



December 17, 2020

United States Department of Education
Free Speech Hotline
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Sent via Electronic Mail (freespeech@ed.gov)

To Whom It May Concern:

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.

We write to draw the Department's attention to the actions of Susquehanna University ("Susquehanna"). These actions indicate that Susquehanna has substantially misrepresented its educational program, which purports to protect the freedom of expression of its students and faculty. Susquehanna has acted in a manner inconsistent with its representations by:

- Implementing a policy prohibiting students from displaying campaign signs in their dormitory windows days before the 2020 election; and
- Inaccurately citing the university's 501(c)(3) status to justify its suppression of political speech.

Susquehanna is a private institution that represents to its students, to the public, to its accreditor, and to the Department that it protects the academic freedom and freedom of expression of its students. Relevant excerpts of these commitments are enclosed.

FIRE has repeatedly reminded Susquehanna's senior leadership that its suppression of speech violates not only its representations to prospective and current students, faculty, and the general public, but its promises to its accreditor, the Middle State Commission on Higher Education.

The accreditation standards of the Middle States Commission on Higher Education, a copy of which is enclosed, require that an institution:

- Both “possesses and demonstrates . . . a commitment to . . . freedom of expression”;
- In “all activities, whether internal or external, . . . honor its contracts and commitments” and “adhere to its policies”; and
- Both “possesses and demonstrates . . . the avoidance of conflict of interest or the appearance of such conflict in all activities and among all constituents.”

Unfortunately, attempts to informally resolve many of these matters have proved unfruitful.

Susquehanna’s refusal to correct these issues renders its representations a substantial misrepresentation in violation of 20 U.S.C. § 1094(c)(3) and 34 CFR 668.71(c).¹ Accordingly, FIRE requests that the Department initiate an investigation to determine whether monetary penalties or other measures are appropriate, pursuant to its authority under 20 U.S.C. § 1094(c)(3) and 34 CFR 668.71(a).

Sincerely,



Sabrina Conza
Program Analyst, Individual Rights Defense Program

Encl.

- Appendix A: Excerpts of Susquehanna University’s expressive rights policies
- Appendix B: Middle States Commission on Higher Education Standards for Accreditation and Requirements of Affiliation, Standard II
- Appendix C: Correspondence between FIRE and Susquehanna University

¹ U.S. Dep’t of Educ., Final Rule, 85 Fed. Reg. 59,922 n.37 (Sept. 23, 2020) (“The Department notes that public and private institutions also may be held accountable to the Department for any substantial misrepresentation under the Department’s borrower defense to repayment regulations.”).

Appendix A:

Excerpts of Relevant Susquehanna Policies

I. Peaceful Assembly Policy

The Peaceful Assembly Policy, published by the Division of Student Life and included as part of THE SUSQUEHANNA UNIVERSITY STUDENT HANDBOOK, provides, in pertinent part:²

The residential, liberal arts college is dedicated to research, teaching, and service. Susquehanna University encourages open, on-going intellectual engagement and debate by members of the University community through civil, mutually respectful interactions that preserve the openness of public dialogue and debate. As such, the right to dissent is essential to academic freedom and scholarly pursuits. Susquehanna expects all members of the community to be respectful of each other and to contribute in positive ways to an orderly and civil exchange of diverse ideas and opinions. Susquehanna wants all community members to feel welcome and safe in an environment dedicated to the critical discussion of complex and challenging ideas. Accordingly, Susquehanna University permits University students to assemble and express views on campus subject to this policy, consistent with its mission and its commitment to protecting campus buildings, grounds, and facilities

[. . .]

These forms of expression are permitted on campus so long as they are orderly, lawful, do not disrupt or interfere with the regular operations or authorized activities of the University, and comply with the requirements of this policy and all other policies within the Student Handbook. . . .

² The Peaceful Assembly Policy is set forth at pages 21–23 of the THE SUSQUEHANNA UNIVERSITY STUDENT HANDBOOK (2020-2021), available at <https://www.susqu.edu/campus-life/student-and-campus-services/student-handbook> (“2020-21 STUDENT HANDBOOK”).

II. Political Activity on Campus Policy

THE SUSQUEHANNA UNIVERSITY STUDENT HANDBOOK sets forth a policy titled “Political Activity on Campus Policy,” which provides in pertinent part:³

Susquehanna 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. The university’s policy on “Academic Freedom” and “Statement of Professional Ethics” are printed in the Faculty Handbook. Nothing in the following policy shall be construed as superseding these foundational policies for the university. Rather, the following policy should be understood as clarifying and elaborating how academic freedom should be exercised while respecting and protecting the university’s status as a tax-exempt institution. The university encourages students and other members of the campus community to learn about and participate in the political process. The purpose of this policy is to provide clear guidelines for Susquehanna University faculty, staff and students as to how they might appropriately do so.

³ 2020-21 STUDENT HANDBOOK at 23–36.

Appendix B:

Middle States Commission on Higher Education Standards for Accreditation and Requirements of Affiliation: Standard II

The Middle States Commission on Higher Education's Standards for Accreditation and Requirements of Affiliation provide, in pertinent part:⁴

Standard II – Ethics and Integrity

Ethics and integrity are central, indispensable, and defining hallmarks of effective higher education institutions. In all activities, whether internal or external, an institution must be faithful to its mission, honor its contracts and commitments, adhere to its policies, and represent itself truthfully.

