

**WRITTEN TESTIMONY of CATHERINE SEVCENKO  
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Before the

**UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON WAYS AND MEANS,  
SUBCOMMITTEE ON OVERSIGHT**

March 2, 2016 Hearing on

**Protecting the Free Exchange of Ideas on College Campuses**

March 2, 2016

Representative Peter Roskam  
Chairman  
House Ways and Means Oversight Subcommittee  
B-317 Longworth House Office Building  
Washington, DC 20515

Representative John Lewis  
Ranking Member  
House Ways and Means Oversight Subcommittee  
1106 Longworth House Office Building  
Washington, DC 20515

**RE: March 2, 2016 Hearing on Protecting the Free Exchange of Ideas on College Campuses**

Dear Chairman Roskam, Ranking Member Lewis, and honorable members of the Subcommittee:

The Foundation for Individual Rights in Education (FIRE; [thefire.org](http://thefire.org)) is a nonpartisan, nonprofit organization dedicated to defending student and faculty rights on America's college and university campuses. These rights include freedom of speech, freedom of assembly, legal equality, due process, religious liberty, and sanctity of conscience—the essential qualities of individual liberty and dignity. Since FIRE's founding in 1999, our efforts have won 385 victories on behalf of students and faculty members whose rights were unjustly denied at 250 colleges and universities, defeated 223 repressive speech codes thereby advancing freedom of expression for more than 3.5 million students, educated millions about the problem of censorship on campus, and spurred reforms across the entire California, Hawaii, and Wisconsin state university systems. Every day, FIRE receives pleas for help from students and faculty who have found themselves victims of administrative censorship or unjust punishments simply for speaking their minds. With their fundamental rights denied, they come to FIRE for help.

I write you today to supplement the testimony I will be giving at the “Protecting the Free Exchange of Ideas on College Campuses” hearing on March 2, 2016. Thank you for the opportunity to offer FIRE's perspective on the serious threats to free expression on campus.

The censorship that student Alex Atkins faced at Georgetown University Law Center (Georgetown Law) is not an isolated event but an example of a national problem that affects all colleges and universities. This written testimony will further describe how institutional misunderstanding of applicable Internal Revenue Service (IRS) guidelines regarding political expression on campus inhibits political engagement. I also will address the broader issue of campus censorship.

## Political Activity on Campus: Private Universities with 501(c)(3) Status

The vast majority of private institutions of higher education operate as nonprofit organizations incorporated exclusively for educational purposes and exempt from paying federal income tax under U.S. Internal Revenue Code 26 U.S.C. § 501(c)(3). In FIRE’s experience, institutions often cite their tax-exempt status to justify banning political activity by students on campus or forbidding them to use university resources, broadly defined, for political purposes.<sup>1</sup>

Section 501(c)(3) restricts qualifying nonprofit organizations from participating or intervening, directly or indirectly, in a political campaign on behalf of, or in opposition to, any candidate for public office. 26 C.F.R. § 1.501(c)(3)-1(c)(3)(ii)—(iii). The IRS has defined prohibited political activity as including, but not limited to, candidate endorsements, contributions to political campaigns, public statements of favor or opposition to a candidate made on behalf of the organization, distributing statements of others favoring or opposing a candidate, or allowing a candidate to use an organization’s assets or facilities if other candidates are not given an equal opportunity.<sup>2</sup> Section 501(c)(3) also restricts qualifying nonprofits from dedicating a substantial part of their activities to attempting to influence legislation. 26 C.F.R. § 1.501(c)(3)-1(c)(3)(iv). An organization found to be in violation risks penalties including loss of its tax-exempt status and the imposition of excise taxes.

Although a college or university may not engage in political expression as an institution, university community members remain free to express their personal views.<sup>3</sup> The IRS has accordingly concluded that the restriction on political activity does not apply to individual academic community members.<sup>4</sup> In continuing education materials regarding “Election Year Issues” released in 2002, the agency made clear that “[i]n order to

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<sup>1</sup> Unfortunately, this problem is not limited to private institutions. As government instrumentalities, public colleges and universities are also exempt from federal income tax but are granted that status under Section 115 of the Internal Revenue Code, although some of them also have 501(c)(3) status. Association of American Universities, *Why Are Universities and Colleges Exempt from Federal Income Taxation?* (Mar. 2013), <http://www.aau.edu/WorkArea/DownloadAsset.aspx?id=14246>.

Although public institutions are bound by the First Amendment, they, too, curtail student political speech, relying on the same justification as private institutions: their tax-exempt status prohibits them from allowing partisan speech on campus. For simplicity, this testimony will discuss 501(c)(3) status in terms of private institutions, but the problem of colleges and universities censoring political speech to protect their tax-exempt status exists across the U.S. higher education system.

<sup>2</sup> Internal Revenue Service, FS-2006-1, *Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations* (Feb. 2006), <https://www.irs.gov/uac/Election-Year-Activities-and-the-Prohibition-on-Political-Campaign-Intervention-for-Section-501%28c%29%283%29-Organizations>.

<sup>3</sup> See, e.g., *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819 (1995).

<sup>4</sup> This conclusion is bolstered by Supreme Court rulings making clear that student fees distributed in a viewpoint neutral way may be used to support political or religious activities because the student groups are expressing their views, not those of the university. *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 a government actor); *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).

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.” Judith E. Kindell & John Francis Reilly, *Election Year Issues*, Exempt Organizations Continuing Professional Education Technical Instruction Program for Fiscal Year 2002, 377–78 (2002), <https://www.irs.gov/pub/irs-tege/eotopici02.pdf> (2002 Election Issues). In particular, “[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 a school official.” *Id.* at 365.

