



October 30, 2020

Susan L. Lantz, Ed.D.
Vice President for Student Life
Susquehanna University
514 University Avenue
Selinsgrove, Pennsylvania 17870-1164

URGENT

Sent via Electronic Mail (lantzs@susqu.edu)

Dear Vice President Lantz:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE is concerned by Susquehanna University's institution of a policy prohibiting the use of political campaign signs in students' dormitory windows. That policy, implemented out of a misinterpretation of its obligations as a 501(c)(3) non-profit organization, is contrary to the university's express promise that its students enjoy broad rights to political expression. In light of the imminent election, we call on the university to immediately rescind its policy and communicate to students that their political expression will not be restricted.

I. Susquehanna's Restriction on Displaying Political Signs

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us.

On October 28, you sent a letter to undergraduate students warning:

Above all, Susquehanna University is a place to support free speech and encourage cooperative reasoning in discourse; however, as a nonprofit institution, it cannot directly or indirectly endorse any political candidates. As a reminder, public-facing signs for political

candidates are not permitted on the campus grounds or buildings. Students are allowed to have political signs within their rooms.¹

On October 29, three student organizations at Susquehanna University—the SU College Republicans, SU College Democrats, and Young Americans for Liberty—issued a joint statement criticizing the university’s adoption of a policy requiring students to refrain from displaying campaign signs in their dormitory windows.²

On October 30, you sent an email responsive to that joint statement, reading in pertinent part:³

There is a fairly wide range of practices adopted by colleges and universities in response to the prohibition of tax-exempt organizations from directly or indirectly participating in partisan political activities. For example, the law school of Georgetown University prohibits all political activity including the passing of pamphlets or the display of any political signs. Conversely, Liberty University held what some thought amounted to rallies for a presidential candidate and had an employee publicly working for political campaigns.

Susquehanna University wants its students and employees to participate in the political process, but we are drawing the line at allowing students, or employees of the university who reside in university owned residences, including the president, from outwardly displaying partisan political signs. We believe that allowing such a practice is confusing to the public and can imply that the university is endorsing a candidate or political party. Our grounds and buildings were purchased with or built with donations exempted from taxation or financed with bonds that also enjoyed tax-exempt status. The tradeoff is that by using the benefits of tax exemption, we are prohibited from being involved in political activity.

¹ Letter from Susan Little Lantz, Vice Pres. for Student Life, Susquehanna Univ., Oct. 28, 2020 (on file with author).

² Derek Dengler, *et al.*, *SU Political Groups Unite Against Residence Hall Sign Ban*, THE QUILL, Oct. 29, 2020, <https://suquill.com/2020/10/29/su-political-groups-unite-against-residence-hall-sign-ban>.

³ Email from Lantz, Oct. 30, 2020, 1:56 PM (on file with author).

Your email went on to quote “verbiage” from the Internal Revenue Service relating to 501(c)(3) organizations’ obligations to refrain from “directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office.”⁴ You declined to rescind the policy.⁵

II. Susquehanna Will Not Risk its 501(c)(3) Status by Adhering to its Commitments to Freedom of Expression

Maintaining tax-exempt status under section 501(c)(3) does not require painstaking, door-by-door censorship of student political speech by campus administrators. To the contrary, Susquehanna’s admirable commitment to protecting its students’ political expression—if the university adheres to that commitment—shields the university from liability for *student* political expression, which is not *participation* in a political campaign by the university.

A. *Susquehanna University Promises Its Students Freedom of Expression.*

Susquehanna University’s Student Handbook provides a policy on “Political Activity on Campus” providing, in pertinent part, that the university is “committed to the free expression of political views by members of the campus community and to the value of discourse and debate in the educational process.”⁶

These promises are consistent with Susquehanna’s accreditation by the Middle States Commission on Higher Education, which requires that each accredited institution “possess[] and demonstrate . . . a commitment to academic freedom, intellectual freedom, [and] freedom of expression.”⁷ Middle States’ standards require not only dedication to these principles but action in conformity with those promises.

Having made these commitments, Susquehanna is legally and morally bound to adhere to them. For almost a century, Pennsylvania has recognized that “the relation between the student and the [private] college is solely contractual in character.”⁸ And while, as you suggested in your email, other institutions have engaged in censorship of student political

⁴ *Id.*

⁵ *Id.*

⁶ SUSQUEHANNA UNIV., 2019–2020 STUDENT HANDBOOK, *Political Activity on Campus Policy*, <https://www.susqu.edu/campus-life/student-and-campus-services/student-handbook/additional-policies> (last visited Oct. 30, 2020).

⁷ MIDDLE STATES COMM’N ON HIGHER EDUC., STANDARDS FOR ACCREDITATION AND REQUIREMENTS OF AFFILIATION 5 (13th ed. 2015), http://www.msche.org/wp-content/uploads/2018/06/RevisedStandards_FINAL.pdf.

