

Public colleges or re-education camps for “children”?

by Noel W. Sterett

Historically, the purpose of public colleges has been to provide a marketplace of ideas, thought, and education to young adults—those capable of thinking and speaking independently and critically of the world around them. This is why the freedom of speech, the ability to express varied points of view and ideas no matter how odd or unpopular, has long been considered critical to the success or purpose of a college. Those who only remember the countless student protests of the 1960's or the freedom they enjoyed in college may still assume that the public college campus is still the safest place for free speech in the land.

Unfortunately, it is no longer so. In just the last decade or so, countless cases have been filed by students, speakers, and free speech advocacy groups exposing the egregious efforts to suppress speech on college campuses across the country. Administrators, deans, and boards have enacted patently unconstitutional speech codes, publically shamed student groups for inviting certain outside speakers on campus, and sequestered speech into Soviet-style “free speech” zones on campus—some as small as just six feet wide.

While many, if not most, of these free speech cases have been successful, far too many public colleges and their administrations remain undeterred. Waubensee Community College is a case in point. Last summer, we filed suit against Waubensee after the college denied our clients' request to return to campus in 2014 to hand out their flyers from behind a table—as they had done in years past. The College's denial letter even candidly conceded that the denial was both absolute and based on the viewpoint our clients sought to share. And in its papers filed with the court, Waubensee has not just refused to inform the court where speech is protected on campus but has actually and repeatedly declared that there “are no free speech zones on campus.”

After months of briefing and an all day preliminary injunction hearing, U.S. District Judge Robert Gettleman, who has openly shared his disagreement with the content of our clients' flyers, issued an opinion rebuking the school for engaging in “purposeful unconstitutional suppression of speech.”

However, despite what the College's own letter makes plain and what the law makes clear (i.e. viewpoint discrimination is never constitutional), Waubensee has decided to appeal—at significant cost to the school district and the courts. But why? Why do colleges persist in pursuing clearly unconstitutional courses of action in order to undercut what was once considered critical to their purpose? Waubensee's briefs and a recent article in *Slate* by University of Chicago law professor Eric Posner entitled “Universities Are Right—and Within Their Rights—to Crack Down on Speech and Behavior,” give us a few clues.

First, as both Waubensee and Mr. Posner have argued, college students should be treated like children not adults. The college claimed in their briefs that one of its jobs is to protect the “Nation's youth” from the type of information Lela and McCartney seek to share. Mr. Posner plainly states “[college] students are children. Not in terms of age, but in terms of maturity. Even in college, they must be protected like children”

Second, many college administrators now believe that they have a greater obligation to protect the “children” in their care from any speech or idea that they may find “disparaging” or “demeaning” than they have to the First Amendment to the United States Constitution. The only speech and ideas these children have a right to hear are those of their professors—who, on most college campuses have the same worldview. In the words of Waubensee's Director of Emergency Management and Safety, the college must even prohibit any “active attempt to influence student thinking.” Since Waubensee clearly doesn't apply that prohibition to its own professors, it must only apply to anyone who does not agree with the College's preferred opinion.

This folks is what, in many cases, your tax dollars are funding and will continue to fund until all of us—parents, students, and taxpayers—start to freely and fervently speak out against it. And we need more courageous plaintiffs willing to exercise and assert their constitutional rights in court. ■