The IRS has followed this interpretation in administrative rulings. For example, it decided that a university did not engage in campaign activity or attempt to influence legislation when it provided funding, facilities, and faculty advisors to a student-run newspaper that published student editorials expressing positions on legislation and candidates. Noting that the university exercised no editorial control over the content and that a statement on the editorial pages made clear the views expressed were not those of the university, the agency held that the provision of resources to the paper did not convert the publication of student opinions into institutional acts. Rev. Rul. 72-513, 1972-2 C.B. 246.

In another ruling, the IRS decided that a university did not participate in a political campaign by offering a political science course that required students to take part in the campaign of a candidate of their choice. The IRS held that the fact of offering the course and dedicating personnel and facilities to teaching it did not “make the university a party to the expression or dissemination of political views of the individual students in the course of their actual campaign activities . . . .” Rev. Rul. 72-512, 1972-2 C.B. 246.

Student groups and organizations may also engage in partisan activities without endangering a university’s tax-exempt status. A college or university does not generally fall afoul of IRS regulations by simply making its facilities and resources available to groups supporting a particular candidate, as long as the institution does so on a viewpoint neutral basis. The 2002 Election Issues document states that the IRS will decide on a case-by-case basis if provision of facilities to a group to conduct political campaign activities will constitute participation or intervention in a political campaign. Factors will include **“whether the facilities are provided on the same basis that the facilities are provided to other non-political groups and whether the facilities are made available on an equal basis to similar groups.”** 2002 Election Issues at 378 (emphasis added).

Thus, existing IRS continuing education material and revenue rulings regarding political activity on campus provide nonprofit colleges and universities two guiding principles: First, university community members and student groups are not presumed to speak on behalf of their universities or colleges unless the institution exerts control or influence over their message or activity. Second, if the institution has a history of providing access to institutional resources and facilities on a viewpoint neutral basis, then the partisan views expressed by participating university community members will not be attributed to the school.

### College and University Misinterpretation of Section 501(c)(3)

Despite the existing IRS guidance, many private colleges and universities take an overly-cautious, overly-restrictive approach to Section 501(c)(3) compliance, severely limiting or banning student partisan speech on campus or interpreting the use of *any* university resource by a student or student group as implicating the university in the activity. Of course, private institutions are not state actors bound to uphold the First Amendment right of students to engage in political speech. But most private colleges and universities maintain policies or public statements that promise their students the right to free expression on campus. As such, students reasonably expect to be able to participate in political activities, which involve issues of central importance to our country. Ironically, by stifling political speech, private schools undermine their ability to fulfill their educational mission, the very purpose for which they were granted non-profit status.

Indeed, even institutional policies governing student partisan speech commonly begin by repeating support for free expression and political engagement. For example, Georgetown Law's current policy begins with the statement that the school "encourages and supports the free exchange of ideas and political viewpoints."<sup>5</sup> However, these value-based statements are too often followed by restrictions on student speech that universities claim are necessary in order to protect their tax-exempt status.

A university does not "encourage or support" the free exchange of ideas among its students when it unnecessarily restricts political activity and expression on campus. As a nonprofit educational organization, FIRE understands the need to take care in protecting institutional tax-exempt status. But universities must be honest with their students. By interpreting IRS restrictions too broadly, they undermine, discourage, and censor campus speech. Some students, like Alex Atkins and his colleagues, have the fortitude to push back because political engagement is significant to them. But what about students with a passing interest in politics? Their engagement will be lost, and they will have learned a deeply unfortunate lesson about civic participation.

If administrators at Georgetown Law, assisted by some of the most accomplished law professors in the country, cannot read the relevant material and be confident that partisan activity by students will not jeopardize the institution's 501(c)(3) status, there is a problem. Harvard Law School is apparently also confused. Its current policy concludes with a "friendly reminder" to students that it university resources cannot be used "to engage in an activity that favors or opposes any candidate for public office including but not limited to: Harvard email and/or listservs; Harvard blogs . . . ; or the use of classrooms, catering services, or media services."<sup>6</sup>

Clear guidance from the IRS would solve this problem. A direct statement that students, faculty, and staff may engage in partisan political activity as long as they do not claim to speak for the college or university would be of lasting benefit to our nation's campuses.

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<sup>5</sup> *Georgetown Law Student Organization Policy on Partisan Political Activities*, Georgetown University Law Center, <https://orgsync.com/18903/files/587087/download#> (last visited Feb. 28, 2016) (also available at <https://www.thefire.org/policy-on-partisan-political-activities-2>).

<sup>6</sup> *Policy on Campaign & Political Activity*, Harvard Law School, <http://hls.harvard.edu/dept/dos/student-orgs/handbook-for-officers/policy-on-campaign-political-activity> (last visited Feb. 26, 2016).

With greater clarity regarding when partisan speech will be attributed to an institution and when community use of university resources will implicate an institution, students, faculty, and staff will better know what they may say and do, and universities will have greater confidence in what they may allow.

FIRE recommends that Congress encourage the IRS quickly to issue concise guidance on a college or university's obligations under Section 501(c)(3) with respect to campus political speech. The 2016 campaign is already well underway, yet many institutions continue to employ overly restrictive policies out of an abundance of caution and fear for their tax-exempt status. Campus discourse suffers as a result. Every student or student organization told that they cannot sit at a table and hand out information about their chosen candidate, that they cannot invite the candidate to campus to speak to other students, or that they cannot even use a school's microphone if a candidate does manage to make it on campus, loses the opportunity to engage their peers on the most pressing political issues of the day and to advocate for the change they want to see in the world.

