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Appeal No. 2022AP2026

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KONKANOK RABIEBNA, RICHARD A.  
FREIHOEFER, DOROTHY M. BORCHARDT,  
RICHARD HEIDEL, AND NORMAN C. SANNES,

Plaintiffs-Appellants,

v.

HIGHER EDUCATIONAL AIDS BOARD AND  
TAMMIE DEVOOGHT-BLANEY,  
Defendants-Respondents-  
Petitioners.

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APPEAL FROM A FINAL ORDER OF THE JEFFERSON COUNTY  
CIRCUIT COURT, THE HONORABLE WILLIAM F. HUE,  
PRESIDING,

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**NONPARTY BRIEF OF AFT-WISCONSIN**

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January 16, 2026

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**INTRODUCTION AND  
STATEMENT OF INTEREST OF THE AMICUS**

The American Federation of Teachers-Wisconsin (AFT-Wisconsin) represents employees of many of the technical colleges that depend on these minority undergraduate retention grants to ensure success of their *entire* student body. AFT-Wisconsin represents a wide array of professionals and one of its divisions represents higher education professionals. Nationally the AFT works with the American Association of University Professors and together they represent the largest and most powerful group of higher education workers in the United States. Their mission is to defend “colleges and universities from sustained political and economic attacks and advance a bold, collective vision of higher education.”

## ARGUMENT

Wisconsin established a system of technical colleges to prepare students for the workforce and expand access to education for students historically excluded, especially women, students of color,<sup>1</sup> and students with disabilities. These institutions serve as a cornerstone of Wisconsin's academic and economic infrastructure. They offer high quality career training to students not interested in, or able to obtain, a four-year degree. They also supply a skilled workforce for Wisconsin's robust blue-collar industries.

Despite their overall success, Wisconsin's technical colleges face persistent racial disparities in student outcomes. Black and Hispanic students enroll but then leave and graduate at markedly lower rates than their white peers. These gaps reflect structural barriers that undermine the very purpose the technical college system was designed to fulfill. The State therefore has not only an interest in addressing these stark racial disparities but also a duty to do so. The minority undergraduate retention grants established in Wis. Stat. § 39.44 respond directly to this problem. They offer a narrowly tailored and evidence-based means to abate disproportionately high dropout rates for students of color.

### **I. Wisconsin's technical colleges provide specialized training and emphasize career preparation.**

The technical colleges represented by AFT-Wisconsin serve a unique function in Wisconsin's higher education landscape: specialized career training for students not interested in or well-

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<sup>1</sup> This brief uses the term "students of color" to refer to students who identify as a race/ethnicity other than white, namely Black and Hispanic students.

suites for four-year colleges. Wisconsin was the first state in the nation to develop a statewide technical college system. John Scott, *Wisconsin Technical College System*, Wisconsin Legislative Fiscal Bureau Informational Paper 35, 1 (January 2003), [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://docs.legis.wisconsin.gov/misc/lfb/informational\\_papers/january\\_2003/0035\\_wisconsin\\_technical\\_college\\_system\\_informational\\_paper\\_35.pdf](https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2003/0035_wisconsin_technical_college_system_informational_paper_35.pdf). In 1911, the state established vocational systems for the purpose of educating older children and adults who were not otherwise enrolled in secondary or post-secondary schools. *Id.* Originally run by local school systems or districts, Wisconsin merged these schools into a statewide system in 1965. *Id.*

