



March 11, 2019

Dr. Rahmat Shoureshi
President's Office
Portland State University
PO Box 751--POF
Portland, Oregon 97207-0751

Sent via U.S. Mail and Electronic Mail (president@pdx.edu)

Dear Dr. Shoureshi:

On February 18, 2019, the Foundation for Individual Rights in Education (FIRE)¹ wrote to the Chief of Police of Portland State University (PSU) concerning law enforcement's cancellation of a meeting of the Portland State International Socialist Organization (ISO).

Our letter called on PSU to publicly explain the cancellation in order to ascertain whether law enforcement's conduct was consistent with PSU's obligations under the First Amendment, posing several questions related to the cancellation. Regrettably, PSU failed to respond to that letter. Meanwhile, records produced in response to a public records request suggest that the university's response focused not on defending its students' First Amendment rights, but on securing the university's public image.

Inaction following requests to defend students' expressive rights appears to be the default posture for PSU Campus Public Safety. Last week, officers stood idly by while demonstrators, this time opposed to a conservative speaker, purposefully prevented the speaker from addressing a meeting of the Portland State College Republicans.

Together, PSU Campus Public Safety's responses suggest that its approach to protecting students' First Amendment rights is less "To Protect And Serve" and more "I prefer not to."²

¹ As you will recall from our prior correspondence, FIRE is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

² Herman Melville, *Bartleby, the Scrivener: A Story of Wall Street*, PUTNAM'S MAGAZINE (Nov.—Dec. 1953).

I. Portland State Records Suggest PSU’s Cancellation of the International Socialist Organization Meeting Abridged the First Amendment

As our letter of February 18, 2019, explained, the First Amendment obligates law enforcement to make “bona fide efforts” to protect expressive rights “by other, less restrictive means” short of cancelling the expressive activity. *Bible Believers v. Wayne County*, 805 F.3d 228, 255 (6th Cir. 2018)). Because PSU is a public institution, the decisions and actions of its law enforcement officers are bound by the First Amendment. *Healy v. James*, 408 U.S. 169, 180 (1972); *Laizure v. Washington County*, No. 3:17-cv-01254-SB, 2018 U.S. Dist. LEXIS 128951, at *10 (D. Or. July 13, 2018).

While PSU chose not to respond to the questions posed by FIRE’s letter, the university produced at least some³ of the records it was obligated to produce pursuant to Oregon’s Public Records Law. Those records, enclosed, consist of emails to and from PSU’s Chief of Police. They do not inspire confidence that PSU’s cancellation of the ISO meeting can meet any level of First Amendment scrutiny.

The following timeline can be gleaned from those records. At 4:08 p.m. on the day of the ISO meeting, PSU Chief of Police Donnell Tanksley received an email alerting him to Joey Gibson’s plan to appear at the 6:30 p.m. meeting. With nearly two and a half hours to take steps to protect the expressive rights of the student organization, the records suggest that Chief Tanksley’s first step, at 4:19 p.m., was to email Christopher Broderick and Kenny Ma, PSU’s senior communications and public relations administrators.⁴ Twenty-five minutes later, at 4:44 p.m., Tanksley forwarded the email to a number of PSU law enforcement personnel. At 5:20 p.m., Tanksley forwarded the Joey Gibson email to Alexander Accetta, a PSU assistant vice president whose authority includes the Student Union. At 5:31 p.m., Tanksley again emailed Accetta, “[t]hanks a million,” but the records do not reveal what action had been taken.

These records suggest that PSU had several hours to take steps, short of cancelling the meeting, to ward against any threat to public safety or disruption. Instead, its leadership viewed the possibility of disruption as an optics problem and the cancellation of the students’ meeting as an expedient tool to avoid that possibility. The First Amendment requires more of law enforcement before they foreclose on First Amendment rights.

Accordingly, FIRE again calls on Portland State University to transparently account for the actions taken by its law enforcement personnel.

³ This production may be incomplete. PSU concedes that there may be bodycam footage responsive to FIRE’s public records request, but requires a fee of \$108.36 per minute of footage in order to blur out any faces. PSU says it does not have the technology to produce the audio alone, which would obviate the need to obfuscate any video.

⁴ Portland State University Office of University Communications, *Staff Directory*, <https://www.pdx.edu/university-communications/contact> (last visited Mar. 8, 2019).

