



FIRE

Foundation for Individual
Rights and Expression

November 15, 2022

John R. Porter
c/o Amanda Hyde, Administrative Assistant
President's Office
Lindenwood University
209 S Kingshighway Street
Saint Charles, Missouri 63301

URGENT

Sent via U.S. Mail and Electronic Mail (ahyde@lindenwood.edu)

Dear President Porter:

FIRE again writes to express concern regarding the state of freedom of expression and association at Lindenwood University,¹ given the university's stance that student organizations may not endorse candidates for office. Student endorsements of candidates are core political speech as private citizens, are clearly protected by the university's strong free expression promises, and—perhaps most importantly—are not prohibited by the university's status as a 501(c)(3) tax-exempt organization, which prohibits only “the institution itself” from endorsing candidates.² Lindenwood must permit students to engage in political speech on campus and train its officials to properly construe the university's 501(c)(3) obligations and to avoid censoring students' protected expression, as explained below.

LU student Cullen Dittmar—to whom, as you may recall, LU's student government denied recognition for a TPUSA chapter on campus because of concern over potential for controversy—submitted the required documents to begin a College Republicans club.³ LU Director of Student Involvement Carynn Smith entered comments on Dittmar's College

¹ As you may recall from prior correspondence, the Foundation for Individual Rights and Expression is a nonpartisan nonprofit dedicated to defending freedom of expression, conscience, and religion, and other individual rights on America's college campuses.

² *Political Nonpartisanship Policy*, LINDENWOOD UNIV., <https://www.lindenwood.edu/policies/list/political-nonpartisanship-policy> (last visited Nov. 11, 2022).

³ Email from Carynn Smith, Director, Student Involvement, Lindenwood Univ., to Cullen Dittmar (Nov. 8, 2022, 3:43 PM) (on file with author). The recitation of facts here reflects our understanding of those that are pertinent. We appreciate that you may have additional information to offer and invite you to share it with us.

Republicans constitution, including: “Unfortunately, you cannot endorse Republicans for public office. This is not permitted based on our Institutional Non-Partisan Policy[.]”

Ms. Smith is wrong.

LU’s Institutional Non-Partisan Policy, which Smith references, states:⁴

Consistent with the position asserted in its Bylaws, the University practices political nonpartisanship. This means that no University office, organization, subdivision, student, or employee may use University resources, advertising channels, or work time to promote, assist, or express support for any particular candidate(s) pursuing election or appointment to a political office. Similarly, no Lindenwood students, faculty members, or employees may use University resources or University work time on behalf of personal political initiatives or state or imply that they speak as a representative of the University when expressing personal support for a political candidate. No Lindenwood students, faculty members, employees, or entities are permitted to post, mount, erect, or stand a sign, banner, or poster of a political nature on any property owned, leased, or managed by the University.

This policy is in no way meant to deter students or organizations on campus from engaging in political discussions and debate. However, Lindenwood as an institution itself, must remain politically neutral relative to candidates for office. Also, students may invite active candidates to campus as long as the University issues equal invitations to the opposing candidates. The general principle is that Lindenwood will allow political activities on campus only if they serve a clear educational purpose. Any such events must be approved in advance by the University.

Additionally, LU promises students that it “values freedom of expression and the open exchange of ideas and, in particular, values the expression of controversial ideas and differing views.”⁵ As LU’s Student Handbook also states, “freedom of thought and word within the confines of higher education is central to effective education of the whole person.”⁶ Yet in

⁴ *Political Nonpartisanship Policy*, *supra* note 2 (emphasis added).

⁵ *Bias & Incident Reporting*, LINDENWOOD UNIV., <https://www.lindenwood.edu/diversity-equity-and-inclusion/bias-incident-reporting> (last visited Nov. 2, 2022).

