



March 29, 2022

President Peter Salovey
Office of the President
Yale University
P.O. Box 208229
New Haven, Connecticut 06520-8229

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

Dear President Salovey:

The Foundation for Individual Rights in Education (FIRE), a nonpartisan nonprofit dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses, is concerned by Yale's response to the substantial disruption of the March 10, 2022, panel discussion that the Federalist Society attempted to hold at the Law School. Universities committed to free expression must protect students' free speech rights by making good faith efforts to prevent severe disruptions to expressive events as they occur. Allowing disruptors to silence speakers will only incentivize more threats to students' free speech rights and deter students from inviting potentially controversial speakers to campus.

I. Protesters Largely Prevent Audience from Hearing March 10 Federalist Society Panel Discussion

The following is our understanding of the pertinent facts.¹ We appreciate that you may have additional information to offer and invite you to share it with us.

American Humanist Association executive director Monica Miller and Alliance Defending Freedom (ADF) general counsel Kristen Waggoner visited Yale Law School on March 10 for a panel discussion on civil liberties hosted by the Yale Federalist Society student chapter. Among the audience were those seeking to listen to the panelists' discussion and about 120 protesters opposed to Waggoner and ADF. Several Yale police officers were also present in the hall to observe the event.

¹ FIRE's understanding of the facts is informed by a full audio recording of the event as well as first-hand accounts by the Yale Federalist Society leadership and event participants. Yale Federalist Society Chapter, *Audio Recordings of March 10 Panel Discussion* (Mar. 10, 2022), available at <https://www.youtube.com/watch?v=Che9UldnnSY>.

As Yale Law professor Kate Stith began to introduce the speakers, protesters interrupted her by voicing their displeasure toward ADF. Stith then read Yale’s free speech and disruption policies to the audience and told them to “grow up,” which prompted more jeering and yelling from the protesters.

As the panelists began speaking, protesters inside the lecture hall and in the hallway right next to the event began loudly chanting, yelling, clapping, stomping, and pounding on the walls to prevent audience members from hearing the speakers. The cacophony was so loud it drowned out the speakers and even disrupted nearby events and classes in the same building. The panelists attempted to speak over the noise but a majority of the audience was unable to hear them for most of the event.

Once the event concluded, police escorted the panelists from the hall. Aside from Stith’s initial reading of Yale’s policies, at no point during the event did any Yale administrator or police officer ask audience members in the hall to quiet down or to stop disrupting the event.² Yale Police Department Assistant Chief Anthony Campbell stated that officers were there “not to enforce YLS policy but rather to protect the safety of the demonstrators and those they were protesting.”³

II. Upholding Free Speech Requires Protecting Students’ Expressive Events From Substantial Disruption

Institutions of higher education committed to upholding students’ free speech rights, like Yale Law School,⁴ must ensure that student groups can exercise their expressive rights by hosting speakers.⁵ When such events are targeted for disruption by those opposed to the

² In an email to the Yale Law community, Dean Heather Gerken states that “a number [of students] made excessive noise” at the event and “some refused to listen to our staff,” but the students “inside the event” “complied with University policies.” Email from Gerken to Yale Law School Community (Mar. 28, 2022), available at <https://www.thefire.org/yale-law-dean-heather-gerken-email-to-yale-law-community-march-28-2022> [<https://perma.cc/JTX6-4JW7>].

³ Eda Aker, *Controversy continues over YLS protest and police presence*, YALE DAILY NEWS (Mar. 17, 2022), <https://yaledailynews.com/blog/2022/03/17/controversy-continues-over-yls-protest-and-police-presence>.

⁴ “Membership in the Law School does not qualify any person’s freedom to exercise one’s constitutional rights, including the rights of freedom of speech, of the press, and of peaceable assembly.” YALE LAW SCHOOL, *Rules of Discipline*, at § I(2) (2021–22), <https://bulletin.yale.edu/bulletins/law/rules-discipline> [<https://perma.cc/6UG8-NVR9>]. Yale Law is morally and legally bound to uphold this promise to protect students’ expressive rights consistent with the First Amendment. *E.g.*, *Johnson v. Schmitz*, 119 F. Supp. 2d 90, 93 (D. Conn. 2000) (“The basic legal relation between a student and a private university or college is contractual in nature. . . . There seems to be no dissent from the proposition that the catalogues, bulletins, circulars, and regulations of the institution determine the contractual relationship.”) (cleaned up); *see also Morris v. Yale Univ. Sch. of Med.*, No. 05CV848 (JBA), 2006 WL 908155, at *4 (D. Conn. Apr. 4, 2006) (finding that student’s breach of contract claim against Yale Medical School presented no “particularly novel or unsettled issues of Connecticut law”).

⁵ *E.g.*, *Gay Students Org. of the Univ. of N.H. v. Bonner*, 367 F.Supp. 1088, 1096 (D.N.H. 1974) (The “right” of students “to hear speakers of their own choice” is one of the “activities traditionally protected by the First Amendment.”); *Brooks v. Auburn Univ.*, 296 F.Supp. 188, 190–91 (M.D. Ala. 1969) (The First Amendment protects “the rights of students and faculty to hear a speaker invited to the campus.”); *see also Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (It is “well established” that the First Amendment confers and protects the right to speak as well as “the right to receive information and ideas.”). While Yale Law School is not directly

speakers or the speakers' messages, universities must make "bona fide efforts" to protect expressive rights, such as removing the source of the disruption.⁶ By allowing protesters to substantially disrupt the Federalist Society's event, Yale violates its promises to protect its students' rights and incentivizes more threats to future events.

