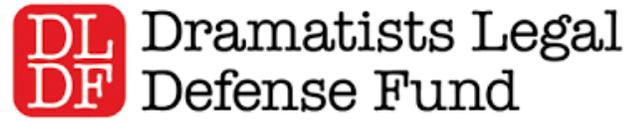




National
Coalition
Against
Censorship



September 23, 2016

President Jane Close Conoley
California State University, Long Beach
Office of the President
Brotman Hall BH-300
1250 Bellflower Boulevard
Long Beach, California 90840

Sent via U.S. Mail and Electronic Mail (jane.conoley@csulb.edu)

Dear President Conoley:

The Foundation for Individual Rights in Education (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. The National Coalition Against Censorship (NCAC), founded in 1974, is an alliance of over 50 national nonprofit organizations, including literary, artistic, religious, educational, professional, labor, and civil liberties groups dedicated to promoting the right to free speech. The Dramatists Legal Defense Fund (DLDF), formed as a nonprofit arm of the Dramatists Guild of America, advocates on behalf of dramatists, theaters, audiences, and all those in the culture at large who are confronting censorship on stages across America.

FIRE, NCAC, and DLDF write to California State University, Long Beach (CSULB) to express our concern over the university's cancellation of a performance of *N*GGER WETB*CK CH*NK* ("*N*W*C**") due to apparent opposition to the play's content.¹ The cancellation is wholly at odds with First Amendment principles and betrays the university's role as the "marketplace of ideas." *Healy v. James*, 408 U.S. 169, 180 (1972) (citations omitted). We strongly urge CSULB to reverse its decision and allow *N*W*C** to be performed.

The following is our understanding of the facts; please inform us if you believe we are in error.

¹ FIRE's efforts to understand the cancellation of the performance have been frustrated by CSULB's refusal to disclose records in response to a request under California's Public Records Act. CSULB asserted that administrators' speech would be chilled if the public were to learn about the bases for their decision to cancel the performance.

*N*W*C** was created and is performed by members of the Speak Theater Arts company. First staged in 2004, the satirical play is performed by three actors—an Asian-American, a Hispanic American, and an African-American—and mocks racial stereotypes while deliberately forcing audiences to confront the cultural weight and history behind the racial and ethnic slurs comprising its title. For more than a decade, Speak Theater Arts has performed *N*W*C** at dozens of colleges and universities throughout the country. The company completed a brief residency at CSULB and performed the play there in September 2015. The residency’s success led Michele Roberge, Executive Director of the Richard & Karen Carpenter Center for the Performing Arts, to schedule the play for another performance at the Carpenter Center on September 29 of this year.

Administratively housed within CSULB’s College of the Arts (COTA), the Carpenter Center showcases performances by professional artists and serves as the home of residential production companies. While the Carpenter Center’s programming is not subject to preapproval by COTA or the university, COTA offers input on coordinating the Center’s proposed programming with academic departments or units where certain works may be of special interest.

According to Roberge, the performance was initially scheduled in March 2016. Roberge alleges that she first encountered pressure from CSULB to cancel the performance in May, due to objections from CSULB community members to the play’s perceived content as well as its title. Roberge initially offered to reschedule the performance for early 2017 so that CSULB could add additional programming to help contextualize the issues confronted in *N*W*C**, but was finally informed by email on August 22 that CSULB was cancelling the performance. Roberge, who had served at the Carpenter Center for fourteen years, resigned in protest, effective September 8.

Subsequent statements by CSULB confirm that the decision to cancel the performance was motivated by opposition to the content of *N*W*C**. For example, the *OC Weekly* carried this statement from CSULB spokesperson Michael Uhlenkamp in an article dated September 7:

“Members of the campus community [this year] voiced concerns that the performance wasn’t achieving the goal of constructing a dialogue about racial relations,” he said. “Not to disparage the performers, but there were questions of the educational value of the performance, so the president asked the Carpenter team to withdraw the performance.”²

If students were not convinced of the play’s educational value when it was performed at CSULB last year, and have little interest in attending the play this year, that is of course their decision to make. Students are free not to attend *N*W*C**, whether because they

² Joel Beers, *Long Beach St. Pulls Plug on N*GGER WETB*CK CH*NK Show. Cancellation, or Censorship?* OC WEEKLY (Sept. 7, 2016), <http://www.ocweekly.com/music/long-beach-st-pulls-plug-on-n-gger-wetb-ck-ch-nk-show-cancellation-or-censorship-7491571>.

believe the play to be offensive or for any other reason. Likewise, faculty are free to coordinate academic programming with the Carpenter Center if they think it may enhance their students' academic experiences, and they are free to decline to do so. But instead of recognizing the freedom community members enjoy to reach their own determinations about the play—a freedom protected by the First Amendment—CSULB's cancellation has unilaterally foreclosed any further engagement.