### **Colleges and Universities Cite IRS Obligations to Justify Censorship**

Specific examples of campus censorship demonstrate that Alex Atkins' experience was not an anomaly. Colleges and universities consistently cite their tax-exempt status to justify silencing political speech election year after election year. Please remember that these are only examples of instances that have come to our attention, either because they were covered in the media, or a student or faculty member came to FIRE for assistance. Hundreds of colleges and universities across the country maintain policies limiting student political speech and campaign-related activity. The number of students who, over the years, either did not seek assistance after being silenced or who chose not to speak at all after reading their school's policies is impossible to know.

In the last several months alone, FIRE has written to two private universities in the District of Columbia, the political heart of the nation, urging them to properly construe their Section 501(c)(3) obligations so as to allow the maximum amount of student political speech.<sup>7</sup> At Georgetown Law, Alex Atkins and a group of fellow students who support Senator Bernie Sanders' presidential campaign were prevented from reserving a table inside the law school or sitting at a table outside the law school to inform students about the senator's policies and how to register to vote in the primaries.<sup>8</sup>

Last fall, American University refused to recognize the student organization "Students for Rand"—a group supporting the presidential campaign of Senator Rand Paul—based on the group's affiliation with the national organization of the same name. Until the

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<sup>7</sup> Each election year, FIRE receives numerous requests for help from students who, after consulting our materials or talking with a FIRE staff member, arrive at an agreement with their university without more formal intervention. Since last fall, these inquiries are becoming more frequent.

<sup>8</sup> Mary Lou Byrd, *Students at Georgetown Banned From Handing Out Campaign Materials Supporting Bernie Sanders*, THE WASH. FREE BEACON (Feb. 2, 2016, 10:30 AM), <http://freebeacon.com/issues/georgetown-banned-handing-campaign-materials-bernie-sanders>; Lisa Burgoa, *GULC Under Fire For Campaign Policy*, THE HOYA (Feb. 9, 2016), <http://www.thehoya.com/gulc-under-fire-for-campaign-policy>.

university reversed its decision after being contacted by FIRE,<sup>9</sup> the group was denied certain privileges extended only to recognized student groups, including the ability to reserve meeting space on campus or reserve tables in designated areas of campus. In the university's response to FIRE, Vice President of Campus Life Gail Short Hanson wrote: "The Internal Revenue Service provides limited guidance to assist in determining whether or not a particular activity may constitute a prohibited political campaign intervention. Therefore, the University carefully considers whether to permit on-campus political activities and events on a case-by-case basis."<sup>10</sup>

In 2013, Saint Louis University (SLU) administrators prohibited the College Republicans from hosting former senator Scott Brown on campus, claiming that doing so would jeopardize their tax-exempt status. Todd Foley, then an assistant director of SLU's Student Involvement Center, stated that Brown's "appearance here would be a violation of our Tax Exempt status as a 501(c)3. . . . Since Scott Brown has made comments about possibly running for office in NH . . . the IRS would consider him as a candidate—thus it being in conflict with our tax exempt status."<sup>11</sup>

Leading up to the 2008 election, the College of St. Catherine (now St. Catherine University) in Minnesota denied requests to allow on-campus speeches by Hillary Clinton, Bay Buchanan, and Senator Al Franken. Justifying its denial, the administration cited the requirement that nonprofit institutions maintain neutrality vis-à-vis candidates for public office, although that restriction does not apply to students, as discussed above.<sup>12</sup>

Even public universities, which are bound by the First Amendment, unnecessarily and unjustly invoke their tax-exempt status as a justification for shutting down partisan or politically charged student speech. For example, in 2014, the Student Government Association at Montclair State University in New Jersey—to which the university delegates the authority to distribute student activity fees to student organizations—imposed budgetary sanctions on the Montclair Students for Justice in Palestine for distributing pamphlets on the Israeli-Palestinian conflict because they contained "offensive and political wording."<sup>13</sup> In its sanctions letter, the Association's "attorney general" admonished the group that it was to be a cultural organization, not a political one. Citing the Association's tax-exempt status, she wrote: "We have strict rules from the government on how to run the organization while remaining in non-profit status. . . . Part

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<sup>9</sup> *FIRE Letter to American University President Neil Kerwin*, Nov. 2, 2015, <https://www.thefire.org/fire-letter-to-american-university-president-neil-kerwin>.

<sup>10</sup> *Response Letter to FIRE from American University Vice President of Campus Life Gail Short Hanson*, Nov. 12, 2015, <https://www.thefire.org/response-letter-to-fire-from-american-university-vice-president-of-campus-life-gail-short-hanson/>

<sup>11</sup> Eli Yokley, *St. Louis University nixes Scott Brown appearance on campus*, POLITICMO (Oct. 30, 2013), <http://politicmo.com/2013/10/30/st-louis-university-nixes-scott-brown-appearance-on-campus>.

<sup>12</sup> Paul Walsh & Jenna Ross, *Mouths taped, St. Kate's students protest rule on speakers*, STAR TRIBUNE (Oct. 29, 2008), <http://www.startribune.com/mouths-taped-st-kate-s-students-protest-rule-on-speakers/33354009>.