II. Portland State University's Inaction During College Republicans Event

The Portland State College Republicans are a recognized student organization at PSU. On the evening of March 5, 2019, the College Republicans hosted Michael Strickland, a local political activist, for a discussion about how, in their view, Strickland's First and Second Amendment rights had been infringed by his recent conviction on felony firearms offenses.⁵ The discussion was to be held in PSU's Smith Memorial Student Union.⁶ After Strickland's presentation began, a member of the audience began ringing a cowbell, yelling, and standing in front of the projector. When Strickland sought to continue speaking, the demonstrator would resume use of the cowbell. The entirety of the disruption, which lasted more than an hour, was captured on several videos, including videos published by both Strickland's supporters and detractors.⁷

On March 7, PSU issued a public statement concerning the disruption:⁸

Announcement: Portland State University has guidelines for events at Smith Memorial Student Union. An event this week was sponsored by the Portland State College Republicans, a recognized student organization at PSU. Due to the nature of the event advocating gun rights, a Campus Public Safety officer monitored the event to ensure the safety of participants. When an individual disrupted the event by ringing a cowbell, the officer used his professional judgment and determined not to threaten or restrain the individual so as not to escalate a potentially unsafe situation. After the disruption, the meeting continued, and PSU facilities management allowed College Republicans to extend their meeting beyond the scheduled end time that night because of the disruption delay.

⁵ *Michael Strickland: How The 1st Amendment Was Invalidated*, FACEBOOK (Feb. 19, 2019), <https://www.facebook.com/events/307989646584364>. On February 10, 2017, Strickland was convicted of twenty-one felony and misdemeanor crimes after he brandished a firearm at demonstrators protesting the shooting deaths of two African-Americans by police. Aimee Green, *Guilty: Man who pulled gun out at 'Don't Shoot PDX' protest*, THE OREGONIAN, Feb. 10, 2017, https://www.oregonlive.com/portland/2017/02/guilty_man_who_pulled_gun_out.html. Strickland has appealed his conviction on, among other things, a probationary restriction on his ability to filming relating to his political activities absent permission of his probation officer. *State of Oregon v. Michael Aaron Strickland*, No. A165019, Court of Appeals of the State of Oregon, Appellant's Brief and Excerpt of Record, Dec. 14, 2017, at *46. After Strickland was arrested, he was banned from PSU in or about July, 2016, for a period of two years. Andrew Theen, *Portland colleges ban man charged with waving gun at Don't Shoot PDX march*, THE OREGONIAN/OREGONLIVE, July 13, 2016, https://www.oregonlive.com/education/2016/07/portland_colleges_ban_man_char.html.

⁶ *Id.*

⁷ See, e.g., Kay Bridges, *Mike Strickland 3 5 19 PSU – Harassment of Presentation*, YOUTUBE (Mar. 6, 2019), <https://www.youtube.com/watch?v=ZBl40jyIWhg> ("YouTube Video"); Cascadian Resistance (@CasResistance), TWITTER (Mar. 5, 2019, 7:04 PM), <https://twitter.com/CasResistance/status/1103129215874957312> ("Twitter Video").

⁸ Portland State University, *Announcement*, FACEBOOK (Mar. 7, 2019), <https://www.facebook.com/PortlandStateU/posts/10157162395918872>. The post ended with a link to the Rules of Conduct for the Smith Memorial Student Union, which is available at <http://bit.ly/2tXbKZs>.

There is reason to doubt the university's factual assertions.

First, the videos depict not simply “a” Campus Public Safety officer, but four law enforcement officers, including Campus Police Sergeant Willie Halliburton, Public Safety Officer Nichola Higbee,⁹ and two other uniformed officers.¹⁰ At least two officers were present within the first several minutes of the disruption.¹¹

Second, the officers apparently believed that they could not remove a disruptive audience member, not simply that it would be imprudent. During the disruption, one of Strickland's supporters approaches Sgt. Halliburton and asks, “There's nothing—you can't kick this guy out?” Sgt. Halliburton shakes his head and says, “No, we cannot.” Strickland's supporter asks, “So they can do it in classrooms?” and the officer nods his head affirmatively. Another supporter asks Officer Higbee, “there's nothing you can do unless he throws punches and gets violent?”¹² She, likewise, nods affirmatively.

Third, the university does not explain what facts contributed to the officers' “professional judgment” in determining that it would “escalate a potentially unsafe situation” if they intervened. The university cites only the content of the meeting—the “nature of the event advocating gun rights”—as the basis to monitor the meeting. There is no indication that the officers believed anyone present was armed.

