⁵³ 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.⁴⁵⁴ 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.⁴⁵⁵ 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.”⁴⁵⁶

To this end, this Note proposes:

- First, That Congress pass, pursuant to its War Powers,⁴⁵⁷ 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

3:50 PM), <http://www.express.co.uk/news/uk/697583/Rotherham-abuse-scandal-child-grooming-gangs-industrial-scale-victims-CSE>.

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, *supra* note 445.

⁴⁵⁶ See *Brown v. Entm't Merchs. Ass'n*, 131 S. Ct. 2729, 2738 (2011).

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,⁴⁵⁸ 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.⁴⁵⁹ In such circumstances, courts only strike down such an act when it reaches beyond the federal government's authority.⁴⁶⁰

With this stated, *Brown* requires that a restriction on speech "must be actually necessary to the solution," in order for such a law to pass strict scrutiny.⁴⁶¹ 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

⁴⁵⁸ See U.S. CONST. art. I, § 8, cl. 1.

⁴⁵⁹ See *Youngstown Sheet & Tube Co. v. Sawyer*, 72 S. Ct. 863, 870–71 (1952) (Jackson, J., concurring).

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....").

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 . . . , enabl[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

⁴⁶² See *United States v. Playboy Entm’t Grp., Inc.*, 120 S. Ct. 1878, 1889 (2000).

⁴⁶³ *Id.* at 1886.

⁴⁶⁴ See *id.*

⁴⁶⁵ *Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd.*, 112 S. Ct. 501, 514 (1991) (Kennedy, J., concurring).

⁴⁶⁶ See U.S. CONST. art. I, § 8, cl. 3.

⁴⁶⁷ *United States v. Lopez*, 115 S. Ct. 1624, 1630 (1995); see U.S. CONST. art. I, § 8, cl. 3.

⁴⁶⁸ *United States v. Carolene Products Co.*, 58 S. Ct. 778, 783 (1938).

⁴⁶⁹ *Id.* at 783, 783 n.4.

⁴⁷⁰ *South Dakota v. Dole*, 107 S. Ct. 2793, 2796 (1987).

⁴⁷¹ *Id.*

⁴⁷² *Id.* at 2798.

Most of the proposal implicates War Powers that allow more in the exercise of federal power than otherwise.⁴⁷³ 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.⁴⁷⁴

Nonetheless, so long as it falls within the scope of the needed powers, the war power implicates speech restrictions.⁴⁷⁵ Further, economic emergencies may also permit powers under the Commerce Clause that would otherwise not be permitted.⁴⁷⁶

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."⁴⁷⁷ Nothing in this opinion will change *Brandenburg's* core standard inasmuch as it applies in all contexts outside of war.⁴⁷⁸ 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.⁴⁷⁹ This problem remains entrenched without an end in sight, without

⁴⁷³ See U.S. CONST. art. I, § 8, cl. 11; *Korematsu v. United States*, 65 S. Ct. 193, 195 (1944).

⁴⁷⁴ *United States v. Maviglia*, 52 F. Supp. 946, 947 (D.N.J. 1943).

⁴⁷⁵ See, e.g., *Schenck v. United States*, 39 S. Ct. 247, 249 (1919); but c.f., *Brandenburg 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.⁴⁸⁰ This situation creates an emergency sufficient to warrant using the War Power; for without this vigilance, the nation risks total subversion.⁴⁸¹ Such a warrant, combined with the War Power's use necessitates a different standard from *Brandenberg*, for this power contains the power to levy a successful defense.⁴⁸²

The original standard applicable to speech in *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.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.⁴⁸⁴ For this, the trial court tried and convicted him for a violation of the Espionage Act.⁴⁸⁵ The Supreme Court upheld his conviction unanimously, and in doing so, noted that:

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 endured⁴⁸⁶

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.⁴⁸⁷ The *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.⁴⁸⁸ The trial court convicted the defendant of the charges based upon that broad fact pattern.⁴⁸⁹ The Supreme Court applied Judge Hand's formulation of "clear and present danger," which took the

⁴⁸⁰ 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.

⁴⁸¹ Compare *Dennis v. United States*, 71 S. Ct. 857, 895 (1951) (Jackson, J., concurring), with *Grutter*, 123 S. Ct. at 2340, and Conger, *supra* note 386; Beale, et al., *supra* note 319, and Edmonds, *supra* note 365, and Turley, *supra* note 213, and French, *supra* note 212.

⁴⁸² Compare *Brandenberg*, 89 S. Ct. at 1830, with *Korematsu*, 65 S. Ct. at 197–98 (Frankfurter, J., concurring).

⁴⁸³ See *Schenck*, 39 S. Ct. at 249.

⁴⁸⁴ *Id.* at 248.

⁴⁸⁵ *Id.* at 247–48.

⁴⁸⁶ *Id.* at 249.

⁴⁸⁷ See *Dennis*, 71 S. Ct. at 861–62, 867–68.

⁴⁸⁸ *Id.* at 861–62.