<sup>13</sup> *Letter of Sanction from Montclair State University Student Government Association Attorney General Demi M. Washington to Montclair Students for Justice in Palestine*, Sept. 25, 2014, <https://www.thefire.org/letter-sanction-montclair-state-university-attorney-general-demi-m-washington>.

of the list of things we cannot be associated with is any political or lobbyist organization.”<sup>14</sup> After FIRE wrote to the Montclair State University administration on the student group’s behalf, the Association’s then-president rescinded the sanctions.<sup>15</sup>

And during the 2008 election cycle, the University of Oklahoma (OU) administration sent an email to the entire university community informing them that university email accounts “may not be used to endorse or oppose a candidate, **including the forwarding of political humor/commentary.**”<sup>16</sup> The email reasoned that even the personal use of university email accounts “may not include political issues outside of the educational context as it places the University at risk of losing its tax exempt status.”<sup>17</sup> Only after extensive public criticism did OU president David Boren rescind the previous email, noting that community members should merely refrain from purporting to speak on behalf of the university in support of a candidate.<sup>18</sup>

The censorship of political speech does not arise solely from colleges’ and universities’ interpretations of their tax-exempt status. Year round, administrators and student governments rely on any number of university policies and conduct codes to suppress political expression. Election cycles tend to give rise to repeated examples of the censorship of political speech, likely because election season is when students are most excited to advocate for their candidate and engage their peers.

For example, in 2012, Ohio University forced a student to remove a flyer from her dormitory door that criticized *both* presidential candidates Barack Obama and Mitt Romney, citing a policy (fortunately now defunct) prohibiting students from displaying political posters outside their rooms until within fourteen days of the election date.<sup>19</sup> Administrators relied on policies regulating displays in residence halls in demanding that students remove a banner supporting former representative Ron Paul at Auburn University in 2011<sup>20</sup> and signs from dormitory windows supporting then-senator Barack Obama at the University of Texas at Austin in 2008.<sup>21</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> *Response Letter to FIRE from Montclair State University General Counsel Mark J. Fleming*, Oct. 9, 2014, <https://www.thefire.org/response-montclair-state-university-general-counsel-mark-j-fleming-fire/> (enclosing Oct. 8, 2014 response letter to FIRE from Student Government Association President Kristin M. Bunk).

<sup>16</sup> *Response Letter to FIRE from University of Oklahoma President David L. Boren*, Oct. 13, 2008, <https://www.thefire.org/letter-to-fire-from-university-of-oklahoma-president-david-l-boren> (emphasis added).

<sup>17</sup> *Id.*

<sup>18</sup> Email from David L. Boren, University of Oklahoma President, to University of Oklahoma Community (Oct. 27, 2008, 6:54 PM), <https://www.thefire.org/email-from-ou-president-david-l-boren-to-university-of-oklahoma-community-october-27-2008>.

<sup>19</sup> Foundation for Individual Rights in Education, *With Election Day Close, Ohio University Ends Political Censorship in Dorms*, THE TORCH (Oct. 9, 2012), <https://www.thefire.org/with-election-day-close-ohio-university-ends-political-censorship-in-dorms-2>.

<sup>20</sup> Adam Kissel, *Double Standard at Auburn: Ron Paul Banner Banned from Dorm Room Window While ‘Total Ban’ Goes Unenforced*, SCSU-AAUP (Jan. 17, 2012), <http://www.scsuaaup.org/double-standard-at-auburn-ron-paul-banner-banned-from-dorm-room-window-while-total-ban-goes-unenforced>.

<sup>21</sup> KHOU Staff, *UT students punished for hanging political signs in dorm windows*, KHOU (Oct. 26, 2009, 10:57 AM), <http://www.khou.com/story/news/2014/07/10/11177704>.



Also leading up to the 2012 presidential election, administrators at Christopher Newport University (CNU) relied on an overly restrictive policy regulating campus demonstrations to deny a student group's planned protest of a campus appearance by vice-presidential nominee Representative Paul Ryan. CNU refused to waive the policy's ten-day notice requirement for demonstrations, despite the fact that Ryan's speech was announced only two days before it took place.<sup>22</sup>

Ahead of the 2010 mid-term congressional elections, Grambling State University (GSU) in Louisiana sent an email to the university community advising members to delete any email containing a political campaign solicitation and not to forward such emails through university accounts. To do so, GSU explained, "may be viewed as utilizing university resources for solicitation purposes, a violation of state policy[.]"<sup>23</sup> A university spokeswoman justified the ban on political emails under its email use policy prohibiting distribution of "disruptive or offensive messages" based on a number of protected characteristics, including "political beliefs."<sup>24</sup> Driven by misunderstanding and fear, colleges and universities too often censor political speech on campus—a problem that the IRS has the power to correct.

### **Other Forms of Campus Censorship Silence Political Speech**

Unfortunately, institutional confusion regarding the obligations of tax-exempt organizations is not the only cause of campus censorship. Overly broad and vague "speech codes," tiny and onerously regulated "free speech zones," and other forms of speech-restrictive polices are common and hinder students' ability to be politically active on campus.<sup>25</sup> These regulations prevent students from becoming the engaged citizens we need for our democracy to thrive and progress.

Campus censorship can extend to the simple act of giving someone a copy of the Constitution. On September 17, 2013, Constitution Day, a security guard and campus administrator at Modesto Junior College in California told student Robert Van Tuinen, an Army veteran, that he could not hand out copies of the U.S. Constitution because he was not standing in the campus's tiny "free speech zone."<sup>26</sup> Furthermore, because the free speech zone was "booked," he was told he would have to wait two weeks before he could do so. Van Tuinen had to sue Modesto Junior College (with FIRE's help) before the

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<sup>22</sup> Greg Lukianoff, Editorial, *Feigning Free Speech on Campus*, N.Y. TIMES (Oct. 24, 2012), [http://www.nytimes.com/2012/10/25/opinion/feigning-free-speech-on-campus.html?\\_r=0](http://www.nytimes.com/2012/10/25/opinion/feigning-free-speech-on-campus.html?_r=0).

