

**“We the People” Competition for Districts 1, 3, and 5
Lake Oswego High School
January 10, 2012**

Commissioner Nick Fish

Thank you to Lake Oswego High for hosting this event, and to my friends at *We The People* for organizing another great program.

And thanks to the teachers, coaches, parents, and organizers for inviting me to speak.

I want to especially thank tonight’s participants for inspiring all of us. You are all winners in my book.

Tonight, I would like to discuss a recent constitutional dispute that happened in our own backyard.

In past years, we have explored the constitutional issues around the Watergate crisis, and the Joint Terrorism Task Force.

Tonight, I’d like to take up Occupy Portland.

Over the past year, Portland and the nation have been on the front lines of a real-world debate over the scope and application of the First Amendment.

For several weeks, from the window behind my desk at City Hall, I could look out at the encampments of Occupy Portland in Lownsdale and Chapman Squares.

These are the city's oldest public squares acquired in the mid 19th Century, and conceived of as places for Portlanders to rest, celebrate and express their opinions.

I could see signs celebrating freedom of speech and hear the banging of drums. Every day at noon, a young man with a loud-speaker walked across the street to City Hall and delivered passionate remarks.

As an elected official, I have a legal obligation to protect the rights of those who desire to express their opinion.

As Americans, we take for granted the right to express our views in the public sphere. In the case of the Occupy movement, in our parks.

The Occupy movement raised two important Constitutional questions:

(1) At what point does the right to free expression of one person or group trump that of another?

(2) Are there reasonable limits to free speech?

The courts have said that there can be reasonable limits on the time, place, and manner one can exercise free speech.

Such restrictions must be content neutral, narrowly tailored, serve a significant government interest, and leave open ample alternative channels for communication.

Early in the occupation, while respecting the right of others to express their deeply held views, I spoke up on behalf of the parks and all those in our community – the 100% – who were being deprived of their right to use the public squares.

When I issued an open letter on October 17 raising concerns with the impact of long-term encampments on the fragile ecology of these squares, I received a lot of calls and emails.

They were not all friendly.

Among the over 200 Emails I received, here are some of my favorites:

The Calmly Sarcastic:

“Hi, I'd like to secure campsite reservations at Lownsdale. Please let me know if this is possible, as it looks like that campsite has been pretty full for a while now. I'm willing to budge a little on dates if it's still full.”

The Outraged Defender:

“SHAME ON YOU FOR USING FORCE AGAINST MY PEOPLE OF PORTLAND.....ALL THIS FOR A PARK.....FIRST AMENDMENT RIGHTS READ UP ON IT.....INFORM YOURSELF.....IS A PIECE OF GRASS WORTH HURTING PEOPLE....? RESIGN NOW.....” Of course, that one was in all Caps.

The Law and Order Proponent:

“See, look what you have done. Give an inch and they take a mile, ruining the city. Idiots. You morons are to blame for this bull____.”

In case anyone here feels left out, I can be reached at nick@portlandoregon.gov.

One of the key questions in our democracy is: how do we balance the Constitutional rights of all citizens – the 100%?

Portland is known as a bastion of liberal values. What if the camps in Lownsdale and Chapman Squares had been occupied by Tea Party Patriots? Would Portland have been as welcoming?

What if the camps had been at Pioneer Courthouse Square, or in your local neighborhood park?

Would the outcry over placing any limits on free speech have been the same?

As a public official, I cannot make judgments about the 1st Amendment based on the content of the speech. The public square cannot discriminate.

When it came time to enforce reasonable limits to protect public safety and property, and to keep the public square available to

everyone, there were some who, by right, exercised civil disobedience.

Thomas Jefferson wrote, “We are not to expect to be translated from despotism to liberty in a featherbed.”

The earliest blows struck against King George were simple acts of civil disobedience.

This is an important right of every American. From freedom riders in the South, to the students opposing the Vietnam War, challenging government in the name of a higher calling is an important tradition in our country.

I was at the squares on November 12, the night the camps were closed. Some Occupiers chose to be arrested, rather than leave voluntarily. They were exercising an important right.

Civil disobedience should always be a hard choice. By its very nature, it implies risk and sacrifice. Without the friction of constraint, it is merely a street party – fun, energizing... but without substance.

As you move forward in your lives, you will be required to make serious choices about how you express strongly held beliefs. By engaging in this competition, you have taken an important first step. You have begun to consider the great constitutional issues at the core of our experiment in democracy.

While your parents may shudder at the idea – some of you may even choose to assume the personal risk of civil disobedience.

As you make these choices, I ask that you also consider the great balancing that is essential to maintaining the cherished space that is the American public square.

Don't lose sight of the fact that what makes America special is the wealth of ideas around us. Stand up not just for your argument, but also for the rights of others to have their moment in sun.

If you do this, then you will have learned one of the most important lessons of this competition.

Thank you.