Criteria

An accredited institution possesses and demonstrates the following attributes or activities:

1. a commitment to academic freedom, intellectual freedom, freedom of expression, and respect for intellectual property rights;
2. a climate that fosters respect among students, faculty, staff, and administration from a range of diverse backgrounds, ideas, and perspectives;
3. a grievance policy that is documented and disseminated to address complaints or grievances raised by students, faculty, or staff. The institution's policies and procedures are fair and impartial, and assure that grievances are addressed promptly, appropriately, and equitably;
4. the avoidance of conflict of interest or the appearance of such conflict in all activities and among all constituents;
5. fair and impartial practices in the hiring, evaluation, promotion, discipline, and separation of employees;

⁴ MIDDLE STATES COMM'N ON HIGHER ED., STANDARDS FOR ACCREDITATION AND REQUIREMENTS OF AFFILIATION, <https://www.msche.org/standards> (last visited July 8, 2020).

6. honesty and truthfulness in public relations announcements, advertisements, recruiting and admissions materials and practices, as well as in internal communications;
7. as appropriate to its mission, services or programs in place:
 - a. to promote affordability and accessibility;
 - b. to enable students to understand funding sources and options, value received for cost, and methods to make informed decisions about incurring debt;
8. compliance with all applicable federal, state, and Commission reporting policies, regulations, and requirements to include reporting regarding:
 - a. the full disclosure of information on institution-wide assessments, graduation, retention, certification and licensure or licensing board pass rates;
 - b. the institution's compliance with the Commission's Requirements of Affiliation;
 - c. substantive changes affecting institutional mission, goals, programs, operations, sites, and other material issues which must be disclosed in a timely and accurate fashion;
 - d. the institution's compliance with the Commission's policies; and
9. periodic assessment of ethics and integrity as evidenced in institutional policies, processes, practices, and the manner in which these are implemented.

Appendix C:

Correspondence with Susquehanna University

Correspondence with Susquehanna University is attached, as follows:

- Oct. 30, 2020, FIRE letter to Susquehanna University Vice President Susan L. Lantz
- Nov. 3, 2020, Letter from Susquehanna University's outside counsel, Michael E. Baughman, to FIRE
- Nov. 3, 2020, FIRE letter to Susquehanna University's outside counsel

Oct. 30, 2020

**FIRE letter to Susquehanna University Vice President
Susan L. Lantz**



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

Nov. 3, 2020

**Letter from Susquehanna University's outside counsel,
Michael E. Baughman, to FIRE**

Michael E. Baughman
michael.baughman@troutman.com

November 3, 2020

VIA E-MAIL

Adam Steinbaugh
Director, Individual Rights Defense Program
Foundation for Individual Rights in Education
510 Walnut Street
Suite 1250
Philadelphia, PA 19106

Re: Susquehanna University

Dear Mr. Steinbaugh:

I represent Susquehanna University, and I write in response to your letter dated October 30, 2020 addressed to Vice President Susan L. Lantz. Susquehanna University is committed to its students' rights to free expression, including their ability to express individually held political views. Students have the right to express those views in many ways. However, consistent with guidance from the Internal Revenue Service, they are not permitted to post political signs on University property in a way that might suggest endorsement by the University of a particular candidate or party. The University's policy barring posting of political signs in windows of University owned residence halls is consistent with this policy, and is a reasonable and appropriate restriction on the time, place and manner of student speech.

You cite to the University's policy on political activity on campus, but I disagree that you have properly summarized that policy. While the policy reaffirms the University's commitment 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," it also recognizes that certain activities are not permissible where they reasonably could be construed as reflecting a direct or indirect endorsement by the University of a particular political party or candidate. This includes posting signs or other materials on University property in a way that might be construed as representing the University's views. The policy, therefore, clearly permits the University to bar use of its residence halls – which are owned by the University and part of its charitable mission – from containing outward expressions of an endorsement for a particular candidate. While students are free to display signs in the privacy of their own rooms, placing political signs in the windows of University owned property might reasonably be construed as the University directly or indirectly supporting a particular political candidate. Thus, even if the policy constitutes a contract as you say, the University has followed it.

The University agrees with you that political speech is at the core of the values protected by the First Amendment. And while the First Amendment does not apply to the University as a private institution, the University nonetheless provides a rich environment for students to express those personal political beliefs. Students are permitted to carry political signs on campus, they are entitled to hold and attend political rallies, they are entitled to wear political clothing and buttons. But the University draws the line at use of University owned buildings to display a partisan political message, which may put at risk its tax exempt status. As you know, even where the First Amendment applies, government actors are entitled to place reasonable time, place and manner restrictions on speech so long as they are content neutral. The University's policy applies to all political signs posted in windows, not just to those of a particular candidate for office. Thus, even if the First Amendment were applicable here (and it is not), the University's policies are consistent with First Amendment principles. None of the authorities that you cite suggest otherwise.

The University encourages its students to be politically active, to voice their viewpoints and to vote. Students are given multiple platforms to express their personal beliefs, so long as those activities cannot be construed as representing the views of the University. Because the placing of signs in the windows of residence halls might be so construed, the policy is reasonable and the University does not intend to change it.

Thank you for reaching out to the University about your concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Baughman". The signature is stylized and cursive.

Michael E. Baughman

MEB/pak

Nov. 3, 2020

FIRE letter to Susquehanna University's outside counsel



November 3, 2020

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

Sent via Electronic Mail (michael.baughman@troutman.com)

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).