CSULB has also attempted to justify the cancellation as an academic decision limited only to withdrawing CSULB's academic involvement with the performance. CSULB has further claimed that the Carpenter Center was free to stage the performance of *N*W*C** and that the center alone was responsible for cancelling the performance outright. But these contentions cannot be reconciled with public statements that CSULB directed that *the performance itself* be canceled. For example, per the *Gazettes* newspapers, Uhlenkamp stated that "President Conoley asked the Carpenter Center team to withdraw the performance from the 2016-17 schedule."³ The unmistakable impression is that in response to criticism about the show's content, CSULB determined that *N*W*C** should not and would not be performed at the Carpenter Center.

The Supreme Court has repeatedly rejected the idea that speech may be silenced by a government actor solely because of the subjective offense it may cause others. *See Texas v. Johnson*, 491 U.S. 397, 414 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."). The Court has extended this principle to public colleges like CSULB. *See Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) ("[T]he mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of 'conventions of decency.'").

In addition to violating the First Amendment principles by which CSULB is bound, the cancellation is an affront to the principles of academic freedom. CSULB has made a unilateral pronouncement on the artistic value of *N*W*C** and, in doing so, has denied community members the opportunity to view and consider the performance for themselves. Such a paternalistic response denies students important learning opportunities and erodes faculty members' ability to decide how best to teach their students. This decision deprives students, faculty, and the community at large of an opportunity to experience a play renowned for challenging audiences on matters of race and justice during a cultural moment in which these issues are of particular urgency.

Critical engagement with uncomfortable issues is part of the educational process. Such dialogue is especially important at a university, the quintessential marketplace of ideas. A public university's role is to challenge students, to help them confront cultural realities

³ Harry Saltzgaver, *CSULB's Carpenter Center Director Michele Roberge Resigns In Protest Over Show Cancellation*, *GAZETTES* (Sept. 6, 2016), http://www.gazettes.com/news/csulb-s-carpenter-center-director-michele-roberge-resigns-in-protest/article_653cdf10-74a3-11e6-944e-6766695221c8.html.

critically, and to make them think. A public university fails in its educational mission when it eliminates programming because some members of its community consider it offensive or objectionable.

CSULB's decision is particularly disappointing in light of the strong stand you took last year in the face of local opposition to *N*W*C**. Your previous defense both of the Carpenter Center's right to stage the performance and of art's potential to serve as a vehicle for discussion and enlightenment was true to CSULB's stated intention to imbue in students "a love of ideas; an appreciation of artistic expression, science, and technology; and an understanding of varied cultures."

This year's unfortunate and unnecessary cancellation ultimately raises concerns not only for the Carpenter Center's future programming, but for student and faculty programming as well. We fear that these are not theoretical concerns. CSULB's handling of this episode represents a missed opportunity for the CSULB community, and a failure to embody the ideals of free expression central to CSULB's place as a public university.

As the Supreme Court declared in *Snyder v. Phelps*, 131 S. Ct. 1207, 1220 (2011), "As a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate." We call on CSULB to recognize this guidance by making clear that it will fully stand up for its students' and faculty members' First Amendment rights, and that it will not limit their cultural opportunities on campus because of the offense they might cause to some or even many.

Again, we strongly urge CSULB to allow *N*W*C** to return to be performed at the Carpenter Center, now or at some future date, so that the CSULB community is not denied the outlet the show provides for engaging the issues at its heart.

We request a response to this letter by October 7, 2016.

Sincerely,



Peter Bonilla

Vice President of Programs, Foundation for Individual Rights in Education



Svetlana Mintcheva, Ph.D.

Director of Programs, National Coalition Against Censorship



Ralph Sevush, Esq.

Executive Director, Dramatists Guild

cc: Cyrus Parker-Jeannette, Dean, College of the Arts