



Foundation for Individual Rights in Education

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July 1, 2005

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Dear President Rawlins:

Thank you for your prompt response to our letter of June 17, 2005. FIRE was pleased to read that Washington State is committed to the fundamental right to freedom of speech free from unlawful obstruction by others. We can assure you, however, that you do not need to confirm your obligation to respect the free speech rights of your students with the Office of the Attorney General. Washington State is a public university bound by the First Amendment of the U.S. Constitution and therefore may not tolerate, let alone support, attempts to disrupt, silence, and censor a theatrical work. This should be obvious to the administration of any public university.

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On April 21, student protestors at Washington State unlawfully attempted to obstruct the free expression of other students at a performance of the play *Passion of the Musical* by standing up during the play, collectively yelling out remarks that drowned out the play, and making threats to cast and audience members. Some threats were documented on video, such as, “I kill you,” “You better watch out,” and, “Get off of there or I’ll mop your fucking head!” According to the Director Chris Lee, the protestors also said, “We will get you outside,” and, “We will kill you.” The disruptive students succeeded in actually halting the play numerous times throughout the night. Washington State campus security’s response was to ignore Lee’s request that officers remove the protestors who were disrupting the performance and causing cast and audience members to fear for their safety. Instead, security requested that Lee censor lyrics in order “to avoid a possible riot or physical harm.” Washington State security’s obligation was to protect the performance—not to enforce the will of a mob that it claimed teetered on the brink of violence.

You may wish to review the case of *Jones v. Board of Regents*, 436 F.2d 618 (9th Cir. 1970). The plaintiff in that case, a war protestor, sought to enjoin

enforcement of a University of Arizona regulation that prohibited handbilling on campus; the university's justification was that the protestor's exercise of his freedom of expression through the distribution of controversial handbills caused people to threaten him with violence and therefore created a risk of public disturbance. The Ninth Circuit found in favor of the protestor, noting that "undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression." *Id.* at 621, citing *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 508 (1969). Even in the face of extremely hostile reactions, then, the court affirmed that a person has a right to be free from a "heckler's veto" and to express his or her views. **As the court stated, local law enforcement, far from suppressing speech, should have taken action "so as to prevent the infringement of Jones' constitutional right by those bent on stifling, even by violence, the peaceful expression of ideas or views with which they disagreed."** *Jones*, at 621. Yet during the performance of *Passion of the Musical*, Washington State campus security not only refused to remove the disruptive protestors, but actually told Lee to alter the play in order to avoid angering the very people who were attempting to squelch the cast's expression.

In addition to this university-supported heckler's veto on April 21, subsequent statements made by you and other administrators demonstrate that to defend this heckler's veto the university is even willing to dispense with the most common sense understanding of what a theatrical production is. Such an event is a venue for the director, cast, and others involved in the production to express themselves. It is not a forum for protestors in the audience. Simply put, **a theatrical performance is not a place for those who disagree with the content of the performance to engage in loud, disruptive behavior that is distracting to both cast members and audience members.** Performing a play is constitutionally protected free speech; however, disrupting a play is not, and threatening people with violence for expressing themselves is potentially criminal. Washington State's argument that Lee and the performers somehow created a public forum in the midst of a theatrical production is preposterous.

FIRE has also discovered that the same Office for Campus Involvement that on April 21 purchased tickets for the 40 student protestors at *Passion of the Musical* sponsored a showing earlier this year of Eve Ensler's *The Vagina Monologues*, a play that some students would find offensive. In April, the university also sponsored the production of *Tales of the Lost Formicans*, which included scenes of a young man masturbating onto an American flag and of two characters smoking marijuana. During the fall of 2003, the university sponsored the production of *Equus*, which contained nudity and "adult" language. Would the university have defended the "right" of a group of students who disliked the content of *The Vagina Monologues*, *Tales of the Lost Formicans*, or *Equus* to disrupt those performances or threaten the performers because they disliked these shows? Would the university, knowing that these students organized and planned such a protest, have purchased tickets on their behalf so that they would not have to pay to see something that offended them?

Washington State should not defend the right of students to disrupt these or any other theatrical production at the university, including Lee's *Passion of the Musical*. Doing so even once sets an unwise precedent that will encourage students to attempt to unlawfully stifle performances they dislike instead of engaging in protected expression, such as protesting outside of the production or writing opinion articles in the newspaper. Washington State's public defense of the student

protestors' disruption of *Passion of the Musical* currently constitutes the university's stance on "free speech"—a stance that defends the right of individuals to stifle and suppress others' expression, but violates the right of individuals to freedom of expression. The university's current position is inconsistent with the First Amendment and brings with it the specter of legal liability for each day during which it officially supports such a violation of its students' rights.

FIRE requests that Washington State publicly renounce its defense of the heckler's veto and clarify its position in supporting students' rights to freedom of expression protected by the U.S. Constitution. We again request your administration's written assurance to your students and to FIRE that any theatrical production or other protected student expression will be allowed to proceed unhindered by faculty, administrative staff, or other students; that no "heckler's veto" will be permitted to obstruct such expression; and that no university policy or contrivance will be used to infringe upon the expression of protected speech by any student at Washington State.

As Washington State students' rights continue to be at stake, FIRE requests a response by 5 p.m. on Thursday, July 14, 2005.

We look forward to hearing from you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Lukianoff".

Greg Lukianoff
Director of Legal and Public Advocacy

cc:

Robert C. Bates, Provost, Washington State University
Charlene K. Jaeger, Vice President for Student Affairs, Washington State University
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