<sup>23</sup> Stephen Clark, *Grambling State University Bans Political E-Mails, Cites State Law*, FOX NEWS (Sept. 22, 2010), <http://www.foxnews.com/politics/2010/09/22/university-louisiana-bans-political-e-mails-draws-free-speech-advocates.html>.

<sup>24</sup> *Id.*

<sup>25</sup> FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION, SPOTLIGHT ON SPEECH CODES 2016 4–5 (2016), <https://www.thefire.org/spotlight/reports>.

<sup>26</sup> Photo included in supplemental materials.

college abolished its free speech zone and admitted that the First Amendment applied on campus.<sup>27</sup>

In 2014, Blinn College student Nicole Sanders advocated for gun rights outside the Student Union to support concealed carry legislation then pending in the Texas legislature. But a campus administrator, accompanied by three armed police officers, told Sanders she needed “special permission” to talk about guns. Further, if she wanted display signs and recruit students for the Young Americans for Liberty student group she was organizing, she would also have to be in the school’s free speech zone, which was roughly the size of a parking space.<sup>28</sup> With FIRE’s assistance, Nicole filed a First Amendment lawsuit to vindicate her rights.<sup>29</sup> We are hopeful for a settlement.

Also in 2014, Western Michigan University (WMU) refused to let the rapper and social activist Boots Riley participate in a “Peace Week” organized by the student group Kalamazoo Peace Center (KPC). Campus police decided that Riley’s participation in the Oakland, California “Occupy” movement made him a potential security threat. When KPC objected, WMU imposed a fee for security that the group could not pay, in essence taxing controversial speech. KPC had to file a lawsuit for WMU to reform its policies.<sup>30</sup>

Public universities may not violate the First Amendment and private universities must honor their promises of freedom of expression. Uncertain guidance from the IRS is no excuse for violating students’ speech rights. This Subcommittee may help solve the persistent problem of campus censorship by recommending to the IRS that it issue a simple statement clarifying that students and faculty may engage in political activity without endangering institutional tax-exempt status. Thank you again for granting FIRE the opportunity to discuss the importance of protecting the free exchange of ideas on campus.

Respectfully submitted,  
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<sup>27</sup> Foundation for Individual Rights in Education, *Victory: Modesto Junior College Settles Student’s First Amendment Lawsuit*, THE TORCH (Feb. 25, 2014), <https://www.thefire.org/victory-modesto-junior-college-settles-students-first-amendment-lawsuit>.

<sup>28</sup> Photo included in supplemental materials.

<sup>29</sup> Maxim Lott, *Texas student sues after college bans gun rights sign*, FOX NEWS (May 28, 2015), <http://www.foxnews.com/us/2015/05/28/texas-student-sues-after-college-bans-gun-rights-sign.html?intcmp=latestnews>.

<sup>30</sup> Rex Hall, Jr., *WMU to pay \$35,000 to settle free-speech lawsuit filed by Kalamazoo Peace Center*, MLIVE (May 4, 2015, 5:47 PM), [http://www.mlive.com/news/kalamazoo/index.ssf/2015/05/wmu\\_to\\_pay\\_35000\\_to\\_settle\\_fre.html](http://www.mlive.com/news/kalamazoo/index.ssf/2015/05/wmu_to_pay_35000_to_settle_fre.html).

# **ATTACHMENT A**

Since its founding, FIRE has routinely intervened when colleges and universities restrict political speech on campus. Here are examples from the past two election cycles.

### **Private Institutions**

**Georgetown University Law Center:** In February 2016, Georgetown University Law Center prohibited the unregistered student group, Students for Bernie, from renting a table on campus.<sup>1</sup>

**American University:** Last fall, American University refused to recognize the student organization “Students for Rand”—a group supporting the presidential campaign of Senator Rand Paul—based on the group’s affiliation with the national organization of the same name. Until the university reversed its decision after being contacted by FIRE, the group was denied certain privileges extended only to recognized student groups, including the ability to reserve meeting space on campus or reserve tables in designated areas of campus.

**Saint Louis University:** In 2013, Saint Louis University (SLU) demanded a student group hold an event featuring former Massachusetts Senator Scott Brown at an off-campus location.<sup>2</sup> SLU justified its wrongful decision to prevent Brown from appearing on campus by citing misguided concerns over its tax-exempt status. FIRE sent a letter to SLU in November 2013, and again in January 2014 after the university defended its actions.<sup>3</sup>

**College of St. Catherine:** In the fall of 2008, College of St. Catherine (now St. Catherine University) disinvited a number of speakers including Bay Buchanan, Senator Al Franken, and former senator and current presidential candidate Hillary Clinton.<sup>4</sup>

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<sup>1</sup> Mary Lou Byrd, *Students at Georgetown Banned From Handing Out Campaign Materials Supporting Bernie Sanders*, THE WASH. FREE BEACON (Feb. 2, 2016, 10:30 AM), <http://freebeacon.com/issues/georgetown-banned-handing-campaign-materials-bernie-sanders/>; Lisa Burgoa, *GULC Under Fire For Campaign Policy*, THE HOYA (Feb. 9, 2016), <http://www.thehoya.com/gulc-under-fire-for-campaign-policy/>.

<sup>2</sup> Eli Yokley, *St. Louis University nixes Scott Brown appearance on campus*, POLITICMO (Oct. 30, 2013), <http://politicmo.com/2013/10/30/st-louis-university-nixes-scott-brown-appearance-on-campus/>.

<sup>3</sup> Peter Bonilla, *Saint Louis University Kicks Political Speech Off Campus*, THE TORCH (Apr. 9, 2014), <https://www.thefire.org/saint-louis-university-kicks-political-speech-off-campus/>.