Today, technical colleges provide the practical career training for Wisconsin's next generation of tradespeople, factory workers, police officers, and paramedics. See Wisconsin Policy Forum Focus #2 (January 2024), <https://wispolicyforum.org/research/understanding-technical-college-funding-in-wisconsin/>. "The technical college system in Wisconsin has evolved out of necessity to serve employers and to help keep a trained workforce in communities, many of them rural and low-income." Mark Lisher, Most UW System Schools' Enrollments Are Stagnant as Tech Colleges Flourish, Badger Institute (Nov. 13, 2025), <https://www.badgerinstitute.org/most-uw-system-schools-enrollments-are-stagnant-as-tech-colleges-flourish/>. Although many technical colleges offer more general education programs, and many students end up transferring to four-year colleges, these are not the schools that offer bachelor's

degrees in philosophy and French. True to their name, technical colleges emphasize technical, vocational, and industrial education. *Id.* (This focus on career preparation diverges even from “community colleges,” which offer more associate degrees and programs to help students transfer to four-year colleges). *Id.* Technical colleges offer training, certifications, and degrees in air conditioning and refrigeration technology, butchery, police work, paramedic work, dental hygiene, and welding. *See e.g., View All Programs, Madison Area Technical College, <https://madisoncollege.edu/academics/programs> and Academic Programs, Milwaukee Area Technical College, <https://www.matc.edu/course-catalog/index.html> to peruse various programs.* They even offer options for high schoolers to seamlessly transition to lucrative and respectable careers—these days most commonly nursing and welding. Royce Podeszwa, *Rising Dual Enrollment for High Schoolers Contributes to Wisconsin Technical College Growth*, Wisconsin Public Radio (January 6, 2026), <https://www.wpr.org/news/rdual-enrollment-high-schoolers-contributes-wisconsin-technical-college-growth>.

Wisconsin runs one of the most expansive technical college systems in the nation. *Understanding Technical College Funding in Wisconsin*, Focus #2, Wisconsin Policy Forum (January 2024), <https://wispolicyforum.org/research/understanding-technical-college-funding-in-wisconsin/>. Only six states have more technical colleges than Wisconsin and all of those states have substantially more residents. *Id.* Presumably it is Wisconsin’s high percentage of manufacturing workers—the second highest in the country—

that continues to incentivize people to pursue a technical education. *See id.* In fact, enrollment at Wisconsin technical colleges has increased by 18 percent in the last five years. Podeszwa, *supra* at 10.

Wisconsin's expansive technical college system provides the state of Wisconsin with educational bootstraps for those who do not have the time, money, ability, or interest in a four-year college but have the drive to work hard and earn their keep. Students graduate from these schools with the expertise to keep Wisconsin's industries running.

## **II. Technical colleges aim to make education accessible to all.**

At Wisconsin technical colleges, accessibility and retention are paramount: the system's success depends on graduating the next generation of workers. From their origins, these schools intended to eliminate racist, sexist, and ableist barriers. One of the five stated purposes of the Technical College System is to "[p]rovide "education and services which address barriers created by stereotyping and discriminating and assist individuals with disabilities, minorities, women, and the disadvantaged to participate in the work force and the full range of technical college programs and activities." Wis. Stat. § 38.001(3)(e).

Technical colleges have upheld these commitments to accessibility and today attract diverse student bodies. Statewide, the Wisconsin Technical College System schools have about 294,000 students. *2024-2025 Fact Book*, Wisconsin Technical

College System, 7 (October 2025), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://wtcsystem.edu/assets/Uploads/Publications/Report/WTCS-Student-Data-Fact-Book-2024-25.pdf. Of those who reported their race (about 260,000), 69 percent are white, 14.5 percent are Hispanic, and 8.5 percent are Black. Asian, American Indian, Hawaiian/Pacific Islander, and Multi-ethnic students make up another eight percent approximately. *Id.* The second largest school, Madison College (formerly Madison Area Technical College) sits in Madison and has a slightly higher percentage of students of color.<sup>2</sup> *Id.* Milwaukee Area Technical College is the system's largest and most diverse school in the system. *Id.* Of the students who reported their race, 30.7 percent are Black, 30.3 percent are white, 28 percent are Hispanic, and about 11 percent are Asian, Hawaiian/Pacific Islander, and multi-ethnic.<sup>3</sup> *Id.*

