



# FIRE

Foundation for Individual  
Rights and Expression

April 11, 2023

Lynn Mahoney  
Office of the President  
San Francisco State University  
1600 Holloway Avenue  
San Francisco, California 94132

**URGENT**

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

Dear President Mahoney:

FIRE<sup>1</sup> is seriously concerned by SFSU's failure to address the anti-free speech actions of some protestors at last week's Turning Point USA event that featured NCAA swimmer Riley Gaines speaking on women's sports and transgender athletes.<sup>2</sup> One viral video of the event shows Gaines attempting to speak through a din of external chanting and banging from protestors that appears to have substantially disrupted the event. Video reportedly taken after the event shows protestors chasing Gaines down a hallway as police physically shield her, and she alleges she was physically assaulted by a protester.<sup>3</sup> Authorities reportedly escorted Gaines to a secure room where she was locked inside for almost three hours until protestors dispersed.

It is alarming that this level of mob censorship and pugnacity occurred on a campus bound to respect students' constitutional right to free expression, and despite the presence of public university administrators, campus security, and (eventually) police. While we appreciate your April 10 email regarding this incident (and another, involving a serious threat to academic freedom at SFSU), your assertion that "the First Amendment was honored" during this event does not track with the video footage that clearly showed uncontrolled and substantial

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<sup>1</sup> As you will recall from our recent correspondence regarding SFSU's investigation of professor Maziar Behrooz, the Foundation for Individual Rights and Expression has, for more than 20 years, defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at [thefire.org](http://thefire.org).

<sup>2</sup> The recitation of facts here reflects our understanding of the pertinent facts based on publicly available information. We appreciate that you may have additional information to offer and invite you to share it with us.

<sup>3</sup> Greg Wong, *Anti-trans activist's speech at SF State ends in 'disruption' by protestors*, SAN FRANCISCO EXAMINER (Apr. 7, 2023), [https://www.sfexaminer.com/news/the-city/trans-rights-protestors-fill-riley-gaines-sf-state-event/article\\_e356fe8a-d56d-11ed-b614-cb8c50acdd08.html](https://www.sfexaminer.com/news/the-city/trans-rights-protestors-fill-riley-gaines-sf-state-event/article_e356fe8a-d56d-11ed-b614-cb8c50acdd08.html).

disruption during Gaines' presentation not only in the hallway (audible inside the room), but also inside the room as protestors repeatedly interrupted her speech.<sup>4</sup> We call on the university to investigate what led to last week's appalling display and respond accordingly to ensure it never happens again.

As you must know, the First Amendment requires public universities like SFSU to protect student groups' free speech rights by making good faith efforts to address disruptions to expressive events as they occur.<sup>5</sup> Failure to properly address such disruptions ratifies an unconstitutional "heckler's veto"<sup>6</sup> and will only incentivize more threats to students' freedom of speech and deter them from hosting potentially controversial speakers on campus. When those opposed to speakers or their message target such events for disruption, educational institutions must respond with "bona fide efforts" to protect expressive rights.<sup>7</sup> Such efforts to address the disruption are "the proper response to potential and actual violence."<sup>8</sup> In finding that even the violent reaction of a hostile mob cannot justify cutting off a speaker's protected expression, a federal appellate court explained that:

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.<sup>9</sup>

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<sup>4</sup> Email from Bobby King, Director of Communications, San Francisco State University, to Sabrina Conza, Program Officer, FIRE (Apr. 10, 2022, 3:31 PM) (on file with author).

<sup>5</sup> It has long been settled law that the First Amendment is binding on public universities like SFSU and accordingly they must ensure that student groups can exercise their expressive rights by hosting speakers; 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."); *Stacy v. Williams*, 306 F. Supp. 963, 975 (N.D. Miss. 1969) (finding that student group's right to invite political candidates to campus is protected by the First Amendment); 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.").

<sup>6</sup> A heckler's veto occurs when protestors substantially disrupt an event via violence or other means to prevent a speaker from speaking. *First Amendment Glossary*, FIRE, <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>; Adam Goldstein, *Dear University of North Texas: The 'Heckler's veto' is not a good thing*, ETERNALLY RADICAL IDEA (Nov. 5, 2020), <https://www.thefire.org/dear-university-of-north-texas-the-hecklers-veto-is-not-a-good-thing>.

<sup>7</sup> *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 255 (6th Cir. 2015).

<sup>8</sup> *Collins v. Jordan*, 110 F.3d 1363, 1371–72 (9th Cir. 1996); *Bible Believers*, 805 F.3d at 255 ("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.").

<sup>9</sup> *Bible Believers*, 805 F.3d at 252.

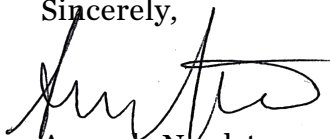
At the Turning Point USA event, while administrators and campus police stood by as the disruption escalated, Gaines finished delivering her prepared remarks amidst the noise and interruptions before police escorted her away with protestors in pursuit. It is clear from the events of that night that SFSU could have, and should have, done more to ensure its students were able to hold their expressive event on campus without such substantial disruption.

This incident, and other similar disruptions at schools nationwide, make clear that maintaining strong free expression policies is not enough, independently, to ensure expressive freedoms.<sup>10</sup> Universities must educate their students on their First Amendment rights and those of other students, faculty, and members of the campus community. To protect free speech and ensure their educational communities' safety, universities must clarify that the use of force or mob rule to silence speech is not an exercise in free speech—it is censorship.

We urge SFSU to educate its students on the distinction between protected protest and disruptive conduct that prevents others from exercising their own expressive rights. We would be pleased to work with your university to ensure campus officials and students are clear about these concepts. To this end, we recommend that you adopt and implement FIRE's "Free Speech at Freshman Orientation" materials, which aim to teach incoming students about their free speech rights from the beginning of their time at SFSU.<sup>11</sup>

We look forward to hearing from you and request a substantive response to this letter no later than the close of business on April 18, 2023, confirming SFSU will investigate whether the administration and campus police made bona fide efforts to protect students' expressive rights, or whether they in any way enabled or sustained the disruption.

Sincerely,



Amanda Nordstrom  
Program Officer, Campus Rights Advocacy

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<sup>10</sup> See Alex Morey, *Stanford Law students shout down 5th Circuit judge: A post-mortem*, FIRE (Mar. 13, 2023), <https://www.thefire.org/news/stanford-law-students-shout-down-5th-circuit-judge-post-mortem>; Zach Greenberg, *New audio shows severe disruption of Yale Federalist Society panel — which the university did little to prevent*, FIRE (Mar. 29, 2022), <https://www.thefire.org/news/new-audio-shows-severe-disruption-yale-federalist-society-panel-which-university-did-little>; *FIRE statement on speaker disruption at University of New Mexico*, FIRE (Sept. 16, 2022), <https://www.thefire.org/news/fire-statement-speaker-disruption-university-new-mexico>; Sabrina Conza, *FIRE urges transparency, action from Penn State after Uncensored America event cancellation*, FIRE (Oct. 25, 2022), <https://www.thefire.org/news/fire-urges-transparency-action-penn-state-after-uncensored-america-event-cancellation>.

<sup>11</sup> *Free Speech at Freshman Orientation*, FIRE, <https://www.thefire.org/research-learn/free-speech-freshman-orientation>.