WISCONSIN INSTITUTE FOR LAW & LIBERTY

January 31, 2024

Testimony in Support of Senate Bill 596

Chairman Hutton and Members of the Senate Committee on Universities & Revenue,

I am Dan Lennington, Deputy Counsel at the Wisconsin Institute for Law & Liberty. I direct WILL's Equality Under the Law Project, which advocates for a colorblind society through litigation and policy reforms.

Today I am pleased to speak in support of Senate Bill 596.

The United States Constitution and the Wisconsin Constitution both include a pledge of racial equality and a mandate that all laws must be colorblind. This is especially important in the field of education. Last June, the United States Supreme Court decided that affirmative action policies at Harvard and the University of North Carolina were illegal. Those policies granted racial preferences in admission to some races but not others. Harvard defended the program saying it was necessary to ensure racial diversity in the student body. But the Supreme Court rejected that argument, explaining that racial preferences are a zero-sum game, always benefiting some students at the expense of others and relying on racial stereotypes. In short, the Court ruled there was no justification for race discrimination in higher education, and that so-called "diversity" does not justify race-based decision making.

Unfortunately, Wisconsin law fails to live up to the principle of equality for all. Dozens of Wisconsin programs—from grant programs to government contracting to drug treatment—discriminate against Wisconsin citizens based on race. These preferences must all be reformed and opened to all races. If they are not, courts will eventually strike down these programs, potentially resulting in awards of damages and attorneys' fees against state officials.

Today, the Legislature is considering a series of reasonable and necessary reforms to make some of our laws colorblind. These reforms are long overdue.

The bill focuses on two general areas: (1) race-based scholarships and loans to students, and (2) racial enrollment incentives for certain educational institutions.

These existing laws create racial categories based on stereotypes, and then dole out preferences to some races over others. This is unconstitutional race discrimination, pure and simple. Today's bill fixes that.

Consider two existing grant programs: the Minority Undergraduate Retention Grant Program and the University of Wisconsin's Lawton Minority Undergraduate Retention Grant Program. Under these programs, only "minority undergraduates" are eligible for scholarships. White students are ineligible for a scholarship, but you may be surprised to learn who is "white" under existing law. Students from North Africa—Egypt, Morocco, Libya, Tunisia, and Algeria—are ineligible for these scholarships because of their race. Students from Gaza, Yemen, or the West Bank are likewise ineligible for scholarships because of their race. Same with all students from Turkey or any Middle East country, from Saudi Arabia to Afghanistan. Wisconsin law considers all these students "white" and therefore not worthy of a scholarship.

What about Asians? Nearly all Asians are excluded from these Wisconsin scholarship programs. Students who are from (or whose parents or grandparents are from) India, Pakistan, China, Japan, Thailand, and Indonesia are ineligible based on race. There are 48 countries in Asia, and only students who can trace their ancestry to three countries (Laos, Cambodia, and Vietnam) are eligible for scholarships. Even Hmong students are targeted by these racial classifications. While these scholarships attempt to benefit Hmong students, some Hmong students are ineligible if their parents or grandparents emigrated from the wrong country or in the wrong year.

We at WILL are challenging the Minority Undergraduate Retention Grant Program in court. Our clients include a white man and his wife, who is from Thailand. They have a biracial child. No one in this family is eligible for the grant because of their race.

What about Latinos? State law only grants racial preferences to "Hispanics." "Hispanics" are narrowly defined under state law as those from a country "whose culture or origin is Spanish." This would exclude students who come from Brazil, Guyana, Suriname, or French Guiana, and would likely exclude students from English-speaking countries such as the Bahamas, Jamaica, and Belize.

In short, Wisconsin's legal definitions of who is a "minority" simply don't make sense even if you are in favor of racial preferences. Considering all the laws at

issue in this reform package, each of them discriminates against students from the Middle East, North Africa, Central Asia, and those who are non-Hispanic Latinos.

The solution, however, is not adding more racial categories. All racial categories are illegal and would be unworkable even if they were permissible. More importantly, racial distinctions are just plain wrong: "It's a sordid thing, divvying us up by race," as the Supreme Court has explained. All racial classifications are pernicious and demean the dignity of all individuals.

The proposed bill fixes these laws and erases these racial preferences. And instead of eliminating these programs, the bill wisely opens the programs to all students who are disadvantaged. The bill considers students as they ought to be considered: as individuals, not as members of racial groups.

As a final matter, it is important to note that the Universities of Wisconsin publicly announced in December that they will abandon all race-based scholarships that are not in state law. The Universities of course cannot amend state law, but they can reform their own non-statutory scholarships, which is what they have done. This is on the heels of the Universities of Wisconsin removing race as a factor in admissions, hiring, promotion, and agreeing to eliminate mandatory diversity statements and many DEI positions.

