



November 3, 2020

Michael E. Baughman
Troutman Pepper Hamilton Sanders LLP
3000 Two Logan Square
Philadelphia, Pennsylvania 19103-2799

Sent via Electronic Mail ([REDACTED])

Dear Mr. Baughman:

Thank you for your letter of today's date responding to FIRE's letter of October 30, 2020.

We are naturally disappointed that Susquehanna University has chosen, on Election Day, to insist that its prohibition of students' campaign signs in their dormitory windows is consistent with the university's published commitment to freedom of expression.

First, the university's ownership of the building does not grant it free reign over all expression that takes place within it. Although the university owns the interior walls just as it owns the windows, it only purports to limit the visible display of signs: students can—as the university's response put it—"display signs in the privacy of their rooms."

Displaying a sign only you and your close friends can see defeats the purpose of displaying a sign, and the ability to engage in expression in other ways does not justify censorship of this mode of speech. That is particularly so when many avenues of political expression—such as assembly and in-person interaction with others—have been foreclosed by the ongoing pandemic.

Second, public and private colleges and universities regularly allow students to exercise their expressive rights, using the institution's grounds and buildings' walls, to promote candidates, parties, and ballot propositions.¹ Again, the IRS guidance on the relationship between universities' tax-exempt status and student political expression indicates that the inquiry is

¹ See, e.g., Dan Copp, *Nicholls eliminates campus chalking policy following backlash*, THE COURIER, Nov. 1, 2020, <https://www.houmatoday.com/story/news/2020/11/02/nicholls-eliminates-campus-chalking-policy-following-controversy/6091091002>; FIRE, *California State University, Bakersfield: Prohibition on 'Politically Related' Posters Prevents Proposition Proponent's Posting*, <https://www.thefire.org/cases/california-state-university-bakersfield-prohibition-on-politically-related-posters-prevents-proposition-proponents-posting>.

not whether a third party would misinterpret signs as conveying the institution's support, but whether the institution *directed* that the signs be installed.

Third, applying First Amendment principles by analogy, the university's policy would not survive First Amendment scrutiny as a time, place, or manner restriction because it is not content-neutral: In order to determine whether a sign is a partisan political sign, you have to read its content.²

We appreciate that by the time this letter is considered, polls here in Pennsylvania will have closed. But that does not moot the students' interest in displaying signs after Election Day, as they signal support for their favored candidates in the event the election is contested, or simply allow them to share their view that the wrong person won. Whatever their purpose, the university will not risk its tax-exempt status by refusing to suppress its students' speech.

Sincerely,



Adam Steinbaugh
Director, Individual Rights Defense Program

² Even if the regulation is facially content-neutral, it is content-based if it cannot be “justified without reference to the content of the regulated speech.” *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015).