

April 9, 2025

Chair Swearingen, Vice-Chair Green, and Honorable Members of the Assembly Committee on State Affairs:

**The American Civil Liberties Union of Wisconsin appreciates the opportunity to provide written testimony in opposition to Assembly Bill 58.**

AB-58 prohibits a flag “used for ceremonial purposes related to a political party, a political or social cause, a sexual orientation or gender identity, a political, ideological, or religious viewpoint, or a gang or extremist group as designated by the federal bureau of investigation, [or] a flag that commemorates, represents, or shows support for or opposition to a political party, a political or social cause, **a racial identity, a sexual orientation or gender identity**, or a political, ideological, or religious viewpoint” from being “flown, hung, or displayed from a flagpole or the exterior” of:

- any state office building or facility, including the state capitol;
- any building or facility leased by a state agency;
- any building or facility owned or leased by a local government unit; or
- any building or facility owned, leased, or used by a school board

Further, the bill bans any “flag that has been used for or is used for ceremonial purposes and was designed to recognize a holiday” or “represents, commemorates, or has been designed to recognize a holiday listed under s.230.35(4)(a) or 995.20.” **Notably, that includes Juneteenth**, recognized as a federal holiday in 2022 to commemorate June 19, 1865 — two months after the end of the Civil War and more than two years after the Emancipation Proclamation was issued — when the Union army advanced in Texas and Oklahoma declaring the last enslaved people there free. **It also includes Indigenous Peoples’ Day**, which honors and celebrates First Nations and reaffirms the significance of their Tribal sovereignty, cultures, and histories.

The bill also repeals Wis. Admin. Code § 2.07(1), which states, “The United States flag and the flag of the state of Wisconsin shall be the only flags flown, hung, or displayed from any state office building or facility, **except as the governor may direct**,” presumably to specifically target Governor Evers’ raising of the Pride Flag<sup>1</sup> and the Juneteenth Flag<sup>2</sup> in recent years.

While the ban “does not apply to a state office building, facility, or property that is leased or rented to a private, nongovernmental entity,” the text of the bill does not explicitly address mixed-use facilities and raises several constitutional concerns regarding viewpoint discrimination and government control of private speech under the First Amendment.

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<sup>1</sup> “Gov. Evers Announces Progress Pride Flag to be Flown Statewide in Celebration of Pride Month,” [Press Release](#) (May 31, 2024)

<sup>2</sup> “Gov. Evers Signs Executive Order Raising Flag at State Capitol in Celebration of Juneteenth,” [Press Release](#) (June 18, 2024)

This bill seemingly violates the First Amendment free speech rights of private property owners to the extent that it restricts what flags they may choose to fly on their own property. The bill fails to provide clarity as to the impact on private property owners in at least the following ways:

- Does the ban apply to a government-owned building occupied by both governmental and private entities?
- Does the ban apply to a privately-owned building leased or rented exclusively to a governmental entity?
- Does the ban apply to a privately-owned building leased or rented to both a governmental entity and a private entity?
- What does it mean for a building or facility to be “used” by a school board? – would this include any privately owned building where a school board happens to meet or conduct any business?

The co-sponsorship memo notes the proposal “reinforces respect for our shared history and values,” but it’s important to ask **whose shared history and values?**

It appears that AB-58 is less about patriotism than it is about power. In the last session, this legislature proposed allowing parents to opt their children out of instruction related to “controversial subjects” related to race and gender. This session, it’s banning the affirming display of Pride flags by local governments. Meanwhile, the federal government continues to scrub references about women, people of color, and members of the LGBTQ+ community from their websites. All of these actions send a chilling message to Wisconsinites who stand for justice, equality, and an honest teaching of our nation’s complicated history: that their struggles and contributions are unworthy of acknowledgement and protection.

The City of Milwaukee hosts one of the oldest Juneteenth celebrations in the country, which has been celebrated with an annual parade and festival since 1971. **Are we really going to pass a law prohibiting the city and county of Milwaukee from raising a flag celebrating Black people’s liberation from chattel slavery?**

In 1981, Wisconsin became the first in the nation to pass a statewide civil rights law prohibiting discrimination based on sexual orientation in employment, housing, and public accommodations. **Are we really going to pass a law prohibiting a school board from displaying a flag that instills a sense of community, pride, and inclusivity for *all* students?**

County and municipal governments as well as educational institutions have raised the flags of federally recognized tribes in observation of Indigenous Peoples’ Day. **Are we really going to pass a law prohibiting a unit of government or school from honoring and acknowledging the native land we continue to occupy, even if outside the current “boundaries of an Indian reservation or other land held in trust for the tribe or band”?**

Today it’s flags. We fear there will be broader restrictions on speech, education, or expression for anyone the state deems unacceptable tomorrow. We respectfully urge committee members to oppose this bill.