

January 23, 2014

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*Sent via First Class Mail and Facsimile (314-977-7186)*

Dear Mr. Galli:

FIRE is in receipt of your November 26, 2013, reply to our letter dated November 13. While we appreciate your prompt response, your letter failed to adequately address our concerns about the matter in question. We write to reiterate that Saint Louis University's (SLU's) tax-exempt status is in no way jeopardized by a political candidate's appearance at an on-campus event hosted by a student organization and that by prohibiting such events SLU has improperly curtailed the basic right of students and student organizations to engage in political expression. FIRE urges SLU to affirm its students' right to engage in such activity and to assure the campus community that this mistake will not be repeated.

In your letter, you state that the decision to disallow the planned presentation by Scott Brown at an event hosted by the SLU College Republicans was based upon SLU's concern that Brown might be considered a "candidate for public office," and therefore allowing the presentation to proceed could place SLU at risk of losing its tax-exempt status. As we explained in our November 13 letter, this concern stems from a failure to distinguish between institutional speech and student speech and is thus a misunderstanding of federal law.

Simply put, Scott Brown's planned speech did not jeopardize SLU's tax-exempt status regardless of whether Brown is a candidate for public office. In order to constitute improper institutional participation in a campaign, "the political activity must be that of the college or university and not the individual activity of its faculty, staff or students." Judith E. Kindell and John Francis Reilly, "Election Year Issues," Exempt Organizations Continuing Professional Education Technical Instruction Program for Fiscal Year 2002, 377-78 (2002), *available at* <http://www.irs.gov/pub/irs-tege/eotopici02.pdf>. That an event hosted by a political student group features a presentation by a candidate rather than other political activity does not itself render the activity any more attributable to the university.

The determining factor remains the same: whether the activity reasonably expresses the views of the institution or those of its individual members. As we have explained, a student organization acting independently and without claiming to speak on behalf of the university cannot reasonably be understood to express institutional views.

Nor is a student group's political activity attributable to SLU merely because it uses university facilities. A key factor in determining whether use of university facilities by a student group for political purposes constitutes participation in a political campaign by the *university* is whether those facilities are made available on the same basis to non-political groups, and whether they are made available to similar groups on an equal basis. *See id.* at 378. Similarly, the Internal Revenue Service has ruled that a tax-exempt 501(c)(3) organization does not engage in improper campaign activity when it makes its facilities available for rent to a candidate for campaign purposes, so long as it rents those facilities under the same terms to the general public. *See Rev. Rul. 2007-41, 2007-25 I.R.B. at 11 (June 18, 2007).*

Again, student organizations are strongly presumed to speak only for themselves and not for their institutions. There is no justification for the concern that student political activity would be any more attributable to the university than would a campaign speech made by a candidate properly renting the university's facilities. Indeed, your letter explains that the 2011 breakfast event featuring gubernatorial candidate Jay Nixon was "paid for, sponsored and organized" by the *St. Louis Business Journal*, and therefore was not prohibited campaign activity. The College Republicans' event was no different. It was sponsored and organized by the student organization—not by the university itself—and the College Republicans presumably would have paid any cost normally assessed to student organizations seeking to use university facilities. That the College Republicans group is funded using student fees does not alter this analysis. *See Board of Regents of the University of Wisconsin System v. Southworth, 529 U.S. 217, 229 (2000).*

So long as SLU provides access to its facilities to all recognized student groups under the same terms, the political activity of student organizations will not be attributed to the university simply because it occurs on university property. If, as you contend in your letter, political viewpoints do not play a role in SLU's approval of events hosted by student groups, there was plainly no basis for the concern that Scott Brown's presentation at the College Republicans event would have put SLU's tax-exempt status at risk.

This position is borne out in the policies of SLU's peer institutions, which recognize that the political activity of students and student organizations does not jeopardize their tax-exempt status, and expressly affirm students' rights to engage in precisely the type of activity that SLU has rashly prohibited in this instance.

For example, Washington University in St. Louis' *Guidance on Political, Campaign, and Lobbying Activity* provides that "student groups registered with the Student Union may use University facilities for events involving government officials and candidates," subject to generally applicable facility scheduling policies.<sup>1</sup> Similarly, Northwestern University's *Use of University Facilities for Political Activities* policy allows student organizations to "reserve

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<sup>1</sup> Available at <http://www.wustl.edu/policies/political.html> (last visited Jan. 20, 2014).