The tide is clearly turning towards race neutrality and away from DEI. Twenty-five states have now approved or introduced bills prohibiting DEI. And public support strongly supports equality. A recent Gallup poll indicates that 68% of Americans support the Supreme Court's decision to end affirmative action, including 63% of Asian Americans, 52% of African Americans, and 68% of Hispanic Americans.

WILL strongly supports programs that benefit students based on their individual needs, not on racial stereotypes. Today's bill takes an important first step in making our laws colorblind, as required by federal law and the Constitution.

Thank you for your time today, and I'd be happy to answer any questions.

Testimony Exhibit
Racial Group Exclusions in Current Law

Grants

1. **Minority Teacher Loan Program (Wis. Stat. § 39.40, HEAB)**

   This program offers loans of up to $10,000 per year for students pursuing a teacher's license in teacher shortage areas. Loans may be forgiven. The current law only benefits the following racial groups: Black American, American Indian or Alaskan Native, Hispanic, Asian or Pacific Island origin, or two or more races.

   Exclusions: Latinos from non-Spanish countries, African students on visas, North Africans, Middle Eastern students

   Proposed Law: Open to all disadvantaged students.

2. **Minority Undergraduate Grants (Wis. Stat. § 39.44, HEAB)**

   The program awards grants of up to $2,500 to students enrolled at least half-time in independent, tribal, or technical colleges. The current law only benefits the following racial groups: Black American, American Indian, Hispanic, persons with ancestors from Laos, Vietnam, or Cambodia.

   Exclusions: Students from North Africa, the Middle East, and Asia (with the exceptions of Laos, Vietnam, and Cambodia), Latinos from non-Spanish countries, African students on visas, aboriginal students who do not identify as "American Indian," such as Native Hawaiian.

   Proposed Law: Open to all disadvantaged students.

3. **Minority/Disadvantaged Graduate Grants (Wis. Stat. § 36.25(14), UW)**

   This law allows UW to set up a grant program for minority and disadvantaged graduate students. UW has established this program under the name "Advanced Opportunity Program" or "AOP." The statutes do not define "minority." UW's application for this program provides only the following are eligible: 1) Students from the following racial/ethnic groups: a) African American; b) American Indian or Alaskan Native; c) Hispanic/Latino; d) statutorily defined Southeast Asian; 2) Students who participated in one of the following programs: Upward Bound, TRIO, Talent Search, or 3) First-generation college students.

Exclusions: Based on UW's administration of this program, it is likely that most Asians are excluded, as are students from North Africa, the Middle East, and Native Hawaii.

Proposed Law: Open to all disadvantaged students.

4. **Lawton Grants (Wis. Stat. § 36.34, UW)**

The program awards grants of up to $3,000 to UW students. The current law only benefits the following racial groups: Black American, American Indian, Hispanic, persons with ancestors from Laos, Vietnam, or Cambodia.

Exclusions: Students from North Africa, the Middle East, and Asia (with the exceptions of Laos, Vietnam, and Cambodia), Latinos from non-Spanish countries, African students on visas, aboriginal students who do not identify as "American Indian," such as Native Hawaiian.

Proposed Law: Open to all disadvantaged students.

Enrollment Targets

1. **Medical College and School of Dentistry – (Wis. Stat. §§ 39.15, 39.46)**

Law mandates that "every effort" shall be made to "ensure that at least 5 percent of the total enrollment of the college consists of minority students." The law does not define "minority," but if other definitions in Chapter 39 are applied this would exclude nearly all Asians, students from North Africa and the Middle East, and Latinos from non-Spanish countries.

Proposed Law: Eliminate this requirement so that all students are considered as individuals, not as members of racial groups.

2. **Tech Colleges: Minority Student Plans, Special Programs, and Incentive Grants (Wis. Stat. §§ 38.04(8), 38.26, 38.27, Tech Colleges)**

Three separate sections provide for minority enrollment plans and incentive grants to cater specifically to minority students. The laws adopt a narrow definition of "minority" as follows: Black, Hispanic, American Indian, Eskimo, Aleut, Native Hawaiian, Asian Indian, and "a person of Asian-Pacific origin." "Person of Asian-Pacific origin" means a person whose ancestors originated in Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, or the Northern Marianas. "Asian-

Indian" means a person whose ancestors originated in India, Pakistan, or Bangladesh. “Black" means a person whose ancestors originated in any of the black racial groups of Africa. “Hispanic" means a person of any race whose ancestors originated in Mexico, Puerto Rico, Cuba, Central America, or South America or whose culture or origin is Spanish

Exclusions: Based on the accompanying definition listed below, minority students from North Africa, the Middle East, Central Asia, and North Asian are excluded. Other Asians, such as individuals from Indonesia, Thailand, Malaysia, and Singapore, are excluded.

Proposed Law: Eliminate this requirement so that all students are considered as individuals, not as members of racial groups.