



Foundation for Individual Rights in Education

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November 13, 2013

William R. Kauffman, Interim President
Saint Louis University
Office of the President
One North Grand
St. Louis, Missouri 63103

Sent via U.S. Mail and Facsimile (314-977-7105)

Dear President Kauffman:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned by the threat to freedom of expression presented by Saint Louis University's (SLU's) cancellation of an on-campus speaking event hosted by the SLU College Republicans featuring former United States Senator Scott Brown. SLU's decision to cancel this event was evidently based on the mistaken notion that the event would put SLU's tax-exempt status at risk. SLU's misunderstanding of its obligations under federal law leaves the basic right of student organizations to engage in political expression at serious risk. We ask that SLU correct its error and clarify students' right to engage in political expression to the SLU community.

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

On October 29, 2013, Senator Brown was scheduled to speak at SLU, hosted by SLU's College Republicans, as part of a tour of Missouri universities that was also to include speeches at the University of Missouri-Columbia and Missouri State University. On the day of the scheduled lecture at SLU, however, administrators informed the College Republicans that their event could not take place on the SLU campus; Brown instead spoke to the group at an off-campus restaurant.

Todd Foley, Assistant Director of SLU's Student Involvement Center, stated that allowing the lecture to take place on campus would have violated federal law, according to the political website *PoliticMo*:

“[T]he University has determined that Scott Brown is considered a candidate for public office and therefore falls under the provisions of the Tax Code from the IRS regarding educational institutions hosting candidates for public office. His appearance here would be a violation of our Tax Exempt status as a 501(c)3,” Foley wrote in an email obtained by *PoliticMo*.

He continued, “Since Scott Brown has made comments about possibly running for office in NH and that others have made similar comments about him running, then the IRS would consider him as a candidate — thus it being in conflict with our tax exempt status.”

SLU's justification seriously and fundamentally misstates its obligations under federal law. SLU fails to recognize the important distinction between institutional expression and the expression of student organizations, which are strongly presumed to speak only for themselves and not their institutions. SLU must promptly rectify its errors.

With respect to the university's obligations under section 501(c)(3) of the Internal Revenue Code, Internal Revenue Service training materials have drawn a distinction between “the individual political campaign activities of students” and their university, and the agency has noted that “[t]he actions of students generally are not attributed to an educational institution unless they are undertaken at the direction of and with authorization from a school official.” Judith E. Kindell and John Francis Reilly, “Election Year Issues,” Exempt Organizations Continuing Professional Education Technical Instruction Program for Fiscal Year 2002, 365 (2002), *available at* <http://www.irs.gov/pub/irs-tege/eotopici02.pdf>. Noting that “civic engagement is an important part of college life, and First Amendment protections come into play,” Ada Meloy, general counsel for the American Council on Education, has summarized IRS guidance in this area by writing that “even openly partisan student groups may use an institution's facilities without violating any rules” because such activities “further the goal of fostering students' civic engagement while avoiding the perception of institutional bias.” Ada Meloy, “Legal Watch: Political Activity on Campus,” *available at* <http://www.acenet.edu/the-presidency/columns-and-features/Pages/Legal-Watch-Litigation-and-regulation-in-academe.aspx>.

Similarly, the Supreme Court of the United States recognized the distinction between the institutional speech of a university and the private speech of recognized student groups funded by a mandatory student activity fee in *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217 (2000). The Court noted in that case that when speech is “financed by tuition dollars,” with “the University and its officials ... responsible for its content,” then it “might be evaluated on the premise that the government itself is the speaker,” but it may not be evaluated this way when the expressive activity springs from student groups funded by a student activity fee intended for “the sole purpose of facilitating the free and open exchange of ideas by, and among, its students.” *Id.* at 229.

Because of the frequency of improper university restrictions on students' and professors' political activity, FIRE has published a *Policy Statement on Political Activity on Campus*, recently updated for the 2012 election cycle. In our 2012 *Policy Statement* (enclosed), we specifically addressed the issue of private universities wrongly censoring political expression and activity out of concern for their tax-exempt status:

Despite the seeming severity of the restrictions on political activity at private colleges and universities imposed by the requirements of section 501(c)(3), however, it is extremely important to note that these prohibitions apply to the institution itself and those reasonably perceived to be speaking on its behalf, not to individual students, faculty, or staff engaged in clearly individual, unaffiliated activity. In a 1994 statement, the IRS made clear that “[i]n order to constitute participation or intervention in a political campaign ... the political activity must be that of the college or university and not the individual activity of its faculty, staff or students.”

There is a greater risk that an individual's political activity may be attributed to the university as a whole when that individual is a high-level administrator, but this risk diminishes greatly when one moves down the chain of command to lower-level administrators, and almost disappears completely when one reaches the political activity of students and faculty members who do not also serve as administrators or department heads. As such, many of the fears expressed by administrators at private colleges and universities about partisan student and faculty political activity impacting the university's tax-exempt status are unfounded.

In determining the potential impact of student and faculty political activity on a private university's tax-exempt status, some important guidelines should be remembered. First, the political activity of students and faculty, unless reasonably perceived as communicating an official institutional position, generally does not impact tax-exempt status. **Second, the use of institutional resources and facilities by established student groups for partisan purposes is allowable as long as the groups pay the normal fee (if any) and obtain the use of the resources and facilities through the same process used by all student groups.** [Emphasis added.]

Federal regulations simply do not support SLU's contention that Brown could not be allowed to speak to a student organization on campus because he may be a candidate for office at some point in the future. Provided that the SLU College Republicans complied with applicable policies and did not attribute their activity to SLU, the university faced no threat to its tax status and had no grounds to shut down the event.

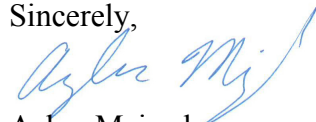
In addition to being premised on an erroneous understanding of its federal obligations, SLU's actions here appear inconsistent with its own recent practice. In March 2011, for instance, Missouri Governor Jay Nixon spoke at an event in SLU's Anheuser-Busch Auditorium, hosted

by the *St. Louis Business Journal*.¹ SLU apparently, and correctly, had no concerns for its tax-exempt status with respect to Governor Nixon's presence at this event, despite the fact that he had announced his intention to seek re-election several months earlier.² In light of this past example, SLU's cancellation of the College Republicans' event, featuring a former United States Senator who is not a declared candidate for any elected office, is all the more inexplicable.

Students and student organizations at Saint Louis University do not forfeit their right to host speakers who have held or seek elected office because of SLU's tax status. SLU's actions to the contrary are based on a misunderstanding of federal law and compromise student speech rights. FIRE asks that SLU clarify to the campus community their rights to political expression and activity, and make clear that the errors it has made in this case will not be repeated.

We appreciate your attention to these important concerns, and request a response to this letter by November 27, 2013.

Sincerely,



Azhar Majeed
Associate Director of Legal and Public Advocacy

Encl.

cc:

Kent Porterfield, Vice President for Student Development
Todd Foley, Assistant Director, Student Involvement Center
Susan Fanale, Director, Student Involvement Center

¹ *'Polite' protesters interrupt Nixon at SLU*, ST. LOUIS POST-DISPATCH, Mar. 18, 2011, available at http://www.stltoday.com/news/local/govt-and-politics/political-fix/polite-protesters-interrupt-nixon-at-slu/article_fe3a85b4-516d-11e0-82ef-0017a4a78c22.html.

² *Gov. Nixon confirms he will seek re-election*, ASSOCIATED PRESS, Dec. 16, 2010, available at <http://www.columbiainmissourian.com/a/132731/gov-nixon-confirms-he-will-look-re-election>.