⁶ *Academic Freedom*, 2022-23 STUDENT HANDBOOK, LINDENWOOD UNIV., <https://www.lindenwood.edu/files/resources/student-handbook.pdf> (last visited Nov. 2, 2022).

prohibiting student organizations from advocating for candidates, LU violates these morally and contractually binding free speech commitments.⁷

Political speech, including advocacy on behalf of political candidates, is at the core of the “freedom of expression” protected by the First Amendment.⁸ “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.”⁹ Promotion of a candidate for office is undoubtedly “core political speech” at the very heart of free expression, where First Amendment protection is “at its zenith.”¹⁰

To be clear, as a 501(c)(3) tax-exempt organization, LU is correct that it may not “itself”¹¹ endorse candidates for office.¹² However, it is abundantly clear that a student’s or a student organization’s individual endorsement of a political candidate is not reasonably construed as an endorsement by the university. LU’s prohibition on student groups endorsing candidates ignores the distinction between institutional expression and the expression of its students, who are strongly presumed to speak only for themselves. This fact is demonstrated by the LU College Democrats’ 2018 endorsement of Congressional candidate Mark Osmack, for which the group apparently suffered no university punishment, as is proper given the endorsement was clearly not imputed to LU.¹³ (That the College Democrats endorsed their candidate without issue, while the College Republicans club is *not even being permitted to form* raises additional troubling questions about viewpoint discrimination.)

Courts have held that student speech does not constitute expression by the institution itself. For example, the Supreme Court has made clear that the use of a public university’s facilities¹⁴ 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.¹⁵

⁷ *Corso v. Creighton Univ.*, 731 F.2d 529, 531 (8th Cir. 1984) (holding that disciplinary procedures found in the student handbook are enforced as a contract between students and their university).

⁸ While the First Amendment does not require LU to protect freedom of expression, legal decisions concerning the scope of the “freedom of speech” protected by the First Amendment inform students’ reasonable expectations as to the meaning of the university’s promise that its students will enjoy freedom of expression.

⁹ *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

¹⁰ *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 186–87 (1999) (quoting *Meyer v. Grant*, 486 U.S. 414 (1988)).

¹¹ *Political Nonpartisanship Policy*, *supra* note 2.

¹² See 26 C.F.R. § 1.501(c)(3)-1(c)(3)(i)-(iii).

¹³ *College Democrats at Lindenwood University*, FACEBOOK (May 9, 2018), <https://www.facebook.com/LUCollegeDems/posts/pfbid0mUot2Uj4Jqg5y1wc21DwxgH1PgwGzSTK8DV4ALbzMqwRY8WtUXcrKnZrAbS7edZGl>.

¹⁴ See note 8.

¹⁵ *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 student activity fees, were not speech by the institution); *Rosenberger v. Rector & Visitors of the*

Likewise, the IRS also clearly distinguishes “individual political campaign activities of students” from those of their universities. The IRS has further noted that “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.¹⁶ “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.”¹⁷ Before that, in 1972, an IRS ruling held that a student newspaper that received funding and other resources from an educational institution did not endanger the institution’s tax-exempt status by endorsing a candidate.¹⁸

Student organizations endorsing or advocating for political candidates thus in no way risks the university’s tax-exempt status—nor does that status accordingly provide a defensible basis for limiting students’ political speech. No reasonable person could be misled into believing LU has chosen to endorse a candidate in a state or national election through a student organization’s endorsement of a candidate, especially given that the university also recognized a College Democrats group.¹⁹ To the contrary, students and other observers of political speech would naturally perceive such an endorsement as speech of the student organization: Campuses are understood to be places of contested expression—an expectation that LU commendably nurtures by committing to protect that exchange of views. Supreme Court holdings and IRS regulations are clear that colleges do not risk their tax-exempt statuses by upholding students’ rights; on the contrary, institutions like LU expose themselves to liability when they erroneously censor students’ core political speech.

LU must act swiftly to recognize Dittmar’s College Republicans chapter, and bring the university’s policies and actions in line with its clear commitments to free expression. Given the urgent nature of this matter, we request a substantive response to this letter no later than the close of business on Tuesday, November 22, 2022.

Sincerely,



Sabrina Conza
Program Officer, Campus Rights Advocacy

Cc: Carynn Smith, Director, Student Involvement

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).

¹⁶ 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>.

¹⁷ *Id.* at 377.

¹⁸ I.R.S. Rev. Rul. 72-513, 1972-2 C.B. 246.

¹⁹ *Lindenwood Collegiate Democrats*, LINDENWOOD UNIV., <https://lindenwood.presence.io/organization/lindenwood-collegiate-democrats> (last visited Nov. 10, 2022).