We recognize that the First Amendment does not create an affirmative obligation on the part of law enforcement to prevent third parties from infringing the rights of others.¹³ We also recognize that institutions committed to freedom of expression must anticipate and protect the rights of student and faculty members to peacefully protest disfavored speakers, whether that protest is polite and sober or vociferous and untempered.

The ability for students to present, hear, and challenge views in an enclosed location means little if it depends on unanimous agreement that the speaker *should* be heard. As Justice Thurgood Marshall observed: “The freedom to speak and the freedom to hear are inseparable; they are two sides of the same coin.” *Kleindienst v. Mandel*, 408 U.S. 753, 775 (1972) (Marshall, J., dissenting).

⁹ YouTube Video, *supra* note 7, at 13:00.

¹⁰ YouTube Video, *supra* note 7, at 1:43.

¹¹ Twitter Video at 2:20, 3:56.

¹² YouTube Video, *supra* note 7, at 2:45.

¹³ *DeShaney v. Winnebago Cty. Dep't. of Social Servs.*, 489 U.S. 189, 197 (1989) (“nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors”); *Young Ams. Found. v. Covino*, No. 2:16-CV-03474 (C.D. Cal. Dec. 12, 2016), Dkt. No. 87, Mem. at 6–7 (due process violation framed as failure to act to remove protesters at a university speech is “foreclosed by” *DeShaney*); *Felber v. Yudof*, 851 F. Supp. 2d 1182, 1186 (N.D. Cal. 2011) (at a public university, students who were harassed, intimidated, and assaulted had “no basis for pursuing such constitutional claims against defendant,” as “state actors have no constitutional obligation to prevent private actors from interfering with the constitutional rights of others.”).

The First Amendment does not forbid public officials from prohibiting and taking action in the face of disruptive conduct that substantially, materially, and intentionally obstructs meetings. *Adderley v. Florida*, 385 U.S. 39, 47–48 (1966) (state actors have the “power to preserve the property under [their] control for the use to which it is lawfully dedicated,” and protesters have no First Amendment right to protest “whenever and however and wherever they please,” so long as the regulation is “nondiscriminatory”); *White v. Norwalk*, 900 F.2d 1421, 1425–26 (9th Cir. 1990) (no First Amendment violation for regulating “disruptive” conduct in meetings “in ways that would not meet the test of actual breach of the peace,” including regulation of participants “speaking too long, by being unduly repetitious, or by extended discussion of irrelevancies”); *but see Norse v. City of Santa Cruz*, 629 F.3d 966, 967 (9th Cir. 2010) (ejection of citizen who gave a silent Nazi salute at a city council meeting violated the First Amendment because it did not amount to actual disruption, and “[a]ctual disruption means actual disruption,” not “constructive disruption, technical disruption, virtual disruption, . . . or imaginary disruption.”).

California’s Supreme Court aptly addressed the need to defend a right to heckle a public speaker, while also preserving the right of assembly:

The Constitution does not require that any person, however lofty his motives, be permitted to obstruct the convention or continuation of a meeting. . . . The constitutional guarantees of . . . the rights of the people peaceably to assemble and petition for a redress of grievances[] would be worth little if outsiders could disrupt and prevent such a meeting. . . . This inhibition does not mean, however, that the state can grant to the police a “roving commission” to enforce Robert’s Rules of Order, . . . since other First Amendment interests are likewise at stake.

Audience activities, such as heckling, interrupting, harsh questioning, and booing, even though they may be impolite and discourteous, can nonetheless advance the goals of the First Amendment. For many citizens such participation in public meetings, whether supportive or critical of the speaker, may constitute the only manner in which they can express their views to a large number of people; the Constitution does not require that the effective expression of ideas be restricted to rigid and predetermined patterns. . . . A cogent remark, even though rudely timed or phrased, may “contribute to the free interchange of ideas and the ascertainment of truth.”

....

Since the Constitution indubitably affords some measure of protection to the free expression of all those present at a meeting—speakers, officials, and audience—[the statute prohibiting] “disturbances” [of meetings] potentially may collide with safeguarded First Amendment interests. **Nonetheless, the state retains a legitimate concern in ensuring**

that some individuals' unruly assertion of their rights of free expression does not imperil other citizens' rights of free association and discussion. [Citation.] Freedom of everyone to talk at once can destroy the right of anyone effectively to talk at all. Free expression can expire as tragically in the tumult of license as in the silence of censorship.

In re Kay, 1 Cal. 3d 930, 938–41 (1970) (emphasis added). These principles are directly applicable here.