<sup>4</sup> Paul Walsh & Jenna Ross, *Mouths taped, St. Kate's students protest rule on speakers*, STAR TRIBUNE (Oct. 29, 2008), <http://www.startribune.com/mouths-taped-st-kate-s-students-protest-rule-on-speakers/33354009/>.

# **ATTACHMENT B**

## Public Institutions

**Montclair State University:** In 2014, Montclair State University (MSU) Student Government Association (SGA) Attorney General Demi Washington penalized the Montclair Students for Justice in Palestine (MSJP) organization five percent of its semester budget and ordered the group to cease all political activity after receiving complaints that the group had handed out “political” and “offensive” pamphlets.<sup>1</sup> Washington also admonished the group that it was only to focus on Palestinian culture and not to take positions on political issues.<sup>2</sup> In October 2014, FIRE sent a letter to MSU demanding that the SGA rescind its sanctions against MSJP and respect its student groups’ ability to distribute literature of a political nature.<sup>3</sup> Five days later, SGA President Kristen Bunk reversed the sanctions and reassured MSJP members that students and organizations have a right to express political views on campus.<sup>4</sup>

**Brooklyn College:** In February 2013, an event entitled “BDS Movement Against Israel” sparked controversy after it was revealed the event was co-sponsored by several student groups as well as Brooklyn College’s political science department. Some—including New York City public officials—criticized the college’s sponsorship as constituting an official endorsement of the event and the views of its speakers by Brooklyn College.<sup>5</sup>

**Christopher Newport University:** In September 2012, Christopher Newport University (CNU) censored student speech by preventing the Feminist Alliance, a student group, from protesting a campus appearance by Representative Paul Ryan, who was a vice presidential nominee at the time.<sup>6</sup> CNU refused to waive a 10-day notice requirement for student groups wishing to engage in

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<sup>1</sup> Hannan Adely, *Montclair State University student association reverses penalties on pro-Palestinian club’s pamphleteering*, THE RECORD (Oct. 9, 2014, 8:39 PM), <http://www.northjersey.com/news/montclair-state-university-student-association-reverses-penalties-on-pro-palestinian-club-s-pamphleteering-1.1106383>.

<sup>2</sup> Letter of Sanction from Demi M. Washington, Attorney General, Montclair State University Student Government, to Montclair Students for Justice in Palestine and Executive Board (Sept. 25, 2014), <https://www.thefire.org/letter-sanction-montclair-state-university-attorney-general-demi-m-washington/>.

<sup>3</sup> Letter from Ari Z. Cohn, Program Officer, Legal and Public Advocacy, Foundation for Individual Rights in Education, to Susan A. Cole, President, Montclair State University (Oct. 3, 2014), <https://www.thefire.org/fire-letter-montclair-state-university-president-susan-cole/>.

<sup>4</sup> Letter from Mark J. Fleming, University Counsel, Montclair State University, to Ari Z. Cohn, Program Officer, Legal and Public Advocacy, Foundation for Individual Rights in Education (Oct. 9, 2014), <https://www.thefire.org/response-montclair-state-university-general-counsel-mark-j-fleming-fire/>.

<sup>5</sup> Editorial, *Brooklyn College department is showing distinct lack of courage*, N.Y. DAILY NEWS (Feb. 5, 2013, 4:00 AM), <http://www.nydailynews.com/opinion/spineless-brooklyn-article-1.1255307>.

<sup>6</sup> Greg Lukianoff, Editorial, *Feigning Free Speech on Campus*, N.Y. TIMES (Oct. 24, 2012), <http://www.nytimes.com/2012/10/25/opinion/feigning-free-speech-on-campus.html>.

"demonstrations" on campus, despite the fact that Representative Ryan's September 18 appearance was only publicly announced two days earlier.<sup>7</sup>

**Michigan State University:** In 2012, Associated Students of Michigan State University (ASMSU) rejected the College Libertarians' request for funding, claiming that the university could not "fund groups with political agendas."<sup>8</sup> FIRE wrote to Michigan State University in October, explaining that the school could not make such viewpoint-based funding decisions and urging ASMSU's funding board to reverse its decision.<sup>9</sup> On October 23, the board did just that, and the event was able to move forward.<sup>10</sup>

**Northern Virginia Community College:** In February 2012, the fully recognized student group Students for Sensible Drug Policy (SSDP) sought permission to attend a national conference. SSDP President Chris McMillon was told by college administrator Patricia Gordon that the college was "unable to fund any student organizations with a political agenda."<sup>11</sup> FIRE asked the college to revise this unconstitutional policy in accordance with the First Amendment rights of student groups like SSDP.<sup>12</sup>

**Ohio University:** In 2012, Ohio University (OU) blocked a student from putting a notice on her door arguing that neither President Obama nor Mitt Romney were fit for office.<sup>13</sup> FIRE wrote to

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<sup>7</sup> *CNU considers change to protest policy*, DAILY PRESS (Sept. 23, 2012), [http://articles.dailypress.com/2012-09-23/news/dp-nws-crime-notebook-0923-20120923\\_1\\_students-kevin-hughes-protest-policy-student-protests](http://articles.dailypress.com/2012-09-23/news/dp-nws-crime-notebook-0923-20120923_1_students-kevin-hughes-protest-policy-student-protests).

<sup>8</sup> Peter Bonilla, *Michigan State Reverses Decision Rejecting Free-Market Scholar's Speech*, THE TORCH (Nov. 16, 2012), <https://www.thefire.org/michigan-state-reverses-decision-rejecting-free-market-scholars-speech-3/>.