### **III. Drastic racial disparities exist in retention and graduation rates at Wisconsin technical colleges and all public higher education institutions, nationwide.**

Despite good intentions, however, a closer look reveals a serious problem: students of color have a much lower chance of graduating than their white peers. Take the example of the extremely popular welding program at Wisconsin's technical

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<sup>2</sup> Compared to the Wisconsin Technical College System statewide, Madison College has a higher percentage of students who identify as Hispanic (19%), Asian (5.2%), Black (9%), and Multi-Ethnic (4%), but a lower percentage of students who identify as Hawaiian/Pacific Islander (0.08%) and American Indian (0.5%).

<sup>3</sup> 6.4% Asian; 4% Multi-Ethnic; 0.5% American Indian; 0.07% Hawaiian/ Pacific Islander.

colleges. One study compared program completion rates for welding, across demographic groups, controlling for economic status, and found extreme racial disparities. Hilary Barker, et al., System-Wide Equity Report 2021, Wisconsin Technical College System (November 2021), <chrome-extension://efaidnbnmnibpcajpcglclefindmkaj/https://www.mstc.edu/sites/default/files/2021-12/WTCS-2021-equity-report.pdf>.

Only 16 percent of Black students living in poverty and 33 percent of Hispanic students living in poverty completed the welding program within six years. *Id.* In contrast, 55 percent of white students living in poverty completed the program within six years. *Id.*

The Milwaukee Area Technical College recently reported that the persistence rate<sup>4</sup> was 23 percent higher for white students than students of color in the Fall 2023 semester. Mark Feldmann, *MATC's No.1 Job: Making All Students Successful*, MATC Newsroom (April 24, 2025), <https://www.matc.edu/news/2025/04/voice-of-college-live-second-session.html#:~:text=Secondpercent20Voicepercent20ofpercent20thepercent20College,Home>. The retention rate<sup>5</sup> was 17 percent higher for white students than students of color for the same period. *Id.* And critically, the completion rate was nine percent higher for white students than students of color. *Id.*

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<sup>4</sup> The rate at which students who enrolled in the Fall semester enrolled again the next Fall.

<sup>5</sup> The rate at which students who enrolled in the Fall semester enrolled again the Spring semester that followed.

This issue is not limited to technical colleges. As of 2020, more than 76 percent of white students graduated from Wisconsin public colleges within six years, but only about 40 percent of Black students graduated in the same period. Rich Kremer, *Southeastern Wisconsin Colleges, Universities Partner to Eliminate Disparities in Graduation Rates*, Wisconsin Public Radio (October 21, 2020), <https://www.wpr.org/education/southeastern-wisconsin-colleges-universities-partner-eliminate-disparities-graduation-rates>. Hispanic and Asian American<sup>6</sup> students fared slightly better with six-year graduation rates of 61 percent and 66 percent, respectively. *Id.*

Unfortunately, this pattern holds true across the country. In one study of students enrolling at public colleges nationwide in 2010, overall completion rates were the highest for Asian and white students (63.2 percent and 62.0 percent, respectively) followed by Hispanic students (45.8 percent) and Black students (38 percent). Doug Shapiro, Afet Dunder, et al., *A National View of Student Attainment Rates by Race and Ethnicity – Fall 2010 Cohort* (Signature Report No. 12b), National Student Clearinghouse Research Center (April 2017), <chrome-extension://efaidnbnmnibpcjpcglclefindmkaj/https://nscresearchcenter.org/wp-content/uploads/Signature12-RaceEthnicity.pdf>.

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<sup>6</sup> The minority undergraduate retention grants are eligible to some Asian American students, those students from, or descended from, Laos, Vietnam, or Cambodia (as well as Black, American Indian, and Hispanic students). This brief does not address the ethnic diversity among students who identify as Asian or provide any research specific to students from, or descended from, Laos, Vietnam, or Cambodia.

