The Washington Post
Democracy Dies in Darkness

Opinion: Academia's hostility to intellectual diversity suffers a courtroom setback

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Yesterday at 7:00 a.m. EDT

It is not surprising when a compound of moral arrogance and political authoritarianism — e.g., the culture of today's academia — produces intolerance of intellectual diversity and disdain for the law. Nevertheless, a three-judge panel of the U.S. Court of Appeals for the 8th Circuit was startled by the behavior of the University of Iowa: "We are hard-pressed to find a clearer example of viewpoint discrimination."

The university's policy pertaining to Registered Student Organizations (RSOs) forbids "differences in the treatment of persons because of race, creed, color, religion," etc., "or any other classification that deprives the person of consideration as an individual." But the university also believes, or used to believe, that students should have the right to "organize and associate with like-minded students." So, all RSOs may "exercise free choice of members on the basis of their merits as individuals" and "any individual who subscribes to the goals and beliefs of a student organization may participate in and become a member of the organization." As the 8th Circuit notes, "This is not an 'all-comers policy,' which would require RSOs to accept any student as a member or leader of the group."

In 2017, a gay student filed a complaint against Business Leaders in Christ (BLinC), claiming he was denied a leadership position because he refused to subscribe to the group's conviction that same-sex marriage is biblically forbidden. The university deregistered BLinC, saying it violated the university's Human Rights Policy by disqualifying individuals from leadership positions "on the basis of sexual orientation and gender identity."

BLinC sued, asserting violations of First Amendment guarantees of free speech, free association and free exercise of religion. A district court supported BLinC with an injunction, but granted the university representatives qualified immunity from personal liability because they supposedly acted where there was not "clearly established law."

InterVarsity Christian Fellowship,which has been active at the university for more than 25 years, accepts members, but not leaders, who reject the group's faith. In 2018, the university said InterVarsity violated school policy. InterVarsity's leader asked whether the university would be satisfied if the group said leaders would be "requested" or "strongly encouraged" to subscribe to the group's faith. The university said no.

After the district court's injunction for BLinC, the university reinstated InterVarsity and other deregistered religious groups. But rather than obeying that court's order to treat RSOs equally, the university intensified its unconstitutional viewpoint discrimination. The university's compliance review targeted religious organizations and, the 8th Circuit tartly says, the university's forever "dissipated" when it finished with religious RSOs.

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As for equal treatment, the university had no objection, for example, to Love Works. This RSO, founded by the student who complained about BLinC, requires all members to sign a "gay-affirming statement of Christian faith."

When the district court judge (a President Barack Obama appointee) who had dealt with the BLinC case ruled in the InterVarsity case, her exasperation was obvious: "The court would never have expected the university to respond to that order [for equal treatment of RSOs] by homing in on religious groups' compliance with the policy while at the same time carving out explicit exemptions for other groups. But here we are."

In ruling for InterVarsity, the 8th Circuit said that when the district court extended qualified immunity to the university representatives regarding BLinC, that court did not have the benefit of the 8th Circuit's later ruling in BLinC, where the appeals court reversed the circuit court to hold that "the law was clearly established" that universities cannot use "nondiscrimination policy" as an excuse for "viewpoint discrimination against RSOs."

The university's contempt for the district court's order in the BLinC case indicates that the university officials felt their political high-mindedness entitled them to disregard the law in order to enforce conformity to progressive opinions that hardly need such buttressing on today's intellectually monochrome campuses. The 8th Circuit concluded:

"What the University did here was clearly unconstitutional. It targeted religious groups for differential treatment under the Human Rights Policy — while carving out exemptions and ignoring other violative groups with missions they presumably supported. The University and individual defendants turned a blind eye to decades of First Amendment jurisprudence or they proceeded full speed ahead knowing they were violating the law. Either way, qualified immunity provides no safe haven."

So, they can be sued. And they will be. Which should be an educational experience for them, and a teachable moment for the many others like them in today's academia.

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