<sup>9</sup> Letter from Peter Bonilla, Associate Director, Individual Rights Defense Program, Foundation for Individual Rights in Education, to Lou Anna K. Simon, President, Michigan State University (Oct. 19, 2012), <https://www.thefire.org/fire-letter-to-michigan-state-university-president-lou-anna-k-simon-october-19-2012/>.

<sup>10</sup> Letter from Denise B. Maybank, Ph.D. Interim Vice President for Student Affairs, Michigan State University, to Peter Bonilla, Associate Director, Individual Rights Defense Program, Foundation for Individual Rights in Education (Nov. 9, 2012), <https://www.thefire.org/response-to-fire-from-interim-vice-president-for-student-affairs-denise-maybank-november-9-2012/>.

<sup>11</sup> Email from Patricia Gordon, Northern Virginia Community College, to Chris McMillon (Feb. 26, 2012, 11:21 AM), <https://www.thefire.org/email-from-patricia-gordon-to-chris-mcmillon-february-26-2012/>.

<sup>12</sup> Letter from Peter Bonilla, Assistant Director, Individual Rights Defense Program, Foundation for Individual Rights in Education, to Peter Maphumulo, Provost, Northern Virginia Community College (May 11, 2012), <https://www.thefire.org/letter-from-fire-to-northern-virginia-community-college-may-11-2012/>.

<sup>13</sup> Peter Bonilla, *With Election Day Close, Ohio University Ends Political Censorship in Dorms*, THE TORCH (Oct. 9, 2012),

OU President Roderick McDavis on September 28, reminding OU of its legal obligation as a public university to respect student First Amendment rights.<sup>14</sup>

**University of Cincinnati:** In 2012, University of Cincinnati (UC) told UC's Young Americans for Liberty (YAL) chapter it could not gather signatures or talk to students about support of a statewide "right to work" ballot initiative.<sup>15</sup> FIRE secured the assistance of Ohio's 1851 Center for Constitutional Law for YAL's lawsuit. In June 2012, United States District Judge Timothy S. Black held that the policy "violates the First Amendment and cannot stand" and issued a preliminary injunction against its enforcement.<sup>16</sup>

**Auburn University:** In November 2011, Auburn University student Eric Philips was required to remove a banner supporting former Representative Ron Paul's presidential campaign from the inside of his dormitory window. Despite Auburn's policy prohibiting all window decorations in its residence halls, Philips documented numerous examples of the policy not being enforced against other students.<sup>17</sup>

**Grambling State University:** In 2010, university officials prohibited its students and faculty from transmitting any "campaign solicitations" via the university's email system, a ban that included any message that implied one's support for a particular political candidate.<sup>18</sup>

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<https://www.thefire.org/with-election-day-close-ohio-university-ends-political-censorship-in-dorms-2/>.

<sup>14</sup> Letter from Peter Bonilla, Associate Director, Individual Rights Defense Program, Foundation for Individual Rights in Education, to Roderick J. McDavis, President, Ohio University (Sept. 28, 2012), <https://www.thefire.org/fire-letter-to-ohio-university-september-28-2012/>.

<sup>15</sup> Email from Conference & Event Services, University of Cincinnati, to Chris Morbitzer, President, Young Americans for Liberty chapter of the University of Cincinnati (Feb. 10, 2012, 8:05 AM), <https://www.thefire.org/email-from-conference-and-event-services-to-yal-uc-chapter-president-christopher-morbitzer-february-10-2012/>; see also Tyler Kingkade, *University Of Cincinnati Free Speech Zones Ruled Unconstitutional By Federal Judge*, HUFFINGTON POST: HUFFPOST COLLEGE (June 14, 2012, 3:28 PM), [http://www.huffingtonpost.com/2012/06/13/university-of-cincinnati-free-speech-zone\\_n\\_1594971.html](http://www.huffingtonpost.com/2012/06/13/university-of-cincinnati-free-speech-zone_n_1594971.html).

<sup>16</sup> Univ. of Cincinnati Chapter of Young Ams. for Liberty v. Williams, No. 12-cv-00155, 2012 U.S. Dist. LEXIS 80967, at \*2 (S.D. Ohio June 12, 2012).

<sup>17</sup> Adam Kissel, *Double Standard at Auburn: Ron Paul Banner Banned from Dorm Room Window While 'Total Ban' Goes Unenforced*, SCSU-AAUP (Jan. 17, 2012), <http://www.scsuaaup.org/double-standard-at-auburn-ron-paul-banner-banned-from-dorm-room-window-while-total-ban-goes-unenforced/>.

<sup>18</sup> Stephen Clark, *Grambling State University Bans Political E-Mails, Cites State Law*, FOX NEWS (Sept. 22, 2010), <http://www.foxnews.com/politics/2010/09/22/university-louisiana-bans-political-e-mails-draws-free-speech-advocates.html>.



**Iowa Western Community College:** In 2008, Iowa Western Community College banned individual students from distributing campaign handbills and banned postings of campaign materials where other postings were allowed.<sup>19</sup>

**University of Illinois:** In 2008, the University of Illinois Ethics Office issued a statement that went too far in banning political expression and participation on University of Illinois campuses.<sup>20</sup> FIRE, the American Association of University Professors, the ACLU, the National Association of Scholars, and the Illinois Association of Scholars firmly criticized the administration's statement.<sup>21</sup>

**University of Oklahoma:** In the weeks prior to the 2008 presidential election, the University of Oklahoma (OU) notified students and faculty that “the forwarding of political humor/commentary” using their university email accounts was prohibited.<sup>22</sup> After FIRE wrote OU President David L. Boren, explaining that the policy violated the right to freedom of speech, Boren replied that the policy was intended to be applicable only “to the extent discussions are attributable to the University as endorsing or opposing a political candidate.”<sup>23</sup> Boren issued a university-wide statement on October 27, 2008, fully rescinding the earlier email and stating that OU policy “does not limit the right of anyone to express individual views.”<sup>24</sup>

**University of Texas:** In 2008, the University of Texas at Austin (UT) banned two students from posting political signs in support of then-Senator Barack Obama’s presidential campaign on their dormitory door and window, in order to avoid the appearance that UT was supporting a candidate.<sup>25</sup>

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<sup>19</sup> Will Creeley, *With Election Weeks Away, Political Speech Under Attack on America’s Campuses*, THE TORCH (Oct. 15, 2008), <https://www.thefire.org/with-election-weeks-away-political-speech-under-attack-on-americas-campuses/>.