These data show a “24 percentage point gap in the completion rates of [B]lack and white students.” *Id.* The gap between Hispanic and white students is 16 percent (45.8 percent and 62.0 percent, respectively). *Id.* In other words, during the six-year period studied, a substantially higher percentage of Black and Hispanic students dropped out of public colleges compared to white students. *Id.* These gaps remain true regardless of gender. *Id.* The abundance of data provides a “strong basis in evidence” that remedial action is warranted. *See Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 277 (1986).

#### **IV. The high cost of school presents a substantial barrier to education.**

The role of unaffordability in driving racial disparities in higher education cannot be overstated. As costs rise, students of color are disproportionately forced to pause or withdraw before earning their credentials. Despite the lofty goal of technical colleges to eliminate discriminatory barriers for students, students (and potential students) face serious economic barriers to attending and graduating from these schools. Ultimately, higher education is just too expensive, and students of color get hit the hardest. In a recent report, Wisconsin ranked in the bottom five states for affordability of public higher education. Natalie Yahr, *Wisconsin Trails Most States in Affordability of Public Colleges*, Wisconsin Watch (October 20, 2025), <https://pbswisconsin.org/news-item/wisconsin-trails-most-states-in-affordability-of-public-colleges/>. All but two of Wisconsin’s

higher education schools are unaffordable. *Id.* Federal financial aid does not buoy students as much as it once did. *Id.*

School is least affordable for technical college students. *Id.* The average technical college student faces an affordability gap of \$1,336, nearly triple the national average. *Id.* This is in large part because technical college students have less means. Students in the technical college system face multiple systemic barriers to education, such as poverty, racism, disability, and single parenthood. Barker, *supra* at 13. In the Technical College System statewide, 29 percent of students live in poverty. *Id.* Ten percent are disabled, ten percent are single parents, and nine percent have limited English proficiency. *Id.* The more barriers a student faces, the less likely it is that the student will complete their program. *Id.* For example, a single mother of color with a disability has a 20 percent chance of completing her program whereas students in the general population have a 40 percent chance of completing their program. *Id.* Increasing financial aid is one obvious way to help students stay in school.

**V. Non-financial barriers contribute to racial disparities in retention and graduation rates.**

Money is not the only problem facing students of color. In fact, Black and Hispanic students reported emotional stress and mental health as the top reasons that they considered dropping out (cost was third). Stephanie Marken, *Black, Hispanic Students at Greatest Risk of Leaving Program*, Gallup (Feb. 28, 2024), <https://news.gallup.com/poll/611093/black-hispanic-students->

greatest-risk-leaving-program.aspx. These students feel strained by stereotyping, discrimination, and a general lack of belonging. *Id.* Compared to white students, more are first-generation students who feel imposter syndrome and need more mentorship to navigate academia. See Clara Burgo, *Some Perspectives on University Challenges for Latinx Undergraduates*, HISPANIC STUDIES REV. 8(2) (2024), <https://hispanicstudiesreview.cofc.edu/article/123156-some-perspectives-on-university-challenges-for-latinx-undergraduates>. Additionally, the environment Black and brown students encounter in college does not always reflect the culture from which they came. See *Id.*

Many of these students also struggle to balance full-time work and family caregiving responsibilities while attending school. *Id.*; Marianna McMurdock, *Why Nearly Half of Black Students Have Considered Stopping College*, *The 74* (Feb. 9, 2023), <https://www.the74million.org/article/why-nearly-half-of-black-students-have-considered-stopping-college/>. Students of color are significantly more likely than their white peers to face complex social, cultural, and emotional barriers to higher education.

**VI. Minority undergraduate retention grants offer a narrowly tailored means to reduce racial disparities in retention.**

Schools have a compelling interest in remedying these stark disparities in student success, and the minority undergraduate retention grants offer a narrowly tailored—if not the most narrowly tailored—means to do so. Racial disparities in student

success harm both students and the colleges that serve them. Students who do not graduate lose the tuition that they invested without gaining access to their profession or the long-term economic stability these institutions were designed to provide. Their peers, in turn, see their classes get less diverse as they progress through the program. And the harm compounds when a graduating class is substantially more homogenous than the cohort that entered just a few years earlier. This sends a powerful and discouraging messages to first-year students about who is likely to succeed.