PSU's own policies for the Smith Memorial Student Union, where the meeting was held, recognize this balance. Those policies provide that "disruptive or disorderly conduct . . . that unreasonably disturbs patrons . . . and interferes with use and enjoyment of the facilities, including . . . [n]oise that is disturbing to others" is "strictly prohibited."¹⁴ Visitors who violate this regulation "may be given a warning, asked to leave, or be permanently banned . . . upon threat of arrest should they return."¹⁵ The rules conclude by urging witnesses to contact Campus Public Safety.¹⁶

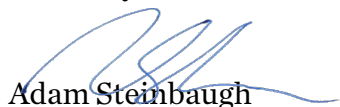
III. Conclusion

This year, PSU's law enforcement have at least twice surrendered students' expressive rights in the face of disruption. In January, officers took action to shut down a socialist student group's meeting; in March, they ratified by inaction the disruption of a conservative group's meeting. The message is clear: If you disagree with a student group at Portland State, left or right, simply threaten to disrupt their meetings. The police will be standing by.

This is an unacceptable result at a public university dedicated to freedom of expression. We again call on Portland State University to transparently hold its law enforcement to account.

We request receipt of a response to this letter no later than the close of business on March 25, 2019.

Sincerely,



Adam Steinbaugh
Director, Individual Rights Defense Program

Cc:

Donnell Tanksley, Chief of Police, Campus Public Safety
University Public Safety Oversight Comm., c/o Co-Chairs Marcy Hunt and Michael Alexander

Encl.

¹⁴ Rules of Conduct for the Smith Memorial Student Union, *supra* note 8.

¹⁵ *Id.*

¹⁶ *Id.*



Tank Tanksley <tanksley@pdx.edu>

FW: Joey Gibson @ PSU tonight, 6:30pm

Tank Tanksley <tanksley@pdx.edu>

Thu, Jan 24, 2019 at 4:09 PM

To: "Elmore, Dorothy" <Dorothy.Elmore@portlandoregon.gov>

rec'd

Donnell "Tank" Tanksley
Chief of Police/Director
Campus Public Safety
Portland State University

503-725-4782

503-725-5593

tanksley@pdx.edu

www.pdx.edu/cpsa

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Tank Tanksley <tanksley@pdx.edu>

FW: Joey Gibson @ PSU tonight, 6:30pm

Tank Tanksley <tanksley@pdx.edu>

Thu, Jan 24, 2019 at 4:19 PM

To: Christopher Broderick <cgb2@pdx.edu>, Kenny Ma <kenma@pdx.edu>

Donnell "Tank" Tanksley
Chief of Police/Director
Campus Public Safety
Portland State University

503-725-4782
503-725-5593
tanksley@pdx.edu
www.pdx.edu/cpsa

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----- Forwarded message -----

From: **Elmore, Dorothy** <Dorothy.Elmore@portlandoregon.gov>
Date: Thu, Jan 24, 2019 at 4:08 PM
Subject: FW: Joey Gibson @ PSU tonight, 6:30pm
To: Donnell Tanksley <tanksley@pdx.edu>

FYI., this is just off the web.. Good luck!

Dorothy Elmore



OMF Facilities Security Manager

City of Portland, Office of Management and Finance

d: (503) 823-6920 | c: (503) 823-6571

1120 SW Fifth Avenue, Room 1250

Portland, Oregon 97204

dorothy.elmore@portlandoregon.gov

From: Clodius, Jen

Sent: Thursday, January 24, 2019 4:05 PM

To: Hafer, Heather <Heather.Hafer@portlandoregon.gov>; Elmore, Dorothy <Dorothy.Elmore@portlandoregon.gov>; Leon Guerrero, Cheryl <Cheryl.LeonGuerrero@portlandoregon.gov>; Warren, William <William.Warren@portlandoregon.gov>

Subject: RE: Joey Gibson @ PSU tonight, 6:30pm

From Facebook (note threat in second image):



Joey Gibson

2 hrs · 🌐

If you are near PSU today please stop by here and respectfully ask questions to challenge their bubble.



TODAY AT 6:30 PM

Capitalism v Climate: Ecosocialist Alternatives to Climate Chaos

★ Interested

📍 Causes · 113 people



Joey Gibson

29 mins ·

Calls Patriot Prayer a hate group but then has the nerve in the same sentence to threaten me for wanting to talk. These socialist need to disavow antifa and their fascist tactics. Hey Facebook, this is me posting a threat from someone else, and I am openly discouraging these types of posts.



Quin Hagle

19 mins ·

Who wants to Fuck up Joey Gibson, leader of the fascist hate group patriot prayer? He'll be here tonight.