When disruptive tactics are used to interfere with expressive events, the "proper response to potential and actual violence" is to address the disruption "rather than to suppress legitimate First Amendment conduct as a prophylactic measure."⁷ As one court aptly observed, "In a balance between two important interests—free speech on one hand, and the . . . power to maintain the peace on the other—the scale is heavily weighted in favor of the First Amendment."⁸ In finding that even the violent reaction of a hostile mob cannot justify cutting off a speaker's protected expression, a federal appellate court proclaimed:

Maintenance of the peace should not be achieved at the expense of the free speech. The freedom to espouse sincerely held religious, political, or philosophical beliefs, especially in the face of hostile opposition, is too important to our democratic institution for it to be abridged simply due to the hostility of reactionary listeners who may be offended by a speaker's message.⁹

Yale Law's responsibility to protect expressive events against severe disruptions is reflected in its policy banning "Intentionally and substantially interfering with . . . University activities or functions, or with the freedom of movement, freedom of peaceable assembly, freedom to learn, or other rights of any member of or visitor to the Law School or University."¹⁰ Additionally, Yale's "three strikes" policy regarding "people disrupting an event" states that "Yale is committed to protecting free expression and peaceful dissent" and requires administrators to inform protesters that "interfering with a speaker's ability to speak and the audiences ability to hear/see/enter is not permitted."¹¹ This policy then calls for "police to assist in allowing this event to proceed without disruption" once protesters have been warned.¹²

bound by the First Amendment, interpretations of the First Amendment's guarantee of "the freedom of speech" provide guidance as to what Yale Law's institutional promise of that freedom means to its students.

⁶ *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 255 (6th Cir. 2018).

⁷ *Collins v. Jordan*, 110 F.3d 1363, 1371–72 (9th Cir. 1996).

⁸ *Bible Believers*, 805 F.3d at 228.

⁹ *Id.* at 252; *see also id.* at 251 (A speaker does not "somehow forfeit the protection afforded her message by the Constitution because it unintentionally evoked a hostile reaction from others.") (cleaned up).

¹⁰ *Rules of Discipline*, *supra* note 4, at § II(a).

¹¹ *Conversations to have with people disrupting an event*, YALE UNIV. (last visited Mar. 28, 2022), https://s3.documentcloud.org/documents/21434558/three_strikes-language.pdf [<https://perma.cc/EJD3-9FVQ>].

¹² *Id.* Moreover, Yale's policy regarding disrupting expressive events provides: "When Yale or its members host outside speakers, they are also generally free to express their views, even if unpopular or controversial. Dissenting members of the community may protest and express disagreement, but they may not interfere with a speaker's ability to speak or attendees' ability to attend, listen and hear." *Guidance Regarding Free Expression and Peaceable Assembly for Students at Yale*, YALE UNIV. (last visited Mar. 29, 2022),

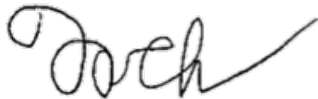
Yet during the Federalist Society event, Yale administrators and police officers made no effort to address the disruptive conduct beyond a warning at the onset of the event that was largely ignored. Rather than address the source of the disruption—protesters opposed to Waggoner and ADF who sought to prevent others from hearing the speakers—Yale acquiesced to the “heckler’s veto” by allowing protesters to make enough noise to drown out the panel.¹³ Although Yale did not cancel the panel, its commitment to free expression, encompassing students’ and faculty members’ right to host outside speakers, requires the institution to do more than idly stand by while a hostile crowd strips speakers of their ability to communicate with others. Yale’s failure to act will encourage more disruptions to future events, deter students from bringing politically diverse speakers to campus, and dissuade those interested in hearing from such speakers from attending events, all of which chills the climate for free speech at Yale. In the end, the only speakers able to speak will be those whose ideas are sufficiently righteous or uncontroversial in the eyes of would-be hecklers.

III. Conclusion

To ensure the protection of students’ expressive rights, FIRE calls on Yale to make bona fide efforts to address substantial disruptions to students’ expressive events as they occur, and to educate students on the distinction between protected protest and disruptive conduct that prevents others from exercising their own freedom of speech. Yale would also do well to enforce its policies on removing individuals who continue to disrupt events after they have been warned that attempts to disrupt expressive activity may result in university discipline.¹⁴

FIRE would be pleased to work with Yale to protect campus free speech rights, and we hope this letter will be a useful start to that process. We request receipt of a response to this letter no later than the close of business on April 12, 2022.

Sincerely,



Zachary Greenberg
Senior Program Officer, Individual Rights Defense Program

Cc: Heather Gerken, Yale Law School Dean and Sol & Lillian Goldman Professor of Law

<https://secretary.yale.edu/student-life/guidance-regarding-free-expression-and-peaceable-assembly-students-yale> [<https://perma.cc/H2GY-C7ND>].

¹³ A heckler’s veto occurs when protesters substantially disrupt an event via violence or other means to prevent a speaker from speaking. FIRE, *First Amendment Glossary* (last visited Mar. 24, 2022), <https://www.thefire.org/first-amendment-library/glossary>; see also Zach Greenberg, *Rejecting the ‘heckler’s veto’*, FIRE (June 14, 2017), <https://www.thefire.org/rejecting-the-hecklers-veto>; Greg Lukianoff and Nadine Strossen, *Shouting down speakers is mob censorship: Part 14 of answers to arguments against free speech from Nadine Strossen and Greg Lukianoff*, ETERNALLY RADICAL IDEA (Mar. 24, 2022), <https://www.thefire.org/shouting-down-speakers-the-hecklers-veto-is-not-free-speech-part-14-of-answers-to-arguments-against-free-speech-from-nadine-strossen-and-greg-lukianoff>.

¹⁴ See *supra* notes 10-12 (describing Yale policies regarding event disruption).