⁸ *Barker v. Bryn Mawr Coll.*, 122 A. 220, 221 (Pa. 1923); *see also Swartley v. Hoffner*, 734 A.2d 915, 919 (Pa. Super. Ct. 1999) (finding the contractual relationship “is comprised of the written guidelines, policies, and procedures as contained in the written materials distributed to the student over the course of their enrollment in the institution”).

expression, their suppression of students' rights does not allow Susquehanna to default on its own promises.

B. Political Speech is at the Core of Freedom of Expression.

Political speech, including political signs like the ones displayed by students here, is at the core of the “freedom of expression” protected by the First Amendment.⁹ “Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs.”¹⁰ Promotion of a candidate for the highest office in the land is undoubtedly “core political speech” at the very heart of freedom of expression, where protection is “at its zenith.”¹¹ In striking down a rule prohibiting the display of signs, the Supreme Court observed that political signs, “[o]ften placed . . . in windows . . . play an important part in political campaigns” and are a “venerable means of communication that is both unique and important.”¹²

C. The University’s Obligations as a 501(c)(3) Organization Do Not Require it to Censor Student Political Expression.

The university’s status as a 501(c)(3) entity does not provide a compelling interest justifying a departure from its commitment to students’ expressive rights. To the contrary, it is abundantly clear that a student’s individual endorsement of a political candidate cannot reasonably be construed to be an endorsement by the institution he or she attends. While the university *itself* is prohibited from participating or intervening in a political campaign,¹³ the application of this policy to an individual student’s sign ignores the distinction between institutional expression and that of its students, who are strongly presumed to speak only for themselves.

The Supreme Court has made clear, for example, that use of a public university’s facilities by a religious student group—on the same basis made available to other student groups—no more committed the institution to the religious group’s religious views than to the views of any other student group.¹⁴

⁹ Again, while the First Amendment does not require Susquehanna University to protect freedom of expression, legal decisions concerning the scope of the “freedom of speech” protected by the First Amendment informs students’ reasonable expectations as to the meaning of the university’s promise that its students will enjoy freedom of expression.

¹⁰ *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

¹¹ *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 186–87 (1999) (quoting *Meyer v. Grant*, 486 U.S. 414 (1988)).

¹² *City of Ladue v. Gilleo*, 512 U.S. 43, 54–55 (1994).

¹³ See 26 C.F.R. § 1.501(c)(3)-1(c)(3)(i)-(iii).

¹⁴ *Widmar v. Vincent*, 454 U.S. 263, 274 (1981); see also *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 229 (2000) (expressive activities of student organizations at public university, funded by mandatory

Internal Revenue Service (IRS) training materials and rulings are in accord. These materials have drawn a distinction between “the individual political campaign activities of students” and their universities, 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” university officials.¹⁵ “In 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.”¹⁶ Before that, in 1972, an IRS ruling held that a student newspaper receiving funding and other resources from an educational institution does not endanger the institution’s tax-exempt status by endorsing a candidate.¹⁷

Accordingly, students’ display of political campaign signs in their dormitory windows does not risk the university’s tax-exempt status, nor does that status provide a defensible basis for regulating student political speech. Under the university’s application of the 501(c)(3) policy, a student may display a political sign only where nobody can see it. That defeats the purpose of a political sign, stripping students of an important vehicle for promoting their political views.

Moreover, no person, however unreasonable, could be misled into believing that Susquehanna University has chosen to make its endorsement, in an election for the highest office in the land, through a sign placed in one of dozens of windows in one of thirty-two dormitory buildings. As evidenced by the cross-partisan list of student organizations protesting the university’s policy, students afforded freedom of expression are likely to endorse competing candidacies, resulting in competing campaign signs and messages, undermining the likelihood that any viewer will be lulled into thinking that one among these many differing signs represents the *university’s* message. Permitting signs of differing views is a sign of lively debate and a strong way to demonstrate to any reasonable observer that no one student’s sign constitutes the institution’s speech.

III. Conclusion

Given the urgent nature of this matter, as it pertains to an election being conducted this coming Tuesday, we request receipt of a response to this letter **by 5:00 p.m. on Saturday, October 31, 2020**, affirming that Susquehanna will not enforce this policy to limit students’ display of political campaign signs.

student activity fees, were not speech by the institution); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 841 (1995) (where university adhered to viewpoint neutrality in administering student fee program, student religious publication funded by fee was not speech on behalf of university).

¹⁵ 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>.

¹⁶ *Id.* at 377.

¹⁷ I.R.S. Rev. Rul. 72-513, 1972-2 C.B. 246.

Sincerely,



Adam Steinbaugh

Director, Individual Rights Defense Program

Cc: Jonathan D. Green, President and Chief Executive Officer
Phil Winger, Vice President and Chief of Staff
Derek Dengler, SU College Republicans
Thomas Tang, SU College Democrats
Alexander Stone, Young Americans for Liberty