⁴⁸⁹ *Id.*

“gravity of the evil” sought and subtracted from it the evil’s “improbability.”⁴⁹⁰ The court praised this interpretation as the most inclusive one available.⁴⁹¹ Through this application, the Supreme Court affirmed the defendant’s conviction.⁴⁹²

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.⁴⁹³ However, there does exist mutual interests between multiple factions that create a real propensity toward a similar result.⁴⁹⁴ Such a result appearing more prevalently in the United Kingdom only adds weight to this concern.⁴⁹⁵ 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.⁴⁹⁶

Applying the Hand formulation in *Dennis*,⁴⁹⁷ adherents of the ideology concerned seek to have their beliefs enshrined throughout American society.⁴⁹⁸ 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.⁴⁹⁹ Further, the goal not only has a real probability of success: to some extent, the adherents already succeeded.⁵⁰⁰ The improbability of success renders itself lessened when the United Kingdom’s police situation allows itself to elucidate its transmission into ideological success.⁵⁰¹

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.

⁴⁹⁶ Compare *Schenck*, 39 S. Ct. at 247–48, 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.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.⁵⁰³ Accordingly the arguments that allow the curtailment of speech in educational settings permit it on online platforms.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.⁵⁰⁵

Major internet companies produced online platforms that generate much in the way of information that many persons use and visit.⁵⁰⁶ Two billion people actively use Facebook alone.⁵⁰⁷ One-and-a-half billion actively use YouTube; another over 300 million people use Twitter.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.⁵⁰⁹ AdSense's distribution of advertisements to YouTube video makers helps contribute in Google's \$24.8 billion take for April 2017 alone.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 *Lopez*.⁵¹¹ The policy touches and concerns no fundamental rights besides the speech question previously addressed.⁵¹² Accordingly, a logical relation for the policy, whether facially obvious or

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.

⁵⁰³ See *supra* Part III, Section A.

⁵⁰⁴ See *id.*

⁵⁰⁵ See *Lopez*, 115 S. Ct. at 1630; *Dole*, 107 S. Ct. at 2796; *Carolene Products*, 58 S. Ct. at 783, 783 n.4.

⁵⁰⁶ See, e.g., *August 2017 Most Famous Social Network Sites Worldwide*, *supra* note 417.

⁵⁰⁷ *Id.*

⁵⁰⁸ *Id.*

⁵⁰⁹ *March 2014 U.S. Search Engine Rankings*, *supra* note 409.

⁵¹⁰ See *Google Promises Stricter Control*, *supra* note 401.

⁵¹¹ Compare *August 2017 Most Famous Social Network Sites Worldwide*, *supra* note 417, and *March 2014 U.S. Search Engine Rankings*, *supra* note 409, and *Google Promises Stricter Control*, *supra* note 401, with *Lopez*, 115 S. Ct. at 1630.

⁵¹² See *supra* Part III, Section A.

proffered, suffices to meet constitutional muster under the Commerce Clause.⁵¹³

The spending under this proposal seeks to maneuver largess away from the heavily centralized giants of Google, Facebook, YouTube, and Twitter.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.⁵¹⁵ Further, the provisions correspond to eroding what clearly amounts to a monopoly, given the market share and money flowing through these entities alone.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.⁵¹⁷ This permits a finding of full *Lopez* compliance for these provisions under the Commerce Clause.

The facts mentioned also permit compliance under *Dole*.⁵¹⁸ The company facts show a clear federal interest in pursuit of "the general welfare."⁵¹⁹ As mentioned before, no other constitutional violation apparently

⁵¹³ *Carolene Products*, 58 S. Ct. at 783.

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.

⁵¹⁵ Compare *August 2017 Most Famous Social Network Sites Worldwide*, *supra* note 417, and *March 2014 U.S. Search Engine Rankings*, *supra* note 409, and *Google Promises Stricter Control*, *supra* note 401, with *N.F.I.B. v. Sebelius*, 132 S. Ct. 2566, 2587 (2012) [hereinafter *Obamacare I*] (Roberts, C.J., opinion).

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.

⁵¹⁷ See *Standard Oil Co. of New Jersey v. United States*, 31 S. Ct. 502, 519 (1911).

⁵¹⁸ Compare *August 2017 Most Famous Social Network Sites Worldwide*, *supra* note 417, and *March 2014 U.S. Search Engine Rankings*, *supra* note 409, and *Google Promises Stricter Control*, *supra* note 401, with *Dole*, 107 S. Ct. at 2796, 2798.

⁵¹⁹ Compare *August 2017 Most Famous Social Network Sites Worldwide*, *supra* note 417, and *March 2014 U.S. Search Engine Rankings*, *supra* note 409, and *Google Promises Stricter Control*, *supra* note 401, with *Dole*, 107 S. Ct. at 2796.

exists.⁵²⁰ Because the entities in question are companies and not State governments, the requirements for States do not apply.⁵²¹

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.⁵²² 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.⁵²³ 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.⁵²⁴

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.⁵²⁵

IV. RECOMMENDATIONS

There may be a risk of certain governmental sectors that show hostility to the provisions or otherwise refuse to enforce them.⁵²⁶ Strict enforcement of

⁵²⁰ See *Dole*, 107 S. Ct. at 2798; *supra* Part III, Section A.

⁵²¹ Compare *August 2017 Most Famous Social Network Sites Worldwide*, *supra* note 417, and *March 2014 U.S. Search Engine Rankings*, *supra* note 409, and *Google Promises Stricter Control*, *supra* note 401, with *Dole*, 107 S. Ct. at 2796.

⁵²² See *supra* Part III, Sections A–B.

⁵²³ See generally U.S. CONST. amend. I (“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.

espionage laws allows a counteraction of this potential problem.⁵²⁷ 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.⁵²⁸ 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 outlive 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 its algorithms this way, because it currently programs its algorithms to target content its corporate culture finds repugnant.⁵²⁹

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

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.

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.