<sup>20</sup> Scott Jaschik, *Beware the Button Police*, INSIDE HIGHER ED (Sept. 24, 2008), <https://www.insidehighered.com/news/2008/09/24/buttons>.

<sup>21</sup> Adam Kissel, *University of Illinois Responds to Widespread Complaints Against Ban on Political Activity*, THE TORCH (Oct. 6, 2008), <https://www.thefire.org/university-of-illinois-responds-to-widespread-complaints-against-ban-on-political-activity/>.

<sup>22</sup> Charles C. Haynes, *In higher education, low tolerance for free speech*, FIRST AMENDMENT CENTER (May 22, 2014), <http://www.firstamendmentcenter.org/in-higher-education-low-tolerance-for-free-speech>.

<sup>23</sup> Letter from David L. Boren, President, University of Oklahoma, to Adam Kissel, Director, Individual Rights Defense Program, Foundation for Individual Rights in Education (Oct. 13, 2008), <https://www.thefire.org/letter-to-fire-from-university-of-oklahoma-president-david-l-boren/>.

<sup>24</sup> Email from David L. Boren, President, University of Oklahoma, to University of Oklahoma community (Oct. 27, 2008, 6:54 PM), <https://www.thefire.org/email-from-ou-president-david-l-boren-to-university-of-oklahoma-community-october-27-2008/>.

<sup>25</sup> *UT students punished for hanging political signs in dorm windows*, KHOU (Oct. 26, 2009, 10:57 AM), <http://www.khou.com/story/news/2014/07/10/11177704/>.

# **ATTACHMENT C**

# **“Free Speech” Zone Modesto Junior College (California)**



# Modesto Junior College (California)



**CA COLLEGE BARS STUDENT FROM HANDING  
OUT COPIES OF CONSTITUTION ON CAMPUS**

**AMERICA  
LIVE**

# “Free Speech” Zone Dixie State University (Utah)



# “Free Speech” Zone University of Hawaii at Hilo



University of Hawaii at Hilo students can speak their minds,  
but only if they're in this tiny "free speech zone."

Yes, that's a puddle.

All of America is a free speech zone.

thefire.org

# “Free Speech” Zone Blinn College (Texas)



- After recruiting new members for Young Americans for Liberty (YAL) outside the Student Union, Nicole was told that she could only do so in the “Free Speech” Zone, two squares of pavement, 11 x 16 feet in area.

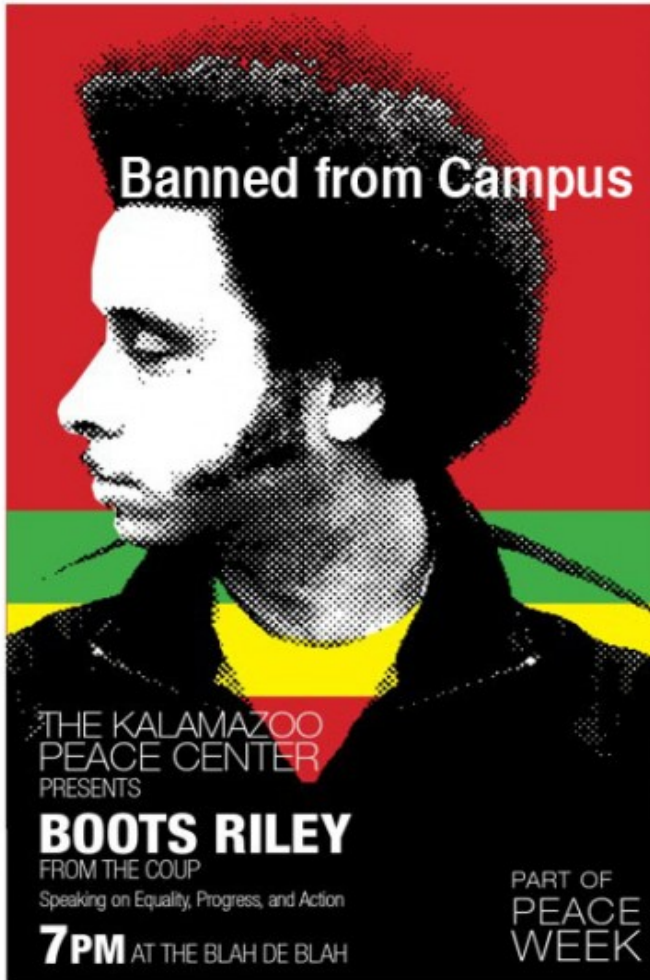
# Blinn College (Texas)



- If Nicole wanted to talk about *guns* that would require special permission, which Nicole probably couldn't get.



# Western Michigan University



- The Kalamazoo Peace Center (KPC) at Western Michigan University found out that censorship comes in many forms when it invited rapper and activist Boots Riley to campus.
- School officials first refused to allow the rapper and social activist on campus because he was allegedly a “threat” to public safety and then decided he could appear only if KPC paid for private security, which it couldn't afford.