University facilities, including lecture halls, outdoor reservable space, and any other space available to all recognized student groups, to conduct organizational meetings or to host, sponsor and/or publicize an event on behalf of a candidate.”<sup>2</sup> In order to ensure that such activity is not attributable to the institution, Northwestern requires that student organizations using facilities to host an event with a candidate issue basic disclaimers, the language of which is appended to the policy. Muhlenberg College’s *Policy on Partisan Political Activity* explicitly states that the political activities of its students and student organizations do not pose a threat to the school’s tax-exempt status, and permits student organizations to host “partisan voter activities including events with specific candidates.”<sup>3</sup>

These are only a few examples of the policies at many of SLU’s peer institutions that properly safeguard the right of students and student organizations to engage in political expression and activity while ensuring that such activity is not attributable to the institution itself. SLU would be wise to follow their example with respect to the use of university facilities for political activity.

Consistent with this proper understanding of the distinction between student and institutional speech, student organizations at colleges and universities across the nation regularly host on-campus events featuring political candidates. For example, on November 20, 2013, the St. Bonaventure University College Democrats hosted an event featuring Martha Robertson, a candidate for the United States House of Representatives, at which students were encouraged to ask questions about her policy positions on matters that might arise during her term in Congress.<sup>4</sup> Earlier in November, Admiral and former U.S. Congressman Joe Sestak spoke to the University of Pennsylvania’s Penn Democrats student group about his plans to run for the United States Senate.<sup>5</sup>

Notably, these candidate events hosted by student organizations are commonplace even in close proximity to election dates, where the appearance is expressly for campaign purposes. For instance, on September 18, 2012, less than two months prior to the presidential election, the NYU College Libertarians hosted an event at which Gary Johnson, then a candidate for President of the United States, gave a campaign speech and encouraged students to vote for him in the upcoming election.<sup>6</sup> And in April 2012, the Emerson Democrats hosted the College Democrats of Massachusetts convention at Emerson College, where U.S. Senatorial candidate Elizabeth Warren addressed attendees.<sup>7</sup> Warren spoke about her candidacy and campaign platform, and explicitly solicited support for her campaign from the students in attendance.<sup>8</sup>

<sup>2</sup> Available at <http://www.northwestern.edu/general-counsel/policies/political.html> (last visited Jan. 20, 2014).

<sup>3</sup> Available at <http://www.muhlenberg.edu/pdf/main/aboutus/president/policy.pdf> (last visited Jan. 20, 2014).

<sup>4</sup> *Congressional Hopeful Robertson To Visit St. Bonaventure*, POST-JOURNAL, Nov. 16, 2013, available at <http://www.post-journal.com/page/content.detail/id/631290/Congressional-Hopeful-Robertson-To-Visit-St-Bonaventure.html>.

<sup>5</sup> *Coming Up: Admiral Joe Sestak at Penn*, PENN DEMOCRATS (Nov. 3, 2013), <http://penndems.org/coming-up-admiral-joe-sestak-at-penn>.

<sup>6</sup> Brett Chamberlin, *Yesterday’s NYU Libertarian Event Was Sort Of Insane*, NYU LOCAL (Sept. 19, 2012), <http://nyulocal.com/on-campus/2012/09/19/yesterdays-nyu-libertarian-event-was-sort-of-insane>.

<sup>7</sup> Jackie Tempera, *Senatorial candidate appeals to Emerson’s college democrats*, BERKELEY BEACON, Apr. 5, 2012, available at <http://www.berkeleybeacon.com/news/2012/4/5/senatorial-candidate-appeals-to-emersons-college-democrats>.

<sup>8</sup> *Id.*

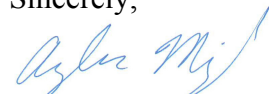
The concerns expressed by SLU failed to materialize in these and countless other instances of student-sponsored events featuring candidates for public office. Events of this nature occur frequently and without impact on universities' tax-exempt status. In fact, our research has not revealed a single instance of a college or university losing its tax-exempt status based solely on a candidate's appearance at a campus event hosted by a student organization. This result is consistent with IRS policy: Students are presumed to speak for themselves and not on behalf of their university, and student groups may conduct political activity using school facilities made similarly available to all student groups without jeopardizing the school's tax-exempt status.

Had Saint Louis University wished to err on the side of caution, it could have requested that the College Republicans include disclaimers, both during the event and when advertising the event, that the speech did not constitute the views of SLU. Such an approach would have provided assurance that the event would not be reasonably attributed to the university while preserving students' right to engage in political activity. Instead, relying on a flawed interpretation of its obligations under federal law, SLU made the unjustifiable error of prohibiting the event on campus entirely, infringing on the expressive rights that SLU has promised to its students.

FIRE again asks that SLU clarify its commitment to upholding its students' rights to political expression and activity, and assure the campus community that this mistake will not occur in the future.

We request a response by February 13, 2014.

Sincerely,



Azhar Majeed

Director, Individual Rights Education Program

cc:

William R. Kauffman, Interim President

Kent Porterfield, Vice President for Student Development

Todd Foley, Assistant Director, Student Involvement Center

Susan Fanale, Director, Student Involvement Center