TODAY AT 6:30 PM
Capitalism v Climate: Ecosocialist Alternatives to Climate Chaos

GOING ▼

Causes · 112 people




Jen Clodius
Strategic Communications Manager
City of Portland, Office of Management and Finance
d: (503) 823-6806 | c: (503) 823-5946

From: Hafer, Heather
Sent: Thursday, January 24, 2019 4:03 PM
To: Elmore, Dorothy <Dorothy.Elmore@portlandoregon.gov>; Leon Guerrero, Cheryl <Cheryl.LeonGuerrero@portlandoregon.gov>; Warren, William <William.Warren@portlandoregon.gov>
Cc: Clodius, Jen <Jen.Clodius@portlandoregon.gov>
Subject: Joey Gibson @ PSU tonight, 6:30pm

Hi All,

I wanted to give you a heads up that Patriot Prayer might be crashing an event tonight at PSU, 6:30pm – 8:30pm.

Abolish I.C.E PDX Retweeted






Antifada

@Antifada161 · 59m

ALERTA: Joey Gibson & goons threatening to crash this event today at PSU

24 Going · 85 Interested · 12 Shares




Lee is going

Details

Capitalism puts profit for a few over survival of the many. We have the ability to avoid serious climate crisis, but it's not profitable to... See More

Recent Posts



Joey Gibson

— I wd be there to ask questions. Please be mature and respectful

1


12

8

JAN 24

Capitalism v Climate: Ecosocialist Alternatives to Climate Chaos

Public Event by Portland State International Socialist Organization



Gerald Stewart invited you

Interested

Going

Ignore

More

Today at 6:30 PM – 8:30 PM

Starts in about 4 hours · 46°F Partly Cloudy

Heather Hafer
Public Information Officer/Senior Management Analyst
 City of Portland, Office of Management and Finance
d: (503) 823-6965 | c: (503) 823-1242
1120 SW Fifth Avenue, Room 1250
Portland, Oregon 97204

4 of 5

2/19/2019, 12:11 PM

heather.hafer@portlandoregon.gov



image003.gif
23K



Tank Tanksley <tanksley@pdx.edu>

FW: Joey Gibson @ PSU tonight, 6:30pm

Tank Tanksley <tanksley@pdx.edu>

Thu, Jan 24, 2019 at 4:44 PM

To: David Troppe <dtroppe@pdx.edu>, Gregory Marks <marksg@pdx.edu>, Craig Whitten <whittec@pdx.edu>

Cc: Joe Schilling <jschill2@pdx.edu>, "Halliburton, Willie" <willie@pdx.edu>, Robert McCleary <mcclear@pdx.edu>

[Quoted text hidden]

2 attachments



image003.gif
23K



image006.jpg
3K



Tank Tanksley <tanksley@pdx.edu>

FW: Joey Gibson @ PSU tonight, 6:30pm

Tank Tanksley <tanksley@pdx.edu>
To: Alexander Accetta <alexa@pdx.edu>

Thu, Jan 24, 2019 at 5:20 PM

Donnell "Tank" Tanksley
Chief of Police/Director
Campus Public Safety
Portland State University

503-725-4782
503-725-5593
tanksley@pdx.edu
www.pdx.edu/cps

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----- Forwarded message -----

From: **Elmore, Dorothy** <Dorothy.Elmore@portlandoregon.gov>

Date: Thu, Jan 24, 2019 at 4:08 PM

[Quoted text hidden]

[Quoted text hidden]



image003.gif
23K



Tank Tanksley <tanksley@pdx.edu>

FW: Joey Gibson @ PSU tonight, 6:30pm

Tank Tanksley <tanksley@pdx.edu>

Thu, Jan 24, 2019 at 5:31 PM

To: Alex Accetta <alexa@pdx.edu>

Thanks a million.

Donnell "Tank" Tanksley
Chief of Police/Director
Campus Public Safety
Portland State University

503-725-4782
503-725-5593
tanksley@pdx.edu
www.pdx.edu/cpsa

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[Quoted text hidden]



Tank Tanksley <tanksley@pdx.edu>

FW: Joey Gibson @ PSU tonight, 6:30pm

Tank Tanksley <tanksley@pdx.edu>
To: Aimee Shattuck <shattuck@pdx.edu>

Thu, Jan 24, 2019 at 5:45 PM

Standby with Chief Tanker
Officer Kappa a Marked Socialist
reflecting which canceled due
to Patriot Prayer threat
1930 Off Duty 42W.