When students do not remain enrolled and graduate, Wisconsin's technical colleges lose their investment of time and money in the students they carefully selected for admission to their programs. These schools exist to serve a broad range of students, particularly those for whom traditional four-year institutions are inaccessible, impractical, or ill-suited. They offer affordable, workforce-focused education intended to lead to stable employment and long-term self-sufficiency. Despite those noble goals and purpose, Black and Hispanic students continue to leave these programs at markedly higher rates than their peers. In short, these disparities signal that the schools are failing to fulfill their promise. Accordingly, increasing persistence and retention of students of color is a stated goal of many technical colleges. *See e.g., Madison Area Technical College, Institutional Research and Effectiveness Dept., Board End Measures, May 18, 2022.*

The minority undergraduate retention grants address this problem in a straightforward and targeted way. First, to state the

obvious, financial aid improves outcomes. Milwaukee Area Technical College has reported that persistence rates and retention rates are both higher among students who received federal financial aid. Feldmann, *supra* at 13.

Second, limiting these grants to those students who need the most help staying in school is the most narrowly tailored means to combat racial disparities in retention. In other words, these grants support students who face the greatest risk of dropping out. Because students of color face complex social, cultural, and emotional barriers not faced by their white peers—even their white peers living in poverty—there is a need for financial aid reserved specifically for students of color. Financial aid for all students below a certain income level, for example, would not address the noneconomic barriers. Focusing on the student groups least likely to make it to graduation has a strong basis in evidence. *See Wygant*, 476 U.S. at 277. When it comes to enrollment, “financial aid and scholarships are even more important to unenrolled Black and Hispanic Americans,” including emergency aid. Marken, *supra* at 16. It is fair to assume the same is true when it comes to retention.

These grants reach students that may not be eligible for other aid. Traditional student financial aid often does not reach those students most at risk of dropping out. “It’s common, for instance, for colleges to limit scholarships to full-time students living on-campus .... But the practice disproportionately denies financial aid to Black students, more likely to have working responsibilities that prevent them from enrolling full-time, and

more likely to be parents, ineligible for on-campus housing.”  
McMurdock, *supra* at 17. In contrast, the grants available under  
Wis. Stat. § 39.44 do not require students to have full-time status  
or an on-campus residence.

The minority undergraduate retention grants advance the  
core educational and workforce objectives of Wisconsin’s technical  
colleges by helping ensure that students who enroll can persist and  
complete their programs.

### CONCLUSION

For the foregoing reasons, AFT-Wisconsin respectfully  
requests that the Court rule in favor of Defendants-Respondents-  
Petitioners Higher Educational Aids Board and Tammie  
Devooght-Blaney and hold that the minority undergraduate  
retention grants enacted under Wis. Stat. § 39.44 satisfy equal  
protection.

Date: January 16, 2026

Electronically signed by Christine Donahoe

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### FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. §§ 809.19(7) and (8) for a brief produced with a proportional serif font. The length of this brief is 2,991 words and 20 pages.

Signed: January 16, 2026

Electronically signed by Christine Donahoe

### CERTIFICATE OF SERVICE

I hereby certify that I have submitted an electronic copy of this brief to the Clerk of the Court of Appeals and representatives for Plaintiffs-Appellants Konkanok Rabiebna, Richard A. Freihoefer, Dorothy M. Borchardt, Richard Heidel, and Norman C. Sannes, as well as Defendants-Respondents-Petitioners Higher Educational Aids Board and Tammie Devooght-Blaney via the electronic filing system for the Court of Appeals.

Signed: January 16, 2026

Electronically signed by Christine Donahoe