

February 9, 2014

VIA FACSIMILE & U.S. MAIL

Attorney Jamie Lewis Keith
123 Tigert Hall
P.O. Box 113125
Gainesville, FL 32611-3125

Re: First Amendment educational presentations at the University of Florida

Dear Ms. Keith,

The purpose of this letter is to formally advise you that Created Equal, along with certain number of your students intend to conduct *lawful* (i.e., no trespassing, disorderly conduct, disturbing the peace, etc.) and *non-disruptive*, educational presentations on the Plaza of the Americas and Turlington Plaza on the University of Florida (UF) campus, March 13-14, 2014 from approximately 9:00AM until approximately 3:00PM. This letter will explain Created Equal's positions on several issues which we hope can be satisfactorily negotiated prior to Created Equal's visit to your campus.

Created Equal's display involves the exhibition of 4' x 3' handheld abortion and prenatal photo signs, along with the distribution of literature and discussions with passersby who wish to converse.

Created Equal fully obeys relevant law and university regulations. We also respect a university's "time, place and manner" authority to preserve its legitimate interest in maintaining public safety and an orderly learning environment. Because reactions from passersby in the past have become violent towards our members and property we ask for the university's willingness to deploy an adequate *uniformed* (as opposed to plain-clothes) police presence.

Approximately 20 people (students and Created Equal personnel) will be involved in conducting the educational presentations at any one time throughout the display period. As an integral part of these presentations, Created Equal hands out leaflets to interested passersby. As you no doubt agree, this activity is protected by the First Amendment. *See, e.g., Lovell v. City of Griffen*, 303 U.S. 444, 452 (1938); *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357, 377 (1997). The leaflets are not solicitations, but information related to the displays.

Unquestionably, Created Equal has a First Amendment right to conduct their educational presentation in a public forum. "[A] principal purpose of traditional public fora is the free exchange of ideas," *see Cornelius v. NAACP Legal Defense & Ed. Fund*, 473 U.S. 788, 800 (1985), and other purposes include "assembly, communicating thoughts between citizens, and discussing public questions," *see Hague v. Committee for Ind. Organization*, 307 U.S. 496, 515 (1939). A university is "peculiarly the 'marketplace of ideas.'" *Healy v. James*, 408 U.S. 169, 180 (1972). Therefore, free speech areas on your campus are public fora in which our rights cannot be restricted unless certain standards are met.

The standard for *content-based* restrictions on speech is that any such regulation must be *necessary* to serve a *compelling* state interest and be *narrowly drawn* to achieve that end. *Boos v. Barry*, 485 U.S. 312, 321 (1988). Furthermore, such regulations "must be subjected to the

most exacting scrutiny.” *Id.* Only categories of speech such as obscenity, defamation, and fighting words have been found to meet that standard. *See, e.g., R.A.V. v. St. Paul*, 505 U.S. 377, 383 (1992). Your client will have no such “compelling” interests as to our speech.

The standard for *content-neutral* restrictions on speech is that any such regulations must be “narrowly tailored to serve a *significant* government interest, and leave open ample alternative channels of communication.” *Perry Ed. Ass’n v. Perry Local Educator’s Ass’n*, 460 U.S. 37, 45 (1983) (emphasis added). The University of Florida undoubtedly has “significant interests” in speech on public property. Those interests are *safety* and *traffic flow* on streets and sidewalks and the opportunity of students to obtain the education for which they paid without substantial interference. *Cf. Widmar v. Vincent*, 454 U.S. 263, 277 (1981).

It is axiomatic that the First Amendment protects speech, especially when the speech is offensive to some. *See, e.g., Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134-35 (1992) (speech cannot be “punished or banned, simply because it might offend a hostile mob”); *Cohen v. California*, 403 U.S. 15, 21 (1971) (viewers who dislike a message have a *responsibility* to “avoid further bombardment of their sensibilities simply by averting their eyes”); *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949) (free speech “may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger”). Therefore, the possibility that Created Equal or anyone else might offend others by their speech is irrelevant and cannot be used as a basis for restricting that speech, nor can any other reaction by those who are in the communication area of the speech provide such a basis.

As noted above, we are prepared to accept *reasonable* time, place, and manner restrictions on our First Amendment activity and will make every effort to ensure that our conduct does not negatively affect legitimate interests of the university. But we will not accept *unreasonable* restrictions. An example of an unreasonable restriction would be any attempt by the university to minimize controversy by relegating Created Equal’s display to an obscure campus location. Central to the exercise of First Amendment rights is the right of access to the audience to which a statement is intended to be communicated. Campus locations traditionally used for “attractive” campus activities (activities likely to attract eager participants) are often deemed unsuitable for “off-putting” First Amendment speech. By definition, protected speech is often unattractive to the majority of passersby, and First Amendment speakers must, therefore, be permitted to go to an audience that will not come to them. Pedestrian or vehicular thoroughfares must not, of course, be blocked.

Another circumstance, which could result in immediate litigation, is any university refusal to enforce the law and its own regulations concerning third-party interference with our exercise of our First Amendment rights. On several previous visits to university campuses, dissident persons have attempted to conceal Created Equal’s exhibit from the views of passersby by erecting large fabric barriers in front of our signs. The courts will not permit a public university to impose a content-based moratorium on First Amendment activity either *directly* through its police or *indirectly* through its students or other agents. In addition to the importance of your university’s legal obligation to remove interfering protestors to a location reasonably distant from our display, it should be borne in mind that failure to act promptly in defense of First Amendment freedoms legitimizes interference (instead of debate) as the preferred response to disagreeable points of view.

Universities sometimes mistakenly believe that a significant police presence agitates a hostile crowd or will subject the administration to criticism for appearing to associate the university with an unpopular message. However, my long experience has shown that the deterrent effect achieved by the *constant* presence of three or four uniformed officers far outweighs their potential to provoke a hostile crowd. It has been our observation that *every* school which started out with too few uniformed police on site had ultimately lost control of an otherwise controllable situation and ended up deploying far more police to regain that control than would have been required to maintain it.

Since speech must not be taxed if it is to remain truly “free,” it goes without saying that we will not pay any fee for the exercise of their First Amendment rights—in the form of “security charges” or any other tax, which would confer upon the rich speech rights denied the poor. *See, e.g., Forsyth County v. Nationalist Movement*, 505 U.S. 123, 136 (1992).

Finally, we would appreciate receiving, as soon as possible, a copy of any university rules and regulations that may be relevant to our free speech activities on your campus. If possible, email them to me at mark@createdequal.net. If they are available online, please direct me to the precise URL.

Thank you in advance for your assistance with this matter.

Very truly yours,
CREATED EQUAL

Mark Harrington, Executive Director